


No. 14358

Supreme Court of Illinois

Lowe.

vs.

People

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

14358

No. 3

PEOPLE'S CAUSES.

*Law
vs
People*

1852

1852

1
The people of the State of Illinois

By the grace of God free and
Independent

To all whom these presents shall come
Greeting: know ye that we having caused to be
inspected the Records and proceedings now con-
-aining in the office of our Clerk of our Circuit
Court in and for our County of Randolph do find
certain Records and Proceedings in the words
and figures following to wit:

United States of America
State of Illinois
Randolph County

pleas before the Honorable
Charles R. Starr Judge of the District Judicial Circuit
and presiding Judge of the Randolph County
Circuit Court in the State of Illinois at a Term of
said Court begun and held at the Court House in
Randolph City in the County and State aforesaid on
the third Monday (the same being the nineteenth
day) of December in the year of our Lord one
thousand Eight hundred and fifty eight
and of the year of the Independence of the United
States of America the Eighty Third

Present Honorable Charles R. Starr Judge as aforesaid

Are Beckett State Atty Genl

David R. Eusham Sheriff of Randolph County

Philip Worcester Clerk of the Randolph County Circuit Court

And thereupon the said Sheriff made returned into open Court the writ of venire facias heretofore directed therein under the seal of the County Court of Hamilton County as personally served upon the following named persons to wit:

John C. Schober John W. Pierce, William F. Dickson
 Charles Skinner Basalique Blair Morris Miller
 Henry Moe Nathan Lewis Daniel Beebe
 Isaac S. Lincoln Roswell C. Nichols Andrew Wiley
 William Stabler Peter W. Katz John Flajvel
 Charles Lusher Jonathan Richmond Alphonzo Miller
 Archibald Morrison Nathaniel Drayer John B. Welch
 John H. Robinson and George W. Hoyle.

Personally to the said appear before the Circuit Court of said County to the holders at the Court House in Hamilton City in said County on the third day (the twentieth day) of December A.D. 1854 at or before the hour of Eleven O'clock in the forenoon of said day to serve as Grand Jurors. Thereupon said Jurors were ordered to be called and being so called the following named persons answered to their names and gave their attendance to wit:

William F. Dickson, Charles Skinner, Basalique Blair
 Morris Miller Henry Moe Nathan Lewis
 Daniel Beebe Isaac S. Lincoln Roswell C. Nichols
 Andrew Wiley William Stabler John Flajvel
 Charles Lusher Jonathan Richmond Alphonzo Miller

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Archibald Morrison, Nathaniel Draper John B. Hetch^{and}
 John H. Dawson^{and} John C. Schoby John W. Peice
 Peter Munkastz^{and} George W. Hoyle. For good cause
 shown to the Court were excused from serving on
 said Jury. Whereupon Archibald Morrison of said
 panel was by the Court appointed Foreman of said
 Grand Jury. And the Foreman and each and every
 of said Grand Jurors were then duly sworn accor-
 -ding to Law and after receiving the charge of the
 Court retired to enter upon the discharge of their
 duties

And afterwards to wit: on the 30th day of
 December A.D. 1854 it being also one of the
 regular days of the December Term of our
 said Circuit Court for the said year A.D. 1854
 And the said Court being then duly organized
 and sitting in open Court the following pro-
 -ceedings were had and entered of Record
 by the said Court which is in the words and figures
 following to wit:

The People of the State of Illinois

vs
 Vincent J. Lowe

Defendant for obstructing
 Public Highway

Said now at this day came
 the Grand Jury into open Court and present to the
 Court a true Bill of Indictment against the above
 named defendant Vincent J. Lowe for for
 obstructing a Highway which said

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Indictment was endorsed "A True Bill"
"Archibald Morrison Foreman" of the Grand
Jury

State of Illinois }
 Hamilton County }
 Of the December Term of the
 Hamilton County Circuit Court
 in the year of Our Lord One
 Thousand Eight Hundred and Fifty Eight

The Grand Jurors chosen selected and sworn
 in and for the County of Hamilton in the name and by
 the authority of the people of the State of Illinois upon
 their oaths present that Vincent J. Lorr late of said
 County of Hamilton on the first day of June in the
 year of our Lord One Thousand Eight Hundred
 and Fifty Eight at and within the County of Hamilton
 in the State of Illinois aforesaid, and on divers days
 and times between that day and the ratting of this
 indictment, a public highway, leading from
 Vincennes in the State of Indiana to Chicago in the
 State of Illinois, at a place near the point at which
 Sections Seventeen Eighteen Nineteen and Twenty come
 together in Township Thirty one North Range fourteen
 East, unlawfully did obstruct and then and there in
 upon and across the said Public Highway did unlawfully
 build and erect a certain fence thereby rendering the
 said public Highway inclosed to pass to the
 great damage of all the good citizens of said State
 going returning passing and repassing along the
 said public Highway, contrary to the form of the
 Statute in such case made and provided and
 against the peace and dignity of the said People of
 the State of Illinois

Simon D. Swift

States Atty

On the back of which Indictment is the following endorsement.

"A. True Bill"

At Morrison Foreman of the Grand Jury
Metropes. David Lyndell, Ct. S. Jail, Wm. Nichols

And afterwards So this on the 2^d day
of January. And also the following proceedings
were had and Entered of Record

Sanbalee Circuit Court January Term A.D. 1860
United States of America
State of Illinois
Sanbalee County

Read before the Honorable
Charles R. Starrs Judge of the Twelfth Judicial
Circuit and presiding Judge of the Sanbalee
County Circuit Court in the State of Illinois
at a Term of said Court begun and held at
the Court House in Sanbalee City in the County
and State aforesaid on the First Monday (the same
being the second day) of January in the year of our
Lord One Thousand Eight Hundred and Sixty
and of the year of the Independence of the
United States of America the Eighty Third
Present Hon Charles R. Starrs Judge of the Twelfth Judicial Circuit

Charles J Beattie States Atty of Eleventh Judicial Circuit
 Francis K. Parkman Sheriff of Kawlake County,
 Philip Worcester Clerk of the Kawlake County Circuit Court
 And afterwards to wit: on the
 30th day of January A.D. 1860. It being one of
 regular the days of the January Term of said Court
 for the said year A.D. 1860 and the said Court
 being then duly organized and sitting in open
 Court for the transaction of business the
 following proceedings were had and entered
 Record by the said Court in the words and
 figures following to wit:

The People of the State of Illinois }
 vs } Indictment for obstructing
 Vincent J. Dodd } Public Authority

And now at this day comes the
 said defendant in his own proper person as well as by
 J. H. Paddock his attorney and enters his motion to
 quash the Indictment in this cause

And afterwards to wit: on the
 31st day of January A.D. 1860 It was being one
 of the regular days of the January Term of
 said Court for the said year A.D. 1860 and the
 said Court being then duly organized and sitting
 in open Court for the transaction of business the
 following proceedings were had and entered
 of record by the said Court which are
 in the words and figures following to wit:

the people of the State of Illinois
 vs
 Indictment for obstructing
 Public Administration
 Vincent J. Lowe

And now at this day comes C. J. Beattie State Attorney
 and the said dependent also comes in his own proper
 person as well as by J. H. Paddock his attorney and after
 hearing the arguments of course upon said dependents
 motion heretofore entered herein to quash the Indictment
 in this case. The Court being fully advised on the
 premises it ordered that said motion be and it is
 granted. And be the said dependent being arraigned
 at the Bar of this Court in due form of Law waived
 being furnished with a copy of said Indictment
 and forth with being demanded of and concerning
 said his demeanor alleged against him in said
 Indictment how he would acquit himself thereof
 ye Plea in this behalf says Not Guilty in manner
 and form as charged in said Indictment, and
 of this he puts himself upon the Country and the said
 people by their said attorney do the like. Whereupon
 on motion of said dependent required by appointment
 it is ordered by the Court that this case be and it
 is continued, and that said dependent do enter
 into Recognizance herein for his appearance at the
 next Term of Court with good and sufficient Security
 in the sum of Fifty Dollars. Whereupon be it remembered
 that on this Thirty First day of January A.D. 1860
 personally appeared in open Court Vincent J. Lowe

as Principal and James Byrnes as security and
 acknowledged themselves jointly and severally to one
 and the indebted to the people of the State of Illinois
 for the use of the Inhabitants of Kankakee County in
 the penal sum of Fifty Dollars good and lawful
 money of the United States of America to be levied
 and made of their respective goods and chattels, lands
 and tenements if default be made in the conditions
 following. To-wit: That if the said dependent Vincent
 J. Goro shall personally be and appear before the
 Circuit Court of Kankakee County in the State of
 Illinois on the first day of the next term thereof to be
 holden at the Court House in Kankakee City County
 and State aforesaid. On the second Monday of
 April next the same being the sixth day of April in
 the year of Our Lord One Thousand Eight Hundred
 and Sixty then and there to answer unto the People
 of the State of Illinois concerning a certain Indictment
 preferred against him by the Grand Jury of Kankakee
 County and now pending and undetermined
 in said Court for the Misdemeanor of Obstructing
 Public Highway and shall then and there remain
 in continued attendance upon the said Court
 from day to day until said Court shall be disposed
 of and shall not depart thence without leave of said
 Court and shall abide by and perform the order
 and Judgment of said Court in the premises
 then and in that case this Recognizance to be null
 and void otherwise to be and remain in full force

and effect and with this The said Vincent & Dove
 as principal and James Byrnes as security, signified
 themselves to be content thereto by order of Court &
 Entered of Record

And afterwards To Wit: on the
 9th day of April 1860 the following proceedings
 were had and Entered of Record

Haukalee County Circuit Court of
 The April Term thereof 1860

United States of America

State of Illinois }
 Haukalee County }

Pleas before the Honorable

Charles R. Starr Judge of the Tenth Judicial Circuit
 and sole presiding Judge of the Haukalee County Circuit
 Court at a term thereof begun and held at the Court
 house in Haukalee City in the County and State aforesaid
 on the Second Monday (the same being the sixth day)
 of April in the year of our Lord One Thousand
 Eight Hundred and Sixty and of the year of the
 Independence of the United State of America the Eighty
 Third.

