The Original Jurisdiction of the Illinois Supreme Court

Justin A. Stanley

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/cklawreview

Recommended Citation

Justin A. Stanley, The Original Jurisdiction of the Illinois Supreme Court, 22 Chi.-Kent L. Rev. 169 (1944). Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol22/iss3/1

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact jwenger@kentlaw.iit.edu, ebarney@kentlaw.iit.edu.
THE ORIGINAL JURISDICTION OF
THE ILLINOIS SUPREME COURT

JUSTIN A. STANLEY AND ROGER L. SEVERNS*

Since its creation, pursuant to the provisions of the Constitution of 1818, the Supreme Court of Illinois has dealt largely with appellate cases. From the decisions of such cases have come the work-day rules of tort and contract, of property and status. Limited by the Constitution of 1818, and by both succeeding constitutions, the court's exercise of original jurisdiction has been smaller in quantity and, generally speaking, of an entirely different nature than its work on appellate cases. These original cases do not, however, stand in a minor role either in significance in the law of the state or in importance in the work of the court.

I. CONSTITUTIONAL PROVISIONS

The Constitution of 1818 provided that the Supreme Court should have appellate jurisdiction only "except in cases relating to the revenue, in cases of mandamus, and in such cases of impeachment as may be required to be tried before it." Such restriction on original jurisdiction was changed by the Constitution of 1848 to an affirmative grant of power to take original jurisdiction in the three types of cases mentioned and also in cases of habeas corpus. By the Constitution of 1870, the affirmative grant was continued, although impeachment cases were withdrawn from the list, so that

* Assistant Professor of Law and Professor of Law, Chicago-Kent College of Law, respectively.
1 Ill. Const. 1818, Art. IV, § 2.
currently the court has original jurisdiction "in cases relating to the revenue, in mandamus and habeas corpus."\(^3\)

The difference in the form of the grant of original jurisdiction employed in the Constitution of 1818 and that used in the two later constitutions has been of no practical significance in the treatment of cases, although it may indicate a conceptual difference as to the functions of the court itself.\(^4\) Similarly, the grammatical difference between the permissive "may have original jurisdiction" of the Constitution of 1818 and the mandatory "shall have" of the Constitution of 1870 has been without importance. There should be room for argument that the change of language meant something and that what might have been discretionary before was no longer so under the Constitution of 1870. However, the court has consistently taken the position that it may, in the exercise of its discretion, refuse to hear cases which otherwise meet technical jurisdictional requirements and in the decided cases it has made no mention of the change in the language of the constitutions.

All three constitutions have confined the jurisdiction of the court to "cases," but few opinions exist in which there is any discussion of what the court conceives a "case" to be, and in no instance has there been a decision dismissing a cause for the reason that it was not a "case."\(^5\) The explanation for this fact is probably to be found in that most litigation in this state, at least until recent years, has been based on old and accepted common-law forms of action or on proceedings in equity instead of legislative innovations. A study of

\(^3\) Ill. Const. 1870, Art. VI, § 2.

\(^4\) The difference in language is probably to be explained upon historical grounds. The predecessor in position of the Supreme Court of Illinois was the General Court of Illinois Territory, first organized in 1809. This court exercised primarily an original jurisdiction, although it was empowered to review cases decided by the inferior courts of the Territory. Throughout the territorial period, the original jurisdiction of the General Court continued to overshadow in importance its original jurisdiction. The first case ever reviewed arose upon writ of error in 1810. Late in the territorial period there was dissatisfaction with the situation with respect to appeals and the framers of the Constitution of 1818 may have wished to emphasize that the new court was to be primarily an appellate tribunal. When the Constitutions of 1848 and 1870 were drawn, the established function of the court was clear.

\(^5\) Suits which were dismissed for failure to state sufficient facts to constitute a cause of action within well recognized pleading patterns were not considered for obvious reasons.
the federal cases, on the other hand, would show that the problem as to what constitutes a "case or controversy" within the meaning of the Federal Constitution\(^6\) has often been raised in special proceedings authorized by legislative enactment and unknown to the common law.\(^7\)

The fullest description to be found in the Illinois reports as to what is meant by the word "case" was given by Justice Shaw in a concurring opinion in *North Chicago Hebrew Congregation v. Board of Appeals*.\(^8\) That proceeding was docketed as an "appeal to set aside a decision of the Board of Appeals of Cook County" and arose under a 1932 amendment to the Revenue Act of 1898 which related to methods for passing on the question of a claimed exemption of real estate from taxation where there had been no judicial determination of the question of liability.\(^9\) The statute prescribed one course of procedure to be followed where the Board of Appeals, which was first to pass on the question, should determine that the property was exempt, and another where the Board determined that the property was liable to be taxed. In the first situation, the exemptive ruling was not to be final unless approved by the state Tax Commission, but the Board's ruling in either case was to be submitted to the commission coupled with a complete statement of the case prepared by the county assessor under the direction of the board. If the commission agreed that the property should not be taxed, it was to notify the board and the assessment was to be corrected accordingly. If it disagreed, it was so to notify the board and file with the Supreme Court a certified statement of the facts and the court was to "hear and determine the matter as the right of the case may be."\(^10\) In the second situation, i. e. where the board determined in the first instance that the property was subject to taxation, the matter was closed un-

\(^6\) U. S. Const., Art III, § 2.
\(^8\) 358 Ill. 549, 193 N.E. 519 (1934).
\(^10\) Laws 1931-2, First Spec. Sess., p. 81, § 35e; Cahill's Ill. Rev. Stat. 1933, Ch. 120, § 346(5).
less the taxpayer prayed an appeal. If so, the Tax Commission was required, upon receipt of the assessor’s statement, to present the case to the court “in like manner as hereinbefore provided.”

The second of these procedures was the one which had been followed in the matter before the court, for the board had ruled that the real estate in question was not exempt. The entire court agreed that the proceeding should be treated, if at all, as a matter of original jurisdiction for it recognized that the legislative provision for an “appeal” from the findings of a non-judicial body resulted merely in an attempt to impose administrative duties upon the court which was void since, under the Constitution, the court could perform only judicial functions. The majority of the judges were willing, though, to accept the matter as a “case” relating to the revenue albeit the majority opinion did not discuss what was meant by such term.

Justice Shaw disagreed. He thought the proceeding should be dismissed, but for the reason that a “case” was not presented. As he viewed the statute, procedural due process was lacking because there was no provision therein for adequate notice, there was no possibility of rendering a final judgment which would be res judicata, hence the court’s opinion could be nothing more than advisory to the executive department of the government. After reviewing the decided cases dealing with the subject, he concluded:

In order to constitute a case the conflicting claims of adverse parties must be presented to a tribunal by such due process of law as to permit the court to make a binding judicial determination of the questions involved. The proceeding before us is lacking in all of these essential attributes. First, there are no conflicting claims. There is, at most, a disagreement between two administrative agencies in the executive department of government. . . Their duties and their interest in the subject matter are identical—i.e., the administration and enforcement of the revenue laws. Neither can they be parties. The tax commission is neither an entity nor a corporation but is created expressly as an executive and administrative board. . . The board of appeals . . . [like] the tax commission . . . has no existence as an entity . . . Second, the act fails

