

No. 14511

Supreme Court of Illinois

Moore

vs.

Hoisington

71641  7

62
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 149

Reported

Moore
vs
Hessinger

363

14511

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Manure Judge of the Seventh
Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of
Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House
in the City of Chicago, in said County, on the Third Monday, (being the
Sixteenth day) of March in the year
of our Lord One Thousand Eight Hundred and sixty-three and of the
Independence of the said United States the Eighty seventh

Present, Honorable George Manure Judge of the 7th Judicial Circuit }
of the State of Illinois. }

Joseph Knut States Attorney.

David S. Hammond Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered, that heretofore
to-wit; on the 26th day of February in the year
of our Lord One thousand Eight hundred
and sixty-three, John M. Morse by William L.
Gandy his Solicitor filed in said Court his certain
Bill of Complaint, which is in the words and
figure following, To-wit-

2

State of Illinois
County of Cook p.

John, M. Moore

vs
Charles Mc Donnell et al

Circuit Court
March Term
1863
In Chancery.

To the Honorable George Mannin
Judge of the Circuit Court, in and for the County
of Cook and State of Illinois

Your orator John, M. Moore of the Town
of South Chicago, County of Cook and
State of Illinois unto your Honor humbly
complaining, sheweth, that on the 4th day
of November A. D. 1862, an election was held
~~under~~ ^{and under} in pursuance of the laws of
the State of Illinois, for town officers of the
Town of South Chicago aforesaid, that the
Town of South Chicago is divided into nine
election precincts to wit, two precincts in
each of the first, second, third and fourth
wards of the City of Chicago, in said County,
numbered, first, ^{and} second precincts in each of
said wards, and the precinct of South Chicago,
without the City limits, and on the said 4th
day of November 1862, the polls were open-
ed, brands of election, qualified, and vote

were received, in each of the said precincts for the different town officers, provided by law, to be elected in said town on that day and further that the manner of conducting said election was to conduct the election for town officers, and also all officers elected for State, District and County offices, under the laws of the State, under the supervision of three Judges or Inspectors of election, and two clerks at each poll or precinct for each board of election so constituted to keep two ballot boxes, in one of which it was designed to put the ballots for State, County, and Congressional candidates, and in the other ballots for candidates for town officers, while the two clerks kept two poll lists, corresponding or duplicates, in which was entered the name of each person voting, without discrimination whether he voted for one or both sets of candidates, for the different ~~town~~ offices, and all the candidates for Congress, State and County offices, & for members of the General Assembly were printed or written on one ballot, and all the candidates for town offices on another ballot, and after the election was closed, and the ballots counted, and canvassed, the ballots for town officers were placed in a paper bag, sealed up by the Judges of election, and ought to have been delivered to the County Clerk or Town Clerk and the ballots for members of Congress, State and County officers and members of the

3
General Assembly were placed in another paper bag, sealed up and, delivered to the clerk of the county court, and both of said bags were properly labelled, with a statement of the contents thereof.

And your orator further shews unto your Honor, that at said election so holden as aforesaid on the 4th day of November 1862, votes were cast for different town officers to-wit: Supervisor, ^{Assistant} Supervisor, ^{Collector}, Clerk, Five Justices of the Peace, Five Constables, Three Overseers of Highways, and one Comptroller of Highways, and your orator attaches hereto a tabular statement marked Exhibit C, and makes it a part of this Bill of Complaint, exhibiting the votes cast for Justices of the Peace, and in each precinct with the same added up, giving the aggregate vote for each person for said office, as the returns from the different voting precincts show the same to be except as hereinafter stated, whereby it appears and the fact is, that your orator, Aaron Aaron Calvin, De Wolf, ~~Q. G. Hamilton~~, and Nicholas Bondell were duly and legally elected Justices of the Peace and it further appears therefrom, that ^{Charles} ~~James~~ ^{Glennell} ~~McDonnell~~ was also elected, but whether such is the fact or not your orator does not state, but he has been informed and believes, that Charles Mc Donnell was elected instead of ^{James A.} ~~said~~.

who claims to be elected - and your orator further shews
 And your orator further shews
~~unto your Honor~~, that returns of the result of
 said election. Showing the number of votes
 cast for each candidate, for the different town
 officers, were delivered to Leonard Campbell
 who was there and there the town clerk of the
 said town of South Chicago, on or before the
 10th day of November 1862, from all the ^{said} vo-
 ting precincts.

