

12924

No. _____

Supreme Court of Illinois

Newton et al

vs.

Holdridge

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

GEORGE M. NEWTON,
GEORGE FETZER, and
ENOS WELD,
Commissioners of Highways of Town of Vermilion,
vs.
ASA HOLDRIDGE.

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ABSTRACT OF THE RECORD.

ON the 13th day of November, A. D. 1857, a "Bill in Chancery" was filed in the Clerk's office of the Circuit Court, in the words and figures following, to wit:

STATE OF ILLINOIS, } *And Circuit Court thereof, to*
La Salle County, } *February Term, A. D. 1858.*

To the Honorable MADISON E. HOLLISTER, Judge of the 9th Judicial Circuit of said State, and sitting as Chancellor:

Complaining sheweth unto your Honor, your Orator Asa Holdridge, of said County:

That heretofore, to wit: On or about the 11th day of October, 1856, a petition was presented to the Commissioners of Highways of the town of Vermillion, in said County, signed by twelve or more voters of said town, praying said Commissioners to lay out a new road, four rods wide, commencing at or near the South West corner of the North West quarter of Section No. thirty, (30,) in said town, thence running in an Easterly direction until it intersects a road running East and West through Section twenty-nine, (29,) in said town; said petition stated the names of the owners of the land over which said road was to pass, as follows: Asa Holdridge, J. T. Bullock, L. S. Bullock; J. C. Bayless, C. Clark, and J. G. Baker, and afterwards, on the 3d day of February, 1857, Hiram Hurd and John Rider, two of said Commissioners, made and filed with the Town Clerk of said town, an order, which is, in substance, as follows:

LA SALLE COUNTY, }
Town of Vermillion, } *ss.*

Whereas, upon the application of L. C. Knapp, Zenas Hall, Jr., Enos Weld, Anson Hawley, J. C. Knapp, Hiram Adams, Nathan L. Eaton, Jerial Jones, Timothy Weld, Jerial Hutchinson, Wm. C. Jones, John B. Elliott, twelve legal voters residing within three miles of the route hereinafter mentioned for a public highway, a copy of their petition having been duly posted as required by law. We, the Commissioners of Highways, of said

Page of Rec. town, did, on the 15th day of November, A. D. 1856, cause a survey to be made by a competent surveyor, of the following route, to wit:

3. Commencing at or near the South West corner of the North West quarter of Section thirty, (30,) in said town, thence running in an Easterly direction until it intersects a road running East and West through Section twenty-nine, (29,) in said town, being the same mentioned and set forth in said petition, which survey is according to the annexed plat, and the said Commissioners have personally examined said route, and having heard reasons as were offered for and against laying out said road, and being of the opinion that the laying out of the same is necessary and proper, and that the public interest will be promoted thereby, it is ordered and determined that a road be, and the same is hereby laid out, and established as follows, to wit: To the Commissioners of the Highways of the town of Vermillion, in the County of La Salle, and State of Illinois. I hereby certify, that I proceeded on the 15th day of November, A. D. 1856, to lay out a new road, four rods wide, according to said petition, commencing on the line between the towns of Vermillion and Eden, at the South West corner of the North West quarter of Section thirty, in said town of Vermillion, thence running East three hundred and eighteen rods, to the South East corner of the North East quarter of said Section thirty, intersecting with a road running East and West through Section twenty-nine, in said town, said road running East and West through the centre of said Section thirty, according to the annexed plat.

LUTHER WOODWARD, Surveyor.

VERMILLION, November, 17th, A. D. 1856.

A. According to said survey, and the plat hereunto annexed, and made part of this order, which is hereby declared to be a public highway, four rods wide, the above described line being the centre thereof, and that half of the width of said road runs one hundred and sixty (160) rods over lands owned by John G. Baker, taking two (2) acres of land; and one-half over land owned by Asa Holdridge, taking two acres, one hundred and sixty (160) rods; and eighty rods on land owned by Joseph T. Bullock, and heirs of L. S. Bullock, taking one acre; and eighty (80) rods over land of J. C. Bayless, taking one acre; and one hundred and sixty (160) rods on land owned by Cutting Clark, taking two acres.

In witness whereof, we, the said Commissioners, have hereunto set our hands this 3d day of February, A. D. 1857.

HIRAM HURD, } Commissioners
JNO. RIDER, } of Highways.

And on the same day the said Commissioners made and filed with the Town Clerk of said town an order, in substance, as follows:

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5.

We, the undersigned, Commissioners of Highways of the town of Vermillion, in the County of La Salle, having on the fifteenth (15) day of November, A. D. 1856, upon due application made to us for that purpose, laid out a road as follows: Commencing on the line between the towns of Vermillion and Eden, at the South West corner of the North West quarter of Section thirty, (30) in said town of Vermillion, thence running East three hundred and eighteen (318) rods to the South East corner of the North East quarter of said section thirty, intersecting with a road running East and West through Section twenty-nine (29) in said town, said road running East and West through the centre of said Section thirty; and certain owners of lands through which said road passes, not having released all claim to damages by reason of laying out and opening of the same, and not being able to agree as to the amount of such damages, we proceeded to assess the same, what we deemed just and right to each individual claimant, with which we could not agree, taking into account and estimating the advantage and benefits the road will confer on the claimants for the same, as well as the disadvantages, and have assessed the damages of each owner and claimant, as follows:

To Asa Holdridge, on the North West quarter of Section thirty, in said town, at one hundred and thirty dollars, being enclosed lands; and to Joseph T. Bullock, and heirs of L. L. Bullock, on the West half of the South West quarter of said Section thirty, sixty-five dollars; and to J. C. Bayless, on the East half of said South West quarter, sixty-five dollars, all being enclosed lands; and to Cutting Clark, who claimed damages on the South East quarter of said Section, being enclosed lands, we have estimated the advantages of said road equal to any and all damages; and Jno. G. Baker, on the North East quarter of the same Section, who claimed damages, we have estimated the advantages of said road equal to any and all damages.

E.

In witness whereof, we have hereunto set our hands this 3d day of February, 1857.

HIRAM HURD, } Commissioners
JOHN RIDER, } of Highways.

And your orator shows to your Honor that he had no notice in any manner, of the time and place when and where said Commissioners would view his land aforesaid, or make any appraisement of damages thereon, and had no opportunity of being heard or of adducing evidence before them in relation to that question; that he was, at the several times aforesaid, and still is, the owner of the North West quarter of Section thirty in said town, across which said road will run if laid out according to the order aforesaid, and if said road shall be laid out across said land, it will occasion a damage to your orator, in at least the sum of four hundred and fifty dollars. And that on the 3d day of February,

Page of Rec. 1857, your orator, together with Jacob C. Burgess, Joseph T. Bullock, John G. Baker and Cutting Clark, who were then and there owners of land in said town, across which said road will run if the same shall be opened as provided in said order, took an appeal from the order aforesaid, of said Commissioners, to Lorenzo Leland, Supervisor of the town of Ottawa, William Paul, Supervisor of the town of Salisbury, and John Gray, Supervisor of the town of La Salle, all of the county of La Salle, and State of Illinois, which appeal was, and is, in substance, as follows:

To LORENZO LELAND, Supervisor of the town of Ottawa, WILLIAM PAUL, Supervisor of the town of Salisbury, and to JOHN GRAY, Supervisor of the town of La Salle, in the County of La Salle, and State of Illinois:

The undersigned, Asa Holdridge, Joseph T. Bullock, and heirs of L. L. Bullock, J. C. Burgess, Cutting Clark and John G. Baker, feeling themselves, by two orders made by the Commissioners of Highways of the town of Vermillion, in said County of La Salle, on the third day of February, A. D. 1857, and which orders were filed in the office of the Town Clerk of said town on the 4th day of February, A. D. 1857, in laying out a highway in said town and assessing damages thereon, do hereby appeal to you from such orders, a copy of which orders are hereto annexed, in, and by which, the proceedings and determinations of said Commissioners will more fully appear.

The grounds on which this appeal is made, are,
First; That said road is not necessary.

Second; That said Commissioners proceeded illegally, in laying out said road and in assessing damages thereon.

Third; That the damages assessed are inadequate to compensate the owners of land affected; and said appeal is brought in relation to the laying out of said road and assessing damages thereon, and to reverse entirely the determination of said Commissioners in the premises.

Dated this 1st day of February, A. D. 1857.

ASA HOLDRIDGE,
JACOB C. BURGESS,
JOSEPH T. BULLOCK,
JOHN G. BAKER,
CUTTING CLARK.

Which said appeal was left with the said Lorenzo Leland, and notice thereof given to the other Supervisors named in said appeal. And said Supervisors did thereupon fix upon a time and place for hearing said appeal; said time being some day in April, A. D. 1857; the particular day, your orator does not now recollect, at a school house in said town.

And your orator shows that notice of the time and place of hearing said appeal so fixed as aforesaid was given to said High-

way Commissioners, and at least three of the petitioners for said road, at the time and in the manner provided by law.

9. Your orator further shows to your Honor, that at the time and place fixed for hearing the appeal as aforesaid, but one of the said Supervisors, to wit: the said John Gray attended; and said Supervisor Gray, thereupon said that he would adjourn the hearing of said appeal until the 3d Monday in June, A. D. 1857, at the same place; and on the day last aforesaid, none of said Supervisors appeared but the said John Gray, who said he would adjourn the hearing of said appeal until the 6th day of July, 1857, and on said 6th day of July, none of said Supervisors appeared, and no proceedings were had touching said appeal.

Your orator further shows to your Honor, that on the 22d day of July, 1857, the said Lorenzo Leland and the said John Gray met at the place aforesaid, and associated with themselves Joel W. Armstrong, Supervisor of the town of Deer Park, and said Supervisors then and there made and filed with the Town Clerk of said town of Vermillion an order which was in substance as follows:

STATE OF ILLINOIS, }
La Salle County. } ss.

10. Whereas, the persons who are the appellants in the annexed written appeal to Supervisors, did appeal to said Supervisors from the orders and determinations of the commissioners of highways, of the town of Vermillion in said county, in laying out the highways and assessing the damages mentioned in the annexed copy of the order of said commissioners, a copy of which order as well as all the papers in relation to said appeal, hereunto annexed, form a part of this order; and whereas, in consequence of an adjournment said appeal has not hitherto been heard and disposed of; and whereas, on the twenty-second day of July, A. D. 1857, in pursuance of previous notice duly given, the said supervisors Lorenzo Leland and John Gray, in said appeal mentioned, met at a school house near the line of said road, and associated with them Joel W. Armstrong, supervisor of the town of Deer Park, in said county, (the other supervisor mentioned in said appeal being unable to be present) and heard the proofs and allegations of the parties.

Now, therefore, we the said supervisors who heard said proofs and whose signatures are hereto attached, being fully advised of the premises, do hereby order and determine that the said orders and determinations of said commissioners of highways be and the same are in all things affirmed.

In witness whereof, we have hereunto set our hands this 22d day of July, A. D. 1857.

