

No. **12236**

Supreme Court of Illinois

Dunning, et al

vs.

Matthews

71641  7

One Page Circuit Court

April Term 1833.

Robert A. Mathews

vs } action of Trespass on the
Josiah D. Drummings } Case
Patrick Burns }

Be it remembered that on the trial of this cause, the Plaintiff called James Scott who was duly sworn as a witness for & on behalf of said Plaintiff, he said Scott then testified on direct examination, that he is acquainted with the parties to this suit. he said witness knows when the fence was torn down in Mathews field in Little Rock, said field contains about One hundred acres, the road runs through the field from East to west, saw Drummings take down the fence from four to six rods, this was done in the fall of 1831, said fence was in Kane County, said witness then testified on cross examination that Drummings boy was with him at the time said fence was torn down, thinks it was the last of December. here the Plaintiff closed his case,

The Defendant then offered & read in evidence the following stipulation in writing which is in words and figures following

State of Illinois }
One Page County } Circuit Court April Term 1833

R. N. Matthews

vs
J. O. Dimming
Same

Trespass

vs
Dimming & Byrns

Trespass

It is hereby stipulated & agreed between the parties in these suits, that the following admissions may be read & used as testimony on the trial of both of the above entitled suits, to wit:

The Plaintiff admits that the premises upon which the trespass complained of in his declaration were committed, are the same as described in defendant's pleas, & within the limits of the road alleged to have been laid out, but denies the legality of the laying out of said road and the right of defendants to enter upon open or work said road.

Defendants admit the entrance upon the premises of Plaintiff described in the declaration & pleas, and the removal of the fences from the limits of the Highway as set forth in their said pleas.

It is further stipulated that both said suits be continued to the next term of said Court & that the plaintiff pay the costs of the present term made previous to this date.

Dated April 9th 1833.

R. N. Matthews

J. O. Dimming }
By J. O. Dimming & Byrns } depts

The defendant then called John Price as a witness who was duly sworn & testified on direct examination that he is acquainted with the parties to this suit. Plaintiff resides in Little Rock, Kendall County. Defendant resides in Big Rock, Kane County. witness resides in Big Rock, Kane County. and was road Commissioner in the years 1830 & 1831. witness is acquainted with the premises described in Defendant's pleas, was present at the meeting of the freeholders to examine the road & make their order locating said road. witness was also present when the jury examined the premises & assessed plaintiff's damages.

This witness further testified that he is acquainted with Lorenzo J. Samson, knows that he (said Samson) acted as Town Clerk of Big Rock, in the years 1830, 1831 & 1832, the witness further testified that he is acquainted with the handwriting of said Samson, that he has often seen ~~him~~ said Samson write. a paper was then shown to said witness marked "A" in evidence to which plaintiff objected, the Court sustained the objection to which decision defendant excepted.

Defendant then showed said witness a paper marked "B" said witness testified that the signatures to the three several ~~instruments~~ certificates upon said paper marked "B" was in the hand writing of said Samson which are in words and figures following, to wit,

Tuesday April 27 1830.

At a town Meeting held at the School House
of the 3^d District in the town of Big Rock Kane
County, Illinois

Josiah D. Drimming was chosen Moderator
and Shepherd Johnston Jr Clerk both being sworn
according to Law.

It was Resolved That the Pathmasters & Pound Masters
be elected viva voce.

Resolved That John Snooks be Path Master in road
District No 1

Resolved That William Drake be Path-master in Road District No 2

Resolved That James Dindap. be Path-Master in road District No 3.

Resolved That John Pierce be Path Master in road District No 4

Resolved That George Barton be Path Master in road District No 5.

Resolved That Josiah D. Drimming be Path-Master in road District No 6

Resolved That there be a Pound in each road District and
that pound Masters yard be formed in each District

Resolved That John Snooks be Pound Master in District No 1

Resolved That William Drake be Pound Master in District No 2

Resolved That James Dindap be Town Master in District No 3.

Resolved That John Price be Town Master in District No 4.

Resolved That George Barton be Town Master in District No 5.

Resolved That Josiah D. Dimmick be Town Master in District No 6.

Resolved That Hogs shall not be free commoners.

~~Resolved~~ Moved and Seconded.

That Sheep shall not be free commoners. decided in the affirmative by dividing the Town.

Moved and Seconded That boards and picket fence four feet high and rail fence four and a half feet high be considered a lawful fence decided in the affirmative by yeas and nays.

Moved and Seconded that this meeting adjourn to the same place for the next Election. decided in the affirmative.

Upon canvass of votes the following was the result.

For Supervisor Josiah D. Dimmick

" Town Clerk Lorenzo J. Lamson

" Assessor Norman Hart

" Overseer of the Poor John Price

" Commissioners George White

of John Dindap.

Highways John Price

" Justice of the Peace } Theadore C. Cogwell
Thomas Meredith

" Constables } William Gardner
George W. Severance

" Collector Robt. G. Livingston

J. D. Drimming Moderator

"B"

Shepherd Johnston Jr. Clerk

State of Illinois
Rand County

Township of Big Rock.

I, Lorenzo J. Lamson Town Clerk
do, in and for the Township of Big Rock County
and State aforesaid. Do hereby certify that the
above and annexed paper from from "A" to "B" inclusive
is a true copy and correct copy of the records and
proceedings of a town meeting held at the Center
School House in said township on the second day
of April A.D. 1830. and I do further certify that
the same is truly and correctly copied from the Records
of my Office now in my possession as Town Clerk of
said Township

In Witness whereof I have hereunto set my
hands and seal this 13th day of February A.D.
1832,

L. J. Lamson ~~Secy~~
Town Clerk of Big Rock

witnes then stated that he believes the signature to the certificate annexed to said paper is in the hand writing of said Samson, defendant then offered said paper marked "C" in evidence, to which the plaintiff objected, the Court sustained the objection, to which decision defendant excepted.

The Defendant then showed said witnes a paper marked "B" said witnes testified that the signatures to the three several certificates upon said paper marked "B" was in the hand writing of said Samson which are in words and figures following, to wit,

To the Commissioners of Highways of the town of Big Rock, Kane County, Illinois

The undersigned, who ~~are~~ is liable to be apportioned for road labors in said town of Big Rock, respectfully represents to your body, that it is necessary and proper that the road leading Westward from Big Rock should be altered & re-located through the lands occupied by Robert A. Matthews, by beginning at the point where the said road crosses the South line of said County, or Westward in a direct line to the road leading Northeast from Little Rock, known as the North road.

Dated April 8th 1850

J. D. Manning

Notice is hereby given, that I have applied to the Commissioners of Highways for the town of Big Rock, to alter & relocate, a road leading Westward from my House & crossing a lot of land occupied by R. H. Matheys, on the West half of the South West quarter of Section 33 Township 38 North of the third Principal Meridian, by beginning at the point where said road crosses the East line of said Lot, thence Southwesterly in a direct line, either to the point where said road crosses the South line Kane County, or Westward to the road leading from Little Rock Northeastly called the North road, that there will be a meeting of freeholders at my House in said town on the 10th day of April instant at 2 O'clock P.M. to examine said road & to certify in regard to the necessity & propriety of altering & relocating the same, at which time & place all persons interested therein may appear if they see fit & show cause if any they have, against said alteration.

