

No. 12628

Supreme Court of Illinois

President & Trustees of
Mendota.

vs.

Thompson.

108
Presidents House
Town of New York
Charles Thompson

109

Pres

1858

12628

109

LaSalle County Court Term Term 1857

State of Illinois

LaSalle County

Plas Proceedings and Judg-
-ments held and taken in and before the
LaSalle County Court in the State of Illinois, at
the Court House in Ottawa in the County
of LaSalle of same Term thereof to wit of the
First day of June A.D. 1857 and of the Indepen-
-dence of the United States of America the
Eighty first.

Present Hon John C. Champlin Jr.

Be it remembered that on the 13th day of May 1857
a complaint was filed in the office of the County
Court in the words following to wit

J. L. Blanchard would respectfully represent unto
J. A. Gilman a Justice of the Peace in and for the
County of LaSalle & State of Illinois and give
him to understand and be informed that C.
E. Thompson did sell Spirituous and intoxicating
malt & mixed liquors bar wine & cider at various
and different times unto Charles Augustine and
other persons on or about the 7th day of March
A.D. 1857, to wit at and within the corporate limits
of the Town of Mendota in said County all of
which sales were made at and within the
corporate limits of said Town at the times
aforesaid contrary to the Statute & to the Ordinance

of the President & Trustees of Said Town of Mendota
Therefore pray process &c

G. L. Blanchard

And also on the 13th day of May 1857 a summons
was filed in the clerk's office of LaSalle County in
words and figures following to wit:
State of Illinois

LaSalle County, } The People of the State of Illinois to
 } any constable of said County Greeting
You are hereby commanded to summons J. C.
Thompson to appear before me at my Office in
Mendota on the 20th day of March A.D. 1857, at 2
O'clock P.M. to answer the President and Trustees
of the Town of Mendota in said County of a plea
that he render to the said plaintiffs the sum of one
hundred Dollars which he owes and unjustly
detains for selling liquor contrary to the Statute
and to the Ordinance of the President and
Trustees in that behalf made and provided
and thereof make due return as the
law directs. Given under my hand and
seal this 14th day of March A.D. 1857.

G. H. Gilman C. P. Clerk

Endorsed

March 16th 1857. Served by Reading to the within
named J. C. Thompson. Clerk constable
Served "25. Mileage "15. - "30

And also on the said 15th day of May 1857, a Transcript
 was filed in the clerks Office in the words and
 figures and following to wit:
 The President and Trustees
 of the Town of Mendota

vs
 A. C. Thompson

Deft

\$100.00

March 10th 1857, on complaint
 made by G. L. Blanchard against said Defendant for
 Selling Liquors contrary to the Statute and the Ordinance
 of the said President & Trustees and Security for costs
 having been filed Issued Summons returnable on the
 20th inst - at 2 o'clock P. M. Inst & Subpoenas Summons
 returned Endorsed March 11th 1857. Served by reading
 to the within named A. C. Thompson, S. Clark const-
 table March 20th 1857. Parties appeared with counsel
 C. D. Mudgett esq. for plffs & A. C. Crocker esq. for
 Deft. Motion to dismiss made by Deft - 1st Because
 the Justice was not legally elected 2^d for want of
 a plaintiff there being no such corporation 3^d
 Because Justice has not the right to try cause
 for a corporation within wherein he is an inhab-
 itant being being interested in the Event of the
 suit 4th Because suit is brought for \$100 when
 it should have been brought for but five Dollars
 5th Because the Ordinance is void in that it is
 a total prohibition instead of of regulating the
 sale of Liquors &c. Motion overruled after

4
 hearing the evidence in the premises it is adjudged
 that the said Deft- has been guilty of selling Twenty
 Glasses of Spirituous Liquors &c. contrary to the Statute
 and the said ordinances Therefore it is hereby deci-
 ded that the said ptffs have a judgment against
 the said Deft- for the sum of one Hundred
 Dollars and costs of suit being five Dollars
 for each offence.

April 8th 1857. The said C. C. Thompson appeared
 and filed and appeared Bond and prayed and
 appeared to the County Court of LaSalle County

Ans. for	Compt-25	Sec 25	Comm 25	4 Subs 75	8 outas, 37	2,00
	Pris 0.25	Ent Jdgy, 25				225-
	Ent Appeal, 25	Bond, 37	Transcript, 25			1,00
C. blank Court fe						15.25
C. blank Court fees on Bonds, 30						5
C. Krutger Court " " Subpoenas						1.00

State of Illinois  C. C. H. Gilman a Justice of
 LaSalle County  the peace for said County do
 hereby certify that the above Trans-
 -cript contains a correct statement of the proceedings
 had in the premises before me as appears by my
 Booklet and the papers sent herewith Given
 under my hand and seal this 8th day of
 May A D 1857.

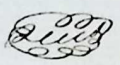
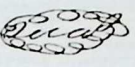
C. H. Gilman J. P. 

And also on the said 13th day of May 1857, a bond was filed in the clerk's office in the words following to wit:-

Know all men by these Presents that we C. C. Thompson and James Aiken of the County of LaSalle in the State of Illinois are held and firmly bound unto the President and Trustees of the Town of Mendota in the penal sum of Two Hundred and fifty dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents, Witness our hands and seals this 8th day of April A.D. 1857.

