

12615

No. _____

Supreme Court of Illinois

People ex-rel.

vs.

Bd. School Inspectors City
of Peoria.

71641  7

1. Be it remembered that heretofore To Wit: on the 7th day of January in the Year of our Lord one thousand eight Hundred and fifty Eight there was filed in the office of the Clerk of the County Court of the County of Peoria in the State of Illinois a Petition of Henry Grove which in words and figures is as follows, To Wit.

To the Hon. Wellington Vaukes Judge of the County Court of Peoria County in the State of Illinois

Your Petitioner Henry Grove of the City & County of Peoria of State of Illinois Respectfully represents.

Petition That your petitioner is a free white Citizen of the United States of America and is also a resident house-holder & taxpayer in the City of Peoria & has a child named Clara Priscilla Grove aged about fourteen years residing with your Petitioner which he wishes to send to the Public Schools in said City of Peoria & receive instruction therein. He further states that there are now five large commodious School Houses in said city in each of which Schools are now taught under the control of the Board of School Inspectors of said City. He further states that the School houses in the second & third district in said city are most convenient to the residence of & that there is sufficient room in said schools for his said child. He claims the legal right to send his child to one of said schools & have her instructed therein and has demanded admittance for his child into one of said schools and has been refused by the Superintendents of said schools under the Order of said Board of School Inspectors. He further states that he knows of no valid or legal reason why his child should be excluded from said schools. He therefore prays that a Writ of Mandamus may issue to said Board

of School Inspectors requiring them to receive & instruct his said child in some one of said schools in the second or third districts in said city of Peoria. H. Grove being sworn on oath says that the facts set forth in the foregoing Petition are true.

H. Grove.

Sworn to & subscribed before

me Jan'y 7. 1858. Charles Kettelle Clerk in Geo. Kettelle Deputy Clerk

And on the same day To Wit: on the 7th January 1858 there was filed in the office of the Clerk of said court in said cause a Notice and the Return made by the Sheriff thereof, which is in the words and figures following: To Wit:

Henry Grove

vs.

The Board of School
Inspectors of the City of Peoria

In the County Court of
Peoria County. January Term
1858.

On this seventh day of

January A.D. 1858. Personally appeared Henry Grove and filed his Petition for a Writ of Mandamus and the Court having read & considered the same doth now order and direct that a Rule be entered against the Defendants requiring them to show cause by Tomorrow Morning at 10 O'clock A.M. Why a Writ of Mandamus should not issue as prayed in said petition & that notice of this Rule be given to the defendants forthwith.

Order of Court

Wellington Couckes *CLK*
County Judge

State of Illinois }
Peoria Co } p.

Clerk's Office Peoria Jan'y 7. 1858
I Charles Kettelle Clerk of the County and of said county do hereby certify that the above is a true copy of the Order as appears of Record in my office.

Witness my hand and the Seal of the Court this
7 Jan. 1858. Charles Kettelle Clerk

per

Geo. Kettelle Deputy

Seal

I have served the within Writ on D. A. Bartlett Pres
and John Smith Sec by reading to them the same January 7 1858
J. W. Smith Sheriff

Notice

Filed January 7 1858
Charles Kettelle Clerk
per Geo. H. Kettelle
9549

And afterwards, To Wit: on the 8th January, 1858, there was filed in the office of the
Clerk of said court in said cause, a Motion of Defendants, in the words and figures
following To Wit:

Kenns Grove
VS:

In the County Court on application for
Mandamus.

"The Board of School
Inspectors in Poria" And now comes the said Dft & moves
the court to dismiss this proceeding for the reason that the sub-
ject matter in dispute has been fully settled & adjudicated
in & by the circuit court of said Poria County - as shown
by affidavit on file. Capers for Dft

Grove vs Board of
School Inspectors

Motion

Filed January 8. 1858
Charles Kettelle Clerk
per Geo. H. Kettelle Dpty

And on the same day To Wit: on the 8th day of January 1858. there was filed in the office of the Clerk of the County Court of the County of Peoria, in the said cause, the affidavit of J. H. Cooper, Defendants Attys: in the words and figures following To Wit:

Henry Grove
vs.

The Board of School
Inspectors of the City
of Peoria

In the County Court Peoria County
Ills. In application for Writ of
Mandamus.

Affidavit.

Jonathan B. Cooper being duly sworn says, That all matters touching the relief prayed in this case have been already fully adjudicated, decided, and settled by the Circuit Court of Peoria County at the late November Term of said court, as affiant is advised & verily believes - That at said Term the said Grove filed his petition for a Writ of Certiorari against said Board commanding them to certify to said Court the records of their Orders & proceedings touching the Districting of said City for School purposes, together with a Map or Plat of said City, showing the boundaries of said districts &c. to which said Board made & filed their return conformably to the terms of said Writ - And thereupon said Grove entered his Motion in said cause asking said Court among other things in substance to annul & cancel their Orders & records of said Board districting said City, and prohibiting petitioner from sending his said child to the public schools in said City - said Grove also at the same Term of said court, filed his Bill in Chancery in said Court, against said Board, praying among other things, for an Injunction against said Board prohibiting them from keeping up a certain school, in said Bill mentioned for the benefit of the School district in which said Grove is placed, and asking that said Board be required to receive his said child into some of the other schools in said city, and for general relief: to which said Bill said Board filed their answer and said cause was fully heard & determined

by said Court as also the Petition & Motion of said Grove on
 said certiorari and affiant here refers to said records, papers
 & proceedings of said court and makes the same part of this
 affidavit. Wherefore affiant says that the subject matter
 of this application has been fully heard & adjudicated by
 a court of competent jurisdiction and he submits that
 the only remedy of Petitioner is by an appeal or Writ of
 Error to the Supreme Court from the judgments, orders, de-
 crees of said Circuit Court in said suits & proceedings
 above named.

Jonathon R. Cooper.

Subscribed & sworn to before me

this 8th January 1858.

Charles Kittelle Clk per Geo. H. Kittelle Dpty.

Erre v. School Inspector
 Aff. of Cooper.

Filed January 8th 1858
 Charles Kittelle Clk
 per Geo. H. Kittelle Dpty. Clk.

And afterwards To Wit: on the 14th day of January 1858; there ^{was} ~~was~~ ^{issued from} filed in the office of the
 clerk of said court in said cause, a Writ of Mandamus, in the words and figures
 following. To Wit:

State of Illinois } The People of the State of Illinois
 Peoria County & } To the Board of School ^{of the City of Peoria} Inspector, Greeting
 Whereas it has been represented to the Hon. Willin-
 gton Lucks, Judge of our County Court in and for the County of Peoria
 and State of Illinois on the 7th day of January A.D. 1858 be-
 ing in open Court and at the January Term of said Court
 that Henry Grove is a citizen, resident, householder and
 Tax Payer of the City of Peoria and hath a child named

Mandamus -

Clara Priscilla Grove, whom by law and of right the said
 Henry Grove ought to be permitted to send to and have instructed
 and taught in some one of the Public Schools within the City
 of Peoria convenient and adjacent to his residence therein:
 And that said Board have laid off and created a certain
 school District in said City in which there is not any Pub-
 lic School House or School within the limits of the said City
 of Peoria in which district said Henry Grove resides. And that
 there are Two Public Schools Houses in said City respec-
 tively called and known as the Second district School House
 and the Third District School House and that said Two
 School Houses are the only public School houses within
 said City adjacent or convenient to the Residence of said
 Grove in one of which two said School Houses the said
 Henry Grove ought by law and of right to have place and
 instruction for his said child and that there is no good or
 sufficient reason why said Clara should be excluded from
 or denied instruction in one of the Two School house above
 named and that you the said Board of School Inspectors
 of the City of Peoria have without any reasonable cause
 whatever hitherto refused and still refuse to admit the said
 Clara into either the aforesaid School houses of district
 number Two and Three and from all other public School
 houses within said City, unjustly excluding her, depriving
 her of the right to be instructed and taught therein, in con-
 tempt of us and to the great damage and grievance of him
 the said Henry Grove

We, therefore being willing that
 due and speedy justice be done the said Henry Grove
 in this behalf Command you, that immediately after
 the receipt of this Writ you do admit the said Clara
 Priscilla Grove into the Second or Third district School
 House within said City of Peoria and cause her to

7

be instructed regularly therein or signify to the said Court
a term thereof to be held at the Court House in the
said City of Peoria in said county on the First
Monday of February A. D. 1858. Cause to the contrary
thereof that the same complaint may not by your def-
ault be repeated to us And now you shall have executed
this Writ, make known to us after service thereof
returning the same into the Office of the Clerk of our
said Court and this you are not to omit on peril that
may fall thereon

Witness Charles Kettelle Clerk
of our said Court And the Seal thereof at Peoria
this 14th day of January 1858
Charles Kettelle Clerk per Geo. H. Kettelle
Dpty

Seal

Henry Love
W. G.
Board of School Inspectors
City of Peoria

Mandamus

Subscribed by delivery to the Hon
Jacob Gale, Superintendent Public
Instruction of the City of Peoria
Charles Kettelle Clerk
per Geo. H. Kettelle
Dpty

and afterwards To Wit: on the 1st July 1858. said Writ of Mandamus was returned
indorsed as follows To Wit:
State of Illinois
Peoria County. ss. I Jacob Gale to whom this Writ has been delivered
by the Sheriff of Peoria County; return the same
into Court and state that I am not one of the Board
of School Inspectors of the City of Peoria, am not a party defendant to
the Writ, have no power or control over said Board, no authority to appear
or answer for them to this Writ, am not aware that the several members
of the Board are acquainted with fact that the Writ has been issued or
expect such a Writ from the Court, and submit to the Court whether
any delivery or service of the Writ on me can in any manner bring

Return of
J. Gale Esq

me into court in a proceeding to which I am not a party.
February 1st 1858. Jacob Gale.

