

12472

No. _____

Supreme Court of Illinois

County of Peoria

vs.

Harvey

71641  7

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The County of Peoria
vs
David Harvey

12472

1857

State of Illinois }
Peoria County } 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
according 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 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
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:

In 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.

David Harvey who is the owner of the north east
~~corner~~ quarter of section ten (10) in township ten (10) north
seven (7) east, also of the South east quarter of section
ten (10) in township ten (10) north seven (7) east all 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
\$4000.00

David Harvey by
Purple Langer & Pratt his attys.

State of Illinois
Peoria County (Clerks office)

I, Charles Kettelle clerk
of the County Court, do hereby certify that the within & foregoing notice was filed in said office on the 17th day of January A.D. 1855. Given under my hand & official seal this 19th day of January A.D. 1855

Charles Kettelle clk
I further certify that the Commissioners appointed to locate the road mentioned in said notice assessed fifty dollars damages on N.E. quarter of Sec. 10 Township 10 N 1 E.

Dea

Attest

Charles Kettelle, clk.

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 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 Orslow Peters, Judge of the sixteenth Judicial Circuit in the State of Illinois to wit:

Monday March 12th A.D. 1855

John Harvey

vs

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

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

David Harvey

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 defendant

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 Anselow Peters
Judge of the sixteenth Judicial Circuit in the
State of Illinois to wit:

Friday May 25th 1855
David Harvey
vs
County of Peoria } Appeal from assessment of damages
by Road Commissioners.

This day came on to be heard the defendants 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 & 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 16th A.D. 1856
David Harvey
vs
County of Peoria } Appeal from assessment of damages
by Road Commissioners

This day came the plaintiff by Purpfe & Pratt his attorneys and the County of Peoria by Elbridge G. Johnson its attorney and it is ordered by the Court that a Jury be empannelled to assess the plaintiffs damages in this cause, whereupon came a Jury of twelve good and lawful men to wit: John Keller, Joseph True, Matthew Brown

David Wilson, John Dufield, John Darby, Hiram Shane
William Stewart, Andrew Dawson James B. Curran,
John Hutchinson and Alpheus Richardson, 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, and the evidence of the parties being
fully heard retired, to consider of their verdict.

Saturday May 17th A.D. 1856

David Harvey

vs { Appeal from assessment of damages
County of Peoria } by Road Commissioners.

This day came the Jury empannelled in
this cause on yesterday and on their oaths aforesaid do
say, we the Jury find for the plaintiff and assess him
damages at the sum of six hundred and fifty dollars, where
upon it is considered by the Court that the said plaintiff
have and recover of the said defendant his damages and his
costs herein in form aforesaid assessed 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

David Harvey

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

This day came the defendant by Elbridge
G. Johnson its attorney and enters a motion for a new
trial in this cause, reasons of file

And afterwards to wit the defendant filed in the
clerks office of said Circuit Court on the 21st day of
May A D 1856 a motion for a new trial in this cause
which in figures & words is as follows;

David Harvey Peoria County Circuit Court
vs May term 1856

County of Peoria Defendant moves that the verdict be
set aside and for a new trial in this cause

- 1 Because the Court erred in intertaining 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 au-
thority of said County had ever passed upon the question
of damages in this cause
- 3 Because there was no evidence offered of the existence of a
legal road.
4. Because the Court gave improper instructions as asked
by the plaintiff and refused proper instructions asked
by the defendant.
- 5th. Because the verdict in said cause is against the law
and evidence.
6. Because plaintiff did not prove or offer to prove that
plaintiff objected to the said roads 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.

