

12506

No. \_\_\_\_\_

Supreme Court of Illinois

County of Peoria.

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vs.

Gordon.

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State of Illinois }  
Peoria County } 20 Pleas in the Circuit Court in and  
for the County of Peoria and State of Illinois before the  
Honorable the Judge of 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 records & proceedings of  
said Court the following matters and things to wit:

Be it Remembered that on the twenty fourth day  
of February A.D. 1855 there was filed in the office of the  
Clerk of the Circuit Court, in and for the County and  
State aforesaid, a certificate of Charles Kettelle, Clerk of  
the County Court of said Peoria County 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 }  
Peoria County } Clerk's office

I, Charles Kettelle Clerk of the County  
Court in and for said County, do hereby certify that the plat  
and assessment of damages of a State road from Peoria in  
Peoria County to Rock Island in the County of Rock  
Island was filed in said office on the 23rd day of December  
A.D. 1854, by the Court appointed for that purpose, and  
that it appears by said plat and assessment that said  
Commissioners assessed the damages on the north west  
quarter of section ten in Township ten north & East at  
the sum of fifty dollars Given under my hand



Seal and official seal this 23rd day of January  
A.D. 1855 Charles Kettelle

In the matter of the assessment of damages under an act  
entitled "An act to establish a State road from Peoria  
County in Peoria County to Rock Island in Rock Island  
County approved February 11th 1853.

Austin H. Gordon who is owner of the north west quarter  
of section ten (10) in township ten (10) north range seven (7)  
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.

Austin H. Gordon  
by Purple Sanger & Pratt his attys.

Proceedings at a term of the Circuit Court begun and held at  
the Court house in the City of Peoria in and for the County of  
Peoria in the 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. Present the  
Honorable Charles Peters Judge of the sixteenth Judicial  
Circuit in the State of Illinois to wit:

Monday March 13th A.D. 1855

Austin H. Gordon

vs  
County of Peoria } Appeal from assessment of damages  
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, begun and held at the Court house in the City of Peoria in and for the County of Peoria 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. Present the Honorable Caslow Peters Judge of the sixteenth Judicial Circuit in the State of Illinois: to wit:

Friday May 25th 1855  
Austin H. Gordon

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 exceptions may be signed in vacation.

And afterwards to wit on the 17th day of May A D 1856 the defendant filed in the office of the Clerk of said Court to a motion to dismiss this appeal which is in the words and figures following to wit:

Peoria County Circuit Court  
March Term 1855

Austin H. Gordon

vs  
County of Peoria

} Appeal from assessment of damages on the  
logging out of road in said case mentioned.

Defendants moves to dismiss this appeal because no appeal is given by statute 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 reasons above stated, this Court has not jurisdiction of said case and appeals.

E. G. Johnson atty for deft.

Proceedings at a term of the Circuit Court begun and held at the Court house at the City of Peoria in and for the County of Peoria in the 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. Present the Honorable Jacob Gale Judge of the sixteenth Judicial Circuit in the State of Illinois to wit:

Saturday May 17th A.D. 1856

Austin H. Gordon

vs

County of Peoria

} Appeal from assessment of damages by  
Road Commissioners

This day came the plaintiff by Purple & Pratt his attorneys and the County of Peoria by Elbridge G. Johnson its attorney, and it is ordered by the Court that a jury be impanelled to assess the plaintiffs damages in this cause whereupon came a jury of twelve good and lawful men to wit: Joseph Dune, Jacob Lawrence, Samuel Coris, Matthew Wilson, A. Weston Brailey, Thomas J. McCreaw, John Infield, E. L. Norton, Jacob H. Wells, Matthew Brown, John Darby and Milton Hasbrook, 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 five hundred and forty eight dollars 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 same be paid by the said defendant as provided by law in such cases made and provided,

Tuesday May 20th A.D. 1856  
Austin H. Gordon

vs  
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, reason on file

Upon which the defendant to wit on the 21st day of May A.D. 1856, filed in the clerk's office of said Court its reasons for motion for a new trial which are in the words and figures following to wit:

Austin H. Gordon

vs  
County of Peoria } Peoria County Circuit Court  
May Term 1856

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 asked by the defendant.
  5. Because the verdict in said case is against the law and evidence.
  6. Because plaintiff did not prove or offer to prove that plaintiff objected to the said road 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 ~~same~~ Commissioners to the County Court or Board of Supervisors of Peoria County.
- E. G. Johnson  
Atty for deft.

Proceedings at a term of the Circuit Court begun and held at the Court house at the City of Peoria in and for the County of Peoria in the 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. Present the Honorable Jacob Gale Judge of the sixteenth Judicial Circuit in the State of Illinois to wit:

Saturday May 31st 1856

Austin H. Gordon }  
County of Peoria } Appeal from assessment of damages  
by Road Commissioners



This day came on to be heard the motion of the defend-  
ants 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 days.

Upon which the defendant afterwards to wit on the  
4th day of June A D 1856 filed in the clerks office of the <sup>Circuit</sup>  
Court of said County his bill of exceptions in said cause  
which is in the words & figures following to wit:

bill of exceptions

"Austin Gordon

vs  
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 to  
wit:

"Peoria County Circuit Court  
March Term 1855

Austin H. Gordon

vs  
County of Peoria

} Appeal from assessment of damages on  
the laying out of road in said case mentioned



Defendant moves to dismiss this appeal because no appeal is given by statute 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 reasons above stated, this court has not jurisdiction of said case and appeals."

