

No. **413**

Supreme Court of Illinois

Phillip Clark

vs.

Bayliss Lake

(379)  7

State of Illinois }
Sangamon County } P. Pleas before the Circuit Court in & for
said County & State.

Be it remembered that on the
23^d day of August 1834, the following precept was filed
in the Clerk's Office of said Court, to wit:

Sangamon County Circuit Court
Philip Clark }

vs } Trespas on the case for destroying p'ty's boat
Bayle's Lake } and Cargo. Damages \$2000 -
To C. R. Matheny Clk. C. Court.

Specie summons as above
returnable to the next term.

Aug. 23^d. 1834 -

Logan & Stone p'ty's Atty's."

And afterwards, to wit, on the 23^d day of August 1834, the following
summons was issued, to wit:

"The People of the State of Illinois,

To the Sheriff of Sangamon County, Greeting:

You are commanded to summon Bayle's Lake to be &
appear before the Circuit Court of Sangamon County
on the first day of the next term, to be holden at Springfield,
on the second Monday in the month of September next,
to answer Philip Clark in a plea of trespass on the
Case for destroying p'ty's boat & cargo, damages \$2000 -

And have you then there this writ. Witness the Honorable
Samuel D. Lockwood, Judge of our said Court. at
Springfield, this 23^d day of August 1834 -

C. R. Matheny Clk."

On which summons is the following endorsement, to wit:

"Executed August 26th 1834 ac. to law - Service 50. Travel 12 m. 75. Returning 12^c

G. Elkin Shff. C."

And afterwards, to wit, on the 29th day of August 1834, the following
declaration was filed in the Clerk's Office
of said Court, to wit:

"State of Illinois

Of September Term
Sangamon County Circuit Oct 1834 -

Philip Clark complains of Bayliss Lake in
Custody &c of a plea of Insuper on the Case. For that whereas
by an act of the people of the State of Illinois represented in
the General Assembly entitled "An act declaring the Sang-
amou River a navigable stream" Approved December 26 -
1832 it is enacted as follows to wit: "Be it enacted by the
people of the State of Illinois represented in the
General Assembly that the Sangamon River from
its mouth (following the main Channel) to the third
principal mandian be and the same is hereby decl-
ared a navigable stream that no dam of any descrip-
tion or other obstruction shall be placed in the River
so as to impede the navigation thereof or drive the
the water from its natural Channel so as to
overflow the bottoms or produce stagnant waters
in any place" And whereas after the making
passing of the act and by virtue thereof up to and
after the time of committing the several piercences
hereinafter mentioned the said Sangamon river
from its mouth following the main Channel to
the third principal mandian was and of right
ought to have been a navigable stream and was
and of right ought to have ~~been~~ a public highway
and was and of right ought to have been free and
open for all the good Citizens of the State of Illinois
and others to navigate the same to all times
from any obstruction with their Canoes, Skiffs, Sago-
-junks, flat Boats barges and Steam Boats - And
whereas neither the said Defendant nor any
other person had any right to obstruct or impede
the navigation of the said Sangamon River from its mouth
following the main Channel to the third principal

By Consent of the parties, this cause
is continued until the next term of this Court."
And afterwards, to wit, on the 11th day of March 1835,
the following proceeding was had, viz:

"Philip Clark }
vs } T.O.C.
Bayle Lake } Continued."

"And afterwards, to wit, on the 8th day of July 1835 the
following order was entered, to wit:

"Philip Clark }
vs } In Case.
Bayle Lake }

On motion of the plaintiff by his
attorney a rule is awarded him against the defendant
to file his plea herein by tomorrow morning eight
o'clock."

And afterwards, to wit, on the 9th day of July 1835, the fol-
lowing plea & similitur were filed in the clerk's office of said Court, to wit:

"Clark }
vs } Of the Special July Term of the Circuit
Lake } Court for Sangamon County

And the said defendant comes & defends
the wrong & injury when & and says he is not guilty
in manner & form as the plaintiff hath above thereof
in his said declaration complained against him, & that
he prays may be enquired of by the Country &
And plaintiff likewise

Stuart & Sumner P.C.

Walter J. J.

And afterwards, to wit, on the 10th day of July 1835, the
following proceeding was had, to wit:

"Philip Clark }
vs } Dispass on the case.

