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No. _____

Supreme Court of Illinois

Keech

vs.

People

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Henry Keech, Plaintiff in Error, } SUPREME COURT AT OTTAWA,
vs. } APRIL TERM, 1859.
THE PEOPLE, Defendants in Error. }

ABSTRACT OF ARGUMENT OF PLAINTIFF IN ERROR, AND AUTHORITIES CITED.

Certain inhabitants of Medina and Radnor petitioned the Highway Commissioners of said towns to lay out a highway upon the line between said towns.

On the 14th day of December, 1852, Commissioners made an order refusing to lay said road, which was filed in the clerks' offices of said towns on same day.

On the 20th December, 1852, an appeal was taken to Church, Yocum and Stringer, then Supervisors.

On the 25th day of January, 1853, Supervisors met and made an order dismissing the appeal for informality therein, intending the same to be a final termination of the matter, and dispersed without day, which order was duly filed in the clerks' offices of said towns. Some four weeks afterwards, at the request of Harvey Stillman said Supervisors met at his house and adjourned to meet at the same place on the 11th of April, 1853, and on that day met, and two of said Supervisors rescinded the previous order, and associated Dimon with them, and the three made an order laying the road, which was also filed in said clerks' offices.

Defendant below is indicted for obstructing this road.

The road never was open and used by the public even for an hour, consequently there was no user or dedication.

I. The court below permitted improper evidence to go to the jury on part of the people.

1st. The second road petition offered was wrongly admitted in evidence, because it describes a road passing over other and different lands from the first petition given in evidence, and is apparently a different road.

2d. The order of Supervisors made April 11, 1853, rescinding order of January 25th, 1853, was wrongly admitted in evidence, because only two of said Supervisors acted in making the same. Powers of a public nature must be performed by all in whom they are vested, or all must be present and acting.

3d. The order of April 11, 1853, laying the said road, was wrongly admitted in evidence. But this point arises upon the instructions of the court, and will there be discussed.

II. The court below gave improper instructions on part of people.

People's first instruction is erroneous, because it places the guilt or innocence of defendant below upon the sole question whether the road was opened or not, without regard to the legality of any of the proceedings for laying the same.

III The court below refused proper instructions asked by defendant below.

1st. Defendant's second instruction was improperly refused

Roads laid out upon town lines must be divided into sections by the Highway Commissioners of the respective towns, and allotted by sections to such towns, and such allotment filed in the town clerks' offices.

Sec. 237, 23^d and 239, page 1166, Purple's Statute.

Each of such towns has exclusive jurisdiction to open and keep in repair the sections so allotted to it, and no right to open or meddle with sections not allotted to it.

Sec. 239, page 1166, Purple's Statute.

2d. Defendant's third instruction is but an application of the statutes above cited to the case on trial, and was improperly refused.

3d. Defendant's fourth instruction was wrongly refused. The law requires that roads laid by Supervisors on appeal shall be opened by Highway Commissioners, in same manner as roads laid by them.

Sec. 232, page 1165, Purple's Statute.

The opening of a road in the manner provided by law is an essential step in the process of converting private property to public use, and until that is done it still remains private property, and there is no road.

The essential nature of this step is contemplated by our statute, which provides that unless roads be opened within five years they shall be deemed vacated.

Sec. 287, page 1173, Purple's Statute.

The statutes already cited require separate parts of the said road to be allotted by the Highway Commissioners to the towns of Radnor and Medina, and give to each town the exclusive right to open and keep in repair such portion as is allotted to it. Consequently Radnor had no right to open any portion not allotted to it.

4th. Defendant's fifth instruction was wrongly refused, for reasons above stated, and because by sections 241 and 242, page 1166, Purple's Stat., defendant is entitled to 60 days notice to remove his fences. Said notice must come from the Highway Commissioners of the town having a right to open the road, and notice from town not having such right is void.

5th. Defendant's 13th instruction was wrongly refused. Roads upon town line can be opened only by joint action of Commissioners of such towns, allotting the same for that purpose.

6th. Defendant's 14th instruction was improperly refused. First, Supervisors met January 25th, 1853, and took cognizance of and made a final order and determination dismissing the said appeal for informality in the same, then adjourned without day. The tribunal is created only for a specific purpose. It comes into existence with the appeal and expires with the determination of it, and cannot revive itself upon the suggestion of parties and reverse former proceedings and make new ones.

Second, the Supervisors had a right to dismiss the appeal. This position does not conflict with the decision in *Beadles vs. Smith*, 15 Ill. 326. There the Supervisors were required to proceed to determine a case of which they had refused to take cognizance. Here they took cognizance of and finally determined the appeal by dismissing it. While the Supervisors should not entertain technical objections, still they must certainly have the power of determining whether an ap-

peal is properly pending before them, and of dismissing it if it is not. See note to Hain's Compilation of Township Organization Laws, edition of 1857.) Many cases may arise where they cannot do otherwise than dismiss the appeal. They must have power to dismiss the appeal for informality therein, otherwise any or all the requirements of the statute in relation to what the appeal shall contain may be omitted. In this case there was in the appeal a fatal non-compliance with the statute, in not stating the date of the filing of the order appealed from. Sec. 225, page 1164, Purple's Stat. By this statement alone can it appear that the appeal was taken in season to give the supervisors jurisdiction. Jurisdiction must appear on the face of the proceedings of tribunals of limited jurisdiction.

Third, the order dismissing the appeal never was rescinded, but is still in force.

Fourth, There was no legal notice of said meeting of supervisors, on 11th of April, 1853. None of the petitioners were notified.

7th. Defendants last instruction, marked 12, should have been given as asked.

First. Because if said supervisors could legally meet at all on the 11th of April, 1853, for further action, it must be upon *the same* notice provided by law for their former meeting.

Second. Because there is no legal presumption that the adverse party has legal notice of the pendency of proceedings against him. Notice is essential to the validity of the proceedings, and must appear.

Third. Because when Supervisors have met once in pursuance of due notice, and made what they and all parties considered a final determination of the appeal, if they afterwards meet and take different action, there is no presumption of law that due notice was given of said second meeting.

IV. The verdict of the jury should have been set aside as contrary to law and evidence.

1st. Because the evidence has no reference to the obstruction laid in the indictment. The indictment alleges that the defendant erected an obstruction situated on the S. half of N. E. quarter of sec. 12, township 10 N., range 7 E., and the S. half of N. W. quarter of sec. 7, township 10 N., range 8 E. The testimony is explicit, and shows an obstruction only on the first named of these tracts. Proving an obstruction on one tract of land does not support an indictment for an obstruction charged to be on two separate tracts, situated in two different townships.

2d. Said road never was opened. Defendant could not be found guilty of obstructing a road which was never opened.

3d. There was never any allotment of the said road between said towns authorizing them to open it, consequently there was no highway.

4th. The said road was never legally laid out.

5th. Defendant was by law entitled to 60 days' notice to remove his fences. The only notice received by him was from the Highway Commissioners of Radnor, which was null and void, because said town had no jurisdiction to open or remove fences upon that portion of the road.

The court below should have granted a new trial for all the reasons aforesaid.

H. B. HOPKINS,

Attorney for Plaintiff in Error.

V
No indictment lies for the offences of which the defendant is found guilty.

This is an indictment under the 134th sec. of criminal code of Revised stat. (Purple's stat. sec. 145, page 385,) which was repealed prior to the finding of said indictment.

The 134th sec. of criminal code is repealed, by implication, by the 16th sec. of ch. 93, Revised statute, entitled "Roads," being subsequent legislation upon the same subject providing a different penalty and different mode of recovery. This repeals former law.

Rex vs Carter, 4th Burrow's Rep 2026;
Dwarris on statutes, 674 ;
Buckallew vs Ackerman, 3 Halstead, 48 ;
Smith vs State, 1 Stewart, 506 ;
Eely vs Thompson, 3d A. K. Marshall, 70 ;
State vs Maze, 6 Humphrey's Rep. 17;
Leighton vs Walker, 9 New Hampshire, 59 ;
Hamilton vs Benston, 1 English, 24 ;
Goram vs Lucker, 6, B. Monroe, 146 ;
State vs Muskingums, 2 Indiana Rep. 440 ;
Nichols vs Squire, 5 Pickering, 168 ;
Commonwealth vs Kimbal, 21 Pickering 176.

Leges posteriores priores contrarius abrogant.

The 38th sec. of chap. 93, Rev. stat., is a transcript of the 30th sec. of act of 1841 "concerning Roads," and is held to repeal so much 92d ch. Rev. Statute entitled "Right of Way," as is inconsistent therewith, County of Sangamon vs Brown, 13 Ill., 207. The 16th sec of ch. 93, Rev. statute (page 1043, Purple's statute) is a transcript of sec. 8 of law of 1841; "concerning Roads," consequently repeals so much of criminal code as is inconsistent therewith.

