No. 12647

Supreme Court of Illinois

People.

VS.

Brewer.

71641

P.D. 858

The People . rc Richard Arewey Fele 2 Feb. 25: 1858 Liland Elerk 8 2,65

Hear before the Hon Marting Ballon judge of the trenty thirds Adicial circuit of the State of Ollinois at the January terms of the Circuit Court ine and for the county of Dureau begung and hees at the Court House inc) Orinciton ing saide County one the first monday in The months of Junuary in the year of oure Lord one thousand light hundred and Gifty Eight Present How Martin Bullow Sudge " Ednard M Fisher clerk y 3 1 Waldron Chuift y TEO W Stipp States celly I wit one the thirds day of said term The People of the state of Illinois in the relation of Quio Warrants Richard Brewer James K Horkins

Perry A Piper and John & Lashroft

Now comes Gibon, an actorney of this court and on his motion leave is given to file an information hereing against the said Defendants, The People one the relation of Richard Brewer James & Horking

Perry Hope to Juhn & Lastrop

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Defendants and pile there pleas to paid informate
tions in the word, and prigues frietowing towits [12647=1]

Replications to said pleas in the words and Jigury Gillowing to mit! Ou mit one the DEventeenthe day of paid Term The People of the State of Ilinois In the relations of Juseph n Kies Williams Ring Rupp & Gebbons & That Sustens Dus Harrants Richards Brewer Now comes I to Wotipp Mi of Peters & Gibons ing behalf of the People and the Defendant comes by Jaylor & Ide his altorneys and The court orders that a Jung be empannelled to try the ipues in this cause and a dury of twelve goods and lawful mon to wit: doel -Doolittle It. a. morgan, alongs I Edict & Colney Osmyn Smitty Thomas Tibs on amos Nerald abraham Spark, Cyrus Coltone, alving Ballows Isaac Junderburg and C & Plummer who are duly elected tries and Smorne, well and truly to try this cause and a true verdich orender according to law and Evidence and sais Jury by agree ment of said parties have leave to seperate to meet at the opening of the court to morrow morn-To wit one the Eighteenthe day of paid Ferm The People on the relation of In Thursantes

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that the found of expensions man legany elocks to pers (でしんりで) cong their and quety and Authorition of range in Earl of the Journal Junastral minsinto and undangtule herding and Executing the office rante against he defined for unsyling wind which and This was an information in the mature of a this war-Lue Kurnah Chehans donner The malun of a Themas den line Mily & Justons une? as merpomerfup & The Testile or retakione dough to the 3 Stake of Dunny 3 de Event of Samuny derm. 1858 Cape of agreed care In the Encues from the dake there but of excultions human mitting the only days doub fraite have keare to prefron and geld De es ales fuebles consideres by the court that the diving that they enter with season in to be adding to be adding of the county to be adding the beauty the best of the county to be adding relating an allens and affect houng one conthutes the motion of the back alternage the The of the Pary de find the paid of the said that the said relations and their and recover of the said relations all their and the land and charges the said wind there all their and the lateral

Merry property and sout sent prince and the fact diete (acting as charmens) fand alechong the prosperies with the mest. The of bring of checkers of more more that the granbee burny jusym Bries for burning juscisty of whom was a true of para downship and the world of park they and hue being out be well when present on having water until hay past in o'deck in the afternoon In ohishing of school of said downship publics and termined and the proper place per holding on electures have been elected a minter of the roting of the aformand 2. That one the day when paid defendant properted to the refle exceptes. per 18 mil danner in evertines to the daing to their In done in the man of part bound of seeing the sus That the person burnets of and donnohily should of said tourship has lufon sail stead shows ordens The down of Duly, and that the former how teed. Dereitenally and that the said Downship mas cards and the aforemed desirable suction men the some whose the dynamic that the pries town of Dech - fre to the admitsing of face first it it is but for Inniling of those of the town of Deely other People defend and claims the number of an elation I shat the first of the elictions under which the by the court ing favor of the defendant were so follows whom the brad of the course and which were all deaded that he may one gand office The question which area emplanted to by the wered, she defendand urmilles have by the part to when took place, und a dring had been legaled qualifies. Aprile of fact were office on the qiday of November and 1857, and

