

12267

No. _____

Supreme Court of Illinois

Ashley.

vs.

Alvord.

71641  7

P.S.
State of Illinois } Pleas before the Honorable Edwin
La Salle County } S. Seland presiding Judge of the
Ninth Judicial Circuit of the
State of Illinois at a circuit Court commenced
and held in and for the County of La Salle and
State of Illinois at the Court House in Ottawa on
the second Monday of November in the year of our
Lord one thousand eight hundred and fifty four
and of the Independence of the United States the
Seventy eighth

Present

The Honorable Edwin S. Seland Presiding Judge
Philo Lindley Clerk
W. H. L. Wallace States Attorney
Richard Thome Sheriff

On the 26th September 1854. a precipe was filed
in the office of the Clerk of said Court in the
words and figures following to wit,

" State of Illinois, La Salle County and Circuit
Court thereof of the November Term A.D. 1854

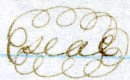
Lauren N. Ashley }
vs } Trespass, Damage \$ 500.00
Nelson Alvord }

The Clerk of the said Court
will issue summons in the above entitled case
Dickey Wallace &c
for Plaintiff "

And afterward to wit on the same day a sum-
mons was issued, which was in the words and
figures following to wit.

State of Illinois 3
La Salle County 3^b

The People of the State of Illinois
to the Sheriff of said County - Greeting. We com-
mand you that you summon Nelson Alvord if he
shall be found in your County, personally to be and
appear before the Circuit Court of said County on
the first day of the next term thereof to be holden
at the Court House in Ottawa in said County
on the thirteenth day of November next, to answer
unto Lauren N. Ashley in a plea of Trespass to the
damage of the said plaintiff as he says, in the
sum of five hundred dollars. And have you
then and there this writ, with an endorsement
thereon, in what manner you executed the same
Witness Philo Lindley Clerk of our said Court and
the seal thereof at Ottawa this 26.th day of Septem-
ber A.D. 1854



P. Lindley Clerk"

And on the 13th of November 1854, the same was
filed in the office of said Clerk with an endorse-
ment thereon, in the words and figures following
to wit

"Not found in my County Nov 10th 1854
Ret 10th

R. Thome Sheriff"

And afterwards to wit on the same day, another
precipe was filed, which was in the words and
figures following to wit

"State of Illinois - La Salle Circuit Court - Do
Nov Term 1854

"Laurin N. Ashley }
vs } Trespass - Damages \$500 -
Nelson Alvord }

It is supposed that the defend-
ant in the above case - (which was begun this
morning) - is now in the County of Peoria - The
Clerk will therefore issue a summons to the
Sheriff of Peoria County in said case
Sept 26th 1854

Dickey Wallace & Co
for Pltff "

And on the same day an other summons was
issued in the words and figures following to wit

"State of Illinois }
La Salle County } p

The People of the State of Illinois to the Sheriff of
Peoria County - Greeting. We Command you. That
you summon Nelson Alvord if he shall be found
in your County personally to be and appear before
the Circuit Court of said La Salle County on the
1st day of the next term thereof to be holden at
the Court House in Ottawa in said County,
on the thirteenth day of November next, to answer
unto Laurin N. Ashley in a plea of Trespass to the
damage of the said plaintiff as he says, in
the sum of Five hundred dollars. And have
you then and there this writ with an endorse-
ment thereon in what manner you executed
the same. Witness Philo Lindley Clerk of our
said Court and the seal thereof at Ottawa
this 26th day of September A.D. 1854.



P. Lindley Clerk

And on the back of said summons (which was filed in the Office of said Clerk Oct. 12th 1854) The following endorsement appears, to wit

"Served the within writ by reading the same to Nelson Alvord as within I am commanded

L. B. Cornwell

Sheriff P. C. Ills

By J. Clark Deft

Serving .50

21 miles 1.05

Return .10

\$1.65

Sheriff fees paid by Plaintiff L. B. Cornwell Sheriff

And afterward to wit on the 30th October 1854 the plaintiff filed his declaration, which was in the words and figures following to wit

"State of Illinois - La Salle County Circuit Court thereof - Nov Term 1854

Laurin N. Ashby plaintiff - complains of Nelson Alvord defendant in a plea of trespass

For that whereas at the County aforesaid heretofore viz on the 1st day of September A.D. 1854, plaintiff was lawfully possessed of a certain close in said County, viz. the South West quarter of Section twenty four in Township No. thirty two North of Range one East of the third principal meridian, and so plaintiff being so possessed the said defendant with force and arms - then and there unlawfully broke and entered said close of said plaintiff and then & there threw

down and injured the fences of said plaintiff standing upon said close - and with horses and cattle trod down and destroyed the grass and grain of plaintiff then therein standing & growing, and tore up the soil of said close and other wrongs to the said plaintiff then and there did

And for that also heretofore on the day & year aforesaid at the County aforesaid said plaintiff was lawfully possessed of a certain other close situate in said County and said defendant then & there (the said plaintiff being thus lawfully possessed of the same) unlawfully & with force and arms broke and entered said close of plaintiff - and broke down the fences therein then & there situate and destroyed the same by means whereof a great many cattle, horses and hogs were let into said close and a large amount of grass and grain of plaintiff then situate upon said close was eaten up and destroyed by said cattle, horses & hogs - and other wrongs to said plaintiff, said defendant then & there did - to his damage five hundred dollars. wherefore he sues

Dickey & Wallace
for pl'tff "

And afterwards to wit on the 23^d November 1854. said day being one of the days of the November Term of said Court. The defendant filed his Pleas - which are in the words and figures following to wit

Samuel N. Ashley

vs

La Salle County Circuit
Court Nov Term A.D. 1854.

And now comes the said
defendant by Glover & Cook his attys and
defends the wrong & injury when &c and says
actio non &c because he says he is not guilty
in manner & form as the said plaintiff hath
above declared against him & of this he puts
himself upon the country

And for a further
plea in this behalf as to the first count of pliffs
declaration. defts says actio non because he
saith at the said time when &c there was a
public highway regularly and lawfully esta-
blished and opened to the public travel run-
ning through the close in plaintiffs declar-
ation in said 1st count mentioned along which
the people of said then & there had the right
to pass and repass and this defendant then
and there as he might lawfully might do
did pass along said highway and break down
and remove the fence then and there being
in and across said public highway which are
the same supposed trespasses of which the
plaintiff hath above thereof complained against
him and he is ready to verify wherefore he
prays Judgment

And for a plea to the 2^d count
of the plaintiffs declaration the said defendant
says actio non &c because he says that the said
close in said count mentioned and in which
the said supposed trespasses are supposed to
have been committed at the said time when

re was the close soil and freehold of this defen-
 dant, wherefore the said defendant at the
 said time when re committed the said several
 supposed trespasses in the said court ment-
 ioned in the said close, as he lawfully might
 for the cause aforesaid which are the said
 several trespasses whereof the said plaintiff
 hath above thereof complained against him
 & this he is ready to verify wherefore he prays
 Judgt re Glover & Cook "

20

And afterwards to wit on Tuesday November
 28th said day being one of the days of the
 November Term 1854. The following Motion was
 made - which is in the words and figures
 following to wit

" Laurin N. Ashley {
 127 vs { Trespass
 Nelson Alvord {

This day the plaintiff by
 Dickey & Wallace his attorneys moves the Court
 for leave to file their replications to defendants
 second plea. which motion is sustained by
 the Court "

And on the 27th day of November 1854. The plai-
 ntiff filed his replications - which were in
 the words and figures following to wit

Laurin N. Ashley {
 vs { La Salle Circuit Court Nov
 Nelson Alvord { Term 1854 - Action Trespass

And said plaintiff for replication to said defendant's plea. secondly above pleaded by Dickey & Wallace - says - that there was not at the said times when &c a public highway regularly and lawfully established and opened to the public travel running through the close in the first count of plaintiff's declaration mentioned along which the people had a right to pass and repass - as is alleged by said defendant in his said plea and this plaintiff prays may be enquired of by the country &c

Dickey & Wallace
for plaintiff

And for further replication to said second plea - plaintiff says that there was not a public highway regularly and lawfully established and opened to the public travel running through the close in the 1st count of plaintiff's declaration mentioned along which the people had a right to pass & repass as is alleged in said plea - And the said plaintiff further saith that he brought his action against said defendant not only for the trespasses in said plea attempted to be justified by said defendant - but also that the said defendant on the said times &c in said declaration mentioned with force & arms and on other and different occasions than those in said plea mentioned broke and entered the said close of the said plaintiff in the said first count mentioned and then & there threw down and injured the fences of said plaintiff standing upon said

close, and with horses and cattle trod down
and destroyed the grass and grain of plaintiff
then on therein standing & growing and tore
up the soil of said close in other and differ-
ent parts of said close than in said place
mentioned & out of said supposed public
highway in said plea mentioned, in man-
ner and form as plaintiff hath above thereof
complained against said defendant -
which said trespasses above newly assigned
are other and different trespasses than those
in said plea attempted to be justified -
Wherefore plttf prays judgment &c

Dickey & Wallace
for Pltff

And for replication to defendants third plea
plaintiff says that said parcel of land
in the said second count of said declar-
ation mentioned at the time when &c was
and is a certain close known and describ-
ed as the South west quarter of Section
Twenty four in Township number thirty two
North of range number one East in said
County of La Salle which said close now is
and at the time when &c was another and
different close from the close in said third
plea mentioned and therein alleged to be
the close soil and freehold of said defenda-
ant and this the plaintiff is ready to verify
wherefore he prays judgment &c

Dickey & Wallace
for plaintiff

And for a further replication to said plea of defendant by him secondly above pleaded plaintiff says that he said plaintiff brought his said action not for the said several trespasses in said second plea mentioned and therein attempted to be justified but for that the said defendant on the said times &c. in said declaration mentioned with force and arms and on other and different occasions ~~then~~ ~~and~~ those in said plea mentioned broke and entered the said close of the said plaintiff in the said 1st count mentioned, and then and there threw down and injured the fences of the said plaintiff standing upon said close and with horses and cattle trod down and destroyed the grass and grain of plaintiff then therein standing and growing and tore up the soil of said close in other and different parts of said close than in said plea mentioned and out of said supposed public highway in said plea mentioned in manner and form as plaintiff hath above thereof complained against said defendant - which said trespasses above newly assigned are other and different trespasses than those in said plea attempted to be justified - Wherefore he prays Judgment &c

Dickey & Wallace
for Plaintiff //

And on the 5th of December 1854 the defendant filed his rejoinder in the words and figures following to wit

Laurens Ashley
vs
Melson Alvord
La Salle County Circuit Court
Nov Term AD. 1854

And for rejoinder to the 1st replication to deft
2^d plea in which the plaintiff puts himself
upon the country defendant doth the like