The condition of the above Obligation is such that whereas the said President and Trustees of the Town of Mendota did on the 20th day of March A.D. 1857, before C. A. Gilman a justice of the Peace for the said County of LaSalle recover a judgment against the above bounden C. C. Thompson for the sum of One Hundred Dollars from which judgment the said C. C. Thompson has taken appeal to the County Court of the County of LaSalle aforesaid and State of Illinois, Now if the said C. C. Thompson shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then

6. The above obligation to be void otherwise to remain in full force and effect.

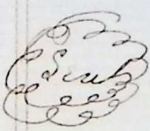
Approved by me at my ³ C. E. Thompson 
office this 8th day of ³ Feb. Aiken 
April 1857

C. H. Gilman

Justice of the Peace

Be it remembered that on the 13th day of May 1857
a summons was issued out of the clerks office
of the County Court of LaSalle County in the
words following to wit:

The People of the State of Illinois to our Sheriff
of our County of LaSalle. Greeting

 Whereas in a certain cause lately pending
in our Court held before Chas. H. Gilman
Esquire one of the Justices of the Peace in
and for our County of LaSalle wherein The Presi-
dent & Trustees of the Town of Mendota plaintiffs and
C. E. Thompson defendant. Judgment has been
rendered by said Justice against the said
defendant from which the said defendant
has appealed to our LaSalle County Court.
We therefore command you that you summon
the said President & Trustees of the Town of Mendota
that they personally be and appear in our said
LaSalle County Court before our Judge thereof

7.

on the first day of the next term of said court
to be held at the Court House in Ottawa on the
first Monday in June next at ten o'clock
in the forenoon and abide and perform the
judgment of our said court in the premises

In witness whereof we have caused the
seal of our said Court to be hereunto affixed and
attested by Samuel W. Raymond our clerk thereof
at Ottawa 13th day of May 1857.

Samuel W. Raymond Clerk

E. L. Herrick Deputy

Endorsed

Issued by reading the within to Jacob C. Crocker clerk
of the Town of Mendota and delivering to him a
copy of the same this 13th day of May 1857

E. L. Waterman Scl^o

pr. H. C. Good Deputy

Plas. St. & R. 1/2 - 10 - 28 miles 140 - 1 Copy 50 H 250

Afterwards to wit - at the same Term 1857 of said
court on the 5th day of June 1857, the following proce-
dings were had and entered of record to wit -

The President and Trustees
of the Town of Mendota

as

C. D. Thompson

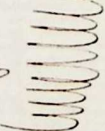
Appeal

This day came the
Spleintiffs by Leland &
Leland their attorneys and defendant

by Bushnell & Gray his attorneys Whereupon by agreement of parties a jury is waived and the cause submitted to the court for trial Whereupon after hearing the evidence and arguments of counsel and due deliberation thereon had the court finds the issues herein for the defendant Whereupon the plaintiffs by their said attorneys enter their motion for a new trial herein. which motion after hearing the arguments of counsel is overruled by the court to which ruling of the court the plaintiffs by their said attorneys then and excepted -

It is therefore considered by the court that said defendant have and recover of said plaintiffs his costs and charges by him herein expended as well as in the court below and that he have Execution therefor

And afterwards to wit on the 6th day of June A.D. 1857, a bill of exceptions was filed with the clerk of said court in the words and figures following to wit

State of Illinois  County Court of Said County
 LaSalle County  June Term A.D. 1857

The President & Trustees of —
 The Town of Mendota —
 vs —

Be it remembered that on the trial of this cause the plaintiffs to maintain the issue on their part offered in evidence an ordinance passed by persons purporting to be the President & Trustees of the Town of Mendota & acting as such in the words & figures following viz:

"Be it ordained by the President and Trustees of the Town of Mendota"

Sec 1 That the Sale of all spirituous intoxicating or mixed liquors wine beer ale, porter, cider or any fermented or malt liquors is hereby declared to be a nuisance and any person selling any spirituous intoxicating or mixed liquors wine beer ale porter cider or any fermented or malt liquors in any quantity shall upon conviction be fined five dollars for each offence and the term each offence as herein mentioned shall be construed to mean the selling by the glass quart or in any quantity and for each separat glass or quantity sold or disposed of for gain or profit

Sec 2. That any persons keeping a billiard table or an alley of from one to twenty pins who shall fail or refuse to take out a licence for the same shall be fined five dollars for each game played on the same And any person keeping open and allowing any playing of ten pins or billiards on the Sabbath shall pay a fine of five dollars for each game played

Sec 3. That the Keeper of all billiard Tables and alleys of from one to Twenty pins shall be required to pay a license of Fifty dollars a Year.

Sec 4. Penalties incurred for a violation of any ordinance of said Town of Mandota may be sued for and recovered before any justice of the Peace or before any other Court having jurisdiction.

One half of the penalty collected upon the information and complaint of any person shall be paid to such person by the Treasurer of the said Town.

No license shall be granted or issued in pursuance of any of the ordinances of this Town for a longer term than one year. All licenses granted or issued and not otherwise limited shall expire on the Second Monday of October next after the granting or issuing of the same.

The plaintiffs also offered in evidence a copy of the Mandota press a newspaper published in Mandota which contained said ordinance published before the time of the sale of liquor offered to be proved as hereinafter mentioned. Plaintiffs also offered to prove that the defendant in the year 1836 & after the time of the insertion of said ordinance in said paper on the several occasions sold to two different individuals

quantity of Spirituous liquor & that the sale was within the corporate limits of Moundata the whole of the foregoing evidence was objected to by the defendant & the objection sustained & to the opinion of the court in excluding said evidence the complaint at the time thereof excepted. The defendant having pleaded orally. nil til corporation in bar of the action. The plaintiff introduced in evidence on this point the following paper=

At a meeting of the inhabitants Legal voters of the Town of Moundata in the County of LaSalle and State of Illinois held in pursuance of previous notice given according to Law by posting up notices in three of the most public places in said Town meeting called and held on the 21st day of October 1854 meeting called to order and on motion Daniel D. Guile was appointed Chair-
=man and L. V. Gilman was appointed clerk of the meeting. On motion meeting proceeded to vote viva voce for and against incorporating said Town of Moundata that being the object for which the meeting was called and held the following table exhibits the votes as given
voters names For Incorporation against incorporation

