

No. 12548

Supreme Court of Illinois

Garrison

vs.

Rudd

71641  7

Monday Sept 22^d 1856.

United States of America
State of Illinois
Winnebago County.

Pl^e as before the Hon.
Benjamin R. Sheldon Judge of the Fourteenth
Judicial Circuit Court of the State of Illinois
began and held at the Court House in Rock-
ford in said county of Winnebago on the
22^d day of September in the year of our Lord
one thousand eight hundred and fifty
six. Present. Hon Benjamin^R Sheldon Judge
William Brown State Attorney
John F. Taylor Sheriff
Attest Charles W. Spafford Clerk

Winnebago Circuit Court
September Term A.D. 1856

Thomas J. Rudd }
vs } Trespass
Thomas Garrison } Damages \$1000.

The clerk of the circuit court will please issue
summons in the above entitled suit re-
turnable at the next term of court
Miller & Miller
Plff. Attorneys
To C. W. Spafford clerk }

Endorsed "Filed Aug 7th 1856 C. W. Spafford"
Clk

2

Circuit Court Summons.
State of Illinois } ss.
Winnebago County }

The people of the State of Illinois
to the Sheriff of Said County Greeting;
We command you that you summon Thomas-
Garrison if he shall be found in your County,
personally to be and appear before the circuit
court of Said County on the first day of the
next term thereof, to be holden at the Court
House in Rockford, in said county, on the 4th
Monday in September next to answer unto
Thomas J. Rudd in a plea of Trespass to the
damage of the Said plaintiff as he says in the sum
of One thousand dollars. And have you then
and there this writ, with an endorsement there-
on, in what manner you shall have execu-
uted the same. Witness Charles H Spafford, Clerk,
of our said court, and the Seal thereof, at Rock-
ford, aforesaid, this seventh day of August
A.D. 1856 Charles H Spafford Clerk
"Seal" By J. E. L. Southgate Deputy

Endorsed. State of Illinois } ss.
Winnebago County } I duly served the within
by reading the same to the within named Thomas
Garrison Aug 7th 1856 as I am therein commanded
John F. Taylor Sheriff

Winnebago Circuit Court
February Term A.D. 1857
Thomas J. Rudd }
Thomas Garrison }

3
Winnebago County, Ill.

Thomas J. Rudd, Plaintiff in
this suit by Miller & Miller complains of Thomas
Garrison Defendant being summond of a
plea of Trespass &c. For that the said Defendant
on the twenty eighth day of July Eighteen fifty six
and divers other days and times previous and bet-
ween that day and the commencement of this
suit at the County aforesaid with force and arms
broke open and entered into the close of the said
plaintiff situated lying and being in the city of
Rockford in the County aforesaid abutting tow-
ards the west on main Street running para-
-llel with Rock River through the city of Rock-
-ford, towards the East on Rock River tow-
-ards the South on a certain close in the possession
of George W. Rudd, towards the north on a cer-
-tain close in possession of Elizabeth Martin,
and then and then forced and broke open
broke to pieces damaged and spoiled divers to
wit; Ten gates of the said plaintiff of great value,
to wit: of the value of One hundred Dollars then
standing and being in the said close, and the
locks staples and hinges to wit; twenty locks,
thirty staples twenty hinges of the said plaintiff,
to wit: of the value of Fifty Dollars respec-
-tively, affixed to the said gates and with which
the same were then respectively fastened and forced
and broke down and broke to pieces damaged
and spoiled, divers fences to wit, Ten rods of
fence belonging to the said plaintiff of great
value, to wit of the value of Two Hundred

dollars then standing and being in the said close of the said plaintiff; and with feet in walking-trod down trampled upon consumed and spoiled the grass and shubbery of the said plaintiff of great value to wit: of the value of Twenty dollars then and there growing and being - and with Cattle, to wit: Horses, mares, geldings, cows, oxen and sheep ate up and depastured the grass and corn of the said plaintiff of great value to wit: of the value of Twenty dollars then growing and being in the said close and with divers other Horses, Mares geldings, sheep & Cattle, and also with the wheels of diverse carts, waggons, and other carriages crushed damaged and spoiled other the grass, corn & shubbery of the said plaintiff of great value to wit: of the value of Thirty Dollars then then also growing and being and with feet of ^{the} said Cattle, Horses, mares and geldings and with the wheels of the said Carts, waggons, and other carriages tore up subverted damaged and spoiled the earth and soil of the said close, and also then and then mowed and cut down the grass and corn of the said plaintiff, then growing in the said close and then and there seized took and carried away the hay and corn to wit: Two cart loads of corn, Two cart loads of Hay of great value, to wit of the value of one hundred Dollars, of the said plaintiff, and also then and then cut down, prostrated and destroyed the trees and underwood, to wit: Thirty locust trees Twenty Balsam of Gilead trees Twenty poplar trees Twenty Plum trees of the said plaintiff of great value, to wit: the

