

8793

No. _____

Supreme Court of Illinois

People, ex. rel., Scott

vs.

Richard B. Sargent

71641  7

Pleas held before the Honorable
Wm A Underwood Presiding Judge
of the Second Judicial Circuit
Court at the September Term of
the Randolph Circuit Court in
the year of our Lord One Thousand
Eight hundred and fifty

The People & on the relation of Hance A Scott
vs
Richard B Servant

And now, ^{on} the 23rd day of September it being the
first day of the September Term of the Randolph
Circuit Court, The following order of said Court
was entered to wit

Monday September 23^d. A.D. 1850

The People on the relation of Hans N. Scott
vs
Richard B. Servant } motion

This day Phillip B. Soule
States attorney for the People of the State of Illinois, in
for the Second Judicial Circuit, on a motion grounded
upon an affidavit filed on the first day of this Term,
and now here produced

It is ordered that a rule be made on Richard
B. Servant, now acting as Justice of the Peace, in
for the County of Randolph, returnable to the fourth day
of the present Term, to show cause if any he can
why the said attorney for the people of the said State
should not have leave from this court to file an infor-
-mation in the nature of a writ against the
said Richard B. Servant upon the Relation of
Hans N. Scott, for having usurped, entered into,
and illegally holding, and executing the office of Justice of
the peace of Randolph County aforesaid, and that a
copy of this rule be served upon said Richard
B. Servant, by the Sheriff returnable to the 4th day
of the present Term

And now on this 27th day of Sept it being the fifth
day of said Term, Phillip B. Soule, Prosecuting atty
for the Second Judicial Circuit files the following
Information, which is in the words and figures
following to wit

Copy of Information

State of Illinois } ss
Randolph County }

Circuit Court

September Term A.D. 1850

now at this term Phillip B. Soule attorney

for the People of the State of Illinois for the Second Judicial Circuit, who prosecutes on behalf of the People, of the State of Illinois, on the relation of Henry N. Scott, of the said County of Randolph Comes into Court, and gives the Court to understand, and he informed, that on the fourth day of December in the year Eighteen hundred and forty nine, Richard B. servant of the said County of Randolph, at said County did unlawfully usurp and intrude into the office of Justice of the Peace in and for said County of Randolph, and did then and there enter into and upon the Exercise of the powers and duties of said office of Justice of the Peace for said County, and did then and there by such unlawful intrusion, and usurpation become possessed of the said office, and of the emoluments and immunities and privileges thereto appertaining against the Peace and equity of the people of the State of Illinois and contrary to the form of the Statute in such case provided

P. B. Soule

States attorney

And now on this 27th day of September it being on the fifth day of said Term, the Defendant having entered his appearance, files the following Plea to wit

Copy of Plea of Dept

State of Illinois }
Randolph County } S.D.

In the Randolph Circuit Court
September Term AD 1850

The People of the State of }
Illinois, on the Relation of }
Hance N. Scott }

vs

Richard B. Servant }

In answer to a Rule made on the ^{Said} Richard

B. Servant, now acting as Justice of the Peace in and for the County of Randolph, returnable to the fourth day of the present Term of the said Circuit Court, to show cause if any he can, why Phillip B. Souke attorney for the People of the said State of Illinois, in and for the second Judicial Circuit, should not have leave from the Court to file an information, in the nature of a quowarranto against the said Richard B. Servant upon the relation of Hance N. Scott, for having usurped, intruded into, and illegally holding, & exercising the office of Justice of the Peace of Randolph County aforesaid, and for plea to the information filed in this cause the said Richard B. Servant, first having been duly sworn doth say (actis now) because he doth depose and say, that on the 7th day of August AD 1847, at a general Election of the said County of Randolph to Elect Justices of the Peace in and for said County for the Town of Chester precinct or district, which Election being held at the time & in the manner prescribed by the Laws of the said State of Illinois, the said Richard B. Servant was duly elected a Justice of the Peace in & for the said County of Randolph and which said Election, of said Richard B. Servant, was duly certified by the Clerks and the Judges of the said Election, whereupon the said Richard B. Servant, proceeded to qualify himself for holding said office, of Justice of the Peace, and for that purpose he executed & delivered his Bond within twenty days after his said Election, to the Clerk of the County Commissioners Court

