

12057

No. _____

Supreme Court of Illinois

People, ex. rel., City of
Rockford

vs.
Maynard

71641  7

To the Honorable, the Justices of the Supreme
Court of the State of Illinois -

Your petitioner, "the City of Rockford,"
in the County of Winnebago and State of Illi-
nois by L. F. Warner, Attorney for said City
respectfully represent -

That the City of Rockford is a
regularly incorporated City, incorporated
under the fifth and sixth sections of an act
of the State of Illinois, Entitled "an act to
incorporate Towns and Cities", Approved
February tenth AD 1841. And that the
first Election under the said City organization
was held on the third Monday of April
AD 1852 in compliance with Section
one, Article fourth, of an act, Entitled
"an act to incorporate the City of Spring-
field", Approved February third, AD
1840 the act referred to in the aforesaid
sixth sixth section of "an act to incor-
porate Towns and Cities".

And that the Mayor and Al-

Aldermen elected at ^{said} Election took the
oaths office and entered upon the
duties of their office. And that on the
fifteenth of May A.D. 1852, that an ordi-
nance was passed by the said City Council
requiring all male inhabitants of said
City to over the age of twenty one years to
labor on the streets and alleys in said
City three day in each year, and upon ^{failure}
to perform said Labor after due notice
or to commute for the same to the street
commissioner in compliance with said
ordinance, to forfeit and pay for each
day they neglected to perform said labor
or commute as aforesaid, the sum of
one dollar per day, a copy of which
ordinance under the seal of said City
is herunto attached in schedule marked
A which your petitioners prays may be
taken as a part of this petition.

And that the second Election for
said City for the Election of a Mayor and
aldermen for the said City, was held on
the third Monday of April A.D. 1853.
And that Hiram W. Maynard was duly
elected Mayor of said City at said last
Election and that he was commissioned

by the Governor this State as a Justice
of the Peace for the City of Rockford and
the County of Winnebago for the term of
one year from the date of his election in
accordance with section seven Article
sixth of the said act to incorporate the
City of Springfield, and that he took the
oaths of office and entered upon the duties
of the same. And that one Brown
an inhabitant of said City and liable
to perform Road labor in said City hav-
ing refused to perform Road labor in said City after
having been duly required to perform
the same in accordance with the
aforesaid Ordinance, that the petitioners
caused a writ of summons to be sued
out from before the said Herman R. Magn-
and ~~a Mayor~~ ^{as aforesaid} under the seal of said City to cause him
the said Brownell to answer before the
said Herman R. Magnand ~~a Mayor~~ ^{as aforesaid} under the seal of said City
in a plea of debt for the penalty
prescribed by the aforesaid ordinance
for his said Refusal a copy of which
under the seal of said City is herunto
attached in schedule marked B which

your petitioners pray may be taken as
a part of this petition.

And that on the sixth day of June
AD 1833 in compliance with the afore-
said writ of summons the said H
Brownell appeared before the said
Mayor and answered to the said plea
and that such proceedings were thereupon
had before the said Mayor in the prem-
ises, That said City of Rockford on the
said ~~sixth~~ day of June AD 1833 on the
Judgment and consideration of the
said Hiram R Maynard Mayor as aforesaid
recovered the sum of three dollars debt against
the said defendant for his said Failure, and
fifty six cents for their costs of suit, and it was
ordered by the said Mayor that the said
Plaintiff have execution therefor, a copy of
the entry of which said proceedings and
Judgment certified under the seal of
said City is herewith ~~present~~ attached
on schedule marked Marked C which
your petitioners pray may be taken as a
part of this Petition, and that on the
Fifteenth day of July AD 1833 your

petitioners caused the said ~~Armand~~
R Magnard Mayor as aforesaid to be
required to issue an Execution upon
the aforesaid judgment And that
being so required he thereupon object-
ed that if he should issue such execu-
tion he would be likely to involve
himself in expensive, troubles, and doubt-
ful litigation, that he doubted him-
self this power to act in the premises
and that he assigning such reasons
as aforesaid wholly refused and
still refuses to issue such execution

Your petitioners therefore
pray the consideration of this
Honorable Court in the premises
and that a writ of Mandamus may
be issued commanding the said
Armand R Magnard Mayor as
aforesaid to issue an Execution
upon the aforesaid judgment

State of Illinois }
La Salle County of }

L. F. Warner being duly sworn on oath
saith that the matters and things set forth
in the above petition in manner and
form as therein stated are true in substance
and in fact L. F. Warner