Bayle Lake } This day came the parties, by their
attorneys, and it is commanded that
a jury come to try the issue joined between the parties

and thereupon came a jury to wit: James Taylor, Elijah Duncan, William Ramsey, Alexander Garrett, Alexander Ritchey, Joseph Bondurant, Joseph Whitey, Hugh M. Armstrong, Charles Morgan, James W. Keys, Robert Sattley & George Stout, who being impanelled tried and sworn, well truly to try the issue joined on aforesaid, and having heard the evidence adduced by the parties, and part of the argument of Counsel and it being too late to proceed farther with the trial, were adjourned over until tomorrow morning eight o'clock."

And afterwards to wit, on the 11th day of July 1835, the following proceeding was had, to wit:

"Philip Clark

v

} In support of the case.

Bayless Lake

} This day again came the parties by their attorneys, and thereupon

came the jury sworn in this cause on yesterday

to wit: James Taylor, Elijah Duncan, William Ramsey, Alexander Garrett, Alexander Ritchey, Joseph Bondurant, Jonas Whitney, Charles Morgan, James W. Keys, Robert Sattley, and George Stout, who having heard the argument of Counsel retired, and afterwards returned into Court the following verdict to wit: "We of the jury find for the defendant." It is therefore considered by the Court that the defendant recover of the plaintiff his costs by him about his defence in this behalf expended."

And afterwards to wit, on the 17th day of July 1835, the following proceeding was had, to wit:

"Philip Clark

v

} In Case.

Bayless Lake

} This day came the parties aforesaid by their attorneys and the plaintiff produced his bill of exceptions which was signed and sealed by the Court, and

ordered to be made part of the record; which bill
of exceptions is as follows to-wit:

Clark
vs } In Core
Lake }

Be it remembered that on the trial of
this case the plaintiff gave evidence conducing to
prove that he built a flat bottomed boat and loaded
her with 2500 bushels of Corn and with a sufficient
tide to descend the river (had it not been obstructed
by artificial obstructions) that said plaintiff descended
the Sangamon River (intending to go to the lower
Market Natchez or Orleans) till within 3 quarters of
a mile of the defendants mill dam on said River where
he stopped upon hearing the sound of the mill and went
to explore the obstruction: that the defendant had previous to
that time & after the passage of the law referred to in the
plaintiffs declaration (which plaintiff also read to the jury)
and ^{which law} is as follows (to-wit) Be it enacted by the people
of the State of Illinois represented in the general assembly
That the Sangamon River from its mouth (following
the main channel) to the third principal meander be
and the same is hereby declared a navigable stream; that
no dam of any description or other obstruction shall be
placed in the river so as to impede the navigation thereof or
drive the water from its natural channel so as to overflow
the bottoms or produce stagnant waters in any place: have
enacted said dam and mill and was the owner thereof which
impeded the navigation of said River and was between the
third ^{3rd} meander referred to in the said law and the mouth of
the river that owing to said dam impeding the navigation
of said river plaintiff could not descend with said boat
and load & was stopped so that the water fell & the plaintiffs
boat in consequence was sunk & Corn lost by being
drowned: that said Corn was worth when it was lost

Murderer by the erection or maintenance of any mill
mill dam, mill house abutment, buttryp mill wheel
or any other thing. and whereas before and at the time
of committing the several grievances hereinafter mentioned
the said plaintiff had a flat Bottomed boat of Great
size to wit of the value of \$1500 loaded with a large quantity of corn, to wit 2500 bushels of corn, the prop-
erty of the plaintiff, of great value of \$500. Proceeding in and up

the said navigable stream between the mouth thereof
and the third principal meander following the main
Channel thereof to wit on the 15th day of April 1834 at the
State, County, and Circuit aforesaid. Yet the said
defendant well knowing the premises but contriv-
ing and wrongfully and unjustly intending to injure
and prejudice the said plaintiff in this respect
and to deprive him of the use and benefit of
the said navigable stream and to delay hinder
and detain the plaintiff in navigating the said
Sangamon River with his said flat bottomed
boat loaded as aforesaid and to sink detain
and destroy the said flat bottomed boat and the
corn loaded therein to wit on the said 15th day of April
1834 and at the State, County, and Circuit aforesaid
did erect and make in upon and across the
main Channel of the said Sangamon River
between the mouth thereof and the third prin-
cipal meander one mill dam, one mill
house, one mill wheel with long arms thereto &
two abutments whereby the navigation of the said
navigable stream to wit was greatly impeded &
totally obstructed and the same so made and
erected did keep and continue from that day
to the commencement of this suit. By reason
whereof whilst the said flat bottomed boat of the plaintiff
with the large quantity of corn aforesaid was descend-
ing the navigable stream aforesaid to wit the Sangamon