D. G. Bly " "

D. D. Guile " "

Benja West " "

George Mills " "
 D. L. Lerois " "
 Geo. Warner " "
 James Stubbs " "
 C. H. Gilman " "

Meeting on Motion adjourned This 22nd
 State of Illinois

LaSalle County for the undersigned do hereby
 Town of Mendota certify that the above contains
 a correct and true statement

of the proceedings of a meeting held in said Town
 for the purpose of taking a vote for and against
 Incorporating under the general incorporation law
 The result of the vote taken as aforesaid was
 Eight votes for Incorporation and none against
 In testimony whereof we hereunto set our hands
 and seals this first day of November 1854

L. H. Gils Chairman

C. H. Gilman Clerk

Publ. Books.

of an election of the Town of Mendota
 held at the School house in said Town for
 the election of Trustees of said Town in the
 County of LaSalle and State of Illinois
 held on the 7th day of November A.D. 1854 Notice
 of said election having been given according
 to Law L. H. Gils being Chairman and

C. H. Gilman be Clerk of said meeting before opening the polls the said chairman and clerk were duly sworn according to Law.

Votes received

No. 1. Wm. Cross	No. 18. Geo. W. Manning
" 2. A. J. Green	" 19. Edw. M. Baldwin
" 3. Frederick Ball	" 20. Richard W. Foster
" 4. D. A. Pitkin	" 21. Jas. A. Fair
" 5. Chas. H. Greene	" 22. Benton Parks
" 6. A. Barrett	" 23. D. D. Hibbs
" 7. C. H. Gilman	" 24. Jas. Smith
" 8. G. W. Cross	" 25. C. E. French
" 9. D. D. Gridg	" 26. Jas. Hastings
" 10. C. E. French	" 27. Benja. West
" 11. Chas. R. Fish	" 28. Joseph Edwards
" 12. R. P. Webster	" 29. John West
" 13. James K. Remondy	" 30. Benja. Bates
" 14. O. Waite	" 31. Geo. V. Miner
" 15. Wm. Connell	" 32. C. C. C.
" 16. Geo. A. Richmond	" 33. C. E. Thompson
" 17. Peter Jones	

James Hastings					" 20		
Frederick Baldwin					" 19		
Russell Webster						111	33
Geo A. Richmond							1, 31
Benja West							15.
Ephraim C. French							18

R. L. Gules 1111 1111 111 13
 C. H. Gelman 1111 1111 1111 14

are counting the ballots given at the election held as hereinbefore stated it was found that the following named persons received the number of votes annexed to their respective names for the office named in connection with each as follows to wit

Jamus Hastings for Town Trustee Received twenty votes

Ed ^d M. Baldwin	"	"	"	"	Minister "
Russell Webster	"	"	"	"	Thirty three "
Geo A. Richmond	"	"	"	"	Thirty one "
Benjamin West	"	"	"	"	Fifteen "
Ephraim C. French	"	"	"	"	Eighteen "
R. L. Gules	"	"	"	"	Thirteen "
C. H. Gelman	"	"	"	"	Twenty "

Certified by us

R. L. Gules Chairman

Attest

C. H. Gelman Clerk

State of Illinois } ss
 DeKalb County }

I Daniel D. Raymond Clerk of the County Court of said County do hereby certify that the foregoing is a true and correct copy of the papers relating to the incorporation of the Town of Mendota

filed in my office on the 16th day of November
1856

In witness whereof I have hereunto set
my hand and affixed the seal of
said court at Ottawa this 28th day of November
1856

D. W. Raymond clerk

State of Illinois
LaSalle County ss

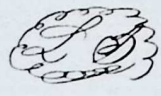
Our Geo. A. Richmond James
Hastings Russell Webster Benjamin West
and Frederick M. Baldwin do Solemnly
swear that we will support the constitution of
the United States and of the State of Illinois
and that we each and every one of us
will perform the duties of Justices for the
Town of Mendota according to the law
to the best of our skill and understanding
so help us God

Geo. A. Richmond
F. M. Baldwin
Benjⁿ West
R. S. Webster
J. Hastings

Subscribed and Sworn to before me at my office
in Mendota this (13) thirteenth day of December one
Thousand Eight-Hundred and fifty four

Gov. V. Minor S.P.

To the County Clerk of LaSalle County, State of Illinois Dear Sir This is a copy of our corporation Seal of the Town of Mendota LaSalle County, and State of Illinois and wish the same entered as such

Gov. A. Richmond 

President of Trustees of Town of Mendota
LaSalle County Illinois

(The above Papers was filed in my office Dec 15th 1856)

Mendota Town 20th 1855-

The white male residents of lawful age and qualified voters of the Town of Mendota in the County of LaSalle and State of Illinois (which Town having not less than one hundred and fifty inhabitants) wishing to be incorporated for the better regulation of their internal police assemble themselves together in public meeting at the School house in said Town pursuant to a notice previously given by setting up written notices in three of the most public places in said Town eleven days before the meeting of the inhabitants as aforesaid Being so assembled they proceeded to choose from

among their number a President & a clerk
 Benjamin West was chosen President &
 J. P. Pres^{clerk} of said meeting both of whom
 were sworn by C. H. Gilman an acting Justice of
 the peace in and for said County of LaSalle
 faithfully to discharge the trust reposed in them
 as President & clerk of said meeting. The residents
 as aforesaid of said town being assembled as
 aforesaid proceeded to decide by vote viva voce
 whether they would be incorporated or not.
 The following votes were received