And afterward, To Wit, on the 2nd day of February 1858, there issued from the office of the Clerk of said court, an alternative Writ of Mandamus, in the words and figures following To Wit:

State of Illinois }
 Peoria County S. } The People of the State of Illinois. To
 the Board of School Inspectors of the
 City of Peoria, Greeting

Whereas it has been represented to the Hon. Wellington Vauks Judge of our County Court in and for the County of Peoria and State of Illinois on the 7th day of January A.D. 1858 being in open Court and at the January Term of said Court that Henry Grove is a citizen resident Householder and Tax Payer of the City of Peoria and hath a child named Clara Priscilla Grove, whom by Law and of Right the said Henry Grove ought to be permitted to send to and have instructed and taught in some one of the Public Schools within the City of Peoria convenient and adjacent to his Residence therein. And that said Board have laid off and created a certain School District in said City in which there is not any Public School House or School within the limits of the said City of Peoria in which district said Henry Grove resides and that there are Two Public School Houses in said City respectively called and known as the Second District School House and the Third District School House and that said Two School Houses are the only public School Houses within said City adjacent or convenient to the residence of said Grove on one of which two said School Houses the said Henry Grove ought by Law and of right to have place and instruction for his said

Alternative
 Writ:

9. child, and that there is no good or sufficient reason why said Clara should be excluded from or denied instruction in one of the Two School Houses above named and that you the said Board of School Inspectors of the City of Peoria have without any reasonable cause whatever hitherto refused and still refuse to admit the said Clara into either the aforesaid School Houses of district Number Two and Three and from all other public School Houses within said City, unjustly excluding her, depriving her of the right to be instructed and taught therein, in contempt of us and to the great damage and grievance of him the said Henry Grove.

We therefore being willing that due and speedy justice be done the said Henry Grove in this behalf command you, that immediately after the receipt of this Writ you do admit the said Clara Piscilla Grove into the Second or Third District School House within said City of Peoria and cause her to be instructed regularly therein or signify to the said Court at a Term thereof now holding at the Court House in the said City of Peoria in said County on the Fifth day of February A.D. 1858 at 10 o'clock A.M. cause to the contrary that the same Complaint may not by your default be repeated to us and how you shall have executed this Writ make known to us after service thereof, returning the same into the Office of the Clerk of our said Court, and this you are not to omit on peril that may fall thereon.

Witness Charles Kettelle Clerk of our said County Court, and the official seal thereof at Peoria this 29th day of February A.D. 1858.

Charles Kettelle Clerk for Geo. H. Kettelle & Co.



Henry Grove
vs.
Board of School Inspectors
City of Peoria

Writ of Mandamus
Alternative Writ

To be moved by order in to
Angus P. Ballitt, the President
of the Board of School Ins.
of the City of Peoria.
Charles B. White, Clerk.
per Geo. H. Bellamy, 2nd Jy. clk.

And afterwards To Wit: on the 5th day of July 1858. there was filed in the office of the clerk of said court in said cause, a Motion of Defendants, to quash the alternative Writ of Mandamus in the words and figures following To Wit:

State of Illinois / In the county court, February Term, 1858.
Peoria County / S. vs.
The People of the State of Illinois
on the relation of Henry Grove
vs. / For Mandamus
The Board of School Inspectors
of the City of Peoria

Motion.

The Defendants enter a Motion to quash the alternative writ of Mandamus issued of the date of February 2nd A.D. 1858. for the following reasons:
1st Because said Writ. was issued returnable within ten days of its date.
2nd Because said Writ should have been made returnable to the next term of this Court and not to the present term of Court.
3rd Because said Writ does not show sufficient cause to entitle said Henry Grove to the relief thereby sought.
4th Because the defendants are not required by Law to permit the said Henry Grove to send to and have his said daughter instructed in either the 2nd district School house or the 3rd district School house within said city of Peoria.
5th Because the said Writ does not state or show that the

said Henry Grove has no other specific legal remedy
 6th. For want of jurisdiction
 7th. Because the said Writ is otherwise, informal insuffi-
 cient and defective

J. Gale for dfts.

Grove vs. School Inspectors
 Motion to Quash

Filed Feb 5th 1858
 Chas. Williams Clerk
 per Geo. M. Williams
 Sps 10

And afterwards, To Wit: on the 13th day of February 1858: there was filed in the office of the
 County Court of said county in said cause, a Return of the Defendants to said Altern-
 ative Writ of Mandamus, in the words and figures following. To Wit:

State of Illinois } In the County Court of said County
 Peoria County, Oct. } For Mandamus.

In the Matter of the application of Henry Grove
 for a Writ of Mandamus to issue out of said court against
 the "Board of School Inspectors" of the city of Peoria
 And now come the said "Board of School Inspectors" and
 for return to the Alternative Writ of Mandamus issued against
 them herein, on the relation of the said Henry Grove say =
 That it is true the said Henry Grove is a citizen Resident
 Householder & tax payer of said city, and hath a child
 named Clara Pucillo Grove, whom, in common with other
 children in said city, and upon the same terms & under the
 same restrictions, & not otherwise, he hath a right to send
 to & have instructed in some one of the public Schools of said
 city. But these defendants expressly deny that the said Relation
 is of right entitled to send his said child to either of the
 two public Schools in said Alternative Writ named,

Return of-
 to Writ

onto the relief specified in said Writ, in manner & form
 as the same is therein stated & set forth. And because
 Defendants aver & show, that the said Relator is not and
 was not at the time of issuing said Writ, a resident of
 either of the School districts of said city, within which the
 said two Schools are kept & situate, and that by law
 & under the rules & regulations of said Board for the
 Control & government, of the Public Schools of said city,
 no person residing within the limits of one School district
 of said city is entitled, against the consent of said Board
 to send his Child to, and have it instructed in a school
 kept & established by said Board within the limits of
 any other School district of said City. Defendants
 further aver & show to the Court, by way of return to
 said Writ, That by law & under the rules & regulations
 of said Board, ready to be shown to the Court, and which
 these defendants here offer to produce & show to the Court,
 the inhabitants of each particular School District of said
 City, who apply in proper season are entitled first to have
 their Children received & instructed in the public school
 or schools, established & kept by said Board in & for
 the District in which they respectively reside, before chil-
 dren residing outside of any such District can lawfully or
 properly be admitted into any such School. And defen-
 dants aver that, at the time of the Supposed Grievance
 complained of & alleged in said Writ, all the public schools
 in both said second & third districts which the said
 Clara was qualified or disposed to enter, were full to
 overflowing with the Children & pupils resident within
 said districts respectively, who had applied and been
 admitted in due season. To Seats therein; And so that
 the said Clara could not have been admitted into
 either of said Schools without first turning out

Some one who had a prior & better right to be received & instructed therein, than herself.

Defendants admit that at the time of issuing said Writ, the said Board had refused & still did refuse to admit the said Clara into either of the two Schools in said Writ named, for which she had applied, but they deny, that in so doing they acted without any reasonable Cause, or that they unjustly excluded or deprived her from any right or privilege to which she was by law entitled.

