

New-Jersey Court of Errors and Appeals.

NEW-JERSEY SUPREME COURT.

NATHAN ALLEN,	}	
<i>ads.</i>		IN DEBT.
JOHN M. STEVENS.		<i>On Demurrer to Pleas.</i>

The following are the pleadings which have been filed in the above cause :

New Jersey Supreme Court of the thirteenth day of September, in the year of our Lord, eighteen hundred and fifty-nine.

SOMERSET COUNTY, SS. Nathan Allen, defendant in this suit, was summoned to answer unto John M Stevens plaintiff therein, of a plea that he render unto him the plaintiff, two dollars, which to him he owed and from him unjustly detained. And, thereupon the plaintiff, by George H.
10 Brown, his Attorney, complains for that the plaintiff before and at the time of committing the grievance hereinafter mentioned, to wit, on the twentieth day of June, in the year eighteen hundred and fifty-nine, was seized and possessed of a tract or lot of land, situate in the township of Hillsborough, in said county, adjoining lands of the defendant and other persons. And the plaintiff further says that on the day and year aforesaid, and before and since that time, the defendant has been accustomed to pass and repass
20 by a private road there, to and from his said lands at his pleasure, unto, through, and over the said tract or lot of

land of the plaintiff. And the plaintiff further says that he had caused to be erected across the said private road a swinging gate. And that the defendant on the day and year aforesaid, at Hillsborough aforesaid, left open the said gate, contrary to the form of the act of the Legislature of the State of New Jersey, entitled, "An act concerning roads," approved April 16th, 1846, whereby and by force of the said statute the defendant forfeited and became liable to pay the
 10 said sum of two dollars. And whereby an action hath accrued to the plaintiff as prosecutor to demand and have of the defendant the said sum of two dollars above demanded.

G. H. BROWN,
Attorney for plaintiff.

And the said Nathan Allen, by John V. Voorhees, his attorney, comes and defends the wrong and injury when &c., and says that as to leaving open the said gate in the declaration of the plaintiff mentioned; the said defendant by leave of the Court, here for that purpose, first had and
 20 obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because, he says that he, the said Nathan Allen, long before and at the said time when, &c., in the said plaintiff's declaration mentioned was and from thence hitherto hath been and still is seized in his demesne as of fee, of and in the occupancy of a certain close in the township of Hillsborough, in the county of Somerset, and within the jurisdiction of this Court, called his homestead farm, contiguous and next
 30 adjoining to the said close or lot of land of him the said plaintiff, in the said declaration mentioned in which, &c., and that he, the said defendant, and all those whose estate he now hath and at the said time when, &c., in the said declaration mentioned, had of and in the said close or lot of land of him, the said plaintiff, from time whereof the memory of man is not to the contrary have had and used, and have been accustomed to have, and use, and of right ought to have

had and used. And the said defendant at the time when, &c., ought to have had and used, and still of right ought to
 10 have and use without obstruction, a certain way for himself and themselves, and his and their servants, farmers and tenants, occupiers of his said close called his homestead farm, to pass and repass, on foot and with horses, mares, geldings, and other cattle, as well as with his and their carriages, and wagons, from a certain public highway in the township of Hillsborough, into, through, over, and along the said close or lot of land of the said plaintiff in which, &c., is situated the said way unto and into the said close now of him, the said defendant, and so from thence back
 20 again unto, into, through, over and along the said close of the said plaintiff, in which, &c., unto and into the said public highway, at all times of the year, at his and their free will and pleasure, without obstruction as aforesaid. And the said Nathan Allen being so seized of his said close, and having occasion to use the said way, did with his servants, and horses, mares and geldings, carriages and wagons, at the said time, when, &c., pass and repass, in, by, through and along the said way from the said public highway into, through, over and along the said close or lot of land of him,
 30 the said plaintiff, in which, &c., is situated the said way unto and into the said close now of the said defendant, and so from thence back again, in, by, through and along the said way, unto and into the said public highway using the said way there for the purpose and on the occasion aforesaid, and in so doing, and because the said swinging gate in the said declaration of the said plaintiff mentioned before the said time, when, &c., had been wrongfully and unlawfully erected, and was then standing and being in and across the said way, and obstructing the same so that without throwing
 40 open and leaving open the same the said defendant could not then pass and repass without obstruction with his said horses, geldings, mares and other cattle, and with his carriages and wagons into, through, over and along the said close, in the introductory part of this plea mentioned, unto,

and into the said public highway there as he ought to have done, he, the said defendant, at the said time when, &c., in order to remove the said obstruction did throw open and did leave open the said swinging gate, in the said declaration mentioned, as he lawfully might for the cause aforesaid, 10 which is the said supposed cause of action in the introductory part of this plea mentioned, and for which the said plaintiff hath above instituted his said suit against him, the said defendant. Without this that the said close or lot of land and premises in which, &c., was a private road there, as the plaintiff in his said declaration hath alleged. And this he, the said Nathan Allen, is ready to verify, wherefore he prays judgment if the said John M. Stevens ought to have or maintain his aforesaid action thereof against him, &c.

