

No. 14269

Supreme Court of Illinois

Sweeney

vs.

People

47
STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

14269
No. 4

PEOPLE'S CAUSES.
1882

Swamy
vs

People

Refers

STATE OF ILLINOIS, SS. }

Supreme Court, Third Grand Division, at Ottawa: }

The People of the State of Illinois,

To the Clerk of the Circuit Court of La Salle County:

WHEREAS, in a certain plea between *The People of the State of Illinois* ^{GREETING}

plaintiff and *Edward Sweeney*

defendant lately depending in the *Circuit* Court of said County, wherein judgment was rendered for the said *plaintiff*

and against the said *Defendant*

and the said *Defendant* having duly sued out a writ of *Error* from said Supreme Court to reverse the judgment of said Court, rendered against *Defendant*

as aforesaid, to the Supreme Court, held at Ottawa, on the first Tuesday after the first Monday in April, and in pursuance of the said *writ of Error* a transcript of the record and the proceeding: in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said *plaintiff*

that the said record has been diminished, inasmuch *the following parts of the record of said case to wit "Tuesday February 11. 1852. then Wm Chumassers President "This day the grand jury return into open Court the following indictments as true bills," and also the word "Term" after the word February in the second line of the indictment, and also the figures 1850 "1859" in the testimony of H.B. Neff (instead of the figures 1860 which were sent up)*

hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficient record sent in the plea aforesaid, but in the record there is a diminution: YOU ARE, THEREFORE, HEREBY COMMANDED, That, without delay, the said *above described record* therein you cause to be transmitted to the Supreme Court, to be held at Ottawa, on the *forthwith*

~~next~~, without any diminution or addition whatsoever, to the end that speedy justice may be done in the premises, according to law; whereof you are in no wise to fail; and send you then there this writ.

Witness The Hon. JOHN D. CATON, Chief Justice of said Court,

and the seal thereof, at Ottawa, this *5th* day of *May* in the year of our Lord one thousand eight hundred and ~~fifty six~~ *1855*

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deput

I hereby certify that I have amended the original record transmitted to the Supreme Court as herein commanded.

Witness my hand and the Seal of the Circuit Court of LaSalle County Illinois, this 5th day of May A.D. 1862.

A.B. Moore Clerk
C. H. Hooker Deputy

Sweeney

vs

The People

Writ of Certiorari

Filed May 6 1862

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

EDWARD SWEENEY }
vs. } *Indictment for continuing an Obstruction in*
THE PEOPLE, &c. } *a Highway.*

ABSTRACT OF RECORD.

- 2, 3, 4 Indictment—three counts, all substantially the same.
Road is between NW $\frac{1}{4}$ of Sec. 7, and SW $\frac{1}{4}$ Sec. 6, Township 35 N., R. 3 E. 2d P. M.
- 5 Bail.
- 6 Motion to quash. Plea of not guilty.
- 7, 8, 9 Mere recital of the trial.
- 10 Motion for new trial overruled, and judgment.
- 11 Twenty days from last day of term, to file bill of exceptions.

Evidence.

- John R. Lewis, Town Clerk of town of Freedom, proved record of the road.
- 12 John Whitham posted petition in three of most public places in the town, on first Tuesday of April, 1859, and made affidavit of the fact, which is attached to record of the road.

Sweeney occupies NW $\frac{1}{4}$ Sec. 7, in Freedom. There is a road on the west line of said section. There is a post and board fence in the centre of the whole half mile of road. Defendant put it there. It is an obstruction to the travel. He knows the notices for a meeting of the commissioners, on 3d of May, 1859, at Taylor's, to consider the petition. He posted the same in three of the most public places in the town, on the day of the date thereof.

Plaintiff offered to read the notice to the jury. Defendant objected. Objection overruled and exception.

- 13 Notice dated 27th of ~~May~~ ^{April} 1859, signed by commissioners, describes

- 13 the road and states that the commissioners would meet on the 3d of May, 1859, at Robert Taylor's, to consider the petition. (No hour is mentioned for the meeting).

Whitham further stated that he was at Taylor's, on 3d of May. Only H. B. Neff and F. Baldwin, commissioners, were there. W. T. McClure, commissioner, was absent.

- 14 Taylor's house is at one end of the road, and it can all be seen from the house. Sweeney was there. We all talked about the road. Sweeney thought it would damage him \$300; take away his land and make him build fence.

No evidence of amount of damages, and they were not decided upon.

Plaintiff put the question: What was said by the two commissioners about adjournment? To which defendant objected. Overruled and exception.

The commissioners proposed to adjourn to Esq. Allen's office, in Harding, four miles distant.

Sweeney was there when they first began to talk about adjourning, but went away.

- 15 Commissioners did finally adjourn to meet at Harding, in a week. There was no announcement of the adjournment, only general talk about it. Sweeney was not at the meeting at Harding.

H. B. Neff, one of commissioners, was at Taylor's. Determined to adjourn to Harding, 11th May, 2 o'clock, P. M. There was no written notice given to Sweeney of the adjournment, and no record made of the adjournment.

- 16 Petition dated 4th April, 1859. Affidavit of John Whitham and John Briley, of posting petition on 5th of April.

Order of commissioners making road. Recites posting of the petition, and that, on the 3d of May, they examined the road, and heard reasons for and against; first having given EIGHT days notice of the meeting. Determined on 3d of May to lay out the road.

- 19 On 16th of May, caused survey to be made.

- 20 Survey, plat, and final order dated 17th of May, 1859.

- 21 Order of commissioners, in relation to damages, recites that they laid out the road on the 11th of May, 1859, and not allowing Sweeney any damages, dated 17th of May, 1859.

To the introduction of all which papers, in relation to said road, the defendant excepted.

- 23 J. C. DeLong testified that he was a constable, and read the notice to Sweeney, to open the road, on 14th of March, 1860. Plaintiff proposed to read the notice to the jury, and defendant excepted.

Notice dated 7th of March, 1860, recites that commissioners laid the road 17th of May, 1859, and it was affirmed on an appeal to supervisors on 23d of July, 1859. Copy of order of supervisors attached.

- 23 The road is described as running over lots 1 and 2, NW $\frac{1}{4}$, T. 35, R. 3. (No meridian, state, county, or town given in notice).
- 24, 25, 26, Appeal papers of Sweeney and others offered, and read under excep-
27 tion of defendant. Order of supervisors, dated 23d of July, 1860, allow-
ing Sweeney \$25 damages.
- 28 H. B. Neff recalled, stated that, on the 8th or 9th of March, 1859, he
tendered \$25, in gold, to Sweeney for damages. He refused to take it.
The tender was after the notice to remove the fence was executed and
delivered to Delong to serve.
Plaintiff rested their case.
Defendant moved to exclude from the jury the notice to open the
road. Overruled—exception.
Plaintiff proposed to recall Delong to prove that a copy of notice was
tendered Sweeney, who refused to take it. Defendant objected. Over-
ruled and exception.
Delong recalled, stated that he tendered a copy of the notice to
Sweeney, and he refused to take it.
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- 29 The defendant called E. C. Humphrey, who testified that he was pre-
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there at first, but got angry and went away one half hour before the ad-
journment.
There was no announcement by commissioners of adjournment.
Sweeney was not at the meeting at Harding, on the 11th of May.
- 30, 31 Plaintiff's instructions. Exception to all.
The 2d lays down the law that if Sweeney was notified of the meeting on
3d of May, 1859, and was there claiming damages, and that the commis-
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whether he was present at the time of the adjournment or not.
- 32-36 Defendant's instructions.
To the refusal of the 4th, 8th, and 11th, defendant excepted.
4th. That if commissioners did not, within ten days of the twenty in
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of hearing reasons for and against, then the jury should find de-
fendant not guilty.
- 35 8th. If fence made before road laid, and the notice to remove the
same was defective in time of service or manner, or an omission of
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road was executed and delivered to Delong to serve, then the notice was
void, and defendant ought to be acquitted.

BUSHNELL & AVERY,
Attorneys for Plaintiff in Error.

ERRORS ASSIGNED.

1. Overruling motion to quash.
2. In permitting the notice of the Commissioners of the meeting on 3d May, 1859, to consider the petition, to go to the jury.
3. Permitting the witness, John ~~Whitlow~~^{Whitham}, to testify about the adjournment of that meeting.
4. Permitting the record of the road to be read to the jury.
5. Allowing notice to open the road to go to the jury.
6. Allowing proceedings of Supervisors to be read to the jury.
7. Overruling motion of defendant below, after the plaintiff below had rested their case, to exclude the notice to open the road from the jury.
8. Allowing witness Delong to be recalled and testify, after the People had closed their case.
9. Overruling motion for a new trial.
10. Giving People's instructions.
11. Refusing 4th, 5th, and 11th instructions of defendant below.

BUSHNELL & AVERY,
For Plff's. in Error.

1801

Abstract

Edward Swiney vs The People

Filed May 3, 1842
L. Geland
Clk

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THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

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vs. } *Indictment for continuing an Obstruction in*
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For Plff's. in Error.

Abstract

Edward Sweeney

vs
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Filed May 3. 1842
J. Leland
clerk

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APRIL TERM THEREOF, A. D. 1862.

EEWARD SWEENEY }
 ^{vs.} } *Indictment for continuing an Obstruction in*
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POINTS AND AUTHORITIES.

