No. 12924

Supreme Court of Illinois

Newton et al

VS.

Holdridge

71641

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.

2.

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, La Salle County,

And Circuit Court thereof, 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 showeth 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, \ 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:

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.

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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Page of Rec

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.

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 apprisement 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 Comissioners 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.

8.

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 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 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.

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.

6

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 sald 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 remidiless 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

11

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 foregeing bill.

Nov. 12, 1857.

M. E. HOLLISTER Judge, &c.

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:

"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 Covnty. \\
\$\ 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.

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.

[Seal.] 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, 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

14

Page of Rec. Fetzer, wife of said George Fetzer, 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."

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. $rac{}{}$ 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. $rac{}{}$ 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-tune."

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.

The demurrer of George M. Newton, George Fetzer 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

16.

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.

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 Nort-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.

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.

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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, La Salle County,

And Circuit Court thereof, 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 showeth 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, \ 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

2:

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:

Commencing at or near the South West corner of the North 3. 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.

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

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.

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 apprisement 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,

9

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 Comissioners 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-

8

way 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 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.

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.

6

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 sald 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 remidiless 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

11.

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.

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 foregeing bill.

Nov. 12, 1857.

M. E. HOLLISTER Judge, &c.

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 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:

"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 Covnty. } 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.

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 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

14.

Page of Rec. Fetzer, wife of said George Fetzer, 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."

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:

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. $rac{vs.}{}$ 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.

The demurrer of George M. Newton, George Fetzer 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

16].

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.

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.

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 Nort-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.

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

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.

Court here, the following errors, viz:

OLIVER C. GRAY,
Attorney for plaintiffs in error.

Nº 114 Road Jonning from of the time of Wenniellion Hostiach of Precia File April 27.1860 Likeland Elis

Nº 114 Road Jonning from of the time of Wenniellion Hostiach of Precia File April 27.1860 Likeland Elis

State of Illeriois. Supreme Cerist 3 9 Division 4. George M. Newton, George Fetzer and Enos Ireld, Conof the Tenn of Hermillion asa Holdridge Abstract of Record.

State of Allinois of Pleas before the Honorable La Salle County of Madison 6. Hollister Circuit Sudge for the Ninth Judicial District in Said State and the Presiding Judge. of the La Salle County Corcuit Court, at a Serno of Said Court commenced and held at the Court House in Offawa in Said County on the first Monday in the month of February, the Same being the foist day of February in the year of our Lord One Thousand Eight Stundred and fifty Eight and of the Andefornamee of the United States of Americal the Eighty Second The How Madesin 6. Hollister Fresiding Judge...

John J. Wash. clerk

Ero L. Waterman Sheriff

Oi 6. Gray States attorney, pro tem Be it remembered that on the 13 to day of Novem-ber a D. 1857 in Bill in Chancery, was filed in the blerk's office of the Circuit Court, in the words and figures following, to wit; State of Illinois 38. and Corquit Court there of La Salle County 3 To February Jerm a 2. 1858. of the Stonorable Madison E. Hollister Judge of the get Sudicial Circuit of Said State and setting as Chanceller: Complaining Showeth with your Monor your Orator asa Holdridge of said County:

according to said survey and the folat hereunto annexed and made pair of this order which is herely declared to be a public highway four rods wide, the above described line being the centre thereof, and that half of the wealth of Said road runs one hundred and Sixty (160) rods over lands owned by John J. Baker, Falling two 2 acres of land, and one half over land owned by asa Holdridge taking two acres, one hundred and Lixty (160) rods and Eighty rodo on land owned by Joseph J. Bul--lock and heirs of to & Bullock taking One a cre, and Eighty 80 rods over land of f. O. Dayless Fasting one acre, and one hundred and Sixty (160) rods on land owned by butting black Faking his a cres -

mussiness have hereunto bet our hands this 3d.

day of February a.D. 1859

Stérau Steer 3 Commissioners Ano. Rider 3 Stighways.

