

No. 12989

Supreme Court of Illinois

People, ex. rel.

vs.

Bangs

71641  7

The People of the State of Illinois }
on the relation of Martin Ballou }

vs.

Mark Bangs }

Appeal from Marshall }

And now comes the Plaintiff
and says, that there is manifest Error in the record
and proceedings of the Court below, in this, to wit,

- 1st The Court Erred in giving judgment for the
Defendant, and against the relation for Costs
- 2nd The Court ought to have found the Defendant
guilty, and should have given judgment
of ouster against Defendant, and for Costs,

And the Plaintiff therefore prays that
the said judgment be reversed

Island & Island
for Appellant

1
Held before the Circuit Court of Marshall County
in the State of Illinois at a Term thereof begun
and held at the Court House in the City of Lacon
in said County on Monday the Second day of May
in the year of Our Lord One thousand eight hundred
and fifty nine. Present Hon Mark Bangs judge of
the 23^d judicial Circuit of the State of Illinois pre-
siding, Henry Miller States attorney for said judicial
Circuit Thomas Ellis Sheriff of said Marshall
County and James Wescott clerk of said Circuit Court."

Be it remembered that on the 4th day of May
A. D. 1857 the same being one of the days of the
Term as aforesaid and the Court being then judi-
cially sitting with Hon E. N. Powell judge of the
16th judicial Circuit of the State of Illinois
presiding a complaint was filed in said Court
in the suit of the People of the State of Illinois
on the relation of Martin Ballou against Mark
Bangs which complaint is in words and figures
as follows to wit:

Complaint

"State of Illinois }
Marshall County } ss. Martin Ballou being duly sworn
according to law, doth depose and
say, that this deponent has been
and is legally entitled to and should exercise the
powers of the Office of Judge of the twenty third

Judicial Circuit Court of the State of Illinois; that under and by virtue of the provisions of an act entitled "An act to establish the twenty third Judicial Circuit, and to fix the times for holding Courts in the Ninth Judicial Circuit" approved February 10th 1857 at a regular Election for Judge and States attorney for the said twenty third Judicial Circuit held in the Counties of Bureau, Putnam and Marshall in said State on the 14th day of March A. D. 1857 deponent was duly Elected to the said Office of Judge of said twenty third Judicial Circuit Court, and afterwards, to wit, On the 31st day of March in the year last aforesaid, in pursuance of said Election, deponent was duly Commissioned by the Governor of the State of Illinois as such Judge, and deponent thereupon duly qualified by taking the several Oaths in manner and form as required by law and entered upon the duties of said office, and has discharged the duties thereof from the time of his being so Commissioned & qualified to wit, from the 4th day of April A. D. 1857 until the present time, and still holds his said Office. That at the time of deponents aforesaid Election, he then did reside and for more than five years prior thereto had resided in said County of Bureau, at which place deponent has ever since resided & still does reside.

Deponent further says that Mark Bangs of said Marshall County, did on or about the 2^d day of May A. D. 1857 at

A. D. 1857 at said County of Marshall in the State
aforesaid unlawfully usurp and intrude into the
said Office of Judge of the twenty third Judicial
Circuit Court aforesaid, and has ever since unlaw-
fully held and Executed and still does unlawfully
hold and Execute said office; and has and still
does unlawfully receive, take and enjoy the emolu-
ments, rights privileges & exercise the powers of the
said office, and has refused & still does refuse
to allow deponent to hold and Execute the said
office or to receive or enjoy the rights privileges
and emoluments thereof.

Deponent further says that the said Mark Rango
claims to hold the said office by virtue of a
pretended and illegal Election for Judge & State
attorney of the said twenty third Judicial Circuit
held on the 5th day of April A. D. 1857 in the Coun-
ties of Putnam, Marshall & Woodford in said State
unders and by virtue of the provisions of an act
entitled "An act to repeal a certain act herein
named, and to establish the twenty third Judicial
Circuit" approved the 11th day of February A. D. 1857.
Deponent is therefore desirous that a rule may be
made upon the facts stated herein, on motion
of the attorney for the People of the State of Illi-
nois in the 23^d Judicial Circuit, upon the said
Mark Rango to show Cause why leave should
not be given to file an information in behalf of

the People of the State of Illinois, in the nature
of a quo Warranto, upon the relation of said Mar-
tin Ballow against the said Mark Bango for un-
lawfully usurping, intruding into, and unlawfully
holding and executing the said office as aforesaid,"

Subscribed and Sworn

to before me this 4th day

of May A. D. 1859

James McCott Clerk"

"Martin Ballow"

Endorsed filed May 4. 1859. James McCott Clerk"

Information

"State of Illinois }
Marshall County. }

ss. Of the May Term A.D. One
Thousand Eight Hundred and
Fifty Nine of said Marshall County
Circuit Court.