Subscribed & sworn to }
before me this 20th day
of July A.D. 1853. }

L. Leland Clk. Sup. Court - 3^d Division
By P. K. Leland Depy. Clk. ✓

Schedule of referred to in the foregoing
petition

S. 1 Schedule A
Schedule referred to in Petition marked A

An Ordinance dividing the City into
Street districts and to provide for the improvement
thereof. Passed by the Council May 15th 1852 -

Article 1st

Section 1. Be it ordained by the City Council
of the City of Rockford, That the City shall be,
and is hereby divided into two Street districts
to be known as district number one and
district number two, and that district
number one shall embrace all that part
of the City lying west of the middle line of Rock
River, and district number two shall embrace
all that part of the City lying East of the middle
line of Rock River

Article 2

Sec 1 Each male inhabitant of the City of
Rockford twenty One years of age and upwards,
shall be required in each year to labor three
days on the Streets Lanes & Alleys in the
Street district in which he shall reside (ac-
counting ten hours labor one day work) under
the direction of the Street Commissioner; And
the Street Commissioners shall have power
in their respective districts to require any person
liable
to perform Street labor to furnish a team and
waggon and such other implements as the
Street Commissioner may direct: and
the Street Commissioner shall credit upon
the Street tax of the person so furnishing any
implements, such amount as shall be
just and reasonable for the use of the
same. Provided that any person called
upon to perform Street labor may commute

for the same with the Street Commissioners
at the rate of Seventy five Cents per day

Sec 3 It shall be the duty of the Street Commis-
sioners to give at least three days notice to all
persons liable to perform Street labor in their
respective districts of the time and place
when and where they are to appear for that
purpose and with what implements

Sec 4 In case any person liable to perform
Street labor shall neglect or refuse to per-
form the labor or communicate with the
Street Commissioners of his district for
the same according to the provisions of
this Ordinance for the space of one day
after being notified by the Street Commissioners
as directed in Section 3 Article 3^d hereof, he
shall forfeit the sum of One dollar for each
and every day labor so neglected or refused
to be performed, which, with costs of suit
may be recovered in an action of debt

In testimony whereof I have hereunto
set my hand and caused
to be affixed the seal of
the City of Rockford this
15th day of May in the year of
our Lord One thousand Eight
Hundred and fifty two

William Lathrop

Clark Willard Mayor

STATE OF ILLINOIS, }

ss.

WINNEBAGO COUNTY.

Schedule B

The People of the State of Illinois, to the Marshal of the City of Rockford, GREETING:

You are hereby commanded to summon

H. Brownell

to appear before the un-

dersigned, the Mayor of the City of Rockford, at his office in said City, on the *6th* day of *June*, A. D.

1853, at *9* o'clock, *A. M.*, to answer the City of Rockford, of a plea of debt, for a sum not exceeding one

hundred dollars

on ordinance, to wit: An ordinance dividing the City into Street Districts, and providing for the improvement thereof, passed by the Council of the City of Rockford, May 15th, A. D. 1852.

GIVEN under my hand and seal of the City of Rockford, this

1st

day of

June

A. D. 1853.

(Copy)

H. R. Maynard

Mayor. *Wm. H. Hester*
of the Peace

Schedule C

The City of Rockford

vs
A Brownell

Demand \$3.00

Decketing 12 1/2

Summons 18 3/4

Set in debt for a
failure to perform Road
labor in compliance with
an Ordinance of said City
passed Aug 15 1852

Summons issued June first, 1853, Returnable
June 6 at nine o'clock A.M. Summons
returned served. June 6th June 6 o'clock
A.M. Defendant appeared waived
service of process. The Plaintiff appeared
by S F Warner, and declared against
the defendant for the sum of three
dollars debt for a failure to perform
Road Labor in compliance with an
an Ordinance passed by the said
City Council of the City of Rockford
May 15, 1852

To which
The Defendant pleads the general issue
saying he did not owe and was not
inculcated as claimed by the Plaintiff.
Whereupon the cause was submitted
to the Court upon the following agreed
state of facts, agreed upon by and between
the said parties first that the City
of Rockford was a regularly incorporated
City, under the Laws of this state, & that
Hiram R. Muzzarel was Mayor of said
City and as such was duly commissioned
by the Governor of this state as a Justice
of the peace for said City and the County

of Thimbergo, & that the following Ordinance
was duly passed of the said City Council
and due notice of publication given
of the same to wit" as appears from
the Record of said city of record
of date May 15. 1852,

