

No. 12795

Supreme Court of Illinois

People ex-rel.

vs.

Greenleaf, School Commrs.
Cook Co.

263-31

Open L Greenleaf

vs

The Board of Directors

of Townships 41 &c

12795

1859

United States of America

STATE OF ILLINOIS, COUNTY OF COOK, S. S.

Pleas, before the Honorable George Mamern

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the

First Monday, (being the First day) of

March in the year of our Lord one thousand eight hundred and

Fifty Eight and of the Independence of the said United States the

Eighty Second

Present, Honorable

George Mamern Judge of the 7th Judicial
Circuit of the State of Illinois.

Charles Norton States Attorney.

John S. Wilson Sheriff of Cook County.

Attest;

W. L. Church Clerk.

p 1

It is remembered that heretofore, to wit: on the
24th day of March in the year aforesaid
the Trustees of Schools for Township 41
N R 14 E, by their Attorney, filed in the
Court aforesaid their certain Petition in the
words & figures following, to wit:

Cook County Circuit Court
Chs Chancery

To The Honorable George Manierre Judge
of the Cook County Circuit Court.

Your Petitioner the "Trustees of
Schools of Township (41) forty One, Range
(14) Fourteen East of the ~~third~~ Principal
Meridian" would humbly show unto your
Honor

That by the laws of the State of Illinois
it is made the duty of the School Commissioner
of the County of Cook to receive from the
Auditor of State of Illinois & otherwise certain
School moneys and "upon the receipt of the
~~amount due upon the audit report to~~
^{portion} ~~appropriate~~ one third of said amount to the several
Townships and parts of Townships in Cook County
in proportion to the number of acres in said
Townships & parts of Townships and the remaining
two thirds to the several Townships & fractional
townships in Cook County according to the
number of white children under twenty one

year of age returned to him in which
 Schools have been kept in accordance with
 the laws of this State and shall pay over the
 distribution still belonging to each township &
 fractional township as aforesaid to the respective
 Township Treasurers or other authorized persons
 annually & when there is a County fund in
 the hands of such School Commissioners it
 shall be loaned & the interest applied in the
 same manner.

That William S. Greenleaf is the
 School Commissioner of said Cook County
 and has a large amount of the funds above described
 subject to distribution as aforesaid. the exact
 amount of said additions is not informed but
 believes to amount to several thousand dollars

That George W. Reynolds
 George W. Bliss & S. S. Melrose are the
 Trustees of said Township 41 St R 14 East of
 3rd P M & Harvey C. Ward is the Treasurer of
 said Township & is the Secretary of said Board
 of Trustees & George W. Reynolds is the Chairman
 of the same & that schools are kept in
 said Township 41 and that one district in
 said Township is nearly all composed of the
 territory added thereto as hereinafter mentioned

That by the General law
 of said State of Illinois approved on the

3

Eighteenth day of February AD 1857 it was provided that each Congressional Township as surveyed & laid off by authority of the United States is established as Township for School purposes.

That by a law of said State approved subsequently, to wit: on the Eighteenth day of February AD 1857 which law is now in force & unrevoked. That the Town of ~~Evansston~~ comprises all of Fractional Township forty one north of Range fourteen east & Sections twelve, thirteen, twenty four & twenty five & thirty six of Township forty one north of Range fourteen East the Archangel Culmette Reserve & fractional Sections twenty two, twenty six & twenty seven in Township forty two north Range fourteen East & that the same forms and constitute a Township for School purposes and be known as Township forty one north Range fourteen East.

That by said last mentioned act it is provided that all acts or parts of acts conflicting with said act are repealed.

That the said Petitioner claims that said Sections 12, 13, 24, 25 & 36 in Township 41 N R 13 East & the Archangel Culmette Reserve & fractional Sections 22, 26 & 27 in Township Forty two north Range

4

Thirteen East and the acres & number of Children therein should be added to & made a part of the basis of distribution of said School funds to the Township 41 N R 13 East of Third P M & that the said School Commissioner for the County of Crook should divide to the said last mentioned Township whatever proportion of said School money will be coming to said Township after the same has been so added.

