

No. **12746**

Supreme Court of Illinois

People

vs.

Daniels

TERM  1

6
Jerome Davis
vs
The People

6 P.D.

12746

1859

In Supreme Court State of Illinois
To the Office Term AD 1857
Ismael Daniels

vs. error to Bureau County
The People &c. Circuit Court

Now Comes the said plaintiff in error and says that in the record Judgment and proceedings in the Court below there is manifest error in this to wit -

- 1st The Court erred in admitting in evidence to the Jury the purported orders report and plat set out in the bill of Exceptions.
- 2 In giving the peoples instructions.
- 3 In refusing Defts qualification to Peoples.
- 5th Instructions
- 4th In refusing Defts 3^d & 11th & 13th Instructions.
- 5 In overruling defendants motion for new trial & rendering Judgment on verdict.

Wherefore the said plaintiff in error prays that the said Judgment may be reversed and in all things restored to his rights

Peters & Farnell
attys for Daniels

Now before the Honorable Martin Ballou
Judge of the twenty third Judicial Circuit of the State of
Illinois at a Term of the said Circuit Court begun and
held at the Court House in Princeton in the County of
Bureau on the first Monday in September in the year
of our Lord one thousand eight hundred and fifty seven

Present Hon^{ble} Martin Ballou Judge

Edward M. Fisher Clerk

J. K. Waldron Sheriff

Geo. W. Pepp Att^y Atty

The Sheriff returns in to Court the venire facias
issued by order of the Board of Supervisors of Bureau County
for a Grand Jury by which it appears that the following
named persons have been duly selected and summoned
to attend said jury at the present term of this Court, to wit:
Justin Stevens, W. H. Young, John T. Ladd, John E. Reynolds,
James E. Harris, Joseph E. Williams, Sylvester Barber, Elmer
Clements, Lewis D. Rodge, Marshall W. Abel, W. C. M. Davis,
Jacob Baldwin, Peter Longworth, H. W. Acord, Amos E.
Balden, T. Greenmeyer, Patrick H. Kelly, B. C. Couch, Ezra
McEntyre, George H. Gless, Asa Upson and Andrew Maple
who are severally called and answer to their names with the ex-
ception of Sylvester Barber, Elmer Clement and Patrick H.
Kelly who are by the consideration of the Court severally excused
for their non-attendance. B. C. Couch and Andrew Maple
after being duly sworn offer their excuses for their further
attendance which being accepted by the Court and said jurors are excused from further attend-
ance at this Term. By order of the Court, W. B. Smith, Joel
Doolittle, Charles T. Boyd, Thomas Stralinger, Isaac Hughes
and John Long are summoned by the Sheriff from the
by standers to serve as Grand Jurors at this term Justin
Stevens is appointed Foreman and after being duly sworn
and instructed by the State Attorney said jury have taken
their oath and sit as a grand inquest for the County of
Bureau

And afterwards to wit on the 14th day of said Term and being the 22^d day of said Month.

The Grand jury return into Court and present in open Court the following Bill of Indictment as a true Bill to wit;

A Bill of indictment against Jerome Daniels for obstructing a public highway, in the words and figures following to wit;—

Copy of Bill of Indictment

State of Illinois } ss. Of the September Term of the said Bureau
Bureau County } County Circuit Court in the year of our Lord
eighteen hundred and fifty seven

The Grand Jurors chosen selected and sworn in and for said County, in the name and by the authority of the People of the State of Illinois, upon their oaths present, that Jerome Daniels late of said County, on the Eleventh day of May in the year of our Lord eighteen hundred and fifty seven, at and within the County of Bureau aforesaid, a certain public Highway leading from Princeton in the said County of Bureau to Iron River in the said County of Bureau, did fence across and did ditch across near where said Highway passes over the Chicago Burlington and Quincy Rail Road and then and there thereby obstructed the said Public Highway so as to render the same inconvenient and dangerous to pass; contrary to the form of the Statute in such case made and provided; and against the peace and dignity of the same people of the State of Illinois

And the Grand Jurors aforesaid in the name and by the authority of the People aforesaid, upon their oaths aforesaid do further present, that Jerome Daniels aforesaid, at and within the County aforesaid, from the Eleventh day of May aforesaid until the taking of this indictment, on the public highway aforesaid, at the place aforesaid did continue the obstruction aforesaid, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the same people of the State of Illinois

George W. Hipp, State Attorney

upon the back of which indictment were the following words—
 "writ; to wit;

Filed Sept 22. 1857 C. M. Fisher Clerk

The People v^e Jerome Daniels, Indictment for obstructing
 a public highway and for continuing the same.

At True Bill Justus Stevens Foreman
 William Solomon Lapp, Jacobus Allen, George W. Pratt
 John Wright, George Hinatale, William Allen, John Long
 George W. Stepp State Attorney

Bail \$150. J. B.

— And the Court orders that said Bill be filed, that capias be
 issued herein returnable to the next term of this Court and that
 said defendants be held to bail in the sum of one hundred and
 fifty dollars

And afterwards to wit; on the 20th day of October A.D. 1857
 process of Capias was issued herein pursuant to the order of the
 Court as aforesaid, in the words and figures following to wit;

State of Illinois }
 Bureau County } To the Sheriff of Bureau County, Greeting
 We Command you that you take the body
 of Jerome Daniels and him safely keep, so that you have him
 before the Circuit Court of Bureau County, on the first day of
 the next Term thereof to be held at the Court house in Princeton,
 in said County, on the first Monday of January next to answer
 unto the People of the State of Illinois for and concerning the
 crime of obstructing a public highway & for continuing the
 same with which he stands charged before our said Court as
 by a certain bill of Indictment prepared against him by the
 Grand Jury of said County filed in our said Court, in that be-
 half appears and have you then and there this writ.

