

No. 13743

# Supreme Court of Illinois

Nelson

---

vs.

People

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In the matter of  
the application of  
Nelson & Roe for  
Habeas Corpus

Before Baron Ch. Justice  
at his Chambers  
Ottawa

~~78~~ 857  
36

In the matter of application  
of  
Nelson C. Roe, to be  
discharged from arrest &c

Before Hon John D. Leaton  
Chief Justice of the Supreme  
Court of the State of Illinois

Cook County fs:

William Jones of said County being  
duly sworn dep, that it is true as is alleged in the petition  
for a Habeas Corpus in this matter of the application of  
the said Roe to be discharged &c, that a scire facias  
suit was commenced against this deponent and  
the said Roe upon the said recognizance in the  
said petition mentioned, and that said Roe being  
in the State of Iowa was informed thereof by this  
deponent, and requested to come to Chicago to attend  
the Sept Term 1857 of the Recorder's Court in which said  
scire facias suit was pending for the purpose of making  
a defence to said suit as is set forth in said petition, and  
that on the arrival of said Roe, in Chicago, this deponent  
for the purpose of snubbling himself and said Roe

successfully to defend said scire facias suit made a formal surrender of said Roe, and immediately thereupon entered into a new recognizance for the appearance of said Roe to answer the indictment mentioned in the said petition; that after said new recognizance was entered into and before the said scire facias suit was dismissed, or the costs paid therein, said Roe was arrested upon the ca. sa. by reason virtue of which he is now held in custody; and that said scire facias suit was not dismissed, or disposed of by the said Recorder Court until the next day after said Roe's arrest, and while he was

held ~~in~~ custody on said writ of ca. sa.

Subscribed & sworn to before  
me this 19<sup>th</sup> day of October A.D. 1857  
Walter Kimball Clerk

William Jones

State of Illinois  
Cock County, ss:

Wm. McAllister being duly sworn  
says that the foregoing affidavit is in substance true, and also  
that said Roe on his arrival in Chicago, employed him

As Counsel to appear for said Roe in the said  
Recorder Court to defend the said scire facis suit,  
and that this deponent did so attend the said Court for  
said Roe to prevent any judgment being obtained  
against him in said suit. and finally after the arrest of  
said ~~ca. sa.~~ Roe on said ca. sa., this deponent procured the  
~~said~~ Costs in said scire facis suit to be paid, and the said  
suit ~~was~~ <sup>was thereupon</sup> dismissed and ended. and that said  
Roe has since the same became dismissed been unable to  
return to his home in Iowa by reason of the arrests in the  
said petition for discharge set forth.

Subscribed & sworn to before *Wm M M Cleister*  
me this 19<sup>th</sup> day of October A.D.  
1857 *Walter Kimball Clerk*

15743

Filed Oct. 20 1854  
L. Leland  
Clk

Nelson  
v  
People

The People  
as  
Nelson, C. Roe &  
William Jones } Forger.

On motion of defendant's  
attorney.

It is ordered by the  
court that the said defendants  
be discharged from their recognizance  
herein & the default heretofore  
entered in the cause, be set  
aside & vacated.

And now comes  
into <sup>open</sup> court Nelson, C. Roe and  
acknowledged himself to owe  
and be indebted unto the People  
of the State of Illinois in the  
penal sum of Fifteen Hundred  
dollars to be levied of his goods  
& chattels, lands, & tenements  
respectively.

