

No. 12629

Supreme Court of Illinois

People.

vs.

Harris.

71641  7

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The People

vs
Joseph Harris

1858

16. P.D.

12629

1858

State of Illinois
Knox County

Now before the Honorable John
S. Thompson Judge of the South
Judicial Circuit in the State
of Illinois, at a Court begun and
held at the Court house in Knoxville
on the fourth Monday of September
in the Year of our Lord one
thousand Eight hundred and
fifty six, to wit, on the second
day of October A.D. 1856.

Present Hon. John S. Thompson Judge
James H. Stewart Pros. atty.
Cornelius Runkle Sheriff
Hiram P. Mory Clerk

The People of the State of Illinois

vs
Indictment for Obstruction
Joseph Harris & Public Road &c

Be it remembered that herefore, to wit, on
the second day of October A.D. 1856, the
following Bill of *Exceptions* was filed
in this Court, and agreed upon
between the parties as the record in this
cause, and reads in the words and

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figures following, to-wit:
 "State of Illinois } Knox Circuit Court
 Knox County } September Term AD 1856

The People }
 vs }
 Joseph Harris }

Be it remembered that
 at the April Term of this Court begun &
 held at the April Term AD 1856, there was
 pending in this Court an Indictment
 against said Joseph Harris, which was
 in the following words & figures to-wit:

"State of Illinois - Knox County ss - of the Septem-
 ber term of the Knox County Circuit Court
 in the Year of our Lord one thousand Eight
 hundred and fifty five - The Grand
 Jurors chosen, selected and sworn in and
 for the County of Knox, in the name and by
 the authority of the People of the State of Illinois
 upon their oaths present, that Joseph
 Harris on the first day of August in the
 Year of our Lord one thousand Eight hundred
 and fifty five, at and within the County
 of Knox and State of Illinois, in a certain
 public road there called the middle State
 road from Peoria to the Warren County line

running upon and across the North West
of Section Twenty one, in Township Ten
North of Range four East of the fourth
principal meridian, in the County of
Knox aforesaid, the said public road being
then and there a common Highway
for all the People of the State of Illinois, to go
return, pass, re-pass, ride and labor at their
free will and pleasure, unlawfully and
injuriously did put and place a plank
fence, and did then and there, and
on other days and times, between that
day and the day of the making of this
presentment there unlawfully and
injuriously permit and suffer the said
plank fence to be and remain in and
upon the said public road and
common highway of the said People of
the State of Illinois, for the space of thirty
days whereby the public road and
common highway aforesaid then and
there on the said other days and times
for and during all the time aforesaid
was obstructed so that the said People of
the State of Illinois could not then and
on the said other days and times go
return, pass, re-pass, ride and labor in

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through and along the said common highway as they ought and were wont and accustomed to do, to the great damage and common nuisance of the said People of the State of Illinois to the evil example of all others in like case offending, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois

J. M. Stewart State Attorney

Per ten

And the endorsement thereon was as follows " The People of the State of Illinois vs Joseph Harris, Indictment for obstructing Public road &c. A true Bill -

A. C. Wyley foreman of the Grand Jury -
Adjudges Jacob Kittinger, D. A. Jones,
Filed 29th day of September AD 1855 A. J.
Murray clerk - Copies read true Bail
\$1000 J. S. Thompson" And that at the

April term of this Court aforesaid came the said defendant and moved the Court to quash the said Indictment, which motion and the reasons therefor are as follows -

The People vs Joseph Harris - Circuit Court, April Term AD 1856.

Motion to quash Indictment.

1st The Indictment does not show a stated

place the road is complained of is being obstructed.

2nd. It does not show the place of the location of the road.

3rd. It does not show at what place the fence is built or the direction of the same.

4th. It does not show whether the road is ^{inter}crossed upon by the fence or obstructed by a fence across the same.

5th. It is uncertain.

6th. It does not show that the obstruction renders the road inconvenient or dangerous to pass.

7th. It does not show in what way the fence obstructs the road.

8th. The Indictment is double.

