No. 14747

Supreme Court of Illinois

Waterman

---

vs.

Raymond

71641 7

STATE OF . NOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 126

J. W. Middleton & Co., Stationers, 196 Lake St.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

APRIL TERM THEREOF, A. D. 1864.

MINARD L. WATERMAN,
Plaintiff in Error,
vs.
REUBEN RAYMOND, WHO SUES FOR HIMSELF, AS WELL AS FOR THE COUNTY OF GRUNDY,
Defendant in Error.
} *Error to Kendall County.*

ABSTRACT OF RECORD.

11 This was an action of debt under the statute for obstructing a public highway, and was tried before Justice Grant and a jury of six men Oct. 18th, 1860, and verdict and judgment against defendant below for twenty-three dollars, for debt and costs of suit, taxed at twenty-three dollars and eighty-three cents.

6 The complaint was in these words, viz:

"STATE OF ILLINOIS, } ss. Action of Debt. Debt $52.00.
GRUNDY COUNTY, }

"REUBEN RAYMOND, as well for himself as the County,
vs.
MINARD WATERMAN.

"Before Colquohorn Grant, Justice of the Peace.

7 "The complaint of Reuben Raymond, who hereby makes it known that the said Minard Waterman did, before the 26th day of September, A. D. 1860, and during said year A. D. 1860, obstruct a public road by encroaching upon or fencing the same up where it passes along the section line on the west side of section No. 20, in township No. 34,

range No. 6, east of the 3d principal meridian, in said county of Grundy. The said obstructions being a fence and other obstructions placed in the said road by said defendant where it passes the west half of the south-west quarter of said section. The said complainant further alleges that, on the day an year aforesaid, said obstructions so placed in said road by said defendant were still kept up and maintained by the said defendant, to the great injury of the travelling public, and that Isaac W. Brown, a justice of the peace within and for said township and county, on the day and year aforesaid, in pursuance of law, ordered the said Minard Waterman to remove the said obstructions so by him placed in said public road; yet the said defendant hath not yet removed the said obstructions, but ever since the said 26th day of September and each and every day since hath suffered the same to remain in said public road, and the same are now in said public road, to the great injury of the travelling public. For which the said defendant hath forfeited the sum of fifty-two dollars, recoverable in an action of debt, one-half to this complainant, and the other half to the said county of Grundy. The
8 complainant therefore prays that a summons in debt may issue against the said Minard Waterman, as well for the use and benefit of this complainant as the said county, returnable according to law.

"October 10th, 1860.

"REUBEN RAYMOND."

Summons issued Oct. 10th, 1860, and served on defendant Oct. 11th, 1860.

13 Appeal taken Oct. 22d, 1860, by the defendant below to the circuit court of Grundy county, and appeal bond filed therein 29th Oct. 1861.

15 Change of venue, upon the petition of defendant below, from the circuit court of Grundy county to the circuit court of Kendall county.

22 Tried at the January term, A. D. 1864, before the Hon. R. G. Montony, judge, and a jury, at the circuit court of Kendall county, and verdict against defendant below as follows, viz: "We, the jury, find the defendant guilty, and find the debt in favor of the plaintiff against the defendant in the sum of ten dollars."

The defendant below then and there moved the court for a new trial. The court overruled said motion, and the defendant then and there excepted to the ruling of the court in overruling said motion for a new trial.

The defendant below then and there moved the court in arrest of judgment. The court overruled said motion, and to the decision of the court in overruling said motion the defendant then and there excepted.

22 The court then rendered judgment upon said verdict as follows, viz: "It is therefore considered by the court that the plaintiff have and recover of and from said defendant said sum of ten dollars, and that he have execution therefor."

23 The defendant below then and there moved the court to apportion the costs herein under the statute, and thereupon the court ordered that the plaintiff below pay eight twenty-thirds, and the defendant below fifteen twenty-thirds of all the costs herein, and to the decision of the court in that behalf the defendant below then and there excepted.

March 5th, 1864.

24 *Bill of Exceptions* filed by defendant below, which is as follows, viz:

That is to say,

STATE OF ILLINOIS, } In Circuit Court thereof, January Term thereof,
KENDALL COUNTY. } A. D. 1860.

REUBEN RAYMOND, who sues for himself, as well as for the County of Grundy,
vs.
MINARD L. WATERMAN. } *Appeal.*

Be it remembered, that, on the trial of this cause, the plaintiff, to maintain the issues on his part, called Thomas Loughead as a witness, who, being first duly sworn, testified as follows: I reside in Morris, Grundy county, State of Illinois. I lived on section 17, town 34, N., range 6 east of the 3d P. M., in 1841 or 1842. George ~~Brown~~ Brower was patentee of the W. ½ of 17. I occupied the W. ½ of sect. 17 from 1842 to 1848. I was one of the original viewers to locate the road in controversy. I was appointed by the county commissioner's court of Grundy county. Warren and ~~Dr. Curtis~~ & Curtis of Morris were the other viewers. Warren was the surveyor. On the west side of 17 we considered the line. We took the west side of the ditch for the center of the road. We located the road on the section lines. We saw the Government mound on the section corner, on the S. W. ¼ of sec. 20, and that was the center of the road. I have seen a mound on the W. line of sec. 20. I don't remember seeing the center mound at that time, but I have seen it. We, viewers, laid this road on a straight line with the ditch and the mound at the S. W. corner of section 20. I understood it to be. Waterman came on to 20 after the road was laid out, about 1850, and
25 occupied an 80 acre tract; before that it was occupied by Stephens. Waterman fenced it first on his west line in 1852. I suppose he left

out the road. The road was laid out 50 feet wide, and I suppose Waterman fenced out 50 feet. During the time I lived there, there was no dispute. I was commissioner, and we worked the road, but not as low down as Waterman's fence. Work was done on the road on sec. 17, and it was travelled. I saw the center mound 2 or 3 times, helping to find where to put fence. As far as I could judge it was a straight line. I know, by standing on the mound and sighting through, the mound at the south-west corner of sec. 20 was visible after the road was laid out. The school-house was put there since I left. I have been at the
25 S. W. corner of sec. 20 two or three times since I left. I never saw a mound at the N. W. corner of sec. 20. The reason why we laid the road on the west line of the ditch was, because we could not find it. I examined for the corner a number of times in 1840 or 1841. There was a ditch made on the W. line of sec. 17 before I came into the State, in 1840.

Thomvs Loughead, Cross Examined.—In 1840 I owned part of sec. 17; range of trees can't be taken accurately; was planted in 1842; road was traveled west of the trees, on 17 and 20. Perkins planted hedge fence on sec. 18, on east side of N. E. 1-4 of sec. 18, reaching the N. E. corner of N. E. 1-4 of sec. 18, almost 1850.. We laid it in 1847. I have seen the school corner after the fence was built. When road was made, west end of 18 was vacant land, shrubbery extended up to where fence was torn down. Waterman's fence torn down, not quite 1-2 mile; stumps are there; cannot testify now as to the location of Mound, it is now obliterated. Speaking of school house mound, I employed Thomas Henry to run off. We then found School House Mound, running from there, struck on edge of ditch; which edge I do not know; a part 19 I owned, and sold a part of 18; was run by Henry, and this was the time we found the School House Mound. What work I know of being done on road, was on west line of sec. 17, when township organization was first in force; would find himself squeezed in at Raymond's, &c; about room enough for two wagons.

Direct examination of Thos. Loughead resumed. I don't know much about Raymond, but I know that he had fence further west than it is now. The center of the road was the west breaking of the ditch I fenced; commenced on line of 18.

Edson Gifford, being sworn, says: I reside at Lisbon; know defendant Waterman; 8 miles from him; known him 15 years; know he has lived on Sec. 20.

William Stephen, being sworn, says: I reside at Big Grove; I owned
27 part of sec. 20, now owned by Waterman; was living on 20 in '37 or '38; the mound was visible and plain at that time; water would be around it; the mound was in a sort of a basin; took notice, because I

expected to improve the land. Brown, I and Cook, went over; stakes were in N. W. of 17, south-west corner of 17 and N. W. corner of 20. (I think) we ranghed through from the 3 corners between 17 and 18 and 19 and 20; we staked it on 19 and 20; we staked it on a straight line. I went down and I did not think the stake was right; I was on high ground; the ground was lower ground where I pointed him to; I put stakes at the monument, and picketed straight through. Waterman wanted me to go down to the corner; which suggested it, I don't know; I said he was claiming land west of what I did.

27 *John Loughead* being sworn, says: I lived on 17, town 34; lived there 22 years; know the ditch; I was one of the petitioners for the road, failed in getting surveyor, and there was a petition against it. Road was west of ditch; I have nothing definite in mind on S. W. 1-4 of 20, whether we found it or not; we set the compass and looked north along the ditch and line of trees, and we found that to range with the ditch within 3 or 4 rods of school house. I don't know the corner on N. E. of 17; I did know the mound on the N. W. of 17, called the Knox corner. In making survey in 1847, found 1-2 section mound in sec. 8; on NW. corner of 17 was 1-2 section mound at school house; found some others south of 20; did not notice anything that it was not a straight line along the line in question; know of Waterman building a fence there, down on S. W. of 20; the track that we travelled south, was some places 5 or 8 rods from line, on account of wet land.

28 On his cross examination, John Loughead said, I could not tell whether the moud was inside Raymond's or not.

James Thompson being sworn, says: I reside at Nettle Creek, T. 34, line on N. E. of sec. 19; I know about where the N. W. corner of sec. 20; know ditch on west line of sec. 17; knew School House Corner before Waterman built fence; I put up fence about 12 years ago, on east side 19; corner of school house was always visible; I staked over ditch; set three stakes on ditch, and others, and one on Bob Thompson's slough, and then ranged and set my fence 25 feet from that; from my making my fence it was straight. Waterman's fence was moved west into the road, about half way, and then moved it east, and then moved it back. After Waterman moved his fence, there was not room for wagons. Waterman, when he was path-master, said he would move road into my land, because Gray was going to take my hedge. I have noticed post holes ~~often~~ after Waterman's fence was moved; the land between old post holes and new fence had been cultivated by Waterman. There is a bridge west of my hedge, made I think by Waterman when path-master. Think Waterman's fence was right across the bridge. I worked in the turnpike. Waterman's boys worked on road opposite where his old barn stood.

29 On his cross examination, James Thompson said: I feel interested and have feeling; want the fence as Raymond wants it. Raymond has shut up the old public travel.

Direct examination of James Thompson resumed.—*Explanation.*—I did not wish the jury to understand that the fence was moved 15 rods west, but south, towards his own (Mr. Waterman's) house; extended it 15 rods south, into the road; whether the centre of the road or not, I do not know across the bridge, running along the road.

Cross examination of James Thompson, resumed.—I have 80 acres; have nearly 80 acres inside my enclosure; I think the road was thrown up before the fence was cut down. We met last night to compare ideas.

George Bullis being duly sworn, says: I live in Nettle Creek on sec. 8, Grundy County. I know SW. corner of sec. 20, knew it 14 years. There was a "dish hole"; in that hole was a mound and one stake 2 or 3 feet long; another, some 6 feet,—I suppose to range by, or same thing. Road was turnpiked about 7 years ago. I passed there while they were working on the road. They covered the mound. Think mound was a little on the E. side of turnpike. Raymond was path-master at the time. Waterman's fence was E. of there. The west side of the ditch was not. Fence was put up 7 years ago this coming spring. Raymond owned that adjoining land. Turnpike was so that two wagons could pass. No bridge there. Waterman's fence was moved since he first set it; was moved west into the road at the SW. corner of sec. 20, and it ranged through; it was about 20 feet. It has been moved 2 or 3 times. The fence I speak of is the fence he put up since the commissioners took the fence out of the road. I examined the old post holes of fence between him and Gray on east of Waterman's. Waterman's fence had been moved west; had been moved west some 40 feet; had been broken up and cultivated by Waterman before the fence was moved. Old road was traveled ever since I knew anything about it,—about 14 years, and Waterman's road was traveled by public don't know how long.

30 On the cross examination, George Bullis said: Raymond fenced about seven years ago. In a wet time they used to travel a beaten track on Raymond's land (open) which Raymond has fenced in. I was path-master. Mound in SW. of 20, was a little on the east side of the pike. Marcy is on sec. 30. There was a gate 47 feet from the old original mound. I think I could now go within four feet of the mound. There has never been two different pikes to my knowledge. I have seen the School House Mound and Grave Yard Mound, or what they called a mound. There is a stone, but I don't know that it is the centre of mound. Waterman ownes W. 1-2, SW. 1-4, 20. The north end of his fence, I don't know of being a mound. (Here shows plat.)

Direct examination resumed. There is a Grave Yard Mound—not a regular mound there. but a stone stuck there. There is a ditch on west line of 17, about 3-4 of a mile. (By the jury.) There were no figures on short stakes.

William Winterbottom being sworn, says: I know that Waterman had
31 said fence at SW. 1-4 20, five or six years ago, when I first saw the fence. When I first went there, two wagons could pass easily. When I next saw it it was narrow—two wagons could not pass—do not know whether Waterman's fence had been moved. Waterman's land was fenced at E. and W. side, but do not know as to south side. There was change in fence on east side of Waterman's. I think in 1859 he moved fence west. Land was cultivated when they moved the fence.

On his cross examination, Wm. Winterbottom said: It was the east line of Waterman's fence which was changed in 1859.

O. C. Massey being sworn, says: I was party in the trespass suit,—Highway commissioner Aylesworth was another. I reside at Nettle Creek, on sec. 35, Knox corner, SW of 20; 20 was one of the first sections entered by John Gray in 1837 or '38. Was a stake stuck at 17 and 20 on SW. 17 and SW. 20 on 1-2 mile 20, and 1-2 mile in SW. 20 was a stake in a low place of ground, in a sort of basin, in spring filled up with water. Was a government mound—stake was in it. Holderman's land was between 5 and 6. Road runs from there to 17 on the north-west corner of 17; thence to south-west 17; then down to school house, then through to We started by
32 the south-west corner of 20, and run road. At that time, we stuck a black walnut scantling in the mound in south-west 20. (2 by 4 or 4 by 4,) was a bur oak stake there, is pretty much decayed at this time. That stake remained there until I was elected commissioner.

Had conversation with Waterman—Waterman said stake (scantling) got up or was pulled up for safe keeping—I think I have traveled through all roads in Nettle Creek town. Waterman's fence was east of where the road is now—there was no fence on west side then in '59—think Waterman built his fence on north corner and then made a jog west and built post and rail. South fence set in to the road about 15 feet, and other corner remained back; was there when dug ditch; trees dead; ditch made some time before, mounds and ditch seen nearly in a straight line, on that line they built a bridge; on 17 there was a slough came down there before I was commissioner. I built a new turnpike before there were any suits; on the SW of 20 and NW 17 were always visible corners; I took up the bridge and moved it east. Waterman's fence was 15 or 16 feet on the road; fence remained there all that summer till June, year after, was surveyed by Henry, Ewer and Wilson. Ewer made his

survey 2 or 3 years ago; Wilson same year. Henry 5 years ago. SW cor. sect. 20, where Henry surveyed it for the town, the stakes was gone; I put in a stone there, north of corner; could not keep it in the corner. When Ewer surveyed it I put in a lime stone in the corner, saw both
33 stones then in the turnpike. I dug down, I put a stone in SW 20 and NW 17 and at school House. Waterman's fence that stood in the road there I took down 4 years ago last June, he set his fence back 25 feet, he then notified me to move Gray's fence back that was about 3 feet in the road; I told him that Gray had a right to keep his fence in the road to make a hedge. Waterman's fence remained there from spring to winter, the posts were cut down; he then moved it back east in '60 I think. Waterman said he had the scantling, and had me go back and set in original cor. SW 20. We disagreed where he wanted me to put it was further west then I thought right, and I did not set it or any.— Ground began to elevate from there. Building the turnpike filled up the basin. I have known the SW. cor. of 20 there 20 years. Before Waterman moved his fence was plenty of room. After could not pass in wet weather; the dispute with Waterman was before I was commissioner. I tried to settle this dispute with Waterman. I tried to buy land of Waterman in dispute. Hoge lives on sec. 21, the NW cor. 21 and NE cor. of 20 are good; cor. SE 21 is a mound but not SW. Have ranged from SE of 21 to SW of 20; they are in a line. SE of 21 is called Hoge's corner.

In his cross examination C. C. Massey, said:

Waterman's fence was taken down 3 times by authorities; one of these times since I have been at Morris, in '59 or '60, cut down. Taken down first time in June, from 17 to 20 1859, then he had left 15 or 16 feet for road; north corner was not in the road. When Henry and I surveyed was in '58. I know the south west corner of 32; no dispute about that, all parties agree. Know the ½ sec. corner of 17 on west line no dispute about SW corner of 29 but very little difference; the ditch runs along the south ½ of 17 same ditch spoken of. Locust trees on embankment, stumps are there visible; the line from ½ sec. corner 17 to SW corner of 32 line not quite straight. Bridge on 17, one on 20, one on 29, one on 20, moved east 15 or 20 feet; same day fence was taken down. Raymonds fence was put there since this trouble about, the road had a fence more than 40 feet west and moved it east. Thompson's fence is further east than Trench's, not over 5 feet; from 4 to 5 feet.— Trench's fence tallies with ½ sec. cor. of 17, I never saw any corner on SW corner of 21. Know SW cor. 28 and 33 and SW 16 those mounds. I put a stone at SW cor. 17, there was a stake. Original mound was destroyed and scattered. Mound has not been visible for 14 or 15 years prior to this survey, but stakes had been there. I went to see Waterman and Waterman said he had the scantling in Blacksmith shop for safe keeping; there was a floor in the attachment to the Blacksmith shop; just as certain of this as any thing that I have sworn to.

Direct examination resumed:

Have traveled west of ditch, never was travel east of the ditch. I was present at the survey and went along the line with Aylesworth, the county surveyor was there. The fence set on the road at that time in 1859.

Doctor Lemuel Ewens being sworn says: I resided in Mazon, Grundy county; I was county surveyor 2 years; commenced in Nov. '57.

I made a survey for commissioners in June or July—29 July, '59, it was a survey of a road. Road commenced at a point called Holderman's lane between sec. 5 and 6, the plat I hold is the original that I made. I filed it, this plat, by direction of the commissioners with the town clerk of this town as in this plat; I made my survey under directions of the commissioners, (for a copy of this plat, see page 35 record,)

36 Minutes and plat of a survey of a road in the township thirty-four, range six, east of the third P. M., made by me this twenty-ninth day of July, A. D. 1859, as follows:

Commencing at the north east corner of section six, township thirty-four, Range six east of the third P. M., at a point formerly known as Holderman's Lane, thence south 80.40 chains, variation 6 deg. 30 m to the north west corner of sec. eight. Thence south eighty chains and sixty one links (80.61) variation 6 deg. 45 m. to the north west corner of sec. seventeen (17,) thence south, va. 6 deg. 50 m., eighty chains and twenty-six links (80.26) to the north west corner of section twenty (20) thence south 6 deg. 30 m. eighty chains and eight links (80.08) to the north west corner of sec. twenty-nine (29) which corner is thirty-five links east of the corners set forth in the Records of the county surveyor, made by Thomas Henry, and dated May 23d, 1849, and seventy links east (70) of a survey made by George Keirsted, and recorded on page 13 of the record dated Aug. 7th, 1851, and fifty-seven links east of a survey made by me and recorded June 25th 1859; thence south variation six degrees and thirty-five minutes (6 deg. 35 m.) eighty chains and ninety-four links (80.94) to the north west corner of section thirty-two (32) no mound found here. Thence south variation six degrees and twenty-five minutes (6 deg. 25 m.) thirty-nine chains and sixty-eight links (39,68) to the half section named on the east line of section thirty-one, (31) mound and ditch found plain and were marked by a stake.

Thence south variation six degrees and twenty-five minutes [6 deg.

25 m.] forty chains thirteen links [40.13] to the SW corner of section thirty-two [32] mound plain.

The above is a correct plat of said road together with the lands adjoining as therein set forth.

SAMUEL EWENS,
County Surveyor of Grundy County, Ill.

37 Minutes and plat of a re-survey of a road in township thirty-four, Range six east of the third P. M., as follows, to wit: Commencing at the half section mound on the north line of section twenty-nine. Thence south variation six degrees and thirty minutes (6 deg. 30 min.;) distance eighty chains and sixty-one and one-half links (80 61½,) to the half section mound on the south line of sec. twenty-nine (29) then south variation six degrees and forty-five minutes (6 deg. 45 min.;) distance seventy-nine chains and ninety links (79 90,) to the half section mound on the south line of section thirty-two (32) and more fully set forth in the plat, which is a correct representation of said road as surveyed by me, this twenty-ninth day of July A. D. 1859.

SAMUEL EWENS,
County Surveyor of of Grundy County, Ill.

I hereby certify that the foregoing is a correct copy of plat of survey of Holderman and Mud Creek Road, surveyed July 29, 1859, now on record in my office. Given under my hand this 10th day of Oct. A. D. 1863.

MORGAN L. LLOYD,
Town Clerk of the Town of Nettle Creek, County of Grundy.

38 John Gray was with me—Mr. Loughead.—The only point of dispute was at the SW cor of section 20. I commenced at Holderman's Lane. We went down what was known as Holderman's Lane, one mile to NW corner section 8; the bearing between the points at NW corner section 5 and NW corner sec 8, was 6 deg. 30 min. east; there was a mound and ditch there; between section 7 and 8, to NW corner of section 17, there was a mound; the distance was 80 chains and 40 links, the variation 6 deg. 45 min.; then 80 chains 43 links south to the NW corner of section 20, variation 6 deg. 50 min. I think there we tried to get a line through 20, and went back one mile; then through between 7 and 18, distance 17.22 chains; there was a well defined mound; we went along south along the county line where we found a mound plain without survey; shows Govt. mark: then east 72 chains 53 links, variation 6 deg. 15 min., this was in exact accordance with our original minutes; came out exactly to the stone, at or near end of ditch; then surveyed due east 6 deg. 30 min. from stone between section 17 and 18, distance 80 chains 13 links; the distance of Government notes were not accu-

rate; then we took our instruments and went away. Next at SE corner
38 of section 20; mound obliterated. A few days before I surveyed for Waterman. Waterman brought a man that knew all about the corner, then went to this corner, and the commissioners did not doubt the Cor. SE corner of section 20; there was a fence north and south, and east and west; then went ½ mile down and came to mound between 29 and 28; then went west 1 mile through center of section 29; there put tempo-
39 rary stake; then went south from that point ½ mile and found nothing that would show mound; ½ mile further run within rod east of a mound, run one mile at a variation of 6 deg. 25 min.; set instrument on the southwest corner of 32, went north to ½ section, 6 deg. 25 min.; went through ½ mile and came to temporary stake; went back, stuck stake to mark SW corner section 29 back to stake, variation 6 deg. 03 min., there was very near in a line trees on the ditch. While I was at SW corner of section 32, we went west 72 chains 43 links to county line; went back to NW corner section 31, measuring 72 chains 75 links, bearing 6 deg. 15 min.; at that distance fixed staff permanently at SW corner section 29; ran a straight line at middle of 29, half way between, had a pole stuck up at NW of 20, and ran it (the stake) distance between SW corner 29 to SW corner of 20, 80 chains 94 links; measured distance from that corner to NW corner section 20, 80 chains 8 links; came back to county line on the SW, between 19 to SW of 20, distance 17.22; corresponded nearly with original field notes. All fractional sections; went 80 chains between 29 and 20, 1 mile to mound that Waterman and Devare told me was the Government mound; then went one mile east between 21 and 28, variation 6 deg. 15 min. After fixing up a stone, ran 6 deg. 30 min. from NW corner of section 20 to SW corner of section 20, fixing the stake to the center of turnpike; from thence to s.w. corner of section 24, 6 deg 35 min. Section 20 was 13 links too large. I was employed by Waterman to survey not longer than two weeks previous to this survey. I started from s. c. corner of 20; then S. half mile; Waterman carried flag and stuck it up at corner of fence. Fence was
40 between 20 and 21. Was a fence east and west part way across 29. Cattle had beaten down. Saw mound and stake about 3 rods east of corner; said to Waterman, what's that? Waterman said he knew all about that; that it came in the night; was on time—when the sun went down was not there—in the morning it came. The mound bore the marks of Government mound. Told him it was the Government mound; he said if he had only known this, I could have saved you a good deal of trouble. I have been on the west line of twenty. I have never found any local attraction there as far as I ever knew, none whatever. We supposed that the line of the road was at the east of the trees. There was a fence on the west side of pike, but not on the east side; ditch and stakes to continue the line would have run off, then would have come to the trees.

On the cross examination Dr. Ewens said: I made two surveys; did not tally; my instrument was perfect, nearly new. Afterwards sold to McBride; was in as good condition except as to the center pin; needle was not as highly magnitized then. All agreed upon the n. w. cor. of section 20. I do recollect, independant of the paper, about the mound. I swore Darveau as to the s. e. corner of section 20. My records would show, if I had them, the evidence of Darveau. Witness says, upon being shown another paper, I was mistaken. I am out half
41 mile too far north. When I could set my compass on a known mound, I knew it to be correct, and that the variations could be noted without any trouble. I know that Waterman told me that was the true corner. Mr. Waterman told me that he wanted to have the corner just right, cut where it would; the line between 17 and 18, 20 and 21, 29 and 30, 31 and 32, is deflected, not straight. West line of the town is a straight line, as straight as men usually work and call it straight. Mathewson and McBride did point out those points to me last term, but Mathewson I never saw before that time. After I had established the s. w. corner of section 20, I swore Massey.

Direct Examination Resumed.—The corner I surveyed for the commissioners was thirty-five links (north, or east,) of what I established for Waterman.

Cross Examination Resumed.—Mr. Waterman appeared to be very anxious to have it done right, and I did not think he would deceive me or himself. I did not make the survey till after the fence was torn down.

Isaac W. Brown, being sworn, says: I live in the town of Nettle Creek, on sec. 34. Was a justice of the peace there. (Looks at notice.) I went out in the spring of 1852. I served a correct copy of this notice on Waterman, on the 26th of Sept., 1860. There was a little conversa-
23 tion in '62. Waterman, after getting his horse shod, took me out, and admitted that the road ran through low ground at S. W. 20. Looked north; did not see ditch. Nothing said about petition; but asked if it would not be better for the public to have road running in higher land.

On his cross-examination, I. W. Brown said: No fence at either side, nor at S. W. corner.

Robert Wilson, being duly sworn, says: I reside at Ottawa. I am a school-teacher. My occupation has been surveyor since 1851. I surveyed a line between 17 and 18, 19 and 20, 29 and 30, 31 and 32. Made it for William Willing, said to be a commissioner, 17th of Sept. 1860. Willing was there, surveyor, Commissioners Massey and Jno. Gray. Judge Harris was there at first. The first enquiry I made at Ottawa, when Willing called, was as to the difficulty. Told me 'twas S. W. of 20; was taken to N. W. cor. 17; was a stake; was no ditch

there; commenced at N. W. cor. 17 and run to N. W. cor. 32, marked by a stone. My purpose in running that line was to establish the latitude of the corners. The reason I run this was that those lines are made by running n. and s., line cors. vary; made by full measurement 80 chains. In this way I compared with Government minutes. I found the distance to be 58 lks. in excess of one measurement, having placed stakes as I run south at each qr. cor., I corrected these by equalizing after fixing latitude that was to find deflection, if any; s. w. being in controversy, I wished to find two cors., one east and one west of it. We went to s. e. of 21, ran west; there were three or four stones round the stake; run west, finding nothing to mark a corner, 121 chains and eight links; then found there these stakes and mound; brought me on half section line of 20, on s. line. I continued west to township line, agreeing with Government notes at the s. w. of 19; there I corrected the stakes for latitude, giving the n. w. 19 and 20 by field notes, as I had them. S. w. of 20 was on middle of turnpike. Then fixing s. w. of 29, ran from s. w. of thirty eastward to 1-4 corner on s. line of 29. I was satisfied I found the mound, distance being three links short, the distance of the 1-½ miles corresponded with the government distance. The stake at the s. w. 30 was to deflect from, between 31 and 32 I set a flag and lat. s. w. of 32 and my compass for ranging at 1-4 cor. 32. I found the line pass west of the mound 6 links was to n. w. of 19; ran e. to n. w. of 20, found that distance to a stone ten links too long. Stone was at a ditch at s. w. of 17. Had run previously n. w. of 20 eastward 1-2 mile to quarter cor. This is my survey. Left a stone at s. w. 20; on s. line of 17, 19 and 21 I ran whole distance; at 21 I found a pile of stone and stake in them. It gave 19 what it called for. The turnpike at s. w. 20 was a basin, with gentle slope, road crossing lengthwise. I went and set flag on west line of 17, and found the line on west edge of ditch and s. w. 20; it was a straight line. This is my report and plat as I returned it to William Willing, the commissioner. (For plat see page 44, record.)

To the Commissioners of Highways of the town of Nettle Creek:

I hereby report the following survey to establish the line of a certain road, a portion of it between two points, viz: Between the north-west corner of section 17, town 34, range 6 east, and the south-west corner of sec. 32 in same town and range. Those two points having been kept up, I commenced at the north-west corner of sec. 17, and run a straight line south to the south-west corner of sec. 32, the whole distance being four miles and fifty six links. At 40 chains and 16 links from starting point found stone set some 4 links east of straight line, at 81,20 chains found a stone said to be a section corner to sec. 17, 18, 19 and 20. This corner is some 6 links west of an old ditch, by many said to be close on the

east of said line. At the quarter section corners between sections 31 and 32, I found a faint though very well defined ditch—mound dug up—dist. from south-west corner of 32, 40,06 chains. I then set section corner to sections. 29, 30, 31 and 32, 80,12 chains from south-west corner to 33 and 32, and corner to 19, 20, 29 and 30, at 80,12 from last named corner, and then proceeded to test these corners by running east and west lines from range line. I set then at the distance from range line and quarter's section's corners east, marked on the accompanying map, to which I refer you for further particulars. I believe the above named map to be a correct representation of said line as originally made and established by me.

46 *Robert Wilson*, Surveyor, on his cross examination, said: Had a compass, I found a stake or stone that was dug out of the ground; was shown to me by a man; found stone between 18 and 19; think there was a hedge near to it. At north-west corner 20, was a stone set; at ¼ corner between 19 and 20 being School House corner, was a stone. I fixed the stake a little west of the stone. Found nothing at south-west of 20. At a ¼ corner of 29, found none. South-west of 29, nothing. Quarter's corner between 31 and 32 well established, mound bearing 6 deg. 29 min. Used a compass, did not rely wholly on the needle. Set the stakes equi-distant 40 ch. 12 links, giving each their proportion of excess. Found Massey, Gray. Started at a ¼ corner that they showed me ¼ corner 21—ditch, stone and mound on ¼ corner 21. Nothing on S. W. 20. Fonnd stake, but no mound on S. W. 19. Field notes were handed to me by Massey. Henry made them, from SE. 21 to ¼ corner of S. line 20, too long by 1 ch. and 5 links. Paid no attention to it. On ¼ corner of sec. 29 was a stake driven over much, and a place where a ditch might have been.

Direct Examination Resumed—At ¼ cor. W. line of 20, a mound was pointed out to me as a government mound, called here Grave Yard corner. In making government survey, &c., notes indicated that the mound south belonged to the other township. I have always found the government distances in fractional sections. Correct (Plats of surveyors to go to the jury on both sides.)

47 *Wm. McFarlarm* being duly sworn, says: I reside in Morris; did live on SW. 1-4 of 18, Nettle creek; lived there 8 years. There has been a mark of a corner ever since I went there. It was on the west line of the ditch. There was about a mile of fence in spring 1853. Year before Waterman put up fence on west line of 20, ½ mile to the SW. corner of his 80 and up to School House corner. Gray fenced there 2 or 2 years after. Gray's fence was a little west of Waterman's. Fence where Waterman put it up was proper or considered to be. Gray's fence was

a little west of corner. Waterman's original fence was in range with
47 the fences above—perhaps 15 or 20 rods of the fence remained there;
(the north part) was more on the south part. South part of the original
fence was board fence. SW. corner was pretty close to the ditch on east
side of the turnpike. the original fence would be 15 or 20 rods from
center of turnpike at SW. 20, where Ewer put his stone. Gray did not
fence back by about 6 feet. Knew when Ewer put his stake at SW.
corner of 20. Waterman's fence was moved. The ground where the
fence stood had to be plowed and fence taken up to make a turnpike.
Was put up west after that same season; was taken up and put up again
still further west. I think in 1859 or '60 was cut down by Commission-
ers. Massey was there, and I think no other commissioner. There was
a ½ mile north, the people went to piece off. Waterman had a fence on
west line. SE. corner of 20 was quite a mud hole. After Mr. Gray
fenced up, we had to go through there, there was no other way. (Here
48 witness showed a sort of plat on brown paper.) Fence stood there that
same season of suit commenced at Morris, and at the time of the trial of
this suit at Morris. First post was taken up by Commissioners, and
Waterman then put it up a rod west. Fence was torn down before any
turnpike was made. There was a piece of turnpike on west side of 20.
Culvert, at Raymond's house was moved the same day the fence was
torn down. There was a bridge at Thompson's slough, through McFar-
lan's slough, and one at Waterman's.

R. Aylesworth, being sworn, says: I reside in the town of Nettle Creek, on section 18. Lived there since '55. Was highway commissioner. Was present at one survey of Ewer. Was present when he set his stake in s. w. 1-4 of 20, little east of center of road. Waterman's fence was afterwards moved several times. Fence was moved first when that turnpike was made. Fence was in the way of making turnpike, and was moved to make it. Waterman's fence stood there four years ago; last summer it stood in the center of turnpike. Before the commencement of this suit before J. P. fence was w. of the turnpike. I was witness before J. P. The turnpike was then in Waterman's enclosure. I was present when Waterman's son and hired man were moving fence west.

John Gray, being sworn, says: I reside in T. 34, sec. 20, from '36 to
49 now. Am patentee of the sec. 20, in Nettle Creek. Have lived on
that section since 1837, town 7, 80 acres of that section now. In the fall
of '36 I arrived in Chicago; stopped there about 3 months. In the fall
I employed Ives to survey the whole town, 34, for me. He surveyed
there 2 weeks; and this way I became familiar with mounds. Next
year I got L. H. Rood to survey the section 20 by itself. Secs. 17 and
20 was entered at the same time. All the mounds on secs. 17 and 20
on w. line, now brows are visible. A year or two after patenting,

employed a man to build a ditch. Mounds were distinct. The graveyard corner mound visible. Up 1-2 mile mound visible. N. w. 17 mound visible. Ditch was made so as to leave center of mound w. of edge of ditch (6 or 8, or 12 inches,); ditch came down to corner of 17, along w. of 20. The two mounds were visible, at school house was visible. When I put up my fence that mound at school house I calculated to leave the full 25 feet for road. Waterman's fence stood 4 feet east. Waterman set fence right there. The mound in s. w. of 20 was peculiar—mound was in a dish, was an inclined plane running up towards west on sec 20, 3 mounds on north, 3 on s., &c. The mounds had been surveyed by government survey. Was kind of flat; could tell by the ditch. By the side of it were stakes, but burned. S. w. 20 I measured from mound to mound. When Waterman put up his fence
50 in '54 or '55 he drew a furrow from mound to mound, to set fence by on 1-4 sec. cor., on sec. 20. I pointed out mound. He had his full 80. I was not present when road was located; saw stakes; ditch in center of road. The road was located making ditch center of road and the west line of sec. 20, width on each side 20 feet. Road was on a straight line, and old government mounds were straight from n. of 17 to s. of 32 by the eye. Know government mound at n. e. cor. of 20. At s. e. of 20 I did know government mound, but it has been lost many years. At s. e. of 21 I have known mound great many years; could go to it now; 1-4 cornering 29 there. Have known it since 1836. Same mound as Wilson found a rotten stake in. Wilson's survey located the mounds exactly or very near. Was with Wilson when he put his stake on s. w. cor. of 20, and that was where the government mound was. Waterman fenced out full 25 feet for road. Waterman's fence has been moved by highway commissioners twice; once in '59; remained down till 1860; was standing on highway 15 feet last time fence was put; was pretty much on the west line of turnpike, 18 or 20 feet from where it originally stood; was moved in 1860. Waterman was there. Fence was standing there at time of the suit. Was present at Ewen's survey of s. w. cor. of 20. His stake was put on s. w. cor. of 20. It was 47 feet west of government mound. Took in Thompson's hedge and all ditches and fences in the town. They did not start from the n. e. of 20 when the fences were put up. The people travelled in the road. When Waterman put up his fence last, there was but 12 feet between fences at s. e. 29. I know the corner and the mound. Road, as originally fenced out by Waterman and others, was worked. There were bridges and turnpike. I know of Waterman when commissioner, working on the Thompson bridge; work was done between 19 and 20, and up to the school house. I have taken an active part in this controversy.

51 C. C. Massy, recalled.—I went to Waterman's house and told him to work on the road and move the fence. Waterman said, he knew his fence was in the road; said that I might take out fence and then he could defend himself.

The plaintiff then introduced in evidence a certified copy of the record of Grundy County Commissioners' Court, of the laying out of the road in controversy and plat of the same as follows, to-wit:

STATE OF ILLINOIS, }
Grundy County. } ss.

At a regular session of the County Commissioners' Court of said county, began and held at the Court House in Morris, in said county, on Monday the seventh day of September in the year of our Lord One Thousand Eight Hundred and Forty-six:

Present—Jacob Claypool, Andrew Kinsloe, James Cronan, Com.
PATRICK KELLY, *Deputy Sheriff.*
Attest: GEORGE H. KIERSTEAD, *Clerk.*

52 Be it remembered, that at the September meeting, A. D. 1846, of the County Commissioners' Court of said county the following proceedings were had, to-wit:

TUESDAY, September 8, 1846.

Road Petition. The Court have this day had under consideration a petition of John Curtis and others, praying the appointment of viewers to view and locate a county road, "commencing at the south end of Holderman's lane, on the north line of Grundy county, thence south five miles, thence to the Illinois river on the nearest and most eligible route, crossing the same at or near Horrom's or Bunch's landing; thence to the middle of the north line of section four, Township 32, Range 6; thence south through the center of Section 16, T. 32. R. 6, to the road leading from Morris to the county line in the direction of Mud Creek." And the Court being fully advised in the premises, do order and consider Leander Newport, Isaac Hoge and Orville Cone be appointed said viewers, and that they report herein at the next term of this court. Provided that the clerk issue no notice to said viewers authorizing said examination until the sum of twenty dollars be deposited with said clerk as provided by law.

And afterwards, to-wit, at the December term, A. D. 1846, of the said County Commissioners' Court, the following proceedings were had, to-wit:

MONDAY, Dec. 7, 1846.

In the matter of Road No. 27. Time to report extended. It is ordered by the court that Leander Newport, Isaac Hoge and Orville Cone, who were, at the last regular term of this court, appointed viewers to view and examine a route for a road from Holderman's Lane the road leading from Morris to Mud Creek, be allowed to report concerning the same at the next term of this court.

53 And afterwards, at the March term 1847 of the said court the following proceedings were had, to-wit:

Time to report on Road No. 27 continued.

It is ordered by the court that Leander Newport, Isaac Hoge and Orville Cone, who were, at the September term for the year 1846, of this court, appointed viewers to view and examine a route for a road from Holderman's Lane to the road leading from Morris to Mud Creek, be allowed to report concerning the same at the next term of this court.

And afterwards, at the June term, 1847, of said court, the following proceedings were had, to-wit:

MONDAY, June 7, 1847.

Re-appointment of viewers on Road No. 27, &c. T. Loughhead, J. Antis, E. Warren.