Which was overruled by said court and therefore 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 accepted. 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.

(Report.)

"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 & upon the most practicable route to the town of Princeville in said county thence north westerly 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 pursuance 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 now  
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  
reviewed, 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 wherever 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 marked  
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. Harrington

Smith Frye

} Commissioners

State of Illinois

Peoria County } Clerk's Office

I, Charles Kettelle Clerk of <sup>the</sup> 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 Prye to locate a State road from the city of Peoria to Rock Island in Rock Island County according to the Act of the Legislature of 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 Prye Samuel Dimon 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 Co, will view mark & locate said road as designated in the act of the General Assembly of the State of Illinois passed Feby 12th 1853. So help us God.

Smith Prye

Saml. Dimon

W. Corrington

} Commissioners

Subscribed & Sworn to before me this 5th day of June A.D. 1854. Charles Kettelle clerk.

I further certify that Samuel Farmer as Surveyor & Lewis Taylor & Levi Winkles as chairman were duly sworn before me as appears by the papers on file in said office. Given under my hand and official ~~and~~ seal at the city of Peoria this 22nd day of December A.D. 1854. Charles Kettelle clk.

State of Illinois

& Peoria County } Clerk's office

I, Charles Kettelle, clerk of the County Court in & for the County aforesaid do hereby certify that the



foregoing is a true copy of the report of the Commissioners  
appointed to open & 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  
(Seal) & official seal at Peoria this 29th day of  
January A.D. 1857

Charles Kettelle Clerk

with the Certificate of the Commissioners thereto attached  
and also an Act intitled "An Act to establish a State road  
from Peoria in Peoria County to Rock Island in Rock  
Island County, approved Feb. 12, 1853, and also an Act,  
intitled "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 report the defendant objected because the said plat  
and report does not show a legally established 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 the Board of Supervisors of said County  
of Peoria had passed upon the question of damages in this  
case or ordered the said road to be opened, but the Court  
overruled the objection and admitted the plat and report as  
evidence of the existence of said road and the plaintiffs  
right to recover damages for the location and laying out of the  
same to which the defendant excepted. Plaintiff then offered  
evidence tending to prove he was in possession of the premises  
described in said appeal, the direction of said road  
over said premises and the damage caused thereby if the  
said road should be opened and constructed as located  
& there the plaintiff rested



The Jury found a verdict for the plaintiff, the defendant entered a motion for a new trial for the following reasons:

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.

4th. Because the Court gave improper instructions, as asked by the plaintiff and refused proper instructions asked by defendants.

5th. Because the verdict in said case is against the law and evidence.

6th. Because plaintiff did not prove or offer to prove that plaintiff objected to the 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.

The Court overruled the said motion and defendants counsel then excepted, defendant entered 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;



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 Seal

Upon which the defendant by its counsel on the  
28th day of June A.D. 1856 filed in the office of the  
Clerk of said Circuit Court and appeal bond, which is  
in the 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  
as principal and Leonard B. Cornwell as sureties are  
held and firmly bound unto Austin H. Gordon of the  
County of Peoria in the sum of one hundred dollars for  
the payment of which well & truly to be made we bind our-  
selves & our heirs jointly & severally firmly by these presents.

The condition of the above obligation is such that  
whereas the said Austin H. Gordon 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  
said County of Peoria for the sum of five hundred & forty eight  
dollars damages and costs of suit from which judgment the  
said County of Peoria has taken an appeal to the Supreme  
Court of the State. Now provided the said County shall  
duly prosecute said appeal & shall pay said judgment & all  
cost interest & damages in case said judgment shall be af-  
firmed, then this obligation to be void otherwise of full  
force. Witness our hands and seals this 24th day of June  
A D. 1856

Seal

Isaac Brown Seal  
Chairman Board Supervisors Peoria Co.  
Leonard B. Cornwell Seal

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



State of Illinois,

Peoria county } I, Enock Sloan, clerk of the  
circuit court in and for the county and  
state aforesaid, do certify that the foregoing  
is a true transcript of the proceedings and  
records of the cause wherein Austin H. Gordon  
is plaintiff and the county of Peoria is defend-  
ant and as the same remains of record and on file  
in my office.

In witness whereof I hereto set my  
hand and the seal of said court at  
Peoria, this 7th day of April A.D. 1857  
Enock Sloan, clk



County of Dorset } In the Supreme Court April Term  
vs } A.D. 1857  
Austin & Gordon }

Appeal from Dorset

And now comes the said plaintiff and says that in  
the record and proceedings <sup>& judgment</sup> manifest error hath intervened  
to his injury in this

- 1<sup>st</sup> 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 <sup>instructions</sup> 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 a motion in arrest
- 10 In rendering a judgment for plaintiff

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

By Mead & Millican  
attorneys for plffs

Found in Error

Prayer for Reft.

No 1

Filed April 29, 1857  
A. C. Gordon

County of Dorset  
vs  
A. C. Gordon



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The County of Peoria  
vs  
Austin H. Gordon

110

12506

1857