But your Petitioner sheweth unto your Honor that the said Special Commissioner as aforesaid has and does refuse so to apportion & divide said School money.

Therefore your Petitioner prays that the your Honor will grant a writ of mandamus commanding the said Commissioner that in making his apportionment & division of School money in his hands for distribution to the several Townships & fractional Townships in the County of Crook he add to Township forty One North Range fourteen East of 3^d P M according to the Government Survey the number of acres and children under twenty one years of age contained & being in said Section Twelve, Thirteen, Twenty four, Twenty five & Thirty Six in Township forty one North of Range thirteen East of 3^d P M & the

51
Exchange Quilmetts Reserve & Fractional
Sections Twenty two, Twenty Six & Twenty
Seven in Township Forty two North Range
Thirteen East & that he divide & apportion
to said Township 41 N R. 4 E in proportion
to the number of acres & children of the age
aforesaid in said Township after having so
added the said acres and children as aforesaid
& having apportioned the said money as aforesaid
he pay over the same to the Treasurer of said
Township according to law

And your Petitioners
pray that your Honor will grant such other
& further relief as may be according to
equity & good conscience in the matter
Geo H Reynolds Cas

By H B W	} H B Ward
H B Ward	
Petitioner Sol	
	one of Trustees of
	T 41 N R. 4 E of 38 m

State of Illinois
Cook County

Harvey B Ward being duly sworn
says the above Petition is true as he verily believes
Subscribed and sworn to before me
this 24 March 1858

Wm L Church W 3 H B Ward

6
And thereupon on the same day & year
last aforesaid and at the March Term
of said Court the following ^{proceedings} among others
was had and entered of record therein, to wit:

The People &c April
Trustees of Schools for 1841 &c }
vs } Petition for Mandamus
William L Greenleaf
School Commr of Cook Co }

On reading and filing
the Petition of the said Relators and on motion of
E B Murd of Counsel, It is ordered that the
Peoples writ of Alternate Mandamus do
forthwith issue to the said William L
Greenleaf School Commissioner as aforesaid
commanding him as such School Commissioner
to show cause if any he has, or can show
why the prayer of the said Relators should
not be granted.

And thereupon afterwards,
to wit: on the day and year last aforesaid
there issued out of the Office of the
Clerk of the Court aforesaid the Peoples
writ of mandamus in the words & figures
following, to wit:

7

State of Illinois
County of Cook^{3rd} The People of the State of
Illinois to William L. Guinleaf
School Commissioner of Cook County.
Gentlemen:

Whereas it hath been represented to
our Circuit Court of Cook County that by
the laws of the said State of Illinois, it is made
the duty of the School Commissioner of Cook
County, annually upon the receipt of the
School money in the Auditor's Warrant to
apportion the same together with all other
School monies in his hands liable to
distribution to the several Townships and parts
of townships in his County that shall have
been duly organized for school purposes,
One third thereof in proportion to the number
of acres in said several townships and the
remaining two thirds in like manner in
proportion to the whole number of white
Children under the age of twenty one years
in said several townships & parts of townships
in which school have been kept according
to law, And shall pay over to the respective
Treasurers thereof when the same shall be
demanded the distributive share so
apportioned to each of said townships and
parts of townships,

that by a general law

8

of said State of Illinois approved on the
 Sixteenth day of February A.D. 1857 it is
 provided that each congressional Township
 as surveyed and laid off by Authority of the
 United States should constitute a Township
 for School purposes,

