No. 12230

Supreme Court of Illinois

Plummer, et al

---

vs.

People

71641 7

Seymour Plummer et al
vs error to Bureau County
The People of the State of Illinois

And the said Seymour Plummer Edgar Plummer & Horace Plummer now come, and say that in the record and proceedings aforesaid, there is manifest error in this to wit.

1st The Circuit Court erred in sustaining the demurrer to the 2d & 3d Pleas of Edgar Plummer & Horace Plummer

2d The Circuit Court erred in sustaining the Demurrer to the 2d & 3d Pleas of Seymour Plummer

3 The Court erred in finding the issue for the people, upon the plea of nul tiel record

4th The Court erred in awarding execution against the defendants, or either of them

5 The record shows no cause of action.

6 The said Judgment was given in favor of the People, when it should have been given in favor of the plaintiffs in error.

Wherefore the said Plummers pray that the said Judgment & order for ds execution may be reversed, annulled & held for nothing &c

Milton T Peters
atty for Pltffs in error

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And the said People by Wallace their counsel comes and say that there is no such error as the said plaintiffs in error have above alleged, and that said judgement and proceedings are in all things regular and not erroneous and this they pray may be enquired of by the court. Wherefore they pray that said judgement may in all things be affirmed —

Wallace
for the people

State of Illinois } Be it remembered that
Bureau County } on this 1st day of September
AD 1854, Martin Ballou and William Martin
Justices of the Peace for said County of Bureau
filed in the Office of the Clerk of the Circuit
Court of said County a bond or recognizance
in words and figures as follows, to wit:
"State of Illinois }
Bureau County } S.S. Be it remembered that on the
first day of September A.D. 1854 Seymour Plummer
Horace Plummer and Edward Plummer of the
County of Knox in the State of Illinois personally
came before Martin Ballou and William Martin
Esqs two of the Justices of the Peace of said County of Bureau and
severally and respectively acknowledged themselves
to owe to the People of the State of Illinois that is to say
the said Seymour Plummer and the said Horace Plummer
and the said Edgar Plummer each separately in the
sum of Five hundred dollars to be separately made
and levied of their respective goods and chattels, lands
and tenements to the use of the said People, if default
shall be made in the conditions following
The condition of this recognizance is such that if
the said Seymour Plummer who has been committed to
the Common Jail of the County of Bureau aforesaid
for the want of sureties, shall personally be and appear
at the next term of the Circuit Court to be held in
and for the said County of Bureau, on the first

day thereof to answer to an indictment to be prefered against him for the crime of Larceny, and to do and receive what shall by the Court be then and there enjoined upon him and shall not depart the Court without leave, then this recognizance to be void or else remain in full force

Taken, subscribed and acknowledged the day and year above written before us.

Martin Ballou J.P.
Wm. Martin J.P.

Seymour his X mark Plummer (S)
H. Plummer (S)
Edgar Plummer (S)

Pleas before the Hon. Edwin S. Leland Judge of the Ninth Judicial Circuit of the Circuit Court of the State of Illinois at the October Term of said Circuit Court begun and held at the Court House in Princeton in the County of Bureau on Tuesday the third day of October in the year of our Lord one thousand eight hundred and fifty four

Present Hon. Edwin S. Leland Judge
Edward M. Fisher Clerk
Asmyn Smith Sheriff
Wm. H. L. Wallace States Atty

The People vs Seymore Plummer, Indictment for Larceny.

Thursday October 5. 1854

Now comes W. H. L. Wallace attorney for the People and the said defendant being three times solemnly called to come into Court here and answer as required to do by his said recognizance, comes not but makes default. And the said Horace Plummer and Edgar Plummer being three times solemnly called to come into Court here bring the body of the said Seymour Plummer as required to do by their said recognizance bring him not but make default. It is therefore considered by the Court that the said recognizance herein is forfeited. It is therefore considered by the Court that the People of the State of Illinois have and recover of the said Seymour Plummer Horace Plummer and Edgar Plummer the sum of Five hundred dollars the amount of the said Recognizance together with all their costs and charges in and about their suit in this behalf expended

It is also further considered by the Court that a writ of Scire Facias be issued herein against said defandants requiring them to show cause if any they have why the said People shall not have execution against them for the collection of the amount of said recognizance so forfeited as aforesaid and that the same be directed to the Sheriff of Knox County, in words and figures as follows