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

David Harvey

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 3rd 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 6 words & figures following
to wit:

David Harvey	} Peoria County Circuit Court
vs	
County of Peoria	} May term A.D. 1856

Be it Remembered that at the May
term 1855 of this Court, the defendant in this cause
moved to dismiss the same for reasons stated in said
motion to wit:

David Harvey	} Peoria County Circuit Court
vs	
County of Peoria	} 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 sum-
moned 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 thereupon the defend-
ant excepted, which exception was allowed and noted. 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
excepts. 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 lay out 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 Princeville in said County, thence northwesterly to the town of Lafayette in Clark County, thence continuing a northwesterly direction to Bishop hill in Henry County, thence to lean bridge 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 1st 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 or as 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. Lorrington

Smith Frye

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 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 Lorrington & Samuel Dimon be appointed in association with Smith Frye 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 Frye Samuel Dimon and Washington Lorrington do solemnly swear that as Commissioners to view and 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 Frye

Sam. Dimon

W. Lorrington

Commissioners

Subscribed & Sworn to before me this 5th day June A.D.
1854. Charles Kettelle clerk

I further certify that Samuel Farmer as Surveyor
& Lewis Hagler & Levi Winkles as chainmen were duly
sworn before me as appears by the papers on file in said
office. Given under my hand and official seal at
Seal the City of Peoria this 22d. 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 & 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
Seal under my hand & official seal at Peoria this 29th
day of January A.D. 1854
Charles Kettelle, clk

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
regular session of the General Assembly in regard to the
location of State roads" approved March 4, 1854. "
To said plat and report the defendant objected because
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 plaintiffs counsel then requested the Court to instruct the Jury as follows.

1. That the benefits of a general character and which are derived equally to the claimant and others are not to be estimated by the Jury.
2. That the claimant is entitled to recover such damages as he sustains by reason of the road running over said land and that in estimating the same, the Jury may take into consideration the necessary expense of fencing the road, the value of the land, the value of the injury to the Locust Grove and the necessary inconveniences arising from the manner in which the land is divided over and above the additional value which his land will derive from the construction of the road."

which were given, and the defendants counsel then

requested the Court to instruct the Jury as follows:
In estimating the damages to which the Plff in this case is entitled the Jury are to consider the damages the plaintiff will sustain over and above the additional value which his land will derive from the construction of the proposed road and the expense of fencing are not necessarily to be paid for provided such additional value overbalance expense with other damages.

which were refused and the defendants counsel then and there accepted.

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 cause,
3. Because there was no evidence offered of the existence of a legal road,
4. Because the Court gave improper instructions as asked by the plaintiff and refused proper instructions asked by the defendant,
5. Because the verdict in said case is against the law and evidence,
6. 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. By E. G. Johnson Atty for deft."

The Court overruled 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

And afterwards to wit on the 20th day of June A.D.
1856 the defendant filed its appeal Bond in said
cause 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 David Harvey of Peoria County
in the penal sum of one hundred Dollars for the payment
of which well and truly to be made we bind ourselves
& our heirs jointly and severally firmly by these presents.
The condition of the above obligation is such that whereas
the said David Harvey did on the 16th day of May
A.D. 1856 before the Circuit Court of Peoria in the State
of Illinois recover a judgment against the said County
of Peoria for the sum of six hundred & fifty dollars and
costs of suit from which judgment the said County has
taken an appeal to the Supreme Court of the State of
Illinois. Now Provided the said County shall duly
prosecute said appeal & shall also pay said judgment cost
interest and 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 Isaac Brown Seal

Seal Chairman Board Supervisors Peoria County
Leonard B. Cornwell Seal
Approved by me this 28th day of June A.D. 1856
James L. Barkman Clerk

State of Illinois
Peoria County

I, Enoch Floan, clerk of
the circuit court in and for the county and
State aforesaid do certify that the forego-
ing is a true and correct transcript of the
proceedings in the case wherein David Harvey is
plaintiff and the county of Peoria is dependant, 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. 1854.

Enoch Floan, clk

County of Peoria } In the Supreme Court April
vs } Term AD 1857
David Harvey }

Appeal from Peoria

And now comes the said plaintiff and says that in the record and proceedings ^{& 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 the part of plaintiff
- 5 In excluding proper evidence on the part of defendant
- 6 In giving improper instructions on the part of 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 nought held

By Wend & Williamson
attys for plff

Found in Error
People for deft

County of Dorset
vs
David Harvey

Filed April 20, 1854,
S. Seland
Clerk

No 5