United States of America
State of Illinois, Kane County
City of Elgin ss:

Pleas before the Honorable Richard G. Montony Judge of the Court of Common Pleas of the City of Elgin in the County of Kane and State of Illinois at a regular Term of said Court begun & held at the Court House in the City of Elgin in said County on the 27th day of April in the year of Our Lord One thousand Eight hundred and sixty three

Present the Honorable Richard G. Montony Judge
Joseph H. Whipple Sheriff
Eugene Wells, Attorney for the

Attest R W Rudelfort
Clerk

Be it remembered that heretofore to wit on the 17th day of April A.D. 1863. a ~~Copy of Record~~ was filed with the Clerk of the said Court of Common Pleas of the City of Elgin a Copy of Record in the words and figures following to wit:

"United States of America State of Illinois Kane County ss: Pleas at a regular Term of the Circuit Court of said County of Kane begun & held at the Court House in Geneva in said County on the Monday the second

day of February in the year of our Lord One Thousand Eight Hundred and Sixty three, being the first Monday in said Month

Present Isaac G. Wilson Judge
Joseph H. Whipple Sheriff
Chas J. Metzgar State Atty

Attest J. C. Moore Clerk

Be it remembered that heretofore to wit: on the 30th day of November AD 1859 the same being one of the days of the February Term of said Court the following amongst other proceedings was had ~~in said~~ and Entered of Record in said Court to wit:

1859

Lawrence M. Baker
vs
Henry Warne and David Bowne } Trespass

This day comes the defendant by Platt & Harvey their attorneys and file their petition and move the Court for a change of Venue herein.

And afterwards to wit on the 5th day of December AD 1859 the same being one of the days of the November Term in the year AD 1859 the following amongst other proceedings was had and entered of Record in said Court to wit:

Lawrence M Baker

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1829 vs } Trespass

Henry Warne and
David Bowne

This day comes the parties by their Attorneys and the defendants motion for a change of venue heing coming on to be heard after agreement of Counsel the Court being fully advised of and under said motion, to which ruling of the Court the defendants by Plate their Attorney Excepted

And afterwards to wit: on the 7th day of December the same being one of the days of the November Term of said Court in the year A.D. 1829 the following proceedings was had and entered of record in said Court to wit:

1829 Lawrence M Baker } Trespass
v
Henry Warne & al
David Bowne

This day comes the Plaintiff by Barry his Attorney and having filed his demurrer to the defendants Special Plea herein the defendants by Plate and Harvey their Attorneys also come and join in demurrer. After Argument of Counsel the Court being fully advised, of and under said demurrer It is therefore considered by the Court that the defendants have judgment and Execution

against the Plaintiff for their Costs about said Summons expended.

And afterwards to wit: on the 8th day of December 1859 the same being one of the days of the November Term of said Court as aforesaid the following amongst other proceedings was had and entered of Record in said Court to wit:

6829

Lawrence W. Baker
vs
Henry Warne and
David Bourne
} Trespass

This day comes the Plaintiff by Eastman & Barry his Attorneys and the Defendants by Hale their attorney also come and on motion of Plaintiffs Attorneys it is Ordered by the Court that a jury come whereupon came a jury of good and lawful men of the County, to wit: Caleb Kipp, John Reed Zechariah Mathews, John J Chambers, James Wilson, Henry Lyon, R. W Lee, James E Prescott, John McClelland, John C. Wilson E. S. Smith, Jacob Grimes who being severally by tried and selected and sworn to try the issues between the parties herein and to render a verdict according to the evidence, and after hearing a portion of the evidence, the jury are allowed by the Court to disperse until the meeting of the Court

5 Court to-morrow morning

And afterwards to wit on the 9th day of December aforesaid the same being one of the days of the term aforesaid the following amongst other proceedings was had and entered of record in said Court to wit:

6829 Lawrence M Baker
v
Henry Warne and
David Bonne
} Trespass

This day come again the parties by their respective attorneys, and the jury heretofore impannelled herein also come & after listening to the remainder of the evidence, the argument of Counsel and the instructions of the Court the jury retire under the charge of a sworn Officer of this Court to consider of their verdict and by consent of parties it is Ordered by the Court that when the jury agree they have leave to seal their verdict and disperse and meet the Court to morrow morning at nine o'clock

And afterwards to wit: on the tenth day of December A.D. 1859, the same being one of the days of the November Term of said Court the following amongst other proceedings was had and Entered

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of Record in said Court to wit;

1829

Lawrence McBake
vs
Henry Warne and
David Boone
} Trespass

This day come again the parties to this suit by their respective Attorneys and the jury heretofore impannelled herein also come and for a verdict upon their oaths do say we the jury find the defendants guilty and assess the Plaintiffs damages at the sum of five dollars which is ordered by the Court to be entered of Record and thereupon the defendants by Platt their Attorney move for a new trial

And afterwards to wit on the twentieth day of December A.D. 1829. the same being one of the days of the November Term of said Court the following amongst other proceedings was had & entered of Record in said Court to wit

1829

Lawrence McBake
vs
Henry Warne and
David Boone
} Trespass

This day come

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again the parties in this suit by their respective attorneys and the defendants ~~the~~ motion for a new trial heretofore entered herein coming on to be heard after argument of Counsel the Court being fully advised overrules said motion and orders judgment on the verdict of the jury herein.

It is therefore considered by the Court that the Plaintiff have and recover of the defendants the sum of five dollars damages and also his costs in this suit expended and have execution therefor And on motion of the defendants it is ordered that they have ten days to file their bill of exceptions herein —

And afterwards to wit: On the fifth day of March AD 1861 the same being one of the days of the February Term of said Court the following amongst other proceedings was had and entered of Record in said Court to wit.

6829

Lawrence M Baker
vs
Henry Warne and
David Bowne
} Trespass

This cause is entered generally

And afterwards to wit: On the second day of February A.D. 1863. the same being one of the days of the February Term of said Court the following amongst other proceedings was had & entered of Record in said Court to wit:

1829

Laurena M Baker
vs
Henry Warne, and
David Boone
} Trespass

This day comes the Plaintiff by W D Barry his Attorney and the defendants by Plato & Smith their Attorneys and by their agreement the venue in this cause is changed to the Court of Common Pleas of the City of Elgin

It is therefore ordered that the Clerk of this Court transmit to the Clerk of the Court of Common Pleas in the said City of Elgin all the papers on file in this cause and a transcript of the proceedings had in this Court herein

State of Illinois
Kane County ss } I Thomas C Moore
Clerk of the Circuit Court

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in and for said County in the State aforesaid do Certify the foregoing to be a Correct transcript of the proceedings had and entered of Record in said Court in a Cause lately pending therein wherein Lawrence M Baker was Plaintiff and Henry Warne and David Bowen were defendants And I further Certify that the accompanying papers Numbered from one to sixteen inclusive are all the papers on file in said Cause

Witness

Thomas C Moore

Clerk of said Court.

(Seal Stamp)

And the Seal thereof at Geneva in said County this 13th day of April AD 1863.

Thos C Moore

Clerk

And afterwards to wit: On the said 17th day of April A.D. 1863. was also filed with the Clerk of the Court of Common Pleas of the City of Elgin a Summons, Declaration, Pleas, Demurrer, Plea by leave of Court, and Replication in the words and figures following to wit:

State of Illinois }
Kane County } ss The People of the State of Illinois to the Sheriff of said County Greeting: We Command you that you Summons Henry Warne & David Bowne if they shall be found in your County, personally to be and appear befor the Circuit Court of said County on the next Term thereof to be holden at the Court House in Geneva in said County on the third Monday of May next to answer unto Laurence M Baker in a plea of Trespass to the damage of said Plaintiff as he says in the the sum of Three Hundred Dollars. and have you then and there this writ, with an indorsement thereon, in what manner you shall have Executed the same.

Witness Paul K Wright Clerk of our said Court and the Seal thereof, at Geneva in said County this 29th day of March A.D. 1859. Paul K. Wright Clerk

L S

And said Summons has on the back thereof an indorsement in the words and figures following to wit:

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Served by reading to David Bowne and Henry Warne this 4th day of May 1859

Ethan J. Allen Sheriff

By H. M. Clark

Deputy

2 Services	1.00	
Milage	1.25	
Return	10	2.35

Filed May 6. 1859

R. R. Wright Clk

Lawrence M Baker } Kane County
vs } Circuit Court of
Henry Warne & } the May Term
David Bowne } AD 1859.

Lawrence M Baker Plaintiff in this suit complains of Henry Warne & David Bowne Defendants in this suit of a plea of trespass. For that whereas the said Defendants on the first day of February ~~AD 1859~~ in the year of Our Lord One thousand Eight hundred and fifty nine and on divers other days & times between that day and the day before the Commencement of this suit with force and arms &c broke

and entered the close of the said Plaintiff situate & being in the Township of Plato and Compton in the County of Kane and State of Illinois and known and described as follows: to wit: The east half of the South East quarter of section thirty one in township forty one North of Range seven East of the third Principal Meredian in the district of lands subject to Sale at Chicago Illinois containing Eighty acres. And also the East half of lot number two of the North East quarter of section six in Township forty of Range seven in the district of Lands subject to Sale at Chicago Illinois containing thirty nine acres and ninety six hundredths of an acre, and then and there forced and broke down the fences then & there standing in upon and around said close and broke to pieces damaged and spoiled divers to wit: five hundred fence rails of great value to wit: of the value of three hundred dollars then standing and being in upon and around said close; and with feet in walking trod down trampled upon consumed & spoiled the grass & herbage of the said Plaintiff of great value to wit,

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of the value of three Hundred Dollars there then growing and being; and with Cattle to wit horses mares geldings Cows Oxen and Sheep and also with the wheels of divers Carts waggons and other Carriages crushed damaged and Spoiled other grass and herbage of the said Plaintiff of great value to wit of the value of Three Hundred Dollars then there also growing and being; and with the feet of said horses mares and geldings and with the wheels of the said Carts waggons and other Carriages tore up subverted damaged and Spoiled the Earth and soil of the said Close;

And also then and there broke down prostrated and destroyed a great part to wit fifty perches of the fence of the said Plaintiff of and belonging to the said Close and hindred and prevented the said Plaintiff from having the use benefit and Enjoyment of said Close in so large and ample manner as he might and otherwise would have done to wit at the County of Kane aforesaid and other wrongs to the said Plaintiff then and there did to the great damage of the said Plaintiff

And also for that the said defendants

on the tenth day of February in the year of Our Lord one thousand Eight hundred and fifty nine and on divers other days and times between that day and the day before the commencement of this suit with force and arms &c broke and entered one other Close of the said Plaintiff situated lying and being in the County of Kane and State of Illinois and known and described as the East half of the South East Quarter of Section thirty one in Township forty one north of Range seven East of the third Principal Meredian in the district of lands subject to sale at Chicago Illinois and then and there threw down tore down broke and destroyed a great part to wit fifty rods of the fences of the said Plaintiff of and belonging to said Close then and there broke to pieces damaged destroyed and spoiled down to wit five hundred fence rails of the great value to wit of the value of three hundred dollars then standing and being in the fence in and upon said close; and with feet in walking trode down trampled upon consumed and spoiled the grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars

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there then growing and being; and with Cattle to wit Horses mares geldings cows oxen and sheep and also with the wheels of divers carts waggons and other Carriages crushed damaged and spoiled other grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars then there also growing and being; and with the feet of the said horses mares and geldings and with the wheels of the said carts waggons and other Carriages tore up subverted damaged and spoiled the earth & soil of the said Close; and also then and there broke down prostrated and destroyed a great part to wit fifty perches of the hedges and fifty perches of the fences of the said Plaintiff of and belonging to the said Close and hindred and prevented the said Plaintiff from having the use benefit and enjoyment of said close in so large and ample a manner as he might and otherwise would have done to wit at the County aforesaid; and other wrongs to the said Plaintiff there and then did to the great damage of the said Plaintiff

And also for that the said defendant on the fifth day of February in the year of Our Lord One thousand Eight hundred and fifty nine and on divers other days and times between that and the day before the commencement of this suit with force and arms broke and entered the close of the said Plaintiff situate and being in the County of Kane and State of Illinois and known as the East half of lot number two of the North East quarter of section six in township forty of Range seven in the district of lands subject to sale at Chicago Illinois and then and there threw down tore down and broke down a great part to wit fifty rods of the fences of the said Plaintiff in and upon said close and broke to pieces damaged spoiled and destroyed divers to wit five hundred fence rails of great value to wit of the value of three hundred dollars then standing and being in the fence in and upon said close and with feet in walking trode down trampled upon consumed and spoiled the grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars there then growing and being; and with Cattle to wit horses mares geldings

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cows oxen and sheep and also with the wheels of divers Carts waggons and other carriages crushed damaged and spoiled other grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars there then also growing and being and with the feet of the said horses mares and geldings and with the wheels of the said Carts waggons and other Carriages tore up subverted damaged and spoiled the earth and soil of the said close and also then and there broke down prostrated and destroyed a great part to wit fifty perches of the hedges and fifty perches of the fences of the said Plaintiff of and belonging to the said close and hindered and prevented the said Plaintiff from having the use benefit and enjoyment of said close in so large and Ample a manner as he might and otherwise would have done to wit at the County of Kane aforesaid and other wrongs to the said Plaintiff then and there did to the great damage of the said Plaintiff

And Also for that the said Defendants on the twenty sixth day of February in the year of Our Lord one

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Thousand Eight hundred and fifty nine with force and arms & broke and entered one other close of the said Plaintiff Situate and being in the County of Kane and State of Illinois and known and described as the East half of the South East quarter of Section thirty one in Township forty one North of Range seven East of the third principal Meredian and the East half of lot number two of the North East Quarter of Section six in Township forty of Range seven all in the district of lands subject to sale at Chicago Illinois and then and there threw down prostrated and destroyed a great part to wit fifty rods of the fence of the said Plaintiff of and belonging to said Close; and then and there broke to pieces damaged spoiled and destroyed divers to wit five hundred fence rails of great value to wit: of the value of three hundred dollars then and there standing and being in the fence of the said Plaintiff in and upon said close; and with feet in walking trode down trampled upon consumed and spoiled the grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars then there growing and being, and with Cattle

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to wit horses, mares geldings Cows oxen and sheep eat up and depastured the grass and herbage of the said Plaintiff of great value to wit the value of three hundred dollars then growing and being in said Close, and with diverse other horses, mare geldings sheep and cattle and also with the wheels of divers Carts wagons and other Carriages crushed damaged and spoiled other grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars there then also growing and being and with the feet of the said horses mares and geldings and with the wheels of the said Carts wagons and other carriages tore up subverted damaged and spoiled the Earth & soil of the said ~~said~~ close; And also then and there broke down prostrated and destroyed a great part to wit fifty perches of the hedges and fifty perches of the other fences of the ~~said~~ said Plaintiff of and belonging to the said close and other wrongs to the said plaintiff then and there did to the great damage of the said Plaintiff

Wherefore the said Plaintiff saith that he is injured and hath sustained damage to the amount of Three hundred

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dollars and therefore he brings his
suit &c

W. D. Barry
Atty for Plff

Filed May 6. 1859
P R Wright Clk

State of Illinois }
Kane County } ss

Kane County Cir Court
May Term AD 1859

Henry Warne and
David Bowne
vs
Laurence M. Baker
} Trespass

And the said defendants
by Plato & Harvey their Attorneys Come and
defend the force and injury when &c
and say that they are not guilty of
the said supposed trespass above laid
to their charge or any or either of them
or any part thereof in manner and
form as the said Plaintiffs hath above
thereof complained against them and
of this the said defendants put themselves
upon their Country &c
And the Plaintiff ~~&~~ }
doth the like

Plato & Harvey
for Defts

~~Barry & Farnham Attys for~~
Plff

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21 Barry & Eastman Atty for Plff

And for a further plea in this behalf the said defendants by leave &c say Actio non because they say that the said defendants before and at the several times when &c were and still are Commissioners of high-ways in and for the town of Champlain in said Clinton County And that before and at the said several times when &c a public highway had been duly laid out, recorded and ordered to be opened on the town line between the towns of Plats and Champlain in said County and running upon and across the said Closes of the Plaintiff in the said declaration mentioned; And that after such public highway had been duly located, and ordered to be opened as aforesaid that portion of the same, running upon and across the said Close of the Plaintiff in the declaration mentioned, was duly altered and partitioned to said Town of Champlain as a road district, to open, keep in repair &c according to the Statute in such case made and provided. And the said defendants aver that after

the said highway had been located and ordered to be opened, the said Plaintiff was duly notified in writing to remove his fences out of and from such public highway — And sixty days having elapsed since the service of said notice and the said Plaintiff neglecting and refusing to comply with such notice and open the said public highway, the said defendants as Commissioners of highways as aforesaid afterwards ~~to~~ to wit at the said time when &c entered upon the said closes in which &c and took and carried away the said fences &c to a convenient distance and out of the said public highway and there left the same for the use of the said Plaintiff doing no unnecessary damage to the said Plaintiff on these occasions — which are the same supposed trespasses in the said Plaintiffs declaration mentioned, and whereof the said Plaintiff hath above complained against them and this the said defendants are ready to verify wherefore they pray judgment &c

Platt & Harvey
Attys for Defts

Filed May 18, 1857
P. H. Wright Clk

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Laurence M. Baker
vs
Henry Waine and
David Boone

Kane County Circuit
Court November
Term AD 1859

And the said Plaintiff
says that the said plea of the said Defendants
by them secondly above pleaded in manner
and form as pleaded and the matter in the
same contained is not sufficient in Law
to Bar the said Plaintiff of his aforesaid
action against them and that he is not
bound by law to answer the same and
this he is ready to verify wherefore he
prays judgment & his damages aforesaid
to be adjudged to him &c.

Barry & Eastman
Attys for Plff

Filed Dec 7, 1859
P R Wright
Clerk

State of Illinois }
Kane County } ss

Kane County Circuit Court
November Term 1859.

Henry Wayne
David Bowne
vs
Lawrence M. Baker } Trespass

And for a further plea in this behalf the said defendants as to the breaking &c by leave &c say Actio non because they say that before and at the said several times when &c there was and of right ought to have been a certain Common and public highway, into, through, ~~and~~ over and along the said Close in which &c for all people to go pass and repass on foot and with carriages at all times at their free will and pleasure Wherefore the said defendants having occasion to use the same way at the said several times when &c went and passed into through and over the said Close in which &c and along the said highway there using the same as he lawfully might for the cause aforesaid - And in so doing the said Defendants with his feet in walking and the said Cattle and Carriages unavoidably

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a little trod down & the grass therbage then growing and being in said close in which &c subverted, damaged & the said of the same close at the said several times when &c And because the said fences and fence rails in the declaration mentioned before the said several times &c had been wrongfully erected and were then standing in and across the said highway and obstructing the same so that the said defendants could not then pass & repass through and over the said close in which &c in the said highway there as they ought to have done — the said defendants at the said several times when &c in order to remove the said obstructions forced & broke down the said fences and rails in the said declaration mentioned, and took and carried ~~away~~ the said fence rails to a small and convenient distance and there left the same for the use of the said Plaintiff doing no unnecessary damage to the said Plaintiff on these occasions which are the same supposed trespasses in the said Plaintiffs declaration mentioned, and whereof the said Plaintiff hath above complained against them and this

the said defendants are ready to verify
Wherefore they pray judgment &c
Plato & Harvey
Attys for Defts

Filed Nov 25. 1859
R R Wright Clk

State of Illinois
Kane County } ss
Pending in the Kane County
Circuit Court November Term
AD 1859

Lawrence M. Baker
vs
Henry Warne &
David Bowne

And the said Plaintiff
as to the said Plea by the said defendants
secondly above pleaded says "precludi non"
because he says that before and at the said
several times when &c refers to in said plea
no public highway had been duly laid out
recorded and ordered to be opened on the
town line between the towns of Plato and
Campton in said County and running upon
and across the said Closes of the said Plain-
tiff and of this he puts himself upon the Country &c

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And the said Plaintiff by leave &c as to the said plea by the said defendants thirdly above pleaded says "precludi non" because he says that before and at the said several times when &c in said plea referred to, there was not and of right ought to have been a certain common and public highway into through over and along the said close in which &c (referred to in said plea,) for all people to go, pass and across on foot and with carriages at all times at their will and pleasure and of this he puts himself upon the country &c

Barry & Eastman
Attys for Plff

Filed Dec 8. 1859
R. R. Wright Clk

And afterwards to wit: On the Twenty seventh day of May AD 1863. the same being one of the days of the May Special Term of said Court the following among other proceedings was had and entered of Record in said Court to wit:

11/45

Lawrence M Baker
vs
Henry Manet
David Browne
(Trespass

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This day comes the Plaintiff by D. Wilcox his attorney and the defendants by Hale & Smith their Attorneys and waive a jury and submit this suit to the Court

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Lawrence M Baker
or
Henry Warne &
David Bourne
} Trespass

This day comes again the parties to this suit by their attornies and after hearing the evidence and argument of Counsel the Court takes the case under advisement until the next term of this Court

And afterward to wit on the thirteenth day of November A.D. 1863. the same being one of the days of the November Special Term of said Court the following among other proceedings was had and entered of Record in said Court to wit:

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453

Lawrence M Baker
or
Henry Warne &
David Bourne
} Trespass

This day

28 comes the ~~Plaintiffs~~ parties to this suit and the Court having taking the case under advisement until this term and being fully advised find the issues joined in favor of the Plaintiffs and assess his damages at fifty cents

It is therefore considered by the Court that the Plaintiffs have and recover from the defendants the sum of fifty cents damages and his costs in this suit expended and have Execution therefor

And afterwards to wit on the 16th day of November A.D. 1863. the same being one of the days of the November Special Term of said Court the following amongst other proceedings was had and entered of Record in said Court to wit

5/453 Lawrence M. Baker
or
Henry Mann &
David Boone
} Trespass

This day come the defendants by Plato and Smith their Attorneys and pray an Appeal which is allowed by the Court and the bill of Exceptions to be filed in twenty days

And afterwards to wit on the second day of December A.D. 1863 the same being still one of the days of said November Special Term of said Court the following amongst other proceedings was had and entered of Record in said Court to wit:

5/4th

Lawrence M. Baker
vs
Henry Warne &
David Bowne
} Trespass

This day come the Defendants in this suit by their Attorneys Mats & Smith and move the Court that the time for making up and filing the Bill of Exceptions and Appeal Bond be extended to December 26. 1863. Motion allowed and and the amount of the Bond fixed at three hundred Dollars and by consent of parties the Bond to be approved by the Clerk.

And afterwards to wit: On the 16th ~~first~~ day of December A.D. 1863. there was filed with the Clerk of the Court of Common Pleas of the City of Elgin a bill of Exceptions in the words and figures following to wit:

Laurence M. Baker
vs
Henry Warne & David Bourne
} In the Court of Common Pleas of the City of Elgin. May Special Term A.D. 1863.

Be it remembered that at the said term of said Court said Cause coming on to be heard the Plaintiff offered in Evidence two patents from the United States to the Plaintiff of the East half of the South East quarter of Section thirty one Township forty one North of Range seven East of the third Principal Meredian. And the East half of lot two of the North East quarter of Section six Township forty North of Range seven East of 3d P.M. whereupon the defendants admitted that the Plaintiff at the time named in his declaration was the owner and in the possession of said lands in the declaration described —

The Plaintiff then called

Abraham Quackenbush as a witness who being sworn testified: I reside in Campton have lived there seven years, I know the farm that Baker lives upon. Mr Baker lived there 13 years ago, when I came there— He occupied and worked the land under claim of ownership — I know the defendants.

Three years ago Mr. Bourne told me that they had opened the road through from the Blackberry Road to the St. Charles and Geneva road — This was done in 1889. They threw down the fence and opened the road — It was the road fence on the Blackberry road — The fence taken down was the west fence of the road. The damages for breaking down the fence is fifty cents —

Cross. Examined —

The defendants when they took down this fence were highway Commissioners of the Town of Campton —

It is on the town line between Campton and Plato and where the road intersects the Blackberry road it is about 3/4 of a mile from the four corners of town

The defendants said they took down this fence as Highway Commissioners of the

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town of Campton —

Plaintiff then called D. Reynolds who testified: I know the defendants — I know where Baker resides — He has been in possession of the land in the patents described, for more than twenty years — About February 1859. The defendants got through Bakers land on to my land — My land lies east of Bakers they were all together when I heard the conversation — They said they had opened the road and Mr Baker had forbidden them — They had taken the fence down — This land is situated in the County of Kane Ill.

Cross Examined

Both of the defendants made remarks about taking down the fence and that Baker forbid them — I first saw them between Bakers and my land, and they were in the act of taking down the fence when I first noticed them.