Henry Miller States attorney for the twenty third Judi-
cial Circuit of the State of Illinois, who prosecutes
in behalf and in the name and by the authority of the
People of the State of Illinois, on the relation of
Martin Ballow of the County of Bureau in the
State aforesaid, comes here into Court and gives
the Court to understand and be informed, that
Mark Bango of the said County of Marshall, on
the second day of May in the year of Our Lord, One
Thousand Eight Hundred and Fifty Nine, at the
County of Marshall aforesaid, did unlawfully usurp
and intrude into the office of Judge of the
Twenty Third Judicial Circuit Court of the State

of Illinois, and from and since said second day
of May in the year aforesaid, at the County of Marsh-
all aforesaid, hath and still doth unlawfully hold
and exercise the said office of Judge of the said
Circuit Court, and hath and still doth unlawfully
exercise the powers privileges and rights of said office,
Contrary to the forms of the Statute in such case
made and provided, and against the peace and
dignity of the same people of the State of Illinois."

"Henry Miller States Attorney"

"Endorsed filed May 5. 1859."

James Mescott Clerk"

Agreement

"State of Illinois } ss. Of the May Term of the Circuit
Marshall County } Court of said County A. D. 1857.

The People of the State of Illinois
on the relation of Martin Ballou

vs

Mark Bange

Information in nature
of Quo Warranto,

It is agreed by the
parties in this cause

that under and by virtue of the provisions of an act
Entitled An act to establish the twenty third Judicial
Circuit, and to fix the times for holding courts in the
Ninth Judicial Circuit approved February 10th 1857 at
a regular Election for Judge and States Attorney for
the twenty third Judicial Circuit held in the Counties

of Bureau, Putnam and Marshall in said State, on the 14th day of March A. D. 1857 Martin Ballou the relator was duly Elected to the office of Judge of the said 23^d Judicial Circuit, that in pursuance of his said Election afterwards, to wit, on the 31st day of March A. D. 1857 he was duly commissioned by the Governor of said State as Judge of said Judicial Circuit, and that thereupon, on the 4th day of April in the year last aforesaid, the said Ballou duly qualified by subscribing and taking the several oaths in manner and form as required by the Constitution and laws of said State, and that he thereupon entered upon the discharge of the duties of said office, and that he has discharged the duties thereof from that time until the present time, and now still claims to hold said office.

That at the time of said Ballou's Election as aforesaid he then did reside, and for more than five years prior thereto had resided in said Bureau County, at which place he ever since has and still does reside.

That at an Election for Judge and State attorney for the twenty third Judicial Circuit held in the Counties of Putnam, Marshall and Hoodford, on the 5th day of April A. D. 1857 under and by virtue of the provisions of an act Entitled "An act to repeal a certain act herein named, and to establish the twenty third Judicial Circuit" approved February 11th 1857 said Defendant Mark Baugo was elected to the office of Judge of the twenty

third Judicial Circuit in said State, that in pursuance of his said Election he was thereupon Commissioned by the Governor of said State as such Judge and duly qualified by subscribing taking the several oaths in manner & form required by the Constitution and laws of said State and entered upon the discharge of the duties of said office, and still Exercises the duties thereof, and at the time of the filing the information in this cause he was Executing the duties & rights of said Office.

That at the time of said Bangs Election as aforesaid, he then, did reside, and for more than five years prior thereto had resided in said Marshall County, at which place he ever since has and still does reside. Now it is hereby agreed to submit this cause to the Court here on the foregoing stated facts, to be decided in the same way as if the cause was now at issue by due form of pleading, the said Defendant Entering his appearance in this cause waiving process & service thereof, and also waiving, all questions of form either in relation to the mode of proceedings or otherwise. Now, if the Court shall be of Opinion that the Defendant Mark Bangs is legally and rightfully Judge of the said twenty third Judicial Circuit of said State, then the Court is to decide ^{the} Cause in favor of Defendant and against the relator for costs - but if the Court shall be of opinion that said Defendant Mark Bangs is not legally, & rightfully Judge of the said twenty third Judicial Circuit and that said relator is legally & rightfully

Judge of said twenty third Judicial Circuit, then the Court is to decide against said Defendant in favor of said relator, & give judgment of ouster against Defendant, & for costs. It is further agreed that either party may take an appeal from such judgment, to the Supreme Court, upon his own bond without other security.'

"Martin Ballou"

"Mark Bangs"

"Endorsed filed May 5. 1857.

