

No. 13509

# Supreme Court of Illinois

Taylor.

vs.

Marcey.

71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

---

No. 63.

*Taylor*  
*vs.*

*Marcy*

*735 09*

*1261*

*Refined*



Supreme Court April 1<sup>st</sup> 1860

Jay vs Mearns } Mo to set aside order  
of removal

In support of the motion we suggest that the Bill of exceptions does not appear in any way to have ever been made part of the record. In order to give the judge judicial power to sign & seal a bill of exceptions after some time, there should be an <sup>of record</sup> entry on the time; whether there was time given cannot rest in parol & be proved as a matter in pais. The record should show the exceptions properly taken. The record was filed in this case & the order of removal taken on the same day. The case had not got warm in the dock before it was off. Such eager snappings, & after justice ought not to be unnecessarily encouraged. There ought to be a reasonable admixture of speed & deliberation in the conduct of cases by litigants.

If the appellee had good reason to believe there was no exception in the case upon which error could be assigned. He could hardly have anticipated an order of removal for want of a point in many imaginary cases when none in fact existed. I sh

Jaynes Muzz

Suggestions on the  
to set aside some  
of money -

Filed May 3, 1860  
L. Leland  
Clerk



State of Illinois  
William Taylor } Supreme Court  
appellant } 3<sup>d</sup> General Term  
vs } April Term  
Eliot Macey } AD 1860

To Joseph R. Helms  
Attorney for the  
Appellant }

Take notice  
that on the 3 day of May  
AD 1860 I shall move  
the Court to set aside the  
defect-hunt to be taken and  
to have the jury met of  
usual business in the other  
room when & where you are  
requested to be and appear  
and resist said application  
if you deem

Yours &c

B F Park  
Spts City

State of Illinois }  
Peoria County } Benjamin F. Parks  
being first clerk sworn on oath  
does depose and say that he received  
a notice of which the foregoing is  
a copy, on Joseph W. Helms the attorney  
of William Taylor at the City of  
Huron Peoria County Illinois  
by handing the same to him  
on the 30th day of April A.D. 1860

Inm & Lobach  
before me this }  
2<sup>d</sup> day of May }  
A.D. 1860 }  
Wm. H. Miller

B F Parks

Notary Public





State of Illinois }  
Rene County } Benjamin F. Parks  
being first duly sworn on oath  
does depose and say that he has  
been the attorney of Robert Muey  
the appellee in the above case  
and that there has been three jury  
trials in said case and one  
hearing before this Court; That  
this defendant tried the case for  
said Muey at the last January  
term of the Rendell County Court  
and that after a verdict  
was rendered for the defendant  
below, a motion for a new  
trial was made but no exceptions  
were taken and no time to  
file a bill of exceptions was  
asked or demanded in the  
hearing of this appeal; That an  
appeal was made and this  
defendant got the impression at  
the time from some remark  
made by some of the present  
attorneys who represented Logan  
that no bill of exceptions  
would be filed and the only  
object of the appeal was  
delay

That some weeks after  
Court adjourned this defendant  
went to Chicago the County Seat  
of Rendell County and



inspected the record of the  
 case and found the record  
 to be precisely as stated in the  
 copy of the record heretofore  
 attached, and I went to the  
 Judges minutes and found them  
 as copied above. This effort  
 asked Judge Hurlimber Esq.  
 the clerk if any bill of exceptions  
 had been filed. He replied that  
 no bill of exceptions had been  
 filed and that he had not  
 seen any. That the object of this  
 effort - in going to Leavenworth  
 to see if any case would be  
 taken as any record would be  
 taken up. The record showed  
 no time allowed by said record  
 to file a bill of exceptions and  
 no bill of exceptions was filed  
 at the time which was a  
 considerable time of the Court  
 had adjourned. This effort  
 then directed the Clerk to make  
 out <sup>a certified copy of the</sup> ~~a certified copy of the~~ record in the case  
 and also a copy of the appeal  
 bond and the judges minutes  
 for the purpose of setting the  
 case down.

This opponent has been informed and believes it is just to be true that no bill of exceptions had been written or shown up until long after Central had adjourned.



No bill of exceptions was ever shown  
to this opponent as his client, and this  
opponent understands the same that  
no notice was ever served on him  
that a bill of exceptions, had been  
as was to be presented to the  
circuit-judge. This opponent further  
states that he has never made any  
agreement of any name or kind  
with the opposing counsel in regard  
to extending the time of filing any  
bill of exceptions that no bill  
of exceptions was filed during  
the ~~term~~ term of the Kansas  
Circuit Court for A.D. 1860 and for  
some weeks after, and no order  
giving them time was entered of record  
as is shown by the record of said  
Circuit Court attached marked N.

And this opponent further states  
that he believed that the only action  
which could be taken in the case by  
this court upon the record as it stands  
when first seen by this opponent  
was simply to allow a motion  
to dismiss an appeal and the  
record marked N. was made  
out in pursuance to the direction  
of this opponent as then stated  
and this opponent ~~is~~ <sup>is</sup> ~~very~~ <sup>very</sup> sure  
to be the condition of the record  
supposed that he could correct  
his ~~condition~~ in regard to the  
time in which he should  
make such motion to dismiss



And, of course, when this effect  
was informed by Joseph W. Helme  
Esq., that he had obtained the  
case, which information was  
obtained on the 30th of April  
AD 1860, at the City of New York  
when this effect was informed  
that a bill of exceptions had  
been obtained and that the Court  
of this effect Macey had been  
defendant and his case removed  
for non-jurisdiction <sup>obtained by</sup> upon such bill of exceptions <sup>obtain</sup>  
Noted.

This effect asks that the  
order of removal and said judgment  
may be set aside and that the  
said Robert Macey may be removed  
in this Court in the same manner  
as though no such order of removal  
had been entered of record herein  
And also for the purpose of showing  
how said case came into this  
Court wholly and in violation  
of the law of this Court as this  
effect truly believes,  
In witness whereof  
6 June 1862 }  
Dec. 27 May 1860 }

B. H. P. Esq.

Wm. H. Miller

Notary Public





Wm Taylor

Ellis Huxey

Trespas

Kendall County Circuit  
Court Jan. Term A.D. 1860

Minutes of the Court

2 Jury Trial 3 Verdict not guilty - no for  
new trial over 1st Inst. - 11 Appeal Allowed on  
pleas entering into Bond in the penal sum of  
of \$500. with John Samuel as surety in 60 days  
as of this Term

Jan. 18th 1860

This day came the plaintiff in  
his own proper person as well as by Helme and  
Smith his attorneys and the said Defendants  
by Parks and Watson his attorneys as well as  
in his own proper person also comes and  
thereupon the issues in this cause being joined  
it is considered by the Court that a jury also  
come and thereupon came the following named  
persons of a jury to wit - Addison H. Albee  
Charles Sanford Henry Hornby 2d Truman  
B. Hathaway Peter O'Brien Isaac K. Huxey  
Uri L. Hubbard Harrison A. Albee John Holbrook  
Walter S. Hays Richard R. Harris and Stephen  
H. Brown each of whom were severally sworn  
selected and sworn and after hearing



the Evidence and receiving the instructions  
of the Court retires in Charge of an officer  
to Consider upon this Verdict

January 11. to 1811.

This day the parties appear  
by their attorneys of record and the Jury of record  
also come into Court and say on the Jury  
find the Defendant not Guilty - and thereupon  
came the Plaintiff by Smith one of his attorneys  
and moves the Court for a new Trial herein  
which said Motion was thereupon overruled by  
the Court and it is considered by the Court  
that the Defendant recover of the Plaintiff  
the Costs by him in this behalf Expended  
and that he have Execution thereon And  
Afterwards again came the Plaintiff by his  
attorney of record and pray an appeal to the  
Supreme Court which said Appeal is granted  
upon Plaintiff entering into Bond to Defendants  
in the penal sum of five hundred Dollars with  
John Smith as surety in six days from this  
date

- True Copy of all proceeding had in  
this cause at the same time of said Court A.D. 1811  
Attest Seal of Court Court. G. M. Hollenback  
clerk



Know all men by these presents  
that I William Taylor as principal  
& John Samuel as surety of the County of  
Kendall & State of Illinois are held & lawfully  
firmly bound unto Elbert Thayer of the same  
County & State in the penal sum of five  
thousand Dollars for the payment of which well  
& truly to be made we do bind ourselves & each of  
us of our heirs Executors administrators and assigns  
jointly severally & jointly by these presents with our  
hands and seals dated at Oswego this 27<sup>th</sup> day  
of February A.D. 1860

The condition of the above obligation  
is such that whereas in a certain suit had  
at the January Term of Kendall County  
Circuit Court A.D. 1860 wherein William  
Taylor was plaintiff & the said Elbert Thayer was  
Defendant in an action of trespass upon  
Real Property the said Elbert Thayer did  
verdict a judgment for Cash against the  
said William Taylor from which said  
Judgment the said William Taylor  
did at the time of rendering said  
Judgment pray an appeal to the Supreme  
Court of the State of Illinois which  
was allowed at the time Now



the said William Taylor shall prosecute  
his said appeal with speed & without  
delay & shall pay the said Judgment  
& all costs which have or may  
accrue & all interest and damages  
in case the Judgment shall be affirmed  
in the said Supreme Court then  
the above obligation to be void otherwise  
to remain to remain in full force and  
effect

Wm Taylor Seal  
John Smith Seal

True Copy of the original  
Now on file in my office  
attest by seal of the Cir Court of  
said County

G. H. Allenbach  
Clerk

Filed July 27, 1840.  
G. H. Allenbach Clerk



266 63-13

Taylor vs Macey

Affidavit of  
B. F. Parker -

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Filed May 8. 1860  
L. Leland  
Clerk



Supreme Court Term Decr Apr Tm 1860

266 William Taylor }  
vs } Appeal  
Elihu Marcy }

And now comes the said Appellee  
Marcy by Seland Seland & Parks  
his attys & says that there is no such  
error in said record & proceedings as  
is in the assignment of errors alleged  
Wherefore he prays an affirmance of  
said verdict

Seland Seland  
for Appellee

To P.K.L.

No to strike bill of exceptions from file before  
joining error of rule to be in error. <sup>Robert A. Brown</sup> Otherwise not.  
All I get back.



63

Taylor. Apple  
100  
Marney Appleton.

Filed April 14. 1861  
Shelton  
Ct.