voters were ent having votes for a postponement of said elections as aforesaid, the election was post pones and the voters present dispersed no hotice of said postponement was poster on the door of In school Honse (the place of holding said Elichion) nor mere the proceedings of paid voters veduces to writing that about one hour after paid postponement as number of other waters assembles and being verbally informed of faid pastponement but claiming that buch postponement was dlegal organized a trans of election and held an election at which tronly four votes were polled of which sais defendant received trenty toro That said Indges of paid eliction delivered the poll book of paid Election to the school commissioner of the country of Bureau aforesaide That the said defendant took and put forebed an oath of office and the anti-duelling oath and an oath to support the constitution of the United States and of this state but the affedavit dis not in any part of il contain the mord, Bureau County or State of Minors said affed avit was made before a magistrato who was a chustice of the Jeace of paide Bureau County but it was not so stated ing the body of the affedarit moring the Justo the same an election was subsequently held at the time and place fixed by the aforesaid postponement and the three Gerst mentioned relators were elected to paid office receiving each thirty two votes of which last election the poll books was delivered to the aforesaid school commissioner and the paid three relators were duly qualified by taking the prescribes outho The court upon the motion of the defendant instructed the dury that

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said postponement was eligat that as postpone ment could not be had without a prior organ. egation of as board of elections and that a light-Election case no such prior organizations was entendate - Election could afterward, be had on the same day and that the trustees or Ludges could abone order an adjournment if desired by the voters present to all which which the People excepted The court overruled and refused Is give an instruction offends by the People -That the law did not require that notice of said postponement should be posted upon the door of the paid school house or that the post ponement should be in writing to which the People then and then excepted The Jung founds for the defendant and the court rendered judgement against the relators for costs to which the People then and there excipled and an appeal was prayed for and allowed to the said relations We hereby agree that the above stakement of facts is correct and comfrises the points excepted As ing the above cause and we further agree that the clink of the Circuit Court of paid Hurran Dounty shall so certify to the Rapreme Court without a fuller record. Peters Elbons Juny 23 : 1858. Ultys for Metators Taylor o Ade actys for Defendant the points excepted to in the above confains

at the time thereof to sign and deale this their vill of exceptions and make it a part of the necordor which is done accor The Ballon (Real dingly Judge of 23 - Judicial Circuit of the state of Illinois appeal Bond know all men by these present that me doups In Kies William King Kupp & Siton Thomas Ousting and closeph me Kinsty all of the County of Bureau and State of Allenves are held and firmly bonns unto Richard Horewer of the same county in the penal sund of Imo hundre of dollars current money of the United States for the payment of which well and truly to be made we bent ourselves our heirs executions and administrators jointly severally and firmly by these presents witness our hand, and peals the eleventhe day of Julmany a Dow thousand eight hundred and Lefty eight the conditions of the above oligatring is such that whereas upon the treat of and informations in the natural a Lua Warranto against said Richard Drewer (whereing the said four first mentioned obligors were. relators) ine the circuit court ing and for paids county and state, a werdich of not Builty was rendered in favor of paid Richard Brewer and a Judgement therupon given by the said Eincuit Court in accompand themitto and further that said defendant Richard 512647-47 Thewer recover his costs thereing expended

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against said relations, from which said dixinge ment of the paid relators; from which paid Judgment of the fail circuit court, the said four first mentioned obligors have prayed for and obtained an appeal to the supreme court of said state non if the said four first mentioned obligors shall prosecuto their saw appeal with effect and shall recover, pay all costs which may have account in case the fact dagement that be affirmed in the said supreme court then the above obli gution to be void otherwise to memain in face force and effect. Joseph Kies Deal 3 Am Ring Cial approved and filedy Ruph 2 & chons Qual by me the Feb 16.1858 6 1/4 His her dk & Thomas Quetin Fint Joseph In Kinstry Rial

State of Illinois 3 Pet I Edward In Fisher

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IN THE SUPREME COURT OF THE STATE OF ILLINOIS, OF APRIL TERM, 1858. The People ex-relatione Joseph N. Kies, William Ring, Rupp F. Gibons and Thomas Tustin appellant. Appeal upon an information in the nature of a Quo Warranto, from the Bureau County Circuit Court. 298. Richard Brewer, appellee. The facts of this case are detailed in the agreed 'statement of facts,' signed by the parties, which is as follows, to wit:—"This was an information in the

nature of a Quo Warranto against the defendant, for usurping and intruding into, and unlawfully holding and executing the office of 'Trustees of schools of Township Sixteen, North of Range Ten, East of the fourth principal and its principal and intruding and int

cipal meridian.'
"Pleas: not guilty, and Justification—that the said defendant was legally elected to said office on the 9th day of November, A. D. 1857, and had been

"Issues of fact were taken by the People upon both pleas, and a jury impanalled to try the issues.

panalled to try the issues.