Present the Hon Charles R. Starr Judge of the 20th Judicial Circuit
 Court J. Beattie State Attorney 20th Judicial Circuit
 and R. E. Hamman County Clerk Haukalee County
 and Philip Horvath Clerk of Circuit Court of Haukalee
 County

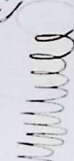
And afterwards To Wit: On the 10th day of April A.D. 1860 It being one of the regular days of the term of said Court for the said year A.D. 1860, and the said Court being then duly organized and sitting in open Court for the transaction of Business the following proceedings were had and entered of Record by said Court in the words and figures following To Wit:

The People of the State of Illinois } Indictment for
 vs } Obstructing Public
 Jurant J. G. Goss } Highway

Such now at this day comes C. J. Beattie State Attorney and the said defendant also comes in his own proper person as well as by J. H. Paulson his attorney and by the agreement of said parties it is ordered by the Court that the trial of this cause be and it is set for to commence thereupon said defendant enters his motion to continue this cause and after hearing the argument of Counsel upon said motion the Court being fully advised in the premises it is ordered that the same be and it is presented thereupon Admonished a Sheriff on the part of the defendant in this cause and three times solemnly called but comes not or any person for him but of this he fails and makes default which by order of Court is Entered of Record, and in motion of said defendant it is ordered by the Court that a writ of Attachment do issue herein

against Said Witness for contempt of Court in not attending as such Witness when lawfully summoned so to do returnable forthwith which is done

And afterwards To Wit. In the 12th day of April A.D. 1860 It also being one of the regular days of the April Term of said Court for the said year A.D. 1860 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in the words and figures following To Wit:

The People of the State of Illinois } Indictment for obstructing
vs } Highways
Vincent D. Gove }
} 

And now at this day comes C. J. Beattie State attorney and the said defendant also comes in his own proper person as well as by J. H. Paddock his attorney and the said defendant being now furnished with a copy of said Indictment prepared against him in this case, and also with a list of the names of the Witnesses to be sworn on the trial of said cause together with a list of the Petit Jurors of this present term of this present Court, and the being arraigned at the Bar of this Court in due form of Law and being forthwith demanded of and concerning said Indictment alleged against him in said Indictment that he would

accept finally thereof for plea in this behalf being he
 is not guilty in manner and form as alleged
 against him in said indictment and of this he
 puts himself upon the Country and the People by
 said State attorney doth the like. Whereupon by the
 agreement of said parties it is ordered by the Court
 that this cause do now proceed to trial and that a
 Jury come for that purpose. Whereupon came the Jurors
 of a Jury of good and lawful men to wit
 John Blackford, William Townsend, Humphrey Tucker, Abner Coring,
 Thomas Glaf, Big Sutherland, James R. Walker, Gustavus Hosmer,
 Amos H. Stone, James Gandy, James M. Coggins, W. Merwin Woodard
 who being duly sworn and sworn to well and truly
 try the issue herein joined between the parties hereto and
 a true verdict give according to Law and the Evidence
 After hearing the Evidence the day addressed, it being
 time to adjourn by the agreement of said parties
 it is ordered by the Court that said Jury do here
 leave to separate and meet the Court here to
 tomorrow morning at the coming in of Court

And afterwards to wit on
 the 13th day of April A.D. 1863 It was being one
 of the regular days of the April Term of said Court
 for the said year A.D. 1863 and the said Court
 being then duly organized and sitting in open
 Court for the transaction of business the following
 proceedings were had and entered of Record
 by the said Court in the words and figures
 following to wit:

The People of the State of Illinois
 vs
 Vincent F. Lome

Indictment for Obstructing
 Highway

And now at this day again
 came the parties hereto as aforesaid and the Jury
 heretofore Empanelled herein also again came and
 after hearing the recross and the Evidence the
 Arguments of Counsel and receiving the instructions
 of the Court Retire in Charge of a sworn officer of
 this Court to consider of their verdict and now it being
 time to adjourn for the day it is ordered by the Court
 that said Jury be now brought into Court and said
 Jury returning into open Court say they cannot agree
 upon a verdict in this cause, And the Court being
 fully advised in the premises it is ordered that said
 Jury be and they are discharged from further service in this
 suit. And it is also further ordered by the Court
 that the Recognizance heretofore at the last term of
 this Court entered herein be and it is continued and
 this cause be also continued

And afterwards to wit on the
 3^d day of September A.D. 1868 the following proceedings
 were had and Entered of Record

Hankook County Circuit Court of the
 September Term thereof A.D. 1868
 United States of America

State of Illinois

Hankook County Plea before the Hon. Charles

R. Starr Judge of the Twentieth Judicial Circuit and sole
 presiding Judge of the Kawakae County Circuit
 Court at a Term thereof begun and held at the Court
 House in Kawakae City in the County and State
 aforesaid on the First Monday the same being the
 third day of September in the Year of Our Lord one
 thousand Eight hundred and Sixty and of the year
 of the Independence of the United States the Eighth
 Month

Present Was Charles R. Starr Judge of the 20th Judicial Circuit
 Ara Baultlett who was appointed State Atty this Term
 Harris R. Durward Sheriff of Kawakae County
 Allen Philip Worcester Clerk of the Circuit Court of
 Kawakae County

And afterwards do this on the
 4th day of September A.D. 1860 It was Verdy one of the
 regular days of the September Term of said Court
 for the said year A.D. 1860 and the said Court being
 then duly organized and sitting in open Court
 for the transaction of Business the following
 proceedings were had and Entered of Record by the
 said Court in the Words and figures following to wit
 The People of the State of Illinois

vs
 Vincent S. Lorro
 Indictment for obstructing
 Highway

And now at this day comes
 Ara Baultlett the State Attorney and the defendant
 also comes by C. A. Lake his attorney and the Court
 being fully advised in the premises of the agreement

of the parties it is ordered by the Court that this cause
be and it is continued

And afterwards 20th Feb: on the
12th day of January A.D. 1861 the following proceedings
were had and Entered of Record,

Kankakee County Circuit Court
January Term 1861

United States of America

State of Illinois vs

Kankakee County Pleas before the Honorable

Charles R. Starr Judge of the Twentieth Judicial Circuit
and presiding Judge of the Kankakee County
Circuit Court in the State of Illinois, at a Term of said
Court begun and held at the Court House in Kankakee
City in the County and State aforesaid on the first Monday
(the same being the seventh day) of January in the year of
Our Lord One Thousand Eight Hundred and Sixty
one and of the year of the Independence of the
United States the Eighty First

Present and Charles R. Starr Judge of the Twentieth Judicial Circuit

Charles Wood States Atty " " "

James W. Barry of Sheriff of Kankakee County

Allen Elm Courts Clerk of the Kankakee County Circuit Court

And afterwards 20th Feb: on

The 12th day of January A.D. 1861 J. Barry one of
the regular days of the January Term of said Court
in the said year A.D. 1861 and the said Court being
then duly organized and sitting in open Court for

the transaction of business the following proceedings were had and Entered of Record by the said Court in the Books and Pages following to wit:

The People of the State of Illinois }
vs }
Vincent J. Love } Indictment for Obstructing Highway

Said word at this day comes the People by their Attorney C. A. Hood and the defendant also comes by Paddock & Murray his attorneys and by the agreement of the parties it is ordered that this cause be set for next Tuesday Morning

Said afterwards to wit: on the 10th day of January A.D. 1861 It also being one of the regular days of the January Term of the said Court for the said year A.D. 1861 and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and Entered of Record by the said Court in the Books and Pages following to wit:

The People of the State of Illinois }
vs }
Vincent J. Love } Indictment for Obstructing Highway

Said word at this day comes the People by C. A. Hood their Attorney and the defendant also comes as well in his own proper person as by Paddock & Murray his Counsel and by the agreement of the parties it is ordered by the Court that this cause do

and proceed to trial and that a Jury do now come
 for that purpose whereupon came the Jurors of a
 Jury of good and Lawful men to wit
 Jefferson Wood, James Eaton J. W. Miller, David Shannon
 Alexander Bonchans, U.S. Edmunds, Jacob W. Kelly, James W. Peay
 Emma Hall, Daniel B. Reed J. D. Labrie and James W. Hammett
 who being duly empanelled and sworn will and
 truly to try the issue joined between the People of the
 State of Illinois and the defendant and give
 verdict according to the Law and the Evidence
 after hearing the Evidence addressed the arguments
 of Counsel and the instructions of the Court which
 are charge of a Sworn officer to consider of their
 verdict

And of records to wit: on the 1st day of
 January A.D. 1861 It was being one of the regular
 days of the January Term of said Court for
 the said year A.D. 1861 and the Court being then
 duly organized and sitting in open Court for
 the transaction of business the following proce-
 -dure was had and entered of Record by the said
 Court in the Words and Figures following to wit:

The People of the
 State of Illinois

vs
 Indictment for Obstructing Highway
 Vincent J. Gore

And now at this day comes the People
 by their attorney C. H. Wood and the defendant also

came in his own proper person as well as by Paddock
and Murray his attorneys and the Jury heretofore empanelled
and sworn heretofore also come again into open Court
and for Verdict Say, That the Jury find the defendant
Guilty in manner and form as charged in said
Indictment. Whereupon came Paddock and Murray
Defendants Counsel and Enter their motion for a
New Trial in this case and in arrest of Judgment

And afterwards to wit on the 26th day of January
AD 1861 it being one of the regular days of the Fair
Term of said Court for said year AD
1861 the following proceedings were then
and there had and entered of Record by said Court
in words and figures following to wit

The People of the State of Illinois	}	Indictment for obstructing Highway
vs		
Vincent & Sore		

And now at this day comes the
People by L H Wood States Attorney and the Defen-
dant also comes as well in his own proper person
as by Paddock and Murray his Attorneys
Whereupon the Court being fully advised in
the premises it is ordered that the motion heretofore
entered herein by said Defendants Counsel for a
new trial and in arrest of Judgment be and the
same is hereby overruled to which decision of the Court
in overruling the Defendants said motion the
said Defendant excepts. And now the said Defen-
dants Attorneys minus Defendants being present

in open court. upon the rendition of the judgment in this cause. Whereupon it is ordered by the Court that said Defendant pay a fine of Twenty Dollars together with the costs

It is thereupon considered by the Court that the Plaintiffs recover of the said Defendant ^{to the sum of Twenty Dollars} their fine aforesaid, together with their costs and charges about their suit in this behalf expended and that they do have execution therefor and it is also further ordered by the Court that the obstruction in said highway be removed by the Sheriff of Kandakee County to all of which the Defendant by his counsel excepts and it is further ordered that said Defendant have Thirty days to file his Bill of Exceptions

in the words and figures following to wit.