I could not see them take down the Blackberry Road fence, they were acting as Highway Commissioners of the town of Campton — Baker was not there when I came — I took no part in taking down the fence — They said Baker forbid

them pulling down the fences — They said they thought there was a road there — They said they took down the fence to open the road — The fence was in the road that was claimed by the Commissioners to exist there — In opening the road the defendants claimed to act as Highway Commissioners

— Plaintiff rested —

The defendants then offered as Evidence the following certified copies of Road papers from the records & from the files of the respective town Clerks offices of said towns of Hampton and Plato which were objected to by the Plaintiff but received subject to objection to be considered by the Court, the authenticity of all which was duly proven

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To the commissioners of Highways of the towns of Campton and Plato. The undersigned Legal voters residing within three miles of the following proposed road alteration ~~and~~ would represent that it is necessary and proper and your petitioners ask that all that part of the road commonly known as the Elgin and Sycamore road in the town of Plato and west of the St. Charles and Geneva roads be vacated and relocated as follows:

Commencing at the northwest corner of the town of Campton from thence eastward on the line dividing Plato and Campton until it intersects the St. Charles and Geneva road, or as near said line as the location of Wm. Brophys house and door yard will justify. Said relocations will pass over lands owned by Wm Brophy, E. E. Baker, Daniel Kuyk & others and known as J. H. Seaton, J. C. Ellsworth, A. Nichols J. L. Hinkley & Jackson L. S. Allen A. D. Jackson, Jason Nichols

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David McDearmid. C. T. Craft. Wm Arnold. Calvin Shurtleff. Daniel Seaton. John S. Hadley. Gilbert Ellis George Jennings. Jan. 18. 1858.

I. C Ellithorp, being duly sworn, doth depose say that he posted three copies of the within petition ~~petition~~, as follows: Nelsons Walker's Shed Gilbert's shop, Canada Corners. in the Town of Compton being three of the most public places in said town

I. C. Ellithorp.

Subscribed and sworn to
before me this 22. day of Jany 1858

A. B. McWaine J. P.

The undersigned Commissioners of Highways of the town of Compton met the Commissioners of Plato on the 20th of Feby 1858 & examined the within proposed road alteration, and we are of the opinion that the road should be altered as asked for in the within petition but the Commissioners of Plato disagreeing with us as to the practicability of altering the same on account of the damage it would cause the town to pay we return this petition to the Town Clerk with this our refusal to alter the road as asked for

Henry Waine } Commissioners of
S. M. Cook } Highways of
Compton

Petition to alter town line road between Plato and Campton. Filed March 12th 1859 at 2 o'clock P.M.

A. Currier

Town Clerk

I Charles L. Cone Town Clerk of Campton in the County of Kane do hereby certify that the foregoing is a true and perfect copy of the original on file in my Office

Dated this 7th day of June A.D. 1859

Charles L. Cone Town Clerk

of Campton.

~~In matter of Ellithorp et al~~ "P."

Town Clerks of Campton and Plato

whereas the commissioners of Highways of the towns of Campton and Plato in the County of Kane having upon the application of T. C. Ellithorp and others refused to so alter that part of the Elgin and Sycamore road which lays between St. Charles & Geneva and the Blackberry road as to cause the same to run from the Northwest corner of the Town of Campton east on or near the line dividing Plato and Campton until it intersects the St. Charles & Geneva road the undersigned feeling himself aggrieved by the refusal of said commissioners to make said alteration, to wit: to so alter the said road as to

establish the same on or near said town line
between the St Charles and Blackberry roads as
petitioned for by the undersigned and others,
appeals from said determination and order
and refusal of said Commissioners, assigns the
following reasons for his appeals 1st That the
Commissioners by their refusal did not consult
the convinance of the community or traveling
public. 2nd Because the present location of
said road has caused me one hundred
miles extra travel within 12 months and
will cause me the same extra travel every
12 months as long as I reside where I now do
3rd Because it causes one mile extra travel
to all persons living on the north side of
Virgil or the south side of Burlington many
persons in the interior of Burlington, everytime
they travel to St Charles, Geneva Batavia
Aurora &c and they present this appeal for the
purpose of reversing the determination of said
Commissioner in their refusal to locate as
above specified He therefore prays for a
further hearing in the matter, and for such
other order and such further proceedings as is by
law in such cases made and provided,

Said refusal was filed in the Town Clerks Office
in Campton on the 12th day of March 1858. Petition
and refusal filed in town Clerks Office in Plato

on the 13th day of March 1858, ~~Petition and refusal~~
April 6th 1858. V. C. Ellithorp J. D. Winkler A. Nichols
Jason Nichols, Franklin Jackson, Thos. Solomon
Spencer Allen Wm Denison

Filed April 6th 1858
A. Curries Town Clerk of Campton

I Charles. F. Cone, Town Clerk of the town of Campton in the County of Kane do hereby certify that the foregoing is a true and correct copy of the original on file in my Office

Dated this 7th day of June A.D. 1859
Charles. F. Cone Town Clerk
of Campton

To F. H Bowman & Jos. Andrew Pingree Supervisors of St Charles, Geneva and Rutland, Sirs, you will take notice that V. C. Ellithorp, J. D. Winkler A. Nichols Franklin Jackson, T. Solomon S. Allen have taken an Appeal from the decision of the commissioners of the town of Plato and Campton in refusing to so alter that part of the Elgin and Spencer road which lays between the St Charles and Geneva road and Blackberry road as to cause the same to run on or between near the line dividing Plato & Campton, from the Blackberry to the

St Charles road which appeal is made to
S. H. Bowman of St Charles, A. Joy of Virgil &
A. Pingree of Rutland & bears date April 6th
1858. The grounds upon which the appeal is made
is the refusal of said Comissioners to alter as
asked for by said Ellithorp and others in a
petition now filed in my office, on
the 12th day of march 1858, and said
appeal is brought to reverse the determination
of said Commissioners.

Dated this 6 day of April A. D. 1858

Abner Comier Town Clerk of
Campton

Wm Hannon Town Clerk of Plato

I Charles F Cone Town Clerk of the Town of
Campton in the County of Kane, do hereby
certify that the forgoing is a true and
correct copy of the original now on file in
my office

Dated this 7th day of June A.D. 1869.

Charles F. Cone Town Clerk of
the Town of Campton

State of Illinois } Witness J. C. Ellithorp, A. Nichols,
County of Kane } Franklin Jackson, Thos Salmon of
the Town of Burlington & Jason Nichols, Spencer
Allen & William Denison of the Town of Virgil
of said County, did, on this 6th day of April

1858 appeal to us from an order and determination of the Commissioners of Highways of the Towns of Pluto and Campton contained in the order of said Commissioners deposited with the Town Clerks of said Towns and filed in Campton on the 12th day of March in Pluto on the 13th day of March 1858 a copy of which order as well as well as all the papers before us, in said appeal are hereunto annexed, and Andrew Pingree and F. Foy having met on the first day of May 1858 at one o'clock P. M. at the house of Wm. Brophy in Campton to hear the proof and allegations of the Parties being the time and place agreed upon by us when and where we would meet to consider said appeal and F. H. Bowman one of the Supervisors appointed by the Town Clerks of Campton & Pluto to hear and determine said appeal not attending whereupon said Andrew Pingree and F. Foy proceeded to fill the vacancy with A. A. Rawlin Supervisor of Kensville in said county & then adjourned to meet at the house of the said Brophy aforesaid on the 6th day of May 1858 at 10 o'clock A. M. at which place we met as per adjournment and it appearing that said Commissioners of Highways and them of the petitioners in said case had been duly notified of which meeting as required by Law, we did proceed to

hear the proofs and allegations of the parties & to consider said appeal, and we being now fully advised in the premises are of the opinion that said road is necessary and proper & that the public interest will be promoted thereby, we do therefore order, that the order and determination of said Commissioners of Highways be, & the same is hereby in all things reversed; and do order & determine that the same road be and the same is hereby laid out & established & and near the line between the towns of Plato & Campton agreeable to the prayer of the petitioners and also of those of the petitioners who have written this appeal as may be seen by the papers herewith connected more particularly described as follows, to wit Commencing in the center of the St. Charles and Geneva road exactly on the ~~road~~ line between Plato and Campton near Wm. G. Walkers ~~and~~ residence and running thence in a westerly direction across the lands of the aforesaid Wm. G. Walker & D. Reynolds on or near the line between them about twenty two rods thence in the same direction wholly on D. Reynolds land about eighty rods thence in the same direction wholly on L. M. Bakers land about eighty rods or more or less to the middle of the blacktop road & to a point exactly two rods north of the

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line between the said towns Campton and Plato, and that the said line above described be the centre of said road and the same is hereby declared to be a public highway four rods in width for a more definite description of the above newly laid or altered road see the accompanying map of the survey, which we have ordered & caused to be made and it is further ordered & determined, in consequence of the laying of the above described road, that all of the part of the road commonly known as the Elgin an Sycamore road which lays in the town of Plato from the St. Charles and Geneva road to the Blackberry roads, be, and the same is hereby vacated, the following is a more particular description of the vacated part of the Elgin & Sycamore road to wit, Commencing with its intersection with Blackberry road and running thence north 70° east 16 10/100 chains; thence 77½ east 16 chains to the St Charles & Geneva roads, more or less, And the undersigned supervisors further report that Wm S. Walker occupies and the above described road enclosed a distance of twenty four rods wide has not set up any claim for damages so that in our appointments of damages on said

route, we have estimated the advantages to the said Walker to be equal to the damages inasmuch as the laying and opening of said road open to him a direct and feasible route to Blackberry Station, and to the Southern and Central portion of our country.

And in relation to damages claimed by D. Reynolds across whose land the said road passes for the distance of eighty rods, we, the undersigned having applied to him with a view of agreeing with him upon the subject, and totally failing to do so, we proceeded to assess the same at what we deemed just and right, taking into account the advantages as well as the disadvantages, & have assessed the damages to the said Reynolds by cropping his land or section No 32 in the town of Pluto and Section No 5 in the town of Campton it being in closed and improved land, at two hundred and fifty dollars.

And in relation to damages claimed by L. M. Baker across whose land the said road passes for the distance of eighty rods more or less in section No 31 of the town of Pluto & section No 6 of Campton we have proceeded to assess the damages at what we deemed

just and right and taking into account and estimating the advantages & benefits as well as the disadvantages, we have estimated the advantages of said road equal to any and all his damages in as much as the vacation of the above section of the Elgin and Sycamore road which lays wholly on the said Bakers land saves him one acre and twenty hundredth of land and about ninety six rods of fence

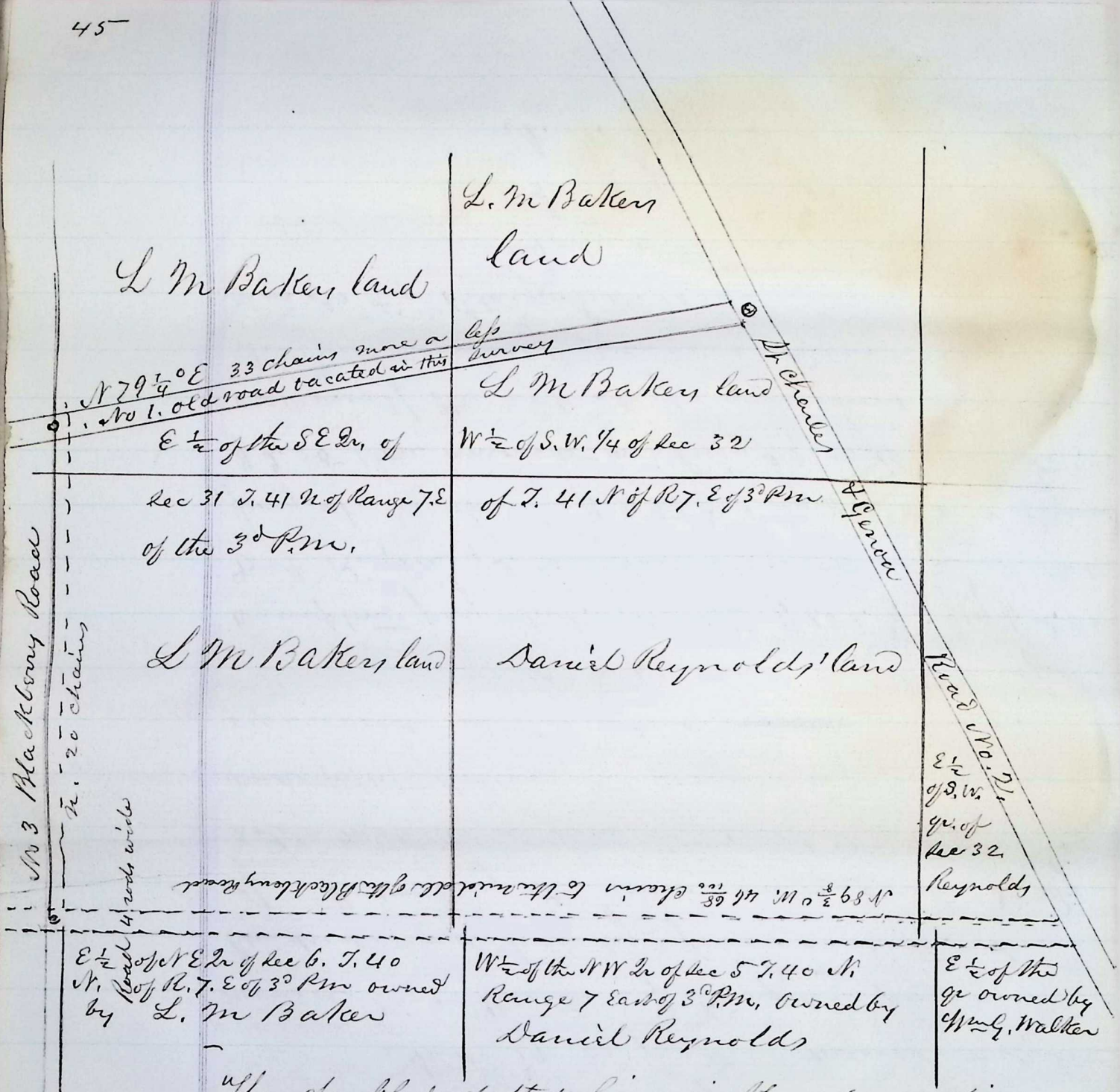
And it is further ordered & determined that the town of Compton pay one hundred and twenty five dollars and the town of Plato pay the same amount to D. Reynolds making a sum total of two hundred and fifty dollars the same being for damages expressed in the above ~~order~~ order.

And also that the town of Compton pay A. A. Rankin $1.50 & A. Joy $2.25 & A Pingree $2.25 And that the town of Plato pay A. A. Rankin $1.50 & A Joy $2.25 & A Pingree $2.25 that amounts on a bill $12.00 it being the expenses of the appeal for Supervisors services. In witness whereof we have hereunto set our hands this 6th day of May A. D. 1858.

Andrew Pingree Supervisor of the town of Plato

A Joy " " " Elgin

A. A. Rankin " " " Kaneville



The double dotted lines in the above diagram show the Bearing, length width, and location, of the new laid road, commencing in the center of the St Charles and Genoa roads on the line between the towns of Plato and Campton running thence North 89 3/8° W 46 68/100 chains to the middle of the Blackberry road to a point two rods or fifty links north of the line between Plato and Campton crossing the lands of Wm G. Walker.

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Daniel Reynolds, & L. M. Baker as set forth in the above map being 4 rods in width: Said road was surveyed by the subscriber May 15th 1858 by the order of and under the direction of the following supervisors before whom an appeal had been taken. N. N. Rawlin, Fletcher Foy, & A. Pingree The red lines above represent nearly the old traveled road vacated under the survey, and the above named Supervisors order

Witness my hand and seal

Andrew Pingree (Seal) Deputy County Surveyor ~~Surveyor~~ in Kane County Illinois under A. Wm Mann Surveyor of the County aforesaid

Expenses of Campton on within Dan'l Reynolds $125.00 N. N. Rawlin $1.50. F. Foy 2.25 & A Pingree $2.25

Filed this 17th day of May 1858

E. Miller Town Clerk of Campton

I Charles. F. Cone Town Clerk of Campton in the County of Kane do hereby certify that that the foregoing is a a true and correct copy of the original on file in my office,

Dated this 7th day of June A. D. 1859

Charles. F. Cone Town Clerk of the Town of Campton

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State of Illinois }
Kane County }

Personally appeared before me this day T. C. Ellithorp and being duly sworn upon his says that he has given notice in writing to the Commissioners of highways of the towns of Campton & Plato in said County that he the said T. C. Ellithorp & others have taken an appeal from the order and determination of the said Commissioners, filed in the Town Clerks office in Campton on the 12th day of March 1858 and in Plato on the 13th day in march 1858 refusing to so alter the Elgin & Sycamore road as to cause the same to run from the St Charles and Genoa roads to the Blackberry road on or near the line dividing Plato and Campton that the said notices was given to the Commissioners in the Town of Plato on the 12th day of April 1858 and that said notice stated that H. H. Bowen of St. Charles, J. Joy of Virgil and A. Pingree of Rutland would meet at the house of Wm Brophy in the Town of Campton on the first day of May 1858 to hear and determine said appeal which was taken to reverse the determination of said Commissioners, that like notices were given

to commissioners of Highways of the Town of Compton & also to three of the petitioners for said road on the 13th and 14th day of April 1858

W. C. Elliott

Subscribed & sworn to before me this first day of May 1858 S. M. Cook, Justice of the Peace

I Charles F. Cone Town Clerk of Compton in the County of Lee and State of Illinois do hereby certify that the within is a true and perfect copy of the original on file in my office

Dated this 7th day of June 1859

Charles F. Cone Town Clerk of Compton

State of Illinois }
Lee County }

"Whereas a public highway has been laid on & near the line dividing the ~~line~~ Co's Plats and Compton from the South west corner of the Town of Compton running east on & near the line aforesaid for the distance of three hundred and fifty six three rods or thereabouts: it is therefore ordered that the said highways be divided into two road districts as follows, to wit: that part thereof from the south west corner of the Plat to the east line of the South west quarter of Section 31 in Plat

shall be one of said road districts & is hereby allotted to the town of Plato. That the residue of said highway shall be the other road district and is hereby allotted to the town of Campton.

In witness whereof the said Commissioners have hereunto subscribed their names this 6 day of December A. D 1858

Henry Warne } Commissioners of
David Bourne } Highways of Campton

Wm M. Morehouse } Commissioners of Highways
Smith Jamieson } of Plato

Filed and recorded Dec. 18th 1858.

E. Miller Town Clerk
of Campton

Wm Hauser Town Clerk of Plato

I Charles F. Cone Town Clerk of the town of Campton in the County of Kane in State of Illinois do hereby certify that the within is a true and perfect copy of the original on file in my office dated this 7th day of June 1859 Charles

Charles F Cone of town of Campton

To Laurence M. Baker you will take notice that a highway four rods in width has been located in pursuance of law; to wit; by three Supervisors of Kane County. namely: A. Rigor Supervisor of Rutland. F. Joy Supervisor of Virgil and N. Rawl

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Supervisor of Kaneville said road was located by said Supervisors upon an appeal taken ~~upon an appeal taken~~ from the determination of the Commissioners of Highways of Campton & Plato in refusing to locate which Highway is said un agreeable to our order of said Supervisors bearing date the sixth day of May A.D. 1858 which highways passes through certain enclosed lands owned and occupied by you as follows beginning at the centre of the St. Charles & Geneva roads on the line between Plato and Campton and running thence north 89 3/8 d. West 46 68/100 Chains to the middle of the Blackberry road to a point two rods north of the line between Plato and Campton you are therefore hereby notified and required to remove your fences from within the bounds of said highway within sixty days after the service of this notice

Henry Warne) Commissioners of
Elwood Browne) Highways of Campton

Personally appeared before me this day Jacob S. Minkler who being duly sworn upon his oath says that the within is a true copy of a notice given to Lawrence M. Baker at his residence in the town of Plato on the 16th day of December 1858

Jacob S. Minkler

Subscribed and sworn to before me this 21st day

of February 1859 Samuel M Cook J. P. (Seal)

Filed in my office this 26th day of February 1859 at 5 o'clock P. M.

E. Miller Town Clerk

The original of which this is a true copy was handed to the said Baker on the 18th day of December 1858 by J. D Winkler

I Charles F. Cone Town Clerk of the Compton of Kane County State of Ills do hereby certify that the within is a true and perfect copy of the original on file in my Office

Dated the 7th day of June A D 1859

Charles F Cone Town Clerk

of Compton

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To the Commissioners of Highways of the town of Plato & Campton The undersigned legal voters residing within three miles of the following proposed road alteration would represent that it is necessary and proper, and your petitioners would respectfully ask. That all that part of the road commonly known as the Elgin and Sycamore road which lay in the town of Plato, and west of the St. Charles and Genoa road, be vacated and relocated as follows; Commencing at the North west corner of Campton, from thence eastward on the line dividing the towns of Plato and Campton or as near thereto as practicable, until it intersects the St. Charles and Genoa road; Said relocation will pass over lands owned by Wm Brady. L. H. Baker Daniel Reynolds and others not known

A. H. Beaton. S. D. Ellithorp, A. Nichols. C. S. [illegible]
J. L. Kimball. Franklin Jackson. [illegible]
A. D. Jackson. Jason Nichols. Daniel McDaniel
William Arnold, Calvin Shurtleff, Daniel Seaton
John F. Wadley, Gilbert Ellis, George Jennings.

State of Illinois } I, William Hanson, Town
Kane County } Clerk of the town of Plato
& ex-officio Assessor thereof do hereby certify that the
above is a true copy of the originals petition
filed in my office by the road commissioners
of the town of Plato on the 13th day of
March 1858.

Wm Hanson Town Clerk of Plato ~~personally~~
~~appeared before me~~ G. C. E. Ellithorp being duly sworn, doth
depose and say that he posted three Copies of
the within petition as follows:
Plato 4 corners, 4 corners near G. P. Harvey's farm,
4 corners at L. M. Bakers in the town of Plato,
being three of the most public places in said
town,
Subscribed and sworn to before me this 22 day of June 1858.
A. R. McWaine J.P.

Not Granted, filed March 13th 1858.
Wm. Hanson
Town Clerk

State of Illinois. Kane Co. I William Hanson
Town Clerk of the town of Plato, do hereby
certify that the above is a true copy of the
endorsement on the back of the original Pet-
ition filed in my office by the commissioners

of Highways of the town of Plato on the 13th day of March 1858.

Wm Hanson Town Clerk of Plato

To G. H. Bowman & Joy, Andrew Pingree. Supervisors of St. Charles, Virgil and Rutland Sirs you will take notice that G. C. Ellithorp S. J. Minkler, A Nichols. P. Nichols. Franklin Jackson. G. Solomon. S. Allen and others, have taken an appeal from the decision of the Commissioners of the towns of Plato and Canton in refusing to so alter that part of the Elgin & Sycamore road which lays between the St. Charles and Genoa Road and Blackberry Road as to cause the same to run on or near the line dividing Plato and Canton from the Blackberry to the St. Charles Road, which appeal is made to G. H. Bowman of St. Charles, F. Joy Virgil and A. Pingree of Rutland and bears date April 6. 1858. The grounds upon which the appeal is made is the refusal, of said Commissioners to alter as asked for by said Ellithorp and others in a petition now filed in my office on the 12th day of March 1858. and said appeal is brought to reverse the determination of said commissioners.

Dated this 6th day of April A.D. 1858.

Abner Carrier Town Clerk of Canton

Wm Hanson, Town Clerk of Plato

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State of Illinois } I, S. Williams Hanson Town
Kane County } Clerk of the Town Plato
do hereby Certify that the above is a true
copy of the original certificate of Selectmen
of Supervisors to hear and determine the
appeal therein mentioned now on file in
my office in connection with the other
papers in relation thereto.

Wm Hanson Town Clerk of Plato.