The counsel for appellant moved the Court below to quash the indictment, which motion was overruled. (Rec. p. 8.) We insist the motion to quash should have been sustained, for the following reasons, viz.:

1st. The 1st count is double, containing two distinct offences—the obstruction and the continuance of an obstruction. The language of the statute is in the disjunctive, “inconvenient or dangerous.” The indictment contains both; this is fatal.

Miller vs. State, 5 Howard, 250.
Com. vs. Teck, 20 Pick. 356.

2d. The indictment nowhere alleges a notice to remove the obstruction. If it was necessary to prove a notice as material fact, it was necessary to allege it. This is too familiar a principle of law to admit of argument or need authorities.

3d. The indictment nowhere shows at what term of Court it was found and presented. No words need be wasted upon this point, it is clearly fatal.

The indictment is fatal in this: It alleges the continuance to be on the 1st day of January, 1862, without any allegation as to the length of time it was continued. The obstruction and continuance being alleged to be on a certain day without a continuance. No evidence of a continuance could be received but such as took place on that day. The indictment should have alleged a continuance from one certain day to another.

We call the attention of your Honors to the fact that the Record nowhere shows that the indictment was returned into Court, and presented by the grand jurors in open Court. To this objection there can be no answer.

State vs. Glover, 3 Iowa, 249.

This Court has decided in *Gardner vs. The People*, 3 Scam. 85, that the Record must show that the grand jury returned the indictment in open Court, endorsed "a true bill." In this case no such thing appears of Record.

The second error assigned, relates to the notice of the Commissioners of their meeting after receiving the petition.

Act Feb. 12, 1857, (Sess. laws, p. 46,) Scates, Treat, and Blackwell's, page 366, provides that the Commissioners shall give at least *eight* days previous notice of their meeting to consider the petition.

This notice was dated and posted 27th April, and fixed the 3d day of May for the meeting. By counting both the 27th of April and 3d of May, there will be but seven days notice, and according to the usual construction of such statutes, counting one day and not the other, there would be but six days notice.

There is no hour of the day specified for the meeting. The statute says the notice must state "*the time when and place where*" the meeting will be held. If the law does not require a definite time of day to be mentioned, then the Commissioners could meet on any hour in the 24, and their action would be legal, and persons opposing the road would be obliged to wait all day and watch the arbitrary proceedings of the Commissioners.

When private property is taken for public use, the law must be strictly followed and strictly construed. The mere presence of Sweeney for a short time on the 3d of May, when only two Commissioners were there, and no business done, the meeting not being called to order, "nothing but a general talk," and Sweeney's leaving an half an hour before the persons present separated, and there being no announcement of an adjournment, and there being no record of the adjournment, will not amount to a waiver of the defects of the notice.

4th. The evidence of the proceedings of the Commissioners should be in writing. The law provides, Scates' Statute, page 354, Sec. 5, that the order of the Commissioners, laying the road, shall be recorded. Every material thing necessary to be done by the Commissioners, should be contained in the written order. If the officers wish to adjourn from time to time, they should make a record of the fact. Unless they do, they lose their jurisdiction, and their power ceases.

The order in this case, (page 16,) recites the determination to lay out the road on the 3d of May, although the order was not signed until the 17th.

We therefore think the Court erred in permitting the plaintiff below to prove by parol the adjournment of the meeting on the 3d of May, because the law requires such fact to be recorded, and because in this case it contradicts the Record itself. This road record does not contain a word about any meeting on the 11th of May. It is shown by verbal testimony. The order in relation to damages mentions the meeting on the 11th, and contradicts the order for the road in stating that they determined to lay out the road on the 11th, the order stating that it was done on the 3d.

5th. What is said on the 2d and 3d errors assigned, will apply to the 4th, as showing why the Record was not sufficient. In addition, however, we call attention to the fact that the order states that all the
18 business of the Commissioners was done on the 3d May, (the 11th is not mentioned at all,) except getting a survey made on the 16th, and executing the order on the 17th.

It is absolutely necessary that some order should be made concerning damages. There is no such order applicable to the meeting on the 3d of May, as set forth in the order for the road. An order about damages describing a road, laid out at a meeting on the 11th May, cannot, by any system of mutations, be made applicable to an order for a road established by record of the 3d.

6th. Notice "B," page of Record 23, is defective, in not stating the meridian in its description of the road.

7th. The proceeding of the Supervisors on appeal ought not to have been allowed to go the jury.

It proves nothing, unless it would be to rebut any evidence of the defendant below to show that it was still pending. It only affirms the order of the Commissioners, and as long as the defendant below did not seek to make any use of the appeal record, it had no bearing whatever on the validity of the road.

8th. The law requires the notice to open the road to be given by copy.

Scates' Statutes, p. 357, Sec. 24.
Case *vs* Thompson, 6 Wend. 634.

9th After the plaintiff below had rested their case, it was contrary to the practice in criminal cases to allow the People to open their case and cure defects by additional testimony, especially if it was done under a motion of the defendant, as in this case, to exclude the evidence from the jury.

10th. The argument, under the 2d and 3d points, is applicable to the 10th error assigned. (See Abstract page 33.)

11th. The 4th, 8th, and 11th instructions of defendants below refused by the Court assert the law to be,—

“*Fourth*—That it is the duty of Commissioners to *go upon and view* the road, and hear reasons for and against, within ten days after the 20 in which the petition is posted.”

Page 353, Secs. 1, 2, and 3, of Scates, Treat and Blackwell's Statute.

The only evidence about the view was simply, that two of the Commissioners were at one end of the road, $\frac{3}{4}$ of a mile long, at the meeting at Taylor's 3d May.

The Commissioners were incompetent to do justice to the public and individual's interest, without a careful personal survey of the whole line of road, and the law makes it imperative that they should make such examination.

Eighth—In support of the law, as stated in 8th (refused) instruction, it is only necessary to refer to the general rule of strictly construing and strictly following all statutes which provide for taking private property for public use. Any material defect ought to vitiate the proceedings, as much so as in the assessment and collection of taxes. In this case no meridian was mentioned in the notice, and it was impossible to determine from the notice itself where the road was situated, or what road it was.

Eleventh instruction (refused) was based upon the proof, (page 28 of Record,) that the notice to remove the fence was executed and delivered by the Commissioners to Delong, to serve before the tender was made.

The Commissioners could not take a step towards opening the road, until the damages were paid or tendered. Any action of that kind would be void. Then this notice was premature, and it was the duty of the Commissioners to have made another after notice of the tender.

~~GRAY~~, AVERY & BUSINELL,
Att'ys for Plff. in Error.

4
Edward Swenney
vs
The People

Supp Brief

Filed May 3. 1862
J. L. Linn
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862

EDWARD SWEENEY } *Indictment for continuing an obstruction in*
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POINTS AND ARGUMENTS FOR THE PEOPLE.

We submit this case on behalf of the People upon the points made by the plaintiff in error.

It is true, that a motion to quash was made by the plaintiff in error, but it was made *ore tenus*, and was *pro forma* wholly, the mover declining to point out any objection to the indictment, or to argue his motion. This practice has grown into great abuse upon the Circuit, and should be discouraged by this Court, by settling the rule in this case, that the party, by such a motion, without specific points or argument made, should secure no advantage, nor be allowed to fish for errors after plea and trial.

It is a matter of discretion whether an indictment shall be quashed. It is not *ex debito justitiae*. The Court may quash for insufficiency, or put the party to his motion in arrest, and where the question is doubtful, the first remedy will be refused.

Wharton's American Crim. Law, 131.
People v. Eckfer, 7 Cowen Rep. 535.
State v. Hagaonen, 1 Green Rep. (N. J.) 314.

The plaintiff in error having failed to make a specific assignment of defects in the indictment, and not having moved in arrest, is barred from claiming errors now therein.

Answer to Sweeney's 1st point :

The 1st count is not double. The indictment is founded on sec. 134, page 397, Scates' Statute. A. may obstruct and be indicted ; so he may be indicted for continuing, if he suffers a continuance. So B. may after-

wards take possession of the property, and by suffering A.'s obstruction to continue, may be indictable. In such case, the indictment should only charge B. with continuing the obstruction, and it would not be necessary to charge who made the obstruction. The Court will see, on inspection, that the first count charges that the obstruction rendered the road "*inconvenient to pass.*" The 2d count is in the conjunctive, using the words, "inconvenient AND dangerous to pass." The 3d count is in the same language as the 1st: "inconvenient to pass."

The 1st and 3d counts are not liable, in fact, to the objection made, and the 2d count is in the conjunctive, while the statute is in the disjunctive, which is proper.

Wharton's Crim. Law, 81.

Where there is one count good, and some bad ones, and a general verdict of guilty, as in this case, no error lies upon the bad counts.

Wharton's Crim. Law, 113.
Curtis v. People, Breese Rep. 200.
Townsend v. People, 3 Scam. 329.
Holliday v. People, 4 Gilm. 113.

Answer to Sweeney's 2d point:

Sec. 134, Scates' Statute, page 397, defines the offence, and does not provide for any notice to be given to remove the obstruction.

Sec. 24, Scates' Statute, page 357, provides for a notice in case the road passes through "inclosed, cultivated, or improved lands." This is an exception made by a different statute from that creating the offense. If there be an exception in the same clause of the act which creates the offense, the indictment must show affirmatively that the defendant does not come within the exception; but if the exception or proviso (as in this case) be in a subsequent clause or statute, or if in the same section, and not incorporated with the enacting clause by any words of reference, it is in that case matter of defence, and need not be either averred or negatived in the pleading. The law on this point is well settled.

Lequat v. People, 11 Ills. 330.
Metzker v. People, 14 Ills. 102.

