

13625

No. _____

Supreme Court of Illinois

corley et al

vs.

Kennedy, Sr.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 144

1862

Corley

v.
Kennedy

13625

Depledge

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Bureau County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Bureau County, before the Judge thereof, between

Michael Kennedy Sr. —

plaintiff —, and Martin Corby, Matthias Phelan & Leslie Miller Consts of Highways & Samuel E. Parke Town Clerk of Westfield —

defendants, it is said that manifest error hath intervened, to the injury of the said Defendants

as we are informed by their complaints — the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Michael Kennedy Sr. —

that he — be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Michael Kennedy Sr. —

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 21st day of March in the year of our Lord One Thousand Eight Hundred and Sixty-two.

S. Veland

Clerk of the Supreme Court.

State of Illinois ss
Bureau County

I have served the within Scire Facias by
reading it to the within named Michael
Kennedy & this 11th day of April A.D. 1862
D. McDonato Sheriff Bureau
By W. C. Stacy Deputy

68
Martin C. Cady et al,

No. 144 vs.
Michael Kennedy Sr.

SCIRE FACIAS.

FILED... C. J. Pl. ... 23... A. D. 1862

L. Seland Clerk.

1 service - 50
10 miles travel 75
Return 10
71.35



Martin Corley & others
vs Emma to Beman
Michael Kennedy, Dever

Supreme Court
State of Illinois
3rd Grand Division
April, 1862
AD 1862

And the said defendant in
error says that there is no error
in the record and proceedings of record
or in giving the judgment of record
and therefore he prays that the said
Judgment may be affirmed &
that his costs may be recognized
to him &

William H. Peters
& George C. Ide
attys for Defts in Error

68

144

Martin Corley et al
vs Eux to
Bancro
Michael Kennedy Esq

Jourdan in Eux

Filed Apr 23, 1862.
L. Kelam
C.M.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

MARTIN COOLEY *et al.* }
vs. } ERROR TO BUREAU COUNTY.
MICHAEL KENNEDY, SEN. }

DEFENDANTS IN ERROR'S BRIEF.

The following objections to the regularity and validity of the proceedings of the Commissioners of Highways and Supervisors, appeared to the original papers that were returned by the Town Clerk, in obedience to the writ of certiorari, which comprised all the papers then in the Town Clerk's office.

Abs. 1 1st. Petition stated that, from the C. B. & Q. Railroad, the proposed road would run in a *North-Easterly* direction, to connect with the Peru & Dixon Plank Road in the town of Arlington. The direction of the road and termination are indefinite. The names of all the owners of lands over which the road would pass are not given, nor were they stated to be unknown. The petition did not, therefore, comply with the law.

1 *Cooke's Statutes, Page 353, Sec. 1.*

Abs. 1-3 2d. Same page of statute, sections 1 and 2, forbid the Coms. to act upon the petition until *twenty days after* the petition had been posted. Section 1, bottom of page 366, requires the Coms. to give 8 days notice of the time and place when and where they would hear the reasons for and against the road. In this case the Coms. fixed the 7th of November A. D. 1860, for said hearing. The petition was posted on the 11th Oct., there not being 28 days intervening between the 7th Nov. and 12th Oct. Coms must have acted upon the petition *before* the petition had been posted 20 days, or they did not give 8 days notice of their meeting for the hearing of the petition. If the amended return is to

be considered, then it appears that the Coms. acted upon the petition on the 29th Oct.—*seventeen days only* after the posting of the petition. The notice for this meeting is dated the 29th Oct., and the affidavit is, that it was posted upon that day. This action of the Coms. being premature, is without legal sanction, and is therefore null and void, and, *legally, no time* was selected, nor notice given, for the hearing upon the petition, and their action upon the premises is a nullity.

3D. In the original papers returned by the Clerk, there is no evidence whatever that any notice had been given for the hearing upon the petition.

ABS.
2-4

4TH. On the 9th Nov. 1860, the Coms. filed their order in the Town Clerk's office, refusing to lay out the road. On the 28th Nov., the petitioners appealed. On the 29th Nov., the Supervisors fixed the 24th Dec. for the hearing of such appeal. The notices to Coms. and petitioners, for such hearing, are also dated 29th Nov., and were all served either before or on the 6th Dec. The day for the hearing of the appeal was selected, and notices were given within 28 days after the filing of the order of Coms., when the statute, (Cooke's,) pages 354 and 355, sections 8, 10 and 11, provides that the day for such hearing shall be designated *after* 30 days had elapsed from the filing of the order of the Coms. in the Town Clerk's office, all who are desirous of appealing, to take their appeal within that time. This selection of the time for the hearing of the appeal being entirely unauthorized at such time, was void. The services of the notices upon the Coms. and petitioners, fixing the day for such hearing, being *before* the time when the Supervisors could select the day, is likewise void.

REC.
44-5

The notices, even if at the proper time, were insufficient. The appellants are not described therein as petitioners, or shown to have any right to appeal. The notices, except those addressed to the Coms., are addressed to no one, and as they appear in the original papers, are signed by no one.

ABS,
2

5TH The defendant in error was the owner of lands over which the road would pass, and it was so stated in the petition, yet no notice was given to him of the appeal, or the hearing thereof, nor did he appear before the Supervisors at the hearing. The amended certificate of the Supervisors states that on the 28th Dec., 1860, the last day of such hearing, Michael Kennedy, jr., agent for Michael Kennedy, sen., was present; but the certificate does not state that he had authority to appear for his father, the defendant in error, or that he did so appear, or that he took any part in the proceedings before the Supervisors, or even that he knew that they were assessing his father's damages. If the defendant in error had been there himself, under the circumstances, it would not have been an appearance or waiver of notice.

REC,
89

People vs. Judges of Herkimer Co., 20 Wendell, 187.

When the owner of land over which the road is to pass takes an appeal,

the law requires notice to the three of the petitioners and to the Coms. ; but when the petitioner take the appeal, surely it is not the intention of the law, that then notice shall be given to the Coms. and petitioners, and none to the owners of lands over which the road passes . If so, the land owner's interest is determined without notice to him. This appeal is not applied for, or taken from the Coms. at the hearing upon the petition, but in vacation before the town Clerk without notice. In the application for the establishment of the road, and in the appeal, the petitioners and the landholders are adverse parties. Any three of the petitioners can appeal and bring up the case for the whole; and if they are only required to notify the Coms. and three of the petitioners, the appellants can notify themselves of the hearing of the appeal, or waive notice, or if they should notify three other petitioners, the case is not bettered any—they are on the same side and of the same parties. Is not notice as important to the man whose land is proposed to be taken, as to the petitioners? Does the law contemplate such partiality? *McPherson vs Holdridge*, 24 Ill., 38, holds that all the parties are entitled to notice, and so should the statute be construed.

Cooke's Stat., Page 355, Sections 11 and 15.

ABS.
1-2

6TH. The road as established by the Supervisors, materially varies from the petition. The names of the owners of lands over which the road was to pass, were given in the petition. The C. B. & Q. Railroad was not one of them; on the contrary, the petition stated the proposed road should run on the north side of said railroad; yet the Supervisors *did* locate the road over the lands of said railroad, which they had no right to do; and such action invalidates the road.

Cole vs. Town of Canaan, 9 Porter R. 88.

AB3
2-3

REC,
89

7TH. Both the original and amended records, show that Supervisors had no legal right or authority to assess the damages of defendant in error. The Supervisors are authorized to assess the damages of the owner of land over which a road will pass, when they cannot *agree* with him in relation thereto. There must be a *disagreement*, before they are authorized to assess such damages.

1 Cooke's Stat., Pages 354 and 5, Sections 6 and 15.

The Supervisors, in their reports, state that the damages of the defendant in error were *not released*, and *therefore* they assessed them. They do not state that any attempt whatever was made to agree with him in regard to his damages, or that such attempt would have been unavailing. The Court held, in *Gilbert vs. Columbia Turnpike Co.*, 3 Johns Cases, 107, that if the record *omit to state such disagreement*, it is fatal to the proceedings.

8TH. In the original papers, there was no entry of an adjournment of the

Supervisors, from the 24th to the 28th Dec., when they assessed the damages of defendant in error; nor was there any entry of the appearance of the defendant in error on the 28th, when his damages were assessed; nor was there any evidence of notice given to him of their meeting on the 28th.

Some of these objections were not specially and formally assigned as errors, in the petition for the certiorari, but this is not material. The Court held, in *The Commonwealth vs. Sheldon and others*, 3 Mass., 187, that upon a return to a certiorari, they would inspect the record, and if they should find error, they would quash the proceedings, although such error or errors were not embraced in the assignments of errors—that the rule was different in writs of error from that of certiorari.

After the certiorari issued, the appellants sought to reform the papers and records, then in the town Clerk's office, as follows, to wit:

1st. By having another affidavit made, and filed in the town Clerk's office, of the posting of the petition. But the new affidavit contained nothing different from the first affidavit, that was material.

2d. By filing in town Clerk's office, a purported copy of a notice, alleged to have been given by the Coms., of the time and place for their hearing of the petition, and an affidavit of service. The affidavit is defective, in not stating that the notice was posted by direction of the Coms., and also in not stating that the notice was posted in three of the most public places in the town, as required by law. The affidavit states *township*. The Court could not take judicial notice, that the boundaries of the two were identical. The town might be much larger than the township. The notice, then, might have been posted in three of the most public places of the township, and still not of the town.

3d. They filed in the town Clerk's office, a new affidavit of Benedict, contradicting his prior affidavit on file, in which he now stated that the notices before filed in the town Clerk's office, were not correct copies of the originals which had been served, as he had sworn in his first affidavit, but that the original notices which he had served, had appended to them, the signatures of the appellants.

4th. They filed in the town Clerk's office, a new certificate of the Supervisors, who laid out the alleged road, certifying that although they had made no entry of their continuance of the hearing of the appeal, from the 24th to the 28th of December, 1860, yet that they in fact had formally so adjourned, and also state, as before mentioned, that Michael Kennedy, jr., was present on the 28th Dec., the last being by them interpolated improperly in their certificate, (even if they had the right to make a new one.) in order to manufacture testimony to sustain their proceedings.

If the purported amendments and additions to the papers and records, were legal and proper, and in due season, yet there is an entire failure to re-

move 1st, 2d, 4th, 5th, 6th, 7th objections contained in this brief, and the 3d and 8th are only partially obviated. The 3d is not removed. The affidavit does not show a sufficient posting of the notice for the hearing of the petition, for the reasons already stated.

But the defendant in error insists that such amendments and additions, if they could be made at all, could only be made on *due notice* given to the parties interested. These were made nearly a whole year after the proceeding had been had, and the papers filed in the town Clerk's office, and records completed, without notice to the defendant in error.

This Court decided, in 11 Ill., 59 and 18, and in 18 Ill., 390, that a record could not be amended at a subsequent term of the Court, even in a matter of form, without *notice to the opposite party*, and in the last case, the Court held there must be something to amend by.

The plaintiffs in error cite the case of a sheriff amending his return of process without notice. But a sheriff is a sworn officer, who has given bond for the faithful performance of the duties of his office, which any one has the right to put in suit for redress of any injury sustained by an untrue or incorrect return of the sheriff; but not so in regard to these officers and their witnesses of whom they procure *ex parte* affidavits. They could affidavit the land owner out of his land over which the road passes, and he have no redress of the affiants. But the proposed amendments and additions are of a very different character from returns of process. The assessment of damages on the 28th Dec. being on a different day than that fixed by the Supervisors for the hearing the appeal, and they not having stated that on the 24th they adjourned the hearing to the 28th, is a nullity; and as the original assessment stood prior to the addition made thereto, one year thereafter, it was absolutely void on its face. Now it would be very unfair if the Supervisors could come in and amend their record in that way, without notice to the defendant in error, and make their assessment valid, and he be deprived of his property without an opportunity of being heard. If they could make such addition one year thereafter, why not ten years thereafter, whoever should be then the owner of the land? These new affidavits were not amendments of papers on file, but original papers thrust in to supply defects. There had not been on file any copy of the notice for the hearing of the petition, or affidavit of the service thereof, so this affidavit could not be considered an amendment. There was no affidavit on file to amend. No authority has been cited by the attorney for the plaintiffs in error, authorizing them to hunt up witnesses and get their affidavits, to establish what should have appeared of record twelve months before, giving no notice to the defendant in error of the taking of such affidavits, so that he could have procured counter affidavits, or subject plaintiffs' affidavit makers to a cross-examination, and all this, too, in a special proceeding to divest defendant in error of his property without his consent. Such a practice would lead to endless frauds and unlimited perjury. Owners of real estate and their grantees would have no security. If this could be done in one year after the proceedings had terminated, it could be done

after 10 years, or at any time. We claim that Supervisors are like arbitrators, that they are selected for the special case, and after they make their decision and report, and it has been filed, that they have no further jurisdiction in the premises, and that they have no authority to amend their report. Counsel for plaintiffs in error insists that the evidence of the regularity of these proceedings need not appear in the town's Clerk's office, or of record in any way, but that the evidence may rest in the uncertain memory of witnesses. This is a very dangerous doctrine, and opposed to the whole spirit of our laws and decisions. This Court has held, and it has been held in almost all the Courts, and I need only cite 3 Johns Cases 107, and 10 Wendell, 175, that in special powers granted by statute, affecting the property of individuals, the power must be strictly pursued, and must so appear *on the face of the proceedings* to affect private property.

1 Gilman, 10 and 15 Ill., 46, cited by the opposite counsel, were decided on a very different system of laying out of public roads; but even if applicable, we have rebutted the presumption of the regularity of the proceedings claimed to be afforded by the final order of the Supervisors establishing the road, by producing all the road papers and records in the town Clerk's office, and thereby shown that these proceedings were irregular, and that there is a want of necessary papers, without which, the road is illegal. Case cited of 1 R. R., case 462, was an appeal and under a different proceeding from this.

Case cited by opposite counsel, in 23 Wendell, 327, was the amendment of a clerical error, to make courses and distances correspond with fixed monuments. The question of want of notice was not presented or decided. This Court has decided that notice is necessary.

4 Halstead, 2, 357, cited by opposite counsel, are cases where the Court allowed amendments to the caption of an indictment, required by the statute of New Jersey, where the *minutes, records and files of the Court supplied the deficiencies*.

In Taylor vs. Henry, 2 Pick, 402, the Court held that resort could not be had to verbal testimony to supply the omission of an entry of the adjournment of a town meeting.

If the Supervisors acted without notice, the opposite counsel says, the appeal is still pending before them. If there is such want of notice, then certainly their order laying out the highway should be quashed. Supervisors' statement of notice in their report is not sufficient. It should affirmatively appear by the papers, and not by recital in their report. We think that the Circuit Court could not have done otherwise than have sustained the objections aforesaid.

MILTON T. PETERS & GEORGE O. IDE,
Attorneys for Defendants in Error.

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Cooley

has

Kennedy

Deft. Brief

Filed May 7, 1862

J. L. Linn

CLK

STATE OF ILLINOIS ; IN THE SUPREME COURT
 OF APRIL TERM, 1862.
 ERROR TO BUREAU.

Martin Corley and Others, Plaintiffs, in error, }
 vs. } CERTIORARI.
 Michael Kennedy, Sr., Defendant, in error. }

A B S T R A C T .

Page 1. At August Term, 1861, of Bureau Circuit Court, defendant filed in said Court
 " 2. his petition for a Certiorari after the course of the common law against the plain-
 tiffs as highway commissioners and town clerk of Westfield township: To certify
 up to said Court the record and proceedings of a certain highway, laid out by
 three Supervisors, and about to be opened by plaintiffs as such commissioners in
 said Town through lands of defendant, said Petition alleges that the action of said
 Supervisors in laying out said highway was illegal and void for the reasons following:

" 5. 1. Because it don't appear that Petition for said highway was posted
 twenty days before action was had on it.
 2. Because Petition don't give the names of all the owners of lands over which
 the said highway passes.
 3. Because there is no evidence in Town Clerk's office that said commissioners
 gave notice of their meeting to act on said Petition.
 4. Because said Supervisors did not give any notice of the laying out of said
 highway.
 5. Because said Supervisors did not lay out said highway on the day appointed,
 but on a subsequent day without notice to parties interested and without a formal
 adjournment from the day appointed.
 6. Because said highway is null and void.
 7. Because no estimate of defendant's damages occasioned by said highway
 was ever filed with the Town Clerk, nor was the damages allowed defendant, ever
 tendered to him.