dollars then standing and being in the said close of the said plaintiff; and with feet in walking-trod down trampled upon consumed and spoiled the grass and shubbery of the said plaintiff of great value to wit: of the value of Twenty dollars then and there growing and being - and with Cattle, to wit: Horses, mares, geldings, cows, oxen and sheep ate up and depastured the grass and corn of the said plaintiff of great value to wit: of the value of Twenty dollars then growing and being in the said close and with divers other Horses, mares geldings, sheep & Cattle, and also with the wheels of diverse carts, waggons, and other carriages crushed damaged and spoiled other the grass, corn & shubbery of the said plaintiff of great value to wit: of the value of Thirty Dollars then then also growing and being and with feet of ^{the} said Cattle, Horses, mares and geldings and with the wheels of the said carts, waggons, and other carriages tore up subverted damaged and spoiled the earth and soil of the said close, and also then and then mowed and cut down the grass and corn of the said plaintiff, then growing in the said close and then and there seized took and carried away the hay and corn to wit: Two cart loads of corn, Two cart loads of Hay of great value, to wit of the value of one hundred Dollars, of the said plaintiff, and also then and then cut down, prostrated and destroyed the trees and underwood, to wit: Thirty locust trees Twenty Balsam of Gilead trees Twenty poplar trees Twenty Plum trees of the said plaintiff of great value, to wit: the

5

The value of one hundred Dollars; and also
 then and there broke down prostrated, ^{and} destroyed
 a great part to wit: Fifty rods of fence of the
 said plaintiff of and belonging to the said close
 of great value to wit: of the value of Two hundred
 dollars, to wit: at the county of Hennibago
 aforesaid, and other wrongs to the said plaintiff
 then and there against the peace of the people
 of the State of Illinois and to the damage of
 the said plaintiff of One thousand dollars

Miller & Miller
 Plff Attys

Endorsed "Filed Feby 6th 1857

C. W. Pennoyer

Deft Clerk

Thomas Garrison }
 al

Thomas J. Rudd } and the said defendant
 by Loop & Cathrop his Attorneys comes & defends
 the peace and injury when &c. and says
 that he is not guilty of the said several trespasses,
 or any or either of them in manner
 & form as the said plaintiff shaks above thereof
 in his declaration against him complained
 and of this the said defendant puts himself upon the country &c.

Loop & Cathrop
 Attys for Deft

And the said defendant for a further plea
 in this behalf by leave of the court just had
 and obtained says actio non because he says
 that the said premises in said plaintiff's

declaration mentioned were at the time when
 re a lane or private way leading from the high
 way to the river, and that the said defendant
 at the time when re, was entitl'd to pass
 and repass over and through the same, and
 that in order to the enjoyment of the said
 right he did remove a gate ^{or} fence erected
 by the said plaintiff upon and across the
 said lane or way doing no unnecessary harm
 damage to wit; at the time & place aforesaid,
 as well he might for the cause aforesaid
 which is the same supposed trespass in
 said plaintiff declaration mentioned, &
 not other or different which this defendant
 is ready to verify, wherefore he prays judg-
 ement re

Goop & Catherop
 for Deft

And the said defendant for a further
 plea in the behalf, by like leave re says
actio now because he says that at the
 time when re in said plaintiffs declara-
 tion mentioned he entered upon the said
 premises and removed the gate & fence
 as in said declaration mentioned by the
 leave & licence of the said plaintiff, doing
 no unnecessary damage, which is the same
 supposed trespass in the Plaintiff declara-
 tion mentioned & not other or different;
 which the defendant is ready to verify;
 wherefore he prays judgement re,

Goop & Catherop
 attys for Deft

7
Endowed "Filed Feby 19-57

W B Derrick clerk

United States of America }

State of Illinois }

Winnebago County S.D. }

Pleas before the
Hon Benjamin R. Sheldon Judge of the
fourteenth Judicial circuit of the State of Illinois
at a term of the Winnebago County Circuit
court began and held at the court house in
Rockford in said county of Winnebago
on the sixteenth day of February in the year
of our Lord one thousand eight hundred and
fifty seven, Present Hon Benj. R. Sheldon Judge

U. D. Meacham State Attorney
Samuel J Church Sheriff

Attest Morris B Derrick clerk

And afterwards to wit on the nineteenth day
of February it being one of the days of the afore-
said term of court the following entry was
made as appears of record of the court minutes

Thomas J. Rudd }

vs

Thomas Garrison } On motion of Plaintiff
by Miller & Miller his attorney leave was
granted plaintiff to file 2^d Replications
to 2^d Plea in this cause

Winnebago Circuit Court

Thomas J. Rudd }

Thomas Garrison } and the said

8
plaintiff as to the pleas of said ^{the} defendant by him
just above pleaded and wherein he puts him-
self upon the country doth the like
And the said plaintiff as to the said defend-
ant second plea and the matters therein stated
says preclude none because, he says that the
said premises in the said plaintiff declaration
mentioned were not at the time when ^{re} a
lane or private way leading from the highway
to the river and that the said defendant
at the time when ^{re} was not entitled to pass
and repass over and through the same and
this he the said plaintiff prays may be injured
of by the country ^{re} and the said defendant
doth the like