State of Illinois }
Rock Lake County } SS Circuit Court of the January Term 1861

The People of the State of Illinois }
vs } indictment for obstructing Highway
Vincent & Louie }

The defendant now comes and moves the Court to set aside the verdict of the jury and grant a new trial in this cause for the following reasons

- 1st 1st Because the Court allowed incompetent evidence to go to the jury.
- 2^d 2^d Because the Court refused to allow competent evidence to go to the jury offered by the defendant
- 3^d 3^d Because the Court gave instructions to the jury on the part of the prosecution that were not law
- 4th 4th Because the Court instructed the jury contrary to law
- 5 5 Because the Court refused to give the instructions upon the part of the defendant which are marked refused
- 6 6 Because the Court refused to instruct the jury in accordance with the law
- 7th 7. Because the jury were misled by the instructions of the Court
- 8th 8 Because the verdict of the jury was contrary to law and the instructions of the Court
9. 9 Because the said verdict was contrary to the evidence

Paddock Mummy & Bonfield
attys for deft

State of Illinois
Hankassee County } Circuit Court of the January Term 1861

The people of the State of Illinois
vs
Jesse J. Lowe — } Indictment for obstructing a Highway

The defendant now comes and moves the Court
to arrest the judgment herein and dismiss said suit for the
following reasons

- 1st The Indictment is double
- 2^d The Indictment charges more than one offence
- 3^d The Indictment does not show how the obstruction was caused
or of what it consisted
- 4th The Indictment does not show where the obstruction was
committed
- 5th The indictment does not aver that the fence was an obstruction
- 6th The Indictment is extra territorial inasmuch as it alleges
a road partly in the State of Indiana to have been obstructed
in the State of Illinois
7. 7th as laid the prosecution were bound to prove the
whole road and this State cannot take jurisdiction of
an offence in the State of Indiana
- 8th and because the Indictment was otherwise insufficient

By Paddock Murray & Bonfield
His attys

State of Illinois }
 Rankine County } Circuit Court of the January
 Term A D 1861

The People of the
 State of Illinois: }

vs } Indictment for obstructing
 Vincent Lowe } a Highway

But it is remembered that
 upon the trial of the above entitled cause
 at the above term of this Court The People
 of the State of Illinois to maintain said
 prosecution introduced and swore
 the following persons as witnesses who testified
 and gave evidence respectively as follows viz:
 The People for & }

vs } Vincent Lowe } Pff excused Leban Hayward
 Deft Wm B Oakley

David Lynds Snoon Resident of this & Prognois
 Cos since 1842 - Known Deft - Lived in the
 neighborhood of the Road known of a public
 Highway leading from Vincennes to Chicago.
 Obstruction made at such Point along road
 running north & south & a few rods from section corner
 of Sects 17-18-19 & 20 & 31 & 14 Rankine Co Ill (here
 described by a Diagram) have seen mile stones
 from Chicago to Danville the fence that obstru-
 ted the road run across the Section line of
 20- & 19 that was put up in 1855 - said road has

not been used since by the public I have known
 the road to be traveled from 1840 to 1855 Fence built
 in may or June 1855 may be in 1855 - Delt afterwards
 opened a lane with a pair of bars which has
 since been closed up. The fence obstructs the highways
 The obstruction is Town 31 R 14 E at Sects 17 & 18 - Corners
 of 17-18-19 & 20 - half a rod north from the corner on
 section line - fence runs east and west - In 1840 come
 to this country saw mile stones as I traveled along -
 one about a quarter of a mile south of this point
 I ~~worked~~ worked this road as supervisor for several
 years. There was a little bridge on a slough one
 east of section line the other south of section line
 Bridges very near line between mile stone and
 River one on 17 the other on 19 These Bridges were on
 a road known when I come into the country as
 Vincennes and Chicago State road, Boardman built
 bridge over Kankakee river (in 1843) do not know
 whether he exercised a public office, Bridge of
 Kankakee built by subscription grant also by County
 of \$ 600⁰⁰, The Road north of the River was worked
 for a long time - Turnpiked - was always worked
 within a mile of the River - I have traveled it from
 Chicago to a little distance beyond Texas - have seen
 mile stones on N side of Vermillion - after the bridge
 was built, it was the main traveled road - until in
 1852 it was main travelled road bridge went out
 in 1850 and until in 1850 there was a ferry travel
 then turned and went through crossing below

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 mile stones on N side of Vermillion - after the bridge
 was built, it was the main traveled road - until in
 1852 it was main travelled road bridge went out
 in 1850 and until in 1850 there was a ferry travel
 then turned and went through crossing below

the mill at mounce - stipulation to open Highway
 offered and objected to - Objection overruled - exception
 read in evidence

cannot say what work was done in any
 particular year - there was work done nearly every
 year - small bridge built in about year 1842 & 1843
 Question - who had the possession of and
 claimed to own in 1845 - the NW sect 17 T 31
 N R 14 E - objected to - Objection overruled -
 exception taken by Deft - Answer - Robert Hill
 was in possession of that part of said 1/4 south
 of River - had possession from time I come
 into the country up to 1854 & tilled on both
 sides of the road - NW Sec 20 I owned in 1845
 I bought it - N E sect 19 was possessed and
 claim to be owned by Robert Hill it was in
 him when I first came into the country -
 I think he deeded it away - Robert Hill had
 S E of sect in 1845 - he with the rest of us
 who wanted to fence our lands - he acquiesc-
 ed in its running - he worked on the public

highway on section line running down to this
 point Oct 1841 - Hill worked on it in 1840 and
 at different times - Always worked upon from
~~1840~~ 1845 as overseer or a hand - worked on it within
 10 rods of this point - I never knew of Hill's objecting
 Cross of \times come into this country in 1840 - I crossed once in 1840
 I don't recollect whether I crossed in 1842 - in 1840 &
 1841 I resided in Prognos or Bunkum - there was
 a good ford when I come into the country at
 Boby Hills - I did not help to lay out road or
 set mile stones from B to C - when I came into the
 country there were tracks all over the Prairie when
 the bridge was there they went further east to get
 around a Slough - no bridge at 1st Shew in 1840
 In 1849 bridge was swept away now was rebuilt
 - think they might have taken toll for a year
 or two before bridge went away - Mommie
 Spring up a mile below and travel went
 that way - the travel was both ways - there was
 a good crossing there - after the bridge went
 away the principal travel went below
 by way of Mommie after they built the dam
 it backed the water up and prevented
 crossing the ford up at the Robert Hill place
 2 feet deep when I crossed it - The general travel
 went by way of Mommie after bridge was
 swept away - after they stopped the ferry there
 was no work between the place of the obstruction
 and the river - I think they put in the Slough

Bridge after the year 1847. I think there was a bridge across the Stew. I think the bridge went off Stew in 1852 and have never been rebuilt since. This imaginary road (D96) leads into a ^{country} road that carries it down to Momeuce by at corners of ^{sections} 17-18-19420. Can't get to the river for fences for half a mile below. It would be a great convenience to me to have road to get to river and for my stock.

Algernon I bail Sworn - Know Dept. several public highways across those sections (17-18-19420) I always understood it to be called the Chicago & Vincennes State road. Known obstructions ever since 1856 and think since 1855. They were a little north of corner. I did not see it done. It is post and rail fence that caused the obstruction run across the old route of travel. I had a conversation with Dept about obstruction. I was appointed Road Master. I went to Lowe to remove the obstruction as ordered by Comr. A year in 1856 I read the document to Mr Lowe - Mr Lowe told me that he would open the road. he went down with me and he had a pair of bars that made a lunge and and took them down. I had two or three conversations with him and he told me every time that he would take them down but I understood next that they were up and was

going to be kept up - have seen 60 or 70 teams
 at a time on this road but this has not been for
 11 years - have called ~~upon~~^{out} people to work upon
 this road myself - It has been worked for ten years
 in 1836 when I first knew this road &quire Rob Hill
 claimed to have possession the land over which
 the old travel took - Live claims to own it now
 Joe Hill was in possession of it in 1836 he occupied
 up to his death - Or Lynds is now in possession of

19. Have known this road to be traveled ever
 since 1836 up to this time excepting this part fenced
 up - I think it was in I think it was in 1855
 that it was fenced ~~up~~ perhaps 1856 - Have never passed
 there since but I have seen that obstruction

Cross of

x I did work upon this part between where fenced
 up & River but never since bridge went out
 Or Lynds talked with me about having it
 opened - These bars were from 7 to 8 rods from where
 the road ought to be - I think the old Chicago
 & O State road was a little west of the corner
 might be 2 to 4 or 5 rods west - might be 8 rods
 I think I have seen fence running N & running
 a little farther west since new survey - might have
 seen it while Hill was still alive - after new
 survey Hill moved fence back of line of old travel
 It extended west of line before - The present fence
 suplies a part of Hill's fence running E & W - Since
 taking off the Ferry & building bridge at Monmouth

X

the public have travelled around by Momence
 I know nothing of the running the C & O State road
 after the ferrying stopped and bridge was built
 at Momence the public stopped travelling on
 it - The road is of great value to the public
 living south of it on account of the cattle
 Direct by x Hill left a road open to the public a little south
 after putting up this fence

Robert Stearnman whom I know a highway called C & O
 State road - have traveled it - It used to run about
 a mile east of the town line - It crossed at a place
 called Squire Hills Tavern - The 1st time I travelled
 it was in 1842 I have travelled from Paris Edgar
 Co to Chicago - on this road - have seen stones
 set up along the road in places - don't personally
 know of any obstruction on that road - Jeff
 wanted in 1859 to present a petition to vacate
 a part of the road between Dr Lynds and
 the river

Cross by x Jeff said the road was not traveled and
 a nuisance - and had ceased to be travelled
 I did not consider that the travelling
 public needed the road or would have used
 the road if it had been kept open - some
 of the neighbors they wanted it open for
 their cattle to get to the river - there was means
 to get to the river half a mile west and a
 mile west it was all open West of Lower place

in 1855 - my reason for not vacating it was because I thought we had no power to do so it being a State road and the public had vacated it had abandoned it - Bridge went off in Feb 1849 Ferry kept there until 1851 - I don't think it would have been a highway unless there was some way to cross the river and there has been no way of crossing the river since Partrick removed his ferry. It has been fenced South - in places it used to go South on cross lots and it now goes on straight line - that has been the case since as early as 1857

Jonathan Brewster - live at Mounce - In 1855 I went to Dept to have the use his west fence and did rent it from him and in 1857 he told me that he wanted me to move my fence as he wanted to make a road along between - the last time we had conversation it was in the lane it ran South from his old house. I am not positive whether it was a quarter or a half a mile and not certain which Lane is $\frac{1}{4}$ miles South South of river - The road he intended to open ran north and South - The other road ran parallel with it same direction

Cross of

I should think that the general travelling public had no use for the old road

Stanson Hawkins Sworn - have known the Vincennes & Chicago State road for a year before the Sague war - I took a contract to drop mile stones from Vermillion to Chicago - I let it out to Blue Island - it was called Vincennes & Chicago State Road - the State paid us. I never saw any of them got - we did not travel on the State road where laid out - Sac war was in 1832 - It went across the ~~Vermillion~~ ^{Waukegan} at the Island above mence - it was called yellow Head ford - yellow Head was the highest person there - Have not travelled it but once for 25 years - Bridge was $\frac{1}{4}$ of a mile - I do not know whether that Bridge was exactly on the line of the Vincennes & C State Road - ~~traveled~~ ^{crossed} over it once and went to Robert Hill & took my breakfast and returned over it homeward.

I don't know whether this road was used and traveled by the public when I first came to the river twenty four years ago & I do not know of the public travelling with reference to any particular survey we had the whole Grand Prairie to travel on. The Plff rested.

