

No. 13095

Supreme Court of Illinois

People, ex. rel.

vs.

Dowling

STATE OF ILLINOIS,
SUPREME COURT.
Third Grand Division,

No. 24.

PEOPLE'S CAUSES.

People

Daniel

15092

Page 1

In the Supreme Court of the
State of Illinois, 3^d Grand Di-
vision. April Term 1865.

The return and defence of
John J. Dowling to the writ of
Habeas Corpus issued on the
relation of Hermann Silber.

The said John J. Dowling
comes and defends - and for
defence and return to said
writ. Why he has not obeyed
said writ, and why a peremptory
mandamus should not
issue against him, shews to
this Honorable Court. the fol-
lowing reasons. - that is to say:

= Admitting that the city of
Pew is a municipal cor-
poration - that it was di-
vided into four wards on
the 31st of March 1865 - that
the city Council was then con-
stituted - that defendant
was then clerk of said city -
- that the election boards of

2, the several wards were organized and places of election appointed — that elections were held in the first, second and third wards — and the results of said election as to Wm. Scherzer, Churchill Copping, and Richard A. Winston — that a meeting of the city council took place on April 11th — and that ordinances of said ^{city} concerning the custody of the records, papers, and seal of said city exist — — — as set forth in said petition =

= and protesting that, according to the matters and things contained in said petition, petitioner is not entitled to said writ or to any relief whatever =

= He denies, that said Brewster was elected mayor =

= that said Brewster was elected alderman of the first ward = That said ^{Burgum} was elected alderman of the 3^d ward =

3 = that the election in ^{the} 4th ward was illegal = and that said Herman Silver was duly elected clerk of said city = in manner and form as set forth in said petition and writ = and so he says, that said Silver had not at the time of the filing said petition, or service of said writ, and has not now, any right to demand and receive, as clerk of said city, the record books, papers, and seal of said city -

This defendant states as to the election in said 4th ward - that it is true it was not held at the house of Wm Hackman the place appointed by resolution of said board - that the judges of election met at the house of said Hackman on the morning of election day and opened the polls and then adjourned to the district school-house in said

4

wend. where the voting took place - that this fact appeared by the return of said judges of said election =

= but this defendant states that he is informed and believes, that one reason for said removal was the request made by said Hackman, who was one of the judges, that the polls be removed = That another reason was this - that said Hackman kept a saloon - that many voters, ^{to wit, over fifty} of said wend. on account of this, or some reason, early in the week previous to the election, signed a petition to said city council to remove the polls to said school-house = that the regular meeting of said city council was to have taken place on Saturday evening before the election - that Aldermen Young & Neam only were present - that this defendant was there as clerk. and had said petition

5- in his possession, to be presented to said board, by request of some of the petitioners,

- but as no quorum was present, no business was done, and the board adjourned for one week -

= that this petition and the contents thereof were known to said young and Pecum, and they were in favor of granting the prayer of it - that he believes, these and he insists, that these facts concerning said petition and the contents of said petition were known to said Bohrend and aldermen Moore & Cahill. This defendant is informed and he believes, that the judges of election in removing the polls, acted with the knowledge and the sanction of mayor Bohrend, and other members of the council, and in good faith - that said school house was generally believed to be, and

6 was in fact, a better place for the election than said Hackman's house - that said School-house is not a "considerable distance" from said Hackman's but from 100. to 150 paces^{only} and in plain view therefrom. that it is equally central, and as well known to the people - that the election was held there without any one making an objection, or complaint. that said Behrend was there several times during the day, that said Young, Neam, Deare and Cahill were there -

- that said Powers, who contested the election of Kaiser, was there nearly the whole day soliciting ^{& challenging} votes - that in fact the place of election was well known to all - at least as well ~~so~~ well as any of the other places of election, - that there was a large and full vote in said ward.

7 that this defendant resides in said ward, and is well acquainted there, and has heard much talk concerning said election, and this attempted disfranchisement of the voters of said ward, and he has not heard of one voter who failed, or neglected, to vote on account of the removal of the polls - and he never heard of any pretence of wrong, in such removal, until the proposition was made before the board to throw out the vote of said ward - and this defendant believes, and charges it to be true, that said judges of election, and members of the city council, acted in good faith in causing, or permitting said the place of election to be changed - that the people voted in good faith, that not a vote was lost on account of it.

8. - and that the attempt to disfranchise the voters of said 4th ward on account of the pretended illegality of the removal of the polls, was a fraudulent scheme, subsequently converted to annul the voice of the majority and to place in power those who had only a minority vote.

As to the action of the city council on April 11th 1860, claimed to be set forth in said petition & writ, this defendant says, that the report of the same ~~also~~ set forth in petition is in many ~~other~~ respects incorrect. in ~~some~~ other respects correct. and in other respects he does not know whether correct or not = that there were many people present, and much excitement and confusion prevailed: that he was present as clerk. that he ^{kept} some minutes

9 of the proceedings - that
he put said minutes in
the safe. Which was un-
-der his charge, and of which
he had the key, and where
he usually kept the records
and papers of said city -
-that the next day said
safe was broken open by
some persons unknown
to defendant - but as he
is informed and believes,
by an association of per-
sons, that is to say, said
Philip K. Bohrand, Amos Hill
Loring, George Moore, Richard
A. Winston, and A. S. Hagan,
pretending to be the city
council of the city of Penn.,
- and their pretended clerk,
the rector: since which time
he has not seen said min-
utes. - Defendant says that
he made a record of the
proceedings from memory,
embracing such matters as
he deemed material and
proper, and leaving out
such as was doubtful re-

obnoxious and improper,
and ~~which~~ published the
same as follows

" **Proceedings of the City Council**
CITY COUNCIL ROOM }
April 11th, 1860. }
The Council met; pursuant to a special
call by His Honor the Mayor for the pur-
pose of canvassing the returns of the
late Municipal Election and declaring who
was elected.
Present, His Honor the Mayor Alder-
men Young, Ream and Maze. On motion
the minutes of proceedings of the last
meeting were read and approved.
On motion, the returns of the Judges
of Election of the 1st Ward were canvassed
and it appeared that J. L. McCor-

mack received	85 votes for long term.
T. D. Brewster	80 " " "
J. L. McCormick	5 majority
Wm. Scherzer	84 for short term.
A. L. Sheppard	78 " " "
Wm. Scherzer	6 majority.

Alderman Ream here protested against
the order of the proceedings stating that
the usual and proper way was to canvass
the returns for Mayor first.

A motion was made by Ald. Young
and seconded by Ald. Ream that J. L.
McCormick having received a majority of
five votes for Alderman of the 1st Ward
for the long term that he be declared el-
ected and take his seat, which motion his
Honor refused to put to the board to pass
upon.

On motion Wm. Scherzer was declared
elected as Alderman for the short term
for the 1st Ward.

The returns of the judges of election
of the second ward were then canvassed
and it appeared that Churchill Coffing re-
ceived

66 votes for long term.
Wm. Paul 1 " " " "
Wm. B. Day 41 term not indicated.
Wm. Paul 44 " " " "
C. Coffing (later) 3 " " " "

Mr. Coffing took his seat and claimed
his right to take part in the proceedings
and insisted upon doing so, under protest
from Aldermen Ream and Young. The
returns of the 3rd Ward were canvassed
and it appeared, that

For long term	R. A. Winston	48
do do	James Cummings	1
do do	Barthomew Denny	24
Short term	James Cummings	16
do do	A. T. Hagan	39
do do	Bartholomew Denny	7
Not indicated,	James Cummings	24

At this point, R. A. Winston took his
seat and claimed a right to act and insist-
ed upon doing so, under a similar protest
as urged against Mr. Winston.

It was then moved and seconded that
James Cummings be declared re-elected
as Alderman of the 3d ward for the short
term.

Upon which the Mayor accepting of
the votes of Wm. Scherzer and Churchill
Coffing, and refusing to accept of Mr.
Young, the Motion according to such
voting was overruled.

The returns of judges of election of the
fourth ward were taken up and it appear-
ed that Frederick Kaiser received 75
and Asa F. Powers 58 votes.

A double vote containing names of
Kaiser & Schaulin rejected by the judges
25; scattering 3.

Upon canvassing the returns of the
judges of election of all the wards, it ap-
peared that

For Mayor, Naasson Young rec'd	261
do P. K. Behrend do	254

On motion, the Council adjourned.

J. J. DOWLING, City Clerk.

- Defendant says that the
above is not a full state-
ment of all that was said
and done, but correct as
far as it goes, and suffi-
ciently full under the
limitations above spec-
ified.

11

Defendant says that Alderman Young took his seat at the Board, and he thinks he voted on the approval of the minutes. On the resolution offered by Dease he thinks and insists that he did not vote.

As to the service of notice of contest by Brewster upon Mc Cormick he knows nothing except that he saw Brewster hand Mc Cormick a piece of paper - from all that was said and done he supposes it was some such notice, but does not know the contents, except from hearsay, nor does he remember precisely the time such paper was given.

As to notice served, or claimed to have been served, by Asst. Powers on Frederick Kaiser, he has no positive knowledge, except that some thing was said or done concerning such notice. He has

seen a paper purporting to be such notice, and he believes, and admits that such was given.

As to the resolution of-
fered by Alderman Hare,
defendant says, that Keam
voted for the same. it is
true: but he believes him-
self and insists the fact to be,
and he understands from
said Keam that he believes
and insists the fact to be,
that said resolution was
cunningly devised by
said Edmund, Goffing, and
Hare, their abettors, and
counsellors, with a view of
defrauding, by a trap, those
elected by a majority vote,
out of their rightful seats:
- that Keam was ignorant
of such intent, and had he
known or suspected it would
he would not have voted
for said resolution.

Defendant says that af-
 ter the returns from the
 first ward were canvassed,
 Alderman Young made
 a motion that Messrs
 McLennick and Schesser
 having the highest num-
 ber of votes, be declared elec-
 ted; which motion was sec-
 onded by Alderman Neam-
 — that Mayor Behrend
 would not put the motion
 on the ground that Young
 was not a member of the
 Board — and it was at
 this time that the discus-
 sion as to his right to be
 there arose — At sometime
 — the precise time we cannot
 tell, Young left his seat at
 the table: and before he left
 he heard Mr Coffey say to
 him, in a manner cal-
 culated to embarrass and
 intimidate, "I am surprised
 to see, ^{a man of} your ^{intelligence} at the Board.
 — knowing full well that
 your term expired on Elec-
 tion day at sundown" —

14,

- to which Young replied that "he did not know what the law was - but it had been the practice, and he supposed it right, for aldermen to sit till their successors were elected and qualified."

While they were canvassing the returns of the second ward, and about the time ~~that~~ that Copping filed his oath of office (is not certain whether before, or after) me -

Cornick came forward and
filed his oath of office. Claim-
ed his election ^{as Alderman} and ^{demanding his seat} ~~demanded~~
~~his seat~~ at the board,
which was refused him
because there was a contest.
Young then filed his oath
of office as mayor. McCor-
nick made a motion. Sec-
onded by Alderman Nesman
that Young take his seat
as mayor. Behrend did
not put the motion on

Mc Cormick also ^{about this}
time made a motion to
adjourn which was seconded.
But Behrend, would not put
the motion for the same reason.

on the ground that Mc Cormick was not a member of the Board: ~~Behrend did~~ not in express terms deny the right of Young as alderman or mayor to sit at the Board.

