

13953

No. _____

Supreme Court of Illinois

County Commissioners of
Knox County

vs.

Ferris

Rec^d. the arguments of counsel in this case,
(2 papers.)

Gilman.

State of Illinois }
Knox County } Pleas before the Honorable
Norman H. Purple Judge of
the fifth Judicial Circuit of
the State of Illinois.

At a Circuit Court began and
held at the Court House in Knoxville
on the thirso Monday in the
Month of November (it being the
Seventeenth day of saide month)
in the year of our Lord one thousand
Eight hundred and forty five

Presents the Hon Norman H Purple Judge

Amos Ward Daniel Meek }
and Samuel B Anderson }
County Commissioners of Knox County } Appral

George W Ferris }
^{vs}

But remembered that heretofore to wit on the fourth
day of September A D 1844 the saide plaintiffs
caused to be filed in the Circuit Court of saide
County, and in the above entitled cause a
Transcript from the Docket of Daniel Robinson
Esq a Justice of the Peace of saide County, which
Transcript is in the words and figures following to wit

"The County Commissioners of Knox County Illinois
George W Ferris - Action of Damages for obstructing
a road - Complaint by John A Gray

Damages \$100.00 - Entry Aug-13th 1844 - Summons

Issued Returnable Aug-24 1844 at 12 o'clock M.

Subpoena Issued for Plaintiff. Subpoena Issued for Defendants

Commenced before John Jackson J. P. and a change
of venue taken and brought before Daniel Robinson
J. P. August 24 1844.

Court called and Julius
Manning appeared for the plaintiffs and C. K.
Harvey for Defendants and after hearing the
testimony of Mr. Hitchcock Sidney Williams John Mesh
H. Munkce A. Mesh John L. Clay Mr. Dickson
Mr. Jerrolds Mr. Brewington & John Montgomery.
It is the judgment of the Court that there is no
cause of action & judgment rendered against the
Commissaries of ~~Knox~~ County for the costs of suit taxed
at \$7.22 August 24 1844.

I certify that the above
transcripts & papers with it contain a full and perfect
statement of all the proceedings before me
September 4th 1844 Daniel Robinson J. P.

And heretofore to wit, on the seventh day of September
A. D. 1844 the said Plaintiffs filed in the Circuit
Court of said County an Appeal Bond which Bond
is in the words and figures following to wit,
(see Bill of Exceptions)

And on the 4th day of Septem-
ber A. D. 1844 there issued out of the Circuit Court
of said County at the instance of the said
Plaintiffs a writ of Superseceas which writ is
in the words and figures following to wit

"State of Illinois

"Knox County } ss The People of the State of
Illinois to Daniel Robinson Esq

a Justice of the Peace of said County and
any Constable of said County - Greeting -

"Whereas on the 24th day of August A. D. 1844

before you the said Daniel Robinson a Justice
of the peace in and for said County a Judgment
was rendered against Amos Ward Daniel Meek
and Samuel B Anderson County Commissioners
of said County of Knox in favor of George W Ferris
for the sum of seven Dollars and twenty two cents
as appears by a statement of the said Judgment
filed in the Office of the Clerk of the Circuit
Court of the said County of Knox in a suit
wherein the said Amos Ward Daniel Meek and
Samuel B Anderson County Commissioners of
Knox County are plaintiffs and the said George
W Ferris is Defendant, from which said
Judgment the said Plaintiff have Appealed
to the Circuit Court of Knox County aforesaid.

You are therefore hereby injunction and
required to suspend all further proceedings
in relation to said suit until the said
Circuit Court shall make further order to the
contrary and to return all the papers in the
said suit and a transcript of the said
Judgment according to Law, and this you shall
in no wise omit.

AS Witness John G Sanburn Clerk
of said Circuit Court at Knoxville
this fourth day of September 1844
John G Sanburn Clerk

Which said writ of Supersedeas was returned
enclosed as follows.

