

12152

No. _____

Supreme Court of Illinois

People, ex. rel.

vs.

Wilson

71641  7

6
People ex. rel. vs.
R. S. Wilson

6 R.D.

12152

1854

United States of America
State of Illinois
County of Cook

SS:

Plas before the Honorable
John M. Wilson Judge of the Cook County
Court of Common Plas within and for the
County of Cook and State of Illinois at
a Regular term of said Cook County Court
of Common Plas begun and Holden at
the Court House in the City of Chicago
in said County and State on the first
Monday being the sixth day of February
in the year of our Lord one thousand
eight Hundred and fifty four and of
the independence of the United States the
seventy eighth

Present The Honorable John M.
Wilson Judge

Daniel McShoy Prosecuting Attorney
Cyrus P. Bradley Sheriff

Attest Walter Kimball Clerk

Court opened by Proclamation—

Be it remembered that on the
second day of March one thousand eight
hundred and fifty four to which day
from day to day said court had regularly
been adjourned, some of the days of said
February Term of said court, certain
proceedings ~~were~~ had in said court in
a matter then pending in said

court nor had any intent of none in
the words and figures following viz -

" The People of the State }
of Illinois upon the rela- }
tion of William F. Burges }
vs }

Robert S. Wilson }

March 2^d 1854

In the matter of the application
of the said William F. Burges
to grant leave for to file an
information in the nature
of a quo warranto against
said Robert S. Wilson -

And now at this day come the said -
Burges on the in person and by his Attorney
John F. Farnsworth, and the said Robert S.
Wilson by his Attorneys Blackwell Hoynes &
Walker also comes, and this matter came on
to be heard and having been argued by counsel
was taken under advisement by the Court
and the Court being fully advised in the prem-
ises after mature deliberation has, refuse
to grant leave to the prosecuting Attorney of said
Court to exhibit to this Court an information
in the nature of a quo warranto, at the relation
of said William F. Burges to be therein mention-
ed as the Relator, against the said Robert S. Wilson
for usurping intruding into or unlawfully
holding or exercising the office mentioned in
the petition filed in this cause and overrule
said motion and deny the prayer of said petition
to which ruling & decision of the Court the
said William F. Burges takes exception -

It is therefore considered that the said Robert S. Wilson recover against the said William G. Purges his costs in this behalf expended and have execution therefor

And thereupon it is agreed by the parties that the bill of exceptions in this cause be settled signed and sealed by the judge of this court in vacation and filed as of the present term of this court, and have the same effect as if so now filed.

And the said William G. Purges may appeal from the decision of this court to the Supreme court of this State and it is granted unto him upon his filing within thirty days from this day his bond to the said Robert S. Wilson in the penal sum of three hundred dollars and with John F. Farnsworth as his surety therein conditioned that he will prosecute his appeal to effect and without delay, and in case the judgment of this court is affirmed upon dismissal or trial of said appeal shall pay all costs in the Supreme court and in this court in this cause.

And that Afterward and on the
twenty ninth day of March in the year
of our Lord one thousand eight hundred
and fifty four the said Relator filed in
the office of the clerk of said court ~~his~~
a certain bond in the said matter in
the words and figures following viz -

" In the Cook County Court of Common Pleas
The People of the State
of Illinois upon the
Relation of William G. Burges

vs

Robert S. Wilson

In the Matter of the applica-
tion of the said William G. Burges
for leave to file an information in
the nature of a quo Warrant
against said Robert S. Wilson
for intruding into the office of
Recorder of the City of Chicago -

Know all men by these Presents
that we William G. Burges as principal
and John F. Farnsworth as security are
held and firmly bound unto said Robert
S. Wilson in the penalty of three hundred
dollars for the payment of which well &
truly to be made unto the said Robert S. Wilson
his executors administrators & assigns we
do bind ourselves our heirs executors and
administrators jointly severally & firmly
by these presents signed sealed and dated
this 29th day of March A.D. 1854

The condition of this obligation is such that whereas in the above matter in the said court, on the ^{day of} March instant the said court then being in session the said application was refused, and the said Robert S. Wilson by the judgment & consideration of said court recovered against the said William J. Burges his costs by him in that behalf expended, from which decision the said Burges prayed an appeal to the supreme court which was granted unto him upon his filing bond within thirty days with a penalty & condition as by the court in that behalf provided—

Now therefore if the said Burges shall prosecute his suit to effect & without delay and shall pay all ~~costs~~ such costs as shall be awarded upon dismissal or trial of said appeal in the supreme court and all costs in this court in the said cause then the above bond to be void or otherwise to remain in full force

W. J. Burges Secd

J. H. Farnsworth Secd

which said bond is enclosed thus

People ex rel W. J. Burges vs R. S. Wilson
appeal bond. Filed 29th March 1854. W. Kimball

Clk

And that afterwards and on the 12th
day of June A.D. 1854 the said Relator
filed in the office of the Clerk of said court
his bill of exceptions in said cause in
the words & figures following viz -

In the Cook County Court
of Common Pleas
The People of the State of Illinois
upon the Relation of William T. Burgep
vs
Robert S. Wilson

} In the
matter of the application of
William T. Burgep for leave to
file an information in the
nature of a quo warranto
against said Robert S. Wilson -

Be it remembered that on the
seventh day of January A.D. 1854 came the
said Burgep one of in his own person and
filed with the Clerk of this court a Petition
and accompanying affidavit a copy of Notice
and proof of service of the original thereof and
security for costs in the words & figures following
that is to say -

To the Honorable the Cook County
Court of Common Pleas
In session at its February Term
A.D. 1854 -

