

13724

No. _____

Supreme Court of Illinois

People, ex. rel.

vs.

Jameson et al

71641  7

State of Illinois County of Rock Island, ss
The People of the State of Illinois
Ex Rel. of Booth Nettleton } Circuit Court
vs } June Term A.D. 1855-
William R Garrison }

To the Honorable Ira O. Wilkinson
Judge of the Judicial Circuit in and
for the State of Illinois now sitting in the County
of Rock Island -

The People of the State of Illinois upon the Re-
lition of Booth Nettleton, ^{in the name and by the authority of the said People} gives the Circuit
Court now holden in the County of ~~Rock Island~~
Rock Island aforesaid to understand and
be informed that William R Garrison
Elias Benner David McFarland Ebenezer
Chapin and John M. Fuller pretending that
there is a legal corporation for Municipal
purposes under the name and style of the
"President and Justices of the Town of Co-
quawta" have unlawfully intruded into
and usurped the offices, powers, immunities,
privileges and franchises of such fictitious
and pretended Corporation, and do now un-
lawfully hold and exercise the offices, powers,
immunities, privileges, and franchises afo-
said in the Town of Coquawta County of ~~Rock~~
Iowa and State of aforesaid - enacting and en-
forcing Ordinances, and governing the in-
habitants and Citizens of said Town according
to law - Wherefore the said People of the State of
Illinois, upon the Relation of Booth Nettleton
aforesaid pray that a writ of Subpoena may
issue against the said William R Garrison, Elias
Benner David McFarland, Ebenezer Chapin and
John M. Fuller requiring them to appear and

show by what authority they hold and exercise
the offices, powers, immunities, privileges and
franchises aforesaid, and that on a final
hearing that Judgment of Ouster be entered
Against them

J. H. Stewart Attorney for
Relator

The People of the State of
Illinois Ex Rel

vs

William R. Lawrence

et al

Information

Filed June 20 1855

August Munchy

Notice is hereby given that on Saturday
 that on Saturday the 12th day of April A.D. 1851
 there will be a meeting of the legal voters of the
 town of Ogawa in the Court house in said town at
 ten o'clock A.M. of at which time and place a vote
 will be taken to decide whether said town of Ogawa
 shall be incorporated or not April 2nd 1851

Mr J. B. & C. H. Patterson publishers of the "Ogawa
 Spectator & Kentucky Observer" hereby certify that
 the annexed notice was published in said paper
 two weeks successively the first publication being on the
 2nd day of April 1851 and the last on the 9th day of April 1851
 Given under our hands and seals this 4th day of September
 1851
 J. B. & C. H. Patterson

At an election held at Ogawa in the County
 of Henderson on Saturday the 12th day of April A.D.
 1851 for the purpose of taking a vote for and against
 incorporation the following was the result of said vote

For incorporation	} Against incorporation																													
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State of Illinois }
 Henderson County }
 I William C. Rice an acting
 Justice of the Peace and County Judge
 within and for said County do hereby certify that Ebenezer
 Clappier was by me sworn in as president and Robert M.
 Patterson as Clerk of an Election held at the Court house
 in the town of Ogawa on Saturday the 12th day of
 April 1851 for the purpose of voting for or against incorpo-
 rating said town — Given under my hand and seal

This 12th day of April A.D. 1857

Wm C Rice Seal County Judge

Asa Smith
John Roscomb
John Gubhart
Wm W Garland
Jas Mitchell
W Records
C. Park
John Tompson
Thos McGill
George Jarrett
Horace Cattan
Loc Atwood
Theodore M. Farland
J M Rankin
Julius Gifford
Lewis Carter
Albert Hubbard
G. A. Russell
A N Aldridge
Thos J Berry
Bert Herrington
C. Patterson
John Reynolds
J Francisco
Loc Sarnell
C C Finch
John Curry
G M Thompson
H M Pres
Jas W Harris
N C Chapin
A Knowles

W M Kinney
Robt M Patterson
C Chapin
B. Nettleton
John M Kinney
Pley Gifford
Reuben Gouge
A. M. Moffet
J H Graham
Wm Mitchell
David Mitchell
John S Pollock
Ben Pool
John Mowry
David M Farland
J. Bigelow
Thos Giles
J. B. Patterson
Daniel Gifford
John M Farland
Wilson M Graham
Wm Kennedy
J W Simpson
Harrison Coon
Hugh McLellan
W Phelps
C. B. Matthews
J. B. Simpson
J S Brainard
Jas Conlance
Saml P. McGaw
C. Guin

H Biglow
 Michael Mulstey
 Samuel Kimball
 John McEwen
 Joe Savenport
 Robt Chyne
 J. H. Maury
 C. H. N. Patterson
 Wm L. Powers

Henry Artley
 Levi B. Wilkinson
 W. D. Henderson
 Christian Lee
 David Watson
 H. Haines
 S. Maguire
 Seymour Catherin
 A. Blacky
 S. N. Snook

At an election held at the court house
 in the town of Ogawka County of Hender-
 son and State of Illinois on the 12th day
 of April in the year of our Lord one thousand
 eight hundred & fifty one to vote for or against
 incorporating said town of Ogawka the fol-
 lowing was the result of said vote
 For incorporation had seventy two votes
 Against incorporation had twelve votes
 certified by us

attest
 Robert M. Patterson }
 Ebenezer Chapin } President

Minutes of Meeting
 for Organization
 of Civil School at
 Ogawka, Ill.