I have summoned the within named Daniel
Robinson by reading to him the within summons
this 6th September 1844

Peter Francis Shiff

And again on the same day to wit, on the fourth
day of September A D 1844 in pursuance of the
Statute in such case made and provided
the then Clerk of the Circuit Court in and for
said County Issued out of said Office a
Summons on Appeal which said Summons
is in the words and figures following to wit,

" State of Illinois

" Knox County } ss The People of the State
of Illinois

" To the Sheriff of Knox County Greeting
" We Command you to summon George W
" Ferris if to be found in your County to be
" and appear before the Judge of our Circuit Court
" for the County of Knox on the first day of the
" next term thereof to be holden at the Court House
" in said County of Knox on the 3^d Monday
" of November next, to answer to an appeal
" obtained by Amos Ward Daniel Moeck
" and Daniel B. Anderson County Complainants
" of Knox County from a judgment rendered
" against them in favor of George W Ferris
" before Daniel Robinson Esq a Justice of the
" Peace of said County on the 24th day of
" August A D 1844 for the sum of 7.75 Dollars
" and costs of suit, and have you there
" this writ.

AS Witness John G Sanborn Clerk
of said Court at the Court House
this 4 day of September 1844
the Seal of said Court hereunto affixed
John G Sanborn Clerk

Which said Summons was returned endorsed
as follows

"I have Summoned the within named George
"W Ferris by reading to him the within Summons
"this 9th day of September 1844
Peter A. Evans Sheriff

And afterwards to wit, on the 19th day of
November to wit, on the third day ¹⁸⁴⁴ of November
term of said Knox Circuit Court for the year 1845
the following motion was made and entered of
Record in said Court

"Amos Ware Daniel Meek }
" & Samuel B. Anderson County }
" Commissioners & Co } Appeal
" George W. Ferris }
" Defendant }
" Plaintiff }

This day came the
"Defendant, by his attorney and enters his
"Motion to dismiss this suit

And afterwards to wit, on the 20th day of
the said November last, aforesaid and on the
said term last, aforesaid to wit, at the November
Term of said Circuit Court in and for said
County of Knox in the year A. D. 1845 aforesaid.
The following Order was made and entered
of record in said Cause:

"Amos Ware Daniel Meek }
" and Samuel B. Anderson }
" County Commissioners & Co } Appeal
" George W. Ferris }
" Defendant }
" Plaintiff }

This day again came the parties by their
attornies and the Court after hearing the
the arguments of counsel upon the motion
entered herein on yesterday to discontinue this suit
and being duly advised in the premises doth
order that said motion be overruled.

And afterwards took on the 21st day of said
November last aforesaid took at the November
Term of said Court in the year 1845 aforesaid
and on the fifth day of said Term
the following proceedings were had and entered
of Record in said case

Amos Ware Daniel Meek
and Samuel B. Anderson
Complainants of Knox County } Appeal
George W. Ferris }

This day came the
parties by their attornies and Issue being joined
for trial they put themselves upon their Country
Thereupon came the Jurors of a Jury took
William A. Haskins Alexander Osborn Kauselaw
Johnson Harrison Shamer Isaac Lott
Elder, Kunkle Greenup Stillwell Maryanneth
Brayn Benjamin Young John Caldwell John
Bum & Schuller Deathage who being
selected true and sworn well and truly
to try the Issue joined herein upon their Oaths
do say well the jury find for the plaintiff
ninety Dollars debt
Thereupon the Defendant by his attornies enters

his motion for a new trial herein -
Which motion is overruled by the Court, and
And thereupon it is considered by the Court,
that the said Plaintiff have and recover
of the said Defendant, the said sum of
Ninety ^{dollars} found by the Jury aforesaid and
also their costs in this behalf expended as well
in this Court as in the Court below and that
they have execution therefor &c

And thereupon the Defendant, by his attorney
enters his motion herein for an appeal to the
Supreme Court

And afterwards to-wit, the 27th day of November
at the term of said Court last aforesaid the
following order was made and entered in
said cause

Amos Wares Daniel Meek }
and Samuel Anderson }
County Commissioners of Knox } Appeal
County }

