No. 8699

Supreme Court of Illinois

People, ex. rel., A.G. Caldwell

vs.

John Reynolds

71641 7

State of Illinois

Supreme Court, 1st Division Dec Term 1848

The People on the rel. of A. G. Caldwell vs John Reynolds. } Application for a Mandamus

The law, the constitutionality of which is questioned, by this application, provides for the division of Gallatin County, incorporating a part of its territory into a new county, called Saline. The act goes on in detail, with all the various provisions necessary to effect the change, and then, in the tenth section, provides for an election, authorising the people of that County to say by their vote whether they wished the division or not, and that the law should only go into operation in the event, that a majority of the votes at such election desired a division. To establish the unconstitutionality of this act it is assumed, that instead of being a law, finished and obligatory from the hands of the General Assembly, this is merely a bill prepared by that department of the government, and submitted to the people of Gallatin County, to be by them passed into a law, or defeated at the polls. This assumption is not true in fact. The law as passed, was complete and perfect, although its principal provisions were to take effect upon a contingency, the determination of which did not depend upon the exercise of legislative powers by the people; but upon an expression which they were authorised to make, rather in the execution than in the enactment of the law — an expression to be made in a legitimate and an ordinary way. To the General Assembly have the people delegated the legislative powers of the government, only limited and controlled by the Federal and State constitutions; and it is insisted that these ~~legislative~~ powers cannot be delegated, to any body of men or any portion of the people; upon the principle that

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delegated powers cannot be delegated - This maxim is true, unless the delegate is empowered to employ others. The extent to which this maxim should be applied to a legislator, depends upon a proper understanding of legislative powers; - upon a proper determination of what may legitimately be done in the exercise of those powers. It is easy to say that it is the business of the legislature to make laws - but then we must inquire, what kind of laws may be made? Must they be full, complete, perfect, absolute, depending upon no contingency and conferring no discretion? This would be absolute legislation, exhausting legislative power on the subject matter of the law. We presume that nowhere has constitutional learning advanced so far, as to assert this doctrine. For ourselves, in determining what is legitimate and proper legislation, we feel warranted in looking at the past to see what kind of laws legislative bodies have been in the habit of passing. Legislative power, is not a new idea, only springing into existence at the formation of this republic, but it has been known and understood since the first formation of society and the institution of civil government; and its meaning is not changed by its introduction into the American Constitutions, although its exercise, is there limited, restricted and controlled, as well by their express provisions as by the genius of the government of which they are the fundamental laws. If we take the action of all past legislatures, as determining what may & should properly be done in the exercise of legislative powers, we see that ~~that~~ while they are bound to make the laws, yet those laws need not be absolute nor make every provision for doing that which they may authorize to be done. While all must

be done under their sanction, yet they need not do all, nor command all. A law may depend upon a future event as contingency for its taking effect, and that contingency may arise from the voluntary act of others. Of this class are all laws creating private corporations, and a very large proportion of the laws creating public or municipal corporations. The former must necessarily be submitted to the corporators for acceptance, before they take effect, and this has been very usually done with the latter, especially in the incorporation of towns and Cities, and not unfrequently of Counties, and we have never heard it questioned before, that the legislature might properly submit a law, creating either a private or public corporation, to the acceptance of the corporators. All such laws are perfect and complete, when they leave the hands of the legislature, although a future event shall determine whether they can take effect or not. If we say that this is an unauthorized delegation of legislative power, we forget what is a proper and legitimate exercise of that power. If the saying be true, that the legislature cannot delegate its powers, it is only so in its most general sense. The may will admit that the legislature cannot delegate its general legislative ~~powers~~ authority, still it may authorize many things to be done by others which it might properly do itself. All powers possessed by the legislature is delegated to it, by the people, and yet few will be found to insist, that whatever the legislature may do, it shall do, or else it shall go undone. To establish such a principle ~~would be almost~~ in a large state would be almost to destroy the ~~state~~ government. The legislature may grant ferry licences, or it may lay out roads and specify their routes and bounds, and yet who will doubt that it may delegate this power to others, either by general or special laws. So also, it

