

12268

No. _____

Supreme Court of Illinois

Morgan.

vs.

Green.

71641  7

Kaball County Court

State of Illinois
Kaball County

Pleas, Proceedings and
Judgments held and taken in and before
the Kaball County Court in the State of Illinois
at the Court House in Ottumwa in the County
of Kaball of June Term thereof to wit - of
the Second day of June in the year of our Lord
One thousand Eight hundred and fifty six
and of the Independence of the United States
of America the Eightieth

Present Hon Henry J. Cotton Judge
Saml. W. Raymond Clerk
Francis Weaver Shiff.

Be it remembered that heretofore to wit - on
the 10th day of June A.D. 1856. a declaration was
filed in the office of the clerk of the said Court
and as in is in the words and figures fol-
lowing to wit -

State of Illinois } In the County Court thereof
Kaball County ss. } To June Term A.D. 1856
Rees Morgan }

David Green

Rees Morgan plaintiff
complain's David Green
defendant in a plea of trespass quia clausum
propter for that the said defendant on the 1st day
of June A.D. 1856 and on divers other days and
times between that day and the commencement

of this suit at LaSalle County aforesaid with
force and arms &c. broke and entered the
close of the plaintiff situate in the county
of LaSalle aforesaid, said close being the
East half of the North East quarter section
Thirty one {31} Township Thirty four {34} of Range
four {4} East of 3^d Principal Meridian - which
said close of the plaintiff abuts on the west by
a close in possession of one P. C. Champlin, and
on the South, North and East on the close in poss-
ession of the said plaintiff - And then and
then broke down prostrated and destroyed a
great part, to wit, one rod of fence belonging
to the plaintiff of great value to wit, One
hundred dollars then and then being
in, and of, and belonging to the said close
of the plaintiff, and with feet in walking
and with horses, cattle and carriages trod
down, crushed and injured the grass herbage
and crops of the plaintiff of great value to wit -
of the value of One hundred dollars then then
growing and being and subverted and spoiled
the south end soil of the said close of the plain-
tiff and other wrongs then and then did to
said plaintiff to wit at the county aforesaid
against the peace and dignity of the people
of said state and to the damage of said
plaintiff in the sum of One hundred dollars
and therefore he brings suit

By Stoddard & Cawley
his attorneys

filed Dec 10 1856

D. W. Raymond CLP.

Wernick

Afterwards on the same day a plea was
filed in the office of the clerk of this court which
contains the words and figures following to wit.

State of Illinois } On the County Court thereof
Madison County ss } A.D. 1856 Term Second

David Green }

vs - }

Reese Morgan }

Trespass Quam Clausum

Harriet

{ The defendant David Green

by his attorney C. V. Leland comes and defends
the force and injury when &c. and for plea
says that he is not guilty of the said supposed
trespass laid to his charge by said plaintiff in
his said declaration in manner and form
as therein set forth against him, and of
this he puts himself upon the country &c.

C. V. Leland

And the plaintiff doth
the like

for default.

Stoddard & Cawsey

Attys for plff.

And for further plea in this behalf as to the
supposed trespasses in said plaintiff's de-
claration mentioned - The defendant says
that the plaintiff ought not to have and
maintain his aforesaid action here against
him because he says that long before and
at the time when &c. there was a certain
common and a public highway lawfully
laid out and established into and through
over and along the said close in which &c.
for all the people of the state of Illinois and

others to go and return pass and repass on foot and with horses, cattle and carriages at all times at their free will and pleasure - wherefore the defendant being one of the citizens of said state of Illinois at the several times when &c. went passed and repassed &c. into and through over and along the said highway using the same as he had a lawful right for the cause aforesaid and by so doing he the said defendant with his feet in walking and the said horses, cattle and carriages unavoidably a little trod down trampled upon and spoiled the grass herbage and crops growing and being in said close in which &c. and subverted the soil and damaged the same in said close.

And because the said fence in the said declaration mentioned before and at the time of the several times when &c. had been wrongfully erected and run then standing and being on and across the said highway and obstructing the same so that without breaking down prostrating a portion of said fence the said defendant could not pass and repass with his horses, cattle and carriages over and along the said highway as he ought to have done.