By the law of 1841, Defendant could not be indicted for obstructing highways or continuing obstruction, Farris vs Ward, 4th Gil., 510.

The 1st sec. of act of 1852, page 1057, sec. 83, Purple's statute, provides for indictments in case of obstruction of roads, but not for contrary obstruction.

Obstructing road and continuing obstruction are separate and distinct offences, Crosby vs Gibbs, 10 Ill., 309.

The conviction is both for obstructing and continuing the obstruction, and is, therefore, illegal.

Reach to the People

Office Brief

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HENRY KEECH,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF
ILLINOIS,
Defendants in Error.

ERROR TO PEORIA.
SUPREME COURT AT OTTAWA.
APRIL TERM, A. D. 1859.

3 Indictment found by Grand Jury September, 1858, presenting that Henry
Keech, on 7th of September, 1857, built a fence across a public road running north
and south on the east line of township 10 N., R. 7 E. of 4th principal meridian,
commencing at north-east corner of said township and terminating in the Prince-
ville and Mt. Hawley road: said fence being on south half of north-east quarter of
section 12, in said township, and south half of north-west quarter of section 7, in
township 10 north, 8 east of fourth principal meridian.

4 Also a second count presenting that said Keech continued the said obstruction
from the said 7th September until the finding of said indictment.

Indictment properly endorsed.

5 6 Capias duly issued, served and returned. September Term, 1858, plea of "Not
7 8 9 Guilty" entered and continued. Tried before Powell, Judge, and Jury, February
Term, 1869. Jury found verdict of "Guilty."

Defendant entered motion for new trial for reasons filed, and motion overruled.

9 10 Judgment of Court fining Keech \$1.00 and costs, and ordering road to be
opened by Sheriff.

11 The Bill of Exceptions is briefly abstracted as follows:

On part of The People John C. Yates, being sworn, said he was acquainted
with said road; that the same commenced at the north line of Radnor and Medina
townships, where they corner with Akron and Hallock; runs south on the line
between Radnor and Medina, and terminates in the Princeville and Mt. Hawley
road. The north half mile of this road is part of an old road traveled before this
one was laid, and has been open 6 or 7 years. Defendant's obstruction is on south
half of north-east of 12 in Radnor 1 1-2 mile south of north end of road. Defend-
ant owns an "80" lying eighty rods on said road, and his north fence and south
fence run across that portion of the road which lies in Radnor. Geo. Cramer
owns next 80 north of defendant. Was formerly a gate on land of L. Matthews,
near Cramer's north-east corner, and bars on defendant's south line, and some
travel passing through, mostly by the neighbors. Defendant's fences were built
before the road was laid. First Saturday in September, 1857, I was directed by
the path master in our road district to remove defendant's fences from that portion
of the road which is in Radnor, and did so. Defendant put them back, and so
they remain. Road was open on the Radnor side below defendant's line. The
upper part of the road has been worked by authorities of Radnor. Don't know
of its being worked below the Matthews gate, 80 rods north of defendant's line.

13 People then gave in evidence an original road petition from the town clerk's
office of Medina, dated June 7, 1858, to highway commissioners of said town,
signed by fourteen persons, praying the laying out of a road from the north-east

corner of Radnor, along the line between said town and Medina, to the Princeville and Mt. Hawley road, over premises owned by Thos. Yates, jr., Wm. Vancil, — Groosback, — Matthews, and west half of south-west of section 7, owner unknown, the estate of Denman Stillman and the estate of — Pickles and John Benjamin and Lorin Wilder.

And an order endorsed thereon refusing to lay the said road, signed by Charles B. Pierce, Samuel Princehouse, George B. Harlan, and John Jackson, Commissioners of Radnor and Medina. Filed December 14, 1852.

The People then offered in evidence an original petition from the files in the clerk's office of Radnor, dated June 7th, 1852, to highway commissioners of the town of Radnor, signed by eighteen persons praying the location of a road commencing and terminating same as last named, but passing over lands owned by Wm. Seeley, Thos. Yates, jr., James P. Miller, Geo. F. Cramer, Henry Keech, Edward Wilder, Harvey Stillman, Albert Cline, Mrs. Johnson and Mrs. Buxton.

Upon which is an order refusing to lay the said road, signed same as last, filed December 14, 1852.

To the giving of which in evidence defendant objected. The Court overruled objection, and defendant excepted.

The People then offered an original paper from the files in the clerk's office of Radnor, praying an appeal from the decision of said Commissioners to George Stringer, Wm. W. Church, and Chas. Yocum, Supervisors of Richwoods, Jubilee and Milbrook, dated December 20, 1852, signed by Harvey Stillman, Joseph Yates and Thos. Yates, jr. Filed June 7, 1853.

The People then gave in evidence an original order, plat and survey of road, from files in clerk's office of Medina, and a similar one from clerk's office of Radnor, signed by Samuel Dimon, Supervisor of Kickapoo, Charles Yocum, Supervisor of Milbrook, and Wm. Church, Supervisor of Jubilee, declaring the said road to be a public highway four rods wide.

The People then produced Joseph B. Cramer, who, being sworn, said he was path master in the road district in which defendant's land is situated in 1857, and on the 6th of July in that year gave defendant notice in writing, signed by Highway Commissioners of Radnor, to remove his fences in 60 days, and that witness on 5th of September, 1857, removed the portion of said fences in Radnor, and defendant immediately put the fence back. I measured 2 rods from town line, and moved fence that distance. Witness and others under road authorities have done work on that part of road above Matthews' gate, but not below. Road has never been worked by public authority on defendant's land, or on the land of G. W. Cramer. Posts were set for G. W. Cramer's north and south fence within line of road when it was laid. Said fence was in road in 1857, when I removed Keech's fences. I also removed the ends of said G. W.'s east and west fences from the road, but did not remove his north and south fence. Fence on defendant's north line was built in summer of 1857. Road was open through on the Radnor side after removing defendant's fence, except said G. W. Cramer's north and south fence.

The People then rested, and defendant gave in evidence an original order from the files of the clerk's office of Medina, dated January 25th, 1853, and filed the

26th of Jan. 1858, signed by Wm. W. Church, Supervisor of Jubilee, George J. Stringer, Supervisor of Richwoods, and Chas. Yocum, Supervisor of Milbrook, dismissing the said appeal taken to them for informality in the same.

24 Defendant then produced Chas. Yocum, who, being sworn, said, I am one of the persons to whom the said appeal was taken. Was present at meeting of Supervisors on 25th of January, when appeal was dismissed. That dismissal was intended as a final termination of the appeal, and Supervisors separated with no intention of meeting again. Three or four weeks afterward Harvey Stillman requested us to meet at his house and take further action. We met and adjourned till the 11th of April, and that day, no one being present to object, laid the road. I was served with notice to attend at said last meeting. Do not know whether any steps were ever taken to open the road. There were fences along the line of the road when it was laid. Geo. Stringer became unable to attend on account of ill health, and Samuel Dimon was substituted.

25 Phineas Couch, being sworn, said, I was town clerk in Medina in 1852. Delivered all road papers to my successor. I own an 80 on this road in Medina, lying eighty rods on the road one half mile south of its north end. My fences are on the town line. My east and west fences were built before the road was laid. North and south fence built since. I never had notice to remove my fence; never knew of any person in Medina being so notified. The road has never been open or traveled through. Town of Medina has never taken any steps to open it to my knowledge.

26 Leman Matthews, being sworn, said: Plat shown me marked "A," is substantially correct. Red line shows the road in question; blue lines show other roads; black lines indicate boundaries of land owned as marked. The north half mile of this road is part of an old road. Next south Joseph Yates owns an 80 lying 160 rods on the road. His north and south fence is several feet in the road. Posts were set before road was laid. G. W. Cramer owns next 80 south, 80 rods on road. His north and south fence has been in road ever since it was laid. Defendant owns next 80 south, 80 rods on road. Has been fenced ever since road was laid. The south half mile fenced up by Benjamin within last year. In Medina the road has always been fenced up the greater part of the way. P. Couch owns the first 80 south of the north half mile, 80 rods on the road. His north and south fence is on town line. I own next 80 south, same distance on road. My east and west fences built to town line before the road was laid. North and south fence built on line since. I also own next quarter south, 160 rods on road. My east and west and north and south fences are on town line, and were before road was laid. My wife owns the next 80 south, 160 rods on road. Her fences have been on road ever since it was surveyed. Scholes owns next 80 south. His fences also stand on or near town line. Cline owns next quarter and has no fence on town line. Benjamin owns next quarter; fenced across town line two years ago. His land extends to Princeville and Mt. Hawley road. Road never was opened or traveled through in Medina. I was never notified to move my fences. Road authorities of Medina have never taken any steps to open the road, and have never done any work upon it. My gate and Keech's bars were for the accommodation of the neighbors.

