

14426

No. \_\_\_\_\_

# Supreme Court of Illinois.

Commr's. of Highways of  
Swan T.

---

vs.

People, ex. rel.

---

103

STATE OF ILLINOIS,  
SUPREME COURT,

Third Grand Division

14426      63

No. 63

*Com of*  
*Hughes*  
*vs*  
*People*

1863

Be it Remembered that on the 24<sup>th</sup>  
day of December a.d. 1861 a Preemptory  
Writ of Mandamus issued out of the  
office of the Clerk of the Circuit Court  
of Warren County Illinois which is in  
the words and figures following to wit.

State of Illinois } ss.

Warren County } To the Commissioners  
of Highways of Brown  
Township in the County aforesaid,

Whereas at the October Term of  
the Warren County Circuit Court 1859  
John D. Walden in the name of the  
People of the State of Illinois and in  
behalf of himself and others filed an  
affidavit and relation against you  
the said Commissioners of Highways of  
said Township in which said relation  
it is set forth and shown to this Court  
that heretofore to wit on the 7<sup>th</sup> day of  
September a.d. 1845 the County Commissioners  
Court of said County then being in session  
proceeded to establish and did establish  
and order to be opened a certain public  
highway described in the Surveyors  
Report as follows Commencing at the  
Sutton Co line near the corner of sections  
30 & 31 of Township 8 N 1 E 1 Sec 25 & 26 of

Township 8 N 1 W at the point where the  
Road laid out from Ellisville intersect  
to the Warren Co line, thence North 82°  
West one mile and 180 poles, thence  
North 79° W four miles, thence W 296  
poles passing a little North of Wm Mc  
Mahills Home and a little south of  
Mr Jarkers Home, thence N 52° W 62  
poles intersected the line between  
sections 24 & 25 of T 8 N 2 W thence West  
along the line between the same tiers  
of sections five miles and 73 poles inter  
sected the Range line between Townshi  
ps 8 N & 3 West, thence South 8 poles, thence  
West 20 poles, thence N 58° W five miles  
thence N 48° W 2 Miles & 75 poles inter  
sected the Henderson Co line 5 poles  
and 3 links South of what we believe  
to be the mound corners of Townships  
8, 8 & 9, 9 North 3 & 4 West near where  
the laid out State Road from Mounds  
by way of La Harpe & C to Fairfield  
Adams Co crosses the Co line to wit  
passing through Township 8 N 2 W in  
said Warren Co on or near the section  
lines between sections 24 & 25, 23 & 26  
22 & 27, 21 & 28, 20 & 29, 19 & 30 of  
said Township as by plat of Road and

copy of County Commissioners orders attached to said relation and marked Exhibit "A" fully appears, that for several years after said road was established said road passing through a great portion of its length vacant & unoccupied lands, continued open and was worked travelled and used as a public highway through Township 8 N 2 W in said Warren Co that said road was used and traveled upon as such highway on or near the line upon which it was established to wit on or near the line between sections 24 & 25, 23 & 26, 22 & 27, 21 & 28, 20 & 29, 19 & 20 of said Township, that afterwards to wit in the year 1854 the said Township was organized under the Township Organization law and took the name of Jordan Township, that from that time to the present the Roads in said Township have been under the Control and supervision of the Commissioners of Highways of said Town, that afterwards to wit in the year 1856 or 1857 said Road was obstructed by a small field being fenced on the North West quarter of sec 26 on the North part of said quarter, that about the same time other obstructions

7  
were put upon said Road towards the  
East part of the Town of Swan town  
between the said sections 23 & 26, 24 &  
25 in said Town by fences &c and  
that a short time after town about  
the year 1858 said road was entirely  
obstructed and the travel thereon  
stopped by the fencing of a large  
part of the NW quarter of 26, that all  
the travel passing along said road  
between sections 23 & 26 and 24 & 25  
was entirely stopped, that said road  
has continued thus obstructed between  
the sections last mentioned from the  
date last above mentioned up to  
the present time, that said road  
was also obstructed by a fence on the  
South side of the East Half of the SE  
qr of section 22 in said Town being  
moved into the centre or near the  
centre of said road, that soon after  
the said road was obstructed and the  
travel thereon stopped in that portion  
on the line between sections 23 & 26  
and 24 & 25 and the East part of sections  
22 & 27 as aforesaid, Now therefore  
at this October Term of the Circuit Court  
of Warren County ad 1861 this Cause

