

No. 14687

Supreme Court of Illinois

School Directors Dist. #5

vs.

School Directors Dist. #1.

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 35-122

J. W. M.

School Direct
Dist No 5
vs
School Dist
No 1

14687

107 35-142
SUPREME COURT OF ILLINOIS—THIRD GRAND DIVISION.

APRIL TERM, A. D., 1863.

107 SCHOOL DIRECTORS OF
DISTRICT No. 5—24—10.

vs.

SCHOOL DIRECTORS OF
DISTRICT No. 1—24—10.

} APPEAL FROM OGLE.

Filed May 8. 1863

APPELLEE'S BRIEF.

Deane
MR I.

DISTRICT No. 1.—The appellee was plaintiff below, and brought its action of assumpsit against appellant, to recover the sum of \$47.29, which, as they claimed, had been raised by a tax levied within their district, and by their authority, and came into the hands by the township treasurer, who, upon an order from the trustees of the town, 24—10, paid said sum over to appellant, (District No. 5.)

In the court below judgment for \$47.29 was rendered in favor of appellee, which this appeal is brought to reverse.

The proof, which is set out verbatim in the abstract, shows conclusively that in April, 1856, township 24—10, in Ogle county, was divided into School Districts, of which District No. 1 and District No. 5 were two.

The order by which these districts were created was read in evidence. The map which the proof shows was made at the time, had been lost, and was not given in evidence.

Appellants claim that because the map was not given in evidence, the organization and boundaries of the district were not properly established.

The order establishing the district was the original and most reliable evidence of the organization, and boundaries of the district. It was the very record required by law to be kept, and was the very best evidence to prove the facts that could be adduced.

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Proof shows that the directors and inhabitants of both districts acquiesced in the boundaries of the districts, as established in April, 1856.

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There was then sufficient evidence to show that District 1, the appellee, and District 5, appellant, were organized and acquiesced in as such districts, with the boundaries specified in the order of April 7th, 1856.

By this order,

The E. hf. of N.W. qr., Sec. 26,

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were included within the boundaries of District No. 1, (appellee.)

Plaintiffs then read in evidence the certificate of the School Directors of District No. 1, dated Sept. 9th, 1859, requiring two per cent., to be levied on all taxable property in the district for building a school house for the year 1859.

Plaintiff then proved by Egbert Light, county clerk, that this two per cent. tax was extended on the collector's book, on the property herein before set forth, as a part of District 1, (appellee.)

Plaintiff then read in evidence portions of the town treasurer's account, showing that he received \$47.29 of funds belonging to District No. 1, and paid said \$47.29 to District No. 5, (appellant), on an order of the School Trustees.

Record page 21 and 22.

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The treasurer, Samuel Wagner, testified that he paid over the \$47.29 on this order.

This was the gist of plaintiff's evidence.

Can there be any doubt in the mind of the court, that, upon this evidence, the jury would be warranted in finding for the plaintiff below, (appellee), for the sum of \$47.29, thus had and received by defendant, (appellant), out of monies belonging to appellee?

I think it will be conceded that there is no doubt on this point, unless the position taken by appellant, that appellee could not recover at all in *assumpsit*, be correct.

We think assumpsit will lie in this case and refer the court to

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The only evidence on the subject is contained in the order of the trustees of the town, read in evidence by plaintiff.

This order is dated April 21, 1860, and recites that the boundary lines of District No. 5 had, on the 4th of June, 1859, been, by the trustees of town 24, extended so as to embrace the parts of sections above described, as being part of District No. 1, under the order of 1856, and then states, "It is, therefore, considered that said district was correctly and legally established at the meeting of said board, at said June session, 1859."

It is claimed by appellants that this order legally established District No. 5 with the boundaries claimed.

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Upon the evidence given to the jury, there can be no question but what the instructions of the court, and the verdict of the jury were proper.

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L. L. Leland *CR*

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Levi Westbrook, E. hf., of E. hf., Sec. 34.

The treasurer, Samuel Wagner, testified that he paid over the \$47.29 on this order.

This was the gist of plaintiff's evidence.

Can there be any doubt in the mind of the court, that, upon this evidence, the jury would be warranted in finding for the plaintiff below, (appellee), for the sum of \$47.29, thus had and received by defendant, (appellant), out of monies belonging to appellee?

I think it will be conceded that there is no doubt on this point, unless the position taken by appellant, that appellee could not recover at all in *assumpsit*, be correct.

We think assumpsit will lie in this case and refer the court to
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McDonald v. Brown, 16 Ill., 32.
Critzer v. McConnell, 15 Ill., 173.
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II.

There was no evidence on the part of appellant (defendant below) given to the jury tending to show that the boundaries of the districts in question were ever changed in any way from those contended by the appellee.

The only evidence on the subject is contained in the order of the trustees of the town, read in evidence by plaintiff.

This order is dated April 21, 1860, and recites that the boundary lines of District No. 5 had, on the 4th of June, 1859, been, by the trustees of town 24, extended so as to embrace the parts of sections above described, as being part of District No. 1, under the order of 1856, and then states, "It is, therefore, considered that said district was correctly and legally established at the meeting of said board, at said June session, 1859."

It is claimed by appellants that this order legally established District No. 5 with the boundaries claimed.

We answer if it did, it came too late to give District No. 5 (appellee) any right to, or interest in, the money raised in the contested territory for school purposes of 1859, for it will not be claimed that it related back to, and legalized the old void order of 1859, but only that it was good as a new order.

Upon the evidence given to the jury, there can be no question but what the instructions of the court, and the verdict of the jury were proper.

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Appellants also insist that improper evidence was given to the jury on the part of plaintiff below, and proper evidence offered by defendant below, was excluded:

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We say it was properly excluded, because it did not purport to have been made at a regular semi annual meeting.

Scates Stat, page 440, Sec. 33.

Metz v. Anderson, 23 Ill., 468.

And because it was not authenticated by the signature of the President and Clerk of the Board, as the law directs.

See same authorities.

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This evidence was properly excluded by the court, because, by law, a record of these proceedings is required to be kept.

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tent. This is the law wherever a record is required to be kept by law.

Jackson v. Daly, 5 Wend., 526.

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No exception was taken by defendat below (appellant) to the ruling of the court in excluding from the jury the orders of the trustees, passed April 4th, 1859, April 21, 1859, and June 4th, 1859, which were offered by defendants.

But the next exception was to the ruling of the court in refusing to give defendant time, while the trial was progressing, to get the record amended, signed, &c.

See Record, p. 27, and Abstract, p. 6.

This was a matter within the discretion of the court, and cannot be assigned for error.

Defendants were bound to have their evidence ready when the trial came on, or show good cause for delay or continuance.

There was no attempt to do either.

IV.

The next and last error assigned is that the court erred in overruling the motion for a new trial, and in arrest of judgment.

By a reference to the record the court will observe that the cause was tried June 13th, 1861, and the bill of exception filed July 3d, 1863.

The exception to overruling the motion for new trial, and in arrest, appears in the bill of exceptions, page 32, of Record, abstract, page 6, and is in the present tense "*excepts*," and this court has repeatedly held that an exception of this kind, is too late.

13 *Ill.*, 700.

11 *Ill.*, 84.

3 *Scam.*, 63.

4 *Gilm.*, 448.

GLOVER, COOK & CAMPBELL,
For Appellee

107
SUPREME COURT OF ILLINOIS—THIRD GRAND DIVISION.

APRIL TERM, A. D., 1863.

107 SCHOOL DIRECTORS OF
DISTRICT No. 5—24—10.

vs.

SCHOOL DIRECTORS OF
DISTRICT No. 1—24—10.

} APPEAL FROM OGLE.

Filed May 8. 1863

Delivered over

APPELLEE'S BRIEF.

I.

DISTRICT No. 1.—The appellee was plaintiff below, and brought its action of assumpsit against appellant, to recover the sum of \$47.29, which, as they claimed, had been raised by a tax levied within their district, and by their authority, and came into the hands by the township treasurer, who, upon an order from the trustees of the town, 24—10, paid said sum over to appellant, (District No. 5.)

In the court below judgment for \$47.29 was rendered in favor of appellee, which this appeal is brought to reverse.

The proof, which is set out verbatim in the abstract, shows conclusively that in April, 1856, township 24—10, in Ogle county, was divided into School Districts, of which District No. 1 and District No. 5 were two.

The order by which these districts were created was read in evidence. The map which the proof shows was made at the time, had been lost, and was not given in evidence.

Appellants claim that because the map was not given in evidence, the organization and boundaries of the district were not properly established.

The order establishing the district was the original and most reliable evidence of the organization, and boundaries of the district. It was the very record required by law to be kept, and was the very best evidence to prove the facts that could be aduced.

Jackson v. Daly, 5 *Wend.*, 526.

Mecker v. Ransellar, 15 *Wend.*, 397.

Hallock v. Woolsey, 23 *Wend.*, 328.

Smith v. Helmer, 7 *Barb.*, 416.

Hitts v. Colvin, 14 *Johns.*, 182.

Spangler v. Jacoby, 14 *Ill.*, 300.

Jameson v. Conway, 5 *Gilm.*, 231.

Proof shows that the directors and inhabitants of both districts acquiesced in the boundaries of the districts, as established in April, 1856.

Wentz v. Anderson, 23 *Ill.*, 469.

There was then sufficient evidence to show that District 1, the appellee, and District 5, appellant, were organized and acquiesced in as such districts, with the boundaries specified in the order of April 7th, 1856.

By this order,

The E. hf. of N. W. qr., Sec. 26,

The S. W. qr., Sec. 26,

The W. hf., Sec. 35,

The E. hf., of E. hf., Sec. 34,

The E. hf., S. E. qr., Sec. 27,

were included within the boundaries of District No. 1, (appellee.)

Plaintiffs then read in evidence the certificate of the School Directors of District No. 1, dated Sept. 9th, 1859, requiring two per cent., to be levied on all taxable property in the district for building a school house for the year 1859.

Plaintiff then proved by Egbert Light, county clerk, that this two per cent. tax was extended on the collector's book, on the property herein before set forth, as a part of District 1, (appellee.)

Plaintiff then read in evidence portions of the town treasurer's account, showing that he received \$47.29 of funds belonging to District No. 1, and paid said \$47.29 to District No. 5, (appellant), on an order of the School Trustees,

Record page 21 and 22.

Plaintiff then read in evidence the order of trustees, contained on page 22 of Record, requiring the treasurer to pay over to District No. 5, (appellant,) "all the district tax collected from the following persons and tracts of lands:"

William T. Crowell and E. S. Cangdon. E. hf., N.W. qr., Sec. 26.

Samuel James. 3 W. qr., Sec. 26.

J. T. Patrick, E. hf., S E. qr., Sec. 27.

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The treasurer, Samuel Wagner, testified that he paid over the \$47.29 on this order.

This was the gist of plaintiff's evidence.

Can there be any doubt in the mind of the court, that, upon this evidence, the jury would be warranted in finding for the plaintiff below, (appellee), for the sum of \$47.29, thus had and received by defendant, (appellant), out of monies belonging to appellee?

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13 *Ill.*, 700.

11 *Ill.*, 84.

3 *Scam.*, 63.

4 *Gilm.*, 448.

GLOVER, COOK & CAMPBELL,

For Appellee

107 35-142

Supreme Court of Illinois,

THIRD GRAND DIVISION,

AT OTTAWA.

APRIL TERM, 1863.

SCHOOL DIRECTORS

Of District No. 5, Town No. 24, Range 10, Ogle County,

APPELLANTS,

VS.

SCHOOL DIRECTORS

Of District No. 1, Town No. 24, Range 10, in Ogle County,

APPELLEES.

ABSTRACT OF RECORD.

H. A. MIX AND LELAND & BLANCHARD,

ATTORNEYS FOR APPELLANT.

Filed April 22, 1863

S. Seaton CLK

OREGON:

PRINTED AT THE OGLE COUNTY REPORTER OFFICE.

1863.

ABSTRACT OF RECORD.

Record Page.

SCHOOL DIRECTORS OF DISTRICT No. 5,)
TOWN No. 24, RANGE 10, OGLE COUNTY,) APPELLANT.

vs

SCHOOL DIRECTORS OF DISTRICT No. 1,)
TOWN No. 24, RANGE 10, in OGLE COUNTY.) APPELLEE.

Action brought by Appelle vs. Appellant before a Justice of the Peace, January 26th, A. D. 1861, for money had and received by Dft. below, for the use of Plffs. below.

Appeal to the Circuit Court of Ogle County, March 4, 1861.

Bill of exceptions copied in full.

Hiram Reed testified: I am Township Treasurer of Town 24, Range 10, in this county; These four books are the records of my office; There was an order made on the 7th of April 1856, districting Township 24, Range 10, into school districts, this was at a regular semi-annual meeting.

Orders read in evidence from the books kept by the township Trustees as follows:

District No. 1, shall commence on the south line of the Township, on the center of section 35, running north through center of sections 35, 26, 23, 14, to center of 14, on the north; thence west on north line of sections 14 & 15, to Rock River; thence following the meanderings of the River to the south line of Town; thence east to the place of beginning.

District No. 5, shall commence at the south-east corner of the town; thence North, on the east side of the town to the north-east corner section 24; thence west to the center of section 23 on the north; thence

south through the center of sec. 23, 26, & 35, to the south line of the town; thence east to the place of beginning.

Daniel F. Green testified; I have lived in district No. 1, five or six years, heard the record read, they have alway elected directors with boundaries according to the record.

Albert Woodcock, County Clerk of Ogle county, produces the following, on file in his office.

We hereby certify that we require the rate of two per cent to be levied for the purpose of building a School House, on all the taxable property of our district, for the year 1859.

Given under our hands this 9th day of September 1859.

F. P. McCAMLEY,	}	Directors district No. one, Town-	
WILLIAM BOYCE,			ship No. 24, Range No. ten, Coun-
BENJAMIN BOYCE,			ty of Ogle, and State of Illinois.

List of Tax Payers; WILLIAM WERTZ, DANIEL F. GREEN (and others)

Said Woodcock stated that he had in his possession collector's book of Town 24, Range 10, in said county, and produced it.

Elbert K. Light, Clerk of Ogle co. in 1859; A tax of two dollars on the hundred was levied in district No. 1, for the year 1859, in accordance with a plat in Co. Clerk's office of said district made in 1856, in accordance with order in record offered in evidence; said tax amounted to two hundred and thirty dollars, and 98-100. Directors of district No. 5, filed a certificate levying a tax of two and 50-100 dollars on the hundred, amounting to three hundred eighty 7-100 dollars.

Collector's book offered in evidence by plff.

Said witness further testified that he first extended the tax on the E $\frac{1}{2}$ N W $\frac{1}{4}$ and S W $\frac{1}{4}$ sec. 26, W $\frac{1}{2}$ sec 35, E $\frac{1}{2}$ E $\frac{1}{2}$ sec 34, and E $\frac{1}{2}$ S E $\frac{1}{4}$ sec 27 of said town, according to a plat then on file in his office, and at the rate of 2 $\frac{1}{2}$ per cent on the dollar, accordance with the certificate. At this point the defence presented a plat and called William Artz, who testified that he was trustee of schools for said town in 1859, and was President of the board; John A. Wagner was Clerk; John James was also a Trustee and the signatures of said Artz and James, to the certificate upon the back of said plat are genuine.

The certificate on the back of the map is as follows:

STATE OF ILLINOIS,	}	We the undersigned trustees of town 24,
Ogle County.		
		Districts to be correct, to the best of our knowledge and belief.

JOHN JAMES,
WILLIAM ARTZ.

For plat see Record, page 19. At the top of the plat are the words, Township No 24, north of Range No. 10, &c.

20 Albert Woodcock stated that said plat was a part of the files of his office.

20 Thereupon defendant offered said Plat, certificate and filing, in evidence. Objection: sustained, and exception by Plaintiff.

20 Said Light further testified, that he did first extend the tax in district No. 5, on collector's book according to said plat, for the year 1859, at the rate of 2 50-100 dollars on each one hundred dollars, in accordance with the certificate of said directors of district No. 5, but altered the same before it was delivered to the collector at \$2.00 on the \$100. Witness further said the plat in his office previous to one then offered in evidence, was made on the back of a Teacher's schedule. It was produced on trial below; can't say there was a certificate upon it. This plat was drawn in accordance with the bounds of district No. 5, as first established in 1856, there was no other plat in the office when I was clerk made upon a teacher's schedule.

20 Woodcock recalled; I was requested to search for the plat in question. I looked among the files in my office; there were two packages of township plats; I could not find it. I could not state that there were any certificates at all upon it.

21 Hiram Reed recalled; Made the plat at the time of the division on the back of a Teacher's schedule. Mr. Richardson was President, E. J. Wait Clerk. My impressions are that it was certified to by President and Clerk; don't recollect contents of certificate.

21 Samuel Wagoner testified that he was township treasurer of Rockvale in 1859; had money in his hands for district No. 1, for that year; these books are my records of moneys received and paid out. The books of account of the treasurer of district No. 1, and district No. 5, were offered in evidence. Objection by defendant, overruled. Exception taken.

The accounts were read in evidence as follows: [See Record Page 2]

In these accounts, that of district No. 1, contains these words:—"June 29, Dist. No. 5, by order of Trustees, \$47.29."

22 That of No. 5, these words: "June 29, from Dist. No. 1, by order of Trustees, \$47.29." I paid of moneys collected in District No. 1, to district No. 5, \$47.29. Objection by defendant overruled. Defendant excepts. The money I received from the Town Collector, and a part from the county Treasurer. I paid over this amount of money under an order of the Trustees.

Plaintiff offered in evidence so much of an order of the board of Trustees of said town as relates to the payment of money, which is dated April 21, 1860, and is as follows:

22 The boundary lines of district No. 5, coming up for consideration, and it appearing that the boundaries of said district were established

at an adjourned meeting of said board, holden at the school house in district No. 8, on the 4th day of June 1859, and by an order of the board made at said meeting, said district was established, and embraces the following territory, to wit: Sections 24, 25, 35 and 36, and E $\frac{1}{2}$ of section 23, and all of section 26, except the W $\frac{1}{2}$ of N W $\frac{1}{4}$ of said section, the E $\frac{1}{2}$ of S E $\frac{1}{4}$ of section 27, the E $\frac{1}{2}$ of the E $\frac{1}{2}$ of section 34, all in township 24, Range 10, E., and it appearing by petition and remonstrance that all the voters and tax payers of said district No. 5, were anxious and desirous to have said district No. 5, remain as constituted by said Board at said June session 1859. It is therefore considered that said district was correct'y and legally established at the meeting of said board, at said June session, 1859; and it is further ordered that the treasurer of said township be required to pay over to the directors of said district all the district tax collected from the following persons and tracts of land, for school purposes, within said district No. 5, for the year 1859:

William T. Crowell, & E. S. Congden, e hf nw qr sec 26, 80. 23

Samuel James sw qr, sec 26, 160.

J. T. Patrick, e hf se qr, sec 27, 80.

Richard Westbrook, w hf sec 35, 320.

Levi Westbrook, e hf e hf sec 34, 160.

All of said persons being residents therein and all of said tracts of land situate thereon, which said treasurer will pay over to the Directors as soon as the same shall come to his hands. In reference to the foregoing boundary question, the following persons were sworn:

J. T. Patrick, lives in district No. 5, as he supposed; went to attend a meeting in district No. 1, which was called for the purpose of locating the site of a school house in said district, 1; said he understood Mr. Green that he had no right to vote. 23

David Smith, same in substance as Patrick's testimony. 23

The board further went into examination of the books of former Treasurer, and finding them to be correct, the same were accepted. Board then adjourned to meet at next regular session.

WILLIAM ARTZ, Pres't.

SAMUEL WAGGONER, Clerk.

Defendants introduced as a witness John M. Sewell: Resident of district No. 5, since March 1857, since which time a school has been taught in the district—new school house built in 1859; might be in 1858. 24

John James—Resides in Rockvale; was trustee of schools in 1858 and 1859; at the regular April meeting in 1859, a petition was presented to set off a part of district No. 1, to district No. 5; Artz was chairman of the Board of Trustees. I taught school in district No. 5

25 in the winter of 1859, 1860 and 1861. Said witness was asked the following question: Where did the pupils residing on the east half of the north west quarter and the south west qr. of section 26, and the west half of section 35 and the e hf of e hf of section 34 and e hf of se qr of section 27 attend school during the time he taught in said district?

Plaintiff objected; sustained. Exception.

25 The defendants then offered to prove by said James and Artz, another trustee, that at the regular session of the board of trustees of said Town, holden at the regular April term 1859, an application was made by the citizens of district No. 5, to annex to said district, the e hf of e hf of section 34, the e hf of the se qr of section 27, the w hf of section 35, the sw qr and the e hf of nw qr of section 27, to said district No. 5, and to take the same from district No. 1, of said Town, which application was resisted by the citizens of district No. 1, that said matter was considered upon in part at said April meeting, that an adjourned meeting was then agreed upon which was to take place on the 21st of the said April, at the same place, which was in the school house in district No. 8, in said Town. In the interval it was the arrangement between the said Trustees, that they would visit the said territory, and inspect it, that they might learn more definitely the propriety of dividing said district; One of said trustees being sick, they were unable to visit said premises, before the 21st day of April; that they again convened on the said 21st day of April in pursuance of the said adjournment, at the said School House, in district No. 8, that they agreed upon a meeting to be holden on the 19th day of May, at the Boyce School House, in said district No. 1, for the purpose of finally disposing of the question of the division of said School District, and further, that in pursuance of said adjourned meeting the said Trustees did meet at the said Boyce School House, in the afternoon of the said 19th day of May, A. D. 1859, and that most of the citizens of both said districts were there; that the matter was discussed in the forenoon, and that during the afternoon they went upon the premises desired to be attached to district No. 5, and again returned to said Boyce School House, and after duly considering the matter, they agreed to annex said territory to district No. 5, and make known the determination at said meeting. It being late before the business was closed, they adjourned said meeting to meet in the school house in district No. 8, to the 4th of June 1859, and that said meeting was duly holden on the said 4th day of June 1859, in accordance with said adjournment. To the introduction of which the Plaintiff then and there excepted. Objection sustained. Exception.

26 Thereupon defendant offered the following order, April 4, 1859.—

The Trustees met at the school house in district 8, Town 24, Range 10 and proceeded to business. In the first place the public funds were not ready for distribution. In the second place a petition was presented for the alteration of district 5, for enlarging it, and a remonstrance accompanying it April 21. The trustees met on this day, the funds not being in the hands of the treasurer they adjourned.

