

12761

No. _____

Supreme Court of Illinois

~~NION~~
Dimen *Dimen*

VS.

People

Samuel Deane
vs
The People &c.

1780.

1856

12761

This bundle did
not contain the second
book

Samuel Simon }
The People } Arguments

Simon was indicted for fencing across a public road, described in the indictment as being "a public Road leading from the City of Peoria and County of Peoria to the City of Knoxville in the County of Knox."

There is no Evidence in the Records of the Existence of any such Roads.

Near the place where Simon built his fence there were several travelled tracks over the Prairie - He fenced across one of them - And the Rebutting Evidence tended to prove that there was a legal Road from Peoria to Charleston across which, or along in the track of which the fence was placed.

The Evidence given by the People in Chief did not tend to prove a Record Road. It only showed that there was a travelled track, and tracks over the Prairie where this fence was built.

The Defendant, Simon then proved by the Clerk of the County Court, that there was no record of any Road from "Peoria to Knoxville," and that no such road had ever been laid out or Established.

Defendants then proved that there were several travelled tracks across the prairie at

at the place where the Road was fenced
Extending over a Space of 14 or 15 Rods in width

He then Offered to Prove, that the land where
the fence was built was Patented to Ezra King
on 10th Aug 1818. That King conveyed the land to Norman
Nicholson on the 27th Nov 1818. and sold by him
to Jacob Farr July 15th 1824 - and conveyed by
Farr to Nancy Winan - Defts wife in July 1849.
and that during all that time the Road was travelled
thru Nicholson & Farr were non residents and
never received any Compensation or Damages for
using the land for a road - (Excluded.)

The People then by way of Rebutting
Evidence only proved a legal Road from
"Point to Charleston". This Evidence and the
ruling of the Court in admitting it was excepted
to.

(For particulars in relation to the
Evidence see Miller abstract).

After the People had closed their rebutting
evidence the Defendants offered to prove, that when
the road from "Point to Charleston" was laid out
the land was owned by Jacob Farr who was
a citizen and resident of the State of N.Y. That
he had no notice of any of the proceedings Establishing
the Road, that no damages were assessed to
him or compensation made to him or any other person
That in the 30th July 1849. he conveyed the land to
Nancy Winan. Defts wife - (Excluded)

The instructions asked and given and
refused will be found in the million abstract
It is unnecessary to repeat them.

The substance of the whole case as
given by the Court is, that Private property
may be taken for Public use without compen-
sation, and that a waggon track over
a Prairie makes a legal public Road "Prima
facie", and that this "prima facie" evidence
can not be rebutted. and that the owner
of lands may dedicate the same to the Public
without his knowledge or consent.

If this is the law the judgment ought
to be affirmed, otherwise, Reversed.

I call the attention of the Court particularly
to the Records as stated in the Abstract and
also to the 6th Assignment of Enow. That the
Jury in their retirement was not attended by
a sworn officer.

J. H. Phipps

Verdict Guilty.

Motion for new trial

Reasons

1. Verdict against law & Evidence
2. Court Refused proper instructions asked by Deft.
3. Court gave improper instructions asked by the People
4. Court rejected proper evidence offered by Deft.
5. Court permitted People to introduce improper & irrelevant testimony
6. Jury sworn they retired to consider of their verdict now not attended by a sworn officer
7. Bill of Indictment not found by legal Grand Jury.
8. Norton Bristol one of Jurors not a Resident of the County, which was unknown to Defendant until after Jury was empanelled.

Dec. 1. 1853.

Simon filed an affidavit that no Officer was sworn to attend the Jury & that neither he nor his Counsel agreed to dispense with the attendance of such sworn officers.

Same day he filed an affidavit that Grand Jury was selected & summoned by the Supervisors... Reviewing the Records & Vermin & making the same parts of his affidavits, also that Norton Bristol was not a resident of Pinck County, was one of the Jurors who tried the case & that neither he nor his Counsel had any knowledge that he was not a resident of the County until the Jury was empanelled.

The People filed the affidavits of Clark that he was
Const., attended on the Jury. Kept them together
all regular - See affidavit. Pryor put them into
his charge.

Mo for New Trial Ordered
Dec. 2, 1853.

Errors assigned
Sent as Reasons for new trial

Samuel Simon

The People

Abstract

and Argument

Filed for

People