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No. _____

Supreme Court of Illinois

People

vs.

Farnham.

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STATE OF ILLINOIS

COURT,

T.

DIVISION.

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People
of
Illinois
Trustees

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

THE PEOPLE OF THE STATE OF ILLINOIS,
ex relatio, SELAH GRIDLEY,
vs.
LUCIUS FARNHAM, ISAAC LOTT, JOSEPH
S. BIBBINS, WILLIAM WILLIAMS AND
HENRY H. LEWIS.

BRIEF AND ARGUMENT OF DEFENDANTS IN ERROR.

I.

The word *town* in the act of 1845, for incorporating towns, section one is used in the *general* sense as a *settlement* of one hundred and fifty inhabitants, whether that settlement was within an already platted and surveyed town or not.

And gives the power and privilege to the white male residents of any settlement of 150 inhabitants, who may have resided 6 months therein, for the better regulation of their internal police, to assemble together and vote for or against incorporation, &c.

The legislature did not intend, evidently, to define in sec. 17 of the same chapter, the word '*town*,' which they had previously used in the former sections.

They do not assume to do so, but simply provide in section 17 the manner of laying out a town or addition, &c.

That the Legislature intended to use the word *town* in those former sections to mean a settlement of inhabitants or people, whether in a surveyed or platted town or addition or not, is apparent from section 5, where they provide that "the president and trustees shall have the power to define the boundaries of such town."

The boundaries of what town? If, as claimed by the relator, it means the platted and surveyed town, then it is nonsense, for the boundaries of such a town were already established by the survey and plat, with stones in the corners, &c.

This court in *Ill. Cen. R. R. Co. v. Williams*, 27 Ill. p. 48, held that a town or village may exist although there is no plat, &c., in the manner pointed out by statute.

If this position is correct the demurrer to the 2d and 3d replications to defendants plea was properly overruled, as it was immaterial whether it was a platted and surveyed town or not.

II.

There was a town called Newark in Kendall County, on W $\frac{1}{2}$ of sec. 5 and E $\frac{1}{2}$ of sec. 6, T 35 N, R 6, E of 3d p. m., at the time of a meeting to vote on incorporation was held, containing at least 300 white male inhabitants. See record, bill of exceptions, p. 35, testimony of Asabel Newton and Alanson Robinson.

And in 1849, at the precinct house of said Newark, there was a meeting of the legal voters of said town to vote for and against incorporation; written notices having been posted up in three public places in the town before the meeting. The meeting proceeded to elect a moderator and clerk, and 30 votes were cast for incorporation and 3 against. See Record p. 36, 37, the testimony of Alanson Robinson and Asabel Newton.

So far there was a compliance with the statute.

On the 17th of Feb., 1849, and within 20 days of former election (see p. 36, testimony of A. Robinson) there was an election of trustees, and 5 trustees were duly elected. Bill of exceptions, Record p. 31. A meeting of the trustees was held and president and clerk elected. Record p. 32.

An ordinance was passed Feb'y 20th, 1849, defining the boundaries of the town, and Feb'y 26, 1855, an amendatory ordinance defining the boundaries of the town, (Record p. p. 32 and 33,) which boundaries include the premises mentioned in the relators information.

It was also proven on part of defendants that trustees and other officers provided for in the general laws of this State in relation to municipal corporations had been elected annually since the year 1849, except one year, and that said trustees had from time to time passed ordinances, &c. Record p. 37.

Showing an *user* on part of defendants.

The act of incorporation and proof of acts under it as *user* are sufficient evidence of the organization of the corporation. 1 Wend. 555; 3 Wend. 296; 20 Ill. p. 197.

III.

But the relator says, that books of the corporation and the entries and ordinances therein therein were improperly introduced in evidence.

The minutes and entries made by the officers of a corporation, if it appear that they have been kept in a proper place and by a proper person are admissible. 1 Wend. 555; 6 Wend. 655; 4 Peters 349; Angel & Ames on corporations, 471, 472, and are evidence of legality of the proceedings of the corporation. Angel & Ames on corp. 471, 472; 13 Ill. p. 523, 624; *Hall v. Carey*, 5 Georgia 239.

The books of a corporation are competent evidence for the purpose of showing the acts and proceedings of the corporation. 10 Johns. 154; 5 Wheat. 420; 13 Ill. 523; 4 Randolph 578; 10 Ala. 82.

But there is evidence aliunde, of the original incorporation of the town and the election of the just board of trustees and don't depend upon the books. See evidence of Alanson Robinson and Asabel Newton, Record p. 36.

IV.

Asabel Newton testifies p. p. 34, 35 and 36, that a certificate of the state of the polls at the first meeting was delivered to Geo. W. Hartwell, then the Clerk of the County Commissioners Court, to be put on record in his office.

There is some little discrepancy in the testimony on this point. But we claim that the requirement of sec. 10 of chap. 25, R. S., is only directory to the president and trustees, to deposit such certificate with the clerk of the County Commissioners Court; and if the proper number of voters have voted in favor of incorporation according to law, and have duly elected trustees, and have acted under such incorporation, the legality of the incorporation will not be effected by a failure of the first trustees to perform their duty in depositing such certificate with the County Com's Court.

V.

The public have for a long time, to-wit, ever since 1849, acquiesced in the exercise of the corporate powers by the president and trustees of the town of Newark, and the Legislature of this State by an act passed in 1857, entitled an act to extend the jurisdiction and powers of the president and trustees and constables of the towns of Oswego and Newark, in the county of Kendall, recognized the said president and trustees of the town of Newark, as a municipal corporation. See Laws 1857, p. p. 1328, 1331, Section 7 of that act, p. 1331, expressly speaks of the "corporation of the town of Newark and the officers thereof."

This act is mentioned and referred to both in the affidavit of the relator accompanying the information, Record p. 6, and in defendants plea, and there set up. Record p. 16.

And this court in *Jameson v. The People*, 16 Ill. p. p. 258, 259, expressly decide that where a municipal corporation has been recognized by acts of the General Assembly empowering it to act, all enquiry into the *original organization* of the corporation is *precluded*.

The case here quoted was a *quo warranto* vs. the defendants as president and trustees of the town of Oquawka, and the principles there enunciated seem to cover the whole case before this court.

The court there say, "Were we to hold, after this acquiescence of the public and these recognitions of the Legislature, that the town remains unincorporated on account of some *defect in its original organization as a corporation*, what confidence could individuals have in the validity of securities emanating from these local authorities."

And again, "Municipal corporations are created for the public good—are demanded by the wants of the community; and the law, after long continued use of corporate powers and the public acquiescence, *will indulge in presumptions*, in favor of their legal existence;" quoting several cases which bear out the position.

And again, "It would seem incompatible with good faith and *against public policy*, although *irregularities may have intervened* in the organization of the town, now to hold that it is not a body corporate."

What more can be said on the part of the defendants in this case after the language of the court above quoted. We leave our case in the hands of this court, confident that this court will reaffirm the principles enunciated in the case last quoted, and the judgment of the Circuit Court will be affirmed.

ADDITIONAL POINT OF DEFENDANT IN ERROR.

In answer to the point made by plaintiff in error, that there is no evidence in the record of the publication of the ordinances defining the boundaries of the town, we have only to say that even if it be so, it is *immaterial*, for the reason that the public in general, and the relator in particular, have for a long time, ever since 1849, acquiesced in the exercise by the president and trustees of the town of Newark, of corporate powers over the land embraced in said ordinances, including the land embraced in the information and complaint in this case; and the relator, Selah Gridley, was himself for two years, to-wit, 1856 and 1857, one of the trustees of said town, see Record p. p. 46 and 47, and should be estopped now from denying the corporate powers of said town over said land.

CHAS. WHEATON,
For Defts in Error.

The People
ex relatio Selah
Gridley.
vs

Lucius Flannham
et al.

Prize & Argument
of dependants in
error.

Filed May 11. 1864

J. H. Goodwin

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United States of America
State of Illinois
Kendall County
Now before the Honorable Madison E. Nettles Judge of the ninth Judicial
Circuit of the State of Illinois and
presiding Judge of the Kendall County
Circuit Court at a Term thereof begun
and held at the Court House in
Oswego in said County on the
Eighth day of April A. D. 1868
being the first Wednesday after the first Monday
of said Month of April in the year of our Lord
one thousand eight hundred and sixty eight
of the Independence of the United States of America
the Eighty second.

Present the Honorable Madison E. Nettles Judge
David P. Jones Esq. State Attorney
Geo. W. Wallcutt Clerk
and A. D. Newton Sheriff.

Attest; Geo. W. Wallcutt Clerk.
Court opened by proclamation,

Be it Remembered that heretofore to wit
on the 15th day of January A. D. 1868 the same
being one of the days of the January Term A. D.
1868 of the Kendall County Circuit Court sitting
for the dispatch of Business in the Court House
in Oswego in said County the following persons

ceding among others were had in said Court and returned of Record to wit;

The People on the Relation
of Seth Gridley

v.
Lucius Jamham Isaac Satt
Joseph S. Robbins William Williams
and Henry N. Lewis

And Information of the
Nature of said Warrants

On this day
came David P. Jones State attorney and on
his Motion it is ordered by the Court that he
have leave to exhibit to the Court and file an
information of the nature of a said Warrants
against the said Lucius Jamham Isaac Satt
Joseph S. Robbins William Williams and Henry
N. Lewis on the Relation of Seth Gridley and
on Motion of said State attorney it is further
ordered by the Court that the said Lucius
Isaac Satt Joseph S. Robbins William Williams
and Henry N. Lewis be called to show Cause
by Monday Morning next why they should not
appear and plead to said Information.

And Allowed upon the same day and year
last aforesaid the said State attorney Cause to
be filed in said Court the Information of the said
Relator in the words and figures following to wit;

State of Illinois }
 Kendall County } ss.

And of the January term of the Circuit Court of said County of Kendall in the year of our Lord one thousand eight hundred and sixty three.

David P. Jones States Attorney in & for the ninth Judicial District in the State of Illinois who prosecuteth in the name & by the authority of the people of the State of Illinois on the relation of Selah Gridley of the Town of Newark in said County of Kendall comes into the Court here and gives the Court to understand and be informed that Lucius Harnham, Isaac Lott, Joseph S. Bibbins, William Williams, and Henry H. Lewis late of said County on the day of March in the year of our Lord one thousand eight hundred and sixty two at the town of Newark in the County of Kendall aforesaid did use and exercise and thence continually afterwards to the time of exhibiting this information hath there used & exercised and still do there use and exercise without any legal warrant lawful authority or right whatsoever, the office and privileges of Trustees of the Town of Newark in said County, and for and during all the time last aforesaid have there claimed and still do there claim to be Trustees of said Town and to have use and enjoy all the liberties, privileges & franchises belonging to the office of Trustees aforesaid belonging and appertaining during all the time last above mentioned Whereas in truth & in fact said Town of Newark was never incorporated, which said office liberties privileges and franchises they the said Lucius Harnham, Isaac Lott, Joseph S. Bibbins, William Williams & Henry H. Lewis during all the time last aforesaid without any legal warrant lawful authority or right whatsoever have usurped and unlawfully held and execute, that is to say, at said town of Newark in said

County, contrary to the form of the Statute in such case made & provided and against the peace & dignity of the same people of ^{the State of} Illinois. Wherefore the said States Attorney prays that due process of law may be awarded against the said Lucius Hamham, Isaac Lott, Joseph S. Bibbins, William Williams and Henry H. Lewis, in this behalf to make answer and show by what authority they claim to have, use, and enjoy the offices, liberties, privileges & franchises aforesaid,

And the said States Attorney further giveth the Court ^{here} to understand and be informed that said Lucius Hamham, Isaac Lott, Joseph S. Bibbins, William Williams, and Henry H. Lewis, on the day of March in the year of our Lord One thousand eight hundred and sixty two in said County did use & exercise, and thence continually, afterwards to the time of exhibiting this information hath then used and exercised and ~~still~~ do then use and exercise without any legal warrant, lawful authority, or right whatsoever, the offices and privileges of Justices of the town of Newark in said County, under the laws of the State of Illinois relative to incorporated towns over & upon the South West quarter of the North West quarter of Section Five in township thirty five North of Range Six East of the third principal Meridian in said County belonging to said Selah Gridley & without the limits & jurisdiction of the said town of Newark, and for and during all the time last aforesaid have then claimed and still do then claim to exercise & use the offices & privileges aforesaid at the place and in the manner aforesaid, which said powers, liberties, privileges & franchises they the said Lucius Hamham, Isaac Lott,

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Joseph H. Bibbins, William Williams and Henry H. Lewis during all the time last aforesaid without any legal warrant, lawful authority or right whatsoever have usurped and unlawfully held & executed and still do usurp, unlawfully hold and execute the offices and privileges aforesaid at the place and in the manner aforesaid, that is to say, in the said County of Kendall, contrary to the form of the Statute in such case made & provided, and against the peace & dignity of the same people of the State of Illinois.

Wherefore the said States Attorney prays that due process of law may be awarded against the said Lucius Harkness, Isaac Lott, Joseph H. Bibbins, William Williams, & Henry H. Lewis in this behalf to make answer and shew by what authority they claim to have used & enjoy the offices, liberties, privileges & franchises aforesaid.

D. P. Jones
States Attorney

State of Illinois } And of the January term of the Circuit
Kendall County } Court of said County, A.D. 1863.

The People of the State of
Illinois ex rel. Selah Gridley

vs

Lucius Harkness, Isaac Lott
Joseph H. Bibbins, William Williams
& Henry Lewis

Quo Warranto

Selah Gridley being first duly sworn according to law, says, on oath, that at a meeting of the inhabitants of the town of Newark held on the tenth

day of February A.D. 1849 in said Town for the purpose of deciding by vote whether they would become incorporated as a town under the general laws of the State of Illinois in relation to the incorporation of towns then in force. Thirty one votes were then and there cast in favor of such incorporation and three against it as will appear by the Certificate of the President and Clerk of said meeting.

3 Affiant further says that he has good reason to believe and does believe that no certified statement in writing of the polls of the first meeting, provided for in the tenth section of the General laws of the State of Illinois in relation to towns was ever made and deposited with the County Clerk of said County of Kendall or entered of record in his office as required by said tenth section, that affiant has been informed by the then Clerk of said County Court that no such Certificate was ever deposited with him, and affiant has been unable to find any record of such certificate in the office of the Clerk of said County Court.