"State of Illinois } The People of the State of Illinois
Bureau County } To the Sheriff of Knox County Greeting

Whereas heretofore to wit on the first day of September AD 1854 Seymour Plummer as principal and Horace Plummer and Edgar Plummer as security came before Martin Ballou and William Martin Jrs of the Justices of the Peace of said County of Bureau, the said Seymour Plummer having been previously to wit on the 24th day of August AD 1854 duly arrested and brought before Hezekiah B Smith an acting Justice of the Peace in and for said County on a warrant issued by said H.B. Smith Esq on a complaint for larceny and in default of bail was committed by said Justice to the County Jail of said Bureau County on or about the 25th day of August AD 1854. And the said Seymour Plumer Horace Plumer and Edgar Plumer did then and there in said County of Bureau sign seal and deliver to the said Martin Ballou and William Martin Justices as aforesaid a certain bond or recognizance whereby they severally acknowledge themselves to owe to the People of the State of Illinois, that is to say, the said Seymour Plummer, the said Horace Plumer and the said Edgar Plumer each separately in the sum of Five Hundred dollars to be separately made and levied of their respective goods and chattels lands and tenements to the use of said People if default shall be made in the conditions following, to wit: That if the said Seymour Plummer who has been committed to the common Jail of the County of Bureau aforesaid for the want of sureties

shall personally be and appear at the next term of the Circuit Court to be held in and for the said County of Bureau on the first day thereof to answer to an indictment to be preferred against him for the crime of larceny and to do and receive what shall by the Court be then and there enjoined upon him and shall not depart the Court without leave. Which said Bond or Recognizance (*) was duly filed of record in the office of the Clerk of the Circuit Court of said Bureau County on the first day of September AD 1857. And whereas at the next succeeding term of said Circuit Court in and for the said County of Bureau, to wit: at the October Term thereof begun and held at Princeton in said County on Tuesday the third day of October AD 1857 the said Seymour Plummer being three times solemnly called to come and answer to said Indictment which was then and there preferred against him by the Grand Jury of said Bureau County, came not but utterly failed to be and appear as required to do by said recognizance and the said Horace Plummer and Edgar Plummer being severally three times solemnly called to appear and produce the body of the said Seymour Plummer before said Court failed and neglected to present the body of the Seymour Plummer before said Court as by the said recognizance they were required to do.

It was therefore then and there considered by the Court that the said Recognizance was forfeited and that the People of the State of Illinois have and recover

(*) Given under our hands and seals this 26th day of September AD 1857 William Morton, Justice as aforesaid. and were then and there duly certified by said Justices, and was by them delivered to the Clerk of the Circuit Court of said Bureau County and

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of the said defendants Seymore Plumer, Horace Plumer and Edgar Plumer the sum of Five hundred Dollars the amount of the said recognizance together with all their costs and charges in and about their suit in this behalf expended and that a writ of Scire Facias be issued herein against said defendants returnable to the next term of this Court requiring them to appear and show cause if any they have why the said People shall not have Execution against them for the amount of the said recognizance so forfeited as aforesaid and that said writ be directed to the Sheriff of Knox County. We therefore command you to summon the said Seymour Plummer, Horace Plummer and Edgar Plummer if to be found in your County, personally to be and appear before the Judge of our said Circuit Court on the first day of the next term thereof to be holden at the Court House in Princeton in said County on the second Monday in the month of January A.D. 1855 to show cause if any they have why the said People of the State of Illinois shall not have Execution against them severally for the said several sums for which they are respectively bound according to the force form and effect of their said recognizance and further to do and receive what our said Court shall then and there consider and adjudge against them in that behalf thereof fail not and make return of this writ with an endorsement thereon of the time and manner of serving the same on or before the first day of the term of said Court

to be holden as aforesaid

Witness Edward M. Fisher Clerk of our said Court and the seal thereof at Princeton in said County this 15th day of December AD 1854

(Seal.)

Edward M. Fisher Clk

State of Illinois
Knox County ss } I, C. Runkle Sheriff of said County of Knox do certify and return that I did on the 21st day of December 1854 Execute the within writ, as I am commanded, by reading the same to Horace Plummer and Edgar Plummer, Seymore Plummer not being found in my County

C. Runkle Sheriff
By Wm. McGowan Deputy Sheriff
Knox Co. Ills.

December 21. 1854
Filed Dec 26. 1854 E. M. Fisher Clk.