The Petition concludes by praying that on inspection of the papers pertaining
 to said highway, that the Court will order that the proceedings and orders made by
 the Commissioners and Supervisors, relating to said highway, be vacated and an-
 nulled, and that the writ of Certiorari operates as a supersedias, against the open-
 ing of said highway, said Petition makes exhibits of the orders and proceedings
 had by the highway Commissioners and Supervisors in reference to said road.—
 Upon which Petition the Circuit Court at said term ordered a writ of Certiorari to
 issue according to the prayer of said Petition.

On the 5th September, 1861, the writ of Certiorari was issued according to the
 order of said Circuit Court, and returned served on the plaintiffs.

At the December Term, 1861, of said Circuit Court, the plaintiffs and the Town
 Clerk of Westfield made return to said writ of the following papers:

" 30, 31. 1. A Petition for the highway in question, signed by twenty-five legal voters
 " 33. residing within three miles of the said highway therein proposed, said highway
 commencing at a point on the township line between Westfield and Berlin between
 sections 7 and 18, in Westfield town, and running due east on the section line, to
 the C. B. & Q. R. R., and thence a north easterly direction on the north side of said
 R. R. on the most direct and eligible route to connect with the Peru and Dixon
 Plank Road, in the town of Arlington, that said road will pass over lands owned
 by Julius Benedict, Phillip Kennedy and Michael Kennedy; the Petition bears
 date the 9th of October, 1860, and in other respects is in the usual form.

" 32, 37. 2. Attached to said Petition is the affidavit of Julius Benedict that he posted
 three copies of said Petition in three of the most public places in said town of
 Westfield, said affidavit sworn to before A. Morgan, J. P. on the 12th of Oct. 1860

3. On the back of said Petition, is an order of the said highway Commissioners,

Page 32, 38. refusing to lay out said road, said order bearing date November 7th, 1860.

- “ 34. 4. Appeal by C. C. Warren, T. T. Larkin, Julius Benedict, Joseph Morrison and James Winter, (five of the Petitioners) from said order of the highway Commissioners (refusing to lay out said road), to the Town Clerk of Westfield town, said appeal is in the usual form bearing date November 23th, 1860, and signed by the appellants, and is made to reverse the said order and determination of the highway Commissioners, in refusing to lay out said road
- “ 39. 5. Certificate of Town Clerk of Westfield, of the taking of said appeal by appellants, and the selection by said Town Clerk of the Supervisors of the towns of Selby, Berlin and Clarion, in said county of Bureau, to try said appeal, said appeal being made on said 28th day of November, 1861, and the said order of the highway Commissioners from which said appeal was made, was filed in said Town Clerk's office on the 9th of November, 1860, said certificate of said Town Clerk is in the usual form and bears date Nov. 28, 1860, and is signed by said Town Clerk.
- “ 38. 6. Order of said Supervisors (selected to try said appeal), fixing on the 24th of December, 1860, at 10 o'clock, A. M., as the time, and the office of Esq., Park in Arlington, as the place when and where they will try said appeal, signed by said Supervisors.
- “ 43. 7. Notice to the Commissioners of highways of Westfield Town, notifying them of the time and place fixed by said Supervisors for the trial of said appeal as aforesaid, said notice bearing date Nov. 29th, 1860, but said notice is not signed by appellants or other person.
- “ 44. 8. Affidavit of Joseph Morrison (appellant), that on 6th December, 1860, he served said notice on said highway Commissioners by giving to each of them a copy of said notice.
- “ 45. 9. Notice to Nichols, Linton and Barnhart (three of the Petitioners for said road) of the said time and place fixed by said Supervisors for the trial of said appeal, said notice bearing date Nov. 29, 1860, but is not signed by the appellants, or other person.
- “ 45. 10. Affidavit of Julius Benedict that he served said notice on said Nichols, Linton and Barnhart, by giving to each of them a copy thereof, on the 30th day of November, 1860, said affidavit sworn to before a J. P., December 24th, 1860.
- “ 48. 11. Order and report of said Supervisors, that they met at the house of Esq. Park, in Arlington, on 24th December, 1860, at 10 o'clock, A. M., to try said appeal. It then appearing to them that the said Commissioners of highways and three of the petitioners for said road, had been duly notified of their said meeting as required by law, they did then and there proceed to hear the allegations of the parties and try said appeal, personally examining the route for said road, then and there determined to lay out said road and reversed the said order of the highway Commissioners, and having so determined to lay out said road, they did on the 28th of December, 1860, cause a survey thereof to be made, by a competent surveyor who made his report to them as follows: (then they set out said report of the surveyor in hec verba) In their order laying out the road by metes and bounds, on the route described in the petition for said road and certain land owners over which said road passes to-wit: Benedict, the Kennedy's and the C. B. & Q. R. R. Co., not having released their claim to damages, they proceeded to assess the same. The benefits of the road to Benedict, Philip Kennedy and the C. B. & Q. R. R. Co., is equal to their damages. To Michael Kennedy, (deft.) they assessed his damages at \$650 00 for his damages occasioned by said road passing over his lands (described in their order) and they annex the said plat and survey of said road to their report and make it a part thereof, and declare said road a public highway 4 rods wide, said order bears date January 15th, 1861, and is signed by said supervisors.
- “ 46. 12. Survey and plat of said road signed by the surveyor.
- “ 53. 13. And afterwards at said December Term, 1861, of said Circuit Court, to-wit, on the 16th December, 1861, the plaintiffs filed the affidavit of S. R. Hemenway, setting forth that since the said return was made to the original writ, that said highway Commissioners, supervisors and appellants, had severally amended and corrected the errors, and supplied the omissions, apparent in the said transcript of the papers relating to said road, certified and returned in pursuance of the original writ issued herein. That such amendments and corrections of said road papers, were then on file in said Town Clerk's office, of Westfield Town, said affidavit setting forth such amendments, &c., in detail, and asking that a special

writ of Certiorari issue to said Town Clerk to certify as a part of said transcript originally returned by him, the said new and amended papers, on file in his office, and the Court thereupon ordered that such special writ of Certiorari issue herein.

Page 59. And afterwards at the same term of Court to-wit, on the 16th of December 1861, the said parties to this proceeding appeared in open Court, and agree that the following shall be taken and considered by the Court as the return of said Town clerk to said special writ of Certiorari, to wit :

- “ 61. 1. The Road petition as returned to the original writ.
- “ 63. 2. The affidavit of Julius Benedict of the posting of said petition as returned, to the original writ.
- “ 63. 3. That on 7th December, 1861, there was attached to said petition and filed in said town clerk's office, a new affidavit of said Benedict,—that he posted three copies of said petition in three of the most public places in said town on 12th day of October, 1860.
- “ 64. 4. On 9th of December, 1861, there was filed in said town clerk's office, a copy of notice of said highway commissioners, to the effect that said highway commissioners had fixed upon the 7th of November, 1860, at 10 o'clock, A. M., of said day, at the depot of the C. B. & Q. R. R., in said town, as the time and place when and where they would meet to hear reasons for and against laying out said road, said notice dated October 29, 1860.
- “ 65. 5. Attached to said notice is the affidavit of J. Meriam, (highway Commissioner), that he posted said notice in three of the most public places in said town, on or before 29th October, 1860.
- “ 66. 6. Order of said Commissioners refusing to lay said road, as set forth in the return to the original writ, filed November 9, 1860.
- “ 75. 7. Appeal to town clerk, same as set forth in return to the original writ.
- “ 79. 8. Town clerk's certificate of appeal and selection of supervisors, same as set forth in return to original writ.
- “ 81. 9. Supervisors order fixing time and place to try appeal the same as set forth in the return to original writ.
- “ 69. 10. Notice by appellants to said highway commissioners, of the said time and place fixed for trial of appeal by supervisors, same as the notice in return to original writ, except that this notice is signed by appellants, and was filed in Town Clerk's office December 10, 1861.
- “ 70. 11. Attached to said notice is the affidavit of Joseph Morrison (appellant), that he served said notices (so signed) on each of the said road commissioners by giving to each a copy thereof, on the 6th of December, 1860.
- “ 73. 12. Notice by appellants to three of the petitioners for said road, of said time and place fixed by supervisors to try said appeal, the same as the notice in return to original writ, except that this notice is signed by appellants, and was filed in the Town Clerk's office on 10th December, 1861.
- “ 74. 13. Affidavit of Julius Benedict attached to said notice that he served the same on C. C. Nichols, N. Linton and M. L. Barnhart, [three of petitioners] by giving to each a copy of the same [signed by appellants] that he so served the same on said Nichols and Linton on 30th Dec. 1860, and on Barnhart on 1st Dec. 1860.
- “ 83. 14. Order and report of supervisors, reversing decision of highway Commissioners, establishing road in question, assessing damages &c., same as set forth in the return to the original writ; said order and report filed in said Town Clerk's office, January 24, 1861; damages audited and allowed March 26, 1861.
- “ 87. 15. Amended report and order of said supervisors filed in said Town Clerk's office, on the 10th December, 1861; whereby, they state that they met at the house of Esq. Park on 24th December, 1860, at 10 o'clock, A. M., and then and there determined to lay said road as stated in their original order and report, which consumed the whole of said day, and not then having time to assess the damages, and lay out said road; that they then and there in presence of the parties interested, adjourned the laying out of said road and assessing said damages, until the 28th of December, 1860, at 10 o'clock, A. M., at the office of said Esq. Park; that

they met at said time and place in accordance with said adjournment, and laid out the said road, and assessed the damages as stated in their original order and report; the said parties interested being then and there present, said amended order and report, bearing date November 20, 1861; and is signed by said supervisors, and filed in Town Clerk's office, December 10, 1861.

18. Survey of said road as set forth in the returns to the original writ, and
“ 90, 91. also the plat of said road made by the surveyor.

19. Certificates of Town Clerk and highway Commissioners of Westfield of
“ 73. the correctness of the copies of the foregoing proceedings.

Order and judgment of Circuit Court, on the hearing of this cause upon the re-
“ 94. turn of Town Clerk to the original writ, and the said amended return filed by agreement of the parties, above set forth. The said Court after hearing argument, of counsel ordered and adjudged that the proceedings of said Supervisors set forth in said returns concerning said road be quashed, and the order of said supervisors establishing said road be annulled and made void, and that said defendant, Kennedy, recover his costs.

Bill of exceptions, embodies the said return to the original writ of Certiorari,
“ 96. affidavit of S. R. Hemenway, and amend returns, all above set forth; and agreement of the parties that said amended and supplied papers should be read in evidence, as if made by the town Clerk to the special writ of Certiorari, awarded herein. The order and judgment of the said Court quashing the proceedings of said Road Commissioners and supervisors, and annulling the order of the supervisors establishing said road. To which ruling of the Court the plaintiffs by their attorney then and there excepted, and prayed the Court to sign and seal said Bill of Exceptions, which was then and there done by the said Court, on the 28th day of December, 1861.

ASSIGNMENT OF ERRORS.

1. The Court erred in ordering that the proceedings of the Supervisors concerning the highway in question, *be quashed*.

2. The Court erred in adjudging that the order of the supervisors, establishing said highway be annulled and made void.

3. The Court erred in not deciding that said highway is valid and legal.

4. The Court erred in not giving full credit to the amended papers set out in the return to special writ.

5. The Court erred in quashing the proceedings of Road Commissioners and the appeal.

6. The Court erred in giving judgment against defendant for costs.

POINTS AND AUTHORITIES.

1. *The amendments of the Road Papers.* 1st, of the affidavit of the posting of the Road Petition; 2d, of the supplying of the Highway Commissioners' notice which was posted; 3d, of the notices of the appeal served on the commissioners and three of the petitioners, *showing the real facts* were properly made—such notices being in the nature of and fill the office of a summons. The return on a summons to show the fact of service may be amended at any time, and at the officer's own volition.

—See 2d *Gilman Rep.* Page 583-4.

Sheriff may amend his return without notice to party affected.

—3d *Gilman Rep.* Page 152-3.

Sheriff may amend return after he is out of office and after decree.

—15 *Illinois*, Page 100 and 269.

2. The Statute don't require these notices or the evidences of the posting and serving of them to be made a matter of record, or filed in Town Clerk's Office; the legality of the road therefore can't depend upon the omission to do an act not required by the Statute.

3. The jurisdiction of the highway commissioners and Supervisors, in the premises, must depend upon these facts: 1st, whether the road petition was in fact posted 20 days before action was had on it; 2d, whether the highway commissioners *in fact* put up requisite notices eight days before their action, and 3d, whether proper notices of the appeal were *in fact* served, and not whether the *filing of the evidences* of these acts in

the Town Clerk's office, was contemporaneous with the acts themselves.

4. It was proper for the Supervisors to amend their order and report, establishing the road according to the facts, showing the adjournment of the trial from 24th to 23th December, 1860. The making out of their order was a ministerial act.

—See 23d Wend., Page 323.

Where Supervisors on appeal in laying out a road misdescribed the location of the road in June, 1836, and afterwards in Sept., 1837, amended their order correctly describing the road, held to be proper. —23d Wendell, Page 323.

All papers relating to roads may be amended in the same manner.—*Ib.*

5. Commissioners laid out a road in pursuance of law, but neglected to file their proceedings; the proceedings were afterwards filed under a mandamus, and the road held to be valid, the act being held merely ministerial.

1st Cowen, Page 589. 13th Pick. Page 229. 11th Mass. Page 477. 4th Blackf. P. 2.

6. The Court may at any time and at any stage of a suit award a Certiorari to correct a record in its body or branches, and especially when a diminution is alleged.

—4th Johns. Page 509.

7. The amended road papers in this case returned in pursuance of the special Certiorari, became a part of the record.

3d Ind. Rep. 107 *id.*, 316. 2d Blackf. 422. 1st Blackf. 551 and note. 25th Binne, 581.

8. Records and proceedings may be amended after awarding of Certiorari.

—4th Halst. 2, *Ib.* 357.

9. Town Clerk may amend record according to the truth.

3d N. Hamp, 573. 11th Mass, 377.

10. The presumption is that the proceedings anterior to the order of the supervisors establishing the road are regular. 1st Gilman 10. 3d Gilman 499. 15th Ill. 546.

11. Objection that parties had no notice of the action of Commissioners and Supervisors, *must appear on the record*, it is not sufficient that there is no allegation in the record that they had notice, it must appear negatively that they had not notice.

Amer. Railway Case' Vol. 1, Page 462.

In this case, the Supervisors in their order say that the proper notices were given.

12. Defendants damages were audited and allowed (see page 87 of record) though it was unnecessary.

13. Defendant can't object if his name as a land owner was in the petition for the road.

14. Even though this Court should hold that the Supervisors acted without giving the proper notices, the proceedings ought not to be quashed, but the appeal would still be pending before them.

24th Ill. 38.

J. L. TAYLOR, Att'y for Pl'tffs in Error.

Page 1.

It was before the Hon. M. E. Hollister
Judge of the ninth Judicial Circuit of the
State of Illinois at a term of the Circuit
Court begun and held at the Court House
in Pomeroy within and for the County of
Bureau on the second Monday in the month
of August in the Year of our Lord One
thousand Eight hundred and Sixty one

Present Hon. M. E. Hollister Judge
Geo. M. Cadeliffe Clerk
Daniel M. Donald Sheriff
and C. P. Jones States attorney

(On the 17th day of said term)

At day morning 8 o'clock August 30th
A.D. 1861 Court met pursuant to adjournment
present same as yesterday
(and as above)

Michael Kennedy Sr

vs

Petition for Certiorari

Martin Corley, Matthias

Shelan & Lucie Miller

Commissioners of Highways

and Samuel C. Park

Common Clerk of Westfield

And now comes plaintiff by Cendall
& Sade his attorneys and presents to the Court

his Petition for Certiorari, in the words and figures following to wit:

To the Honor Mr. G. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois

Your petitioner Michael Kennedy Senior of the County of Bureau in said State respectfully shews unto your Honor that on the 9th day of October A. D. 1866 a petition of said date was addressed to the Commissioners of Highways of the town of Westfield in said County praying them to lay out a new road in said town to wit: "Commencing at a point on the townships line between Westfield and Berlin, between Sections Seven and Eighteen in said town of Westfield and running due East on the section line to the C. B. & L. Railroad and thence in a North Easterly direction on the north side of said Railroad on the most direct and eligible route to connect with the Peou & Dixon Plank Road in the Town of Arlington" a copy of which petition is herewith filed, marked "A" and made part of this petition; that on the 12th day of October 1866 copies of said petition were posted as will appear by the Affidavit of Julius Benedict, on file in the town clerk's Office of said town a copy of which

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affidavit marked "B" is hereto annexed, that there is no Record or other evidence on file in said town Clerks Office showing that said Commissioners ever gave any notice, Eight days beforehand of the appointed time and place to hear reasons for and against the laying out of said Highway in the manner required by law; that on the 7th day of Nov. 1860 said Commissioners made their order refusing to lay out said road, a copy of which order is hereto annexed and marked "C"; that afterwards, to wit on the 28th day of November 1860, as appears from the records of said Town Clerks Office, an appeal was taken from the decision of said Commissioners to the town clerk of said town of Westfield who on the same day made a certificate appointing the Supervisors of Berlin, Silby, and Clarion to hear and determine said appeal, a copy of which appeal marked "D" and a copy of which certificate marked "E" are hereto attached; that said Supervisors appointed the 24th day of December 1860 and the Office of Esq. Parke, in Arlington as the time and place when and where they would hear and determine said appeal as will appear from their certificate a copy of which marked "F," is hereto attached, but that the same has ever made public or posted does

nor appear from the Records of said Town Clerk's Office, said certificate itself being without date; that there are papers on file in said Office purporting to be notices to the Commissioners of Highways of said town and the petitioners for said Road, designating the time and place of hearing said appeal, but the same are not signed by any person and are not directed to any one, as appears by the files in said Office copies of which pretended notices are hereto annexed and marked respectively "G" and "H", but your petitioner denies that any notice of said appeal was given to him or that there is any evidence thereof to be found among the records of said Office.