And for rejoinder to the 2^d & 3^d replications of
the plaintiff to the 2^d plea of deft above plea
defendant saith that he is not guilty of any
of the several trespasses in said replication
newly assigned out of the limits of the
highway mentioned or any or either of them
& of this he puts himself upon the country

And for rejoinder to the replication of plaintiff
to the defendant's 3^d plea defendant saith
that he is not guilty of the trespasses in said
replication newly assigned or any or either
of them in manner & form as the same are
newly assigned and of this he puts himself
upon the country

And for a further rejoinder
to the replication of plaintiff to the 3^d
plea of defendant, defendant says actio non
re because he saith that at the said several
times when & there was a public highway
regularly and lawfully established and
opened to the public travel running throug
h the close in said replication mentioned
along which the people of said State then
& there had the right to pass and repass
and this defendant then & there as he
lawfully might did pass along said high

way & break down & remove the fence there & there being in and across said highway which are the same supposed trespasses above laid to his charge & this he is ready to verify wherefore he prays Judgment &c

And on the 6th day of December 1854. The Plaintiff files his Surrejoinder in the words and figures following to wit

Laurin A. Ashley }
vs } La Salle Circuit Court
Nelson Alvord } Nov Term A.D. 1855

And for a surrejoinder to second rejoinder to replication of plaintiff to third plea of defendant, plaintiff says that there was not a public highway regularly and lawfully established and opened to the public ~~use~~ travel running through the close in said replication mentioned, along which the people had a right to pass and repass as is alleged in said rejoinder. And the said plaintiff further says that he brought his action against said defendant not only for the trespasses in said rejoinder attempted to be justified by said defendant, but also for that the said defendant on the said times &c in said replications mentioned with force and arms broke and entered the said close of the said plaintiff in the said replication mentioned and then and there broke down the fences thereon then and there situate and

destroyed the same in other and different parts of said close than in said rejoinder mentioned and out of said supposed public highway in said rejoinder mentioned, by means whereof a great many horses, hogs, and cattle were let into said close and a large amount of grass and grain of plaintiff therein then situate was eaten up and destroyed by said horses hogs and cattle in manner and form as plaintiff hath above thereof complained against said defendant which said trespasses above newly assigned are other and different trespasses than those in said rejoinder attempted to be justified, Wherefore he prays judgement &c

Dickey & Wallace
for plaintiff "

And on the 16th December 1854 the defendant filed his Rebuttal which was in the words and figures following to wit

"Laurin N. Ashley
vs
Nelson Alvord
La Salle County Circuit Court
November Term AD. 1854

And for rebuttal to the surjoinder of the plaintiff to the, to the second rejoinder of defendant to the replication of plaintiff to the 3^d plea of defendant, defendant says actio non, because he says that there was at the several times when &c a public highway regularly and lawfully established and opened to the public travel running through through the close

in said surjoinder mentioned along which
the people had a right to pass & repass, and
because he says that as to the trespasses newly
assigned in said surjoinder & which are other
than those fully answered in the aforesaid
rejoinder of this defendant he is not guilty
of the same or any or either of them as in
said Surjoinder is alleged & of this he puts
himself upon the country

Glover & Cook p. 202

And afterwards to wit on Thursday December 7th
said day being one of the days of said Nov-
ember, Term 1854. further proceedings were
had in this cause, which were in the
words & figures following to wit

" Sac. N. Ashley }
127 vs } Trespas
Nelson Alvord }

This day comes the plaintiff
by Dickey & Wallace his Attorneys and the
defendant by Glover & Cook his Attorneys. and
thereupon come the following jurors of a Jury
to wit: William Pierson, James Prescott, J. H.
Friedenburgh, J. J. Knowland, J. Pembroke, W. Munroe
C. H. Sutphen, J. E. Waterman, Jeremiah Wood
John Schuler, Archibald Shorp & D. W. C. Gooding
who are duly elected tried and sworn to well
and truly try the issues herein according to
the evidence. And now plaintiffs counsel
move the Court to discharge the jury herein
and for leave to amend his declaration, which
motions are sustained by the Court upon

condition that plaintiff pay the costs of this term to be taxed.

Therefore it is ordered that plaintiff have leave to amend his declaration herein, on or before the first day of January next, and that he pay the costs of this term to be taxed"

And on the 16th of April 1855 the Plaintiff filed his Amended declaration, which was in the words & figures following to wit

"State of Illinois - La Salle County and Circuit Court thereof to November term A.D. 1854

Laurin N. Ashley plaintiff by leave of the Court complains of Nelson Alvord in a plea of Trespass

For that whereas at the County aforesaid, heretofore, to wit on the 1st day of September A.D. 1854, plaintiff was lawfully possessed of a certain close in said County viz: the South west quarter of Section No thirty four in Township No thirty two North of range one east of the third principal meridian and said plaintiff being so possessed the said defendant with force and arms then and there unlawfully broke and entered said close of said plaintiff, and then and there threw down and injured the fences of said plaintiff, standing on said close and with horses and cattle trod down and destroyed the ~~good~~ grass and grain of plaintiff then

therein standing and growing - and tore up the soil of said close, and other wrongs to the said plaintiff then and there did

And for that also heretofore to wit on the day and year aforesaid at the County aforesaid said plaintiff was lawfully possessed of a certain other close situate in said County, and said defendant then and there (the said plaintiff being thus lawfully possessed of the same unlawfully and with force and arms broke and entered said close of said plaintiff and broke down the fences therein then & there situate and destroyed the same by means whereof a great many cattle horses and hogs were let into said close and a large amount of grass and grain of plaintiffs then situate upon said land close eaten up and destroyed by said cattle horses and hogs and other wrongs to said plaintiff, said defendant then and there did - to his damage of five hundred dollars - and therefore he sues

Dickey & Wallace
Plff. Atty's "

And on Thursday November 15th 1855 said day being one of the days of the November term of said Court for the year A.D. 1855, a motion was made, which was in the words and figures following to wit

"Lauren Ashley }
 33 vs } Trespass
 Nelson Alvord }

This day the defendant comes by Glover & Cook his attorneys who move the Court to strike the plaintiffs amended Declaration from the files herein, which motion is overruled by the Court."

And afterwards to wit on Friday November 16th said day being one of the days of said November Term 1855. an agreement was made which was in the words and figures following to wit

"Lauren Ashley }
 33 vs } Trespass
 Nelson Alvord }

By agreement of parties it is ordered by the Court that this cause be set for trial on Wednesday of the 3^d week of the term."

And on the 27th day of November 1855 the defendant files his Pleas in the words and figures following to wit

"Lauren Ashley }
 vs } La Salle County Circuit Court
 Nelson Alvord } Nov Term A.D. 1855

And now comes the said defendant by Delana & Delana his attorneys & defends the wrong & injury when &c and

says actio non est because he says he is not guilty
in manner & form as the said plaintiff hath
above thereof declared against him & of this
he puts himself upon the country
And the plaintiff doth the like

by Wallace

2nd And for a further plea in this behalf as to the
first count of plaintiffs amended declaration
defendant says actio non, because he says
that at the said time when & there was a
public highway regularly and lawfully
established and opened to the public travel
running through the close in said first
count of plaintiff amended declaration
mentioned, along which all the people of
the State of Illinois then & there had the
right to pass & repass & this defendant then
& there as he lawfully might do, did pass
along said highway and break down and
remove the fence then & there being in and
across said public highway and in the
necessary use of said highway did with
horses and cattle tread down and destroy
the grass & grain of plaintiff then & there
being in said highway & did tear up the
soil within the limits of said highway which
are the same supposed trespasses of which
the plaintiff hath above thereof complained
against him and this he is ready to verify
wherefore he prays Judgment

And for a plea
to the second count of plaintiffs amended
declaration said defendant says actio non
est because he says that the said close in

said count mentioned and in which the
said supposed trespasses are supposed to
have been committed at the said time when
he was the close soil and freehold of this
defendant - wherefore said defendant at
the said time when he committed said
several supposed trespasses in said count
mentioned in the said close as he lawfully
might for the cause aforesaid, which are
the said several supposed trespasses whereof
the said plaintiff hath above thereof com-
plained against him & this he is ready to
verify wherefore he prays judgment &c
“Seland & Seland”
for deft

And afterwards to wit on Wednesday
November 28th said day being one of the days
of the said November term A.D. 1855. The
following further proceedings were had, in
the words and figures following to wit

“ Laurin N. Ashley }
vs } Trespass
Nelson Alvord }

This day again comes the
plaintiff by Wallace his attorney and the def-
endant by Glover & Cook his attorneys and by
agreement of parties it is ordered that this
cause be set for trial on Monday afternoon of the
4th week of this term. And now the plaintiff
by his attorney enters a Nolle Prosequi herein as to
the second count in his declaration, and the
defendant by his counsel withdraws his plea

of liberum tenementum to said second count
in said Declaration"

And on the 30th day of November
1855. The Plaintiff files his replication in the
words and figures following to wit

" La Salle Circuit Court = November term A.D. 1855
Laurin A. Ashley }
vs } Trespass
Nelson Alvord }

And now again comes the
said plaintiff by Gray & Wallace his attorneys
and for replication to said defendants second
plea by him above pleaded the said plaintiff
saith precludi non re because he says that
there was not at the said time when re a
public highway regularly and lawfully est-
ablished and opened to the public travel
running through said close as the said
defendant hath thereof in said second
plea alleged & this the said plaintiff prays
may be enquired of by the country re

Gray & Wallace
and the deft doth the like for plff
Glover Cook & Delana

And for further replication to the second plea
of said defendant the said plaintiff by leave
of the Court re says precludi non re. because
he says there was not at the said time when
re a public highway regularly and lawfully
established and opened to the public travel
running through the said close along which
the people of the State of Illinois had the right

to pass & repass as is alleged in said plea
And the said plaintiff further saith that he
brought his action against said defendant
not only for the trespasses in said plea attempt-
ed to be justified by said defendant but also
for that the said defendant at the said times
when & in said declaration mentioned with
force & arms and on other & different occasions
than those in said plea mentioned broke and
entered the said close of the plaintiff and
then and there threw down & injured the fences
of said plaintiff standing on said close & with
horses and cattle trod down and destroyed the
grass and grain therein standing & growing
& tore up the soil of said ~~close~~ close in other
and different parts of said close than in
said plea mentioned & out of said supposed
highway in said plea mentioned in manner
and form as plaintiff hath above thereof com-
plained against said defendant - which said
trespasses above newly assigned are other and
different trespasses than those in said plea
attempted to be justified & this the said defen-
dant is ready to verify wherefore he prays
judgement &c

Gray & Wallace //

for plff

And on the 7th day of December A.D. 1855 the
defendant files his Demurrer in the words
and figures following to wit