Pleas before the Honorable Edwin S. Leland Judge of the Ninth Judicial Circuit of the State of Illinois at the term of said Court begun and held in and for the County of Bureau at Princeton in said County on Tuesday the ninth day of January in the year of our Lord One thousand eight hundred and fifty five

Present Hon. Edwin S. Leland Judge
Edward M. Fisher Clerk
Stephen G. Paddock Sheriff
William H. L. Wallace States Atty

Thursday January 11. 1855

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The People of the State of Illinois
vs
Seymour Plummer
Horace Plummer &
Edgar Plummer

Sci. Fa. on Recog.

This day come the defendants Horace Plummer and Edgar Plummer by Tyler their attorney and filed their demurrer to the writ of Scire Facias herein in the words and figures following, to wit:

"State of Illinois } Bureau County Circuit
County of Bureau } Court January Term AD 1855.

The People
vs
Seymore Plummer
Horace Plummer &
Edgar Plummer

Scire Facias on Recognizance

And the said Horace Plummer and Edgar Plummer, defendants in the above entitled cause by their attorney come and defend the wrong and injury, where &c and say that the said Scire Facias and the matters and things therein contained in manner and form as the same ~~as~~ ~~&c~~ are above stated and set forth are not sufficient in law for the said People to have or maintain their said action against the said defendants Horace Plummer and Edgar Plummer and that they are not bound to answer the same and this they are

ready to verify. Wherefore they pray judgement and that the said People may be barred from having or maintaining their said action thereof against them &c

A. Tyler Jr

Atty of Horace & Edgar Plummer.

And for further cause of Demurrer the said Defts assign the following to wit.

1st The said Scire Facias sets out a several recognizance as being executed by the said Defts. severally and sets out a Judgt. of the Court on a joint recognizance at the Oct Term 1854.

2d The said Scire Facias or Recognizance does not show with sufficient certainty the time when the said Seymore Plummer was to appear for trial or the Term of the Court when he was bound to appear & answer to the Indictment or the place where he was to appear

3d The said Scire Facias does not show when the Recognizance was executed and also the said Scire Facias is in other respects uncertain, informal & insufficient

A. Tyler Jr Atty of the said Horace Plummer & Edgar Plummer

And the States Attorney comes in behalf of the People and after argument of Counsel and the Court being fully advised in the premises, It is considered that said demurrer be sustained. Whereupon on motion of said Peoples Attorney leave is given to said Attorney to amend the said writ of Scire Facias herein issued in words and figures as follows viz

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State of Illinois
Bureau County & Circuit Court thereof Jan. term 1855.

The People &c
vs
Horace Plummer &
Edgar Plummer impleaded
with Seymour Plummer

Scire Facias on
a recognizance

And the said People by Wallace States Attorney by leave of the Court for amendment to said writ of Scire Facias submit the following, at the asterisk (*) in the thirtieth line from the top of said writ, insert "was then and there approved by said Martin Ballou and William Martin Justices as aforesaid and was then and there duly certified by said Justices and was by them delivered to the Clerk of the Circuit Court of said Bureau County and"

W. H. L. Wallace
States Atty

filed Jany 11. 1855
E. M. Fisher Clerk.

Saturday January 13. 1855.

Now comes the said Defendants Horace Plummer and Edgar Plummer by Kendall their Atty and file their pleas herein in the words and figures following to wit

The People &c
vs
Seymour Plummer et al

Bureau Circuit Court
January Term 1855.

1. And the said Horace Plummer and Edgar Plummer impleaded with the said Seymour Plummer come and defend &c And say that the said People ought not to have final Judgement and Execution against them on said purported recognizance because they say that there is no such Record of the said supposed Recognizance in the said Scire Facias mentioned remaining in said Court in manner and form as therein alledged and this they are ready to verify, therefore they pray Judgement if the plaintiffs ought to maintain their said action against them &c

Kendall for Defts.