Mude and filed with the Join Clerk of Said town an order in Substances as follows ",

Tours an order in Substances as follows! The West the undereigned Commissioners of Highways of the Town of Vermellins in the Country of La Salle having on the fifteenth (B) day of november a.D. 1856 - whose due afficient made to us fir that purpose laid out a road as follows: Commencing on the line between the Journs of Vermellins and Edew of the South West Corner of the north West quarter of Section thirty (30) in Said hours of Vermelling themes running East three hundred and Eighten themes running East three hundred and Eighten

(318) rodo to the South East corner of the north East Quarter of Said Section thirty intersecting, with a road running East and West through Se chow twenty nine (29) in Said Tours, said road running East and West through the center of Said Section thirty i and certain owners of lands Through which Said roud fassess not having released all claim to domages by reason of laying out and opening of the same, and not being able to agree as to the amount of such damages, we for ceeded to assess the Same, what we deemed just and right to each individual claimant with which we could not agree, Falling into account and estimating the adrantlegs and benefits the road with confer or the claimants for the Same, as well as the dis advantages, and have assessed the damages of Each owner, and claim aut as follows; To Usa It oldridge on the North West quarter of Section thirty in said town at one hundred

of Section thirty in said toins at one hundred and thirty dollars, leving Enclosed lands and to Soseph I. Bullick and heirs of L. Bullick and heirs of L. Bullick on the West half of the South West quantity of Said Sections thirty, sixty five dollars, and to f. b. Dayless on the East half of Said South West quarter sixty five dollars, all being enclosed lands and to butting blank 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 Ano & Baker, on the north East Quarter of the Same Section who claimed damages, we have estimated the advantages of Said road Expense who claimed damages, we have estimated the advantages of Said road Equal to any and all damages,

Lands this 3d day of February 1859 —

Sohn Bider 3 Highways

Aud your orator Shous to your Honor that he had no notice in any mounter of the time and Tolace 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 theno 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 a cross which said road will run if laid out according to the order afereraid, and if said road, be laid out across said land it will occasion a damage to your Orator in at least the sum of four hundred of February 1854 Your Orator together with Facob. C. Burges, Joseph J. Bullock John G. Bascer, and Cutting Clark, who were thew and there owners of land in Said tours a cross which said road will run if the Same Shale be opened as provided in Said order took an appeal from the order oforesaid of Said Commissioners to Lorgenzo Loland Supervisor of the Jour of Otrana, William Faul Superin-Sor of the low of Salishing and John Gray Supervisor of the town of La Salle all of the Country of La Salle all of the Country of La Salle and State of Allinois, which appread was and is in Substance as follows:

of Ottawa, William Paul Supervisor of the Tour Town of Salisbury and to John Gray Supervision of the Tound of La Sallo him the County of La Sallo and State of Allinois. The undersigned Asa Holdridge, Joseph J. Bullock, and heir of L. L. Bullock, J. C. Durgess, butting Clark and John G. Baster JEEling themselves, by two orders made by the Commissioners of Highways of the hours of Vermellion in Said County of Las 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 al 185% in laying out a highway in Said Four and assessing damages thereon do hereby apopeal to you from such orders, a copy of which orders are hereto amexed, in and by which the proceedings and determinations of Said Commission ers will more fully appear. The grounds on which this appeal is made are, Hust; That said road is not necessary. Second: That Said Commissioners proceed ed ellegally in laying out said road and in assessing damages therein as Third; That the damages assessed are in a dequate 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 vereise Entirely the determination of Said Commissioners in the premise. Dated this 1st day of February

Asa Holdridge Jacob C. Burgess Joseph J. Ballock John G. Baker Culting 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 thereufeno fix upon a time and place for hearing said appeal, said time being some day in aforil a 21857. the particular day your orator does not now re collect, at a school house in said tours, and your orator Shows that notice of the time and folace of hearing Said appeal So fixed as afriesaid was given to said of the fetitioners for Said road at the time and in the manner forwided 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 Super users, to wit the said John Gray attended and Said Supervisor Gray, therupon Said, that he would adjourn the hearing of Said appeal untill the 3 d Monday in June a 21857 at the Same place, and on the day last aforesaid, home of said Supervisors appreared but the Said John Gray who said he would adjourn the hearing of said appeal untill the 6th day of July 1859 - and on said 6th day of July none of Said Supervisors appeared and no hove eedings were had touching said appeal Your Orator further shows to your Honor that on the 22 day of July 1857 - the said Losengo Loland and the said John Gray met at the folace aforesaid and associated with themselves Joel It. Armstrong Supervisor of the Journ of Deer Park, and said Supervisors there and there made and filed with the town clark of said town of vermillion, an order which was in Substance as follows;