" Circuit-Court in & for La Salle County in the
State of Illinois - November Term A.D. 1855

"Laurin N. Ashley }
 vs } Trespass
 Nelson Alvord }

Now comes the said defend-
 ant & as to the second replication or new aspi-
 gment of plaintiff to the second plea of def-
 endant says that the same is insufficient in
 law & that he is not by law bound to answer
 the same - & for cause of demurver says that
 the said replication is double & in this viz
 that it traverses the existence of the public
 highway & also avers that the said supposed
 trespasses were committed out of said high-
 way. wherefore he prays judgment
 Selanda & Selanda,,
 for deft

And on the same day to wit Friday December
 7th. said day being one of days of said November
 Term A.D. 1855. The Plaintiff files his amended
 replication in the words and figures follow-
 ing to wit

"La Salle Circuit Court. November Term A.D. 1855
 Ashley }
 vs } Trespass
 Alvord }

And the said plaintiff by way
 of amendment to the second replication to
 defendants second plea herein, comes & by way
 leave of the Court & for further replication to
 said defendants second plea - says preclude
 non re because he says that the said tres-
 passes in said second plea mentioned and

attempted therein to be justified were not
done by said defendant in the necessary
use of said highway in the introductory
part of said plea mentioned, nor were the
same done and committed in said high-
way, but in other parts of said close outside
of said highway and this the said plaintiff
prays may be enquired of by the country &c
Wallace & Gray //

& And the defendant for plff
doth the like

Glover Cook & Lelana
for the defendant //

And on the same day further proceedings were
had in the words and figures following to wit

Lauren N. Ashley Z
33 vs Z Trespass
Nelson Alvord Z

The plaintiff comes by
Wallace his attorney and the defendant by
Glover & Cook & C. S. Lelana his attorneys and
after hearing the arguments of counsel the court
sustain the defendants demurrer to plaintiffs
replication; whereupon the plaintiff takes
leave of the court to amend his replication
which is now here in court amended and
placed on file. And now come the following
jurors of a jury to wit: Norman Matson, Samuel
Hadley, J. E. Shaw, Thomas Harris, Abram & Loya
James Prescott, D. C. Stopping, D. W. C. Gooding,
Sidney Mace, H. Potter, J. C. Miller and John A
Schuler who are duly elected tried and sworn

to well and truly try the issues herein according to the evidence; and after hearing a part of the evidence the further hearing of this cause is postponed until nine o'clock to morrow morning"

And on Saturday Dec 18.th the same being one of the days of the said November term 1855 further proceedings were had. in words and figures following to wit

4	Lauren A. Ashley	3	
33	vs	3	Trespas
	Abelton Alvord	3	

This day again come the parties hereto by their attorneys, together with the jury sworn herein and after hearing the remainder of the evidence, the further hearing of this cause is postponed until ten o'clock next Monday morning"

And on Monday December 10th the following further proceedings were had. in word and figures following to wit

"	Lauren A. Ashley	3	
33	vs	3	Trespas
	Abelton Alvord	3	

This day again come the parties hereto by their attorneys, together with the jury sworn herein, and after hearing the arguments of counsel, the further hearing of this cause is postponed until nine o'clock to morrow morning,"

And on Tuesday December 11th the following further proceedings were had, in the words and figures following to wit

" Lauren N. Ashley }
33 vs } Trespass
Nelson Alvord }

This day again came the parties hereto by their attorneys, and after hearing the balance of the arguments of counsel, and the Instructions read by the Court, the jury retire to consider of their verdict, and after due deliberation thereon had, return into open Court the following verdict to wit: We the jury find the issues joined in favor of the plaintiff and assess his damages at five cents

Whereupon the defendants counsel move the Court for a new trial //

And afterwards to wit on Wednesday December 12th said day being one of the days of the said November term A.D. 1855- The following further proceedings were had, which were in the words and figures following to wit

" Lauren N. Ashley }
33 vs } Trespass
Nelson Alvord }

This day again came the parties hereto by their attorneys, and after hearing the argument of Counsel the Court overrule the motion for a new trial

It is therefore considered by the Court that the plaintiff

have and recover of the defendant the sum of five cents for his damages, and his costs and charges by him herein expended and that he have execution therefor "

And on the 19th day of December. The defendant filed his bill of exceptions herein, which was in the words and figures following to wit

" Lauren N. Ashley }
vs } John La Salle County Sheriff
Nelson Alvord } Court November term AD, 1855.

Be it remembered that on the trial of the issue in this cause, the plaintiff to sustain the issues on his part introduced in evidence a patent from the United States for the South West quarter of section thirty four, township thirty two north, of range one east of the third Principal Meridian, dated in April 1849 & proved by Bradley Moore that the defendant took down the fence near the North east corner of the quarter, passed across said quarter in a South west course & took down the fence & went out near the South west corner of the quarter - that he went across with a horse & wagon - (witness a month or so afterwards pointed out to Edwarda Fry the place where the fence was taken down where defendant went out

The defendant then introduced Henry Kingsley as a witness who being sworn testified as follows: that he was

acquainted with the situation of the South
west quarter of section thirty four in township
18^{North} two north of range one East of third P. M.
that he had resided in the neighborhood
of said land for about sixteen years - that
during all that time and until the same
was fenced up at the East & West lines of
the quarter, there had been a road used
& travelled across the quarter section by the
public - that the general course of the road
was North East & South West leading from
the town of Magnolia at the South West thro-
ugh Lowell towards the North East - that
the road as travelled entered the quarter
section some rods south of the North East
corner of the quarter section, passed across
Southwesterly & went off a short distance north
of the South West corner of the quarter -
Witness also stated that in 1848, he was
one of the Chairman engaged in locating
a County road from the County line of
Putnam County to Lowell in connection
with Joel Alford & C. C. Elliott, viewers &
that Major Newton was axeman & drove
the stakes - He stated that generally in places
where the road that was already there was
fenced, they located their road in the same
place & that it was located across the quarter
section about where the travelled track was
at the time. He testified that the road
to the North East & South West within five
miles either way from the quarter section
was fenced in several places at the time
they located their road & that judging from

his eye the fences were about four rods apart from three to four - that buildings had been erected along the road & orchards planted that after the location of their road & before the fencing across the track on the East and west lines of the quarter section the country had improved along the road - new farms were opened & other buildings & fences were built along the road. Witness also testified that a field had been enclosed by plaintiff after he bought the quarter section on the north part of the quarter - that the South fence of the enclosure ran across the quarter from the north East to south west & was near along where the range of the stakes for the road which were placed there by the axeman would go. Kingsley also testified that in a conversation he had with the plaintiff about the time the plaintiff bought the place - plaintiff said in speaking of the comparative value of this place with another, that he preferred this quarter although it was badly cut by the road to the other place - Kingsley also testified that he was a Supervisor before the laying out the Elliott & Alford road & as such built a bridge across the Slough - that this was up the Slough & seven rods from the place where the Elliott & Alford road crossed - that the travel however in dry times mostly went across the Slough at the place where the last named road was laid & that in 1846, this bridge was taken up & put across the Slough on the Elliott & Alford road - that the place of the bridge was near

the South west corner of the said South west quarter & a little to the west of it. Witness also testified that Mr Gee who occupied the land east of the quarter section had an enclosure before plaintiff enclosed his field & that the fence at the north west corner ran for some rods in a north east & south west ~~cor~~ ~~ner~~ course so as to cut off the north west corner of the quarter on which Gee's enclosure was - and it appeared in evidence that by mistake Gee's west fence was placed west of his line & on the plaintiff's quarter section, so that the East end of Ashley's diagonal fence was placed opposite to the west end of Gee's diagonal fence & the fences were opposite each other & judging by the eye from three to four rods apart - It also appeared in evidence that on the quarter west of Ashley's land the South east corner was cut off by a fence running north east & south west & nearly ranging with Ashley's diagonal fence. In answer to a question asked by plaintiff's attorney Kingsley stated that Alvora the defendant while he & Alvora & Kingsley were going across the said South west quarter of section thirty four, said to them, if I went across anywhere, there was the place where I went in" (pointing to a space between the Gee fence & the Ashley fence) "and there was where I went out" (pointing to a place on the west line of the quarter south of & close to the south line of the Ashley fence) "and I drove right straight along from point to point so as not to get out of the line of the road" —

& irrespective of the travelled track —
Witness stated that the place where
Alvord said he went in & went out was
within the limits of the road as they laid
it out, if it was as wide as the fences were
apart — that is, it would be within the
parallelogram made by extending the Gee
fence south west parallel to the south line
of Ashley's enclosure — Witness said he had
no doubt the places as pointed out were
within the limits of the road — The place
pointed out by Alvord when he entered on the
east was south of & within from twenty to
forty feet of the diagonal fence & north of the
Gee diagonal fence. the bridge that was
moved was put on the place from which
it was moved in the year A.D. 1843 or 1844

Major Newton testified that he was an axeman
on the occasion alluded to by Mr Kingsley —
that he drove the stakes — that there was a
stake set near the west line of Ashley's quarter
section, and one about a mile & a half north
east of it towards his ~~farm~~ farm. he also
testified that the next year after the Elliott
& Alvord road was laid out & on the occasion
of the change of the hedge spoken of by Kingsley
& in order to locate the bridge & where road
stakes were yet there he set up a pole & ranged
through & thus ascertained the proper place
to put the bridge & put it in the place so as-
certained. He also testified that when Ashley
was about enclosing his field he came to him
for information about the road in order that

he might know how to place his improvements, and that he told him how it ran & soon after Ashley enclosed his field - witness also testified that he had no doubt but that the place pointed out by Alford in the conversation, alluded to by Kingsley was within the limits of the road, if it was as wide as the fences & the range of the fences were apart -

Both Kingsley & Newton testified that on the Monday before the trial they both went & examined the place where the road ran along the south line of Ashley's fence & that they had no doubt that the place pointed out by Alford was in the road as it was laid out by the viewers.

Mr Hawes was then introduced as a witness who testified, that in the year 1830, he was one of three viewers appointed by the County Commissioners Court of Jaycee County (Putnam & LaSalle Counties then being part of Jaycee County) to stake ~~out~~ & blaze a road from near his house to the mouth of Fox River - that they had no surveyor, but that they staked & blazed the road - that the general course of the road was north east & south west that the place where he then lived is now in Putnam County - that the road they located crossed Ashley's quarter section about the place where the south line of Ashley's fence was placed - He thought it was a little north of the fence at one end & a little south at the other - He stated that when

the road was first travelled the track was made near the stakes, that the viewers selected the best ground for the road - that in places the travel might have deviated - that there was a pond hole in this quarter section & sometimes the travellers went on one side & sometimes on the other - that he commenced using the road immediately after it was located & had travelled it frequently since across the quarter section - Hawes also testified that Mr Graves came to him one evening a day or two before the trial to enquire where the starting point of his road was - that he did not go out of the house but told him it was about ten rods north of the bridge near his house - In answer to an enquiry where the road went at Baileys Point (between which place & Hawes' house the Ashley quarter section is situated) he told him he could not direct him without going with him to show him

The defendant then rested

The plaintiff then introduced, without objection the following petition, report, plat & order of the County Commissioners Court of La Salle County in 1845

Road Petition

This day a petition was presented to the Court praying the Court to establish a road commencing at the South west

corner of section 6 Town 32, N Range one East
thence one mile east, thence one half mile
north, thence East till it intersects the road
leading from Granville to Dadds mills, thence
along that road to said Mills on the Big
Bendition.