Loop & Sathrop

for Deft

And the said plaintiff for a further replication
in the defendants second plea by leave of the
court ^{re} says preclude none because he says
that the said defendant had no right or
privileges in to upon over and through the
said plaintiff said premises and that the
entry upon the said premises and the remo-
val of said gates and fences by the said defen-
dant to wit: at the time and place mentioned
in the said plaintiffs declaration was with-
out any right or authority and in violation
of the said plaintiffs rights in said premises
And this he the said plaintiff prays may be
injured of by the country ^{re} and ^{the} other
said defendant doth the like

Loop & Sathrop for Deft

and the said plaintiff as to the said defendants
 plea by him thirdly above pleaded says preclude
 now because he says at the time when &c
 in said Plaintiffs declaration mentioned
 prior to the commencement of this suit the
 said defendant of his own wrong entered upon
 the said plaintiff premises and removed
 the gates and fence as in said declaration
 mentioned without any leave or license
 of the said Plaintiff and in violation of the
 said Plaintiffs right and this the said
 Plaintiff says may be injured by the countage
 Miller & Miller

And the said defendants atty for Plff
 doth the like
 Loop & Sathrop for Defs

And afterwards to wit on the 20th day of Feby
 it being one of the days of the aforesaid term
 of court the following entry was made —

Thomas Grubb {
 vs

Thomas Garrison } And now comes the
 Plaintiff Miller & Brown his attorneys
 and the defendant by Loop & Sathrop
 his attorneys also comes & issue being
 joined it is ordered that a jury come
 and thereupon come a jury of good and
 lawfull men who being duly empann-
 eled tried and sworn well and truly to
 try the issue joined & having heard the evi-
 dence & arguments of counsel they retired

to consider of their Verdict & thereafter they returned into court with the following Verdict: He the jury find the defendant guilty & assess the Plaintiff damages at Five Dollars and thereupon the Defendant moved the court for a new trial herein

Tuesday April 28th 1857

United States of America

State of Illinois Winnebago County S.D.

Pleas before the Hon. Benj R. Sheldon Judge of the fourteenth Judicial circuit of the State of Illinois at a term of the Winnebago County circuit court, began and held at the Court House in Rockford in said county of Winnebago on the 28th day of April in the year of our Lord one thousand eight hundred and fifty seven Present the Hon Benj R. Sheldon Judge

W.D. Meacham State Attorney

Samuel J. Church, Sheriff

Attest Morris B. Derrick Clerk

And afterwards to wit: on the 5th day of May it being one of the days of the April term of said Court the following entry was made as appears of Record of the court minutes

Thomas J. Rudd } Tuesday May 5th 1857
vs

Thomas Garrison } and now comes the Plaintiff
by Miller & Brown his Attorneys & the defendant
by Soop & Lathrop his Attorneys also come & the
Court having heard the argument of counsel

11 On the motion of the defendant for a new
trial herein and having considered the same,
denies and Overrules the motion to which the defendant Ex-
-pts: It is ordered that the Plaintiff have judgment
on the ~~jury~~ verdict of the jury heretofore rendered
to wit: we the jury find the defendant guilty and
assess Plaintiff damages at \$5.00. It is ~~therefore~~
ordered & considered by the court that the Plain-
tiff have and recover of the defendant the
sum of five dollars damages as also his costs
& charges herein expended & that he have exe-
cution therefor; Thereupon the Defendant
prayed an appeal to the Supreme court which
was allowed upon condition that he ^{an appeal bond} file with
the clerk of this court within 30 days properly con-
-ditioned with Chas. W. Hooper or Roberts Clough
as surety in the sum of Two hundred dollars

In the Winnebago County Circuit Court
Thomas J. Rudd } Feby term 1857.
vs } Trespass
Thomas Garrison }

Be it remembered that on the
trial of this cause the plaintiff introduced
as a witness, Doctor George Rudd, who testified
that he knew the premises of the Plaintiff when
the trespass was committed and since the year
1852 & are in the city of Rockford in this county
that they have been owned and occupied by
the plaintiff. That there was a lane fenced
out by the plff. sometime in 1853 on or about the