The said defendant at the said several times when &c. in order to remove the said obstruction tore down a portion of said fence in said declaration mentioned, and took and removed the fence to a small & convenient distance on and within the ^{line} ~~line~~ of said highway and left the same

for the use of the said plaintiff doing no
unnecessary damage to the said plaintiff
on these occasions which are the supposed
trespass in the plaintiff's declaration mentioned
and whereof the said Rees Morgan hath
in his said declaration complained
against him the said Daniel Green, and
none other, and this the said defendant
is ready to verify when &c.

C. S. Leland

For deft.

State of Illinois }
Naselle Leruby }

Rees Morgan vs Daniel Green
Trespass Quasi Servituti

And now comes the said Rees Morgan and
saith prout he saith now because he says that
there was not at the several times when &c.
a common and public highway duly
laid out and established according to law
into and through nor and along the said close
of the plaintiff in which &c. for all the people
of the state of Illinois and others to go, return
pass and repass on foot and with cattle
horses and carriages at all times at their
free will and pleasure as is in & by the plea
aforesaid alleged and of this the said
plaintiff puts himself upon the country

Attest & Convey

Attorney for Plaintiff

And the defendant doth the like

C. S. Leland

For Defendant

Filed Jan 10-1856

J. W. Raymond Clerk

Afterwards to wit on the said 10th day of June
A.D. 1856 being one of the days of said term of said
Court. the following order was made and
entered of record as follows to wit.

77 West Morgan }
 m- } In trespass Quam Clausen Hargit
David Green }

 } This day comes the plaintiff
by Stoddard & Cowenby his attorneys and files
his declaration in trespass against David
Green and at the same time comes the
said defendant by Leland & Leland his
attorneys and enters process and enters
his appearance herein and files his pleas
to the said declaration

~~Afterwards to wit on the 11th day of June 1856
an agreed statement, and exhibits were filed
in the office of the clerk of this court which are
in the words and figures following to wit.~~

~~State of Illinois }
 } County Court June Term 1856
Naselle County }~~

~~West Morgan }~~

~~m-~~

~~David Green }~~

~~In trespass Quam Clausen Hargit~~

Afterwards to wit in the 11th day of June 1856
the same being one of the days of said term
of said court the following order was made
and entered for and to wit

Wesley Morgan
vs
David Green

Superior Court of Law and Equity

This day again comes the
plaintiff by Stadden & Co. and his attorneys
and defendant by Deland & Deland and his attorneys
and file an agreed statement of the facts in
this case - and by agreement a jury is waived
and this cause submitted to the court for trial
and after hearing the evidence the court finds
the issue herein for the defendant.

It is therefore considered by the Court
that the said defendant have and recover
of said plaintiff his costs and charges by
him herein expended and that he have
execution therefor

Afterwards on this same day a bill of exceptions
was filed in the office of the clerk of this Court
in the words and figures following to wit

State of Illinois } Sadell County Court
Sadell County } June Term 1856

Be it remembered that on the trial of this
cause the following agreement was all
the evidence in this cause. the agreement
is as follows -

State of Illinois } County Court Lane June 1856
Sabath County }

Reese Morgan }
vs } In presence of Quam Clausen & J. A.
David Green }
}

On the above case the following stipulations
by and between the plaintiff and defendant
are agreed upon

1st It is admitted as fact by the plaintiff that
exhibit "A, B, C." are correct copies of the proceedings
of the County Commissioners Court of Sabath
County and that exhibit "D" is a correct
copy of a map and report of the commission
appointed by an act of the legislature of the
state of Illinois approved January 16th 1857
appointing R. M. Court of Cook County, Isaac P.
Wallace of Sabath County and Benjamin T. Bradley
of Kane County, commissioners to view, survey
mark and locate a road from the Court House
in Ottawa by Green Mill &c. to Naperville on
the nearest and best route - and that the
map in exhibit "D" is a correct map of the
road so located from the Court House in Ottawa
to Green Mill, and that a map of the whole
road from Ottawa to Naperville was filed in
the clerk's office of the County Commissioners Court
of the County of Sabath on the 6th day of March
1858

2nd It is ^{also} admitted by the plaintiff that the close
mentioned in declaration, was and land
known as land located by the General

Government to the state of Illinois for the construction of the Illinois and Michigan canal, and was held under the laws of the state up to the 15th day of September A.D. 1848. when the plaintiff purchased said close, and has since owned the fee in the same.