Witness Edward M. Fisher Clerk of our said Circuit Court and
 the seal thereof at Princeton this 20th day of October in the
 year of our Lord one thousand eight hundred and fifty seven

Edward M. Fisher Clerk



to the law and evidence, and said jury not being able to agree upon their verdict are discharged from the further consideration of this cause

Now before the Hon^{ble} Martin Ballou Judge of the twenty third Judicial Circuit of the Circuit Court of the State of Illinois at the April Term of the said Circuit Court begun and held at the Court House in Princeton in the County of Bureau on Monday the fifth day of April in the year of our Lord one thousand eight hundred and fifty eight

Present Hon^{ble} Martin Ballou Judge
Edward M. Fisher Clerk
J. H. Waldron Sheriff
George W. Stapp State Atty

To wit on the 4th day of said Term being April 8th A.D. 1858.

The People

vs Indict for obstructing a Public Highway
Jerome Daniels

Now comes George W. Stapp Attorney for the People and the defendant comes by Peter & Sawell ^{attorneys} his, and the Court orders that a jury be empanelled to try this cause, and a jury comes of twelve good and lawful men to wit; Asahel Lomas, John T. Wyatt, Cyrus Lewis, David Archer, Joseph S. Clark, Robert Kauter, Moses C. Looming, Eben Clifford, John C. Winnick, Charles S. Wright and Nathan Barnett who are duly sworn and sworn well and truly to try the issue herein and a true verdict render according to the law and evidence

And afterwards to wit on the 9th day of April A.D. 1858

The People

vs } Indict for obstructing a highway
Jerome Daniels

Now come the said Parties by their Attorney as aforesaid and the jury empanelled as aforesaid; and said jury upon their oaths say; We of the jury do find the said defendant guilty as charged in said indictment. And the Defendant by his said Attorney moves the Court for a new trial herein

And afterward to wit, on the 20th day of April A.D. 1858

The People

vs
Indict for obstructing a Public Highway
Aaron Daniels

Now come the said parties by their Attorneys as aforesaid and the Court consider that said motion for a new trial be overruled. It is therefore considered by the Court that said Defendant make his fine to the People of the State of Illinois in the sum of forty dollars. It is therefore further considered by the Court that the said People have and recover of the said Defendant the said sum of forty dollars together with all their Cost and charges in and about their suit in this behalf expended and that they have execution therefor.

And afterward to wit on the 24th day of April A.D. 1858 it being the 18th day of said Term.

Now comes the said Defendant by Peters + Sorell his Attorney and files his bill of exception herein in the words and figures following to wit;

State of Illinois Bureau County, I.L.
The People vs } Circuit Court April Term 1858
vs
Aaron Daniels } Indict for Obstructing a road

Be it remembered that on the trial of this Cause the people introduced proof tending to show that a Road was surveyed and staked out at the place obstructed, running westerly from Princeton to Green River in said County in

1844 and also proof tending to prove that said road at that place had been travelled some that time until the same was obstructed by the Deft in the Spring of 1857 and that said alleged road had been worked & recognized by the proper Road Authority as a Road ever since 1844 until the Spring of 1857 and also proof tending to prove that that said road had been travelled at the place in question for more than 20 years prior to the time of obstructing the same as charged in the indictment and also proof tending to prove that a road had been dedicated to the public by the owner of the land at the place in question & the defendant introduced evidence tending to prove that said road was not so travelled & there was no such dedication. The Deft then introduced the County Clerk of said County and asked him if he had searched the Records of his Office & whether he could find any record of a road leading from Princeton to Green River in said County or of any other Road where the obstructions were proved to have been placed by the Deft, and he replied that he had so searched & could find no record of any road at the place where said obstructions were, but stated that he found the following orders of the County Commissioners Court:—

State of Illinois } County Commissioners Court September
Bureau County } Special Term Commenced and held in
Princeton on Monday the 23rd day of September 1858

Present }
Oscar Smith }
William Haskin } Judges
Mass T. Greely }
& C. H. Banks } Clerk

Petition having been presented with the legal number of signatures and it being proved to the satisfaction of the Court by the oath of James A. Everett that public notice had been given according to the laws of said State in such cases made & provided Orders—Therefore that Thomas Watson James M. Dexter and Austin P. Olds be and they are hereby appointed Commissioners

to view and if the public good require taking into consideration the expense of construction and its utility to the Public relocate the road leading from Princeton to French Town so that the same shall be made to cross the Bureau Creek at some suitable place to build a bridge ^{over} said Creek and also to lay a road from said Crossing to intersect the road leading from Princeton to West-Bureau by Capt Swift at some point in the previous Water North West of said Crossing and that Austin H. Olds be appointed Surveyor on said road and that they report this day to this Court.

Ordered that the time for making the foregoing report be postponed until Wednesday the second day of October next.

State of Illinois } County Commissioner's Court October Special Term Commenced
Bureau County } and held on Wednesday the 1st day of October A.D. 1844.

Present

William Perkins }
Moses T. Swift } Judges
Ezra Smith }
+ C. H. Bonds } Clerk

Ordered that the report of Thomas Watson James M. Decker and Austin H. Olds Viewers appointed to relocate part of the Road from Princeton to French Town and also a part of the road from Princeton via of Capt Swift Westaby be and the same is hereby accepted and said road ordered to be opened sixty four feet wide.

