No. 12068

Supreme Court of Illinois

People, ex. rel.

vs.

Shaw, et al

71641 7

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People ex rel Dixon
vs
Bela Shaw et als.

48

6 P.D.

Prepared

12068

1853

State of Illinois, sct.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Winnebago - **GREETING:**

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Winnebago county, before the Judge thereof, between The People of the State of Illinois at the relation of George Dixon plaintiffs and Bela Shaw, Newton Crawford, Harry N. Spalding & Bradford McKenney defendants it is said manifest error hath intervened, to the injury of the aforesaid plaintiffs as we are informed by their complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distintly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the 2nd Monday in June next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the seal thereof, at Ottawa, this thirtieth day of May in the year of our Lord one thousand eight hundred and fifty three.

L. Leland Clerk of the
said Supreme Court.

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The People ex rel. Dixon

v

Bela Shaw et als.

Writ of Error

To June Term 1853.

Filed June 3d 1853

O. H. Spafford

Clk

State of Illinois
Winnebago County } ss

Pleas before the Hon. Benjamin R. Shelden at a term of court begun and held at the Court House in Rockford in & for said County of Winnebago and State of Illinois on Monday the 25th day of April AD 1853. Present the Honorable Benjamin R Shelden presiding Judge William Brown States Attorney King H Milliken Sheriff. C. St. Rockford

C M R

The People &c &c
George Dixon
vs
Bela Shaw et al

Be it remembered that heretofore to wit on the 15th day of March AD 1853 at the March Term of said Winnebago County Circuit Court came the States Attorney for the 11th Judicial Circuit and filed the following Notice in the above entitled Cause to wit

"In the Winnebago Circuit
To Bela Shaw Newton
Crawford Harry N Spaulding
and Bradford McKinney of Rockford
in the County of Winnebago and
State of Illinois

Take notice that on the first day of the next ensuing Term of the Circuit Court for the said County of Winnebago to be held at the

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Court House at Rockford in said County on the third Monday of March next, being the Eighteenth day of the said Month or as soon thereafter as counsel can be heard the said Court will be moved for a rule upon the said Bela Shaw Newton Crawford Harry N Spaulding and Bradford McKinney to shew cause why leave should not be given for the States Attorney of the Eleventh judicial circuit of the State of Illinois to exhibit in the said Court according to the form of the Statute in such case made and provided, an information in the nature of a Quo warranto, at the relation of George Dixon of Rockford aforesaid against the said Bela Shaw Newton Crawford Harry N Spaulding and Bradford McKinney jointly and severally for usurping, intruding into and unlawfully holding and executing the Office of Bridge Commissioners of the Rockford Bridge, and that the annexed affidavit of the said George Dixon will be exhibited in support of the said motion

Dated 11th March 1850 — Yours &c

(Signed) Alonzo Plank

States Attorney for 11th Judicial Circuit

In the Winnebago County Circuit Court

State of Illinois
Winnebago County } ss

George Dixon of Rockford in the ~~Town of Rockford~~ County of Winnebago being duly sworn upon his oath says that on the twenty fifth February in the Year of our Lord

one thousand Eight hundred and forty seven an act was passed by the General Assembly of the State of Illinois intitled an act provide for the maintenance of Rockford Bridge, incorporating certain persons named in said act and their Successors as a body politic under the name and style of Bridge Commissioners of the Rockford Bridge, for the purpose of maintaining and repairing the Bridge over Rock River at Rockford, and paying certain debts alleged to be due for the building and repair thereof and conferring upon them divers powers for those and other purposes and among others the power of levying a tax upon the taxable property of the precinct of Rockford in said County for such purposes, and that the said act required that the Successors of the said persons named and incorporated in & by the said act should be elected annually at the General Election in each year, and this affiant further says that ever since the first day of December last past or thereabouts, Bela Shaw Newton Crawford Harry N Spaulding and Bradford McKinney of Rockford aforesaid have usurped, intruded into and unlawfully held and executed, and still do usurp intrude into and unlawfully hold and execute the Office powers and rights of such Bridge Commissioners as aforesaid, without having been elected thereto at any annual election as aforesaid, and without having any legal warrant right or title to do so as this affiant is advised and believes to be true, and this