A.

John June 20. 1855
 J. Wilson clerk

An election held in the town of
Ogunquit on the following Saturday the 26th
day of April A.D. 1854 the following persons
voted at said election for trustees of said election

Voters names
Robert M Patterson
Wm McFarland
Jas H Stewart
Booth Nettleton
S Moir
C Park
Jno McGaw
Thos W McMill
J B Patterson
Wm L Powers
R M Young
Ben Pool
Michael Mulstay
C B Matthews
Jno Simpson
Wm C Rice
J H Graham
Saul P McGaw
Jno Tompason
Wm Shopshire
Theodor McFarland
Joe Atwood
C H Patterson
C Benner
Jas Mitchell
Lily Gifford
Henry Artly
Wm Anderson
C C Finer

Voters names
John Mowry
Jno McFarland
John Roscum
Lewis Carter
Wm Canady
C R Adams
A Chapin
Henry N Coes
Jno Sarnell
H McKinney
C Patterson
C Chapin
Jno McKinney
Jas Constance
Jas A. Meury
Ben Harrington
Jno S. Pollock
Joe H Barnes
David McFarland
G A Russell
S. S. Phelps
A Maguire
H Bylow
Odundahl
Peter Selbrish
A Withman
H. C. Stone
C. M. Farris

State of Illinois }
Henderson County }

J. William C. Rice County
Judge of said County do certify

~~that this day Ebenezer Chapin~~ and by virtue of said
office an acting Justice of the Peace in and for
said County, do hereby certify that I have admin-
istered the oath required by law to Ebenezer
Chapin as president and to Robert W.
Patterson as Clerk of an election this day
held in the town of Aquawka for the election
of trustees of said town under the general law
for the incorporation of towns in the state of
Illinois given under my hand and seal
this 26th day of April A.D. 1857

W. C. Rice (Seal) County Judge
of said County

At an election held in the Court house
in the town of Aquawka in the County of Hender-
son and state of Illinois on the 26th day of April
in the year of our Lord one thousand eight
hundred and fifty one the following named
persons received the number of votes an-
nexed to their names for the following described
offices to wit

John S. Pollock	for trustee	fifty votes
W. J. Henderson	"	forty eight "
Geo. McKimney	"	forty seven "
Ebenezer Chapin	"	forty nine "
Julius Gifford	"	forty six "
S. S. Phelps	"	three "
A. Hibbard	"	six "
A. Knowles	"	four "
J. B. Patterson	"	two "
Wm. C. Rice	"	one "

D. Gifford	for trustee	three votes
P. J. Birdsall	do	six "
Wm L. Powers	do	four "
Gas A. Maury	do	two "
E. R. Adams	do	two "
Robt. Moir	do	one "
A. Wittman	do	two "
Thaddeus Canine	do	one "

certified by us

attest

Robert M. Patterson
 Clerk

Ebenezer Chapin
 President

Minutes of Election
of President United

B.

Filed June 20. 1855
D. Nelson clk

State of Illinois County of ^{Rock Island} ~~Anderson~~

William R Jamison & others
ads

The People of the State of Illinois
ex. Rel. of

Circuit Court ^{June} ~~April~~ term
Term of A.D. 1855

1st Plea.

And the said William R Jamison, Elias Benner, David McFarland, Ebenezer Chapin & John M. Fuller come by their attorney and for plea to the said information say they ought not to be ousted from the powers, privileges, offices and franchises of the corporation of the president and trustees of the town of Aquawka because they say that on the 2nd day of April A.D. 1851 notice of ^{the} meeting next hereinafter mentioned was given by publication of a printed notice in the Aquawka Spectator and Keithsburg Observer a weekly newspaper printed and published in said town which notice was also inserted in the same paper on the 9th day of April A.D. 1851 and which notice is in the words & figures following to wit,

"Notice is hereby given that on Saturday the 12th day of April 1851 there will be a meeting of the legal voters of the town of Aquawka at the Court house in said town at 10 o'clock A.M. at which time and place a vote will be taken to decide whether said town of Aquawka shall be incorporated or not April 2nd 1851"