South line of the plaintiffs premises and on the north line of the witnesses premises, that the lane was 25 feet in width, and principally on the South end of the plaintiffs premises. The lands of the plaintiff and witness adjoined each other the witness land lying south of the plaintiff and both lying East of the Public road leading North from the city of Rockford, being a continuation North of Main street in said city. That the line between the witness land and that of the Plaintiffs was not exactly straight, and the lane running at right angles with the public road included at the East end of the lane a small part of witnesses land. That until the South line of the lane struck witnesses land the whole 25 feet was on plaintiffs land; and that the plaintiff erected a fence & gates across said lane, upon the line of the public road in the Spring of 1855. The said gates and fence across the lane were torn down by defendant on the 28th of July 1856. Witness thinks the damages, costs of and repair somewhere in the neighborhood of \$10. Deft. broke and cut down the gates & fence with an axe after tearing down the gates. Deft. broke down and removed the picket fence on each side of the gates the whole 25 feet the width of the alley - The lane was fenced out from the road to the river by self some time in 1853, and the fence on the sides of the same were 25 feet apart. The Plaintiff then introduced as witness William

M. G. Gogor, who testified that he has lived
 for the last 17 years upon the plaintiffs place
 that he has during that time frequently seen
 the defendants cattle, 10 or 12 in number, in
 the lane above described and on plaintiff
 premises. Witness saw Def. cut down & remove
 said gates & fence across the ally on plff
 premises fronting on the Public Highway.
 The defendant then introduced as a witness
 Thomas Norcross, who testified that he was
 a House builder by trade; that he was with
 the Defendant at the time the Gate & fence
 were removed by him, that the materials were
 carefully removed & set up against the fence.
 That in his opinion the damage or costs
 of repair would not exceed \$2.00. —
 The defendant also proved that Defendant lived
 in the same house & occupied the same premises
 occupied and owned by James Taylor at
 the time plff purchased his lands from Taylor
 and that the two pieces were separated by the
 Public road running north from Rockford
 a continuation of Main Street in said City
 & all belonged to the same Congressional sub-
 division of land. The defendant then offered
 in evidence two deeds of conveyance from
 James Taylor, which deeds were in the words
 & figures following to wit:

The plaintiff objected to the introduction of said deeds, and the court sustained the objection to which decision & ruling of the court the defendant then and there excepted

The defendant then offered to prove that the said land had been used for the purpose of allowing the cattle of Taylor and of the defendant to go to the river for water from the time Rudd, the plaintiff went into possession.

The plaintiff objected to the said proof so offered by the defendant, and the court sustained said objection, to which decision and ruling of the court the defendant then and there excepted.

The foregoing was all the evidence in the cause

The jury found the defendant guilty, and assessed the plaintiff damages at the sum of five dollars —

The defendant then moved for a new trial — Afterward, to wit, at the April term of said court, the said motion of the defendant for a new trial came on to be heard & was overruled by the court and judgment was rendered against the defendant upon the verdict of the jury; to which decision & ruling of the court in overruling said motion for a new trial the defendant then and there excepted, and prayed that

17
this his bill of exceptions be signed & sealed
by the Judge, & made part of the record in this
cause, which is done accordingly.

Benj. R. Sheldon, Seal

Endorsed Filed May 7th 1857

W B Denick clerk

Know all men by these presents that we
Thomas Garrison as principal and Char-
les C. Hope as surety are held and fairly
bound unto Thomas J. Rudd in the penal
sum of Two hundred dollars, to the paym-
ent of which well and truly to be made we
bind ourselves, our & each of our heirs Executors
& administrators jointly and severally firmly by the-
se presents. Sealed with our seal dated this
19th day of May A D 1857.

The condition of the above bond is such that
whereas at the April term of the Circuit Court
of the County of Winnebago in the State
of Illinois A D 1857, the above named
Thomas J. Rudd recovered a judgment
in an action of trespass, against the
above named & bonded Thomas Garrison
for the sum of five dollars damages, besides
costs, from which said judgment the
said Thomas Garrison has taken an
appeal to the Supreme Court of the State
of Illinois, now if the said Thomas Garrison
shall duly prosecute his said appeal
and shall pay the Judgment, Costs,
interest & damages in case said said

18.

gment shall be affirmed by the Supreme Court, then this bond to be void otherwise to remain in full force & virtue

Thomas Garrison "Seal"
Charles LeRoux "Seal"

Endorsed - Filed & approved

by me this 20th day of May
1857 M B Derick

Fris 6.50.

Cir. clark

State of Illinois

Winnebago County S B I M. B. Derick Clerk of the Circuit Court in & for said County do hereby Certify the foregoing to be a Correct & Complete Copy of the records of papers on file in my Office in the foregoing entitled Cause & that they are correct copies of such original record of files duly compared therewith by me:

Witness my hand & the seal of said Court at the City of Rockford this 31st day of March 1858.

M B Derick Clerk

By At. Penoyer Dep. Clerk



112
Thos. J. Ridd
vs
Thos. Garrison
Transcript
of
Record for Sup Court

Filed April 3, 1858
L. Leland
clerk



STATE OF ILLINOIS, SUPREME COURT,
THIRD GRAND DIVISION,
APRIL TERM, A. D. 1858.

THOMAS GARRISON, Appellant, vs. THOMAS J. RUDD, Ap-
pellee.

Appeal from Winnebago.

ABSTRACT.