Coming on to a hearing upon the relation aforesaid, the alternative writ and answer of the said Commissioners and proofs and argument of counsel and the Court being fully advised in the premises and it appearing to the Court that said Commissioners had been repeatedly requested and petitioned to remove said obstructions and repair said road, that said Commissioners still continue to and did altogether neglect and refuse to reopen and repair said road. and it further appearing to the Court that said road so obstructed is of great benefit and advantage to the said citizens of Swan Township particularly those residing in the Western portion thereof, that said obstructions are each year of great advantage to the said people, and also that said road is of great advantage to citizens residing West of said Swan Township in Point Pleasant that said road is of great advantage to the relator and the farm whereon he lived at the time of the filing of said petition, and it appearing to the Court that no good cause exists for refusing and neglect

ing to open and repair said road or highway. Therefore it is ordered by the Court and you the said Commissioners of highways of said Swan Township Warren Co. Ills. are hereby Commanded forthwith to proceed to remove and to remove the obstructions upon and reopen and put in repair the portion of the road or highway running on the line between sections 24 & 25, 23 & 26, 22 & 27, 21 & 28 20 & 29, 19 & 30 in your Township where the said road or highway is now obstructed and closed to wit, between sections 24 & 25 and 23 & 26, and the East part of sections 22 & 27 in Swan Township, and hereof fail not at your peril, and make return hereof as the law directs,

Witness Wm Laferty Clerk of our said Circuit Court and the  
 (seal) seal thereof at Mounds  
 this 24th day of December  
 A.D. 1861.

Wm Laferty Clerk

Upon the back of which will appear the following return made by the

Officer serving the same which is  
as follows to wit.

"I have served the foregoing writ by  
reading the same to Solomon Perkins  
Absalom Vandever & Israel Jared the  
Commissioners of Highways of the Town  
of Swan, in the County of Warren, &  
delivering them a Copy of the same,  
Feb 4<sup>th</sup> 1862.

David Turnbull Sheriff

by H. Swan Deft.

Filed Mch 13<sup>th</sup> 1862

Wm Laferty CLK

Copy of Affidavit for Attachment

State of Illinois 300.

Warren County & Pleas before the Hon  
orable Charles B  
Lawrence Judge of the tenth Judicial  
District of the State of Illinois, at a Cir  
cuit Court began and held at the Court  
House in the City of Monmouth in Warren  
County and State of Illinois on the Third  
Monday in the month of March, in the  
year of our Lord One Thousand Eight Hundred  
red

and fifty No. It being the 17<sup>th</sup> day of  
said month.

Present Hon Charles B Lawrence Judge  
James H Stewart, States attorney  
David Turnbull Sheriff  
Mr Laferty Clerk

The People of the State of Illinois }  
Ex relatio John D Walden } Petition  
vs } for Mandam  
Commissioners of Highways }  
of Swan Township, } us,

Copy of Affidavit for attachment

State of Illinois } Circuit Court  
County of Warren } March Term A.D. 1862

The People vs }  
vs }  
Abraham Vandever }  
S. Perkins & }  
Israel Jared, Commissioners of Highways }  
in & for the Town of Swan in the County of }  
Warren & State of Illinois, }

Almon Kidder being  
first duly sworn according to law  
deposes and says that on the 24<sup>th</sup>

Day of December a d 1861 a preemp-  
 tory writ issued out of and from the Circuit  
 Court of the County of Warren in the State  
 of Illinois in pursuance of the decree  
 and order of said Court made at the  
 last term of this Court directed to the  
 said Commissioners of Highways of Swan  
 Township in said County ordering and  
 Commanding them the said Commissioners  
 of Highways forthwith to proceed to re-  
 move and to remove the obstructions upon  
 and reopen and put in repair the por-  
 tion of the road or highway running  
 on the line between sections 24 & 25, 23  
 & 26, 22 & 27, 21 & 28, 20 & 29, 19 & 30 in  
 said Swan Township where the said  
 Road or highway is obstructed and  
 closed to wit between sections 24 & 25 and  
 23 & 26 and the East part of sections 22 & 27  
 in said Township which said preemp-  
 tory writ is made a part of this affi-  
 davit and herewith presented to this  
 Court with the return of the Sheriff  
 thereon that as appears by said return  
 said writ was served upon the said  
 Abolom Vandever, Solomon Perkins &  
 Israel Javed, Commissioners of Highways  
 as aforesaid by reading the same to them  
 and delivering a copy thereof to said