June 4th, 1859. The trustees met again at the school house in District 8, and proceeded to business, the amount of town and State funds to be \$478.37 for distribution, allowing the treasurer his percentage, leaves \$468.81 for distribution, in the first, one half the amounts of funds is \$234.40. The census of the town is 393 under twenty-one and this amount is divided between the districts entitled to the same.

Dist. 2d. The number of days on schedule amounts to 9313, and the amount of money to be divided on schedule \$234.40. 27

The schedule of Dist. 6, was rejected on the ground of not keeping up a school in previous year six months. 27

On motion Dist. 5, an alteration was made commencing on the south line in the middle of section 23, running west 80 rods, thence south, between the line of Eightys, half mile south thence west 160 rods, thence south to town line thence east to middle of section 35.

Plaintiff objected to the introduction of said orders on the ground that they were not signed or at a regular adjourned meeting.—sustained.

Defendant moves to amend said record, overruled—defendant excepts. 27

Defendant moves to exclude from the jury the order heretofore read marked "A" showing a division of said town into districts for the reason that the same were not made at a regular meeting.—overruled.

Plaintiff's instructions were all refused and the instructions asked for the defendants were all given.

Verdict for Plaintiff \$47,29. 32

Defendant moves in arrest of judgement and for a new trial, overruled, defendant excepts. 32

The Errors assigned are—the admission of improper testimony; the exclusion of proper testimony; in overruling motion for new trial in arrest; the verdict and judgment is against the law and evidence. In entering judgment for plaintiff.

H. A. MIX AND LELAND & BLANCHARD,

ATTORNEYS FOR APPELLANT.

107 - 1863

Supreme Court of Illinois,
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APPELLANTS,

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Filed April 22, 1863
S. Seland Clerk

OREGON:
PRINTED AT THE OGLE COUNTY REPORTER OFFICE.
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2.
south through the center of sec. 23, 26, & 35, to the south line of the town; thence east to the place of beginning.

Daniel F. Green testified; I have lived in district No. 1, five or six years, heard the record read, they have always elected directors with boundaries according to the record.

Albert Woodcock, County Clerk of Ogle county, produces the following, on file in his office.

We hereby certify that we require the rate of two per cent to be levied for the purpose of building a School House, on all the taxable property of our district, for the year 1859.

Given under our hands this 9th day of September 1859.

F. P. McCAMLEY,	} Directors District No. one, Town-	
WILLIAM BOYCE,		ship No. 24, Range No. ten, Coun-
BENJAMIN BOYCE,		ty of Ogle, and State of Illinois.

List of Tax Payers; WILLIAM WERTZ, DANIEL F. GREEN (and others)

Said Woodcock stated that he had in his possession collector's book of Town 24, Range 10, in said county, and produced it.

Elbert K. Light, Clerk of Ogle co. in 1859; A tax of two dollars on the hundred was levied in district No. 1, for the year 1859, in accordance with a plat in Co. Clerk's office of said district made in 1856, in accordance with order in record offered in evidence; said tax amounted to two hundred and thirty dollars, and 98-100. Directors of district No. 5, filed a certificate levying a tax of two and 50-100 dollars on the hundred, amounting to three hundred eighty 7-100 dollars.

Collector's book offered in evidence by plff.

Said witness further testified that he first extended the tax on the E $\frac{1}{2}$ N W $\frac{1}{4}$ and S W $\frac{1}{4}$ sec. 26, W $\frac{1}{2}$ sec 35, E $\frac{1}{2}$ E $\frac{1}{2}$ sec 34, and E $\frac{1}{2}$ S E $\frac{1}{2}$ sec 27 of said town, according to a plat then on file in his office, and at the rate of 2 $\frac{1}{2}$ per cent on the dollar, accordance with the certificate. At this point the defence presented a plat and called William Artz, who testified that he was trustee of schools for said town in 1859, and was President of the board; John A. Wagner was Clerk; John James was also a Trustee and the signatures of said Artz and James, to the certificate upon the back of said plat are genuine.

The certificate on the back of the map is as follows:

STATE OF ILLINOIS,	} We the undersigned trustees of town 24,
Ogle County.	

Districts to be correct, to the best of our knowledge and belief.

24, 10.

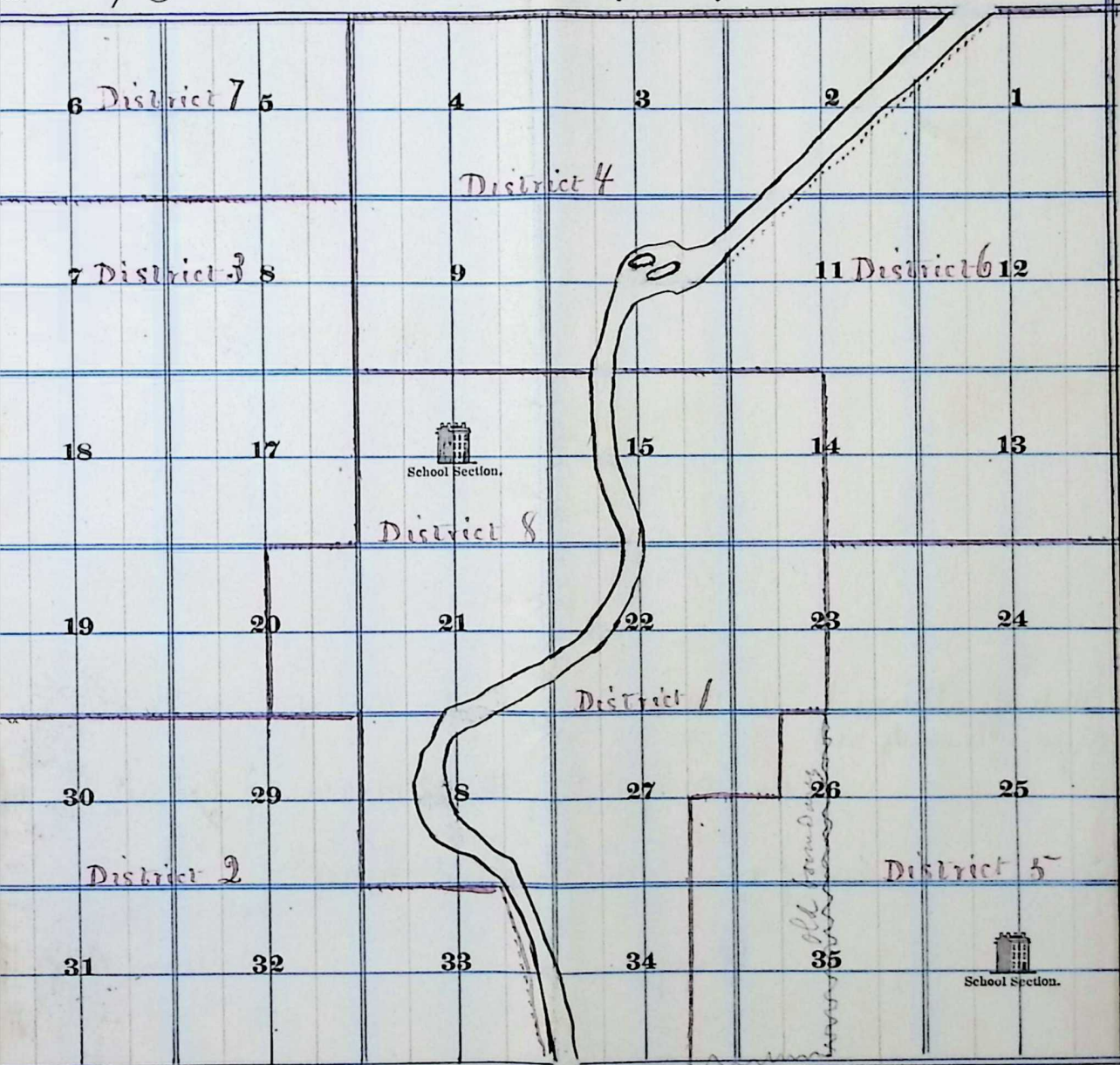
JOHN JAMES,
WILLIAM ARTZ.

For plat see Record, page 19. At the top of the plat are the words, Township No 24, north of Range No. 10, &c.

D I A G R A M

—OF— Rockvale

Township No. ~ 24 ~ North, of Range No. 10 ~



E.—Entered.
F.—Filed on.

Filed. Oct 3. 1839
E. H. Light
Clerk

State of Illinois)
Ogle County ss

We the undersigned Trustees of Town 24. Range
do hereby Certify this Diagram of District to be

Correct. to the best of our Knowledge and belief

(Copy)

John James
William Artz

20 Albert Woodcock stated that said plat was a part of the files of his office.

20 Thereupon defendant offered said Plat, certificate and filing, in evidence. Objection: sustained, and exception by Plaintiff.

20 Said Light further testified, that he did first extend the tax in district No. 5, on collector's book according to said plat, for the year 1859, at the rate of 2 50-100 dollars on each one hundred dollars, in accordance with the certificate of said directors of district No. 5, but altered the same before it was delivered to the collector at \$2.00 on the \$100. Witness further said the plat in his office previous to one then offered in evidence, was made on the back of a Teacher's schedule. It was produced on trial below; can't say there was a certificate upon it. This plat was drawn in accordance with the bounds of district No. 5, as first established in 1856, there was no other plat in the office when I was clerk made upon a teacher's schedule.

20 Woodcock recalled; I was requested to search for the plat in question. I looked among the files in my office; there were two packages of township plats; I could not find it. I could not state that there were any certificates at all upon it.

21 Hiram Reed recalled; Made the plat at the time of the division on the back of a Teacher's schedule. Mr. Richardson was President, E. J. Wait Clerk. My impressions are that it was certified to by President and Clerk; don't recollect contents of certificate.

21 Samuel Wagoner testified that he was township treasurer of Rockvale in 1859; had money in his hands for district No 1, for that year; these books are my records of moneys received and paid out. The books of account of the treasurer of district No. 1, and district No. 5, were offered in evidence. Objection by defendant, overruled. Exception taken.

The accounts were read in evidence as follows: [See Record Page 2]

In these accounts, that of district No. 1, contains these words:—
"June 29, Dist. No. 5, by order of Trustees, \$47.29."

22 That of No. 5, these words: "June 29, from Dist. No. 1, by order of Trustees, \$47.29." I paid of moneys collected in district No. 1, to district No. 5, \$47.29. Objection by defendant overruled. Defendant excepts. The money I received from the Town Collector, and a part from the county Treasurer. I paid over this amount of money under an order of the Trustees.

Plaintiff offered in evidence so much of an order of the board of Trustees of said town as relates to the payment of money, which is dated April 21, 1860, and is as follows:

22 The boundary lines of district No. 5, coming up for consideration, and it appearing that the boundaries of said district were established

at an adjourned meeting of said board, holden at the school house in district No. 8, on the 4th day of June 1859, and by an order of the board made at said meeting, said district was established, and embraces the following territory, to wit: Sections 24, 25, 35 and 36, and E $\frac{1}{2}$ of section 23, and all of section 26, except the W $\frac{1}{2}$ of N W $\frac{1}{4}$ of said section, the E $\frac{1}{2}$ of S E $\frac{1}{4}$ of section 27, the E $\frac{1}{2}$ of the E $\frac{1}{2}$ of section 34, all in township 24, Range 10, E., and it appearing by petition and remonstrance that all the voters and tax payers of said district No. 5, were anxious and desirous to have said district No. 5, remain as constituted by said Board at said June session 1859. It is therefore considered that said district was correctly and legally established at the meeting of said board, at said June session, 1859; and it is further ordered that the treasurer of said township be required to pay over to the directors of said district all the district tax collected from the following persons and tracts of land, for school purposes, within said district No. 5, for the year 1859:

William T. Crowell, & E. S. Congden, e hf nw qr sec 26, 80. 23

Samuel James sw qr, sec 26, 160.

J. T. Patrick, e hf se qr, sec 27, 80.

Richard Westbrook, w hf sec 35, 320.

Levi Westbrook, e hf e hf sec 34, 160.

All of said persons being residents therein and all of said tracts of land situate thereon, which said treasurer will pay over to the Directors as soon as the same shall come to his hands. In reference to the foregoing boundary question, the following persons were sworn:

J. T. Patrick, lives in district No. 5, as he supposed; went to attend a meeting in district No. 1, which was called for the purpose of locating the site of a school house in said district 1; said he understood Mr. Green that he had no right to vote. 23

David Smith, same in substance as Patrick's testimony. 23

The board further went into examination of the books of former Treasurer, and finding them to be correct, the same were accepted. Board then adjourned to meet at next regular session.

WILLIAM ARTZ, Pres't.

SAMUEL WAGGONER, Clerk.

Defendants introduced as a witness John M. Sewell: Resident of district No. 5, since March 1857, since which time a school has been taught in the district—new school house built in 1859; might be in 1858. 24

John James—Resides in Rockvale; was trustee of schools in 1858 and 1859; at the regular April meeting in 1859, a petition was presented to set off a part of district No. 1, to district No. 5; Artz was chairman of the Board of Trustees. I taught school in district No. 5

25 in the winter of 1859, 1860 and 1861. Said witness was asked the following question: Where did the pupils residing on the east half of the north west quarter and the south west qr. of section 26, and the west half of section 35 and the e hf of e hf of section 34 and e hf of se qr of section 27 attend school during the time he taught in said district?

Plaintiff objected; sustained. Exception.

25 The defendants then offered to prove by said James and Artz, another trustee, that at the regular session of the board of trustees of said Town, holden at the regular April term 1859, an application was made by the citizens of district No. 5, to annex to said district, the e hf of e hf of section 34, the e hf of the se qr of section 27, the w hf of section 35, the sw qr and the e hf of nw qr of section 27, to said district No. 5, and to take the same from district No. 1, of said Town, which application was resisted by the citizens of district No. 1, that said matter was considered upon in part at said April meeting, that an adjourned meeting was then agreed upon which was to take place on the 21st of the said April, at the same place, which was in the school house in district No. 8, in said Town. In the interval it was the arrangement between the said Trustees, that they would visit the said territory, and inspect it, that they might learn more definitely the propriety of dividing said district; One of said trustees being sick, they were unable to visit said premises, before the 21st day of April; that they again convened on the said 21st day of April in pursuance of the said adjournment, at the said School House, in district No. 8, that they agreed upon a meeting to be holden on the 19th day of May, at the Boyce School House, in said district No. 1, for the purpose of finally disposing of the question of the division of said School District, and further, that in pursuance of said adjourned meeting the said Trustees did meet at the said Boyce School House, in the afternoon of the said 19th day of May, A. D. 1859, and that most of the citizens of both said districts were there; that the matter was discussed in the forenoon, and that during the afternoon they went upon the premises desired to be attached to district No. 5, and again returned to said Boyce School House, and after duly considering the matter, they agreed to annex said territory to district No. 5, and make known the determination at said meeting. It being late before the business was closed, they adjourned said meeting to meet in the school house in district No. 8, to the 4th of June 1859, and that said meeting was duly holden on the said 4th day of June 1859, in accordance with said adjournment. To the introduction of which the Plaintiff then and there excepted. Objection sustained. Exception.

26 Thereupon defendant offered the following order, April 4, 1859.—

The Trustees met at the school house in district 8, Town 24, Range 10 and proceeded to business. In the first place the public funds were not ready for distribution. In the second place a petition was presented for the alteration of district 5, for enlarging it, and a remonstrance accompanying it April 21. The trustees met on this day, the funds not being in the hands of the treasurer they adjourned.

June 4th, 1859. The trustees met again at the school house in District 8, and proceeded to business, the amount of town and State funds to be \$478.37 for distribution, allowing the treasurer his percentage, leaves \$468.81 for distribution, in the first, one half the amounts of funds is \$234.40. The census of the town is 393 under twenty-one and this amount is divided between the districts entitled to the same.

Dist. 2d. The number of days on schedule amounts to 9313, and the amount of money to be divided on schedule \$234, 40. 27

The schedule of Dist. 6, was rejected on the ground of not keeping up a school in previous year six months. 27

On motion Dist. 5, an alteration was made commencing on the south line in the middle of section 23, running west 80 rods, thence south, between the line of Eightys, half mile south thence west 160 rods, thence south to town line thence east to middle of section 35.

Plaintiff objected to the introduction of said orders on the ground that they were not signed or at a regular adjourned meeting.—sustained.

Defendant moves to amend said record, overruled—defendant excepts. 27

Defendant moves to exclude from the jury the order heretofore read marked "A" showing a division of said town into districts for the reason that the same were not made at a regular meeting.—overruled.

Plaintiff's instructions were all refused and the instructions asked for the defendants were all given.

Verdict for Plaintiff \$47,29. 32

Defendant moves in arrest of judgement and for a new trial, overruled, defendant excepts. 32

The Errors assigned are—the admission of improper testimony; the exclusion of proper testimony; in overruling motion for new trial in arrest; the verdict and judgment is against the law and evidence. In entering judgment for plaintiff.

H. A. MIX AND LEE AND BLANCHARD,

ATTORNEYS FOR APPELLANT.

ABSTRACT OF RECORD.

Record Page. SCHOOL DIRECTORS OF DISTRICT No. 5, }
TOWN No. 24, RANGE 10, OGLE COUNTY, } APPELLANT.

vs

SCHOOL DIRECTORS OF DISTRICT No. 1, }
TOWN No. 24, RANGE 10, in OGLE COUNTY. } APPELLEE.

1 Action brought by Appelle vs. Appellant before a Justice of the Peace, January 20th, A. D. 1861, for money had and received by Dft. below, for the use of Plffs. below.

6 Appeal to the Circuit Court of Ogle County, March 4, 1861.

13 Bill of exceptions copied in full.

13 Hiram Reed testified : I am Township Treasurer of Town 24, Range 10, in this county; These four books are the records of my office; There was an order made on the 7th of April 1856, districting Township 24, Range 10, into school districts, this was at a regular semi-annual meeting.

Orders read in evidence from the books kept by the township Trustees as follows:

District No. 1, shall commence on the south line of the Township, on the center of section 35, running north through center of sections 35, 26, 23, 14, to center of 14, on the north; thence west on north line of sections 14 & 15, to Rock River; thence following the meanderings of the River to the south line of Town; thence east to the place of beginning.

14 District No. 5, shall commence at the south-east corner of the town; thence North, on the east side of the town to the north-east corner section 24; thence west to the center of section 23 on the north; thence

south through the center of sec. 23, 26, & 35, to the south line of the town; thence east to the place of beginning.

Daniel F. Green testified; I have lived in district No. 1, five or six years, heard the record read, they have always elected directors with boundaries according to the record.

Albert Woodcock, County Clerk of Ogle county, produces the following, on file in his office.

We hereby certify that we require the rate of two per cent to be levied for the purpose of building a School House, on all the taxable property of our district, for the year 1859.

Given under our hands this 9th day of September 1859.

F. P. McCAMLEY,	} Directors district No. one, Town-
WILLIAM BOYCE,	
BENJAMIN BOYCE,	
	ship No. 24, Range No. ten, Coun-
	ty of Ogle, and State of Illinois.

List of Tax Payers; WILLIAM WERTZ, DANIEL F. GREEN (and others)

Said Woodcock stated that he had in his possession collector's book of Town 24, Range 10, in said county, and produced it.

Elbert K. Light, Clerk of Ogle co. in 1859; A tax of two dollars on the hundred was levied in district No. 1, for the year 1859, in accordance with a plat in Co. Clerk's office of said district made in 1856, in accordance with order in record offered in evidence; said tax amounted to two hundred and thirty dollars, and 98-100. Directors of district No. 5, filed a certificate levying a tax of two and 50-100 dollars on the hundred, amounting to three hundred eighty 7-100 dollars.

Collector's book offered in evidence by plff.

Said witness further testified that he first extended the tax on the E $\frac{1}{2}$ N W $\frac{1}{4}$ and S W $\frac{1}{4}$ sec. 26, W $\frac{1}{2}$ sec 35, E $\frac{1}{2}$ E $\frac{1}{2}$ sec 34, and E $\frac{1}{2}$ S E $\frac{1}{2}$ sec 27 of said town, according to a plat then on file in his office, and at the rate of 2 $\frac{1}{2}$ per cent on the dollar, accordance with the certificate. At this point the defence presented a plat and called William Artz, who testified that he was trustee of schools for said town in 1859, and was President of the board; John A. Wagner was Clerk; John James was also a Trustee and the signatures of said Artz and James, to the certificate upon the back of said plat are genuine.

The certificate on the back of the map is as follows:

STATE OF ILLINOIS,	} We the undersigned trustees of town 24,
Ogle County.	
	range 10, do hereby certify this Diagram of
	Districts to be correct, to the best of our knowledge and belief.

24, 10.

JOHN JAMES,
WILLIAM ARTZ.

For plat see Record, page 19. At the top of the plat are the words, Township No 24, north of Range No. 10, &c.

20 Albert Woodcock stated that said plat was a part of the files of his office.

20 Thereupon defendant offered said Plat, certificate and filing, in evidence. Objection: sustained, and exception by Plaintiff.

20 Said Light further testified, that he did first extend the tax in district No. 5, on collector's book according to said plat, for the year 1859, at the rate of 2 50-100 dollars on each one hundred dollars, in accordance with the certificate of said directors of district No. 5, but altered the same before it was delivered to the collector at \$2.00 on the \$100. Witness further said the plat in his office previous to one then offered in evidence, was made on the back of a Teacher's schedule. It was produced on trial below; can't say there was a certificate upon it. This plat was drawn in accordance with the bounds of district No. 5, as first established in 1856, there was no other plat in the office when I was clerk made upon a teacher's schedule.

20 Woodcock recalled; I was requested to search for the plat in question. I looked among the files in my office; there were two packages of township plats; I could not find it. I could not state that there were any certificates at all upon it.

21 Hiram Reed recalled; Made the plat at the time of the division on the back of a Teacher's schedule. Mr. Richardson was President, E. J. Wait Clerk. My impressions are that it was certified to by President and Clerk; don't recollect contents of certificate.

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The accounts were read in evidence as follows: [See Record Page 2]

In these accounts, that of district No. 1, contains these words:—" June 29, Dist. No. 5, by order of Trustees, \$47.29."

22 That of No. 5, these words: " June 29, from Dist. No. 1, by order of Trustees, \$47.29." I paid of moneys collected in District No. 1, to district No. 5, \$47.29. Objection by defendant overruled. Defendant excepts. The money I received from the Town Collector, and a part from the county Treasurer. I paid over this amount of money under an order of the Trustees.