— and said Witness also stated that he found the following report of Road Viewers but that the same was not recorded in his office —

To the Honorable the County Commissioners of the County of Bureau
Gentlemen

We the undersigned having been appointed by your Honorable body to view and locate a site for a bridge across the Bureau Creek

on the road leading from Princeton to Frenchtown, and to allocate such portions of said road as the public good may require and also to lay a road from some point on said road to intersect the road leading from Princeton to West Brunswick via Capt. Parfitt's respectfully beg leave to report;

That they have attended to the duties assigned them and after viewing the different roads and taking into consideration the public convenience and costs of construction have located said bridge across the Brunswick brook a few rods above Peter's old mill-dam the south side of said bridge to come to a cotton wood tree standing on the west bank of said brook and have re-located the road running from Princeton to Frenchtown as follows to wit; Commencing at a stake 8 feet north of said cottonwood tree running thence South $70^{\circ}45'$ West 111 rods thence $S. 47^{\circ} W$ 48 rods, thence $S. 65^{\circ} W$ 48 rods thence $S. 58^{\circ} 30' W$ 52 rods to the old road leading to Frenchtown, 22 rods west from range line between townships 8 & 9 West. Also commencing at said stake on west bank of brook running thence across the brook easterly to a stake on east bank of brook thence $S. 77^{\circ} 30' E$ 24 rods across the bottom thence $S. 61^{\circ} 3' E$ 46 rods thence $S. 79^{\circ} E$ 26 rods to old road leading to Princeton, said road to extend on each side of said line equally and to be of the same width as the old road.

Also commencing at a point on the above described road 45 rods west of the Brunswick brook in the center of S. L. Everett's land running thence $N. 58^{\circ} W$ 41 rods and thence thence $N. 51^{\circ} 30' W$ 40 rods thence $N. 49^{\circ} W$ 24 rods to thence $N. 70^{\circ} 30' W$ 76 rods to Cyrus' bottom west line thence West 80 rods across said Cotton's land thence $N. 66^{\circ} 30' W$ 126 rods and thence thence $N. 73^{\circ} E$ 446 rods to intersect the road leading from Princeton to West Brunswick via Capt. Parfitt's at the S. E. corner of Williams' Alleged field said road to extend two rods each side of the above described line all which is respectfully submitted

Thomas Watson
James M. Deater
Austin F. Olds } viewers

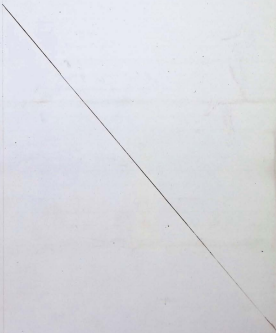
Survey

Page
10
Thomas Wilson 2 days }
Sydney McDexter 2 days } Viewers
Clinton H. Olds 2 days }

Clinton H. Olds 2 days Surveyor
Gyren Colton 1 day Chairman

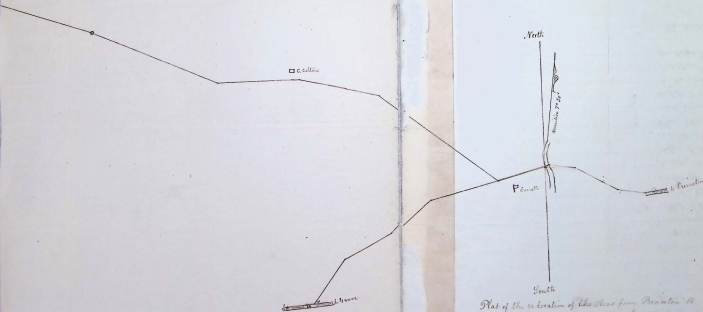
Accepted by County Board Princeton Oct 2^d 1844
C. W. Combs Clerk

— And said witnesses also stated that he found the
following Plats of a Road which was not filed or recorded in
his office



Wm. H. H. H.

Road and Capt. Hingle



Map of the relocation of the Road from Princeton to
French Creek across the Burren Creek
J. H. Olds Surveyor

— and that that was all that appeared among the records and files of his Office relating to any road where said obstructions were placed and maintained by the deft.

The deft then moved the Court to exclude from the jury the said orders report and plat & each of them from the jury which the Court refused to do but permitted the same to go to the jury & the deft then and there excepted.

The deft then introduced the County Surveyor of said County & introduced proof tending to prove that the Road described in said report according to the minutes & Survey in said report did not go to the place where the obstructions were placed and maintained by the deft but went some distance South of such place and the Prosecution introduced evidence tending to prove that the road platted in case it ended at Allen's field as mentioned in the plat would pass over the place obstructed & the defendant introduced evidence tending to show to the contrary The Court then gave the following instructions to the jury on behalf of the People

State of Illinois }
Barren County } Circuit Court April Term A.D. 1858

The People vs

or
Abner Daniels

The Court instructs the jury on the part of the prosecution

1st If the jury believe from the evidence that a public road has been used by the public over the place of obstruction in question for twenty years without interruption and that the owner of the land acquiesced therein the the law presumes a dedication of the ground upon which the Road runs, to the use of the Public for such purpose

2^d If the jury believe from the evidence that a public road

was laid out over the place in question in 1849, that it was used by the public as such until the spring of 1857, that during said time it was wanted and kept in repair by the proper public Authorities, and that the owner, or owners of the land assented to such use and keeping in repair, then it is legal highway - and the jury may infer the assent of the owner, or owners of the land from their acquiescence, if they did acquiesce.

