

Supreme Court of Illinois.

CENTRAL GRAND DIVISION.

JANUARY TERM, 1876.

THE PEOPLE OF THE STATE OF
ILLINOIS FOR THE USE OF THE
TRUSTEES OF SCHOOLS, TOWN
19, R. 14 WEST, APPELLANTS.

Appeal from Champaign.

VS.

JAMES YEAZEL, IMPLEADED
WITH JACKSON LEWIS APPELLEE,

ABSTRACT OF RECORD.

- 1 Convening order of Court September Term 1874.
- 3 Convening order of Special January Term 1875.
- 4 Precipe and summons.
- 6 Return on summons.
- 7-19 Declaration in debt against Jackson Lewis and James Yeazel surviving obligors on the collectors bond of Jackson Lewis with O. M. Conkey deceased in which are two counts. The first count avers the delivery by County Clerk of tax book of S. Homer township for 1872 to Lewis, in which the clerk had extended state, county, town, district school, road and bridge tax due from persons and property in said town for 1872; that a warrant was thereto attached under the hand and seal of the said clerk directed to Lewis commanding him to pay to the township treasurer the school fund tax; that in said book taxes amounting to \$1.00 were extended in favor of Union school districts 1 and 5 lying partly in T 19 R 14 (plaintiffs township) and partly in T 19 R 11 and in favor of districts 2 and 4 lying wholly in T 19 R 14 all of which territory was in S. Homer; that the clerk before said delivery

made out and sent by mail to the treasurer of T 19 R 14 a certificate of the amount of taxes so levied in districts 1, 2, 4 and 5 which certificate the treasurer presented to Lewis April 1, 1873 and demanded payment; that Lewis collected the amount of school tax so levied and should have paid to treasurer but failed and refused. The second count same as first except these additions; avers that taxes were levied in favor of Union school district No. 1. lying partly in T 19 R 14 and partly in T 19 R 11 amounting to \$372.73; also taxes in favor of Union school district No. 5 same towns amounting to \$227.25 from same territory; also in favor of district 4 lying wholly in T 19 R 14 amounting to \$1075.06; also in favor of district 2 same town amounting to \$237.25. Avers that clerk copied the numbers of school district in town of S. Homer into collectors book and extended rate per cent. levied by directors.

23-28 Pleas of defendant Yeazel, four in number as follows: (1) Plea of general performance; (2) Plea of payment of the money due Union districts No. 1 and 5 to the treasurers of Towns 19 R 11 and T 19 R 14; (3) Plea of payment to the several treasurers of T 19 R 14; (4) Payment as in No. 2.

29 Leave to amend sheriffs return on summons and default as to James Yeazel.

31 Convening order of March Term 1875 and default set aside.

33 Demurrer by plaintiff to all the above pleas.

34-35 Order of Court sustaining demurrer to pleas numbered 1, 3 and 4 and overruling it as to the 2nd.

36-37 Amended first plea.

38-39 Amended third plea.

40-41 Additional plea of payment of all moneys collected to plaintiffs treasurer and returns of delinquent taxes.

42-44 Additional plea filed September 22, 1875, which omitting venue and title of cause reads as follows:

And for further plea in this behalf by leave of the court first had and obtained the said defendant James Yeazel says *actio non* because he

says that he ought not to be charged with the said debt in the plaintiffs declaration mentioned or with any part thereof by reason of the said writing obligatory because he says that the said school districts one, five, two and four are union school districts as alleged in plaintiffs declaration two of said school districts lying and being in townships nineteen (19) north of range fourteen (14) west of the 2nd P. M. in said Champaign county and the other two districts are situate lying and being in township nineteen (19) aforesaid north of range eleven east of the 3rd P. M. in said county, and that said school districts adjoin upon each other and that John J. Swearingin and Eleazer Freeman in the year 1872 were school treasurers in and for said union school districts and as such treasurers were the legal custodians of the school moneys belonging to said districts and authorized by law to receive and receipt for all school moneys collected as due for the use and benefit of schools in said several school districts. And the defendant avers that the said Jackson Lewis as collector of taxes for the year 1872, in the town of South Homer, county of Champaign and state of Illinois did collect the revenues or taxes due and payable to and for the use of schools in said several school districts and paid the same to the said John J. Swearingin and Eleazer Freeman, school treasurers as aforesaid, each of said school treasurers securing the amounts or amount of said school money of and from the said Jackson Lewis, collector as aforesaid to which they were entitled as such treasurers respectively; and that the taxes so collected have been used and expended for the use and benefit of schools in said school districts.

45-49 Demurrer by plaintiffs to plea lastly filed.

41 Replication to 2d amended plea.

49 Demurrer to plea and amended pleas overruled and stipulation to consider a replication to plea and amended pleas filed.

50-51 Trial by jury, verdict for defendant, and motion by the plaintiffs for a new trial.

ties therein named are known to us to be of sufficient ability and that we hereby approve of the same, this 16th day of December, A. D., 1872.

W. A. CONKEY,

Supervisor of the town of South Homer.