Commissioners which service was made soon after said writ was issued, that the last of said Commissioners was sworn on the fourth day of February ad 1862 that said Commissioners have refused and neglected to reopen said Road and still do refuse and neglect to do the same or to obey said writ and on the contrary as this deponent is informed & believes held the order and decree of said Court in utter contempt asserting in a bragging manner that they were able to pay all the fines that might be assessed against them for said refusal, and using other language showing an utter disregard of the authority of this Court, further deponent saith not.

Almon Kidder.

Subscribed & sworn to  
before me this 21<sup>st</sup> day of March 1862,  
Wm Laferty CLK  
Filed March 22<sup>d</sup> 1862  
Wm Laferty CLK

And afterwards to wit on the 22<sup>d</sup> day of March ad 1862 the following order was entered upon the Records of said

Court which reads as follows to wit.

210  
The People of the State of Illinois }  
Ex relatio John D Walden } Petition  
vs }  
Commisshiners of Highways } for  
of Swan Township. } Mandamus.

It appearing to the Court that Absalom Vandever, Solomon Perkins, and Israel Jared defendant herein have disobeyed the writ of mandamus issued herein at the last term of this Court. On motion of plaintiffs Attorney, It is ordered by the Court that an attachment issue herein against said defendants returnable instantes.

(Copy of Attachment)

State of Illinois ss.

Wauken County } The People of the State  
of Illinois. To the Sheriff  
of Wauken County. Greeting. We Command  
you to take Absalom Vandever, Solomon  
Perkins & Israel Jared, and them safely  
kep. so that you have their bodies forth  
with before the Circuit Court of Wauken  
County at the term now holden at Mon  
mouth, to answer the People of the State of

Illinois, for a contempt of Court, in not obeying Writ of Mandamus. Having been duly served with process, And have you then there this writ, Witness Wm Laferty Clerk of our said Court at Mounmouth this 22 day of March a d 1862, the seal of said Court being hereto affixed,  
Vnull Wm Laferty clerk

Upon the back of said attachment app ears the following return, To wit:

"I have served this writ by reading the same to the within named Solomon Perkins, Israel Jared & Abolom Vard ever & have <sup>them</sup> now in Court, this 25<sup>th</sup> day of March 1862.

David Turnbull Sheriff

By Robt Woodward Const.

Filed Mch 25<sup>th</sup> 1862

Wm Laferty clerk

Copy of answer of Defendants.

State of Illinois } Warren Circuit Court  
Warren County } March Term a d 1862

The People vs  
 vs  
 Absalom Vandever  
 Solomon Perkins &  
 Israel Jared.

Contempt.  
 In the Judge of said  
 Court; And now comes  
 the said defendants  
 Absalom Vandever, Solomon Perkins & Israel  
 Jared who have been served with a writ  
 of attachment for contempt of this hon-  
 orable Court and show to the Court that  
 they are not guilty of any contempt of  
 the Court whatever, but have been always  
 willing & are now willing to obey the  
 orders decrees & Judgments of this Court,  
 that in regard to said writ of preceptory  
 Mandamus issued out of this Court on  
 the 24th day of December a d 1861 upon an  
 order & decree made in this Honorable  
 Court at the last term of this Court they  
 say that a copy of the same was served  
 on Absalom Vandever one of these  
 defendants on the 17th day of January  
 a d 1862 and upon the others on or about  
 the 4th day of February a d 1862, that before  
 that time to wit in the month of December  
 a d 1861 a petition was circulated and  
 signed by about 42 legal voters residing  
 within three miles of the road herein  
 after mentioned & described to wit passing

