

No. 14621

Supreme Court of Illinois

Clifford

vs.

Town of Eagle

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 145

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

1864

LaSalle County Court December Term 1863
State of Illinois }

LaSalle County }

Record of the Proceedings,
orders, judgments and decrees held and taken
in and before the County Court in and for
the County of LaSalle and State of Illinois
at a regular term thereof, commenced and held
at the Court House in Ottawa on Monday the
seventh day of December in the year of our
Lord Eighteen hundred and Sixty three, and
of the Independence of the United States
the Eighty Eighth.

Court met pursuant to Law
Present the Hon. P. Kimball Second Judge
J. H. Raymond Clerk
W. R. Mulligan Sheriff

Be it reme[m]bered that on the 7th day
of September a transcript was filed in
the office of the Clerk of said County Court
which Transcript is in the words and figures
following to wit -

State of Illinois }
LaSalle County }

In Justice Court before
O. Leavens Justice LaSalle County

Town of Eagle

vs

Demand \$28⁰⁰

Charles Clifford

1863	July 29 th	Summons issued returnable the
Plaintiffs costs		5 of August next at 1. O'clock P.M., and
costs for		delivered Bryant Hart Constable to serve,
sum	25	Three Subpoenas on the part of the Plaintiff
3 Subpoenas	75	issued
Doct 3	20	August, 5 th Summons returned by Constable
Securing 4 wit.	20	Hart personally served by reaching to the
Entry jud Debt	25	defendant July 30 th 1863, Const. fees \$1.15
" " Costs	25	The Subpoenas of the Pltff returned by Const.
" Sect	10	B. Hart. Served by reaching to the persons
Const fees (Hart)	2.00	therein named. Const. fees, \$7.05
on Sumd	1.15	August 5 th 1863. at 1. O'clock P.M. parties
" Subp ^s	7.35	appear. Plaintiff by E. S. Leland its attorney
4 wit fees	3.00	Defendant makes application for continuance,
appeal fees	1.50	application, denied - Defendant moves
paid by Def ^t		to quash Summons for want of statement
		of the action, motion overruled - Plaintiff's
		Claims of Defendant \$28 ⁰⁰ Penalty for
		obstructing highway, Defendant denies
		Plaintiff's claims, Petition for opening
		road offered in evidence by Plaintiff,
		objected by defendant, objection overruled,
		John Kearns, A. P. Berry, & Thomas Clark
		Sworn and examined as witnesses on
		the part of the plaintiff - Report of

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Supervisors laying out and establishing road offered in evidence by plaintiff objected to by defendant objection overruled, Notice to open road and copy of notice to remove obstructions offered in evidence - John Kearns, Thomas Clark, Charles Hoffman, Thomas Nodcutt, Jeffry Louness and A. P. Berry examined and sworn -

Upon hearing the evidence in the case it is considered by the Court that the said Plaintiff have and recover of the said defendant the sum of twenty eight dollars for its demand against the said defendant also the sum of thirteen dollars and twenty cents for the costs of suit expended herein and that it have execution therefor,

State of Illinois }
La Salle County } 6

I, A. Leaven, a justice of the peace in and for said County do hereby certify that the foregoing transcript and the papers herewith, contain a full & perfect statement of all the proceedings before me in said cause,

In witness whereof I have hereunto set my hand this 21st day of August A.D. 1863

A. Leaven, J.P.

5
Cent
U.S.
Stamp

"Endorsed" Filed Sept. 7th 1863

S. W. Raymond Clerk

"W. S. Easton Deputy"

4 Be it also remembered that on the 16th day of November 1863. a Summons was issued by the Clerk of said Court, in said Cause which Summons is in the words and figures following to wit —