2. And for a further plea in this behalf the said defendants say that they ought not to be charged on the said Recognizance in the said Scire Facias mentioned because they say that at the time of the making and delivery of the said recognizance the said Seymour Plummer was unlawfully imprisoned in the County Jail of Bureau County in the State of Illinois on a pretended Charge of Larceny alledged to have been committed in the County of Muscatine and State of Iowa and by covin & nit at the County of Bureau aforesaid was unlawfully detained in said Jail until by force and duress ~~duxtress~~ of imprisonment he the said

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Seymour Plummer as Principal and the said defendants as his securities then and there made sealed and delivered the said purported recognizance to the said Justices to relieve said Seymour Plummer from such unlawful imprisonment and for no other consideration and this they are ready to verify, wherefore they pray Judgement if the said People ought to maintain their said action thereof against them.

Kendall for Defts.

3. And for a further plea in this behalf the said defendants say that the said People ought not to have final Judgement and execution against them on said purported Recognizance, because they say that the said Seymour Plummer was arrested and brought before one Hezekiah B. Smith a Justice of the Peace of the said County of Bureau upon a charge of larceny alledged in the warrant, upon which he (said Seymour Plummer) was arrested and brought before said Justice, to have been committed by him in Muscatine County in the State of Iowa and upon the examination upon said charge he the said Seymour Plummer was found guilty by said Justice of said charge of Larceny and required to enter into recognizance with security to appear and answer said charge before the Circuit Court of said County of Bureau on the first day of the next term thereof. And in default of such recognizance being executed the said Seymour Plummer was by said Justice committed

to the said County Jail, by a certain warrant of commitment or mittimus in which warrant of commitment it was alledged and stated by the said Justice that the charge against the said Seymour Plummer was the same larceny as hereinbefore described and the Jailor of the Jail aforesaid who was then and there the Sheriff of said Bureau County received said Seymour Plummer upon said Warrant of Commitment and detained him in custody in said Jail under and by virtue of said Warrant of Commitment a long time to wit for the space of twenty four hours. And then the said Jailor deeming the said Warrant of Commitment insufficient and illegal afterwards and while the said Seymour Plummer was in custody as aforesaid caused to be made out by said Justice a new warrant of commitment stating therein the offence to have been committed in said Bureau County in the State of Illinois and not in Muscatine County in the State of Iowa as was alledged in the said warrant to arrest and in the said first warrant of commitment And defendants aver that at the time of making the said second warrant of commitment the said Justice had no jurisdiction of the said cause or of the said person of Seymour Plummer, that said Justice had adjourned his Court & sent the said Plummer to Jail, and there was no complaint or warrant or cause pending before said Justice authorizing any such warrant of commitment as the said second warrant above mentioned

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that at that time the cause was not before the said Justice and the said Justice held his office at Kiskilva and there made the said second Warrant of Commitment without even notice to said Seymour Plummer and while said Seymour Plummer was unlawfully detained and imprisoned at and in the Jail as aforesaid that the said second warrant was presented to the said Justice by said Sheriff and the said Justice signed the same at Kiskilva and the first warrant of commitment was then given up and destroyed and the said Sheriff afterwards pretended and professed to hold the said Seymour Plummer by virtue of the said second pretended warrant of commitment and while he was so held the said Seymour Plummer as Principal and and the said defendants as his securities made and delivered the said pumpted recognizance to relieve the said Seymour Plummer from such unlawful imprisonment and for no other considerations and this they are ready to verify wherefore they pray judgement if the action aforesaid shall be maintained against the said defendants Kendall for Defts "

Filed Jany 13. 1855. E. M. Fisher Clk

Pleas before the Hon'l Edwin L. Leland Judge of the Ninth Judicial Circuit of the State of Illinois at the Term of said Court begun and

held in and for the County of Bureau at Princeton in said County, on Tuesday the twenty seventh day of March in the year of our Lord One thousand eight hundred and fifty five

Present Hon. Edwin S. Leland Judge
Edward M. Fisher Clerk
Stephen G. Paddock Sheriff
W. H. L. Wallace States Atty.

The People of the State of Illinois
vs
Seymour Plummer
Horace Plummer &
Edgar Plummer
Sci fa on Recognizance

Now comes W. H. L. Wallace Attorney for the People and files his demurrer to the second and third pleas of said defendants Horace & Edgar Plummer in words and figures as follows, to wit;

"Bureau Circuit Court March term AD 1855

The People &c
vs
Horace Plummer &
Edgar Plummer impleaded
with Seymour Plummer
Scire facias on Recognizance

And now comes W. H. L. Wallace States Attorney who prosecutes for said People in this behalf and as to the said pleas of said

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Horace and Edgar Plummer by them secondly and thirdly above pleaded, says precludi non &c because he says that the matters and things in said second and third pleas and in each of them as the same are therein stated and set forth are insufficient in law and each of them is insufficient in law to bar the said People from having execution on said Recognizance according to the form force and effect of said Recognizance and this he is ready to verify wherefore he prays judgement &c W. H. L. Wallace States Atty."

