

13097

No. _____

Supreme Court of Illinois

Road Commr's. Town of Vermilion

vs.

Holdridge

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 38.

Road Com
vs
Haldridge
1866

13097

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State of Illinois } Pleas before the Honorable
La Salle County } Madison E. Hollister Circuit
Judge for the Ninth Judicial
District in said State and the presiding Judge of
the La Salle County Circuit Court, at a term of said
Court commenced and held at the Court House in
Ottawa in said County on the first Monday in the
month of February, the same being the first day of
February in the year of our Lord One thousand Eight
hundred and fifty Eight and of the Independence
of the United States of America the Eighty Second.

Present

The Honorable Madison E. Hollister
Presiding Judge

John F. Nash clerk

Eri L. Waterman Sheriff

O. C. Gray States attorney, pro tem,

Be it remembered that on the 15th day of November
AD 1857, a Bill was filed in the Clerk's office of
the Circuit Court, in the words and figures following,
to wit: "

State of Illinois } And Circuit Court thereof,
La Salle County } To February Term A.D 1858.

To the Honorable Madison E. Hollister Judge
of the 9th Judicial Circuit of said State and
sitting as Chancellor

Complaining sheweth
unto Your Honor, Your Orator Asa Holdridge
of said County,

That heretofore, to wit, prior to the
15th day of November A.D. 1856 - a petition was

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presented to the commissioners of highways & ~~highways~~ of the Town of Eden for the laying out of a new road therein named, and afterwards, to wit; on the 28th day of January A.D. 1857. John W. Underhill and John Vandervoort his of Said Commissioners made and filed with the Town Clerk of said Town an order in substance as follows:

Bullock & Holdridge Road

LaSalle County

Town of Eden

Whereas upon the application of Calvin Copeland Jr, Henry Kingsley, J. Barr, W. B. Wilson, P. J. Miller, Henry Butler, C. B. Miller, L. Long, A. J. West, George Falmesbee, E. M. Miller, G. B. Budd, W. J. Pickering, W. A. Alvord, James M Beth, Bayly Barrows, Twelve legal voters, residing within three miles of the route hereinafter described for a public highway, a copy of the petition having been duly posted as required by law, we the Commissioners of highways of said Town did on the 15th day of November A.D. 1856, - cause a survey to be made by a competent surveyor of the following route, to wit: Commencing at or near the South East corner, of the North East quarter of Section twenty five in said Town thence running in a westerly direction to a point directly South of the middle of the alley running north & South through Block two (2) in the Town of Tonica, thence running North, until it intersects Pontiac Street in said Town of Tonica - The names of the owners of the lands over which the road is to pass as your petitioners, are informed, are Asa Holdridge, C. J. Bullock, the heirs of L. L. Bullock, Jason

Ashley and A. D. West being the same as mentioned and set forth in the said petition, which survey is according to the annexed plat and the said Commissioners having personally examined said route and having heard such reasons as were offered for and against laying out said road and being of the opinion that the laying out of the same is necessary and proper and that the public interest will be promoted thereby, it is ordered that the road and the same is hereby laid out and established according to the said survey and the plat hereunto annexed and made a part of this order, which is hereby declared to be a public highway four rods wide, the above described line being the centre thereof.

In witness whereof we the said Commissioners have hereunto set their hands this 28 day of January 1857

John W. Underhill } Commissioners
John Vandervoort } of Highways

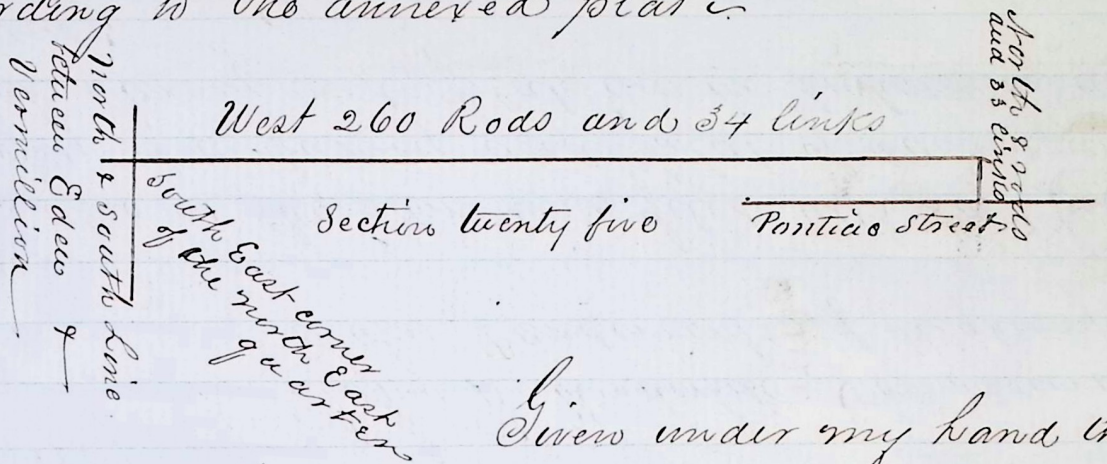
And also at the same time filed with said Court a copy of a survey and plat of said road which survey and plat are in substance as follows:

Surveyors Report -

To the Commissioners of highways of the Town of Eden County of La Salle -

I hereby certify that I proceeded on the 15th day of November 1856 - to survey out a new road four rods wide according to the foregoing petition - commencing on the North and South line between the Towns of Eden

and Vermillion, at the South East corner of the North East quarter of Section (25) twenty five in said Town of Edew, thence running West (260) two hundred and sixty rods (34) thirty four links to a point South of the middle of the alley running North and South through Block two (2) in Tonica, thence North (8) Eight rods (33) thirty three links intersecting Pontiac Street in said Town of Tonica according to the annexed plat.