State of Illinois }
LaSalle County } SS

} The people of the State of Illinois
To the Sheriff of said County — Greeting
We command you to Summon the Town of
Eagle if to be found in your County, personally
to be and appear before the County Court
of said County on the first day of the next
term thereof, to be holden at the Court House
in Ottawa on the seventh day of December
next to prosecute their suit, which they
~~instituted~~ instituted against Charles Clifford
and recovered judgment before C. Levens
a justice of the peace of said County, on the 5th
day of August 1863, for the sum of Twenty Eight
dollars besides costs, from which said judg-
ment Charles Clifford has taken an appeal
to the County Court of said County, and further
to do and perform whatever said Court may
then and there decide in the premises,
And have you then and there this writ

Witness Samuel W. Raymond Clerk of said Court and
the Seal of said Court, at Ottawa, this 16th day of
November A.D. 1863 S.W. Raymond Clerk

Endorsed on back of Summons - as follows -

State of Illinois }
La Salle County }

I have duly executed the within writ by reading the same to Anthony Barry Supervisor of the Town of Eagle and also by reading to Charles Hoffmann Clerk of the Town of Eagle, and delivering each of them a true copy thereof on this 24th day of November A.D. 1863.

W. R. Milligan Sheriff
per J. T. Brush Deputy

for Service & Ret	1.10
Mileage 40	2.00
Copys 2	1.00
	<u>\$4.10</u>

Filed Dec^r 5th 1863. J. W. Raymond Clerk

Be it remembered that on the seventh day of December 1863 the same being the first day of said Term of said Court the following order was made and entered of record in said Cause to wit,

Town of Eagle }
vs } appeal
Charles Clifford }

This day comes the Town of Eagle by Seland and Blanchard its attorneys, and defendant by Gray, Avery & Bushnell his attorneys, who enter their motion for a continuance

4 herein, which motion after hearing the argu-
ments of counsel, and affidavits filed. is
Sustained, and the cause continued at the
costs of the defendant,

It is therefore considered by the Court that said Plaintiff have and recover of said defendant his Costs and Charges by him at this term expended and that he have Execution therefor.

Be it also remembered that on the seventh day of March A.D. 1864, the same being the first day of the March term A.D. 1864 of said County Court, the following order was made and entered of record in said Court, to wit;

Town of Eagle

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Charles Clifford

appeal

3 This day comes the defend-
-dant by Gray. Avery & Brinkell his attorneys
and enter their motion to dismiss this suit
for want of a complaint.

Be it also further remembered that on the 15th day of March 1864 the same being one of the days of said term of said Court the following orders were made and entered of Record in said Court, to wit;

Iron of Eagle

vs

vs

Charles Clifford

} appeal.

This day again comes the Plaintiff by Deland & Blane & their attorneys and the defendant by Gray, Avery & Bushnell his attorneys, and after hearing the arguments of Counsel on the motion heretofore entered to dismiss, the Court overruled said motion, to which ruling of the Court the defendant by his said attorneys then and there, excepted, and by agreement of said parties the intervention of a Jury is waived, and this cause submitted to the Court for trial, and the Court after hearing the ~~proofs~~ evidence and arguments of Counsel and being fully advised finds the issues in favor of the Plaintiff and that the defendant owes to and unlawfully detains from the plaintiff the sum of twenty eight dollars,

Whereupon the defendant by his said attorneys enter their motion for a new trial herein, which motion is overruled by the Court.

It is therefore considered by the Court that said Plaintiff have and recover of said defendant said sum of twenty eight dollars debt, together with its costs and charges in and about the prosecution of this suit expended by said plaintiff and that it have execution therefor

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Town of Eagle

vs

Charles Clifford

} appeal.

This day again comes the Plaintiff by Deland & Blackman its attorneys and the defendant by Gray, Avery & Bushnell his attorneys, and after hearing the arguments of Counsel on the motion heretofore entered to dismiss, the Court overuled said motion, to which ruling of the Court the defendant by his said attorneys then and there, excepted, and by agreement of said parties the intervention of a Jury is waived, and this cause submitted to the Court for trial, and the Court after hearing the ~~proofs~~ evidence and arguments of Counsel and being fully advised finds the issues in favor of the Plaintiff and that the defendant owes to and unlawfully detains from the plaintiff the sum of twenty eight dollars,

Whereupon the defendant by his said attorneys enter their motion for a new trial herein, which motion is overuled by the Court.