The Court after due consideration
of the same ordered the following viewers
to view and if necessary view and locate
said route as follows to wit

H. L. Owens by M. Newton & William Clayton
five dollars deposit made by N. Richey

Road petition

This day a petition was presented to the
Court setting forth that a part of a State
road laid out by Jesse Roberts, William Sely
and others which lies between the Town of
Sewell in this County and the County line
commonly called the Peoria and Chicago
road and running in its general course
towards the Town of Magnolia in Putnam
County runs in such places that it is
useless and burdensome, and also a road
laid out by Hitt, D. & Letts and Dr Hall
commencing at the mouth of Alford's lane
on the north line of Joel Alford's farm and
running to the County line in a direction
to Mrs Hawes in Putnam County which said
road was intended for the same line of
travel is in the same situation. The
petitioners therefore wish and pray the Court
for the location of a road commencing at
the Town of Sewell aforesaid and running

thence to where the road is now travelled
on the north side of William Seely's house
on his old farm, thence to where it is now
travelled on the south side of the house
of Asa H. Ramage - thence along on the
south side of Alpers Little's fence and thr-
ough the land fenced across the farm of
J. Ashley thence along the north end of
G. M. Newton. A. A. Newton and S. B. Miller
fence thence on the north side of J. W. Hoxie's
House - thence on the nearest best ground
to the south side of Thomas Peterson's
tavern on the ridge - thence to the county
line about as now travelled and to meet
the road as now laid in Putnam County
and that both the other roads if legally in
existence be vacated on such parts of them
as are not used for this road! the petiti-
oners also pray for the location of a road
commencing where the before described new
road shall cross the section line running
north and south between sections 25 and
26 in Township 32, N R 1, East and run-
ning north along said line to the south
west corner of Section one in the same
township. Thence on the best ground to
intersect the road running from near
Todd's Store to Peru - and if the viewers
shall think the reasons sufficient they
may run the south end of said road as
far as the south west corner of Section 1 is
along the West side of said line and the
petitioners pray that the road running
from near Todd's Store to the Peru road

near the house of M. C. Little and laid out by L. W. Dimick, K. H. Maffitt & Co to be reviewed and such parts of it as are useless and burdensome by reason of running over bad ground or through improvements to be relaid and the old vacated

The Court after mature consideration ordered that the following named persons be appointed viewers to view said route to wit. as follows

A. M. Little, C. C. Elliott

Joel Alvord

\$10. deposit made

Jason Ashley
Henry Kingsley
Geo. M. Newton
Avenue

Field notes of the road leading from the town of Lowell to the county line in Putnam County

- Commenced at County line at a point 1 chn 95 lin S 82° W of SW corner of J. Worthington's Brick house said point being 4 chns & 3 links S of 1/4 sec corner in the third P.M. on W side of Section 18 S. 31. N of range one E.
- 1st N 39° 45' E 134 chns & 6 links to a stake just in front of ^{house} Patterson's Brick
 - 2nd N 51° 15' E 145 chs
 - 3rd Due E 5 ch
 - 4th N 47° 41' E 31 chs 54 links
 - 5th N 58° 30' E 149 chs passed SW corner house N side
 - 6th N 48° E 47 chs to Mag Newton's W line 3 chs 75 lin S of 1/4 cor of ^(S 48° E 6)
 - 7th N 48° E 84 chs to end of the Little & Godd road
 - 8th N 55° E 10 chs
 - 9th N 27° 30' E 7 chns 68 lin to E side of Bayley's creek
 - 10th N 40° 30' E 22 chs 62 lin
 - 11th N 46° 45' E 13 chs to a stump N of Seely's house in center of ^{road}

- 12th N 49° 30' E 103 chs to a point opposite the house of John Bayley
 13th N 53° E 18 chs to top of tree by Ryders
 14th N 86° 30' E 23 chs to Herds
 15th due E 11 chs 81 links to SW corner of the town of Lawrence
 being the SW corner of NE qr of NE qr of sec 17, T 32, R 2

Field notes of road from where above road crosses the section line between sec 25 & 26 T 32 R 2 in a northerly direction to intersect Penn & Todd's mill road

Commencing at a point 3 chs 75 links S of 1/4 sec corner between Sections 25 & 26 T 31, R 1 E running thence

- 1st due N 283 chs & 75 links on sec line
 2nd due W 40 chs to the SW corner of sec 1, T 32, R 1, E of 3rd Pm
 3rd N 87 chs & 14 links to Penn & Todd's mill road

Field notes of a review of a road from Todd's mill to Penna road near the house of M. C. Little commenced at said Penna road at a point near the house of M. C. Little cherry tree 8 in diameter bearing 352° W 23 links

- 1st N 15° 30' W 33 chs to opposite the house of S. C. Gale
 2nd N 7° 45' W 98 chs & 30 links to N line of Willis Moffatt's land
 3rd N 43° 20' W 13 chs 25 links across spring branch
 4th N 40° 28' 6 chs 28 lin to B C 4 in di
 5 N 15° 6 4 chs 37 links
 6 N — 19 chs to centre of Lane in front of C. R. Potters dwelling to a point 20 chs N of S line of Sec, 12, T 32, R 1 E

Chaimmen { Joel Alvord
 { Geo C. Gale

I hereby certify that the notes and annexed plat are correct

Geo. H. Norris
 County Surveyor

To the Hon County Commissioners of La Salle
County

We the undersigned viewers appointed
to locate the roads mentioned in the annexed
notice do report that after being duly sworn
we proceeded to view the several roads therein
mentioned and do report that we have located
the same as represented on the annexed plat
and recommend the same to be approved and
opened believing them all to be for the conven-
ience of the public and would also recommend
that all other roads conflicting with or running
immediately on & near the same routes be vacated
All which is respectfully submitted

Joel Alvord

C. C. Elliott

July 1, 1845 This is to certify that the within named
Charles C. Elliott was this day by me sworn to
discharge the duty of the within appointm-
ent according to law

Luther Woodward

Justice of the Peace

July 2, 1845. This is to certify that the within
named Joel Alvord was this day by me sworn
to discharge the duty of the within appoint-
ment according to law & without partiality
or favor

C. C. Elliott J. P.

C. C. Elliott

You are hereby notified that you Mr.
Lett and Joel Alvord are appointed to view and

if necessary locate the route as follows, to wit
commencing at the corner of Lowell and Nunn's
thence to where the road is now travelled on the
north side of William Sedgely's house on his old
farm, thence to where it is now travelled on the
South side of the house of Asa Holdridge, thence
along ^{to} the south side of Meper's Settle's fence
and through the lane fenced across the farm
of J. Ashley thence along the north end of S. M.
Newton A. A. Newton and J. B. Miller's fence
thence on the north side of S. W. Kopic's house
thence on the nearest best ground to the south
side of Thomas Paterson's Tavern on the ridge
thence to the County line about as now
travelled and so meet the road as now laid
out in Putnam County and you will (if the
public good requires it) create all other parts
of roads conflicting with the above proposed
route.

You will also view and (if the public
good requires it) locate a road as follows to
wit - commencing where the before described
new road shall cross the section line running
north and south between sections 25 and 26
in Township 32. N Range 1 East and running
north along said line to the south west corner
of section one in the same Township, thence
on the best ground to intersect the road run-
ning from near Dodd's ~~mill~~ Store to Peru and if
should think it for the public good, you may
run the south end of said road as far as the
south west corner of section 13 along the west
side of said line. You will also review and
if necessary (by reason of bad ground or because

of running through or damaging improvements)
vacate such parts (as you may deem) of the
road from near Dodd's Store to the Pavia road
near the house of M. C. Little and on by L. W.
Dinnick &c



By order of the County Commissioners
Court dated at Ottawa June 2, 1845
Maurice Murphy Clerk

Road Report of
C. C. Elliott
&
J. Alford

Accepted & recorded
Filed July 22^d 1845
M. Murphy Clk

Road Report

This day the report of Joel Alvord and C. C. Elliott was presented examined and approved and ordered to be recorded which is accordingly done in the words and figures as follows to wit

To the Hon County Commissioners of La Salle County - We the undersigned viewers appointed to locate the roads mentioned in the annexed notice do report that after being duly sworn we proceeded to view the several roads therein mentioned and do report that we have located the same as represented on the annexed plat and recommend the same to be approved and opened believing them all to be for the convenience of the public and would also recommend that all other roads conflicting with or running immediately on or near the same routes be vacated

All which is respectfully submitted

Joel Alvord
C. C. Elliott

Field notes of review of road from Todd's Mill to Peoria road at a point ^(near the house of M. C. Little) commenced at said Peoria road at a point near the house of M. C. Little cherry tree 8 in diameter bearing S 52° W 23 links

1st N 15° 30' W 33 chs to opposite the house of J. C. Gates

2^d N 7° 45' W 98 chs & 30 links to a line of Willis Moffet's land

3^d N 43° 20' W 13 chs 25 links across Spring Branch

4th N 4° W 6 chs 28 links to B O 4 in dia

5th N 16° 6 4 chains 37 links

6th N - 19 chains to centre of lane in front of C. R. Potter's dwelling to a point 20 chns N of S line of sect 12, S 32, R 1 E

Chairmen { Joel W. Alvord
 { Geo H. Morris

I hereby certify that the above notes and annexed Plat are correct

Geo H. Morris

County Surveyor

Joel Alvord sworn before C. C. Elliott J. P.