Given under my hand this
14th day of November AD 1856.
Luther Woodward Surveyor "

And on the 25th day of January 1857 - the said two commissioners of highways made and filed with said Town Clerk an order which is in substance as follows -

"We the undersigned commissioners of highways of the Town of Edew in the County of LaSalle having on the first day of November A.D. 1856 - upon due application made to us for the purpose, laid out a road as follows, Commencing on the North and South line between the Towns of Edew and Vermillion at the South East Corner of the North East Quarter of section twenty-five in said Town of Edew, thence running West (260) two hundred and sixty rods and (34) thirty four links to a point South

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of the middle of the alley running north and South through Block (2) No in the Town of Tonica thence North (8) Eight rods (33) thirty three links intersecting Pontiac Street in said Town of Tonica and certain owners of lands through which said road passes not having released all claims to damage by reason of the laying out and opening the same and not being able to agree with them as to the amount of such damage, we proceeded to assess the same at what we deemed just and right to each individual claimant with which we could not agree, taking into account and estimating the advantages and benefits the road will confer on the claimants for the same, as well as the disadvantages, and have assessed the damages of each owner ^{and} claimant as follows - To P. J. Bullock, & L. L. Bullock on lands owned by them bordering on the half Section line running West, commencing at the north East corner of the South East quarter of Section twenty-five, said line being the above described road, at Seventy dollars, being enclosed and cultivated lands, and to Asa Holdridge on the North East quarter of Section twenty five being enclosed and cultivated lands One hundred Dollars, and to Asen Ashley on the East half of the North West quarter of Section twenty-five being enclosed and cultivated lands, twenty dollars -

In Witness whereof we have hereunto set our hands this 25th day of January 1857 -

John W. Underhill } Commissioner
John Vandervoort } of Highways

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All of which will more fully and at large
appear from the records of said town of Eden
remaining in the office of the town clerk thereof
reference to which is hereby made, and your
orator further shows to your Honor that at the
several times aforesaid he was and still is
the owner of the North East quarter of Section
number twenty five, Town thirty two North range
one East of the third principal Meridian
which is situate in said town and across
which said road will run if the same is
opened in the manner provided in said or-
der - which said tract of land is and
was at the several times aforesaid and still
is enclosed by fence and cultivated -

Your Orator shows to your Honor that on
the 26th day of February A.D. 1857, Your
orator and one Joseph T. Bullock who was
then and there the owner of land in said town
across which said road will run if the same
shall be opened as provided in said order,
took an appeal from the order of said commis-
sioners aforesaid to Lorenzo Leland Supervisor
of the town of Ottawa, William Paul Super-
visor of the town of Salisbury and John Gray
Supervisor of the town of LaSalle, which appeal
was in writing and is and was in substance
as follows;

Appeal

To Lorenzo Leland Supervisor of the town
of Ottawa, William Paul Supervisor of the town
of Salisbury and John Gray Supervisor of the
town of LaSalle all in the County of LaSalle
and State of Illinois, we the undersigned do

Holdridge and P. J. Bullock of the Town of Eden, in said County feeling aggrieved by certain orders made by the commissioners of Highways of said Town, on the 28th day of January A.D. 1857 - and filed in the office of the Town Clerk of said Town of Eden on the third day of February A.D. 1857 - in laying out a highway in said Town and assessing the damages thereon do hereby appeal to you from such order as unto annexed in and by which the proceedings and determination of said Commissioners will more fully appear, the grounds upon which this appeal is taken are 1st that the said road is not necessary, 2^d that said Commissioners proceeded illegally in laying out said road and in assessing the damages thereon - 3^d the damages assessed are inadequate to compensate the owners of land affected and said appeal is brought in relation to laying out said road and in assessing damages thereon, and to reverse entirely the determination of the commissioners in the premises.

Dated this 26th day of February A.D. 1857
 Asa Holdridge
 Joseph J. Bullock

And a notice that such appeal had been taken was duly given to said Lorenzo Leland, John Gray & William Paul by leaving a notice thereof with each of them -

Your Orator further Shows to Your Honor that after said appeal was taken said Supervisors fixed on a certain day in April A.D. 1857 - as the time of hearing said appeal, the par-

particular day your Orator does not certainly recollect but believes that it was the (Seventeenth) 17th day April AD 1857 and notice of the time and place of hearing said appeal was duly given to said commissioners and at least three of the petitioners for said road.

Your Orator further shows to your Honor that said Supervisors did fix the place for the hearing of the appeal aforesaid - at the School house in the village of Tonica in said Town, said Supervisors also did agree upon the 16th day of April to hear and determine an appeal which had been taken to them by certain persons from an order of the Commissioners of highways of the town of Vermillion, and the place of hearing said appeal to be in a School house in said town of Vermillion known by the name of Widow Burgess's School house. Your Orator further shows to your Honor that on said 16th day of April AD 1857, nine of said Supervisors attended at the place fixed for the hearing of the said last mentioned appeal, except the said John Gray, that he did not proceed to hear said last mentioned appeal but said that he should adjourn the same to a certain day in June then next but the particular day your Orator can not state, Your Orator further shows to your Honor that at the time and place fixed as aforesaid by said Supervisor for the hearing of the appeal of your Orator and said Bullock as aforesaid neither of said Supervisors attended nor were any proceedings had touching said appeal, Your Orator further shows to your Honor that due