- 3^o That the road or highway was opened by the supervisor during the years 1832, 1835 and 1834, and between the year 1835 and 1846 there were two bridges erected across the ravine which crossed the line of said road within less than a fourth of a mile of the point where the trespass in the plaintiffs declaration is complained of. It is also admitted that the opening of the road through the timber near the plaintiffs close was by cutting out for about three fourths of a mile the under brush to about the width of fifty feet, but the greater portion of the line of said road from Ottawa to Green Mill.

passed over open prairie and also that said Road labor was performed by the supervisor appointed by the public authorities on the line of said road up to the year 1846 when the line of said road was fenced across at a distance of about one half mile south west of the plaintiffs said close by one R. Thorne which diverted the travel some forty rods to the south of the line of said road at the point so fenced and that during the spring of the year 1849 one James Clark fenced across the road on the west line of said plaintiffs close and within 10 rods of the plaintiffs fence thrown down as complained of in his declaration which diverted the travel

to the north and off of the line of said road

It is admitted that neither W. Shomo nor James Clark ever acting as supervisor or under any agency of public authority when so obstructing or fencing across the line of said road. It is also admitted that since the fencing by James Clark across the line of road especially for the last three years there has been a continual strife between the citizens of the village of Daylin and those persons fencing across the line of said road between Ottawa & Green Mill and some seven or eight law suits have arisen in consequence thereof.

It is also admitted by the plaintiff that the line of said roads in exhibit A. & B. are on the same line over the close of the plaintiff as complained of in his declaration -

It is also admitted by the plaintiff that there never has been any other road laid out or established from Ottawa to Green Mill except the one above referred to.

On the part of the defendant it is admitted as fact -

That on about the 8th day of June 1856 the defendant travelled through the plaintiff's close on the line of said road and threw down the plaintiff's fence but did not divert his travel or remove the fence to a greater distance from the center line of said road than fifteen feet on either side.

It is also admitted by the defendant that there was a steep bluff near the point

where the alleged trespass was committed
and on the line of said road to wit -
about 15 rods east which was impassable
until during the month of December 1854
when the same was graded down for a
safe passage for loaded and other trains
and travel, previous to that time the travel
at that point was directed to the south
about 15 rods.

It is also admitted by the defendant that
from the date of laying out the Cornfield road
in 1830 - up to 1846 or 1849 and before the barrier
was fenced between Greens Mill and Otterton
only a portion of the travel was exactly on
the line of said road but varied as the
choice of travelers directed them - sometimes
on one side and sometimes on the other
and sometimes within fifteen feet of the
center of the line of said road.

It is also admitted that the tracks of land
marked out on Exhibit "C" represent the
location of section 31 T. 34. R. 4. E 3. P. M., and
that the 80 acres marked R. Morgan represent
the same described in the plaintiffs declaration.
These tracks of land are not marked on the
plot as returned by the commissions but
have been placed there in this copy of account
for convenience.

C. S. Leland for deft
Hadden & Coars for plff.

Exhibit "A"

State of Illinois }
Sabath Court } p.

County Commission Court
Sept. Term 1831

Among other things the following orders
were adopted

Ordered by the Court that there be a
road viewed leading from the public square
in Ottawa of S. Greens Mill to intersect the
Chicago road at or near John Greens

#

March Term of said Court 1832 -
the following order and report was entered
of record to wit

Ordered by the Court, That the
report of Joseph Bond and L. S. Robins views
of a road leading from the public square
in Ottawa of John Greens Mill to intersect the
Chicago road at John Greens, and that the
aforesaid road be established as a public
highway, and that their report be entered
on the records of this court, which is in
the words and figures following to wit.

To the Honorable County Commissioners
Court of Sabath Court.