And said defendants come by Tyler & Kendall their attorneys and after argument of Counsel and the Court being fully advised in the premises It is considered that said demurrer be sustained

Now comes the said defendants Horace Plummer and Edgar Plummer by Kendall and Tyler their attorneys and the States Attorney comes in behalf of the People and files his replication to said defendants first plea and demurrer to said second and third pleas filed herein in the words and figures following, to wit;

"Bureau Circuit Court - March term AD 1855.

The People &c
vs
Horace Plummer + } Scirfacias on Recognizance
ump

Edgar Plummer impleaded
with Seymour Plummer

And now Comes W H L Wallace States attorney who prosecutes for said people in this behalf and as to the said plea of said Horace Plummer and Edgar Plummer by them first above pleaded says precludeinon &c. because he says that there is a record of the said Recognizance in said Scire facias mentioned remaining in said Court in manner and form as is in said Scire facias alleged. and of this the said people put themselves upon the Country &c.

W H L Wallace
States attorney

Kankakee Circuit Court March Term AD 1855.
The People &c.
vs Scirefacias on
Horace Plummer & Recognizance
Edgar Plummer impleaded
with Seymour Plummer

And now Comes W H L Wallace States attorney who prosecutes for said People in this behalf. and as to the said Pleas of said Horace and Edgar Plummer by them secondly and thirdly above pleaded. says precludeinon &c. because he says that the matters and things in said second and third pleas. and in each of them, as the same are therein stated and set forth. are insufficient in law and

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each of them is insufficient in law to bar the Said People from having execution on Said Recognizance according to the form, force and effect of Said Recognizance and this he is ready to verify. Wherefore he prays Judgment &c. W H C Wallace States attorney

And after argument of Counsel and the Court being fully advised in the premises Said demurrer is sustained

And the Said defendant Seymour Plummer by his attorneys Kendall and Tyler Comes and files his pleas herein in the words and figures to wit

State of Illinois } Bureau County Circuit Court
Bureau County ss } March Term AD 1855.

The People of the State of Illinois }
vs } Scire facias upon a
Seymour Plummer Horace Plummer } Recognizance
and Edgar Plummer }

And the Said Seymour

1st Plummer by his atty Comes and defends the wrong and injury when &c. and Says the Said People ought not to have Execution of the debt and damages aforesaid against him upon the Said Scire Facias and Supposed Recognizance because he Says that there is not any Record of the Orders, Judgments and Recognizance in Said Scire Facias Mentioned Remaining in the Said Circuit Court of Bureau County and State aforesaid in manner and form as the people have above in their Said

Scire Facias alleged and this the Said Defendant Seymore Plummer is ready to verify. Wherefore he prays judgment if the Said People ought to have or maintain their aforesaid action thereof against the Said defendant &c.

A Tyler Jr Atty for
Seymore Plummer

2

And for further plea in this behalf the Said defendant Seymore Plummer Says that he ought not to be charged with the Said Debt by virtue of the Said Supposed Recognizance because he Says that he the Said Defendant at the time of the making of the Said Supposed Recognizance to wit. on the Said first day of September AD 1854. at the County of Bureau and State aforesaid was unlawfully imprisoned by the Said People of the State of Illinois Plaintiffs in this Suit. in the County of Bureau and State aforesaid. and then and there detained in Prison. until by the force and duress of imprisonment of him the Said defendant Seymore Plummer he made the Said Supposed Recognizance and delivered the Same to the Said People of the State of Illinois Plaintiffs in this Suit as his recognizance and this he the Said defendant Seymore Plummer is ready to verify. Wherefore he prays Judgment if he ought to be charged with the Said debt by virtue of the Said Supposed Recognizance &c

A Tyler Jr Atty for
Seymore Plummer

[12230-11]