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further says that the said Bela Shaw Newton Crawford Harry N Spaulding and Bradford McKinney so being unlawfully such Bridge Commissioners as aforesaid purpose and intend to levy a tax under color of the said act, upon the Tax payers of the said Late precinct of Rockford to the amount of Eight hundred dollars and more, and that it is unlawful for them to levy such tax as this affiant is advised and believes, that this affiant is the owner of a considerable amount of Taxable property within the said Late precinct, and is interested in having the right and title of the said Bela Shaw Newton Crawford Harry N Spaulding Nes and Bradford McKinney to the said Office of Bridge Commissioners of the Rockford Bridge tried upon a legal proceeding to oust them from the said Office. And this affiant further says that application for leave to file an information in the nature of a Quo Warranto against the said Bela Shaw Newton Crawford Harry N Spaulding and Bradford McKinney could not be made sooner at his instance for the reason that this affiant was not aware at the last term of this Court of the facts constituting the want of title of the said persons to be such Bridge Commissioners as aforesaid, nor that it was material to the interest of this affiant that they should be ousted from being such Bridge Commissioners

(Signed) George Dixon

Sworn to at Rockford

in the county of Winnebago
this 11th day of March 1850
before me

O H Spafford Clerk

In the Winnebago County Circuit Court

State of Illinois
Winnebago County } ss

Francis Bennett of Rockford in the County of Winnebago makes solemn affirmation and saith, that he did on the Eleventh day of March instant serve Bela Shurtleff, Henry N Spaulding and Rufus McKinney named in the annexed notice with the said notice by delivering to each of them respectively a true copy of the said notice and also a true copy of the affidavit of George Dixon hereunto annexed. and further that this affiant did on the fourteenth day of the same month of March serve Newton Crawford, also in the said notice named with a true copy of the said notice and affidavit and this affiant further saith that the said service upon each of the said persons was made at Rockford aforesaid

(Signed) Francis Bennett

Affirmed at Rockford in the County of Winnebago this 18th day of March 1850 before me

O H Spafford
Clk

[2048-4]

and of record & Bent on the 22d day of March AD 1858 at the March Term of said Court in the Record following Affidavit of Bela Shaw one the defendants herein was filed in this Cause Exit which said affidavit is in the words & figures following Viz

Winnebago Circuit Court
Bela Shaw, Newton Crawford
Henry N Spaulding and
Bradford McKinney
vs
The People ex rel George Dixon } March Term 1858

Winnebago County ss
Bela Shaw one of the above named Defendants being duly sworn deposes and says that by an act of the Legislature of the State of Illinois entitled "An act to provide for the maintenance of the Rockford Bridge" approved February 25 1847 this Deponent, the said Defendant Newton Crawford and Ephraim Wyman and Daniel McKinney were by said act appointed "Bridge Commissioners of the Rockford Bridge, and by said act appointed a Body Corporate and politic by said name, and thereby authorized & declared the amount of tax to be levied on the taxable property of Rockford Precinct for the maintenance of said Bridge. And the Deponent further says that in com=

plance with the third Section of said Act an election for the choice of such Bridge Commissioners was held at the Court House in Rockford Precinct on Monday the 2d day of August 1847. being the first monday in said August. and the Defendants Shaw and Crawford and the said Ephraim Wyman were in due form of Law elected. the said Shaw residing on the East side of Rock River and the said Wyman & and Crawford on the West side of Rock River. and that at said Election ~~and that at said~~ the said Daniel McKinney and one Charles Morris, both residing on the East side of Rock River received an equal number of votes. and a greater number than any other candidates for said Office except the above named persons who were elected

And this Deponent further says, that on the 7th day of August 1848 being the first Monday thereof an election ~~was held~~ for said Commissioners was held at the Court House in Rockford Precinct and the said Wyman & Crawford residing on the West side of the River and the said Shaw ~~the Deponent~~ and one Luke Doolittle residing on the East side thereof. were in due form of Law Elected as such Commissioners

And this Deponent further says that at an Election for the Choice of four Bridge Commissioners for said Bridge was held at the Court House in Rockford Precinct on the 6th day of August 1849. being the first Monday of said Month. when the Defendants, two of them residing on the East side of the River and two residing on the

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other side thereof were in due form of law elected as such commissioners and that under and by virtue of said election the Defendants now claim to be and act as such commissioners.