L. LELAND, Supervisor of the town of Ottawa.

JOHN GRAY, Supervisor of the town of La Salle.

J. W. ARMSTONG, Supervisor of the town of Deer Park.

And your orator shows to your Honor, that he had no notice in any way of the said meeting of the supervisors when they made the order aforesaid, and no opportunity of being heard or of introducing his evidence before them.

11. And your orator charges, that as he is advised by counsel and verily believes and therefore charges the fact to be, that said road was never legally laid and established, in the manner specified in the order aforesaid, for the reason that the proper steps were not taken to establish the same as required by law, and for the reason that your orator had no notice of the establishment of said road nor of the action of the commissioners aforesaid, in assessing the damages aforesaid, at the time when such action was had, nor of the time and place, when and where said supervisors passed upon the appeal of your orator and others as aforesaid, all of which questions affected the rights of your orator, and upon which, he has had no opportunity to be heard or to introduce his testimony in relation thereto.

And your orator shows to your Honor, that George M. Newton, George Fetzer and Enos Weld are now commissioners of highways for said town of Vermillion, and they claim that *that* they have a legal right by virtue of the proceeding aforesaid, to proceed to open the road aforesaid, across the land of your orator aforesaid, although the damages assessed by said commissioners as aforesaid to your orator have never been paid to him.

Your orator further shows to your Honor, that the said commissioners of highways of said town of Vermillion threaten and give out in speeches that they will proceed to open said road across the said land of your orator, and have given your orator notice to open the same; and your orator charges that they will proceed to open said road as aforesaid unless restrained by the order this court.

All of which is against equity and good conscience, and tends to the manifest injury of your orator.

12. In as much, therefore, is in danger of sustaining injury and is remediless except in equity where matters of this sort are properly cognizable and reliable. Your orator prays that said Geo. M. Newton, Geo. Fetzer and Enos Weld, be made parties defendant to this bill and summoned to answer the same, and that they may be enjoined from opening the road aforesaid, across the land aforesaid, of your orator until the further order of this court in that behalf, and that upon the final hearing of this bill

it may be decreed by this court, that said defendants and their successors in office be restrained from opening the road aforesaid, across the land of your orator aforesaid, until the said road shall have been established, and the damage sustained thereby by your orator be fixed in manner provided by law or for such other or further relief, as to your orator shall seem meet, and as to equity shall appertain.

GLOVER & COOK,
Solicitors for Complainant.

STATE OF ILLINOIS, } ss.
La Salle County.

Asa Holdridge, being first duly sworn, saith on oath, that the matters stated in the foregoing bill as of his own knowledge are true, and so far as the same are stated upon his information and belief, the same are true to the best of his knowledge, information and belief.

ASA HOLDRIDGE.

Subscribed and sworn to before me this 11th day of November, A. D. 1859.

D. F. CAMERON, N. P.

Let an injunction issue according to the prayer of the foregoing bill.

Nov. 12, 1857.

M. E. HOLLISTER Judge, &c.

13. On the 13th day of November, A. D. 1857, a summons issued out of and under the seal of said court in the words and figures following, to wit:

STATE OF ILLINOIS, } ss.
La Salle County.

The people of the state of Illinois, to the Sheriff of La Salle County, greeting:

We command you to summon George M. Newton, George Fetzner, and Enos Weld, if to be found in your county, personally to be and appear before the Circuit Court of said county, on the first day of the next term thereof, to be holden at the Court House in Ottawa, on the first Monday of February next, to answer to a certain bill of complaint filed in our said Circuit Court, on the chancery side thereof, against them by Asa Holdridge, and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness John F. Nash, Clerk of said Court, and the
[SEAL.] seal of said Court at Ottawa, this 13th day of November, A. D. 1857.

JOHN F. NASH Clerk.

Which summons was returned by the sheriff of said La Salle Co.,

on the 30th January, 1858, with an endorsement thereon in the words and figures following, to wit:

14. "Served by leaving a true copy of this writ with Catherine Fetzer, wife of George Fetzer, a white person above the age of ten years, and a member of the family, at his usual place of abode, informing her of the contents thereof, this 26th day of November, 1857. Also served by reading said writ to George M. Newton and delivering to him a copy thereof this 12th day of December 1857. Enos Weld not found.

E. L. WATERMAN, Sheriff,
per A. E. GROW, Deputy.

On the 13th November, 1857, a writ of injunction issued out of and under the seal of said court in the words and figures following, to wit:

STATE OF ILLINOIS, }
La Salle County. } ss.

The people of the state of Illinois, to George M. Newton, George Fetzer, and Enos Weld commissioners of highways of the town of Vermillion, greeting:

Whereas, Asa Holdridge has lately exhibited his bill of complaint to the judge of the Circuit Court in and for the County and State aforesaid, on the chancery side thereof, against you the said Newton, Fetzer and Weld defendants, wherein among other things it is alleged that you are attempting to open a road over and through the North-west quarter of section thirty, in the town of Vermillion, in said County and State, said land belonging to said Holdridge.

15. We, therefore, in consideration of the premises, do strictly enjoin and command you that the said George M. Newton, Geo. Fetzer, and Enos Weld commissioners of highways as aforesaid, and your successors in office, that you, and each of you, do absolutely and entirely desist from proceeding to open the road aforesaid, across the said land until you, and each of you, shall appear and fully answer the complainants bill, and said Court make other order to the contrary.

Hereof fail not under the penalty of what the law directs.

To the Sheriff of said County to execute. Witness
[SEAL.] John F. Nash, Clerk of said Court, and the seal of said Court at Ottawa, this 13th day of November, A. D. 1857.

JOHN F. NASH, Clerk.

Which writ of injunction was returned by the sheriff of said County with an endorsement thereon, in the words and figures following, to wit:

"Served by leaving a true copy of this writ with Catherine

Page of Rec. Fetzter, wife of said George Fetzter, a white person above the age of ten years, and member of the family, at his usual place of abode, informing her of the contents thereof, this 26th day of November, 1857. Also on the 12th day of December, 1857.— Served by reading to and *delivery* a copy of said writ *with* Geo. M. Newton.

Enos Weld not found.

E. L. WATERMAN Sheriff.

Per A. E. GROW Deputy."

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

"ASA HOLDRIDGE,
vs.
GEORGE M. NEWTON *et als.* } *In Chancery.*

The defendants by Bushnell & Gray their solicitors, move the Court to dissolve the injunction herein."

And afterwards, to wit: On Saturday Feb. 27th, 1858, the same being one of the days of the Feb. term of said Court, for said year, another order was entered of record in said cause in the words and figures following, to wit:

"ASA HOLDRIDGE,
vs.
GEO. M. NEWTON *et als.* } *In Chancery.*

This day the complainant comes by Glover & Cook, his solicitors, and the defendants by Bushnell & Gray, their solicitors; and by agreement of parties it is ordered that this cause be heard at Chambers in vacation, and the orders or decree entered of record *nunc pro tunc*."

On the 9th day of February, 1859, the defendants file their demurrer to complainant's bill, in the words and figures following, to wit:

STATE OF ILLINOIS, } *Circuit Court thereof in Chancery.*
La Salle County. } *To February term, A. D. 1858.*

17. The demurrer of George M. Newton, George Fetzter and Enos Weld, commissioners of highways of the town of Vermillion, defendants to the bill of complaint of Asa Holdridge, complainant:

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in and by the said bill set forth and complained of to be true, in manner and form as the same are therein set forth and alleged, say they are advised by their counsel that there is no matter or thing in the said bill contained good and sufficient in law to call these defendants

in question in this honorable Court for the same, but that there is good cause of demurrer thereunto, and, therefore, this defendant saith that the complainant's said bill, in case the allegations therein contained were true, which these defendants do in no sort admit, contains not any matter of equity wherein this Court can ground any decree, or give the complainant any relief or assistance as against these defendants. Wherefore and for divers other errors and imperfections in the said bill appearing, these defendants do demur in law thereunto, and humbly demand the judgment of this honorable Court, whether they shall be compelled to put in any further or other answer to the said bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf, most wrongfully sustained.

BUSHNELL & GRAY,

Solicitors for Defendants.

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

"ASA HOLDRIDGE,

vs.

GEORGE M. NEWTON, GEORGE FETZER
and ENOS WELD, Commissioners of highways
of the town of Vermillion.

} *In Chancery.*

It appearing to the Court that the said defendants, George M. Newton, George Fetzer and Enos Weld, were duly served with process of summons in this cause more than ten days before the present term of this Court, and it further appearing to the Court that said defendants have filed herein a demurrer to said bill, this day this cause came on to be heard upon the bill of said complainant and the demurrer of said defendants, and it appearing to the Court that an injunction had been issued out of and under the seal of this Court, by which said injunction the said defendants, commissioners of highways of the town of Vermillion, and their successors in office, were enjoined and commanded that they, and each of them, do absolutely and entirely desist from proceeding to open a road across the North-west quarter of Section No. thirty, (30,) in said town of Vermillion, until they and each of them do appear and fully answer the said complainant's bill, and the said Court make other order to the contrary; and it further appearing to the Court that said complainant was and is the owner of the land above designated and described, and it further appearing to the Court that the matters and things in the said bill contained are good and sufficient in law to call the said defendants in question in this Court for the same, and that there is not good cause of demurrer thereunto, and that there is in said bill matters of equity wherein the Court can ground a decree and give the said complainant relief and assis-

Page of Rec. tance against the said defendants; the said demurrer, of said defendants to said bill is overruled, and the said defendants having been ordered by rule of this Court to file their answer herein instanter, and the said defendant entirely failed to file any answer herein in pursuance of said rule, but made default, and said bill is ordered to be taken for confessed. And it is, therefore, hereby ordered, adjudged, and decreed that the said injunction herein before issued be made perpetual, and that said defendants, commissioners of the town of Vermillion aforesaid, and their successors in office be forever restrained from proceeding in any manner to open the said road over, across, or through the said land above described, viz: "The North-west quarter of section number thirty, (30,) in the town of Vermillion."

Assignment of Errors.

21. And now comes the said George M. Newton, George Fetzner and Enos Weld, plaintiffs in error, and say, that in the record and proceeding there is manifest error, and that the decree aforesaid should be wholly reversed therefor, and shows to the Court here, the following errors, viz:

1st. The Court below erred in overruling the motion of the plaintiffs in error, to dismiss the bill of complaint of the defendants in error, for want of equity in said bill, and to dissolve said injunction for the same cause.

2d. The Court below erred in overruling the demurrer of the plaintiffs in error to said bill of complaint.

3d. And for other errors.

OLIVER C. GRAY,
Attorney for plaintiffs in error.

No 114.

Road Commissioners
of the Town of Commellions

vs -

Ana Holdridge

Abstract of Record

Filed Apr 27, 1860
L. Leland
Clerk

12924

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

GEORGE M. NEWTON,
GEORGE FETZER, and
ENOS WELD,

Commissioners of Highways of Town of Vermilion,

vs.

ASA HOLDRIDGE.

Page of Rec.

ABSTRACT OF THE RECORD.