About this time all the others. Kaiser, Cummings, Winston & Hagan filed their oaths of office. When Hagan came forward to take his seat, Cummings notified him that he contested his right to take his seat. Behrend did not in express terms, deny the right of Young as alderman, or mayor, to sit at the Board - but that he was ^aadvised, and he proposed. After Scherzer, Coffey, Winston & Hagan had taken their seats, to vacate his seat, remarking, "that they could put one of their number in the chair and settle the matter among themselves."

or words to that effect. but on request of said last named persons, ~~he~~ or some of them, he remained.

Defendant understands and believes, ^{thru} that said Behrend served a notice on Young, for the first ^{time} on the day following this meeting, that he would contest his election - that he, defendant, has this notice in his possession and it is dated May 12th. =

= Defendant says that he is unqualified in the law but he believes, and insists, that under the resolution, (Supposing that it should be considered of any binding force, which defendant denies), said Young had a right to take the office and his seat at the Board, as mayor, on filing his oath of office, as the returns from all the wards gave him seven majority for said office.

17 He believes and insists that, with, or without regard to said resolution, by said returns and by the fact of his receiving a majority of all the votes given, counting in said 4th ward which gave ^{him} a majority of 44 votes, upon his filing his oath of office he became from that moment ^{fact} mayor or - in law and in law, and so that all proceedings + of said Board, except to adjourn, or of said association of individuals, after that, as the charter provides that the mayor shall preside, were, as of the city council of no effect whatever.

Defendant says that the usual practice has been, according to his best information and belief, (and he has been clerk for three years, and knows

the practice for such time) for all the old Board to meet soon after the election and canvass the returns of elections, as made by the judges of election, commencing with the mayor, and declaring the election of him who appeared to have, by such returns, the highest number of votes, and giving to such a seat, on his filing his oath of office with the clerk. We understand and insist that, at one time, which was in 1854, the old Board failed to meet soon after the election, on account of the absence of Churchill Coffey, who was then an alderman holding over ^{enough} - but the newly elected ~~board~~ among whom was said Theron D. Brewster. Claiming to have been elected mayor, claimed the right to enter upon their office, having filed their oaths of office,

without any such recognition, or declaration, by the old Board, and did so enter and act. And this defendant is informed, and believes it to be true, that this Honorable Court sustained the action of said newly elected members, although the old board finally met and declared the election in favor of other parties. Defendant believes and insists that, before this, a like practice was resorted to in some instances, - but since that time the people of Peru generally have understood such practice lawful; and a formal count by the old board has been made, only to ensure certainty and regularity.

Still further defendant urges that as the division of said city into four

19. wends took effect from
the 31st of March. The
Council began at the meet-
ing on the 11th was not
so constituted as to pass
a vote (except to adjourn)
without the vote of the
newly elected members,

= And so this defendant
considers himself justified
in the belief, that said Young
became mayor, in law and
in fact, as aforesaid - and
says that all that he has
done in the premises ^{has} been
done in good faith, and
under such belief.

as to that portion of
said petition & writ which
sets up a claim that The-
ron B Brewster was elected
alderman of the 1st ward for the long
term, by a majority of the
legal votes cast, defendant
says that it is not so, ac-
cording to his best infor-

18

mation & belief - that his source of information is the returns of the judges of election, for such record, which shows that John Mc Cormick received 85 votes and Theron & Brewster, the next highest, 80 votes for alderman for the long term. and he thinks that the judges certified that said Mc Cormick was duly elected; and defendant believes and insists that this was so, in fact and in law and that he was wrongfully kept from his seat after he filed his oath of office.

As to the pretended count set forth as having been made by said association of individuals, claiming to act as city council, this defendant knows nothing - He has heard and believes it possible that said votes might have been changed after

the count by the judges
 was made, as the votes
 were kept at one of the stores
 in Pem, and, in a measure,
 unsafe = but this defen-
 dant states that he has
 heard and believes that
 it was well and common-
 ly known and understood
 among the voters of said
 1st ward, that John L. Mc-
 Cormick was being run for
 the long term, and for no
 other, - that there were two
 parties at said election,
 and much interest and
 excitement prevailed =
 = that Young was nomi-
 nated at a public meet-
 ing of the citizens of Pem,
 very fully attended, = that
 the voters of said 1st ward
 favorable to Young's election,
 in full meeting, nominated
 for aldermen John L. Mc-
 Cormick & A. E. Shephard,
 = that those favorable
 to the election of Beine

22

nominated Theron D. Brewster and Wm. Scherzer for Aldermen. = That the tickets cast for Mc Cormick & Shepherd had the name of Mc Cormick first upon them; that they were printed, without any designation as to long or short term = that the designation, which was upon the votes, was subsequently entered in writing = and defendant believes from all the circumstances, and he insists, that all those who cast votes for Mc Cormick and Shepherd without any designation as to term (if such were in fact cast) intended and supposed they were voting for Mc Cormick for the long term, and for Shepherd for the short term = and so that the judges of election for said ward committed no mistake or wrong in counting said votes given

23
for McCormick, without designation of term (if such were given) for said McCormick for the long term =

Defendant makes the same statement in reference to Cummings of the 3^d ward: = that the votes favorable to Young nominated Denny & Cummings, & those favorable to Behrens nominated Winston & Hays - in full meeting = that it was commonly understood and known among the voters of said ward that Denny and Winston were running for the ~~the~~ long term, and Cummings and Hays for the short ^{term}. That the tickets with Denny & Cummings name on them had Denny's name first & were printed without any designation of term. That such designation as was made, was made by the voters.

24

in everything = and so defendant
says he believes from all the
circumstances of the case,
and he insists the fact
to be, that all those voters,
who voted for Cummings
without indicating the
term intended and sup-
posed they were voting for
him for the short term.
= and thus said Cummings
was elected by a majority
vote for the short term.
and became alderman
and was entitled to ^{his seat} ~~seat~~
on his filing his oath of
office.

Defendant still further
insists, as to the right of
said Cummings & McCor-
smick to seats at the Board,
that the city council had
no right to require any de-
signation, as to long or short
term, to be made = that by
the increase of the number
of wards the 1st & 3d wards

25

ever left without resident aldermen, = and that the proper construction of the charter would require two aldermen from each of these wards to be elected without designation = that the two persons having the highest number of votes should be regarded as elected, and the term should be afterwards decided between them, by lot, as in the first election under the charter = and so that said McCormick & Cummings were both duly elected.

Defendant ^{also} insists that Frederick Kaiser was in fact duly elected alderman in the 4th ward by a majority of 17 votes over Pomeroy, the next highest, and that he became alderman and was entitled to take his seat on filing his oath of office.

26

as to the matters and things
 contained in exhibit "B"
 & exhibit "C" defendant
 says he knows nothing except
 by hearsay = he supposes
 such action was had by
 the persons named = but
 he denies that said persons,
 or association of persons,
 had, or has any legal claim
 to be regarded as the city
 council of the City of Penn.
 He submits that all their
 acts are merely colorable
 & without right - an attempt
 to defeat the rights of the
 majority by mere technicali-
 ties.

This defendant admits
 that said relation, on the 12th
 of April, as clerk, demanded
 of him the record books,
 papers & seal of said city
 - and again ^{at another time} ~~also~~ at which
 time they were in possession
 of Mayors Young. That at both
 times he refused to deliver
 them, claiming, according
 to the facts of the case as
 he understands them, that
 he said defendant, is, & was,
 the clerk of the city of Penn.
 = that said Young, from the

27

said 11th of April, has been, & is, the mayor of Pem. in law & in fact, and that he, defendant, has kept and controlled said books, papers, and seal, under the order of said Young, as in duty bound to do by ordinance, in good faith, and as he considers is still bound to do.

Defendant further states, and returns, in addition to the foregoing, that the 13th of April the City Council of Pem, constituted as hereinbefore stated, met on the call of Mayor Young - ^{& notice to all} at which meeting defendant was elected clerk pro tem. and he ~~entered~~ ^{made} a record of the proceedings in the proper book and published the same, a copy of which is given in exhibit it is hereunto attached and made a part of this return. Also they had another meeting on April 14, also on the 18th of April. at which this defendant was elected clerk, and other meetings have been had

28,

from time to time. The
proceedings entered of
record and published
copies of which are here-
unto attached in exhibit
"B" and made a part of
this return.

All of which is returned
and respectfully submitted

John J. Dowling

State of Illinois
Caselle County }

John J. Dowling
being duly sworn says
that he has read the above
return read that whatever is stated of
his own knowledge is true
and all the rest is true
to the best of his knowledge
and belief. and constitutes
a true return to the writ where
unto he has been served.

Subscribed &
sworn to before me
this 14th day of
May A.D. 1860

John J. Dowling

Robert M. Rileiff Clerk Magistrate

29 Exhibit "A"

CITY COUNCIL ROOM,
April 13th, 1860.
The Common Council of the City of Peru met: Pursuant to a call of his Honor the Mayor Young. Present, his Honor the Mayor, Aldermen, Ream, Kaiser, Scherzer, McCormick and Cummings.
On Motion, J. J. Dowling was elected Clerk Protem.

On motion the reading of the minutes of the proceedings of the last meeting were dispensed with. On motion it was declared that it appeared from the returns that His Honor the Mayor had received the majority of the votes for Mayor for the ensuing year, and that therefore he be declared Mayor of the city of Peru for the coming year. On motion it was declared that J. L. McCormick was elected Alderman of the first ward for the long term. On motion it was declared that Wm. Scherzer was elected Alderman of the 1st ward for the short term. On motion it was declared that Churchill Coffing was elected Alderman for 2nd ward. On motion it was declared that R. A. Winston was elected Alderman for the 3rd ward for the long term. On motion it was declared that James Cummings, was elected as Alderman for the 3rd ward for the short term.

On motion, It was declared that Frederick Kaiser was elected as Alderman of the fourth ward.

On motion, The Council adjourn until to-morrow evening, at 7 o'clock.

J. J. DOWLING,
City Clerk pro tem.

Exhibit "B"

CITY COUNCIL ROOM,
April 14th, 1860.
The City Council met, pursuant to adjournment.
No Quorum being present, the Council adjourned.
J. J. DOWLING,
City Clerk pro tem.

Proceedings of the City Council

CITY COUNCIL ROOM,
April 18th, 1860.

Council met, pursuant to adjournment, present his Honor, Mayor Young, Aldermen Ream, Scherzer, Kaiser, McCormick and Cummings.

On motion the minutes of the proceedings of the last meeting were read and approved, after which, his Honor the Mayor suggested that on the next regular night of meeting, the Board do appoint City Officers for the fiscal year 1860.—Suggestion was on motion approved, after which the Board on motion adjourned to a day to be appointed.