State of Illinois }
County of Cook } P: Your petitioner William
T. Burgep of said State respectfully represents
unto this court that he desires to see and

proceeds as relates therein an information
in the nature of a quo warranto against
Robert S. Wilson of said county for usurping
intruding into and unlawfully holding
the office of judge of the Records court of the
city of Chicago under the title conferred upon
the incumbent of that office by the act es-
tablishing said court of the Records of the
city of Chicago and upon the annexed affi-
davit hereby made a part of this petition
asks this court to grant unto the proseu-
ting Attorney of this court leave to file upon
the relation of your petitioner such in-
formation unless cause to the contrary be
shown according to law

W. J. Burges -

"State of Illinois }
County of Cook } p. William J. Burges
being duly sworn doth upon his informa-
tion and belief depose and say that under
and by virtue of an act entitled an act
to establish the records court of the city
of Chicago, approved February 12th A.D. 1853
an election was held in said city on the first
Tuesday of March 1853 for a judge of said
court in pursuance of the first section of
said act, That at such election Robert S.
Wilson was elected judge of said court and es-
turned; That the said Robert S. Wilson has
since received his commission from the
Governor of this State as such judge of said
court under the title and style given the
person holding that office in & by the second
section of said act of the Records of the city

of Chicago and has taken the oath required by law before entering upon the discharge of the duties thereof: That The said Robert S. Wilson has not at the time of such election resided five years next preceding such his election to said office in this State.

And this deponent further states that the said Robert S. Wilson has entered upon the discharge of the duties of said office and is now acting therein, and at the terms of said court held under said act has presided as judge of said court without lawful right and authority so to do under the laws and constitution of this State by reason of his not having been a resident of this State five years at & next preceding such his election as aforesaid.

Subscribed & sworn to before W. G. Burgess -
on this 7th day of January
A.D. 1854. Walter Kimball

Clark Cook ex. et. of Comm Phas "
to Robert S. Wilson Esq.

Sir Take notice that on the sixth day of February next or as soon thereafter as counsel can be heard a motion will be made in the Cook County Court of Common Pleas then to be in session, upon affidavit & Petition a copy of which are herewith served upon you for a rule against you to show cause why leave should not be granted to the prosecuting Attorney of the said court to file as prayed for an information in the nature of a quo warranto

upon the relation of William Y. Burges against
you to show by what authority you
claim to have use and enjoy the
office therein mentioned of Recorder of
the city of Chicago and the liberties privi-
leges and franchises therunto belonging-
Dated Chicago Jan'y 7. 1854

W. Y. Burges pro se

State of Illinois
County of Cook Sp. William Y. Burges
of said county being duly sworn doth depose
say that he did on the 7th day of January
Instant personally serve upon Robert
S. Wilson a notice of which the above is
a copy, and at the same time deliver
him copies of the annexed petition &
affidavit - W. Y. Burges

Subscribed & sworn to before
me this 7th day of January
1854 W. Kimball Clerk

Cook Co. Ct. Com. Pleas -

In the Cook County Court of Common Pleas.
I do hereby enter myself security
for costs in this cause and acknowledge
myself bound to pay or cause to be paid all
costs that may accrue therein either to the
opposite party or to any of the officers of
this court under the laws of this State -
Dated Jan'y 7. 1854 William Y. Barron
Att'y

And that afterwards on the
seventh day of February 1854 being one of
the days of the present term of this court
an order was made by the court and

The Sup^{ts} of the State of
Illinois upon the Relation
of William Y. Burges
Due Warrant -
Robert S. Wilson

contents of Record in this matter in the words and figures following viz -

The People de et al
William G. Burges

vs
Robert S. Wilson

This day comes the said Relator in his own person, and the said Defendant by Frank Hogue & Blackwell his Attorneys also come, and on reading & filing the petition notice and proof of service in this cause it is ordered that the defendant show cause, by Thursday next why leave should not be granted to file the information prayed for in said Petition -

And that afterwards and on the day of February 1854 being one of the days of the present term of this court this matter was brought on for argument, and there upon at the request of said Robert S. Wilson the said William G. Burges was sworn & made the following affidavit -

"In the Cook county Court of Common Pleas
The People of the State of
Illinois et al Wm G. Burges

vs
Robert S. Wilson

State of Illinois

County of Cook Sp: William G. Burges

above named upon the application of said Defendant, being duly sworn do then depose and say that at and before the time of

} motion for leave
to file information

giving the notice for hearing this motion
this deponent was returned in causes
then pending in the Recorder's court of
the city of Chicago, and that he is now
employed & returned in such causes
that he has now no recollection of making
any motion in said court in said
causes that is in open court before the
judge thereof - that he has himself
had no personal difficulties with the said
Robert S. Wilson and that he is now
a practising lawyer in the city of Chicago,
that he was not at the election of said
Recorder a resident of said city nor a
tax payer therein - And upon his own
behalf further says that about the ~~month~~
middle of October last he broke up his
business in Belvidere and removed the
same to Chicago that he considers him-
self a resident of the city of Chicago that
his family are temporarily remaining
at Belvidere until he can make suit-
able arrangements for them to live in
Chicago - That though in Belvidere on the
last general election day he refused to vote
there saying that he was a citizen of Chicago
and had no right to vote there at Belvidere
That he has been a practising lawyer
in this State for eleven years and upwards
part of the time in Chicago & part at
Belvidere Boone county - and that with
the exception of about two years he has
been a resident of this State since 1836
subscribed & sworn to before

me this Tenth day of } W. J. Burges
February. A.D. 1854 }
matter of John F. Hamsworth

And John F. Hamsworth of counsel
for the Relator was also at the request of said
Robert S. Wilson sworn and made deposed
in answer to questions propounded to him by
said Wilson's counsel that he was the law
Partner of the Relator in Chicago that he
had had an office in Chicago since au-
gust last - that his family still resided in
the county of Kane - That he had never
had any personal difficulty with the
said Wilson That the said Recorder had
rendered a judgment against him upon
Scire. on a recognizance of bail as he
thought wrongfully and that in his opinion
the said Wilson was not competent to perform
the duties of the office of Judge of the Recorder's
court.

