

12851

No. _____

Supreme Court of Illinois

Munson.

vs.

Minor.

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William Mason
vs

Samuel B. Minor

147

12351

1859

1
State of Illinois

LaSalle County ss. Whereas the Honorable Madison E. Hollister, the Judge of the South Judicial District of said State and the presiding Judge of the LaSalle County Circuit Court at a term of said Court commenced and held at the Court House in Ottawa in said County and State on the first Monday in the month of January the same being the seventh day of January in the year of our Lord one thousand eight hundred and fifty nine and of the Independence of the United States of America the eighth third,
Court

The Honorable Madison E. Hollister, Presiding Judge
John F. Clark Clerk
Washington Burdett State Attorney
Francis Farmer Sheriff

Be it remembered that on the 18th day of January 1859 there was filed in the office of the Clerk of the Circuit Court of said County and State a certain bill in chancery in the name and signed following to wit:

"State of Illinois ss. And Circuit Court thereof
LaSalle County ss. To Helianth terms A.D. 1859.

To the Hon. Madison E. Hollister Judge
of said Court,
Humbly Complaining, Sheweth unto
your Honor your Orator William Hunsors of
said County that he is the owner of the N.E. 1/4 &
S.E. 1/4 of Section one (1) in Township Thirty five
(35) North of Range three (3) East of the 3^d
Principal Meridian in said County, and

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that he lives on said South East quarter,
Your Orator further Shows that said land
is joined to and is a part of School dis-
trict No 5 in Serena Town 35 N.E. 4 E &
P.M. in said County, and has been a part
of said district for six or seven years &
still is. And Your Orator has sent his
Children to School in said district for that
time, and in no other, and believes he has
always paid for the maintenance and
support of said School whatever, was just
and proper for him to pay, by tax or other-
wise and is now ready and willing and
even anxious to do.

Your orator further Shows that the
School directors of said district did on
the 30th day of June A.D. 1888 levy a School
tax in said district for said year of twenty
five cents (25cts) on each one hundred
dollar valuation of taxable property in
said district and did return your orator
as one of the tax payers of said district,
which tax Your Orator is ready & willing
to pay, but whether or not said tax was
carried out on the collector book by the
County clerk, on the personal property of
your orator, and said S.E. 4, your orator
is now unable to say positively.

Your Orator further Says that by the
assessment Roll upon which the tax of
1888 is levied said N.E. 4 is Valued at \$978.00
said S.E. 4 is valued at \$1920.00 and the
personal property of your orator at \$1493.

Your Orator further Shows, that the School

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directors of (supposed) District No 9 in Township 35, N. Range 3, East 3d P.M. in said County did on or about the 26th day of June A.D. 1858 certify to the County Clerk of said County, that they had estimated and levied a School tax for A.D. 1858 for said supposed district, of two dollars on each one hundred dollar valuation of all the taxable property in said district; and did return your Orator as one of the tax payers of said District No 9. And that said tax has been carried out in the collectors Book for said Township 35, N.R. 3, E. 3d P.M. the same being the Town of Freedom. On the personal property of your Orator, and on said South East quarter of Sect one (1) making in all a School tax of Sixty Eight ²⁴/₁₀₀ dollars.

B.W. Statute

Pa 440. Sec 33

Your Orator further States that there is no map of the School districts in said Town of Freedom, on file in the County Clerks office and none recorded there, as provided by law, but that there is a paper in said office from which the said Clerk pretends to determine what tracts of land lie in said supposed district No 9. and by said paper it does appear from lines drawn thereon, that said S.E. ¹/₄ in which your Orator lives is in said district No 9, but your Orator charges and believes he is able to prove that in making said paper, it was a mistake to represent said S.E. ¹/₄ as belonging to said District No 9. and contrary to the decision of the Trustees of Schools of said Town of Freedom.

Your Orator further shows that said

Trustees of Schools of the Town of Freedom, in
 conjunction with the Trustees of Schools of the
 Township of N. R. 4. E. 3^d P. M., being the Town
 of Seneca in said County did sometime in
 the Spring of 1858 and before any School
 tax was levied by the said Directors, for the
 purpose of rectifying said mistake, attach
 said South East quarter of Sec 1, to District
 No 5 in said Seneca.

Your Orator further Shows that said
 S E $\frac{1}{4}$ is nearly three miles from the School
 house in District No 9, and on the opposite
 side of Indian Creek, and that it is impos-
 sible for your orator to send his Children to said
 School there - that for the past five or six years
 has by mistake paid a large amount of tax
 to support said school in said District No 9.

Your Orator further Shows unto your Honor
 that said tax certified by said directors of District
 No 9, as he is informed and verily believes was
 never submitted to the popular vote of said
 district for approval or rejection as required
 by law.

Your Orator further Shows that Samuel
 E. Minor the collector of said Town of Freedom
 has received his warrant for the collection of
 taxes for A.D. 1858; and intends to enforce from
 your Orator the collection of all the said School
 taxes -

For as much as your orator is entirely
 remediless in the premises according to the
 strict rules of the common law, and can
 only have relief in a Court of Equity, he
 therefore prays that a writ of Subpoena be issued

Be Seats Statute

La 445, Sec 44

" 447, " 47

impossible

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out of the Clerk's office of this Hon. Court directed to said Samuel E. Minor commanding him to appear before this Honorable Court on a day therein named and to stand to and abide by such order as the Court may deem just & proper.