For Incorporation	Against Incorporation
John Hastings senr	
C. H. Gilman	
John Hastings Jr	
William Cross	
James Hastings	
W. H. Rockwood	
J. H. Adams	
D. H. Aldrich	
C. M. Kelly	
William Clark	
W. B. Bly	
G. Coleman	
Geo Wells	
J. Mc Baldwin	
J. C. Rust	
C. H. Johnson	

Benja West-
 W. Lumb
 Jas. Edwards
 E. D. Mudgett
 S. D. Ray, Jr
 Saml. Wood
 William Tomman
 R. P. Webster
 Samuel Kuse
 Samuel P. Ques

Total number of votes For
 Incorporation 26
 Against - "00

We the undersigned President & clerk of the
 meeting held at the School House in Mendota
 in the County of LaSalle and State of Illinois
 on the 26th day of June A.D. 1833 for the purpose
 of voting for and against incorporating the town
 of Mendota do hereby certify to the Board of
 Trustees of said Town that this document furnishes
 a correct return of the State of the Polls of
 said meeting witness our hands this 28th
 day of June A.D. 1833-

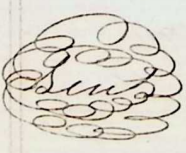
Benja West President
 Samuel P. Ques Clerk

(Filed June 29th 1833)

State of Illinois
 LaSalle County, Personally came P. H. Adams

C. H. Johnston W. P. Gulliday A. G. Bly and Lenton Lamb (who being duly sworn) do declare and solemnly swear by the ever living god that they will perform the duties of Trustees for the Town of Mendota under the general Incorporation law according to the best of their skill and understanding Subscribed and sworn to before me at my office C. H. Johnston this 28th day of March 1853- W. P. Gulliday C. H. Gilman P. A. G. Bly Lenton Lamb

State of Illinois
 LaSalle County ss

I, Edward W. Raymond Clerk of the County, Clerk of said County do hereby certify that the above and foregoing are true and correct copies of the original papers in relation to the Incorporation of the Town of Mendota now on file in my Office In witness whereof I have hereunto set my hand and affixed the seal of said Court at Ottawa this 28th day of March 1856
 E. W. Raymond Clerk

The Plaintiffs also proved that the Town of Mendota through persons acting as President & Trustees had exercised the powers that they would have been entitled to exercise if they

had been duly incorporated The Book containing the proceedings purporting to be the various & usual acts of an incorporated Town was also introduced in evidence & was proved to be the book used as & for a record of the proceedings of the President & Trustees of the Town of Mendota The first meeting appearing to be held was on the 28th day of June A.D. 1853 The only evidence of the election of the Board of Trustees for the year A.D. 1853 was the oral evidence of a witness who testified that he was present at an election of trustees in June 1853 & that such an election was held. He also testified that there had been no annual election of Trustees since ~~thence~~ and that there was a record made of such election. The Court decided that such evidence of the election of Trustees & the other facts mentioned in this Bill of exceptions were not sufficient to prove the fact of the election of the first Board & that it was necessary to prove an election of the first board of Trustees by written evidence thereof in order to establish the fact of incorporation on the 6th day of July 1853 & during the term when by said Record Book J. H. Adams Lemmon Lemm W. F. Galleday C. H. Johnson & L. S. Bly appeared to be acting as Trustees the lines of section thirty three of Township thirty six North of Range one east of the Third P. M.

was declared to be the bounds & corporate limits of the Town of Mendota as appears by an entry on Said Book

on the 9th of July 1833 as appears by said Book. Galliday tendered his resignation in consequence of living out of said Town & it appeared that he did not live within said Section when elected on the same day as appears by said book. Loomis & Johnson also resigned. It was proved that the reason why they resigned was that they were not freeholders.

The record book shows that George Wells C. H. Gilman & John Hastings were appointed to fill the vacancies (the vacancy occasioned by the resignation of Galliday was filled by George Wells before the resignation of Loomis & Johnson) and the record recites that they severally took the Oath of office when appointed. The record contains ordinances on various subjects orders allowing bills appointing & removing officers & contains a recital of the usual & ordinary acts performed by the Trustees of an incorporated Town - recites the presence of the Trustees & clerk (naming them) & there is a change of the names showing different persons acting as Trustees during the different Years. The record contains no other evidence of the Election of Trustees except mentioning them as the Trustees elect

having met

" And it was also proved by oral evidence that persons acting as the President & Trustees of Mendota had since the Election in Ann 1853. (& whose election was proved orally as before mentioned) acting in that capacity.

The above was all the evidence. The Court found the issue of nil tid corporation for the defendant. Plaintiffs moved for a new trial - the court overruled the motion & to the opinion of the Court in so doing. plaintiffs then & there on said trial excepted & pray the court to sign & seal this their Bill of exceptions, which is done in open court.

J. A. Humphreys

State of Illinois
Sawyer County
I, Philo Quincy, Clerk of
the County Court in and for
said County do hereby certify that the
above and foregoing is a true full and
complete copy of all the orders of Court &
the Pleadings in said case as the same appears
of record on file in my office.

Witness my hand & the seal of said
County Court this 9th day of March
AD 1858
P. Quincy Clerk

Chas. E. Thompson \$4.50

Ernst & Ernst

4.50

paid of Leland & Leland

The President & Trustees of
The Town of Mendota

vs.

Charles E. Thompson

Error to La Salle
Co. Court

Now come the said President & Trustees of Mendota, plaintiffs in error, by Leland & Leland their attorneys, & say that in the record & proceedings in this cause, there is manifest error, in this to wit:

1st The Court erred in excluding the evidence offered of the sale of liquor by the defendant.

2^d The finding of the Court on the plea of null tiel corporation was against the evidence.