And that on the 12th day of April A.D. 1851 certain white male residents of lawful age who had resided in said town for six months ~~and~~ ^{or} who were owners of freehold property therein the said town of Aquawka having not less than one hundred & fifty inhabitants assembled themselves together in pursuance of said notice in public meeting at the Court house of the county aforesaid in the town aforesaid and then & there chose Ebenezer Chapin president and Robert M. Patterson clerk of said meeting from among their number

and the said Ebenezer Chapin & Robert M. Patterson were then and there duly sworn by William C. Rice County Judge and ex officio Justice of the peace in and for said County and State faithfully to discharge the duties reposed in them as president and ~~trustee~~ Clerk of said meeting and thereupon the said William C. Rice County Judge & ex officio Justice of the peace as aforesaid made his certificate in writing as evidence of the qualification of the president & clerk of said meeting which is as follows to wit

State of Illinois }
Henderson County } I William C. Rice an acting Justice of the peace and County Judge within and for said County do hereby certify that Ebenezer Chapin was by me sworn in as president and Robert M. Patterson as Clerk of an election held at the Court House in the town of Aquawka on Saturday the 12th day of April A. D. 1851 for the purpose of voting for or against incorporating said town
Given under my hand and Seal this 12th day of April
A. D. 1851 Wm C. Rice (Seal) County Judge

And after the qualification of the president and clerk of said meeting as aforesaid the residents ^{& owners} as aforesaid there assembled then and there proceeded to vote ^{by ballot} whether they would be incorporated or not in incorporated and after all the votes were given for the purpose aforesaid then the said president and clerk certified under their hands in writing the number of votes in favor of being incorporated as being seventy two and the number of votes against being incorporated as twelve which certified statement of the polls is as follows to wit

"At an Election held at the Court house in the town of Aquawka County of Henderson & State of Illinois on the 12th day of April A. D. 1851 to vote for or against incorporating the town of Aquawka the following was

The result of said vote

For incorporation had seventy two votes
Against incorporation had twelve votes

Certified by us

attest

Robert M. Patterson } Clerk

Cheney Chapin } President

And thereupon afterwards and before the 17th day of April A.D. 1851 the said Robert M. Patterson Clerk of the meeting as aforesaid gave public notice to the voters possessing the qualifications as aforesaid to assemble at the Court House aforesaid on the 26th day of April in the year A.D. 1851 for the purpose of electing five trustees for the town of Aquawka aforesaid which said notice was posted up in different ^{public} places in said town and is in substance as follows to wit

Trustees Election

At an Election of the Citizens of Aquawka held at the Court house on Saturday the 12th inst - more than two thirds of the voters balloted in favor of incorporating the town of Aquawka Notice is therefore hereby given that an Election will be held at the Court house on the 26th day of April inst to Elect five trustees for the town of Aquawka
Robert M. Patterson Clerk

Aquawka April 16th 1851

And on the 26th day of April A.D. 1851 at the Court house aforesaid in pursuance of the notice last mentioned an Election was held at which the said Cheney Chapin acted as president and the said Robert M. Patterson as clerk and the said voters qualified as aforesaid proceeded to and did then & there vote by ballot for certain residents and freeholders of said town as trustees of said town of Aquawka and after the Election was closed the said president and clerk canvassed the ballots given and found that John S. Pollock, John McKinney William

J. Henderson, Ebenezer Chapin & Julius Gifford had received the highest number of votes for trustees and the minutes of said proceedings and canvass of said Election were kept & certified by the said president & Clerk and were as follows to wit:

at an Election held in the Court house in the town of Aquawaka County of Henderson State of Illinois on the 26th day of April A.D. in the year of our Lord one thousand eight hundred and fifty one the following named persons received the number of votes annexed to their respective names for the following described offices to wit:

John S Pollock	For trustee	Fifty votes
Wm S Henderson	do	forty eight votes
John McKinney	do	forty seven votes
Ebenezer Chapin	do	forty nine "
Julius Gifford	do	forty six "
S S Phelps	do	three "
A Hubbard	do	six "
G. A. Russell	do	four "
A. Knowles	do	four "
J. B. Patterson	do	two "
Wm C Rice	do	four "
P. Gifford	do	three "
P. S Birdsall	do	six "
Wm S Powers	do	four "
Jas A Maury	do	two "
E. R. Adams	do	two "
Robt. Moir	do	one "
A. Wittman	do	two "
Shadders Barnes	do	one "

Certified by us } Ebenezer Chapin
 President

Attest }
 Robert M Patterson, Clerk }

And thereupon to wit on the 28th day of April
A.D. 1851 the said trustees elect were duly sworn
into office by William C. Rice County Judge aforesaid
and a certificate of such fact was made which
is in the form following to wit

State of Illinois }
Henderson County } ss I William C. Rice County
Judge and of said County
do certify that this day Ebenezer Chapin, John
McKinney, William S. Henderson, John S. Pollock
& Julius Gifford were by me duly sworn to discharge
their duties as trustees of the town of Aquawka ac-
cording to the best of their abilities Witness my
hand & seal this 28th day of April A.D. 1851