20 See plat of road, page 29 of record.

30 On part of defendant, James Mooney said: I was Highway Commissioner of Medina in 1854. Never knew of any allotment of the road between Radnor and Medina. Never knew of the road being traveled through, or any attempt to open it on part of Medina.

On part of defendant, Charles B. Pierce said: I was Highway Commissioner of Medina in 1852 and 1853, and signed the order refusing to lay this road. No steps were taken during said years, nor since to my knowledge, to open said road, or allot the same between Radnor and Medina. There was when the road was made, and still is, two and a half or three miles of fence on said road in Medina. Has never been an open road and never worked by authorities of Medina. I had notice of meeting of Supervisors at which road was laid.

31 On part of defendant, Walter Mooney said: I am town clerk of Medina. Have with me all the records and papers in said clerk's office relating to the road in question. Witness was then required to produce all of said records and papers, and produced the same copied in the bill of exceptions, so belonging to said office.

32 On part of defendant, Phineas R. Wilkinson said: I am town clerk of Radnor; and further stated same as last witness, and produced the papers and records herein mentioned as belonging in the clerk's office of Radnor.

Defendant rested.

The People then produced and gave in evidence from the clerk's office of Medina an order signed by William W. Church, Supervisor of Jubilee, and Charles Yocum, Supervisor of Milbrook, dated April 11th, 1853, reciting a dismissal of the appeal aforesaid on the 25th of January, 1853, and that upon further deliberation they considered the reasons for said dismissal insufficient, and decided to take further action in the matter. To which evidence defendant objected. Court overruled objection, and defendant excepted.

33 People then produced and gave in evidence from the clerk's office of Radnor an order dated the 25th of January, 1853, signed by Wm. W. Church, Supervisor of Jubilee, George J. Stringer, Supervisor of Richwoods, and Charles Yocum, Supervisor of Millbrook, dismissing the before-mentioned appeal, and also an order deciding to take further action in the matter of the appeal, similar to that last above-mentioned from the clerk's office of Medina.

34 People then produced and gave in evidence from the clerk's office of Radnor a notice dated March 21, 1853, notifying John Jackson and Geo. Harlan, Commissioners of Highways of Radnor, of the aforesaid meeting of Supervisors at the house of Harvey Stillman, on the 11th of April, 1853, to take further action in relation to said appeal, signed by said Stillman, and service accepted by said Jackson and Harlan.

35 On part of the people, Harvey Stillman said.—I was present both when Supervisors dismissed the appeal and laid the road. Highway Commissioners of Radnor were present at the meeting, the 11th of April, 1853. Commissioners of Medina not present. One person from Medina, Mr. Yates, and several from Radnor were present. There were fences on the road when it was laid, and some of them are there yet.

Yates being sworn, said — I gave the notices for the meeting of supervisors at

which the road was laid. Gave notice to each of the commissioners of Medina, but to no other person. But one person from Medina was present when the road was laid. I was present and am one of the petitioners.

36 George Harlan, being sworn, said — I was Highway Commissioner of Radnor in 1853. Had notice of the meeting of supervisors at which the road was laid. Commissioners of Radnor were present. Do not know that any person from Medina was present.

This was all the evidence in the case.

The court then, on part of the people, gave the jury the following instruction.

No. 1. If the jury believe from the evidence that the road in controversy was opened by the overseer of highways, and that the defendant built a fence across the same after it was thus opened, as charged in the indictment, they should find the defendant guilty.

36 37 The court also, on part of people, gave instructions Nos. 1, 2 and 3, to the giving of which defendant objected and excepted.

37 38 39 On part of the defendant, court gave the jury instructions Nos. 1, 6, 7, 8, 9, 10 and 11. Defendant thdn asked the court to instruct the jury as follows: No. 2, Roads laid out on the line of two towns, must be divided into sections by the highway commissioners of the respective towns, and allotted to each of the towns respectively, by sections, and a record of such allotment filed in the town clerk's office of the said towns, as required by sections 238 and 239 of the Township Organization Act. And when the road is so allotted, each town has the right to open and keep in repair the sections allotted to it, and no right to meddle with sections not allotted to it.

40 No. 3. The allotment mentioned in the foregoing instruction should be made after the road is laid out and with reference to it, and be recorded as the statute provides.

No. 4. The town of Radnor had no right to open or remove fences upon any part of the road in controversy, except such portion of the same as had been allotted to said town to open and keep in repair, according to the statute in such case provided.

40 41 No. 5. The town of Radnor had no legal right to remove fences and open the road in said town, along the whole length of the line, without some allotment as the statute provides; authorizing said town to open the same, and had no legal right to give the notice required by law for the removal of fences, and any such notice given by them has no legal force, unless the portion of road to which it refers had been allotted to said town.

41 No. 13. The court further instructs you that the road in question, if you believe that it was laid out on the line between the towns of Medina and Radnor, could not be opened legally except by the commissioners of each town, or at least two from each town. And unless the road was thus opened, they should find "Not guilty."

No. 14. If the jury believe that the supervisors, to whom the appeal was taken from the decision of the highway commissioners met in pursuance of due notice for the purpose of trying the said appeal, and then and there dismissed the appeal for informality in the same, the said supervisors had no right to take further juris-

diction of the case and make a different determination at a subsequent period.

All of which said instructions, Nos. 2, 3, 4, 5, 13 & 14, the court refused to give, to which refusal defendant then and there objected and excepted.

30 Defendant then asked the court to instruct the jury as follows: When an appeal is taken from the decision of highway commissioners, notice of the appeal must be served upon the commissioners and three petitioners, and if the supervisors, to whom the appeal is taken, dismiss the appeal and disperse or adjourn without day, and afterwards meet again for further action, the same notice must be given as is required in the first instance.

35 And the court refused to give the said instruction as asked, but modified and gave the same as follows: When an appeal is taken from the decision of highway commissioners, notice of the appeal must be served on all the commissioners and three of the petitioners. And if the supervisors, to whom the appeal is taken, dismiss the appeal, and disperse or adjourn without day, and they afterwards meet and take up the appeal again for further action, notice thereof must be given of further action by the supervisors, but the presumption of law is, that such notice was given, until the contrary is made to appear.

To which refusal and modification, defendant then and there objected and excepted.

42 The jury then rendered a verdict of guilty.

Defendant then move the court to set aside the said verdict and for a new trial, for the following reasons:

1. The verdict is against the law.
2. The verdict is against the evidence.
3. The verdict is against law and evidence.
4. The verdict is unjust, erroneous and illegal. Also for further reason, that the court refused proper instructions asked by the defendant, and gave improper instructions for the plaintiff. Which said motion for a new trial was overruled by the court, to which the defendant then and there objected and excepted.

PLAINTIFF ASSIGNS FOR ERROR

1. The court permitted improper evidence to go to the jury on part of the People.
2. The court erred in giving improper instructions for the People.
3. Court erred in refusing proper instructions for Defendant.
4. The court erred in refusing to set aside said verdict.
5. The court erred in overruling said motion for a new trial.
6. The court erred in rendering judgment upon said verdict.
7. Said judgment should have been for the defendant instead of the plaintiff.

H. B. HOPKINS,

Attorney for Plaintiff in Error.

LL. 11

Keech. vs The People
Abstract

Filed April 19. 1859
L. L. Leland
Clerk

Proceedings at a term of the Circuit Court begun and held
at the Court House in the City of Peoria in and for the County of
Peoria in the State of Illinois on the Second Monday of
September in the Year of our Lord one thousand eight
hundred and fifty eight it being the thirteenth day of said
Month. Present the Honorable Elisha W. Powell, Judge
of the Sixteenth judicial Circuit in the State of Illinois,
Alexander McCoy, States Attorney, Francis H. Smith
Sheriff and Enock J. Sloan, Clerk, to wit:

Monday September 13th A.D., 1858

The Sheriff of Peoria County returned into Court a venire
from the Board of Supervisors of said County from which
it appears that the following persons have been selected by
said Board of Supervisors and summoned by said Sheriff
to appear and serve at the present term of this Court as
Grand Jurors, viz John McClelland, Jonas Hotchkiss,
George C. McEadden, John Durham, Pincus Bonson, Curtis Cad-
ge, George H. Piper, M. L. W. Huse, Edwin Smith, Leander Small,
Jesse Jones Jr., George Hadley, George Dovelbiss, Adam Scholes,
Richard Graham, Cyrus Harwood, A. D. Wycoff, William C.
Stevens, Joseph Adkinson, Daniel Power, Josiah Fulton,
Thomas Cowser, Nathan Kellogg, all of whom gave their atten-
dance except George C. McEadden, George H. Piper and
Thomas Cowser, who for good cause shown to the Court
were excused from serving upon the Grand jury at this
term of this Court and John McClelland, John Durham &
Joseph Adkinson, who when their names were called did
not answer,

Ordered that the Sheriff summon six persons from the

by Stenders to serve as Grand Jurors at this term of this Court, in place of those excused and absent as aforesaid. Whereupon the Sheriff returned the names of Bradford Hall, William Carr, Caleb Mount, Sanford Moon, Eldrick Smith Jr. John D. Ramor, as duly served by him for that purpose, all of whom gave their attendance. The Court appointed Edson F. Smith as Foreman of the Grand Jury and the said Edson F. Smith, Foreman, together with the other Grand Jurors in attendance as aforesaid were duly sworn and charged as a Grand Jury and retired to consider of their presentments &c

Monday September 14, 1858

The Grand Jury came into Court and presented the following bills of Indictment as true bills, to wit:
 The People of the State of Illinois vs Henry Reach, Indictment for obstructing public road
 The People of the State of Illinois vs Elizabeth Walker, Sarah Fitzpatrick alias Sally Boner, Indictment for Larceny.