It is therefore considered by the Court that said Plaintiff have and recover of said defendant said sum of twenty eight dollars debt, together with its costs and charges in and about the prosecution of this suit expended by said plaintiff and that it have execution therefor

Whereupon Said defendant by his Said attorneys pray an appeal herein, which is allowed upon his entering into a bond in the penal sum of one thousand dollars with Julius Avery as security, Said bond and bill of Exceptions to be filed within twenty days from this date

Be it also remembered that on the 15th day of March 1864 a bill of Exceptions in Said Cause was filed in Said Court which bill of Exceptions is in the words and figures following, to wit;

State of Illinois } County Court thereof
La Salle County } To March Term thereof A.D. 1864

Town of Eagle }
vs }
Charles Clifford }

Be it remembered that on the trial of the above entitled Cause the plaintiff to maintain the issue on its part read in evidence an agreement & notice in words and figures as follows, viz;

Town of Eagle }
vs } County Court of La Salle
Clifford } County, Dec. Term 1863
It is conceded for

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the purposes of this trial that the petition for the road in controversy was posted up according to law, and that the signers were legal voters residing within three miles of the route - That the defendant was present before the Supervisors to whom an appeal had been taken & had a hearing, that the damages allowed by the Supervisors were tendered to & refused by Clifford -

That 60 days notice was duly given to Clifford to open his enclosure, and that the Commissioners opened the road after the notice expired by throwing down the fence & that Clifford replaced the fence in the supposed road, and after-wards Clifford received a copy of the notice hereto attached on the 6th day of June 1863 and did not remove said fence,

Wm. Avery & Bushnell for
Clifford.

Leaard & Blanchard

To Charles Clifford of the Town of Eagle
La Salle County Illinois.

You are hereby notified that your fence along the East line of the North East quarter of Section four teen in Township thirty one North of Range two East of the third P.M., is in the public road which commences at the North west corner

quarter of Section one and terminates at the South west corner of Section thirty six of said Town & range, Unless you shall remove the same in a reasonable time say by the first day of July next, an action in the name of the Township of Eagle will be commenced against you for the penalty of one dollar a day provided in Sec 94 of the Township Law,

Yours truly J. G. Black, overseer
June 6th 1863 of Highways

The Plaintiff introduced in evidence a petition in words as follows - viz;

To the Commissioners of Highways of the Town of Eagle LaSalle Co. The undersigned who are liable to be assessed for road labor in said Town respectfully represent, to your body, that you would cause the following described route to be laid, to wit; Commencing at the N.W. corner of Sec, 1, T31, R2 & 3^d P.M., thence South to the S.W. corner of Sec, 36, T31, R2, & 3^d P.M., The undersigned therefore respectfully requests that you will cause said route to be surveyed and such proceedings to be had as is by law in such case provided,

Dated at Eagle the 11th day of Feb 1862

The proposed road runs thro' the following described land -

on the East Side of the 2. owners. A. Perkins & J. H. Ruder

on the West side of Sec 1, owners. H. Howard & E. B. Vandenburg

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" " " " 12 " H. Devine & J. Wakie

" " East " " 11 " Wm Ruess

" " " " 14 " Charles Clifford

" " West " " 13 " Same

" " " " 24 " Luke Connep

" " East " " 23 " Jas G. MacLay

" " " " 26 " Same

" " West " " 25 " not Entered

" " " " 30 " " "

" " East " " 35 all of the above lands in T31, R2, E3P4

Nathan Appleton, Luke Connep, Eden B. Vandenburg
Peter J. Vandenburg, Frederick Weller, H. Devine George Kiser
Henry Fisher, John Gorman, John Ruess,
Anthony P. Berry, Patrick Berry, Jeremiah Rider
Thos Prendergast, James Prendergast, Jim. Gannon
Mick Berry, Robert Connep, Thomas Howard,
Thomas Haversty, Michael Prendergast, Timothy
Coffee, Patrick Prendergast, John Prendergast,

endorsed on Back; " the the Commissioners
" of Highways of the Town of Eagle have deter-
" mined not to grant the prayer of the within
" Petitioners