of the Said County of Randolph, which Said Bond was approved by the Clerk of the Said County Commissioners Court, and also he took the oaths of office prescribed by Law, before the Clerk of the Said County Commissioners Court, to be taken by Justices of the Peace, and having so qualified himself, and having received a Commission from the Governor of the Said State of Illinois, to hold & exercise the office of Justice of the Peace, in & for the Said County of Randolph, for the Term of two years from and after his Said Election, and until his Successor, should be elected and qualified, he the Said Richard B. Servant, proceeded to hold & exercise his Said office of Justice of the Peace as aforesaid, and this respondent further says, that on the 8th day of October AD 1849 there then being a vacancy in the office of Clerk of the County Commissioners Court, in & for the Said County of Randolph, the County Commissioners of the Said County Commissioners Court, according to the Laws of the State of Illinois, in such case made and provided, then duly appointed the Said Richard B. Servant, Clerk of the Said County Commissioners Court pro tempore, to hold and perform the duties of Said office of Clerk until Said vacancy should be otherwise filled, whereupon the Said Richard B. Servant, proceeded to qualify himself for holding Said office of Clerk according to the Laws of the Said State of Illinois, and for that purpose took the oaths ~~prescribed~~ prescribed by the Said Laws of Illinois, and in the manner therein prescribed, in open Court of the Said County Commissioners Court, and gave his bond as prescribed by Law, which was duly approved by the Said County Commissioners Court, and having so qualified himself entered upon the duties of his office, as Clerk of the Said County Commissioners Court — This respondent further says that on the 20th day of November AD 1849 in accordance with the Laws of the Said State of Illinois, the Said Richard B. Servant, as Clerk as aforesaid duly appointed One Presley P. Hamilton his deputy Clerk to be and act in every particular as deputy Clerk of the Said County Commissioners Court, and the Said Hamilton having qualified himself according to the Laws

of the said State, Entered upon the duties of his said office, as
deputy clerk as aforesaid — This deponent further says that on
the 6th day of November AD 1849, the Term of office for which he had
been Elected a Justice of the Peace aforesaid for the Chester Town Precinct
or district, having Expired he was again Elected a Justice of the Peace
by the People of the said County of Randolph, at an Election then
held at the time & in the manner provided by the Laws of the
said State of Illinois, which said Election of the said Richard
B. Servant as a Justice of the Peace as last aforesaid was duly
Certified by the Clerks & Judges of said Election, whereupon the said
Richard B. Servant proceeded to qualify himself to hold and fill
the said office of Justice of the Peace to which he had been Elected
as last aforesaid, and for the purpose of ^{so} qualifying in accordance with
the Laws of the said State of Illinois, within twenty days from & after
his Election last aforesaid, he executed and delivered his Bond, with
Condition due form of Saw to the Clerk of the said County Commissioners Court
and took the oath prescribed by Law before ~~the~~ the said Clerk of the said
County Commissioners Court by J. P. Hamilton his deputy, and the said
Richard B. Servant Elected and qualified as last aforesaid received a
Commission from the Governor of the said State of Illinois, to hold and
Exercise the office, of Justice of the Peace, in and for the County of Randolph,
from & after his Election as last aforesaid for the Term of four years, &
until a successor shall be Elected & qualified — Thereupon the said
Richard B. Servant entered upon the duties of the office to which he
had been Elected as last aforesaid & from thence has continued to hold & Exercise the
said office of Justice of the Peace up to the present time, as this deponent conceives he had
a good & legal right to do, this deponent further says that the time or term for which he was Elected
a Justice of the Peace as last aforesaid, has not as yet expired, nor has he at any time resigned
the said office of Justice of the Peace, nor been removed from the said office of Justice
of the Peace for any Cause, or at any time whatsoever, and further this deponent saith
not } Subscribed & sworn to before me this } R. B. Servant

26th day of September 1850

[8793-4]

M. Palls clerk cir Court

And thereupon the said Plaintiff Counsel, having
withdrawn their first & second replication, files
their third replication to defendant said plea
which is in words & figures following to wit

Copy of Replication

And for a further replication in this behalf Said
Soulle & ally, for the People said says that as to
the plea of the ^{sd} defendant above pleaded, they
ought not to be allowed, in because they say that at the
time & several times in said plea named or either of them
the depts was not legally Elected to said office of Justice
of the Peace for the Saice Town Chester Precinct,
and qualifed therefor according to Law as is in Saice
plea alleged, which they may be enquired of by the
Court.

Philip B. Soule

by Wm J. A. Bradford

the first & second replications, being having been
withdrawn a demurrer is filed to the third

And Thompson said Defendants Counsel, files this
Demurrer to Puffs said 3^d Replication, which
is in words & figures following to wit

Copy of demurrer to 3^d replication

Richard B. Servant
vs

the People of the State of Illinois }
on the relation of Abner N. Scott }
of the said plaintiffs to the said plea of the said defendant & }
the matters therein contained ⁱⁿ manner & ^{form} as the same }
~~are~~ ^{are} above pleaded & set forth, are not sufficient in Law, for the }
said plaintiffs to have & maintain their action there against }
the said defendant, and that he the said defendant is not bound }
by Law to answer the same, and ^{that} the said defendant is ready to }
verify wherefore by reason of the insufficiency of the said third }
replication in this behalf, the said defendant prays Judgment }
if the said plaintiffs ought to have or maintain their }
aforesaid action there against him &c

Causes of demurrer

- 1 It is sought by the plaintiffs to call in question facts which it is not competent for the court in the manner sought to enquire into
- 2 It sets forth & pleads matters of Law not facts
- 3 It pleads & sets forth instead of facts conclusions of Law
Baker & Hamilton
for defendant