The Defendant to maintain his defence introduced and Sworn the following witnesses who respectfully testified as follows

by
Testimony for Defendant

William Chatfield Swann in 1849 in Feb or March the bridge went out and there was a ferry there afterwards it was generally pretty bad crossing as there was two bad slaws between corners of sec 17-18-19 & 20 & River there were bridges on the slaws but they were moved away the slaws were pretty bad - without the bridges the road was of no consequence I dont think the public would use it by bridge or ferry the travel all diverged from and after the going down of the bridge it diverged by a road three or four miles south by way of the toll bridge at Mowence & after bridge swept away there was a ferry which remained about a year & ferry was stoped on want of travel I heard nothing of it in 1854 when I first came into the country I came up from Danville but diverged at Broquois and crossed by Shober crossing

William Gastitt

resided in Mowence in 1853 & 1854 was then road commission with the place called a road between corners of sects 17-18-19 & 20 & My attention was first called to that road in 1853 next time my attention was next called to it to vacate it there was a bridge on one of the slaws and the com of Highy come to the conclusion that the public had abandoned the road and we ordered the bridge to be removed it (bridge) was ordered to be taken away and put upon

the public road where it was used - we put it on to the same road but a mile north of the river after it turned and crossed the river from the lower ford about a mile below and then went into the same road again this was in 1853 The travelling public abandoned the road in 1852 and went by a diverging road which intersected the OVC State road as called at corners of Sects 17-18-19 & 20 & went a mile below by way of Mornence - I do not think the public needed it as a road - They abandoned it in 1852 - They abandoned it because of natural obstructions

x There was several reasons one was the river was obstructed by a dam below which set back the water and second the bridge was swept away. Mornence was commenced in 1842 - after dam was raised it made the water deep at the crossing above & caused the public to go by way of the lower crossing

xx The travel come back on the road on the N side about a mile from the river

William Chatfield recalled - one of the dams went off when the bridge went off - never has been a ford at the Hill crossing since 1844 - I built a dam 1/2 mile below the bridge - the dam was built before I got there

Cantrick's lived North of R where bridge used to be
 come there in Spring of 1848 - there was some
 obstructions back of the river - a fence - it obstructs
 travel sixty rods back from the river - it is all
 open prairie - The old fashioned road goes through
 my yard which covers the road - we left it open
 for some time after travel had stopped but by
 advice of neighbors shut up - over six years -
 There has been no travel since in 1852 on road
 in question - I had the ferry on the river
 the travel quit in 1852, and I sold boats and
 quit it because it did not pay - The general
 travelling public quit the road since 1852 - it
 went by Mounce

John Hill's I am son of Robert Hill lived with my
 Father until the time of his death in 1854 -
 There was no travel there in 1854 when he died
 It had ceased to be trodded before the time my
 father died - we had a rail fence across the
 road previous to my father's death - we had
 a fence across the road in two places and Louis
 fence supplies the place - The fence (my
 father) was there in 1854 - Lynds drowed away
 some of the bridge timber off the South Hough
 think Mr Lynds had a lane across the lane
 so that his cattle could cross from one field
 This was after my father died - I think the

fall before he came there - There was no road there when my father put up the fences.

Albion Smith's Acg with R Hills Residence - Previous to Hills death he had a fence across road called C & B State road should think there was not much difference between the location of it and the Hill fence - known of a fence across the road on same road between Lynds two fields. Should say it was 1852 or 1853

John Heddons Lived at R Hills in 1847 the bridge went away in 1849 and the bridges on all the shews - all the fording was a 100 rods above the bridge - There is no necessity for a public highway there - I have swam horses over both those shews east 1/4 mile they can of Lynds they can get to the river - stock can get to the river 1/4 mile east

Thereupon the parties rested their case & submitted to the same to the jury after they should receive the instructions of the court whereupon the court gave the following instructions on the part of the People to the giving of which the Deft excepted viz:

The Court instructs the jury that if they believe from the evidence that a public Highway has been obstructed by the Defendant as charged in the indictment then the law is for the People and the Jury should find the defendant guilty. To the giving of this instruction the Deft thereupon then and there excepted

2

Gwen

If the Jury believe from the evidence that the Highway in question was uninterruptedly used by the public for the period of twenty years then the Jury will find the same a legal Highway and if it has not been vacated pursuant to law or voluntarily abandoned and the defendant has obstructed the same the Jury should find him guilty

In the giving of ~~which~~ this instruction the Dept thereupon then & there excepted

3

Gwen

If the Jury believe from the evidence that other persons (than the Defendant) obstructed the said Highway either before or after the obstruction of the same by the ^{said} defendant it is no reason or excuse for the defendant to do the same as every ^{person} who obstructs a public Highway is liable to indictment for so doing

In the giving of this instruction the Dept then & there excepted

4

The Jury are further instructed that the time of the obstruction as laid in the indictment is not material and need not be proved as laid in said indictment that from the time of the commencement of the obstruction until the same is removed is one continuous act

of obstruction - and if the jury believe from the evidence that the said obstruction has rendered the said Highway or road inconvenient to be passed or travelled by the public within eighteen months from the finding of the Indictment then the jury will find the Defendant guilty

Given

To the giving of this instruction the Court thereupon then & there excepted

5th

If the Jury believe from the evidence that a dam was built across the river in the neighborhood of Hill ford and that in consequence of the building of said dam the said Highway or road was rendered inconvenient or dangerous to be passed or travelled by the public then there is no reason or excuse for the defendant to obstruct said Highway

Given

To the giving of this instruction the Court thereupon then & there excepted

6th

If the Jury Believe from the evidence that Robert Hill while in the possession and claiming to own the land on which the obstruction in question was placed dedicated said land as a public Highway and the same was accepted & used by the public and that the defendant claims said land through and from said

Given

Robert Hill then the defendant is estopped from denying that the same is not a public Highway

To the giving of this instruction the Court thereupon then & there excepted

7th The Jury are instructed that a road or Highway may be legally established by being used by the public and being recognized as a road or Highway by the proper authorities and it is sufficient evidence of such recognition by the public authorities to have it worked on or repaired such as building bridges over rivers or streams on the line of said road and when a road or Highway is so established with the express or implied assent of the owner of the land over which such road or Highway passes then it is in law a public Highway and if the Jury believe from the evidence that the road in ~~that~~ the road in question has been so established and assented to by the defendant or his grantors and that the defendant has afterwards obstructed the said Highway then the Jury will find him guilty

To the giving of this instruction the Court thereupon then & there excepted

Given

8th The Jury are instructed that although a road may be unnecessary yet a private individual cannot obstruct it without the sanction of law

Given

In the giving of this instruction the Court thereupon then and there excepted

9th The Jury are instructed that in order to show an abandonment by the public of a road it must be proved that the public had voluntarily adopted another line of travel. And if the Jury believe that the public were forced to adopt another line of travel by reason of a dam being built farther down the river and thereby setting back the water so that the public could not cross at the accustomed place then that does not constitute an abandonment of the road in law

Given

In the giving of this instruction the Court thereupon then and there excepted

10th The Jury are further instructed that the public cannot be charged with the abandonment of a road without showing that they have acquired ^{or adopted} another in lieu of it

Given

In the giving of this instruction the Court thereupon then and there excepted

Thereupon the Justice read the case & admitted
the same to the jury after they should receive the
instructions of the court & hereupon the court gave
the following instructions on the part of the State
in the giving of which the Court excepted viz

and thereupon the court gave the following
instructions on the part of Defendant

The jury are judges of the law & the fact in
the case & if the jury in view of the law & the fact
believe from the evidence that the prosecution
have failed to prove the road as laid in the
indictment the law is for the defendant &
the jury should find for the defendant not
guilty

Given

If the jury do not find that a public High
way exist from Vincennes in the State of Indiana
to Chicago in the State of Illinois and in each
and every part thereof then the law is for the
Defendant

Given

Given
 If the jury believe from the evidence that the public from 1852 until the time of the alleged obstruction had ceased to use the alleged road and the public had adopted another and different line of travel voluntarily acquiring the lawful right to use such other line of travel and by so doing had intended to abandon said alleged road then you will find the defendant not guilty

Given
 If the jury find that the offence of obstructing a public Highway was committed by the defendant more than eighteen months before the indictment was found against said defendant the said offence is barred and you will bring in a verdict of not guilty This is the law unless the jury find that the obstruction was continued by the defendant up to within 18 months in which case it would not be barred by the Statute. So the giving of this instruction the defendant there excepted

Given
 The burden of proving a Highway rest upon the prosecution and if they have failed to prove to you that there was such a public Highway leading from Vincennes to Chicago then you will find the defendant not guilty

Green

When an indictment charges the obstruction of a road leading from one place to another place it is incumbent for the prosecution to prove that a road exists between those places and if they fail to make such proof the prosecution fails to maintain their indictment

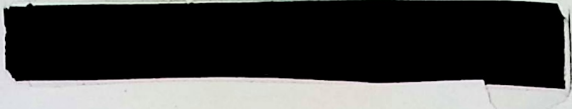
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Green

In order to create a right of way by prescription it must be shown by proof that the road claimed by prescription has been used for twenty years uninterruptedly adversely and continuously and that the owner of the land for twenty years has acquiesced in such use and if you find that said track was not used for twenty years as aforesaid then you will find this defendant not guilty so far as a road by prescription.

And thereupon the defendant moved the court to give the following instructions to the jury which the court refused to do & marked such instruction refused
The Court excepted
For Deft

- The court instructs the jury that a traveled road or track across an open & unfenced uncultivated prairie country for any length of time where there is no legally surveyed or laid out ~~road~~ public highway whether



Refused

that term be twenty or more years is not evidence of a dedication or a public highway according to our law & if the jury believe from the evidence that any road has been shown to be such a road only as above set forth then the law is for the defendant

To the refusal of the court to give this instruction the Dept thereupon there & there excepted

2
Refused

A dedication to be binding must be voluntary and if the owners of land acquiesce in the public using a road upon the mistaken supposition that a road legally existed when in fact such road did not legally exist then such acquiescence does not amount to a dedication

To the refusing the giving of this instruction the Dept thereupon there & there excepted

3
Refused

That while the public cannot be compelled to abandon a public highway on account of obstruction yet if they voluntarily abandon such highway either on account of obstruction or otherwise and acquire the lawful right to another line of travel then such abandonment restores the right to the owner of the lands to

occupy such highway

To the refusing of the giving of this instruction the de^{ft} thereupon then & there excepted

7 That the offence of obstructing a Public highway is only a misdemeanor and unless an indictment is found for ~~such~~ ^{Such} offence within eighteen months from the time of the commission of the offence it is barred by the Statute of Limitations and if the jury find that the defendant committed such offence more than eighteen months before the finding the indictment against him then such offence is barred by the Statute of Limitation and you will find the defendant not guilty

Refused

To the refusal of the court to give this instruction the De^{ft} thereupon then & there excepted

Thereupon the jury brought in a verdict of "guilt" against the defendant and thereupon the defendant moved the court to set aside said verdict and grant a new trial because the court allowed incompetent evidence to go to the jury because the instructions given by the court on the part of the Pl^{ff} were not law and were contrary to law, because the court refused to ~~instruct~~ ^{instruct} the jury give the instructions on the part of the defendant which

are marked "refused" because the court refused to instruct the jury in accordance with the law because the jury were misled by the instructions given on the part of the People, because the verdict of the jury was contrary to the law & the instructions of the court, and because the verdict was contrary to the evidence, and the court being fully advised in the premises overruled said motion to set aside the verdict of the jury & grant a new trial herein to which the defendant thereupon then & there excepted and entered his motion in arrest of Judgment because the indictment was double because the indictment charged more than one offence, because the indictment did not show how the obstruction was caused or of what it consisted or where it was committed, and does not aver that the fence was an obstruction, because the ~~verdict~~ indictment was extrajurisdictional that part of said road lay in the State of Indiana and because the indictment was otherwise insufficient and the court being fully advised in the premises refused to grant said motion and overruled said motion in arrest of Judgment & thereupon the court found said debt \$25.00 & costs to which refusal to grant said motion and the overruling said motion in arrest of Judgment the said defendant thereupon

excepted and prayed that the said court would ~~write~~ sign and seal this bill of exceptions together with a certificate that the same contains all the evidence given on the trial of said cause which is accordingly done

C. R. Starr *seal*



State of Illinois
Kankakee County } I, Elon Curtis, Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify that the above and foregoing is a full true and correct Transcript of the Record of the Proceedings of the Circuit Court of said County in a certain cause lately pending in said Court wherein the People of the State of Illinois were Plaintiffs and Vincent J. Sowe was defendant concerning an Indictment for obstructing a Highway, as appears from the Records and files of said Court now in my said office.

