

No. 14409

# Supreme Court of Illinois

County of Rock. Island

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vs.

Steele

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

14409 No. 224

*Co of Ross  
Island*

1863

*Steele*

~~County of Rock~~

~~State of New York~~

Court

Mr. Chief Justice Caton delivered the opinion of the Court

~~to say~~ We shall notice but one of the several questions raised in these cases, for that we meet at the very threshold, and is decisive of <sup>them and</sup> necessity, supercedes all others.

The actions ~~are~~ brought against "The County of Rock Island," while the Statute, in express terms, requires that they should be brought against "The Board of Supervisors of the County of Rock Island" We have often decided that we must take judicial notice of the adoption of township organization by any county in the state; and so we know that Rock Island County has adopted that law. The first section of the thirteenth article of the township organization law of 1861, confers upon the counties thus organized, the capacity "To sue and be sued in the manner prescribed by law." And this manner is prescribed in the third section of the same article, as follows; "All acts and proceedings by and against a county in its corporate

Capacity shall be in the name  
of the board of supervisors of such  
County." In Lehrer v. Co. v. Mueser  
Co., 4 Gilman 20, we stated what is famil-  
iar to all, that a county has not the  
Capacity to be sued except it is  
Conferred by special Statute, and  
when that Capacity is so conferred,  
the mode provided for by the  
Statute must be strictly pro-  
sued. And this seems specially in-  
joined in this statute. It confers  
the Capacity "to sue <sup>and</sup> be sued in  
the manner prescribed by law",  
clearly limiting that capacity to  
the manner thus prescribed. In  
any other mode, the Capacity is wanting,  
as much as if there were no law  
authorizing ~~the~~ <sup>the County</sup> to be sued. In no other  
mode could the county be brought  
before the court. In no other name  
does any one authorized to appear  
for the County. Hence, there was no  
necessity for a plea of misnomer  
as in ordinary cases. The whole  
proceeding was unauthorized by law.  
The judgments must be reversed.

Judgments reversed.

223-76-25  
224-77-26  
County of R.I.  
2

Mule

opinion  
Caton

C.R.

Recorder Book 13  
p 89  
Caton

SUPREME COURT OF ILLINOIS.

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April Term, A. D. 1863.

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THE COUNTY OF ROCK ISLAND, Appellant.

vs.

JOSEPH STEELE, Appellee.

APPEAL FROM HENRY.

## Points and Authorities for Appellant.

### I.

All suits against a County adopting Township organization must be brought against the Board of Supervisors of such County.

General Laws, 1861, page 235 sec. 1, 3 and 5.

### II.

# A County cannot be sued except in the manner pointed out by the Statute; and the Court will take judicial notice that the County of Rock Island had adopted Township organization prior to the commencement of this suit in the Court below.

The Circuit Court had no power to render judgment in the case as brought. Schuyler Co. vs. Mercer Co. 4, Gilman 20.

### III.

The special counts of the declaration are insufficient because they do not aver a demand of payment at the County Treasury, and therefore the Court below should have sustained Appellant's motion to carry back Appellee's demurrer to Appellant's 3d and 4th pleas, to 1st and 2d counts of Appellee's declaration.

People *Ex. Rel. &c.* vs Tazwell Co., 22d, Illinois, 152.

### IV.

The Court below should not have sustained Appellee's demurrer to Appellant's pleas.

### V.

The act of the General Assembly approved Nov. 6, 1849, entitled "An act supplemental to an act entitled 'An act to provide for a general system of Railroad Incorporations'" 2d vol. Purple's Statutes, p. 1072, is unconstitutional and void, because it was passed at a special session of the General Assembly, having no power under the Governor's Proclamation convening the same, to pass said law.

See State Constitution, Article 4, sec. 10. Governor's Message to Senate and House of Representatives, Oct. 22d, 1849, in which is set out the Proclamation convening the two Houses in special session. Senate Journal Special Session, 1849, p. 6. House Journal same Session, p. 7.

### VI.

Section 6, Art. 10 of the State Constitution does not grant power to pass such a law.

The power if it exists, is to be found in sec. 5, Art. 9.

### VII.

The judgment should be reversed.

*Wm. B. ...*

# The Circuit Court of Rock Island County had no power to change the venue in said cause, and the Circuit Court of Henry County had no jurisdiction to try the same, or to render judgment therein -

People's Stat Chapt 2 <sup>70</sup> 283. Sec 18  
Schuyler v Mercer Co Super

J. B. Hawley

Atty Gen Appellant

2234274

County of Rock Island

vs

State

Appellants

Filed May 1st 1863

J. B. Hawley

Att Gen

SUPREME COURT OF ILLINOIS.

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April Term, A. D. 1863.

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*over*

# The Circuit Court of Rock Island  
County had no power to change the Term  
in said Court, and the Circuit Court of  
Idaho Co had no jurisdiction to try the  
same or render judgment therein  
People v. ~~Admiral~~ 27 P. 283, Dec 18  
Schuyler v. ~~Prosser~~ Co supra

J. J. Hawley  
Atty Gen. Appellant

76-772224 224  
County of Rock Island  
vs  
State  
Appell's Brief

Filed May 1st 1863  
J. J. Hawley  
Clerk