And this deponent further says that all the above named persons appointed & elected as aforesaid as Bridge commissioners acted as such during the term of their appointment and election and that each time they were severally sworn as required by said act before acting

Bela Shaw

Sworn to & subscribed before me this 21st day of March 1850

Selden M. Church
Judge of the Court

And afterwards to wit on the 23d day of March AD 1850 at the March Term of said court in the records of the proceedings in said cause is the following entry in this cause to wit

The People Ex Rel
George Dixon
vs
Bela Shaw Newton Crawford
Henry R Spaulding & Bedford McKay

And now on this day comes the States Attorney in behalf of the People and on affidavit of the Relator herein moves the court for a change of venue in this cause and the court being fully advised on said motion orders that the venue herein be and the same is hereby changed to the County of Stephenson and it is further ordered by the court that the Clerk of this Court transmit to the Clerk of Circuit Court for the County of Stephenson all the papers connected herewith together with a complete transcript of the record herein

And afterwards to wit on the 29th day of March AD 1850 an entry is made upon the records of the Circuit Court of the County of Stephenson in the above entitled cause in words and figures following to wit

The People Ex Rel Geo Dixon
vs
Bela Shaw & als

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Now at this day comes the States Attorney for the Eleventh Judicial Circuit in behalf of the People and moves the Court for leave to file information herein in the nature of a Quo Warranto, and thereupon the said Defendants appear by Isaac Marsh Esq their Attorney, and resist the said Motion. And the Counsel for said parties being heard by the Court, It is considered by and ordered by the Court that the States Attorney have leave to file an information in this Court according to his application in this behalf.

And afterwards Viz. on the 30th day of March
A.D. 1855 an information was filed in the Cause, with the Clerk of said Circuit Court of the County of Jefferson aforesaid. Which said information is in the words and figures following Viz it

In the Stephenson Circuit Court
By change of Venue from the County of Winnebago
Of the Term of March in the
Year of our Lord one thousand
Eight hundred and fifty.

Stephenson County ss.

Phineas W. Clark
States Attorney Pro tem in the County of Winnebago
of the People of the State of Illinois for the said
County duly appointed by the Court in the absence
of Thomas Clark Circuit Attorney of the Eleventh
Judicial Circuit of the said State who sues for
the said People in this behalf, comes here into the
Circuit Court for the County of Stephenson at
the Court house in Freeport in the said County
on the 30th day of March in the Year of our Lord
One thousand Eight hundred and fifty and for
and in the name and by the authority of the
said People of the State of Illinois at the relation
of George Dixon of Rockford in the County of
Winnebago according to the form of the statute
in such case made and provided, gives the said
Court here to understand and be informed.
That in and by a certain act of General Assembly
of the State of Illinois passed on the twenty fifth
day of February in the Year of our Lord one thousand
Eight hundred and forty seven intitled "An act
for the Maintenance of the Rockford Bridge". It
was among other enacted as follows. That is
to say "A special Tax is hereby authorized
to be levied upon the taxable property in Rockford

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precinct in the County of Winnebago for the purpose of repairing and maintaining the Bridge ~~[illegible]~~ across Rock River at Rockford, and defray the debt incurred in its erection and repair". And that in an other part of the said act, it is enacted as follows that is to say "Newton Crawford Bela Shaw Ephraim Nyman and Dennet McKinney are hereby appointed Bridge Commissioners of the Rockford Bridge. And said Commissioners, and their Successors are hereby appointed a body corporate and politic by such name and style and are hereby vested with power to declare the amount of tax to be levied on the taxable property of Rockford Precinct aforesaid" meaning the said Special tax. And that in an other part of said act it is enacted as follows that is to say. "Said Commissioners are hereby authorised to appoint a Treasurer to take charge of the funds collected, and are also empowered to apply the proceeds of such tax to the maintenance and repair of the Rockford Bridge and to defray the amount of indebtedness incurred in erecting and repairing such Bridge" And that in another part of the said act it is enacted as follows that is to say. "Said Commissioners are hereby required to keep said bridge in a good and safe state of repair as far as the funds produced by such tax will warrant" And that in an other part of the said ~~Ac~~ act it is enacted as follows that is to say "An Election for four commissioners under this act shall be held at the next General