W. C. Rice Seal
County Judge

And the said Ebenezer Chapin president
and Robert McD Patterson Clerk as aforesaid then
and there delivered a certificate of the state
of the polls at the meeting holden as aforesaid
on the 12th day of April A.D. 1851 to the said trust-
ees so elected ^{# who deposited the same} with the Clerk of the County Court
in and for said County & State who entered the
same on the records of his office which certificate
in writing so recorded as aforesaid is as follows
to wit

At an Election held at Aquawka
in the County of Henderson and state of Illinois on
Saturday the 12th day of April A.D. 1851 for the purpose
of taking a vote for or against incorporation the
following was the result of said vote

For incorporation 12 votes Against incorporation 12 votes

State of I

At an election held at the Court house

with a copy of the notice with certificate of participation, Bonds, certificate
of qualification of president & clerk, & with poll list & tally paper

in the town of Aquawka County of Henderson
& State of Illinois on the 12th day of April in the
year of our Lord one thousand eight hundred
and fifty one to vote for or against incorporating
said town of Aquawka the following was the result
of said vote For incorporation Seventy two votes
Against incorporation twelve votes

Certified by us
attest Ebenezer Chapin, President

Robert M. Patterson Clerk

And the said defendants further aver that the
said trustees so elected and qualified as aforesaid
then & there organized their board by the election of
John McKinney one of their number as president
and James H. Stewart as clerk by the appointment of
all other persons necessary under the general act entitled
Corporations and the first division thereof approved March
3rd 1845 and that the said president and trustees
of the town of Aquawka from the time of their election
qualification and organization as aforesaid passed
ordinances & made bye laws for the regulation of the internal
police of said town of Aquawka and held their meetings from
time to time and caused their clerk to keep a record of
such acts & proceedings and fully exercised all the powers
of a municipal Corporation under the act of the Legis-
lature aforesaid and the ordinances passed under such
organization have brought suits, levied & collected taxes
for corporation purposes and held themselves out as
legally authorized corporation as aforesaid for the term
of one year and till their successors were elected
and qualified and the said defendants were duly
elected and qualified as trustees of the said town of
Aquawka on the 31st day of May A.D. 1854 as the

Successors of the Trustees first Elected and that they hold and exercise the offices of the trustees first Elected and that they hold and exercise the offices powers & alleged in the information herein as the legally Constituted board of trustees of the Corporation formed as herein set forth and the said defendants further aver that the Legislature of this State passed an act entitled "an act to authorize the town of Aquawka, to subscribe to the Capital stock of Certain Corporations therein named" which was approved on the 21st day of June 1852 and also a subsequent act entitled "An act to amend an act entitled an act to authorize the town of Aquawka to subscribe to the Capital stock of Certain Corporations therein named" which was approved on the 8th day of February 1853 and by which acts of the Legislature aforesaid the said Corporation was recognised as a legal and existing Corporation body authorized to perform certain acts therein mentioned by its president & trustees Wherefore the said defendants hold and exercise the offices privileges powers immunities and franchises of the Corporation of the president and trustees of the town of Aquawka by virtue of the power conferred on them as the lawfully Constituted officers of such Corporation as they have a right by law to do and for no other or different purpose and this they are ready to verify. Wherefore they pray Judgment for their costs in this behalf expended &c

N. C. Gandy

Attorney for Defendants

The People Es. Rel. of
Boston

vs

Wm R. Garrison & al

1st Plea.

Filed June 29. 1855

Frederic M. Wood

State of Illinois, County of Rock Island

The People & Rep. of
Booth Settlement

Circuit Court
June Term A.D. 1855.

vs
William R. Garrison & al

2^d Plea. And for further Plea in this behalf the said Defendants say they out not to be ousted &c. because they say that they are a body corporate under the general law for incorporating towns passed and approved March 3^d 1845 by the Legislature of this State, and that under the provisions thereof, the said ^{legal voters as operating} ~~inhabitants~~ of the Town of the same having then & there, over one hundred ^{square} ~~square~~ inhabitants Aquawka, heretofore, to-wit, on the 12th day of April A.D. 1851 voted whether they would become incorporated or not, and that a record or memorandum in writing was kept of such proceedings, which is in the words and figures following, to-wit,

(Here read copy of Minutes Marked A.)
and afterwards, an election was had and held in further pursuance of the provisions of said general law for five trustees for said Town, at which certain proceedings were had of which a written memorandum or record was made which is as follows, to-wit,