Plaintiff offered in evidence so much of an order of the board of Trustees of said town as relates to the payment of money, which is dated April 21, 1860, and is as follows:

22 The boundary lines of district No. 5, coming up for consideration, and it appearing that the boundaries of said district were established

at an adjourned meeting of said board, holden at the school house in district No. 8, on the 4th day of June 1859, and by an order of the board made at said meeting, said district was established, and embraces the following territory, to wit: Sections 24, 25, 35 and 36, and E $\frac{1}{2}$ of section 23, and all of section 26, except the W $\frac{1}{2}$ of N W $\frac{1}{4}$ of said section, the E $\frac{1}{2}$ of S E $\frac{1}{4}$ of section 27, the E $\frac{1}{2}$ of the E $\frac{1}{2}$ of section 34, all in township 24, Range 10, E., and it appearing by petition and remonstrance that all the voters and tax payers of said district No. 5, were anxious and desirous to have said district No. 5, remain as constituted by said Board at said June session 1859. It is therefore considered that said district was correctly and legally established at the meeting of said board, at said June session, 1859; and it is further ordered that the treasurer of said township be required to pay over to the directors of said district all the district tax collected from the following persons and tracts of land, for school purposes, within said district No. 5, for the year 1859:

William T. Crowell, & E. S. Congden, e hf nw qr sec 26, 80. 23

Samuel James sw qr, sec 26, 160.

J. T. Patrick, e hf se qr, sec 27, 80.

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All of said persons being residents therein and all of said tracts of land situate thereon, which said treasurer will pay over to the Directors as soon as the same shall come to his hands. In reference to the foregoing boundary question, the following persons were sworn:

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David Smith, same in substance as Patrick's testimony. 23

The board further went into examination of the books of former Treasurer, and finding them to be correct, the same were accepted. Board then adjourned to meet at next regular session.

WILLIAM ARTZ, Pres't.

SAMUEL WAGGONER, Clerk.

Defendants introduced as a witness John M. Sewell: Resident of district No. 5, since March 1857, since which time a school has been taught in the district—new school house built in 1859; might be in 1858. 24

John James—Resides in Rockvale; was trustee of schools in 1858 and 1859; at the regular April meeting in 1859, a petition was presented to set off a part of district No. 1, to district No. 5; Artz was chairman of the Board of Trustees. I taught school in district No. 5

25 in the winter of 1859, 1860 and 1861. Said witness was asked the following question: Where did the pupils residing on the east half of the north west quarter and the south west qr. of section 26, and the west half of section 35 and the e hf of e hf of section 34 and e hf of se qr of section 27 attend school during the time he taught in said district?

Plaintiff objected; sustained. Exception.

25 The defendants then offered to prove by said James and Artz, another trustee, that at the regular session of the board of trustees of said Town, holden at the regular April term 1859, an application was made by the citizens of district No. 5, to annex to said district, the e hf of e hf of section 34, the e hf of the se qr of section 27, the w hf of section 35, the sw qr and the e hf of nw qr of section 27, to said district No. 5, and to take the same from district No. 1, of said Town, which application was resisted by the citizens of district No. 1, that said matter was considered upon in part at said April meeting, that an adjourned meeting was then agreed upon which was to take place on the 21st of the said April, at the same place, which was in the school house in district No. 8, in said Town. In the interval it was the arrangement between the said Trustees, that they would visit the said territory, and inspect it, that they might learn more definitely the propriety of dividing said district; One of said trustees being sick, they were unable to visit said premises, before the 21st day of April; that they again convened on the said 21st day of April in pursuance of the said adjournment, at the said School House, in district No. 8, that they agreed upon a meeting to be holden on the 19th day of May, at the Boyce School House, in said district No. 1, for the purpose of finally disposing of the question of the division of said School District, and further, that in pursuance of said adjourned meeting the said Trustees did meet at the said Boyce School House, in the afternoon of the said 19th day of May, A. D. 1859, and that most of the citizens of both said districts were there; that the matter was discussed in the forenoon, and that during the afternoon they went upon the premises desired to be attached to district No. 5, and again returned to said Boyce School House, and after duly considering the matter, they agreed to annex said territory to district No. 5, and make known the determination at said meeting. It being late before the business was closed, they adjourned said meeting to meet in the school house in district No. 8, to the 4th of June 1859, and that said meeting was duly holden on the said 4th day of June 1859, in accordance with said adjournment. To the introduction of which the Plaintiff then and there excepted. Objection sustained. Exception.

26 Thereupon defendant offered the following order, April 4, 1859.—

The Trustees met at the school house in district 8, Town 24, Range 10 and proceeded to business. In the first place the public funds were not ready for distribution. In the second place a petition was presented for the alteration of district 5, for enlarging it, and a remonstrance accompanying it April 21. The trustees met on this day, the funds not being in the hands of the treasurer they adjourned.

June 4th, 1859. The trustees met again at the school house in District 8, and proceeded to business, the amount of town and State funds to be \$478.37 for distribution, allowing the treasurer his percentage, leaves \$468.81 for distribution, in the first, one half the amounts of funds is \$234.40. The census of the town is 393 under twenty-one and this amount is divided between the districts entitled to the same.

Dist. 2d. The number of days on schedule amounts to 9313, and the amount of money to be divided on schedule \$234.40. 27

The schedule of Dist. 6, was rejected on the ground of not keeping up a school in previous year six months. 27

On motion Dist. 5, an alteration was made commencing on the south line in the middle of section 23, running west 80 rods, thence south, between the line of Eightys, half mile south thence west 160 rods, thence south to town line thence east to middle of section 35.

Plaintiff objected to the introduction of said orders on the ground that they were not signed or at a regular adjourned meeting.—sustained.

Defendant moves to amend said record, overruled—defendant excepts. 27

Defendant moves to exclude from the jury the order heretofore read marked "A" showing a division of said town into districts for the reason that the same were not made at a regular meeting.—overruled.

Plaintiff's instructions were all refused and the instructions asked for the defendants were all given.

Verdict for Plaintiff \$47,29. 32

Defendant moves in arrest of judgment and for a new trial, overruled, defendant excepts. 32

The Errors assigned are—the admission of improper testimony; the exclusion of proper testimony; in overruling motion for new trial in arrest; the verdict and judgment is against the law and evidence.

In entering judgment for plaintiff.

H. A. MIX AND LELAND & BLANCHARD,

ATTORNEYS FOR APPELLANTS

107 35

Abstract

Filed April 22, 1863

J Seland CM

ABSTRACT OF RECORD.

Record Page. SCHOOL DIRECTORS OF DISTRICT No. 5, }
TOWN No. 24, RANGE 10, OGLE COUNTY, } APPELLANT.

vs

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Appeal to the Circuit Court of Ogle County, March 4, 1861.

Bill of exceptions copied in full.

Hiram Reed testified: I am Township Treasurer of Town 24, Range 10, in this county; These four books are the records of my office; There was an order made on the 7th of April 1856, districting Township 24, Range 10, into school districts, this was at a regular semi-annual meeting.

Orders read in evidence from the books kept by the township Trustees as follows:

District No. 1, shall commence on the south line of the Township, on the center of section 35, running north through center of sections 35, 26, 23, 14, to center of 14, on the north; thence west on north line of sections 14 & 15, to Rock River; thence following the meanderings of the River to the south line of Town; thence east to the place of beginning.

District No. 5, shall commence at the south-east corner of the town; thence North, on the east side of the town to the north-east corner section 24; thence west to the center of section 23 on the north; thence

south through the center of sec. 23, 26, & 35, to the south line of the town; thence east to the place of beginning.

Daniel F. Green testified; I have lived in district No. 1, five or six years, heard the record read, they have always elected directors with boundaries according to the record.

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Given under our hands this 9th day of September 1859.

F. P. McCAMLEY, } Directors district No. one, Town-
WILLIAM BOYCE, } ship No. 24, Range No. ten, Coun-
BENJAMIN BOYCE, } ty of Ogle, and State of Illinois.

List of Tax Payers; WILLIAM WERTZ, DANIEL F. GREEN (and others)

Said Woodcock stated that he had in his possession collector's book of Town 24, Range 10, in said county, and produced it.

Elbert K. Light, Clerk of Ogle co. in 1859; A tax of two dollars on the hundred was levied in district No. 1, for the year 1859, in accordance with a plat in Co. Clerk's office of said district made in 1856, in accordance with order in record offered in evidence; said tax amounted to two hundred and thirty dollars, and 98-100. Directors of district No. 5, filed a certificate levying a tax of two and 50-100 dollars on the hundred, amounting to three hundred eighty 7-100 dollars.

Collector's book offered in evidence by plff.

Said witness further testified that he first extended the tax on the E½ N W¼ and S W¼ sec. 26, W½ sec 35, E½ E½ sec 34, and E½ S E½ sec 27 of said town, according to a plat then on file in his office, and at the rate of 2½ per cent on the dollar, accordance with the certificate. At this point the defence presented a plat and called William Artz, who testified that he was trustee of schools for said town in 1859, and was President of the board; John A. Wagner was Clerk; John James was also a Trustee and the signatures of said Artz and James, to the certificate upon the back of said plat are genuine.

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Districts to be correct, to the best of our knowledge and belief.
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JOHN JAMES,
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20 Albert Woodcock stated that said plat was a part of the files of his office.

20 Thereupon defendant offered said Plat, certificate and filing, in evidence. Objection: sustained, and exception by Plaintiff.

20 Said Light further testified, that he did first extend the tax in district No. 5, on collector's book according to said plat, for the year 1859, at the rate of 2 50-100 dollars on each one hundred dollars, in accordance with the certificate of said directors of district No. 5, but altered the same before it was delivered to the collector at \$2.00 on the \$100. Witness further said the plat in his office previous to one then offered in evidence, was made on the back of a Teacher's schedule. It was produced on trial below; can't say there was a certificate upon it. This plat was drawn in accordance with the bounds of district No. 5, as first established in 1856, there was no other plat in the office when I was clerk made upon a teacher's schedule.

20 Woodcock recalled; I was requested to search for the plat in question. I looked among the files in my office; there were two packages of township plats; I could not find it. I could not state that there were any certificates at all upon it.

21 Hiram Reed recalled; Made the plat at the time of the division on the back of a Teacher's schedule. Mr. Richardson was President, E. J. Wait Clerk. My impressions are that it was certified to by President and Clerk; don't recollect contents of certificate.

21 Samuel Wagoner testified that he was township treasurer of Rockvale in 1859; had money in his hands for district No 1, for that year; these books are my records of moneys received and paid out. The books of account of the treasurer of district No. 1, and district No. 5, were offered in evidence. Objection by defendant, overruled. Exception taken.

The accounts were read in evidence as follows: [See Record Page 2]

In these accounts, that of district No. 1, contains these words:—
"June 29, Dist. No. 5, by order of Trustees, \$47 29."

22 That of No. 5, these words: "June 29, from Di t. No. 1, by order of Trustees, \$47.29." I paid of moneys collected in District No. 1, to district No. 5, \$47.29. Objection by defendant overruled. Defendant excepts. The money I received from the Town Collector, and a part from the county Treasurer. I paid over this amount of money under an order of the Trustees.

Plaintiff offered in evidence so much of an order of the board of Trustees of said town as relates to the payment of money, which is dated April 21, 1860, and is as follows:

22 The boundary lines of district No. 5, coming up for consideration, and it appearing that the boundaries of said district were established

at an adjourned meeting of said board, holden at the school house in district No. 8, on the 4th day of June 1859, and by an order of the board made at said meeting, said district was established, and embraces the following territory, to wit: Sections 24, 25, 35 and 36, and $E\frac{1}{2}$ of section 23, and all of section 26, except the $W\frac{1}{2}$ of $NW\frac{1}{4}$ of said section, the $E\frac{1}{2}$ of $SE\frac{1}{4}$ of section 27, the $E\frac{1}{2}$ of the $E\frac{1}{2}$ of section 34, all in township 24, Range 10, E., and it appearing by petition and remonstrance that all the voters and tax payers of said district No. 5, were anxious and desirous to have said district No. 5, remain as constituted by said Board at said June session 1859. It is therefore considered that said district was correct y and legally established at the meeting of said board, at said June session, 1859; and it is further ordered that the treasurer of said township be required to pay over to the directors of said district all the district tax collected from the following persons and tracts of land, for school purposes, within said district No. 5, for the year 1859:

William T. Crowell, & E. S. Congden, e hf nw qr sec 26, 80. 23

Samuel James sw qr, sec 26, 160.

J. T. Patrick, e hf se qr, sec 27, 80.

Richard Westbrook, w hf sec 35, 320.

Levi Westbrook, e hf e hf sec 34, 160.

All of said persons being residents therein and all of said tracts of land situate thereon, which said treasurer will pay over to the Directors as soon as the same shall come to his hands. In reference to the foregoing boundary question, the following persons were sworn:

J. T. Patrick, lives in district No. 5, as he supposed; went to attend a meeting in district No. 1, which was called for the purpose of locating the site of a school house in said district 1; said he understood Mr. Green that he had no right to vote. 23

David Smith, same in substance as Patrick's testimony. 23

The board further went into examination of the books of former Treasurer, and finding them to be correct, the same were accepted. Board then adjourned to meet at next regular session.

WILLIAM ARTZ, Pres't.

SAMUEL WAGGONER, Clerk.

Defendants introduced as a witness John M. Sewell: Resident of district No. 5, since March 1857, since which time a school has been taught in the district—new school house built in 1859; might be in 1858. 24

John James—Resides in Rockvale; was trustee of schools in 1858 and 1859; at the regular April meeting in 1859, a petition was presented to set off a part of district No. 1, to district No. 5; Artz was chairman of the Board of Trustees. I taught school in district No. 5

25 in the winter of 1859, 1860 and 1861. Said witness was asked the following question: Where did the pupils residing on the east half of the north west quarter and the south west qr. of section 26, and the west half of section 35 and the e hf of e hf of section 34 and e hf of se qr of section 27 attend school during the time he taught in said district?

Plaintiff objected; sustained. Exception.

25 The defendants then offered to prove by said James and Artz, another trustee, that at the regular session of the board of trustees of said Town, holden at the regular April term 1859, an application was made by the citizens of district No. 5, to annex to said district, the e hf of e hf of section 34, the e hf of the se qr of section 27, the w hf of section 35, the sw qr and the e hf of nw qr of section 27, to said district No. 5, and to take the same from district No. 1, of said Town, which application was resisted by the citizens of district No. 1, that said matter was considered upon in part at said April meeting, that an adjourned meeting was then agreed upon which was to take place on the 21st of the said April, at the same place, which was in the school house in district No. 8, in said Town. In the interval it was the arrangement between the said Trustees, that they would visit the said territory, and inspect it, that they might learn more definitely the propriety of dividing said district; One of said trustees being sick, they were unable to visit said premises, before the 21st day of April; that they again convened on the said 21st day of April in pursuance of the said adjournment, at the said School House, in district No. 8, that they agreed upon a meeting to be holden on the 19th day of May, at the Boyce School House, in said district No. 1, for the purpose of finally disposing of the question of the division of said School District, and further, that in pursuance of said adjourned meeting the said Trustees did meet at the said Boyce School House, in the afternoon of the said 19th day of May, A. D. 1859, and that most of the citizens of both said districts were there; that the matter was discussed in the forenoon, and that during the afternoon they went upon the premises desired to be attached to district No. 5, and again returned to said Boyce School House, and after duly considering the matter, they agreed to annex said territory to district No. 5, and make known the determination at said meeting. It being late before the business was closed, they adjourned said meeting to meet in the school house in district No. 8, to the 4th of June 1859, and that said meeting was duly holden on the said 4th day of June 1859, in accordance with said adjournment. To the introduction of which the Plaintiff then and there excepted. Objection sustained. Exception.

26 Thereupon defendant offered the following order, April 4, 1859.—

The Trustees met at the school house in district 8, Town 24, Range 10 and proceeded to business. In the first place the public funds were not ready for distribution. In the second place a petition was presented for the alteration of district 5, for enlarging it, and a remonstrance accompanying it April 21. The trustees met on this day, the funds not being in the hands of the treasurer they adjourned.

June 4th, 1859. The trustees met again at the school house in District 8, and proceeded to business, the amount of town and State funds to be \$478.37 for distribution, allowing the treasurer his percentage, leaves \$468.81 for distribution, in the first, one half the amounts of funds is \$234.40. The census of the town is 393 under twenty-one and this amount is divided between the districts entitled to the same.

Dist. 2d. The number of days on schedule amounts to 9313, and the amount of money to be divided on schedule \$234, 40. 27

The schedule of Dist. 6, was rejected on the ground of not keeping up a school in previous year six months. 27

On motion Dist. 5, an alteration was made commencing on the south line in the middle of section 23, running west 80 rods, thence south, between the line of Eightys, half mile south thence west 160 rods, thence south to town line thence east to middle of section 35.

Plaintiff objected to the introduction of said orders on the ground that they were not signed or at a regular adjourned meeting.—sustained.

Defendant moves to amend said record, overruled—defendant excepts. 27

Defendant moves to exclude from the jury the order heretofore read marked "A" showing a division of said town into districts for the reason that the same were not made at a regular meeting.—overruled.

Plaintiff's instructions were all refused and the instructions asked for the defendants were all given.

Verdict for Plaintiff \$47,29. 32

Defendant moves in arrest of judgement and for a new trial, overruled, defendant excepts. 32

The Errors assigned are—the admission of improper testimony; the exclusion of proper testimony; in overruling motion for new trial in arrest; the verdict and judgment is against the law and evidence.

In entering judgment for plaintiff.

H. A. MIX AND LELAND & BLANCHARD,

ATTORNEYS FOR APPELLANT.

107-35

Abstract

Given April 22, 1863

J Seland CW

THE SUPREME COURT
OF THE
STATE OF ILLINOIS;

Third Grand Division, April Term, A. D. 1863.

SCHOOL DIRECTORS DISTRICT NO. 5, TOWN 24, RANGE 10. <i>vs.</i> SCHOOL DIRECTORS DISTRICT NO. 1, TOWN 24, RANGE 10.	}	APPEAL FROM OGLE.
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APPELLANTS BRIEF :

This action was commenced by District No. 1 vs. District No. 5, to recover a sum of money had and received by District No. 5, for the use of District No. 1.

The facts in this case, as we claim them to be, are as follows :

District No. 1 claimed, that on the seventh of April 1856, at a regular meeting of the town Trustees of town 24, said Trustees laid off said town into School Districts, and designated the boundaries thereof. (School Laws of 1855, sec. 34.) (Record 13.)

At a regular meeting of the trustees of said town, held in April 1859, the trustees had under consideration the subject of annexing to district No. 5 the following described real estate which was then included within the boundaries of district number 1, viz: e hf of e hf of section 34; w hf of section 35; e hf of se qr of section 27, (vide Record 24-25 ab.) That said regular meeting adjourned to meet at the same place on the 21st of same month, to give said trustees an opportunity to inspect the territory proposed to be annexed to district No. 5; that on the 21st of April said trustees convened pursuant to adjournment; without concluding the matter, they adjourned to meet on the 4th of June.

Trustees met June 4th 1859, pursuant to adjournment. The boundary lines of district number 5 were designated and a map of said town prepared and filed as required by law. (School laws of 1857, section 33. (Record 27, map page 19.)

At a regular adjourned meeting of the trustees of said town, held on the 21st day of April 1860, it was ordered that said district number 5 remain as constituted by the board at its session June 4, 1859. (Record 23.)

About the 9th of September 1859, the inhabitants of district number 1 levied a tax of two per cent. upon all the taxable property in said district; (record 17) said tax was extended on the lands above described, and which were before annexed to district number 5. (Record 18.) The tax when collected was paid over to township treasurer. (Record 21.)

At a regular adjourned meeting of trustees, held April 21, 1860, it was ordered that the town treasurer pay to the directors of said district, number 5, all the tax collected upon the land annexed as aforesaid to district number 5, (Record 23) which was paid in pursuant to said order, amounting to \$47.29. (Record 25.)

District number 1 claiming that the acts of the trustees in annexing said lands to said district number 5, were illegal and void, brought this action as aforesaid and recovered judgment.

If a plat being made, regularly certified and filed in the Clerk's office is essential, then we claim that the evidence does not establish the position assumed by plaintiff below, that the land described was included within the boundaries of district number 1, at any time. The only evidence offered upon that point was an entry upon the records, designating the boundaries of School districts in town 24. (Vide record 14.) The trustees were then acting under the 34th section of the School laws of 1855, which required the "trustees to lay off the township into districts and prepare maps and designate thereon the districts, by numbers, said map to be certified by the President and Clerk of the board and filed with, and recorded by the County Clerk, in a book to be kept for that purpose."

No map of the supposed districting in April 1856 was put in evidence on the trial below, but an attempt was made to prove the existence, at one time, less and contents of such map.

Hiram Read testified that he made such a map on the back of a teacher's schedule; his impression was that it was certified to by the President and Clerk. He does not testify as to the contents of the map or certificates. (Record 21.)

Albert Woodcock, County Clerk, testified that, being requested, he looked among the files in his office; there were two packages of town plats; could not find the plat; could not state that there were any certificates upon it. (Record 20.)

Elbert K. Light testified that he was County Clerk in 1859; that there was a plat in his office of the districting in 1856, in accordance with the order of districting in 1856; it was made on the back of a teacher's schedule; we had the plat at the trial before the justice. (Record 18-20.)

This is all the evidence upon the point. If we concede the existence of such a map, no sufficient foundation is laid for the introduction of secondary evidence of its contents. It does not appear that diligent search had been made for the same. It had been in the custody of some other person than the clerk, who was not produced as a witness. The following authorities are cited upon this point. 19 Ill., 626; 5 Gil., 117.

There was no satisfactory evidence of the contents of said map or certificates. 19 Ill., 630.

The plaintiff below seems to have appreciated the fact that he had failed to lay a sufficient foundation for the introduction of parole evidence, to prove the contents of map, for he makes no attempt to prove such contents.

But, if it be found that said town was legally laid off into districts on the 7th of April 1856, and the parcels of land heretofore described were included in the boundaries of said district, No. 1, then the question recurs as to whether the action of the trustees in 1859, changing the boundaries of said districts, No. 1 and 5, so as to include said parcels of land within the boundaries of said district No. 5 was legal. The trustees were then acting under the 33 section of the School laws of 1857, which provided that trustees might "alter or change" said map at any regular session, to suit the wishes and conveniences of a majority of the inhabitants of their town.