No 266

Supreme Court

Taylor vs Marcy — Mo to set aside <sup>order</sup> for reversal for non joinder in error

The Appellant by Mr. Helme suggests, that the order should not be set aside

The Record was filed on the morning of the 3<sup>d</sup> day of the Term, with errors assigned. And at the Motion house a rule for joinder in error on the 4<sup>th</sup> day of the Term, entered

On the afternoon of the 3<sup>d</sup> day the case was called by the Court on the regular call of the Docket, and by the practice of the Court, the appellant was under the necessity of defaulting or hearing ex parte or waiting until the cause would be reached on the 2<sup>d</sup> call of the Docket. He chose to have the cause reversed there for non joinder & it was done

In this condition the cause stood for two weeks and then the appellee moves to set aside the default, and the following grounds are presented each of which is deemed insufficient

I

That the default was entered on the same day on which the Record was filed of this the appellee can not complain unless the appellee had come within a reasonable <sup>time</sup>



If the appellee had come on the next day and moved the court to set aside the default as was done in the continuances entered on the same day in 267 + 268 - the ruling in those cases sitting and continuances would apply here.

Suppose this default had not been taken on the first call of the Docket but the rule for a joinder had been left standing for three days and then on motion of Appellant the reversal had been ordered for nonjoinder, would any cause of complaint exist - The law does not require a vain thing, and as in fact the Appellee paid no attention, till 10 days after the rule for ~~nonjoinder~~ <sup>joinder</sup> had expired, he was not in any way damaged by the entry having been made, at the regular call instead of the next day at the expiration of the rule.

II That the Bill of exceptions was <sup>not</sup> prominently signed, and ought to be in the Record - and that without the Bill of exceptions there was no error in the Record.  
The appellant answers this + protests that the Bill of exceptions is all regular and if that question should ever come



before this <sup>Court</sup>, he will shew by Affidavits  
- that the statements in the affidavit of  
B F Parks on that subject are very far  
from a true history of that matter

But the appellant contends him-  
-self, so far as this motion is con-  
- cerned by saying that at the utmost  
the statements only amount to this,  
that in point of law there is no  
error in the Record -

Appellant suggests, that it is not  
cause for setting aside a default  
for non foundation in error, to allege  
that there is no error in the Record  
It is too late for Appellant to say that

III That the attorney for the appellee  
supposed that the appeal was taken  
for delay and would not be prosecuted  
He answers that he had no good  
reason to suppose any such thing  
and shows no fact on which he would  
have any right to rely as a ground  
of inattention - He says that he sup-  
- posed from <sup>some</sup> ~~remarks~~ of some remark  
of some Lawyer representing Taylor  
that no bill of exceptions would be filed



He does not tell what that remark was  
nor who made it-

And Suppose there was no bill  
of exceptions in the Record and never  
had been, still the Orders are all regular  
The appeal was regularly taken  
The bond filed in time

Parker examined & knew that ~~was~~ so  
The Record was regularly filed as required  
by the Statute And the errors are specified  
and abstracted  
A Rule allowed regularly for joinder  
in error. That rule expired without  
any joinder

The Order of reversal was  
regularly entered - And two weeks  
afterwards the court is asked  
to set the same aside, because the  
default was entered on the third day  
of the term instead of the fourth, which  
really made no difference to the  
Appellee - next because there  
was really no error in the Record  
and third because the Lawyer for Appellee  
(who by the way, does not appear to have  
been employed in this Court by the  
Appellee till after the default).  
Supposed the appeal would  
not be prosecuted



It is true that this Cause has been tried  
Three times in the Court below  
& once in this Court. The first verdict  
was for Defendant and was so gross  
a violation of right & the law, that  
the Circuit Court set it aside  
without costs. The second  
verdict was for the Plaintiff  
& Plaintiff had judgment and this  
was over ruled in this Court on the  
ground that one or two of the instructions  
were in some respects objectionable  
but which might have been varied  
in accordance with the facts and  
the objectionable parts left out, and  
answered the Plaintiffs purpose equal-  
ly as well. - And in the last trial the  
verdict was for the <sup>Defendant</sup> Plaintiff, but  
this was erroneously had as we verily  
believe. - The controversy relates to a  
Road and affects much larger  
interests than are shown in the  
Record and no injustice can be  
done by giving us another  
trial

This is a singular case it would  
seem, to justify the Defendants claim



set in his remarks about "eager  
 snappings after Justice" He would  
 reverse the Maxim that the law  
 favors <sup>or encourages</sup> the vigilant, and would  
 ask extraordinary and "unreason-  
 able encouragement" to the sleepy  
 "vigilantibus non dormientibus servient leges"

Belton & Dickey  
 for App't

286 68

Taylor & Mary

Surgeon of  
 Hospital against  
 Mrs. to set aside her  
 -set

Modified by Car  
 Insurance



United States of America  
State of Illinois } 38.  
Kendall County }

Read before  
The Hon. Madison E. Hollister Judge of the  
Ninth Judicial Circuit of the State of  
Illinois and presiding Judge of the Kendall  
County Circuit Court at a Term thereof  
begun and held at the Court House in  
Osceola in said County on the 9<sup>th</sup> day of January  
A. D. 1860 being the second Monday of said month  
and the year of the Independence of the United States  
of America the Eighth month  
Present,

The Hon. M. E. Hollister Judge as aforesaid  
N. Rushville Esq. State Attorney  
G. W. Hollenback Clerk  
W. Murphy Sheriff  
Attst., G. W. Hollenback Clerk

Be it remembered that hereof to wit;  
on the 9<sup>th</sup> day of August A. D. 1855 there was filed in  
the office of the Clerk of the Circuit Court of said  
a precept in writing in in certain matter in the  
words following to wit;



William Taylor } Kendall Circuit Court  
Elbert Macey } Trespass

The Clerk of Kendall  
Circuit Court will  
please issue a summons in favor of William Taylor  
Plaintiff and against Elbert Macey Defendant  
in an action of Trespass Damages Five hundred  
Dollars

Helmut Smith

Atty for Plaintiff

Filed Aug. 7<sup>th</sup> 1855

C. W. Carter Clk.

The writ issued as above directed with  
the Sheriff's return endorsed thereon is in the words and  
figures following to wit

State of Illinois } ss  
Kendall County } The People of the  
State of Illinois to the  
Sheriff of said County - Greeting.

We command you, that  
you summon Albert Marey if he shall  
be found in your County, personally to be and  
appear before the Circuit Court of said County  
on the first day of the next Term thereof - to  
be holden at the Court House in Oswego,  
in said County, on the 3<sup>d</sup> Monday of September  
next, to answer unto William Taylor in a  
plea of Trespass, to the damage of the said  
Plaintiff as he says, in the sum of five  
hundred dollars - and have you then  
and there this writ, with an endorsement  
thereon, in what manner you executed the  
same



Witness, John M. Brothers Clerk  
of said Court, and the Seal  
thereof at Oswego - in said County  
this 9<sup>th</sup> day of August - in the year of our  
Lord, one thousand eight hundred and fifty  
five

John M. Brothers  
Clerk



The Sheriff's return Endorsed on the back of said writ is in the words and figures following to wit;

Served by reaching to the within named Albert Marcy this 3<sup>d</sup> Day of Sept, A. D. 1855,

Wm. Day Sheriff  
per. J. D. Kennedy, Deputy  
Filed this 13<sup>th</sup> day of Sept. 1855.  
J. M. Crothers

And Afterward to wit on the same day to wit on the 7<sup>th</sup> day of September A. D. 1855 William Taylor the Plaintiff filed in the office of the Clerk of the Court a Declaration against the said Albert Marcy the Defendant and is in the words and figures following to wit,

State of Illinois } ss

4  
Hendall County }

Of the September Term of  
Hendall Circuit Court, in the  
Year of our Lord one thousand  
Eight hundred and fifty five  
William Taylor plaintiff in this suit by  
Helm & Smith his Attorneys complains of Albert  
Marcy defendant in this suit, being summoned



in a plea of Trespass - For that the said  
defendants, on the first day of May, in the  
Year of our Lord one thousand eight hundred  
and fifty five - and on divers other days and  
times, between that day and the day of the  
commencement of this Suit - with force and  
arms, broke and entered the close of the  
said plaintiff situate in the County of  
Hendall and State of Illinois, and then  
and there broke open broke to pieces damaged  
and despoiled divers to wit, five pairs of  
bars of the said plaintiff of great value  
to wit of the value of fifty dollars, then & there  
standing and being in said close and with  
feet in walking trod down trampled upon  
consumed and spoiled the grass and  
corn of the said plaintiff of great value  
to wit of the value of fifty dollars, then &  
there growing and being in said close and  
with Cattle to wit Horses Mares geldings Cows  
Oxen and Sheep eat up and depastured the  
grass, corn, wheat, and Oats of the said  
plaintiff of great value to wit of the value  
of fifty dollars, and also seized took despoiled  
and carried away the rails posts and boards  
of the said plaintiff to wit, five loads of



Boards, five loads of Rails, five loads of  
Posts of great value to wit of the value of  
two hundred dollars. By means of which  
said several premises, the said plaintiff  
was greatly annoyed and disturbed in  
his possession during all the time aforesaid  
and hindered and prevented from carrying  
on his necessary affairs & business to wit  
at the County of Kendall aforesaid and  
other wrongs to the said plaintiff then and  
there did, to the great damage of the said  
plaintiff contrary to the form of the  
Statute in such case made and provided  
and against the peace and dignity of the  
People of the State of Illinois, whereupon the  
said plaintiff saith he is injured and hath  
sustained damage to the amount of five  
Hundred dollars, and therefore he brings  
Suit &c — — —

Helm and Smith Atty  
for Plffs

Filed Sept 9th 1855

J. M. Crothers Clerk  
per J. J. Emerson Deputy

And afterwards to wit on the 19<sup>th</sup> day of  
September A. D. 1855 The Defendant Elbert Marcy  
filed in the office of the Clerk of the Circuit Court of  
said County his plea therein and the same run in  
the words and figures following to wit,

Elbert Marcy  
Acts  
William Taylor } Kendall Co. Circuit  
Court, September Term  
A. D. 1855

And the said Defendant by Parks his  
Attorney comes and defends the force and  
injury, when &c. and says that he is not  
guilty of the said supposed trespass -  
above laid to his charge or any or either  
of them or any part thereof in manner  
and form as the said Plaintiff hath above  
thereof complained against him and of  
this he the said Defendant puts himself  
upon the Country &c.