Yet to be void  
on the condition that Nelson  
C. Roe shall personally be  
and appear before the

Recorder Court of the City of Chicago  
on the first day of the next  
ten money to answer unto  
the people of the state of  
Illinois in an indictment  
for forgery, now pending  
in said court against  
him & shall abide the  
order of said court & not  
depart the same without  
leave otherwise to be & remain  
in full force & effect

State of Illinois }  
County of Cook }  
City of Chicago } I, Philip A. Holmes Clerk of the  
Recorder Court of the City of Chicago  
County and State aforesaid do hereby certify that the  
above and foregoing

State of Illinois }  
Cook County } ss

John L. Wilson  
of said county being duly  
sworn deposes and says that  
he is the sheriff of said county  
and that Nelson L. Roe was  
surrendered to this deponent  
by William Jones the bail  
of said Nelson L. Roe, upon  
the annexed copy of a bail  
piece, and that the copy of  
the bail piece and return  
attached to said copy  
are true copys of the bail  
piece & return made by  
me at the time stated  
and set forth in said return

Subscribed & sworn  
to before me this  
19th day of October

John L. Wilson  
Sheriff of  
Cook County Ill

Filed Oct 20, 1857  
S. Leland  
B. R.

State of Illinois }  
La Salle County }<sup>es</sup>

Elliott Anthony  
of Chicago, County of Cook,  
State of Illinois, being  
duly sworn deposes & says  
that Nelson, C. Roe in a  
certain application for  
his discharge from ~~the~~  
on the capias and satisfaction  
by which he is now held  
in custody, made a  
certain affidavit in  
the Cook County Court of  
Common Pleas that he  
came from the State of Iowa  
to Chicago for the sole  
purpose of answering  
unto an indictment for  
forgery pending against  
him in the Recorder's  
Court in said city and  
that no mention whatever  
was made by him about  
any scire facias suit  
and this deponent believes

that no scire facias was  
then pending against him  
whenever - but that if  
any was pending that  
it was discontinued  
before his said arrest  
on the capias and satisfaction  
by which he was never  
held -

And this deponent  
further saith that Nelson  
C. Roe was surrendered  
up his surety on the  
warrant bond to the sheriff  
of Cook county on the 20th  
of September A.D. 1857  
and that on the 24th  
day of September A.D. 1857  
he said Roe was brought  
into open court & admitted  
to bail on his own recognizance  
to appear at the next  
term of the said Circuit  
court.

And this deponent  
further saith that undoubtably  
the said Roe had then

Ben ~~Adams~~ left - to bail  
and on the same day, the  
said Roe was arrested  
upon the copias and  
patent of the suit  
of Alexander Hill & that  
he is now under arrest  
by virtue of said copias  
and patent

Subscribed & sworn to } Elliott Anthony  
this 20th day of October }  
A.D. 1857. D. Hoar

In the matter of  
Nelson & Prosser  
Ex parte  
affidavit

Filed Oct. 20, 1857  
S. Leland  
Clk

Recorder's Court of the City of Chicago  
March Term A. D. 1855.

Be it remembered that on the first day of March in the year last aforesaid it being one of the days of the regular February Term of said Court the following among other proceedings were had and entered of Record in said Court which proceedings are in the words and figures following to wit;

The People  
59 Indictment for Forgery.  
Nelson C. Roe      This day comes into open Court  
Nelson C. Roe as principal and William Jones as  
security and severally acknowledge themselves  
to own and be indebted unto the People of the State  
of Illinois in the penal sum of One thousand  
five hundred Dollars to be levied of their goods  
and chattels Lands & Tenements respectively;  
Yet to be void upon the condition  
that the said Nelson C. Roe shall personally be and  
appear before the Recorder's Court of the City of  
Chicago (now in session at the Court House) on the  
first day of the next Term thereof to answer unto  
the People of the State of Illinois on an Indictment  
for Forgery therein pending against him and shall  
abide the Order of said Court and not depart the

same without leave otherwise to be and remain  
in full force and effect

State of Illinois }  
County of Cook }  
City of Chicago }

I, Philip A. Wayne Clerk  
of the Recorder's Court of  
the City of Chicago in said State and County do  
hereby certify that the above and foregoing is a true  
Copy of a Recognisance entered of Record in said  
Court as appears from the files in my Office

In testimony whereof I  
have hereunto set my hand and affixed the seal  
of said Court this Twelfth day  
of September A. D. 1857

L. J.

Philip A. Wayne  
Clerk

Upon the back of the said certified Copy of the  
said Recognisance was endorsed the following ~~to~~ to  
wit:

" " I hereby acknowledge the surrender of the  
within named Nelson C. Roe into my custody this  
27<sup>th</sup> day of September A. D. 1857

John C. Wilson  
Sheriff

State of Illinois }  
County of Cook }  
City of Chicago }

I, Philip A. Wayne Clerk

of the Recorder's Court of the City of Chicago  
in said State and County. I hereby certify  
that the above and foregoing is a true Copy of a  
certified Copy of a Recombinance with the endorsement  
thereon now on file in my Office as appears from  
the Record of said Court.