And also that he may answer this Bill as fully and particularly as though he was specially interrogated thereto (the necessity of an oath being hereby expressly waived) and also that a writ of injunction may be issued enjoining said Minor from the collection of all the School tax levied on said South East quarter of Section one, and upon the said personal property of your orator and for such other or further relief as to your honor shall seem meet & proper in the premises, and your orator will ever pray &c

Pulius Avery
Comp. Solicitor

State of Illinois } William Munson on
LaSalle County } oath Says that he is
the Complainant in above
Bill of Complaint and that the matters & things
therein contained stated of his own Knowledge
are true, and that the other matters stated
therein he believes to be true,
Subscribed & sworn before, } William Munson
me this 12th day of January }
AD 1859. O. Leabens J.P. }

Let an Injunction issue according to the
prayer of the foregoing bill
Dated 17, 1859

Mr. E. Hollister
Judge &c

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On the same, said 18th day of January 1859 a writ of Injunction was issued out of and under the Seal of said Court, in the words and figures following, to wit:

"State of Illinois } The People of the State
LaSalle County } of Illinois to Samuel E.
Miner, Greeting;

Whereas William Mounson has lately exhibited his bill of complaint to the Judge of the Circuit Court in and for said County and State on the Chancery Side thereof against you the said Samuel E. Miner defendant, wherein among other things it is alleged that you are the tax collector for the town of Freedom.

We therefore in consideration of the premises do strictly enjoin and command you the said Miner that you do absolutely and entirely desist from collecting the School tax assessed in your town on the personal property of said Mounson and also the School tax assessed in the S.E. 1/4 Sect. 35, R. 3, E. 3^d S. W. until you shall appear and fully answer the complainant's bill and said Court make other order to the contrary. Hereof fail not, under the penalty of what the law directs.



To the Sheriff of said County to execute.
Witness John F. Nash Clerk of said Court
and the Seal thereof at Ottawa this 18th
day of January A.D. 1859.

J. F. Nash Clerk "

which writ of Injunction was returned by the Sheriff of LaSalle County, on the 3^d day of February 1859 with the following endorsement thereon, to wit:

William Mouson vs Samuel E. Hoener - Injunction
 Executed this writ by reading the same to
 Samuel E. Hoener & delivering to him a true
 copy of this writ. Day 19th 1859

Dr & R 60

J. Warner Sff

Copy 50

12 m 60 paid by Aug 11
 \$1.70

On the 18th day of January 1859, a Summons
 was issued in said cause in the words and
 figures following, to wit:

State of Illinois³ The People of the
 LaSalle County³ State of Illinois.

To the Sheriff of
 LaSalle County, Greeting: We command
 you to summon Samuel E. Hoener if he be
 found in your County, personally to be and ap-
 pear before the Circuit Court of said County,
 on the first day of the next term thereof, to be
 holden at the Court-house in Ottawa, on the first
 Monday in the month of February next, to answer
 a certain bill of complaint, filed in our said
 Circuit Court, on the Chancery side thereof, against
 him by William Mouson. And have you there
 and there this writ, and make return thereon
 in what manner you execute the same.

Witness John H. Nash, clerk of said
 Court, and the Seal of said Court
 at Ottawa, this 18 day of January
 AD 1859.

J. H. Nash Clerk

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which summons was returned by the Sheriff
of LaSalle County, February 3^d 1859, with an
endorsement thereon, as follows to wit:

"William¹⁰⁷ Munsen

vs

Samuel E. Miner

Sums in Chancery to November term 1859
- Executed this writ by reading the same
to Samuel E. Miner and delivering a true copy
of this writ to him

Jan'y 19th 1859

J. Warner Shiff

Sent & Ret 60. Copy 50. 12 m. 60 = \$170. paid by Clerk

And afterwards, to wit: On Tuesday the 8th day
of February A.D. 1859, the same being one of the
days of the February Term of said Court for
the year 1859, an order was entered of record in
said cause in the words and figures following, viz:

"William¹⁰⁷ Munsen

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vs

Samuel E. Miner

In Chancery

On motion of complainant
by Julius Avery his Solicitor, the defendant is ruled
to file an answer herein on or before tomorrow morning

And afterwards to wit, on Wednesday February 9th
1859, the same being one of the days of said Feb-
ruary Term of said Court for said year another
order was entered of record in said cause in
the words & figures following, to wit:

"William Munsen

vs

Samuel E. Miner

In Chancery

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This day again comes the complainant by Julius Avery, his Solicitor, and the defendant being three times solemnly called in open Court comes not, nor any one for him, but makes default. And it appearing to the Court that said defendant has been duly Served with Summons, more than ten days before the first day of the present term of this Court, and is still in default of an answer, on motion of complainant's Solicitor it is ordered by the Court that the bill herein be taken pro confesso against said defendant, by default, for want of an answer—"

And afterwards to wit on the 15th day of February, 1859, the same being one of the days of the said term of said Court for said year an "affidavit to open default" was filed in said cause in the words and figures following, to wit:

"State of Illinois

LaSalle County & Circuit Court thereof
February Term 1859.