We the commissioners appointed to view
and survey a road from Ottawa to Greens
Mill, thence to intersect the Chicago road at
or near Greens. Report to your Honorable body
that we have surveyed and located the
road as follows to wit. Beginning at the

And that Section J. Robins, Mr. Peck and Joseph Bond
be appointed commissioners to locate and survey said
road the nearest from and to the aforesaid point.

public square in Ottawa and running N 40 E
 40 chains, thence N. 50. E. 21 chains, thence N 30 E
 35 chains, thence N 10 E. 28 chains, & 50 links,
 thence N 28 E. 12 chains & 50 links, thence N 48. 30 E
 100 chains, thence N. 60 E. 6 chains, thence N 54 E
 4 chains, thence S. 71 E. 4 chains near the mill
 thence N. 26 E & 33 chains thence N. 82 E. 8 chains,
 thence N. 52 E. 8 chains, thence N. 55 E. 48 chains,
 thence N. 47 E. 11 chains, ^{thence N 50 E. 40 chains, thence N 79 E. 25 chains} & 50 links, thence N 65 E 11
 chains, thence N. 78 E. 6 chains, thence N 80 E. 25
 chains, to John Green. all of which are submitted
 to your consideration

March 5th 1852

Wesleyland

L. V. Robins } Connors.

ordered by the Court that Mr Stadden be appointed
 supervisor of the road from Ottawa by Green
 mill to where it intersects the Chicago road -
 State of Illinois

Sabell Court

I, Samuel W. Raymond clerk
 of the Circuit Court of said county do hereby
 certify that the foregoing is a true and
 correct copy from the records of the said
 Co. Court of said county now remain-
 ing in my office



In witness whereof I have hereunto
 set my hand and affixed the seal
 of said Court at Ottawa this
 10th day of June 1856

S. W. Raymond clerk

Exhibit "B"

County Commission Court March Term
1838

Tuesday March 6th 1838

Present

The same Commission
as on Yesterday

State Road Report

This day the report and map of a state road located by R. M. Sweet Isaac P. Hallack and Benjamin P. Snidley from the Court House in Ottawa by Isaac Mill Mr L. D. Dumas, Vetal Vermont, George Town, George Wollentank, William Harris Edward S. Arnold and from thence to Stafsenville, was handed into the court by Almon Dyer Esq. and it appearing to the satisfaction of the court that the said Commission had complied with all the requisitions of the act, authorizing the locating of said road the said report and map are accepted and approved by the Court and ordered to be filed

Ordered that the following compensation be allowed out of any money in the Treasury not otherwise appropriated to the following named persons to wit,

To Almon Dyer, Surveyor on said road 13 days \$26.00
To Isaac P. Hallack one of said commission 53.42

Making the amount paid of this Court \$79.42
Being the whole amount chargeable to this court for locating said road