election, on the first Monday in August Eighteen hundred and forty seven, and every year thereafter, be elected by the legal voters of Rockford precinct" as in and by the said act will more fully and at large appear And that the said act still remains unrepealed. And that Bela Shaw Newton Comfort Harry N. Spaulding and Buford McKinney all of Rockford aforesaid in the County of Winnebago aforesaid for the space of one hundred and twenty days now last past and more without any legal warrant, right or title whatsoever have used and exercised and still do use and exercise the said Office of "Bridge Commissioner of the Rockford Bridge" to wit at Rockford aforesaid in the County of Winnebago aforesaid, and that each of them has used and exercised, and still do use and exercise the Office of such bridge commissioner, but at Rockford and in the County aforesaid, and that the said Bela Shaw, Newton Comfort Harry N Spaulding and Buford McKinney for and during all the space of time last above mentioned, without any legal warrant right or title whatsoever at Rockford aforesaid in the County of Winnebago aforesaid have claimed and still do claim to be bridge commissioners of the Rockford Bridge ~~and have and have and exercise~~ under the act aforesaid and each of them has claimed and still do claim to be one of the said Bridge commissioners of the Rockford Bridge

appointed by a certain other act of the General Assembly of the State of Illinois passed on the twenty fifth day of February in the year of our Lord one thousand eight hundred and forty seven entitled "An act to provide for the maintenance of the Rockford Bridge" West at Rockford aforesaid in the County of Winnebago aforesaid, and that each of them hath used and exercised and still doth use and exercise the office powers and rights of such Bridge commissioners to wit at the place and in the County aforesaid and that the said Bela Shaw Newton Crawford Harry R Spaulding, and Bradford McKinney for and during all the space of time last above mentioned without any legal warrant right or title whatsoever at Rockford aforesaid in the County aforesaid have claimed and still do claim to be the Bridge commissioners of the Rockford Bridge under the last mentioned act act and each of them hath claimed and still doth claim to be one of the said Bridge commissioners and have and enjoyed and exercised all the powers and rights and duties appertaining to such Bridge commissioners, which said office powers and rights the said Bela Shaw Newton Crawford Harry R Spaulding and Bradford McKinney for and during the whole time last above mentioned upon the said People of the State of Illinois have usurped intruded into and unlawfully held and executed and still do usurp and unlawfully

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hold and execute, and each of them have usurped into and unlawfully held and executed and still do the usurp and unlawfully hold and execute, Duet at Rockford aforesaid in the County of Winnebago aforesaid, in contempt of the said People of the State of Illinois, and to their great damage and prejudice and also against the peace and dignity of the same People &

Wherefore the said States Attorney for the said People prays the consideration of the Court here in the premises, and that due process of law may be awarded against the said Bela Shaw Newton Crawford Henry N Spaulding and Bradford M Phinney to compel them and each of them to answer to the said People and to shew by what warrant or authority they claim, and each and either of them respectively claims to hold have use and exercise the office franchises and rights aforesaid

P. W. Platt States Attorney
Pro tem

And afterwards to wit on the 9th day of September AD 1851 at September Term of said Court. in the Records of the proceedings thereof is the following Entry to wit

The People of the State of Illinois Ex Rel George Dixon
vs
Bela Shaw & als

Now at this day come the Defendants by Marsh their Attorney and enter their appearance herein

And afterwards to wit on the 14th day of September AD 1852 upon the Records of said Tazewell Court of Chpinson County of the proceedings in the above entitled cause is the following entry to wit

The People of the State of Illinois Ex Rel George Dixon
vs
Bela Shaw & als

On Motion of Plaintiffs by their Attorney It is Ordered by the Court that Defendants plead to the information in this Cause by Tuesday Morning next,

And afterwards to wit on the 21st day of September AD 1852

The Defendants by their attorney file the following plea in the Cause which is on and is and lyeth following Viz:

Stephenson Cir Court

Bela Shaw Newton Crawford
& Bradford McKinney &
Henry N Spaulding
vs
The People ex Rel
George Dixon

And the said Defendants by S Marsh their attorney come and defend the wrong and injury when & where &c. and protesting that the said information and the matters and things therein contained are insufficient in law and that they need not nor are they obliged by the law of the land to answer thereto, yet for a plea in this behalf they say that the People their information aforesaid ought not to have and maintain because they say that under the provisions of an act of the General Assembly of the State of Illinois, entitled "An Act to provide for the Maintenance of the Rockford Bridge" approved February 25. 1847. the said Bela Shaw & Newton Crawford together with Ephraim Wyman & Daniel McKinney were appointed "Bridge Commissioners of the Rockford bridge" and they the said