Affiant further saith that he hath resided near said town ever since the year A.D. 1843 and has been acquainted with the inhabitants of said Town during that time, and he believes that at the time of said meeting and the casting of the said votes the number of the inhabitants included in the town of Newark in said County as surveyed and platted in accordance with the laws in relation to towns above referred to was less than One hundred and fifty, that the votes of said town so laid out and surveyed together with others residing in the vicinity thereof have from time to time

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met and chosen Boards of Trustees who have exercised various powers and privileges given by the laws above mentioned to Boards of Trustees of incorporated towns in this State not only within the limits of the town of Newark as laid out and surveyed as aforesaid, but also in land adjacent thereto and belonging to affiant, viz., "The SW¹/₄ of NW¹/₄ of S¹/₄ 35 N. R 68 3^d E. M. which has never been laid out platted & surveyed as aforesaid.

Affiant further saith that on the 26th day of April A.D. 1858 the Acting Board of Trustees of said Town made an order that the Clerk thereof post notices of an election to be held in the Public School house on the 29th day of May A.D. 1858 to adopt or reject an act passed by the Legislature in 1857 entitled "An Act to extend the jurisdiction and powers of the President and Trustees and Constables of the towns of Oswego and Newark in the County of Rendell" Said Election to be held between the hours of 1 & 5 o'clock in the P.M. and form of ballot to be "For the Act" or "Against the Act" as appears by the records of the proceedings of said Board.

Affiant further says that on said 29th day of May 1858 between the hours aforesaid said election (mentioned in said order) was held, and resulted as declared by the Moderator after canvass as follows.

For the Act, No of votes	52
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Against the Act, No of votes	54
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Affiant further says that on or about the day of March A.D. 1862 Lucius Farnham, Isaac Lott

Joseph S. Bibbins, William Williams and Henry H. Lewis were chosen Trustees of said Town by the votes thereof and that said last named persons have ever since exercised and still continue to exercise various powers & privileges conferred by the general laws of this State in relation to towns, not only within the limits of the town of Newark as surveyed laid out & platted but also upon and over said lands of this Affiant adjacent thereto which have never been surveyed and laid out into town lots additions or subdivision but are used and occupied by Affiant as farming lands,

Affiant further says that no election or vote of the voters of said Town upon the incorporation thereof under the aforesaid general laws has ever been had or taken except as hereinbefore stated, nor had any vote been taken upon the adoption or rejection by the voters of the said town of Newark of said act entitled 'An Act to extend the jurisdiction and powers of the President Trustees & Constables of the towns of Oswego & Newark previous to the rejection thereof as ~~affirmed~~ aforesaid,

Affiant further says that said Lucius Hamham, Isaac Lott, Joseph S. Bibbins, William Williams, & Henry H. Lewis claim the right to exercise the powers & privileges mentioned in said act in relation to the towns of Oswego and Newark.

Affiant further says that the foregoing are the only special laws of this State in relation to the town of Newark as Affiant believes.

Selah Gridley

Subscribed and sworn to
before me the 15th day of Jan^y

A.D. 1863

G. M. Hollenback, Clerk.

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Filed January 15. 1863.

G. W. Nellenbark Ch. L.

And Attorneys upon the 19th of January
A. D. 1863 the same being still one of the
Court days of the January Term of the
Kendall County Circuit sitting as aforesaid
and the said Lucius Fairbank Isaac S. ~~and~~
Joseph S. Pittier ^{and} William Williams and
file in said Court their plea to said Information
in the words and figures following to wit,

10 State of Illinois } as
Kendall County } Court, Jan. term 1863.

The people of the State of,
Illinois ex relatio. Selah Gridley, } Information
vs } for Quo Warranto.
Lucius Garnham, Isaac Lott,
Joseph S. Bibbins, William
Williams & Henry H. Lewis }

And now in this same term the
said Lucius Garnham, Isaac Lott, and William
Williams and Joseph S. Bibbins come by Charles
Wheaton their Attorney and having heard the said
information complain that they are by colour thereof
grievously used and disquieted, and this unjustly, because
protesting that the said information and the matters
therein contained are not sufficient in law and
that they are not obliged by the law of the land to
answer thereto, for plea they say, that they do not think
that the said people ought to impeach or trouble them by
reason of the premises in the said information mentioned
and specified, because they say that under the general laws
of the State of Illinois relative to incorporate towns passed
by the legislature of this State of Illinois in 1845 the
inhabitants of the town of Newark in the said County of
Kendall, at a meeting of the ^{said} inhabitants of said town
of Newark held on the 10th day of February A.D. 1849 pursuant

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to notice of the time and place of said meeting which
been previously given of the time and place of such
meeting ten days before said meeting by setting up
written notices in three of the most public places in said
Town, at the Precinct House in said town, The white
male inhabitants of said town of lawful age who had
resided six months therein (which said town of Newark
then had not less than one hundred and fifty inhabitants)
did assemble themselves together in public meeting at the
said Precinct House, a Public place in said town, in said town
and being so assembled did proceed to choose & did choose
Asa Manchester President & Alanson Robinson Clerk
of said meeting both of whom were duly sworn faithfully
to discharge the trust reposed in them as president & clerk
of said meeting, And ^{then} the inhabitants as aforesaid of said
town did proceed to decide by vote, viva voce, whether
they would be incorporated or not, and after the said
inhabitants of said town had so voted there appeared to
be thirty one votes for incorporation of said town & three
for not incorporating said town, from which it appears that
two thirds of the votes present at said meeting were in
favor of incorporating said town, and at said meeting
thirty one votes were thus cast for incorporating said town
and three cast against incorporating, And the said President
and Clerk after said votes were given in then & there certified
under their hands the number of votes given in favor of
incorporating and the number against being incorporated
and it then & there appearing that two thirds of the votes present

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at said meeting were in favor of being incorporated the said President and Clerk did deliver a certificate of the state of the polls at said meeting to the Board of Trustees afterwards elected as hereafter set forth. The qualified voters of the said Town of Newark having decided at said meeting as aforesaid that they did wish to be incorporated, the said Alanson Robinson Clerk of the said Just meeting did thereafter give five days previous public notice to the said voters of said town to assemble at the

a public place in said town on the 17th day of February AD 1849 the day named in said notice to elect by viva voce vote five presidents & freeholders of said town for trustees of the same, to hold their office for one year and until other trustees are chosen in their place. And the said qualified voters of said town did on the 17th day of February AD 1849 pursuant to said notice assemble at the said a public place in said town, and being so assembled the President & Clerk of said just meeting did preside & the said qualified voters did then & there duly elect by viva voce vote the following persons Trustees for said town viz: Willett R Murray, Melrose Sweetland, George B. Hollenback, Henry W. Kennedy and Peter Hritts, and afterwards, to wit; on the 20th day of February AD 1849 the said trustees of said town so elected as aforesaid met together in said town and before entering on their duty as such Trustees took an oath to discharge said duty, according to their best abilities, and then & there having taken said oath the said Board of Trustees chose out of their own body George B. Hollenback President of the Board of Trustees of the said

Town of Newark, And the said President and trustees of the said Town of Newark so elected & qualified as aforesaid and their successors in office became and were from thenceforth under the said laws of the State of Illinois both in law and equity, a body corporate and politic by the name and style of "The President and Trustees of the town of Newark", And as such body politic & corporate by virtue of said incorporation as aforesaid the said President and Trustees of the town of Newark and their successors in office had from that time thenceforth, and have under the said laws of the State of Illinois among other powers granted by said laws the power to define the boundaries of said town, provided the same shall not exceed one mile square and to levy and collect annually a tax on all the real estate in such town not exceeding 50 cents on every hundred dollars of Assessment valuation thereof.

And these defendants further say that the said President and Clerk of the said just meeting did deliver to the said President and trustees so elected as aforesaid a certified statement in writing of the polls at said just meeting and the said President and Trustees did deposit the same with the then Clerk of the County Commissioners court of said Kendall County, to be entered on record in his office. And these defendants further say that successors to the said President and Trustees of the town of Newark were under the said general laws of the State of Illinois relative to incorporated towns as aforesaid duly elected as Trustees of said Town of Newark from time to time until the third day of March AD 1862 when these

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defendants Lucius Gurnham, Isaac Lott, and William Williams together with Joseph S. Bibbins and Henry H. Lewis were duly elected Trustees of the said town of Newark as hereinafter set forth. And then defendants further say that the said just named Board of President & Trustees so elected as aforesaid at their just meeting as such Board held on the 20th day of February 1849 defined the boundaries of said town of Newark by ordinance as follows,

"Section 1. Be it ordained by the President and Board of Trustees of the town of Newark that the incorporation of said town shall include the following tracts of land, to wit: Commencing at a point on Half Mile due North of the center & running due East One half Mile to the half section line, thence South along that line one mile to the section line which divides section five from section eight, thence West along that line one mile to the half section line which divides section six, thence North along that line one mile to the north section line of section six thence East one half Mile along that line to the place of beginning containing One Mile Square"

And afterwards to wit on the 26th day of February A.D. 1855 the then President and Trustees of the said Town of Newark duly elected as successors of said just mentioned Board of Trustees and their successors from time to time duly elected until the 17th day of February A.D. 1855 when said last mentioned

Board of Trustees were duly elected consisting of Asa Manchester, Warren M Sweetland, Henry R. Fowler Samuel Bingham, and Samuel S. Wright, of which Board of Trustees, the said Samuel S. Wright was duly elected President by said Board; duly passed an ordinance amending the said just ordinance defining the boundaries of said town of Newark and defined anew the boundaries of said town so that the same should be as follows,

"Commencing at the North East corner of section number Six (6) thence running East on the North section of section five (5) one half mile, thence South along the half section line dividing sections five & eight (5 & 8), thence West along ^{said} section line one mile to the half section line dividing section six (6) North South, thence North along said half section line to the North section line of section six thence East along said section line one half mile to the place of beginning And embracing the West half of Section N^o five (5) and the East half of Section N^o six (6) in township North thirty five (35) North of range N^o six (6) East of the third Principal Meridian in the County of Kendall and State of Illinois, — Which have been the boundaries of said incorporated town of Newark ever since said 26th day of February A.D. 1855 and were said boundaries of said town at the time of exhibiting the said information herein and now are, and these defendants say that the said South West quarter of the North West quarter of section

line in Township thirtyfive North of Range Six East of the
 third Principal Meridian in said County of Kendall is said
 information mentioned and described are within the juris-
 diction of the said Corporate town of Newark and are included
 in said Boundaries of said town and have been ever since
 said 26th day of February A.D. 1855. And these defendants
 further say that the Legislature of the State of Illinois at
 its session in 1857 passed an Act extending & increasing
 the powers of the President and Trustees of the said town
 of Newark which said Act so extending the powers of said
 president and trustees of Newark was to become a law if
 the qualified voters of said town of Newark should vote
 in favor thereof. And these defendants say that on
 the 29th of May A.D. 1858 an election was held at the
 public Schoolhouse in the said town of Newark for
 the purpose of adopting or rejecting said Act to extend
 the jurisdiction & powers of the President & Trustees and
 Constables of the towns of Oswego and Newark in said
 County of Kendall, at which election there was for the
 act 52 votes and against the act 54 votes. And
 that afterwards in pursuance of a publication of three
 written notices posted in three of the most public places
 of the time and place of holding such election under the
 direction of the Board of Trustees of said Town of
 Newark an election was held on the 24th day of
 March 1860 at the public school house in said town
 of Newark between the hours of One and five o'clock
 of said day for the purpose of adopting or rejecting said
 act passed by the Legislature of the State of Illinois

in 1857 to extend the jurisdiction of powers of the President and Trustees & Constables of the towns of Oriskany & Newark in said County of Rensselaer, At which election there were cast For the act thirty nine votes and against the act there were no votes. And the said act was then & there adopted by the said qualified voters of said town of Newark. And these defendants further say that on the 3^d day of March AD 1862 at a legal election duly notified of the qualified voters of the said incorporated town of Newark held at the public School house in said incorporated town of Newark these defendants and the said Joseph S. Bibbin and Henry H. Lewis were duly elected by a majority of the votes of the qualified voters cast at said election Trustees of the said Town of Newark as successors of the said just Board of Trustees and then successors as aforesaid And afterwards on the 15th day of March 1862 these defendants and the said Joseph S. Bibbin were in said town of Newark duly sworn to discharge their duties as said Trustees of said town of Newark and then and there entered upon their duties as said Trustees and duly elected out of their own body Lucien Hamham as President of said Board of Trustees and at said time John Doyme was elected by ^{the} said Board of trustees ^{as Trustee} in place of Henry H. Lewis who refused to qualify as Trustee aforesaid. And these defendants further say that on the 15th day of March AD 1862 they did in pursuance of the said general laws of the State of Illinois relative to incorporated towns passed in

1845 and the general amendments to said general laws passed by said Legislature since, and by virtue of said election as Trustees as aforesaid take upon themselves respectively, the office of President and Trustees of the said town of Newark at the town & County aforesaid - And by virtue of the premises they then & there became and on the ^{said} 15th day of March AD 1862 at the town & County aforesaid and from thence continually until the time of exhibiting the said information were and still are the President & Trustees of the town of Newark in said County of Kendall and by that warrant the said defendants for and during all the time is the said information in that behalf specified at the said town & County have respectively used and exercised and still do use & exercise the office of President & Trustees of the said town of Newark, and for and during all that time have then claimed to be such President & Trustees of said town of Newark and to have use and enjoy, all the liberties privileges and franchises to the said office belonging as it was and is lawful for them to do. And as such President and Trustees of the town of Newark as aforesaid they have under the said general laws of the State of Illinois and in accordance therewith levied and collected a tax not exceeding 50 cents, on a hundred dollars of the assessed valuation thereof upon the South West quarter of the North West quarter of section 5 in township 35 North of range six (6) East of the third principal meridian in said County belonging to Selah

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Gridley, which said real estate is situated within the bounds of the said Corporation of the town of Newark and always has been situated within the said boundaries of the said incorporated town of Newark and within the jurisdiction of the said President and Trustees, and they have levied and collected said tax as they lawfully might, — Without this, ~~that~~ the said defendants, the said office liberties privileges and franchises in the said information above mentioned, or any of them have usurped & did usurp upon the people of the State of Illinois in manner & form as by the said information is above alleged against them; All and singular which matters and things the said defendants are ready to verify and prove as the Court shall award, Wherefore they pray Judgment and that the said office liberties privileges and franchises by them claimed in manner aforesaid may be allowed & adjudged to them and that they may be dismissed and discharged by the Court hereof and from the premises above charged against them,

Chas Wheaton

Attorney for defendants. —

Filed ~~April~~ January 19, 1863

M. Halliburton Clerk

And the said Henry H. Sears by Wheaton his Attorney
Caused on the day and year last aforesaid to be filed
in said Court his disclaimer to said Information
in the words and figures following to wit:

20 State of Illinois }
 Kendall County }
 Kendall County Circuit Court
 January term 1863

The People ex relatio
 Selah Gridley

vs

Henry H. Lewis
 et als

And now in this said term comes the said Henry H. Lewis by Wheaton his Attorney protesting that the information aforesaid is not sufficient in law, and that he is not under any necessity by the law of the land to answer thereto, for plea nevertheless, saith that he never used the aforesaid liberties privileges and franchises or any of them nor in the same or any of them ever usurped upon the said people of the State of Illinois in manner & form as by the said information is supposed, but in the same and in every of them disclaims and disavows, Whereupon he prays judgment, and that he may be dismissed by the Court,

Chas Wheaton

Att'y for deft
 Lewis

Filed January 19. 1863.
 C. M. Nollenback Clerk

And Aftward upon the 21st day of January A. D. 1863 the same being still in

of the day of the January Term A. D. 1863 at
the Honorable Circuit Court sitting for the
Dispatch of Business in the Court House in
Annapolis. And said the following among other
proceedings were had in said Court in said
Term and return of Record to wit;

The People on the Petition
of Seth Gridley

Lucius Frankham MacSatt
Joseph S. Robbins Williams Williams
and Henry H. Lewis

Information of the nature
of a Quo Warranto.

