

11962

No. _____

Supreme Court of Illinois

Colton. et al.

vs.

Hauchett, et al.

71641  7

State of Illinois }
Ogle County } p

Plus in the Circuit Court of said Ogle County, in the State of Illinois, at the March Term of said Court for the year 1852, in a certain Cause on the Chancery side thereof, between Salmon C. Cotton, Spencer Puggles, John A. Ettinger, John Haman, Aaron A. Jaine, Theron Camins, Leonard Adams, Charles Tarrap, Joseph A. D. Cushing, George S. Herre, Elisha W. Dutcher, Samuel A. Barber, John D. Thomson, William Watmough, Samuel W. Johnson, Edward Adams, Samuel M. Farland, Michael Stombach, Ormanut Morris, John H. Middleknap, Jacob Dornbarger, and John Garman Complainants, and Calvin R. Hoadly, Amos Lucas, Sterling Blackman, Abram Sanford, Armand D. Wood, Joseph Williams, Joel Robinson Norman W. Wadsworth, A. O. Campbell, Elias Thomas, Benjamin T. Adcock, Edward F. Dutcher, Asa G. Spalding, Austin Lewis, Christopher G. Holbrook, Gould C. Norton and John H. Stubb defendants. —

Be it remembered that on the 13th day of March A.D. 1852 came the said Complainants by Holland and Wright their Solicitors, and filed in said Court their Bill of Complaint and petition in the words and figures following to wit —

To the Honorable Jas. O. Wilkinson Judge of the
6th Judicial Circuit of the State of Illinois and
Judge of the Circuit Court in and for Ogle County in
said Circuit sitting in Chancery

Your Oration, Salmon

C. Cotton, Spooner Ruggles, John A. Etinger, Solon
Cumins, Horace W. Paine, Theron Cumins, Leonard
Andrus, Charles Throop, Joseph A. D. Cushing, George
L. Herrick, Elisha W. Dutcher, Lemuel W. Barker
John D. Stevenson, William Walmsley, Samuel W.
Johnson, Eamard Wilson, Samuel W. Farland
Michael Stonebraker, Emanuel Morris, John W.
Middlekauff, Jacob Dorenberger and John Gorman
residents of the County of Ogle aforesaid, on behalf of
themselves and all the other Citizens tax payers in said
County humbly complaining show unto your Honor
they are tax payers in said County and that they on their
own account pay yearly to the use of said County the sum
of Two hundred Dollars & upwards for taxes for County
purposes, and that they together with the other Citizens of
Ogle County who are also tax payers pay yearly a County
tax in said County of Ogle in the aggregate the sum of
over Three thousand Dollars. Your Oration would
further represent and show unto your Honor that
by an act of the Legislature of the State of Illinois
approved February 17th 1851 entitled An act authorizing
James Hanchett to build a bridge across Rock River
at Oregon Illinois the said James Hanchett and his
associates their heirs and assigns are authorized to build
a bridge across Rock River at any point on the Town
Flat of the Town of Oregon that he may select in the County
of Ogle and State of Illinois and after the completion of said
bridge to place a toll gate at either end of the same, when
he and they their heirs and assigns may demands of every

person passing on said bridge the rate of tolls provided by said act in preference to which act is hereto made for the more full statement of its several provisions.

Your Orator would further show unto your Honor that the said County of Ogle by a vote of her Citizens have adopted the system known to the law as the "Township system" and that said County is divided into Twenty Towns under the provisions of the law. Your orator would further represent and so charges the fact to be that the Board of Supervisors of said Ogle County at a special session of said Board, upon the application of said James. H. Stanchett had the following proceedings as appears from the Records of the proceedings of said Board At a meeting of the Board of Supervisors June 28. 1852. the following preamble and resolutions were then introduced and read to wit: "Whereas it is proposed by James. H. Stanchett to erect a bridge across Rock River at the Town of Oregon in the County of Ogle, and whereas the people of said County are greatly interested in the success of said undertaking by the said Stanchett. Thereupon be it resolved that on the completion of said Bridge by the said James. H. Stanchett at the Town of Oregon in said County of Ogle an order shall be drawn on the Treasurer of said County for the sum of Fifteen Hundred Dollars in favor of the said James. H. Stanchett. Provided however and it is hereby expressly declared that the order aforesaid for the sum aforesaid shall not be issued to the said James. H. Stanchett until he shall have executed to said County a good and sufficient right of way across said Bridge for all the officers of said County while employed in the business of the County to continue for and during the term of twenty years from the date hereof. which said grant shall include a right of way across said Bridge

