

12862

No. _____

Supreme Court of Illinois

Merritt, et al

vs.

Farris, et al

71641  7

156

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Stephen Merritt

others vs

John G. Tarriss

others.

156

388

12862

Was before the Circuit Court of Marshall County in the State of Illinois at a
Term thereof begun and held at the court house in the City of Lacon in said County
on Monday the twenty fourth day of January in the year of Our Lord One thousand eight
hundred and fifty nine. Present Hon M Ballou Judge of the 23^d Judicial Cir-
cuit of the State of Illinois Presiding - George M. Steyer States attorney for said
Judicial Circuit - Thomas Ellis Sheriff of said County and James Woodcock clerk of
said Court.

Bill of Exceptions Stephen Merrill et al } Bill of Exceptions
vs } Be it remembered that
John G Farris et al } this day came the complainants by G
L Fort their counsel, and file their
bill of complaint herein which is as follows

Complainants - State of Illinois County of Marshall, ss
Bill And the Circuit Court thereof

To the Honorable Martin Ballou Judge
of the Twenty third Judicial Circuit
Court of the State of Illinois
In Chancery sitting

Humblly complaining would Respectfully
represent unto your Honor - Stephen
Merrill, James P. King, Samuel Richey,
John Dunlap Jr. William T. Honeywell
William Murray, John Batts, M

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that they are residents and tax-payers of Marshall County Illinois and that they are all except Stephen Merritt & Samuel Rickey Residents of School District No. 10 in Township No. thirteen 13 North and Range No nine (9) East in said County, and that said Rickey is the owner of Real Estate in said district, and that said Merritt is the owner of both Real and personal property in said district, all of which is subject to legal taxation.

The said school district No. ten is composed of all of Sec. No. 31. the S. 1/2 of Sec. 30. the N. 1/2 of Sec. No 32. and the S. N. q. of Sec. No 29. all in said Township No. 13 N. 9. E. a plat of which is hereto attached marked Exhibit A.

Your orators would further represent to your Honor that John G. Farris Har- mon Andrews & Warner Combs pretended to act as school directors of said school district No 10 up to sometime in the month of October last. from the time said district was organized.

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and that Harmon Andrews, Warner Combs & Daniel Dill now pretend to act as directors of said district as successors to the first named directors. And your Orators further represent unto your Honor that said John J. Farris Harmon Andrews and Warner Combs. while pretending to act as school directors of said school district to ten (10) - and while assuming to act in that capacity attempted to authorize, and to cause to be levied, an enormous, and burthensome tax on the property of said district, and by said attempt have wrongfully induced Washington E. Cook the County Clerk of said county to assess and compute said taxes upon the valued property of said district which is very grievous to be borne by the property owners of said district and particularly by your Orators.

Your Orators further shew that said persons first named as school directors while attempting to act as such made out and signed a certificate or writing, bearing date on the 8th day June A. D. 1858, and returned

Bill of Exception
Continued

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the same to said Clerk in which and by which they authorized and required or certified that they had estimated to be levied or raised a tax of one per cent for the purpose of extending schools beyond six months in said district, and also six percent for ordinary school purposes making seven per cent upon the property of said district, a true copy of which certificate or writing is hereto attached and marked Exhibit B. and is hereby referred to and made a part of this your Orators bill of complaint. And that said Clerk in compliance with said writing signed by said John S. Jarvis Harmon Andrews and Warner Combs, assessed and levied seven per cent school tax over & above all other taxes on the property of your Orators as follows To Wit.

	Sec	T.	R.	Val	Schall Tax
Stephen Merrill	A.E. 31	13.	9	\$1120.	\$78.40
do "	S.E. 30	"	"	1120.	78.40
Saml Riekey	N.W. 31	"	"	1280.	89.60
W. C. Honeywell	Sp. S. W. 31	"	"	600.	42.00
Jas. P. King	Sp. S. W. 31	"	"	600.	42.00
John Dunlap J	Sp. S. E.	"	"	455.	31.85
J. R. R. R.	Sp. S. E.	"	"	585.	40.95

(changed to)
585. 40.95

Personal Property

S. Bennett	val. \$494.	\$34.58
Ed. Shackelford	387.	24.99
Jas P. King	241.	16.84
W. S. Honeywell	194.	13.58
Wm Murray	162.	11.34
John Betts	209.	14.63
5 John Dunlap Jr.	189.	13.23
H. Beaumont	75.	5.25

Which assessment and levy of tax was made by said Clerk wrongfully by said persons pretending to act as school directors and by said Clerk, and is now in the hands of William Rowe the tax collector of said Township, with a warrant for collection attached thereto issued by said Clerk authorizing and requiring said collector to make said taxes, and said collector is now demanding payment thereof and is threatening to make collection of said unjust taxes by seizure, levy and sale of the property of your Orators which would be to their great damage and injustice of your Orators. — Your petitioners further show and charge the fact to be that there are a number of persons resident in school district who now own and have

Bill of Exceptions

Continued

for the last year past owned a large amount of personal property upon which there is no levy and assessment of school tax as aforesaid. That is to say Mrs Mary Grief wife of Daniel Grief decedent owns property valued at \$250. —

Levi Tanquary	100. —
David Gill	900.
Geo Cook	<u>300.</u>
Total	\$1550. —

§ upon which the tax at the aforesaid rate would have amounted to \$108.50 That said taxes as levied amount to \$981.⁵² and if the 122.50 was added it would make \$1090.52 — your petitioners further represent and charge the fact to be true — that no election has ever been held in said district or any question ever been submitted to the People or voters of said district for, or to fix on, or select a site for any school house, or to remove any old one or for the levy of any tax to purchase a school house site, or any school house, or to build any new school house or for any Location or purchase, or erection of any such school house, since the said district was organized or established or of the people or voters of the territory out

No election

No vote

of which the said district was organized and no election or vote was ever had taken or proposed for any other purpose than the election of said directors and no other question proposition or thing was ever submitted or proposed to the people of said district or to or at any meeting except the election of said directors. —

✓ And your petitioners would further charge that no notice of any kind has ever been posted given or set up by said directors or other person or persons for any such election vote or purpose in said district

And do further charge that no school house site has ever been purchased or any grant ever been made or any deed ever made for a school house site in said district and that there appears none of Record

Orators further represent that there are a very small number of scholars in district and that it would not cost over two hundred dollars to procure and employ good and competent teachers to teach all the scholars in said district during the term of six months of the year + pay all expenses of the same, and that a suitable school house could be built abundantly

Bill of Exceptions
Continued

good and sufficient to accomodate all scholars in said small district for the sum of from three to four hundred dollars. — four hundred at the furthest. And further represent that the amount levied as aforesaid is more than three per cent on the value of all the property in said district. and a tax of over three per cent can in no case be levied. —

8 Your orators further represent that the house in which the said persons pretending to act as school directors have caused to be kept a school — and which house your petitioners have understood was sometimes called a school house is not central in said district as will appear by the attached plat of said district hereby already referred to and that the same was not located and erected by the voice or consent of the people of said district legally expressed. — and would further show that said John G. Farris claims said house as personal or individual property and that is not the property of the district. And further represent that if in any event if said directors should ever intend to dedicate said building (which is not central and not the choice of the people) to said district

9 it could not be done — for the reason
that they do not hold the title thereto as ap-
-pears of Record, but on the contrary thereof
the said John E. Farris does not nor never
did hold a good title to said land or site
on which said house is erected, and further
that the said John E. Farris did on or
about the 1st day of April 1858 execute and
deliver to Doric E. Warner a trust for all
of the $\text{N}\frac{1}{2}$ $\text{N}\frac{1}{4}$ of Sec No 32. T. 13 N. R.
9. E. upon which land said house sometimes
used as a school house is situate and
which deed embraces said house and is duly
recorded in Book No page 28 of the Records
of said county and which is referred to and
made a part hereof, and which trust deed
is not made for the benefit of said district
but is for the benefit of said Warner, and
is now due unpaid, and said land is sub-
ject to be sold at any day including said
house, whereby the title to the to the site
on which said house is situate is not in
the control of said directors or any of them
or of said district or any person for the use
of said district.

Your Orators therefore charge that said
Farris, Andrews, and Combs acting as directors
or aforesaid nor in any other capacity nor

Bill of Exceptions
Continued

any other person, had any power right or authority to authorize or to attempt to authorize the computation, levy and collection of any such tax as aforesaid for the purposes set forth in their said writing or certificate or for any other purpose whatever and that it exceeded their power in amount and was beyond their jurisdiction in purpose and was insufficient to authorize said clerk to compute and assess said tax and said collector ought not to be allowed to demand and collect the same.

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In as much therefore as your Orators are remediless at Law they invoke the aid of Chancery under the dispensation of this Honorable Court, and pray that the said John S. Harris, Harmon Andrus, and Warner Combs, Washington E. Cook & Daniel Deal may be made defendants hereto and that a subpoena in Chancery may issue summoning them and each of them to be and appear before this Honorable Court and that they and each of them be required to answer all and singular the matters and things herein before contained the oath of said defendants being hereby waived And also that said William Rowe Tax collector as aforesaid be also made party

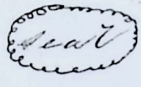
defendant hereto that he be summoned
to answer as aforesaid. And that a writ
of Injunction may issue out of this Hon-
orable Court enjoining and restraining all
of said defendants and all persons through
and under them from collecting or attempt-
ing to collect any part of said tax of or
from your Petitioners or any of them. —
And for such other and further relief as
shall seem according to equity and good
conscience. And as in Duty bound will
ever pray &c.