The Record shows that Sweeney's land was improved, so the notice had to be proved, but not alleged in the indictment.

Answer to Sweeney's 3d point:

The indictment in the record shows that it was found and presented at the February Term of the Circuit Court, A. D. 1862.

It is not necessary, in an indictment for continuing an obstruction of a road, to allege any particular length of time that it was continued obstructed. The offence is complete the very first moment after the obstruction is made. The indictment alleges that he, on Jan. 1, 1862, "did continue to obstruct," and is all-sufficient in this respect.

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4

Swamy
vs
People &c

Points and arguments
for the people

Filed May 14, 1842

J. Deland

clerk

Jones & Gray

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862

EDWARD SWEENEY } *Indictment for continuing an obstruction in*
vs. } *a Highway.*
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wards take possession of the property, and by suffering A.'s obstruction to continue, may be indictable. In such case, the indictment should only charge B. with continuing the obstruction, and it would not be necessary to charge who made the obstruction. The Court will see, on inspection, that the first count charges that the obstruction rendered the road "*inconvenient to pass.*" The 2d count is in the conjunctive, using the words, "inconvenient AND dangerous to pass." The 3d count is in the same language as the 1st: "inconvenient to pass."

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Sweeney
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Points and arguments
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Dated May 14, 1842

J. S. Sweeney
O/S

Jones & Gray

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Filed May 14, 1842

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c/r

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EEWARD SWEENEY }
 ^{vs.} } *Indictment for continuing an Obstruction in*
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POINTS AND AUTHORITIES.

The counsel for appellant moved the Court below to quash the indictment, which motion was overruled. (Rec. p. 8.) We insist the motion to quash should have been sustained, for the following reasons, viz.:

1st. The 1st count is double, containing two distinct offences—the obstruction and the continuance of an obstruction. The language of the statute is in the disjunctive, “inconvenient or dangerous.” The indictment contains both; this is fatal.

Miller vs. State, 5 Howard, 250.
Com. vs. Teck, 20 Pick. 356.

2d. The indictment nowhere alleges a notice to remove the obstruction. If it was necessary to prove a notice as material fact, it was necessary to allege it. This is too familiar a principle of law to admit of argument or need authorities.

3d. The indictment nowhere shows at what term of Court it was found and presented. No words need be wasted upon this point, it is clearly fatal.

The indictment is fatal in this: It alleges the continuance to be on the 1st day of January, 1862, without any allegation as to the length of time it was continued. The obstruction and continuance being alleged to be on a certain day without a continuance. No evidence of a continuance could be received but such as took place on that day. The indictment should have alleged a continuance from one certain day to another.



We call the attention of your Honors to the fact that the Record nowhere shows that the indictment was returned into Court, and presented by the grand jurors in open Court. To this objection there can be no answer.

State vs. Glover, 3 Iowa, 249.

This Court has decided in *Gardner vs. The People*, 3 Scam. 85, that the Record must show that the grand jury returned the indictment in open Court, endorsed "a true bill." In this case no such thing appears of Record.

The second error assigned, relates to the notice of the Commissioners of their meeting after receiving the petition.

Act Feb. 12, 1857, (Sess. laws, p. 46,) Scates, Treat, and Blackwell's, page 366, provides that the Commissioners shall give at least *eight* days previous notice of their meeting to consider the petition.

This notice was dated and posted 27th April, and fixed the 3d day of May for the meeting. By counting both the 27th of April and 3d of May, there will be but seven days notice, and according to the usual construction of such statutes, counting one day and not the other, there would be but six days notice.

There is no hour of the day specified for the meeting. The statute says the notice must state "*the time when and place where*" the meeting will be held. If the law does not require a definite time of day to be mentioned, then the Commissioners could meet on any hour in the 24, and their action would be legal, and persons opposing the road would be obliged to wait all day and watch the arbitrary proceedings of the Commissioners.

When private property is taken for public use, the law must be strictly followed and strictly construed. The mere presence of Sweeney for a short time on the 3d of May, when only two Commissioners were there, and no business done, the meeting not being called to order, "nothing but a general talk," and Sweeney's leaving an half an hour before the persons present separated, and there being no announcement of an adjournment, and there being no record of the adjournment, will not amount to a waiver of the defects of the notice.

4th. The evidence of the proceedings of the Commissioners should be in writing. The law provides, Scates' Statute, page 354, Sec. 5, that the order of the Commissioners, laying the road, shall be recorded. Every material thing necessary to be done by the Commissioners, should be contained in the written order. If the officers wish to adjourn from time to time, they should make a record of the fact. Unless they do, they lose their jurisdiction, and their power ceases.

The order in this case, (page 16,) recites the determination to lay out the road on the 3d of May, although the order was not signed until the 17th.

We therefore think the Court erred in permitting the plaintiff below to prove by parol the adjournment of the meeting on the 3d of May, because the law requires such fact to be recorded, and because in this case it contradicts the Record itself. This road record does not contain a word about any meeting on the 11th of May. It is shown by verbal testimony. The order in relation to damages mentions the meeting on the 11th, and contradicts the order for the road in stating that they determined to lay out the road on the 11th, the order stating that it was done on the 3d.

5th. What is said on the 2d and 3d errors assigned, will apply to the 4th, as showing why the Record was not sufficient. In addition, however, we call attention to the fact that the order states that all the business of the Commissioners was done on the 3d May, (the 11th is not mentioned at all,) except getting a survey made on the 16th, and executing the order on the 17th.

It is absolutely necessary that some order should be made concerning damages. There is no such order applicable to the meeting on the 3d of May, as set forth in the order for the road. An order about damages describing a road, laid out at a meeting on the 11th May, cannot, by any system of mutations, be made applicable to an order for a road established by record of the 3d.

6th. Notice "B," page of Record 23, is defective, in not stating the meridian in its description of the road.

7th. The proceeding of the Supervisors on appeal ought not to have been allowed to go the jury.

It proves nothing, unless it would be to rebut any evidence of the defendant below to show that it was still pending. It only affirms the order of the Commissioners, and as long as the defendant below did not seek to make any use of the appeal record, it had no bearing whatever on the validity of the road.

8th. The law requires the notice to open the road to be given by copy.
Scates' Statutes, p. 357, Sec. 24.
 Case vs Thompson, 6 Wend. 634.

9th After the plaintiff below had rested their case, it was contrary to the practice in criminal cases to allow the People to open their case and cure defects by additional testimony, especially if it was done under a motion of the defendant, as in this case, to exclude the evidence from the jury.

10th. The argument, under the 2d and 3d points, is applicable to the 10th error assigned. (See Abstract page 33.)



11th. The 4th, 8th, and 11th instructions of defendants below refused by the Court assert the law to be,—

“*Fourth*—That it is the duty of Commissioners to go upon and view the road, and hear reasons for and against, within ten days after the 20 in which the petition is posted.”

Page 353, Secs. 1, 2, and 3, of Scates, Treat and Blackwell's Statute.

The only evidence about the view was simply, that two of the Commissioners were at one end of the road, $\frac{3}{4}$ of a mile long, at the meeting at Taylor's 3d May.

The Commissioners were incompetent to do justice to the public and individual's interest, without a careful personal survey of the whole line of road, and the law makes it imperative that they should make such examination.

Eighth—In support of the law, as stated in 8th (refused) instruction, it is only necessary to refer to the general rule of strictly construing and strictly following all statutes which provide for taking private property for public use. Any material defect ought to vitiate the proceedings, as much so as in the assessment and collection of taxes. In this case no meridian was mentioned in the notice, and it was impossible to determine from the notice itself where the road was situated, or what road it was.

Eleventh instruction (refused) was based upon the proof, (page 28 of Record,) that the notice to remove the fence was executed and delivered by the Commissioners to Delong, to serve before the tender was made.

The Commissioners could not take a step towards opening the road, until the damages were paid or tendered. Any action of that kind would be void. Then this notice was premature, and it was the duty of the Commissioners to have made another after notice of the tender.

~~GRAY~~, AVERY & BUSHNELL,
Attys for Plff. in Error.

4
Edward Swearing
3
The Purple
Puffs Being

Given May 3, 1842
J. Seland
Clerk

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

EEWARD SWEENEY }
 vs. } *Indictment for continuing an Obstruction in*
THE PEOPLE, &c. } *a Highway.*

POINTS AND AUTHORITIES.

The counsel for appellant moved the Court below to quash the indictment, which motion was overruled. (Rec. p. 8.) We insist the motion to quash should have been sustained, for the following reasons, viz. :

1st. The 1st count is double, containing two distinct offences—the obstruction and the continuance of an obstruction. The language of the statute is in the disjunctive, “inconvenient or dangerous.” The indictment contains both ; this is fatal.

Miller vs. State, 5 Howard, 250.
Com. vs. Teck, 20 Pick. 356.

2d. The indictment nowhere alleges a notice to remove the obstruction. If it was necessary to prove a notice as material fact, it was necessary to allege it. This is too familiar a principle of law to admit of argument or need authorities.

3d. The indictment nowhere shows at what term of Court it was found and presented. No words need be wasted upon this point, it is clearly fatal.

The indictment is fatal in this : It alleges the continuance to be on the 1st day of January, 1862, without any allegation as to the length of time it was continued. The obstruction and continuance being alleged to be on a certain day without a continuance. No evidence of a continuance could be received but such as took place on that day. The indictment should have alleged a continuance from one certain day to another.

We call the attention of your Honors to the fact that the Record nowhere shows that the indictment was returned into Court, and presented by the grand jurors in open Court. To this objection there can be no answer.