James Wescott, Clerk

And on the 5th day of May A.D. 1857 the same being one of the days of the Term as aforesaid and the Court being then judicially sitting the Hon E. S. Powell judge of the Sixteenth Judicial Circuit of the State of Illinois presiding the following proceedings were had in above entitled cause ~~case~~ and entered of record to wit:

Thursday May 5th A. D. 1857.

Trial and
Judgment

"The People of the State of Illinois
on the relation of Martin Ballou
vs
Mark Bangs"

Quo Warranto.

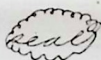
This day came the People
by Henry Miller State Attorney
as well as the relator in
person, and the defendant also came in person as well
as by his counsel, and the parties agreed to waive a

jury and submit this cause to the court for trial; and the court having heard the evidence and being now fully advised in the premises doth find the issues herein for the Defendant. It is therefore considered by the court that the said Mark Bangs the Defendant herein have and recover of the said Martin Ballou the relator herein his costs in and about his defence in this behalf expended, and that he have execution therefor. Whereupon came the relator and prayed an appeal to the Supreme Court of this State, which appeal is allowed upon the relators entering into bond in the sum of One hundred dollars in ten days from this date."

Appeal Bond

"Know all men by these presents, that I Martin Ballou of the County of Bureau and State of Illinois am held and firmly bound unto Mark Bangs of the County of Marshall and State aforesaid in the penal sum of One Hundred Dollars lawful money of the United States, for the payment of which, well and truly to be made, I bind my self my heirs Executors and administrators jointly severally and firmly by these presents, Witness my hand and seal this 5th day of May A. D. 1857. The condition of the above obligation is such that whereas upon the trial of an information in the nature of a Quo Warranto against said Mark Bangs wherein the said Martin Ballou was relator, in the Circuit Court in and for the said County of Marshall and

State aforesaid, a jury having been waived by the said parties and the said Cause submitted to the said Court for trial, a judgment was rendered by the said Circuit Court in favor of said Mark Bangs & further that said Mark Bangs recover his costs therein expended against said relator, from which said judgment of the said Circuit Court, the said Martin Ballow has prayed and obtained an appeal to the supreme Court of said State. Now if the said Martin Ballow shall prosecute his said appeal with effect, and shall moreover pay all costs which may have accrued in the said Cause, in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void, otherwise to remain in full force and effect."

"Martin Ballow" 

"Endorsed filed May 5. 1857."

James Hescott, clerk

State of Illinois, } ss. I, James Hescott, Clerk of the
Marshall County, } Circuit Court in and for
said County and State do certify that the foregoing is a correct transcript of the proceedings had and the papers on file in said Circuit Court in the Suit of The People of the State of Illinois on the relation of Martin Ballow against Mark Bangs as the same appears of record and on file in my office.

In Witness Whereof, I hereto set my hand and
the Seal of said Court at my office in the City
of Lason, in said County this Twelfth day of
April A. D. 1865.

James Wescott clerk

243-45

^{vs} The People ~~re~~ on the
relation of Martin Ballou

^{vs.}

Mark Bangs

Filed April 18, 1860
L. Leland
Clerk

**In Supreme Court ; Third Grand Division,
April Term, A. D., 1860.**

**The People of the State of Illinois
on the Relation of Martin Ballou,**
vs.
Mark Bangs. } **Appeal from Marshall.**

This is an information in the nature of a *Quo Warranto* filed in the Marshall Circuit Court, May Term, 1859, by the States Attorney on the relation of Martin Ballou, against Mark Bangs. The facts in the case are set forth in the following agreed case between the parties :

State of Illinois, } ss. *Of the May Term of the Circuit Court of said County,*
Marshall County, } *A. D., 1859.*

**The People of the State of Illinois,
on the Relation of Martin Ballou,**
vs.
Mark Bangs. } *Information in nature of Quo Warranto.*

Pages 5, 6, 7 and 8.

It is agreed by the parties in this cause that under and by virtue of the provisions of an act entitled "An Act to establish the Twenty-third Judicial Circuit, and to fix the time for holding Courts in the Ninth Judicial Circuit," approved February 10th, 1857, at a regular election for Judge and States Attorney for the Twenty-third Judicial Circuit, held in the counties of Bureau, Putnam and Marshall in said State, on the 14th day of March, A. D., 1857, Martin Ballou, the relator, was duly elected to the office of Judge of the said Twenty-third Judicial Circuit, and that in pursuance of his said election, afterwards, to wit, on the 31st day of March, A. D. 1857, he was duly commissioned by the Governor of said State as Judge of said Judicial Circuit, and that thereupon, on the fourth day of April in the year last aforesaid, the said Ballou duly qualified himself by subscribing and taking the several oaths in manner and form as required by the constitution and laws of said State, and that he thereupon entered upon the discharge of the duties of said office, and that he has discharged the duties thereof from that time until the present time, and now still claims to hold said office.

