

12647

No. _____

Supreme Court of Illinois

People.

vs.

Brewer.

71641  7

~~3 72th~~
The People ex rel
Joseph M. Kriesdorn

vs
Richard Brewer

1858

3 P.D.

12647

1858

Prepared

The People .v.c
vs

Richard Brewster

Filed Feb. 25. 1858
S. Leland
Clerk

\$ 2.65

Pleas before the Hon^{ble} Martin Ballou
judge of the twenty third Judicial circuit of the
State of Illinois at the January term of the
Circuit Court in and for the county of Bureau
begun and held at the Court House in
Princeton in said County on the first
monday in the month of January in the
year of our Lord one thousand Eight hundred
and fifty Eight

Present Hon^{ble} Martin Ballou Judge
" Edward M Fisher clerk
" J R Waldron Sheriff
" Geo W Stipp State atty

To wit on the third day of said term - - -

The People of the State of Illinois
in the relation of

vs

Quo Warranto

Richard Brewer James K Hoskins
Perry N Piper and John S Lathrop

Now comes

Gibson, an attorney of this court and on his
motion leave is giving to file an information
herein against the said Defendants,

To wit on the ninth day of said Term
The People in the relation of

vs

Richard Brewer James K Hoskins
Perry N Piper & John S Lathrop

Now comes the

Defendants and file their plea to said informa-
tion in the word and figures following to wit:

and the People by their attorney file their
Replications to saids pleas in the words and
figures following to wit:

To wit on the Seventeenth day of said Term
The People of the State of Illinois
In the relations of Joseph W Kies
William Ring Ruff & Gibbons
& John Sullivan

vs
Dns Warrants
Richard Brewer

Now comes Geo W Stiff
W T Peters & Gibbons in behalf of the People and
the Defendant comes by Taylor & Ide his Attorneys
and the court orders that a Jury be empannelled
to try the issues in this cause and a Jury of
twelve good and lawful men to wit: Joel -
Doolittle St. A. Morgan, Alonzo P Edick & C Olney
Osmyr Smith, Thomas Gibson, Amos Herald,
Abraham Spark, Cyrus Colton, Alvin Ballou,
Isaac Dunderburg and C G Plummer who are
duly elected tried and sworn well and truly to try
this cause and a true verdict render according
to law and Evidence and said Jury by agree-
ment of said parties have leave to separate to
meet at the opening of the court to morrow morn-
ing

To wit on the Eighteenth day of said Term
The People on the relation of

vs
Dns Warrants
Richard Brewer

Now come the saids
parties by their attorneys aforesaid and the Jury
aforesaid and said Jury upon their oath say

John was an informant in the matter of a law
suits against the defendant in manufacturing and obtaining
into, and unlawfully holding and exporting the office
of Director of Schools of Domestic production
of range the East of the County financial means
long years - not guilty and Obstruction
that the said defendant was legally elected to be

Richard Jones
at
the matter of a
information in
William King King of England and
The People or relations to King
James County
State of Illinois
Court of Common Pleas, 1858
Copy of agreed case on the Court

Copy of agreed case on the Court
from the date -
these two of execution having nothing doing days
said parties have leave to prepare and file
It is also further considered by the court that the
same having one thirty days from the date
acted by the clerk of the court and file the
am hundred dollar with security to be affor-
dation that they enter into bond in the sum of
relating on account and appeal having one con-
in the matter of the said attorney the
there
expended and that they have execution
ing and about ^{his} defense and the what
the said relations all ^{his} cut and charges
than the said defendant have and power of
not guilty" It is further considered by the court
"We of the County do find the said defendant

office on the 9th day of December, A.D. 1857, and
has been legally qualified. Office of fact was
taken by the people upon that day and a jury
empanelled in the afternoon. The defendant admitted
that he was in said office the question which arose
upon the trial of the cause and which was all decided
by the court in favor of the defendant were as follows
He said:

1. That the first part of the election under which the
defendant claims, shows the return of an election
for alderman of ward of the town of Delhi, the people
admitted to the admission of said part first; but
upon the defendant showing that the said town of Delhi
and the aforesaid township were then and now the same
definitively, and that the said township now calls
the town of Delhi, and that the former trustees
of said township had, before said election, returned
that the school township of said township should
be deemed the name of said town of Delhi, the said
part first was admitted as evidence in the jury to which
the people excepted.