7  
D. F. Parks  
Defts Atty

And for a further plea in this behalf  
as to the breaking and entering of the  
Plaintiffs close and committing



5  
The said several trespasses in Plaintiffs  
declaration mentioned &c, the said defendant  
says Actio Non because he says that the  
time of the committing the said several  
trespasses when &c, There was and of right  
ought to have been a certain common  
and public Highway into, over, through and  
along the said close in which &c for all the  
Citizens of this State, to go, return, pass  
and repass on foot and with Cattle and  
Carriages, at all times of the Year, at their  
free will and pleasure, Wherefore the said  
Defendant being a Citizen of this State and  
having occasion to use the same way, at the  
said several times, when &c, went passed and  
repassed on foot and with Cattle and Carriages  
into over and through the said close of  
the said Plaintiff in said Highway as he  
lawfully might, and in so doing the  
said defendant then and there broke out  
and removed certain Rails and Posts that  
then and there obstructed the free passage  
over along and through the said close of  
the said close, of the said plaintiff in  
said Highway as aforesaid and then and  
there the said Defendant in walking



And with his Cattle and Carriages then  
and there necessarily a little trod down  
the grass &c, doing no unnecessary damage  
which on the said several supposed  
Trespasses in Plaintiffs declaration  
mentioned and this the said defendant  
is ready verify wherefore he prays  
Judgment and e

Parks, Defts - Atty

And for a further plea in this behalf  
the said Defendant says, Actio non, because  
he says that before and at the time of the  
committing of said several supposed  
trespasses to wit, on the 5<sup>th</sup> day of  
March A.D. 1853 Henry H Jenkins & Jenkins  
& Fairbanks and A Scott, then and there  
being the owner in fee simple of a certain  
piece of land and then and there also  
being in possession thereof to wit, the said  
close of the said plaintiff, then and there  
quit claimed and released all claim  
and title to a certain strip of land  
into, along, and through the said close  
of the said Plaintiff, and had the said  
release so made, filed in the Town<sup>Clerks</sup>,  
Office of said Town in which the



said close of the said Plaintiff is  
situated and said Land so released  
by the Highway commissioner of said Town  
opened and declared by said commissioner  
a public Highway - and in and by such  
release said persons aforesaid gave to  
each and every person, Citizen of this  
State, the right to pass along through and  
into the said close of the said Plaintiff  
of all of which said Plaintiff had notice  
and the said Defendant being a Citizen  
of this State and having occasion to go  
pass, and repass, over into along and  
through said close of the said Plain-  
tiff. Then and there had occasion to  
pass over said road which had been  
so released to the public and in pass-  
ing necessarily a little trod down the  
grass &c. and then and there took down  
and removed certain bars and fences  
which obstructed the free passage over said  
road doing no unnecessary damage which are  
the said several supposed trespasses of which  
the Plaintiff complains and this the said  
Defendant is ready to verify wherefore he  
prays Judgment &c



B. H. Parks  
Deft. Atty.

Filed Sept 19<sup>th</sup> 1855

John M. Prothers  
Clerk

And Afterward to wit, on the 11<sup>th</sup> day of  
Nov. A. D. 1856 the Defendant herein filed  
with leave of the Court his fourth Amended  
Plea to the Plaintiffs declaration herein and  
is in the words and figures following to wit,

Albert Marcey

ads

Rendall County Circuit Court  
June Special Term A. D. 1856

And for a further Plea in this behalf the  
said Defendant says actio non because he  
says that herefore to wit, on the 24<sup>th</sup> day of  
December A. D. 1854 a petition duly signed  
by to wit, twelve legal voters, living within  
three miles of said proposed road was  
presented to the Highway commissioner of the  
Town in which the said close is located  
that notice of the presentation of said  
petition was published by putting up  
written notices thereof in three of the



~~Public~~ most Public places of said town for twenty days, prior to the presentation to said Commissioner that afterwards to wit on the 5<sup>th</sup> day of March A. D. 1853, the said Highway Commissioner of said town in which said close of the said Plaintiff is located proceeded to examine the ground over, through, and along said close of the said Plaintiff and the owners of said close at that time to wit Henry Jenkins and Celestia Jenkins having released all claims for damages by reason of the opening of said proposed public Highway over said close. The said Highway Commissioner then and there having full power and authority so to do then and there caused a survey and plat of a public Highway to be made and then and there ordered & directed a Public Highway to be opened over along and through said close four rods wide and afterwards to wit on the 12<sup>th</sup> day of March A. D. 1853, said Highway Commissioner filed such order for a road and the survey and plat thereof in the Town Clerks Office of said Town, and afterwards to wit on the 9<sup>th</sup> day of April A. D. 1853 an appeal was taken from the said order of the Highway Commissioner of



Said Town to three Supervisors of said County  
of Mendocino. Not one of said Supervisors then  
and there being of the said Town in which  
said close of the said Plaintiff is located  
and afterward to wit on the 14<sup>th</sup> day of  
November A.D. 1853 upon hearing said appeal  
said Supervisors affirmed said order of  
said Highway Commissioner declaring said  
route over along and through the said close of  
the said Plaintiff a public Highway and Henry  
Gentins and Celestia Jenkins who then & there  
having the legal and lawful possession of  
said close of the said Plaintiff and being  
part owners thereof then and there opened a road  
over through and along the close of the said  
plaintiff and said route over along and  
through the close of the said plaintiff  
become and was and now is and of right  
ought to be a Public Highway and would and  
by virtue of such order of said Highway  
13 Commissioner each and every person Citizen  
of this State had a right to pass & repass  
on foot and with Cattle and Carriages over  
along and through said route so declared as  
Public Highway. And the said Defendant after  
the making of said order as aforesaid and



the opening said road and before the  
commencement of this Suit having occasion  
to pass over along and through said public  
Highway which is over along and through said  
close of the said plaintiff then and there nec-  
essarily a little trod down the grass &c  
and then and then took down and removed  
certain panels of fencing which obstructed  
his free passing along and through said  
Public Highway through the said close of the  
said Plaintiff, doing no unnecessary damage as  
he lawfully might, which are the said several  
supposed trespasses whereof the said Plaintiff  
hath above thereof complained and this  
he is ready to verify wherefore he prays  
Judgment &c.

B. H. Parks  
Deft's Atty.

Filed June 11<sup>th</sup> 1856

John M. Prothers  
Clerk

And afterwards to wit on the 6th day of October A.D. 1857 the Plaintiff herein by Nelson and Smith his attorney filed in said Court his replication to the plea of the Defendant in the words and figures following to wit,

State of Illinois  
Kendall County Circuit Court

William Taylor

vs  
Elbert Maizey

and the said Plaintiff as to the said plea of the said Defendant by him first above pleaded and in which he puts himself into the line

And the said plaintiff as to the said plea of the said Defendant by him secondly, thirdly and fourthly above pleaded said that he the said plaintiff by reason ~~by reason~~ of anything by the said Defendant in those pleas alleged ought not to be barred from having and maintaining his ~~of~~ said action ~~tho~~ against him the said Defendant because he says that at the time of committing the said several trespasses in the said plaintiff, declaration mentioned there was not a common and public Highway into over and through and along the said place of the said plaintiff in which & for all the citizens of this



State to go ~~and~~ pass and repass on foot  
and with Cattle and Carriages or in any other  
Manner at all times or any time of the Year at  
their free will and pleasure as in said places  
Alleged and that the said Defendant at the  
said several times when &c of his own wrong  
and without Cause or right by him in said  
places Alleged Committed the said several  
Trespasses in said Declaration mentioned  
and in said places attempted to be justified in  
Manner and form as the said Plaintiff hath  
above thereof Complained against the said Defendants  
and that the said Plaintiff pray may be enjoined of  
by the Country &c

Wm. H. H. atty

And I give unto the like  
Packs for Letters

Filed Oct. 4, 1854

G. H. Hollenback.

Recd.

And afterward to wit, on the Tenth day of January A. D. 1859 there was filed in the Office of the Clerk of the Circuit Court of said County a certain Certified Transcript of Record proceedings had in the Supreme Court for the Third Grand Division of the State of Illinois in this Cause and is in the words and figures following that is to say;

At a Supreme Court Begun and held at Ottawa at and Tuesday the twentieth day of April in the Year of Lord one thousand eight hundred and fifty Eight within and for the Third Grand Division of the State of Illinois

Present the Honorable John D. Eaton Chief Justice  
" " Sidney Russell Associate Justice  
" " Pickens H. Hooker Associate Justice

Saturday Jan 5, 1858.

17 Eliza Macey  
vs.  
William Taylor

Appeal from Kenosha

On this day again came the said parties and the Court having diligently examined and inspected as well the Record and proceedings aforesaid as the matters and

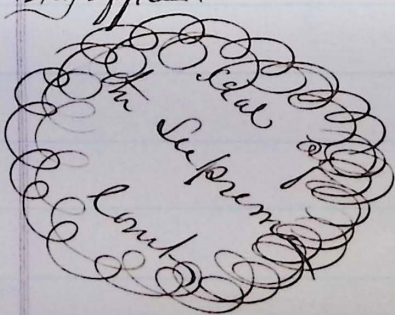


thing therein assigned for Error and being now  
sufficiently advised of and concerning the premises and  
of the opinion that in the Record and Proceedings—  
aforesaid and in the rendition of the Judgement,  
aforesaid there is Manifest Error;

Therefore it is Considered by the Court  
that for that Error and others in the Record and  
Proceedings aforesaid the Judgement of the Circuit  
Court in this behalf rendered, be voided, annulled,  
set aside, and wholly nothing esteemed, and that  
this Cause be remanded to the Circuit Court for  
such other and further proceedings as to law and  
justice shall appertain. And it is further Considered  
by the Court that the said Appellant recover from  
the said Appellee his Costs by him in this behalf ex-  
pended and that he have Execution therefor.

Lorenzo Deland Clerk of the Suprem  
Court of the State of Illinois do hereby certify  
that the foregoing is a true Copy of the final order of <sup>the</sup> said  
Supreme Court in the above entitled Cause of record in

18 My office.



Our Testimony whereof I have set my  
hand and affixed the seal of <sup>the</sup> said Court  
at Ottawa this 6<sup>th</sup> day of January in the  
Year of our Lord one thousand eight hundred  
and fifty-nine. L. Deland - Clerk of the Supreme Court  
by E. B. Rice Deputy



And Afterward to wit, on the 12<sup>th</sup> day of  
 April in the Year of our Lord one thousand eight  
 hundred and fifty nine the same being the sixth  
 Judicial day of the April Term A.D. 1859 of  
 the Kent and County Circuit Court the following pro-  
 ceedings <sup>among others</sup> were had and entered of Record in said  
 Court to wit,

|                    |   |          |                                                                           |
|--------------------|---|----------|---------------------------------------------------------------------------|
| William Taylor     | } | Trespass | This day came the parties and<br>by agreement this Cause<br>is continued. |
| v.<br>Elbert Macey |   |          |                                                                           |

And Afterward to wit on the Tenth day of  
 January in the Year of our Lord one thousand eight  
 hundred and sixty the same being the second Judicial  
 day of the Kent and County Circuit Court of the January  
 Term thereof for the Year A.D. 1860 then in session  
 17 at the Court House in Oswego in said County for the  
 transaction of Business the following among other  
 proceedings were had and entered of Record to wit

|                    |   |          |
|--------------------|---|----------|
| William Taylor     | } | Trespass |
| v.<br>Elbert Macey |   |          |



This day came the plaintiff in his own proper person as well as by Helms and Smith his attorneys and the said Defendant ~~by Parks and Metzger his attorneys~~ as well as in his own proper person also came and appeared the issues in this cause being joined it is considered by the Court that a jury also come and appeared and the following named persons of jury to-wit; Addison H. Allen Charles Dauphin Henry Hemmelt, Truman R. Hackaway Peter D. Bryan Isaac H. Young of Ohio L. Hubbard Harrison A. Allen John H. Henshaw Charles H. Faden Richard R. Harris and Stephen W. Brown Each of whom were duly chosen selected and sworn and after hearing the evidence and receiving the instructions of the Court retired in charge of an officer to consider upon their verdict.