CHAS E. HARDEN,

Town Clerk of the town of South Homer.

56-57 Eleazer Freeman testified : In 1872-73 I was treasurer of the Board of Trustees of Schools 19 R 14 west—in April 1873 I presented to Jackson Lewis a certificate from J. W. Shuck, County Clerk, of the amount of taxes assessed in my township for the different school districts and demanded payment—he paid in at different times sums of money in all \$975.38—he never paid in any other sums of money on this tax—the receipts here shown and numbered 1, 2, 3 and 4 are the receipts given by me to him. I have looked over the personal tax list in the collectors books and marked the letter, "O" opposite the names of persons residing in my township owing tax to union districts No. 1 and 5—those districts lie partly in my township and partly in T 19 R 11 east—the county line between Champaign and Vermilion counties divides my township in the center—in 1872 these townships formed a part of South Homer town.

58-70 Plaintiffs then introduced in evidence parts of the collectors book of South Homer township as follows :

*List of taxable personal property in the Town of South Homer, in
the County of Champaign, and State of Illinois, assessed for the year
1872:*

To Whose Name Assessed.	Dist. Sc Tx.	No. of Sch'l District.	Re- m'ks						
	Dols. Cts.								
Anderson W D	4	76	4-19-14	Paid	o Hearter Wash	1	22	1-10-11-14	Paid
Brennan Patrick	1	08	4-19-14	Paid	o Harvey Isaac	1	51	5-19-11-14	Paid
Bartlett Elijah	4	58	4-19-14	Paid	o Johnson J H	2	29	5-19-11-14	Paid
Baird Joseph	5	18	4-19-14	Paid	o Loeffler G B	3	87	1-19-11-14	Paid
o Brown Josephus	57	1-19-11-14	Paid	o Loeffler Christ	45	1-19-11-14	Paid		
o Brown W H	67	1-19-11-14	Paid	Leeney J W	16	46	4-19-14	Paid	
o Brown Thomas	1	46	1-19-11-14	Paid	o Loeffler Geo J	1	04	5-19-11-14	Paid
o Brokaw J K	1	41	5-19-11-14	Paid	o Lucy Abbot	2	07	5-19-11-14	Paid
Cannon M C	82	4-19-14	Paid	Mead David	5	64	2-19-14	Paid	
Carpenter T J	20	12	4-19-14	Paid	Mead Thomas	99	2-19-14	Paid	
Clancy Barney	1	46	4-19-14	Paid	McEntyer Jno	87	2-19-14	Paid	
Cowgell L E	1	40	4-19-14	Paid	o Nunnemacher Jo	67	5-19-11-14	Paid	
Coggershall J S	2	34	4-19-14	Paid	Oakes Geo	1	73	2-19-14	Paid
Coons Chas E	3	08	4-19-14	Paid	Ogden Wm	3	90	4-19-14	Paid
o Corlis W S	36	1-19-11-14	Paid	Ogden Isaac	82	4-19-14	Paid		
o Cooper H & A	2	69	5-19-11-14	Paid	O'Neal Hugh	51	2-19-14	Paid	
o Downing M W	1	08	5-19-11-14	Paid	Popgoy W M	3	99	2-19-14	Paid
o Doyle Zohr	1	80	1-19-11-14	Paid	o Farnell Joseph	2	75	5-19-11-14	Paid
o Demory Joseph	1	79	1-19-11-14	Paid	Poage Susan	5	02	2-19-14	Paid
Devoss J W	3	70	4-19-14	Paid	Penny Joseph	3	26	4-19-14	Paid
Davis J A	87	1-19-11-14	Paid	o Parris Henry	2	26	5-19-11-14	Paid	
o Dephugh M	1	84	2-19-14	Paid	Roach Thomas	2	10	4-19-14	Paid
Elder John	2	75	2-19-14	Paid	Roach John	40	4-19-14	Paid	
Elder W G	18	1-19-11-14	Paid	Richey G T	58	4-19-14	Paid		
o Elkin H C	18	1-19-11-14	Paid	o Radebaugh P	1	34	1-19-11-14	Paid	
o Elkin S J	3	32	4-11-14	Paid	Siner Warren	46	1-19-11-14	Paid	
o Freeman Andrew	3	74	4-19-14	Paid	Smith W R	4	58	4-19-14	Paid
Freeman Thos Jr	6	24	2-19-14	Paid	o Sanders Joseph	1	02	5-19-11-14	Paid
Freeman Edward	7	26	4-19-14	Paid	Stevens N H	2	40	5-19-11-14	Paid
Freeman J L	11	16	1-19-11-14	Paid	o Starhorn Tom	21	1-19-11-14	Paid	
Freeman Thomas Sr	17	64	4-19-14	Paid	Thomas C S	2	56	4-19-14	Paid
Freeman Eleazer	2	06	4-19-14	Paid	Thomas Wm	7	14	4-19-14	Paid
Glasscock H J	3	42	4-19-14	Paid	Umberhower S B	1	18	4-19-14	Paid
Glasscock J H	4	24	4-19-14	Paid	o Underwood G S	1	23	5-19-11-14	Paid
Gillespie B	1	70	5-19-11-14	Paid	o Wooden G W	1	35	5-19-11-14	Paid
o Gohl Christ	8	19	1-19-11-14	Paid	Yeazel Abram	17	81	2-19-14	Paid
o Hartman Thompson	10	42	4-19-14	Paid	Yeazel J B	5	08	4-19-14	Paid
Hayes Wm & John	2	34	4-19-14	Paid	Yeazel Mariah	1	83	2-19-14	Paid
Hixenbaugh A	1	18	4-19-14	Paid	Yates W F	9	78	4-19-14	Paid
Hixenbaugh H B	1	54	1-19-11-14	Paid	Whetstone John S	10	50	4-19-14	Paid
o Hixenbaugh Isaac	2	74	4-19-11-14	Paid	o Campbell W T	1	62	5-19-11-14	Paid
Hart Abner	1	38	2-19-14	Paid	Demory Joseph	79	1-19-11-14	Paid	
Hart John	1	18	4-19-14	Paid	Elder Joshua	51	2-19-14	Paid	
Hill W R	1	55	5-19-11-14	Paid	Ellis Henry	74	4-19-14	Paid	
o Hackett M J	10	92	4-19-14	Paid	o England Jesse	1	13	1-19-11-14	Paid
Harey S P	5	46	4-19-14	Paid	o Pierce James	25	1-19-11-14	Paid	
Hays James	35	1-19-11-14	Paid	Freeman Stephen	64	4-19-14	Paid		
o Hoover B F	1	77	5-19-11-14	Paid	Harmison Isalah	3	88	2-19-14	Paid
o Hester Robert	9	96	4-19-14	Paid	Harding E D Mrs	74	4-19-14	Paid	
Hayden John	7	50	4-19-14	Paid	Hedges W B	58	4-19-14	Paid	
Hayes Lizzie	1	94	4-19-14	Paid	Johnson Markus	50	4-19-14	Paid	
Hixenbaugh W H	1	82	1-19-11-14	Paid	McIlroy Robert	1	42	4-19-14	Paid
o Harmon J M	1	24	5-19-11-14	Paid	McKee	1	42	4-19-14	Paid
o Harmon A W	1	82	2-19-14	Paid	o Nogle	27	1-19-11-14	Paid	
Holmes Mrs E A	1	82	2-19-14	Paid	Parnell W R	46	4-19-14	Paid	
					Swearingen J A	2	66	2-19-14	Paid
					o Tourtelotte M J E	1	60	1-19-11-14	Paid