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may pass all the laws requisite for the government of a particular city, or township, or school-district and who will doubt the propriety of its authorising this to be done by the people within the limits of the city, town or district ~~either directly or~~ by their local representatives, or even directly. ~~And~~ This is making laws, and laws ~~to~~ of as binding efficacy as if passed directly by the legislature — They are dependent upon the legislature for their vitality and force, through the act of incorporation, or law under and by virtue of which they are made — Necessarily, ~~these are~~ regarding many things ~~which the legislature may do either mediately or immediately~~ ~~While~~ especially, ~~affecting~~ local or individual interests ~~or things~~ the legislature may act either mediately or immediately. ~~Where the is it~~ We see, then, that while the legislature may not divest itself of its proper functions, or ~~can~~ delegate its general legislative authority, it may still authorise others to do those things which it might properly, yet cannot understandingly or advantageously do itself — Without this power legislation would become oppressive, and yet imbecile — Local laws almost universally call into action, to a greater or less extent, the agency and discretion either of the people or individuals, to accomplish in detail what is authorised or required in general terms — The object to be accomplished, or the thing permitted may be specified and the rest left to the agency of others, with better opportunities of accomplishing the object or doing the thing understandingly — In this way have the seats of justice of most of the counties in the State been located — Indeed the old county seat of ~~the~~ this very County, was ~~decided~~ selected, fixed by ~~five~~ ~~three~~ persons named in an act of the legislature, ~~and~~ under authority, therein delegated to them — Session Laws of 1826-77 ~~legislature~~ the Constitution has been violated

by the passage of the law now in question, then was that location ~~not by the persons named~~ without its sanction - If, by declaring the law invalid, we restore old Gallatin to her original boundaries then, by the same decision do we unsettle the old county seat, because it was located ~~by collusion~~ in pursuance of authority ~~given~~ delegated by the legislature to ~~people~~ individuals - We should say, because the legislature might have named the place, it should have done so, and in no other way could it ~~be~~ have been constitutionally ~~done~~ selected

The only cases to which we have been referred in the last countenancing the position assumed by the relator appear to have been decided by the Supreme Courts of Pennsylvania and Delaware, and noticed in the January and June No's (1848) of the Western Law Journal - These, we feel called upon to notice, and it is to be regretted that we have not full reports of the cases - They appear to be identical in their facts and decisions and the same course of reasoning is pursued by both courts. The first is Parker vs the Commonwealth, noticed in the January No - There, it appears that the Supreme Court of Pennsylvania, by a majority of three judges to two ~~judges~~, held that an act entitled "An act authorising the Citizens of certain counties to decide by ballot, whether the sale of Vinous and Spiritous Liquors should be continued in said Counties," was unconstitutional - It appears that by other laws of that state, the sale of such liquors is prohibited, except by persons obtaining a license from the Court of Quarter Sessions - The legislature then passed the law complained of, authorising the people of certain Counties, to determine by their vote, whether the sale of Spiritous liquors should be altogether prohibited in their Counties, or in afterwards, whether any licenses should be granted - In both cases it was admitted that the laws did not contravene any express provision of their State Constitutions, but then it was said

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not they were invalid because they flagrantly violated the principles and spirit of their constitutions, and tended to subvert their republican forms of Government - And how were their republican Governments to be subverted? By allowing the people of a county to determine by ballot whether or not intoxicating drinks should be sold in the County - Here they perceive an attempt by the legislature to establish a pure democracy, from which, we are informed, they think greater danger is to be apprehended than from an absolute monarchy - Such an attempt, it is supposed, is revolutionary in its tendency and subversive of a republican Government -