Now, it is alleged that the districting of said town 24 in 1859, in accordance with the map then filed, (Record 19,) was not made at a regular session.—The 32 section of the act of 1857 provides that regular semi-annual sessions shall be held on the first Mondays of April and October, in each year, and other meetings at such other times and places as the Trustees shall think proper; and further, that the President of the board, or any two members thereof may call a special meeting of the board. If it be held that the matter of dividing towns into

School districts must be done at one of these regular semi annual sessions, then comes the inquiry whether the action in 1859, was at a regular or special session. There is nothing in the entire record that tends to show that there was a special meeting of the board called by the President, or any two members of the board, as required by law.

It however appears from the records, kept by the trustees for the year 1859, and offered in evidence by defendant, that a regular meeting of the board was held on the 4th of April of that year, and the matter of changing the boundaries of district number 5 was considered. The record shows that the board were unable to complete the business for which they met, but fails to show an adjournment to any specified day. (Record p. 26.)

But, it appears from the same record, that the board met on the 21st of the same month, for the purpose of transacting the unfinished business of the 4th of April meeting; and the record also shows that they again adjourned, leaving the same business unfinished, (vide Record 26.) without naming a day of meeting, so far as appears of record. On the 4th of June of same year, the board again met and completed said unfinished business. The alteration was made in district No. 5 and 1, as before stated and a map made and filed in the County Clerk's office. (Record 26, 27 and 19.)

Now it is true that the record of these several meetings does not show an adjournment to the next time of meeting, but the record does show the nature of the business under consideration at the regular session, and that that business was unfinished at each session, until the last, when it was completed, and that no other business was transacted at these several meetings, except the business under consideration at the regular session in April.

Now, if the law requires that the laying off of a town into school districts must be done at a regular session, there can be no objection to a regular session, after having had such matter under consideration, adjourning and completing said business at an adjourned meeting. This is too well settled to require argument, or authority in support thereof. Was the alteration of districts number 1 and 5 completed at an adjourned meeting of the regular April session? We think it is clear from the record offered in evidence by defendants below, that the alterations were made at such adjourned meeting for reasons heretofore stated; but the court excluded the record from the jury on objection made by plaintiff, that it did not show that it was at a regular adjourned meeting, and that the record was not signed by the President and Clerk.

The 32 section of the law of 1857, which requires that the minutes of the board of Trustees shall be signed by the President and Clerk, is only *directory*; and the minutes, although not so signed, are to be considered valid until the contrary is shown. The Justices &c., vs. House &c., Geo. 328.

The court will not hold such direction to be mandatory, unless such a construction is necessary to accomplish the object contemplated by the act. No public inconvenience or private damage can arise from the neglect to observe the strict letter of the act, if the court hold it to be directory, while, on the other hand, serious inconveniences might arise, by holding it to be mandatory, for such proceedings are more frequently not signed than signed, and a large portion of the proceedings of School trustees would be found invalid. Such technical nicety will never do. Whether the records were those of the trustees, and whether made at regular adjourned sessions, or at special sessions, were all questions of fact for the jury to pass upon, and the records should have been admitted in evidence, as well as the oral evidence of the parties. The defendant, below, proposed to amend the record in accordance with the facts, so that it would show the sessions to be regular adjourned ones, and to have the same signed by the President and Clerk. *Nunc. pro. tunc.*, and to use them as amended, in evidence. (Record p. 27.) The court rejected the proposition.

The board of trustees, or clerk had an undoubted right to amend their record in accordance with the real facts in the case, and correct the form thereof so that

they might comply with the law: *Harris vs. School District No. 10*, 8 Foster [N. H.] 58 and authorities there cited; *Cass vs. Bellows*, 11 Foster [N. H.] 501.

The defendants below, offered, in evidence, a map made in pursuance of the order, changing districts number 1 and 5, which was excluded by the court, on the ground that it was not certified to by the President and Clerk. (Record p. 19) The map was properly filed in the County Clerk's office, and was certified to by two of the trustees, who made and fully identified, which is a compliance with the spirit of the act. This court has decided that the provision requiring a map to be certified and filed &c., is only directory: *Munson vs. Miner*, 22 Ill., 595. But all of these supposed errors and defects were subsequently, permanently cured, by the action of the board at a regular adjourned meeting, held on the 21st of April 1860, in ratifying and recognizing the existence of said school districts as established by said trustees, on said 4th of June, A. D. 1859. This order is found on Record p. 22, and we call your Honors special attention to the same, for it was introduced by the plaintiffs below, without objection, and is strictly formal, and disposes of all these questions: *Sawyer vs. Williams*, 25 Vermont, 311; *Pierce vs. Carpenter*, 10 Vermont, 481; *Alden vs. Rounsville*, 7 Metcalf, 219.

The amount in controversy, was paid to appellants by the Township Treasurer upon the order of the board of trustees. (Record p. 25.)

Now conceding, for the sake of the argument, that the township treasurer ought not to have been directed by the trustees to pay the money to appellants, can appellee recover the money from appellants in this action? We think not. The parties thus again ratified the new district. If the treasurer has paid the money to a wrong party, the trustees had control of the board, and their disposition of it was an exercise of authority, on a subject under their control.

There certainly can be no implied promise on the part of district number 5 to pay the money thus received to district number 3.

There is no dispute about the facts being as stated in the 4th instruction, on the part of the defendants below, (Record p. 30) but the jury paid no attention to it.

The first instruction for plaintiffs below, is not the law. It was calculated to mislead the jury, as being an assumption that the districts was not properly altered at the June meeting, 1859, and it left the question of law as to what facts were necessary to make a legal change of the boundaries of the district, to the jury. It is also objectionable because it takes the position that no subsequent ratification of the attempt to change the lines of the District could be made by the trustees.

On the subject of the power and authority of the trustees to act within their sphere, and as to a subsequent ratification of imperfect action, see *Metz et. al., vs. Anderson*, 23 of Ill., 467.

H. A. MIX, AND
LELAND & BLANCHARD,
For Appellants.

107 35 142

Appellant Briefs

School Dist. No 5,

28

School Dist No 1

Filed May 4 1863

J. Seaman

THE SUPREME COURT
OF THE
STATE OF ILLINOIS;
Third Grand Division, April Term, A. D. 1863.

SCHOOL DIRECTORS DISTRICT NO. 5,
TOWN 24, RANGE 10. }
vs. } APPEAL FROM OGLE.
SCHOOL DIRECTORS DISTRICT NO. 1,
TOWN 24, RANGE 10. }

APPELLANTS BRIEF :

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The facts in this case, as we claim them to be, are as follows :

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The court will not hold such direction to be mandatory, unless such a construction is necessary to accomplish the object contemplated by the act. No public inconvenience or private damage can arise from the neglect to observe the strict letter of the act, if the court hold it to be directory, while, on the other hand, serious inconveniences might arise, by holding it to be mandatory, for such proceedings are more frequently not signed than signed, and a large portion of the proceedings of School trustees would be found invalid. Such technical nicety will never do. Whether the records were those of the trustees, and whether made at regular adjourned sessions, or at special sessions, were all questions of fact for the jury to pass upon, and the records should have been admitted in evidence, as well as the oral evidence of the parties. The defendant, below, proposed to amend the record in accordance with the facts, so that it would show the sessions to be regular adjourned ones, and to have the same signed by the President and Clerk, *Nunc. pro. tunc.*, and to use them as amended, in evidence. (Record p. 27.) The court rejected the proposition.

The board of trustees, or clerk had an undoubted right to amend their record in accordance with the real facts in the case, and correct the form thereof so that

they might comply with the law: *Harris vs. School District No. 10*, 8 Foster [N. H.] 58 and authorities there cited; *Cass vs. Bellows*, 11 Foster [N. H.] 501.

The defendants below, offered, in evidence, a map made in pursuance of the order, changing districts number 1 and 5, which was excluded by the court, on the ground that it was not certified to by the President and Clerk. (Record p. 19) The map was properly filed in the County Clerk's office, and was certified to by two of the trustees, who made and fully identified, which is a compliance with the spirit of the act. This court has decided that the provision requiring a map to be certified and filed &c., is only directory: *Munson vs. Miner*, 22 Ill., 595. But all of these supposed errors and defects were subsequently, permanently cured, by the action of the board at a regular adjourned meeting, held on the 21st of April 1860, in ratifying and recognizing the existence of said school districts as established by said trustees, on said 4th of June, A. D. 1859. This order is found on Record p. 22, and we call your Honors special attention to the same, for it was introduced by the plaintiffs below, without objection, and is strictly formal, and disposes of all these questions: *Sawyer vs. Williams*, 25 Vermont, 311; *Pierce vs. Carpenter*, 10 Vermont, 481; *Alden vs. Rounsville*, 7 Metcalf, 219.

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There certainly can be no implied promise on the part of district number 5 to pay the money thus received to district number 5.

There is no dispute about the facts being as stated in the 4th instruction, on the part of the defendants below, (Record p. 30) but the jury paid no attention to it.

The first instruction for plaintiffs below, is not the law. It was calculated to mislead the jury, as being an assumption that the districts were not properly altered at the June meeting, 1859, and it left the question of law as to what facts were necessary to make a legal change of the boundaries of the district, to the jury. It is also objectionable because it takes the position that no subsequent ratification of the attempt to change the lines of the District could be made by the trustees.

On the subject of the power and authority of the trustees to act within their sphere, and as to a subsequent ratification of imperfect action, see *Metz et. al., vs. Anderson*, 23 of Ill., 467.

H. A. MIX, AND
LELAND & BLANCHARD,
For Appellants.

~~107~~ 35-142
School Dist. No 5
School ²³ Dist. No 1

Appellants Briefs

Filed May 4. 1863
L. L. Carter

THE SUPREME COURT
OF THE
STATE OF ILLINOIS;
Third Grand Division, April Term, A. D. 1863.

SCHOOL DIRECTORS DISTRICT NO. 5,
TOWN 24, RANGE 10.

vs.

SCHOOL DIRECTORS DISTRICT NO. 1,
TOWN 24, RANGE 10.

APPEAL FROM OGLE.

APPELLANTS BRIEF :

This action was commenced by District No. 1 vs. District No. 5, to recover a sum of money had and received by District No. 5, for the use of District No. 1.

The facts in this case, as we claim them to be, are as follows :

District No. 1 claimed, that on the seventh of April 1856, at a regular meeting of the town Trustees of town 24, said Trustees laid off said town into School Districts, and designated the boundaries thereof. (School Laws of 1855, sec. 34.) (Record 13.)

At a regular meeting of the trustees of said town, held in April 1859, the trustees had under consideration the subject of annexing to district No. 5 the following described real estate which was then included within the boundaries of district number 1, viz: e hf of e hf of section 34; w hf of section 35; e hf of se qr of section 27, (vide Record 24-25 ab.) That said regular meeting adjourned to meet at the same place on the 21st of same month, to give said trustees an opportunity to inspect the territory proposed to be annexed to district No. 5; that on the 21st of April said trustees convened pursuant to adjournment; without concluding the matter, they adjourned to meet on the 4th of June.

Trustees met June 4th 1859, pursuant to adjournment. The boundary lines of district number 5 were designated and a map of said town prepared and filed as required by law. (School laws of 1857, section 33. (Record 27, map page 19.)

At a regular adjourned meeting of the trustees of said town, held on the 21st day of April 1860, it was ordered that said district number 5 remain as constituted by the board at its session June 4, 1859. (Record 23.)

About the 9th of September 1859, the inhabitants of district number 1 levied a tax of two per cent. upon all the taxable property in said district; (record 17) said tax was extended on the lands above described, and which were before annexed to district number 5. (Record 18.) The tax when collected was paid over to township treasurer. (Record 21.)

At a regular adjourned meeting of trustees, held April 21, 1860, it was ordered that the town treasurer pay to the directors of said district, number 5, all the tax collected upon the land annexed as aforesaid to district number 5, (Record 23) which was paid in pursuant to said order, amounting to \$47.29. (Record 25.)

District number 1 claiming that the acts of the trustees in annexing said lands to said district number 5, were illegal and void, brought this action as aforesaid and recovered judgment.

If a plat being made, regularly certified and filed in the Clerk's office is essential, then we claim that the evidence does not establish the position assumed by plaintiff below, that the land described was included within the boundaries of district number 1, at any time. The only evidence offered upon that point was an entry upon the records, designating the boundaries of School districts in town 24. (Vide record 14.) The trustees were then acting under the 34th section of the School laws of 1855, which required the "trustees to lay off the township into districts and prepare maps and designate thereon the districts, by numbers, said map to be certified by the President and Clerk of the board and filed with, and recorded by the County Clerk, in a book to be kept for that purpose."

No map of the supposed districting in April 1856 was put in evidence on the trial below, but an attempt was made to prove the existence, at one time, loss and contents of such map.

Hiram Read testified that he made such a map on the back of a teacher's schedule; his impression was that it was certified to by the President and Clerk. He does not testify as to the contents of the map or certificates. (Record 21.)

Albert Woodcock, County Clerk, testified that, being requested, he looked among the files in his office; there were two packages of town plats; could not find the plat; could not state that there were any certificates upon it. (Record 20.)

Elbert K. Light testified that he was County Clerk in 1859; that there was a plat in his office of the districting in 1856, in accordance with the order of districting in 1856; it was made on the back of a teacher's schedule; we had the plat at the trial before the justice. (Record 18-20.)

This is all the evidence upon the point. If we concede the existence of such a map, no sufficient foundation is laid for the introduction of secondary evidence of its contents. It does not appear that diligent search had been made for the same. It had been in the custody of some other person than the clerk, who was not produced as a witness. The following authorities are cited upon this point. 19 Ill., 626; 5 Gil., 117.

There was no satisfactory evidence of the contents of said map or certificates. 19 Ill., 630.

The plaintiff below seems to have appreciated the fact that he had failed to lay a sufficient foundation for the introduction of parole evidence, to prove the contents of map, for he makes no attempt to prove such contents.

But, if it be found that said town was legally laid off into districts on the 7th of April 1856, and the parcels of land heretofore described were included in the boundaries of said district, No. 1, then the question recurs as to whether the action of the trustees in 1859, changing the boundary lines of said districts, No. 1 and 5, so as to include said parcels of land within the boundaries of said district No. 5 was legal. The trustees were then acting under the 33 section of the School laws of 1857, which provided that trustees might "alter or change" said map at any regular session, to suit the wishes and conveniences of a majority of the inhabitants of their town.

Now, it is alleged that the districting of said town 24 in 1859, in accordance with the map then filed, (Record 19,) was not made at a regular session.—The 32 section of the act of 1857 provides that regular semi-annual sessions shall be held on the first Mondays of April and October, in each year, and other meetings at such other times and places as the Trustees shall think proper; and further, that the President of the board, or any two members thereof may call a special meeting of the board. If it be held that the matter of dividing towns into

School districts must be done at one of these regular semi-annual sessions, then comes the inquiry whether the action in 1859, was at a regular or special session. There is nothing in the entire record that tends to show that there was a special meeting of the board called by the President, or any two members of the board, as required by law.

It however appears from the records, kept by the trustees for the year 1859, and offered in evidence by defendant, that a regular meeting of the board was held on the 4th of April of that year, and the matter of changing the boundaries of district number 5 was considered. The record shows that the board were unable to complete the business for which they met, but fails to show an adjournment to any specified day. (Record p. 26.)

But, it appears from the same record, that the board met on the 21st of the same month, for the purpose of transacting the unfinished business of the 4th of April meeting; and the record also shows that they again adjourned, leaving the same business unfinished, (vide Record 26.) without naming a day of meeting, so far as appears of record. On the 4th of June of same year, the board again met and completed said unfinished business. The alteration was made in district No. 5 and 1, as before stated and a map made and filed in the County Clerk's office. (Record 26, 27 and 19.)

Now it is true that the record of these several meetings does not show an adjournment to the next time of meeting, but the record does show the nature of the business under consideration at the regular session, and that that business was unfinished at each session, until the last, when it was completed, and that no other business was transacted at these several meetings, except the business under consideration at the regular session in April.

Now, if the law requires that the laying off of a town into school districts must be done at a regular session, there can be no objection to a regular session, after having had such matter under consideration, adjourning and completing said business at an adjourned meeting. This is too well settled to require argument, or authority in support thereof. Was the alteration of districts number 1 and 5 completed at an adjourned meeting of the regular April session? We think it is clear from the record offered in evidence by defendants below, that the alterations were made at such adjourned meeting for reasons heretofore stated; but the court excluded the record from the jury on objection made by plaintiff, that it did not show that it was at a regular adjourned meeting, and that the record was not signed by the President and Clerk.

The 32 section of the law of 1857, which requires that the minutes of the board of Trustees shall be signed by the President and Clerk, is only *directory*; and the minutes, although not so signed, are to be considered valid until the contrary is shown. The Justices &c., vs. House &c., Geo., 328.

The court will not hold such direction to be mandatory, unless such a construction is necessary to accomplish the object contemplated by the act. No public inconvenience or private damage can arise from the neglect to observe the strict letter of the act, if the court hold it to be directory, while, on the other hand, serious inconveniences might arise, by holding it to be mandatory, for such proceedings are more frequently not signed than signed, and a large portion of the proceedings of School trustees would be found invalid. Such technical nicety will never do. Whether the records were those of the trustees, and whether made at regular adjourned sessions, or at special sessions, were all questions of fact for the jury to pass upon, and the records should have been admitted in evidence, as well as the oral evidence of the parties. The defendant, below, proposed to amend the record in accordance with the facts, so that it would show the sessions to be regular adjourned ones, and to have the same signed by the President and Clerk, *Nunc. pro. tunc.*, and to use them as amended, in evidence. (Record p. 27.) The court rejected the proposition.

The board of trustees, or clerk had an undoubted right to amend their record in accordance with the real facts in the case, and correct the form thereof so that

they might comply with the law : *Harris vs. School District No. 10*, 8 Foster [N. H.] 58 and authorities there cited ; *Cass vs. Bellows*, 11 Foster [N. H.] 501.

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There certainly can be no implied promise on the part of district number 5 to pay the money thus received to district number 5.

There is no dispute about the facts being as stated in the 4th instruction, on the part of the defendants below, (Record p. 30) but the jury paid no attention to it.

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H. A. MIX, AND
LELAND & BLANCHARD,
For Appellants.

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School Dist. No. 8
School Dist. No. 1
Appellants Briefs

Filed May 4, 1863

L. L. Leland M

THE SUPREME COURT
OF THE
STATE OF ILLINOIS;

Third Grand Division, April Term, A. D. 1863.

SCHOOL DIRECTORS DISTRICT NO. 5, TOWN 24, RANGE 10.	}	APPEAL FROM OGLE.
<i>vs.</i>		
SCHOOL DIRECTORS DISTRICT NO. 1, TOWN 24, RANGE 10.	}	

APPELLANTS BRIEF :

This action was commenced by District No. 1 *vs.* District No. 5, to recover a sum of money had and received by District No. 5, for the use of District No. 1. The facts in this case, as we claim them to be, are as follows :

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If a plat being made, regularly certified and filed in the Clerk's office is essential, then we claim that the evidence does not establish the position assumed by plaintiff below, that the land described was included within the boundaries of district number 1, at any time. The only evidence offered upon that point was an entry upon the records, designating the boundaries of School districts in town 24. (Vide record 14.) The trustees were then acting under the 34th section of the School laws of 1855, which required the "trustees to lay off the township into districts and prepare maps and designate thereon the districts, by numbers, said map to be certified by the President and Clerk of the board and filed with, and recorded by the County Clerk, in a book to be kept for that purpose."

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H. A. MIX, AND
LELAND & BLANCHARD,
For Appellants.

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School Directors
No 5-
23

School Directors
No 1
Appellants Briefs

Filed May 4 1863
J. Seland
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THE SUPREME COURT
OF THE
STATE OF ILLINOIS;
Third Grand Division, April Term, A. D. 1863.

SCHOOL DIRECTORS DISTRICT NO. 5,
TOWN 24, RANGE 10. }
SCHOOL DIRECTORS DISTRICT NO. 1,
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APPELLANTS BRIEF :

This action was commenced by District No. 1 vs. District No. 5, to recover a sum of money had and received by District No. 5, for the use of District No. 1. The facts in this case, as we claim them to be, are as follows :

District No. 1 claimed, that on the seventh of April 1856, at a regular meeting of the town Trustees of town 24, said Trustees laid off said town into School Districts, and designated the boundaries thereof. (School Laws of 1855, sec. 34.) (Record 13.)

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About the 9th of September 1859, the inhabitants of district number 1 levied a tax of two per cent. upon all the taxable property in said district; (record 17) said tax was extended on the lands above described, and which were before annexed to district number 5. (Record 18.) The tax when collected was paid over to township treasurer. (Record 21.)

At a regular adjourned meeting of trustees, held April 21, 1860, it was ordered that the town treasurer pay to the directors of said district, number 5, all the tax collected upon the land annexed as aforesaid to district number 5, (Record 23) which was paid in pursuant to said order, amounting to \$47.29. (Record 25.)

District number 1 claiming that the acts of the trustees in annexing said lands to said district number 5, were illegal and void, brought this action as aforesaid and recovered judgment.

If a plat being made, regularly certified and filed in the Clerk's office is essential, then we claim that the evidence does not establish the position assumed by plaintiff below, that the land described was included within the boundaries of district number 1, at any time. The only evidence offered upon that point was an entry upon the records, designating the boundaries of School districts in town 24. (Vide record 14.) The trustees were then acting under the 34th section of the School laws of 1855, which required the "trustees to lay off the township into districts and prepare maps and designate thereon the districts, by numbers, said map to be certified by the President and Clerk of the board and filed with, and recorded by the County Clerk, in a book to be kept for that purpose."

No map of the supposed districting in April 1856 was put in evidence on the trial below, but an attempt was made to prove the existence, at one time, loss and contents of such map.

Hiram Read testified that he made such a map on the back of a teacher's schedule; his impression was that it was certified to by the President and Clerk. He does not testify as to the contents of the map or certificates. (Record 21.)

Albert Woodcock, County Clerk, testified that, being requested, he looked among the files in his office; there were two packages of town plats; could not find the plat; could not state that there were any certificates upon it. (Record 20.)

Elbert K. Light testified that he was County Clerk in 1859; that there was a plat in his office of the districting in 1856, in accordance with the order of districting in 1856; it was made on the back of a teacher's schedule; we had the plat at the trial before the justice. (Record 18-20.)

This is all the evidence upon the point. If we concede the existence of such a map, no sufficient foundation is laid for the introduction of secondary evidence of its contents. It does not appear that diligent search had been made for the same. It had been in the custody of some other person than the clerk, who was not produced as a witness. The following authorities are cited upon this point. 19 Ill., 626; 5 Gil., 117.

There was no satisfactory evidence of the contents of said map or certificates. 19 Ill., 630.