3. And for further plea in this behalf the Said defendant Seymore Plummer Says that he Ought not to be Charged with the debt by virtue of the Said Supposed recognizance because he Says that he was arrested upon a warrant issued by Ezekiah B. Smith a Justice of the Peace in and for the County of Bureau on the 23d day of August 1854 which Said warrant was issued upon the affidavit of one Cornelius Wilkin which charged the Said Seymore Plummer with having committed a larceny in the County of Muscatine in the State of Iowa, and the Said Seymore Plummer Says that he was brought before the Said Justice of the Peace on Said warrant on the 24th day of August 1854 and on examination then and there had before Said Justice of the Peace in & for the County of Bureau and State of Illinois at Indiantown upon the Charge of larceny Charged to have been committed in the County of Muscatine & State of Iowa. and the Said Seymore Plummer States that all the evidence before the Said Justice upon Said examination & the affidavit of Said Wilkin. the Said warrant. mittimus & transcript & docket of Said Justice proved that the Said larceny with which he was then and there Charged was committed in the County of Muscatine. and State of Iowa. and not in the County of Bureau and State of Illinois. nor in any other County in the State of Illinois and that the Said deft. was not Charged of any other Offence. and the Said Seymore Plummer Says that the Said Larceny with which he was Charged as aforesaid was committed in the County

of Muscatine in the State of Iowa, and not in the County of Bureau and State of Illinois, nor in any other County in the State of Illinois. And that the said Seymore Plummer upon the aforesaid charge of Larceny on the day and year last aforesaid failed to give Bail and was by the said Justice on the day & year last aforesaid for said alleged Offence committed to the Jail of Bureau County, and for no other Offence, and that the said Supposed Recognizance upon which this Scire Facias is brought was executed to release him the said Seymore Plummer from imprisonment in the said Common Jail of Bureau County in which he was imprisoned upon the aforesaid charge of Larceny committed in the County of Muscatine in the State of Iowa, and for no other Offence, all of which the said Defendant Seymore Plummer is ready to verify wherefore he prays Judgment if the said people ought to have or maintain their aforesaid action thereof against the said Defendant &c.

A Tyler Jr. atty of
Seymore Plummer

and the said Peoples attorney files his replication to to said first plea and demurrer to said second and third pleas in the words and figures following to wit.

Bureau Circuit Court — March term AD 1855

The People &c
vs
Seymour Plummer impleaded &c.
with Horace Plummer &
Edgar Plummer

Scire facias on
Recognizance

[12230-12]

And the Said People by Wallace States attorney comes and as to the plea by Said Defendant Seymour Plummer by him firstly above pleaded. Says precludi non because they Say there is a record of the Orders, judgments and recognizance in Said Scire facias mentioned. now remaining in the Said Circuit Court of Bureau County and State of Illinois in manner and form as is Stated in Said Scire facias - and this the Said People are ready to verify by the record. Wherefore they pray judgment &c.

W. H. L. Wallace States atty

And as to the Second and third pleas by Said defendants Seymour Plummer by him Secondly and thirdly above pleaded. the Said people Say precludinon &c. because they Say that the matters and things in Said Second and third pleas and in each of them. are insufficient in law to bar the Said People from having Execution on Said Recognizance according to the form force and effect thereof and this they are ready to verify Wherefore they pray judgment &c.

W. H. L. Wallace States atty

And the Court being fully advised in the premises Considers that Said demurrer to Said Second and third pleas be Sustained.

By agreement of Parties a Jury is waived. and this Cause is Submitted to the Court for trial, and the Court finds the Issue herein in favor of the People.

It is therefore considered by the Court that the People have execution herein for the collection of the judgment herein before entered as aforesaid.

State of Illinois
Bureau County ss. I Edward M Fisher Clerk
of the Circuit Court in and for
Said County in the State aforesaid do hereby certify that the foregoing is a full and complete transcript of the proceedings had in Said Circuit Court of Said County, in the foregoing entitled cause as of Record and on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of Said Court at Princeton in Said County this 1st day of June A.D. 1855

Edward M Fisher
Clerk

Clerks fees
Transcript 4.73
Cert & Seal 35
$5.08

Paid By M. J. Petus
Ed M Fisher

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Seymour Plummer et al
vs.
The People &c

Record

Filed June 5. 1888.
L. Leland Clk.

In Supreme Court — June Term 1855.