George W^{as} Ferris }
This day again came
the Parties and their attorneys and it is
Ordered by the Court that the appeal prayed
herein be granted upon the following condition
that the said Defendant do within 30 days
from the date hereof enter into an appeal
Bond with Sylvanius Ferris as his security
in the sum of two hundred and fifty Dollars
conditioned as the law requires

"Public Road in said District by fencing up
"the same and permitting the same to remain
"for a long length of time to wit, for the space
"of 200 days after having been ordered to
"remove the same by the said John S. Clay
"Supervisor as aforesaid for a failure to pay them
"the sum of 100 Dollars which the said George
"W. Ferris owes to them by virtue of the premises
"and the Statute in such case made and
"provided and make due return of this writ as
"the law directs. Given under my hand and
"Seal this 13th day of August A. D. 1844.

John Jackson *(Seal)*
Which said Summons is endorsed as follows
"August the 17th 1844 Served by reading to the
"within named George W. Ferris"

A. M. Richard Const.
"That the case on the affidavits of the Defendants
"was removed from the said Jackson to one
"Daniel Robinson who on the 24th of August
"1844 rendered a judgment in favor of the
"Defendants for cost, that on the fourth day of
"September 1844 the Plaintiffs Anderson
"Ward and Meek filed with the Clerk
"of this Court an appeal Bond which appeal
"Bond is in the words and figures following
"to wit: Know all men by these presents that
"we Amos Ward Daniel Meek and Samuel
"Anderson County Commissioners of Kuest
"County State of Illinois and Julius Manning
"are held and firmly bound unto George
"W. Ferris in the sum of fifty Dollars for the
"payment of which well and truly to be made

"we bind ourselves our heirs executors administrators
"freely by these presents sealed with our seals and
"dated this 4th day of September A D 1844

The Condition of this Obligation is such
"That if the above named Ames Ward Daniel
"Meek and Samuel B Anderson shall pay and
"satisfy whatever Judgment by the Circuit Court of
"Knox County on the dismissal or trial of a Certain
"Appeal to the said Circuit Court this day taken
"by them from a Judgment against them by Daniel
"Robinson Esq: a Justice of the Peace in and for
"the said County of Knox on the 24th day of Aug-
"ust A D 1844 wherein the said Ames Ward
"Daniel Meek and Samuel B Anderson County
"Commissaries of the said County of Knox are
"Plaintiffs and the said George W Ferris
"is Defendant for the sum of seven dollars and
"twenty two cents in favor of the said George W
"Ferris and against the said Ames Ward
"Daniel Meek and Samuel B Anderson
"County Commissaries of Knox County aforesaid
"then the above obligation to be void otherwise
"to remain in full force and virtue

"Approved this 4th day
"of September A D 1844

"John G Sanborn Clerk

} Samuel B Anderson Seal

} Daniel Meek Seal

} Ames Ward Seal

} Julius Manning Seal

"That on the ^{first} ~~24~~ day of the November term
"1845 of this Court the same being the first term
"of this Court which motions could be heard in this
"Case, the Defendant by his Counsel moved the
"Court to dismiss the said Suit that upon the
"hearing of the said motion it appeared that
"the said Suit was brought to recover a penalty

for obstructing a public Road and for continuing
such obstruction for a long space of time to wit for
the space of 200 days after being ordered to
remove the same by a Supervisor, and the grounds
of such motion was an alleged want of jurisdiction
in a Justice of the peace to try such a case, and
also that the Statute upon which the Statute action
was founded being the 8th ^{act} Section of the Chapter act
concerning public roads approved February 20th 1841
was repealed, and also for that the amount of the
penalty sued for in this case is being stated
in the said Summons that the said Defendants
neglected to remove the fence for a long space of time
to wit for the space of 200 days after the order
herin before named -- might exceed \$100.00
which said motion to dismiss the said Suit
was thereupon overruled, to the overruling whereof
the Defendants then and there excepted. And
thereupon the Defendants moved the Court to dismiss
the appeal taken herin which was in like
manner overruled and the Defendants thereupon
then and there excepted to the decision of the Court
in overruling his motion to dismiss to said
appeal; and thereupon the Court ordered that
a jury be empaneled to try the said Suit
and thereupon came the jurors of a jury to wit
Alexander Osborn and Eleme others and upon
the trial of the said cause the Plaintiffs
proved that at the March term 1841 of the
County Commissioners Court of the said County
John Montgomery was appointed Supervisor
of road district N^o 34 that at the June
term 1841 of the said County Commissioners Court