11 Ibid.
12 The proceeding was dismissed, however, for lack of a sufficient public interest.
to provide any due process of law for presenting any question to us for other than an advisory opinion. There is no provision for any judicial determination of the facts, but only that "the State Tax Commission shall then file in the Supreme Court a certified statement of facts" . . . Neither is there any provision in the act for the issuance or service of process. There is a vague statement in the act that "upon receipt of such notice [from the tax commission to the board of appeals] the clerk shall notify the person making the application aforesaid." The sentence is meaningless, because there is no previously mentioned application. There is nothing to indicate what clerk is meant, what the notice is to contain, whether or not it is to be in writing, to whom it is to be given nor within what time. Neither is there any provision as to the manner or means by which it is to be served or sent. Further, there is no apparent reason for giving any notice, because there is no provision for forming any issue, receiving any evidence, the filing of any brief or argument, nor opportunity of any kind to be heard. This is not due process of law and presents nothing to us in such form as to permit our judicial power to make a binding determination of any question. Our decision would not become res judicata, and we would leave the owner of the property exactly where we found him, with his right to object to the tax unimpaired by our advisory opinion.13

The principles which Justice Shaw thus announced and the tests which he applied to the problem are generally accepted as essential. They have been stated many times by the Supreme Court of the United States. What is startling about his opinion is the fact that not a single Illinois case is cited on the question, for he relied entirely on Federal authorities. It would seem clear, though, that before the original jurisdiction of the Illinois Supreme Court could be invoked the proceeding must be one which passes such tests, for without that no "case" is presented.

II. THE NATURE OF THE GRANT OF JURISDICTION

The granting of original jurisdiction to the Illinois Supreme Court in the specified cases has never been deemed, either by it or by the Legislature, as a grant of exclusive jurisdiction in those cases, but one of concurrent jurisdiction only.

13 358 Ill. 549 at 565, 193 N.E. 519 at 525. One of the confusing things about the opinion is that it does not point out that the majority based its decision on one portion of the statute and the concurring judge rested his conclusions upon another. There certainly would have been room for a consideration of whether the invalid procedure, provided in the situation where the decisions of the Board and the Commission were in conflict, nullified the entire amendment, and whether the procedure followed in the litigation before the court resulted in a "case."
This conforms to traditional conclusions in such situations, for the legislature has indicated its views by providing for direct appeal to the Supreme Court in cases involving the revenue.\(^\text{14}\)

So too, in spite of differences in the language used in the grant of original jurisdiction as found in the Constitutions of 1848 and 1870, the court has always taken the position that the exercise of its original jurisdiction depends entirely on its own discretion. If a case does not possess certain requisites which the court feels it should have, such as a subject matter of general public interest, it will refuse to hear it, in spite of the fact that the case may relate to the revenue or be a mandamus proceeding.

This point was squarely raised and definitely settled in *People ex rel. Kocourek v. City of Chicago*,\(^\text{15}\) a mandamus proceeding brought to compel the removal of an overhead bridge constructed across a public alley for private purposes. After leave had been granted to file the suit and the petition, an answer, and a demurrer thereto had also been filed, the defendant moved to dismiss the petition on the ground that the original jurisdiction of the court did not extend "to that class of cases in *mandamus* which affect only the rights and interests of the local public or of individuals, and not those of the people of the whole State, or the State in its corporate or sovereign capacity."\(^\text{16}\) After an extensive review of the authorities elsewhere, the court granted the motion, pleading guilty at the same time of past laxity in undertaking cases of only local concern. It summarized, as follows, the rules announced by courts of other states:

*First*—That the jurisdiction of the court of last resort in such States is principally appellate; that its original jurisdiction is not a general one, like that conferred on the circuit or district courts, but is a limited one, and concurrent, as far as it extends, with those courts.

*Second*—That in conferring original jurisdiction by constitutional provision in such cases as *mandamus*, it was not contemplated that the Supreme Court would take jurisdiction of all *mandamus* cases which parties might think best to bring before it, but that such original jurisdiction was conferred that the court of highest authority in the State

\(^{14}\) Ill. Rev. Stat. 1943, Ch. 110, § 199.

\(^{15}\) 193 Ill. 507, 62 N.E. 179 (1901).

\(^{16}\) 193 Ill. 507 at 508, 62 N.E. 179.
should have the power to protect the rights, interests and franchises of the State and the rights and interests of the whole people, to enforce the performance of high official duties affecting the public at large, and, in emergency (of which the court itself is to determine), to assume jurisdiction of cases affecting local public interests, or private rights, where there is no other adequate remedy and the exercise of such jurisdiction is necessary to prevent a failure of justice.

Third—that the Supreme Court is vested with a sound legal discretion to determine for itself, as the question may arise, whether or not the case presented is of such a character as to call for the exercise of its original jurisdiction.\textsuperscript{17}

While expressly refusing to approve those conclusions in their entirety, the court did give them substantial blessing. On the matter of underlying policy, it also said:

It is the policy of the law that parties shall be sued in the county where they reside, and that both local and private controversies shall be first heard in the local courts, where there will be the least inconvenience and expense to the parties. We cannot allow a practice to be continued which has heretofore, to some extent, been allowed by the indulgence of the court until it has become burdensome not only to litigants but to this court as well, and has consumed much of its time which is necessary for the consideration of cases on error or appeal, by concentrating upon our docket a large number of cases which would otherwise be distributed among the different local courts. No jury is provided for this court to determine issues of fact, nor is it the rule to hear witnesses here, and the practice is to send such issues down to the local court for trial before a jury. Now, no reason, legal or otherwise, is perceived why such cases should not be brought, the pleadings settled, issues made, the trial had and judgment rendered in the proper local tribunal, leaving to this court, in the exercise of its appellate jurisdiction, the correction of errors only. It would be impracticable to adopt or announce any precise rule which would be applicable to all cases that may arise, nor shall we attempt to do so; but the general rules hereinbefore stated will in most cases enable the bar to determine whether or not any particular case is a proper one for original cognizance in this court. At all events, these general rules will hereafter be enforced, and petitions for \textit{mandamus} inconsistent with them will not be allowed to be filed originally in this court.\textsuperscript{18}

In much the same way, when refusing to accept jurisdiction in \textit{North Chicago Hebrew Congregation v. Board of Appeals},\textsuperscript{19} a case relating to the revenue, the court employed identical language to that found in a part of the second point

\textsuperscript{17} 193 Ill. 507 at 522, 62 N.E. 179 at 184.
\textsuperscript{18} 193 Ill. 507 at 524, 62 N.E. 179 at 185.
\textsuperscript{19} 358 Ill. 549, 193 N.E. 519 (1934).
of the court’s summary in the Kocourek case as support for its action. Again, in *Eli Bates House v. Board of Appeals*, it declared that: “What was said [in the Kocourek case] in reference to original jurisdiction of this court in *mandamus* proceedings applies with equal force to original proceedings here involving the revenue.”

Since the Constitution, despite its apparently mandatory language, has not compelled the exercise by the court of jurisdiction in every technically qualified case, it would seem to follow that the legislature could not compel it either. The contrary view was argued in the *Eli Bates House* case for it was urged there that the legislature, by setting out the specific procedure to be followed on appeal, had, in effect, directed the court to take jurisdiction and, as a consequence, it had no right to “exercise discretion” and refuse to consider the case. The court made short shrift of that argument as it said:

We derive our original jurisdiction from section 2 of article 6 of the constitution and from no act of the legislature. As we have pointed out, we have the duty to exercise a sound discretion as to whether we should take original cases. The legislature cannot compel the exercise of the discretion or enlarge or limit our original jurisdiction in cases involving the revenue, *mandamus* and *habeas corpus*.