through said Town of Swan in said County on or near the section line between sections 24 & 25, 23 & 26, 22 & 27, 21 & 28, 19 & 20 in the said Town of Swan in said County of Warren from the East side of said Town to the West side of the same being part of a road commencing at the Fulton County line at the corner of section 30 & 31 S 41 E & section 25 & 26 S 41 W passing through said County of Warren to the County line of Henderson County in said State by which said petition the defendant as Commissioners of Highways of the Town of Swan in the said County of Warren were petitioned, & requested by said legal voters to discontinue so much of said road as lies between the East line of the said Town of Swan and the North West Corner of the East half of the North East quarter of section twenty seven in said Town passing on or near the section lines between sections 24 & 25, 23 & 26 & the East half of the South East quarter of section 22 and the East one half of the North East section 27 in said Town of Swan; that said petition was posted up & published by putting up 3 copies thereof in three of the

most public places in said Town,  
that afterwards to wit on the tenth  
day of January a d 1862 in Compliance  
with said request & the prayer in said  
petition & in accordance with law the  
defendants as such Commissioners did  
personally examine the proposed road  
to be discontinued as aforesaid that  
before that time however these defend  
ants did fix upon a time & place to wit  
Janry 11 a d 1862 and at the house of David  
Stice in said Town of Swan and near said  
Road which was proposed to be discon  
tinued, to hear any reasons that  
might be offered for or against dis  
continuing the said road, and they  
caused written notices thereof to be  
posted up in three of the most public  
places in said Town more than eight  
days previous to said time of meeting,  
that upon said day fixed by them  
as aforesaid to wit Janry 11, 1862 these  
defendants as such Commissioners met  
at said place & did hear any & all  
reasons offered for or against the dis  
continuing of said road as aforesaid  
that these defendants not then being  
fully satisfied in the premises took  
the said case under advisement and

adjourned until the 16th day of July  
 1862, and afterwards met on the 16th  
 day of January ad 1862 having again  
 met, in pursuance of an adjourn-  
 ment made on the said 11th day of  
 July ad 1862 these defendant then  
 acting as such Commissioners did  
 then & there decide to discontinue  
 said road according to the prayer  
 of said petition, and then & there made  
 out their order in writing signed with  
 their hands & seals as such Commissioners  
 discontinuing the said road as aforesaid,  
 and a copy thereof is herewith  
 filed marked Exhibit "A" and thereupon  
 on the same day the said order for  
 discontinuing said road was filed  
 according to law in the Town Clerk's  
 Office of said Town of Swan & that  
 none of these defendants were served  
 with process until said order discont-  
 inuing said road was made as aforesaid  
 although these defendants all  
 saw & were in company with the Sheriff  
 of said County of Warren two days  
 previous to the 17th day of July ad  
 1862 & before said order discontinuing  
 said road was made as aforesaid.

That these defendants were advised & believed at the time of the service of said writ of preceptory mandamus upon them, that the said proceedings aforesaid discontinuing said Road, relieved them from opening the same road under the order & decree of this Court made at the last Term of this Court, and that they have refused to do so for that reason & not that they wished to disobey any order or decree of this Court which they were bound to obey, being advised by good counsel, and being fully satisfied that no contempt would be committed in disobeying said Mandamus - as these defendants did disobey the same, but they utterly deny any intention to treat the orders or decrees of this Court with contempt. They admit therefore that they have not opened said road, but they say that they are not now, nor were they bound to open the same for the reason that the same road, was discontinued as aforesaid, these defendants deny that they have ever asserted in a bragging manner that they were able to pay all fines that might be assessed

against them for said refusal to comply with said writ, but they admit that upon being threatened with being arrested & fined & thrown out of office they did say that if they had violated the law they were responsible for the same. And they deny that they have used ather language or any language showing an utter or any disregard to the authority of this Court, but on the contrary have the utmost respect for the same. And having purged themselves of all Contempt wherewith they are charged, they pray to be discharged.

Abolom Vandever  
Solomon Perkins  
Israel Jared.

State of Illinois }  
Marion County } Abolom Vandever  
Solomon Perkins &  
Israel Jared the defendants whose  
Names are signed to said answer  
after being first duly sworn depose &  
say, that the matters & things therein  
contained are true in substance &  
fact.

Abraham Vandever  
Solomon Perkins  
Israel Jared;

Subscribed & sworn

to before me this 25th day of March  
A.D. 1862,

Aly Kirkpatrick N.P.  
Filed Mch 26/1862

W. Laferty clerk

And afterwards to wit on the 4th day of  
April A.D. 1862, the following order  
was entered upon the Records of our  
said Court which reads as follows  
to wit.