On the 13th day of November, A. D. 1857, a "Bill in Chancery" was filed in the Clerk's office of the Circuit Court, in the words and figures following, to wit:

STATE OF ILLINOIS, } *And Circuit Court thereof, to*
La Salle County, } *February Term, A. D. 1858.*

To the Honorable MADISON E. HOLLISTER, Judge of the 9th Judicial Circuit of said State, and sitting as Chancellor:

Complaining sheweth unto your Honor, your Orator Asa Holdridge, of said County:

That heretofore, to wit: On or about the 11th day of October, 1856, a petition was presented to the Commissioners of Highways of the town of Vermillion, in said County, signed by twelve or more voters of said town, praying said Commissioners to lay out a new road, four rods wide, commencing at or near the South West corner of the North West quarter of Section No. thirty, (30,) in said town, thence running in an Easterly direction until it intersects a road running East and West through Section twenty-nine, (29,) in said town; said petition stated the names of the owners of the land over which said road was to pass, as follows: Asa Holdridge, J. T. Bullock, L. S. Bullock, J. C. Bayless, C. Clark, and J. G. Baker, and afterwards, on the 3d day of February, 1857, Hiram Hurd and John Rider, two of said Commissioners, made and filed with the Town Clerk of said town, an order, which is, in substance, as follows:

LA SALLE COUNTY, }
Town of Vermillion, } *ss.*

Whereas, upon the application of L. C. Knapp, Zenas Hall, Jr., Enos Weld, Anson Hawley, J. C. Knapp, Hiram Adams, Nathan L. Eaton, Jerial Jones, Timothy Weld, Jerial Hutchinson, Wm. C. Jones, John B. Elliott, twelve legal voters residing within three miles of the route hereinafter mentioned for a public highway, a copy of their petition having been duly posted as required by law. We, the Commissioners of Highways, of said

Page of Rec. town, did, on the 15th day of November, A. D. 1856, cause a survey to be made by a competent surveyor, of the following route, to wit:

3. Commencing at or near the South West corner of the North West quarter of Section thirty, (30,) in said town, thence running in an Easterly direction until it intersects a road running East and West through Section twenty-nine, (29,) in said town, being the same mentioned and set forth in said petition, which survey is according to the annexed plat, and the said Commissioners have personally examined said route, and having heard reasons as were offered for and against laying out said road, and being of the opinion that the laying out of the same is necessary and proper, and that the public interest will be promoted thereby, it is ordered and determined that a road be, and the same is hereby laid out, and established as follows, to wit: To the Commissioners of the Highways of the town of Vermillion, in the County of La Salle, and State of Illinois. I hereby certify, that I proceeded on the 15th day of November, A. D. 1856, to lay out a new road, four rods wide, according to said petition, commencing on the line between the towns of Vermillion and Eden, at the South West corner of the North West quarter of Section thirty, in said town of Vermillion, thence running East three hundred and eighteen rods, to the South East corner of the North East quarter of said Section thirty, intersecting with a road running East and West through Section twenty-nine, in said town, said road running East and West through the centre of said Section thirty, according to the annexed plat.

LUTHER WOODWARD, Surveyor.

VERMILLION, November, 17th, A. D. 1856.

4. According to said survey, and the plat hereunto annexed, and made part of this order, which is hereby declared to be a public highway, four rods wide, the above described line being the centre thereof, and that half of the width of said road runs one hundred and sixty (160) rods over lands owned by John G. Baker, taking two (2) acres of land; and one-half over land owned by Asa Holdridge, taking two acres, one hundred and sixty (160) rods; and eighty rods on land owned by Joseph T. Bullock, and heirs of L. S. Bullock, taking one acre; and eighty (80) rods over land of J. C. Bayless, taking one acre; and one hundred and sixty (160) rods on land owned by Cutting Clark, taking two acres.

In witness whereof, we, the said Commissioners, have hereunto set our hands this 3d day of February, A. D. 1857.

HIRAM HURD, } Commissioners
JNO. RIDER, } of Highways.

And on the same day the said Commissioners made and filed with the Town Clerk of said town an order, in substance, as follows:

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5.

We, the undersigned, Commissioners of Highways of the town of Vermillion, in the County of La Salle, having on the fifteenth (15) day of November, A. D. 1856, upon due application made to us for that purpose, laid out a road as follows: Commencing on the line between the towns of Vermillion and Eden, at the South West corner of the North West quarter of Section thirty, (30) in said town of Vermillion, thence running East three hundred and eighteen (318) rods to the South East corner of the North East quarter of said section thirty, intersecting with a road running East and West through Section twenty-nine (29) in said town, said road running East and West through the centre of said Section thirty; and certain owners of lands through which said road passes, not having released all claim to damages by reason of laying out and opening of the same, and not being able to agree as to the amount of such damages, we proceeded to assess the same, what we deemed just and right to each individual claimant, with which we could not agree, taking into account and estimating the advantage and benefits the road will confer on the claimants for the same, as well as the disadvantages, and have assessed the damages of each owner and claimant, as follows:

To Asa Holdridge, on the North West quarter of Section thirty, in said town, at one hundred and thirty dollars, being enclosed lands; and to Joseph T. Bullock, and heirs of L. L. Bullock, on the West half of the South West quarter of said Section thirty, sixty-five dollars; and to J. C. Bayless, on the East half of said South West quarter, sixty-five dollars, all being enclosed lands; and to Cutting Clark, who claimed damages on the South East quarter of said Section, being enclosed lands, we have estimated the advantages of said road equal to any and all damages; and Jno. G. Baker, on the North East quarter of the same Section, who claimed damages, we have estimated the advantages of said road equal to any and all damages.

G.

In witness whereof, we have hereunto set our hands this 3d day of February, 1857.

HIRAM HURD, } *Commissioners*
JOHN RIDER, } *of Highways.*

And your orator shows to your Honor that he had no notice in any manner, of the time and place when and where said Commissioners would view his land aforesaid, or make any appraisement of damages thereon, and had no opportunity of being heard or of adducing evidence before them in relation to that question; that he was, at the several times aforesaid, and still is, the owner of the North West quarter of Section thirty in said town, across which said road will run if laid out according to the order aforesaid, and if said road shall be laid out across said land, it will occasion a damage to your orator, in at least the sum of four hundred and fifty dollars. And that on the 3d day of February,

Page of Rec. 1857, your orator, together with Jacob C. Burgess, Joseph T. Bullock, John G. Baker and Cutting Clark, who were then and there owners of land in said town, across which said road will run if the same shall be opened as provided in said order, took an appeal from the order aforesaid, of said Commissioners, to Lorenzo Leland, Supervisor of the town of Ottawa, William Paul, Supervisor of the town of Salisbury, and John Gray, Supervisor of the town of La Salle, all of the county of La Salle, and State of Illinois, which appeal was, and is, in substance, as follows:

7. To LORENZO LELAND, Supervisor of the town of Ottawa, WILLIAM PAUL, Supervisor of the town of Salisbury, and to JOHN GRAY, Supervisor of the town of La Salle, in the County of La Salle, and State of Illinois:

The undersigned, Asa Holdridge, Joseph T. Bullock, and heirs of L. L. Bullock, J. C. Burgess, Cutting Clark and John G. Baker, feeling themselves, by two orders made by the Commissioners of Highways of the town of Vermillion, in said County of La Salle, on the third day of February, A. D. 1857, and which orders were filed in the office of the Town Clerk of said town on the 4th day of February, A. D. 1857, in laying out a highway in said town and assessing damages thereon, do hereby appeal to you from such orders, a copy of which orders are hereto annexed, in, and by which, the proceedings and determinations of said Commissioners will more fully appear.

The grounds on which this appeal is made, are,
First; That said road is not necessary.

Second; That said Commissioners proceeded illegally, in laying out said road and in assessing damages thereon.

Third; That the damages assessed are inadequate to compensate the owners of land affected; and said appeal is brought in relation to the laying out of said road and assessing damages thereon, and to reverse entirely the determination of said Commissioners in the premises.

8. Dated this 1st day of February, A. D. 1857.

ASA HOLDRIDGE,
JACOB C. BURGESS,
JOSEPH T. BULLOCK,
JOHN G. BAKER,
CUTTING CLARK.

Which said appeal was left with the said Lorenzo Leland, and notice thereof given to the other Supervisors named in said appeal. And said Supervisors did thereupon fix upon a time and place for hearing said appeal; said time being some day in April, A. D. 1857; the particular day, your orator does not now recollect, at a school house in said town.

And your orator shows that notice of the time and place of hearing said appeal so fixed as aforesaid was given to said High-

way Commissioners, and at least three of the petitioners for said road, at the time and in the manner provided by law.

9. Your orator further shows to your Honor, that at the time and place fixed for hearing the appeal as aforesaid, but one of the said Supervisors, to wit: the said John Gray attended; and said Supervisor Gray, thereupon said that he would adjourn the hearing of said appeal until the 3d Monday in June, A. D. 1857, at the same place; and on the day last aforesaid, none of said Supervisors appeared but the said John Gray, who said he would adjourn the hearing of said appeal until the 6th day of July, 1857, and on said 6th day of July, none of said Supervisors appeared, and no proceedings were had touching said appeal.

Your orator further shows to your Honor, that on the 22d day of July, 1857, the said Lorenzo Leland and the said John Gray met at the place aforesaid, and associated with themselves Joel W. Armstrong, Supervisor of the town of Deer Park, and said Supervisors then and there made and filed with the Town Clerk of said town of Vermillion an order which was in substance as follows:

STATE OF ILLINOIS, } ss.
La Salle County. }

10. Whereas, the persons who are the appellants in the annexed written appeal to Supervisors, did appeal to said Supervisors form the orders and determinations of the commissioners of highways, of the town of Vermillion in said county, in laying out the highways and assessing the damages mentioned in the annexed copy of the order of said commissioners, a copy of which order as well as all the papers in relation to said appeal, hereunto annexed, form a part of this order; and whereas, in consequence of an adjournment said appeal has not hitherto been heard and disposed of; and whereas, on the twenty-second day of July, A. D. 1857, in pursuance of previous notice duly given, the said supervisors Lorenzo Leland and John Gray, in said appeal mentioned, met at a school house near the line of said road, and associated with them Joel W. Armstrong, supervisor of the town of Deer Park, in said county, (the other supervisor mentioned in said appeal being unable to be present) and heard the proofs and allegations of the parties.

Now, therefore, we the said supervisors who heard said proofs and whose signatures are hereto attached, being fully advised of the premises, do hereby order and determine that the said orders and determinations of said commissioners of highways be and the same are in all things affirmed.

In witness whereof, we have hereunto set our hands this 22d day of July, A. D. 1857.

L. LELAND, Supervisor of the town of Ottawa.

JOHN GRAY, Supervisor of the town of La Salle.

J. W. ARMSTONG, Supervisor of the town of Deer Park.

And your orator shows to your Honor, that he had no notice in any way of the said meeting of the supervisors when they made the order aforesaid, and no opportunity of being heard or of introducing his evidence before them.

