

No. 12511

Supreme Court of Illinois

Greg.

vs.

Lott, et al.

State of Illinois)
Grundy County (S.S.

Pleas before the
Honorable S. W. Randall Judge of
the 11th Judicial Circuit in the State
of Illinois, and presiding Judge
of the Circuit Court of Grundy County
in said State at a Circuit Court
(it being a Special Term heretofore
fixed by the said presiding Judge)
begun and held at the Court
House in Morris in said County on
Monday the first day of December
in the year of our Lord one thousand
eight hundred and fifty six and
of the Independence of the United
States the Eighty first
Present

The Hon. S. W. Randall Judge
H. A. Bartleson States Attorney
A. C. & Wallace Sheriff
Attest

John Gallaway Clerk

~~Be it remembered that heretofore~~
~~to wit~~

(2)

Austin Grey

vs
Lewis P. Lott

Laurence W Claypool

Frederick S. Watkins

The Commissioners of Highways of
Saratoga Township

Be it remembered, that, heretofore,
& wit, on the 21st day of November
AD 1856 The said Austin Grey filed
his bill in the Office of the Clerk
of this Court and which bill is
in the words and figures following
to wit,

Austin Grey

vs
Lewis P. Lott

Laurence W Claypool

Frederick S. Watkins

The Commissioners of
Highways of Saratoga
Township

In Chancery

To The Honorable
S W Randall Judge of the 11th
Judicial Circuit in the State of
Illinois

Humblly complaining sheweth
 unto your Honor your Orator
 Austin Grey of the County of
 Grundy and State of Illinois
 that about the 12th day of October
 AD 1856 a petition was presented
 to the Commissioners of Highways
 of the Township of Saratoga in
 said County signed by your
 Orator and Twenty four others
 as well as your Orator all legal
 voters, praying the vacation of that
 part of a certain road, known as
 the Harris and Lisbon road,
 described as follows, to wit,

Commencing at the South West
 Corner of Section six (6) in Township
 Thirty Four (34) North of Range Seven
 (7) East of the Third principal
 Meridian, running thence South
 Thirty degrees and Fifty minutes
 East, Eighty four and Twenty four
 one hundredth chains; thence South
 Thirty two degrees, thirty minutes East
 Sixty eight and Sixty seven one
 hundredth chains, thence South
 Thirty three degrees forty five minutes
 East Thirty eight and Three ^{one} hundredth

Chains and there ending and that on the 23^d day of September AD 1836 a copy of said petition was posted in three of the most public places in said Township.

And your Orator further sheweth that all of said petitioners at the time of signing said petition were and still are residents residing within three miles of said part of said road and that your Orator is the owner in fee simple of the South West quarter of Section Seventeen, Township thirty four Range Seven East of the third principal Meridian in said County.

And your Orator further sheweth that on the 16th day of October AD 1836 the Commissioners of Highways of said Township met for the purpose of taking into consideration the prayer of said petition and after having examined said part of said road and heard such reasons as were offered for or against its vacation, said Commissioners did order that said part of said road be vacated and which order so

Made by them they caused to be reduced to writing and after which each signed it with his respective name and which order so made was together with said petition and the affidavit of posting copies of the same on the 17th day of October AD 1836 filed in the Town Clerk's Office of said Township a copy of which petition affidavit and order is herewith annexed marked exhibit (A) and made a part of this bill

And your Orator further sheweth that on the 10th day of November AD 1836 as he is informed and believes an appeal was taken from said order of said Commissioners D Lewis P. Lott Supervisor of Morris Township, Laurence W. Claypool Supervisor of Waupoose Township and Frederick S. Watkins Supervisor of Felix Township by John B. Moore and A. J. Hoord and which appeal so taken as your Orator is informed and believes was left with Lewis P. Lott on the said 10th day of November AD 1836 and that on the

(6)
said 10th day of November AD 1836
said Laurence W Claypool and Frederick
S Watkins were each notified of said
appeal by said Appellants

And your Orator further sheweth
that neither the said John B. Moore
or the said A. J. Ford is the owner
or the Agent of the owner of any
of the lands over which said
part of said road, proposed to be
vacated as aforesaid passes

And your Orator further
sheweth that on the 19th day of
November AD 1836 said Lewis P.
Lott, Laurence W Claypool and
Frederick S Watkins Supervisors as
aforesaid met for the purpose of
taking into consideration the subject
of said appeal and that at such
meeting your Orator appeared before
them and filed an affidavit with
them setting forth that the said
John B. Moore and A. J. Ford were
not nor was either of them the
owner or the agent of the owner
of any of the land over which
said part of said road passes
but said Supervisors not deeming

said objection sufficient proceeded to review said order made by said Commissioners as aforesaid and determined to entirely reverse the same and order said Commissioners to reestablish said part of said road by them vacated as aforesaid and which determination of said Supervisors has not yet been reduced to writing.

And your Arator further sheweth that said part of said road runs directly through the said land of your Arator as well as that of many other persons doing to the land through which it passes a serious injury and that immediately after said order was made by said Commissioners to vacate said part of said road your Arator as well as many other land holders along said road closed up the same without any expectation that an appeal from said order would be taken believing that said order would give general satisfaction and that if your Arator should be compelled to open said road

again it would subject him to serious inconvenience by laying his farm open to commons exposing the crops growing thereon and would subject him to great expense

And your Orator further sheweth that if said Supervisors should be permitted to make the order that they have determined upon although it might be entirely void for the want of jurisdiction in the Supervisors yet said Commissioners might feel themselves bound thereby and other persons would feel themselves authorized to pass through the premises of your Orator and throw down his fences thus subjecting him to the danger of losing his crops, to vexation and inconvenience

All which actings and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of your Orator in the premises.
In Consideration whereof and