It is ordered by the court, that Thomas Loughead, John Antis and Ezekiel Warren, be appointed viewers to view and examine the route for a certain road, authorized to be viewed at the September term of this court for the year A. D. 1846, in the place of Leander Newport, Isaac Hoge and Orville Cone, and that the time to report on said road be extended to the next term of this court.

54 And afterwards, at the September term, 1847, of said court, the following proceedings were had, viz:

MONDAY, Sept. 6, 1847.

Road No. 27 established.

Ezekiel Warren, John Antis and Thomas Loughead, viewers appointed at the last term of this court to locate a certain road, number 27, this day filed their report and plat of said road, which report is in the words and figures following, to-wit:

STATE OF ILLINOIS, } ss.
GRUNDY COUNTY, }

The undersigned viewers appointed by the County Commissioners of Grundy County, at their June term 1847, to view, survey, and locate a county road, commencing at the south end of Holdermen's lane, running south five miles; thence south to the Illinois river at or near Horrom's or Bunch's Landing; thence south through the center of section 16, T. 32 and 6 to the road leading from Morris to the county line in the direction of Mud Creek, herewith report that they have viewed the same, and caused it to be surveyed by E. Warren, a plat of which survey is herewith submitted, and that we do report favorable to the establishment of said road according to the survey thereof.

E. WARREN,
JOHN ANTIS,
THOMAS LOUGHEAD, } *Viewers.*

September 4, 1847.

And the court being fully advised of and concerning the premises in relation to the said road No. 27, do order that said road be permanently established as a county road, fifty feet in width.

55 And afterwards, on the second day of the said term, the following other proceedings were had, viz:

It is ordered by the court that the following persons receive the sums to their names severally set forth, it being for their service in surveying and locating road No. 27.

Thomas Loughead, Viewer, 3 days,	$3 00
John Antis, " "	3 00
Ezekiel Warren, " "	3 00
Ezekiel Warren, Surveying and Platting,	6 00
Henderson Barrach, Chainman, 1 day,	75
Charles Doty, " "	75
Harvey Hyslop, " "	75
Timothy Horrom and Team, 1 day,	2 00

And it is further ordered that the above named persons severally receive orders on the treasurer for the above mentioned sums.

STATE OF ILLINOIS, }
GRUNDY COUNTY, } ss.

I, Samuel B. Thomas, Clerk of the County Court within and for said county and State, do hereby certify the foregoing to be a full and complete record of the recorded proceedings had in relation to the laying out of road No. 27, as appears by the record in my office.

{ L. L. } Witness my hand and the seal of said Court at Morris in said County and State, this 7th day of April 1863.

{ 10c. Int. Rev. }

SAMUEL B. THOMAS, County Clerk.

58 Minutes and plat of a resurvey of a road in township 34, range 6 E. of the 3d P. M., made by me this 29th day of July A. D. 1859, as follows, (For plat see pages 56 and 57 record :) Commencing at the NE. cor. of sec. 6, T. 34, range 6 east of the 3d P. M., at a point formerly known as Holderman's lane; thence S. 80,40 chains; variations 6 deg. 30 min., to the NW. corner of section 8; thence S 80 chains and 61 links—(80.61); variation 6 deg. 45 min. to the NW. corner of sec. 17 (17); thence south, variation 6 deg. 50 min., 80 chains and 26 links, (80. 26) to the NW. corner of section twenty (20); thence south, variation 6 deg. 30 min., 80 chains and 8 links (80.8) to the NW. corner of sec. twenty-nine (29), which corner is 35 links east of the corner, as set forth in the records of the County Surveyor, made by Thomas Henry, and dated May 29th 1849, and seventy (70) links east of survey made

by George Kiersted, and recorded on page 13 of the record, dated Aug. 7, 1851, and 57 links east of a survey made by me and recorded June 25th 1859; thence south, variation 6 deg. 35 min. (6.35), 80 chains and 94 links (80,94) to the NW. corner of sec. thirty-two (32); no mound found here. Thence south, variation 6 deg. 25 min. (6.25), 39 chains and 68 links to the half-section mound on the east line of section thirty-one (31), mound and ditch found plain and well marked by a stake; thence south, variation 6 deg. 25 min. (6.25), 40 chains and 13 links to the SW. corner of section thirty-two (32); mound plain.

The above is a correct plat of said road, together with the land adjoining as therein set forth.

SAMUEL EWERS,
County Surveyor of Grundy County, Ill.

59 The plaintiff also introduced in evidence the plat and report of the survey of the road in controversy made by Ewers, surveyor for Highway Commissioners of Nettle Creek, also the plat and report of Wilson, surveyor. (Suevey and plat of Ewers will be found on page 57, Record.)

Here the plaintiff rested his case.

The defendant then called as a witness George H. Kiersted, who was duly sworn, and testified as follows:

George H. Keirsted.—I live in Morris; I am a surveyor; have been County Surveyor of Grundy Co., I have been a surveyor since 1842, and have made six or more surveys in the town of Nettle Creek.

I am acquainted somewhat with section 20.

I made a survey for Waterman to locate his fence there. I started at the 1-4 corner on the south side of sec. 20. It appeared to me to be a government mound. I have but little doubt of it. I ran north at 7 deg. or 7 1-2 degs. I pursued this line through the section north, and found the qr. corner on the north side of sec. 20; from there west I could not see any mound there; my chaining came out on the west side of where the surveyors established at grave yard corner. I came out a rod west of the stone. Then I ran south about half mile to the qr. corner of sec. 20. I sent for a scythe and mowed around and found a mound indistinct; I put in a stake, a white oak stake, and left it about 15 inches above ground.

Then I went south to the SW corner of sec. 20, and found a mound and put a stake there. I took the bearing from the School House corner at 6 deg. I stuck a soft wood stick--basswood or cotton wood, at the SW cor. of sec. 20. Two years after that, I was called on to survey some roads along sec. 17; went along out the qr. cor. on the north side of sec. 20, was the same as in my former survey. I found no mound on the s. e. cor. of sec. 20. All we surveyors agree in the corner at sec. 32. There was local attraction; we traveled along and found a variation of the needle; we dropped the needle about every half mile, and the variation was at least from 30 m. to 55 m. McBride & Matthewson, went to the school house corner and started at 6 deg., they had dug about a foot from my stake. I told them where to dig, at the place I supposed I had placed my stake. They dug where I indicated and found my stake. Matthewson had a first class transit instrument. Ewen's instrument was not in adjustment. Thompson's hedge stands 8 or 9 feet west of grave yard stone. I saw the point where Matthewson and McBride found corner on s. w. of 20. cor. was right and on gov't mound. assuming the corners made to be right it would be on Waterman's land 25 feet and over. Measuring from the school house fence it would be 25 feet to the center of mound. There was a mound in s. w. cor. of township, and mound east; then north another called the Darveau; think we found mound s. e. of 29, and mound s. w. of 29.

On his cross-examination George H. Kiersted said, grave yard cor. I
61 did not find; I put in a long stake of soft wood; there was a turnpike on east of that. Matthewson & McBride make their corners there, some 50 or 60 links due west ran a tangental line by pickets. Brought us west of s. w. qr. 32.

Artemus J. Matthewson, being sworn, says: I am a surveyor. Have been engaged since '31-'32. Have surveyed many of canal lands. Have surveyed at Nettle Creek, fall of 1859, for Waterman. Began at s. e. of 32; ran random to east 1-4 cor. line of 32. We sat stakes, beginning at a point; continued north on that line to point near n. e. cor. of 32. No doubt about those corners. Continued the course of the last half mile by stake and transit directly, running into the fields to the Darveau corner. From Darveau corner next 1-2 mile we found no corner. Before I ran this mile we had run west to the range line; then came back to n. e. cor. of 31; corrected and hunted for the corner north on the town line; found the corner; then fixed a point and hunted for the 1-4 corner on the n. line of 32; then ran on the east line of 29; continued n. in Gray's field to n. line of sec. 20; looked for a cor.; found a stake standing perhaps 2 or 3 chains; fell west of corner think over 2 chains; set stakes; went to the stone at n. e. cor. of 17; ran s. at about 1-2 mile 40 chs. and 22 links; found 1-4 cor. on east of 17; continued

south to of 20; came out near fence at a point 22 lks. west of where
62 we saw stakes stand; dug and found an old stake near a fence—black walnut; ran west; went to n. e. corner of sec. 28. New pike is east. Waterman called for a new survey. I went with McBride next year before the litigation at Morris. Four rods south is a foot and 10-100. I could not see from 1-4 corner, between sec. 17 and 18, to grave yard corner; there was a high piece of land. Don't think ditch runs straight; it is difficult to mark a ditch straight. 1-4 sec. corner on south line of 17 is 25 feet east of the east fence. Locusts stand on the n. w. corner of sec. 5. I have looked for mound and have never been able to find a mound. North line of township overruns government field notes 2 chs. 10 lks. Difficult to find a mound on north line of township; it was plowed over. We also ran in La Salle county, perhaps 3 or 4 miles, n. and s., and e. and w. found a bow or bend. Were in La Salle county the first time of surveying. I was doing work for Cook, and Waterman wanted me to do some surveying for him; said he was in trouble or doubt. It took me from 3 to 5 days; may be over 4 days. There had been breaking done about one year between s. w. 1-4, west of 29, and 1-4 cor. 30 in the hollow. We pursued the line across south of creek. Furrow run to bluff. In running south of w. cor. 20 1-4 corner on west line of 29 we found an old travelled track, crossing our track sometimes
63 on the left and sometimes on the right. Near this line we found one or two places, little dishes, culverts there. There is an old pike at the school house at s. w. corner of 20. One line runs top of the old pike. Raymond fenced into the road; that stone west of Thompson's house at n. w. side of 20. Thompson's hedge is 9 feet west of Kiersted's old corner. Kiersted corner is 19½ links w. of Wilson's, 11 inches of Henry's corner. I had an opinion that stone was too far east. All the travel appears to be on the line I made on the s. w. corner of 20. When we got this stake out it would fall apart; had the appearance of being one stake, and soft wood. The dirt had worked in and I split it. It was old and rotten. Saw that it had been sharpened with an axe. Might have been basswood or poplar, or maple, old and soft; softness appeared to be from nature of the wood. Might have been hard, and rotted soft. I think I found s. w. corner of sec. 20; have no doubt about its being the government corner. By my survey sec. 19 falls short, and sections 20 and 21 overrun extensively. Where I put my stake for s. w. 20, was west of where my survey made the corner. If my line is right, the north end of Waterman's fence, say at school house corner, would be 26 or 27 feet east of Kiersted's corner, on the east side of the road at s. w. corner. Noticed the fence on west side at s. w. corner of sec. 20 bearing s. 76½ deg., e. 83½ lks.; stone at or near the pike;
64 another stone we found there: stone set, which is near the center of pike, 62 lks. n. of Matthewson's corner, and 8 links west of Wilson's corner; set by this another corner. Stand at Kiersted's corner and look

n. would require a stick 16 or 20 feet long to picket. Made map this winter. Made a plat at the time of survey; made the offsets at every ½ mile. Known mounds are of greater importance than surveys. I commenced at s. w. corner of sec. 32. I went back a piece, to ascertain before going into the disputed work, from the n. e. corner of sec. 29. I called on Gray, and others said it was the corner.

Mr. John Gray, Hoge and Dix were examined as to corner. Dix disagreed with Gray and Hoge. I and McBride started, Dix thought it was east of where I was. I could not say, but think I do recollect now something about the brick. Dix had got puzzled some way. Dix evidently had got excited, could not reconcile it; something might have trampled on it; we had to dig for brick; my impression is, I commenced at a distance from the Hoge corner east. I think McBride commenced from brick and stone corner; think measured next between two stones, 79 chains and 95 links; from Hoge's corner 8 chains 27 links—McBride—I think it would run west of the ditch, the point that we started from on S. line of 19 to s.w. corner of 20, was less than Govt. notes called for. McBride established his corner at s. w. corner 20, past where I had; found no other stakes at s.w. corner of 20; dug around east, &c.

Direct Examination Resumed.—It is very seldom Govt. notes are correct.

65 Rob't. Wilson recalled by plaintiff.—By sighting the instrument to get a level over the place, I should set the instrument on the ground, say south and sight north. The rule is that all good surveyors would run the lines the way they were originally made.

W McBride, being sworn, says: I am surveyor of Grundy county since 1848; surveyed Nettle Creek. In spring of 1860 Waterman wanted me to make a survey—mentioned Massey—wanted to know where we were going. Matthewson came to Massey on street; Massey said he would take me up. We went up with Massey; went down to Grays; went out to the n.e. corner of section 20; looked for corner; seemed to be 2 points, Hoge's corner and Brick-dust corner. Matthewson wanted Dix sworn. Matthewson wanted Hoge sworn. Their statements was contradictory; noted the difference between the 2 points. Next went up to 18; went there prejudiced against Waterman and was careful. I noted the difference to grave-yard stone; then n.; then ¼ corner to w. side of 17, back to grave-yard corner, then back; went to ¼ corner on s. side of 18; not able to find any there on range line; then to School House Corner; then continued that course, same bearing; then on east side of section 2, nothing found; then question came up about n.e. corner of 20, went to n. Dix said he thought he could give

us a point more definitely. We did some digging at the other corner; think Dix dug some there. Dix thought it ran through Gray's house door; could not find any house; went to s.e. of 20, found a stone corner. Gray thought corner was further east, was not able to find any.
66 We continued that line on half mile to Darveau's corner; then measured west noting our distance; came up on the road; went back after that, back to the corner at s.e. of 29; found a corner there; ran n. to s. e. of 20; random point, came a few inches west of a stone; ran west noting distance up to the ¼ corner of s. side of 20; continued up along s. side of 20, up to s. w. of 19; found point, but not very satisfactory to me, old digging; then turned and measured down to where the corner of 19 ran down and connected one point at s. e. of 20; then between 19 and 30, 1 mile south; then to s.e. of 29, and measured our distance to s.w. of 29, to s.w. of 30; then one mile n.; line s.w. of 30, not very satisfactory; then to s.e. of 28 to test, and measured up to s.e. of 29; then came back; found a zigzag but not regular on road line. Came back making our corrections at s.e. of 18, we set no corner. At s.w. of 20 my calculations came 5 or 6 links east of the Matthewson and Kiersted corner, but I put my corner where Matthewson had. By my survey section 19 fell short and 20 and 21 overrun extensively. I afterwards run out a road on the range line, in the southwest corner of 18; then s. to the s.w. of 30. I added 24 links to make it full 8 links, that gave this entire Govt. distance, except 1 link. About same time I laid out another road on line from s.w. of 18 to School House Corner. I put my corner for the n.w. of 20, 8 feet and a few inches. Govt. distance on that line 72 chains and 20 links. I made it 72 26. I have an old record (old record of Henry offered; ruled out by the court; defendant saves the question.) [The following is a copy of the survey and record of Henry, to-wit:]

Found mound on s. w. cor. of 18 on qr. cor. between 18 and 19; commenced at range line—ranged, did not find mound; made it 72.38 random line to stone. Field notes were 72.20 from township line, to stone was 72.38. Gov't distance was 72.20. I am satisfied the Gov't distance was not correct. Gov't distance would fall short of where the stone is, would be too short. I have run in Grundy County other lands, where all mounds were visible in s. part of Grundy Co., (shows map.) Assume that the line of township is straight which is not correct. Gov't notes show 80 chains 10 links, next mile 80.20, next 80.22 and 80.18, &c., is generally so through the county. Gov't. mound is correct must be extraordinary circumstance. I have often found fraction to run over and fall short; there is no rule for finding last corner laid down. The s. w. cor. is not an essential corner. I know of no definite rule by which a surveyor is to be governed. My opinion is, I would first try Gov't. distance, and if different, would go to the known cor. run random lines, &c. I know the instrument of Ewer. I took it home and examined it. Tried to run some lots; was out of adjustment, center pin very dull, was out of adjustment when I got it; my opinion is that it had not been in adjustment in a good while; was at n. e. with Kiersted in 1861, at n. e. of 20, was with him at grave yard corner. I planted stone at grave yard corner, I know stone, called it the Henry stone. Henry was with me and pointed out the corner at s. e. of 18. Kiersted stone was 7 links west of mine and mine 12 links and some inches w. of grave yard stone, same stone that all the other witnesses have been talking about. When I got to s. w. cor. of 20, I was of opinion that point
69 was some 6 or 7 links E. of point Matthewson proved. I dug for stake and found it. We differed a little, his cor. was a little west of him. We went down to qr. cor. on w. side of 29 and for random pt. there. I think I put in a corner there e. of the stone 6 or 7 links. I think we went s. to s. w. of 29. I was impressed that the corner would be very close to where Matthewson's mound was, thought Matthewson's point was a little too far west. Then west to town line in La Salle County, thought that corner was a little west, I found a corner down, west and found gov't distance did not hold out. I added links enough to make full 80 this was a range line at s. w. of 30 I then was better satisfied that cor. of s. w. 29 was correct. I put a stone in on school house cor. which is 7 feet 3 or 4 inches west of Kiersted's cor. From all circumstances I thought Kiersted was right and I wrong. I became satisfied that my corner at s. e. of 20 was too far east, Kiersted and I went up there. K. ranged along n. and s. a lirtle and said "Mac, you have your corner too far east." This was in 1861, after we examined the Kiersted corner, I dug and found an old stake. After Kiersted ranged n. and s. found a white oak stake. Kiersted described it before, was the same, Kiersted said "set your compass at 6 deg. and run down and you will find nearly corner." Did so, and found that the two corners of Matthewson and

70 Kiersted were correct. Suppose our cor. to be correct. Waterman's fence was not in the road; an old road is west of where the road is now, and would correspond with our surveying *at s. w. of* 20 *might have been* 15 *or* 20, &c. It would leave the old travel about right. Saw ends of Waterman's posts.

On his cross examination, N. McBride said: Variations of compass differ at different times; nine years from now, variations would be but very little different. Variations incline both ways. The general variations would be the best test after getting courses. In N. W. portion of Illinois, the variation is about 2 degs. Whole amounts of variation is west. I placed the corner from Matthewson's testimony, not far from my survey, because it was destroyed and plowed over. My measurement overrun some links. Matthewson's corner would make 20 and 21 overrun more than mine. Run down to SW. of 29, found nothing there. I dug at a point pointed out by Dix; found stones; am not positive about brick. Don't remember measuring from old foundation of Gray's house. I measured the distance from the Hoge to the stone corner. Anderson and French did the chaining. SW. ¼ of 19 remember digging there. SW. corner of 20 was a stone. Was another stone SE. of stone on ¼ corner on south line of 20. I swore Mr. Gray. I do remember about seeing a furrow, think it was east of Matthewson's corner, about 2 rods. I think there were 2 or——sticks standing on a very large mound there, ant hill, or something very much elevated. Sticks were stuck in the ground. Ordinary description of government sticks at 1-4 corner of south line of 20. Mound appeared to be about 20 years old. Furrows ran a little east of south I think.

71 *Direct Examination Resumed.*—This is the same mound Matthewson referred to.

Cross Examinaiion Resumed.—The corner on it east of 20 was west of ditch on east side of road.

J. V. P. French being sworn, says: I live on sec. 18 on NE. ¼. Lived there in June 55. Have lived there ever since. Have chained there. Have taken no part except as chainman on 1st Matthewson survey; 2d think when McBride was there. Waterman was there part of the time, nearly all 1st time. They commenced on T. line on SE. 32; 2d time don't recollect. I know several places at School House Corner. Know the point 25 feet from Kiersted's corner to fence. In '57 and '58 Gray was school director there when fence was put up. Bridge between 17 and 18 at my SE. corner of 18 to SE. corner of 18, 27 links east—27 east of that line. Raymond moved his fence after this difficulty commenced. Moved part of his fence, might be ½ more or less. There was a traveled track inside his fence. Was 40 links from it. Raymond's fence was set out 39 feet. Should think old track was where they claim this corner. There is a pike in the line, took the old track. Raymond's improvements were in reference to the old pike. I think there was a

part of Waterman's fence at school house moved a little east. I think I would have been likely to have taken notice if Waterman had moved his fence so as to have allowed only 12 feet. Before Raymond moved
72 his fence at the school house, I should think there was plenty of room. Did not notice Waterman trying to mislead surveyors. Aylesworth built school house fence in 1858.

Oliver Dix being sworn, says: I live on south ½ of SE. ¼ of 8; own NE. ¼ of 17. Have lived there since '48. ¼ corner on south line of 8, SE. corner of 8. The whole mounds on north side of 8 were visible. The 1 4 corner on east line of 17 and the mound on the SE. corner of 17 was visible at that time; 1-4 corner on west of 17. I was not familiar with them. I recollect the NE. corner of 20, and on the SW. of 20. I went down with Waterman to see about corner, about Waterman's building in '49 or '50. Traveled south considerable after road was laid out. I hauled my rails and posts up that road. The timber road travel went very near road. Nearly all the travel was near the mound. Old line of travel, left. The mound a little on the east. Horses' whiffletrees hit the stakes several times. Stubbed my toe. I was down there last November. There was evidence of the traveled track in field. Old pike ranged as near with present pike as near as you get any,—near SW. of 20. Raymond's fence the whole line from the school house down, was nearly straight. Waterman's fence had not been changed to amount to anything by him. At SE. being a little low and muddy he put in his fence on his own land, are SW. corner of 20, 15 or 20 feet Four or six rods of fence on his own land. This was after his line of fence. There
73 has been no general change in the line of fence along ½ mile of fence. Raymond put his fence out so far that there was no room for travel. Could not have been a hog pen over the mound without my knowing it. Knew Waterman's blacksmith. 30 rods from north was crotches,—boards nailed on,—was to keep the wind out,—no floor. No attachments except what the horses left, and cinders. I knew where the SE. of 17 was, before it was demolished. When fencing, Cook showed me the mound. Fence stood there some 2 or 3 years. My fence was 2 feet east, out end, 1-4 corners of 17. I have known since '58. Waterman wanted me to show him the brick and stone corner. McBride came and I put my foot down and said, somewhere here and about 2 feet from there an oldish pointed stake; and put in brick and stone—either Matthewson or McBride. I did not put it there. Had been travel over it. NW. of 17 in 1850 was visible.

On his cross-examination, O. Dix said: His father married my mother. N. e. cor. of 20. I was examined by McBride. I told them there was about the corner found stake 3 or 4 inches high. They did not find brick and stone there at that time. On the e. line of 20 Hoge's fence was there, not Ewer's. Mound on s. w. corner of 20 was on a lowish piece of ground. Travelled road was to the w. of the mound.

R. R. Peckham, being sworn, says: Live in sec. 8. Ten years ago next April Waterman had built his fence, when I was first there. Don't know where these mounds are, of my own knowledge. I got a hog from Waterman. There was a hog-pen there of 2 or 3 acres towards s.
74 w. of 20. Well was near fence, about 15 feet. The well is about 15 feet from west fence, and about 2 or 3 rods from s. fence. Never knew him to move his fence. Fence could not be moved without my knowing it. I changed works with him every little while. The old pike would be in a range with the old line of travel. Raymond moved his fence about 39 feet. The old turnpike was before they had any law-suit. With reference to the old line of travel, Waterman had left out 25 feet. Has been no substantial change in Waterman's fence till it was cut down. Don't think the north post of Waterman's fence stood east of Gray's fence.

James Anderson, being sworn, says: Live on w. 1-2 of sec. 35, Nettle Creek. I carried chain for McBride with French. Some acquainted with land and old lines of travel; have been for some time. No change in Waterman's line of fence, except on north end of it, till it was cut down. North end 10 or 15 rods set back east from the road. Waterman's fence was east of the travel; should judge 25, 30, or may be 40 feet. No change. From Kiersted's mound and Matthewson & McBride's mound fence never encroached upon the road. Old line of travel would run into Raymond's field at s. w. corner 39 feet. Raymond moved his fence 39 feet east. Waterman's fence and Raymond's fence, as he first made it, would lean 50 feet, and may be more. In s. w. corner was a house and fence. Since controversy commenced fence was moved, and finally house was moved east. Ask Gray what ranged. The school house fence stood 25 feet then, on a line of trees or stumps. Would come on a line of school house corner.

75 *Yale Waterman* being sworn says: Father's fence was set in '52 or '53. I helped set this fence; the mound was visible; stake burnt off; grass was high, low ground, high water covered it. In '51 Kiersted came out and recognized mound and put stake there. I laid down some boards took a square and measured from them 26 feet. School House mound was then visible, between two points was pretty straight, mound remained here about 8 years 'till it was plowed down, saw Reuben Raymond plow it down, saw him do it in '57 or '58; no other mound after that. After Raymond enclosed, his fence set back 25 feet on the west. Raymond extended it about 38 or 39 feet. Raymond's fence was put there in '54 or '55, our fence was put up first. The first traveled track was in range with the 1-4 corner and s.w. of 20, a little more on the west side of mound; drier now being plowed; was there when Kiersted found the mound in '51 or '52, after he measured them he sent for a scythe and mowed and found old stake burned. Set basswood

stake at School House corner. Mowed down and the ditch was visible. Drove a seasoned white oak stake with sledge, and Kiersted adopted this. They told me they found the stake as I told Matthewson and Mc-
76 Bride ; should judge it was the same stake. McFarland has fenced s. on line of road ; had been breaking at the time. Bridges, Stranger put on since this suit commenced ; moved east, carried up to where our fence originally stood. Plowing up made road go east. Bridge moved a little more than its length east. Was with Matthewson when he found mound (not on s.w. 20,) was quite an elevation passed over. Matthewson told me to take a shovel and shovel it out carefully ; struck 3 courses of clay. Matthewson took a pin and found a hole where the stake had rotted out. Was a stake east of that not an old one. We own w. ½ n.e. 1-4 Sec. 29 ; was a track, &c., went down to break, turned up that road since this difficulty. There has been a mound made and some stakes put in ; rotten when put in.

On being cross-examined Yale Waterman said : Has been a controversy about road on the quarter corner of s. line of 20. The west line of ditch ranged with mound.

Yale Waterman recalled by Wheaton : At Wilson's survey, I was not there. I know when Highway Commissioners were there with Ewer in July 1859.

Cross Examined by Gray.—Was not at southwest cor. of 20.

Here the defendant rested his defence.

The plaintiff then introduced the following rebutting testimony :

C. C. Massey recalled by Wheaton : I am not mistaken, and I think
77 I am not. Yale Waterman was at SW. corner of sec. 20, and said he knew once where mound was, but did not know now. Plowing was done in Massey's land. When Raymond plowed he plowed each side of mound, then both together ; fences would have to be moved from SW. of 20, west along 17. Was present when Dix &c. at NE. corner of 20. Mr. Dix was sent for ; dug down where Dix told them and found brick and stones. Dix said he got that corner by ranging through from his 1 4 corner to the old house. Dix said he knew it by the SF. corner of his 1 4 corner and old house, at or about the Matthewson survey. I think they found 15 stakes at SW. corner of sec. 20.

Cross Examined by Gray.—The highest of the stakes were 12 feet from it ; balance 20 or more ; were found before land taken. Do not know when land was taken. Mound was south of Massey's. Morey's fence would be in road, so would Raymond's. Thompson's hedge is in road ; would reach French's fence if he carried it on.

Aylesworth for Plaintiff.—At NE. of 20, I was present with Dix; Dix said, when he or some one else was digging, that was the corner, said he knew by ranging with old house. McBride ranged with the brick and stone corner, and would strike 3 or 4 rods, perhaps of house. Dix said Waterman was with him when he put brick and stone in NE. of 20. I built school house fence; was put from the road not less than a rod, so that a team could be hitched without being in the road.

Dr. Ewers.—I think I was present at s. w. corner of 20. Do not know that question was put to me more than another about running the s. w. corner. Yale Waterman, in substance, said he once knew where the s. w. of 20 corner was, mentioning the time when it was plain and well defined, but could not tell now.

Ques. What is your best recollection of the substance of what Yale Waterman told you about his then knowing the s. w. corner of section 20?

That he did not know the precise spot. He had impressions that it was further west than I had fixed the stake, but was not confident.

I know only where s. w. corner 20 is, from Matthewson's and my own observation. At the time of surveying for Waterman, land was open prairie. The ground in that region was a little higher. As far as plowing goes immediately in this corner, I don't suppose plow ever went over it since grass grew. On the prairie land rises, inclines a little to the south. Grass growing there was common prairie.

Cross Examined by Gray.—My eyes are not better than a level. There would be a difficulty in taking a level by putting instrument immediately in the vicinity. Instrument should be off. Cannot take a level within a rod of instrument.

Simon Fry, called and sworn by plaintiff, said: I was present at Matthewson & McBride's survey in 1860. I know pretty near where s. w. corner of 20 is. Lowest place of ground is not as low east of stake,
79 but lowish flat ground. Tall grass never grows there where Matthewson's corner was, 1-4 corner on s. line of 19. Was present when they were trying to find this corner. Matthewson stopped and dug. They, Matthewson and others, dug up a mound that looked like an original mound, between 19 and 20. Mr. Gray told them where the mound was. Was n. e. of Matthewson's mound. Think Matthewson was sworn by McBride. There was a hole in the mound that I called a crawfish hole. That was the hole that Matthewson swore to. There were many stakes at the s. w. corner of 20 all around. I can't tell about mound and crawfish hole as well as Waterman.

Thompson, called by plaintiff. S. w. 20—was present at Matthewson's and McBride's survey. ground has never been plowed. Ground slopes to the west.

By Gray, for defendant: Can see one furrow there now.

John Gray, recalled by plaintiff.—I know that Raymond did plow up the mound at s. w. 20. There was an original mound 47 feet east. I can't state *it* was plowed up by Raymond. Was present at Matthewson and McBride's survey. Heard Waterman test.

Matthewson corner was never plowed up, ground there was upland prairie. Long grass never grew at Matthewson's corner, it was an elevation, was to the extreme west of long grass. Was present at survey where Dix n. e. of 20, found Dix digging, said, "Dix, what are you digging there for." No answer, he came down to brick and stone. Dix said, sighting through north, "I can swear that the original was to the right or left of my spade handle." We asked Matthewson to go. P. Matthewson refused. Fixed his compass at old house and ranged back. Threw him east. Dix said I put the bricks and stones there and Waterman was present; that was considerable east of the government mound at hf corner on s. line of 19. Yale Waterman dug and Matthewson soon found what I called a craw fish hole and I pointed out the government mound a few rods n. e. of that. Matthewson was particular and took his knife and said cor. was disturbed; said it indicated a gov't mound. I ran something into the hole that was called a craw-fish hole; did not put the rosin weed into the hole until Matthewson had gone; they measured from the crawfish hole and not from the mound pointed out by me.—After the Matthewson survey we looked for stakes at s. w. 20, and examining Matthewson's corner we dug and found many stakes, pretty much west and all around. The Matthewson survey would give me more land. Wilson's survey would give me just right.

80

Here the testimony closed.

All the foregoing witnesses, both for the plaintiff and defendant, were duly sworn before testifying.

This was all the evidence in the case.

81 The court then gave the following instructions for the plaintiff, to the giving of which, and each and every of them, the defendant then and there objected.

The court then and there overruled the said objections of the defendant, and to the opinion of the court in giving said instructions and each and every of them, the said defendant then and there excepted.

1. If the jury believe, from the evidence, that there was an open and public highway on the line described in the complaint, and some time within eighteen months prior to the commencement of this suit, the same was obstructed by fencing, or otherwise by the defendant, Waterman, Given. then the jury should find for the plaintiff, and assess their debt against defendant in a sum not to exceed ten dollars.

2. If the jury believe, from the evidence, that the Highway Commissioners of Nettle Creek, as Highway Commissioners employed Dr. Ewers, then being county surveyor of Grundy county, to survey and fix the boudaries of the road in question, and in pursuance of such employment, and under the direction of said Highway Commissioners, he did survey, and locate, and plat said road, and when such plat was completed and report thereof was approved by the Highway Commissioners Given. of said town, and under the direction of the Highway Commissioners of said town filed the same, together with the minutes and report of survey in the Town Clerk's office of said town, then such plat, minutes, and report so made and filed, is *prima facie* evidence of the location of a road on the line indicated by the survey, and upon the question of the location of the road, or line of the same, the burden of the proof is then upon the defendant to disprove or rebut that *prima facie* case, and if the defendant has not done so far as relates to the line of the road, the jury should find for the plaintiff.

82 3. A public road established by public authority, continues as such until it shall be vacated by like authority, and it does not follow because the Given. public have adopted another and different line of travel voluntarily, that the road established by public authority is abandoned or vacated thereby.

4. The jury are instructed that it is necessary, in the first instance for the plaintiff to show, in order to prove the establishment of the road by the direction of the County Commissioners' Court, is to introduce the order Given. of the County Commissioners' Court establishing the road, and it is not necessary for the plaintiff on that question to go further and show that the previous steps required by the statute had been taken.

6. If there is any discrepancy between the courses and distances, and Given. the monuments mentioned in the survey of the road in question, the monuments must control.

11. If the jury believe from the evidence that the defendant, at or near
63 the southwest corner of 20, the point in controversy, fenced out a road several feet east of the point established by Ewers and Wilson in their surveys, and identified by other witnesses; if the jury believe from the evidence that they did identify and establish the same as the true SW corner of section 20 in town 34, and that defendant so fenced out a road at that point, with the intention that the public should use the same as a public road, and the public accepted the same as such by traveling and repairing it, by proper authorities, then such facts amount to a dedication of a road to the public, and the defendant has no right afterwards to fence on or across the same. Provided: If the jury further believe from the evidence that at the time Waterman built said fence, there was a road laid out on the south end of the west line of section 20, by the public authorities, and that Waterman in building such fence intended only to fence out such public road, then that would rebut the conclusion from that act that he intended thereby to dedicate the road so fenced out to the public for a highway, but is good evidence in the question as to where Waterman regarded the east line of the laid out road to be.

Given.

The said defendant then and there asked the court to give the follow-
84 ing qualifications to the plaintiff's third instruction and the plaintiff's fourth instruction; and to give the same as asked by the defendant, the said court then and there refused; and to the opinion of the court in refusing to give said qualifications to said 3d and 4th instructions of the plaintiff the defendant then and there excepted.

Qualifications to Plaintiff's 3d Instruction.—It is not necessary that the public authorities should vacate a road when once laid, but the public may abandon by "*non user*" and by adopting another and different line of travel, and such adopted road, if proven, and the public acquire a right therein by dedication of the owners of the lands through which it passes, and if the jury believe from the evidence that the public did abandon said road as above stated, and adopted another line of travel as above stated, and acquired right therein, as above stated, by dedication, then said adopted road became a legal highway; and then, if the jury believe from the evidence that Raymond fenced out a road several feet west of the point established by Kiersted, McBride and Matthewson in their survey and identified by other witnesses—if the jury believe from the evidence that they did identify and establish the same as the true s. w. corner of section 20, and that said Raymond so fenced out a road at that point with the intention that the public should use the same as a public road, and that the public accepted the same as such by travelling and working the same by the public authorities, such facts amount to a
85 dedication of a road to the public, but under the qualification given by the court to said plaintiff's instruction.

Refused.

85 *Qualification to the Plaintiff's 4th.*—But, if the jury believe from the evidence that the plaintiff has shown by his own proofs, by the record introduced by him of the original proceedings of the county commissioners, or otherwise, that there was a petition for said road, signed by thirty-five citizens of the county, then the plaintiff must supply such defects, if any, in the record by other proof.

Refused.

~~Given.~~ The said court then gave the following instructions for the defendant. The court refused to give the 6th instruction asked by the defendant; and to the refusal of the court in that behalf the defendant then and there excepted.

1. The jury are instructed as a matter of law in this case that the monuments erected by the original government surveyor upon the land are facts, and that the field notes and plats returned by the original surveyor, indicating course, distance and quantity, are but description, which may to serve to assist in ascertaining those facts.

Given.

86 2. The law makes the lines actually run upon the ground by the original surveyor the true external boundaries of all lands sold by the government, if they can be ascertained by reference to the monuments erected upon the land by the original surveyor.

Given.

3. Established monuments not only serve to show with certainty, the lines of their own tracts upon which they are erected, but may be resorted to in connection with the field notes and other evidences to fix the original location of a monument or line which has become lost or obliterated by time or accident, or design.

Given.

Given. 4. When a section corner is lost, the monuments of the adjacent sections may be resorted to for the purpose of ascertaining where the lost corner was actually put by the original surveyor.

5. The law cannot satisfactorily determine in all cases, whether courses and distances shall govern when they do not correspond. But this must be determined by concurring testimony and the circumstances of each particular case; the one that convinces the judgment most must be selected. But where known monuments are found, they control courses and distances, whether they, the courses and distances, correspond or not.

Given.

Refused. 6. The monuments, if found to have been erected at the two extremities of a township line, are not entitled to a more controlling influence in determining the actual location of the intermediate line, than the section corners established along the line if they can be found, and the

monuments if proven to have been erected at section corners are not entitled to more controlling influence in determining the actual location of the intermediate line between section corners than the quarter section corners established along such line, if they can be found.

7. Whether a township line or a section line are necessarily straight in all cases, a deflected line or irregular curve line, if established by satisfactory evidence, should be adopted by the jury as the true line originally run by government surveyor.

Given.

87 8. The quantity of land by distance or measurment according to the field notes, may sometimes be considered by a jury in corroboration of other evidences, but in determining the boundaries of land, they are the least reliable, and are the last to be resorted to.

Given

88 9. If the jury believe from the evidence that the highway in question was laid out on the section line between the SW. corner of section twenty and the quarter corner on the east line of section 19, and that these two points established by Matthewson, McBride and Kiersted and other witnesses, if proven, are the true corners for said two points, and that Waterman's fence at the time of the supposed abstractions, as claimed, was twenty-five feet east of a line run between those two points, then the jury will find the defendant not guilty, if they find the width of the road as laid out, was fifty feet.

Given.

10. If the jury believe from the evidence that a fence and improvements was made south of the SW. corner of section 20, by Martin, and that bridges were put in by the road authorities on the line of the road in controversy, between section 19 and 20, and between section 17 and 18, and between section 30 and 29; and that Raymond built his old fence in reference to the old line of travel, and that the school house and school house fence was built, and that the pike south of the school house was made in reference to, and on the same general old line of travel as also French's ~~bridge~~ range and McFarland's fence; and that the traveling public used said general line of travel, if proven, for a series of years, commencing shortly after the road was laid out, and that all of said improvements are on the same general range, and correspond with the lines as fixed by Matthewson, McBride and Kiersted's surveys: these circumstances in connection with others in proof, are proper to be considered by the jury in determining the question of where the road in controversy was laid.

ASSIGNMENT OF ERRORS.

1. The court erred in admitting improper evidence offered by the plaintiff below.

2. The court erred in refussng to admit proper evidence offered by the defendant below.

3. The court erred in giving to the jury the said instructions and each of them, asked by the plaintiff below.

4. The court erred in refusing to qualify the 3d and 4th instructions of the plaintiff below, and each of them, as asked to be qualified by the defendant below.

5. The court erred in refusing to give to the jury, the said 6th instruction asked by the defendant below.

6. The court erred in overruling the motion of said defendant below, for a new trial in said cause.

7. The court erred in overruling the motion of the defendant below, in arrest of judgment in said cause.

8. The court below erred in the apportionment of the costs in said cause.

9. The court erred in rendering the judgment aforesaid, in manner and form aforesaid.

GRAY, AVERY & BUSHNELL,
LELAND & BLANCHARD,
GLOVER, COOK & CAMPBELL,
Att'ys for Plaintiff in Error.

126-159

Supreme Court
3d. J. Div.
April T. 1864.

Minard L. Bateman
vs.
Reuben Raymond
& C.

Abstract &
Assignment of
Errors.