river between its mouth and the third principal
meridian the said plaintiff with his flat bottomed
boat aforesaid loaded with the large quantity of Corn
aforesaid was stopped delayed hindered and detained
from proceeding on down the said navigable
stream by the mill dam, mill house mill wheel and
abutments of the plaintiff aforesaid in and upon
and across the navigable stream aforesaid and
whereby also the plaintiff lost the advantage of
proceeding to market with his said boat loaded
with Corn to wit on the said 15th day of April
1834 at the State, County and Circuit aforesaid and
whereby also the plaintiff's said boat loaded
with Corn as aforesaid has been hindered
delayed and detained from thence up to the
present time and by reason whereof the said
boat of the plaintiff loaded with Corn as aforesaid
aforesaid afterward to wit on the 20th day of April
1834 at the State County and Circuit aforesaid
sunk and was destroyed in the said large
-men river and the said boat and all the
Corn of the plaintiff aforesaid loaded there
was wholly lost and destroyed to wit by reason
of said hindrance delay and detention
aforesaid. By means of all which the plain-
tiff hath been injured & sustained damages
to \$2000 and therefore he sues &c

D. Stone & S. T. Logan "

and afterward, to wit, on the 21st day of November 1834,
the following order was entered, to wit:

"Philip Clark

or

Bayless Lake

}
} Trespas on the case.
}

5
In testimony whereof I have hereunto
set my hand & affixed the seal of
said Court, at Springfield, this
2^d day of December A.D. 1835.

Wm. McKitt Clin
"

57
Copy of Record of 4.25
Certificate that . 50
4.75

Philip Clark
vs 2 Copy of Records
Bayle Lake

— " —

1835

John Lee 1/9.

1835 J. W. Luman

Judgment Reversed

Dec^r Term 1835

413

Philip Clark

Buyless Lake

This was an action of trespass on the case brought by Clark against Lake in the Sangamon Circuit Court. The Plff declared against the Defs, for erecting a dam across the Sangamon River, which stream had been declared a public high way by a Statute of this State, whereby the Plff had been obstructed in the navigation thereof while proceeding down the River with a boat load of corn whereby lost his said boat & corn - The Defs plead not guilty -

On the trial of the cause the Plff gave evidence conducing to prove that he descended said River with a boat load of corn, with a sufficient tide of water to descend the River, if it had not been obstructed by artificial obstacles, intending to go to Natchez or New Orleans - That when the boat arrived within $\frac{3}{4}$ of a mile of Defs. Mill dam he stopped his boat - That in consequence of the said dam's impeding the navigation of the said River, the boat could not proceed on the trip in consequence of being so stopped the corn was lost - That the corn was worth $12\frac{1}{2}$ cents per bushel where it was stopped on the River & worth 75 cents at the lower Markets.

After the foregoing evidence was given, the Defs, asked a verdict, whether there was not another Mill dam across said River below the Defs. Mill dam erected in violation of said law, which was higher than the Defs. ^{mill} dam & whether said lower dam would not have prevented Plff from proceeding to the lower Markets of Natchez, or New Orleans as it was late in the season & no other tide

might take place in the river during that season, even if the Duff could have gone over the left Mill dam, to which the Duff's counsel objected but the Court overruled the objection & permitted the question to be asked & the deft. to prove that sent to the jury by said testimony - to which opinion & judgment of the Court the Duff by his counsel excepted.

The only question presented in this case, is whether the Circuit Court erred in permitting this testimony to be given to the jury?