Forasmuch as your Orator can
 only have adequate relief in the
 premises in a Court of Equity
 where matters of this nature are
 properly cognizable & relievable;
 To the end therefore that the said
 Lewis P. Lott, Laurence W Claypool
 and Frederick S Watkins and the
 Commissioners of said Township
 and their confederates when
 discovered may upon their several
 and respective Corporal oaths
 to the best and utmost of their
 several and respective knowledge
 remembrance information and
 belief full true direct and
 perfect answers make to all and
 singular the matters aforesaid
 and that as fully and particularly
 as if the same were here repeated
 and they and every of them
 distinctly interrogated thereto and
 that the said Lewis P. Lott, Laurence
 W Claypool and Frederick S. Watkins
 may be enjoined from executing
 or reducing to writing the order
 which they have determined to
 make as aforesaid and that your

Arator may have such other and
 further relief in the premises as
 shall be agreeable to equity and
 as to your Honor shall seem meet.
 May it please your Honor to
 grant unto your Arator not only
 a writ of injunction issuing out
 of and under the seal of this
 Honorable Court directed to the said
 Lewis P. Lott, Laurence W. Claypool
 and Frederick S. Watkins commanding
 them and each of them to desist
 from reducing to writing or
 executing the order which they have
 determined to make as aforesaid
 but also a writ of summons
 directed to the said Lewis P. Lott
 Laurence W. Claypool & Frederick S.
 Watkins and the Commissioners of
 said Saratoga Township commanding
 them and each of them at a certain
 day and under a certain pain
 therein to be limited personally to
 be and appear before your Honor
 in this Honorable Court and then
 and there full true direct and
 perfect answers make to all and

(11)

Singular the premises and further
to stand to perform and abide such
further order direction and decree
therein as to your Honor shall seem
meet and your Honor will ever pray
Seely Baughen Austin Grey
Sols for Comp't

State of Illinois
Grundy County) ss.

Austin Grey

being duly sworn, on oath saith,
that the matters and things set
forth in the bill by him
subscribed and herewith annexed
as stated so far as they are stated
to be of his own knowledge are
true and so far as they are stated
to be upon the information of
others he believes them to be true
Austin Grey

Subscribed & sworn to
before me this 20th day
of November AD 1836

A Bennett Master in Chancery

The Clerk of the Circuit Court
will issue a writ of injunction

(12)

in accordance with the prayer of
the foregoing bill. The Complainant
having given bond to my satis-
faction
Nov 20th 1836

A Bennett Master in Chy

And he it further remembered
that the said Complainant filed
with his said bill the following
petition, affidavit and order
marked Exhibit (A)

Copy of Petition

To the Commissioners
of the Town of Saratoga in the
County of Grundy.

The Undersigned legal voters
residing within three miles of
the route hereinafter mentioned
and described do hereby make
application to you, to vacate all
that portion of the Morris and
Lisbon road as follows, to wit,
Commencing at the South West
corner of Section Six in Township
thirty four (34) North of range seven
(7) East 3^d P.M. running thence
South 30° 50' East Eighty four 24/100

chains Thence South $32^{\circ}30'$, East Sixty Eight $\frac{1}{8}$ / 100 chains, Thence South $33^{\circ}45'$, East Thirty Eight $\frac{13}{100}$ chains and there ending. The names of the owners of the lands over which the road passes as your petitioners are informed are, Henry Murcun, John W Grey, Austin Grey, Richard A Putt, and others unknown.

Your Petitioners therefore pray that you will proceed to vacate said road according to law
Dated Saratoga Sep 23 1856

Petitioners Names	Petitioners names
Daniel David	J. Raphael David
Albert & Cody	John B. Cody
Amos Heacox	Henry Murcun
Barace Heacox	R. A. Putt
W Heacox	E C Sawyer
Henry Cody	Ralph Sawyer
E W. Chapin	A. G. Meyers
Alva Loyd	John W Grey
Nelson R. Loyd	Austin Grey
R. Cody	Spencer Meyers
John Washburn	James Leech
Henry S. Goodrich	

(14)
Copy of Affidavit
State of Illinois, Grundy County } ss
Aaron Hoffman being
duly sworn, on his oath saith
that on Tuesday the 23^d day of
September inst, he put up three
copies of the within petition in
open view & view, one on the
highway opposite the house of
John W Grey, one on the highway
by the house of Daniel David
and one on the highway at the
mouth of the Lisbon lane near
the residence of John Gibson all
being put up on the fence at the
road side being three of the most
public places in the Township of
Saratoga

Subscribed & sworn to Aaron Hoffman
This 25th day of September
A.D. 1836 before me
A Bennett

Police Magistrate of Morris

Copy of Order
Grundy County }
Town of Saratoga } ss

(15)
Whereas upon application of
Daniel David Albert G. Cady Aaron
Beacox, Horace Beacox, W Beacox,
Henry Cady, E W Chapin, Alna
Loyd, Nelson R. Loyd, R. Cady,
John Washburn, Henry S Goodrich
and others, more than Twelve legal
voters, residing within three miles
of the route hereinafter described
a copy of their petition having
been duly posted as required by
law, We the Commissioners of
highways of said Town did on
the sixteenth day of October 1836
meet on the said road and having
examined personally said portion
of said road proposed to be
vacated and having heard such
reasons as were offered for & against
the vacation of that portion of said
road, described in said petition
and being of the opinion that
the vacation of the same is
necessary and proper and that
the public interest will be promoted
thereby: It is ordered & determined
that that portion of said Lisbon
road, described in said petition

is hereby vacated as follows, to wit,
 Beginning at The North West
 quarter of Section number Six (6) in
 Township number thirty four (34)
 North in range number Seven (7)
 East of the Third (3^d) principal
 Meridian and running thence South
 thirty degrees and fifty minutes
 East Eighty four Chains and Forty
 nine links; Thence South thirty two
 degrees and thirty minutes East sixty
 Eight Chains and Sixty Seven links,
 Thence South thirty three degrees
 and forty five minutes East thirty
 Eight Chains and Three links and
 there to end according to the courses
 and distances in said petition
 which is hereby declared to be
 vacated and no longer to be a
 public Highway.