3^d The Court erred in deciding that it was necessary to prove on the part of the plaintiffs by written evidence, that the first Board of Trustees were elected, in order to establish the fact of incorporation.

4th The Court erred in overruling the motion for judgment for the defendant.

And now comes the defendant in error, and says that in the record and proceedings aforesaid, there is no error, wherefore he prays that the judgment be affirmed. Leland & Leland
Plffs' attys

¹⁰⁷
President & Trustees
of the town of Mendota
W.

Charles E. Thompson

Corr to LaSalle County
Court-

Record & errors-

Filed March 25, 1888

L. Leland

CLK.
per order

Supreme Court 3^d Grand Division

April Term A.D. 1858.

The President & Trustees
of Mendota

vs.

Charles E. Thompson

} Error to LaSalle
County Court.

Argument & C. for Defdt. in error.

The only question in this case is, whether upon the oral plea of null tie corporation pleaded by the defdt. in error, there was competent and sufficient proof to show that the incorporation of Mendota was legal.

The plaintiff below for the purpose of proving that fact, introduced, without objection, the Record kept, (and required by law to be kept) by the Town Authorities.

The plaintiff claimed to be incorporated under the Statute. 1 Purples Statutes 172.

It will be seen from the Record, that the people of Mendota made two attempts at incorporation under the Statute. The first in Oct. 31. 1854.

They failed to incorporate according to law for many reasons, at this time, and it is only necessary to mention one, that was fatal, viz. It nowhere appears that the voters for the incorporation were either residents for six months, or freeholders, as required by Sec. 1. Purp Stat: 172, or that before going into the election, that the persons who purport to have been chosen as President and Clerk of the election, were sworn, as reg-

incurred by said Sec. 1.

at the election held for Trustees (under this attempt at organization) on the 7th. of November 1854. ~~where~~ Richmond, Baldwin, West, Webster & Hastings are said to have been elected. It would have taken this to be regular and in conformity to law to have completed the incorporation.

The 3^d Section 1 Purp. Statutes 172, provides that after the decision for incorporation, the Clerk is to give 5 days notice of the meeting to the voters, to elect viva voce 5 residents and freeholders, for Trustees.

The 4th. Sec. Same Law, provides that the Board of Trustees select from their number a President" and the President & Trustees aforesaid, and their successors in office, shall thenceforth be considered in law and in equity, a body corporate & politic" and may sue & be sued &c.

The 5th. Sec. Same Law, provides, that "The President and Trustees, or a majority of them, of any Town incorporated as herein directed, shall have power to make, ordain, and establish & execute such ordinances &c."

The 6th. Sec. Same Law. provides that vacancies in the Board may be filled by the other members, being a majority of the Board.

This attempt at incorporation, it needs no argument to show, was a failure.

for the reason, that, in many respects, it was not in conformity to law, and so far forth as the evidence of these facts were offered by Mendota, the Court properly decided, that they did not prove the incorporation. And it seems to have been regarded as a failure to organize by the people themselves, for we find from the Record p. 16. 17 that on the 20th. June 1855, the people met again for the purpose of incorporating, and went through all the preliminary steps, according to law, so far as we have been able to see.

The people then decided for incorporation, and on the 28th. June 1855. Adams, Johnson, Golliday, Bely & Lamb took the oath of office, as Trustees, but it now where appears, that they were ever elected, in any way.

This fact the record should have shown. But suppose they were duly elected; the book & other proof clearly showed, that three of the five were ineligible by the law. Golliday is shown to have been a non-resident, and Lamb & Johnson were neither of them freeholders, and the 3^d Sec. of the Law required them to be both residents and freeholders, and accordingly we find that on the 9th day of July 1855, Golliday Lamb & Johnson resigned, or attempted to resign, but we insist that they had nothing to resign, for being disqualified by law, they took no office by this pretended election.

Now it clearly took five trustees, all of whom had to be both residents and freeholders, to complete the incorporation, and that Board had to be once full according to law, before the other two viz. Adams & Bly. amounted to any thing. It is true that the Record book shows that Mills, Gilman & Hastings were appointed to fill the vacancies occasioned by these resignations.

But we submit, that there must be first of all five trustees all of whom shall be qualified under the law, before they can act, or even have successors.

There never was but two trustees duly elected and it is plain, that they could not be a Board of five, and equally as plain, that their attempt to fill vacancies, was an illegal act, under the 6th Section of the Law.

This 2^d Attempt therefore at incorporation was a failure for the reasons assigned.

Had the plaintiff introduced proof of the use of corporate powers by Mendota, and there rested, it is perhaps true, that this would have made out a prima facie case of the incorporation of the town. The authorities cited by the plaintiff in error in his brief seem to go to that extent; but this certainly can not be so where, in the first instance, he offered and introduced the record evidence himself, and that showing beyond doubt, that the incorporation was not according to law.

it would be a strange rule of evidence to permit him to show afterwards, by secondary proof, an incorporation by user, and thus to beg a presumption of law, that Mendata had been duly incorporated, where he had shown himself by better evidence that the Law was not complied with, and especially so, as the 5th. Sec. requires, "The Town to be incorporated as herein directed", before it is authorized to pass any ordinances.

We submit it, that the Court was right in finding the issue of nul tiel Corporation for the defendant, and that the judgment of the Court below should be affirmed.

Oliver C. Gray,
pro Defdt. in error;

189
Supreme Court
No. 104.

The President &
Trustees of Minnesota
vs.
Charles E. Thompson

Argument for
Def't in error,

Filed May 20. 1858
L. Leland
CLK

✓

O. C. Gray
pro Def't. in error.

189
Supreme Court
No. 104.

The President &
Trustees of Mendota
vs.
Charles E. Thompson

Argument for
Def't in error,

Filed May 20. 1858
L. Leland
CLK

✓

O. C. Gray
pro Def't. in error.

STATE OF ILLINOIS—SUPREME COURT.