Plummer et al
vs
The People &c

Error to Bureau —

It is agreed in this case that the transcript of the record on file is defective & for the purpose of avoiding the delay of a certiorari, it is agreed by the counsel for the respective parties, that at the October term A.D. 1854 of the Bureau Circuit court on the 4th day of October 1854 an indictment was duly returned and presented in open court by the Grand Jury of said county at that term, against the said pltff in error Seymour Plummer for larceny — with the proper endorsements — which indictment was on that day filed in said court and this case may be considered as though these facts appeared in the transcript

W. H. Wallace
for the People &c —
Milton T. Peters
atty for Pltff in error

[12230-14]

Plummer et al

vs

The People &c

Agreement as to record

Plummer
vs
Pople

1st Point-

4 Gil 433
13 Ills 9
2 A K Marshall 131-
11 Maine 344
4 Mass 641
Rev Stat page 261 } See 4
" 283 } " 203
15 Ills 223
Rev Stat 191 " 206

2d Point

3 Gil 330
15 Ills 292
12 Snedeker & Marshall 472
5 Danes Abridgment 279. See 8

7 Pick 232- 11 Mass 337- 7 Mass 280- 16 Mass 198. 2 Kelley 363
2 A.K. Marshall 131-

Seymour Plummer et al
vs
The People &c

authorities for Plff in error

Seymour Plummer
Horace Plummer &
Edgar Plummer
vs
The People of the State
of Illinois

Error to Bureau County
Circuit Court —

Judgment rendered against plffs
in error on a scire facias on a
recognizance —

The Clerk of the Supreme Court at
Ottawa, will please issue a writ
of error in the above cause, and
scire facias to Clerk of the said
Circuit Court, as the law directs

Milton T Peters
atty for Plaintiffs
in error

S. Sel and Esq Clk &c

Please find five
dollars enclosed, to docket the
above cause. Send down the
scire facias to me, and I will
have it served upon the Clerk,
also please acknowledge receipt
of the five dollars. I wish you
would get Wm H. L. Wallace to
accept service of the writ of
error on behalf of the People

Yours &c

Milton T Peters

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5

Veyman Plummer et al.
vs
Perpli &c.
Praecipe &c.

Filed Apl. 23rd 1855.
L. Leland Clk.

Seymour Plummer et al Error to Bureau County
vs
The People of the State of Illinois

This case was on a Scire facias on a recognizance executed by Seymour Plummer as principal & the other two as Securities, taken by two Justices to release the body of Seymour Plummer from imprisonment in the County Jail, it was conditioned for his appearance before the Circuit Court of Said County to answer to an indictment to be preferred against him for the Crime of larceny, the defendants not appearing there was a forfeiture of the recognizance. the Scire Facias was demurred to and amended & then Horace Plummer and Edgar Plummer plead 1st nul tiel record 2d That at the time the recognizance was given Seymour Plummer was unlawfully imprisoned in the County Jail of Bureau Co on a pretended charge of Larceny, alledged to have been committed by him in Muscatine Co Iowa. & was so detained in imprisonment, until the defendants were compelled to give the recognizance to procure his release from such unlawful imprisonment & for no other Consideration 3d that Seymour Plummer was brought before H.B. Smith a J P of Said County charged with having committed larceny in Muscatine Co Iowa & found guilty and for want of Sureties was committed to Said Jail & in the commitment the Justice stated the offence as aforesaid & Seymour Plummer was detained in prison 24 Hours under such commitment, when the Sheriff & Jailer having become apprehensive that the Mittimus was bad, made out a new one stating the offence to have been committed in Bureau Co aforesaid & obtained the Said Justices Signature to the Same at Inclemantown in the absence of & without notice to Seymour Plummer & while he was so confined in Jail & there being no complaint of that kind before him & had not been & no witness against & then the old warrant of commitment was destroyed & the Sheriff & Jailer professed

[12230-17]

to hold him under the new williams & to release him from such unlawful imprisonment & for no other consideration the recognizance was given -
the People took issue upon the 1st plea by replying that there was such a record & demurred generally to the 2 & 3d pleas. which demurrer was sustained by the Court & the defendants stood upon their pleas.
Seymour Plummer then plead 1st Nul tiel record on which was formed an issue of fact. 2d that said recognizance was obtained by duress & force of unlawful imprisonment & for no other consideration. 3d that Seymour Plummer was unlawfully imprisoned on a charge of Larceny charged to have been committed in Muscatine Co Iowa & they gave the recognizance to procure his release & for no other cause. people demurred generally to 2 & 3d pleas which demurrer was sustained & the case was submitted to the Court upon the issue of nul tiel record and found for the people & execution was awarded against all the defendants. It is assigned for error that the Court erred in sustaining the aforesaid demurrers & erred in finding the issue for the people. & the record shows no cause of action

Milton J Pilcher
atty for Pltffs in error

Seymour Plummer et al
vs
The People
Abstract

Filed June 5. 1855
T. Wilson Clk.