List of taxable Real Estate, in the Town of South Homer, in the County of Champaign, and State of Illinois, assessed for the year 1872:

To Whose Name Assessed.	Subdivision of Section.	Section.	Town.	Range.	District & Sch'l Tlx.	No. School District.	Remarks.	Geo R Leoffler same	n 1/2 sw	615	1	Paid	
								Peter Radebaugh	n 4 1/2 r s 1/2 sw	390	19	Paid	
								David Meead	s 35 1/2 r s 1/2 sw	255	11	Paid	
								W G Elder	e 1/2 se	755	14	Paid	
								Thos Harmison	w 1/2 se	898	2	Paid	
								Allen Poage	nw	1568	19	Paid	
Wm Hays	w 1/2 no 2 ne	4	19	14	6 20		Paid	Allen Poage	w 1/2 se	709	14	Paid	
S E Donaldson	sw ne	"	"	"	5 50		Paid	same	w 1/2 ne	835	14	Paid	
B Gillespie	w 1/2 e 1/2 sw	"	"	"	5 50		Paid	Geo Oakes	sw nw	538	14	Paid	
B Gillespie	w 1/2 sw	"	"	"	15 68		Paid	Allen Poage	e 70 r se nw	335	14	Paid	
Julia W Gallon	n 1/2 ne	5	19	14	11 38		Paid	Geo Oakes	w 10 r se nw	58	2	Paid	
J J Swearingen	n 1/2 se	"	"	"	14 18		Paid	Abraham Yeazel	sw	2496	19	Paid	
same	sw se	"	"	"	9 28		Paid	Allen Poage	w 1/2 se	1133	14	Paid	
Eleazer Freeman	se se	"	"	"	8 70		Paid	David Mead	e 1/2 ne	859	1	Paid	
Daniel Williams	sw ne	6	19	14	2 32		Paid	John Elder	w 1/2 ne	990	19	Paid	
Uriah Stevens	nw nw	"	"	"	1 86	5	Paid	O M Conkey	nw	1637	11	Paid	
Uriah Stevens	sw nw	"	"	"	2 07		Paid	Thomas Freeman	sw	1090	14	Paid	
Uriah Stevens	se nw	"	"	"	1 59	19	Paid	David Mead	n 1/2 se	898	2	Paid	
John J Swearingen	e 1/2 se	"	"	"	6 01		Paid	Marlah Yeazel	s 1/2 se	813	14	Paid	
Christian Gohl	ne	7	19	14	9 96		Paid	O M Conkey	ne	1580	19	Paid	
W G Clark	sw nw	"	"	"	4 59		Paid	J Hixenbaugh	n 3-5 no 1 e 1/2 nw	99	14	Paid	
same	n 1/2 sw	"	"	"	3 55	14	Paid	J M Harmon	s 2-5 no 1 e 1/2 nw	70	14	Paid	
Joseph Nunnermacker	n 154 r e 1/2 se	"	"	"	3 99		Paid	same	no 2 e 1/2 nw	179	14	Paid	
Richard Hays	e 1/2 ne	8	19	14	18 32	5	Paid	same	no 3 e 1/2 nw	273	14	Paid	
M D Coffeen	w 1/2 ne	"	"	"	14 90	19	Paid	Thos Hartman	no 2 nw nw	569	14	Paid	
same	nw	"	"	"	32 62	14	Paid	Thos Brown	no 1 sw	564	14	Paid	
James Hays	e 1/2 se	8	19	24	19 24	14	Paid	Thos Hartman	no 2 sw	606	14	Paid	
Abram Hixenbaugh	nw se	"	"	"	7 78	11	Paid	Sarah Freeman	e 1/2 se	731	1	Paid	
Morg'n H Hixenbaugh	sw ne	"	"	"	8 24		Paid	O M Conkey	w 1/2 se	773	19	Paid	
Wm Hays	ne	9	19	14	30 20		Paid	Jas Freeman's heirs	all ne nw n	138	11	Paid	
Mary Ogden	n 6 r w 26 r sw nn	"	"	"	3 54		Paid	Dunville road	all e 5 r ne ne s	51	14	Paid	
Richard Hays	nw	"	"	"	27 70		Paid	Hary Michenor	Dunville road			Paid	