J. D. Dimmick

Dated, Big Rock April 3^d 1830

State of Illinois
Kane County ss

Josiah D. Dimmick being sworn says that on the 3^d day of April instant, this deponent posted a notice of (which the within is a copy) on the door of Octagon School House,

One at the usual place of posting notices at the
four corners near Shepherd Johnston's, & also one in
the blacksmith shop occupied by Smith & Sonnet
all in the town of Big Rock, in said County.
Subscribed and sworn this J. D. Dimmick
23^d of April 1830 before me

Thaddeus C. Corbett
Justice of the Peace
Rec^d & filed April 24th 1830
S. J. Lamson Town Clerk

To the Commissioners of Highways of the town
of Big Rock Kane County.

We the undersigned free
holders of said town having been duly sworn &
not being interested in the lands through which
the road hereafter mentioned is to be laid out,
nor of him to any owner thereof, have personally
examined the routes upon which a road is applied
for to be altered & relocated, by J. D. Dimmick, as
follows, to wit. Commencing at the point where
the road running West of said Dimmick crosses the
East line of the West half of the South West
quarter of Section 33 in Township 38 North
Range 6 East, occupied by Robert A. Matthews
thence Westerly in a direct line to the road
leading North East from Little Rock, called

the Stage road, and have carefully heard & considered all reasons that were offered for and against the laying out of said road. We do therefore certify that we are of opinion that said alteration is necessary & proper, & that the same ought to be made as applied for & as above described.

Given under our hands at Big Rock this 10th of April 1850.

Theodore C. Ogels, James W. Swan, Wm Perry,
Wm Warterman, Bradbury Easterbrook, Elcott Nowell,
J. E. Ament, Maurice Reed, Cicero Beardsley,
P. S. Winslow, Aaron Vogelmeier, John W. Perry.

The undersigned Commissioners of Highways for the town of Big Rock in the County of Hamilton & State of Illinois on the application of J. D. Dunning (a person liable to be assessed for Highway labor in said town) to alter and relocate that part of the road leading West of said Dunning's Mound which crosses the West half of the South West quarter of section thirty three in Township thirty eight, North Range Six East of the third principal Meridian, the survey of which ~~road~~ as proposed be altered and relocated is as follows, to wit, Beginning at the point where said road crosses the East line of said

lot above described, thence South seventy nine
degrees West twenty eight chains and seventy three
links crossing said lot & lands occupied by Robert
A. Matthews to the center of the road leading
Northeasterly from Little Rock, known as the
North or Stage road, and it being satisfactory
proved to us that proper & legal notice had
been given of the meeting of twelve freeholders
to examine & certify in relation to said alteration
and that twelve respectable freeholders of said
town free from all legal exceptions, did
assemble on the tenth day of April instant,
examine said route, hear all objections and
did certify to us under oath that said
alteration was necessary and proper, and the
incorporated (after giving the said R. A.
Matthews proper and legal notice) having met
examined said road and heard all objections
offered to such alteration, and being of opinion
that such alteration and relocation is necessary
and proper. It is therefore Ordered that said
alteration be made and that a road four rods
wide be located & laid out, and the same is
located & laid out according to said Survey, and
the same is hereby declared to be a public
Highway

Given under our hands and seals at Big

Rock this 23^d day of April 1830.

George White *SB* Commissioner.
John Pierce *SB* of Highway for
F. M. Liverance *SB* the town of Big Rock

Rec^d & Recorded April 24th 1830, on page 9th
first Volume town Records.

S. J. Lamson
Town Clerk

We the undersigned free holders of the town
of Sugar Grove in Kane County having
been duly sworn as a jury to assess the dam-
ages for laying out a road in the town of
Big Rock, through lands occupied by Robert
A. Mathews, which road is described in the
papers hereto annexed, and having persona-
lly examined said premises & the routes of the roads
through and about the same, and after hearing
and considering all the reasons that were offered
for and against said alteration & relocation
Do Certify that the premises of R. A. Mathews
are damaged by said alteration, and we
therefore find that he is entitled to Fifty
Dollars damages.

Given under our hands & seals at Big
Rock, this tenth day of December 1830,

John Aries *SB*
John Morris *SB*

Clark Pitch	SS
Ephraim Smith	SS
Henry W. Hamilton	SS
Phil Stater	SS

Rec^d on file Jan'y 1st 1831

S. J. Larnson Town Clerk
To R. A. Matthews Esq

Sir, Whereas we the undersigned Commissioners of Highways for the town of Big Rock, in Kane County, did on the 23rd day of April 1831 last alter & relocate that part of the road leading West of J. D. Dunning's house, which crosses the West half of the South West quarter of Section thirty three in Township 38. North Range 6 East of 3^d principal Meridian, the survey of which was located road as altered & relocated is as follows. Beginning at the point where said road crosses the East line of the lot above described, thence South seventy nine degrees West twenty eight chains and seventy three links, crossing said lot & lands occupied by Robert A. Matthews, to the center of the road leading Northeasterly from Little Rock, known as the North or Stage road, you are there fore hereby required & notified to open said road by removing all fences & other obstructions from the same within sixty days after

service of this notice,

Given under our hands, Francis White, Commissioner
at Big Rock, Dec. 11th 1830. S. C. Severance of Highway

John Pierce of Big Rock

State of Illinois
Kane County

John Pierce being duly sworn
says that he served a notice of which the
within is a copy on Robert A. Matthews, by
delivering him said notice on the 20th day of
December 1830.

Sworn before me this 1st John Pierce
day of January 1831.

Theodore A. Cogwell Justice the Peace
Rec^d on file Jan^y 4th 1831.

L. J. Samson Town Clerk,

To the Town Clerk of the town of Big Rock
Kane County.

Sir I having been elected Overseer
of Highways & Poor Master for the said town
of Big Rock on the first day of April
instant, hereby notify you that I have
accepted of both of said Offices.

Witness my hand at Big Rock this 3^d day of April 1831
J. D. Dunning

Rec'd on file April 8th 1851.

L. J. Lamson Town Clerk,
J. Lorenzo J. Lamson Town Clerk of the town
of Big Rock, Kane County, hereby Certify that
the foregoing are true copies of Records & papers
filed in my Office.

Given under my hand & seal, at Big Rock
this 29th day of Jan'y 1852.

L. J. Lamson
Town Clerk.

At the annual town meeting for the town
of Big Rock, Kane County, Illinois, held
at the center School House in said town on
the first day of April 1851, J. D. Dunning
was unanimously chosen Moderator and duly sworn
by T. C. Vozell, Esq Justice of the Peace.

On motion Voted that Pathmasters and Pomme masters be elected by
ayes & noes.

Voted That the Board of Supervisors be required to
procure a good Horse & farm for the maintenance
of the County paupers.

Voted That each voter state to the Clerk whether he
is in favor or opposed to Hogs running at large,
upon counting the votes it was decided against
hogs running at large or being free Common
-ers.

Noted That there be six Pounds, to wit, One in each road District and that each Pound Master's barn yard or other yard, be the public Pound.