That by a special law
 of said State of Illinois approved subsequently
 to the passage of the General School Law
 and which is now in force and unrepealed,
 the Town of Evanston in Cook County comprising
 all of fractional Township No 41 St R 14
 East 3^d P M Sections Numbered 12, 13, 20, 24, 25 and
 36 of Township No 41 St R 13 E 3^d P M the
 Archangel Outlet Reserve & fractional Sections
 22, 26 and 27 in Township No 42 St of R 13
 East is made and constituted a township
 for School purposes to be known and
 designated as township No 41 St of R 14
 East 3^d P M,

That George W Reynolds, George
 W Chip and S S Miltie are the Trustees
 of said Township 41 Range 14 and
 Harvey P Ward is the Treasurer and that
 Schools are kept in said Township as the law
 direct, and whereas it hath been represented
 that you the said William L Greenleaf
 School Commissioner as aforesaid have a large

9
amount of School funds in your hands, the exact amount of which is not known - to be apportioned and distributed by you as such School Commissioner and the distributive shares paid over to the respective Treasurers of the several Townships in your County as by law you are required: And whereas it has been further represented to our said Court that notwithstanding the premises with which you are well acquainted, you have without any reasonable cause whatever, hitherto refused and still refuse to apportion to said Township for one Sixth of Range Fourteen East out of the School funds in your hands for distribution according to law, taking as the basis of apportionment the present contents thereof and pay the same over to the treasurer although often requested so to do by said treasurer, by reason whereof the said Township has been wholly deprived of the use of said money in maintaining its schools to the manifest injury of said Township as by its Complaint we have understood. We therefore, being willing that speedy justice be done to said Township in this behalf command you that immediately upon the receipt of this writ, you do, without further excuse or delay apportion to said Township its full proportionate share of said

money and pay the same over to the Treasurer thereof, or signify to our said Court cause to the contrary, lest in your default complaint should come to our said Court repeated, And how you shall execute this command certify to our said Court now sitting at Chicago in said County forthwith together with this writ.

Witness William
L Church Clerk of our said Court and the
seal thereof at Chicago this 24th day of
March AD 1858
Wm L Church Clerk

And afterwards, to wit; on the same day & year last aforesaid, said writ was returned into the Court aforesaid by said School Commissioner with his answer thereto attached in the words and figures following, to wit:

William L Greenleaf
School Commissioner of Cook County
cto

The People of the State of Illinois
in the relation of the Trustees of
School of Township 41
North of Range 14 East

In the Cook County
Circuit Court

The Answer of William
L Greenleaf School Commissioner of Cook

County I William L Greenleaf School
 Commissioners of Cook County do hereby
 certify & return to the Honorable Circuit
 Court of said County that, as I am
 advised, so much of the 2^d section of the
 act of the General Assembly of the State of
 Illinois entitled "An act to establish the
 Town of Lake View in Cook County and to
 change the name & boundaries of the Town
 of Ridgerville, and to constitute the same a
 Township for school purposes" approved
 February 17th 1857 as purports to create a
 Township for School purposes by the name
 of "Township No. one North Range fourteen
 East" is repugnant to the Act of Congress
 approved April 18th 1818 which provided that
 Section Number Eighteen in every township and
 when such section has been sold, or otherwise
 disposed of, other lands equivalent thereto and
 as contiguous as may be shall be granted
 to the State for the use of ^{the} ~~inhabitants~~ of such
 township for the use of Schools ^{and} also to the
 act of Congress approved February 15. 1843
 which provides "That the monies arising
 from the sales of school lands shall be
 forever applied under the direction of said
 Legislatures to the use and support of Schools
 within the several Townships and districts of

County for which they were originally reserved and set apart and for no other use or purpose whatever" and that "in the apportionment of the proceeds of said fund each township and district shall be entitled to such part thereof and no more as shall have accrued from the sums or sums of money arising from the sale of the school lands belonging to such township or district" for the reason that the act in question creates a new Township for school purposes outside of the Congressional Township. And if the Law is enforced it would divert the monies received from sale of such lands from the inhabitants living in such Congressional district, contrary to the provisions of said acts of Congress. That if said act of the General Assembly is valid as to the distribution of the school funds derived from other sources than the sales of the school lands, which I am advised it is not. yet there is no mode pointed by law or in any Indignant-compatible with law by which I can distribute the money accruing from other sources than such sales of school lands in one way, while the money accruing from such sales would be distributed in another way, and therefore