In Witness whereof me the said
 Commissioners have hereto set
 our hands this Sixteenth day of
 October A.D. 1836

Jeremiah Collins

Wiram Thayer
 Commissioners

And he is further remembered
that on the said 21st day of November
A.D. 1836 the said Complainant filed
in the Office of the Clerk of this
Court by his Solicitors Seely & Baughen
his precept in the words and figures
following, to wit,

Austin Grey
vs
Lewis P. Lott
Lawrence W. Claypool &
Frederick S. Watkins } Circuit Court
of Grundy County
and State of
Illinois
December Special
Term A.D. 1836
In Chancery

The Clerk will please issue
Injunction & Summons in the above
case returnable to the December
Special Term

Seely & Baughen
Sols for Complainant

And thereupon a writ of
Injunction was issued in the words
and figures following, to wit,
State of Illinois
Grundy County ss.

The People of the
State of Illinois vs Lewis P. Lott

F187

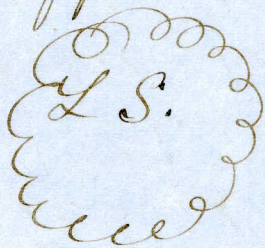
Laurence W Claypool and Frederick
S Watkins Their Counsellors, Attorneys
Solicitors and Agents, Greeting

Whereas Austin Grey has
lately exhibited his bill of Complaint
to the Judge of the Circuit Court
in and for the County and State
aforesaid on the Chancery side
thereof against you the said Lewis
P. Lott, Laurence W Claypool and
Frederick S Watkins Defendants
wherein among other things it is
alleged that you unjustly and
illegally entertain a certain Appeal
in relation to the vacation of a
certain portion of the road known
as the Morris and Lisbon Road
more particularly set forth and
specified in said Complainant's
bill of Complaint, which appeal
was taken by John B. Moore and
A. F. Hoard and that you contemplate
reducing to writing or making
or executing an order in relation
to the reestablishment of that
portion of said road so vacated
We therefore in consideration of
the premises do strictly enjoin and

Command you The said Lewis P. Loth, Laurence W Claypool and Frederick S Watkins and all and every of the persons above mentioned that you and each of you do absolutely and entirely desist from reducing to writing or causing to be executed any order which you may have determined upon in relation to the vacation or reestablishment of that portion of said road above referred to upon the appeal aforesaid until you and each of you shall appear to and fully answer the Complainants bill, and the said Court make other order to the contrary. Hereof fail not under the penalty of what the law directs.

To the Sheriff of said County
to execute

Witness John Galloway
Clerk of the Circuit Court and
official seal at Morris this 21st
day of November AD 1886
John Galloway
Clerk



Which writ of injunction was returned into the office of the Clerk of this Court on the 22nd day of November A.D. 1836 by the Sheriff of said Grundy County with this indorsement thereon, following, to wit:

Served the within by reading to the within named de^{ft}s and delivering a copy of the same to each this 22nd day of Nov 1836

A. C. Wallace

by Jas Williams

Sept

And on the said 21st day of November 1836 a summons was issued by the Clerk of this Court to the Sheriff of Grundy County in the words and figures following, to wit,

The People of the State of Illinois
to the Sheriff of the County of Grundy
Greeting

We command you that you summon Lewis P. Loth, Laurence W. Claypool and Frederick S. Watkins if they shall be found in your County personally to be and appear in our Grundy County Circuit Court before the Judge thereof on the

first day of the next Term of said Court & be held at the Court House in Morris on the first Monday in December next at Ten o'clock in the forenoon & answer & a petition exhibited against them in our said Court by Austin Grey - and to do further and receive what the said Court shall have considered in that behalf. And have you then there this writ and the manner you shall have executed the same

In witness whereof we have caused the seal of said Court to be hereto affixed and attested by John Gallaway the Clerk thereof at Morris this 2nd day of November 1834

John Gallaway Clerk



Which said Summons was on the 22nd day of November 1834 returned into the office of the Clerk of this Court by the Sheriff of said Grundy County with his indorsement thereon in the words and figures following, to wit:

Served the within by reading & the

(22)
within named Writs and delivering a
copy of the same to each this 22nd
Nov^r 1836

C. C. Wallace by
Gas Williams Sec^y

And he it further remembered
that on the 4th day of December 1836
the said Complainant filed in the
Office of the Clerk of this Court his
Exjunction Bond and which Bond
is in the words and figures following
to wit.

Know all men by these presents
that me Austin Grey and Albert D
Bishop of the County of Grundy and
State of Illinois are held and firmly
bound unto Lewis P. Lott, Laurence
W Claypool and Frederick S Watkins
in the penal sum of five hundred
dollars to be paid to the said Lewis
P. Lott, Laurence W Claypool and
Frederick S. Watkins their heirs
administrators executors or assigns
which payment well and truly to
be made me bind ourselves, our
heirs executors and administrators
jointly severally and firmly by these
presents. Witness our hands and seals

This 20th day of November AD 1836

The condition of the above obligation is such that whereas the above bounden Austin Grey has prayed an injunction out of the Court of Chancery of said Grundy County against the said Lewis P. Lott, Laurence W Claypool and Frederick L. Watkins to restrain them from reducing to writing or executing a certain order which they had determined to make as Supervisors, reversing an order made by the Commissioners of Highways of Saratoga Township vacating a certain road. Now if The said Austin Grey shall well and truly pay and satisfy the said Lewis P. Lott, Laurence W Claypool and Frederick L. Watkins all such damages as they or either of them may sustain by wrongfully suing out said injunction, then this obligation to be void