C. C. Elliott sworn before L. Woodward J. P.

The Court in consideration of the recommendation of the viewers that all roads running between the points in which the above mentioned roads have been located and running with them be vacated

The Plaintiff then offered in evidence the following paper after proving that the persons named therein as commissioners of highways were at the date thereof acting in that capacity that the persons who signed the same as clerk was the acting town clerk of Eden Township & that the signature was in his handwriting

I hereby certify that on the 30th day of November & first day of December A D 1855 I surveyed, by the request of the Commissioners of highways in the Town of Eden, La Salle County a road described as a road leading from near Wm Hawes, thence on a strait line near Lewis Bailey's, received and laid by Wm Hawes, Abel Esterbrook & Jesse S. Roberts A D,

1830. The line of which is shown through the town
of Eden on the accompanying plat. Witness my
hand this 3rd day of December AD 1855

John P. Blake County Surveyor
of Putnam Co Mo

Notes

Commencing at a point in the township line
27.46 chains north of the east corner to sections 24 & 25
in T 32, R 1E east of the 3rd meridian in the
present travelled road, and with an assumed
variation of $7^{\circ}30'$ East, thence $S 46^{\circ}11'$ west ten miles
and forty rods to a point 1.85 chains $N 49^{\circ}11'$ of the
north end. of the bridge near W^m Haws, the place
of termination

La Salle County, $\frac{3}{2}$
Town of Eden $\frac{7}{2}$

Whereas a road leading from a point near William Hawes in Putnam County to the mouth of Fox river of the Illinois was laid out by the authority of the County Commissioners Court of Sagwell County on the 6th day of August A.D. 1830 which said road runs through the town of Eden but which is not sufficiently described of record. Now therefore we the undersigned Commissioners of highways for the said town of Eden do order that so much of said road as lies in the said town of Eden be ascertained, described and entered of record in the Clerk's office of said town according to a survey which has been made under our direction as follows. Commencing on the town line at a point in the now travelled road 27' 46 chains north of the East corner to section 24. & 25 in town 32. N.R. one East north of the 3^d meridian and with an assumed variation $\alpha 7^{\circ} 30'$ East thence $S 46^{\circ} 11'$ west ten miles & 40 rods to a point 1' 85 chains N. $49^{\circ} 16'$ of the North end of the bridge near Mr Hawes, and we do further order that the line of said survey be the centre of so much of said road as lies in said Town of Eden commencing as mentioned above and terminating at the township line 8 links W of the SE corner of the SW $\frac{1}{4}$ of Section 34. in the said Town of Eden a distance of 288 chains and that the same be of the width of 30 feet

Given under our hands $\frac{3}{2}$ Thomas B. Graves $\frac{3}{2}$ Commissioners
at Eden this 3^d day of $\frac{3}{2}$ Charles Mudge $\frac{3}{2}$ of
December 1855 $\frac{3}{2}$ George McLean $\frac{3}{2}$ highways

La Salle County, 3
Town of Eden 3

I hereby certify that the foregoing
is a true copy of the report and plat of said
road as filed in my office

Dated December 3^d AD, 1855,

George B. Holmes
Clerk

To the introduction of this evidence the defend-
ant by his attorneys at the time the same was
so offered, objected - The Court overruled the
objection & permitted the ~~people~~ paper to be
read as evidence in the cause & to the opinion
of the Court in overruling said objection & in
permitting said evidence to be introduced
the defendant by his attorneys then & there
at the time thereof, excepted

Upon the examin-
ation of the witness Thomas B. Graves by whom the
plaintiff proved the execution of the above paper
he stated that he was the uncle of the plaintiff
that he had served a subpoena in the case for
him on one of the witnesses - that he learned
from some of the persons who were on the jury
in the case of an indictment against Ashley
tried at the present term of this Court that
he was convicted for shutting up the old
Hawes road and that he deemed it to be
his duty as one of the Commissioners of high
ways to ascertain where the old Hawes road
was & have it opened - that he went down to
see Mr Hawes & that the conversation between
him & Mr Hawes was substantially as stated
by Mr Hawes - that he employed the surveyor

from Putnam County & that the Surveyor, surveyed where he directed him to & and that he directed him as near as he could in accordance with the directions of Hawes - that the survey was made in a straight line from Hawes to Bailey's point & that he went considerably further south than the diagonal fence & as represented on the plat made by Blake the surveyor - that the line of the survey went through some houses, across fences & through orchards & he stated that he thought that in the due & proper discharge of his duty he ought to open it where it was surveyed. He also testified that there were several travelled tracks across the Ashley quarter section - that the tracks in places were as much as forty rods apart - that he had seen a stake in Ashley's field & that he thought it was twenty feet north of the diagonal fence

The plaintiff then introduced, Amos L Ashley a brother of the plaintiff & Amasa Stewart who testified that they acted as chainmen and assisted Edward Fry when he made a survey of the Elliott & Alvord road and they stated that they believed they chained correctly

Edward Fry was then introduced who testified that he ran out the Elliott & Alvord road from the minutes above mentioned that the witness Bradley Moore. Shown him the place where Alvord took down the fence & went out on the west side — that he surveyed the centre line of the road — that his line was all the way across the quarter north of the diagonal fence a little nearer at the East end than at the west — that he made no measurements at the East, but at the west the centre line of the road as surveyed by him, was two rods & eighteen links distant from & north of the centre of the gap pointed out to him as the place where Alvord went out. He stated that he ran a random line & then corrected back — that he could not tell whether he ran on the same variation as the road was originally, as the minutes did not state the variation — He stated that he was informed by Mr Morris what he thought this variation was — This declaration of Morris was objected to & excluded after it was stated the line Fry ran went north of the diagonal fence across Ashley's quarter, and on the east line, he came out north of the diagonal fence — That Fry in his survey found points mentioned by George H Morris, the surveyor of the Alvord & Elliott road in 1845, east of Ashley's quarter — That the variation he ran on would make no difference, when he came to correct his random lines as he did.

Plaintiff then introduced another witness named Graves son of Thomas B Graves who testified that he was path master in 1850 & that Ashley then told him that he did not want him to expend any money on that road across his quarter - that he did not think there was a road there - He also stated that he had seen a stake in Ashley's field and that it was about 15 or 20 Rods from the west line of the quarter & about two rods north of the diagonal fence. He also stated that there were several distinct tracks across the quarter from North East to South West & that the stakes were as much as forty rods apart in places. He stated that the fence at the South East corner of his field which was on the track next west of the Ashley quarter was placed there as a boundary between his field & the North side of the road - that this fence & Gee's fence were built before the Ashley diagonal fence & after the laying out the Elliott & Alvara road.

It appeared from the evidence that Ashley fenced across the track of the road by extending his east fence down to the Gee farm & by building a fence on the west up to the Graves fence - that this obstruction of the ^{road} was first made in October A.D. 1853 & that for twenty five years before there had been no fence on that quarter across the east line between the diagonal fence & the Gee fence & none on the west along the west line of the quarter south of the Graves fence.

The diagonal fence was put up in the spring of 1852. This fence enclosed a part of the old travelled track. one half of this fence across the quarter, and perhaps more, was south of the old travel. There were across Ashley's land six or eight travelled tracks, which were apart that is the extremes, thirty or forty rods. In the fall of the year 1849, or winter of 1849-1850 Ashley told me that the road should not go there. This was after the road was laid on the section line. He said he would not have both roads. The section line road was laid then - and regularly surveyed - but not opened - The west line of Gee's fence ran across some of the travelled tracks - the travel being along his diagonal fence after his enclosure was made.

This was all the evidence in the case

The Plaintiff requested the Court to instruct the jury as follows.

Plaintiff's instructions

- 1st If the jury believe from the evidence that the defendant broke and entered the quarter section mentioned in the declaration and that the said quarter section was owned by or in possession of the plaintiff at the time of such breaking and entry, then the jury should find the defendant guilty, unless the defendant has shown by proof that there was a public highway legally established and laid out across said quarter section and that the defendant in entering and passing across said quarter section, was all the time within the said road
- 2nd The burden of proving a highway rests upon the defendant after it is shown that he broke & entered the close - and it is also necessary to show by proof that the defendant in such case did not depart from the limits of said road while in said close
- 3rd A right of way across lands can only be acquired in three ways - 1st by prescription 2nd by dedication & 3rd by laying out in the manner prescribed by law

4th In order to create a right of way by prescription it must be shown by proof that the road claimed by prescription has been used for 20 years uninterruptedly adversely and continuously under color of right - and that the owner of the land for 20 years has acquiesced in such use such owner being in a position to object if he saw proper

5th Before the jury can find that the supposed roads or any of them exist by dedication they must believe from the evidence that the United States while they owned the land through which the supposed roads passed or the plaintiff since he has owned the land intended to set apart, and did set apart the ground over which said supposed roads ran for the use of the public for a highway - and that the public accepted the same for a highway by some public authority authorized to accept it

6th The mere act of making a fence along one side of the travelled track by the plaintiff when he owned the land on both sides of the travelled track is not alone evidence of an intention to dedicate the land to the public for a road

7th If it is proved in this case that the plaintiff soon after he purchased the land in question notified the supervisor of roads that he did not acquiesce in the road running through said land and forbid said Supervisor from

Given
doing any work on said road, and fenced up a part or the whole of the road and ploughed up the travelled track these are circumstances tending to rebut any presumption of an intention to dedicate the road to the public

Refused
8th It is not competent for other persons along the line of travel to accept the road for the public even if it was dedicated by the Plaintiff. The only way in which an acceptance can be made binding upon the plaintiff, is that such acceptance should be made by the County Commissioners Court or the County Court, or the commissioners of highways, of the form in which the road lies

Given
9th A mere permission of the owner of the land for the public to pass across the land, will never ripen into a prescriptive right of way, but such permission is only a license and may be revoked at any time by the owner of the land

Given
10th The facts that a public road has been used travelled upon, worked upon, and recognized by the public authorities, do never of themselves establish a legal public highway. Proof of these facts merely furnish a presumption that such is a regular highway, but these circumstances only furnish a legal presumption, which may be rebutted by the records showing that such public road was not

laid out in pursuance of the law—

11th Although it is not necessary in the first instance, for the defendant, in order to prove the existence of a public highway to prove it by the Records of the County Commissioners Court, but the defendant may prove that the road was used and travelled upon by the public & was recognized by the public authorities as a public road, and was worked by the Supervisor and this would be sufficient prima facie, to establish a public road. Yet when the records of the County Commissioners Court are introduced by the plaintiff, which show a failure on the part of said Court to comply with the provisions and requirements of the statute, then the presumption of the regularity of the proceedings, arising from such use travel and work by the public, is rebutted and the defendant is then bound to show that the statute has been complied with, in every essential particular necessary to make it a valid road under the law—

12th A public highway laid out under the law in force in 1845, whose width is not defined and named on the record, is void. In 1845 the law required the County Commissioners Court to establish the width of the road upon the record; and if the jury believe from the evidence that in 1845 the County Commissioners Court upon the report of Alford and Elliott, failed or omitted

to fix the width on the record, of the road said viewers recommend, this omission is fatal to the legal existence of that road

13th Unless it is shown by proof that the road viewed and staked by Hawes, Roberts & Easterbrook had a fixed, a determined width, such road is void