And your orator charges, that as he is advised by counsel and verily believes and therefore charges the fact to be, that said road was never legally laid and established, in the manner specified in the order aforesaid, for the reason that the proper steps were not taken to establish the same as required by law, and for the reason that your orator had no notice of the establishment of said road nor of the action of the commissioners aforesaid, in assessing the damages aforesaid, at the time when such action was had, nor of the time and place, when and where said supervisors passed upon the appeal of your orator and others as aforesaid, all of which questions affected the rights of your orator, and upon which, he has had no opportunity to be heard or to introduce his testimony in relation thereto.

And your orator shows to your Honor, that George M. Newton, George Fetzer and Enos Weld are now commissioners of highways for said town of Vermillion, and they claim that *that* they have a legal right by virtue of the proceeding aforesaid, to proceed to open the road aforesaid, across the land of your orator aforesaid, although the damages assessed by said commissioners as aforesaid to your orator have never been paid to him.

Your orator further shows to your Honor, that the said commissioners of highways of said town of Vermillion threaten and give out in speeches that they will proceed to open said road across the said land of your orator, and have given your orator notice to open the same; and your orator charges that they will proceed to open said road as aforesaid unless restrained by the order this court.

All of which is against equity and good conscience, and tends to the manifest injury of your orator.

In as much, therefore, is in denger of sustaining injury and is remediless except in equity where matters of this sort are properly cognizable and reliable. Your orator prays that said Geo. M. Newton, Geo. Fetzer and Enos Weld, be made parties defendant to this bill and summoned to answer the same, and that they may be enjoined from opening the road aforesaid, across the land aforesaid, of your orator until the further order of this court in that behalf, and that upon the final hearing of this bill

it may be decreed by this court, that said defendants and their successors in office be restrained from opening the road aforesaid, across the land of your orator aforesaid, until the said road shall have been established, and the damage sustained thereby by your orator be fixed in manner provided by law or for such other or further relief, as to your orator shall seem meet, and as to equity shall appertain.

GLOVER & COOK,
Solicitors for Complainant..

STATE OF ILLINOIS, }
La Salle County. } ss.

Asa Holdridge, being first duly sworn, saith on oath, that the matters stated in the foregoing bill as of his own knowledge are true, and so far as the same are stated upon his information and belief, the same are true to the best of his knowledge, information and belief.

ASA HOLDRIDGE.

Subscribed and sworn to before me this 11th day of November, A. D. 1859.

D. F. CAMERON, N. P.

Let an injunction issue according to the prayer of the foregoing bill.

Nov. 12, 1857.

M. E. HOLLISTER Judge, &c.

13. On the 13th day of November, A. D. 1857, a summons issued out of and under the seal of said court in the words and figures following, to wit:

STATE OF ILLINOIS, }
La Salle County. } ss.

The people of the state of Illinois, to the Sheriff of La Salle County, greeting:

We command you to summon George M. Newton, George Fetzer, and Enos Weld, if to be found in your county, personally to be and appear before the Circuit Court of said county, on the first day of the next term thereof, to be holden at the Court House in Ottawa, on the first Monday of February next, to answer to a certain bill of complaint filed in our said Circuit Court, on the chancery side thereof, against them by Asa Holdridge, and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness John F. Nash, Clerk of said Court, and the
[SEAL.] seal of said Court at Ottawa, this 13th day of November, A. D. 1857.

JOHN F. NASH Clerk.

Which summons was returned by the sheriff of said La Salle Co.,

on the 30th January, 1858, with an endorsement thereon in the words and figures following, to wit:

14. "Served by leaving a true copy of this writ with Catherine Fetzer, wife of George Fetzer, a white person above the age of ten years, and a member of the family, at his usual place of abode, informing her of the contents thereof, this 26th day of November, 1857. Also served by reading said writ to George M. Newton and delivering to him a copy thereof this 12th day of December 1857. Enos Weld not found.

E. L. WATERMAN, Sheriff,
per A. E. GROW, Deputy.

On the 13th November, 1857, a writ of injunction issued out of and under the seal of said court in the words and figures following, to wit:

STATE OF ILLINOIS, } ss.
La Salle County. }

The people of the state of Illinois, to George M. Newton, George Fetzer, and Enos Weld commissioners of highways of the town of Vermillion, greeting:

Whereas, Asa Holdridge has lately exhibited his bill of complaint to the judge of the Circuit Court in and for the County and State aforesaid, on the chancery side thereof, against you the said Newton, Fetzer and Weld defendants, wherein among other things it is alleged that you are attempting to open a road over and through the North-west quarter of section thirty, in the town of Vermillion, in said County and State, said land belonging to said Holdridge.

15. We, therefore, in consideration of the premises, do strictly enjoin and command you that the said George M. Newton, Geo. Fetzer, and Enos Weld commissioners of highways as aforesaid, and your successors in office, that you, and each of you, do absolutely and entirely desist from proceeding to open the road aforesaid, across the said land until you, and each of you, shall appear and fully answer the complainants bill, and said Court make other order to the contrary.

Hereof fail not under the penalty of what the law directs.

To the Sheriff of said County to execute. Witness
[SEAL.] John F. Nash, Clerk of said Court, and the seal of
said Court at Ottawa, this 13th day of November, A.
D. 1857.

JOHN F. NASH, Clerk.

Which writ of injunction was returned by the sheriff of said County with an endorsement thereon, in the words and figures following, to wit:

"Served by leaving a true copy of this writ with Catherine

Page of Rec. Fetzner, wife of said George Fetzner, a white person above the age of ten years, and member of the family, at his usual place of abode, informing her of the contents thereof, this 26th day of November, 1857. Also on the 12th day of December, 1857.—Served by reading to and *delivery* a copy of said writ *with* Geo. M. Newton.

Enos Weld not found.

E. L. WATERMAN Sheriff.

Per A. E. GROW Deputy."

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

"ASA HOLDRIDGE,
vs.
GEORGE M. NEWTON *et als.* } *In Chancery.*

The defendants by Bushnell & Gray their solicitors, move the Court to dissolve the injunction herein."

And afterwards, to wit: On Saturday Feb. 27th, 1858, the same being one of the days of the Feb. term of said Court, for said year, another order was entered of record in said cause in the words and figures following, to wit:

"ASA HOLDRIDGE,
vs.
GEO. M. NEWTON *et als.* } *In Chancery.*

This day the complainant comes by Glover & Cook, his solicitors, and the defendants by Bushnell & Gray, their solicitors; and by agreement of parties it is ordered that this cause be heard at Chambers in vacation, and the orders or decree entered of record *nunc pro tunc.*"

On the 9th day of February, 1859, the defendants file their demurrer to complainant's bill, in the words and figures following, to wit:

17. STATE OF ILLINOIS, } *Circuit Court thereof in Chancery.*
La Salle County. } *To February term, A. D. 1858.*

The demurrer of George M. Newton, George Fetzner and Enos Weld, commissioners of highways of the town of Vermillion, defendants to the bill of complaint of Asa Holdridge, complainant:

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in and by the said bill set forth and complained of to be true, in manner and form as the same are therein set forth and alleged, say they are advised by their counsel that there is no matter or thing in the said bill contained good and sufficient in law to call these defendants

in question in this honorable Court for the same, but that there is good cause of demurrer thereunto, and, therefore, this defendant saith that the complainant's said bill, in case the allegations therein contained were true, which these defendants do in no sort admit, contains not any matter of equity wherein this Court can ground any decree, or give the complainant any relief or assistance as against these defendants. Wherefore and for divers other errors and imperfections in the said bill appearing, these defendants do demur in law thereunto, and humbly demand the judgment of this honorable Court, whether they shall be compelled to put in any further or other answer to the said bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf, most wrongfully sustained.

BUSHNELL & GRAY,

Solicitors for Defendants.

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

" ASA HOLDRIDGE,

vs.

GEORGE M. NEWTON, GEORGE FETZER } *In Chancery.*
and ENOS WELD, Commissioners of highways }
of the town of Vermillion.

19. It appearing to the Court that the said defendants, George M. Newton, George Fetzer and Enos Weld, were duly served with process of summons in this cause more than ten days before the present term of this Court, and it further appearing to the Court that said defendants have filed herein a demurrer to said bill, this day this cause came on to be heard upon the bill of said complainant and the demurrer of said defendants, and it appearing to the Court that an injunction had been issued out of and under the seal of this Court, by which said injunction the said defendants, commissioners of highways of the town of Vermillion, and their successors in office, were enjoined and commanded that they, and each of them, do absolutely and entirely desist from proceeding to open a road across the North-west quarter of Section No. thirty, (30,) in said town of Vermillion, until they and each of them do appear and fully answer the said complainant's bill, and the said Court make other order to the contrary; and it further appearing to the Court that said complainant was and is the owner of the land above designated and described, and it further appearing to the Court that the matters and things in the said bill contained are good and sufficient in law to call the said defendants in question in this Court for the same, and that there is not good cause of demurrer thereunto, and that there is in said bill matters of equity wherein the Court can ground a decree and give the said complainant relief and assis-

Page of Rec. tance against the said defendants; the said demurrer, of said defendants to said bill is overruled, and the said defendants having been ordered by rule of this Court to file their answer herein instanter, and the said defendant entirely failed to file any answer herein in pursuance of said rule, but made default, and said bill is ordered to be taken for confessed. And it is, therefore, hereby ordered, adjudged, and decreed that the said injunction herein before issued be made perpetual, and that said defendants, commissioners of the town of Vermillion aforesaid, and their successors in office be forever restrained from proceeding in any manner to open the said road over, across, or through the said land above described, viz: "The North-west quarter of section number thirty, (30,) in the town of Vermillion."

Assignment of Errors.

21. And now comes the said George M. Newton, George Fetzer and Enos Weld, plaintiffs in error, and say, that in the record and proceeding there is manifest error, and that the decree aforesaid should be wholly reversed therefor, and shows to the Court here, the following errors, viz:

1st. The Court below erred in overruling the motion of the plaintiffs in error, to dismiss the bill of complaint of the defendants in error, for want of equity in said bill, and to dissolve said injunction for the same cause.

2d. The Court below erred in overruling the demurrer of the plaintiffs in error to said bill of complaint.

3d. And for other errors.

OLIVER C. GRAY,
Attorney for plaintiffs in error.

No 114 43

Road Commission
of the town of Vermillion

vs.

John Holdridge

Abstract of Record

Filed April 27. 1860

L. Leonard

Clk.

193
Paper

No 114 43

Road Commission
of the town of Vermillion

vs.

John Holdridge

Abstract of Record

Filed April 27. 1860

L. Leland

Clk.

193
Paper

State of Illinois.

Supreme Court 3^d J. G. Dirson ss.

George M. Newton,
George Getzer and
Enos Weld, Com-
missioners of Highway
of the Town of Vermilion
ss.

Asa Holdridge

Abstract of Record.

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

Present

The Hon Madison E. Hollister

Presiding Judge.