Monday September 16th 1858

The People of the State of Illinois
 vs Henry Reach
 Indictment for obstructing road

This day came the defendant by Hopkin his attorney, and entered his plea of not guilty as charged in the Indictment against him, and on his application, this cause is continued to the next Criminal term of this Court.

which said Indictment of
The People of the State of Illinois vs Henry Reach
Indictment for obstructing for public road
is the in the words and figures following, to wit:

"State of Illinois, ss.

Peoria County, ss.

Of the September Criminal Term of
the Peoria County Circuit Court

In the Year of our Lord 1858

The Grand Jurors Chosen, Selected and Sworn in and for
the County of Peoria aforesaid, in the name and by the authority
of the People of the State of Illinois, upon their oaths present
that Henry Reach late of the County of Peoria aforesaid,
on the Seventh day of September in the Year of our Lord one
thousand eight hundred and fifty seven at and within
the County aforesaid, with force and arms unlawfully did
make and build, and cause to be made and build a fence
in and across a public road running North and South
on the East line of Township number ten North of the base
line and in Range Number Seven East of the fourth princi-
pal meridian in the County of Peoria aforesaid from the North
East Corner of said township on said East line South
to where said East line intersects a public road, called
the Princeville and Mount Hawley road, on the South half
of the North East quarter of section number twelve in said
township, and on the South half of the North West quarter
of section number seven in Township Number Ten North of
the base line, and in Range number eight East of the fourth
principal meridian in Peoria County aforesaid (said fence
aforesaid was made built and extended across and upon

Said road above described on said two half (quarter) sections of land above described) and thereby did then and there obstruct said road and render the same inconvenient to pass, contrary to the form of the Statute in such case made and provided, and against the Peace and dignity of the (Same people of the) State of Illinois.

And the Grand Jurors aforesaid in the name and by the authority of the People of the State of Illinois upon their oaths do further present that the said Henry Reach at and within the County of Peoria aforesaid on the said Seventh day of September aforesaid and from that day until the day of the finding of this indictment the said fence so by him made and built and caused to be made and built as aforesaid the same being an obstruction to said road as aforesaid hath continued and kept up and thereby during all said time obstructing said road, so as to render the same inconvenient to pass Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the Same people of the State of Illinois

A. McCloy State Attorney.

[Said Indictment endorsed as follows]

Obstructing Road

People vs Henry Reach - A true bill, Edson F Smith Foreman of the Grand Jury -
 Witnesses for prosecution: Joseph Yates Jr. Joseph D. Cramer, Phineas R. Wilkinson, (dues team) Samuel Dimon, Charles W. Kern, W. H. Church, Robt M. Hamilton, Geo. F. Cramer, Henry Stillman, Samuel Bondough, John H. Tate
 Capias & Bail \$200. C. N. Powell."

5

On the fourteenth day of September in the year of our Lord one thousand eight hundred and fifty eight there was issued out of the ~~Common~~ office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois under the Seal of said Court the ^{in said cause} following, A Capias ad respondendum which is in the words and figures following, to wit:

" The People of the State of Illinois To the Sheriff of Peoria County, Greeting: We Command you to take Henry Keach Lockmuth if he may be found in your county, and him safely keep, until he shall have given you bail according to law, or shall be otherwise lawfully discharged from your custody, so that you may have him before our Circuit Court now sitting at Peoria, within and for the said County of Peoria, then and there, in our said court, to answer unto the people of the State of Illinois for and concerning the crime of obstructing a public highway with which he stands charged in our said Court as by a certain bill of Indictment preferred against him by the Grand Jury of said County in that behalf appears and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held as aforesaid



Witness Jacob Dale, Clerk of our said Court, and the Seal thereof, at Peoria, this fourteenth day of September in the year of our Lord one thousand eight hundred and fifty eight.
 Enock P. Sloan, Clerk
 P.H.

6.

On the back of said Capias & the following endorsement
 "The Sheriff will take bail in the sum of two hundred
 dollars by order of Court."

Enoch P. Sloan."

Which said Capias was returned in to the office of the
 said Clerk endorsed as follows

"By virtue of the within writ I have this 14th day of
 Sept 1858 taken the within named Henry Reach into
 and have him now in my custody

Few 1.00

Marret 1.00
 #2.00

J. W. Smith, Shff
 C. Smith Jr. Dpt.

~~Friday~~ ^{Tuesday} September 17th 1858
 The People of the State of Illinois
 vs Indictment for obstructing road
 Henry Reach

This day came the defendant by Hopton's
 his attorney and entered his plea of not guilty as charged
 in the indictment against him, and on his application,
 this cause is continued to the next Criminal term of
 this Court,

Ordered that the witnesses on behalf of the People be re-
 cognized in the sum of fifty dollars each, for their
 appearance to the next term of this Court, Therefore
 Be it remembered, that on this day in open Court
 came Joseph Yates Jr. Joseph B. Cramer, Phineas R.
 Wilkinson, W. W. Church, Robert M. Hamilton, Samuel D. Minn

Harry Tillman, John C. Yates, Charles Yocum, and
 acknowledged, each for himself, to owe and be indebted
 unto the People of the State of Illinois, in the sum of
 fifty dollars each, to be levied of their, or each of their
 respective goods and Chattels, lands and tenements
 and rendering as the Law directs. Not upon this
 Condition that if you and each of you shall be and
 appear before the Judge of this Court at the next Crimi-
 nal term of said Court, on the first day thereof, to be
 held on the Second Monday of February next, to testify
 in behalf of the People in the Case of the People of Illinois
 vs Henry Reach, on an Indictment preferred against
 said Henry Reach by the Grand Jury of Penu County
 for obstructing a public road, and not depart hence
 without leave of Court, otherwise in full force and
 virtue

Proceedings at a term of the Circuit Court began and
 held at the Court house in the City of Peoria in and for
 the County of Peoria and State of Illinois on the first Monday
 of February in the Year of our Lord one thousand eight
 hundred and fifty nine, it being the seventh day of said
 month, Present the Honorable Elihu W. Powell Judge of
 the 16th Judicial Circuit in said State, Alexander Mc
 Coy State Attorney, John Snyder, Sheriff and Enosh P.
 Hoan, Clerk, to wit:

8

Tuesday February 15th A. D. 1839
The People of the State of Illinois

vs Indictment for obstructing road
Henry Keach

This day Came the States attorney, and also
Came the said Henry Keach in person, attended by Hopkins
& Robert C. Engersoll his attorneys and the said Keach having
heretofore entered his plea of not guilty as charged in the
Indictment against him - It is ordered by the court that
a jury be empanelled to try this issue, whereupon came a jury
of twelve good and lawful men, to wit: John Sturm,
John Doyle, Ranson Bouton, Samuel Watrous, George B.
Gallagher, David Nightingale, George Lane, Mathew Craig,
William Potter, Benjamin Heckler, George Wilmott and
S. L. Gill who being duly chosen tried and sworn to well and
truly try this issue of traverse between the People of the State
of Illinois, plaintiffs and Henry Keach defendant,
and a true verdict give according to the law and the
evidence, and not having heard all the evidence in the
case, were adjourned to meet the court at nine o'clock
to-morrow morning

Wednesday February 16th A. D. 1839
The People of the State of Illinois

vs Indictment for obstructing road,
Henry Keach

This day this Cause again came on to be heard,
The People by the State Attorney and the Defendant by Hopkins

9

and Ingersoll his attorneys, Come, And also came the
 Jury Room on yesterday to well and truly try this issue of
 traverse, and a true verdict give according to the law
 and evidence, And the said jury having heard the evidence,
 the Argument of Counsel and the instructions of the Court,
 Upon their oaths aforesaid, do say, "We the jury find
 the defendant guilty in Manner and form as charged
 in the indictment Against him"

Whereupon the defendant by his attorneys entered a
 Motion for a new trial, for reasons filed.