Filed April 30. 1864
L. Leland
Clerk

United States of America
State of Illinois } ss
Kendall County

Pleas before the Hon. Madison E. Wallace
Judge of the ninth Judicial Circuit
of the State of Illinois and presiding
Judge of the Kendall County Circuit
Court at a Term thereof begun and
and held at the Court House in
Oswego in said County on the fifth
day of April being the first Wednesday following
the first Monday of April in the year of our Lord
one thousand eight hundred and sixty one and of
the Independence of the United States of America the
Eighty eighth.
Present The Honorable Madison E. Wallace Judge aforesaid
David L. Jones Esq. States Attorney
Geo. W. Wallenbeck Clerk
Almira D. Newton Sheriff.

Attest Geo. W. Wallenbeck Clk
Court opened by Proclamation.

Be it Remembered that afterwards to wit on the 14th
day of April A. D. 1861 the same being one of the days
of the April Term of the Circuit Court aforesaid sitting
for the dispatch of Business in the Court House in
Oswego aforesaid the following proceedings were had
in said Court to wit:

The Honorable Madison E. Hallister presiding Judge retires from the Bench and the Honorable Richard F. Montony Judge of the Courts of Common Pleas of the Cities of Aurora and Elgin in the County of Kane at the request of the Honorable Madison E. Hallister took his seat upon the Bench, and the following proceedings were had and entered of Record to wit:

Pleas before the Honorable Richard F. Montony Judge of the Courts of Common Pleas of the Cities of Aurora and Elgin in the County of Kane and presiding in the Circuit Court of the County of Kendall at the request of the Honorable Madison E. Hallister Judge aforesaid to wit:

Reuben Raymond who sues for himself as well as for the County of Grundy

vs.

Miland L. Wheaton

} Appeal

And now upon this day comes the Plaintiff by Wheaton one of his attorneys and moves the Court to amend the Defendants Bill of Exceptions herein in this; by writing the word "Given" in the margin opposite the said Defendants 9th and 10th Instructions severally as Copied in said Bill of Exceptions, and it appearing to the Court that O. C. Gray Esqr. one of the attorneys for said Defendant had been duly notified that the Motion aforesaid would be made on Monday April 11th 1864

this 5th day of the present Term of this Court or as soon thereafter as Counsel could be heard and it further Appearing to the Court that the word "Given" was written in the Margin opposite the Defendants 9th and 10th Instructions severally, before the jury retired to Consider of their Verdict in this cause and the Court after being fully advised in the premises Considers that the word "Given" be written in the Margin opposite the said Defendants 9th & 10th instructions severally, as copied in said Bill of Exceptions, all of which is done in Open Court.

The Defendants Bill of Exceptions in the Case of Reuben Raymond who sues for himself as well as for the County of Grundy against Thomas L. Bateman as Ammended in Conformity with the foregoing order is in the words and figures following that is to say;

State of Illinois
Kendall County ss } In the Circuit
Court thereof
January Term
A. D. 1844.

Reuben Raymond
who sues for himself
as well as for the
County of Grundy
vs
Menard L. Waterman } Appeal

Be it remembered that on the trial of this cause, the plaintiff to maintain the issues on his part, called Thomas Longhbridge as a witness who being first duly sworn testified as follows, —
I reside in Morris Grundy County State of Illinois. I lived on Section 17 Town 34 — N. Range 1 East of the 3rd P. M. in 1841 or 1842. George Bowers was the Patentee of the W 1/2 of 17. I occupied the W 1/2 of Sec 17 from 1842 to 1848 I was one of the original viewers to locate the road in controversy — I was appointed by the County Commissioners Court of Grundy County. Warren & Dr — Gates of Morris were the other viewers — Warren was the Surveyor On the West side of 17 we considered the line — We took the West side of the Fields for the center of the road We located the road on the section lines

We saw the Government Mound on the Section corner on the N. W. ¼ of sec 20. and that was the centre of the road. I have seen a mound on the W. line of sec 20. I do not remember seeing the centre mound at that time - but I have seen it We reviewed laid the road on a straight line with the ditch and the mound at the N. W. corner of sec 20. I understood it to be — Waterman came on to 20 after the road was laid out. about 1860. and occupied an 80 acre — tract — before that time it was occupied by Stevens — Waterman fenced it's first on his West line in 1862. I suppose he left out the road - the road was laid 60 feet wide & I suppose Waterman fenced out 80 feet During the time I lived there - there was no dispute - I was commissioner & we worked ~~there~~ the road on sec 17 and it was travelled - I saw the centre mound 2 or 3 times helping to find out where to put fence. As far as I could judge, it was a straight line I know by standing on the mound & sighting through. The mound ~~at Section~~ at N. W. corner of sec 20, was visible after the road was laid out The school house was just there since I left. I have been at the South West corner of sec 20 two or

three times since I left. I never saw a mounce at the N. W. corner of sec 20, the reason why we laid this road on the West line of the Distr was because we could not find it — I examined for this corner a number of times in 1840 or 1841 There was a ditch ~~made~~ made on this W line of sec 17 before I came into this State in 1840. In 1840 I owned part of sec 17 ~~Timber~~ Range of trees can be taken accurately were planted in 1842 — road was travelled west of trees — public travelled road was west of trees on 17 & 20 Perkins planted hedge fence on sec 18 on East side of N.E. 1/4 of sec 18 reaching N.E. Cor of N.E. 1/4 of sec 18 the year 1850. We laid it in 1847. I have seen the above house Cor after the fence was built — where road was made west end of 18 — was vacant land & brush very extended up to where fence was torn down Waterman's fence torn down not quite 1/2 a mile stumps are there — cannot testify now as to the location of mounce it is now obliterated — speaking of above house mounce I employed Thos Henry to run off — Webster found above house mounce running from there streak one edge of Distr which ~~is~~ ridge I do not

know a part of nineteen & once & twice a part of eighteen was run off by Henry & this was the time we found about house mound What work I know of being done on the road was on west line of Sec 17 when Jno Org was first in here would find himself squeezed in at Raymonds & about room enough for two wagons

Dir Raymond

I dont know much about Raymonce but I know that he has been further west than it is now

The center of the road was the west — breaking of the Delath — I fenced commencing on line of 18 —

Edson Gifford

Resides at Lisbon — Know Dept Waterman 8 miles from here Known here 15 years — Know he has lived on Section 20.

Wm Stevens

Resides at Big Grove I owned part of Sec 20. now owned by Waterman was living on 20 in 87-88 — The mound was visible & plain at that time Water would in parts be on the mound was in a sort of a basin but no- tice because I expected to improve the land

Two Brasses & cork went over stakes were in N. W. of 17 S. W. corner of 17 & N.W corner of 20 (I think) We ranged through from the 3 corners - between 17, 18 & 19 & 20 We staked it on 19 & 20 - We staked it on a straight line ——

Dir Kennedy

I went down & did not think the stake was right - it was on high ground the ground was lower ground where I pointed him to & put stakes on the monument & ~~pickets~~ picketed straight through - Waterman wanted me to go down to the corner - which suggested it I don't know - I R.C. he was claiming land west of what I did

John Lowhead

I lived on 17 Town 24 lived there 22 years - Know the ditch I was one of the petitioners for road failed in getting surveyors & there was a petition against it — road was west of Ditch - I have nothing definite in my mind on S. W. 1/4 of 20 whether we found it or not - we set the compass & looked north along the Ditch & line of trees & we found stone to range within 3 or 4 rods of where I do not know the cor on N & E. of 17 I did know

the mound on the N. W. corner of 17 called
knob corner — I in making survey in 47
found ½ sec mound in sec 8 + on N. W
corner of 17 next was ½ sec mounce at
school house ~~is~~ found some others south of
20 Did not notice anything that it was
not a straight line along the line in
question I know of Waterman building
a fence there now on N. W of 20 — the
track we travelled south was in some
places 6 or 8 rods from line on account of
wet land —

X

I could not tell whether the mound was
inside of Raymonds or not ——

James Thompson

Resides at Nesler Creek Town
ship 34. lies on N. E. ¼ of sec 19 — I know
about where the N. W. Cor of sec 20 — Know
ditch on west line of sec 17 — Know school
house corner before Waterman built fence
I put up fence about 12 years ago on east
side sec 19 — cor at school house was always
visible — I staked down Ditch set 3 stakes
on ditch + others and one on Bob —
Thompsons slough + then ranged + set my
fence 20 feet from that. — from my staking
ing my fence it was straight —

Waterman's fence was moved west into the road about 1/2 way & then moved it East & then moved it back after he moved his fence there was not room for wagons Waterman when he was pathmaster said he would move road into my land because Gray was going to take my hedge — I have noticed post holes after Waterman's fence was moved the land between old post holes & new fence had been cultivated by Waterman there is a bridge west of my hedge made & think by Waterman when pathmaster — think Waterman fence was right across the bridge & worked in the turnpike — Waterman's ~~bridge~~ boy ~~was~~ worked on road opposite where his old barn stood —

X Ex'd

I feel interested & have feelings want the fence as Raymond wants it — Raymond has shut up the old public travel —

Thursday — Resumed — Explanation

I did not wish the Jury to understand that the fence was moved 15 rods West but south entrances his own (Mr Waterman's) house — extended it 15 rods — south into the road whether the centre of the road or not I do not know across the bridge running along the road

X I have 80 acres nearly 80 acres woods inside my enclosure I think the turnpike was thrown up before the fence was put down — We met last night to compare ideas —

George Bullis

Live in Nettle Creek on sec 8 — Grundy County — I know S.W. cor of sec 20. Knew it 14 years I first noticed it while hunting — there was a ~~ditch~~ dish hole, in that hole was a — mound + one stake 2 or 3 feet long another some 6 feet, I suppose to take range by or something, road was turnpiked about 7 years ago, I passed there while they were working on the road, they covered the mound, think mound was a little on East side of turnpike — Raymond was pathmaster at that time — Valentines fence was East of them the west side of the ditch was not fenced. fence was put up 7 years ago this coming Spring Raymond owned that adjoining land — turnpike was so that two wagons could pass ~~so so~~ no — bridge there then Valentines —

fence was moved since he fenced it up was moved west into the road at the S. W. corner of sec 20. it ranged through it was about 20 feet, it has been moved 20 or 3 times — the fence I speak of is the fence put up since the Commissioners took the fence out of the road I examined the old post holes of fence between him + Gray on East of Waterman's Waterman's fence had been moved west — had been moved west some 40 feet had been broken up + cultivated by Waterman before the fence was moved — old road was travelled ever since I knew anything about it about 14 years — at Waterman's road was travelled by public don't know how long — Raymond fenced about 7 years — in a wet time they used to travel on a beaten track on Raymonds land open which Raymond has fenced in — I saw pattmasters mound in S. W. of 20 was a little on east side of pike Mound is on section 20 — there was a gate 45 feet from the old original mound — I think I could go within 4 ft of ground there has never been 2 different pikes to my knowledge I have seen the school house mound + Grave yard mound

or what they call a mound there is a stone but I dont know that it is in center of mound Waterman owns West ½ of S. W ¼ Sec 20 — the north end of his fence I dont know of being moved (here shows plat)

Dir Resumed

There is a grave yard mound not a regular mound there but a stone stuck there — there is a Ditch on west line of 17 about ¾ of a mile — By the Jury — there were no figures on shore stake

Wm Winterbottom

I know that Waterman had said fence at S. W. ¼ 20 5 or 6 years ago when I 1st saw the fence — When I first went there two wagons could pass easily when I next saw it was narrow two wagons could not pass do not know whether Watermans fence had been moved — Watermans land was fenced at E. & W side but do not know as to South side — there was change in fence on East side of Watermans — I think in — 5-9 he moved fence west land was cultivated when they moved

the fence — it was the East line of Waterman's fence that was changed in 1859-

Finished as to Winterbottom.

C. C. Massey.

I was party in trespass suit being highway commissioner — Aylworth was another — I resided at Nettle Creek on Section 35 — Know corner S. W of 20 — 20 was one of the first sections entered by John Gray in 37 or 38 — was a stake & stones up in 17 & 20 on L. W. 17 & L. W. 20 on 1/2 mile 20 & 1/2 mile — in L. W. 20 was a stake in a low piece of ground in a sort of basin in Spring filled up with water — was a Government mound — stake was in it — Holderman's Lane was between 5 & 6 Road runs from there to 17 on the N. W. corner of 17 thence to L. W. of 17 — then down to school House thence through to the town of Arenah Was started by the south W corner of 20 & run a south

at that time we struck a Black Walnut standing in the mound in L. W. 20 (2 X 4 or 4 X 4) was a burr oak stake there is pretty much decayed at this time — that stake remained there till I was last

ed commissioner — had conversation
with Waterman said stake (scantling)
was got up or pulled up to take keeping —
I think I have traveled through all the
roads in Nesta Creek town —

Watermans fence
was east of where the road is now
there was no fence on W. side then in 59 —
think Waterman built his fence on North
corner + then made a jog west + built
post + rail. South fence set into the
road about 15 feet and other corner re-
mained track was there when dug ditch
trees + Ditch made some time before
Mounds + ditch were nearly on a straight
line — on that line there built a —
bridge on 17 — there was a slough come
down there before I was commissioned
I built new turnpike before there were any
mills — On the R. W. of 20 + N. W. 17 —
were always visible corners — I work
up the ~~bridge~~ bridge + moved it East —
Watermans fence was 14 or 16 feet on the
road — fence remained there all that
summer till June year after — was sur-
veyed by Henry Ewer + Wilson — Ewer —
made his survey 2 or 3 years ago —
Wilson same year — Henry 5 years ago

S. W. corner of 20 - when Henry surveyed it for the Town the stake was gone I put in a stone there North of corner - could not keep it in the corner - When - Ever surveyed it I put in a limestone in the corner saw both stones there on the turnpike I dug down put a stone in S. W. 20 - N. W. 17 + at school house - Waterman's fence stood stood in the road there - I took down 4 years ago last June - He set his fence back 28 feet He then notified me to move Gray fence back - that was about 3 feet in road I told him Gray had a right to keep his fence in the road to make a hedge - Waterman's fence remained there from Spring to Winter - the posts were cut down - He then moved it back East in 60 I think - Waterman said he had the resetting + had me go back + set in original Cor of S. W. of 20 - We disagreed, where he wanted me to put it was further West than I thought right + I did not set it or any ground began to elevate from there, - Building the turnpike filled up the basin - I have known the S. W. corner of 20 this 20 years - before Waterman moved his fence there was plenty of room

after could not pass in Nel reached the dispute with Waterman was before I was commissioned — I tried to settle this dispute with Waterman — tried to buy land of Waterman in dispute

About 1/4 acre of land Waterman said he would do so but he did not like to gratify his neighbors — Excluded —

Hoag lives on sec 21 — N. W. corner of 21 & N. E. corner of 20. — are good — corner of S.E. 21. is a mound but not south west — have ranged from S.E. corner of 21. to S. W. of 20. they are in a line — South east of 21. is called Hoags corner —

X

Watermans fence was taken down three times by Authorities — one of the times since I have been at Morris — in 59 or 60. cut down — taken first time in June from 17th to 20th 1859. then he had left 15 or 16 feet for road — North corner was not in the road When Henry & I surveyed it was in 1858

N.B. I know the south west corner of 32 No dispute about that all parties agree I know the 1/2 section corner of 17 on West line No dispute

about S. W. corner of 29 but very little difference — the ditch runs along the south 1/2 of 17 same ditch spoken of — Locust trees on embankment stumps are there visible — the line from 1/2 sec corner of 17 to S. W. corner of 32 line not quite straight — Bridge on 17 sec 20 one on 29 — one on 20 & moved east 15 or 20 feet same day fence was taken down — Raymonds fence was put there since this trouble about the race — had a fence more than 40 feet west & moved it East — Thompsons fence is further east than French's not over 5 feet but from 4 to 5 feet — French's fence tallys with 1/2 sec cor- of 17 — I never saw any corner on S. W. corner of 21 — Know S. W. Corner of 28 & 33 & S. W. ~~Corner~~ 16 — those mounds — I put a stone at S. W. corner of 17 — there was a stake & original mound was disturbed & scattered — mounds has not been visible for 14 or 15 years prior to this survey but stakes had been there I went to see Waterman & Waterman said he had the scantling in Black- smiths shop for safe keeping there was a floor in the attachment to the Black smiths shop. just as certain of this

as of anything I have sworn to —

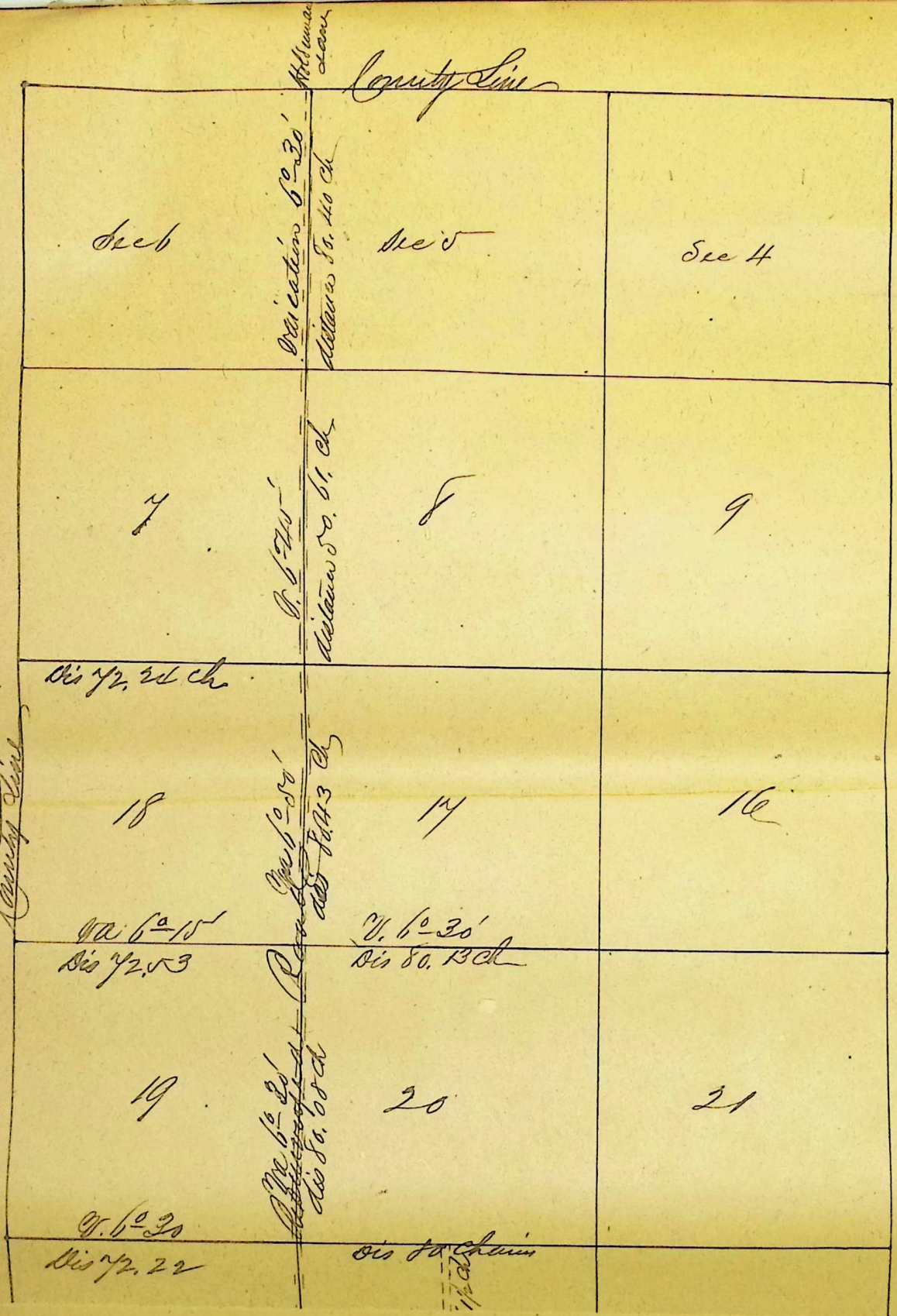
Dir resumed

I have travelled west of Chicago never was travel east of Chicago - I was present at survey I went along the line with Ainsworth - the county surveyor was there the fence sat in the road at that time in 1859. —

Doctor Samuel Ewers

I resided in Mazon in Grundy I was — county surveyor there 2 years commenced in Nov 57. — I made a survey for County Commrs in June or July 29th — July 59 — it was a survey of a road — road commenced at a point called Hoecermans lane between sections 5 + 6. — the plat I have is the original that I made, I filed it, the plat, by the direction of the Com with the town clerk of this town as to this plat — and made my survey under their direction (Here insert copy of Ewers plat)

John Gray was with me, Mr Longhead the only point of dispute was at the South West Cor of Sec 20.


County Line
Sec 6
Sec 5
Sec 4
7
8
9
18
17
16
19
20
21
County Line

Minutes and plat of a survey of a road in Township thirty four Range six East of the 3rd P.M. made by me this this ~~twenty~~ ninth day of July A.D. 1859 as follows,

Commencing at the north East Corner of Section six township thirty four Range six East of the third P.M. at a point formerly known as Holdamans Saw thence South 80.40 Chains Variation 6° 30' to the North West Corner of Section Eight thence South Eighty Chains and and sixty one links (80.61ch) Variation 6° 45' to the South West Corner of Sec Seventeen (17) thence South V.a. 6° 0' Eighty Chains and twenty six links (80.26ch) to the North West Corner of Section twenty (20) thence South Va. 6° 30' Eighty chains and Eight links (80.08ch) to the North West Corner of Section twenty nine (29) which Corner is thirty six links East of the Corner as set forth in the Records of the County Surveyor made by Thomas Maury and dated May 23rd. 1849 and seventy (70) links East of a Survey made by Geo. Hunter and recorded on page 13 of the Records dated Aug 4. 1851 and fifty seven links East of a Survey made by me and recorded June 25. 1859 thence South Variation six Degrees thirty five Minutes (6° 35') Eighty Chains and ninety four links (80.94 ch) to the North West Corner of Section thirty two (32) no mound found here, thence South Variation six degrees and twenty five Minutes (6° 25') thirty nine Chains and sixty Eight links to the Half Section mound on the East

line of Section thirty one (31) Mound and ditch found plain and well Marked by a Stake 2 links North Variation six Degrees and twenty five minutes (6° 25') forty Chains and thirteen links (40 13 chs) to the Southwest Corner of Section thirty two (32) Mound plain.

The Above is a Correct plat of the said Road together with the Lands adjoining as claims set forth.

Samuel Ewers
County Surveyor
of Grundy Co. Ills.

Sec 6 | Sec 5 | Sec 4

Sec 7 | Sec 8 | Sec 9

Sec 18 | Sec 17 | Sec 16

19 | 20 | 21

20 | 29 | 28

31 | 32 | 33

Minutes & plat of a resurvey of a Road in Township thirty four Range five East of the third P.M. made by me this twenty ninth day of July A.D. 1859 as follows, Commencing at the North East Corner of Sec five township thirty four Range five East the third P.M. at a point formerly known as Holdemans Lane thence South 80.40 chains Variation 6° 30' to the north west corner of Sec Eight thence South Eighty Chains and sixty one links (80.61 ch) Variation 6° 45' to the north west corner of Sec Seventeen (17) thence South Va. 6° 30' Eighty chains and twenty five (80.26 ch) to the north west corner of Sec twenty (20) thence South 6° 30' Eighty chains and Eight links (80.08 ch) to the north west corner of Sec twenty nine (29) which corner is thirty five links East of the corner set forth in the Records of the County Surveyor made by Thomas Avery and dated May 23d. 1849 and twenty (20) links East of a Survey made by Geo Kimsted and Recorded on page 13 of the Records dated Aug 9th. 1851 and fifty seven links East of a Survey made by me and recorded June 25. 1859 Thence South Variation five degrees thirty five Minutes 6° 35' Eighty Chains and ninety four links (80.94 ch) to the Northwest corner of Section thirty two. (32.) no Mounds found here thence South Variation five degrees and twenty five Minutes (5° 25') thirty nine Chains and sixty Eight links to the half Section Mound on the East line of Section thirty one (31) Mound and ditch found plain and all Marks by a Stake

Thence South variation six degrees and twenty five Minutes (6°25') forty Chains thirteen links (40.13 Ch) to the South West Corner of Section thirty two (32) mound plain. The above is a correct plat of said Road together with the Lands adjoining as thereto set forth.

Samuel Ewers
County Surveyor
of Grundy County Ill.

I hereby certify that the foregoing is a correct copy of plat of Survey of Holdaman & Mud Creek Road Surveyed July 29th 1859 now on Record in my office.

Given under my hand this 10th day of Oct A. D. 1863.

Morgan L. Lloyd Town Clerk
of Town of Mills Creek County
of Grundy.

I commenced at Hvedarmans Lane - we went down what was known as Hvedarmans lane 1 mile to N.W. cor sec 8- the bearing between the points at N.W. cor sec 5 & N.W. cor sec 8 was 6° 30' east there was a mound & ditch there between sec 7 & 8 to N.W. cor of sec 17 there a mound the distance was 80 chs & 40 links the variation 6° 45' then 80 chs. 43 lks south to the N.W. corner of sec 20 - variation 6° 50' I think then we tried to get a line through 20 & went back 1 mile then through between 7 & 18 distance 17 chs 22/100 there was a well defined mound we went S along the County line where we found a mound Klair without survey, thence [illegible] Govt mound. then E 72 chs 50 lks [illegible] was in exact accordance with our original minutes. Came out exactly to the stone at or near end of ditch. then surveyed East 6° 30' from stone between sections 17 & 18, distance 30 chains & 13 links. The distances of Gods notes were not accurate - then we took up our instruments & went away N & E at S. E cor. of Sec 20. Mound obliterated - a few days before I

surveyed for Haberman. Haberman brought a man that knew all about the cor— then went to this cor. & the commissioners did not doubt the cor. S.E. cor. of Sec. 20. there was a fence North & South & East & West. then went 1/2 mile down & came to mound between 29 & 28. then went West one mile through center of Sec 29 there put temporary stake. then went South from that point 1/2 mile & found nothing that would show mound - 1/2 mile further and within one rod East of a mound. run 1 mile at a variation of 6° 25' set instrument on the S.W. cor. 32. went North to 1/2 Sec. 6° 25' went through one half mile & came to temporary stake. went back. stuck stake to mark S.W. cor. Sec. 29. back to stake var 6° 3' then was very near line with trees on the ditch.

While I was at S.W. cor. of Sec. 32 we went N. 72 ch. 43 lks to Co. line— went back to the N.W. cor. Sec. 31. measuring 72 chs 75 lks leaving

6° 15' at that distance. fixed stake permanently at S.W. cor sec 29 ran a straight line at middle of 29. 1/2 way between = - had a pole stuck up at S.W. of 20 & ran to it (the stake) distance between S.W. cor 29 to S.W. cor of 20. 80 chs 74 lks measured dist. for that cor to N.W. cor sec. 20 80 chs 8 lks came back to Co. line on the S.W. between 19 to S.W. of 20 dis. 17. 22 correspond nearly with original field notes all fractional sections. went 80 chs between 29 & 20. 1 mile to that mound that Waterman & Dewan told me was the government mound. then went 1 mile East between 21 & 28 var 6° 15' after fixing up a stake ran 6° 30' from N.W. cor of sec. 20 to S.W. cor sec. 20 fixing the stake to the center of turnpike. from thence to S.W. cor of 20 6° 35' sec. 20 was 13 lks too large. I was employed by Waterman to survey. not longer than ~~that~~ 2 weeks previous to this survey. I started from S.E. cor. of 20 thence S 1/2 mile. Waterman

carried flag & stuck it up at cor. of fence - fence was between 20 & 21, was a fence & went part way across 29 - cattle had broken down - saw mound & stake about 3 rods east of cor. said to Waterman what's that? W. said he knew all about that, came in the night. was a time when the sun went down was not there, in the morning it came - the mound bore the marks of a Goat mound, told him it was the Goat mound. he said if I had only known this I could have saved you a good deal of trouble -

I have been on the W. line of 20. I have never found any local attraction there - as far as I ever knew, none whatever - He supposed that the line of the road was at the East of the tree. there was a fence on N. side of pike but not on E. side ditch & stake - to continue the line would have run off; then would have come to the tree.

instrument was defect. Nearly new. afterwards sold to Mc Bride, was in as good condition except as to the cent Pin, Needle was not as highly magnetic they all agreed upon the N W cor of Sec 20 - I do recollect independent of the paper about the Mound. I swore Dawson as to the S. E. cor of Sec 20. My records would show if I had them the evidence of Dawson, Witness says on being shown another paper, I was Mistaken, I am out 1/2 Mile too far North - When I could set My compass on a Known Mound I knew it to be correct and that the variation could be noted without any trouble. I know that Bateman told me that was the true corner, Mr Bateman told me he wanted to have the corner just right cut where it stood, the line between 17 & 18. 20 & 21 29 & 30 31 & 32 is deflected - Not straight. Most line of this town is a straight line or as straight as men usually work and call it straight Matheson & Mc Bride did point out their points to me last term but Matheson I never saw before that time - after I had established the

S N Cor of 20 I swore Massey-
Sir was the corner I surveyed for the
Commissioners was 35 Links (North or east)
of Mutt I established for Bateman.

X Mr Bateman appeared to be very
anxious to have it done right and
I did not think he Wd deceive
me or himself - I did not make the
survey till after the fence was torn
down -

Isaac N Brown.

Live at Town of Nettle Creek on
Sec 34. Was a Justice of the Peace
then. Looks at Notice - I sent out in
the Spring of 1862 - I served a
correct copy of this Notice on Bateman
on 26th Sept 1860. There was a
little conversation in 62. Bateman
after getting his horse shod took
me out and admitted that the road
ran ~~Ran~~ through Low ground at S N
20, Looked North did not see ditch
Nothing said about petition but
asked if it would not be better
for the Public to have road running
on higher land.
X No fence on either side now at

S W corner.

Robt Wilson

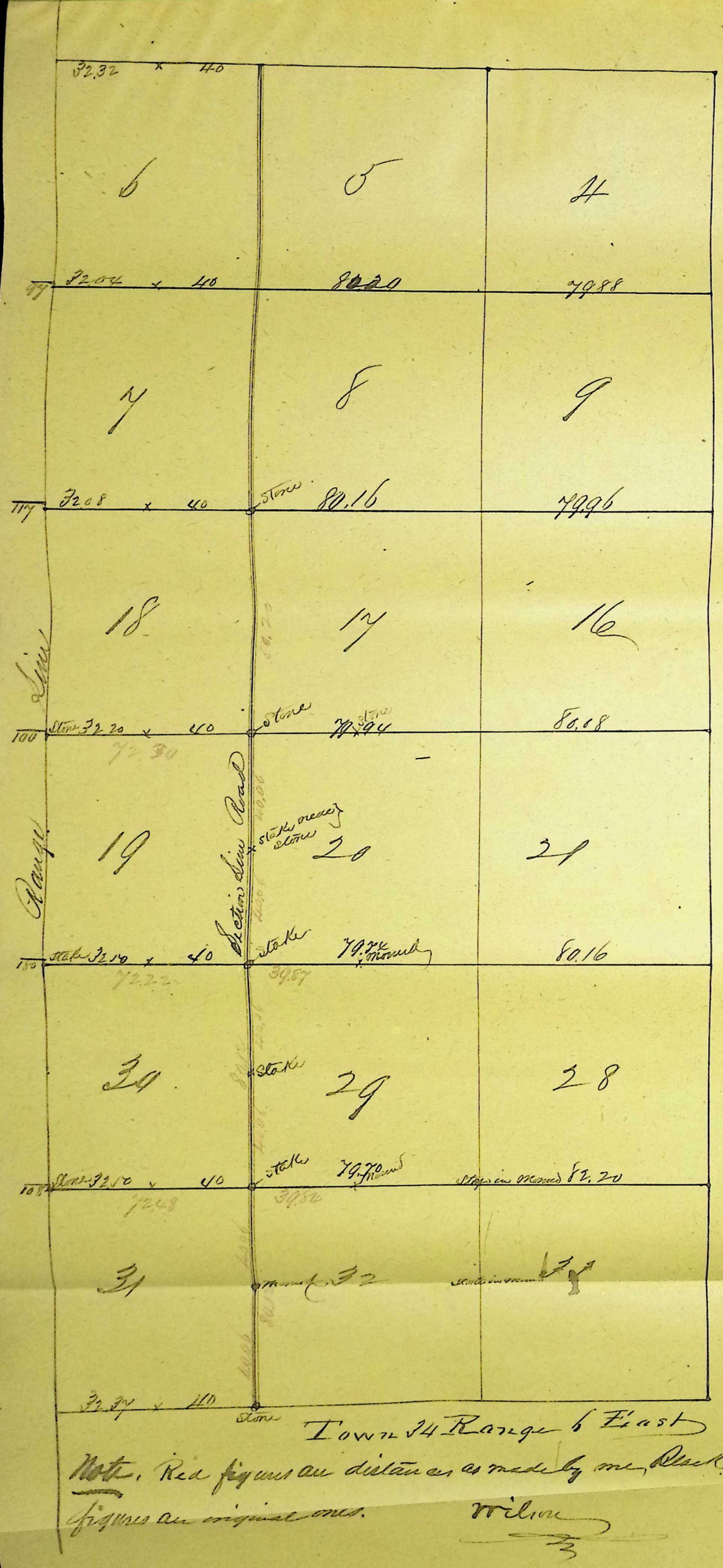
Reside at Ottawa. I am a School teacher My occupation has been Surveyor since 1857. I Surveyed a line between 17 & 18, 19 & 20 29 & 30 31 & 32 - Made it for William Billing said to be Commissioner, 17 Sept 1862 - Billing was there Sawyer Commissioner Massey & Jno Grey Judge Harris was there at part - the first inquiry I made at Ottawa when Billing called was as to the dipsiculty, told me twas S W of 20. Was taken to N W cor 17 Was a stake Was no ditch there - commenced at N W cor 17 & ran to N W cor 32 Marked by a stone My purpose in running that line Was to establish the Latitude of the corners - The reason I run thus was that these lines are made by running N & S line. Corners were Made by Gull Measurement 80 chs in this Way I Compared with govt Minutes - I found the distance to be 5 & ch in excess of our Measurement having placed stakes as I ran 5 at each 1/4 cor I corrected these by equalizing

after giving latitude next was to find deflection if any — S W being in controversy I wished to find 2 corners one east & 1 west of it — He went to S E of 21 ran west there were 3 or 4 stone round the stake ran west finding nothing to mark a corner, ran 12 chains & 8 lks then found three stakes and mound brought me on 1/2 sec line of 20 on S line I continued west to township line agreeing with the govt notes at the S W of 19 — then corrected the stakes for latitude giving the north west of 19 & 20 by field notes, as I had them, S W of 20 was on middle of turnpike. then giving S W of 29 — ran from S W of 30 eastward to 1/4 cor on S line of 29. I was satisfied I found the mound distance being 3 links short the distance of the 1 1/2 miles corresponded with Govt distance. The stake at the S W 30 was to deflect from — between 31-32 I set a flag & 1 at S W of 32 & my compass for ranging at 1/4 cor 32, I found the line passed W of the mound 6 links — went to N W of 19 ran E to N W of 20, I found that distance to a stone 10 lin

To the Commissioners of Highways of the Town of Nettle Creek:

I Hereby Report the following survey to establish the line of a certain Road or a portion of it between two points Namely, Between the North West Corner of Section 17 in Town 24 Range 6 East and the South West Corner of section 32 in same Town and range - Those two points having been Kept up - I Commenced at the north West Corner of Section 17 and ran a Strait line South to the South West Corner of Section 32 - The whole distance being four miles and 5 links ch 40 Ch. and 16 links from the starting point found a Stone said to be a Section Corner to Sec. 17, 18, 19, & 20 This Corner is some 6 links west of an old ditch, by many said to be close on the East of said line - At the 1/4 section Corner between Sections 31 & 32 I found a faint tho' very well defined ditch mound dug up - dist from S. W. Corner of 32 40.06 Chs - I then set each Section Corner to Sections 29, 30, 31, and 32, 80.12 chs from S. W. Corner to 31 & 32 and Corner to 19, 20, 29 & 30 at 80.12 from last named Corner and then proceed to test these Corners by running East and west lines from Range line - I set them at the distances from Range line and Quarter section Corners Each Marked on the accompanying map to which I refer you for further particulars - I believe the Above named map to be a correct representation of said line as originally made and established by me

Robt. Wilson Surveyor



Town 34 Range 6 East

Note. Red figures are distances as made by me, Black figures are original ones.

Wilson

Corg, stone was at a ditch at S W of 17, had run previously N W of 20 eastward 1/2 Mile to quarter cor, this is my survey, left a stone at S W 20- On S line of 17 19 & 21 I ran Whole dist, at 21 I found a pile of stones & stake in them, it gave 19 What it called for, the turnpike at S W 20 was a basin with gentle slope, road crossing lengthwise. I went up and set stake on west line of 17 & found the line on the west edge of ditch & S W 20, it was a straight line - This is my report & plat & I returned it to Mr. Milling the commissioner (Here insert Wilsons report & plat)

X Had a compass — I found a stake or stone that was dug out of the ground, was shown me by a man found stone between 16 & 17 think there was a hedge near to it, at N W cor 20 was a stone set, at 1/4 cor between 19 & 20 being School house corner was a stone. I fixed the stake a little west of the stone, found nothing at S W of 20. at 1/4 cor of 29 found none. S W 29 nothing — quar cor between 31 & 32 well established Mound bearing 6° 29' used a compass did not rely Wholly on a needle — sets the stakes equidistant 40 chs & 12 lks giving each their proportion of excess. found Massey — Grey — started at 1/4 cor that they showed me 1/4 cor 21 — Stake Stone & Mound on 1/4 cor of 21, Nothing on S W 20 — found Stake but no Mound on S W 19 — field notes were handed to me by Massey. Henry made them — From S E 21 to 1/4 cor on S line 20 too long by 1 ch & 5 links Paid no attention to it on 1/4 cor of sec 29 was a stake driven over much and a place where a ditch might have been —

Sir Rest at 1/4 cor N line 20 a Mound was pointed out to me as

a government Mound - called here Grove Land Cor. - In making Govt Survey &c Govt notes indicated that the Mound South belonged to the other township (Plats of Surveyors to go to the Jury on both sides) I have always found the Government distances in fractional sections correct -

— Mc Farland.

Reside in Morris did live on S W 1/4 of Sec 18 Nettle Creek lived there 8 years - there has been a mark of a corner ever since I went there it was on west line of the ditch, there was about a mile of fence in Spring 1853. year before Waterman put up fence on N. line of 20. 1/2 mile to S. W. cor. of his 80 & up to school house cor. — Gray fenced then 2 or 3 years after. Gray fence was a little N. of Watermans fence when Waterman put it up was proper or considered to be. Gray fence was a little west of cor. Watermans original fence was in range with the two fences above about it: — fence shows 15 or 20 rods of the fence

remained there (the north part) was none on the South part. S. part of original fence was board fence. S. W. cor. was pretty close to the ditch on E. side of the turnpike. the original fence would be 15 or 20 feet from centre of turnpike at S. W. cor. when Ewer put his stake. Grey did not fence back by about 6 feet. Knew when Ewer put his stake at S. W. cor. of 20. Waterman's fence was moved. the ground where the fence stood had to be plowed & fence taken up to make turnpike was put up West after that. same season was taken up & put up again still further West. I think in 1859 or 1860 was cut down by commissioners. Maxey was there & I think no other commissioner there was 1/2 mile north the people went a piece off. Waterman had fence on N. line. S. W. cor. of 20 was quite a mud hole. after Mr Grey fenced up we had to go there there was no other way.