John F. Nash. Clerk

Eri L. Waterman. Sheriff

O. C. Gray States attorney, pro tem

Be it remembered that on the 13th day of Novem-
ber A.D. 1857 a "Bill in Chancery" was filed in
the Clerk's office of the Circuit Court, in the words
and figures following, to wit:

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

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

Complaining Sheweth unto your
Honor your Orator Asa Holdridge of said County:

According to said Survey and the Plat
hereunto annexed and made part of this order
which is hereby declared to be a public highway
four rods wide, the above described line being
the centre thereof, and that half of the width
of said road runs one hundred and sixty
(160) rods over lands owned by John G. Baker,
taking two (2) acres of land, and one half over
land owned by Asa Holdridge taking two
acres, one hundred and sixty (160) rods and
eighty rods on land owned by Joseph T. Bul-
lock and heirs of L. S. Bullock taking one
acre, and eighty (80) rods over land of J. C.
Dayless taking one acre, and one hundred and
sixty (160) rods on land owned by Cutting Clark
taking two acres -

In witness whereof we the said Com-
missioners have hereunto set our hands this 3^d
day of February A.D. 1857 -

Hiram Hurd } Commissioners
Geo. Rider } Highways.

And on the same day the said Commissioners
made and filed with the Town Clerk of said
town an order in substance as follows:

"We the undersigned Commissioners
of Highways of the Town of Vermillion in the
County of La Salle having on the fifteenth
(15) day of November A.D. 1856 - upon due ap-
plication made to us for that purpose laid out
a road as follows: Commencing on the line
between the Towns of Vermillion and Eden at
the South West corner of the North West quarter
of Section thirty (30) in said town of Vermillion,
thence running East three hundred and eighty

3

(318) rods to the South East corner of the North East Quarter of said Section thirty intersecting with a road running East and West through Section twenty nine (29) in said Town, said road running East and West through the center of said Section thirty; and certain owners of lands through which said road passes not having released all claims to damages by reason of laying out and opening of the same, and not being able to agree as to the amount of such damages, we proceeded to assess the same, what we deemed just and right to each individual claimant with which we could not agree, taking into account and estimating the advantages and benefits the road will confer on the claimants for the same, as well as the disadvantages, and have assessed the damages of each owner and claimant as follows:

To Asa Holdridge on the North West quarter of Section thirty in said town at one hundred and thirty dollars, being enclosed lands and to Joseph J. Bullock and heirs of L. L. Bullock on the West half of the South West quarter of said Section thirty, sixty five dollars, and to J. C. Payless on the East half of said South West quarter sixty five dollars, all being enclosed lands and to Cutting Clark who claimed damages on the South East quarter of said Section being enclosed lands we have estimated the advantages of said road equal to any and all damages, and Ono G. Baker, on the North East Quarter of the same Section who claimed damages, we have estimated the advantages of said road equal to any and all damages.

In witness whereof we have hereunto set our
hands this 3^d day of February 1857 -

Horatio Ward } Commissioners
John Bider } Highways

And your orator shows to your Honor that he
had no notice in any manner of the time and
place when & where said commissioners would
view his land aforesaid or make any apprais-
ment of damages thereon, and had no opportunity
of being heard or of adducing evidence before
them in relation to that question, that he was
at the several times aforesaid and still is the
owner of the north west quarter of Section thirty
in said town across which said road will
run if laid out according to the order aforesaid,
and if said road ^{shall} be laid out across said
land it will occasion a damage to your
Orator in at least the sum of four hundred
& fifty Dollars. And that on the 3^d day
of February 1857 - Your orator together with
Jacob C. Burgess, Joseph J. Bullock John
G. Parker, and Cutting Clark, who were then
and then owners of land in said town across
which said road will run if the same shall
be opened as provided in said order, took
an appeal from the order aforesaid of said
Commissioners to Lorenzo Leland Supervisor
of the Town of Ottawa, William Paul Superin-
sor of the town of Salisbury and John Gray
Supervisor of the town of La Salle all of the
County of La Salle and State of Illinois,
which appeal was and is in substance as
follows:

7

To Lorenzo Leland Supervisor of the Town of Ottawa, William Paul Supervisor of the Town of Salisbury and to John Gray Supervisor of the Town of La Salle in the County of La Salle and State of Illinois. -

The undersigned Asa Holdridge, Joseph J. Bullock, and heirs of L. L. Bullock, J. C. Burgess, Cutting Clark and John G. Baker feeling themselves, by two orders made by the Commissioners of Highways of the Town of Vermillion in Said County of La Salle on the third day of February A.D. 1857 - and which orders were filed in the office of the town clerk of Said town on the 4th day of February A.D. 1857 in laying out a highway in Said town and assessing damages thereon do hereby appeal to you from such orders, a copy of which orders are hereto annexed, in and by which the proceedings and determinations of Said Commissioners will more fully appear. -

The grounds on which this appeal is made are, First: That said road is not necessary.

Second: That said Commissioners proceeded illegally in laying out said road and in assessing damages thereon -

Third: That the damages assessed are inadequate to compensate the owners of land affected - and said appeal is brought in relation to the laying out of said road and assessing damages thereon, and to reverse entirely the determinations of said Commissioners in the premises.

Dated this 1st day of February
A.D. 1857

8
Asa Aldridge
Jacob C. Burgess
Joseph T. Bullock
John G. Baker
Cutting Clark

which said appeal was left with the said Lorenzo Leland and notice thereof given to the other Supervisors named in said appeal and said Supervisors did thereupon fix upon a time and place for hearing said appeal, said time being some day in April A.D. 1857 - the particular day your orator does not now recollect, at a school house in said town,

And Your Orator shows that notice of the time and place of hearing said appeal so fixed as aforesaid was given to said Highway Commissioners and at least three of the petitioners for said road at the time and in the manner provided by Law -

Your Orator further shows to your Honor that at the time and place fixed for hearing the appeal as aforesaid, but one of the said Supervisors, to wit the said John Gray attended and said Supervisor Gray, thereupon said, that he would adjourn the hearing of said appeal until the 3^d Monday in June A.D. 1857 - at the same place, and on the day last aforesaid, none of said Supervisors appeared but the said John Gray who said he would adjourn the hearing of said appeal until the 6th day of July 1857 - and on said 6th day of July none of said Supervisors appeared and no proceedings were had touching said appeal.

9

Your Orator further shows to your Honor that on the 22^d day of July 1857 - the said Lorenzo Leland and the said John Gray met at the place aforesaid and associated with themselves Joel W. Armstrong Supervisor of the Town of Deer Park, and said Supervisors then and there made and filed with the town clerk of said Town of Vermillion, an order which was in substance as follows;

"State of Illinois,
La Salle County. Whereas the persons who are the appellants in the annexed written appeal to Supervisors, did appeal to said Supervisors from the orders and determinations of the Commissioners of highways, of the Town of Vermillion in said County in laying out the highways and assessing the damages mentioned in the annexed copy of the order of said Commissioners, a copy of which order as well as all the papers in relation to said appeal hereunto annexed form a part of this order, and whereas in consequence of an adjournment said appeal has not hitherto been heard and disposed of, and whereas on the twenty second day of July A.D. 1857 - in pursuance of previous notice duly given, the said Supervisors Lorenzo Leland and John Gray, in said appeal mentioned, met at a School House near the line of said road, and associated with them Joel W. Armstrong, Supervisor of the town of Deer Park, in said County, (the other Supervisor mentioned in said appeal being

unable to be present) and heard the proofs and allegations of the parties, -

Now, therefore, we the said Supervisors who heard said proofs and whose signatures are hereto attached, being fully advised of the premises, do hereby order ^{and} determine that the said orders and determinations of said Commissioners of highways be and the same are in all things affirmed.

In witness whereof, we have hereunto set our hands this 22^d day of July 1857

L. Leland Supervisor of the
Town of Ottawa -

John Gray Supervisor of the town
of LaSalle

J. W. Armstrong Supervisor
of the Town of Deer Park.

And Your Orator shews to your Honor that he had no notice in any way of the said meeting of the Supervisors when they made the order aforesaid, and no opportunity of being heard or of introducing his evidence before them.

And Your orator charges, that as he is advised by counsel & verily believes and therefore charges the fact to be, that said road was never legally laid and established, in the manner specified in the order aforesaid, for the reason that the proper steps were not taken to establish the same as required by law, and for the reason that your Orator had no notice of the establishment of said road nor of the action of the Commissioners aforesaid, in assessing ^{his} damages.

aforsaid, at the time when such action was had, nor of the time & place when and where said Supervisors passed upon the appeal of your Orator & others as aforsaid, all of which questions affected the rights of your Orator, and upon which, he has had no opportunity to be heard or to introduce his testimony in relation thereto.

And your Orator Shows to your Honor, that George M. Newton, George Feltzer & Enos Weld, are now Commissioners of highways for said town of Vermillion, and they claim that that they have a legal right by virtue of the proceedings aforsaid, to proceed to open the road aforsaid, across the land of Your Orator aforsaid, although the damages assessed by said Commissioners as aforsaid to Your Orator have never been paid to him.

Your Orator further Shows to your Honor, that the said Commissioners of highways of said town of Vermillion threaten and give out in speeches that they will proceed to open said road across the said land of Your Orator, and have given Your Orator notice to open the same; and Your Orator Charges that they will proceed to open said road as aforsaid, unless restrained by the order of this Court.

All of which is against Equity and good conscience, and tends to the manifest injury of your Orator—

In as much therefore is in danger of sustaining injury and is remediless except in Equity where matters of this sort are properly cognizable and relievable, Your Orator prays that said George M. Newton, George Feltzer and Enos Weld, be made parties defendant

to this bill and Summioned, to answer the same,
and that they may be enjoined from opening
the road aforesaid, across the land aforesaid,
of your Orator until the further order of this
Court in that behalf, and that upon the final
hearing of this bill it may be decreed by this
Court that said defendants and their Successors
in office be restrained from opening the road
aforesaid, across the land of Your Orator aforesaid,
until the said road shall have been
established and the damage sustained thereby
by your Orator be fixed in manner provided
by law or for such other or further relief, as
to your Orator shall seem meet and as to
Equity shall appertain.

Glover & Cook.

Solicitors for Complainant

State of Illinois
La Salle County

3rd Asa Holdridge, being first
duly sworn, saith on oath,
that the matter stated in the foregoing bill
as of his own knowledge are true, and so far
as the same are stated upon his information
and belief, the same are true to the best of his
knowledge, information and belief.

Subscribed & sworn Asa Holdridge
to before me this 11th day
of November AD 1857

D. J. Cameron N.P.

Let an Injunction issue according to the prayer
of the foregoing Bill
Nov 12. 1857

M. E. Hollister Judge

13.

On the 13th day of November, A.D. 1857, a Summons issued out of and under the Seal of said Court in the words and figures following, to wit:

"State of Illinois, The People of the State
LaSalle County ^{Sh.} of Illinois;
To the Sheriff
of LaSalle County, Greeting;

We Command you to Summon George M. Newton, George Felzer, and Enos Weld, if to be found in your County, personally, to be and appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden at the Court House in Ottawa, on the first Monday of February next, to answer to a certain bill of Complaint filed in our said Circuit Court, on the Chancery Side thereof, against them by Asa Holdridge, and have you then and there this writ, and make return thereon in what manner you execute the Same.