In Testimony whereof I have  
hereunto set my hand and affixed  
the Seal of said Court This Nineteenth  
day of October A. D. 1857

Philip A. Wayne  
Clerk

Petition for  
Habeas Corpus  
Nelson & Roe

Filed Oct. 20. 1857  
J. Leland  
Clk.



In the matter of  
William C. Roe.  
Habeas Corpus

Tidd R. 178. 180 } Privately from arrest  
 7 John 538 }  
 1 Southard N. 366 }  
 3 Wes Jr. 554 }  
 2 Dargy 314 }  
 4 East 437 }  
 3 G. 212 }  
 1 H. Blackstone 636.

Continued

3 Bates 387. - not priviledged from arrest  
 1 " 25- On Cusa  
 2 C & H Ind. 2<sup>nd</sup> p. 1612

1 Harrison Sy. 358 } Not priviledged in  
 2 Bowling 504 } Criminal Cases.  
 1 Adal & El. 378 }  
 3 Imp Law & E. 435 }  
 11 N. S. P. 38. }  
 1 Denis 666 }  
 10 Wen 636.

Filed Oct. 20. 1877  
S. Seland  
Clerk

State of Illinois vs.

The people of the State of Illinois  
To John L. Wilson Sheriff of the  
County of Cook in said State and  
to the keeper of the Common Jail of  
said County ss.

Whereas it has been represented to John D. Catron  
Chief Justice of our Supreme Court, that Wilson  
vs. Roe is unlawfully restrained of his liberty, by you  
or under your control. You are therefore hereby  
commanded to have the body of the said Wilson  
vs. Roe, by whatever name or addition he may be  
called or known, kept at our said Chief Justice  
of our said Supreme Court at his Chambers in  
Ottawa in said State forthwith, together with  
this writ and the cause of his caption & detention  
that our said Chief Justice may make such order in  
the premises as to law and justice may appertain  
Hereof fail not &c

Given under the hand of our said Chief Justice  
this 17<sup>th</sup> day of October 1857.

J. D. Catron  
Ch. J. Ills.

the Motion of Wilson  
No. 1  
of Habeas Corpus

of the Habeas Corpus  
of "

is allowed for 84 miles  
cents for mile and  
curity some for return  
corday to the act in  
ch case made and  
owed. I Deaton

To the Hon John D. Caton Chief Justice  
of the State of Illinois:

The undersigned Sheriff  
of Cook County Illinois makes return to  
writ of Habeas Corpus in the case of  
Melson C. Roe that he arrested and now  
holds said Roe by virtue of a writ  
of Capias ad Satisfaciendum issued out  
of, and under the seal of the Cook  
County Court of Common Pleas a  
copy of which writ is herewith annexed  
and makes a part of this return

John S. Wilson  
Sheriff of  
Cook County  
Illinois

October 19<sup>th</sup> A. D. 1857-

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

The People of the State of Illinois, to the Sheriff of said County, Greeting:

WE COMMAND YOU, that you take

*Nelson C. Roe*

defendant if *he* may be found in your county, and *him* safely keep, so that you have *his* body to satisfy

*Paul Leonard Thomas*

Plaintiff

*in the sum of Ninety Hundred & thirty* dollars and  
*thirty* cents, which the said Plaintiff lately in our Cook County Court of Common Pleas for the

said county, at a term thereof begun and held in the City of Chicago in said County, on the *1<sup>st</sup> Monday in November*

