

No. 14531<sup>1</sup>/<sub>2</sub>

# Supreme Court of Illinois

People, ex. rel.

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vs.

Mellen

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 14-84

PEOPLE'S CAUSES.

*Reported 32 Ill.*

*People*

*75*

*Miller*

1863

14531

*1/2*

14531 1/2

The People of the State of  
Illinois on the relation of  
Henry R Chittenden  
vs

Charles Norman Mellen  
Treasurer of the City of  
Warsaw in Hancock  
County Illinois.

Application for Mandamus before  
the Supreme Court of the State of Illinois  
at Ottawa in said State on the 3<sup>rd</sup>  
grand division of said State

It is agreed by the parties to this suit  
that the City Council of the City of Warsaw  
in Hancock county Illinois duly elected  
and acting under the Charter of said  
City entitled "An act to incorporate the  
City of Warsaw" approved February 12<sup>th</sup>  
1853 and "an act to reduce the act incorpo-  
rating the City of Warsaw and the several  
acts amendatory thereof into one act and  
to amend the same" approved February  
14 1859 at a meeting of said Council held  
in the City of Warsaw aforesaid on the 10<sup>th</sup>  
day of February A.D. 1863 allowed to the  
said Henry R Chittenden the sum of  
thirty dollars to be paid out of the wharfage

found of said city and directed a voucher to  
issue upon the Treasurer of said city - for the  
same And that in pursuance of said  
allowance a voucher or order in the usual  
form was <sup>duly</sup> drawn by the Mayor <sup>and Clerk</sup> of said city  
on the Treasurer of said city in the words  
and figures following to wit:

No 2324 City of Warsaw February 10<sup>th</sup> 1863

Treasurer of the city of Warsaw Pay  
to the order of Henry R Chittenden thirty  
dollars when funds are on hand to the  
account of Wharfage

\$30

W H Roosevelt

Countersigned and

Mayor

Registered

Thos C Clark Clerk



It is further agreed that the said Henry  
R Chittenden on the Eleventh day of February  
A.D. 1863 presented the said voucher or order  
to the said Charles Homer Mellen the  
Treasurer of said city (and it is hereby admit-  
ted that said Mellen is and was at said  
time the Treasurer of said city and having  
the custody of its funds as such Treasurer)  
at his office in said city - for payment  
and that said Mellen refused to pay  
the same.

It is further agreed that at the time

of said 'refusal' the said 'Mellen' as said  
Treasurer had in his hands as such  
Treasurer sufficient of wharfage funds  
to pay the same and not otherwise  
appropriated.

It is further agreed that on the third day  
of February AD 1853 and preceding the  
said action of said City Council the  
following act was passed by the Legis-  
lature of the State of Illinois to wit

"An act to Repeal certain acts  
therein named"

Section 1 Be it enacted by the People  
of the State of Illinois represented in the  
General Assembly that an act entitled  
"An act to incorporate the City of Warsaw"  
approved February 12 1853 and an act  
entitled "An Act to reduce the act incorporating  
the City of Warsaw and the several acts  
amendatory thereof into one act and to  
amend the same" and all acts passed  
in aid of either of the aforesaid acts, be  
and the same are hereby repealed

Sect 2 That the Territory embraced

within the boundaries mentioned in the last of the above named acts be and the same is hereby declared to constitute a Town in the County of Hancock and State of Illinois for county school and all other purposes, as much so in all respects as if the same constituted a complete Congressional Township and had been properly established by the county authorities, and shall at the next general election, elect all such Town officers as other Towns in said County are required to elect

Sec 3 That all the estate both real and personal heretofore or now held by the Board of Education for the city of Warsaw is hereby declared to be vested in the School Trustees to be elected under the provisions of this act in the same manner that the school property of other Towns in this state is now by law held

Sec 4 That all suits now pending in favor of the said Board of Education in any court of this state for the recovery of money or property are hereby declared to be pending in the name of the Trustees

of Schools hereafter to be elected under the provisions of this act and in whom the school property is hereby vested in the same manner as in other Towns in this state acting under Township Organization

Sec 5 This act shall take effect and be in force from and after its passage

(Signed)

S. C. Buckmaster  
Speaker of the House  
of Representatives

Francis A. Hoffmann  
Speaker of the Senate

Approved Feb. 3 1853  
Richd. Yates  
Governor

It is further admitted that the said City of Warsaw in her corporate capacity as such at the time of the passage of said act was indebted for Railroad <sup>School House</sup> and other purposes of Internal improvement in about the sum of one hundred and twenty thousand dollars and for which amount her bonds have been duly issued, about five thousand

~~That~~ and dollars of which are now due  
and the remainder to become due, and  
on which interest is accruing payable  
semi-annually, and that a large amount  
of interest is now due and was at the  
time of the passage of said act and  
remains unpaid and that no provision  
is made for the payment of said  
indebtedness in said act.

It is further agreed that said act was  
passed without the knowledge or consent  
of the City-Council of the City of Warsaw  
and that the same has never been  
adopted by them.

It is hereby agreed to submit the ques-  
tion whether the said Mellen as such  
Treasurer is bound to pay said voucher  
or order to be decided in the same way  
as though this application had been made  
in due form - The said Charles Homer  
Mellen waiving the issuing of a writ  
and entering his appearance herein  
Also waiving all questions of form either  
in relation to the mode of proceeding or  
otherwise.