Witness John F. Nash, Clerk of said Court, and the Seal of said Court, this 13th day of November A.D. 1857
J. F. Nash Clerk,

Which Summons was returned by the Sheriff of said LaSalle County, on the 30th Jan'y 1858, with an endorsement thereon in the words and figures following, to wit:

"Served by leaving a true copy of this writ with Catharine Felzer, wife of George Felzer, a white person above the age of ten years, and a member of the family, at his usual place

of abode, informing her of the contents thereof, this 26th day of November 1857. Also served by reading said writ to George M. Newton and delivering to him a copy thereof this 12th day of December 1857. Enos Weld not found.

E. L. Waterman Shff
pr A. E. Grew Dpty."

On the 13th November 1857, a writ of injunction issued out of and under the Seal of said Court in the words and figures following, to wit:

"State of Illinois of The People of the State
LaSalle County of Illinois to George
M. Newton, George Fetzner
and Enos Weld Commissioners of Highways of
the town of Vermillion, Greeting;

Whereas Asa
Holdridge has lately exhibited his bill of Com-
plaint to the Judge of the Circuit Court in
and for the County and State aforesaid, on the
Chancery side thereof against you the said
Newton, Fetzner and Weld defendants, wherein
among other things it is alleged that you are
attempting to open a road over and through
the North West quarter of Section thirty in
the town of Vermillion in said County and
State, said land belonging to said Holdridge -

We, therefore in consideration of the
premises, do strictly enjoin and command
you that the said George M. Newton, George
Fetzner, and Enos Weld Commissioners of
Highways as aforesaid, and your successors

of abode, informing her of the contents thereof, this 26th day of November 1857. Also served by reading said writ to George M. Newton and delivering to him a copy thereof this 12th day of December 1857. Enos Weld not found.

E. L. Waterman Shff
pr A. E. Grew Dpty."

On the 13th November 1857, a writ of injunction issued out of and under the Seal of said Court in the words and figures following, to wit:

"State of Illinois of The People of the State
LaSalle County of Illinois to George
M. Newton, George Fetzner
and Enos Weld Commissioners of Highways of
the town of Vermillion, Greeting;

Whereas Asa Holdridge has lately exhibited his bill of Complaint to the Judge of the Circuit Court in and for the County and State aforesaid, on the Chancery side thereof against you the said Newton, Fetzner and Weld defendants, wherein among other things it is alleged that you are attempting to open a road over and through the North West quarter of Section thirty in the town of Vermillion in said County and State, said land belonging to said Holdridge.

We, therefore in consideration of the premises, do strictly enjoin and command you that the said George M. Newton, George Fetzner, and Enos Weld Commissioners of Highways as aforesaid, and your successors

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in office, that you and each of you do absolutely and entirely desist from proceeding to open the road aforesaid, across the said land until you, and each of you shall appear and fully answer the complainants bill, and said Court make other order to the contrary.

Hereof fail not under the penalty of what the Law directs.

To the Sheriff of said County to execute.
Witness John F. Nash Clerk of said Court and the Seal of said Court at Ottawa this 13th day of November AD 1857
J. F. Nash Clerk.

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

"Served by leaving a true copy of this writ with Catharine Hetzer, wife of said George Hetzer, a white person above the age of ten years, and member of the family, at his usual place of abode, informing her of the content thereof, this 26th day of November, 1857, also on the 12th day of December 1857, served by reading to and delivering a copy of said writ with George M. Newton

Onas Weld not found.

E. L. Waterman . Shff
per A. E. Grow Deputy

And afterwards, to wit, on Monday February 22^d 1858, the same being one of the days of the February Term of said Court for said year, an order was

16
Entered of records in said cause in the words and figures following, to wit:

"Asa Holdridge }
vs } In Chancery,
George M. Newton et al }
The defend-
-ants by Bushnell & Gray their
Solicitors; move the Court to dissolve the Injunction
herein "

And afterwards to wit; on Saturday Feb'y 27th
1858, the same being one of the days of the Feb'y
Term of said Court, for said year, another
order was entered of records in said cause in
the words and figures, following, to wit:

"Asa Holdridge }
vs } In Chancery,
George M. Newton et al }
This day
the complainant comes by
Glover & Cook his Solicitors, and the defendants
by Bushnell & Gray their Solicitors, and by agreement
of parties it is ordered that this cause be heard
at Chambers in vacation and the orders or
decree entered of records nunc pro tunc "

On the 9th day of February, 1859, the Defend-
-ants file their demurrer to Complainants Bill
in the words and figures following, to wit:

"State of Illinois } Circuit Court thereof, in
La Salle County } Chancery.
To February term AD
1858

17

The demurrer of George M. Newton, George
Hetzler & Enos Weld, Commissioners of Highways
of the Town of Vermillion, defendants, to the bill
of complaint of Asa Hildridge, complainant;

These defendants, by protestations, not confess-
ing or acknowledging, all or any of the matters or
things in and by the said Bill set forth, and
complained of to be true, in manner & form as the
same are therein set forth & alleged, say they
are advised by their Counsel that there is no matter
or thing in the said Bill contained, good & suf-
ficient in law to call these defendants in question
in this Honorable Court for the same, but that there
is good cause of demurrer thereunto, and therefore
this defendant saith, that the complainant's said
Bill, in case the allegations therein contained
were true, which these defendants do in no
sort admit, contains not any matter of equity,
wherein this Court can ground any decree, or
give the complainant any relief or assistance,
as against these defendants; Wherefore & for
divers other errors & imperfections, in the said
Bill appearing, these defendants do demur
in law, thereunto; And humbly demand
the judgment of this Honorable Court, whether
they shall be compelled to put in any further,
or other answer to the said Bill; and humbly
pray, to be hence dismissed with their reason-
able costs, in this behalf, most wrongfully
sustained.

Bushnell & Gray
Solicitors for defendants.

And afterwards to wit, on Tuesday December 14, 1888, the same being one of the days of the November Term of said Court for said year. A decree was entered of record in said cause in the words and figures following, to wit;

Asco Holdridge }
vs } In Chancery
George M. Newton }
George Fetzger & Enos Weld - Commissioners
of Highways of the Town of Vermillion -

It appearing to the Court, that the said defendants George M. Newton, George Fetzger, & Enos Weld were duly served with process of Summons in this cause more than ten days before the present term of this Court, and it further appearing to the Court, that said defendants have filed herein a demurrer to said Bill, this day this cause came on to be heard upon the bill of said Complainant, and the demurrer of said defendants, and it appearing to the Court, that an Injunction had been issued out of and under the Seal of this Court, by which said Injunction, the said defendants, commissioners of Highways of the Town of Vermillion and their Successors in office were enjoined and commanded that they and each of them do absolutely and entirely desist from proceeding to open a road across the North West quarter of Section No thirty (30) in said town of Vermillion, until they and each of them do appear and fully answer the said Complainant's Bill, and the said Court, make other order to the contrary, and it further appearing to the Court that said Complainant was and is

the owner of the land above designated, ^{and} described, and it further appearing to the Court that the matters and things in the said Bill contained are good and sufficient in law to call the said defendants, in question, in this Court for the same, and that there is not good cause of demurrer thereto, ^{unto,} and that there is in said Bill matters of Equity wherein the Court can grant a decree and give the said Complainant relief and assistance against the said defendants; the said demurrer, of said defendants to said bill is overruled, and the said defendants having been ordered by rule of this Court to file their answer herein instant, and the said defendant entirely failed to file any answer herein in pursuance of said rule, but made default and said Bill is ordered to be taken for confessed. And it is therefore, hereby ordered, adjudged and decreed that the said Injunction hereinbefore issued, be made perpetual, and that said defendants, Commissioners of the Town of Vermillion aforesaid and their Successors in office be forever restrained from proceeding in any manner to open the said Road over, across or through the said land above described, viz: "The North West quarter of Section number thirty (30) in the Town of Vermillion"

State of Illinois I John A. Stark Clerk of the Circuit
 and Sale County Clerk in and for said County and
 State do hereby certify that the above and
 foregoing, comprises a true, full, perfect and complete
 record of all the papers on file and all the orders of the
 Court in the said cause of the ~~the~~ Ira Holdridge vs
 Road Commissioners of the Town of Vermillion in the
 same appear of record and on file in my office
 In Testimony Whereof I have hereunto set my
 hand and the Seal of said Court at ~~Channah~~
 this 14th day of April 1889
 J. A. Stark Clerk



Isa Holdridge
 vs
 Geo. M. Bentwaters
 - Record -

State of Illinois I John A. Stark Clerk of the Circuit
 and County of Cook in and for said County and
 State do hereby certify that the above and
 foregoing, comprises a true, full, perfect and complete
 record of all the papers on file and all the orders of the
 Court in the said cause of the ~~the~~ Ira Holdridge vs
 Road Commissioners of the Town of Vermillion in the
 same appear of record and on file in my office
 In Testimony Whereof I have hereunto set my
 hand and the Seal of said Court at Chicago
 this 14th day of April 1889
 J. A. Stark Clerk



Ira Holdridge
 vs
 Geo. M. Bentwaters
 - Record -

Assignment of Errors.

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And now come the said George M. Newton, George Felzer and Enos Weld, plaintiffs in error, and say, that in the record and proceedings ~~affirmed~~, there is manifest error, and that the decree aforesaid should be wholly reversed therefor, and shows to the Court here, the following errors, viz:

1st The Court below erred in overruling the motion of the plaintiffs in error, to dismiss the Bill of Complaint of the defendants in error, for want of equity in said Bill, and to dissolve said injunction for the same cause.

2^d The Court below erred in overruling the demurrer of the plaintiffs in error to said Bill of Complaint.

3^d And for other errors.

Oliver C. Gray,
Atty. for pliffs. in error.

38, 114 (8)
Road Commissioners of
the Town of Vermillion
to Asa Hildridge

Recd

Filed March 23, 1860
L. Leland
Clerk

Recd \$8.00 paid

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

La Salle

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of La Salle County, before the Judge thereof, between Asa Holdridge

plaintiff; and George M. Newton, George Fetzger and
Enos Weld Commissioners of Highways of the
Town of Vermillion

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

as we are informed by their complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Asa Holdridge

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

notice, together with this writ.

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

L. Leland

Clerk of the Supreme Court.
by J. B. Rind

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

La Salle

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of La Salle County, before the Judge thereof, between Asa Holdridge

plaintiff; and George M. Newton, George Fetzger and
Enos Weld Commissioners of Highways of the
Town of Vermillion

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

as we are informed by their complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Asa Holdridge

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

notice, together with this writ.

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

L. Leland

Clerk of the Supreme Court.
by J. B. Rind

114 La Salle

George M. Newton & Als

No. 114 vs.

Asa Holdridge

SCIRE FACIAS.