Austin Grey *LS*
 Attest *LS*

And be it further remembered that on the 4th day of December AD 1836 The said defendants Lewis P. Lott, Laurence W Claypool and

(24)
Frederick S. Watkins filed in The
Office of The Clerk of This Court
their joint and several answer
to the said Complainant's said bill
of complaint and which answer
is in the words and figures fol-
lowing, to wit,

Lewis P. Lott In Chancery
Laurence W Claypool Grundy Co. East
Frederick S. Watkins of the Sec Term 1836

ads
Austin Gray }

These defendants
Lewis P. Lott, Laurence W Claypool
and Frederick S. Watkins now and
at all times saving and reserving
all and all manner of exceptions
to the manifold errors imperfections
and uncertainties in the said Com-
plainant's bill of complaint for
answer unto or to so much thereof
as they are advised is necessary for
them to make answer unto,
answering say true it is as in
said Complainant's bill alledged
that on or about the 10th day of
October AD 1836 a Petition was presented
to the Commissioners of Highways of

The Township of Saratoga in the County of Grundy signed by the said Complainant and 24 others who were as well as the said Complainant legal voters praying the vacation of that part of a certain road known as the Morris and Lisbon road described as follows, to wit,

Commencing at the South West corner of Section Six (6) in Township Thirty (34) North of Range Seven (7) East of the 3^d P Meridian running thence South thirty degrees and fifty minutes East eighty four twenty four one hundredths chains, thence South thirty two degrees thirty minutes East sixty eight sixty seven one hundredths chains thence South thirty three degrees forty five minutes East thirty eight and three one hundredths chains and there ending.

And these defendants further answering admit as in said Complainant's bill further alleged that on about the 23^d day of September AD 1856 a copy of the aforesaid petition was posted in three of the most public places in said Township

(26)
& That all of said Petitioners at the time
of signing the said Petition were
residents within three miles of said
part of said road and that the said
Complainant was the owner in fee-
simple of the South West quarter of
Section Seventeen Township thirty four
Range Seven East of the 3^d P. Meridian
in said Grundy County.

And these defendants further
answering admit that on or about
the 16th day of October 1886 the Com-
missioners of highways of said Town-
ship met for the purpose of taking into
consideration the prayer of said Petition
and after having examined said part of
said road and heard such reasons as were
offered for and against its vacation, said
Commissioners did order that said part of
said road be vacated and that such
order so made by them was reduced to
writing and that they each signed said
order with their respective names and
that said order together with said Petition
the affidavit of posting notices of the
same on or about the 17th day of October
1886 filed in the Town Clerk's Office of
said Township.

(27)

And These defendants further answering admit that on or about 10th of November 1836 an appeal was taken from said order of said Commissioners to these defendants, one a Supervisor of Morris Township, one a Supervisor of Maupousu Township and the other Supervisor of Felix Township by John B. Moore and A. G. Ford and that said appeal was taken to and left with Lewis P. Gott, then Supervisor one of these defendants on the said 10th day of November 1836 and that on said 10th day of November Laurence W. Claypool and Frederick S. Watkins two of the Supervisors of said Grundy County the other two defendants were each notified of said appeal by said appellants.

And these defendants further answering as to that part of Complainants bill which charges that neither the said John B. Moore or the said A. G. Ford were the owners or the agents of the owners of any land over which said part of said road proposed to be vacated passes say and aver the truth to be that both the said Moore and Ford each of them were and had been and was at the time of so taking said appeal to them.

defendants as supervisors owners and occupiers of land over which the Morris and Lisbon road passes a portion of which was vacated by said Commissioners as aforesaid and the order of said Commissioners vacating the same appealed from as aforesaid & these defendants as aforesaid and these defendants say and charge the truth to be that the said A. G. Hoord actually resides and owns land on said Morris and Lisbon road on both sides thereof immediately at that point on said road where that portion of said road commences proposed by the said Commissioners aforesaid & be vacated and discontinued—

that said Moore resides on said Morris and Lisbon road near where the discontinuance is proposed & commence and owns land also on said road, that that portion of said Morris and Lisbon road sought to be vacated commences at the land of the said Hoord and terminates southerly about two and a half miles

And these defendants further answering admit that on the 19th day of March 1836 these defendants Supervisors as aforesaid met for the purpose

(29)

Of taking into consideration the Subject
of said appeal and that at said time
and place the said Complainant appeared
before them defendants setting as Super-
visors as aforesaid and filed an affidavit
with them setting forth that the said
John B. Moore and A. G. Ford were not
nor was either of them the owner or
the agent of the owner of any of the
land over which said part of said road
passes and these defendants further
admit that they as Supervisors afo-
said did not deem said objection
sufficient and that they proceeded in
pursuance of their duty as Supervisors
to review said order made by said
Commissioners as aforesaid and then and
there determined to entirely reverse the
same and ordered said Commissioners
to reestablish said part of said road
by them vacated as aforesaid

These defendants in further
answering said bill say that it is
not true as therein alledged that these
defendants had not reduced their said
order, reversing the said determination of
the said Commissioners, to writing and
had not signed the same; and they

(30)

Therefore deny the same; but alledge the truth to be that on the 20th day of November AD 1836 and before the said writ of injunction had been served upon these defendants, the determination of these defendants as such supervisors and order reversing the said decision of the said Commissioners and ordering them to reestablish said part of said Road by them vacated as aforesaid had been by these defendants reduced to writing signed and fully executed.