Your petitioner further shows that on the 15th day of January 1861 said Supervisor made an order establishing said road, a copy of which order is hereto annexed and marked "B" that prior to and ever since the making of said order your petitioner has been and still is the owner of a portion of the premises over which said road is alleged to be laid to wit; the East half of the N. W. qr. of Sec. 13; the N. E. qr. of Sec 13; the E 1/2 of the S. W. qr. of sec. 7; the S. E. qr of sec 7; and the S. W. qr. of sec. 8 all in said Town of Westfield)

5

being 5th 17th of N. H. & of 4th J. M.; the Commissioners of highways of said Town have given your petitioner notice to remove his fences on said premises and threaten to open said pretended road through and over the said lands of your Petitioner greatly to his prejudice, and under the claim that said alleged Road is a legally laid out highway. But your petitioner asserts that the same is not legally laid out as appears by the records pertaining to said road for the following reasons to wit;

- 1st Because it does not appear that copies of the petition were posted up at least 30 days before the commissioners of highways acted thereon.
2. Because the petition is defective in not showing the names of all the owners of the lands over which said road was prayed to be laid, nor does it state that their names are unknown.
- 3 Because there is no evidence in said town clerks Office that notice was given by the commissioners of highways and posted up at least Eight days before they acted on said petition and hence there was neither jurisdiction in said commissioners nor in said Supervisors on appeal.
- 4th Because in hearing said appeal said Supervisors did not proceed to lay out said Road in the manner required by law by giving the requisite or any notice whatever to your petitioner and.

others interested.

5 Because said Supervisors did not order said road to be laid out on the day appointed by them to hear said appeal, but laid out said road and asseped the damages occasioned to your petitioner by taking his land on a day long subsequent to said appointed day and without any notice to your petitioner and without any formal adjournment,

6 Because said proceedings in relation to said road are null and void

7 Because no estimate of said damages allowed to your petitioner for taking his said land had ever been deposited with said town clerk and filed among his records; nor does it appear that the damages allowed have ever been tendered to your petitioner or provision made for their payment by said towns

Inasmuch therefore as no mode of appeal is provided for your petitioner from said orders and decisions of the commissioners of highways and Supervisors aforesaid in regard to the errors complained of in this petition, your petitioner prays that a writ of certiorari after the course of the common law may be issued out of and under the seal of this Honorable Court directed to said commissioners of highways to wit;

Martin Corley, Matthias Thelan, & Leslie Miller

and to Samuel E. Parke Town Clerk of said
Town of Westfield commanding them and each
of them to cause the record of the proceedings
aforesaid relating to said alleged road to be
fully certified to this Court for its inspection
and review and that upon the inspection of
such record, this Court will order and direct
that said orders and proceedings of said com-
missioners of highways and of said Supervisors
touching the Establishment of said alleged road
may be quashed, wholly vacated and annulled
and that the granting of said writ of Certiorari
may operate as a writ of Supersedeas to stay
the opening of said alleged road through the lands
of your petitioners, upon your petitioners giving
such bond with such conditions as your Honor
shall deem meet, and your petitioners will ever
pray.

Hendall & Ide

Petitioners attorneys

State of Illinois Bureau County Ill.

Michael Kennedy Sr. being duly sworn
deposes and says that the matters and facts set
forth in the foregoing petition are true and those
stated upon his information and belief he believes
to be true

Subscribed and sworn to before me
this 28th day of August A.D. 1861

Michael Kennedy Sr.

George C. Ide, Police Magistrate

Exhibit A

to the Commissioners of Highways of the town of Westfield in the County of Bureau and State of Illinois

We undersigned legal voters residing within three miles of the route herein after mentioned and described for a road do hereby make application to you to lay out a new road of the width of your rods as follows: commencing at a point on the township line between Westfield and Berlin, between sections seven (7) and Eighteen (18) in the said town of Westfield and running due East on the section line to the C. B. & Q. Railroad and thence in a North Easterly direction on the North side of said Railroad on the most direct and Eligible route to connect with the ^{Great} Dixon Plank Road in the town of Arlington the names of the owners of the lands over which the road is to pass are Julius Benedicts, Phillips Kennedy, and Michael Kennedy, Com petitioners therefore pray that you will proceed to lay out said road and cause the same to be opened according to Law

Dated at Arlington Ill. this 9th day of October A. D. 1860

Names
Joseph Mentier
John S. Larkin

Names
Agosaban Rockabber
Wm. G. Turvid

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W. G. Smith
 J. A. Dupes
 A. P. Howe
 H. Mellen
 Wm Wallace
 J. H. Arnold
 E. C. Warren
 E. C. Nichols
 W. A. Sikes
 J. M. Morris
 Nathan Limborn

Joseph Waugh
 Thomas Anderson
 Joseph Isaacs
 William Bell
 Carl Berrett
 M. L. Barnhart
 Joseph Morrison
 John J. Smet
 Wm Lade
 Julius Benedict

" 13 "

State of Illinois }
 Bureau County } ss.

Julius Benedict being duly sworn doth depose and say that he posted three copies of the within notice as follows Dupes Store, Post Office, and Luke Leathers & Kernil's shop in the town of Westfield, being three of the most public places in said town

Subscribed and sworn to before me this 12th day of October A. D. 1860
 W. Morgan J. P.

Julius Benedict

Exhibit "C"

We the undersigned commissioners of highways of the town of Westfield having this day examined the route for a new road petitioned for in the within petition and heard the reasons for and against the same are of opinion that the public good does not require the laying out of the same } Leslie Miller }
 dated at Westfield this } J. J. Mericom }
 7th day of Nov. 1860 } of Highways }

Exhibit "D"

To the Town Clerk of the Town of Westfield in the County of Bureau and State of Illinois
 The undersigned citizens of said County residing near the route for a road hereinafter described feeling themselves aggrieved by an order made by the commissioners of highways of the said town of Westfield on the 7th day of November A. D. 1860 and filed in the Office of the said town clerk on the ninth day of November A. D. 1860 do hereby appeal to you from such decision or order aforesaid and request you to select three Supervisors of said County to try said appeal according to a statute in such case made and provided And your appeals show that said order is a refusal by the said commissioners of highways of said Westfield

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to lay out a public highway described in a petition presented to the said commissioners of highways a copy of which petition is hereto annexed and marked (A) and made part of this appeal, and your appellants show that they were each of them signers of said petition and petitioners for said highway and your appellants show that due notice of said petition was given, a copy of the proof of which notice is hereto annexed marked (B) and made part of this appeal and your appellants show that a copy of the order of refusal aforesaid of said commissioners is hereto annexed marked "C" and made part of this petition. The grounds of this appeal are that the public good ^{imperatively} demands that a public highway should be laid out as described in said petition and that the order of said commissioners refusing to lay out the road petitioned for in said petition is erroneous and based on a mistaken view of the interests of the public. This appeal is brought to wholly remove the said order of said commissioners and to have a public highway laid out and established as prayed for in said petition.

Witness our hands this 28th day of
November A. D. 1860

L. G. Warren
John J. Hartin
Otho Benedict
Joseph Morrison
Joseph Mintier

State of Illinois
 Bureau County
 Town of Westfield

I Samuel Parker

Town Clerk of said town of Westfield do hereby certify that on the 28th day of November A. D. 1860 the following named appellants to wit, E. C. Warren Joseph McIntire, Town J. Larkin Julius Benedict, Joseph Morrison came and filed with me their appeal in writing by which they appealed from the decision of the Commissioners of Highways of said Town of Westfield in refusing to lay out a highway as follows commencing at a point on the township line between Westfield & Berlin between sections seven (7) and Eighteen (18) in the said town of Westfield and running due East on the section line to the C. B. & L. Railroad and thence in a North Easterly direction on the North side of said Railroad on the most direct and eligible route to connect with the Peru and Dixon Plank road in the town of Arlington which order of said Commissioners in refusing to lay out said road was deposited with me and filed on the 9th of November A. D. 1860 The grounds upon which said appeal is made are that the public good imperatively

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demands that a public highway should be laid out on said route as described and that the order of said commissioners in refusing to lay out said road is erroneous and based on mistaken views of the interest of the public; and that I have selected the Supervisors of the towns of Selby, Berlin, Clarion, to hear and determine said appeal, having had in making such selection due regard to the interests of the persons interested. Given under my hand this 28th day of November A. D. 1860

Samuel C. Parke

Town Clerk.

Certificat^e F^o

State of Illinois }
Bureau County } p.

We the undersigned Supervisors of the towns of Selby, Berlin, and Clarion in said County who have been selected by the Town Clerk of the Town of Westfield, in said County to hear and determine the appeal described in the certificate of said Town Clerk deposited with the said Supervisor of the Town of Selby do hereby appoint the 24th day of December A. D. 1860 at 10 O'clock in the forenoon at the time and the Office of Say. Parke in Robinson as the place when

and where we will hear and determine said appeal

Thomas Justin Supervisor of Selby
George Rackley Supervisor of Berlin
W. C. Bruce Supervisor of Clinton

Exhibit "A"

State of Illinois } To the Supervisors of the
Bureau County } ss Town of Berlin in said
Town of Westfield } County

Sir the undersigned, having taken an appeal from the ^{decision of the} Commissioners of highways of the said town of Westfield in refusing to lay out a highway, as follows to wit; commencing at a point on the township line between Westfield and Berlin between sections seven (7) and Eighteen (18) in said town of Westfield and running due East on the section line to the C. B. & Q. Railroad, and thence in a North Easterly direction on the North side of said Railroad, on the most direct and eligible route to connect with the Town of Dixon Plant road in the town of Arlington; which order of said commissioners in refusing to lay out said highway was deposited with the town clerk of Westfield and filed on the 9th day of November A. D. 1860. The grounds upon which said appeal is made are that the public good

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imperatively demands that a public highway should be laid out on said route as described and that the order of said commissioners in refusing to lay out said ^{Road} is erroneous and founded on mistaken views of the interest of the public. You are further notified that you and the Supervisors of the towns of Selby and Clarion in said County have been selected by the Town Clerk of the said Town of Westfield to try said appeal, and that said appeal has been left by us with the said Supervisor of the Town of Westfield Selby on the 29th day of November A. D. 1860

Witness our hands this 29th day of November A. D. 1860

C. C. Warren

Julius Benedict

Samuel J. Larkin

Joseph Morrison

Joseph Montier

Exhibit "G"

State of Illinois }
Bureau County }
To the commissioners of Highways
of the town of Westfield in said County
Gentlemen you are hereby notified the undersigned have taken an appeal addressed to the town clerk of said town from your order filed in the Office of the said clerk with him on the ninth day of November A. D. 1860 refusing to lay out a highway on the

16 road described in the petition, upon which your
said order is endorsed; that said town clerk
has selected the Supervisors of the Town of
Kelby, Berlin and Clerion in said County
to hear and determine said appeal, and that
said Supervisors have appointed the 24th day
of December A. D. 1860 at ten o'clock in the
forenoon of said day at the time and the office
Benjamin Parke Esq in Arlington as the place where
and where they will hear and determine said
appeal, Witness our hands this 29th day of
November A. D. 1860

State of Illinois }
Bureau County } ss
Town of Westfield }

Mr. Joseph Morrison being
duly sworn according to law deposed and says
that on the 6th day of December A. D. 1860 he
delivered a true copy of the within notice to
Mr. Miller one of the commissioners of highway
of said town that on the 6th day of December
A. D. 1860 he delivered a true copy of the within
notice to Mr. Merriam ^{one} of the commissioners of
highways of said town; that on the 6th day of
December A. D. 1860 he delivered a true copy
of the within notice to Mr. Lanna one of the
commissioners of highways of said town

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I have read and subscribed
before me this 15th day of
December A. D. 1860
B. S. Parke J. P.

Joseph Morrison

Chin. 24.

State of Illinois }
Bureau County } J. P.

To Mr.

Sir, You are hereby notified that the undersigned have taken an appeal addressed to the town Clerk of the town of Westfield in said County, from an order made by the commissioners of highways of said town, and filed with said Clerk on the 9th day of November A. D. 1860, refusing to lay out a highway on the route described in the petition upon which said order is indorsed and of which petition you are one of the signers; that said town clerk had selected the Supervisors of the towns of Selby Berlin and Clarion in said County, to hear and determine said appeal: and that said Supervisors have appointed the 24th day of December A. D. 1860 at 10 o'clock in the forenoon of said day as the time and the office of Esquire Benj. S. Parke in Arlington as the place, when and where they will hear and determine said appeal. Witness our hands this 29th day of

November A. D. 1860

State of Illinois }
 Bureau County } s. s.
 Town of Mt. Field }

Mr. J. Benedict being duly sworn according to law deposes and says that on the 30th day of November A. D. 1860 he delivered a true copy of this notice to Mr. Nichols one of the petitioners for the within described road that on the 30th day of November A. D. 1860 he delivered a true copy of this notice to Mr. Linton one of the petitioners for the within described road, and that on the 30th day of November A. D. 1860 he delivered a true copy of this notice to Mr. Barnhart one of the petitioners for the within described road.

Sworn to and subscribed before me this 24th day of December 1860 } Julius Benedict
 George Rackley s. s.

