

No. 14303

Supreme Court of Illinois

Murphy

vs.

City of Chicago

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 204

14303

~~Mey~~

Murphy
vs
City of Quincy

1002

Prepared

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

2
1861

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House in the City of Chicago, in said County and State, on the first Monday, being the Third day of March in the year of our Lord One Thousand Eight Hundred and Sixty Two and of the Independence of the United States of America the Eighty Seventh

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago.

Van H. Higgins
and Grant Gordon } Judges.

Charles Moran Prosecuting Attorney.

Anthony Hering Sheriff of Cook County.

Attest, Thomas J. Carter Clerk.

Page 1

Be it remembered that herebefore, to wit, on the Twenty fourth day of January in the Year of our Lord One Thousand Eight Hundred and Sixty Two, Harriet A. Murphy, by Scates McAllister & Gerritt her attorneys filed in the office of the Clerk of the Superior Court of Chicago her certain declaration in words and figures following to wit

Superior Court of Chicago.
Of the Term of January A.D. 1862.

State of Illinois }
County of Cook } ss.

Harriet A. Murphy the plaintiff in this suit by Scates McAllister and Jewett her attorneys complaining of the City of Chicago, the defendant in this suit (which has been duly summoned &c) of a plea of trespass on the case.

For that whereas heretofore to wit on the 6th day of May A.D. 1856 to wit at the County aforesaid and before the committing of the grievances, by the said defendant hereinafter mentioned the said plaintiff was, from thence hitherto hath been and still is the owner in fee of certain lands and premises with the appurtenances situate lying and being in the said City of Chicago and known as Lot number nine in Block Twenty nine in the original Town of Chicago, which said Block lies west of the West bank of the South Branch of the Chicago River but near to the same and between two certain East & West Streets of said City respectively crossing and passing the said South Branch by Bridges and constituting important thorough-fares of said City, one of which said Streets known as Lake Street bounds said block on the north and the other of said Streets known as Randolph Street bounds the same on the south, and being divided into two tiers of Lots by an alley running from said Randolph Street northerly to said Lake Street and said Lot being in the Eastern tier of said Lots in said block, fronts East and adjoins laterally upon said Randolph Street.

Whereas also long prior to the said day and year aforesaid and to the committing of the grievances hereinafter mentioned, on to wit the 29th day of January A.D. 1849 there was a street running across and from said Randolph Street northerly to Lake Street aforesaid,

which was known as West Water Street and was laid out upon a line somewhat East of the thread of West Water Street as now laid out and between the site of the last mentioned street and said South Branch but leaving a space or strip of land between the East line thereof and said South Branch, upon which said strip of land certain owners of lots in the said Eastern tier in said Block Twenty nine ^{as} ~~or~~ aforesaid claimed wharfing privileges as appurtenant to their said lots, and which claim the said defendant controverted; that such claims being made as aforesaid and divers disputes having arisen respecting the same between property owners & the said defendant, the said defendant on to wit the day and year last aforesaid to wit at said County, by its Common Council passed and adopted, certain Propositions in that behalf to be submitted to the property owners, for disposing of said Wharfing privileges. Which said propositions is recited & set forth in the Indenture hereinafter mentioned and the said defendant by the Common Council also further in that behalf passed an ordinance likewise in said indenture recited and set forth that in and by the said Proposition, the said defendant amongst other things proposed to lay out a new West Water Street extending from Madison Street to Fuller Street seventy five feet in width in such manner that the East line of said new Street should commence on Madison Street at a point eighty feet East of the South East corner of Lot Ten in Block fifty one in said Original Town and thence run in a direct line to a point one hundred and sixty feet and seventy one hundredths of a foot East of the North West corner of Lot one in Block forty four in said Original Town thence north to a point in the South line of Lot nine in Block Twenty nine one hundred and sixty feet and seventy one hundredths of a foot East of the South West corner of said Lot 9 in Block Twenty

nine Thence north in a direct line to a point one hundred and sixty feet and seventy one hundredths of a foot East of the North West Corner of Lot one in Block 29 thence North Westly in a direct line to a point one hundred and fifty feet and one tenth of a foot East of the South East Corner of said Lot seven in Block twenty two thence North Westly in a direct line to a point fifty five feet East of the North West Corner of Lot 2 in Block 22 in said original Town and seventy feet at right angles distant from the Water line first herein mentioned including in said street also all of the land in Block fifty one West of the said East line and between it and the West line of the alley dividing said block and also including in said street all of that part of Lot Eight in Block 22 which lies west of the East line of said New street.