E. M. Galleney } Commissioners
E. J. Narbonne }
Alph Goff } Highways

The Plaintiff then offered in evidence the

the record of the proceedings of the Supervisors on an appeal from the determination of the Commissioners of highways, to the introduction of which the defendant then & there objected on the following grounds -

- 1st There is no description of a road so far as relates to the direction, distance or termination of the road, given in the order of the Supervisors,
- 2^d There is not a plat & report of a Survey of the road such as required by the Statute,
- 3^d No actual Survey was made by the Surveyor employed by the Supervisors,

Which objections was
overruled by the Court & deft. then & there
excepted -

The Plaintiff then read the record of the proceedings of the Supervisors on the appeal as follows -

To John H. McGarran, Geo. M. Dilmon & Patrick Ryan, Supervisors of the Towns of La Salle, Hope & Grand Rapids,

Application having been made by the undersigned & others to the Court, of Roads of the Town of Eagle; a road in said town as follows, to wit, commencing at the NW. corner of Sec 1, T. 31, R. 2, E. thence South to the SW. corner of Sec 36, T. 31, R. 2 E, & said corner

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having on the 6th day of March last after hearing the parties interested determined not to lay out said road the undersigned being the applicants for said road conceiving themselves aggrieved by the aforesaid determination of Com^{rs} appeals from their said decision & prosecute this appeal for the purpose of fully reversing the said decision of said Com^{rs} They therefore pray for a further hearing in the premises & for such other proceedings as is by law in such case provided.

The petition having the decision of said Com^{rs} written thereon refusing to locate said road was filed on the 8th day of March 1852

Eagle March 30 '52 Luke Connors

By John H. McGarraw, George M. Dillman and Patrick Ryan Supervisors of the Town of Saballs, Hope & Grand Rapids,

An appeal having been made on the 30th day of March 1852. by Luke Connors of the Town of Eagle in the said County of Saballs from the determination of the Commissioners of Roads in the said Town made on the 6th day of March 1852 in refusing to lay out a road in said Town upon the application of twelve legal

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voters of said town residing within three miles of the road so petitioned to be laid out. Commencing at the NW corner of sec. 1, T. 31, R. 2 E., then south to the SW corner of S. 31, T. 31, R. 2, E., which appeal was brought to reverse entirely the said determination of the said Commissioners, and we the said Supervisors having given notice to the said Commissioners and to the said Luke Comps specifying therein the time and place at which we should convene to hear the said appeal, and having met at the time and place specified in the said notice, and having heard the proofs and allegations of the parties, did determine and decide that the said determination of the said Commissioners in refusing to lay out said road ought to be reversed -

We do therefore order and adjudge that the said determination of the said Commissioners in refusing to lay out said road be and the same is hereby reversed, and we do further order that a road be and is hereby laid out pursuant to the application of the said Luke Comps, commencing at the North west corner of Section one (1) Township thirty one (31) range two (2) East of the third principal meridian, and that the width of said road be four rods, the courses whereof according to a plat thereof which we have caused to be made by Joseph H. Wagner

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Esq. County Surveyor of said County of
La Salle will more fully appear, and which
plat is ~~herein~~ herewith attached and made
part hereof, and we do further determine
and assess the damages sustained by the
following named persons by reason of the
laying out and opening said road as
follows —

To Herman Harwood Forty Dollars
" Henry Perkins Forty Dollars
" Charles Clifford Twenty Dollars

Dated this first day of June A.D. 1852
J. H. McFarran Supervisor of Town of La Salle *Exd*
G. M. Dillman Supervisor of Town of Hope *Exd*
Patrick Ryan Supervisor of Town of Grand Rapids *Exd*
Surveyors fees — \$1.00

Supervisors fees: To J. H. McFarran this day \$4.50
" " " Patrick Ryan " " \$4.50
" " " G. M. Dillman " " \$4.50

T. 31. R. 2. E. 3^d P. 1m.

2	1
11	12
14	13
23	24
26	25
35	36

I hereby Certify the above plat to be a true
 representation of a road in the Town of
 Eagle in the County of Sublette as laid out under
 the direction of Patrick Ryan, John H. McFarren
 & George W. Dillman three Supervisors of said
 County. May 12th 1852.