Defendants further aver that at & long prior to the issuing of said Writ, the said Board of School Inspectors was, & still is, by law, vested with full power & authority over all the public Schools of said city, and to make rules & regulations therefor, in their discretion, to lay off & district said City for school purposes, and to alter & change the same, as in their judgment, may seem best. And defendants aver that before the happening of the said supposed grievance in said Writ mentioned, to wit, on or about the seventh day of September A D 1857. the said Board did proceed to alter the Boundaries of School districts in said city, and to Redistrict the said city for school purposes, and did in fact redistrict the same, and lay off the said City into School districts numbered from one to six inclusive, which said School districts, as then constituted by said Board still subsist, without change, and defendants further aver that, as said Districts were then formed & still exist, the residence of the said Henry Grove, falls & is within the limits of School district No. 5 in said City, as it had always theretofore been, and not within the limits of either of said School districts Nos. 2 or 3, in said Writ mentioned: And defendants admit, that there is

not any school House nor any public School kept by said Board in said 3rd district, within the corporate limits of said city. But defendants aver & show to the Court, that at the time & long prior to the time of the said supposed grievance there was & still is a public School established and kept by said Board for the said district No. 5. upon the same terms, as to all residents within said city, and under the same rules regulations & control, as the other public Schools of said city, which said school is kept in a House erected for the purpose by the inhabitants of school district No. 5. acting under the general school laws of this state & prior to the organization of said Board & the establishment of the present school system in said city, and which defendants show is comfortably & commodiously fitted & furnished, but which said House, defendants show is situate about one hundred feet outside the corporate limits of said city, but so as to be reasonably accessible & convenient, to the said Grove and to all the inhabitants of said district No. 5, and nearer to them than any of the other public schools of said city. Defendants aver that said school was originally established in said House and is still kept therein, by said Board at their request, and so far as said Board is advised or believes, pursuant to the unanimous wish of all the inhabitants of said school district No. 5. the said Henry Grove alone excepted. And to discontinue the same would operate a great hardship upon the people of said district who desire said school, as said Board has not the means speedily to construct a suitable House within said District, and there is no suitable House within said District in which a school could be established & kept. And defendants submit that the single fact that

And has not been unjustly & wrongfully hindered & prevented from having his
 said child received into & instructed in the public schools of said city
 as in said writ is assumed

said House is situate a few feet outside the corporate limits of said city offers no legal impediment to the establishing & keeping up a school therein for said District, by said Board. Defendants further aver that said School has at all times been open & free to all the inhabitants of said District, No. 5 on the same terms as the other public schools of said city under the charge & control of said Board that there has always been & still is sufficient room & accommodations in said House to receive & admit all the children of said District who have applied for admission therein, and that the said Relator, at the time of the supposed grievance above named, and at all proper times since then, might have sent his said child to said School and had her received & instructed therein. Defendants further aver that at the time of the said alleged grievance, the said Relator was offered the privilege by said Board of sending his said child to either of the Schools in the 4th & 6th districts of said city and having her received & instructed in one or the other of the same, neither of said Schools being full at that time, and said Board being disposed to accommodate the said Grove and enable his said child to be more appropriately classed, wherein their judgment the same could be done, without infringing the just rights of others, or prejudicing the general interests of the Schools under their charge - but which said offer & proposal of said Board the said Relator declined. And so Defendants aver that the said Henry Grove has been permitted by said Board to send his said child to the public Schools of said city and to have her received & instructed therein. Defendants therefore say that the said Relator hath not sustained wrong & injury as hath by him been alleged, and they submit that a

preemptory Writ of Mandamus ought not to be awarded by this court to compel the said Board to admit the said Clara Piscilla Grove into either of the Schools in said 2nd or 3^d districts, as in & by the said Alternative Writ herein they are conditionally required to do.

And said Defendants having now made full return to said Writ, pray to be hence dismissed with their costs. &c

The "Board of School Inspectors of the City of Peoria. By

A. P. Bartlett, president

The People ex relatione Henry Grove

vs. The Board of School Inspectors

two

Return

Filed February 13 1858

Charles Feltus, Clerk

per Geo. H. Bartlett, Jpy

And afterwards to wit: on the 1st day of March 1858, there was filed in the office of the Clerk of said court in said cause, a Motion on part of Relator to quash said return to said Writ in the words and figures following to wit:

State of Illinois } In the County Court for Marion
County of Peoria } ff. damus

The People of the State of Illinois ex relatione
Henry Grove
versus

The Board of School Inspectors of the City of Peoria
The said relator moves the court humbly to quash the return made by the said defendants to the Alternative Writ of Mandamus issued herein, and to award a preemptory writ of Mandamus, and so forth, for that the said return is manifestly uncertain, argumentative, irregular, non-issuable and insufficient.

Manning, Robinson & Bracey for relator

ex rel Grove

1

Inspectors

to quash

in

March 24 1858

Charles Feltus

per Geo. H. Bartlett

Jpy

Motion to
quash.

And afterwards To Wit: on the 8th day of February 1858. there was filed in the office of the County Court of said County, the Defendants Bill of Exceptions in the words and figures following To Wit:

The People ex relatione

Henry Grove

vs.

Board of School Inspectors
of the City of Peoria

Petition for Mandamus.

Be it Remembered that on the coming out to be heard of the Motion made by the defendants herein to quash the alternative Writ of Mandamus granted herein on the 2nd day of February A.D. 1858, which said Motion is in the Words & figures following To Wit:

Bill of Exceptions

- "The defendants enter a motion to quash the alternative Writ of Mandamus issued of the date of February 2nd A.D. 1858. for the following reasons,
- 1st Because said Writ was issued returnable within ten days of its date
 - 2nd Because said Writ should have been made returnable to the next Term of this Court and not to the present Term of Court.
 - 3rd Because said Writ does not show Sufficient Cause to entitle said Henry Grove to the relief thereby sought.
 - 4th Because the defendants are not required by law to permit the said Henry Grove to send to and have his said daughter instructed in either the 2nd district School house or the 3rd district School house within said city of Peoria.
 - 5th Because the said Writ does not state or show that the said Henry Grove has no other Specific legal remedy.

Or for want of jurisdiction

- 7th Because the said Writ is otherwise informal, insufficient and defective.

J. Calverford dtd.

The Court overruled said Motion To which decision of said Court in overruling said Motion the said defendants by their Counsel then then excepted, and pray that this then Bill of exceptions may be signed, sealed & made of record by the Court which is done.

Wellington Loucks (Seal)
County Judge.

Done July 24. 1858.
O. Bellows, Clerk.

And afterwards To Wit on the 9th of March 1858. Then was filed in the office of the Court of the County of Peoria. Bill of Exceptions, in said cause in the following words to wit

The People of the State of Illinois, Ex Relatone Henry Grove, Vs. The County Court Peoria County Ills. Of the March Term O. C. D. 1858.

The "Board of School Inspectors of the City of Peoria."

Bill of Exceptions

Perit remembered that on the coming on of this cause to be heard upon the Motion of the said Relator to quash the return of the said defendants to the alternative writ of Mandamus granted herein, which said Motion is in words & figures as follows.

"The said Relator moves the Court here to quash the return made by the said defendants to the alternative Writ of Mandamus issued herein, and to award a peremptory writ of Mandamus, and so forth, for that the said return is manifestly uncertain, argumentative, irregular, non-venable and insufficient."

Manning Robinson & Bonney for Relator
And thereupon said Court sustained said Motion and ordered the said Return to be quashed, whereupon said defendants

entered their Motion for leave to amend their said return, which said Motion of said defendants; & amend said return was overruled by the Court, And said Court refused to allow said Return to be amended, And then the Court quashed the said return And ordered & directed a peremptory Mandamus to issue against the said defendants herein and rendered judgment against said defendants for costs. To all which decisions of said Court in ordering said return to be quashed - refusing to allow the same to be amended quashing said return & directing a peremptory Mandamus to issue and rendering judgment against said defendants for costs; the defendants by their Counsel then & there excepted And by agreement of parties it was then & there Ordered by the Court that the Bill of Exceptions in this case may be signed & sealed by the Court: in vacation which is done.

Wellington Loucks. 
County Judge.

Copied by Rev. Grove

vs.

School Inspectors

Bill of Exceptions

Filed March 9th 1858.

Charles H. Hittell Clerk

Geo. B. Hittell

Spy.

And afterwards to wit on the 10th day of March 1858, there was filed in the office of the Clerk of the County Court, an appeal Bond of the defendants, in the words and figures following, to wit:

Bond

Know all men by these Presents that we the Board of School Inspectors of the City of Peoria in the County of Peoria in the State of Illinois, as principal and John Hamlin as surety, are held and firmly bound unto the People of the State of Illinois, for the use of Henry Grove in the Penal sum of Five Hundred Dollars for the

payment whereof will and truly to be made we do hereby bind ourselves and our Successors, heirs, executors and administrators jointly and severally, firmly by these presents, Witness our hands and seals at Peoria this 10th day of March A.D. 1858. The condition of the foregoing obligation is such that whereas the People aforesaid on the relation of the said Henry Grove did at the March Term A.D. 1858 of the County Court within and for the County of Peoria in the State of Illinois recover by the consideration of said Court, a judgment that a precepting writ of Mandamus should issue against the said Board of School Inspectors commanding them to receive Clara Piscalle a daughter of said Henry Grove into the Second District School or the Third District School within and for said city, and to instruct her therein from which said judgment the said Board of School Inspectors have taken an appeal to the Supreme Court of the State of Illinois. Now if the said Board of School Inspectors shall prosecute said appeal with effect or shall pay all such costs and damages as may anywise be adjudged against them, in case said judgment shall be affirmed by said Supreme Court then the obligation is void, otherwise the same is in force.

Board of School Inspectors

by A. V. Battelle (President) Seal
Jno. Hamlin Seal

Record.