JOHN A. DOWLING,
City Clerk.

CITY COUNCIL ROOM,
April 20th, 1860.
Council Met. Present his Honor Mayor Young, Aldermen Ream, Scherzer, Kaiser, McCormick and Cummings.

On motion the proceedings of the last meeting were read from the minutes, and the same approved.

At this part of the proceedings his Honor the Mayor arose, and delivered the following address.

Address of his Honor Mayor Young.

Gentlemen of the City Council:—Having being elected by a majority of our fellow citizens, as your Chief Executive Officer, it becomes my duty to address you, on the policy which, in my opinion, should characterize our administration of the City affairs, during the present municipal year.

I would first remark that during the excitement consequent on the late election, much has been said on both sides, which is to be deplored, much to be forgiven, much to be forgotten. For my own part, I shall only say that, although I have received my full share of the most unprovoked calumny, I heartily forgive both the authors and circulators of it; and shall endeavor to forget it, and, if in the heat of the moment, I should have been betrayed into the use of language, which I most earnestly entreat that the same charitable sentiment may be extended to me. Let all harsh feelings cease on both sides, and let us not forget, that we may be friends and neighbors for many years, after we shall cease to be members of the City Council.

I shall not trouble you with any lengthened remarks on the financial affairs of the City. The Treasurer and Collector's reports will be laid before you, and you will find the whole matter more in detail, than I could present to you. The negotiation with the holders of the Chicago and Rock Island Rail Road Bonds, will also be submitted to you, I am not aware how far the matter has progressed, but I would recommend, that we urge the subject to an equitable and honorable adjustment. In the present depressed state of the City finances, it is incumbent on us that we practice the most rigid economy, during the present municipal year. No more money should be expended in work than shall be absolutely necessary for the due maintenance of the thoroughfares of the city, and I think a judicious application of the poll tax will be sufficient, or nearly so, for that purpose; but, of course you will yourselves be judges in that matter.

I shall not appoint any standing committees except the committees on streets, the Aldermen of each Ward being ex-officio members of said committees. I think the practice of appointing standing committees, in a small municipality like ours, is objectionable; inasmuch, as it submits the members of those committees to an undue pressure from without. I shall, therefore, nominate them as circumstances may arise to require it.

Gentlemen, I shall rely on your assistance to conduct our business with that due order and decorum, which should characterize a deliberative Body.

It is true, our City is as yet but small, and many of us are comparatively humble individuals; still we compose the Senate of Peru, and its proceedings should be marked by due dignity and propriety.

And now, gentlemen, permit me to say, that I do not stand before you as the representative of any person, party, or clique, but, as the chosen servant of my fellow citizens, with full intention to administer, with your assistance, the affairs of our City in such a manner that its prosperity and the welfare of our citizens may be promoted. And in order to carry such a resolution into effect, I shall expect your hearty assistance and co-operation; as without those, my exertions must be powerless. However we may differ outside the Council Room, I hope and expect that when assembled around this Board, all personal and party considerations will be laid aside, and we shall act as bound by our oaths of office for the best interests of the City.

I thank you Gentlemen, for the kind attention with which you have heard me, and fervently hope that the Great Ruler of Councils may guide us in the ways of peace—that our proceedings may be marked by harmony and cordiality—and that, at the expiration of our terms of of-

30,
see, we may retire, with the consciousness of having done our duty as good and faithful servants.

On motion, the address from the chair be printed in the minutes of the official proceedings of the City Council. On motion the council proceeded to fix the salaries of the different officers for the fiscal year, 1860. It was then moved and seconded that the City Clerk's salary be \$125.00 per year. Assessor \$75.00 for the fiscal year.

On motion, the appointment of the city attorney was dispensed with for the present.

On motion, the present city watchman be notified that his services are dispensed with from this date.

On motion, of Ald. Cumming. John J. Dowling be appointed City Clerk. Seconded by Ald. Ream.

Moved by Ald. Scherzer that F. W. Mattocks be appointed City Clerk. Seconded by Ald. Kaiser. His Honor the Mayor having called for vote by ballot it appeared that

J. J. Dowling received	3 votes.
F. W. Mattocks "	2 "
J. J. Dowling's majority,	1 "

It was then moved by Ald. McCormick that John J. Dowling be appointed City Clerk, by acclamation for the fiscal year, 1860. Motion seconded by Ald. Ream and carried.

Ald. Scherzer nominated Charles Struver for the city assessor seconded by Ald. Ream.

Moved by Ald. McCormick that Noah Sapp be appointed City Assessor motion seconded when there appeared, on vote by ballot, that

Charles Struver,	3 votes.
Noah Sapp,	2 "
Charles Struver's majority	1 "

It was on motion, declared that Charles Struver be elected by acclamation, City Assessor for the fiscal year. Motion carried. On motion Henry Jones be elected City Treasurer. There being no opposition. Henry Jones was on motion appointed City Treasurer for the fiscal year.

FOR CITY COLLECTOR.

Moved by Ald. Scherzer that Martin Harmon be appointed City Collector.—Seconded by Ald. Kaiser.

Moved by Ald. McCormick that D. O'Sullivan be appointed City Collector. Seconded by Ald. Ream.

When there appeared on vote by ballot for

Martin Harmon,	2 votes.
D. O'Sullivan,	3 "
D. O'Sullivan's majority	1 "

On motion, Daniel O'Sullivan was appointed City Collector for the fiscal year 1860.

Moved by Ald. Kaiser that Wm. H. Foot be appointed City Marshal. Seconded by Ald. Scherzer.

Moved by Ald. Ream that Paul Boehme be appointed City Marshal. Seconded by Alderman Scherzer.

When there appeared on vote by ballot for

Wm. H. Foot,	1 vote.
--------------	---------

Proceedings of the City Council

CITY COUNCIL ROOM
April 24th, 1860.

At a called meeting by his Honor, Mayor Young.

Present, Aldermen Ream, McCormick, Kaiser, Scherzer and Cummings. His Honor, the Mayor took the chair.

On motion of Ald. McCormick, the reading of the minutes of the proceedings of the last meeting be dispensed with. Seconded by Ald. Scherzer. Carried.

Report of the Committee on Streets in and for the First Ward.

The committee on streets report that they have repaired, the repairing of the steps leading from the corner of La Salle streets to Mr.

Abraham's corner, and the repairs have been accordingly executed.

Ald. Cummings of the committee on Streets for the 3d Ward, reports that he requested of Mr. Merritt to have the sidewalk in the premises of Mr. Miller leading to La Salle repaired.

Ald. Ream then handed in his resignation as Alderman for the 4th Ward, which reads as follows:

To the Honorable Mayor and City Council of the City of Peru.

Gentlemen: Having moved my residence from the 4th Ward, I do hereby give notice of my resignation as Alderman of said Ward my resignation to take effect from and after the 5th day of May next.

Dated at Peru this 24th day of April 1860.

BENJAMIN REAM.

Moved by Ald. McCormick that Mr. Ream's resignation be accepted and that his said office be from and after date declared vacated.

Moved by Ald. McCormick that an Election be held in the 4th Ward to fill the unexpired term of Ald. Ream. Motion seconded and carried.

Fredrick Kaiser also handed in his resignation as Alderman for the 4th Ward which reads as follows:

To the Honorable Mayor and City Council of the City of Peru.

I would hereby respectfully resign my office as Alderman for the 4th Ward; my resignation to take effect from and after the fifth day of May next.

F. KAISER.

Peru May 24th 1860.

On motion the foregoing resignation was accepted.

Moved by Ald. Scherzer that an election be held in the 4th Ward for one Alderman to fill the unexpired term of Mr. Kaiser; seconded by Ald. McCormick and carried.

On motion it was resolved, that the election to fill both of said vacancies shall be held on the 5th of May next; and that at said election it shall be designated by the voters on their ballots which of the candidates for election shall hold for the unexpired term of Ald. Ream, and which for that of Ald. Kaiser.

On motion, the City Clerk was ordered to post notices of election in three public places in the 4th Ward.

It was then on motion declared, that an election be held in the district schoolhouse in the 4th Ward and the following gentlemen be judges thereof:

John Kellogg, William Hackman and James Whitehead.

On motion, we now adjourn until Saturday evening next.

JOHN J. DOWLING.
City Clerk.

ded by Ald. Scherzer.
Moved by Ald. Ream that Paul Boehme
be appointed City Marshal. Seconded by
Alderman Scherzer.

When there appeared on vote by ballot

for	1 vote.
Wm. H. Foot,	4 "
Paul Boehme,	3 "
Paul Boehme's majority,	

On motion, Paul Boehme was appointed City Marshal for the fiscal year.

CITY SURVEYOR.

On motion Wm. Lambach was appointed City Surveyor, without opposition.

BOARD OF HEALTH.

On motion, Doctor Sebach was appointed one of the Board of Health.

On motion, Doctor Winslow was appointed one of the Board of Health.

On motion G. W. Lininger and B. Denny was appointed inspector of weights and measures.

Wood Inspectors.

On motion, A. L. Bull be appointed lumber and wood inspector.

On motion, James Barton be appointed lumber and wood Inspector.

On vote by ballot, there appeared for James Barton 5 votes. The latter was therefore.

On motion appointed, lumber and wood inspector for the fiscal year.

City Sexton.

Moved by Ald. Scherzer that Asa F Powers be appointed City sexton.

Moved by Ald. Ream that Louis Lauber be appointed City Sexton, when there appeared.

On vote by ballot that Asa F Powers, received two votes and Louis Lauber 3 votes.

Moved by Ald. McCormick that Lewis Lauber be appointed City Sexton for the fiscal year 1860 seconded by Ald. Ream and Carried.

On motion the city clerk was directed to notify all the different officers appointed this evening.

Moved by Ald. McCormick that H. S. Beebe be allowed the City printing at a salary of \$75.00 for the fiscal year seconded by Ald. Ream, and Carried.

On motion the rates of licenses by fixed the same as last year.

His Honor the mayor then Nominated the following Aldermen as Committees on streets.

Ald. McCormick and Scherzer for the first ward.

Ald. Coffing & Maze for the second ward.

Ald. Winston & Cummings for the third ward.

Ald. Ream & Kaiser for the fourth ward.

On motion the petition of Selman be laid over for the present.

Moved by Ald. McCormick that the mayor be requested to demand from the ex mayor the keys of the safe and all other property belonging to the city seconded by Ald. Scherzer and carried.

On motion the police magistrate and city marshal be requested to hand in their reports by the next night of meeting.

On motion the order of the proceeding of the board be as follows, for the present fiscal year.

1st. Minutes of the former proceedings read and adopted.

2. Street commissioners Reports.

3. " " Bills.

4. Other Bills.

5. Reports of committees.

6. Unfinished business from last meetings.

7. Petitions.

8. Miscellaneous.

If it should be so required, any member may move the suspension of the standing order.

On motion we now adjourn until Saturday the 28th of April.

JOHN J. DOWLING.

on motion we now adjourn until Saturday evening next.

JOHN J. DOWLING.
City Clerk.