In Chancery

William H. Hunsen

vs

Samuel C. Miner

Bills for Injunction.

William H. L. Wallace of said County being sworn on oath says that he was retained by the School directors of District No 9 of said R. S. & Co in said County to resist the application for an injunction in this cause - that he and they not knowing where said application would be made, he went to the Judge of the County Court & to the clerk of this Court and endeavored to

find the Judge of this Court on the day said injunction was granted to resist the granting of the Same, but failed to find said Judge in time to appear before him in said matter -

That on the first day of the present term of this Court (affiant having been employed by said directors to defend this suit) affiant examined the docket & files of the Court and found that no action had been taken and thereupon took the bill from the files for the purpose of preparing an answer thereto and said bill has been in affiant's possession ever since - that affiant was, as he believes the only counsel employed in the defence of said cause, & he had no knowledge or notice that any rule was taken for an answer herein or any other steps taken therein until after the default was entered - that he has examined said cause and believes defendant has a good legal and equitable defence to said bill on the merits - and further saith not.

Subscribed & sworn to before W. H. L. Wallace
me this 15th day of February
1859 J. F. Nash Clerk

And ~~attorneys~~ ~~to wit~~, on Monday February 14th, the same being one of the days of the holy term of said Court for said year 1859, another order was entered of record, in said cause, in the words and figures following, to wit;

"William Munson 3

vs 3

Samuel C. Miner 3

In Chancery,

This day comes the defendant by W. H. L. Wallace his Solicitor and moves the Court to set aside the order for reference herein, and the default heretofore entered herein,

And again in February 15th 1859, the same being one of the Days of the February Term of said Court for said year, the Defendant files his answer to Complainant's bill, in the words and figures following, to wit:

State of Illinois

LaSalle County & Circuit Court thereof
February term A.D. 1859

The answer of Samuel E. Moirer, to the bill of Complaint of William Munson filed against him in said Court -

This respondent saying and reserving to himself all benefit of exception to the manifest errors, uncertainties and insufficiencies of said bill of Complaint for answer thereto, or to so much thereof as he is advised and believes is material to be answered unto, answering says -

That he admits that said complainant is the owner of the N.E. 1/4 & S.E. 1/4 Sec 1 T. 35, N.R. 3 & E, in said County, and that said complainant lives on said S.E. 1/4

Respondent further answering says, that it is true that a part of said Land, namely the North East quarter of said Section one (1) is and has been for several years joined to and is a part of School district No 5 in T. 35, N.R. 4, E. in the town of Serena - but this respondent distinctly denies that the South East quarter of said Section one (1), in which said complainant resides, has been for six or seven years a part of said district No 5 as is

alleged ~~the~~ in said bill. But respondent alleges the fact to be that in April 1853 the Trustees of Schools of T⁵⁵, N. R. 3 E. (in which said Sec one (1) is situated) created a district in said last mentioned township, called "District No. 9" which said district embraced the South East quarter of said Section one (1) on which complainant then resided & still resides - and that said South East quarter continued to form a part of said District No 9 until the semi-annual meeting of said Trustees of T⁵⁵, N. R. 3, E. in October 1858, at which last mentioned time the said South East quarter was on the petition of said complainant attached to said district No 5 in T⁵⁵, N. R. 4 E. - but that this was not done until after the school tax mentioned in said bill had been estimated levied and certified by the School Directors of said district No 9 as stated in said bill.

Respondent further answering says that he does not know of his own knowledge whether complainant has sent his children to school in said district No 5, and to no other, as is alleged in said bill and respondent neither admits nor denies the allegation ~~the allegation~~ in that behalf contained in said bill - but respondent is informed and believes that said complainant has sent his children to school in said district No 5, and that money has been drawn from the funds of said Township 55 N R 3, E. to pay for such schooling, on the ground that said complainant was an inhabitant of said last mentioned township.

Respondent further answering says he has no personal knowledge as to whether said complainant "has always paid for the maintenance & support of said school whatever was just and proper for him to pay" - but respondent is informed and believes that said complainant was taxed in said District No 9, on a large amount of property for the school tax of 1857 amounting to over a hundred dollars - that complainant refused to pay the same when called upon by the collector of the town of Freedom, for 1857 - and induced said collector to return the said tax as delinquent by promising to stand between said collector for 1857, and all harm to him by so doing, - that said complainant then applied to the Board of Supervisors of said County for an abatement of said tax - failing in which he appeared before the County Court of said County and successfully resisted judgment for said delinquent tax on the ground that he (said complainant) had personal property out of which said tax might have been collected - and if those facts are true, respondent submits that they tend to show that said complainant was not "ready and willing and even anxious" to pay such tax, as is alleged in said bill.

