No. 12461

Supreme Court of Illinois

Harvey

vs.

County of Peoria

71641 7

108

The County of Peoria
by
John Harvey

108

1857

12461

1

State of Illinois }
Peoria County } ss Pleas in the Circuit Court in and for the County of Peoria and State of Illinois before the Honorable the Judge of said Court presiding therein according to law.

To all whom it may concern Know ye that the records of said Court being inspected and examined there appears of record among ~~other things~~ the records and proceedings of said Court the following matters and things to wit:

Be it Remembered that on the twenty fourth day of February A.D. 1855 there was filed in the office of the Clerk of the Circuit Court, in and for the County and State aforesaid a certificate of Charles Kettelle, Clerk of the County Court of said Peoria County with a notice thereto attached duly certified by said Kettelle to have been filed in his office which are in the words and figures following to wit:

In the matter of the assessment of damages under an act entitled "An act to establish a State Road from Peoria in Peoria County to Rock Island in Rock Island County approved February 11th 1853.

John Harvey who is owner of the South west quarter of section thirty three (33) in township eleven (11) north seven (7) east. Also of the north east quarter of section four (4) in township ten (10) north seven (7) east, all in Peoria County, hereby appeals from the assessment of damages by the Commissioners appointed to view and locate said road to the Circuit Court of

[124610]

2

Peoria County and states the damages assessed to him are to low and entirely inadequate and that in fact his damages will be at least $ 4.000.00

John Harvey
By Purple Sanger & Pratt his Attys

State of Illinois
Peoria County } Clerks office

I, Charles Kettelle Clerk of the County Court in & for said County do hereby certify that the within notice was filed in said office on the 17th day of January A.D. 1855. Given under my hand & seal of office this 17th day of January A.D. 1855.

Charles Kettelle Clerk

I further certify that the Commissioners appointed to locate the road mentioned in said notice assessed no any damages on the S.W. 33 Township 11 N 7 E. or on the N.E. 4. 10 N. 7 E. as appears by the plat on file in said office (Seal)

Charles Kettelle Clerk

Proceedings at a term of the Circuit Court begun & held at the Court house in the City of Peoria in and for the County of Peoria in the State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty five it being the fifth day of said month, Present the Honorable Onslow Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois to wit:

Monday March 12th A.D. 1855

John Harvey
vs } Appeal from assessment of damages
County of Peoria } by Road Commissioners

This day came the defendants by E. G. Johnson its attorney and entered a motion to dismiss the appeal herein for reasons on file.

And afterwards to wit, on the 21st day of March A D. 1855 the defendant filed in the office of the clerk of said Court a motion to dismiss this appeal which is in the words and figures following to wit;

John Harvey vs County of Peoria } Peoria County Circuit Court, March Term 1855. Appeal from assessment of damages on the laying out of ~~said~~ road in said case mentioned

Defendant moves to dismiss this appeal, because no appeal is given by Statutes of this State in the first instance in such cases, and because no jury of householders was summoned to assess said damages in this case and therefore no appeal could be taken to this Court. Because for the reasons above stated this Court has not Jurisdiction of said case and appeals

E. G. Johnson Atty for deft.

Proceedings at a term of the Circuit Court begun and held at the Court house in the City of Peoria in and for the County of Peoria on the second Monday of May in the year of our Lord one thousand eight hundred and fifty five it being the fourteenth day of said month. Present the Honorable Onslow Peters, Judge of the Sixteenth Judicial Circuit in the State of Illinois to wit:

Friday May 25th 1855

John Harvey
vs } Appeal from assessment of damages
County of Peoria } by road Commissioners

This day came on to be heard the defendants motion to dismiss this appeal and the Court being fully advised in the premises overruled said motion to which decision of the Court the defendant excepted. Ordered that the bill of exceptions may be signed in vacation.