Saturday February 19th A.D. 1859

The People of the State of Illinois

vs

Indictment for obstructing road

Henry Teach

This day this Cause came on to be heard
 on Motion of defendant for a new trial of this Cause,
 And the Court being Satisfied in the premises
 overruled said motion

Tuesday February 22^d A.D. 1859

The People of the State of Illinois

vs

Indictment for obstructing road

Henry Teach

It is ordered and adjudged by the Court
 that the said Henry Teach make his fine to the People of
 the State of Illinois for the use of the People of said County
 in the sum of one dollar, that he pay the costs of this proce-
 dure, and that execution issue therefor. And it is further

11

Ordered by the Court that a writ issue from this court directed to the Sheriff of this County to execute, directing him to remove the obstruction in said indictment mentioned.

11
People } Indictment for obstructing Highway
as }
Henry Keck } Tried at the February Term 1859 of the
Circuit Court in & for the County of Peoria.

It is remembered that on the trial of this Cause the People to support the said Indictment produced John C. Yates a witness who being sworn testified as follows

I am acquainted with the road which I understood to be in question in this case, it commences on the North line of Radnor & Medina Townships where said Townships corner with Atton & Hollock and runs South on the Town line between Radnor and Medina about 3 1/2 miles and terminates in what is called the Princeville and Mount Hawley Road near a cottonwood tree. The North half mile of this road has been open some six or seven years, It was part of an old road travelled before the road in question was laid out. This road was laid over the said half mile of old road, This North half mile has never been obstructed. The defendant's obstruction is about a mile & a half from the North end of said road on the South half on the N.E. of Sec. 12 in the Town of Radnor. Defendant owns an 80 acre tract lying East & West making 80 rods on the line of said road. Defendant's fences on his North line and South line stand across that portion of the road which lies in the Town of Radnor they run from the West end of his land to the Town line between Radnor & Medina

K

K

George Cramer owns the North half of the same quarter, being
 the next 80th North of Defendant. There was formerly a gate
 at the North East corner of Cramers land. The gate was on
 L Matthews land who owns the quarter adjoining Cramer
 in Medina. There was also a pair of bars on Keeschs
 South line and there was some travel mostly by the neighbor-
 hoods through these bars & gate. The gate and bars were
 closed up about a year ago. The travel along this road
 where it meets the said obstruction turns $\frac{1}{2}$ mile East
 into the Penna & Wyoming road or West into another North
 & South road. There is a road along the North line of
 Radnor & Medina townships except the first $\frac{1}{2}$ mile East
 of the North end of this road in controversy. There is no road
 on this first $\frac{1}{2}$ mile East. The road is mostly open below
 said obstruction on the Radnor side. Defendants fences
 were built before the road was laid out. On the first
 Saturday in September 1857 I was at work with others on
 the highways and we were ordered by Mr Cramer the
 Path Master in our road district to remove the defendants
 fences from the said road, we removed the rails out of
 the road & Defendant told his son Rufus who stood
 by to put them back & he did so & the fences have
 not since been removed to my knowledge. The upper
 part of this road has been worked by the town authorities
 of Radnor, don't know that it has been below Matthews
 gate on land of Cramer & Keesch. Road was opened
 & travelled below Keeschs line on the Radnor side.

The People then offered an original Road Petition
& order of Commissioners thereon from the Town Clerk's
Office of the Town of Medina which was as follows

June 7th 1852

To the Comm. of Highways, in & for the Town of Medina in
the County of Peoria State of Illinois. The undersigned
legal voters of the Town of Medina in said County of Peoria
& who reside within three miles of the road proposed to be
laid out as hereinafter mentioned Respectfully Represent

That the public convenience requires a road to be
laid out not exceeding sixty six feet in width commen-
cing at the North line of the Towns of Medina & Radnor,
Near the Residence of Benjamin Harburt thence South
along the line between said Towns of Medina & Radnor
(as near as practicable) over lands owned by Mrs. Yates
of Williamson Tancil, - Gracbecks - Matthews,
and the West half of the S. W. of Sec. 7 owner unknown
the Estate of Genman Stillman & the Estate of - Pickle
& John Benjamin & Lorin Wilder, until it intersects the
Pineville & Mount Heavly road, at or near a Cotton Wood
tree in said road, on or near the lands of Lorin Wilder

The undersigned therefore respectfully pray
Your Hon. Body, to unite with the road
Comm. of the Town of Radnor, who have been
duly petitioned to unite with you for that
purpose and lay out a Public Highway from
said point just above mentioned, along the
line as near as practicable during said

Town of Medina & Radnor to said Ponceville
and ~~Mount~~ Mount Hawley road at the point
above mentioned

The undersigned as in duty bound will swear
I pray

William Daniel

L. F. Ransom

P. O. Sayre

Nicholas Torrey

Edward Elze

Fredrick Jacobs

Reuben J. Gurley

Jason Hawley

John Holmes

George Holmes

Thomas Hanson Sen

Thomas Hanson

Benj. W. Thivoley

Thomas Yates

I do Solemnly swear, that on the 25th day of
Sept. 1852 I posted up three copies of the within
petition in three public places in the town of
Medina in Peria County Illinois. I depose. Sub
Sept 30th 1852

Harvey Hillman

Subscribed and sworn to before me this
30th day of Sept 1852 George B. Harlan J.P.

I do Solemnly swear that on the 9th day of
November 1852 I posted up three copies of the
within petition in three public places in the town
of Medina Peria County Illinois. I depose. Sub
Radnor Nov, 10th 1852

Harvey Hillman

Subscribed and sworn to before me this tenth
day of November 1852 George B. Harlan, J.P.

We the undersigned believe that it would not be proper
and that the public interest does not require a road
in accordance with the prayer of the within petition

Corn. of Highways
for Medina & Radnor

{ Char' B. Pierce
Samuel Princehouse
George B. Harlan
John Jackson

Commissioners to meet on the 30th at 10. O. A. M., at
Hearburt Corner

Petition of Harvey Stillman and others for Road
Filed December 14th 1852. J. Crouch, Town Clerk.

The People then offered an original road
petition & order of Commissioners thereon from the Town
Clerks office of the Town of Radnor to the introduction
of which defendant then & there objected & the Court
overruled said objection & defendant then & there excepted to
said ruling of said Court which was as follows

June 7th 1852

To the Honorable the Commissioners of Highways in and for
the Town of Radnor in the County of Perma and State of Ill.
The undersigned legal voters of the Town of Radnor
in said County of Perma and who reside within three miles
of the road proposed to be laid out as hereinafter mentioned

Respectfully Represent

That the public Convenience requires a road to be laid out, (not exceeding) sixty six feet in ~~and~~ width, Commencing at the North line of the Town of Radnor and Medina near the residence of Benjamin Kurlburt thence South along the line as near as practicable between said Towns of Radnor & Medina over lands owned as follows by William Deely, Thomas Yates Jr, James P. Miller, George F. Cramer, Henry Neach, Edward Wilder, Harvey Stillman, Albert Cline, Mrs Johnson, & Mrs Buxton until it intersects the Pineville and Mount Hawley Road, at or near a cotton wood tree on or near the lands of Lavinia Wilder. The undersigned therefore respectfully pray Yr Honorable Body to unite with the Road Commissioners of the Town of Medina who have been duly petitioned to ~~and~~ unite with you for that purpose and lay out a public highway from said point just above mentioned along the line as near as practicable dividing said Towns of Radnor and Medina to said Pineville and Mount Hawley Road at the point above mentioned. The undersigned as in duty bound will ever pray

William M^c Coy
 Alfred Futtertee
 Sam^l Neady
 James M. White
 John Houston
 Samuel M^c Coy
 John Yates
 J. L. Singrey
 Adam Yates

Thomas Atkinson
 John B. Yates
 Samuel Dousough
 J. Yates
 William Deely
 Thomas Summers
 George F. Cramer
 Joseph Yates
 Harvey Stillman

17

I do solemnly swear that on the 24th day of Sept 1852
I posted up three copies of the within petition in three public
places in the Town of Radnor, So help me God
Radnor Sept, 30th 1852 Harvey Stiltman
Subscribed and sworn to before me this 30th day of
Sept, 1852, George B. Harlan J. P.

I do solemnly swear that on that the 10th day of
November 1852 I posted up three copies of the within
petition in the Town of Radnor. So help me God
Radnor Nov. 10th 1852. Harvey Stiltman
Subscribed and sworn to before me this 10th day
of November 1852, George B. Harlan J. P.