2. That on the day when said defendant testified to
have been elected, a number of the voters of the aforesaid
township met at the proper place for holding an election
in order to elect a school of said township election and
having waited until half past ten o'clock in the afternoon
of said day and there being only two voters present one
of whom was a trustee of said township and the other
present during it and without having organized
with a view of electing it was ordered that the
said election be postponed until the next
Monday and at the same place and hour
and the said Justice (acting as chairman)
having returned said meeting and all the

voters present having voted for a postponement of
said election as aforesaid, the election was post-
poned and the voters present dispersed. No notice
of said postponement was posted on the door of
the school House (the place of holding said election)
nor were the proceedings of said voters reduced to
writing that about one hour after said postponement
a number of other voters assembled and being 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 sub-
scribed 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
affidavit did not in any part contain the
words "Bureau County" or "State of Illinois" said
affidavit was made before a magistrate who
was a Justice of the Peace of said Bureau County
but it was not so stated in the body of the
affidavit nor in the ~~facts~~ the same 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
office 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 elections and that a legal Election in case no such prior organization was intended to ~~Elect~~ could afterwards be had on the same day and that the trustees or judges could alone order an adjournment if desired by the voters present to all which which the People excepted. The court overruled and refused to give any instructions 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 then and there excepted and an appeal was prayed for and allowed to the said relators.

We hereby agree that the above statement of facts is correct and comprises the points excepted to in the above cause and we further agree that the clerk of the Circuit Court of said Bureau County shall so certify to the supreme Court without a fuller record.

Jan'y 23^d 1858.

Peters Gibbons

Attys for Relators

Taylor & Ide

Attys for Defendants

Be it remembered that the above contains the points excepted to in the above cause

and the said relations prayed the Court
at the time thereof to sign and seal this
their bill of exceptions and make it a
part of the records which is done accor-
dingly.

The Ballou Seal
Judge of 23^d Judicial Circuit
of the State of Illinois

appeal Bond

Know all men by these presents that we Joseph
N. Kie, William Ring, Rupp F. Gibbons, Thomas
Dusting and Joseph Mc Kinstry all of the
county of Bureau and State of Illinois
are held, and firmly bound unto Richard
Brewer of the same County, in the penal sum
of Two hundred dollars current money of the
United States for the payment of which we
and truly to be made we bind ourselves our
heirs executors and administrators jointly
severally and firmly by these presents witness
our hands and seals the eleventh day of Feb-
ruary A D one thousand eight hundred and
fifty eight. The condition of the above obliga-
tion is such that whereas upon the trial of
and information in the nature of a Qu. Warrant
against said Richard Brewer (wherein the
said four first mentioned obligors were
relators) in the circuit court in and for
said county and state, a verdict of Not
Guilty was rendered in favor of said
Richard Brewer and a Judgement thereupon
given by the said Circuit Court in accordance therewith
and further that said defendant Richard
Brewer recover his costs therein expended

against said relators, from which said Judge
next of the said relators; from which said
Judgment of the said circuit court, the said
four first mentioned obligors have prayed
for and obtained an appeal to the supreme
court of said State. Now if the said four first
mentioned obligors shall prosecute their said
appeal with effect and shall recover, pay
all costs which may have accrued in case
the said Judgment shall be affirmed in
the said supreme court then the above obli-
gations to be void otherwise to remain in full
force and effect.

Joseph Ries *Read*
approved and filed *3* *Wm Ring* *Read*
by me this Feb 16. 1858 *Ruff J. Gibbons* *Read*
E. M. Fisher *clerk* *Thomas Martin* *Read*
Joseph McKinstrey *Read*

State of Illinois *3*
Bureau County *3* *2d* I Edward M. Fisher
clerk of the Circuit Court within and for the
County of Bureau and State aforesaid do
hereby certify that the foregoing is as true and
perfect transcript of the records in the foregoing
entitled cause and I so testimony whereof
I have hereunto set my hand and
affixed the seal of said court at
Princeton this 17th day of February
A.D. 1858 Edward M. Fisher
clerk

Appeal upon an information in
the nature of a Quo Warranto,
from
the Bureau County Circuit
Court.

“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 legally qualified.

"The defendant admitted that he was in said office.

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.

“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 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 Errors Assigned, are, that the Court Erred;

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.

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

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

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