And Daniel McShoy the prosecu-
ting Attorney for the county of Cook & for the
circuit court & for the Cook county court
of common Pleas. was present upon the
hearing of this motion and opposed the
granting of the same as asked by said
Relator



And then upon the case was fully argued by Burges & Farnsworth for the Relator & Henry Blackwell & Walker for the defendant, and taken under advisement by the court until the second day of March 1854 one of the days of the present term of this court when the court denied the motion and petition of said Burges in this matter and refused to grant leave to the prosecuting attorney of this court to file an information in the nature of quo warrants upon the relation of said Burges against said Robert S. Wilson for usurping intruding into or unlawfully holding or exercising the office in said petition mentioned and rendered a judgment against the said Burges in favour of the

said Wilson for the costs in this matter -
to which decisions of the court the said
Burgess excepts and prays that this his
bill of exceptions may be now here in
open court and during the February
Term of this court A.D. 1854 be signed
and sealed by the judge thereof pursuant
to the statute in such case made and
provided and it is done accordingly
this tenth day of June A.D. 1854 -
signed in vacation as of said term by
agreement of parties
John M. Wilson *(seal)*

State of Illinois }
County of Cook } P. J. Walter Kimball Clerk
of the ~~County~~ Cook County Court of Common
Pleas in & for said County do hereby certify
that the foregoing is a full true perfect &
complete transcript & copy of the Record
proceedings & judgment in a certain
case pending lately in said Court wherein
The People of the State of Illinois upon
the relation of William G. Burgess were
plaintiffs and Robert S. Wilson Defendant
in the matter of the application of said
Burgess to grant leave to file an informa-
tion in the nature of a quo warranto
against said Robert S. Wilson and of

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the whole thereof as the same now remain
of Record in my office—

In testimony whereof I have
hereunto set my hand and
affixed the seal of said Court
at my office in Chicago this
12th day of June A.D. 1854
Walter Kimball Clerk

Fees Transcript & Certificate \$3.50
Paid by W. S. Burgess.

W. Kimball Clerk

In the supreme court.

of June Term AD 1854

The People of the State of
Illinois upon the Relation
of William T. Burges App^{ee}

vs
Robert S. Wilson App^{ellu} } Appeal from
Cook Coun. Plas

And now comes the said Burges
as well on behalf of himself as of said people
and says that in the said Pleas and
proceedings aforesaid, and also in giving
the judgment aforesaid there is mani-
fest error in this that

That the said Cook county
court of common Pleas should have
granted ~~unto~~ the leave to file an
information as prayed for in said
Petition

and that the said court erred
in refusing leave to file said ~~Petition~~
information upon the relation of
said William T. Burges. against
said Robert S. Wilson in the nature of
a quo warranto, to show by what
warrant and authority he used ~~ex-~~
said and enjoyed the said office
of Recorder of the City of Chicago and
privileges and franchises thereto
belonging and appertaining & in
rendering a judgment against said
William T. Burges in favour of
said Wilson for costs of suit

And also there is error in this that
the judgment aforesaid by the Record
aforesaid appears to have been given for the
said Robert S. Wilson against the
said William Y. Purgip, whereas by
the law of the land the said judgment
ought to have been given against the
said Robert S. Wilson - & on behalf of the
People of the State of Illinois as of himself

— And the said William Y. Purgip
prays that the judgment aforesaid
for the errors aforesaid, and for errors
other errors in the said record and
proceedings being may be reversed
annulled and altogether holden for
nought, and that he may be restored
to all things which he hath lost by
accasion of the said judgment -
and the said Cook County Court of
Common Pleas direct to allow
such information as aforesaid to be
filed and thereupon proceed further
according to law do

W. Y. Purgip

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1854

The People were

W. L. Burroughs -

vs

Robert S. Wilson

Transcript

—

Filed June 13, 1854.

L. S. C. Leland Clerk.

Prepared

James Worth Burroughs

per R. L. P.

Cook Com. Phas
People ex nt Burges

vs
Robert S. Wilson

} Relators Brief-

The first question that offers itself
is ~~the~~ upon what court & in what man-
ner are the rights of the Parties in
this matter to be inquired into & decided.

As to the court no exception seems
to be taken to that in which in which
the application is made.

Thus that leaves only the question
of manner to be disposed of and that
involves the proper question construction
of Chapter P. S. 900 Warrants -

Take this act by itself and its
language needs no construction, it applies
to every person, and to every officer or
franchise held or used under the
laws or constitution of this State -

The right to try by this mode of proceeding
the warrant or authority of the Sheriff
does not hold the office he holds is clear
that the manner of enforcing that
right -

And in contrast it is the only
mode of trying the right - and enforcing
the remedy by ouster. Supposing the party
is indicted & convicted, judgment of ouster
does not follow. The party may still con-
tinue to hold. He can a fine of \$200
plus ~~from the~~ ~~from the~~

And admitting that the party

was another remedy does that
deprive him of this -

Then the manner of enforcing that right
let the person by whom to

Any person or persons is the
language of the statute - not confined
to parties in interest, to parties incidentally
to taxpayers - but generally and
as fully as any person may go
before a grand jury & complain
of any public wrong -

Neither is it confined to the
Atty Genl or State Atty to do it
ex officio -

At common law & in
those states where the statute
of Anne is ^{not} in force, or a
similar one, it is necessary
that it should be done ^{ex officio} as
to corporations & intrusions into
Public offices, ~~ex officio~~ not mentioned in that Act.

10 Mass. 299. 500 232 -
5 Ohio 150 -

But in those states ^{even} where individuals
^{many of the authorities go to show that}
usurp - Infor ^{is} may be filed ex rel.