State of Illinois
Ladell Court

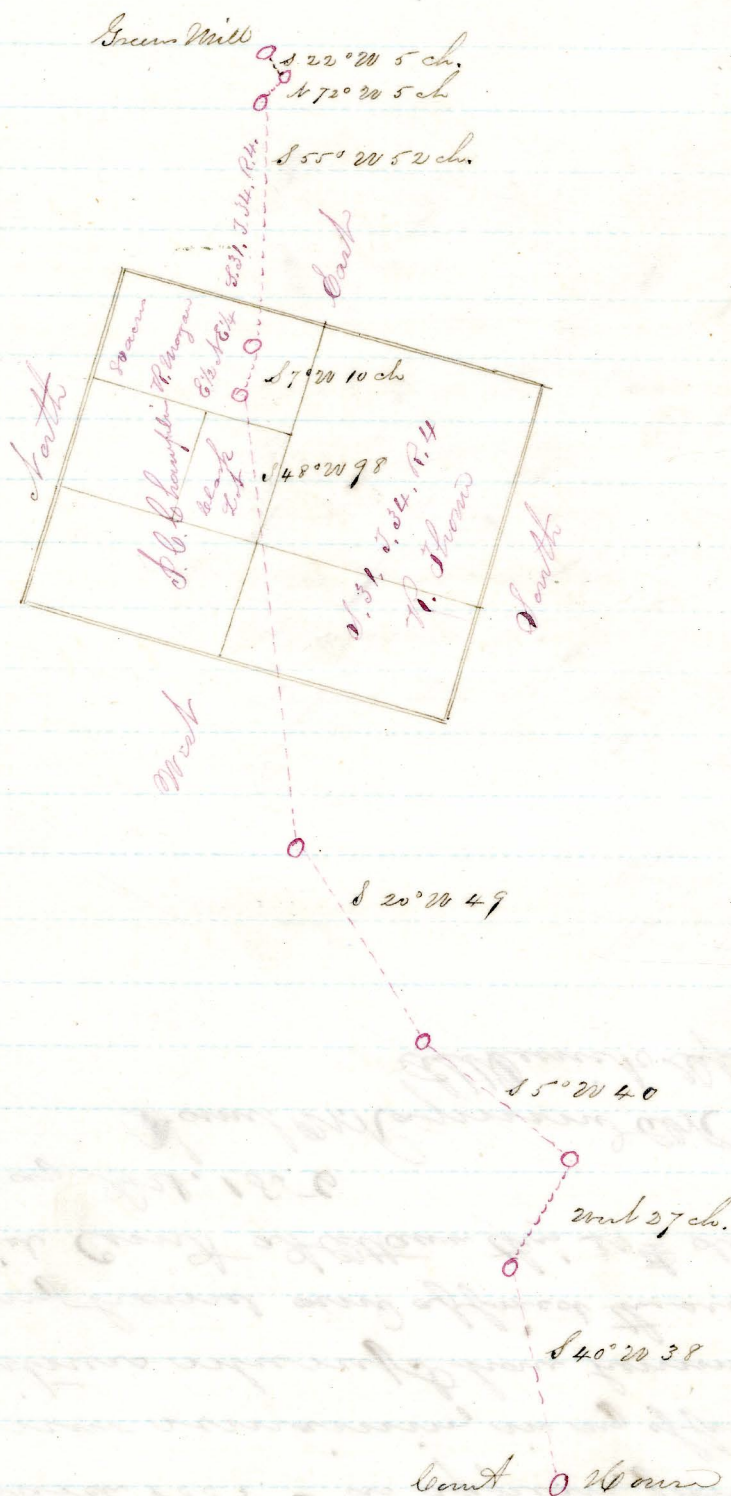
I, Samuel H. Raymond Clerk
of the County Court of said county, do hereby
certify the within to be a true and correct
copy of an order entered of record by the
County Commissioners of said county, on
the 6th day of March 1838. - as appears from
said record now remaining in my office.



In witness whereof I have hereunto
set my hand and affixed the seal
of said Court at Ottawa this 30th day
of May A.D. 1856

Sam. H. Raymond Clerk
Attest: Clerk's Office

Exhibit "C"



3831 ch. & 50 links from Napier's best barf. At the same
 Sabath lev. or 47 miles and 71 ch. and 50 links

I hereby certify the above to be a true and correct survey (according to the best of my belief) of a road authorized by the legislation of the State of Illinois on the 16th of January 1837. to be

made from Kapiwille in Cook county to
Ottawa in LaSalle county

Almon B. Greer Surveyor

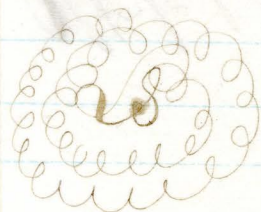
We the undersigned commissions appointed
and authorized by the legislation of the state of
Illinois on the 16th of February 1857 do hereby
certify that we have viewed and caused the above
survey to be taken and marked and have located
the same as a state road leading from Kapiwille
in Cook county through a part of Kane County to
Ottawa in LaSalle County and have authorized
these maps thereof to be made and are filed
in the Clerk's office of the County Commissioners
Court in each of the above said County

V. B. H. Fridley

J. P. Wallock } Commissioners

State of Illinois }
LaSalle County } ss.