FILED

April 24 A. D. 1860

L. Leland

Clerk.

Served this writ by revealing
to the within marked Asa
Holdridge this 7th day of
April 1860 F. Warner atty

By W. J. Hale

Des 8 PM 60

20 m 102

O. C. Gray

att'y for Plffs. in error

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

GEORGE M. NEWTON,
GEORGE FETZER, and
ENOS WELD,

Commissioners of Highways of Town of Vermilion,

vs.

ASA HOLDRIDGE.

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ABSTRACT OF THE RECORD.

On the 13th day of November, A. D. 1857, a "Bill in Chancery" was filed in the Clerk's office of the Circuit Court, in the words and figures following, to wit:

STATE OF ILLINOIS, } *And Circuit Court thereof, to*
La Salle County, } *February Term, A. D. 1858.*

To the Honorable MADISON E. HOLLISTER, Judge of the 9th Judicial Circuit of said State, and sitting as Chancellor:

Complaining sheweth unto your Honor, your Orator Asa Holdridge, of said County:

2. That heretofore, to wit: On or about the 11th day of October, 1856, a petition was presented to the Commissioners of Highways of the town of Vermillion, in said County, signed by twelve or more voters of said town, praying said Commissioners to lay out a new road, four rods wide, commencing at or near the South West corner of the North West quarter of Section No. thirty, (30,) in said town, thence running in an Easterly direction until it intersects a road running East and West through Section twenty-nine, (29,) in said town; said petition stated the names of the owners of the land over which said road was to pass, as follows: Asa Holdridge, J. T. Bullock, L. S. Bullock, J. C. Bayless, C. Clark, and J. G. Baker, and afterwards, on the 3d day of February, 1857, Hiram Hurd and John Rider, two of said Commissioners, made and filed with the Town Clerk of said town, an order, which is, in substance, as follows:

LA SALLE COUNTY, }
Town of Vermillion, } ss.

Whereas, upon the application of L. C. Knapp, Zenas Hall, Jr., Enos Weld, Anson Hawley, J. C. Knapp, Hiram Adams, Nathan L. Eaton, Jerial Jones, Timothy Weld, Jerial Hutchinson, Wm. C. Jones, John B. Elliott, twelve legal voters residing within three miles of the route hereinafter mentioned for a public highway, a copy of their petition having been duly posted as required by law. We, the Commissioners of Highways, of said

Page of Rec. town, did, on the 15th day of November, A. D. 1856, cause a survey to be made by a competent surveyor, of the following route, to wit:

3. Commencing at or near the South West corner of the North West quarter of Section thirty, (30,) in said town, thence running in an Easterly direction until it intersects a road running East and West through Section twenty-nine, (29,) in said town, being the same mentioned and set forth in said petition, which survey is according to the annexed plat, and the said Commissioners have personally examined said route, and having heard reasons as were offered for and against laying out said road, and being of the opinion that the laying out of the same is necessary and proper, and that the public interest will be promoted thereby, it is ordered and determined that a road be, and the same is hereby laid out, and established as follows, to wit: To the Commissioners of the Highways of the town of Vermillion, in the County of La Salle, and State of Illinois. I hereby certify, that I proceeded on the 15th day of November, A. D. 1856, to lay out a new road, four rods wide, according to said petition, commencing on the line between the towns of Vermillion and Eden, at the South West corner of the North West quarter of Section thirty, in said town of Vermillion, thence running East three hundred and eighteen rods, to the South East corner of the North East quarter of said Section thirty, intersecting with a road running East and West through Section twenty-nine, in said town, said road running East and West through the centre of said Section thirty, according to the annexed plat.

LUTHER WOODWARD, Surveyor.

VERMILLION, November, 17th, A. D. 1856.

4. According to said survey, and the plat hereunto annexed, and made part of this order, which is hereby declared to be a public highway, four rods wide, the above described line being the centre thereof, and that half of the width of said road runs one hundred and sixty (160) rods over lands owned by John G. Baker, taking two (2) acres of land; and one-half over land owned by Asa Holdridge, taking two acres, one hundred and sixty (160) rods; and eighty rods on land owned by Joseph T. Bullock, and heirs of L. S. Bullock, taking one acre; and eighty (80) rods over land of J. C. Bayless, taking one acre; and one hundred and sixty (160) rods on land owned by Cutting Clark, taking two acres.

In witness whereof, we, the said Commissioners, have hereunto set our hands this 3d day of February, A. D. 1857.

HIRAM HURD, } Commissioners
JNO. RIDER, } of Highways.

And on the same day the said Commissioners made and filed with the Town Clerk of said town an order, in substance, as follows:

Page of Rec

We, the undersigned, Commissioners of Highways of the town of Vermillion, in the County of La Salle, having on the fifteenth (15) day of November, A. D. 1856, upon due application made to us for that purpose, laid out a road as follows: Commencing on the line between the towns of Vermillion and Eden, at the South West corner of the North West quarter of Section thirty, (30) in said town of Vermillion, thence running East three hundred and eighteen (318) rods to the South East corner of the North East quarter of said section thirty, intersecting with a road running East and West through Section twenty-nine (29) in said town, said road running East and West through the centre of said Section thirty; and certain owners of lands through which said road passes, not having released all claim to damages by reason of laying out and opening of the same, and not being able to agree as to the amount of such damages, we proceeded to assess the same, what we deemed just and right to each individual claimant, with which we could not agree, taking into account and estimating the advantage and benefits the road will confer on the claimants for the same, as well as the disadvantages, and have assessed the damages of each owner and claimant, as follows:

To Asa Holdridge, on the North West quarter of Section thirty, in said town, at one hundred and thirty dollars, being enclosed lands; and to Joseph T. Bullock, and heirs of L. L. Bullock, on the West half of the South West quarter of said Section thirty, sixty-five dollars; and to J. C. Bayless, on the East half of said South West quarter, sixty-five dollars, all being enclosed lands; and to Cutting Clark, who claimed damages on the South East quarter of said Section, being enclosed lands, we have estimated the advantages of said road equal to any and all damages; and Jno. G. Baker, on the North East quarter of the same Section, who claimed damages, we have estimated the advantages of said road equal to any and all damages.

In witness whereof, we have hereunto set our hands this 3d day of February, 1857.

HIRAM HURD, } *Commissioners*
JOHN RIDER, } *of Highways.*

And your orator shows to your Honor that he had no notice in any manner, of the time and place when and where said Commissioners would view his land aforesaid, or make any appraisement of damages thereon, and had no opportunity of being heard or of adducing evidence before them in relation to that question; that he was, at the several times aforesaid, and still is, the owner of the North West quarter of Section thirty in said town, across which said road will run if laid out according to the order aforesaid, and if said road shall be laid out across said land, it will occasion a damage to your orator, in at least the sum of four hundred and fifty dollars. And that on the 3d day of February,

Page of Rec. 1857, your orator, together with Jacob C. Burgess, Joseph T. Bullock, John G. Baker and Cutting Clark, who were then and there owners of land in said town, across which said road will run if the same shall be opened as provided in said order, took an appeal from the order aforesaid, of said Commissioners, to Lorenzo Leland, Supervisor of the town of Ottawa, William Paul, Supervisor of the town of Salisbury, and John Gray, Supervisor of the town of La Salle, all of the county of La Salle, and State of Illinois, which appeal was, and is, in substance, as follows:

To LORENZO LELAND, Supervisor of the town of Ottawa, WILLIAM PAUL, Supervisor of the town of Salisbury, and to JOHN GRAY, Supervisor of the town of La Salle, in the County of La Salle, and State of Illinois:

The undersigned, Asa Holdridge, Joseph T. Bullock, and heirs of L. L. Bullock, J. C. Burgess, Cutting Clark and John G. Baker, feeling themselves, by two orders made by the Commissioners of Highways of the town of Vermillion, in said County of La Salle, on the third day of February, A. D. 1857, and which orders were filed in the office of the Town Clerk of said town on the 4th day of February, A. D. 1857, in laying out a highway in said town and assessing damages thereon, do hereby appeal to you from such orders, a copy of which orders are hereto annexed, in, and by which, the proceedings and determinations of said Commissioners will more fully appear.

The grounds on which this appeal is made, are,
First; That said road is not necessary.

Second; That said Commissioners proceeded illegally, in laying out said road and in assessing damages thereon.

Third; That the damages assessed are inadequate to compensate the owners of land affected; and said appeal is brought in relation to the laying out of said road and assessing damages thereon, and to reverse entirely the determination of said Commissioners in the premises.

Dated this 1st day of February, A. D. 1857.

ASA HOLDRIDGE,
JACOB C. BURGESS,
JOSEPH T. BULLOCK,
JOHN G. BAKER,
CUTTING CLARK.

Which said appeal was left with the said Lorenzo Leland, and notice thereof given to the other Supervisors named in said appeal. And said Supervisors did thereupon fix upon a time and place for hearing said appeal; said time being some day in April, A. D. 1857; the particular day, your orator does not now recollect, at a school house in said town.

And your orator shows that notice of the time and place of hearing said appeal so fixed as aforesaid was given to said High-

way Commissioners, and at least three of the petitioners for said road, at the time and in the manner provided by law.

9. Your orator further shows to your Honor, that at the time and place fixed for hearing the appeal as aforesaid, but one of the said Supervisors, to wit: the said John Gray attended; and said Supervisor Gray, thereupon said that he would adjourn the hearing of said appeal until the 3d Monday in June, A. D. 1857, at the same place; and on the day last aforesaid, none of said Supervisors appeared but the said John Gray, who said he would adjourn the hearing of said appeal until the 6th day of July, 1857, and on said 6th day of July, none of said Supervisors appeared, and no proceedings were had touching said appeal.

Your orator further shows to your Honor, that on the 22d day of July, 1857, the said Lorenzo Leland and the said John Gray met at the place aforesaid, and associated with themselves Joel W. Armstrong, Supervisor of the town of Deer Park, and said Supervisors then and there made and filed with the Town Clerk of said town of Vermillion an order which was in substance as follows:

STATE OF ILLINOIS, }
 La Salle County. } ss.

10. Whereas, the persons who are the appellants in the annexed written appeal to Supervisors, did appeal to said Supervisors from the orders and determinations of the commissioners of highways, of the town of Vermillion in said county, in laying out the highways and assessing the damages mentioned in the annexed copy of the order of said commissioners, a copy of which order as well as all the papers in relation to said appeal, hereunto annexed, form a part of this order; and whereas, in consequence of an adjournment said appeal has not hitherto been heard and disposed of; and whereas, on the twenty-second day of July, A. D. 1857, in pursuance of previous notice duly given, the said supervisors Lorenzo Leland and John Gray, in said appeal mentioned, met at a school house near the line of said road, and associated with them Joel W. Armstrong, supervisor of the town of Deer Park, in said county, (the other supervisor mentioned in said appeal being unable to be present) and heard the proofs and allegations of the parties.

Now, therefore, we the said supervisors who heard said proofs and whose signatures are hereto attached, being fully advised of the premises, do hereby order and determine that the said orders and determinations of said commissioners of highways be and the same are in all things affirmed.