Dec 1/50

J. H. Wagner Surveyor of
 Sublette Co

49 This was all the evidence in the case, the Court found for the plaintiff. The defendant moved for a new trial, which motion was overruled by the Court and the defendant then and there excepted.

And the defendant prays the Court to sign and seal this bill of Exceptions which is done this fifteenth day March A.D. 1864

P. Winchell Seland Seal
Judge of the County Court of LaSalle
County in the State of Illinois

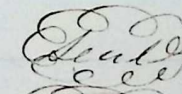
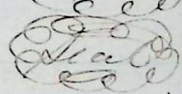
Be it further remembered that on the 15th day of March 1864 a bond was filed in this case which is in the words and figures following, to wit:

Know all men by these presents that we Charles Clifford and Julius Avery are held and firmly bound unto the Town of Eagle in LaSalle County Illinois in the penal sum of one hundred dollars for the payment of which well and truly to be made we bind ourselves our heirs Executors and administrators jointly, severally & firmly - The condition of the above obligation is such that whereas the said "Town of Eagle" did at the March term of the County Court of LaSalle County & State of Illinois recover a judgment against the above bounden Charles

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Clifford for the Sum of twenty eight dollars
and Costs of Suit taxed at twenty five ⁰⁵/₁₀₀
dollars, in action of debt for obstructing a
road, and whereas the Said Clifford has
prayed an appeal to the Supreme Court
of the third Grand Division of said State,
from said judgment. Now if the Said Clif-
ford shall prosecute said appeal with
effect and without delay and shall pay
whatever judgment Costs and damages
that may be awarded against him on
account of said appeal, and shall pay the
amount of said judgment and Costs in the
said County Court then this obligation to
be void otherwise to remain in full force
and effect.

Witness our hands and seals this 11th day
of April A.D. 1864

Charles Clifford 
Julius Avery 

State of Illinois
21) LaSalle County
I, Samuel W. Raymond
Clerk of the County Court in and for said
County do hereby certify the foregoing to be
a true, full & complete copy from the
records & files in my office of the proceeding
in the above entitled cause
Witness my hand and the seal
of said Court at Ottumwa this
12th day of April 1864
S. W. Raymond Clerk

Now comes said Appellant by
Gray Tracy & Bushnell his attorneys and
says that there is manifest error
in the ^{said} record and proceedings and
for cause shows
1st The court admitted improper evidence
in allowing the proceedings of the
Supervisors to be introduced
2^d The finding of the court was ~~not~~
manifestly against the evidence
3^d Refusal to Grant a new trial
and other error
Gray Tracy & Bushnell
for appellant

145⁹⁴
appeal

Charles Clifford
vs
Town of Eagle



Filed April 15, 1864
L. Deland
Clerk

W. D. C.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

CHARLES CLIFFORD }
 vs. } *Appeal from La Salle.*
TOWN OF EAGLE. }

APPELLANT'S BRIEF AND ARGUMENT.

The records of the proceedings of the supervisors do not
make a legal road, because,



All the proceedings of the Commissioners and supervisors were had in the Spring of 1852, and were done under the act of Feb. 17, 1851, concerning township organization.

Scate's Treat. and Blackwell's Statute, page 353, Art 24, Sect's 3, 4, 6, 11 and 15.

By sec. 3 the *determination* to lay the road must be made before the hearing, and by the decision in 15 Ill., page 137, the survey must be made before the order for the road.

We copy section four.