for all Grand and Petit Jurors and all witnesses attending Criminal trials" After discussion on motion the sum of Fifteen Hundred Dollars was stricken out and the sum of One Thousand Dollars inserted. The Preamble and Resolution as amended was adopted upon the Call of the Yeas and nays as follows. C. R. Voadley, Amos Lucas, Sterling Blackman, Frank Sanford, Francis D. Hooker, Joseph Williams, Seriel Robinson, W. H. Wadsworth, A. C. Campbell, Elias Thomas, B. T. Strickland II voting in the affirmative and J. C. Cotton, Spooner Ruggles, John Carmow, R. S. Spalding, Austin Lewis and John A. Etinger, voting in the negative & a certified copy of which said order is herewith filed and made part of this Bill and marked "A"

And your orator would further represent and so charge the fact to be that the said James V. Vanchett whom your orator, pray may be made a defendant to the bill being about to construct a Bridge across Rock River at Oregon in said County under the provisions of the act aforesaid upon which he and such as associate themselves propose to charge such tolls or rates for crossing on and passing over the same to all such persons and property as may pass thereon, and such tolls as by law he and they are authorized to do in contravention of law procured the passing of the order aforesaid recited thereby giving to said Vanchett the sum of one thousand Dollars without any authority of law whatever.

Your orator would further state that the said Bridge so about to be constructed is to be and remain the sole and private property of the said Vanchett and such others as may associate themselves with him and their heirs and assigns

and in no way shape or manner the property of said
County of Ogle or any town thereof. And that your
Orators have not a full, clear and adequate remedy
by the strict rules of the Common law and can only have
relief in a Court of equity. They therefore pray that
Calvin. R. Hooley. Amos Lucas. Sterling Blackman
Nirram Sanford. Nirram D. Wood. Joseph Williams
Jeniel Robinson. Norman W. Hadsworth. A. O. Campbell
Elias Thomas. Benjamin. J. Mednick. Edward. F.
Dutcher. Asa L. Spalding. Austin Lewis. Christopher
C. Holbrook & Gould C. Norton who constitute a majority
of the Supervisors of the several Towns in said and
forming a majority of the Board of Supervisors in and
for said County. And John Henkle Clerk of said
Board of Supervisors may be made parties defendants
to this suit. and that a writ of summons may issue
against all of said persons as also said James W.
Hanchett. and that they may be compelled to answer
without oath all and singular the premises herein set
forth and that on the final hearing of said Bill the
said Board of Supervisors, and the said John M. Henkle
as clerk of said Board may be forever enjoined from
issuing said order direct in the within recited resolution
of said Board, as well as their successors in office, and
that said order and resolution of said Board may be
decreed to be cancelled, and that in the mean time a writ
of injunction may issue out of your Honors said Court
restraining the said John Henkle and the said Board
of Supervisors from issuing said order or taking any
further steps or order in the matter of issuing said order
of One Thousand Dollars to said James W. Hanchett

Holland & Wright
Sols for Compt

Salmon. C. Cotton
Spooner Ruggles
John. A. Ettinger
John German
Solon Cumins
Others

State of Illinois }
Ogle County } I Solon Cumins one of the Complainants
in the foregoing being duly sworn deposes
and says that all the ^{several} matters and things
set forth in the foregoing ^{as true} are true in substance and in fact
and that all the other several matters & things therein set
forth I believe to be true

Sworn to and subscribed

before me this 12th day of }
March 1852. C. F. Sulches }

Solon Cumins

Board of Supervisors January Special Term
Wednesday January 28th 1852

The following Preamble was thus introduced and read verbatim
"Whereas it is proposed by James H.
Hauchett to erect a Bridge across Rock River at the
Town of Oregon in the County of Ogle and whereas the
People of said County are greatly interested in the
success of said undertaking by the said Hauchett"