(Here McFarland shows sheet of plat on brown paper) fence stood

Was that same season of suit commenced at Morris, and at the time of the trial of this suit at Morris, first part was taken up by commissioners & Waterman then put it up a rod West- fence was torn down before any turnpike was made- there was a piece of turnpike on N. side of 20 culvert at Raymonds he was moved East the same day the fence was torn down- there was a bridge at Thompsons slough, one through McFarlands slough & one at Watermans

R. Hilworth

Resides in town of Aletto Creek on Sec. 18- lived there since 1855- was highway commissioner- was present at one survey of Evers- was present when he set his stake in S.W. 1/4 of 20 little east of centre of road- Watermans fence was afterwards moved several times - Fence was moved first when that turnpike was made- fence was in the way of making turnpike & was moved to make it- Waterm[illegible] fence stood there 4 years

ago ~~Sec~~ last Summer it stood in the centre of turnpike - before the commencement of this suit before S.P. fence was west of the turnpike - I was witness before S.P. the turnpike was then in Haberman's inclosure I was present when Haberman's son & hired man were moving fence West

John Grey

Resides in T. 34 Sec. 20 from 36 to now was patented of the Sec. 20. in Kettle Creek - have lived on that Sec. since 37. Sown 7.80 of that Sec. now - in the fall of 36 Married in Chicago. stopped there about 3 months - in the fall I re-employed Ives to survey the whole town 34 for me - he surveyed then 2 weeks - and this way I became familiar with mounds - next year got L.H. Rood to survey the section 20 by field Sec.s 17 & 20 were entered at same time - all the mounds on Sec.s 17 & 20 on N. line of 17 were Round & visible a year or 2 after patents employed a man to build a dirt

mounds were distinct. The grave yard corner mound visible, up one half mile ~~N W 17 mound visible~~ mound visible. Ditch was made so as to leave centre of mound west of edge of ditch visible 10 or 8 or 12 inches / ditch came down to cor. of 17 along N. of 20, the 2 mounds were visible. at school house was visible When I put up my fence that mound at School house I calculated to leave the full 21 feet for road. Haterman's fence stood four ft. East — Haterman set fence right there — the mound in south W. of 20 was peculiar, mound was in a ditch. was an inclined plane running up from West, on sec 20. 3 mounds on North. 3 on South ro. the mounds had been surveyed by Govt Survey were kind of flat, could tell by the ditch by the side of it — corn stakes but burned S. N. 20, I measured from mound to mound when Haterman put up his fence in 84 rods. he drew furrow from mound to mound to set fence by, on 1/4 sec. cor. on sec. 20. I pointed out mount, he had his full 80. I was not present when road was located. saw stakes. ditch in centre of road. The road was located, making ditch in centre of road & the West line of sec 20.

Width on each side 25 ft.
Road was on straight line and
old Govt Mounds were straight
from N of 17 to S of 32. by the eye
I knew Govt Mound at N E Cor of
20, at S E of 20 I did know Govt
Mound but it has been lost many
years - at S E of 21 I have known
Mound great many years could go to
it now; 1/4 cor of 29 Mound there have
known it since 1886. same Mound
as Wilson found rotten stake in -
Wilsons survey located the Mounds
exactly or very near, was with Wilson
when he put his stake on S W cor
of 20 & that was where the Govt
Mound was, Bateman fenced out
full 25 feet for road, Batemans
fence has been removed by highway
commissioners 2ce, once in 59, remained
down till 1860, was standing on
highway 15 ft, last time fence was
but was pretty much on the west
line of turnpike, 18 or 20 feet from
where it originally stood, was moved
in 1860. Bateman was there, fence
was standing there at time of the
suit - was present at ~~Batemans~~
& ~~Ewers~~ Ewers survey of S W cor of

20, his stake was put on S.W. cor
of 20— Was present at Mackenzie
& McBride survey— their survey was
west of Gods mound at S.W. cor.
of 20 It was 47 feet west of Gods
mound, took in Thompsons hedge
& all ditches & fences in the town
they did not start from the
N.E. of 20. when the fences were
put up the people travelled in
the road when Waterman put
up his fences last there were
but 12 ft. between fences—; at S.E.
29 I knew the cor. & the mound
— Road as originally fenced but
by Waterman & others was worked
there were bridges & turnpike
I know of Waterman when
commissioner working on the
Thompson bridge, work was done
between 19 & 20 & up to the school
house— I have taken an active
part in this controversy

Mr Maltby

I went to Watermans house
told him to work on the road
& move the fence W. said he knew his
fence was on the road said that I

might take out fence & he then could defend himself

The plaintiff then introduced in evidence a certified copy of the record of Grundy County Commissioners Court of the laying out of the road in controversy & plat of the same (here insert a copy of record & plat) The plff also introduced in evidence the plat & report of the survey of the road in controversy made by Ewell surveyor for Highway Commissioner of Settle Creek & report of Hillson surveyor

Plff then rested

The defendant then called as a witness George H. Kiesled who was duly sworn & testified as follows

George H. Kiesled

I live in Morris — I am a surveyor ~~by occupation~~, have been County surveyor of Grundy Co — I have been a surveyor since 1842 & have made six or more surveys in the town of Settle Creek. I am acquainted somewhat with Sec. 20. I made a survey for Bateman

State of Illinois }
Grundy County }

At a regular Session of the County Commissions Court of said County begun and held at the Court House in Morris in said County on Monday the seventh day of September in the year of our Lord one thousand eight hundred and forty eight

Present Jacob Claypool
Andrew Kinsloe } Commissions
James Brown
Patrick Kelly Deputy Sheriff
Attest Geo. H. Hewitson Clk

Be it remembered that at the September meeting A.D. 1848 of the County Commissions Court of said County the following proceedings were had to wit,

Tuesday September 5th 1848

Road petition
Curtis & Others
Longhead & others
No 27

The Court have this day had under consideration a petition of John Curtis and others praying the Appointment of Viewers & Surveyor to view and locate a County road commencing at the South end of Holdaman Lane on the North line of Grundy County thence South five miles thence to the Illinois River on the nearest and most eligible route crossing the same at or near Morris or Brunches Landing thence to the middle of the north line of section 4 Township 32 Range 6 – thence South through the Centre of Section No. 3. 32 R. 6 to the Road leading from Morris in the direction of Mud Creek

And the Court being fully advised in the premises do

Order and Consider Leander Newport Isaac Hoge and Orville Lowe be Appointed Said Viewers and that they Report Heriin at the next Term of this Court provided that the Clerk issue no notices to said Viewers Authorizing said Examination until the Sum of Twenty Dollars be deposited with said Clerk as provided by Law.

And Afterward to wit at the December Term 1846 of the said County Commissioners Court the following proceedings were had Viz,

In the Matter of Road No 27 Time to Report Extended

Monday December 7. 1846

It is Ordered by the Court that Leander Newport Isaac Hoge & Orville Lowe who were at the last Term of this Court Appointed Viewers to View and Examine the route for a road from Holtzmans Lane to the Road leading from Morris to Mud Creek be Allowed to Report concerning the same at the next term of this Court.

And Afterward at the March Term 1847 of the said Court the following proceedings were had to wit,

Time to Report on Road No 27. Continued

It is Ordered by the Court that Leander Newport Isaac Hoge & Orville Lowe who were at the September Term for the year 1846 of this Court Appointed Viewers to View and Examine a route for a road from Holtzmans Lane to the Road leading from Morris to Mud Creek be allowed to report concerning the same at the next Term of this Court.

And Afterwards at the June term 1847 of said Court the following proceedings were had &c,

Monday June 7th 1847

Reappointment of Viewers on Road No 27 and T. Longhead & Curtis E. Warren

It is Ordered by the Court that Thomas Longhead John Curtis and Ezekiel Warren be Appointed Viewers to view and Examine the route for a Certain Road Authorized to be Viewed at the September Term of this Court for the Year 1846 in the place of Leander Newport Isaac Hoge and Wells Lane and that the time to report on said Road be extended to the next Term of this Court.

And Afterwards at the September Term 1847 of said Court the following proceedings were had &c,

"Monday September 6th 1847"

Road No 27 Established

Ezekiel Warren John Curtis and Thomas Longhead Viewers Appointed at the last Term of this Court to locate a Certain Road numbered 27 this day filed their Report & Plat of said Road which said Report is in the words and figures following to wit,

State of Illinois } ss
Grundy County }

We the Undersigned Viewers Appointed by the County Commissioners ~~Court~~ of Grundy County at their June term 1847 to view lay out and locate a County road Commencing at the South end of Holden mans Lane running South five miles then South to the Illinois River at or near Hamms or Bunches Landing thence South through the Centre of section 16 T. 32 R. 6 to the Road leading from

Morris to the County line in the direction of Mud Creek, Herewith Reports that they have viewed the same and caused it to be surveyed by E. Warren a plat of which survey is herewith submitted and that we do Report favorable to the Establishment of said Road according to the Survey thereof.
September 4th 1847.

E. Warren
John Artis
Thomas Langhead
Viewers.

And the Court being fully advised of and concerning the premises in relation to ~~which~~ the said Road No. 24 do order that said Road be permanently established as a County Road fifty feet in width

And afterwards on the second day of the said Term the following other proceedings were had viz.

It is ordered by the Court that the following persons receive the sums to their ~~respective~~ names severally set forth it being for their services in surveying & locating road No 24 viz

John Artis Viewer	3 days	3.00
Thos Langhead "	"	3.00
Ezekiel Warren "	"	3.00
Ezekiel Warren Surveyor	3 days & Plotting	6.00
Reuben Bunch Chainman	1 day	75
Charles Doty "	1 "	75
Henry Styplop "	1 "	75

Timothy Hamm 2 Days 1 " 2.00

And it is further ordered that the above named persons severally receive Orders on the Treasurer for the above mentioned sums.

State of Illinois }ss
Grundy County }

I Samuel P. Thomas Clerk of the County Court within and for said County and State do hereby Certify the foregoing to be a full and Complete Record of the Records proceedings had in relation to the laying out of Road No 27 as appears from the Records in my office

Witness my hand and the seal of said Court at Morris in said County and State this 7th. day of April A. D. 1863.

Int Rev Stamp 10c

Samuel P. Thomas Clerk

North Line of Grundy County

No 1 1/2 miles along the Center of Section 28, 21, 16, 29 to Center of Section 4 T. 32 R. 6 E.
No. 2 N. 33° E 26 Rods
" 3 N. 8° E 108 "
" 4 N. 14° W 260 "
" 5 N. 38½° W 291 " 8 links
" 6 North — 80 "
" 7 West 25° N. 76 "
" 8 N. 32½° W. 80 "
" 9 W. 41° N 76 " to Bank of Illinois River
" 10 W — 22 " across River
" 11 N. 28° W. 271 " 12 links to the Canal
" 12 N 80° W. 158 " to oak tree
" 13 W 16° N 36 "
" 14 W 27° N 48 "
" 15 N 10° W 72 "
" 16 N 3° W 33 "
" 17 N 22° E. 36 "
" 18 N ---- 72 " Quarter Cor. N. line Sec 8, T. 33 R. 6
" 19 North 7½ on the line to the North line of Grundy County Illinois

No 19 Length of Road 1 4 miles 19 rods & 20 links

State of Illinois } ss
Grundy County }

I Hereby Certify that the foregoing plat &c is a true and correct plat of the Survey of the County road (No. 27) Commencing at the South end of Hollenbeck's Lane thence South five miles thence to the Illinois River Crossing at or near Simmons or Burches landing thence South through the center of Sec 16 T. 32 R. 6 to the Road leading from Plums to the County Line in the direction of Mud Creek as Surveyed by me June 23, 24, 25, 1847

S. Warren Surveyor

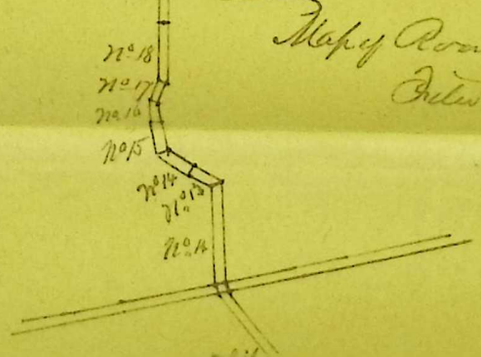
Paid Road

Endorsed

Map of Road 27

Filed 8th July 6. 1847

Geo. H. Merritt Clk



C. C. & W. Road leading from Burns to the County Line in the direction of Medlock as surveyed by me June 23, 24, 25, 1847

S. Warren Surveyor pro tem Road

Endorsed

Map of Road 27

Filed Sept 6, 1847

Geo. A. Shurtleff Clk

No 18
No 17
No 16
No 15
No 14
No 13
No 12
No 11
No 10
No 9
No 8
No 7
No 6
No 5
No 4
No 3
No 2
No 1

Wagon and Mud Creek Road

State of Illinois
County of

I Samuel R. Warren Clerk of the County Court in said County and State aforesaid do hereby certify the foregoing to be a correct Map and Plat of Road No. 27 as laid out from Hope to Burns, by a Jury duly sworn for that purpose and the Report of the Road Commissioners appointed by said Court to view said Road as filed in my office this 13th day of September A.D. 1847.

Witness my hand and the seal of said Court at Mendota in said County this 13th day of September A.D. 1847.

Samuel R. Warren Clerk

By Wm. Shurtleff Deputy

to locate his fence there, I started at the 1/4 corner on the South side of Sec 20, I ~~thought~~ appeared to me to be a government Mound, I have but little doubt of it, I ran North at 7° or 7 1/2° - I pursued the line through the section North and found the 1/4 corner on the North side of Sec 20, from there West, I could not see any Mound there, My Chaining came out on the West side of Where the Surveyors established at Grave yard corner, I came out a rod West of the stone - then I ran South about 1/2 Mile to the 1/4 corner of Sec 20, I sent for a Scythe and Mowed around and found a Mound indistinct, I put in a stake, a White oak stake and left it about 15 inches above ground, then I went South to the S W corner of Sec 20, and found a Mound and put a stake there - I took the bearing from the School House corner at 6° - I stuck a Soft Wood stick - bass wood or cotton wood at the S W corner of Sec 20 - Two years after that I was called to Survey some roads along Sec 17 - went along and the 1/4 corner on the North side of Sec 20 was the same as in My former Survey - I found no Mound

on the S E corner of Sec 20 - all the Surveyors agree on the corner at Sec 32 - There was local attraction - We travelled along and found a variation of the needle. We dropped the needle about every half Mile and the variation was at least from 30' to 55' - Mc Bride and Matthewson went to the School house corner and started at 6.° - they had dug about a foot from my stake; I told them where to dig at the place I supposed I had placed my stake, they dug where I indicated and found my stake, Matthewson had a first class transit instrument -

Ewer's ~~Ewers~~ instrument was not in adjustment Thompsons hedge stands 8 or 9 feet west of Grave Yard Stone - I saw the pt where M & McB found cor on S R of 20 - Cor was right and on Govt Mound, Assuming the corner Made to be right it would be on Bateman's land 25 ft & over Measuring from the School house fence it would be 25 ft to the centre of the Mound. There was a Mound in S R cor of T2 & Mound east then North another called the Sevean Think We found Mound S E of Z 9 & Mound S W of 29 -

X Grave yard cor. I did not

find- I put in a long stake of soft wood- there was a turnpike on East of that. H & M C.S. made their cor. thus somewhat or 60 links due west- ran a tangented line by pickets- brought us west of S.W. 1/4 32

Arlemus S. Matheson
A surveyor- I have been engaged since 31-32 have surveyed many of canal lands have surveyed at Skettle Creek fall of 32 for Waleman.
Began at S.E. of 32 ran random to East 1/4 cor. line of 32. Set stakes at Beginning pt continued N. on that line to ft near N.E. cor. of 32 no doubt about that corner, continued the course of the last 1/2 mile by stakes & transit directly running into the fields to the Dolan corner, from Dolan corner next 1/2 mile we found no corner before I had run this mile we had run west to the ranged line. Then came

back to the N.E. cor. of 31 — corrected & hunted for the cor. cor on a true line found the cor. then fixed a point & hunted for the 1/4 cor. on N. line of 32 then ran on the E. line of 29 cont'd N. in Grey's field to the North line of Sec. 20, looked for a cor. found a stake standing, perhaps 2 or 3 chs, fell. West of cor. think over 2 chs, set stakes went to the stone at N.E. cor. of 17 ran South at about 1/2 mile, 40 chs & 2 links found 1/4 cor. in E. of 17. cont'd S. to of 20 came at near fence at a point about 22 links N. of where we ran stakes stand day & found an old stake near a fence black walnut ran west went to N.E. cor. of Sec. 28 — run Pikeism East Waterman called for another survey. I went with M Bride next year — before the litigation at Morris — 4 rods 1 inch is a foot & 50/100

see Matheson

Matheson continued

I could not see between the 1/4 corner between Sec. 17 & 18 to grade yard corner, there was a high piece of land. Dont think ditch runs straight, it is difficult to make a ditch straight - 1/4 Sec. corner on South line of 17 is 35 feet East of the East fence Lowells stand on the N.W. corner of Sec. 5. I have looked for mound & have never been able to find a mound. North line of Township overruns Government field notes 2 chs & 10 lks - difficult to find mounds on North line of Township it was plowed over. We also ran in Lasalle county, perhaps three or four miles. North & E & W. found a ton or bend even in La Salle County, the first time surveying I was doing work for Cook, & Waterman wanted me to do some surveying for him. Said he was in trouble or doubt. it took me from 3 to 4 day may be over 4 days.

There had been breaking done about one year between Sec 5 & 6.

1/4 West of 29 + 1/4 cor. 80 in hollow there, we pursued the line across S. of the creek, furrows run to Bluff.

In running South of N. cor. of 20 to 1/4 corner on west line of 29. We found an old traveled track crossing our track sometimes on the left, sometimes on the right near this line we found one or 2 places, little ditches, culverts there, there is an old pike at school house at S.W. cor. of 20 our line runs top of the old pike Raymond fenced into road that stone West of Thompsons house at N.W. side of 20 Thompsons ledge is 7 feet West of Kerrels old corn. Kerrels corner is 19 1/2 lks N of Wilsons 11 inches of Henrys cor.

I had an opinion that stone was too far East. all the travel appeared to be on the line I made. on S.W. corner of 20 when we got this stake out it would fall apart, had the appearance of being one stake & soft wood, the dirt had worked in & split it. it was old rotten but that it had been sharpened

with an axe, might have been
basswood or poplar or maple, old
& soft, softness, ~~seemed~~ appeared to be from
nature of the wood, might have
been hard & rotted soft. I think
I found S.W. cor. of Sec. 20 have no
doubt about it being the Govmt.
corner. By my survey Sec. 19 falls
short sections 20 & 21 over 1m
Extensively where I put my stake
for S.W. 20 was West of where my
survey made the corner. If my
line is right, the North End of
N & fence, say at School House
corner, would be 26 or 27 feet East of
Kersteds corner on the East side of
the road at S.W. corner noticed the
fence on N. side - at S.W. corner of
Sec 20 bearing 76½° E. 83½ lks stone
at or near the pike another stone
we found there - Stone set, which
is near the centre of the pike 62 lks N of Mathews
corner & 8 links N. of Wilsons corner
set by this another corner - Stand at
Kersteds corner & look N. it would
require a stick 16 or 20 feet long
to picket - made map this Under-
made a plat at time of survey,
made the offsets at every ½ mile

– known mounds are of greater importance than surveys. I commenced at S.W. corner of Sec. 32. I went back a piece to ascertain before going into the disputed work from the S.E. corner of Sec. 29.

I called on Gray when with McBride to survey & went with me to S.E. cor. of 20. There was not much of a mound – Gray & others said it was the corner

Mr Ian Grey

Hoag & Dix were examined as to corner. Dix disagreed with Gray & Hoag. I & McBride started – Dix thought it was East of where I was – I could not say but think I do recollect now, something about the brick – Dix had got juggled someway – Dix evidently had got excited & could not recollect it. something might have trampled on it. we had to dig for brick – my impression is I commenced at a distance from the Hoag corner East – I think McBride commenced on brick and stone corner. think

~~Measurement~~ ~~measured last~~ between 2 stones 79 Clks
& 95 lks from Hoag corner & Ls 27 lks

M Bride— I think it would run west of the ditch. the point that we started from on S. line of 19 to S. W. corner of 20 was less than Govt. ~~survey~~ notes called for. M Bride established his cor. at S. W. cor. 20 just where I had found no other stakes at S. W. corner of 20 dug around East &c.

Dist Res. It is very seldom Government notes are correct.

Robt Nelson recalled by pltff.

By sighting the instrument to get a line over the place, I should set the instrument off the ground say South eight North. The rule is that all good surveyors would run the line the way they were originally made

S. M. Bride

Am surveyor of Grundy Co. since 1846. surveyed Nettles Creek. Am Spring 1860 Waterman wanted me to make a survey, mentioned Massey, wanted to know when we were going— Matheson came to Massey on street. Massey said he would take me up. we went up with

Massey - went down to Grey, went out to the North East cor. of Sec. 20. looked for corner, seemed to be 2 points. Hoag cor & Brick dust cor.

Matheson wanted Dix sworn, Math. wanted Hoag sworn. their statement were contradictory. I noted the difference between the 2 points, next went up to 18, went there prejudiced against Haleman & was careful. I noted difference to grave-yard stone there N. there W corner to W. side of 17. back to grave yard corner there back. went to 1/4 corner on S. side of 18. not able to find any tree on range line, then to School-House, then continued that course same bearing then on E. side of Sec. D. nothing found, then question came up about N.E. corner 20, went to N. Dix & said he thought he could give us a point more definately, we did some digging at the other corner, struck Dix dug some there Dix thought it ran through Gray's house door, couldn't find any bound. went to S.E. of 20 found a stone corner. Gray thought

corner was further East, were not able to find any. We continued that line on ½ mile to Division corner then measured N. noting on distances came up to the road, went back after that, back to the corner at S.E. of 29, found a corner there, ran N. to S.E. of 20, random pt. came a few inches West of stone, ran West noting distances up to the ¼ corner on S. side of 20. continued up along S. side of 20 up to S.W. of 19 found pt. but not very satisfactory to me- old digging- then turned and measured down to where the corner of 19 ran down and connected our point at S E of 20, then between 29 & 30 1 Mile south then to S E of 29 and measured our distance to S W of 29, to S W 30, then 1 Mile N. line at S W of 30 not very satisfactory, then to S E of 28 to test & measured up to S E of 29. then came back found a zigzag but not regular on road line - Came back making our correction - at S E of 18 we set no corner, at S W of 20 My calculation came 5 or 6 links east of the Matheuson & Elsted corner but I put the corner where Matheuson had. By my survey Sec 19 fell short & 20 & 21 overrun extensively. I afterwards

ran out a road on the range line in the South West Corner of 18. then S to S W of 30. I added 24 links to make it full 8 links that gave this entire Govt dist except 1 link, about same time I laid out another Road on line from S W of 18 to School house Corner. I put my corner for the N W of 20, 8 feet and a few inches - Govt distance on that line 72 chs & 20. I made it 72.26. I have an old record - old Record of Henry opened, ruled out - dist same question - Found Mound in S W cor of 18, on 1/4 cor between 1841 9 - commenced at range line, ranged did not find Mound Made it 72.38. random line to stone, Field Notes here 72.20. from township line to stone was 72.38. Govt dist 72.20 I am satisfied the Govt distance was not correct, Govt distance would fall short of where the stone is, would be too short, I have run in Grundy county other land where all mounds were visible in S part of Grundy (shows Map) Assume that the line of township is straight, which is not correct, Govt Notes show 80 ch. 10. next mile 80. 20. Next 80, 22. & 80. 18. &c is generally so through the county. Govt Mounds if

correct Must be extraordinary Circumstances
I have as often found fractions to
overrun & fall short, there is no
rule for finding lost corners laid
down. the S M corner is not an
essential corner. I know of no definite
rule by Which a Surveyor is to be
governed, My opinion is I would
first try Govt distances & by different
would go to a known corner and to
another known corner, run random
line &c. I know the instrument of
Ewer, I took it home examined it
tried to run some lots was out of
adjustment, centre pin was very dull,
was out of adjustment When I got it
My opinion is it had not been in
adjustment in a good While. Was at
N E With Kiester in 1861, at N E of
20, Was With him at grave yard cor,
I planted stone at grave yard cor,
I know stone called the Henry stone,
Henry was With me and Pointed out
the corner at S E of 18. Kiesters stone
was 7 links N of Mine & Mine 12 links
& some inches West of grave yard stone
same stone that all the other witnesses
have been talking about. When I got
to S M cor of 20. I was of opinion

that Point was some 6 or 7 links east of Point Matheuson proved. I swore Matheuson, I dug in for stake & found it. We digged a little, his cor was a little west of mine. We went down to 1/4 cor on N side of 29 & fix random Point there. I think I put in a corner there & of the stone & or 7 links. I think we went S to S W of 29. I was impressed that the corner would be very close to where Matheusons mound was, thought Matheusons Point a little too far west, then went to town line in La Salle County, thought that corner was a little west I found from a corner down west & found Govt distance did not hold out, I added links enough to make full 80, this was on range line at S W of 30. I then was better satisfied that corner of S W 29 was correct, I put a stone in on school house corner, which is 7 feet, 3 or 4 inches west of Dierstedts corner. Went with Diersted & found corner. From all circumstances I thought Diersted was right & I wrong. I became satisfied that My corner at S & 20 was too far east. Diersted & I went up there

east.

X I ranged along N & S a little and said Mc You have your corner too far east, this was in 1861, after we examined the Kiersted corner I dug and found an old stake, after Kiersted ranged N & S found an White oak stake, Kiersted described it before, was same, Kiersted said set your compass @ 6° and run down & you will find nearly corner, did so & found that the 2 corners of Matthewson & Kiersted were correct, Suppose our corners to be correct Bateman's fence was not in the road, an old road is west of where the road is now & would correspond with our surveying, at S W of 20 might have been 150 to 20 & C It would leave the old travel about eight, or ends of W's posts.

X ex. Variations of compass differ at different times, 9 years from now variation would be but very little different, variations incline both ways, the general variation would be the best test of the getting courses. In N W Ills the var is about 2 12 Whole amt of var is west. I placed the corner from Matthewsons testimony not from My survey, because it was destroyed and plowed over, My

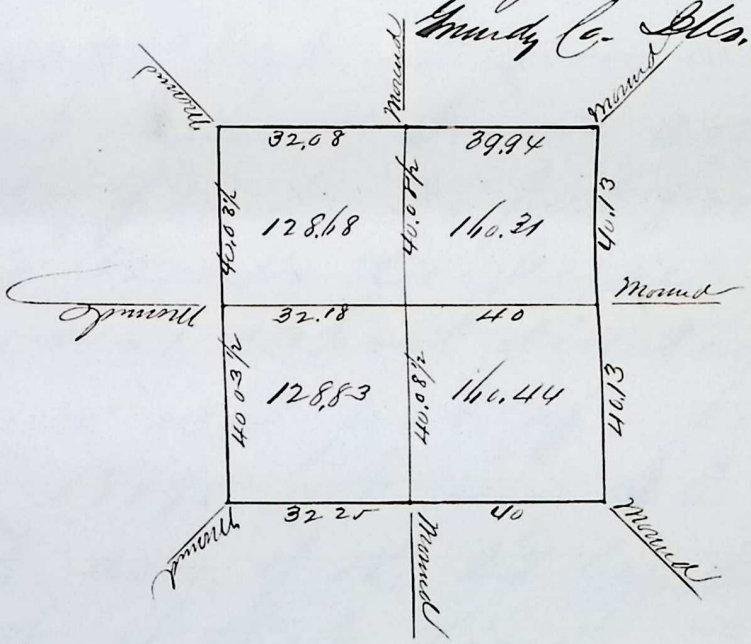
Measurements overrun some links
Mathewsons corner. Could make 20 &
21 overrun more than mine, ran
down to S W of 29 found nothing there,
I dug at a point pointed out by
Dix found stone am not positive
about brick. Dont remember measuring
from old foundation of Greys house
I measured the distance from the
Hoag to the stone corner. Anderson &
French did the chaining. S W 1/4 of
19 remember digging there; S W corner
of 20 has a stone has another stone
S E of stone, on 1/4 corner on S line of
20. I swore Mr Gray. I do remember
about seeing a furrow; think it was
east of the Mathewson corner about
2 rods, I think there were 2 or —
stakes standing on a very large Mound
there, about hill or something very
much elevated. Stakes were stuck
in the ground, ordinary description
of Government stakes, at 1/4 corner of
S line of 20 Mound appeared to be
about 20 years old. furrows ran
a little east of S I think.

D resd this is the same Mound Mathewson
referred to

X resd the corner on N E of 20 was N of ditch.

Record of Survey of Sec 18 T. 34 R. 6 E. of 3rd P.M. and Subdivision into 1/4 Sections as the same Made May 23rd 1854 for Thomas Sanghead for Seth Perkins David Jameson and Frank Hall Esq Commenced at Mound at the N.E. corner of said Sect. Thence W. Va. 6° 28' Dist 72.02 to Mound Thence S. V. 6° 15' Dist. 80.07 1/2 to Mound Thence E. Va 6° 15' Dist 72.19 to mound Thence N. Va. 6° 07 1/2 Dist 80.26 to Place of Beginning - The Subdivisions are Marked as figures upon the lines. The following is a Correct plat.

Thos. A. Sharp Co. Surveyor G Grundy Co. Ills.



I hereby certify the above to be a true and Correct Copy of the Original Record of Survey in my Office as Copied by me from the same Morris Mar 9. 1861.

A. McBride
County Surveyor of
Grundy County
Illinois.

at E side of road —

E. V. P. French —

Live on sec 18, on N E ¼ Lived there in June 55 have lived there ever since, have chained there, have taken no part except as Chainman — on first Mathewson survey. 2nd thinks when McBride was there, Haleman was there part of the time nearly all. 1st time they commenced on 7 line on S. E. 32 — 2nd time dont recollect. I know several places at School House corner, know the point. 25 feet from Kellet's corner to fence. in 57 or 58 Grey was school director then when fence was put up. bridge between 17 & 18. at my S. E. cor. of 18 to S. E. cor. of 18. 27 links East — 27 East of that line.

Raymond moved his fence after this difficulty — commenced, moved part of his fence might be 1/2 or more or less. there was a travelled track inside his fence — was 40 lks from it. Raymond's fence was set out 39 feet. should think old track was where they claim their

corner. There is a pike on the line
toor & the old track. Raymonds improve-
ments were in reference to the old pike
I think there was a part of Waterman's
fence at School House moved little
East. I think I would have been
likely to have taken notice if Water-
man had moved his fence so as to
have allowed only 12 feet. Before
Raymond moved his fence at the
School House, I should think there
was plenty of room. Did not notice
Waterman trying to mislead survey
-or. Aylesworth built the School House
fence in /5?

Oliver Dix

Live in S. 1/2 of N.E. 1/4 of Sec. 8, own N.E.
1/4 of 17. have lived there since /48 — 1/4
corner on 8 line of 8, S.E. cor. of 8. the
whole mounds on North side of 8 were
visible. the 1/4 corner of East line of 17
the mound on the S.E. cor. of 17 was
visible at that time. 1/4 cor. on N. of
17. I was not familiar with them.
I recollect the N.E. cor. of 21 & on the
S.W. of 20. I went down with Waterman
to see about corner. about W's build-
ing in /49 or /50. Traveled South
considerable after road was laid out

I hauled my rails & posts up the road
the timber road travel went very
near the road. nearly all the travel
was ~~very~~ near the mound. old line of
travel left the mound a little on the
East. Horses whiffletrees hit the stake
several times. startled my toe. I was
down there Last November. there was
evidence of the traveled track in field
Old Pike ranged as near with present
pike. as near as you get any. near
S.E. of 20. Raymonds fence the whole
line from the School House down -
was nearly straight. Hakimans
fence has not been changed to amount
to any thing by him. at S.E. being a
little low & muddy. he put in his
fence in on his own land on S.E.
cor of 20 - 15 or 20 feet - 4 or 5 rods of
fence on his own land - this was
after his line of fence. There has been
no general change in the line of fence
along 1/2 mile of fence. Raymond put
his fence out as far that there was no
room for travel. could not have been
a boy pen over the mound without
my knowing it. Knew Wis blacksmith
shop - 30 rods from N - was rotted
boards nailed on - ways to keep the wind

out. no floor in attachments except what the horses left reinders.

I knew where the S.E. of 17 was before it was demolished. when fixing fence Cook showed me the mound, fence stood the same 2 or 3 years. my fence was 2 feet East out end. 4 corner of 17 I have known since 85. Waterman wanted me to show him the brick stone corner. M Bride came I put my foot down, and said somewhere here about 2 feet from there an oldish pointed stake & put in brick reckon either Mathewson or M Bride. I did not put it there, had been traced over it. S.W. of 17 in 1850 was visible

His father married my mother. N.E. cor of 21. I was examined by M Bride. I told them there was stone corner. found stake 8 or 4 in high, they did not find bricks & stone there at that time, on the E. line of 20. Hoag fence was there not Ewers moved on S.W. cor. of 20. was on a boggish piece of ground. traveled road was to the West of mound.

R. R. Peckham

Live on Sec 8. 10 years agreement

April. Haltiman had built his fence when I was first there. Dont know when those mounds are of my own knowledge. I got a hog from Haltiman. There was a hog pen there of 2 or 3 acres, towards S.W. of 20, well was near fence, about 15 feet, the well is about 15 feet from N. fence, and about 2 or 3 rods from S. fence, never seen him to move his fence. fence could not be moved without my knowing it.

I changed works with him every little while. The old pike would be on a range with old line of travel. Raymond moved his fence about 30 feet. The old turnpike was before they had any law-suit. with reference to the old line of travel Haltiman had left out 25 feet. has been no substantial changes in Haltimans fence till it was cut down. Dont think the N. part of N's fence stood E. of Grays fence.

James Anderson

Live on N. 1/2 of Sec. 35. Settled Creek

I carried chain for McBride with French - some acquainted with land and old line of travel, have been for some time. No change in N's

line of fence except on N. end. till it was cut down. North end 10 or 15 rods set back east from the road. Hallimans fence was E. of the travel. Should judge 25 or 30 or may be 40 feet. no change.
From Kersted mound & Mathewson & McB side mound fence never encroached upon the road, old line of travel would run into Raymonds field at S.W. corner. 39 feet. Raymond moved his fence 39 feet east. Hallimans fence & Raymonds fence as he first made it would leave 80 ft. & may be more in S.W. corner. was of house & fence, since controversy commenced fence was moved & finally house was moved East. ask Frey what ranged? The School House fence stood 25 feet there - on a line of trees or stumps, would come on a line of School House cor.

Hall Hallman

Fathers fence was set in 1852 or 53 & helped set this fence the mound was visible, stakes burnt off. Trail was high. low ground high water covered it. in 51 Kersted came out & recognized mound & put a

stake there, I laid down some boards took square & measured from there 26 feet. School House mound was then visible. between two points was pretty straight mound remained there about 8 years till it was plowed down. I saw Reuben Raymond plow it down saw him do it in 57 or 58. no other mound after that. After Raymond enclosed, his fence set back 25 feet on the West. Raymond extended it about 28 or 29 feet. Raynds fence was put there in 54 or 55. our fence was put up first. the first traveled track was in range with the 1/4 corner & S.W. of 20. a little more on West side of mound at the mound, dryer now being plowed. was then when Kessler found that mound in 51 or 52. after he measured them he sent for a scythe mowed & found old stake burned. set basswood stake. at School House corner mowed down & the ditch was visible. drove a round white oak stake with sledge & Kessler adopted this. They told me they found stake as I stated Mark & McBride. Showed

judge it was the same stake.
McFarland had fenced S. also on
line of road - had been breaking, at the
time bridges stringers put on since
the law-suit commenced - moved East
carried up to where our fence originally
stood. Plowing up made road
go east. Bridge moved a little more
than its length east. was with Matt.
when he found mound, not at S.W. 20.
was quite an elevation passed over
Matt. told me to take a shovel &
shove it out carefully. struck 3
courses of clay. Matt. took a pin
found a hole, where the stake had
rotted out, was a stake East of
that - not an old one. The corn N.
1/2, N.E. 1/4 Sec. 29. was a track &c,
went down to track turned up
that road, since this difficulty
there has been a mound made &
some stakes put in - rotten when
put in.

Has been a controversy about
road on the 1/4 corner of S. line of 20
The N. line of ditch surveyed with
mounds

Gale Hartman, recalled by
Wheaton. at Wilson's survey Texas

not there. I know when highway commissioners were there with Ewers in July 1859. (Here the Defendant rested his defense

X Ex by Gray Was not at S.W. corner of 20.

(The plaintiff then introduced the following rebutting testimony

Massey by Wheaton If I am not mistaken, I think I saw not, Gall Waterman was at S.W. cor. of sec 20 and said he knew once where mound was, but did not know now. Plowing was done in Mowing land, when Raymond plowed he plowed each side of Removed & then both together. fences would have to be moved from. S.W. of 20 west along 17. was present when Dix sec at S.E. cor. of 20, Mr Dix was sent for. dug down where Dix told them found brick & stone. Dix said he got that corner by ranging through from his 1/4 corner to the old house. Dix said he knew it by the S.E. cor. of his 1/4 cor. & old house at, or about the Matheuson survey. I think they found 15 stakes at S.W. cor. of Sec. 20.

1 Ex by Gray The thickest of the stakes were 12

feet from it, balance 26 or more. were found before level taken. Do not know when level was taken, mound was S. of Mosey Jence, would be in road so would Raymonds fence. Thompson hedge is in road. would touch Frenches fence if he carried it on.

Aylesworth, by Kerr.

At NE of 20 I was present with Dix Dix said where he or some one else was digging that was the corner, said he knew by ranging north to old house Mc Bride ranged to the brick & stone corner & would strike 3 or 4 rods east perhaps of house. Dix said Bateman was with him when he put brick & stone in N. E of 20. I built school house fence was put from road not less than a rod. so that a team could be hitched without being on the road.

Dr Bower.

I think I was present at S W corner of 20 & do not know that question was put to more more than another about knowing the S W corner. Jale Bateman in substance said he once knew where the S W corner of 20 was. mentioning a time when it was plain and well defined but could not tell now.

Saved { What is your best recollection of the substance of what Dale Bateman told you about his then knowing the S W corner of Sec 20.?

Saved { that he did not know the precise spot, he had impressions that it was further west than I had fixed the stake but was not confident.

I know nearly where S W corner of 20 is from Math & my own observation at the time of surveying for Bateman land was open prairie, the ground in that region was a little higher, as far as plowing goes immediately in this corner I don't suppose plow ever went over it since grass grew on the prairie. land rises inclines a little to south Grass growing there was ~~coming~~ common prairie.

Very by guess) My eyes are not better than a level. There would be a difficulty in taking a level by putting instrument immediately in the vicinity, instrument should be off, cannot take a level within a rod of instrument.

Simon Fry.