notice in writing of the time and place fixed for
 hearing the said appeal of Your Orator & Said
 Bullock, as aforesaid was duly served upon the
 said Commissioners of Highways from whose order
 said appeal was taken and upon at least three
 petitioners for the road aforesaid at least eight days
 before the time fixed as aforesaid for hearing said
 appeal. Your Orator further Shows to Your
 Honor, that at the said time in June A.D. 1857
 to which said Supervisor Gray said that he
 should adjourn the hearing of the appeal
 taken as aforesaid from the order of the commis-
 sioners of highways for the town of Vermillion
 none of said Supervisors appeared at the place
 of hearing said appeal, but said Supervisor
 John Gray who then & there said he should ad-
 journ the hearing of said appeal until the 6th
 day of July then next, and at the time aforesaid
 in June none of said Supervisors at-
 tended at the place of hearing the appeal of
 Your Orator and Said Bullock. Your Orator
 further Shows to Your Honor that on said 6th day
 of July A.D. 1857, none of said Supervisors appeared
 at the place fixed for hearing the said appeal from
 the said Commissioners of the town of Vermillion
 nor at the place fixed for the hearing of the appeal
 of your orator and said Bullock.

And your orator further Shows to your Orator
 that from the time agreed upon by said Super-
 visors for hearing the appeal of Your Orator
 as aforesaid until the proceedings hereinafter
 set forth no proceedings were had touching
 the said appeal by said Supervisors.

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Your Orator further shows to your Honor that on the 22^d day of July AD 1857 the said John Gray Supervisor of the town of LaSalle aforesaid and the said Lorenzo Leland Supervisor of the Town of Ottawa aforesaid met at the said School house in the town of Vermillion where it was first appointed to hear the appeal from the order of the Commissioners of highways for said town of Vermillion, and said Gray and Leland then and there associated with themselves Joel W. Armstrong Supervisor of the town of Deer Park in said County and after proceeding to hear and determine said appeal from the order of the Commissioners of Highways of said town of Vermillion then at the same place proceeded to hear and determine the appeal of Your Orator ^{Ed} said Bullock, and thereupon made the following order -

State of Illinois
LaSalle County, ^{3^d}/₃ Whereas the person who
are the appellants in
the annexed written appeal to Supervisors, did
appeal to said Supervisors from the orders and
determination of the Commissioners of highways
of the Town of Eden in said County in laying
out the highway and in assessing the damages
mentioned in the annexed copy of the order
of said Commissioners a copy of which order
as well as all the papers in relation to said
appeal herunto annexed form a part of this
order, and whereas in consequence of an
adjournment said appeal has not hitherto

been heard and disposed of, and whereas on the 22^d day of July A.D. 1857 - in pursuance of previous notice duly given, the said Supervisors, Lorenzo Leland and John Gray, in said appeal mentioned met at a School house near the line of said highway and associated with them Paul W. Armstrong Supervisor of the town of Deer Park in said County (the Supervisor mentioned in said appeal being unable to be present) and heard the proofs and allegations of the parties, now we the said Supervisors who heard such proofs and whose signatures are hereto attached being fully advised of the premises do hereby order and determine, that the said order and determination of said Commissioners of highways be and the same are in all things affirmed.

In Witness whereof we have hereunto set our hands this 22^d day of July A.D. 1857 -
 L. Leland Supervisor of the Town of Ottawa
 John Gray Supervisor of the Town of La Salle
 J. W. Armstrong Supervisor of the Town of Deer Park.

And Your Orator further Shews to Your Honor that said appeal from the order of said Commissioners of highways of the Town of Eden in laying out the road aforesaid was filed with the Town Clerk of said Town of Eden within the time required by law for taking appeals in such cases - And your Orator further Shews to your Honor that said Town Clerk selected Lorenzo Leland Supervisor of the Town of Ottawa - John Gray Supervisor of the Town of La Salle and William Paul Supervisor of the

Town of Salisbury all of the said County of LaSalle, and neither of whom were residents of the town of Edgewood, in which said highway is situated, for the hearing of said appeal and the foregoing proceedings were had under said appeal. Your Orator further Shews to your Honor that the Commissioners of highways of said Town of Edgewood, did not, before determining to lay out the road aforesaid, fix upon a time and place when and where they would meet to hear any reasons that might be offered for or against laying out the same, nor did they cause written notices thereof to be posted up in three of the most public places in said Town Eight days previous to the time of said meeting.

Your Orator further Shews to your Honor, that said Commissioners of highways gave him no notice of the time and place when & where they would meet and view his land aforesaid or when and where they would determine the damages for the location of said road over and across the same,

And Your Orator Charges that as he is advised by Counsel and verily believes, and therefore Charges the fact to be that the said road has not been legally laid out over & across the land of your orator aforesaid for the following reasons:

First, because legal notice has not been given of the acts of said Commissioners in laying out of said road; because no notice was given to your Orator of any of the acts of said Commissioners in relation to the assessment of damages sustained by your Orator, or which would be sustained by him if the road aforesaid were

opened across his land aforesaid, consequently no opportunity was given to him of being heard and of producing evidence in relation to the amount of such damages - and because after the appeal of your Orator and said Bullock had been taken as aforesaid, and the time and place had been fixed for the meeting of said Supervisors to hear said appeal, and after notice had been given to the petitioners and commissioners aforesaid, said Supervisors did not meet to hear and determine said appeal - And because there was no adjournment of the time of hearing said appeal - and because when the Supervisors aforesaid did determine said appeal in the manner aforesaid, they did not meet in said Town of Eden, that they did not examine said road and that they did not hear said appeal at any place at or near the said road and because your Orator had no notice in any manner of the time and place of the meeting of said Supervisors to hear and determine said appeal, and had no opportunity of being heard, or of ^{producing} ~~admitting~~ evidence thereto.

