

MAINE STATE LEGISLATURE

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SEVENTY-SEVENTH LEGISLATURE

HOUSE

NO. 431

House of Representatives, Feb. 27, 1915.

*Reported by Mr. Woodman from Committee on Claims and
ordered printed under joint rules.*

C. C. HARVEY, Clerk.

STATE OF MAINE

RESOLVE, in favor of Samuel D. Erskine, Moses Erskine,
Wilber B. Tibbetts, Elmer H. Boynton and Delbert L.
Fowles.

Resolved, That there be and hereby is appropriated the
2 sum of two hundred and seventy dollars to be paid to Sam-
3 uel D. Erskine, Moses Erskine, Wilber B. Tibbetts, Elmer
4 H. Boynton and Delbert L. Fowles, it being the amount
5 they were obliged to pay as damages for building a road
6 in the town of Jefferson laid out by the county commission-
7 ers of the county of Lincoln, the road having been built
8 under the instructions and directions and according to the
9 plans and specifications of the county commissioners.

STATEMENT OF FACTS.

In 1909 the county commissioners of the county of Lincoln were called upon to lay out a road in the town of Jefferson to change the location of an existing highway. The commissioners having decided that common convenience and necessity required the change of location, proceeded to lay out such way.

On Sept. 22, 1909, a petition for a writ of certiorari was brought by owners of land against the county commissioners. The case was heard before a Justice of the Supreme Judicial Court at Wiscasset at the April term of court, 1910. The judgment of the court was as follows: "Writ denied, records adjudged good." The county commissioners after the above judgment was rendered notified the selectmen to build the road. Wilber B. Tibbetts and Elmer H. Boynton, two of the selectmen, advertised for bids for building the road and as a result of the bidding let the contract to Delbert L. Fowles. The contractor proceeded to build the road in accordance with the plans and specifications of the county commissioners. Samuel D. Erskine and Moses Erskine let their teams with a driver to the contractor to work on this road.

After the road was built the owners of the land brought a suit for trespass against the one county commissioner, two selectmen, the contractor and the men who let their team and man work on the road.

The land owners recovered a verdict of \$270 damages with costs. The case was carried to the law court. The decision is found in Vol. 109, Page 165. The court say that the judgment of the court in the certiorari proceedings "records adjudged good" was not warranted.

They found that the county commissioners were not liable for damages in the trespass suit but that the selectmen, contractor, and the men who let their team to the contractor, knowing that they were to work on this road were liable. The reasons for this are all stated in the case. The above parties paid the \$270.00 and paid costs amounting to \$297.49. They ask the state to reimburse them for the amount of the judgment, \$270.00.