Therefore be it resolved
that on the completion of said Bridge by the said
James H. Hauchett at the Town of Oregon in said
County of Ogle an order shall be drawn on the Treasurer
of said County for the sum of fifteen hundred Dollars
in favor of the said Hauchett"

Provided however, and it
is hereby expressly declared that the order aforesaid for the

sum aforesaid shall not be issued to the said James
H. Hauchett until he shall have executed to said
County a good and sufficient right of way across said
Bridge for all the officers of said County while employed
on the business of the County to continue for and during
the Term of twenty years from the date hereof which said
grant shall include a right of way across said Bridge
for all grand and petit jurors and all witnesses attending
Criminal Trials. After discussion

On Motion the
sum of Fifteen Hundred Dollars was stricken out
and the sum of One Thousand Dollars inserted. The
preamble and resolution as amended was adopted
upon the Call of the yeas & nays as follows

C. R. Roadley, Amos Lucas, Sterling Blackman,
Merino Sanford, Merino, D. Wood, Joseph Williams
Jerril Robinson, N. W. Hadsworth, A. O. Campbell,
Elias Thomas, & B. T. Herdick voting in the
affirmative And

J. C. Cotton, Spooner Reggles
John Garman, A. G. Spalding, Austin Linsie &
J. A. Ettinger voting in the Negative

Board of Supervisors January Special Term
Thursday January 29, 1857

A motion was then
made to reconsider the appropriation of \$1000.00 to
James H. Hauchett for the purpose of assisting him in
the Erection of a Bridge across Rock River at Oregon
which was decided by yeas & nays as follows —

Yeas
 Austin. Lins
 Genl Robinson
 A. G. Spalding
 J. A. Utiger
 John. Warman
 Spooner Riegler
 S. L. Cotton
 C. G. Holbrook (8)

Nays
 C. F. Hoadley
 A. Lucas
 S. Blackman
 W. Sanford
 W. D. Woods
 J. Williams
 H. H. Hadsworth
 A. Q. Campbell
 Elias Thomas
 B. D. Hedrick (10)

State of Illinois }
 Ogle County } I John M. Winkle Clerk of the
 County Court, in and for said County,
 do hereby certify that the foregoing is a true
 copy as taken from the records of the proceedings of Board
 of Supervisors of said County.

Witness my hand and seal of the County
 Court at Oregon this 12th day of March 1852.
 John M. Winkle, Clerk

{ Seal }

And afterwards to wit on the 19th day of March
A.D. 1852. Came the Defendants by Deputation Miller
and Prator their Solicitors, and filed their answer to the
the Compliments bill aforesaid, in the words and figures
following to wit

State of Illinois } At the March Term of the Ogle County
Ogle County } Circuit Court in Chancery sitting

Salmon C. Cotton et al

James W. Hanchett et al

Injunction

And the said James

W. Hanchett, Calvin R. Stodley, Amos Lucas,
Sterling Blackman, Abram Sanford, Abram D. Wood,
Joseph Williams, Eniel Robinson, Norman W. Hadworth,
A O Cambell, Elias Thomas, Benjamin S. Hendricks,
Edward F. Dutcher, Asa G. Spalding, Austin Luns,
Christopher G. Holbrook, Gould G. Norton,
John Winkle Defendants.

The above Defendants
saying and averring to themselves all right of exception
to the manifold errors and insufficiencies of the Complainants
Bill of Complaint, herein filed for answer thereto, or so
much thereof as they are advised are material &
necessary to make answer unto say, that they do not
deny that the said Complainants are tax payers
of the County of Ogle & State of Illinois as stated in
said Complainants Bill of Complaint & as set forth
and specified. And said Defendants further
answering admit that said Defendants did donate
to said James W. Hanchett said sum of one
thousand Dollars for the purpose of aiding said
Hanchett in building a bridge across Rock River
at Oregon in said County of Ogle and State said
donation or appropriation was so made by said
Defendants and a portion of the Complainants
in this Bill named to wit Salmon C. Cotton
Spooner Ruggles, John A. Stinger, & John Garman