I was present at Mackenzons & McBride survey in 1860. I know pretty near where S.W. corner of 20 is Low rich piece of ground. it marks

low East of Stake. but Lowish flat ground. tall grass never grew there where Matt. corner was. 1/4 cor. on S. line of 19 was present when they were trying to find this corner. Matt. stopped & dug. they. Matt. & others dug up a mound that looked like an original mound between 19 & 20 Mr Grey told them where the mound was. was North E. of Matt. mound, think Matt was known by Mr Bid. there was a hole on the mound, that I called a crawfish hole. that was the hole that Matt. went to. there were many stakes at the S. W. corner of 20 all around. I can tell about mound & crawfish hole as well as Matt now

Thompson

By Plff S.W. 20 was present at Matts & Mr Bids survey- ground has never been plowed - ground slopes to the West - can see no furrow there now

By Gray John Gray

I know that Raymond did plow up the mound at S.W. 20 - was an original mound 47 feet East. Point stake it was plowed up by Raymond was present at Matts & Mr Bids

survey - heard Matt testify. Matts
corner was never plowed up - ground
there was upland prairie. Long grass
never grew at Matts corner. It was
an elevation - was to the extreme
west of long grass - was present
at survey when Dix N.E. of 20. found
Dix digging - said "Dix what are
you digging there for?" no answer -
he came down to Brick & Stone
Dix said sighted through N. I can
swear that the original was to the right
or left of my spade handle. He asked
Matt to go. Matt refused - fixed his
compass at old house & ranged back
threw him east; Dix said "I put the
brick and stone there" & Bateman was
present" - that was considerably east of
govement Mound; at 1/2 cor on S line
of 19. Jake Bateman dug & Matt swore
found what I called a crawfish
hole & I pointed out Govt Mound a
few rods N E of that. Matt was particular
& took his range & said Loam was disturbed
Matthewson said it indicated a Govt Mound
I ran something into the hole that was
called a crawfish hole, did not put the
rosin weed into the crawfish hole
till after Matt had gone. They measured
from the crawfish hole & not from the

Mound pointed out by me. After the Matheuson Survey We looked for stakes at S W of 20, and examining Matts corner We dug & found Many ~~stakes~~, pretty much West & all round.

The Matts survey would give me more land, Wilson Survey would give me just right.

Here the ~~testimony~~ closed —

All the foregoing Witnesses both for the Plaintiff & Defendant Were duly Sworn before testifying. This Was all the evidence in the case.

The Court then gave the following Instructions for the Plaintiff, to the giving of Which and each and every of them the defendant then and there objected the Court then and there overruled the said objections of the defendant and to the opinion of the Court in giving said instructions and each and every of them the said defendant then & there excepted (Here follows the instructions given by the Court for the Plaintiff)

Copy of Plaintiffs Instructions.

Given. First. If the jury believe from the evidence that there was an open and public highway on the line described in the complaint and sometime within eighteen Months prior to the commencement of this suit the same was obstructed by fencing or otherwise by the defendant Bateman then the Jury should find for the Plaintiff and assess their debt against the defendant in a sum not to exceed ten dollars.

Given. Second. If the jury believe from the evidence that the highway Commissioners of Nettle Creek as highway Commissioners employed Dr Ebert & then being

County Surveyor of Grundy County to survey and fix the boundaries of the road in question and in pursuance of such employment and under the direction of said highway commissioners he did survey locate and plat said road and when such plat was completed and report thereof, was approved by the highway commissioners of said town and under the direction of the highway commissioners of said town filed the same together with the minutes and reports of survey in the town clerks office of said town, then such plat, minutes and report so made and filed is prima facie evidence of the location of a road on the line indicated by the survey, upon the question of the location of the road & the line of the same and the burden of proof is then upon the defendant to disprove or rebut that prima facie case and if the defendant has not done so so far as relates to the line of the road the jury should find for the plaintiff.

Three. A public road established by public authority continues as such until it shall be vacated by like authority, and it does not follow

Defendants

because the public have adopted another and different line of travel voluntarily that the road established by public authority is abandoned or vacated thereby.

Four. The Jury are instructed that all it is necessary in the first instance for the plaintiff to show in order to prove the establishment of the road by the direction of the county commissioners court, is to introduce the order of the county commissioners court establishing the road, and it is unnecessary for the plaintiff on that question to go farther and show that the previous steps required by statute had been taken.

Defendants

Six. If there is any discrepancy between the courses and distances and the monuments mentioned in the survey of the road in question the monuments must control.

Eleven. If the jury believe from the evidence that the defendant at or near the South West corner of 20, the point in controversy, fenced out a road several feet east of the point established by Ewer and Wilson in their surveys and identified by other witnesses, if the jury believe from the evidence that they did identify and establish the same, as the true S W corner of section 20 in town 34 and that defendant so fenced out a road at that point with the intention that the public should use the same as a public road & the public accepted the same as such by travelling and repairing it by proper authorities then such facts amount to a dedication of a road to the public and the defendant has no right afterwards to fence on or across the same; provided if the jury further believe from the evidence that at the time Bateman built said fence there was a road laid out on the South end of the West line of section 20 by the public authorities and that Bateman in building such fence intended only to fence out such public road, then that would rebut

Seven.

the conclusion from that act that he intended thereby to dedicate the road so fenced out to the public for a highway but is good evidence on the question as to where Waterman & regarded the east line of the laid out road to be.

Qualifications to the plaintiffs instructions asked by the defendant and refused by the court

The said defendant then and there asked the court to give the following qualifications to the plaintiffs 3d instructions and to the plaintiffs 4th instruction and to give the same as asked by the defendant, the said court then and there refused and to the opinion of the court in refusing to give said qualifications to said 3rd & 4th instructions of the plaintiffs the said defendant then and there excepted (Here follows the defendants qualifications to the plaintiffs 3d & 4th instructions refused by the court) The said court then gave the following instructions for the defendant, The court refused to give the sixth instruction asked by the defendant and to the refusal

of the Court in that behalf, the defendant there and there excepted.

3

Def Qualification to Plaintiffs 3rd " instruction.

It is not necessary that the public authorities should create a road when once laid, but the public may abandon a road by "non user" & by adopting another & different line of travel, and such adopted road if proves & the public acquire a right therein, by dedication of the owners of the lands through which it passes, and if the jury believe from the evidence, that the public did abandon such road as above stated & adopted another line of travel as above stated, and acquired right therein as above stated by dedication, then such adopted road becomes a legal highway; and then if the jury believe from the evidence that Raymond fenced out a road several feet west of the

Raymond

point established by Kiersted, McBride & Mathewson in their surveys & identified by other witnesses. If the jury believe from the evidence that they did identify & establish the same as the N.W. corner of section 20. and that said Raymond so fenced out a road at the point with the intention that the public should use the same as a public road & that the public accepted the same as such by travelling & working the same, by the public authorities. such facts amount to a dedication of a road to the public but under the qualification given by the Court to said Plff's instruction.

Refused

Qualification to Plff's fourth

But if the jury believe from the evidence that the Plff has shown by his own proofs by the record introduced by him of the original proceedings of the County Commrs or otherwise that there was no petition for said road signed by 25 citizens of the Co. then the Plff must ~~suppose~~ supply such defect if any, in the record by other proof.

Given

Copy of Instructions for Defendant.

1st The jury are instructed as a matter of law in this case that the monuments erected by the original Govt. Surveyor upon the land are facts. & that the field notes and plats returned by the original surveyor indicating course, distance & quantity are but descriptions which may serve to assist in ascertaining those facts.

Given

2nd The law makes the lines actually run upon the ground by the original surveyor the true & lawful boundaries of all lands sold by the Govt if they can be ascertained by reference to the monuments erected upon the land by the original surveyor

3d Established monuments not only serve to show with certainty the lines of their own tracts upon which they are erected

Rivers

but may be resorted to in connection with the field notes & other evidences to fix the original location of a monument or line, which is become lost or obliterated by time accident or design.

Rivers

4th. Where a section cor. is lost, the monuments of the adjacent sections may be resorted to, for the purpose of ascertaining where the lost cor. was actually put by the original surveyor.

Rivers

5th. The law cannot satisfactorily determine in all cases whether courses or distances shall govern when they do not correspond, but this must be determined by concurring testimony and the circumstances of each particular case. the one that controls the judgment must be selected. But when I know ~~xxx~~ monuments are found that control courses & distances whether they. the courses or distances correspond or not

6. The Monuments if proven to have been erected at the two ~~extremities~~ extremities of a township line are not entitled to a more controlling influence in determining the actual location of the intermediate line than the section corners established along the line if they can be found and the Monuments if proven to have been erected at section corners are not entitled to a more controlling influence in determining the actual location of the intermediate line between section corners than the quarter section corners established along such line if they can be found.

Reversed

7. Neither a township line or a section line are necessarily straight in all cases: a deflected line or irregular curve line if established by satisfactory evidence should be adopted by the Jury as the true line originally run by the government Surveyor.

Given.

8. The quantity of land by distance or measurement according to the field notes may sometimes be considered by a Jury in corroboration of other evidence but in determining the boundaries of land

Given.

they are the least reliable and are the last to be resorted to.

9. If the jury believe from the evidence that the Highway in question was laid on the section line between the South West corner of section 20 and the quarter corner on the east line of section 19, and that those two points as established by Matheweson, McBride & Dierstead and other witnesses if proven are the true corners for said two points and that Bateman's fence at the time of the supposed obstruction as claimed was twenty five feet east of a line run between those two points then the jury will find the defendant not guilty if they find the width of the road as laid was sixty feet.

Given.

10. If the jury believe from the evidence that a fence and improvements was made south of the S. West corner of section 20 by Martin and that Bridges were put in by the road authorities on the line of the road in controversy between section 19 & 20 and between section 17 & 18 and between sections 30 & 29, and Raymond built his old fence in reference to the old line

Given.

of travel and that the School house and School house fence was built and that the pike south of the school house was made in reference to and on the same general ~~laid~~ line of travel as also Frenches Hedge and Mc Farlands fence and that the travelling Public used said general line of travel is proven for a series of years commencing shortly after the road was laid out and that all of said improvements are on the same general range and correspond with the lines as fixed by Matheson Mc Bride & Hensteds Surveys; these circumstances in connection with others in proof are proper to be considered by the Jury in determining the question of where the road in controversy was laid;

The Jury retired and returned into Court with their verdict and found for the Plaintiff and assessed his debt at ten dollars —

The said defendant then and there moved for a new trial, the said Court then and there overruled said Motion for a new trial and to the decision of the Court in that behalf, the said

Filed March 5th 1864
G. M. Wallenbeck
Clerk

defendant then and there excepted, the said defendant then prayed the Court to sign and seal this his Bill of exceptions herein, which is accordingly done in open court, the Court has herein certified to all the evidence in the case. This March 5th A.D. 1864.

R. G. Montony. (Seal)

State of Illinois }ss
Kendall County } I Geo. M. Wallenbeck Clerk of the Circuit Court in and for said County do hereby certify that the above is true Copy of the Bill of Exceptions as the same was amended by order of said Court April 11th A. D. 1864 also a true Copy of the proceedings had and entered of Record in relation thereto, in the Matter of Reuben Raymond who sues for himself as well as for the County of Grundy against Nimrod S. Watson lately pending in said Court.

Given under my hand and seal of said Court this 9th day of May A. D. 1864.

G. M. Wallenbeck
Clerk

126

Bateman
vs
Raymond

Amended Record

Filed May 10. 1864.
L. Leland
Clk.

Clerks fees Copying
200 folios $200

G. M. Kallenbach
Clk

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

[redacted]

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

is concerned, for Thomas Longhead, one of the original viewers of the road, testified, (see Record p. 25,) that at the time of laying out the road the NW corner of section 20 could not be found, and the viewers of the road laid the road on the west line or edge of the ditch on the west of sec. 17, for the reason that they could not find the NW corner of 20, and so laid the road without reference to that corner; and it is immaterial therefore whether Henry afterwards found that corner or not.

II.

The plaintiff's second instruction was properly given under the act of 1861. (See Laws 1861, p. 130.)

That act is not *ex post facto* in its operation. It does not deprive the owner of the land of any vested rights. The act simply ratifies and confirms all proceedings theretofore had by town authorities and other authorities in surveying, locating and platting the public highways of each town, and makes such plat and survey *prima facie* evidence of the existence of the highway.

The argument of plaintiff in error is just as forcible against the operation of the statute in *futuro* as against its *ex post facto* effect, and therefore the argument proves too much.

The act simply establishes *what shall be evidence* in a given case and cannot be, when it goes no further, unconstitutional.

It is not every retrospective law that is *ex post facto* and unconstitutional, as for instance a law curing former defective acknowledgments in deeds, although retrospective, is not *ex post facto* and unconstitutional. 8 Pet. 88; 15 S. & R. 72; 8 Mass. 472, and like cases which assimilate to this.

But independent of this instruction, and even if it had been refused, the jury would have found from the evidence and would have been warranted in finding the same verdict that they did render, and must have found the location of the road as they did, as we shall establish more fully hereafter.

III.

The third instruction given for the plaintiff and objected to by the defendant establishes the true principle, that "it does not follow because the public have adopted another and different line of travel voluntarily, that the road established by public authority is abandoned or vacated thereby."

Champlin v. *Morgan*, 20 Ill. p. 183.

And the qualification asked for by defendant below had a direct tenden- to mislead the jury, and had also injected in it an argument of the case, and moreover was wholly inapplicable to the facts proven; for the evidence is overwhelming that the road was established where Ewer and Wilson made the SW corner of sec. 20, and over the point where the turnpike spoken of by them afterwards was, their stake for the SW cor. of 20 being set by them in the centre of the turnpike; and the public only *in a wet time* went west of the place of the established road in order to avoid the wet place where the mound in SW 20 was, and there was no evidence at all of a non-user, and no evidence at all of a dedication of a road to the public on the west of the true SW cor. of 20.

IV.

The defendant's 6th instruction was properly refused, as it instructed the jury, on the weight of evidence, instructing them that one fact should not have a more controlling influence on their minds than another, a matter of which the jury were the sole judges, and on which the court had no right to instruct them. It seems unnecessary to elaborate this point. A mere inspection of the instruction shows its impropriety.

V.

The apportionment of costs was a matter of discretion for the Circuit Court. The statute is that the court shall divide the costs according to the justice of the case.

Sec. 17, Scates Stat. p. 246.

There is no such practice in the Circuit Courts in apportioning costs as claimed by plaintiff in error in argument. The plaintiff below prevailed in the case, recovered all the judgment the statute would allow, established the road by proof and fully prevailed on the merits of all questions in controversy; and we submit that the Circuit Court did justice in apportioning the costs, even if this court inquires into that question.

VI.

This court will not disturb the verdict of a jury unless it is palpably and manifestly against evidence. If there is evidence to support the verdict this court will not interfere. 25 Ill. p. 125, *Ohio & Miss R. R.* v. *Brown.*

Nor where there is a conflict of evidence. *Bloom* v. *Crane, et. al.*, 24 Ill. p. p. 48, 49.

The testimony of Thomas Longhead, (one of the original viewers of the road, see Record p. 25,) William Stephen, (Record p. 27,) James Thompson, (Record p. 28,) George Bullis, (Record p. 29–30,) C. C. Massey, (p. 32, 33,) John Gray, (Record p. 49, 50,) fully establishes the ¼ corner of south west of sec. 20, as shown by them as old residents from the government mound and stake formerly existing there, from the peculiar location of the mound, &c.; and their testimony is direct and positive that the true south west ¼ corner of 20 is where Ewer and Wilson, the two surveyors for plaintiff, made it in their surveys.

And the jury must have been satisfied from the evidence that the point established by Ewer and Wilson, in or near to the centre of the turnpike, corroborated and identified, as it was, by the testimony of the above named witnesses, was the true SW corner of sec. 20.

Wilson and Ewer, by their surveys, made the SW cor. of 20 identically the same, or nearly so, [Record p. p. 49, 23,] while Mathewson & McBride do not put the corner where their survey brings. [See Mathewson's testimony, Record p. 63, and McBride's, Record p. 66.] McBride & Mathewson *differed*, but McBride put his corner where Mathewson had,

although his survey brought him 5 or 6 links east of Mathewson: [See McBride's testimony, p. 66.]

And the jury very properly gave but little reliance to the accuracy of these two surveys, as against those of Wilson & Ewer, corroborated by so many witnesses to known monuments.

The surveys of Mathewson & McBride made sec. 19 fall short and sections 20 and 21, overrun extensively, [Record p. p. 63, 65,] while Wilson & Ewer give to sec 19 its complement, and 20 and 21 overrun but little. [See their testimony, p. p. 23.]

It is not true that all the obstructions were made by Raymond as alleged by plaintiff in error.

Waterman's fence was moved into the road 2 or 3 times. See testimony of James Thompson. p. 23; George Bullis, p. 29; Wm. Winterbottom, p. 31; C. C. Massey, 32-33; Wm. McFarland, p. 47-48; R. Aglesworth, p. 48; John Gray, p. 49-50; and was in the road at the time of commencing this suit originally, and obstructing the same. Testimony of John Gray, McFarland, Aglesworth, Massey, &c.

The road was originally laid on a straight line. [See testimony of Thomas Longhead, one of the original viewers, p. 24; John Gray, p. 50; William Stephen, p. 27; John Longhead, p. 27; Thompson, p. 28; Massey, p. 32, &c.] While if the road was where plaintiff in error claims, and where surveys of Mathewson & McBride pretend to put it, it would be on a curve. [See testimony everywhere.]

The overwhelming balance of testimony establishes the location of the road where it was claimed by the plaintiff below, and also establishes the fact of the obstructions of the road by Waterman in fencing across the same.

VII.

The jury, from the evidence must have found, as they did, even if the court below had refused the 3d instruction of the plaintiff below, or had given the modification of the same asked for by defendant below.

For these reasons we submit that the judgment of the court below should be affirmed.

DICKEY & WHEATON,
For Deft in Error.

1859

Minard L. Waterman

vs

Reuben Raymon

Brief of Deft.

Filed May 24. 1824

L. Leland

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

MINARD L. WATERMAN,
Plaintiff in Error,
vs.
REUBEN RAYMOND, WHO SUES FOR HIMSELF, AS WELL AS FOR THE COUNTY OF GRUNDY,
Deft. in Error.

} Error to Kendall County.

POINTS AND AUTHORITIES FOR PLAINTIFF IN ERROR.

This was an action of debt under the statute for obstructing a public highway. [See Session Laws, June 22, 1852.]

Scates Statute, p. 574.

menced at mound at the NE corner of said section; thence west variation 6 degs. 28 m. dist. 72.02 to mound; thence south 6 degs. 15 m. dist. 80.07½ to mound; thence east. variation 6 degs. 15 m. dis. 72.19 to mound; thence north variation 6 degs. 07½ m. dist. 80.26 to place of beginning. The subdivisions are marked in figures upon the lines. (For plat, see page 67 record.)

THOMAS A. HENRY,
County Surveyor of Grundy County, Ill.

I hereby certify the above to be a true and correct copy of the original record of survey in my office as copied by me from the same.

Morris, March 9th, 1864.

N. MCBRIDE,
County Surveyor of Grundy County, Ill.

See Abstract, p 67.

The 3d section is *ex post facto* in its operation. It is made in its terms "to apply to ratify and confirm all proceedings *heretofore* had," &c., and in the case at bar did operate on the survey made by Dr. Ewers in 1860.

The 2d section makes the plat, minutes and report of the surveyor, *prima facie* evidence that the road or roads there indescribed, have been *lawfully* constituted a public highway.

This deprives the owner of land of his right, without any notice or hearing of any kind, and legalizes a road at all events, dispensing with all the necessary requisites before the title to a road can be vested in the public. It makes the surveyor a tribunal to pass upon the rights of property, without any notice to or hearing of the owner. If this be so, a surveyor is the supreme power of the state.

24 Ill. 38.

III.

The 3d instruction given for the plaintiff below, is clearly not law as given, and was calculated to mislead, and no doubt did mislead the jury. [See abstract, p. 32.]

It announces the false proposition that a public highway when once laid by public authority, never ceases to exist, except it be vacated by like public authority; and inasmuch as a public highway can only be laid by the order of the road authorities, this instruction directs the jury that the road cannot cease to exist, except the road authorities, by their order, vacate it. This is not good law, because it excludes the idea that a public road may cease to exist by *non-user* of the public, coupled with the adoption by the public of another and different line of travel in lieu of the old one, and the acquisition by the public of a legal right to travel such newly adopted line, by any of the modes known to the law, or the necessity of the road having ceased to exist. The qualification asked to this instruction by the defendant below, and which the court refused to give, is indisputable law, and is based upon and fully sustained by the decision of this court.

Champlin vs. Morgan, 20 Ill. p. 181.

It cannot be said that the facts in the case did not warrant the qualification to be given. The record will show that the proofs in the case most strongly tended to show the existence of every single fact stated in the hypothesis of this qualification. How the court below could give the plaintiff's 11th instruction and refuse the defendant's qualification to the plaintiff's 3d instruction, cannot be well conceived. The same

facts as against Raymond, as to what would amount to a dedication on his part, were asked and refused in this qualification,—the same facts, we say, that the court below in the 11th instruction, given for the plaintiff, declared would amount to a dedication as against Waterman.

IV.

It was manifestly error for the court below to refuse to give the defendant's 6th instruction.

The principle of this instruction is distinctly recognized by this court in the case of Rogers vs. McClintock, 11 Ill. 279.

Its application to the facts is obvious. Waterman's fence which was claimed as an obstruction of the highway, extended north and south on the west half of the S W qr. of sec. 20. The road, it is agreed, was laid out north and south on the section lines. Hence it became important to ascertain the true position of the government corners, as well the section corner at the SW qr. corner of sec. 20, as the quarter corner between sections 19 and 20, called the School House corner, one-half mile north of this section corner. When these two points were fixed by the jury, then a right line run from the section corner at the SW corner of sec. 20, to the School House Corner, would correctly determine whether Waterman's fence obstructed the road or not, and not a right line run from the section corner at the SW corner of sec. 20 to the section corner at the SW corner of sec. 17.

V.

We think the court below erred in the apportionment of the costs in the cause.

The judgment before the justice was $23.00 for the plaintiff, and the judgment in the Circuit Court was only $10.00 for the plaintiff. In such case, the statute requires the court "to divide the costs between the parties, according to the justice of the case."

Sec. 17, Scates Stat. p. 246.

The court below ordered the defendant below to pay fifteen twenty-thirds, and the plaintiff below only eight twenty-thirds of the costs.

The practice on our circuits we believe to be, to apportion the costs in the relative proportion that the amount of one judgment bears to the other, and we submit that the statute makes it peremptory, and that the court cannot apportion arbitrarily, according to its discretion.

VI.

The finding of the jury was clearly against the weight of the evidence, and the defendant should have been allowed a new trial. All the obstructions were made by Raymond, who moved his whole fence 39 feet to the east; Waterman's fence having remained as it had stood for years.

For these reasons, we submit that the judgment below should be reversed, and the cause remanded back for a new trial.

GRAY, AVERY & BUSHNELL *et al.*,

Attorneys for Plaintiff in Error.

126 159

Supreme Court
3d J. D.
April T. 1864.

Miriam L. Waterman

vs.

Reuben Raymond
&c.

Brief of Plaintiff
in Error.

Filed May 7. 1864
L Solinus Clk

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

MINARD L. WATERMAN
vs.
REUBEN RAYMOND.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

I.

The record of Henry County Surveyor was sought to be offered in evidence by defendant below under sec. 7, chap. 103, R. S. That section applies, as we claim, only to questions of private boundaries of land, and it is therin made the duty of the surveyor to note in his book the survey made by him at the request of any person giving the name of the person *whose land is surveyed*; and such record shall be subject to the inspection of any person who *may think himself interested*, and a certified copy thereof shall be admitted as *prima facie* evidence, &c., the object and scope of the statute evidently being to provide a means only to private individuals of establishing in the first instance their boundaries of the land when called in question.

But the record sought to be introduced was that of a survey made for private individuals to establish private boundaries, and which the public had no interest, to which the public was not a party, and certainly could not be *prima facie* evidence, against the public, of any point along the line of the road in controversy, and was properly rejected by the court below.

The record was not admissible in evidence according to any of the known rules of evidence, but if admissable at all it was under the statute.

But the NW corner of sec. 20, the point sought to be established by the record of Henry, was an immaterial one, as far as the location of this road

is concerned, for Thomas Longhead, one of the original viewers of the road, testified, (see Record p. 25,) that at the time of laying out the road the NW corner of section 20 could not be found, and the viewers of the road laid the road on the west line or edge of the ditch on the west of sec. 17, for the reason that they could not find the NW corner of 20, and so laid the road without reference to that corner; and it is immaterial therefore whether Henry afterwards found that corner or not.

II.

The plaintiff's second instruction was properly given under the act of 1861. (See Laws 1861, p. 130.)

That act is not *ex post facto* in its operation. It does not deprive the owner of the land of any vested rights. The act simply ratifies and confirms all proceedings theretofore had by town authorities and other authorities in surveying, locating and platting the public highways of each town, and makes such plat and survey *prima facie* evidence of the existence of the highway.

The argument of plaintiff in error is just as forcible against the operation of the statute in *futuro* as against its *ex post facto* effect, and therefore the argument proves too much.

The act simply establishes *what shall be evidence* in a given case and cannot be, when it goes no further, unconstitutional.

It is not every retrospective law that is *ex post facto* and unconstitutional, as for instance a law curing former defective acknowledgments in deeds, although retrospective, is not *ex post facto* and unconstitutional. 8 Pet. 88; 15 S. &. R. 72; 8 Mass. 472, and like cases which assimilate to this.

But independent of this instruction, and even if it had been refused, the jury would have found from the evidence and would have been warranted in finding the same verdict that they did render, and must have found the location of the road as they did, as we shall establish more fully hereafter.

III.

The third instruction given for the plaintiff and objected to by the defendant establishes the true principle, that "it does not follow because the public have adopted another and different line of travel voluntarily, that the road established by public authority is abandoned or vacated thereby."

Champlin v. *Morgan*, 20 Ill. p. 183.

And the qualification asked for by defendant below had a direct tenden- to mislead the jury, and had also injected in it an argument of the case, and moreover was wholly inapplicable to the facts proven; for the evidence is overwhelming that the road was established where Ewer and Wilson made the SW corner of sec. 20, and over the point where the turnpike spoken of by them afterwards was, their stake for the SW cor. of 20 being set by them in the centre of the turnpike; and the public only *in a wet time* went west of the place of the established road in order to avoid the wet place where the mound in SW 20 was, and there was no evidence at all of a non-user, and no evidence at all of a dedication of a road to the public on the west of the true SW cor. of 20.

IV.

The defendant's 6th instruction was properly refused, as it instructed the jury, on the weight of evidence, instructing them that one fact should not have a more controlling influence on their minds than another, a matter of which the jury were the sole judges, and on which the court had no right to instruct them. It seems unnecessary to elaborate this point. A mere inspection of the instruction shows its impropriety.

V.

The apportionment of costs was a matter of discretion for the Circuit Court. The statute is that the court shall divide the costs according to the justice of the case.

Sec. 17, Scates Stat. p. 246.

There is no such practice in the Circuit Courts in apportioning costs as claimed by plaintiff in error in argument. The plaintiff below prevailed in the case, recovered all the judgment the statute would allow, established the road by proof and fully prevailed on the merits of all questions in controversy; and we submit that the Circuit Court did justice in apportioning the costs, even if this court inquires into that question.

VI.

This court will not disturb the verdict of a jury unless it is palpably and manifestly against evidence. If there is evidence to support the verdict this court will not interfere. 25 Ill. p. 125, *Ohio & Miss R. R.* v. *Brown.*

Nor where there is a conflict of evidence. *Bloom* v. *Crane, et. al.*, 24 Ill. p. p. 48, 49.

The testimony of Thomas Longhead, (one of the original viewers of the road, see Record p. 25,) William Stephen, (Record p. 27,) James Thompson, (Record p. 28,) George Bullis, (Record p. 29–30,) C. C. Massey, (p. 32, 33,) John Gray, (Record p. 49, 50,) fully establishes the ¼ corner of south west of sec. 20, as shown by them as old residents from the government mound and stake formerly existing there, from the peculiar location of the mound, &c.; and their testimony is direct and positive that the true south west ¼ corner of 20 is where Ewer and Wilson, the two surveyors for plaintiff, made it in their surveys.

And the jury must have been satisfied from the evidence that the point established by Ewer and Wilson, in or near to the centre of the turnpike, corroborated and identified, as it was, by the testimony of the above named witnesses, was the true SW corner of sec. 20.

Wilson and Ewer, by their surveys, made the SW cor. of 20 identically the same, or nearly so, [Record p. p. 40, 23,] while Mathewson & McBride do not put the corner where their survey brings. [See Mathewson's testimony, Record p. 63, and McBride's, Record p. 66.] McBride & Mathewson *differed*, but McBride put his corner where Mathewson had,

although his survey brought him 5 or 6 links east of Mathewson: [See McBride's testimony, p. 66.]

And the jury very properly gave but little reliance to the accuracy of these two surveys, as against those of Wilson & Ewer, corroborated by so many witnesses to known monuments.

The surveys of Mathewson & McBride made sec. 19 fall sh rt and sections 20 and 21, overrun extensively, [Record p. p. 63, 66,] while Wilson & Ewer give to sec 19 its complement, and 20 and 21 overrun but little. [See their testimony, p. p. 23.]

It is not true that all the obstructions were made by Raymond as alleged by plaintiff in error.

Waterman's fence was moved into the road 2 or 3 times. See testimony of James Thompson. p. 23; George Bullis, p. 29; Wm. Winterbottom, p. 31; C. C. Massey, 32-33; Wm. McFarland, p. 47-48; R. Aglesworth, p. 48; John Gray, p. 49-50; and was in the road at the time of commencing this suit originally, and obstructing the same. Testimony of John Gray, McFarland, Aglesworth, Massey, &c.

The road was originally laid on a straight line. [See testimony of Thomas Longhead, one of the original viewers, p. 24; John Gray, p. 50; William Stephen, p. 27; John Longhead, p. 27; Thompson, p. 28; Massey, p. 32, &c.] While if the road was where plaintiff in error claims, and where surveys of Mathewson & McBride pretend to put it, it would be on a curve. [See testimony everywhere.]

The overwhelming balance of testimony establishes the location of the road where it was claimed by the plaintiff below, and also establishes the fact of the obstructions of the road by Waterman in fencing across the same.

VII.

The jury, from the evidence must have found, as they did, even if the court below had refused the 3d instruction of the plaintiff below, or had given the modification of the same asked for by defendant below.

For these reasons we submit that the judgment of the court below should be affirmed.

DICKEY & WHEATON,

For Deft in Error.

126 – 159

State of Illinois } ss.

Supreme Court of the State of Illinois. Third Grand Division. April term. 1864.

Orrin L. Waterman
vs
Reuben Raymond } Error to Tazewell.

To the Hon Judges of the Supreme Court.

The petition of Reuben Raymond, defendant in error above named, and who was plaintiff in the Court below, respectfully represents to Your Honors, that the record filed in this cause is not a correct record, and is untrue in fact in the following particulars, to wit: in the record of the bill of exceptions filed herein, the 9th and 10th instructions asked by the defendant in the Court below to be given to the jury on his part are marked in said record of said bill of exceptions as "refused" whereas said 9th and 10th instructions were in truth and fact given by the Court to the Jury, on the trial of this cause in the Court below, on the part of the defendant, and were marked by the said Court "given".

And your Petitioner further shows unto your honor that When the original bill of exceptions was made out, and signed and sealed by the Hon R. G. Montony, the presiding Judge Who tried said cause in the Kendall Circuit Court, there was attached thereto a certified copy of the instructions given to the Jury on the part of the said defendant in the Court below, and a certified copy of the instructions refused on the part of said defendant, Which were certified to by George M Hollenbeck, Clerk of said Circuit Court of Kendall County, as being correct copies, but in such certified copy of such instructions attached to said bill of exceptions, there was Nothing Written opposite (on the Margin) of the said 9th and 10th instructions, neither the word "given" or "refused", but said Clerk in Making out said certified Copy of said instructions omitted to Write the Word "given" opposite said 9th and 10th instructions as he should have done and as the same appeared on the original instructions, and the said

Judge Who signed & sealed the said bill of exceptions did so without noticing such omission, And your Petitioner further shows that When said bill of exceptions was filed with the said Clerk of the Circuit Court of Kendall County on the 5th day of March last past, there was written in pencil mark opposite said 9th and 10th instructions ~~the~~ in said bill of exceptions, the word "refused" in the handwritten of O. C. Ogden, the counsel for said Bateman defendant, as your Petitioner is informed & believes, and neither your Petitioner nor his counsel consented to such interlineation of the bill of exceptions, and your Petitioner further says that this cause was tried at the last January term of said Kendall County Circuit Court and the said bill of exceptions was settled signed and sealed on or about March 5th 1864, being in vacation; and at the last April term of said Kendall Circuit Court, your Petitioner by his counsel applied to the said Hon R. G. Montony, Who tried said cause, in open court after due notice to the said R. G. M. the counsel

and attorney for said defendants Bateman, to amend said bill of exceptions in said particular according to the fact, and the said Judge upon such application amended said bill of exceptions according to the fact and truth of the case, so that said bill of exceptions as thus amended now shows that said instructions 9 and 10, were given to the jury, which is the fact. And said April term of said Court was the first term of Court after said bill of exceptions was signed & sealed as aforesaid. Your Petitioner therefore prays that a Writ of Certiorari may issue to the said Clerk of said District Court commanding him to send up a true copy of the record in this particular aforesaid.

Reuben Raymond

State of Illinois } ss.
Logan County }

Reuben Raymond being first duly sworn, on his oath says that the above Petition signed by him is true in substance and fact.

Reuben Raymond

Sworn & subscribed before me this 20th Day of April A.D. 1874
L. Leland Clerk
by J. A. Rice Dep.

Filed April 20 1874
L. Leland Clerk

No 126
Petitions
Raymond
Petition for Certiorari

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Cicuit Court for the County of Kendall — Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Cicuit Court of Kendall County, before the Judge thereof, between

Reuben Raymond

plaintiff, and

Miriard L. Waterman

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

Waterman

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 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~~ Pro Nancy H. Walker, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 4th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty four.

L. Leland
Clerk of the Supreme Court.

126

Miriam L. Bateman

No. vs.

Reuben Raymond

WRIT OF ERROR.

FILED April 4. A. D. 1864

L. Leland

Clerk.

State of Illinois } ss. Supreme Court
of the State of Illinois
Third Grand Division
April Term, 1864.

Miranda L. Waterman
vs
Reuben Raymond } Error to
Kendall.

And now comes the said defendant in error and says that the copy of the record filed in this Court in this cause wherein it appears in the bill of exceptions that the Ninth and tenth instructions asked by the defendant in the court below to be given to the jury were refused, is incorrect and untrue and not a true record in fact, The said defendant therefore, by Wheaton his attorney, now moves this honorable court that a writ of Certiorari may issue to the Clerk of the Kendall County Circuit Court to send up a true record in that particular. Which Motion is founded on the petition & affidavits filed herewith

Chas Wheaton
Atty for dft in error.

No 126.

Patterson

v

Raymond

Motion for

certiorari

Filed April 20. 1884

L. Leland

Clerk

State of Illinois ss. Supreme Court
of the State of Illinois
Third Grand Div. Apr. term
1864.

Miranda L. Bateman,
vs
Reuben Raymond } Error to
Kendall.

Charles Wheaton, being first duly sworn, on his oath says, that he was the counsel for the said Reuben Raymond on the trial of this cause in the Kendall County Circuit Court, and that on or about the 5th of March, last past, O. L. Gray, Counsel for the said Bateman, Defendant in the Court below, came to this affiant with a bill of exceptions in said cause to be settled, and this affiant and said Gray went over said bill of exceptions carefully, and this affiant looked over the certified copy of the instructions given and refused on the part of Plaintiff and defendant which was attached to said bill of exceptions and certified to by the Clerk of said Circuit Court, and this affiant saw nothing of the words "refused" written in said bill of exceptions opposite the 9th and 10th instructions asked for by the

defendant, nor any statement in said bill of exceptions that the same were refused, and after looking over said bill of exceptions as afore= =said this affiant Minuted on the bottom of the said bill to the said Judge, that the bill of exceptions was substantially correct, and the said Judge Signed and Sealed the same without examination. But this affiant says, that at some time before said bill of exceptions was filed with the said Clerk, the word "refused" was written on the margin of said bill of exceptions in pencil Mark opposite the said 9th and 10th instructions as asked for by the said defendant Waterman, and the said word "refused" is not in the handwriting of the said Judge or of the said Clerk, and was put there without the knowledge or consent of this affiant. And the said Circuit Clerk in making a copy of the record in this cause for the plaintiff in error has copied the said word "refused" into the copy of the bill of exceptions opposite the said 9th & 10th instructions And this affiant says that said 9th and 10th instructions were given

to the Jury on the trial of said cause and were marked given by the Court. And this affiant further says that at the last April term of the Kendall Circuit Court, which was the first term of said Court after said bill of exceptions was signed by said Judge, this affiant as counsel for the said Raymond, Plaintiff in said cause, after due notice to the said O. L. Gray, Counsel for said Waterman, applied to the said Judge in open Court, to amend said bill of exceptions in said particular according to the truth, and the said Judge did on such application amend said bill of exceptions in that particular so that the same now shows that the said 9th and 10th instructions asked for by the defendant in the Court below were given to the Jury. Which is the fact.

Chas P Wheaton.

Subscribed & sworn to before me this 20th day of April, A.D. 1864

Subscribed & sworn to
J. B. Rice Deputy

S. Leland Clerk

No 126.

Waterman
vs
Raymond

Aff in Support
of Motion for
Certiorari

Filed April 20. 1864
L. Leland. Clerk

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of ~~Lasalle~~ Grundy County, 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 Kendall County, before the Judge thereof, between ~~Aaron L Porter~~

Reuben Raymond

plaintiff, and ~~John Doe~~

Alvinard L. Waterman

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

Waterman

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

Reuben Raymond

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 A.D. 1864 ~~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

Reuben Raymond

notice, together with this writ.

Witness, The Hon. Pinckney H Walker Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 4th day of April in the year of our Lord One Thousand Eight Hundred and Sixty-four

L. Leland

Clerk of the Supreme Court.

126

Miriard L. Waterman

No. vs.

Reuben Raymond

SCIRE FACIAS.

$1.00

Filed April 20, A. D. 1864

L. Leland Clerk.

State of Illinois
La Salle County } ss

I have duly Served the within writ by reading the same to the within named Reuben Raymond on this the 4th day of April AD 1864

W. R. Millington Sh
by D. J. Brush Deputy

Fees Service .60
Mileage 10 - 1.00
R R .10

$1.70

Paid

United States of America
State of Illinois } ss
Kendall County

Pleas begun the Hon. Richard G. Montony judge of the Courts of Common Pleas of the Cities of Aurora and Elgin in the County of Kane and Presiding (at the Request of the Honorable Madison E. Wallace judge of the Tenth Judicial Circuit of the State of Illinois) as judge of the Kendall County Circuit Court at a Term thereof begun and held at the Court House in Oswego in said Kendall County on the second Monday being the 11th day of the Month of January in the year of our Lord one thousand eight Hundred and sixty ~~three~~ four and of the Independence of the United States of America the Eighty Eighth.

Present the Honorable Richard G. Montony Judge aforesaid
David P. Jones Esqr. States Attorney
Geo. M. Wallenbeck Clerk
A. D. Newton Sheriff.

Attest, G. M. Wallenbeck Clerk.

Court opened by Proclamation.

