

No. 12491

Supreme Court of Illinois

County of Peoria.

vs.

Johnson.

State of Illinois }
Peoria County } ss

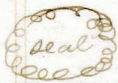
Pleas in the circuit court in and for the county of Peoria and state of Illinois, before the Honorable the judge of said court, presiding therein according to law.

To all whom it may concern, Know I, 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 circuit court clerk, in and for the county and state aforesaid, a certificate of Charles Kettelle, clerk of the county court of said county of Peoria, 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:-

State of Illinois }
County of Peoria } Clerk's office.

I, Charles Kettelle, clerk of the county court in and for said county do hereby certify that the within notice was filed in my office on the 17th day of January A.D. 1855. Given under my hand and official seal this 17th day of January A.D. 1855.



Charles Kettelle, Clerk

State of Illinois

Peoria County } Clerk's office

I, Charles Kettelle, clerk of the county court in and for said county, do hereby certify that the commissioners appointed to view and locate a state road from Peoria in the county Peoria to Rock Island in the county of Rock Island, have filed their plat and assessment of damages in said office and that they assessed the damages on the north east quarter of section twenty four in township 10 north seven east in said county at the sum of one hundred dollars



Given under my hand and official seal
this 23^d day of January A.D. 1855.

Charles Kettelle, Clerk

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. Cloe A. Johnson who is owner of the north east quarter of section twenty-four (24) in township ten (10) north seven (7) east in Peoria County, hereby appeals from the assessment of damages by the commissioners appointed to view and locate said road, to the circuit court of Peoria County, and states as the ground for said appeal that the damages assessed to her are too low and entirely inadequate, and that in fact her damages will be at least \$2000.00 - Cloe A. Johnson, by Purple, Langer & Pratt, her attys.

Proceedings at a term of the circuit court began and held at the court house in the city of Peoria in and for the county of Peoria and 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. Honorable Ouslow Peters, judge of the 16th judicial circuit in the state of Illinois, presiding to-wit:-

Monday, March 12th A.D. 1855.

Chloe A. Johnson

vs. appeal from assessment of damages by Road Commissioners
County of Peoria

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

Proceedings at a term of the circuit court began and held at the court house in the city of Peoriaⁱⁿ and for the county of Peoria and state of Illinois, 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. Honorable Ouslow Peters, judge of the 16th judicial circuit in the state of Illinois, presiding, to-wit:-

Friday, May 25th A.D. 1855

Chloe A. Johnson

vs. appeal from assessment of damages by Road Commissioners.
County of Peoria,

This day came on to be heard the dependants 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 began and held at the court house in the city of Peoria in and for the county of Peoria and 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. Honorable Jacob Gale, judge of the 16th judicial circuit in the State of Illinois, presiding, to-wit:—

Saturday, May 17th AD 1856.

Chloe A. Johnson

vs. appeal from Assessment of Damages by road Commissioners,
County of Peoria

This day came the plaintiff by Purple V Pratt, her attorney, and the County of Peoria by Elbridge G. Johnson, its attorney and it is ordered by the court that a jury be empannelled to assess the plaintiffs damages in this cause. Whereupon came a jury of twelve good and lawful men to-wit:—John Hutchinson, William Donaldson, John Keller, William Phade,

William Stewart, Lyman Reed, Alpheus Richards and Daniel Brestel, James B. Curran, Andrew Dawson, Hiram Thane, and John Benjamin, 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 of the jury find for the plaintiff and assess her damages at the sum of six hundred and fifty-seven dollars, whereupon it is considered by the court that the said plaintiff have and recover of the said defendant her damages herein in form aforesaid assessed and also her costs herein and that the same be paid by the said defendant as provided by law in such case made and provided.

Tuesday, May 20th A.D. 1856.

Chloe A. Johnson

vs appeal from assessment of damages by road Commissioners
County of Peoria

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

Saturday, May 31st A.D. 1856.

Chloe A. Johnson

vs appeal from assessment of damages by road Commissioners
County of Peoria

This day came on to be heard the motion of the defendant for a new trial in this cause, and the court being sufficiently

advised in the premises overruled said motion; whereupon the defendant entered a motion in arrest of judgment and the ~~and~~ ~~the~~ court being sufficiently advised in the premises overruled said motion; thereupon 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 with security to be approved by the clerk of this court in thirty days.

And afterwards to-wit:- On the fourth day of June AD 1856, there was filed in the office of the circuit court clerk aforesaid, a bill of exceptions, in words and figures following - to wit:-

Chloe Johnson	}	
vs	}	Peoria County Circuit Court, May Term AD 1856
County of Peoria	}	

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:-

Chloe Johnson	}	Peoria County Circuit Court, March
vs	}	Term 1855 - Appeal from Assessment
County of Peoria	}	of damages on the laying out road in
	}	said case mentioned.

Defendant moves to dismiss this appeal, because no appeal is given by statutes of this state, in the first instance in such cases, and because no jury of house-holders was summoned to assess said damages in this case, and therefore no appeal could be taken to this court. Because for the reason above stated, this court has not jurisdiction of said case and appeals.

C. G. Johnson

Atty for deft.
which was overruled by said court and thereupon the defendant excepted, which exception was allowed and noted - And now at the May term 1856 this cause came on to be heard and tried when the defendant renewed said motion to dismiss which motion was overruled and defendant excepts.

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 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'y. 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.

