

14386


No. _____

Supreme Court of Illinois

Waugh

vs.

EE
L~~WA~~ch.

71641  7

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Putnam - Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of Putnam County, before the Judge thereof, between John Waugh who sues as well for himself as for the County of Putnam

plaintiff, and John W. Leach

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

as we are informed by his complaint ~~to~~ 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 judgments 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. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 13th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

L. Island
Clerk of the Supreme Court.

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SUPREME COURT, } ss.

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plaintiff, and John W. Leach

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

as we are informed by his complaint ~~to~~ 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 judgments 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.

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plaintiff, and John W. Leach

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

as we are informed by his complaint ~~to~~ 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 judgments 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.

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L. Island
Clerk of the Supreme Court.

123
John Waugh Jr &c

No.

vs.

John W. Leach

WRIT OF ERROR.

FILED

March A. D. 1862

L. Island

Plenk.



(11)
State of Illinois,
Putnam County J. P.

Pleas before the Honorable
Samuel L. Richmond Judge of the 23rd Judicial
District of said State - At a Term of the Circuit
Court of said County of Putnam, begun and
held at Keokuk, in the Court-House, on Monday
the Twenty-eighth day of October A.D. 1861 -

Present Hon. Samuel L. Richmond, Judge &c.
James H. C. Roal, State's attorney,
Harvey B. Loper, Sheriff,
John B. Gerberich, Clerk;

Be it remembered that heretofore, to-wit: June
13th A.D. 1859 - a summons was issued by a
Justice of the Peace, which is in the words and
figures following, viz:

"State of Illinois,
Putnam County J. P. The
People of the State of Illinois to any Constable
of said County, Greeting:

You are hereby com-
manded to summon John W. Beech to appear before
me at my office, in Keokuk, on the 18th day of
June A.D. 1859, at 2 o'clock P.M. to answer the Com-
plaint of John Waugh, who sues as well for the
said County of Putnam as for himself, in an
action of Debt for obstructing a certain Public
Road in said County for a failure to then a

(2)

certain demand not exceeding one hundred dollars, and herof make due return as the law directs -

Given under my hand and seal this 13th day of June A.D. 1859 -

J. D. McBarty *Q. C.*

"Return on said summons - "Served by reading to the within named
"John W. Beech this fourteenth day of June 1859 - E. McCarter, Const. "

Afterwards, to wit: on the 8th day of July A.D. 1859 - the following Appeal Bond was filed in said Circuit Court, viz:

"Know all men by these presents, That we John W. Beech and Robert Beech are held and firmly bound unto John Waugh, who sues &c. in the penal sum of Forty - seven dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs and administrators, jointly, severally and firmly by these presents. Witness our hands and seals, this 8th day of July A.D. 1859.

The condition of the above obligation is such, whereas, the said, John Waugh, who sues as well for himself as for the use of Putnam Co., did on the 18 day of June A.D. 1859 before J. D. McBarty Esq., a Justice of the Peace, for the County of Putnam recover a judgment against the abovesaid John W. Beech for the sum of eighteen dollars and cents, and costs of suit, from which said

(3)

judgment the said John W. Beech has taken an appeal to the Circuit Court of the County of Putnam aforesaid, and State of Illinois. Now, if the said John W. Beech shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court, upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect -

In presence of } J. W. Beech Seal
Robert Beech Seal
Approved July 8 - 1859 }
Geo. Dent, Clk. "

Afterwards, to wit: July 14th. A.D. 1859. the following summons was issued by the Clerk of said Court, which is in the words & figures following, to wit:

" State of Illinois,
Putnam County }
The People of the State of Illinois, To the Sheriff of said County, Greeting:

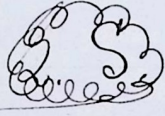
Whereas in a certain cause lately pending before Joseph D. McBarly, Esquire, one of the Justices of the Peace, within and for said County, wherein John Vaughn, sues as well for himself as for the County of Putnam, Plaintiff - and John W. Beech, defendant, judgment was rendered by said Justice against the said John W. Beech from which judgment the said

(4)

John W. Beech has appealed to the Circuit Court of said County:

We Therefore Command you that you summon the said John Waugh to be and appear before said Circuit Court, on the first day of the next term thereof, to be held at the Court-House in Hennepin on the Fourth Monday in October next, at ten o'clock in the forenoon and abide by and perform the judgment of said Court in the premises.

Witness Geo. Dent, Clerk of said Court, and the seal thereof, at Hennepin in said County, this Fourteenth day of July A.D. 1859.



Geo. Dent, Clerk. "

Which summons has the following endorsement on the back of the same, to-wit:

" State of Illinois,
Putnam County } G.

I have duly served this writ, by reading the same to John Waugh this 26th day of July A.D. 1859.

John P. Geberich, Sheriff."

Afterwards, to wit: October 24, A.D. 1859, a Transcript was filed in said Court, which is in the words & figures, following, viz:

"June the 13th 1859 -

State of Illinois } Justice Court

(57) Putnam County } Before J. D. McCarty -

John Waugh, as well for himself, as for
said County - } Demand \$100.00

This day summons issued to E. McCarty, Constable - set for trial on the 18th Instant, at 2 o'clock P.M., summons returned served by reading to J. W. Leach, the Deft. on the Fourteenth June 1859 - E. McCarty, Constable, June the 18th 1859 - this day come the Plaintiff and this cause came on hearing and the Defendant failed to appear solemnly called - and the witnesses in the case being called and sworne and after hearing of the evidence and examination of the exhibits it is considered that the Plaintiff for himself as well as for the said County have judgment by default against the Defendant for the sum of eighteen dollars debt and also for the cost herein expended, and that he have execution for the same.