RECORD. — This was an action of trespass *quare clausum fregit*, brought by *Rudd* vs. *Garrison*, and tried at the February term, 1857, of the Circuit Court of Winnebago County.

Page 3. The declaration alleges trespasses committed by *Garrison* on a close, situate in the city of Rockford, "abutting towards the west, on Main street, running parallel with Rock river, towards the east on Rock river, towards the south on a certain close in the possession of George W. Rudd, and towards the north on a certain close in possession of Elizabeth Martin." The alleged trespasses were tearing down gates and fences, and going upon the land with cattle, &c.

Page 5. The defendant filed three pleas:

1st. Not guilty.

Page 6. 2d. That the premises were a lane or private way leading from the highway to the river, and that defendant was entitled to use it, and in order to his enjoyment of that right he removed the gate and fence erected by plaintiff across said lane, doing no unnecessary damage, &c.

3d. License.

Page 7. The plaintiff took issue on first plea, and by leave of the Court filed two replications to the second plea.

Page 8. 1st. That the premises were not a lane or private way, and that defendant was not entitled to use it.

2d. That defendant had no right of way, &c.

Page 9. To the third plea plaintiff replied, denying license. Issues were joined on these several replications.

The cause was tried before a jury who found the defendant guilty, and assessed plaintiff's damages at \$5.

Pages 10, 11. Defendant moved for a new trial, which motion, at the April term of said Court, was overruled, and judgment rendered on the verdict.

Page 12. The bill of exceptions shows, that on the trial plaintiff proved by George Rudd that he knew the premises when the trespasses were committed, since 1852. They are in the city of Rockford, and were owned and occupied by the plaintiff; that there was a lane fenced out by the plaintiff in 1853, on or near the south line of plaintiff's premises, and on the north line of witness's premises; that the lane was 25 feet wide, and principally on the south end of plaintiff's premises. The land of the plaintiff and of witness adjoined; the witness's land being south of plaintiff's, and both lying east of the public road leading north from Rockford, being a continuance of Main street, in said city; that the line between plaintiff's premises and witness's was not exactly straight, and

the lane running at right angles with the public road included at the east end a small part of witness's land; that until the south line of the lane struck witness's land, the whole 25 feet was on plaintiff's land, and that plaintiff erected a fence and gate across said lane upon the line of the public road in the spring of 1855; that defendant tore down the gate and fence in July, 1856. Witness thought the damage was about \$10. Defendant broke and cut down the gate and fence with an axe the whole width of the 25 feet. The fences on each side of the lane, running to the river, were 25 feet apart, and were fenced out by plaintiff in 1853.

Plaintiff also proved that defendant's cattle were in the lane after the fence and gate were removed.

Defendant then proved that the gate and fence were carefully removed, and the materials carefully set up against the fence.

Defendant also proved that he lived in the same house and occupied the same premises occupied and owned by James Taylor at the time plaintiff purchased his land from Taylor, and that the two pieces were separated by the public road running north from Rockford, a continuation of Main street in said city, and all belonged to the same congressional subdivision of land.

The defendant then offered in evidence two deeds from James Taylor.

The first was a deed from James Taylor and wife to plaintiff, dated Jan. 26, 1853, for a part of the north part of Section 23, T. 44 N., R. 1 E. 3d P. M.—commencing at a point in the middle of the river road, on the west side of Rock river, leading from Rockford to Rockton, (describing the premises in which the alleged trespasses were committed, bounded west by the road south George W. Rudd's premises, east by the river, and north by Elizabeth Martin's premises.) "The party of the first part reserving to themselves and their heirs forever the use of an alley 25 feet wide, on or near the south line of the above conveyed tract jointly with the said party of the second part and his heirs—said alley to extend from said river road to the river."

The second of said deeds was a deed from James Taylor and wife to the defendant, dated June 22, 1853, for a part of the north part of the north-west quarter of Section 23, T. 44 N., R. 1 E. 3d P. M., and some other land, "and the party of the first part also hereby conveys to the party of the second part and their heirs and assigns all the right and interest that the said party of the first part, their heirs or assigns, have in and to a lane or passage way from said river road to the river, on or near the south line of T. J. Rudd's land."

These deeds were objected to by plaintiff, and the objection sustained by the Court, and the deeds excluded, and defendant excepted.

The defendant then offered to prove that the said lane had been used for the purpose of allowing the cattle of Taylor and the defendant to go to the river for water from the time Rudd, the plaintiff, went into possession. The plaintiff objected to the introduction of said proof, and the Court sustained the objection and excluded the proof, and defendant excepted.

The jury found defendant guilty.

Defendant moved for a new trial. The Court overruled the motion and gave judgment, and defendant excepted.

Errors Assigned.

1st. The Court erred in excluding said deeds, and each of them offered in evidence by defendant.

2d. The Court erred in excluding the proof offered by defendant, showing a user and acquiescence by plaintiff.

3d. The Court erred in overruling the defendant's motion for new trial.