&

State of Illinois } Whereas Timothy C. Gilthrop
Kane County } S. S. Kinkler. A. Nichols
Franklin Jackson, Thomas Solomon of the Town
town of Burlington in said County & Jason Nich-
ols. Spencer Allen and William Denison of the
town of Virgil in said County, did on the 6th
day of April. A. D. 1858. appeal to us from an
order and determination of the commissioners
of Highways of the towns of Plato and Canton
contained in the order of said Commissioners
deposited with the town Clerks of Plato and
Canton respectively. to wit-in Plato on the
13th day of March. A.D. 1858. and in Canton the
12th day of March. A.D. 1858. a copy of which
said order as well as all the papers before
us in said appeal are hereunto annexed &
we Andrew Pingree and Fletcher Foy. having met
on the first day of May 1858. at 10 Clock P. M. at the

house of William Brosby in the town of Canton to hear the proofs and allegations of the parties, being the time and place agreed upon by us, when and where we would meet to consider said appeal and finding that G. W. Bowman, the St. Charles supervisors, did not attend who had been appointed by the respective town clerks of Canton and Pierpont, as one of the supervisors, before whom the appeal had been taken, whereupon we proceeded to fill the vacancy with N. N. Rawlin, supervisors of the town of Rainsville, and then adjourned to meet at the house of the aforesaid Wm Brosby on the 6th day of May 1858. at 10. O'clock A.M. at which place we met as per adjournment. & it appearing that said Commissioners of Highways and three of the petitioners in said case, had been duly notified of which meeting as required by law we did proceed to hear the proofs & allegations of the parties and to consider the appeal, and we being now fully advised in the premises, are of the opinion that said road is necessary and proper and that the public interest would be promoted thereby, we do therefore order that the order and determination of said Commissioners of Highways be, and the same is hereby in all things reversed and do order and determine that the road be

and the same is hereby laid out and established on and near the line between the towns of Canton and Plato agreeable to the prayer of the petitioners and also of that of the persons who took the appeal as may be seen by the papers herewith connected, more particularly described as follows, to wit- commencing a point in the centre of the St. Charles and Genoa Road exactly on the line between Plato and Canton near William G. Walkers residence and running thence in a westerly direction across the lands of the aforesaid Walker and D. Reynolds on or near the line between them about twenty-two rods thence in the same direction wholly on D. Reynolds land about eight rods thence in the same direction wholly on L. M. Bakers land about eight rods, more or less to the middle of the Blackberry road and to a point exactly two rods north of the line between the said towns, Canton and Plato and that said line above described be the center of said road and the same is hereby declared to be a public highway, four rods in width. For a more definate description of the above newly laid or altered road see the accompanying map of the survey, which we have ordered and

caused to be made And it is further ordered and determined in consequence of the laying of the above described road that all that part of the road commonly known as the Elgin and Sycamore road which lays in the town of Plato from the St Charles and Genoa Road to the Blackberry Road, be and the same is hereby vacated, The following is a more particular description of the vacated part of the Elgin and Sycamore roads, to wit-Commencing at its intersection with the Blackberry road and running thence north 70° east 11-16 100 chs, thence north 79 1/2 east 16 chs, to the St Charles and Genoa road more or less. And we the undersigned supervisors further report that Wm S. Walker across whose land the above described road passes for the distance of twenty rods nearly has not set up any claim for damages, and that in our assessment of damages on said route, we have estimated the advantages to the said Walker to be equal to the damages, inasmuch as the laying and opening of said road opens to him a direct and desirable route to Blackberry station and to the southern and central portion of our county.
And in relation to damages claimed

by D. Reynolds across whose land the said road passes for the distance of eighty rods, we, the undersigned having applied to him with a view of agreeing with him upon the subject, and totally failing to do so, we proceeded to assess the same at what we deemed just and right taking into the account the advantages as well as the disadvantages, & have assessed the ~~same~~ damages to the said D. Reynolds, by crossing his lands, at ~~two hundred and fifty~~ two dollars on section No 32 in the town of Plato and section No 5 in the town of Canton it being enclosed and improved lands, at five hundred & fifty dollars.

And in relation to damages claimed by L. M. Baker across whose land the said road passes for the distance of eighty rods more or less, on section 31 of the town of Plato and section No 6 of Canton, we have proceeded to assess the damages at what we deemed just and right, and taking into the account and estimating the advantages and benefits as well as the Disadvantages, we have estimated the advantage of said road equal to any and all his damages inasmuch as the creation of the new section of the Elgin and Sycamore road, which lays wholly on the said Bakers

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land, saves him one acre and twenty hundredths of land, and about ninety-six rods of fence. And it is further ordered and determined that the town of Canton pay one hundred & twenty five dollars, and the town of Plato pay the same amount to D. Reynolds, making a sum total of two hundred & fifty dollars, this being for damages expressed in the above order. And also that the town of Canton pay N. N. Rawlin $1.50 & Plato pay him $1.50 And that the town of Canton pay A. Pingree $2.25 & Plato pay him $2.25 & that the town of Canton pay A. Pingree $2.25 & Plato $2.25 these several sums aggrading $12.00 it being for expenses of the appeal, for supervisors services.

In witness whereof we have hereunto set our hands this 6th day of May A.D. 1858.

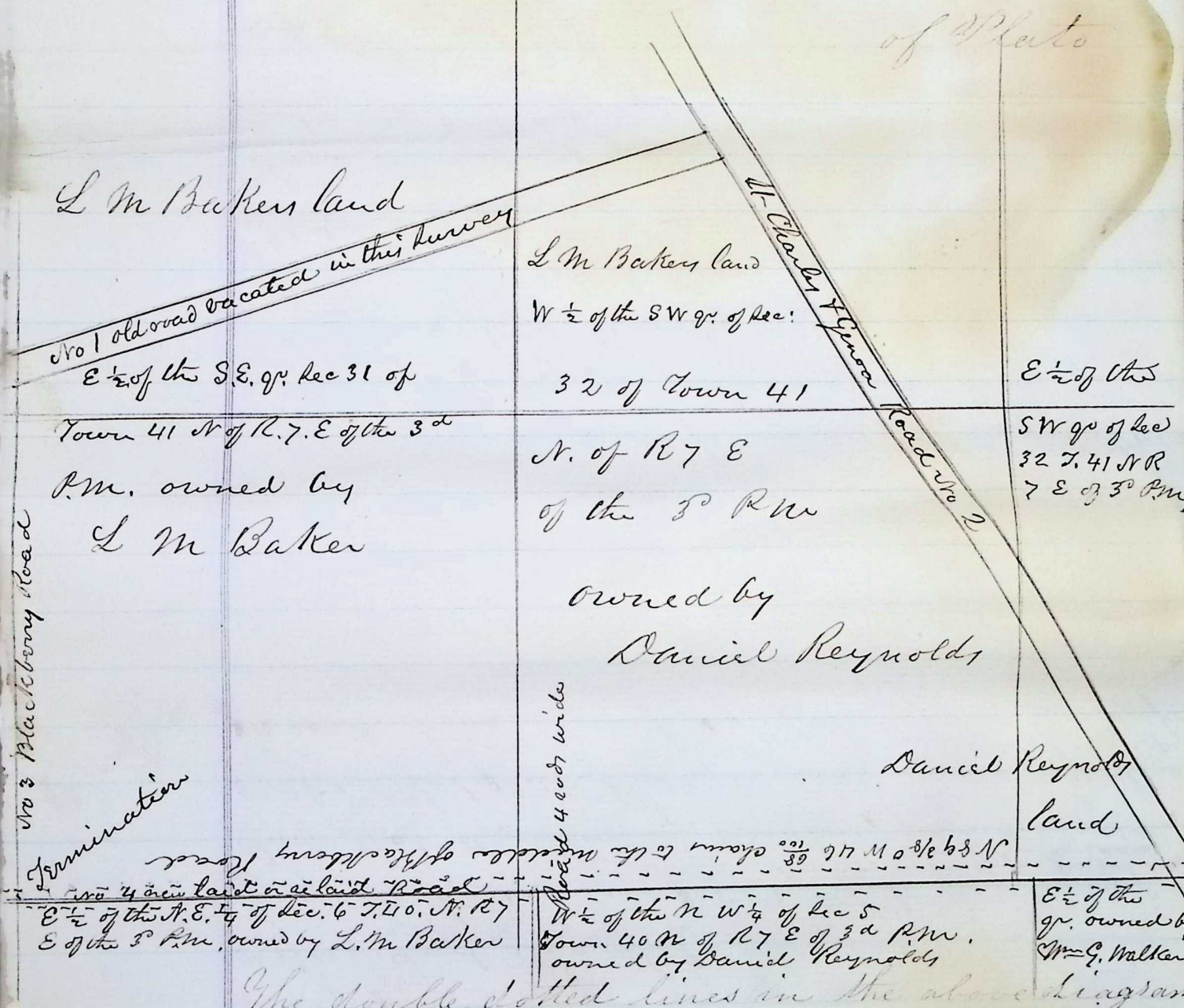
Andrew Pingree
Supervisor of the town of Portland

F. Foy, Supervisor of the town of Virgil
N. N. Rawlin
Supervisor of the town of Kirkville

State of Illinois } I William Hanson Gunn Clerk
Kane County } of the town of Plato do hereby certify that the foregoing is a true copy of the original report of the Supervisors whose names are thereto attached which was filed in my office on the 20th day of August 1858, & that the following is a true copy of the original

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map and Survey attached to said report.
Wm Hanson Town Clerk
of Platts



The double dotted lines in the above diagram show the bearing length and location of the new laid road commencing in the center of the St. Charles and Genoa Road, on the line between the Town of Platts and Kampton, and running thence N. 89 3/4° W. 40 50 chains to the middle of the Blackberry road, to a point two rods or 50 links north

of the line between Campton and Plato, crossing the lands of Wm Walker. Daniel Reynolds, and L. K. Baker, as set forth in the foregoing map, being 4 rods in width. Said road was surveyed by the subscriber May 15th 1858. by the order of and under the direction of the following Supervisors before whom an appeal had been taken, viz't. N. Rawlin, Fletcher Jay. and A. Pingree. The red lines above represent nearly the old traveled road vacated under this survey and the above named Supervisors order.

Witness my hand and seal A. Pingree (L.S.)
late deputy county Surveyor under Addin Mann Co Surveyor of Kane County Illinois.

— Defendants here rested —

The Plaintiffs then introduced John Briggs who testified: I reside in the town of Plato and have resided there since July 1835. Am pretty well acquainted with the inhabitants of Plato and vicinity — I H Deaton lived in Campton 18 years T. C Ellithorp has lived in Burlington 18 years, A Nichols has lived in Burlington seven years Except last winter — J Minkler lived in the town of Burlington —

and never in Plato — Jason Nichols never resided in Plato but did in Virgil — H. Jackson never lived in Plato, Daniel McDonnud has lived in Plato for about 12 years — He is a Scotchman and said he had never been naturalized — he is a renter and does not own land there, A. C Craft lived in the town of Burlington and never in Plato. Wm Arnold lived in Campton and never in Plato C Shirtliff resided in Campton and not in Plato — Daniel Seaton lived in Campton and never in Plato — Gilbert Ellis never lived in Plato — George Jennings lived in Virgil and never in Plato —

I have been acquainted with the Elgin and Sycamore road ever since it was laid which is about fourteen years — the road was laid as a State road by special act of the legislature — I was acquainted with all the names on the petition Mr Wilcox was one of the Commissioners named in the act — It was from Elgin to Sycamore in DeKalb County — This State road when it was first laid did not touch the town of Campton and never changed except by the road in question so as to touch

64 Campton. There has been several re-
views of the State Road — This State road
never was on a Town line a that part
lying between the St. Charles and Genoa
road and the four Corners marked on
the Map —

Cross Examination

I was not present when the State
Road was laid out — Baker resides
about half mile from town line. The
distance of the old road from the town
line is from 1/4 to 1/2 mile — Between
the Towns of St. Charles and Elgin the
State Road runs on the Town line —

Re Examined

I have been Commissioner
one year and then passed over one year
I was the first Commissioner after the
Township Organization — Before, the
Commissioners of Campton had nothing
to do with the Road taken up that is the
State Road — The Road was under
the charge of Plato Township — I helped
to district the State road and allotted
it to District Number ten in Plato

I know of subordinates working the
State road in Plato —

George Harvey sworn on behalf of Plaintiff and testified: I lived in the Town of Plato from 1837, to 1848, and was afterwards and am yet well acquainted with those towns, I was with the Commissioners that laid out the State Road. The Commissioners were General Wilcox Mayo and a third Commissioner I dont recollect — This was I think in 1846. The road as laid out by them did not touch the town of Compton — When I moved away the Township Organization law was not in force and the County Commissioners Court appointed the road Commissioner. The State road was originally half a mile from town line, but not so far now from the town line

The foregoing testimony of Griggs and Harvey objected to, by the defendants at the time offered, and received subject to objection —

The Plaintiff introduced Wm Hanson as a witness who testified:

I know the old road in question — The Commissioners of the town of Plato had charge of it and not the town of Compton — I acted as town clerk

of Plato in 1852. finish.

It was admitted by both parties that the Towns of Plato, Burlington, Virgil and Campton Corners together about 1/8 of a mile south of where said Elgin and Sycamore road strikes the west line of Plato and the Blackberry road — Virgil being west of Campton, Burlington west of Plato. Campton south of Plato.

A map was also introduced by the plaintiff which was admitted to be correct and the same was considered in Evidence which was as follows:

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North

Road on north line of Bakers Farm

J. Russel

Burlington

Town Plato

Town Line

Road as formerly laid

Brophy

L. M. Baker

80. acres
E½ S.E.¼ Sect 31. T. 41. Rang 7.

L. M. Baker

Road to Elgin

80. acres
N.½ S.W. ¼ Sect. 32
T. 41. R. 7

State Street

D. Reynolds

Walker

West

Town Corners

Road on the Town Line

East

Brophy

Road on Baker's W. Line

L M Baker

80. acres
E ½ N.E. ¼ Sect 6.
T. 40 Range 7.

Township Kirkpatrick

Town of Compton

State of I[illegible]
Kane C[illegible]

ss

I Adin Mann County Surveyor of Kane County do hereby Certify that the above is a correct map of L.M Bakers farm in said County as surveyed by me with other farms adjoining and also the roads as now or formerly laid on and through said premises.

Given under my hand this 6th day of June 1859.

Adin Mann Co. Surveyor
of Kane County

69 The foregoing was all the testimony in the case

The Court found the defendants guilty and assessed the Plaintiffs damages at fifty cents. to which decision and judgment of the Court the defendants by their Counsel at the time excepted and pray that this their bill of Exceptions may be signed and sealed which is done

R. G. Montony [Seal]
Judge of said Court

And afterwards to wit: on the 11th day of December A.D. 1863 was filed with the Clerk of our said Court of Common Pleas of the City of Elgin a Bond in the words and figures following to wit:—

Know all men by these presents, that Henry Warne & David Bowne as Principals and a John Warne as surity are held and firmly bound unto Laurence Baker in the penal sum of One Thousand dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and Administrators

jointly severally and firmly by these presents. Witness our hands and seals this tenth day of December A.D. 1863.

The Condition of the above obligation is such that whereas the said Lawrence M. Baker did at the October Term A.D. 1863. of the Court of Common Pleas of the City of Elgin in Kane County State of Illinois recover a judgment against the above bounden Henry Warne and David Bowne for the sum of fifty cents & costs from which judgment the said Warne & Bowne have taken an Appeal to the Supreme Court of the State of Illinois

Now if the said Warne & Bowne shall prosecute their Appeal with effect and shall pay whatever judgment may be rendered by the Court upon the affirmation dismissal or remanding of said Appeal then this Obligation to be void otherwise to remain in full force and Effect.—

Henry Warne (Seal)
David Bowne (Seal)
John Warne (Seal)

Indorsed on the back.

Approved & Filed Dec 11. 1863
R. W. Padelford Clerk

71

State of Illinois
Kane County } ss.
City of Elgin

I Rodolphus W Radelford Clerk of the Court of Common Pleas of the City of Elgin in Kane County and State of Illinois. Do certify the foregoing to be a correct transcript of the Proceedings had and entered of Record in said Court, and full and complete copies of papers filed therein, in a Cause lately pending in said Court wherein Lawrence M. Aiken was Plaintiff and Henry Warne & David Bowne were defendants

Witness Rodolphus W Radelford Clerk of the Court of Common Pleas of the City of Elgin in said County and the Seal thereof at Elgin this 14th day of April A D 1864

R. W. Radelford
Clerk



210.00
Atty $21.

State of Illinois } In the Supreme Court
Third Grand Division } ss To the April Term A.D. 1864

Henry Warne et al
David Bowne Appellants
vs
Lawrence M. Baker Appellee } Assignment of Errors

And now the said Appellants come and say that in the record and proceedings aforesaid there is manifest error in this to wit:

1st The Court erred in admitting improper testimony on the part of the plaintiff

2nd The Court erred in rendering judgment against the defendants —

By reason whereof the Appellants pray that said judgment may be reversed &c

Platt & Smith
Attys for Appellants

State of Illinois } ss

Supreme Court April Term A.D. 1864

Lawrence M Baker
ats
Henry Wann & David Bown } appeal

And now comes the said appellee (L M Baker) by S. Wilcox his attorney and says that there are no such errors in the foregoing record as the said appellants have thereof alleged wherefore he prays that the foregoing judgment and proceedings in all respects be affirmed

S. Wilcox
atty for appellee

In the Supreme Court

Norris & Bowen
vs
Baker

Record

Filed Apl. 20. 1864.
Leland
Clk.

Pleas by Smith
Allegs for Apltes

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

HENRY WARNE & DAVID BOWNE, *Appellants*,
vs.
LAWRENCE M. BAKER, *Appellee*.
} TRESPASS.

APPEAL FROM THE COURT OF COMMON PLEAS OF THE CITY OF ELGIN.

POINTS AND BRIEF OF COUNSEL FOR APPELLANTS.

First. The alleged trespass was committed, if at all, by the Highway Commissioners of the town of Campton, acting as such, in the opening of a road upon the town line between the towns of Campton and Plato, which road as they claimed had been duly laid out there, and duly allotted to the town of Campton, and ordered to be opened, which the Plaintiff Baker refused, or neglected to do, and thereupon the same was done by the Defendants. This clearly appears from the evidence. And we insist that the record evidence in this case shows, that in fact such road had been duly laid, and that such commissioners were justified in opening the same, and in so doing were not trespassers.

But it is, or was, in the Court below, insisted that the proceedings whereby said road upon the town line was established, were altogether irregular and void, for the reasons that the *original petition* for this road was not such as to *authorize any* body to *act in the premises*, and that the tribunal *laying the road, had no jurisdiction of the matter.*

Upon these objections, we make the following suggestions:—

1st. Upon what body is conferred the power to alter, discontinue or lay out roads? *Primarily* upon the Commissioners of Highways of the town in which road so to be altered, discontinued, or laid lies. Town. Org. Law of 1851, Art. 22, Sec. 1, and Art. 24, Sec. 1.

If road to be acted upon on town line the *primary* jurisdiction is conferred on Commissioners of the two towns affected. Ibid, Art. 24, Sec. 20.

Under what circumstances can this power be exercised by the Commissioners? Ans. "When petitioned by any number of legal voters not less than 12, residing within three miles of the road to be laid, &c." Ibid, Art. 24, Sec. 1.

The requisites then are, 1st. Proper petition. 2nd. Signed by legal voters. 3rd. Not less than twelve in number. 4th. Their residence: *within three miles the road* in question.

2nd. This same power is also conferred upon three Supervisiors of the County, not of the town or towns interested. Ibid, Art. 24, Sec. 12, 15.

In what way or under what circumstances may the power be exercised by *them?* Ans. When there shall have been an appeal from the decision of Commissioners of Highways. Ibid, Art. 24, Sec. 8, 14, Laws of 1857, p. 185.

3rd. The road in controversy in this case is upon the town line, what body had the power to locate the same there? Ans. Commisioners of Plato and Campton —none other in the first instance. Ibid, Art. 24, Sec. 20.

To whom was the petition (the receipt of which authorized them to act) presented in this case? Ans. To the Commissioners of Plato and Campton.

Then in the refusing to locate upon the town line by the Commissioners of Plato and Campton, they exercised a power duly conferred upon them.

They refused to locate the road upon the town line as also to vacate the old road.

The aid of the *other* tribunal on *whom is conferred power* to *act* in such matters under certain circumstances was invoked by appeal.

It is asked of them to lay a road on the town line. They do so having full power to act in the premises. And it is for acts done in the opening of said road by Defendants as Highway Commissioners of Campton, to which town the road in controversy had been allotted, that this suit is brought.

4th. But it is said *neither* of the tribunals mentioned, had any authority to act in *this* case.

They say "the Commissioners of Plato and Campton could not act, for the act sought to have done was to so alter a road lying *wholly in Plato*, as to make the same run upon the line between Plato and Campton.

That it is competent for *some* tribunal to make such alteration *there is no doubt.*

The Commissioners of *Plato can't do it: they* may *alter the road*, but they *can't* so alter the same *as to make it run on the town line*, and the petition asks this kind of an alteration.

Who then may make *such* an alteration?

Ans. The *Comissmioners* of *both towns interested* in the alteration, to wit: *Plato* and *Campton.*

It is conceded that the Commissioners of both towns acting together compose the proper tribunal to cause a road to run on the town line, but the Commissioners of Campton could have nothing to do with vacating the road in Plato. Granted for the sake of the argument.

It does not appear that they *did* have anything to do with vacating of the road in Plato. On the contrary it does appear, that while they *desired*, not only to locate the old road on the town line, but to vacate the old road in Plato; yet the *Commissioners of Plato*, who it is claimed was the *only* competent authority to *vacate* the old, not only refused to vacate but to locate on the town line, *neither* of *which was for this reason done.*

The *Commsssioners of Plato*, (claimed to be the only proper tribunal to do the thing asked,) were asked to vacate. and locate on town line, as well as the Commissioners of Campton, whose acts in connection with the Commissioners of Plato were *necessary to relocate on the town line*, if not necessary to vacate old road.

The vacation desired was asked of the proper parties to vacate, (even if Commissioners of Plato are the *only* proper parties,) and the *relocation on the town line certainly* is asked of the proper tribunal, to wit: Commissioners of Plato and Campton both—what objection then to the acts of this tribunal, or to the two tribunals acting in concert in regard to the matter?

Plaintiff certainly ought not to complain, inasmuch as no relocation or vacating was ordered by the Commissioners of Campton, or Commissioners of Plato, acting either separate or together.

Commissioners of Campton desire a different result, but Commissioners of Plato, (the only competent authority according to Counsel for Appellee,) refuse

and their refusal controls, and from *their refusal to locate a road on town line* an appeal is taken.

This appeal authorizes another and different tribunal to take the matter in hand.

The three Supervisors have all the authority to lay out, relocate or vacate, or alter roads *when appealed to*, as the Commissioners of any town, or in case of town line roads as Commissioners of two towns.

The appeal was "*for the purpose of reversing the determination of the Commissioners in refusing to locate on the town line.*" And this second tribunal to reverse the determination, and do locate a road on the town line. They do more they order that in consequence of the location on town line, that old road be vacated, (a matter about which petitioners have no desire.) This they done without asking from us. If they were asked by the appeal to vacate the old road as well as locate on town line, it would *unquestionably* have been competent for them to vacate the same.

But whether it was so or not, they were asked by the appeal to locate a road on town line, and sufficient for Defendants that they done so, and that we are in the line of the road as thus located.

It can make no difference with the Appellants, whether the action of the Supervisors in vacating the old road was proper, or not, so that the road on the town line was properly located, by a competent tribunal, for it is for acts done in the line of that road, and that only, that this action is brought. 2 Hill 443

An objection was urged against the original petition in this "that the persons signing the same did not reside in the town of Plato."

The statute as before cited fixes the residence of petitioners, to wit: "within three miles of the proposed road," and it is not claimed but these petitioners reside within the proper distance, and it is to be presumed they did. It is argued that, if the petitioners are not confined to the town where road lies, persons not liable to foot the expense, may *force* a road upon others to build. Not so. The *Commissioners of Highways*, have the power, and *not the petitioners*, to locate roads. Any body, if a legal voter, and residing within three miles of the road desired, may *petition* for a road, and when this petition is presented to the Commissioners of Highways then *they* are authorized to *exercise their discretion* in regard to the matter, and that their discretion may be exercised in conformity with wishes of those who have to foot bill of expenses. The statute provides that the *inhabitants of the town* in *which said road is* shall be notified of the fact that Commissioners have been *petitioned* to act. Thereupon *they*, *the parties interested pecuniarily*, can make *their* wishes known to the authority *having the power* to *locate* or *refuse to locate*. There is no injustice in this.

There is nothing then in the suggestion, on which this argument was founded, that unless petitioners lived in the town affected, they might force a road which those having to build did not want.

This case has been once before this Court, (24 Ill. 351,) and the regularity of the proceedings therein were passed upon, and held to be regular, and it does seem to us, that as was said by this Court, when the case was first here, so it might again be said, "We are unable to see the least force in this position," that of the Counsel for Appellee.

There being then no irregularity in the proceedings establishing the road in question, in the opening of which it is charged the Defendants were guilty of a trespass, it is respectfully submitted, that the judgment of the Court below ought to be reversed.

PLATO & SMITH,
Attorneys for Appellants.

In the Supreme Ct.

1841

239

Vanvi & Towers

/

Baker

Brief of Defendants

Thiladelphia May 10. 1841

D. Sedgwick Esq

D. & S.

Attys

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

HENRY WARNE & DAVID BOWNE, *Appellants,*
vs.
LAWRENCE M. BAKER, *Appellee.*

TRESPASS.—*Case appealed from Court of Common Pleas of the City of Elgin.—Heard, in Supreme Court, April Term, A. D.* 1864.

APPELLANTS' PETITION FOR RE-HEARING.

And the said Appellants now come and present to the Court their petition for a re-hearing of said cause, and show to the Court the following grounds for such application.