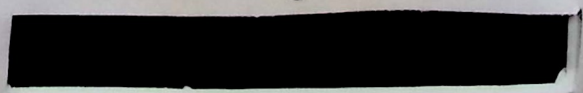
Attest my hand and the seal of said Court at Kankakee City in said County this July 8th 1861

Elon Curtis Clerk

I am of the opinion that the foregoing record contains a full & true ^{history} of the proceedings ⁱⁿ the cause therein mentioned upon ~~and~~ the trial of the cause.

C. R. Starr *JB*

Dated October 19th 1861. Judge of the 20th Judicial Circuit of the State of Illinois



[REDACTED]

And the said Vincent I have, now comes and says, that in the record and proceedings aforesaid there is error in this to wit,

1. That the indictment is double, and charge more than one offence, and does not show how the obstruction was caused, or in what it consisted, nor where the obstruction if any, was committed, and does not charge the fence with being an obstruction, and is otherwise insufficient.

2 Because it shows that the Court allowed incompetent evidence to go to the Jury, and refused to allow competent evidence to go to them.

3. Because ~~the~~ it shows that the Court gave instructions upon the part of the People as well as the 4th instruction on the part of the defendant that were contrary to the law.

4th Because it shows that the Court erred in refusing to give to the Jury the instructions on the part of the def^t marked refused, and that the jury were misled by the instructions of the Court.

5th Because it shows that the verdict of the jury was contrary to the law & the evidence and should have been set aside by the Court, and because the Court erred in not granting a new trial, and in overruling the motion in arrest of judgment, and because the def^t

Supreme Court—Third Division.

VINCENT T. LOWE,

Self in Error
~~Appellant,~~

vs.

The People of the State of Illinois,

Self in Error
~~Appellees.~~

} Error to Kankakee Circuit Court.

Record.

ABSTRACT OF CASE.

- 5-6 Indictment for obstructing Highway lading from Vincennes in the State of Indiana, to Chicago in the State of Illinois, at a place near the point at which Sections 17, 18, 19 and 20 intersect in Town 31, N. R. 14 E. in Kankakee Co., Ill. and was found in Circuit Court of said Co., Dec. Term, 1858.
- 20 There was travel near point of obstruction upon lands claimed by Robert Hill on what was known as the "Chicago and Vincennes State Road," from the year 1832, to 1852 and work done on road.
- 28-23-30 There were mile stones commencing at a point of about 80 rods South of point of obstruction and continuing at different places South to the County of Edgar.
- 23-20-32 A bridge was built across the Kankakee river about 10 to 20 rods below the traveled route in 1843, which went out by a freshet in 1849.
- 33-31 From time bridge went out until in 1851, there was a ferry on the river, where bridge had been, which ferry was stopped and removed on account of the travel having changed and gone by way of a County road running East and West across road in dispute at the place of obstruction, and leading down about 1½ miles to Mommence and from thence back unto road in dispute about a mile

29-33-34 The Road in dispute had been fenced across in different places for a distance of three or four miles South of point of obstruction.

26 Obstruction was made in 1855, upon land occupied by the Plaintiff in error, by erecting a fence with a pair of bars at or near point of intersection of Sect's 17, 18, 19 and 20, Town 31 N. R. 14 E., continued to this time.

19-20 Jury ~~trial~~ Verdict of guilty. Motion for new trial and motion
61 in arrest of judgment. Fine \$20 00 and costs. Judgment thereon and order for the removal of obstruction.

PADDOCK, MURRAY & BONFIELD,
Atty's for Pl'ff in Error.

B R I E F .

Rev. Stat's
of 1845
P 175, § 134 "If any person shall obstruct or injure or cause to be obstructed
"or injured any public road or highway, &c."

The foregoing is what is claimed to be the law of this alleged offence.

do.
P 189, § 200 "No person shall be prosecuted, tried or punished for any mis-
"demeanor or other indictable offence below the grade of felony,
"or for any fine or forfeiture under any penal Statute, unless the
"indictment &c., shall be found within one year and six months
"from the time of committing the offence or incurring the fine or
"forfeiture.

Crosby vs. Gipp's,
19 Ill., 309-310 Obstructing a Highway and continuing an obstruction are distinct
offences.

Champlin vs
Morgan
20 Ills. 183. If the public cease to use a public road and adopt and acquire a
different line of travel they may be charged with an abandonment
of such road.

PADDOCK, MURRAY & BONFIELD,
Atty's for Pl'ff in Error.

POINTS.

1. The evidence shows that the offence was committed in 1855, and not later than in 1856, therefore as the indictment was not found until the 30th day of December, 1858, more than 18 months had elapsed between the commission of the offence and the time of finding the indictment.

2. The continuing of the obstruction is a distinct offence from that charged in the indictment. A party may be charged in the indictment for either obstructing or continuing such obstruction.— But when indicted for one he cannot be convicted upon such indictment of the other offence and the Circuit Court erred in considering that if the obstruction continued to within 18 months of the time of finding the indictment, that it was not barred by the Statute.

3. The evidence shows that the road between the points of obstruction and the river was voluntarily abandoned by the public and a new road adopted and acquired in lieu thereof. The public have an interest in the improvement of water courses which may be of greater public importance than the loss of a road and they may elect to suffer damage and inconvenience thereby, as well as property holders and others having rights in or along such water courses and may elect to acquiesce in the flowage of a ford tending to impede and obstruct travel and seek new lines of travel instead of removing or surmounting such flowage obstruction in order to have the benefits of the improvement of such water courses, and if they so elect to abandon the road, such abandonment is voluntary, and if they acquire a new road in lieu thereof, it restores the old road to the land owner and the question is a proper subject of enquiry by the jury, and if so the 9th of the Peoples instructions and the refusal to give the 3d of Defendants instructions were erroneous.

4. The indictment charges an obstruction of the Highway, but does not allege in what the obstruction consisted of. It is true, it says, that the Plaintiff in error built a fence across the highway, which was an inconvenience, but does not aver that the fence was

an obstruction. It does not connect the fence with the obstruction as the manner of it. It says that the fence was inconvenient to pass, which it might be and not be an obstruction, as the Statute contemplates that the act must not only be inconvenient to travelers but be an obstruction to travel. The indictment is double.

5. The Court erred in holding that the prosecution in order to establish the fact of the road's being dedicated to the public by Rodert Hill, whom it was claimed owned the land over which the road passed, might show that he (Hill) had possession of and claimed title to such lands as evidence of ownership, instead of introducing documentary evidence of title in Hill.

6. They must show that the road exists in each and every part from Vincennes to Chicago.

PADDOCK, MURRAY & BONFIELD,

Atty's for Pl'ff in Error.

Instructions on the Part of the People.

1st. The Court instructs the jury, that if they believe from the evidence that a public highway has been obstructed by the Defendant as charged in the indictment, then the law is for the People and the jury should find the Defendant guilty.

2d. If the jury believe from the evidence that the Highway in question was uninterruptedly used by the People for the period of twenty years, then the jury will find the same a legal highway, and if it has not been vacated pursuant to law, or voluntarily abandoned and the Defendant has obstructed the same, the jury should find him guilty.

3d. If the jury believe from the evidence that other persons, (than the defendant) obstructed the said highway, either before or after the obstruction of the same by the said defendant, it is no reason or excuse for the defendant to do the same, as every person who obstructs a public highway is liable to indictment for so doing.

4th. The jury are further instructed that the time of the obstruction as laid in the indictment is not material and need not be proved as laid in said indictment. That from the time of the commencement of the obstruction until the same is removed, is one continuous act of obstruction, and if the jury believe from the evidence that the said obstruction has rendered the said highway or road inconvenient to be passed or traveled by the public within 18 months from the finding of the indictment, then the jury will find the defendant guilty.

5th. If the jury believe from the evidence that a dam was built across the river in the neighborhood of Hill's ford, and that in consequence of the building of said dam, the said highway or road was rendered inconvenient or dangerous to be passed or traveled by the public, then there was no reason or excuse for the defendant to obstruct said highway.

6th. If the jury believe from the evidence that Robert Hill while in the possession and claiming to own the land on which the obstruction in question was placed, dedicated said land as a public highway, and the same was accepted and used by the public, and that the defendant claims said land through and from said Robert Hill, then the defendant is estopped from denying that the same is not a public highway.

7th. The jury are instructed that a road or highway may be legally established by being used by the public and being recognized as a road or highway by the proper authorities, and it is sufficient evidence of such recognition by the public authorities to have it worked on, or repaired, such as building bridges on river or sloughs on the line of said road and when a road or highway is so established with the express or implied assent of the owner of the land over which said road or highway passes, then it is in law a public highway, and if the jury believe from the evidence that the road in question has been so established and assented to by the defendant or his grantors, and that the defendant has afterwards obstructed the said highway, then the jury will find him guilty.

8th. The jury are instructed that although a road may be unnecessary, yet a private individual cannot obstruct it without the sanction of law.

9th. The jury are instructed that in order to show an abandonment by the public of a road, it must be proved that the public had voluntarily adopted another line of travel. And, if the jury believe that the public were found to adopt another line of travel by reason of a dam being built farther down the River, and thereby setting back the water so that the public could not cross at the accustomed place, then that does not constitute an abandonment of the road in law.

10th. The jury are further instructed that the public cannot be charged with the abandonment of a road without showing that they have acquired or adopted another in lieu of it.

Instructions Given on the Part of Defendant.

The jury are judges of the law and the facts in the case, and if the jury, in view of the law and the facts, believe from the evidence that the prosecution have failed to prove the road as laid in the indictment, the law is for the defendant, and the jury shall find the Defendant not guilty.

If the jury do not find that a public highway exists from Vincennes, in the State of Indiana to Chicago, in the State of Illinois, and in each and every part thereof, then the law is for the Defendant.

If the jury believe from the evidence that the public from 1852, until the time of the alleged obstruction had ceased to use the alleged road, and the public had adopted another and different line of travel, voluntarily acquiring the lawful right to use such other line of travel, and by so doing had intended to abandon said alleged road, then you will find the Defendant not guilty.

If the jury find that the offence of obstructing a public highway, was committed by the defendant more than eighteen months before the indictment was found against said defendant, the said offence is barred, and you will bring in a verdict of not guilty. This is the law unless the jury find that the obstruction was continued by the defendant up to within eighteen months, in which case it would not be barred by the Statute.

To the giving of this instruction, the defendant then and there excepted.

The burden of proving a highway, rests upon the formation, and if they have failed to prove to you that there was such a public highway leading from Vincennes to Chicago, then you will find the defendant not guilty.

When the indictment charges the obstruction of a road leading from one place to another place, it is incumbent for the prosecution to prove that a road exists between those places, and if they fail to make such proof, the prosecution fails to maintain their indictment.