10 Mass. 299 & 305 & 6 - 3 Dallas
Rep. 112 - 5 Ohio. 150 (top page)

The only case to be found where any
application was required to be made ^{in the first instance} to
the State Atty is 5 Ohio 223, but
that is based upon the ruling in same
book 150. & is said to be a reasonable
rule which that court had adopted for its
own Government ~~and~~

Again what is meant by this
tenor ex officio -

I take it that it means
 the actual signing of the information by
 the State Atty. - what does the court
 mean in 2 Dallas 112. when they
 say pro forma he must allow his name to be
 used. not that he shall sign it himself -
~~Other~~ Another case 10 Mass. 298. by Sewall J. + 299
 by Parsons & J.

when it is held that the recital of ex officio
 is mere surplusage.

It must be that in other cases
 the relator himself signs the name
 of the State Atty. - but in ex officio info
 he signs it himself - and having signed it
 himself. the recital ^{of the relator} is mere surplusage.

Then in the case of cited in 15
 Serg. & Rawls, 130 from cas. Temp. Harb. 247
 it is said "The court, indeed have themselves
 made this distinction, to grant informations
 for public usurpations, but if it is only
 of a private franchise, not concerning the
 "Public Government", as a fair rule the
 court has sometimes refused them, & directed
 an application to the Attorney General."

And in Rex vs Hoag 2 B & A 344 cited
 in Col on Dec. Har. 126, "this appⁿ is made to
 enforce a general act of parliament, which intrudes
 all the corporations in the Kingdom and
 therefore it is no objection that the party applying
 is not a member of the corporation."

Again in 1 Strange 300. It is said that
informations have ^{been} constantly ~~been~~ granted
when any new jurisdiction or a public
trust is exercised without authority -

Now in these cases it is nowhere
laid down that before the court will grant
~~but~~ that the party, must show himself to
have some individual, local, or pecuniary
interest in the question - It is sufficient
that it concerns the administration of
Public Justice -

Now all those cases which the
counsel for the defences have cited will be
found on an examination to have laid
down rules calculated to prevent persons
in the enjoyment or use of private rights
or franchises being troubled by men ~~strangers~~
having no priority & no interest -

An officer the salary of which
is payable out of the state treasury & which
concerns the administration of public
justice every person is interested in -
and to cite as rules against granting the
^{information} cases about the petty rights of corporation
officers does seem to me to be a perversion
of law - and when as in several instances
when these corporation officers concern
the administration of public justice the
information seems to have gone almost
as a matter of course
2 Strange

Again unless an officer which concerns the administration of public justice is an officer under such a corporation as is mentioned in that Act no information ex relatio, but a grand warrant, or information ex officio lay against a ~~public officer~~ -

That is the common law. ^{that} is to be presumed the law of all the ^{states} ~~States~~ unless allusion is made to that Statute as being in force, or a similar one.

Now what was the object of our legislation in passing our Statute it is evidently broader & more comprehensive in its terms than the Statute of Anne. ~~Did~~ Did the not intend to bring all officers in this State open to the scrutiny of every individual. The Supreme such & very much alarmed lest dignities should be abused, and made to answer to any other than another dignity, but that is not the theory of our law. The People are the highest dignities, they confer all authority and as such they each of them has the right to inquire into the tenure of those holding offices at their gift - and here Infr to 10 Mass 306 -

The counsel on the other side say that the decision of the court on this application is not the subject of an Appeal and we say that in a doubtful case the court will not decide upon the merits in this summary manner - and for that very reason if no other.

Rex vs. Sir John Carter - Cooper 59 - the court says. The objections turn singly upon a point of doubtful law, whether or "It may be a question which in its consequences may more or less affect the right of all the corporations in the Kingdom. Therefore all these grounds operate conclusively to make the rule absolute -

so in this case all the judges who are elected under that clause of the constitution about courts in cities, may be affected by the decision of this question -

King vs. Mair 3 T.R. 599 - "all that we are to look to is that a fair doubt is raised, and that the parties applying come with clean hands & in proper time."

In this case he was a corporation officer but whose office was that of a public peace officer -

King vs. Goswin Douglas 399 -

was a case arising out of a construction of a statute, & the court says "But there has been no case on the construction of this act, and the court cannot in a

7
Summary may decide whether ~~to~~ and
the rule has made absolute.

Here ~~the~~ construction of this clause
of the constitution is ^{asked} in a case
where the facts ~~prove~~ show that
it is necessary - ~~and~~ ^{never none} has ever
been given to it.

Rex vs Latham, 3 Bur. 1486 -

Lord Mansfield says - Therefore as it does
not appear whether the Court at which the
defendants were tried was a competent one
or not "an information must go upon
this ground alone, unless an acquiescence"
The next page he says it is "For usurping
the office upon the crown"

King vs Harcourt 2 East 180 -

The facts in this case 178. were all
stated on information & belief - & the Court
say ^{yet} as no answer had been given to
it ^{that the facts alleged a new ~~jurisdiction~~} by the defendant, who had had an
opportunity of denying it if the infor-
mation were untrue, &c. they put it
in course of inquiry ^{applications}

In these ^{applications} the states of facts must
concur, illegibility & use - & both
must appear from the affidavits - &
one as much as the other - now here
we state ^{facts upon which we base} illegibility upon belief -
it is not denied nor put in issue
in fact is admitted by the counsel
that R. S. Wilson has not been a
resident of this State for years

An argument that "authority is given expressly to the Atty Genl & to the circuit judges to institute these proceedings and expressly to exclude all others an exclusion" means too much because under this statute they have got to have a relator who is willing to prosecute - now unless he gets a relator a person ^{who will be} responsible for costs ^{for the people pay nothing} upon whose relation he says in fits & starts he cannot proceed under this statute -

The cases of 1 Mc Cord 35. Cherry vs St & 25 What. 291. Wallace vs Anderson only show what is considered that this prosecution must be carried on in the name of the People State or Commonwealth