20 And Afterward to-wit on the 11<sup>th</sup> day of January A. D. 1860 the same being the third judicial day of the Term of the Court aforesaid the following proceedings among others were had and entered of Record to-wit;

William Taylor

v.  
Elbert H. McCoy

Trespass

This day the parties appear by their attorneys  
Yonson and the jury Yonson also come into Court and  
say "We the jury find the Defendant Not Guilty" and thereupon  
came the Plaintiff by Smith one of his attorneys and moves  
the Court for a new Trial herein which said Motion was  
overruled by the Court - And it is considered by the Court  
that the Defendant recover of the Plaintiff the costs by him  
in this behalf Expended and that he have Execution -  
thereupon. And Afterward again came the Plaintiff by his  
attorney Yonson and pray an appeal to the  
Supreme Court which said Appeal is allowed  
upon Plaintiff entering into Bond to Defendant  
in the sum of five thousand Dollars with  
John Samuel as surety in sixty days from this date



William Taylor }  
v. } Tinsall  
Elliot Shacey }

Be it Remembered  
that on the trial

of the above entitled Cause of action the  
Plaintiff to sustain this action introduced one  
Orin Tyler who being duly sworn on oath  
said that he knew the parties plaintiff and  
Defendant, That some time in June A.D. 1880  
the Defendant pulled down the Plaintiffs fence  
in two places, that at each place where the fence  
was pulled down there were three or four  
panels of fence pulled down, that the panels  
were made of Boards and the Boards were  
14 or 16 feet long making two spaces in the different  
places when the Defendant pulled down the  
~~Defendant~~ Plaintiffs fence of three or four rods  
wide each that some of the Boards were badly  
split up and nearly destroyed and that they  
were thrown over the ditch fence and that  
the damage was at least fifty cents.

22 That the place where said fences were  
pulled down was in Muscat County, Illinois

On Cross Examination witness stated  
that he saw the fence after it was pulled down  
and the Boards split up and he asked the



Defendant about it and Defendant said he had pulled it down because it was in the road and he knew the Roads over the fence when they then were and if they were put up again he would make even wood of them

The Plaintiff then introduced William Ryan who was sworn and who testified that the premises when said fence was pulled down then belonged to the Plaintiff and that the Plaintiff was then in possession of the same and that the Plaintiff purchased the same in the fall of A. D. 1884.

On Cross Examination Witness stated that there had been a time some years previous when Samuel Jenkins lived upon the premises which Plaintiff purchased but who had since deceased, that said deceased Samuel Jenkins wanted a road when said fence was pulled down and said Jenkins built his fence in reference to that road. The witness also stated on the direct Examination & returned testified that the place where said ~~fence~~ <sup>road</sup> was intended to be laid out and which at the time of the trespass being committed had been fenced out by Samuel Jenkins in his lifetime with reference to a road being laid out <sup>the same</sup> ~~that~~ had been abandoned before Taylor purchased the same.

23



That he ~~had~~ cut wheat right at the place  
when the trespass was committed the summer  
before the Plaintiff purchased the same, that he  
never knew of any road labor being put upon  
said Road. That at the time of the Trespass  
being committed all the fields were in one con-  
-mon field, that there was no road fenced out  
and travelled and used as a public  
Road within a half a mile or more of  
the place when the trespass was committed -  
without there being a Gate at each end of the  
Road the Plaintiff then offered his Deeds of said  
premises in Evidence which were testified to by the  
witness Ryan as conveying the lands where said  
Trespass was committed and the same were permi-  
-ted to be read to the Jury which said Deeds are in  
the words and figures following that is to say;



This Indenture Made this eighteenth day of March  
in the year of our Lord one thousand Eight hundred  
and fifty three Between John M. Jenkins  
of the Town of Brooklyn of said County in the  
State of Wisconsin a son of and him at Law  
of Samuel Jenkins late of the County of Kendall  
in the State of Illinois now deceased & Mary  
Ann Jenkins wife of said John M. Jenkins  
party of the first part and William Scott of  
the County of Kendall State of Illinois party of the  
second part - Witnesseth that the said party of  
the first part - for and in Consideration of  
the sum of one thousand and sixty five  
Dollars to them in hand paid by the said  
party of the second part - (the Receipt whereof is  
hereby acknowledged) have united release sold  
conveyed and quit Claimed and by these presents  
do remise release sell convey and quit Claim  
unto the said party of the second part his  
heirs and assigns forever All the following  
described lot ~~piece~~ or parcel of land situated  
24 lying and being in the said County of Kendall  
said State of Illinois and known and distinguished  
as the west half of the North East Quarter and lot  
Number one of the North West Quarter of Section  
seven in Township thirty seven of Range first



in the District of Lands subject to Sale at  
Chicago, Illinois containing one hundred and  
Sixty acres - Also a certain other piece or parcel  
of Land situate in said County of Kendall being wood-  
-land & being part of the North East fourth of the South  
East quarter of Section five Township thirty seven  
North of Range six East of the third prin-  
-cipal Meridian - and bounded as follows  
beginning at the North West Corner of said lot running  
South seven degrees East twenty Chains, then a North  
Eighty three degrees East Eight Chains and fifty links  
then a North Nineteen degrees and forty minutes  
west twenty Chains and thirty five links then  
South Eighty three degrees west Nine Chains  
to the place of beginning containing thirteen  
and sixty four hundredths acres of Land  
be the same more or less - It being the true  
intent and meaning of their parents to convey  
all the right title and interest of the said John  
M. Jenkins of in & to said premises as one of  
the heirs at law of said Samuel Jenkins  
deceased and the right of dower of the said  
Mary Ann as wife of the said John M. ~~Jenkins~~  
to have and to hold the same together with  
all and singular the Appurtenances and privileges  
thereunto belonging or anywise <sup>thereunto</sup> appertaining



and all the Estate right title interest and Claim  
 Whatever of the said party of the first part either  
 in Law or Equity to the only proper use benefit and  
 behoof of the said party of the second part his  
 heirs and assigns forever. And the said party  
 of the first part for themselves their heirs Executors  
 and administrators do covenant and agree  
 to and with the said party of the second part  
 his heirs and assigns that he will warrant  
 and forever Defend the aforesaid premises to be  
 free and Clear of all Claims or Claims of all  
 and Every Person or Persons Claiming or to Claim  
 by Church or man or them or either of them and  
 none other. In Witness Whereof the said  
 party of the first part have hereunto set their  
 hands and seals the day and Year first  
 above written

Sealed and Delivered  
 in presence of

James M. Clark  
 John C. Jordan

John M. Jenkins  
 Mary A. Jenkins

24

State of Wisconsin  
 County of Sauk

I James M. Clark Judge  
 of the County Court in and  
 for said County, and State aforesaid do hereby certify



that John M. Jenkins & Mary Ann Jenkins who are  
personally known to Me as the Real persons whose  
Names are subscribed to the Premised deed  
appeared before Me this day in person and  
acknowledged that they Executed and delivered  
the said Deed as their free and Voluntary  
act for the uses and purposes therein set forth.

And the said Mary Ann Jenkins wife of the said  
John M. Jenkins having been by Me Examined  
separate and apart and out of the hearing of her  
Husband and the Contents and Meaning of the said  
Deed having by me made known and Explained  
to her she acknowledges that she had freely and  
Voluntarily Executed the same and relinquished  
her down to the Covenants and tenements therein men-  
tioned without Compulsion of her said Husband  
and that she did not wish to retract the same.

Given under my hand this Eighteenth day of  
March in the year of our Lord one thousand  
eight hundred and fifty three

James M. Clark

County Judge of  
Sank County  
Wisconsin



State of Tennessee }  
 Laake County } ss D. George Mutters Clerk of  
 the County Court of said  
 County do Certify that James M. Cook Esq. the  
 person who signed the foregoing Certificate of Acknowledgment  
 and before whom the same was taken  
 was on the Eighteenth day of March A. D. 1853, then  
 Mediator, Judge of the County Court of said  
 County, duly qualified according to Law. I also  
 Certify that the foregoing Deed is Executed and  
 Acknowledged in accordance with the Laws of  
 this State



In testimony whereof I have hereunto  
 set my hand and Affixed the  
 Seal of said Court at the Clerk's  
 Office this 18th day of March A. D. 1853  
 George Mutters

Clerk of the  
 County Court

Filed March 29th 1853 at 3 o'clock P.M. and  
 Recorded in Book Pages 317 & 318  
 John M. Cortner Clerk Circuit  
 Court & Officer Recorder & Sheriff  
 County Ill. per H. Gray Secy



This Indenture, made the fifth day of December  
 in the Year one thousand eight Hundred and fifty  
 four between William Scott and Jane Scott  
 his wife being heirs at Law of Samuel Jenkins  
 late of Kendall County Illinois now deceased  
 parties of the first part, and William Taylor of  
 the County and State aforesaid party of the  
 second part, Witnesseth that the said parties of  
 the first part, for and in consideration of the  
 Sum of five Hundred dollars, Lawful money  
 of the United States of America to them in  
 hand paid by the said party of the second part  
 at or before the sealing and delivery of these  
 presents the receipt whereof is hereby acknowledged  
 have aliened, remised, released, conveyed and  
 confirmed and by these presents do alien remise  
 release convey and confirm unto the said party  
 of the second part and to his heirs and  
 assigns forever all that certain Lot and parcel  
 of Land situate in the County of Kendall  
 and State of Illinois, known and distinguished  
 as the west half of the north east quarter and  
 Lot number one, of the north west quarter of  
 Section seven, in Township thirty seven of Range  
 six in the District of Lands subject to Sale at  
 Chicago Illinois, containing one Hundred



and sixty acres, also a certain piece or parcel of Land Situate in said County of Kendall being Wood Land being a part of the north east fourth of the South east quarter of Section five Township thirty seven north Range six east of the third principal meridian and bounded as follows beginning at the north west corner of said Lot Running South seven degrees East Twenty Chains, thence North Eighty three degrees East Eight Chains and fifty links thence North nineteen degrees and forty minutes West twenty chains and thirty five links. thence South Eighty three degrees west five chains to the place of beginning containing thirteen acres and Sixty four Hundredths of an acre of Land It being the true intent and meaning of these presents to convey all the right title and interest of the said William Scott & Jane Scott as heirs at Law of Samuel Jenkins deceased; the said Jane Scott being the daughter of said Samuel Jenkins deceased and also all the right title and interest of John M Jenkins in said premises who was also one of the heirs at Law of said Samuel Jenkins deceased and the right of dower of Mary Ann Jenkins wife of the said John M. Jenkins and also all the right title