An adjourned meeting of the City Council was held on the 7th of May inst.

Present His Honor, Mayor Young, Aldermen McCormick, Scherzer, Cummings, Jacobs and Halligan.

On motion T. P. Halligan was appointed clerk pro tem.

On motion the reading of the minutes of the preceding meeting was dispensed with.

On motion E. S. Holbrook was appointed City Attorney, and was requested to take immediate steps to defend the mandamus suit commenced against the City Clerk John J. Dowling.

On motion the Mayor and Alderman Halligan were appointed to take such steps as they deem necessary to defend the mandamus suit brought against said Dowling.

On motion the Council adjourned until next Saturday.

T. P. HALLIGAN.

City Clerk Pro Tem.

CITY COUNCIL ROOM, }
May, 5th, 1860. }

COUNCIL MINUTES. Present His Honor Mayor Young Ald. Scherzer McCormick, Cummings, and Kaiser.

On motion, the minutes of the proceedings of the last meeting were read and approved.

Street Commissioners Return,

Wm. Kamper	6 days	\$6.00
Peter Loscheild	2 ..	2.00
S. Trobst	$\frac{1}{2}$..	0.50
Wm. Hackman	2 ..	3.00

Side Walk returns Lot 6 and 7 in Block 69, each lot \$19.00, Viz.

Labour	3.00
Nails	1.38
Lumber	14.02

19.00

I certify this return is Correct.

Wm. Hackman

Street Commissioner 1st Ward—Other Bills.

Asa. F. Powers for making two poll Boxes \$2.00

B. & F. J. Denny pail & Dipper 2.00

Francis Warner costs attending the Recorder's 11.50

F. W. Mattocks Deputy Sheriff 6.00

Wm. H Foot 4 days as Constable 6.00

J. J. Dowling cleaning and lighting City Hall 10.00

The Lessee having giving up his title to said Hall, his Honor the Mayor suggested that all persons who call public meetings in future shall pay for lighting and clean up said City Hall.

On motion of Ald. McCormick seconded by Ald. Scherzer the Mayor's suggestion was approved.

His Honor than nominated Ald. Scherzer to countersign all City orders and in in case of his being absent Ald. Maze shall sign to the same.

Moved by Ald. McCormick that the Council now proceed to act on the judges returns of the last election held in the fourth ward seconded by Ald. Scherzer.

On canvassing the same there appeared for T. P. Halligan 101 votes to fill the vacancy of Ald. Kaiser there also appeared for Jacob, Jacobs 100 votes to fill the vacancy Occasioned by Ald. Ream.

On motion T. P. Halligan Esq., and Jacob, Jacobs Esq. were declared duly elected Aldermen for the fourth ward to fill the unexpired term of Kaiser & Ream resigned. Both gentlemen having qualified took their seats at the board.

On motion we now adjourn until Monday evening next.

J. J. DOWLING,

City Clerk.

24 702

Prose
A. R. L. L. L.

By

Dowling

afford

Filed May 15 1860
L. L. L.
Clerk

[Faint, illegible handwriting in columns, likely bleed-through from the reverse side of the page.]

The People Ex vs
Herman Silver

²¹
Wm J. Dowling

} State of Illinois
LaSalle County vs William
Chumasco being duly sworn says
that he was present at the meeting
of the Common Council of Fern
hills on 11th April ¹⁸⁶⁰ and that at
said meeting a resolution was
adopted substantially as set
forth in Exhibit A. attached
to the petition and that after
the adoption of such resolution,
and after ~~the~~ Messrs Schuyler
Coffey, Haysen and Wernick
had taken their seats at the
Board a Resolution was
adopted ~~as stated~~ Messrs Coffey
Haysen, Winston Mays voting
for the same P K Burkhead
pending as Mays & Messrs Baum
Haysen being present taking
part in the proceedings
appointing Herman Silver
the Mayor Clerk of the City of
Blue for the ensuing year.

Subscribed & sworn before me Wm Chumasco
this 15th day of May 1860

Notelaud Clerk
by J. B. R. Deputy

People
expressed their
by

~~Meeting~~

The arguments
are best related taken
by me June 2, 1860
G. S. Eldredge

Peaplt

47

Handling

No 24

Page 1. The People of the State of Illinois to John Dowling

Whereas it has it has lately been represented to us in the Supreme Court of the State of Illinois that before our Justices thereof on the part and behalf of Norman Silvio that the City of Peru is a municipal corporation in the County of LaSalle in the State of Illinois - and that by an ordinance of said City, duly passed by the Common Council of said City on or about the 31st day of March A.D. 1860 said City was divided into four wards ^{with the name} in accordance conferred upon said and of which said ordinance the following is the City City by their act of incorporation, that at the time of passage of such ordinance the ^{the} Board of Common Council consisted of the following persons Philip R. Behrend who had been elected Mayor at the election held on the first Monday of April A.D. 1860 of Naason Young who was elected Alderman on the first Monday of April 1858 for the first ward for the term of two years James Cahill who was elected Alderman for the 2nd ward of

BUREAUS,
DRESSERS,
STANDS,
SOFA
L
Parlor, Card, Cent
Spring Bottom, Child
Chairs,
All kinds of work,
Book-Cases, &c., &c.
workmen, and of first
Oil Paintings frame
Call and examine me
where.
dec 21st.

Wm.

Having lately purchased
and put in complete re

TRENTON

is ready to furnish the
WHEAT AND E
which will be warrant
market. It is for sale
in Peru.

CUSTO
promptly attended to, a
N. B. The highest
be paid for Wheat.
Trenton, Dec. 2d., 18

NEW

WAGENK

Importers, Wholesale

AN ORDINANCE.

Be it ordained by the City Council of the City of Peru:

1st. That from and after the 31st day of March inst. the City of Peru shall be divided into four Wards, with the following as the boundaries of each viz:

2d. All of that portion of said City lying east of a line running from the Illinois river, along the centre of Plain street, to the northern boundaries of the City, to constitute and be the 3d ward.

3d. All of that portion west of said line drawn through Plain street and east of a line running from the river through the centre of Washington street to the centre of Brewster street, and from thence through the centre of La Salle street to the northern boundaries of the City, to constitute and be the 2d ward.

4th. All of that portion west of said last mentioned line, and east of a line running from the river through the centre of Hamilton street to the centre of Main street, thence through the centre of Main street to the centre of Schuyler street; thence through the centre of Schuyler street to the said northern boundaries of the City, to constitute and be the 1st ward.

5th. The "fourth ward" to embrace all of that portion of the City lying west of the last mentioned line.

6th. On the first Monday of April next, an election shall be held in each of said wards (at places to be designated by the Council, by resolution, prior to said time), for one Mayor for the City, and in the third and first wards respectively, for two Aldermen for each of said wards; and in the 2d and 4th wards respectively, for one Alderman for each of said wards.

7th. One of the Aldermen elected for the 3d, and one elected for the 1st ward, shall hold office for the term of two years; and the other for each of said wards shall hold office for the term of one year. And it shall be designated by the voters in each of said wards at the time of election which one shall hold for the long, and which for the short term.

8th. The Aldermen elected for the 2d and 4th wards shall respectively hold office for the term of two years.

9th. It is also hereby ordained, that Alderman Maze holding his office as Alderman of the 2d ward as it has heretofore been bounded, shall retain his office for his unexpired term for the 2d ward as it is herein above limited; and Alderman Ream now holding for the first ward as it was heretofore limited shall retain his seat for his unexpired term for the fourth ward as it is herein above limited, and at the expiration of their terms, an election shall be held at the regular municipal election in their respective wards, as newly limited, for an Alderman for each of said wards, who shall hold their office for the term of two years.

Attested,
JOHN J. DOWLING, City Clerk.

2
said City for the term of two years
from said first Monday of April
1858. Benjamin Read who was
elected Alderman of the first Ward
on first Monday of April 1854 for
the term of two years and George May
who was elected Alderman on said
first Monday of April 1854 for
the term of two years from for the
second Ward of said City."

And that by an order of said
Council made on the 17th day
of March 1860. the place, of holding
the Election in said City on the
first Monday of April 1860. was
appointed as follows.

For the first Ward at the British
School House

For the second Ward at the City Hall

For the third Ward at J. R. Merritts House

For the fourth Ward at William Mack
Mans House.

That in Pursuance of
said order John J. Dowling
who at that time was the Clerk
of said City duly published
a Notice of said Election in
accordance with the provisions
of said order of said Council

3

stating in said notice the time and places of holding such election in strict conformity with said order. And that Elections were held in accordance with said notice in the first second and third wards in said City - but that in the Fourth ward the Election was not held at the House of William Backman as directed by said order and the notice given by said Dowling in pursuance of said order but that said Election in said Fourth ward was held at a school house some considerable distance from said Backman's house and on another street as appeared from the returns of the proper of Elections of said several wards and all of which said returns were presented before said Council at their meeting held on the 11th day of April 1860. That at said meeting Philip K. Behrend Mayor of said City of Peru and who by the terms of the act of incorporation held his office until his successor was duly elected and qualified

4

was present and alderman
Beau of the first ward and
alderman Mags of the second ward
were also present - and Haason
Young also appeared and
took his seat at the Council
Board - when a resolution
was introduced and unanimously
by passed Haason Young voting
for the same - which provided
that the Candidates of the late
City Election holden on the 2^d of
April 1860. who by the returns of
the judges of Election appeared to
have the highest number of votes
and in regard to whose Election
there was no contest be requested
to qualify and take their seats.

That Mr Young who voted at on said
resolution claimed to still be
a Member of the Board - was
not lawfully a Member of said
Board - but continued to act
as such. - That upon the passage
of above resolution Messrs D.
Brewster gave notice to John L.
McCormick that he contested
the Election of said McCormick
as alderman of the 1st Ward

3 on the ground that illegal votes
had been cast for him and also
that void and uncertain votes
had been cast and counted for
said Th. Cornick

Asa J. Powers gave notice to Fred
rick Kaiser that he should contest
his election as alderman of the 4th
ward on the ground that he said
Kaiser was not a citizen of the
United States at the time of the elec-
tion.

That there being no contest in the
case of William Schuyler elected one
of the alderman for the first ward
for one year or in the case of Chas
Chil Coffing elected alderman of
the second ward for two years or
in the case of Richard Alonster
elected alderman of the third ward
for two years or in the case of
A. J. Kagan elected alderman
of the third ward for one year
they were solemnly sworn in and
took their seats at the Board

That it appearing from the return
of the judges that the election in
the 4th ward was not held at
the place appointed by the Council

6

The question arising thereon and the questions raised by the several contestants for the office of Alderman was postponed until the next meeting of the Council.

And that the relative Herman Silow was at said meeting duly elected City Clerk for the ensuing year. The following persons then being present at the Board: viz Philip K Behrend Acting Mayor. Alderman ^{of the 4th Ward} Ream & Scheizer Ream of the first ward Mage & Coffing of the second ward Winston & Nagas of the third ward. There being only one vote Alderman Ream cast against him for said office.

That at said meeting Ream Young was not entitled to act as Alderman his term of office having expired by limitation.

