

***McFarlin v. Essex Co., 10 Cush. 304 (Mass., 1852)***

***Massachusetts Supreme Judicial Court***

William McFarlin, of Lowell in the County of Middlesex, yeoman, by his petition to the County Commissioners for the County of Middlesex, at their meeting holden at Concord in said County on the first Tuesday of June 1850 ... represented that he is and for a long time has been the owner of a certain Fish right or fishing privilege, situated at the head of Patucket Falls, in Merrimack River, in said Lowell; That the Essex Company are a Corporation established by law; that by an act of the Legislature of this Commonwealth, on the twentieth day of March in the year eighteen hundred and forty-five, the said Essex Company were authorized to construct a dam across Merrimack River at a place about twenty miles below the location of your Petitioners Fish right or Fishing Place, that by an additional act of said Legislature on the ninth day of May in the year Eighteen hundred and Forty eight, it was provided that the said company should be liable for all damages that should be occasioned to the owner of Fish rights existing above said Company's dam, by stopping or impeding the passage of fish up and down the Merrimack River by the said dam and that such damage should be assessed by the County Commissioners of the County where such Fish rights exist and that either party if dissatisfied with any assessment of damages in such cases might apply for a Jury to assess the damages in the manner provided ...

And the said McFarlin further represents that the said Essex Company did proceed to erect such dam, and did thereby totally stop and impede the passage of Fish up and down said River, so that for more than two years now no fish have passed up and over

said dam and your Petitioners' fish right hath been totally destroyed, so the damages of the said McFarlin, as he says, the sum of Five thousand dollars. And the said McFarlin further alleges, that he heretofore petitioned your Honorable Board, to asses the damages by him in that behalf sustained, and that the regular meeting of your Honorable Board, holden at Cambridge, on the first Tuesday of January last, you did proceed to assess said damages, with which assessment said McFarlin is dissatisfied. And he further alleges that he is aggrieved by the assessment made by your Honorable Board and he prays that you will order a Jury to be summoned and impaneled to assess the damages to his Fish right, by the reason of the erection of said dam ...

And it appearing to said Commissioners that notice has been given to the said Essex Company ... it was ordered that the Clerk should forthwith serve a warrant directed to the Sheriff of said County of Middlesex, to summon a Jury according to Law ... And on the nineteenth day of July last, the Clerk issued said warrant accordingly. And now the verdict of the Jury is returned by the Sheriff, and is entered in the Court for adjudication, and is, in the words following: "Verdict of the Jury in the case of William McFarlin vs. The Essex Company. The Jury impaneled by Samuel Chandler, Sheriff of the County of Middlesex on the twentieth day of August AD 1850 for the purposes mentioned on the warrant in this case issued on the Petition of William McFarlin against the Essex Company, having been first duly sworn before said Samuel Chandler and having chosen Archibald O. Varnum foreman, by ballot, after carefully viewing the premises and fully hearing the parties do find and our verdict is that the said William McFarlin recover against the said Essex Company the sum of Seventeen hundred and four dollars and fifty cents, as his damages sustained as aforesaid.

The respondents appeal therefore to the Supreme Judicial Court next to the holden for this County.