(Here read copy of Minutes Marked B.)
whereby John S. Pollock, John McKinney, William D. Henderson, Ebenezer Chapin, and Julius Gifford were duly elected Trustees of said Town of Aquawka, and afterwards to-wit, on the 29th day of April A.D. 1851. Said Trustees were qualified and entered upon their duties of office as such and from thence continued to hold and exercise the same till their successors were elected and qualified, and

that upon the election and qualification of said Justices as aforesaid the said President and Clerk of the meeting hereinbefore first set forth delivered a certificate of the state of the polls and the result thereof of the meeting so holden as aforesaid on the 12th day of April A.D. 1851, to the said Justices, which was by them deposited with the Clerk of the County Court of the County of Henderson aforesaid, who recorded the same in the records of his office, which said Certificate so delivered, deposited, and recorded is in the same words and figures as the record or memorandum in writing of the meeting first in this plea set forth, by means whereof these defendants aver that the said inhabitants of the town of Aquawka became a corporate body and said Justices were vested by all the powers thereof conferred by the laws of this State in such cases made and provided: and the said Defendants aver that they were ~~so~~ elected and qualified and now hold and exercise the offices of Justices of the said Town of Aquawka as the successors of the Justices so elected and qualified as aforesaid. And the said Defendants further aver that from the time of the organization of such Corporation as aforesaid the said Town of Aquawka by its Justices and other corporate officers have acted as a municipal corporation, enacting ordinances and enforcing them, appointing officers, levying and collecting taxes, and all other acts proper and fit for the inhabitants as a municipal corporation and still continues so to act. And the said Defendants further aver that the existence of such corporate body has been since the time of the organization and

before the filing of the Information herein, has been recognised by the Legislature of this State in the passage of two acts, one entitled "An act to authorize the Town of Aquawkeo to subscribe to the Capital Stock of certain Corporations therein named, which was approved on the ~~7th~~^{21st} day of ~~February~~^{June} 1852, and the other entitled "An act to amend an act entitled an act to authorize the town of Aquawkeo to subscribe to the Capital Stock of certain Corporations therein named," which was approved on the 8th day of February 1853. Wherefore these defendants hold and exercise the offices, privileges &c. as in said Information alleged, as by law they have a right to do by virtue of the premises aforesaid, and for no other or different purpose; and this they are ready to verify &c. Wherefore they pray judgment &c.

H. C. Gandy
Attorney for Defendants.

The People Ex Rel. of
Boston

vs
Wm R. Garrison & al

2^d Plea.

Filed June 20. 1855-
Thos M. Welch.

10

10

State of Illinois, County of Rock Island Co.

The People ex Rel. of
Booth & Nettleton }
vs }
William R. Garrison & al }
Circuit Court,
June Term A. D. 1857.

3^d Plea.

And the said Defendants for further Plea in this behalf say they ought not to be ousted etc. because they say that on the 2^d day of April 1857, notice of the meeting next hereinafter mentioned was given by publication of a notice in the Aquawka Spectator and Keithsburg Observer a weekly newspaper printed and published in said Town which notice was also inserted in the same paper on the 9th day of April 1857, and is in the words and figures following, to-wit,

"Notice is hereby given that on Saturday the 12th day of April 1857 there will be a meeting of the legal voters of the town of Aquawka at the Court House in said Town at 10 o'clock A. M. at which time and place a vote will be taken to decide whether said town of Aquawka shall be incorporated or not. April 1st 1857."

And that on the 12th day of April A. D. 1857 at the hour and place specified in and in pursuance of said notice, certain white male residents of lawful age who had resided in said Town for six months prior thereto, and who were owners of freehold property therein, the said town of Aquawka having not less than than one hundred and fifty inhabitants, assembled themselves together, and then and there chose out of their number Ebenezer Chapin as President and Robert M. Patterson as Clerk of said meeting, and the said Ebenezer

Chapin and Robert M. Patterson were then and there duly sworn by William C. Rice County Judge and ex officio Justice of the Peace in and for said County and State, faithfully to discharge the duties reposed in them as president and clerk of said meeting, and thereupon the said County Judge made his Certificate in writing as evidence of the qualification of said President and Clerk of said meeting, which is as follows,

"State of Illinois

Henderson County) I William C. Rice an acting Justice of the Peace and County Judge within and for said County do hereby certify that Ebenezer Chapin was by me sworn in as President and Robert M. Patterson as Clerk of an election held at the Court House in the town of Equawka on Saturday the 12th day of April A. D. 1851 for the purpose of voting for or against incorporating said town.

Given under my hand and seal this 12th day of April A. D. 1851. Wm. C. Rice ~~Secy~~ County Judge and after the qualification of the said President and Clerk as aforesaid the residents as aforesaid there assembled proceeded to vote by ballot whether they would be incorporated or not incorporated and after all the votes were given for the purpose aforesaid these the said president and clerk canvassed the same and certified in writing under their hands the number of votes in favor of being incorporated as seventy two and the number of votes against being incorporated as twelve, which certificate is as follows, to-wit,

" At an election held at the Court House in the town of Equawka, County of Henderson

and State of Illinois on the 12th day of April A. D. 1857
to vote for or against incorporating the town of
Aquanoka the following was the result of said
vote

For incorporation had seventy two votes
Against incorporation had twelve votes

Attest certified by us.