John L. Clay presented to the said Court a petition of 35 voters of said County for a road running from the North West of Section 30 in Township 11 N 1 E easterly on the Section line between Sections 19 & 30 till it intersected the Knoxvile and Galveston road at or near Section of township Eleven North two East that the name of the defendant was signed to the said petition. It was then proved by the Record of the County Commissioners Court that on the presentation of the said petition the said County Commissioners Court appointed 3 viewers to locate the said road that the said viewers returned to the said Court a plat of the said road as follows

11 N. 1. E						11 N 2 E
19	20	21	22	23	24	Galveston 19
30	29	28	27	26	25	30

~~Knoxville Road~~

that thereupon the said County Commissioners Court entered upon their Records the following Order to-wit

"Ordered that the above Road be established in accordance with the foregoing plat reports and field notes and that the width thereof be fifty feet, and that the Clerk refer to John L. Clay the three Dollars 'deposited'. And that the Surveyor in and for the County of Knox run out said road and that the said views Stuck Stakes every half mile in the middle of said road so located as

as aforesaid three of which said States
were upon the land of said Defendants where
the road was obstructed as hereinafter mentioned

The above was all the record evidence
of laying out the said road, except the general
Order appointing Supervisors there was no order
of the said County Commissioners Court to open
said road, to the introduction of all which
evidence the Defendants then and before it
was introduced objected which objections were
overruled by the Court to the overruling of which
objections the Defendants then upon exception
and the plaintiffs then proved that in the year
1841 the said John Montgomery as Supervisor
cut out the said road till within 3 or 4 miles
of the Defendants farm and that the said
Montgomery hauled timber upon the prairie to
bridge all of the Sloughs on said road one
of said Sloughs was within a half of a mile
of the place where said road was obstructed
on said Defendants said land that he should
have built several bridges and all said bridges
had not all the work due on said road been expen-
ced that said Defendants done on said road
the one days work which was due from him as
petitioner upon said road

That at the March Term 1842 one Adney
Williams was appointed Supervisor of the said
road District and worked on the said road
that the Defendants farm and for 3 or 4 miles
each way on the said road which ran through
the said farm was smooth prairie that the
said Williams as Supervisor caused some timber
to be hauled near the said Defendants land

to bridge a Slough on the said road but, no bridge was built, that there was a Track on or near the line of the said road through the Defendants farm caused by the passing of carriages along the line of the said road but, no work had been done on the said road except, as aforesaid, but, that, all the Sloughs which were not bridged by the said Montgomery were passable with carriages, that, when the said Supervisor Williams called on the said Defendants to work on the said road he said he had done one days work on the road and thought, that, that, and giving the lance was enough for him; that, at the March term 1843 of the County Commissioners Court, the Defendant, was appointed Supervisor of the said District; and while he was such Supervisor in May 1843 built a fence across the line of said road running from Section 19 to Section 30.

And that, one Sherman Williams when he presented the petition to the said Defendants for the said road asked the said Defendants, to give three days work on said road that, the said Defendants said that, one days work and his lance over which said road would pass would be as much as he could afford to give. And that, the said Defendants before the said road was obstructed fenced his said land on one side of said road and ploughed his said land on the other side leaving sufficient space for the said road according to the plot of the said road.

That, before the said Defendants obstructing the said road that, he asked the said

Saney Williams if he might build a fence across the said road until he could get his crops in, that at that time he had a fence built on one side of said road leaving a space of land for said road and that he had drawn some rails to build a fence on the other side of said road, and had laid them so as to leave a space for said road that the said Saney Williams told him he personally had no objections to his obstructing the road for that length of time, that the said Defendant asked the said John L. Llay whether he might obstruct said road until he could put in said crop and that he would remove the same as soon as he could put in said crop - that said Llay told said Defendant he had no right to give him permission.