"Whenever the commissioners of highways shall determine to lay out any new road, or alter any old one, they shall cause a survey to be made by a competent surveyor, who shall make a report to them of such survey, accompanied with a plat particularly describing the route by metes and bounds, courses and distances, and also the lands over which such road passes. They shall incorporate such report and survey, accompanied with the plat, in an order to be signed by them, declaring such road so altered or laid out to be a public highway; which order, together with the petition shall, be deposited with the town clerk, who shall note the time of filing the same. In case the commissioners shall determine not to alter, discontinue or lay out any roads in accordance with any petition to them presented, they shall note the fact on the back of said petition, and deposit it with the town clerk, who shall note the time of filing the same."

All these authorities discuss the question of *certainty* in the survey and description of roads, and the cases in Coxe and Harr. are strongly in point.

The stringent rules generally adopted by courts in cases where private property is taken for public use, are not, perhaps, so rigidly adhered to in matters concerning roads, as in

other like proceedings, yet we believe that the *full substance*, if not the letter of the statute, should be complied with. In this case there is neither.

The order only says that, in accordance with the application of Luke Conness, they lay out a road, "*commencing* at the Northwest corner of section one, (1,) in township thirty one, (31,) range two (2) East of the 3d P. M." The courses and distances are according to plat. Page 14 record, 2 abst.

Here is no *terminus* at the South end. The plat gives no *termini* whatever; no courses, no distances, no monuments, and does not purport to be an actual survey. It not even mentions the beginning or end. There is not a word or figure that has any reference to an actual survey.

The road is six miles long, and was surveyed, platted and reported for fees "\$1.00." (!) It is argued by appellee, the lines and figures on the plat are sufficient, because you can *suppose* that they mean sections and section lines, and without expressing any thing in the English language, the court will imagine a road that even Gunter, with all his skill and science, never could find. Is it to be supposed and assumed as a fact, that the road for the distance of six miles was a straight line? That section of country may be prairie or it may be timber land, cut by valleys and rivers, ledges and mountains. And every one knows that such a thing as an absolute straight line for 6 miles, in our government survey, is an absurdity. There is not one but what is deflected more or less. There are scarcely any section corners on township lines that are at the same point. The supervisors, no doubt, thought the line straight, and imagined a road without making one. If they had fixed it on a surveyed straight line, and fixed the *termini*, it might have been a good description.

This road ran through an unsettled country. Some of the land was not even entered. When the same become settled up, and land become valuable, the old corners all along the line are sought, and if the road is not definitely described, by *metes* and *bounds* and *distances*, it gives rise to interminable litigations.

The survey does not show a monument a measurement, a distance nor a point of compass, and there is nothing in the order of the supervisors relieving the defect. The recitals in the proceedings do give a terminus, but the order for the road does not; and although it refers to the plat and survey, it is not helped thereby, because the plat, &c., is more defective even than the order.

The petition shows that there are numerous owners of land along this six mile road, and the order only gives damages to but three, Clifford, Perkins and Harwood, and says nothing whatever about the benefits or damages to the remaining nine or ten owners. Page 11 and 15 of record.

The law requires that damages should be allowed, or that there should be a finding and order on the question whether or not the benefits equal the damages, and it should not be left silent. An order for a road is an entirety, and part of it can not be good and part bad, where an attempt is made to make the road the whole distance prayed for. No man's land should be taken for public use without at least a determination or judgment of the proper officers or court, as to the benefits and damages. Such determination and judgment should be a matter of record and note left in *pais*. If it is not a matter of record, no man's right of property would be safe. We cannot find that this question has been decided by the Supreme court, but we are aware that in the Circuit courts, the law as we have stated it has been adhered to.

Scates, &c. Statute, page 354, Sec. 6.

We think a complaint should have been made under oath.

The act of June 22, 1852, Scates, &c., Statute, page 574, expressly mentions it, and the act of Feb. 20, 1861, Ses. Law, 264, only changes the law so far as relates to the right of the town to sue.