Noted That Levi Bartlett be pound master in District No 1
 " " William Waterman be pound master in District No 2,
 " " Geo W. Severance be pound master in District No 3
 " " John Pierce be pound master in District No 4
 " " Ora Hodges be pound master in District No 5
 " " J. D. Dunning be pound master in District No 6

The following rules and regulations relative to impounding animals, and the duty of Pound Masters were unanimously adopted, to wit,

Ordered That all animals inhibited from running at large shall be liable to be impounded, when found running at large, and all animals allowed to run at large shall be liable to be impounded, if found to have entered the close of any person, through or over a lawful fence or sufficient fence, and any person sustaining damage from or by animals impounded may have the same collected by the sale of such animals, provided a certified acknowledgment of said damages from two or more of the fence viewers be presented to the Pound Master before the sale or discharge of such animals from pound.

Ordered That Pound Masters may sell animals impounded at public sale to make the damages & costs assessed against them by posting notices six days previous to such sale. One upon the Pound & One in each of the two most public places within two miles of the Pound, and the balance of the proceeds of such sale, after deducting all damages fees & charges, shall be paid to the original owner or possessor of such animals when called for,

Ordered That Pound Masters shall be entitled to the following fees & charges, for keeping, posting & selling animals impounded in addition to the fee allowed by law for receiving and discharging to wit, for keeping & feeding per day each horse or mule ten cents, each head of horned cattle eight cents, each Hog five cents, each Sheep three cents, and posting each notice of sale ten cents,

Ordered That any person taking animals to the Pound which are not inhibited from running at large shall be liable to pay the Pound Masters fees and charges and all damages unless he shall present to the pound Master a certificate from two of the fence viewers stating that said animals broke through or over a sufficient or lawful fence.

The following named persons were duly elected Pound Masters or overseers of

Highways by crys and votes, to wit,
 in Road District number One Harvey Thompson
 " " " " Two Mark Seary
 " " " " Three Norman West
 " " " " Four John Pierce
 " " " " Five Ezra Wodges
 " " " " Six J. D. Dimmick

Noted That all money now in the treasury may
 be expended by the Com of Highways for the
 support of bridges

Noted That the sum of One hundred Dollars be raised
 by tax upon the town for the support of roads & bridges

Noted That the next town meeting be held at this place.

The poll being closed and votes canvassed, it was
 found that seventy two ~~was~~ votes has been polled
 and that the following named persons been elected
 to the Office affixed to their names, each having
 received the number of votes opposite his name, to wit,

J. D. Dimmick	Supervisor	91 Votes
L. C. Samson	Town Clerk	69 Votes
Johnas W. Rhoads	Treasure	68 Votes
Franklin C. Severance	Commissioner	68 Votes
John Pierce	of Highways	39 Votes
Harvey Thompson		
John Pierce	Oversee of Poor	58 Votes
Norman West	Collector	62 Votes

Alexis Wall Justice of	59 votes
George White & the Place	59 votes
George W. Seagraves Constable	43 votes
Howard Howell Constable	52 votes
L. J. Samson Town Clerk	J. Dunning Moderator

Town Clerk's Office Big Rock,
Kane County Illinois

I, Lorenzo J. Samson, hereby
Certify that the foregoing is a true copy of the minutes
of the proceedings of the last annual town meeting in
town duly filed & recorded on the town records in my
Office.

Given under my hand at Big Rock this 9th day
of April 1831.

Lorenzo J. Samson Town Clerk.

To J. Dunning Overseer of road District No 6 in
the town of Big Rock Kane County.

You are hereby notified & required to open
& vote the road laid out & recorded in said town in
April 1830. leading West of your home passing through
lands of R. A. Mathews in Sections 32 & 33. to the
road leading Northeasterly from Little Rock called
the North road to Aurora.

Dated December 1st 1831.

John Pierce } Coproprietors of Highways
G. W. Seagraves } of Big Rock

To Franklin N. Severance, of the town of Big Rock
Kane County.

Whereas at the annual town Meeting
in said town of Big Rock, holden on the second
day of April instant, said town failed to choose
an eligible person for one of the Commissioners of
Highways for the current year, in that Office now
remains vacant.

Therefore we, respectfully full confidence
in your integrity and ability, have appointed and do
hereby appoint you a Commissioner of Highways for said
town, to hold said Office until some other person
is chosen or appointed in your stead, and you are to exercise
the same powers, be subject to the same penalties
and perform the same duties as if you had been
chosen to said Office by the electors of said town,
& such as are required & fixed by Law.

In Witness Whereof we have herewith subscribed
our names & fixed our seals at Big Rock this 23^d of Apr 1830,

J. A. Oppeney Supervisor *JS*

L. J. Lamson Town Clerk *LS*

Alexis Hale Justice of Peace *AS*

T. C. Corryell Justice of Peace *TC*

Rec^d on file April 23^d 1830.

L. J. Lamson

Town Clerk

JS

Clerks Office town of Big Rock Kane Co. Ill.
I Lorenzo J. Lamson Town Clerk of said town of
Big Rock. Do hereby Certify that all the matter
contained in the annexed papers from "A" to "B" inclusive
are correct copies from the records of said town and
from papers on file in said Office of which I have
been Clerk since the first organization of said town.
Given under my hand and seal at Big Rock
this 13th day of April 1832.

L. J. Lamson Town Clerk *LD*

Defendant then offered said papers marked "B" in evi-
- ce to which Plaintiff objected, the Court sustained
the objection, to which Defendant excepted, the Court
stated to the defendant that if he proposed to follow up
the papers marked "B" with such evidence as would make
them material they would be admitted but no other evi-
- ce was offered. This was all the evidence given or offered
in the case. The Court then gave a judgement
in favor of the Plaintiff upon which the Defendant
moved the Court for a new trial, which motion was
overruled by the Court, to all of which, opinions of the
Court in rejecting said evidence and overruling the
motion for a new trial, the defendant then and
there excepted and pray this Bill of exceptions to be
signed and sealed by the Court and made a part
of the record in the above entitled Case.

L. W. Randall *LD*
Judge of the 11th Judicial Circuit

82
J. S. Dunning Nat.
R. W. Matthews
Record

Filed June 13. 1906
L. Leland Ch.

Wks. fee \$6.00



13
And the said Certificate covers
days that in the preceding judgment
must & been allowed there is
no more information in previous
judgments

Transmitted
Sergey A. Ship
for Matthews

United States of America
State of Illinois
DuPage County

Pleas before the Honorable
S. W. Randall, Presiding Judge of the
Eleventh Judicial Circuit in the State of
Illinois at a Circuit Court in and for the
County of DuPage, in said Judicial Circuit
begun and held at Naperville in said
County on Monday the 9th day of April
in the year of our Lord one thousand eight
hundred and fifty five and of the
Independence of the United States of
America the Seventy Ninth

Present the Honorable S. W. Randall, Judge.
S. W. Bowen State Attorney
A. C. Graves Sheriff
Attest Peter Forstrop, Clerk.

Be it remembered that heretofore, to wit,
on the 13th day of December in the year of our
Lord 1831, there was issued out of the ~~Clerks~~ Office
of the Clerk of the Circuit Court of Kane
County, the following summons to wit

State of Illinois
Kane County } For The People of the State

of Illinois. To the Sheriff of said County Greeting.
 We Command you that you Summon Josiah
 D. Dimming & Patrick Burnes, if they shall be
 found in your County, personally to be and appear
 before the Circuit Court of said County to be
 holden at the Court House, in Geneva, in said
 County on the Second Monday of February next,
 to answer unto Robert N. Mathews, in a plea of
 Trespass, to the damage of the said plaintiff as he
 says in the sum of Three hundred Dollars.