Proceedings of the County Court of Peoria County State of Illinois began and held at the Court House in the City of Peoria in said County on Monday January 4th 1858 for Judicial & other business.

Present.

Hon. Wellington Souers Judge.

Charles Russell Clerk &c

Francis W. Smith Sheriff.

Thursday January 7th 1858.
The People Ex Relatone Henry Grove

68

VS

Petition for Mandamus.

The Board School Inspectors
of the City of Peoria

On this 7th day of January A.D. 1858, personally appeared Henry Grove and filed his Petition for a writ of mandamus and the Court having read and considered the same doth now order and direct that a Rule be entered against the defendants requiring them to show cause by To morrow morning at 10 o'clock A. M. why a Writ of Mandamus should not issue as prayed in said Petition & that notice of this Rule be given to the Defendant forthwith.

State of Illinois }
County of Peoria } ss.

21

In the County Court
of the January Term A.D. 1858.

The People of the State of Illinois
on the relation of Henry Grove
against
The Board of School Inspectors
of the City of Peoria.

For Mandamus.

Friday January 8th A.D. 1858.

And now at this day
comes the said relator in person,
with W. Howell Robinson and
Charles C. Bonney, Esquires, his counsel
and the said defendants by
Jacob Gale and Jonathan K. Cooper
Esquires also come, and hereupon
the said relator moves the Court
here to allow and award a rule
for an alternative writ of mandamus
against said defendants, pursua-
nt to the Statute and his petition
therefor and so forth: whereupon the
said defendants do oppose said

motion, and move the Court here to dismiss this proceeding for the reason that the subject matter in dispute has been fully settled, and adjudicated, in and by the Circuit Court of said Floria County and in support of their said motion, the said defendants read the affidavit of Jonathan K. Cooper Esquire which is filed herein.

And hereupon the motion aforesaid of the said defendants to dismiss this proceeding is argued by counsel and on consideration thereof overruled and denied by the Court. Whereupon the motion aforesaid of the said relator for a rule for an alternative writ of mandamus and so forth is argued by counsel and on consideration thereof is allowed by the Court; and hereupon the Court here do make a rule absolute that an alternative writ of mandamus do issue in the name of the People &c. directed to the Board of School Inspectors of the City of Floria &c. reciting that Henry Groce Esquire is a citizen,

resident, householder, and tax-
 payer of the City of Florida, and
 hath a child named Clara Priscilla
 Groe, whom by law and of right,
 the said Henry Groe ought to be
 permitted to send to, and have
 instructed and taught in some
 one of the public Schools within
 the City of Florida; ^{or convenient or adjacent to his residence therein,} and that said
 Board have laid off and created
 a certain School District in said
 city, in which there is not any
 public School House or School, in
 which district said Henry Groe
 resides; and that there are two
 Public School Houses in said city,
 respectively called and known as
 the Second District School House,
 and the third District School House
 and that said two School Houses are
 the only ^{public} School Houses, within said
 city, adjacent or convenient to the
 residence of said Groe in one of which
 two said School Houses the said
 Henry Groe ought by law and of
 right to have place and instruction
 for his said child;— and that there
 is no good or sufficient reason why
 said Clara should be excluded from

or denied instruction in one
 of the two School Houses above
 named; And that the said Board
 of School Inspectors of the City of
 Floria, without any just or reason-
 able cause have unjustly excluded
 the said Clara from the said
 second District School House and
 from the said Third District School
 House and from all other public
 School Houses within said City,
 and do utterly refuse to permit
 or allow her to be anywise instructed
 or taught therein, in contempt of
 us and to the great damage and
 grievance of him the said Henry
 Groce, as informed by his complaint
 &c. And let the said writ
 command &c the Board aforesaid
 that they do forthwith admit
 the said Clara, Priscilla Groce
 into the said second District
 School House, or the said Third Distric-
 t School House within said City
 of Floria and cause her to be
 instructed regularly therein or
 show cause to the contrary on
 the first day of the next Term &c
 And let said writ be served by

delivered thereof to Jacob Gale Esquire Superintendent
of Public Schools for said City &c

Proceedings of the County Court Peoria County,
State of Illinois, began and held at the Court House
in the City of Peoria in said County on Monday February
1st 1858 for judicial and other business. Present Hon.
Wellington Cocks Judge, Charles Kettle Clerk and Francis
W Smith Sheriff

Tuesday February 2^d 1858

The People Ex Relatone

Henry Grove

VS.

Petition for Mandamus.

The Board of School Inspectors
of the City of Peoria

On Motion of the Relator, do ordered by the
Court, that an Alias Alternative Writ of Mandamus
do issue against the said defendants, returnable on Fri-
day Morning next. And let such Writ be served
by the delivery thereof to Amos P Bartlett president of
said Board and by the delivery of a copy thereof to John
B Smith Secretary of said Board.

Monday February 8th 1858.

The People Ex Relatone

Henry Grove

Petition for Mandamus.

The Board of School Inspectors of the City of Peoria

This day this cause came on to be heard on the motion of the said defendants to quash the alias Alternative Writ issued in this cause. The Court being fully advised in the premises doth overrule the said motion. Upon the motion of the said Defendants leave was given them to file their return to said Writ by the 20th day of March A.D. 1858 and this cause ordered to be continued untill the March Term of this Court.

Proceedings of the County Court of Polio County, State of Illinois in said county on Monday March 1st 1858 for judicial and other Business. Present Hon. Wellington Cooks Judge Charles Kelleck Clerk and Francis W. Smith Sheriff.

Saturday March 6th 1858.

This day comes the relator, with Charles C. Bonney and W. Howell Robinson Esquires his counsel and the said Board of School Inspectors by Jonathan H. Cooper Esquire their counsel also come, and hereupon the cause

comes on to be heard upon the motion of said Relator to quash the return made by the said defendants to the alternative writ of mandamus issued herein, and the Court after hearing the arguments of Counsel thereon, on consideration of said motion doth allow the same and quash the said return; And hereupon the said defendants pray leave to amend their said return, which leave is refused them by the Court, And now all and singular the premises being seen and fully understood by the Court here it is considered by the Court, that the said Henry Grove is entitled by Law and of Right to send his child Clara Priscilla Grove to the Second District School or the Third District School in the City of Peoria in this county, and to have his said child regularly received and instructed therein; and because it sufficiently appears to the Court here that the said Board of School Inspectors have unjustly, unlawfully, and without any reasonable cause excluded the said Clara Priscilla from both of the Schools above-mentioned to the great damage and grievance of the said Henry Grove, Therefore it is Ordered by the Court, that a peremptory Writ of Mandamus do issue herein against the said Board of School Inspectors, commanding them that they do immediately after the receipt thereof regularly admit, and receive the said Clara Priscilla Grove into the said Second District School or the said Third District School and instruct her therein, and that they make known to the Court here, how they shall have executed the same on the first day of the next Term of this Court, and it is considered by the Court, that the said Henry Grove do have and recover of and from the said Board of School Inspectors his costs and charges by him the said Henry Grove

about his suit in this behalf. expended, and that he have Execution therefor and so forth.

And hereupon the said defendants pray an appeal to the Supreme Court, which is allowed provided the said defendants do file their appeal Bond herein conditioned as the Law directs, in the penal Sum of Five Hundred Dollars with security, which by consent of said relation to be approved by the Clerk of this Court.

State of Illinois }
 Peoria County. ss } Charles Kettelle, Clerk of the County
 court within and for said county of Peoria
 Do hereby Certify That the foregoing, is a True copy
 of the papers filed and the Bill of Exceptions and appeal
 Bond and a true Transcript of the Record
 in the Suit of,
 The People &c ex rel. Henry Grove, versus, The Board
 of Schools Inspectors of the City of Peoria
 as appears of Record and on file in my office
 Witness my hand and seal this
 17th day of March. 1858.
 Charles Kettelle Clerk

Costs in the County Court
 Transcript of Record. \$11.50. paid by Defendants
 Charles Kettelle Clerk

29 = And now come the said Appellants herein, and for assignment of errors upon said Record and proceedings in this Court. Say - That in the said Record & proceedings there is Manifest Error - in this =

1st Said Court Erred in overruling the Motion to dismiss the Petition of said Relator herein, and in awarding an alternative writ of Mandamus thereon =

2nd Said Court Erred in directing the Service of said Writ upon the Superintendent of Schools of said City =

3rd Said Court Erred in directing the issue of said Alias Alternative Writ =

4th Said Court Erred in overruling the Motion of said Appellants to quash said Alias Writ =

5th Said Court Erred in sustaining the Motion of the Relator to quash said Return & in quashing the same =

6th Said Court Erred in refusing to allow the defendants to amend their said Return =

7th The said Court Erred in directing the issue of a Peremptory Writ of Mandamus herein, and in rendering

judgment for costs against the defendants =

8th The judgments, orders & proceedings of said Court in contumacious of the just authority, powers & duties of appellants herein, are against Law, and beyond the jurisdiction of said Court =

Jonas R. Cooper
for appellants =

And the said Appellants comes and says that in the record & proceedings there is no error
From P P

189
THE PEOPLE *Ex Relictone*

Henry Grore

VS

The Board of School Inspectors

OF THE

CITY of PEORIA.