*1855* last past, recovered against the said *Nelson C. Roe* defendant for

*his damages in a certain Decree in Chancery*

and the further sum of *Eighteen* dollars and *forty* cents

for the costs and charges of the said Plaintiff about the said Plaintiff suit in that behalf expended, whereof the said defendant convicted, as appears to us of record, in ninety days from the date hereof; and have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness, WALTER KIMBALL, Clerk of our said Court, and the seal thereof, at Chicago, in said county, the *23<sup>d</sup>* day of *September*

A. D. 1857.

*Walter Kimball* Clerk.

*Seal*

COOK COUNTY COURT OF COMMON PLEAS.

Ca. Sa. No. 8908 Case No. 1962

Fee Book. 7557

Date Apr 22 1857 Return

Shel. L. Stone

Nelson & Roe

VS.

Damages ..... \$ 1330.30  
 Plaintiff's cost ..... 18.40  
 Defendant's cost .....

The Sheriff will collect \$ 1348.70  
 interest from 7 months  
 1855

Filed Oct 20, 1857

J. Delaney  
 Clerk

J. Anthony Plaintiff's Attorney

Executed by arresting the within named Nelson & Roe and he having demanded to be brought into <sup>The County</sup> <sup>County</sup> <sup>County</sup> I have this day brought him in this 24<sup>th</sup> of September 1857 and the Judge being unable to hear the case I have committed him to Jail

1 arrest 50  
 1 mile 5  
 1 Return 10.65

Shel. L. Nelson  
 By George Anderson <sup>Sheriff</sup>

To the Hon. John D. Catton one of the Justices of the Supreme Court of the State of Illinois - In vacation -

To the Hon. John M. Wilson Judge of the Cook County Court of Common Pleas in and for the County of Cook State of Illinois:

The petition of Nelson C. Roe sheweth that he is confined, and restrained of his liberty by John D. Wilson the Sheriff of Cook County, and that he your petitioner is now in the pretended custody of said Sheriff, under color and pretense as follows, that is to say:

Heretofore to wit on or about the day of June AD 1855, one Abel S. Strom commenced suit against your petitioner in the Cook County Court of Common Pleas in and for the County and State aforesaid, on the Chancery side of said Court, and afterwards obtained a decree therein against your petitioner for a large sum of money to wit about \$1300. As will more fully appear by reference to the proceedings had in said Cause, reference being had for that purpose to the records of said Court.

Your petitioner further represents that before said decree was obtained against him, to wit on the 6<sup>th</sup> of February AD 1855, or thereabouts, an indictment was found

again your

against your petitioner for the alleged crime of Forgery, and that your petitioner was soon thereafter arrested thereon, and that he your petitioner thereupon entered into recognizance with good and sufficient security for his appearance in said Recorder's Court to make answer unto and to plead to said indictment or criminal charge - And that William Jones of the City of Chicago was his Surety on said Recognizance -

Your petitioner further sheweth, that afterwards to wit at the July Term of said Recorder's Court A.D. 1857 such proceedings were had by said Court, and therein, in respect to said indictment and Recognizance that a Scire facias was sued out of said Recorder's Court, <sup>in the usual form</sup> against your petitioner and William Jones, returnable on the first Monday of Sept. inst. into said Court, at the September Term thereof, to shew cause why execution should not issue against <sup>your petitioner and also against</sup> the said Wm Jones, such security as aforesaid upon <sup>in pursuance of the statute in such case made & provided</sup> the said Recognizance - Your petitioner further

Sheweth that, <sup>soon</sup> after said indictment was obtained  
against him, he became, and still is a citizen of  
the state of Iowa, and a resident thereof; that  
after said scire facias was sued out against him  
and said Wm Jones, as aforesaid, he came <sup>from Iowa</sup> to the said  
City of Chicago, on or about the day of September  
1st 1857 during the session of the September Term of said  
Recorder's Court, at the request of his said security the  
said Jones, to show cause against any judgment being  
rendered upon the said scire facias <sup>(proceeding or action by)</sup> <sup>against himself or said Jones</sup> and also to make  
answer unto the said indictment so obtained against  
him as aforesaid, and immediately upon, or soon after  
his arrival <sup>in Chicago</sup>, commenced to attend personally in the said  
Recorder's Court <sup>with counsel</sup> for the purpose of defending said scire  
facias <sup>suit</sup> and employed counsel for that purpose imme-  
diately upon his said arrival. and also attended in  
said Court to make answer unto the said indictment.