I, Samuel W. Raymond clerk of
the County Court of said county, do hereby certify
the above and foregoing to be a correct copy of that
part of a road from Ottawa to Kapiwille, between
Greens Mill & Ottawa from the original now on
file in my office



Witness my hand and the seal of
said Court at Ottawa this 10th day
of June A.D. 1856

S. W. Raymond clerk

The cause was submitted to the Court for
trial. Jury waived, the Court found the issues
for the defendant. The plaintiff moved for a

for a new trial, the Court overruled the motion
and to the opinion of the Court in so doing
the plaintiff then & there excepted & prays
the Court to sign & seal this his bill of exceptions
which is done

H. S. Cotton *Secy*
Leah
mn

State of Illinois

Nasalle County }
3^d

J. P. Samuel W. Raymond
Clerk of the County Court of said county, do
hereby certify the above and foregoing to be a
full true and complete copy of the record
and proceedings in the case wherein Rees
Morgan is plaintiff and said Green is
defendant in this Court.

In witness whereof I have
hereunto set my hand and affixed
the seal of said Court at Champaign
this 18th day of June A.D. 1856

Sam. W. Raymond Clerk
J. M. Derrick Depy.

State of Illinois
La Salle

Supreme Court June Term 1886

Ross Morgan
vs
David Green

And now comes the said Ross Morgan
the plaintiff in error by ~~attorney~~
his attorney & says that in the record & proceedings
in the above cause there is manifest error in this
to wit:

- 1st The finding of the Court should have been for
the plaintiff below instead of for the defen-
dant below
- 2 The Court erred in granting the motion for
a new trial.
- 3 The judgment was against the evidence in
the case.

Slaves for life in
Error

And the aft in Error says that in the record
the findings there is no such error

Said for aft in
error

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Reese Morgan

-rs-

Daniel Green
" " "

Filed June 23. 1856
L Leland
Clerk

Recd \$7.35

STATE OF ILLINOIS, SUPREME COURT,

To JUNE TERM, 1856.

Error to La Salle.

REES MORGAN *vs.* DAVID GREEN.

ABSTRACT OF THE RECORD.

NARR. in trespass *quare clausum fregit*—close being E. hf. N. E. qr. 31, 34, 4.

Pleas—1st. Not guilty.

2d. Public highway.

Replications—1st. *Similiter* to 1st plea.

2d. Traverses second plea.

Jury waived and cause submitted to court on agreed statement of facts in writing, which is as follows :

STATE OF ILLINOIS, }
La Salle County, } County Court, June Term, 1856.

Rees Morgan }
vs. } Trespass *quare clausum fregit*.
David Green. }

In the above case the following stipulations by and between the plaintiff and defendant are agreed upon :

1st. It is admitted as proof by the plaintiff, that Exhibit A. and B. are correct copies of the proceedings of the County Commissioners' Court of La Salle county, and that Exhibit C. is a correct copy of a map and report of the commissioners appointed by an act of the legislature of the state of Illinois, approved January 16, 1837, appointing R. M. Sweet, of Cook county, Isaac P. Hallock, of La Salle county, and Benjamin F. Fridley, of Kane county, commissioners to view, survey, mark, and locate a road from the court house in Ottawa, by Green's mill, &c., to Napierville, on the nearest and best route, and that the map in Exhibit C. is a correct map of the road so located from the court house in Ottawa to Green's mill, and that a map of the whole road from Ottawa to Napierville was filed in the Clerk's office of the County Commissioners' Court of the county of La Salle, on the 6th day of March, 1838.

2d. It is also admitted by the plaintiff, that the close mentioned in declaration was canal land, known as land donated by the General Government to the state of Illinois for the construction of the Illinois and Michigan canal, and was held under the laws of the state up to the 15th day of September, A. D. 1848, when the plaintiff purchased said close, and has since owned the fee in the same.

3d. That the road or highway was opened by the Supervisor during the year 1832, 1833, and 1834, and between the year 1833 and 1846 there were two bridges erected across two ravines which crossed the line of said road within less than a fourth of a mile of the point where the trespass in the plaintiff's declaration is complained of. It is also admitted, that the opening of the road through the timber near the plaintiff's close

was by cutting out, for about three-fourths of a mile, the underbrush to about the width of fifty feet, but the greater portion of the line of said road from Ottawa to Green's mill passed over open prairie; and also that road labor was performed by the Supervisors appointed by the public authorities on the line of said road up to the year 1846, when the line of said road was fenced across at a distance of about one-half mile southwest of the plaintiff's said close, by one R. Thorne, which diverted the travel some forty rods to the north of the line of said road at the point so fenced; and that, during the spring of the year 1849, one James Clark fenced across the road on the west line of said plaintiff's close, and within ten rods of the plaintiff's fence thrown down as complained of in his declaration, which diverted the travel to the north and off the line of said road.