The plaintiff below seems to have appreciated the fact that he had failed to lay a sufficient foundation for the introduction of parole evidence, to prove the contents of map, for he makes no attempt to prove such contents.

But, if it be found that said town was legally laid off into districts on the 7th of April 1856, and the parcels of land heretofore described were included in the boundaries of said district, No. 1, then the question recurs as to whether the action of the trustees in 1859, changing the boundary lines of said districts, No. 1 and 5, so as to include said parcels of land within the boundaries of said district No. 5 was legal. The trustees were then acting under the 33 section of the School laws of 1857, which provided that trustees might "alter or change" said map at any regular session, to suit the wishes and conveniences of a majority of the inhabitants of their town.

Now, it is alleged that the districting of said town 24 in 1859, in accordance with the map then filed, (Record 19,) was not made at a regular session.—The 32 section of the act of 1857 provides that regular semi-annual sessions shall be held on the first Mondays of April and October, in each year, and other meetings at such other times and places as the Trustees shall think proper; and further, that the President of the board, or any two members thereof may call a special meeting of the board. If it be held that the matter of dividing towns into

School districts must be done at one of these regular semi annual sessions, then comes the inquiry whether the action in 1859, was at a regular or special session. There is nothing in the entire record that tends to show that there was a special meeting of the board called by the President, or any two members of the board, as required by law.

It however appears from the records, kept by the trustees for the year 1859, and offered in evidence by defendant, that a regular meeting of the board was held on the 4th of April of that year, and the matter of changing the boundaries of district number 5 was considered. The record shows that the board were unable to complete the business for which they met, but fails to show an adjournment to any specified day. (Record p. 26.)

But, it appears from the same record, that the board met on the 21st of the same month, for the purpose of transacting the unfinished business of the 4th of April meeting; and the record also shows that they again adjourned, leaving the same business unfinished, (vide Record 26.) without naming a day of meeting, so far as appears of record. On the 4th of June of same year, the board again met and completed said unfinished business. The alteration was made in district No. 5 and 1, as before stated and a map made and filed in the County Clerk's office. (Record 26, 27 and 19.)

Now it is true that the record of these several meetings does not show an adjournment to the next time of meeting, but the record does show the nature of the business under consideration at the regular session, and that that business was unfinished at each session, until the last, when it was completed, and that no other business was transacted at these several meetings, except the business under consideration at the regular session in April.

Now, if the law requires that the laying off of a town into school districts must be done at a regular session, there can be no objection to a regular session, after having had such matter under consideration, adjourning and completing said business at an adjourned meeting. This is too well settled to require argument, or authority in support thereof. Was the alteration of districts number 1 and 5 completed at an adjourned meeting of the regular April session? We think it is clear from the record offered in evidence by defendants below, that the alterations were made at such adjourned meeting for reasons heretofore stated; but the court excluded the record from the jury on objection made by plaintiff, that it did not show that it was at a regular adjourned meeting, and that the record was not signed by the President and Clerk.

The 32 section of the law of 1857, which requires that the minutes of the board of Trustees shall be signed by the President and Clerk, is only *directory*; and the minutes, although not so signed, are to be considered valid until the contrary is shown. The Justices &c., vs. House &c., Geo. 328.

The court will not hold such direction to be mandatory, unless such a construction is necessary to accomplish the object contemplated by the act. No public inconvenience or private damage can arise from the neglect to observe the strict letter of the act, if the court hold it to be directory, while, on the other hand, serious inconveniences might arise, by holding it to be mandatory, for such proceedings are more frequently not signed than signed, and a large portion of the proceedings of School trustees would be found invalid. Such technical nicety will never do. Whether the records were those of the trustees, and whether made at regular adjourned sessions, or at special sessions, were all questions of fact for the jury to pass upon, and the records should have been admitted in evidence, as well as the oral evidence of the parties. The defendant, below, proposed to amend the record in accordance with the facts, so that it would show the sessions to be regular adjourned ones, and to have the same signed by the President and Clerk, *Nunc. pro. tunc.*, and to use them as amended, in evidence. (Record p. 27.) The court rejected the proposition.

The board of trustees, or clerk had an undoubted right to amend their record in accordance with the real facts in the case, and correct the form thereof so that

they might comply with the law: *Harris vs. School District No. 10*, 8 Foster [N. H.] 58 and authorities there cited; *Cass vs. Bellows*, 11 Foster [N. H.] 501.

The defendants below, offered, in evidence, a map made in pursuance of the order, changing districts number 1 and 5, which was excluded by the court, on the ground that it was not certified to by the President and Clerk. (Record p. 19) The map was properly filed in the County Clerk's office, and was certified to by two of the trustees, who made and fully identified, which is a compliance with the spirit of the act. This court has decided that the provision requiring a map to be certified and filed &c., is only directory: *Munsou vs. Miner*, 22 Ill., 595. But all of these supposed errors and defects were subsequently, permanently cured, by the action of the board at a regular adjourned meeting, held on the 21st of April 1860, in ratifying and recognizing the existence of said school districts as established by said trustees, on said 4th of June, A. D. 1859. This order is found on Record p. 22, and we call your Honors special attention to the same, for it was introduced by the plaintiffs below, without objection, and is strictly formal, and disposes of all these questions: *Sawyer vs. Williams*, 25 Vermont, 311; *Pierce vs. Carpenter*, 10 Vermont, 481; *Alden vs. Rounselle*, 7 Metcalf, 219.

The amount in controversy, was paid to appellants by the Township Treasurer upon the order of the board of trustees. (Record p. 25.)

Now conceding, for the sake of the argument, that the township treasurer ought not to have been directed by the trustees to pay the money to appellants, can appellee recover the money from appellants in this action? We think not. The parties thus again ratified the new district. If the treasurer has paid the money to a wrong party, the trustees had control of the board, and their disposition of it was an exercise of authority, on a subject under their control.

There certainly can be no implied promise on the part of district number 5 to pay the money thus received to district number 5.

There is no dispute about the facts being as stated in the 4th instruction, on the part of the defendants below, (Record p. 30) but the jury paid no attention to it.

The first instruction for plaintiffs below, is not the law. It was calculated to mislead the jury, as being an assumption that the districts was not properly altered at the June meeting, 1859, and it left the question of law as to what facts were necessary to make a legal change of the boundaries of the district, to the jury. It is also objectionable because it takes the position that no subsequent ratification of the attempt to change the lines of the District could be made by the trustees.

On the subject of the power and authority of the trustees to act within their sphere, and as to a subsequent ratification of imperfect action, see *Metz et. al., vs. Anderson*, 23 of Ill., 467.

H. A. MIX, AND
LELAND & BLANCHARD,
For Appellants.

107 35-142
School Dist No 5
School Dist No 1
Appellants Briefs

Filed May 4 1863
L. L. Clark
clerk

State of Illinois } In Ogle County Circuit Court -
County of Ogle } Of the June Term A.D. 1862 -

School Directors of District No. 1, T. 24, R. 10.
County of Ogle and State of Illinois

School Directors of District No. 5, T. 24, R. 10.
County of Ogle and State of Illinois

Be it remembered, that on the trial of the above entitled cause, the plaintiff to maintain the issue on its side, introduced as a Witness Heriam Reed, who being duly qualified and sworn, testified as follows -

I am Township Treasurer of Town 24, Range 10, in this County. These four Books are the Records of my office. There was an order made, on the 7th of April 1856, districting Township 24, Range 10, into School Districts, this was at a regular semi annual meeting. A. L. Richardson, E. J. Waite and Mr. Boyce, were Trustees. Waite acted as Clerk and Richardson was President. they have had School Directors and school, in District No. 1, since 1856.

~~Here the plaintiff offered in evidence the Record~~ The plaintiff thereupon offered in evidence, the following orders found upon the Records of the Trustees of Schools of said Township, which order is in the words & figures following -

At a meeting of the Board of Trustees, for Township 24, Range Ten East of 4th P. M. County of Ogle, and State of Illinois, the following were the lines of Districts agreed to for said Township -

District No. 1, shall commence, on the South line of the Township on the centre of Section 35, running North through centre of section 35, 26, 23, 14, to centre of 14 on the North, thence West on North line of Sec 14, & 15, to Rock River, thence following the meanderings of the River to the South line of Town, thence East to the place of beginning -

District ^{ct} 2. shall commence at the S. West corner of the town thence North on West line of town to N. West corner of Sec 30. thence East on North line of 30. - 29. to N. E. corner of S. 29. thence South on the line between Sec 28 + 29. to S. E. corner of S. 29. thence East on the S. line of 28. to R. River. thence following the River to the South line of the Town. thence West to the place of beginning -

District ^{ct} 3. shall commence at S. W. corner Sec 19. thence North on the West line of the town to the North W. corner of Sec 7. thence East on the North line of Sec 7 + 8. to the N. E. corner of Sec 8. thence South on the East line of Sec 8. + 17. to the S. E. corner of 17. thence West. to the corner of Sec 20. on the North thence South through the centre of Sec 20. to the centre of Sec 20. on the South. thence West to the place of beginning -

District ^{ct} 4. shall commence at the S. W. corner of Sec 9. thence North on the West line of Sec 9. + 4. to the North line of the town. thence East on the the North line of the town to Rock River. thence following meanderings of the River. to North line of Sec 15. thence West to the place of beginning -

District ^{ct} 5. shall commence. at the South East corner of the town. thence North on the East side of the Town to the N. E. corner Sec 24. thence West to the centre of Sec. 23. on the North thence South through the centre of Sec 23. 26 + 35. to the South line of the town, thence East to the place of beginning -

District ^{ct} 6. shall commence at the N. E. corner of the town thence South on the East line of the town to S. E. corner Sec. 13. thence West to the centre Sec 14. on the South. thence North, through the centre of Sec 14. on the North. thence West on the North line of Sec 14. + 15. to the River. thence following the meanderings of the River to the North line of the town. thence East to the place of beginning -

Fractional District ^{ct} 7. shall commence at the N. W. corner. of the town thence East on the North line of the town

to the N. E. corner of Sec 5, thence South to the S. E. corner of Sec 5. thence West on the South line of Sec 5 & 6. to the West line of the town, thence North to the place of beginning -

District No 8. shall commence at N. W. corner of Sec 16, running South to the S. W. corner of Sec 16. thence West to the centre of Sec 20. on the North. thence South through the centre of Sec 20. on the South. thence East to the N. E. corner of Sec 29. thence South to the S. E. corner of Sec 29. thence East to R. River thence North following the meanderings of the River. to the North line of Sec 15. thence West to the place of beginning.

A. C. Richardson Prest
E. J. Waite Clerk -

The order on said record book next preceeding the last order was in the words and figures following -

At a meeting of the Trustees held April 7. 1856. at the house of E. J. Waite in Town (24) Range 10. East of 4th P. M. in County of Ogle & State of Illinois. The board proceeded to ascertain the amt of money in hands of Treasurer for distribution which amt was \$428.12. subject to distribution

District No 1	Received	\$ 58.00
"	" 2	60.00
"	" 3	88.00
"	" 4	54.00
Scholars sent from Dist No 1. to Town of Marion		4.71
Board of Education		264.71
		95.45
		<u>360.16</u>
A. C. Richardson Prest	}	
Elveston J. Waite Clerk		

The Amount of principal embracing notes & mortgages on hand at the above date was \$1481.²⁵ & cash on hand \$158.¹² making a sum total of \$1640.⁰⁷ -

Which was admitted & read in evidence -

And farther, the Plaintiff introduced Daniel T. Greene as a Witness, who being sworn, testified that he had heard the record read. I have lived in District Number 1. five or six years they have always elected Directors every year, with boundaries according to the record—

Albert Woodcock being qualified and sworn in behalf of the Plaintiff testified as follows: I am County Clerk of Ogle County Illinois I find in my office a certificate of levy, of school tax in District No 1. Town 24, Range 10, for the year 1859. — thereupon said Witness produced said certificate, which was read to the Jury, and is in the words and figures following to-wit:—

We hereby certify, that we require the rate of two per cent. to be levied for the purpose of Building a School House on all the taxable property of our district for the year 1859— Given under our hands this 9th day of September 1859—

F. P. McCamley } Directors, District No one
William Boyce } Township No 24, Range No ten, County
Benjamin Boyce } of Ogle, and State of Illinois —

List of Tax Payers

William Uertz
Daniel T. Green
James McCames
F. P. McCamley
Benjamin Boyce
Matilda Fuller
Ezekiel S. Congdon
Lyman Salisbury

W. T. Crowell
Richard Westbrook
Lewis Westbrook
J. S. Patric
Samuel James
David Smith
William Boyce
William H. Hornell
James Wilber

Rockvale. Sept 9th /59

Endorsed - Filed Sept 10. 1859. Albert K. Light Clerk

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said Woodcock. further testified that he had in his possession the Collectors Book. of Town 24. Range 10. in said County. for 1859. which was produced

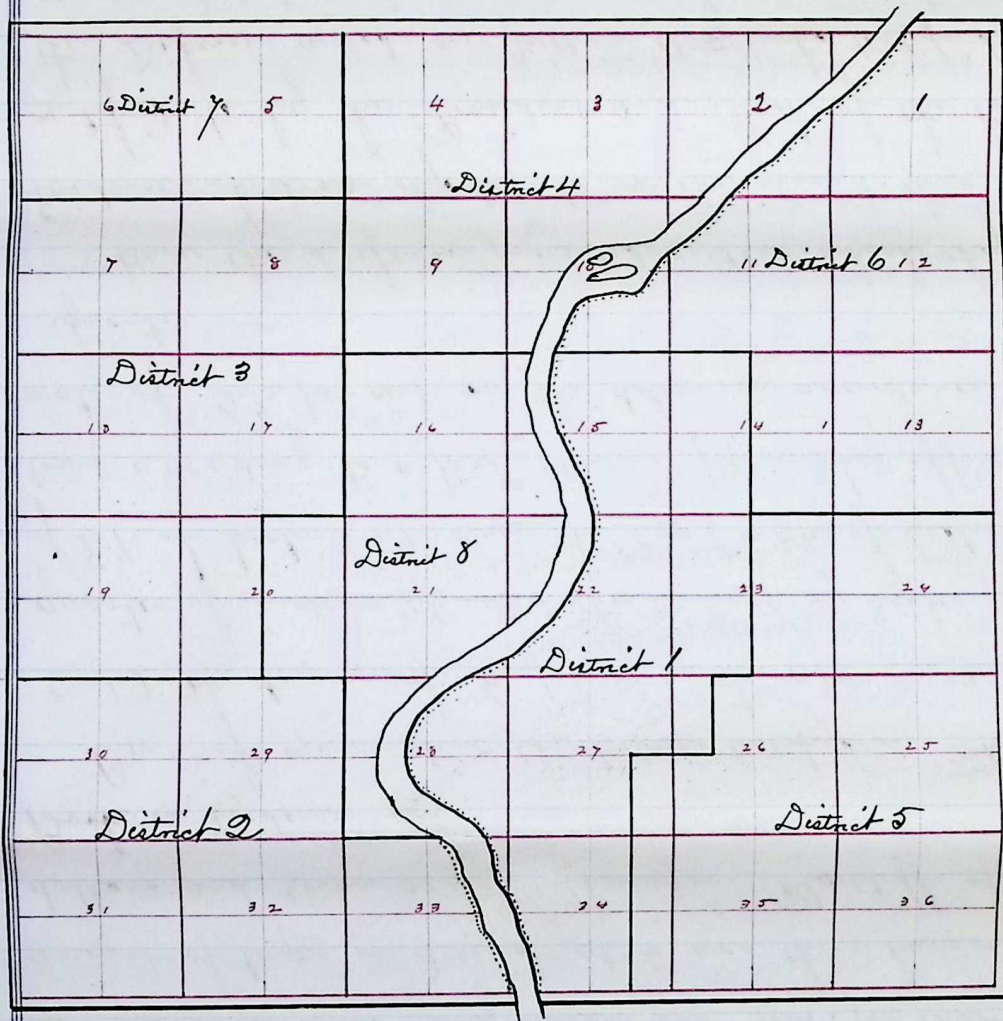
Elbert K. Light. being produced and qualified. testified. that he was Clerk of said County. in 1859. - there was a tax levied in District No. 1. of that year. it was at the rate of Two dollars on the hundred dollars. & was levied in accordance with a plat in my office made of said district in 1856. in accordance with order in record offered in evidence - There was a certificate filed by the Directors of District No. 5. levying a tax of Two dollars and a half on the hundred dollars. The taxes in district No. 1. amounted to two hundred and thirty dollars and $98\frac{1}{100}$. for that year. The amount of taxes in district No. 5. was three hundred and eighteen dollars and seven cents - Thereupon Plaintiff offered Collector Book in Evidence -

On Cross examination the witness testified - That he first extended the tax on the East half of the N.W. Quarter, and the S.W. quarter of Section 26. and the W. half of Section 35. and the E $\frac{1}{2}$ of E $\frac{1}{2}$ of Section 34. and the E $\frac{1}{2}$ of S E $\frac{1}{4}$ of Section 27. of said town according to a plat. then on file in his office. and at the rate of $2\frac{1}{2}$ per cent. on the dollar. in accordance with the certificate -

Here the Defence presented a Plat. which they offered in Evidence. which was objected to. on the ground that it was not certified to by the President and Clerk of the Board. thereupon the Defence called one William Arty. who testified. that he was Trustee of Schools for said Town in 1859. and that he was President of the Board during said year. John A. Wagoner was ^{the} Clerk. and that John James was also a Trustee during said year. and that the signatures of the said Arty and the signature of the said James. appended to the certificate on the back of the plat. are genuine which plat and certificate. are in the words

and figures following to wit:—

Diagram of Rockvale
Township ct° 24 north. of Range ct° 10.



State of Illinois

Ogle County ss. We the undersigned Trustees of Town 24. Range 10.

do hereby certify this Diagram of District to be correct
to the best of our knowledge and belief—

John James

William Antz —

Filed Oct 3. 1859. E. K. Light Clerk —

Albert Woodcock being recalled stated that said Plat was a part
of the files of his office—

And thereupon the defendant offered said Plat. Certificate
and filing on the back in evidence— To which the Plaintiff

excepted, and the Court sustained the Exception, and excluded said Plat from evidence - To which the defendant excepted -

Said Light, then further testified, on Cross examination - That he did first extend the School Tax in District No 5, on Collectors Book, according to said Plat, so offered in evidence by the defendants, for the year 1857, and that he so extended the said tax, at the rate of Two dollars and fifty cents on the 100 dollars, in accordance with the certificate of the Directors of said District number 5, but attested the same before it was delivered to the Collector at 2¢ on 100¢ -

On Re Direct Examination, he further stated, That the Plat in his office previous to the one then offered in evidence by the defendant was made on the back of a School Teachers Schedule, we had the Plat at the trial, in the Court below, cannot state, that there was a certificate upon it. This Plat, was drawn in accordance with the bounds of District No 5, as first established 1856, there was no other Plat in the office, when I was Clerk made upon a Teachers Schedule

Allert Woodcock recalled - I was requested to search for the Plat in question. I looked among the files of my office, there were two packages of Township Plats, I could not find it. I could not state, that there were any certificates at all upon it -

Hiram Read, recalled -

I made the Plat at the time of the division on the back of a Teachers Schedule. I drew up the Plat, Mr Richardson was President of the Board, E. J. Waite was Clerk, my impressions are, that it was certified to by the President & Clerk, don't recollect the contents of the certificate

Samuel Wagner, being produced and qualified in behalf of the Plaintiffs, testified as follows - I was Township Treasurer of Rockwell

in 1859. I had the money in my hands for District Ct¹. for that year. these Books are my Records. of moneys received and paid out for that year. - Plaintiff offered the Books of Account of the Treasurer of District Ct¹ of District Ct⁵. in evidence - the defendant objects which objection being heard and considered by the Court, is overruled - To which the defendant, Excepto. The accounts were read in evidence, and were in the words and figures, following to wit: -

D ^r Town Treas. in account with Town 24, Range 10, E. Ogle Co. Ill. First Dist. 6 th						
When received	Of whom received & on what account	Ct District	When paid out	To whom paid and on what account	Ct District	Tax
1860. March 9	Town Collector	127.64	1860. March 9	Order from Directors		62.71
April 2	Amount apportioned on schedule	36.05	" " "	" " "		15.48
June 29	" received from County Treasurer	65.68	" " 27	D. J. Green " " "		49.45
			April 2	Wm York Teacher. on schedule		25.00
			" "	Directors Balance " "		11.05
			June 29	Dist Ct ⁵ . by order of Trustees		47.29
			July 7	Ambrose Morton Mason Work on Sch. House		18.39
						<u>\$229.37</u>

D ^r Town Treas. In account with Town 24, Range 10, E. Ogle Co. Ill. Fifth Dist. 6 th						
When received	Of whom received & on what account	Ct District	When paid out	To whom paid & on what account	Ct District	Tax
1860. March 9	Town Collector	242.20	1860. April 2	Directors		242.20
April 2	Amount apportioned on schedule	52.99	" 2	John James Teacher on schedule		53.00
June 29	" Received from County Treasurer	66.20	July 7	" " " " "		8.00
" "	" From Dist Ct ¹ . by order of Trustees	47.29	" "	J. M. Sewell. per order Directors		105.48
						<u>\$408.68</u>

I paid of moneys collected in District Ct¹. to District Ct⁵. \$47.29 the defendants object. objection overruled. to which debt. excepto
The money I received from the Town Collector, and a part. from the County Treasurer. I paid over this amount of money under an order of the Trustees - To which Debt object on the ground that the order should be introduced -

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Thereupon the Plaintiff offered in Evidence so much of an order of the Board of Trustees of said Town as related to the payment of money & which order of the Board of Trustees of said Town, made at the Session of said Board, is in the words and figures following, to wit:—

Ogle County, Ills—

1860, Saturday April, 21—

Adjourned meeting of the Board
of Trustees, at the house of W^m Arty

Present W^m Arty President

H. R. Waggoner—

The boundary lines of Dist Ct-5, coming up for consideration, and it appearing that the boundaries of said District, were established, at an adjourned meeting of said Board, holden at the School House in District Ct^o 8, on the 4th day of June 1859, and by an order of the Board, made at said meeting, said District was established and embraces the following Territory to wit: Sections 24, 25, 35 and 36, and $\frac{E}{2}$ of Sec 23, and all of Section 26, except the $W\frac{1}{2}$ of $SW\frac{1}{4}$ of said Section. The $\frac{E}{2}$ of $SE\frac{1}{4}$ of Sec 27, The $\frac{E}{2}$ of the $\frac{E}{2}$ of Sec 34, all in Township 24, Range 10, E. and it appearing by petition and remonstrance that all the voters and Taxpayers of said District Ct^o 5, were anxious and desirous to have said Dist Ct^o 5, remain as constituted by said Board, at said June Session 1859. It is therefore considered that said District was correctly and legally established, at the meeting of said Board, at said June Session 1859. And it is further ordered, that the Treasurer of said Township be required to pay over to the Directors of said District, all the District Tax collected from the following persons & tracts of land, for school purposes within said Dist Ct^o 5, for the year 1859—