Before jurisdiction of the cause will be taken, then, the matter must be such as will appeal to the “sound discretion” of the court.

### III. THE TYPES OF CASES ACCEPTED

The language thus used indicates that this discretionary quality extends to each of the four types of cases specified in the three Illinois constitutions. Any discussion of these types must, then, necessarily be confined largely to an examination of the factors which have induced the court to act, rather than to a consideration of the rules and principles of legal doctrine applied in the cases themselves.

The grant of original jurisdiction in *habeas corpus* cases was not included in the Constitution of 1818. In a

---

20 358 Ill. 596, 193 N.E. 526 (1934).
21 358 Ill. 596 at 598, 193 N.E. 526 at 527.
22 358 Ill. 596 at 599, 193 N.E. 526 at 527.
case decided in 1835, therefore, the court held it could not authorize the allowance of writs of habeas corpus unless incident to its appellate jurisdiction.\textsuperscript{23} There was little discussion of the matter beyond a reference to a like decision of the Supreme Court of the United States,\textsuperscript{24} nor was there indication in the opinion that the lack of such jurisdiction was of any serious consequence. It did observe, though, that application might be made to any circuit court or to one of the justices of the Supreme Court itself.\textsuperscript{25}

Original jurisdiction in habeas corpus, added by the Constitution of 1848, was exercised the next year for the purpose of admitting to bail a prisoner who had appeared successively before three different committing magistrates, the third of whom had ordered his committment.\textsuperscript{26} The court has continued in the exercise of original jurisdiction in habeas corpus to the present time but has seldom had occasion to discuss its jurisdiction in the opinions which have been written in these cases. That the jurisdiction is discretionary may probably be assumed from the broad language used in discussing other types of cases. In other respects, the jurisdiction is based upon the same grounds as that of the Circuit and Superior Courts and is no more extensive than theirs.\textsuperscript{27} The same duty rests upon the Supreme Court, in applications before it, to disregard prior applications to other courts with the same exceptions.\textsuperscript{28}

Assuming the jurisdiction to be discretionary no expressions of the court have been found indicating the circumstances under which the court might decline to exercise its powers. The indications are that the court considers many more cases of habeas corpus than is in-

\textsuperscript{23} People v. Taylor, 2 Ill. (1 Scam.) 202 (1835).

\textsuperscript{24} Ex parte Bollman and Ex parte Swartwout, 8 U. S. (4 Cranch) 75, 2 L. Ed. 554 (1807).

\textsuperscript{25} At that time the justices also travelled on circuit, hence might well entertain matters which would not fall within the jurisdiction of the Supreme Court itself. See Rev. Stat. 1827, p. 119, § 2, and p. 236, § 1; Rev. Stat. 1845, Ch. 29, § 9, and Ch. 48, § 1.

\textsuperscript{26} In re McIntyre, 10 Ill. (5 Gill.) 423 (1849).

\textsuperscript{27} People v. Murphy, 212 Ill. 584, 73 N.E. 902 (1904).

\textsuperscript{28} People v. Siman, 284 Ill. 28, 119 N.E. 940 (1918).
icated by the number of opinions published, and a commentator pointed out recently that there was a marked increase in 1943 in the number of petitions for writs of habeas corpus filed. In view of the important function of the writ, it may be that the court is less disposed to reject these applications for the exercise of its jurisdiction than in other types of cases.

Both the Constitution of 1818 and that of 1848 conferred original jurisdiction upon the Supreme Court in “such cases of impeachment as may be by law directed to be tried before it.” These earlier constitutions also made provision for the trial of impeachments by the senate, and it was argued in the Constitutional Convention of 1847, without avail, that such provision was adequate and no jurisdiction should be extended to the Supreme Court. The legislature, though, seems never to have made provision for the trial of impeachment cases by the court, consequently the record discloses no instance of the exercise of this jurisdiction. In the 1870 Constitution, the grant was omitted.

In all three Illinois constitutions, the provision conferring original jurisdiction on the court in “cases relating to the revenue” has appeared at the head of the list. Doubtless the purpose of this provision is to provide a method for the speedy and final determination of questions concerning the collection of taxes. By providing the Supreme Court with original jurisdiction, it may have been supposed that

29 From 1849 to 1902, for example, the court published opinions in only eleven cases, to-wit: In re McIntyre, 10 Ill. 422 (1849); Ex parte Klepper, 26 Ill. 532 (1862); People v. Bradley, 60 Ill. 390 (1871); People ex rel. Manyx v. Whitson, 74 Ill. 20 (1874); People ex rel. Hinckley v. Pirfenbrink, 96 Ill. 68 (1879); People ex rel. Davis v. Foster, 104 Ill. 156 (1882); Ex parte Smith, 117 Ill. 63, 7 N.E. 683 (1886); People ex rel. Henderson v. Allen, 160 Ill. 400, 43 N.E. 332 (1896); People ex rel. Birkholz v. Jonas, 173 Ill. 316, 50 N.E. 1051 (1898); People ex rel. Hutchinson v. Murphy, 188 Ill. 144, 58 N.E. 984 (1900); People ex rel. Martin v. Mallory and People ex rel. Dorsey v. Same, 195 Ill. 582, 63 N.E. 508 (1902).

30 See Clarke, Supreme Court Cases Increase, Chicago Bar Record, Vol. XXV, No. 5, p. 222 (1944).


34 No change has been made in the phrase since 1818, except in the Constitution of 1848 where the word “relative” was substituted for “relating.” The Constitution of 1870 returned to the original wording.
the validity of a taxing statute could be determined at once without waiting the slower course of appellate procedure. However that may be, the fact is that the original jurisdiction has been invoked in relatively few cases. The determination of the constitutionality of many taxing statutes involves the decision of complicated and often disputed questions of fact. Difficulties in the way of presenting such questions to the Supreme Court, hereafter discussed, may have deterred a more frequent recourse to the original jurisdiction. Moreover, the legislature, by short-circuiting the Appellate Court in cases relating to revenue, has provided a procedure consuming little more time than would be involved were the jurisdiction of the Supreme Court invoked in the first instance. The language of the Civil Practice Act, authorizing direct appeal in tax cases, is substantially identical to that found in the constitutional provision, hence most such cases reach the court on appeal.

The Supreme Court has made it very clear that, both in the exercise of its original jurisdiction and of its jurisdiction to consider appeals direct from courts of first instance, the phrase "relating to the revenue," requires that the controversy be between a taxing authority and a taxpayer and be one involving the collectibility of the tax. Disputes between two agencies over the right to receive the proceeds of the tax, or between a city council and a school board over the rate of tax for school purposes, do not, therefore, constitute cases "relating to the revenue."