13

certify and return that I cannot distribute
the School money to said Township Forty one
North Range Township East as by the said
ord. I am commanded for the reasons aforesaid

Jms L Greenleaf

School Comm'r of Cook Co Ills

And afterwards, to wit: on the day and year
last-aforesaid the said Relators by their
attorney aforesaid filed in said Court their
certain demurrer to the answer of the said
defendant, in the words and figures following,
to wit:

The Board of Trustees of
Township 41 N R. 14 East Relators

Jms L Greenleaf
School Commissioner &c

Circuit Court of
Cook County Ills

And now come the
said petitioners and demand to the said
defendants ~~relators~~ made in this cause
& for cause sheweth that the said
defendant hath not in his said return
stated such a defence as ought to entitle
him to bar the said petitioners from the
relief sought in their said petition and
that the said law is not against the
constitution of this State, wherefore the
said petitioners demand judgment and

that the mandamus issue in this cause
And now here comes the said William N. B. Murt
Squibb by E. Van Horn his Attorney Solicitor for Plfs

and joins in the answer of the said People
of the County of Cook of 14th St & 14th East
and thereupon afterwards, to wit: at the
March Term of said Court, to wit: on the
day and year last aforesaid, the following
proceedings were had and ended of record
therein, to wit—

The People & Ex rel
Trustees of Schools of
14th St & 14th East

Mandamus

William L. Greenleaf
School Commissioner
of Cook County

This cause coming on this day
to be tried upon the demurrer of the said Relator
to the return & answer of the said defendant
made to the writ of alternate mandamus issued
therein, and Counsel having been heard and
the premises duly considered and being now
fully understood the Court doth find that
the answer of the said defendant is not sufficient
in law to bar or preclude the said Relator
from having and maintaining their aforesaid
action.

Therefore it is ordered & considered that

the prayer of said Relators be granted and that the said School Commissioner do forthwith proceed to distribute the monies now in his hands subject to distribution according to the prayer of said petitioners, and it is further ~~added~~ ordered that the writ of *peremptory* mandamus to said School Commissioner upon his failure to comply with this order and that he pay the costs of this proceeding. To which decision and judgment of the Court the said defendant excepts and prays an appeal to the Supreme Court of this State, which is granted on condition that he execute and file with the clerk of this Court his appeal bond within 30 days with Michael Gormley as surety, conditions according to law.

And thereupon afterwards, to wit, on the day and year last aforesaid there was filed in said Court a certain stipulation in the words and figures following, to wit:

The Board of Trustees of
Town 41 N. R. 14 East

vs
William L. Greenleaf
School Commissioner &c

It is hereby stipulated that no advantage shall be taken for objection made to the form of the Petition

16

went & return thereto or to the demurrer
or that the same are sufficient to raise the
question whether the said Wm L Greenleaf
as such Commissioner is legally liable to
pay over the money as prayed in said
petition

N B Murd

Petitioner Counselor

Wm L Greenleaf

And afterwards, to wit: on the 16th day
of April in the year last aforesaid
the said defendant filed in the office
of the Clerk of said Court his certain
appeal bond in said Cause in the words
and figures following, to wit:

17

Know all men by these Presents that we
 Michael Gormley and William L Greenleaf
 School Commrs of the County of Cook and
 State of Illinois are held and firmly bound
 unto Trustees of Schools of Township No 41
 Range 14 East 3^d P M also of the same
 County and State in the penal sum of One
 Hundred Dollars lawful money of the United
 States for the payment of which well 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 this fourteenth
 day of April AD 1858