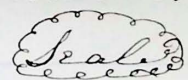
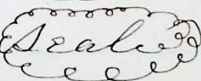


And interest of said Jane Scott wife of said  
 William Scott including her dower right as  
 well as all her other rights and interests in said  
 premises together with all and singular the  
 Tenements hereditaments and appurtenances  
 thereunto belonging or in any wise appertaining  
 and the reversion and reversions remainder  
 and remainders rents issues and profits  
 thereof; and also all the Estate right title interest  
 of said parties of the first part in property  
 possession claim and demand whatsoever, as well  
 in Law as in equity of the said party of the first  
 part of in or to the above described premises  
 and every part and parcel thereof with the  
 appurtenances; To have and to hold all and  
 singular the above mentioned and described  
 premises together with the appurtenances unto  
 the said Party of the second part his heirs and  
 assigns forever: And the said parties of the first  
 part, for themselves their heirs executors and  
 administrators do hereby covenant promise  
 and agree to and with the said party of the  
 second part his heirs and assigns that they have  
 not made, done committed executed or suffered  
 any act or acts thing or things whatsoever  
 whereby or by means whereof, the above mentioned

and described premises or any part or parcel thereof now are or at any time hereafter shall or may be impeached charged or incumbered in any manner or way whatever it

It is understood by and between the Parties to these presents that the said party of the second part buys and holds the above bargained and described premises subject to the dower of Phebe Jenkins the Widow of Samuel Jenkins ~~deceased~~ late of said County of Kendall now deceased.

In witness whereof, the said Parties of the first part have hereunto set their hands and Seals the day and Year first above written

Wm Scott   
Jane Scott 

Sealed and delivered  
in the presence of  
William Crvin  
Wm Ryan

32 State of Illinois }  
Kendall County }

I William Crvin a Justice of Peace in and for said County do hereby certify that William Scott and Jane Scott his wife who are



personally known to me as the real persons whose names are subscribed to the above Deed appeared before me this day in person and acknowledged that they executed and delivered the said deed as their free and voluntary act for the uses and purposes therein set forth.

And the said Jane Scott Wife of the said William Scott having been by me Examined Separately and apart and out of the hearing of the said Husband and the Contents and Meaning of the said Deed having been by me made known and fully Explained to her acknowledged that she fully and voluntarily Executes the same and relinquished her dower to the Lands and tenements mentioned as well as all her other rights and interests in the same without Compulsion of her said Husband and that she does not wish to retract the same - Given under my hand and seal this 5<sup>th</sup> day of December A.D. 1854  
 William Ervin   
 Justice of the Peace

33

Filed March 12 1855 at 12 o'clock P.M.  
 and Recorded in Book of pages 442 & 443  
 C. M. Crothers Clerk of Court  
 & Officer Recorder Humboldt Co.  
 per James Sept.



This Indenture, made this twenty third day of April in the Year of our Lord one Thousand Eight Hundred and fifty five between Henry Jenkins of the County of Kendall and State of Illinois, party of the first part; and William Taylor of the County and State aforesaid, party of the second part, - Witnesseth that the said party of the first part, for and in consideration of the sum of three Hundred and fifty dollars to him, in hand paid by the said Party of the second part, (the receipt of ~~which~~ which is hereby acknowledged) has remised, released, sold, conveyed and quit claimed, and by these presents do remise release sell convey and quit claim unto the said party of the second part, his heirs and assigns forever, - All the following described lots or parcels of Land Situate lying and being in the County of Kendall and State of Illinois; One piece is known and designated as the west half of the Northeast quarter of Section No. seven (7) in Township Thirty seven (37) North, of Range No Six (6) East of the third principal meridian, containing Eighty Acres of Land be the same more or less - The other piece is known and designated as a part of the Northeast quarter of the ~~said~~ Northeast quarter of ~~said~~



4  
Section No five (5) in said Township, and is bounded as follows to wit: Beginning at the Northwest corner of the said Northeast quarter of the said Southeast quarter of said Section No five — Thence Southerly along the West line of the said Northeast quarter of the said Southeast quarter of said Section, Eleven (11) Chains and twenty seven (27) links — Thence Easterly on a line parallel to the North line of said quarter, Six (6) chains and ninety seven (97) links — Thence Northerly to a stake on the said North line of said quarter which stake stands five (5) chains Easterly from the said Northwest corner of the said Northeast quarter of the said Southeast quarter of said Section — Thence Westerly along said North line five (5) chains to the place of beginning containing Six (6) acres and Seventy-five Hundredths of an Acre of Land, be the same more or less — — I do have and to Hold the same together with all and singular the appurtenances and privileges therunto belonging or in any wise therunto appertaining, and all the Estate, right title interest, and claim whatsoever of the said Party of the first part, either in Law or Equity

Speed appeared before me this day in person and  
acknowledged that he executed and delivered  
the said Speed as his free and voluntary  
act for the uses and purposes therein set  
forth - given under my hand this Twenty  
third day of April in the Year of our  
Lord one thousand Eight Hundred and fifty  
five

Archibald Sears

Justice of the Peace

Filed June 5, 1855 at 10 'p. A. M. and Recorded  
in Book P, pages 42 & 43 - J. M. Prothers

Clerk Our Court ex  
officio Recorder Kendall Co Ills for  
Peneson Sept



Know all men by these presents that Harvey  
Burrell and Margaret Burrell his wife of the  
County of Kendall and State of Illinois in con-  
sideration of Five hundred dollars to them paid  
do by these presents grant bargain sell and convey to  
William Taylor of the County of Kendall and State of  
Illinois all the following described lands situated in  
the Town of Little Rock County of Kendall and  
State of Illinois and described as follows  
to wit, The South East quarter of the North East  
quarter of Section Number Seven (7), Township Number  
(3), Thirty seven North of Range (4) Six East of  
the Third principal Meridian containing forty  
acres by Government Survey. To have and  
to hold the same together with the privileges and appur-  
tenances thereto belonging or in any wise appertaining  
and the premises and portions remainder and remainders  
rents issues and profits thereof to the above named Grantee  
his heirs and assigns forever and do warrant  
~~as to~~ the same to be free from all incumbrances  
whatever. In Witness Whereof we have hereunto set our  
hands and seals this sixteenth day of June  
A.D. 1855

Harvey Burrell  
Margaret Burrell  
in presence of  
W. H. Loring



State of Illinois  
Kendall County

J. W. Edgwick a Notary Public  
in and for said County and State  
do hereby Certify that Harry Burnell who  
is personally known to me as the real person whose  
Name is subscribed to the Annexed Deed appeared before  
me this day in person and acknowledged that he Ex-  
ecuted and delivered the said Deed as his free  
act and deed for the uses and purposes therein  
set forth - And the said Margaret Burnell wife  
of the said Harry Burnell having been by me  
Examined separately and apart and out of the  
hearing of her Husband, and the Contents and  
Meaning of the said Deed having been by me  
made known and Explained to her she acknowledged  
that she had freely and voluntarily Executed the same  
and relinquished her Dower to the lands and tenements  
therein mentioned without Compulsion of her said  
Husband and that she does not wish to retract  
the same - In testimony whereof I have hereunto  
set my hand and affixed my Notarial Seal this  
sixteenth day of June in the  
Year of our Lord one thousand  
Eight Hundred and fifty five  
Wesley H. Edgwick  
Notary Public





Filed June 23. 1855 at 10<sup>9</sup>/<sub>2</sub> A.M. &

Recorded in Book C. page 74

D. M. Crocker

Chk in Court & etc -

official Reader of Records

by Mrs M

Brunswick

The Defendant to prove his case then introduced  
C. J. Lincoln who being sworn testified that he  
was the Town Clerk of Little Rock Township  
That the Book here presented was the Record of  
the Town of Little Rock. The Defendant then offered  
the Records of the Town of Little Rock in relation  
to said Road in Evidence but the same were objected  
to by Plaintiff. But they were permitted by the Court  
to go to the Jury - a copy of which Record is  
as follows - which is duly Certified by the Town Clerk  
of Little Rock

First the Petition for a Road.

Second the Order of the Commissioners of Highways  
of the Town of Little Rock and the Survey and Release of Damages.

Third the Appeal and the decision of the Supervisors  
All of which except the Release of Damages were  
admitted by the Court.

The Defendant then produced the  
original Release of Damages and proved that the signatures  
of Henry Jenkins, Letitia Jenkins and William Deane  
were true and genuine and then offered the same in  
Evidence which were permitted to go to the Jury All of  
which Records and the Release of Damages are  
in the words and figures following to-wit:

" Road Petition "

" To the Commissioners of Highway of



of the Township of Little Rock in the County of  
Hendall and State of Illinois

The undersigned legal voters of the Town  
of Little Rock and who reside within two miles  
of the proposed route for a road herin after mentioned  
and described respectfully represent to your body that it  
is necessary and proper that a Road should be laid  
out upon the following described route to wit,

Beginning at the new travelled Galena Road  
on the line between Alanson Fairbanks and Luke Gates  
thence South along the line of Luke Gates Alanson  
Fairbanks J. Wilson Andrew or Archibald Scott  
the heirs of Samuel Jenkins James Beato Sarah  
Scott Henry Jenkins and the Tyler lot. to the  
South east corner of Henry Jenkins Land thence  
along the line of John Runney and the Tyler lot  
to the West side of land belonging to the heirs of  
John Samuel thence South along the line of  
the heirs of John Samuel John Runney and John  
Jones to the South west corner of said Samuels  
Land thence through John Jones Land to the  
North west corner of Pleg Jones Land thence  
41 Along the line of John and Pleg Jones to  
Land belonging to Thomas R. Neal thence South easterly  
along the line of Thomas R. Neal Pleg Jones  
and Sadaiah Lincoln to the South West corner of



said Six old Sand thence east along the line  
of Edward Lincoln and Peleg Jones to the  
Road leading from Bristol to Somers Co.