And Your Orator further Charges that if said road should be opened across his land as aforesaid there would be a damage to your Orator of not less than four hundred ^{and} fifty dollars.

And your Orator further Charges that Henry M. Pearson, Philip Retrick ^{and} Stephen Wooley are now commissioners of highways of said Town of Eden and that they threaten and give out in Speeches that they will cause the road aforesaid to be opened across the land

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of your orator aforesaid. and have given notice to your orator requiring him to open the same across said land and they have not nor has any person ever paid or offered to pay to your orator the sum of One hundred dollars assessed as his damages in manner ~~and manner~~ and form aforesaid.

And your Orator further charges that unless said commissioners are restrained by an order of this Honorable Court, they will proceed to open said road across the said land of your Orator under the pretence and claim that said road has been legally established and laid out and that they have the right by law, as such commissioners to open the same across the land of your orator aforesaid, all of which would be to the manifest injury, oppression & wrong of your Orator.

And as much therefore as your orator is in danger of sustaining injury, and is remediless except in Equity where matters of this sort are properly cognizable and relievable, your Orator prays that the said Harvey M. Pheasant, Philip H. Strick and Stephen Wooley Commissioners as aforesaid may be made defendants to this your Orator's Bill and may be summoned to answer the same without oath which is hereby expressly waived, and that they may be enjoined by writ of injunction to be issued out of and under the seal of this Honorable Court from proceeding to open the road aforesaid, across the land of your orator aforesaid, until the further order of this Court in that behalf

And that upon the final hearing of this Bill it may be decreed by this Court that said Commissioners and their Successors in office may be enjoined from opening the road aforesaid across the land of your orator aforesaid until the Same shall be laid out and established, and the damages occasioned thereby to your orator fixed in pursuance of Law, or for such other or further relief as to your Honor shall seem meet or to Equity shall appertain.

Glover & Cook

Solicitors for Compt

State of Illinois }
LaSalle County } 3

Asa Holdridge being first duly sworn says on oath that the matters and things stated in the foregoing Bill so far as the Same are Stated as of the knowledge of affiant, ^{as true} and so far as the Same are Stated as of the information & belief of affiant, the Same are true according to the best of his knowledge, information and belief.

Subscribed & sworn to before } Asa Holdridge
me this 11th day of November }
AD 1857 } C. F. Cameron.

Let an Injunction issue according to the prayer of the foregoing Bill

Nov 12, 1857

M. E. Hollister Judge

On the same 13th day of November 1857 a Summons was issued in said cause in the words and figures following, to wit:

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" State of Illinois } The People of the State of
La Salle County } Illinois; To the Sheriff of
La Salle County, Greeting -

We Command you to Summon Harry McPherson,
Philip Petrick and Stephen Wooley, if to 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, on the first ^{Monday} day
of February next, to answer to a certain bill of
Complaint filed in our said Circuit Court, on the
chancery side thereof against ^{them} by Asa Holmridge;
and have you then and there this writ, and
make return thereon in what manner you execute
the same.

Witness, John F. Nash, Clerk
of Said Court, and the Seal of Said Court,
at Ottawa, this 13th day of November AD
1857

J. F. Nash Clerk

which Summons was returned by the Sheriff of La Salle
County with the following Endorsement thereon, to wit:
" Served by reading to and leaving with Mary
McPherson and Mariah Petrick, each a true copy
of this writ, said persons being white and above the
age of ten years, and members of said respective
families at the usual place of abode of the said
Philip Petrick and Harry McPherson this 12th day
of December 1857. Stephen Wooley not found.

E. L. Waterman Shff
per A. E. Brown Dpty "

On the said 13th November 1857, an injunction
issued out of and under the Seal of said Court

in the words and figures following, to wit:

"State of Illinois ³/₄ The People of the State
La Salle County ³/₄ of Illinois to Harvey
McPherson, Philip Hetrick
and Stephen Wooley, Commissioners of Highways
of the Town of Eden, Greeting,

Whereas Asa Holdridge has lately exhibited
his bill of Complaint to the Judge of the Circuit
Court in and for the County and State aforesaid,
on the Chancery Side thereof against you the Said
McPherson, Hetrick & Wooley defendants;
wherin among other things it is alleged that
you are attempting to open a road over and
through the North East quarter of Section
number twenty five, in Township thirty two North
Range one East of the third principal Merid-
ian in Said County and State, belonging
to Said Asa Holdridge.

We therefore in consideration of the prem-
ises do strictly Enjoin and command you,
the Said McPherson, Hetrick and Wooley
Commissioners of Highways aforesaid and your
Successors in office, that you and each
of you do absolutely and entirely desist
from proceeding to open the road aforesaid
across the Said land until you and each
of you shall appear and fully answer the
Complainant's bill, and said Court make
other order to the contrary. Hereof fail
not under the penalty of what the Law directs.

To the Sheriff of Said County to
Execute.