W H Glasscock	n 1/2 ne	16	19	14	16 94		Paid	Frances Clark	no 5 ne ne	30		Paid	
Joseph S Baird	sw ne	"	"	"	5 82		Paid	Jos Nomrafcher	no 6 ne ne	21		Paid	
J W Leeny	nw nw	"	"	"	13 86		Paid	O M Conkey	nw ne	241		Paid	
Thos Harmison	s 1/2 sw	"	"	"	15 34		Paid	same	e 1/2 sw ne	120		Paid	
Ebben Taylor	e 1/2 se	"	"	"	14 66		Paid	same	nw sw ne	35		Paid	
Joseph H Baird	nw se	"	"	"	7 22		Paid	John Elder	n 28 r ne se	60		Paid	
Thos Harmison	sw se	"	"	"	5 94	19	Paid	E A Freeman	no 7 se ne	31	19	14	Paid
Eleazer Freeman	ne	17	19	14	43 26		Paid	W G Elder	no 8 se ne	36		Paid	
A Freeman	nw	"	"	"	33 88	14	Paid	R J Stanton	no 9 se ne	36		Paid	
Wm F Yates	n 1/2 sw	"	"	"	20 36		Paid	Thompson Hartman	n 1/2 nw	393		Paid	
Edmund Freeman	s 1/2 sw	"	"	"	14 18		Paid	same	s 1/2 no 1 nw	221		Paid	
Eleazer Freeman	n 1/2 n 1/2 se	"	"	"	6 86		Paid	J J Coons	n 35 r e 50 r sw	67		Paid	
James L Freeman	s 1/2 n 1/2 se	"	"	"	6 94		Paid	nw				Paid	
same	s 1/2 se	"	"	"	14 66		Paid	J J Swearingen	s 45 e 50 r sw nw	97	1	Paid	
Wm B Downey	n 1/2 ne	18	19	14	5 76		Paid	Alonzo Mapes	s 29 r w 30 r s 1/2	45	19	Paid	
Jane Burk	s 1/4 ne	"	"	"	4 81		Paid	Thompson Hartman	alt no 1 sw r e	35	14	Paid	
J M Harmon	ne ne nw	"	"	"	65		Paid	of Salt Fork	ne of Salt Fork			Paid	
A P Harmon	nw ne nw	"	"	"	73		Paid	same	w 1/2 no 1 sw	249		Paid	
same	n 30 r s 1/2 ne nw	"	"	"	103		Paid	E R Field	no 20 r no 2 sw	117		Paid	
Joseph Parnell	s 70 r s 1/2 ne nw	"	"	"	35		Paid	same	no 3 no 2 sw	64		Paid	
S R Harmel	n 1/2 no 2 nw	18	19	14	2 32		Paid	Geo B Locfler	no 4 no 2 sw	38		Paid	
same	s 1/2 no 2 nw	"	"	"	1 53		Paid	Richard Hays	n pt no 5 no 2 sw	48	1	Paid	
same	se nw	"	"	"	3 95		Paid	Wm Hays	s pt no 5 no 2 sw	44	18	Paid	
John G Lefler	e 1/2 se	"	"	"	4 81		Paid	B H Towner	n 1/2 no 6 no 2 sw	36	11	Paid	
W G Clark	no 2 sw	"	"	"	4 32		Paid	Geo B Elder	no 7 no 2 sw	44	14	Paid	
Wm F Yates	n 1/2 se	"	"	"	4 56	1	Paid	Wm Hays	no 8 no 2 sw	38		Paid	
Thomas Freeman	s 1/2 se	"	"	"	4 64		Paid	J B Thomas' heirs	ne se	275	19	Paid	
same	ne	19	19	14	14 85	19	Paid	Thos Freeman	nw se	275	11	Paid	
W G Clark	sw sw	"	"	"	2 08		Paid	same	all n 30 r sw se	28	14	Paid	
J Hixenbaugh	se sw	"	"	"	4 50	11	Paid	M B Custer	n Salt Fork	56	1	Paid	
Geo R Leoffler	n 89 r se	"	"	"	7 83		Paid	se Salt Fork			19	Paid	
Peter Radebaugh	s 71 r se	"	"	"	7 11	14	Paid					Paid	
James S Freeman	n 1/2 ne	20	19	14	7 89	2	Paid					Paid	
W G Elder	sw ne	"	"	"	3 49	19	Paid					Paid	
S S Elder	se ne	"	"	"	3 89	14	Paid					Paid	
Edmund Freeman	nw	"	"	"	18 37	14	Paid					Paid	

