

No. 12489

Supreme Court of Illinois

County of Peoria

vs.

Smith

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 accord-
ing 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 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 ~~was~~ filed in the office of
the clerk of the Circuit Court in and for the County and
State aforesaid a certificate of Charles Kettelle, clerk of the
County Court of said Peoria County, 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:

"On 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"

James Smith who is owner of the north west quarter of Section
four (4) 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 him
are too low and entirely inadequate and that in fact his
damages will be at least \$2000.00. James Smith
by Purple & Pratt his attys.

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 & locate a State
road from Peoria to Rock Island filed a plat & assessment
of damages in said office on the 22nd day of December A.D.
1854 and that said Commissioners appraised the damages on
the N.W. quarter of section ten north & East at the sum of
one hundred dollars. Given under my hand & official seal this
24th day of January A.D. 1855.

Charles Kettelle Clerk

Proceedings at a term of the Circuit Court begun & 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 fifth day of said month. Present
the Honorable Enelow Peters, Judge of the sixteenth Judicial
Circuit, in the State of Illinois to wit:

Jan. Monday March 12th A.D. 1855

James Smith

County of Peoria } Appeal from assessment of damages
by Road Commissioners

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

And afterwards to wit on the 16th day of May A.D. 1855

the defendant filed in the office of the clerk of said Court a motion to dismiss this appeal which is in the words and figures following to wit:

James Smith

vs

County of Peoria

Peoria County Circuit Court

March term 1855

} Appeal from assessment of damages on the laying out of 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 householders was summoned to assess said damages in this case and therefore no appeal could be taken to this Court, because for the reasons above stated this Court has not jurisdiction of said case and appeals.

E. G. Johnson, Atty for deft.

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 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. Present the Honorable Charles Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois to wit:

Friday. May 25th 1855

James Smith

vs

County of Peoria

} Appeal from assessment of damages by road Commissioners

This day came on to be heard the defendant's 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 begun and held at the Court house at the City of Peoria in and for the County of Peoria in the 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. Present the Honorable Jacob Gale Judge of the sixteenth Judicial Circuit in the State of Illinois to wit

Friday May 17th A.D. 1856
James Smith

vs
County of Peoria } Appeal from assessment of damages
by Road Commissioners
This day came the plaintiff by Purple & Pratt his attorneys & the County of Peoria by Elbridge G. Johnson its attorney and it is ordered by the Court, that a Jury empanelled to assess the plaintiffs damages in this cause whereupon came a Jury of twelve good and lawful men to wit: William Shade, Lyman Reed, John Keller, William Donaldson, John Hutchinson, William Stewart, Daniel Boesler, William Shane, Alpheus Richardson, Andrew Dawson, James B. Carran and 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, etc of the Jury find for the plaintiff and assess his damages at the sum of six hundred and twenty dollars and seventy five cents, 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

Tuesday May 20th A.D. 1856
James Smith

vs
County of Peoria

} Appeal from assessment of damages
By Road Commissioners

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

Upon which the defendant on the 21st day of May
A.D. 1856 filed in the clerks office of said Court its reasons
for a motion for a new trial which are in the words and
figures following to wit;

James Smith

vs
County of Peoria } Peoria County Circuit Court
May Term 1856

Deft 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 recognised 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 case.
3. Because there was no evidence offered of the existence
of a legal road,

4. Because the Court refused to exclude the plaintiffs evidence in said cause.
5. Because the Court gave improper instructions as asked by the plaintiff and refused proper instructions asked by the defendant.
6. Because the verdict in said case is against the law and evidence.
7. Because plaintiff did not prove or offer to prove that plaintiff objected to the said road 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.
8. Because Court erred in allowing a Jury to be empanelled to try said cause.

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 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, Present the Honorable Jacob Gale, Judge of the sixteenth Judicial Circuit, in the State of Illinois to wit:

Saturday May 31st 1856

James Smith

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 judgment, 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 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 to be approved by the clerk of this Court in thirty days.