3

We the undersigned believe it would not be proper
and that the public interest does not require a road
in accordance with the prayer of the within petition
George B. Harlan Samuel Pinckhorne
John Jackson Chas. B. Pierce

Commissioners to meet on the 30th Nov, 1852, at
10 o'clock A. M. at Harburt Corner

Filed in Town Clerk's Office December 14 1852
Jm Gifford clk.

The People then offered an original paper from the town clerk's office of the Town of Radnor praying an Appeal from the order of Highway Commissioners aforesaid to three Supervisors which was as follows

Southampton Dec. 20th 1852

To Leroy Stringer, William M. Church, Cha^s Youn Supervisors of the Towns of Richwood, Jubilee & Millbrook in the County of Penna. Application having been made by us to the Com. of Highways of the Towns of Radnor and Medina to lay out a road on the line dividing said Towns as follows, Com. at the Corner of said Town near the residence of Benjamin Hubbard and running South along the line dividing said Town as near as practicable to a cotton wood tree on or the lands of Lorin Wilder at which point it would intersect the Pineville and Mount Hawley road. And the said Com. having on the 30th day of Nov. last, after hearing the parties interested determined not to lay out said road, the undersigned being the applicants for said road conceiving themselves aggrieved by the said ~~termination~~ determination of said Com. Appeals from their said decision. And we hereby assign the following reasons for our appeal: 1st That the road is a practicable one 2nd That the public convenience demands the road, both for public travel and the benefit of school houses. And we prosecute this our appeal for the purpose of wholly reversing said decision of said Com.

We therefore pray for a further hearing in the premises
and for such other and further proceedings as is by
law made and provided

Harvey Stillman

Joseph Yates

Thomas Yates Jr

Filed June 7, 1853 J. C. Yates T. Clark
Recorded June 19/53

The People then gave in evidence an original
Order of Supervisors and plat of road from the office
of the Town Clerk of Medina and one similar in all
respects from the Town Clerk's office of the Town of Radnor
which were as follows

Harvey Stillman
Joseph Yates
Thomas Yates Jr

Commissioners of Highways for
the Towns of Radnor & Medina

Appeal

At an adjourned meeting
of the Supervisors in the above entitled case, held at the house
of Harvey Stillman the 11th day of April 1853, in pursuance to previous
notice for hearing the reasons for and against said appeal

Proceeded as follows. No objection to the proposed
road being made by any one, a survey was made of the con-
templated road, a plat of which is hereto annexed and is
a part of this report, and hereby declares the same to be a

Public Highway four rods wide,, And we further say that
 Considering the ~~At~~ Advantages and disadvantages
 to persons owning land lying on lands adjacent to the
 said road, or nonresidents owning the same, are not entitled
 to any damages for the reason as we believe that the
 benefits to be derived from the road are more than the
 damages likely to be sustained

Sam^l Dixon Sup^r Nickapoo
 Charles Yeom Sup^r Millbrook
 W^m H. Church, Sup. Jubilee

(For Copy
Final order of Supervisors opening
Said Road)
Copy (Medina)

Part of Radnor		Part of Medina		Stations Courses	Chains Links	Remarks
		Corner of 10 N. 7. E and 10 N. 8 E		1 st Sta		
1		6		2	5	To the N.E. corner of Sec 12 of the Town of Radnor
		2 nd Sta.		3	81	To the N.E. corner of Sec 24 of the Town of Radnor
		3 rd Sta.		4	16	To a post from which a cotton wood tree lies W. 6 links
12		7		5	70	
		4 th Sta				
13		18				
24		19				

At certifying that the above plat and accompanying field notes is a true copy of a survey made by me by order of the Supervisors of Berks Co on the 11th of April 1853 and that the chain courses were both double and from Medina to that the chain courses were both and that the whole length of the road is three miles fifty seven chains and thirty two links, bearing T. 65° E. S. 1' given under my hand this 14th of April 1853
Wm Lifford, Surveyor.

Filed July the 19th 1853 James D. Ridgway, Town clerk.

All the foregoing records were identified as the original papers in relation to the laying out of the road in question

The People then introduced as a witness Joseph Bramer who being sworn said I was a path master in the town of Radnor of the road district in which defendant's land is situated for the year 1857. On the 6th day of July 1857 I gave defendant notice in writing to remove his fence from the road in question. I obtained the notice of the Highway Commissioners of the Town of Radnor, it was signed by them. On the 5th day of September 1857 I removed defendant's fence from the road in the Town of Radnor. I made a measurement commencing at what I considered corner of defendant's land on the town line, measured two rods & removed rails out of the road that distance. Defendant was present & directed his son Rufus to put the fence back & he did so. Defendant also put back part of fence himself. Fence has remained there ever since as far as I know. It is still there. I also removed Mathews gate from the said road $\frac{1}{4}$ of a mile above defendant's North line, the gate was down put back myself & others have done work on the said road under the direction of the direction of the Highway Commissioners of the Town of Radnor on that part of the road above Mathews gate, but not below. The road never has been worked by public authority upon Neches or Geo Bramer land to my knowledge, there was a small bridge put in upon said land by the neighbors I suppose for their own convenience, the neighbors pass that way some before

I went along with the Indians up the road and then when I measured at the line I removed
 Kaseka hence I commenced to measure at the center of the road as it was laid out for
 removing Kaseka hence the corners the road was after changing on the Kaseka side
 except the 4th corner North & South road about 5 or 6 feet within the
 line of road

The road was laid. My brother Geo Cromer has his North & South fence in the line of this road. It was there in 1857 when I removed Neech's fence I removed George East's West fence at the end within the line of the road but did not remove the North & South fence think the posts were set for the fence when the road was laid. I saw men drawing lumber with Neech team and building fence on Neech North line in Summer of 1857. Defendant took down the rails & I saw defendant build the fence on this his North line in 1857 in Summer.

The people then rested and defendant introduced an original order from the town records of Medina of the Supervisors, to whom the said appeal was taken which was as follows.

of Padnos Jan'y 25th 1853

We the undersigned Supervisors of the towns of Jerilee, Rich-
woods and Millbrook to whom the Appeal was taken by
Harvey Tilton, Joseph Yates and Thomas Yates from the
decision of the Highway Commissioners of the towns of Radnot & Medina
refusing to lay out a road between said towns having met at the
house of Geo. F. Thomas pursuant to notice, on the 'do' day of
July after examining the papers presented to us belonging to said
appeal do hereby decide said appeal in consequence of infor-
mality in said papers

William H. Church. Sup. Jerilee
George J. Stringer Sup. Richwood

William H. Church. Sup. Public
George J. Stringer. Supervisor Richmonds
Charles Yocum. Supervisor Milledush

Fees	William H. Church	\$2.50
	Geo Stringer	1.50
	Chas Gooden	4.50

Filed ^{Chas. Boutwell} Jan^y 26th 1853 ^{4.50} Pine has Crouch, Town Clerk
Not Crouch, Town Clerk, Town of Medina

Defendant then produced Charles Yocum as a witness who being sworn said

I am one of the Supervisors to whom appeal was taken in reference to the laying out of this road. I then lived in Millbrook & was Supervisor of that Township. I was present at the meeting of the Supervisors on the 25th of January 1853 when the appeal was dismissed. That was at the time considered a final termination and end of the matter & the Supervisors separated without any expectation to meet again ~~to~~ take further action in the matter. Some three or four weeks afterwards Harry Stiltman requested me to meet again & take further action in relation to the appeal. He made a similar request to the other Supervisors and a meeting was had at which some of the Supervisors attended but not all and was adjourned. We met again on the 11th day of April A.D. 1853 and rescinded what we had done on the 25 of January and took further action in the case. No person was present objecting to the road & we determined to lay the road.

I was served with notice to appear at the time the road was laid by the Supervisors, do not know whether any other person was served with notice or not. I did not ~~see~~ ^{serve} anybody. I do not know whether the road was ever opened or not. Do not know whether the Commissioners of Medina ever took any steps to open the road. Mr Stiltman requested the ~~Supervisors~~ ^{Supervisors} to meet at his house and we did so. There were

25

fences along the line of the road at the time needed to lay it. Don't remember how many
 one of the Supervisors to whom the appeal was taken became
 unable to attend on account of ill health and
 Samuel Dimon Supervisor of Tickapoo was substituted
 in his place & acted at the last meeting of the Super-
 visors. The appeal was dismissed for ^{some} informality
 in the papers.