J. D. McCarty, J. P.

Supercedes served -

Copy of summons -

State of Illinois

Putnam County } The People of the State of Illinois, to any Constable of said County, Greeting -

You are commanded to summon J. W. Leach in your County to appear before me

(6)

at my office in Hannepin on the 18th day of June 1859, at 2 o'clock P.M., to answer the Complaint of John Waugh who sues for himself as well as for said County in a certain plea for the failure to pay him one hundred dollars and hereof make legal service and return -

Given under my hand and seal this 13th day of June 1859 -

J. D. McBarty, J. P. *Seals*

Copy of return on summons -

I have served the within summons by reading the same to J. W. Seach on the 14th day of June 1859

C. fees 45 cents - E. Mcartea -

(Fees inserted here)

State of Illinois,
Putnam County } J. D. McBarty, J. P.

McBarty do hereby certify the above to be a true Transcript from my pocket in the above named suit.

Given under my hand and seal this 10th day of August 1859. J. D. McBarty, J. P. *Seals*

First day of the foregoing named Term of said Circuit Court of said County, to-wit: October 28th AD. 1861 -
the following order was had, to-wit:

" John Waugh, who sues as well }
for himself as for the County of Putnam }"

(7)
No. 35.

ms.
John W. Leech

3 Appeal,

Now comes the Plaintiff-
by P. M. Shaw, his attorney, and the defendant not
being ready for trial, it is ordered by the court that
this cause be passed at the defendant's costs—
Therefore it is considered and adjudged by the
court, that the said Plaintiff recover of the
said Defendant his costs herein expended,
for the first day of this Term, to be taxed, and
that he have execution therefor.

Tuesday, October 29th A.D. 1861.

Court met pursuant to adjournment—

Present the same as yesterday—

(2nd day of said Term)

The following order was had
on said day in same cause, to wit:—

John Waugh, who sues as well for himself,
as for the County of Putnam

} Appeal.

No. 35.

ms.
John W. Leech

3

Now again come the
parties by their respective attorneys—The Plaintiff
by Shaw & Bangs and the Defendant by Dent &
Eldredge— and also a jury of good and lawful
men, to wit: David D. Speer, Abraham Whisner,
H. J. Oaks, Isaac S. Purviance, James E. Blake

(8)

Owen Mofford, Eli V. Raley, Emer Smith, Peter Feltes, John W. Moore, Daniel Albert, and Augustus Shepherd. Come to try the issue and are duly sworn, who after hearing the evidence do upon their oaths say - "We the Jury find the defendant not guilty."

(3rd day of said Term)

Wednesday Oct. 20, 1861.

Court met pursuant to adjournment -

Present same as yesterday -

Being one of the days of said court, the following order was entered, to-wit: -

John Waugh, who sues as well for himself as for the County of Rutnam

vs.

John W. Leech

} Appeal -

No. 35.

Now again comes the Plaintiff by Shaw & Bangs his attorneys, and moves the Court to set aside the verdict herein, and also makes a motion for a new trial in this cause. -

(4th day of said Term)

Thursday, October 21, 1861.

Court met pursuant to adjournment -

Present the same as yesterday -

The following order was had in said cause.

John Waugh, who sues as well }
3



(9)
No. 35.

for himself as for the County of Putnam?

^{vs.}
John W. Leech

} Appeal
}

And now the Court having duly considered the motions made by Plaintiff hereinbefore to set aside the verdict and for a new trial - It is ordered by the Court that the same be and they hereby are overruled - Therefore it is considered and adjudged by the Court that the said Defendant have and recover of the said Plaintiff, his Costs herein expended, to be taxed, and that he have execution therefor -

And now again comes the Plaintiff, by Shaw & Bangs, his attorneys, and prays an appeal to the Supreme Court and the Court having duly considered said prayer, and thereupon the same is granted, upon the Plaintiff entering into Bond in the sum of Three hundred dollars, conditioned according to Law, with surety to be approved by the Clerk of this Court (by agreement of parties) to be filed within sixty days, together with his Bill of Exceptions in same time -

Afterwards, to-wit: January 24, 1862, a Bill of Exceptions was filed in said Court in said Cause, which is in the words of figures following, to-wit:

"State of Missouri,
Putnam County) ss.

John Haugh who

does as well for the County, In Circuit Court of
of Putnam (State of Illinois) } Putnam County
as for himself } October Term A.D. 1859

John W. ^{vs.} Beech } Appeal from J. P. -

Be it remembered that on the trial of the above cause at the October Term A.D. 1861. of said Court, the Plaintiff produced his account against said Defendant which is in the words and figures, following, to wit:

| | |
|---|---------|
| J. W. Beech | Dr. |
| To John Warrick + Putnam Co. | |
| For penalty given by statute for obstructing a public road running through the Town of Florid in Putnam County, on Main Street in said Town | \$10.00 |
| For suffering such obstruction to remain, after being legally notified to remove same, for the space of 30 days. | 90.00. |

Augustus Cassell sworn as a witness on part of Plaintiff testified as follows - That he was acquainted with parties to suit, he (witness) had lived in the Town of Florid in Putnam County State of Illinois for more than twenty-four years until last spring - That he knew where Main Street in the old Town of Florid was and helped lay out the same + knows where Main

The following is a copy of the deed of Dedication of the old Town of Florid:

" Situated on the North East quarter of section twenty-four in Town Thirty-two north, in Range two West of the third Principal Meridian, County and state aforesaid. The data or starting point in the present survey of said Town is a stone planted or fixed at the South West corner of a Wheelwrights shop (standing on the South West corner of Lot No. one) and now owned by Mr. Aaron Thomson being on the North line of Main Street, and from which point the present survey extends due East on the said North line of Main Street twenty-eight rods or 462, and due West from said stone or starting point on the line of said street sixty-two rods or 1023 feet, making the East and West lines of the present survey, 90 rods in length, and due North from said starting point two hundred feet, being the length of the lots of the present survey, also from said starting point due South two hundred and seventy-five feet, making the North and South lines of the present survey four hundred and seventy-five feet.

Further description as follows, to wit: Width of Main Street 75 feet, Streets running

(13) North and South 30 feet, each in width —
 alleys 10 feet wide each, Length of lots 200 feet
 each, width of same 60 feet. Except the two
 East Lots which is 32 feet wide each and also
 the two West lots which is twenty-three feet
 wide each.