Upon which the defendant afterwards to wit on the 14th day of June A.D. 1856 filed in the clerks office of the Circuit Court of said County its bill of exceptions in said cause which is in the words and figures following to wit:

"James Smith

vs
County of Peoria } Peoria County Circuit Court
May Term A.D. 1856

Be it Remembered that at the May term 1856 of this Court the defendant in this cause moved to dismiss the same for reasons stated in said motion;

to wit:
"James Smith

vs
County of Peoria } Peoria County Circuit Court
March Term 1855
Appeal from assessment of damages on the laying out of 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 reasons above stated this Court has not jurisdiction of said case and appeals.

E. G. Johnson

Atty for deft."

Which was overruled by said Court, and therefore the defendant excepted, which exception was allowed and avoted. 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 excepted. 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 to wit:

"We the undersigned Commissioners appointed to view layout 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 Vincerville in said County thence north westerly to the town of Lafayette in Stark County thence continuing a northwesterly direction to Bishophill 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 wherever 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
W. Gorrington
Smith Prye } Commissioners

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 the 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 Gorrington & Samuel Dimon be appointed in association with Smith Prye, 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 Fry, Samuel Dimon and Washington Worthington 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 Fry

Saml. Dimon

W. Worthington

} Commissioners

Subscribed and Sworn to before me this 5th day June
A.D. 1854

Charles Kettelle Clerk

I further certify that Samuel Warner as Surveyor & Lewis Hagler & Levi Winkles as chainmen were duly sworn before me as appears by the papers on file in said office. Given
Deed under my hand & official seal at the City of Peoria
this 22nd 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 Commissioners appointed to open

I 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 & official seal
J. A. D. at Peoria this 29th day of January A.D. 1857
Charles Kettle, Clerk.

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 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 therein 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 Jury found a verdict for the plaintiff; the defendant entered a motion for a new trial for the following reasons:
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 case
 3. Because there was no evidence offered of the existence of a legal road.
 4. Because the Court refused to exclude the plaintiffs evidence in said cause
 5. Because the Court gave improper instructions as asked by the plaintiff and refused proper instructions asked by the defendant.
 6. Because the verdict in said case is against the law and evidence
 7. Because plaintiff did not prove or offer to prove that plaintiff objected to the said road 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 deff
 8. Because Court erred in allowing a Jury to be empanelled to try said cause.

The Court overruled the 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 cause:

to which the defendants Counsel accepted and requested
the Court to seal this bill of exceptions, which is done,
Jacob Gale, *Seal*

Upon which the defendant on the 28th day of June A.D.
1856 the defendant filed its appeal bond in the clerk's
office of said Court which is in the words & 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 James Smith in the sum of one
Hundred dollars for the payment of which well and truly
to be made we bind ourselves and our heirs jointly & severally
firmly by these presents the condition of the above obli-
gation is such, that whereas the said James Smith did
on the 17th day of June A.D. 1856, before the Circuit Court
in and for the County of Peoria in the State of Illinois
recover a judgment against the said County of Peoria for
the sum of one hundred & sixty dollars & seventy five cents
damages & cost of suit from which said judgment the said
County of Peoria has appealed to the Supreme Court of
said State. Now provided the said County of Peoria shall
duly prosecute said appeal & shall pay the judgment
cost interest & damages in case said judgment 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

Seal

Isaac Brown *Seal*
Chairman Board Supervisors Peoria Co

Leonard B. Cornwell (Seal)
Approved by me this 28th day of June A.D. 1856
James H. Barkman Clerk

State of Illinois }
Peoria County }
I, Enock Glover, clerk of the circuit
court in and for the state and county aforesaid do
certify that the foregoing is a true and correct trans-
cript of the records in the cause wherein James
Smith 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 the seal of said court at
Peoria, this 7th day of April A.D. 1857
Enock Glover, clk.

County of Peoria } In the supreme April
vs } Term AD 1857
James Smith }
Appeal from Peoria

and now comes the said plaintiff and says
that in the record and proceedings, ^{the 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 part of
plaintiff

5 In excluding proper evidence on the part of
defendant

6 In giving improper instructions on the part of
~~def~~ 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
Judgment may be reversed and for no right
held

Binden de Error
Pliff for 1000

By Read Williamson
attys for plff

115

County of Peoria

vs

James Smith

Filed April 20, 1857

L. Leland
Clerk

No 8

113²

The County of Berio
James ^{vs} Smith

12489

1857