Quinn

3rd

If the jury believe from the evidence that a public Road was laid out over the place of obstruction in question, that it was used and travelled by the public as such, and that it was recognized and kept in repair as such by the public authorities, then proof of these facts furnishes a legal presumption, liable to be rebutted, that such road is a public highway.

Quinn

4th

If the presumption has by such proof as is mentioned in the 3rd instruction caused the legal presumption therein mentioned that if such presumption is not rebutted, a highway is proved.

Quinn

Defendant's qualification to peoples 3rd & 4th instructions That if the jury believe, that the acts and proceedings in laying out such road, introduced in evidence to the jury are invalid and void that then such presumption has been rebutted.

Quinn

5th

If there is any discrepancy between the courses and distances, and the monuments mentioned in the survey of the road in question the monuments must control.

Quinn

- To the giving of each of which the defendant then and there objected but the Court overruled his objection & read said instructions to the jury & the deft: then & there excepted.

And the deft: before said 5th instruction was read to the jury asked the Court to give the following qualification to the plaintiff's 5th instructions, -

Refused

Defendants qualification to Pliffs 3rd instruction
That a monument whose location can not be determined
by the field notes cannot control field notes in the report, as
the location of the road must be determined from the
report & surveys & not by any thing outside of the report
and survey

— which the Court refused to do and the defts; then and
there granted.

And the defts further asked the Court to give the following
instructions to the jury

Refused

3 That if a road has been used and travelled by the Public
as a highway and is recognized and kept in repair as such
by the proper authorities, proof of these facts furnishes a legal
presumption that such road is a public highway, but it is
only a presumption and is subject to be rebutted, and if it
is shown that there is no legal record of a such road
then the presumption that such highway is a laid out
road, under the laws of this State has been rebutted,
unless it have been proved that such road was laid out
by the proper legal authorities prior to the date of an act
entitled "an act concerning public Roads" Approved Feb
20-1841"

The People v

Jerome Davis

Refused

11th That the field notes & plat of the laying out of the road
in contention must govern as to the location of said road
and if the place where the same was obstructed by the
said defendant was not within the bounds of said
road as designated by the plat and field notes then
the said defendant is not guilty of obstructing said
laid out highway

Refused

13th That if the jury are satisfied by the
evidence of the County Surveyor that the own
ers of the laid out road as they actually read

would not establish such road where the obstructions were placed, then said defendant is not guilty of obstructing such road although such obstructions were where said road was surveyed & staked through by the Bureau who laid out such road, as their report and record must govern, as to the location of such highway"

— Which the Court refused to do and the deft; then and there excepted - and the case went to the jury & the jury found the deft; guilty & the deft; then & there moved the Court for a new trial in said cause, and the Court overruled said motion to the overruling of which motion the said deft; then & there excepted and the Court then & there rendered judgement upon said verdict, against the objections of the deft; to the rendering of which judgement the deft; then & there excepted and then & there prayed the Court to sign & seal this his bill of exception which is done accordingly

W. Ballou Judge Pres
of 23^d Judicial Circuit Ill

State of Illinois }
Bureau County } Edward de Fisher Clerk of the
said de hereby certify that the foregoing is a true & perfect copy of the proceedings in the above entitled cause as the same appear on file and of record on the books & papers in my office. In witness whereof I hereunto set my hand and affix the seal of the said Court at Pontiac in said County on this first day of November A.D. 1858

Edward de Fisher Clerk
per H. Hallupking Dep. Clk.

Clerk's Fee for transcript &c \$6.00

Paid by Defendant

*The People v
Horne Daniels
Transcript of Record*

*Filed April 14, 1887
L. Leland
Clerk*

For \$6.00

Compensated

In Supreme Court, State of Illinois, } TO THE APRIL TERM, A. D., 1858. }

JEROME DANIELS }
vs. } Error from Bureau County.
THE PEOPLE, &c., }

This case was an indictment against the Plaintiff in error for obstructing a public highway leading from Princeton to Green River, in said County, on the 11th May, 1857. The Defendant was convicted at the April Term, A. D., 1858, of the Circuit Court of said County, to reverse which Judgment this writ of error is prosecuted. The rulings of the Court and points excepted to will appear in the bill of exceptions, which is as follows, to wit:

State of Illinois, Bureau County, SS:

CIRCUIT COURT, APRIL TERM THEREOF, A. D., 1858:

Page 6. **THE PEOPLE** }
 vs. } Indictment for Obstructing a Road.
Page 7. **JEROME DANIELS.** }

Be it remembered, that on the trial of this cause the people introduced proof tending to show that a road was surveyed and staked out at the place obstructed, running westerly from Princeton to Green River, in said County, in 1844: and also proof tending to prove that said road, at that place, had been travelled since that time until the same was obstructed by the Defendant in the Spring of 1857, and that said alleged road had been worked and recognized by the proper road authorities as a road ever since 1844, until the Spring of 1857: and, also, proof tending to prove that said road had been travelled, at the place in question, for more than twenty years prior to the time of obstructing the same, as charged in the indictment: and, also, proof tending to prove that a road had been dedicated to the public by the owners of the land, at the place in question, and the defendant introduced evidence tending to prove that said road was not so travelled, and there was no such dedication. The Defendant then introduced the County Clerk of said County and asked him if he had searched the records of his office, and whether he could find any record of a road leading from Princeton to Green River, in said County, or of any other road where the obstructions were proved to have been placed by the Defendant: and he replied that he had so searched, and could find no record of any road at the place where said obstructions were, but stated that he found the following orders of the County Commissioners' Court:

State of Illinois, Bureau County, ss:

County Commissioners' Court September Special Term, commenced and held at Princeton, on Monday the 23d day of September, 1844.