N. B. On the end of each lot on Main Street is
 marked in figures the width thereof, on the
 back part thereof the length, and in the center
 of each lot is marked the number, by which
 it is known and designated —

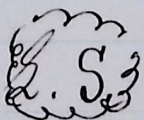
Wm. M. Stewart

R. M. Hayes, County Surveyor. } Aaron Thompson

State of Illinois
 County of Putnam } P. J. Hooper Warren, clerk
 of the County Commissioners' Court of said
 County, do hereby certify that William M. Stewart
 and Aaron Thompson, personally known to
 me as the same persons whose names are sub-
 scribed to the annexed Plat, and acknowl-
 edged that they signed the same as their free
 act and deed, for the uses and purposes
 therein expressed.

Given under my hand and seal of
 said Court, at Kennepin this 10th day of
 December 1835.

H. Warren, clk. "



(14)

The Record of the Plat and deed of Dedication of White's Addition to Florid is as follows.

The following is a copy of the Plat of White's Addition to Florid -

| | | | |
|----|----------------|--|--|
| 81 | 91 | | |
| 82 | 40 | | |
| 63 | any | | |
| | 50 | | |
| | 80 | | |
| | 81 | | |
| | 82 | | |
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| | 98 | | |
| | 99 | | |
| | 100 | | |

S. J. ...

The following is a copy of the deed of Dedication of White's Addition to the Town of Florid:

(17)

Said witness testified further as follows -
That he knew of a Public Road being ^{laid} along the
Main Street in Florid 40 feet wide. Did not know
how close to the South line of the Street it was laid.
It was laid in 1836 - There has been a Public trav-
eled way through said Streets where the travel
now is substantially for the last 23 years - though
it did not run straight as it now does - It
crooked a little on account of sloughs, the
grounds being for a long time uninclosed, a
bridge was built by the County authorities in
the Main Street to said Town and Addition -
That travel came right along the South line of
Florid - sometimes varying further north and
sometimes South on account of sloughs - Have
traveled the Road often myself during all that
time. Some 12 or 14 years ago Beech's fence
was moved ^{out} and to what was supposed to be
Beech's line on South ^{line} of Main Street in the
Addition. Prior to that time the fence was
some distance South - In 1837 - 1838 or 1839
the fence was moved ^{out} and by James Beech -
It was moved out to the South line of Main
Street in White's Addition - During the time
that the fence was out to the line the travel was
confined to the land north of the line - In some
places approaching near the fence and at other
places further off. The Road not being straight -
in some places the travel was right along the

18,
fence within a few feet and almost touching
the stakes - The fence remained on the line
and the travel continued pretty much in the
same place as it then was until some two or
three years ago when the defendant John W. Leech
moved the fence some 7 or 8 feet North and into
Main Street in White's Addition - This was
done some time previous to the commencement
of the suit before the Justice of the Peace in this
cause - I was a witness in suit before the J.P.

Cross examined by Defendant -

Stakes were driven
for a 66 feet Street in Addition - Did not know
where the County Road of 1849 was located - The
Bridge is East of my house in Road on Street
leading East - Is 25 or 30 might be 40 feet, don't
think it is 40 feet North of South line of Main
Street - Road runs East from Bridge on old
road as nearly as it could - Mahlon Smith
had fence on North line of Street White's Addition
up to Waugh's building, was still more open
space in S. E. corner of what is now Waugh's
farm - Waugh some years ago put his fence
out several feet on North side of Street so as to
leave a pretty narrow road between him
and Leech - Think there is not 66 feet left for
the Street - never measured it - never was any

(19) building on South line of Street -
Direct resumed -

Witness had owned the Lots on South Side of Main Street in the Addition of White & sold them to John W. Seech & the fence was on the South line of the 66 feet Street. ~~Know~~ a bridge was built there some 23 years ago on East line of Florid - not the same bridge as is now there -

Joseph Cassell sworn as a witness on behalf of Plaintiff testified as follows: Have lived in Florid 22 years. Know of John W. Seech's putting his fence on the Public Highway two or three years ago. Know when the fence was put by James Seech 12 or 13 years ago - John W. Seech put his fence 12 or 15 feet North of the fence of James Seech. The travel went close to the fence of James Seech - within 8 or 10 feet - went straight through them - The road did not change after James Seech's fence was put there, but was the same or very nearly the same after and before the fence was put there - I worked on the road under Supervisor Ratten or Stewart twenty years ago -
Cross examined -
The first bridge was built there

(20)

in Florid some 20 years ago + was a little South of the present bridge - From South fence to West end bridge is some 30 feet + from South fence to East end is some 17 feet - Waugh has been putting out his fence on North side some seven or eight years - Witness did not help locate the street -

Defendant's old fence built by James Beech was from two to six feet North of South line of Main Street -

Direct resumed -

The fifteen feet between the old fence and the new was near the bridge -

John Bear sworn as a witness on behalf of Plaintiff testified that he had lived in Florid some twenty-three years - Know where Main Street in White's Addition to Florid is. It lays East of Main Street in the old Town 33 feet wide - Main Street in old Town is seventy^{five} feet wide - The offset in Street between old Town and Addition is on North side - South line of Main Street in Addition corresponds with South line in old Town. Know there has been a traveled way along 33 feet street - The first bridge there was four or five feet

(21)

from the South line of the New Town (addition)
 The fence of James Leech corresponded with
 South line of Addition in Main Street, ex-
 cept that in some places was a little over
 the line and in some places not quite to the
 line - Was put there some 15 years ago - The
 travel was in some places within two feet of this
 fence and some places ten feet - Fence of Defend-
 ant was some 3 or four years ago put fifteen feet
 North of South line of Main Street in Addition.
 Prior to fifteen years last road ran over same
 place except in avoiding sloughs -
 Cross Examined -

Old bridge was only some four
 or five feet North of South line of Main Street. New
 bridge is some 30 feet North of the line -