Besides the objection that it is inconsistent with the genius of a republican government, to submit such a question to the decision of the people, the maxim before alluded to, that delegated power cannot be delegated, was invoked and relied upon by those Courts. In Delaware the Court says: "The powers of government are trusts of the highest importance; on the faithful and proper exercise of which depend the welfare and happiness of society. These trusts must be exercised in strict conformity with the spirit and intention of the constitution by those with whom they are deposited; and in no case whatever, can they be transferred or delegated to any other body or persons; not even to the whole people of the State; and still less to the people of a county. It is a plain proposition of law, that a power or authority vested in one or more persons, to act for others, involving in its exercise judgment and discretion, is a trust and confidence reposed in the party, which cannot be transferred or delegated - The making of laws is the highest act of Sovereignty that can be performed in a free nation; and therefore

the legislative power may be truly said to be the supreme power of a state. Its exercise requires superior intellectual faculties, improved by study and experience; although it seems to be a common notion with many pretended advocates of popular rights at the present day, that every man is instinctively ~~fitted~~ qualified to be a member of the legislature." We cannot concur in the application to legislative powers, of the maxim relied upon to the extent asserted by that court. ~~In~~ The apprehension of disastrous consequences, which might result from an ~~unwisest~~ unwise use of a discretion, vested in the ~~public~~ people or any portion of them, seems to have led the court to lay down a principle, which certainly cannot be maintained in our judgment. No exception is made to the rule which is asserted, that legislative power is a trust which cannot be transferred or delegated. If this be true, it necessarily follows, that the legislature can authorize others, either the people, the courts or individuals to do nothing which it might do itself. While we may concur with that court, in deprecating and condemning, the fulsome effusions, and unprincipled conduct, of the demagogue whose only merit consists in an artful ability, to deceive the people and flatter the public vanity; ever persuading them that they can do no wrong; approving, defending and advocating every popular prejudice, even at the sacrifice of his own judgment, that he may acquire an influence and use their power for selfish purposes; — who is even willing to ride upon the whirlwind that hastens to destruction, for the giddy pleasure of guiding the storm, we ought not to allow such occasional abuse of the public confidence or credulity, to impel us to the other extreme, and conclude that the people are not safe repositories of any

power — that they cannot judiciously exercise any discretion -

We have before attempted to show that, the legislature may to a certain extent, authorize others to do that which it might properly do itself; and as its powers are all derivative, it may delegate at least some of its delegated powers, the right to do which is also denied in terms by the court in Pennsylvania; and yet this authority to do this, we apprehend, is clearly recognised by the latter court in the case then before it.

In the absence of all legislation on the subject, the right of all persons to sell spirituous liquors is undoubted - A law was then passed, prohibiting the sale of such liquors, by all, except such persons as should obtain a licence from the Court of Quarter sessions - Now the legislature might, had it seen fit, have ~~delegated~~ exempted certain persons by name from the operation of the law by authorizing them still to sell liquor, but instead of doing so, it delegated that power to the Court of Quarter Sessions by authorising it to grant licenses, upon terms prescribed by the law, or by its discretion, or without terms, which it is immaterial, for our present purpose - This delegation of authority is not censured by the court, nor is its propriety questioned - We do not know whether it is left to the discretion of that court to determine whether it would grant any licenses or not - At any rate, that might have been done with equal propriety; and if that had been done, then had the legislature, delegated the very power to one man or a few men, which it was determined, could not be delegated to many men, — to the voters of the County - The same power might, with equal propriety, been delegated to as if the expression is preferred, the same jurisdiction

might have been conferred upon some individual by name, which was given to the court, and if they could confer it upon one man, why not upon more — the voters of the county — Had this authority been given to the court, instead of the voters, we are compelled to believe, that no complaint of its constitutionality would have been entertained, and yet there would have been as much a delegation of powers in one case as in the other. To prove this, needs no argument. If by leaving this question to the people, the republican form of government is to be overturned, and its principles subverted, by a miniature democracy, may not the same awful calamities be apprehended from a miniature monarchy? If by giving this power to the people, the one is created, then, by conferring it upon one individual we have the other. It seems to us that the latter is quite as inconsistent with the genius of a republic as the former and as subversive of its principles, although it is manifest, that there is a wide difference of opinion upon the political question, as to which of these extremes we should first incline —

It is the substance of the thing which we should look at, more than the form — It matters not whether this question is submitted to the people, the court or an individual, by a seperate act, or by the original law prohibiting the sale, and authorising the granting, of licenses, and we repeat, that we apprehend the constitutionality of a clause would never have been questioned, authorising the Court of Quarter Sessions to determine by its vote or order, ~~to determine~~ whether any licenses should be granted in the County or not. The answer is, that in the case supposed, the court would only have been executing a law, vesting it with a discretion, and this, we conceive, is the true answer to the objection which was urged against the law in question.