And have you then and there this writ with
 an endorsement thereon, in what manner you have ex-
 ecuted the same.



Witness Charles B. Wells, Clerk, of our
 said Court, and the seal thereof, at
 Geneva, in said County, this 13th day
 of Dec. A.D. 1851.

Charles B. Wells, Clerk.

on which said Summons is the following enclosement
 Name County Circuit Court.

February Term A.D. 1852.

Robert N. Mathews

vs

Josiah D. Dimming
 Patrick Burnes

Summons in Trespass

Personally served on the within named Josiah
D. Dunning and Patrick Burns by reading
December 23rd 1851 at 3 O'clock P.M.
Suther Dearborn Clerk of
Kane County.

J. T. Berrie Depy.

Services 100

40 miles 200

Return $\frac{10}{\$8.10}$

Filed 28th May 1852.

John J. Ridler Attor.

And afterwards to wit on the ~~23rd~~ day of ~~June~~
in the year of our Lord AD 1852, there was filed
in the office of the said Clerk of Kane and
in the office of the Clerk of San Diego County
May 28th 1852, the following Declaration to wit,
Kane County Circuit Court,

State of Illinois }
Kane County }

February Term AD 1852.

Robert A. Matthews, the Plaintiff in this suit
in his own proper person, complains of Josiah
D. Dunning, and Patrick Burns Defendants
in this suit who have been summoned to answer
to said plaintiff in an action of Trespass,

for that the said Defendants heretofore, to wit,
on the first day of December, A.D. 1851, and divers
days between that time and the commencement of
this suit, with force and arms broke and entered the
close of the said plaintiff, that is to say the East ha-
lf of the South East quarter of Section 32, and
the West half of the South West quarter of
Section 33) being Township 38 North Range
Six

East 3^d M situate lying being in the County
of Kane and State of Illinois, and tore and
broke down one hundred rods of rail fence, and
broke and destroyed the rails belonging to said
fence. Also with force and arms, to wit, at the
time and place aforesaid broke and tore down one
hundred rods of Post fence, and with Horses
Cattle, Hogs, and Sheep and hired Servants, with their
feet walking trod down trampled upon the said
freehold of the said plaintiff, and also, to wit, at the
time and place aforesaid, with their feet walking trod
down trampled upon consumed and spoiled the
grass and herbage of the said plaintiff then and
there growing and being, of great value, to wit, of
the value of Three Hundred Dollars lawful money
and other way to the said plaintiff then and there
due and to the damage of the said plaintiff of the
sum of three hundred dollars and therefore he
brings suit &c

R. A. Mathews

In person

on which Declaration is the following
Filed Jan 30th 1852

V. B. Wells Clerk

Filed 28 May 1852.

John J. Readler

CR

And on the 12th day of February in the year of our Lord 1832, there were filed in the office of the Clerk the following Pleas to wit,

Josiah D. Dimming

& Patrick Byrnes

ads

Robert A. Mathews

} State of Illinois Kane County
Circuit Court, February Term 1832

The Defendants in this suit come & defend the force & injury complained of in the plaintiffs Declaration, and say they are not guilty of the said several trespasses alleged in said plaintiffs declaration or any or either of them, in manner and form as the said plaintiff hath thereof complained against them and of this they put themselves upon the County

J. D. Dimming
Patrick Byrnes

And for a further Plea in this behalf as to the charges & wrongs alleged in plaintiffs declaration mentioned defendants say actus non re because they say that the lands & premises upon which the alleged trespass mentioned are supposed to have been committed were at the time when re situated in the town of Big Rock in said County, which County was organized under the act of 1849 for town & County organization, that the grammar fences grasp

herbage, rails &c. mentioned &c. were at the time when
&c within the limits of a public Highway, ordered, loca-
ted & laid out, by the Commissioners of Highways of
said town in April 1830, that the damages for laying
out & opening of said Highway, were only assessed in
December 1830 that immediately after the assessment
of said damages the said plaintiff (Mathews) then
owner or possessor of said premises was only notified
to open said Road, that at the time when &c. the
alleged trespass was supposed to have been commit-
ted the said defendant Dimmick was an overseer
of Highways for road District number 6, of said
town of Big Rock, acting under the orders and
instructions of the Commissioners of Highways of
said town and that if any rails, fences, crops, grass
or herbage was injured or removed it was so injured
or removed in opening & working said road, by said
overseer of Highways, & with the assistance of the
said defendant Byrnes, which are the same injuries
or trespasses in the introductory part of this Plea me-
ntioned & whereof the said plaintiff hath complain-
ed against them and of this they are ready to
verify whereof they pray Judgement &c

J. D. Dimmick
Patrick Byrnes

And on the 18th day of February in the year of our
Lord 1832 there was filed in the office of the said

Clerk & in the Clerk's office of San Diego County May
28th 1852 the following Demure, to wit:

February Term of the Kane County Circuit Court,
A.D. 1852

R. A. Mathews

vs

Joseph Dimmick }
Patrick Burns }

And the said Plaintiff as
to the said plea of the said de-
fendants by him (secondly) pleaded saith that the
same and the matter therein contained in manner,
and form as the same are pleaded and set forth
are insufficient in Law to bar or preclude him the
said plaintiff from having or maintaining his aforesaid
action thereof against the said defendants; and that
he the said plaintiff is not bound by Law to answer
the same. and that he the said plaintiff is ready to
verify wherefore by reason of the insufficiency of
the said plea in this behalf, the said plaintiff
prays judgement and his damages by him sustained
on account of the committing of the said trespasses
to be adjudged to him &c

R. A. Mathews

And on the 10th day of May in the year last aforesaid
there was filed in the office of said Clerk the following
notice for a change of venue, to wit.

State of Illinois
Kane County & Kane County Circuit Court May term A.D. 1832
R. N. Mathews

vs
Josiah D. Dunning } Trespass
and Patrick Burns
R. N. Mathews

vs } Trespass
Josiah D. Dunning }

To Josiah D. Dunning sir
please take notice that I shall apply to the Judge
of the above Court on Monday the tenth day of May
next at the hour of ten o'clock A.M. or as soon
thereafter as counsel can be heard for a change
of venue in the above entitled cause

Dated April 27th A.D. 1832.