These defendants further aver that when said appeal from the decision of the said Commissioners was so as aforesaid lodged with these defendants, Supervisors as aforesaid they went on to said Morris and Lisbon Road and often carefully viewing the same and especially that portion of the said Road so as aforesaid by said Commissioners vacated and hearing the allegations and proofs of the parties interested these defendants then and there in the exercise of their best judgment considered that the public interests required that the said determination of the said Commissioners should be reversed and that portion of said Morris and Lisbon

Road so as aforesaid vacated by said Commissioners, reestablished and that moved by these considerations and acting in good faith they made reduced to writing signed and executed their said order reversing the said order of the said Commissioners and reestablishing that portion of said Morris and Lisbon Road by them the Commissioners aforesaid so as aforesaid vacated as aforesaid.

These defendants submit whether their said proceedings, determinations and orders so as aforesaid made in good faith are the proper subject matter of review by this Honorable Court.

And these defendants positively and unequivocally deny all combination or confederation or conspiracy against the said Complainant in any way to injure or aggrieve the said Complainant or any other person or persons either directly or indirectly interested in subject matter of said road without this that there is any other matter or thing in said Complainant's Bill of Complaint not herein answered admitted or denied by these defendants material or proper for them to make answer unto wherefore these defendants pray

to be discharged and dismissed herefrom
with their reasonable costs and charges
in this behalf expended

Fredrick S. Watkins
L. P. Lott

Laurence W Claypool

State of Illinois
Grundy County ss.

Fredrick S. Watkins

L. P. Lott v Laurence W Claypool The
above defendants who signed the fore-
going answer being duly sworn on
oath says each for himself that they
have heard the foregoing answer by
them subscribed read and know the
contents thereof and that the same and
the matters and things therein set forth
are true

Subscribed and
Sworn to

Fredrick S. Watkins
L. P. Lott

The 4th day of Dec 1836 Laurence W Claypool
John Gallaway Jk

And now at this Term
to wit December 4th A.D. 1836 This day
comes the said plaintiff by his Soli-
citors Seely & Baughen and the said defen-
dants Lewis P. Lott, Laurence W Claypool
and Fredrick S. Watkins by their

Solicitor S. W. Harris, and the said defendants Lawrence W. Claypool, Lewis P. Lott and Frederick S. Watkins by their said Solicitor move the Court to dissolve the injunction herein and to dismiss the said Complainant's bill; which motion the Court after due consideration grant and do order and decree that the injunction herein be dissolved and the said Complainant's bill against the said defendants be dismissed. And thereupon the said Complainant by his said Solicitors prays the Court for an appeal herein to the Supreme Court of this State which motion is granted by the Court upon condition that the said Complainant give bond in the sum of one hundred dollars within ~~thirty~~ sixty days with William S. Hopkins as security.

And he is further remembered that the said Complainant for the purpose of perfecting said appeal and in pursuance of the said order of said Circuit Court filed in the Office of the Clerk of this Court an appeal bond on the 13th day of December AD 1836 and which was within sixty days of

(34)
after the obtaining of said order for
said appeal and the said Complainant
thereby perfected said appeal to the
Supreme Court said bond being in the
sum of one hundred dollars and signed
by the said Complainant and William
T. Hopkins and in all respects in
compliance with the order of this Court
in allowing said appeal and which
appeal bond is in the words & figures
following, to wit,

Know all men by these presents
that we Austin Grey and William T. Hopkins
are held and firmly bound unto Lewis
P. Lott, Laurence W. Claypool and Frederick
S. Watkins in the penal sum of one
hundred dollars lawful money of the
United States which payment well
and truly to be made we bind our-
selves our heirs executors & administrators,
jointly severally firmly by these presents
Witness our hands and seals this
day of December AD 1836.

The condition of the above obligation
is such that whereas the above bounden
Austin Grey, filed his bill in Chancery
in the Circuit Court of Grundy County

(33) and State of Illinois to enjoin the said Lewis P. Lott, Laurence W Claypool and Frederick S. Watkins from making or executing a certain order which they the said Lewis P. Lott, Laurence W Claypool and Frederick S. Watkins had determined to make and execute as Supervisors reversing a certain order made by the Commissioners of Highways of Saratoga Township in the said County of Grundy and State of Illinois and which injunction was dissolved by said Circuit Court at a term thereof commencing on the first Monday in December A.D. 1836 whereupon the said Austin Gray prayed an appeal to the Supreme Court of the State of Illinois and which was granted by said Circuit Court by the said Austin Gray with William S. Hopkins as surety su-
tering into bond in the sum of one hundred dollars for the prosecution of said appeal

Now therefore the condition of this obligation is such that if the said Austin Gray shall prosecute his said appeal with effect and shall well and truly pay all such judgment

costs and damages as shall be awarded against him by said Supreme Court then the above obligation to be void otherwise to remain in full force and effect.

Austin Gray 
W. T. Hopkins 

State of Illinois)
Grundy County) ss.

I John Gallows
Clerk of the Circuit Court of said
Grundy County do hereby certify that
the above and foregoing is a full
and complete transcript of the
record of the proceedings of said
Circuit Court in said case and the
whole record pertaining thereto and
that the same is truly copied from
the records and files of said Court
remaining in my office.

Witness my hand and the
Official Seal of said Court
this 3^d day of April A.D. 1838
John Gallows
Clerk

Austin Grey
L. P. L. M. Gal
~~~~~  
Record  
~~~~~

Filed April 18 1887
L. Leland
Clerk

Austin Grey, } Supreme Court of
as } The State of Illinois
Lewis P. Lott et al } Plaintiffs Brief
of Authorities

pr

Where there is apparent equity in the bill, though the bill may be defective, it will not be dismissed on motion, but the defendant is required to demur, plead or answer. *Fisher vs Stone* 3^d Seam. 68. *Edwards vs Beard*. Breese 41

2^{ed}

A bill in Chancery was the proper remedy in this case. A Court of Chancery has jurisdiction to proceed by injunction where public officers under a claim of right are proceeding illegally to injure or destroy the real property of another or where it is necessary to prevent a multiplicity of suits although the defendants may be sued at law. *Mohawk and Hudson Rail Road Co vs Archer* et al 6th Paige Rep 83. *Belnap et al vs Belnap et al* 2^{ed} John Chan Rep 463. and cases there cited.