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 and 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 herewith filed is a correct plat of said road as viewed, laid out, and located by us. that whenever 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 board 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
H. Corrington } Commissioners
Smith Frye }

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 to Rock Island in Rock Island county, to-wit:- "Resolved that Washington Corrington & Samuel Dimon be appointed in association with Smith Frye to locate a state road from the city of Peoria to Rock Island in Rock Island county according to the act of the legislature for that purpose."

I further certify that the following is a true copy of the oath taken by

the commissioners aforesaid to wit:—
"State of Illinois, Peoria County—We Smith Frye,
Samuel Dimow and Washington Corrington do
solemnly swear that as commissioners to view
locate and lay out a state road commencing
at the city of Peoria thence to the town of
Rock Island in Rock Island Co., will view, mark
& locate said Road as designated in the act of
the General Assembly of the state of Illinois
passed, Feb'y. 12th 1853—So help us God.

Smith Frye }
Samuel Dimow } Commissioners
W. Corrington }

Subscribed and sworn to before me this 3rd
day June AD 1854. Charles Kettelle, Clerk

I further certify that Samuel Farmer as
Surveyor & Lewis Flagler & 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 the city of Peoria this 22nd day of
December AD 1854 Charles Kettelle, Clerk

State of Illinois

Peoria County, I Clerk's office

I, Charles Kettelle, clerk of
the county Court in and for the county
aforesaid do hereby certify that the fore-
going 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 and of-
ficial seal at Peoria this 29th
day of January AD 1857.
Charles Ketteler, clk

To this said plat and report the dependant
objected because said plat and report does not
show a legally established road, and because
there is no proof offered therewith that said
road was ever ordered to be opened and con-
structed - or that either the county court or
the board of Supervisors of said county of
Peoria had passed upon the question of dam-
ages in this case, or ordered the said road to
be opened - but the court overruled the objec-
tion, and admitted the plat and report as evi-
dence 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 dependant excepted. Plaintiff then offered
evidence tending to prove he was in possession
of the premises described in said appeal - the
dissection of said road over said premises
and the damage caused thereby if the said
road should be opened and constructed as lo-
cated - and here the plaintiff rested.

The plaintiffs counsel then requested

the court to instruct the jury as follows:-

which were given.

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

Chloe Johnson	}	Peoria County Circuit Court
vs		May term 1856
County of Peoria		

Defendant moves that the
verdict be set aside and for a new trial
in this cause.

- 1 Because the court erred in enter-
taining jurisdiction of this cause.
- 2 Because there was no evidence that said
road had been ordered to be opened, or re-
cognised 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 of-
fered of the existence of a legal road.
- 4 Because the court gave improper in-

instructions as asked by the plaintiff, and refused proper instructions asked by the defendant

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

6 Because plaintiff did not prove or offer to prove that plaintiff objected to the said roads 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.

The court overruled said motion, and defendants counsel then excepted.

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 following order in said case.

To which the defendants counsel excepted, and requested the court to seal this bill of exceptions, which is done.

And afterwards to-wit- On the twenty-eighth day of June A.D. 1856, there was filed in the office of the circuit court clerk, aforesaid, an appeal Bond, in words and figures following to-wit:-

"Know all men by these presents that we the County of Peoria by the chairman of the board of Supervisors as principal and Leonard B. Cornwell as sureties are held and firmly bound unto Chloe A Johnson 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 above obligation is such that whereas the said Chloe A Johnson, did on the 17th day of May, A.D. 1856, before the circuit court in & for the County of Peoria in the state of Illinois recover a judgment against said county of Peoria for the sum of six hundred and fifty seven dollars damages & costs 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 & all costs damages & interest in case said judgment shall be affirmed then this obligation to be void, otherwise of full force. Wit-

ness our hands and seals this 27th day of
June A.D. 1856 Isaac Brown (seal)

Chairman Board Supervisors Peoria Co. Ill

Leonard B. Cornwell, (seal)

Approved by me this 28th day of June
A.D. 1856. James I. Barkman, clk

State of Illinois }
Peoria County } ss

I, Enoch T. Sloan, clerk of
the Circuit Court in and for said
county and state do certify that the
foregoing is a true transcript of the
records in the cause wherein, Chas
A Johnson is plaintiff and the County of
Peoria is defendant, as the same remains
of record ^{and on file} in my office.

In witness whereof I hereto set
my hand and affix the seal of said
court this 10th day of April A.D
1857. Enoch T. Sloan, clk

County of Teoria } In the supreme court April
vs } Term AD 1857
Chloe A Johnson }

Appeal from Teoria

And now comes the said plaintiff and says that in
the record and proceedings, ^{& judgment} aforesaid manifest
error hath intervened to his injury in this

1 The court erred in retaining jurisdiction
in not dismissing this appeal

2 The court erred in retaining jurisdiction of the
Case

3 In empannelling a jury

4 In admitting improper evidence on part of plaintiff

5 In excluding proper evidence on the part of defendant

6 In giving improper instructions on the part of plaintiff

7 In refusing proper instructions on the part of defendant

8 In refusing a new trial

9 In overruling motion in arrest

10 In rendering a judgment for plaintiff

Wherefore the plaintiff prays that said judg-
ment may be reversed and for nought
held

By Mead & Williamson
attys for plff

County of Teoria

vs

Chloe A. Johnson

Entered in

Filed for record

Sept 1

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The County of Peoria
vs
Chloe & Johnson

1857

12491