That Philip K Behrend was duly elected Mayor of said City. The vote of the Fourth Ward being illegal and void.

That Nelson D Brewster was duly elected Alderman of the first Ward he having received

7

78 votes for the two year term and John L. McCormick only seventy five votes - and that in making the return by the judges of election they counted Ballots for John L. McCormick by mistake in which the office was not indicated and which ought not to have been counted for him

And that on the 12th day of April, ¹⁸⁶⁰ the said Relator Herman Silow produced his oath of office at a meeting of the Common Council of said City at that time held and was declared duly qualified to act as City Clerk. That at said meeting the Mayor was authorized to open the City safe and deliver the records, books, papers, and seal of said City to said Silow - That the safe was thereupon opened and the record, ordinance book and the city seal were missing. That the Ballot boxes containing as was supposed the votes and returns of the judges of election were then without being opened sealed and delivered to said Silow

of and directed to be deposited by him in the Bank of Peru which was done

That a subsequent meeting of the Council was held on the 18th day of April 1860. at which was present P. K. Behrend Mayor and Aldermen Coffey, Winston, Magee & Magaw - That the Ballot boxes were then unsealed and the Council proceeded to declare the result - as follows. P. K. Behrend and Frederick Kaiser (the persons claiming to have been elected Aldermen of the Fourth ward) by request ~~to~~ proceeded to count the Ballots of the several wards - and found the Ballots cast in the first ward to be 166 - of which P. K. Behrend received for Mayor 75 votes, Mason Young for Mayor 90 votes. For alderman of long term Theron D. Brewster received 78 votes and John L. McCormick 75 votes. For alderman for short term Theron D. Brewster received 3 votes and for term not indicated in the Ballots John L. McCormick received 8 votes. For short term Wm. Schurz received 84 votes and A. B. Shephard 68 votes. For ~~short~~ long term A. B. Shephard received

The place of holding the election being different from that provided by the ordinance which was carried unanimously - Phillip K. Rehnerd was duly and duly elected Mayor of the City of Peru for the ensuing year.

It was then moved and seconded and carried that Herman Slow City Club be authorized to Commence a suit in the nature of a Mandamus against John Dowling for the delivery of the records ordinance book, papers and seal belonging to the City of Peru.

Audit having been represented to us also that said Herman Slow did on the 12th day of April 1860 prior to the meeting of the City Council personally and as Clerk of said City demand of said John J. Dowling in the City of Peru all the books, papers and records, ^{Seal} of said City in his possession as former Clerk and that said John J. Dowling peremptorily refused to deliver any of the books, papers, records and seal of said City on the ground as he alleged that he said Dowling was not satisfied with the existing organization of the

11

city council

And that by ordinance of said city the Clerk was the Custodian of the Books, records papers and seal of said city and that all the books, papers, plats, records and seal of said city were up to and until and during the meeting of the Council held on the 11th day of April 1860. in the possession and under the control of said Dowling -

And that after such demand to wit on the 21st day of April 1860. the said Herman Silva made another and further personal demand of the said John J. Dowling of the Books, papers, records and seal of said city which said demand was made in said city of Penn which demand said Dowling refused to comply with

And it also hath been represented that said Dowling unlawfully took the said Records, ordinances book and seal belonging to said city from the City Council room and still hath the same in his custody and under his control. And that the said City Council are in consequence thereof embarrassed

12) and delayed our business
in the discharge of their official
duties

1) ~~It is therefore~~ ^{and the Court having} ordered that
an Alternative Mandamus
issue out of ~~our~~ said Court
directed to and command
ing the said John F. Dowling
that he immediately deliver
up to said Herman Silver
the said Records books papers
and the Seal of the City of Peew
or that he show cause to the
Court on the fifteenth day of
May A.D. 1880.

Now therefore we being
willing that full and speedy
justice be done in this behalf.
as it is first commanded you
the said John F. Dowling that
immediately after the receipt
of this writ you deliver to said
Herman Silver the Records books
papers and seal of said City
of Peew or that you show
cause to the Court on the
fifteenth day of May A.D. 1880
in front of the Supreme
Court of the State of Illinois

on the fifteenth day of May
A.D. 1860. at the Court room
in the City of Ottawa in the County
of Lachapelle and State of Illinois

Witness the Honorable John
D. baton Chief Justice of ^{our} said
Supreme Court and the seal
of said Supreme Court at
Ottawa this 5th day of May
A.D. 1860.

L. Leland Ck.

In The Supreme Court of the State of Illinois
Third Grand Division
April Term A.D. 1860.

Page 1

The People ex relatione
Herman Silver

vs

John J. Dowling

To the Honorable,

The Judges of said Court:

Your Petitioner Herman Silver of the City of Sen in the County of LaSalle and State of Illinois respectfully represents unto your Honors: — That the City of Sen is a Municipal Corporation organized under and by virtue of an act of the General Assembly of the State of Illinois, approved February 13th 1851. And your Petitioner further shows unto your Honors, that Sections One, Three and Five of Article First of said act of Incorporation are in the words following.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the inhabitants of the Town of Sen, in the County of LaSalle, and State of Illinois, be and they are hereby constituted a body politic and corporate, by the name

and style of the "City of Peru" and by that name shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

§ 3. The present board of Trustees of the Town of Peru shall, on the first Monday of April next, divide the said City of Peru into two wards, as nearly equal in population as practicable, particularly describing the boundaries of each,

§ 5. The inhabitants of said City, by the name and style of aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended, in all Courts of Law and equity, and in all actions whatever; to purchase, receive and hold property, real and personal, in said City; to purchase, receive and hold property, both real and personal, beyond the City, for burial grounds and for other public purposes, for the use of the inhabitants of said City; to sell, lease and convey or dispose of property, real and personal, for the benefit of the City, and to improve and protect such property, and to do all other things in relation thereto as natural persons.

That Sections One, Two, Five, six, seven, Eight, nine, Twelve and Fourteen of article Second of said act of Incorporation, are in the words following. Viz:

Article Second

Section 1. There shall be a city council, to consist of a Mayor and board of aldermen.
 § 2. The board of alderman shall consist of two members from each ward, to be chosen by the qualified voters, for two years.

§ 5. At the first meeting of the city council, the alderman shall be divided, by lot, into two classes — The seats of those of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year, so that the half of the board shall be elected annually.

§ 6. The city council shall judge of qualifications, elections and returns of their own members, and shall determine all contested elections.

§ 7. A majority of the city council shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent

members, under such penalties as may be prescribed by ordinance.

§ 8. The City Council shall have power to determine the rule of its proceedings, punish its members for disorderly conduct, and with the concurrence of two-thirds of the members elected, expel a member.

§ 9. The City Council shall keep a journal of its proceedings, and from time to time publish the same, and the year and day, when demanded by any member present, shall be entered upon the journal.

§ 12. The Mayor and each alderman, before entering upon the duties of their office, shall take and subscribe an oath that they will support the constitution of the United States, and of this state, and that they will well and truly perform the duties of their office to the best of their skill and ability.

§ 14. There shall be twelve stated meetings of the City Council in each year, at such times and places as may be prescribed by ordinance.

That Section one and five of article three of said act of Incorporation entitled "Of the Chief Executive Officer," are in the words following, viz:

Article 3^d

Section 1. The chief executive officer of the city shall be a Mayor, who shall be elected by the qualified voters of the city, and shall hold his office for one year, and until his successor shall be elected and qualified.

§ 5. Whenever an election of Mayor shall be contested, the City Council shall determine the same as may be prescribed by ordinance,

That Section first of article fourth of said act of Incorporation entitled "Of Elections" is in the words following viz:

Section 1. On the first Monday of April next, an election shall be held in each ward of said city, for one Mayor for the city, two Aldermen for each ward, and forever thereafter, on the first Monday of April of each year, there shall be an election held for one Mayor for the city, and one alderman for each ward; the first election for Mayor and alderman shall

be held, conducted, and returns thereof made, as may be provided by ordinance of the present Trustees of the Town of Gen.

That Sections second and eleventh of article fifth of said Act of Incorporation entitled "of the Legislative powers of the City Council" are in the words following viz:

§ 2. The City Council shall have power to appoint a Clerk, Treasurer, Assessor, Marshal, supervisor of Streets, and all such other officers as may be necessary.

§ 11. To divide the City into wards, alter the boundaries thereof, and erect additional wards as the occasion may require.

That Sections one and two of article six of said Act of Incorporation entitled "of the Mayor" are in the words following, viz

Section 1. The Mayor shall preside at all meetings of the City Council, and shall have a casting vote and no other; in case of non attendance of the Mayor at any meeting, the board of alderman shall appoint one of their own number

chairman, who shall preside at that meeting

§ 2. The Mayor, or any two aldermen, may call special meetings of the City Council, And your Petitioner further shows unto your Honors, That in pursuance of the power conferred by Section Three of article first of said Act of Incorporation said City was divided into two wards, and continued so divided into two wards until the thirty first day of March A.D. 1860. when the said City of Peru was divided into four wards in pursuance of an ordinance before then duly passed by the Common Council of said City which said ordinance is in the words and figures following viz:

AN ORDINANCE.

Be it ordained by the City Council of the City of Peru:

1st. That from and after the 31st day of March inst. the City of Peru shall be divided into four wards, with the following as the boundaries of each viz:

2d. All of that portion of said City lying east of a line running from the Illinois river, along the centre of Plain street, to the northern boundaries of the City, to constitute and be the 3d ward.

3d. All of that portion west of said line drawn through Plain street and east of a line running from the river through the centre of Washington street to the centre of Brewster street, and from thence through the centre of La Salle street to the northern boundaries of the City, to constitute and be the 2d ward.

4th. All of that portion west of said last mentioned line, and east of a line running from the river through the centre of Hamilton street to the centre of Main street, thence through the centre of Main street to the centre of Schuyler street; thence through the centre of Schuyler street to the said northern boundaries of the City, to constitute and be the 1st ward.

5th. The "fourth ward" to embrace all of that portion of the City lying west of the last mentioned line.

6th. On the first Monday of April next, an election shall be held in each of said wards (at places to be designated by the Council, by resolution, prior to said time), for one Mayor for the City, and in the third and first wards respectively, for two Aldermen for each of said wards; and in the 2d and 4th wards respectively, for one Alderman for each of said wards.

7th. One of the Aldermen elected for the 2d, and one elected for the 1st ward, shall hold office for the term of two years; and the other for each of said wards shall hold office for the term of one year. And it shall be designated by the voters in each of said wards at the time of election which one shall hold for the long, and which for the short term.

8th. The Aldermen elected for the 2d and 4th wards shall respectively hold office for the term of two years.

9th. It is also hereby ordained, that Alderman Maze holding his office as Alderman of the 2d ward as it has heretofore been bounded, shall retain his office for his unexpired term for the 2d ward as it is herein above limited; and Alderman Ream now holding for the first ward as it was heretofore limited shall retain his seat for his unexpired term for the fourth ward as it is herein above limited, and at the expiration of their terms, an election shall be held at the regular municipal election in their respective wards, as newly limited, for an Alderman for each of said wards, who shall hold their office for the term of two years.