Exhibit

To Thomas Justin George Rackley and W. H. Bruce, Supervisors of the Town of Selby, Berlin & Clarion in the County of Bureau and State of Illinois

The undersigned having been employed by you to make a survey of a road commencing at

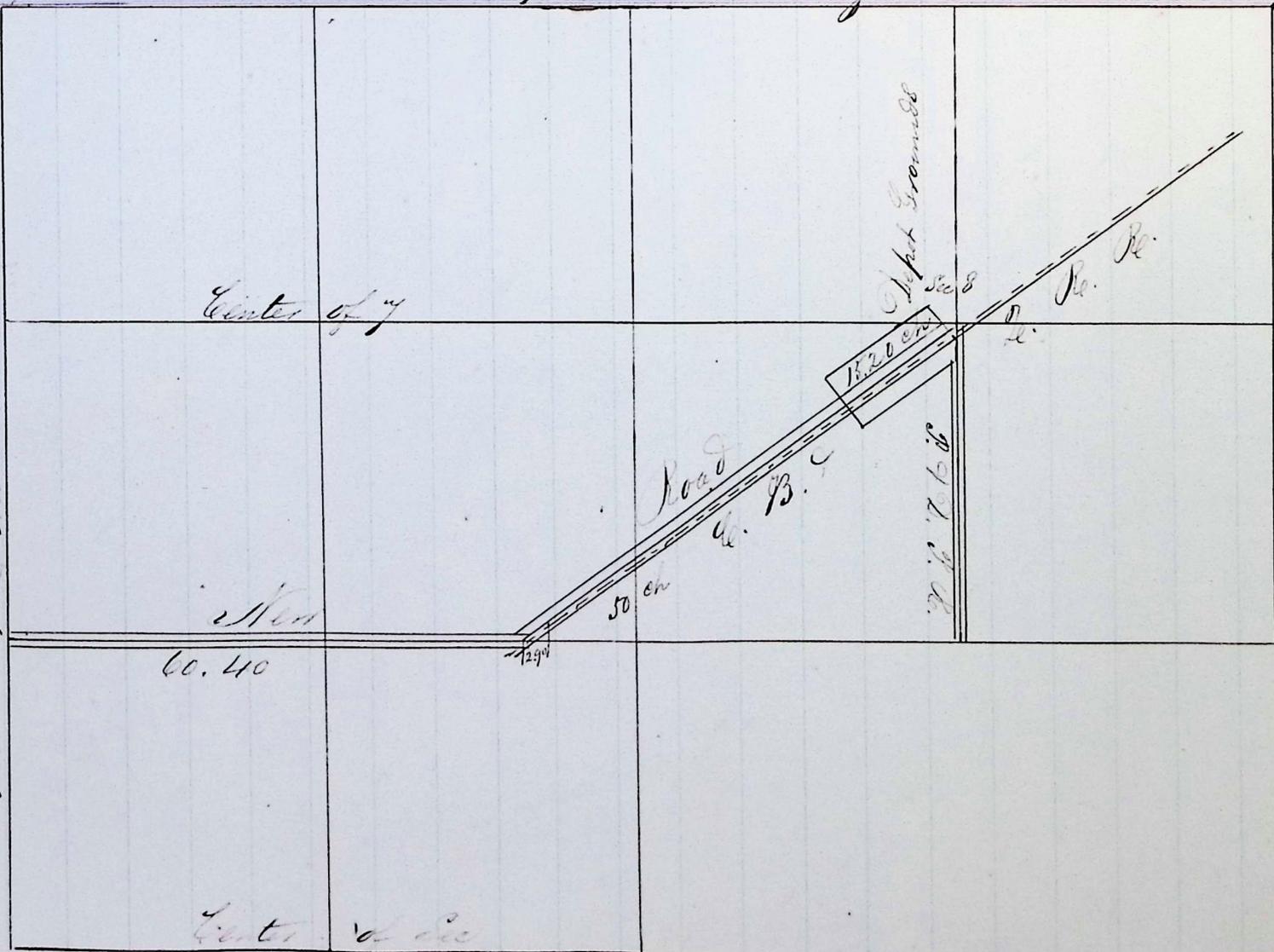
19 a point on the township line between Westfield and Berlin between sections seven (7) and Eighteen (18) in said town of Westfield and running due East on the section line to the C. B. & Q. Railroad and thence in a North Easterly direction on the North side of said Railroad on the most direct and eligible route to connect with the Peru & Dixon Plank Road in the town of Arlington, would report that the following is a correct survey thereof as made by me under your directions, to wit: Commencing at the S. W. corner of section Eighteen (18) Township Seventeen (17) North of base line Range eleven (11) East of the 11th P. M. town East sixty chains and forty links (60.40 ch) to a stake eighty three feet from the center of C. B. & Q. R. R. thence North $54^{\circ} 4'$ E. two chains and ninety links to a stake, thence N 54° E fifty chains to company's grounds thence S. 54° E fifteen chains and twenty links (15.20 ch) to a stake in center of Peru & Dixon Plank Road, and that herewith is a correct plat of said road according to said survey.

Dated this 8th day of Jan. A. D. 1861

Abram Cash Sr.

County Surveyor

Township 17 Range 11



State of Illinois }
 Bureau County } ss

Whereas on the 28th day of November A. D. 1860 G. C. Warren Joseph Mintier Town J. Larkin Julius Benedict and Joseph Morrison filed with the town clerk of the town of Westfield in said County of Bureau an appeal addressed to said town clerk appealing from the order and determination of the commissioners of highways of said town of Westfield in refusing to lay out a certain road in said town contained in the order of said commissioners, deposited with the town clerk of said town and filed the 9th day of November A. D. 1860 a copy of which said, as well as the papers before us in said appeal are herewith annexed, and the said town clerk having selected us the undersigned, three of the Supervisors of said County, for the hearing of said appeal, and having met on the 24th day of December A. D. 1860 at 10 o'clock A. M. at the Office of Benjamin F. Parker Esq in the village of Arlington to hear the proofs and allegations of the parties, being the time and place agreed upon by us, when and where we would meet and consider such appeal and it appearing that said commis-

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comers of highways and three of the petitioners in said case, had been duly notified of such meeting as required by law, we did proceed to hear the proofs and allegations of the parties and consider said appeal, having first personally^v ally⁺ the route of the proposed road; and we being now fully advised in the premises, are of the opinion that said road is necessary and proper and that the public interest will be promoted thereby, we do therefore order, that the order of said commissioners of highways be and the same is hereby in all things reversed, and having determined to lay out said road, we did on the 28th day of December A.D. 1860 cause a survey thereof to be made by a competent Surveyor who made report to us as follows viz,

To Thomas Justin George Packley
W. R. Bruce of the towns of Silby, Berlin
and Lebanon in the County of Bureau and
State of Illinois, The undersigned having
been employed by you to make survey of a
road commencing at a point on the township
line between Westfield & Berlin, between sections
seven (7) and eighteen (18) in said town of West
field and running due East on the section
line to the C. B. & S. Rail Road and thence
in a North Easterly direction on the North

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side of said Rail Road, on the most direct and eligible route to connect with the Peru and Dixon Plank Road in the Town of Arlington. Would report that the following is a correct Survey thereof as made by me under your direction to wit, commencing at N. W. corner of Section Eighteen (18) Township Seven (7) North of base line, Range Eleven (11) East of the 4th P. M., thence East sixty chains and forty links (66.40 ch) to a stake eighty three feet from centre of C. B. & Q. R. R. Thence N. $56^{\circ} \frac{1}{4}$ E. two chains and ninety links to a stake, thence N. 54° E. fifty chains to company ground thence N. 54° E. fifteen (1520) chains and twenty links to a stake in centre of Peru & Dixon Plank Road and that here with is a correct plat of said Road according to said survey

Dated this 8th day of Jan^y. A. D. 1861

(Signed) Abram Lusk Jr.
County Surveyor

and certain owners of lands over which road passes to wit, Julius Benedict Phillip Kennedy Michael Kennedy and the Chicago Burlington & Quincy Railroad Company not having released all claims to damages sustained by reason of the laying out and opening of the same, we proceeded to assess

the same, what we deemed just and right to each individual owner of the lands over which said road passed taking to account and estimating the advantages and benefits the road will confer on the owners of said lands for the same as well as all disadvantages, and have assessed the damages of each owners as follows, viz: To Julius Benedict on the west half of North West quarter of section Eighteen (18) town seven ten (17) North, Range Eleven (11) East of the fourth (4) T. M., and to Phillip Kennedy on the West half of the South west quarter of section seven (7) in the aforesaid town 17 N. 11 E of 4th T. M. we have estimated the advantages of said road equal to any and all their damages respectively. To Michael Kennedy on the East half of the North West quarter of section Eighteen (18) on the North East quarter of section Eighteen (18) on the East half of the South west quarter of section seven (7), the South East quarter of section seven (7), and the South west quarter of section eight (8), all in the aforesaid town Seventeen (17) North, Range Eleven (11) East of the fourth (4) T. M. we have assessed the damages at six hundred and fifty dollars, and to the Chicago Burlington & Quincy Railroad Company we have estimated the advantages of said Road, equal to

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and all their damages, It is therefore ordered and determined that a road be, and the same is hereby laid out and established according to said survey and the plat hereunto annexed and made a part of this order, which is hereby declared to be a public highway, four rods wide, the line of said survey being the center of said road; In witness whereof we have hereunto set our hands this fifteenth day of January A.D. 1861

Thomas Justin Supervisor of Shelby
 George Rackley Supervisor of Berlin
 W. C. Bruce Supervisor of Glavin

For Thomas Justin 11 days = 6.00	} To be paid by the Town of Westfield
" George Rackley 11 " = 6.00	
" W. C. Bruce " = 4.50	
" A. Cash Jr. Surveyor = 5.00	

And on his motion It is ordered by the Court that a writ of Certiorari issue herein to said defendants in accordance with prayer of petition

Copy of writ

State of Illinois) The people of the state of Illinois
 Bureau County)
 To Martin Corley, Matthias
 Shelton and Leslie Miller Commissioners of high
 ways and Samuel E. Foster Town Clerk

of the town of Westfield, in said County. Erecting
 Whereas by the Petition and
 affidavit of Michael Kennedy Sr. and Michael
 Kennedy Jr. it has been represented to the Judge
 of our Circuit Court, for the County aforesaid
 that on the 7th day of November 1860, the commis-
 sioners of highways of said town made their order
 refusing to lay out a certain road described
 "Commencing at a point on the township line
 between Westfield and Berlin between sections
 seven and eighteen in said town of Westfield
 and running due East on the section line to the
 C. D. & L. Railroad and thence in a North
 Easterly direction on the North side of said
 railroad on the most direct and eligible route
 to connect with the Peru & Dixon Plank road
 in the town of Arlington as they were petitioned
 to do, as appears by the record in the office of
 said clerk, from which decision an appeal
 was taken to three Supervisors of said County
 who on the 15th day of January A. D. 1861 made
 an order thereupon as follows, to wit; "It is
 therefore ordered and determined that a road be
 and the same is hereby laid out and estab-
 lished according to said Survey and the plat
 hereunto annexed and on the part of this order
 which is hereby declared to be a public highway
 four rods wide the line of said Survey being the

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center of said road" (said survey and plat being a part of said order as will appear by the records in the Office of said clerk) - And whereas it appears that manifest injustice has been done to said petitioner by the proceedings as aforesaid

Now therefore we being willing for certain reasons and causes in said petition set forth that the proceedings in relation to the locating of said road should be reexamined in the Circuit Court of said County. Do hereby command you the commissioners and clerk aforesaid that you do forthwith without excuse or delay certify to the said Circuit Court a transcript under the hand and seal of said clerk of all the proceedings touching the locating of said road truly fully and exactly as in the custody of said clerk they now remain together with this writ that said Court may do that which of right ought to be done, and that in the mean time you entirely desist from opening said alleged road through the lands of ^{said Petitioner} Michael Kennedy &

Witness the Clerk of said Court and the Seal thereof at Princeton this 5th day of September A.D. 1861

Geo. M. Readcliffe Clk.
per Charles J. Tatham Deputy

Seal
Lee

to the Sheriff of said County to execute

On the back of said writ the Sheriff made the following return.

"Served by reading to the within named Lizzie Miller & S. E. Parke this 9th day of Sept. 1861 further served this 23rd day of September 1861 by reading to the within named Martin Corley further served this 8th day of Oct. 1861 by reading to the within named Matthias Shelan

D. Mc Donald Sheriff

By W. C. Stacy Deputy

Treas. before the Hon. Mr. Hollister Judge of the Ninth Judicial Circuit, of the State of Illinois at a term of the Circuit Court begun and held at the Court House in Princeton within and for the County of Bureau State aforesaid on the second Monday in the month of December in the Year of our Lord one thousand eight hundred and sixty one

Present George M. Radcliffe Clerk

and Daniel M. Donald Sheriff

And now on this first day are present as aforesaid but the Hon. Mr. E. Hollister Judge of said Court is not present, and thereupon according to the Statute in such case made and provided Court stands adjourned until to morrow morning

(On the 4th day of said term)

Thursday morning 8 1/2 o'clock December
12th A.D. 1861 Court met pursuant
to adjournment, present same as
First day, with Mr. E. Hollister
Judge & D. P. Jones States attorney

Michael Kennedy &

vs

Martin Corley, Matthias
Shelan and Leslie Miller Petition for
Com: of Highways & Samuel Vestivari
E. Parker Com. Clerk of
Westfield

And now comes petitioner by
Kendall & Ide his attorneys and on his motion
it is ordered by the Court that defendants make
return to the writ issued herein by to morrow
morning.

Friday morning December 13th A.D.
1861. 8 1/2 o'clock - Court met pursuant
to adjournment, Present same as
Yesterday

Michael Kennedy &

vs

Petition for Vestivari

Martin Coley Matthias
 Shelton & Leslie Miller Comrs.
 of Highways and Samuel E.
 Parke Town Clerk of Westfield)

And now comes defendants by
 their attorneys aforesaid and file the return of
 said town clerk to the writ of certiorari is-
 sued herein in the words and figures following
 to wit

State of Illinois Bureau County

Circuit Court December Term 1861

The return of Samuel E. Parke town clerk
 of the Town of Westfield in said County to
 the petition of Michael Kennedy & exhibits
 in said Court against said Parke and his
 co-defendants, Martin Coley, Matthias
 Shelton and Leslie Miller commissioners of
 Highways of said Town

In obedience to the annexed writ
 of certiorari & Samuel E. Parke, Town
 Clerk aforesaid do hereby certify and return
 unto said Court under my hand and seal
 a true and correct transcript of all the pro-
 ceedings touching the ~~proceedings~~ locating of
 the road described in said writ, truly fully
 and exactly as in my custody they remained
 according to the command of said writ

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which transcript proceedings of record & file in my Office is hereto attached and compose a part of this return & consists as follows

No. 1 Petition for Road

No. 2 Appeal

No. 3 Town Clerks certificate

No. 4 Appointment of Supervisors

No. 5 Notice to Supervisor

No. 6 Notice to commissioners

No. 7 " " Petitioners

No. 8 Surveyors Plat

No. 9 Order of Supervisors &c

Which papers contain all the records and proceedings in relation to said road on file in the Town Clerks office of said town of Westfield and are true and correct copies of the originals of which I am the sole custodian by virtue of my said office

Witness my hand and seal this Eleventh day of December A. D. 1861

Samuel E. Faste

Edw. J. Faste

Town Clerk of Westfield

State of Illinois Bureau County Ill

I Samuel E. Faste being duly sworn do depose that the foregoing return is true in all respects (with the exception of the numbering which is put upon said copies for iden-

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ification merely) So help me Gods
 Subscribed to and sworn to }
 before me Dec. 12, 1861 } Samuel Q. Parker
 George A. Ide
 Police Magistrate Princeton

State of Illinois }
 Bureau County } S. S.

Julius Benedict, being duly
 sworn doth depose and say that he posted three
 copies of the within notice as follows Dupres
 Store Post Office and Luke Lawlers black-
 smiths shop in the Town of Westfield being three
 of the most public places in said Town
 Subscribed and sworn to before }
 me this 12th day of October A. D. 1860 } Julius Benedict
 A. Morgan J. P.

We the undersigned Commissioners of
 Highways of the town of Westfield, having this day
 examined the route for a new Road petitioned
 for in the within petition and heard the reasons
 for and against the same, are of the opinion
 that the public good does not require the laying
 out of the same
 Dated this 7 day of November } Leslie Miller } Commissioners
 A. D. 1860. at Westfield } S. S. Meriam } of Highways

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Bureau County }
Town of Westfield } 38

I Samuel E. Parke Town Clerk
of said Town of Westfield do hereby certify that
the foregoing and within is a true and correct copy
of the original thereof on file in my Office, wherein
is contained the entry or records of all such matters

In witness whereof I have hereunto set my
hand and seal this 10th day of September 1861

Samuel E. Parke T. Clerk

To the Commissioners of Highways of the Town
of Westfield in the County of Bureau and State
of Illinois

The undersigned legal voters residing
within three miles of the route hereinafter mention-
ed and described for a road, do hereby make applica-
tion to you to lay out a new Road of the
width of four Rods as follows: Commencing at
a point on the Township line between Westfield
and Berlin, between sections seven (7) and
eighteen (18) in the said Town of Westfield, and
running due East on the section line to the C.
B. and Q. Railroad and thence in a North
Easterly direction on the North side of said Rail-
road on the most direct and eligible route to connect
with the Peun and Dixon Plank road in the
Town of Arlington. The names of the owners

of the lands over which the road is to pass as your petitioners are informed Julius Benedict, Phillip Kennedy and Michael Kennedy, Your petitioners therefore pray that you will proceed to lay out said Road and cause the same to be opened according to law. Dated at Arlington Ills this 9th day of October A. D. 1860

Names	Names
Joseph Winkler	Adelaid Rockafeller
Samuel J. Fortin	Wm G. Survid
W. G. Smith	Jos. Waugh
J. A. Dupel	Thoms Anderson
A. P. Howe	Jos. Isaac
H. Mellon	Wm. Full
Wm Wallace	Earl Barrett
J. H. Arnold	Mr. G. Barnhart
G. C. Warren	Jos. Morrison
L. C. Nichols	John J. Sweet
J. A. Sikes	Wm. Wade
L. M. Norris	Julius Benedict
Nathan Linton	

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To the Town Clerk of the Town of Westfield
in the County of Bureau and State of Illinois.