And your orator further shews, that
 at said election on the 4th day of November
 1862, the board of election at each poll
 consisted of three judges or inspectors and two
 clerks, that two lists of votes were kept, one
 by each clerk, and the name of every per-
 son voting was entered on both, that two
 ballot boxes were kept at each poll, in one
 of which it was designed to put the ballots
 for Congressional, Legislative, County and
 State officers, and in the other the ballots for
 town officers, but your orator avers, that
 it so happened by design or mistake of the
 Judges, that the ballots were interchanged
 or put into the wrong box, so that when the
 polls were closed, and the ^{two} boxes opened, ballots
 of both kind were found in each box, and
 at some of the election polls such ballots
 were counted and returned, the same as
 if they had been found in the box for which

They were intended, and at other, The ballots for town
 officers found in the box intended for State,
 county, Congressional, and Legislative ballots
 and Vice Versa were rejected by the Judges or
 Inspectors, and not returned, and of the latter
 class in the town of South Chicago, your report
 shows that at the poll, for the second precinct in
 the second ward, of the said city of Chicago, the
 Judges or Inspectors found thirty two ballots
 for town officers, in the box intended for ^{the ballots of} general
 officers which they did not count or include
 their usual certificate and return. (and at the
 same time found thirty five ballots for gen-
 eral officers, in the box intended for town ~~ballots~~
 but counted the same, sealed them up in an
 envelop, and deposited them in the county
 clerk's office, and made a special return
 stating the facts to the office of the town clerk,
 and of these ballots your report received
 Twenty five votes for the office of Justice
 of the Peace, the said Worthington ten for Justice
 of the Peace, and Aaron Aasen, Charles Mc Donald,
 Nicholas Bendell, and Peter Caldwell, Twenty
 five votes each for the offices of ~~Justice~~ of
 the Peace, and Calvin J. Wolf, J. G. Milliken,
 J. Summerfield, and C. G. Diehl, seven votes
 each for the same office.

And your report further shews, That at the
 polls of the 1st precinct of the 4th ward, in said city.

Twenty five ballots were cast for your orator and the said Aaron Haven, Nicholas Bendell, Peter Caldwell, and Charles Mc^r Donnell, and seven for their respective competitors, which were rejected, not counted or returned in any way for the sole reason, that they were placed in the wrong box, by such interchange.

And your orator avers, that he is entitled to those votes last described, and that counting them in addition to the votes shown by the returns, and the Table marked Exhibit C. as well as allowing those cast for others, the majorities of your orator and the said Haven and Bendell will be increased and also the said Charles Mc^r Donnell will be entitled to the office of Justice of the Peace, instead of Isaac G. Milliken, who now claims to be elected, from the declared result of said election.

And your orator further shews that the said Leonard Gamphart town clerk as aforesaid neglected and refused to call to his assistance two Justices of the Peace, and canvass the returns of said election, because of insufficient reasons and excuses, until he was ordered to proceed in the discharge of said duty, by the judgment and decision of ~~the~~ Court, upon an application of the People, on the relation of Michael Evans, for a writ of mandamus to compel the performance of said duty, and after said peremptory writ was awarded

to wit on the 2^d day of December A.D. 1862, as your
 orator has since been informed and believes
 The said Leonard Gampert, acting as such
 town clerk, called to his assistance two Justices
 of the Peace, for the County of Cook, and proceed-
 ed to count and canvass the said returns, and
 declare the result thereof and in so doing the
 said clerk and Justices held that the certificate
 of returns from the the 1st precinct of the
 2^d ward in the City of Chicago, showed that
 Three hundred and sixty nine, votes were
 cast for A. M. Moore, for the office of Justice
 of the Peace, and none for your orator, & re-
 jecting said votes from the count for your orator.
 said clerk and Justices, declared that Aaron
 Haven received twenty nine hundred and
 twenty seven votes, Calvin D. Wolf, twenty
 nine hundred and ten votes, Isaac L. Milliken
 twenty nine hundred and seven votes, Pickles
 Berdell twenty eight hundred and eighty seven
 votes, and Charles Mc, Donnell twenty eight
 hundred and seventy three votes, ~~and Joseph~~
~~A. Springston twenty eight hundred and~~
~~seventy nine votes~~ each for the office of Justice
 of the Peace and were duly elected, and further
 that your orator received twenty ~~five~~ hundred
 and twenty seven votes, Peter Caldwell twenty
 eight hundred and fifty one votes, John Sherman
 field twenty eight hundred and fifty votes
 Joseph A. Hoisington twenty eight hundred & sixty nine ^{votes}

C. L. Biehl twenty eight hundred and thirty seven votes, & C. M. Moore three hundred and sixty nine votes each for the office of Justice of the Peace.