Attested,
JOHN J. BOWLING, City Clerk.

which said Ordinance last mentioned your Petitioner represents, was passed by

said Common Council in pursuance of the power conferred upon them by said Section Eleven of Article Fifth of said act of Incorporation

And your Petitioner further represents that at the general Election held in and for said City on the first Monday of April A.D. 1857 Philip K. Behrend was duly elected Mayor of said City for the year next ensuing and Benjamin Ream was duly elected Alderman of the first ward of said City, and George Waze was duly elected Alderman of the second ward of said City to hold their offices respectively as provided in said Section One of Article Fourth of said act of Incorporation; That at the general Election held in and for said City on the first Monday of April A.D. 1858, Nasson Young was duly elected Alderman of the first ward of said City and James Cahill was duly elected Alderman of the second ward of said City to hold their respective offices as provided in the said section one of article fourth of said act of Incorporation and that the Common Council of said City for the year next ensuing the first Monday of April A.D. 1859 consisted of Philip K. Behrend as Mayor and said young

Page 9

and Reaw as Alderman of the first ward of said City and The said Cahill and Weaze as Alderman of the second ward of said City. -

And your Petitioner further represents unto your Honors, That at a meeting of the Common Council of said City held at the City Council Room in said City on the 17th day of March A.D. 1860. a motion was made and adopted by said Common Council providing for the places of holding the Election in said City on the first Monday of April A.D. 1860. which said motion or resolution as appears from the proceedings of said meeting as published by and under the direction of the Clerk of said City was as follows

On Motion. The following places be appointed to hold the municipal election; and also the names of the Judges for said wards be as follows:

For the first ward, at the Brick School House. David Lininger, Samuel N. Muzo, William Scherzer. Judges.

Second ward, at the City Hall. Daniel O'Sullivan, Hiram Holmes, James Dalrymple. Judges.

Third ward, at J. R. Merritt's House. Eli Levitt, James Cummings, J. R. Merritt. Judges.

Fourth ward, at William Hackman's House. John Kellogg, Gerrard Leeper, William Hackman. Judges.

The Clerk got directions to procure two new ballot Boxes for the use of the city, and the Judges of each ward to procure a Map of the city of Peru after which the Council.

On Motion, Adjourned for two weeks.

JOHN J. DOWLING,
City Clerk.

and which said motion or resolution your Petitioner charges was adopted by said Common Council as stated in said

published proceedings thereof. That in pursuance of said motion or resolution John J. Dowling the then duly appointed and acting clerk of said city duly published a notice of election to be held in said city for the election of Mayor and alderman on the first Monday of April A.D. 1860. which said notice was in the words and figures following:

Notice of Election.

Notice is hereby given that on the 1st Monday of April next, an Election will be held in the city of Peru, for the following officers for the coming municipal year; to wit: One Mayor for the City, and in the first and third wards (as limited in the ordinance) respectively for two aldermen for each of said wards, and in 2nd and 4th wards (as also limited by said ordinance) respectively for one Alderman for each of said wards, one of said aldermen for 1st and one for the third ward; to hold office for the term of two years, and the other for each of said wards to hold for one year, each; and it is to be designated by the voters of each of said wards, who shall hold for the long, and who for the short term; the Aldermen of the 2nd and 4th wards to hold for two years each. The Polls shall be opened at the brick School house for the 1st ward, for the 2nd at the City Hall, for the 3rd at J. R. Merritt's House, and at Wm. Hackman's for the 4th ward.

Dated at my office, at the City Hall in the City of Peru this 17th day of March A. D. 1860.

JOHN J. DOWLING City Clerk.

And your Petitioner further represents unto your Honors That in pursuance of said election notice, an election was held in said city of Peru on the first Monday of April A.D. 1860 for the election of Mayor and alderman at the places respectively designated in said notice for holding said election except that the election in the fourth ward of said city was not held at William Hackman's House the place appointed by said Resolution

and designated by said election notice for holding the same, but was held at a School House some considerable distance from the said Hackmans House and on another street in said fourth ward which fact your Petitioner is informed and believes appeared from an inspection of the judges returns of said election in said fourth ward and which said returns were present before the Common Council at their said meeting held on the 11th day of April A.D. 1860 ^{hereinafter mentioned} and your Petitioner further represents that after the time for the holding of said election last mentioned elapsed, to wit on the 11th day of April A.D. 1860. The City Council of said City met at the Council Chamber in said City in pursuance of a call of the Mayor for the purpose of canvassing the returns of the said election last mentioned, that there was present at said meeting last mentioned Philip K. Behrend Mayor of said City and Alderman Ream of the first ward and Alderman Maze of the second ward. Mason Young also appeared and took his seat at the Council Board whereupon the proceedings were had and took place

at the said meeting of said Common Council last mentioned as detailed in the statement of the proceedings thereof hereto annexed marked exhibit "A" - and which your Petitioner prays may be deemed and taken as a part of this his Petition and to which said exhibit "A" your Petitioner for greater certainty prays leave to refer, and at which said meeting your Petitioner represents that he was duly appointed City Clerk of said City as in the proceedings of said meeting last mentioned contained in said Exhibit "A." is set forth and to which for greater certainty your Petitioner prays leave to refer. And your Petitioner further represents that the said Philip K. Behrend claims to be and as your Petitioner is advised and believes was duly elected Mayor of said City at said election last mentioned for the reason that the said election in the fourth ward in said City was not held by the Judges of Election at the place appointed by the Common Council for the holding of the said election and that the entire vote of said fourth ward was illegal and therefore was not and ought not to have been

counted or taken into consideration by the Common Council in declaring the result of such Election whose right and duty it was to decide thereon - That the said Philip K. Behrend had a majority of the legal votes cast at said Election for the office of Mayor,

And your Petitioner further represents that the said Theron L. Brewster claims to be and as your Petitioner is advised and believes was duly elected Alderman of the first ward of said City at said last mentioned Election on the ground that he received at said Election in said first ward a majority of all the votes cast for the office of Alderman of said ward for the long Term, and that the Judges of Election in said first ward in returning that John L. McCormick was elected Alderman for said long Term committed an error in their returns in counting for and giving to said John L. McCormick Eight votes cast for him at said Election which votes did not indicate whether they were cast by the Electors casting the same for Alderman for the long Term or for the short Term that the votes cast for said McCormick for the long Term were less in number than those cast for said Brewster for

The long term, and as appears from the
 proceedings of the said meeting of the
 Common Council of said city held on
 the 18th day of April A.D. 1860. and contain-
 ed in ~~said~~ Exhibit "C." and the said
 Theron D. Brewster having appeared before
 said Common Council at said meeting
 held on the 11th day of April A.D. 1860. as
 heretofore stated and was set forth
 in said Exhibit "A." the said Common
 Council rightfully and legally determined
 at said meeting held on the 18th day of
 April A.D. 1860. as ~~heretofore~~ ^{in after} stated that
 said Theron D. Brewster was duly elected
 it appearing to the Common Council at such
 meeting that said Brewster received a
 majority of the legal votes cast in said
 first ward for Alderman for the long
 term and of which meeting of the
 Common Council last mentioned, your
 Petitioner is informed and believes the
 said McCormick had due notice and
 was requested by the Mayor Philip K.
 Behrend to attend. And your
 Petitioner further shows that he is informed
 and believes that the returns of the Judges
 of Election of said fourth ward were pre-
 sent before said Common Council at

Page 15.

Their said Meeting on the 11th day of April and from which it then and there appeared to said Common Council that said Election in said fourth ward was held by the Judges of said Election at a different place from the one appointed by the said Common Council for holding said Election in said fourth ward. That the polls in said ward were opened at the said House of William Hackman and the Judges of Election after opening the polls at said Hackmans House in said ward, adjourned thence to a School House in said ward some considerable distance and on another street from that on which said Hackmans House was situate. The place designated by said Common Council for holding said Election in said ward. And your Petitioner is advised and believes that he was duly appointed Clerk of the City of Peru as ^{hereinafter stated} ~~aforsaid~~, by the then duly and legally constituted Common Council of said City and that said Behrend was duly and legally elected Mayor and the said Brewster, Winston, Scherger Hagan and Coffing were duly elected Aldermen of said City at said last mentioned Election.

wherefore your Petitioner claims that he is the legally appointed clerk of said city and entitled to hold his office as such until superseded by the due appointment of some other person in his stead and as such clerk is entitled to the custody of the Records, Books papers, plats, maps office furniture and seal belonging to said city - and your Petitioner further represents unto your Honors that a special meeting of the Common Council of said City was duly held on the 12th day of April A.D. 1860. at which meeting your Petitioner appeared before the Common Council of said City and produced his oath of office and was declared duly qualified to act as City Clerk of said City for the ensuing year, and at which said meeting the proceedings were had and took place as detailed and set forth in the Record of the proceedings of such meeting a copy of which is hereto annexed marked Exhibit "B" and to which your Petitioner for greater certainty prays leave to refer, and which Exhibit "B" your Petitioner prays may be deemed and considered as a part of this his Petition.

Page 17.

And your Petitioner further represents unto your Honors That one John J. Dowling was the duly appointed Clerk of the Common Council of said City for the year next pre-^{ceding} the meeting of the Common Council, at which the resolution was adopted appointing your Petitioner City Clerk as heretofore set forth that said Dowling was present at such meeting and officiated there at as City Clerk of said City.