Respondent further answering admits that the school directors of said district No 5 did on the 30th of June 1858 levy a school tax in said district for said year of 25 cents on each \$100 valuation of the taxable property in said district - but respondent denies that said tax was carried on the

Collector Book or in any manner listed in said South East quarter of said Sec one (1) or on the personal property of said complainant as respondent is informed and verily believes -

Respondent further answering admits that said N E 1/4 of Sec 1 is valued in the assessment roll at \$975. - and said S E 1/4 is valued at \$1930. and that complainant's personal property is valued at \$1493.

Respondent admits that the School directors of said District No 9 T35, N. R. S. E. did on the 26th day of June 1858, estimate levy and certify a School tax in said district for 1858, of two Dollars on each \$100. valuation of the taxable property in said district and did return said Complainant as one of the tax payers of said district No 9 - & that said tax has been carried out in the collector's book for said Township 35, N. R. S. E. being the sum of \$68 $\frac{24}{100}$ on complainant's personal property and on said South East quarter of Section one (1) aforesaid - making in all \$68 $\frac{24}{100}$ as alleged in said bill -

Respondent says he does not know whether there is any map filed or recorded showing said District No 9, and he therefore neither admits nor denies the same - but he is advised & believes and therefore insists that it is immaterial whether there is such map or record or not - but respondent denies that it was a mistake in representing said South East quarter of said Section one (1) as belonging to said District No 9

and that such representation is not contrary to the decision of the Trustees of Schools of said town of Freedom, as will be shown by the certified copy of the records of the proceedings of said Trustees certified by E. J. Allen Township treasurer of said T. 35. N. R. 3. E. and hereto attached and marked exhibit "A" and made a part of this answer.

Respondent further answering says that as he is informed and verily believes the said Trustees of Schools of Freedom did not in the Spring of 1858 and before any School tax for that year had been levied, attach said South East quarter of Sec one (1) to said District No 5 as is alleged in said bill - but respondent charges the fact to be that such action was not had until October 1858 & after said tax had been levied -

Respondent admits that said tax so levied, estimated and certified by the School directors of said District No 9 was not submitted to the popular vote of said district, but respondent alleges that said tax was not for the purpose of building or repairing School house in said district but for the sole purpose of continuing Schools in said district for a longer time, than the regular School fund of the district would pay for, not exceeding in all six months of said year and as respondent is advised & believes it was not deemed necessary by law, and the law did not require such tax to be submitted to a popular vote of said district.

Respondent admits that he is collector of

the said town of Freedom & had received his warrant for the collection of said tax for 1858, and did intend to enforce the collection of said tax from complainant as alleged in said bill.

As to the allegation in said bill that complainant lives 3 miles from the School house in No 9 & on the opposite side of Indian Creek & that it is impossible for complainant to send his children to School there, respondent is advised & believes that the same is immaterial and he therefore neither admits nor denies the same.

And having fully answered respondent prays to be hence dismissed with his costs &c

Saml E. Hooper.

Apr. 20th 1850

Trustees met to hear petition for division of district one from John W. Lummery not granted. Also one from Wm. M. Lummery ^{petitioner} that the E/2 of Sec. 1 be set off and attached to a part of Township 35 N. R. 4, to form a joint district said petition was granted.

Joel Jones

Treasurer.

Freedom April 29th 1853

In compliance with a petition of a majority of the householders in district No. 1 in the town of Freedom, We the Trustees of Schools in said town do hereby set off and form a new School district to be called district No 9, embracing the following described Section of Land; Beginning

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in the center of Section No 10 thence East through
the center of Sect 11 & 12 to the East of Sec 12 thence
North to the middle of Section 1 thence West to
the center of Section 1, thence North to the North
line of S^d Sec 1, thence West to the middle of Section
3, thence South to the place of beginning.

J. D. Porter Treasurer.

Wesley Batcheller

Warlin Thompson

Trustee

1858 October. At the semi-annual meeting of the
Board of Trustees,

The Board also took into consider-
ation the petition of William Munroe to set off the
E¹/₂ Sec 1, and attach the same to S. 35 & 4 for
School purposes; and it was concluded, and
determined, by said Board, to attach said E¹/₂
of Sec 1, as aforesaid to district No 5 S 35 R 4,
to form a joint School district.

E. J. Allen, clerk,

S. E. Miner

President of the Board

LaSalle County

I do hereby certify the above
to be a true copy of the
records in my office.

E. J. Allen,

Treasurer.

Jan'y 17th 1859

State of Illinois S^d,
LaSalle County S^d

Samuel E. Miner the defend-
-ant in the above case being sworn
in oath says that he has
heard the foregoing answer read and knows the
contents thereof, and that the matters and things
therein stated, except where the same are therein

alleged information and belief, are true in substance and in fact - and the matters therein alleged are information and belief he really believes to be true.

Subscribed & sworn to Samuel E. Miner
before me this 14th day of
February 1859
P. F. Nash clerk

Now follows an affidavit on the part of defendant in support of his motion to dissolve the injunction herein.