Stephen Merritt
James P. King
Samuel Rickey
John Dunlap Jr.
William J. Honneywell
William Murray
John Betts
M. Shackleford.
H. Beaumont

State of Illinois }
County of Marshall } ss. John Dunlap, James
P. King, Wm J.
Honneywell & William Murray, being duly
sworn doth depose and say that he is
one of the above named Petitioners, and

Bill of Exception
Continued

that he has heard the above Petition
or bill read over to him & fully explained
to him, and that the same and all things
therein contained as stated are true in sub-
stance, form and fact.

Subscribed and sworn
to this first day of Feb.
A. D. 1859, -
J. L. Fort 
Co. Judge

John Dunlap Jr
James P. King
Wm S. Honeywell
Wm Murray

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Exhibit A.

	30	OK	29	
		Clerritt		
H.	Rickey			E
	21		32	
	J. P. King	J. Dunlap		
	W. S.			
	Honeywell	J. Batts		

J

Exhibit B
We the undersigned directors of district No. 10 township No 13. range No 9 in the County of Marshall and State of Illinois do hereby certify that said board have estimated and required to be levied for the year 1858 the rate of six for general school purposes. and the rate of one for paying teachers. and extending terms of schools on each one hundred dollars valuation of taxable property in said district.
Given under our hands this 8. day of June 1858.

John G. Farris
Harmon Andrews } Directors
Warner Combs

Filed June 28. 1858 W. E. Cook clerk

13 And upon the hearing of which an injunction was allowed according to the prayer of the Bill
February 8th A. D. 1859.

Order of Court Stephen Merrill James P. King
granting injunction Samuel Rickey John Dunlap Jr
William S. Honeywell William Murray
John Belts M. Shakelford
v H Beaumont

vs

John G. Farris Harmon Andrews
Warner Combs Washington E. Cook
Daniel Dick & William Rowe

Bill for Injunction

This day came the complainants by G. L. Fort their solicitor and file their bill for injunction herein, and the court having considered said Bill of complaint, and being now fully advised in the premises, doth order that an injunction issue according to the prayer of said Bill.

[1206207]
Be it also remembered that afterwards upon the coming in of Defts answer to said Bill & their affidavits in support thereof the cause was heard upon Bill, answer

& affidavits. Which answer and affidavits are as follows.

Bill of Exception
Continued
Defendants
Answer

State of Illinois
County of Marshall

} ss

In the Circuit Court
To the January Term 1859

Stephen Merritt
James P. King et. al.

vs.

Harmon Andrews
Warner Combs et. al.

In Chancery
Bill for Injunction

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The joint and several
answer of Harmon Andrews, Warner Combs
John E. Ferris, Washington E. Cook & Daniel
Leibel and William Rowe. Defendants to
the said Bill of Injunction.

The said defendants saving and reserving
to themselves all and all manner of excep-
tion to the many inaccuracies misstate-
ments and insufficiencies in said Bill con-
tained for answer, to the same or to so much
thereof as they are advised is material &
necessary for them to answer unto answer-
ing say, that they admit and suppose it to
be true that complainants are all residents
and tax payers of Marshall County, that
they are all except said Stephen Merritt &
Samuel Rickey residents of the school dis-
trict named in said Bill. - That said
Rickey is the owner of Real estate in said

district. — That said Merrill is the owner of real estate in said district, but has no personal estate in said district to respondents knowledge. — That said school district is composed of the real estate or territory mentioned in said Bill. —

Defendants admit that Harmon Andrews Warner Combs & John E. Ferris did act as school directors in said district as stated in said Bill and were the directors of said district No 10. as stated in said Bill and that said Harmon Andrews, Warner Combs and one Daniel Deihl are now school directors for said district. — That said Ferris, Andrews, & Combs, while acting as such school directors did cause to be levied a tax upon the taxable property in Residents of said district as set forth in said complainants Exhibit "B." except that said directors did not levy said tax for the purpose of extending schools in said district for a period beyond six months in the year — and excepting further that said director returned with their said certificate a list of the resident tax payers in said district.

That pursuant to and in compliance with said certificate a copy of which is the

Bill of Exceptions
Continued

said Exhibit "B" they the said directors assessed and levied the amount of tax as alleged in said Bill. Defendants admit that said Rowe is collector of taxes in and for the township in which said district is located that said collector has now in his hands a collectors warrant from said County Clerk authorizing him to collect taxes assessed in said town and that he is now prepared to, and about to proceed to collect said tax as alleged in the said bill except as is hereinafter particularly specified & set forth.

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That said Mary Grief, Tanguay, Gill & Cook are not assessed as charged in said Bill and defendants aver that Grief & Tanguay were returned in the said list of Resident tax payers of said district to said County Clerk of said County and were not taxed because they were not returned as taxpayers or as assessed by the assessor of said town for the previous year and that the said Gill never was taxed or assessed in said district for the reason that the assessor for the past year could never find such a man as David Gill in said district, and that no such a man as George Cook has ever lived in said district as

respondents have ever known, and they
here aver that they do not believe there
is now or ever has been any actual resident
in said district by the name of George Cook.
Defendants further answering deny that no
election has ever been held in said district
or any question been submitted to the people
or voters of said district for or to fix on, or
select a site for any school house or for the
levy of any tax, or to build any such school
house, or for the erection of any school ho-
use since said district was organized or
17 established, or of the people or voters of the
territory out of which said district was or-
ganized. — Defendants further deny that
no election or vote was ever had, taken or
proposed for any other purpose than the
election of said directors. — on the contrary
Defendants allege that there was a vote of
the people or voters of said district taken
on the 6th day of April 1857 upon the
selection of a site for a school house and
for the building of a school house in said
district. — That the said voters in said
district did on the said 6th day of April 1857
vote upon, and by their said vote as afore-
said decided upon a site for a school house
and did further decide that the said school

Bill of Exceptions
Continued

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directors of said district should proceed to build a school house, upon said site as voted upon and selected of dimensions as follows to wit; 21 feet by thirty feet of brick. Defendants further answering deny that no notice of any kind has been posted given or set up, by said directors or other persons, in said district. — but on the contrary Defts aver that a notice was posted given & set up in said district on the 23^d day of March 1887 by direction of said directors, Ferris, Andrews & Combs for election of directors and for selecting a school house site — That pursuant to said notice the meeting & vote aforesaid was taken & held as above alleged, and that at said meeting said voters did by their vote then and there taken, order and direct and authorize the said directors Ferris Combs and Andrews to proceed to build a school house on said site — of brick of the dimensions aforesaid. — as all of which matters and things respecting said votes, notices, &c will more fully appear by reference to the record book of said directors, now ready to be shown to the court & made part hereof. Defendants deny that no school house

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site has ever been purchased or any grant ever been made or any deed ever made for school house site in said district. But on the contrary Defts allege that said John G. Ferris. did. at said meeting at the time said vote was taken as aforesaid. and in the presence of the said voters. offer and tender to said district. one half acre of ground as a gift to said district for said school house site and that said Ferris has since deeded said half acre of ground by a good and sufficient deed of Warranty to said district and delivered the same to said directors which deed is here now ready to be shown to the Court & made part hereof & bears date 23^d December 1857. Defendants allege that there are now in said district forty seven children in said district under the age of twenty one years. Defts admit and suppose it to be true that \$200. would procure & employ competent teachers for all the scholars in said district for six months and pay expenses of the same. Defts deny that a suitable school house for the accommodation of all the scholars in said district could be built for from 500 to 400 Dollars but on the contrary allege that said directors

Bill of Exceptions
Continued

have built a school house in said district upon said site according to said directions and vote, and that said school house so built did in fact cost the sum of Seven Hundred Sixty one dollars and sixty cents \$761.⁶⁰. Defendants further aver that said school director Ferris, Andrews & Combs did in fact build said school house in the cheapest & most economical manner they could consistently with the directions and requirements of said voters at said meeting or voting. 21 Defendants admit that the said tax levied as aforesaid of seven per cent is more than 3 per cent. but defendants allege that they are instructed and advised that a tax of more than 3 per cent can be levied. Defendants allege that said school house is in as central a location in said district as the same can be made or located without putting the same in the centre of a section where there are no roads laid out either public or private. That said school house is not more than about $\frac{3}{4}$ of a mile from the furthest house from it in said district. Defendants admit that Exhibit "A" to complainants bill is as correct as such exhibits usually are. —

That said John S. Ferris does not claim
said school House as his property. but
defts admit that said school House is
the property of the district. Defendants
admit that said John S. Ferris did ma-
ke a trust deed as set forth in said Bill
but said defendants allege that said
trust deed is released as to said school
house site & that said release does app-
ear of record, as will appear by reference
to the records of said County made part
hereof. Defendants further answering wo-
uld state, that pursuant to the aforesaid
authority of the legal voters of said distri-
ct, the said director Harmon Andrews,
Warner Combs & John S. Ferris did proceed
as aforesaid to build a school house on
said site costing as aforesaid something
more than the sum of Seven hundred Dollars
which school House was completed & made
ready for schools about the first day of No-
vember A.D. 1857. and that the said di-
rectors have caused a school for the acc-
ommodation of all the scholars in said
district to be kept and maintained in said
school house at the rate of six months in
each year since the first of November A.D.
1857. That during the spring & summer

Bill of Exceptions
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of 1857 said directors Andrews Combs & Ferris in good faith & for the good of said district caused a tax to be levied and assessed - on the property of said district to the amount of Five Hundred Dollars. which Five Hundred Dollars of tax said directors supposed would be sufficient to make the payment agreed upon with the builder of said school house, for that year to wit: A.D. 1857. intending to get up a subscription to support the school for that year which they did. - That said Five hundred dollars tax so levied was would have met the paymt for the year 1857 promised to the contractors & builders of said school house - That the collector of taxes for said town for the year 1857 did proceed under a warrant from the clerk of the County Court of said county to collect said Five hundred Dollars tax and had actually collected the sum of Three Hundred and seventeen Dollars of the same. when certain of the taxpayers of said district to wit, said Stephen Merrill Pickey & King - obtained from this court a writ of Injunction restraining and enjoining the said collector of said town for said A.D. 1857 from collecting said