"The defendant admitted that he was in said office.

"The questions which arose on the trial of the cause and which were all decided by the court in favor of the defendant were as follows, to wit:

1. "That the poll-book of the election under which the defendant claimed, showed the returns of an election for 'Trustees of schools of the town of Selby.' The People objected to the admission of said poll-book; but upon the defendant showing that the said 'town of Selby,' and the aforesaid township sixteen, were the same territorially, and that the said township was called the 'town of Selby;' and that the former trustees of said township had, before said election, ordered that the school business of the said township should be done in the name of said 'town of Selby'—the said poll-book was admitted in evidence to the jury; to which the People excepted.

2. "That on the day when said defendant professed to have been elected, a number of the voters of the aforesaid township met at the proper place for holding an election for 'Trustees of schools of said township sixteen,' and having waited until half past two o'clock in the afternoon of said day, and there being only six voters present, one of whom was a trustee of said township, and the voters present desiring it; without having organized into a board of election, it was moved that the said election be postponed until the next Monday, and at the same place and hour; and the said trustee (acting chairment) having prepaged said motion, and all the voters present havnext Monday, and at the same place and hour; and the said trustee (acting as chairman,) having proposed said motion, and all the voters present having voted for a postponement of said election as aforesaid, the election was postponed, and the voters present dispersed. No notice of said postponement was posted on the door of the school house, (the place for holding said election,) nor were the proceedings of said voters reduced to writing: that about an lower after said postponement a number of other voters, assembled, and an hour after said postponement, a number of other voters assembled, and, being verbally informed of said postponement, but claiming that such postbeing verbally informed of said postponement, but claiming that such postponement was illegal, organized a board of election, and held an election, at
which twenty four votes were polled, of which, said defendant received
twenty-two; that said Judges of said election delivered the poll-book of
said election to the School Commissioner of the county of Bureau, aforesaid:
that the said defendant took and subscribed an oath of office, and the antiduelling oath, and an oath to support the constitution of the United States
and of this State; but the affidavit did not in any part of it contain the
words "Bureau County," or "State of Illinois;" said affidavit was made
before a magistrate, who was Justice of the Peace of said Bureau County;
but it was not so stated in the body of the affidavit, nor in the jurat to the but it was not so stated in the body of the affidavit, nor in the jurat to the

"An election was subsequently held at the time and place fixed by the aforesaid postponement, and the three first mentioned relators were elected to said offices, receiving each thirty-two votes; of which last election the poll-book was delivered to the aforesaid School Commissioner, and the said

three relators were duly qualified by taking the prescribed oaths.

"The Court, upon the motion of the defendant, instructed the jury, that said postponement was illegal; that a postponement could not be had without a prior organization of a board of election; that a legal election could

out a prior organization of a board of election; that a legal election could afterwards be had, on the same day, in case no such prior organization was entered into; and that the trustees or judges could alone order an adjournment if desired by the voters present; to all which the People excepted.

"The court overruled and refused to give an instruction offered by the People, 'That the law did not require that notice of said postponement should be posted upon the door of the said school-house, or that the postponement should be in writing;' to which the People then and there excepted.

"The jury found for the defendant and the court rendered judgement against the relators for costs, to which the People excepted, and an appeal was prayed for, and allowed to said relators."

The Errors Assigned, are, that the Court Erred;

1st. In admitting in evidence the poll-book of defendant's pretended election.

2d. In instructing the jury, that the postponement of the election on the 9th of November, A. D. 1857, was illegal, and that a legal election could be held afterwards, on the same day.

3d. In refusing to give the People's instruction, 'that no notice of the said postponement need be posted on the door of the said school house, and that

said postponement need not be in writing.'

4th. In not holding, that the affidavit made by said defendant to qualify was insufficient.

5th. In rendering Judgement in favor of the defendant, and against said re-

lators for costs.

Wherefore the People, by said relators, pray that the said judgement be reversed and said defendant ousted from said office.

GIBONS & PETERS,

Att'ys for Relators.

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