And now come
the Plaintiffs by
James States Attorney

and answer to the Defendants plead and each of them
and thereupon the Defendants by Wheaton their Attorney
came and the Court after hearing the parties in re-
lation to said Demurrer being fully advised considered
that the same be overruled - and afterward the Plaintiffs
have leave to file Replications to the Defendants pleas
upon which this cause is continued.

And afterward upon the 8th day of April 1863
the People by James States Attorney filed in said Court
the Replications of the Plaintiff to the Defendants
pleas filed herein, and said Replications are
in the words and figures following
to wit;

22 State of Illinois } Of the ^{April} term of the Circuit Court of said
Kendall County } County of Kendall in the year of our Lord
eighteen hundred and sixty three.

The People of the State of Illinois
ex relatio. Selah Gridley

vs
Lucius Harnham, Isaac Lott
Joseph S. Bibbins, William Williams
and Henry H. Lewis

Information in the
nature of a Quo Warranto.

1st And the said David P. Jones States attorney is &
for the ninth Judicial ~~District~~ Circuit in the State
of Illinois who in the name and by the authority of the
people of the State of Illinois prosecutes in this behalf
having heard the plea of the said Lucius Harnham, Isaac
Lott, Joseph S. Bibbins, William Williams, and Henry H.
Lewis by them in manner & form aforesaid above pleaded in
Bar for the said people saith that the said people by
reason of anything by the said Lucius Harnham, Isaac
Lott, Joseph S. Bibbins William Williams and Henry
H. Lewis above in their behalf alledged ought not to be
from having their aforesaid information against them
the said Lucius Harnham, Isaac Lott, Joseph Bibbins
William Williams and Henry H. Lewis, because that protesting
that the said plea and the matters therein contained in manner
and form as the same are above pleaded and set forth are
not sufficient in law, nevertheless for replication thereto
the said States attorney in the name and by the authority

of the people aforesaid saith that the said Will^l H^l R. Munney, Nelson H. Sweetland, George B. Hollenback, Henry W. Kennedy and Peter Fritts and their Successors in office at the said time when & where he did not become and were not thenceforth under the general laws of the State of Illinois passed by the Legislature of said State in 1845 a body corporate and politic both in law and equity by the name and style of the President & trustees of the town of Newark in manner & form as the said Lucius Hamham, Isaac Lott, Joseph S. Bibbins, William Williams, and Henry H. Lewis have in their said plea in that behalf alledged, and this he the said States Attorney in the name and by the authority of the people aforesaid, prays, may be enquired of by the Country &c

And the said defendants do the like &c
Chas. Wheaton Att^y for def^s -

2nd And the said States attorney, in the name & by the authority of the people of ^{the State of} Illinois further saith that said town of Newark as surveyed, platted, mapped and recorded under and by virtue of the general laws of the State of Illinois in relation to corporations & towns then in force did not have inhabitants to the number of one hundred and fifty or more in manner and form as the said Lucius Hamham, Isaac Lott, Joseph S. Bibbins, William Williams, and Henry H. Lewis, have in their said plea in that behalf alledged, and this he the said States Attorney in the name and by the authority of the people of the State of Illinois prays, may be enquired of by the Country &c.

24 3rd And the said States Attorney in the name and by the authority of the people of the State of Illinois further saith that the said South West quarter of the North West quarter of Section five in township thirty five North of Range six East of the third principal Meridian in said County of Kendall was never laid out into town lots or otherwise subdivided, and this he the States Attorney in the name and by the Authority of the people of the State of Illinois is ready to verify. — Wherefore he prays Judgment &c —

4th And the said States Attorney in the name and by the authority of the people of the State of Illinois further saith that the said Willett R Murrey, Nelson D Sweetland, George B Hokenback, Henry W Kennedy, & Peter Tritts in and by said plea alleged to have been elected trustees of said town of Newark did not nor did any of them, at any time deposit with the Clerk of the County Commissioners Court of said County of Kendall to be entered of record or record in his office a certified statement in writing of the polls at said first meeting in said plea mentioned in manner and form as the said Lucius Harnham, Isaac Lott, Joseph S. Bibbins, William Williams and Henry H. Lewis have in their said plea in that behalf alleged and this he the said States Attorney in the name and by the Authority of the people of the State of Illinois prays may be enquired of by the Country &c, And the said defendants do the like &c

Cha. Wheaton, Atty. for depts

5th And the said States Attorney in the name & by the authority of the people of the State of Illinois further saith that the said Lucius Harnham, Isaac Lott, Joseph S. Bibbins, William Williams, and Henry H. Lewis at the said time when &c, when &c,

25 were and are not the President and trustees of the town of Newark in said County of Kendall in manner and form as the said Lucius Hamham, Isaac Lott, Joseph S. Bibbins & Henry H. Lewis have in their said plea in that behalf alleged, and this be the said States attorney in the name and by the Authority of the people of the State of Illinois may be enquired of by the Country &c.

And the said defendant doth the like &c

Chas Wheaton Atty, for def^{ts} -

6th And the said States Attorney in the name and by the authority of the people of the State of Illinois further saith that the said town of Newark was never incorporated under & by virtue of the laws of the State of Illinois in manner & form as the said Lucius Hamham, Isaac Lott, Joseph S. Bibbins, William Williams, and Henry H. Lewis have in their said plea in that behalf alleged and this be the said States attorney in the name and by the Authority of the people of the State of Illinois may be enquired of by the Country &c

David P. Jones

States Attorney in and for the
Ninth Judicial Circuit.

And the said def^{ts} do the like &c }
Chas Wheaton Atty, for def^{ts} }

Filed April 5th 1863.

G. W. Hollenback Clerk,

And afterward to wit, on the 18th day of April A. D. 1863 the same being one of the days of the April Term A. D. 1863 of the Kendall County Circuit Court sitting for the dispatch of business in the Court House in Oswego in said County the following among other proceedings were had in said Court and entered of Record to wit;

The People as the Plaintiffs
of Selch Lindsay

Successors of Samlham Isaac Lath
Joseph S. Robbins William Williams
And Henry H. Luns

Information of the
Nature of a Quo-
- Warranto

And now the Defendants
by their attorney come and demand
the second third and fourth Applications of the
Plaintiffs to the Defendants please and the Court
After hearing the parties in relation to the said
Demand not being fully advised in the
premises takes time to Consider.

The Demand of the said Defendants to
the plaintiffs Applications filed herin is in the
words and figures following to wit

State of Illinois)
Kendall County

Kendall County Cir
Court April Term 1863

The People Ex. Relates
Selah Bradley

v.

The Trustees of the Town of
Stewart

And the said Defendants
come to where by where their attorney and say
that the second third and fourth Replications of
the said People to the Plea of the said Defendants
and each and every of them and the matters and things
therein contained in each and every of said Replications
are not sufficient in Law to enable the said people
of the State of Illinois to maintain their said
Information of Quo Warranto by reason of any
things therein contained and the said Defendants
are not bound in law to answer the same
and that they are ready to verify - wherefore
Resp. Wheaton atty for Defs.

Filed April 18th 1863.

E. W. Hallenback Clerk.

And afterwards ^{to wit.} upon the 11th day of April A.D.
1863 the same being one of the days of the April
Term of the Circuit Court of said State sitting at
Janesville, the following proceedings among other
now had in said Court and entered of Record
to wit:

The People on the Relation
of Selah Gridley

v.
Lucius Farnham Isaac Sato
Joseph S. Robbins William Williams
And Henry H. Lewis

Information of the
Nature of a
Jus Warranto

And now come again
the parties to this suit and the Court being
now fully advised in Relation to the Demurrer
of the said Defendants to the Replications of
the Plaintiffs considers that said Demurrer be
sustained as to the second and third Replications
of the Plaintiffs herein, and that the said Demurrer
be overruled as to the fourth Replication of the
Plaintiffs herein - And thereupon came the Defendants
by their then attorney and have leave to reply
to the fourth Replication of the said Plaintiffs
- And it is considered by the Court that the said
Defendants have judgment of the said Relator
upon the Demurrer aforesaid and that said
Defendants have and receive of and from the
said Relator the costs by them about said
Demurrer as to said second and third Replications
expended and that they have execution therefor

And afterwards to wit, on the 13th day of April
A. D. 1868 the same being still one of the days
of the Term of the Court aforesaid sitting as aforesaid
the following proceedings among others were had in

29 said Court and Justice of Peace to wit,

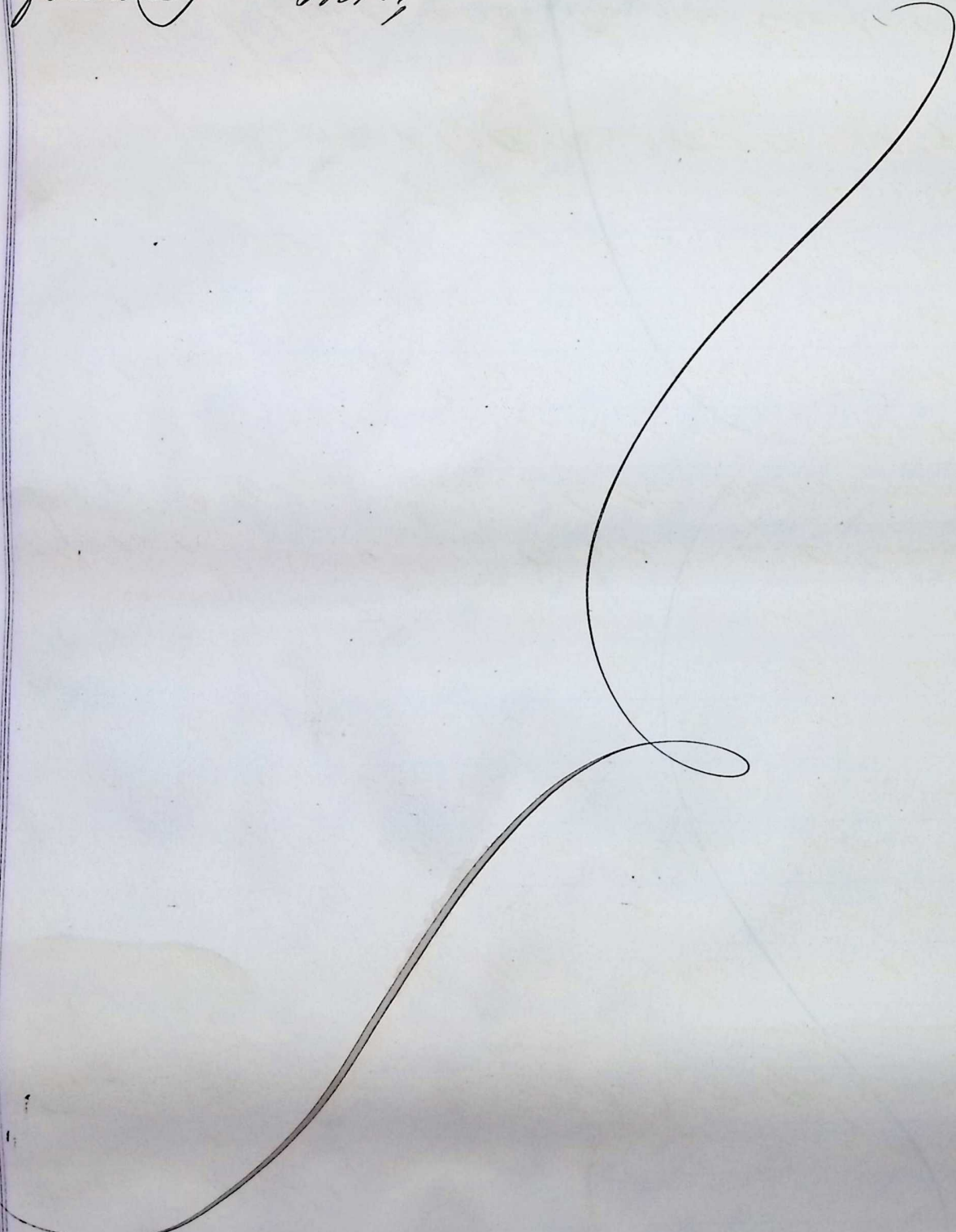
The People on the Relation of
Selah Gridley —

Lucius Farnham Isaac Lott
Joseph S. Cribbins William Williams
and Henry H. Lewis

Information of the Nature
of a Quo Warranto

And now upon
this day one the Plaintiff by James H. H. Attorney and the Defendants
by Edward one of their attorneys and this cause again com-
ing on to be heard upon the issues joined herein and
also upon the proofs and testimony of witnesses produced
and sworn in open Court, and the Court after hearing
the evidence finds the issues herein for the said
Defendants. It is therefore considered by the Court
that the People have nothing by their said proceeding
and that the said Defendants go thereof without day
And therefore Court the People by James H. Attorney
and moves the Court for a new trial herein and the
Court after hearing the parties in relation to the
said Motion considers that said Motion be overruled
And it is further ordered by the Court that the said Defendants
herein account of and pay the said Relator the costs by them
in this behalf expended and that they have Execution therefor.
And afterwards Court the People by James H. Attorney
and have leave of the Court to settle and file a Bill of
Exceptions herein within fifteen days.