Five Hundred Dollar tax and declaring
the said assessment for said year 1857,
irregular and unlawful — which injunc-
tion Defendants are advised was made
perpetual by this court. — Defendants
further say that upon said Five Hun-
dred Dollar tax having been declared
irregular and unlawfully levied & assess-
ed as aforesaid, they proceeded to cause
to be levied and assessed in the summer
of 1858 an other tax upon the taxable
property of said district of sufficient
amount to pay for building said school
house and for defraying the expenses of
keeping up a school in said district for
the period of six months in the year, to
wit: a tax of six per cent on the one
hundred Dollars of taxable property in
said district for the former of said purpo-
ses & a tax of one per cent on said proper-
ty for the keeping up or extending schools
in said district for the period of six mon-
ths in the year and not beyond six months
That said persons in said District who paid
towards building said school house under
the assessment of 1857 are to be paid their
said several amounts so paid by them out
of the said assessment of 1858. That said

Bill of Exceptions
Continued

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collector William Rowe was authorized by said directors. when he should collect said tax of 1858 to receive as money from said persons who had so paid in the year 1857, a certificate from said directors which each of said payers of 1857 held for the money they had so paid in 1857 in payment of said tax of 1858 so far as said certificates should go towards the payment of said tax of 1858. which certificates which said collector Rowe was authorized as aforesaid to receive would amount in all to the sum aforesaid of $\$517\frac{28}{100}$ which sum deducted from the aggregate amount of the said tax levied in 1858 of $\$981\frac{82}{100}$ would leave in reality but $\$464\frac{54}{100}$ to be paid this year to wit 1858. — Defendants further answering say that towards the said subscription or expense for the support of schools in said district as aforesaid during the year 1857 the said Merritt Rickey & King paid or contributed nothing. and that said Merritt did send at least one of his children to said school when it was so supported by such subscription & without tax. and ^{that} said Rickey had a tenant on his said Real Estate in said district who had children that were sent

to said school by said tenant while said school was so supported by such subscription & that said tenant of said Ricketys paid no part of said subscription - said King has no children old enough to go to said school and therefore sent none.

25 That now, there are in attendance upon said school now being kept in said school house in said district children from tenants living on said Merritts land & on said Ricketys land in said district also the children of said Honeywell and said Murray are now going to said school said Honeywell sending 4, and said Murray 3 scholars. said Betts is also now sending one scholar to said school.

That at the date of the meeting of the voters of said district to elect directors & to select a site for a school house and to build a school house as aforesaid said Honeywell did not live in said district but did live in an adjoining town to wit: the town of La Prairie in said County.

That at said meeting to vote upon a school house site, elect directors & to build a school house, said Stephen Merritt was a voter and one of the Judges of the election and was a candidate at said election

Bill of Exemption for the office of school director of said district
Continued - et that said King & Murray were not at said
election said Dunlap & Murray did not then
live in said district - That said Murray
owns no real estate in said district and is
not a permanent resident of said district
but has informed some of Defendants that
he said Murray will leave said townsh-
ip about the first of March next.

Said defendants having now fully answer-
-ed pray to be hence dismissed with their
costs in this behalf most unreasonably &
26 unjustly expended & incurred.

Harman Andrews

John G. Farris

Warner Combs

State of Illinois
County of Marshall } ss. Before the undersigned
-ed a Notary Public
within and for said county personally ap-
-peared the above named Harman Andrews
John G. Farris and Warner Combs this 9th
day of February A. D. 1859 who being first
duly sworn say that the matters and
things therein set forth as upon informa-
tion and belief are true as they verily
believe & that the rest of the allegations in

said answer are true in substance & in matter of fact

Mark Bangs

Notary Public

"Election Notice"

To the legal voters in District No ten (10), township thirteen (13) North Nine (9) East of the fourth (4) principal meridian Notice is hereby given that an election will be held at the house of Harman Andrews in said district on Monday April sixth A. D. eighteen hundred & fifty seven at two o'clock P. M. for the purpose of electing three directors for selecting a school house site and for a school house for said district.

27 Said district includes Section Thirty one (31) the West half of thirty two (32) the south west quarter of Twenty Nine (29) and the south half of Thirty (30) in said township of Whitfield as laid off by the Board of Trustees.

By order of the Board of Trustees

March 23rd 1857

Timothy Atwood T. T.

District No 10 April 6th 1857

Agreeably to notice a meeting was held at the house of Harman Andrews. where on a motion Harman Andrews was elected

Bill of Exceptions
Continued

president and John S. Paris clerk on
motion Daniel Deihl. Stephen Merrill & Warner
Combs be elected judges to conduct the
the election of directors - on motion that
we now proceed to elect three directors.

Poll List

1 John S. Paris	{	4 Stephen Merrill
2 Warner Combs		5 Daniel Deihl
3 Harman Andrews		

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As the undersigned judges appointed to
conduct an election for directors in
district No. ten (10) Township thirteen
(13) North Nine (9) East certify that
Warner Combs received four votes Har-
man Andrews 4. John S. Paris 4. Stephen
Merrill one Daniel Deihl one and that
Warner Combs Harman Andrews & John
S. Paris having received a majority of
votes cast, are hereby declared duly
elected.

John S. Paris	Judges	{	Daniel Deihl.
Clerk			Stephen Merrill
April 6 th 1857			Warner Combs

On motion, the ground one half of

an acre, on the South west corner of his
land be accepted for a school house
site - on motion that the directors be
instructed to build a house thirty by twenty
one feet of Brick -

John E. Faris

Clerk

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We the undersigned directors of district
No ten (10) township No thirteen (13)
North No Line (9) east in the County
of Marshall and State of Illinois do
hereby certify that said board have es-
timated and required to be levied for
the year 1858 the rate of six per cent
for general school purposes and the
rate of one per cent for paying teachers
and extending terms of school, on each
one hundred dollars valuation of tax-
able property in said district.

Given under our hands this twenty eighth
day of June 1858

Directors of District
No 10, 13, 9

{ John E. Faris
Harman Andrews
Harner Combs

Attest John E. Faris

Clerk

Bill of Exception
Continued

List of resident tax payers in district
No 10, township No (13) thirteen, North
range nine (9) East.

Harman Andrews	John Betts
Levi Tanguary	John Dunlap Jr
Merritt Shackelford	Hiram Beaumont
James P. King	Warner Combs
William Honeywell	Stephen Merrill
William Murray	Mary Faris
Mrs Daniel Griffin	Daniel Deihl

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We the undersigned directors of district
No. ten (10) in township thirteen (13) range
nine (9) East certify, that the foregoing
is a correct list of the personal property
holders in said district subject to tax-
ation for the A. D. 1858.

Directors

John E. Faris
Harman Andrews
Warner Combs

John E. Faris

Clerk of R. D.

~~said and said action is substantial and well
founded~~

Almon Harget

~~John R. Rabbitt~~

Defendants Prof

State of Illinois

Bureau County vs.

Stephen Meritt et al

vs.

Harmon Andrews et al

Circuit Court of the Janu-
ary Term A. D. 1859.

31

James Vaughan being duly sworn according
to law deposes and says, that he is acquaint-
ed with Stephen Meritt, that he is acquaint-
ed with the general reputation of said Meritt
for truth and veracity in the neighborhood
where said Meritt resides and that the sa-
me is not good. And Deponent further says
that said Meritt is a man of a very litigi-
ous and contentious disposition.

subscribed and
sworn to before me
this 10th day of Feb-
ruary A. D. 1859

James Newcott
Clerk

James Vaughan

Bills of Exception
Continued
Reft. Proof

State of Illinois
Marshall County ss.

Circuit Court of the
January Term A. D. 1857

Stephen Merrill et. al.

vs.

Harmon Andrews et. al.

Bill for Enforcement.

32

James C. Ferris being duly sworn according to law. deposes and says that on the 23rd day of March A. D. 1857 he posted up at the Cross Roads, called Dubbs Corner, in school District No 10 in Township 13 North Line East being Whitefield in said Marshall County said place being one of the most public places in said district a notice, of which the following is substantially a copy

"Election Notice"

"To the legal voters in District No ten township 13 North Line East Notice is hereby given that an election will be held at the House of Harmon Andrews in said District, on Monday April 6th A. D. 1857 at two O'clock P. M. for the purpose of electing three Directors and selecting a school house site for a school house for said District, said District includes section 31, the West half of 32 the S. W. q. of 29, and the South half of 30 in said Township of Whitefield

"as laid off by the board of Trustees.

"By order of the board of Trustees March
"23^d 1857

Timothy Atwood J. J.

33 Affiant further says that he saw Harmon
Andrews and Robert C. Ferris each take
a copy of said notice for the purpose of
posting up the same on the said 23^d day
of March A.D. 1857 and is informed and
believes that said Andrews and Ferris did
post up said notices in said District on
said day -

Subscribed and sworn
to before me this 10th day
of February 1857

James Hecatt
Clerk

James C. Ferris

State of Illinois
Marshall County, ss.

Circuit Court of the
January A.D. 1857

Stephen Merritt et al

vs.