sitting as a Board of Supervisors of the County of Ogle & State of Illinois said County having legally adopted Township Organization according to the Statute in such case made and provided and that said appropriation or donation was made by said Board of Supervisors and by said several Supervisors sitting in their official capacity & not otherwise. And the said Defendants further answering admit that said donation was made to aid in the construction of a Bridge across Rock River at Oregon the County set of said County because it was deemed by a majority of the whole board of Supervisors of said County proper and expedient for the interest & convenience of the Inhabitants of said County if they could thereby secure the building of said Bridge. And said Defendants further answering state that said Grant & donation was made for the consideration of the privilege & immunities to be granted by said Wanchett to certain Citizens of said County in crossing said Bridge as in said Bill is alleged and also for the further consideration that the said County of Ogle owned in its Corporate Capacity a large amount of Town Lots and other real estate situate in said Town of Oregon the price & value of which in the opinions of said Defendants would & will by the building of said Bridge be largely increased to an amount much larger than the amount of said donation and for the further consideration that said Bridge could & would not be built exclusively from the private means of said Wanchett as the tolls allowed by law having in view the amount of travel across said Bridge would not give the party building the same a sufficient remuneration for his investments in building said Bridge.

And said Defendants further answering say that said
Kauchette by reason of said Donation & pursuance of
said arrangement so made by said Board of Supervision
has made large investments & paid out large sums of money
in the purchase of timber for the purpose of completing
said Bridges which said Kauchette would not have
did had not said Board of Supervision made said
donation to him said Kauchette for the uses and purposes
above set forth.

And said Defendants further answering
say that said order donating said One thousand Dollars
was made by a majority of the whole of the Board of
Supervision of said Eagle County sitting in a judicial
Capacity according to Law.

Therefore the said
Defendants pray that said Bill may be dismissed and
said Defendants be fully discharged therefrom and that
the Enjunction be dissolved, annulled & vacated & void
herein

By Dutcher Miller & Keaton
Sols for Defs

And on

And on the same day, to wit on the 19th day of March A.D. 1852 came the said parties by their solicitors and file the following stipulation to wit

Salmon C. Cotton }
Spoom Ruggles et al } In the Ogle Circuit Court,
vs } of the March Term A.D. 1852
James H. Handlet et al } on the equity side thereof

Bill in Chancery to enjoin the Board of Supervisors of Ogle County, from granting to James H. Handlet, one thousand dollars, to aid in erecting a toll bridge across Rock River, at Oregon City, the County seat of said County.

It is hereby agreed by and between the parties Complainant and defendant. Hereto, that this Cause should be heard on bill & answer, and that a per forma Decree shall be rendered, herein for the Defendants, that no injunction shall issue, however, but that it shall be considered as issued, and that no further steps shall be taken herein, by way of enforcing said Order, to Handlet, until this Cause shall be determined by the Supreme Court: and that only two questions will be presented, to the Supreme Court, for adjudication, viz. first, the right of the defendants to issue the order for the purpose specified in the bill, & answer, and secondly whether the Complainants have sought the proper remedy, in this Court, or not — The question being a matter affecting the public interest, the intention hereof is to obtain, the Opinion of the Supreme Court, upon the two points above named — and for that purpose the parties hereto have agreed that this Cause shall be determined by the Supreme Court, on the two points, above named, without regard, to technicalities and only with a view

to ascertain the law - on the points above named, and to
settle the difficulty, in this case, - And it is further agreed
that this Cause shall be heard in its order at the next
term of the Supreme Court, & the parties hereby agreed to
waive the issue of process & to enter their appearance, respect
ively, - Done at Oregon City, March 15, 1852, in Open
Court, - It is further agreed that this stipulation shall be
made part of the record in this Cause, & shall be so treated
in the Supreme Court -
Dulcien M^r. Araton
& Miller Sols for drafts
Holland & Wright Sols
for Comps -

And on the same day to wit the 19th day of March A.D. 1852
at the March Term of the Circuit Court in and for Ogle
County in the State of Illinois, in the Records proceedings
of said Court on said day is the following entry to wit