The undersigned citizens of said County residing near the route for a road hereinafter described, feeling themselves aggrieved by an order made by the commissioners of Highways of the said Town of

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Westfield on the 7th day of November A. D. 1860
was filed in the Office of you the said Town Clerk on
the 9th day of November A. D. 1860 do hereby appeal
to you from such decision or order aforesaid and
request you to select three Supervisors of said Town
to try said appeal, according to the Statute
in such case made and provided. Yours appellants
show that said order is a refusal by the said
commissioners of highways of said Westfield to lay
out a public highway described in a petition
presented to the said commissioners of highways a copy
of which petition is hereto annexed, ^{marked (A)} and made part
of this appeal and your appellants show that
they were each of them signers of the said Peti-
tion and Petitioners for said Highways and your
appellants show that due notice of said Petition
was given a copy of the proof of which notice
is hereto annexed, marked (B) and made part
of this appeal and your appellants show that
a copy of the order of refusal aforesaid of said
commissioners is hereto annexed marked "C" and
made part of this petition. The grounds of this
appeal are that the public good importunately
demands that a public highway should be laid
out as described in said Petition and that the
order of said commissioners refusing to lay
out the road petitioned for in said petition is
erroneous and based on a mistaken view

36 of the interests of the public. This appeal is brought to wholly reverse the said order of said commissioners, and to have a public highway laid out and established as prayed for in said Petition. Witness our hands this 28th day of November 1860

C. C. Warren
J. C. Almonte
Thomas J. Jackson
Julius Benedict
J. C. Morrison

To the commissioners of highways of the Town of Westfield in the County of Bureau and State of Ills. The undersigned legal voters, residing within three miles of the route hereinafter mentioned and described for a road, do hereby make application to you to lay out a new road of the width of four rods as follows commencing at a point on the Township line between Westfield and Berlin between sections (7) and (8) in the said Town of Westfield, and running due East on the section line to the C. B. & E. Railroad and thence in a Northwesterly direction, on the North side of said Railroad, on the most direct and eligible route to connect with the New and Dixon plank road in the Town of Arlington, the names of the owners of the lands over which the road is

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to pups as your petitioners are informed are Julius Benedict, Phillip Kennedy Your Petitioners therefore pray that you will proceed to lay out said Road and cause the same to be opened according to law

Dated at Arlington Mo. this 9th day of October A.D. 1860

Named	Named
Jos. Mintier	L. M. Norris
J. J. Lottman	Nathan Linton
W. G. Smith	Agosaland Rockafeller
J. A. Dupes	Wm. G. Survice
A. P. Moore	Joe. Waugh
H. Melben	Thom Anderson
Wm. Wallace	Joe. Isaac
J. H. Arnold	Wm. Full
C. C. Warren	Carl Bafert
C. C. Nichols	Me. L. Barnhart
S. A. Sikes	Joe. Morrison
John J. Sweet	Wm. M. Cade
	Julius Benedict

State of Missouri }
Bureau County } ss

Copy of "B"

I, Julius Benedict, being duly sworn doth depose and say that he posted three copies of the within notice at follows Dupes Store Post Office, and Luke Landers Blacksmiths

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Shops in the Town of Westfield being some of the most public places in said Town
Subscribed, and sworn to before me
this 12th day of October A. D. 1860

A. Morgan J. P. Julius Benedict

Copy of Commat. order
(A.)

We the undersigned commissioners of highways of the Town of Westfield, having this day examined the route for a new Road petitioned for in the within petition and heard the reasons for and against the same are of the opinion that the public good does not require the laying out of the same

Dated at Westfield, this 7th day of November A. D. 1860 } Leticia Miller } commissioners
S. A. Meriam } of highways

Bureau County }
Town of Westfield } S. S.

I Samuel E. Tarkenton
Clerk of said Town of Westfield do hereby certify, that the foregoing is a true and correct copy of the original thereof on file in my Office, wherein is contained the entry or record of all such matters
In witness whereof, I have hereunto set my hand and seal this 16th day of September A. D. 1861

Samuel E. Tarkenton Town Clerk Seal

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State of Illinois }
 Bureau County } ss.
 Town of Westfield }

I Samuel E. Parke Town Clerk
 of the said Town of Westfield, do hereby certify that
 on the 28th day of November A. D. 1860 the following
 named appellants to wit: C. C. Warren Jo. Martin
 Tom. J. Larkin Julius Benedict and Joseph
 Morrison, came and filed with me their appeal
 in writing, by which they appealed from the decision
 of the Commissioners of Highways of said Town
 of Westfield in refusing to lay out a Highway
 as follows, to wit: Commencing at a point on the
 Township line between Westfield and Berlin
 between Sections seven (7) and eighteen (18) in the
 said Town of Westfield and running due East on the
 section line to the C. B. and Q. Railroad and thence
 in a North Easterly direction on the North side of
 said Railroad on the most direct and eligible
 route to connect with the Peru and Dixon Plank
 Road in the Town of Arlington; which order of said
 commissioners in refusing to lay out said Road was
 deposited with me, and filed on the 9th day of Novem-
 ber A. D. 1860. The grounds upon which said appeal
 is made are that the public good importunately de-
 mands that a public highway should be laid out
 on said route as described, and that the order of said
 commissioners in refusing to lay out said road is er-

sonous and based on mistaken views of the interest
of the public; And that I have selected the super-
visors of the Towns of Selby Berlin and Clarion, to
hear and determine said appeal, having had in
making such selection due regard to the interests
of the persons interested), Given under my hand
this 28th day of November A. D. 1860

Samuel E. Parke

Town Clerk

Bureau County }
Town of Westfield }^{ss.}

I Samuel E. Parke, Town
Clerk of said Town of Westfield do hereby certify
that the foregoing is a true and correct copy of
the original thereof on file in my Office

In witness whereof, I have hereunto set my hand
and seal this 16th day of September A. D. 1861

Samuel E. Parke Town Clerk Seal

State of Illinois }
Bureau County }^{ss.}

We the undersigned Supervisors
of the Towns of Selby, Berlin and Clarion in said
County, who have been selected by the Town Clerk
of the Town of Westfield, in said County to hear
and determine the appeal described in the certi-
ficate of said Town Clerk deposited with the
said Supervisor of the Town of Selby do hereby

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appoint the 24th day of December A. D 1860 at 10 O'clock in the forenoon of said day as the time and the Office of Esqr. Parke in Arlington as the place when and where we will hear and determine said appeal

Thomas Rustin

Supervisor of Selby

George Tackley Supervisor of Berlin

W. C. Bruce Supervisor of Clarion.

Bureau County }
Tonn of Westfield } Sd.

I S. E. Parke Tonn Clerk of said tonn of Westfield, do hereby certify that the foregoing is a true and correct copy of the original thereof on file in my Office, In witness whereof, I have hereunto set my hand and seal this 16th day of September A. D 1861

Samuel E. Parke, Tonn Clk. & Seal

State of Illinois

Bureau County }
Tonn of Westfield } Sd.

To The Supervisors of the Tonn of Berlin in said County, Sir, The undersigned, have taken an appeal from the commissioners of Highways of the said Tonn of Westfield in refusing to lay out a Highway as follows to wit:
Commencing at a point on the Township line

between Westfield and Berlin (between sections (7) and Eighteen (18) in said Town of Westfield) and running due East on the section line to the C. V. & S. Railroad and thence in a North Easterly direction on the North side of said Railroad on the most direct and Eligible route, to connect with the Peru and Dixon Plank road in the Town of Arlington; which order of said commissioners in refusing to lay out said Highway was deposited with the Town Clerk of said Westfield and filed on the 9th day of November A. D. 1860. The grounds upon which said appeal is made are that the public good imperatively demands that a public Highway should be laid out on said route as described, and that the order of said commissioners in refusing to lay out said Road is erroneous and founded on mistaken views of the interests of the public. You are further notified that you and the Supervisors of the Towns of Selby and Clarion in said County have been selected by the Town Clerk of ^{the} said Town of Westfield to try said appeal, and that said appeal has been left by us with the said Supervisor of the Town of Selby on the 29th day of November A. D. 1860.

Witness our hands this 29th day of November A. D. 1860

C. G. Warren Julius Benedict

Town S. Larkin Wm. Morrison

Jo. Wintier

Bureau County }
Town of Westfield }^{ss}

I Samuel E. Parke Town Clerk
of said Town of Westfield do hereby certify that the
foregoing is a true and correct copy of the original
thereof on file in my Office, In witness whereof
I have hereunto set my hand and seal this 16th
day of September A. D. 1861

Samuel E. Parke Town Clerk *[Signature]*

State of Illinois }
Bureau County }^{ss}

To the commissioners of highways
of the Town of Westfield in said County, greeting
You are hereby notified the undersigned have taken
an appeal, addressed to the Town Clerk of said
Town from your order filed in the office of the
said Clerk, with him on the 9th day of November
A. D. 1860 refusing to lay out a Highway on the
route described in the petition upon which your
said order is endorsed; That said Town Clerk
has selected the Supervisors of the Towns of Selby
Berlin and Glenion in said County to hear and
determine said appeal and that said Supervisors
have appointed the 24th day of December, A. D. 1861
at 10 O'clock in the forenoon of said day as the time
and the Office Benjamin F. Parke Esq; in Arling
ton as the place when and where they will hear.

114 and determine said appeal

Witness our hands this 29th day of November A.D 1860.

State of Illinois }
Bureau County } S.S
Town of Westfield }

Mr. Jos. Morrison being duly sworn according to law deposes and says that on the 6th day of December A.D 1860 he delivered a true copy of the within notice to Mr. Miller one of the commissioners of Highways of said Town that on the sixth day of December A.D 1860 he delivered a true copy of the within notice to Mr. Meriman one of the commissioners of highways of said Town and that on the 6th day of December A.D 1860 he delivered a true copy of the within notice to Mr. Dana one of the commissioners of highways of said Town

Jos. Morrison

Subscribed and sworn to before me

This 15th day of December A.D 1860

B. E. Carke J. C.

Bureau County }
Town of Westfield }

I Samuel E. Carke town clerk of said Town of Westfield do hereby certify that the foregoing is a true and correct copy of the original thereof on file in my Office

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In witness whereof I have hereunto set my hand
and seal this 16th day of September A. D. 1861

Samuel C. Parke Town Clerk Execd

State of Illinois }
Bureau County } To Mr.

Sir you are hereby notified that
the undersigned have taken an appeal addressed
to the Town Clerk of the Town of Westfield in
said County, from an order made by the Com-
missioners of Highways of said Town and filed
with said Clerk on the 9th day of November A. D.
1860, refusing to lay out a highway on the route
described in the petition upon which the said order
is indorsed) and of which petition you are one of
the signers; That said Town Clerk has selected
the Supervisors of the Towns of Selby, Berlin and
Clanton in said County, to hear and determine
said appeal; and that said Supervisors have appoint-
ed the 24th day of December A. D. 1860 at 10 o'clock
in the forenoon of said day as the time, and the
office of Esquire Benj^r F. Parke, in Arlington
as the place when and where they will hear and
determine said appeal

Witness our hands this 29th day of November A. D. 1860

State of Illinois }
Bureau County } To Mr. J. Benedict being duly
Town of Westfield

Sworn according to law deposed and says that on the 30th day of November A. D. 1860 he delivered a true copy of this notice to Mr. Nichol one of the petitioners for the within described road, that on the 30th day of November A. D. 1860 he delivered a true copy of this notice to Mr. Linton one of the petitioners for the within described road, and that on the first day of December A. D. 1860 he delivered a true copy of this notice to Mr. Barnhart one of the petitioners for the within described road
 Sworn to and subscribed before me }
 this 24th day of December A. D. 1860 }
 George Ractley J. J.

Bureau County
 Town of Westfield

I Samuel E. Parke town clerk of said town of Westfield do hereby certify that the foregoing is a true and correct copy of the original thereof on file in my Office

In witness whereof I have hereunto set my hand and seal this 16th day of September A. D. 1860.

Samuel E. Parke, Town Clerk

To Thomas Justin, George Ractley, and W. R. Bruce, Supervisors of Selby, Berlin and Glendon in the County of Bureau and State of Illinois

The undersigned having been employed

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by you to make a Survey of a road, commencing at a point on the Township line between Westfield and Berlin between sections seven (7) and eighteen (18) in said Town of Westfield, and running due East on the section line to the C. B. & A. Railroad and thence in a North Easterly direction on the North side of said Railroad, on the most direct and eligible route to connect with the Peru and Dixon Plank Road in the Town of Arlington

I would report that the following is a correct copy Survey thereof as made by me under your directions to wit: Commencing at the N. W. corner of section Eighteen (18) Township (17) North of Base line, Range Eleven (11) East of the 4th P. M., thence East sixty chains and forty links (60.40 ch) to a stake eighty three feet from the center of C. B. & A. R. R. thence N. $56^{\circ} \frac{1}{4}$ E two chains and ninety links to a stake, thence N. 54° E fifty chains to Company's ground, thence N. 54° E. fifteen 1520, chains and twenty links to a Stake in the center of Peru and Dixon Plank Road and that herewith is a correct plat of said Road according to said survey

Dated this 8th day of January A.D. 1861

Abram Lusk Jr.

County Surveyor

Bureau County }
 Town of Westfield } Samuel Poole Town

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Clerk of said Town of Westfield do hereby certify that the foregoing is a true and correct copy of the original thereof on file in my Office

In witness whereof I have hereunto set my hand and Seal this 16th day of September A. D. 1861

Samuel E. Parker Town Clerk Seal

State of Illinois }
Bureau County } ss

Whereas on the 28th day of November A. D. 1860 C. C. Warren Jos. Allintier, Towns-
d. J. Larkin, Julius Benedict and Jos. Morrison
filed with the Town Clerk of the town of Westfield,
in said County of Bureau an appeal addressed
to said Town Clerk appealing from the order and
determination of the Commissioners of Highways
of said Town of Westfield in refusal to lay out a
certain road in said town, contained in the order
of said Commissioners, deposited with the Town
Clerk of said town, and filed the 9th day of
November A. D. 1860 a copy of which order as well
as all the papers before us in said appeal are
hereunto annexed, and the said Town Clerk
having selected us the undersigned three of the
Supervisors of said County for the hearing of
said appeal, and we having met on the 21st
day of December A. D. 1860 at 10 O'clock A. M.
at the office of Benja. F. Parker Esq in the

Village of Arlington to hear the proofs and allegations of the parties, being the time and place agreed upon by us when and where we would meet to consider such appeal and it appearing that said commissioners of highways and three of the petitioners in said case had been duly notified of such meeting as required by law; we did proceed to hear the proofs and allegations of the parties and to consider said appeal, having first personally examined the route of the proposed road and we being most fully advised in the premises, are of the opinion that said road is necessary and proper, and that the public interest will be promoted thereby. We do therefore order, that the order and determination of said commissioners of highways, be and the same is hereby in all things reversed, and having determined to lay out said Road, we did on the 28th day of December A. D. 1860 cause a survey thereof to be made by a competent surveyor, who made report to us as follows, viz:

" St. Thomas Justin, George Rackley and W. R. Bruce, Supervisors of the Towns of Selby, Berlin and Union, in the County of Bureau and State of Illinois, the undersigned having been employed by you to make a survey of a road, commencing at a point on the Township line between Westfield and Berlin, between

sections seven (7) and eighteen (18) in the said
 Town of Westfield) and running due East on the
 section line to the C. B. & Q. Railroad, and thence
 in a North Easterly direction on the North side of
 said Rail road on the most direct, and Eligible
 route to connect with the Ferris and Dixon Plank
 Road in the Town of Arlington

Would report that the following is a correct sur-
 vey thereof as made by me under your directions
 to wit, commencing at the N. W. corner of section
 Eighteen (18) Township Seventeen (17) North of Base
 line, Range Eleven (11) East of the 4th P. M. thence
 East sixty chains and forty links (60.40 ch) to a
 stake Eighty three feet from the center of C. B. & Q.
 R. R. thence N. $56^{\circ}4$ E. two chains & ninety links
 to a stake, thence N. $54^{\circ}6$ E. to company's ground
 thence N. $54^{\circ}6$ E fifteen 15.20 ch chains and twenty
 links to a stake in center of Ferris & Dixon
 Plank Road, and that herewith is a correct plat
 of said Road according to said Survey.

Dated this 8th day of January A. D. 1861

(signed) Abram Lush Jr.