Harmon Andrews et al

Daniel Duhl being

duly sworn according to law deposes and

Bill of Exceptions
Continued
Defts Prof

34

says that he is a resident of school District No 10 in Whitefield township in said county that he has resided six years in said Whitefield township. that he is now sending his children to the school in said District. That he owns a farm in said District consisting of the S. W. quarter of section 29 in said township. that said farm is worth five thousand Dollars that his personal property was assessed for the year 1858 at between 4000 dollars. that he is one of the Directors of said District that he has heard read the answer of the defendants to the Bill of complaints of the complainants and that the matters and things therein alleged are true in substance and fact. — Depoent further says that he believes he pays more taxes than any other resident of said school District. Depoent further says that the complainant Stephen Merritt. he believes to be the originator of said Bill of complaint that said Merritt has always been troublesome and contentious in said District and has caused great expense and trouble to the good citizens thereof desirous of educating the children of the District and further says that he verily believes it to be a great misfortune to the people of said District. that

said Merrit owns property therein, and earnestly prays this Honorable Court to relieve the said District by dissolving the injunction in the said cause and to prevent the said Merrit from drying up the fountain of Knowledge in said District.

Subscribed and sworn to } Daniel Deibel
before me this 10th day of }
February A. D. 1859 }
James McCook }
35 } Clerk

Stephen Merrit et al. }

vs }

John G. Ferris et al }

Marshall County Circuit
Court of the January
Term 1859.

State of Illinois

Marshall County ss.

Robert P. Ferris after being duly sworn says that he was present at a meeting of the people in the school district mentioned in the complainant's bill to elect directors to select a site for school house and determine whether one should be built in & for said district. that thirteen days before said meeting was held he saw three notices of said

Bill of Exceptions
Continued
Deft's Proof

meeting posted up in the most public place
in said district. affiant further saith that
said Merit was at said meeting and pre-
sided over the same. and according to his
best recollection and belief said notices spe-
cified the object for which said meeting
was held and which were determined at
said meeting

Subscribed & sworn to
before me the 11th day
of February A. D. 1857
James Heacock
Clerk

Robert J. Faris

36

State of Illinois
Marshall County ss.

Circuit Court of the
January Term A. D. 1857

Merit et al
vs.
Andrews et al

William Callen being
duly sworn according to law deposes and
says that he was at the election in school
District No 10 in Whitefield Township de-
scribed in this answer of the Defendants in

this cause. that said election took place at the time and in the manner stated in the said answer, and further this deponent swears positively that Stephen Merritt the complainant in said suit, was at said election and was one of the Judges thereof and further says that James P. King, John Durlap Jr. William S. Honeywell and William Henry were not at said election.

37

Subscribed and sworn to
before me this 11th day of
February A. D. 1859.

James Mescall
Clerk

William Callen

Complainants
Provs

State of Illinois } ss.
Marshall County }

C. C. Jan. 5. 1859

Stephen Merritt et. al.

vs.

John J. Harris

Shenwood J. Merritt being first duly sworn deposeseth and saith that he lived in school district No 10 in Whitfield Township from the time said district was organized up to the 1st day of Sept last. And that

Bill of Exceptions

Continued

in the month of March A.D. 1857. he saw an election notice posted in said district at the corner of Dan Dill fence at the cross roads for an election in said district to be held in the month of April of said year. which notice was for the election of directors of said district and for no other purpose. — And that this affiant was in different parts of said district during about that time and never saw any other notice posted in said district for any school election or school purpose.

Shenwood T. Merritt

38

Ambler Merritt being first duly sworn says. — that he has heard the foregoing affidavit of Shenwood Merritt read and that the same is true of his own personal knowledge.

Ambler E. Merritt

44

Upon the hearing of which on motion of Defendants the court dissolved the Injunction and dismissed the complainants Bill and rendered Judgment

February 10 A. D. 1859

Motion to dissolve

Injunction

Stephen Merritt et al

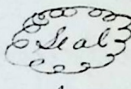
vs

Bill for Injunction

John G. Farris et al } This day came the Defendants
by their solicitors and entered
a motion to dissolve the injunction granted in this cause

Friday February 11th A. D. 1859

Order of Court Stephen Merritt et al } Bill for Injunction
dissolving vs
Injunction + John G. Farris et al } This day again
dissolving Bill came the complainants by G. L. Fort
their solicitor, and the defendants came
by Bangs & Steff their solicitors, and this cause coming on to
be heard and tried upon the motion of the defendants to dissolve
the injunction heretofore granted in this cause, and dismiss
the complainants bill of complaint; And after argument of
counsel the court being now fully advised in the premises,
doth order adjudge and decree, that the injunction granted in
this cause, be dissolved and that the complainants bill
of complaint be dismissed; And it is further ordered that
the defendants recover of the complainants their costs in this
behalf expended, and that execution issue therefor as upon
judgments at law: whereupon came the complainants by
their solicitor and pray an appeal to the Supreme Court
of this State, which appeal is allowed upon the complainants
filing a Bond in the Sum of One thousand dollars, con-
ditioned according to law, with William Rickey, as security
in twenty days; and that the complainants have leave
to file a Bill of exceptions within the same time.

Bill of Exceptions "To all of which orders of dissolving said Injunction and
Continued dismissing said Bill the complainants then and there
excepted, and prayed and obtained: an appeal to the
supreme court of this state and asked that this their
bill of Exceptions be signed and sealed which is done
M. Ballou Judge 
of 23rd Judicial Circuit Ills

It is agreed by and between ^{all} the parties to the above entitled
cause, that the foregoing Bill of Exceptions is true full
correct and complete

Lacow Feb 23rd 1859

"G L Fort for Complainants
Mark Baugs for Defts"

400

foregoing Bill of Exceptions are endorsed "Filed March 1. 1859 James Merritt clerk

On the 21st day of February AD 1859 the following appeal
Bond was filed in said cause to wit:

Appeal Bond "Know all men by these presents that we
Stephen Merritt Samuel Rickey James P. King
John Dunlap Dr. William Murray Hiram
Beaumont, John Peto Mr. J. Shackelford
William G. Honeywell as principals and
William Rickey as security are held and
firmly bound unto John G. Farris Harmon
Andrews Warner Combs Daniel Deil Mil-
iam Rowe and Washington E. Cook in the
penal sum of One Thousand dollars cur-
rent money of the United States for the

payment of which well and truly to be made we and each of us bind ourselves our heirs administrators and executors firmly by these presents. Signed sealed and dated this 16th day of February A. D. 1859

41 The condition of the above obligation is such that whereas the above bounden Stephen Merritt Samuel Rickey James P. King John Dunlap Jr William Murray Brian Beaumont John Bels M. J. Shackelford William S. Honeywell. were complainants in a certain Bill for Injunction against the said John S. Harris Warner Combs Harmon Andrews Daniel Deil William Rowe Washington E. Cook defendants for an Injunction in the Circuit Court of Marshall County Illinois at the January Term A. D. 1859.

And whereas upon said bill of complaint such proceedings were had in said Court at said term, as that an Injunction was granted by said court at said term according to the prayer of said bill of complaint enjoining the collection of certain school tax mentioned and described in said bill of complaint. And whereas also upon the coming in of the answer of said defendants and upon the hearing of said cause upon the Bill of complainant the

defendants answer and the proofs the said Court at said term dissolved said Injunction and dismissed said Bill of complaint and rendered judgment against said defendants, from which said ruling of the Court, orders and judgment of the court the said complainants prayed and obtained an appeal to the Supreme Court of the State of Illinois

Now therefore, if, the said complainants shall well and truly pay and discharge all of the aforesaid taxes and shall also further pay whatever judgment, and also all damages and all costs that may be awarded rendered or entered by the said Supreme Court of the State of Illinois in case said appeal shall be dismissed by the said Supreme Court or in case the judgment of the said Circuit Court shall be affirmed.

Then this obligation to be void, otherwise to be and remain in full force and virtue.

Witness our hands and seals this day and year first above written.

Jas. P. King

Seal

John Dunlap Jr

Seal

Wm Murray

Seal

Wm J. Honeywell

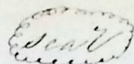
Seal

Merrill P. Shackelford

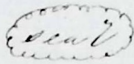
Seal

In Presence of

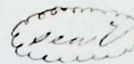
Stephen Merrill



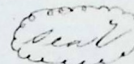
Samuel Rickey



William M. Rickey



Hiram Beaumont



State of Illinois

Marshall County

J.S. I, James Mescott clerk of the Circuit Court
in and for said County do certify that

the foregoing is a full and complete transcript of the proceedings
had, and the papers on file in the aforementioned cause as
the same appears of record in said Circuit Court.

In Witness whereof I have hereunto set my hand
and affixed the Seal of said Court at Lacrosse
this 5th day of March A.D. 1859.

James Mescott clerk

Fes 7. 50

15th
Stephen Merritt & others
vs

William Sickles et al.

Transcript of
John G. Ferris & others

Transcript of
Record.

Filed April 6, 1859
L. Deland
Clerk

In Supreme Court State of Mining
To the April T. 1859
Stephen Hewitt et al
vs Inor to Mars hall
John H. Fenis et al } Circuit
Circuit

Now Comes the Said Defts
in error and says that in
the records proceedings and
Judgment of the Said Circuit
Court there is no error whatever
Wherefore the Said Defts
in error pray that the decree
and Judgment of Said
Circuit may be in all things
affirmed
Peters & Bangs
attys for Defts in Error

No 156
Stephens Merritt et al
v
John. G. Ferris et al

Comdus in Error

Filed April 25, 1859
A. Leland
Clerk

Stephen Menitt et al
vs Inor to Marshace Co
John H. Harris et al
Brief for Appellees

The Certificate of the directors levying the taxes is in the exact form of the statute, and does not omit the words per cent as stated in Compt's bill and abstract. See page 29 of the record.

The notice for the meeting to decide the school house site, and the erection of a school house is in due form. See page 27 of Record and the affidavits of James C. Harris & Robert P. Harris prove that such notices were duly posted.