210  
The People of the State of Illinois } Petition  
Ex Relatio John D. Waldron } for  
vs } Mandam  
The Commissioners of Highways } -vs.  
of Tazewell Township. }

This day again came  
on this cause for a hearing on the  
attachment issued herein for Abraham  
Vandever, Solomon Perkins, & Israel  
Jared. Commissioners herein for their  
outraged Contempt in disobeying the Writ  
of Mandamus issued herein heretofore by  
order of this Court. And after hearing the  
same it is ordered by the Court that the said

20

Commissioners be discharged upon the payment of the cost of the attachment issued herein. And on Plaintiffs motion it is ordered by the Court that an alias Preemptory writ of Mandamus issue herein to the Commissioners of Highways of Swan Township, Thereupon came defendant and prays an appeal to the Supreme Court, which is not allowed by the Court. And defendant has leave to file his bill of exceptions in ten days from this date.

State of Illinois  
Warren County ss I Wm Laferty Clerk of the  
Circuit Court in and for said County do hereby  
certify that the above and foregoing is a true  
copy of the record and proceedings in the foregoing  
case. (So far as the same are copied in this  
case) as the same appears from the records  
and files of my office

Witness my hand and the seal of our  
said Court at my office in Mounds  
this 12<sup>th</sup> day of April AD 1862

Wm Laferty Clerk

Fees \$4.00

The Commissioners of  
Highways, Swan Township  
Franklin County

v

The people &c. et al  
John D. Walden

Supreme Court of  
Illinois

April Term  
A.D. 1863

and now

come said Commissioners and  
say that in the proceedings & record  
of said cause there is manifest  
error & then injury in this:

- 1 The Court erred in adjudging costs  
in favor of the defendants in error  
and against said commissioners  
upon the attachment
- 2 The Court erred in ordering an  
alias writ of preemptory mandamus  
against said commissioners
- 3 The proceedings of the Court were  
otherwise informal & erroneous

~~By A. G. Kirkpatrick~~

~~his atty~~

They therefore pray that said judgment  
& orders of said circuit Court may  
be reversed for want of bill

In Nulla est errorum By A. G. Kirkpatrick  
W. C. Loney for Deft in Error their attorney

335  
Commissioner of Highways,  
Swan Township, Hancock

The People & c. n. l.

John B. Waldon

Esq. to Hancock

Record

Filed May 1. 1842

J. Pelamie

clerk

Commissioners of  
Highways of Swan  
Township

Supreme Court  
of Illinois  
April 5 1863

The people ex rel of  
John D. Walden

Said Plaintiffs  
in error object to said motion  
of said defendants to set aside  
& quash the supersedeas for the  
following reasons

- 1 The answers of the defendants  
below to the preemptory writ of  
Mandamus & attachment  
(which writs in error call affidavits)  
form a part of the record &  
need not be incorporated in a  
bill of exceptions; their answers  
are just as much a part of  
the record as the original  
answers to the bill & attachment  
writ.
- 2 The answers are not denied  
by replication or otherwise

A. G. Kirkpatrick  
Atty. at L.

<sup>63</sup>  
The Commission, of  
Highway Sewer Township

v  
The people of and to  
John S. Mulden

objections to  
Sewer notes

Filed April 22, 1863

J. Seave  
Mr

State of Illinois }  
Hansen County }

William G. Bond after being  
first duly sworn deposes and says  
that he is well acquainted with  
the pecuniary circumstances of  
Bump A. Reed, David Steer, W. H. W.  
Steer and William Thomas, who are  
propounders or security upon a bond  
to be given if a writ of Error & Reprieve  
is allowed by the Supreme Court  
of Illinois on the application of  
Solomon Perkins, Absalom Vandewer, &  
Essau Land commissioners of Highway  
of the Town of Swan in Hansen Co  
Illinois plaintiffs in Error as  
The people ~~vs~~ <sup>vs</sup> John D. Waldron  
defendants in Error; That Bump A.  
Reed owns over 320 acres of land in  
Hansen Co Ill, worth over ten dollars  
per acre, most of the land being <sup>under</sup> cultivation,  
together with horses, mules, & other  
personal property of the value of  
at least fifteen hundred dollars;  
That David Steer is the owner of  
over hundred & ninety acres of land  
in Hansen Co Ill, worth over \$15  
per acre, together with over one  
thousand dollars worth of <sup>personal</sup> property;  
That William Thomas owns about  
200 acres of land with