And your Petitioner further represents that after the adoption of said resolution appointing your Petitioner City Clerk as aforesaid, to wit: on the 12th day of April A.D. 1860. your Petitioner took and subscribed to his oath of office as such Clerk, and on the same day after having subscribed to and taken his oath of office as such Clerk, but prior to the meeting of the Common Council of said City on that day as heretofore mentioned, and set forth in Exhibit "B" your Petitioner personally demanded of said John J. Dowling, at and within the said City of Erie aforesaid the seal of the City and all the Books, papers and Records of and belonging to said City then in his possession as the Clerk of said City, whereupon the

said John J. Dowling presumptively re-
fused to deliver to your Petitioner any
of the Books Records papers and Seal of
said City alleging as a reason therefor
that he was not satisfied with the then
existing organization of the City Council

And your Petitioner further shews
unto your Honors that at the time last
mentioned and for a long time prior
thereto there was and still is in force
an Ordinance of said City of Peru duly
passed by the Common Council of said
City entitled "An Ordinance to pro-
vide for the care and safe keeping of the
seal Records Books Maps plats papers
and office furniture of the City of Peru"
by which said ordinance it was or-
dained that the Seal, Records, Books,
Maps, plats, papers and office furni-
ture of the City of Peru should be kept
in the charge of the City Clerk subject
to the direction of the City Council
which said ordinance is in the words and
figures following viz: "An Ordinance
to provide for the care and safe keeping of
the Seal, Records, Books, Maps, plats, papers
and office furniture of the City of Peru"

Page 19

Section 1st. Be it ordained by The City Council of The City of Fern, that The Seal, Records, Books, Maps, plats, papers and office furniture of The City of Fern, shall be kept in the charge and care of The City Clerk, subject to The direction of The City Council,

Section 2. That whenever said Seal, Records, Books, Maps, plats, papers and office furniture, or any of them, shall be retained by any person or persons, other than such clerk, and without authority of The City Council, it shall be the duty of The Clerk of The City Council, to demand of any such person or persons (if found within the city) to deliver to said Clerk any of said articles so retained

Section 3. If any person or persons shall wilfully retain from the possession of said clerk, after demand as aforesaid, or after evading ^{such} demand, The Seal, or any Record Book, Map, plat, paper or office furniture of The City of Fern, such person or persons shall pay a penalty of Ten Dollars per day for each day's retention of such possession from The Clerk, to be recovered by action or actions of debt, in the name of The City, with costs,

before the police Magistrate of the City of
Ierw,

Section 4. It shall be the duty of the clerk
of the City Council, under the direction
of the Mayor, to institute such legal
proceedings, in the name of the City or
otherwise as may be necessary or proper,
to recover possession of, or to recover pe-
nalties for retaining, any of the effects
of the City of Ierw, mentioned in the
first section of this ordinance,

Henry Jones. Clerk

And your Petitioner further represents
unto your Honors, that all the Books,
plans, papers, Records, and Seal of said
City were during the year next prece-
ding ^{and, at the time of,} the meeting of the Common Council
of said City held on the 11th day of April
A.D. 1860, in the possession and under
the control of the said John J. Howling
as the clerk of said City and as your
Petitioner verily believes the Records
of the proceedings of the Common Council
the Ordinance Book and Seal of said
City, ^{are still} were in the custody and under
the control of said John J. Howling.
That immediately after your petitioner
had made the demand of said

6
Page 21

Dowling for all the Books papers and Records of said city and The Seal of said city Your Petitioner informed Philip K. Behrend the Mayor of said city of such demand and refusal, whereupon The said Mayor of said city on the same day called the meeting of the Common Council of said city the proceedings of which are contained in said Exhibit "B" hereto annexed, and wherefor The said Mayor called the said meeting of the city Council last mentioned.

And your Petitioner further represents unto your Honors, that a special meeting of the City Council of said city was held in the city on the 18th day of April A.D. 1860. at which meeting were present Philip K. Behrend Mayor of said city and Churchill Coffey, R. A. Winston George Maze and A. J. Hagard Alderman of said city, at which said meeting last mentioned the proceedings were had as stated and set forth in the Records of the Common Council and a Copy of which is hereto annexed marked Exhibit "C." and which your petitioner prays may be deemed and taken as a part of this his Petition and to which for

greater certainty your Petitioner prays
 leave to refer. And your Petitioner
 further represents, That after the said
 meeting of said City Council last
 mentioned to wit: on the 21st day of
 April A.D. 1860. your Petitioner made
 an other and further personal demand
 of the said John J. Dowling for the
 delivery to your Petitioner of the Books
 papers Records of said City and the
 Seal of said City, which said demand
 last mentioned was made at said City
 upon which said demand the said John
 J. Dowling replied to your Petitioner That
 he had not in possession the said Books
 papers, Records, and Seal of said City, but
 which said denial of the possession thereof
 your Petitioner believes and charges to be false
 as respects the Record book, Ordinance book
 and seal of said City as the said John
 J. Dowling had the possession thereof
 until the appointment of your Petitioner
 as Clerk as aforesaid, That the same are
 not to be found in the City Council Room
 the usual and proper place for the keeping
 thereof and which, ^{at the time of and} until the said meeting
 of the City Council at which your Petitioner
 was appointed Clerk as aforesaid was

under the control of the said Dowling he having a Key to the door of the City Council Room and also a Key to a safe in the Council Room in which the papers, Books, Records and Seal of the City of New were usually kept.

And your Petitioner further shows, That at the Meeting of the said City Council held on the 12th day of April A.D. 1860. as heretofore stated, the said safe in the Council Room was opened and the said Record, Ordinance Book and Seal of ^{said} City were ascertained to be missing from said safe. to the proceeding of which said Meeting as set forth in Exhibit "B" hereto annexed your Petitioner for greater certainty prays leave to refer

And your Petitioner verily believes and therefore charges that the said John G. Dowling unlawfully took the said Record Ordinance Book and Seal belonging to said City from the City Council Room and still has the same in his custody and under his control,

And your Petitioner further shows, That the City Council of said City and your Petitioner are embarrassed hindered and delayed in the discharge of their official duties in consequence of

The detention of said Record, Ordinance Book and Seal belonging to said City wherefor your Petitioner prays that your Honors may order a Writ of Mandamus to issue commanding the said John J. Dowling to deliver to your Petitioner as Clerk of the City of Iowa the Record Book, Ordinance Book papers and Seal ^{in his possession or under his control} belonging to said City, or that an alternative Mandamus may issue commanding the said John J. Dowling to deliver the same to your Petitioner as aforesaid, or to show cause before your Honors at a certain time and place therein mentioned why he neglects and refuses so to do, according to the rules and practice of this Court ^{in such cases made & provided} or for such or further order or relief in the premises as your Honors may deem proper to grant.

Herman Silver

Chambers & Eldredge
Attys for Relator 23

25.

State of Illinois
LaSalle County ss.

Herman Silver
The Petitioner in the foregoing Petition
named being duly sworn says,
That he has read the said Petition
and knows the contents thereof
That the same is true of his own
knowledge except as to the matters
therein stated on information
or belief and as to those matters
he believes it to be true.

Subscribed and sworn to before me
this 26th day of April
A.D. 1860.

John T. Thompson Jt.

Seal

Proceedings of the City Council of the City of Peru.

COUNCIL CHAMBER,
Peru, April 11th, 1860. }

It appearing that the late city clerk, J. J. Dowling, has published a false and garbled statement of what he calls the "Proceedings of the City Councils on the 11th of April, 1860," to which he has signed his name, J. J. Dowling, city clerk, it is deemed proper that the true proceedings of that city council should be presented in order that the real state of facts may be made apparent, and the omissions and errors of that false record may be clearly presented to the public.

With a view to this object, we have prepared the following proceedings of the city council holden on the 11th of April, 1860, which we submit to the candor and fairness of our fellow citizens—and we are certain that the large number of citizens present on that occasion will vouch for the fidelity and accuracy of our report.

The council met pursuant to a special call by his Honor, the Mayor, for the purpose of canvassing the returns of the late municipal election.

Present, his Honor, the Mayor, P. K. Behrend, and Aldermen Ream, of the 1st Ward, and Maze of the 2d Ward.

Naasson Young also occupied a seat at the table in the council.

On motion, the minutes of proceedings of the last council were read and approved.

The Mayor then announced that the canvassing of the election returns for the different wards, to ascertain the result of the election, was now in order.

Whereupon Alderman Maze introduced the following resolution:

Resolved, That the candidates of the late city election, holden on the 2d of April, 1860, who, by the returns of the judges of election, appear to have the highest number of votes, and in regard to whose election there is no contest, be now requested to qualify and take their seats as members of the city council. Seconded by Alderman Ream.

Upon being put it was voted for affirmatively by aldermen Maze and Ream, and Mr. Young also voted affirmatively, whereupon the resolution was declared adopted.

The Mayor after declaring the adoption of the resolution inquired of Mr. Young if he considered himself still an acting member of the Board, remarking that he had notice that he had voted upon the passage of the resolution just adopted?

Mr. Young replied that he supposed that he held his seat as alderman until his successor was elected and qualified.

To this the Mayor responded that he thought not but that from the reading of the city charter, he Mr. Young, having been elected for two years, his term of office expired by limitation on the first Monday of April 1860.

To which Mr. Young replied that he held his office until his successor was elected and qualified.

Here Theron D. Brewster gave notice that he contested the election of Mr. McCormick as alderman for the long term in the 1st Ward on two grounds.

Mr. Brewster thereupon served a notice upon J. L. McCormick, of his design to contest his election, and the grounds upon which the contest was made.

Peru, April 9th, 1860.

To John L. McCormick, Sir:

Take notice that I hereby contest your election as alderman of the 1st Ward of the city of Peru, on these grounds,

1st. That illegal votes were cast for you at the municipal election held in said city on the 2d of April.

2. That votes were counted for you by the Judges of said election which were void for uncertainty and informality.

T. D. BREWSTER.

Asa F. Powers also gave notice that he would contest the election of Frederick Kaiser as Alderman of the 4th Ward on the following grounds:

That he Frederick Kaiser was not a citizen of the United States, as required by the city charter, and as the form in-

That the Judges of said election improperly and unlawfully held the election in said ward on the 2d of April, at a place different from the one designated by the election notice for holding said election.

Mr. Powers also served a notice upon Mr. Kaiser that his election was contested and the grounds upon which the contest was made.

After giving the notices aforesaid, a motion was made to read the returns of the election in the 1st Ward as certified by the Judges of election in said Ward, on the vote for Aldermen of said Ward.

Whereupon it appeared that J. L. McCormick received 85 votes, and Theron D. Brewster 80.

Wm. Scherzer received 84 votes for the short term, and A. L. Shepherd 78.

J. L. McCormick from the bystanders, stated that the method adopted by the city council was usual in canvassing the returns for alderman before canvassing the returns of the Mayor, and stated that when he was Mayor that was his way of doing business. Whereupon alderman Ream expressed an opinion that the returns for Mayor should be canvassed first.

On motion Mr. Scherzer having the largest number of votes for alderman for the short term and there being no contest in regard to his election was declared duly elected as alderman of the 1st Ward for the short term, which motion was carried, aldermen Maze and Ream and Mr. Young voting affirmatively.

A motion was then made by Mr. Young, which was seconded, that John L. McCormick having received the

unusual

Exhibit "A" - Continued

largest number of votes for alderman for long term in 1st Ward be declared elected. Seconded by alderman Ream.

The Mayor declined to receive the motion on the ground that Mr. Young the mover, was not a member of the city council, and a motion from him could not properly be entertained (Mr. Young still persisting upon his right to act with the council) and the Mayor feeling the delicacy of his position, there being no copy of the city charter present asked Messrs. McCormick, Brewster, Kilduff and Coffing, who had been members of the city council, their recollection in regard to the practice about which the present question arose.

Captain McCormick in response to the case, stated that in his opinion Mr. Young was entitled to act as alderman until his successor was elected and qualified. Messrs. Kilduff, Cronise, and others entertained similar views. Messrs. Brewster and Coffing being called upon differed from the others and agreed with the Mayor that the term of Mr. Young expired by limitation and that he was not qualified to act as alderman in the present city council. The debate became bitter, and the speakers spoke with much feeling and under considerable excitement.

A copy of the city charter was produced and section 1st of article 4 and section 5 of article 2 was admitted fully to sustain the ruling of the mayor, *It appearing no where in the charter that aldermen were authorized to retain their offices until their successors were elected and qualified.*

The returns of the judges of election of the 2d Ward for alderman were then on motion canvassed and it appearing that Churchill Coffing received 66 votes, Wm. Paul 1.