70-75 And the certificates of the county Clerk and collectors warrant attached thereto.

75 J. S. McCullough county clerk testified as follows: I was in the county clerk's office when this book was prepared—it is the collectors book for the town of South Homer for 1872—the figures in the column headed “No. of School District,” in this book denote the number of the school district and congressional townships in which the tracts opposite are situated—the figures “1-19-11-14” mean school district No. 1 in townships 19 ranges 11 east and 14 west—the figures “5-19-11-14” mean school district No. 5 townships 19 in ranges 11 and 14—the figures “2-19-14” and “4-19-14” mean districts No. 2 and 4 in T 19 R 14.

76 The plaintiffs then introduced the certificate identified by witness Freeman as the one presented by him to Jackson Lewis as follows:

STATE OF ILLINOIS, }
CHAMPAIGN COUNTY. } ss.

I, J. W. Shuck Clerk of the County Court within and for said County, do hereby certify that the following are the amounts per cent. levied on each one hundred dollars' worth of Property, also the amount of Tax raised in the following School Districts, in the Town of Homer, Township 19, Range 14, for the year A. D., 1872, as appears from the Tax List of said town for said year:

	RATE ON 100.	Amount of School Tax
School District No. 1, T 19 R 11 and 14,	0/15	372/73
“ “ “ 2, T 19 R 14,	1 00	384 39
“ “ “ 4, T 19 R 14,	2 00	1075 06
“ “ “ 5, T 19 R 11 and 14,	3 75	237 25

Given under my hand and Seal of said Court, at my office in Urbana
this 14 day of March, A. D., 1873.

[SEAL.]

J. W. SHUCK, CLERK.

To E. Freeman, Township Treasurer of Town 19, Range 14 W 2d P. M

77 Plaintiffs also introduced the official plat of the division into school districts of townships 19 R 11 and township 19 R 14 as follows :

R 11		R 14						
	6	6	5	4	3	2	1	
Fractional Town 19 R 11 E	7	7	8	9	10	11	12	
	18	18	17	16	15	14	13	
	19	20	21	22	23	24	25	
	30	30	29	28	27	26	25	
	31	31	32	33	34	35	36	
	1-18-11-14				2-18-14			

Handwritten notes on the grid:

- Vertical line between columns 4 and 5: *Champion and Meridian Township*
- Vertical line between columns 6 and 7: *Champion and Meridian Township*
- Diagonal line between rows 2 and 3: *Champion and Meridian Township*
- Diagonal line between rows 4 and 5: *Champion and Meridian Township*
- Diagonal line between rows 6 and 7: *Champion and Meridian Township*
- Diagonal line between rows 7 and 8: *Champion and Meridian Township*
- Diagonal line between rows 8 and 9: *Champion and Meridian Township*
- Diagonal line between rows 9 and 10: *Champion and Meridian Township*
- Diagonal line between rows 10 and 11: *Champion and Meridian Township*
- Diagonal line between rows 11 and 12: *Champion and Meridian Township*
- Diagonal line between rows 12 and 13: *Champion and Meridian Township*
- Diagonal line between rows 13 and 14: *Champion and Meridian Township*
- Diagonal line between rows 14 and 15: *Champion and Meridian Township*
- Diagonal line between rows 15 and 16: *Champion and Meridian Township*
- Diagonal line between rows 16 and 17: *Champion and Meridian Township*
- Diagonal line between rows 17 and 18: *Champion and Meridian Township*
- Diagonal line between rows 18 and 19: *Champion and Meridian Township*
- Diagonal line between rows 19 and 20: *Champion and Meridian Township*
- Diagonal line between rows 20 and 21: *Champion and Meridian Township*
- Diagonal line between rows 21 and 22: *Champion and Meridian Township*
- Diagonal line between rows 22 and 23: *Champion and Meridian Township*
- Diagonal line between rows 23 and 24: *Champion and Meridian Township*
- Diagonal line between rows 24 and 25: *Champion and Meridian Township*
- Diagonal line between rows 25 and 26: *Champion and Meridian Township*
- Diagonal line between rows 26 and 27: *Champion and Meridian Township*
- Diagonal line between rows 27 and 28: *Champion and Meridian Township*
- Diagonal line between rows 28 and 29: *Champion and Meridian Township*
- Diagonal line between rows 29 and 30: *Champion and Meridian Township*
- Diagonal line between rows 30 and 31: *Champion and Meridian Township*
- Diagonal line between rows 31 and 32: *Champion and Meridian Township*
- Diagonal line between rows 32 and 33: *Champion and Meridian Township*
- Diagonal line between rows 33 and 34: *Champion and Meridian Township*
- Diagonal line between rows 34 and 35: *Champion and Meridian Township*
- Diagonal line between rows 35 and 36: *Champion and Meridian Township*