14th The Commissioners of highways of the town of Eden had a right by law to ascertain describe and enter of record the location of the road viewed and staked by Hawes, Roberts and Easterbrook in 1830, if said road was not sufficiently described, and unless the proof shows that the place where defendant broke and entered was within the limits of said road as actually established that road affords no justification to defendant for such breaking & entry

15th Under the law that was in force in 1845 when the County Commissioners Court made the orders read in evidence, the County Commissioners Court had full power to vacate upon petition in conformity with law, any State or County road in this County - and if the jury believe from the evidence that said Court in pursuance of a legal petition made an order vacating the roads across the land in controversy in this suit, then the roads so vacated would constitute no justification to defendant for entering upon the land

16th Private property cannot be taken for public purposes without ^{just} compensation, or a waiver of such compensation
Given

17th No acts of other persons along the same line of travel, in fencing or building, can make such an acceptance of the roads as would bind Ashley - nor can such acts prove a dedication on the part of Ashley
Given

18th In order to create a right of way either by prescription, or dedication, the proof must show a continuous and uninterrupted use of the same travelled track, and evidence of travel sometimes in one track & sometimes in another track, such tracks, being several rods apart - & sometimes one being used sometimes another - such evidence does not show either prescription or dedication
Given

19th A right of way cannot be acquired by prescription as against the United States over land owned by them
refused

20th A right of way by dedication cannot be created without some act or acts and declarations by the owner of the land showing an intention to dedicate the ground for a public highway and an acceptance thereof by public authority empowered by law to accept of such dedication

And to the giving of said instructions and

each of them, said defendant then & there upon said trial objected - the Court overruled such objection and gave each of said instructions except the 8th, 13th and 19th and to the decision of the Court in overruling said objection & in giving said instructions & each of them so given the defendant then & there upon said trial excepted

The defendant requested the Court to instruct the jury as follows
Defendant's instructions

1st If the trespasses alleged in the declaration consisted only in the defendant's driving his wagon and horses across the land described in the declaration in a highway or public road and in taking down fences which had been erected across the said highway or roads, they should find for the defendant

2 If the jury believe from the evidence that there was a road used by the public generally for the purpose of public travel across the land of the plaintiff and if said plaintiff permitted the public to use said road for such a length of time that the public accommodation and private rights would be materially affected by an interruption of the enjoyment, he could not legally fence the same up and prevent the further use of it, by the public

3rd That if the minutes of survey do not show a road to be located in the place where it was actually staked and laid out, still the staking & laying out must control in determining its location

4th It is not necessary to prove the location of a public road by the minutes of survey or other written evidences, but the same may be proved by persons who were along and assisted in the location of the road, and saw the stakes, if any, set and the place where the road was actually staked out is the place of the road

5th The owner of land through which a road is about to be located, must in the first instance & as soon as the fact comes to his knowledge, object to its location across ~~the~~ his land. If he acquiesces in the location opening and using it by the public, he thereby waives his claim for damages and cannot afterwards shut up the road because his damages were not paid

6th That if two of the viewers appointed by the County Commissioners Court actually located and staked the centre line of a public highway across the land of the plaintiff described in the declaration, and if said road so located was ~~accepted~~ accepted actually worked by the public authorities and used by the public with the assent

of the plaintiff) for such a length of time that the public accommodation and private rights might be materially affected by an interruption of the enjoyment thereof, then such assent and acceptance amounted to a dedication to the public of the use of said road, and said plaintiff after such dedication had no right to fence the same up & prevent the further use of it by the public - and although the Courts Commissioners may not have established any width, yet, in determining the location & width of the road dedicated, the jury may consider all the facts proved in the case, the ranging of the line of fences on the road, the distance of said fences apart, the acts of the plaintiff in fencing along the north line of the road if these things are proved & all other facts which tend to show an intention on the part of the plaintiff to give the public the road through his land

7th If the centre line of a road was surveyed and located as mentioned in the last instruction and if the plaintiff intending to dedicate to the public for a road a strip across said quarter section in the declaration mentioned of the width of two rods on each side of said centre line and if while intending to enclose a field on the north side of the road so that the south line of the fence of the enclosure should be north of, parallel to, & two rods distant

Given

from the said centre line of said road he did enclose said field & by mistake or inaccuracy extend his fences on the east and west so far south, that said south line of fence either diagonally crossed the surveyed & located road or was a little south of the surveyed & located road, then the facts which would amount to a dedication of a strip four rods wide south of the fence, if it had been placed where plaintiff intended to place it, would amount to a dedication of a strip four rods wide south of the fence as it actually was as long as the plaintiff permitted his fence to remain where he had thus by mistake or inaccuracy placed it and while said fence so remained the public would have the right to travel along the south line of said fence and within four rods of it although travellers might thereby pass over the land of the plaintiff which was south of the limits of the road

And each of said instructions ~~were~~ given for the defendant were given by the court

At the request of the defendant the court gave to the jury the following qualifications of the plaintiff's instructions, viz:

Qualifications of the 9th instruction of Plaintiff
If however the plaintiff acquiesced in the use of it by the public with the understanding on his part and on the part of the public that it was used as a public highway and it was ^{so} used and worked by the public authorities till the public accommodation or private rights would be materially affected by the interruption he could not interrupt afterwards

Qualifications of the 10th 11th & 12th instructions of Plaintiff
The law as laid down in the 10th 11th & 12th instructions of the plaintiff is only applicable to the question of whether there has been a road regularly laid out under the authority of the County Commissioners Court & does not prevent the creation of a road by prescription or dedication & the centre line of the road as located may be used as evidence to ascertain what was dedicated

Qualifications of the 15th instruction of Plaintiff
The County Commissioners of LaSalle County had no authority under the petition therein introduced in evidence to vacate the Sagewell road

Qualification of the 17th instruction
of plaintiff

These acts however are competent
evidence for the jury to consider in determin-
ing what was dedicated by Ashley to the
public if there was a dedication

Qualification of the 18th instruction
of plaintiff

If the centre line of a road was
actually located & staked the fact that
the travel may have varied a little from
the line of stakes would not prevent the
public from acquiring a right to travel the
road as located from stake to stake and
the use of a little variant from the stakes
would be an use of the staked road in
law

The jury found a verdict in favor of the
plaintiff. whereupon the defendant by
his attorneys entered a motion for a new
trial - which motion the Court overruled
& thereupon to the decision of the Court
in overruling said motion the defendant
by his attorneys then & there in court ex-
cepted & prayed the Court to sign & seal
this his Bill of exceptions which was
then & there done in open court

M. E. Hollister Judge (Clerk)

Jan 18, 00

State of Illinois } J. John F. Stark Clerk of the
LaSalle County } Circuit Court in and for
said County and State do hereby
certify that the above and foregoing record in the
case of Samuel N. Ashby vs Nelson Almond comprising
a true, full perfect and complete copy of the
process, all the pleadings, orders of Court and
the Bill of Exceptions, as the same appear on
file and of record in my office

In Testimony Whereof I have hereunto
set my hand and the seal of said
Court at Ottawa this 4th day of
January 1886

J. F. Stark Clerk

State of Illinois } Samuel N. Ashby
Supreme Court } Nelson Almond

And now comes the plaintiff in error
& says that in the record & proceedings in the above case there is manifest
error in this regard:

- 1st The Court erred in admitting improper evidence on the part of the plff.
- 2^d The Court erred in giving the instructions & each of them given on the
part of the plff.
- 3^d The verdict was against the evidence, & the judgment against the law
- 4th The Court erred in overruling the motion for a new trial & ren-
dering judgment on the verdict

Glover & Cook & Seland &
Seland for plff in error

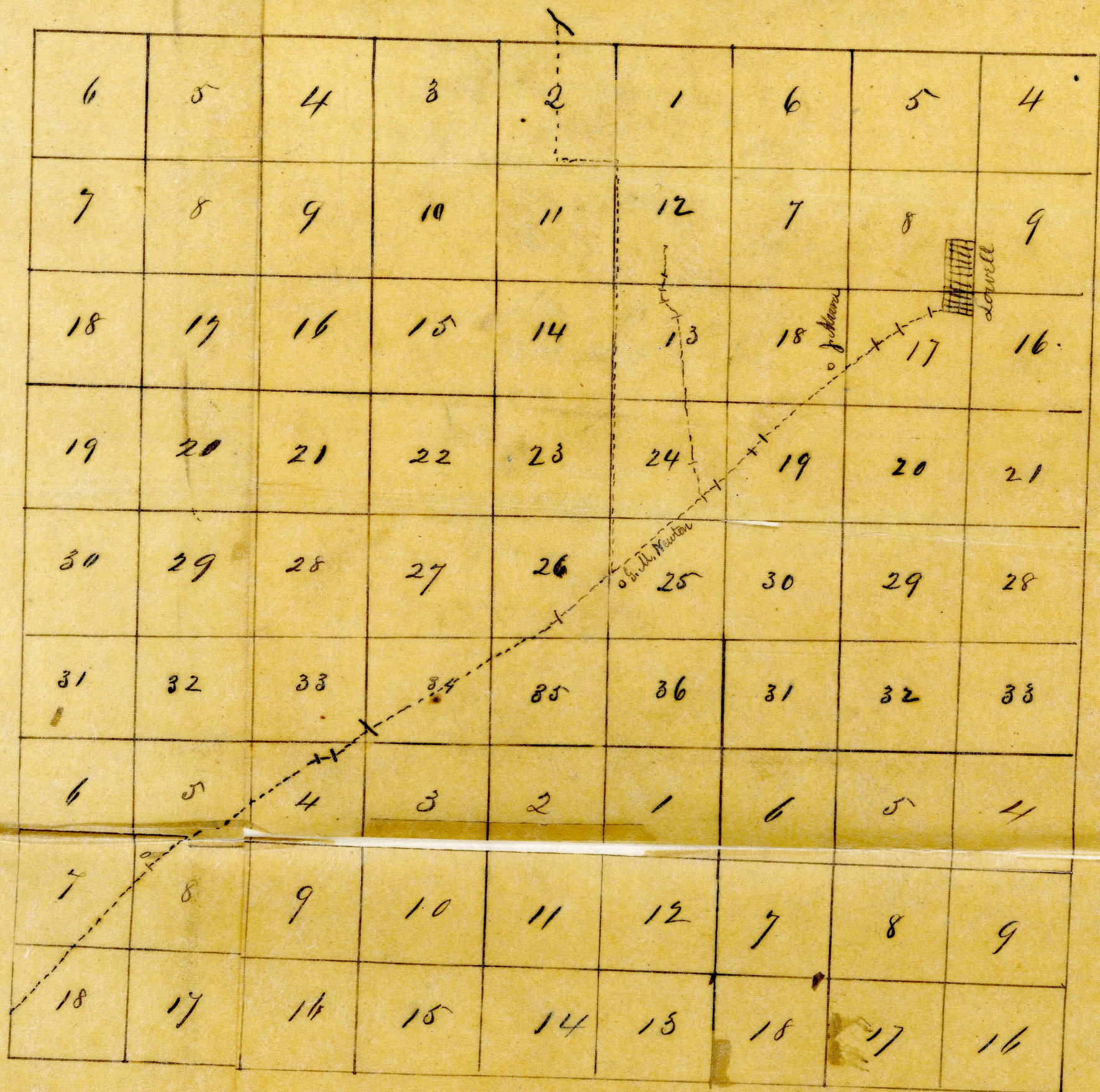
And said ~~affidavit~~ says defendant in error
comes & says there is no such error in the
said proceedings and judgment as plaintiff has
alleged and that said judgment ought to be
affirmed

W. H. L. Wallace for deft
in error

54
Nelson & Howard
as.
Lauren N. Ashley

Record & return

Filed March 6, 1856
Leland Clerk.
By P. B. Rice Deputy



Lauren & Ashby }
as
Nelson & Alvord }

Three
These questions are presented in this record

I 1st The Court below improperly admitted as evidence. The Survey made by John P Blake under the direction of the Commissioners of Highways of the Town of Eden in Dec 1835. These proceedings will be found on Pages 2 & 3 of the Abstracts.