Says the Court, in delivering their opinion in this case, "The question now presented for the consideration of the Court, is whether the Commissioners of the two towns of Plato and Campton, had jurisdiction to hear and determine the question of altering and relocating the road in controversy." The Court says, "It appears that only one of the petitioners resided in the town of Plato, (and that he was not a voter,) and only three others resided in Campton, the others all resided in the towns of Burlington and Virgil." And the Court says, "It is insisted that only legal voters of the town in which the road was to be located or vacated and liable to the expense of opening and repairing the same can legally petition for such alteration of a road in existence, or the establishment of a new road."

The Court then quote the 1st Sec. of the 12 Article of the Township Org. Law, and ask the question, "Is this requirement answered when the requisite number of legal voters residing within the required distance, have signed the petition, although not residents of the town?" And it is in answer to this question, and which is the one which determines this case, that the counsel for the Appellants believe the Court to have erred. The Court by way of answering the question go on to say that the Statute has created townships into corporations, etc, and remark, "It was manifestly the design of the Legislature when it created these bodies, to confer the power authorized to be exercised upon the citizens of the towns." * * * * "The design of the law is manifestly to give the voters of the town the control of their corporation to the extent of the power conferred and the duties to be performed." "It was not intended that the voters of one town should control the acts of the officers of another town in matters affecting their corporation."

And the Court concludes as the result of the propositions enumerated by them as quoted above, that "A fair and reasonable construction of the Act can only authorize the legal voters of the town to be affected by the action of the Commissioners to become petitioners for the alteration or relocation of a road."

Upon these propositions laid down by the Court, and the conclusion drawn, we desire to say 1st, "The *power* authorized to be exercised" in the location of a road in any town is without doubt, conferred in the first instance "upon the citi-

zens of the town," to wit, upon the *Commissioners* of *Highways*, who alone have the power in the first instance to locate roads, and such power is not conferred upon the petitioners nor is it ever exercised by them. And the location of the road and the power exercised in this case was by the citizens of the towns affected, to wit, the Commissioner of Highways of Plato and Campton and not by petitioners. The fact that persons not citizens of the town affected petition these citizens of the town having the power to do an act, to do that act can in no sense be said to deprive the proper corporate authority of the power authorized to be exercised by them; and to allow such to *petition* for the location of a road would not at all militate against the correctness of said first proposition of this Court.

It is said the design of the law is to "give the voters of the town control of the corporation," etc. The principle here enumerated cannot apply in determining who shall be the petitioners for a road, from the fact the statute provides a limit to the residence of a petitioner, in many cases but a very small fraction of the voters of a town to be effected would exercise any control of the corporation in any sense. The petitioners in the case in hearing, living outside of the corporation, do not desire to *control* the corporation, but living within the distance specified in the statute of the desired road, they exercise the right which we insist the law gives them of *petitioning* the proper officers of the corporation to lay the same for their use.

We freely admit it was never intended to give the voters of one town control of the acts of the officers of another, nor do we seek to do so in this case. We insist that anybody, if a legal voter and residing within three miles of the road desired, may *petition* for the road, and when this petition is presented to the Commissioners of Highways then *they*, the duly constituted authority acting for the corporation, are authorized by the statute to *exercise their discretion* in regard to the matter. They are not *compelled* to lay a highway because they have been petitioned for the same. They are to exercise their *discretion*, and that their discretion may be exercised according to the wishes of those who have to foot the bill of expense incident to the laying of the road, the statute provides that the inhabitants of the towns in which said road is, shall be notified of the fact that Commissioners have been petitioned to act. Therefore, *they*, *the parties interested pecuniarily* can make their wishes known to the authority *having the power to locate* or to *refuse to locate*. See L. 1857, p. 55.

There is no injustice in this.

That it never was the design of the statute to confine the petitioners for a road to the town in which the same was to be located seems to us apparent from the necessity of the case. Take the case at bar—Burlington is an interior town, can only reach mills and market upon Fox River by passing through the town of Plato, they desire a road for that purpose, it is a necessity without which for instance the entire inhabitants of the interior town will be cut off from market. The proper authorities of Plato are willing to lay a road for their use, but they can only do so when petitioned by twelve legal voters residing within three miles of the road, (and as this Court says within the town of Plato.) Now if this additional requirement as held by this Court is *necessary*, how we ask will the inhabitants of Burlington get a road out, if there does not happen to be twelve legal voters of Plato residing within three miles of the road, or (as was the case probably here,) there was not twelve voters of Plato, within three miles of the road, who are not too stingy and selfish to petition for a road which would add to their expense. Is Burlington to be deprived of a highway through the town of Plato when necessary, and when perhaps a large majority of the voters of Plato

are willing to build the same, because there are not twelve voters of Plato living within three miles of the road to petition for the same.

The law makes no such requirements in terms, but on the contrary the only thing made necessary to be done before the proper authority can take the matter in hand is to present to them a petition of "any number of legal voters, not less than twelve, *residing within three miles of the road to be laid*," etc. And it does seem to us that to impose further restrictions in the matter is contrary to the *intent* of the Statute, as it is certainly beyond its language, and is wholly unnecessary, and in a large number of cases would be productive of great hardship, as we have illustrated above.

We have to say in conclusion, that the law fixing the character and residence of petitioners for roads has existed in a similar form to the present for years before township corporations were created, and before, it referred to territory generally, and there is nothing in a township organization that should change or limit the language of the statute on this point.

We have clearly shown that in no case can the *petitioners* force a road upon others to build, and we only add that in cases when a road has been laid, the opening of which will be assessed to the town, the opening may be postponed till the expense is provided for some other way than by tax. See Town. Org. Law, 1851, Art. 24, Sec. 18. Having thus called the attention of the Court to the points which we desire them to again consider, we respectfully submit the matter to the Court's attention, fully believing in the desire of the Court to make no decision unless based upon a proper construction of the law.

PLATO & SMITH, *Atty's for Appellants.*

Appellants Petition
for rehearing

Filed Apl. 13. 1865
S. Sclander Clk

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

HENRY WARNE & DAVID BOWNE, *Appellants,*
vs.
LAWRENCE M. BAKER, *Appellee.*

TRESPASS.—*Case appealed from Court of Common Pleas of the City of Elgin.—Heard, in Supreme Court, April Term, A. D.* 1864.

APPELLANTS' PETITION FOR RE-HEARING.

And the said Appellants now come and present to the Court their petition for a re-hearing of said cause, and show to the Court the following grounds for such application.

Says the Court, in delivering their opinion in this case, "The question now presented for the consideration of the Court, is whether the Commissioners of the two towns of Plato and Campton, had jurisdiction to hear and determine the question of altering and relocating the road in controversy." The Court says, "It appears that only one of the petitioners resided in the town of Plato, (and that he was not a voter,) and only three others resided in Campton, the others all resided in the towns of Burlington and Virgil." And the Court says, "It is insisted that only legal voters of the town in which the road was to be located or vacated and liable to the expense of opening and repairing the same can legally petition for such alteration of a road in existence, or the establishment of a new road."

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And the Court concludes as the result of the propositions enumerated by them as quoted above, that "A fair and reasonable construction of the Act can only authorize the legal voters of the town to be affected by the action of the Commissioners to become petitioners for the alteration or relocation of a road."

Upon these propositions laid down by the Court, and the conclusion drawn, we desire to say 1st, "The *power* authorized to be exercised" in the location of a road in any town is without doubt, conferred in the first instance "upon the citi-

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PLATO & SMITH, *Atty's for Appellants.*

Filed Apl. 13. 1865
L. Leland
Clk.

In the Supreme Court
of the State of Illinois
Third Grand Division

Henry Mann et
David Brown
Appellants

Lavonia M Baker
Appellee

Issues - Appeal from the
Court of Common Pleas
of the city of Elgin -

B. S. Wilcox. Atty for Appellee
You are hereby
notified that on the 7th day of April A.D.
1865 or as soon thereafter as counsel can
be heard we shall move said Supreme
Court now in session to grant a
rehearing in the above entitled
cause determined by said Court
at the April Term A.D. 1864. for
reasons which will be then presented
to said Court -
Elgin April 6th 1865

Plato & Smith
Attys for Appellants

I hereby accept service of a copy
of the above notice this 6th day
of April A.D. 1865 - S. Wilcox -



Notice of A/c Coleon

Filed A/c 13.1865

L Leland Clk

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

HENRY WARNE & DAVID BOWNE, *Appellants*,
vs.
LAWRENCE M. BAKER, *Appellee*.

TRESPASS.—*Case appealed from Court of Common Pleas of the City of Elgin.—Heard, in Supreme Court, April Term, A. D.* 1864.

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And the said Appellants now come and present to the Court their petition for a re-hearing of said cause, and show to the Court the following grounds for such application.

Says the Court, in delivering their opinion in this case, "The question now presented for the consideration of the Court, is whether the Commissioners of the two towns of Plato and Campton, had jurisdiction to hear and determine the question of altering and relocating the road in controversy." The Court says, "It appears that only one of the petitioners resided in the town of Plato, (and that he was not a voter,) and only three others resided in Campton, the others all resided in the towns of Burlington and Virgil." And the Court says, "It is insisted that only legal voters of the town in which the road was to be located or vacated and liable to the expense of opening and repairing the same can legally petition for such alteration of a road in existence, or the establishment of a new road."

The Court then quote the 1st Sec. of the 12 Article of the Township Org. Law, and ask the question, "Is this requirement answered when the requisite number of legal voters residing within the required distance, have signed the petition, although not residents of the town?" And it is in answer to this question, and which is the one which determines this case, that the counsel for the Appellants believe the Court to have erred. The Court by way of answering the question go on to say that the Statute has created townships into corporations, etc, and remark, "It was manifestly the design of the Legislature when it created these bodies, to confer the power authorized to be exercised upon the citizens of the towns." * * * * "The design of the law is manifestly to give the voters of the town the control of their corporation to the extent of the power conferred and the duties to be performed." "It was not intended that the voters of one town should control the acts of the officers of another town in matters affecting their corporation."

And the Court concludes as the result of the propositions enumerated by them as quoted above, that "A fair and reasonable construction of the Act can only authorize the legal voters of the town to be affected by the action of the Commissioners to become petitioners for the alteration or relocation of a road."

Upon these propositions laid down by the Court, and the conclusion drawn, we desire to say 1st, "The *power* authorized to be exercised" in the location of a road in any town is without doubt, conferred in the first instance "upon the citi-

zens of the town," to wit, upon the *Commissioners* of *Highways*, who alone have the power in the first instance to locate roads, and such power is not conferred upon the petitioners nor is it ever exercised by them. And the location of the road and the power exercised in this case was by the citizens of the towns affected, to wit, the Commissioner of Highways of Plato and Campton and not by petitioners. The fact that persons not citizens of the town affected petition these citizens of the town having the power to do an act, to do that act can in no sense be said to deprive the proper corporate authority of the power authorized to be exercised by them; and to allow such to *petition* for the location of a road would not at all militate against the correctness of said first proposition of this Court.

It is said the design of the law is to "give the voters of the town control of the corporation," etc. The principle here enumerated cannot apply in determining who shall be the petitioners for a road, from the fact the statute provides a limit to the residence of a petitioner, in many cases but a very small fraction of the voters of a town to be effected would exercise any control of the corporation in any sense. The petitioners in the case in hearing, living outside of the corporation, do not desire to *control* the corporation, but living within the distance specified in the statute of the desired road, they exercise the right which we insist the law gives them of *petitioning* the proper officers of the corporation to lay the same for their use.

We freely admit it was never intended to give the voters of one town control of the acts of the officers of another, nor do we seek to do so in this case. We insist that anybody, if a legal voter and residing within three miles of the road desired, may *petition* for the road, and when this petition is presented to the Commissioners of Highways then *they*, the duly constituted authority acting for the corporation, are authorized by the statute to *exercise their discretion* in regard to the matter. They are not *compelled* to lay a highway because they have been petitioned for the same. They are to exercise their *discretion*, and that their discretion may be exercised according to the wishes of those who have to foot the bill of expense incident to the laying of the road, the statute provides that the inhabitants of the towns in which said road is, shall be notified of the fact that Commissioners have been petitioned to act. Therefore, *they, the parties interested pecuniarily* can make their wishes known to the authority *having the power to locate* or to *refuse to locate*. See L. 1857, p. 55.

There is no injustice in this.

That it never was the design of the statute to confine the petitioners for a road to the town in which the same was to be located seems to us apparent from the necessity of the case. Take the case at bar—Burlington is an interior town, can only reach mills and market upon Fox River by passing through the town of Plato, they desire a road for that purpose, it is a necessity without which for instance the entire inhabitants of the interior town will be cut off from market. The proper authorities of Plato are willing to lay a road for their use, but they can only do so when petitioned by twelve legal voters residing within three miles of the road, (and as this Court says within the town of Plato.) Now if this additional requirement as held by this Court is *necessary*, how we ask will the inhabitants of Burlington get a road out, if there does not happen to be twelve legal voters of Plato residing within three miles of the road, or (as was the case probably here,) there was not twelve voters of Plato, within three miles of the road, who are not too stingy and selfish to petition for a road which would add to their expense. Is Burlington to be deprived of a highway through the town of Plato when necessary, and when perhaps a large majority of the voters of Plato

United States of America
State of Illinois, Kane County
City of Elgin ss:

Pleas before the Honorable Richard G. Montony Judge of the Court of Common Pleas of the City of Elgin in the County of Kane and State of Illinois at a regular Term of said Court begun & held at the Court House in the City of Elgin in said County on the 27th day of April in the year of Our Lord One thousand Eight hundred and sixty three

Present the Honorable Richard G. Montony Judge
Joseph H. Whipple Sheriff
Eugene Wells, Attorney for the

Attest R W Rudelfort
Clerk

Be it remembered that heretofore to wit on the 17th day of April A.D. 1863. a ~~Copy of Record~~ was filed with the Clerk of the said Court of Common Pleas of the City of Elgin a Copy of Record in the words and figures following to wit:

"United States of America State of Illinois Kane County ss: Pleas at a regular Term of the Circuit Court of said County of Kane begun & held at the Court House in Geneva in said County on the Monday the second

day of February in the year of our Lord One Thousand Eight Hundred and Sixty three, being the first Monday in said Month

Present Isaac G. Wilson Judge
Joseph H. Whipple Sheriff
Chas J. Metzgar State Atty

Attest J. C. Moore Clerk

Be it remembered that heretofore to wit: on the 30th day of November AD 1859 the same being one of the days of the February Term of said Court the following amongst other proceedings was had ~~in said~~ and Entered of Record in said Court to wit:

1859

Lawrence M. Baker
vs
Henry Warne and David Bowne } Trespass

This day comes the defendant by Platt & Harvey their attorneys and file their petition and move the Court for a change of Venue herein.

And afterwards to wit on the 5th day of December AD 1859 the same being one of the days of the November Term in the year AD 1859 the following amongst other proceedings was had and entered of Record in said Court to wit:

Lawrence M Baker

3

1829 vs } Trespass

Henry Warne and
David Bowne

This day comes the parties by their Attorneys and the defendants motion for a change of venue heing coming on to be heard after agreement of Counsel the Court being fully advised of and under said motion, to which ruling of the Court the defendants by Plate their Attorney Excepted

And afterwards to wit: on the 7th day of December the same being one of the days of the November Term of said Court in the year A.D. 1829 the following proceedings was had and entered of record in said Court to wit:

1829 Lawrence M Baker } Trespass
v
Henry Warne & al
David Bowne

This day comes the Plaintiff by Barry his Attorney and having filed his demurrer to the defendants Special Plea herein the defendants by Plate and Harvey their Attorneys also come and join in demurrer. After Argument of Counsel the Court being fully advised, of and under said demurrer It is therefore considered by the Court that the defendants have judgment and Execution

against the Plaintiff for their Costs about said Summons expended.

And afterwards to wit: on the 8th day of December 1859 the same being one of the days of the November Term of said Court as aforesaid the following amongst other proceedings was had and entered of Record in said Court to wit:

6829

Lawrence W. Baker
vs
Henry Warne and
David Bourne
} Trespass

This day comes the Plaintiff by Eastman & Barry his Attorneys and the Defendants by Hale their attorney also come and on motion of Plaintiffs Attorneys it is Ordered by the Court that a jury come whereupon came a jury of good and lawful men of the County, to wit: Caleb Kipp, John Reed Zechariah Mathews, John J Chambers, James Wilson, Henry Lyon, R. W Lee, James E Prescott, John McClelland, John C. Wilson E. S. Smith, Jacob Grimes who being severally by tried and selected and sworn to try the issues between the parties herein and to render a verdict according to the evidence, and after hearing a portion of the evidence, the jury are allowed by the Court to disperse until the meeting of the Court

5 Court to-morrow morning

And afterwards to wit on the 9th day of December aforesaid the same being one of the days of the term aforesaid the following amongst other proceedings was had and entered of record in said Court to wit:

6829 Lawrence M Baker
v
Henry Warne and
David Bonne
} Trespass

This day come again the parties by their respective attorneys, and the jury heretofore impannelled herein also come & after listening to the remainder of the evidence, the argument of Counsel and the instructions of the Court the jury retire under the charge of a sworn Officer of this Court to consider of their verdict and by consent of parties it is Ordered by the Court that when the jury agree they have leave to seal their verdict and disperse and meet the Court to morrow morning at nine o'clock

And afterwards to wit: on the tenth day of December A.D. 1859, the same being one of the days of the November Term of said Court the following amongst other proceedings was had and Entered

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of Record in said Court to wit;

1829

Lawrence McBake
vs
Henry Warne and
David Boone
} Trespass

This day come again the parties to this suit by their respective Attorneys and the jury heretofore impannelled herein also come and for a verdict upon their oaths do say we the jury find the defendants guilty and assess the Plaintiffs damages at the sum of five dollars which is ordered by the Court to be entered of Record and thereupon the defendants by Platt their Attorney move for a new trial

And afterwards to wit on the twentieth day of December A.D. 1829. the same being one of the days of the November Term of said Court the following amongst other proceedings was had & entered of Record in said Court to wit

1829

Lawrence McBake
vs
Henry Warne and
David Boone
} Trespass

This day come

7

again the parties in this suit by their respective attorneys and the defendants ~~the~~ motion for a new trial heretofore entered herein coming on to be heard after argument of Counsel the Court being fully advised overrules said motion and orders judgment on the verdict of the jury herein.

It is therefore considered by the Court that the Plaintiff have and recover of the defendants the sum of five dollars damages and also his costs in this suit expended and have execution therefor And on motion of the defendants it is ordered that they have ten days to file their bill of exceptions herein —

And afterwards to wit: On the fifth day of March AD 1861 the same being one of the days of the February Term of said Court the following amongst other proceedings was had and entered of Record in said Court to wit.

6829

Lawrence M Baker
vs
Henry Warne and
David Bowne
} Trespass

This cause is entered generally

And afterwards to wit: On the second day of February A.D. 1863. the same being one of the days of the February Term of said Court the following amongst other proceedings was had & entered of Record in said Court to wit:

1829

Laurena M Baker
vs
Henry Warne, and
David Boone
} Trespass

This day comes the Plaintiff by W D Barry his Attorney and the defendants by Plato & Smith their Attorneys and by their agreement the venue in this cause is changed to the Court of Common Pleas of the City of Elgin

It is therefore ordered that the Clerk of this Court transmit to the Clerk of the Court of Common Pleas in the said City of Elgin all the papers on file in this cause and a transcript of the proceedings had in this Court herein

State of Illinois
Kane County ss } I Thomas C Moore
Clerk of the Circuit Court

3

9

in and for said County in the State aforesaid do Certify the foregoing to be a Correct transcript of the proceedings had and entered of Record in said Court in a Cause lately pending therein wherein Lawrence M Baker was Plaintiff and Henry Warne and David Bowen were defendants And I further Certify that the accompanying papers Numbered from one to sixteen inclusive are all the papers on file in said Cause

Witness

Thomas C Moore

Clerk of said Court.

(Seal Stamp)

And the Seal thereof at Geneva in said County this 13th day of April AD 1863.

Thos C Moore

Clerk

And afterwards to wit: On the said 17th day of April A.D. 1863. was also filed with the Clerk of the Court of Common Pleas of the City of Elgin a Summons, Declaration, Pleas, Demurrer, Plea by leave of Court, and Replication in the words and figures following to wit:

State of Illinois }
Kane County } ss The People of the State of Illinois to the Sheriff of said County Greeting: We Command you that you Summons Henry Warne & David Bowne if they shall be found in your County, personally to be and appear befor the Circuit Court of said County on the next Term thereof to be holden at the Court House in Geneva in said County on the third Monday of May next to answer unto Laurence M Baker in a plea of Trespass to the damage of said Plaintiff as he says in the the sum of Three Hundred Dollars. and have you then and there this writ, with an indorsement thereon, in what manner you shall have Executed the same.

Witness Paul K Wright Clerk of our said Court and the Seal thereof, at Geneva in said County this 29th day of March A.D. 1859. Paul K. Wright Clerk

L S

And said Summons has on the back thereof an indorsement in the words and figures following to wit:

11

Served by reading to David Bowne and Henry Warne this 4th day of May 1859

Ethan J. Allen Sheriff

By H. M. Clark

Deputy

2 Services	1.00	
Milage	1.25	
Return	10	2.35

Filed May 6. 1859

R. R. Wright Clk

Lawrence M Baker } Kane County
vs } Circuit Court of
Henry Warne & } the May Term
David Bowne } AD 1859.

Lawrence M Baker Plaintiff in this suit complains of Henry Warne & David Bowne Defendants in this suit of a plea of trespass. For that whereas the said Defendants on the first day of February ~~AD 1859~~ in the year of Our Lord One thousand Eight hundred and fifty nine and on divers other days & times between that day and the day before the Commencement of this suit with force and arms &c broke

and entered the close of the said Plaintiff situate & being in the Township of Plato and Compton in the County of Kane and State of Illinois and known and described as follows: to wit: The east half of the South East quarter of section thirty one in township forty one North of Range seven East of the third Principal Meredian in the district of lands subject to Sale at Chicago Illinois containing Eighty acres. And also the East half of lot number two of the North East quarter of section six in Township forty of Range seven in the district of Lands subject to Sale at Chicago Illinois containing thirty nine acres and ninety six hundredths of an acre, and then and there forced and broke down the fences then & there standing in upon and around said close and broke to pieces damaged and spoiled divers to wit: five hundred fence rails of great value to wit: of the value of three hundred dollars then standing and being in upon and around said close; and with feet in walking trod down trampled upon consumed & spoiled the grass & herbage of the said Plaintiff of great value to wit,

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of the value of three Hundred Dollars there then growing and being; and with Cattle to wit horses mares geldings Cows Oxen and Sheep and also with the wheels of divers Carts waggons and other Carriages crushed damaged and Spoiled other grass and herbage of the said Plaintiff of great value to wit of the value of Three Hundred Dollars then there also growing and being; and with the feet of said horses mares and geldings and with the wheels of the said Carts waggons and other Carriages tore up subverted damaged and Spoiled the Earth and soil of the said Close;

And also then and there broke down prostrated and destroyed a great part to wit fifty perches of the fence of the said Plaintiff of and belonging to the said Close and hindred and prevented the said Plaintiff from having the use benefit and Enjoyment of said Close in so large and ample manner as he might and otherwise would have done to wit at the County of Kane aforesaid and other wrongs to the said Plaintiff then and there did to the great damage of the said Plaintiff

And also for that the said defendants

on the tenth day of February in the year of Our Lord one thousand Eight hundred and fifty nine and on divers other days and times between that day and the day before the commencement of this suit with force and arms &c broke and entered one other Close of the said Plaintiff situated lying and being in the County of Kane and State of Illinois and known and described as the East half of the South East Quarter of Section thirty one in Township forty one north of Range seven East of the third Principal Meredian in the district of lands subject to sale at Chicago Illinois and then and there threw down tore down broke and destroyed a great part to wit fifty rods of the fences of the said Plaintiff of and belonging to said Close then and there broke to pieces damaged destroyed and spoiled down to wit five hundred fence rails of the great value to wit of the value of three hundred dollars then standing and being in the fence in and upon said close; and with feet in walking trode down trampled upon consumed and spoiled the grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars

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there then growing and being; and with Cattle to wit Horses mares geldings cows oxen and sheep and also with the wheels of divers carts waggons and other Carriages crushed damaged and spoiled other grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars then there also growing and being; and with the feet of the said horses mares and geldings and with the wheels of the said carts waggons and other Carriages tore up subverted damaged and spoiled the earth & soil of the said Close; and also then and there broke down prostrated and destroyed a great part to wit fifty perches of the hedges and fifty perches of the fences of the said Plaintiff of and belonging to the said Close and hindred and prevented the said Plaintiff from having the use benefit and enjoyment of said close in so large and ample a manner as he might and otherwise would have done to wit at the County aforesaid; and other wrongs to the said Plaintiff there and then did to the great damage of the said Plaintiff