R. N. Mathews

Plaintiff

R. N. Mathews, being sworn says that he served the
within notice on Josiah D. Dunning on the twenty
ninth day of April inst by delivering him a
copy. Dated this 30th day of April A.D. 1832.
sworn to before me

this 10th day of May 1832 } R. N. Mathews
Clerk of the Court

and also on the 10th day of May in the year last afore-
said the following petition for a change of venue was
filed in the office of said clerk, to wit,

R. N. Mathews

vs
Jonah D. Drummy and
Patrick Burns

} Kane County County Circuit
Court May Term A.D. 1852,

R. N. Mathews the Plaintiff in
the above entitled cause being sworn and deposed
and say that he fears he cannot have a fair trial
in this Court, on account that the Judge is prejud-
iced against him, and therefore prays that the venue
may be changed to some other County where the cause
above complained of do not exist, affiant further
states that this knowledge has come to him
since the last term of this Court.

subscribed and sworn to

before me this 10th day of May A.D. 1852. } R. N. Mathews
H. B. Wells Clerk }

and on the 28th day of May in the year of our Lord
1852, there was filed in the office of our said Clerk
of DePue County the following copy of Record,
to wit,

United States of America
State of Illinois

Pleas before the Hon

Isaac G. Wilson Judge of the Thirteenth Judicial Circuit of the State of Illinois at a term of Name County Circuit Court, began and holden at the Court House in Geneva in said County on the 10th day of May in the year of our Lord one thousand eight hundred and fifty two.

Present the Hon. Isaac G. Wilson Judge
Amos B. Horn States Attorney
Amthor Dearborn Sheriff
Attest Charles B. Will Clerk

Afterwards, to wit on the 10th day of May 1852, it being one of the days of the May term of the Name County Circuit Court for A.D. 1852, the following among other proceedings were had, to wit,
Robert M. Watthens

39

VS

Josiah D. Dimming } Sheriff.
Patrick Burns }

This day comes the Plaintiff and presents his petition to the Court for a change of Venue herein the Court being fully advised upon the Venue of this cause changed to the County of On Page in the Eleventh Judicial Circuit

State of Illinois
 Kane County *ss*

I, Charles B. Wells Clerk of
 Kane County Circuit Court, Do hereby certify
 the foregoing to be a true and perfect copy of
 the order, changing the venue of the foregoing
 entitled cause as appears of Record in my office
 and the papers accompanying from A to G all
 papers on file in my office in said cause.

In Witness Whereof, I have hereunto
 set my hand and affixed the seal of
 said Court at Genoa, this 26th day of
 May A. D. 1852,

Charles B. Wells

Clerk

And on the 18th Oct. 1853 there was filed in the office of the Clerk of said DuPage County the following plea, to wit,

State of Illinois DuPage County Circuit Court Special Term 1853.

Robert A. Matthews

vs
J. D. Dunning &
Patrick Byrns

Action for Trespass
Change of Venue from Kane County

And for a further plea in this behalf as to the force, injury, wrong & charges alleged in plaintiffs declaration mentioned, defendants say actir. non. ~~re~~ because they say that the premises lands fences &c mentioned in said declaration were at the time when &c situated in road district number six, in the town of Big Rock in said County of Kane that said County of Kane was on the first day of April 1850, organized under the act to provide for Townships & County organization in the State of Illinois approved February 12th 1849, and continued under such organization up to the time of the commencement of this suit, that at the annual town meeting of said Town of Big Rock held on the second day of April 1850, John Pierce & George White were elected Commissioners of Highways for said Town, that afterwards, to wit, on the 12th day of April 1850.

Franklyn A. Severance was appointed to the office
 of Commissioner of Highways by the Supreme
 Court Clerk & Justice of the Peace, said Town of
 Big Rock, that said Commissioner served & took control
 of the public Highways of said town for that year
 that J. D. Dunning a resident of said town of Big
 Rock, liable to be assessed for road labour did
 apply in writing to the said Commissioner of High-
 ways on the 8th day of April 1850, to alter & relocate
 a road through the premises in said plaintiff's
 declaration mentioned that said J. D. Dunning did
 on the 3rd day of April 1850, post up notices in
 writing at three public places in said town specify-
 ing the route of the proposed road and the tracts of
 land through which the same was proposed to be
 laid & stating that freeholders would meet at the
 house of said Dunning on the 10th day of April
 1850, at 2 o'clock P.M. to examine said route &
 certify in relation regard to the necessity & propri-
 ety of altering and relocating the same, that on
 the said 10th day of April 1850, twelve freeholders
 of said town of Big Rock not interested in the
 land aforementioned, nor of said to the owner
 thereof, did assemble at the time and place
 in said notice specified, and after being sworn
 did examine the roads, route, & premises mention-
 ed in said application being the same

premises in the plaintiffs declaration mentioned
and after hearing all the reasons that were
offered for & against the laying out of said
road, did certify to the Commissioners of Highways
of said town, that said alteration was necessary
and proper and that the same ought to be made
and afterwards, to wit. on the 23^d day of April
1830, the said Commissioners of Highways, after
giving the said R. A. Mathews proper and legal notice
did meet & examine said road & hear all objection
offered to such alteration & being of opinion
that said alteration and relocation was necessary
& proper, did order that said alteration ~~and~~
~~relocation~~ be made, & did locate & lay out
a road four rods wide as applied for & declare
the same to be a Public Highway & cause said
order to be recorded in the Clerks Office of said
town on the 24th day of April 1830, that after-
wards, to wit. on the ninth day of December 1830,
upon the application of said Commissioners of
Highways, by John Pierce one of their number
Theodore C. Byrrell, a Justice of the Peace of
said town issued a warrant to any Constable of
another town in said County, to wit. the town
of Sugar Grove, commanding him to summon
twelve disinterested freeholders of said County
not residents of said town of Big Rock, to

to appear before him at his office on the 10th day of December 1830, to make a jury to assess the damages for altering & laying out the road mentioned in said order of the Commissioners through the premises aforesaid, that on the said 10th day of December 1830, to make a jury to assess the damages for altering & laying out the road mentioned in said order of the Commissioners through the premises aforesaid that on the said 10th day of December twelve freeholders of said town of Sugar Grove, answered to their names as returned upon said warrant by A. A. Constable, from which number six were drawn by said Justice & duly sworn to serve as said jury to assess said damages, that after examining the roads & routes & premises aforesaid said jury returned into Court their verdict for Fifty Dollars damages for said Matthews, which verdict was afterwards, to wit, on the 4th day of January 1831, filed in the Clerk's Office of said town of Big Rock & a copy thereof together with a statement of the costs & expenses of said assessment, delivered to the Supervisor of said town, that on the 20th day of December 1830, a notice in writing signed by said Commissioners of Highways, was served upon said R. A. Matthews ordering and requiring him to remove all fences and other

obstructions from said road so located as above
within sixty days from the service of said notice,
that afterwards, to wit, on the 1st day of April 1831
at the annual town meeting of said town of Big
Rock, John Peice, Franklin M. Lawrence and
Harvey Thompson were elected Commissioners of High-
ways of said town & served and acted as such during
said year that J. D. Dimming was elected Overseer
of Highway for said District number six in
said town & was duly qualified and served as
such Overseer, that afterwards, to wit, on first day
of December 1831, the said Commissioners of High-
ways in said road district notified & required this
defendant Dimming then Overseer of Highway in
said road District, to open and work said road,
that in pursuance of said Order or requirement
the said defendant Dimming with the assistance of
the other defendant Byrnes, proceeded to open said
road, that no more damages were done to plaintiff's fence
grass &c. than was necessarily required in opening said
road, and that all the said acts, wrongs or injuries
aforementioned are the same trespasses complained of
in the plaintiff's declaration & in the introductory part
of this plea mentioned, and of this the defendants
are ready to verify, wherefore they pray Judgment.