Witness John F. Nash Clerk of



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Said Court and the Seal of Said Court at
Ottawa this 13th day of November 1857
J. H. Nash Clerk.

which writ of Injunction was returned by the
Sheriff with an endorsement thereon in the words
and figures following, to wit:

"Served by
reading to and leaving a copy of the within writ with
Mary McPherson wife of Harry McPherson a white
person above the age of ten years, at his usual place
of abode. Also left a copy said writ with Mariah
Netrick wife of Said Philip Netrick a white person
above the age of ten years at his usual place of abode
informing her of the contents thereof, this 12th day of
December 1857. Stephen Woolley not found
E. L. Waterman Shff
per A. E. Brown Deputy."

And afterwards, to wit: on Monday February 22^d
1858, the same being one of the days of the February
Term of said Court for said year, an order was
entered of record in said Cause in the words and
figures following, to wit:

"Asa Holdridge }
vs } In Chancery
Harvey McPherson et alii }

The defendants by Bush-
nell & Gray their Solicitors move the Court to dis-
solve the Injunction herein "

And afterwards to wit: on Saturday/February
27th the same being one of the days of the Feb.
Term of Said Court for the year 1858, an ad-
ditional order was entered of record in said
cause in the words and figures, following, to wit:

"
Asa Holdridge }
vs } In Chancery
Harvey M. Pherson et al. }

This day the Com-
plainants comes by Glover & Cook his Solicitors
and the defendants by Bushnell & Gray their
Solicitors and by agreement of parties it is or-
dered that this cause be heard at Chambers
in Vacation, and the orders or decrees entered
of record nunc pro tunc.

On the 9th of February 1858 the Defendants
file their demurrer to Complainants Bill in
the words and figures following, to wit:

State of Illinois } Circuit Court thereof
La Salle County } in Chancery ~ To February
Term A.D. 1858.

The Demurrer of Harvey M. Pherson, Philip
Netrick & Stephen Wooley, Commissioners of High-
ways of the Town of Eden, defendants, to the Bill
of Complaint of Asa Holdridge Complainant;

These defendants by protestation, not
confessing or acknowledging all or any of the
matters or things, in & by the said Bill set forth,
and complained of to be true, in manner & form,
as the same are therein set forth & alleged, say

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They are advised by their counsel, that there is no matter or thing in the said bill contained, good & sufficient in law, to call this defendants in question, in this Honorable Court for the same, but that there is good cause of demurrer thereunto, and therefore these defendants say that the complainants said Bill, in case the allegations therein contained were true, which these defendants do in no sort admit, contains not any matter of Equity wherein this Court can ground any decree, or give the complainant any relief or assistance as against these defendants; Wherefore & for divers other errors and imperfections in the said Bill appearing these defendants do demur in law, thereunto; & hereby demand the judgment of this Honorable Court, whether they shall be compelled to put in any further or other answer to the said Bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully Sustained.

Bushnell & Gray
Solicitors for defendants

And afterwards to wit, on Tuesday December 14th 1858, the same being one of the days of the November Term of said Court for said year a decree was entered of record in said cause in the words and figures, following, to wit:

"Asa Holdridge }
vs } In chancery
Harvey McPherson - Philip Hetrick & Stephen
Woolley, Commissioners of Highways of the Town of Eden."

It appearing to the Court that the said defendants Henry McPherson and Philip Petrick were duly served with process of Summons in this cause more than ten days before the present term of this Court, and that the appearance of the said Stephens Wooley has been entered by Bushnell and Gray his attorneys, and it further appearing to the Court that said defendants have filed herein a demurrer to said Bill,

this day this cause came on to be heard upon the bill of said complainant, and the demurrer of said defendants, and it appearing to the Court that an Injunction had been issued out of and under the Seal of this Court, by which said Injunction the said defendants, Commissioners of highways of the Town of Edgewood and their successors in office were enjoined and commanded that they and each of them do absolutely and entirely desist from proceeding to open a road over and through the North East quarter of Section number twenty five in Township thirty two North of Range One East of the Third Principal Meridian until they and each of them do appear and fully answer the said complainant's Bill and the said Court make other order to the contrary, and it further appearing to the Court that said complainant was and is the owner of the said North East Quarter of said Section twenty five, and it further appearing to the Court that the matters and things in the said Bill contained, are good and sufficient in law to call the said defendants in question in this Court for the same and that there is not cause

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of demurrer thereto and that there is in
said Bill matters of Equity wherein this Court
can grant a decree, and give the said Com-
plainant relief and assistance against the said
defendants, the said demurrer of said defend-
ants to said Bill is overruled, and the said
defendants having been ordered by rule of this
Court, to file their answer herein instantly, and
the said defendants having failed to file
any answer herein in pursuance of said
rule, but made default, and said Bill
is ordered to be taken for confessed, and It
is therefore hereby ordered, adjudged and
decreed that the said Injunction heretofore
issued be made perpetual, and that said
defendants, commissioners of the Town of Eden
aforesaid and their Successors in office be
forever restrained from proceeding in any man-
ner to open the said Road ^{east.} over, across or
through the said North ~~West~~ quarter of said
Section twenty five (25), in Township thirty two
North of Range One East of the Third Prin-
cipal Meridian,, —

State of Illinois & I John F. Clark Clerk of the
 said County of Illinois County and State do hereby certify
 that the above and foregoing comprises a true full
 perfect and complete record of all the papers on file
 and the orders of court in the said cause of *Wm*
Heldridge vs The Road Commissioners of the Town of
Eden 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 County
 at Ottawa this 14th day of April A.D. 1859
 J. F. Clark

Assignment of Errors.