Before the fence was built the travel was not
 confined to any particular track except at the bridge.
 Some of the road on the North side was fenced some
 15 or 16 years ago - some of it not so long -

There was perhaps 20 rods of open space South
 of the bridge and think the travel inclined South
 so as to go round the hill - worked on the bridge -

Leech James moved his fence out to the line
 some 15 years ago - The work has been done on that
 line ever since the fence was made - No particular
 change in the travel - was not traveled South of
 Main line. Travel kept as near the middle

of the road as they could. The new fence was put on to the graded part of the road - The old fence at East end came nearer the traveled track than at the West end - The new board fence is put over $\frac{1}{3}$ of the whole line through White's Addition, running East from Florid - Witness did not help locate the road

Daniel Albert sworn as a witness on part of Plaintiff, testified that he once lived in White's Addition to Florid but has not lived there for several years - Knew where the travel was on Main Street in said Addition nineteen (19) years ago - was near where it now is - Run closer to fence at East end than it did at West end - Travel at West end was some 15 feet from fence - Never knew exactly where Main Street, in White's Addition was -

Cross Examined.

The first bridge was not there when I came - The bridge that was there when I came was where the bridge now is - might be a few feet off -

Re-examined by Plaintiff -

The ground East of the bridge to the first slough is good hard ground and the travel went direct -

(23)

Henry C. Thomas sworn as a witness on part of Plaintiff testified that he knew where White's Addition to Florid was, but did not know ~~exactly~~ where street was located - but assisted once to make a survey - Was 60, 70 or 80 rods of board fence at East end of Main Street in old Down tin Street of the White's Addition - Defendant told witness that he (Defendant) had it put there - The fence was some 13 or 14 feet over into Street at West end - The fence was put there before the Commencement of this suit - The old fence put up by James Beech was North of the South line of Main Street in White's Addition - On the survey he assisted to make ^{the} stakes - were all set in the field South of that fence -

Andrew Wardlaw sworn as a witness on behalf of Plaintiff testified that he knew the location of Main Street in White's Addition to Florid - Has been there ever since witness knew the place nearly twenty years. - The Main Street run where it does now run right through - Always saw the Street there - Don't know by whom or what authority laid out - There has been a Public Highway along there for twenty years - Was called upon some two or three years since as Supervisor to settle a dispute concerning the location of the Highway along there.

(24)

Had a survey made by Booth a surveyor - The street there by that survey was found to be 33 feet wide - South line of Main Street in the Addition corresponded with the South line of Main Street in old Town -

Here the Plaintiff rested -

John P. Blake sworn as a witness on part of defendant testified that he was County Surveyor of Putnam County in 1849 - Laid out road through Main Street - the centre of the road as laid running from the center of said street at the West end of Florid to a point two and one half chains North to the South East Corner of N. W. 1/4 of section Thirty T. 32 N. R. 1 W. - White's Addition to Florid is partly on S. W. 1/4 said section Thirty -

Here a Plat of said road accompanied by the viewers report and the order of Court thereon establishing said road located in 1849 were produced and read to the Jury - which said report Plat & order are as follows :-

(The following is the order of said viewers)

"Road from S. W. Corner S. E. 1/4 Sec. 26 T. 32 N. R. 2 W. (at Hennepin & Lacon road) in a N. E. direction, via Florid &c. to S. W. Corner S. E. 1/4 Sec. 11 T. 32 N. R. 1 W. at State road from Hennepin to Ottawa.

Also a Road from S. E. Corner of Sec. 16 T. 32 N. R. 1 W.

(25)

in Southerly direction to S.W. Corner S. E. 1/4 Sec. 28 T. 32 N. R. 1 W. (to road from B. S. Leutter's to Mt. Palatine,

Report filed Sept. 3, 1849, Approved Sept. 4, 1849. Samuel C. Bacon, John Ong & Howson K. Zeno acting as Co. Commissioners. —

To the ^{County} Commissioners Court of Putnam County, Illinois — The undersigned, appointed at the June Term of the Commissioners Court A.D. 1849, to view and locate two roads hereinafter described, Report as follows:

On the 23^d day of August A.D. 1849, we proceeded in Company to a personal view of the routes selected by the Petitioners for the roads & described in the order of the Court, and having examined the same, agreed in the opinion that the roads applied for are necessary & of public utility. We accordingly proceeded to locate and establish the same according to Law, as the following description & annexed Plat will show. —

Commencing at station 1, which is three rods North of the 1/4 section corner of section twenty-six, in Township number Thirty-two, North of Range No. two West of the third Principal Meridian, on the South side of said section, in the road leading from Hennepin to Bacon, at or very near the junction of the road from Washington to Hennepin with the Hennepin and Bacon road — thence N. 57° E. eighty rods to station 2; thence N. 45° E. forty rods to station 3; thence N. 37 1/2° E. forty rods to station 4;

(26.)

thence N. 29° E. twenty-four rods, to station 5; B. oak at this point bears S. $73\frac{1}{2}^{\circ}$ E. 48 links, distant; thence N. 11° E. thirty rods, to station 6; thence N. 19° E. thirty rods and ten links to station 7; thence N. 6° E. one hundred two rods and struck the section line between sections 25 and 26; continued the same course forty rods and found the N. E. Corner of section 26 and the S. E. Corner of section 23 due West ninety-three links; continued the same, fifty five rods, to station 8; thence N. 35° E. twelve rods; here a causeway of five or six rods will be required no water in a dry time; continued the same course seventy-six rods, to station 9; at this point there is a sugar tree fifteen inches in diameter bearing N. 69° W. and fifty-nine links distant; thence N. 22° E. forty-eight rods, to the West line of the East half of the North West quarter of section twenty-four: striking said line ten rods and sixteen links Northward of the South West Corner of said lot, at station 10; thence N. 43° E. fourteen rods and six links to the North line of Joseph Castle's land to station 11; at this point there is a sugar tree, thirty inches in diameter, bearing N. 9° E. twenty-one links distant; thence Eastward, on the North line of Joseph Castle's land, ninety-one rods to station 12; thence S. 86° E. sixty-four rods to station 13; in the middle of the West end of Main Street in Florid; thence East along Main Street, two hundred and