State of Allinois, Sf. Whereas the preisons who are the appellants in the annexed written appeal to Super--visors, ded appear 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 meritioned in the aunexed copy of the order of Said Commissioners, a copy of which order as well as all the paper in relation to said appeal hereunto annexed form a part of this order, and whereas in Coursequence of an adjournment said appeal has not hetherto been heard and disposed of, and whereas on the tuenty Second day of July A.D. 1854 - in pursuance of forcious notice duly givero, 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 thew goel It. amstrong, Supervisor of the Town of Deer Park, and 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 he and Said forosts and whose Signature. are hereto attached, being fully advised of the premises, do herely order up 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 - day of Buly anssy Leland Supervisor of the Journ of Ottawa — John Gray Supervisor of the town of Lasalle J. W. Armstrong Supervisor of the Journ of Deer Park.

And Your Orator Shows to your Honor that he had no notice in any way of the saids meeting of the Supervisors when they made the weard or of introducing his evidence before them.

Und your orator charges, that as he is ad--used by coursel & 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 establish ment of said road nor of the action of the Commission en afaresaid, in assessing, damages. aforesaid; at the time when such action was had, nor of the time & place when and where said Sufferies or passed upon the appeal of your Orator & others as aforesaid, all of which questions affected the rights of your Orator, and women which, he has had no ofsportunity to be heard or to introduce his testimony in relation thereto,

Secree M. Newton, George Felzer & Enos Weld are now Commissioners of highways for said tours of Vernullion, and they claim that that they have a legal right by virtue of the Jero ceedings aforesaid, to Jave eed to open the ward 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 Vermellins threaten and give out in Speeches that they will proceeds to open Said road a cross 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 of this Courts

all of which is against Equity and good conscience, and lends to the manifest injury of your Orator

In as much therefore is in danger of a Sustaining injury and is remidiles except in Equity where meathers of this Sort are property Cognizable and relievable. Your Orator Jorays that Said George M. Newton, George Felger and Enos Weld, be made fourthe defendant

To this bill and Summined 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 heaving of this bill it may be decreed by this Court that said defendants and their successers in office be restrained from ofpening the road aforesaid, a cross the land of Your Orator afore-Said, until the Said road Shall have been established and the damage Sustained thereby ly your orator be fixed in manner forweded by law or for Such other or further relief, as to your Orator Shall Seem meet and as to Equity Shall apportain , Glover & Cook. Solicitors for Complainant

Lat Salle County 3th Asa Holdridge, being first duly Swow, Saith on oath, that the matter stated in the foregoing bell 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 Much ledge, information and belief.

Subseriled & Sumo (Asa Holdridge to before me this 11 days of november an 1859

D. F. Cameron n. P.

Let an Injunction issue according to the prayer of the foregoing Bill Mo 12. 1859 Ell Mollister Judgese

issued out of and under the Seal of Said lout in the words and figures following, to evit; State of Allinis & The People of the state La Salle County & of Allinois; Jo the Sheriff of Lat Salle County, Greeting: We Command you to Summon George M. Neutro, George Felzer, and Enus Weld, if to be found in your County, personally to be and appear before the fineuit bourt of Said County, on the first day of the next time thereof, to be holder at the Court House in Ottawa, on the first Monday of February next; to answer to a certain bell of Complaint feled in our Said Circuit Court on the Chan-cery Side there of, against them by Usa Holdinges, land have you there and there this wit, and make return there on in what manner you Executo the Same.

