

12492

No. 12492

Supreme Court of Illinois

County of Peoria.

vs.

sd
Debon.

State of Illinois } ss.
Peoria County }

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 re-
cords and proceedings of said court the follow-
ing 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 attach-
ed 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,
Peoria County, - Clerk's office - I, Charles Ket-
telle, clerk of the county court in and for
said county, do hereby certify that the within
notice was filed in said office, on the 17th day
of January A.D. 1855 - Given under my hand



& seal of office this 17 day of January
A.D. 1855 Charles Kettelle, Clerk.

I further certify that the commissioners appoint-
ed to locate the state road from Peoria to Rock

Island assessed the damages on the North west quarter of section thirty-two in township eleven north seven east at the sum of one hundred dollars as appears by the plat filed in said office.

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" -

George Debord who is owner of the north west quarter of Section thirty-two (32) in township Eleven (11) North Seven (7) east in Peoria County, hereby appeals from the assessment of damages by the commissioners appointed to view & 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 inadequate and that in fact his damages will be at least \$2000.00

George Debord

by Purple Pratt his atty.

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 first Monday of March in the year of our Lord one thousand eight hundred and fifty-five, it being the first day of said month - Present the Honorable Ouslow Peters, judge of the sixteenth

judicial circuit, in the state of Illinois, David D. Evans, Sheriff, Elbridge G. Johnson, states attorney, and Jacob Gale, clerk, to-wit:-

Monday, March 12th A.D. 1855

George Debord }
vs { appeal from Assessment of damages by
County of Peoria } Road Commissioners

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

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-five, it being the 14th day of the month, Honorable Ouslow Peter, presiding - to-wit:-

Friday, May 25, A.D. 1855

George Debord }
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 be-
gan 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, A. D. 1856, it being the 12th day of said
month. Hon. Jacob Gale, judge of the 16th ju-
dicial circuit in the state of Illinois, presiding
to-wit:-

Saturday, May 17th A.D. 1856.

George Debord

vs.

County of Peoria

} Appeal from Assessment of
damages by Road Commissioners

This day came the plaintiff by
Purple & Pratt, his attorneys and the county of
Peoria by Elbridge G. Johnson its attorney and it
is ordered by the court 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:- John Hutchinson, John
Benjamin, Hiram Shane, Andrew Dawson, James
B. Curran, Daniel Brestel, Alpheus Richardson,
Lyman Reed, William Stewart, William Shade,
John Keller and William Donaldson, 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 his

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 and State of Illi-
nois, 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 - Hon. Jacob Gale, presiding, to-wit:-

Saturday, May 31st AD 1856

George Debord

vs.

County of Peoria.

} Appeal from Assessment of damages
by Road Commissioners

This day came on to be heard the
motion of the defendant for a new trial in this
cause and the court being sufficiently advised
in the premises overruled said motion, whereupon
the defendant entered a motion in arrest of judg-
ment and the court being sufficiently advised in
the premises overruled said motion thereupon
the defendant prayed an appeal herein to the
supreme court of this state, which is allow-
ed 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 hun-
dred dollars with security to be approved by
the clerk of this court in thirty days.

damages at the sum of six hundred and eighty-five 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 cases made and provided.

Afterwards to wit:— On the fourth day of June A.D. 1856, there was filed in the office of the clerk of the circuit court as aforesaid, a bill of exception, in words and figures following. to-wit:—

George Debord	}	Peoria County Circuit Court
vs		
County of Peoria	}	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:—

"George Debord	}	Peoria County Circuit Court, March Term 1855—Appeal from Assessment of damages on the laying out of road in said case mentioned.
vs.		
County of Peoria		

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 seasons above stated, this court has not jurisdiction of said case and appeals.

E. G. Johnson, atty for dept" 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:—"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 Peoriaⁱⁿ 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 of roads, do hereby cer-
tify that we have in pursuance of the above
entitled acts, reviewed, laid out and located a
state road from and to the points therein de-
signated, and that the plat herewith filed is
a correct plat of said road as viewed, laid
out and located by us; that wherever dam-
ages have been allowed by us we have mark-
ed 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 Com-
missioners by the board of Supervisors of Pe-
oria 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 certi-
ficate or report

Samuel Dimon }
W. 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 Dimon and Washington Corrington do solemnly swear that as Commissioners to view, locate and lay out a state road commencing at the City of Peoria thence to the town of Rock Island in Rock Island County, will view, mark & locate said road as designated in the act of the General Assembly of the State of Illinois, passed February 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."

I further certify that Samuel Farmer
as surveyor & Lewis Flagler & Levi Winkler
as chainmen were duly sworn before me
as appears by the papers on file in said of-
fice. Given under my hand & official seal



at the city of Peoria this 22^d day of
December A.D. 1854 - Charles Kettelle, clk.

State of Illinois

Peoria County

Clerk's office

I, Charles Kettelle, clerk of
the County Court in & for the County aforesaid
do hereby certify that the foregoing
is a true copy of the report of the Com-
missioners 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 official
seal at Peoria this 29th day of
January. A.D. 1857.

Charles Kettelle, clk."

With the certificate of the Commissioners there-
to 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 February 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 therewith 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 he was in possession of the premises described in said appeal - the direction of said road over said premises, and the damage caused thereby if the said road should be opened and constructed as located and here the plaintiff rested.

The plaintiffs counsel then requested the court to instruct the jury as follows:-

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

George Debord }
 as } Peoria County Circuit Court
County of Peoria } - May 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 appeared of the existence of a legal road.

4. Because the court gave improper instructions as asked by the plaintiff, and refused proper instructions as 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

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 Petf.

The court overruled the said motion and defendants counsel then ~~are~~ 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 cause.

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

Jacob Gale, (seal)

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 as principal, by the chairman of the board of Supervisors of said county and Leonard B. Cornwell as sureties are held and firmly bound unto George Debord of the county of Peoria in the sum of one hundred dollars for the payment of which well & truly to be made we bind ourselves our heirs, jointly & severally firmly by these presents.

The condition of the above obligation is such that whereas the said George Debord did on the 17th day of May A.D. 1856 before the circuit court of Peoria County in the state of Illinois recover a judgment against the said county of Peoria for the sum of six hundred and eighty-five dollars damages & cost of suit from which judgment the said county has appealed to the supreme court of said state. Now in case the said county shall duly prosecute said appeal & shall also pay said judgment & costs, interest & damages, in case the same 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.-
Isaac Brown, , Chairman Board Supervisors Peoria

county - Leonard B. Cornwell (Seal).

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

George Debon

State of Illinois,
Peoria County, J. S. I. Enoch P. Sloan, clk.
of the circuit court of Peoria county
in said state do certify that the foregoing
is a true transcript of the records
in the cause wherein George Debon
is plaintiff and County of Peoria
is defendant ^{and on file} as the same remains
of record in my office.

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

County of Teoria } In the Supreme court
 } April Term 1857
George Debon } appeal from Teoria

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

- 1st The court erred in not dismissing the appeal
- 2 The court erred in retaining jurisdiction of the cause
- 3 In empannelling a jury
- 4 In admitting improper evidence on the 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 judgment for plaintiff

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

By Mead Williamson
attys for plaintiff

Order in Error
People for Def.

County of Georgia

vs
George Debon

Filed April 20, 1887

L. Leland
Clerk

No 4

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The County of Peoria
vs
George Debord

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