- And now come the said Henry McPherson
 Philip Heluck & Stephen Wooley, plaintiffs
 in error, and say that in the record and
 proceedings aforesaid, there is manifest error,
 and that the decree aforesaid should be
 wholly reversed therefore, and show to
 the Court here the following errors, viz:
- 1st The Court below erred in overruling the
 motion of the plaintiffs in error, to dismiss
 the writ of Complaint of the defendants, in
 error, for want of equity in said writ, and
 to dissolve said injunction for the same cause.
 - 2^d The Court below erred in overruling
 the demurrer of the plaintiffs in error
 to said writ of Complaint.
 - 3 And for other error in said record.
- Olivier C. Gray.
 Atty. Geo. J. Helffs. in error.

and now come the said defendant in
 error Ada Holdridge says that in the re-
 cord of said proceedings of said then
 is no error as assigned by said plaintiffs
 except for the facts of Glover Cook & Campbell
 Assgt. of error
 Filed April 23, 1860
 L. Deland
 Clerk

Solicitors for said
 Holdridge

173 38-46
 Peace Commissioners
 of Town of Eden

Ada Holdridge

Record & assgt
 of error -

Filed April 13, 1859
 L. Deland
 Clerk

Filed April 13, 1859



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 judgments of a plea which was in the Circuit Court of La Salle County, before the Judge thereof, between Asa Haldridge

plaintiff, and George M. Newton, George Fitzes
and, Enos Well Commissioners of Highways
of the Town of Vermillion

defendant; it is said manifest error hath intervened, to the injury of the aforesaid defendants

as we are informed by their complainant — and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaints aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 23 day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty

L. Leland

Clerk of the Supreme Court.
by J. B. Rice Deputy

George W. Newton
Attal,

No.

vs.

Asa Holdridge

WRIT OF ERROR.

~~This writ of Error is made a~~
~~Supersedeas, and as such is to be~~
~~obeyed by all concerned.~~

~~L. Leland~~

~~Clerk.~~

FILED

March 23^d

A. D. 1860

L. Leland

Clerk.

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

HARVEY McPHERSON, *et al.*, }
vs. }
ASA HOLDRIDGE.

POINTS FOR DEFENDANT.

1. No legal notice was ever given to said Holdridge that said Commissioners intended to lay out any road whatever.

abstracts page 8

2. No legal notice was ever given him that said Commissioners intended to assess his damages thereon, and no opportunity was ever given him of being heard on the subject.

abs. page 5.

8 Verm 389.

2. English 390

3. Ill. Chp. 186.

16. Barb 392

25. " 635.

3. After said appeal was taken, and the time and place of the meeting of said Supervisors fixed, and the said Commissioners and three of said petitioners notified thereof, said Supervisors did not meet at such time and place, and did not take any action whatever upon said appeal.

abs. page 4.

4. Said time of hearing said appeal was not at any time adjourned.

abs. page 4

5. When said Supervisors did finally act upon said appeal, they had no jurisdiction over the subject matter, for the following reasons:

1. They gave said appellants no notice whatever of the time and place of meeting.

2. They did not meet in the town where said road was situated.

3. They did not personally examine said road.

4. They did not meet at or near the line of said road.

22 Dec 478.

GLOVER, COOK & CAMPBELL,
Attorneys for said Defendant.

08. 246. 4
A. Plerson wal

v

Asa Holdridge

Points for Deft
in Error

Filed Apr 26. 1860

L. Leland

Clark

1 Courts will interfere by injunction to prevent public officers from exercising what they claim to be a public right &c

x 15 Ill 399 -

4 Johns Chy 53.

12 B Monroe 610

7 Smead v. Hallam 568 -

1 V Esey 188

x 13 Howard 518 -

2 Storgis Equity

x 13 Ill 169 -

x 18 " 293. Chaffin v. Morgan

2 Jurisdiction of Commissioners of Highways must can only arise from a strict compliance with Statute

x 2 Helm 184. & 429.

1 Scam 323.

x 22 Ill 478.

4 Hill 86.

3 Johns Cars 107.

3 Greens v. Barker 340.

16 Johns 7.

4 Bin 116.

1 Cowper 26.

1 East 64.

1 Burr 377.

3 This Compliance must appear & materially appear on the face of the proceedings

11 Ill 636.	2 Ala 253.
6 Wheat 119.	2b 689.
3 Pet Chy 28.	3 " 287.

4 Our proceedings of Com m^{rs} do not show it -

~~They did not comply with section~~

Section one was not complied with

Sec 2. was not complied with

Sec 3 was not complied with -

8 Verne 389.

16 Barb 392.

2 English 390.

25 " 685.

3 Ill chy 186.

~~Sec 6. was not complied with~~

Sec 6. was not complied with

Supervisors acts void -
appeal duly made & c
no appearance at the time
none since then

No notice of the meeting in ver-
million & therefore the case
comes precisely within 22 Dec 478

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 judgments of a plea which was in the Circuit Courts of La Salle County, before the Judge thereof, between Asa Holdridge

plaintiff, and Henry McPherson, Philip Hetrick & Stephen Wooley Road Commissioners of the town of Eden County of La Salle & State of Illinois

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

as we are informed by their complaints the record and proceedings of which said judgments 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 Asa Holdridge

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

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 22 day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

38 La Salle

Henry McPherson et al

No. 38 vs.

Asa Holdridge

SCIRE FACIAS.

FILED April 24 A. D. 1860

L. Leland

Clerk.