It is admitted that neither R. Thorne nor James Clark were acting as Supervisors or under any agency of public authority when so obstructing or fencing across the line of said road. It is also admitted that, since the fencing by Thorne and Clark across the line of road, especially for the last three years, there has been a continual strife between the citizens of the village of Dayton and those persons fencing across the line of said road between Ottawa and Green's mill, and some seven or eight law suits have arisen in consequence thereof.

It is also admitted ~~that~~ by the plaintiff, that the lines of said roads in exhibit A. and B. are on the same line over the close of the plaintiff as complained of in his declaration.

It is also admitted by the plaintiff, that there never has been any other road laid out or established from Ottawa to Green's mill except the one above referred to.

On the part of the defendant, it is admitted as proof,

That on about the 8th day of June, 1856, the defendant traveled through the plaintiff's close on the line of said road and threw down the plaintiff's fence, but did not direct his travel or remove the fence to a greater distance from the centre line of said road than fifteen feet on either side.

It is also admitted by the defendant, that there was a steep bluff near the point where the alleged trespass was committed and on the line of said road, to wit: about 15 rods east, which was impassable until during the month of December, 1854, when the same was graded down for a safe passage for loaded and other teams and travel. Previous to that time the travel at that point was diverted to the south about fifteen rods.

It is also admitted by the defendant, that, from the date of laying out the county road in 1832 up to 1846 and 1849, and before the prairie was fenced between Green's mill and Ottawa, only a portion of the travel was exactly on the line of said road, but varied as the choice of travelers directed them, sometimes on one side and sometimes on the other, and sometimes within fifteen feet of the centre of the line of said road.

It is also admitted, that the tracts of land marked out on Exhibit C. represent the location of Section 31, T. 34, R. 4, E 3d P. M., and that the 80 acres marked R. Morgan represent the close described in the plaintiff's declaration.

These tracts of land are not marked on the plat as returned by the commissioners, but have been placed there in this copy by consent, for convenience.

STADDEN & CAVARLY, for *Plff.*

LELAND & LELAND, for *Deft.*

Exhibit A.

COUNTY COMMISSIONERS' COURT, }
Sept. Term, 1831. }

Order that the road be viewed and appointing commissioners to survey and locate.

MARCH TERM, 1832.

Report of Commissioners—approved—and order establishing road as public highway.

Order appointing Wm. Stadden Supervisor of the road.

Exhibit B.

COUNTY COMMISSIONERS' COURT, }
March Term, 1833. }

Report and map of State road from Court House in Ottawa by Green's mill, &c., to Napierville, approved and filed.

Exhibit C.

Map (to be found at the end of this abstract.)

Surveyor's certificate thereto.

Certificate of Commissioners under act of Jan'y. 16, 1837, of having viewed, surveyed, and located, and filed maps of said State road.

The Court found the issues for the defendant—plaintiff moved for a new trial—overruled, and exception.

Errors Assigned.

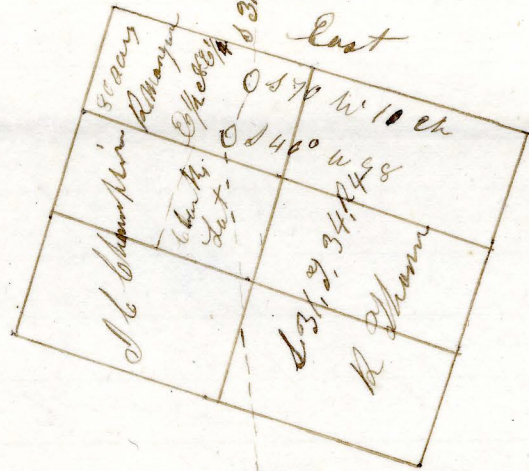
- 1st The finding of the Court should have been for plff. below, instead of ^{for} deft. below.
- 2^d The Court ^{erred in} overruling the motion for new trial—
- 3^d The judgment was against the evidence in the cause.