Commissioners & their successors were in and by the said act enacted, declared and appointed a body corporate, and politic to continue and have succession, as by the said act of the General Assembly of the People of the State of Illinois, reference being thereto had, will among other things more fully and at large appear. And the said defendants further say that by force of the said act of the General Assembly and of the provisions thereof the said Bela Shaw Newton Comfort Ephraim Wyman and Daniel McKinney did do, act and perform the duties and exercise the powers and privileges of such "Bridge Commissioners of the Rockford bridge" as they lawfully might from and after the time of their appointment aforesaid until the first Monday in August in the said year 1847. And the said Defendants further say that in & by said act, among other things it was provided in the third section thereof that "an election for four commissioners under the act shall be held at the next general Election on the first Monday in August Eighteen hundred and forty seven, and every year thereafter, to be elected by the legal voters of Rockford Precinct, and at all such Elections the two candidates residing on the East side of Rock River having the highest number of votes, and the two candidates residing on the West side of Rock River receiving the highest number of votes

shall be declared duly elected"

And the said Defendants further say that afterwards to wit on the second day of August in the year of our Lord 1847 being the first Monday in said August in pursuance and by virtue of said third Section of said act an election was held in said Rockford Precinct by the legal voters of said Rockford Precinct to wit in said County of Winnebago at the Court House in said Rockford precinct for the choice of such four Commissioners at which said Election the said Bela Shaw & Newton Crawford and the said Ephraim Wyman were in due form of law elected by the said legal voters of Rockford Precinct such Commissioners the said Newton Crawford and Ephraim Wyman residing on the West side of Rock River and the said Bela Shaw residing on the East side of Rock River. And at said Election the said Daniel McKinney and one Charles Works both residing on the East side of Rock River received an equal number of votes and a greater number than any other person residing on the said East side of Rock River next to the said Bela Shaw

And those Defendants further say that on the seventh day of August 1848 being the first Monday thereof an election for such four Commissioners was held at the Court House in said Rockford Precinct and the said Newton Crawford & Ephraim Wyman residing on the West side of Rock River

and the said Bela Shaw and one Luke Coshie were at such Election duly in due form of law in pursuance and by force of the provisions of said act elected such four commissioners. And these defendants further say that afterwards to wit on the sixth day of August 1849 being the first Saturday of said August an election was held at the Court House in said Rockford Precinct in said County of Winnebago by the legal votes of said Rockford Precinct, for the choice of such four commissioners under and by virtue of the provisions of said act, and at said last mentioned Election the said defendants Bela Shaw & Bradford McKinney residing on the East side of said Rock River having received the highest number of votes at such Election ~~were duly in due form of law elected by the legal votes of said Rockford Precinct~~. And the said Defendants Newton Crawford & Harry A. Spaulding residing on the West side of said Rock River having received the highest number of votes at such Election were duly in due form of law elected by the legal votes of said Rockford Precinct such four commissioners

And the said Defendants further say that from and after the said last mentioned first Saturday in August by virtue of their said Election as Bridge commissioners of the Rockford Bridge and by force and virtue of said act of the

[1206 R.12]

General Assembly of the people of the People of the State of Illinois they having taken the oath required by said act did enter into the said Office of Bridge Commissioners of the Rockford Bridge and have without Doubt from and after the said last mentioned first Monday in August until the filing of the said information held the said Office and continued to exercise and perform the powers and duties thereof as they lawfully might do, and as they were required by the provisions of the act aforesaid to do. All which several matters and things they the said Defendants are ready to verify & be wherefore they pray judgment &c

J Marsh
Defts Counsel

And afterwards to wit on the 25th day of September AD 1852 upon the Records of said Court of the County of Stephenson of the proceedings in the above intitled cause is the following entry to wit

The People of the State of Illinois
Ex Rel George Dixon
vs
Bela Shaw & als
} Quo Warranto
information

By agreement of parties on file It is Ordered by the Court, that the

venue in this cause be changed to the County of Winnebago. It is therefore ordered by the Court that the Clerk of this Court transmit to the Clerk of the Circuit Court for the County of Winnebago all the papers connected herewith together with a complete Transcript of the Records herein. And it is further ordered that the said cause be there tried as if the same had originated in the Winnebago County Circuit Court