The plaintiff then further proved that at the March term 1844 of the said Court, John L. Llay was appointed Supervisor of the said District, the said Llay being the person on whose complaint this suit was brought, and thereupon the said Plaintiff produced the said John L. Llay as a witness to whose competency the Defendant objected on the ground of his being the Supervisor on whose complaint the suit was brought, which objection was overruled by the Court to the amount of which objection ^{the defense put} them excepted and thereupon the said John L. Llay was sworn as a witness testified that on the 23^d day of

as the same was closed the Defendants
moved the Court to instruct the jury
to find as in case of nonsuit, stating as grounds
of such motion that if the Defendants were
liable at all for erecting the said fence
he would be liable as a Supervisor for not
doing his duty as such Supervisor the
obstruction having been erected by him when he
was Supervisor of which offence the Justice
Court could have no jurisdiction, that for
not removing the said obstruction upon the
said order the said defendant was ^{not} liable
by reason of the insufficiency and uncertainty
of the said order which motion was then overruled
by the Court to which owing by the Court
of the said motion the said Defendants
then excepted. The defendant then proved
by Palkin, since by the United States that
he was the owner in fee of the North East quarter
of said section 30 and of the South East quarter
of Section 19 adjoining or adjoining since January
1841 that on the 13th day of September 1843 and
while he was Supervisor of the said District
he caused three householders James Bunker
Samuel Hitchcock and John G. Wash to be
summoned before a Justice of the Peace
of the said County to appear before such Justice
of the Peace on the said 13th day of September
1843 and then that the said three persons
were sworn by the said Justice to keep the
damages sustained by the said Defendant as
owner of the said land by reason of the said
road passing over the same on and above

the additional value which such land might derive from the construction of such road that the said three persons on the said 13th day of September 1843 assessed the said damages at 95 dollars and one copy of the report of such assessment was laid before the County Commissioners Court of said County at their next regular term after such assessment the Defendants then proved by the Records of the County Commissioners Court that the said County Commissioners Court refused to allow and pay the Defendants the amount of such assessment or of any part thereof.

The above was all the evidence in the case and thereupon the Court instructed the jury that if they believe from the evidence that the Defendants obstructed the road and continued such obstruction after being notified by the proper Supervisor as complainer of by the Plaintiffs and if they further believe from the evidence that the road was opened through his land by his consent or without objection from him prior to the time of his procuring his damages to be assessed they will give a verdict for the Plaintiff which verdict must not exceed one hundred dollars.

And thereupon the jury after retiring returned into Court the following verdict. *That the jury find for the Plaintiffs 90 Dollars*

And thereupon the Defendants move the Court for a new trial and assign and gave notice of the following grounds for such new trial
1st the said verdict is against Law.
2^d it is against the evidence.

3^d the instructions of the Court to the jury were erroneous. Which said motion for a new trial was thereupon overruled by the Court, to the annulling of which the said Defendant then and there objected excepted and prayed that his said exceptions might be recorded which is accordingly done; and thereupon the Defendant prays an appeal to the Supreme Court in this cause which is allowed on condition that he enter in to the usual Bond with Sylvanus Ferris as security within 30 days from the 27th day November 1845

November 27 1845 *M. Purple Seal*

And afterwards to-wit on the the fifteenth Day of December A. D. 1845 in pursuance of an order made and entered herein, the said Defendant filed in this Court an appeal Bond which Bond is in the words and figures following

Know all Men by these Presents, That we,
George W Ferris as principal and Sylvanus Ferris as security
 are held and firmly bound unto *Samuel B. Anderson Daniel Meek and James Ware County Commissioners* of the County *Knox* and State of *Illinois* in the penal sum of *two hundred and fifty* dollars, current money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals at the Clerk's office in *Knoxville* this *15th* day of *December* A. D. 1845.