We are unable to appreciate the danger, or impropriety, either in a political or a legal view, of allowing the legislature, to vest a discretion of this kind depending upon many local circumstances for its proper exercise, either in the people or a court, either of whom may, in truth, be much better qualified to exercise it unexceptionably than the legislature itself. The application made of the maxim, that delegated power cannot be delegated, would lead to most embarrassing results, and would have a much more certain tendency to despotism, than the action complained of. How those courts reconciled their use of this maxim, with the powers universally conferred upon municipal corporations, we are not fully advised. Such corporations are always, delegated with authority to pass laws, local in their character, it is true, but universal in their application within their jurisdictions; — laws precisely ~~similar~~ such as those in question. If in Pennsylvania and Delaware, there are no incorporated towns or cities, authorised to pass and enforce laws prohibiting, the sale of spirituous liquors, and many other acts lawful in themselves, within their limits, we venture the assertion, that those states stand alone in this respect; and in other states, at least, we imagine it has never been questioned, that such powers may well be conferred. It may be true, that this authority is usually conferred upon a board of trustees or city council, but that does not affect the question, so far as a delegation of authority is concerned. This authority, might as rightfully be conferred upon, the mayor alone, or upon the voters of the city, as upon a common council. It is presumed, that there is no constitu-

tional provision, determining upon how many, or upon how few, the legislature may confer this power – That must be left to legislative discretion – If the voters of a city or town may be authorised to determine, either directly by their votes, or by their local representatives whether spirituous liquors shall be sold within their precincts, then surely the voters of a county may be allowed to do the same – Upon the question of authority it can matter little, whether the territory be greater or less, or whether it be densely or sparsely populated – Both counties and cities are municipal corporations and vested with greater or less powers, according to the discretion of the legislature – Both of these as well as other, less important, perhaps, but similar corporations, are usually vested with power to levy taxes, often by a direct vote of the people, and collect them, which has been well said to be one of the highest acts of sovereignty, and yet this authority is admitted to be legitimate by the Court in Delaware, in the very case, because it is said to be not the making, but merely the execution of a law – If to say that a certain tax shall or shall not be assessed and collected, is not legislation, then we are unable to see how it is the making of a law to say that spirituous liquors shall or shall not be sold – And yet how variously different men may look upon the same thing – The supreme court of Delaware says: "No ingenuity can discover the shadow of similitude between the act of the 19th of February 1847 (the unconstitutional law) and any part of the school law." To say that the authority given to the school voters – to members of a corporation, to determine whether a tax shall be

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laid or not, is a grant of legislative power, is an abuse of language!" Pardon our simplicity when we inquire, where they get ~~that~~ that authority, if it is not granted them by the legislature? Whose else gives it them? The majority may vote this tax upon the minority against their consent. This, we had supposed, was not an inherent and natural right, but could only be delegated by the sovereign power of the state. This, the same Court says, is vested in the legislature which might have imposed the tax specifically by a direct law. If all of this be true, we are unable to perceive the abuse of language anticipated; nor do we think it requires any extraordinary degree of ingenuity, not only to "discover the shadow of a similitude between the" two laws, but a very striking resemblance in their principles.

Without pursuing the subject further, we think enough has already been said, to show that the legislature may delegate authority, either to individuals or to bodys of people, to do many important legislative acts, not only similar to that authorized by the law, the validity of which is here questioned, but also others of a ~~much~~ more important and, upon principle, of ~~a~~ much more questionable propriety; but, in doing this, it does not divest itself of any of its original powers. It still possesses all the ~~powers~~ authority it ever had. It is still the repository of the legislative power of the state.

Entertaining no doubt of the constitutionality of the law authorizing the division of Galleton county, this application for a mandamus, will have to be denied.