In order to create a right of way by prescription, it must be shown by proof that the road claimed by prescription, has been used for twenty years uninterruptedly, adversely and continuously, and that the owner of the land for twenty years has acquiesced in such use, and if you find that said track was not used for twenty years, as aforesaid, then you will find the defendant not guilty, so far as a road by prescription.

Instruction Asked by Defendant and Refused by the Court.

1st. The Court instructs the jury that a traveled road or track across an open and unfenced, uncultivated prairie country, for any length of time, where there is no legally surveyed or laid out public highway, whether that term be twenty or more years, is not evidence of dedication, or a public highway according to our law, and, if the jury believe from the evidence that any road has been shown to be such a road only as above set forth, then the law is for the defendant.

2d. A dedication to be binding must be voluntary, and if the owner of land acquiesced in the public, using a road upon the mistaken supposition that a road legally existed, when in fact such road did not legally exist, then such acquiescence does not amount to a dedication.

3d. That while the public cannot be compelled to abandon a public highway on account of obstruction. Yet if they voluntarily abandon such highway either on account of obstructions or other-

wise and acquire the lawful right to another line of travel, then such abandonment restores the rights to the owner of the lands to occupy such highway.

7th. That the offence of obstructing a public highway is only a misdemeanor, ~~and~~ and unless an indictment is found for such offence within eighteen months from the time of the commission of the offence, it is barred by the Statute of limitations, and if the jury find that the defendant committed such offence more than 18 months before the finding of the indictment against him, then such offence is barred by the Statute of limitation, and you will find the defendant not guilty.

Errors Assigned.

1. That the indictment is double and charges more than one offence and does not show how the obstruction was caused or in what it consisted, nor where the obstruction if any was committed, and does not charge the fence with being an obstruction and is otherwise insufficient.
2. Because it shows that the Court allowed incompetent evidence to go to the jury and refused to allow competent evidence to go to them.
3. Because it shows that the Court gave instructions upon the part of the People, as well as the 4th instruction on the part of the Defendant that were contrary to the law.
4. Because it shows that the Court erred in refusing to give to the jury the instructions on the part of the Defendant, marked refused, and that the jury were misled by the instructions of the Court.
5. Because it shows that the verdict of the jury was contrary to the law and the evidence and should have been set aside by the Court, and because the Court erred in not granting a new trial and in overruling the motion in arrest of judgment, and because the Court erred in refusing to quash the indictment.

ARGUMENT OF URI OSGOOD.

In addition to what Messrs. Paddock, Murray and Bondfield have presented by their points in the case, I desire to call the attention of the Court particularly, *First*,—to the charges in the indictment which are as follows: (page 5.) “That Vincent T. Lowe late of said County of Kankakee, on the first day of June in the year of our Lord one thousand eight hundred and fifty-eight at and within the County of Kankakee in the State of Illinois aforesaid and on divers days and times between that day and the taking of this inquisition, a public highway leading from Vincennes in the State of Indiana to Chicago in the State of Illinois, at a place near the point at which sections seventeen, eighteen, nineteen and twenty come together in township thirty-one North, Range fourteen East unlawfully did obstruct, and then and there in, upon and across the said public highway did unlawfully build and erect a certain fence thereby rendering the said public highway inconvenient to pass, to the great damage” &c.

The indictment charges that on the 1st day of June, 1858, and on divers days and times between that day and the taking of the inquisition [Dec. 30, 1858, P. 4] the defendant below, “unlawfully did *obstruct*” the highway in said indictment described. How or in what manner obstructed, is not alleged, but immediately following the indictment proceeds as follows: “and then and there in, upon and across the said public highway did unlawfully build and erect a certain fence, *thereby* rendering the said public highway inconvenient to pass, to the great damage” &c.

There is no allegation that the building of the fence constituted *the* obstruction complained of, but that the building and erecting the fence, “thereby rendered the said public highway inconvenient to pass” &c.

Nothing is to be taken by intendment to sustain the indictment, but it should clearly and distinctly, in unequivocal language charge and set forth the crime or misdemeanor which the party indicted is

called upon to answer and of what such crime or misdemeanor consists. "The indictment must state all the circumstances which constitute the definition of the offence in the act so as to bring the defendant precisely within it." 17th Ills. 158; *Cannady vs. The People* on P. 159. Charging that the road was obstructed without stating how or in what manner it was obstructed is not sufficient. The indictment is unquestionably bad and should have been quashed.

Again. Even though the indictment were good, the proof was insufficient to produce a conviction. The indictment describes the road alleged to be obstructed as "a public highway leading from Vincennes in the State of Indiana to Chicago in the State of Illinois." This is a material allegation and the Prosecutor was obliged to prove it as laid in order to produce a conviction. The Supreme Court in the case of *Martin vs the People*, 23d Ill's 395, which was a case on indictment for obstructing a highway, on page 396, uses the following language: "But the description of the road in the indictment was material and should have been proved as laid."

There was no proof showing the existence of a public highway from Vincennes Ind. to Chicago Ill. David Lynds (P 22) says—"Knows of a public highway leading from Vincennes to Chicago." Father along on page 23 the same witness says—"In 1840, came to this country; saw mile stones as I travelled along. One about a quarter of a mile south of this point." And further along on same page 23 he says: "I travelled it from Chicago to a little distance beyond ~~Tenas~~. Have seen mile stones on a fork of the Vermillion after the bridge was built."

This was the strongest evidence given relative to the existence of the road and is far from establishing a road from Vincennes Indiana to Chicago, Ill. On cross examination the witness said, "I did not help to lay out the road or set mile stones from V. to C. (P 25) When I came into this country there were tracks all over the prairie." Other witnesses testified that they knew a road called the Vincennes and Chicago State Road, but there was no proof establishing the road as described in the indictment. The failure to

prove the existence of the road as laid was of itself sufficient to defeat a conviction.

Aside from this the evidence shows that from about 1851 or '52 the road was entirely abandoned by the public. A dam had been built across the Kankakee River below the crossing used in connexion with the road in question. A bridge which had been built at the crossing, went off in 1849. All the witnesses for the prosecution as well as for the defence, that testify upon this point agree, and that after the bridge went off a ferry was kept up by VanKirk one or two years, and then that was abandoned for the want of travel and from that time the travel entirely ceased upon the road and the road was fenced up at different places south of the point where the alleged obstruction was placed.

Wm. A Chatfield (at P 31) testified that the bridge went off in Feb'y or March 1849 and that a ferry was established, that it was bad crossing as there were two bad sloughs between the corners of Sec's 17, 18, 19 and 20 and the river, and that the bridges across them were moved away and that without the bridges the road was of no consequence. That the travel all diverged, from and after the going down of the bridge, three or four miles south and went by way of the toll bridge at Momence. That the ferry was stopped for want of travel in about a year after it was established.

William Haslett testified (P. 31) that he was road commissioner, and his attention was first called to the road in 1853. Next his attention was called to it to vacate it. That there was a bridge on one of the sloughs and the Commissioners came to the conclusion that the public had abandoned the road and ordered the bridge to be removed and placed on the road a mile north of the river in 1853. That the traveling public abandoned the road in 1852 and went by a diverging road, &c.

Vankirk testified [P 33] that there had been no travel on the road since 1852, and that by the advice of the neighbors he had shut up the road across his premises for over six years. There seems to be no disagreement of the witnesses for the prosecution

or defence relative to the ^{part} of abandonment from '52, and it appears to be unnecessary to pursue this branch of the case any farther.

Again it appears from the evidence that the obstruction complained of, was placed in the road in 1855 or '56. No one of the witnesses places it later than 1856. The indictment was found on the 30th of Dec. 1858 considerably more than eighteen months after the road was obstructed. [P 5] This aside from any other objection is sufficient to reverse the judgment of the Circuit Court and dismiss the suit. See Rev. S. 1845, P. 189, Sec. 200, Crim'l Code after first period. "Nor shall any person be prosecuted, &c, "for any misdemeanor or other indictable offence below the grade "of felony &c., unless the indictment, information or action shall "be found or instituted within one year and six months from the "time of committing the offence."

The indictment was found under the 134 Sec. of the criminal law. (See Rev. S. 1845, P. 175.) But in regard to the statute of limitations; it makes no difference whether it was under the 134th Sec., or under the 16th Sec. of the Road Law (R. S. 1845, P 482) The indictment is for *obstructing*, not for *continuing* an obstruction and the foregoing Statute bars the right to convict, unless the indictment is found previous to the expiration of the eighteen months from the time the road was obstructed. There are two offences described in the said Sections 134 and 16—one is for *obstructing* and the other for *continuing* an obstruction and a conviction can only be had for the offence charged. In the case of Crosby vs Gipps, 19 Ill. 309, the Court say in speaking of the two classes of offences, on P 310, "These are as much separate offences as if "they were of entirely different characters, and relating to different "subjects."

I desire to call the attention of the Court to the 1st, 4th, 6th, 7th, 9th and 10th instructions given on the trial for the People.

The 1st does not refer in any manner to the road specified in the indictment, but refers to any road and authorized the jury to find a

verdict against the defendant if they should find he had obstructed any road.

As to the 4th; the indictment being for obstructing the road only it was improper to instruct the jury that the obstruction was a continuous obstruction till removed. The continuation of an obstruction being of itself a separate & distinct offence. 19 Ill's 310 as above.

Sufficient has been set forth by Messrs. Paddock, Murray and Bonfield relative to the 6th instruction.

The 7th tended to mislead the jury. The proof of using a highway and of its being recognized by the public authorities is not sufficient evidence of recognition. Such user and recognition is only prima-facie evidence of dedication and may be rebutted.

The 9th was given without reference to the road alleged to have been obstructed and without reference to the evidence given in the case and the jury were at liberty under it, to draw their conclusions from any source of information they might have. In the case of Erving vs Runkle, 20 Ill's 448, on P 464, the Court uses the following language: "Juries should be permitted to believe nothing except that belief be occasioned by the evidence and their minds should always be directed to that only as their ground of belief." See also Coughlin vs The People 18 Ill's 266; 20 Ill's 485, Galena & Chicago R. R Co. vs Jacobs; 23 Ill's, 470 Matthews vs Hamilton et al. In this last case the Court say in speaking of an instruction of this character, "This instruction is objectionable in the first place because it does not require the jury to found their belief of the fact of agency on the evidence of the case. The jury may have had other reasons than the evidence adduced to conclude that Strong was Plaintiff's agent and if so this instruction authorized them to act upon them instead of the evidence. Before this instruction was given it should have been so modified as to preclude the danger of misleading the jury in that respect."

The 10th instruction is obnoxious to the same objection as the 9th.

The 4th instruction given on the part of the Defendant below is liable to the same objection as the 4th given on the part of the prosecution and was excepted to by the defendant when given.

The Court erred also in refusing to give the instructions marked 1, 2, 3 and 7, on the part of Defendant below, (Pages 41-42)—The one marked 7, was important to the Defendant and laid down the law correctly.

It seems unnecessary to say more. The judgment below should be reversed and the case dismissed.

URI OSGOOD,
Att'y and Counsel for Pl'ff in Error.

3. P. 2.

Vincent J. Sow
as
The People.