And Aftuward, ^{to wit,} upon the 21st day of April
A. D. 1863 the People by James State attorney
Caused to be filed herein the Bill of Exceptions
of the said People in the words and figures
following to wit;



31 State of Illinois }
Kendall County }

Of the April term of the Circuit
Court of said County of Kendall in
the year of our Lord Eighteen hundred
and Sixty three,

The people of the State of Illinois
ex rel. Selah Gridley

vs

Lucius Hamham, Isaac Lott,
Joseph G. Bibbins, William
Williams, and Henry H. Lewis

Information in the nature
of a Quo Warranto. —

Be it remembered that the said defendants to
prove and maintain the issues on their part, on the trial
of the above entitled cause by the Court to whom the
same was submitted for trial by the parties hereto, and
a jury trained, introduced as a witness Albert Cook
who being duly sworn testified as follows, viz: The book
now here shown to me contains the records of proceedings
of the Trustees of the town of Newark, The defendants
then offered to read in evidence from said Book the following
viz: "Election of Trustees,

There being an Election for Trustees of said
incorporation on the 17th day of February 1849 and
after canvassing the votes it appeared that the following
persons were duly elected Trustees for said incorporation,
Willett R. Murray, Henry W. Kennedy
Nelson D. Sweetland, Peter Smith "
George B. Hollenback,

To the reading of which the States Attorney then

and then objected, which objection was overruled by the Court who allowed the same to be read in evidence - to which decision of the Court in overruling said objection the said States Attorney then and there excepted,

The defendants then offered to read in evidence from said Book the following, viz:

"Meeting of Trustees

At a meeting of the Board of Trustees of the town of Newark George B. Hollenback was called to the chair and Asahel Newton clerk pro tem. of said meeting. It was moved and seconded that George B. Hollenback be President of the Board of Trustees of the Town of Newark whereupon he was duly elected.

It was moved and seconded that Alanson Robinson be Clerk of said Board of Trustees of the town of Newark whereupon he was duly elected. The Board then passed the following Ordinances

Section 1. Be it ordained by the President and Board of Trustees of the town of Newark that the incorporation of said town shall include the following tracts of land, to wit: Commencing at a point one half mile due north of the center and running due East one half mile to the half section line, thence south along that line one mile to the section line which divides section five from section eight, thence West along ~~that~~ that line one mile to the half section line which divides section six, thence North along that line one mile to the north section line of section six, thence East

one half mile along that line to the place of beginning,
Containing One mile square.

Asa Manchester was duly elected supervisor of roads
of said town

Asahel Newton
Clerk pro tem, "

"Monday evening February 26th 1853
Be it ordained by the President and Trustees of the
Town of Newark that Ordinance No. 1 passed
February 20th 1849 be so amended as to read
Commencing at the North East corner of section
No. six, thence running East on the North section line
of section five one half mile, thence South along the
half section line dividing sections five & eight
thence West along said section line one mile to the half
section line dividing Section six North and South
thence North along said half section line to the North
section line of section six, thence East along said section
line one half mile to the place of beginning and embracing
the West half of Section No. five and the East half of
Section No. six in Township No. thirty five North of
Range No. six East of the 3^d principal Meridian in the
County of Kendall in the State of Illinois, which being
adopted was ordered to be published by the Clerk transcribing
three copies of the above and posting the same."

To the reading of which and each and every part thereof
in evidence the said State attorney then & there objected
which objection was overruled by the Court & each &
all of the above were admitted in evidence, to which said

decision of the Court is overruling said last mentioned objection and admitting the above in evidence, the said State Attorney then and there excepted. The said defendants then introduced as a witness Asahel Newton who being duly sworn testified as follows, to wit; I acted as Clerk of the first meeting of Trustees, Alanson Robinson was the first Clerk of the Board. The record of the proceedings of the first meeting of the Trustees is in the handwriting of A R Noble - he was not the first Clerk of the Board. A certificate has been made out and put into the hands of George W. Hartwell then the Clerk of the County Commissioners Court. I have searched for it among the records, I understand it is lost, I saw it placed in the hands of Mr Hartwell at the first meeting of the Board to be filed and recorded in the Clerks office. The defendants then introduced as a witness George W Hartwell who being first duly sworn testified as follows, to wit;

I was Clerk of the County Commissioners Court at the time of the first meeting of the Board of Trustees of the town of Newark. I have examined the office of the Clerk of that Court for the purpose of finding the certificate of the State of the polls at a meeting of the inhabitants of the town of Newark held for the purpose of determining whether said town should be incorporated or not - and have never been able to find it. It has never been recorded. It was first stated that Mr. Wisner brought it to be recorded. If it had been delivered to me to be recorded I think I should have recollected it. My best impression

is that it was never delivered to me. No fees were ever paid me for recording it, I have heard it was sent to Mrs Cook at Ottawa.

The defendants then recalled Asahel Newton who further testified as follows, to wit:

I think George W Hollenback delivered the certificate to Hartwell. I cant state positively the number of inhabitants residing in the town of Newark at the time of the meeting to vote upon the question of incorporation was held. I assisted in taking an enumeration of children for school purposes and think there were at least 300 white male inhabitants in the boundaries of the town as afterwards fixed and defined by the Trustees. Prior to the meeting of the inhabitants we got up three notices and posted them in the town ten days before the meeting.

The Defendants then called as a witness Alanson Robinson who being first duly sworn testified as follows to wit: I was the first clerk of the Board of Trustees of the town of Newark. The proceedings of the first meeting were recorded by A. R. Nible by my direction. I took a census for school purposes & think that the number of inhabitants in the West half of section 5 and the East half of section 6 in Township thirty five north of Range 6 East of the 3^d T.M. in Wendale County was between 300 and 400, and at the time of the meeting held to determine whether the town should become incorporated or not the West half of said section 5 & the East half of said section 6 are with the boundaries of the town

as afterward defined by ordinance.

The dependants then called J. J. Cole as a witness who being first duly sworn testified as follows, viz: I am Clerk of Rindall County. I have searched the office of the Clerk of the County Commissioners Court and the papers belonging to the same a number of times for the purpose of finding a certificate of the State of the polls at a meeting of the inhabitants of the town of Newark held for the purpose of determining whether they would become incorporated or not but have never been able to find any.

The dependants then again recalled Asahel Newton who further testified as follows, viz:

The Certificate of the State of the polls which I have referred to contained the proceedings of the first meeting of the inhabitants & the number of votes cast, I think there were over two thirds cast for incorporation, I stated that George B. Hollenback, Henry Kennedy, Peter Hritts & Nelson Sweetland were elected Trustees, it stated that the meeting was held in 1849 at the Precinct house in Newark. I was the Moderator of the meeting. I am not certain that I presided at the meeting for the election of Trustees which was very soon after and within twenty days. Alanson Robinson was clerk of the first meeting of the inhabitants.

The dependants then recalled Alanson Robinson who further testified as follows viz: The Certificate of the State of the Polls contained the records of the first meeting and election of Trustees. There were 30 votes for incorporation and three against — don't know how long the votes had been

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there, I think they were freeholders & legal voters. I was Clerk of the first meeting - think I received the Certificate. The meeting proceeded to elect a Moderator & Clerk. Written notices were posted up in three places in the town ten days before the meeting.

The defendants then offered to introduce in evidence from said book entries therein showing that Trustees & other officers provided for in the general laws of this State in relation to Municipal corporations had been elected annually since the year 1849 with the exception of one year and that said Trustees had from time to time passed ordinances & performed other acts authorized to be done by said general laws by Trustees of towns incorporated under the provisions of said laws, to which the said State Attorney then and there objected - which objection was overruled by the Court and the said entries admitted in evidence. To which decision of the Court is overruling said objection and admitting said entries in evidence the said State Attorney then and there excepted, and the proceedings of the President & Trustees of the said Town of Newark as recorded on pages, 22, 27, 28, 41, 47, 51, 54, 55, 67, 90, 91, 108, 123, 125, 126, 127, 128, 129, 132, 133, 134, 141, 160, 161 & 177, of the Records of said Town of Newark to wit,

Pursuant to previous notice an Election was held at the Mansion House in the Town of Newark on Monday the 18th day of February A.D. 1850 for Trustees of said Corporation for the ensuing year.

Upon counting the ballots it appeared that

George B. Hollenback	received	52	votes
Asahel Newton	"	30	"
W. M. Sweetland	"	29	"
Nelson Messenger	"	29	"
Horon Lewis	"	28	"
James Hervey	"	27	"
John Hollenback	"	23	"
Horatio Fowler	"	23	"
C. Courtright	"	23	"
A. Robinson	"	2	"
M. Beaupre	"	1	vote
C. Tilton	"	1	"
W. Stowell	"	1	"

From the above result it appears that G. B. Hollenback, A. Newton, W. M. Sweetland, Nelson Messenger and Horon Lewis were duly elected Trustees of said Corporation.

A. Robinson Clerk

Tuesday Evening Sept. 30, 1857

Board met pursuant to call of President.
Present Trustees W. M. Sweetland, Asahel Newton and
Melvin Messenger

In consequence of the absence of President G. B. Hollenback,
Asahel Newton was appointed President pro tem.

On motion

Ordered that W. H. Lewis, be and he hereby is
appointed Treasurer in the place of Alanson Robinson
removed out of the bounds of the Corporation.

Pursuant to previous public Notice, an election
for five Trustees for the Corporation of Newark was holden at the office of
MR Nible on Monday the 23^d day of February A.D. 1852.

On counting the ballots it appeared that the
following named persons received the number of votes
set opposite their respective names, viz:

Asahel Newton	received	Forty five	votes
Warren M. Sweetland	"	Forty two	"
Bishop D. Lewis	"	Forty two	"
George W. Winchell	"	Forty two	"

W. H. Lewis	received	Forty two votes
W. C. Cleveland	"	Thirty "
L. S. P. Moore	"	Twenty nine "
John Hollenback	"	Twenty eight "
Henry W. Kennedy	"	Twenty eight "
Peter Britts	"	Twenty six "
Samuel Bingham	"	Two votes
Johnson Misner	"	Two "
James Hervey	"	One "
C. C. Thunemann	"	One "
Joseph Bibbins	"	One "
David Phillips	"	One "
Samuel Wright	"	One "
Daniel Warr	"	One "
Horatio Fowler	"	One "
No Corporation	"	One "

I certify the foregoing to be a true copy from
the poll book of the above Election

A. R. Nibbs Clerk, —

February 27th 1852

The following persons having received the highest number
of votes at the Corporation Election held on Monday the 23^d day
of February inst. met this day at 11 O'clock A.M. when the
following oath of office was administered and subscribed as follows.

To wit:

State of Illinois }
Kendall County } ss

You and each of you do solemnly
swear in the presence of the ever living God

that you will well & truly perform the duties of Trustees of the Corporation of the town of Newark during the term of your election to the best of your understanding & abilities so help you God

W M Sweetland

Asahel Newton

G. W. Winchell

B. B. Lewis

W. H. Lewis

Shorad Subscribed to
before me this 27th day
of February AD 1852
A. R. Nible J. R.

On Motion Asahel Newton was unanimously elected President, & Alexander R. Nible Clerk of the Board of Trustees.

On Motion, The President was appointed a Committee to investigate the financial affairs of the Corporation and report at the next meeting.

On motion the Clerk was appointed to require of the Street Commissioner to report to the next meeting, the amount of labor performed, and a full statement of his official proceedings during his term of his office.

Adjourned until Wednesday evening March 3, 1852

A. R. Nible Clerk

Poll Book, 1853

of an election for five Trustees for the Corporation of Newark held at the Clerk's office February 23 1853, previous legal notice having been given.

On counting the ballots it appeared that the following

42

named persons received the number of votes set opposite their respective names, viz:

Robert Le Beau	received	10	votes
James Hervey	"	10	"
Johnson Mison	"	9	"
Samuel Bingham	"	9	"
George B. Hollenback	"	9	"
A. R. Niblo	"	2	"

Whereupon the President officially declared Robert Le Beau, James Hervey, Johnson Mison, Samuel Bingham, and George B. Hollenback duly elected Trustees in and for the Corporation of Newark.

Attest
A. R. Niblo, CK

Asahel Newton, Pres^t

Clerk's Office, Newark, June 25, 1854.

No election having taken place for the previous year and there being two vacancies in the Board caused by the resignation of Asahel Newton and B. B. Lewis and their vacancies having been filled heretofore by persons who neglected to qualify,

It was ordered that the roll of Trustees be called and the vacancies filled by persons who would qualify and serve,

Roll called — Present — W. M. Sweetland, George W. Winchell and Johnson Mison, On Motion

Richard C. Ireland was nominated & elected.

Mr. Ireland was ^{then} introduced to the Board, and desired to take the oath required to be taken by Trustees when he states his objections to serve. A desultory conversation or explanation here took place

having for its object the necessity of having a full Board of Trustees so as to enable the Board to appoint a Street Commissioner to work the roads of the Corporation, For this purpose Mr Ireland yielded his objections and took the oath of office required,

Henry P. Fowler was then nominated and elected,

Mr Fowler being absent, on motion Board adj'd

A. R. Nibbs Clk

Poll Book of an election held at the Public School House in Newark on Saturday the 17th day of February A.D. 1855 for the purpose of electing Trustees of said Corporation & also for voting for or against dissolving the said Corporation.