The Condition of the above Obligation is Such,
 That whereas the said *Samuel B. Anderson Daniel Meek and James Ware County Commissioners* as aforesaid did on the *21st* day of *November* in the year of our Lord one thousand eight hundred and *forty five* in the Circuit Court, in and for the county of *Knox* and State of *Illinois*, recover a judgment against the above bounden *George W Ferris* for the sum of *Ninety* dollars and *sixty* cents, debt, and *sixty* dollars and *sixty* cents, damages, and *sixty* dollars and *sixty* cents, costs; from which said judgment of the said Circuit Court, the said *George W Ferris* has prayed for, and obtained an appeal to the Supreme Court of said State. Now, if the said *George W Ferris* shall duly prosecute his said appeal with effect, and shall moreover pay the amount of the judgment, costs, interest and damages rendered, and to be rendered against him in case the said judgment shall be affirmed in the Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

Signed, Sealed and delivered in the Presence of
C. B. Harvey Approved,
George W Ferris
Sylvanus Ferris
Schiller Hauman Clerk Circuit Court Co. III.

No.

vs.

Plaintiff
On Appeal.

Defendant

APPEAL BOND, SUP. CT.

Filed,

A. D. 184 .

Clerk.

Karnes & Wood, Book, Job & Blank, Prs. Quincy.

Handwritten signature or mark

State of Illinois }
Knox County }^{SS}

I Achilles Shannon Clerk of the Circuit Court, in and for said County do hereby certify that the foregoing transcript of the records of the judgments and other proceedings in the case lately pending in said Court, wherein Amos Wallace Daniel Beck and Samuel B Anderson County Commissioners of Knox County were plaintiffs and George W Ferris Defendant is a full complete and correct copy of all the orders motions and judgments or proceedings in anywise done or had in the above cause as fully and completely as the same appears of otherwise in said office.

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Knoxville this 21st day of September A D 1846

Achilles Shannon Clerk

Costs of Transcript	55 40 words
16 cts per 100 -	\$ 8.82
Cash & Seal	30
Total	\$ 9.32

State of Illinois }
Supreme Court }³

Of the December Term
of the Supreme Court of
the said State in the

year of our Lord 1846
Amos Ward, Daniel Meek &
Samuel B. Anderson County Commissioners
of St. Mary County, Plaintiffs
against
George W. Ferris defendant.

And now on this 12th day of December in
the year of our Lord 1846 comes the said George W.
Ferris by B. H. Harway his attorney before the
said Supreme Court, and says that in the record
of proceedings aforesaid there are manifest
errors which are assigned as follows

1st There is error in this, that the said circuit
court overruled the said motion to dismiss said suit

& 2^d in this, that the said circuit court overruled
said motion to dismiss said appeal, & in this

3^d that said circuit court admitted in evidence
said plat of said road, & said petition for
said road, & order establishing said road,

4th & in this that said circuit court admitted evidence
of said conversations between said witness Williams
& said defendant & between said witness Clay & defendant,

5th And there is error in this that said circuit
court admitted said John L. Clay to testify as
a witness in said case & in this that

6th that said court admitted in evidence said
notice to open said road by said Clay & in this

7th that said circuit court refused to instruct
the jury to find for the defendant as is case
of new suit & instructed them to find for the

8th plaintiffs as in the record set forth & in this
there is error in ^{this} that said circuit court over-

9th =ruled said motion for a new trial ^{for said case} & ^{said court}
that judgment was given for the plaintiffs
when it ought to have been for the defendant,
wherefore for the errors aforesaid & other errors
the defendant prays said judgment may be
reversed. &c,
B. H. Harway for deft,

60 baw's record.

ads
George W Ferris

Manuscript of lines 3, 4, 5

57 Dec. 15 1846

Ed
Week
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1846 7 15. 00-

State of Illinois: Supreme Court ss
 George W. Ferris, plf in error
 Amos Ward et al. vs Comrs of Knox County, defts in error

And now comes the said defendants
 and says as to the said errors above assigned
 by the said plaintiff that there are no such
 errors in the said cause nor in the record
 nor proceedings thereof, as the said plaintiff
 above hath alleged nor any, nor either of
 them. Wherefore the said defendants pray
 that the said judgment be may be affirmed.

Calius Manning
 for defts in error.