That at the time of said Ballou's election as aforesaid, he then did reside, and for more than five years prior thereto had resided in said Bureau county, at which place he ever since has and still does reside.

That at an election for Judge and States Attorney for the Twenty-third Judicial Circuit held in the counties of Putnam, Marshall and Woodford, on the fifth day of April, A. D., 1859, under and by virtue of the provisions of an act entitled "An Act to repeal a certain act herein named, and to establish the Twenty-third Judicial Circuit," approved February 11th, 1859, said defendant Mark Bangs was elected to the office of Judge of the Twenty-third Judicial Circuit in said State, that in pursuance of his said election he was thereupon commissioned by the Governor of said State as such Judge, and duly qualified by subscribing and taking the several oaths in manner and form required by the constitution and laws of said State, and entered upon the discharge of the duties of said office, and still exercises the duties thereof, and at the time of the filing the information in this cause he was executing the duties and rights of said office.

That at the time of said Bang's election as aforesaid, he then did reside, and for more than five years prior thereto had resided in said Marshall county, at which place he ever since has and still does reside.

Now it is hereby agreed to submit this cause to the Court here on the foregoing stated facts, to be decided in the same way as if the cause was now at issue by due form of pleading, the said defendant entering his appearance in this cause and waiving process and service thereof, and also waiving all questions of form either in relation to the mode of proceedings or otherwise.

Now, if the Court shall be of opinion that the defendant, Mark Bangs, is legally and rightfully Judge of the said Twenty-third Judicial Circuit of said State, then the Court is to decide the cause in favor of said defendant and against the relator for costs—but if the Court shall be of opinion that said defendant, Mark Bangs, is not legally and rightfully Judge of the said Twenty-third Judicial Circuit and that said relator is legally and rightfully Judge of said Twenty-third Judicial Circuit, then the Court is to decide against said defendant, and in favor of said relator, and give Judgment of Ouster against said defendant and for costs. It is further agreed that either party may take an appeal from such Judgment, to the Supreme Court, upon his own bond without other security.

MARTIN BALLOU.
MARK BANGS.

Pages 8 and 9.

The Court gave Judgment for the defendant and against the relator for costs.

POINTS AND AUTHORITIES RELIED UPON BY THE PLAINTIFF.

1st. Sec. 1, of Article 2 of the Constitution of this State vests the powers of government in three distinct departments, viz: Legislative, Executive and Judicial. Circuit Courts or the Judges thereof, comprise a part of the Judicial department of the Government, and consequently are not subject to the dictation or control of either of the other departments thereof.

Sec. 1 of Art. 5, of Const.—Purple's Statutes, 57, do do 45.

2d. Sec. 15 of Art. 5, provides that on the first Monday of June, 1855, and every six years thereafter, an election shall be held for Judges of Circuit Courts; provided, whenever an additional Circuit is created, such provision may be made as to hold the second election of such additional Judge at the regular election herein provided: Consequently the Legislature had no Constitutional power to authorize an election of Judge under the act of Feb. 11th, 1859, as there was no "additional Circuit" thereby created.

Purple's Statutes, page 58. Sess. Laws 1859, page 56 and 57. 6 Cowen R. 642.

3rd. By the Constitution and laws of this State, a Circuit is designated and known only by its number, and not by its territory, because the territory of a Circuit is liable to be changed and varying.

Sec. 7 of Art. 5, of Const.—Purple's Statutes, pp 57.

4th. The Act of Feb. 11th, 1859, did not increase the number of Circuits, but only redistricted the former 23rd Circuit; consequently such "exigency of the State" contemplated in the 6th sec. of Art. 5 of the Constitution, in the opinion of the Legislature, did not then exist as would authorize it to "increase the number of Circuits;" it is therefore evident that the Legislature did not intend by that act to make an additional or new Circuit; and as there was no vacancy in the office of Judge of that Circuit, the relator being then an incumbent in said office, so much of the aforesaid act as provides for the election of a Judge, is therefore void.

Purple's Statutes, page 58. 6 Ind. R., 496. 7 Ind. R., 326. 1 Sumner C. C. R., 277. 9, Watts, 200.

Island & Island

Att'ys for Plaintiff.

The People &c. on the
relation of Martin Ballou
vs.

Mark Beang

Abstract of Record,
Points & authorities

Filed Apr 18. 1860
L. Deland
Clerk

Preface