However clear this may appear to us, and however novel the principle contended for may have been, still ~~two~~ two decisions, made by tribunals of as great respectability as the Supreme Courts of Pennsylvania and Delaware, and upon questions so very like this, may well have justified those whose interests and judgments inclined them to disappove

of the act complained of, in doubting, or denying its Constitutionality. The question however is now settled, and we entertain no doubt that all well disposed submit to the provisions, and operation of the law.

[RL99-97]

The People Ex Rel.
A. G. Caldwell
vs
John Raynalds

Opinion by
Caton J.

Filed Dec 12th 1848

To be entered of
record as of the
last term.

T. H. Treat. C. J.

State of Illinois }
Supreme Court } Set.

The People of the State of Illinois, to the Clerk of County Greeting:—

Because in the record and proceedings as also in the rendition of the judgment of a suit lately had in and before the Circuit Court of County before the Judge thereof between Plaintiff and Defendant of a plea of. On the Case, manifest error hath intervened as it is said to the great injury of the said as by his Complaint we are informed; and we being willing that said error if any there be, should in due manner be corrected, and full and speedy justice be done to the parties aforesaid in this behalf; do command you to send to the Judges of our Supreme Court at Mt. Vernon with all convenient dispatch a transcript of the record and proceedings of the suit aforesaid with all things concerning the same distinctly and openly under the seal of your Court together with this writ, so that the said Judges may have them at the next term of said Court to be holden on the 2d Monday in the Month of November next, that the record and proceedings aforesaid being inspected they may cause to be done thereupon for correcting that error what of right and according to law and the rules of said Court ought to be done.

Witness Finney S. Preston, Clerk of our said Supreme Court and the Official Seal thereof at the Court room in Mt. Vernon the day of A.D. 1849

Finney S. Preston Clk
Sup. Court

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the county of Peoria, for county purposes, until organized in the manner prescribed in the act to which this is a supplement.

AN ACT permanently to locate the Seat of Justice of Gallatin County.

APPROVED, January 26, 1826.

WHEREAS, the inhabitants of the county of Gallatin have prayed that the county seat of the said county may be removed to an eligible site in the geographical centre of the county, as near as may be: and whereas, it is ascertained that the said centre will fall on lands within the saline reserve, and leased to Timothy Guard; and that the said Guard, to enable commissioners to make such selection, has executed a release for one hundred acres of such land as may be hereafter selected under the authority of this act: therefore,

Preamble.

SEC. 1. *Be it enacted by the people of the state of Illinois represented in the general assembly.* That William Burnett, James Ferguson, Michael Sprinkle, John Brown, and Ezekiel Smith, be, and they are hereby, appointed commissioners, for the purpose of selecting a site for the seat of justice within the said reserve, on the lands now held, under lease, by said Guard, if the centre shall fall on said lands: and the said commissioners, or a majority of them, being duly sworn, before some justice of the peace in this state, to make such location on such land, shall meet at the house of —— Henderson, in the said county, in twenty days after they shall have received evidence, by a law of the congress of the United States, of a donation or grant having been made, by the said congress, of the said one hundred acres of land, released as aforesaid, for the site of the future seat of justice of said county; and the assent of this state is hereby given to any law the congress of the United

Commissioners appointed to locate the seat of justice, and how to proceed.

States may pass, vesting the title to said lands in the said county, or the county commissioners thereof, for the purposes herein expressed.

To make return to commissioners' court.

Sec. 2. *Be it further enacted*, That whenever such evidence shall have been received, and the said commissioners, or a majority of them, having selected and determined the site, on the said tract of land, they shall certify the same, under their hands and seals, and return the same to the next county commissioners' court, in and for said county; and the court shall cause the same to be recorded; and such place shall thereafter become the seat of justice for said county.

Their compensation.

Sec. 3. *Be it further enacted*, That the commissioners aforesaid, shall receive two dollars for each and every day they may necessarily be employed in locating the future seat of justice, to be paid out of the county treasury of said county, by an order of the county commissioners' court.

AN ACT establishing the form of Deeds to be executed by the Auditor of Public Accounts for the Sale of Land for Taxes, and for other purposes.