On counting the Ballots it appeared that there had been 57 votes Poll'd, viz;

For continuing the Corporation Fifty votes

Against the Corporation

Four votes

Blanks

Three "

For Trustees of the Corporation

Asa Manchester received	Thirty five votes
Warren M. Sweetland "	Thirty votes
Henry P. Fowler "	Thirty four votes
Samuel Bingham "	Thirty four votes
Samuel S. Wright "	Thirty three votes
Richard S. Ireland "	Twenty one votes
Hermitt Warner "	Twenty two votes
Edwin Gridley "	Twenty three votes
John Kollenback "	Twenty one votes
Don C. Cleveland "	Twenty two votes

Burr Bristol	received	One vote
Horatio Fowler	"	One vote
Cornelius Tilton	"	One vote
John Higby	"	One vote
Elisha Bibbins	"	One vote
B. Cassidy	"	One vote
Elder Clark	"	One vote
Sanford Washburn	"	One vote
Levi Brainard	"	One vote.

We do hereby certify that the above is a true & correct report of said election.

Albert Cook, Clerk,

G. W. Winchell, President,

Monday evening February 27, 1855.

After considerable discussions & canvassing for officers for the Corporation the following persons were declared duly elected to the several offices annexed to their respective names, viz;

For Street Commissioner John A. Coy was elected

For Treasurer Alex. R. Nible was elected

For Constable & Collector Albert Cook was elected

For Assessor Joseph S. Bibbins was elected

After adopting measures to repair the Bridges on the Lisbon road and also the Bridge near Marshall Havenhill's on the Ottawa Road

On motion, The Board adjourned until Tuesday evening the 27th Inst. To meet at the Room over Lewis & Fowler's Drug Store at 7 o'clock precisely.

Attest
A. R. Nible Clerk

G. S. Wright
President

Tuesday Evening Feb 27. 1855

Board met pursuant to adjournment.

Present - All the Board except the Clerk,
W. M. Sweetland appointed Secretary pro tem.

Moved that we now proceed to review the ordinances heretofore adopted by this Corporation to alter, amend, & revise. Whereupon the following ordinances were passed unanimously.

Time of holding Elections.

Be it ordained by the President and Board of Trustees of the town of Newark;

That the Annual election for Trustees of the corporation shall hereafter be held on the first ⁽¹⁸⁵⁵⁾ Monday of March at such time and place within said town as the President and Board of Trustees shall hereafter from time to time appoint; And at all such elections the polls shall be held open from 1 O'clock until 5 O'clock in the afternoon of said day; and which said election shall be conducted in all other respects according to the regulations prescribed by Statute for ~~Justices~~ the election of Justices of the peace and Court clerks.

Ordered to be transcribed & posted,

To remove obstructions from Streets

Be it ordained by the President and Board of Trustees of the Town of Newark; That all persons are hereby notified and required to remove all obstructions which they may have in wood or other property

from the side walks of all lawful streets in the Corporation and are hereby forbidden to lay, or leave, or cause to be laid or left any obstructions that may endanger the footman, under a penalty of not less than one dollar nor more than five dollars.

Ordered transcribed and posted.

Poll Book of an Election held in Newark on Monday the 3rd day of March A.D. 1856 for one Justice of the Peace and five Trustees for the Corporation of Newark, Kendall County Illinois.

On counting the Ballots it appeared that 86 votes had been polled.

For Corporation 38 votes

No Corporation 48 "

William H. Lutyen for Trustee	received	46 votes
Selah Gridley	" " "	46 "
Robert Le Beau	" " "	46 "
E. A. Kennedy	" " "	46 "
Peter Writts	" " "	46 "
N. P. Barnard	" " "	39
Horatio Fowler	" " "	39
Samuel Bingham	" " "	39
Samuel S. Wright	" " "	38
Johnson Mismen	" " "	38

For Justice of the Peace

Albert M. Cocks received 47 votes

Albert Cook " 38 "

State of Illinois, Kendall County }
 Town of Newark }

We Samuel S. Wright, Judge, and
 A. R. Niblo Clerk of an Annual Election for one
 Police Magistrate and five Trustees of said Corporation
 held at the office of A. R. Niblo on Monday the Second
 day of March AD 1857 by order of the President &
 Trustees of said Corporation do certify that the following
 named persons received the number of votes set opposite
 their respective names for the following offices to wit;

A. M. Cocks	received	Forty two	votes	for	Police Magistrate
Albert Cook	"	Forty six	"	"	"
Peter Fritts	"	Ninety three	"	"	Trustee
Selah Gridley	"	Forty seven	"	"	"
Parnette Warner	"	Forty seven	"	"	"
W. H. Lutyens	"	Forty six	"	"	"
C. C. Thunemann	"	Forty six	"	"	"
Samuel S. Wright	"	Forty six	"	"	"
W. H. Lewis	"	Forty six	"	"	"
N. S. Barnard	"	Forty six	"	"	"
C. A. Kennedy	"	Forty five	"	"	"

We certify the above correct

Attest A. R. Niblo. —

Sam. S. Wright

Albert M. Cocks having received the higher
 number of votes for Police Magistrate was declared duly elected
 to that office, Peter Fritts, Selah Gridley & Parnette

Warner having received the highest number of votes for Trustees were declared duly elected; There being no majority as to the other candidates they are left as will appear from the above returns

March 3, 1857,

A. R. Niblo, Clerk of the said election

Corporation Election for the town of Newark held at the public School house in said town on the first (1st) Monday in March 1858.

At an Election as above designated
Asa Manchester received for the office of Police Magistrate 69 votes
A. R. Niblo received for the same office 62 votes

Of the votes cast for Trustees

William Williams	received	71	votes
A. D. Newton	"	71	"
W. H. Lewis	"	73	"
John Boyer	"	112	"
Robert C. Howe	"	73	"
Wm. J. Lutyens	"	71	"
Robt. LeBeau	"	58	"
Elah Girdley	"	58	"
Ira Scofield	"	57	"

A true copy from the Poll Book

V. Vermilye, Clerk of the Board

Corporation Election for the year 1859 held at the school house in the town of Newark for the election of Trustees for said town for the year 1859. At which Election, March 7th

Elisha Bibbins	received	Fifty seven votes	57
S. S. Wright	"	Fifty six	56
W. H. Lewis	"	Fifty six	56
H. R. Howler	"	Fifty seven	57
W. M. Sweetland	"	Fifty four	54
Samuel Bingham	"	One	1

Whereupon Elisha Bibbins, S. S. Wright, W. H. Lewis, H. R. Howler and W. M. Sweetland were declared duly elected Trustees of the town of Newark for the year 1859.

We hereby certify that the foregoing is a true & correct result of the election held as above,

Albert Cook, Clerk, W. H. Lewis Secy

State of Illinois }
Kendall County }

Personally appeared before me a Justice of the Peace in & for the said County, Elisha Bibbins, S. S. Wright, W. H. Lewis and H. R. Howler who were duly elected Trustees of the town of Newark for the year 1859 who took and subscribed the following oath to wit; You and each of you solemnly swear that you will well and truly perform the duties of Trustees of the town of Newark during the term of your election according to the best of your ability and understanding and in accordance with the Statutes in such case made & provided

I sworn & subscribed to before me
this 9th day of March 1859.

Albert Cook, J.P. 

Elisha Bibbins
Sam. S. Wright
W. H. Lewis
H. R. Howler

March 26th 1859 Wm. M. Sweetland
appeared & took the above oath and
subscribed his name
Albert Cook J.P.

W. M. Sweetland

Drug Store April 25th 1859.

Board met at the call of the President who was present, also Trustees Fowler, Wright, & Sweetland. John Fickner was present and accepted the appointment of Street Commissioner for the ensuing year. On motion Albert Cook was appointed Town Assessor for the present year.

The Clerk was instructed to furnish to St. Com. a list of the names of persons liable to work on streets.

On motion H. H. Lewis was appointed Corporation Collector.

The Clerk made his report as directed at last meeting, and after discussing the matter awhile Board adjourned to meet at this place tomorrow night at 7 o'clock.

Albert Cook Clerk Cor

Drug Store April 30th 1859.

Board met at the call of the President, Present Lewis, Fowler, Wright, & Sweetland. After some preliminary discussion the following Ordinances were passed and ordered to be posted.

Be it ordained by the President and Board of Trustees of the Town of Newark, That the Assessor of the Corporation proceed immediately to make an assessment of the Real estate of said town and as soon as completed the collector proceed to collect at the rate of fifty cents upon each and every One hundred dollars worth of real estate in said town, which tax when collected of the inhabitants thereof shall be applied to the building of sidewalks and other incidental expenses of said town. Also,

An Ordinance relating to spirituous, vinous, Malt

fermented, mixed, and intoxicating liquors,

Sec. 1st Be it ordained by the President and Board of Trustees of the Town of Newark, that the introduction storing depositing or keeping in store in deposit, or on hand, or having in possession within the corporate limits of said Town of any spirituous, vinous, malt, fermented, mixed or intoxicating liquors for the purpose of selling bartering, or exchanging the same, or of any species of traffic therein is hereby declared to be a nuisance, and every person guilty thereof and each & every person knowingly aiding and assisting therein, as agent, clerk, servant or otherwise, shall upon conviction forfeit & pay to said town the sum of not less than ten nor more than fifty dollars, And if the person or persons owning or having the charge or possession of said liquors shall fail or neglect to remove the same without and beyond the corporate limits of said town within twenty four hours after their conviction every such person shall further forfeit and pay to said town the sum of ten dollars for every twenty four hours that said liquors shall remain within said corporate limits after their conviction.

Sec. 2nd, Any person who shall sell barter give away or exchange any spirituous, vinous, malt, fermented, mixed or intoxicating liquors within the corporate limits of said town, or who shall upon the sale barter or exchange of any goods, chattels, wares, merchandize, property, choses in action, or upon any promise contract or agreement expressed or implied deliver or furnish or cause to be delivered or furnished or knowingly

suffer to be taken or received any spirituous, vinous malt fermented mixed or intoxicating liquors shall be considered & adjudged guilty of a nuisance, and every such person upon conviction thereof shall forfeit & pay to said town the sum of twenty dollars for each & every offence

Sec. 3rd Whenever any resident of said town shall complain or oath before the Police Magistrate thereof that he has good reason to believe and does verily believe that any spirituous vinous malt fermented mixed or intoxicating liquors are stored or deposited or held or kept in store, in deposit, or on hand in any store warehouse, dwelling, room or building or in any cellar or place within the corporate limits of said town for the purpose of selling bartering giving away or exchanging the same or for any species of traffic therein, or for the purpose of furnishing or delivering the same in violation of this ordinance it shall be the duty of said Police Magistrate to issue a warrant under his hand directed to any constable of said town reciting the substance of said complaint and commanding him forthwith to examine the place mentioned in said complaint which process the said constable shall execute & return with his endorsement thereon showing how he has executed the same; And if upon such examination he shall find any of the liquors aforesaid which he has good reason to believe are stored, deposited or held or kept in store in deposit or on hand for any of the purposes aforesaid he shall make his return accordingly stating the name or names of the person

persons owning the same and in whose possession or charge or care the same may be; And thereupon such suits & prosecutions may be instituted against said persons as in other cases of violation of the first section of this ordinance.

Sec. 4. Whenever Judgment shall be rendered against any person or persons for the penalty above provided for introducing depositing or holding or keeping in store in deposit or on hand any of the liquors aforesaid, or having the same in their possession and such person or persons shall fail or neglect to remove said liquors without and beyond the corporate limits of said town within three days after said conviction it shall be the duty of said Constable to remove the same; and he shall immediately notify the person or persons from whom possession or charge the same have been taken when the same have been deposited.

Sec. 5. That any person who shall be and appear within the limits of said town in any wise intoxicated shall be fined in a sum not less than five nor more than twenty five dollars for each offence.

Sec. 6. That if such offender as aforesaid shall make affidavit before the Justice of the Peace before whom he is about to be tried stating therein the name or names of the person or persons who furnished him the liquor on which he became intoxicated and the kind & quantity thereof and the time and place where & when it was so furnished and whom he paid for it, and how much & in what manner fully & particularly then if such Justice of the Peace believes that such offender has made a full fair and honest disclosure without

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qualification or reservation whatever of all the facts and circumstances concerning the furnishing of liquor as aforesaid to him, And it also further appears to the satisfaction of such Justice of the Peace that such liquor was furnished to him, the said offender, in violation of some ordinance of said town to discharge him in payment of costs from all liability for the penalty incurred as aforesaid, And thereupon it shall be the duty of such Justice of the Peace to proceed without delay against such person or persons for furnishing him such liquor as provided by this ordinance

Sec. 7. Whenever Judgment shall be rendered for any penalty imposed by this ordinance and an Execution issued thereon shall be returned unsatisfied for the want of property whereon to levy & satisfy the same and the defendant or defendants shall fail to pay the said judgments & costs the Magistrate who rendered said judgment shall commit the said defendant or defendants to the County jail; Provided that such defendant or defendants shall not be imprisoned for a longer period than eight hours for each & every dollar of such judgment & costs And provided further that such defendant or defendants shall be discharged whenever said judgment & costs shall be paid,

Sec. 8. This Ordinance shall not be construed so as to deprive any well established apothecaries or regular practicing physicians from the use of any one of the above named liquors for the compounding of any medicine sold or dispensed by them, Provided the same are sold in good faith and without evident intent to violate the letter & spirit of this Ordinance.

Why Sect. 10 was amended
March 12, 1861.

55 Dec. 9. All Suits, prosecutions, Trials, in cases arising under this ordinance shall be commenced & proceeded in, and if demanded and their fees previously paid, a jury impaneled therein as in other cases under the town ordinances, And appeals may be taken from all judgments rendered therein as in other cases.

Dec. 10. So much of any ordinance heretofore passed relative to the sale of spirituous vinous, malt fermented & intoxicating liquors as conflicts with the provisions of this ordinance is hereby repealed.

Dec. 11. This Ordinance shall take effect and be in force on and after the fifteenth day of May A.D. 1859. —

Albert Cook } Clerk Corp.

I hereby certify that I, this third day of May A.D. 1859 posted three copies each of the above ordinances One each at the Postoffice, One each at Coys Store, and One each at Lotts Store

Albert Cook } Clerk of Corp.

Poll Book of an election for Trustees of the town of Newark for the year 1860 held at the Schoolhouse in said town on the sixth day of March 1860.