And also for that the said defendant on the fifth day of February in the year of Our Lord One thousand Eight hundred and fifty nine and on divers other days and times between that and the day before the commencement of this suit with force and arms broke and entered the close of the said Plaintiff situate and being in the County of Kane and State of Illinois and known as the East half of lot number two of the North East quarter of section six in township forty of Range seven in the district of lands subject to sale at Chicago Illinois and then and there threw down tore down and broke down a great part to wit fifty rods of the fences of the said Plaintiff in and upon said close and broke to pieces damaged spoiled and destroyed divers to wit five hundred fence rails of great value to wit of the value of three hundred dollars then standing and being in the fence in and upon said close and with feet in walking trode down trampled upon consumed and spoiled the grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars there then growing and being; and with Cattle to wit horses mares geldings

5

17

cows oxen and sheep and also with the wheels of divers Carts waggons and other carriages crushed damaged and spoiled other grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars there then also growing and being and with the feet of the said horses mares and geldings and with the wheels of the said Carts waggons and other Carriages tore up subverted damaged and spoiled the earth and soil of the said close and also then and there broke down prostrated and destroyed a great part to wit fifty perches of the hedges and fifty perches of the fences of the said Plaintiff of and belonging to the said close and hindered and prevented the said Plaintiff from having the use benefit and enjoyment of said close in so large and Ample a manner as he might and otherwise would have done to wit at the County of Kane aforesaid and other wrongs to the said Plaintiff then and there did to the great damage of the said Plaintiff

And Also for that the said Defendants on the twenty sixth day of February in the year of Our Lord one

17

Thousand Eight hundred and fifty nine with force and arms & broke and entered one other close of the said Plaintiff Situate and being in the County of Kane and State of Illinois and known and described as the East half of the South East quarter of Section thirty one in Township forty one North of Range seven East of the third principal Meredian and the East half of lot number two of the North East Quarter of Section six in Township forty of Range seven all in the district of lands subject to sale at Chicago Illinois and then and there threw down prostrated and destroyed a great part to wit fifty rods of the fence of the said Plaintiff of and belonging to said Close; and then and there broke to pieces damaged spoiled and destroyed divers to wit five hundred fence rails of great value to wit: of the value of three hundred dollars then and there standing and being in the fence of the said Plaintiff in and upon said close; and with feet in walking trode down trampled upon consumed and spoiled the grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars then there growing and being, and with Cattle

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to wit horses, mares geldings Cows oxen and sheep eat up and depastured the grass and herbage of the said Plaintiff of great value to wit the value of three hundred dollars then growing and being in said Close, and with diverse other horses, mare geldings sheep and cattle and also with the wheels of divers Carts wagons and other Carriages crushed damaged and spoiled other grass and herbage of the said Plaintiff of great value to wit of the value of three hundred dollars there then also growing and being and with the feet of the said horses mares and geldings and with the wheels of the said Carts wagons and other carriages tore up subverted damaged and spoiled the Earth & soil of the said ~~said~~ close; And also then and there broke down prostrated and destroyed a great part to wit fifty perches of the hedges and fifty perches of the other fences of the ~~said~~ said Plaintiff of and belonging to the said close and other wrongs to the said plaintiff then and there did to the great damage of the said Plaintiff

Wherefore the said Plaintiff saith that he is injured and hath sustained damage to the amount of Three hundred

19

dollars and therefore he brings his
suit &c

W. D. Barry
Atty for Plff

Filed May 6. 1859
P R Wright Clk

State of Illinois }
Kane County } ss

Kane County Cir Court
May Term AD 1859

Henry Warne and
David Bowne
vs
Laurence M. Baker
} Trespass

And the said defendants
by Plato & Harvey their Attorneys Come and
defend the force and injury when &c
and say that they are not guilty of
the said supposed trespass above laid
to their charge or any or either of them
or any part thereof in manner and
form as the said Plaintiffs hath above
thereof complained against them and
of this the said defendants put themselves
upon their Country &c
And the Plaintiff ~~&~~ }
doth the like

Plato & Harvey
for Defts

~~Barry & Farnham Attys for~~
Plff

6

21 Barry & Eastman Atty for Plff

And for a further plea in this behalf the said defendants by leave &c say Actio non because they say that the said defendants before and at the several times when &c were and still are Commissioners of high-ways in and for the town of Champlain in said Clinton County And that before and at the said several times when &c a public highway had been duly laid out, recorded and ordered to be opened on the town line between the towns of Plats and Champlain in said County and running upon and across the said Closes of the Plaintiff in the said declaration mentioned; And that after such public highway had been duly located, and ordered to be opened as aforesaid that portion of the same, running upon and across the said Close of the Plaintiff in the declaration mentioned, was duly altered and partitioned to said Town of Champlain as a road district, to open, keep in repair &c according to the Statute in such case made and provided. And the said defendants aver that after

the said highway had been located and ordered to be opened, the said Plaintiff was duly notified in writing to remove his fences out of and from such public highway — And sixty days having elapsed since the service of said notice and the said Plaintiff neglecting and refusing to comply with such notice and open the said public highway, the said defendants as Commissioners of highways as aforesaid afterwards ~~to~~ to wit at the said time when &c entered upon the said closes in which &c and took and carried away the said fences &c to a convenient distance and out of the said public highway and there left the same for the use of the said Plaintiff doing no unnecessary damage to the said Plaintiff on these occasions — which are the same supposed trespasses in the said Plaintiffs declaration mentioned, and whereof the said Plaintiff hath above complained against them and this the said defendants are ready to verify wherefore they pray judgment &c

Platt & Harvey
Attys for Defts

Filed May 18, 1857
P. H. Wright Clk

22

Laurence M. Baker
vs
Henry Waine and
David Boone

Kane County Circuit
Court November
Term AD 1859

And the said Plaintiff
says that the said plea of the said Defendants
by them secondly above pleaded in manner
and form as pleaded and the matter in the
same contained is not sufficient in Law
to Bar the said Plaintiff of his aforesaid
action against them and that he is not
bound by law to answer the same and
this he is ready to verify wherefore he
prays judgment & his damages aforesaid
to be adjudged to him &c.

Barry & Eastman
Attys for Plff

Filed Dec 7, 1859
P R Wright
Clerk

State of Illinois }
Kane County } ss

Kane County Circuit Court
November Term 1859.

Henry Wayne
David Bowne
vs
Lawrence M. Baker } Trespass

And for a further plea in this behalf the said defendants as to the breaking &c by leave &c say Actio non because they say that before and at the said several times when &c there was and of right ought to have been a certain Common and public highway, into, through, ~~and~~ over and along the said Close in which &c for all people to go pass and repass on foot and with carriages at all times at their free will and pleasure Wherefore the said defendants having occasion to use the same way at the said several times when &c went and passed into through and over the said Close in which &c and along the said highway there using the same as he lawfully might for the cause aforesaid - And in so doing the said Defendants with his feet in walking and the said Cattle and Carriages unavoidably

24

a little trod down & the grass therbage then growing and being in said close in which &c subverted, damaged & the said of the same close at the said several times when &c And because the said fences and fence rails in the declaration mentioned before the said several times &c had been wrongfully erected and were then standing in and across the said highway and obstructing the same so that the said defendants could not then pass & repass through and over the said close in which &c in the said highway there as they ought to have done — the said defendants at the said several times when &c in order to remove the said obstructions forced & broke down the said fences and rails in the said declaration mentioned, and took and carried ~~away~~ the said fence rails to a small and convenient distance and there left the same for the use of the said Plaintiff doing no unnecessary damage to the said Plaintiff on these occasions which are the same supposed trespasses in the said Plaintiffs declaration mentioned, and whereof the said Plaintiff hath above complained against them and this

the said defendants are ready to verify
Wherefore they pray judgment &c
Plato & Harvey
Attys for Defts

Filed Nov 25. 1859
R R Wright Clk

State of Illinois
Kane County } ss
Pending in the Kane County
Circuit Court November Term
AD 1859

Lawrence M. Baker
vs
Henry Warne &
David Bowne

And the said Plaintiff
as to the said Plea by the said defendants
secondly above pleaded says "precludi non"
because he says that before and at the said
several times when &c refers to in said plea
no public highway had been duly laid out
recorded and ordered to be opened on the
town line between the towns of Plato and
Campton in said County and running upon
and across the said Closes of the said Plain-
tiff and of this he puts himself upon the Country &c

26

And the said Plaintiff by leave &c as to the said plea by the said defendants thirdly above pleaded says "precludi non" because he says that before and at the said several times when &c in said plea referred to, there was not and of right ought to have been a certain common and public highway into through over and along the said close in which &c (referred to in said plea,) for all people to go, pass and across on foot and with carriages at all times at their will and pleasure and of this he puts himself upon the country &c

Barry & Eastman
Attys for Plff

Filed Dec 8. 1859
R. R. Wright Clk

And afterwards to wit: On the Twenty seventh day of May AD 1863. the same being one of the days of the May Special Term of said Court the following among other proceedings was had and entered of Record in said Court to wit:

11/45

Lawrence M Baker
vs
Henry Manet
David Browne
(Trespass

27

This day comes the Plaintiff by D. Wilcox his attorney and the defendants by Hale & Smith their Attorneys and waive a jury and submit this suit to the Court

14
453

Lawrence M Baker
or
Henry Warne &
David Bourne
} Trespass

This day comes again the parties to this suit by their attornies and after hearing the evidence and argument of Counsel the Court takes the case under advisement until the next term of this Court

And afterward to wit on the thirteenth day of November A.D. 1863. the same being one of the days of the November Special Term of said Court the following among other proceedings was had and entered of Record in said Court to wit:

5
453

Lawrence M Baker
or
Henry Warne &
David Bourne
} Trespass

This day

28 comes the ~~Plaintiffs~~ parties to this suit and the Court having taking the case under advisement until this term and being fully advised find the issues joined in favor of the Plaintiffs and assess his damages at fifty cents

It is therefore considered by the Court that the Plaintiffs have and recover from the defendants the sum of fifty cents damages and his costs in this suit expended and have Execution therefor

And afterwards to wit on the 16th day of November A.D. 1863. the same being one of the days of the November Special Term of said Court the following amongst other proceedings was had and entered of Record in said Court to wit

5/453 Lawrence M. Baker
or
Henry Mann &
David Boone
} Trespass

This day come the defendants by Plato and Smith their Attorneys and pray an Appeal which is allowed by the Court and the bill of Exceptions to be filed in twenty days

And afterwards to wit on the second day of December A.D. 1863 the same being still one of the days of said November Special Term of said Court the following amongst other proceedings was had and entered of Record in said Court to wit:

5/4th

Lawrence M. Baker
vs
Henry Warne &
David Bowne
} Trespass

This day come the Defendants in this suit by their Attorneys Mats & Smith and move the Court that the time for making up and filing the Bill of Exceptions and Appeal Bond be extended to December 26. 1863. Motion allowed and and the amount of the Bond fixed at three hundred Dollars and by consent of parties the Bond to be approved by the Clerk.

And afterwards to wit: On the 16th ~~first~~ day of December A.D. 1863. there was filed with the Clerk of the Court of Common Pleas of the City of Elgin a bill of Exceptions in the words and figures following to wit:

Laurence M. Baker
vs
Henry Warne & David Bourne
} In the Court of Common Pleas of the City of Elgin. May Special Term A.D. 1863.

Be it remembered that at the said term of said Court said Cause coming on to be heard the Plaintiff offered in Evidence two patents from the United States to the Plaintiff of the East half of the South East quarter of Section thirty one Township forty one North of Range seven East of the third Principal Meredian. And the East half of lot two of the North East quarter of Section six Township forty North of Range seven East of 3d P.M. whereupon the defendants admitted that the Plaintiff at the time named in his declaration was the owner and in the possession of said lands in the declaration described —

The Plaintiff then called

Abraham Quackenbush as a witness who being sworn testified: I reside in Campton have lived there seven years, I know the farm that Baker lives upon. Mr Baker lived there 13 years ago, when I came there— He occupied and worked the land under claim of ownership — I know the defendants.

Three years ago Mr. Bourne told me that they had opened the road through from the Blackberry Road to the St. Charles and Geneva road — This was done in 1889. They threw down the fence and opened the road — It was the road fence on the Blackberry road — The fence taken down was the west fence of the road. The damages for breaking down the fence is fifty cents —

Cross. Examined —

The defendants when they took down this fence were highway Commissioners of the Town of Campton —

It is on the town line between Campton and Plato and where the road intersects the Blackberry road it is about 3/4 of a mile from the four corners of town

The defendants said they took down this fence as Highway Commissioners of the

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town of Campton —

Plaintiff then called D. Reynolds who testified: I know the defendants — I know where Baker resides — He has been in possession of the land in the patents described, for more than twenty years — About February 1859. The defendants got through Bakers land on to my land — My land lies east of Bakers they were all together when I heard the conversation — They said they had opened the road and Mr Baker had forbidden them — They had taken the fence down — This land is situated in the County of Kane Ill.

Cross Examined

Both of the defendants made remarks about taking down the fence and that Baker forbid them — I first saw them between Bakers and my land, and they were in the act of taking down the fence when I first noticed them.

I could not see them take down the Blackberry Road fence, they were acting as Highway Commissioners of the town of Campton — Baker was not there when I came — I took no part in taking down the fence — They said Baker forbid

them pulling down the fences — They said they thought there was a road there — They said they took down the fence to open the road — The fence was in the road that was claimed by the Commissioners to exist there — In opening the road the defendants claimed to act as Highway Commissioners

— Plaintiff rested —

The defendants then offered as Evidence the following certified copies of Road papers from the records & from the files of the respective town Clerks offices of said towns of Hampton and Plato which were objected to by the Plaintiff but received subject to objection to be considered by the Court, the authenticity of all which was duly proven

10.

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To the commissioners of Highways of the towns of Campton and Plato. The undersigned Legal voters residing within three miles of the following proposed road alteration ~~and~~ would represent that it is necessary and proper and your petitioners ask that all that part of the road commonly known as the Elgin and Sycamore road in the town of Plato and west of the St. Charles and Geneva roads be vacated and relocated as follows:

Commencing at the northwest corner of the town of Campton from thence eastward on the line dividing Plato and Campton until it intersects the St. Charles and Geneva road, or as near said line as the location of Wm. Brophys house and door yard will justify. Said relocations will pass over lands owned by Wm Brophy, E. E. Baker, Daniel Kuyk & others and known as J. H. Seaton, J. C. Ellsworth, A. Nichols J. L. Hinkley & Jackson L. S. Allen A. D. Jackson, Jason Nichols

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David McDearmid. C. T. Craft. Wm Arnold. Calvin Shurtleff. Daniel Seaton. John S. Hadley. Gilbert Ellis George Jennings. Jan. 18. 1858.

I. C Ellithorp, being duly sworn, doth depose say that he posted three copies of the within petition ~~petition~~, as follows: Nelsons Walker's Shed Gilbert's shop, Canada Corners. in the Town of Compton being three of the most public places in said town

I. C. Ellithorp.

Subscribed and sworn to
before me this 22. day of Jany 1858

A. B. McWaine J. P.

The undersigned Commissioners of Highways of the town of Compton met the Commissioners of Plato on the 20th of Feby 1858 & examined the within proposed road alteration, and we are of the opinion that the road should be altered as asked for in the within petition but the Commissioners of Plato disagreeing with us as to the practicability of altering the same on account of the damage it would cause the town to pay we return this petition to the Town Clerk with this our refusal to alter the road as asked for

Henry Waine } Commissioners of
S. M. Cook } Highways of
Compton

Petition to alter town line road between Plato and Campton. Filed March 12th 1859 at 2 o'clock P.M.

A. Currier

Town Clerk

I Charles L. Cone Town Clerk of Campton in the County of Kane do hereby certify that the foregoing is a true and perfect copy of the original on file in my Office

Dated this 7th day of June A.D. 1859

Charles L. Cone Town Clerk

of Campton.

~~In matter of Ellithorp et al~~ "P."

Town Clerks of Campton and Plato

whereas the commissioners of Highways of the towns of Campton and Plato in the County of Kane having upon the application of T. C. Ellithorp and others refused to so alter that part of the Elgin and Sycamore road which lays between St. Charles & Geneva and the Blackberry road as to cause the same to run from the Northwest corner of the Town of Campton east on or near the line dividing Plato and Campton until it intersects the St. Charles & Geneva road the undersigned feeling himself aggrieved by the refusal of said commissioners to make said alteration, to wit: to so alter the said road as to

establish the same on or near said town line
between the St Charles and Blackberry roads as
petitioned for by the undersigned and others,
appeals from said determination and order
and refusal of said Commissioners, assigns the
following reasons for his appeals 1st That the
Commissioners by their refusal did not consult
the convinance of the community or traveling
public. 2nd Because the present location of
said road has caused me one hundred
miles extra travel within 12 months and
will cause me the same extra travel every
12 months as long as I reside where I now do
3rd Because it causes one mile extra travel
to all persons living on the north side of
Virgil or the south side of Burlington many
persons in the interior of Burlington, everytime
they travel to St Charles, Geneva Batavia
Aurora &c and they present this appeal for the
purpose of reversing the determination of said
Commissioner in their refusal to locate as
above specified He therefore prays for a
further hearing in the matter, and for such
other order and such further proceedings as is by
law in such cases made and provided,

Said refusal was filed in the Town Clerks Office
in Campton on the 12th day of March 1858. Petition
and refusal filed in town Clerks Office in Plato

on the 13th day of March 1858, ~~Petition and refusal~~
April 6th 1858. V. C. Ellithorp J. D. Winkler A. Nichols
Jason Nichols, Franklin Jackson, Thos. Solomon
Spencer Allen Wm Denison

Filed April 6th 1858
A. Curries Town Clerk of Campton

I Charles. F. Cone, Town Clerk of the town of Campton in the County of Kane do hereby certify that the foregoing is a true and correct copy of the original on file in my Office

Dated this 7th day of June A.D. 1859
Charles. F. Cone Town Clerk
of Campton

To F. H Bowman & Jos. Andrew Pingree Supervisors of St Charles, Geneva and Rutland, Sirs, you will take notice that V. C. Ellithorp, J. D. Winkler A. Nichols Franklin Jackson, T. Solomon S. Allen have taken an Appeal from the decision of the commissioners of the town of Plato and Campton in refusing to so alter that part of the Elgin and Spencer road which lays between the St Charles and Geneva road and Blackberry road as to cause the same to run on or between near the line dividing Plato & Campton, from the Blackberry to the

St Charles road which appeal is made to
S. H. Bowman of St Charles, A. Joy of Virgil &
A. Pingree of Rutland & bears date April 6th
1858. The grounds upon which the appeal is made
is the refusal of said Comissioners to alter as
asked for by said Ellithorp and others in a
petition now filed in my office, on
the 12th day of march 1858, and said
appeal is brought to reverse the determination
of said Commissioners.

Dated this 6 day of April A. D. 1858

Abner Comier Town Clerk of
Campton

Wm Hannon Town Clerk of Plato

I Charles F Cone Town Clerk of the Town of
Campton in the County of Kane, do hereby
certify that the forgoing is a true and
correct copy of the original now on file in
my office

Dated this 7th day of June A.D. 1869.

Charles F. Cone Town Clerk of
the Town of Campton

State of Illinois } Witness J. C. Ellithorp, A. Nichols,
County of Kane } Franklin Jackson, Thos Salmon of
the Town of Burlington & Jason Nichols, Spencer
Allen & William Denison of the Town of Virgil
of said County, did, on this 6th day of April

1858 appeal to us from an order and determination of the Commissioners of Highways of the Towns of Pluto and Campton contained in the order of said Commissioners deposited with the Town Clerks of said Towns and filed in Campton on the 12th day of March in Pluto on the 13th day of March 1858 a copy of which order as well as well as all the papers before us, in said appeal are hereunto annexed, and Andrew Pingree and F. Foy having met on the first day of May 1858 at one o'clock P. M. at the house of Wm. Brophy in Campton to hear the proof and allegations of the Parties being the time and place agreed upon by us when and where we would meet to consider said appeal and F. H. Bowman one of the Supervisors appointed by the Town Clerks of Campton & Pluto to hear and determine said appeal not attending whereupon said Andrew Pingree and F. Foy proceeded to fill the vacancy with A. A. Rawlin Supervisor of Kensville in said county & then adjourned to meet at the house of the said Brophy aforesaid on the 6th day of May 1858 at 10 o'clock A. M. at which place we met as per adjournment and it appearing that said Commissioners of Highways and them of the petitioners in said case had been duly notified of which meeting as required by Law, we did proceed to

hear the proofs and allegations of the parties & to consider said appeal, and we being now fully advised in the premises are of the opinion that said road is necessary and proper & that the public interest will be promoted thereby, we do therefore order, that the order and determination of said Commissioners of Highways be, & the same is hereby in all things reversed; and do order & determine that the same road be and the same is hereby laid out & established & and near the line between the towns of Plato & Campton agreeable to the prayer of the petitioners and also of those of the petitioners who have written this appeal as may be seen by the papers herewith connected more particularly described as follows, to wit Commencing in the center of the St. Charles and Geneva road exactly on the ~~road~~ line between Plato and Campton near Wm. G. Walkers ~~and~~ residence and running thence in a westerly direction across the lands of the aforesaid Wm. G. Walker & D. Reynolds on or near the line between them about twenty two rods thence in the same direction wholly on D. Reynolds land about eighty rods thence in the same direction wholly on L. M. Bakers land about eighty rods or more or less to the middle of the blacktop road & to a point exactly two rods north of the

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line between the said towns Campton and Plato, and that the said line above described be the centre of said road and the same is hereby declared to be a public highway four rods in width for a more definite description of the above newly laid or altered road see the accompanying map of the survey, which we have ordered & caused to be made and it is further ordered & determined, in consequence of the laying of the above described road, that all of the part of the road commonly known as the Elgin an Sycamore road which lays in the town of Plato from the St. Charles and Geneva road to the Blackberry roads, be, and the same is hereby vacated, the following is a more particular description of the vacated part of the Elgin & Sycamore road to wit, Commencing with its intersection with Blackberry road and running thence north 70° east 16 10/100 chains; thence 77½ east 16 chains to the St Charles & Geneva roads, more or less, And the undersigned supervisors further report that Wm S. Walker occupies and the above described road enclosed a distance of twenty four rods wide has not set up any claim for damages so that in our appointments of damages on said

route, we have estimated the advantages to the said Walker to be equal to the damages inasmuch as the laying and opening of said road open to him a direct and feasible route to Blackberry Station, and to the Southern and Central portion of our country.

And in relation to damages claimed by D. Reynolds across whose land the said road passes for the distance of eighty rods, we, the undersigned having applied to him with a view of agreeing with him upon the subject, and totally failing to do so, we proceeded to assess the same at what we deemed just and right, taking into account the advantages as well as the disadvantages, & have assessed the damages to the said Reynolds by cropping his land or section No 32 in the town of Pluto and Section No 5 in the town of Campton it being in closed and improved land, at two hundred and fifty dollars.

And in relation to damages claimed by L. M. Baker across whose land the said road passes for the distance of eighty rods more or less in section No 31 of the town of Pluto & section No 6 of Campton we have proceeded to assess the damages at what we deemed

just and right and taking into account and estimating the advantages & benefits as well as the disadvantages, we have estimated the advantages of said road equal to any and all his damages in as much as the vacation of the above section of the Elgin and Sycamore road which lays wholly on the said Bakers land saves him one acre and twenty hundredth of land and about ninety six rods of fence

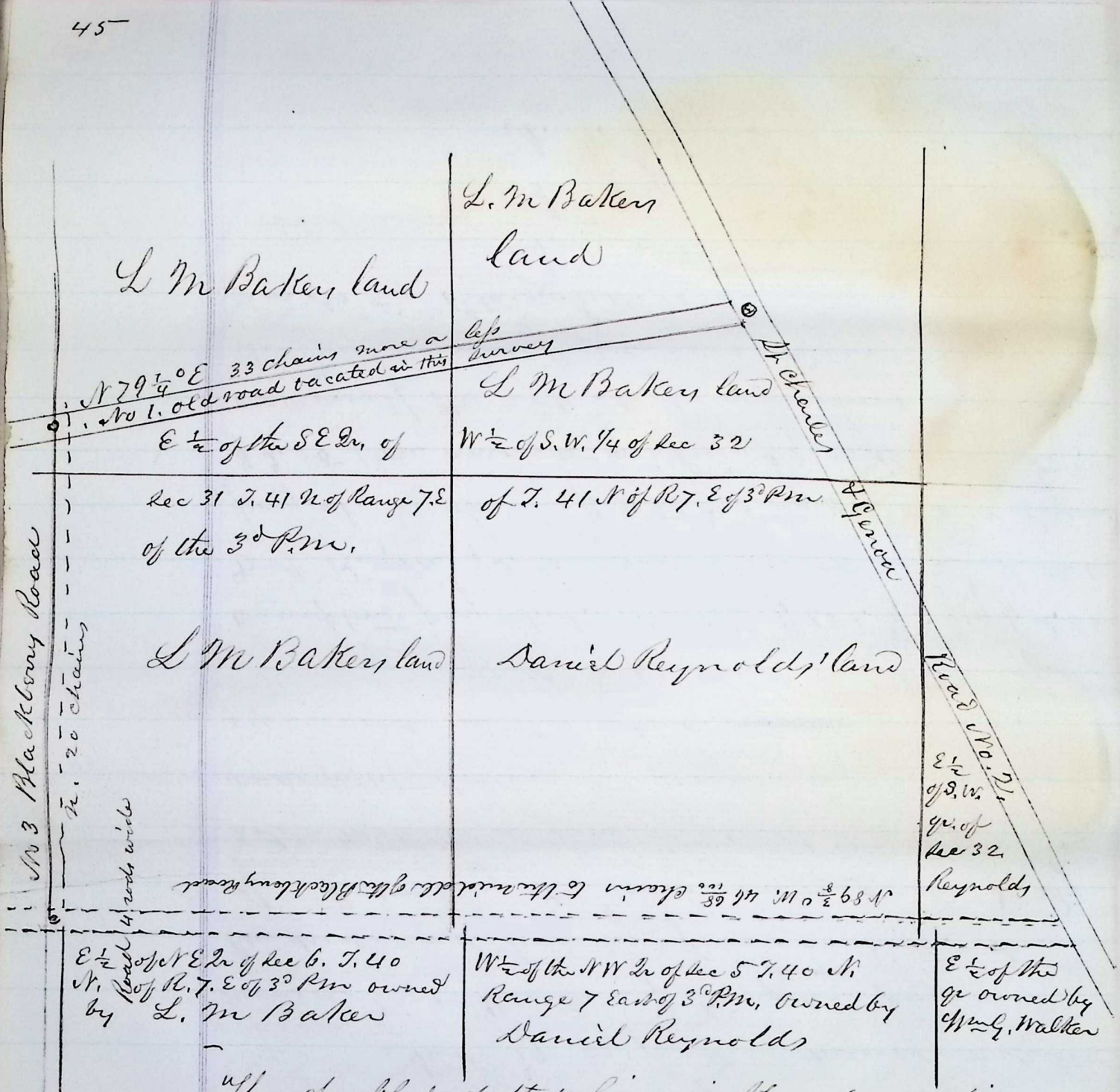
And it is further ordered & determined that the town of Compton pay one hundred and twenty five dollars and the town of Plato pay the same amount to D. Reynolds making a sum total of two hundred and fifty dollars the same being for damages expressed in the above ~~order~~ order.