County Surveyor

and certain owners of lands over which said road
 passes to wit: Julius Benedict, Phillip Kennedy,
 Michael Kennedy and the Chicago Burlington
 and Quincy Rail Road Company, not having relea-
 sed all claims to damages sustained by reason

of the laying out and opening of the same, we proceeded to assess the same at what we deemed just and right to each individual owners of the lands over which said road passes, taking into account and estimating the advantages and benefit the road will confer on the owners of said lands for the same as well as all disadvantages and have assessed the damages of each owner as follows viz: To Julius Benedict on the West half of the north West quarter of Section Eighteen (18) Town seventeen (17) North Range (11) Eleven East of the fourth 4th T. Me., and to Philip Kennedy on the West half of the south west quarter of Section seven (7) in the aforesaid town (17) N. E. 11 E. of the 4th T. Me. we have estimated the advantages of said Road equal to any and all their damages respectively, to Michael Kennedy on the East half of the north West quarter of Section Eighteen (18) on the north East quarter of section eighteen (18) on the East half of the south west quarter of section seven (7) the South East quarter of section seven (7) and the south west quarter of section eight (8) all in the aforesaid Town seventeen (17) North Range Eleven (11) East of the fourth 4th T. Me., we have assessed the damages at six hundred and fifty dollars, and to the Chicago Burlington and Quincy Rail road company we have estimated to the advantages of said Road equal to any

and all their damages, It is therefore ordered and determined, that a road be, and the same is hereby laid out and established according to said survey and the plat hereunto annexed and made part of this order which is hereby declared to be a public highway, four rods wide, the line of said survey being the center of said Road. In witness whereof we have hereunto set our hands this 15th day of January A.D. 1861

Thomas Justin Supervisor of Town of Selby

Geo. Packley Supervisor of the Town of Berlin

W. R. Bruce Supervisor of Town of Clarion

Due

Thos. Justin 11 days - 6.00

George Packley 11 do - 6.00

W. R. Bruce " 4.50

W. Lash Jr. Surveyor 5.00

to be paid by the Town
of Westfield

Bureau County

Town of Westfield

Samuel E. Park town clerk

of said town of Westfield, do hereby certify that the foregoing is a true and correct copy of the original thereof on file in my Office

In witness whereof I have hereunto set my hand and seal this 16th day of September A.D. 1861

Samuel E. Park Town Clerk

Monday morning 16th Decem^r 1861 Court met pursuant to adjournment, present same as on Saturday last, (and as before)

Michael Kennedy Sr.

vs

Petition for Certiorari

Martin Corley, Mathias
Phelan & Leslie Miller
coms. of Highways and
Samuel E. Parke Town
Clerk of Westfield

And now come dependants by Taylor their attorney and file herein affidavit as follows to wit

State of Illinois } In Circuit Court
Bureau County } Decem^r Term 1861

Michael Kennedy

vs

Certiorari

Corley et al

Board coms of Town of
Westfield

Before me George M. Raddiff
Clerk of the said Court this day appeared
S. Random Kemmurray who being duly
sworn on his oath says that the original

transcript of the papers relating to the road in question in the above suits as returned by the town Clerk of Westfield) Townships in pursuance of the writ of Certiorari issued in the above cause is defective showing irregularities in the action and want of action of the Road Commissioners and Supervisors who acted upon the said road in question in said suit which irregularities are more particularly specified as follows

- 1st That it does not appear from said transcript when the Petition for said road was posted before the same was acted on by said court.
- 2^d That no Copy of the notices (posted by the said commissioners) of the time and place when and where said Commissioners would meet to hear reasons for and against laying out said road, and no proof of the posting of said notices ^{appears} in the said transcript.
- 3rd That the copy of the notices served by the appellants of said road on the said Commissioners and on three of the petitioners appearing in said transcript does not appear to be signed by said appellants.
- 4th That it appears from the report and order of the said Supervisors on the trial of said appeal that they commenced the trial of said appeal at the time and place appointed for the hearing of the same, but that they did not complete

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their action on said appeal ~~at the time and place~~ appointed) until several days subsequent to said day that it does not appear from said transcript that said Supervisors adjourned) the further hearing of the matters involved in said appeal from the day first appointed to the said subsequent day when their action on said appeal was completed nor does it appear from said transcript that the parties interested in said appeal were notified of said subsequent day when the final action of said Supervisors was had upon the said appeal

This affiant further says that all the several matters above specified, which by the said transcript, appears to have been omitted to be done by said road commissioners and Supervisors respectively as above set forth were in truth and in fact, actually and regularly performed by the said Road Commissioners and Supervisors in the manner following that is to say

1st That copies of the Petition for said Road were in fact, posted on the 12th day of October 1860 in three of the most public places in said Town of Westfield being twenty days before the same was presented to said road commissioners for their action thereon

2nd That said Road Commissioners did in fact

post notices in three of the most public places in
Said Town of Westfield of the time and place when
and where they would meet to hear reasons for and
against the laying out of said road and that
said notices were so posted for eight days before
the day fixed therein for the meeting of said road
commissioners to act upon said petition, and
that said day so fixed was within ten days
after the expiration of ^{the} said twenty days that said
petition had been posted as aforesaid

3^d That the notices served by the said appellants
upon the said Road commissioners and three of
the petitioners for said Road of the time & place
fixed for the trial of said appeal were in fact
signed by the said appellants.

4th That the said Supervisors having met at
the time and place fixed for the trial of said
appeal and then and there determined to lay
said road did also in truth and in fact then and
there in the presence of the parties interested in
said appeal adjourn the ^{further} hearing and action
upon the said appeal to the time and place
when and where they met, and had their final
action upon said appeal appearing in said
transcript.

This affiant further says that by accident
mistake or neglect that the said Road Commis-
sioners Supervisors and appellants in their

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General ministerial duties of making out the papers and proofs of their several acts as 1st Indly 3rdly & 4thly last above specified committed the Clerical errors omissions and diminutions of the papers pertaining to said Road so continued until after said transcript of the proceedings relating to said Road had been made out certified and returned by said Town Clerk to this Court.

This affiant further says that since the said transcript was so made out and certified by said Town Clerk that the said Road commissioners Supervisors and appellants have severally corrected amended and supplied the papers and proofs first herein above specified by new papers and proofs which correctly describe their several acts in relation to said Road as 1st Indly 3rdly & 4thly last above specified and that said new papers & amendments are now on file in the Town Clerks Office of said Town of Westfield but are not embraced in the said transcript of the proceedings relating to said Road returned by the said Town Clerk in pursuance of the writ issued in the above cause he therefore asks that a special writ of Certiorari may issue to the said Town Clerk to certify as a part of the said transcript the said new or amended papers which are as follows

1st & 2nd Affidavit of the posting of said petition
 2^d Notice of the meeting of the Road Commissioners
 for hearing reasons for and against the laying
 out of said Road together with the affidavit
 of the posting thereof
 3^d The Notice to the road Commissioners for
 hearing of the time & place fixed for the hearing
 of said appeal together with the affidavit of
 the service thereof
 4th The notice to three of the Petitioners
 for said road of the trial of said appeal toge-
 ther with the affidavit of the service thereof
 5th The amended report of the Supervisors
 showing the adjournment of the action on said
 appeal from the day first set for the hearing
 thereof to the day on which final action was
 had thereon - Affiant knows the facts herein
 above stated from having carefully examined
 all the said road papers in the said Town
 Clerks office, both the papers embraced in
 said transcript and the said amended paper
 filed in said Town Clerks office since said
 transcript was certified & returned

Subscribed & sworn to before

me, Geo. W. Radcliffe Clerk } S. C. Holmerway
 this 16th day of Decr. 1861 }

G. W. Radcliffe Clerk

And thereupon move the Court that a special

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writ of Certiorari issue herein to said Town Clerk to certify the new or amended papers filed in his Office since the issuing of the original writ herein and pertaining to the road in controversy in this suit and thereupon the Court being fully advised in the premises orders that said motion be sustained and that special writ of certiorari issue herein as asked for by said defendants

Michael Kennedy Sr.

vs

Certiorari

Martin Corley, Matthias
Thelan, & Leslie Miller,
Comrs of Highways & Samuel
E. Parke Town Clerk of Westfield

And now comes the parties hereto by their attorneys aforesaid and file herein the following agreeing that it shall be taken as the return to the special writ ordered, the same as if duly certified to by said Town Clerk and said agreed return is as follows to wit

State of Illinois } In Circuit Court
Bureau County } vs
December Term 1861
Michael Kennedy
vs
Corley & others

S. R. Hemenway being first duly sworn on his oath says that the annexed is a correct transcript of all the papers now on file in the Town Clerk's office of the Town of Westfield in said County of Bureau pertaining to the road described in the said transcript that he knows the same to be true copies of said papers from having copied the same himself, and that the copies of the several papers in said transcript contained are true copies of all the original papers relating to the said Road now on file in said Town Clerk's Office

Subscribed & sworn to before
me Geo. M. Radeliffe clerk
this 13th of December 1861

Geo. M. Radeliffe, clk.
By Cair D. Trimble

S. R. Hemenway

State of Illinois }
Bureau County }
Town of Westfield }

The answer of the Road Commissioners and town clerk of the Town of Westfield in the County of Bureau and State of Illinois below named

A certified Transcript of all the records proceedings and papers on file in the Clerk's office of said Town pertaining to the laying out

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and establishing of a certain road in said Town described as follows to wit of the width of four rods commencing at a point on the Township line between Westfield and Berlin between sections seven (7) and Eighteen (18) in the said Town of Westfield) and running due East on the section line to the C. B. & L. Railroad) and thence in a North Easterly direction on the North side of said railroad in the most direct and eligible route to connect with the Peru and Dixon Plank road in the Town of Arlington the names of the owners of the lands over which the Road is to pass as your petitioners are informed are Julius Benedict, Phillip Kennedy and Michael Kennedy, said above and the following description being as full and entire as the same remains in said Town Clerk's office and is annexed to this writ and herewith returned as within commended as follows

The following is a copy of the Petition pertaining to said road

" To the Commissioners of highways of the Town of Westfield in the County of Bureau and State of Illinois

The undersigned legal voters residing within three miles of the ~~same~~^{route} hereinafter mentioned and described for a road do hereby make application to you to lay out a new road of the width

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of four Rods as follows commencing at a point on the Township line between Westfield & Berlin between sections seven (7) and Eighteen (18) in the said Town of Westfield and running due East on the section line to the C. B. & Q. Railroad and thence in a North Easterly direction on the North side of said Railroad in the most direct and eligible route to connect with the Peru and Dixon Plank Road in the Town of Arlington. The names of the owners of the lands over which the road is to pass as your petitioners are informed are Julius Benedict Phillip Kennedy and Michael Kennedy. Your petitioners therefore pray that you will proceed to lay out said road and cause the same to be opened according to law.

Dated at Arlington Ills this 9th day of October A. D. 1860

Names	Names
Joseph Mintier	Agostaus Rockefeller
Jos. Easton	Wm. G. Survid
W. T. Smith	Joseph Waugh
S. A. Dupce	Thomas Anderson
A. O. Howe	Joseph Isaac
M. Allen	William Fell
Wm. Wallace	Earl Barrett
S. H. Arnold	Chas. L. Barnhart
C. C. Warren	Joseph Morrison
C. C. Nichols	John J. Sweet

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J. A. Sykes
L. M. Morris
Nathan Linton

Wm. Wade
Julius Benedict

(at the bottom and in the same sheet with said petition is the following affidavit ("B" referred to in appeal)

State of Illinois }
Bureau County } p.

Julius Benedict being duly sworn doth depose and say that he posted three copies of the within notice as follows Dupess Store, Post Office and Luke Lawlers Blacksmiths shop in the Town of Westfield being three of the most public places in said Town

(signed) Julius Benedict
Subscribed and sworn to before me this 12 day of October A.D 1860
A. Morgan J. J.

And afterwards on the 7 day of December A.D 1861 there was attached to said petition and filed in the ^{said Town Clerks office of} said Town an additional affidavit of the posting of copies of said petition which is in the words and figures following

State of Illinois }
Bureau County } p.

Julius Benedict being duly sworn

64 on his oath says that he posted three copies of the within petition as follows one at Dupres store one at the Post Office and one at Luke Lawlers Blacksmiths Shop all in the Town of Westfield aforesaid in said County it being three of the most public places in said Town and that he^{so} posted said copies of said Petition on the 12 day of October A. D. 1860

Julius Benedict

Subscribed and sworn to before me
this third day of December A. D. 1861

J. P. Kemenuway "Notary Public"

On the ninth day of December A. D. 1861, there was filed in the said Town Clerks Office a Copy of notices of said Road Commissioners as on said petition as follows

Highway Notice

A petition having been presented to the Commissioners of highways of the Town of Westfield in the County of Bureau to lay out a new Road upon the following described route to wit of the width of four rods commencing at a point on the township line between Westfield and Berlin between sections seven (7) and Eighteen (18) in the said Town of Westfield and running due East on the section line to the C. B. & Q. Railroad and thence in a North Easterly

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direction on the North side of said Railroad, on the most direct and eligible route to connect with the Peru and Dixon Plank road in the Town of Arlington the said commissioners do hereby give notice that they have fixed upon the 7th day of November A. D. 1860 at the hour of 10 O'clock A. M. at the Depot of the Chicago Burlington and Quincy Railroad in said Town as the time and place they will meet to hear any reasons that may be offered for or against the Laying out of said road when and where all persons interested can be heard, dated at Westfield this 29th day of October A. D. 1860

David Dans
 Leslie Miller
 S. J. Merriam

Commissioners of highways
 for the Town of Westfield
 for the year A. D. 1860

Attached to which said notice of sd commissioners of their time and meeting appears the following Affidavit

State of Illinois Bureau County & ss.

S. J. Merriam being duly sworn on his oath says that he posted up three notices of which the within is a true copy in the following places to wit one at the Depot of the C. B. & Q. Railroad depot, one at the Post Office and one at Dupas store all in said Town of Westfield in said County, the

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Some being three of the most public places
in said Township in said County, that said notices
were so posted by me on or before the 29th day of
October A.D. 1860 so that at least eight days in-
tervened between the posting of said notices and
the time therein set for a hearing of said petition
I subscribed and sworn to before me

a Notary Public within and for
the County of Bureau this 3rd
day of December A.D. 1861
S. R. Hermerway
Notary Public

S. J. Merriam
Road Commissioner
for the Year 1860 of the
Town of Westfield

Copy of the order of said Commissioners on
the back of said petition with the filing of the
same refusing to lay out said road

We the undersigned Commissioners of Highway
of the Town of Westfield having this day examined
the route for a new Road petitioned for in the
within petition and heard the reasons for and
against the same are of the opinion that the
public good does not require the laying out of
the same

Dated at Westfield this seventh day of November A.D. 1860
(on the back of which said Petition } Leslie Miller } Commissioners
appears the following words & figures } S. J. Merriam } of highway
"A petition for a road to pass over the
land owned by Julius Benedict"

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Phillip Kennedy & Michael Kennedy

Page 229 of 72 "Filed 9 - November A. D. 1860"

Samuel E. Foster Town Clerk"

Copy of notice to Road commissioners
Marked "G"

State of Illinois

Bureau County

Town of Westfield

To the Commissioners of high-ways of the Town of Westfield in said County -
Gentlemen you are hereby notified that the undersigned have taken an appeal addressed to the town clerk of said town from your order filed in the Town Clerk's office of said town with him on the 9th day of November A. D. 1860 refusing to lay out a highway on the route described in the petition upon which your said order is indorsed, that said Town Clerk has selected the Supervisors of the Town of Selby Berlin and Clarion in said County to hear and determine said appeal, and that said Supervisors have appointed the 24th day of December A. D. 1860 at 10 O'clock in the forenoon of said day as the time and the Office of Benj^m F. Foster Esq in Arlington as the place when and where they will hear and determine said appeal Witness our hands this 29th day of November A. D. 1860

"Copy of the affidavit on the back of said above notice"

State of Illinois
 Bureau County } S.D.
 Town of Westfield }

Mr. Joseph Morrison being duly sworn according to law deposes and says that on the sixth day of December A.D. 1860 he delivered a true copy of the within notice to Mr. Miller one of the commissioners of highways of said town that on the 6th day of December A.D. 1860 he delivered a true copy of the within notice to Mr. Morrison ^{one} of the commissioners of highways of said town and that on the 6th day of December A.D. 1860 he delivered a true copy of the within notice to Mr. Dana one of the commissioners of highways of said town

Signed Joseph Morrison

Sworn to and subscribed before me } copy of filing on Book of
 this 15th day of December A.D. 1860 } said return & affidavit
 B. F. Parker Justice Peace } (Filed Jan. 24 (61)

On the back of which appears the following words and figures " No. 90. Page 223

Filed Jan. 24 (61)

Notice to come to be filed up sworn to & kept for trial

Samuel E. Parker

Clerk Town of Westfield

(And afterwards on the 10th day of December

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A. D 1861 there was filed in the Town Clerks office
a notice as follows.