Your petitioner further sheweth that while he was so  
in attendance upon said Recorder's Court, <sup>and before any judgment was rendered upon said scire facias to them</sup> that Mr Jones  
his said security took and <sup>formally</sup> surrendered up your  
petitioner as he might lawfully do, as such seen

city as aforesaid, in order to prevent judgment going  
against him, <sup>your petitioner or</sup> the said Jones, upon the said <sup>suit by</sup> Scire facias,  
in pursuance of Sec 196 of Chap 20 of the Revised Statutes  
of this state:— And thereupon the said Roe your  
Petitioner, and the said Jones entered into a  
new recognizance before said Recorder's Court  
for the appearance of said your petitioner in  
said Court from day to day during said Sep.  
Term of the said Court, to answer unto the  
said indictment which then was and  
still is pending in said Court.

Your petitioner further sheweth unto your  
honor that afterward to wit on the 24<sup>th</sup> day  
of Sept 1857 And before either your petitioner or the said  
Jones were in fact discharged from the said first  
mentioned recognizance, and whilst the said  
proceedings on Scire facias were still pending  
<sup>and before said suit by Scire facias had been dismissed,</sup>  
and undetermined; And after the said second  
recognizance had been entered into as aforesaid

said, and whilst your petitioner was in actual attendance upon the said Recorder Court (which was in session in the Court House at the said City of Chicago), for the purposes aforesaid, that is to say, of making answer unto said indictment, and of <sup>as hereinbefore set forth</sup> defending or adjutting said *scire facias* suit, and of procuring the discharge of said Jones and himself from said first recognizance, John L. Wilson as Sheriff of Cook County, by Geo. Anderson his deputy arrested your petitioner, in said Recorder Court, and while the same was in session, upon said 24<sup>th</sup> day of September 1857. Upon a *Capias ad satisfaciendum* issuing out of the Cook County Court of Common Pleas, in said Chancery suit, in favor of said Krom, and against your petitioner, a copy of which said *Capias ad satisfaciendum* is herewith annexed and marked Exhibit

A. Your petitioner is informed, and believes that before said ca. sa. was issued, that a fi. fa. or execution for the amount decreed in said Chancery suit to be paid, was issued out of the Cook County Court of Common Pleas to the Sheriff of Cook County, commanding said Sheriff to make the amount of said Decree and Costs out of the goods, Chattels, lands & Tenements of your petitioner; and he your petitioner is further informed and believes that at the time when said fi. fa. or execution <sup>was issued</sup>, that there was a Master in Chancery for said County of Cook, to execute the Decrees of said Cook County Court of Common Pleas, which might be rendered on the Chancery side of said Court; and your petitioner therefore claims that said writ of fi. fa. or execution could not lawfully issue to said Sheriff as aforesaid, and that no such proceeding, were had in said Chancery suit as would authorize said writ or ca. sa. to issue against your petitioner.

Your petitioner further alleges that said ca. sa.

~~A. Upon which, and which~~ was issued out of said court, whilst your petitioner was in attendance upon said Recorders Court for the purpose of attending to said action by *scire facias*, and of making answer to said indictment, to wit on the 23<sup>rd</sup> day inst.