And whereas also the laying out of said new West Water street would and did require, the taking of nearly if not the whole width thereof off from the East end of the Eastern tier of Lots including said Lot nine of the plat in said Block twenty nine.

And whereas also the said deft in and by the said proposition did amongst other things propose to discontinue so much of West Water street (old West Water street meaning) as lay between the East line of said new West Water street and the River and to convey to the respective persons owning Lots in the Blocks therein mentioned the premises in front of their respective Lots in Exchange for the land taken for the new street, upon certain terms & conditions therein also mentioned, as by the Indenture hereinafter mentioned when produced will more fully and at large appear.

And whereas also after the making of said proposition & ordinance and before the time of making the Indenture hereinafter next mentioned such proceedings and arrangements were had between the deft and certain of the property owners aforesaid,

on to wit the 1st day of May A.D. 1852 to wit at the County aforesaid, that said new West Water street was opened by the defendant in pursuance of said Proposition, covering amongst others the said portion off the East end of said Lot nine, and without any compensation being made therefor.

And whereas also, afterwards to wit on the sixth day of May A.D. 1856 to wit at said County the said plff being the owner of said Lot nine and that portion thereof covered by said New Street, and the matters respecting said wharfing privileges being & remaining unsettled, the said plff and defendant, under and in pursuance of said Proposition and ordinance for the purpose of adjusting the said matters made a certain Indenture in writing in and by which the said plaintiff under her hand & seal granted unto the said defendant all of that portion of said Lot nine which was covered by said New Street by the description in substance of all that part of said Lot nine in said Block twenty nine in said original Town of Chicago which lies east of a direct line drawn from a point in the South line of said Lot nine in ^{Block} 29, 85 feet and $\frac{4}{100}$ of a foot East of the South West corner of said Lot nine to a point on the North line of Lot one in said Block twenty nine eighty five feet and seventy one hundredths of a foot East of the North West corner of said Lot one with all & every of the appurtenances in Exchange of and for the premises or piece of land thereafter described.

And whereas also the said defendant in consideration of the said conveyance aforesaid and of the payment by the said plff to deft of two thousand two hundred and forty dollars the said deft by the same Indenture under the hand of its Mayor Comptroller & clerk and its corporate seal conveyed to the said plaintiff the said

6

portion of land lying & being in front of her said lot nine (9) & between the East line of said New West Water street and the River aforesaid by the description of all that tract parcel or piece of land which was recently a part of said West Water street and which lies directly East of said Lot nine in Block 29 in the original Town of Chicago North of the North line of Randolph Street and South of an extension of the north line of said Lot 9 if said North line was extended in a direct line to the north line of Lake street to the Chicago River East of the East line of said new Street described in the foregoing proposition and between said East line and the Chicago River. The west line of the premises hereby conveyed to said Harriet A. Murphy being 160 feet and $\frac{70}{100}$ of a foot distant from the West line of said Lot nine in said Block twenty nine and the East line of said premises hereby conveyed to said Harriet A. Murphy being 70 feet distant from the West line of said premises.

And whereas also in said conveyance of the said portion of said Lot nine so taken as aforesaid for said new Street it was provided stated and declared that the said defendant was to leave and to hold the said premises with the appurtenances as and for a public street or highway in and of said city to be used as such and for no other use object or purpose whatsoever;

And the said Plaintiff avers that the said defendant afterward to wit on the 8th day of June A.D. 1857 to wit at said county accepted the said deed, grant and conveyance so as aforesaid made by the said Plaintiff to the said Dept of the said premises so taken for a portion of said new West Water Street as aforesaid and the same was afterward to wit on the 10th day of July A.D. 1857 duly Recorded in the Records office of said county as by the said deed

7

when produced will more fully and at large appear. which said street became and then & there was a common public highway and it then & there became and was the duty of the said defendant, to preserve and keep the said premises free from all other uses except those of a street or highway in and of said city, and not permit or authorize the same to be occupied or used for any other purposes than those of a street or highway of said city, and it also became and was the duty of the said dept to keep the said street open and unobstructed and to permit the said plff to have and enjoy the said street and the said portion thereof so conveyed by plff to dept as aforesaid as and for a public highway and street of said city and unobstructed by other and different uses, and to enjoy the said New West Water street as such with its connection with said Randolph street which adjoining said premises as aforesaid, and not to close up said New street in front of said Block twenty nine & of said Lot 9 or in front of said premises so conveyed by the said dept to the plff as aforesaid or cut off said connection ~~with~~ with said Randolph street as aforesaid.