And also that the town of Compton pay A. A. Rankin $1.50 & A. Joy $2.25 & A Pingree $2.25 And that the town of Plato pay A. A. Rankin $1.50 & A Joy $2.25 & A Pingree $2.25 that amounts on a bill $12.00 it being the expenses of the appeal for Supervisors services. In witness whereof we have hereunto set our hands this 6th day of May A. D. 1858.

Andrew Pingree Supervisor of the town of Plato

A Joy " " " Elgin

A. A. Rankin " " " Kaneville



The double dotted lines in the above diagram show the Bearing, length width, and location, of the new laid road, commencing in the center of the St Charles and Genoa roads on the line between the towns of Plato and Campton running thence North 89 3/8° W 46 68/100 chains to the middle of the Blackberry road to a point two rods or fifty links north of the line between Plato and Campton crossing the lands of Wm G. Walker.

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Daniel Reynolds, & L. M. Baker as set forth in the above map being 4 rods in width: Said road was surveyed by the subscriber May 15th 1858 by the order of and under the direction of the following supervisors before whom an appeal had been taken. N. N. Rawlin, Fletcher Foy, & A. Pingree The red lines above represent nearly the old traveled road vacated under the survey, and the above named Supervisors order

Witness my hand and seal

Andrew Pingree (Seal) Deputy County Surveyor ~~Surveyor~~ in Kane County Illinois under A. Wm Mann Surveyor of the County aforesaid

Expenses of Campton on within Dan'l Reynolds $125.00 N. N. Rawlin $1.50. F. Foy 2.25 & A Pingree $2.25

Filed this 17th day of May 1858

E. Miller Town Clerk of Campton

I Charles. F. Cone Town Clerk of Campton in the County of Kane do hereby certify that that the foregoing is a a true and correct copy of the original on file in my office,

Dated this 7th day of June A. D. 1859

Charles. F. Cone Town Clerk of the Town of Campton

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State of Illinois }
Kane County }

Personally appeared before me this day T. C. Ellithorp and being duly sworn upon his says that he has given notice in writing to the Commissioners of highways of the towns of Campton & Plato in said County that he the said T. C. Ellithorp & others have taken an appeal from the order and determination of the said Commissioners, filed in the Town Clerks office in Campton on the 12th day of March 1858 and in Plato on the 13th day in march 1858 refusing to so alter the Elgin & Sycamore road as to cause the same to run from the St Charles and Genoa roads to the Blackberry road on or near the line dividing Plato and Campton that the said notices was given to the Commissioners in the Town of Plato on the 12th day of April 1858 and that said notice stated that H. H. Bowen of St. Charles, J. Joy of Virgil and A. Pingree of Rutland would meet at the house of Wm Brophy in the Town of Campton on the first day of May 1858 to hear and determine said appeal which was taken to reverse the determination of said Commissioners, that like notices were given

to commissioners of Highways of the Town of Compton & also to three of the petitioners for said road on the 13th and 14th day of April 1858

W. C. Elliott

Subscribed & sworn to before me this first day of May 1858 S. M. Cook, Justice of the Peace

I Charles F. Cone Town Clerk of Compton in the County of Lee and State of Illinois do hereby certify that the within is a true and perfect copy of the original on file in my office

Dated this 7th day of June 1859

Charles F. Cone Town Clerk of Compton

State of Illinois }
Lee County }

"Whereas a public highway has been laid on & near the line dividing the ~~line~~ Co's Plats and Compton from the South west corner of the Town of Compton running east on & near the line aforesaid for the distance of three hundred and fifty six three rods or thereabouts: it is therefore ordered that the said highways be divided into two road districts as follows, to wit: that part thereof from the south west corner of the Plat to the east line of the South west quarter of Section 31 in Plat

shall be one of said road districts & is hereby allotted to the town of Plato. That the residue of said highway shall be the other road district and is hereby allotted to the town of Campton.

In witness whereof the said Commissioners have hereunto subscribed their names this 6 day of December A. D 1858

Henry Warne } Commissioners of
David Bourne } Highways of Campton

Wm M. Morehouse } Commissioners of Highways
Smith Jamieson } of Plato

Filed and recorded Dec. 18th 1858.

E. Miller Town Clerk
of Campton

Wm Hauser Town Clerk of Plato

I Charles F. Cone Town Clerk of the town of Campton in the County of Kane in State of Illinois do hereby certify that the within is a true and perfect copy of the original on file in my office dated this 7th day of June 1859 Charles

Charles F Cone of town of Campton

To Laurence M. Baker you will take notice that a highway four rods in width has been located in pursuance of law; to wit; by three Supervisors of Kane County. namely: A. Rigor Supervisor of Rutland. F. Joy Supervisor of Virgil and N. Rawl

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Supervisor of Kaneville said road was located by said Supervisors upon an appeal taken ~~upon an appeal taken~~ from the determination of the Commissioners of Highways of Campton & Plato in refusing to locate which Highway is said un agreeable to our order of said Supervisors bearing date the sixth day of May A.D. 1858 which highways passes through certain enclosed lands owned and occupied by you as follows beginning at the centre of the St. Charles & Geneva roads on the line between Plato and Campton and running thence north 89 3/8 d. West 46 68/100 Chains to the middle of the Blackberry road to a point two rods north of the line between Plato and Campton you are therefore hereby notified and required to remove your fences from within the bounds of said highway within sixty days after the service of this notice

Henry Warne) Commissioners of
Elwood Browne) Highways of Campton

Personally appeared before me this day Jacob S. Minkler who being duly sworn upon his oath says that the within is a true copy of a notice given to Lawrence M. Baker at his residence in the town of Plato on the 16th day of December 1858

Jacob S. Minkler

Subscribed and sworn to before me this 21st day

of February 1859 Samuel M Cook J. P. (Seal)

Filed in my office this 26th day of February 1859 at 5 o'clock P. M.

E. Miller Town Clerk

The original of which this is a true copy was handed to the said Baker on the 18th day of December 1858 by J. D Winkler

I Charles F. Cone Town Clerk of the Compton of Kane County State of Ills do hereby certify that the within is a true and perfect copy of the original on file in my Office

Dated the 7th day of June A D 1859

Charles F Cone Town Clerk

of Compton

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To the Commissioners of Highways of the town of Plato & Campton The undersigned legal voters residing within three miles of the following proposed road alteration would represent that it is necessary and proper, and your petitioners would respectfully ask. That all that part of the road commonly known as the Elgin and Sycamore road which lay in the town of Plato, and west of the St. Charles and Genoa road, be vacated and relocated as follows; Commencing at the North west corner of Campton, from thence eastward on the line dividing the towns of Plato and Campton or as near thereto as practicable, until it intersects the St. Charles and Genoa road; Said relocation will pass over lands owned by Wm Brady. L. H. Baker Daniel Reynolds and others not known

A. H. Beaton. S. D. Ellithorp, A. Nichols. C. S. [illegible]
J. L. Kimball. Franklin Jackson. [illegible]
A. D. Jackson. Jason Nichols. Daniel McDaniel
William Arnold, Calvin Shurtleff, Daniel Seaton
John F. Wadley, Gilbert Ellis, George Jennings.

State of Illinois } I, William Hanson, Town
Kane County } Clerk of the town of Plato
& ex-officio Assessor thereof do hereby certify that the
above is a true copy of the originals petition
filed in my office by the road commissioners
of the town of Plato on the 13th day of
March 1858.

Wm Hanson Town Clerk of Plato ~~personally~~
~~appeared before me~~ G. C. E. Ellithorp being duly sworn, doth
depose and say that he posted three Copies of
the within petition as follows:
Plato 4 corners, 4 corners near G. P. Harvey's farm,
4 corners at L. M. Bakers in the town of Plato,
being three of the most public places in said
town,
Subscribed and sworn to before me this 22 day of June 1858.
A. R. McWaine J.P.

Not Granted, filed March 13th 1858.
Wm. Hanson
Town Clerk

State of Illinois. Kane Co. I William Hanson
Town Clerk of the town of Plato, do hereby
certify that the above is a true copy of the
endorsement on the back of the original Pet-
ition filed in my office by the commissioners

of Highways of the town of Plato on the 13th day of March 1858.

Wm Hanson Town Clerk of Plato

To G. H. Bowman & Joy, Andrew Pingree. Supervisors of St. Charles, Virgil and Rutland Sirs you will take notice that G. C. Ellithorp S. J. Minkler, A Nichols. P. Nichols. Franklin Jackson. G. Solomon. S. Allen and others, have taken an appeal from the decision of the Commissioners of the towns of Plato and Canton in refusing to so alter that part of the Elgin & Sycamore road which lays between the St. Charles and Genoa Road and Blackberry Road as to cause the same to run on or near the line dividing Plato and Canton from the Blackberry to the St. Charles Road, which appeal is made to G. H. Bowman of St. Charles, F. Joy Virgil and A. Pingree of Rutland and bears date April 6. 1858. The grounds upon which the appeal is made is the refusal, of said Commissioners to alter as asked for by said Ellithorp and others in a petition now filed in my office on the 12th day of March 1858. and said appeal is brought to reverse the determination of said commissioners.

Dated this 6th day of April A.D. 1858.

Abner Carrier Town Clerk of Canton

Wm Hanson, Town Clerk of Plato

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State of Illinois } I, S. Williams Hanson Town
Kane County } Clerk of the Town Plato
do hereby Certify that the above is a true
copy of the original certificate of Selectmen
of Supervisors to hear and determine the
appeal therein mentioned now on file in
my office in connection with the other
papers in relation thereto.

Wm Hanson Town Clerk of Plato.

&

State of Illinois } Whereas Timothy C. Gilthrop
Kane County } S. S. Kinkler. A. Nichols
Franklin Jackson, Thomas Solomon of the Town
town of Burlington in said County & Jason Nich-
ols. Spencer Allen and William Denison of the
town of Virgil in said County, did on the 6th
day of April. A. D. 1858. appeal to us from an
order and determination of the commissioners
of Highways of the towns of Plato and Canton
contained in the order of said Commissioners
deposited with the town Clerks of Plato and
Canton respectively. to wit-in Plato on the
13th day of March. A.D. 1858. and in Canton the
12th day of March. A.D. 1858. a copy of which
said order as well as all the papers before
us in said appeal are hereunto annexed &
we Andrew Pingree and Fletcher Foy. having met
on the first day of May 1858. at 10 Clock P. M. at the

house of William Brosby in the town of Canton to hear the proofs and allegations of the parties, being the time and place agreed upon by us, when and where we would meet to consider said appeal and finding that G. W. Bowman, the St. Charles supervisors, did not attend who had been appointed by the respective town clerks of Canton and Pierpont, as one of the supervisors, before whom the appeal had been taken, whereupon we proceeded to fill the vacancy with N. N. Rawlin, supervisors of the town of Rainsville, and then adjourned to meet at the house of the aforesaid Wm Brosby on the 6th day of May 1858. at 10. O'clock A.M. at which place we met as per adjournment. & it appearing that said Commissioners of Highways and three of the petitioners in said case, had been duly notified of which meeting as required by law we did proceed to hear the proofs & allegations of the parties and to consider the appeal, and we being now fully advised in the premises, are of the opinion that said road is necessary and proper and that the public interest would be promoted thereby, we do therefore order that the order and determination of said Commissioners of Highways be, and the same is hereby in all things reversed and do order and determine that the road be

and the same is hereby laid out and established on and near the line between the towns of Canton and Plato agreeable to the prayer of the petitioners and also of that of the persons who took the appeal as may be seen by the papers herewith connected, more particularly described as follows, to wit- commencing a point in the centre of the St. Charles and Genoa Road exactly on the line between Plato and Canton near William G. Walkers residence and running thence in a westerly direction across the lands of the aforesaid Walker and D. Reynolds on or near the line between them about twenty-two rods thence in the same direction wholly on D. Reynolds land about eight rods thence in the same direction wholly on L. M. Bakers land about eight rods, more or less to the middle of the Blackberry road and to a point exactly two rods north of the line between the said towns, Canton and Plato and that said line above described be the center of said road and the same is hereby declared to be a public highway, four rods in width. For a more definate description of the above newly laid or altered road see the accompanying map of the survey, which we have ordered and

caused to be made And it is further ordered and determined in consequence of the laying of the above described road that all that part of the road commonly known as the Elgin and Sycamore road which lays in the town of Plato from the St Charles and Genoa Road to the Blackberry Road, be and the same is hereby vacated, The following is a more particular description of the vacated part of the Elgin and Sycamore roads, to wit-Commencing at its intersection with the Blackberry road and running thence north 70° east 11-16 100 chs, thence north 79 1/2 east 16 chs, to the St Charles and Genoa road more or less. And we the undersigned supervisors further report that Wm S. Walker across whose land the above described road passes for the distance of twenty rods nearly has not set up any claim for damages, and that in our assessment of damages on said route, we have estimated the advantages to the said Walker to be equal to the damages, inasmuch as the laying and opening of said road opens to him a direct and desirable route to Blackberry station and to the southern and central portion of our county.
And in relation to damages claimed

by D. Reynolds across whose land the said road passes for the distance of eighty rods, we, the undersigned having applied to him with a view of agreeing with him upon the subject, and totally failing to do so, we proceeded to assess the same at what we deemed just and right taking into the account the advantages as well as the disadvantages, & have assessed the ~~same~~ damages to the said D. Reynolds, by crossing his lands, at ~~two hundred and fifty~~ two dollars on section No 32 in the town of Plato and section No 5 in the town of Canton it being enclosed and improved lands, at five hundred & fifty dollars.

And in relation to damages claimed by L. M. Baker across whose land the said road passes for the distance of eighty rods more or less, on section 31 of the town of Plato and section No 6 of Canton, we have proceeded to assess the damages at what we deemed just and right, and taking into the account and estimating the advantages and benefits as well as the Disadvantages, we have estimated the advantage of said road equal to any and all his damages inasmuch as the creation of the new section of the Elgin and Sycamore road, which lays wholly on the said Bakers

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land, saves him one acre and twenty hundredths of land, and about ninety-six rods of fence. And it is further ordered and determined that the town of Canton pay one hundred & twenty five dollars, and the town of Plato pay the same amount to D. Reynolds, making a sum total of two hundred & fifty dollars, this being for damages expressed in the above order. And also that the town of Canton pay N. N. Rawlin $1.50 & Plato pay him $1.50 And that the town of Canton pay A. Pingree $2.25 & Plato pay him $2.25 & that the town of Canton pay A. Pingree $2.25 & Plato $2.25 these several sums aggrading $12.00 it being for expenses of the appeal, for supervisors services.

In witness whereof we have hereunto set our hands this 6th day of May A.D. 1858.

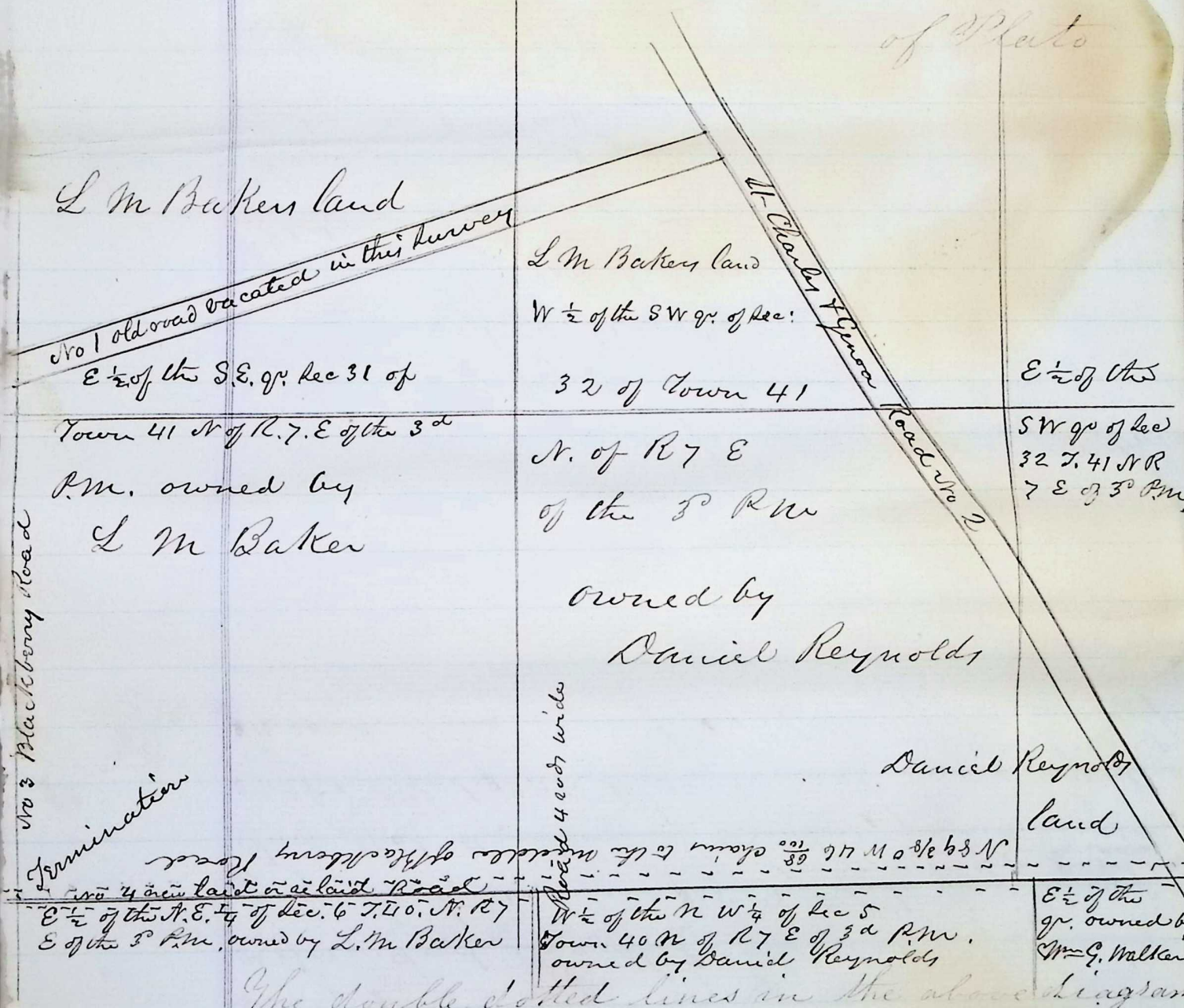
Andrew Pingree
Supervisor of the town of Portland

F. Foy, Supervisor of the town of Virgil
N. N. Rawlin
Supervisor of the town of Kirkville

State of Illinois } I William Hanson Gunn Clerk
Kane County } of the town of Plato do hereby certify that the foregoing is a true copy of the original report of the Supervisors whose names are thereto attached which was filed in my office on the 20th day of August 1858, & that the following is a true copy of the original

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map and Survey attached to said report.
Wm Hanson Town Clerk
of Platts



The double dotted lines in the above diagram show the bearing length and location of the new laid road commencing in the center of the St. Charles and Genoa Road, on the line between the Town of Platts and Kampton, and running thence N. 89 3/4° W. 40 50 chains to the middle of the Blackberry road, to a point two rods or 50 links north

of the line between Campton and Plato, crossing the lands of Wm Walker. Daniel Reynolds, and L. K. Baker, as set forth in the foregoing map, being 4 rods in width. Said road was surveyed by the subscriber May 15th 1858. by the order of and under the direction of the following Supervisors before whom an appeal had been taken, viz't. N. Rawlin, Fletcher Jay. and A. Pingree. The red lines above represent nearly the old traveled road vacated under this survey and the above named Supervisors order.

Witness my hand and seal A. Pingree (L.S.)
late deputy county Surveyor under Addin Mann Co Surveyor of Kane County Illinois.

— Defendants here rested —

The Plaintiffs then introduced John Briggs who testified: I reside in the town of Plato and have resided there since July 1835. Am pretty well acquainted with the inhabitants of Plato and vicinity — I H Deaton lived in Campton 18 years T. C Ellithorp has lived in Burlington 18 years, A Nichols has lived in Burlington seven years Except last winter — J Minkler lived in the town of Burlington —

and never in Plato — Jason Nichols never resided in Plato but did in Virgil — H. Jackson never lived in Plato, Daniel McDonnud has lived in Plato for about 12 years — He is a Scotchman and said he had never been naturalized — he is a renter and does not own land there, A. C Craft lived in the town of Burlington and never in Plato. Wm Arnold lived in Campton and never in Plato C Shirtliff resided in Campton and not in Plato — Daniel Seaton lived in Campton and never in Plato — Gilbert Ellis never lived in Plato — George Jennings lived in Virgil and never in Plato —

I have been acquainted with the Elgin and Sycamore road ever since it was laid which is about fourteen years — the road was laid as a State road by special act of the legislature — I was acquainted with all the names on the petition Mr Wilcox was one of the Commissioners named in the act — It was from Elgin to Sycamore in DeKalb County — This State road when it was first laid did not touch the town of Campton and never changed except by the road in question so as to touch

64 Campton. There has been several re-
views of the State Road — This State road
never was on a Town line a that part
lying between the St. Charles and Genoa
road and the four Corners marked on
the Map —

Cross Examination

I was not present when the State
Road was laid out — Baker resides
about half mile from town line. The
distance of the old road from the town
line is from 1/4 to 1/2 mile — Between
the Towns of St. Charles and Elgin the
State Road runs on the Town line —

Re Examined

I have been Commissioner
one year and then passed over one year
I was the first Commissioner after the
Township Organization — Before, the
Commissioners of Campton had nothing
to do with the Road taken up that is the
State Road — The Road was under
the charge of Plato Township — I helped
to district the State road and allotted
it to District Number ten in Plato

I know of subordinates working the
State road in Plato —

George Harvey sworn on behalf of Plaintiff and testified: I lived in the Town of Plato from 1837, to 1848, and was afterwards and am yet well acquainted with those towns, I was with the Commissioners that laid out the State Road. The Commissioners were General Wilcox Mayo and a third Commissioner I dont recollect — This was I think in 1846. The road as laid out by them did not touch the town of Compton — When I moved away the Township Organization law was not in force and the County Commissioners Court appointed the road Commissioner. The State road was originally half a mile from town line, but not so far now from the town line

The foregoing testimony of Griggs and Harvey objected to, by the defendants at the time offered, and received subject to objection —

The Plaintiff introduced Wm Hanson as a witness who testified:

I know the old road in question — The Commissioners of the town of Plato had charge of it and not the town of Compton — I acted as town clerk

of Plato in 1852. finish.

It was admitted by both parties that the Towns of Plato, Burlington, Virgil and Campton Corners together about 1/8 of a mile south of where said Elgin and Sycamore road strikes the west line of Plato and the Blackberry road — Virgil being west of Campton, Burlington west of Plato. Campton south of Plato.