In witness whereof, we have hereunto set our hands this 22d day of July, A. D. 1857.

L. LELAND, Supervisor of the town of Ottawa.

JOHN GRAY, Supervisor of the town of La Salle.

J. W. ARMSTONG, Supervisor of the town of Deer Park.

And your orator shows to your Honor, that he had no notice in any way of the said meeting of the supervisors when they made the order aforesaid, and no opportunity of being heard or of introducing his evidence before them.

11. And your orator charges, that as he is advised by counsel and verily believes and therefore charges the fact to be, that said road was never legally laid and established, in the manner specified in the order aforesaid, for the reason that the proper steps were not taken to establish the same as required by law, and for the reason that your orator had no notice of the establishment of said road nor of the action of the commissioners aforesaid, in assessing the damages aforesaid, at the time when such action was had, nor of the time and place, when and where said supervisors passed upon the appeal of your orator and others as aforesaid, all of which questions affected the rights of your orator, and upon which, he has had no opportunity to be heard or to introduce his testimony in relation thereto.

And your orator shows to your Honor, that George M. Newton, George Fetzner and Enos Weld are now commissioners of highways for said town of Vermillion, and they claim that *that* they have a legal right by virtue of the proceeding aforesaid, to proceed to open the road aforesaid, across the land of your orator aforesaid, although the damages assessed by said commissioners as aforesaid to your orator have never been paid to him.

Your orator further shows to your Honor, that the said commissioners of highways of said town of Vermillion threaten and give out in speeches that they will proceed to open said road across the said land of your orator, and have given your orator notice to open the same; and your orator charges that they will proceed to open said road as aforesaid unless restrained by the order this court.

All of which is against equity and good conscience, and tends to the manifest injury of your orator.

12. In as much, therefore, is in danger of sustaining injury and is remediless except in equity where matters of this sort are properly cognizable and reliable. Your orator prays that said Geo. M. Newton, Geo. Fetzner and Enos Weld, be made parties defendant to this bill and summoned to answer the same, and that they may be enjoined from opening the road aforesaid, across the land aforesaid, of your orator until the further order of this court in that behalf, and that upon the final hearing of this bill

it may be decreed by this court, that said defendants and their successors in office be restrained from opening the road aforesaid, across the land of your orator aforesaid, until the said road shall have been established, and the damage sustained thereby by your orator be fixed in manner provided by law or for such other or further relief, as to your orator shall seem meet, and as to equity shall appertain.

GLOVER & COOK,
Solicitors for Complainant..

STATE OF ILLINOIS, }
La Salle County. } ss.

Asa Holdridge, being first duly sworn, saith on oath, that the matters stated in the foregoing bill as of his own knowledge are true, and so far as the same are stated upon his information and belief, the same are true to the best of his knowledge, information and belief.

ASA HOLDRIDGE.

Subscribed and sworn to before me this 11th day of November, A. D. 1859.

D. F. CAMERON, N. P.

Let an injunction issue according to the prayer of the foregoing bill.

Nov. 12, 1857.

M. E. HOLLISTER Judge, &c.

3. On the 13th day of November, A. D. 1857, a summons issued out of and under the seal of said court in the words and figures following, to wit:

STATE OF ILLINOIS, }
La Salle County. } ss.

The people of the state of Illinois, to the Sheriff of La Salle County, greeting:

We command you to summon George M. Newton, George Fetzer, and Enos Weld, if to be found in your county, personally to be and appear before the Circuit Court of said county, on the first day of the next term thereof, to be holden at the Court House in Ottawa, on the first Monday of February next, to answer to a certain bill of complaint filed in our said Circuit Court, on the chancery side thereof, against them by Asa Holdridge, and have you then and there this writ, and make return thereon in what manner you execute the same.

[SEAL.] Witness John F. Nash, Clerk of said Court, and the seal of said Court at Ottawa, this 13th day of November, A. D. 1857.

JOHN F. NASH Clerk.

Which summons was returned by the sheriff of said La Salle Co.,

on the 30th January, 1858, with an endorsement thereon in the words and figures following, to wit:

14. "Served by leaving a true copy of this writ with Catherine Fetzer, wife of George Fetzer, a white person above the age of ten years, and a member of the family, at his usual place of abode, informing her of the contents thereof, this 26th day of November, 1857. Also served by reading said writ to George M. Newton and delivering to him a copy thereof this 12th day of December 1857. Enos Weld not found.

E. L. WATERMAN, Sheriff,
per A. E. GROW, Deputy.

On the 13th November, 1857, a writ of injunction issued out of and under the seal of said court in the words and figures following, to wit:

STATE OF ILLINOIS, } ss.
La Salle County. }

The people of the state of Illinois, to George M. Newton, George Fetzer, and Enos Weld commissioners of highways of the town of Vermillion, greeting:

Whereas, Asa Holdridge has lately exhibited his bill of complaint to the judge of the Circuit Court in and for the County and State aforesaid, on the chancery side thereof, against you the said Newton, Fetzer and Weld defendants, wherein among other things it is alleged that you are attempting to open a road over and through the North-west quarter of section thirty, in the town of Vermillion, in said County and State, said land belonging to said Holdridge.

15. We, therefore, in consideration of the premises, do strictly enjoin and command you that the said George M. Newton, Geo. Fetzer, and Enos Weld commissioners of highways as aforesaid, and your successors in office, that you, and each of you, do absolutely and entirely desist from proceeding to open the road aforesaid, across the said land until you, and each of you, shall appear and fully answer the complainants bill, and said Court make other order to the contrary.

Hereof fail not under the penalty of what the law directs.

To the Sheriff of said County to execute. Witness
[SEAL.] John F. Nash, Clerk of said Court, and the seal of said Court at Ottawa, this 13th day of November, A. D. 1857.

JOHN F. NASH, Clerk.

Which writ of injunction was returned by the sheriff of said County with an endorsment thereon, in the words and figures following, to wit:

"Served by leaving a true copy of this writ with Catherine

Page of Rec. Fetzner, wife of said George Fetzner, a white person above the age of ten years, and member of the family, at his usual place of abode, informing her of the contents thereof, this 26th day of November, 1857. Also on the 12th day of December, 1857.—Served by reading to and *delivery* a copy of said writ *with* Geo. M. Newton.

Enos Weld not found.

E. L. WATERMAN Sheriff.

Per A. E. GROW Deputy."

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

"ASA HOLDRIDGE,
vs.
GEORGE M. NEWTON *et als.* } *In Chancery.*

The defendants by Bushnell & Gray their solicitors, move the Court to dissolve the injunction herein."

And afterwards, to wit: On Saturday Feb. 27th, 1858, the same being one of the days of the Feb. term of said Court, for said year, another order was entered of record in said cause in the words and figures following, to wit;

"ASA HOLDRIDGE,
vs.
GEO. M. NEWTON *et als.* } *In Chancery.*

This day the complainant comes by Glover & Cook, his solicitors, and the defendants by Bushnell & Gray, their solicitors; and by agreement of parties it is ordered that this cause be heard at Chambers in vacation, and the orders or decree entered of record *nunc pro tunc*."

On the 9th day of February, 1859, the defendants file their demurrer to complainant's bill, in the words and figures following, to wit:

STATE OF ILLINOIS, } *Circuit Court thereof in Chancery.*
La Salle County. } *To February term, A. D. 1858.*

17. The demurrer of George M. Newton, George Fetzner and Enos Weld, commissioners of highways of the town of Vermillion, defendants to the bill of complaint of Asa Holdridge, complainant:

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in and by the said bill set forth and complained of to be true, in manner and form as the same are therein set forth and alleged, say they are advised by their counsel that there is no matter or thing in the said bill contained good and sufficient in law to call these defendants

in question in this honorable Court for the same, but that there is good cause of demurrer thereunto, and, therefore, this defendant saith that the complainant's said bill, in case the allegations therein contained were true, which these defendants do in no sort admit, contains not any matter of equity wherein this Court can ground any decree, or give the complainant any relief or assistance as against these defendants. Wherefore and for divers other errors and imperfections in the said bill appearing, these defendants do demur in law thereunto, and humbly demand the judgment of this honorable Court, whether they shall be compelled to put in any further or other answer to the said bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf, most wrongfully sustained.

BUSHNELL & GRAY,

Solicitors for Defendants.

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

"ASA HOLDRIDGE,

vs.

GEORGE M. NEWTON, GEORGE FETZER } *In Chancery.*
and ENOS WELD, Commissioners of highways }
of the town of Vermillion.

19. It appearing to the Court that the said defendants, George M. Newton, George Fetzer and Enos Weld, were duly served with process of summons in this cause more than ten days before the present term of this Court, and it further appearing to the Court that said defendants have filed herein a demurrer to said bill, this day this cause came on to be heard upon the bill of said complainant and the demurrer of said defendants, and it appearing to the Court that an injunction had been issued out of and under the seal of this Court, by which said injunction the said defendants, commissioners of highways of the town of Vermillion, and their successors in office, were enjoined and commanded that they, and each of them, do absolutely and entirely desist from proceeding to open a road across the North-west quarter of Section No. thirty, (30,) in said town of Vermillion, until they and each of them do appear and fully answer the said complainant's bill, and the said Court make other order to the contrary; and it further appearing to the Court that said complainant was and is the owner of the land above designated and described, and it further appearing to the Court that the matters and things in the said bill contained are good and sufficient in law to call the said defendants in question in this Court for the same, and that there is not good cause of demurrer thereunto, and that there is in said bill matters of equity wherein the Court can ground a decree and give the said complainant relief and assis-

Page of Rec. tance against the said defendants; the said demurrer, of said defendants to said bill is overruled, and the said defendants having been ordered by rule of this Court to file their answer herein instanter, and the said defendant entirely failed to file any answer herein in pursuance of said rule, but made default, and said bill is ordered to be taken for confessed. And it is, therefore, hereby ordered, adjudged, and decreed that the said injunction herein before issued be made perpetual, and that said defendants, commissioners of the town of Vermillion aforesaid, and their successors in office be forever restrained from proceeding in any manner to open the said road over, across, or through the said land above described, viz: "The North-west quarter of section number thirty, (30,) in the town of Vermillion."

Assignment of Errors.

21. And now comes the said George M. Newton, George Fetzer and Enos Weld, plaintiffs in error, and say, that in the record and proceeding there is manifest error, and that the decree aforesaid should be wholly reversed therefor, and shows to the Court here, the following errors, viz:

1st. The Court below erred in overruling the motion of the plaintiffs in error, to dismiss the bill of complaint of the defendants in error, for want of equity in said bill, and to dissolve said injunction for the same cause.

2d. The Court below erred in overruling the demurrer of the plaintiffs in error to said bill of complaint.

3d. And for other errors.

OLIVER C. GRAY,
Attorney for plaintiffs in error.

No. 114.
Road Commissioners
of the town of Vermillion
vs -
Asa Coldridge
Master of Record

Filed Apr 27. 1860

L. Delamater

Clk

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