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Seventy-five rods and seven links, to the East end of the Town of Florid, and station 14 at the middle of the road leading from J. G. Deularny's to Wm. Patten's; thence S. 15° E. along the line of said road, ten rods, to the center line of section 19. T. 32 N. R. 14 W. to Station 15; thence N. 89° 40' E., along the center line of said section 19, to the half section corner on the East side thereof, one hundred and fifty-nine rods and fourteen links, to station 16; thence N. 89° 30' E., along the middle line of section 20, said Township, one hundred and three rods and eleven links, to a slough six rods wide, which will need a causeway of that length and a bridge of three feet in width; no water runs in a dry time; continuing the same course forty-four rods further, we find another wet place, requiring a bridge of 18 inches in width though quite passable in dry seasons without; continuing the same course 170 rods + 5 lks. to the half section corner on the East side of said section twenty, to station 17; thence S. 89° 45' E. two hundred and ninety-one rods and five links, and the road crosses a low place adjacent to a pond which will need throwing up for four rods and a bridge three feet wide for a wet time; in dry weather no water where the road is laid; continuing the same course twenty-seven and a half rods, we come to the quarter section corner on the East side of section 21,

(28)

to station 18; thence N. $89^{\circ}25'E$. three hundred and nineteen rods and ten links to the quarter section corner on the East side of section twenty-two, to station 19; thence North 16^{or}. to the original corner of sections 14, 15, 22, 23, to station 20; thence N. $15'W$. along the East line of section 15 one hundred and sixty-one rods and 19 links to the original quarter section corner on the East side of section 15, to station 21; thence N. $15'E$. 161 rods and twelve links to the original corner 10, 11, 14, 15 to station 22; thence N. $33'W$. along the East line of section ten, one hundred and sixty-one rods and ten links, to the original quarter section corner on the East side of section ten, where this road intersects the state road leading from Hennepin to Ottawa.

The whole distance is nine miles + 12 rods.

We then proceeded to survey the other road included in the order and commenced at the S.E. corner of section 16, T. 32. N. R. 1 W. at station 1, and run South $24'W$. one hundred and sixty rods and thirteen links to the quarter section corner on the East side of section 21, to station 2; thence N. $89^{\circ}45'W$. one hundred and fifty-nine rods and eight links to the center of section 21 aforesaid, to station 3; thence S. $15'E$. one hundred and sixty-one rods to the quarter section corner on the South side of section 21, to station 4; thence S. 17° .



(29)

one hundred and sixty-one rods to the center corner of section 28, T. 32 N. R. 1 W., to station 5; thence S. 43' E. one hundred and sixty-one rods to the quarter section corner on the south side of section 28 aforesaid, where this road intersects the County road leading from Baylis Culletts to Palatine the place of termination.

The length of this road is two miles one hundred and sixty-two rods and twenty-one links. The road is laid forty feet wide; that width being more generally satisfactory than any other; and stakes are driven at the full width of the road, at the important points along the route. Through the timber the trees are marked to designate its course -

The viewers have not been able to ascertain that any damages will be claimed on any part of the road as now laid -

Sept. 3rd 1849.

John C. Blake,
A. P. Dycart,
James G. Ross.