And it was further agreed that the said
Brownell lived in Ward District Number
One in said City of Rockford; and that
said Brownell was at that time over
the age of twenty-one years, & that
John Travers of said Ward District
was by the City Council duly appointed
a Street Commissioner in Ward
District Number One in said City,
& that said Brownell was duly notified
by said Travers to perform Road Labor
in said Ward District in conformity
with said Ordinance, and it was
further agreed that said Brownell
never had performed Road Labor
in accordance with said ordinance
nor committed for the same and
that more than ten days has expired
since the time he was notified required
to perform the same previous to the com-
mencement of this suit,

Whereupon the Court after
considering the agreed state of facts
agreed upon by the parties, orders and
adjudges and it is ordered and adjudged
by this Court that the said plaintiffs
have and do receive of and from
the said defendant the sum of three
dollars debt for a failure to comply
with said ordinance and the cost
of this suit in the sum of fifty-six cents
and that the plaintiffs have execution
therefor,

State of Illinois
City of Rockford }

I J. H. Farwell
Clerk of said City do hereby
certify that the above and
following contains a true copy
of the paper and Record in
the aforesaid cause of the City
of Rockford vs W Brownell as
appears from the Records of
said City

Given under my hand and
Official seal at Rockford
this Eighteenth day of July

A D 1853

J. H. Farwell
City Clerk

Before the justices of the Supreme Court, comes Miriam R. Maynard, mayor of the city of Rockford, in the foregoing petition named, by Francis Barnard his attorney and counsel in this behalf, and says that he cannot deny all or any of the matters alleged in the said petition, but freely acknowledges the same to be true. And he further says that he refused to issue the execution in the said petition mentioned, not only from the apprehension of involving himself in litigation, but also because the opinion has been expressed by very many persons, lawyers as well as others, and there have been judicial opinions to the same effect, that the grant of judicial powers to mayors of cities, purporting to be made by the sixth section of the "Act to incorporate towns and cities," ~~passed~~ passed 10 Feb. 1849, is unconstitutional and void; and according to his belief, the ~~executo~~ issuing of executions in such cases, in the present conflict of opinions on the subject, would lead to great and extensive mischief; and for that reason he did not think it his duty to issue the execution mentioned in the said petition, until there should be a judicial

determination touching the propriety of his doing
so; and therefore he refused, and still refuses
to issue the said execution. And he respectfully
submits himself to the order and direction of
this court, in the premises.

Hiram R. Maynard,
By Francis Barnard,
his attorney and counsel.

The People of the State
of Illinois, in relation
of the City of Springfield

Hiram K. Magruder

Petition for Mandamus.

Filed July 20th 1853.

L. Leland Clk.

By P. M. Leland Depy.

Pupard

The people of the State of Illinois
on the Relation of the City
of Rockford
vs
Aram R Maynard

State of Illinois Supreme Court
Petition for a Mandamus

Points for the Relator

I The S. & L. of 1849 entitled "an act to
incorporate Towns & Cities See 5 & 6 Page
225, authorizes Towns & Cities to become
incorporated with all the articles and
provisions of the acts incorporating
the cities of Quincy & Springfield
I

Those acts S. & L. 1840 P. 67 & 113
form the Basis for a city organisation
throughout this State by S. & L. 1849
225 & 6

The fact being conceded that
the city of Rockford was regularly
incorporated adopting the spring
field charter, The City of Rockford
acquires all the rights incident

to said Charter S. L. 1840 Page 6

The question proposed to be argued into, are the rights and duties of the Mayor of a city incorporated as a foresaid

By Article 6 S 7 of the act incorporating the city of Springfield S L 1840 Page 12. S 7. he shall be commissioned by the Governor as a Justice of the Peace for said City and County, & as such shall be conservator of the Peace in said City &c See 8 same article Page 12, & S L 1840 Page 119. The Mayor shall ^{have} exclusive Jurisdiction under the ordinances, and concurrent Jurisdiction within the limits of the city

Those acts, and the acts of 1848 referred to are in Harmony with the Constitution of the State Referred to by the Dept, Art 3 Sec 1. which provides that inferior Local courts of civil & Criminal Jurisdiction may be established by the general Assembly in the cities of this State - with a uniformity of organization, and Jurisdiction throughout the said cities

Taking the above acts of the General Assembly, has constituted a Local inferior Courts in cities of uniform civil & criminal Jurisdiction throughout the state

That Jurisdiction is expressly defined Sec Law 1840 Page 12 & 119 having in some instances a Jurisdiction coextensive with Justices of the Peace And in others an exclusive Jurisdiction act incorporating the city of Rock I 1849 + " incorporating the city of Peoria 1852 & special Laws adopting the same provisions