Robert M. Patterson, Clerk. Ebenezer Chapin, "President"

And afterwards the said ~~certificate~~ to-wit, after
the election of five trustees for said Town, the
said Certificate, together with a copy of the
notice hereinbefore set forth with a certificate
of publication thereto attached as is required for
proof of the publication of notices by the
Statute of this State, the certificate of qualifi-
cation hereinbefore set forth, the names of the
voters (or poll list) voting at said election and
the tally ~~count~~ ^{papers} made in the canvass of said
votes, was delivered to the Trustees aforesaid &
by them deposited with the Clerk of the County
Court in and for said County, who then
and there recorded the same in the Records
of his office where the same still remains:
And the said Defendants further aver that
after the vote on the question of incorpora-
tion as aforesaid, five Trustees were elected
and qualified as officers of said Town, who
exercised and held such offices for the
term for which they were so elected, that
they were succeeded by other persons who
were also elected and qualified as such Trust-
tees and served as such, and that these
Defendants were duly elected and qualified
as the ~~officers~~ ^{Trustees} of said Town and now hold
and exercise the rights, power, privileges &

The People ex. Rel. of
Booths Association

vs
Wm. W. Garrison & al

3^d Pleas.

Filed June 20. 1855
J. F. Wilson clerk

of the said Corporation of the town of Aquasco
by virtue of the premises aforesaid as they have
a lawful right to do, which they are ready
to verify. Wherefore they pray judgment if they
ought to be aided &c.

W. C. Gandy
Defendants attorney.

The People of the State of Illinois }
vs }
Relatives Booth Nettleton }

vs

William R. Garrison

And the said Plaintiff saith that the said Pleas one, two, and three or either of them, and the matters therein contained in manner and form as the ^{same} are above pleaded and set forth, are not sufficient in law to bar or preclude the said Plaintiff from having or maintaining their aforesaid action there against them, and that plaintiffs are not bound to answer the same and this they are ready to verify - Wherefore for want of a sufficient plea they pray Judgment, and that said Defendants may be Ousted &c

J. H. Stewart attorney
for Relator

And the said defendants come by their attorney & join in the foregoing demurrers

A. C. Gandy

Atty for Defendants

The People et al. of
Booth Settlement

vs
Wm R. Garrison et al

Sent to Pleas.

Filed June 20 1855
J. Wilson clk

Pleas before the Hon John A. Wilkinson
Judge of the Sixth Judicial Circuit
of the State of Illinois at a term of said
Court begun and held at the court-house
within and for the County of Rock Island
and State aforesaid on the Second Monday
(the Eleventh day) of June A.D. 1855.

Present Hon John A. Wilkinson *Judge*

J. B. Gordon Sheriff

W. D. Miller *State's atty*

Frederick Wilson *clerk*

And afterwards to wit on the Fifth day of
said term and the Eleventh day of said
month the following proceeding was had

The People of the State of Illinois
on Relation of Booth Nettleton

William R. Jamerson, Elias Bennett
David M. Fuller, Obenize Chapin
and John M^e Farland

Motion

This day came the People of the State of
Illinois upon the relation of Booth Nettleton
by James H. Stewart attorney for the relator
and enter their motion for leave to file an in-
formation against William R. Jamerson, Elias
Bennett, David M. Fuller, Obenize Chapin
and John M^e Farland, praying a

defendants first, second and third. pleas, and the court having heard the argument of counsel and being sufficiently advised in the premises order that the said demurrer be and the same is hereby sustained, and therefore defendants failed to plead further herein but elected to stand and abide by their said pleas

It is therefore ordered by the court that the defendants be ousted from the offices of President and Trustees of the town of Aquawka, and that the Peoples aforesaid have and recover of the said defendants their costs in this behalf expended and that they have execution therefor,

And upon agreement of parties it is ordered by the court that an writ of ouster issue herein, until this cause be determined by the Supreme Court, and also that the original papers filed herein may be withdrawn and filed in the Supreme Court instead of a transcript thereof

And the said ~~William~~ W. Garrison, Elias Bennett, David McFarlane, Ebenezer Chapin & John M. Fuller, Plaintiffs in Error come by their attorney and say that there is and was error in the cause of which the foregoing is a record and as error therein they assign the following, to-wit,

1st The Circuit Court erred in sustaining the demurrer to the pleas to the Information

2^d The Circuit Court erred in rendering judgment on the demurrer of the Pleator to the defendants plea,

Wherefore they pray that the Judgment of the Court below be reversed and set aside and the cause remanded for other proceedings in the Court below.

W. C. Gandy

Attorney for Plaintiffs in Error.