Witness John F. Nash, Clerk of Said Court, and the Seal of Said Court this 13 to day of November a.D. 1859 J. F. Nash Clerk, Which Summers was returned by the sheriff of said Lasalle County, on the 30th Dany 1858, with an endersement therew in the words and figures following, to wit; "Served by leaving a true copy of this writ with Catharine Helger, wife of Deorge Felger, a white person above the age of lew years, and a member of the family, at his usual place

of abode, informing her of the contents thereof, this 26 th day of November 1859. Also Served by reading Said with to Berge M. Neutow and delivering to him a copy thereof this 12th day of December 1859. Enos Weld not found Shiff for a. E. From Shiff On the 18th 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 Almois of The People of the State Las Salle County & of Allinois to Beorge Helzer and Enas Weld Commissioners of Highways of the tour of Vermilling, Greeting; Whereas Asa Holdridge has lately Exhibited his bile of com-plaint to the Judge of the Circuit Court in and for the County and State aforesaid, on the Obcurreny So'de thereof against you the Said Neuton, Fetzer and Weld defendants, wherein aming other things it is alleged that you are attempting to open a road over and Through the North West quarter of Section thirty in State, said land belonging to said Holdridge We, Therefore in consideration of the premises, do Strictly Enjoin and command. you that the Said Deorge M. Meutino, George Fetzer, and Enos Treed Commissioners of Highways as aforesaid, and your buccessus

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in office, that you and each of you do absobutely and Entirely desist from proceeding to ofen the road aforeraid, a cross the said laws until you, and each of you shall appear and fully answer, the complainants bill, and Saw Court make other order to the contrary. Stereof fail not under the fainalty of what the Law. directo. To the Sheriff of Said Country to execute.

Sund Court and the Seal of Said Court at Olland this 13th day of Animber as J. F. Mash clast,

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

"Served by leaving a true copy of this with with batharine Helzer, wife of Said Beorge Hetzer, a white person above the age of live years, and member of the family, at his usual place of abode, informing her of the contents thereof, this 26th day of Mor ember, 1859, also on the 120 day of December 1859, Served by reading to and delivery a copy of said writ detho bearfe M. newton Onos Weld not found.

6. Lo Haterman Shiff per a. E. Grow Depy

And afterwards, to wit, on Monday February 220 1858, the Same being one of the days of the February Serve of Said Court for said year, an order was Entered of records in Said cause in the words and figures following, to wit; Seage Mi Newton Euls 3 In Chancery,
Seage Mi Newton Euls 3 The defende Solicities; more the court to dissolve the Injunctions herein " And afterwards, to wet; on Saturday Hely 27" Term of Said Court, for Said year, another order was entired of record in Said cause in the words and figures, following, to est; Asa Holdridge George M. Neutro et al 3 In Chan cery,
This day Blover Hook his Solicitus, and the defendants by Bushnell Abray 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 for time, On the 9th day of February, 1859, the Defend-auto file their demunrer to complain anto Bell in the words and figures following, to wit; State of Illinois & Corcuit Court Thereof, in Las Sall County 3 Chancery.

The domurrer of George M. Neutow, George Hetzer & Enso Held, Commissioners of Highways of the Jour of Vermellino, defendants, to the bele of Complaint of Asa Holdridge, complainant; These defendants, by protestation, not confersing or acknowledging all or any of the matters or things in and by the Said Bill Set forth, and Compolained of to be true, in manner & form as the Same are therein set forth & alleged, say they are advised by their Coursel that there is no malter or thing in the Said Bill contained, good & Suf--ficient in law to call these defendants in questions in this Honorable Court for the Same, but that there is good cause of demunrer thereunto, and therefore this defendant Saith, that the complainants said Bill, in case the allegations therein contained were true, which these defendants do in no Sort admit, contains not any matter of Equity wherein this bout can ground any decree, or give the complainant any relief or assistance, as against these defendant; Wherefore ofer duess other errors & imperfections, in the Said Bile 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 auswer to the said Bill ! and humbly pray to be hence dismussed with their reason able costs, in this behalf, most aring fully Sustained. Dustruell & Tray Solicitors for defendants, or