APPROVED, January 26, 1826.

Sec. 1. *Be it enacted by the people of the state of Illinois represented in the general assembly*, That all deeds, hereafter to be executed by the auditor of public accounts, to the purchasers of lands that have been, or shall hereafter be, sold by him, for the taxes, interest, (if any) and costs, due thereon, shall be in the following form, to wit:

Form of deed.

The auditor of public accounts of the state of Illinois, to all who shall see these presents, greeting: Know ye, that whereas, I did, on the day of at the town of Vandalia, in conformity with all the requisitions of the several acts in such cases made and provided, expose to public sale, a certain tract of land, being (here insert the description of it), for the sum of

C.

At a special term of the County Commissioners Court, held at the Office, of Isaac Cooper, in Shawneetown, state of Illinois, county of Gallatin, on Tuesday the 3rd day of Octr 1848.

Ordered, that, in as much, as John Reynolds, the present Recorder, of the county of Gallatin, has refused or, neglected to remove the records of his Office, to Shawneetown the County seat of said County, as requested to do by a special order passed from this Court, at the last september Term.

Therefore it is hereby declared, that the Office of Recorder as aforesaid is vacated, by his own act, & ~~[illegible]~~ will be filled as the law provides

C. Gold, Clerk, of the County Commissioners Court, Gallatin County, Illinois.

C

The notice was handed
to John Rowe
first of the two notices
handed to him by
me
Oct 13 1848

Filed Dec 9th 1848
John Wallace Clk
pro tem of Levy Ct

To the County of Gallatin:

You are hereby notified, that on the first or some subsequent day of the next Term of the Supreme Court of the State of Illinois, to be held in Mt. Vernon, in said State, on the first Monday of this month, an application will be made upon the complaint of Albert G. Caldwell for a mandamus to be addressed to John Reynolds, Recorder, commanding him to act as such Recorder under his election held on the first Monday of August, 1847, for the limits of Gallatin County as then defined by law; he having refused to act as such Recorder; when and where you may attend, by Counsel or otherwise and aid the said John Reynolds in resisting said application if you deem proper; it being the purpose of such application to insist upon the unconstitutionality of the Act of the General Assembly of said State, entitled, "An Act to divide the County of Gallatin, and to form out of the same the County of Saline", approved Feb.y 25th 1847, as well as to insist upon the consequent invalidity of the action of your acting County Commissioners' Court in vacating the said office of the said John Reynolds.—

Dated December 2d 1848.—

Yours, &c

(Signed) A G Caldwell

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The original of the within Notice has this day been filed with me this 2 day of Dec 1848.

Calvin Gold
Clerk
C.C.C.G.C

Filed Dec 9th 1848
John McWhorter Clk
per Lewis T. Cogy Dep

To the Hon the Justices of the Supreme Court of the State of Illinois, at a Term thereof begun and held at Mt Vernon in the 1st Grand Division, on the 1st Monday of December 1848.

The undersigned a citizen of Gallatin County and State of Illinois, would respectfully represent to your honors, That heretofore on the 1st Monday of August 1847, the County of Gallatin in this State, having been long prior, existed into a County and existed without question ~~up~~ as such ~~up~~ to that time, was embraced within certain limits defined by the statutes prescribing the bounds thereof and providing for its municipal organization; That under and by virtue of an act of the General Assembly of the State of Illinois entitled "An act to permanently locate the seat of Justice of Gallatin County ~~entitled~~ approved the 26th January 1826," the seat of Justice of said County of Gallatin was located at Equality in said County, a copy of which act is herewith filed, marked A, and prayed to be taken as a part of this Complaint; That on the 1st Monday of August 1847 a general election was held