Proceedings at a term of the Circuit Court begun & held at the Court house at the City of Peoria in and for the County of Peoria in the State of Illinois on the second Monday of May in the year of our Lord one thousand eight hundred and fifty six it being the twelfth day of said month. Present the Honorable Jacob Gale, Judge of the sixteenth Judicial Circuit in the State of Illinois to wit:

Friday May 16th A. D. 1856.

John Harvey
vs } Appeal from assessment of damages
County of Peoria } by Road Commissioners

This day came the plaintiff by Purple & Pratt his attorneys and the County of Peoria by Elbridge G. Johnson its attorney and it is ordered by the Court ~~by the Court~~ that a Jury be impannelled to assess the plaintiffs damages in this cause whereupon came a Jury of twelve good and lawful men to wit: William Shade, William Donaldson Matthew Wilson, H. N. Wheeler, Jacob Lawrence, Lyman Reed, Jacob H. Wells, Milton Hasbrook, John Alter,

H. V. Flagler, E. L. Norton and David Maxwell who being duly chosen tried and sworn well and truly to assess the plaintiffs damages in this cause and a true verdict give according to evidence upon their oaths do say we of the Jury find for the plaintiff and do assess his damages at the sum of two hundred dollars. Whereupon it is considered by the Court that the plaintiff have and recover of the defendant the said sum of two hundred dollars ~~whereupon it is considered by the Court that the plaintiff have and recover of the defendant the said sum of~~ his damages herein in form aforesaid and also his costs herein and that the same be paid by the said defendant as provided by law in such cases made and provided.

Tuesday May 20th A D. 1856

John Harvey
vs
County of Peoria } Appeal from assessment of damages by Road Commissioners

This day came the defendant by Elbridge G. Johnson its attorney and enter a motion for a new trial in this cause, reasons on file.

Upon which the defendant on the 21st day of May A D. 1856 filed in the Clerks office of said Court its reasons for a motion for a new trial which are in the words and figures following to wit:

John Harvey
vs } Peoria County Circuit Court
County of Peoria } March Term 1856

Deft moves that the verdict be set aside

and for a new trial in this cause

1 Because the Court erred in entertaining jurisdiction of this cause.

2. Because there was no evidence that said road had been ordered to be opened or recognized by the County Court or board of Supervisors of said County or that the proper authority of said County had ever passed upon the question of damages in this case.

3. Because there was no evidence offered of the existence of a legal road.

4. Because the Court refused to exclude the plaintiffs evidence in said cause

5. Because the Court gave improper instructions as asked by the plaintiff and refused proper instructions asked by the defendant.

6. Because the verdict in said case was against the law and evidence.

7. Because plaintiff did not prove or offer to prove that plaintiff objected to the said road being laid out and located over said premises or that the plaintiff claimed damages at the time said road was laid out ~~or~~ and located over said premises, or that he appealed from the decision of the Commissioner to the County Court or Board of Supervisors of Peoria County E. G. Johnson Atty for deft.

8. Because Court erred in allowing a jury to be empannelled to try said cause.

Proceedings at a term of the Circuit Court begun and held at the Court house in the City of Peoria in and for the County of

Peoria in the State of Illinois on the second Monday of May in the year of our Lord one thousand eight hundred and fifty six it being the twelfth day of said month. Present the Honorable Jacob Gale Judge of the Eighteenth Judicial Circuit in the State of Illinois to wit:

Saturday May 31st 1856

John Harvey
vs
County of Peoria } Appeal from assessment of damages by Road Commissioners

This day came on to be heard the motion of the defendant for a new trial in this cause and the Court being sufficiently advised in the premises overruled said motion, whereupon the defendant entered a motion in arrest of judgment, and the Court being sufficiently advised in the premises overruled said motion, thereupon the defendant prayed an appeal herein to the Supreme Court of this State which is allowed on the defendants filing bond to be signed by the Board of Supervisors or the Chairman of the board of Supervisors, on behalf of the County of Peoria in the penal sum of one Hundred Dollars to be approved by the Clerk of this Court in thirty days.