GRAY, AVERY & BUSHNELL,
For Appellant.

145-94
Charles Clifford
as
Town of Eagle
Appellants Brief

Filed April 29, 1864
J. L. Lucey

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

THOS. CLIFFORD
^{vs.}
THE TOWN OF EAGLE. }

This is an action of debt, founded on sections 94 and 96 of the township law of Feb. 20, 1861, Acts of 1861, p. 266. It is not a *qui tam* action, but an ordinary action of debt, and no information is required.

There is no question made about the obstruction of the supposed road, but it is contended that the evidence of the existence of a highway is not sufficient.

"From all that we can discover, by a due inspection of the Record, it seems that there has been a substantial compliance with the requirements of the statute in laying out and establishing the road alleged to have been obstructed by the plaintiff in error. The law does not require the strictest possible compliance with all its provisions, but only that there shall be nothing omitted to be done which is fundamental." (29 Ill., 138.) The above language of Judge Breese, is so much better than any we have on hand, that we borrow it for our brief.

We think the proceedings in relation to the road in this case would be held sufficient by the New Jersey courts. In the more liberal courts of a State where the soil is less sandy, the public mind more expanded, and individual selfishness, in conflict with the public weal, less encouraged, this highway will surely stand the gentle assault of our adversary upon it.

The plaintiff in error seems to be much distressed at the idea that the road has but one terminus. We think there is a terminus at each end, or two termini in all, and that it is not necessary that a man should have been through college in order to be able to find them.

The order of the Supervisors recites that the application was for a road, "*commencing at the N. W. corner of Sec. 1, T. 31, R. 2, E., thence south to S. W. corner of Sec. 36, T. 31, R. 2 E.*" and states that a road be and is laid out, *pursuant to the application*, commencing at the north-west corner of section one (1), township thirty-one (31), Range two (2), east of the third principal meridian. *Alluding to a plat thereof*, which we have caused to be made by Joseph H. Wagner, County Surveyor of said county of La Salle, will more fully appear, *and which plat is hereunto attached and made part thereof*, (Plat, p. 18 of Record.)

The road is four rods wide, and the north-west corner of sec. 1 is one terminal point, and the S. W. corner of 36 is the other, and the external lines of the road are parallel right lines. A terminal point of a road is at the end of the centre line always. We do not perceive any uncertainty as to the location of the road.

It is said that the damages of other parties were not assessed. The plaintiff in error did not trouble himself about the affairs of other people. They probably released their damages, *pro bono publico*. But whether damages have been assessed and paid to others or not, is not material to this case.

Reversing the order of the commissioners, who refused to lay out the road, and ordering that the road be laid out, amounts, we think, to a determination by the Supervisors that the "road was necessary and proper, and that the public interests would thereby be promoted," without incorporating this language into their report. A record of a tribunal should not be encumbered with reasons for the decision.

If notice was actually given to the commissioners of highways, it certainly cannot be material by whom it was done. The person making the appeal shall cause notice to be served, and he has caused it to be done. The tribunal of the Supervisors has decided that notice was given, and that is enough for the purposes of this trial. The presumption is, that preliminary proceedings were regular. Again, Clifford himself was present at the hearing before the Supervisors, and whether others interested were notified or not does not affect his case. The 11th Sec. perhaps only applies to appeals from a decision in favor of the road. Sec. 14 to cases of refusal to lay out.

We hardly know what is meant in the brief on the other side by the expression that "the determination to lay the road must be made before the hearing." Some typographical error, probably. The survey must have preceded the order establishing this road, because the survey is recited in the order as a past event.

We have examined all the cases cited on the other side, but we are unable to perceive that they have any bearing on this law suit.

The exclamation point about the \$100 fee we concur in. It was too small, undoubtedly. Injustice is done Gunter by the insinuation that he could not find this road. He could have done it with his scales on his eyes.

The road is a first rate one, for a new country, and we leave it with regret, but we have other cares.

LELAND & BLANCHARD.