The only object of this evidence was to show that the place where the defendant crossed the plaintiffs quarter section, was not within the limits of the Hawes road. By reference to the two plots it will be seen that Blake's Survey crossed the quarter far south of the Ashby diagonal fence & far south of the place where Hawes testified he actually located the road.

There are two objections to the evidence
1st It is ex parte. & no opportunity was given to cross examine Blake.

2^d The only way he ascertained the route of the road was by Surveying where Graves directed him. & Graves had no other means than the uncertain & unsatisfactory information given him by Hawes.

The evidence was calculated to mislead the Jury & create the impression that the Daphne road was out of the limits of the Hawes road. At best it is a mere declaration of Blake's that the Hawes road was near the South East

Corner of the quarter. & NW of the place where
Ashley placed his diagonal fence.

The evidence was got up long after the suit was
commenced. & cannot be introduced as an establish-
ment of the place where the road was on the day
of the alleged trespass.

II

2^d The Instructions of the plaintiffs were
erroneous.

By the 1st instruction the defendant was
required to prove that although he was a traveller
and entered the quarter in the road & left it in the
road, that he did not in transitu enclose the
quarter & leave the limits of the road.

There are two objections to this.

1st The presumption should be that if he was a travel-
ler along the road & went on to the quarter on
the road & left it on the road, (and the proof
clearly shows this. because he must have entered
at the NE in a lane between two fences & ^{he} went out
within 100 feet of Ashley's South fence, at the SW
corner of the quarter) that he remained in the road.

2^d If by reason of Ashley's South fence being too
far South at the West end, he was thereby forced
on to the quarter South of the limits of the road
he would not be a trespasser. The instruction makes him

a trespasser at all events unless he has proved that he was all the time within the limits of the road & not it is apparent that the act of the plaintiff in extending his fence too far South may have made it impossible for him to have kept within the width of the road South of the fence without getting out of it.

The law is well settled that a trespasser may deviate from the road & crop the adjoining land when the road is impassable. A fortiori he can do this when the act of the owner of the adjoining land forces him out of it by fencing, wholly or partly across it.

2nd inst. The objection to the 2^d instruction is the same

4th inst. The objection to ~~the~~ 4th instruction is that the fact that the land is owned ^{that} the owner does not object for 20 years is enough to make a road by prescription. Otherwise there might never be a prescription as to residents of a foreign State or Country. By being the owner of the land he must be considered as in an objecting position. If actual notice of the road is ~~not~~ necessary & he is not to be considered as having constructive notice by being the owner. Then there will be serious obstacles in the way of ever having a case where non residents have claimed their claims for damages, or of ever obtaining an order against them or a road by dedication or prescription.

5th Inst. The objections to the 4th apply to the 5th

This instruction requires that there should be proofs of an intention on the part of the owner to set apart his land for the use of the road.

By being the owner of the land he should be presumed to know that the road is there. & if a road is used across his land for such a length of time that the public accommodation & private rights would be materially affected by an interruption, he should not be permitted to interrupt it because he did not know that such had been the case. If this were so all the roads run across the land of the United States. Although they may have been used for more than twenty years could be interrupted by the Government from the U.S. A foreigner across whose land a road had been used for any length of time & after buildings & fences had been placed all along it, might close it up to the serious injury of the inhabitants along its whole route. The establishment of such a doctrine would be fraught with incalculable mischief.

Another objection to this instruction is that it requires an acceptance by some public authority authorized to accept. - An acceptance may be by user by the public & so are the authorities.

I quoted Ex Sec 662 & the authorities there quoted

6th Inst. The 6th instruction is that the mere act of making a fence along one side of the travelled track when built around on both sides is not alone evidence of an intention to dedicate.

So that there are two objections

1st It is stated that this is not evidence.

The fair construction of this expression is that it does not tend to prove. It is unqualifiedly stated that this fact of so fencing is not evidence of an intention to dedicate. As a link in the chain it is the strongest kind of evidence. In connection with the evidence of Mayor Newton, that he pointed out to the jury at his request the place where the road ran in order that the jury might know how to place his fence, it is evidence of the most conclusive character. Surely no other construction can be put upon the language than that ^{the fact} it should be excluded from the consideration of the jury as evidence.

2d If it is construed to mean that it was not sufficient evidence then the Court usurped the province of the jury whose exclusive right it is to judge of the weight of the evidence. The Statute forbids the Court to instruct as to the evidence & authorizes Courts to instruct only as to the law.

I think myself the fact that there is a travelled track used as a road across a quarter section of land from the N E corner to the SW corner, thus  + the fact that a fence is built diagonally across as above is sufficient to authorize any rational mind to conclude, that the fence was so built as the boundary of the road & if so that there was a road given to the public. No man ever fenced a quarter section of prairie in that way unless there was a road across it, where there ^{was} ~~is~~ a travelled track along such diagonal fence

7th The 7th instruction is that the fencing up parts or the whole of the road plowing up the travelled track tend to rebut the dedication.

The fencing here alluded to is the diagonal fence & ~~the plowing~~ the plowing of the field. Because the fencing across the road was not till 1853. The jury are thus instructed that the making the enclosure with the diagonal fence on the South side of it & which are circumstances of great strength in favor of the dedication, tend to rebut it. The fencing across the road in 1853 might tend to rebut a dedication. The fencing along the road supports it.

9th Inst. The 9th instruction is that a mere permission for the public to pass across will never ripen into prescription. This is only a licence & can be revoked.

A permission for the public to pass across as travellers ~~within~~ for 20 years is what makes a prescription. If this means that a licence to use his land as a way with a knowledge on the part of the user that there is no way there, this is right. But there is no pretence in this case that the travellers were going across this land with the knowledge that there was no way there. It was used by the public as a road & such use 20 years ~~makes~~ makes a prescription right to use. There was no evidence that ~~it tended~~ to show that it was used as land & not as a highway & the instruction not containing the expression that it was used ~~not~~ as a highway, was wrong & calculated to mislead the jury.

10th Inst. The 10th Instruction is that using, working & never of themselves establish a highway. They merely arrest a presumption which may be rebutted by the records showing it was not laid out in pursuance of law.

There was no evidence in the records that the road was not laid out in pursuance of law.

The only objection to the record is that the plaintiff did not introduce any evidence that the County Commrs did fix the width. There was no evidence by the clerk that there were no other orders of the County. There being therefore no evidence to base it upon it was not right to turn the jury loose into the record to find such defects as they might imagine there were. The instruction should point out some defect & be based upon the fact constituting the defect.

11th Inst The objection to the 11th is like that to the 10th

This is a more general declaration that when a road has been introduced showing a failure on the part of the County Commrs to comply then the defendants must show that all the requirements of the Statute have been complied with.

There is no evidence showing the County Commrs have failed in anything. There may have been an order, not introduced by the plaintiff, fixing the width of the road. How has the Plaintiff shown there was such an omission. He may have introduced a small portion of the proceedings & how does this show that the remainder do not exist. Suppose he had only introduced the petition for the Elliot & Alward road.

Would this rebut the prima facie case of a road ~~defects~~ Would this require the defendant to prove that all the requirements of the Statute had been com-

plied with. There should have been some evidence that the proceedings introduced were all there were in relation to the road. Before the defendant could be called upon to prove that all the requirements of the statute had been complied with.

12th Inst. A

This instruction lays down the general proposition that if the County Commrs did not upon the report of the viewers fix the width of the Elliott & Alward road, the omission is fatal to the existence of the road.

The defendant has proved a road de facto. The plaintiffs has introduced some proceedings in relation to a road received by Alward & Elliott. How has he negatived the fact that the width of the road as indicated by his diagonal fence & the opposite & parallel Goe' fence was not of the width fixed by the County Commrs? How has he proved that there is no such order fixing the width so that the de jure & the de facto roads are not of the same width? Proving some of the proceedings does not negate the existence of any other. The law having fixed a minimum width of 30 feet. In the absence of an order fixing the width the road would be 30 feet wide. At any rate it would be wide enough for vehicles to pass.
2 Camis R. 179 11 Smeal 94 17 Pick 309 19 Pick 311

14th Inst. The 14th instruction is based upon the evidence heretofore allowed to as improperly admitted.

It is that the Commrs of Eden had a right to ascertain describe & enter of record the old Havers road & that ^{subseq} proof shows that the township within the limits of said road as actually established that road affords no justification.

This actually establishing the road was long after the suit was commenced, & after the defendant township of course while the Court was in session upon this case.

Old right had three companions, no! Not the Com-
missioners, but one of them, the uncle of the plaintiffs
with his feelings enlisted in his behalf, as is evident from
his evidence to go & get the County Surveyor or the Pat-
nam County to run a line across the County so
as to miss the place of the Saphord township, ~~which~~
~~the Court was in Session~~. With no one there on the
side of the defendant & then bring in the Survey to
show where the road was actually established
The admission of the evidence & the bearing such an
instruction upon it were most flagrantly erroneous
& this probably got the defendant, in the minds of the
jury out of the limits of the old Hawes Road.
And ^{this evidence &} the instruction that the omission to fix the width
of the Elliott & Almad road was fatal to that one
beat the defendant in an exceedingly plain case
of right on his side by leaving ^{him} out of one road
& without the other.

17th Inst. No acts of others in fencing or building can make
such an acceptance of the road as would bind Ask-
ley. Nor can such acts prove a dedication on his
part.

These acts of others in fencing & building
are a necessary part of the proof of dedication.
They are the very things that do bind him. So that he
is estopped from retracting.