That there is no conflict, with the Constitution referred to R S. 16 §27 which provides That Justices shall be elected for four years -

~~The General Assembly~~

Under the acts referred to the Mayor power, are given him in virtue of his Election to ^{the office of} said Mayor that his ^{very} commission as a Justice of the Peace confers no powers independent of his powers conferred upon him by Justice by his Election of Mayor

And

That there is no power granted, that
conflicts with Art 4 of Constitution
1. That his office is not one of the
legislative offices of the Government
under the Constitution

That the Constitution has thus
set forth what the legislative
executive, judicial powers of
the Government shall consist
of + see 29 Art III
Constitution

The Mayor is not brought
within either of those divisions

That the Law and constitution should
be so construed as that both may
stand together unless they directly
conflict

That cities throughout this state
have organized under the aforesaid
Law, and acted under the same,

That endless confusion must arise
if the aforesaid acts by this Court
be declared unconstitutional

And Cities left with no authority
to enforce their ordinances

The Court will in the first instance
grant a peremptory mandamus in
the first instance where there is
no dispute about the facts

In the case the petition is sworn
to, & the deft admits the facts
People v Pearson II & III Scam R
& II Scam R Page 207. 6 of Crown
R page 526

J. F. Warner
" " Atty for Relator

The people of the State
of Ill Ex rel City of Rockford

vs

Abram R Maynard Mgr

Defendants

Brief

Rockford July 25. 1853

Dear Sir.

I have just seen Mr Burnap, who argued this Mandamus case on one side, and Mr. Warner who argued it on the other side, and learn from them that they have left written arguments.

I have argued the same question in our Circuit Court, and that Court has decided that the Mayor possesses no judicial power - and I am anxious that the points made before the Judge shall also be presented to the Supreme Court, and with that view I have obtained the Consent of the Council to place the accompanying argument before that Court.

You will oblige me by placing it among the papers for the consideration of the Court.

Yrs truly
J. L. Cook

Supreme Court.

People & ed. Rockford }
vs. }
Maynard, Mayor. }

Mandamus.

Points for Dependents.

1. When the acts incorporating the cities of Springfield and Quincy respectively, which are made the basis of city corporations in this state, S.L. 1849, p. 225 & 6, were passed in 1840, S.L. of that year, p.p. 6 and 113, the constitution, R.S. 36 § 8, directed, "it competent number of justices shall be appointed in each county, in such manner as the general assembly may direct, whose time of service, power and duties shall be regulated and defined by laws." And ^{by statute} the justices were elected for four years.

The act for the incorporation of the city of Quincy, ~~did not~~ ^{did not} organise a mayor's court. ^{nearby the act of Springfield, S.L. 1849, p. 113, § 5} But the act incorporating Springfield, § 6 of art. VI. "Of the Mayor," says, "He shall be commissioned by the governor as a justice of the peace for said city and county, and as such he shall be a conservator of the peace in the said city." And section 8 of the same article, article

says, "He shall have exclusive jurisdiction in all cases under the ordinances of the corporation, and concurrent jurisdiction with all justices of the peace in all civil and criminal cases within the limits of the city, arising under the laws of this state. S. S. 1840 p. 12.

The new constitution requires that justices of the peace "shall hold their offices for four years, the term of four years," R. S. 16 § 27.

The defendant does not claim to have the general powers of justice of the peace, although nominally conferred upon him by the governor's commission for one year; but he considers that commission as void as to those powers. But in rendering the said judgment, he claimed to have the ~~poss~~ exclusive jurisdiction in all cases arising under the ordinances of the city of Rockford, according to the terms of the said act, because that jurisdiction is not incident to the office of justice of the peace, and therefore that such ~~jurisdiction~~ exclusive jurisdiction was not disturbed by the constitutional provision that justices of the peace shall hold for the term of four years; and he claimed that the governor's commission, although in invalid terms, conferred that power upon him,

if such commission were necessary to confer it upon him, and he submits to the court, whether his said positions were right.

2. The defendant submits to the court, whether the requirement of art. V. §1 of the constitution "that inferior local courts, of civil and criminal jurisdiction may be established in the cities of this state, but such courts shall have a uniform organization and jurisdiction, in such cities," is not sufficiently satisfied by the provisions of the act incorporating Springfield, which are above quoted, and under which most of the cities in this state have been organized; and whether ~~the~~ special acts which may have been passed incorporating ~~cities~~ other cities, without a court like that established by the said act, are not to be taken as exceptions, and violations of the said provisions of the constitution.

