

No. 14067

Supreme Court of Illinois

People, ex. rel. McCagg

vs.

Mayor, et al, City of Chicag

as follows to wit. Continued
for Annual Report.

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION. JUNE TERM,
A. D. 1869.

14067

THE PEOPLE, *ex. rel.*, E. B. McCAGG & AL.,
vs.
THE MAYOR, COMPTROLLER and CLERK
OF THE CITY OF CHICAGO. } Mandamus.

POINTS AND AUTHORITIES FOR RELATORS.

This is an application for a peremptory Writ of Mandamus against the Mayor, Comptroller and Clerk of the City of Chicago, to compel them to execute, issue and deliver to the Relators the bonds of the City of Chicago, to be used in paying for lands taken and authorized to be taken for the extension of Lincoln Park.

The 12th section of the act of February 8th, 1869, set out in the writ, makes it the duty of the defendants to issue bonds upon the demand of the relators. The demand has been made and the defendants have refused to issue the amount demanded, or any bonds whatever, until it be determined by a court of competent jurisdiction, that the provisions of the act are valid and make it their legal duty to issue bonds thereunder.

The meaning of the act is clear; the section is mandatory; there is no discretion left to the defendants.

The only question is, is the section requiring the issue of the bonds, valid?

The defendants question the validity of the act, and decline to issue the bonds upon two grounds:

First. That the legislature cannot require a municipal corporation to contract a debt to purchase land for the extension of Lincoln Park, without the consent of the corporate authorities, and,

Second. That the commissioners are officers within the meaning of the constitution, and were appointed by the legislature in violation of its provisions.

The Relators insist on the converse of these propositions:

And, if the commissioners are officers within the meaning of the constitution, no inquiry can be made into that question in this proceeding.

And the bonds must be delivered to the Relators as individuals, whether they

Signed & sworn to
R. D. W. [Signature]

are clothed with authority either as officers or commissioners.

I.

III.

The commissioners of Lincoln Park are not officers within the meaning of Art. 4, S. 12 and Art. 5, S. 23 of the constitution. *Bunn & Co., vs. The People*, 44 Ill. *et als.*

For example of legislative construction, see Chicago Hydraulic Board, Private Laws 1851, 213; Cook Co. Drainage, Laws 1851, 195; Laws 1852, 240; Mason Co. Drainage, Laws 1853, 247; Laws 1859, 104; Levee Monroe Co., Laws 1859, 110; Penitentiary, Laws 1857, 131.

IV.

It is immaterial whether the Relators are officers within the meaning of the Constitution or not.

1. If the commissioners are officers within the meaning of the constitution, and their appointment by the legislature against the provision of the fundamental law, yet they are officers *de facto*, clothed with all the habiliments of office, and in the full exercise of the duties appertaining thereto, and their right to hold and exercise such authority cannot be questioned, except by a proceeding in the nature of *quo warranto*. That question cannot be raised collaterally although the Relators are in office contrary to the constitution. *Lewistown vs. Proctor*, 23 Ill., 533; *Coles Co. vs. Allison*, 23 Ill., 437; *People vs. Collins*, 7 J. R. 549; *State vs. Rich*, 20 Mo. 383; *Taylor vs. Skrine*, 3 Brevard, 516; *Matter Walker*, 3 Barb. 166; *Fowler vs. Bebee*, 9 Mass. 231; *Com. vs. Fowler*, 10 Ib., 281; *People vs. Kilduff*, 15 Ill., 492; *People vs. Head*, 25 Ill., 328.

2. The Mayor, Comptroller and Clerks are ministerial officers, without judicial powers, and they cannot refuse to obey a plain provision of the law because the persons to whom they are directed to deliver the bonds are not, in their opinions legally appointed to the place of commissioners. *People vs. Collins*, 7 J. R., 549;

Morris vs. People, 3 Denio, 395; Carleton vs. People, 10 Mich., 253; Leach vs. Cassidy, 23 Ind., 449; People vs. Dean, 3 Wend., 438; People vs. Solomon, Jan. Term, 1868.

3. The Relators are officers *de facto*, if not *de jure*, and no enquiry will be made into the question as to their holding rightfully, although they claim the bonds as Commissioners. They claim for the public and not in their own behalf. Creighton vs. Piper, 14 Ind., 182; Keyser, Comm'rs. vs. McKissan, 2 Rawl., 139; Rodman vs. Harcourt, 4 B. Mon., 232.

There are many cases where the person claiming to be an officer is a party, where no enquiry will be made as to whether he is an officer *de jure*, or not. People vs. Dean, 3 Wend. 438; Carlton vs. The People, 10 Mich. 251; People vs. Stevens, 5 Hill, 630; Creighton vs. Piper, 14 Ind., 182; Leach vs. Cassidy, 23 Ib., 449; Conover vs. Devlin, 24 Barb., 605; Com'rs. vs. McDaniel, 7 Jones Law R., 113.

4. The act set forth in the writ names E. B. McCagg, John B. Turner, Joseph Stockton, Andrew Nelson, and Jacob Rhein as commissioners, and directs the delivery of bonds to them on demand, and these are the same persons who demanded the bonds. It is no answer that these persons were not lawful commissioners. It was entirely competent for the legislature to cause the bonds as is done in effect by this act to be delivered to individuals named in the act.

5. The public interests cannot be injured by the delivery of the bonds. The bonds will be as safe in the hands of the Relators as in the custody of the Comptroller, who is an appointee of the Mayor, and who has given less security for the performance of his duties.

6. The Relators have been recognized by the Board of Public Works, who by law were the predecessors of the Relators, while the Mayor only refuses to regard them as lawfully authorized. It will not answer for one officer to recognize the Commissioners and another to refuse. Being Commissioners *de facto*, they must be treated as such by all persons until ousted by a judgment rendered in a proceeding in the nature of a *quo warranto*.

W. C. GOUDY,

Attorney for Relators.