Which motion was overruled by the Court and to the overruling of said motion to quash, the said defendant by his counsel then and there accepted and that afterwards at the April Term of said Court aforesaid the said defendant had the said defendant was arraigned to answer said Indictment and entered his plea of not Guilty and the said defendant had leave of said Court to file plea of the Statute of limitations, the plea

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of the defendant are in the words following, to wit, "State of Illinois Knox County ss. Knox Circuit Court The People vs Joseph Harris. And now comes the defendant & to the Indictment in this cause for plea thereto says he is not Guilty in manner and form or in any manner as is in said Indictment alleged and set forth and of this he puts himself upon the Country &c L Douglass atty for defendant

And for further plea in this behalf have of the Court first had and obtained the the defendant says the said People ought not to have and maintain their action thereof against him because he says the said Indictment was not found within one Year and six months from the time of committing the said supposed offence & this he is ready to verify wherefore he prays Judgment of said Indictment if the said People ought to have and maintain their said action thereof against him &c L Douglass atty for def

And that at the September term of said Court A.D. 1856 came on to be tried the said Indictment & the matters & things therein contained, and that then & there came the said People by their State Attorney and moved the Court to strike out the defendants plea of the Statute of limitations thereupon the said plea was ordered by the Court to be stricken out, and that the defendant then & there to the ruling or order of the Court in striking out of said plea excepted, and at the last named time of said Court a Jury was indifferently empanelled, called, elected, tried and sworn to try the said cause, and the truth of the allegations of said Indictment, And after the said Jury was so elected the said People to maintain the issue on their their part called Jacob Kittinger as a witness who being duly sworn testified as follows, to-wit,

That he lived in Township Ten North, Range four East in Knox County Illinois, knew old middle State Road, it was laid before he came to the country, he said that on the line of the road, it was travelled

very little, till the alteration or the laying
 of the new road, new road has been
 travelled ten or twelve Years, it runs
 across South East, South West and
 North West twenty one, Township Ten
 North, Range four East, It was fenced
 on the North West quarter of section
 twenty one, the new road has been
 worked and as a road, I was road
 Supervisor ten or twelve Years ago. I
 received instructions to work the road
 from M J Bunkle Clerk of the County Court.
 It was in writing & may be laying about
 at home, I worked the road as
 Supervisor, and made two bridges acro^s
 two Sloughs on North West twenty one.
 this was on the road laid in 1846,
 Miller who was Supervisor worked on
 same road afterwards, but not on the
 new road or alteration, The road on
 the North West twenty one was fenced
 up by the defendant or he caused it
 to be done, three Years ago this fall by
 posts and boards across the road in
 two places, and turned the travel
 around the South West corner of the
 said North West twenty one, the defendant
 made the road around the corner of

the quarter, The road went across
said quarter in a line straight with
the bridges, the road crossed the South
and West line of said quarter, about
thirty rods from the South West corner
of the said quarter, all the work done
on the ~~quarter~~ road on the said North
West twenty one being knowledge was
the two Slough bridges, The fence has
stood there from the time it was made
to the present, No work done on the old
road up to time the new road was
laid. Moreover the People called
Scander. Merrill who being duly sworn
testifies That he knows the road
lives two & one half miles from the road.
The new road across the South line
of the North West quarter of section twenty
one about thirty rods East of the South
West corner of the said quarter, and
crosses the west line of the quarter
about fifteen rods North of the South
West corner of the quarter, The road
was travelled seven or eight years, I
under Keitlinger helped make the
bridges on North West twenty one, The
bridges were partially made about
nine years ago, and finished some

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seven or eight years ago, I as supervisor finished them. It was fenced three years ago this fall by Joseph Harris on the line of the quarter & the fence still continues.

Before the bridges were made between and in line with the fences Mr. Kittinger plowed two fences across said quarter about two rods apart straight across, and the bridges were made between and in a line with the fences & the track across there was between the fences. — The old road and the new road did not touch on this land.

James Adams was sworn by and on the part of the People who testifies as follows.

He lives three fourths of a mile from the road has known the road about ten years. It runs across North West twenty one. Harris built the fence three years ago this fall I worked on it, it was completed last of September or first of October three years ago this fall & the fence has continued till now — And thereupon the People rested their case.

And the defendant to maintain the issue
on his part introduced in evidence
the Hot & field notes of the old ~~xxxxx~~ ^{Road} in
middle Tioria State which is as follows,
(By instruction of counsel the Hot & field
notes are not incorporated into the Record)
And also produced a Petition for the
laying of a new road which is as
follows (By instruction of counsel the
Petition referred to, is not incorporated
into the Record) Also the Record of the
County Commissioners Court of Koot
County Illinois Appointing Viewers
thereon as follows (By instructions
of counsel the Record of the County
Commissioners Court referred to, is
not incorporated into this Record)
Also from the same Record the Report
of the Viewers & field notes for the same
and the order of the Court thereon is as
follows, (By instruction of counsel the
report, field notes and order of the
Court referred to, is not incorporated
into this Record) And also introdu-
ced a Petition for a vacation of a part
of the old middle Tioria State road
which reads as follows: (By instruction
of counsel the Petition referred to, is not

incorporated into this Record). Also introduced the Record of the County Commissioners Court of Knox County aforesaid showing the appointment of jurors on said vacation which was as follows, (By instructions of Counsel the Record aforesaid is, not incorporated into this Record). And also the same Record showing the report of the Jurors order of the Court thereon as follows, (By order of Counsel the Record & report aforesaid to are not incorporated into this Record) Which was all the Record concerning either of said roads or both of them.