Chas Clifford
as
Four eagles

Chief of Dept

Filed Aug 26

leaving the order of the commission... out the road, and ordering that the road be... we think that a determination... was necessary and proper and that the... thereby be promoted, without... their report. A record of a... with reasons for the decision.

If notice was actually given to the commission... is certainly correct be material by whom it was... non making the special... has caused it to be done. The... doubted that notice was given... pages of this trial. The... could be very serious. At... at the hearing before the... forested were notified or not... road. It is a case of... to lay out.

We have known what is meant in the light on the other side... by the expression that "the determination to lay the road must... be made before the hearing." Some typographical errors pro-... dable. The survey must have preceded the order establishing... this road, because the survey preceded in the order as a pre-... event.

We have examined all the cases cited on the other side, but... we are unable to perceive that they have any bearing on this... law suit.

The exclamation point about the \$100 fee we cannot find. It... was too small, undoubtedly. I think it is John G. Miller by the... insinuation that he could not find that road. He could have... about it with his scales on his eye.

The road is a first rate one, for a new country, and we leave... it very regret, but we have other cases.

LEONARD A. STANLEY, JR.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

Chas. Clifford
vs

TOWN OF EAGLE

~~CHARLES CLIFFORD.~~

} *Appeal from La Salle.*

ABSTRACT OF THE RECORD.

- 1-3 Transcript of justice filed Sept. 7th, 1863.
- 4 Summons and return.
- 5 Continuance.
- Motion by def't to dismiss for want of a complaint.
- 7 Motion overruled—trial, and judgment for plaintiff.
- 9 *Evidence.* The petition was properly posted and signed by proper person. The defendant was present before the supervisors on trial of the appeal from the decision—the damages allowed defendant were tendered and refused.
- 60 days notice to remove the obstruction; after which commissioners opened the road and defendant again fenced it up. Defendant received another notice to remove the fence and failed to do it.
- Petition for road, viz: commencing at the NW corner Sec. 1, T. 31 N., 2 E., thence south to south west corner of sec. 36, same town.
- Refusal of commissioners to lay out the road.
- 12 Proceedings of supervisors. (Objection of defendant, with reasons, which are same as the errors assigned.)
- Objection overruled.
- 13 Appeal from the refusal of commissioners, by Luke Conness.
- The proceedings of the supervisors here recite the appeal from above

refusal to lay out a road described as commencing at NW corner of Sec. 1, T. 31, R. 2 E; thence south to SW corner of sec. 36, T. 31, R. 2 E. Notice to commissioners and Luke Conness giving time and place of meeting. Meeting, and reversal of the refusal of the commissioners.

- 6 Order for road, pursuant to the application of said Luke Conness,—
 “Commencing at the north west corner of sec. 1, T. 31 N, R 2 E,” 4 rods wide, the courses whereof are according to plot.

This is the whole and only description in the order.

- 15 Damages assessed.

Town 31, Range 2 East, Third Principal Meridian.

2	1
11	12
14	13
23	24
26	25
35	36

I hereby certify the above plot to be a true representation of a road in the town of Eagle, in the county of La Salle, as laid out under the direction of Patrick Ryan, John H. McFarran, and Geo. M. Dillman, three supervisors of said county, May 12th, 1852.

Fees \$1.00.

J. H. WAGNER,
Surveyor of La Salle County.

ERRORS.—1st. The court admitted improper testimony, in allowing the proceedings of the supervisors to be introduced.

2d. The finding of the court was not warranted by the evidence.

3d. Refusal to grant a new trial.

GRAY, AVERY & BUSHNELL,
For Appellant.

148 94

SUPREME COURT,

Third Grand Division,

APRIL TERM THREOT, A. D. 1864.

Charles Clifford

TOWN OF EAGLE

vs.

~~CHARLES CLIFFORD~~

} Appeal from La Salle.

ABSTRACT.

GRAY, AVERY & BUSHNELL,

Attorneys for Appellant.

Filed April 26. 1864

J. L. and MR