3d

If public officers are departing from that power, which the law has vested in them, and assuming power, over property, which the law does not give them, they may be restrained by injunction. Storys Eq Jurisp Sec 955
(a) Colton et al vs Hanchett et al
13 Ill 615

4th

Neither Moore or Flood was authorized to take the appeal to the Supervisors, neither of them being the owner, or the agent of the owner, of any of the land, over which that part of the road, proposed to be vacated, passes. Clark vs Phelps. 4th Cowen 190

Our Township organization Law of 1849 - so far as these proceedings are concerned - was taken from the laws of New York. Sections 30 and 31 provide for an appeal from Commissioners of highways and that every person who shall conceive himself aggrieved may take the appeal

Laws of 1849 P222

By these sections, it would ^{at first view} appear

that two classes of persons may take the appeal, 1st The persons petitioning, and 2nd The persons owning the land over which the road might pass.

By the law of 1851 Session Laws page 73- Section 8th, The right of appeal as provided for in the law of 1849 was restricted to the owners, ^{on their agents} ~~on their agents~~ ~~of the~~ ~~land~~, of the land over which the road or part of road proposed to be vacated, laid out or discontinued might run

5th

The genius of the law of 1851 appears to be, to let the public interests, so far as the roads are concerned, rest with the Commissioners, but that private individuals, owning land over which a part of a road may run, which is proposed to be vacated may appeal for the protection of their lands and to recover the damages they may sustain.

The following authorities are illustrative of this point,

To entitle a person to damages for laying out a highway, the damages must be direct, producing a legal effect

12th U.S.D. 644. Sec 43 and 44 - 21st Conn
Rep 313.

Though a road may be laid
along the line of an individual yet
if it takes none of his land he is
not entitled to damages. People vs
Supervisors of Oneida 19th Wend 102

The discontinuance of a part of
a street is no cause for damages to
others on the same street if there is
still a way open for them 13th U.S.D.
644. Sec 35. Smith vs City of Boston - 7th
Crushing Rep 254

Persons injured, merely as
members of the community, cannot
certiorari the proceedings of Com-
missioners of highways, to give them
the right to certiorari they must have
a legal individual interest in the
matter. 9th U.S.D. 429 Sec 4. ~~2d~~ Maine
Rep. 353

6th

If the bill could have been dis-
missed on the defendants, Lott,
Claypool & Watkins answering fully
still the Court erred in dissolving

The injunction The material allegation
in The bill not having been answered
at all
7th

The defendants to The bill had not
all been brought in when The bill
was dismissed, it was error therefore to
dismiss The bill until such time as
all the defendants were brought in
Duncan et al vs State Bank of Illinois
1st Scam. 262.

Austin Gray
vs
L. P. Lott & al
Brief

Court

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, A. D. 1857.

In Chancery—Appeal from Grundy County Circuit Court.

AUSTIN GRAY *vs.* LEWIS P. LOTT, LAWRENCE W. CLAYPOOL, FREDERICK S. WATKINS, and the Commissioners of Highways of Saratoga Township.

ABSTRACT OF THE RECORD.

RECORD.

Bill.

Page 3.

Complainant sheweth that about the 12th day of October, A. D. 1856, a petition was presented to the Commissioners of Highways of Saratoga Township, in the County of Grundy, signed by complainant and twenty-four others, all legal voters, praying the vacation of that part of a certain road known as the Morris and Lisbon Road, described as follows: Commencing at the south-west corner of section six, (6,) in township 34 north, of range 7 east, running thence south 30 deg. 50 min., east 84.24 chains; thence south 32 deg. 30 min., east 88.67 chains; thence south 33 deg. 45 min., east 38.03 chains, and there ending; that on the 23d day of September, A. D. 1856, a copy of said petition was posted in three of the most public places in said township; that all of said petitioners, at the time of signing said petition, were legal voters, and resided within three miles of said part of said road; that complainant then was the owner, in fee simple, of the south-west quarter section 17, township 34 north, of range 7 east.

Page 4.

Page 5.

Page 6.

Page 7.

That on the 16th day of October, A. D. 1856, the Commissioners of Highways of said township met to consider the prayer of said petition, and ordered that said part of said road be vacated; that on the 10th day of November, A. D. 1856, an appeal was taken from said order to Lewis P. Lott, Laurence W. Claypool, and Frederick S. Watkins, Supervisors, by John B. Moore and A. J. Foord; that neither the said John B. Moore or A. J. Foord was the owner, or the agent of the owner of any of the land over which said part of said road passes; that on the 19th day of November, A. D. 1856, said Supervisors met to consider the subject of said appeal, and said complainant appeared before them, and filed with them an affidavit, setting forth that the said John B. Moore and A. J. Foord were not, nor was either of them, the owner, or the agent of the owner of any of the land over which said part of said road passes; but said Supervisors not deeming said objection sufficient, proceeded to review said order, and determined to entirely reverse the same, but which determination had not then been reduced to writing.

Page 8.

That said part of said road runs directly through the said land of said complainant, as well as that of many other persons, doing a serious injury; that immediately after said order was made by said Commissioners, said complainant, as well as many other landholders along said road, closed up the same; that if said complainant should be compelled to open said road again, it would subject him to serious inconvenience, lay his farm open to commons, and expose the crops growing thereon.