Be it Remembered that heretofore to wit on the 14th day of January A. D. 1862 there was filed in the office of the Clerk of said Circuit Court of Kendall County certain record proceedings in a certain Matter Brought by Change of Venue from the Circuit Court of the County of Grundy in said State of Illinois to the Circuit Court of the said County of Kendall which Record proceedings

are in the words and figures following that is to say;

The People of the State of Illinois
By the Grace of God: Free and Independent
To all to whom these presents shall come
Greeting;

Know ye that we having caused to be
inspected the Records and proceedings now remaining
in the office of the Clerk of our Circuit Court in
and for our County of Grundy and State of Illinois
do find there certain Records in the words and figures
following, to wit

United States of America }
State of Illinois }
Grundy County }
Pleas before

the Honorable Jesse O. Norton Judge of the Eleventh
Judicial Circuit of the State of Illinois and presiding
Judge of the Circuit Court of said Grundy County and
State aforesaid at a Special Term of the Grundy County
Circuit Court begun and held at the Court House in
the City of Morris in said County, and State aforesaid,
on Tuesday the fourteenth day of February in the Year
of our Lord one Thousand Eight Hundred and Sixty
one, and of the Independence of the United States the
Eighty fifth;

Present the Hon. Jesse O. Norton Judge of 11th Judicial Circuit
Lucien Tippin, Sheriff of Grundy Co
John P. Harrison, Clerk of the Grundy
County Circuit Court.

Be it Remembered, that on
the fourteenth day of February in the year of our

3

Lord one Thousand Eight hundred and Sixty one in being one of the Regular days of the said February Special Term and the Court then being duly organized and judicially sitting for the adjudication of Business the following proceedings among others were had and entered of Record by the said Court, in words and figures following, to wit,

"149"

Reuben Raymond
v.
Miriard L. Hateman } Appeal

Now on this first day of the term to wit, the 14th day of February A. D. 1861 came the parties hereto Hains & Turner for the Plaintiff and J. P. Faulkner Esq. for the Defendant and by agreement it was ordered by the Court that this Cause be continued until the next May Term".

And Afterwards to wit; on the twenty ninth day of October in the year of Our Lord one thousand Eight hundred and Sixty one in being one of the regular days of the October Term of said Court for said year and said Court then being duly organized and sitting for the adjudication of business the following proceedings among others was had and entered of Record by said Court in words and figures following, to wit;

Reuben Raymond
v.
Miriard L. Hateman
Appellant } Appeal from L. Grant J.P.

Now on this 29th day of October A. D. 1861 in being the 2nd day of the Term comes the said plaintiff by E. L. Fellows Esqr his attorney

4

and upon his Motion, the said Defendant, he being the Appellant herein, is ruled to file a new Appeal Bond in this cause, and the said Defendant files a petition Verified by Affidavit and his attorney J. P. Faulkner Esqr. enters a cross Motion for a change of Venue in this cause upon the ground that said Defendant has such an undue influence over the minds of the inhabitants of Grundy County against said Defendant

And afterwards to wit, on this 30th day of October A. D. 1861 it being the 3rd day of the Term again come the said Defendant, by his said attorney, and files a new Appeal Bond in this cause as ordered, which is approved by the Court, and the Court having had the Motion for a change of Venue in this cause under advisement and being fully advised in the premises It is considered and ordered by the Court, that the Venue in this cause be and the same is hereby changed from the Grundy County Circuit Court to the Circuit Court of Kendall County, in this State, by reason of the said Plaintiff having such an undue influence over the Minds of the inhabitants of Grundy County against the said Defendant. It is further ordered that the Clerk of this Court do make out, certify and transmit to the said Circuit Court of said Kendall County a full true and perfect transcript of the Records of the proceedings of this Court in this cause together with all of the papers filed herein appertaining to or forming a part of the record of this Court in this cause.

State of Illinois }
Kendall County } ss

I John B. Davidson Clerk of the Circuit Court in and

5

for said County and State do hereby certify that the within and foregoing is a full true and perfect copy of the Records & the Proceedings had in the Grundy County Circuit Court in a certain cause lately pending therein wherein Reuben Raymond was plaintiff and Minard S. Waterman was defendant as appears from the Records now remaining in my office and I further certify that the papers herein transmitted marked respectively in red ink from Letter A to Letter K K inclusive are all the papers appertaining to and files in said cause in said Court In testimony whereof I have hereunto set my hand and affixed the seal of said Court at the City of Morris in said County and State this 16th day of January A. D. 1852.

John B. Davidson
Clerk

Filed Jany. 14th. 1852.
G. W. Wallenbeck Clerk.

The Bond for Costs filed with the Justice of the Peace in this cause and Marked in red ink Letter A by the Clerk of the Circuit Court of Grundy County aforesaid is in the words and figures following that is to say

State of Illinois } ss
Grundy County }

Reuben Raymond as well for himself as the County
v.
Minard Waterman

Before Alexander Grant Justice of the Peace Action of Debt to recover penalty

6

for obstructing Public
Highway

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court in pursuance of the laws of said State.

Dated this 10th day of a. D. 1860.

E. C. Sawyer

Filed Oct 31/60

Wm. A. Kinsted clk

Filed Jany. 14. 1862.

F. M. Wallenark Clerk.

The Complaint filed in this cause and upon which Summons was issued by the Justice of the Peace before whom the same was tried in the Court below and which was Made in part in ink by the Clerk of the Circuit Court of said Grundy County Letter A is in the words and figures following that is to say;

State of Illinois } ss
Grundy County } Action of Debt
Debt $52.00

Reuben Raymond as well for himself as the County

v.

Minard Waterman } Before Olyer Olsen Grundy Justice of the Peace

The Complaint of Reuben Raymond who hereby makes it known that the said Minard Waterman did before the 26th day

7

of September A. D. 1860 and during said year A. D. 1860 obstruct a public Road by encroaching upon or fencing the same up, when it passes along the section line on the west side of Section No 20 in Township No 34 Range No. 6 East of the 3rd principal Meridian in said County of Grundy

The said obstructions being a fence and other obstructions placed in the said Road by said Defendant when it passes the west half of the South west quarter of said Section. The said Complainant further alledges that on the day & year aforesaid said obstructions so placed in said Road by said Defendant were still kept up and maintained by the said Defendant to the great injury of the Travelling public & that one Isaac N. Brown a Justice of the Peace within and for said Township & County on the day and year aforesaid in pursuance of law ordered the said Minard Stateman to remove the said obstructions so by him placed in said public Road yet the said defendant hath not yet removed the said obstructions but ever since the said 25th day of September and each and every day since hath suffered the same to remain in said public Road & the same are now in said Public Road to the great injury of the Travelling public— For which the said Defendant hath forfeited the sum of fifty two Dollars recoverable in an action of Debt one half to this Complainant and the other half to the said County of Grundy.

The Complainant therefore prays that a Summons in Debt may may issue

8

against the said Minard Bateman as well for the use and benefit of this Complainant as the said County returnable according to Law.

Oct 20. 1860. Reuben Raymond

Filed Oct 31/60.

Wm A. Kersha Clerk.

Filed Jan 7. 14. 1862.

J. M. Hallenbeck Clerk.

The Summons in this cause issued (by the Justice of the Peace in the Court below and before whom the same was tried) upon the foregoing Complaint and marked by the Clerk of the the Circuit Court of said Grundy County Letter A in red ink with the endorsements thereon is in the words and figures following that is to say;

State of Illinois } The People of the
Grundy County } State of Illinois to any
Constable of said County,

Greeting;

You are hereby Commanded to Summon Minard Bateman to appear before me at my office in Morris on the 18th day of October A. D. 1860 at 10 o'Clock A. M. to answer the Complaint of Reuben Raymond who sues as well for the said County as for himself, in an action of Debt to recover penalty for obstructing a public highway, for a failure to keep them a

9

certain demand not exceeding one hundred dollars; and thereof make due return as the law directs.

Given under my hand and seal this 18th day of October A.D. 1860.

Coly'n Grant J.P. [seal]

Debt	$52.00
Costs	1.31
Mileage	55
Subpœna	25

Personally served by reading the same to the within named Defendant.
Oct 11th 1860. — Jas Tyler Robt. McFarland Const.
Filed Oct 31/60
Wm A. Kinsey Clk
Filed Jan 7. 14. 1862.
G. W. Hallenbeck Clk.

The Writ issued by the Justice of the peace before whom this cause was tried in the Court below as recited by the Clerk of the Circuit Court of said Grundy County Letter D in red ink D is in the words and figures following that is to say;

State of Illinois }
Grundy County } The People of the State of Illinois to any Constable of said County Greeting;

We Command you to summon six lawful men of your County to appear before me forthwith at my office in Morris who are not of Kin to Reuben Raymond plaintiff

or to Miriam Waterman Defts. to make a jury between said parties in a plea of Debt, because as well the said Plaintiff as the said Defendant have put themselves upon the Country for trial which jury you are to take and their names you are to write on this writ

Witness my hand and seal this 18th day of October A. D. 1860

Colg^n Grant J.P.

Filed Oct 31/60
Wm. C. Kuntz Clk

Filed Jan 9th 1861.
G. M. Vallenbark Clk.

The Transcript of the said Justice of the Peace Marked by the Clerk of the said Grundy County Circuit Court Letter K in red ink referred to in the foregoing Certificate and filed by him in said Cause is in the Words and Figures following that is to Say;

State of Illinois } ss
Grundy County } Be it remembered that on the 18th day of October A. D. 1860 before me Colg^n Grant a Justice of the Peace in and for said County of Grundy personally came Reuben Raymond who being duly sworn on his oath says that the within named Miriam Waterman is justly indebted to him in the sum of fifty two dollars and ten cents for the penalty for obstructing a public highway by refusing to work on the road in Highland Grove Precinct in said County of Grundy after having been duly notified so to do by the Overseer of said road and that the said Miriam Waterman refuses to pay the same

Reuben Raymond

Subscribed and sworn to before me this 18th day of October A. D. 1860

Colg^n Grant J.P.

Reuben Raymond as well for himself as the County
vs.
Miriam Waterman

Debt $52.10
To recover penalty for Obstructing a public Highway

18th October 1860 Complaint and Bond for Costs filed. Summons issued returnable 18th October 1860 at 10 o'Clock A. M and delivered to plaintiff

* Endorsements on back of the writ & papers following it viz
" Writ duly issued the within named "
" Summons as following "
" Miriam Waterman Defendant "
" C. M. Hallenbeck Sheriff Grundy Co. By Ruby as "
" Chas. Hovey - Sheriff's Fees Millionaire Costs "

11

Six Subpoenas issued on the part of the plaintiff and delivered to plaintiff.

13th October 1860 one Subpoena issued on the part of the defendant & delivered to defendant.

15th October 1860 Summons returned by Constable McFarland served by reading to Defendant 11th Octr 1860 Fees 75 Cents Plaintiffs Subpoenas also returned by Constable McFarlane served on the person therein named Fees $1.50

10 O'clock A.M. Parties appear, Plaintiff Claims of the Defendant $50 as a penalty for Obstructing a public highway as set forth in the Complaint filed,

Defendant moves to dismiss the Case because the Complaint is not sworn to. Motion denied

Defendant denies the obstructing of the public Highway mentioned and demands that the Cause be tried by a jury, and pays the fees required by law.

Writs issued directed to any Constable Commanding him to summon a jury of six men & delivered to Const McWilliams

2 O'clock P.M. Writs returned by Const McWilliams with the following names of the jury— W. J. Seacock Franklin K. Hubbard Samuel Arnold Sen W. Burd and Charles Hussey—. Fees 75 cts

The jurors upon being called appeared and were sworn to try the cause

D. A. Armstrong. Reuben Agnew, Geo. Bullis John Longhead, John Gray, Thomas Henry, Isaac N. Brown, James Thompson C. C. Hussey, John Ely Charles Noble, Samuel Young, Wm McFarland Owen Owens. Wm Stephens, and Mr. Wilson, attended and were sworn as witnesses on the part of the plaintiff

who Claim fees

12 Mr Matthews vs. Geo. H. Kinsted & W. M Boid attended and were sworn as witnesses on the part of the Defendant. After hearing the Testimony the Jury retired and upon returning into Court say, that they find for the Plaintiff and assess the fine of the Defendant at twenty three Dollars -. It is therefore Considered by the Court that the said Plaintiff have and recover of the said Defendant the sum of twenty three Dollars for his debt, with Costs of Suit herein taxed at twenty three dollars and Eighty three Cents

Colg^n Grant J.P.

State of Illinois }
Grundy County } I Colgrove Grant a justice of the peace in and for said County do certify that the foregoing transcript, and accompanying papers contain a full and perfect Statement of all the proceedings had before me in the above entitled cause Witness my hand ~~this~~ this 29th day of October 1860.

Colg^n Grant J.P.

Filed Oct. 31/60

Geo. H. Kinsted Clerk

Filed Jan. 14. 1862

G. W. Ballenbach Clerk.

The Appeal Bond originally filed in this cause and Approved by Colg^n Grant Esq^r. the Justice of the Peace upon whose this cause was tried in the Court below and marked by the Clerk of the Circuit Court of Grundy aforesaid Letter A in red ink A is in the words and figures following that is to say:

13

Know all men by these presents that we Minard Waterman & Aaron Sears of the County of Grundy in the State of Illinois are held and firmly bound unto Reuben Raymond in the penal sum of twenty five Dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs Executors and administrators jointly severally and firmly by these presents. Witness our hands and seals this 22 day of Oct A. D. 1860

The Condition of the above obligation is such that whereas the said Reuben Raymond did on the 15th. day of October A. D. 1860 before Colgrahem Grant a Justice of the Peace for the said County of Grundy recover a Judgment against the above bounden Minard Waterman for the sum of twenty three dollars and costs from which judgment the said Minard Waterman has taken an Appeal to the Circuit Court of the County of Grundy & State of Illinois. Now if the said Minard Waterman shall prosecute his Appeal with effect and shall pay what=ever judgment may be rendered by the Court upon dismissal or trial of said Appeal then the above obligation to be void, otherwise to remain in full force and effect

Approved by me at my office
this 22 day of Oct. 1860

Colg Grant
Justice of the Peace

M. S. Waterman Seal
Aaron Sears Seal

Filed Oct 31/60.
Wm A Rustes Clk

Filed January 22. 1862
Wm Mallenus Clk.

Also Be it Remembered that on the 29th day of October A. D. 1861 the same being one of the days ~~of the~~ of the October Term A. D. 1861 of Grundy County Circuit Court the said Defendants Wateman files in said Court as ruled thereon, to file a new Appeal Bond in this cause and now marked by the Clerk of said Court in red ink Letter B and is in the Words and figures following that is to say;

Know all men by these Presents, that we Miland S. Wateman & Aaron Sears are held and firmly bound unto Reuben Raymond in the penal sum of Three Hundred Dollars Lawful money of the United States for the payment of which well and truly to be made we bind ourselves our Heirs and administrators jointly severally and firmly by these presents. Witness our hands and seals this 22 day of October A. D. 1861

The Condition of the above obligation is such that whereas the said Reuben Raymond did on the 18th day of October A. D. 1861 before C. Grant Esq. a Justice of the Peace for the County of Grundy recover a Judgment against the above bounden Miland S. Wateman for the sum of Twenty three Dollars and Costs of suit from which said Judgment the said Miland S. Wateman has taken an Appeal to the Circuit Court of the County of Grundy aforesaid and State of Illinois. Now if the said Miland S. Wateman shall prosecute his Appeal with effect and shall pay whatever Judgment may be rendered by the Court upon dismissal or trial of said Appeal then the above obligation to be void

15

otherwise to remain in full force and effect.
In pursuance of. W. L. Wateman [Seal]
Aaron Sears [Seal]

Filed by me this 29th day of Oct a.d. 1861
J. D. Davidson Clerk

Filed Jan. 14. 1862
G. W. Wallenbeck Clerk.

Be afterward to wit on the 29th day of October A.D. 1861 the same being still one of the days of the October Term A.D. 1861 of the Circuit Court of said Grundy County the defendant herein files his petition herein for a change of venue marked in words and letters following that is to say:

State of Illinois } In Grundy County Circuit Court
Grundy County } October Term 1861.

Reuben Raymond
v.
Miriam L. Wateman } Appeal

Your petitioner who is the Defendant in the above entitled Cause shows unto Your Honor that the Plaintiff in the above entitled Cause has an undue influence over the Minds of the Inhabitants of said Grundy County & for that reason Your petitioner fears that he cannot have a fair ~~and impartial~~ trial of said Cause in said County & he prays that the Venue in said Cause be changed to some County where the above Cause does not exist.

W. L. Wateman.

16

State of Illinois }
Grundy County } Minard S. Wateman the above
named petitioner being first duly sworn upon his oath
says that the above petition is true in substance
& in fact.

M. S. Wateman

Subscribed & sworn to before me
this 30th day of October A.D. 1861.

John R. Davidson Clk

Filed Oct 30 1861

John R. Davidson Clk

Filed Jan. 14, 1862.

G. W. Wallenbeck Clk.

And Afterward to wit, on the ~~same~~ day. to wit,
on the 14th day of January A.D. 1862 the same being
one of the days of the January Term A.D. 1862 of
the Kendall County Circuit Court sitting for the
dispatch of Business in the Court House in Ottawa
in said Kendall County the following proceeding among
others was had entered of Record to wit;

Reuben Rayment who sues
for himself as well as for the County of Grundy

vs.

Minard S. Wateman } Appeal

This day
came the
parties hereto and this cause is Continued.

And Afterward to wit on the second day of September
A.D. 1862 the same being one of the days of
the September Term A.D. 1862 of the Kendall County
Circuit Court sitting for the dispatch of Busi-

-inus in the Court House in Oswego in said
17 Kendall County the following proceedings among others
was had in said Court and entered of Record
thereon to wit,

Reuben Raymond who sues for
himself as well as for the County of Grundy
v. } Appeal
Miriam L. Hatemann } This day this
Cause is Continued.

And afterward to wit on the 12th day of January
A. D. 1863 the same being one of the days of
the January Term, A.D. 1863 of said Kendall County Circuit
Court sitting for the Dispatch of Business in the
Court House in Oswego in said County the following
proceedings among others was had in said Court and
entered of Record thereon to wit,

Reuben Raymond who sues for
himself as well as for the County of Grundy
v. } Appeal
Miriam L. Hatemann } And now come the
parties to this suit
and by agreement this Cause is Continued the Costs of
the Continuance to abide the result of the suit.

And afterward to wit on the 9th day of April A.D.
1863 the same being one of the days of the April Term
A. D. 1863 of the Kendall County Circuit Court sitting
for the dispatch of Business in the Court House in Oswego
in said County, the following proceedings among others

was had in said Court and entered of Record therein
18 to wit,

Reuben Raymond who sues for
himself as well as for the County of Grundy

v.

Minard S. Statesman } Appeal

This day this
Cause is Continued
by agreement of the parties hereto.

And Afterward to wit, on the 13th day of October A. D. 1863
the same being one of the days of the October Term A. D.
1863 of the Kendall County Circuit Court sitting for the
dispatch of Business in the Court House in Oswego
in said Kendall County the following proceeding among
others was had and entered of Record in said Court
to wit,

Reuben Raymond who sues for
himself as well as for the County of Grundy

v.

Minard S. Statesman } Appeal

This day came
the parties hereto
by their attorneys and by their agreement this cause
is Continued.

And Afterward to wit, on the 13th day of January
A. D. 1864 the same being one of the days of
the January Term A. D. 1864 of the Kendall
County Circuit Court sitting for the Dispatch
of Business in the Court House in Oswego in
said Kendall County the following proceedings
among others were had in said Court and entered
of Record therein to wit,

19

Reuben Raymond who sues for himself as well as for the County of Grundy
v.
Minard L. Bateman
} Appeal

And now upon this day comes the Plaintiff by Wheaton Smith Parks & Beach his attorneys as well as in his own proper person and the Defendant in his own proper person as well as by Gray & Decker his attorneys also comes and the issues being joined herein, it is considered by the Court that a jury also come and thereupon come a jury of good and lawful men to wit; John Smith R. A. Boyd R. H. Mann Alfred Edson Sr. Darius Field C. P. Dyer 2d James C. Shepard James Springer John Gaylord Abram P. Stout Jr. Geo Gastill and Truman P. Hathaway Each of whom are duly Elected tried and sworn and the Court and jury proceed with the hearing of the cause.

And afterward to wit on the 14th day of January A. D. 1864 said Court being still in session as aforesaid the following proceedings among others were had in said Court in said cause and return of Record to wit;

Reuben Raymond who sues for himself as well as for the County of Grundy
v.
Minard L. Bateman
} Appeal

And now again come the parties hereto and the jury aforesaid, and the Court and jury further proceed in hearing the cause.

And afterward to wit on the 15th day of January A.D. 1864 the same being one of the days of the January Term

20

said Court sitting as aforesaid the following proceedings among others were had and entered of Record in said Cause to wit;

Reuben Raymond who sues for himself as well as for the County of Grundy

v.

Miriam S. Statesman

} Appeal

And now come the parties to this suit and the jury aforesaid into Court and the Court and jury further proceed in hearing this cause.

And Afterward to wit on the 16th day of January A.D. 1864 the same being still one of the days of the January Term A.D. 1864 of said Court sitting for the Dispatch of Business aforesaid the following among other proceedings were had in said Court in said Cause and entered of Record to wit;

Reuben Raymond who sues for himself as well as for the County of Grundy

v.

Miriam S. Statesman

} Appeal

And now come again the parties to this suit and the jury aforesaid also come, and the Court and jury proceed in hearing this cause.

And Afterward to wit; on the 18th day of January A.D. 1864 the same being still one of the days of the January Term A.D. 1864 of said Court still sitting for the Judicial transaction of Business at the place aforesaid the following proceedings were had in said Court in said Cause and entered of Record to wit;

21

Reuben Raymond who sues for himself as well as for the County of Grundy
v.
Miriam L. Hateman
} Appeal
This day came the parties aforesaid the Jury again into Court, and the Court and Jury proceed in hearing this cause.

And afterward to wit on the 19th day of January A.D. 1864 the same being still one of the Court days of the January Term A.D. 1864 of the Kendall County Circuit Court sitting as aforesaid, the following proceedings among others were had in said Court and entered of Record to wit;

Reuben Raymond who sues for himself as well as for the County of Grundy
v.
Miriam L. Hateman
} Appeal
And now came the parties to this suit and the Jury aforesaid also came into Court, and the Court and Jury proceed in hearing this cause.

And afterward to wit on the 20th day of January A.D. 1864 the same being still one of the days of the said January Term A.D. 1864 of the Kendall County Circuit Court still sitting for the dispatch of Business in the Court House in said County the following proceedings among others were had in said Court in said cause and recorded of Record in the said Court proceedings in the words following to wit;

22

Reuben Raymond who sues for himself and as for the County of Grundy

vs

Miriam L. Waterman

} Appeal

And now upon this day again come the parties to this suit and the jury aforesaid also come into Court, and the jury after hearing the Evidence and receiving the instructions of the Court have leave to retire in charge of an officer to consider of their Verdict, And afterwards they come into Court and say, we the Jury find the Defendant guilty, and find the debt in favor of the Plaintiff against the Defendant in the sum of ten Dollars which is entire of Rend.

And thereupon the Defendant by Gray his attorney moves the Court for a new trial herein and the Court after hearing the parties in relation to the said Defendants motion for a new trial herein being fully advised Considers that the same be overruled, And thereupon the Defendant comes again by Gray his attorney and moves the Court for arrest of judgement herein and the Plaintiff by Wheaton his attorney comes and the Court after hearing the parties in relation to the Defendants motion in arrest of judgement being fully advised Considers that the same be overruled, to the overruling of both of the said Motions the Defendant by his said attorney Excepts. It is therefore considered by the Court that the plaintiff have and recover of and from said Defendant said sum of ten Dollars and that he have Execution therefor. And thereupon

the Defendant by Gray his attorney comes and moves the Court to apportion the costs herein under the Statute and the Plaintiff by Wheaton his Attorney comes and the Court after hearing the parties in relation to the Defendants Motion being fully advised considers that the Plaintiff shall pay Eight twenty thirds and the Defendant fifteen twenty thirds of all Costs herein to which the Defendant by his said Attorney Excepts.

And thereupon the Defendant by his said Attorney prays an Appeal to the Supreme Court which Appeal is granted upon Condition that the said Defendant enter into Bond in the sum of Five Hundred Dollars with security to be approved by the Clerk of this Court within forty days and that the Bill of Exceptions herein be filed in sixty days from the adjournment of this Court. Again comes the Plaintiff by Wheaton his attorney and upon his Motion the Court certifies upon his Minutes the following material Witnesses on the part of said Plaintiff to wit. Thomas Longhead James Thompson Geo. Bullis William Winterbottom L. Massey Wm. Stephens John Longheade Isaac N. Brown Robt. Shaw Samuel Eyers William McFarland R. Aylesworth John Gray Simeon Fry. and Edson Gifford.

And afterwards to wit on the 5th day of March A. D. 1844 the said Defendant files in the Office of the Clerk of the Circuit Court of said County all copies this Bill of Exceptions in this cause which said Bill of Exceptions is in the words and figures following

that is to say;

State of Illinois } In Circuit Court
Kendall County } thereof January
Term thereof A. D. 1866.

Reuben Raymond who sues for himself as well as for the County of Grundy
vs.
Howard S. Waterman } Appeal

Be it Remembered that on the trial of this cause, the plaintiff to maintain the issues on his part, called Thomas Longhead as a witness who being first duly sworn testified as follows, - I reside in Morris Grundy County State of Illinois - I lived on Section 17 Town 32 N. Range 6 East of the 3rd P.M. in 1841 or 1842, George Brown was the patentee of the W½ of 17, I occupied the W½ of ~~Sec~~ 17 from 1842 to 1848 I was one of the original Viewers to locate the road in Controversy - I was appointed by the County Commissioners Court of Grundy County, Warren and D. Curtis of Morris were the other Viewers, Warren was the Surveyor, on the West side of 17 we considered the line, We took the West side of the ditch for the Centre of the Road - we located the Road on the section lines, we saw the Government Mound on the section Corner on the S. W. ¼ of Sec 20 and that was the Centre of the Road, I have seen a Mound on the N. line of Sec. 20, I dont remember seeing the centre Mound at that time, but I have seen it, the Viewers laid this road on a ~~straight~~ line with the ditch and the mound at the S. W. Corner of Section 20, I understood it to be,

25

Waterman came on by 20 after the Road was laid Out, about 1850 and occupied an 80 acre tract before that it was occupied by Stevens, Waterman fenced it first on this west line in 1852. I suppose he left out the Road The Road was laid out 50 feet wide, and I suppose Waterman fenced out 50 feet during the time I lived there, there was no dispute I was Commissioner, and we worked the Road, but not as low down as Watermans fence - work was done on the ~~fence~~ road on Sec 17, and it was travelled - I saw the Center mound 2 or 3 times ~~pointed~~ helping to find where it put fence, as far as I could judge, it was a Straight line I know by standing on the Mound and sighting through. The Mound at the South West Corner of Sec 20 was visible after the road was laid out. The School House was just there since I left, I have been at the S. W. Corner of Sec 20 two or three times since I left - I never saw a mound at the N. W. Corner of Sec 20, The reason why we laid ~~out~~ the Road on the west line of the ditch was because we could not find it - I examined for the Corner a number of times in 1840 or 1841. There was a ditch made on the W. line of Sec 17 before I came into the State in 1840.

Thomas Longhead Cross Examined

In 1840 I owned part of Sec 17 - Range of trees cant be taken accurately - were planted in 1842. Road was travelled west of the trees - public travelled road was west of trees on 17 & 20 - Perkins planted hedge fence on Sec. 18 on East side of N. E¼ of Sec 18 reaching the N.E. Cor. of N.E¼ of Sec 18 about 1848. We laid it in 1847 - I have seen the School

Corner after the fence was built – when road was
26 made West East of 18 was vacant land. Shrubbery
Extended up to when fence was torn down –

Waterman fence torn down not quite quite
1/2 mile Stumps are there – Cannot testify now
as to the location of Mound it is now obliterated
Speaking of School house mound – Employed
Thos. Henry to run off – We then found School
House Mound running from there Street on Edge of
ditch which Edge I do not Know – A part of
Quarter Damned and Sold a part of 18 was
run by Henry – & this was the time we found the
School House mound – What work I Know of being
done on road was on West line of Section when
Township Organization was first in force – would
find Himself Squeezed in at Raymonds &c about
room enough for two wagons.

Direct Examination of Thos. Longhead resumed
I dont Know much about Raymond but I
Know that he had fence further West than it
is now. The Centre of the Road was the west
breaking of the ditch. I fenced corner on line of 18
Edson Gifford being sworn says.
Reside at Lisbon Know defendant Waterman
5 Miles from him – Know him 15 years Know he
has lived on sec 20.

William Stephens being sworn says
Reside at Big Grove – Owned part of sec 20
now owned by Waterman was living on 20 in
'37 & '38 the mound was visible and plain at that
time – Water would in parts wash be on – the
Mound was in a sort of a basin – took notice

27

because Suspected to improve the land – 2 Brooms I and Cook went over stakes now in N.W. cor of 17 S. St. cor of 17 & N.W. cor of 20 (Chinks) we ranged through from the 2 Corners between 17 & 18 & 19 & 20 We staked it on 19 & 20 we staked it on a straight line –

I went down & I did not think the stake was not right – it was on high ground – the ground was lower ground where I pointed Chinn to put stakes at the Monument & picketed straight through – Wateman wanted me to go down to the Cor. – which suggested it I dont Know – I said he was claiming land west of what I did.

John Longhead being sworn says,

I live on 17 Town 3 S. live there 22 years Know the ditch – I was on of the Petitioners for Road failed in getting surveys & there was a petition against it – Road was west of ditch – I have nothing definite in mind on S.W. ¼ of 20 whether we found it or not – we set the Compass and looked North along the ditch & line of trees & we found that to range with the ditch within 3 or 4 rods of School House – I dont Know the Cor. on N.E. of 17 – I did Know the Mound on the N.W. of 17 – Called the Stone Cor. – in making survey in 1874 found ½ lee Mound in Sec 8 & on N.W. Cor 17 Note was ½ lee mound at School House found some others South of 20 – did not notice any thing that it was not a straight line along the line in question – Know of Wateman Building a fence there down on S. St. of 20 the track that we travelled South was some places 6 or 8 rods from line on account

28

of west land

On his Cross Examination John Langhead said I could not tell whether the Mound was inside Raymonds or not.

James Thompson being sworn says I reside at Little Creek D. 3 C — live on ~~the~~ N.E. ¼ Sec 19. - I know about where the N.W. Cor ¼ Sec 20 - Know ditch on west line ¼ Sec 17 - Know school house corner before Wateman built fence - I put up fence about 12 years ago on East side of Section - Cor at school house was Always visible - I staked over ditch at 3 stakes on ditch & thus — and one for Bob Thompson Slough & then ranged & set my fence 25 feet from that. from my marking my fence it was straight. Watemans fence was moved West into the road about ½ way & then moved it East & then moved it back - After Wateman moved his fence there was not room enough for Wagons — Wateman when he was pathmaster said he would Move road into my land because Gray was going to take my Ridge.

I have noticed post holes after watemans fence was moved the land between old post holes & new fence had been cultivated by Wateman there is a Ridge West of My Ridge made I think by Wateman when Pathmaster — think Watemans fence ran right across the Ridge I worked in the Turnpike — Watemans boys mowed ~~mowed~~ on road opposite where his old Barn stood.

On his Cross Examination James Thompson said I feel interested & have failing — want the fence as Raymond wants it — Raymond has shut up the

old public trail

29 Direct Examination of James Thompson resumed.
Explanation - I did not wish the Jury to understand that the fence was moved 15 rods west but south towards his own (Mr Watermans) Fence - Extended it 15 rods south into the road whether the center of the Road or not I do not know across the Bridge running along the road

Cross Examination of James Thompson resumed
I own 80 acres - Have nearly 50 acres inside my inclosure - I think the turnpike was thrown up before the fence was cut down - We met last night to compare ideas.

George Bullis being duly sworn says,
I live in Nettle Creek on Sec 8 Grundy County I know S. W. Cor of Sec 20 - Knew it 14 years then was a "dish Hole" in that Hole was a ~~Stake~~ Mound and one Stake 2 or 3 feet long, an then some like feet - I suppose to range by or something - road was turnpiked about 7 years ago - I passed there while they were working on the road they covered the Mound - think mound was a little on the E. side of turnpike - Raymond was pathmaster at that time - Watermans fence was E of there - The west side of the ditch was not ~~fenced~~ fence was put up 7 years ago this coming Spring - Raymond owns that adjoining land - Turnpike was so that two wagons could pass - No Bridge there - Watermans fence was moved since the first Set it was moved west into the road at the N.W. Cor of Sec 20. & it ranges through

- it was abot 20 feet - it has been moved
30 2 or 3 times - the fence I speak of is the fence
he put up since the Commissioners took the fence
out of the Road - I Examined the old post holes
of fence between him and Gray on East of Watermans
- Watermans fence had been moved west - had
been moved west some 40 feet - Had been broken
up and Cultivated by Waterman before the fence
was Moved old road was travelled ever since I
Knew anything about it - about 12 Years - at Watermans
Road was travelled by public dont Know how long.

On the Cross Examination George Bullis said,
Raymond fenced about seven years ago - in a wet
time they used to travel a beaten track on Raymonds
land (open), which Raymond has fenced in I
was pathmaster - Mound in S.W. of 20 was a
little on the East side of the pike - Mercy is on
Section 30 - there was a gate 47 feet from
the old original Mound - I think I could now
go within four feet of the Mound - there has
never been 2 different Pikes to my Knowledge
- I have seen the School house Mound and
grave Yard ~~Mound~~ Mound or what they
called a Mound - there is a Stone but I
dont Know that it is the Centre of Mound -
Waterman owns W½ S.W. 1/4 20 - the North End
of his fence I dont Know of being a Mound (here
shows plat)

Direct Examination resumed

There is a grave Yard Mound not a regular
Mound there - but a Stone Stuck there - there is a
ditch on West line of 17 about ¾ of a Mile -

(By the Jury) there were no figures on that Stake.

31

William Whitebottom being sworn says;
I Knew that Waterman had a fence at
S. W. 1/4 20 5 or 6 years ago when I first saw
the fence - When I first went there 2 wagons
could pass Easily - When I went Down it
it was narrow 2 Wagons could not pass
do not Know whether Watermans fence had
been moved - Watermans land was fenced
at E. & W. Side but do not Know as to S. Side
- There was Change in fence on E. side of Water
=mans - I think in 59 the moved fence West -
land was Cultivated when they moved the fence
On his Cross Examination Whitebottom said
It was the East line of Watermans fence which
was ~~moved~~ Changed in 1859.

L. L. Maddox being sworn says
I was party in the Turnpike suit - Highway Com
=mission - Clyburn was another - Lives at
Little Creek on Sec 35 - Knew Cor. S. W. of 20-
20 was one of the first Sec. Cornered by John
Gray in 37 or 8 - was a Stake Stones at 17 + 20
on S. W. 17 + S. W. 20 on 1/2 mile 20 + 1/2 mile - in
S. W. 20 was a Stake in a low place of ground
in a sort Basin in Spring filled up with water
- was a Government Mound - Stake was in it
= Holdmans Lane was between 5 + 6 - Road runs
from there to 17 on the N. W. Cor of 17 there to
S. W. 17 there down to School House - thence through
to
the States by the South creek

cor. of 20 & run a road.

32 At that time we struck a Black walnut Scantling in the Mound in S. W. 20 (2 by 4 & 4 by 4) was a burr oak stake there is pretty much decays at this time — that stake remaining there until I was Elected Commissioner — had Conversation with Waterman — Watemans Fence was East of where the Road is now — there was no fence on W. side there in Sq — think Waterman built his fence on north Corner & then made a jog west & built past the Rail — south fence set into the road about 15 feet and other Corner remains back — was there when dug ditch — tree & ditch made same time before — Mound & ditch run nearly on a straight line — on that line then built a Bridge on it there was a Slough Come down there before I was Commissioner — I built a new turnpike before there were any suits — on the S. W. of 20 & N. W. 17 were always Visible Corners — I took up the Bridge and moved it East — Watemans fence was 15 or 16 feet on the Road — fence remained there all that summer till June year after — was Surveyed by Henry Ewer & Wilson — Ewer Made his Survey 2 or 3 years ago — Wilson same year — Henry 5 years ago — S. W. Cor. lies 20 — When Henry Surveyed it for the Town the stake was gone — I put in a stone there — north of Corner could not keep it in the Corner — When Ewer Surveyed it I put in a Lime stone in the Corner

saw both stones there on the Turnpike – I dug down – I put a stone in S.Cr. 20 & N.W. 17 & at School House Watermans fence then stood in the Road then I took down 4 years ago last June – he set this fence back 25 feet – He then notified me to move Grays fence back that was about 3 feet in the Road – I told him Gray had a right to keep his fence in the road to make a hedge – Watermans fence remained there from Spring to Winter – then posts were cut down – he then moved it back East in to I think – Waterman said he had the Scantling and had me go back & set in original Cor S.W 20 – he disagreed where he wanted me to put it was further west than I thought right & I did not set it or any – Ground began to elevate from there – Building the turnpike filled up the Basin – I have known the S.W. Cor of 20 this 20 years – Before Waterman moved his fence was plenty of room – after could not pass – in wet weather – the dispute with Waterman was before I was commissioner – I tried to settle this dispute with Waterman – I tried to buy land of Waterman in dispute – Hogs lives on Sec 21 – the N. W. Cor 21 & North E. Cor 20 are good Cor S. E. 21 is a mound but not S. W. – I have ranged from S. E of 21 to South W. of 20 – they are in a line – S.E. of 21 is called Hogs Corner

On his Cross Examination Mr. Massey said – Watermans fence was taken down 3 times by Authorities on of those times since I have been at Mays in 59 or 60 Cut down – taken down 1st time in June from 17 to 25th 1859 – then he had left 15 or 16 feet for Road north Corner was not in the

34

Road — When Runyon Surveyed was in 58. I Know the South West Corner of 32 — no dispute about that all parties agree — Know the 1/2 Section Corner of 17 on West line no dispute about S. W. Corner of 29 but very little difference — the ditch runs along the South 1/2 of 17 same ditch spoken of — Locust trees on Embankment stumps are there Visible — the line from 1/2 Sec Corner 17 to S. W. Corner of 32 — line not quite Straight — Bridge on 17 one on 20 — 1 on 29 — one on 20 moved East 15 or 20 feet same day fence was taken down — Raymonds fence was put there since this trouble about the Road had a fence more than 40 feet West & moved it East.

Thompsons fence is ~~fou~~ East there Trenches Not over 5 feet — from 4 to 5 feet — Trenches filled with 1/2 Sec Cor. of 17 — I never knew any Cor. on S. W. corner of 21 — Knew S. W. Cor 28 & 33 & N. W. those Mounds — I put a Stone at S. W. Cor of 17 there was a Stake — Original Mound was destroyed & scattered — Mound has not been Visible for 14 or 15 years prior to this Survey but Stakes had been there — I went to see Waterman and Waterman said he had the Recording in Blacksmith Shop for safe Keeping — there was a floor in the attachment to the Blacksmith shop — just as Certain of this as anything that I know from it.

Direct Examination resumed.