"H^m Minnesota }
vs } LaSalle Cir. Court.
Samuel E. Miner }

State of Illinois }
LaSalle County }
Mable Dickerson, and
Norman Smith, both of
said County being each
severally sworn on oath depose and says each
for himself - that they are informed and really
believe that William Munson was from the
29th day of April A.D. 1853. until the month
of October A.D. 1858 an inhabitant and resident
of school district number nine (9) in T. 35 N. E.
R. 3. E. in said County, being the town of
Freedom in said County - that during all
that time said Munson resided and still
resides on the South East quarter of section
number one (1) in said town - and affiants
are informed & believe that the Trustees of
said Township, on the 29th day of April

Supreme court. 3rd Grand Division
April term 1859.

William Munson }
vs } Error to LaSalle-
Samuel E. Miner }

Points for diff. in error.

The question presented by this record is, whether the school directors of a school district under the law of 1857, have the power to estimate and cause to be levied a tax for the support of schools in the district for a time not exceeding six months in the year, without a vote of the inhabitants of the district.

The 43rd section of the law—
(vide Session laws of 1857, page 274)
provides in express and unqualified terms that the "directors shall be authorized to have levied and collected a tax annually, on all the property of the district" "for procuring fuel &c" & "employing teachers after the state and township funds are exhausted."

The 44th section of the act prescribes the method of estimating

and certifying this ^{and all taxes for school purposes} tax, and contains
this proviso "that the people vote the
same as hereinafter expressed".

The 47th section provides that
the directors may borrow money
and issue bonds &c "provided the
"same shall be voted by a majority
"of all votes cast at an election, first
"giving ten days notice" &c

The 48th section prescribing the
powers and duties of directors says
"They shall establish a sufficient number
"of common schools for the education
"of every individual person over the
"age of five and under twenty one
"years in their respective districts,
"and shall make the necessary
"provision for continuing such
"schools in operation for at least
"six months in each year, and
"longer if practicable" - And the
concluding clause of the 48th
section provides for a vote on
the question of locating a site
for a school house, and ^{contains} a limitation
on the power of the directors
as to building school houses, and
~~and contains~~ and concludes with

these words "Nor shall the directors
"have power to levy taxes for the purpose
"of extending the terms of schools for
"a longer period than six months in
"each year" "without the consent
"of a majority of the legal votes cast
"at said election".

These are believed to be all the provisions of this law which have any bearing upon this question except the 4th section, which relates to the manner of enforcing a judgment against the directors.

It would appear from a consideration of these several provisions that the legislature intended to erect and put in operation a system of free schools and to make provision for its support. The title of the act, which under our constitution may be supposed to be significant of its object and purposes, is "An act to establish and maintain a system of free schools". It provides a whole corps of officers, beginning with a State superintendent, then county commissioners, then township trustees & then district directors

and these last as being most immediately in contact with the great body of the people, are clothed with the taxing power, and the duty of making provision for carrying the system into operation, when the public funds provided by law are inadequate. The whole structure of the act demonstrates that it was the intention of the legislature to provide a permanent system of free schools for all the children of the state for at least six months of the year - and when the people to be affected by it desired to continue the schools for a longer period, to give them the power to do so under this system, and when they did not so desire, then to leave them the power by their votes to deny the funds for the support of schools for a longer period than six months -

It is not pretended that it is not within the power of the legislature to confer the taxing power on these directors, nor that the object sought to be accomplished is a laudable

and desirable one - In the 43rd section unlimited taxing power is given to these directors for the objects therein specified; and if there is any limitation to this power we must look to other parts of the law to find it - The proviso in the 44th section is at best but a qualified limitation of this power - "provided the people vote the same as hereinafter expressed" - ^{further} ~~As~~ examination of the act shows that it is "hereinafter expressed" that the people shall vote whether they shall borrow money (sec 47) and where a school house shall be ~~erected~~ ^{erected} (sec 48) or whether they will purchase a school house site (sec 48) or whether a school house shall be erected, located, purchased or changed (sec 48) and whether they shall erect a school house worth more than \$1000 and whether "to levy a tax for the purpose of extending the terms of schools for a longer period than six months in each year" (sec 48)

Now in the 43rd section the power being given in unlimited terms so far as this question is

concerned, there can be no limitation on this power except that contained in other parts of the act. By a familiar rule of construction, the express denial contained in the latter clause of the 4th section, that the directors shall not have power to levy tax to extend schools beyond six months, ^{without a vote} ~~centenas~~ involves a recognition of their power to levy such tax for that purpose not exceeding six months - "The expression of the one thing is the exclusion of another" (Harris on Statutes 713 - 13 Ill. 546.)