If the Supreme Court shall be of opinion that the City Charter of the City of Warsaw approved February 12 1853 and the act entitled "an act to reduce the act incorporating the City of Warsaw and the several acts amendatory thereof into one act and to amend the same" approved February 14 1859 are not legally and constitutionally repealed by said Act approved February 3<sup>d</sup> 1863 and that the said Henry R Chittenden is entitled to have payment of said vouchers or order from said Mellev as such Treasurer the Court is to decide in favor of the said Petitioner and a writ of peremptory Mandamus is to issue

This agreement is to be deemed and taken for and to have the same effect as a Petition, writ, and return thereto and as though all the regular proceedings and steps had been taken to obtain a peremptory Mandamus

It is further agreed that this case be heard before the Supreme Court of this State at its session to be held at Ottawa on the 21<sup>st</sup> day of April A.D. 1863 in the Third Grand division of the State for

Judicial purposes both parties hereto  
freely consenting and agreeing to its  
being heard and adjudicated in  
said District

Henry P. Chittenden

Charles Homer Mellen

P. D. 14

The People on the Relation  
of Henry R Chittenden  
vs  
C. H. Miller Treasurer  
of the City of Warsaw

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Filed April 23-1863  
L. Shepard  
Clerk

The People vs upon  
the reletion of  
Henry R. Chittenden

vs

Charles Homer Miller

Petition for Mandamues

I make the following points in support of  
the motion for a mandamues

The act recited in the application and  
entitled "an act to repeal certain acts  
therein named, is unconstitutional  
and void because it is a local law  
and the subject of the act is not expressed  
in the title,"

See 23. art 3<sup>d</sup> constitution Pop. Stat. p 418

1<sup>st</sup> It is a local law and embraces more  
than one subject

The 1<sup>st</sup> Section Repeals the charter

The 2<sup>d</sup> section constitutes it a township for  
county and school and all other purposes  
It will be seen by reference to the law of  
April 14<sup>th</sup> 1859 Private laws of 1859 p 281. that  
the territory included in the city of Warsaw  
embraces part of congressional township  
4 North of Range Nine west of the 2<sup>d</sup> principal

mercifully, The simple repeal of the charter without other legislation would leave the territory part of said Township 4, but the 3<sup>d</sup> section of the act makes the territory a new township for county school and all other purposes

The third section passes the title of certain real estate from one party to another

The fourth provides for survivorship of suits now pending against board of execution

There are clearly many provisions in this act which are independent of the repeal of the city charter especially the provisions of the second section

The title of the act should have been an act to repeal certain acts in incorporating the city of Warsaw and to provide another organization for its territory also to pass the title to its school lands ~~and~~ or something of that sort

The title purports simply a repealing act and yet contains a number of affirmative propositions entirely distinct from a repeal of the charter

we do not think that the title of this act expresses any thing, definitely, the subject of the act is required to be expressed in the title. Does this title show that the repeal of the city charter of Warsaw is the subject of the act if not then the subject of the act is not expressed in the title, more especially is it not expressed in the title that a new town was created for municipal purposes

The constitution says no private or local law which may be passed by the legislature shall embrace more than one subject and that shall be expressed in the title. The mischief sought to be remedied by this clause of the constitution was the passage of acts by their titles which should not inform the members of the legislature upon what they were called to vote, now in this case who could understand from the title that the charter of the city of Warsaw was repealed by this act

Again, the 1<sup>st</sup> act to incorporate the city of Warsaw was passed Feb 12<sup>th</sup> 1853  
the 2<sup>d</sup> act was passed Feb 14<sup>th</sup> 1859

We submit that this last act is not set forth with sufficient certainty in the repealing act to be repealed by it. The date of the passage of the act, or of its being in force not being given, will the court hold the act of Feb 14, 1859 to be repealed when it is not so stated in the repealing act. see Laws of 1859 p 281.

The city of Warsaw owes \$100,000 some of its bonds do not mature until 1876 the only way to enforce payment of these bonds is to get a writ when they become due and then procure a mandamus to the city authorities to raise a tax to pay them. This the repealing act effectually prevents the obligation of the contract is in fact destroyed and the creditors of the city are in fact deprived of their property.

There seems to be no reason why the defendant should not pay the relator the sum due him in any view of this question.

B. C. Leach

14  
The People on the  
relation of H. R. Christian

C. H. Miller

Museum of Worsam

Points for Relator

Friday, Apr. 23, 1863

L. G. Land  
M

WARSAW ILL July 7. 1853

Hon. P. H. Walker

Rushville Ill

Dear Sir, Last winter

The Legislature passed an Act  
repealing the Charter of the City  
of Warsaw, converting the city into  
a Township of the county, for townships  
and school purposes.

Under the City organization the Treas-  
urer of the City was Treasurer of  
the School fund.

Doubts arising whether the repealing  
law was constitutional a suit  
was instituted by consent at the  
Ottawa Term of the Supreme  
Court in the name of the People  
on the relation of Henry P. Chitt-  
enden vs Charles Horner Mellen  
for a Mandamus to compel him

To pay a certain order issued  
under the authority of the city council  
after the repealing act had  
passed.

This case we understood was  
taken under advisement.

I write to know if the case has  
yet been decided and if not  
to suggest the importance to us  
of a decision as early as possible.

We have had heretofore under the  
old system an excellent class of  
schools.

The uncertainty now as to which  
organization to act under and  
the responsibility of reaching  
the school funds until that  
case is disposed of prevents  
us from making any arrange-  
ments for the conducting of our

schools and leaves us altogether  
in doubt as to what to do.

In the mean time our teachers  
are liable to look for employment  
in other places.

We had hoped to get the decision  
before the meeting of the legislature  
as in case the repealing act was  
sustained we desired to get  
some legislation as to our  
schools for we find it will be  
impossible to carry them on  
with efficiency & success under  
the general law in regard to  
schools

I am and Yours truly  
John Williams

Exhibit No. 14 People's Book  
Agenda No. 84.

I enclose for  
you a card  
from Mrs. Marsh  
with a request  
to the  
Mandarin

14-84