Defendant then produced Phineas Couch a
 witness who being sworn said

I was Town Clerk of Medina in 1852
 went out of office in April 1853 delivered all papers
 in the Town Clerk's office to my successor Town Land
 on the road in question in the town of Medina I own
 an 80 half miles South of the North end of this road,
 my land is 80 rods on the road my fence is on the town
 line has never been moved since the road was laid
 My East & West fences were in the line of road when
 it was laid N & South fence built since I never
 had any notice to remove my fences from the line of
 said road. The road never has been opened. The Town
 of Medina have never taken any steps to open the road to
 my knowledge & think they never have. The half mile
 between my land & the town line on the North has always
 been open, it was part of an old road most of the
 travel on this North half mile of road turns 1/2 mile
 East at my North line into the Peoria & Wyoming
 road. Do not know of any owner of land in Medina

26
7

ever being notified to remove fences from this road
Road never has been travelled through except by
~~going~~ going through gates or bars & then not on town
line where road was laid there has been 2 miles or more
of fence on or near the town line in the road in Medina
ever since it was surveyed.

Defendants then produced Leman Matthews
who being sworn said

7

of line in Medina township and own land on
the road in question. The plat shown me marked it
is a substantially correct representation of the said
road & lands & other roads in its vicinity. The red
line represents the road in question. The blue
lines represent other roads & the black lines the
boundaries of lands owned as marked. The north
half mile of this road has already been open it was
part of an old road coming down from the North
line of the Towns of Radnor & Medina & turning
East $\frac{1}{2}$ mile into the Wyoming & Poria road. On the
Radnor side next South of this first half mile
Joseph Yates owns one (being) 160 rods on the said
road by 80 the other way. Yates North & South fence
stand back from the town line but not out of the
line of the road by several feet. ~~cannot exactly~~
^{exactly} tell how many. The posts were set when the road was
surveyed. Leo Cramer owns the next 80 South
80 rods on the road by 160 Cramer fence North & South

27

7

has been in the road ever since it was surveyed, his brother at one time acting as Park Master removed the end of his East & West fence but did not remove the N & S one

Defendant owns the next 80 South of the Cramer. This is also fenced up ever since the road was surveyed. I know of no other obstruction South of this on the Radnor side except on the last 1/2 mile which is fenced up on both sides by Benjamin this fence was made about 2 years ago

See Plat
Annexed

The road in the Town of Medina has always been fenced up a greater part of the way I Couch owns the first 80 South of the North 1/2 mile of this road being 80 rods on the road by 160. his North & South fence is on the town line at the center of the road or nearly so I own the next 80 South of Couch lying the same way my East & West fences run to the town line & my North & South fence is on the line the E & W fence stood in same way when road was surveyed, the fence built since. My gate which Cramer removed stood at the South West corner of this tract. I gave Cramer notice to put back my gate & it was soon put back. I suppose he did it. I own the next quarter South of last named, my North & South fence is very nearly on the town line & East & West fences extend to it East & West fences & have been so in said road ever since it was surveyed North & South fence built since My wife owns the West 80 South of mine being 160

Rods on the road by so the other way. Her North & South and East & West fences have stood in the road, since it was surveyed & run as mine. I hold owns the next 80 South lying in same way as last 160 rods on road. His fence stands a little further back from the town line but not out of the road. Aline ~~now~~ owns the next quarter South. An 80 on each side of the road & has no fence in the line of said road. Benjamin has the next quarter South extending nearly to the Priceville & Mt Hawley road. His fences are upon the road both in Medina & Madnot fences built about 2 years ago.

v
m

The road never has been opened in the Town of Medina. I have never known of the Highway Commissioners of Medina taking any steps to open the said road. I have never received any notice to remove fences and have never known of any being given to any person. The authorities of Medina have never done any work on this road as I know of. My gate & Keech's bars were to accommodate the neighbors who had been in the habit of passing through before this road was surveyed. Never has been travelled through as a public road. Said on Cross examination the North & South fences on my 80 lot & on my quarter were built after I knew that the road was laid out by the Supervisors.

29

Akron

A

Hallock

Radnor

Mydas

Crouch

Matthews

Medina

Geo Cramer

Matthews

Kueck

Mrs Matthews

The new road

Scholes

Prince & Wyoming Road

A Cline

Benjamin

Princeton & Mt. Holly

W

E

S

m

Defendants then presented James Money who being sworn said I was Commissioner of Highways of Medina in 1852, during that time no steps were taken to open the road in question. The Town of Medina have never taken any steps to open it to my knowledge. I have never known of any allotment of the said road by Sections or in any way between the Towns of Radnor & Medina. I have never known of the road being written by the authorities of Medina.

m

7

m

Charles D. Peirce then being sworn said I was Highway Commissioner in Medina in 1852 & in 1853 was one of the persons who signed the order from which the appeal was taken. I have never known of the Town of Medina taking any steps to open the road in question, the Commissioners did not during my term of office. There was no division of the road and allotment between the said towns. I have never known of any being made. There are 2 1/2 or three miles of fence in this road in Medina, and was about as much when the road was laid. It has never been an open road. I have never known of road authorities of Medina doing any work on the road. I had notice of the meeting of the Supervisors at which the road was laid.

Walter Mooney being sworn said

I am Town Clerk of Medina have with me all the Records and Original papers in the said office relating to the road in Controversy. I have made search among the papers & records in said office & have all I could find relating to said road. Witness was then requested to produce all of said papers Records & produced the said papers mentioned in this bill of Exceptions as belonging to said office

Pineas V. Wilkinson being sworn said

I am Town Clerk of Town of Radnor and further stated same as last witness & produced the papers & records herein mentioned as belonging to Town Clerk's office of Radnor and said papers from both townships were given in evidence.

And Defendant rested,

32 The People then gave in evidence an original order of Supervisors from the papers on file in the Town Clerk's Office of Medina which was as follows to the giving of which defendant then & there objected - The Court overruled said objection & defendant excepted

e We the undersigned Supervisors of the Towns of Jubilee & Millbrook in the County of Peoria & State of Illinois - to whom an appeal was taken by Harvey Stillman, Joseph Yates, Thomas Yates Jr. from the decision of the Highway Commissioners of the Towns of Radnor and Medina refusing to lay out a road between said Towns of Radnor & Medina having filed an order on the 25th day of January A.D. 1853 dismissing said appeal for reasons stated in said order now on file in the Clerk's Office of the Town of Medina. And now on further deliberation at an adjourned meeting this day held at the house of Harvey Stillman do conclude that the reasons assigned in said order of the 25th of January 1853 for dismissing said appeal were not well taken and are insufficient and have therefore taken further action in the case,
Witness our hands this 11th

day of April 1853 " William W. Church Supervisor Jubilee
Charles Vocum Supervisor of Millbrook

Order of Supervisors filed July the 19th 1853

James D. Ridgway Town Clerk.
Recorded page 26,

33
People then gave in evidence an original paper from the files in the town Clerk's office of Radnor which was as follows

7
Town of Radnor Jan'y 25, 1853
We the undersigned Supervisors of the Towns of Jubilee, Richwoods and Millbrook to whom the appeal was taken by Harry Stillman, Joseph Gates, & Thomas Gates Junr from the decision of the Highway Commissioners of the Towns of Radnor & Medina refusing to lay out a road between said Towns having met at the house of Geo. F. Warner pursuant to notice on this 25th day of Jan'y after examining the papers presented to us belonging to said appeal do hereby set aside said appeal in consequence of informality in said papers.

William W. Church Sup Jubilee
George J. Stringer Supervisor Richwoods
Charles Yocum Supervisor of Millbrook

Fees
William W. Church 2.50
Geo. Stringer 1.50
Charles Yocum 3 day 4.50

e
We the undersigned Supervisors of the Towns of Jubilee, Richwoods & Millbrook after more mature deliberation in the matter of the within appeal have concluded that the reasons assigned within for dismissing said appeal are insufficient, and we have therefore taken further action in the case, Witness our hands this 11th day of April 1853.

William W. Church Supr Jubilee
Charles Yocum Supervisor of Millbrook.
Filed in Town Clerk's office March 7, 1853, Wm Sifford clk.

The People then offered in evidence an original Notice from the files in the Clerk's office of the town of Radnor which was as follows

To John Jackson & George D. Harlan Commissioners of Highways of the Town of Radnor in the County of Pennsylvania

You are hereby notified that a meeting of the Supervisors of the Towns of Millbrook, Jubilee and Richwood in said County will be held at the house of Harry Stittman in Radnor Township on the seventh day of April A.D. 1853, at 11 o'clock A.M. to hear and determine the appeal of Harry Stittman and others from the decision of the Commissioners of Highways of the Towns of Radnor & Medina refusing to lay out a road on the line between said two towns, at which time you are requested to appear

Radnor March 21, 1853, Harry Stittman

We acknowledge service of this notice on us this 21st day of March 1853

John Jackson
George D. Harlan

Filed June 7, 1853 J. L. Yates. J. C.