State vs. Glover, 3 Iowa, 249.

This Court has decided in *Gardner vs. The People*, 3 Scam. 85, that the Record must show that the grand jury returned the indictment in open Court, endorsed "a true bill." In this case no such thing appears of Record.

The second error assigned, relates to the notice of the Commissioners of their meeting after receiving the petition.

Act Feb. 12, 1857, (Sess. laws, p. 46,) Scates, Treat, and Blackwell's, page 366, provides that the Commissioners shall give at least *eight* days previous notice of their meeting to consider the petition.

This notice was dated and posted 27th April, and fixed the 3d day of May for the meeting. By counting both the 27th of April and 3d of May, there will be but seven days notice, and according to the usual construction of such statutes, counting one day and not the other, there would be but six days notice.

There is no hour of the day specified for the meeting. The statute says the notice must state "*the time when and place where*" the meeting will be held. If the law does not require a definite time of day to be mentioned, then the Commissioners could meet on any hour in the 24, and their action would be legal, and persons opposing the road would be obliged to wait all day and watch the arbitrary proceedings of the Commissioners.

When private property is taken for public use, the law must be strictly followed and strictly construed. The mere presence of Sweeney for a short time on the 3d of May, when only two Commissioners were there, and no business done, the meeting not being called to order, "nothing but a general talk," and Sweeney's leaving an half an hour before the persons present separated, and there being no announcement of an adjournment, and there being no record of the adjournment, will not amount to a waiver of the defects of the notice.

4th. The evidence of the proceedings of the Commissioners should be in writing. The law provides, Scates' Statute, page 354, Sec. 5, that the order of the Commissioners, laying the road, shall be recorded. Every material thing necessary to be done by the Commissioners, should be contained in the written order. If the officers wish to adjourn from time to time, they should make a record of the fact. Unless they do, they lose their jurisdiction, and their power ceases.

The order in this case, (page 16,) recites the determination to lay out the road on the 3d of May, although the order was not signed until the 17th.

We therefore think the Court erred in permitting the plaintiff below to prove by parol the adjournment of the meeting on the 3d of May, because the law requires such fact to be recorded, and because in this case it contradicts the Record itself. This road record does not contain a word about any meeting on the 11th of May. It is shown by verbal testimony. The order in relation to damages mentions the meeting on the 11th, and contradicts the order for the road in stating that they determined to lay out the road on the 11th, the order stating that it was done on the 3d.

18 5th. What is said on the 2d and 3d errors assigned, will apply to the 4th, as showing why the Record was not sufficient. In addition, however, we call attention to the fact that the order states that all the business of the Commissioners was done on the 3d May, (the 11th is not mentioned at all,) except getting a survey made on the 16th, and executing the order on the 17th.

It is absolutely necessary that some order should be made concerning damages. There is no such order applicable to the meeting on the 3d of May, as set forth in the order for the road. An order about damages describing a road, laid out at a meeting on the 11th May, cannot, by any system of mutations, be made applicable to an order for a road established by record of the 3d.

6th. Notice "B," page of Record 23, is defective, in not stating the meridian in its description of the road.

7th. The proceeding of the Supervisors on appeal ought not to have been allowed to go the jury.

It proves nothing, unless it would be to rebut any evidence of the defendant below to show that it was still pending. It only affirms the order of the Commissioners, and as long as the defendant below did not seek to make any use of the appeal record, it had no bearing whatever on the validity of the road.

8th. The law requires the notice to open the road to be given by copy.
Scates' Statutes, p. 357, Sec. 24.
Case vs Thompson, 6 Wend. 634.

9th After the plaintiff below had rested their case, it was contrary to the practice in criminal cases to allow the People to open their case and cure defects by additional testimony, especially if it was done under a motion of the defendant, as in this case, to exclude the evidence from the jury.

10th. The argument, under the 2d and 3d points, is applicable to the 10th error assigned. (See Abstract page 33.)

11th. The 4th, 8th, and 11th instructions of defendants below refused by the Court assert the law to be,—

“Fourth—That it is the duty of Commissioners to go upon and view the road, and hear reasons for and against, within ten days after the 20 in which the petition is posted.”

Page 333, Secs. 1, 2, and 3, of Scates, Treat and Blackwell's Statute.

The only evidence about the view was simply, that two of the Commissioners were at one end of the road, $\frac{3}{4}$ of a mile long, at the meeting at Taylor's 3d May.

The Commissioners were incompetent to do justice to the public and individual's interest, without a careful personal survey of the whole line of road, and the law makes it imperative that they should make such examination.

Eighth—In support of the law, as stated in 8th (refused) instruction, it is only necessary to refer to the general rule of strictly construing and strictly following all statutes which provide for taking private property for public use. Any material defect ought to vitiate the proceedings, as much so as in the assessment and collection of taxes. In this case no meridian was mentioned in the notice, and it was impossible to determine from the notice itself where the road was situated, or what road it was.

Eleventh instruction (refused) was based upon the proof, (page 28 of Record,) that the notice to remove the fence was executed and delivered by the Commissioners to Delong, to serve before the tender was made.

The Commissioners could not take a step towards opening the road, until the damages were paid or tendered. Any action of that kind would be void. Then this notice was premature, and it was the duty of the Commissioners to have made another after notice of the tender.

~~GRAY~~, AVERY & BUSHNELL,
Att'ys for Pl'ff. in Error.

4

Edward Sumner,

vs

The People

Brief of Reply

Filed May 3. 1862

J. Seabrook

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

EDWARD SWEENEY }
vs. } *Indictment for continuing an Obstruction in*
THE PEOPLE, &c. } *a Highway.*

ABSTRACT OF RECORD.

- 2, 3, 4 Indictment—three counts, all substantially the same.
Road is between NW $\frac{1}{4}$ of Sec. 7, and SW $\frac{1}{4}$ Sec. 6, Township 35
N., R. 3 E. 2d P. M.
- 5 Bail.
- 6 Motion to quash. Plea of not guilty.
- 7, 8, 9 Mere recital of the trial.
- 10 Motion for new trial overruled, and judgment.
- 11 Twenty days from last day of term, to file bill of exceptions.

Evidence.

- John R. Lewis, Town Clerk of town of Freedom, proved record of the road.
- 12 John Whitham posted petition in three of most public places in the town, on first Tuesday of April, 1859, and made affidavit of the fact, which is attached to record of the road.

Sweeney occupies NW $\frac{1}{4}$ Sec. 7, in Freedom. There is a road on the west line of said section. There is a post and board fence in the centre of the whole half mile of road. Defendant put it there. It is an obstruction to the travel. He knows the notices for a meeting of the commissioners, on 3d of May, 1859, at Taylor's, to consider the petition. He posted the same in three of the most public places in the town, on the day of the date thereof.

Plaintiff offered to read the notice to the jury. Defendant objected. Objection overruled and exception.

- 13 Notice dated 27th of ~~May~~^{April}, 1859, signed by commissioners, describes

- 13 the road and states that the commissioners would meet on the 3d of May, 1859, at Robert Taylor's, to consider the petition. (No hour is mentioned for the meeting).

Whitham further stated that he was at Taylor's, on 3d of May. Only H. B. Neff and F. Baldwin, commissioners, were there. W. T. McClure, commissioner, was absent.

- 14 Taylor's house is at one end of the road, and it can all be seen from the house. Sweeney was there. We all talked about the road. Sweeney thought it would damage him \$300; take away his land and make him build fence.

No evidence of amount of damages, and they were not decided upon.

Plaintiff put the question: What was said by the two commissioners about adjournment? To which defendant objected. Overruled and exception.

The commissioners proposed to adjourn to Esq. Allen's office, in Harding, four miles distant.

Sweeney was there when they first began to talk about adjourning, but went away.

- 15 Commissioners did finally adjourn to meet at Harding, in a week. There was no announcement of the adjournment, only general talk about it. Sweeney was not at the meeting at Harding.

H. B. Neff, one of commissioners, was at Taylor's. Determined to adjourn to Harding, 11th May, 2 o'clock, P. M. There was no written notice given to Sweeney of the adjournment, and no record made of the adjournment.

- 16 Petition dated 4th April, 1859. Affidavit of John Whitham and John Briley, of posting petition on 5th of April.

Order of commissioners making road. Recites posting of the petition, and that, on the 3d of May, they examined the road, and heard reasons for and against; first having given EIGHT days notice of the meeting. Determined on 3d of May to lay out the road.

- 19 On 16th of *May*, caused survey to be made.

- 20 Survey, plat, and final order dated 17th of *May*, 1859.

- 21 Order of commissioners, in relation to damages, recites that they laid out the road on the 11th of May, 1859, and not allowing Sweeney any damages, dated 17th of *May*, 1859.

To the introduction of all which papers, in relation to said road, the defendant excepted.

- 23 J. C. Delong testified that he was a constable, and read the notice to Sweeney, to open the road, on 14th of March, 1860. Plaintiff proposed to read the notice to the jury, and defendant excepted.

Notice dated 7th of March, 1860, recites that commissioners laid the road 17th of May, 1859, and it was affirmed on an appeal to supervisors on 23d of July, 1859. Copy of order of supervisors attached.

