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Court of Errors and Appeals.

FEBRUARY TERM, 1853.

EVELINA VANTILBURGH, plantiff in error, *vs.* CHARLES SHANN and RALPH VOORHEES, Justices of the Peace, and PETER VANDIKE and ANDREW T. VROOM, Surveyors, defendants.	*On writ of error to the Supreme Court.*

Certiorari in common form, directed to defendants, tested first Tuesday in November, A. D., 1851. Evelina Vantilburgh, Prosecutrix. Returnable to the 4th Tuesday of February, A. D., 1852.

COPY OF RETURN.

To the justices of the Supreme Court, in obedience to this writ, return of the determination, petition, order, and proceedings above specified, under the hands and seals of the said justices and surveyors named in the premises, is hereunto annexed. Witness our hands and seals, at request and on behalf of associates.

CHARLES SHANN. [L. S.] 10
PETER VAN DIKE. [L. S.]

February 23*d*, 1852.

To Charles Shann and Ralph Voorhees, Esquires, two of the Justices of the Peace, in and for the county of Somerset, and to Peter Vandike and Andrew T. Vroom, Esquires, Surveyors of the Highways of the township of Franklin, in said county of Somerset. Complaint having been made to one of the Overseers of the Highways of the township of Franklin, that the highway within my limit and division, leading from George Kay's to Lewis Heath's corner, in the village of Kingston, is not opened to its 20 full width, but that the same has been encroached upon; and it being doubtful to me, as such overseer, what person hath so narrowed and encroached upon such highway, I do hereby apply to you, the said Justices and Surveyors, to determine the same in writing, under your hands, according to law.

JOHN VANTILBURGH.

Dated, November 27, 1851.

Charles Shann, Ralph Voorhees, two of the Justices of the Peace of the county of Somerset, and Peter Vandike and Andrew T. Vroom, the Surveyors of the Highways of the township of 30 Franklin, in said county, being applied to by John Vantilburgh, overseer of the roads of said township, to determine in regard of certain encroachments upon the highway in said township, lead-

ing from George Kay's house, on Rocky Hill, to the house of Lewis Heath, in the village of Kingston, the said overseer being doubtful what person hath narrowed and encroached upon said highway; and notice being given to George Kay, Josiah M. Walker, Peleg H. Barker, Lewis Heath, Aaron Colby, James R. Cruser, Peter Vannole, William G. Baylies, and John G. Baylies, Executors of the late Robert Baylies, deceased, John Skillman, John Tucker, Evelina Vantilburgh, Elijah Stout, James Conover, Peter Vantilburgh, proprietors of the adjacent land, to appear before us, this day, at the place aforesaid, we proceeded to determine the same, and we, the subscribers, do determine, that Lewis Heath, Peter Vantilburgh, Evelina Vantilburgh, John Skillman, William G. Baylies, and John G. Baylies, Executors of the late Robert Baylies, dec'd., Peleg H. Barker, hath narrowed and encroached on said highway, and we have staked and marked the part so narrowed and encroached on, and do order the said overseer to open the same according to our determination. Witness our hands and seals, this ninth day of December, eighteen hundred and fifty-one.

CHARLES SHANN, *Justice of the Peace.* [L. S.]
RALPH VOORHEES, *Justice of the Peace.* [L. S.]
PETER VAN DIKE, *Surveyor of H. W.* [L. S.]
ANDREW T. VROOM, *Surveyor of H. W.* [L. S.]

NEW JERSEY SUPREME COURT.

EVELINA VANTILBURGH,
vs.
CHARLES SHANN,
RALPH VOORHEES, and others.

On certiorari removing proceedings touching a road in Franklin township, Somerset county.

And the said Evelina Vantilburgh prays that the determination, order and proceedings of the defendants, touching a highway leading from George Kay's house to the corner of Lewis Heath's, in the village of Kingston, may be reversed, and for nothing holden, for the following reasons:

1. That the Justices and Surveyors of the Highways exceeded the power and authority vested in them by law.

2. That their determination or judgment is void for uncertainty, it names neither the beginning nor end of the road, nor the course nor distance of said road.

3. That it does not appear that the said Surveyors of the Highways were sworn, as required by law.

JAS. S. GREEN,
Att'y of plaintiff in certiorari.

NEW JERSEY SUPREME COURT.

JUNE TERM, 1852, JUNE 17, 1852.

CHARLES SHANN, and others, *ads.* EVELINA VANTILBURGH. } *Certiorari in matter of road and determination of township officers, &c., upon encroachments.*

The Court having seen and inspected the road, and return of the proceedings of the officers of the township of Franklin, in the county of Somerset, in this case, and heard the evidence and arguments of the counsel of the respective parties, and maturely considered of the same; it is now therefore ordered and ad- 10 judged by the Court, that the said proceedings and determination of the several and respective officers in the premises below, be and remain in all things affirmed, with costs to be taxed, on motion of

SAM'L R. HAMILTON, *Attorney of defendant.*

WRIT OF ERROR TO COURT OF ERRORS.

Returnable to November Term, 1852.

Assignment of errors filed June 28, 1853.

1. General error, that judgment ought to have been given for Evelina Vantilburgh, plaintiff in certiorari instead of for defen- 20 dants.

2. That the state of demand and the matters therein contained, were not sufficient for the justices and overseers to maintain their action against said Evelina Vantilburgh.

WM. HALSTED,
Attorney of plaintiff in error.

Joinder in error.