The point of differentiation between those cases relating

35 See cases cited in notes 40 to 43 post.
36 Compare Ill. Rev. Stat. 1943, Ch. 110, § 199, with Ill. Const. 1870, Art. VI, § 2. The constitutional provision, of course, relates only to original jurisdiction.
37 People v. Deep Rock Oil Corp., 343 Ill. 388, 175 N.E. 572 (1931); People v. Holten, 259 Ill. 219, 102 N.E. 171 (1913); People v. Turnbull, 256 Ill. 532, 100 N.E. 221 (1912); People v. City Council of Peoria, 229 Ill. 225, 82 N.E. 225 (1907); Reed v. Village of Chatsworth, 201 Ill. 480, 66 N.E. 217 (1903).
38 Reed v. Village of Chatsworth, 201 Ill. 480, 66 N.E. 217 (1903).
39 People v. City Council of Peoria, 229 Ill. 225, 82 N.E. 225 (1907). The case of Campbell v. Campbell, 22 Ill. 664 (1859), would seem to fit the requirement, it being a suit to enjoin the collection of taxes, but the court refused jurisdiction on the ground that it did not have original jurisdiction to issue injunctions. Whether the case might have been one relating to the revenue was not discussed. Possibly the particular assessment, being for "railroad purposes," was not within the scope of "revenue."
to the revenue which the court will hear in the exercise of its original jurisdiction and those properly before it on direct appeal is, again, the requisite that the former must involve a "public interest." In three cases unquestionably relating to the revenue the court refused original jurisdiction because the controversy in each involved merely the question of whether or not the taxpayer's individual property was exempt from taxation. In *People v. Deep Rock Oil Corporation*, though, the court stated: "Leave to file this suit was granted because of the State-wide public importance not only of the subject-matter but of an early disposition of it." The "public interest" was apparent for the case involved the constitutionality of the Motor Fuel Tax Act and also concerned the problem as to whether sales to municipalities were exempt from its provisions or not.

Many perplexing questions arise involving the administration of the revenue laws, but such questions are frequently productive of litigation which is not between taxpayers on the one side and taxing authorities on the other. In refusing to permit its original jurisdiction to be invoked unless such persons are the parties, as well as the requirement that a matter of public interest be concerned, the court is carrying out the probable intention of the framers of the three constitutions. A letting down of the bar of the first requirement might well make of the court a mere arbiter between administrative agencies. Such a result would lead logically to a break-down of the second requirement. The result reached by the court in these cases seems, then, to be a satisfactory one.

If the number of cases in the Illinois reports in which the Supreme Court has written opinions dealing with its original jurisdiction in habeas corpus and revenue matters is small, the lack is more than made up by the plethora of opinions dealing with the jurisdiction in mandamus. In that

---

40 North Chicago Hebrew Congregation v. Board of Appeals, 358 Ill. 549, 193 N.E. 519 (1934); Turnverein "Eiche" v. Board of Appeals, 358 Ill. 595, 193 N.E. 528 (1934); Eli Bates House v. Board of Appeals, 358 Ill. 596, 193 N.E. 526 (1934).
41 343 Ill. 388, 175 N.E. 572 (1931).
42 343 Ill. 388 at 391, 175 N.E. 572 at 575.
43 Ill. Rev. Stat. 1943, Ch. 120, § 417 et seq.
field there is data upon which to appraise the function and value of the grant of original powers. It is interesting to note that the first opinion published on the entire subject of original jurisdiction was in a mandamus action which involved a set of facts closely parallel to the one which produced John Marshall's famous opinion in Marbury v. Madison. In that case, Governor Coles had informed Lieutenant Governor Hubbard that he expected to be absent from the state after July 18, 1825, and that the duties of the governor would devolve upon Hubbard. It happened that the office of paymaster general had been vacant for some time. Accordingly, on November 2, 1825, Hubbard appointed William L. D. Ewing to the position. Forquer, the Secretary of State at that time, refused to sign and seal Ewing's commission on the ground, among others, that Governor Coles had returned to the state on October 31, 1825, and was discharging his duties as governor when Hubbard attempted to make the appointment. The fundamental issue raised by Ewing's suit to compel Forquer to sign and seal his commission was whether Coles or Hubbard was, in law, the chief executive of the state.

Justice Lockwood, on behalf of the court, wrote what was for those days a long opinion and one which possesses considerable historical interest. The importance of the issue had, evidently, been pressed upon the judges, for Justice Lockwood expressed somewhat naively the court's sense of injury at being expected to render a decision in less time than was required to argue the case. A lawyer scanning the opinion today comes to realize how close the frontier was to the capital, then at Vandalia, for Justice Lockwood wrote:

As, however, a decision has been anxiously pressed upon the court, they have determined to give the subject all the investigation which the shortness of the time, and the almost total absence of law books and other sources of information, will permit. If the court, laboring under

---

44 People ex rel. Ewing v. Forquer, 1 Ill. (Breese) 104 (1825).
45 5 U. S. (1 Cranch) 137, 2 L. Ed. 60 (1803).
46 He noted that Marbury v. Madison had been pending in the Supreme Court of the United States for two years before the decision in that case was pronounced: 1 Ill. (Breese) 104 at 108.
such great disadvantages, together with the unprecedented nature and novelty of the case, should err in the conclusions to which they shall arrive, they have no doubt that the error will meet, in the bosoms of the intelligent and honest, with a ready and satisfactory apology.\textsuperscript{47}

The decision denied the writ, for the rule that mandamus will not issue to compel the performance of an act unless the legal duty to perform it is clearly established was applied.

It has been pointed out earlier in this discussion that the Supreme Court of Illinois regards its original jurisdiction as discretionary in character. For that matter, the question of whether or not a writ of mandamus should issue from any court has been considered to be a matter of sound judicial discretion. In dealing with this problem, therefore, the Supreme Court has been primarily concerned with the public consequences likely to follow its action. In the Forquer case just discussed, a second reason urged for refusing the writ was the serious consequences which might flow from a judicial determination of the question of who was entitled to administer the powers of the governor. Before undertaking a decision on this question, the court considered that if the issue was decided in favor of the Lieutenant Governor, a serious disruption of the affairs of the state government might result.\textsuperscript{48} In another case,\textsuperscript{49} where the court was asked to require a railroad to dispose of certain of its lands at a low price, the court was concerned with the effect this would have upon the security of the holders of a large amount of outstanding bonds. The court there "balanced the equities," considering the interest of the state in putting an end to the tax exemption of the lands in question as against the probable effect of depreciating the security of the bonds.

Closely akin to the factors affecting the court's discretion, is the general requirement of the existence of a public

\textsuperscript{47} 1 Ill. (Breese) 104 at 106 (italics added).
\textsuperscript{48} The court also pointed out that this question ought not to be settled in litigation to which neither official was a party. In People ex rel. Phillips v. Lieb, 85 Ill. 484 (1877), for example, the court was reluctant to issue a writ of mandamus where it might cause serious embarrassment in the assessment and collection of taxes.
\textsuperscript{49} People v. Ketchum, 72 Ill. 212 (1874).
interest, as laid down in the case of People ex rel. Kocourek v. City of Chicago, before the court will permit its jurisdiction to be invoked. This case, and its companion case, involved suits on the relation of a citizen and taxpayer to compel a city to remove bridges which had been constructed over public rights of way to connect private buildings on either side of public alleys. The majority of the court ruled that the cases involved only local and private matters and resolved that henceforth the court should exercise no further original jurisdiction in such matters. Justice Magruder dissented in both cases, objecting strenuously to the view that the obstruction of a public right of way was a matter of only local import.

Just what will constitute a sufficient public interest in any given case is hard to determine by the application of any general principles. It is clear, from the cases just referred to, that the court intended this question to be one which it reserved the right to decide upon the facts of individual cases as they arose. Possibly no standards can be pre-determined for measuring public interest, but such a flexible requirement may sometimes serve judicial convenience when other factors impel the conclusion.