W. J. Crowell

E. S. Congdon

Samuel James

J. J. Patrick

Richard Westbrook

Levi Westbrook

following tracts to wit:

$\frac{E}{2}$ of $SW\frac{1}{4}$ Sec 26,	80
$SW\frac{1}{4}$ " 26,	160
$\frac{E}{2}$ $SE\frac{1}{4}$ " 27	80
$W\frac{1}{2}$ " 35	320
$\frac{E}{2}$ of $\frac{E}{2}$ " 34	160
	<u>800</u>

All of said persons. being residents therein and all of said tracts of land situate thereon. which said Treasurer will pay over to the Directors, as soon as the same shall come to his hands. In reference to the foregoing boundary question, the following persons were sworn. J. T. Patrick said he lived in Dist Ct^o 5. as he supposed went to attend a meeting in Dist Ct^o 1. which was called for the purpose of locating the site of a School House in said Dist 1. said he understood Mr Green. that he had no right to vote —

David Smith Sworn. said he supposed he lived in Dist Ct^o 5. he attended a meeting for the location of a School House in Dist Ct^o 1. when he went there. saw Mr Green writing and distributing Tickets Mr Green told me. he supposed I had no right to vote. did offer me a Ticket — The Board further went into examination of the Books of Former Treasurer. and finding them to be correct. the same were accepted. Board then adjourned. to meet at next regular Session

William Arty Pres
Samuel Waggoner Clerk —

The defendants claiming the right to have all of said order in evidence the whole order was read —

The Plaintiff having closed their evidence. the defendant introduced John M. Sewell. who being qualified. testified as follows — I am a resident of District Ct^o 5. I have resided there. since March 1857. there has been a School taught in the District. since the Spring of 1857. — the District was organized when I went there. A new School House built in District in 1859. commenced school in new house in 1859. it might be in 1858. that the school house was built —

John James. being produced and qualified on behalf of the defendant deposed as follows: — I reside in Rockvale. I held a school office in that Town. I was Trustee of Schools. for two years. I served in 1858 & 9. in that capacity. our Board held a Session at the regular

time in April 1859. after the regular meeting. we held two adjourned meetings - at the regular April meeting in 1859. a petition was presented an application. to set off a part of District No 1. to District No 5. Arty was chairman of the Board of Trustees. at that time I have taught school in District Number 5. I taught there in the winters of 1859 + 1860 and 1860 + 1861 -

Said Wetzel was then asked. where the pupils. residing on the East half of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 26. and the W $\frac{1}{2}$ of Section 35. and the E $\frac{1}{2}$ of E $\frac{1}{2}$ of Sec 34. and E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 27. - attended school. during the time he taught. in said District -

To the answering of which the Plaintiff excepted - which exception the Court sustains. to which ruling the defendant then and there excepted -

The defendant then proposed to prove by said James and William Arty another Trustee. that at the regular session of the Board of Trustees of said Town. holden at the regular April term 1859. an application was made by the citizens of District No 5. to annex to said District the E $\frac{1}{2}$ of E $\frac{1}{2}$ of Section 34. the E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 27. the West $\frac{1}{2}$ of Section 35. the SW $\frac{1}{4}$ and E $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 27. to said District No 5. and to take the same from District No 1. of said Town. which application was resisted. by the citizens of District No 1. that said matter was considered upon in part at said April meeting. that an adjourned meeting was then agreed upon. which was to take place on the 21st of the said April at the same place which was in the school house in district No 8. in said Town. in the interval it was the arrangement. between the said Trustees. that they would visit the said Territory. and inspect it. that they might learn more definitely the propriety of dividing said district. one of said Trustees being sick. they were unable to visit said premises before the 21st day of April. that they again convened on the said 21st day of April in pursuance of the said adjournment. at

the said School House in District No 8. that they then agree upon a meeting to be holden on the 19th of May at the Boyce School House in said District No 1. for the purpose of finally disposing of the question of the division of said School district And further. that in pursuance of said adjourned meeting. the said Trustees did meet. at the said Boyce School House. in the forenoon of the said 19th day of May A.D. 1857. and that most of the citizens of both said Districts were then. that the matter was discussed in the forenoon. and that during the afternoon. they went upon the premises. desired to be attached to District No 5. and again returned. to said Boyce School House and after duly considering the matter. they agreed to annex said Territory to District No 5. and made known the determination at said meeting. it being late before the business was closed they adjourned said meeting to meet in the School House in District No 8. to the 4th of June 1857. and that. said meeting was duly holden on said 4th day of June 1857. in accordance with said adjournment -

To the introduction of which the plaintiff then and there excepted. which being heard and considered by the Court was sustained - to which ruling the defendant. then and there excepted -

Thereupon. the defendant offered in evidence the following orders. found upon the Records of the said Board of Trustees -

April 4th 1857 -

The Trustees met at the School House in District No 8. Town 24. Range 10. and proceeded to business. in the first place the public funds were not ready - for distribution - In the second place a petition was presented for the alteration of District 5. for enlarging it. and a remonstrance accompanying it

April 21st The Trustees met on this day. the funds not being in the hands of Treasurer. they adjourned -

June 4th 1859.

The Trustees met again at the School House in Dis 8. and proceeded to business, the amount of Town & State funds to be \$ 478.37 cts for distribution, allowing the Treasurer his percentage leaves \$ 468.81 cts for distribution - in the first - one half the amount of funds is \$ 234.40 cts. the census of the town is 393. under twenty one and this amt is divided between the districts entitled to the same -

Dist 2nd - The number of days on schedule amounts to 9313. and the amount of money to be divided on schedules \$ 234.40 cts -

The Schedule of Dis. 8th was rejected on the ground of not keeping up a school in previous year. Six months -

On motion Dis 5. an alteration was made, commencing on the South line in the middle of Section 23 - running West 80 rods. thence South. between the lines of Eighty half mile south. thence West 160 rods. thence South to town line. thence East to middle of Sec 35.

To the introduction of which orders so entered upon the School records of said town the plaintiff objected on the ground that they were not signed, or at a regular adjourned meeting. and the Court sustained the objection

Whereupon the defendant entered his motion for leave to have the said record amended, showing said several meeting to be adjourned ^{meetings} in accordance with the facts. and permitting the same to be signed by said president and Clerk nunc pro tunc. and to make said records comport with and show fully all the proceedings had in regard to the division of said District No 5 -

Which motion being heard and considered is overruled. to which the defendant then and there except -

And thereupon the defendant moved to exclude from evidence the Jury the order heretofore read (on page 6) in evidence showing a division of said town into districts on the ground that said order did not seem to be made at a regular session of said Board

which being heard & considered, is overruled -

And thereupon, the plaintiffs asked the following instructions which were given -

That if the jury believe from the evidence that the portion of the district ct¹ one was not legally set off to Dist ct⁵. at the June meeting 1859. by a good and sufficient order made by the town trustees of Schools of Town 24. Range 10. that no subsequent order of said Trustees recognizing said order could make said portions of Dist ct¹ one a part of School Dist ct⁵. But that the same would be and remain in Dist ct¹ one so far as the question is before this jury -

And the defendant asks the following instruction.

The Deft asks the Court to instruct the jury -

1 That the Plaintiff can not recover herein against the defendant unless there is evidence in the case, showing a debt legally contracted between District ct⁵. and District ct¹. or that District ct⁵. actually received & used for school purposes the money of district ct¹. which they equitably ought to repay -

Given

2 That School Directors are only liable as a Corporation for teachers wages and for debts legally contracted, or monies wrongfully rec^d & used by the corporation for school purposes which they ought in equity to repay -

Given

3 That if a Township Treasurer pays funds belonging to one District over to another District the Treasurer is liable to the District to which the money rightfully belonged

Given

4 That if a Township Treasurer pays money belonging to one

Given

District to another District by order of the Township Trustees. such payment does not authorize a recovery in suit brought by the one District against the other

Given

5 That if the jury believe from the evidence that the Township Treasurer paid over the money in controversy to District No 5 by virtue of an order of said Trustees appearing to have been regularly made, the legality of such order can not be contested in this action.

Given

6 That if the Treasurer paid over money to District No 5 which said District was not entitled to such money can be recovered from District No 5. in an action brought by him.

Given

7 That if the Treasurer paid over money to District No 5 which said District was not entitled to such money can be recovered from District No 5 only in an action brought by said Treasurer or by the Trustees, and in no other way.

Given

8 That if the Plffs have failed to show that the money in controversy was received by the Directors of No 5 as Directors for school purposes & actually so appropriated, the Plff can not recover.

Given

9 That if the Plffs have failed to show that the money in controversy was received and used by the Directors of No 5. for school purposes, the Plff can not recover.

Given

10 That School Directors have no power given them by law to borrow money or to render their District liable to an action for money had and received in any other way than by the mode pointed out by law. that School Directors

can not make their District liable for moneys which they had not right to receive unless the corporation actually received & used such money and that if persons acting as School Directors receive money which by law they were not entitled to they thereby incur a personal responsibility and not a liability which the District can be bound to pay

11 *Given* That ^{this} is an action against District No 5 as a corporation and before the jury can find a verdict against the Defendants they must be satisfied from the evidence that a debt has been contracted by the Directors of a character under the law such Directors had a right to contract or that the Corporation as such actually received money that they ought in equity refund

12 *Given* That under the law incorporating Schools Directors no authority is given to them to contract debts for money loaned

13 That the object contemplated by the law in requiring written instructions to be given to a jury is to present to the jury the law applicable to the fact proved in the case that the Court only gives such instructions as present the law and that the jury in this case is bound to take the law as given in the instructions and to find a verdict accordingly That all instructions are to be taken & construed together and that by a comparison and construction together of all the instructions the law is to be gathered as given by the Court and that if there are apparent contradictions between instructions such contradictions of each instruction are properly given are only apparent and by a proper construction of all the instructions will be found not to exist

The Jury having returned a verdict for the Plaintiff
for the sum of \$47.27

The Defendants enters its motions in arrest and for new
trial which being heard and considered is overruled
to which the Defendants except

The ~~following~~ ^{foregoing} is all the evidence offered by
either party in this cause

W. W. Heaton *W. W. Heaton*
Judge —

State of Illinois } Of the November Term of the
Ogle County } Circuit Court A.D. 1863,

I hereby certify that the above bill of
exceptions was allowed signed and filed of & during the
terms of which it was dated and that the want of a seal
was an oversight of the Court, & that said seal is now
attached by me on motion of H. A. May depts attorney

W. W. Heaton
Judge —

State of Illinois }

Ogle County ss } I Frederick G. Petrie Clerk of
the Circuit Court of said County State
aforsaid do certify that the above foregoing is a
true & correct copy of the amended bill of exceptions
in the foregoing cause as remains among the files
of said Court —

Witness my hand & the seal of said
Court at Oregon. this 28th day of
March A.D. 1864.



F. G. Petrie Clerk
By M. Ettinger Dep
Ck fee on this bill \$5.00

35-
School Directors of
District No 1-24-10

or

School Directors of
District No 3-24-10

Amended bill of Receipts

Filed April 19. 1864
J. L. and W.

School Directors of
Dist No. 5. Town 24.
Range 10. Ogle Co

vs

School Directors of
Dist No. 1. Town 24 -
Range 10. Ogle Co

Appeal from Ogle

Now comes the said Ap-
peller by Glover, Cook & Humphreys its
attornies & enters its motion herein
to strike the supposed Dec of Ex-
ceptions from the ~~file~~ Record in
said Cause

Because said Supposed Dec con-
tains no order by the Judge of said
Court ordering the same to be made
a part of the Record in said
Cause

Because the said Supposed Dec is
~~not~~ certified under the seal of said
Judge

Jones v Sprague 2. Scam. 55.

Moss v Flint 13 Dec 572.

Glover Cook & Humphreys
for Appeller

³⁵
School Directors

~~to~~ No 5

School Directors
No 1

Motion to Strike
Bill of Exceptions
from Record

W. L.

Supreme Court of Ill April 1863

School Directors vs
School Directors } Appeal from Ogle

It is said that the exception, in the Bill of exceptions mentioned, to the overruling the motion for a new trial, being in the present tense is to be construed to mean that the exception was not taken on the trial but at the time of filing the Bill.

It is evident that it was taken at the time when the motion was overruled. The language is "the motion" is overruled & "the defendant excepts." The present tense is so often used when by the rules of grammar the past tense is the more proper expression. That it is to be regretted that our bad grammar should have produced such serious consequences as have flowed from the decisions of our Court on this subject, but we do think it would be carrying the thing too far to say that a statement in the bill that "the defendant enters his motion which being heard & considered is over-

said" means that the motion was entered & overruled at the time when the Bill was filed, though that time was in vacation, & after the trial was over. We claim however that the order on page 12 of the record contains a clearly grammatical exception to the decision of the Court overruling the motion for a new trial. This order is a portion of the record & is enough without referring to the Bill of exceptions.

There are however in the bill of exceptions many questions grammatically sound which are sufficient for our purpose.

The plot or Map of the District No 5 found on p 19 was completely evidence in connection with proof of an acquiescence by the inhabitants & an use of the District as their de facto territory. The offered evidence & use by Lindy's children to school see p 25, was also completely & the grammar of the exception here is unexceptionable. Lindy Murray himself could not complain of it.

The only danger to be apprehended is that the word "sustains" will not be

crime by law a retrospective meaning
but that it by means of the present-
(or rather having been)
tense being, and it might under per-
son authority be held to mean that
the exception though made in apt time
was taken under advisement & decided
in vacation after the trial was over.

Sel and Blanchard

~~107~~ 35
School District
No 5 - 22

²³
School District
No 1 - 22

Concluding
Argument

Lib.

Be it remembered that, at a Circuit Court, begun and holden at the Court House in Oregon, in and for the County of Ogle and State of Illinois, on the third Monday of March A.D. 1861. to wit: - on Tuesday the nineteenth day of said March, then and there being present, the

Hon. John V. Eustace Judge of the 22nd
Judicial Circuit of said State

Frederick G. Petrie Clerk

John A. Hughes Sheriff and

David McCartney States Attorney

Attest F. G. Petrie, Clerk -

And that on the 15th day of March A.D. 1861
a Summons, Venire and Transcripts in the words and figures
following, were filed in said Court to wit:

State of Illinois }
Ogle County ss } The People of the State of Illinois, to any

Constable of said County: Greeting: -

You are hereby commanded to summon The School Directors
of District Number Five in Township Number 24, Range 10,
in the County of Ogle and State of Illinois, to appear before
me at my office in Oregon on the second day of February
1861, at 10 o'clock A.M. to answer the complaint of the School
Directors of District Number One in Township 24, Range 10,
in the County of Ogle & State of Illinois, for a failure to pay
them certain demand, not exceeding one hundred dollars: and
thereof, make due return as the Law directs. Given under
my hand and seal, this 26th day of January A.D. 1861 -

Jno M. Snowden J. P. ~~Ward~~

Endorsed as follows to wit: - Demand \$99.⁰⁰ Justice fees, 56 -

"Served the within by reading in the presence and hearing of the

Summons)

"within named Alva McMaster, Thomas Rutledge & John
"M. Siwell, this 26. day of January, 1861, being directors
"of the School district of ct^o 5. Town 24. Range 10. in county
"of Ogle & State of Ills" "Wm R. Buser Constable"
Filed March 15, 1861. F. G. Petrie Clerk By B. F. Sheets Dep

State of Illinois

(Verine)

County } The People of the State of Illinois, to
any Constable of said County - Greeting:-
We command you to summon six lawful men of your
County to appear before me at my office in Oregon on the
2^d day of February 1861, at one o'clock P. M. who are not
of kin to the School Directors of District ct^o 1. in Township 24.
Range 10. in the county of Ogle, Illinois, Plaintiffs, or to the
School Directors of District ct^o Five in Township 24, Range
10. in the county of Ogle, State of Illinois are defendants, to
make Jury between said parties, in a plea of money had and
received because as well the said Plaintiff as the Defendant
have put themselves upon the country for trial: and have you
then and there the names of the jury and this writ: Given
under my hand and seal, at my office in Oregon in said
County, this 2^d day of February A.D. 1861-

Jno Mc. Snowden J. P. L. & C.

Endorsed as follows to wit:- "Charles R. Potter, John Etnyre, E. J.
Reiman, Daniel Stout, Wm Waterman, Jonathan W. Jenkins
served the within by reading in the presence and hearing of the
above named Jurors this 2 day of Feb. 1861. Serv. 50-

Wm R. Buser Constable -

Filed March 15, 1861. F. G. Petrie Clerk. By B. F. Sheets dep

(Transcript)

The School Directors of District ct^o 1. in } Before John Mc. Snowden
Township ct^o 24. Rang 10. in the county } Justice of the Peace
of Ogle and State of Illinois } Demand \$ 99. 00

vs
 The School Director of District No 5,
 Township No 24, Range 10, in the County
 of Ogle, State of Illinois

Mr. Sears Atty for Plff
 Mr. Chip Atty for Defts
 1861, Jan 26. Summons issued
 to Const Buser, returnable on
 the 2^d day of February 1861, at
 10 o'clock A. M. -

Same day issued Subpoena on part of plaintiff to Albert Woodcock
 Ellert K. Light, Mr Yontz, Hiram Reed and Subpoena duces tecum
 to Samuel Wagoner Esqr. And also issued Subpoenas on part of
 defendants to John James, William Artz, Hiram Reed, Tyler Patrick
 E. S. Longdon, Richard Westbrook - delivered Subpoenas to Const-
 ble Buser, for service - Same day Summons returned served by
 Const Buser -

1861, Feb 2. Subpoenas returned served by Const Buser on
 William Artz, Tyler Patrick, E. S. Longdon, Richard Westbrook
 Samuel Wagner. - Feb 2^d 1861 - Case called at 10 o'clock
 A. M. Both parties appear. Plaintiffs through their attorney ask
 for jury trial - Venire issued to Const Buser, and Court
 adjourned until 1 o'clock P. M. to meet at the office of
 Joseph Sears, Esqr.

At 1 o'clock P. M. Venire returned, served on C. R.
 Potter, John Etnyre, E. S. Longdon, E. J. Reiman, Daniel Stout, William
 Waterman and Jonathan W. Jenkins
 Charles R. Potter, John Etnyre, Ernest J. Reiman, William W.
 Watterman, Daniel Stout and Jonathan W. Jenkins, were sworn
 as Jurors to try the cause - Plaintiffs declare for monies had
 and received - Defendants plead the general issue -
 Ellert K. Light, and Samuel Wagoner were sworn as Witnesses
 in the case, and examined in part. Court adjourned until
 7 o'clock P. M. - at 7 o'clock P. M. Court met and the
 examination of Mr Wagner was resumed, as well also as
 that of Mr Light - Court adjourned until 10 o'clock A. M. Feb 4th
 1861

Justices fees.
 Docketing 12 1/2
 Summons 25
 2 Subpoenas 37 1/2
 Venire 25
 Serving Jurors 80
 2 Subpoenas 37 1/2
 Transcripts 25
 2 days trial 4.00
 \$6.42 1/2
 Const Fees
 Serving Jurors .50
 Subpoenas 1.40
 do + do .53
 do do 2.03
 Venire .50
 Attend Jury 1.00
 \$5.96

4

Witness Fees
 A. W. Wadsworth 2 days \$11.00
 H. Reed do 1.00
 D. T. Greene 1.00
 E. K. Light 1.00
 Mr Yontz 1.00
 S. Wagoner 1.00
 \$6.00

Feb 4th 1861. Court met at 10 o'clock A. M. Jury called and all present. The examination of Mr Wagoner was resumed Daniel T. Green. Wm Artz. Mr Yontz and Hiram Reed were also sworn as witnesses and testified in the case. -

After the close of the testimony, and argument by the attorneys the Jury retired in custody of Const. Buser and Court adjourned

1861. Feb 5. at 8 o'clock A. M. the Jury come into court and declared their inability to agree, and that there was no possibility of an agreement, whereupon they were discharged by the Court. - By consent of parties case continued until Monday, Feb 11. 1861. at 10 o'clock A. M. -

1861. Feb 11. Parties met at 11 o'clock A. M. and case continued by consent until Monday the 25th day of February 1861. at 10 o'clock A. M. Mr Sears appearing on part of Plffs and Mr Rutledge and Mr Sewell on part of defts -

1861. Feb 22. Subpoena issued to Hiram Reed, Albert Woodcock Henry Wagoner, Elbert K. Light, Addison Yontz, Samuel Wagoner and delivered same to F. P. McCamly for service

1861. Feb 23. Issued Subpoena to John James, William Artz John A. Wagoner, J. Tyler Patrick, Richard Westbrook, and delivered same to John Sewell for service -

1861. Feb 25. Change of venue taken to J. S. Woolly Esqr -

I certify the foregoing to be a true transcript from my docket

Jno M. Snowden B

Oregon Ogle Co. Ills. Feb 28th 1861 -

Justice of the Peace

Endorsed to wit: - Filed March 15. A. D. 1861. F. G. Petrie Clerk By B. F. Sheets depts

Transcripts

3 5

The School Directors of District
No 1 in Township No 24, Range 10, in
the County of Ogle & State of Illinois

vs

The School Directors of District No 5.
Township No 24, Range 10, in the County
of Ogle & State of Illinois

} February 25, 1861.
} Both parties come into Court
} by agreement, and they being
} ready for trial, and not
} wishing a jury, and the
} Court having heard the
} evidence in the cause.

Debt \$47.29

find - for the plaintiffs - judgment is therefor rendered against
defendants for the sum of forty seven & 29/100 dollars debt and
costs taxed at the sum of twenty three & 63/100 dollars

I.S. Woolly fee

2 days 200 - \$4.00

J. M. Snowden ^{Justice} \$6.42

Wm R. Bussers fee \$2.