That afterwards and on said 24<sup>th</sup> day of September the said Sheriff caused your petitioner to be conveyed by virtue of said Ca. sa. to the County Jail of Cook County and there held in custody and restrained of his liberty: that on the 25<sup>th</sup> day of Sept 1857, the said petitioner was by the direction and order of the said Cook County Court of Common Pleas discharged from said arrest, in manner following by said Sheriff to wit: the said Sheriff caused your petitioner to be brought through the outer door of the entrance to said Jail; and under the flight of steps leading unto the Court house on the north side, pretended to liberate your petitioner from said arrest, and thereupon re-arrested him upon the same identical process or writ of *Capias ad satisfaciendum*,

upon which he was arrested on said 2<sup>nd</sup> day of September, as hereinbefore stated, and he has had no opportunity to return to his home in Iowa, since he was first arrested on said ca. ca. 200  
And your petitioner says that he is confined or restrained of his liberty by the Sheriff of Cook County under the color or pretenses aforesaid.

Your petitioner further states that said indictment is still pending against him and he is still under recognizance to appear and answer in said Recorder Court, thereto: that he <sup>that is to say, without being forcibly compelled to attend said court</sup> attended the said Recorder Court, voluntarily, and in good faith, for the purposes aforesaid, and he claims that as such suitor as aforesaid <sup>suit or action commenced against him and his said security in Iowa as aforesaid, by</sup> both in respect to said habeas corpus, and the said indictment, that at the times aforesaid he was and still is exempt, and privileged from the said pretended arrests

do made as aforesaid at the instance  
of said Strom. Wherefore your petitioner prays a <sup>writ of</sup> Habeas Corpus  
to discharge him from custody &c. Nelson C. Roe

State of Illinois }  
Cook County }

Nelson C. Roe the above petitioner  
being duly sworn says that the above  
petition is true in substance and in fact.

~~Walter Kimball~~  
Subscribed & sworn to before Nelson C. Roe  
me this ~~14<sup>th</sup>~~ day of ~~September~~ October

1857. Walter Kimball Clerk

Cook County Court of Common  
Place Witness the Seal of Walter Kimball Clerk & the Seal of  
said Court at the City of Chicago this day & year aforesaid  
Walter Kimball Clerk

M. K. McAllister &

F. H. Kales, of Counsel for  
said Roe -

CA. SA.

SCOTT & FULTON, PRINTERS, CHICAGO.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

WE COMMAND YOU, that you take

The People of the State of Illinois, to the Sheriff of said County, Greeting:

*Alvin C. Roe*

defendant if *he* may be found in your county, and *him* safely keep, so that you have *his* body to satisfy

Plaintiff

*April Leonard Stover*

*In the sum of Thirteen Hundred & thirty*  
*fourty* dollars and

cents, which the said Plaintiff lately in our Cook County Court of Common Pleas for the

said county, at a term thereof begun and held in the City of Chicago in said County, on the *1<sup>st</sup> Monday in November*

*1855* last past, recovered against the said *Alvin C. Roe* defendant for

*his damages in a certain decree in Chancery*

and the further sum of *Eighteen* dollars and *forty* cents

for the costs and charges of the said Plaintiff about the said Plaintiff suit in that behalf expended, whereof the said defendant convicted, as appears to us of record, in ninety days from the date hereof; and have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness, WALTER KIMBALL, Clerk of our said Court, and the seal thereof, at Chicago, in said county, the *23<sup>d</sup>* day of *September*

A. D. 1857.

*Walter Kimball*  
Clerk.

*Exhib*

*Exhibit A*

CITY COURT OF COMMON PLEAS.

Case No.

Fee Book.

Return

\_\_\_\_\_

vs.

\_\_\_\_\_

.....\$

.....

.....

\_\_\_\_\_

will collect

Plaintiff's Attorney.

In the matter of the application  
for the discharge  
of  
Nelson C. Roe

And now comes the  
said John L. Wilson by Elliott Anthony his  
Attorney, and says that the matters contained  
in the within petition are not sufficient  
to authorize the discharge of the petitioner  
as he has by the within petition prayed &c

Elliott Anthony  
atly for said

Filed Oct 20 1851  
J. L. Bond  
Clerk