It appears from the record that the verdict was for the Duff, which ^{probably} shows the ^{effect} of the testimony that this Court cannot ^{understand} what ^{other} use could have been made of this testimony unless it was to urge ^{that} ~~that~~ ^{that} the Duff could have passed the left dam, he would not have been benefitted by it, as he inevitably would have been stopped by the dam lower down the river. This mode of reasoning ^{if adopted was} is not more sound in Morals than in Law. The law is well settled ^{that} every person who erects an obstruction across a public highway, is liable for all the injuries that result from it. It is consequently no excuse, that another obstruction would have produced the same effect, for the obvious reason, that ^{the} party injured by the first obstruction has no cause of action against the person who erected the second. In the present case the second Mill dam had not delayed the Duff & of course he could not have ^{seen} the person who erected it. If the Duff sought to recover damages for a greater amount than the value of the corn & boat, where the injury occurred

by showing how much profits he had lost by the obstruction occasioned by Deft. Mill dam, it doubtless would have been proper for the Deft. to show, in mitigation of damages, that such profits could never have been realised, in consequence of the impossibility of the boats reaching the lower Markets, occasioned by obstructions in the river below Deft. Mill dam. It is evident however, that the evidence was not offered in mitigation of damages, because no such limitation was proposed by the Deft. nor required by the Circuit Court.

The true rule relative to receiving or rejecting testimony is, ~~tested, by the question~~, does the proposed testimony tend to prove the issue joined between the parties? ~~If the testimony offered does not tend to prove the issue or~~ ~~consequently, it is not admissible~~ ^{it} ~~to be received~~. The jury, as they ~~from the facts in issue~~, ought to be rejected. This Court believing that such may have been the effect of the question asked by the Deft. on ^{that} opinion the Circuit Court erred in not rejecting it.

The judgment below is therefore reversed with costs & the cause remanded, with directions to the Circuit Court of Sangamon County, to award a venue de novo.

Blank }
Lake } Journal

Justin Lockwood

Filed Jan. 24,
1836 - Journal

+

Philip Clark

in

Bayley Lake

} Error to Sargenow

107 The Defendant in Error comes & defends
I say that in the record Judgment &
proceedings there is no error; wherefore he
sings that said Act^l be affirmed with
costs &c

Wm T. Shunt.

Dea

Clark
N. E. Spinder
Lake Indiana

Feb. Dec. 23

1832

Antun

State of Illinois, sct.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Largamon*

GREETING:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Largamon* county, before the Judge thereof, between

Philip Clark plaintiff and *Bayless*

Lake defendant it is said manifest error hath interceded to the injury of the aforesaid *Plaintiff* as we are informed by *his* complaint, and we being willing that error (if any there be) should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Vandalia in the county of Fayette, on the *Second Monday in December* ~~next~~, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, the Hon. William Wilson, Chief Justice of our said Court, and the seal thereof at Vandalia, this *nineteenth* day of *December* in the year of our Lord one thousand eight hundred and *thirty five*

J. M. Duncan clk

Supreme Court
Philip Clark
@ { Writ of Error
Baylis Lake

Filed Dec 19
1835 Jm Duman

Philip Clark

vs
Barth Clark

} Upon Error to the
Sangamon Circuit
Court

Clark brought an action on the case against ~~Barth~~ Clark for an injury the plaintiff had sustained by damage done in delaying a boat load of corn therein by being delayed water falling & corn getting wet by reason of a mill dam which Defendant had erected on the Sangamon River declared to be a navigable stream by the State of Illinois

The Defendant pleaded not guilty on which issue was joined; and on the trial after the Plaintiff had proved the facts necessary to enable him to recover the Defendant was permitted to prove, notwithstanding Plaintiffs objections that there was another mill dam on the River below Defendants erected also in violation of law which would would equally obstruct the Plaintiffs property to which Plaintiff excepted, & verdict and judgment, having been rendered against him, he now assigns for error the admission of said testimony

Black's claim

When seen to the
Baptist Church
Court

Black brought an action on the case
against the Baptist Church for an injury to
his property. The court found in favor of
Black in damages a sum of \$1000.
The court also ordered a writ of
specific performance of a contract to
be made by the Baptist Church
to the state of Illinois.

The court also ordered
that the Baptist Church
pay the costs of the action.

Black
vs
Baptist Church
No 107

The court also ordered
that the Baptist Church
pay the costs of the action.
The court also ordered
that the Baptist Church
pay the costs of the action.

Philip Clark } upon a writ of Error
vs } to the Sangamon Circuit
Bayless Lake } Court

The Plaintiff says that in record, proceedings & Judgements in the Above case manifest error hath intervened in this Court

That the Court erred in permitting the witness to be sworn to the Jury excopted to by Plaintiff as stated in the Bill of Exception

Walker for
Plaintiff



Clark
¹⁷
Lake & Erros

Filed Dec 19. 1835
J. M. Guman