Transcript from County Court.

Filed April 26, 1898

in the Court

at Peoria

THE PEOPLE OF THE STATE OF ILLINOIS, <i>Ex-Relatione</i> HENRY GROVE, vs. THE BOARD OF SCHOOL INSPECT- ORS OF THE CITY OF PEORIA.	IN THE SUPREME COURT, STATE OF ILLINOIS, THIRD GRAND DIVISION. ON APPEAL FROM PEORIA.
--	--

ABSTRACT OF RECORD.

P.P. 1 and 2. On the 7th day of January, A. D. 1858, Henry Grove filed his petition in the County Court of Peoria county for a mandamus to issue out of said Court against the "Board of School Inspectors of the City of Peoria."

Petition states that said Grove is a free white citizen of the United States, a resident, householder, and taxpayer in said city, and has a child named Clara Priscilla Grove, aged about 14 years, residing with him, whom he wishes to send to and have instructed in the public schools in said city. That there are five large school houses in said city, in each of which schools are taught under the control of said Board. That the houses in the 2d and 3d districts of said city are most convenient to petitioner, and there is room enough in them for his child, to the school taught in one of which he claims the right to send her. That he has demanded admittance for her into one of them and been refused by the Board. That he knows of no valid reason why she should be excluded therefrom. Prayer of petition: That a mandamus issue to the Board, requiring them to receive and instruct said child in some one of the schools in said 2d or 3d districts.

P. P. 2, 3. On filing which petition, said Court ordered that the defendants show cause on the next day at 10 o'clock A. M. why the prayer of the petition should not be granted, a copy of which order was served on the same day, by reading to A. P. Bartlett, President, and John Smith, Secretary of said Board.

On the 8th day of January the defendants move to dismiss the said petition, P. P. 3, 4, 5. upon affidavit filed, setting forth that the subject matter of the petition has been already fully adjudicated in the Circuit Court of Peoria county. Which motion P. P. 21, 22, 23, 24. is overruled by the Court, and said Court thereupon orders that an alternative writ of mandamus issue to said Board, returnable to the February term of said Court, requiring said Board to receive said Clara into one of the schools of the 2d or 3d districts of said city, or show cause to the contrary, and that said writ be served on Jacob Gale, Esq., Superintendent of Public Schools for said city.

P. P. 5, 6, 7. January 14, 1858, alternative writ issued. Return thereto filed by said Gale

February 1st, 1858: That he is not a member of said Board, nor a party defendant to said suit. That he has no control over said Board, nor authority to appear and answer for them, and submitting that no proceeding can be had against him therein.

February 2, 1858, order of Court directing an alias alternative writ to issue in said cause, and to be served on the President and Secretary of said Board. Which said alias writ issued the same day and sets out: That it having been, on the 7th day of January, 1858, represented to said Court that Henry Grove is a citizen, &c., of said city of Peoria, and hath a child whom he has a right to have received and instructed in one of the public schools in said city adjacent to his residence. That said Board have laid off a school district in said city in which there is no public school house or school within the city limits, and in which district said Grove resides. That there are two public school houses in said city—one in district No. 2 and one in district No. 3—both of which are adjacent to the residence of said Grove. That these are the only public school houses within said city adjacent or convenient to him. That there is no sufficient reason why said Clara should not be received and instructed in one of them, and that said Board, without reasonable cause, refuse to admit her into either. Said writ then commands said Board to admit said Clara into one or other of said schools, or show cause to the contrary by the 5th of February instant.

February 5, 1858, defendants move to quash said alias writ,

1st. Because it is returnable within ten days.

2d. Because it should have been returnable to the next term of Court.

3d. Because it does not show the relator entitled to the relief sought.

4th. Because defendants are not required by law to receive said Clara into the schools of either said 2d or 3d district.

5th. Because it does not appear that said relator has no other specific legal remedy.

6th. For want of jurisdiction.

7th. Said writ is otherwise informal and insufficient.

Which said motion is overruled by the Court, and defendants except and ask that their bill of exceptions may be signed and sealed by the Court, which is done.

February 13th, 1858, defendants file their return to said alias alternative writ,

in substance as follows: That it is true said Henry Grove is a resident, &c., of said city, and hath a child, whom, in common with other children in said city, and on the same terms, &c., and not otherwise, he hath a right to send to and have instructed in some one of the public schools of said city, but deny his right to send her to either of the schools in said 2d or 3d district, or to the relief claimed. That said relator is not, nor was he when said writ issued, a resident of either of said districts, and that by law and the regulations of the Board a resident of one school district is not entitled against the consent of the Board to send his child to the public schools of another district. That the residents of each school district who apply in due season are entitled to have their children received and taught in the public schools of the district where they respectively reside, and before children from outside any such district are admitted into such school. That at the time when, &c., all the public schools in said 2d and 3d districts were full to overflowing with the children and pupils resident in said districts respectively; and so that said Clara could not have been received into either without first turning out some one already admitted, and who had a prior and better right therein than herself. Defendants admit that said Board refused to admit said Clara into either of said schools; but deny that in so doing they acted without reasonable cause. That said Board is by law vested with authority over the public schools of said city; to make rules and regulations therefor; to lay off and district the city for school purposes, and in their discretion to alter the same. That before the grievance complained of they had districted said city, making six school districts, which said districts, as then formed, still exist. That the relator resides within district No. 5. That there is no school house nor any public school in said district No. 5 within the corporate limits; but at the time when, &c., there was, and still is, a public school established and kept by the Board for said district, upon the same terms, as to residents within the city, as other public schools of said city, which school is kept in a house comfortable and commodious, and convenient to the residence of the relator, and all the inhabitants of said district 5, but is situate about 100 feet outside the city limits. That said house was built before the organization of the Board, and said school established and still kept therein at the request of all the people of said district except the relator; and that to discontinue it would operate a hardship upon said inhabitants, as there is no school house within the district, and said Board have not the means speedily to erect a suitable one. That the location of said house a few feet outside of the corporate limits is not of itself a legal impediment to establishing and keeping a school therein by said Board. That the child of the relator might at all proper times have been sent to and instructed in said school. That at the time when, &c., the relator was besides offered the privilege of sending said child to either of the schools in the 4th and 6th districts in said city, said schools not being full, and said board being willing to accommodate as far as in their power. Defendants aver that the relator has not been prevented from sending his child to the public schools of said city, as assumed in said writ; that he hath not sustained injury as charged, &c.

P. P. 16, 26,
27, 28, 18.

On the 2d day of March, 1858, the relator filed his motion to quash said return, and for a peremptory mandamus, for the reason that said return is uncertain, argumentative, irregular, non-issuable and insufficient. Which said motion was sustained by the Court, and said return ordered to be quashed. Thereupon said defendants moved for leave to amend their said return, which the Court refused to grant, and then and there ordered that a peremptory writ of mandamus do issue against said defendants, commanding them to receive said Clara Priscilla Grove into the schools of said 2d or 3d districts and instruct her therein, and said Court then and there rendered judgment against said defendants for costs. To all of which said defendants excepted, and prayed an appeal to this Court.

P. 29. Appellants assign the following errors upon said record :

1st. Error in overruling motion to dismiss petition herein, and in awarding an alternative writ of mandamus thereon.

2d. In directing the service of said writ upon the Superintendent of Schools of said city.

3d. In directing an alias alternative writ to issue.

4th. In overruling motion to quash said alias writ.

5th. In sustaining motion to quash return and in quashing the same.

6th. In refusing leave to amend the return.

7th. In ordering a peremptory writ of mandamus to issue, and rendering judgment against defendants for costs.

8th. Said judgments, orders and proceedings are against law, in contravention of the just authority, powers and duties of appellants, and beyond the jurisdiction of said Court.

JONA. K. COOPER, *for Appellants.*

154
People of the State
of Illinois Circuit

vs

Board of School Inspectors

of said Court.

of the just authority, powers and jurisdiction of said Court, and beyond the jurisdiction

of said Court, orders and proceedings are against law, in contravention

of the just authority, powers and jurisdiction of said Court, and beyond the jurisdiction

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

of said Court, orders and proceedings are against law, in contravention

April 28

Filed April 21, 1838

Attest
J. H. COOPER, Sec. Appellate

STATE OF ILLINOIS, SCT.

IN THE SUPREME COURT AT OTTAWA.

THE BOARD OF SCHOOL INSPECTORS OF THE CITY OF PEORIA,
APPELLANTS,
VS.
THE PEOPLE OF THE STATE OF ILLINOIS EX-RELATIONE HENRY
GROVE,
APPELLEES.

MANDAMUS.