If it should be urged as an argument against this construction of the law, that this is a dangerous power to place in the hands of any officers, and therefore the legislature never could have so intended, then I answer, where the statute is plain it is a tyrant & if its provisions are constitutional the courts are bound to enforce them - Again, this power must be lodged some where, and why

not in these officers who are nearest to the people to be affected, and the most immediately accountable to them -

By the law as thus construed a permanent system of ^{free} schools for six months in the year is provided for all the children in the state - In those localities and districts where the people desire public schools for a longer period, they can do so under this system - When they do not so desire, then the schools would cease after the end of six months - ~~If the directors without regard to the law -~~

The case of *Beverly v. Sabine* 20. Ill. 357, cited by the plaintiffs counsel, presents an essentially different question from that raised here - There the question ^{in that case} was on the power of the directors to raise a tax to pay a debt, contracted in building a school house worth more than \$1000, without a vote of the people - The 48th section expressly declares that they shall not have such power without a vote

I presume that what the court say in that case in regard to the general powers of directors, will not be regarded as conclusive as to the construction of this law, especially as the question there raised did not necessarily involve a full examination of all the powers given - and did not in any manner affect the question in this case -

As to the second point made by the plff. in error (in regard to the Map) the view of the circuit court was that that was merely directory so as to enable the county clerk correctly to extend the taxes, and that in cases where there was (as in this case) no question about the property ~~assess~~ taxed being in the district, it could not affect the validity of the tax whether there was or was not a map - But the record does show that there was a map from which the clerk ascertained how to extend the tax, and did it properly in this case -

Nor do I think the third point made by plff - that the act authorizing the tax to be collected by the township collector instead of some officer of the district, is unconstitutional - is well taken - The district is within the township and forms a part of it - as much so as the township forms a part of the county, and the county a part of the state - As well might it be said that the revenue laws requiring the state revenue to be collected by county officers, or the county tax to be collected by the township collectors, are unconstitutional - This is a general law, and applies throughout the state, and the illustration of counsel in regard to the city collector of Chicago collecting taxes in Ottawa is inappropriate -

W H L Wallace
Counsel for defendant.

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Yuna Munson

vs

Saml. E. Minor

Points

Filed April 23 1889

L. Leland

clerk

W. H. Wallace

Counsel for deft in error

A. D. 1853. created said district number nine (9) in said town, and made it to embrace all of said section except the North East quarter of said section one (1) and said district number nine (9) remained in that condition until the semi-annual meeting of the trustees of said town in October A. D. 1858, after the school tax for that year had been assessed, and at said semi-annual meeting in October said Trustees set off the E $\frac{1}{2}$ of said section one (1) and attached the same to district number five (5) T 35 R. 4 - and that this was after the school tax for 1858 had been assessed in said district number five (5) - Affiants further state that they are school directors in and for said District number nine (9) and that they are informed and believe the fact to be that the school directors of said district number five (5) T 35, N. R. 4 E. on the 5th of April 1858 - drew from the township funds of said township No 35, N. R. 3, E. the sum of \$5,40. a part of which was drawn to pay for the schooling of said Munson's children who had attended school in said district No 5 during previous winter - and on the ground that they were inhabitants of said T 35, N. R. 3 - Affiants further state that they are informed & believe that said Munson avoided the payment of his school tax in said District No 9. for 1857 by representing to the collector that he would save him harmless in case he would not levy for the same and then when the tax was returned as delinquent, resisted judg

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ment, therefor on the ground that he had plenty of personal property out of which the tax might have been collected.

Subscribed & Sworn to Mahlon Dickerson
before me this 18th day Norman Smith
of January 1859.
P. Lindley Clerk

On Tuesday February 15th 1859, the same being one of the days of the February term of said Court, for said year, a further order was entered of record in said cause in the words and figures following, to wit;

William Munson }
vs } In Chancery
Samuel E. Miner }
It is ordered
by the Court that the default
heretofore entered herein be set aside and that
the defendant have leave to file his answer.
The defendant by W. H. L. Wallace his solicitor
moves the Court to dissolve the Injunction
issued in this case.

And afterwards, to wit; on the 16th day of July
AD 1859, the same being one of the days of the
said Term of said Court for said year, the
Plaintiff filed a replication to defendant's
answer herein in the words & figures following,
to wit: "

William Munson } LaSalle County Circuit
vs } Court February T 1859
Samuel E. Miner } Chancery
The replication of said

complainant to the answer of said defendant.

The repliant saving & reserving unto himself all and all manner of exception to the manifold insufficiencies of said answer for replication thereto says, that he will aver & prove that his said bill to be true certain & sufficient in law to be answered unto, and that said answer of said defendant is uncertain, untrue and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in said answer contained material to be replied unto confessed and avoided, traversed or denied is true, all which matter and things this repliant is ready to aver & prove as this Court shall direct as pray as he has before prayed.

J. Avery

Sol for Complt. "

And afterwards, to wit; on Monday February 21st 1854, the same being one of the days of the February Terms of said Court for said year, the following and final order was entered of record in this cause, in the words and figures following, to wit:

"William Minson

vs

Samuel E. Miner

In Chancery

This day came the plaintiff by Julius Avery his Solicitor, and the defendant by W. H. L. Wallace his Solicitor and after hearing the arguments of Counsel, it is ordered by the Court that the defendants motion to dissolve the injunction herein

be sustained. It is therefore considered by the Court that the Complainants will be dismissed and that the defendant have and recover of the complainant his costs and charges by him herein expended, and that he have execution therefor. "

And afterwards, to wit on the 26th day of February AD 1859, the Plaintiff filed his Bill of Exceptions in this cause, in the words and figures following, to wit:

"State of Illinois } and Circuit Court
LaSalle County } thereof to February
Term AD 1859.