The following is a copy of the Plat - - -

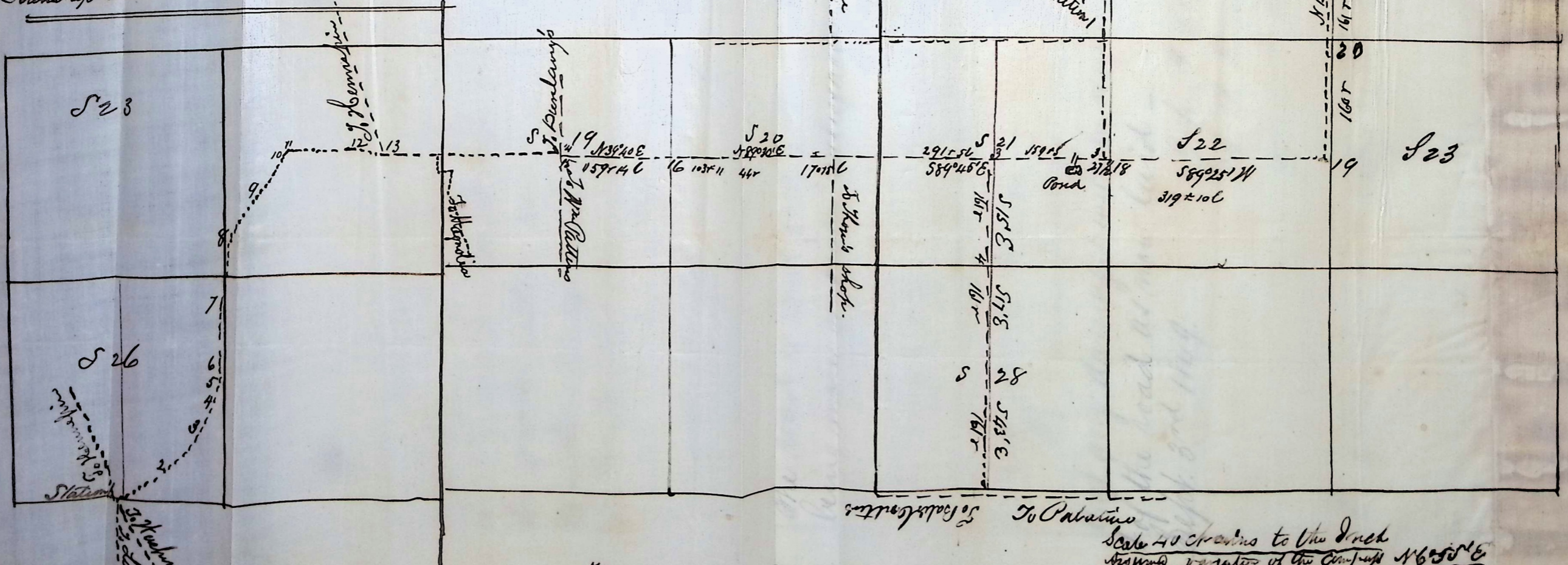
Notes of the Survey

| | | | |
|--------------|--------|----------|------------------------|
| From Station | 1 to 2 | N 57° E | 80 rods |
| " | " | 2 to 3 | N 45° E 41 " |
| " | " | 3 to 4 | N 57 1/2° E 40 " |
| " | " | 4 to 5 | N 29° E 24 " |
| " | " | 5 to 6 | N 11° E 30 " 60 breaks |
| " | " | 6 to 7 | N 19° E 20 " |
| " | " | 7 to 8 | N 16° E 197 " |
| " | " | 8 to 9 | N 35° E 88 " |
| " | " | 9 to 10 | N 22° E 48 " |
| " | " | 10 to 11 | N 43° E 14 " 6 " |
| " | " | 11-12 | S 89° 43' E 91 " |
| " | " | 12-13 | S 56° E 64 " |
| " | " | 13 to 14 | East 275 " 7 " |
| " | " | 14 to 15 | S 15° E 20 rods |

Township 32 N. R. 1 W. 3rd Principal Meridian



Township 32 N. R. 2 West



The above plat was surveyed by me on the 23, 24 & 25 days of August A.D. 1844
 John P. Blake County Surveyor of Putnam Co. N.H.

Scale 40 Chains to the Inch
 and under variation of the Comp. N 65° 50' E

The following is a copy of the order of court —

"The following ^{Road} Report was made by viewers appointed by this court at its last term, to-wit:

Report.

"To the County Commissioners' Court of Putnam County, Illinois.

The undersigned appointed at the June Term of the Commissioners' Court A.D. 1849 to view and locate two roads hereinafter described, Report as follows: On the 23rd day of August A.D. 1849 we proceeded in Company to a personal view of the routes selected by the petitioners for the roads + described in the order of the Court and having examined the same agreed in the opinion that the roads applied for are necessary + of public utility. We accordingly proceeded to locate and establish the same ac-

From S. W. Corner S.E. 1/4 Sec. 26 T. 32 N. R. 2 W. at Keunepin + Lacon road in a Northwesterly, Easterly + Northwesterly direction to S. W. Corner S.E. 1/4 Sec. 10 T. 32 N. R. 1 W. at state road from Keunepin to Ottawa.

cording to Law as the following description + annexed Plat will show. Commencing at station 1, which is three rods North of the 1/4 section corner of section twenty-six in Township number Thirty-two North of Range No. two West of the Third Principal Meridian on the South side of said section, in the road leading from Keunepin to Lacon, at or very near the junction of the road from Washington to Keunepin, with the Keunepin and Lacon road; thence N. 57° E. eighty rods to station 2; thence N. 45° E. forty rods to

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Station 3; thence N. $37\frac{1}{2}^{\circ}$ E. forty rods to station 4; —
thence N. 29° E. twenty-four rods to station 5; — B. oak
at this point bears S. $73\frac{1}{2}^{\circ}$ E. 48 links distant; thence N. 11
E. thirty rods to station 6; thence N. 19° E. thirty rods and
ten links to station 7; thence N. 6° E. one hundred and
two rods and struck the section line between sections
25 and 26, continued the same course forty rods and
found the N. E. corner of section 26 and the S. E. corner
of section 23 due West ninety-three links, continued
the same course fifty-five rods to station 8; thence
N. 35° E. twelve rods, here a causeway of five or
six rods will be required — no water in a dry time,
continued the same course seventy-six rods to sta-
tion 9 — at this point there is a sugar tree fifteen in
diameter bearing N. 69° W. and fifty-nine links;
thence N. 22° E. forty-eight rods to the West line of
the East half of the North West quarter of section twen-
ty-four striking said line ten rods and sixteen
links Northward of the South West corner of said
lot at station 10; thence N. 43° E. fourteen rods
and six links to the North line of Joseph Castle's
land to station 11, at this point there is a sugar
tree — there is a sugar tree thirty inches in diam-
eter, bearing N. 90° E. twenty-one links distant,
thence Eastward on the North line of Joseph Castle's
land ninety-one rods to station 12; thence S. 86° E.
sixty-four rods to station 13 in the middle of the
West end of Main Street in Florid, thence East
along Main Street two hundred and seventy-five

(32)

rods and seven links to the East end of the East end of the Town of Florid and Station 14; at the middle of the road leading from J. S. Dunlavy's to Mrs Patten's, thence S. 15° E. along the line of said road ten rods to the center line of section 19 T. 32 N. R. 1 West to Station 15; thence N. $89^{\circ} 40'$ E. along the center line of said section 19 to the half section corner on the East side thereof one hundred and fifty-nine rods and fifteen links to station 16; thence N. $89^{\circ} 30'$ along the middle line of section 20 said Township one hundred and three rods and eleven links to a slough six rods wide which will need a causeway of that length and a bridge three feet in width - no water runs in a dry time, continuing the same course forty-four rods further we find another wet place requiring a bridge of 18 inches in width. though quite passable in dry seasons without: continuing the same course 170 rods + 5 lks to the half section corner on the East side of said section twenty to station 17; thence S. $89^{\circ} 45'$ E. two hundred and ninety-one rods and five links, and the road crosses a low place adjacent a pond which will need throwing up four rods and a bridge three feet wide for a wet time - in dry weather no water where the road is laid, continuing the same course twenty-seven and a half rods, we come to the quarter section corner on the East ~~side~~ side of section 21 to station 18; thence N. $89^{\circ} 25'$ three hun-