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in and for said County, for the
election of certain Officers, among
them a Recorder in and for
the said County of Gallatin as
then existing by law, and under
its then organization as such;
That at such election one John
Reynolds, was elected, as such Recorder
for the term of two years & until his successor was elected & qualified
and was afterwards duly Com=
missioned and qualified to act as
such, and from thence until recently
used and exercised the said Office,
holding the same at Equality
the said Seat of Justice of Gallatin
County; That in pursuance of the
10th Section of an Act of the General
Assembly of the State of Illinois,
entitled "An act to divide the
County of Gallatin and to form
out of the same the County of Saline
approved the 25th day of February
1847, the voters of the said Gallatin
County by a vote upon the question
cast a Majority of votes in favor
of the division of said County
and the said John Reynolds then
being such Recorder, fell within
the limits assigned to Gallatin
County by said last mentioned
Act. Now may it please
your Honors, ~~that~~ your Com=
plainant avers that the said last
mentioned Act of the General
Assembly, a Copy whereof marked B

is hereunto filed and Submitted to the Court as a part of this Complaint, was and is unconstitutional and void, and that the said John Reynolds was and is Recorder in and for the limits of the original County of Gallatin according to his election and commission to the same, & has in manner resigned his said office of Recorder. Your Complainant further states that claiming the said John Reynolds the only legitimate Recorder for the limits of Gallatin County as first above indicated, presented to the said John Reynolds as such Recorder the following described Deeds of Conveyance and requested the said John Reynolds to receive and record the same, to wit, on the 27th day of October 1848 a Deed of Conveyance from one George W. Akers & Wife to your Complainant for Eighty Acres of Land Situate within the limits of Gallatin County as denominated and defined by said last mentioned act of the General Assembly; also on the same day a Mortgage from one James C. Slow to your Complainant, for the Security of $323,48 upon 220 acres of Land likewise Situate in the last mentioned limits.

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also on the 2d. day of December 1848.
a further Deed of Conveyance
from Wm. A. Dokker to the
Albert G Caldwell, (your Com=
plainant) Ebenezer F. Ryan,
Samuel Dunlap & David A
Smith as Assignees of the
Bank of Illinois, of lands situ=
ate within the limits of old Gal=
latin County, and within the
limits denominated and de=
fined by said last mentioned
act of the General Assembly as
the County of Saline, being
295 $\frac{70}{100}$ Acres of land conveyed
in consideration of the sum of
$7802 $\frac{40}{100}$ the said deed of con=
veyance being held by your
Complainant as such assignee
& charged with the duty of having
the same recorded - Your Com=
plainant also avers that the said
John Reynolds at the said several
times when the said Deeds were
respectively so presented to him
with the request to receive and
record the same, there being at his
office in Equality, refused
to receive and record the said
Deeds of Conveyance and
Mortgage above described - Now
May it please your honors
that your Complainant, deem=
ing it necessary to the perpetuation

and security of the title and interests granted by the said Deeds and Mortgage, that the same should be recorded by the said John Reynolds as the Recorder of the County of Gallatin, and irrespective of the said Act of the General Assembly pretending to divide the same, and also deeming it a matter of great public interest that the order and judgement of your honorable Court should be had in the premises, would therefore pray your honors to grant a writ of Mandamus addressed to the said John Reynolds as such Recorder, commanding him to receive and record the said Deeds of Conveyance and Mortgage, and to perform his duties as such Recorder according to the law of the land, and to grant such other and further relief as to your honors may seem meet and proper.

As in duty bound &c.

Albert G. Caldwell
Complainant

[P.L.99-42]

People &c on Relation
A. G. Caldwell
vs
John Reynolds Recr.

Application for Mandamus

Filed Dec 9th 1848
John Wilbach Clk
By Lewis F Leary Dep

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To the Honorable the Justices of the Supreme Court of the State of Illinois, at a Term thereof held in Mt. Vernon, on the first Monday of December, 1848:

The undersigned would respectfully represent to your Honors, that Albert G. Caldwell, a citizen of Gallatin county, has this day exhibited to him his complaint, addressed to your Honors, praying a mandamus against the undersigned, as Recorder for said county, commanding him to receive and record certain deeds of conveyance and mortgages of premises described therein.— The said Albert G. Caldwell has also exhibited to the undersigned notices of such intended application addressed to and served upon the Counties of Gallatin and Saline, by copies filed with the acting Clerks of the County Commissioners' Courts thereof.— Now may it please your Honors, the undersigned wishes, to avoid as much expense as possible in resisting the said application, and to bring the question of his official duties, as such Recorder, in relation to the matters charged in said complaint, before the said Supreme Court, without prolixity or unnecessary delay.— He therefore waives all preliminary oaths, affidavits, process, and orders of your Honorable Court, and enters his appearance and is willing to submit the question in controversy upon the said complaint and this answer thereto, of the undersigned, as an agreed case to abide the judgment and order of your Honorable Court, as if an alternative mandamus had regularly issued and the facts in said complaint, and this answer of the undersigned, had appeared upon and in due returns thereof.—