Served this writ by reading
thereunto the within
named Asa Holdridge this
th 7th day of April A.D. 1860

J. Warner atty

Secy RA 60 By W B Hall Cpy

20 m 100

1,600 C. Gray
Att'y for Piffin Ena



State of Illinois Supreme Court
Third Grand Division
April Term 1860-

Harvey McPherson et al
Commissioners of Highways
of The Town of Eden

vs

Asa Holbridge

Argument
of Sft in
Error -

The Record in this case shows that the Sft in Error filed a Bill in the Court below praying for an injunction against Pltffs in error to restrain them from opening a certain Road therein described. The injunction was granted, and the Pltffs in error filed a demurrer to the Bill, moved to dissolve the injunction for want of equity in the Bill, the Court overruled the demurrer, Pltffs in Error abided by the ~~demurrer~~ and a decree was entered making the injunction perpetual. Pltffs bring the case here by writ of error and allege as

reasons why the decree was im-
proper

1st That the Court ought not
to interfere by injunction to pre-
vent a simple trespass.

This is undoubtedly the law,
but the injunction was not gran-
ted to prevent a simple trespass
it was to prevent the ~~attempts~~
exercise of what was claimed to
be a public right, on the part of
the Highway Commissioners and which
if exercised ~~would~~ without
right would cause an irre-
mediable injury to the complain-
ant below, his property would
be taken from against his will
and contrary to law, his fields
would be thrown open to the
devastation of cattle, which
he must either suffer from or
be at the expense of fencing a-
long the line of the road.
What remedy at law could
he have for these injuries?

The law is well settled that
public officers who are threaten-
ing to do an ~~act~~ as unlawful

act as such public officer under
a claim of public right may be
restrained by injunction -

13 Howard 518 -

12 B. Monroe 610 - Dudley v Frankfurt

15 Dec 399. Smith vs Bangs -

7 Smedes Marshall 568 -

4 Johns Chy 53 -

22 Vesey 188 -

The second reason urged why the
decree below was improper ~~was~~ is
that ~~there was~~ the proceedings of
the Commissioners ^{were} ~~was~~ according
to law and that their order
for opening the road was con-
firmed by the Supervisors to
whom the same was appealed -
whereas we insist on the behalf
of Defendant in Error that

The acts of the Commissioners
and those of the Supervisors
were illegal & therefore a nullity
and that the acts of the Super-
visors in confirming the order
of Commissioners were illegal
& therefore a nullity

~~+ The Commissioners in order to gain any jurisdiction of the question must~~

1 The jurisdiction of the commissioners if they have any must arise under the provisions of Article 24 of Chapter 104 of the Statutes of Illinois and these provisions being in derogation of the common law must have been strictly complied with

16. John 7. 2. Gilman 184 + 429

4. Bin 116. 1. Seaman 323.

1. Cowper 26. 4. Hill 86.

1. East 64. 3. John Cases 107.

3. Green's D. R. 340. 1. Burr 377-

This compliance must affirmatively appear in the records of the proceedings required to be filed in the office of the Town clerk

2. Ala 253.

6. Wheat 119.

2b 689.

11. Ill 636.

3. Ala 287.

5. Pet. C. R. 28.

The Order of the Commissioners set out on page 1. of the

abstract, ^{only} shows that an appli-
cation of 12. legal voters residing
within 3. miles of the proposed
road was made to them,
for aught that appears of rec=
ord this application may have
been oral not in the ~~shape~~
form of a petition as requir=
ed by law, it does not ap=
pear to have been in writing
and the court will not pre=
sume that it was, hence
the first section of said
Article 24. was not complied
with.

The order further states that
"a copy of the petition having
been ^{duly} posted as required by law"
etc and this is all that ap=
pears to show that three cop=
ies of the very petition presen=
ted to the Commissioners on
this occasion were posted in
three of the most public pla=
ces in the Town 20. days be=
fore the said order was pas=
sed and is entirely insuff=
icient for that purpose.

The commissioners are not for the purposes of this case the judges as to whether the law had been complied with, they are bound to certify the fact and then this court can determine whether the law has been complied with, this comes precisely within the ruling of the court in the case of *Rip v Croke* 1. Cowper 26. see also *Gilbert v Columbia Turnpike Co* 3. John Cas. 107-

The fact not appearing this court will not presume that due notice was given because the Commissioners thought so especially when the Bill distinctly alleges that such notice was not given

Hence see abstract page 5-

The second section of the Act was not complied with -

The Bill also states, page 5. of abstract, that said commissioners of Highways gave Dft in error no notice of the time or place when or where they would meet and view his

lands, or when and where
they would ~~must~~ determine
the damages for the location
of said over and across the
same. And Plaintiffs in
Error say that no such no-
tice is required by law -

To this we answer that Sec-
tion three of said Article 24-
says "The Commissioners shall
hear any reasons that may
be offered for or against the
proposed road, that is they
shall give those whose inter-
ests are to be affected an
opportunity of being heard
and this implies that he
shall have notice of the
time and place of such
hearing, of what avail would
this requirement of the statute,
that is so properly careful of
the rights of the different parties
to be affected, be if its object
could be defeated by collu-
sion between the Commission-
ers and a few of the voters of
the Town? or by the negligence of
Commissioners

McKim v Mason 3 Illd Chy Dec. 186,
De Baum & Mayon of Ill. 16 Barb 392 -
~~Washburn & Hudson v R.R. Co. Archer & Paige 83.~~
~~Oakley v The Trustees of Mrs. Bay 6 Paige 262~~
~~Beltznap v Beltznap 2 Johns Chy 463.~~
~~Farrin v Lewis 4 Wayne & Craig 249.~~
~~And this Court in the case of~~
~~Smith v Bangs 15 Ill 399.~~
~~has done the exact doctrine we~~
~~claim & says "A Court of Equity has~~
~~jurisdiction to interfere by injunction~~
25 Barb our 635 -
22 Ill 478 -

and the principle of law that a person can not be deprived of his property or have any of his rights affected without due notice of the same and a right to be heard is too well settled to need argument here -