The site selected for the school house was on the South West corner of this land (that is the land of John H. Harris) See 28 & 29 pages of the record. If this is indefinite, still it makes no difference because the latter part of section 48 of the School Law of 1857 provides that if a majority of the votes are not cast in favor of any ^{one} site, the directors shall have the right to locate and build

a School house which shall not cost
over \$1000 - This School house cost only \$761 ⁶⁰/₁₀₀
The law does not require the Site
to be selected nor the School house
to be determined upon by the voters before
the directors lay the tax for the same,
(See said Section 48) and therefore whether
this Meeting was legal or illegal
would not affect the validity of
this tax -

There is no limit as to the rate per
cent of taxation for School purposes
except the necessities of the district,
Section 47 only provides that the total
indebtedness of the district under that
Section shall not exceed three
per cent on the value of the taxable
property. But that is where the
district borrows money & issues
their bonds for the payment thereof.
and it has no application to the
rate of taxation for School purposes.

The only real question in this
case is, whether this tax was legal
without the sanction of the majority
of the voters of this district

Supreme Court State of Illinois
April 1, 1857 —

MERRITT et al
vs.
FERRIS, et al.

for Defts in error

The taxes sought to be enjoined are legal.—1 Blackwell's Statutes, pages 445, 446, 447. 448
This Court has not decided this question.—20 Ill., 357.

Peters & Lamelle
attys for Defts in error

Menitt et al
C

Feris et al

Appelles Authorities

This Court very properly in 20 Ill. 357
decided, that the tax in that case
was illegal without a vote of the
people authorizing it. Because the
School house in question in that
case cost over \$1000. The latter part
of Section 48, declares that the directors
shall not have the power to levy taxes
to extend the terms of School for a
longer term than six months in one
year, nor for the purpose of building
a School house, that should cost
over \$1000. without the consent of a
majority of the votes cast at such
election. But the tax levied
in this case, was not to extend to
the terms of the School beyond the
six months, and the house was
to cost only \$764 $\frac{60}{100}$ ^{the laying of which tax} which was
clearly within the province of the
directors to effect without such vote.

The preceding part of Section 48 makes
it the duty of the directors, to make
provision for continuing School in operation
for at least six months of the year,
and to cause suitable buildings to be
erected or rented for School houses,
and then in Section 43 they are expressly

authorized to levy such taxes - and to
insist that it should be their duty to
do so. and deprive them of the power
to perform their duty, would be absurd.
But it may be insisted, that the directors
may get the district in debt for those
purposes, and then a Mandamus will
lie to compel them to levy taxes
to discharge such debts. But
as I understand it, a Mandamus
does not confer a grant of power
but its object is to compel a party
to exercise the power which he
already possesses and which was his
duty to have exercised. that it
only compels a party to do, what
he ~~should~~ have done before. and
that it does not invest a
party with a new power -
The latter part of section 44, which
provides that "the people vote the
same as hereinafter expressed"
will only appropriately apply to the
concluding part of section 48. which
requires a such vote. where the terms
of schools are to be extended beyond
Six Months where the schoolhouse
is to cost over one thousand dollars.

The Manner of taking a vote in Such Cases is provided in Section 48, which is that the notice shall be given in the Same manner and for the Same number of days, as is required for the election of directors. Section 42 provides for the giving of the notices in cases of elections for directors —

But to take the vote where the School house will cost less than \$1000- or to ~~support~~ ^{support} Schools for less than Six Months, no mode is provided - and it could not have been the intention of the Legislature to have an election, and yet ^{leave} the mode and manner of calling and conducting the Same be wholly unprovided for, but to give the law the construction here placed upon it, makes the law intelligible and reasonable throughout, while if the other construction is given, the law would appear ~~as~~ absurd in requiring ^{an} election without providing how often or where it should be held, and the latter part of Section 48 is without meaning, for why

prohibit ^{the Directors} from levying taxes to extend
schools beyond six months, and to
build school houses that would
cost over one thousand dollars,
^{without the vote of the people}
if they had no power whatever
to levy such taxes for the purposes
of supporting schools and building
school houses, ^{at all} without such vote
of the people.

It is the practice in chancery cases
that where matter is neither ad-
mitted or denied by the answer
the same must be proved by the
Complainants. 2 Gil 679 —
The Complainants have proved
nothing in this case. and
no material point is admitted
by the answer that will help
the complainants —

There is no proof on the part
of complainants, to show that those
persons which they claim were
omitted in the assessment of
the taxes were residents of the
district having property therein.
but upon the contrary this charge

in the bill has been disproved by the defendants, but if the same had been proved as alleged in the bill, it would not invalidate such tax, for if there was such omniscience, it was merely accidental and through mistake, which ^{point} is decided in 21 Pickering 75 —

The Complainants must succeed on the case made by the bill, and they can not avail themselves of admissions made by the defendants in their answers, which do not sustain the case made by the bill. But if they could, what has the tax of 1857 decided to be illegal to do with the validity of this tax, If those persons, who had paid money on the tax ~~of~~ of 1857 which was illegal, instead of receiving their money back, permitted the same to be credited upon the tax which they owed for 1858, what possible difference does it make,

21000-21]

The Plaintiffs attorneys wholly misapprehend the notice given for

the election dated March 23-1857-
It calls a meeting "for electing
"three directors, for selecting
"a school house site, and for
"a school house for said District."

The notice specified three objects,
1st The election of directors
2^d The selection of the site
for the school house. 3^d
for determining the question of
erecting a school house —

The notice is specific and right
in every respect, and the construction
placed on it by plffs attorneys
is absurd,

There is no merits in the Compls
applications and they should receive
no encouragement at the hands
of this Court —

The construction herein placed
upon the School Law of 1857
is the one generally adopted
If this argument in this case
can be defeated all the other
arguments for school purposes
in the Country are invalid

Peters & Hamell
attys for Defts
in error

67
No 156 —

Stephen Meritt due
vs
John G. Ferris et al

Depts Brief

Filed April 29, 1859
L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

STEPHEN MERRITT *et al.* vs. JOHN G. FARRIS *et al.*

ABSTRACT OF THE RECORD.

Record. This was a bill in Chancery, filed by Stephen Merritt, James P. King, Samuel Rickey, John Dunlap, Jr., William S. Honeywell, William Murray, John Batts, M. Shackelford, and H. Beaumont, complainants, in the Marshall Circuit Court, at the January Term, A. D. 1859, to enjoin the collection of a school tax levied by the Directors of School District No. Ten, in Township 13 N., Range 9 East, in that county. The injunction was granted, and at the same term the respondents filed their answer and affidavits in its support, and moved the Court to dissolve the injunction, which was done, and the bill dismissed. The plaintiffs in error, who were the complainants below, appealed to this Court.

- 1 The bill alleges that the complainants are residents and tax payers of Marshall County, Ill., and that they are all, except Stephen Merritt and Samuel Rickey, residents of School District No. 10, in Township 13
- 2 North, Range 9 East, in said County; and that said Rickey is the owner of real estate in said district, and Merritt is the owner of both real and personal estate in said district, all of which is subject to legal taxation.

The district is composed of Section 31, the south 1-2 of sec. 30, the W 1-2 of sec. 32, and the SW qr of sec. 29, according to a plat filed as follows:

N.		
	Merritt.	
W. Rickey.		E.
	31	32
J. P. King.	J. Dunlap.	
Honeywell.	J. Batts.	
S.		

- 2 That John G. Farris, Harmon Andrews, and Warner Combs pretended to act as School Directors of said district up to October last, and that Harmon Andrews, Warner Combs and Daniel Diel now pretend to act as Directors of said district, as successors of the first named directors.

Record.

3 That Farris, Andrews, and Combs, while pretending to act as School Directors of said district, and assuming so to act, attempted to authorize and cause to be levied an enormous and burthensome tax on the property of said district, and by such attempt have wrongfully induced Washington E. Cook, the County Clerk of said county, to assess and compute said taxes upon the valued property of said district, which is very grievous to the property holders of the district and particularly to complainants.

4 That the first named directors made and signed a certificate on the 8th June, 1858, and returned it to the Clerk of the county, by which they authorized and required and certified that they had estimated to be levied a tax of *one per cent.* for extending schools beyond six months, and *six per cent.* for ordinary school purposes, making *seven per cent.* upon the property of the district.

The certificate is attached and is as follows:

13 "We, the undersigned, Directors of District No. 10, Township No. 13, Range No. 9, in the county of Marshall, and State of Illinois, do hereby certify that said Board have estimated and required to be levied, for the year 1858, the rate of six for general school purposes, and the rate of one for paying teachers and extending terms of schools on each one hundred dollars valuation of taxable property in said district.

"Given under our hands this 8 day of June, 1858.

JOHN G. FARRIS,
HARMON ANDREWS,
WARNER COMBS, } Directors."

4 That the clerk, in compliance with said certificate, assessed and levied seven per cent. school tax (on the \$100) on the property of complainants, as follows:

	Valuation.	Tax.
Stephen Meritt, ne 31 and se 30	\$2,240	\$156 80
Sam'l. Rickey, nw 31	1,280	89 60
W. S. Honeywell, sh sw 31	600	42 00
Jas. P. King, nh sw 31	600	42 00
John Dunlap, jr., nh se 31	455	31 85
J. Bets, sh se 31	585	30 95

PERSONAL PROPERTY:

5	S. Merritt,	494	34 58
	M. Shackelford,	357	24 99
	Jas. P. King-	241	16 87
	W. S. Honeywell,	194	13 50
	Wm. Murray,	162	11 34
	John Betts,	209	14 53
	John Dunlap, jr.,	189	13 23
	H. Beaumont,	75	5 25

Which tax was wrongfully made by said clerk, and is now in the hands of William Reeves, the tax collector of the township, with a warrant attached thereto for collection, and the collector is demanding payment and threatening to collect the tax by a levy and sale of the property of complainants.