Dulife 1.25

Am't from Snowden docket \$5.96
7.21

Witness fee from Snowden docket

J. W. Underwood 1.00

H. Read 1.00

D. J. Greene 1.00

E. K. Light 1.00

Wm Arty 1.00

S. Wagoner 1.00
61.00

March 9, 1861. Bond filed and an appeal taken to the
Circuit Court

The Bond, entering appeal & Transcript paid for
by defendants \$1.00 -

State of Illinois
Ogle County

} ss I do hereby certify that the above
is a true Transcript from my docket

in the above entitled cause

Oregon March 15, 1861 -

Isaac S. Woolly J.P. 3

Endorsed to wit: Filed March 15, 1861, F. G. Petrie Clerk By B. F. Sheets dekt

And afterwards to wit: - on the 20th day of April A.D.
1861. the following Appeal Bond was filed in said Court to wit:

(Appeal Bond)

Know all men by these presents. That we John M. Sewell
Alva McMaster and Thomas Rutledge School Directors of School
District No (5) Five in Township No Twenty four, Range No Ten
(10) County of Ogle and State of Illinois as principal and

6
Henry A. Mix as security of the County of Ogle, and State of Illinois, are held and firmly bound unto Benjamin Boyce William Boyce and Francis P. McCamly, School Directors of School District No one in Township No Twenty four Range ten County of Ogle and State of Illinois, also of the same County and State, in the penal sum of One hundred & forty one & $\frac{84}{100}$ dollars dollars, current money of the United States, for the payment of which, well and truly to be made, we bind ourselves our heirs, executors and administrators jointly, severally and firmly by these presents. Witness our hands and seals, this Fourth day of March A.D. 1861—

The Condition of the above Obligation is such That whereas the said Benjamin Boyce, William Boyce and Francis P. McCamly, School Directors of School District No one aforesaid did, on the twenty fifth day of February A.D. 1861, before Isaac S. Woolly Esq. a Justice of the Peace in and for the County aforesaid, recover a Judgment against the above bounden John M. Sewell, Alva McCaster & Thomas Rutledge School Directors of School District No Five as aforesaid for the sum of Forty seven ($\$47$) $\frac{29}{100}$ dollars debt and twenty three $\frac{63}{100}$ dollars costs; from which said Judgment of the said Justice, the said John M. Sewell, Alva McCaster, Thomas Rutledge, School Directors as aforesaid, has taken an appeal to the Circuit Court of the said County and State, Now if the said John M. Sewell, Alva McCaster & Thomas Rutledge School Directors as aforesaid, shall prosecute their said Appeal with effect and shall pay the said debt and costs, in the case the said Judgment shall be affirmed on the trial of the said Appeal in the said Circuit Court, then the above obligation to be void otherwise to remain in full force and virtue.

Taken and entered into before me J. M. Sewell 3 Directors of School District at my office this 9th of March Thomas Rutledge (Seal) District No 5, T. 24, R. 10, A.D. 1861. Isaac S. Woolly J.P. Alva McCaster (Seal) Ogle Co. Illinois H. A. Mix (Seal)

7

Endorsed to wit: - Filed April 20, A.D. 1861, F. G. Petrie Clerk By B. F. Sheets Dept

And afterwards to wit: - on said 20th day of April A.D. 1861, a summons was issued out of said Court, in the words of figures following to wit: -

State of Illinois

Ogle County, ss ³ The People of the State of Illinois, to the Sheriff of said County, Greeting: -

We Command you, the

you summon Benjamin Boyce, William Boyce and Francis P. McLeamy, School Directors of School District No Five in Township No Twenty four, Range No Ten, County and State aforesaid if they shall be found in your county, personally to be and appear before the Circuit Court of said Ogle County, on the first day of the next term thereof, to - begin and holden at the Court house, in Oregon in said Ogle County, on the second Monday of June next, to answer an appeal taken by John M. Sewell, Alva McEaster and Thomas Rutledge, School Directors of School District No one T 24, R. 10, as aforesaid, from a Judgment rendered by Isaac S. Woolly a Justice of the Peace of said County, on the 25th day of February A.D. 1861, against the said John M. Sewell, Alva McEaster and Thomas Rutledge, School Directors as aforesaid, and in favor of the said Benjamin Boyce, William Boyce and Francis P. McLeamy, School Directors as aforesaid and have you then and there this writ. -

Witness, Frederick G. Petrie, Clerk of our said Court and the Seal thereof, at his office, in Oregon, in said County of Ogle, this 20th day of April A.D. 1861 -

F. G. Petrie Clerk

By B. F. Sheets Dept

Endorsed to wit: - State of Illinois

Ogle County, ss ³ I duly served the within writ on

Seal

4
the within named William Boyce and Francis P. McKeamy
as I am therein commanded, by reading the same in their
presence and hearing, this 8th day of May A.D. 1861 -

John A. Hughes Sheriff by J. A. Hughes Jr. Deputy
I duly served the within writ on the within named Benjamin Boyce
as I am therein commanded by reading the same in his presence and
hearing this 31st day of May A.D. 1861 -

John A. Hughes Sheriff. By J. A. Hughes Jr. Deputy
Filed June 10th 1861. F. G. Petrie Clerk -

And afterwards to wit: - At a Circuit Court begun
and holden at the Court House in Oregon, in said County
and State, on the first Monday of November A.D. 1861 -
to wit: - on Tuesday the 5th day of said November A.D. 1861,
then and there being present the

Honorable William W. Heaton, Judge 22^d Jud. Cir.

Frederick G. Petrie Clerk

John A. Hughes Sheriff 2^d

David McKeamy State Attorney

Attest F. G. Petrie Clerk -

And afterwards to wit: - on Saturday November 9th A.D.
1861, the same being as yet of said November Term A.D. 1861,
of said Court the following proceedings among others were had
and entered of record to wit: -

234 - School Directors of District No. 1. of }
Township No. 24. N. Range No. 10. E. } Appeal -

vs } And now on this
School Directors of District No. 5. of } day, come, the said Plaintiffs
Township No. 24. N. Range No. 10. (apt) } by Sears their Attorney, and
the said defendants come by
their Attorney, and now by agreement of parties, it is ordered

that this cause be continued —

And afterwards to wit: — on Tuesday March 18th A.D. 1862. the same being one of the days of the March Term. A.D. 1862. of said Court. the following proceedings were had and entered of record to wit: —

School Directors District No. 1. of
Town 24. Range 10. Ogle Co. Ills

} Appeal

School Directors District No. 5. of Town 24. Range 10. Ogle Co. Ills. (apts)

} This day comes the
said plaintiffs by Sears
his attorney. and enter their
motion to dismiss the appeal

herein for want of bond. and thereupon come the said defendants
by their attorney. and enter their cross motion. for leave to
file amended bond. whereupon after due consideration by the Court
it is ordered that said cross motion be sustained. and that plaintiffs
file amended Bond by Thursday morning next —

And afterwards to wit: — on the 19th day of March A.D. 1862.
an Amended Bond. was filed in said Court in the words and figures
following to wit: —

(Amended Bond)

Know all Men by these presents: That ~~the~~ School Directors
of District Number Five. Township Twenty four. Range Ten. County
of Ogle and State of Illinois. as principal & Henry A. Mix as
Surety are held and firmly bound unto School Directors of
District Number One Township Twenty four. Range Ten. County of
Ogle and State of Illinois & to their successors in office in
the penal sum of One hundred & forty one & ⁸⁴/₁₀₀ dollars. lawful
money of the United States. for the payment of which said
sum. well and truly to be made. we bind ourselves & our suc-
cessors in office. by these presents — Witness our hands

and Seals, this Eighteenth day of March A.D. 1862 -

The condition of the above Obligation is such, That whereas the said School Directors of District Number One Township Twenty four, Range Ten, County of Ogle and State of Illinois, did, on the 25th day of February A.D. 1861, before Isaac S. Woolly a Justice of the peace, in and for the County of Ogle, recover a judgment against the above bounden School Directors of District Five, Township Twenty four, Range Ten, County of Ogle and State of Illinois - for the sum of Forty seven & $\frac{29}{100}$ dollars Debt, and Twenty three & $\frac{63}{100}$ dollars costs: from which said judgment of the said Justice, the said School Directors of District Number Five Township Twenty four Range Ten, County of Ogle and State of Illinois have taken an appeal to the Circuit Court of the said County of Ogle and State of Illinois - Now if the said School Directors of District Number Five, Township Twenty four, Range Ten, County of Ogle and State of Illinois shall prosecute their appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void, otherwise to remain in full force and effect - In Testimony whereof said School Directors in their corporate capacity have set their hand & affixed their Seal -

Approved by me, at my office, this 19th day of March A.D. 1862

F. G. Petrie Clerk } School Directors of District
By B. F. Sheets Deft } Number Five, Township Twenty
four Range Ten, County of Ogle
State of Illinois -

By John M. Sewell Clerk
Henry A. Mix Seal

Endorsed to wit: - Filed this 19th day of March A.D. 1862
F. G. Petrie Clerk

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And afterwards to wit: on Wednesday June 11th A.D. 1862. the same being one of the days of the June Term A.D. 1862. of said Court. the following proceedings were had and entered of record to wit: -

2178 School Directors District Ct^o 1. Township 2
Ct^o 24. of Range Ct^o 10. Ogle County. Illinois } Appeal
vs } And now on
School Directors District Ct^o 5. of Township - this day come the said
Ct^o 24. of Range Ct^o 10. Ogle County. Illinois - } plaintiffs by Sears and
Dutcher their attorneys
and move the Court. for an attachment for E. K. Light a
witness on the part of the said plaintiff, who had been duly
served with process: it is therefore ordered that a writ of attachment
for contempt. issue for said witness -

And afterwards to wit: on Thursday June 12th A.D. 1862
the same being as yet of said June Term A.D. 1862. of said
Court. the following proceedings were had and entered of
record to wit: -

2187 School Directors of District Ct^o 1. Township 2
Ct^o 24. Range Ct^o 10. Ogle County Illinois } Appeal
vs } And now on this
School Directors of District Ct^o 5. Township } day come. the said parties
Ct^o 24. Range Ct^o 10. Ogle County Illinois (apt) }
by their attorneys. and now to try the issue joined herein. come the
jurors of a jury good and lawful men to wit: - Charles F. Emerson
Nathaniel Swingley. Luther Odell. Nathaniel W. Beebe. William
Richardson. Samuel Mitchell. Henry Bly. John Curtis. E. J.
Bordel. John Walrath. James D. Hays & Daniel Moore. who

being duly elected, tried and sworn, the trial proceeds, and after hearing the evidence in part, the hour of adjournment arrives

And afterwards to wit: - on Friday June 13th A.D. 1862, the same being as yet of said June Term A.D. 1862, of said Court, the following proceedings were had and entered of record to wit: -

2194	School Directors of District No. 1, Township No. 24	}	}
	Range No. 10, Ogle County Illinois		
	vs		} Appeal
	School Directors of District No. 5, Township No. 24,		
	Range No. 10, Ogle County, Illinois (Apts)		

And now on this day come again the said parties by their attorneys, and now come the said Jury herein, and the trial proceeds, and after hearing the evidence, and arguments of Counsel, and having received the instructions of the Court, the said Jury retire to consider their verdict and afterwards on this day come the said Jury and present their verdict to wit: - "We the Jurors find the due for the Plaintiff and aske the damages at Forty Seven dollars and twenty nine cents (47.29)" And thereupon the said defendants enter their motion in arrest of judgment, and for a new trial herein and the Court having heard the arguments of Counsel, and being fully advised in the premises, it is ordered that said motion in arrest and for a new trial be overruled, to which ruling of the Court, the said defendants then and there except and thereupon it is further ordered that the said plaintiffs have and recover of the said defendants the said sum of Forty Seven dollars and twenty nine cents their damages aske as aforesaid, together with their costs and charges in this

behalf expended, and that they have execution therefor -

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And afterwards to wit:- on Wednesday July 2^d A.D. 1862. the same being as yet of said June Term A.D. 1862. of said Court. the following proceedings were had and entered of record to wit: -

229 School Directors District No 1. Township 24 }
Range 10. Ogle County Illinois } Appeal

vs
School Directors District No 5. Township No 24 }
Range 10. Ogle County. Illinois (Apts) } And now on this day
come again the said Plaintiff.

by Sears & Dutcher their attorneys and said defendants come by Miss
& Eustace their attorneys. and thereupon the said defendants pray
an appeal of this cause to the Supreme Court of this State.
which is allowed upon the defendants filing Bond with either John
M. Sewell, Alvah McMaster or Thomas Rutledge as security in
the penal sum of Two hundred dollars, within Sixty days
from this date -

And afterwards to wit: on said 2^d day of July A.D. 1862. the Bill of exceptions in the words and figures following. was
filed in said Court to wit: -

State of Illinois } In Ogle County Circuit Court
County of Ogle } of the June Term A.D. 1862.

(Bill of Exceptions)

School Directors of District No 1. T. 24. R. 10. }
County of Ogle and State of Illinois }

vs
School Directors of District No 5. T. 24. R. 10. }
County of Ogle and State of Illinois }

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Be it remembered, that on the trial of the above entitled cause, the Plaintiff, to maintain the issue on its side, introduced as a Witness Hiram Read, who being duly qualified and sworn, testified as follows: -

I am Township Treasurer of Town 24, Range 10, in this County - These four Books, are the Records of my Office - There was an order made on the 7th of April 1856, districting Township 24, Range 10, into School Districts this was at a regular semi annual meeting, A. C. Richardson E. J. Waite and Mr Boyce, were Trustees, Waite acted as clerk and Richardson was President - they have had School Directors and School, in District No. 1, since 1856.

The Plaintiff thereupon offered in evidence, the following orders found, upon the Records of the Trustees of Schools of said Township, which order is in the words & figures following - which was admitted and read in evidence

"A"
At a meeting of the Board of Trustees for Township 24, Range Ten, East of 4th P. M., County of Ogle and State of Illinois, the following were the lines of Districts agreed to for said Township -

District No. 1, shall commence, on the South line of the Township, on the center of Section 35, running North through centre of Section 35, 26, 23, 14, to centre of 14, on the North, thence West on North line of sec 14 & 15, to Rock River, thence following the meanderings of the River to the South line, of Town, thence East to the place of beginning

District No. 2, shall commence at the S. West corner of the Town, thence North, on West line of town to N. West corner of Sec 30, thence East on North line, of 30 & 29, to N. E. corner of S. 29, thence South on the line between Sec 28 & 29, to the S. E. corner of S. 29, thence East on the S. line of 28, to R. River, thence following the River to the

14 South line of the Town, thence West to the place of beginning -

Dist ct³. shall commence at S. W. corner

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Sec 19. thence North on the West line of the Town, to the North W. corner of Sec 7. thence East on the North line of Sec 7, & 8, to the N. E. corner of Sec 8. thence South on the East line of Sec 8, & 17, to the S. E. corner of 17. thence West, to the corner of Sec 20. on the North, thence South, through the centre of Sec 20. to the centre of Sec 20. on the South, thence West to the place of beginning

Dist, ct⁴, shall commence at the S. W. corner of Sec 9. thence North on the West line of Sec 9, & 4, to the North line of the Town. thence East on the North line of the Town, to Rock River, thence following meanderings of the River, to North line of Sec 15. thence West to the place of beginning -

District ct⁵, shall commence, at the South East corner of the Town - thence North on the East side of the Town to the N. E. corner Sec 24. thence West to the centre of Sec 23. on the North, thence South through the centre of Sec 23, 26, & 35, to the South line of the town thence East, to the place of beginning

Dist ct⁶, shall commence at the N. E. corner of the Town thence South on the East line of the Town to the S. E. corner Sec 13. thence West, to the centre Sec 14. on the South, thence North, through the centre of Sec 14. on the North, thence West on the North line, of Sec 14 & 15, to the River, thence following the meanderings of the River to the North line of the Town, thence East to the place of beginning -

Fractional District ct⁷, shall commence at the N. W. corner of the Town, thence East on the North line of the Town, to the N. E. corner of Sec 5. thence South to the S. E. corner of Sec 5, thence West on the South line of Sec 5, & 6,

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to the West line of the Town, thence north to the place of beginning -

District No 8. shall commence at N.W. corner of Sec 16. running South to the S.W. corner of Sec 16, thence West to the centre of Sec 20, on the north - thence South through the centre of Sec 20, on the south - thence East to the N.E. corner of Sec 29, thence South to S.E. corner of Sec 29, thence East to R. River - thence north following the meanderings of the River, to the north line of Sec 15, thence West to the place of beginning

A. C. Richardson Prest

E. J. Waite Clerk -

The order, on said Record Book next preceding the last order was in the words and figures following -

At a Meeting of the Trustees held April 7. 1856 at the House of E. J. Waite in Town (24) Range 10 East of 4th P.M. in County of Ogle & State of Illinois, the Board proceeded to ascertain the amt of money in hands of Treasurer for distribution, which amt was \$428.12, subject to distribution

District No 1.	Received	\$58.00
" " 2	"	60.00
" " 3	"	88.00
" " 4	"	54.00
Scholars sent from Dist No 1. to Town of Marion		4.71
		<u>264.71</u>
		95.45
		<u>360.16</u>

A. C. Richardson Prest

Elveston J. Waite Clerk 3 Board of Education

The amount of principal embracing notes & mortgages on hand at the above date was \$1481.95 & Cash on hand \$158.12 making a sum total of \$1640.07

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17 And further the Plaintiff introduced Daniel J. Greene as a Witness who being sworn, testified, that he had heard the Record read. I have lived in District Number 1, five or six years, they have always elected Directors, every year, with boundaries according to the record

Albert Woodcock being qualified and sworn in behalf of the Plaintiff, testified as follows:-

I am County Clerk of Ogle County Illinois. I find in my Office a Certificate of Levy of School Tax in District No 1. Town 24. Range 10, for the year 1859- thereupon said Witness produced said Certificate, which was read to the Jury, and is in the words and figures following to-wit:-

We hereby certify that we require the rate of two per cent to be levied for the purpose of building a School House on all the taxable property of our district, for the year 1859.

Given under our hands this 9th day of September 1859.

F. P. McCamly } Directors District No One Townships
William Boyce } No 24. Range No ten. County of
Benjamin Boyce } Ogle and State of Illinois

List of Tax Payers

William Wertz	W. J. Crowell
Daniel J. Green	Richard Westbrook
James McKames	Lewis Westbrook
F. P. McCamly	J. S. Patric
Benjamin Boyce	Samuel James
Matilda Fuller	David Smith
Ezekiel S. Longdon	William Boyce
Syman Salisbury	William H. Hornell
	James Wilbur

Rockvale Sept 9th / 59- Endorsed to-wit: 1-24-10.

\$2.00 on each \$100. Filed Sept 10. 1859. Albert K. Light clerk

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Said Woodcock, further testified, that he had in his possession the Collectors Book of Town 24, Range 10, in said County for 1859, which was produced -

Elbert K. Light, being produced and qualified testified, that he was Clerk of said County in 1859, there was a Tax levied in District Ct² 1, of that year, it was at the rate of Two dollars on the hundred dollars, & was levied in accordance with a plat in my office made of said district in 1856, in accordance with order in record offered in evidence, there was a certificate filed by the Directors of District Ct² 5, levying a Tax of Two dollars and a half, on the hundred dollars, the Taxes in District Ct² 1, amounted to Two hundred and thirty dollars and $98\frac{1}{100}$ for that year, the amount of Taxes in District Ct² 5, was Three hundred and Eighteen dollars and seven cents, thereupon Plaintiff offered Collectors Book in evidence -

On Cross examination the Witness testified - that he first extended the Tax, on the East half of the N.W. Quarter and the S.W. quarter of Section 26, and the W. half of section 35, and the E $\frac{1}{2}$ of E $\frac{1}{2}$ of Section 34, and the E $\frac{1}{2}$ of S E $\frac{1}{4}$ of Section 27, of said town according to a plat, then on file in his office, and at the rate of $2\frac{1}{2}$ per cent. on the dollar, in accordance with the certificate -

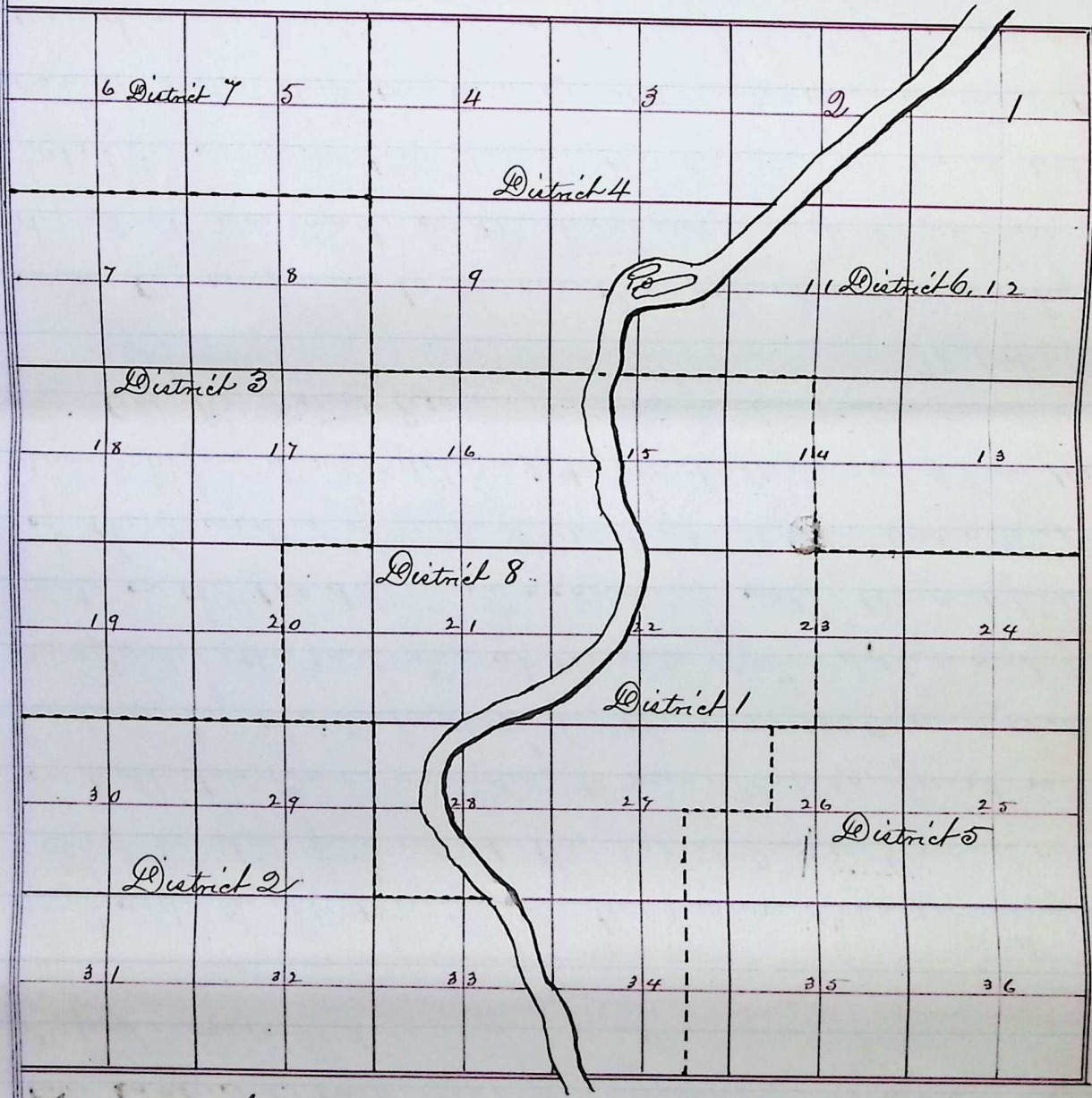
Here the Defence presented a Plat, which they offered in evidence, which was objected to, on the ground that it was not certified to by the President and Clerk of the Board thereupon the defence called one William Arty, who testified,