THE PRESIDENT AND TRUSTEES
OF THE TOWN OF MENDOTA }
vs.
C. E. THOMPSON. }

ABSTRACT OF RECORD.

Action of debt for a penalty for selling liquors. Trial before a justice of the peace, and appealed to the county court of LaSalle county, and tried before the judge of said court at the June term, 1857. Finding for the defendant. Motion for new trial overruled.

The issues were oral. One plea was *nul tiel* corporation.

EVIDENCE ON THE TRIAL.

An ordinance passed by persons purporting to be the President and Trustees of the Town of Mendota, and acting as such, which is as follows:

Be it ordained by the President and Trustees of the town of Mendota:

Sec. 1. That the sale of all spirituous, intoxicating or mixed liquors, wine, beer, ale, porter, cider, or any fermented or malt liquors, is hereby declared to be a nuisance; and any person selling any spirituous, intoxicating or mixed liquors, wine, beer, ale, porter, cider or any fermented or malt liquors in any quantity, shall, upon conviction, be fined five dollars for each offence—and the term each offence as herein mentioned shall be construed to mean the selling by the glass, quart or in any quantity, and for each separate glass or quantity sold or disposed of for gain or profit.

Sec. 2. That any person keeping a billiard table or an alley of from one to twenty pins, who shall fail or refuse to take out a license for the same, shall be fined five dollars for each game played on the same. And any person keeping open and allowing any playing of ten pins or billiards on the Sabbath, shall pay a fine of five dollars for each game played.

Sec. 3. That the keeper of all billiard tables, and alleys of from one to twenty pins, shall be required to pay a license of sixty dollars a year.

Sec. 4. Penalties incurred for a violation of any ordinance of said town of Mendota, may be sued for and recovered before any justice of the peace or before any other Court having jurisdiction. One half of the penalty collected upon the information and complaint of any person shall be paid to such person by the Treasurer of the said town.

No license shall be granted or issued in pursuance of any of the ordinances of this town, for a longer term than one year. All licenses granted or issued and not otherwise limited, shall expire on the second Monday of October next, after the granting or issuing of the same.

^{pg 10} A copy of the Mendota Press, a newspaper published in Mendota which contained said ordinance published before the time of the sale of liquor as offered to be proved as hereinafter mentioned,

3d. The plaintiffs then offered to prove that the defendant in the year 1856, and after the publication of said ordinance, sold on two different occasions to two different persons a quantity of spirituous liquors and that the place of sale was within the corporate limits of the said town of Mendota. To the introduction of this evidence the defendant objected, the Court sustained the objection and the plaintiff excepted.

4th. The plaintiff then introduced in evidence the following copy of the proceedings certified to be on file in the county Clerk's office of LaSalle county.

1st. The proceedings of the inhabitants of Mendota at a meeting called to vote for or against incorporating said town of Mendota, showing a vote on the 31st of October, 1854, in favor of incorporation, which proceedings were signed and certified by the chairman and clerk of the meeting.

2d. The poll book of an election for Trustees of said town, held on the 7th of November, 1854, at which five Trustees, to wit: George A. Richmond, F. M. Baldwin, Benjamin West, Roswell Webster, and J. Hastings were elected. The poll book is certified by the chairman and clerk.

3d. The oath of office of said five Trustees.

4th. A communication addressed to the clerk of the county court, signed George A. Richmond, President of Trustees of town of Mendota, stating that an accompanying seal was that of the town of Mendota, and requesting the same to be entered as such.

5. A copy of proceedings certified by the clerk of said county as on file in his office, which are

1st. The proceedings of a meeting of the white male residents of lawful age and qualified voters of the town of Mendota, on the 20th June 1855, for the purpose of deciding whether they would be incorporated or not, certified by Benjamin West, President, and Samuel P. Ives, Clerk, at which the vote was for incorporation.

2d. The oath of office of five persons as Trustees of Mendota taken on the 28th day of June, 1855.

VI. The plaintiff also proved that the town of Mendota, through persons acting as President and Trustees, had exercised the powers that they would have been entitled to exercise if they had been duly incorporated. The book containing the proceedings, purporting to be the various and usual acts of an incorporated town, was also introduced in evidence, and was proved to be the book used as and for a record of the proceedings of the President and Trustees of the town of Mendota. The first meeting appearing to have been held, was on the 28th day of June, A. D. 1855. The only evidence of the election of the Board of Trustees for the year A. D. 1855, was the oral evidence of a witness, who testified that he was present at an election of trustees in June, 1855, and that such an election was held. He also testified that there had been an annual election of Trustees since then, and that there was a record made of such election. The court decided that such evidence of the election of trustees, and the other facts mentioned in this bill of exceptions, were not sufficient to prove the election of the first board, and that it was necessary to prove an election of the first board of trustees by written evidence thereof, in order to establish the fact of incorporation. On the 6th day of July, 1855, and during the term when, by said record book, J. H. Adams, Lansen Lamb, W. P. Galliday, C. H. Johnson and D. G. Bly appeared to

be acting as trustees. The lines of section thirty-three of township thirty-six north, of range one east of the third principal meridian, were declared to be the bounds and corporate limits of the town of Mendota, as appears by an entry on said book.

On the 9th of July, 1855, as appears by said book, Galliday tendered his resignation, in consequence of living out of said town; and it appeared he did not live within said section when elected. On the same day, as appears by said book, Lamb and Johnson also resigned. It was proved that the reason they resigned, was that they were not freeholders.

