

No. 12470

Supreme Court of Illinois

County of Peoria

vs.

Nashan

71641  7

III.

The County of Peoria
vs
John Nashan

12470

1857

State of Illinois }
Peoria County } 21

Pleas in the circuit court in and
for the County of Peoria and State of Illinois, be-
fore the Honorable the Judge of the 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 re-
cords and proceedings of said court, the fol-
lowing matters and things to wit:-

Be it remembered that on the ^{twenty-fourth} ~~seventeenth~~
day of January A.D. 1855, there was filed in the
office of the circuit court clerk, in and for
the county and state aforesaid, a certificate of
Charles Kettelle, clerk of the county court of said
county of Peoria, 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:-

State of Illinois }
County of Peoria } Clerk's office

I, Charles Kettelle, clerk of the
County Court in and for said County do hereby
certify that the within notice was filed
in my office on the 17th day of January A.D. 1855

Given under my hand and official seal

this 17th day of January A.D. 1855.

Charles Kettelle, Clerk



State of Illinois }

County of Peoria } Clerk's office

I, Charles Kettelle, clerk of the county Court in and for said county do hereby certify that the commissioners appointed to locate a state road from Peoria to Rock Island assessed the damages on the South east quarter of section 10, in Township 10 North 7 East at the sum of fifty dollars, as appears by the plat of said road filed in said office on the 22^d day of December A.D. 1855. Witness, Charles Kettelle

Clerk of said court & official seal

thereof this 24th day of January A. D.

1855- Charles Kettelle, clk

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. - John Nashan who is the owner of the South east quarter of section ten (10) 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

John Nashan
by Purple, Sanger & Pratt
his attorneys.

Proceedings at a term of the circuit court began and held at the court house in the city of Peoria in and for the county of Peoria and 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. Honorable Ouslow Peters, judge of the 16th judicial circuit, in the state of Illinois, presiding - to-wit:-

Monday, March 12, A.D. 1855

John Nashan

vs } appeal from assessment of damages
County of Peoria } 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.

Proceedings at a term of the circuit court began and held at the court house in the city of Peoria in and for the county of Peoria and state of Illinois, 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. Honorable Ouslow Peters - presiding - to-wit:-

Friday, May 25, A.D. 1855.

John Ashion

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 excep-
tions may be signed in vacation.

Proceedings at a term of the Circuit Court
began and held at the court house in the city
of Peoria in and for the county of Peoria and
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.
Honorable Jacob Gale, presiding - to-wit

Saturday, May 17, A.D. 1856.

John Ashion

vs

County of Peoria

} appeal from Assessment of damages by Road Commissioners.

This day came the Plaintiff by Purple
Pratt his attorney and the County of Peoria by
Albridge B. Johnson, its attorney, and it is ordered
by the court that a jury be empanelled to as-
sess the plaintiffs damages in this cause, whereup-
on came a jury of twelve good and lawful

men to-wit:- William Donaldson, John Keller, William Shade, William Stewart, Lyman Reed, Alpheus Richardson, Daniel Brestel, James B. Curran, Andrew Dawson, Hiram Thane, John Benjamin, and John Hutchinson, 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, We of the jury find for the plaintiff and assess his damages at the sum of thirty dollars and fifty 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 said same be paid by the said defendant as provided by law in such cases made and provided.

Tuesday, May 20, A.D. 1856.

John Nashion
as
County of Peoria } Appeal from Assessment of damages 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 on file.

Saturday, May 31st 1856

John Nashan

as
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 with security to be approved by the clerk of this court in thirty

And afterwards to-wit. On the fourth day of June A.D. 1856, there was filed in the office of the circuit court clerk aforesaid, a bill of exception in words and figures following, to-wit:-

John Nashan

as
County of Peoria

} Peoria County Circuit Court - 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:-

John Nashan } Peoria County Circuit Court, March term
w } 1855 - Appeal from assessment of damages
County of Peoria } in 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 reason above stated this court has not jurisdiction of said case and appeals.

O. G. Johnson, for deft.
which was overruled by said court and thereupon the defendant 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. "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

And upon the most practicable route to the town of
Princeton in said county, thence northwester-
ly to the town of Lafayette in Stark county,
thence continuing a northwesterly direction to Bishop
Hill in Henry County, thence to Cambridge in
said county and from thence to the town of
Rock Island in Rock Island county in pur-
suance 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 re-
viewed 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
whenever 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 mark-
ed 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. Corrington
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 Corrington & 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 Dinow and Washington
Corrington, 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 County, will
view, mark & locate said road as de-
signated in the act of the General Assem-
bly of the State of Illinois, passed, Feby.
12th 1853, So help us God.