W. P. Barnard received	Twenty five votes	25
J. S. Robbins	" two "	22
R. F. Leger	" five "	25
Daniel Warr	" — "	20
E. S. Tichenor	" five "	25
John Hoigley	" One	1
Albert Cook	" One	1

We W^m H Lewis Judge of the above Election and Albert Cook Clerk hereby certify that the above is a correct statement of the number of votes each person received for Trustees of the Town of Newark at the above election.

Attest
Albert Cook, Clerk—

} Judge—

Newark, March 10th 1860. The old Board of Trustees met at S. Wright's shop and upon examination of the Ordinance passed February 27th 1855 entitled "Time of holding elections" the above election on motion was declared null and void for the reason that it was held on the 10th instead of the 5th of March as required by the aforesaid Ordinance. W. M. Sweetland tendered his resignation of the office of Trustee which on motion was accepted.

On motion of Trustee Lott N. P. Barnard was nominated & duly elected to fill the vacancy occasioned by the resignation of Sweetland. W. H. Lewis then offered his resignation which on motion of Fowler was accepted.

On motion of Fowler, R. F. Dyer was nominated and duly elected to fill the vacancy occasioned by the resignation of Trustee Lewis.

N. P. Barnard & R. F. Dyer then appeared and took the usual oath administered to Trustees which was administered by Albert Cook Esquire.

The Board then organized by appoint N. P. Barnard president.

The Board then proceeded to the election of officers for the Corporation. Whereupon the following persons were duly appointed

W. H. Lewis Collector

Albert Cook Treasurer & Assessor

On motion the further appointment of officers was postponed—

The Board then adjourned to meet at the same place on Tuesday evening next March 13th 1860.

Albert Cook } Clerk of the Board

Newark March 13th 1860. Trustees met at G. S. Wright's office. Present the Just N P Barnard Wright, Fowler, Lott, & Deyn. Minutes of last meeting read and approved. H P Fowler offered his resignation which was not accepted by the Board. G. S. Wright also offered his resignation which was not accepted - after which the Board passed the following Ordinance

An Ordinance

in relation to assessing taxes in the town of Newark for the
Year 1860

Be it ordained by the President & Board of Trustees of the town of Newark that the Assessor of the Corporation proceed immediately to make an assessment of the real estate of said town, and to make out a list of taxes thereon at the rate of 50 cents on the One hundred dollars of valuation of said real estate; and that as soon as the said Assessment and tax is completed the Collector of the Corporation proceed immediately to collect the same of each and every person named in said Taxlist, and the collection of said tax to be completed by the 1st of June ^{next}. And that said tax when so collected shall be applied to the improvement of the streets & side walks, and other expenses of said Town,
Three copies of the above ordinance were ordered to be posted by the Clerk,

It was also ordered that the Clerk post three notices of an election to be held in the Public Schoolhouse in the town of Newark on the 24th day of March inst. to adopt or reject an act passed by the Legislature in 1857 entitled "An Act to extend the jurisdiction and powers of the President & Trustees & constables of the towns of Oswego and Newark in the County of Mendall" Said election to be held between the hours of 1 & 5 O'clock in the P.M. and form of ballot to be "For the Act" & "Against the Act" The Board then adjourned to meet on the 23^d at 7 O'clock P.M.

Albert Cook

Clerk of the Board

March 14. 1860. I hereby certify that I this day posted three copies each of the above ordinance in relation to taxes & notices for the election on the 24th Inst. - One copy of each at the P. O. - One copy of each at the Newark Drug Store One copy of each at N. S. Barnard's Store

Albert Cook

Clerk of the Corp

March 24th 1860. At an election held at the public school house in the town of Newark pursuant to notice on the 24th day of March 1860 between the hours of One and five O'clock in the P.M. of said day for the purpose of adopting or rejecting an act passed by the Legislature in 1857 entitled "An Act to extend the jurisdiction and powers of the President & Trustees and Constables of the towns of Oswego and Newark in the County of Mendall," at which election J. S. Wright acted as Judge and Albert Cook as Clerk, The result was declared by the Judge to be as follows.

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"For the Act" Thirty nine votes 39

Against the Act, none

We hereby certify that the above is the true and correct result of the election this day held for the purpose as above stated

Dated Newark March 24th 1860

Attest

Albert Cook

Clerk of the election.

Samuel Wright

Judge of the election

VOLL BOOK of an election held at the School House in the Corporate Town of Newark in the County of Kendall and State of Illinois for the election of five Trustees of said Town on the 4th day of March 1861.

On counting the votes it appeared that

L. Harnham	received	43	votes
J. Lott	"	43	"
R. F. Lyon	"	43	"
Wm Williams	"	44	"
H. R. Fowler	"	83	"

H. Bingham	received	42	votes
J. Scofield	"	41	"
W. H. Lutyens	"	42	"
R. Mason	"	42	"

L. Harnham, J. Lott, R. F. Myer, W. Williams, & H. R. Fowler having received a majority of all the votes cast at said election were declared duly elected to the office of Trustees of said Town of Newark for the Year 1861. We hereby certify that the foregoing is a true copy of the results of the election held at the Schoolhouse as above stated on the 4th day of March 1861.

Attest
 Albert Cook, Clerk

Sam^l S. Wright } Judge of the
 } election

March 3^d 1862. Trustees met at Bibbins rooms at the call of the President, Present Harnham, Fowler, Williams, Bibbins, — Harnham in the chair. The President desired to be released from acting as Judge of Corporation election this day in consequence of sickness in his family — Whereupon W^m Williams was appointed to that office in his place — On Motion adjourned
 J. S. Bibbins Clerk pro tem.

Copy of the Poll Book of an election held at the Schoolhouse in Newark County of Kendall State of Illinois on the third day of March eighteen hundred & sixty two (1862) for a Police Magistrate and five (5) Trustees of the Corporation of Newark

The total number of votes cast being eighty three (83)

On counting the votes it appeared that for Police Magistrate,

George P. Sleezer	had received	45	votes
George W. Hartwell	" "	35	"
Isaac Lott	" "	1	"

For Trustees of Corporation		
Lucien Hamham	had received	43 votes
Wm Williams	" "	44 "
Henry H Lewis	" "	44 "
Joseph S Bibbins	" "	46 "
Isaac Lott	" "	45 "
H R Howler	" "	36 "
C B Raymond	" "	37 "
A H Hummaman	" "	35 "
Ira Scofield	" "	37
Robert Mason	" "	38

H. Kennedy - 1 vote, W H Lewis 1 vote, John Hollenback 1 vote

Whereupon George P. Sleezer having received a majority of all the votes cast was declared elected to the office of Police Magistrate in and for the Corporation of Newark

Lucien Hamham, William Williams, Henry H Lewis, Joseph S. Bibbins and Isaac Lott were also declared elected to the office of Trustees of the Corporation of Newark

We hereby certify that the foregoing is a true copy of the minutes of an election held at the time and for the purposes aforesaid

J. S. Bibbins Clerk of Election
W Williams, Judge of Election.

1863. Pursuant to legal notice an election for five (5) Trustees of the Corporation of the Town of Newark was held at the District Schoolhouse on the second (2) day of March 1863, and on counting the ballots it appeared that the following named persons received the number of

votes set opposite their respective names.

Samuel Bingham	received	50 votes
Isaac Lott	do	51 "
S. S. Wright	do	48 "
Geo W. Winchell	do	49 "
Wm Williams	do	50 "
C. C. Hunneman	do	41 "
J. A. Coy	do	39 "
Robert Maron	do	40 "
Robert Le Bean	do	41 "
John Boyne	do	39 "

Whereupon the following named persons were declared legally elected to the office of Trustees of the Corporation of the Town of Newark

Samuel Bingham, Isaac Lott, S. S. Wright,
Geo. W. Winchell & Wm Williams

I hereby certify that the above is a true copy of the Poll Book of said election.

J. S. Bibbins, Clerk
now affixed in evidence

The defendants here rested their case, and the said States attorney then and there moved the Court to exclude the evidence introduced on the part of the defendants and each and every part thereof which motion was overruled by the Court - to which decision of the Court in overruling said motion the said States attorney then and there excepted.

The said States attorney then offered to prove that the Town of Newark had been legally laid out and surveyed and a plat thereof made by the County Surveyor of said County of Kendall in which said town is situated in all respects in compliance with the laws of the State of Illinois in relation to laying out towns, and that said plat so made was duly recorded in the recorder's office in said Kendall County previous to said meeting of said inhabitants and the said States attorney also then and there offered to prove by C. C. Thurneman a witness duly called & sworn in this cause on the part of said people that the number of inhabitants in said town of Newark as laid out, surveyed, platted and recorded as aforesaid & all additions thereto & subdivisions of Outlots therein was less than One hundred and fifty at the time of said meeting of the inhabitants of said town held for the purpose of determining whether they would become incorporated,

And thereupon the Court refused to allow said States attorney to introduce said proof, and excluded the same. To which decision of the Court in refusing to allow said proof to be introduced & excluding the same the said States attorney then and there excepted. This was all the evidence in the case.

The Court found for the Defendants and thereupon the said States Attorney then and there entered a motion for a new trial which motion was overruled by the Court to which decision of the Court in overruling said motion for a new trial the said States Attorney then and there excepted and prayed the Court to sign & seal this Bill of exceptions which is done this seventeenth day of April A.D. 1863 and the same ordered to be filed

M E Hollister
Judge



Filed April 21, 1863.

G. W. Hollenback

Clk

State of Illinois

Kendall County

J. Geo. W. Wallenbaum

Clk of the Circuit Court

in and for the said County and State aforesaid
do hereby certify that the above and foregoing
contains a true Transcript of all proceedings
had in said Court in a cause lately pending
therein in which The People on the Relation of
Jesse Girdley are Plaintiffs and Lucius Frankham
Isaac Lott Joseph S. Pittins William Williams
and Mary H. Lewis are Defendants together with
all papers pertaining thereto remaining on file
in my office

Given under my hand and
seal of said Court this 5th day
of May A. D. 1868.

J. W. Wallenbaum

Clk



People ex rel
Gredley

Furnham & others

Filed April 4, 1864

L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION

APRIL TERM THEREOF, A. D. 1864.

THE PEOPLE &c. <i>ex rel.</i>	}	Error to Kendall.
SELAH GRIDLEY,		
vs.		
LUCIUS FARNHAM, ISAAC		
LOTT, JOSEPH S. BIBBINS,		
WILLIAM WILLIAMS AND		
HENRY H. LEWIS.		

POINTS AND AUTHORITIES FOR PLAINTIFFS IN ERROR.

I.

The only persons who can vote for incorporation and become incorporated under the general law of this state providing for the incorporation of towns, are the actual residents within the limits of towns surveyed, laid out and recorded in accordance with said law, and having not less than 150 inhabitants.

The 1st sec. (Rev. Stat. p. 111) provides that "whenever the white male *residents* of lawful age of any town in this state, having not less than 150 inhabitants, shall wish to become incorporated for the better regulation of their internal police, it shall be lawful for said *residents*" to assemble and organize a meeting at some place in said town, choose a president and clerk, etc., etc.

The 2d section provides that "if it shall appear that two-thirds of the voters present are in favor of being incorporated, the president and clerk

shall deliver a certificate of the state of the polls to be elected as herein-after provided."

The latter sections of the same act provide that whenever a "town" shall be laid out, it shall be surveyed by the county surveyor, and that a plat shall be made, certified, acknowledged and recorded, and stones planted at the corners. A penalty is imposed for neglecting to plant stones, causing a survey or plat to be made in any other manner than that prescribed, or selling lots until all the provisions of the law are complied with.

It is evident that the word "town" in the 1st section of the act includes territory surveyed and platted in accordance with the latter part of the act only. Because,

1st. There were no other towns known to the law of this state at the time of the passage of the act.

2d. There is no mode of determining the number of inhabitants, or who is entitled to vote upon the question of incorporation, except by reference to the plat.

3d. The act gives the owner of land the exclusive right to lay it out into town lots, streets, &c., at such time and in such form as he sees fit, and the corporation has no power to compel him to do so, or to take any portion of it for the public use unless it be granted or dedicated for that purpose; sec. 17 to 23 inclusive. This reservation to the owner would seem to leave the question whether his land should be submitted to the jurisdiction of a corporation, to be determined by him until it is laid out in accordance with the law.

4th. The confirmation of the right of the owner to use his land without converting it into town lots, includes and confers the right to such use unencumbered by the onerous and unnecessary burdens which a corporation would impose.

5th. The act prohibits the laying out of towns in any other manner than that therein prescribed, and also the disposing of, selling or leasing of any lot until all the requisitions of the act are complied with; thus preventing the formation of towns or villages on territory not legally laid out. Sec. 24 and 25.

The power given to the Trustees by the 5th section "to define the boundaries" of the town, merely confers the right to determine the original boundaries, and not to fix new ones, unless, perhaps, for the purpose of embracing new additions or out lots.

See books stat. p. 200 Sec. 7

The certificate of the state of the polls was the best evidence, and no other could be introduced.

Cole on Crim. Inf. & *Quo Warranto*, (Law Lib., Vol. 31,) p. 221.
 Act, Sec. 2 & 10.
 Jackson vs. Leggitt, 7 Wend. 378.
 Coffin vs. Collins, 17 Maine, 442.
 Owens vs. Speed, 5 Wheat. 620.

The loss of the certificate was not established. It is at least probable that it remained in the possession of Cook, Hartwell or Hollenback, and none of them made any search except Hartwell, and he only in the clerk's office.

If the existence of the corporation can be shown by user (which is not admitted,) the user must be shown by legal evidence.

Before the book was admissible, it was necessary to prove that it was the record of a corporation; had been publicly kept as such, and came from the proper custody, and that the entries were of a public nature and made by the proper officer.

Grant on Corp. (Law Lib. Vol. 55,) p. 317.
 Whitman vs. Granite Church, 11 Shep. 236.
 Cole on *Quo Warranto*, 227.
 Dewitt vs. Yeates, 10 John. R. 154.

This proceeding puts the legal existence of the corporation directly in issue, and the *onus probandi* is on the defendants, who must prove their title as pleaded. The people are not bound to show anything.

Cole on Crim. Inf. & *Quo Warranto*, (Vol. 31, Law Lib.) 217.
 Angell & Ames on Corp. Sec. 756.
 Clark vs. People, 15 Ill. p. 213.