Upon which the defendant afterwards to wit on the 3rd day of June A.D. 1856, filed in the Clerks office of the Circuit Court of said County its bill of exceptions in said cause which is in the words and figures following to wit:

John Harvey
vs
County of Peoria } Peoria County Circuit Court
May term A.D. 1856

[2461-4]

Be it Remembered that at the May term 1855 the defendant in this cause made a motion to dismiss said cause for reasons stated in said motion: to wit:

"John Harvey vs County of Peoria } Peoria County Circuit Court March Term 1855 appeal from assessment of damages on the laying out of road in said case mentioned.

Defendant moves to dismiss this appeal, because no appeal is given by Statutes of this State in the first instance in such cases, and because no jury of householders was summoned to assess said damages in this case and therefore no appeal could be ~~made~~ taken to this Court. — Because for the reasons above stated this Court has no jurisdiction of said case and appeal.

E. G. Johnson, Atty for deft."

which was overruled by the Court and the defendant excepted which exception was noted. And now at the May term 1856 of said Court this cause came on to be heard when the said defendant objected to the empanelling of a jury to try said cause because said Court have no jurisdiction of said cause, objection overruled deft. excepts and jury empannelled and sworn. Pltff offered the plat of the said road and report of the Commissioners who laid out said road, with the certificate of the Commissioners thereto attached and also an act entitled "An act to establish a State Road from Peoria in Peoria County to Rock Island in Rock Island County" approved Feby 12th 1853 and also an act entitled "An act to amend the several acts passed at the last regular

~~town~~ session of the General assembly in regard to the location of State roads" approved March 1st 1854, as evidence of the existance of said road. ~~To wit~~ to wit:

"We the undersigned Commissioners appointed to view, lay out and locate a state road, commencing at the City of Peoria, in Peoria County running from thence & upon the most practicable route to the town of Princeville in said County thence north westerly to the town of Lafayette in Stark County thence continuing a northwesterly direction to Bishop hill in Henry County thence to the town of Rock Island in Rock Island County in pursuance to an act of the General Assembly of the State of Illinois approved February 12th 1853 entitled "an act to establish a state road from Peoria in Peoria County to Rock Island, in Rock Island County and also of an act of said General Assembly Approved March 1, 1854 entitled an act to amend the several acts passed at the last regular session of the General assembly in regard to the location of State roads, do hereby certify that we have in pursuance of the above entitled acts reviewed, laid out and located a state road from and to the points therein designated and that the plat herewith filed is a correct plat of said road as viewed laid out and located by us; that wherever damages have been allowed by us we have marked the amount allowed in figures upon the tract on which they were allowed and upon those tracts upon which nothing is marked no damages have been allowed. We also certify that after having been ~~fully~~ duly appointed commissioners by the Board of Supervisors of Peoria County we were each of us duly sworn as the law directs, a copy of which order

[12461-5]

10

of appointment and the oath taken by us are hereto attached and made part of this certificate or report.

Samuel Dimon
W. Corrington } Commissioners
Smith Frye

State of Illinois
Peoria County } Clerks Office

I Charles Kettelle Clerk of the County Court & also Clerk of the board of Supervisors of said County do hereby certify that the following is a true copy of the appointment & order of the Board of Supervisors of said County of the appointment of Commissioners to locate a State Road from the City of Peoria to Rock Island in Rock Island County to wit: "Resolved that Washington Corrington & Samuel Dimon be appointed in association with Smith Frye to locate a State road from the City of Peoria to Rock Island in Rock Island County according to the act of the Legislature for that purpose" I further certify that the following is a true copy of the oath taken by the Commissioners aforesaid to wit: "State of Illinois Peoria County: We Smith Frye, Samuel Dimon and Washington Corrington do solemnly swear that as Commissioners to view locate and lay out a State road commencing at the City of Peoria thence to the town of Rock Island in Rock Island Co. will view mark & locate said Road as designated in the act of the General Assembly of the State of Illinois passed Feby 12th 1853. So help us God.