And Also a Branch leading from the road  
at the North East Corner of Henry Jenkins land and  
running west along the line of Henry Jenkins  
Elbert Hancey and thence of Samuel Jenkins  
to the South West Corner of the last named Jenkins  
land. The Undersigned therefore respectfully request  
that you will cause said route to be surveyed  
and such proceedings to be had as is by law in  
such cases provided. Little Rock Dec. 27<sup>th</sup> 1852.

J. H. Brady

S. A. Oriatt

Rich. Glass

Elbert Hancey

Ephraim Buck

Henry Jenkins

John Scott

Eli Samell

John Samell

John L. Hancey

John R. Jones

Dr. M. Benedict

C. J. Culver

Byrd I. Ryburn

Orville Colburn

James Scott

Archibald Scott

Samuel Scott

Andrew Scott

Peleg Jones

42

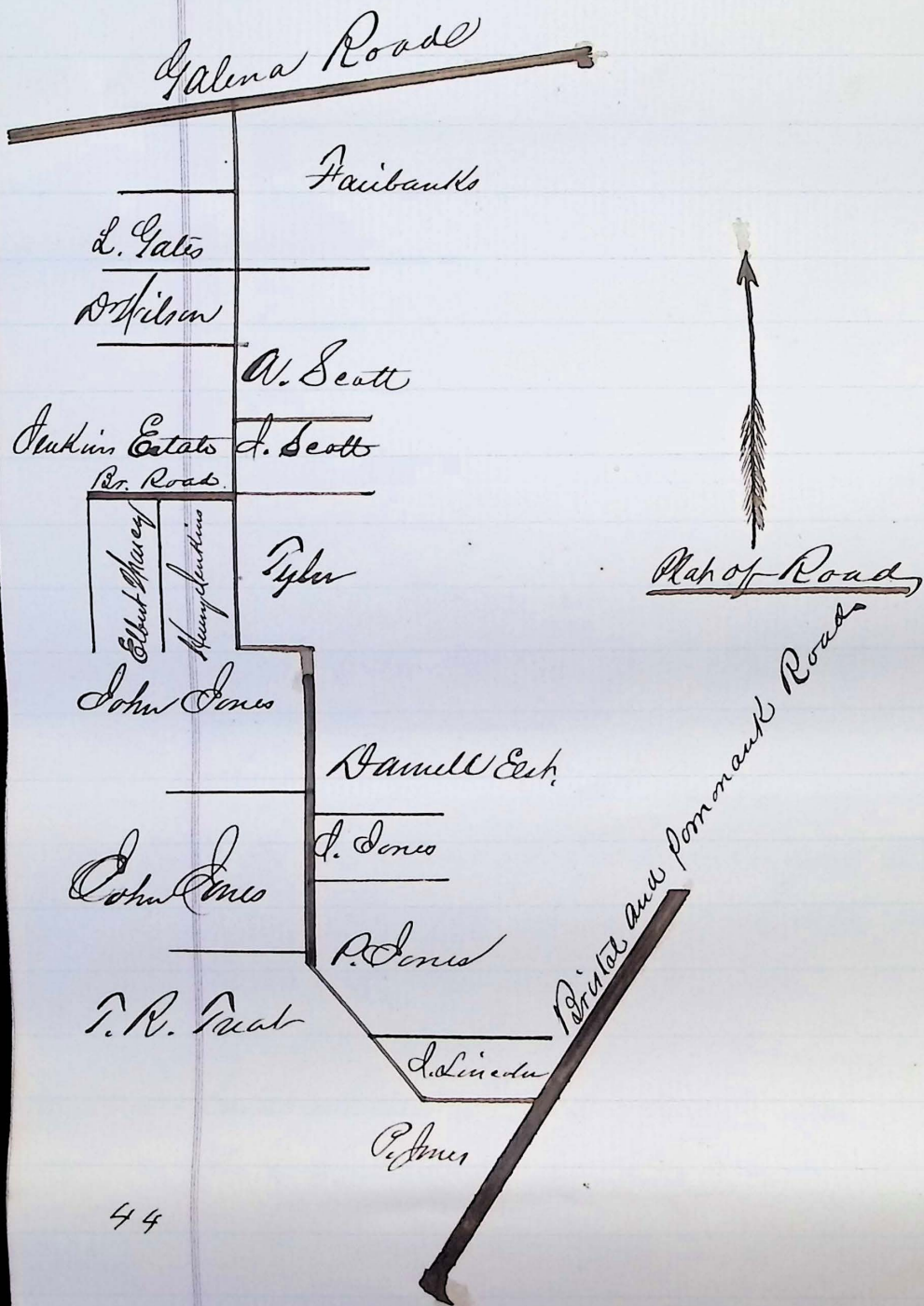
County of Kendall  
Town of Little Rock

The Commissioners Respect  
The Undersigned Commissioners



of Highway in and for the Town of Little Rock and  
County aforesaid on application by Petitioner did on the  
fifth day of March Inst. Cause a Survey to be made  
of the following route to wit beginning at the Galena  
road on the line between L. Gates and H. Fairbanks and  
running southerly on land of said Gates and Fairbanks  
and others to a point in the Bristol and Simonauk Road  
on the line dividing the lands of Pleg Jones  
and Edward Lincoln being the same route described  
in said Petition which survey is as follows,

Beginning at a Stake Standing in the center of the  
Bristol and Simonauk Road on the line between  
the lands of Pleg Jones and E. Lincoln running  
thence south Eighty two degrees fifteen minutes west  
twenty seven chains and fifty one links to the south  
west corner of said Lincoln's farm thence North fifty  
seven degrees thirty five minutes west on the line  
between said Lincoln and P. R. Treat thirteen chains  
thence same course between the lands of said Treat  
and P. Jones, twenty five chains and fifty one  
links thence North six degrees and forty five minutes  
West between said lands from chains and ninety  
seven links to the south East corner of John Jones  
lands thence North seven degrees thirty minutes  
West between the lands of P. Jones and L. Jones  
sixteen chains and thirty seven links thence same





run through lands of J. Jones sixteen Chains and  
thirty seven links to the southwest corner of lands  
belonging to the Estate of John Darnell thence same  
course between the lands of said Estate and of J. Jones  
seven Chains forty five links thence ~~same course~~  
~~between said Estate~~ <sup>same course</sup> ~~and~~ <sup>Eighty two</sup>  
~~degrees thirty minutes~~ and lands of John Perry forty  
Chains thence south Eighty two Degrees thirty minutes  
west between the lands of said Perry and of  
H. Tyler twenty Chains to said Tylers south west  
corner thence North seven Degrees thirty minutes  
west between the lands of said Tyler and Sarah  
Scott James Scott A. Scott A. Fairbanks  
on the East side and the lands of Henry Jenkins  
Estate of David Jenkins L. Nelson and Luke Yates  
on the West one hundred and forty three Chains  
to the center of the Galena Road. Also a branch  
leaving the above road at the North East corner of  
Henry Jenkins Land and running thence westerly  
on the Government Survey between the lands  
of Henry Jenkins and Elbert Sharkey on the South  
side and Estate of David Jenkins on the North  
side forty Chains to the Southwest corner of  
said Estate (a plat of which is herewith filed)  
And the undersigned being of opinion that it is  
necessary and proper that such road be laid out



It is therefore ordered that a road four rods wide  
be located and laid out according to said Survey  
and the same is hereby declared <sup>to be</sup> a public Highway

We would also report that the owners  
of lands over which said Road passes have consented  
there except T.R. Treat and Jedediah Lincoln whose  
damages are assessed as follows To T.R. Treat  
No Damages To Jedediah Lincoln No Damages

Given under our Hands and seals this 12<sup>th</sup>  
day of March A.D. 1853.

Jedediah Schuman } Commissioners of  
A. Faubanks } Highways for the  
Wm C. Humming } Town of Little Rock

---

Release of Damages  
County of Kendall }  
Town of Little Rock } A. Highway having been  
laid out on the day of  
the date herof by William C. Humming Jedediah  
Schuman and Alanson Faubanks Commissioners  
of Highway for said Town on an Application by  
Petition therefor through certain lands owned by  
us. Commencing at a point in the now  
travelled Galena road on the line between --  
A. Faubanks and L. Yates and running



South on the line between <sup>said</sup> Fairbanks and L. Gates  
A Scott heirs of Sam<sup>l</sup> Jenkins and then to the  
South East Corner of Henry Jenkins lands thence East  
along the lines of John Tunney and the Tyler  
lot to the West side of lands belonging to the heirs  
of John Dammell thence South along the lands  
of said Dammell Estate J. Tunney and J. Jones to the  
North West Corner of said Dammell land thence Southwesterly  
through lands of J. Jones to the North West Corner of  
of J. Jones lands; thence along the line of J. Jones  
and J. Jones to lands belonging to C. R. Heath  
thence Southwesterly along the lands of said Heath  
J. Jones and J. Lincoln to the South West Corner  
of said Lincoln's lands thence East along the lands  
of said Lincoln and Fleg Jones to the Road  
leading from Priest to Semonauk.

And Also a Branch leaving this road  
at the North East Corner of H. Jenkins land  
and running West along the lands of H. Jenkins  
Elbert Hargis and the heirs of Sam<sup>l</sup> Jenkins to  
the South West Corner of the last named Jenkins  
47 lands. Now therefore know all men by these  
presents that We the undersigned for and in  
consideration of the advantage and benefit  
to be derived by us respectively and the public  
generally do hereby release all claims to damages



by reason of failing out of said Road.  
Witness our hands and seals this 3<sup>rd</sup> day  
March A.D. 1853,

|                        |                      |
|------------------------|----------------------|
| John P. Jones Seal     | John Scott Seal      |
| Andrew Scott Seal      | Sarah Scott Seal     |
| Pleg Jones Seal        | Henry Jenkins Seal   |
| Alanson Fairbanks Seal | John C. Tamm Seal    |
| Elbert Macey Seal      | Adelata Jenkins Seal |

### Surveyors Report

To the Honorable Commissioners

of Highways of the Town of Little Rock - Report of  
a survey as made by the undersigned direction from  
near Pleg Jones' to the Galena Road near  
Alanson Fairbanks and more particularly described  
as follows to wit, Beginning at a stake standing  
in the center of the Bristol and Somonauk road  
and on the line between the lands of Pleg Jones  
and Frederick Lincoln running then on South Eighty  
two degrees and fifteen Minutes west twenty seven  
Chains and fifty one links on said line to  
the south West Corner of said Lincolns farm, then on  
North forty seven Degrees and thirty five Minutes west  
on the line between the said Lincoln and J. H. Treat  
nineteen Chains thence same course between the  
lands of said Treat and Pleg Jones twenty five