The undersigned accordingly states, that so much of said complaint as charges that Gallatin county

on the first Monday of August, 1847, was, and had been long prior to that time, embraced within certain limits defined by law; - that Equality was located as the seat of justice thereof under the Act of the General Assembly specified and exhibited by said complaint; - that the undersigned was elected Recorder, at the time mentioned in said complaint, by the people of Gallatin County embraced within the limits above mentioned, and was duly commissioned and qualified, and acted as such, thence to the time hereinafter mentioned; - that the said county of Gallatin was divided under the Act of the General Assembly, approved February 25. 1847, exhibited in said complaint; - that the undersigned, then being such Recorder as aforesaid, fell within the limits of Gallatin county as defined by said last mentioned Act; - that the said two deeds of conveyance and the mortgage mentioned in said complaint were presented to the undersigned as such Recorder at the times stated for record, and the undersigned refused to receive or record the same; ~~and that~~ he the undersigned cannot deny ~~the above facts~~, but admits. ~~them.~~ -

But, the undersigned also states, that in pursuance of said Act, so dividing the said county of Gallatin, Shawneetown received a majority ~~a majority~~ of the votes of the county of Gallatin as formed by said Act, for county seat thereof; that the undersigned retained his said office of Recorder at Equality, the old county seat of Gallatin County, as formed as aforesaid long prior to the passage of said Act, awaiting the direction of the law; that Isaac Cooper and Charles Dinson, elected under said last mentioned Act, and acting as the County Commissioners

Court for the County of Gallatin as newly formed under said Act, on the third day of October 1848, by an order of their said Court, a copy of which in the hand writing of their Clerk is herewith filed marked C. vacated the office of the undersigned, as such Recorder, and further ordered that an election be held on the 7th day of November, 1848, for the election of a Recorder for said county of Gallatin, as formed under said Act;- that at such election the undersigned was elected such Recorder, but has not as yet qualified nor acted as such, nor resigned his commission as Recorder of the old county of Gallatin, according to his first election as such as aforesaid.-

The undersigned further states, that the action of the acting County Commissioners' Court of the county of Gallatin, as newly formed as aforesaid, in vacating the office of the undersigned, (as will appear by the dates set forth in the complaint and in this answer,) occurred before the presentation of the said deeds and mortgage respectively, for record;- that although the undersigned had not resigned or abandoned his said office of Recorder under his first election, yet, in consequence of the proceedings of the said acting County Commissioners' Court, last mentioned, he felt uncertain as to the course he should pursue, and did not feel disposed to take the responsibility of recording the said deeds and mortgage, when they were so presented as aforesaid, and therefore refused to act.

John Reynolds

December 4th 1848.

It is agreed by and between Albert G. Caldwell applicant for the Mandamus, and John Reynolds, Recorder, the parties in the proceeding contemplated

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in the complaint and answer hereto appended:

1st. That the matters of complaint and defence, as presented in the said complaint and answer, be submitted to the Supreme Court, held at Mt. Vernon, Illinois, on the 1st Monday of December, 1848.-

2d. That the Court upon the hearing of the complaint and answer, so submitted, shall make a final order, or grant a peremptory mandamus, if the case require it, in the same manner as if an alternative mandamus had issued and the facts so submitted had appeared upon the due return thereof.

J. G. Caldwell
John Reynolds

John Reynolds
Recorder, &c
ads
The People &c ex. rel.
A. G. Caldwell

Answer or Return, &c

Filed Dec 9th 1848
John Wilbourn & Ch
Wm Lee & Lacy Cl.