That if said Supervisors should be permitted to make the order which they had determined upon, though it might be void, the Commissioners might feel themselves bound thereby, and other persons would feel authorised to pass through the premises of said complainant, and throw

RECORD.

Page 8.

down his fences and thus endanger his crops and subject him to vexation and inconvenience.

Page 9.

Page 10.

And said complainant prayed that said Supervisors might be enjoined from reducing to writing or executing the order which they had determined to make, and for other and further relief, and that process of injunction might be issued against said Supervisors, and process of summons against said Supervisors and said Commissioners of Highways of said Township.

Abstract of Answer of Lewis P. Lott, Laurence W. Claypool, and Frederick S. Watkins.

Page 24.

Page 26.

Said defendants admit that a petition was presented, and copies thereof posted; that all of said petitioners were residents; that the said complainant was the owner of land; that said Commissioners met to consider the prayer of said petition, and ordered said part of said road to be vacated; that an appeal was taken from said order, as stated in said bill.

Page 27.

Page 28.

Said defendants, as to that part of the bill which charges that neither the said John B. Moore or the said A. J. Foord were the owners, or the agent of the owners of any land over which said part of said road, proposed to be vacated, passes, aver the truth to be that both the said Moore and Foord, each of them were, and had been, and was, at the time of so taking said appeal, owners and occupiers of land over which the Morris and Lisbon road passes, a portion of which was vacated by said Commissioners as aforesaid, and that the said A. J. Foord actually resides and owns land on said Morris and Lisbon road, on both sides thereof, immediately at that point on said road where that portion of said road commences proposed by the said Commissioners to be vacated; that said Moore resides on said Morris and Lisbon road, near where the discontinuance is proposed to commence, and owns land also on said road.

Page 29.

Said defendants further admit that on the 19th day of March, A. D. 1856, as Supervisors, they met to take into consideration the subject of said appeal; that said complainant appeared before them and filed an affidavit as stated in said bill; that said defendants did not deem said objection sufficient, and proceeded to review said order, and determined to entirely reverse the same, and order said Commissioners to re-establish said part of said road.

Page 30.

Said defendants further answering say, that on the 20th day of November, A. D. 1856, and before the said writ of injunction had been served on them, their said determination and order reversing the said decision of the said Commissioners, and ordering them to re-establish said part of said road, by them vacated as aforesaid, had been, by said defendants, reduced to writing, signed, and fully executed.

Page 32.

Page 33.

Order of Court, March Term, 1857.

Said complainant, by his Solicitors, Seely & Baugher, and said defendants, Lott, Claypool, and Watkins, by their Solicitor, S. W. Harris, appeared, and the said defendants, Lott, Claypool, and Watkins, by their said Solicitor, moved the Court to dissolve said injunction and dismiss said bill, which motion the Court granted, and ordered and decreed that the injunction herein be dissolved, and that said bill be dismissed. Thereupon said complainant prays an appeal to the Supreme Court of this State, which motion is granted by the Court, on condition that the said complainant give bond in the sum of one hundred dollars, within sixty days, with William T. Hopkins as surety.

Page 34.

Said complainant, for the purpose of perfecting said appeal, and in pursuance of said order of said Circuit Court, filed in the office of the Clerk of this Court, an appeal bond, on the 15th day of December, A. D. 1856, and which was within sixty days after the obtaining of said order for said appeal, thereby perfecting said appeal to the Supreme Court, said bond being in the sum of one hundred dollars, and signed by the said complainant and William T. Hopkins.

SEELY & BAUGHER,

Solicitors for Appellant.

Austin Gray

vs,

Lewis P. Galt
Lawrence W. Claypool &
Ferdinand Watkins

In error on appeal

And now come the
said Lewis P. Galt Lawrence W. Claypool & Ferdinand
Watkins and say that there is no error either
in the record and proceedings aforesaid,
or in making the decree aforesaid; and
therefore they pray that the said decree may
be affirmed and that their costs may be
do and to them &c

By S. H. Harris
their Solicitor,

102
Austin Gray

vs.

L. P. Gott et al.

Found in Error

Filed May 5/85

S. Liland

Clerk

S. W. Harris

Austin Grey
Plaintiff Below
Plaintiff in error
vs

Lewis P. Lott
Laurence W Claypool
Frederick S. Watkins &
The Commissioners of
Highways of Saratoga
Township

Supreme
Court of
the State
of Illinois

And The said plaintiff by
Seely & Baughn his Attorneys comes
and says There is manifest error
in the foregoing record and assigns
for error thereon the following
points to wit.

1st The Court erred in dissolving
the injunction against Lewis P. Lott
Laurence W Claypool and Frederick S.
Watkins.

2nd The Court erred in dismissing
said bill

Seely & Baughn
Attys for Pltff

102

Austin Grey

vs

Lewis P. Scott

Assignment of Errors

Filed April 18. 1883

S. Leland
Clerk

Austin Gray
v.s.
L P Lall et al.

appeal from the Grundy
Circuit Court,

Defendants Brief.

Formerly the Chancellor, refused to restrain by injunction Public Officers or other persons, acting in the execution or by the Authority of Legislative enactments. They still so refuse to interfere with public officers, except in two classes of Cases—

- 1st Where public officers exceed their jurisdiction—
- 2nd Where, under pretense of an authority, which the law does give them to a certain extent, they go beyond the line of their authority, and infringe or violate the rights of others.