- 23 The road is described as running over lots 1 and 2, NW $\frac{1}{4}$, T. 35, R. 3. (No meridian, state, county, or town given in notice).
- 24, 25, 26, 27 Appeal papers of Sweeney and others offered, and read under exception of defendant. Order of supervisors, dated 23d of July, 1860, allowing Sweeney \$25 damages.
- 28 H. B. Neff recalled, stated that, on the 8th or 9th of March, 1859, he tendered \$25, in gold, to Sweeney for damages. He refused to take it.
- The tender was after the notice to remove the fence was executed and delivered to Delong to serve.
- Plaintiff rested their case.
- Defendant moved to exclude from the jury the notice to open the road. Overruled—exception.
- Plaintiff proposed to recall Delong to prove that a copy of notice was tendered Sweeney, who refused to take it. Defendant objected. Overruled and exception.
- Delong recalled, stated that he tendered a copy of the notice to Sweeney, and he refused to take it.
- People again rest their case.
- 29 The defendant called E. C. Humphrey, who testified that he was present at the meeting at Taylor's, on 3d May, 1859. That Sweeney was there at first, but got angry and went away one half hour before the adjournment.
- There was no announcement by commissioners of adjournment.
- Sweeney was not at the meeting at Harding, on the 11th of May.
- 30, 31 Plaintiff's instructions. Exception to all.
- The 2d lays down the law that if Sweeney was notified of the meeting on 3d of May, 1859, and was there claiming damages, and that the commissioners adjourned, without assessing damages, to Esq. Allen's, at Harding, then Sweeney is bound in law by said adjournment, ~~although~~ whether he was present at the time of the adjournment or not.
- 32-36 Defendant's instructions.
- To the refusal of the 4th, 8th, and 11th, defendant excepted.
- 33 4th. That if commissioners did not, within ten days of the twenty in which the petition was posted, go upon and view the road, for purpose of hearing reasons for and against, then the jury should find defendant not guilty.
- 35 8th. If fence made before road laid, and the notice to remove the same was defective in time of service or manner, or an omission of county or range, or in any material point made necessary by statute, then the defendant was not guilty.
- 36 11th. If the tender of the \$25 was made after the notice to open the road was executed and delivered to Delong to serve, then the notice was void, and defendant ought to be acquitted.

ERRORS ASSIGNED.

1. Overruling motion to quash.
2. In permitting the notice of the Commissioners of the meeting on 3d May, 1859, to consider the petition, to go to the jury.
3. Permitting the witness, John ^{Whitman} ~~Wintlow~~, to testify about the adjournment of that meeting.
4. Permitting the record of the road to be read to the jury.
5. Allowing notice to open the road to go to the jury.
6. Allowing proceedings of Supervisors to be read to the jury.
7. Overruling motion of defendant below, after the plaintiff below had rested their case, to exclude the notice to open the road from the jury.
8. Allowing witness Delong to be recalled and testify, after the People had closed their case.
9. Overruling motion for a new trial.
10. Giving People's instructions.
11. Refusing 4th, 8th, and 11th instructions of defendant below.

BUSHNELL & AVERY,
For Plffs. in Error.

⁴
Abstract

Edward Swamy
vs
The People

Filed May 3. 1842
J. Leland
clerk

Edward Sweeney } Sup. Court 3. G. D.
 vs. } April T. 1862.
 The People &c. } Error to Lasalle

Olivier B. Gray being first duly sworn on his oath says, that he is of counsel for the People in this cause: that the Record in this cause certified to by the Clerk of the Circuit Court is not a true, full & perfect copy of the record on file in his Office, in this to wit; it does not contain the following on Record P. page 77.

" Tuesday Febry. 11. 1862

Hon. William Chumaseo

Presiding.

This day the Grand Jury return into open court the following indictments as true bills to wit,

The People &c.

Edward ^{vs.} Sweeney //

It omits the word Term after the word February in the 2^d line of the Indictment.

It changes from 1859 to 1860 in the Bill of exceptions in the testimony of Olivier B. Gray.

H. B. Jeff.

Subscribed & sworn to this
 5th day of May 1862
 L. B. Jeff. Clerk

~~Arthur Cooley~~
as

47 4 P.D.
Sweeney
as

~~Michael Kennedy~~

The People

affidavit

Filed May 5th 1882
L. Leland
Clerk

1.

State of Illinois }
LaSalle County } ^{S.S.} *Present* Madison E. Hollister the
Judge of the North Judicial
District of the State of Illinois and the Presiding
Judge of the LaSalle County Circuit Court in
said State at a term of said Court begun and
held at the Court house in Ottawa in
said County and State on the first Monday
in the month of February the same being the
third day of February in the year of our
Lord one thousand eight hundred and sixty
two, and of the Independance of the United
States of America the Eighty fifth

Present The Honorable Madison E. Hollister Presiding Judge
Absalom B. Moore Clerk
David P. Jones States Attorney
Ori V. Watterman Sheriff

Be it remembered that heretofore to wit:
On Tuesday February 11th 1862, the same being
one of the days of the February Term of said
Court for said year, an indictment was
and returned into open court as a true bill
found by the Grand Jury of said Term and
entered of record as follows:

The People &c
vs
Edward Sweeney } Indictment for obstructing
a public Road

2
State of Illinois }
LaSalle County } ^{J. S.} Of the February Term of the Circuit
Court of said County, in the
year of our Lord one thousand Eight Hundred
and sixty two

The Grand Jurors, chosen selected and
sworn in and for said county of LaSalle in
the name, and by the authority of the People of
the State of Illinois, upon their oaths, present,
That Edward Swaney late of said County on
the first day of January in the year of our
Lord one thousand Eight Hundred and Sixty
two, at and within the County aforesaid —
unlawfully did continue to obstruct
a certain public road then and there being,
beginning at the South East Corner of Section
number six of Township number thirty five,
North, of Range number Three, East of the Third
Principal Meridian, in said County of LaSalle
and State of Illinois, running thence in a
westerly course, four rods wide, along the
Section line between said Section, number six
and Section number seven, in the Township
and range aforesaid, to the west line of said
Section number six and number seven by
then and there continuing to encroach upon
the said public road, by then and there —
Keeping a fence therein, and thereby then
and there rendering the said public road

inconvenient to pass; Contrary to the form of the Statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois, and to the common nuisance of the same People of the State of Illinois, then and there passing and re-passing over the same

And the Jurors aforesaid upon their oaths aforesaid, in the name and by the Authority of the People aforesaid do further present: That Edward Sweeney late of said County on the first day of January, in the year of Our Lord one thousand Eight hundred and sixty two, at and within the County aforesaid unlawfully did continue to obstruct a certain public road, then and there being upon and over section number seven of Township number thirty five North of Range number Three, East of the Third Principal Meridian, in said County of Cass and State of Illinois, by then and there continuing to encroach upon the said public road, by then and there keeping a fence therein, and thereby then and there rendering the said public road inconvenient and dangerous to pass, Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois and to the

Common nuisance of the same people of
the State of Illinois, then and there passing
and repassing over the same

And the Grand Jurors aforesaid, upon their
Oaths aforesaid, in the name and by the
authority of the people aforesaid, do further
present - That Edward Sweeney late of said
county on the first day January in the year
of Our Lord one thousand Eight hundred and
sixty two, at and within the county aforesaid
unlawfully did continue & obstruct a certain
public highway, then and there being and
running upon and over sections number six
of Township number thirty five, North Range
number Three, East of the Third principal
Meridian, in the County of Cassell aforesaid
in the state of Illinois, by then and there contin-
uing to Enroach upon the said public high-
way, by then and there keeping a fence therein,
and thereby then and there rendering the said
public highway inconvenient to pass contrary
to the form of the Statute in such case made
and provided and against the peace and dignity
of the same people of the same State of Illinois
and to the common nuisance of the ^{same} people
of the said State of Illinois, then and there
passing and repassing over the said public
highway

David P. Jones,

State attorney North circuit.

The People &c

vs

Edward Spencey

Indictment for
Obstructing a
public road.

A True Bill
Ben J. B. Reynolds
Foreman

Witnesses

Henry B. Neff

John Witham

John Witham

William T. McClure

James W. Brierly

Gordon Davis

Gordon Davis

Ephraim E. Allen

Bail \$ 200

M. C. H.

(Filed Feby 11. 1862)

A. B. Morse

Clerk

⊗ which Indictment was ordered by the
Court to be filed and Capias issued thereon
& that the said Edward Sweeney be
admitted to bail in the sum of Two
Hundred Dollars

Be it remembered that heretofore to wit;
on the 11th day of February 1861. An Indict-
ment was filed in the Office of the Clerk
of said Court; which Indictment & the
endorsements thereon is in the words &
figures following to wit;

Indictment # 57

Be it remembered that heretofore to wit;
On Thursday February 20th 1862; The same
being one of the days of the February Term
of said Court further proceedings were had
in said Cause & entered of record as
follows To wit;

The People vs }
Edward Sweeney } Indictment for obstructing
a public Road

This day came
personally before the Court Edward
Sweeney as principal and Julius Arny
as his Security, who severally acknowledge

7

themselves to owe and be indebted unto the people of the State of Illinois in the penal sum of one hundred dollars each to be levied of their goods and Chattels, lands and tenements as the law directs, To be void upon condition that said Sweeney shall personally be and appear before this Court from day to day at the present term thereof, to answer to an Indictment lately preferred against him by the Grand Jury of the County for the crime of obstructing a public Road and that he shall not depart the Court without leave, otherwise in force

Be it remembered that heretofore to wit; On Wednesday February 26th 1862, the same being one of the days of the February Term of said Court - further proceedings were had in said cause & entered of record as follows To wit;

The People &c vs Edward Sweeney	} Indictment - for obstructing a } public Road
This day the defendant comes by W. Bushnell his Attorney and moves the Court to quash the Indictment herein; which motion is overruled by the Court, The Defendant being now enquired of	

