The Court Archive:
Milwaukee Avenue Toll Road Case

John A. Lupton
© Illinois Supreme Court Historic Preservation Commission
May 2018

Toll roads cause great irritation with motorists across the country and in Illinois. Proponents argue that the roads are largely self-sufficient and paid for by those who use them, while opponents complain of the high tolls and the restrictions on freedom of movement. One interesting Illinois Supreme Court case in the nineteenth century concerned the inheritance of a Milwaukee Avenue toll road.

Amos J. Snell was a wealthy Chicago landlord with thousands of tenants. In 1870, he purchased the Northwestern Plank-Road toll road. The road was built by the Northwestern Plank-Road Company under an 1849 grant by the state of Illinois. Plank roads were so rough they were also known as corduroy roads, but they were an improvement over rutty dirt roads that instantly turned to mud after a good rain. The state authorized the company to finance the road with toll gates. Toll roads could not operate in the City of Chicago, but the beginning of the toll road—at Fullerton and Milwaukee—was not in the city limits at the time. The toll portion of the road ran all the way to the boundary of Lake and Cook counties, near Wheeling. When Snell bought the road, he improved it with gravel but also erected more toll gates, much to the public's anger.

By the 1880s, Snell was a millionaire with the toll road his most lucrative investment. On February 9, 1888, Snell was awakened by a burglar and murdered in his home. No one was ever charged for the murder, which made the national news, although many suspected Willie Tascott, who disappeared forever. Snell did not leave a will, and his heirs moved to secure his estate, particularly the valuable toll road.

After Snell's death, the city of Chicago, which had extended its boundaries into areas containing parts of the road, began to tear down the toll gates because toll roads were not permissible in the city. Snell's heirs sued the City of Chicago to prevent the city from removing the gates. Snell's heirs contended that they had the right to operate the toll road because when Snell bought the road, the right to charge tolls was part of the agreement and noted in the sale contract.

The Superior Court of Chicago ruled for the city, and the Snell heirs appealed to the Illinois Supreme Court, 133 Ill. 413 (1890). Justice Benjamin Magruder, writing for the Court, agreed with the Superior Court judgment, noting that the authority granted by the state to the old

company was held by Snell as a life estate and the right to collect tolls could not be passed along forever to Snell's descendants despite what the sales agreement said. The continued authority to charge tolls was contrary to public policy and the "free and untrammeled use [of roads] belongs to the public." Snell's heirs then appealed to the U.S. Supreme Court, 152 U.S. 191 (1894), which upheld the decision. The Court admitted that Snell might have secured the right to collect tolls perpetually if he had incorporated his business under the law. Failing to do that, he had nothing to pass on after his lifetime.

Milwaukee Avenue has been a "free and untrammeled" road ever since.