And for a further plea in this behalf by the said defendant as to the leaving open the said swinging gate, in the plaintiff's declaration mentioned, the said defendant by like leave of the Court here for that purpose, first had and obtained, says that heretofore to wit on the first day of January, A. D., eighteen hundred and twenty-one. Cornelius Allen was lawfully seized and possessed of the same close or lot of land and premises now of the plaintiff in his said declaration mentioned, and one Nathan Allen was lawfully seized and possessed of the same land and premises now of the defendant, and whose estate therein he, the said defendant, now hath called his homestead farm, being the same 30 land and premises mentioned and referred to in the introductory part of the first plea, and lying and being contiguous and next adjoining to the said close or lot of land and premises now of the plaintiff. And the said Cornelius Allen, being seized of the said close or lot of land and premises, he the said Cornelius Allen, on the day and year aforesaid by his certain deed of grant executed under his hand and seal and delivered to the said Nathan Allen, (which deed has been accidentally lost or destroyed and cannot therefore 40 now be produced before the Court,) for a certain consideration therein expressed, did grant unto the said Nathan Allen and to

his heirs and assigns forever, (being the owner of the said close or lot of land and premises now of the defendant ;) a certain way from a certain public highway in the township of Hillsborough, aforesaid, into, through, over and along said land and premises now of the said defendant, and so back again from the said last mentioned lands and premises, which, &c., unto and into the said public highway to go, return, pass and repass, on foot by himself and themselves, and his and
10 their servants, and with horses, mares, geldings, carts and carriages in and along the said last mentioned way, every year and at all times of the year, at his and their free will and pleasure, without obstruction, by virtue of which said grant the said defendant before and at the said time when, &c., was and still is entitled to such way as last aforesaid. And the said defendant being so seized and entitled to such a way as last aforesaid, he, the said defendant, at the said time, when, &c., did at the said time, when, &c., go and pass in, through, and along the said way, from the said public
20 highway, into, through, over and along the said close or lot of land and premises of the said plaintiff, in which, &c., unto and into the said lands and premises now of the said defendant, using the said way there for the purpose and on the occasion aforesaid as he lawfully might, for the cause aforesaid. And in so doing, and because the said swinging gate in the said declaration of the plaintiff mentioned, before the said time, when, &c., had been wrongfully and unlawfully erected, and was then standing and being in and across the said way and obstructing the same so that
30 without throwing open and leaving open the same, the said defendant could not then pass and repass without obstruction with his said horses, geldings, mares, and other cattle, and with his carriages and wagons, unto, through, over and along the said close in the introductory part of this plea mentioned, unto and into the said public highway there, as he ought to have done, he, the said defendant, at the said time, when, &c., in order to remove the said obstruction did throw open and did leave open the said swinging gate, in

the said declaration mentioned, as he lawfully might for the
 10 cause aforesaid, which is the said supposed cause of action
 in the introductory part of this plea mentioned, and for
 which the said plaintiff hath above instituted his said action
 against him, the said defendant. Without this that the said
 close or lot of land and premises in which, &c, now is a pri-
 vate road there, as the plaintiff in his said declaration hath
 alleged. And this, he, the said Nathan Allen, is ready to
 verify, wherefore he prays judgment if the said John M.
 Stevens ought to have or maintain his aforesaid action
 thereof against him, &c.

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J. V. VOORHEES,
Attorney of defendant.

And the said John M. Stevens, as to the said pleas of the
 said Nathan Allen by him above pleaded, saith that the
 same and the matters therein contained in manner and form,
 as the same are above pleaded and set forth, are not suffi-
 cient in law to bar the said John M. Stevens from having
 or maintaining his aforesaid action thereof against him, the
 said Nathan Allen. And that the said John M. Stevens is
 not bound in law to answer the same, and this he, the said
 30 John M. Stevens, is ready to verify. Wherefore for want
 of a sufficient plea in this behalf the said John M. Stevens
 prays judgment and his debt aforesaid, together with his
 damages by him sustained on occasion of the detention
 thereof to be adjudged to him, &c.

G. H. BROWN,
Attorney of plaintiff.

New-Jersey Court of Errors and Appeals.

NATHAN ALLEN,

vs.

JOHN M. STEVENS,

} IN ERROR.
 } *Assignment.*

40 Afterwards to wit, on the twenty-seventh day of Febru-

ary, in the year of our Lord one thousand eight hundred and sixty-one, before the Court of Errors and Appeals in the last resort, at the city of Trenton, comes the said Nathan Allen, by John V. Voorhees, his Attorney, and says that in the record and proceedings aforesaid and also in giving the judgment aforesaid there is manifest error in this to wit :

1st. Because the Court in and by their said judgment did determine that the alleged private way or right of way, 10 appurtenant to the lands of the said Nathan Allen, in his said pleas alleged to be such, was not such private way or right of way, but was in fact a private or by-road under the statutes of New Jersey, and as such the said John M. Stevens had the right to hang gates in and across the same, and that the said Allen was liable to pay the statute penalty of two dollars for leaving open such gate.

2nd. Because notwithstanding the said Nathan Allen alleged in his said pleas that the said road was an ancient private way or right of way, and had been used by him and 20 those under whom he claimed, without obstruction from time whereof the memory of man is not to the contrary. Yet the said Court adjudged that the same was not such private way or right of way, but that it was in fact a private road under the statute of New Jersey.

3rd. Because the said Court in sustaining the demurrer of the plaintiff, did adjudge and determine a question of fact, in this, that notwithstanding the defendant had alledged in his second plea, a title to said private way, or right of way by grant, yet the Court in effect determined that he had no 30 such title by grant or otherwise.

4th. Because the said Court adjudged that title by prescription to a private way or right of way does not prevail in the State of New Jersey.

There is also error in this to wit that by the record aforesaid it appears that the judgment aforesaid given was given for the said John M. Stevens, whereas by the laws of the land the said judgment ought to have been given for the said

Nathan Allen, against the said John M. Stevens. And the said Nathan Allen prays that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by reason of the said judgment.

5th. Because the Court decided that a man over whose land another has a right of way, may as of right, and by the law of the Land put up a gate in said way.

J. V. VOORHEES,
Attorney of plaintiff in Error.

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