Salmon C. Cotton, Spooner Ruggles,
John A. Ettinger, John Cumins
Horace H. Paine, Theron Cumins
Leonard Andrus, Charles Throop
Joseph A. Cushing, George S. Strick
Elish W. Dutcher, Lemuel H. Parker
John D. Stearns, William Ramsley
Samuel H. Jackson Johnson, Edward Helm
Samuel McFarland, Michael Stonebraker
Emanuel Morris, John H. Meddelkauff
Jacob Cornbarger, & John Harmon
vs

James H. Hauchett, Calvin R. Hoadley
Annis Lucas, Sterling Blackman,
Verian Sanford, Abram A. Clark Wood
Joseph Williams, Jereb Robinson Homer
W. Wadsworth A.C. Campbell
Eliis Thomas, Benjamin J. Hendrick
Edward F. Dutcher, Asa G. Spalding
Austin Lines, Christopher G. Holbrook
Gould G. Norton John Winkle

In Chancery

And now at this
time come on to be heard the above entitled cause
on the Bill and answer and agreement of the said parties
which is filed in this cause & made part of the records
by agreement. And it appearing to the Court from
the said agreement that a decree pro forma should

be entered herein for the Defendants. It is therefore
 ordered adjudged and decreed that the Bill in this case
 be dismissed and that the said Defendants recover of
 & from the said Complainants their Costs by them in this
 behalf expended & that execution issue therefor

Geo. O. Wilkinson

State of Illinois }
 Ogle County } ss

I, R. B. Light Clerk of the
 Circuit Court in and for said County, do hereby certify
 the foregoing to be a true copy of the Bill, answer
 Supplication and decree & Record in the above entitled
 case and that the same is truly copied from the original
 and files of my Office.



In testimony whereof I have hereunto
 set my hand and the seal of said Court
 this 14th day of June A.D. 1852
 R. B. Light Clerk

Order for - Fees - 4 35
 Copyright 35
 4 35

Ogle

Salmon C. Colton et al

James H. Hanchett et al

Record & aft.

Filed June 25 1852.
 A. Delano Clerk.

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And now at this June Term of the Supreme Court.
the said Plaintiffs in Error by Jason March
their Atty Come & assign Errors therein as follows viz.

1. That the Court below erred in entering a Decree
in favor of the Defendants in that Court.
2. That the Court below erred in not entering a Decree
in said Cause in favor of the Complainants therein.
according to the prayer of their bill.

J. March
Atty for Plff in Error

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Ogle* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment ^{due} of a plea which was in the Circuit Court of *Ogle* — county, before the Judge thereof, between

Salmon C. Cotton, Stephen Cuyler, John A. Ettinger, Nelson Cumins, Horace C. Paine, Theron Cumins, Leonard Andrews, Charles Throop, Joseph A. D. Cushing, George L. Herrick, Elisha W. Dutcher, Samuel N. Barber, John D. Stevenson, William Wamsley, Samuel W. Johnson, Edward Holm — plaintiff — and *Samuel M. Highland, Michael Stonebraker, Emanuel Morris, John H. Middlehauf, Jacob Doornbargers, John Gorman, Complainants and James H. Kanchett, Calvin R. Woodley, Annis Lucas, Sterling Claghman, William Sanford, Herman Wood, Joseph Williams, Anne Robinson, Norman W. Wadsworth, H. O. Campbell, Elias Thomas, Benjamin J. Keunch, Edward F. Dutcher, Asa G. Spalding, Austin Lines, Christopher J. Holbrook, Gould & Horton & John H. Kable* — defendants it is said manifest error hath intervened, to the injury of the aforesaid

Complainants

as we are informed by *their* 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 the 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 Ottawa, in the county of La Salle, on the *2d Monday in June* — 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. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *25th* — day of *June* in the year of our Lord one thousand eight hundred and fifty *two*,

S. Seland Clerk of the Supreme Court.
Phy S. H. Seland Depy. Clk.

Ogle.

Salmon C. Cotton & Co.
vs.
James H. Hancock & Co.
Writ of error.

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Filed June 25th 1852.
J. Seland Clk.
By P. H. Seland Depy.

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