Storrs Equity

Frewin v. Lewis 4th Mylne & Craig
255 and authorities there cited—

The Lord Chancellor in the case of Frewin v. Lewis remarks, "The main object of the Bill was, to prevent the

order of the poor-law commissioners
from being carried into effect, on the
ground that the Commissioners had
exceeded their jurisdiction

"They were bound (Continued the
"Lord Chancellor, to make out such a
"Case, as the foundation of the application.
"So long as Public functionaries strictly
"confine themselves within the exercise
"of those duties which are confided to
"them by the law, this Court will not
"interfere—

"This Court will not interfere to
"see whether any alteration or regulation
"which they may direct is good or
"bad—

"This Bill does not state any such
"case, It merely states that it is inconven-
"ient that these alterations should take
"place, and that the proposed expenditures
"should be made; and the reason why it
"is alledged to be inconvenient is that
"in the district over which the plaintiff
"under the local act, have an authority
"the work house is sufficient for the
"purposes of that district."

This the Chancellor says is "no reason
at all—

Now apply the law of the above Case to the One under Consideration.

The facts of the two Cases are Similar, with this difference; In the Case of *Brewin vs. Lewis* there was a question whether the jurisdiction of the poor-law commissioner Extended to the Parish in which was situate the Workhouse in question.

In the Case at bar there is no question as to the jurisdiction of the Supervisors over the subject matter of appeals from the decision of the Commissioners of Highways. In that Case the Chancellor held by Construction, of apparently conflicting Statutes that the poor-law, Commissioner's jurisdiction did extend over the place in question. In this case the jurisdiction of the Supervisors over the subject matter is undoubted. From this point the two Cases are parallel.

In the one the bill states it would be inconvenient that certain alterations in a Workhouse should take place,

In the other it is stated that if a certain road should be reopened it would subject the Complainant to serious inconvenience, and to variation.

and inconvenience.

The reason of this inconvenience, assigned in the One Case is, that the old work house, was sufficient, and there was no necessity for expending money on it.

The reason assigned in this Case is, that the Commissioners or some one else will reopen the road, where the Complainant has closed it, thus subjecting him to the inconvenience of inclosing his land, or permitting it to remain open to Commons.

Now this, in the language of the Lord Chancellor in the Case in 4th Mylne & Craig "is no reason at all."

The Complainant is bound to show that the Supervisors have exceeded their jurisdiction, or have acted under colour of office to the injury of the Complainant, & without authority of Law.

It will be observed, that it no where appears affirmatively, that in the Complainants Bill, that the Supervisors acted without authority of law, in reversing the decision of the Commission of Highways. This can not even be

infered. In chancing as at law all inferences
are to be taken most strongly against the
pleader. And this brings me to the prin-
cipal point, which I suppose the Bill
of the Complainant intended to present.

The 1st Sec of the 24 article of
an Act to provide for township organization
Laws of 1851 p 35. Authorizes the
Commissioners of highways to alter or
discontinue any road &c. The same
Sec. directs that the petition for such
alteration "shall set forth in writing
"a description of the road and what
"part thereof is to be altered or discontinued"
20

Sec 8 of the same article provides
that "Any person or persons being owners
of or agents for any tract of land over
which any highway, altered, discontinued
or laid out shall own &c shall have
the right of appeal &c"

The Bill alleges that a petition
was presented to the Commissioners of
highways praying the vacation of that
part of a certain road known as the
Morris & Lisbon Road, described &c.
That the Commissioners ordered that
part of the Road to be vacated, and

that an appeal was taken to the defendants, three Supervisors of Said County, by James B. Moore and A. J. Foord; that neither the said Jas. B. Moore nor the said A. J. Foord was the owner, or the agent of the owner of any of the land over which said part of said Road passes.

Under the rule that all inferences are to be taken most strongly against the pleader, it must be taken for granted that the appellants were the owners of land over which the Road passed which was altered, by vacating a part of it. And this inference is in accordance with the truth as set up in the answer.

One of the appellants owned land on both sides of the road, and abutting against one of the termini of the part altered.

But the Complainant claims that the Legislature intended to limit the right of appeal to those owning land on the identical part of a Road altered or vacated.

Thus a man owning 10 acres of land, over which a highway passes

gets 12 friends residing within three
miles of him, and not necessarily on
the road at all, to petition for the vacation
of that part of it running through his
10 acres. The Commissioners alter the
Road by vacating that part of it, and
thus block up the entire road, yet
no man owning land and living on
the road on either side of the 10 acres
would have the right of appeal!

This is not the language of the
Statute, and could never have been the
intention of the Legislature

The language of the Statute is
that any person owning land se over,
which any highway, altered discontinued
shall run se shall have the right of
appeal, Not that any person owning
land on any part altered of any highway
se shall have the right of appeal.

If I am right in this construction
of the Statute, it settles without further
consideration the question at issue, and
the Court below properly dissolved the
information, and dismissed the Bill for
want of equity.

But suppose the appeals to have
been irregular, or taken by persons

not strictly authorized, and that the Supervisors erred in the opinion that the appeal was properly taken, has the complainant pursued the proper remedy? Is there not a complete and adequate remedy at law?

This Court has repeatedly decided that the common law writ of Certiorari lies in this State,

Ought not the Complainant to have pursued his remedy at law?

Again the injunction prayed in this case is peculiar. It is that the Supervisors ~~may~~ be enjoined from inducing to writing or executing the order which they had determined to make.

The law requires the Supervisors to reduce their orders to writing, the same as Commissioners under Sec 6, of the same Article. This is filed with the Township Clerk, & there the duty of the Supervisors ends.

Are Public officers or even Courts ever enjoined from making a record of their doings?

In this case however the Supervisors answer ~~that~~ that they had

reduced their decision to writing and
fully executed the same, before the writ of
injunction was served on them.

In no view, therefore, of
this case, can I conceive of any error
in the decision of the Court below.

S. W. Harris
Solicitor for
Defendants

Austin Gray
vs.

L. P. Sott et al

appral from
Grundy

Depts Brief

S. M. Harris

102

Austin greg

vs

Lewis P. Sotterals

1857

Affirmed

1857

X