3. The defendant also submits whether the provisions of the sixth article of the said act requiring the mayor to preside at meetings of the city-council, and giving him a casting vote therein, at which ordinances are to be passed, and the administrative duties require

ed of him by the same article, together with his
judicial powers above referred to, are not
such a combination of legislative, executive
and judicial powers in the same person as
is forbidden by the second article of the con-
stitution of this state, and whether the grant
of judicial powers to the mayors of cities un-
der the said act is not therefore void.

Frederic Burrup,
for Defendant.

Supreme Court.
Maynard, Mayor of
Rockford
etc.
People & city of
Rockford.

Briefs.

Filed, July 21st 1853,
L. Leland Clk.
By P. K. Leland Depy.

Burnap.

Hiram R. Maynard, Mayor &c.
ads.

The People Ex. rel. City of Rockford

} Mo for Mandamus

} Argument

The City of Rockford was organized under the act of Feb'y 10. 1849, entitled "an act to incorporate town & cities," and in its organization it has formally adopted the law of Feb'y 3. 1840, incorporating the City of Springfield, as its Charter.

By the 6th Sec. of the act of 1849 the provisions of the Springfield Charter in relation to the duties of Mayor, & his powers as Mayor are given to the Mayors of such cities as are incorporated under the provisions of that act.

The 7th Sec. of Art. 6. of the Springfield Charter makes the Mayor of that City a Justice of the Peace, and confers upon him all of the Judicial powers granted to him, or which he can in any manner exercise as such Justice - and not as Mayor. By reason of his Election to the Office of Mayor that law declares him a Justice of the Peace for the term - viz one year. He is not Elected a Justice of the Peace, but his election to the office of Mayor made him, under the old Constitution, Justice of the Peace, as well as Mayor.

The duties of the two offices are plainly distinguished

between in the law. Those of Mayor are prescribed in Section One to Six inclusive, and they ^{are} strictly and clearly Ministerial and Executive powers and duties, and there can be no pretence that in any one of these sections any Judicial power is attempted to be conferred.

Sections 7, 8, & 9, Confer upon the same person, not as Mayor but as a Justice of the Peace, all the Judicial power conferred by the Charter.

Under the Old Constitution the person so elected Mayor, & Commissioned by the Governor as Justice of the Peace became a legal, Constitutional Justice of the Peace, because there was then no limitation upon the legislative power to declare in what manner, nor for what length of time a Justice should be appointed; and ~~that~~ had the Legislature had unlimited power in the Establishment of "inferior Courts"

By the adoption of the New Constitution all laws of the State, and all parts and portions of any law of the State in conflict with its provisions became inoperative, and as if they had never been enacted.

The 1st Sec. of Art. 5 of the New Constitution declares, too plainly ~~for~~ to admit of any mistake or misapprehension, where the whole Judicial power of the State is vested.

And that is - "In our Supreme Court - In Circuit Courts - In County Courts - And in Justices of the Peace."

The 7 Sections following show the manner in which the Courts provided for shall be created, and the 27th Sec. declares the manner in which the Justices of the Peace mentioned in the first Section shall be elected, and the duration of the office. They must be elected as Justices of the Peace, to the office of Justice, in districts legally ascertained & established; And they shall, when so elected, be Commissioned by the Governor, & shall hold their Office 4 years.

The Mayor of the City of Rockford is elected on the third Monday of April in each year (Sec 1. Art. 4) & He is elected to the office of Mayor, and takes upon himself the responsibilities of that office; but he can no more be a Justice of the Peace by virtue of such Election than any one of the Aldermen can be. So much of the Charter which the City adopts as declares that the Mayor shall be Justice of the Peace is clearly abrogated by the New Constitution declaring the manner in which they shall be elected & the time for which they shall be Commissioned; And it is clear that as Mayor he possesses no judicial power for the reason that, by the terms

of the Charter, that power is not given to the Mayor as such, but to him as Justice of the Peace.

On the argument of this same question in the Circuit Court (in an other case), it was insisted that the 6th Sec. of the Act of 1849, established the "Inferior local Courts" in "Cities" provided for in the 1st Sec. of Art. 5 of the Constitution; and that the Mayors of all the Cities were vested with the same judicial powers by that act which were given to the Mayors of Quincy & Springfield by their Charters before the adoption of the new Constitution.

The first, and, as we think, a conclusive answer to this position is, that by that 6th Section nothing in the way of power is conferred excepting the powers belonging to and vested in the Mayors of those Cities as Mayors, and that by a careful reading of the section, & the grant of powers in the Charters, it will be seen that as Mayor they had no judicial power. That the only judicial power was as Justice of the Peace; And that this section of the Act of 1849 only attempts to vest in the Mayors of the new cities the same power as Mayor, & not as Justice of the Peace, which the Mayors of those Cities possessed under the two Charters.