And afterwards to wit on the 6th day of May A.D. 1853 the said Plaintiffs by their Attorney come and file their Demurrer to the Defendants plea herein with the Clerk of the Winnebago County Circuit Court, which said Demurrer is in the words & figures following to wit

In the Circuit Court

The People ex Rel George Dixon
vs
Bela Shaw Newton Crawford
& Harry N Spaulding & Bradford McKinney

And William Brown States Attorney for the fourteenth Judicial Circuit who prosecutes in this behalf for the said People of the State of Illinois, says that the said plea of the said Defendants by them above pleaded

[1001-13]

and the matters and things therein contained in manner and form as the same are above pleaded and the matters therein contained ~~in manner and form~~ ~~as the same are above pleaded~~ and set forth are not sufficient in law to bar or preclude the said People from having and maintaining their aforesaid information against the said Defendants. And that he the said States Attorney in behalf of the said People is not bound to answer the same. And this he is ready to verify. Wherefore for want of a sufficient plea in this behalf the said States Attorney prays judgment in the premises for the said People against the said Defendants, and that the said Defendants may be ousted and removed from the said Office of Bridge Commissioners of the Rockford Bridge, and may be fined for their usurping intruding into and unlawfully holding and executing the said Office of Bridge Commissioners and that the said George Dixon Relator as aforesaid may recover his costs of prosecution &c.

And the said States Attorney shews to the Court here the following causes of demurrer to the said plea: that is to say, for that the said Defendants have not in and by their said plea alleged that they were elected by the legal voters of Rockford precinct at an election for that purpose held at a General Election according to the provisions of the said act in that behalf. But on the contrary thereof the said plea shews ~~and~~ that the said Defendants were elected

at a time when no General Election was or could be held in this State

And also for that the said Defendants have in and by their said plea alleged that they were duly in due form of law elected such Bridge Commissioners as aforesaid, yet they have not shown by whome the said Election was held or the form or manner thereof, or whether they were declared elected, or ~~[illegible]~~ were elected at the proper place so as to enable this Court to judge whether they were duly elected

William P Brown
States Attorney

And on the same day to wit the 6th day of May A.D. 1853 at the April Term of said Winnebago County Circuit Court in the Record of the proceedings thereof in this Cause is the following certain Bill

The People of the State of
Illinois Ex Rel George Dixon
vs
Bela Shaw Newton Crawford
Harry N Spaulding and Buckford McKinney

This day comes William P Brown States Attorney for the Fourteenth Judicial Circuit who prosecutes for the People in this behalf and files his demurrer to the plea of the Defendants to the information in this Cause, and the said Demurrer having been submitted to the Court

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the same is overruled. It is therefore considered and adjudged by the Court that the said People take nothing by their said information, and that the said defendants go thereof without day and it is further adjudged and considered by the Court that the said Defendants have and recover against the said Relator their costs and charges herein expended and that they have execution therefor

State of Illinois
Winnebago County ss

I O H Spafford
Clerk of the Circuit Court in & for said
County do certify the foregoing to be a true
copy of the pleadings & Record in the
above entitled cause so far as I have been
directed to set them forth by the Plaintiff
in Error

In Testimony whereof I
hereunto set my hand and
affix the Seal of said Court
at Rockford this 24 day of
July A D 1833

O H Spafford
Clk

Fees for Transcript
$ 9,25

[12068-15]

And now, to wit on the second Monday in June, in the year of our Lord one thousand eight hundred and fifty-three, before the Justices of the Supreme Court of the People of the state of Illinois, at the court house at Ottawa, in the county of La Salle, comes W. H. L. Wallace ~~Cook~~ states attorney of the ninth judicial Circuit of the said state, who prosecutes for the said People in this behalf, and says, that in the record and proceedings aforesaid, and in the rendition of the judgement aforesaid, there is manifest error, in this to wit that the said Circuit Court for the county of Winnebago ought to have sustained the said demurrer of the said People, and not to have overruled the same. And there is also error in this, that the said Circuit Court, ought to have sustained the said demurrer for all and singular the causes therein alleged, and also there is error in this, that by the record and proceedings aforesaid, it appears that judgment therein was given for the defendants therein, ~~when~~ against the said People, whereas by the law of the land the same ought to have been given in favor of the said People against the said defendants. Wherefore the said W. H. L. Wallace ~~Cook~~ states attorney as aforesaid, ~~in the name~~ in behalf of the said People, prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for nought, and that the said People may be restored to all things which they have lost by occasion of the said judgment, &c.