APPEAL FROM PEORIA COUNTY COURT.

JOINDER IN ERROR.—And hereupon come the said appellees, by Charles C. Bonney their Attorney, and say that there is no error, either in the record and proceedings aforesaid or in the rendition of the judgment aforesaid, and pray that the said Supreme Court here may proceed to examine and consider as well the record and proceedings aforesaid as the matters aforesaid above-assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, and so forth.

CHARLES C. BONNEY,

Attorney for Appellees.

POINTS AND REFERENCES.

1. It is respectfully submitted that an alleged former adjudication cannot be tried on a motion to dismiss: that a *motion to dismiss* is irregular and ought not to be entertained on the hearing of a rule to show cause why an alternative mandamus should not be awarded; that the affidavit filed in support of said motion is surprisingly insufficient to sustain even the insufficient cause alleged therein.

2. It is further submitted that in appearing and showing cause why an alternative mandamus should not issue the appellants waived all objections

to the application for the writ, not then insisted upon by them, and admitted whatsoever they did not deny.

3. The Court had full power and authority to direct service of the writ by delivery thereof to the Superintendent of Schools, and had the Court awarded a peremptory writ upon such service and the return made by the Superintendent, such award would not be erroneous.—Tapping on Mandamus, 331, and cases cited.

4. The power of the Court below to make the alternative writ returnable within such time as it may prescribe, is unquestionable. It is necessarily included in the power to award the writ, and is sustained by authority.—Tapping, 329; Statute of Mandamus, Sec. 5.

5. *Prima facie*, every citizen of Peoria is entitled by law and of right to send his children to some school within the city, and convenient and adjacent to his residence therein. Hence the right of the relator may be generally suggested, and every legal intendment is in its favor. It is only when the writ is prayed apparently against common right, that the right of the relator is required to be otherwise set forth.—Act of 1855, Laws of 1855, page 195; Act of 1857, Laws of 1857, page 231; Tapping on Mandamus, pages 319, 321, 379, 380.

In this case, the relator suggests the general right. Avers that there are but two schools in the city convenient or adjacent to his residence therein, and that he is excluded from both by the inspectors; and prays a mandamus to compel the Board to admit his child to one or the other of those schools. Surely it cannot be contended that if the averments of the writ be true, the relator is not entitled to the relief he seeks.

6. The Court can see from the face of the writ that mandamus is the only remedy which the relator can successfully invoke.

7. The jurisdiction of the Peoria County Court is clear.—Act of 1855; Purple's Statutes, 1259.

8. By taking leave to make return to the alternative writ, the Inspectors admit its sufficiency and regularity, and undertake to set up matter of

fact which in law shall be sufficient cause why a peremptory writ should be denied: and they undertake so to plead such matter of fact that issues may be formed thereon for trial.

9. There is no matter of fact alleged in said return, which if true is a sufficient denial of the right of the relator as set forth in the writ.—Tapping, 358, 359, 371.

10. There is no matter of fact alleged in said return upon which a material issue can be formed and tried.—Tapping on Mandamus, 348, 349, et sey. 357.

11. The substance of the return is matter of *opinion* rather than matter of *fact*. The Inspectors have returned their own conclusions, without setting forth the facts on which their conclusions are founded; and they pray the judgment of the Court, not upon the facts they allege, but upon the opinions they entertain. For this among other reasons the return was properly quashed.—Tapping, 351, 352, 353, 355, 359, 372, 373, 377.

12. It can hardly be seriously contended, that it was error for the Court to refuse leave to amend the return made, especially when no particular amendment was offered or suggested. Such leave must necessarily rest wholly in the discretion of the Court.

13. The right and grievance of the relator being sufficiently shown by the writ, and the return being in the language of the motion to quash, manifestly uncertain, argumentative, irregular, non-issuable and insufficient, the judgment for a peremptory mandamus is good and will not be reversed.

14. The statute expressly gives costs, and without the statute the successful party would recover them.—Statute Mandamus; Tapping, 381.

Minoda Jiv yveiqvetoq a yivw oawo tneicifine ad llinla wal ni deivw joat
 eawesi tneit joat jo yvthau dawa hooq ad os oshetobaw yest bwa : boinab ad
 lant wot noewest boinot ad yaw
 a si oaw ni deivw amtor bwa ni bogella joat jo tollaw on ai owaq . 0
 qat—Jivw est ni drot joa na vohetor est jo thgt est jo lantab tneicifine
 . IVS, 638, 838, qunq

School Inspectors
 J. Peave 13-4

From
 Manasnu
 Aapt Buef -

April 27

Filed April 27, 1888

L. Leland
 Clerk

Count the tot totas are ni teth, bawhewo yveicifine ad ylvah awo it . 31
 tneicifine on noth ylvahewo yveicifine tneicifine est lwanu at ovel center of
 taw ylvahewo taw ovel drot bawhewo to bawhewo taw tneicifine
 tawo est jo vohetow est ni ylvah
 yd awoda ylvahewo gneid tottot est jo oawvewig bwa thgt est . 31
 tneicifine on noth ylvahewo gneid tottot est jo oawvewig bwa thgt est . 31
 est, tneicifine bwa oshetobaw non tneicifine, tneicifine, tneicifine ylvahewo
 bawhewo ad tot llin bwa boog si tneicifine yveicifine a tot tneicifine
 a si oaw ni deivw amtor bwa ni bogella joat jo tollaw on ai owaq . 0
 qat—Jivw est ni drot joa na vohetor est jo thgt est jo lantab tneicifine
 . IVS, 638, 838, qunq

THE PEOPLE OF THE STATE OF ILLINOIS, <i>Ex Relatone</i> HENRY GROVE, vs. THE BOARD OF SCHOOL INSPECT- ORS OF THE CITY OF PEORIA.	}	IN THE SUPREME COURT, STATE OF ILLINOIS, THIRD GRAND DIVISION. ON APPEAL FROM PEORIA.
---	---	--

The people ex relat Grove -

ABSTRACT OF RECORD.

P.P. 1 and 2. On the 7th day of January, A. D. 1858, Henry Grove filed his petition in the County Court of Peoria county for a mandamus to issue out of said Court against the "Board of School Inspectors of the City of Peoria."

Petition states that said Grove is a free white citizen of the United States, a resident, householder, and taxpayer in said city, and has a child named Clara Priscilla Grove, aged about 14 years, residing with him, whom he wishes to send to and have instructed in the public schools in said city. That there are five large school houses in said city, in each of which schools are taught under the control of said Board. That the houses in the 2d and 3d districts of said city are most convenient to petitioner, and there is room enough in them for his child, to the school taught in one of which he claims the right to send her. That he has demanded admittance for her into one of them and been refused by the Board. That he knows of no valid reason why she should be excluded therefrom. Prayer of petition: That a mandamus issue to the Board, requiring them to receive and instruct said child in some one of the schools in said 2d or 3d districts.

P. P. 2, 3. On filing which petition, said Court ordered that the defendants show cause on the next day at 10 o'clock A. M. why the prayer of the petition should not be granted, a copy of which order was served on the same day, by reading to A. P. Bartlett, President, and John Smith, Secretary of said Board.

On the 8th day of January the defendants move to dismiss the said petition,
P. P. 3, 4, 5. upon affidavit filed, setting forth that the subject matter of the petition has been already fully adjudicated in the Circuit Court of Peoria county. Which motion
P. P. 21, 22, 23, 24. is overruled by the Court, and said Court thereupon orders that an alternative writ of mandamus issue to said Board, returnable to the February term of said Court, requiring said Board to receive said Clara into one of the schools of the 2d or 3d districts of said city, or show cause to the contrary, and that said writ be served on Jacob Gale, Esq., Superintendent of Public Schools for said city.

P. P. 5, 6, 7. January 14, 1858, alternative writ issued. Return thereto filed by said Gale

February 1st, 1858: That he is not a member of said Board, nor a party defendant to said suit. That he has no control over said Board, nor authority to appear and answer for them, and submitting that no proceeding can be had against him therein.

February 2, 1858, order of Court directing an alias alternative writ to issue in said cause, and to be served on the President and Secretary of said Board. Which said alias writ issued the same day and sets out: That it having been, on the 7th day of January, 1858, represented to said Court that Henry Grove is a citizen, &c., of said city of Peoria, and hath a child whom he has a right to have received and instructed in one of the public schools in said city adjacent to his residence. That said Board have laid off a school district in said city in which there is no public school house or school within the city limits, and in which district said Grove resides. That there are two public school houses in said city—one in district No. 2 and one in district No. 3—both of which are adjacent to the residence of said Grove. That these are the only public school houses within said city adjacent or convenient to him. That there is no sufficient reason why said Clara should not be received and instructed in one of them, and that said Board, without reasonable cause, refuse to admit her into either. Said writ then commands said Board to admit said Clara into one or other of said schools, or show cause to the contrary by the 5th of February instant.