Abstract

Pliffs, Briefs & Pleadings

Filed May 7, 1842

J. G. Clark
Clerk

Supreme Court of the State of Illinois
April Term A.D. 1862

Vincent L. Lowe
vs
The People &c } Error to Kankakee

Points & Authorities for Deft in Error

The indictment is a good one
The statute provides that "if any
person shall obstruct" any public
road &c" so as ^{to render} the same inconvenient
or dangerous to pass" shall be fined
&c Sec 134 *in rem code*

It is sufficient if the offence is
charged in the language of the statute
without stating the manner

Whart. Crim. L. § 1

All in relation to the building of the
fence might be struck out & still
the indictment would be good

It is not bad for Duphery
Whart. Crim. L. § 1, 93, 96

The proof sustains the allegation
that that the road runs from

Vincennes to Chicago The witness
Lynds says that he was a resident
of Kankakee and Jurgens Co. since
1842 - lived in the neighborhood of the
road - Renew of a public highway leading
from Vincennes to Chicago - came to
this country in 1840 - saw mile stones
as I travelled along - one about 1/4 mile
south of this point - I worked this
road as supervisor for several years
There was a little bridge on a slough
- one east of the section line - the
other south of the section line
Bridges very near line between mile
stones & river - one on 17 & the other
on 18 These bridges were on a road
known when I came to this
country as Vincennes and Chicago
state road

Rec'd p 22 & 23

Robert Steerman says on page 28
that he knows highway called V & C
state road that he had travelled it
first in 1842 had seen mile stones
set up & that Def in 1859 wanted
to present a petition to vacate a
part of it Alanson Hawkins says
on page 30 that he has known the
Vincennes and Chicago state road

since Sioux war in 1832 that he took contract to set mile stones - sub led the job and was paid by the state

It is immaterial when the fence was built. The maintaining of a fence previously built may constitute as much of an obstruction within the meaning of the law as the building of a fence.

The indictment contains this averment "on the first day of June" etc "and ^{on} divers days & times between that day and the taking of the inquisition" It is introduced in all cases where the nuisance continues and the object of it is to enable the court to give judgment of abatement.

Wharton's Proc. of indictments & pleas
674 note a

There is no evidence of an abandonment. Before the public can be held to have abandoned a road it

must be shown that they had
acquired the legal title to the use
of another line of travel

20 Ill, 183

It is objected to the first instruction
on the part of the people that it
does not refer to the road in
controversy. The jury are told that
if they find that the defendant
obstructed a road as charged in the
indictment they should find him
guilty. What is that charge? Why
that the obstructed a road leading to
from certain points. If the instruction
is too general the indictment is
also.

The first clause of the 4th
instruction on the part of the
people is certainly good law. The
second clause is merely an axiom
viz that an obstruction continues
such until it ceases to be one. The
3^d is not objected to.

as to the 6th instruction for the
people it is quite immaterial
whether title in Hill could be shown
by possession as it contains the

qualification that it must appear
that the defendant held through him
Whatever Hills title was the Deft
was bound by his acts But possession
is sufficient to warrant a conviction
even in criminal case

1 Phill Evr, 650

The seventh instruction does not
exclude the idea that the presumption
arising from user can be rebutted
The jury are told that a road may
be established by user and that the
working of the same & by the
authorities is evidence of user
and before they were authorized to find
the defendant guilty they were required
under this instruction to believe
from all the evidence that the
road had been established by user
& assented to by Deft and his grantor

Of the 9th & 10th instruction it is
said that they do not enjoin the
jury to the evidence in the case
It is a sufficient answer to this
to say that if the jury been led by
them to go outside the evidence

it would necessarily have tended
to ~~show~~ Deft's advantage & therefore
he cannot complain.

The 1st instruction for Deft was properly
refused

17 Ill 421

As to the second, if there was a
dedication it was quite immaterial
what influenced the party making it.
It may have been voluntary although
made under an entire misapprehension
of the facts.

The 6th was properly refused.
A road might be vacated by the
same authority that established it.
20 Ill 183

To make this instruction applicable
to the case the court must assume
that the road was established by use.

The 7th relates to the offence of obstructing
a public highway. The authorities I have cited show
that the indictment would authorize a conviction
for continuing an obstruction. If the offence charged
is a continuance of an obstruction the instruction was
irrelevant.

D. J. [Signature]
State's Atty.

Supreme Court of the State of Illinois
April Term AD 1862

Vincent L. Lowe }
vs } Error to Kankakee
The People &c }

Points & authorities for Depts in Error

The indictment is a good one
The Statute provides 1st if any ^{road} person shall obstruct any public
so as to render the same inconvenient
or dangerous to safe^d shall be fined
&c Sec 134 Verin Code

It is sufficient if the offence
is charged in the language of the
statute without stating the manner
Whart. Verin L 81

All in relation to the building of
the fence might be stricken out
& still the indictment would be
good

It is not bad for duplicity
Whart Verin L 81-93, 96

The proof sustains the allegation that the road ran from Vincennes to Chicago. The witness Lynds says that he was a resident of Keokuk and Proquios Co since 1842 lived in the neighborhood of the road. He saw of a public highway leading from Vincennes to Chicago - came to this County in 1840, ^{saw} mile stones. as I travelled along - one about 1/4 mile south of this point. I worked this road as supervisor for several years. There was a little bridge on a slough ~~over~~ east of the section line the other south of section line. Bridges very near line between mile stones & river - one on sec 17 & the other on 18. These bridges were on a road known when I came to this County as Vincennes and Chicago state road.

Record p 22 & 23

Robert Stearns says on page 28 that he knows highway called V & C State road - that he had travelled it - first in 1842 had seen stones set out and that Dept in ~~ess~~ ^{wanted} 1858, to present a petition to vacate a part of it.

Hanson Hawkins says on page 30 that he has known the Vincennes and Chicago ^{State} road since Sioux war in 1832 that he took contract to drop mile stones - sub let the job & was paid by the state

It is immaterial when the fence was built, the maintaining of a fence previously built may constitute as much of an obstruction within the meaning of the law as the building of a fence

The indictment contains this averment "on the first day of June" &c "and on divers days & times between that day & the taking of the requisition" It is introduced in all cases where the nuisance continues and the object of it is to enable the court to give judgement of abatement. Whart. Proc. of Indictments and Pleas § 74 note a

There is no evidence of an ~~abatement~~ ^{abandonment}. Before the public can be

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must be shown that they had acquired
the legal right to the use of another
line of travel

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It is objected to the first instruction
on the part of the people that it does
not refer to the road in controversy.
The jury are told that if they find
that the defendant obstructed a road as
charged in the indictment they should
find him guilty. What is that charge?
Why, that he obstructed a road leading
to & from certain points

If the instruction is too general the
indictment is also the

The first clause of the 4th instruction
on the part of the people is certainly good
law. The second clause is nearly an
axiom viz, that an obstruction continues
such until it ceases to be one, & the 3^d
is not objected to

As to the 6th instruction for the people
it is quite immaterial whether or not
title in Hill could be shown by possession

as it contains the qualification that
it must appear that the defendant held
through him. Whatever Hills title was
the Def was bound by his acts. But possession
is sufficient to warrant a conviction
even in criminal cases

1 Phill Ec, 650

The 7th instruction does not exclude the
idea that the presumption arising from
user can be rebutted. The jury are told
that a road may be established by user
& that working of the same &c by the
authorities is evidence of user but before
they were authorized to find the defendant
guilty they were required to under this
instruction to believe from ~~all~~ the
evidence that the road had been established
by user and associated to by Def & his grantors

Of the 9th & 10th instruction it is said
that ~~the jury~~ they do not confine the
jury to the evidence in the case

It is a sufficient answer to this to say
that if the jury had been led by them
to go outside of the evidence it would
necessarily have tended to Def advantage
& therefore he cannot complain

The 1st instruction for Def was properly refused 17 Ill 421

As to the second if there was a dedication it is quite immaterial what influenced the the party making it. It may have been voluntary although made under an entire misapprehension of the facts

The 6th was properly refused

A road must be vacated by the same authority that established it

20 Ill 183

To make this instruction applicable to the case the court must assume that the road was established by user

The 7th relates to the offence of obstructing a public highway, the authorities I have cited show that the indictment would authorize a conviction for continuing an obstruction. If the offence charged is a continuance of an obstruction the instruction was irrelevant

D. C. Jones
State Atty

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D. C. Jones
State Atty

3 F. D.
Lowe
by
The People

Defendant's Error
Brief

Filed May 14, 1862
J. L. Leland
CWR

Supreme Court of the State of Illinois
April Term AD 1862

Vincent L Lawe }
vs } Error to Honkakee
The People &c }

Points & authorities for Decision

The indictment is a good one
The statute provides that "if any person
shall obstruct any public road" &c "so as
to render the same inconvenient or
dangerous to pass" shall be fined &c
See 134 Crim. Code

It is sufficient if the offence is
charged in the language of the statute
without stating the manner

Whart. Crim. L. 91

all in relation to the building of the
fence might be stricken out & still
the indictment would be good
It is not bad for Duplicity

Whart. Crim. L. 81-93 96

The proof sustains the allegations that the road ran from Vincennes to Chicago. The witness Lynds says that he was a resident of Hoanakee & Iroquois Co, since 1842. lived in the neighborhood of the road knew of a public highway leading from Vincennes to Chicago. Came to this country in 1840 saw mile stones as I travelled along - one about 1/4 mile south of this point - I worked this road as supervisor for several years.

There was a little bridge on a slough one east of the section line & the other south of ^{the} section line. Bridges very near line between mile stones & river one on sec 17 & the other on 18. These bridges were on a road known when I came to this country as Vincennes & Chicago State road.

Received p 22 X 23

Robert Stearnon says on page 28 that he knows highway called V & C State road that he had travelled it first in 1842 had seen stones set up & that Def in ~~1859~~ ¹⁸⁵⁷ present a petition to create a part of it.

Alanson Hawkins says on page 30 that he has known the Vincennes

Cherry State ~~sub~~ road
since living was in 1832 - that
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It is immaterial when the
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Wharton's' prec of indictments

& pleas 674 note a

There is no evidence of an abandonment. Before the public can be held to have abandoned a road it must be shown that they had acquired the legal title to the use of another line of travel
20 Ill 183

It is objected to the first instruction on the part of the people that it does not refer to the road in controversy

The jury are told that if they find that the defendant obstructed a road as charged in the indictment they should find him guilty. What is that charge? Why must he obstruct a road leading to & from certain points

If the instruction is too general the indictment is also

The 1st clause of the 4th instruction on the part of the people is certainly good. The 2nd clause is merely an axiom, viz: that an obstruction continues such until it ceases to be one & the 3^d is not objected to

As to the 6th instruction for the people it is quite immaterial whether or not title in Hill could be shown by possession as it contains the qualification that it must appear that the defendant held through him

Whatever Hill's title was the Def was bound by his acts

But possession is sufficient evidence of title & warrants a conviction even in a criminal case

1 Phill. Ev 650

The seventh instruction does not exclude the idea that the presumption arising from user can be rebutted. The jury are told that a road may be established by user & that the working the same &c by the authorities is evidence of user, but before they were authorized to find the defendant guilty they were required, under this instruction to believe from (all) the evidence that the road had been established by user & assented to by Def. This grants

Of the 9th & 10th instructions it is said that they do not ^{require} ~~lead~~ the jury to the evidence in the case

It is a sufficient answer to this to say that the jury had been led by them to go outside of the evidence it would necessarily have tended to Def's advantage & therefore be

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A road ~~may~~^{must} be created by
the same authority that
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20 Ill 183

To make this instruction

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ities which I have
cited show that the
indictment would authorize
a conviction for contin-
uing an obstruction.