4th. The Court erred in rendering judgment on the verdict.

5th. The Court erred in rendering the judgment aforesaid in manner aforesaid.

W. H. L. WALLACE,
Of Counsel for Appellant.

Garrison
vs
Rudd

abstract

allegedly.

1st. The Court erred in rendering the judgment aforesaid in manner.

2d. The Court erred in overruling the defendant's motion for new trial.

3d. The Court erred in admitting the facts offered by plaintiff.

in evidence by defendant.

1st. The Court erred in excluding said depositions.

2d. The Court erred in admitting said depositions.

Of Counsel for Defendant.

W. H. L. WATKINS,

Filed May 12, 1878

L. Leland
Clerk

Argument
of errors

Filed May 14, 1878

L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1858.

THOMAS GARRISON, Appellant, *vs.* THOMAS J. RUDD, Appellee.

Appeal from Winnebago.

ABSTRACT.

RECORD. This was an action of trespass *quare clausum fregit*, brought by *Rudd* vs. *Garrison*, and tried at the February term, 1857, of the Circuit Court of Winnebago County.

Page 3. The declaration alleges trespasses committed by Garrison on a close, situate in the city of Rockford, "abutting towards the west, on Main street, running parallel with Rock river, towards the east on Rock river, towards the south on a certain close in the possession of George W. Rudd, and towards the north on a certain close in possession of Elizabeth Martin." The alleged trespasses were tearing down gates and fences, and going upon the land with cattle, &c.

Page 5. The defendant filed three pleas:

1st. Not guilty.

Page 6. 2d. That the premises were a lane or private way leading from the highway to the river, and that defendant was entitled to use it, and in order to his enjoyment of that right he removed the gate and fence erected by plaintiff across said lane, doing no unnecessary damage, &c.

3d. License.

Page 7. The plaintiff took issue on first plea, and by leave of the Court filed two replications to the second plea.

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The cause was tried before a jury who found the defendant guilty, and assessed plaintiff's damages at \$5.

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the lane running at right angles with the public road included at the east end a small part of witness's land; that until the south line of the lane struck witness's land, the whole 25 feet was on plaintiff's land, and that plaintiff erected a fence and gate across said lane upon the line of the public road in the spring of 1855; that defendant tore down the gate and fence in July, 1856. Witness thought the damage was about \$10. Defendant broke and cut down the gate and fence with an axe the whole width of the 25 feet. The fences on each side of the lane, running to the river, were 25 feet apart, and were fenced out by plaintiff in 1853.

Plaintiff also proved that defendant's cattle were in the lane after the fence and gate were removed.

Defendant then proved that the gate and fence were carefully removed, and the materials carefully set up against the fence.

Defendant also proved that he lived in the same house and occupied the same premises occupied and owned by James Taylor at the time plaintiff purchased his land from Taylor, and that the two pieces were separated by the public road running north from Rockford, a continuation of Main street in said city, and all belonged to the same congressional subdivision of land.

The defendant then offered in evidence two deeds from James Taylor. The first was a deed from James Taylor and wife to plaintiff, dated Jan. 26, 1853, for a part of the north part of Section 23, T. 44 N., R. 1 E. 3d P. M.—commencing at a point in the middle of the river road, on the west side of Rock river, leading from Rockford to Rockton, (describing the premises in which the alleged trespasses were committed, bounded west by the road south George W. Rudd's premises, east by the river, and north by Elizabeth Martin's premises.) "The party of the first part reserving to themselves and their heirs forever the use of an alley 25 feet wide, on or near the south line of the above conveyed tract jointly with the said party of the second part and his heirs—said alley to extend from said river road to the river."

The second of said deeds was a deed from James Taylor and wife to the defendant, dated June 22, 1853, for a part of the north part of the north-west quarter of Section 23, T. 44 N., R. 1 E. 3d P. M., and some other land, "and the party of the first part also hereby conveys to the party of the second part and their heirs and assigns all the right and interest that the said party of the first part, their heirs or assigns, have in and to a lane or passage way from said river road to the river, on or near the south line of T. J. Rudd's land."

These deeds were objected to by plaintiff, and the objection sustained by the Court, and the deeds excluded, and defendant excepted.

The defendant then offered to prove that the said lane had been used for the purpose of allowing the cattle of Taylor and the defendant to go to the river for water from the time Rudd, the plaintiff, went into possession. The plaintiff objected to the introduction of said proof, and the Court sustained the objection and excluded the proof, and defendant excepted.

The jury found defendant guilty.

Defendant moved for a new trial. The Court overruled the motion and gave judgment, and defendant excepted.