Grass mill

S 22° W 5 ch
 S 47° W 5 ch
 S 55° W 52 ch

S 31° W 34 ch

East



S 20° W 49

S 50° W 40

Went 27 ch

S 40° W 38

Went 0 house

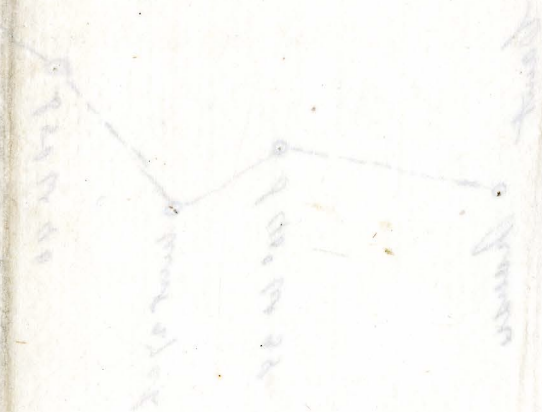
142

Miss Morgan

SS

David Green

Abstract



To the Honorable,
The Supreme Court of the State of Illinois:

I find that the Record of a cause
of Rees Morgan vs. David Green, purporting to
have been tried in the LaSalle County Court
on the 10th inst, has been brought before
your Honors, for your Judgment thereon.

The question ~~sought to be~~
~~presented~~ by the said Record, relates to
the validity of the same road, the validity
of which is the question involved in the
Record of the Case of Champlin vs. Morgan,
presented to this Honorable Court for the
allowance of a writ of Error at the
present term.

Without saying whether there
are any unfounded statements in the Record
of said Cause of Morgan vs. Green or not,
I do say that facts are omitted from said
Record, which the defendants ⁱⁿ the Case
of Champlin vs. Morgan, treated as material
on the trial of said last mentioned Cause.

The said Record of Morgan
vs. Green, is prepared by parties, both

of whom, the Plaintiff as well as defendant, are abettors of said Road, and is not prepared by parties who have an adversary interest in said Road.

The Counsel in said Cause of Morgan vs. Green, as well of the Plaintiff as of the defendant, have all been actively engaged in the Cause of the parties seeking to establish said Road.

The said Cause of Morgan vs. Green, was not tried or examined by the said County Court, as I am informed upon what I deem conclusive authority, but a pro-forma Judgment was rendered therein, by the said County Court in accordance with what the said County Court supposed to be the wish of both parties.

The said Parties have had an opportunity to bring the question sought to be presented in said Suit, before this Honorable Court at the present term, in such a manner that parties having a real and bona fide adversary interest in the question then sought to be presented

To this Honorable Court could have been heard; the said question having been tried in an adversary suit, Champion vs. Morgan at the last term of the Circuit Court, and a verdict found therein for the plaintiff - which verdict was set aside and a new trial granted by said Circuit Court, on the motion of the defendant

Morgan. - The said Record of Morgan vs. Green as originally made did not show that a motion for a new trial had been made in the Court below; & I am informed none was in fact made. Though - of course - the parties could supply that defect by consent.

∴ Upon this state of facts, I submit to this Honorable Court, whether they ought to take cognizance of the said Cause of Morgan vs. Green.

John C. Champion

Miss Morgan

Daniel Green

Suggestions Amicus
Curiae by J. C. Chapman
in above Cause

Russ Morgan
vs
David Green

In this case in behalf of the
Plaintiff in Error. (Russ Morgan)

The following Authorities are Submitted to the
Court to Sustain the Plaintiffs action... especially,
as to the width of the Road.

4	Penn State	337
5	do do	575
"	" "	101
1st	" "	356
13	Wendall	310
5	Wendall	580
5	Blackford	462
8	Blackford	288
3	Madison	105

R. Sturges Atty for Plff

Russ Morgan

L

Dawn Green

Authorizing

Filed June 28, 1856.

L. Leland

Clerk

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Reese Morgan
vs

Daniel Green
1855

12268

1856

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