Copy of notice to Commissioners of highways

State of Illinois }
Bureau County } To the Commissioners of
highways of the town of Westfield in said county
Gentlemen you are hereby notified that the under-
signed have taken an appeal addressed to the
Town Clerk of said Town from your order filed
in the Office of the said Clerk with him on
the 9th day of November A. D 1860 refusing to
lay out a Highway on the route described in
petition upon which your said order is indorsed
That said Town Clerk has selected the Super-
visors of the Town of Selby to wit Thomas
Justin, the Supervisor of the town of Berhinton
George Packerley, the Supervisor of the town of
Clarion to wit Winslow T. Buell in said county
to hear and determine said appeal and that said
Supervisors have appointed the 24th day of Decem-
ber A. D 1860 at 10 O'clock in the forenoon of said
day as the time and the office of Berg: F. Parker
Esq in Arlington as the place when and where
they will hear and determine said appeal
Witness our hands this 29th day of November A. D 1860

Joseph Mentzer

W. C. Warren

Town of Larkin
Julius Benedict
Joseph Morrison

(On the back of which appears the following affidavit)

Copy of Affidavit of Joseph Morrison
State of Illinois }
Bureau County } &c

Joseph Morrison being duly sworn on his oath says that he served the within notice on Leslie Miller, S. J. Merriam & David Dans Road commissioners of the Town of Westfield in said County in 1860 by delivering to Each of them a true copy of the within notice on the 6th day of December A.D. 1860 that on the 15 day of December 1860 he made affidavit on the back of a similar notice, he having served a similar notice to the within on said road commissioners except that the notice on the back of which said affidavit was made was not signed at the bottom the names of the parties whose names was signed to the original & served on said Road commissioners having been by mistake omitted in said copy on the back of which said affidavit was written and which was filed in the Clerks office of said Town of Westfield
Subscribed and sworn { signed Joseph Morrison

41 to before me a Notary Public
within and for said County
this 3^d day of December A. D. 1861
S. C. Klemmway Notary Public

On the back of which said notice with an affi-
davit attached appears the following words and
figures

No. 199

Page 245

Filed Dec. 10th 1861

Samuel C. Parker

Town Clerk

Copy of notice served on petitioners for said road
by Julius Benedict (Marked) "H"

State of Illinois

Bureau County

} To Mr.

Sir you are hereby notified
that the undersigned have taken an appeal ad-
dressed to the Town Clerk of the Town of Westfield
in said County from an order made by the com-
missioners of Highways of said town and filed
with said Clerk on the 9th day of November A. D. 1860 refusing to lay out a high-
way on the route described, in the petition upon
which the said order is endorsed & by which
petition you are one of the signers; That said
Town Clerk has selected the Supervisors of the

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Towns of Selly Berlin & Clarion in said County
to hear and determine said appeal and that said
Supervisors have appointed the 24 day of December
A.D. 1860 at 10 O'clock in the forenoon of said
day as the time and the Office of Benj^r F.
Tacke in Arlington as the place when and where
they will determine said appeal. Witness our hands
this 29 day of November A.D. 1860

Copy of affidavit on the back of said notice

State of Illinois }
County of Bureau } S.S.
Town of Westfield }
Mr. J. Benedict being
duly sworn according to law deposes and says
that on the 30th day of November A.D. 1860 he deli-
vered a true copy of this notice to Mr. Nichols
one of the Petitioners for the within described
road. That on the 30th day of November A.D. 1860
a true copy of this notice to Mr. Linton one of the
Petitioners for the within described road and that
on the 1st day of December A.D. 1860 he delivered
a true copy of this notice to Mr. Barnhart one of
the petitioners for the within described road
signed Julius Benedict
Subscribed & subscribed before
me this 24th day of December
A.D. 1860, George Ruckley J. C.

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(On the back of which appears the following words and figures) No. 89. Page 223

("Filed Jan^y. 24, 1861") Copy of notice to Petitioner to be kept sworn to & produced on trial.

Samuel E. Foster Town Clerk

And afterwards on the 10th day of December A.D. 1860 there was filed in said town Clerks office a notice as follows)

State of Illinois }
Bureau County } ss. Sirs you are hereby notified that the undersigned have taken an appeal and dropped to the town Clerk of the town of Westfield in said County from an order made by the commissioners of highways of said town and filed with said Clerk on the 9th day of November A.D. 1860 refusing to lay out a highway on the route described in the petition upon which said order is endorsed and of which petition you are one of the signers that said Town Clerk has selected the Supervisors of the towns of Selby, Berlin, and Clarion in said County to hear and determine said appeal and that Supervisors have appointed the 24 day of December A.D. 1860 at 10 o'clock in the forenoon of said day as the time and the office of Benjamin F. Foster Esq in Arlington as the place when and where they

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will hear and determine said appeal
Witness our hands this 29 day of November A.D. 1860

Joseph Morrison

C. C. Warren

Joseph Mintier

Saml J. Larkin

Julius Benedict

(Attached to which above notice is the following
affidavit)

Copy of Affidavit of Julius Benedict, Attached
to notice of appeal served on Petitioners for said road
State of Illinois }
Bureau County } ss

Julius Benedict being duly
sworn on his oath says that he served the within
notice on C. C. Nichols, Nathan Linton, and
M. L. Barnhart three of the Petitioners for
said road in said County by delivering to each
of them a true copy of the within notice as follows
to wit on C. C. Nichols and Nathan Linton on
the 30 day of November A.D. 1860 and on M. L.
Barnhart on the 1st day of December A.D. 1860
and on the 15 day of December A.D. 1860 he
made affidavit on the back of a similar notice
having served a notice similar to the within on
said petitioners except that the notice on the back
of which said affidavit was made was not signed

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at the bottom - the names of the parties whose names were signed to the originals served on said petitioners having been by mistake omitted in said copy on the back of which said affidavit was written and ^{which} was filed in the Clerk's office in said town of Westfield)

Subscribed and sworn to Julius Benedict
before me a Notary Public
within & for said County this
4th day of December A. D. 1861

J. R. Holmenway Notary Public

(On the back of which said affidavit appears the following words & figures to wit)

1/0 200 Page 246

Filed in Town Clerk's Office

December 10, 1861

J. E. Parker Town Clerk of Westfield

Copy of appeal to the Town Clerk and filed in said Town Clerk's office as follows

To the Town Clerk of the Town of Westfield
in the County of Bureau and State of Illinois

We the undersigned citizens of said County residing near the route for a road hereinafter described, feeling themselves aggrieved by an order made by the Commissioners of highways of the said town of Westfield on the 7th day of November A. D. 1860 and filed in the office of you the said Clerk on the ninth day of November

A. D. 1860 do hereby appeal to you from such decision or order aforesaid and request you to select three Supervisors of said County to try said appeal according to the statute in such case made and provided - And your appellants show that said order is a refusal by the said commissioners of highways of said westfield to lay out a public highway described in a petition presented to the said commissioners of highways a copy of which petition is hereto annexed marked (A) and made a part of this appeal and your appellants show that they were each of them signers of the said petition and petitioners for said Highway and your appellants show that due notice of said petition was given a copy of the proof which is hereby annexed marked (B) and made part of this appeal - and your appellants show that a copy of the order of refusal aforesaid of said commissioners is hereto annexed marked (C) & made part of this petition. The grounds of this appeal are that the public good imperatively demands that a public highway should be laid out as described in said Petition and that the order of said commissioners refusing to lay out the road petitioned for is erroneous and under a mistaken view of the interests of the public, this appeal is brought to wholly reverse the said order of

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said Commissioners and to have a public highway laid out and established) as prayed for in said petition

Witness our hands this 28 day of November A.D. 1866

C. C. Warren

Joseph McIntier

Thomas J. Larkin

Julius Benedict

Joseph Morrison

Copy of Petition
("A") referred to in Appeal

To the Commissioners of highways of the Town of Westfield in the County of Bureau and State of Illinois

The undersigned legal voters residing within three miles of the route hereinafter mentioned and described for a road do hereby make application to you to lay out a new Road of the width of four rods as follows commencing at a point on the townships line between Westfield and Berlin between sections seven (7) and Eighteen (18) in the said Town of Westfield) and running due East on the section line to the C. B. & Q. Railroad) and thence in a North-easterly direction on the north side of said Railroad on the most direct and eligible route to connect with the Pew & Dixon Plank Road in the

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Town of Arlington. The names of the land owners which the road is to pass as your petitioners are informed, are Julius Benedict, Phillip Kennedy and Michael Kennedy. Your Petitioners therefore pray that you will proceed to lay out said Road and cause the same to be opened according to law

Dated at Arlington Ills this 9th day of October
A. D. 1860

Named	Named
Joseph Mintier	Nathan Linton
Forrd J. Larkin	Agostaus Rockafeller
W. G. Smith	Wm. G. Survis
J. St. Duple	Joseph Waugh
O. O. Howe	Thomas Anderson
H. Moellen	Joseph Isaac
Wm. Wallace	William Fell
J. H. Arnold	Earl Barrett
E. C. Warner	W. L. Barnhart
C. C. Nichols	Joseph Morrison
J. A. Sikes	John J. Sweet
L. M. Norris	Wm. Cade
	Julius Benedict

Copy of Commissioners order
(C)

We the undersigned Commissioners of Highways of the Town of Westfield having this day exam

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ined the route for a new Road petitioned for in the within petition and heard the reasons for and against the same are of the opinion that the public good does not require the laying out of the same

Dated at Westfield this } Leslie Miller } Commissioners
7th day of November A.D. 1860 } S. J. Merriam } of highways

On the back of which is 3 Pieces attached, appears the following letters figured, No 85, Page 223. Appeal Filed Jan 24, A.D. 1861

Inst. 1 P. 1860

Copy of Town Clerks certificate of appeal (Marked "D")

State of Illinois
Bureau County } ss.
Town of Westfield }

I Samuel E. Parke town clerk of said Town of Westfield do hereby certify that on the 28th day of November A.D. 1860 the following named appellants to wit E. C. Warren Joseph Mintier Tomad J. Lanteri Julius Benedict Joseph Morrison came and filed with me their appeal in writing by which they appealed from the decision of the Commissioners of highways of said Town of Westfield in refusing to lay out a highway as follows to wit, commencing at a point on the Township line between

Westfield and Berlin between Sections Seven (7) and Eighteen (18) in the said Town of Westfield and running due East on the section line to the C. B. & Q. Rail road and thence in a Northeasterly direction on the North side of said Railroad on the most direct and eligible route to connect with the Peru and Dixon Plank Road in the Town of Arlington which order of said Commissioners in refusing to lay out said road was deposited with me and filed on the 9th day of November A.D. 1860

The ground upon which said appeal is made are that the public good imperatively demands that a Public highway should be laid out on said route as described & that the order of said Commissioners in refusing to lay out said Road is erroneous and proceeds on mistaken views of the interests of the public: and that I have selected the Supervisors of the Towns of Selby, Berlin & Clarion to hear and determine said appeal having had in making said selection due regard to the interests of the persons interested Given under my hand this 28th day of November A.D. 1860

(Signed) Samuel E. Parke Town Clerk

On the back of which appears the following letters & figures "A: 88 Page 223

Town Clerk's certificate Filed Jan 24/61 Samuel E. Parke
 met at the Office of S. E. Parke in Arlington on Monday Town Clerk
 Dec. 24/60

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Copy of appointment of day by Supervisors to meet and try said appeal. Marked "E"

State of Illinois }
Bureau County } We the undersigned Supervisors

of the Towns of Selby, Berlin, and Clendon in
who have been selected by the Town Clerk of the Town of Westfield in said County
said County, to hear and determine the appeal

described in the certificate of said town Clerk deposited with the said Supervisors of the town of Selby do hereby appoint the 24 day of December A. D. 1860 at 10 O'clock in the forenoon of said day as the time and the office of Esq Parke in Arlington as the place when and where ^{we} will hear and determine said appeal

Thomas Justin Supervisor of Selby

George Rackley Supervisor of Berlin

W. R. Bruce Supervisor of Clendon

On the back of which appears the following words & figures), No. 86, page 223

Appointment of Supervisor

Filed Jan 24, A. D. 1860

Saml. E. Parke Town Clerk "

Marked F.

Copy of notice to Supervisor of Berlin

State of Illinois }

Bureau County }

Town of Westfield }

ss.

To the Supervisor of the Town

of Berlin in said County - Sir we the undersigned have taken an appeal from the decision of the Commissioners of highways of the Town of Westfield in refusing to lay out a highway as follows to wit commencing at a point on the township line between Westfield & Berlin between Sections seven (7) and Eighteen (18) in said Town of Westfield and running due East on the Section line to the C. P. & G. Railroad and thence in a North easterly direction on the North side of said Road on the most direct and eligible route to connect with the Peru and Dixon Plank Road in the Town of Arlington, which order of said commissioners in refusing to lay out said highway was deposited with the Town Clerk of said Westfield and filed on the 9th day of November A. D. 1860 the grounds upon which said appeal is made is that the public good imperatively demands that a public highway should be laid out on said route as described and that the orders of the said commissioners in refusing to lay out said road is erroneous & founded on the mistaken views of the interest of the public. You are further notified that you and the Supervisors of the Towns of Selby & Clarion in said County have been selected by the Town Clerk of said Town of Westfield to try said appeal and

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That said appeal has been left by us with the said Supervisor of the Town of Selby on the 29 day of November A. D 1860 Witness our hands this 29th day of November A. D 1860

C. C. Warren Julius Benedict Joseph Minter
Tom^r J. Larkin Joseph Morrison

On the back of which appears the following words & figures "meet at the office of Esquire Parke in Arlington Monday December 24 1860 at 10 O. M.

No. 87. Page 223 copy of notice to Supervisors to be kept & produced on trial, Filed Jan'y 24, 1861.

Copy of Report of Supervisors selected to try appeal from Commissioners of highroads of the Town of Westfield in said County refusing to lay out the road hereinafter described

State of Illinois }
Bureau County } ss Whereas on the 28th day of November A. D 1860 C. C. Warren Joseph Minter Tom^r J. Larkin Julius Benedict & Joseph Morrison filed with the Town Clerk of the Town of Westfield in said County of Bureau an appeal addressed to said Town Clerk appealing from the order and determination of the commissioners of highroads of said Town of Westfield in refusing to lay out a certain road in said town of Westfield in the

contained in the order of said commissioners deposited with the town clerk of said town & filed the 9th day of November A. D. 1860 a copy of which said order as well as all the papers before us in said appeal are herewith annexed & the said town clerk having selected us the undersigned, three of the Supervisors of said County for the hearing of said appeal and we having met on the 24th December A. D. 1860 at 10 O'clock A. M. at the Office of Benj. F. Parker Esq in the village of Arlington to hear the proof and allegation of the parties being the time & place agreed upon by us when and where we would meet and consider such appeal & it appearing that said Commissioners of highways & three of the Petitioners in said case had been duly notified of such meeting as required by law we did proceed to hear the proofs and allegations of the parties to consider said appeal having first personally examined the route of the proposed road and we being now fully advised in the premises are of the opinion that said road is necessary and proper and that the public interest will be promoted thereby We do therefore order that the order and determination of said Commissioners of highways be and the same is hereby in all things reversed and having determined to lay out said road we did on the 28th day of December A. D. 1860 cause a survey thereof to be made by a competent surveyor who

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made report to us as follows viz To Thomas
 Justin George Ruckley, & W. C. Bruce Supervisors
 of the Town of Selby, Berlin, & Clarion in the
 County of Bureau and State of Illinois. The
 undersigned having been employed by you to make
 a survey of a road commencing at a point on
 the Township line between Westfield & Berlin
 between sections 7 and 18 in said Town of West
 field, and running due East on the section line
 to the C. B. & E. Railroad and thence in a north
 Easterly direction on the North Side of said
 Railroad, on the most direct and eligible route
 to connect with the Peru and Dixon Plank
 road in the town of Arlington, - would report
 that the following is a correct survey thereof,
 as made by me under your direction to wit
 commencing at the N. W. corner of Section Eighteen
 (18) Township Seventeen (17) North of Base line
 Range (11) Eleven East of the 4th P. M. thence East
 sixty chains and forty links (60.40 ch) to a stake
 83 feet from the center of C. B. & E. Railroad,
 thence at $56\frac{3}{4}$ East two chains & ninety links to
 a stake and thence at 54° E. fifteen chains to
 companies grounds thence at 54° E fifteen
 chains and twenty links to a stake in center
 of Peru & Dixon Plank road and that here
 with is a correct plat of said road according to
 said Survey Dated this 8th day of January

29 1861 (signed)

Abram Lush Jr.