The undersigned President and Clerk of the Board of Trustees of Schools in Township 19 Range 14 in Champaign and Vermilion counties in the state of Illinois, do hereby certify that the following is a correct plat of the school districts in said township as now organized.

ISAAC OGDEN,

E. FREEMAN, *Clerk.*

President.

Whereupon the plaintiffs rested their case.

78-80 The defendant to maintain the issues on his part gave in evidence as follows :

J. J. Swearingen testified as follows: In the year 1872 and 73 I was treasurer of the Board of trustees of schools T 19 R 11 and as such was treasurer of a portion of union school districts 1 and 5 in towns 19 in ranges 11 and 14. The defendant by his attorneys then asked of witness the following questions : "If you as treasurer of union districts Nos. 1 and 5 in T 19 R 11 received from Jackson Lewis as collector any portion of the special school tax for the year 1872 collected in T 19 R 14 you may tell the jury how much and whether or not you paid it out for the benefit of these districts ?" To which question the plaintiffs by their attorneys objected,—which objection the court overruled—to which ruling the plaintiffs by counsel then and there excepted.

Answer by witness: I received a portion of the taxes collected out of the revenue of 1872 for these school districts in town 19 R 14 and paid the same out to the teachers and others having school orders—I do not know how much money I received, but I do know the union school districts have received all that was coming to them out of the revenue of that year. I do not know how much they have received. I do not know anything about the money due the other districts. Union school districts No. 1 and 5 drew orders on me and I paid them all the money they were entitled to receive and \$100 more—it was afterwards ascertained that I had made a mistake and they refunded it to me. The directors of these two districts told me that they had got all the money they were entitled to out of the revenue of 1872.

80-81 Defendant then introduced the receipts identified by the witness Freeman as given by him for money paid him by Jackson Lewis as follows:

No. 1, dated March 11, 1873, for \$161.09, on account of school district No. 1, T 19 R 11 and 14 for revenue of 1872.

No. 2, dated March 4, 1873, for \$221.35, on account of district No. 2, T 19 R 11.

No. 3, dated May 23, 1873, for \$47.47, on account of district No. 2, T 19 R 14 and \$238.86, on account of district No. 4, T 19 R 14—revenues of 1872.

No. 4, dated June 18, 1873, for \$306.61, on account of district No. 4, T 19 R 14, from revenues of 1872.

81-82 C. M. C. ELDER testified as follows: In February or March 1873, Mr. Eleazer Freeman came to O. M. Conkey's office where Jackson Lewis did his business and kept his money and said he wanted \$100 for one of the school districts in his town. I don't remember which. Conkey was in the office but Lewis was sick at home. Conkey refused to let him have any money without an order from Lewis, and sent me to tell Lewis what Freeman wanted. I went to Lewis and he sent word to Conkey to let Freeman have the money. Conkey again refused unless the order was written. I went again to Lewis but he was too sick to write the order but said the money—\$100—should be given him. I returned and told Conkey what Lewis said in the presence of Freeman. Conkey went to the safe, took out some money, gave it to Freeman and he put it in his pocket and went off without making any objection. Nothing was said by either party of the amount and I do not know how much was paid. I saw no receipt given but saw Conkey mark \$100 on a ticket which he put in the safe.

82-83 JOHN L. CAILEY testified as follows: I was in 1873, school director in union school district No. 1, in T 19 R 11 and 14. I settled with Freeman for the year 1872—he told me he got \$182 for our district for that year—\$161 of that amount was included in the receipts he gave.

Defendant then asked of witness this question:

“State whether or not district No. 1 has received all it was entitled to from the revenue of 1872.” To which question the plaintiffs objected but the court overruled the objection, and permitted the witness to answer, to which ruling the plaintiffs then and there excepted.

Answer by witness: District No. 1 has received all it was entitled to out of the revenue of 1872.

Cross-examination.—District No. 1 was entitled to \$275 less commissions or \$260 net—part of this amount was received from Freeman and part from Swearingen.

And the defendant the further to maintain the defence offered in evidence the following return attached to said collectors book. To which the plaintiffs by counsel objected. But the court overruled the objection and permitted it to be read to the jury, to which ruling of the court the plaintiffs by counsel then and there excepted.