Smith Frye, }
Sam. Dinow, } Commissioners
W. Corrington }

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

Charles Kettelle, Clerk.

I further certify that Samuel Farmer
as Surveyor & Lewis Flagler & 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 the city of
Peoria this 22^d day of December A.D.



1854.

Charles Kettelle, Clerk

State of Illinois }
Peoria County } Clerks office

I, Charles Kettelle, Clerk
of the county Court in and for the
county aforesaid do hereby certify, that
the foregoing is a true copy of the report
of the commissioners appointed to open and
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 and official
Seal at Peoria this 29th day of Jan-
uary A.D. 1857

Charles Kettelle, Clerk
with the certificate of the commissioners thereto
attached and also an act entitled "An act to estab-
lish a State of Road from Peoria in Peoria coun-
ty to Rock Island in Rock Island County" ap-
proved Feby. 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 the said plat and re-
port the defendant objected because said plat
and report does not show a legally estab-
lished road, and because there is no proof
offered therewith that said road was ever
ordered to be opened and constructed - or that
either the county Court or board of Super-

visors of said county of Peoria had passed up-
on the question of damages in this case or or-
dered the said road to be opened - but the
court overruled the objection and admitted
the plat and report as evidence of the ex-
istence of said road and the plaintiff's right
to recover damages for the location and
laying out of the same, to which the de-
pendant excepted. Plaintiff then offered
evidence tending to prove he was in pos-
session of the premises described in said
appeal - the direction of said road over
said premises, and the damages caused thereby
if the said road should be opened and
constructed as located - and here the plain-
tiff rested.

The Plaintiff's Counsel then requested
the court to instruct the jury as follows:

The jury found a verdict for the plaintiff. The defendant entered a motion for a new trial for the following reasons:-

John Ashau }
vs } Peoria County Circuit Court - 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 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 as asked by the defendant.
- 5 Because the verdict in said case is against the law and the evidence.
- 6 Because plaintiff did not prove or offer to prove that plaintiff objected to 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.

C. G. Johnson, Atty. for Dept.

The court overruled said motion and defend-
ants counsel then excepted. Defendant en-
tered 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 excepted-
and requested the Court to seal this bill
of exceptions, which is done.

Jacob Gale, Clerk

And afterwards, to-wit:- On the twenty-eighth
day of June A.D. 1856, there was filed in the
office of the clerk of the circuit court a-
foresaid, an Appeal Bond, in words and
figures following to-wit:-

Know All men by these presents, that we
the county of Peoria, by the Chairman of the
Board of Supervisors of said county as prin-
cipal and Leonard B. Cornwell as sureties
are held and firmly bound unto John Nashan

in the penal sum of one hundred dollars
for the payment of which well & truly to
be made we bind ourselves & our heirs jointly
& severally, firmly by these presents. The con-
dition of the above obligation is such that where
as the said John Ashaw did on the 17th day of
May A.D. 1856, before the circuit court in &
for the County of Peoria in the state of Illinois
recover a judgment against the said County of
Peoria for the sum of thirty dollars & fifty cents
damages and costs of suit, from which said judg-
ment the said County of Peoria has taken an ap-
peal to the Supreme court of the state. Now in
case the said County shall duly prosecute said
appeal & shall pay said judgment & all costs in-
terests and damages in case the same shall be
affirmed then this obligation to be null & void
otherwise of full force. Witness our hands
& seals this 27th day of June A.D. 1856

Isaac Brown (Seal)

Chairman board of Supervisors, Peoria Co. Ill.

Leonard B. Cornwell, (Seal)

Approved by me this 28th day of June A.D.
1856 James S. Barkman, clk.

State of Illinois }
Peoria County } I, Enosh Sloan, clerk of
the circuit court in and for said county
and state do certify that the foregoing is
a true transcript of the records in the cause
wherein John Nashan 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 affix the seal of said court
at Peoria, this 4th day of April
AD 1857. Enosh Sloan, clk.

County of Peoria } In the Supreme court
vs } April Term 1857
John Nashan }
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 evidence 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 judgment for plaintiff

Wherefore the plaintiff prays that the said judgment may be reversed and for weight held

By Read Williamson
attys for plffs

Order in Error

By People for defts

III.
County of Peoria
vs
John Nathan

Filed April 20, 1857
L. Leland
Clerk

No 6