The book could not be treated as a corporation book for the purposes of this case until the existence of the corporation, as pleaded; had been established; and until it was shown to be a corporation book, the entries could only be considered as the private entries of individuals.

The court admitted the book without any evidence of incorporation.

There was no evidence that the book had been publicly kept, or that the entries had been made by the proper officer, or that it came from the proper custody. On the contrary, it was shown that an entry was made by an unauthorized person, of the proceedings of the election, to determine whether the town should become incorporated. This entry was no part of the proceedings of the trustees, but it was admitted in evidence.

Entries made in corporation books of matters relative to any right claimed by the corporation, can never be evidence for it.

Grant on Corp. (55 Law Lib.) p. 317, 318 and 319.
 Ang. & Ames on Corp. 606.
 3 B. & Ald. 142.
 2 Phill. Ev. 295.
 Com. vs. Woelper, 3 Sergt. & Rawle, 29.
 Jackson vs. Walsh, 3 John. 226.
 Cole on Crim. Inf. &c., 227.

Corporation books are only admissible by way of admissions between members of the corporation, not against strangers.

2 Phill. Ev. 295.

The acceptance of the charter cannot be shown by user, because the law requires it to be done by a vote of the people, &c. The defendants are bound to show the *authority* for the user, and the people are not required to show that it was wrongful.

III.

There is no evidence that the president and clerk of the first meeting were sworn, or that they, or any of the trustees subsequently elected, were residents or freeholders of the town.

There can be no corporation until trustees are elected agreeably to the provisions of the law which requires them to be residents and freeholders.

Rev. Stat. p. 112, Sec. 4.

The law of 1857 does not recognize or refer to the present organization, nor did it repeal the provisions of the general law, a compliance with which was necessary to the existence of a corporation. It merely granted certain powers to the *corporation* provided it should be ratified by a vote of the people, but they rejected it. If the present organization is not a legal one there was no corporation at the time of the passage of the act, and hence there could be no recognition. There is nothing in the language of the act showing that it was intended to apply to an organization in existence at the time of its passage, but it is applicable and appropriate to a contemplated one.

IV.

The ordinances of a town do not take effect until they are published.

Rev. Stat. p. 173, Sec. 7.

Barnett et al vs. Trustees Newark 28 Ill 52

The ordinances defining the boundaries of the town were never published. Should the court hold the organization to be valid, still we claim that it cannot exercise jurisdiction over the farming lands of the relator which have never been laid out or used as town lots.

V.

It is not true that the record shows that the relator served two terms as trustee, or that he otherwise acquiesced in the exercise of corporate powers. His affidavit attached to the information shows that he has not been a resident of the town since 1843, and he never qualified or served as trustee.

DAVID P. JONES,

W. S. GOY,

For Relator.

9-204
People & Excel
Gridley
no.

Pluffs Brief

L Linton MR

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

THE PEOPLE OF THE STATE OF ILLINOIS,

Ex. rel. GRIDLEY, Pl'ffs in Error

vs.

LUCIUS FARNHAM, ISAAC LOTT, JOSEPH
S. BIBBINS, WILLIAM WILLIAMS, &
HENRY H. LEWIS, *Def'ts in Error,*

} *Error to Kendall.*

ABSTRACT OF RECORD.

1, 2, On the 15th day of January 1863, the State's Attorney, by leave of the Circuit Court of said Kendall County, exhibited to the same an information in the nature of *quo warranto* upon the relation of Selah Gridley, against the defendants in error, in substance as follows :

Information.

3, 4 The 1st Count alleges that the defendants in error, on the —— day of March, A. D. 1862, at the town of Newark, in the county of Kendall aforesaid, did use and exercise, and thence continually afterwards to the time of exhibiting this information, hath there used and exercised, and still do there use and exercise without any legal warrant, lawful authority, or right whatsoever, the office and privileges of trustees of the town of Newark in said County, and, for and during all the time last aforesaid, have there claimed and still do there claim to be trustees of said town, and to have, use, and enjoy all the liberties, privileges and franchises belonging to the office of trustees aforesaid, belonging and appertaining during all the time last above mentioned; whereas in truth and in fact said town of Newark was never incorporated, which said office, liberties, privileges and franchises, they the said defendants during all the time last aforesaid, without any legal warrant, lawful authority or right whatsoever, have usurped and unlawfully held and executed, and still do usurp, unlawfully hold and execute, that is to say, at the town of Newark in said county, contrary to the form of the Statute, &c.

4, 5 The 2d Count alleges that said defendants in error on the ——— day of March, A. D. 1862, in said county, did use and exercise, and thence continually afterwards, to the time of exhibiting this information, hath there used and exercised, and still do there use and exercise, without any legal warrant, lawful authority or right whatsoever, the offices and privileges of trustees of the town of Newark in said county, under the laws of the State of Illinois relative to incorporated towns, over and upon the south-west quarter of the north-west quarter of section five, in township thirty-five north, of range six east of the third principal meridian in said county, belonging to said Selah Gridley, and without the limits and jurisdiction of said town of Newark, and for and during all the time last aforesaid, have there claimed and still do there claim to exercise and use the offices and privileges aforesaid, at the place and in the manner aforesaid, which said powers, liberties, privileges and franchises, they the said defendants during all the time last aforesaid, without any legal warrant, lawful authority or right whatsoever, have usurped and unlawfully held and executed, and still do usurp, unlawfully hold and execute the offices and privileges aforesaid, at the place and in the manner aforesaid; that is to say, in the said county of Kendall, contra to the form of the Statute, &c.

the 13th day of January A. D. 1893, there was filed in said Court said information, the following

Affidavit.

ILLINOIS, } ss. And of the January Term of the
County, } Circuit Court of said County, A. D. 1863.

OF THE STATE OF ILLINOIS,
Z. SELAH GRIDLEY,
vs.
ISAAC LOTT, JOSEPH
AM WILLIAMS, & HEN-

Quo Warranto.

SELAH GRIDLEY.

Subscribed and sworn to before me the 15th day of Jan. A. D. 1863.
G. M. HOLLENBACK, Clerk.

Filed January 15, 1863.

G. M. HOLLENBACK, Clerk.

On the 19th day of January 1863, the Defendant filed the following

Plea.

9 And afterward upon the 19th of January, A. D. 1863, the same being still one of the court days of the January Term of the Kendall County Circuit Court, setting as aforesaid, come the said Lucius Farnham, Isaac Lott, Joseph S. Bibbins, and William Williams, and filed in said court their pleas to said information in the words and figures following, to-wit:

10 STATE OF ILLINOIS, } ss. Kendall County Circuit Court,
KENDALL COUNTY, } January Term, 1863.

THE PEOPLE OF THE STATE OF ILLINOIS, }
Ex relatio SELAH GRIDLEY, }
vs. }
LUCIUS FARNHAM, ISAAC LOTT, JOSEPH }
S. BIBBINS, WILLIAM WILLIAMS, & HEN- }
RY H. LEWIS. }

*Information for
Quo Warranto.*

And now, in this same Term, the said Lucius Farnham. Isaac Lott,

- 10 William Williams, and Joseph S. Bibbins, come by Charles Wheaton, their attorney, and having heard the said information, complain that they are by color thereof grievously used and disquieted, and this unjustly, because protesting that the said information and the matters therein contained are not sufficient in law, and that they are not obliged by the law of the land to answer thereto, for plea they say, that they do not think that the said people ought to impeach or trouble them by reason of the premises in the said information mentioned and specified, because they say that under the general laws of the State of Illinois relative to incorporate towns, passed by the Legislature of this State of Illinois in 1845, the inhabitants of the town of Newark, in the said county of Kendall, at a meeting of the said inhabitants of said town of Newark, held on the 10th day of February A. D. 1849, pursuant to notice of the time and place of said meeting which had been previously given of the time and place of such meeting ten days before said meeting, by setting up written notices in three of the most public places in said town, at the precinct house in said town, the white male inhabitants of said town of lawful age who had resided six months therein, (which said town of Newark then had not less than one hundred and
- 11 fifty inhabitants,) did assemble themselves together in public meeting at the said precinct house, a public place in said town, and being so assembled did proceed to choose and did choose Asa Manchester President, and Alanson Robinson Clerk of said meeting, both of whom were duly sworn faithfully to discharge the trust reposed in them as president and clerk of said meeting. And then the inhabitants as aforesaid of said town did proceed to decide by vote, *viva voce*, whether they would be incorporated or not, and after the said inhabitants of said town had so voted, there appeared to be thirty-one votes for incorporation of said town and three for not incorporating said town, from which it appears that two-thirds of the voters present at said meeting were in favor of incorporating said town, and at said meeting thirty-one votes were thus cast for incorporating said town and three cast against incorporating. And the said president and clerk, after said votes were given in, then and there certified under their hands the number of votes given in favor of incorporating, and the number against being incorporated, and it then
- 12 and there appearing that two-thirds of the voters present at said meeting were in favor of being incorporated, the said president and clerk did deliver a certificate of the state of the polls at said meeting to the Board of Trustees afterwards elected as hereinafter set forth. The qualified voters of the said town of Newark having decided at said meeting as aforesaid, that they did wish to be incorporated, the said Alanson Robinson, Clerk of the said just meeting, did thereafter give five days' previous public notice to the said voters of said town to assemble at the
a public place in said town on the
17th day of February A. D. 1849, the day named in said notice to elect,

by *viva voce* vote, five residents and freeholders of said town for trustees of the same, to hold their office for one year, and until other trustees are chosen in their place. And the said qualified voters of said town did on the 17th day of February A. D. 1849, pursuant to said notice, assemble at the said a public place in said town, and being so assembled the president and clerk of said just meeting did preside, and the said qualified voters did then and there duly elect by *viva voce* vote the following persons trustees for said town, viz: Willett R. Murray, Nelson D. Sweetland, George B. Hollenback, Henry W. Kennedy, and Peter Fritts, and afterwards, to-wit: on the 20th day of February A. D. 1849, the said trustees of said town so elected as aforesaid, met together in said town, and before entering on their duty as such trustees, took an oath to discharge said duty according to their best abilities, and then and there having taken said oath, the said Board of Trustees chose out of their own body George B. Hollenback President of the Board of Trustees of the said town of Newark. And the said president and trustees of the said town of Newark so elected and qualified as aforesaid, and their successors in office, became and were from thenceforth under the said laws of the State of Illinois, both in law and equity a body corporate and politic by the name and style of "The President and Trustees of the town of Newark"; and as such body politic and corporate, by virtue of said incorporation as aforesaid, the said president and trustees of the town of Newark and their successors in office, had from that time thenceforth, and have under the said laws of the State of Illinois, among other powers granted by said laws the power to define the boundaries of said town, provided the same shall not exceed one mile square, and to levy and collect annually a tax on all the real estate in such town not exceeding 50 cents on every hundred dollars of assessment valuation thereof.

And these defendants further say, that the said president and clerk of the said just meeting did deliver to the said president and trustees so elected as aforesaid, a certified statement in writing of the polls at said just meeting, and the said president and trustees did deposit the same with the then clerk of the County Commissioners' Court of said Kendall County, to be entered on record in his office. And these defendants further say, that successors to the said president and trustees of the town of Newark were under the said general laws of the State of Ill's relative to incorporated towns as aforesaid, duly elected as trustees of said town of Newark from time to time until the third day of March A. D. 1862, when these defendants, Lucius Farnham, Isaac Lott, and William Williams, together with Joseph S. Bibbins and Henry H. Lewis, were duly elected trustees of the said town of Newark as hereinafter set forth. And these defendants further say, that the said just named Board of President and Trustees so elected as aforesaid, at their just meeting,

- 14 as such Board held on the 20th of February 1849, defined the boundaries of said town of Newark by ordinance, as follows :

"SECTION 1. Be it ordained by the President and Board of Trustees of the town of Newark, that the incorporation of said town shall include the following tracts of land, to-wit : Commencing at a point one-half mile due north of the centre and running due east one-half mile to the half section line, thence south along that line one mile to the section line which divides section five from section eight, thence west along that line one mile to the half section line which divides section six, thence north along that line one mile to the north section line of section six, thence east one-half mile along that line to the place of beginning, containing one mile square."

