

12490

No. _____

Supreme Court of Illinois

County of Peoria

vs.

McCoy

State of Illinois
Peoria County

}²⁵ 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 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 afore
said 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.

William McLeoy who is owner of the south east
quarter of section four (4) in township ten (10) north seven
(7) east, in Peoria County, hereby appeal from the assess-
ment of damages by the Commissioners appointed to view
and locate said road, to the Circuit Court of Peoria
County and states as the ground for said appeal that
the damages assessed to him are too low and entirely in-
adequate and that in fact his damages will be at least
of \$2000.00

William McLeoy
by Purple Sanger & Pratt his attys.

State of Illinois
Peoria County } Clerk's office

J. Charles Kettelle, clerk
of the County Court in and for the County aforesaid do
hereby certify that the Commissioners appointed to view
and locate a State Road from Peoria to Rock Island
assessed the damages on the south east quarter of section 14
township 10 N. 7 E. at twenty five dollars as appears by the
plat filed in said office on the 22d day of December. A.D.
1854. Given under my hand & official seal at Peoria
Ill this 24th day of January A.D. 1855
Charles Kettelle, clk.

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 Amos Peters Judge
of the sixteenth Judicial Circuit in the State of Illinois
to wit:

Monday March 12th A.D. 1855

William McCoy

vs

County of Peoria

} Appeal from assessment of damages
by Road Commissioners

This day came the defendant 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:

Wm. McCoy } Peoria County Circuit Court
vs } March Term 1855. Appeal from
County of Peoria } 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 injury 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 Cuslow Peters Judge of the sixteenth Judicial Circuit in the State of Illinois to wit:
Friday May 25th A.D. 1855

William McCoy }
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:

Saturday May 17th A.D. 1856

William McLeay

vs

County of Peoria

Appeal from assessment of damages
by Road Commissioners

This day came the plaintiff by Purpfe & Pratt his attorneys and the County of Peoria by Elbridge G. Johnson its attorney and it is ordered by the Court that a Jury be empanelled to assess the plaintiffs damages in this cause, whereupon came a Jury of twelve good and lawful men to wit: A. Morton Brailey, Thomas J. McGraw, John Dufield, E. L. Norton, Jacob H. Wells, Matthew Brown, John Darby, Joseph True, Matthew Wilson, Jacob Lawrence, Samuel Voris and Milton Hasbrook, 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 aforesaid do say, we the Jury find for the plaintiff

and assess his damages at the sum of one thousand and thirty six dollars, whereupon it is considered by the Court that the said plaintiff have and recover of the said defendant his damages herein in form aforesaid assessed and also his costs herein and that the same be paid by the said defendant as provided by law in such case made and provided,

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

William McElroy

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

Defendant 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 cause.
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 ~~did not prove~~ 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 road being laid 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 empanelled 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 sixteenth Judicial Circuit in the State of Illinois to wit:

Saturday May 31st 1856

William M^cIlroy

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 fully 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, whereupon the defendant prayed an appeal herein to the Supreme Court of the 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 24th 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:

"Wm McElroy

vs

City of Peoria

} Peoria County Circuit Court
} May Term A.D. 1856

Be it Remembered that at the May Term 1855 of this Court, the defendant in this cause moved to dismiss the same for reasons stated in said motion to wit:

Because no appeal is given by Statutes of this State in the first instance in such cases and because no jury of house holders 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 no jurisdiction of said case and appeals.

E. G. Johnson Atty for deft.

which was overruled by said Court and therefore the defendant excepted, which exception was allowed and

noted. And at the May term 1856, this case came on to be heard and tried when the defendant renewed said motion to dismiss which motion was overruled and defendant excepted. Plaintiff offered the plat of the road in said appeal mentioned and the report of the Commissioners locating the same as evidence of the existence of said road 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 northwesterly to the town of Lafayette in Stark County, thence continuing a northwesterly direction to Bishop hill in Henry County thence to Cambridge in said County and from thence to the town of Rock Island in Rock Island County in pursuance of 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 here with 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 duly appointed Commissioners by the Court of Supervisors of Peoria County we were each of us duly sworn as the law directs, a copy of which order of appointment and the oath taken by us are hereto attached and made part of this certificate or report.