The Condition of the
 above obligation is such that whereas the
 said Trustees of Schools of Township No 41
 Range 14 E 3^d P M did on the twelfth day
 of April AD 1858 in the Circuit Court in
 and for the County and State aforesaid and
 of the March Term thereof AD 1858 obtain
 an order or judgment against the School
 Commissioners of Cook County that a
 mandamus issued against W L Greenleaf
 School Commissioner of the County of Cook
 urging & commanding to pay certain money
 in his hands to said Trustees, and from which
 said judgment or order of the said Circuit
 Court the said School Commissioners of Cook

17

Know all men by these Presents that we
 Michael Gormley and William L Greenleaf
 School Commrs of the County of Cook and
 State of Illinois are held and firmly bound
 unto Trustees of Schools of Township No 41
 Range 14 East 3^d P M also of the same
 County and State in the penal sum of One
 Hundred Dollars lawful money of the United
 States for the payment of which well 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 this fourteenth
 day of April A D 1858

The Condition of the
 above obligation is such that whereas the
 said Trustees of Schools of Township No 41
 Range 14 E 3^d P M did on the twelfth day
 of April A D 1858 in the Circuit Court in
 and for the County and State aforesaid and
 of the March Term thereof A D 1858 obtain
 an order or judgment against the School
 Commissioners of Cook County that a
 mandamus issued against W L Greenleaf
 School Commissioner of the County of Cook
 urging & commanding to pay certain money
 in his hands to said Trustees, and from which
 said judgment or order of the said Circuit
 Court the said School Commissioners of Cook

18 County has prayed for and obtained an appeal
to the Supreme Court of said State.
Now Therefore if the said School Commissioner
of Cook County shall duly prosecute his
said appeal with effect, and moreover perform
the order to pay the amount of the
judgment costs interest and damages
rendered and to be rendered against him
in case the said judgment shall be
affirmed in the said Supreme Court
then the above obligation to be void;
otherwise to remain in full force and
virtue

Taken and entered into before
me at my Office in Chicago
this Fourteenth day of April
A.D. 1858

Wm L Church Clerk

Wm L Greenleaf
Michael Gamley

State of Illinois, }
COUNTY OF COOK. } S. S.

I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of the papers & proceedings
in a certain cause now pending in said Court on the
Common Law side thereof, wherein the Trustees of
Schools of Cook County are Plaintiffs and
William L. Greenleaf is defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this 19 day of April A. D. 1858

Wm L Church

Wm L Church

Clerk

Supreme Court

William L. Gunkel

School Commissioner
of Cook County Ill in error

vs

The Board of Trustees of
Township 41 N R 14 E

And now comes
the said Plaintiff in error by Edward F. Furey
his Attorney says 'there is error in the record
of proceedings & judgment in this suit, &
that the judgment by the law of the land
should be given for the said plaintiff
in error & not for the said defendant
and for good further error
says

That the act of the Legislature under
it is claimed the said Plaintiff in
error should pay over the money
claimed by the defendant in error
is void as being in conflict with
the laws of the United States as set
up in the return of the plaintiff in
error - The Plaintiff therefore prays
that the judgment may be in all things
reversed annulled & set aside & held

263-31

William L. Gundry
School Commissioner
of Cook Co
Plenty in Row
17

The Board of Trustees of
Township 4 N R 14 E
deposits in
Record

Edward Gundry
Atty for Pity in Row
Filed April 21. 1858
L. Deland
Clerk

for nothing, & that he may be restored
to all things which he has lost

Edward Gundry

Atty for Pity in Row

And now came the same defendant
by H. B. Gundry depts Atty & says that
there is not any error in the foregoing
memo & proceeding.

H. B. Gundry

depts Atty.

Superior Court
CIRCUIT COURT.

WILLIAM L. GREENLEAF,
School Commissioner, etc.,
Appellant,
vs.