(33)

dred and nineteen rods and ten links to the quarter section corner on the East side of section twenty-two, to station 19; thence North 160 r. to the original corner of sections 14, 15, 22, 23 to station 20; thence ^{N. 15'} N. along the East line of section 15, one hundred and sixty one rods and nineteen links to the original quarter section corner on the East side of section 15 to station 21; thence N. 15' E. 161 rods and twelve links to the original corner 10, 11, 14, 15 to station 22; thence N. 33' W. along the East line of section ten, one hundred and sixty-one rods and ten links, to the original quarter section corner on the East side of section ten where this road intersects the state road leading from Hennepin to Ottawa. The whole distance is nine miles + 12 rods. We then proceeded to survey the other road included in the order, and commenced at the S.E. corner of

Section 16 T. 32 N. R. 1 W. at station 1 and ran S. 24' W. one hundred and sixty rods and thirteen links to the quarter section corner on the East side of section 21 to station 2; thence N. 89° 45' W. one hundred and fifty-nine rods and eight links to the center of section 21

foresaid to station 3; thence S. 15' E. one hundred and sixty-one rods to the quarter section corner on the South side of section 21, to station 4; thence S. 17' E. one hundred and sixty-one rods to the center corner of section 28 T. 32 N. R. 1 W. to station 5; thence S. 43' E. one hundred and sixty-one rods to the quarter section corner on the South side of section 28 aforesaid, where this road intersects the County road leading

From S.E. corner of
 Sec. 16 T. 32 N. R. 1 W.
 in southerly direction
 to S. W. corner S.E. 1/4
 Sec. 28 T. 32 N. R. 1 W.
 to road from B. Cul-
 tivists Mt. Palatine

(34)

from Paulie's Cullet's to Palatine the place of termination. The length of this road is two miles, one hundred and sixty-two rods and twenty-one links. The whole is laid 40 feet wide; that width being more generally satisfactory than any other, and stakes at the full width of the road, at the important points along the route - Through the timber the trees are marked to designate its course. The viewers have not been able to ascertain that any damages will be claimed on any part of the road as now laid.

Sept. 3rd 1849.

(Signed) John P. Blake, A. P. Dycant

and James G. Lass, which report was examined

order 3

by the Court and it appearing that said viewers were sworn previous to entering upon their duties and that all their proceedings in viewing and locating said roads were regular, It is ordered by the Court that said roads be established as laid down in said report and the Plat thereof returned with said report; that said roads be opened forty feet wide as there laid down; that the Supervisors of the different road districts through which said roads pass be notified of the location thereof, and that said report and Plat be recorded on the records of roads; also that the money deposited be refunded -

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Witness testified that the said Plat was a Plat of the road located in 1849.

Surveyed road of 1849 for Defendant - The Stone planted by Widmer Co. Surveyor 20-2 ch. S. of of the center of the road -

Think the fence of Defendant was not as far north as the South line of the road of 1849 - Think we set the stakes along the South line of the road the whole distance - This Survey was made at the request of Seuch the Defendant in 1858 to find where the road of 1849 was.

Think the road of 1849 was 40 feet wide - The travel there has varied there both before and since the road was located - Enclosures were made on the line of the road at different times and frequently changing -

Never Surveyed White's Addition to Florid - Think the lots on both sides of Main Street are inclosed and are in farms - Have been so inclosed several years - Can't say how long - From the time that old Florid was laid out travel began on Main Street and has continued since - Before the Lots were ~~sold~~ fenced up there was some going around - Since the bridges have been made the travel has taken the same track nearly - The present bridge is located within the bounds of the 1849 road - Maybe a little South of the center of the road - There was a road laid there before the road

(36)

of 1849 was laid under the old Law 66 feet wide I think -

My recollection of the matter was that the Road of 1849 was designed to supersede the former road -

Cross Examined by Plaintiff -

The road of 1849 was intended to supersede the former road. Think the former road was 50 feet wide -

The former road was changed to correspond with the road of 1849 - The road of 1849 extended over the route of the former Road East from the old Town of Florid -

John Waugh's fence was over into the road of 1849.

William Patten sworn as a witness on part of Defendant testified that he as one of the Supervisor helped put in the bridge at East end of Florid - was put there some time ago - Can not fix the date - I have been out of the office of Supervisor about 10 years - Was Supervisor for several years before I received my orders to work the roads from County authorities & the roads were described in my orders as roads in such such sections specifying the sections - Knew of no roads in Florid, except the 66 feet road

(37)

+ the 40 foot Road of 1849. I was notified to move the fence for the 66 foot Road as Supervisor had work expended on County Roads.

It further appeared from the evidence on the above trial that the fence of the defendant was at time of trial and had for some two or three years been moved back on the South line of Main Street in White's Addition being some 13 or 14 feet further South than where it was placed by defendant previous to the commencement of this suit —

There was also evidence tending to show that no more than forty feet of open space was left by Plaintiff between his fence on the North and the South line of Main Street in White's Addition —

The above was all the evidence in the case —

The Court gave the following instructions on part of Plaintiff —

1st.

"If a road is used and traveled by the public as a Highway and is recognized and kept in repair as such by the officers whose duty it is by law to open and repair public roads proof of these facts furnished a legal presumption that such road is a public highway.

"Given"

"Given"

"If a person owning lands permits the public to use a road over them as a public highway and the public officers whose duty it is to repair and keep in order public roads, work upon and repair such road with the assent of the owner, from these facts the jury may infer that the owner of the land has dedicated the road to the public as a Highway"

3rd

"Given"

"A Street in a town or village which has been dedicated as a street by the owners of the land over which it passes is a public highway and a person is liable for obstructing the same in the same manner as for obstructing a road laid out by the public authorities"

4th

"Given"

"The Streets of a Town may be dedicated to the public either by the making acknowledging and recording a Plat of the Town showing the streets by the owner of the land, or by his recognizing the street as a public street, selling lots in reference to said street, allowing the public officers to bridge or otherwise work or repair the streets as a public highway, or in any other way by which the intention of the owner of the land to surrender the use of said street to the public highway is manifested"

139/5th

"The laying out of a public highway over the street of a town which had been duly dedicated to the public or over a portion of a street does not change the right of the public to use the street of the Town in the same manner that they could before the laying of the public highway over it -"

"Gwen"

6th

"This is not a case where the Plaintiff must prove his case beyond a reasonable doubt before he can recover. The Jury should find the Defendant guilty if the preponderance of the evidence satisfies their minds that he has obstructed a public road as charged -"

"Gwen"

7th

"Nor is it necessary that the Jury should believe that the Defendant wilfully obstructed the road before they can find him guilty - it is sufficient if the Jury believe from the evidence that the Defendant obstructed a public highway as charged whether he did it wilfully or not."