That there are several persons, residents of the District, who own and

Record. have owned for a year past a large amount of personal property, upon
6 which no tax is levied for school purposes.

That Mary Grief has property valued at	-	-	-	\$250
Levi Tonquary	"	"	-	100
David Gill,	-	-	-	900
Geo. Cook,	-	-	-	300
				\$1,550

Upon which the tax at above rates would amount to \$108.50.

- 6 That said taxes as levied amounted to \$981.82, and if the personal property omitted had been taxed, would have amounted to \$1,090.32.

7 That no election has ever been held in the district to fix upon a site for a school house, or for building or buying a school house, and no election for any purpose has been had, except for Directors; nor has any notice of any election for any purpose (except for electing Directors) been posted up or given; no school house site has been purchased or obtained.

- 7 That the number of scholars in the district is very small, and it would not cost over \$200 to procure good teachers for six months and pay all expenses, and that a suitable school house, large enough to accommodate all the scholars of the district, for \$400 at furthest.

That the law does not permit a tax of over three per cent. to be levied.

- 8 That the house in which the school is kept is not central; that it was not located or erected by the people; that it is claimed by one John G. Farris, and is not the property of the district. That Farris never had a good title to the land on which it is built; that he has deeded it in trust to D. G. Warner, and the land is now liable to be sold.

- 10 That said Directors had no power, right, or authority to levy the tax, or authorize it to be levied, and that in doing so they exceeded their powers, both in the amount levied and in the right to levy the same, and that the clerk had no power to assess said tax, nor has the collector authority to collect it.

The oath of defendants is waived, and an injunction prayed against the collector and all the defendants, to restrain the collection of the tax.

- 14 The answer of the defendants admits that complainants are all residents and tax payers of Marshall county, and are all residents of the school district except Merritt and Rickey, who own real estate in the district, but Merritt has no personal property in the district, to the knowledge of respondents.

- 15 That said school district is properly described in the bill.

Admits that the persons named in the bill acted as Directors, as set forth, and insists they were and are Directors in fact. Admits that Farris, Andrews and Combs, as Directors, did cause the tax to be levied, as set forth in the bill, except the tax was not levied to extend the school beyond six months in the year, and excepting further that the Directors returned with the certificate a list of the resident tax payers of the dis-

Record.

16

trict. That in pursuance of the certificate, the Directors assessed and levied the tax as set forth.

16

They admit that Rowe is collector of taxes for the township, and that he has in his hands a collector's warrant from the clerk, to collect the tax except as hereinafter set forth.

Admit that Mary Grief, — Tanquary, Gill, and Cook are not assessed as charged in the bill, but aver that Grief and Tanquary were returned in the said list of resident tax payers of said district to the clerk, and were not taxed, because they were not assessed or returned as tax payers by the assessor of the town for the previous year, and that said Gill never was taxed because he could not be found by the assessor, and has never lived in the district.

17

Alleges there was a vote of the people of the district, on the 6th of April, 1857, to decide upon a site for a school house, and for building a school house, and it was voted that the directors should proceed to build a school house upon said site, of brick, 21 by 30 feet.

18

They assert that due notice of the meeting was given by posting up a notice in the district, on the 23d March, 1857, calling for an election of directors, and for selecting a school house site. All of which will appear more fully by their record book which they offer to produce.

18

That at the meeting John G. Farris offered to give one-half acre of ground for a school house site, which was accepted; and that he had since deeded the land, by a good warrantee deed, to the district.

19

Alleges that the district contains 47 children under 21 years of age.

19

Admit that \$200 would employ competent teachers for all the schools in the district for six months, and pay all expenses.

20

Deny that a suitable school house could be built for \$400, and allege that they have built a school house on the site selected by the voters, of dimensions required, which cost \$761 60. That the directors, Ferris, Andrews, and Combs, built the school house in the cheapest and most economical manner.

20

Admit the tax is over three per cent., but assert they had a right to levy a greater tax.

Allege the school house is in as central a situation as it can be placed, unless it is put in the centre of a section where there is no roads. That the school house is not over three-fourths of a mile from any house in the district.

21

Allege that the school house is the property of the district, and is not claimed by Farris. Admit that Farris did make a deed of trust for the land to ———; and allege that said trustee has released all claim to the half acre upon which the house is situated.

21

Allege that the school house was built in pursuance of the vote; that it cost over \$700, and was completed and ready for school about the first of Nov., 1857, and the Directors have caused a suitable school to be kept therein six months in each year ever since.

22

Record.

22

16

That said Andrews, Combs and Farris, as Directors, in the spring and summer of 1857, in good faith, caused a tax to be levied on the property of the district of \$500, which tax they supposed would be sufficient to make the first payment to the builder of the house for 1857, and intended to get up a subscription for the support of the school, which they did.

22

23

That the tax so levied would have made the payment intended. That the collector of the town, for 1857, proceeded under a proper warrant to collect said tax, and did collect \$317.00 thereof, when certain of the tax payers of the district, among whom were Merritt, Rickey and King, obtained from the Circuit Court an injunction restraining the collection of said tax, which injunction was made perpetual by the Court.

That after they were so enjoined, and in 1858, they proceeded to levy another tax upon the taxable property of the district to pay for building said school house, and keeping up the school six months in the year, (which is the tax complained of in this case.)

23

24

The tax was 6 per cent. for building the school house, and one per cent. for schools. That the persons who paid the tax, assessed in 1857, were to be repaid out of the tax assessed in 1858. That the collector, Wm. Rowe, was authorized by the Directors to receive in payment of the taxes of 1858, the receipts or certificates given for the taxes of 1857, of the persons who had paid the taxes of 1857. Which receipts amounted to \$317.28, which, if deducted from the tax of 1858 of \$981.82, would leave a balance at \$664.54 only.

25

That neither Merritt, Rickey, or King ever paid anything on the subscription for supporting the school in 1857; that Merritt sent one of his children to the school; that Rickey had a tenant who sent two children, and paid no tax or subscription; and that King had no children.

That in the school now kept there are children of the tenants of Merritt and Rickey, and the children of Murray (3) and Honeywell (4) are going to the school, and Batts is sending one scholar.

25

26

That at the time of the meeting of the voters to build a school house, Honeywell did not live in the district. That at said meeting Merritt was a voter and one of the judges of election, and a candidate for school director; that King and Murray were not at the election, and Dunlap and Murray did not then live in the district.

That Murray owns no real estate in the district, and is not a permanent resident, and expects to leave on the first of March.

Signed,

HARMON ANDREWS,
and two others.

27

The election notice is set forth. It is dated March 23, 1857, and says the election is for the purpose "of electing three directors for selecting a school house site, and for a school house site for said district," and is signed

TIMOTHY ATWOOD, T. T.

The election was held April 6th, 1857. It was voted to accept half an acre of ground for a school house site, and that the directors be instruct-

Record.

27

ted to build a house, thirty by twenty-one feet, of brick. Warner Combs, Harmon Andrews, and John G. Farris were elected School Directors.

Proof was taken to show that the notices were posted up as set forth in the answer.

37

On the 11th February, 1859, the Court dissolved the injunction and dismissed the bill; whereupon the complainants appealed to the Supreme Court.

6 Complainants now allege that, in the record and proceedings aforesaid and in the rendition of the judgment aforesaid, manifest error hath intervened to their prejudice in this:

1st. The Court erred in dissolving the injunction and dismissing the bill.

2d. The Court erred in not making said injunction perpetual.

For which errors the said complainants pray that said judgment may be reversed, annulled, set aside, and for nought held.

By

G. L. FORT & H. M. WEED,

His Attorneys.

1846 67

Merritt & Co

or

Farr's

Filed April 25: 1839

L. Seland
Clerk

Stephen Merritt & al }
vs } In the Supreme Court
John G Farris & al } April Term Ad, 1839

Argument for Plaintiff in Error
by

G L Frost & J M, Wend

The Bill in this case is filed to enjoin the collection of a School tax in School District No 10, in Marshall County. At the January Term Ad, 1839 of the Circuit Court of Marshall County, the injunction was dissolved and the Bill dismissed.

The origin of the tax is as follows

On the 6th of April 1857, a meeting of the voters of the district was held, where it is alleged by defendants, it was voted to select a site & build a school House. This meeting was held in pursuance of a Notice, to which reference will be hereafter made. After the meeting, the School Directors (Page 5. abstract) caused a tax to be levied for the purpose of building a school House (without any vote of the People) and placed in the hands of the Collector of the Township for collection, who collected \$317. Thereof when he was enjoined from collecting the balance

by the Circuit Court of Marshall County, and on final hearing the Injunction was made perpetual
Record Page 22, 23. Abstract Page 5

In the mean while, the Directors had contracted for building a New School House which cost \$761. 60. (Record Page 20. Abstract Page 4) and was built of the size or dimensions agreed upon

After the the collection of the above described tax was enjoined, ~~to wit~~, the directors proceeded on the 28th of June 1858 to order the levy of another tax of Six per cents on the \$100, for general school purposes, and one cent for paying teachers, making Seven cents on each \$100. of taxable property in the district. This tax was ordered without any vote of the people, on the motion of the Directors, who at the same time ordered & directed that the money collected under the tax of 1857. should be refunded out of the taxes to be collected under the last agreement (See Record 23. 24. Abs 5)

This last tax the complainants alledge is illegal and void for the following reasons

1st Because there never was any legal vote of the people fixing upon a site for a School House, or ordering a School House

to be built

2. Because the money so levied was to be used in refunding taxes previously collected

3. Because no vote of the people was had authorizing the levy of a tax

4. Because there is other property in the District subject to taxation, which was not listed or assessed

I As to the vote to select a school House site and build a School House,

The School Law of 1857, Page 277, Sec 48 provides as follows "No school site shall be purchased or ~~changed without the consent~~ nor shall a school House be erected, located, purchased, or changed without the consent of a majority of the legal voters of any district at an election, in which case, notice shall be given in the same manner and for the same number of days as is required for the election of directors, either by the directors or at least ten legal voters of said district.