8 Concerning the premises, how he could acquit himself herein for a plea, says he is not guilty in manner and form as charged in this indictment

Be it remembered that heretofore, to wit: On Thursday February 27th 1862, The same being one of the days of the February Term of said Court, further proceedings were had in said cause & entered of record as follows To wit: —

The People &c }
 vs }
 Edward Sweeney } Indictment for obstructing a
 public Road
 This day come the People by the States Attorney and Oliver C. Gray and the defendant by Bushnell & Avery his Attorneys and thereupon come the following jurors of a jury to wit: S. J. Signor, John T. Miller, Henry A. Daly, J. W. Drake, S. B. Delans, Geo B. Macey, W. B. Titus, James Chase, Cymon Patterson, William L. Patchen, George Bristol and Joseph Mason, who are duly elected, tried and sworn to try the issues herein according to the law and the evidence, and after hearing a portion of the testimony the further hearing of this cause is postponed until the coming in of the Court tomorrow morning

8 Concerning the premises, now he could acquit himself herein for a plea, says he is not guilty in manner and form as charged in this indictment

Be it remembered that heretofore, to wit: On Thursday February 27th 1862, The same being one of the days of the February Term of said Court, further proceedings were had in said cause & entered of record as follows To wit: —

The People &c }
 vs }
 Edward Sweeney } Indictment for obstructing a
 public Road
 This day come the People by the States Attorney and Oliver C. Gray and the defendant by Bushnell & Avery his Attorneys and thereupon come the following jurors of a jury to wit: S. J. Signor, John T. Miller, Henry A. Daly, J. W. Drake, S. B. Deland, Geo B. Macey, W. B. Titus, James Chase, Cymon Patterson, William E. Patchen, George Bristol and Joseph Mason, who are duly elected, tried and sworn to try the issues herein according to the law and the evidence, and after hearing a portion of the testimony the further hearing of this cause is postponed until the coming in of the Court tomorrow morning

~~The People &c~~
vs
~~Edward Sweeney~~

~~Indictment for obstructing
a public Road~~

~~This day again came
the parties hereto by their Attorneys, and
the jury sworn in the case, and of~~

Be it remembered that heretofore to wit:
On Friday February 28th 1862, The same being
one of the days of the February Term of
said Court - further proceedings were
had in said cause & entered of record
as follows To wit:

The People &c
vs
Edward Sweeney

Indictment for obstructing
a public Road

This day again
came the parties hereto by their Attor=
neys, and the jury sworn in the case
and after hearing the balance of the
Evidence and the arguments of counsel
the jury retire under charge of a sworn
officer to consider of their verdict and after
due deliberation thereon had the jury
return unto Court the following verdict
To wit: We the jury find the defendant
guilty in manner and form as charged
in the Indictment

10 The defendant by his Attorney now moves
the Court for a new trial

Be it remembered that heretofore Court
on Thursday March 5th 1862. The same
being one of the days of the February Term
of said Court further proceedings were had
in said Cause & entered of record as follows
To wit:

The People vs Edward Sweeney
Indictment for obstructing
of public Road

The court this day
overrule the defendants motion for a
new trial herein and sentence the defend-
ant to pay a fine of ten Dollars and
the costs of prosecution

It is therefore considered by
the court that the people of the State of
Illinois have and recover of said defend-
-ant, ten dollars for their fine also their costs
and charges by them in this behalf
expended and that they have execution
therefor

And now on motion of defendants
Attorney it is ordered by the Court that
they be allowed twenty days, from and after the adjournment of the present term of Court to prepare

11

Be it remembered that heretofore To Wit
on the 28th day of March 1862, a Bill of
exceptions was filed in said court,
which is in the words & figures follow-
ing To Wit!

State of Illinois } v.s.
Casale County } Circuit Court thereof
In February Term A.D. 1862.

The People vs
vs
Edward Sweeney } Indictment for Conv
obst- to highway

Be it remembered that on
the trial of the above cause to sustain
the issues on the part of said people &c
John R. Lewis was sworn
who testified as follows.

I am Town clerk of the
Town of Freedom in said county.

The record of the road
hereafter set forth was here shown to
said witness, who testified that they were
the original papers on file in his office
& all the papers relating to the appeal
hereinafter set forth

John. Whittom testified as follows

12

That he recollects the petition for the road in question, and the petition identified by Lewis. He posted up said petition in three of the most public places in Freedom on the 1st Tuesday of April 1859. He made affidavit of the fact

Sweeney occupies N.W. 1/4 Sec 7. in said Town. There is a road on the west line of said quarter running north & South

There is a post & board fence in the centre of the road in dispute for 160 rods Sweeney put it there. It still remains there. It is an obstruction to the travel

He knows the notice of the Commissioners of this meeting at Taylors on 3rd May 1859. and that he posted some in 3 of most public places in the town on the day of the date thereof

The plaintiff then offered to read the notices to the jury. when the defendant objected thereto which objection was overruled by the Court, to which decision ^{of the court} the defendant then and there excepted. The plaintiff then read to the jury the said notice in words and figures following

13

A petition having been presented to the Commissioners of Highways of the town of Freedom in the county of Casselle to lay out a new road upon the following described route to wit: Commencing at the south East corner of Section Six (6) Township thirty five (35) North range three (3) east of the third principal Meridian and running west between Section Six (6) and seven (7) to intersect a road running north and South on the Town line at the south west corner of Section six (6) The said Commissioners do hereby give notice that they having fixed the ^{3rd} day of May 1859. at the house of Robert Taylor in said town as the place they will meet to hear any reasons that may be offered for or against the laying out of said road, when and where all persons all persons interested can be heard

Dated at Freedom }
 this ^{27th} day of April }
 1859 }
 H. B. Neff }
 W^m J. McClure }
 Franklin Baldwin }
 Commissioners }
 of }
 Highways }

Witness was present at Taylors house on 3rd May 1859. 2 of Commissioners were there Mr. Neff & Mr. Baldwin (McClure was not there) — Taylors house is ^{at one} ~~above~~ end of the road, ~~and~~ of the whole road can be seen from the house Sweeney was there, we all talked about

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laying out the road. Sweeney said his
Damages at \$300. He said it was taking away
his land and making him more fencing
There was no evidence offered as to damages
and the question of damages was not
decided at that time

The plaintiffs put the questions what was
said by the two Commissioners about
adjournment?

To which the defendant then and
then objected and the objection was overruled
by the court and the defendant then
and then excepted to the decision of the
Court. The witness then stated that the
Court^{rs} proposed to adjourn to Esy
Allens Office in Harding some 4 miles
distance

Sweeney was there when they first
began to talk about adjournment but
got angry and went away. dont know
positively if Sweeney was present
when the Court^{rs} concluded finally to
adjourn

They did adjourn to meet at
Harding in one week. there was no
announcement of the adjournment
but only general talk about it.

I was present at the meeting of the Commissioners at Harding. Sweeney was not there they met on Wednesday at Esq. Allen's office in Harding
H. B. Neff Testified

That he was one of the course of Highways that layed out the road, was at Faylors 3rd May 1859, dont know what damages Sweeney claimed, ~~he objected~~ to the road — Baldwin & Myself concluded to adjourn until some time the next week, we adjourned to 11th May at two o'clock P. M. to Harding There was no written notice given to Sweeney of adjournment — and no record made if the said P^{ly} closed examination of this witness

The record of the road was then read as follows, —

Road Petition

To the Commissioners of Highways of the Town of Freedom in the County of Cassell the State of Illinois, ^{we the} undersigned legal voters Residing within three miles of the route hereinafter mentioned and described for a road do hereby make application to your Honorable Body to lay out a new road of

the width of four rods as follows, Commencing at the South East Corner of Section Six - Township 35 Thirty five north of Range three - East of the Third Principal Meridian and - running west between Section six and seven to intersect a road running North & South on the Town line at the south west corner of section six, the names of the owners of lands over which the Road Passes are as your Petitioners are informed, John Min, Robert Taylor, Evan Humphrey, Edward Sweeney John Witham, John Briley, John Allegretto your Petitioners therefore Pray that you will proceed to lay out said road and cause the same to be opened according to law, Dated at Freedom this 4th day of April A.D. 1859.

John Witham
 James Crossley
 Goodin Davis
 John Briley
 James B. Briley
 Hazen C. Doany
 Corren Doane
 J. J. White
 Ferre-ran Munderfer
 James McManus
 Thomas McManus
 Charles Davis

John Heiser
 R. B. Glover
 Jacob Melroy
 James Logan
 Carl Andreas
 Henry Winterbottom
 Jacob Weis
 John Weis
 H. P. Thompson
 Barnard Campbell
 John Ferguson
 Varnee House

17.

E. A. Glover
J. H. Miloy
Milton Davis
George Davis
Charles Roguisan

Philippe Sandoz
Joseph Meers
David Davis
Thomas Meyers
Charles Wiley

Lasalle County }
Town of Freedom } S.S.