The original jurisdiction of the Illinois Supreme Court in mandamus cases has served the purpose of providing judicial supervision of the activities of other departments and agencies of the government of the state. In many instances it is probable that a more effective adherence to constitutional and statutory limitations and provisions has resulted from the exercise of this jurisdiction. At the same time, the court has acknowledged limitations upon its own powers in this direction that are worth observing.

In People ex rel. Kocourek v. City of Chicago, discussed

50 193 Ill. 507, 62 N.E. 179 (1874).
52 Compare People ex rel. Taylor v. Board of Education, 197 Ill. 43, 63 N.E. 1033 (1902), in which the court denied a motion for leave to file a mandamus petition to compel a board of education to cease discriminating against relator’s children on account of color, with the long protracted litigation in an almost identical situation culminating in People ex rel. Bibb v. Mayor, etc., of City of Alton, 233 Ill. 542, 84 N.E. 664 (1908).
53 193 Ill. 507, 62 N.E. 179 (1901).
above, the court said that the framers of the several constitutions of Illinois had deemed it wise to confer upon the Supreme Court original jurisdiction in cases, "all of which are of themselves, or in their application may become, of great public importance." With regard to mandamus cases it was said that these cases become of public importance by "compelling the performance of high official duties." Several such cases are to be found in the reports where the court has exercised its jurisdiction within the limits and according to the common law principles customarily applied to the remedy of mandamus. In such cases the element of public interest has appeared to derive in part from the rank and position of the official involved. Thus it becomes a matter of public concern when a high state official declines to discharge his duty, even though the only direct injury is to a private person.

But the Supreme Court has indicated that the official may be too highly placed to be reached by the writ. In several cases, for example, application has been made to the original jurisdiction of the court for a writ of mandamus against the governor. The leading case in Illinois on that point is People ex rel. Billings v. Bissell in which case it was sought to compel the governor to issue so-called "interest bonds" with which to pay interest on outstanding obligations of the state. The General Assembly had passed an act directing the governor to issue such bonds but he had refused so to do. The court, in an opinion written by Justice Caton, discussed at length the constitutional position of the judicial department and its function in requiring the other departments of the government to act within the spheres allotted to them by the constitution, but concluded that it was without power to compel the governor to perform any act no matter how clear might be his duty. The

54 193 Ill. 507 at 510, 62 N.E. 179.
56 19 Ill. 229 (1857).
necessity for independence of action of the three departments was stressed as a basic reason, for the court said:

We may not enjoin the others from doing an unconstitutional act, but by refusing to give effect to such act, or relieving against it, when properly and judicially applied to for that purpose, we may restrain them. We cannot restrain the Governor from issuing the bonds of the State, contrary to law, but when the question is properly presented before us, we can declare such bonds void; and so of a patent for the public land, which he might issue. And so, if he should step beyond his constitutional sphere, and unlawfully imprison a party, we could discharge such party on habeas corpus. But we have no power to compel either of the other departments of the government to perform any duty which the constitution or the law may impose on them, no matter how palpable such duty may be, any more than either of those departments may compel us to perform our duties. The Governor is, and must be, as independent of us as is the legislature, or as we are of either of them. The constitution may impose the duty upon the legislature to pass general laws for the incorporation of railroad or other companies, or to pass a law to prohibit free negroes from coming into the State, but if it neglects or refuses to do so, the responsibility is with the legislature alone, and no man would think of asking the courts to compel them to do so.\textsuperscript{58}

Justice Breese added a concurring opinion that the governor might consent to appear before the court but that the court could not compel him to do so. In matters of public duty, the justice wrote, we must "remit him to the high tribunals of his own conscience and the public judgment."\textsuperscript{59} The doctrine thus announced has remained the settled law in Illinois.\textsuperscript{60}

In accordance with the suggestion of Justice Breese, it was later held that the governor could consent to the exercise of jurisdiction over him.\textsuperscript{61} In a dissenting opinion in still another case it was argued that the court ought to exercise its jurisdiction over him unless he indicated his refusal to accede.\textsuperscript{62} Moreover, the court seems to have taken jurisdic-

\textsuperscript{58} 19 Ill. 229 at 232-3.
\textsuperscript{59} 19 Ill. 229 at 234.
\textsuperscript{60} People ex rel. Brown v. Lowden, 285 Ill. 618, 121 N.E. 188 (1918); People ex rel. Bruce v. Dunne, 258 Ill. 441, 101 N.E. 560 (1913); People ex rel. Bacon v. Cullom, 100 Ill. 472 (1881); People ex rel. Harless v. Yates, 40 Ill. 128 (1859).
\textsuperscript{61} People ex rel. Aiken v. Matteson, 17 Ill. 167 (1855); People ex rel. Stickney v. Palmer, 64 Ill. 41 (1872).
\textsuperscript{62} See dissent by Justice Farmer in People ex rel. Bruce v. Dunne, 258 Ill. 441 at 457, particularly p. 466, 106 N.E. 560 at 566, particularly p. 569. In this case the
tion without objection in three cases in which, apparently, express consent by the governor was lacking,\textsuperscript{63} but in all three the writ was refused on the merits. Instances may be found where it has been suggested, at least in dissenting opinions, that if the governor's duty was of a purely mechanical or ministerial nature, mandamus could compel the performance of it,\textsuperscript{64} but the court has refused to recognize this distinction at least so far as the chief executive is concerned.

The same immunity from control has been extended to the legislative department through the well-known case of Fergus v. Marks\textsuperscript{65} in which the court refused to use the writ to compel the legislature to reapportion the state for representation purposes although such is required by a clear provision of the constitution. The immunity accorded the governor and the legislature is not recognized, however, where the policy of separation of powers is not involved as, for example, in cases of non-performance of duty by election officials, for there the court has utilized its jurisdiction in mandamus to compel compliance with the law and the constitution, finding a considerable public interest to exist in such situations.\textsuperscript{66}

In addition to the use of the writ of mandamus to compel adherence to duty by officials of other departments the court has made considerable use of it to supervise the actions of the lower courts in the state system. Since the Supreme Court of Illinois has a limited appellate jurisdiction, the original jurisdiction in mandamus has provided a closer check upon the functioning of the judicial system than would otherwise have been possible.

\textsuperscript{63} People ex rel. Hill v. Deneen, 256 Ill. 536, 100 N.E. 180 (1912); People ex rel. Donahue v. Deneen, 256 Ill. 436, 100 N.E. 236 (1912); People ex rel. Espey v. Deneen, 247 Ill. 289, 93 N.E. 437 (1910).

\textsuperscript{64} People ex rel. Brown v. Lowden, 285 Ill. 618, 121 N.E. 188 (1918); People ex rel. Bruce v. Dunne, 258 Ill. 441, 101 N.E. 560 (1913).

\textsuperscript{65} 321 Ill. 510, 152 N.E. 557 (1926).