But, should this construction of the

language used in said sixth Section be wrong, and if it was the intention of the Legislature to vest the judicial power also in the Mayors of the new Cities, then it is insisted that that portion of the Section is unconstitutional.

That instrument has vested the whole judicial power of the State elsewhere - and it is not in the power of the Legislature to create a new judicial organ not contemplated by the Constitution.

The "inferior local Courts" which the Legislature is authorized to establish "in the Cities of this State" must be ~~can~~ established by a general law applicable to all Cities; This provision in relation to the powers of the Mayor is expressly limited to Cities organizing under the provisions of that particular act, and is not applicable to Cities therefore incorporated, or to be hereafter incorporated by Special laws.

The clear, palpable intention of the Constitution is that, if any such Courts are established at all, they shall be established by a general law applicable to "the Cities of the State", and not to a portion of the Cities only. And that when such a law is passed each & every City in the State will have a City Court, under a general law, each organized in the same manner and possessing the same jurisdiction.

The Legislature possesses no more power under

the Constitution to establish a city Court, or a local Court in a city, without making such Courts general & uniform in all the Cities, than it ~~has~~^{does} to establish a Bank by Special Charter.

The People of the State have, by their Constitution, declared and named the depositories of ~~that~~ the judicial branch of the Sovereign power - and they have left to the Legislature but one question connected with it to decide & act upon - and that is whether there shall be established in the Cities of the State local Courts by a general law - and when such law is passed it will be a part of the law constituting each & every City in the State, now organized, or which may be hereafter organized, whether by Special acts of incorporation, or under the law of 1849.

Under the Constitution and laws, then, it is evident that the Mayor of the City of Rockford, as such Mayor, possesses no judicial power.

It is even more clear that he is not a Justice of the peace by reason of being Mayor. If he were he would hold the Office of Justice for four years - an office to which he was not Elected, & the City would proceed year after year adding to that distinguished portion of our judiciary until there would be no

rest in The City of Rockford".

It is equally clear that the Legislature by the Act of 1849 ~~has~~ not attempted to ^{Exercise} carry out the provisional power given ~~them~~ to it by the Section of the Constitution authorizing the establishment of Courts in Cities - but that in that act the Legislative Authority has been properly exercised, in granting & giving the Ministerial & Executive powers of the Mayor, without any intention to vest in him, as such, any Judicial power.

The conclusion deducible from these premises is incontestable - That the Mayor, at the time of the rendition of the judgment in this case possessed no Judicial power - That the judgment is a nullity - & that the motion for mandamus should be denied.

J. L. Cook

for Respondent

Sup. Court.

Maynard, Mayor &c.

ad.

The People Ex rel.

City of Rockford

Argument.

J. L. Cook, for Resp. &c.

The true question in this cause is whether the Mayor of the City of Rockford may render judgments and award executions for the breach of the City ordinances.

The question is one of vital importance to the State at large.

Art 6 Sec 8. of the Springfield Charter declares that the Mayor of that City "shall have exclusive jurisdiction in all cases arising under the ordinances of the Corporation, and concurrent jurisdiction with all justices of the peace in all civil and criminal cases within the limits of the City, arising under the laws of the State & C."

Laws Special Session 1839-1840 page 12.

The like power is conferred upon the Mayor of all the cities of this State either under the general laws of 1849 or under special charters.

The power is not in all cases conferred in the identical language but is substantially alike in all cases.

It is substance and not form that the Court is to deal with

And the decision to be made in this case will settle the power of every Mayor in the State.

In my judgment there are two grounds upon either of which this Court may plant themselves in sustaining the power in question.

1. The Constitution Art 5 Sec 1. provides that "Inferior local Courts &c may be established by the general assembly in the cities of this State, but such Courts shall have a uniform organization and jurisdiction in such cities."

Now admitting for the purposes of this argument.

1 That the judicial power of a Mayor in enforcing forfeitures and awarding punishments for the violation of a municipal or police regulation, is a part of the "judicial power of this State." and.

2. That the Mayor in exercising this power is a "Court" within the meaning of this section of the Constitution.

May not such a court and its exercise

of such judicial power exist consistently
with the constitutional provision.

It is a well established principle of
Constitutional law that where portions
of a law conflict with the constitution
but a part is valid, the latter will
be sustained and enforced, if it can
be separated from that which is ^{un-}con-
stitutional.

Campbell vs The Union Bank (Howard)
100 U.S. 625.