"Gwen"

8 -

"The Jury are instructed that the Record of the Plats - admitted in evidence in this cause of the Town of Florid and White's Addition thereto are evidence of the platting and laying out of said Town as by said Records set forth - and that the streets therein were duly dedicated to the public to be used as public highways."

"Gwen"

(40)
9th

"That the streets dedicated to the public as public highways as stated in Instruction No. 8 hereinbefore given would so remain public highways until the they were duly vacated according to Law. That any one who should obstruct any such unvacated street, if it was unvacated would be guilty under the Statute of obstructing a public Highway —"

"Given"

10th

"In the absence of any evidence to the contrary the presumption is that the Town of Florid was and is an unincorporated Town —"

"Given"

"If the Jury believe the defendant to be guilty of obstructing a public Highway then the Jury should find the defendant to be guilty and assess the penalty at any sum not exceeding ten dollars —"

"Given"

Which were all the instructions given on behalf of Plaintiffs —

The Defendant asked the Court to give the Jury the following instructions, to the giving of each and every of which instructions the Plaintiff objected to then & there —

(41) 1st "The Jury are instructed that land cannot be dedicated to the public for a street or highway except by the owner thereof -"
"Gwen"

4th "It was necessary that the evidence should establish to the satisfaction of the Jury that the Defendant encroached upon the public road or highway mentioned in his Bill of particulars herein, and that such road or highway became such by dedication of the owner of the land or was located by the proper authorities - and unless the Jury so find from the evidence they must find for the Defendant."
"Gwen"

6th "The fact that an owner of ground leaves a strip thereof open and unfenced along a public highway is not of itself sufficient evidence of his dedication of such strip to the public as a part of such road or highway -"
"Gwen"

7 - "If the Jury find from the evidence that in 1849 the County authorities laid out and established a Road through and upon what was known as Main Street in White's Addition to Florid and fixed the location of the Road its course, length and breadth within the limits of the former road or street, if White had no title to the street embraced in the Plat, and the public had acquired a right by
"Gwen"

(42) "user or prescription only to the road and that such location of the road by the county authorities in 1849, was intended to supersede the rights which the public had before then so acquired by user or prescription, this would amount to a virtual abandonment by the public of their rights by such user or prescription, and the rights of the public would be limited to the extent so fixed by the county authorities and if the jury further find from the evidence that the defendant's fence did not encroach on the road so laid out in 1849, they should find for the Defendant."

Each and every of which instructions the Court gave to the jury and to the giving of each and every of which instructions on part of Defendant the Defendant then and there excepted -

The jury brought in a verdict as follows: "We the jury find the defendant not guilty" Whereupon the Plaintiff by his counsel then and there moved the Court to set said verdict and grant to Plaintiff a new trial herein but the Court refused to set said verdict aside or to grant Plaintiff a new trial in said cause to which ruling of the Court in refusing to set aside said verdict and in refusing to set aside said verdict and in refusing

(43)

to grant a new trial herein the Plaintiff by his counsel then and there excepted -

Thereupon the Court being about to enter judgment against Plaintiff the Plaintiff entered a motion in arrest of judgment herein but the Court overruled said motion to which ruling of the Court in overruling said motion the Plaintiff then and there excepted, after which the Court entered final judgment on the verdict. And inasmuch as the matters above do not otherwise fully appear of record the Plaintiff by his Counsel then there prayed the Court to sign & seal this his Bill of Exceptions which was then there done accordingly, and this Bill made a part of the Record in said cause.

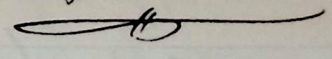
B. L. Richmond Seal

Judge 23^d Judicial Dist.

Time to file Bill of Exceptions in this case extended until Feb. 15, 1862.

D. Dent,

atly. for J. W. Luch



(44)

State of Illinois,
Putnam County,) J. P. John P. Gerberich
Clerk of the Circuit Court, in and for said
County, in the State aforesaid, do hereby certify
that the foregoing is a true copy of the
papers, orders & Bill of Exceptions therein
described as appears of Record in my
office -

Witness my hand and the seal of
said Court, at Keokuk, in said
County this 12th day of March A.D. 1862.
John P. Gerberich, Clerk



And now comes the said plaintiffs in
person said John W. Leech by his attorneys
Mark Bangs and J. M. Shaw and says there is
manifest error in the said record and proceedings
aforesaid in this to wit

- 1st That the said Circuit Court erred in giving
such and every of the instructions given on
the part of the defendant
- 2^d That said Court erred in overruling plaintiffs
motion for a new trial
- 3^d That said Court erred in overruling plaintiffs
motion in arrest of judgment
- 4th That the judgment was rendered for the defendant on
said Court and against the plaintiffs whereas by
the law of the land it ought to have been
rendered for the plaintiffs and against the
defendant

Wherefore and because of said errors and others
not named said plaintiffs in ever pray that
Citator and Supersedeas may issue that
said judgment be reversed and that he
be restored to all things which he has lost
by reason thereof

Mark Bangs & J. M. Shaw atty. for

And the said John W.
Leech comes, by his attorneys,

and says there is no such ^{error} record
as is above alleged. Wherefore he prays
that said judgment may be affirmed,
&c. T. Dent v. J. S. Edmonds
for Leech.

John W. Leech

D

John W. Leech

Record

Filed March 13. 1862.

L. Ireland

CLK.