Miller makes two points

1 Grant of Rude to Taylor was
in Taylor and not apparently
personal merely - not a right appurtenant
to the soil - ^{the Court explained the motion}
a participation of the Rude in setting
the fence ^{the Court sustained the objection and excluded the blood and defendant ex-}
~~case~~ ^{the Court objected to the introduction of said blood and the}
^{to the issue for matter from the time Rude, the plaintiff, went into Court}
^{for the purpose of allowing the cattle of Taylor and the defendant to go}

2 At the time the Rude was conveyed his claim to
the district of the Rude and Gate, it is of
no avail to say that he has used the
land -

Brooks Ab. Litter 190 70 E. C. L. 168

If a way be granted in prop it is personal
only and cannot be appurtenant -

3 Kent's Com 420 ready appealant

Suppose the 120 acre had been put in
500 pounds would each one have the same way -
they would if appurtenant to the land of the plaintiff
Bourne's Sub. Litter 170 130 160 30 16 5 3
An incorporeal hereditament may be granted two ways
1 when prima grants to him this Rude - the grant
is said to be in prop - ^{the Court}
Had Taylor moved off the Rude and Gate and the Rude
the land, it was a prop - ^{the Court}
Rude - it is not limited to the Rude and Gate

3 Suppose Taylor had done this thing?
Would he not have been charged?
No claim except in cutting down the gates

4 No error in excluding the Rude and Gate
They show it was a grant in prop - personal

and not running with the land -

Wallace in conclusion

It does appear how much was allowed for
deposition by cattle, and how much for
breeding gates

Errors Assigned.

1st. The Court erred in excluding said deeds, and each of them offered
in evidence by defendant.

2d. The Court erred in excluding the proof offered by defendant, show-
ing a user and acquiescence by plaintiff.

3d. The Court erred in overruling the defendant's motion for new trial.

4th. The Court erred in rendering judgment on the verdict.

5th. The Court erred in rendering the judgment aforesaid in manner
aforesaid.

W. H. L. WALLACE,
Of Counsel for Appellant.

use the same amounts to nothing - it does not
conclude pfff. he can object when he pleases
to that it is before title arises by prescription -

Duration of prescription depends whether
this right was appurtenant or in gross -
the evidence should be used to mitigate the
damages, if not in prescription -

112

Garrison

vs

Ruell

abstract

argued
May 20 -

Filed May 12, 1838

L. Belmont
Clerk

above said.

23d. The Court erred in rendering the judgment absolute in manner.

43d. The Court erred in rendering judgment on the verdict.

3d. The Court erred in overruling the defendant's motion for new trial.

in evidence by defendant.

for the Court erred in rendering said decree and order of affirmance and

Of Counsel for Appellant

W. H. L. WALLACE

174
This Indenture, Made this Twenty Sixth day of January
in the year of our Lord one thousand eight hundred and fifty three BETWEEN

James Taylor and Jane his wife
of the Town of Rockford County of Winnebago
and State of Illinois of the first part, and

Thomas Jefferson Rudd
of the Town County of Winnebago
and State of Illinois of the second part, Witnesseth, That the said party of the first part,
for and in consideration of the sum of Four hundred DOLLARS,

to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed,
and confirmed, and do hereby grant, bargain, sell, convey and confirm unto the said party of the second part, and to
his Heirs and Assigns FOREVER, all that tract or parcel of land, situate and being in the
Town of Rockford County of Winnebago and State of Illinois
and known and described as follows, to wit:

Being a part of the north part of section twenty three
in township forty four north Range one East of the third principal meridian, bounded
as follow to wit: Commencing at a post in the middle of the River road, on the west side of Rock
River, leading from Rockford to Rockton, at ten chains and fifteen links bearing South Forty
Two degree west from where the north line of section twenty three intersects the middle of
the said road, thence run South Forty Two degrees west along the middle of the said road
three chains and seventy two links to a post, thence South thirty one degree east sixty six links
thence South sixty one degree East two chains and fifty links, thence South seventy nine degrees east one
chain and eighty links, thence South forty eight degree east one chain and twenty seven links
to a post on the west bank of Rock River being the north east corner of the tract of land conveyed
by the late Seth S. Whitman to George H. Rudd thence up stream along the west bank
of the river two chains and fifty four links to a post, thence North forty eight degree
west along the south line of Elizabeth Martin's lot, six chains and thirty eight links
to the place of beginning, containing two acres and ten hundredths of an acre.
The party of the first part reserving to themselves and their heirs forever,
the use of an alley twenty five feet wide on or near the South line of the
above conveyed tract, jointly with the said party of the second part
and his heirs - Said alley to extend from the said river road to
the river

Together with All and Singular, the appurtenances thereunto belonging or in any wise appertaining: To HAVE AND
TO HOLD the above described premises unto the said party of the second part, and to his heirs and assigns
forever; and the said party of the first part, for themselves and thurs heirs, executors and
administrators, do covenant and agree to and with the said party of the second part, his heirs and
assigns, that they are well seized of the premises above conveyed as of a good and indefeasible inheritance
in the law in fee simple, and that the said premises are clear of all liens, claims and incumbrances whatsoever, and of all
taxes and assessments for the present and past years.