TRUSTEES OF TOWNSHIP No.
41 N., R. 14 E., Relators,
Appellees.

APPELLANT'S POINTS. *For Appellant*

By an act of the legislature of this State, passed in 1857, it was provided, that fractional Secs. 22, 26, 27, in Township 42, and the Archangel Owlmet Reserve, together with certain sections in Township 41, should be formed "into a Township for school purposes," and known as Township 41 *R. 14 East*

An application was made to compel the School Commissioner to pay a proportion of the monies arising from the Common School fund, received from the auditor for Township 41 N., of R. 13 East, to the Treasurer of the new township 41 N., of R. 14 East. In other words, instead of allowing the monies arising from the Common School fund, belonging to Township 42, to be appropriated for the use of the schools within that township, they ask to have them used for school purposes outside of Township 42.

We claim that the act of 1857 is in violation of the act of Congress, donating the lands for school purposes.

By the act of Congress, approved April 18, 1818, (3 United States Statute at large, page 430, Sec. 16,) it is provided: "That section numbered 16 in every township, and when such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State, for the use of the inhabitants of *such township*, for the use of schools."

Now this clearly limits the use of lands to the *inhabitants of such township*, not the inhabitants of any other township. It is confined to geographical boundaries; those boundaries are fixed by Congress, (for the townships are surveyed by government.) The legislature cannot create new townships, nor alter those made by the general government.

It may create school districts *within a township*. (Sec. 33 of School Act.) But the boundaries of a township must remain.

In this case the legislature seek to create a new township. That they cannot do. They seek to divest a part of this school fund from 42 to *41 R. 14 East*. That they cannot do, for the act of Congress provides that the lands shall be for the use of the inhabitants within the township—the *whole* money to the *whole* township. We submit, therefore, that the school townships must be confined to the congressional townships.

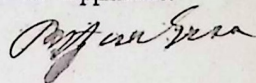
Again, the act of Congress, authorizing the sale of lands, (Act of 1843, U. S. Statutes at Large, vol. 5, p. 600,) provides: "That the monies arising from the sales shall be applied under the direction of the legislature, to the use and support of

schools within the several townships, etc., for which they were originally reserved, and set apart, and for no other use or purpose whatever." If this act is sustained, they are not used for schools *within* the township, but for schools without the township; at least, those inhabitants that put out of the township are deprived of the benefit of the monies arising from the school lands.

It is no answer, that the mandamus only relates to the Common School fund, and not to the monies arising from school lands. If the act conflicts with the laws of the United States above referred to, then we submit the whole act is void, otherwise it would present the incongruity of having the monies of the school lands apportioned in one way, and the monies from the Common School fund in another way, and it would also defeat the object of the acts of Congress in apportioning the lands as above specified.

E. A. & J. VAN BUREN,

Attorneys for Appellant.

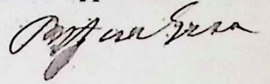


schools within the several townships, etc., for which they were originally reserved, and set apart, and for no other use or purpose whatever." If this act is sustained, they are not used for schools *within* the township, but for schools without the township; at least, those inhabitants that put out of the township are deprived of the benefit of the monies arising from the school lands.

It is no answer, that the mandamus only relates to the Common School fund, and not to the monies arising from school lands. If the act conflicts with the laws of the United States above referred to, then we submit the whole act is void, otherwise it would present the incongruity of having the monies of the school lands apportioned in one way, and the monies from the Common School fund in another way, and it would also defeat the object of the acts of Congress in apportioning the lands as above specified.

E. A. & J. VAN BUREN,

Attorneys for Appellant.



263-31
Superior Court

William L. Grant of
School Commission de
Appellant

vs

Quintess Township
vs 41 &c, relator
Appellee

Filed to Court
Office

Filed April 25, 1889

L. Leland
Clerk

J. & J. Van Dusen
Atty. for Appellee
Office

Prepared