

Ruling on the motion to Quash

The Respondents after answer filed move to quash upon the following grounds:

"This is a private action between Ingleton and Rush as Claimants for the office of Sheriff and should have been by an action in the nature of a Quo Warranto - against Rush."

The ^{petitioner} ~~complainant~~ does not allege that he is in any manner prevented from performing the duties of his office by Rush or through his instrumentality but simply that the Board of Commissioners have refused to perform a ministerial act required of them by law. - The petition states that the petitioner presented his bonds in due form, ^{with good and sufficient securities,} justified according to law, and that the Board of Commissioners refused to receive them and declared that he was not entitled to hold the office in question - Thereupon the petitioner asks that they be commanded to show cause why said bonds were not accepted - Now of the elements of the quo warranto are found here and indeed ^{there} is hardly a question, that upon strict construction, admitting the facts to be as alleged by the petitioner, an action of this nature, would be dismissed.

And concluding this petition with allegations of the petitioners as to the grounds of the same - the grounds of the same are not before the court.

on demurrer, if brought by the petitioner against Rush - And it is the opinion of the Court that the petition and the writ most clearly disclose a case for which no other remedy except the writ of Mandamus exists -

2) The second ground of the motion, is ~~that~~ ^{that} "the Board of Commissioners are a court of record, and that their proceedings ^{can} do not not be examined, ^{in this court} except upon a writ of certiorari - and that Mandamus is therefore an improper remedy"

Sec. 4 of the fourth article of the constitution vests the judicial power of the ~~constituted~~ State exclusively and exhaustively in five classes of courts

- 1 - Courts for the trial of Impeachments
- 2 - The Supreme Court
- 3 - The Superior Courts
- 4 - The Courts of Justices of the Peace
- 5 - Special Courts -

Of these classes the first three are specifically instituted, and their jurisdiction powers and functions are expressly defined - Sec. 19 of this article provides that - "The Legislature shall provide for

For the establishment of Special Courts, for the trial of Misdemeanors in Cities and Towns where the same may be necessary".

It is the opinion of the Court that this constitutes a complete and exhaustive enumeration of the powers of the General Assembly to institute Special Courts, and fixes their jurisdiction. — The enumeration of this power precludes a further power upon the part of the General Assembly and upon the familiar principle that the exceptions prove the rule — and this principle is in the present instance intensified in its application by the words of Sec. 87 of the First Article of the Constitution which the respondents cite in their favor — If the power is not delegated to the Legislature in the Constitution — the Assembly is certainly powerless — to act in the premises. —

I — The next ground of the motion to quash is that the petition does not show affirmatively a cause of action having no other remedy. This has already ~~been~~ ~~pointed~~ ~~out~~ — considered under the first heading —

4 - That "the petition does not state that the Board of Commissioners considered the bonds to be good." The petition states it as a fact that the bonds were good and in due form of law." which is a sufficient allegation as to the character of the bonds - and which is not denied by the return -

5 - The fifth objection is - that "the commissioners have bestowed upon them a discretionary power to accept or reject the bonds of the Sheriff - and that no court can examine into or review the exercise of such discretion!"

It is unnecessary for the purposes of this motion to consider to any great extent the discretionary power of the Board of Commissioners. No one will be so daring as to claim that it ^{is} was in this respect an unlimited discretion and indeed the words of the statute are such as to make it questionable whether the act is in any sense a discretionary one - If, however, the petitioner had then rights to exercise the functions of the Sheriffalty for the term specified in the petition and tendered the proper bonds duly executed with good and sufficient ac-

curity, to the Commissioners, it was
a matter of unqualified right that
those bonds should be approved.
And there are the precise allegations
of the petition. Unfortunately this
motion has been argued as if the
~~fact~~ allegations of the Return which
is in the nature of an answer were
also to be taken as true. The motion is
actually in the nature of a demand
per se and for its purposes the alle-
gations of the petition are admit-
ted - Certainly, if the bonds were
good, and ~~the~~ in legal form, the
Commissioners had no discretion to
refuse them. This would put the place
of every bonded County officer at
the absolute and unquestionable
whim of a Board of Commissioners,
Elections by the people would become
a perfect farce. A Sheriff might ten-
der a bond worth the entire County
and every citizen of the County
might appear on it as a security,
and the Commissioners in the ex-
ercise of this so called discretion
might refuse to approve and declare
the officer innocent. The clerk of this court
might tender a bond worth \$5,000,000.

and the commissioners might tomorrow upon this principle declare his official account -

~~That~~
6- Service of the writ upon the Chairman is insufficient. -

I am clearly of the opinion that service upon the Chairman of the Board is sufficient. But at all events this objection cannot be urged after they have answered through their Chairman. He is their proper head and the Return filed brings them before the Court.

~~That~~ Petitioner
7- "The Sheriff did not state in his application that he had tendered his receipts & vouchers" -

Sec. 9 of Ch. 103 of the Rec. Code - is substantially amended by the recent act in relation to the renewal of bonds - before the Commissioners - with the exception of the provision ^{upon} of ~~that~~ which this objection rests - This omission in the very act which confers upon the commissioners all their powers in the present subject matter, is so much in the nature of an exception as to convince the Court that such provision is not an

present applicable to the Board of Commissioners -

And finally it is the opinion of the Court that the motion to quash cannot be made after answer made by filing the return - traversing the allegations of facts in the petition

~~It is therefore~~ the motion is therefore denied -

J. Woodbridge

County Clerk

Ersgate

U.S.

County of Randolph

W. H. H. S.