The notice required for the election of Directors is prescribed in Sec 42, Page 273, of the same act, which requires the notice to be given by the Township Treasurer according to the ~~the~~ provisions for the election of Trustees

The 25th section of the same act Page 266, provides for the notice to be given for the election of Trustees

The last clause of Section 48, Page 278, provides as follows, "The notice shall state the questions to be decided at said election"

The notice in this case is dated March 23, 1857 (See Record Page 27) & calls a meeting "for the purpose of electing three directors ^{selecting} for a school house site, and for a school house for said district"

It is very evident ~~must~~ state that the notice
" must state the questions to be decided at said
" election " and by the 48th Section, no School
" House can be " erected, located, or changed " without
the consent of a majority of the electors ~~vote~~ '
at an election held under a proper notice

The notice is thus made the basis of
all future proceedings. The notice given, was
for the purpose of " electing three directors for
" selecting a school house site " This was
clearly illegal, as the power to select a site
could only be exercised by the voters in
their primary capacity and could not be
delegated to three directors, nor to one
director, or trustee or private man or
person. There never was, then any legal
selection of a site for a School House

2, The notice also contained a call for
the election of directors to fix upon a site,
" and for a school house " — not for building
a school house, nor for voting a tax to
build a school house. What was ~~to~~ to be
done under this notice? It is really too
vague & uncertain — no one can tell

3. But what was done at this meeting under the notice? Three persons viz Warner Combs Harmon Andrews & John H Harris were elected School Directors — not to select a site for a school house, but Directors generally and then follows this "on motion the ground" "one half of an acre on the South West corner" "of the land be accepted for a school house site" "— on motion that the directors be instructed" "to build a house thirty by twenty one feet of" "Brick" This was all that was done.

The Notice did not call for an election to vote upon the selection of a school house site, and as has been seen, no valid or legal meeting could be held without a proper notice.

But where is this site? This half acre of land? No one can tell.

The vote to build a School House is direct, but there is no vote to levy a tax as is required by Sections 47. & 44. of the School Law of 1857. and the record fails to show that a majority of the voters were in favor of the plan — indeed it does not show that any vote was taken or that the question of building a School House was ever submitted to a vote.

It may be contended that under the latter part of the 48th Section, the School Directors had power to select a site; but this is not so. They can only exercise that power when a majority of the votes at a legal & properly election is not obtained for any site. As the voters were never notified to vote for the selection of ^a site, there never was any election and could not be. The contingency provided for has not occurred.

But

Immediately after the election of Directors held on the 6th of April 1837, ~~viz on the 28th day of June 1837~~ the directors proceeded of their own will to levy a tax of \$500. See Record Pages 21. + 22, for the purpose of paying the first instalment on the School House. This is the tax, the collection of which was perpetually enjoined

II The last tax was ordered by the Directors on the 28th of June 1838, & is the one, the collection of which is sought to be enjoined See Record Page 29. It calls for 6 per cent for general purposes and one per cent for paying teachers. One of the general

purposes to which the money was to be applied was to pay off \$317.28 to persons who had paid school tax the year before.

Now where did the directors get the power to levy a ~~tax~~ for such a purpose.

Suppose it is conceded that they had power by virtue of the last section part of section 48, to levy a tax for building a school House without a vote of the people, they surely have not the power to levy a tax for "general school purposes"

If the District had been sued for the taxes illegally collected, and judgment had against them they might perhaps, have levied the tax under Section 49.

The School House had already been built & completed before the tax of 28th June 1858 was levied, and at most the persons who built it had a claim or demand against the district but there was no power in the directors to levy the tax except under Sec 49.

III No vote of the people of the District was ever had, authorizing the levy of the tax, and no meeting of the citizens of the District ever sanctioned it

Sec 44, Page 274, of the law of 1837, requires that the Directors, shall estimate the amount of money necessary for School purposes which estimate together with a list of all the resident tax payers of the District, shall be certified to the meeting in writing, signed by the President & Clerk of the board, or at least two of the directors, which tax must then be voted as set forth in the law, & after being voted in ~~this~~ proper manner may be ~~levied~~^{assessed} by the Clerk

Section 48, provides for building School Houses selecting sites &c, but requires all matters to be decided by the voters

Section 47, provides "that for the purpose
" of erecting School Houses, purchasing sites
" repairing &c" it shall be lawful for the
Directors to borrow money &c not exceeding
three per cent upon the ~~assessed~~^{assessed} value of the
property of the district, but even this cannot
be done, without a vote of the people of
the district taken at a legal election.
The whole spirit of the law shows a

a clear and undoubted determination to have no tax levied except by a vote of a majority of the people of the district and except to pay a judgment, and such is the decision of this Court in the case of *Beverly vs Sabin* 20 Ill 357

IV The tax in this case was enormous and unheard of It was Seven dollars on the \$100. and the tax of Stephen Merritt on \$2240, was \$156.80 and the tax levied amounted to \$981.82 on the property of the district. No such tax could have been voted by the people. It is onerous oppressive, wrong unconstitutional and void

~~Att. Gen.~~

156 67
Stephen Merritt & al
vs

John G Farris & al

Argument for
Defendants

by

G L Frost &

H W Wood

Filed April 28. 1859

L Leland

Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Circuit Court for the County of Marshall Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Marshall County, before the Judge thereof, between Stephen Merritt, Samuel Ricker, James F. King, John Durlap, Jr., William Murray, Hiram Beaumont, John Betts, M. J. Shackelford and William S. Honeywell, plaintiffs and John F. Farris, Warner Combs, Harmon Andrews, Daniel Deil, William Rowe & Washington B. Cook, —

defendants, it is said manifest error hath intervened, to the injury of the aforesaid plaintiffs

as we are informed by their complaint — and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of April — in the Year of Our Lord one thousand eight hundred and fifty-nine.

L. Deland

Clerk of the Supreme Court.

by J. D. Rice Deputy

Stephen Merritt & others
vs
John G. Farris & others

Writ of Error

Filed April 6, 1859
L. Deland
Clerk.

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of *Marshall* Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Marshall* County, before the Judge thereof, between *Stephen Merriitt, Samuel Rickey, James L. King, John Dunlap, Jr. William Murray, Hiram Beam- mont, John Betts, M. J. Shackelford, and William L. Honeywell,* plaintiffs and *John G. Farris, Warner Combs, Harmon Andrews, Daniel Deil, William Rowe & Washington E. Cook*

defendant &, it is said that manifest error hath intervened, to the injury of the said *plaintiffs*

as we are informed by *their* complaint, _____ the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said *John G. Farris, Warner Combs, Harmon Andrews, Daniel Deil, William Rowe & Washington E. Cook.*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John G. Farris, Warner Combs, Harmon Andrews, Daniel Deil, William Rowe & Washington E. Cook* notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *sixth* day of *April* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*nine*.

L. Leland
Clerk of the Supreme Court.
J. B. Rice Deputy

I have served this writ by reading the same to the
Within Named John G. Garrett, Warner Combs, Harmon
Andrews; Daniel Deal; William Rowe; Washington
& Cook as within commanded on this 8th day of
April A.D. 1859

Thomas Ellis Sheriff of
Marshall County Ill

By J. C. Gore Deft

serving \$ 300
Mileage 118
Retainer 10
\$ 4, 28

Stephen Merrill & others
1880
John G. Davis & others
Seal

Fried April 12 1859
Adelard
to Mr

Shaw's Fee \$ 4, 28

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

STEPHEN MERRITT *et al.* vs. JOHN G. FARRIS *et al.*

ABSTRACT OF THE RECORD.

Record. — This was a bill in Chancery, filed by Stephen Merritt, James P. King, Samuel Rickey, John Dunlap, Jr., William S. Honeywell, William Murray, John Batts, M. Shackelford, and H. Beaumont, complainants, in the Marshall Circuit Court, at the January Term, A. D. 1859, to enjoin the collection of a school tax levied by the Directors of School District No. Ten, in Township 13 N., Range 9 East, in that county. The injunction was granted, and at the same term the respondents filed their answer and affidavits in its support, and moved the Court to dissolve the injunction, which was done, and the bill dismissed. The plaintiffs in error, who were the complainants below, appealed to this Court.

- 1 The bill alleges that the complainants are residents and tax payers of Marshall County, Ill., and that they are all, except Stephen Merritt and Samuel Rickey, residents of School District No. 10, in Township 13
- 2 North, Range 9 East, in said County; and that said Rickey is the owner of real estate in said district, and Merritt is the owner of both real and personal estate in said district, all of which is subject to legal taxation.

The district is composed of Section 31, the south 1-2 of sec. 30, the W 1-2 of sec. 32, and the SW qr of sec. 29, according to a plat filed as follows:

N.		
	Merritt	
W. Rickey.		E.
31		32
J. P. King.	J. Dunlap.	
Honeywell.	J. Batts.	
S.		

- 2 That John G. Farris, Harmon Andrews, and Warner Combs pretended to act as School Directors of said district up to October last, and that Harmon Andrews, Warner Combs and Daniel Diel now pretend to act as Directors of said district, as successors of the first named directors.

Record.

- 3 That Farris, Andrews, and Combs, while pretending to act as School Directors of said district, and assuming so to act, attempted to authorize and cause to be levied an enormous and burthensome tax on the property of said district, and by such attempt have wrongfully induced Washington E. Cook, the County Clerk of said county, to assess and compute said taxes upon the valued property of said district, which is very grievous to the property holders of the district and particularly to complainants.