Present,

ENOS SMITH,
WILLIAM HOSKINS, } Judges.
MOSES T. GREELY,
and **C. W. COMBS,** Clerk.

Petition having been presented with the legal number of signatures, and it being proved to the satisfaction of the Court, by the oath of James S. Everett, that public notice had been given according to the laws of said State, in such cases made and provided, Ordered, therefore, that **Thomas Watson, James M. Dexter and Justin H. Cole** be and they are hereby appointed Commissioners in view, and, if the public good require, taking into consideration the expense of construction and its utility to the public, re-locate the road leading from Princeton to French Grove,

425 deposited.

Entered.

Page 8.

so that the same shall be made to cross the Barren Creek at some suitable place to build a bridge over said Creek, and also to lay a road from said crossing to intersect the road leading from Princeton to West Barren, by Captain Swift's, at some point in the prairie West or Northwest of said crossing, and that Justin H. Oble be appointed Surveyor on said road, and that they report this day to this Court.

Ordered that the time for making the foregoing report be postponed until Wednesday, the second day of October, next.

State of Illinois, Barren County, ss:

County Commissioners' Court, October Special Term, convened and held in Princeton, on Wednesday, the 2d day of October, 1883.

Present,

WILLIAM HOSKINS,
MOSES T. GIBBELY, } Judges,
ENOS SMITH,
and C. W. COMBS, Clerk.

Ordered that the report of Thomas Watson, James M. Dexter and Justin H. Oble, viewers appointed to re-locate part of the road from Princeton to French Grove, and also a part of the road from Princeton via Captain Swift's, westerly, be and the same is hereby accepted, and said road ordered to be opened sixty-four feet wide."

And said witness also stated that he found the following report of road viewers, but that the same was not recorded in his office:

"To the Honorable the County Commissioners of the County of Barren:

"GENTLEMEN—We, the undersigned, having been appointed by your honorable body to view and locate a site for a bridge across the Barren Creek, on the road leading from Princeton to French Grove, and to relocate such portions of said road as the public good may require, and also to lay a road from some point on said road to intersect the road leading from Princeton to West Barren via Captain Swift's, respectfully beg leave to report—

"That they have attended to the duties assigned them, and after viewing the different roads, and taking into consideration the public convenience and cost of construction, have located said bridge across the Barren Creek, a few rods above Guler's old mill-dam, the south side of said bridge to come to a cotton wood tree standing on the west bank of said Creek, and have re-located the road running from Princeton to French Grove as follows, to-wit: Commencing at a stake 8 feet north of said cottonwood tree, running thence south 35 deg. 45 min., west 111 rods, thence south 40 deg. west 48 rods, thence south 55 deg. west 48 rods, thence south 38 deg. 40 min. west 20 rods, west to the old road leading to French Grove, 22 rods west from range line between townships 8 and 9 west. Also, commencing at said stake on west bank of creek running thence across the creek easterly to a stake on east bank of creek; thence south 77 deg. 50 min., east 34 rods across the bottom; thence south 81 deg. 2 min., east 46 rods; thence south 78 deg., east 34 rods to old road leading to Princeton, said road to extend on each side of said line equally, and to be of the same width as the old road.

Also, commencing at a point on the above-described road 45 rods west of the Barren Creek, in the center of J. S. Knecht's land, running thence north 38 deg., west 41 rods and 10 links; thence north 31 deg. 30 min., west 40 rods; thence north 40 deg., west 34 rods west; thence north 74 deg. 30 min., west 78 rods to Cyrus Culton's west line; thence west 80 rods across said Culton's land; thence north 66 deg. 50 min., west 120 rods and 8 links; thence north 78 deg., east

140 rods to intersect the road leading from Princeton to West Bureau via Captain Smith's, at the southeast corner of William Allen's field, said road to extend two rods each side of the above described line all which is respectfully submitted.

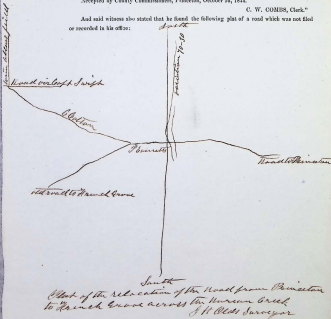
THOMAS WATSON,
JAMES M. DEXTER,
JUSTIN H. OLDS, } Viewers.

Sworn to—Thomas Watson, 1 day,
James M. Dexter, 1 day, } Viewers.
Justin H. Olds, 2 days.
Justin H. Olds, 1 day, Surveyor.
Cyrus Colton, 1 day, Chairman.

Accepted by County Commissioners, Princeton, October 24, 1844.

C. W. COMBS, Clerk."

And said witness also stated that he found the following plat of a road which was not filed or recorded in his office:



And that that was all that appeared among the records and files of his office relating to any road where said obstructions were placed and maintained by the defendant.

The defendant then moved the Court to exclude from the jury the said orders, report and plat, and each of them from the jury, which the Court refused to do; but permitted the same to go to the jury, and the defendant then and there accepted.