I fully concede that such general and
Special laws as confer upon the
Mayor of a city concurrent jurisdiction
with justices of the peace in all
cases where the laws of the State
are violated, on which makes him
ex officio a justice of the peace,
are unconstitutional.

But I am fully convinced that
those portions of our general and Special
laws which confer upon the
Mayors of cities exclusive juris-
dictions in all cases arising
under the ordinances of a city

May be sustained under the constitution.

And the reason is obvious. If that portion of the City Charters which clothes Mayors with concurrent jurisdiction with justices of the peace in all cases arising under the laws of the State is rejected as unconstitutional.

The laws will then be confer a uniform organization and jurisdiction upon all Mayor's Courts.

Their organization will be the same they are elected by the qualified voters of the city.

The duration of their term of office is the same.

So of their mode of qualification &c.

Their jurisdiction will be uniform. Each Mayor will have jurisdiction to hear & determine all cases arising under the ordinances of their respective cities. In this respect the uniformity will be perfect & complete.

True the offences which may exist in one city may be more numerous

in another, and they may be differently defined in the several cities. For instance there may be offences committed in violation of the harbor regulations of Chicago where no such can exist in the interior towns of the State. It may be a nuisance to keep gunpowder in a large city - otherwise in a small town.

But this does not go to the question of uniformity of organization or jurisdiction.

Jurisdiction conferred upon all mayors in all cases arising under such ordinances as may be enacted by the respective cities creates within the meaning of the Constitution uniformity of organization jurisdiction

2. But I deny that the judicial power of a mayor in ~~enforcing the order~~ hearing and determining causes arising under the ordinances of the city is a part of the "judicial power of the State" or that his court is a "Court" within the meaning of the Constitution.

The absurdity of the opposing arguments will be apparent upon an examination of the several distributions of power under the constitution.

Art 3 sec 1. declares that the ^{entirely} "Legislation of this state, shall be vested in a general assembly, which shall consist of a senate and house of representatives, both to be elected by the people."

Similar language is used in conferring legislative power in every state of this union.

Notwithstanding this clause it has been the uniform practice of every sovereign state to create municipal corporations conferring upon them legislative, executive and judicial power and no one has ever questioned the validity of such a delegation of these sovereign powers. On the contrary it has been held that "The power to create corporate bodies for municipal purposes, with the means of self government, is a legitimate exercise of sovereignty, belonging to the legislative power of a state"
Hope v Deadrick 8 Humph R 1.

As of the Springfield Charter best of
the "Legislative power" and grants the
authority to enact certain ordinances
for the good government of the city.

So of every city charter in the state.

This "Legislative power" is exercised
by the Mayor & Common Council
instead of a Senate & House
of representatives as provided by
the Constitution.

Is this local legislative power a part
of the "Legislative power of the State",

If yes, then every charter, a general
law, vesting this power in the
Common Council of the city is void
as in conflict with this provision.

Again. the mode & manner of enacting
laws by the General assembly
is limited by the Constitution.
Who ever contended that these
limitations applied to the legislative
assembly of a city. The mode and
manner of enacting city ordinances
is found in the charter alone.

So as to the mode and manner of choosing the members of the city council.

Constitution Article 4. Sec 1. declares that the "executive power of the state shall be vested in a governor."

The executive power of a city is vested in the Mayor.

If the executive power of a city is part & parcel of the executive power of the State, then every City Charter in the State violates the Constitutional distribution of powers.

No one ever contended that this position was true.

Is there any ~~different~~ different principle applicable to the grant of judicial power in the Constitution?

Art 5 Sec 1. declares ^{that} "The judicial power of this State shall be ^{is hereby} vested in one Supreme Court, in circuit courts, in county courts, and in justices of the peace."

When the Legislature delegates power to the Mayor of a city to hear & determine causes arising under

the ordinances of the city, they do not part with any of the judicial power vested by the constitution in the courts therein specified.

This ~~is~~ ~~the~~ local judicial power is not vested by the constitution, but is created and vested by law. It is called into being by the legislative power of the State having competent authority to create Municipal ~~Corporations~~ Corporations with powers of self government.

The Corporation is a miniature State - Its Charter is its constitution - The distribution of its power, is ~~analogous~~ into legislative, executive, and judicial is analogous to the distribution of the power of the State government. But each has its own organic law, and are controlled and governed by distinct principles of action. &c.

Counties first form a part & parcel of the State government. ~~Some~~ Cities and towns do ~~not~~ not. The distinction is manifest. The County governments are so blended with that of the State that it is impossible to separate them. Take for example the power of the counties over the revenue, highways, ferries &c. County organizations thus become a part of the machinery of the State government, without which it could not exist.