John Witham & John
Briley who being sworn

depose and say that on the 5th day of
April 1859. They posted notices for a road
of which the following is a copy, in three of
the Public Places in said Town of Freedom
to wit: one on James Fondille's Black Smith
Shop in Hudson town, one on the store of
Andrew Parker in Harding, and one in the
Post-Office in Harding

Subscribed & Sworn
Before me this 27th day
of April 1859. E. J. Allen
J. P. } John Witham
John Briley

Lasalle County }
Town of Freedom } S.S.

whereas upon the application
in writing of John Witham
James Crosby, Gordon Davis, John Briley, James
Briley, James McManus, Charles Davis, J. H.
Miloy, R. B. Glover, Charles Wiley, John Myers,
Thomas McGary, R. J. Thompson, twelve legal voters

residing within three miles of the route hereafter described for a public Highway, a copy of their petition having been first duly posted up as required by law, we the Commissioners of Highways of said Town did on the 3rd of May A.D. 1869. personally examine the route proposed in said petition for a road to wit — commencing at the south east corner of Section six (6) Township thirty five (35) north of Range three (3) east of the third principal meridian and running ~~east~~^{west} between Section six (6) and seven (7) to intersect a road — running North and South on the Town line at the South west corner of Section six (6) and having before determining to lay out said road fixed upon a time and place when and where we would meet to hear any reasons for or against laying out the same and having caused written notices thereof to be posted up in three of the most public places in said Town eight days previous to the time of such meeting, and having met at the time and place appointed for hearing said reasons and having heard such as were offered for or against the laying out said road and being of opinion that such laying out is necessary and proper and that the public interest would be promoted thereby and having granted the prayer of

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Said petitioners and determined to lay out said road we did on the 16th day of May A.D. 1859. Cause a survey thereof to be made by a competent surveyor who made report to us as follows

The undersigned having been employed by you to make a survey of a road beginning at the south east corner of section six (6) of Township thirty five (35th) north of Range three (3) east of the (3rd) Principal Meridian (as set forth in the petition) would report that the following as a correct survey made thereof as made by me under your directions to wit: beginning at the south east corner of section six (6) of Township Range &c as above thence westerly on the south line of said section six (6) ninety five chains and twenty seven links (95.27.) to the southwest corner of said section six (6) which is the end of said road, and that herewith is a correct plat of said road according to said survey.

Dated this 16th day of May A.D. 1859.

Harvey Ingersol Surveyor

It is therefore ordered and determined that a road be and the same is hereby laid out and established according to said survey and the plat herunto annexed and made part of this order, which is hereby declared

in Township Thirty five Range three Forty five (\$45) Dollars
to Edward Swensen on Lot one and two of North west quarter
of said section seven

and determine that the order and determination of said Commissioners of Highways be and the same is in part reversed
Be the Supervisors to whom said appeal was made, affirm the order and determination of the said Commissioners of Highways, and assess the Damages to the Appellants as follows to wit: To John McGrath on Lot three South west quarter section six and Lot three North west quarter section seven ~~Twenty five Dollars~~ ^{Twenty five} Dollars, To Evan C. Humphrey on the west half of the North east quarter of said section Seven Twelve (\$12) Dollars and to Robert Taylor on the East half of the North East quarter of said section Seven, that the advantages are equal to the Damages

In witness whereof we have hereunto set our hands this 23rd day of July
AD. 1859.

G. J. Shepardson Supervisor of Town of ^{# Meridian} ~~Iron~~ [#]
Gabriel Rager Supervisor of town of Serena

A true copy
Attest

Wm L. Gaylord
Town Clerk

We the undersigned Commissioners
 of Highways of the Town of Freedom in
 the County of Cassell having on the
 11th day of May AD 1859, upon due applic-
 ation made to us for that purpose
 layed out a road as follows Commencing
 at the South East corner of Section six (6) —
 Township thirty five (35) North Range three (3)
 East of the third principal Meridian and
 running west between section six (6) and
 seven (7) to intersect a road running North
 and South on the town line at the South
 west corner of Section six (6) and certain
 owners of Lands over which said road
 passes to wit: John McGraw, Edward,
 Sweeney, Evan Humphrey and Robert
 Taylor, ~~and~~ ^{not} having released all claims
 & damages sustained by reason of the
 laying out of ~~said road~~ and opening the
 same and not being able to agree ^{with} them
 as to the amount of such damages, we
 proceeded to assess the same at what we deemed
 just and right to each individual claimant
 with whom we could not agree taking into
 account and estimating the advantages
 and benefits the road will confer on the
 claimants for the same, as well as all the
 disadvantages and have assessed the

22 Damages of each owner as follows To —
22 John McGraw in Lot three (3) South west
quarter of section six (6) and Lot three (3)
North west quarter of section seven (7) in
Township thirty five (35) Range three (3) at
twenty five dollars being enclosed lands
and to Edward Sweeney in Lot one (1) and
two (2) of North west quarter of said section
seven (7) and Eben Humphrey on the west
half of the North East quarter of said
Section seven (7) and to Robert Taylor
on the East half of the North east quarter
of said section seven (7) we have estimated
the advantages of said Road road equal
to any and all their Damages

In witness whereof we have hereunto
set our hands this 17th day of May
A.D. 1859.

H. B. Neff } Commissioners
Wm J. McClure }
Franklin Baldwin } Highways

To The introduction of which the defend-
ant then & there objected which was
overruled in the Court and the Defent
then & there excepted to the decision of
the Court

J. C. DeLong

Is a Constable, and read the notice Mark "B." as set forth in his return on the same to Sweeney

The plff then proposed to read the same to the jury, and the deft then & there objected to the same, the Court overruled the objection and the deft then & there excepted to its decision of the Court-

The Plff then read to the jury the said notice as follows

"B"

To Edward Sweeney

You will take notice that the Commissioners of Highways of the town of Freedom in the County of Casselle have laid out a public highway agreeable to an order of said Commissioners bearing date the 17th day of May A.D. 1859, and affirmed by the Supervisors to whom an appeal was taken on the 30th day of July A.D. 1859. Copies of which is herewith annexed which highway passes through certain enclosed lands owned by you on lot No one and two of north west quarter of section seven Township 35 Range 3. You are therefore hereby notified and required to remove your

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fences from within the bounds of said
highway within sixty days after
the service of this notice

Dated this 7th day of March AD 1860.

H. B. Jeff
John J. McClure
Franklin Baldwin } Commissioners
of
Highways

The plaintiff then proposed to read the
following record of proceedings of Supervisors
on an appeal, to which the defendant
objected and the objection was overrul-
ed by the court - and the defendant
then & there objected to the decision
of the Court.

The Jeff then read the following

To Gabriel Buzer Supervisor of the Town
of Serena, Robert McClure Supervisor
of the Town of Ophis and Shepherdson
Supervisor of the Town of Meridian in the
county of Cass and State of Illinois.
The undersigned Robert Taylor, Evan
Humphrey, Edward Sweeney, John
McGrath of the Town of Freedom in
said county, feeling themselves aggriev-
ed by an order made by the Commis-
sioners of Highways of said Town of

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25

Freedom on the 17th day of May A.D. 1859,
which order was filed by the Town Clerk
of said Town on the 25th day of May
A.D. 1859, a copy of which, together with a
copy of all the papers filed with said
Town Clerk in relation to the laying out
of said road, and hereto annexed, in
which the proceedings and determination
of said Commissioners will more fully
appear. The grounds upon which this
appeal is made, are, that the said road is
not necessary and that the damages allowed
are too low and that there was no damages
allowed to three of the appellants, and said
appeal is brought in relation to laying out
of said road, and to reverse entirely the
determination of said Commissioners or
to have more damages allowed

Dated this 20th day of June A.D. 1859.

O. C. Humphrey
Edward Sweeney
John M'Grath
Robert Taylor

26

26

State of Illinois }
Pasalle County } S.S.

Whereas, E. C. Humphrey
Robert Taylor, Edward ~

Sweeney & John McGrath of the Town of
Freedom Said County did on the 20 day
of June A.D. 1859, appeal to us for an order
and determination of the Commissioners of
Highways of said Town contained in the
order of said Commissioners deposited
with the Town Clerk of said Town and filed
the 21st day of June 1859, a copy of which said
order as well as all the papers before us in
said appeal are herewith annexed, and
we having met on the 23^d day of July 1859,
at 10 o'clock A.M. at the dwelling House of E. C.
Humphrey to hear the proofs and allega-
-tions of the parties, being the time and place
agreed upon by us, when and where we
would meet to consider said appeal, and
it appearing that said Commissioners
of Highways and three of the petitioners
in said case had been duly notified of
such meeting as required by law, we did
proceed to hear the proofs and allegations
of the parties and to consider said app-
-eal, and we being now fully advised in
the premises do act judge, order and deter-
-mine that the order and determination
of said Commissioners of Highways be and

27
27

the same is ^{in part} hereby reversed. Be the Super-
 visors to whom said appeal was made
 affirm the order and determination
 of the said Commissioner of Highways
 and assess the damages to the Appellants
 as follows to wit: To John McGraw on Lot
 three south west quarter section six and
 Lot three north west quarter section seven in
 Township thirty five, Range three, forty five
 (45⁰⁰/₁₀₀) Dollars, To Edward Sweeney on Lot one
 and two of north west quarter of said section
 seven twenty five (25⁰⁰/₁₀₀) Dollars To Evan C.
 Humphrey on the east half of the north east
 quarter of said section seven twelve (12⁰⁰/₁₀₀)
 Dollars and to Robert Taylor on the East-
 half of the north east quarter of said
 section seven that the advantages are
 equal to the damages

In witness whereof we have hereunto
 set our hands this 23rd day of July AD 1859.