State of Illinois }
Rock Island County } J. Frazer Nelson clerk
of the circuit court of said County do hereby
certify that the foregoing is a true copy of
~~the~~ the record in the above entitled cause
and that the annexed papers are the originals
mentioned in the record

In Testimony whereof I have
hereunto set my hand and
affixed the seal of said Court
this 20th day of June 1855
J. Frazer Nelson Clerk

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The People ex relation
of Booth v. Weston
at S.

Wm. R. Garrison et al.

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Transcript

13724

Filed July 10. 1855.
L. Keland Clk.

10650

State of Missouri, Supreme Court
3^d Division, June Term 1855.

William R. Jamison & others }
vs. } Error to Rock Island.
People ex Rel. Booth Chittleton }

Argument for Plffs in Error.

An information against the Plaintiffs in Error was filed on the Rel. of Booth Chittleton at the June Term (1855) of the Rock Island Circuit Court alleging that the Plaintiffs in Error held the offices of President & Trustees of the Town of Equawka, which said town was not legally incorporated. To the information the Plaintiffs in Error appeared and filed three special pleas setting out the acts by which such Town was legally incorporated under the general law of 1845. To each of these pleas there was a demurrer which was sustained as to all the pleas & no further pleas being made, Judgment was rendered against the Plaintiffs in Error on the demurrer. From this Judgment the defendants below bring the case here alleging that each and all of the pleas are good and sufficient.

The information does not question

the election of the dependants to the offices they assume, but only the legal existence of the Corporation, and the only question presented is whether the pleas, or any of them, set forth such facts as show that the Town of Aquawka was legally constituted a Municipal Corporation under the general law of this State as found in the Revised Code of 1845.

Absolute corporations possessing full powers, originally were only created by grants from the Sovereign Power, or Legislative act. Cities, Counties, Towns, Hundreds & other political divisions have from the necessity of the case been held as quasi Corporations possessing part but not all of the powers incident to a Corporate body.

Angell & Ames on Corp. 10 et seq.

And hence the same strictness is not held relative to the powers ~~or~~ existence of these bodies as in the case of private bodies made corporate for their own benefit & not for the public good. When such a collection of citizens is made that they require special rules or laws for their protection, comfort, & welfare, the public policy

requires that a part of the powers of government should be delegated and entrusted to such body of citizens - creating a lesser government for special purposes within a larger government, with power perform all acts and make all laws provided by the general government and not inconsistent with the superior laws. The public peace absolutely requires that municipal corporations should be created. And a great difference exists in the case of public municipal corporations & those created for purposes of private speculation.

The ordinary method of creating a Corporation in this Country is by a special act of legislation. In the case of municipal corporations the act places the body of persons into full being as a corporate body; in the case of private bodies of persons, usually certain things are to be done, before the powers can be used. Hence there is a great scarcity of authority upon the case now before the Court, unless we resort to the law as applied to private corporations.

But in our State a general law has been ^{passed} enacting for the benefit of all towns of a certain kind the right to become municipal Corpora-

tions are taking certain steps.

But two parties can be interested in the matter, namely, the State which has at the time the government of the inhabitants in its hands, exclusively, & the inhabitants of the town who are the subject of the law. The State has provided that when 150 inhabitants ~~of any village or town or more~~ are residing together in any village or town & two thirds of such those who are of age & who ^{have} resided therein for over six months or who own freehold property therein, then ~~they shall have the wish~~ to be incorporated, they may become so. By this act the only condition fixed by the State is the number of inhabitants and the desire of those inhabitants, when the powers may pass as if by express grant or charter. The act further provides that the desire of the inhabitants may be ascertained in a certain way, namely, by a vote of a part of the inhabitants, when it further provides that five persons may be elected who shall be the first President & Trustees & exercise the powers of the Corporation till others succeed them.

It is insisted that a fair construction of act ~~is directory~~ as to all the steps to be

taken makes but the two named above, to-wit: the number of inhabitants & the wish of those inhabitants material & that all others are merely directory, & that it does not matter ~~whether~~ how the desire of the people was expressed so that all the inhabitants having the legal right could express their desire, or what was done as the manner of electing the first body of Trustees, so that five trustees were actually elected and entered on their duties,

Of sufficient notice as required by the Statute of the first meeting should be given to afford all persons having the right and desiring to do so might have a voice in determining whether they would become subject to a municipal government and the meeting should be held in pursuance of that notice. If those proceedings were fair then the Corporation is created. If any one ineligible or incompetent should be elected Trustee it would not ~~affect~~ affect the Corporate existence, or if no notice was given of the election of trustees it might render them incapable of holding the offices but could not reach back to the first meeting.

Again it is insisted that where a Corporation, even of a private character, goes

into operation & rights have been acquired under it every presumption should be made in favor of its legal existence.