Smith Frye
Saml. Dimon } Commissioners
W Corrington

11 Subscribed and sworn to before me this 5th day June A.D. 1854, Charles Kettelle Clerk". I further certify that Samuel Farmer, as surveyor & Lewis Klagler & Levi Winkles as chainmen were duly sworn before me as appears by the papers on file in said office. Given under my hand & (Seal) official seal at the City of Peoria this 22nd day of December A.D. 1854.

Charles Kettelle, Clk

State of Illinois
Peoria County } Clerks Office

I, Charles Kettelle Clerk of the County Court in and for the County aforesaid do hereby certify that the foregoing is a true copy of the report of the Commissioners appointed to open & locate a State road from the City of Peoria to Rock Island as appears by the Papers & plat of said road on file in said office. (Seal) Given under my hand & official seal at Peoria this 29th day of January A.D. 1857.

Charles Kettelle Clerk".

To this evidence the defendant objected because said plat and report does not prove a legal road and because it does not tend to prove said road was ever ordered to be opened and constructed and because it does not tend to prove that either County Court or the board of Supervisors of said County of Peoria had passed upon the question of damages in this case or ordered the said road to be opened, but the Court overruled the objection and admitted the plat and report to which the defendant excepts. Plaintiff then offered evidence tending to prove plaintiff was in possession of the

[12461-6]

premises described in said appeal and the amount of damage caused by said road if made as located.

Plaintiff rested.

Defendant then offered a lease of said premises to said Pltff for a term of years

and evidence tending to prove plaintiff was not the owner of said premises but tenant only holding under said lease and thereupon moved that the evidence in relation to damages offered by the plaintiff be excluded, but the Court overruled the motion and defendant excepts.

The plaintiff requested the Court to instruct the Jury as follows:

"That the presumption of law is that the damages will be paid and the road opened as soon as the damages are legally assessed.

That the plaintiff or claimant is entitled to such damages as he may sustain to his leasehold interest by reason of the opening of the road in the manner indicated by the Survey and plat."

which were given and the defendants counsel then and there excepted.

Defendants counsel requested the Court to instruct the Jury as follows:

"John Harvey vs County of Peoria } Peoria County Circuit Court May Term 1856 appeal from assessment of road damages

1. If the Jury find from the evidence that the plaintiff in this case is not the owner of the land over which the road passes, but is a tenant for years under a lease from the owner the plaintiff is entitled to no damages.

2. Before the road can be opened and worked, the owner of the land is entitled to his damages under the Statute provided he claims the same in reasonable time.

[12461-7]

3. The lessee is not compelled to fence the said road at any time and should not receive damages for the occupation of the land until the road is actually opened by proper authority because until that he is not damnified.

4. If the road should not be opened during the continuance of the plaintiffs leasehold interest the plaintiff would be entitled to no damage."

Said instructions 1, 3 & 4 were refused and defendants counsel then and there objected & excepted.

The Jury found a verdict for the plaintiff. The defendant entered a motion for a new trial for the following reasons:

"1. Because the Court erred in entertaining jurisdiction of this cause.

2. Because there was no evidence that said road had been ordered to be opened or recognized by the County Court or board of Supervisors of said County, or that the proper authority of said County had ever passed upon the question of damages in this case.

3. Because there was no evidence offered of the existence of a legal road.

4. Because the Court refused to exclude the plaintiffs evidence in said cause,

5. Because the Court gave improper instructions as asked by the plaintiff and refused proper instructions asked by the defendant

6. Because the verdict in said case is against the law and evidence.

7. Because plaintiff did not prove or offer to prove that

plaintiff objected to the said roads being laid ~~off~~ out and located over said premises, or that the plaintiff claimed damages at the time said road was laid out and located over said premises or that he appealed from the decision of the Commissioners to the County Court or Board of Supervisors of Peoria County. E. G. Johnson, Atty for deft.