And the said plff further avers that under and in pursuance of said conveyance by the said dept to the said plaintiff of said premises as aforesaid the said plff afterwards to wit on the 10th day of June A.D. 1857 the said plff entered into the possession of said premises, and that the right to the free and unobstructed use of the said New Street so laid out from & upon the said East End of said Eastern Tier of lots including that of said Lot 9 became and was appurtenant to the said premises so conveyed by the said dept to the plff as aforesaid.

And the said plff further avers that at the time of the making of the said conveyance as aforesaid there was

and for a long time previously had been and from them to the committing of the grievances by the dept next hereinafter mentioned continued to be and still of right ought to be a common public street & highway for all persons to go return pass & re-pass with their horses, wagons, carts & other carriages at their free will & pleasure and a free convenient & easy access and connection from said Randolph street to and with the said New West Water Street at the points of intersection of said New Street with said Randolph street as well also with said Lake Street and that such access & connection were the only means of access thereto & were necessary to the full and proper enjoyment of said premises so conveyed by the said dept to the plff as aforesaid and of said Lot nine, That at the time last aforesaid and before the committing of said grievances by the dept as next hereinafter mentioned to wit at said county, the said Lot nine of the plff and said premises so conveyed by dept to the plff as aforesaid were of great value to wit of the value of twenty five thousand dollars, that the plff had then & there buildings & improvements on the same abutting on said new street which were valuable and erected other than the said property was then & there readily available for rental purposes, and the use thereof was of great annual value and yielded a large annual income to wit five thousand dollars, That the principal value of said premises conveyed by dept to plff as aforesaid consisted in their location upon said River and the free use of said new street, and the said plff further avers that the said dept well knowing the premises and not regarding its duty in the premises, but fraudulently continuing and intending to injure the plff in this behalf and for the benefit and purposes of certain Rail Road companies, and not for its own benefits or purposes,

afterwards to wit on the 16th day of August A.D. 1858 to
 wit at the City of Chicago in said County by the common
 council of the City of Chicago wrongfully unlawfully
 and unjustly passed a certain pretended ordinance
 entitled "An ordinance to allow a connection between
 the Pittsburg Fort Wayne and Chicago and the Chicago
 St Paul and Fort Sn Lake Rail Road companies and
 such other Rail Road Companies as may unite with
 them;" whereby the said Rail Road Companies were
 authorized to lay down & use a Rail Road Track
 in upon, and along the said New West Water Street
 and to cross said Randolph and Lake streets, and to
 tunnall the same last mentioned streets and carry the said
 last named respective streets over the said rail way and
 over said West Water Street and to use the said West
 Water Street for said purposes for an unlimited time,
 as by the said ordinance or a certified copy thereof when
 produced will more fully and at large appear and the
 plaintiff avers that afterwards and with the permission
 consent and authority of the said defendant and without
 the consent and against the will of the said plff, a
 certain Rail Road Company, styled the Chicago and
 North Western Railway Company on to wit the first
 day of November A.D. 1860. to wit at said County under
 said pretended ordinance entered into and upon the said West
 Water Street as last mentioned, and in front of the plffs
 said premises, and upon the said portion so conveyed by the
 plff to the deft as aforesaid to be used as aforesaid, and dug
 up the same and laid thereon railway tracks, and the said New
 West Water Street between said Lake & Randolph Street and
 a cross & beyond said Lake & Randolph Streets dug up & exca-
 vated, threw down therein divers large quantities of dirt stones, timber
 and other materials and laid thereon divers railways and also there &
 there entered in and upon said Randolph & Lake Streets at their

10

respective points of intersection with said New West Water Street and there laid down and piled up divers large quantities of stone dirt timbers and planks and constructed upon both said Randolph & Lake streets at their said respective points of intersection divers high permanent embankments, wall structures and carried the same respectively to a great height to wit the height of twenty three feet above the surface of said New West Water Street, and the said walls embankments & structures maintain & keep, and which said walls embankments & structures upon said Randolph street are near to and adjoin the plaintiffs premises aforesaid and the said Railway Company, by the permission consent and authority of of the said Dept has continued to use Locomotives, Steam Engines cars and other vehicles thereon. & to keep the said New West Water Street as aforesaid from thence hitherto and still does use the same,

X

That by reason of the said embankment, wall structure and the premises aforesaid all access, from the said Lake or Randolph Street to and with the said new West Water Street, except down a long flight of stairs, was and is entirely cut off, whereby and ~~and~~ by the laying down of the said railway and the use thereof as aforesaid, the use of the said New West Water Street and especially that portion thereof conveyed by the said plaintiff to the said defendant, to be used as and for a public street or highway of said City, is wholly cut off and destroyed, and the said New West Water Street and the whole thereof between the said Randolph & Lake street was and is thereby practically, effectually, and to all intents and purposes closed up. for all purposes except those of the Rail Road Company or Companies using the same as aforesaid.