Chains and fifty one links to a stake thence North  
six Degrees and forty five Minutes west between said  
lands four Chains and ninety seven links to the  
South ~~West~~ <sup>East</sup> Corner of John Jones land thence  
North seven Degrees and thirty Minutes west between  
the lands of Elly Jones and John Jones sixteen  
Chains and thirty seven links thence same Course  
through the lands of said John Jones sixteen Chains  
and thirty seven links to the South west Corner of  
lands belonging to the Estate of John Warrnell,  
thence same Course between the lands of said Estate  
and those belonging to John Jones seven Chains and  
sixty four links thence same Course between  
said Estate and land belonging to John Tunny  
forty Chains, thence South Eighty two Degrees and  
thirty five Minutes west between the Lands of John  
Tunny and those of Hyatt Tyler Sack Scott -  
James Scott Andrew Scott and Mary Fairbanks  
on the East side and the lands of Henry Jenkins Estate  
of Saml Jenkins D. Wilson and Luke Yates on the  
West one hundred and forty two Chains to the Center  
of the Salina Road. Also a Branch leaving the  
above road on the North East Corner of Henry Jenkins  
land running thence westerly on the Government Survey  
between the lands of Henry Jenkins and Ellet Hacey on  
the South side and the Estate of Samuel Jenkins



on the North side forty Chains to the South west  
Corner of said Estate the above course was  
recovered from the present Magnetic Meridian  
Little Rock March 17th 1853

(Signed) Lewis Steward Surveys

State of Illinois } ss  
Henderson County } \_\_\_\_\_

Appeal

To Morris Gray  
Supervisor of the Town of Oswego " Oliver L. Johnson  
" " " " " Haunsay " J. R. L. Baron  
" " " " " Kendall in the County of  
Henderson and State of Illinois,

50  
The Undersigned being  
the Owners and Agents of Lands over which a  
certain road has been laid out by the Commissioners  
of Highways of the Town of Little Rock in the County  
and State of said the Report and order of which  
Road was filed by the said Com. in the office of  
the Town Clerk of the Town of Little Rock of said  
on the twelfth day of March A.D. 1853, failing themselves  
agreed by the determination of said Commissioners  
do hereby Appeal to You from said Order and  
determination on the following grounds to wit,  
1st Because that part of the Road lying South



of the South of the South West Corner of H. Tyler  
land is wrongly and injudiciously laid  
out

2<sup>nd</sup> Because Copies of the Petition for laying  
out said road were not posted up in accordance  
with the law in such cases made and provided

3<sup>rd</sup> Because No Notice was Given of the time  
and place when and where the Court would act  
in the Matter

4<sup>th</sup> Because the order Replat Survey and plat  
are each indefinite and uncertain and are not  
made in accordance with the Statute in -  
such case made and provided

5<sup>th</sup> Because the Damage which will be  
sustained by the Individual taking this Appeal  
if said Road be opened were not assessed  
by said Court in accordance with the laws  
in such cases made and provided.

6<sup>th</sup> Because by the <sup>said</sup> Order and determination  
private property will be taken for public purposes  
without a reasonable Compensation in Violation  
of the Constitution of the United States and  
in Violation of the Constitution and laws of  
this State

7<sup>th</sup> Because a Branch Road is laid out, whereas no such  
Road is authorized by the Laws of this State.



8<sup>th</sup> Because said Branch is essentially a private Road and is therefore not laid out in conformity to the Statute in such Cases Made and provided  
9<sup>th</sup> And Because one of the Comrs who assisted in laying out said Road (Allan F. Aubanks) over a part of whose lands said road is laid out — formerly opposed the laying out of said road but was afterwards paid a liberal Compensation for permitting said Road to be laid out over his premises and now under his oath of office refuses to allow damages to divers persons over whose lands said road is laid out.

In Consideration of the above reasons and divers other wrongs by the said Comrs done in the premises the undersigned takes this appeal in relation to the Assessment of Damages and also in relation to the laying out of said Road by said Comrs and ask that the determination of said Commissioners be entirely reversed

Done at Little Rock  
April 19<sup>th</sup> 1853

James Scott Jr.  
David Lof  
Thomas R. Cook  
Frederick Lincoln



Named Supervisor of Maanawag George M. Kendall  
before whom the aforesaid Appeal was brought by the  
within Named James Scott Jr. and others did Appoint  
in answer to their prayer the 3<sup>rd</sup> day of Nov. 1853. -  
for the hearing of said Appeal at the House of Frederick  
Lincoln at 10 o'clock A. M. and on the said day appointed  
Met for consideration of the same, O. C. Johnson and  
Wm. D. Bacon, being present Adjourned to Nov. 14<sup>th</sup>  
two weeks on which day Morris Gray being present  
the other two Absent Adjourned to Friday the 18<sup>th</sup>  
on which day all three were present to wit, O. C. Johnson  
Morris Gray & Wm. D. Bacon proceeded to the investigation  
of the Matter presented in said Appeal, and After  
hearing all the proofs and Allegations and reasons offered  
for and against said Road and Everything Connected  
with said Appeal, and After viewing the proposed  
road as located by the Corn's of Highway for the  
Town of Little Rock do find and Acclaim as our  
determination that we acquiesce with said Corns,  
in laying out said road and we do further find and  
award to Thomas R. Neal the sum of seventy five  
Dollars Damage and to Frederick Lincoln the  
sum of seventy five Dollars Damage which amounts  
of Damages we do verily believe the said Th. R. Neal  
and Frederick Lincoln do sustain in consequence  
of said Road passing over their Land.



The others who joined in the said Appeal not  
being in our Estimation entitled to any Damages  
in consequence of laying out said Road

Done at Little Rock Nov. 19<sup>th</sup> 1853

Olin L. Johnson } Defensors of  
Thos Gray } Oswego Mansuay  
Jm B. B. B. } and Kendall

The Defendant thus introduced Henry  
Dunkins who said that he was a son of Samuel  
Dunkins deceased. That the land on the North  
side of the Road Marked upon the plat of the  
Branch Road belongs to Saml Dunkins Estate at  
the time of laying out said road that the land  
a part of the way on the South side of said Branch  
Road belongs to the <sup>Defendant</sup> ~~Defendant~~, as is shown by said  
plat - That Withee was administrator and Celestia  
Dunkins was administratrix of Samuel Dunkins  
Estate at the time of laying out said Road -  
and Branch Road - That Samuel Dunkins left a  
widow and four Children that Celestia Dunkins was his  
54 widow and Henry Dunkins John Dunkins Thomas  
Dunkins and Jane Scott who married said William  
Scott were his only Children that said Samuel  
Dunkins died without Making any will - That



Witness purchased the interest of Thomas Jenkins  
in the Jenkins Estate and that William Scott purchased  
the interest of John Jenkins in said Samuel Jenkins  
Estate that he purchased from John and Thomas Jenkins  
was after <sup>the</sup> signing of the Release by the said Celeste  
Jenkins Mary Jenkins and William Scott. That William  
Scott and witness sold and conveyed to William Taylor  
by deed in the Winter and Spring after the Road was  
laid out that Thomas Jenkins and John Jenkins were  
not in the State when the Road was laid out, that  
Mary Jenkins & Celeste Jenkins were in the possession  
of the Jenkins Estate at the time the Road was laid  
out that the fence was pulled down near where  
the Branch road opened into the Main road that the  
fence stood about eight feet into the Main road that  
Samuel Jenkins <sup>at some times</sup> intended to have the Branch Road  
and had built a rod fence with reference to the  
same - that people some times when coming through  
the fields travelled on said Branch Road, and some  
times travelled in other places. That at the time Pitt  
Taylor got the possession of the land it was in the  
winter and the fences were down when the Branch  
road opens into the Main road that there had  
been a fence there before but it was down when  
Taylor got the possession. That the Main -  
Road had a Gate opposite Andrew Scotts and a



gate or two on the other side of plaintiff's premises  
on Cross Examination witness stated that he did  
not know when the line of the Main road was  
that he did not see the lines run and never  
knew when the line of the Road was that <sup>it</sup> was only  
his opinion that the fence stood eight feet in the  
Road

Rebecca Jenkins was then produced by Deft.  
who stated that she was the Widow of Samuel Jenkins  
deceased that she signed the Release - Her husband  
had at one time built his fence with reference to the  
Branch Road there was no objection that she knew  
of to laying out said Road on the part of the heirs  
of Jenkins Estate that she and her son Henry had  
possession of the Jenkins Estate at the time the road  
was laid out that the land had been divided by  
order of Court before that time by the heirs of Jenkins  
Estate and the Widows down set off ---

--- On Cross Examination Witness said  
she never saw the heirs of Jenkins Estate that  
is John Jenkins and Thomas Jenkins for some  
time before said Road was laid out and ~~and~~ <sup>did</sup>  
56 Not know whether they objected or not she never  
heard them object, did not know as they knew that  
said Road or Branch Road was to be laid out  
or was laid out when they sold <sup>and</sup> conveyed the



also stated that Jane Scott was one of the heirs of the Jenkins Estate and wife of William Scott that Jane had never signed Release. That Thomas and John Jenkins were also heirs of the Jenkins Estate that they had neither of them signed the release of damages. That her portion of Land set off to her was on another part of the farm and did not come down to the place where the trespass was committed.

Witness also testified that James Scott owned land immediately opposite the place where said fences <sup>which belongs to plaintiffs</sup> were pulled down and he had never signed the Release.

Andrew Scott being produced and sworn by Defendant testified that he knew the place where said fence was pulled down that it was at the place where the Branch road opens into the Main Road that one part of said fence that was pulled down was <sup>across</sup> what is called the Main road and one part across the Branch road where it opens into the Main road. That that there were Bars at each of the places where the fence was pulled down sufficient for teams and wagons to pass, that he thought the fence when it was pulled down across the Branch Road was in the Main road that he was path master that year and he believed that Road

57



labor was put upon said Chain Road.

On Cross Examination the Witness stated that he does not know whether the fence <sup>that</sup> was pulled down across the Branch Road was in the main Road or not he never saw the line of the Road run and he never saw any stakes or any other marks to designate the location of said road that he can't say that there was any other work done on that road until after the trespass was committed except what he did in front of his own house in bridging a Slough for his own convenience. That there was a gate on said Chain Road some 3 or 4 rods beyond his house across said Chain Road during the whole summer of 1855 and another gate or two on said Road after passing plaintiffs premises from my house that there was no way of getting through on said Chain Road in the summer of 1855 except by opening gates — —

Which was all the evidence on the part of the said Defendant and the said Plaintiff and no other evidence being offered by either party Verdict the

58 Plaintiff asked the Court to give the following instructions to the jury; — — — — —



1 If the Jury believe from the evidence that the Defendant threw down the fence or bars of the Plaintiff, and has shown no authority or justification for so doing the Jury will find for the Plaintiff

2 If the Jury believe from the evidence that the Defendant broke down the fence on land in possession of the Plaintiff and passed over said land with his Teams and Cattle, the Defendant in order to justify such trespass on the ground that the place was a common and public Highway laid out in 1853 is bound to show that the Damages sustained by reason of laying out or opening said road were ascertained either by agreement between the owners of the land and Commissioners of Highway or assessed by the Commissioners after notice given by the Commissioners to the parties of the time and place where they would act on the question of damages that they might be present if they wished so to do, or that their damages were released by the owners " "



3

That to afford a legal presumption that the road in question was a Public road giving the Defendant a right to pass over it and remove obstructions from the fact of its having been travelled. It must appear from the evidence that it has been travelled by the public as a Highway and recognized and kept in repair as such by the commissioners and others whose duty it was by Law to open and repair Public roads.