We contend that our legislature having provided by law the manner of testing the rights to all offices & franchises in this state, that the common law mode is supererogatory, ~~that~~ and for one reason if no other that in informations ex officio no person is liable for costs - but by requiring a relator in all cases. & the court having the power to require that relator to give costs. that objection and it was a serious one to the common law proceeding is obviated

upon this point see 1 Halsb Phos of Crown 363 sect. 13. the construction of 4 & 5 Will Mary c. 18. on page 358 of same book

Now give our statute the same construction & if it effectually prevents the State & Attorney filing suits unless upon relation of someone

The words may & shall be lawful when
used in connection with the adminis-
tration of public justice are impropria-
5 tions

We come now to the main question in the case ~~is~~ the defendant eligible under the constitution laws of this state for the office of Judge of the Recorder's court of the city of Chicago - at the time of his election - and this involves the solution of the phrase used in Sect. 11. Art. 5. of the constitution of "Judge of any court." And it would seem to an ordinary mind not given to sophistry and subtleties, that it admits of but one meaning and within that includes the present incumbent of the Recorder's court of the city of Chicago - Take the words in their usual ordinary acceptation and there is no doubt and no room for it - But as usual no words are exempt from ambiguity, where it is sought to be evaded - and by starting from some point remote from the matter under controversy and begging the admission of certain premises of little or no connection with the subject under discussion, when we get to the real point we find ourselves involved in mist and doubt. created more by the very long & tedious verbiage we have passed through than by any thing else -

Who is Recorder Wilson? He is judge of the Recorder's court of the city of Chicago, which is that court? in this state? Then he is a judge of a court of this state, and is within the 11th sect. of Art. 5. of the constitution. Is the natural conclusion - and is it? But the defense think that is too summary a way to dispose of the question, they give us a long disquisition

about the constitution as a limitation & not a grant of powers to the legislature, and that a great many persons in the exercise of the functions of other officers are or may be called judges ~~as at~~ ^{as here} for the time being and a great many places that may be called courts, and then come to the conclusion that this phrase that every person thought was as plain before is not so plain after all, but it needs construction too -

In construing this part of the constitution we claim that words should be taken in their ordinary usual acceptation, & meaning - and ^{that} that should always prevail, unless results follow from it clearly not according to the will or intention of the parties - and that the present constitution being adopted in place of a former one, wherein changes have been made they should be followed in the plain intent & meaning of such changes & not limited or restricted so as not to carry out the obvious intent of such ~~change~~ ^{changes} ~~thereof~~ -

How was the old constitution - It left every thing except the mere fact of a supreme court entirely to the legislature, ~~the~~ The inferior courts were entirely the creations of the legislature - their powers, term of office & qualifications ~~not entirely~~ regulated by it - How do we find it in the present - Can the legislature establish any & all courts inferior to the supreme, no, then is a change. The judicial power of

3
The state is by the constitution vested in our
supreme court, & in circuit courts, in
county courts, in justices of the peace and
when the legislature shall deem proper, in
inferior local courts of civil & criminal jurisdic-
^{tion}
in cities -

As under the old constitution the legis-
lature could establish but one supreme court
so under the present they can establish but
the class of courts mentioned in it - they can
vest the judicial power nowhere else but as
therein provided, and if they establish, city
courts, they do it under that clause of the
constitution which ~~also~~ authorizes it -

Thus there are all constitutional courts - provided
for by the constitution & we have no other courts in
this state, the legislature are expressly forbidden
to vest the judicial power anywhere else, and
if they undertook to do it, it would be entirely
negatory & void -

Again in the old constitution no restric-
tion was imposed upon the legislature as to the
powers to be conferred upon the inferior courts -
in the present, the circuit courts have their
powers defined Sec. 8. the county courts theirs S. 8 18 &
19 - & the city courts theirs in sect. 1 - & 24 -

In the old the term of office was indef-
inite, ^{during good behavior} in this they are restricted - ^{for a term of years} the manner
of election or appointment was by the general
assembly in this by the people - in that no
salary of the circuit or supreme court in this
it is either at so much per year

In that no qualifications of any kind
are required, in this a section is devoted
particularly to that purpose - and the question
now is, shall the courts by means of strained
construction throw a doubt upon a clause
of the constitution and take out of it a class
of officers who are evidently within the
design and intent of the constitution and
in doing so violate the plain & obvious
meaning of the language used -

Suppose now that no other change than
this sect. 11. had been made in the consti-
tution, how would it have been applied -
it would have been held applicable to every "judge
of a court," when established by the legislature.
The legislature might have gone on and created
courts, & created judges thereof - but they must
have had the qualifications prescribed by that
section or they would have been ineligible to their
offices - What ~~at~~ difference can it make
then that there is one class of courts which
the constitution allows the legislature to create
organize when they see fit, it is no more
than the power they had under the old consti-
tution - as to all inferior courts - Call the
constitution a limitation if you will on
the power of the legislature, but then have it so
do not by ~~so~~ ^{too} many words & much argu-
ment about a thing that nobody disputes -
attempt to take away some that limitation

The Supreme court of this state has decided
I give the counsel's own words for it - the Recorder's
Court of the city of Chicago, to have been established
under the powers contained in the 1st section -
and to be that the act establishing it is a pattern
to be followed in the establishment of courts
in other cities - Then have on the point
submitted that it is a constitutional court, and
not a statutory or dependent upon the legisla-
ture, It is framed under the constitution in
pursuance of a power therein contained -

It is true that the term of office and the salary of
the judge are not given but does that take
away the its character as a constitutional court -
Because the legislature can say what salary they
will give, & how long for what term he shall be elected
is the incumbent above the constitutional require-
ments in other respects -