G. J. Shepardon, Supervisor of Town of # ^{& Melburn}

Gabriel Ruzer Supervisor of Town of Serena

Fees one day each \$4⁵⁰/₁₀₀

Supervisor of town of Ophir

G. J. Shepardon,	just ^{one} day	\$1 ⁵⁰ / ₁₀₀
Gabriel Ruzer	" " "	\$1 ⁵⁰ / ₁₀₀
Robert McCreary	" " "	1 ⁵⁰ / ₁₀₀

9
H. B. Stiff recalled

28

28

He and McClure about the
8 or 9 of March ¹⁸⁵⁹ tendered to Sweeney the
full amount of his damages as
awarded by the supervisors in Gold. Sweeney
refused to take the same. the time of
the tender was after the notice to remove
the fence was executed and placed in
Delong's hands for service

Plaintiff here rested his case

The defendant then moved the court
to exclude from the jury the notice to
open road marked "B", which motion was
overruled by the court and the deft
then & there excepted to the decision of
the court.

The plff then recalled D. C. Delong
for the purpose of ^{proving} ~~proving~~ that a
written copy of notice "B" was tendered
to Sweeney and he refused to take it

To the reading of said witness for that
purpose the deft objected, and the court
overruled the objection on the ground
that the defendant had not made that
objection at the time it was read to the
jury and the defendant then & there
excepted. Said Delong then stated that
at the time he read the notice "B" to
Sweeney he tendered a copy of the

29
29

same to him and he refused to take it
The People again rested their case

E. C. Humphrey, an witness called on
the part of the defendant testified
that he was present at the meeting on
the 3rd of May, that Sweeney was
there and became angry and
left a half an hour before adjourn-
ment. There might have been
something said about adjourning
when he was there but there was
no adjournment for half an hour
after he left, and he could not have
known anything about the adjou-
rment at the time it was made

This was all the Evidence in the Case

The people then asked the Court
the following instructions, ^{which} were given
and to which the Defendant then & there
objected, and the objection was overruled
by the Court, and the defendant
then & there excepted

Instructions for the People

30

1st

If the jury believe from the Evidence that the Defendant Edward Sweeney within Eighteen Months next before the finding of the Indictment in this Case continued to obstruct a public road being upon and over the section 7 of Township 35 North of Range 3 East of the 3rd principal Meridian in this County & then & there encroached upon said public Highway and kept and continued a fence therein so as to render the same inconvenient to pass, the jury should find the defendant guilty

Gover

2nd

If the jury believe from the Evidence that the Commissioners of Highways notified Sweeney to appear before them at the house of Taylor on the 3rd day of May A.D. 1859. and that Sweeney did then & there appear and insisted upon his damages, and that on said day the Commissioners without leaving settled the question of Sweeney's damages adjourned their meeting to the Office of Squire

Gover

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E. J. Allen on the 11th day of May
A.D. 1859, when & where they would decide
upon the said question of Damages
as regarded said road. then Sweeney
would be bound in law by said
adjournment whether he remained
until the final breaking up of said
meeting of said Commissioners on said
3rd day of May A.D. 1859, or left before their
adjournment of said Meeting

³⁰
D^o If the jury believe from the evidence
that the alleged obstruction is a
fence which enclosed a field of the
defendant, through or over which
the road in question was laid out
at or before the time of laying out
the same (if it was laid out) and
that the defendant was not before
the finding of the indictment
herein served with the notice the law
requires to remove said fence then
they will find the defendant not
guilty, unless it appears from the
testimony that such notice was dispe-
-need with by the defendant, or that he
prevented the service thereof by refusing
to receive it when tendered to him

Gives

21

32

92

The defendant asked the following instruction, and as to those that were refused the left them & those except to the decision of the court. —

For Deft

1st

The jury are instructed that before they can find the Deft guilty they must believe from the evidence & beyond reasonable doubt that the Deft has within the County of Wasalle and within Eighteen months next before the finding of the indictment herein continued an obstruction in & over the highway described in the indictment and that such highway ^{is laid out & established and that such obstruction} was legally rendered it either dangerous or inconvenient to pass over & upon the same

Given

2nd

The jury are instructed that before private property can be taken for public use, the public must show by satisfactory proof that there has been in every respect a compliance with the requirement of the law and if the people have failed in this case to show that the road officers have failed to post ^{proper} copies of petitions & notices within the time required by law or that such authorities in any one particular

Given

33
33

thing, made necessary by statute to be done
failed to comply with such requirements
and that defendant has not by his
~~not~~ ⁱⁿ ~~all~~ ^{own} ~~ates~~ ^{waived} the necessary
step of the Road Officers in establishing
a road in controversy then the jury will
find Deft not guilty

Given

3rd The jury are instructed that before the
public can acquire the right of a high
way over the lands of an individual it
must appear that the Road Commissioners
gave eight days notice of the time when
before they would appear for the purpose
of hearing the reasons for ~~it~~ ^{and} against the
laying out of such highway unless
said individual has dispensed with
such notice

C. P. Raymond

4th If the jury believe from the evidence that
the Commissioners of Highways did
not within ten days after the expiration
of the twenty days in which the pet-
-itions were posted go upon the premises
of Deft for the purpose of hearing reasons
for or against the laying out of a
public highway then the jury will find
the Deft not guilty

5th
34
Given

If the jury believe that Deft appeared before the Commissioners at the house of Taylor at the time of their meeting on the 3^d day of May to hear reasons for or against the laying out of the road in dispute & that they ^{afterwards} ~~at the time~~ met on the 11th day of May 1859, at the house of Allen, without adjournment and that Deft did not have due notice of such meeting then in such case the action of the Commissioners in laying out a public Road so far as Deft was concerned is void and not in any way binding upon Deft

Given

6th If the jury believe that the prosecution has failed to prove any one material fact set forth in the indictment then the jury must acquit the Deft

Given

7th The jury are instructed that they are the judges of the law & facts and if the jury have any reasonable doubt of the Deft's guilt they will find a verdict of not guilty

33rd 8th/₄

Refused

If the jury believe from the Evidence that the people have failed to show that Deft was served with a notice such as the law requires to remove the fences^{named in the indictment} if such fences were erected before the laying^{out} of said road ~~named in the indictment~~ or whether in making a mistake in the date or as to length of time, or manner of service or in omission of County, Range, or in any other Material point made necessary by statute. then the jury will find defendant not guilty

Given

9th If the jury have any reasonable doubt as to the fact whether or not there has been a highway established at the place of the alleged obstruction as claimed in the indictment, then the jury should resolve such doubt in favor of the Deft & find a verdict of not guilty

Given

10th The jury are instructed that this being a Criminal proceeding no preponderance of testimony is sufficient - but the jury must be satisfied beyond a reasonable doubt of Deft's guilt & if the jury have such doubts as to whether or not the highway in dispute has been legally laid out & established, then the jury will acquit the Deft

19

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Revised

If the jury believe from the Evidence
 that the tender of the twenty five dollars
 the amt of damages allowed Sept-ly
 the Supervisors on the appeal was not
 tendered until the 8th of March 1860,
 & that the Commissioners of Highways
 issued the notice to remove the fences
 on the 7th of March 1860. then such
 notice is void & the jury will acquit
 the deft.

Given under my hand and seal

M. E. Hollister (Seal)
 Judge

Correct
 Gray

State of Illinois }
 Safulle County } 88. J. A. Alalom B. Moore
 Clerk of the Circuit Court
 in & for Said County do hereby Certify
 that the foregoing is a true, full and
 perfect copy of the record, of said
 Court in Said Cause, and of the papers
 on file in my office, in Said Cause
 In testimony whereof I have hereunto
 set my hand & affixed the seal of
 Said Court this 3^d day of April 1862
 A. B. Moore, Clerk



State of Illinois

Supreme Court and Third Grand Division
April Term AD 1862,

Edward Sweeney

The People vs

The said Plaintiff in error
vs
By Bushnell & Avery, Procs
The following assignment of errors upon
the above records:

The court erred

- 1st In overruling the motion of the defendant, & quash the Indictment,
- 2^d In permitting the notice of the court of highways of their meeting on 3^d of May 1859, to be read to the jury,
- 3^d In permitting the witness John Whitman to testify concerning the adjournment of the court of highways
- 4th In permitting the record of the road, of the court of highways to be read to the jury,
- 5th In permitting the notice "B" of court of highways to open the road, to be read to the jury,
- 6th In permitting the proceedings of the Insurers & notice of appellants to them, to be read to the jury,
- 7th In overruling the motion

of Plaintiff in error. to exclude
notice "B", & open the road, from
the jury
8th

- In permitting the witness DeLong
to testify ~~of~~ on behalf of the People
after they had closed their case.
9. In overruling the motion of the
Plaintiff in error for a new trial
10. In giving the instructions asked
by the People &c.
- 11th In refusing the 4th, 8th & 10th
instructions asked by the Plaintiff in
error.

B. M. Mill & Avery
Attys for P. in Error.

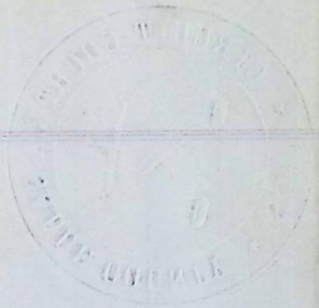
And the said defendant in error
now comes, and for joinder in
error, says that, in the Record and
Proceedings aforesaid, there is no
error.

O. B. Gray & D. P. Jones.
Attys pro Defdt. in error.

Record⁴

Edward Sweeney
vs
The People &c.

Record, sua & jointes—



Filed Apr. 9. 1862.
J. Ireland
Clerk.

*The People vs
Edward Sweeney*

Copy of Record

*Part of Record of
Record on Balance due*

*Edward Sweeney vs
The People &c.
1862*