8. Because Court erred in allowing a Jury to be empannelled to try said cause"

The Court overruled the motion and defendants counsel then and there excepted.

Defendant entered a motion in arrest of judgment but the Court overruled the motion, to which the defendants counsel excepted. On motion of plaintiffs counsel the Court then and there entered the following order.

[12461-8]

to which order the defendant then and there excepted and requested the court to seal this bill of exceptions which is done Jacob Gale (Seal)

And afterwards to wit on the 28th day of June A.D. 1856 the defendant filed in the Clerks office of said Court an appeal bond which is in the words and figures following to wit:

"Know all men by these presents that we the County of Peoria by the chairman of the board of Supervisors of said County as principal and Leonard B. Cornwell as sureties are held and firmly bound unto John Harvey in the penal sum of one hundred dollars for the payment of which well and truly to be made we bind ourselves & our heirs jointly & severally by these presents. The condition of the above obligation is such that whereas the said John Harvey did on the 16th day of May 1856 in the Circuit Court of Peoria in the State of Illinois recover a judgment against the said County of Peoria for the sum of two hundred dollars damages & costs of suit from which said judgment the said County has taken an appeal to the Supreme Court of said State Now provided said County shall duly prosecute said appeal & shall pay said judgment & all costs interest & damages in said suit, provided said judgment shall be affirmed, then this of obligation to be void, otherwise of full force. Witnesses our hands & seals this 27th day of June A.D. 1856 Isaac Brown (Seal)

(Seal) Chairman Board Supervisors Peoria Co.

Leonard B. Cornwell Esq

Approved by me this 28th of June A.D. 1856.

James L. Parkman Clerk

State of Illinois,
Peoria County } ss I, Enoch Sloan, clerk of the circuit court in and for the state and county aforesaid, do certify that the foregoing is a true and correct copy of the records in the case, wherein John Harvey is plaintiff and the county of Peoria is defendant as the same remains of record and on file in my office.

In witness whereof I hereto set my hand and affix the seal of said court at Peoria this 7th day of April AD 1857.

Enoch Sloan Clerk

[12461-9]

The County of Peoria } In the Supreme
vs } Court April T. 1857
John Survey }

Appeal from Peoria & Judgment

And now comes the said plaintiff & says that in the record & proceedings aforesaid manifest error hath intervened to his injury in this

1st The Court erred in ~~not~~ dismissing the appeal

2nd The Court erred in Retaining jurisdiction of the cause

3 In empanelling a Jury

4 In admitting improper evidence on the part of plaintiff

5 In excluding proper evidence on the part of ~~plaintiff~~ defendant

6th In giving improper instructions on the part of ~~plaintiff~~ plaintiff

7 In refusing proper instructions on the part of defendant

8 In refusing a new trial

9 In overruling motion in arrest

10 In rendering Judment for plaintiff

Wherefore the plaintiff prays that the said Judgment may be reversed and nought held

By Read & Williamson
plaintiffs attorneys

Joinder in Error
People for deft

108

John Harney
vs
The County of Peoria

The County of Peoria
vs
John Harney

Filed April 20. 1857
S. Leland
Clerk

No 1.

[12461-10]

[12461-10]

No 107 County of Peoria v John Harvey
Nos 108 to 115 inclusive Same pltff - & questions

Williams for Pltffs
Acts 1853. p 195 Laying out road &c.
Acts 1854. 1058
2 Pub Stat 1032 sect 4
" " " 1033 " 6
" " " 1035 " 13
" " " 1036 " 15
" " " 1050 " 38
Comrs perform the double office of laying out road - and assessing damages - Appeal should be prosecuted from the

one, or the other as they may be aggrieved by their acts in the particular premises

Purple for Defendant

Acts 1853. p 194.

2 Purple Stat 1050 sect 38 Purple says this is the act that authorises the appeals in these Cases.

13 Iles R 207

187 87
116 17
71 70
30
40 or 41 Cases left this 2 May

107 to 115 inclusive

County of Peoria