What then shall we say is meant by
the phrase judge of any court of this state in
our present constitution - in ordinary com-
mon use of language - or if your phrase as
used by the legal fraternity - or in the law
books - It is one who presides in a
place where justice is administered, at regular
statute terms, or terms, & who while so doing
presides over a clerk a sheriff jury men or other
messengers adjuncts, to such administration -
Is there any difficulty in applying or rather
is it not just the term to apply to the Superi-
or court in this case where presiding in the
Recorder's court of the city of Chicago - why he

he is one of the best daily thought in the public newspapers, in the act establishing the court & any other else called a judge of a court - and had it not have been for the unfortunate misnomer by the legislature of calling him a recorder he never would have been elected -

Again all courts

But by what process of reasoning do the defence come to the conclusion that he is not a judge of a court - why say they the word judge has a great many meanings - includes many & different offices - and the word court has the same - and by combining the different meanings of both both words they insist there is a great ambiguity in the expression judge of any court - Now further judges, or inspectors of elections - or justices of the peace or senators, or mayors whatever functions they may perform are all called judges of any court - They may be so in fact. but are never called so -

Now in seeking to extend this by construction to any of that class of officers - persons who in their offices were judges in fact but not so usually called the argument of the defence would be appropriate, and that was what was sought to be done in 3 years.

The case in 3 quotes so much relies
on by the defense cuts but a small figure
here. The attempt there was to extend
by implication to an officer who was
not usually so called, but some of whose
duties were that of a judge, a clause of
the constitution where the word judge was
used in connection with secretary & treasur-
er, without saying of what and also
including in it by name Registrar of
wills & some others who were ex officio
judges & presided as such in a court and
not including by name the officer held
by the defendant in that case though
then in existence at the adoption of
the constitution, and the court in con-
struing the word judge, say they were at
first inclined to apply it to all who
held judicial offices - but in giving their
decision & controlling & limiting its signi-
fication within narrower limits they
allude to the character of the disqualifi-
cation, the fact that the legislature has
it in their power to include other
offices if they saw fit, & to the fact that
the word following secretary & treasurer
could only mean state officers & not merely petty cor-
poration, & therefore the word judge must have
a limited construction, that as at the
adoption of by the constitution & the laws then
existing & in ~~common~~ common parlance
the word judge was applied particularly

There has been so great a change in the condition of this State since the first to the adoption of the second or present constitution that the requirements of the 11th section are just and reasonable & so far from seeking to exempt officers from its ~~reach~~ ^{scope} them - the courts should extend them to all persons who are within the intent & meaning of it -

It is reasonable that they should be applied to all persons residing in courts established in the State whether under the constitution or by the legislature if it has any such power - The first that of citizenship, no man can object. The second residence for five years in the State, is proper that the party may become acquainted with the laws & customs of the State & the practice of our courts - and the third that in his immediate locality he may be generally known -

to certain officers amounting to ninety
in the whole, that the department was
not usually so called, they held its meaning
to be applied to those officers and not to
the officer the department in that case
held.

5 corr 192 } consist of may or shall
 4 Gil 24 } in cases where public
 2 Saltb 60 9 } justice is concerned -
 3 Hill 614 & 615 & cases cited there -
 9 Bac At. 239 -

The property they above have is
 granted must fit the infir-
 mation -

The constitution having prescribed the qualifications of
 constituting eligibility to office the legislature cannot
 intrude. 3 corr. 703 -

6

People up at

at

Robert S. Midea

Pring &

for relation -

Supreme Court.

Robert S. Wilson

a dz -

The People of the State
of Illinois - ^{vs} the
Relation of W. S. Burges

State of Illinois
Cook County vs. Robert S. Wilson
The Defendant in the above
entitled cause being duly sworn
says that this suit was commenced
and is prosecuted as complaint merely
believed for sale & only purpose of
harassment & putting him to unnecessary
trouble & expense without the
least hope or expectation of
success on the part of the Relation
and complaint further says that
upon the hearing of this case before
Hon. J. M. Wilson Judge of the
Cook County Court of Common Pleas
Messrs. Wayne Blackwell Frank
Walker Atty. &c. volunteered
their services in behalf of complaint
that he has believed that
to defend the same in the
Supreme Court. That said

Blackwell told deponent that he would attend to the same at the present Term of this court. That he has several times since the commencement of the present session informed deponent that he had solicited one Hamworth who is the Partner of the Relator and who appeared as counsel for Relator before Judge J. M. Wilson to take up this case. That said Hamworth had refused to do so saying the Relator would attend to it. That the next day after the death of Mr. Collins said Blackwell told deponent that his family insisted upon leaving Chicago in consequence of the prevalence of the Cholera in said City of Chicago and that this case would be continued until next Term of this court. That in consequence of such information from said Blackwell deponent has made no preparation for the argument of this case at this Term of court. That upon the hearing before Judge Wilson Mr. Blackwell prepared the Brief & made the

principal argument upon
the merits of the case and defendant
relied upon him to do the same
before the Supreme Court that
said Blackwell has the Priest
papers in his case, (he is dying)
to be used upon the argument
but this Court will hear which
defendant or other counsel cannot
safely proceed to the argument
of the same. That said
Blackwell has left this State
and defendant cannot now
ascertain where he is, that
said Blackwell's office is closed
and defendant cannot procure
said papers or ascertain where
they now are. That defendant was
informed a few days since by
Miss Hoyle & think that this
case away continued since which
time defendant has rested sat-
isfied that nothing further would
be done in the case at the pres-
ent Term of this Court.

Sworn before me this 19th

day of July A.D. 1832.

O. W. Tull

Notary Public.

R. S. Nelson

People ex al. Burgo
vs.

R. C. Wilson

Off. dicit-

Filed Jul 20th 1834.
J. Leland Clk.
By P. M. Leland Jy.

People ex rel. Burgess.

Robert S. Wilson

} Mo. for leave to file info in nature of
a Duo warrants.

(1) Judge Wilson was, at the time of his election and qualification, eligible to the office of recorder of the City of Chicago

Art 5 sec 11 does not disqualify him

The words "Judge of any Court of this State" is used in a limited sense and that limitation excludes the Recorder.