The defendant then introduced the County Surveyor of said County, and introduced proof tending to prove that the road described in said report, according to the minutes and survey in said report, did not go to the place where the obstructions were placed and maintained by the defendant, but went some distance south of such place, and the prosecution introduced evidence tending to prove that the road platted, in case it ended at Allen's field, as mentioned in the plat, would pass over the place obstructed, and the defendant introduced evidence tending to show to the contrary. The Court then gave the following instructions to the jury on behalf of the People:

State of Illinois, }
SHERIFF COUNTY, }

Circuit Court, April Term, A. D., 1888.

THE PEOPLE, dc., }
vs. }
JESSE DANIELS. }

The Court instructs the jury, on the part of the prosecution:

1st. If the jury believe from the evidence that a public road has been used by the public over the place of obstruction in question for twenty years without interruptions, and that the owners of the land acquiesced therein, the law presumes a dedication of the ground upon which the road runs to the use of the public for such purpose.

2d. If the jury believe from the evidence that a public road was laid out over the place in question in 1844, that it was used by the public as such until the Spring of 1865, that during said time it was worked and kept in repair by the proper public authorities, and that the owner or owners of the land assented to such use and keeping in repair, then it is legal highway, and the jury may infer the assent of the owner or owners of the land from their acquiescence, if they did acquiesce.

3d. If the jury believe from the evidence that a public road was laid out over the place of obstruction in question, that it was used and travelled by the public as such, and that it was re-gained and kept in repair as such by the public authorities, then proof of these facts furnishes a legal presumption, liable to be rebutted, that such road is a public highway.

4th. If the prosecution has by such proof as is mentioned in the 3d instruction raised the legal presumption therein mentioned then if such presumption is not rebutted, a highway is proved.

Defendant's qualification to people's 3d and 4th instruction: That if the Jury believe, that the acts and proceedings in laying out such road, introduced in evidence to the Jury are lawful and void, that then such presumption has been rebutted.

5th. If there is any discrepancy between the courses and distances, and the measurements mentioned in the survey of the road in question the measurements must control.

To the giving of each of which the defendant then and there objected but the Court overruled his objections and read said instructions to the Jury and the deft. then and there accepted.

And the deft. before said 5th instruction was read to the Jury asked the Court to give the following qualification to the plaintiff's 5th instruction:

"Defendant's qualification to Plff's 2th is traction: That a government whose location cannot be determined by the field notes cannot control field notes in the report, as the location of the road must be determined from the report and surveys and not by any thing outside of the report and survey."

Which the Court refused to do and the deft. then and there accepted.

And the deft. further asked the Court to give the following instructions to the Jury.

" 8 That if a road has been used and traveled and used by the Publics as a highway and is recognized and kept in repair as such by the proper authorities, proof of these facts furnish a legal presumption that such road is a public highway, but it is only a presumption and is subject to be rebutted, and if it is shown that there is no legal record of such road, then the presumption that such highway is a laid out road, under the laws of this State, has been rebutted, unless it has been proved that such road was laid out by the proper legal authorities prior to the date of an act entitled 'An Act concerning Public Roads,' approved Feb'y 20, 1841."

THE PEOPLE, &c., }
vs. }
JAMES DANKS. }

11th. "That the field notes and plat of the laying out of the road in contention must govern as to the location of said road and if the place where the same was obstructed by the said Defendant was not within the bounds of said road as designated by the plat and field notes then the said defendant is not guilty of obstructing said laid out highway."

12th. That if the Jury are satisfied by the evidence of the County Surveyor that the minutes of the laid out road as they actually read would not establish such road where the obstructions were placed, then said defendant is not guilty of obstructing such road although such obstructions were where said road was surveyed and staked through by the clerks who laid out such road, as their report and record must govern, as to the location of such highway."

Which the Court refused to do and the deft. then and there accepted and the case went to Jury and the Jury found the deft. guilty and the deft. then and there moved the Court for a new trial in said cause, and the Court overruled said motion. To the overruling of which motion the said deft. then and there accepted, and the Court then and there rendered judgment upon said verdict, against the objections of the deft., to the rendering of which judgment the deft. then and there accepted and then and there prayed the Court to sign and seal this bill of exceptions, which is done accordingly.

M. BALLOU,

Judge of the Judicial Circuit 11th.

(SEAL)

Now comes the plaintiff in error and says that the said judgment of the Court below is erroneous, because, he says that the said Court erred:

1st. In admitting in evidence to the Jury, the purported orders, report and plat set out in the Bill of exceptions.

2d. In giving the people's instructions.

3d. In refusing Defendant's qualification to People's 2th instruction.

4th. In refusing Deft's 2d, 11th and 12th instructions.

5th. In overruling Deft's motion for new trial and rendering judgment on the verdict.

Wherefore the said Plaintiff in error prays that the said judgment may be reversed.

PETERS & FARWELL, Att'ys for Danks.

POINTS AND ANTIQUITIES.—The orders of the Commissioners' report of views and plans were void. The orders specified one road and the report another. The law also required that the points of the proposed route should be given in petition and that the report should be recorded.—Act of Feb'y 23d, 1841.

The Record of the Road could not be contradicted by verbal testimony.

The Record would govern as to the location of the Road and not the uncertain memory of witnesses.

Evans from Bureau Co

Jerome Daniels
as of

The People vs

Abstract &
Appraisal of Evans

Filed April 14, 1858

L. Leland
Clerk

Sioux Daniels
vs. appeal from Bureau
The People &c
Plaints & authorities for appellants

POINTS AND AUTHORITY.—The orders of the Commissioners' report of viewers and plat were void. The orders specified one road and the report another. The law also required that the points of the proposed route should be given in position and that the report should be recorded.—*Act of Feb'y 20th, 1861.* Neither of which was done.