By means whereof the said plaintiff has been subjected to great damage and expense in raising the buildings on her said premises to wit in the sum of five thousand dollars and

has been compelled to lay out divers other sums of money in attempting to provide other means of access to her said premises and to make the same tenable, and get her buildings elevated to the height of said structure and embankment so made upon said New West Water street at the point where the same crossed said Randolph as aforesaid to wit the sum of five thousand dollars to wit at the county aforesaid, and by means whereof her said premises became untenable and were diminished in value to a large amount to wit twenty twenty thousand dollars, and therefore she brings

To the plaintiffs damage of twenty thousand dollars and therefore she brings this suit &c

Scases McAllister & Jewett
Plffs attys

And afterwards by writ, on the Twentieth day of February in the Year aforesaid. The City of Chicago by Ira W. Bull its attorney filed in the office of the Clerk of the said Superior Court its demurrer in words and figures following to wit

Superior Court of Chicago
February Term 1862

Chicago of Chicago
vs

Harriet Murphy

And the said defendant by Paul its Attorney Comes and defends the wrong and injury whom &c And says that the declaration of said Plaintiff and the matters

12

therein contained are not sufficient in law to enable the said Plaintiff to have and maintain her aforesaid action against the said defendant. And this it is ready to verify. Wherefore said defendant prays judgment of the Court.

John W. Buell
Defendant's Attorney

And the said plff joins in Demurrer
Scates McAllister & Jewett
Plffs Attorney

And afterwards to wit on the seventeenth day of March in the year aforesaid said day being one of the days of the March Term of said Court. the following. Among other proceedings was had in said Court. And entered of record the writ;

Harriet A. Murphy
vs
The City of Chicago
Township in Case

This day comes said Plaintiff by Scates McAllister & Jewett her attorneys and said defendant by John W. Buell City Attorney also comes and this cause coming on now to be heard upon the demurrer of said Defendant to the declaration of said Plaintiff and herein pleaded in bar and counsel being heard and the Court being fully advised; it is considered by the Court that the law is with said defendant and that the demurrer be sustained & Plaintiff declaration. Plaintiff therefore elects to abide by her declaration. Therefore it is considered that Plaintiff take nothing by her said writ but that she be in mercy on

State of Illinois }
County of Cook. } S.S.

I Thomas B Carter Clerk of the
Superior Court of Chicago within and for the County
and State aforesaid, do hereby certify that the foregoing
is a full true and complete transcript of a certain
Declaration, Demure thereto and order of Judgment
thereon in a certain suit wherein Barrett & Murphy
is plaintiff and The City of Chicago defendant.

In testimony whereof I hereunto subscribe
my name, and affix the Seal of said
Court, at the City of Chicago, in said
County, this 31st day of March A.D.
1862 Thomas B. Carter Clerk



Supreme Court of the
State of Illinois

Harriet A Murphy
Plff in error

The City of Chicago
Def't in error

April Term
A D 1862

And now comes the said Harriet A Murphy
before the Justices of the Supreme Court at Ottawa
by Scales McAllister & Jewett her attorneys and
says that in the record and proceedings afore-
said and in giving the judgment aforesaid
there is manifest error in this behalf.

The Supreme Court of Chicago erred in
sustaining the demurrer of the said
the City of Chicago to the said plaintiffs
declaration,

The said Court erred in giving judgment
for the defendant and against the
plaintiff

Wherefore for the error aforesaid the said
plaintiff prays that said judgment
may be reversed annulled and
held for nought &c

Scales McAllister & Jewett
Attys for plff in
error

And the said defendant by Ira W Buell its
attorney comes and says that there is no error.

in the Record and proceedings aforesaid in
manner and form as said Plaintiff in error
hath above alleged Wherefore it prays judy-
ment and that the judyment of the Su-
perior Court of Chicago aforesaid may be in
all things affirmed

. Ira W Buell

Defendants Atty

204
Supreme Court
Harriet A. Murphy

vs

The City of Chicago
Manuscript

Filed Apr. 22, 1862.
S. Seland
Clerk

Fee \$3.50

Chg. Scales. No. 111111
& Jan 1862.