A Court is defined to be a place where justice is judicially administered 3 Bl Com 23.

Some are Courts of record and ^{others} not of record.

Some are superior and others inferior Courts

Some are of general others of special jurisdiction

Some exercise appellate, others original jurisdiction

Some exercise exclusive, others concurrent jurisdiction

Some are Constitutional others Statute Courts

Some proceed according to the Course of the Common Law
others in a summary manner.

Some exercise jurisdiction all over the State, others are purely local

The term "Court" as used in the Constitution is broad enough to embrace all of the courts above enumerated and yet it is obvious that the word is used in a more limited sense.

Where is line of demarcation to be found?

Again the Technical definition of a judge is "A person whose office it is, to administer justice, in Courts held for that purpose."

"A public officer authorized by law to hear and determine causes."

"One who presides in a court of justice, and administers the law"

"One who expounds the law and applies it to the facts of a particular case."

Courts and judges are inseparable. Wherever there is a judge, there is a court, and vice versa.

The "judicial power" of a state, is that power which examines the truth of the fact, determines the law arising upon that fact, and if a violation of the law appears applies a legal remedy in favor of the injured party. 3 Bl Com 25.

It may be laid down as a general rule that whenever power is conferred by law upon a person to hear and determine any matter according to the facts and the law that person is *quo ad hoc* a judge, and the place where he sits is *quo ad hoc* a court.

Jurors are judges - always of the fact - and in Criminal Cases of law and fact.

U. Const. A 13. Sec 24.

Inspection of elections are judges

Dunkin v. Waldron 11 John R 114.

Justices of the peace are judges.

3 Bates 300.

The Senate in the trial of impeachments are judges

Art 3 sec 27.

The Mayor of a city in punishing violations of the ordinances acts as a judge

Laswell v. Nickay 3 Scam R 181.

It is conceded on all hands that Supreme Court and County judges - are technically judges.

And we admit that the Recorder exercises judicial power and is a judge.

But the question again recurs what kind of judges are meant by the Constitution?

It is very evident that jurors, election inspectors, justices of the peace, senators, and mayors are not within the meaning of the Constitution.

It is equally clear that Supreme, Circuit and County ~~courts~~ judges are embraced in its provisions.

The same thing is true of the word Courts. It does not apply to the first and does to the second.

It is equally clear that all of these judges exercise "judicial power" within the meaning of A. S. Sec 1.

We have thus seen that the terms "judges and courts" are used by the framers of the constitution in a limited sense.

We think it is clear that the extent of these limitations may be ascertained by looking to the context of the constitution and the section in controversy.

1. The word judge is to be confined to judges of the Supreme court and County courts. It extends no further.

They alone, are called judges by the constitution. Sec 2..7. & 17.

Their jurisdiction is conferred by the constitution.
Sec 5. 8. & 18.

These courts are organized by the constitution and the manner of ^{the} election of the judges specifically provided for.

Provision is made for the division of the State ^{into three divisions} and the election of a supreme judge in each division.

Sec 3.

Provision is made for the organization of judicial circuits, and election of judge in each

Sec 7.

Provision is made for election of County
judge in each County.

Sec 17.

Now the Context of Sec 11. Confirms the question
of eligibility to Supreme Court and County
judges because the words "District, County
~~and~~ or County in which he shall be
elected" is added, having reference
undoubtedly to those judges to be
elected in District, ~~Counties~~ ^{Counties} &
Counties.

The power to establish a reader's court is
contained in the provision to Sec 1. Art. 5.

It is a discretionary power - not imperative

This a limitation of the power to establish inferior courts
no other limitation to be added by the courts.

Mayors and other inferior courts depend
upon the same provision.

The court is not established by the constitution
No jurisdiction is not conferred by the constitution
Nor is the election of the judge to be by the
People. Sec 23.

The court depends solely for its existence,
organization and jurisdiction upon
the Legislature.

It is not therefore a constitutional court,
and does not depend upon constitutional
law for its existence, and eligibility and
election of its officers.

It is created by law, and to the
law alone are we to look for
the determination of this question.

The law. will be found Laws 1853 p 147.

An inferior Court is created. Sec 1.

The name given is the "Recorder's Court of the city of Chicago" Sec 1.

Its jurisdiction is confined to causes of action and crimes arising within the city limits. It is a local court.

The judge is styled "The recorder of the City of Chicago". Not judge. Sec 2.

The expenses of the Court are to be paid by the city. except the judge's salary.

Its jurisdiction is limited.

The salary of the judge is fixed by law but by the Constitution as in other cases. Sec 2.

No qualifications are prescribed by the law. Sec 1.

The judge is to be elected by the People of the city.

The term of office is 5 years, ~~like~~ not of 6. or 4. like the Constitutional judges.

It will thus be seen

1. The Court is created by law.
2. Its jurisdiction conferred by law.
3. The term is different from Constitutional judges.
4. His salary not secured by Constitution.
5. A City Court. to all intents & purposes.

The law will be sustained unless palpable violation of the Constitution.

And

The limitation then ~~is~~ confines the question of eligibility

1. To judges elected in districts, counties & counties,
2. To Constitutional Courts, those organized by the Constitution, and the election of the judges of which is provided in that instrument not to inferior Courts established by the leg.

But an equally strong ground by which Judge Wilson's eligibility may be sustained is to be found in the nature of legislative power under our constitution

The Constitution is a mere limitation upon the power of the legislature - not a grant of power. 2 Scam 79.

3 Scam 127.

4 Scam 127.

The General assembly by virtue of their legislative power may create City Courts.

The limitation is that these Courts shall have an uniform organization & jurisdiction in all of the cities of the State

This argument is strengthened by Sec 23 which provides

"That the election of all officers, not otherwise directed or provided for by this Constitution, shall be made in such manner as the general assembly shall direct."

Now this term election embraces.