Not so with city and county governments. There is no necessary connection between them.

Counties are not bound by statutes of limited cities and towns are.

Counties are not liable for misfeasance, or nonfeasance in the performance of their governmental duties:

City Corporations are.

The comparison may be extended further, but it is unnecessary. Enough has been shown to establish the close analogy between counties and state governments and the total dissimilarity between that of the state and cities.

Again the ~~judicial~~ Constitutional Courts of this state in the exercise of their judicial power are restrained and limited by the constitution. For instance

The right of one accused of crime to a trial by jury is guaranteed and

The form of the accusation is required to be by the indictment or presentment of a grand jury.

In city governments a grand jury forms no part of its machinery, the presentment and trial are summary in their character and the accused has no right to a

trial by jury. This has been the uniform
practice in every state, and the courts
have always maintained these
summary convictions. The Constitution
interposes no barrier to this mode
of ~~prosecution~~ accusation and trial
Williams v City of Augusta 4 Georgia
Reports 509. Slattery's Case 3 Pike Rep
484.

The conclusion to be drawn from this
course of reasoning is that the term
used in the Constitution "judicial
power of the State" has no application
to the hearing and determining
of offences arising under the ordin-
-ances of a city.

The proviso to sec 1. Article 5 State Con-
-stitution which speaks of "inferior
local courts in cities" has reference
exclusively to such inferior courts
as may become necessary in the
administration of public justice in
~~whenever the~~ cases where the general
public laws are violated, and
not to cases arising under
the ordinances and bye laws
of a corporation.

There is in fact a necessity for
local police courts, organized under

the charters of the several cities of this state, in which the local laws of the city may be speedily enforced.

Besides it is the policy of our constitution that the courts organized under each separate and distinct government should enforce and enforce the laws and ordinances of the government ^{by} ~~which~~ which they are created.

The Constitution treats and laws of the federal union are enforced by courts organized under and amenable to the federal government.

The same principle is applied by the federal courts to the state ~~laws~~ governments; questions arising under the constitution of the state is decided by the state and not the federal judiciary; and the constitution given by the state courts to the local law is adopted by the federal courts as a rule of decision.

Our country courts are organized upon the same principle. "The said courts shall have jurisdiction throughout their respective countries

Of in all matters & things concerning
the County revenue &c."

RS 1845 p 133 sec 25.

By parity of ~~reasoning~~ reasoning the
construction and validity of the
local laws of a city should in
the first instance be left to
the tribunals organized under
the city charter, subject to the
supervisory control of the State
judiciary.

But again, the Mayor's Court is not
a court within the meaning of
the constitution, nor is he a
judge in the sense there used.

He is not a court ². He holds no stated
terms. Has no seal or clerk, is not
required to keep a record. Has no
stated salary as judge &c. The
qualifications in Sec 11 Art 5. have
no application to him. He is not
commissioned by the Governor as Mayor
Sec 22 Art 5.

3 Yeates Rep 300.

4 Dallas 229.

When it was held that the Recorder
of the city of Philadelphia was not a

judges within the meaning of
the constitution of Pa. which
prohibited a state judge from
holding any office of trust
& profit under the Federal
Government.

✠
We have thus seen.

1. That the mayor of a city exercises no
part of the judicial power of the
State within the meaning of the
Constitution.

2. That he is not a court within
the meaning of the constitution.

3. That ^{he} is not a judge under the
Constitution.

4. That the breach of a city ordinance
is not a crime within the meaning
of the Constitution.

Now then in conclusion can
it be ~~not~~ successfully contended
that the constitution has been
violated in the organization
of these mayors' courts throughout
the State.

The attention of the court is respectfully
directed to the views above
expressed.

R. B. Blackwell

† It may ~~be proper~~ be proper to add that
in all of our constitutions there is a
positive inhibition against the blending
together of executive, legislative and
judicial powers, and uniting them
in one and the same ~~person~~ person.

In all of the States the mayors of cities
have uniformly exercised all of these
powers; legislative as a member of
the Common Council, he sees that
the laws are faithfully executed, and
renders judgment for breaches of the
City ordinances. This proves conclusively
that the powers of a Municipal Corporation
and not "State powers" within the meaning
of the Constitution.

On the question
Whether uniformity of organization & juris-
diction must be produced by general
laws? I refer to my brief in the Recorders
Court Case.

16.

The People &c, ex rel.
City of Rockford

vs.

Hiram R. Maynard

1853

16 P.D.

12057

Repaired

1853