\textsuperscript{66} People ex rel. Broomell v. Board of Election Com'rs of City of Chicago, 343 Ill. 66, 174 N.E. 840 (1931); People ex rel. Fuller v. Hilliard, 29 Ill. 413 (1862).
One of the very early cases of this character, that of *People ex rel. Bristol v. Pearson*, was decided in 1839. Judge Pearson, it seems, had refused to sign a bill of exceptions in a case tried before him in the Circuit Court of Cook County so an alternative writ of mandamus was obtained from the Supreme Court. When the writ was presented to the judge in open court, he became highly enraged and cited the attorney presenting it for contempt. The extraordinary events in the courtroom that day are described in an affidavit which was later submitted to the Supreme Court. That affidavit read:

**Monday, Nov. 11th, 1839.**

The court met after dinner pursuant to adjournment at about half past one o'Clock.

Judge Pearson took his seat on the platform, and I stood a little to his right hand on the platform, for the purpose of reading the record. My position was such that I faced the bar,—both myself and Judge Pearson being raised about three feet above the bar. Immediately after, the deputy sheriff opened court by proclamation, and before any business had commenced before the court, Mr. Butterfield stepped toward the court, and standing between the bench and bar, a little to the left hand of the judge, addressed the court. He said that he had received a communication from Col. Strode, who had been suddenly called out of town, in relation to business of the court, which was of imperative character. Court intimated he would hear it. Mr. Butterfield then read the communication, and the substance of an affidavit in the case of People against John Hudson, and moved for the trial or discharge of Hudson at this term. The court directed Mr. Butterfield to file his papers and motion, which Mr. Butterfield did. Mr. Butterfield, then, with marked politeness and mildness of manner, handed a paper to the judge, saying that it was a bill of exceptions in the case of Phillips v. Bristol, tried at a former term. Court said 'I did not sign that bill of exceptions.' Mr. Butterfield replied 'I am aware of it, sir, and here (handing another paper to the court,) is a writ of *mandamus* from the supreme court, directing you to sign it. Court said, 'What's that?' Mr. Butterfield, in the same courteousness of manner, repeated his remark. The court, holding the paper towards Mr. Butterfield, said, 'take it away, sir.' Mr. Butterfield said, 'I can not take it, sir—it is directed to your honor, and I will leave it with you. I have discharged my duty in serving it upon you, and can not take it back.' The court then said, 'Mr. Clerk, enter a fine of twenty dollars against Mr. Butterfield.' The court then threw the papers (bill of exceptions and *mandamus*) over the bench on the floor,

67 3 Ill. (2 Scam.) 189 (1839).
between the bench and bar. The court then said, 'what do you mean, sir?' Mr. Butterfield replied, 'I mean, sir, to proceed by attachment, if you do not obey it.'—or words to that effect. The court, in a harsh tone, then said to Mr. Butterfield, 'sit down, sir, sit down, sir,—and to me, 'proceed with the record, sir.' After I had read the record of the preceding week, some business of the day was transacted, and I entered that, together with the order of the court to fine Mr. Butterfield twenty dollars for contempt. The business of the court then under immediate consideration being disposed of, the court privately asked me if all the orders had been entered, when I answered 'Yes, sir.' He then particularly directed my attention to an entry, in his docket, of the fine against Mr. Butterfield, and asked if that had been entered; and I again answered, 'yes, sir.' He continued, 'did you enter it as for interruption of court?' I answered, 'no, sir.' Then he (the court) continued, 'enter it for interrupting the court;' when I forthwith interlined the previous order, so as to read 'for a contempt of court, for an interruption thereof.' I then proceeded to read, by order of court, and to the reading of said order for contempt of court as for an interruption thereof, Mr. Butterfield excepted. Mr. Butterfield said it was not for interruption of court. The court told me to read on; and the record having been read, the court adjourned until court in course.68

Because of the judicial disregard of the alternative writ, counsel moved in the Supreme Court for an attachment against the judge. At the suggestion of Jesse B. Thomas, nephew of the famous Jesse B. Thomas who had been a judge of the old General Court of Illinois Territory, action on the motion was deferred for a few days until Judge Pearson could appear. Upon his non-appearance, Mr. Thomas then filed a brief and argument which Judge Pearson had sent to him. When finally disposing of the case, the Supreme Court noted that the respondent had made an insufficient compliance with the court’s mandate, but decided that the proper procedure was to issue a peremptory writ rather than to attach the judge’s person. It was pointed out that although mandamus will issue to require a judge to sign a bill of exceptions, the judge must determine its accuracy for himself, hence he is not required to sign any bill which might be presented to him. If Judge Pearson had made a return to the alternative writ by pointing out the inaccuracies in the bill presented, the Supreme Court would undoubtedly have refused the peremptory writ, but, in the

68 See affidavit of Thomas Hoyne, Clerk of Court, in 3 Ill. (2 Scam.) 189 at 198.
absence of such showing, the court felt bound to order the execution of the particular bill of exceptions submitted.

Little discussion is found, in the cases in this group, of the requirement of public interest. In view of the lack of original jurisdiction on the part of the several Appellate Courts, the failure of a judge to perform a duty as to a matter over which he has no discretion is, in most cases, of sufficient importance to justify action by the Supreme Court as head of the judicial system. In the case of People ex rel. Waber v. Wells, though, the court did call attention to the factor of public interest as affecting the court's decision to take jurisdiction or not as it sees fit. That case involved the power of the Municipal Court of Chicago, which has no terms of court, to vacate a judgment which it had rendered more than thirty days prior to the date of the application. The question of the power of the Municipal Court to vacate, modify or set aside its judgments, the court said, was a question of public importance which should be settled and generally understood, but it was held that that court possessed no such power except as granted by the statute. The extent to which mandamus might be used to control judicial action was described in the following language:

While mandamus will not lie to control the judicial action of a judge, it will lie to compel an act concerning which he has no discretion. The writ has been awarded to compel a judge of the circuit court to proceed to the trial of a suit on a promissory note without filing a copy of an account . . . to proceed with the trial of an action on a bill of exchange without filing such an account . . . to direct a judge to try a defendant for an alleged crime on a change of venue from another county . . . and to compel a county judge who was interested in the estate of a deceased person to transfer a matter in dispute to the circuit court for adjudication . . . The judge, having no authority to enter the orders in question, has no discretion whether they shall remain upon the records or not.

It has been held, in addition, that the original jurisdiction of the Supreme Court in mandamus may be invoked to compel a trial judge to expunge void orders. Mandamus has also served as a vehicle to determine the extent of the jurisdiction

70 255 Ill. 450, 99 N.E. 606 (1912).
71 255 Ill. 450 at 455, 99 N.E. 606 at 608.
of the several Appellate Courts to issue the writ of certiorari.  

It is only in the mandamus cases that the court has seen fit to discuss to any great extent the procedure to be followed before it in cases concerning original jurisdiction. The position has been maintained that the statutes governing the procedure in mandamus actions are wholly inapplicable to proceedings in the Supreme Court, and it may be assumed that the procedure in all cases of original jurisdiction is sui generis. In mandamus cases, a motion for leave to file a petition for an alternative writ should first be made, and this motion should be supported by a copy of the petition. The proceeding upon the motion is ex parte and nothing will be considered except the petition and the accompanying suggestions of the relators in support of the motion. However, subsequent motions made by either party are required to be supported by reasons or other documentary material. The alternative writ, which issues if the court takes jurisdiction, is made returnable to the same term if the public importance of the question so requires.