William Mancos }
vs } Bill for Injunction
Samuel E. Kinder }

Be it remembered that on the trial of the above entitled cause, the Complainant admitted that at the time the tax complained of, in said Bill, was levied, that said S.E. 1/4 Sec 1. T 35, N. R. 3. E 3^d P.M. was a part of District No 9, of said township.

The following evidence was then introduced by the complainant.

1st A. certificate in the words & figures following, to wit:

We the undersigned Directors of District No 9, Township 35, Range 3 in the County of LaSalle and State of Illinois do hereby certify that said Board have estimated and required to be levied for the

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year 1858 the rate one $\frac{20}{100}$ Dollars on each one Hundred Dollars valuation of Taxable Property in said District for Paying Teachers & extending Term of School, and fifty cents for General school Purposes on each one Hundred Dollars valuation. Given under our hands this 26th day of June 1858

Mahten Dickerson

James Skitter 3 Duclos

John Carey 3

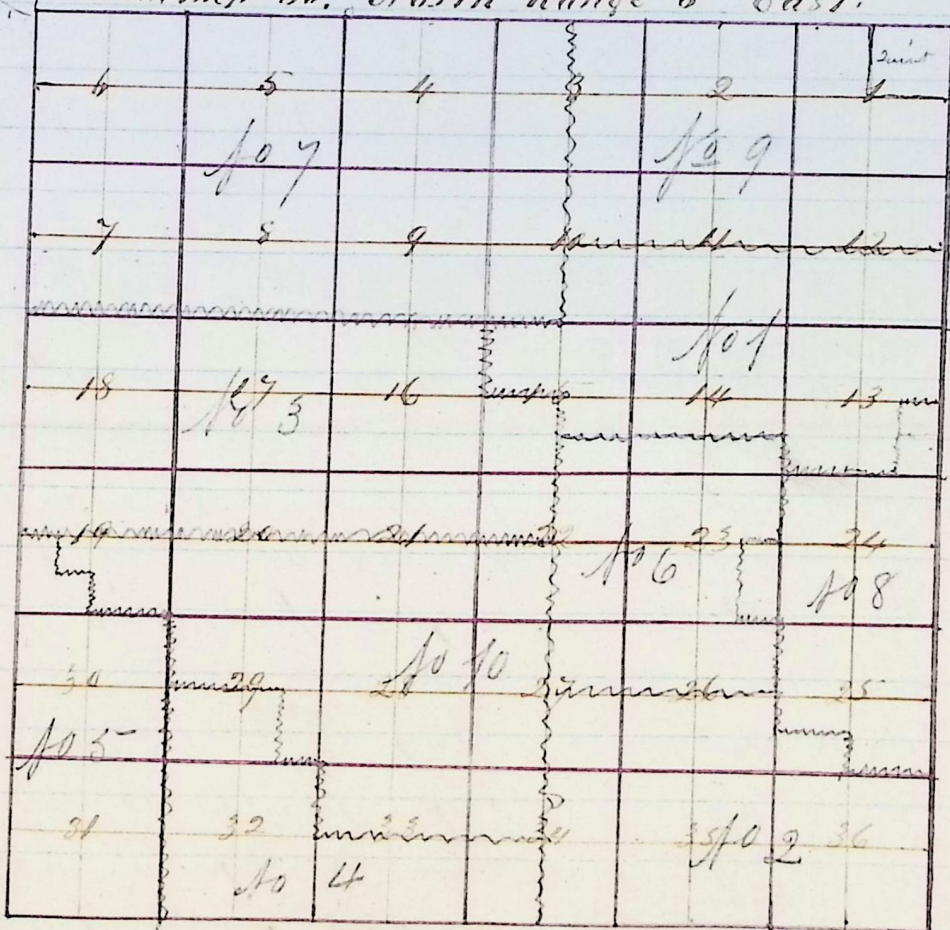
Names of Persons residing in District No 9.

Wm Patterson	Patrick Brown	John Carey
James Gindal	Wm Brown	Henry Barnes
Isaac Smith	Norman Bentley	Wm Mountain
Norman Smith	James Skitter	John Delong
Wm Moore	S. S. Lyons	A. P. Darns
Isak Fletcher	Mahten Dickerson	David S. Ducker

Filed July 4 1858. P. Lindley Clerk

2. A. Map as follows

Township 35. North Range 3 East.



24 30

That said map was the only one on file in the office of the County Clerk showing in what lands to carry out the tax mentioned in said certificate, which was all the evidence introduced.

And thereupon the Court rendered a decree herein dissolving said injunction to which said rendering of the Court the Complainant then and there excepted, and prays that this bill of exceptions be signed & sealed, which is accordingly done.

M. C. Hollister (Seal)
Judge

State of Illinois, Supreme Court
Hottel, 3d Division, April Term
AD 1859

William Munson {

as

Samuel E. Miner } and now comes
said Plaintiff by Stacy his atty
and says that in record in this case
there is manifest error in this

us

~~The error assigned are~~

1st Dissolving the injunction
and dismissing the bill

2^d Refusing to decree a
perpetual injunction

I have
complied herewith

And the defendant in error by Wallace
his counsel comes and pins in error
& says there is no such error in
said record as is above assigned.

