

No. 14013

# Supreme Court of Illinois

People, ex. rel.

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vs.

Dubois, Auditor

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Supreme Court - Second Grand Division,  
January Term 1860.

The People of the State of Illinois }  
Ex-relations of Martin Ballou } Application for a writ of  
vs } peremptory Mandamus  
Jesse H. Dubois Auditor of }  
the State of Illinois }

The facts on which this application is founded  
are set out in the agreed case

The questions arising in this case are as to the effect  
of the act of February 11<sup>th</sup> 1859, Sess. Law 1859 Page 56.

- 1<sup>st</sup> Did it create a new or additional Circuit so as to  
authorize the election of a Circuit Judge therefor? or,  
2<sup>nd</sup> Did it have the effect of removal of the relator from  
the office which he held under the act of February 10<sup>th</sup> 1857  
or, 3<sup>d</sup> Did it destroy <sup>then</sup> the office of Circuit Judge?

The relator insists that it had neither of these  
effects, for the following reasons.

1<sup>st</sup> - It did not create a new or additional Circuit.

Sec. 7 of Article 5 of the Constitution of this State provides  
"That the State shall be divided into nine judicial districts  
in each of which one Circuit Judge shall be elected by the  
qualified electors thereof, who shall hold his office for the term  
of six years, and until his successor shall be commissioned and  
qualified; Provided, that the general assembly may increase  
the number of Circuits to meet the future exigencies of the State"

Sec. 15 of the same Article provides, that, "On the first Mon-  
day of June 1855 and every sixth year thereafter, an election  
shall be held for judges of the Circuit Courts; Provided, when  
ever an additional Circuit is created, such provision may  
be made as to hold the second election of such additional judge  
at the regular elections herein provided"

In pursuance of the above provisions and of the act of Feb. 10<sup>th</sup> 1857 at the time of the passage of the act of Feb. 11<sup>th</sup> 1859 there was a twenty third Circuit then in existence, and in the state twenty four Circuits in all; so that the passage of the latter act did not increase the number of the Circuits in the sense contemplated by the Constitution; but only remodeled or redistricted the then existing Circuit by detaching Bureau County therefrom, and attaching Woodford County thereto; Consequently, in the opinion of the legislature such "Exigencies of the state" as are contemplated in the 7<sup>th</sup> sec. of the above Article did not then exist as would authorize the legislature to "increase the number of Circuits". Therefore it is evident the legislature did not intend by that act to create a new or additional Circuit, nor did it have such effect if so intended, because the number was not thereby increased, and as the legislature must derive its authority as therein prescribed.

The Constitution gives the legislature no authority or power to create two Circuits of the same number, the only designation of Circuits known to the Constitution is by number, and not by territory, for the territory is liable to be changed, and ever changing.

2<sup>nd</sup> The act of 1859 did not have <sup>the</sup> effect of removal of the senator from office, because the legislature has no power of removal in such manner, not even by a direct enactment, much less by indirection and implication, and can remove only in the mode and in the contingency prescribed by the Constitution. The legislature cannot by a

declaratory act make a vacancy in an office created  
by the Constitution

7. Ind. R. 326

6. Ind. R. 496

An incumbent is entitled to hold for the full term pre-  
scribed by the Constitution,

4. Texas R. 400

9. Watts 200

1. Sumner C. C. R. 277

The legislature cannot abolish an office created by the  
Constitution

7. Ind. 157

The act of detaching Bureau County from the 23<sup>rd</sup>  
Circuit did not have the effect of removal of relation  
from office

6. Cowen R. 642

The provision requiring residence in the Circuit has  
reference to his qualification for election, and not as to  
holding the office thereafter

3<sup>d</sup> If the act of 1859 created a new or additional Circuit,  
then the territory or district of the <sup>former 23<sup>rd</sup></sup> Circuit may have  
been thereby abolished, but the office, as has been  
shown, still existed, being unaffected by the enact-  
ment of the legislature. The office would exist, with  
perhaps more nominal duties attached thereto, and to  
which office the <sup>then</sup> incumbent would be still entitled, and  
to its emoluments. So there could in such event be no  
vacancy therein

7 Ind. R. 157

197

The People's  
ex. vol.

Martin Ballou

. 77

Subs. Austria

Brief

2798

14013

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W. J. Conway  
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