The court appears, however, to have encountered a serious problem in cases where disputed questions of fact arise. It has been held to be discretionary with the court whether after the disposition of a demurrer to the petition or answer, the parties will be permitted to make an issue of fact. Where such issues of fact do arise, the court will not permit them to be tried in the Supreme Court itself but will remit the parties to the appropriate circuit court for trial before a jury unless the issue arises as a matter of record. The

73 People v. Pam, 276 Ill. 181, 114 N.E. 504 (1916).
74 People ex rel. O'Connor v. Haas, 239 Ill. 320, 87 N.E. 1111 (1909); People ex rel. Cunningham v. Thistlewood, 103 Ill. 139 (1882). The court in the Thistlewood case said that the procedure would be made to conform as nearly as possible to that in the circuit courts.
75 People ex rel. Cunningham v. Thistlewood, 103 Ill. 139 (1882).
76 People ex rel. Thorp v. Seibert, 167 Ill. 639, 48 N.E. 687 (1897).
77 People ex rel. Bartlett v. Dunne, 219 Ill. 346, 76 N.E. 570 (1906).
79 People ex rel. Cunningham v. Thistlewood, 103 Ill. 139 (1882).
80 People ex rel. Damron v. McCormick, 106 Ill. 184 (1883).
81 As at common law upon a plea of nulli teli record: People ex rel. Baldwin v. Young, 40 Ill. 87 (1867). Just why trial by jury in mandamus cases is necessary is not entirely clear. At common law, the return of the writ was the ultimate and conclusive pleading in the case leaving nothing but a pure question of law to be decided. Jury trial was, of course, unnecessary. Ill. Rev. Stat. 1943, Ch. 87, § 4, permits additional pleading and makes possible the formulation of disputed issues
existence of disputed issues of fact would appear to be one of the considerations having influence on the court's initial determination whether to accept jurisdiction or not. In People ex rel. Taylor v. Board of Education of City of Centralia, for example, it was said:

The court has been more or less embarrassed by the fact that in original mandamus cases, where an issue of fact is made up, it becomes necessary to certify the case to some inferior court having the power to empanel a jury, in order that such issue of fact may be determined, and the case then sent back to us for final determination. By commencing the proceeding in the local courts, which have concurrent jurisdiction, a case may be brought to this court by appeal or writ of error, thus avoiding unnecessary delay and inconvenience to this court and the parties interested.

A situation similar to that involved in the Taylor case gave rise to one of the most extraordinary controversies ever to involve the court's original jurisdiction and serves to bring into sharp relief the difficulties that may attend the trial of issues of fact in one court for the purpose of having judgment pronounced in another. In People ex rel. Bibb v. of fact but is silent as to the express manner of disposing of the same. Section 11 of that statute purports to make the provisions of the Civil Practice Act apply to all points not expressly covered. But the Civil Practice Act, Ill. Rev. Stat. 1943, Ch. 110, § 188, does not purport to enlarge trial by jury to include cases not heretofore handled in that fashion. The constitutional guarantee found in Ill. Const. 1870, Art. II, § 5, limits itself to trial by jury "as heretofore enjoyed." It would seem, then, that the disposition of controverted issues in mandamus should be left to the judge acting without a jury. The majority of the Supreme Court, in People ex rel. Bibb v. Mayor of Alton, 233 Ill. 542, 84 N.E. 664 (1908), indicated that trial by jury in cases involving an exercise of original jurisdiction was an impossibility, but that issues of fact might be referred to a commissioner or submitted to a jury in the discretion of the court. The decisions concerning trial by jury before courts exercising regular trial jurisdiction are few in number and do not appear to reflect serious consideration of the problem: see People v. Town of Waynesville, 88 Ill. 469 (1878), where the verdict of the jury was held binding, and People v. Czaszewicz, 295 Ill. 11, 128 N.E. 739 (1920), where it was argued that the petitioner had an absolute right to a trial by jury, the existence of which the court seemed to admit but nevertheless held that the same had been waived. The decisions in People v. City of Chicago, 209 Ill. App. 586 (1918); Wilke v. City of Chicago, 212 Ill. App. 414 (1918), and Edward v. Thompson, 262 Ill. App. 520 (1931), repeat the dictum of the Czaszewicz case but do not actually involve applications thereof. If trial by jury is to be accorded in mandamus cases, it would seem that legislative treatment of the subject would be desirable.

The court has also said that the existence of another adequate remedy may influence it to decline jurisdiction: People ex rel. Metzner v. Edwards, 66 Ill. 59 (1872). See also People ex rel. Waber v. Wells, 255 Ill. 450, 99 N.E. 606 (1912).

The case involved discrimination against school children on account of race and was referred to in note 52 ante.

197 Ill. 43, 63 N.E. 1033 (1902).
Mayor and Common Council of Alton\textsuperscript{85} a petition was filed, pursuant to leave granted, to compel the authorities of the municipality to admit the children of the relator, a colored man, to the most convenient school without excluding them on account of their color or descent. Issues of fact were certified for trial to the Circuit Court of Madison County. These issues of fact were tried there by seven distinct juries on seven different occasions. In two instances there were disagreements. Upon the first trial, a verdict in favor of respondents was set aside for prejudicial error in ruling upon the admissibility of evidence.\textsuperscript{86} A second verdict, also for respondents, was set aside on account of a misdirection of the court in submitting a question of law to the jury.\textsuperscript{87} A third verdict, again for respondents, was set aside because it was without any support upon the evidence.\textsuperscript{88} At that time, a peremptory writ was refused. A fourth trial resulted, which again produced a verdict against the relator, only to be set aside for failure of the court to direct a verdict.\textsuperscript{89} Once more the issues were tried on the same evidence. Again the trial court refused to direct a verdict and the jury once more found for the respondents. The Supreme Court, its patience exhausted, held to the view that these verdicts were the result of prejudice and passion and awarded a peremptory writ.\textsuperscript{90} Against this background, the court decided, with two judges dissenting, that the constitutional provision for trial by jury does not apply to original proceedings on the ground that trial by jury in the Supreme Court itself was a legal impossibility. The difficulties experienced with the Bibb case may well have influenced the court to decline jurisdiction in the Taylor case.\textsuperscript{91}

IV. OTHER CASES OF ORIGINAL JURISDICTION

The foregoing discussion covers those cases which fall within the terms of the constitutional grant of original jurisdiction. The Supreme Court, however, holds itself to be the

\textsuperscript{85} 233 Ill. 542, 84 N.E. 664 (1908).
\textsuperscript{86} People ex rel. Bibb v. Mayor of Alton, 179 Ill. 615, 54 N.E. 421 (1899).
\textsuperscript{87} Ibid., 193 Ill. 309, 61 N.E. 1077 (1901).
\textsuperscript{88} Ibid., 209 Ill. 461, 70 N.E. 640 (1904).
\textsuperscript{89} Ibid., 221 Ill. 275, 77 N.E. 429 (1906).
\textsuperscript{90} 233 Ill. 542, 84 N.E. 664 (1908).
\textsuperscript{91} See notes 52 and 83, ante.
hereditary possessor of another jurisdiction which must also be classed as original. Every Illinois lawyer is familiar with the view, positively stated by the court, that it is vested with plenary power in questions involving the practice of law. The court has consistently maintained the position that it inherently possesses exclusive power to determine who shall be admitted to practice law and, on the basis of the doctrine of separation of powers, it has insisted that the legislature can only lay down qualifications designed to protect the public. The actual determination of just which individuals should be licensed is deemed to be an exclusively judicial function.