And thereupon the Defendant called George A. Charles who was sworn and testified as follows, That he surveyed the old Middle Preria State road, and made the Plat shown in evidence, and that the fifteen chains and thirty four links reaches the East line of the Town Plat of Knoxville in Knox County, in the center of Main Street, at that point the East line of South West 28. T W N. R 2 E is about fifteen feet East of the Town Plat. There is nothing certain about the Town Plat only the courses and distances, and by taking a fixed point & running

by the courses & distances, the location of the road can be found.

Elias T. Byrnes was called as a witness for defendant who being sworn testified as follows, That he had surveyed the Town Plot of Knoxville and that a stake in the centre of Main Street was near the East line of the Town Plot as he could make it by measurement.

George Stevens was called and sworn for the defendant, who testified that he was a Surveyor and is Deputy County Surveyor and has surveyed eight years, and that he started at a stake in the centre of Main Street in the East part of Knoxville, said stake to be the East line of Knoxville, and run East on the field notes of old Plot of the Middle State Turn Road in evidence to the East line of Knox County and then run West on the field notes of new road in evidence and run across North West of twenty one 10 NNE parallel with the old travelled track across said quarter, and my line at the nearest point to which the road was supposed to be ~~the~~ was

Seventy two and one half links South
of the South End of the Hough bridges
built on the old travelled track. The
line of the two roads intersected West
of the North West quarter of section twenty
one. At the place where I struck the
County line there was no travelled track
across. He struck the County line about
one chain & seventy two links South of
where the travelled ^{track} now crosses the County
line. If I had started on the County line
in the travelled road my line on North
West twenty one would just about hit
the bridges. The chaining in my survey
was done under my supervision and
was correct.

Jacob Kettinger recalled
said that he was with the Surveyor, when
the said road was surveyed, and that
the Surveyor found a stake at the County
line that he supposed was a corner of
a section & run from that as a starting
point for the new road. He did not
know whether he started from the right
point or not. At that time on the old
road there was no travelled track
across the County line & the Surveyor
started out on the Prairie in the Grass

When he came to the County, Stakes on the old road could be found & that he believed the Surveyor started on the County line in range with the old Stakes.

Segro was sworn for the defendant and said that he was Chairman under Stevens in making Survey & that the chaining was under the direction of W. Stevens was correct.

And that the foregoing was all the evidence introduced on the trial of said cause, and that thereupon after the Argument of Counsel the Court gave to the Jury at the request of the States Attorney the following instructions, to-wit:

1st The Court is asked to instruct the Jury, that if they believe from the evidence beyond a reasonable doubt, that defendant obstructed the road as charged in the Indictment, and continued such obstruction continuously on within Eighteen months immediately preceding & finding the Indictment, they should find defendant guilty even if the Obstruction was first erected & placed in said road before Eighteen months immediately prior to the finding of the Indictment.

2 That under this Indictment it is not necessary to prove on the part of the People that the road obstructed was in fact a State road, if it was called the middle State Road, and it is wholly immaterial whether the road was sometimes called Keitlingers road or not, if it was also called the middle State road as set out in the Indictment.

3 That a State road relocated by the Co. Court, at the time this road was claimed to be relocated would not become a County road but would be a State road relocated by the Co. Court.

4 That if they believe that a public road called the middle State road in fact was laid, located, worked & used as such across any part of the NW 1/4 of Sec 21, T14N, R14E, in Knox County & was by defendant obstructed as charged in the Indictment, they should find defendant Guilty.

5 The actual States or monuments placed by the Surveyor & Commissioners appointed to locate the road, indicating the location of the road, are evidence of the real location of the said road, but the record evidence of the location and

Establishment of a road is the best
evidence,

And that the defendant
then and there to the giving of said
instructions to the Jury then and
there objected and excepted, And
that then and there the defendant
asked the Court to give the following
instruction

1 This is an Indictment
against the defendant for obstructing
a public road and continuing such
obstruction thirty days, and although
the Jury believe that the defendant
did so obstruct said road and
continue such obstruction for thirty
days after it was placed in the road
yet if 18 months or more had elapsed
from the ending of said thirty days
before the finding of this Indictment
they must find him not guilty.