And your orator further shews that said canvass was made by the said clerk without any notice to your orator, and he had no information or knowledge thereof, untill the 4th day of December 1862, nor did he have any information that any error existed in the said return from the 1st precinct of the 2^d ward, untill the 5th day of December 1862.

And your orator avers, that the said three hundred and sixty nine votes were in fact, cast for him in the first precinct of the 2^d ward aforesaid, that the ballots were counted for him by the Inspectors and clerks of election at said poll, that the tally sheet and the poll books with the certificates thereto attached show that the said votes were cast for your orator, and that no ballots whatever were cast for C. M. Moore, and your orator avers the fact to be that the name C. M. Moore was written by one of the clerks of election at said poll, for the name of your orator in preparing the certificate of the result to be sent to the town clerk by mistake, and that said mistake was not discovered untill the canvass aforesaid, by the clerks and Justice.

6
And your orator avers, that except for said mistake, he would have been declared elected one of the Justices of the Peace for the Town of South Chicago, according to said returns, instead of Charles Mc, Donnell, and if the said ballots rejected as aforesaid because they were found in the wrong box, had been counted, the said Charles Mc, Donnell would have been declared elected instead of Isaac L. Milliken, but now so it is by reason of said mistakes certificates of election and commissions have been issued to the said Charles Mc, Donnell, Isaac L. Milliken and ^{they with} Gasper, C. Worthington, ~~and they~~ are now claiming the right to exercise the powers and perform the duties of said offices, while your orator has not secured either a certificate or a commission.

And in as much as your orator is without any sufficient remedy at Law, and can only have adequate relief in a Court of Equity, your orator therefore prays that the said Charles Mc, Donnell, Gasper, C. Worthington, and Isaac L. Milliken may be made parties defendants and be required to answer all and singular the statements herein as fully as if the same were here again repeated and they specially interrogated with reference thereto (but not upon oath, that being

9

Especially named), and upon a hearing, that the returns of votes cast at said election may be produced, and examined, the ballots cast properly counted, and the result, declared and such order and decree made as Equity may require, and that the said defendants who may be ascertained to be exercising the duties of the office of Justice of the Peace illegally, may be enjoined, from performing said duties, and that a summons may issue against said Charles Mc Donnell, Isaac L. Milliken, and Jasper C. Brisington, returnable as required by Law &c.

Wm. H. Fuller
 of counsel.

W. C. Bondy
 Sol for Complt.

(Exhibit "A")

		Presidents District	Waac. G. Williford	Calvin de. Wolf	J. ed. Worthington	W. G. Diehl	Ch. Summerfield	John McCornell	Charon Hansen	John. W. Moore	Nicholas Bendell	Peter Caldwell
First Ward	1	673	673	670	668	670	333	362	337	360	357	
" "	2	392	340	390	388	388	242	249	246	245	242	
Second "	1	557	526	528	578	578	366	383	369	368	358	
" "	2	318	311	338	312	311	449	442	437	448	438	
Third "	1	587	528	497	493	570	412	432	408	424	426	
" "	2	39	40	39	39	39	256	258	261	253	252	
Fourth "	1	293	298	289	301	296	360	362	360	372	352	
" "	2	60	60	60	60	60	179	179	179	179	179	
South Chicago		66	84	58	58	58	232	260	259	236	253	
		2907	2910	2869	2837	2850	2833	2923	2898	2887	2837	

12

And thereupon. to-wit: at the said Twenty-fifth
day of February in the year aforesaid. there was
issued out of and under the seal of said
Court. the Peoples writ of summons directed
to the Sheriff of said County to Execute
which is in the words and figures following
To-wit—

State of Illinois
County of Cook } p.