Stemming from its power to determine who shall practice law, is the power to discipline those who engage in the practice without the court’s consent. The leading case on that point is People ex rel. Illinois State Bar Association v. People’s Stock Yards State Bank. The court there declared that the trial courts, likewise, had the power to punish unauthorized persons who practiced before them without right. It was said, though, that the Supreme Court alone had the power to punish, as for contempt, the performance of acts amounting to the practice of law outside of any court, when done by unlicensed persons.

Since the court has the exclusive licensing power, it likewise possesses power to discipline and to disbar. This is held to flow naturally from the power to prevent abuse of licenses which the court has granted. It may, and does, permit committees of bar associations, other lawyers, or any class of persons it deems proper, to initiate such proceedings before it, and the legislature cannot restrict this function to persons injured by the lawyer’s misconduct. It is the responsibility primarily of the court to maintain high standards

---

92 In re Day, 181 Ill. 73, 54 N.E. 646 (1899); People v. People’s Stock Yards State Bank, 344 Ill. 462, 176 N.E. 901 (1931).
94 People ex rel. Moses v. Goodrich, 79 Ill. 148 (1875). In the case of In re McGarry, 380 Ill. 359, 44 N.E. (2d) 7 (1942), the court said it might discipline an attorney though he might also be a judge, provided his general conduct showed a lack of morality.
among attorneys at law, for they are its officers.⁹⁶ As early as 1916, the court remarked that the question as to its jurisdiction in proceedings of this nature was no longer being raised.⁹⁷

V. DEVICES TO AVOID CONSTITUTIONAL LIMITS

While accumulating precedents and determining principles governing the exercise of its original jurisdiction, the Supreme Court has been alert to detect and defeat legislative attempts to evade the limitations imposed by the constitutional provisions. Sections 16 and 17 of the Revised Statutes of 1847, for example, provided for the making up in the lower courts of "agreed cases" and for the certification of questions of law, which were then to be submitted to the Supreme Court for decision. The court steadfastly refused to accept these cases unless and until a final judgment had been properly entered in the court below.⁹⁸ That requirement was held not satisfied by rendering a judgment in the cause against the defendant for "damages and costs" without naming any sum.⁹⁹ Likewise, the court has followed orthodox views that "appeals" from administrative tribunals are instances of attempts to confer original jurisdiction. It has refused to accept such cases until judicial action has been taken in the lower courts.¹⁰⁰

A sharp line has also been drawn between original and appellate jurisdiction over the question of receiving new evidence. Section 92 of the Civil Practice Act¹⁰¹ provided for the submission to reviewing courts, in certain cases, of evidence not offered in the trial court. Holding that the admission of new evidence would be an exercise of original jurisdiction which, except in original cases relating to the revenue, mandamus, and habeas corpus, it could not consider, the court declared the statute unconstitutional.¹⁰² That position

⁹⁶ People ex rel. Chicago Bar Ass'n v. Czarnecki, 268 Ill. 278, 109 N.E. 14 (1915).
⁹⁷ People ex rel. Ludens v. Harris, 273 Ill. 413, 112 N.E. 978 (1916).
⁹⁸ Plumleigh v. White, 9 Ill. 387 (1847); Crull v. Keener, 17 Ill. 246 (1855). The latter case contains a full discussion of the matter. See also People ex rel. Aiken v. Matteson, 17 Ill. 167 (1855), where a judgment was entered in the lower court.
⁹⁹ Cunningham v. Loomis, 17 Ill. 555 (1856).
¹⁰⁰ Courter v. Simpson Construction Co., 264 Ill. 488, 106 N.E. 350 (1914); City of Aurora v. Schoeberlein, 230 Ill. 496, 82 N.E. 860 (1907).
¹⁰¹ Ill. Rev. Stat. 1943, Ch. 110, § 216.
¹⁰² Schmidt v. Life Assurance Society, 376 Ill. 183, 33 N.E. (2d) 485 (1941).
has been consistently maintained ever since the decision in *Beaubien v. Hamilton*,\(^{103}\) back in 1841.

The court has been, usually, as alert to detect efforts by litigants to induce it to exercise an unauthorized original jurisdiction as it has been to prevent the legislature from foisting jurisdiction upon it.\(^{104}\) These attempts have ordinarily taken the form of petitions for the issuance of such common law writs as certiorari, prohibition and the like. A review of the cases indicates a rather strict adherence to the rule that these writs will be issued only in aid of the court's appellate jurisdiction.\(^{105}\) However, it is not required that there be a case pending for review in the Supreme Court before it may issue such writs. The writ of prohibition may be issued whenever an inferior tribunal insists upon proceeding in a case where the issues have been disposed of by the Supreme Court and the doctrine of res judicata is applicable.\(^{106}\) A lower court may even be prevented from proceeding where a question has been previously adjudicated by the Supreme Court, although the technical requirements of res judicata are not present.\(^{107}\) If, however, there is not only no case pending in the Supreme Court, but there has been no prior determination of the issues, an application for a writ of prohibition would be improper.\(^{108}\)

**VI. CONCLUSION**

A review of the cases in which the Supreme Court of Illinois has exercised its original jurisdiction indicates that the court has, throughout its history, regarded itself as primarily a court of review. It has consistently regarded its original jurisdiction as extraordinary, to be exercised only in unusual cases where the public good requires it.

\(^{103}\) 4 Ill. 213 (1841). See also Freitag v. Union Stock Yard & Transit Co., 262 Ill. 551, 104 N.E. 901 (1914).

\(^{104}\) See, however, an unexplained case of original jurisdiction in Auditor v. Hall, 1 Ill. (Breese) 392 (1831). The court did not grant relief.

\(^{105}\) People ex rel. Graver v. Circuit Court, 173 Ill. 272, 50 N.E. 928 (1898).

\(^{106}\) People ex rel. Swift v. Superior Court, 359 Ill. 612, 195 N.E. 517 (1935). See also, as to certiorari, People ex rel. Stead v. Superior Court, 234 Ill. 186, 84 N.E. 875 (1908).

\(^{107}\) People ex rel. Modern Woodmen of America v. Circuit Court, 347 Ill. 34, 179 N.E. 441 (1932). In this case it was held that the denial of a prior application for the writ did not constitute a bar, nor did the existence of a remedy by appeal, if the writ of prohibition would prove a speedier and more effective remedy.

\(^{108}\) People ex rel. Earle v. Circuit Court, 169 Ill. 201, 48 N.E. 717 (1897).
In the cases relating to the revenue it may seem that the
court has been unduly restrictive, but, as was pointed out
earlier, this result has probably been the one contemplated
by the framers of the constitutions. The mandamus cases
have afforded the court an opportunity to require the observ-
ance, by officials of lesser rank than the governor and the
legislature, of their legal and constitutional duties. The
exercise of the jurisdiction in such cases has been quite in
keeping with American traditions. Likewise, good has re-
sulted from the grant of original jurisdiction in mandamus
in that, through it, the court has found a way to supervise
the activities of lower courts where its appellate jurisdiction
might prove inadequate to insure the proper performance of
judicial duties.

In habeas corpus cases it seems that the court has not
attempted to discourage applications but has been conscious
of the importance of the writ as a safeguard against over-
aggressive authority. The court apparently recognizes that
the prejudicial effects of wide-spread publicity may make
recourse to its jurisdiction the only hope of impartial consid-
eration. All in all, the grant of original jurisdiction has been
sufficiently extensive and has been intelligently handled.