For term not indicated Wm. B. Day received 41 votes, Wm Paul 44, and Churchill Coffing 3.

J. L. McCormick here presented his oath of qualification and demanded his seat.

Churchill Coffing asked of the city council and of the bystanders if his election was contested? It being replied no contest, he then presented his oath of qualification and took his seat without objection under the resolution adopted by the council determining its rule of proceeding.

Mr. Young and alderman Ream expressed an opinion that the mayor should be qualified before newly elected aldermen. But as the resolution was explicit Mr. Coffing under its provisions took his place as alderman elect of the 2d Ward.

On motion the certified returns of the judges of election for the 3d Ward were then canvassed and it appearing that R A Winston received for long term 48 votes, James Cummings 1, Bartholomew Denny 24,

For short term, James Cummings received 16 votes, A T Hagan 39, Bartholomew Denny 7.

James Cummings, no term indicated 24 votes.

It appearing that R. A. Winston had received the largest number of votes cast for alderman for long term, and A. T. Hagan for short term, they presented their oath of qualification and took their seats, under the resolution as alderman elect for the 3d Ward.

James Cummings also presented his oath of qualification, in regard to which no action was had, as the council had decided upon the certified returns of the judges of election—there being no contest.

A motion that Mr. Cummings be declared elected alderman of the 3d ward was lost by a large majority.

The returns of the 4th Ward having been called up, and it appearing from the reading of the recorded notice, viz:

"Notice is hereby given that on the 1st Monday of April next, an election will be held in the city of Peru, for the following officers for the coming municipal year, to wit: One mayor for the city, and in the 1st and 3d wards (as limited in the ordinance) respectively for two aldermen for each of said wards, and in 2d and 4th Wards (as also limited by said ordinance) respectively for one alderman for each of said wards, one of said alderman for 1st and one for the 3d ward, to hold office for the term of two years, and the other for each of said wards to hold for one year each; and it is to be designated by the voters of each of said wards, who shall hold for the long and who for the short term; the alderman of the 2d and 4th Wards to hold for two years each. The polls shall be opened at the brick school house for the 1st Ward, for the 2d at the City Hall, for the 3d at J. R. Merritt's house, and at Wm. Hackman's house for the 4th Ward," that the election was holden in a different place from that designated by the city councils in their notice and ordinance appointing the places for holding the election, and as by the notice of Asa F. Powers, contesting the election of Fred. Kaiser, the entire vote of the 4th Ward was impeached and claimed to be void for illegality, the decision in regard to it and the other contested cases was, on motion, postponed for the purpose of examining into their merits with more deliberation—until the next regular meeting.

As there could be no canvass of the votes for mayor that could determine the result until a decision was had upon the legality of the vote of the 4th ward, that was also postponed, upon motion, until the next regular meeting.

On motion, it was ordered that the city council proceed to the election of city clerk.

Whereupon, on motion, Herman Silver was nominated and, on motion, was declared elected by the following aldermen voting in favor: Maze,

Winston, Hagan, and Coffing; Alderman Ream voting against the motion.

The hour being late the council adjourned until the next regular meeting.

P. K. BEHREND,

(Mayor).

GEORGE MAZE,

(Alderman 2d Ward).

CHURCHILL COFFING,

(Alderman 2d Ward).

R. A. WINSTON,

(Alderman 3d Ward).

A. T. Hagan,

Exhibit "B."

Exhibit "C"

Peru, April 12, 1860.

Special meeting called for the purpose of taking into consideration the extraordinary act of John J. Dowling, who refused, after demand having been made, to deliver to his successor in office, the Records, Books, Papers and Seal belonging to the city of Peru.

Present, his Honor the Mayor, P. K. Behrend, Aldermen, Coffing, Winston, Maze and Hagan.

Herman Silver having produced his oath of office, was declared duly qualified to act as City Clerk of the city of Peru for the ensuing year.

Moved and seconded that the Mayor be authorized to open the safe, and deliver to the Clerk, the records, books, papers and seal, belonging to the city of Peru. Carried.

After the safe was opened, the record, ordinance book, and the seal, belonging to the city, were found to be missing.

Moved and seconded, that the ballot boxes be sealed without opening in the presence of the Board of Aldermen and others present, and that the said ballot boxes be placed in the hands of the city clerk. Carried.

The ballot boxes were accordingly sealed, and all present signed their names on each of said ballot boxes, and said boxes were delivered to the city clerk, who was directed to deposit the same in the Bank of Peru for safe keeping.

Moved, seconded and carried, that we now adjourn till Saturday April 14th, at 7 o'clock, p. m.

H. SILVER, City Clerk.

Peru, April 18th, 1860.

Special meeting of the City Council of the City of Peru.

Present, his honor the Mayor, P. K. Behrend. Aldermen, Coffing, Winston, Maze and Hagan.

Moved and seconded, that the Board proceed to open the sealed ballot boxes, and declare the result as to the election of those candidates about whom no action has been taken at the previous meeting of the City Council.—Carried.

After inspecting and finding the ballot boxes sealed in good order, the ballot box of the first ward was opened, and found to contain the poll list and ballots, but the judges returns could not be found.

Moved and seconded that the ballots of the 1st ward be counted for the purpose of ascertaining whether the number of votes on the poll list correspond with the number of ballots polled in said ward. Carried.

Hon. P. K. Behrend and Frederick Kaiser—by request—proceeded to count the ballots of the 1st ward, and found the number to be one hundred and sixty-six, (166) being the same number found on the poll list of said 1st ward.

Moved and seconded that the ballots of the 1st ward be canvassed. Carried.

After canvassing the ballots of the 1st ward the following result was shown.

For Mayor, P. K. Behrend, 75
do Naasson Young, 90

For Aldermen, long term—Theron D. Brewster 78; John L. McCormick 75.

Short term—T. D. Brewster 3.

Term not indicated—J. L. McCormick 8.

Short term—Wm. Scherzer 84; A. L. Shepherd 68.

Long term—A. L. Shepherd 1.

Term not indicated—A. L. Shepherd 8.

Moved and seconded that Theron D. Brewster be declared duly elected Alderman for the 1st ward, for the long term, commencing with the ensuing year. Carried. Whereupon Theron D. Brewster was declared duly elected Alderman for the 1st ward of the city of Peru, for the long term.

Moved and seconded that the ballot boxes opened be re-sealed. Carried.

The ballot box of the 2d ward was opened and the judges returns read from which it appeared the following—viz:

For Mayor—Philip K. Behrend, 66; N. Young, 45.

For Alderman—Churchill Coffing 66 votes; Wm. Paul 1; Paul and Day 44, which latter votes were declared by the judges to be illegal.

The ballot boxes of the 3d Ward were opened and the judges returns read from which it appeared the following:

For Mayor—Philip K. Behrend 55 votes; N. Young, 24.

For Alderman—R. A. Winston, for long term, 48; A. T. Hagan, for short term, 39; James Commings, for short term, 16; B. Denny, for short term, 7; B. Denny, no term, 24; J. Commings, no term, 24; J. Commings, long term, 1.

The ballot box of the 4th Ward was opened and the judges returns were missing.

Moved and seconded, that the entire vote of the 4th Ward be rejected on ground of illegality. The place of election being held in a different place from that provided by ordinance.

Alderman Winston called for the

ayes and nays. The following aldermen answered to their names.

Ayes—Maze Winston and Hagan.

Churchill Coffing asked to be excused from voting on the question before the board.

On motion, seconded and carried, Alderman Coffing was excused from voting.

The ayes being unanimous, the entire vote of the 4th Ward was rejected on the ground of illegality.

Moved and seconded that Philip K. Behrend be declared duly elected mayor of the city of Peru for the ensuing year. Carried.

Philip K. Behrend was declared duly elected mayor for the ensuing year.

Moved and seconded that Herman Silver, city clerk, be authorized to commence a suit, in the nature of a mandamus, against John J. Dowling, for the delivery of the records, ordinance book, papers and seal belonging to the city of Peru. Carried.

On motion, the clerk was directed to request the publishers of the *Union*, *Herald* and *Wachter* to publish these proceedings.

On motion, the council adjourned.

H. SILVER,
City Clerk.

State of Illinois ss:
LaSalle County ss:

William Megge being
first duly sworn says, That on the
Twenty fifth day of April A.D. 1860. he
personally served on John J. Worling
at the residence of said Worling in
the City of Seneca, in the County of
LaSalle, a notice of which the foregoing
is a copy, by handing the same to and
leaving the same with said Worling.

Subscribed and sworn William Megge
to before me this 26th day
of April A.D. 1860.

Norman Silver
Clerk of the Records
Court of the City of Seneca

In The Supreme Court of The State
of Illinois, Third Grand Division
April Term A.D. 1860.

The People of The State
of Illinois Ex Relatone
Herman Silver

vs

John J. Dowling

Term April 25th 1860.

Sir

Take notice That I shall apply
to The Judges of The Supreme Court now
in session, at Ottawa Illinois on The
27th day of April Instant at The opening of
Court on that day or as soon thereafter
as Counsel can be heard for a Writ
of Mandamus to be issued command-
ing you to deliver to me as clerk of
The City of Strev. The Records, Ordinance
Book and Seal of said City,
which application will be founded
upon Petition and Affidavits
There and then to be presented to said
Court - or for such other orders in
The premises as The Court may deem
proper to grant.

Herman Silver

To John J. Dowling

State of Illinois
LaSalle County

ss:
Wm. Churchill

Churchill Coffins
being duly sworn says that he has heard
read the annexed Petition and knows the con-
tents, that he is one of the Aldermen of the
City of Peru for the second Ward in said
City and was elected at the election held
in said City on the first Monday of April
A.D. 1860, as stated and set forth in said
Petition, and Affiant further says that
he was present at the said Meetings
of the Common Council of said City men-
tioned in said Petition viz: the
Meetings held respectively on the 11th
12th and 18th day of April A.D. 1860,
and that Statements of the proceedings
of said Meeting respectively as set
forth in Exhibits A B & C, annexed
to said Petition are ^{substantially} true and correct;
and Affiant further says that the State-
ments contained in said Petition
in regard to the returns of the judges
of Election in the fourth ward are
true to the best of his knowledge belief
Subscribed & sworn Churchill Coffins
to before me this 20th
day of April A.D. 1860

Wm. Churchill

Judge of Records Court of LaSalle County

unlawfully took said Record Book
Ordinance Book and Seal from
The Common Council Room for
The purpose of annoying hindering
and delaying The Common Council
of said City in the transaction of their
business from feelings of resentment
towards said Common Council, be-
cause They appointed said Silver
Clerk of said City instead of said
Sawling.

George Mage.

Subscribed and sworn to before me this 26th day
of April A.D. 1860.

Hermance Silver
Clerk of the Recorder
Court of the City of
Sera

24

Supreme Court
of the State of Illinois

The People Ex rel
Herman Silver

vs
John J. Dowling

Petition for Mandamus

Filed Apr. 27. 1860
L. Keland
Clerk.

Attorney General

Chambers & Eldridge
Attys for Relator