W. H. L. Wallace
States atty

Francis Barnes,
Of Counsel for relator.

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Supreme Court,

The People of the state of Illinois ex rel. George Dyson

vs.

Bela Shaw,
Newton Cranford,
Harry N. Spalding and
Bradford McKenney,

Writ of Error, Return and Assignment.

Filed July 5. 1853.
L. Leland Clk.

Burnap.

And the said defendants by J. Marsik their Attorney come & say the record & proceedings aforesaid are in manifest error

J. Marsik
Attorney for Defts in error

Supreme Court.

People ex rel. Dixon
vs.
Shaw and others.

Brief.

1. The Rockford Bridge act, S.L. 1847, authorises an election of Bridge Commissioners at a general election only, and not at ~~a special election. §3.~~ any other election. §3.

2. The term "general election" is equivocal, being strictly and in general applied to the biennial elections. Old Constitution, R.S. 31 §2, election of senators and representatives; Election of Governor, R.S. 33 §2: Of Sheriff and coroner, R.S. 34, §11. Of lieutenant governor R.S. 34, §13. R.S. 215, §§6, 7, 8, 10. Vacancies, R.S. 221, §32, 34. Election of probate justice. R.S. 426 §2.

3. An election however always being held on the first Monday in August of every year, ~~the election~~ all such elections were sometimes called general elections. R.S. 131 §6. (Laws 31, 274.) For this reason, after the words "next general election," in the third section of the Rockford Bridge act, there were inserted the words, "on the first Monday in August, eighteen hundred and forty seven" to shew that the first election was to be in 1847, instead of 1848, when the first general election properly speaking, was to be held.

4. The new constitution changes the general election from the first Monday in August to the Tuesday next after the first Monday of November, ~~Sess. L. 1849, p. 17 §9. Same page 71, §2.~~ and these general elections are to be held biennially, in the even years. ~~commencing in 1850.~~ Session Laws 1849, p. 17, §9. Page 71, §2. The session laws of 1849, however, provide an election corresponding with the old election of county commissioners, on the first Monday of November 1849. Page 62 §2. 63 §7. 65 §§16 17.

5. The Rockford Bridge Commissioners, after 1848, must have been elected at one of the elections last above referred to, or else at a special election. (New Const. S. L. 1849, p. 26, §16.) No special ~~at~~ election is authorised by the act, and it does not provide any machinery by which a special election ~~can~~ could be held. It does not provide for notices, as in case of all general and special elections. R.S. 215, §10; ~~§§ 91,~~ and there is no person to give any such notice; nor for an order as in case of vacancy in the office of justice of the peace, R. S. 314, §4. Probate justice S. L. 1849 page 185 §2.

6. The material thing contemplated ~~in the election of commissioners, by the Rockford Bridge act,~~ was that the commissioners should be elected ~~at a general election~~, when the voters were present at a general election and the election board was organised. Besides, that the day ~~of the~~ and month for the first election ~~being~~ was given to show what was meant

by the first general election, ~~only~~ as a general rule the time or particular day for the election of corporate officers is directory only. 2 Kent's Com. 275. McCall vs. Byram Manufacturing Company. 6 Con. 438. People vs. Johnson 9 Johnson 157.

7. The plea ~~sets~~ alleges that the election was held at the court house in the precinct; but it does not shew why it was held there; nor that the court house was the place appointed by the county commissioners court, for holding elections in the precinct. R.S. 215 §7.

8. The plea alleges that the election was held by the legal voters of the precinct, but does not shew how they proceeded; whether the commissioners were elected by acclamation, or by ballot, or who presided. Cole on Informations, 349, 355.

9. It does not shew ~~by whom~~ that they were declared elected, as the third section of the act required. Cole on Informations 350, 356. This was ~~necessarily~~ expressly made necessary by the act. §3.

10. The plea avers that the defendants were duly elected. This is not sufficient. The defendants are required to shew their title, and the greatest certainty

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the courts ought to be vigilant, and see that every requisite of the law is ~~complied with~~ strictly complied with. ~~Rockford Bridge Act 9th~~

15. The Rockford Bridge Commissioners were authorised to levy a tax of fifty cents ~~on $100~~ upon $100 on the taxable property in the precinct, and to apply the proceeds of the tax to the maintenance and repair of the Rockford Bridge, and to defray the indebtedness incurred in ~~its erection and upon~~ erecting and repairing it; and were required to keep the bridge "in a good and safe state of repair, as far as the funds produced by such tax will warrant." When the proceeds of that tax were expended ~~therefore~~, the functions of the Bridge Commissioners were at an end, and they ceased to be a corporation. They should therefore in their plea have shewn that the proceeds of the first tax were not expended.