In the 2^d of Gen. ev. Section 662 it is laid
down that the presumption of the owner of the use of a road
across his land for such a length of ~~some~~ time that
the public accommodation & private rights would be ma-
terially affected by the interruption makes a dedication

Of course then these acts of building & fencing along
the road ^{constitute part of} ~~do make~~ the acceptance that binds the dedica-
tor.

18th In order to make a dedication or prescription proof
must show continuous use of one track.

This is calculated to mislead the jury. If the
road was ^{stated} ~~marked~~ out then the line of travel would
in law be applied to the stated route though it di-
verged in places. It is not to be supposed that
the travel of a road across unenclosed prairie
will always keep within the limits of the road.

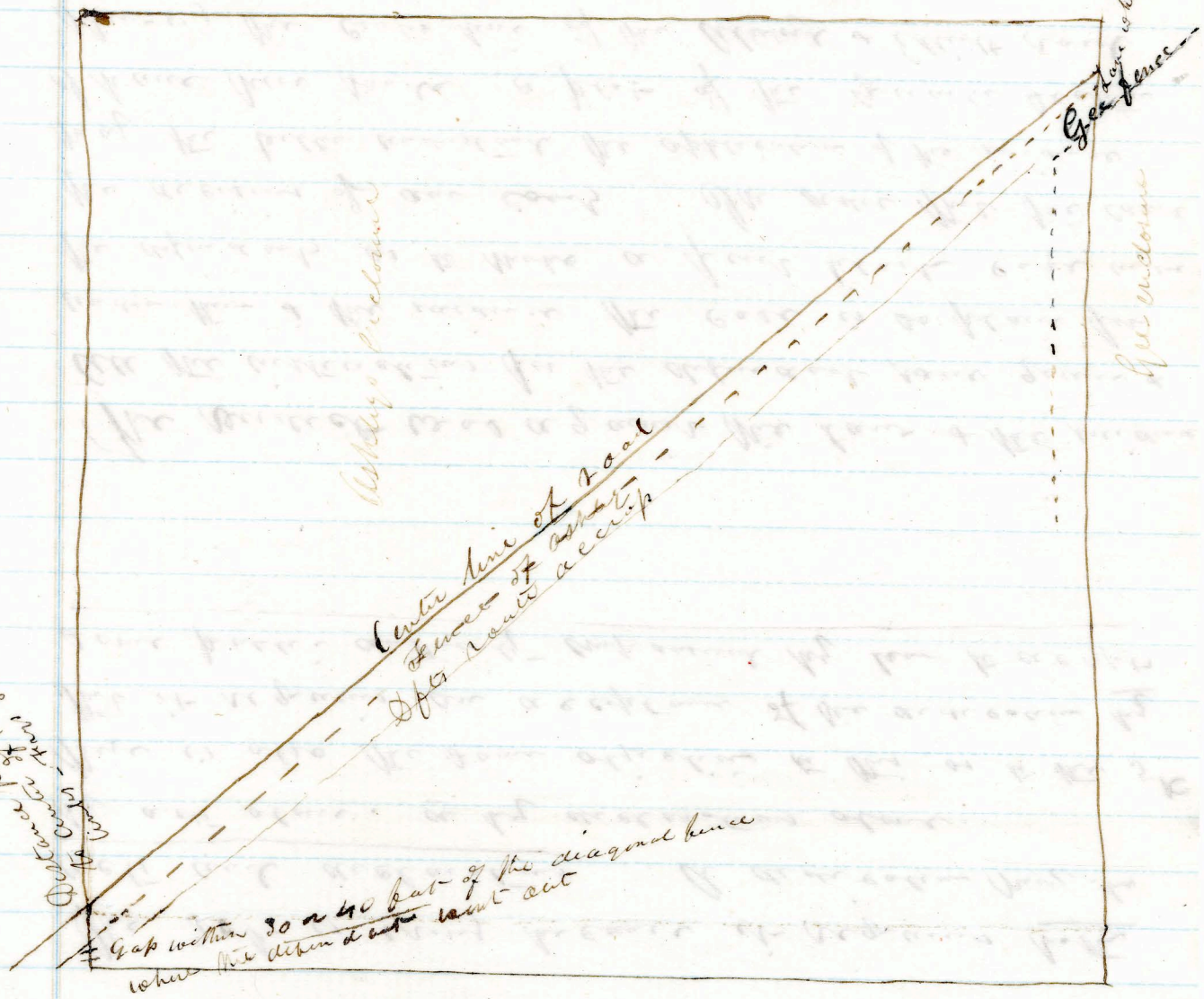
20th The 20th is wrong because it requires both
acts and declarations. A dedication may be
by acts alone, or by declarations alone.

There is also the same objection to this as to the 5th
that it requires an acceptance of the dedication by
some public authority empowered by law to accept

III

The verdict was against the law & the evidence.
All the instructions for the defendant were given &
under them & the evidence the case is so plain for
the defendants as to make a fair black case under
the decisions of our courts. In order that the court
may the better understand the application of the evidence
I have here made a plot of the quarter section
showing the center line of the Alward & Elliott road
& the line of the fence according to the Survey of May
& also the place where on the East the apt entered
the quarter, guided by the line made by the parallel

+ opposite fences of the piths of Geo and the place
 where he went out on the west through the gap



Was there a road along the Ashby diagonal fence at the time the defendants travelled along across the quarter section along the South side of said fence?

Mr. Havers one of the witnesses states that one was located there in 1830 & that it has been constantly used since. He knows that the trail commenced near the line of the States & from the time he located it till the present time he has been constantly travelling it. This road had been used & fenced & buildings erected along it prior to the location of the Elliott & Alvord road in 1845.

The Elliott & Alvord road was for the same line of travel & substantially in the same place. & Kingsley who was one of the chainmen says that where the old road was fenced they located their road in the same place. This road was located across the close where the old road was. For more than twenty years this road had been where the diagonal fence was afterwards placed.

This diagonal fence was the South line of fence of Ashby's enclosure North of it. When Ashby was about making this field he engaged of Major Newton where the road was. Newton showed him the enclosure was then made, & in a shape indicating beyond the possibility of doubt taken in connection with the fact that there was a road there, that he intended his South line of fence to be on the North line of the road. We have a road then from N E to S W and across the quarter for about twenty three years from 1830 to 1853. & then a fence placed along the line of the road by the plaintiffs or rather intended by him to be there. He has actually if Fry's survey is accurate placed his diagonal fence a little too far South. & this under the laws as laid down & which is undoubtedly correct would make the

fence the North line of the road, & by placing this fence opposite the Gee fence a width (within which the defendant must have been) is clearly indicated.

The evidence thus most clearly establishes a road of the width of the distance apart of the two diagonal fences. A laid road laid out by the Comptrolrs and thereby with no evidence of any irregularity in the proceedings. With no evidence that the width was not established by the County Commrs. & with a clearly indicated & marked width - indicated & marked out by the plaintiffs himself. For the Gee fence at the East & the Adams fence at the West were both there when he erected his fence. And for years before the road had been fenced in other places & its width indicated.

Was the defendant in the road? He was a traveller - travelling with a horse & wagon. A lane at the East guided him on to the quarter in the road. A fence on the North, along which he travelled marked the Northern boundary of the road for the purposes of this trial. The fence was a right line across. His motive was to keep within the limits. His declaration called out by the plaintiffs in order to prove the trespass was that he went in a right line. The place where he went out on the West was within 30 or 40 feet of the fence, & within the parallelogram made by extending the Gee diagonal fence SW across the quarter parallel to the Ashby fence. Do not these facts leave the mind entirely free from doubt on the subject? The hearing of the jury ~~should~~ or of the Court should not be towards imagining it possible that he did get out of the limits. It is a mere technical defence & not the merits one. Suppose by reason of the fence being so far South at its west end that travelling within

Forty or fifty feet of the fence thus would place the traveller out of the limits of the road as actually surveyed & located. As against the plaintiffs the defendant surely has the right to consider the diagonal fence the North boundary of the road. And if this be so he could not have got so far South as to be out of the road. To the North he could not go on account of the fence. & South of the width of the road considering the fence the North boundary he did not go.

This case is submitted with the hope that the Court will settle the law questions arising in relation to the road. The question of whether the neglect of the County Commissioners Court to fix the width of a road the center line of which only has been surveyed, will destroy its validity, & authorize the owner of land across which it has been used for a great many years without objection ^{to obstruct it} is a question of great importance. A great majority of the ^{old} roads in this County are in a similar condition & I presume the roads in other parts of the State are similarly situated.

The authorities which will be produced on the other side will ^{decide} ~~decide~~ I think ^{decide} this question against the validity of a road actually established & used for years.

It would undoubtedly be fatal if the question were whether such a road should be established & opened to be opened. If it were opened on this ground before the County Commrs, or this question were in any other way raised it would be right that such a road should not be declared opened. But if it has been used for years it is then a road to the width that the public has appropriated & as marked by the wheels on it or by the ^{fences} along it. If there are no indications at all of width except the track. Then it is a road of the ^{statute} minimum width 30 feet. or as wide as the track, or

wide enough for vehicles to pass. ~~Under the authori-~~
~~ties referred to hereafter~~

Cook & Leland
per plat in cross

Almond is Ashlar

Argt pa pth in
men

Filed June 18. 1856
L. Leland
Clerk

STATE OF ILLINOIS,

Supreme Court, } ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of La Salle Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of *La Salle* county, before the Judge thereof, between *Lauren V. Ashley*

plaintiff, and *Nelson Alvord*

defendant it is said manifest error hath intervened, to the injury of the aforesaid *Nelson Alvord*

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

WITNESS, the Hon. *Walter B. Seale* ~~SAMUEL H. TREAT~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *6th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*

L. Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy

Nelson⁵⁶ Alvord
vs
Lauren N. Ashley
Writ of Error

Filed March 6, 1854

Leland Clerk
By P.B. Rice Deft



STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of La Salle — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of La Salle — county, before the Judge thereof, between Lauren Nashley Plaintiff Nelson Alvord

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

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Lauren Nashley —

that he be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the Second Monday in June next, further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Lauren Nashley — notice, together with this writ.

WITNESS, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 10th day of April in the Year of Our Lord One Thousand Eight Hundred and Fifty-six

Leland

Clerk of the Supreme Court. Do

By J. B. Rice Deputy Clk.

Nelson Alvord
vs
Lauren N. Ashley
Scire Facias

Executed this writ May 10th
1856, by Reading the same
to L. N. Ashley

Fees Served	50
Ret	10
20 Miles	100
	<u>\$1.60</u>

Francis Warner
Shff by D. C. Huggs Depy.

Filed May 12. 1856.
L. Leland Clk.



Nelson Alcott

vs
Lauren N. Ashley

56

12267

1856

#