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Points & authorities for Pltffs in error

1st That the Scire facias was substantially & incurably insufficient and the Peoples demurrers to defts pleas should have been carried back to the Scire facias
when a Scire facias is brought upon a recognizance entered into out of a court of record. it must contain sufficient averments to show the Jurisdiction or authority ~~or authority~~ of the officer taking the same 4 Gil 13 Ills 9 — 4 3 3 — 2 Ark. Mark 131-565-
It must appear that the Justice had Jurisdiction of the case in which the recognizance was taken
11 Maine 344. 4 Mass 641=
Justices Jurisdiction is confined to offences charged to have been committed in this State. Page 190- Sec 203 Rev Stat
This proceeding was not under an act entitled "Fugitives from Justice. Rev Stat page 262. Sec 4 —
the Scire facias must show the authority of the two Justices taking the recognizance. that the deft had been committed for want of bail & that the committing magistrate had indorsed on the mittimus that bail might be taken in some sum, to be specified by the Justice. 15 Ills 223 Rev Stat page 191- sec 206
It must appear that the Justices have taken the recognizance of a party charged with a bailable offence in their County, which dont appear in this case & there is no allegation even of Jurisdiction — which is fatal. 13 Ills 9 — 10 —

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a Scire facias though a Judicial writ must be considered an original action to which the deft may plead. that it must contain a legal cause of action. that it must show a sufficiency on its face to authorize the Judgment asked for. a recognizance not taken by a court of record is not strictly a record until it is filed and entered in Court by the proper authorities & even not then unless taken by a person legally authorized. Lang vs State 3 Black f. 344 —
& if the Scire facias must show by proper averments that the person taking was legally authorized so to do) Andress vs the State — 110

Defendants pleas in the Circuit Court were good & the Peoples demurrers to them should have been overruled

This case was decided in the Circuit Court mainly upon the case of Lans vs People 3 Gil 330 - the Court deeming the defences set up by the pleas came too late, that those defences should have been interposed when the forfeiture of the recognizance was taken, yet in that case, no forfeiture of the recognizance was taken without objection & yet the defts were permitted to deny the existence of the debt, notwithstanding the forfeiture, although they had originally executed the recognizance for $50 - & had consented to the alteration to $100 - which in this case the defendants never did in law execute this recognizance & they can say it is not their deed, it having been obtained by force of illegal duress and imprisonment;

In Solomon vs The People 15 Ills 292 - it was held that the committing magistrate, not being a Judicial officer, had no authority to hear the case & therefore had no jurisdiction & that a recognizance given to the Circuit Judge to release the defts body from imprisonment in the County Jail was void & without any binding force, that it was an involuntary obligation taken without authority of law & could not be enforced, & yet the forfeiture was taken without objection, So in the case now before the Court, the Justice who committed the prisoner had no jurisdiction of the case, and, he was not a Judicial officer to try an offence committed in Iowa, & the recognizance was given involuntarily & is without binding force

When a recognizance is void, all the subsequent steps which are based upon it are void also, and it is competent for the Court to vacate it, any time, even after a Judgment of forfeiture has been entered without objection & also after Judgment on the Scire facias against defts

12 Smedes & Marshall 472 -

for error in the original Judgment the bail may take advantage of it on Scire facias against them, for they could not have error on that Judgment,

5 Danes Abridgment page 279. Sec 8 -

In the ~~following~~ cases reported in 7 Pick 232. 11 Mass 337 7 Mass 280. 16 Mass 198. 2 Kelley 363 & 2 A K Marshall 131 -

the court entertained and sustained objections to the validity of the recognizance although forfeitures had in each case been entered without objection, and I have not been able to find any case in which it was held that objections to the validity of the recognizance should be made when a forfeiture is applied for.

It is not necessary to enter any Judgment on a forfeiture of recognizance, only to declare on the record that the recognizance was forfeited

3 Blackf 108 - Andress vs State

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W S Pitts brief on behalf
of Pltffs in error

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Seymour Plumunt

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1855