84 Collectors return of delinquent list to the county treasurer.

STATE OF ILLINOIS }
CHAMPAIGN COUNTY. }

I, Jackson Lewis, collector of the town of South Homer, in said county of Champaign and state aforesaid, being duly sworn on oath says that the annexed is a full and true list and description of all the taxes contained in the tax bill annexed to the warrant delivered to him for the taxes for the year A. D., 1872 and other years therein specified, which remain uncollected; that the several sums mentioned in the delinquent list remain unpaid and that he has made diligent inquiry, and used due diligence to collect the same, but has not been able to discover any goods or chattels belonging to or in possession of the person or persons charged with or liable to pay said several sums, whereon he could levy the same, and the facts above stated are true and correct.

JACKSON LEWIS,
Collector.

Subscribed and sworn to before me this 19th day of March, 1873.

J. W. HILL,
County Treasurer

Which was all the evidence offered by the defendant in chief.

The plaintiff in rebuttal then offered the following testimony:

85 ELEAZER FREEMAN testified as follows: I have heard the testimony of Mr. Elder. I never received a cent upon the occasion referred to by him. I received a tax receipt for a neighbors tax as so much money, and the amount is included in one of the receipts given in evidence. I never received any money from John J. Swearingen on the tax due my township for that year.

Cross-Examination.—I do not remember of saying to S. W. Custer that on the occasion referred to by Elder, I received \$50 from Conkey, although I may have said something of the kind, yet I did not get the money.

Rebuttal by defendant.

85-86 S. W. CUSTER testified: In conversation with Freeman in relation to the payment of \$100 by Conkey on the occasion referred to by Elder, Freeman told me that he did not get \$100 of Conkey in cash that he only got \$50.

Which was all the evidence upon either side, offered by counsel or heard by the jury.

And thereupon the court gave to the jury in behalf of the plaintiff's the following instructions:

86-87 1st. The court instructs the jury that if they believe from the evidence that the defendants executed the bond in evidence; that Jackson Lewis was collector of the revenue of South Homer township for the year 1872; that as such collector he received from the county Clerk of this county the collectors books introduced in evidence; that in such book it is shown that the sums of \$372.73, \$237.25, \$384.37 and \$1075.-76 were due union districts, No. 1 and 5 and districts No. 2 and 4 respectively out of the revenues to be collected by said collector; that any amount of the money so due, which was collected or might have been collected by said collector, by the exercise of all reasonable diligence, remain unpaid to the treasurer of said town 19 R 14 west then they

will find for the plaintiffs debt, \$37.000, and assess the plaintiffs damages at the total amount of money so due said school districts, less any amount they find to have been paid to Eleazer Freeman, (if they believe him to have been treasurer of Town 19 Range 14,) and less any sums the said Lewis may have legally shown himself unable to collect from the persons of that township owing the same and less two per cent. commissions for the said Lewis on the amount collected.

And the plaintiffs moved the court to instruct the jury on their behalf as follows:

- 87 The court instructs the jury that as a matter of law the only person entitled to ~~revenue~~^{receipts} from the town collector the money collected by him for special school purposes, is the school treasurer of the townships from whose territory the special tax was collected; therefore in determining this case they will consider no money as paid to the plaintiff except such as the evidence shows to have been paid to Eleazer Freeman, if they believe from the evidence he was then school treasurer of T 19 R 14.
- 88 Which instruction the court refused to give in the above form but after adding thereto the following words gave as an instruction for the plaintiffs: "But if you believe from the evidence that any money due the plaintiff from the defendants was paid by the collector Lewis by mistake to said John J. Swearingen, and that said Swearingen afterwards paid said money to said plaintiffs or so accounted for such money to the plaintiff to the satisfaction of the plaintiffs then in that case the plaintiff could not now recover for any such money from the defendants in this suit, if you believe from the evidence the plaintiffs have received such money through the hands of anothers."

And the plaintiffs further moved the court to instruct the jury on their behalf as follows :

- 88-89 The court further instructs the jury on behalf of the plaintiffs in this case that said Jackson Lewis as town collector had no right to make payment of money collected by him as such collector belonging to school, town 19 range 14, except to the treasurer thereof, and if the evidence

shows that the said Lewis made payment to John J. Swearingin, as treasurer of another town, of money which should have been paid to E. Freeman as treasurer of town 19 range 14, then in that case said Lewis is not entitled to be credited with such money so paid said Swearingin, and in such case it makes no difference whether said Swearingin paid such money over to the proper school directors or not.

Which instruction the court refused to give in the above form but after adding thereto the following words, gave as an instruction for the plaintiffs: "But if you believe from the evidence that said Swearingin paid or caused to be paid to the plaintiffs any part of the moneys alleged to have been received by him which was in fact paid the plaintiffs and that plaintiffs received such money, then in that case the plaintiffs could not again recover such money although it may not have been in fact paid by Lewis; and it is sufficient if the evidence shows that the plaintiffs did receive the money either from the collector Lewis or through any other person for him, or on account of his alleged indebtedness to the plaintiff."