Society Middlesex vs Davis. 3 Met. 133.

Hagerstown Turnpike Co. vs Greager, 5 Har. & J. 122.

Dunning vs New Albany & S. N. R. 2 Carter 437

Angell & Ames on Corp. 506. 573, 58.

Acts of assent & recognition of the legal existence by the Legislative power, from which the grant rightfully comes, are strong presumptions in favor of its existence. In this case each of the pleas alleged continued action as a municipal corporation for some four years & the passage of two acts at different sessions of the Legislature by which the Town of Aquasco was authorized as a Corporation to subscribe stock to certain other Companies, which acts are set out in by title in the pleas. Under these acts legal subscriptions & large liabilities be incurred & it becomes important that the Corporation should be sustained.

Again it is said that if it should be considered at all important that notice should appear affirmatively as to the first election of trustees, or any other step not affirmatively

appearing in the pleas, then a presumption should be made that such acts were done & in addition to the foregoing authorities would refer to
Bank. U.S. vs Dandridge 12 Wheat 71.

Tested by these principles it is insisted that each of the pleas is sufficient. The first plea goes much further.

The first plea sets forth that the Town of Aquawkeo contained 150 inhabitants, that notice was given in the manner & for time required, that in pursuance of the notice certain persons having the qualifications required as voters met & selected of their number a President & Clerk, who were sworn in the form required, that the persons who had the legal right cast their votes ^{by ballot}, that the President & Clerk counted the votes which showed more than two thirds in favor of the incorporation, that a certified statement of the polls was made by the President & Clerk, that the Clerk gave a week five days notice as required by the Statute of a meeting for the purpose of electing five residents & freeholders trustees, that in pursuance of such notice, the election was held & prior to the commencement thereof the same persons who were President & Clerk of the first

meeting were sworn as President & Clerk of the election for trustees & acted as such, that the persons having the legal right cast their votes by ballot, that the votes were canvassed by the president & Clerk & five persons elected who possessed the proper qualifications, that the President & Clerk made a certificate of the result, that the Trustees elect were sworn into office and entered on the discharge of their duties, that they organized their board passed ordinances, appointed officers & other acts incident to a municipal Corporation, that the defendants (Plffs in Error) are the successors of such Trustees & that two acts have been passed by the Legislature recognizing the corporate existence of the town, that on the election of the first Board of Trustees, the President & Clerk of the first meeting delivered to them the Certified statement of the polls of the first meeting together with a copy of the notice for holding the meeting with proof of publication thereof, poll list & tally paper, which were all deposited with the Clerk of the County Court & by him recorded.

This plea sets out the performance of every act required by the Statute, both material & immaterial. And it appears

therefrom that the Statute has been following in every respect, except that the votes at the meetings were by ballot & not viva voce as stated in the Statute. It is insisted that this is immaterial, that it does not matter whether the "wish of inhabitants" is expressed one way or the other - both being fair - & that at most the provision is directory. But again after the passage of the Act of 1845, & before the proceedings were had, the new Constitution changed the manner of voting & declares "All votes shall be given by ballot" Const. Art 6. § 2. This provision applies to all public elections - a town is but a smaller political division, & is a public Corporation

Angell & Ames on Corp. 1st seq.

That a municipal corporation is public & subject to legislative control has been always held & decided by this Court.

It is also objected to this Plea that it does not aver that all the facts in the organization appear by written or record evidence. In answer to this we say that the Statute requires nothing except a certified statement of the polls at the first meeting to be preserved, which the plea shows was done. Corrob. proof may be allowed. Bank v. S. in Dandridge 12 Wheat 71.

The 2^d Plea is sufficient. It avers the proper number of inhabitants were in the town, that a President & Clerks were sworn & acted at the first meeting & ~~that~~ the result was in favor of being incorporated. In other respects this plea is in substance as the first except it sets forth hæc verba the proceedings of both meetings as preserved in the minutes. From these it does not appear that notice was given of the second election.

It is insisted that enough otherwise appears in the plea from which the Court will presume that such notice was given. And that it must be presumed that the persons chosen as President & Clerks had the qualifications required & were properly chosen by those present - These things are immaterial.

The 3^d Plea is precisely the same as the first except that it omits entirely to set out the proceedings at the election for first board of trustees, but merely avers that trustees were duly elected.

It is insisted that this omission cannot affect the existence of the Corporation, that the proceedings at the first meeting, the filing of the minutes & the

record thereof, the user of the Corporation
& recognition of the town as a Corporation,
is sufficient evidence, regardless
as to how the first trustees acquired their
offices.

If these premises are correct and
the pleas are good & judgment should
be reversed

W. C. Gandy
atty for Opps in Error.

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Wm. R. Garrison & Co.

in
People &c.

Argument of *et al* note.

9 P. O.

Filed July 11. 1855.
S. Ireland Clerk.

13724

1855