Refused

And that the Court then &
there refused to give the instruction
so asked by the defendant, And
that the defendant then & there
to the refusal of the Court to give
the instruction so asked excepted
and objected, And that the Court

at the request of the defendant gave
the following instructions

Grant
The Jury is instructed that the
field notes given in evidence are
to determine the location of the two
roads given in evidence

And thereupon the Jury retired
with an officer to enquire of the
verdict, and after due deliberation
returned into Court with a verdict
in the words following, to wit, "We the
undersigned Jury find the defendant
Guilty. (signed) E. F. Mair, J. S. Buchanan
William S. Buchanan, J. C. Suttina
J. A. Bundy, William Corder, Charles
Collinson, Isaac Hunter, James Gallant,
P. T. Sisson, Corly Jones, Solomon Massey"
to which verdict the defendant then
and there excepted; And thereupon
upon the coming in of said verdict
the said defendant then and there
made his motion for a new trial
in said cause, which motion and
reasons filed therefor were in the
following words to wit: State of Minn.
Kane County ss. Know Circuit Court
September Term A.D. 1886.

- The People vs Joseph Harris. The
defendant by Manning & Houghlass
his attorneys comes & moves the Court
for a new trial for the following reasons.
- 1 The verdict is against the Law & Evidence.
 - 2 The Court erred in refusing to give
instructions asked by the defendant.
 - 3 The Court erred in giving the instructions
asked by the People.
 - 4 The verdict is against the instructions
of the Court.
 - 5 The instructions given were contradictory.
 - 6 The instructions were calculated to
mislead the Jury.

Manning & Houghlass Attys. for Def.

(Which motion for a new trial was
overruled by the Court, and that the
defendant then & there to the deefin
of the Court in overruling said Motion
for a new trial Excepted, & did
thereupon the said defendant come
and made his motion in arrest of

Judgment in said cause, which motion and the reasons therefor were in the following words, to-wit, "State of Illinois, Knox County ss. Knox Circuit Court, September Term A.D. 1856, The People vs Joseph Davis. The defendant comes and moves the Court for arrest of Judgment in this cause for the following reasons, to-wit,

- 1 For the want of a sufficient Indictment,
- 2 There is no sufficient verdict to authorize any Judgment of the Court thereon,
- 3 ⁵³ There is no sufficient Record in said Cause to authorize or sustain a Judgment therein against said defendant.

Manning & Douglass Attys for Dft
And the Court then and there overruled said motion in arrest of Judgment and assessed a fine of ten dollars together with the costs of prosecution against said defendant, And that the defendant to the overruling of said motion and decision thereon then and there excepted

The Record referred to by the

defendant in his motion for arrest of Judgment, and thereby becomes a part of this Record, and reads in the words and figures following, to-wit, on the 29th day of April A.D. 1856 at the term of the Court then holden, the following order was entered in this cause, which reads in the words of figures following, to-wit,

The People vs
or
Joseph Harris

Obstructing Highway

This day came the defendant by his attorney and moves the Court to quash the Indictment herein after being advised in the premises. It is ordered by the Court that the motion be overruled.

And afterwards, to-wit, on the 23^d day of September A.D. 1856, at a term of the Court then holden, the following order was entered in said cause, which reads in the words following, to-wit,
The People of the State of Illinois

or
Joseph Harris

Obstructing Highway

This day came the

States attorney and moved the Court
to strike the defendants 2nd plea from
the files of this Court, and after being
advised in the premises, It is ordered
by the Court that the motion be ~~allowed~~
sustained, Thereupon came the defen-
dant by his attorney and moves the
Court for leave to amend the Record of
the last Term of this Court so as to show
that leave was given him at that time
to file his plea of Statute of limitations,
thereupon it is ordered by the Court that
the motion be allowed, and that the
Record be so amended.

And afterwards on the same day, to-wit
on the 28th day of September A.D. 1856, the
following order was entered in said
cause, which reads in the figures
following, to-wit,

The People &c	3
vs	3
Joseph Harris	3
	Obstructing Highway

This day the People appeared
by the States attorney, and the defendant
in proper person attended by his attorney
and for plea says that he is not guilty

in manner and form as charged in
the Indictment, and for trial puts him
self upon the Country, thereupon
came a Jury, to wit, James Gallant
William Humber, Conley Jones, Charles
Cullison, John Mosher, E. Kellain, William
Gorden, Isaac Hunter, John C. Lottimore
P. J. Sifer, James S. Bundy and A. S. Bonham
who being elected tried and sworn well
and truly to try the issue joined herein
after hearing the evidence and argument
of counsel, retired to consider of their
verdict, and required to meet the Court
at 8 O'clock tomorrow.