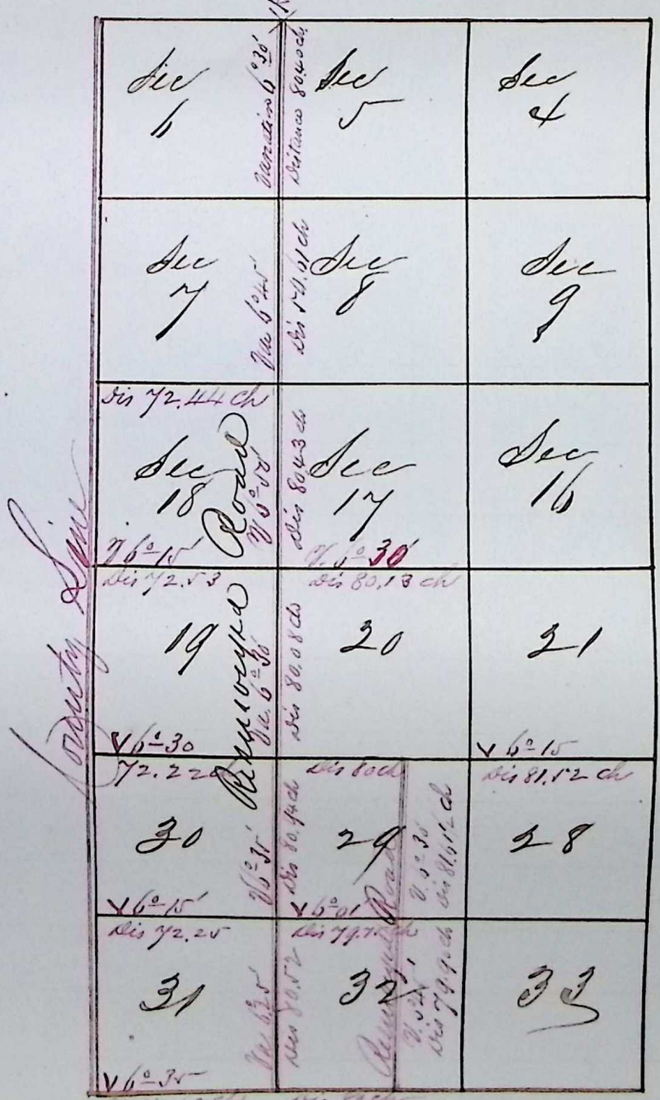
Have travelled west of ditch never was North East of the ditch I was present at the Survey and went along the line with

35

Sylvesters - the County Surveyor was then the same as now in the year 1859.

Doctr Sam'l Ewart being sworn says, I resided in Macon in Grundy County - I was County Surveyor 2 years commenced in Nov. 57 - I made a Survey for Commissioners in June & July - 29th July 59 - it was a Survey of a road - Road Commenced at a point Called Holdamans lane between Secs 5 & 6 the plat I hold is the original that I made -

I filed it - this plat by direction of the Commissioners with the Town Clerk of this Town as in this plat - I made my survey under direction of the Commissioners (a copy of this plat is as follows to wit,)



316

Minutes and plat of a Survey of a Road in Township thirty four Range five East of the third P.M. made by me this twenty ninth day of July A.D. 1859 as follows. Commencing at the North East Corner of section five township thirty four Range five East of the third P.M. at a point formerly known as Holdemans Sand thence South 80.40 Chains variation ~~6°~~ 6° 3' to the Northwest Corner of Sec Eight. Thence South Eighty chains and sixty one links (80.61) Variation ~~five forty four~~ 6° 45' to the North West Corner of Sec (17) seventeen thence South 79 6.° 5' Eighty Chains and twenty five links (80.264) to the North west Corner of Sec twenty (20) Thence South 6° 3' Eighty Chains and Eight links (80.08) to the North West Corner of Sec twenty nine (29) which Corner is thirty five links East of the Corners set North in the Records of the County Surveyor Made by Thomas Henry and dated May 23rd 1849 and seventy links East (70) of a Survey made by Geo. Kersted and recorded on page 18 of the Records dated Aug 7th 1851 and fifty seven links East of a Survey made by me and recorded June 25th 1859 thence South variation five Degrees thirty five minutes (6° 35') Eighty Chains and ninety four links (80.94 ch) to the North West Corner of section thirty two (32) in mound found Stone Thence South variation five degrees and twenty five Minutes (6° 25') Thirty nine Chains and sixty Eight links to the half section mound on the East line of section thirty one (31) Mound and ditch found plain and now marked by a stake. Thence South variation five degrees and twenty five minutes (6° 25') forty chains thirty

Links (40.13) to the south west corner of section thirty two (32) Mound plain.

The above is a correct plat of said Road together with the lands adjoining as thier set forth

Samuel Ewers
County Surveyor of
Grundy County Ills.

Minutes and plat of a resurvey of a road in Township thirty four Range five East of the third P.M. as follows. to wit. commencing at the half section Mound on the north line of section twenty nine thence south variation five degrees and thirty minutes distance Eighty Chains and sixty one and one half Links (80.61½) to the half section mound on the south line of said twenty nine (29) thence south variation five degrees forty six minutes (5° 46') distance seventy nine Chains and ninety Links (79.90) to the half section Mound on the south line of section thirty two (32) and more fully set forth in the plat on the opposite side of this, which is a correct representation of said road as surveyed by me this twenty ninth day of July A. D. 1859.

Samuel Ewers
County Surveyor of
Grundy County Ills.

I Hereby Certify that the foregoing is a correct Copy of Plat of Survey of Holderman & Mud Creek Road Surveyed July 29th 1859 now on Record in My office Given under my hand this 10th day of Oct A.D. 1863

Morgan L. Lloyd Com Clk
of Com of Mills Court County of Grundy

John Gray was with me — Mr. Longhead —
The only point of dispute was at the South
West Cor of Sec. 20 — I Commenced at
Holdumans Lane — we went down what was
Known as Holdumans Lane 1 mile to N.W. Cor
Sec 8 The bearing between the Points at N.W.
Sec 5 & N.W. Cor Sec 8 was 6° 30' East there was
a Mound and ditch there between Sec 7 & 8
to N.W. Cor of Sec 17 there a Mound the dis-
-tance was 80 Ch. & 40 links the Variation 6° 45'
then 80 Ch & 3 links South to the N.W. Cor of Sec
20 Variation 6° 30' — I think there we tried to
get a line through 20 & went back 1 mile then
through between 7 & 18 distance distance 17 Ch
22/100 there was a Well defined mound we went
along — S. Along the County line when we found
a Mound plain without Survey shows Govt. Mark
then E 7.2 Ch 53 lks Var 6° 15' this was in Exact
accordance with our original Minutes Came out
Exactly to the stone at or near End of ditch then
Surveyed due East 6° 30' from stone between Sec. 17 &
18 distance 80 Chs 13 lks the distances of Govt. Notes
were not accurate — then we took our instruments
and went away — Next at S.E. Cor of Sec
20 Mound obliterated — a few days before I
Surveyed for Wateman — Wateman brought a
Man that Knew all about the Corner — then went
to this Corner and the Commissioners did not decide
the Cor. S.E. Cor of Sec 20 there was a fence run
and South & East & West there went 1/2 mile due
& came to mound between 29 & 28 then went
West 1 mile through Centre of Sec 29 then put

39

temporary stake then went south from that point 1/2 mile & found nothing that would show Mound 1/2 mile further run within rod East of a Mound run 1 Mile at a Variation of 6° 25' set instrument on the S. W. Cor 32 went North 1/2 Sec 6° 25' West through 1/2 mile & came to temporary stake went back & took stake to Mark S. W. Cor. Sec 29 back to stake was 6° 0' then was very near in a line trees on the ditch which I was at S.W. Cor of Sec 32 then went West 1/2 Ch 23 links to Co line went back to N. W. Cor. Sec 31 measuring 1/2 ch 75 lks bearing 6° 15' at that distance fixed stake permanently at S.W. Cor Sec 29 ran a straight line at Middle of 29 1/2 way between — had a pole stuck up at N.W. of 20 & ran it (the stake) the distance between S. W. Cor 29 & S.W. Cor of 20. 80 chs 94 lks. Measured distance from that Corner to N.W. Cor. Sec 20. 80 chs 0 8 links Came back to Co. line on the S. W. between 19 & S.W. of 20 dis 17. 22 Corresponded nearly with original Field Notes all fractional sections went 80 chs. between 29 & 20 1 mile to that Mound that Waterman & Dedare told me was the Government Mound then went one mile East between 21 & 28 Var 6° 15' after fixing up a stone ran 6° 30' from N. W. Cor of Sec 20 to S.W. Cor Sec 20 fixing the stake to the Center of Dumpike from there to S.W. Cor of 20 6° 30' Sec 20 was 13 links too large — I was Employed by Waterman to survey not longer than 2 weeks previous to this survey I started from S.E. Cor of 20 thence S 1/2 mile Waterman

carried flag & stuck it up at Cor of fence—
fence was between 20 & 21 was a fence E & West
40 part way across 29— Cattle had beaten down
—saw mound and a stake about 300 ds East
of Cor. said to Waterman What's that? Waterman
said he knew all about that— that it came in the
night— was a time when the corn went down
was not there in the morning it came— the
Mound bore the marks of Govt. Mound— told
him it was the Govt. Mound— he said If I had
only known this I could have saved you a good
deal of trouble— I have been on the W. line
of 20 I have never found any local attraction
there— as far as I ever knew— none whatever— we
supposed that the line of the road was at the
East of the trees there was a fence on W. side
of pike but not on E. side ditch and stakes—
to continue the line would have run off there
would have come to the river.

On the Cross Examination Dr. Ewers said
I made 2 Surveys do not fully understand
was perfect— nearly new afterwards sold to McBride
—was in as good condition Except as to the
center pin— needle was not as highly magnetized
then— All agree upon the W.W. Cor of Sec
20 — X I do recollect independent of the paper
about the Mound I never heard as
to the S.E. Cor. of Sec 20— My Records
would show if I had them the Evidence
of Dawson— Witness says upon being shown another paper
I was mistaken— I am out 1/2 mile too far

North - when I ended let my compass on a known mound I knew it to be correct and that the variation could be noted without any trouble - I know that Wateman told me me that was the true corner Mr Wateman told me he wanted to have the corner just right cut where it would, the line between 17 & 18 20 & 21 29 & 30 31 & 32 is deflected not straight - not line of the Town is a straight line as straight as men usually work and call it straight Matthewson & McBride did point out three points to me last Term but Matthewson I never saw before that time - after I had Established the S.W. Cor of Sec 20 I sworn Massey

Direct Examination resumed

The Corner I accepted for the Commissioners was thirty five link (North & East) of what I Established for Wateman

Cross Examination Resumed

Mr. Wateman appeared to be very anxious to have it done right and I did not think he would deceive me or himself - I did not make the survey till after the Town was torn down

Isaac W. Brown being sworn says I live in the Town of Seattle work on Sec 34 was a Justice of the Peace then - looks at notice - I wrote out in the Spring of 1862 I swore a correct copy of this notice on Wateman on 26th Sept 1860 - There was a little conversation in '62 Wateman

42

after getting this Fence Rhode took me out and admitted that the Road ran through low ground at S.W. 20 – looked north did not see ditch – nothing said about petition but asked if it would not be better for the Public to have road running on higher land

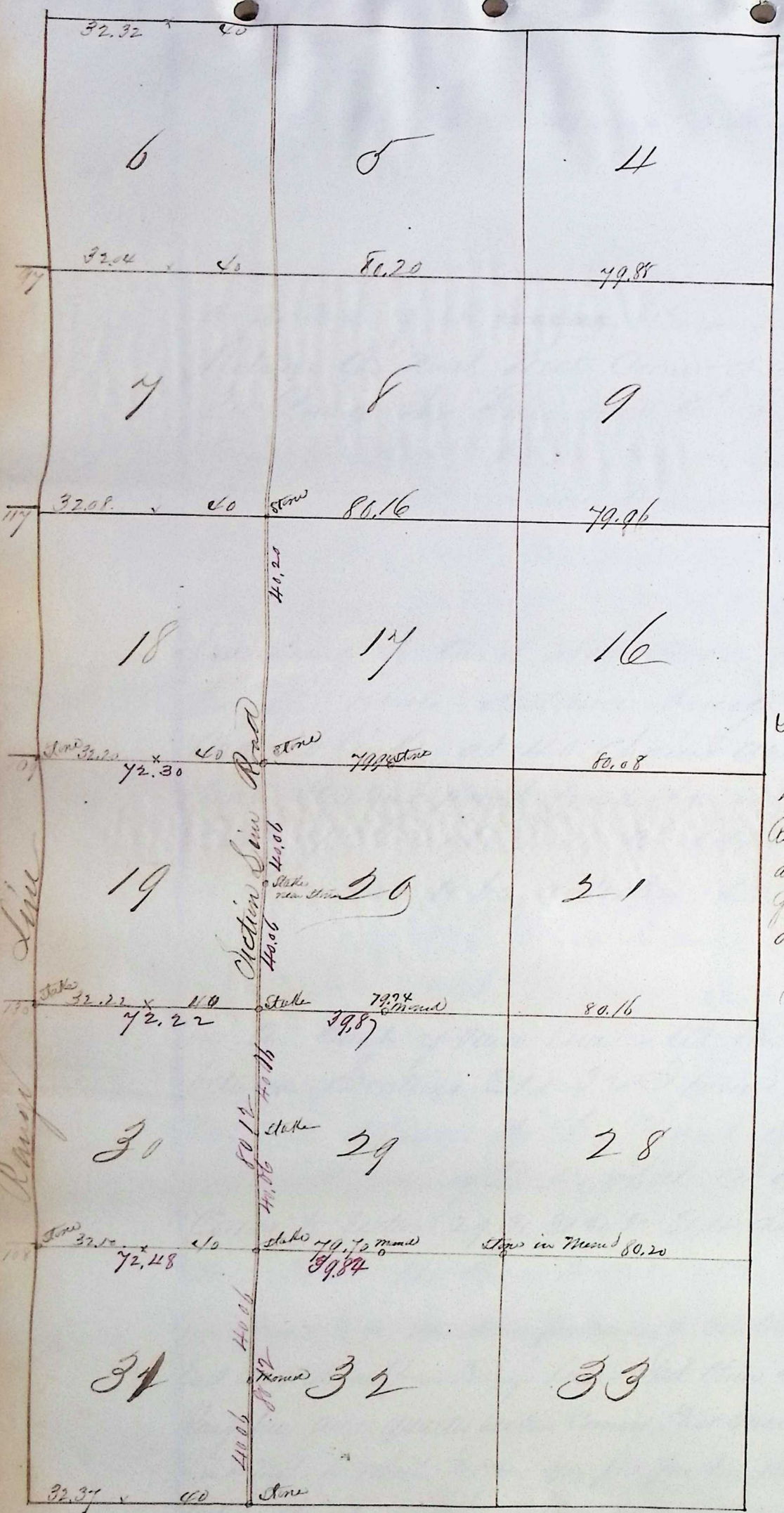
On his Cross Examination J. W. Brown said, No fence on Either side nor at at S.W. Corner.

Robert Wilson being duly sworn says, Resides at Ottawa – I am a School Teacher My occupation has been has been Surveyor since 1851 – I surveyed a line between 17 & 18 19 & 20 29 & 30 31 & 32 – Made in for William Milling said to be a commissioner – 17th of Sept 1860 – Milling was then Sawyer Commissioners Mosley & Jno. Grad Judge Norris was then at first – The first enquiry I made at Ottawa when Milling called was as to the difficulty – told me was S.W. of 20 was taken & N.W. Cor 17 was a stake was no ditch then Commenced at N.W. Cor 17 & run to N.W. Cor 32 – Marked by a stone my purpose in running that line was to Establish the latitude of the Corner the reason I run there was that those lines are made by running N & S line Cor. Vary made by full Measurement 80 chains in this way I Compared with Govt. Minutes – I found the distance to be 28 Lks in Excess of our Measurement – having placed stakes as I ran S. at each 1/2 Cor. I Corrected them by Equalizing after fixing latitude

43

Next was to find deflection if any S. W.
being in Controversy I wished to find 2 Cors
1 & and one Rod of it — We went to S. E of
21 saw west — then saw 30 or 40 stone saw the
Stake saw west finding nothing to mark a
Corner 121 Chains & Eight links then found then
Stakes and Mound brought me on 1/2 Section
line of 20 on S. line I continued west to
Township line agreeing with Gost Notes at the
S. W. of 19 then I corrected the stakes for latitude
giving the N. W. of 19 & 20 by field notes as I had
them — S. W of 20 was on Middle of Turnpike
— then Gising S. W. of 29 — saw from S. W
of thirty Eastward to 1/4 Corner on S. line of
29 I was satisfied I found the Mound distance
being 3 links short the distance of the 1/2 Mile
Corresponded with the Gost distance. The
stick at the S. W. 30 was to deflect from — between 31 &
32 I set a flag & left S. W. of 32 & my Compass for Range
at 1/4 Cor 32 I found the line past W. of the Mound
6 links — was to N. W. of 19 saw E to N. W of 20
found that distance to a stone 10 links too long
— stone was at a ditch at S. W. of 17 — Had run
previously N. W. of 20 Eastward 1/2 Mile to greater Cor
this is my Survey; left a stone at S. W. 20 — on S.
line of 17 — 19 & 21 I saw whole ditch at 21 I
found a pile of stones and stake in them —
it gave 19 what it called for — the Turnpike
at S. W. 20 was a basin with gentle slope
road crossing lengthwise I went and set flag on
West line of 17 & found the line on west edge of ditch
& N. W. 20 — it was a straight line This is my report
and plat as I returned it to William Willing the Commissioner

(44)



Town 2 S Range 6 East

Note

Red figures are distances as measured by me. Black figures are original ones

Wilcox

45

To the Commissioners of Highways of the Town of Little Creek

I hereby report the following Survey to Establish the line of a Certain road or portion of it ~~Lacking~~ between two points Namely Between the North West Corner of Section 17 Town 34 Range 5 East and the South West Corner of Section Thirty two in same Town and Range - Those two points having been Kept up - I Commenced at the North West Corner of Section 17 and ran a Straight line South to the S. West Corner of Section thirty two the whole distance being four miles and 56 links at 40 chains and 16 links from Starting point found Stone set Stone 4 links East of Straight line, at 80.20 chains found a Stone said to be a Section Corner to Sec. 17, 18, 19 & 20. This Corner is some 6 links west of an Old ditch by many said to be Close on the East of said line - At the 1/4 Section Corner between Sections 31 & 32 I found a faint tho' very well defined ditch - Mound dug up - Dist from S. W. Corner of 32 - 40.06 ch - I then set Section Corner to Sections 29, 30, 31 & 32 80.12 chains from S.W. Cor Nov to 31 & 32 And Corner to 19 20 29 & 30 at 80.12 from last Named Corner and then proceeded to test these Corners by running East and West lines from Range line - Set Stone at the distance from Range line and Quarter Section Corner East marked on the accompanying Map to which I refer you for further particulars - I believe the above named map to be a correct ~~Map~~ Representation of said line as originally made and Established by me

Robt. Wilson Surveyor

46

On his Cross Examination Robert Wilson said had a Compass - I found a stake or stone that was dug out of the ground - was shown to me by a man - found stone between 18 & 17 think there was a ledge near to it - at N.W. Cor 20 was a stone set - at 1/4 Cor. between 19 & 20 being School House Corner was a stone - I fixed the stake a little west of the stone - found nothing at S.W. of 20 at 1/4 Corner of 29 found none - S.W. 29 Nothing - quarter Corner between 31 & 32 well Established mound - bearing N° 29' - used a Compass did not rely wholly on the needle - set the stakes Equidistant 40 chs 12 lks going each time proportion of Excess - found Massey - Gray - states at 1/4 Corner. they showed me 1/4 Cor 21 - ditch Stone and mound on 1/4 Cor 21 - Nothing on S.W. 20 - found stake but no mound on S.W. 19 - field notes were handed to me by Massey - Mercy made them - From S.E. 21 to 1/4 Cor. of S. line 20 too long by 1 ch & 5 links paid No attention to it on 1/4 Corner of sec 29 was a stake driven over much & a place where a ditch might have been

Direct Examination resumed

At 1/4 Cor W. line of 20 a mound was pointed out to me as a Government Mound called New Grand Yard Corner - In making Govt. Surveys notes indicated that the Mound South belonged to the other Township - I have always found the Government distances in fractional sections correct

(Plats of Surveys to go to the Jury on both sides)

47

Wm McFarlan being duly sworn says;
I reside in Morris dist lim on S. W/4 of 18 Little
Crk lived there 8 years there has been a Mark
of a corner ever since I went there - it was
on the W. line of the ditch there was about a
Mile of fence in Spring 1853 year before Water
-man put up fence on West line of 20 1/2 Mile to
S. W. Cor of his 80 & up to School house corner
Gray fenced then 2 or 3 years after Gray fence
was a little west of Watermans - fence when Waterm
-an put it up was proper & considered to be.
Gray fence was a little west of corner Watermans
original fence was in range with the fences
above - perhaps 15 or 20 rods of the fence remain
-ed there (the North part) was now on the South
part - S. part of the original fence was board
fence - S. W. corner was pretty close to the ditch
on E. side of the Turnpike - the original fence
would be 15 or 20 from Center of Turnpike at
S. W. 20 when Ever put his stone - Gray did
not fence back by about 6 feet Know when
Ever put his stake at S. W. cor of 20 - Watermans
fence was moved - the ground when the fence
stood had to be plowed & fence taken up to
make a Turnpike was put up west after
that same season was taken up & put up again
still further west - I think in 1859 or 1860 was
cut down by Commissioners - Massey was then
& I think no other Commissioner - there was
a half mile north the people must a fence
up - Waterman had a fence on W. line -
S. W. cor of 20 was quite a mud hole after

48

Mr. Gray fenced up we had to go through them – there was no other way (Two witnesses showed showed a sort of plat on Brown paper) fence stood there that same season of suit Commenced at Morris & at the time of the trial of this suit at Morris – first part was taken up by Commissioners & Waterman then put it up a rod west – fence was torn down before any turnpike was made there was a piece of Turnpike on N. side of 20 Cubout at Raymonds there was none East the same day the fence was torn down there was a Bridge at Thompsons Slough – through McFarlanes Slough & one at Waterm-mans

X

R. Ogle sworth being sworn says I reside in the Town of Little Creek on Section 18 lived there since '55 was highway Commissioner was present at one Survey of Ewer was present when he set his stake in S. W 1/4 of 20 little East of Center of Road Watermans fence was afterward moved several times. Fence was moved first when that Turnpike was made – fence was in the way of Making Turnpike & was moved to make it – Watermans fence stood there four years ago last Summer it stood on the Center of Turnpike – Before the Commencement of this ~~this~~ Suit before D.C. fence was W. of the Turnpike – I was witness before D.C. the Turnpike was then in Watermans inclosure

I was present when Watermans son and hired man were moving fence Brent.

49

John Gray Going Surveyor

Resides in T. 34 Sec 20 from 36 to now and
patented of the Sec 20 in Little Coast Line
Lines on that Section Since 1837 Down 7-80 of
that section Now - in the fall of 36 I arrived
in Chicago Stopped there about 3 months - in the
fall I employed Jesse to Survey the whole Town
3 & for me he surveyed them 2 Weeks - and
this may I became familiar with Minnds that
year I got S. W. Road to Survey the section
20 by itself - Sec 17 & 20 was retired at the same
time - all the Minnds on Sec 17 & 20 on W. line
was Browsed and Visible a year or two - After patenting
Employed a man to build a ditch - Minnds were
distinct - The Grave Yard Corner Mound Visible -
up 1/2 Mile Mound Visible - N.W. 17 Mound Visible
- Ditch was made so as to bear Center of Mound
36 of Edge of ditch (for 8 a 12 inches) ditch came
down to Corner of 17 - Along W. of 20 - the two
Minnds were Visible - at School House was
Visible - when I put up my fence that Mound
at School House I calculated to bear the full
20 feet for Road - Watermans Fence Stood 4 feet
East - Waterman set fence right there - the Minnd
in S. W. 20 was peculiar, Mound was in a ditch
was an inclined plane running up towards
West on Sec 20 3 Minnds on North 3 on S. as
the Minnds had been Surveyed by Govt. Survey
was Kind of flat Could tell by the Ditch by
the side of it - now stakes but Burned - S. W.
20 I measured from Mound to Mound -
When Waterman put up his fence in 54 or 55

he drew a furrow from Mound to mound
50 & set fence by - on S/4 Sec Cor. on Sec 20 Pointed
out Mound - he had his full 80 - I was not
present when Road was located, Saw Stakes -
Ditch in Centre of Road - the Road was located
Making Ditch Centre of Road & the West line of
Sec 20 - Width on Each side 20 feet - Road
was on a Straight line and old Govt. Mounds
now Straight from N. of 17 to S. of 32 by the
Eye - Knew Govt. Mound at N.E. Cor of 20 at
S.E. of 20 I did Know Govt. Mound but it has
been lost many years at S.E. of 21 I have known
mound great many years Could go to it now - S/4
Corner of 29 Mound that I have known it since 1836
Same Mound as Wilcox found a cotton Stake in.
Wilcox Survey located the Mounds Exactly, a very
Near was with Wilcox when he put his stake
on S.W. Cor of 20 and that was when the
Govt. Mound was - Waterman fenced out full
25 feet for Road - Watermans fence has been
removed by Highway Commissioners twice once
in 59 remained down till 1860, was standing in
Highway 15 feet last time fence was put it was
pretty much on the West line of Turnpike 18 or 20
feet from where it originally stood was moved
in 1860 - Waterman was there - fence was standing
there at time of the Suit - Was present at Ewers Survey
of S.W. for 20 his stake was put on S.W. Cor.
of 20 it was 47 feet west of Govt. Mound took
in Thompsons Hedge & all ditches and fences in the
Town. They did not start from the N.E.
of 20 when the fences were put up - The People

51

Travelled in the Road – When Waterman put up his fence last there was now but twelve feet between fences at S.E. 29 I know the Cor. of the Mound – Road as originally fenced out by Waterman & others was rough & there was bridges and Dumpike – I know of Waterman when Commissions working on the Thompson bridge Work was done between 19 & 20 & up to the School House – I have taken an active part in this Controversy.

C. S. Wadsey recalled

I went to Watermans house and told him to work on the Road and now the fence Waterman says he knows this fence was on the Road – Said that I might take out fence and then he could defend himself –

The Plaintiff then introduced in Evidence a Certified Copy of the Record of Grundy County Commissioners Court of the laying out of the Road in Controversy and Plat of the same, as follows to wit,

State of Illinois }
Grundy County } At a regular Session of the County Commissioners Court of said County began and held at the Court House in Morris in said County on Monday the Seventh day of September in the Year of our Lord one thousand Eight Hundred and forty six.

Present Jacob Heyrod
Andrew Kinsloe } Commissioners
James Cowan

Patrick Kelley Deputy Sheriff

Attest. George A. Kinsted Clk.

52

Be it Remembered that at the September Meeting A.D. 1846 of the County Commissioners Court of said County the following proceedings were had - Viz,

Tuesday September 8th A. 1846.

Road Petition Andis & Newport Longhead & others

The Court being this day duly and duly Constituted a petition of John Andis & others praying the appointment of Viewers & Survey and locate a County Road Commencing at the South end of Hutchinsons Land on the North line of Grundy County thence South four Miles - thence to the Illinois River on the nearest and most eligible route crossing the same at or near Harrons or Bruches Landing - thence to the Middle of the North line of Section four Township 32 Range 6 - thence South through the Center of Section 16 T. 32 R. 6 to the Road leading from Morris to the County line in the direction of Mud Creek" And the Court being fully advised in the premises do order and Consider that Newport Isaac Hoge and Orville Coe be appointed said Viewers and that they report therein at the next Term of this Court Provided that the Clerk issue no notices to said Viewers authorizing said Examination until the sum of Twenty Dollars be deposited with said Clerk as provided for by Law.

And afterwards to wit at the December Term A. D. 1846 of the said County Commissioners Court the following proceedings were had & took

In the Matter of Road No 27 Viewers to report Extended

(53)

Monday December 7. 1846.

It is ordered by the Court the Seandes Newport Isaac Hoge & Orville Cone who were at the last regular term of this Court appointed Viewers to view and Examine a route for a road from Holdemans land to the Road leading from Morris to Mud Creek be allowed to report concerning the same at the Next Term of this Court.

And afterward at the March Term 1847 of the said Court the following proceedings were had to wit,

Viewers to Report on Road No 27 Continued

It is ordered by the Court that Seandes Newport Isaac Hoge & Orville Cone who were at the September Term for the year 1846 of this Court Appointed Viewers to View and Examine a route for a road from Holdemans land to the Road leading from Morris to Mud Creek be allowed to report concerning the same at the Next Term of this Court.

And afterward at the June Term 1847 of said Court the following proceedings were had to wit,

Monday June 7. 1847

Reappointment of Viewers on Road No 27 and T. Longhead J. Antis E. Harner.

It is ordered by the Court that Thomas Longhead John Antis and Ezekiel Harner be Appointed Viewers to View and Examine the Route for a certain Road Authorized to be viewed at the September Term of this Court for the year A. D. 1846, in the place of Seandes Newport ~~Isaac Hoge~~ and Orville Cone and that the time to report on said Road be Extended to the Next term of this Court.

Road No 27 Established

And afterwards at the September Term 1847 of said Court the following proceedings were had viz:

Monday September 6th 1847.

Ezekiel Warren John Autis and Thomas Longhead Viewers Appointed at the last term of this Court to locate a certain Road Numbered 27 this day filed their Report & plat of said Road which report is in the words and figures following to wit;

State of Illinois } ss
Grundy County }

The undersigned Viewers Appointed by the County Commissioners of Grundy County at their June Term 1847 to View Survey and locate a County road commencing at the South end of Holdermans Lane running South five miles thence south to the Illinois river at or near Hemmons or Runches landing thence South through the centre of Section 16 T. 32 R 6 to the Road leading from Morris to the County line in the direction of Mud Creek, Herewith report that we have viewed the same and caused it to be surveyed by E. Warren a plat of which survey is herewith submitted and that we do report favorable to the Establishment of said road according to the survey thereof September 4. 1847.

E. Warren
John Autis
Thomas Longhead
Viewers

And the Court being fully advised of and concerning the premises in relation to the said Road No 27 do order that said Road be permanently established as a

County road fifty feet in Width.

55 And afterward on the second day of the said Term the following other proceedings were had &c;

It is ordered by the Court that the following persons receive the sums to their names severally set forth it being for their services in Surveying and locating road No- 27

John Artis	Viewer 2 days	3.00
Thos Longhead	" 1	3.00
Ezekiel Warren	" "	3.00
Ezekiel Warren	Surveyor " & Plotting	6.00
Hudson Barrack	Chainman 1 day	1.75
Charles Doty	" 1 "	75
Henry Wyckoff	" 1 "	75
Timothy Norris	& Jesse 1 "	2.00

And it is further ordered that the above named persons severally receive orders on the Treasurer for the above mentioned sums-

State of Illinois }ss
Grundy County }

I Samuel B. Thomas
Clerk of the County Court
Within and for said County and State do hereby Certify
the foregoing to be a full and Complete Record of the
Recorded proceedings had in relation to the laying out of Road
No- 27 as appears by the Records in my office.
Witness my hand and the Seal of
Seal said Court at Morris in said County
and State this 7th day of April 1863
3 10c Int Rec Samuel B. Thomas Co. Clk.

North Line of Grundy County.

56

I Samuel R. Warner Clerk of the County Court in and for said County and State do certify the foregoing to be a true and correct plat of the Survey of a Road No 27 as applied for by the Citizens of Norris City Lee & Mills Precincts and as ordered by the County Court at the September Term A.D. 1847 of said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Morris this 25th day of September A.D. 1847.

Samuel R. Warner, County Clerk.

No 19

References

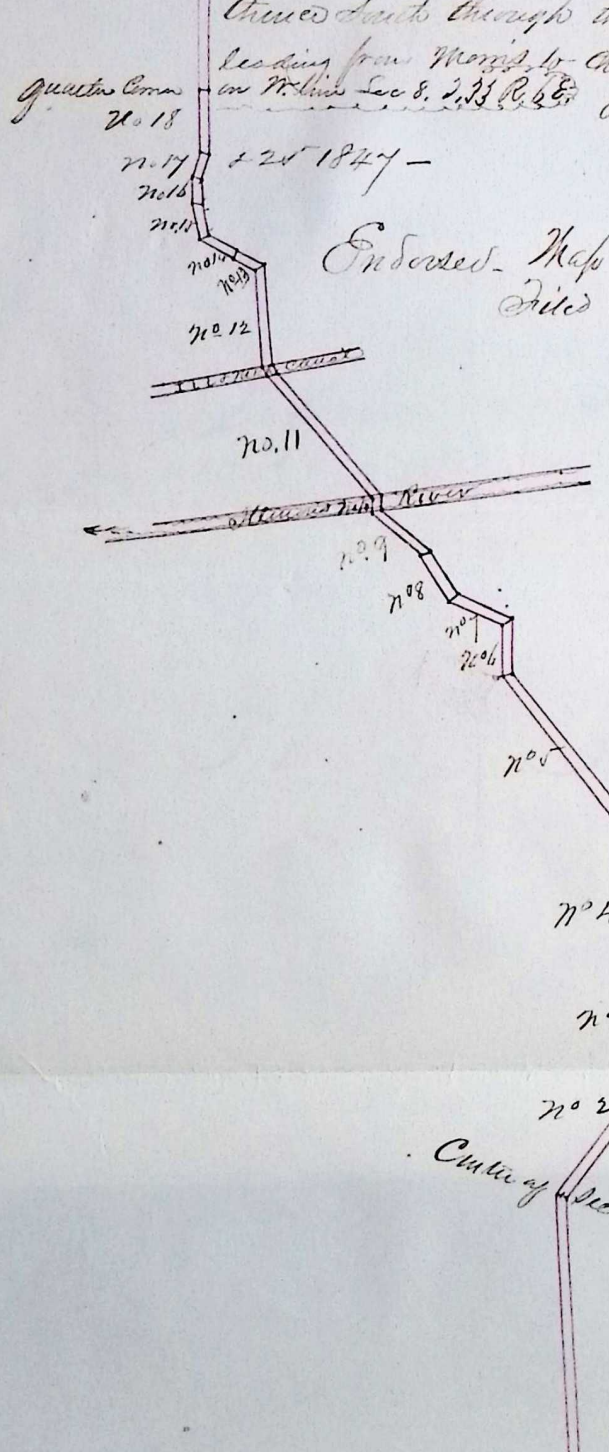
—No 1 N. 4½ Miles thence the Center of Sec. 28. 21. 16. & 9 to Center of Sec 4. T. 32 R. 6 E.
— " 2 N 33° E 26 4 Rods
— " 3 N 8° E 108 "
— " 4 N 14° W. 240 "
— " 5 N. 38½ W 291 " & 8 Links
— " 6 N. 80 "
— " 7 N. 32 W 76 "
— " 8 N. 32½ W. 80 "
— " 9 N 41° W. 76 " to S. Bank of Illinois River
— " 10 N 22 " across the river
— " 11 N 28° W. 271 " & 12 Links to the Corner
— " 12 N 80° W 168 " to Back Line
— " 13 N. 16° W 36 "
— " 14 N 48 "
— " 15 N 10 W. — 52 "
— " 16 N 8° 33 "
— " 17 N 22° E 36 "
— " 18 N 42 " quarter Corner N. line Sec 8 T. 33. R 6
— " 19 N. ½ Miles on section lines to the north line of Grundy County Ill

Length of Road 11½ Miles 19 Rods & 20 Links

State of Illinois }
Grundy County } I Hurley Certify that the foregoing plat is a true and correct plat of the Survey of a County Road No 27 Commencing at the South end of Holcumans Lane thence South four Miles thence to the Illinois River at or near Norrons or Runnels Landing thence South through the Center of Sec 16 T. 32 R 6 to Eastland leading from Morris to the County line in the direction as Mutt Creek as Surveyed by me — June 23. 24 & 25 1847 —

E. Warner, Surveyor of said Road.

Endorsed — Map of Road No 27
Filed Sept. 6. 1847
Geo H Kinsley Cl



No 19

— " 7	N.	25	W	76	"
— " 8	N.	32½	W.	80	"
— " 9	N	41°	W.	76	" to S. Bank of Illinois River
— " 10	N			22	" across the river
— " 11	N	28°	W.	271	" to 12 links to the corner
— " 12	N	80°	W	108	" to oak 2 ins
— " 13	N.	16°	W	36	"
— " 14	N			48	"
— " 15	N	10°	W.	52	"
— " 16	N	8°		33	"
— " 17	N	22°	E	36	"
— " 18	N			42	" quarter Corner N. line Sec 8 T. 33. R 6
— " 19	N.	½ Mile			on section lines to the North line of Grundy County Ill

Length of Road 11¼ miles 19 rods & 20 links

State of Illinois } ss
Grundy County }

I Hiram K. Thomas Clerk of the County Court for said County and Keeper of the Seal thereof do certify that the foregoing is a true and correct copy of the Survey of Plat of a County Road No 27 as the same appears of record in my office. Witness my hand and seal of said County at Morris this 3rd day of Sept A.D. 1847

Hiram K. Thomas Clerk

State of Illinois } ss
Grundy County }

I Hiram K. Thomas Clerk of the County Court for said County and Keeper of the Seal thereof do certify that the foregoing plat is a true and correct plat of the Survey of a County Road No 27 Commencing at the North end of Holtzmans lane thence North four miles thence to the Illinois River at or near Stevens or Runnels Landing thence South through the centre of Sec 16 T. 32 R 6 to the road leading from Morris to the County line in the direction of Mud Creek as surveyed by me — June 23. 24 & 25 1847 —

E. Warner, Surveyor of said Road

Endorsed — Map of Road No 27
Filed Sept. 6. 1847
Geo H Kinsley Clk

Horizontaux Lacs

Ouest Sud

Sec 6	Sec 5	Sec 4
7	8	9
18	17	16
19	20	21
30	29	28
31	32	33

Verticaux 80.30'
Mesurés 80.40 ch

Des 80 ch

58

Minutes and plat of a resurvey of a road in Township thirty four Range six East of the 3rd P.M. made by me this 29th day of July A. D. 1859. as follows, Commencing at the North East Corner of Section six Township thirty four Range six East of the third P.M. at a point formerly known as Haldemans land Thence South Forty chains variation 6° 20' to the North west Corner of Section Eight thence South Eighty chains and sixty one links (80.61 ch) variation 6° 45' to the North west corner of section seventeen (17) thence South Variation 6° 50' Eighty chains and twenty six links (80.26 ch) to the north west Corner of section twenty (20) Thence South Va. 6° 30' Eighty chains and Eight links (80.08 ch) to the north west Corner of section twenty nine (29) which Corner is thirty six links East of the Corner as set forth in the Records of the County Surveyor made by Thomas Neely and dated May 23. 1849 and seventy (70) links East a survey made by Geo Keirsted and recorded on page 13 of the Records dated Aug 7. 1851 and fifty seven links East of a survey made by me and recorded June 25th 1859 thence South Variation six Degrees thirty six 6° 35' Eighty chains and ninety four links (80.94 ch) to the North West Corner of section thirty two (32) no Mound found then thence South Variation six Degrees & twenty six Minutes 6° 25' thirty nine chains and sixty Eight links to the half section Mound on the East line of section thirty one (31) Mound and ditch found plain and well marked by a stake Thence South thence South Variation six Degrees and twenty six minutes 6° 25' thirty chains and thirteen links (30.13 ch) to the South west Corner of section thirty two (32) Mound plain. The above is a correct plat of said Road together with the lands adjoining as there set forth. - Samuel Evans

County Surveyor of Grundy Co. Ills.

The Plaintiff also introduced in Evidence the Plat and Report of the Survey of the Road in Controversy made by Ewers Surveyor for Highway Commissioners of Little Creek also the Plat and report of a Wilson Surveyor - (Survey and Plat of Ewers will be found upon the preceding pages)

Here the Plaintiff rested his Case.