4.

That before the public have a right to open and use a road laid out by the Highway commissioners it must appear from the evidence that the Damages of the several owners of the Land over which it passes have been agreed upon between the commissioners and the owners or assessed by the commissioners after giving notice to said owners of the time and place when and where such assessment was to be made thereby giving them an opportunity to be heard, or that the right of way secured to the Public by the release of the owners filed in the Town Clerks Office



5- Assessment of Damages, or securing the right of way by agreement Assessment or release is not to be presumed to be done without evidence of the fact and the further of proof is on those claiming the right of way to prove that the Damages have been ascertained by agreement or assessed as the Law directs, or that the owners have released the same. " "

6 If the Jury believe from the evidence that Samuel Jenkins died owning real Estate and without making a will, leaving James, Henry, John, and Thomas Jenkins his Children and heirs, at Law they were tenants in common of said real Estate, and the release of one tenant in common of the right of way can not extend beyond his own claim for Damages and can not effect the right of his, & tenant

61  
7 If the Jury believe from the evidence that the Defendant was so isolated or shut in that he had no road out from his premises the Law provides or



way for him to obtain a private or cart road, but he has no right in Law on that account to open a road for himself or pass over the premises of other persons without permission or right established according to Law " "

8 That to constitute or establish a road as a public road by dedication it is necessary that the owner grant the Land to the public for that purpose and that it has been accepted by the public and recognized by them as such

4 That although the Jury might believe from the evidence that the road in question was properly laid out and the Public had a right to pass over it - yet if they believe that the Defendant in the removing the obstructions committed unnecessary damage, he is liable in the action to the Plaintiff for such damages. " "

62 The Plaintiff by his purchase succeeded  
10 to all the rights vested in his grantors in reference to the Land in question at the execution of the Deeds of Conveyance " "



11 That Pelesta Jenkins as the Widow and  
Administratrix of Samuel Jenkins, although  
in possession of the premises, when the road  
was laid could not without authority from  
the several owners do any act which would  
bind them in reference to said Road "

12 William Scott could release nothing  
more than the interest he had in the premises  
at the time he signed the release, and if the  
Jury believe from the evidence that all  
the interest he had in the premises when  
he signed the release was by right of his wife  
the fee being in her his release would not  
effect her rights unless she joined in the  
release and acknowledged the same before  
some Officer authorized to take such acknowl-  
edgment separate and apart from her husband

13 If the Jury believe from the evidence  
that after signing the release William Scott  
obtained the interest of John Jenkins and  
conveyed the same to the Plaintiff, then the  
Plaintiff succeeded to the rights of John Jenkins  
and the question of damages in the  
premises " " "



The Court then instructed the jury as follows for Defendant

1 If the jury believe from the Evidence that the Land, composing said Contested Road route was not <sup>an</sup> enclosed or Cultivated field and that the parties having possession thereof opened the Road then it was not necessary to give sixty days Notice in order to open said Road.

2 If the jury believe from the Evidence that said Jenkins was the owner of the land in his lifetime and while he owned the land fenced out and granted to the Public a right of way over the lands in controversy on what is called "The Branch Road" and that said grant of a road by Jenkins before the same was <sup>(first)</sup> ~~marked~~ by Jenkins was accepted by the Highway Commissioners of said Town of Little Rock then that would constitute a Highway by dedication and the Defendant would be justifiable in pulling down all obstructions which interfered with said right of way.

Reverted)

3 If the jury believe from the Evidence that there was a legally laid out Highway and opened by the parties interested and that the same after being laid out and opened was obstructed and that merely the Defendant only took such obstructions

4 4



out of said Road, doing no unnecessary damages  
then they should find for the Defendant,

Of the Jury believe from the Evidence that Taylor  
only succeeded to the interests of Henry Jenkins <sup>and</sup>  
4 William Scott and Telfer Deciding to Taylor  
Scott and Henry had released all Claims for  
damages to the Public then that is a fact which  
the jury may consider in determining whether  
the place where the alleged trespasser was committed  
was in a public Highway.

5 The acceptance of land dedicated by an  
owner of land to the public for a Highway may be  
shown by use by the public by travel or by  
acts of public officers in repairing the same.

Therefore if the jury believe from the Evidence  
that the land in question upon which said fence  
stood was dedicated by its owners to the  
public for a highway and was used by the  
public for a highway and that the Plaintiff  
built said fence on the Highway then the Defendant  
has a right to remove and throw down the fence

6 Of the Owner of land over which it is  
proposed to construct a road Claims are



Assessment of Damages he must in the first instance when opportunity is given object to the location of the road across his lands or he will be precluded from afterwards insisting upon damages - 11<sup>th</sup> Ed page 497. - 13 Ill. page 211.

6 The jury are instructed that a dedication for a Highway may be proved in various ways. It may be proved by written Grant by long and uninterrupted use or by the acts and declarations of the owner of the premises. They find if the jury believe from the Evidence that said, Quinlan Deceased in his lifetime was the owner of the Grounds, dedicated the same to the Public for a Highway and was accepted by the Public as a Highway and the fence in question was situated in such Highway the jury will find for the Defendant.

7 The jury are further instructed that the public are entitled to the whole road and a person has no right to place an obstruction on any part of a Public Road.

66  
8 The jury are further instructed that no particular length of time is



Necessary for Evidence of Dedication if the act of  
dedication be unequivocal it may take place in-  
-mediately and therefore the jury believe from the  
Evidence that the owners of the land in question  
dedicated the Ground in question to the Public by  
moving their fences back and using the Ground  
for a Highway and if the Public accepted  
the Ground so dedicated by travelling on the  
same or repairing the same and there was  
such dedication and acceptance from the Plaintiff  
purchased the same then he took it with such in-  
-consequence and he would have no right to resume the  
possession as against the Public.

As the giving of which instructions for said  
Defendants by the Court the Plaintiff then and  
then Excepted -

The Jury found a Verdict for  
the Defendants - Whereupon the Plaintiff moved  
the Court for a New Trial herein for the following  
reasons -

1st. The Court Erred in receiving the  
Defendants Testimony in relation to laying out  
said Road particularly the Report of the Com-  
-missioners of Highways



2<sup>nd</sup> The Court Erred in giving Defendants instructions.

3<sup>rd</sup>. The Verdict is against the law and the Evidence.

The Motion for a New Trial was overruled by the Court. To the overruling of which Motion by the Court the Plaintiff then and there Excepted and pray that his Bill of Exceptions may be signed and sealed by the Court and made a part of the Record herein which is done.

M. E. Hollister      Seal  
Judge &c.



And afterwards to wit on the 27<sup>th</sup> day of February A. D. 1860 the Plaintiff herein filed in the office of the Clerk of the Circuit Court of said County in his own proper person his Appeal Bonds which is in the words and Figures following to wit;

"Know all men by these presents that I William Taylor as principal and John D. Smith as surety of the County of Kendall and State of Illinois are held and firmly bound unto Elbert Macey of the same County and State in the special sum of five thousand Dollars for the payment of which well and truly to be made we do bind ourselves and each of our heirs Executors administrators and Assigns jointly, severally and firmly by these presents. Witness our hands and seals, dated at Chicago this 27<sup>th</sup> day of February A. D. 1860

The condition of the above obligation is such that whereas in a certain suit tried at the January Term of Kendall County Circuit Court A. D. 1860 wherein William Taylor was plaintiff and the said Elbert Macey was Defendant in an action of Trespass upon Real Property the said Elbert Macey did recover a Judgement for Costs against the said William Taylor from which said Judgement the said



William Taylor did at the time of rendering  
said Judgement pray an appeal to the Supreme  
Court of the State of Illinois which was allowed  
at the time - Now if the said William Taylor  
shall prosecute his said Appeal with effect and  
without delay and shall pay the said Judgement<sup>and</sup>  
all Costs which have or may accrue and all  
interest and Damages in Case the Judgement shall  
be affirmed in the said Supreme Court then the above  
obligation to be void otherwise to remain in full  
force and Effect

Wm Taylor *Test*  
John Samuel *Test*

Filed July 2<sup>nd</sup> 1860

G. H. Hollenback R

Clerk



State of Illinois  
Newell County Geo J. George M. Hollenback

Clerk of the Circuit Court  
in and for said County do hereby Certify that the above  
sub foregoing is a full and complete transcript and Copy  
of all papers remaining on file in my office in the  
Matter in which William Taylor is Plaintiff and Elbert  
Macey is Defendant in an action of Trespass and  
that the proceeding herein given as being entire of  
Record in said Court in said Cause are all of  
the proceeding had and entire of Record in said  
Court in said Cause

In Witness whereof I have hereunto  
set my hand and the seal of said  
Court at Oswego in said County  
the 6th day of April A. D. 1870.  
G. M. Hollenback

Clerk



Wendell L. L. L.

William Taylor

W. W. W.  
W. W. W.

T. W. W.

T. W. W.

W. W. W.  
W. W. W.  
atty



Supreme Court of Illinois, Third Division.

April Term, A. D. 1860.

William Taylor, Appellee,

vs.

Elbert Marcy, Appellant.

}  
}  
} Appeal from  
} Kendall.

Afterwards, to wit, at the said term of the court aforesaid, comes the said appellant, by Joseph W. Helm, his attorney, and says, that in the record and proceedings aforesaid there is manifest error, in this:

1st. The court below erred in admitting incompetent testimony on the part of the defendant.

2nd. The court below erred in giving the instructions, and each of them, asked by the defendant.

3rd. The court below erred in refusing the plaintiff's motion for a new trial.

4th. The court below erred in giving judgment for the defendant, when by the law of the land judgment ought to have been given for the plaintiff.

And the said appellant prays that the judgment aforesaid may be reversed, set aside, and altogether for naught held.

W. Helm  
for Appellant



~~266~~ 63 - 130

Supreme Court.

William Taylor

vs

Elbert Marcy

3<sup>d</sup> Division

} April Term 1860

Record -

W. H. Hume

for appt

Filed Apr. 14, 1860

L. Deland

CLH

\$10.00. Hume