- 4 That the first named directors made and signed a certificate on the 8th June, 1858, and returned it to the Clerk of the county, by which they authorized and required and certified that they had estimated to be levied a tax of *one per cent.* for extending schools beyond six months, and *six per cent.* for ordinary school purposes, making *seven per cent.* upon the property of the district.

The certificate is attached and is as follows:

- 2 13 "We, the undersigned, Directors of District No. 10, Township No. 13, Range No. 9, in the county of Marshall, and State of Illinois, do hereby certify that said Board have estimated and required to be levied, for the year 1858, the rate of six for general school purposes, and the rate of one for paying teachers and extending terms of schools on each one hundred dollars valuation of taxable property in said district.

"Given under our hands this 8 day of June, 1858.

JOHN G. FARRIS,
HARMON ANDREWS,
WARNER COMBS, } Directors."

- 4 That the clerk, in compliance with said certificate, assessed and levied seven per cent. school tax (on the \$100) on the property of complainants, as follows:

	Valuation.	Tax.
Stephen Meritt, ne 31 and se 30	\$2,240	\$156 80
Sam'l. Rickey, nw 31	1,280	89 60
W. S. Honeywell, sh sw 31	600	42 00
Jas. P. King, nh sw 31	600	42 00
John Dunlap, jr., nh se 31	455	31 85
J. Bets, sh se 31	585	30 95

PERSONAL PROPERTY:

5

S. Merritt,	494	34 58
M. Shackelford,	357	24 99
Jas. P. King-	241	16 87
W. S. Honeywell,	194	13 50
Wm. Murray,	162	11 34
John Betts,	209	14 53
John Dunlap, jr.,	189	13 23
H. Beaumont,	75	5 25

Which tax was wrongfully made by said clerk, and is now in the hands of William Reeves, the tax collector of the township, with a warrant attached thereto for collection, and the collector is demanding payment and threatening to collect the tax by a levy and sale of the property of complainants.

That there are several persons, residents of the District, who own and

Record. have owned for a year past a large amount of personal property, upon
6 which no tax is levied for school purposes.

That Mary Grief has property valued at	-	-	-	-	\$250
Levi Tonquary	"	"	-	-	100
David Gill,	-	-	-	-	900
Geo. Cook,	-	-	-	-	300
					\$1,550

Upon which the tax at above rates would amount to \$108.50.

6 That said taxes as levied amounted to \$981.82, and if the personal property omitted had been taxed, would have amounted to \$1,090.32.

7 That no election has ever been held in the district to fix upon a site for a school house, or for building or buying a school house, and no election for any purpose has been had, except for Directors; nor has any notice of any election for any purpose (except for electing Directors) been posted up or given; no school house site has been purchased or obtained.

3
7 That the number of scholars in the district is very small, and it would not cost over \$200 to procure good teachers for six months and pay all expenses, and that a suitable school house, large enough to accommodate all the scholars of the district, for \$400 at furthest.

That the law does not permit a tax of over three per cent. to be levied.

8 That the house in which the school is kept is not central; that it was not located or erected by the people; that it is claimed by one John G. Farris, and is not the property of the district. That Farris never had a good title to the land on which it is built; that he has deeded it in trust to D. G. Warner, and the land is now liable to be sold.

10 That said Directors had no power, right, or authority to levy the tax, or authorize it to be levied, and that in doing so they exceeded their powers, both in the amount levied and in the right to levy the same, and that the clerk had no power to assess said tax, nor has the collector authority to collect it.

The oath of defendants is waived, and an injunction prayed against the collector and all the defendants, to restrain the collection of the tax.

14 The answer of the defendants admits that complainants are all residents and tax payers of Marshall county, and are all residents of the school district except Merritt and Rickey, who own real estate in the district, but Merritt has no personal property in the district, to the knowledge of respondents.

15 That said school district is properly described in the bill.

Admits that the persons named in the bill acted as Directors, as set forth, and insists they were and are Directors in fact. Admits that Farris, Andrews and Combs, as Directors, did cause the tax to be levied, as set forth in the bill, except the tax was not levied to extend the school beyond six months in the year, and excepting further that the Directors returned with the certificate a list of the resident tax payers of the dis-

Record.

16

trict. That in pursuance of the certificate, the Directors assessed and levied the tax as set forth.

16

They admit that Rowe is collector of taxes for the township, and that he has in his hands a collector's warrant from the clerk, to collect the tax except as hereinafter set forth.

Admit that Mary Grief, — Tanquary, Gill, and Cook are not assessed as charged in the bill, but aver that Grief and Tanquary were returned in the said list of resident tax payers of said district to the clerk, and were not taxed, because they were not assessed or returned as tax payers by the assessor of the town for the previous year, and that said Gill never was taxed because he could not be found by the assessor, and has never lived in the district.

17

Alleges there was a vote of the people of the district, on the 6th of April, 1857, to decide upon a site for a school house, and for building a school house, and it was voted that the directors should proceed to build a school house upon said site, of brick, 21 by 30 feet.

18

They assert that due notice of the meeting was given by posting up a notice in the district, on the 23d March, 1857, calling for an election of directors, and for selecting a school house site. All of which will appear more fully by their record book which they offer to produce.

18

That at the meeting John G. Farris offered to give one-half acre of ground for a school house site, which was accepted; and that he had since deeded the land, by a good warrantee deed, to the district.

19

Alleges that the district contains 47 children under 21 years of age.

19

Admit that \$200 would employ competent teachers for all the schools in the district for six months, and pay all expenses.

20

Deny that a suitable school house could be built for \$400, and allege that they have built a school house on the site selected by the voters, of dimensions required, which cost \$761 60. That the directors, Ferris, Andrews, and Combs, built the school house in the cheapest and most economical manner.

20

Admit the tax is over three per cent., but assert they had a right to levy a greater tax.

Allege the school house is in as central a situation as it can be placed, unless it is put in the centre of a section where there is no roads. That the school house is not over three-fourths of a mile from any house in the district.

21

Allege that the school house is the property of the district, and is not claimed by Farris. Admit that Farris did make a deed of trust for the land to ———; and allege that said trustee has released all claim to the half acre upon which the house is situated.

21

Allege that the school house was built in pursuance of the vote; that it cost over \$700, and was completed and ready for school about the first of Nov., 1857, and the Directors have caused a suitable school to be kept therein six months in each year ever since.

22

Record.

22 That said Andrews, Combs and Farris, as Directors, in the spring
16 and summer of 1857, in good faith, caused a tax to be levied on the property of the district of \$500, which tax they supposed would be sufficient to make the first payment to the builder of the house for 1857, and intended to get up a subscription for the support of the school, which they did.

22 That the tax so levied would have made the payment intended. That the collector of the town, for 1857, proceeded under a proper warrant to collect said tax, and did collect \$317.00 thereof, when certain of the tax payers of the district, among whom were Merritt, Rickey and King, obtained from the Circuit Court an injunction restraining the collection of said tax, which injunction was made perpetual by the Court.

23 That after they were so enjoined, and in 1858, they proceeded to levy another tax upon the taxable property of the district to pay for building said school house, and keeping up the school six months in the year, (which is the tax complained of in this case.)

23 The tax was 6 per cent. for building the school house, and one per cent. for schools. That the persons who paid the tax, assessed in 1857, were to be repaid out of the tax assessed in 1858. That the collector, Wm. Rowe, was authorized by the Directors to receive in payment of the taxes of 1858, the receipts or certificates given for the taxes of 1857, of the persons who had paid the taxes of 1857. Which receipts amounted to \$317.28, which, if deducted from the tax of 1858 of \$981.82, would leave a balance at \$664.54 only.

25 That neither Merritt, Rickey, or King ever paid anything on the subscription for supporting the school in 1857; that Merritt sent one of his children to the school; that Rickey had a tenant who sent two children, and paid no tax or subscription; and that King had no children.

That in the school now kept there are children of the tenants of Merritt and Rickey, and the children of Murray (3) and Honeywell (4) are going to the school, and Batts is sending one scholar.

25 That at the time of the meeting of the voters to build a school house, Honeywell did not live in the district. That at said meeting Merritt was a voter and one of the judges of election, and a candidate for school director; that King and Murray were not at the election, and Dunlap and Murray did not then live in the district.

26 That Murray owns no real estate in the district, and is not a permanent resident, and expects to leave on the first of March.

Signed, HARMON ANDREWS,
and two others.

27 The election notice is set forth. It is dated March 23, 1857, and says the election is for the purpose "of electing three directors for selecting a school house site, and for a school house site for said district," and is signed TIMOTHY ATWOOD, T. T.

The election was held April 6th, 1857. It was voted to accept half an acre of ground for a school house site, and that the directors be instruct-

Record.

27

ted to build a house, thirty by twenty-one feet, of brick. Warner Combs, Harmon Andrews, and John G. Farris were elected School Directors.

Proof was taken to show that the notices were posted up as set forth in the answer.

37

On the 11th February, 1859, the Court dissolved the injunction and dismissed the bill; whereupon the complainants appealed to the Supreme Court.

Complainants now allege that, in the record and proceedings aforesaid and in the rendition of the judgment aforesaid, manifest error hath intervened to their prejudice in this:

1st. The Court erred in dissolving the injunction and dismissing the bill.

2d. The Court erred in not making said injunction perpetual.

For which errors the said complainants pray that said judgment may be reversed, annulled, set aside, and for nought held.

By

G. L. FORT & H. M. WEED,

His Attorneys.

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Moritt. vs. Jarvis

Abstract

Filed April 25, 1859

L. Leland

Clerk