The Record of the Road could not be contradicted by verbal testimony.

The Record would govern as to the location of the Road and not the uncertain memory of witnesses.

Hallock vs. Woodway, 22 Wendell, 398. Weed vs. Hunsell, et al, 3 Blackford, 127.

The order of the Commissioners required the laid out Road to be run from the crossing of Barren to intersect the Road leading from Princeton to West Barren, by way of Capt. Swift's, at some point in the prairie west or north-west of said crossing—while said Road was not run to any point west or north-west of said crossing, but to a point between west and north-west of such crossing.

The laid out Road was not started from such crossing, but from a point west of such crossing, and therefore would not terminate at the point designated.

By the field notes, such laid out Road was at one point run N. 70°, East 448 rods, while by the map, said Road was run N. 75°, West —.

The width of the laid out Road was not determined by the Commissioners' Court, as required by Law. *Act of Feb'y 20th, 1861, Sec. 35,* and is therefore void.

White vs. Conover, 3 Blackford, 354. Carlton vs. Stone, 3 Blackford, 368. Beardlake vs. French, 3 Cass., 318. Shattuck Road, 3 Kinney, 38. Jonestown Road, 1 S. & N., 487.

The laid out Highway had to be recorded before it became a Road. *Act of Feb'y 20th, 1861, Sec. 35. Commonwealth vs. Merrick, 3 Mass., 328. 3 Call, 848.*

The precise direction of the laid out Highway, as laid out and recorded, is uncertain, and therefore the laying out of such Road is void. *Hinchley vs. Hastings, 3 Pickering, 185. Hicks vs. Felt, 4 Mason, 310.*

There was no proof how or when the report of viewers or plat of Road came into the Clerk's office, or that they were filed therein.

Attest: Samuel
att'y for Daniels

Jerome Daniel,
vs
The People

Points & authorities
for appellant

Filed April 14, 1859
L. Leonard
clerk

Supreme Court of Illinois.

Third Grand Division

April Term A.D. 1859

Frederic Daniels

as

The People of the
State of Illinois

Brief on Part of Appellee

It is urged on the part of
the People in this case, that
the first position, taken by counsel
for appellant, is without foundation
for if the Commissioners Court of
Bureau County approved of the report
of the Viewers, and sanctioned the
location of the road, then the law
presumes such road to be legally
established & open to public use.

See 4th Gilman 479 -

1st do - 10 -

.. .. 4 -

The presumption of law is, that, in all
cases, where the interests & rights of
the public are at issue, the public
officers have fully discharged their duty,
and that all papers and records of
proceedings, found in the office, or place
of doing business, of the proper legal
custodian of such papers or records
where the public interests are at stake

are full notice to all persons of the contents of such papers or record of proceedings, - and such papers, or records, need not be recorded at length or even marked "filed" in order to render them binding upon individuals -

See 17 Ill 421 - Merriak vs Wallace, 17 Ill 499
" " 369 -

It is always competent to prove the location of a public highway, by parol evidence, - and any evidence that will convince a jury of the location of such highway, will be deemed & held sufficient. - - -

See 1st Gilman 10 - 2nd Greenleaf, Ev. - See, 662
15th Ill 547

The commissioners, who lay out a public highway, are not required by the law, to commence & terminate such highway at the precise points named in the petition, but they are at liberty to vary the point of commencement, as well as the terminus of such road, in such way & manner as in their judgment will best subserve the public interests. Making due allowance for the nature of the ground &c over which such

Highway Passes, -

See Act of Feb 20th 1841 - 23 Wendall 228 -

19 Do - 58

1 Do - 310

The fact if true, that the commissioners
Court of Bureau County, failed to
fix a certain width to the said road
is perfectly immaterial in this case,
for such an imperfection of the
record, could only be taken advantage
of upon appeal, from the order
establishing such highway. -

See, 17 Rich = 19 Rich - 1st Wendall - 310

2 Greenleaf. Ex - See 662

17 Ill - 383 -

But the evidence in this case, clearly
shows, that the road in controversy
was by the proper tribunal, declared
to be laid out & established four
rods wide, in accordance with the
act of Feb 20th 1841 - the law, under
which the said highway, was laid
out and opened. -

The marks made, states
Shuck &c. by the commissioners, at
the time of the survey of the said
highway, would govern us to the
actual location of the road, in

preference. to the record of the Survey,

Sett. 15 Ill 546

17 Ill 369

It is insisted in this case, that the
highway in question has no
legal existence, because the record
shows that the course of the road
was west or north west of the
crossing of Bureau, with the Road
leading from Princeton, W. West-
Bureau, by way of Capt Swift. While
the said Road was actually run
to a point between west and
north west of such crossing, - this
fact if true is wholly immaterial
provided the said Road actually
ran across appellants' premises
and was by him obstructed
in manner as charged in the
plea. and all this fully
appears from the proofs in the
case. -

See Act of Feb. 20 1841 - 15th Ill 546.

2 Greenleaf Ex-see 662 = 1st Schuman 4th

23 Wendell 338 " " 10

19 do - 88

Sufficient to show that the road was duly
established by competent authority
388 of Gilman 499 - 1 Gilman 10 -

I would be doing manifest injustice
to the public, if I encourage any
effort made by individuals, to
overturn and destroy the public
used highways, on the ground
of the loose and imperfect, minute
records & files kept by the commis-
sioners courts, in the early locations
of roads through a new & sparsely
settled country. - and courts will
undoubtedly, disregard all such
imperfections of records, except where
great & manifest injustice would be
done, and allow resort to the usual
modes of proof, by prescription, from
use & dedication, in addition
to record proof. - and each of these
positions are fully sustained in
17 Ill. 421 & the authorities there
cited -

W. B. Burwell

State's atty.