And the said Plaintiffs Counsel file the following
Replication to wit

~~Copy of Replication & Traverse~~

State of Illinois

Randolph County

Circuit Court Sept Term AD 1850

and the ~~SD~~ Philip B. Fouke atty for
the People &c says that the people of the State of Illinois
ought not to be precluded &c because he says that the
said R.P. servant was at the said 7th day of August
AD 1847 by an Election then & there had by certain
Citizens of the Town of said Chester not held nor
warranted by Law was Elected a Justice of the peace
for the Chester Town district and that by said Election
the said servant, usurped said office of Justice of
the peace for the Town district aforesaid, and said Fouke
atty &c in fact further says that the said servant was
not at either of the times named in said plea Elected a
Justice of the peace, nor did he the said servant qualify
himself therefor by giving Bond & taking oaths as set forth
in said defendants plea and this he is ready to verify
by his atty Philip B. Fouke ^{and} atty for
by Bradford & Starbird

This replication is Traversed & issue is joined thereon
& consented to be tried by the Court

Baker & Hamilton for
defendant

Philip B. Fouke by Bradford &
Starbird for p[er]

And now on this 28th day of September it being on
the sixth day of said Term, the following order
of Court was entered to wit

State of Illinois 1st Circuit Court
Randolph County 3d September Term AD 1850

The People of the State of Illinois, on the relation
of Hance N. Scott vs Richard B. Servant, Inowarranto

Be it Remembered that when this Case came up before
the Court it appeared by the Pleadings and Evidence, in the Case, and
the admissions of Counsel that on the seventh day of August
AD 1847 the defendant was Elected & was duly qualified as a Justice
of the Peace for the Town of Chester in Said County, and continued to
hold the same till the present time and to exercise the duties thereof, and
that on the 8th day of October AD 1849, the Said Servant was appointed
County Commissioners Clerk for Said County of Randolph ^{pro tempore}
and ^{continued} to hold the same till the first day of December AD 1849, and that
on the sixth day of November AD 1849 Said defendant was Elected
a Justice of the Peace for Said County of Randolph. but it appeared
and so was adjudged by the Court that he was never legally qualified
under the last Election to act in Said office of Justice of the Peace,
and ~~that~~ the Court was of opinion and decided that ~~that~~ the Statute
of July 16, 1843, Constituting the Town of Chester a district for the
Election of Justices is in force and effect, and valid to give the Said
Town a right to Elect Justices of the Peace, and the Court was of
opinion further and so decided that in order to vacate the former
office of Justice of the Peace on the Election of the incumbent to the
office of County Commissioners Clerk, which was in compatible
with the first there must be a proceeding to enquire into the
right of the incumbent to hold the first office instituted during the
time when he was holding both offices, and that Election to the second
and qualification under it does not of its self vacate the first,
and ~~that~~ the Court decided that a second supposed Election as Justice
of the Peace, and qualification and acting thereon would not prevent
the defendant from holding over on the first Election, under the

provisions allowing a Justice to hold till his successor is
elected and qualified, if the Election or qualifications
to the second should be not in conformity with
law.

To all which several decisions and opinions
the plaintiffs except and pray the court to sign
and seal this their bill of Exceptions, and make
it a part of the record in this case, which is done
Wm H Underwood (seal)

State of Illinois }
Randolph County }
I James M. Hall
Clerk of the Circuit Court within and for
said County do hereby certify that the
above ^{Record} contains true and correct copies of
all the papers and orders, directed by the
Defendants, to be made out by him, as appears
from the Record of the Circuit Court of said
Randolph County.

In testimony whereof I have set
my hand and affix the seal of said
Court at Office in Chester, this
30th day of October A.D. 1850

James M. Hall, Clerk Cir Court
By J. P. Hamilton Deputy Clerk

Saturday 28th September 1850

The People on the relation of Wm. N. Scott
vs
Richard B. Servant

And now on this day come the
Said Petter by his atty and the Said deft by his atty,
and the Said deft filed his demurrer to petters Said
general replication, and the Court being fully advised of
and Concerning Said demurrer, is of the Opinion and doth
Order that the Said demurrer be Sustained. It is therefore
Considered by the Court that this Suit be dismissed, at
the Costs of the Relator, and thereupon Said plaintiff
entered his motion for an appeal to the Supreme Court
of this State. It is therefore Ordered that Said Appeal
be allowed upon the Relator Wm. N. Scott, giving
Bond in the Sum of One hundred Dollars, with
Wm. P. Haskin security. Conditioned according to Said
and filed in the office of the Clerk of this Court
within thirty days &c

And the said Plaintiff's Counsel Thompson files
his bill of exceptions which is in the words
and figures following to wit

Ms 32

The People's Court
of Hamlet, Scott

vs

Richard B. Servant

Filed 15th day

November 1850

F. D. Preston Clk

No 11

The People on Hill
of Hancu N Scott

as
S

Richard B. Serrant

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Disputed