The record book shows that George Wills, C. H. Gilman and John Hastings were appointed to fill the vacancies. (The vacancy occasioned by the resignation of Galliday was filled by George Wells, before the resignation of Lamb and Johnson,) and the record recites that they severally took the oath of office when appointed. The record contains ordinances on various subjects; orders allowing bills, appointing and removing officers, and contains a recital of the usual and ordinary acts performed by the trustees of an incorporated town; recites the presence of the trustees and clerk (naming them); and there is a change of the names, showing different persons acting as trustees during the different years. The record contains no other evidence of the election of trustees, except mentioning them as the trustees elect having met.

And it was also proved by oral evidence that persons acting as the President and Trustees of Mendota, had, since the election in June, 1855, (and whose election was proved orally, as before mentioned,) acted in that capacity.

The above was all the evidence.

The Court found the issue of *nul tiel* corporation for the defendant.

Plaintiff moved for a new trial. The Court overruled the motion and plaintiff then and there excepted.

ERRORS ASSIGNED.

1st. The Court erred in excluding the evidence offered of the sale of liquor by the defendant.

2d. The finding of the Court on the plea of *nul tiel* corporation was against the evidence.

3d. The Court erred in deciding that it was necessary to prove on the part of the plaintiff by written evidence, that the first board of Trustees were elected, in order to establish the fact of incorporation.

4th. The Court erred in overruling the motion of plaintiff for a new trial, and rendering judgment for the defendant.

LELAND & LELAND, Pl'ff's Atty's.

109. = 127
Presdt. &c. of Mendota
Co.
C. E. Thompson
Abstract

Filed April 29, 1858
L. L. Edmund
Clerk

STATE OF ILLINOIS, { ss.
SUPREME COURT,

TO THE SHERIFF OF THE COUNTY OF

The People of the State of Illinois,

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 La Salle* county, before the Judge thereof, between *The Presidents & Trustees of the Town of Mendota* plaintiffs and *Charles E. Thompson* defendant,

it is said that manifest error hath intervened, to the injury of the said

plaintiffs

as we are informed by *the said plaintiffs* the 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 *Charles E. Thompson*

that *he* 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 *first Tuesday after the* Monday in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* 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 *Charles E. Thompson* notice, together with this writ.

WITNESS, The Hon. ~~WALTER B. SCATES~~ Chief Justice of our said Court, and the Seal thereof at Ottawa, this *25th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*eight*

S. Deland
Clerk of the Supreme Court.

by J. B. Rice Deputy

108
The President & Trustees
of the Town of Mendota
vs
Charles & Thompson

Dei fca
Served by reading the writ
in writ to Charles &
Thompson this 3^d day of
March 1858

Fees ~ 37 1/2 60
28 miles 140
\$ 2,00

E. S. Waterman Dep
of Cass County

Served March 30th

Filed April 10, 1858
Leland
clerk

STATE OF ILLINOIS—SUPREME COURT.

THE PRESIDENT AND TRUSTEES
OF THE TOWN OF MENDOTA
vs.
C. E. THOMPSON.

ABSTRACT OF RECORD.

Action of debt for a penalty for selling liquors. Trial before a justice of the peace, and appealed to the county court of LaSalle county, and tried before the judge of said court at the June term, 1857. Finding for the defendant. Motion for new trial overruled.

The issues were oral. One plea was *nul tiel* corporation.

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Sec. 2. That any person keeping a billiard table or an alley of from one to twenty pins, who shall fail or refuse to take out a license for the same, shall be fined five dollars for each game played on the same. And any person keeping open and allowing any playing of ten pins or billiards on the Sabbath, shall pay a fine of five dollars for each game played.

Sec. 3. That the keeper of all billiard tables, and alleys of from one to twenty pins, shall be required to pay a license of sixty dollars a year.

Sec. 4. Penalties incurred for a violation of any ordinance of said town of Mendota, may be sued for and recovered before any justice of the peace or before any other Court having jurisdiction. One half of the penalty collected upon the information and complaint of any person shall be paid to such person by the Treasurer of the said town.

No license shall be granted or issued in pursuance of any of the ordinances of this town, for a longer term than one year. All licenses granted or issued and not otherwise limited, shall expire on the second Monday of October next, after the granting or issuing of the same.

¹⁰ A copy of the Mendota Press, a newspaper published in Mendota which contained said ordinance published before the time of the sale of liquor as offered to be proved as hereinafter mentioned.

3d. The plaintiffs then offered to prove that the defendant in the year 1856, and after the publication of said ordinance, sold on two different occasions to two different persons a quantity of spirituous liquors and that the place of sale was within the corporate limits of the said town of Mendota. To the introduction of this evidence the defendant objected, the Court sustained the objection and the plaintiff excepted.

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2d. The oath of office of five persons as Trustees of Mendota taken on the 28th day of June, 1855.

VI. The plaintiff also proved that the town of Mendota, through persons acting as President and Trustees, had exercised the powers that they would have been entitled to exercise if they had been duly incorporated. The book containing the proceedings, purporting to be the various and usual acts of an incorporated town, was also introduced in evidence, and was proved to be the book used as and for a record of the proceedings of the President and Trustees of the town of Mendota. The first meeting appearing to have been held, was on the 28th day of June, A. D. 1855. The only evidence of the election of the Board of Trustees for the year A. D. 1855, was the oral evidence of a witness, who testified that he was present at an election of trustees in June, 1855, and that such an election was held. He also testified that there had been an annual election of Trustees since then, and that there was a record made of such election. The court decided that such evidence of the election of trustees, and the other facts mentioned in this bill of exceptions, were not sufficient to prove the election of the first board, and that it was necessary to prove an election of the first board of trustees by written evidence thereof, in order to establish the fact of incorporation. On the 6th day of July, 1855, and during the term when, by said record book, J. H. Adams, Larsen Lamb, W. P. Galliday, C. H. Johnson and D. G. Bly appeared to

be acting as trustees. The lines of section thirty-three of township thirty-six north, of range one east of the third principal meridian, were declared to be the bounds and corporate limits of the town of Mendota, as appears by an entry on said book.