14-6-21.
Iraane Daniels
25-6-21

The People &c

Peoples Brief

Filed May 4, 1899
Leland
Black

Supreme Court of State of Illinois
April Term 1859 - at Ottawa

Leome Daniels

vs. Error to Bureau County Circuit Court
The People of the State of Illinois

The Clerk of the Supreme Court
will issue Scire facias & writ of
error, have the Sci Fa served upon
States attorney and forward writ
of error to us by mail. Inclosed
please find five dollars for
docketing. Suit -

James
Peters & Farwell
attys for Plegg in Error
March 9th 1859.

The Peoples
by
Jerome Daniels
Recipe

Filed March 14, 1859
L. Leland
clerk

State of Illinois } Supreme Court thereof
3rd Term of Session

Jerome Daniel } April Term 4th 1857
vs }

The People H. And now came the
Said People and say
that there is no error, nor
manner of error, either in
Said record and proceedings
nor in the giving the judgment
aforesaid. Wherefore they pray
that Said judgment may be
affirmed in all things. and
that they recover their costs in
this behalf. - &c.

By W. Bushnell
State Atty

Supreme Court

6

Lironi Daniels

vs

The People &c

forwards in error

Filed April 21, 1859

L. Nelson

Clerk

STATE OF ILLINOIS, }
SUPREME COURT,

vs. The People of the State of Illinois,
 To the Clerk of the Circuit Court for the County of Bureau 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 Bureau County, before the Judge thereof, between
The People of the State of Illinois

plaintiff, and Jerome Daniels

defendant, it is said mani-
 fest error hath intervened, to the injury of the aforesaid Jerome
Daniels

as we are informed
 by his 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 Su-
 preme Court the record and proceedings of the plea 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. Cahaw, Chief
 Justice of our said Court, and the Seal
 thereof, at Ottawa, this twelfth day of
March in the Year of Our Lord
 our thousand eight hundred and fifty three
and

Clerk of the Supreme Court,
 by J. R. Rice Deputy

The People of the State of Illinois
vs
Jerome Daniels

Writ of Habeas

Filed April 14, 1859
L. Leland
Clerk

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

To the Sheriff of the County of *La Salle* _____ Greeting:

BEFORE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* _____ Court of *Bureau* County, before the Judge thereof, between *The People of the State of Illinois* _____

plaintiff, and *Jerome Daniels* _____

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

Jerome Daniels _____

as we are informed by *his* 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~~

Washington Bushnell States Attorney
for said Supreme Court _____

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

notice, together with this writ.

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

L. Leland

Clerk of the Supreme Court.
by J. P. Miller Secy

The People of the State of Illinois
⁸⁷
Jerome Daniels
Sci Fa

Served this writ by reading
thereon to
Washing for Bushnell on
the 25th day of October 1857

W. Waring
J. W. Waring
J. W. Waring
J. W. Waring

Filed April 16. 1857
L. Leland
Clerk

*Some points for appellant
The People*

POINTS AND ACCURACIES.—The orders of the Commissioners' report of viewers and plat were void. The orders specified one road and the report another. The law also required that the points of the proposed route should be given in petition and that the report should be recorded.—*Act of Feb'y 20th, 1841.* Neither of which was done.

The Record of the Road could not be authenticated by verbal testimony.

The Record would govern as to the location of the Road and not the uncertain memory of witnesses.

Hillock vs. Wesley, 22 Wendell, 323. Wood vs. Marshall, et al, 2 Blackford, 137.

The order of the Commissioners required the laid out Road to be run from the crossing of Bureau to intersect the Road leading from Princeton to West Bureau, by way of Capt. Swift's, at some point in the prairie west or north-west of said crossing—while said Road was not run to any point west or north-west of said crossing, but to a point between west and north-west of said crossing.

The laid out Road was not started from such crossing, but from a point west of such crossing, and therefore would not terminate at the point designated.

By the field notes, each laid out Road was at one point run N. 70°, East 446 rods, while by the map, said Road was run N. 71°, West —.

The width of the laid out Road was not determined by the Commissioners' Court, as required by Law. *Act of Feb'y 20th, 1841, Sec. 25, and is therefore void. P 241.*

White vs. Conover, 2 Blackford, 444. Carleton vs. State, 2 Blackford, 306. Burdette vs. French, 7 Conn, 129. Shamokin Road, 4 Hinesy, 35. Jewettown Road, 1 S. & H., 427.

The laid out Highway had to be recorded before it became a Road. *Act of Feb'y 20th, 1841, Sec. 25. Commonwealth vs. Herrick, 2 Mass., 339. 3 Call, 543.*

The precise direction of the laid out Highway, as laid out and recorded, is uncertain, and therefore the laying out of such Road is void. *Hinkley vs. Hastings, 2 Pickering, 192. Hicks vs. Fish, 4 Mason, 313.*

There was no proof how or when the report of viewers or plat of Road came into the Clerk's office, or that they were filed therein.

*There is nothing in the objection that they said
they saw land out just West or West 65° N.
23 West 380. The Record*

*Plaintiff's Counsel
atty for appellant*

6
Lionel Daniel
The People
Printed & published
in a hall

12746

~~12747~~

Filed April 12/1859

L. Daniel

1859