W. H. Wallace,
for defendant in error

William Keenan

Samuel E. Keenan

Recd

Filed April 16. 1859

L. Leland

Clerk

Recd \$7.82 paid

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of LaSalle Greeting:

Because, In the record and proceedings, as also in the rendition of
the judgment of a plea which was in the Circuit
Court of LaSalle County, before the Judge thereof, between
William Munson

plaintiff, and Samuel E. Minor

defendant, it is said mani-
fest error hath intervened, to the injury of the aforesaid William
Munson

as we are informed
by his complaint, and we being willing that error should be
corrected, if any there be, in due form and manner, and that justice be done
to the parties aforesaid, command you that if judgment thereof be given,
you distinctly and openly, without delay, send to our Justices of the Su-
preme Court the record and proceedings of the plaint aforesaid, with
all things touching the same, under your seal, so that we may have the
same before our Justices aforesaid at Ottawa, in the County of La
Salle, on the first Tuesday after the third Monday in April next, that
the record and proceedings, being inspected, we may cause to be done therein,
to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief
Justice of our said Court, and the Seal
thereof, at Ottawa, this 4th day of
April in the Year of Our Lord
one thousand eight hundred and fifty-nine
S. Deland

Clerk of the Supreme Court.
by J. R. Rice Deputy

William Minson

or

Samuel B. Minor

Went of Error

Filed April 5, 1859

L. Leland
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of La Salle Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of La Salle County, before the Judge thereof, between William Munson

plaintiff, and Samuel E. Minor

defendant, it is said that manifest error hath intervened, to the injury of the said

William Munson

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa; before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Samuel E. Minor

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Samuel E. Minor

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this 5th day of April in the
Year of Our Lord One Thousand Eight Hundred
and Fifty-nine.

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

William¹⁴⁷ Munson
or

Samuel E. Minors
seifa

Served by sending to the
within named Samuel E
Miner this 7th day of April
1857

F Warner Skiff
Per W B Hall Nry

300-4, 121, 60

1 mill, $\frac{5}{65}$

Filed April 16, 1857
L. Deland
Clerk

State of Illinois
Supreme Court
Third Grand Division

April Term
1883

William Munson Jeffin Error
vs
Samuel E. Minor Jeffin Error

Error &
Lodall

Clerk will issue
serfa as above
J. A. [unclear]
[unclear]

William Munson
vs

Samuel E. Minor

Receipt

Filed April 5: 1858
L. Leland Clerk

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

Error to La Salle County.

WILLIAM MUNSON vs. SAMUEL E. MINOR.

BRIEF.

1st. School Directors have no power to levy a tax "for paying teachers and extending terms of schools, and for general school purposes," without submitting such tax to the voters of the District.—Beverly, *et. al. vs. Sabin, et. al.*, 20 Ill., 357. Scates & Blackwell's Statute, page 445, sec. 44. (Session Laws, 1857, page 274, sec. 44.)

It is insisted by the defendant that, by the proviso of the 48 sec. of the above law, it is only necessary to submit a "tax for building a school house and extending term of schools beyond six months" to the voters of the District.

If such a construction should be given to the law, then the Directors would have an unlimited power to levy a tax for paying teachers, purchasing libraries, and all other matters necessary to carry on our school system. The whole purview of the law shows that such was not the intention of the legislature. "The law, when taken together, clearly indicates the legislative intention that no tax should be levied except in obedience to a vote of the people."

The certificate of levy and objects of the tax are the same as the said 44th sec. provides shall be submitted to a popular vote.

The opinion of the Court in the case of Beverly *vs.* Sabin is based upon the proviso of the 44th sec., and no mention is made of the proviso in the 48th sec.

2d. It is necessary that a map of the School Districts should be certified by the Clerk and President of the Board of Trustees, and filed and recorded in the County Clerk's office.—Scates & B's. Statute, page 440, sec. 33.

A paper without such certificate, and made in pencil mark, is no map, and confers no authority on the County Clerk to carry out the tax.

In levying a tax the forms and provisions of the law should be *strictly* followed.

3d. Sec. 5, art. 9 of the Constitution provides that "the corporate authorities of counties, townships, school districts, &c., may be vested with power to assess and collect taxes."

The power to assess and collect must be exclusive in each corporation. Then the legislature cannot confer upon the township collector the power to collect a district tax. Townships and school districts are separate corporations as much so as the cities of Chicago and Ottawa, and the legislature might empower the collector of Chicago to collect the taxes of Ottawa, or the city council of the one to assess the taxes of the other, under the same power that they make the town collector collect a district. *tax*

JULIUS AVERY, Comp'nts Solic'r.

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SUPREME COURT.

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WILLIAM MUNSON

VS.

SAMUEL E. MINOR.

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BRIEF.

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FILED MARCH 28, 1859.

J. LELAND, *Clerk.*

JULIUS AVERY, *Plff's Sol.*

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