February 5, 1858, defendants move to quash said alias writ,

1st. Because it is returnable within ten days.

2d. Because it should have been returnable to the next term of Court.

3d. Because it does not show the relator entitled to the relief sought.

4th. Because defendants are not required by law to receive said Clara into the schools of either said 2d or 3d district.

5th. Because it does not appear that said relator has no other specific legal remedy.

6th. For want of jurisdiction.

7th. Said writ is otherwise informal and insufficient.

Which said motion is overruled by the Court, and defendants except and ask that their bill of exceptions may be signed and sealed by the Court, which is done.

February 13th, 1858, defendants file their return to said alias alternative writ,

in substance as follows: That it is true said Henry Grove is a resident, &c., of said city, and hath a child, whom, in common with other children in said city, and on the same terms, &c., and not otherwise, he hath a right to send to and have instructed in some one of the public schools of said city, but deny his right to send her to either of the schools in said 2d or 3d district, or to the relief claimed. That said relator is not, nor was he when said writ issued, a resident of either of said districts, and that by law and the regulations of the Board a resident of one school district is not entitled against the consent of the Board to send his child to the public schools of another district. That the residents of each school district who apply in due season are entitled to have their children received and taught in the public schools of the district where they respectively reside, and before children from outside any such district are admitted into such school. That at the time when, &c., all the public schools in said 2d and 3d districts were full to overflowing with the children and pupils resident in said districts respectively; and so that said Clara could not have been received into either without first turning out some one already admitted, and who had a prior and better right therein than herself. Defendants admit that said Board refused to admit said Clara into either of said schools; but deny that in so doing they acted without reasonable cause. That said Board is by law vested with authority over the public schools of said city; to make rules and regulations therefor; to lay off and district the city for school purposes, and in their discretion to alter the same. That before the grievance complained of they had districted said city, making six school districts, which said districts, as then formed, still exist. That the relator resides within district No. 5. That there is no school house nor any public school in said district No. 5 within the corporate limits; but at the time when, &c., there was, and still is, a public school established and kept by the Board for said district, upon the same terms, as to residents within the city, as other public schools of said city, which school is kept in a house comfortable and commodious, and convenient to the residence of the relator, and all the inhabitants of said district 5, but is situate about 100 feet outside the city limits. That said house was built before the organization of the Board, and said school established and still kept therein at the request of all the people of said district except the relator; and that to discontinue it would operate a hardship upon said inhabitants, as there is no school house within the district, and said Board have not the means speedily to erect a suitable one. That the location of said house a few feet outside of the corporate limits is not of itself a legal impediment to establishing and keeping a school therein by said Board. That the child of the relator might at all proper times have been sent to and instructed in said school. That at the time when, &c., the relator was besides offered the privilege of sending said child to either of the schools in the 4th and 6th districts in said city, said schools not being full, and said board being willing to accommodate as far as in their power. Defendants aver that the relator has not been prevented from sending his child to the public schools of said city, as assumed in said writ; that he hath not sustained injury as charged, &c.

P. P. 16, 26,
27, 28, 18.

On the 2d day of March, 1858, the relator filed his motion to quash said return, and for a peremptory mandamus, for the reason that said return is uncertain, argumentative, irregular, non-issuable and insufficient. Which said motion was sustained by the Court, and said return ordered to be quashed. Thereupon said defendants moved for leave to amend their said return, which the Court refused to grant, and then and there ordered that a peremptory writ of mandamus do issue against said defendants, commanding them to receive said Clara Priscilla Grove into the schools of said 2d or 3d districts and instruct her therein, and said Court then and there rendered judgment against said defendants for costs. To all of which said defendants excepted, and prayed an appeal to this Court.

P. 29. Appellants assign the following errors upon said record :

1st. Error in overruling motion to dismiss petition herein, and in awarding an alternative writ of mandamus thereon.

2d. In directing the service of said writ upon the Superintendent of Schools of said city.

3d. In directing an alias alternative writ to issue.

4th. In overruling motion to quash said alias writ.

5th. In sustaining motion to quash return and in quashing the same.

6th. In refusing leave to amend the return.

7th. In ordering a peremptory writ of mandamus to issue, and rendering judgment against defendants for costs.

8th. Said judgments, orders and proceedings are against law, in contravention of the just authority, powers and duties of appellants, and beyond the jurisdiction of said Court.

JONA. K. COOPER, *for Appellants.*

154
People of the State of
Illinois ex rel etc

vs
Board of School Trustees

of said Court.

JONA. K. COOPER, for Appellants.

of the just authority, powers and duties of appellants, and beyond the jurisdiction
Sd. Said judgments, orders and proceedings are against law, in contravention
ment against defendants for costs.

1st. In ordering a peremptory writ of mandamus to issue, and rendering judg-

ment. In refusing leave to amend the return.

2d. In sustaining motion to quash return and in quashing the same.

3d. In overruling motion to quash said writ.

3d. In directing an alias alternative writ to issue.

and etc.

2d. In directing the service of said writ upon the Superintendent of Schools of
said City.

1st. Error in overruling motion to quash petition herein, and in awarding an

alternative writ of mandamus thereon.

Appellants assign the following errors upon said record:

which said errors are excepted, and prayed an appeal to this Court.

then and there rendered judgment against said defendants for costs. To all of
into the schools said 2d or 3d districts and instructed for therein, and said Court

against said defendants, commanding them to receive said Clara Priscilla Grove
to ground, and then and there ordered that said mandamus be issued.

defendants moved for leave to amend their said return, which the Court refused
sustained by the Court, and said return ordered to be quashed. Thereupon said

representative, irregular, non-issuable and insufficient. Which said motion was
and for a peremptory mandamus, for the reason that said return is uncertain, et-

On the 2d day of March, 1838, the relator filed his motion to quash said return.

Filed Apr 21, 1838
As returned
Clerk

HENRY GROVE, <i>Plaintiff in Error,</i> <i>vs.</i> THE BOARD OF SCHOOL INSPECTORS, IN THE CITY OF PEORIA, <i>Defendants in Error.</i>	}	<i>In the Supreme Court,</i> APRIL TERM, 1858. <i>Error to Peoria.</i>
---	---	---

The Plaintiff in error sued out of the circuit court of Peoria County a writ of certiorari, directed to the Board of School Inspectors of the City of Peoria. The writ followed the Petition in substance.

The Petition was as follows:

To the Hon. Elihu N. Powell, Judge of the Circuit Court of Peoria Co., in the State of Illinois:—

Your Petitioner, Henry Grove, of the city and county of Peoria, and State of Illinois, respectfully represents that he is now, and for the six years last past has been a citizen, a resident, householder and tax-payer in the said city of Peoria, that he is the owner of lots 21 & 22 in Ashael Hale's addition to the City of Peoria, in said city, with the improvements thereon. That he has a family, consisting of a wife and two children, that he, with his said family, has resided on said lots during the said six years last past, that he and his said children are free white inhabitants of the United States of America, and were all born within the United States. That the eldest of his children, named Clara Priscilla Grove, is now over twelve years of age, and less than fifteen years. That he desires to educate his said child, and claims the legal and moral right to send his child to the public schools in said city of Peoria. That said Clara Priscilla Grove is also desirous and wishes to attend said public schools in said city of Peoria, but is now and has been prevented and hindered from so doing by the direction, order and action of the Board of School Inspectors in the city of Peoria.

He further states, that to the best of his knowledge, information and

1215-28

belief, he knows of no legal, valid or moral objection to his said child attending and receiving instruction in the public schools in said City of Peoria.

He further states, that some months since, as he is informed and verily believes, that the Board of School Inspectors in the City of Peoria, passed an order, direction, resolve or decree, and spread the same on the maps, plats and records of their proceedings, forbidding and prohibiting your petitioner from sending his said child to the public schools in said City of Peoria. That the name of your petitioner and of his said child is not probably mentioned in said order; but the premises in which your petitioner resides, is marked on said record and map as being excluded from any and all the several school districts in said city.

That your petitioner has sent his said child to one of the public schools in said city, since the passage of said order, and requested admittance to said public schools, in said city; she was prohibited by the teachers, under said order, from entering or receiving instruction in said school.

He further states, that he cannot state the precise terms of said order, nor of the marks on their said maps or plats, but he states that said orders, and the entry on said maps or plats so made by said Peoria School Inspectors, is unjust, oppressive, illegal, tyrannical, irregular and beyond the jurisdiction of said Board of School Inspectors.

That in the adoption and passage of said order, said Board of School Inspectors, as he verily believes, exceeded their lawful power and jurisdiction, and thereby excluded his said child from said schools.

He further states, that so far as his knowledge extends, the law does not provide for an appeal from said order, and he has no remedy to have the same set aside, cancelled or reversed, except by the order of your Honor to allow a writ of *certiorari* to be issued in due form of law, directed to said School Inspectors, directing and commanding them to certify and bring the said record of their proceedings in that behalf, and their said marks and lines on their said maps and plats, before the Honorable the

Circuit Court of Peoria County, that said order and entries may be reversed, set aside, and wholly for naught esteemed; which he prays may be granted.