- 15 And afterwards to-wit, on the 26th day of February A. D. 1855, the then president and trustees of the said town of Newark, duly elected as successors of said just mentioned Board of Trustees and their successors from time to time duly elected until the 17th day of February A. D. 1855, when said last mentioned Board of Trustees were duly elected, consisting of Asa Manchester, Warren M. Sweetland, Henry R. Fowler, Samuel Bingham, and Samuel S. Wright, of which Board of Trustees the said Samuel S. Wright was duly elected president by said Board, duly passed an ordinance amending the said just ordinance defining the boundaries of said town of Newark, and defined a new the boundaries of said town, so that the same should be as follows :

"Commencing at the north east corner of section number six (6), thence running east on the north section — of section five (5) one-half mile, thence south along the half section line dividing sections five and eight (5 & 8), thence west along said section line one mile to the half section line dividing section six (6) north and south, thence north along said half section line to the north section line of section six, thence east along said section line one-half mile to the place of beginning; and embracing the west half of section No. five (5) and the east half of section No. six (6), in township No. thirty-five (35) north, of range No. six (6), east of the 3rd principal meridian, in the County of Kendall and State of Illinois,"—which have been the boundaries of said incorporated town of Newark ever since said 26th day of February 1855, and were said boundaries of said town at the time of exhibiting the said information herein, and now are; and these defendants say that the said south-west quarter of the north-west quarter of section five, in township thirty-five north, of range six east of the 3rd principal meridian, in said county of Kendall, in said information mentioned and described, are within the jurisdiction of the said corporate town of Newark, and are included in said boundaries of said town, and have been ever since said 26th day of February A. D. 1855. And these defendants

- 16 further say, that the Legislature of the State of Illinois, at its session in 1857, passed an act extending and increasing the powers of the President and Trustees of the said town of Newark, which said act so extending the powers of said President and Trustees of Newark was to become a law if the qualified voters of said town of Newark should vote in favor thereof. And these defendants say, that on the 29th of May A. D. 1858, an election was held at the public school house in the said town of Newark for the purpose of adopting or rejecting said act to extend the jurisdiction and powers of the President and Trustees and Constables of the towns of Oswego and Newark in said County of Kendall; at which election there was for the act 52 votes, and against the act 54 votes. And that afterwards, in pursuance of a publication of three written notices posted in three of the most public places of the time and place of holding such election under the direction of the Board of Trustees of said town of Newark, an election was held on the 24th day of March 1860, at the public school house in said town of Newark, between the hours of one and five o'clock of said day, for the purpose of adopting or rejecting said act passed by the Legislature of the State of Illinois in 1857, to extend the jurisdiction and powers of the President and Trustees and Constables of the towns of Oswego and Newark in said County of Kendall, at which election there were cast for the act thirty-nine votes, and against the act there were no votes. And the said act was there and then adopted by the said qualified voters of said town of Newark. And these defendants further say, that on the 3d day of March A. D. 1862, at a legal election duly notified of the qualified voters of the said incorporated town of Newark held at the public school house in said incorporated town of Newark, these defendants and the said Joseph S. Bibbins and Henry H. Lewis were duly elected by a majority of the votes of the qualified voters cast at said election Trustees of the said town of Newark as successors of the said just Board of Trustees and their successors as aforesaid; and afterwards, on the 15th day of March 1862, these defendants and the said Joseph S. Bibbins were in said town of Newark duly sworn to discharge their duties as said Trustees of said town of Newark, and then and there entered upon their duties as said Trustees, and duly elected out of their own body Lucien Farnham as President of said Board of Trustees, and at said time John Boyne was elected by the said Board of Trustees as Trustee in place of Henry H. Lewis, who refused to qualify as trustee aforesaid. And these
- 18 defendants further say, that on the 15th day of March A. D. 1862, they did in pursuance of the said general laws of the State of Illinois relative to incorporated towns passed in 1845, and the general amendments to said general laws passed by said Legislature since, and by virtue of said election as Trustees as aforesaid, take upon themselves respectively the office of President and Trustees of the said town of Newark at the town and county aforesaid, and by virtue of the premises they then and there became, and on the said 15th day of March A. D. 1862, at the town and

18 county aforesaid, and from thence continually until the time of exhibiting the said information, were and still are the President and Trustees of the town of Newark in said county of Kendall, and by that warrant the said defendants for and during all the time it, the said information, in that behalf specified, at the said town and county, have respectively used and exercised, and still do use and exercise the office of President and Trustees of the said town of Newark, and for and during all that time have there claimed to be such President and Trustees of said town of Newark, and to have, use and enjoy all the liberties, privileges and franchises to the said office belonging, as it was and is lawful for them to do. And as such President and Trustees of the town of Newark, as aforesaid, they have, under the said general laws of the State of Illinois, and in accordance therewith, levied and collected a tax not exceeding 50 cents on a hundred dollars of the assessed valuation thereof upon the south-west quarter of the north-west quarter of section 5, in township 35 north, of range six (6), east of the 3d principal meridian in said county, belonging to Selah Gridley, which said real estate is situated within the bounds of the said corporation of the town of Newark, and always has been situated within the said boundaries of the said incorporated town of Newark, and within the jurisdiction of the said President and Trustees, and they have levied and collected said tax as they lawfully might. Without this, that the said defendants, the said office, liberties, privileges and franchises in the said information above mentioned, or any of them, have usurped and did usurp upon the people of the State of Illinois, in manner and form as by the said information is above alleged against them. All and singular which matters and things the said defendants are ready to verify and prove, as the court shall award. Whereupon they pray judgment, and that the said office, liberties, privileges and franchises by them claimed, in manner aforesaid, may be allowed and adjudged to them, and that they may be dismissed and discharged by the court hereof, and from the premises above charged against them.

CHARLES WHEATON,
Attorney for Def'ts.

Filed January 19, 1863.

G. M. HOLLENBACK, Clerk.

On the 8th day of April 1863, the State's Attorney filed the following

Replication.

1st. That said Willett R. Murray, Nelson D. Sweetland, George B. Hollenback, Henry W. Kennedy and Peter Fritts and their successors in office, at the same time, when, &c., where, &c., did not become, and were not thenceforth under the general laws of the state of Illinois, pass-

ed by the legislature of said State in 1845, a body corporate and politic, both in law and equity, by the name and style of the President and Trustees of the town of Newark, in manner and form as the said defendants have in their said plea in that behalf alleged. Conclusion to the country.

23 2d. And the said State's Attorney, in the name and by the authority of the people of the State of Illinois, further saith, that said town of Newark as surveyed, platted, mapped and recorded under and by virtue of the general laws of the State of Illinois in relation to corporations and towns then in force, did not have inhabitants to the number of one hundred and fifty or more, in manner and form as the said Lucius Farnham, Isaac Lott, Joseph S. Bibbins, William Williams and Henry H. Lewis have in their said plea in that behalf alleged, and this he, the said State's Attorney, in the name and by the authority of the people of the State of Illinois, prays may be enquired of by the country, &c.

24 3d. And the said State's Attorney, in the name and by the authority of the people of the State of Illinois, further saith, that the said south-west quarter of the north-west quarter of section five in township thirty-five north, of range six east of the 3d principal meridian, in said county of Kendall, was never laid out into town lots or otherwise subdivided, and this he, the State's Attorney, in the name and by the authority of the people of the State of Illinois, is ready to verify. Whereupon he prays judgment, &c.

4th. That said Willett R. Murray, Nelson Sweetland, George B. Holtenback, Henry W. Kennedy and Peter Fritts, in and by said plea alleged to have been elected trustees of said town of Newark, did not, nor did any of them, at any time, deposit with the clerk of the county commissioners court of said county of Kendall, to be entered of record in his office, a certified statement in writing of the polls of said first meeting, in said plea mentioned, in manner and form as the said defendants have in their said plea in that behalf alleged. Conclusion to the country.

5th. That said defendants at the said time, when, &c., where, &c., were and are not the President and Trustees of the town of Newark in said county of Kendall, in manner and form as the said defendants have in their said plea in that behalf alleged. Conclusion to the country.

Defendants answer to 2^d & 3^d allegations
Answer sustained

Bill of Exceptions.

Jury waived, and cause submitted to the court for trial.

- 31 Defendants, to maintain the issue on their part, introduced Albert Cook as a witness, who testified that the book produced in court contained the records and proceedings of the trustees of the town of Newark.

The defendants then offered to read in evidence from said book the following, viz :

" Election of Trustees.

"There being an election of trustees of said incorporation on the 17th day of Feb., 1849, and, after canvassing the votes, it appeared that the following persons were duly elected trustees for said incorporation : Willett R. Murray, Nelson D. Sweetland, George B. Hollenback, Henry W. Kennedy, Peter Fritz."

To the reading of which the State's Attorney then and there objected, which objection was overruled by the court, who allowed the same to be read in evidence ; to which decision the State's Attorney then and there excepted.

- 32 The defendants then offered to read in evidence from said book the following, viz :

" Meeting of Trustees.

"At a meeting of the board of trustees of the town of Newark George B. Hollenback was called to the chair and Asahel Newton clerk *pro tem.* of said meeting. It was moved and seconded that George B. Hollenback be president of the board of trustees of the town of Newark ; whereupon he was duly elected. It was moved and seconded that Alanson Robinson be clerk of said board of trustees of the town of Newark ; whereupon he was duly elected."

Also entries in said book purporting to be ordinances defining the boundaries of said town, as set forth in the defendant's plea.

To the reading of which and each and every part thereof the State's Attorney then and there objected ; which objection was overruled by the court, and the same admitted in evidence. To which decision of the court in overruling said objection, and submitting said entries in evidence, the said State's Attorney then and there excepted.

- 34 The said defendants then introduced as a witness Asahel Newton, who, being duly sworn, testified as follows :

I acted as clerk of the first meeting of trustees. Alanson Robinson was the first clerk of the board. The record of the proceedings of the first meeting is in the hand-writing of A. R. Niblo. He was not the first clerk of the board. A certificate was made out and put into the hands of Geo. W. Hartwell, then the clerk of the county commissioners' court. I have searched for it among the records. I understand it is lost. I saw it placed in the hands of Wm. Hartwell at the first meeting of the board, to be filed and recorded in the clerk's office.

The defendants then introduced as a witness Geo. W. Hartwell, who, being first sworn, testified as follows :

I was clerk of the county commissioners court at the time of the first meeting of the trustees. I have examined the office of the clerk of that court for the purpose of finding the certificate of the state of the polls at a meeting of the inhabitants of the town of Newark, to determine the question of incorporation, and have never been able to find it. It has never been recorded. It was first stated that Wm. Misner brought it to be recorded. If it had been delivered to me to be recorded, I think I should have recollected it. My best impression is, that it was never delivered to me. No fees were ever paid me for recording it. I have heard it was sent to Mr. Cook, of Ottawa.

- 35 The defendants then recalled Asahel Newson, who further testified as follows :

I think Geo. W. Hollenback delivered the certificate to Hartwell. I can't state positively the number of inhabitants residing in the town of Newark at the time the meeting to vote upon the question of incorporation was held. I assisted in taking an enumeration of children, for school purposes, and think there was at least 300 white male inhabitants in the boundaries of the town, as afterwards fixed and defined by the trustees. Prior to the meeting of the inhabitants we got up three notices and posted them in the town ten days before the meeting.

The defendants then called as a witness Alanson Robinson, who, being first duly sworn, testified as follows :

I was the first clerk of the board. The proceedings of the first meeting were recorded by A. R. Niblo, by my direction. I took a census for school purposes, and think the number of inhabitants in the $W\frac{1}{2}$ of Sec. 5 and the $E\frac{1}{2}$ of Sec. 6, T. 35 N., R. 6 E. of 3d P. M., was between 300 and 400, and at the time of the meeting held to determine whether the town should be incorporated or not, the $W\frac{1}{2}$ of Sec. 5 and the $E\frac{1}{2}$ of

Sec. 6 are within the boundaries of the town as afterwards defined by ordinance.

36 The defendants then called J. J. Cole as a witness, who, being sworn, testified as follows :

I am clerk of Kendall county. I have searched the office of the clerk of the county commissioners' court and the papers belonging to the same a number of times for the purpose of finding a certificate of the state of the polls of the first meeting, but have never been able to find any.

The defendants then again called Asahel Newtop, who further testified as follows :

The certificate of the state of the polls which I have referred to contained the proceedings of the first meeting and the number of votes cast. I think there were over two thirds cast for incorporation. It stated that Geo. B. Hollenback, Henry Kennedy, Peter Fritts and Nelson Sweetland were elected trustees. It stated that the meeting was held in 1849 at the precinct house in Newark. I was the moderator of the first meeting. I am not certain that I presided at the meeting for the election of trustees, which was very soon after and within twenty days. Alanson Robinson was clerk of the first meeting of the inhabitants.

The defendants then recalled Alanson Robinson, who further testified as follows :

The certificate contained the records of the first meeting and election of trustees. There were 30 votes for incorporation and three against. Don't know how long the voters had been there. I think they were freeholders and legal voters. I was clerk of the first meeting. I think I received the certificate. The meeting proceeded to elect a moderator and clerk. Written notices were posted up in three places in the town ten days before the meeting.

37 The defendants then offered to read in evidence from said book entries therein showing that trustees and other officers provided for in the general laws of this state in relation to municipal corporations had been elected annually since the year 1849, with the exception of one year; and that said trustees had from time to time passed ordinances and performed other acts, authorized to be done by said laws, by trustees of towns incorporated under the provisions of said laws. To which the State's Attorney then and there objected; which objection was overruled by the court, and the said entries admitted in evidence. To which decision of the court in overruling said objection and admitting

said entries in evidence, the said State's Attorney then and there excepted.

67 The defendants here rested their case, and the said State's Attorney then and there moved the court to exclude the evidence introduced on the part of the defendants and each and every part thereof, which motion was overruled by the court. To which decision of the court in overruling said motion, the said State's Attorney then and there excepted.

63 The said State's Attorney then offered to prove that the town of Newark had been legally laid out and surveyed and a plat thereof made by the county surveyor of said county of Kendall, in which said town is situated, in all respects in compliance with the laws of the State of Illi-

nois in relation to laying out towns, and that said plat, as made, was duly recorded in the recorder's office in said Kendall county previous to said meeting of said inhabitants; and the said State's Attorney, also, then and there offered to prove by C. C. Thuneman, a witness duly called and sworn in this cause on the part of said people, that the number of inhabitants in said town of Newark, as laid out, surveyed, platted and recorded as aforesaid, and all additions thereto and subdivisions of out lots therein, was less than one hundred and fifty at the time of said meeting of the inhabitants of said town, held for the purpose of determining whether they would become incorporated. And thereupon the court refused to allow the said State's Attorney to introduce said proof, and excluded the same. To which decision of the court in refusing to allow said proof to be introduced, and excluding the same, the said State's Attorney then and there excepted. This was all the evidence in the case.

64 The court found for the defendants, and the said State's Attorney then and there entered a motion for a new trial which, was overruled by the court. To which decision of the court the said State's Attorney then and there excepted.

ERRORS ASSIGNED.

1st. The court erred in sustaining the demurrer to the 2nd and 3d replications to the defendant's plea.

2nd. The court erred in overruling said State's Attorney's objection to reading in evidence from the book mentioned in said record, the entries relating to election of trustees of said Town of Newark, and in admitting said entries in evidence.

3d. The court erred in overruling said State's Attorney's objection to the reading of said ordinances in evidence, and in permitting said ordinances to be read in evidence.

4th. The court erred in overruling the objection to the reading of the entries in said book in evidence, and in allowing said book to be read in evidence.

5th. The court erred in overruling the motion to exclude the evidence introduced by said defendants and each and every part thereof.

6th. The court erred in refusing to allow said State's Attorney to prove that said Town of Newark had been duly surveyed, laid out and platted by the county surveyor of said Kendall county, and a plat thereof duly recorded, and that the number of inhabitants in said town as laid out, surveyed and platted was less than one hundred and fifty.

7th. The court erred in overruling said State's Attorney's motion for a new trial.

8th. The court erred in rendering judgment in favor of said defendants against said defendants.

D. P. JONES,
State's Attorney.

9 P. D 207
People's Ex. rel
Griddle

or

Farnham et al

Abstract

Filed May 20. 1884

L. L. Land
Clerk