And afterwards to cut, on Juesday December 14, 1858, the Same being one of the days of the Movember Term of said bout for said year a decree was entered of record in Said cause in the words and Jigures following, to wit; As a Holdridge 3 on Chancery Searge M. Newton 3 Veld - Commissioners of Highways of the Jour of Vermillion - It appearing h It appearing to the lough, that the Said defendants George M. Newton deorge Fetzer, & Enos Weld were duly served with process of Summons in this cause more than two days before the present terms of this bout, and it further appearing to the Court, that said defend--auts have felet herein a demurrer to Said Bill, this day this cause came on to be heard upon the bile of Said complainant, and the demunser of said defendants, and it appearing to the Court x that an Injunction had been usined out of and Junction, the Said defendants, commissioners of Stighnays of the Journ of Vermillino and their Successors in office were enjoined and commanded that they and each of them do absolutely and the north West quarter of Section no thirty 30 in Said lower of Vermillino, until they and each of Theno do appear and fully answer the said com--plainants Bill, and the Said bourt 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 desembed, and it further apprearing 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 de-- muner theres, and that there is in said Bell matters of Equity wherein the bourt can ground a decree and give the Said Complainant relief and assistance against the Said defendant; the Said demunrer, of Said defendants to said bill is oversuled, and the indefendants 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, herely ordered, adjudged and decreed that the Said Onjunction herein before issued, be made perpetual, and that Said defendants, commissioners of the found Ver-- milleon aforesaid and their Successors in office be forever restrained from proceeding in any manner to ofen the said Road over, derass or through the Faid land above des ented, ry; The north Werk quarter of Section number Thirty (30) in the Journ of Vermillion"

State of Ollinis 3 I John A Noch leech of the Cricies Salle Ceruf & Blend in and for mice and acced State che heref cutify that the liter and Jungoing. Comprises a temo, full, profest and complete searce of all the papers on file and all the orders of the counts in the bride cause of the Ara Heldridge no Road Commissions of the time of himillion as the Sam appear of went and enfele in my office In Lestimmy When Than humb at my hand and the seal of said Count at Cottens this 14 our of April 1889. J. A North Rech Holdridge us by better state

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assignment of Errors. And now come the Laid George m. Newton; George Felzer and onos weld, plaintiff hi error, and day, What in the hecord and proceedings wonders, there is manifest enor, and that the decree aforeraid showed be wholly reversed therefor, and shows to the Court here the following lovors, vig: 1 the Court below loved in overraling the motion of the plantiff, a dovor, to desmiss the Porce of Complaint of the des fendants in error, for want of equily in Sand Bile, and to dessolve tand tryune? him for the Jame cause. 27 The Court below evved in overraleng the demune of the plaints willow to said Bin of Complaint. 32 And for other criss. Oliver b. Eving, ally per plifs in corn.

Road lemmismus of 4) Asa Holdridge Record Flu March 23. 1860 Leland Clink Fees \$ 8, 0 facio

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which said judgments we have caused to be broughts into our Supreme
Court of the Plate of Ollinois, at Otlawa, before the fustices thereof,
Court of the State of Illinois, at Ottawa, before the fustices thereof, to correct the errors in the same, in due form and manner, according to law:
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STATE OF ILLINOIS, ss. The People of the State of Illinois,
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114 La Salu George M. Newtow Exal Asa Holdridge SCIRE FACIAS. L. Leland. 20 m 100 0, 6. gray alty for Phys, in Eur Bes 8121 60

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, La Salle County, And Circuit Court thereof, 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 showeth 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, Ss. Town of Vermillion,

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 memtioned 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.

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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, \ \ fof 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.

6

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 apprisement 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 Comissioners 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 lay-

ing 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.

8.

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 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 3d Monday in June, Λ . 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.

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.

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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

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 sald 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 remidiless 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

12.

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.

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 foregeing bill. Nov. 12, 1857.

M. E. HOLLISTER Judge, &c.

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.

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 of said Court at Ottawa, this 13th day of No-SEAL. vember, 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:

"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 Covnty. } 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.

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.

[Seal,] 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, 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. Fetzer, wife of said George Fetzer, 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."

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,

ps.

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.

The demurrer of George M. Newton, George Fetzer 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

16.

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.

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.

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 Nort-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.

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:

Ist. 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. Mad Emmillion

of the town of Commillion

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