HENRY GROVE.

To this writ the Defendants made return.

1. That the Board had adopted a rule that a scholar residing in one district, shall not attend a school in any other district, without authority from the Superintendent.

2. That one Ira Smith, from the 5th district, had presented a petition praying that the Board might maintain a school outside of the city limits, for the accommodation of the scholars in the 5th district, which was done, the school established, and a teacher employed.

3. Giving boundaries of districts, accompanied by a map with districts and boundaries marked.

4. Showing that there is no school house in the 5th district, being the district in which petitioner resides.

On the filing of the return, the petitioner entered a motion, That the Court order, direct and decree that all the entries, marks, lines or records made, rendered or placed by the Defendants on their records, books, maps, or plats, prohibiting petitioner from sending his child to the public schools in said City of Peoria, be reversed, set aside, cancelled and wholly for naught esteemed. And that the Court vacate, reverse, set aside and cancel all orders, entries, marks or lines made by said Defendants in their records, maps or plats, compelling him to send his child outside of the City limits.

2. The Court overruled the motion and dismissed the petition, and Plaintiff excepted.

The Plaintiff now assigns the following errors upon the record.

1. The Court erred in overruling the motion of the Plaintiff.
2. The Court erred in dismissing the Petition.
3. The Court should have sustained the motion made by Plaintiff below.

GROVE, *in P. P.*

1885
C. W. [unclear]
[unclear] is no school house in the 5th district, being the

for the second Division of the schools in the 5th district, which was done.

April 27 -
Filed April 27. 1858.
S. Kellogg Clerk

STATE OF ILLINOIS, SCT.

IN THE SUPREME COURT AT OTTAWA.

THE BOARD OF SCHOOL INSPECTORS OF THE CITY OF PEORIA,
APPELLANTS,
VS.
THE PEOPLE OF THE STATE OF ILLINOIS EX-RELATIONE HENRY
GROVE,
APPELLEES.

MANDAMUS.

APPEAL FROM PEORIA COUNTY COURT.

JOINDER IN ERROR.—And hereupon come the said appellees, by Charles C. Bonney their Attorney, and say that there is no error, either in the record and proceedings aforesaid or in the rendition of the judgment aforesaid, and pray that the said Supreme Court here may proceed to examine and consider as well the record and proceedings aforesaid as the matters aforesaid above-assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, and so forth.

CHARLES C. BONNEY,

Attorney for Appellees.

POINTS AND REFERENCES.

1. It is respectfully submitted that an alleged former adjudication cannot be tried on a motion to dismiss: that a *motion to dismiss* is irregular and ought not to be entertained on the hearing of a rule to show cause why an alternative mandamus should not be awarded; that the affidavit filed in support of said motion is surprisingly insufficient to sustain even the insufficient cause alleged therein.

2. It is further submitted that in appearing and showing cause why an alternative mandamus should not issue the appellants waived all objections

Caopau

Tapping
[1261573]

The Court must show that there is no other specific remedy or effectual

Grant on corp 280 70p Contr excuse themselves
for want of means
15 Ill 502

Tappin 898-9

Manning

It is further submitted that an alleged matter of substance
cannot be raised upon a motion to dismiss: that a motion to dismiss is not to be used as a motion to present a case for consideration of the merits of the cause, but is to be used to present a case for consideration of the merits of the cause, but is to be used to present a case for consideration of the merits of the cause.

POINTS AND REFERENCES

CHURCHES C. BOYER

It is further submitted that an alleged matter of substance
cannot be raised upon a motion to dismiss: that a motion to dismiss is not to be used as a motion to present a case for consideration of the merits of the cause, but is to be used to present a case for consideration of the merits of the cause.

THE PEOPLE OF THE STATE OF ILLINOIS EX-VERSUS HENRY

THE PEOPLE OF THE STATE OF ILLINOIS EX-VERSUS HENRY

THE PEOPLE OF THE STATE OF ILLINOIS EX-VERSUS HENRY

THE PEOPLE OF THE STATE OF ILLINOIS EX-VERSUS HENRY

THE PEOPLE OF THE STATE OF ILLINOIS EX-VERSUS HENRY

IN THE SUPREME COURT OF ILLINOIS

STATE OF ILLINOIS, PLAINTIFF

to the application for the writ, not then insisted upon by them, and admitted whatsoever they did not deny.

3. The Court had full power and authority to direct service of the writ by delivery thereof to the Superintendent of Schools, and had the Court awarded a peremptory writ upon such service and the return made by the Superintendent, such award would not be erroneous.—Tapping on Mandamus, 331, and cases cited.

4. The power of the Court below to make the alternative writ returnable within such time as it may prescribe, is unquestionable. It is necessarily included in the power to award the writ, and is sustained by authority.—Tapping, 329; Statute of Mandamus, Sec. 5.

5. *Prima facie*, every citizen of Peoria is entitled by law and of right to send his children to some school within the city, and convenient and adjacent to his residence therein. Hence the right of the relator may be generally suggested, and every legal intendment is in its favor. It is only when the writ is prayed apparently against common right, that the right of the relator is required to be otherwise set forth.—Act of 1855, Laws of 1855, page 195; Act of 1857, Laws of 1857, page 231; Tapping on Mandamus, pages 319, 321, 379, 380.

In this case, the relator suggests the general right. Avers that there are but two schools in the city convenient or adjacent to his residence therein, and that he is excluded from both by the inspectors; and prays a mandamus to compel the Board to admit his child to one or the other of those schools. Surely it cannot be contended that if the averments of the writ be true, the relator is not entitled to the relief he seeks.

6. The Court can see from the face of the writ that mandamus is the only remedy which the relator can successfully invoke.

7. The jurisdiction of the Peoria County Court is clear.—Act of 1855; Purple's Statutes, 1259.

8. By taking leave to make return to the alternative writ, the Inspectors admit its sufficiency and regularity, and undertake to set up matter of

fact which in law shall be sufficient cause why a peremptory writ should be denied: and they undertake so to plead such matter of fact that issues may be formed thereon for trial.

9. There is no matter of fact alleged in said return, which if true is a sufficient denial of the right of the relator as set forth in the writ.—Tapping, 358, 359, 371.

10. There is no matter of fact alleged in said return upon which a material issue can be formed and tried.—Tapping on Mandamus, 348, 349, et sey. 357.

11. The substance of the return is matter of *opinion* rather than matter of *fact*. The Inspectors have returned their own conclusions, without setting forth the facts on which their conclusions are founded; and they pray the judgment of the Court, not upon the facts they allege, but upon the opinions they entertain. For this among other reasons the return was properly quashed.—Tapping, 351, 352, 353, 355, 359, 372, 373, 377.

12. It can hardly be seriously contended, that it was error for the Court to refuse leave to amend the return made, especially when no particular amendment was offered or suggested. Such leave must necessarily rest wholly in the discretion of the Court.

13. The right and grievance of the relator being sufficiently shown by the writ, and the return being in the language of the motion to quash, manifestly uncertain, argumentative, irregular, non-issuable and insufficient, the judgment for a peremptory mandamus is good and will not be reversed.

14. The statute expressly gives costs, and without the statute the successful party would recover them.—Statute Mandamus; Tapping, 381.

13-4-49

Inspectors

vs

Drue

cessful party would recover them.—Statute Mandamus; Tapping, 381.

judgment for a peremptory mandamus is good and will not be reversed.

14. The statute expressly gives costs, and without the statute the answer is nearly uncertain, argumentative, irregular, non-issuable and insufficient, the writ, and the return being in the language of the motion to quash, mandamus.

15. The right and grievance of the relator being sufficiently shown by what is in the specification of the Court.

amendment was offered or suggested. Such leave must necessarily rest to refuse leave to amend the return made, especially when no particular

16. It can hardly be seriously contended, that it was error for the Court properly quashed—Tapping, 381, 382, 383, 385, 386, 373, 373, 317. opinions they entertain. For this among other reasons the return was the judgment of the Court, not even the facts they allege, but upon the thing forth the facts on which their conclusions are founded; and they say of law. The Inspectors have received their own conclusions, without set-

Mandamus

Filed Apr 27, 1858
A. Belmont
Clerk

may, 387.

17. There is no matter of fact alleged in said return upon which a mandamus can be formed and returned—Tapping on Mandamus, 348, 349, et

bing, 358, 359, 371.

sufficient denial of the right of the relator as set forth in the writ.—Tapping, 3.

There is no matter of fact alleged in said return, which if true is a fact which in law shall be sufficient cause why a peremptory writ should

may be formed thereon for trial.
be denied; and they undertake so to plead such matter of fact that issues fact which in law shall be sufficient cause why a peremptory writ should

154 = 49

The People ex Relat

Henry Grove

vs

The Board of School Dir
of the City of Peoria

154

1858

12615

X

Refused