The Defendant then Called as a Witness George K. Kirsted who was duly sworn and testified as follows;

George K. Kirsted

I live in Morris - I am a Surveyor I have been County Surveyor of Grundy Co. - I have been a Surveyor since 1862 and have made six or more Surveys in the Town of Little Creek - I am acquainted somewhat with Sec 20 I made a survey for Statesman to locate his fence then I started at the ¼ Corner on the South side of Sec 20 - It appeared to me to be a Government Mound - I have but little doubt of it - I run North at 7° or 7½°, I pursued this line through the Section north and found the ¼ Corner on the North side of Sec 20 - I run then West I could not see any Mound there - my Chaining came out on the West side of where the Surveyors established at Evans yard corner. I came out a rod west of the Stone - Then I run South about ½ a mile to the ¼ Corner of Sec 20 - I sent for a Scythe and Mower arrived and found a Mound indistinct I put in a Stake, a White oak Stake, and left

it about 15 inches above ground. Then I went South to the S. W. Corner of Sec 20 and found a Mound and put a Stake there I took the bearing from the School House Corner at 6c I stuck a Sapt wood stick - bassWood or Cotton=wood at the S. W. Corner Sec 20. Ten years after that I was called on to Survey some roads along Sec 17 - went along and the 1/4 Corner in the North side of Sec 20 was the same as in my former survey I found no mound on the S. E. Corner of Sec 29 all the Surveyors agree in the Corner at Sec 32 There was local attraction - We travelled along and found a Variation of the needle - we adopted the needle about Every half mile and the Variation was at least from 30' to 55' - McBride & Matthewson went to the School House Corner and started at 6c They had dug about a foot from my stake - I told them where to dig - at the place at the place I supposed I had placed my stake. They dug where I indicated and found my stake. Matthewson had a first Class transit instrument. Every instrument was not in adjustment - Thompsons Wedge Stands 8 or 9 feet west of Grave Yard Stone - I saw the point where Matthewson & McBride found Corner on S. W. of 20 - Cor. was right & on Govt Mound Assuming the Corner made to be right it would be on Watermans land 25 feet & over Measuring from the School House fence it would be 25 feet to the Center of Mound - There was a Mound in S. W. Corner of Sec. - and Mound East - then North and then called the Section - think we found Mound S. E. of 29 and Mound S. W. of 29.

61

On his Cross Examination Geo H. Kierstead Said Grave Yard Corner I did not find. Spoke in a long stake of soft wood - there was a Dumpike or East of that Matthewson & McBride made their Corner there I saw 50 or 60 links due West - ran a tangential line by pickets - Brought us West of S.W. c 32.

Artemus J. Matthewson being sworn says.
I am a Surveyor - I have been employed since '31 - '32 have surveyed majority of Canal lands have Surveyed at Little Creek fall of 1869 - for Watterson. Began at S.E. of 32 ran random to East 1/4 Cor line of 32 - We put stakes beginning at a point Continued North on that line to point near N.E. Cor of 32 - No doubt about those Corners Continued the Course of the last 1/2 mile by stakes and transit directly - running into the field to the Dunoca Corner from Dunoca Corner next 1/2 Mile - We found no Corner - Upon this I ran this Mile we have run west to the Range line - then came back to N.E. Cor of 31 - Corrected & hunted for the Corner North on the Range line found the Corner then fixed a point and hunted for the 1/4 Corner on N. line of 32 then ran on the E line of 29 Continued N. in Grays field to N. line of Sec 20 looked for a Cor found a stake standing perhaps 2 or 3 chains fell west of Corner think over 2 Chains set stakes west to the Stone at N.E. Cor of 17 ran S. at about 1/2 Mile 40 Ch. + 22 lks found 1/4 corner on E of 17 Continued South

62

to of 20 came out near fence at a point about 22 links west of where our lines stakes stand dug and found an old stake near a fence — Black walnut — ran west west to North East corner of sec 28 — new pike is East — Waterman Called for another survey I went with Mr Pride next year before the litigation at Morris — 4 rods South is a foot & 6/100 — I could not see from the 1/4 corner between sec 17 & 18 to your corner there was a high piece of land. East ditch runs Straight it is difficult to make a ditch straight 1/4 sec corner on South line of 17 is 20 feet East of the East fence. Locusts stand on the N. W. Corner of sec 5 — I have looked for Mound and have never been able to find a Mound. North line of Township across Government Lines note 2 ch 10 lks — difficult to find Mounds on North line of Township. It was plowed over We also run in La Salle County perhaps 3 or 4 miles N & S. & E & W found a Rock or bound over in La Salle County. The first time of Surveying I was doing work for Cook & Waterman wanted me to do some surveying for him. Said he was in Trouble or doubt Took me from 30 to 60 days may be over 4 days There had been breaking done about 1 year between between S. W. 1/4 west of 29 & 1/4 cor 30 in Chs Sollers We pursued the line across South of Creek Furrows run to bluff. In running East of N. Cor. of 20 to 1/4 corner on west line of 29 we found an old travelled track Crossing our track sometimes on the left & sometimes on the right near this line

We found 1 or 2 places. little dishes. Culverts
there there is an old pike at the School
House at S. W. corner of 20. one line runs
top of the old pike. Raymond Jones
into the Road — that Stone west of Thompsons
House at W. W. Side of 20. Thompsons
Hedge is 9 feet west of Riesters old Corner
Riesters corner is 19½ links W. of Wilson
11 inches of Mumps Corner. I had an opinion
that Stone was too far East — all the Travel
appears to be on the line I made — on the S. B.
corner of 20 when we got the Stake out I could
tell that had the appearance of being an stake & stone
mound. the dirt had been worked in and split in
it was old and rotten down that it had been chopped
with an axe might have been Basswood or
poplar or Maple old and kept — Stones appear
to be from nature of the wood might have been
hard and rotten kept — I think I found S. W. corner
of Sec 20 have no doubt about it being the Govt.
Corner. By my survey Sec 19 falls short & Sections
20 & 21 overrun latitudinally When I put my stake
for S.W. 20 was west of where my survey made
the corner. If my line is right the north end of
Watsmans fence lay at School House Corner
would be 26 or 27 feet East of Riesters Corner
on the East side of the Road at S. W. Corner
Noticed the fence on W. Side at S. W. Corner of
Sec 20 bearing S 76½° E 53½ lks Stone at or
near the pike another Stone no Grass there — Stone
pit which is near the Center of pike 62 lks N.
of Matthewsons Corner. 8 links west of Wilsons Corner

64

at by this another Corner – Stands at Kirsteds
corner and took W would require a Stick 16 or 20
feet long to picket – Made map this winter – made
a plat at the time of Survey – made the offsets
at Every ½ mile – Known mounds are of greater
importance than Surveys – I commenced at S.W.
Cor of Sec 32 – I went back a piece to
ascertain before going into the disputed work
from the N. E Corner of Sec 29 – I called on
Gray & others said it was the Corner –
Mr John Gray Hoyt & Dix were Examined
as to ~~Corner~~ Corner. Dix disagreed with Gray
& Hoyt. Jr & Mr Bride stated Dix thought it
was East of where I was – I could not say but
think I do recollect now something about the
brick. Dix had got puzzled some way. Dix
Evidently had got excited could not reconcile it.
Something might have trampled on it. we had to
dig for Brick my impression is I commenced
at a distance from A Hoyt Corner East. I think
Mr Bride commenced from Brick and stone Corner
think measured west between 2 stones 79 ch & 95 lks
from Hoyt Corner 8 Ch 27 links – Mr Bride – I think
it would run west of the Ditch the point that we
started from as I view of 19 to S. W. Corner of 20
was last that Govt. Notes called for W Bride
established his corner at S. W. Cor 20 just where
I had – Found no other stakes at S. W. Corner of 20
dug across East &c.

Direct Examination resumed

It is very seldom Govt. Notes are Correct.

Robert Wilson – recalled by plaintiffs

By sighting the instrument to get a level over the place I should set the instrument of the ground day ~~South~~ South and sight North – The Rule is that all good Surveyors would run the lines the way they were originally made.

W. McBride being Sworn Says

I am ~~the~~ Surveyor of Grundy Co – since 1848. – Surveyed Nettle Court – In Spring of 1860 Waterman requested me to make a Survey – Mentioned Massey – wanted to know where we were going. Matthewson came to Massey on Street. Massey said he would take me up – we met up with Massey went down to Gray – went out to the N.E. Cor of Sec to look for Cor. Corner to be 2 points Hoge Corner & Brick dust Corner Matthewson wanted Dis Sworn – Matthewson wanted Hoge Sworn – their statements were contradictory I noted the difference between the 2 points. went back up to 18 – went then prejudiced against Waterman and was careful – Notes the difference to Gray yard ~~Corner~~ Stone then W. then S to Cor to N. side of 17 back to Gray yard Corner then back west to S Corner on S. side of 18 not able to find any then on Range line then to School House Corner – then Continued that Course same bearing then on E side of Section 2 Nothing found – then Question came up about N.E. Corner to run S to W. – Dis said he thought he could give us a point more definitely. We did some digging at the other Corner – think Dis dug some ~~digging~~ typo Dis thought it ran through Gray house door Could not find any bones – went to S.E. of 20 found a Stone Corner Gray thought Corner was further East – were not able to find any – We Continued that

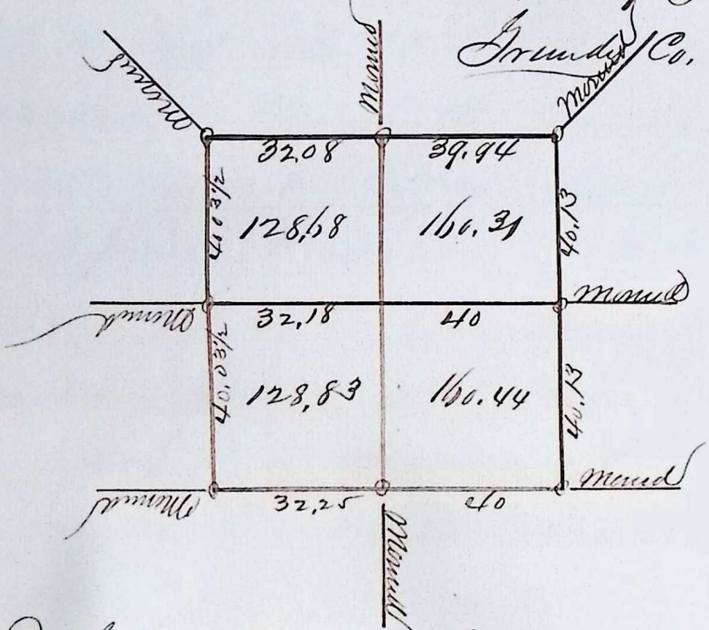
66

line on ½ Mile to Donovan corner then measured
west noting on distance came up on the Road went
back after that-back to the corner at S.E. of 29 found a
corner then - ran N to S.E. of 20 - ran down point
alone a few inches west of a stone ran west noting
distance up to the ¼ corner of S. side of 20 continued
up along S. side of 20 up to S.W. of 19 found point
but not very satisfactory to me did digging - then turned
east and measured down to where the corner of
19 ran down, and connected on point at S.E. of
20 then between 19 and 30 1 mile South then to S.E of
29 and measured on distance to S.W of 29, to S.W.
of 30 then 1 mile W. line S.W. of 30 not very satisfactory
then to S.E. of 25 to test & measured up to S.E of
29, then came back found a Zigzag but not regular
on road line came back making no Corrections at
S.E of 18 we set no Corner at S.W of 20 my Calculation
came 5 or 6 links East of the Matthewson & Kersted
Corner, but I put my corner where Matthewson had.
By my line on sec 19 fell short of 20 & 21 overran
extensively - I afterward ran out a Road on the
Range line in the South west Corner of 18 then S.
to S.W of 30 - I added 24 links to make it
full 8 links that year this entire Govt Dist Except
1 link. About same time I laid out another road
on line from S.W of 18 to School House Corner.
I put my corner for the N.W. of 20 & put and a few
inches - Govt distance on that line 72 ch. & 20 -
I made it 72.26 - I have an old record (Old
Record of Henry Appeal Ruled out by the Court
Defendant Says the Question) [the following is a
Copy the Survey & Record of Henry — to wit:]

67

Record of a Survey of Sect. 18 T. 34 R 6 East of 3rd P.M. and Subdivision into 1/4 Sections of the Same Made May 20th 1849 for Thos. Longhead Joseph Perkins David Jamison and Frank Hall Esq. Commenced at Mound at the N.E. Corner of said Sect. Thence N. Va. 6° 28' Dist. 72.02 to Mound Thence S 6° 15' Dist 80.07½ to Mound Thence E. Va 6° 15' Dist 72.19 to Mound Thence W. Va 6° 07½' Dist. 80.26 to place of Beginning the Subdivisions are marked in figures upon the [illegible] lines. The following is a correct Plat.

Thos. A. Henry Co. Surveyor
Grundy Co. Ills.



I hereby Certify the above to be a true and correct Copy of the Original Record of Survey in my office as Copied by me from the Same Morris May 9th 1864.

W. McBride
County Surveyor
Grundy County Illinois

found Mound on S.W. Corner of 18 on ¼ Corner
between 18 + 19 Commenced at ~~my~~ range line - ranged
did not find mound made it 72.38 - random
line to Stone - Field notes were 72.20 from Township
line - to Stone was 72.38 Govt. distance was 72.20 - I am
satisfied the Govt. distance was not correct Govt
distance would fall short of where the Stone is -
would be too short - I have run in Grundy Co.
other lands where all mounds were visible in S. part
of Grundy (shows map) Assume that the line of
Township is straight which is not correct. Govt
Notes show 80 ch 19 - next mile 80.20, - next 80.22 &
80.18 &c is generally so through the County - Govt.
Mound if correct must be extraordinary Circumstance
- I have often found fraction to run over & fall short. There
is no rule for finding last Corner laid down. The S.W.
Corner is not an essential Corner I know of no
definite rule by which a Surveyor is to be governed
- my opinion is I would first try Govt. distance & if
different would go to a known Corner. to another
known Corner run random lines &c - I know the instrument
of Ewer. I took it home and examined it, tried
to run some lots - was out of adjustment - center pin
was very dull - was out of adjustment when I got it
My opinion is that it had not been in adjustment ~~for~~
in a good while - was at N.E. with Kinsted in 1861.
at N.E. of 20 - was with him at Grave Yard Corner
I planted Stone at Grave Yard Corner I know Stone
called for Humphrey. Henry was with me & pointed out
the corner at S.E. of 18 - Kinsted Stone was 4 links
W. of Mine & mound 12 links & some inches N. of Grave yard
Stone same Stone that all the other witnesses have been talking

about - when I got to S.W. Cor of 2d I was of opinion that point was some 6 or 7 links E of point Matthewson pointed - Down Matthewson. I dug in for Stake & found it. We differed a little his Cor was a little west of ~~mine~~ him We went down to greater Corner on N. side of 29 & for random pt then - I think I put in a Corner then E of the Elm 6 or 7 lks - I think we went South to S.W. of 29 I was impressed that the Corner would be very close to where Matthewson Mound was thought Matthewson point was a little too far West, then must go down line in LaSalle & thought that Corner was a little west. I found for a Corner down west & found Got. dist. did not hold out - I added links enough to make full 80 - this was in range line at S.W. of 2 & then was better satisfied that Corner of S.W. 29 was correct I put a stone in ~~the~~ on School House Corner which is 7 feet, 3 or 4 inches west of Keiste's corner. From all circumstances I thought Keiste was right and I wrong. I became satisfied that any Corner at S.E. of 2 was too far East. Keiste and I went up then K. ranged along. N & S. a little & said "Was you sure your Corner to far East" this was in 1861. After we Examined the Keiste Corner I dug and found an old Stake - after Keiste ranged N & S. found an White oak Stake. Keiste described it before, was the same Keiste said - "Set your compass at 6° and run down and "You will find nearly Corner" - did so & found that the 2 Corners of Matthewson and Keiste was Correct Supposed our Corner to be correct Waterman's fence was not in the Road - an old road is west

70

of Where the road is now and would correspond with
an Imaginary at S. W. of 20 might have been 15 or 20 ch
It would leave the old track about eight — Law
links of Gradiemans Posts.

On his Cross Examination N. M. Bride said,
Variations of Compass differ at different times
9 years from Now Variations would be but very little
different. Variations incline both ways. the general
Variations would be the best test after getting
Courses — In N. W. portion of Illinois the Variation
is about 2½ whole amt. of variation is West.
I placed the Corner from Matthewsons testimony
not far from my survey — because it was destroyed
and plowed over. My Measurements overran some
links Matthewsons Corner, — would make 20 & 21
overrun More than Mine — ran down to S. W.
of 29 found nothing there — I dug at a point
pointed out by Old Found stones, am not positive
about Brick. Dont remember Measuring from old
foundation of Grazebrook House I measured the
X dist from the Hedge to the Stone Corner — X
Anderson and French did the Chaining — S.W. ¼ of 19
remember digging there — S. W. corner of 20 was a
stone — was an other stone S.E. of stone in ¼ corner on
S. line of 20 — Down Mr Gray — I do remember
about seeing a furrow, think it was East of Matthews
— was corner about 2 rods — I think there were 2
or — sticks standing on a very large mound there
, and hill or something very much elevated, sticks
were stuck in the ground. ordinary description of
Government Sticks, at ¼ Corner of S. line of 20 Mound
appeared to be about 20 years old furrow ran a little

Each of S. I think

Direct Examination resumed

This is the same Moses Matthewson referred to

Cross Examination resumed.

The Corner on N. E. of 20 was N. of Ditch at E. side of Road.

E. V. P. French being sworn says

I live on Sec 18 on N. E. ¼ land then in June 65 have lived there ever since - have Chained there - have taken no part except as Chainman on 1st Matthewson Survey - 2nd think when McBride was there. Waterman was there part of the time nearly all 1st time they commenced on my line on S. E. 3rd. 2nd time dont recollect. Moses several places at School house corner. Knew the point. 25 feet from Keirsteds corner to fence in 67 & 68 Gray was School director then when fence was put up Bridge between 17 & 18 at my S. E. Corner of 18 to S. E. Corner of 18 - 27 links East - 27 East of that line - Raymond moved his fence after this difficulty commenced moved part of his fence might be 2 or more or less - there was a travelled track inside his fence - was 40 links from it - Raymonds fence was set out 3 or 4 feet - should think old track was when they claim this corner. There is a pike in the line to the old track - Raymonds improvements were in reference to the old pike. I think there was a part of Watermans fence at School House moved a little ~~west~~ east. I think I would ~~likely~~ have been likely to have taken notice if Waterman had moved his fence so as to have allowed only 12 feet Before Raymond

Moved his fence at the School House I should think there was plenty of Room. Did not notice Waterman trying to mislead Surveyor Applewood built the school house fence in 1858.

Oliver Dix being sworn says

I live on S½ of S.E¼ of 8 and N.E¼ 17 have lived there since 48 — ¼ Corner on E. line of 8 S.E Corner of 8. the Whole Mounds on North side of 8 are visible the ¼ Corner on E. line of 17 and the Mound on the S.E. Corner of 17 was visible at that time ¼ corner on west of 17. I was not fairdian with with them — I recollect the N.E. corner of 20 I saw the S.W. of 20. I went down with Waterman to see about Corner. about Watermans building in 49 or 50 — Travelled south Considerable after road was laid out — I hauled my rails and posts up that road — the timber and travel went very near road. nearly all the travel was near the Mound — old line of travel left — the Mound a little on the East. Horses Wagon tires hit the stake several times — stubbed my toe — I was down there last November there was Evidence of the travelled track in field. Old Pike ranges as near with present pike as near as you get any — near S.W. of 20. Raymonds fence the whole line from the School house down was nearly straight. Watermans fence had not been changed to amount to anything by him — at S.E. being a little low and muddy he put in his fence in on his own land on S.W. of 20 Cor of 20 — 15 or 20 feet 400 rods of fence — on his own land — this was after his line of fence — There has been no general change in the line of fence along ½ mile of fence

73

Raymond put his fence out so far that there was no room for travel. Could not have been a hog pen over the Mound without my knowing it. Knew Watermans Blackham's 3 rods for N. - was first the boards nailed on - was to keep the mud out. no floor - No attachments except what the Horses left and cinders. I Knew when the S.E. of 17 was before it was demolished - when fencing Cook showed me the Mound fence stood there some 2 or 3 yrs my fence was 2 feet E. at end. S. corner of 17 I have known since 58 Waterman wanted me to show him the Brick & Stone Corner. McBride came and I put my foot down and said somewhere here and about 2 feet from there an oldish pointed Stake & put in Brick & Stone - Either Matthewson or McBride I did not put it there - Had been travel over it N. W. of 17 in 1850 was visible

On his Cross Examination Q. Did said,
His father married my mother - N.E. cor of 20
I was Examined by McBride. I told them there was about the Corner found Stake 3 or 4 inches high they did not find Brick and Stone there at that time - on the E. line of 20 Hogs fence was there not Envys - mound on S. st. corner 20 was on a knoll piece of ground travelled road was to the W of the Mound

R. R. Peckham being sworn says
I live on sec 8 - 10 years ago next April Waterman had built his fence when I was first there - Dont Know when there mounds are of my own knowledge - I got a hog from Waterman. there was a hog pen there of 2 or 3 acres to and E. N. of 20

74

well was near fence – about 15 feet – the well is about 15 feet from N. fence, and about 2 or 3 rods from S. fence Never Knew him to move his fence – fence could not be moved without my Knowing it – I Chained work with him every little while The old pike would be in a range with the old line of Travis. Raymond moved his fence about 3 feet – The Old Turnpike was before they had any Lawsuit – with reference to the old line of Travis Waterman had left out 2 feet has been No substantial Change in Watermans fence till it was cut down – Dont think the North part of Watermans fence stood E. of Gray fence

James Anderson being sworn says;
Live on W/s of Sec 35 Nottle creek I carried Chain for McBride with French – Some acquainted with lines & old line of Travis have been for some time No Change in Watermans line of fence Except on North end of it till it was cut down North end 10 or 15 rods set back East from the Road – Watermans fence was East of the track should judge 25. 30 or may be 40 feet no change. From Knotted Maple and Matthews to McBrides Maple fence never encroached upon the Road – old line of Travis would run into Raymonds field at S.W. Corner 3 feet Raymond moved his fence 3 feet East – Watermans fence and Raymonds fence as he first made it would lean 5 feet and may be more in S. W. corner was a line and fence since Controversy commenced fence was moved and finally lines were moved E. – ask Gray what ~~was moved~~ range

The School House fence stood 25 feet there on a line of trees a Stumps would come on a line of School House Corner.

Gab Hateman being Sworn Says.

The fence was set in 52 or 53 I helped set this fence the Mound was Visible - stake burnt off Grass was high low ground high water covered it - in 57 Kiersted came out and recognized mound & put a stake there - I laid down some Boards 16 & 18 square and measured from there 26 feet, School House mound was then Visible between two points was pretty straight, Mound remained there about 8 years till it was plowed down - I saw Reuben Raymond plow it down - saw him do it in 57 or 58 - no other mound after that - after Ray - mond enclosed his fence set back 25 feet on the West Raymond Extended it about 38 or 39 feet Raymonds fence was put there in 54 or 55 - One fence was put up first, the first travelled track was in range with the 1/4 Corner & S. W. of 20 a little West of the West side of Mound - Ance now being plowed was there when Kiersted found the Mound in 51 or 52 - after he measured there he sent for a Scythe and mowed and found old stake burned set Bass wood stake at School House Corner Mowed down & the ditch was Visible. drove a Seasoned white oak stake with sledge & Kiersted adopted this. They told me they found the stake as I told Matthewson & McBride & Sheds judge it was the same stake McFarland Road fences S. Also on line of Road has been breaking at the

76

time Bridges strangers put on - since this Law suit commenced - moved East carried up to where one piece originally stood - plowing up made road go East - Bridge moved 2E little more than its length East. Was with Matthewson when he found mound (not at S.W. 2 c) was quite an Elevation passed over Matthewson told me to take a chord & chain it out carefully three 3 courses of Clay Matthewson took a pick and found a hole where the stake had rotted out - was a stake East of that not an old one. We own W. 1/2 N.E. 1/4 Sec 29 - was a track Boy went down to break turnip up the road since this difficulty there has been a mound made & some stakes put in - cotton when put in -

On Cross Examined Gale Waterman said Has been a Controversy about road on the 1/4 Corner & Line of 20 - The West line of ditch ranged with Mound

Gale Waterman recalled by Wheaton.

- At Wilson Survey - I was not there I know when Highway Commissioners were there with Evans in July 1859.

Cross Examined by Gray

Was not at S.W. Corner of 20.

Here the Defendant rested his Defense

The Plaintiff then introduced the following rebutting Testimony

L. L. Massey recalled by Wheaton.

If am not mistaken and I think I am not Gale Waterman was at S.W. Corner of Sec 20

77

and said he knew one when mound was but did not know now. Plowing was done in Mooneys land — when Raymond plowed he plowed both ends of mound then Bats together fences would have to be moved from S.W. of 20 west along 17 — was present when Dix & a at N.E. cor of 20. W. Dix was sent for — duy down when Dix told them I found Brick & Stone Dix said he got that corner by ranging straight from his & corner to the old House — Dix said he knew it by the S.E. corner of his & corner & old House at or about the Matthewson Survey Stinks they found 15 stakes at S.W. corner of Sec. 20.

Cross Examined by Gray.

The nights of the stakes were 12 feet from it balance 20 or more — were found before land taken. do not know when land was taken — Moore was S. of Mooneys Mooneys fence would be in road. so would Raymonds fence Thompsons Hedge is in Road Would 2 ends Threads fence if he carried it on.

Cross examined by Plaintiffs —

At N.E. of 20 I was present with Dix — Dix said when he & some one Else was digging — that was the Corner said he knew by ranging with old house W. Bride ranged with the Brick & Stone corner and would strike 3 or 4 rods (pulaski) of House. Dix said Waterman was with him when he put Brick and Stone in N.E. of 20 — I built School House fence was put from road not less than a rod so that a team could be hitched without being in the Road.

78

Dr Evans

I think I was present at S. W. corner of 20 do not know that question was put to one more than another about Running the S. W. Corner - Gale Wateman in substance said he once Knew where the S. W. of 20 Corner was mentioning the time when it was plain and well defined, but could not tell now -

Question sworn

What is your best recollection of the substance of what Gale Wateman told you about his then Running the S. W. Corner of Sec 20 ?

Answer

That he did not Know the precise spot he had Impressions that it was Further West than I had fixed the stake but was not Confident

I Know only where S. W. Corner 20 is from Matthewson & my own observation at the time of Surveying for Wateman land was open prairie the ground in that region was a little higher - as far as plowing goes immediately in this corner. I dont suppose plow ever went over it since grass grows. on the prairie land rises inclines a little to the South. Grass growing there was common prairie

Cross Examined by Gray.

My Eyes are not better than a level. There would be a difficulty in taking a level by putting instrument immediately in the vicinity - instrument should be apt cannot take a level within a rod of instrument.

Simon Gray called and Sworn by Plaintiff said I was present at Matthewson & McBride Survey in 1860 I Know pretty near where S. W. Corner of 20 is Lowest place of Ground, is not as low East of Stake

79

but bunch flat ground, tall grass never grew there to here Matthewsons Corner was, — The Corner on S. line of 19 was present when they were trying to find this Corner — Matthewson stopped and dug — they Matthewson & others dug up a Mound that looked like an original Mound between 19 & 20 Mr. Gray & I — there when the Mound was — Was N.E. of Matthewsons mound Think Matthewson was sworn by McBride there was a hole in the mound that I called a Crawfish hole that was the hole that Matthewson drove to, there were many stakes at the S.W. Corner of 20 all around I can tell about mounds and crawfish hole as well as Waterman.

Thompson Called by Plaintiff

S.W. 20 was present at Matthewson & McBrides survey ground was never been plowed, ground slopes to the west

By Gray for Defendant

Can see on prairie there now

John Gray recalled by Plaintiff

I knew that Raymond did plow up the Mound at S.W. 20 — there was an original Mound 47 feet East. I can't state it was plowed up by Raymond, was present at Matthewson & McBride survey. heard Waterman testify. Matthewson Corner was never plowed up ground there was upland prairie — long grass never grew at Matthewsons Corner, it was an Elevation was to the Extreme west of long grass, was present at Survey when Dix. N.E. of 20 found Dix digging said "Dix what are You digging there for" In answer he came down to Bridd and Stone.

80

Dis said lighting through north "I can swear" "that the original was to the right or left of my shade" "handle". Mr Asher Matthewson to Gr E. Matthewson rejoined - fixed his compass at old House and ranged Back - threw him East

Dis said I put the Bricks and Stone there and Waterman was present that was considerable East of the Government Mound at S. Cor of Sec. Gale Waterman dug and Mr Matthewson came found what I called a Crabfish hole and I pointed out the Government Mound a few rods N. E of that. Matthewson was particular and took his Knife and said his Corner was disturbed Matthews said it indicated a Government Mound I saw something into the hole that was called a Crawfish hole dis not put the Rosin weed into the hole until Matthewson had gone they Measured from the Crawfish hole and not from the Mound pointed out by me after Mr Matthewson Survey we looked for Stakes at S. W. Cor and Examining Matthewsons Corner we dug and found many Stakes pretty much west and all around the Matthewson Survey would give me more land Wilsons Survey would give me just right

Here the Testimony Closed

All the foregoing witnesses both for the Plaintiff and defendant were duly sworn before testifying

This was all the Evidence in the Case

The Court then gave the following instructions.

81

for the Plaintiff to the giving of which, and Each and Every of them the Defendant then and there objected

The Court then and there overruled the said objection of the Defendant, and to the opinion of the Court in giving said Instructions and Each and Every of them the said Defendant then and there Excepted;

First Given

If the Jury believe from the Evidence that there was an open and public Highway on the line described in in the Complaint and sometime within Eighteen Months prior to the Commencement of this suit the same obstructed by fencing or otherwise by the Defendant Wakeman then the Jury should find for the Plaintiff and assess their Debt against Defendant in a Sum not to Exceed ten Dollars

Second Given

If the Jury believe from the Evidence that the Highway Commissioners of Wells County as Highway Commissioners employed D. Ewers then being County Surveyor of Grundy County to Survey and Spot the Boundaries of the Road in Question and in Pursuance of such employment and under the direction of said Highway Commissioners he did survey ~~and~~ locate and plat said Road and when such plat was completed and Report thereof was approved by the Highway Commissioners of said Town and under the direction of the Highway Commissioners of said Town filed the same together with the Minutes and Report of Survey in the Town Clerks office of said Town then such plat Minutes and Report so made and filed is prima facie Evidence of the location of a road on the line indicated by

the Survey and upon the question of the location of the Road or line of the same the burden of the proof is then upon the Defendant to disprove a Most that prima facie Case and if the Defendant has not done so far as relates to the line of the road the Jury should find for the Plaintiff.

Thus — A Public Road established by public Authority Continues as such until it shall be Vacated by like Authority and it does not follow because the public have adopted another and different line of travel Voluntarily that the road Established by public Authority is abandoned or Vacated thereby

Given

Dem The Jury are instructed that it is necessary in the first instance for the Plaintiff to show in order to prove the Establishment of the Road by the direction of the County Commissioners Court is to introduce the order of the County Commissions Court Establishing the Road and it is necessary for the Plaintiff on that question to go further and show that the previous steps required by the Statute had been taken

Given

Sup If there is any discrepancy between the Courses and distances and the Monuments Mentioned in the survey of the Road in Question the Monuments must Control.

Given

Given If the Jury believe from the Evidence that the Defendant or near the South west Corner of Lot the point

83.

in Controversy fences out a road known as the East of the point Established by Evans and Wilson in their Survey and identified by other Witnesses if the Jury believe from the Evidence that they did identify and Establish the same as the true S.W. corner of Section 2 in Town 3 S and that Defendant to fence out a road at that point with the intention that the public should use the same as a public road & the public accepts the same as such by travelling and repairing it by proper Authorities then such facts amount to a dedication of a road to the public and the Defendant has no right afterwards to fence on or across the same Provided the Jury further believe from the Evidence that at the time Wateman built said fence there was a road laid out on the south end of the west line of Section 2 by the public Authorities and that Wateman in building said fence intended only to fence out said public road, then that would rebut the Conclusion from that act that he intended thereby to dedicate the Road so fenced out to the public for a Highway but in good Evidence on the question as to where Wateman regarded the East line of the laid out road to be.

Evans

The said Defendant then and there asked the Court to give the following instructions to the plaintiffs Three Instructions and the plaintiffs Fourth Instruction and to give the same as asked by the Defendant the said Court

then and there refused and to the opinion
of the Court in refusing to give said qualifications
to said 3rd & 4th Instructions of the Plaintiff
the said Defendant then and there Excepted.

84

Qualification to Plaintiffs 3rd Instruction

It is not necessary that the public Authorities
should Vacate a road when once laid but the
Public may abandon a road by "Non user"
and by adopting another and different line of
travel and such adopted road if proven and
the public acquire a right thereto by dedication
of the owners of the land through which it passes
and if the jury believe from the Evidence that
the public did abandon such road as above
stated and adopted another line of travel as above
stated and acquired right thereto as above stated
by dedication then such adopted road becomes
a legal highway, and then if the jury believe
from the Evidence that Raymond fenced out
a road around that part of the point Established
by Reuben McBride and Matthews as in their
Survey and identified by other witnesses. If
the jury believe from the Evidence that they
did identify and establish the same as the
true S. W. Corner of Section 20 and that said
Raymond so fenced out a road at that
point with the intention that the public should
use the same as a public Road and that the
public accepted the same as such by travelling
and working the same by the public Authorities

Refused

such facts amount to a dedication of a
85 road to the public but under the qualification
given by the Court to said Plaintiffs instruction

Qualification to the Plaintiffs 4th

But if the Jury believe from the Evidence
that the Plaintiff has shown by his own proof by
the Record introduced by him of the original
proceedings of the County Commissioners Court
that there was a petition for said Road
signed by thirty five Citizens of the County then
the plaintiff must supply such defect ~~by statute~~
if any in the Record by other proof.

Refused

The said Court then gave the following
Instructions for the Defendant. The Court refused
to give the 5th 6th and 10th Instructions asked
by the Defendant, and to the refusal of the Court in
that behalf the Defendant then and there Excepted

Given

1 The Jury are instructed as a matter of law
in this case that the Monuments erected by the
original government Surveyor upon the land
are facts and that the field notes and plats returned
by the original Surveyor indicating Course distance
and quantity are but discription which may be
given to assist in ascertaining those facts.

Given

2 The law makes the lines actually run
upon the ground by the original Surveyor
the true External Boundaries of all lands

Said by the Government if they can be
86 ascertained by reference to the Monuments
Erected upon the land by the Original Surveyor

3d Established Monuments not only serve
to show with Certainty the lines of their own
tracts upon which they are erected but may be
resorted to in Connection with the field notes
Given and other Evidences to fix the original location
of a Monument or line which has become lost
or obliterated by time accident or design.

4th Given When a Section Corner is lost the Monuments
of the adjacent Sections may be resorted to
for the purpose of ascertaining where that
Corner was actually put by the original Surveyor.

5th Given The Laws cannot Satisfactorily determine
in all cases whether Courses or distances shall
govern when they do not Correspond. But
this must be determined by Concurring testimony
and the Circumstances of Each particular case
the one that Convinces the Judgment most
must be selected. But where Known Monuments
are found they Control Courses and distances
whether they the Courses and distances correspond
or not.

6th Repeated The Monuments if proven to have been
Erected at the two Extremeties of a Township
line are not entitled to a more Controlling in-
fluence in determining the actual location of the

87

intermediate lines, then the Section Corners Established along the lines if they can be found and the Monuments if proven to have been erected at Section Corners are not entitled to More Controling influence in determining the actual location of the intermediate lines between section Corners than the Quarter Section Corners established along such lines if they can be found.

7 Given

Whether a Township line or a Section line are necessarily Straight in all cases, a deflected line or irregular Curve line if established by Satisfactory Evidence should be adopted by the Jury as the true line originally run by Government Surveyor;

8 Given

The quantity of Land by distance or Measurement according to the field notes may sometimes be considered by a Jury in Corroboration of other Evidence but in determining the Boundaries of Lands they are the least reliable and are the last to be resorted to

9 Given

If the Jury believe from the Evidence that the Highway in question was laid out on the Section lines between the South West Corner of Section twenty and the Quarter Corner on the East line of Section 19 and that those two points as established by Matthewson & McBride & Kienitz and other witnesses if proven are the True Corners for said two points and that Watermans fence at the time of the Supposed obstructions as claimed

Refused

was twenty five feet East of a line run between
88 those two points then the Jury will find the Defendant
Not Guilty if they find the width of the Road
as laid out was fifty feet.

10 If the Jury believe from the Evidence that
a fence and improvements was made south of
the S. West Corner of Section 20 by Martin and
that Bridges were put in by the Road Authorities
on the line of the Road in Controversy between Section
19 & 20 and between Section 17 & 18 and between
Sections 30 & 29 and that Raymond Smith Heirs
fence in reference to the old line of Road
and that the School House and School House
Fence was built and that the pickets of the
School House was made in reference to and
on the said ~~old~~ general old line of Road as
also French Hedge and Mc Daniels fence
and that the travelling Public used said general
line of Road if proven for a series of years
Commencing shortly after the road was laid
out and that all of said improvements are on
the same general range and correspond with
the lines as given by Matthews and McBride and
Hereto and Surveys these Circumstances in Connec
tion with others in proof are proper to be Considered
by the Jury in determining the question of where
the road in Controversy was laid

Given
(Refused)

The Jury retired and returned into Court
with their Verdict, and found for the Plaintiff and
assessed his Debt at Ten Dollars.

89

The said Defendant then and there moved for a New trial. The said Court then and there overruled said motion for a new trial and to the decision of the Court in that behalf the said Defendant then and there Excepted.

The said Defendants then prayed the Court to sign and seal this his Bill of Exceptions which is accordingly done in open Court

The Court herein certifies to all the Evidence in the case. This March 5th A.D. 1864.

R. G. Mattony Seal

Filed March 5th A. 1864

G. W. Hallenbeck Clerk

State of Illinois } ss
Kendall county }

I George W. Hallenbeck Clerk of the Circuit Courts in and for the said County and State do hereby Certify that the above and foregoing is a true and perfect Transcript and Copy of all the proceedings had and entered of Record in said Court and of the Material papers remaining on file in my office in the case of Reuben Rasmus who sues for himself as well as for the County of Grundy Plaintiff and Minard L. Waterman Defendant



Witness Geo W. Hallenbeck Clerk of said Court and the seal thereof at Ottawa in said County this 21st day of March A. D. 1864.

G. W. Hallenbeck

Clerk

And now comes the said Minard L. Waterman, Plaintiff in Error, and says that in the Record of the Judgment and proceedings aforesaid, there is manifest error, and for causes thereof, assigns to the Court here the following, viz:

Assignment of Errors.

1st The Court erred in admitting improper evidence offered by the ~~Plaintiff~~ below.

2d The Court erred in refusing to admit proper evidence offered by the Defendant below.

3d The Court erred in giving to the Jury the said Instructions, and each of them, asked by the Plaintiff below.

4th The Court erred in refusing to qualify the 3d and 4th Instructions of the Plaintiff below, and each of them as asked to be qualified by the Defendant below.

5th The Court erred in refusing to give to the Jury the said 6th, ~~5th~~ 7th ~~8th 9th~~ 10th Instructions and each of them, asked by the Defendant below.

6th The Court erred in overruling the motion of said defendant below for a new trial in said cause.

7th. The Court erred in overruling the motion of the defendant below in Arrest of Judgment in said cause.

8th. The Court below erred in the apportionment of the costs in said cause.

9th. The Court erred in rendering the Judgment aforesaid, in manner and form aforesaid.

Gray. Avery & Bushnell &
Leland & Blanchard.
Attorneys for Pltff. in Error.

126

Miriard L. Waterman

vs

Reuben Raymond

Record & Exons

Filed Apl. 4, 1864.

L. Leland

Clk.