J. D. Dimming
Patrick Byrnes

and on the 16th day of June in the year
A.D. 1853 there was filed in the Office of said
Clerk the following Demander to wit,
State of Illinois } In the Circuit Court of the
DuPage County & County of DuPage at the Court
R. H. Matthews Term A.D. 1853,

vs
Josiah D. Dimming } Demander to the second Plea
and Patrick Burns }

The Plaintiff in person
comes and says that for any thing in the defen-
dants second plea above pleaded he is not bound
by the law of the County to answer the same
and for reasons following to wit, 1st the defendants
seeks to justify entering on the ground of plaintiff
and pulling down his the said plaintiffs fences
so signing his grapes &c. &c. by law he does not
state and show that previous to the opening of the
road admitted to be on plffs land, damages had
been tendered or paid to the said plaintiff for
the easement sought to be open to the public.

2^d The plea does not aver or state that after said
road was laid out the plaintiff gave sixty
days notice in writing to open said road and
remove his fences prior to the committing of the
trespasses or entering on the ground to open the
said road and pull down the said fences,

named in the declaration.

3^d Defendant omits to state and allege in his second plea that at what time the Comty. of Kane organized under the act of 1849, whether before or after the time the trespass were alleged to have been committed

4th The 2^d plea is uncertain in this and depertum that it does not admit that plaintiff was the owner of the land over which the road sought to be laid out and opened and yet admits Deffs was doing the damages on the identical land mentioned in plffs declaration.

5th plea does not allege that the lands trespassed ~~upon~~ was in road District No 6 in town of Big Rock, Kane Comty Illinois.

6th Plea does not allege and show that at the time the trespasses were committed to wit on the 13th December 1881, defendant was then and there acting as such Overseer of Highways in District No 6, in said town and Comty.

7th The assessment of damages as provided by the 12 Section of the road law is unconstitutional and void because it allows but six instead of twelve men to assess the same.

R. A. Matthews

And on the 16th day of June in the year of our Lord 1833, the same being one of the days of the June Special term of the said Circuit Court of DuPage County, the following proceedings were had to wit,

Robert N. Matthews

No 66

vs

Josiah D. Dunning
Patrick Burnes

} Trespas

This day comes the Plaintiff in his own proper person and by Day his Attorney, and the Defendants in their own proper persons, and the Court having heard the parties on the plaintiff's Demures to the defendants second plea and being fully advised in the premises sustains said Demures. It is therefore ordered and considered that the said plaintiff have and recover of the said defendants his costs and charges in and about said Demures expended and that he Execution therefor.

And on the 17th day of June in the year last aforesaid the same being one of the days of the term of the said Court the following further proceedings were had, to wit,

Robert Matthews

vs

Josiah D. Dunning

} Trespas

This day comes the Defendants

Plaintiff & files his Demurrer to the Defendants amended pleas & the Court having heard the parties thereon sustains the same & grants Defendants leave to amend and Court having heard the parties on motion for continuance formerly entered, grants the same at plaintiffs Costs of term,

And on 6th day of April in the year A.D. 1853, there was filed in the office of the said Clerk the following amended plea, to wit,

State of Illinois
 On Page Circuit Court } Sept Term 1852,
 J. D. Dunning &
 Patrick Byrne }
 and } action for trespass change of
 R. H. Matthews } Name from Name.

And for a further plea in this behalf as to the wrongs, force & injuries charged in plaintiffs said Declaration Defendants say that plaintiff ought not to sustain his said action, because they say the premises lands fences &c, mentioned in said declaration were situated in Road District No 6 in the town of Big Rock, Stone County & State aforesaid, that said County was at the time when &c organized under the act of 1849, providing for the organization of Towns & Counties, that

after the first Annual town Meeting of said town of Big Rock to wit, on the 3^d day of April 1830. Application was made to the Commissioners of Highways of said town by a legal voter of said town liable to be assessed for road labour therein, to alter & relocate a road running through the premises described in plaintiffs declaration, that three notices of such application signed by said applicant, were posted in three public places in said town, that said notices set forth that a meeting of free holders would be held at a place specified in said notices near the premises & at a time specified at least six days after posting said notices to wit, on the 10th day of April 1830, to examine said road & routes & certify in relation to the proposed alteration & relocation, that on said 10th day of April certain respectable free holders of said town not interested in the premises, nor of kin to any of party interested therein did assemble at the place specified & no objection being made to them or either of them were duly sworn and examined said roads and routes, and after hearing all objections to said alteration, did certify to the Commissioners of Highways of said town, that the proposed alteration & relocation was necessary & proper & that the same ought to be made, that the

said Commissioners of Highway (after giving to the said ~~At~~ Plaintiff, ~~Matthews~~) reasonable notice) did afterwards, to wit on the 23rd day of April 1850, meet examine said premises, roads & routes & after hearing all objections from the said Matthews, & deeming it necessary & proper for the public interests did order & determine that a public Highway from road wide be laid out and was by said order laid out as appeared for & through the premises, lands fences &c. in said plaintiff's declaration mentioned & did cause said order establishing said Highway to be filed in the Clerk's office of said town, on the 24th day of December 1850, that afterwards to wit, on the 9th day of December 1850, a Justice of the Peace of said town of Big Rock, upon the application of one of the said Commissioners issued his warrants to a Constable of another town in said County commanding him to summon twelve disinterested freeholders, of said County not residents of said town of Big Rock, to make a jury to assess the damages for altering & relocating said road, that on the 10th day of December 1850, said warrant was returned served upon twelve freeholders of the town of Sugar Grove in said County all of whom answered to their names, that

six of said freeholders were sworn by said Justice
& no objection being made to them, were sworn to
serve as such jury, that after examining said
premises & roads said jury returned into Court
their assessment or verdict in writing for the ~~same~~
damages awarded to said plaintiff (Watthens)
that a copy of said assessment was furnished
to the Supervisor of said town of Big Rock & by
him laid before the Board of Supervisors of said
County at their first meeting after said assess-
ment, that afterwards the Board of Supervisors of
said County took the matter of said damages under
consideration in the presence of said Plaintiff
(Watthens) & after hearing the proof & allegations,
finally fix upon the amount of damages for
said Watthens which amount was immediately
thereafter and before the time of the alleged trespass
in Plffs Declaration mentioned tendered to him
the said Plff by one of said Commissioners
of Highways, that on the 20th of December 1830,
the said Commissioners notified said Plaintiff
(Watthens) in writing to remove all fences and
other obstructions from said road within sixty
days thereafter, that said Plaintiff refusing to
remove his said fences &c. the Commissioners
of Highways of said town did thereafter, to wit,
on the 1st day of December 1831, order

His defendant Dunning (who was at the time
 Overseer of Highways for the road District in which said
 road was situated to open and work said road, that
 in pursuance of said order these defendants did
 proceed peaceably to open said road, not by breaking
 & taking one hundred rods of ~~said~~ fence. one
 hundred rods of picket fence & one hundred rods
 rail fence and destroying the rails, trampling down
 the crops &c. but simply by leveling not exceeding
 two rods of ditch fence within the limits of said
 road in order that the public might pass over said
 road that all the trespass, injuries &c. charged in
 plaintiffs declaration were simply the necessary
 acts of defendants in opening said road accord-
 ing to the order of said Commissioners all of which
 they are ready to verify, & therefore they pray Judgment
 J. D. Dunning
 Patrick Byrne