A map was also introduced by the plaintiff which was admitted to be correct and the same was considered in Evidence which was as follows:

68

North

Road on north line of Bakers Farm

J. Russel

Burlington

Town Plato

Town Line

Road as formerly laid

Brophy

L. M. Baker

80. acres
E½ S.E.¼ Sect 31. T. 41. Rang 7.

L. M. Baker

Road to Elgin

80. acres
N.½ S.W. ¼ Sect. 32
T. 41. R. 7

State Street

D. Reynolds

Walker

West

Town Corners

Road on the Town Line

East

Brophy

Road on Baker's W. Line

L M Baker

80. acres
E ½ N.E. ¼ Sect 6.
T. 40 Range 7.

Township Kirkpatrick

Town of Compton

State of I[illegible]
Kane C[illegible]

ss

I Adin Mann County Surveyor of Kane County do hereby Certify that the above is a correct map of L.M Bakers farm in said County as surveyed by me with other farms adjoining and also the roads as now or formerly laid on and through said premises.

Given under my hand this 6th day of June 1859.

Adin Mann Co. Surveyor
of Kane County

69 The foregoing was all the testimony in the case

The Court found the defendants guilty and assessed the Plaintiffs damages at fifty cents. to which decision and judgment of the Court the defendants by their Counsel at the time excepted and pray that this their bill of Exceptions may be signed and sealed which is done

R. G. Montony [Seal]
Judge of said Court

And afterwards to wit: on the 11th day of December A.D. 1863 was filed with the Clerk of our said Court of Common Pleas of the City of Elgin a Bond in the words and figures following to wit:—

Know all men by these presents, that Henry Warne & David Bowne as Principals and a John Warne as surity are held and firmly bound unto Laurence Baker in the penal sum of One Thousand dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and Administrators

jointly severally and firmly by these presents. Witness our hands and seals this tenth day of December A.D. 1863.

The Condition of the above obligation is such that whereas the said Lawrence M. Baker did at the October Term A.D. 1863. of the Court of Common Pleas of the City of Elgin in Kane County State of Illinois recover a judgment against the above bounden Henry Warne and David Bowne for the sum of fifty cents & costs from which judgment the said Warne & Bowne have taken an Appeal to the Supreme Court of the State of Illinois

Now if the said Warne & Bowne shall prosecute their Appeal with effect and shall pay whatever judgment may be rendered by the Court upon the affirmation dismissal or remanding of said Appeal then this Obligation to be void otherwise to remain in full force and Effect.—

Henry Warne (Seal)
David Bowne (Seal)
John Warne (Seal)

Indorsed on the back.

Approved & Filed Dec 11. 1863
R. W. Padelford Clerk

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State of Illinois
Kane County } ss.
City of Elgin

I Rodolphus W Radelford Clerk of the Court of Common Pleas of the City of Elgin in Kane County and State of Illinois. Do certify the foregoing to be a correct transcript of the Proceedings had and entered of Record in said Court, and full and complete copies of papers filed therein, in a Cause lately pending in said Court wherein Lawrence M. Aiken was Plaintiff and Henry Warne & David Bowne were defendants

Witness Rodolphus W Radelford Clerk of the Court of Common Pleas of the City of Elgin in said County and the Seal thereof at Elgin this 14th day of April A D 1864

R. W. Radelford
Clerk



210.00
Atty $21.

State of Illinois } In the Supreme Court
Third Grand Division } ss To the April Term A.D. 1864

Henry Warne et al
David Bowne Appellants
vs
Lawrence M. Baker Appellee } Assignment of Errors

And now the said Appellants come and say that in the record and proceedings aforesaid there is manifest error in this to wit:

1st The Court erred in admitting improper testimony on the part of the plaintiff

2nd The Court erred in rendering judgment against the defendants —

By reason whereof the Appellants pray that said judgment may be reversed &c

Platt & Smith
Attys for Appellants

State of Illinois } ss

Supreme Court April Term A.D. 1864

Lawrence M Baker
ats
Henry Wann & David Bown } appeal

And now comes the said appellee (L M Baker) by S. Wilcox his attorney and says that there are no such errors in the foregoing record as the said appellants have thereof alleged wherefore he prays that the foregoing judgment and proceedings in all respects be affirmed

S. Wilcox
atty for appellee

In the Supreme Court

Norris & Bowen
vs
Baker

Record

Filed Apl. 20. 1864.
Leland
Clk.

Pleas by Smith
Allegs for Apltes

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

HENRY WARNE & DAVID BOWNE, *Appellants*,
vs.
LAWRENCE M. BAKER, *Appellee*.
} TRESPASS.

APPEAL FROM THE COURT OF COMMON PLEAS OF THE CITY OF ELGIN.

POINTS AND BRIEF OF COUNSEL FOR APPELLANTS.

First. The alleged trespass was committed, if at all, by the Highway Commissioners of the town of Campton, acting as such, in the opening of a road upon the town line between the towns of Campton and Plato, which road as they claimed had been duly laid out there, and duly allotted to the town of Campton, and ordered to be opened, which the Plaintiff Baker refused, or neglected to do, and thereupon the same was done by the Defendants. This clearly appears from the evidence. And we insist that the record evidence in this case shows, that in fact such road had been duly laid, and that such commissioners were justified in opening the same, and in so doing were not trespassers.

But it is, or was, in the Court below, insisted that the proceedings whereby said road upon the town line was established, were altogether irregular and void, for the reasons that the *original petition* for this road was not such as to *authorize any* body to *act in the premises*, and that the tribunal *laying the road, had no jurisdiction of the matter.*

Upon these objections, we make the following suggestions:—

1st. Upon what body is conferred the power to alter, discontinue or lay out roads? *Primarily* upon the Commissioners of Highways of the town in which road so to be altered, discontinued, or laid lies. Town. Org. Law of 1851, Art. 22, Sec. 1, and Art. 24, Sec. 1.

If road to be acted upon on town line the *primary* jurisdiction is conferred on Commissioners of the two towns affected. Ibid, Art. 24, Sec. 20.

Under what circumstances can this power be exercised by the Commissioners? Ans. "When petitioned by any number of legal voters not less than 12, residing within three miles of the road to be laid, &c." Ibid, Art. 24, Sec. 1.

The requisites then are, 1st. Proper petition. 2nd. Signed by legal voters. 3rd. Not less than twelve in number. 4th. Their residence: *within three miles the road* in question.

2nd. This same power is also conferred upon three Supervisiors of the County, not of the town or towns interested. Ibid, Art. 24, Sec. 12, 15.

In what way or under what circumstances may the power be exercised by *them?* Ans. When there shall have been an appeal from the decision of Commissioners of Highways. Ibid, Art. 24, Sec. 8, 14, Laws of 1857, p. 185.

3rd. The road in controversy in this case is upon the town line, what body had the power to locate the same there? Ans. Commisioners of Plato and Campton —none other in the first instance. Ibid, Art. 24, Sec. 20.

To whom was the petition (the receipt of which authorized them to act) presented in this case? Ans. To the Commissioners of Plato and Campton.

Then in the refusing to locate upon the town line by the Commissioners of Plato and Campton, they exercised a power duly conferred upon them.

They refused to locate the road upon the town line as also to vacate the old road.

The aid of the *other* tribunal on *whom is conferred power* to *act* in such matters under certain circumstances was invoked by appeal.

It is asked of them to lay a road on the town line. They do so having full power to act in the premises. And it is for acts done in the opening of said road by Defendants as Highway Commissioners of Campton, to which town the road in controversy had been allotted, that this suit is brought.

4th. But it is said *neither* of the tribunals mentioned, had any authority to act in *this* case.

They say "the Commissioners of Plato and Campton could not act, for the act sought to have done was to so alter a road lying *wholly in Plato*, as to make the same run upon the line between Plato and Campton.

That it is competent for *some* tribunal to make such alteration *there is no doubt.*

The Commissioners of *Plato can't do it: they* may *alter the road*, but they *can't* so alter the same *as to make it run on the town line*, and the petition asks this kind of an alteration.

Who then may make *such* an alteration?

Ans. The *Comissmioners* of *both towns interested* in the alteration, to wit: *Plato* and *Campton.*

It is conceded that the Commissioners of both towns acting together compose the proper tribunal to cause a road to run on the town line, but the Commissioners of Campton could have nothing to do with vacating the road in Plato. Granted for the sake of the argument.

It does not appear that they *did* have anything to do with vacating of the road in Plato. On the contrary it does appear, that while they *desired*, not only to locate the old road on the town line, but to vacate the old road in Plato; yet the *Commissioners of Plato*, who it is claimed was the *only* competent authority to *vacate* the old, not only refused to vacate but to locate on the town line, *neither* of *which was for this reason done.*

The *Commsssioners of Plato*, (claimed to be the only proper tribunal to do the thing asked,) were asked to vacate. and locate on town line, as well as the Commissioners of Campton, whose acts in connection with the Commissioners of Plato were *necessary to relocate on the town line*, if not necessary to vacate old road.

The vacation desired was asked of the proper parties to vacate, (even if Commissioners of Plato are the *only* proper parties,) and the *relocation on the town line certainly* is asked of the proper tribunal, to wit: Commissioners of Plato and Campton both—what objection then to the acts of this tribunal, or to the two tribunals acting in concert in regard to the matter?

Plaintiff certainly ought not to complain, inasmuch as no relocation or vacating was ordered by the Commissioners of Campton, or Commissioners of Plato, acting either separate or together.

Commissioners of Campton desire a different result, but Commissioners of Plato, (the only competent authority according to Counsel for Appellee,) refuse

and their refusal controls, and from *their refusal to locate a road on town line* an appeal is taken.

This appeal authorizes another and different tribunal to take the matter in hand.

The three Supervisors have all the authority to lay out, relocate or vacate, or alter roads *when appealed to*, as the Commissioners of any town, or in case of town line roads as Commissioners of two towns.

The appeal was "*for the purpose of reversing the determination of the Commissioners in refusing to locate on the town line.*" And this second tribunal to reverse the determination, and do locate a road on the town line. They do more they order that in consequence of the location on town line, that old road be vacated, (a matter about which petitioners have no desire.) This they done without asking from us. If they were asked by the appeal to vacate the old road as well as locate on town line, it would *unquestionably* have been competent for them to vacate the same.

But whether it was so or not, they were asked by the appeal to locate a road on town line, and sufficient for Defendants that they done so, and that we are in the line of the road as thus located.

It can make no difference with the Appellants, whether the action of the Supervisors in vacating the old road was proper, or not, so that the road on the town line was properly located, by a competent tribunal, for it is for acts done in the line of that road, and that only, that this action is brought. 2 Hill 443

An objection was urged against the original petition in this "that the persons signing the same did not reside in the town of Plato."

The statute as before cited fixes the residence of petitioners, to wit: "within three miles of the proposed road," and it is not claimed but these petitioners reside within the proper distance, and it is to be presumed they did. It is argued that, if the petitioners are not confined to the town where road lies, persons not liable to foot the expense, may *force* a road upon others to build. Not so. The *Commissioners of Highways*, have the power, and *not the petitioners*, to locate roads. Any body, if a legal voter, and residing within three miles of the road desired, may *petition* for a road, and when this petition is presented to the Commissioners of Highways then *they* are authorized to *exercise their discretion* in regard to the matter, and that their discretion may be exercised in conformity with wishes of those who have to foot bill of expenses. The statute provides that the *inhabitants of the town* in *which said road is* shall be notified of the fact that Commissioners have been *petitioned* to act. Thereupon *they*, *the parties interested pecuniarily*, can make *their* wishes known to the authority *having the power* to *locate* or *refuse to locate*. There is no injustice in this.

There is nothing then in the suggestion, on which this argument was founded, that unless petitioners lived in the town affected, they might force a road which those having to build did not want.

This case has been once before this Court, (24 Ill. 351,) and the regularity of the proceedings therein were passed upon, and held to be regular, and it does seem to us, that as was said by this Court, when the case was first here, so it might again be said, "We are unable to see the least force in this position," that of the Counsel for Appellee.

There being then no irregularity in the proceedings establishing the road in question, in the opening of which it is charged the Defendants were guilty of a trespass, it is respectfully submitted, that the judgment of the Court below ought to be reversed.

PLATO & SMITH,
Attorneys for Appellants.

In the Supreme Ct.

1841

239

Vanvi & Towers

v.

Baker

Brief of Defendants

Thursday May 10. 1841

D. Leland Clk

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

HENRY WARNE & DAVID BOWNE, *Appellants,*
vs.
LAWRENCE M. BAKER, *Appellee.*

TRESPASS.—*Case appealed from Court of Common Pleas of the City of Elgin.—Heard, in Supreme Court, April Term, A. D.* 1864.

APPELLANTS' PETITION FOR RE-HEARING.

And the said Appellants now come and present to the Court their petition for a re-hearing of said cause, and show to the Court the following grounds for such application.

Says the Court, in delivering their opinion in this case, "The question now presented for the consideration of the Court, is whether the Commissioners of the two towns of Plato and Campton, had jurisdiction to hear and determine the question of altering and relocating the road in controversy." The Court says, "It appears that only one of the petitioners resided in the town of Plato, (and that he was not a voter,) and only three others resided in Campton, the others all resided in the towns of Burlington and Virgil." And the Court says, "It is insisted that only legal voters of the town in which the road was to be located or vacated and liable to the expense of opening and repairing the same can legally petition for such alteration of a road in existence, or the establishment of a new road."

The Court then quote the 1st Sec. of the 12 Article of the Township Org. Law, and ask the question, "Is this requirement answered when the requisite number of legal voters residing within the required distance, have signed the petition, although not residents of the town?" And it is in answer to this question, and which is the one which determines this case, that the counsel for the Appellants believe the Court to have erred. The Court by way of answering the question go on to say that the Statute has created townships into corporations, etc, and remark, "It was manifestly the design of the Legislature when it created these bodies, to confer the power authorized to be exercised upon the citizens of the towns." * * * * "The design of the law is manifestly to give the voters of the town the control of their corporation to the extent of the power conferred and the duties to be performed." "It was not intended that the voters of one town should control the acts of the officers of another town in matters affecting their corporation."

And the Court concludes as the result of the propositions enumerated by them as quoted above, that "A fair and reasonable construction of the Act can only authorize the legal voters of the town to be affected by the action of the Commissioners to become petitioners for the alteration or relocation of a road."

Upon these propositions laid down by the Court, and the conclusion drawn, we desire to say 1st, "The *power* authorized to be exercised" in the location of a road in any town is without doubt, conferred in the first instance "upon the citi-

zens of the town," to wit, upon the *Commissioners* of *Highways*, who alone have the power in the first instance to locate roads, and such power is not conferred upon the petitioners nor is it ever exercised by them. And the location of the road and the power exercised in this case was by the citizens of the towns affected, to wit, the Commissioner of Highways of Plato and Campton and not by petitioners. The fact that persons not citizens of the town affected petition these citizens of the town having the power to do an act, to do that act can in no sense be said to deprive the proper corporate authority of the power authorized to be exercised by them; and to allow such to *petition* for the location of a road would not at all militate against the correctness of said first proposition of this Court.

It is said the design of the law is to "give the voters of the town control of the corporation," etc. The principle here enumerated cannot apply in determining who shall be the petitioners for a road, from the fact the statute provides a limit to the residence of a petitioner, in many cases but a very small fraction of the voters of a town to be effected would exercise any control of the corporation in any sense. The petitioners in the case in hearing, living outside of the corporation, do not desire to *control* the corporation, but living within the distance specified in the statute of the desired road, they exercise the right which we insist the law gives them of *petitioning* the proper officers of the corporation to lay the same for their use.

We freely admit it was never intended to give the voters of one town control of the acts of the officers of another, nor do we seek to do so in this case. We insist that anybody, if a legal voter and residing within three miles of the road desired, may *petition* for the road, and when this petition is presented to the Commissioners of Highways then *they*, the duly constituted authority acting for the corporation, are authorized by the statute to *exercise their discretion* in regard to the matter. They are not *compelled* to lay a highway because they have been petitioned for the same. They are to exercise their *discretion*, and that their discretion may be exercised according to the wishes of those who have to foot the bill of expense incident to the laying of the road, the statute provides that the inhabitants of the towns in which said road is, shall be notified of the fact that Commissioners have been petitioned to act. Therefore, *they*, *the parties interested pecuniarily* can make their wishes known to the authority *having the power to locate* or to *refuse to locate*. See L. 1857, p. 55.

There is no injustice in this.

That it never was the design of the statute to confine the petitioners for a road to the town in which the same was to be located seems to us apparent from the necessity of the case. Take the case at bar—Burlington is an interior town, can only reach mills and market upon Fox River by passing through the town of Plato, they desire a road for that purpose, it is a necessity without which for instance the entire inhabitants of the interior town will be cut off from market. The proper authorities of Plato are willing to lay a road for their use, but they can only do so when petitioned by twelve legal voters residing within three miles of the road, (and as this Court says within the town of Plato.) Now if this additional requirement as held by this Court is *necessary*, how we ask will the inhabitants of Burlington get a road out, if there does not happen to be twelve legal voters of Plato residing within three miles of the road, or (as was the case probably here,) there was not twelve voters of Plato, within three miles of the road, who are not too stingy and selfish to petition for a road which would add to their expense. Is Burlington to be deprived of a highway through the town of Plato when necessary, and when perhaps a large majority of the voters of Plato

are willing to build the same, because there are not twelve voters of Plato living within three miles of the road to petition for the same.

The law makes no such requirements in terms, but on the contrary the only thing made necessary to be done before the proper authority can take the matter in hand is to present to them a petition of "any number of legal voters, not less than twelve, *residing within three miles of the road to be laid*," etc. And it does seem to us that to impose further restrictions in the matter is contrary to the *intent* of the Statute, as it is certainly beyond its language, and is wholly unnecessary, and in a large number of cases would be productive of great hardship, as we have illustrated above.

We have to say in conclusion, that the law fixing the character and residence of petitioners for roads has existed in a similar form to the present for years before township corporations were created, and before, it referred to territory generally, and there is nothing in a township organization that should change or limit the language of the statute on this point.

We have clearly shown that in no case can the *petitioners* force a road upon others to build, and we only add that in cases when a road has been laid, the opening of which will be assessed to the town, the opening may be postponed till the expense is provided for some other way than by tax. See Town. Org. Law, 1851, Art. 24, Sec. 18. Having thus called the attention of the Court to the points which we desire them to again consider, we respectfully submit the matter to the Court's attention, fully believing in the desire of the Court to make no decision unless based upon a proper construction of the law.

PLATO & SMITH, *Atty's for Appellants.*

Appellants Petition
for rehearing

Filed Apl. 13. 1865
S. Sclander Clk

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

HENRY WARNE & DAVID BOWNE, *Appellants,*
vs.
LAWRENCE M. BAKER, *Appellee.*

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Says the Court, in delivering their opinion in this case, "The question now presented for the consideration of the Court, is whether the Commissioners of the two towns of Plato and Campton, had jurisdiction to hear and determine the question of altering and relocating the road in controversy." The Court says, "It appears that only one of the petitioners resided in the town of Plato, (and that he was not a voter,) and only three others resided in Campton, the others all resided in the towns of Burlington and Virgil." And the Court says, "It is insisted that only legal voters of the town in which the road was to be located or vacated and liable to the expense of opening and repairing the same can legally petition for such alteration of a road in existence, or the establishment of a new road."

The Court then quote the 1st Sec. of the 12 Article of the Township Org. Law, and ask the question, "Is this requirement answered when the requisite number of legal voters residing within the required distance, have signed the petition, although not residents of the town?" And it is in answer to this question, and which is the one which determines this case, that the counsel for the Appellants believe the Court to have erred. The Court by way of answering the question go on to say that the Statute has created townships into corporations, etc, and remark, "It was manifestly the design of the Legislature when it created these bodies, to confer the power authorized to be exercised upon the citizens of the towns." * * * * "The design of the law is manifestly to give the voters of the town the control of their corporation to the extent of the power conferred and the duties to be performed." "It was not intended that the voters of one town should control the acts of the officers of another town in matters affecting their corporation."

And the Court concludes as the result of the propositions enumerated by them as quoted above, that "A fair and reasonable construction of the Act can only authorize the legal voters of the town to be affected by the action of the Commissioners to become petitioners for the alteration or relocation of a road."

Upon these propositions laid down by the Court, and the conclusion drawn, we desire to say 1st, "The *power* authorized to be exercised" in the location of a road in any town is without doubt, conferred in the first instance "upon the citi-

zens of the town," to wit, upon the *Commissioners* of *Highways*, who alone have the power in the first instance to locate roads, and such power is not conferred upon the petitioners nor is it ever exercised by them. And the location of the road and the power exercised in this case was by the citizens of the towns affected, to wit, the Commissioner of Highways of Plato and Campton and not by petitioners. The fact that persons not citizens of the town affected petition these citizens of the town having the power to do an act, to do that act can in no sense be said to deprive the proper corporate authority of the power authorized to be exercised by them; and to allow such to *petition* for the location of a road would not at all militate against the correctness of said first proposition of this Court.

It is said the design of the law is to "give the voters of the town control of the corporation," etc. The principle here enumerated cannot apply in determining who shall be the petitioners for a road, from the fact the statute provides a limit to the residence of a petitioner, in many cases but a very small fraction of the voters of a town to be effected would exercise any control of the corporation in any sense. The petitioners in the case in hearing, living outside of the corporation, do not desire to *control* the corporation, but living within the distance specified in the statute of the desired road, they exercise the right which we insist the law gives them of *petitioning* the proper officers of the corporation to lay the same for their use.

We freely admit it was never intended to give the voters of one town control of the acts of the officers of another, nor do we seek to do so in this case. We insist that anybody, if a legal voter and residing within three miles of the road desired, may *petition* for the road, and when this petition is presented to the Commissioners of Highways then *they*, the duly constituted authority acting for the corporation, are authorized by the statute to *exercise their discretion* in regard to the matter. They are not *compelled* to lay a highway because they have been petitioned for the same. They are to exercise their *discretion*, and that their discretion may be exercised according to the wishes of those who have to foot the bill of expense incident to the laying of the road, the statute provides that the inhabitants of the towns in which said road is, shall be notified of the fact that Commissioners have been petitioned to act. Therefore, *they*, *the parties interested pecuniarily* can make their wishes known to the authority *having the power to locate* or to *refuse to locate*. See L. 1857, p. 55.

There is no injustice in this.

That it never was the design of the statute to confine the petitioners for a road to the town in which the same was to be located seems to us apparent from the necessity of the case. Take the case at bar—Burlington is an interior town, can only reach mills and market upon Fox River by passing through the town of Plato, they desire a road for that purpose, it is a necessity without which for instance the entire inhabitants of the interior town will be cut off from market. The proper authorities of Plato are willing to lay a road for their use, but they can only do so when petitioned by twelve legal voters residing within three miles of the road, (and as this Court says within the town of Plato.) Now if this additional requirement as held by this Court is *necessary*, how we ask will the inhabitants of Burlington get a road out, if there does not happen to be twelve legal voters of Plato residing within three miles of the road, or (as was the case probably here,) there was not twelve voters of Plato, within three miles of the road, who are not too stingy and selfish to petition for a road which would add to their expense. Is Burlington to be deprived of a highway through the town of Plato when necessary, and when perhaps a large majority of the voters of Plato

are willing to build the same, because there are not twelve voters of Plato living within three miles of the road to petition for the same.

The law makes no such requirements in terms, but on the contrary the only thing made necessary to be done before the proper authority can take the matter in hand is to present to them a petition of "any number of legal voters, not less than twelve, *residing within three miles of the road to be laid*," etc. And it does seem to us that to impose further restrictions in the matter is contrary to the *intent* of the Statute, as it is certainly beyond its language, and is wholly unnecessary, and in a large number of cases would be productive of great hardship, as we have illustrated above.

We have to say in conclusion, that the law fixing the character and residence of petitioners for roads has existed in a similar form to the present for years before township corporations were created, and before, it referred to territory generally, and there is nothing in a township organization that should change or limit the language of the statute on this point.

We have clearly shown that in no case can the *petitioners* force a road upon others to build, and we only add that in cases when a road has been laid, the opening of which will be assessed to the town, the opening may be postponed till the expense is provided for some other way than by tax. See Town. Org. Law, 1851, Art. 24, Sec. 18. Having thus called the attention of the Court to the points which we desire them to again consider, we respectfully submit the matter to the Court's attention, fully believing in the desire of the Court to make no decision unless based upon a proper construction of the law.

PLATO & SMITH, *Atty's for Appellants.*

Filed Apl. 13. 1865
L. Leland
Clk.