The posting up of copies of the petition if it had been done as required by law would not be notice to Holdridge of the time when and the place where the Commissioners would hear him upon the question as to whether the prayer of the same should be granted, it would only notify him that such petition would be presented to them and that they would probably meet ^{at} some ~~where~~ place in the Town during the ten days reconsider the question and he could not be bound to watch at the door of each of the three Commissioners of the Town day and night for the whole

ten days or lose his right to
avail himself of his right to
be heard, to establish such
a doctrine would illegitimately pro-
tect the rights of private property.
Therefore we insist that since
Section 3. ~~was~~^{was} not complied with.

Section 6 - of said Article 24. pro-
vides that unless the Commis-
sioners can agree with the dif-
ferent owners of land as to the
damages sustained by them
they shall assess the same to
the order of the Commissioners
set out on page 2. of a bill
shows that they could not so as-
sess the damages of ~~say in error~~
and the allegations of the
bill page 3. of a bill shows
that he had no notice whatever
of the time when and place
where said Commissioners would
meet to make such assessment.
And the Court will observe that
this assessment is not neces-
sarily to be made at the same
time or place where or where they
decide upon the petition itself.

and may be done at any time after the Commissioners have determined to open the road, ~~now if the posted copies of the petition in accordance with section 2 could be construed into a constraint and unless they are bound to give the parties notice of the time and place of hearing this question they might shadow the commissioners with the most acute detectives for months and then when their patience was completely worn out have the question determined without their knowledge I do not believe the law contemplates such a result - and therefore insist that section 6. was not complied with -~~

And for each of the above reasons the action of the Commissioners was and is ~~an~~ nullity ~~and~~

II.

The action of the Supervisors in affirming the supposed order of the Commissioners was also entirely illegal and therefore a nullity -

Defendant in error and one Bullock took an appeal in writing from the order of the Commissioners, under the provisions of Section 8. of said article 24 - and to John Gray Supervisor of La Salle, William Paul Supervisor of Peru and Domingo Deland Supervisor of Towa; in accordance with section of said Article 24 - they notified each of said supervisors thereof and thereafter said Supervisors fixed upon the 17th day of April as the time and The School House in Tonica in said Town of Eden as the place where they would hear the appeal, Appellants then in accordance with section 11. of said Article 24. gave notice ^{in writing} of said time and place of said meeting appeal to each

of said Commissioners and upon
the said petitioners eight days
before the same said time -

But on said 17th day of April
none of said Supervisors ap=
peared at the place appoint=
ed nor did they assemble
any where or take any action
whatever upon said appeal
nor adjourn the hearing of it
to any other place or time
And they have never since
then assembled at any place
within said town to take
any action upon said ap=
peal, nor have appellants
nor been notified that they
would ever meet at any
other time or place to take
any action thereon -

Now then is it injustice that
the supposed order of the Com=
missioners has ever been con=
firmed by them?

It is insisted by ^{complainant} Plaintiff in er=
ror in his argument that two
of said Supervisors John Gray
and George Deland associa=
ted

Ted with themselves Joel Ann-
Strong Supervisor of Danbury
and on the 26th day of July
affirmed the appeal, and
that their order shows that
~~due notice had been given~~ of
they met "in pursuance of ~~due~~
~~notice~~ previous notice duly
given" But the Bill alleges
that this meeting took place
in the Town of Vermillion at
a distance from the line of
this road and more than
three months after the 17th
day of April ~~which was~~ the
day set for the hearing of the
appeal, that the Appellants
had no notice whatever that
they ~~so~~ intended to meet at
said time and place, that
the meeting was for the purpose
of disposing of an entirely dif-
ferent appeal which had
been taken to said Super-
visor from the laying of some
road in ~~that~~ ^{the} Town of Ver-
million and not for the pur-
pose of disposing of the appeal

of the Defendant in error, that
after said remission appeal
was disposed of, said Super-
visors undertook to dispose of the
appeal of Deft in error and
then and there pass the order
set out on page 5. of Abstract
and by which it is gravely in-
justice Deft is bound.

If the mere statement of facts
were not sufficient, argument
were necessary to show the ut-
ter insufficiency of an order
so passed a case could not
be found that afforded a bet-
ter opportunity - but I shall
content myself by referring
the Court to a case recently
decided by it and reported
in the 22. Ill 478 - where this
court have passed upon this
very question and say with
regard to the action of the Super-
visors then "when they made their
order dismissing the appeal and
adjourned without a further
intention of again meeting to
for the consideration of the case

the proceeding was at an end,
they could not in future meet
and act on the Appeal, un-
less the time and place of
meeting were again agreed
on and notices again ser-
ved &c."

So in this case when the
Superiorons failed to meet at
the time and place appoint-
ed and of which all parties
concerned had due notice
they lost all jurisdiction of
the subject matter, and had
no authority of their own mo-
tion, to meet in another
Town ~~at a long time~~ after
three months thereafter and
all this with any notice
whatever to any of the par-
ties interested, and thus
undertake to determine
the question. And if they at-
tempt so to do, their action
would be entirely unauthor-
ized and their order in op-
erative and void.

W. B. Campbell
for Deft in Error

W. P. Henson (38) 40

Holdridge

Points for
dye in
Error

The Points herein are
also for the consideration
of the Court in
No 114

Camp Lee