1. The election district
2. The qualification of electors
3. The time of holding the election
4. The manner of holding it
5. The return and canvassing of the votes
6. The eligibility of the candidates.

Any other construction of the constitution would render ineligible every justice of the peace Mayor of a city, or justice police judge ~~who~~ presiding over an inferior court, established by the legislature, who had not resided in the state 5 years preceding the election.

4 Dallas, 229. 3 Tate, 300.

(2) Conceding the ineligibility of Judge Nelson, an important question arises, whether one who was not a voter of the city at the time of the election can complain.

And whether the information can be filed where the State atty does not make the application.

The granting of the rule is not matter of right but discretionary.

When great public inconvenience is to follow and no public good can be accomplished the court will refuse.

So where there has been an acquiescence and no complaint.

Cox v Jones 12 Pa St Rep 365 12 US Dig tit Quo Writ

People ex rel. Bingham
v. J. Geo. Warrants

Robert S. Wilson

Shanghae relation
East 46 Note

Conduct of relation
Bacon 1844-S.

Dr. J. R. S. Blackwell

Proper of 24 ex Rel. Briggs

R. S. Wilson -

Thomas Hogue being
duly sworn deposes and saith that he
was present with R. S. Blackwell during the
first and second weeks of the present
Term of this Court and requested of
Mr. Farnsworth the Partner of relation to
take up this case for argument, inasmuch
as deponent was compelled to leave
for Springfield to attend the U. S. Court
on the 3^d week and as he informed
Mr. Farnsworth could not be again
in attendance on the present term
of this Court, but that Mr. F. said
he could not agree it and that
it might stand until Mr. Briggs
could be present on the 2^d week
before this deponent left -

That Mr. Farnsworth was spoken
to 3 or 4 times at least to hear

this case disposed of, but that each time
declined on the ground that Mr Burgess
was not present.

That on the 3^d week of this
term deponent left for Springfield and
returned again on Saturday the 15th
next to attend the hearing of this
cause & found no one here for the
relator or Plff. - & therefore had
the cause continued -

That R. S. Blackwell Esq
was principal Counsel in this cause
and by mutual agreement had
proposed the argument on the
merits and that he is now absent
from the state. - That deponent believes
the argument of this cause cannot
be safely had until he is present,
or until the brief made by him can
be obtained - a some time is
allowed for new & further preparation
begins - and that the interests of the
defendant would be prejudiced by
a hearing of this cause at the

present time under the circumstances

Subscribed & sworn to
before me this 20th day of
July A.D. 1854 ~ ~ ~
L. Leland Clk.
By P. W. Leland Dep. Clk.

Th. H. H. H.

People vs. J. B. Burgess
vs.

R. S. Wilson.

Affidavit

Filed July 20th 1854

L. Leland Clerk

By P. H. Leland depy.

People ex rel.

a.

Robert S. Wilson

It is agreed by and
between the parties to the above entitled
cause that the same shall be
submitted to the Court upon written
Briefs & Arguments and leave to Robert
S. Mackwell to file his arguments
for defence upon his return or
within two months from this date

Ottawa Aug 21st 1854

Hoyne, Walker & Co.
for defence -

W. J. Purvis

Superior Court

Propter ex cel.

By

Walter & Wilson

Agreement

In the Supreme Court

The People ex rel

W. J. Burgep

vs

Robert S. Wilson

} Appeal

} State of Illinois

} County of LaSalle &c.

William J. Burgep of Cook County
being duly sworn doth depose and say
that owing to sickness of his family
which was of that character that he could
not safely leave his home he has not
been able to attend this court at its
present term until this week -

That he understands & believes
that his associate counsel in this
case John F. Farnsworth Esq. was
in attendance on this court, Tuesday
Wednesday Thursday & until Friday
noon of last week, that this deponent
directed Mr. Farnsworth to bring this
case on for argument whilst he
was absent - That on his return
to Chicago this deponent of said Farn-
sworth he informed this deponent
that there was no person in attendance
on the part of said Wilson, That
Mr. Farnsworth though present declined
to take the case up - and that as it
was agreed between said Farnsworth
& this deponent, that this deponent
should attend this court this week
he concluded to let it stand until

the present week -

That this deponent has understood from Mr Blackwell, that this cause should not be pressed on for trial but brought up when ^{it} suited the convenience of the parties - That the continuance of this cause on Saturday last, without notice to the counsel on the other side by Mr. Hoyle took this deponent by surprise, and as being directly contrary to what he was led to believe would be attempted by the counsel to be done in this case. That he did not hear of the ~~continuance until he started for the case~~ ^{continuance until he started for the case} after he had started to come here that this deponent utterly repudiates the charge made by the defendant in his affidavit that this cause is merely prosecuted to harass him and without the least hope of success on the part of this deponent -

That as evidence of the good faith in which this case is prosecuted ~~this~~ and as a reason why this deponent should expect a decision in his favour this deponent states, that with the exception of the counsel for the defendant in this cause he has conversed with no lawyer of any standing in his profession ~~who is not of the opinion~~ and the case having excited much public attention he has conversed with many who has not expressed the opinion that the defendant is not constitutionally qualified to hold the office in question - and this deponent further

states that the delay that has occurred
in bringing this case on for hearing
has been unavoidable, on his part
and he had no reason to anticipate
that counsel who volunteered as the
defendant's claims in his affidavit
would so suddenly desert him -

That in the opinion of this
deponent. Mr. Boyce assisted by
Mr. Walker who is now in attendance
on this court must be as well prepared
or better to take this case up than on
Saturday last

And this deponent believes that
the public good in settling a constitutional
question will be best subserved by
disposing of this case at this time,
instead of continuing the case

Subscribed & sworn to before

me this 20th day of July

A.D. 1854

L. Leland Clk.

By P. H. Leland Secy

M. J. Boyce

People up in

as

Wilson

affr. of Buregh