On the 9th of July, 1855, as appears by said book, Galliday tendered his resignation, in consequence of living out of said town; and it appeared he did not live within said section when elected. On the same day, as appears by said book, Lamb and Johnson also resigned. It was proved that the reason they resigned, was that they were not freeholders.

The record book shows that George Wills, C. H. Gilman and John²¹ Hastings were appointed to fill the vacancies. (The vacancy occasioned by the resignation of Galliday was filled by George Wells, before the resignation of Lamb and Johnson,) and the record recites that they severally took the oath of office when appointed. The record contains ordinances on various subjects; orders allowing bills, appointing and removing officers, and contains a recital of the usual and ordinary acts performed by the trustees of an incorporated town; recites the presence of the trustees and clerk (naming them); and there is a change of the names, showing different persons acting as trustees during the different years. The record contains no other evidence of the election of trustees, except mentioning them as the trustees elect having met.

²² And it was also proved by oral evidence that persons acting as the President and Trustees of Mendota, had, since the election in June, 1855, (and whose election was proved orally, as before mentioned,) acted in that capacity.

The above was all the evidence.

The Court found the issue of *nul tiel* corporation for the defendant.

Plaintiff moved for a new trial. The Court overruled the motion and plaintiff then and there excepted.

ERRORS ASSIGNED.

1st. The Court erred in excluding the evidence offered of the sale of liquor by the defendant.

2d. The finding of the Court on the plea of *nul tiel corporation* was against the evidence.

3d. The Court erred in deciding that it was necessary to prove on the part of the plaintiff by written evidence, that the first board of Trustees were elected, in order to establish the fact of incorporation.

4th. The Court erred in overruling the motion of plaintiff for a new trial, and rendering judgment for the defendant.

LELAND & LELAND, Pl't's Atty's.

109.

Presdt. re. of Mendota

vs.

C. E. Thompson

~~Brief~~

Abstract

Filed April 29, 1838

L. Leland

Clerk

Supreme Court--State of Illinois.

APRIL TERM, 1858.

PRESIDENT AND TRUSTEES
OF MENDOTA,
^{vs.}
CHARLES E. THOMPSON. } *Points and Authorities.*

The only question presented in this case is, whether the evidence on the part of the plaintiff was sufficient to make a prima facie case of the organization of the town of Mendota, as an incorporated town, under the general law of this state; the Court below having held that written evidence of the election of the first Board of Trustees was necessary.

The law seems to be well settled that such proof is not necessary, but that an act of the legislature or charter authorizing the organization of an incorporation, and a user of the corporate powers are all that are necessary; and that such user of the corporate powers creates a presumption that the proper preliminary steps to complete the organization were taken.

As there seems to be no conflict of authority, a few cases are here quoted. The act under which the incorporation was authorized, will be found in 1st Purple's Stat., p. 172.

Utica Ins. Co. vs. Tilman, 1 Wend., 555.

Bank of Manchester vs. Allen, 11 Vermt., 302.

State vs. Carr, 5 N. H., 367.

Way vs. Billings, 2 Mich., 397.

Bank of U. S. vs. Dandridge, 12 Wheat., 64.

Utica Ins. Co. vs. Cadwell, 3 Wend., 296.

Gaines et al vs. Bank of Miss. 7 English, 769.

Tar Navigation Co. vs. Neal, 3 Hawks, 520.

Elizabeth City Academy vs. Lindsay, 6 Iredell, 477.

The adoption of a rule allowing no presumptions, and requiring proof by written evidence of all the preliminary steps pointed out to be taken before the organization becomes complete, would produce serious public inconvenience. As record evidence of all these things has rarely ever been preserved, there is hardly a town or other incorporation in the state, that could maintain an action under such a rule.

LELAND & LELAND,
For Plt'ff in Error.

109.
Presdt. of Minn.
vs.
C. E. Thompson
Brief

May
Filed May 18. 1858.
Leland
Bill

STATE OF ILLINOIS,
SUPREME COURT,

ss. *County* The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *La Salle* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the *County* Circuit Court of *La Salle* County, before the Judge thereof, between *The President & Trustees of the Town of Mendota*

plaintiffs and

Charles E. Thompson

defendant it is said manifest error hath intervened, to the injury of the aforesaid

plaintiff — as we are informed by *the* *said plaintiffs* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaintiff 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 *on the first Tuesday after the third Monday in April 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.

John D. Talbot
WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *25th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-Eight.

L. Leland
Clerk of the Supreme Court.
J. B. Rice Deputy

The President & Trustees
of the Town of Mendota

vs

Charles & Thompson

Writ of Error

Filed March 25, 1858
L. Seland Clk

Supreme Court--State of Illinois.

APRIL TERM, 1858.

PRESIDENT AND TRUSTEES
OF MENDOTA,

vs.

CHARLES E. THOMPSON.

} Points and Authorities.

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and uses under it sufficient evidence

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The adoption of a rule allowing no presumptions, and requiring proof by written evidence of all the preliminary steps pointed out to be taken before the organization becomes complete, would produce serious public inconvenience. As record evidence of all these things has rarely ever been preserved, there is hardly a town or other incorporation in the state, that could maintain an action under such a rule.

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For Pl'ff in Error.

Vermont Case

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109-
Presdt^{re} of Mendota
vs
C. E. Thompson

Brief

Filed May 18. 1858
L. Leland
clerk

Supreme Court - State of Illinois