The People of the State of Illinois
to the Sheriff of said County - Greeting

We command you that you summon
~~Charles~~ Mc Donnell, Jasper, C. Hoisington
and Isaac E. Milliken, if they shall be found
in your county, personally to be and appear
before the Circuit Court of Cook County on
the first day of the next term thereof, to be
helden at the Court House in Chicago, in
said County of Cook on the 3^d Monday of
March next to answer unto John M.
Moore, in his certain Bill of Complaint
filed in the said Court on the chancery side
thereof. And have you then and
there this writ, with an endorsement thereon
in what manner you shall have executed
the same.

Witness William L. Church, Clerk of
Our said said Court, and the seal thereof at Chicago
aforesaid this Twenty Sixth day of February
A.D. 1863.

Wm L. Church Clerk.

(Seal)

Internal
50¢
Revenue

Served this writ on the within named Charles Mc. Donnell, Jasper. A. Hovington & Isaac G. Williken, by delivering a copy thereof to each of them the 26th day of February 1863.

David S. Hammond Sheriff
By A. Nelson Deputy

And afterwards to-wit: On the fifteenth day of March in the year last aforesaid said defendants Isaac G. Williken and Jasper A. Hovington by their attorneys, filed in said Court their Demurrer to the Complainant's said Bill of Complaint, which is in the words and figures following To-wit:

9
Cook County Circuit Court

Grace, L. Williken

James, C. Arisington

ads impleaded et al

John W. Moore

} In Chancery

} Demurrer of

Grace, L. Williken

James, C. Arisington

Two of the Defts.

These defendants by protestation, not confess-
ing, ^{or admitting} all or any of the matters & things in the
said Bill of Complaint to be true in such
manner and form as therein and thereby
set forth and alleged.

Doth demur to the Bill of Complaint, and
for cause of demurrer, shew that complainant
has not made by his said Bill of Complaint
such a case as entitles him in a Court of Equity
to any relief against defendants or either of
them, and shews that the subject of Complaint
is abundantly provided for by proceedings
at law. And said Bill of Complaint
is otherwise informal and insufficient.

And for ^{divers} other good causes of demurrer in
said Bill these defendants doth demur, and
pray judgment of this Honorable Court whether
they be compelled to make answer to said Bill
and humbly pray to be hence dismissed with his
costs of suit.

Chas. Garrison &

C. L. Jenkins

Sols for Defts

And afterwards, to-wit: at the March Term of
said Court, to-wit: On the seventh day of
April in the year aforesaid, the following
proceedings, Among others, were had and
Entered of record. To-wit: —

John M. Merce

vs

Charles Mc Donnell et al

In Chancery.

This cause coming upon the demurrer of the defendants to the Bill of Complaint, and argument having been heard thereon.

It is (pro forma) ordered, adjudged and decreed, that the demurrers be sustained, and the complainant having elected to abide by his Bill, it is further ordered and decreed that the Bill be dismissed, and that the complainant pay the costs herein.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the Bill, Petition, Demurrer & Answer in a certain cause lately pending in said Court, on the Chancery side thereof, wherein John M. Thorne was Complainant and Charles M. Donnell et al Defendants



In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this 11th day of April A. D. 1863
Wm L Church Clerk.

State of Illinois
3^d Grand Division

Supreme Court April Term 1863

John M. Moore

Gasper A. Hoisington,
Isaac L. Miller &
Charles McDowell

Error to Court

And now comes John M. Moore the Plaintiff in Error & says that manifest error hath intervened the proceedings, where of the foregoing is a record to the injury of said plaintiff in error & he assigns as error that

1st The Circuit Court erred in sustaining the demurrer to the Bill.

2^d The Circuit Court erred in dismissing the Bill & rendering judgment against the plaintiff in error.

Wherefore he prays judgment &c

W. C. Goidy

And the said Charles McDowell comes & says there is no such error.

Chas McDowell pro se

Supreme Court of Chicago

Isaac L. Miller

ad. unpleaded

John M. Moore

And now comes the said

Isaac L. Miller one of the above defendants by Attorney Garrison his Atty & says that there is no error either in the record and proceedings or in the giving of said judgment - And the said judgment ought in all things to be affirmed

Wm Garrison

for Isaac L. Miller
Deft in Error

Record

Given April 13, 1863

I Secane Mr Garrison

149

J. M. Moore

as

J. A. Hoisington