Supreme Court.

People & rel. Dixon

vs.

Shaw and others.

Brief.

Barnap.

In the Supreme Court.

Ottawa County, ss.

A writ of error for the People of the state of Illinois at the relation of George Dixon against Bela Shaw, Newton Bradford, Harry N. Spalding and Bradford McKenney, ~~di~~ upon complaint of the said George Dixon, directed to the clerk of the Circuit Court for the county of Winnebago, commanding him to certify a ~~tra~~transcript of the record and proceedings in a certain cause lately depending in the said Circuit Court wherein the said People of the ~~said~~ state of Illinois at the relation of the said George Dixon were plaintiffs and the said Bela Shaw, Newton Bradford, Harry N. Spalding and Bradford McKenney were defendants.

Francis Burnap,
for said relator.

~~An~~ writ of scire facias to hear errors in the same directed to the sheriff of Winnebago County.

Francis Burnap
for said relator.

In the Supreme Court.

The People of the state of Illinois
at the relation of George Dixon
vs.
Bela Shaw, Newton Crawford,
Harry W. Spalding and Bradford McKenney.

Quo warranto.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action, either to the opposite party or any of the officers of this court, in pursuance of the laws of this state. Dated this thirtieth day of May, 1853.

Francis Burnap.

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Supreme Court.
The People ex rel. George Dixon
vs.
Bela Shaw,
Newton Crawford.
Harry W. Spalding and
Bradford McKenney.

Praecipe.

Filed May 30. 1853.
J. Pollard Clk.

Burnap.

STATE OF ILLINOIS, } The People of the State of Illinois,
Supreme Court.

To the Sheriff of the County of Winnebago — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of Winnebago — county, before the Judge thereof, between The People of the State of Illinois at the relation of George Dixon, plaintiffs — and Bela Shaw, Newton Crawford, Harry N. Spalding & Bradford McKenney — defendants, it is said that manifest error hath intervened, to the injury of the said — plaintiffs as we are informed by their complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Bela Shaw, Newton Crawford, Harry N. Spalding & Bradford McKenney

that they be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the 2nd Monday in — June — next, to hear the records and proceedings aforesaid, and the errors assigned, if they — shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Shaw, Crawford, Spalding & McKenney — notice, together with this writ.

Witness, the Hon. **SAMUEL H. TREAT**, Chief Justice of our said Court, and the seal thereof, at Ottawa, this thirteen day of May — in the year of our Lord one thousand eight hundred and fifty three.

L. Leland Clerk of the Supreme Court.

Received this writ June 8th 1853
of Francis Brunner Atty
H. H. Milliken Sheriff

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The People ex rel. Dixon
v
Bela Shaw et als.

Sci. Fa.

To June Term 1853.—

I have served the within writ by reading the same to the within named Bela Shaw Bradford McKinney & Newton Crawford this 8th day of June A.D. 1853
Harry N. Spaulding is not found in my County

Serv	1.50
Mil	15
Ret. writ	10
	$1.75

H. H. Milliken Sheriff
Win. Co. Ills

Filed July 19, 1853.
J. Leland Clk.

In the Supreme Court.

The People ~~ex~~ rel. George Dixon
vs.
Bela Shaw, Newton Crawford,
Harry N. Spalding and Bradford McKenney,

Error to Winnebago.

It is hereby agreed and stipulated by and between the above intitled cause, that no proceedings shall be had in the said cause, other than filing the record therein, ~~until the sixth day of~~ and assigning errors, until the sixth day of July next; and that upon the said day, the said record and assignment of errors having been filed, joinder in error shall be filed for the above named defendants in the said cause, on the said day, or soon thereafter. Dated 13 June 1853.

Francis Barnard,
Attorney for Relator.

Jam Mast
for defts

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Supreme Court

People ex rel. Dixon

vs.

Bela Shaw and others.

Stipulation.

Filed June 18. 1853.

S. Leland Clk.