That he was Trustee of Schools for said Town in 1859, and that he was President of the Board, during said year, John A. Wagoner was the clerk, and that John James was also a Trustee during said year, and that the signatures

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of the said Acty and the signature of the said James appended to the certificate on the back of the plat. are genuine, which plat and Certificate, are in the words and figures following to wit:—

Diagram of Rockvale Township No 24. North of Range No 10—



State of Illinois }
Ogle County ss } We the undersigned Trustees of Town 24. Range
10. do hereby certify this Diagram of District. to be correct
to the best of our knowledge and belief
24-10—
Filed Oct 3. 1859. E. K. Light Clerk— John James
William Acty

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Albert Woodcock being recalled, stated that said Plat was a part of the files of his office -

And thereupon the Defendant offered said Plat Certificate and filing on the back in evidence - to which the Plaintiff excepted, and the Court sustained the exception, and ~~the~~ excluded said Plat from evidence - to which the Defendant excepted

Said Light then further testified, on Cross examination That he did first extend the School Tax in District Ct⁵, on Collectors Book, according to said Plat, so offered in evidence by the Defendants, for the year 1859, and that he so extended the said Tax at the rate of Two dollars and fifty cents on the 100 dollars, in accordance with the certificate of the Directors of said District Ct⁵, but altered the same before it was delivered to the collector at \$2 on 100\$ -

On Re Direct Examination he further stated

That the Plat in his Office, previous to the one then offered in evidence by the defendant, was made on the back of a School Teacher's Schedule, we had the Plat at the trial in the Court below cannot state, that there was a certificate upon it. This Plat was drawn in accordance with the bounds of District Ct⁵, as first established 1856, there was no other Plat, in the office when I was Clerk, made upon a Teachers Schedule

Albert Woodcock recalled -

I was requested to search for the Plat in question, I looked among the files of my office, there were two packages of Township plats, I could not find it, I could not state that there were any certificates at all

upon it -

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Heriam Read, recalled -

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I made the Plat at the time of the division, on the back of a Teachers Schedule. I drew up the Plat. Mr Richardson was President of the Board. E. J. Waite was Clerk. my impressions are, that it was certified to by the President & Clerk. dont recollect the contents of the certificate

~~The~~ Samuel Wagner being produced and qualified on behalf of the Plaintiffs, testified as follows -

I was Township Treasurer of Rockvale in 1859. I had the money in my hands for District No 1. for that year. these Books are my Records of moneys received and paid out, for that year. Plaintiff offered the Books of account of the Treasurer of District No 1 & District No 5. in evidence - the defendant objects, which objection being heard and considered by the Court, is overruled, to which the defendant excepts - The accounts were read in evidence, and were in the words and figures following to wit: -

Dr - Town Treas. In account with Town 24, Range 10 E, Ogle Co. Ill. First Dist						ler
When Received	Of whom received & on what account	No District	When paid out	To whom paid & on what account	No District	
1860. March 9	Town Collector	127.64	1860 March 9	Order from Directors		\$62.71
April 2	Amount apportioned on Schedule	36.05	" " "	" " "		15.48
June 29	" Received from County Treasurer	65.68	" " 27	D. J. Greens " " "		49.45
			April 2	Wm York, Teacher on Schedule		25.00
			" "	Directors Balance " "		11.05
			June 29	Dist No 5. by order of Trustees		47.29
			July 7	Ambrose Morton, Mason Work on Sch House		18.39
		<u>1229.37</u>				<u>\$229.37</u>

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 P. Town Treas.

In Account with Town 24, Range 10 E. Ogle Co. Ill. Fifth Dist

When Received	Of whom received & on what account	cto	District Tax	When paid out	To whom paid & on what account	cto	District Tax
1860, March 9	Town collector		242.20	1860, April 2	Directors		242.20
" April 2	Amount apportioned on schedule		52.99	" " 2	John James Teach on schedule		53.00
" June 29	" Received from County Treasurer		66.20	July 7	" " " " "		81.00
" "	" From Dist ct 1, by order of Trustees		47.29	" "	J. M. Sewell, per order Directors		105.48
			\$408.68				\$408.68

I paid of moneys collected in district ct 1, to District ct 5.
 \$47.29. - The defendants object. objection overruled, to which
 Deft excepts - the money I received from the Town Collector
 and a part from the County Treasurer. I paid over this amount
 of money under an order of the Trustees -
 To which Deft objects on the
 ground that the order should be introduced

Thereupon the Plaintiff offered
 in evidence, so much of an order of the Board of Trustees of said
 Town as related to the payment of money & which order of the
 Board of Trustees of said Town, made at the session of said Board
 is in the words and figures following to wit: -

Ogle County Ills.

1860
 Saturday
 April 21st

Adjourned meeting of the Board of
 Trustees, at the House of Wm Arty
 Present Wm Arty President
 H. R. Waggoner

The boundary lines of Dist ct 5, coming up for consideration
 and it appearing that the boundaries of said District were
 established at an adjourned meeting of said Board, holden
 at the School House in District ct 8, on the 4th day of
 June 1859, and by an order of the Board made at said
 meeting, said District was established, and embraces the

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following Territory to wit: - Sections 24, 25, 35, and 36, and $E\frac{1}{2}$ of Sec 23, and all of Section 26, except the $W\frac{1}{2}$ of $SW\frac{1}{4}$ of said Section - the $E\frac{1}{2}$ of $SE\frac{1}{4}$ of Sec 27, the $E\frac{1}{2}$ of the $E\frac{1}{2}$ of Sec 34, all in Township 24, Range 10, E. and it appearing by petition and remonstrance, that all the voters and tax payers of said District ct^5 , were anxious and desirous to have said Dist ct^5 remain as constituted by said Board, at said June Session 1859. It is therefore considered that said District was correctly and legally established at the meeting of said Board, at said June Session 1859, and it is further ordered, that the Treasurer of said Township be required to pay over to the Directors of said District all the District Tax collected, from the following persons, & Tracts of land, for school purposes, within said Dist ct^5 , for the year 1859 -

W. J. Crowell	} following tracts to wit: -		
E. S. Congden		$E\frac{1}{2}$ $SW\frac{1}{4}$ Sec 26 -	80
Samuel James		$SW\frac{1}{4}$ " 26.	160
J. J. Patrick		$E\frac{1}{2}$ $SE\frac{1}{4}$ " 27.	80
Richard Westbrook		$W\frac{1}{2}$ " 35.	320
Levi Westbrook		$E\frac{1}{2}$ of $E\frac{1}{2}$ " 34	160
			800

All of said persons, being residents therein and all of said Tracts of land situate thereon, which said Treasurer will pay over to the Directors as soon as the same shall come to his hands. In reference to the foregoing boundary question the following persons were sworn, J. J. Patrick said he lived in Dist ct^5 , as he supposed, went to attend a meeting in Dist ct^1 , which was called for the purpose of locating the site of a School House in said Dist 1, said he understood Mr Green, that he had no right to vote. - David Smith sworn, said he supposed he lived in Dist ct^5 , he attended a meeting for the location

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of a School House in Dist No 1. when he went there, saw Mr Green writing and distributing tickets, Mr Green told me he supposed I had no right to vote, did not offer me a ticket ~ The Board further went into examination of the Books of former Treasurer, and finding them to be correct, the same were accepted, Board then adjourned to meet at next regular Session

William Arty Pres

Samuel Waggoner Clerk

The defendants claiming the right to have all of said order in evidence the whole order was read

The Plaintiff having closed their evidence, the defendant introduced John M. Sewell, who being qualified, testified as follows -

I am a Resident of District No 5. I have resided there, since March 1857. there has been a school taught in the District, since the Spring of 1857. the District was organized when I went there. A new School house built in District in 1859. commenced School in new house in 1859. it might be in 1858. that the School house was built -

John James - being produced and qualified on behalf of the defendant, deposed as follows -

I reside in Rockvale. I held a School office in that Town. I was Trustee of Schools for two years. I served in 1858, & 9, in that capacity, our Board held a Session at the regular time, in April 1859. after the regular meeting, we held two adjourned meetings - at the regular April meeting in 1859. a petition was presented on application to set off a part of District No 1. to District No 5. Arty was Chairman of the Board of Trustees, at that time. I have

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taught school in District Number 5. I taught there in the
Winters of 1859. & 1860 and 1860 & 1861 -

Said Witness was then asked where
the Pupils, residing on the East half of the NW¹/₄ and the
SW¹/₄ of Section 26. and the W¹/₂ of Section 35, and the
E¹/₂ of E¹/₂ of Sec 34, and E¹/₂ of SE¹/₄ of Section 27, attended
School during the time he taught in said District! -

To the answering of which the
Plaintiff excepted - which exception the Court sustains, to which
ruling, the defendants then and there excepted -

The defendant then proposed to prove
by said James and William Artz another trustee that at the
Regular Session of the Board of Trustees of said Town, holden
at the regular April Term 1859, an application was made by
the Citizens of District No 5, to annex to said District the
E¹/₂ of E¹/₂ of Section 34, the E¹/₂ of SE¹/₄ of Section 27, the
West ¹/₂ of Section 35, the SW¹/₄ and E¹/₂ of NW¹/₄ of Section 27
to said District No 5, and to take the same from District No 1,
of said Town, which application was resisted, by the Citizens
of District No 1, that said matter was considered upon
in part at said April meeting, that an adjourned meeting
was then agreed upon, which was to take place on the 21st
of the said April at the same place, which was in the School
House in District No 8 in said Town, in the interval it was
the arrangement between the said Trustees, that they would
visit the said Territory, and inspect it, that they might
learn more definitely the propriety of dividing said District
One of said Trustees being sick, they were unable to visit
said premises, before the 21st day of April, that they again
convened on the said 21st day of April in pursuance of the
said adjournment, at the said School House in District
No 8, that they then agreed upon a meeting to be holden
on the 19th of May at the Boyce School House in said

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District Ct¹. for the purpose of finally disposing of the question of the division of said School District, and further, that in pursuance of said adjourned meeting, the said Trustees, did meet at the said Boyce School house in the forenoon of the said 19th day of May A.D. 1859, and that most of the citizens of both said Districts were then, that the matter was discussed in the forenoon, and that, during the afternoon, they went upon the premises, desired to be attached to District Ct⁵ and again returned, to said Boyce School House, and after duly considering the matter they agreed to annex said Territory to District Ct⁵, and make known the determination at said meeting, it being late before the business was closed they adjourned said meeting to meet in the School house in District Ct⁸, to the 4th of June 1859, and that, said meeting was duly holden on said 4th day of June 1859, in accordance with said adjournment. - To the introduction of which the Plaintiff, then and there excepted, which being heard and considered by the Court was sustained - to which ruling the defendant then and there excepted -

Whereupon the defendant offered in evidence the following orders, found upon the Records of the said Board of Trustees -

" April 4th 1859 - The Trustees met at the School House in Dis 8. Town 24. Range 10. and proceeded to business in the first place the public funds were not ready for distribution
" In the second place a petition was presented for the attention of District 5, for enlarging it, and a remonstrance accompanying it

" April 21st - The Trustees met on this day, the funds not being in the hands of Treasurer, they adjourned
" June 4th 1859 - The Trustees met again, at the

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"School House in Dis 8. and proceeded to business, the
"amount of Town & State funds to be \$478.37cts for
"distribution, allowing the Treasurer his per centage, leaves
"\$468.81 cts for distribution - in the first - one half the
"amount of funds, is \$234.40 cts - the census of the Town is
"393 under twenty one and this amt. is divided between the
"districts, entitled to the same -

" Dis 2nd The number of days on Schedule amounts to
"9313, and the amount of money to be divided on Schedule
"\$234.40 cts -

"The Schedule of Dis. Six was rejected on the ground
"of not keeping up a school in previous year six months -

" On motion Dis 5. an alteration was made, commencing
"on the South line in the middle of Section 23, running West
"80 rods thence South, between the line of Eightys, half mile
"South, thence West 160 rods, thence South to town line -
"thence East to middle of Sec 35 -

To the introduction of which orders so entered
upon the School Records of said town the plaintiff objected
on the ground that they were not signed, or at a regular
adjourned meeting, and the Court sustained the objection

Thereupon the defendant entered his motion for
leave to have the said Record amended, showing said
second meeting to be adjourned meeting, in accordance with
the facts and permitting the same to be signed by said
President and Clerk nunc pro tunc and to make said
records comport with and show fully all the proceedings
had in regard to the division of said District cts 5.

Which motion being heard and considered is over-
ruled, to which the defendant then and there excepts -

And thereupon the defendant moves to exclude
from evidence - the Jury the order heretofore read (marked

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"A") in evidence showing a division of said Town into districts, on the ground that said order did not seem to be made at ~~the~~ a regular session of said Board, which being heard & considered is overruled -

And thereupon the plaintiff asked the following instructions which was given -

"That if the Jury believe from the Evidence that the portion of the district ct^o one was not legally set off to Dist. ct^o 5. at the June Meeting 1859. by a good and sufficient order made by the Town Trustees of Schools of Town 24, Range 10. That no subsequent order of said Trustees recognizing said order, could make said portions of Dist ct^o one, a part of School Dist ct^o 5. But that the same would be and remain in Dist ct^o one so far as the question is before the Jury" -

And the Plaintiff further asked the following instructions which were refused to wit: -

Refused
The Court is asked to instruct the Jury on the part of the plaintiff - That if the Jury believe from the evidence that money belonging to District ct^o one has come into the hands of the Directors of District ct^o 5. as such Directors which in equity & good conscience they have not the right to retain the plaintiff may recover it in this form of action -

Refused
2^d That if the Jury believe from the evidence that the money in controversy was levied, collected & paid over to the Township Treasurer of Town 24, Range 10. East Ogl. co Ill. by the proper officers for the benefit of the Inhabitants of School District ct^o one, and that said Township Treasurer paid the same to the School Directors of Dist

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ct^o 5. and that said money was received by them as School Directors of such Dist was not a payment of debt to said District, they will find for the Plaintiffs -

Refused

4th That if the jury believe from the evidence that the School Directors of School Dist ct^o 5. rec^d from Wagner Township Treasurer \$47²⁹/₁₀₀ that was the property of Dist ct^o one the Plff is entitled to recover in this case to the amount proved in this case

Refused

5 That if the jury believe from the evidence that Dist ct^o one was properly & legally laid; that Dist ct^o one is entitled to recover. and have all moneys levied in such district for School purposes unless the defendants have proved that some portion of School District ct^o one had been legally set off into and became a part of School Dist ct^o 5 -

And the defendant asked the following instructions, which were given to wit: -

Given

The Deft asks the court to instruct the jury
1 That the Plaintiff cannot recover hereon against the defendant unless there is evidence in the case showing a debt legally contracted between District ct^o 5 and District ct^o 1. or that District ct^o 5. actually received & used for School purposes the money of District ct^o 1. which they equitably ought to repay

Given

2 That School Directors are only liable as a corporation for Teachers Wages, and for debts legally contracted, or monies wrongfully rec^d & used by the Corporation for School purposes

which they ought in equity to repay

3 That if a Township Treasurer pays funds belonging to one District over to another District, the Treasurer is liable to the District to which the money rightfully belonged

4 That if a Township Treasurer pays money belonging to one District to another District: by order of the Township Trustees: such payment does not authorize a recovery in a suit brought by the one District against the other —

5 That if the Jury believe from the evidence, that the Township Treasurer paid over the money in controversy to District No 5, by virtue of an order of said Trustees, appearing to have been regularly made the legality of said order cannot be contested in this action

6 That if the Treasurer paid over money to District No 5, which said District was not entitled to: such money can be recovered from District No 5, in an action brought by him —

7 That if the Treasurer paid over money to District No 5, which said District was not entitled to, such money can be recovered from District No 5, — only in an action brought by said Treasurer or by the Trustees: and in no other way

8 That if the Plffs have failed to show that the money in controversy was received by the Directors of No 5, as Directors for school purposes & actually so appropriated, the Plff cannot recover

9 That if the Plffs have failed to show that the money in controversy was received and used by the Directors of No 5 for school

purposes - the Plaintiff cannot recover -

31 10 That School Directors have no power given them by law to borrow money or to render their District liable to an action for money had and received in any other way than by the mode pointed out by law - That School Directors cannot make their district liable for moneys which they had no right to receive unless the Corporation actually received & used such money, and that if persons acting as School Directors receive money which by law they are not entitled to, they thereby incur a personal responsibility; and not a liability which the District can be bound to pay -

11 That this is an action against District No 5, as a Corporation and before the Jury can find a verdict against the defendants they must be satisfied from the evidence that a debt has been contracted by the Directors of a character which under the law such Directors had a right to contract, or that the Corporation as such actually received money that they ought in equity to refund -

12 That under the law incorporating School Directors, no authority is given to them to contract debts for money loaned

13 That the object contemplated by the law in requiring written instructions to be given to a Jury, is, to present the Jury the law applicable to the facts proved in the case - That the Court only gives such instructions as present the law! - and that the Jury in this case is bound to take the law as given in the instructions, and to find a verdict accordingly - That all instructions are to be taken and construed together; and that by a comparison and construction together of all the

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instructions, the law is to be gathered as given by the Court -
And that if there are apparent contradictions between instructions
such contradictions, if such instructions are properly given, are
only apparent: - and by a proper construction of all the in-
structions, will be found not to exist -

The Jury having returned a verdict for the Plaintiff for
the sum of \$47.29 -

The defendant enters its motion in arrest, and for a
new trial, which being heard & considered is overruled to
which the defendant excepts -

The foregoing is all the evidence offered by either
party in this cause -

W. W. Heaton, Judge -

Endorsed - Filed July 2, 1862. F. G. Petrie Clk

By M. L. Ettinger Deft

And Afterwards to wit: - on the 12th day of August A.D.,
1862, said defendant filed its Appeal Bond in said
Court, in the words and figures following to wit: -

Know all men by these presents, that we School Directors
of District Number ~~Five~~ Township Twenty four, Range ten, County
of Ogle and State of Illinois, as principal & John M. Sewell
as security are held and firmly bound unto School Director
of District Number One Township Twenty four Range ten,
County of Ogle and State of Illinois & to their successors
in Office in the penal sum of Two Hundred dollars lawful
money of the United States, for the payment of which sum

well and truly to be made we bind ourselves, our heirs, executors and administrators & successors in office, jointly, severally and firmly by these presents —

The Condition of the above obligation is such that whereas the said School Directors of District Number One, Township Twenty four, Range Ten, County of Ogle & State of Illinois, did on the second day of July A.D. 1862, in the Circuit Court of Ogle County, in the State of Illinois, recover in said Court a Judgment against the above bounden School Directors of District Number Five, Township Twenty four, Range Ten, for the sum of Forty Seven dollars and twenty nine cents & costs of suit, in a certain cause on the Common law side of said Court, from which Judgment of said Court the above bounden School Directors of District Number Five, aforesaid have prayed an Appeal to the Supreme Court of the State of Illinois — Now if the above bounden School Directors of District Number Five aforesaid, shall prosecute their appeal with effect and without delay and well and truly pay whatever judgments, costs, interest & damages as may be awarded against them in case said Judgment shall be affirmed then this obligation to be void, otherwise to remain in full force and effect — In Witness Whereof, the said School Directors in their Corporate Capacity have set their hand and Corporate Seal, & the said John M. Sewell has set his hand and affixed his Seal, this 12th day of August A.D. 1862 —

(Seal)

School Directors of District Number Five, Township Twenty four, Range Ten, County of Ogle and State of Illinois. By John M. Sewell Clerk
John M. Sewell (Seal)

approved and
Endorsed — Filed Aug 12, 1862. F. H. Petrie Clerk

By M. L. Ettinger Depy

State of Illinois }
22d Judicial Circuit }

Ogle County }

I, Frederick G. Petrie Clerk of the
Circuit Court, in and for said County
do certify that the above and foregoing is a full, true and
complete Transcript of the Record and files in my office
in said Cause wherein School Directors of Dist Ct 1-2, 24,
R. 10, are plffs and School Directors of Dist Ct 5, 24,
R. 10, are defendants - as the same appears by said
record -

Witness F. G. Petrie Clerk of said Court and the
Seal thereof, at Oregon in said County this
18th day of September A.D. 1862 -

F. G. Petrie Clerk

By M. L. Ettinger Depy



Supreme Court of Illinois
3rd Grand Division at Ottawa
April Term 1863

School Directors of District 2
to 5 Town 24 Range 10 in
Ogle County } Appellant

vs
School Directors of District 2
to 1 Town 24 Range 10 in
Ogle County } Appellee

And now comes the Appellant of Leland Blanchard
& H. A. Mix to attorney and says that in the foregoing
Records & proceedings there is manifest error and
says the Judgment of this court upon the same ~~that~~
~~and~~ that the Judgment rendered by the court below
may be reversed. ~~in this vs H. A. Mix and~~
~~Leland Blanchard attys~~

Errors assigned

- 1 The court admitted improper and excluded
proper testimony
- 2 The court erred by misdirecting the Jury
- 3 The court erred in overruling motion in
arrest of Judgment and for New Trial
- 4 The court erred in rendering Judgment for
appellee (Plaintiff below)
- 5 The Judgment is against law & evidence
H. A. Mix & Leland Blanchard
for Appellants

107-35

School Directors
of District No 5
Town 24 Range 10
File 60

03
School Directors
of District No 1
Town 24, Range 10
File 60

Filed April 8, 1863
L. Seland
Clerk