fifteen dollars per acre in taxes  
be all, and personal property  
worth fifteen hundred dollars;  
Mr. H. H. Steen owns 80 acres of land  
worth \$10 per acre and personal  
property worth three hundred  
dollars; that all of said property  
is in Warren County Illinois  
and not in any wise encum-  
bered either by judgment  
execution, mortgage or otherwise  
and that the whole of the debts  
of said persons do not  
amount to five hundred  
dollars, and further depone  
saith not Wm. G. Bond

State of Illinois }  
Warren County }

I Mr. Lafayette  
Clerk of the Circuit Court of  
said County do certify  
the foregoing affidavit was  
subscribed & sworn to before me  
by said Wm. G. Bond this  
7<sup>th</sup> day of April 1862

Witness my hand  
& the official seal  
of said Court  
Wm. S. Gentry, Clerk

335-63  
Commissioners of  
Highways, Essex Town  
Worcester & Ell

7  
The people & John D.  
Walden

— 11 —  
Affidavit  
as to sufficiency  
of security offered

Attest May 1, 1862  
L. L. Linn  
Clerk

Supreme Court April Term 1863  
State of Illinois 3<sup>rd</sup> Grand Division  
The Commissioners of }  
Highways of Swan }  
Township }  
vs } Error to Writ  
The People & rel of }  
John D. Walden }

And now comes the said  
Defendant in Error & moves  
to set aside & quash the Super-  
sedeas granted herein at the last  
Term of this Court because

1<sup>st</sup> The only parts of the Record  
filed of which this Court can  
take notice consists of the writ  
of Mandamus & return, the order  
for writ of attachment & the writ,  
and the order awarding another  
writ of mandamus, while the  
grounds of the action do not  
appear of record.

2<sup>d</sup> The affidavits copied  
in the record on which the  
Supersedeas was allowed are  
no part of the record & cannot  
be noticed in this Court.

W. C. Gandy for Defendant

63  
The Court. Highway  
Susan Lowship  
vs

The People ex rel  
John D. Walden

Motion to set  
aside Supersedeas

Gilea Apr 22 1864

J. Gilman  
Clerk

Motion overruled

W. C. Govey  
for Def<sup>t</sup>

63  
The Court. Highway  
Susan Lowship  
vs

The People ex rel  
John D. Walden

Motion to set  
aside Supersedeas

Gilea Apr 22 1874

J. Gilman  
Clerk

Motion overruled

W. C. Govey  
for Def<sup>t</sup>

State of Illinois }  
Wauver Court }

James B. Evans } In the Wauver  
v } Circuit Court  
Francis Staat }

Wm Lafayette Clark  
of the said Circuit Court of Wauver  
County; after being first duly  
sworn deposes & says that he was  
clerk of said Circuit Court at the  
time said cause was tried in  
said court & has been clerk of  
said court ever since that time  
that he has no recollection that  
any bill of exceptions was ever  
filed in said cause that he  
does his own writing & business  
as such clerk *personally*  
Wm Lafayette Clark

State of Illinois }  
Wauver Court }  
City of Monmouth } Subscribed & sworn  
to before me this 20th day of April  
A.D. 1863 Witness my hand & notarial  
Seal at said City of Monmouth  
A. G. Kirkpatrick  
A. P.

260  
France, Staat

v

James C. Evans

Affidavit of  
Support.

# IN THE SUPREME COURT OF ILLINOIS.

APRIL TERM, A. D. 1863.

THE COMMISSIONERS OF HIGHWAYS, OF  
SWAN TOWNSHIP, WARREN COUNTY.

vs.

THE PEOPLE, &c., *ex. rel.*, JOHN D.  
WALDEN.