County Surveyor

and certain owners of lands over which said road passes to wit Julius Benedict Phillip Kennedy Michael Kennedy and the Chicago Burlington and Quincy Railroad company not having released all claims to damages sustained by reason of the laying out and opening of the same We proceeded to assess the same at what we deemed just and right to each individual owners of the lands over which said road passes taking into consideration and estimating the advantages and benefits the road will confer on the owners of said lands for the same as well as all disadvantages and have assessed the damages of each owner as follows to Julius Benedict on the West half of the North West quarter of section Eighteen (18) Town seventeen (17) North Range eleven (11) East of the fourth P. M. and to Phillip Kennedy on the West half of the South West quarter of section seven (7) in the aforesaid town (17) N. P. 11 E. of the 4 P. M. we have estimated the advantages of said road equal to any and all their damages respectively; to Michael Kennedy on the East half of the North West quarter of section (18) eighteen on the North East quarter of section 18 on the East 1/2 half of the South West quarter of section

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seven (7) the South East quarter of section seven (7) and the South west Quarter of section Eight (8) all in the aforesaid town seventeen (17) North Range eleven (11) East of the fourth (4) P. M., we have assessed the damages at six hundred and fifty dollars and to the Chicago Burlington and Quincy Railroad Company we have estimated the advantages of said road equal to any and all their damages. It is therefore ordered and here by laid out and Established according to said survey and the plat herunto annexed declared to be a public highway four rods wide, the line of said survey being the centre of said road, In witness whereof we have herunto set our hand this fifteenth day of January A. D. 1861

Thomas Justin Supervisor of ^{the town of} Ellipton
 George Rackley } Supervisor of the Town
 } of Berlin
 W. C. Bruce Supervisor of the town of Clowin

Fees

Thomas Justin 4 days - 6.00	} To be paid by the town of Westfield
George Rackley 4 " 6.00	
W. C. Bruce " 4.50	
A. Lash Jr. Surveyor 5.00	

"On the back of which said report of said Supervisors on the same sheet with the same appears the following
 'No. 91. Filed Jan. 24 1861
 Audited and allowed March 26. 1861"

Copy of amended report of the Supervisors of the town of Selby Clarion and Berlin to wit Thomas Justin W. C. Bruce & George Rackley filed in the town clerks office of the Town of Westfield, the 10th day of December A. D. 1868

State of Illinois
 Bureau County }
 Whereas the undersigned
 Thomas Justin Supervisor of the town of Selby
 George Rackley Supervisor of the Town of Berlin
 & Winslow C. Bruce Supervisor of the town of
 Clarion, having as such Supervisors met at the
 office of Esq. Foster in the Town of Westfield
 in said County on the 24th day of December A. D.
 1866 at 10 O'clock A. M. to try a certain road
 appeal made by Joseph Morrison and others
 from a decision of the Road commissioners
 of said town refusing to lay out a certain road,
 described in said appeal, having on said day
 and place heard the parties interested in said
 appeal and then determined to lay out and estab-
 lish said Road and having made our report of
 the trial of said appeal and order establishing
 said Road signed by us bearing date January
 15, 1867 and filed the same in the Town Clerks
 office of said Town we would now make the
 following amendment to our said report that
 is to say that the allegations and arguments

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of the parties interested in said appeal then and there consumed the whole of the said 24th day of December so that the undersigned did not then have time to pass upon the question of laying out of said road and having then and there determined to lay out said road we did then & there in the presence of said parties interested adjourn the further business of laying out said road and assessing the damages to the owners of the land over which the said road run until the 28th day of the same month at the hour of 10 A. M. O'clock at the same place (Esq Parkes office) and at the time and place to which we had so adjourned we met and caused said Road to be surveyed and assessed the damages occasioned by said road as stated in our said Report filed in said Town Clerks office as aforesaid We also state that Michael Kennedy Jr. agent for Michael Kennedy Senr. and Julius Benedict owners of lands over which said road passed were present when the undersigned assessed the damages occasioned by said road as stated in their said original report

Witness our hands this
20th day of November A.D. 1861

(Signed) Winslow C. Bruce Supervisor of the Town of Clarendon
Thomas Justin Supervisor of the Town of Selby
George Packley Supervisor of the Town of Berlin
On the back of which appears the following words and

Filed in the Town Clerks office Dec. 10. 1861

Samuel E. Parke Town Clerk

To Thomas Justin George Rackley W. C. Bruce
Supervisors of the towns of Selby, Berlin and Clarion
in the County of Bureau and State of Illinois

The undersigned having been employed
by you to make a survey of a road commencing
at a point on the Township line between
Westfield and Berlin between Sections Seven
(7) and Eighteen (18) in said Town of Westfield
and running due East on the Section line to
the C. B. & G. Railroad and thence in a North
easterly direction on the North Side of said
Railroad on the most direct and Eligible route
to connect with Peru and Dixon Plank road
in the Town of Arlington would report that the
following is a correct survey thereof as made by
me under your direction to wit commencing
at the N. W. corner of Section Eighteen (18) Town-
ship seventeen (17) North of Base line Range
Eleven (11) East of the 4th P. M. thence East sixty
chains and forty links (6040) to a stake eighty
three feet from the center of C. B. & G. R. - thence
N. $56^{\circ} \frac{1}{4}$ E. two chains & ninety links to a stake
thence N. 54° E. fifty chains to company's ground
thence N. 54° E. fifteen (15.00 or so) chains and twenty

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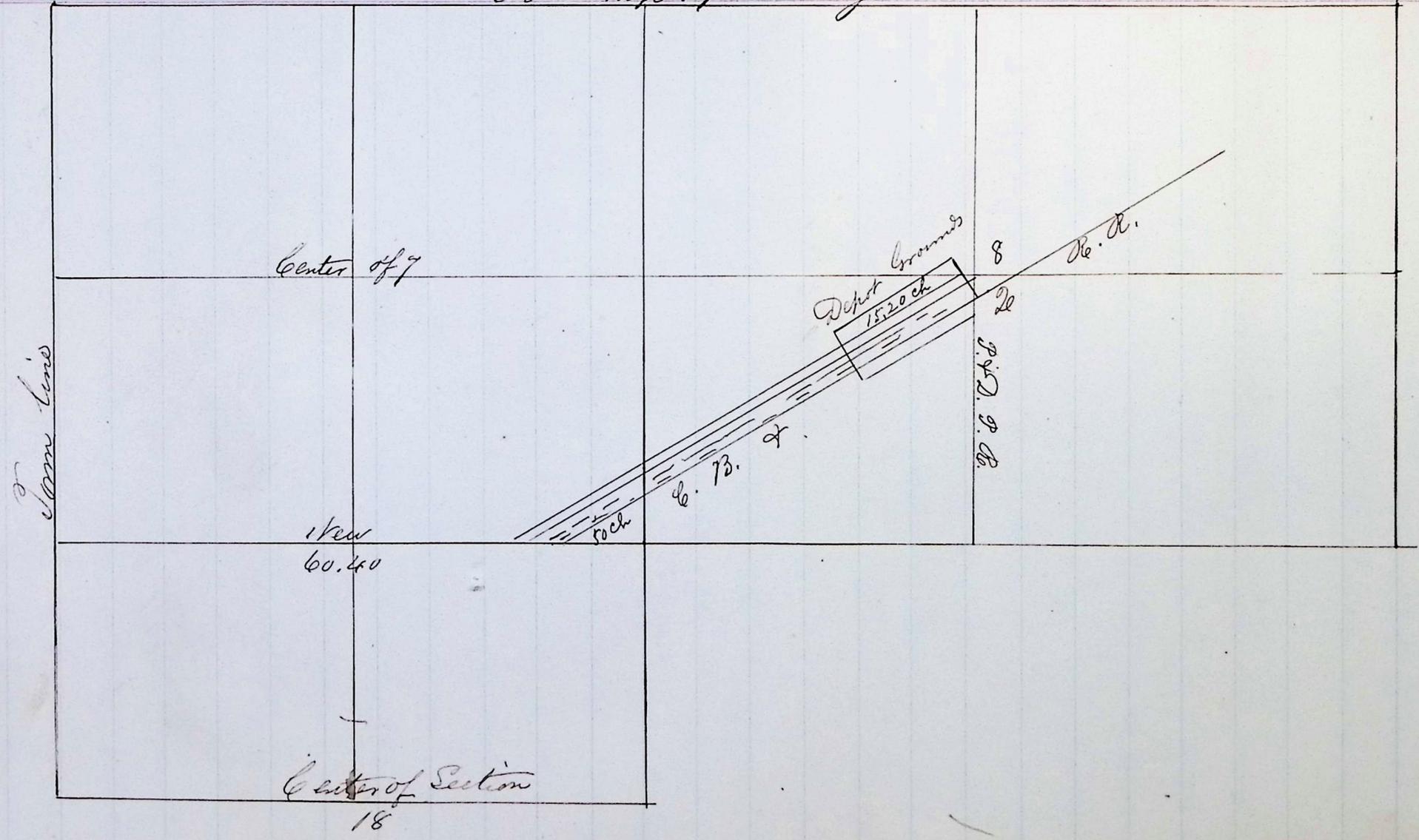
links to a Stake in Center of Peru and Dixon
Plank road and that herewith is a correct plat
of said road according to Said Survey
Dated this 8 day of Jan U.S. 1861

Abram Lash Jr.

County Surveyor

On the corner of which said report appears
the following words & figures, County Surveyors
Plan of Road passing through lands owned by
Kennedy Benedict & others on file N. 92 Page 226
Filed Jan. 24, 61 one o'clock P.M.

Township 17 Range 11



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I Samuel E. Parker Town Clerk of the Town of Westfield in the County of Bureau and State of Illinois hereby certify that the foregoing is a full true and perfect transcript of all the records papers and proceedings in said Town Clerks office pertaining to the road within described this day of December 1861

Town Clerk
of Westfield

We the Road Commissioners of said Town for the Year A.D 1860 certify that the foregoing comprises a full true and perfect transcript of all the proceedings had by us pertaining to the road therein described

Dated this 9th day of December A.D 1861

S. J. Merriam Road Commissioners
Lucie Miller } of the town of said
David Dana } Westfield

Thursday morning 8th Dec 1861
ber 14th A.D 1861 Court met pursuant to adjournment
Present same as Yesterday

(and as on Monday last.)

Michael Kennedy

vs

Petition for Certiorari

Martin Corley, Matthias
 Shelan and Leslie Miller
 Comrs of Highways, and
 Samuel E. Parke, Town
 Clerk of Westfield

And now again comes the Petitioner by Kendall and Ide his attorneys and the defendants by J. S. Taylor their attorney and this cause coming on for a final hearing upon the petition, return of the Town Clerk to the writ issued herein and the return filed by agreement, as a return to the special writ ordered herein, and the arguments of Counsel, the Court being now fully advised in the premises, it is ordered and adjudged by the Court that the proceedings of the Supervisors set forth in said return concerning a certain highway therein described be and the same is hereby quashed, and the order of said Supervisors establishing said highway be annulled and made void; and further that said petitioner have and recover his costs in this behalf expended and that he have execution therefor

And on motion of defendants counsel it is further ordered by the Court that appeal be allowed to the Supreme Court to said defendants

95 herein on filing bond therefore in the penal sum of three hundred dollars with Surety to be approved by the Clerk of this Court within thirty days herefrom, and that defendants also have the same time in which to prepare and file their bill of exceptions herein

Saturday morning 8 1/2 o'clock December 28th A.D. 1861 Court met pursuant to adjournment Present same as Yesterday (and as on Thursday last

Michael Kennedy Sr.

vs

Petition for Certiorari

Martin Corley Matthias
Shelan & Leslie Miller
coms of highways and
Samuel E. Parke Town
Clerk of Westfield)

And now come defendants by their attorney aforesaid and file their bill of exceptions herein as follows to wit

State of Illinois
Bureau County

In Circuit Court
December Term A.D. 1861

Michael Kennedy Sr.

vs

Petition for
Certiorari

Martin Corley, Matthias
Shelan, & Leslie Miller
coms of highways & Samuel
E. Parke Town Clerk of
Westfield)

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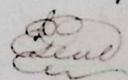
Be it remembered that on the trial of the above entitled cause the above petitioner read in evidence the return of the Town Clerk of the Town of Westfield in said County to the original writ of Certiorari issued in the above entitled cause, which return is in the words and figures following to wit: (said return being a part of this record and may be found commencing on Page 29, ^{and ending on page 52.}) And the dependants having filed in the above cause the affidavit of S. Ransom Hemmway which Affidavit is in the words & figures to wit: (commencing on the 53 Page of this record said affidavit will fully appear) and the Court upon motion, founded upon the said affidavit, having ordered that a special writ of Certiorari issue to the Town Clerk of said Town of Westfield directing him to amend his said return and certify up to this Court the amended and supplied papers pertaining to the said road mentioned in the said affidavit. Thereupon it was now mutually agreed between the parties to the above suit that the following is a true & correct Transcript of the papers relating to the road in question with the amendments & additions thereto, as specified in the affidavit of the said S. Ransom Hemmway to wit: (said transcript) is fully set out in this record and may be found con-

and ending on Page 93.

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beginning on the 5th Page^s and it is mutually agreed between the said parties that the said Transcript last above set forth shall be considered by the said Court on the trial of this proceeding in the same manner as though the same had been properly returned and certified by the said Town Clerk in accordance with the special writ of certiorari subject to all legal exceptions that could have been taken if the same had been properly certified, ordered herein.

And thereupon the above cause now come on for hearing upon the said original and amended transcripts above set forth, and the Court having heard the argument of Counsel and duly considered the matters involved in this proceedings above set forth in said transcripts. It is ordered and adjudged by the Court that the proceedings of the road commissioners and of the Supervisors above set forth be vacated annulled and held for naught, to which decision, ^{and ruling} of the said Court the defendants by their attorney then and there excepted and prays the Court to sign and seal this their Bill of Exceptions which is done accordingly on this 28th day of December A. D. 1861.

Wm. C. Hollister 
Judge

State of Illinois, Bureau County, Ill.

I, George M. Radcliffe, Clerk of the Circuit Court of said County, do hereby certify that the foregoing is a true and correct copy from the record and files of said Court of all proceedings had therein in the foregoing entitled Cause.

Witness my hand and the Seal of said Court at Princeton in said County this 6th day of March A. D. 1862.

Geo. M. Radcliffe Clk
Pr. Chas. J. Peckham
Deputy

Clk's fees for record \$24.60

State of Illinois }
Supreme Court, } 3rd Grand Division

April Term AD 1862,

Martin Corley & others

Plaintiffs, in Error,

vs

Michael Kennedy Secy.

& Depts, in Error.

Assignment

of

Errors-

Afterwards to wit:

at the April Term of the said Court for the year 1862, before the Justices of the said Court came the Plaintiffs in Error by J. S. Taylor their attorney and say that in the Record & proceedings aforesaid and in rendering the Judgment aforesaid there is error in this to wit:

1st The Circuit Court erred in ordering and adjudging that the proceedings of the ~~highway Commissioners~~ ^{Super-}vising concerning the highway in question be quashed -

2^d The ^{Circuit} Court erred in adjudging that the order of the Supervisors establishing said highway be annulled & made void.

3^d The ^{Circuit} Court erred in not deciding that said highway is legal & valid,

4th The ^{Circuit} Court erred in not giving

- full credit to the amended papers
set out in the ~~amended papers~~
Return to the Special Writ of Certiorari,
5 The ^{Circuit} Court erred in adjudging
that the proceedings of the said
highway commissioners relating to
said ~~appeal~~ highway, be quashed
6 The ^{Circuit} Court erred in ~~quashing and~~
adjudging that the said Road
appeal be annulled.
7 The ^{Circuit} Court erred in giving
Judgement against plaintiffs in
error for costs -

8. The Court Erred in not adjudging
that the said Petition for the writ of Certiorari
be dismissed, - And the said plaintiffs
pray that the orders & Judgements of
the said Circuit Court aforesaid
& other errors of the said Circuit Court
in the Record & proceedings aforesaid, may
be reversed & held for nothing and that
the plaintiffs may be restored to all things
which they have lost by the occasion of
the orders & Judgements of the Circuit
Court aforesaid -

J. J. Taylor atto for
Pltys in Error,

068 144

Martin Corley Stubs

Michael Kennedy Sr.

Record

Filed Dec. 31, 1862
L. Ireland
Clerk.



Full credit to the accounts papers