And afterwards, at the same time of the
Court, to wit, on the 21st day of September
A.D. 1856, the following order was entered
in said cause, which reads in the words
and figures following, to wit:

The People of the State of Illinois

vs. Obstructing Highway
Joseph Harris

This day again came the
Jury empanelled herein on Yesterday, and
upon their oath do say "We the Jury find
the defendant guilty in manner and

from as charged in the Indictment.
thereupon came the defendant by his
counsel and entered his motion for a
new trial herein, and for an arrest of
Judgment,

And afterwards, at the same
term of the Court, to-wit, on the 25th day
of September A.D. 1856, the following order
was entered in said cause, which
reads in the words and figures following
to-wit:

The People vs
Joseph Harris
Obstructing Highway

This day again came on
this cause for hearing on the motions of the
defendant for a new trial and in
arrest of Judgment, after being advised
in the premises, It is ordered by the Court
that the motions be overruled,

And afterwards, at the same term of the
Court, to-wit, on the 5th day of October
A.D. 1856 the following order was entered
in said cause which reads in the words
and figures following, to-wit:

The People of the State of Illinois,
vs
Joseph Harris } Obstructing Road

This day again came on this cause for hearing. Thereupon it is considered by the Court that the said defendant by the Court that the said defendant, makes his fine to the People of the State of Illinois in the sum of Ten dollars. Therefore it is finally considered by the Court that the Plaintiffs have and recover of the said defendant the sum of ten dollars the amount of his fine, as assessed by the Court as aforesaid, together with their costs by them in this suit laid out and expended and may have execution therefor. Exceptions taken & Bill Signed

That the matters aforesaid might be a matter of Record in said cause I John S. Thompson the Judge of said Court have during the continuance of said session of the September Term of this Court A.D. 1886, caused to be signed & sealed this Bill of Exceptions.

John S. Thompson Judge

State of Illinois
Knox County

J. Cephus Arms Clerk
of the Circuit Court within and for said
County and State, do hereby certify that
that the foregoing is a true and correct copy
of the Record of the proceedings, in the case
of the The People of the State of Illinois against
Joseph Harris, and a full true and complete
Record thereof as the same appears in
my Office, except that the Plat and field
notes of the old middle Provia State Road
and the Petition for laying a new road
and the Record of Knox County Commissioners
Court appointing viewers on the ~~land~~ said
road & the Record of the same Court showing
report of the viewers of said ^{notes} & the orders of the
said Court thereon, and a Petition for vacation
of a part of the old middle State Provia Road
and the Record of the same County Commis-
sioners Court showing appointment of
viewers on said Petition to vacate and
the Record of the same County Court
showing report of the viewers on the
Petition to vacate and the order
of the Court thereon, were left out

and not sent up as a part of the Bill
of Exceptions at the request of counsel
In testimony whereof I have
hereunto set my hand and
affixed the Seal of said Circuit
Court at Knoxville this 18th day
of April A.D. 1857.
Ophias Arms Clerk

The People
v. LB
Joseph Harris
Copy Record



Filed May 12, 1855
L. Leland
Clk

Manning Dwyer & Co.
for Harris

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Circuit Court Court for the County Knox Greeting:

Because, In the record and proceedings, as also in the rendition of
the judgment of a plea which was in the Circuit Court
Court of Knox County, before the Judge thereof, between
The People of the State of Illinois

plaintiff, and Joseph Harris

defendant, it is said mani-
fest error hath intervened, to the injury of the aforesaid Joseph
Harris

as we are informed
by his complaint and we being willing that error should be
corrected, if any there be, in due form and manner, and that justice be done
to the parties aforesaid, command you that if judgment thereof be given,
you distinctly and openly, without delay, send to our Justices of the Su-
preme Court the record and proceedings of the plaint aforesaid, with
all things touching the same, under your seal, so that we may have the
same before our Justices aforesaid at Ottawa. in the County of La
Salle, on the first Tuesday after the third Monday in April next, that
the record and proceedings, being inspected, we may cause to be done therein,
to correct the error, what of right ought to be done according to law!

Witness, The Hon. John D. Caton, Chief
Justice of our said Court, and the Seal
thereof, at Ottawa, this 12th day of
May in the Year of Our Lord
one thousand eight hundred and fifty-eight

John D. Caton
Clerk of the Supreme Court.

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Joseph Harris

The People of the State
of Illinois
Writ of Error

Filed May 12, 1888
in the
Circuit Court
of Illinois