In the Supreme Court
of the State of Illinois
Third Grand Division

Henry Mann et
David Brown
Appellants

Lavonia M Baker
Appellee

Issues - Appeal from the
Court of Common Pleas
of the city of Elgin -

B. S. Wilcox. Atty for Appellee
You are hereby
notified that on the 7th day of April A.D.
1865 or as soon thereafter as counsel can
be heard we shall move said Supreme
Court now in session to grant a
rehearing in the above entitled
cause determined by said Court
at the April Term A.D. 1864. for
reasons which will be then presented
to said Court -
Elgin April 6th 1865

Plato & Smith
Attys for Appellants

I hereby accept service of a copy
of the above notice this 6th day
of April A.D. 1865 - S. Wilcox -



Notice of A/c Coleon

Filed A/c 13.1865

L Leland Clk

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

HENRY WARNE & DAVID BOWNE, *Appellants*,
vs.
LAWRENCE M. BAKER, *Appellee*.

TRESPASS.—*Case appealed from Court of Common Pleas of the City of Elgin.—Heard, in Supreme Court, April Term, A. D.* 1864.

APPELLANTS' PETITION FOR RE-HEARING.

And the said Appellants now come and present to the Court their petition for a re-hearing of said cause, and show to the Court the following grounds for such application.

Says the Court, in delivering their opinion in this case, "The question now presented for the consideration of the Court, is whether the Commissioners of the two towns of Plato and Campton, had jurisdiction to hear and determine the question of altering and relocating the road in controversy." The Court says, "It appears that only one of the petitioners resided in the town of Plato, (and that he was not a voter,) and only three others resided in Campton, the others all resided in the towns of Burlington and Virgil." And the Court says, "It is insisted that only legal voters of the town in which the road was to be located or vacated and liable to the expense of opening and repairing the same can legally petition for such alteration of a road in existence, or the establishment of a new road."

The Court then quote the 1st Sec. of the 12 Article of the Township Org. Law, and ask the question, "Is this requirement answered when the requisite number of legal voters residing within the required distance, have signed the petition, although not residents of the town?" And it is in answer to this question, and which is the one which determines this case, that the counsel for the Appellants believe the Court to have erred. The Court by way of answering the question go on to say that the Statute has created townships into corporations, etc, and remark, "It was manifestly the design of the Legislature when it created these bodies, to confer the power authorized to be exercised upon the citizens of the towns." * * * * "The design of the law is manifestly to give the voters of the town the control of their corporation to the extent of the power conferred and the duties to be performed." "It was not intended that the voters of one town should control the acts of the officers of another town in matters affecting their corporation."

And the Court concludes as the result of the propositions enumerated by them as quoted above, that "A fair and reasonable construction of the Act can only authorize the legal voters of the town to be affected by the action of the Commissioners to become petitioners for the alteration or relocation of a road."

Upon these propositions laid down by the Court, and the conclusion drawn, we desire to say 1st, "The *power* authorized to be exercised" in the location of a road in any town is without doubt, conferred in the first instance "upon the citi-

zens of the town," to wit, upon the *Commissioners* of *Highways*, who alone have the power in the first instance to locate roads, and such power is not conferred upon the petitioners nor is it ever exercised by them. And the location of the road and the power exercised in this case was by the citizens of the towns affected, to wit, the Commissioner of Highways of Plato and Campton and not by petitioners. The fact that persons not citizens of the town affected petition these citizens of the town having the power to do an act, to do that act can in no sense be said to deprive the proper corporate authority of the power authorized to be exercised by them; and to allow such to *petition* for the location of a road would not at all militate against the correctness of said first proposition of this Court.

It is said the design of the law is to "give the voters of the town control of the corporation," etc. The principle here enumerated cannot apply in determining who shall be the petitioners for a road, from the fact the statute provides a limit to the residence of a petitioner, in many cases but a very small fraction of the voters of a town to be effected would exercise any control of the corporation in any sense. The petitioners in the case in hearing, living outside of the corporation, do not desire to *control* the corporation, but living within the distance specified in the statute of the desired road, they exercise the right which we insist the law gives them of *petitioning* the proper officers of the corporation to lay the same for their use.

We freely admit it was never intended to give the voters of one town control of the acts of the officers of another, nor do we seek to do so in this case. We insist that anybody, if a legal voter and residing within three miles of the road desired, may *petition* for the road, and when this petition is presented to the Commissioners of Highways then *they*, the duly constituted authority acting for the corporation, are authorized by the statute to *exercise their discretion* in regard to the matter. They are not *compelled* to lay a highway because they have been petitioned for the same. They are to exercise their *discretion*, and that their discretion may be exercised according to the wishes of those who have to foot the bill of expense incident to the laying of the road, the statute provides that the inhabitants of the towns in which said road is, shall be notified of the fact that Commissioners have been petitioned to act. Therefore, *they, the parties interested pecuniarily* can make their wishes known to the authority *having the power to locate* or to *refuse to locate*. See L. 1857, p. 55.

There is no injustice in this.

That it never was the design of the statute to confine the petitioners for a road to the town in which the same was to be located seems to us apparent from the necessity of the case. Take the case at bar—Burlington is an interior town, can only reach mills and market upon Fox River by passing through the town of Plato, they desire a road for that purpose, it is a necessity without which for instance the entire inhabitants of the interior town will be cut off from market. The proper authorities of Plato are willing to lay a road for their use, but they can only do so when petitioned by twelve legal voters residing within three miles of the road, (and as this Court says within the town of Plato.) Now if this additional requirement as held by this Court is *necessary*, how we ask will the inhabitants of Burlington get a road out, if there does not happen to be twelve legal voters of Plato residing within three miles of the road, or (as was the case probably here,) there was not twelve voters of Plato, within three miles of the road, who are not too stingy and selfish to petition for a road which would add to their expense. Is Burlington to be deprived of a highway through the town of Plato when necessary, and when perhaps a large majority of the voters of Plato

are willing to build the same, because there are not twelve voters of Plato living within three miles of the road to petition for the same.

The law makes no such requirements in terms, but on the contrary the only thing made necessary to be done before the proper authority can take the matter in hand is to present to them a petition of "any number of legal voters, not less than twelve, *residing within three miles of the road to be laid*," etc. And it does seem to us that to impose further restrictions in the matter is contrary to the *intent* of the Statute, as it is certainly beyond its language, and is wholly unnecessary, and in a large number of cases would be productive of great hardship, as we have illustrated above.

We have to say in conclusion, that the law fixing the character and residence of petitioners for roads has existed in a similar form to the present for years before township corporations were created, and before, it referred to territory generally, and there is nothing in a township organization that should change or limit the language of the statute on this point.

We have clearly shown that in no case can the *petitioners* force a road upon others to build, and we only add that in cases when a road has been laid, the opening of which will be assessed to the town, the opening may be postponed till the expense is provided for some other way than by tax. See Town. Org. Law, 1851, Art. 24, Sec. 18. Having thus called the attention of the Court to the points which we desire them to again consider, we respectfully submit the matter to the Court's attention, fully believing in the desire of the Court to make no decision unless based upon a proper construction of the law.

PLATO & SMITH, *Atty's for Appellants.*

239

Petition

Refused

Filed Apl. 13. 1865

L Delaware Clk

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

HENRY WARNE & DAVID BOWNE, *Appellants*,
vs.
LAWRENCE M. BAKER, *Appellee*.
} TRESPASS.

APPEAL FROM THE COURT OF COMMON PLEAS OF THE CITY OF ELGIN.

ABSTRACT OF THE RECORD IN THE CASE.

Page of Record.

11 On the 6th day of May, 1859, the plaintiff Baker filed a declaration in Trespass, containing four counts; that defendants on the first, tenth, twenty-fifth and sixth days of February, 1859, broke and entered plaintiff's close to wit: the East half of the South-east quarter of section 31 in township 41, North of Range 7 east, and the East half of lot 2 of the North-east quarter of section 6, in township 40, Range 7 east of the third principal meridian, in the County of Kane, and State of Illinois, to his damage three hundred dollars.

19 [redacted]

23

On the 8th day of Dec. 1859, plaintiff filed replications to defendants' pleas,
25 that there was not a public highway laid out, &c.

On the 8th day of Dec. 1859, a Jury trial was ordered, and on the tenth day
7 of Dec. 1859, returned into court with their verdict finding defendants guilty, and assessing the damages at five dollars, which was ordered by the Court to be entered of record. Defendants move for a new trial, which was overruled, excepted to by defendants. The case taken to the Supreme Court, judgment reversed, and cause remanded.

8 On the 2nd day of Feb. 1863, the venue in the case was changed to the Court of Common Pleas of the city of Elgin, by agreement.

26 At the May term 1863, of said Court, the cause was submitted to the Court for
27 trial. Tried, and taken under advisement to the next term. At the November
28 term 1863, the Court found for plaintiff and rendered a judgment against defendants for fifty cents damages. The defendants excepted the decision of the Court, and prayed an appeal to the Supreme Court, which was allowed and time
29 given to file Bill of Exceptions and Appeal Bond, both of which were filed within the time. On the 16th day of Dec. 1863, was filed a Bill of Exceptions
30 as follows:

Plaintiff proved that he was the owner and in possession of the premises in his declaration at the time, when, &c.

Page of Record.

36 To the town clerks of Campton and Plato. Whereas the commissioners of Highways of the towns of Campton and Plato, in the county of Kane, having upon the application of T. C. Ellithorp and others, refused to so alter that portion of the Elgin and Sycamore road which lays between the St. Charles and Genoa and Blackberry roads; and the undersigned feeling themselves aggrieved by the refusal of said commissioners to make said alteration, to wit: To so alter said road as to establish the same on or near said town line between the St. Charles and Blackberry roads, as petitioned for by the undersigned and others, appeals from said determination and order and refusal of said commissioners, and assigns the following reasons for their appeal. That the commissioners by their refusal did not consult the convenience of the community or travelling public. Because the present location of said road causes all persons residing on the north side of the town of Virgil or the south side of Burlington and many persons in the interior of Burlington, one mile extra travel in going to Geneva, St. Charles, Batavia, Aurora, &c.; and they present this appeal for the purpose of reversing the determination of said commissioners in their refusal to locate as above specified. We therefore pray for a further hearing in the matter, and for such other order and such further proceedings as is by law in such cases made and provided. Said refusal was filed in the town clerk's office in Campton on the 12th day of March, and in Plato, March 13th, 1858. T. C. Ellithorp, J. I. Minkler, A. Nichols, Jason Nichols, Franklin Jackson, Thomas Solomon, Spencer Allen, Wm. Denison.

Filed April 6th, 1858. A. Currier, Town Clerk of Campton.

38 To F. H. Bowman, F. Joy, Andrew Pingree, Supervisors of St Charles, Virgil and Rutland: Sirs, You will take notice that T. C. Ellithorp and others have taken an appeal from the decision of the commissioners of the towns of Plato and Campton, in refusing to so alter that part of the Elgin and Sycamore road which lays between the St. Charles and Genoa road and Blackberry road, as to cause the same to run on or near the line dividing Plato and Campton, from the Blackberry to the St. Charles road: which appeal is made to F. H. Bowman of St. Charles, F. Joy of Virgil, and A. Pingree of Rutland, and bears date April 6th, 1858. The grounds upon which this appeal is made, is the refusal of said commissioners to alter, as asked for, by said Ellithorp and others in a petition filed in my office on the 12th day of March 1858, and said appeal is brought to reverse the determination of said commissioners. Dated this 6th day of April, 1858.

Abner Currier, Town Clerk of Campton.
Wm. Hanson, Town Clerk of Plato.

39 State of Illinois, } Whereas, T. C. Ellithorp, and four others of the town of Bur-
Kane County. } lington, and Jason Nichols and two others of the town of Virgil, in said county, did on the sixth day of April 1858, appeal from an order and determination of the Commissioners of Highways of the towns of Plato and Campton, contained in the order of said commissioners deposited with the town clerks of said towns, and filed in Campton on the 12th day of March, and in Plato on the 13th day of March 1858, a copy of which order as well as all the papers before us in said appeal, are hereunto annexed; and A. Pingree and F. Joy, having met on the first day of May 1858, at one o'clock P. M., at the house of Wm. Brophy in Campton, to hear the proofs and allegations of the parties, being the time and place agreed upon by us when and where we would meet to consider said appeal, and F. H. Bowman, one of the supervisors appointed by the town clerks of Campton and Plato, to hear and determine said appeal not attending, whereupon said Andrew Pingree and F. Joy proceeded to fill the vacancy with N. N. Ravlin, supervisor of Kaneville, in said county, and then adjourned to meet at the house of said Brophy on the 6th day of May, 1858, at ten o'clock A. M., at which place we met as per adjournment; and it appearing that said commissioners of highways, and three of the petitioners in said case had been duly notified of which meeting as required by law, we did proceed to

Page of Record.

Plaintiff called Abram Quackenbush as a witness, who testified: I reside in Campton, lived there seven years. Know the farm that Baker lives on—Baker lived there thirteen years ago when I came there. He occupied and worked the land under claim of ownership. I know the defendants. Three years ago Mr. Bowne told me that they had opened the road through from the Blackberry road to the St. Charles and Genoa road. This was done in 1859. They threw down the fence and opened the road. It was the road fence on the Blackberry road. The fence taken down, was the west fence of the road. Damages for breaking down fence, fifty cents.

Cross-examined.—The defendants when they took down this fence were highway commissioners of Campton. It is on town line between Campton and Plato, and where the road intersects the Blackberry road it is ¾ mile from four corners of towns. The defendants said they took down this fence as highway commissioners of the town of Campton.

Plaintiff called D. Reynolds who said: I know the defendants. Know where Baker lives. He has been in possession of the land more than twenty years. About February 1859, they said they had opened the road, had taken the fence
32 down, and Baker had forbid them.

They were acting as highway commissioners of town of Campton. They took fence down to open the road. The fence was in the road, that was claimed by the commissioners to exist then.

33 The defendants then introduced as evidence certified copies from the files and records of the respective town clerks' offices of Campton and Plato, the authenticity of all which were duly proven, which were objected to by the plaintiff, but received subject to objection to be considered by the Court.

34 [redacted]

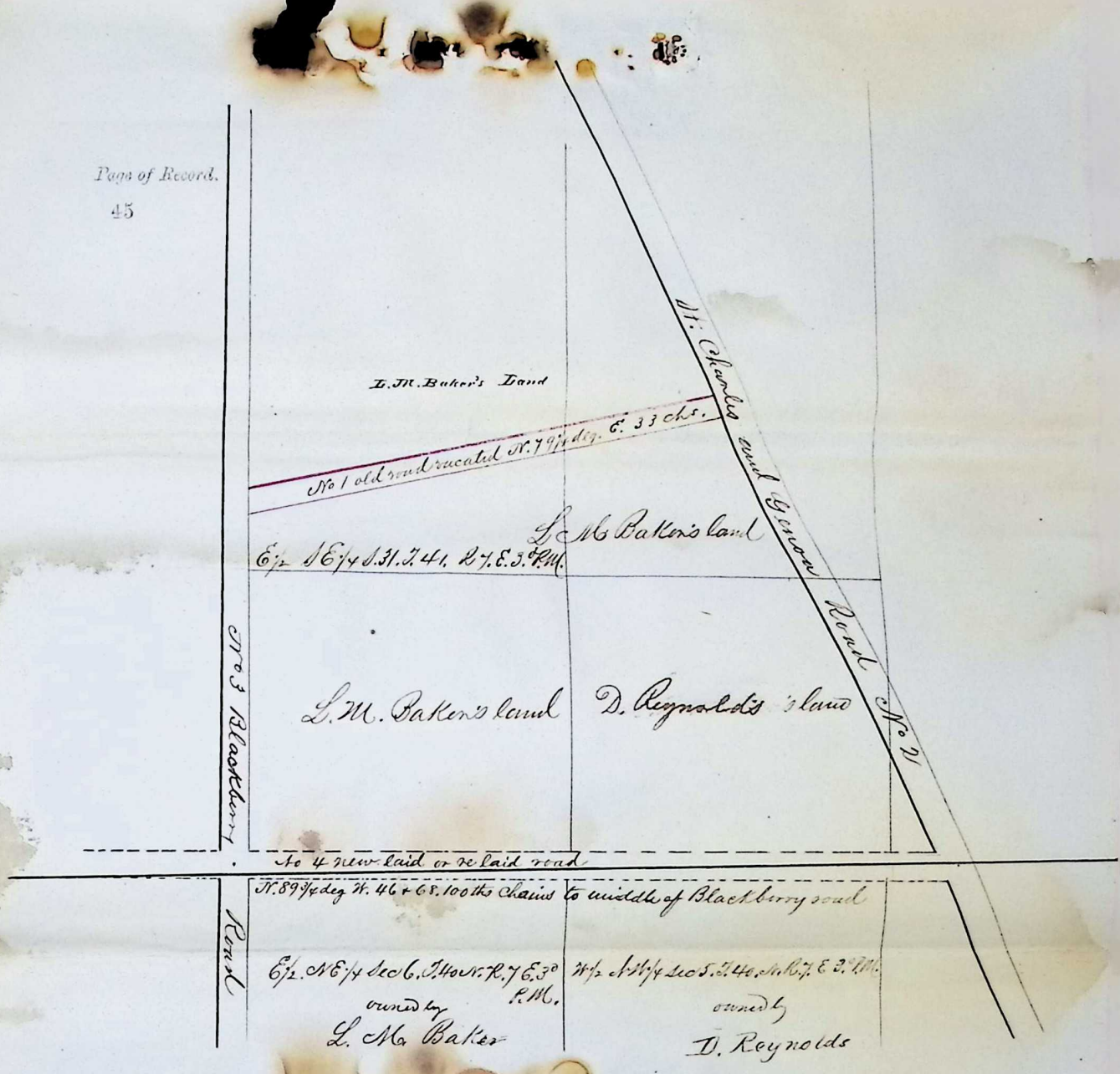
hear the proofs and allegations of the parties, and to consider said appeal; and we being now fully advised in the premises, are of the opinion that said road is necessary and proper, and that the public interest will be promoted thereby, we do therefore order, that the order and determination of said commissioners of highways be, and the same is hereby in all things reversed; and do order and determine, that the said road be, and the same is hereby *laid out and established* on and near the line between the towns of Plato and Campton, agreeable to the prayer of the petitioners, and also of those of the petitioners who have taken this appeal, as may be seen by the papers herewith connected, more particularly described as follows, to wit: Commencing in the centre of the St. Charles and Genoa road exactly on the line between Plato and Campton near Wm. G. Walker's residence, and running thence in a westerly direction, across the lands of the aforesaid Wm. G. Walker and D. Reynolds, on or near the line between them, about 22 rods; thence in the same direction wholly on D. Reynolds' land about 80 rods; thence in the same direction, wholly on L. M. Baker's land, about 80 rods, more or less, to the middle of the Blackberry road, and to a point exactly two rods north of the line between the towns of Campton and Plato, and that the line above described be the centre of said road, and the same is hereby declared to be a public highway four rods in width. For a more definite description of the above newly laid or altered road, see the accompanying map of the survey which we have ordered and caused to be made. And it is further ordered, in consequence of the laying of the above described road, that all of that part of the road commonly known as the Elgin and Sycamore road, which lays in the town of Plato, from the St. Charles and Genoa road to the Blackberry road, be, and the same is hereby vacated. The following is a more particular description of the vacated part of the Elgin and Sycamore road: *Commencing with its inter-section* with the Blackberry road, thence north 70 degrees east, 16 and ten one hundredth chains, thence north 79 and one half degrees east, and 16 chains to the St. Charles and Genoa road, more or less. And the undersigned Supervisors, further report: That W. G. Walker, across whose land the above described road crosses for the distance of twenty rods nearly, has set up no claim for damages; and that in our assessment of damages on said route, we have estimated the advantages to him, equal to the damages. And in relation to the damages claimed by D. Reynolds, across whose land the said road passes for the distance of 80 rods, the undersigned having applied to him with a view of agreeing with him upon the subject, and failing to do so, we proceeded to assess the same at what we deemed just and right, taking into account the advantages as well as the disadvantages, and having assessed the damages to the said Reynolds, by crossing his land on section No. 32 in the town of Plato, and section No. 5 in the town of Campton, at two hundred and fifty dollars. And in relation to damages claimed by L. M. Baker, across whose land the said road passes for the distance of 80 rods on section No. 31 in the town of Plato, and section No. 6 in Campton, we proceeded to assess the damages at what we deemed just and right: and taking into account and estimating the advantages and benefits, as well as the disadvantages, we have estimated the advantages of said road, equal to any and all his damages; *inasmuch as the vacation of the above section of the Elgin and* Sycamore road, which lays wholly on said Baker's land, saves him one acre and twenty hundredths of land and 96 rods of fence.

And it is further ordered, that the town of Campton pay $125, and the town af Plato pay $125 to D. Reynolds, the same being for damages expressed in the above order: and that the town of Campton pay N. N. Ravlin $1 50, and F. Joy $2 25, and A. Pingree $2 25, and that the town of Plato pay the like sums, being expenses of the appeal for Supervisors' services.

ANDREW PINGREE, Supervisor of the town of Rutland.

44 F. JOY, Supervisor of the town of Virgil.

N. N. RATLIN, Supervisor of the town of Kaneville.



The double dotted lines in the above diagram show the bearing, length, width and location of the new laid road: Commencing in the centre of the St. Charles and Genoa road, on the line between Plato and Campton, running thence north 89¾ degrees west, 46 and sixty-eight one hundredth chains to the middle of the Blackberry road, to a point two rods north of the line between Plato and Campton, crossing the lands of Wm. G. Walker, Daniel Reynolds, and L. M. Baker, as set forth in the above map, being four rods in width. Said road was surveyed by the subscriber, under the direction of the following Supervisors, before whom an appeal had been taken, viz.: N. N. Ravlin, F. Joy and A. Pingree. The red lines above represent nearly the old traveled road re-located under this survey, and the above named Supervisors' order. Witness my hand,

46 Andrew Pingree, Deputy County surveyor in Kane County.

47 Affidavit of service of notice of appeal to Supervisors.

Certified to be true copies of the originals on file in his office, by the town clerk of Campton.

48 On the 6th of Dec. 1858, the Commissioner of highways of the towns of Campton and Plato, allotted and partitioned the said highway into two road districts, for the purpose of opening, working and keeping the same in repair; allotting that portion where the trespass is complained of to the town of Campton.

49 On the 18th day of Dec. 1858, the plaintiff was notified in writing by the commissioners of highways of Campton, to move his fences from within the bounds
50 of said highway. Like certified copies from the town Clerk's office of the town of Plato, duly proven, were presented as evidence.

62 The plaintiff then introduced John Griggs, who testified: I reside in Plato, and have since 1835. Acquainted with the inhabitants of that vicinity. J. H. Seaton, Wm. Arnold, C. Shurtliff, Daniel Seaton, lived in Campton. T. C. Ellithorp, A. Nichols, J. Minkler, S. C. Craft lived in Burlington. J. Nichols, Geo. Jennings, lived in Virgil. F. Jackson, and Gilbert Ellis also—never lived in Plato. Daniel McDermid lived in Plato but owned no land there.

Have been acquainted with the Elgin and Sycamore road ever since laid, 14 years ago. It was laid by act of Legislature. It was from Elgin to Sycamore in DeKalb Co. This State road when first laid did not touch the town of Campton, and was never changed except by the road in question so as to touch Campton.

64 Cross Examination.—I was not present when State road was laid out. Distance of old road from town line ¼ to ½ mile. Between towns of Elgin and St. Charles. State road runs on town line.

Re-Examined.—This portion of old State road was under the charge of Plato township. It belonged to district number ten in Plato.

65 Plaintiff then called George Harvey, who testified: I lived in Plato from 1837 to 1848. Am now well acquainted with those towns. I was with the commissioners that laid the State road. It was I think in 1846. The road as laid out by them did not touch the town of Campton. Originally half a mile from town line of Campton—not so far now, though.

The testimony of Griggs and Harvey objected to by the defendants at the time, offered and received by the Court, subject to objection.

The plaintiff then called Wm. Hanson, who testified: I know the old road in question. The commissioners of Plato had charge of it, and not Campton. It
66 was admitted by both parties that the towns of Plato, Burlington, Virgil and Campton cornered together about ¼ mile south of where said Elgin and Sycamore road strikes west line of Plato. Virgil being west of Campton—Burlington west of Plato—Campton south of Plato.

68 The following map was also introduced in evidence.

(A Map of the road and premises similar to the one contained in the foregoing road proceedings.)

69 The foregoing was all the testimony in the case.

The Court found the defendants guilty, and assessed the damages of fifty cents, to which decision and judgment of the Court the defendants by their counsel at the time excepted, &c.

Appeal Bond filed, Dec. 11th, 1863, duly approved.

The Court found defendants guilty, and assessed the plaintiff's damages at fifty cents, to which decision and judgment of the Court the defendants by their counsel at the time excepted, and appeal prayed, &c.

R. G. MONTONY, JUDGE. [Seal.]

Appeal Bond filed, Dec. 10th, 1863, duly approved.

Errors assigned.—

The Court erred in admitting improper testimony.

The Court erred in rendering judgment against the defendants.

PLATO & SMITH,

Attorneys for Appellants.

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Rakes

Abstract

Apl 1. 1864

(Reporter)

Filed Apl 20. 1864
L. Leland
Clk.