People then produced Henry Tellman who being sworn said

I was present at the meeting of the Supervisors both when the appeal was dismissed & when the road was laid. I went with the Supervisors over the road.

The Highway Commissioners of Radnor were present when the road was laid by the Supervisors. Several other persons living in Radnor were present. Commissioners of Medina were not present. One person from Medina was there I think it was Mr Yates. He is a petitioner. Supervisors met at my house. I gave them notice to meet there sometime after they had met & dismissed the appeal. Then were fences on the line of the road when surveyed some of them are still there.

I Yates fence on his eighty is in the line of the road do not know how much. Think the poles were set for his North & South fence when road was surveyed.

Yates being sworn said I gave the notice for the last meeting of the Supervisors when the road was laid. I gave notice to the Commissioners of the Town of Medina. I gave each of the Commissioners a notice in writing of the meeting. I gave notice to no other person but that the three Commissioners were persons were present when the Supervisors met & laid the road. Finally Radnor people there was but one from Medina. I was a petitioner and was present when road was laid.

Long Norton being sworn Said I was a Highway
Commissioner in Radnor in 1853 received notice of the meeting of
Supervisors at Hillmans when road was laid out.
The Commissioners of Radnor were present, those of Medina
were not, Several persons from Radnor were present
don't know whether any one from Medina was there
Which was all the testimony in the case

The Court then instructed the Jury on
part of the People as follows

People
N 1

If the Jury ~~should find the defendant guilty they~~
~~shall so return their verdict and~~ believe from
the evidence that the road in controversy was
opened by the overseer of Highways and that the
defendant built a fence across the same after
it was thus opened as charged in the indictment,
They should find the defendant guilty

per
Given

People
N 1
Given

If the jury should find the defendant
guilty they shall so return their verdict
and the Court will fix the fine

People
N 2

Given

The Court also instruct the Jury on the part of the
People that though the evidence in the case
may show that other obstructions were put and
kept in the road in controversy by other persons,
Yet this is no excuse or defence for the defendant
obstructing the same

87

Pepler
N^o 3
Given

If a fence be built across a public highway which obstructs the same any person may remove such obstruction

If the giving of which defendant then & then objected & excepted

The Court then instructed the Jury on the part of the defendant as follows

N^o 1

Given

By the Statute (Sections 241 & 242 Township organization act) the defendant was entitled to sixty days notice to remove his fences and that notice must come from the Commissioners of Highways of that township having jurisdiction of that section of the road on which his fences stand & he is not bound to remove his fences until he is so notified and a notice is of no validity unless it comes from the party authorized by law to give it

6th

Given

If the Jury have a reasonable doubt as to whether the road in question was a public highway at the time of the alleged ^{obstruction} they will find the defendant not guilty

7th

Given

If the jury have any reasonable doubt as to any of the essential facts necessary to a conviction they will give the defendant the benefit of that doubt and acquit the defendant

Given

When an appeal is taken from the decision of Highway Commissioners notice of the appeal must be served upon all the Commissioners & three of the petitioners And if the Supervisors to whom the appeal is taken dismiss the appeal and disperse or adjourn without day and they afterwards meet and take up the appeal again for further action notice thereof must be given of further ~~notice~~ action by the Supervisors but the presumption of law is that such notice was given until the contrary is made to appear

9 Given

If the jury believe from the evidence that the road in question was not opened as a public highway at the time of the obstruction in question they will not find the defendant guilty of obstructing a public highway

No 10

Given

The Court instructs the jury that if from the evidence they believe that Mr. Cramer the path-master, after having opened the road by taking down gates and fences, and then afterwards himself put up the same obstruction that he had removed, and by order of the Commissioners then they should find not guilty for continuing that obstruction

No 11

Given

The Court instructs the Jury that the final order laying out the road is only prima facie evidence that the preliminary steps had been taken - but the presumption is liable to be rebutted - and if from the evidence it appears that the necessary preliminary steps (or some or any of them) had not been taken, then the Jury should find not guilty.

No 12

Defendant then asked the Court to instruct the Jury as follows, to wit:

"When an appeal is taken from the decision of Highway Commissioners notice of the appeal must be served upon the Commissioners and three petitioners and of the Supervisors to whom the appeal is taken dismiss the appeal and disperse or adjourn without day & afterwards meet again & take up the appeal for further action the same notice thereof must be given as is required in the first instance"

And the Court refused to give the said instruction as ~~not~~ asked but modified & gave the same as No 8 above.

To which refusal & modification defendant then & there objected & excepted.

Defendant then asked the Court to instruct the Jury as follows

2^d 40

Refused

Roads laid out on the line of two towns must be divided into sections by the Highway Commissioners of the two towns & alloted each of the towns respectively by sections and a record of such allotment filed in the Town Clerk's office of the respective towns as required by sections 238 and 239 of the Township Organization Act. and when the road is so alloted such town has a right to open & keep in repair the sections alloted to it & no right to meddle with sections not alloted to it

3^d

Refused

The allotment mentioned in the foregoing instruction should be made after the road is laid out and with reference to it and be recorded as the statute provides

4th

Refused

The Town of Radnor had no right to open or remove fences upon any part of the road in controversy except such portion of the same as had been alloted to said Town to open & keep in repair according to the statute in such case provided

5th

Refused

The Town of Radnor had no legal right to remove fences and open the road in the said town along the whole length of the line without some allotment as the statute provides authorizing said town to

41

open the same & had no legal right to give the notice required by law for the removal of fences and any such notice given by them has no legal force unless the portion of road to which it refers has been allotted to said town

No 13

Refused

The Court further instructs you that the road in question (if you believe that it was laid out on the line between the town of Medina & Radnor) could not be opened legally except by the Commissioners of each town or at least two from each town

And unless the road was thus opened they should find not guilty

No 14

Refused

If the Jury believe that the Supervisors to whom the appeal was taken from the decision of the Highway Commissioners met in pursuance of due notice for the purpose of trying the said appeal and then and there dismissed the appeal for informality in the same, the said Supervisors had no right to take further jurisdiction of the case and make a different determination at a subsequent period

Which said instructions the Court refused to give & defendant then & there objected & excepted

The Jury then rendered the following verdict
~~Reple~~ "We the Jury find the defendant
 guilty in manner and form as charged in the
 indictment against him"

Defendant then moved the Court to set
 aside said verdict and for a new trial for
 the following reasons

- 1st The verdict is against the law
 - 2nd The verdict is against the evidence
 - 3rd The verdict is against law and evidence
 - 4th The verdict is unjust, erroneous & illegal
- Also for further reasons that the Court refused
 proper instructions asked for by the defendant
 & gave improper ones for the Plaintiff

Which said motion the Court overruled to
 which decision of the Court in overruling the
 same defendant then & there objected & excepted,
 and prays that his bill of exceptions may be
 signed & sealed, which is done
 C. N. Powell Secy

State of Illinois }
 County of Peoria } I, Enoch P. Loan Clerk of the Circuit
 Court in and for the County of Peoria in the State of Illinois
 do hereby Certify that the foregoing is a true and correct

Transcript from the Records and the files in my office
in a certain Cause wherein The People of the State of Illinois
are plaintiffs and Henry Reach is defendant and
the same is a complete record of all the proceedings in said
court appearing in the said Cause, I hereto set my hand

and affix the Seal of said Court this twelfth
day of March A.D. 1859
Emmett Flood, clk

And now comes the said Henry Reach by H B Hopkins
his Attorney & says there is manifest error to his great in-
jury in the proceedings of the said court as appears by
the foregoing record & assigns for error

First The Court admitted improper evidence on part of the people

Second The Court gave improper instructions on part of the people

3^d The Court refused proper instructions on part of Defendant

4th The Court erred in refusing to set aside the verdict
of the jury the same being contrary to law & evidence

5th The Court erred in overruling motion for new trial

6th The Court erred in rendering judgment on the said verdict

7th The said judgment should have been in favor of Defendant
instead of the People

And prays the Supreme Court here to inspect said re-
cord & reverse the aforesaid erroneous decisions of the Court
below with costs

H B Hopkins
Atty for Plff in error

~~192~~
Henry Ketch
vs
The People &c.
Record

Filed Apr. 19. 1859.
L. Seland Clk.



State of Illinois } Supreme Court then of
Henry Breach } AS 1859.
3rd Grand Division

20
The People &c } And the People of the State
of Illinois, now come &
say, that there is no error, nor manner
of error, either in the record or
proceedings aforesaid, or in giving
judgment aforesaid, and therefore
they pray, that the judgment
aforesaid, may be affirmed &
&c. -

W. Bushnell
State atty
& Henry Grove
for the People

Henry Beach
vs
The People &c

No-11

Finder in Error.

Filed April 24, 1869

Robert
Clark