} *Error to Warren.*

## ABSTRACT.

At the October Term A. D. 1859, of the Warren Circuit Court, the defendant in error, in the name of the People, &c., filed his affidavit and relation against the plaintiff in error, in which it was set forth that a certain road was legally established in said Township, which road had been and was obstructed by fences, &c., and travel on parts of it entirely stopped. The cause coming on to be heard, a peremptory writ of mandamus was awarded at the October Term, 1861, of said Court. Afterwards on the 24th of December, 1861, the writ was issued, which was returned indorsed by the Sheriff, served, February 4th, 1862.

8 Afterwards, at the March Term, 1862, of said Court, an affidavit was filed, setting forth the fact of the service of said writ, that said  
10 Commissioners had refused and neglected to open said road and obey said writ. Thereupon, on motion, the Court ordered an  
12 attachment to issue against the said Commissioners. On the 25th day of March, 1862, the Sheriff returned the writ, together with Solomon Perkins, Israel Jared, and Absalom Vandever, the said  
13 Commissioners, in Court. On the same day, the Commissioners filed their answer to the writ of attachment, in which they denied that they were guilty of any contempt of the Court, that the said peremptory writ of mandamus was served upon them after said road was vacated and discontinued according to law, in the following manner:—That in the month of December, 1861, a petition was circulated and signed by about forty-two legal voters, residing within three miles of said road; that the petition was published according to law; that afterwards, on the tenth day of January, 1862, the Commissioners, in accordance with law, did decide to discontinue  
16 said road, and then and there made their order in writing, under their hands as such Commissioners, discontinuing said road; and

the same was filed in the Town Clerk's Office, which proceedings in discontinuing said road, were all had since the decision of said Court ordering said road to be opened, and before the service of said writ upon them.

17 They admit they have not opened the road, but claim that under the circumstances, they were not bound so to do.

19 The answer was sworn to by each of them. Afterwards, and during the said term of said Court, upon motion, the Commissioners were discharged, but upon the payment of the costs of the attachment. And on the Peoples' motion, it was ordered by the Court that an alias peremptory writ of mandamus issue to the said Commissioners, requiring them to open the road.

The said Commissioners bring said cause to this Court by writ of Error, and assign the following, to-wit:

1. The Court erred in adjudging costs in favor of the Defendants in error, and against said Commissioners upon the attachment,

2. The Court erred in ordering an alias writ of peremptory mandamus against the said Commissioners.

3. The proceedings of the Court were otherwise informal and erroneous.

A. G. KIRKPATRICK,  
For Plaintiffs in Error.

*The point is whether the commissioners  
of Highways could proceed to discontinue  
the road after they had been  
ordered to open it*

*as to their power & duties see*

*scots statutes page 347  
do 353*



Mr. Chief Justice Caton delivered the opinion of the Court.

Caton C. J. If this record showed that this road had been vacated, in the mode provided by the statute, <sup>and</sup> that the proceeding vacating it was ended and determined, we should not hesitate to reverse this judgment. Such vacation would have been a sufficient excuse for not obeying the writ. There would have been no road to open. Notwithstanding the mandate of the court, <sup>the commissioners</sup> they would have been trespassers for opening it. The writ of mandamus could not be pleaded in justification of such trespass. But there is nothing in the record to show that the road has been vacated. There is an affidavit copied in to the record, stating that fact, but it is not in a bill of exceptions, <sup>and</sup> is not part of the record. We should have the certificate of the judge that it was read, and that there was no counterwaiting proof. Then we should be prepared to exercise, <sup>and</sup> say whether the court below decided correctly or no, on the proof. The judgment must be affirmed.

Judgment affirmed.

The order heretofore entered <sup>Reversing</sup> ~~affirming~~  
the judgment is set aside and an order  
affirming the judgment is made  
Sept 28. 1868.

J. H. Eaton  
P. H. Walker  
" "

63-103-88  
Commonwealth

v

The People

Opinion

of the Court

Recorded Book 13

Sept. 12,

OK

Comptroller

Supreme Court of Illinois }  
April Term 1863

The Commissioners of Highways  
of Crows Township, Macon County } Error to  
Macon

The people of the State of Illinois  
vs. John D. Walden

The clerk  
will issue writ of Error &  
superedeas to Macon County  
A. G. Kuffner for  
Plff in Error

335 63.

The Commission  
L  
7

Thruppe L  
John D. Walden

---

Pa -

Int + af.

Filed May 10. 1862  
L. Keland  
Ch.