If the offense charged is
the continuance of an
obstruction the instruction
was irrelevant.

D. C. Jones
State Atty

And afterwards do this on the 4th day
of March A.D. 1859 the Clerk of said Court
did issue a Capias in the Words and Figures
following to wit:

State of Illinois vs
Franklin County & the people of the State of Illinois
vs the Sheriff of said County. ~~_____~~
you that you take the body of Vincent J. Gorse found
in your County, and safely him keep so that he be
and appear before the Circuit Court, of said
County on the first day of the next Term thereof, to be
holden at the Court House in Hannibal City in said
County on the second Wednesday of April next to
answer unto the People of the State of Illinois
concerning our Indictment for Obstructing
Subduers. And cause you in then and there this
Writ with an Endorsement thereon in what manner
you shall have executed the same. Witness Philip
Forester Clerk of said Court and the seal thereof
at Hannibal City in said County the 2nd
day of March A.D. 1859



P Forester CLK

By J. M. Shirley Dep

On the back of which writ is the following endorse-
ment.

The Sheriff will hold the defendant to
bail in the sum of One Hundred Dollars

P Forester CLK

There by return this writ duly served by annexing the
within named Warrant & also the 2nd day of March 1859

9
This was also filed with said Clerk a certain Recognizance in the words and figures following to wit:

State of Illinois Geo
Kankakee County Be it remembered that on the
28 Day of March A.D. 1859 personally appeared before
me Thomas R. Durbin Esq. of said County, the Sheriff
of Kankakee County in the State of Illinois, Vincent
J. Lorne and S. J. Gale all of Kankakee County, who
jointly and severally acknowledged themselves to owe and be indebted
-ed to the People of the State of Illinois in the sum of One hundred
Dollars, respectively to the value of their respective goods and
chattels, lands and Tenements, if default be made in the condition
following to wit, the condition of this Recognizance, if such should
the said Vincent J. Lorne was lawfully arrested by the Sheriff of
Kankakee County on a Capias, issued out of the Clerk's office of the
Circuit Court of said Kankakee County on the 4 Day of
March A.D. 1859, in the name of the People of the State of
Illinois against the said Vincent J. Lorne on a certain
Indictment found at the Term A.D. 185 of the said Kankakee
County Circuit Court and now pending in the said
Court against the said Capias is returnable on the
first day of next Term of said Court to be holden in the
Court House in Kankakee City, Kankakee County, on
the day of A.D. 185, for if the said Vincent J. Lorne
S. J. Gale shall personally be and appear before said Circuit
Court on the first day of the next Term thereof, to be
holden at the time and place aforesaid, and shall

answer to said Indictment and abide the order of the
court therein, and shall not depart with the leave of the
court then this recognizance shall be void otherwise
the same shall remain in full force and effect

J. T. Lome

[Signature]

S. J. Lake

[Signature]

State of Illinois
Kankakee County ^{Yes} I J. K. Overman Sheriff of
Kankakee County do hereby certify that the above
recognizance, was taken, entered into and acknowledged
before me by the said Vincent J. Lane & J. G. Lake
this 28th day of March A.D. 1854.

J. K. Overman
Sheriff of Kankakee County
By H. B. Bryant Deput

Know all Men by these Presents, That

Vincent T. Lowe

as principal, and William A.

Chatfield & Samuel Nichols as securities, are held and firmly bound

unto The People of the State of Illinois

in the penal sum of two hundred fifty dollars
good and lawful money of the United States, for the payment of which, well and truly
to be made, the said Vincent T. Lowe, William A. Chat-
field & Samuel Nichols

bind themselves, their heirs, executors and administrators,
jointly, severally and firmly by these Presents.

Witness, the hands & seals of the said obligors

this 6th day of November A. D. 1861.

The Condition of the above Obligation is such, That, whereas the above named
People of the State of Illinois

did, at the January Term of the Circuit Court,
held in and for the County of Rankine in the
State of Illinois, A. D. 1861 recover a judgment against the above bounden

Vincent T. Lowe

for the sum of twenty

five dollars & costs of suit

said Vincent T. Lowe to reverse which said judgment, the

has sued out a Writ of Error from the Supreme Court, within and for the Third
Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the
said Vincent T. Lowe

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said
judgment, and all judgments, costs, interest and damages which the said Supreme Court
shall adjudge against him

and abide the order and judgment of said Su-
preme Court in this behalf, then this obligation is to be void, otherwise to remain in full
force and effect.

V. T. Lowe [SEAL.]

Wm. A. Chatfield [SEAL.]

Samuel Nichols [SEAL.]

[SEAL.]

No.

SUPREME COURT,

THIRD GRAND DIVISION.

The People &c

vs.

Vincent T. Lowe

SUPERSEDEAS BOND.

Filed November 12th 1861

L. Leland Clerk.

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Kankakee, Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Kankakee County, before the Judge thereof, between The People of the State of Illinois

plaintiffs and Vincent J. Lowe

defendant, it is said manifest error hath intervened, to the injury of the aforesaid defendant

as we are informed by his complaints and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 12th day of November in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.
by J. D. Rice Deputy



The People of the State of Illinois

No. vs.

Vincent J. Lowe

WRIT OF ERROR.

This writ of error has been made a supersedeas and as such is to be obeyed by all concerned

FILED November 12th A. D. 1861

L. Leland

Clerk.



Faint handwritten notes and bleed-through from the reverse side of the page.

Faint handwritten notes on the right side of the page.

State of Illinois

Waukegan County $\frac{2}{3}$ ss.

Vincent J. Lowe, being duly sworn deposes and says, that William A. Chatfield and Samuel Nichols, who he offers as sureties upon ~~an~~ supercedens bond, are ~~competent~~ and responsible. That both are considerable real estate owners, and are reputed and considered to be out of debt. That Chatfield has real estate, (which this deponent believes is unencumbered) of the value of several thousand dollars, and this deponent believes him to be worth over ten thousand dollars. And that the said Nichols has real estate, (which this deponent believes to be unencumbered) of the value of ^{near about} ten thousand dollars or upwards, and this deponent believes him to be worth about fifteen thousand dollars.

Sworn to and subscribed before me
this the 1st day of November

1891

Oliver Curtis Clerk

V J Lowe

1
2
3
Vincent Love Plaintiff
vs
in Error.

of

The People of the State of
Illinois

Affidavit of Jurisdiction
on Superior Court

Filed November 12 1861

L. Leland
Clerk



Supreme Court of the State of Illinois
April Term A.D., 1862

Vincennes S. Lowe }
vs } Error to Kankakee
The People &c }

Points & Authorities for Defts. in Error

The indictment is a good one
The Statute provides that "if any person
shall obstruct" any public road &c
"so as to render the same inconvenient
or dangerous to pass" shall be fined
&c Sec 134 Crim. Code.

It is sufficient if the offense is
charged in the language of the
statute without stating the manner
~~of the offense~~ Short. Crim. L. 91.

All in relation to the ^{building of the fence} ~~offense~~
might be stricken out & still
the indictment would be good

It is not bad for duplicity
Short. Crim. L. 91, 93, 96

The proof sustains the allegation that the road ran from Vincennes to Chicago. The witness Lynds says that he was a resident of Kankakee & Iroquois Co. since 1842 - lived in the neighborhood of the road - knew of a public highway leading from Vincennes to Chicago - came to this county in 1840 - saw mile stones as ^{he} travelled along - one about 1/4 mile south of this point - I worked this road as supervisor for several years there was a little bridge on a slough one east of the section line the other south of section line. Bridges very near line between mile stone & river - one on sec 17 & the other on 19. These bridges were on a road known when I came to this country as Vincennes & Chicago State road

Record p 22 & 23

Robert Stearnman says on page 28 that he knows highway called V & C State road that he had travelled it - first in 1842 had seen stones set up & that he ^{wanted} in 1859 to present a petition to vacate a part of it

Alanson Hawkins says on page 30 that he has known the vicinities of Chicago state road since Lewis was in 1832 that he took contract to drop mile stones. sub let the job & was paid by the state

It is immaterial when the fence was built. The maintaining of a fence previously built may constitute as much of an obstruction within the meaning of the law as the building of a fence

The indictment contains this averment "on the first day of June" &c "and on divers days & times between that day & the taking of the requisition" It is introduced in all cases where the nuisance continues, and the object of it is to enable the court

to give judgment of abatement
Hartwells Proc. of Indictments & Pleas
674 notes a

There is no evidence of an abandonment. Before the public can be held to have abandoned a road it must be shown that they had acquired the legal right to the use of an unopened line of travel

20 Ill., 183

It is objected to the first instruction on the part of the people that it does not refer to the road in controversy

The jury are told that that if they find that the defendant obstructed a road as charged in the indictment they should find him guilty. What is that charge? Why, that he obstructed a road leading to & from certain points.

If the instruction is too general the

indictment is also

The first clause of the 4th instruction on the part of the people is certainly good law. The second clause is merely an axiom, viz: that an obstruction continues such until it ceases to be one & the 3^d is not objected to

As to the 6th instruction for the people it is quite immaterial whether ^{or not} title in Hill ~~whether~~ could be shown by possession as it contains the qualification that it must appear that the defendant held ~~under him~~ through him. Whatever Hill's title was to the Def was bound by his acts.

But possession is sufficient to warrant a conviction even in criminal cases.

1 Phill Ev. 650

The seventh instruction does not exclude the idea that the presumption arising from user can be rebutted. The jury are told that a road may be established by user & that ^{the} ~~working~~ ^{by} the same ^{ly} by the authorities is evidence of user but before they were authorized to find the defendant guilty ~~under~~ they were required under this instruction to believe from ^{all} the evidence that the road had been established by user & assented to by Def & his grantors.

Of the 9th & 10th instructions it is said that they do not confine the jury to the evidence in the case.

It is a sufficient answer to this to say that if the jury ^{had been} ~~were~~ led by them to go outside of the evidence it ~~necessarily~~ ~~would~~ ~~necessarily~~ have tended to Def advantage & therefore he cannot complain.

The 1st instruction for Def was properly refused

~~Dec~~ 17 Ill 421

As to the 2nd, if there was a dedication it is quite immaterial what influenced the party making it. It may have been voluntary although ~~may~~ made under an entire misapprehension of the facts

The 6th was properly refused
A road must be established
vacated by the same authority
that established it

20 Ill 183

To make this instruction applicable to the case the Court must assume ~~the fact~~ that the road was established by user

The 7th relates to the offense of
obstructing a public highway.
The authorities I have cited
show that the indictment would
authorize a conviction for
continuing an obstruction.
If the offense charged is a contin-
uance of an obstruction the
instruction was irrelevant.

H. P. Jones
State Atty.

³ ^N ^D
The People &c.

us

Lowe

Points & Authorities
for Dept in Error

Given May 14, 1862

J. J. Lowell
C. R.