Samuel Dimon

W. Corrington
Smith Frye

} Commissioners

State of Illinois
Peoria County } Clerk's 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 in 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 Com-
missioners to view locate and lay out a State road com-
mencing at the City of Peoria thence to the town of Rock
Island in Rock Island Co. with 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 }

Subscribed & Sworn to before me this 5th day June A.D.
1854. Charles Kettelle Clerk

~~Subscribed and sworn to before me this 5th day of June
A.D. 1854.~~

I further certify that Samuel Farmer as Surveyor &
Lewis Bagler & Levi Winkles as chainmen were duly
sworn before me as appears by the papers on file in
said office. Given under my hand & official seal at
Peoria the City of Peoria this 22d day of December
A.D. 1854 Charles Kettelle, Clerk

State of Illinois
Peoria County } Clerk's office

I Charles Kettelle
Clerk of the County Court in and for the County afore-
said 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. Given under my hand
Seal & official seal at Peoria this 29th day of January
A.D. 1857 Charles Kettelle, Clerk."

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 Feb. 12, 1853 and also an
act 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 approved March
4, 1854. To the said plat and report the defendant
objected because the said plat and report does not show
a legally established road and because there is no proof
offered therein that said road was ever ordered to
be opened and constructed or that either the 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 as evidence of the existence of said
road and the plaintiffs right to recover damages for
the location and laying out of the same to which the
defendant excepted.

Plaintiff then offered evidence tending to prove that
he was in possession of the premises described in said
appeal, the direction of said road over said premises
and the damages caused thereby if the said road
should be opened and constructed as located and there
the plaintiff rested.

The Jury found a verdict for the plaintiff.

The defendant entered a motion for a new trial for the following reasons:

1. Because there was Court error 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 road being laid 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 error in allowing a jury to be empaneled to try said cause.
- The Court overruled said motion and defendants counsel then accepted. Defendant entered a motion

in arrest of judgment which the Court overruled
to which the defendants counsel excepted. On motion
of plaintiffs counsel the Court then made the follow-
ing order in said cause:

to which the defendants counsel excepted and requested
the Court to seal this bill of exceptions which is done,
Jacob Gale Seal

Upon which the defendant afterwards to wit on the
28th day of June A.D. 1856 filed in the Clerk's office
of said Court its appeal bond which is in the words
and figures following to wit:

"I know all men by these presents, that we the County of
Peoria by the chairman of the Board of Supervisors as
principal and Leonard B. Cornwell as sureties are
held and firmly bound unto William McLeay of said
County 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 and severally firmly
by these presents. The condition of the obligation is
such that whereas the said William McLeay did on
the 17th day of May A.D. 1856 before the Circuit Court
of Peoria County Illinois recover a judgment against
the County of Peoria for the sum of ten hundred and
thirty six dollars damages & cost of suit from which
judgment the said County of Peoria has taken an appeal
to the Supreme Court of the State of Illinois. Now
provided the said County shall duly prosecute said
appeal & shall pay said judgment costs interest &
damages in case said judgment shall be affirmed, then
this obligation to be void otherwise of full force. Witness our
hands & seals this 27th day of June A.D. 1856

Seal

Isaac Brown

Seal

Chairman Board Supervisors Peoria County
Leonard R. Cornwall Seal
Approved by me this 28th day of June A.D. 1856
James S. Barkman, Clerk

State of Illinois)
Peoria County, I do I Enoch Sloan, clerk of the cir-
cuit court in and for said county and state do
certify that the foregoing is a true and correct
transcript of the records in the case wherein William
McCoy is Plaintiff and the county of Peoria is de-
pendant as the same remains of record and on file
in my office

In witness whereof I hereunto set my hand
and affix the seal of said court at Peoria
this 7th day of April A.D. 1857
Enoch Sloan, clk

County of Peoria } In the Supreme Court April
1857 } Term Term 1857
William McCoy }

appeal from Peoria

and now comes the said plaintiff and says
that in the record and 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

6 In giving improper instructions on the part of
plaintiff

7 In refusing proper instructions on the part of def-
endant

8 In refusing a new trial

9 In overruling motion in arrest

10 In rendering judgment for plaintiff

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

By Mead Williamson
attys for plffs

Binden in Error
People for defts

114,

County of Peoria
vs

William McCoy

Filed April 20, 1859
Leland
Clark

No 3

114

The Count of Riviera

vs

William McCoy

1857.

~~12490~~

12490