And the said party of the first part the aforesaid premises unto the said party of the second part, and his
Heirs and Assigns, against the claim or claims of all and every person whomsoever, and all liens and incumbrances, and the
taxes and assessments aforesaid, do and will WARRANT AND FOREVER DEFEND by these presents.

In Witness Whereof, the said party of the first part have hereunto set his hand and seal on the
day and year first above written.

Executed in Presence of

Duncan Ferguson

James Taylor

Jane Taylor



This Indenture, Made this Twenty Second day of June
in the year of our Lord one thousand eight hundred and fifty three BETWEEN James Taylor
and Jane Taylor his wife
of the Town of Rockford County of Winnebago
and State of Illinois of the first part, and Thomas Harrison

of the City of Newark County of Essex
and State of Massachusetts of the second part, Witnesseth, That the said party of the first part,
for and in consideration of the sum of Five thousand nine hundred and
forty seven DOLLARS,

to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed,
and confirmed, and do hereby grant, bargain, sell, convey and confirm unto the said party of the second part, and to
his Heirs and Assigns FOREVER, all those tract or parcels of land, situate and being in the
Town of Rockford County of Winnebago and State of Illinois

and known and described as follows, to wit: A part of the north part of the north west quarter of Section twenty three and
most of the north and east parts of the south west quarter and a part of the west part of the south
the south east quarter of Section fourteen (14) in Township forty four north, Range one East
bounded as follows commencing at the quarter section post between sections fourteen
and fifteen thence running East on the half section line forty chains and ninety
three links to a stone at seventy five links East of the quarter section post, thence
running South eleven chains and fifty five links to a stone thence running South
twenty one degrees East twenty eight chains and two links to a stone in the middle
of the county road thence running along the middle of the said road South
forty two degrees west fifteen chains and eighty three links to a post, thence run
ning along the north line of E. D. Willis land North forty eight degrees west
six chains to a stone, thence north forty two degrees East twenty five
links to a stone, thence running north twenty nine degrees west seven
teen chains and six links to a stone, thence running west seven chains
and thirty three links to a stone in the east line of George Haskell's land
thence north along the East line of the same fifteen chains and eighty links
to a stone, thence runs west twenty one chains to the section line
thence runs north on the section line fourteen chains and twenty links to
the place of beginning containing one hundred and twenty one acres and ninety four hun
drths of an acre excepting and reserving however from this conveyance three
one acre lots, on the west side of the river road, conveyed by James Taylor to E.
A. Gates, and Nathaniel Wilder, and which deeds are on record, The part of the
first part also hereby conveys to the part of the second part and their heirs and assi
gns, all the right and interest that the said party of the first part, their heirs or assigns have in
and to the same way from the said river road to the river on or near the south line of S. A. Budd's land

Together with All and Singular, the appurtenances thereunto belonging or in any wise appertaining: To HAVE AND
to HOLD the above described premises unto the said party of the second part, and to his heirs and assigns
forever; and the said party of the first part, for themselves and theirs heirs, executors and
administrators, do covenant and agree to and with the said party of the second part, his heirs and
assigns, that they are well seized of the premises above conveyed as of a good and indefeasible inheritance
in the law in fee simple, and that the said premises are clear of all liens, claims and incumbrances whatsoever, and of all
taxes and assessments for the present and past years.

And the said party of the first part the aforesaid premises unto the said party of the second part, and his
Heirs and Assigns, against the claim or claims of all and every person whomsoever, and all liens and incumbrances, and the
taxes and assessments aforesaid, do covenant and will WARRANT AND FOREVER DEFEND by these presents.

In Witness Whereof, the said party of the first part have hereunto set their hands and seal on the
day and year first above written.

Executed in Presence of,

The word one was written and
before signing
Duncan Ferguson

James Taylor
Jane Taylor



6-1619-164

WARRANTY DEED.

James Taylor to
Thomas Ellwood

STATE OF ILLINOIS,
WINNEBAGO COUNTY.

Recorder's Office.

FILED for Record on the 24th day of June A.D. 1856 at 10 o'clock A.M.
Recorded in Book 23 of DEEDS, page 200 and examined.

6-1619-164
Recorder.

I, Democrat Harrison a Notary Public in and for the said County, do hereby certify that James Taylor and Jane Taylor personally known to me to be the persons whose names are subscribed to the foregoing Deed as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the same, as their free and voluntary act and deed, for the uses and purposes therein set forth.

And the said Jane Taylor personally known to me to be the wife of the said James Taylor and as the person who subscribed said Deed as such, having been by me made acquainted with the contents and meaning of said instrument of writing, and examined separate and apart from her husband, acknowledged that she had executed the same, and relinquished her dower, and all rights whatever, whether of dower or otherwise, in and to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband, and that she does not wish to retract.

Given under my hand and seal, at Rockford this twenty third day of June A.D. 1856

Democrat Harrison
Notary Public

112-139

Thomas Garrison
vs

Thomas J. Rudd

112

12578

1858

X

Repaired