To the refusal of the court to give said second and third instructions as asked by the plaintiffs, and to the additions and modifications of the same made by the court as above set forth, the plaintiffs then and there excepted.

And thereupon the court gave to the jury on behalf of the defendant the following instructions :

- 90 1st. The court instructs the jury that the official oath of the collector of the school district in controversy attached to his return submitted to the jury, containing the list of taxes to be collected in said township is to be treated with all the solemnities of an oath as though the witness Lewis had testified in person to the matters therein stated before the jury, and the jury should give the same all the weight it is entitled to under all the facts and circumstances that are in proof in this case.
- 91 2nd. The court instructs the jury that the law does not require the collector of taxes to state in his return that he is unable to collect the

taxes by the seizure and sale of the personal property of the proprietor of the lands or the person owing tax on personal property. The collector is presumed to have done his duty unless the contrary appears from the evidence.

91 3rd. The court instructs the jury in this case that the plaintiffs by producing the collector's book of the town of South Homer for the year 1872 with a view to establish a liability, on the part of the defendant, by so doing make said book valid testimony as well for the defendant as for the plaintiffs in relation to all matters therein contained, touching this controversy.

91 4th. The court instructs the jury that before the plaintiffs can recover in this case, they must show that they have sustained injury or loss in the manner alleged by reason of the misconduct of Lewis the collector, and unless they show such injury or loss the jury will find for the defendant.

92 5th. The jury are further instructed that the law is, that all presumptions are in favor of the fact that a public officer has discharged his full and complete duty as such officer, and it devolves on the plaintiffs in this case to show by proof satisfactory to the jury that said Lewis failed to discharge his official duty as required by his official bond, before plaintiff would be entitled to recover in this suit.

To the giving of which instructions for the defendant, and each of them, the plaintiffs by their counsel, then and there excepted.

And thereupon the jury rendered their verdict against the plaintiffs

93 Whereupon the plaintiffs by counsel then and there moved the court to set aside the verdict so rendered and grant a new trial of this cause, and filed the following reasons in writing for their motion to-wit :

(Omitting venue and title of cause.)

And now comes the said plaintiffs by Cunningham & Webber and Somers & Wright their attorneys and move the court for a new trial in this cause, and for special causes for said new trial assign the following causes, viz :

1st. Because the court admitted improper evidence on the part of the defendant.

2nd. Because the court gave improper instructions for the defendant.

3rd. Because the court refused proper instructions for the plaintiffs.

4th. Because the court changed the instructions prepared on the part of the plaintiff, which as prepared, properly and correctly stated the law applicable to the case, into instructions for the defendant, and informed the jury that they were given on the part of the plaintiff.

6th. Because the verdict is against the law and the evidence.

Whereupon the plaintiffs pray for a new trial herein.

Signed by Counsel.

But the court denied the motion and gave judgment on the verdict against the plaintiffs: to which decision of the court the plaintiffs by counsel then and there excepted.

95 And thereupon the plaintiffs by counsel then and there moved the court in arrest of the judgment, and filed the following reasons, to-wit:
(Omitting the venue and title of cause.)

And now comes the said plaintiffs by Cunningham & Webber and Somers & Wright their attorneys and hereby move the court in arrest of judgment in said cause. And for reason of said motion plaintiffs say an immaterial issue is tendered by the defendants in their additional plea, filed September 22nd, and by replication issue thereon gained by the plaintiffs.

CUNNINGHAM & WEBBER,
SOMERS & WRIGHT,

Attorneys.

But the court denied the motion and refused to arrest the judgment to which decision of the court in denying such motion the plaintiffs then and there excepted.

And forasmuch as the matters above set forth do not fully appear of record the plaintiffs tender this Bill of Exceptions and pray that the same may be signed and sealed by the Judge of this court pursuant to

the statute in such case made and provided: which is accordingly done this 20th day of November, 1875.

C. B. SMITH,
Judge.

- 97 Appeal bond.
99 Certificate of Clerk.
100 Assignment of errors as follows:

Assignment of Errors.

And now comes the appellants by Cunningham & Webber their attorneys and say that there is manifest error in the record and proceedings aforesaid, in this, viz :

I. The Court erred in admitting improper evidence on the part of the defendant.

II. The Court erred in refusing to give the 2d and 3d instructions of the plaintiffs as asked, and in modifying the same by adding thereto improper and irrelevant language.

III. The Court erred in giving to the jury each and every one of the defendants instructions.

IV. The verdict of the jury was manifestly against the law and the evidence in the case.

V. The Court erred in overruling the plaintiffs motion for a new trial.

VI. The Court erred in overruling the plaintiffs motion in arrest of judgment and in rendering judgment upon the verdict of the jury.

VII. The Court erred in rendering judgment against the plaintiffs for cost and in awarding execution therefor.

By reason whereof the appellants pray that said judgment may be reversed.

CUNNINGHAM & WEBBER,
Attorney's for Appellants.

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Abstract

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FIELD
JAN 21 1876
E. C. HARRIS