And on the 11th day of April in the year last
 aforesaid the same being one of the days of the term
 of the said Circuit Court the following among other
 proceedings were had, to wit:
 Robert A. Matthews
 vs
 Josiah D. Dunning } Trespass
 Patrick Byrne } by stipulation on file

herein it is ordered that this cause be continued

And afterwards to wit on the 17th day of October
in the year A.D. 1833 the following Demurrer
to D³ & 3^d pleas were filed to wit,

R. K. Watkins

vs
J. D. Dimmery
+ Patrick Burns } On Page Circuit Court
October Term A.D. 1833

And the said Plaintiff in his
own proper person comes and say that the D³ & 3^d
pleas of the said defendants by him secondly
and thirdly above pleaded and the matters and things
set forth are not sufficient in law to bar the
plaintiff from having and maintaining his aforesaid
action against the said defendants and this he
is ready to verify wherefore &c, and for cause
of Demurrer to the said second plea the plaintiff
alleges the following

1st It does not appear from said plea that the
verdict of the jury Justice Warrant for summoning
jury to assess damages was issued at the instance
of the Commissioners of Highways (but of one
of them).

2^d It does not appear from said plea that the
verdict of the jury assessing damages was ever
laid before the Board of Supervisors or acted

upon by them and the names of the persons who testified to the necessity of said road and who assented are not given.

3^d It is not averred by said plea that the damages were ever paid to plaintiff or even offered to him.

4th The said plea does not certify the trespasses complained of in plaintiff's declaration and is in other respects informal and insufficient. And for causes to ^{of damages to} said third plea the plaintiff assigns the following
1st no dates are given when the proceedings therein mentioned were had.

2^d The names are not given of the persons & officers who did the various things in said plea mentioned.

3^d The said plea is in other respects entirely informal & insufficient it does not show how much damages were assented to plaintiff or when nor does it justify the trespasses alleged in plaintiff's declaration & the said plea is argumentative.

And on the 11th day of April in the year last aforesaid and the same being one of the days of said Circuit Court the following proceedings were had to wit,

Robert A. Matthews

vs
Josiah D. Dunning } Trespass
District Attorney } by stipulation on file herein

And on the 17th day of October in the year A.D.
1833. the same being one of the days of the
term of the said Circuit Court, the following
proceedings were had, to wit,

Robert A. Matthews

^{vs}
Josiah D. Dimming } Trespass.
Patrick Burns }

This day comes the plain-
tiff in his own proper person and moves the
Court to strike plea from file. and the Court
having heard the particular on overrule said
motion.

And thereafter, to wit, on 20th day of
October in the year last aforesaid the same being
one of the days of said of the term of said Court
the following further proceedings were had.
Robert A. Matthews

^{vs}
Josiah D. Dimming } Trespass.
Patrick Burns }

This day comes the
parties in their own proper persons and by agree-
ment, it is ordered that this cause be continued
untill next term of this Court as per stipulation
on file it is further ordered that the plaintiff
pay the costs of this term

And on the 13th day of April in the year A.D. 1854, there was filed in the office of the said Clerk the following Replication, to wit,
 R. A. Matthews

as
 J. J. Dunning } DuPage Circuit Court
 Patrick Burns } April Term A.D. 1854.

and the said plaintiff, as the pleas of the said defendants by them 2^dly and 3^dly above pleaded says precludes now because he says that the said defendants of their own wrong committed the said trespasses in the said declaration mentioned and not for the causes in the said pleas alleged and this the said plaintiff prays may be enquired of by the Court &c.

And the said plaintiff as to the said pleas of the said defendants secondly & thirdly above pleaded further says precludes now because he says that no certificate was ever made by twelve freeholders of the town of Big Rock, that the road in said pleas mentioned was necessary and proper but that one of said persons was not a freeholder and of this the said plaintiff puts himself upon the Country &c.

And the said plaintiff as to the said pleas of said defendants aforesaid further says precludes now &c because he says that

the who applies for the laying out and relocating of said road in said pless mentioned was not a citizen of said town of Big Rock & was not liable to do road labour therein and this he prays may be enquired of by the County &c.

And the said plaintiff as to the said pless of the said defendants aforementioned further says precludo non because he says that the jurors who assessed the damages to the said plaintiff which he would sustain by reason of laying out of the said road as mentioned in said pless were not all freeholders of the County of Kane, and of this the said plaintiff puts himself upon the County &c.

And the said plaintiff as to the said pless of the said defendants by them secondly & thirdly above pleaded further says precludo non &c because he says that if any assessment ^{ever} was made of the damages which the said plaintiff would sustain by reason of laying and opening said road mentioned in said pless it was another and different assessment from that in said pless mentioned and of this he is ready to verify wherefore he prays judgement &c.

R. A. Matthews
in proper person

And the said plaintiff as to the said pleas of the said defendants by them secondly and thirdly above pleaded further says preclude non &c because he says that previous to the pretended assessment of the damages of this plaintiff, as is in said pleas alleged to wit on the 23^d day of April A.D. 1830, the said plaintiff applied to one Alexis Wall, who was then and there an acting Justice of the Peace, in and for the said town of Big Rock, in said County of Kane, and the said Wall Justice as aforesaid then and there issued his warrant directed to any Constable of the town of Aurora in said County and commanding him to summon twelve freeholders of said County not residents in said town of Big Rock to appear before said Justice in said town of Big Rock to make a jury to assess said plaintiff's damages by reason of the laying out of said road aforesaid which said warrant was then on the day aforesaid delivered to one Ch. Piny a Constable of said town of Aurora in said County of Kane who thereupon executed the same by summoning twelve good and lawful men as he was commanded and the said person so summoned by said Constable as aforesaid before said Justice, to wit on the 29th day of April 1830, at Big Rock

aforesaid, and the said Justice thereupon
then and there drew from said twelve persons
six of their to make said Jury who were
good and lawful men for that purpose
and the said Jury after being duly sworn
by Justice examined the premises aforesaid
and the route of the said pretended road
and returned to said Justice their verdict
on the day aforesaid in and by which
they assessed the plaintiffs damages as aforesaid
and at the sum of five hundred Dollars
which said verdict was by said Justice delivered
to the Commissioners of Highways of said
town, and by said Commissioners delivered
to the Supervisors of said town to wit. on the
day last aforesaid, which said verdict of
said Jury has never been acted upon by the
Board of Supervisors of said County nor has
they at the time when we ever completed said
assessments according to the Statutes in such
cases made and provided and thus the said
plaintiff is ready to verify wherefore we

R. K. Matthews
in proper person

R. N. Matthews

^{vs}
 J. D. Dimmick
 Patrick Byrnes

 In Page County Circuit
 Court A. D. 1834.

And the said plaintiff as to the said pleas of the said defendants by them secondly and thirdly above pleaded further says, precludes now because he says that previous to the pretended assessment of the damages of the plaintiff as in his said pleas alleged to wit on the 28^d day of April A. D. 1830. the said plaintiff made application to one Alexis Hall then and there one of the Justices of the Peace in and for the said town of Big Rock, in the County of Kane and State of Illinois, to issue his warrant to some Constable of some other town of Kane County neither interested in the land through which the road was laid out & directed him the said Constable to summon Twelve disinterested freeholders residing in some other town in said Kane County aforesaid other than in said town when said road was laid out & not of him to the said plaintiff to assess the damages sustained by the laying out of such road, and the said plaintiff avers that the said Alexis Hall Justice of the Peace

as aforesaid did issue his Summons, to wit,
on the 23^d day of April A.D. 1830. to one
Nolumbus Penny then and there a Constable
residing in the town of Aurora, in said Kane
County Ill. and that the said Penny was then
and there Constable of said town of Aurora,
and as such Constable did then and there
summon twelve disinterested freeholders in
said town of Aurora, according to the mandate
of said Summons to appear before the said
Alexis Hall Justice of the Peace, of Big Rock
as aforesaid, and the said twelve freeholders
Summoned as aforesaid, did afterwards, to wit,
on the 25th day of April A.D. 1830. at the time
commanded in said Summons appear before the
said Alexis Hall who issued the Warrant
and the said Alexis Hall Justice did then and
there draw by lot six of the persons attending
and summoned as the jury by the said Penny
Constable as aforesaid, who were free from all
legal exceptions to accept said damages, and
the jury were then and there sworn well and
truly to determine and accept such damage
& being so sworn did then and there view
& examine the premises and did then and there
on the day aforesaid, after examining the proposed
road over the lands of the said plaintiff return

a verdict to said Justice by which said verdict they assessed the plaintiff damages to the amount of Nine hundred Dollars, which said verdict the said Jury returned to and was received by the said Alexis Wall Justice as aforesaid. And the said plaintiff avers that the said verdict so received by the said Alexis Wall Justice as aforesaid still remains in full force and efficacy unreversed & unrecinded, and this he the said plaintiff is ready to verify wherefore he prays judgment by R. St. Matthews atty in person

And on the 12th day of April in the year A.D. 1834 the same being one of the days of the April term of the said Circuit Court the following among other proceedings were heard to wit,

Robert St. Matthews

vs

Josiah D. Dimmings } Trespass
Patrick Barnes }

This day comes the parties in their own proper persons, motion by the Defendant to strike from file applications from file thereupon plaintiff enters his cross motion, and after hearing the arguments and being fully advised

in the premises the aforesaid motion was sustained
by Court

And thereafter, to wit, on the 13th day of
April in the year last aforesaid there was
filed in the office of the said Clerk the
following Rejoinder, to wit,

J. D. Dunning et al
all
R. N. Matthews } Dry Ridge Cr. Court,
April Term 1834,

And the said defendants
as to the said 1st 2^d 3^d & 4th replications of the
said plaintiff to the said 2^d & 3^d pleas of them
the said defendants which the said plaintiff
hath prayed that may be inquired of by
the County. do the like,

J. D. Dunning
J. Byrnes Deft

And the said defendants for Rejoinder
to the 5th 6th & 7th replications of the said plaintiff
to the said 2^d & 3^d pleas. of them the said defe-
ndants, say a *non-venit*, because they say the
allegations, matters and things set forth in
said replications are not true, and this the
said defendants pray may be inquired of by
the County. &c.

J. D. Dunning
J. Byrnes Deft,

And on the 15th day of April in the year last aforesaid the same being one of the days of the term of the said Court the following proceedings were had, to wit,

Robert N. Matthews	}	Trespass
vs		
Josiah D. Dunning Patrick Barnes		

This day comes the parties in their own proper persons, and by agreement this cause is continued untill the next term of this Court.

And thereafter to wit on the 9th day of April in the year of our Lord 1835, at a Circuit Court begun and held in and for said County at Naperville in said County on the ninth day of ~~May~~ April the Honorable S. W. Randall presiding Judge of said Judicial Circuit presiding the following among other proceedings were had, to wit

Robert N. Matthews	}	Trespass
vs		
Josiah D. Dunning Patrick Barnes		

This day comes the

Plaintiff by Day Ballengall Murray &
Farnsworth and the Defendant in his own pro-
per person, the issue being joined herein by
consent a jury is waived and the case submitted
to the Court for trial, after hearing the evidence
and arguments of Counsel. It is ordered and
considered by the Court that the plaintiff have
judgement of One Dollar and costs.

Whereupon the Defendant comes in his own
proper person and moves the Court for a new
trial

And thereafter to wit on the ^{10th} ~~same~~ day ^{of April 1855} ~~of said~~
the same being one of the days of the term of
the said Court the following further proceedings
were had, to wit,

Robert A. Matthews

^{vs}
Josiah D. Dimmery } Trespas
Patrick Barnes }

This day come the parties
by their respective attorneys and the Court having
heard them on the defendants motion for a new trial
formerly entered herein, and being fully advised
in the premises, refuses said motion. It is therefore
ordered considered and adjudged by the Court
that the said Plaintiff, have and recover from
the said defendant the sum of One Dollar

his damages therein expended and that he have execution therefor. Whereupon the Defendant in his own proper person comes and moves the Court for an appeal therein, which motion is hereby granted on the following conditions, viz, that if the said Defendant within twenty days execute and file according to law a Bond in the sum of Three hundred Dollars with Alexis Hall & John Pierce or either of them as securities

And on the 23rd day of April in the year last aforesaid there was filed in the office of the said Clerk the following Bond, to wit,

Know all men by these Presents that we Josiah D. Drumming, John Pierce & Alexis Hall, are held and firmly bound unto Robert A. Matthews in the penal sum of Three hundred Dollars lawful money of the United States for which payment well and truly to be made we bind ourselves our heirs and administrators joint, severally and firmly by these presents,

Witness our hands and seals this 20th day of April 1855,

The condition of the above obligation is such, that whereas, the said Robert A. Matthews did on the ninth day of April 1855, in

The Circuit Court for DuPage County Illinois, recover a judgement against the above
bonded J. D. Dunning and Patrick Byrne
for One Dollar damages & the costs of suit
in an action of Trespass, from which judg-
ment, the said J. D. Dunning & Patrick Byrne
have taken an appeal to the Supreme Court of
the State of Illinois. Now if the said J. D.
Dunning & Patrick Byrne, shall present their
appeal with effect, and shall pay whatever
judgement may be rendered against them by
the Court, upon dismial trial of said
appeal and all costs, interests and damages
in case said judgement of the Circuit Court
shall be affirmed, then the above obligation
to be void, otherwise to remain in full force & effect.

J. D. Dunning *Test*
Morris Hall *Test*

State of Illinois }
 Du Page County } ss

I, Peter Anthrops Clerk of the
 Circuit Court in and for said County, in the State
 aforesaid, do hereby certify, the foregoing in connection
 with the papers filed in the Supreme Clerk's Office
 of the Supreme Court
 to be a true and correct copy of the record and
 proceedings in the above entitled case.

Given under my hand and the seal of said
 Court at Springfield this 28th day of
 June A.D. 1855

Peter Anthrops

clp

82
J. D. Drumming del.

R. C. Matthews
Recd

Merch Crs of
DuPage County
\$8.65

Filed July 5. 1855.
Leland Ch.

82

Costs Taxed

1855

1223 1/2