No. 13807

Supreme Court of Illinois

Weese

vs.

People

Saml Weese } appellant
vs

THE PEOPLE, appellee } STATE OF ILLINOIS,
~~vs.~~ IN THE SUPREME COURT,
~~SAMUEL WEESE,~~ APRIL TERM, A. D. 1858.

Warning in conclusion

APPEAL FROM KNOX.

The object of taking recog - to secure appearance.

ABSTRACT.

This was a *Scire Facias* upon a Recognizance tried in the Knox Circuit Court, Term A. D. 1857.

Why should there be a difference in such cases and not in private matters -

The Recognizance was entered into on the 13th day of February, A. D. 1856, before the Circuit Court of Fulton County.

If a party gives a bond in a penalty to convey the penalty can't be recovered if he does convey tho' not at the time - damages only to be recovered -

An Indictment for Arson was pending in that County, against Weese, and the recognizance was entered into by Samuel Weese, as principal, and William S. Weese, as surety, in the sum of $1000, conditional for the appearance of Samuel Weese, before the Circuit Court of the County of Knox, on the 4th Monday of April next, "to await and abide the issue of said Court, in a matter now pending and undetermined, wherein the people of the State of Illinois, are Plaintiffs, and Samuel Weese is Defendant, on an indictment for Arson, &c."

The balance of the Recognizance is in the usual form.

The Record sets forth, That the indictment for Arson was brought into the Knox Circuit Court, by change of venue from Fulton County.

2. The record was in evidence - excluded when offered by deft. Immaterial whether in evidence or not.

At the April Term of the Knox Circuit Court, A. D. 1856, the following judgment was entered in said cause.

THE PEOPLE OF THE STATE OF ILLINOIS, } *Arson, Change of Venue.*
vs.
SAMUEL WEESE.

This day came the People aforesaid, by A. M. Craig, States Attorney, and the said Samuel Weese, the principal herein, being three times solemnly called, came not, but made default, and William S. Weese, his security herein, being three times solemnly called in open court, to appear and produce the body of the said Samuel Weese, but did not appear or produce the body of the said Samuel Weese,

but also made default: hereupon, it is considered by the Court, that the recognizance of the said Samuel Weese, as principal, and William S. Weese, his security herein, heretofore taken and by them jointly and severally entered into, and for which they were jointly and severally bound, be taken, held, and declared as forfeited. Therefore, it is considered by the Court now here, that the said People of the State of Illinois, have and receive of the said Samuel Weese, and William S. Weese, the recognizors herein, the sum of one thousand dollars, the amount of their said recognizance. And it is further ordered by the Court, that a writ of *Scire Facias* issue herein directed to the Sheriff of Fulton County, returnable to the next term of this Court, commanding him to summons the said Samuel Weese, and William S. Weese, personally to be and appear before the Circuit Court of Knox County, on the first day of the next term thereof, to be holden at the Court House, in the City of Knoxville, on the fourth Monday of September next, then and there to show cause, if any they have, why final judgment should not be rendered against them, for the amount of their recognizance aforesaid, and costs, and why execution should not issue thereon, for the same. And this cause is continued until the next term of this Court.

The *Scire Facias* was as follows:

STATE OF ILLINOIS, } THE PEOPLE OF THE STATE OF ILLINOIS,
COUNTY OF KNOX. } TO THE SHERIFF OF FULTON COUNTY,
Greeting.

Whereas, an indictment was lawfully pending in the Circuit Court for the County of Fulton, and State of Illinois, against Samuel Weese, for the crime of Arson, at the February Term thereof, A. D. 1856, which had before that time been duly found a true bill, and returned into open Court by a Grand Jury, lawfully empannelled, for the February Term, A. D. 1855, for the said Circuit Court, and the said judgment being then and there so pending therein. At the February Term, A. D. 1856, aforesaid, the said Samuel Weese applied for a change of the venue thereof from the said County of Fulton, and the said Circuit Court ordered the venue to be changed to the County of Knox, in said State, and thereupon, then and there the said Samuel Weese, as principal, and William S. Weese, as security, appeared in open Court, and entered into a recognizance, the record whereof is in the words and figures following, that is to say: Then came Samuel Weese, as principal, and William S. Weese, as security, and jointly and severally acknwledged to owe and be indebted to the people of the State of Illinois, in the just and full sum of one thousand dollars, good and lawful money of the United States, to be levied of their goods and chattels, lands and tenements, if default be made in the condition following, which is this: That if the said Samuel Weese shall well and truly be and appear before the Circuit Court of the County of Knox, on the first day thereof, at the term to be held at the Court House in Knoxville,

in the County of Knox, and State of Illinois, on the fourth Monday in the month of April next, then and there to await and abide the issue of said Court, in a matter now pending and undetermined, wherein the people of the State of Illinois, are Plaintiffs, and the said Samuel Weese, is Defendant, on an indictment for Arson, and shall be and remain about said Court, from day to day, during the said term thereof, and not depart thence without leave of the Court, then this recognizance to be void, otherwise to remain in full force and virtue.

And *Whereas*, afterwards, on the second day of a term of the Circuit Court for the County of Knox, aforesaid, begun on the fourth Monday of April, A. D. 1856, the said indictment then and there pending, came on for trial, and the said Samuel Weese being called, came not, but made default; and the said William S. Weese, being called, failed to produce the body of his said principal, and therefore judgment of forfeiture was rendered against them the said Samuel Weese, and William S. Weese, for the said sum of one thousand dollars, and an order entered that *scire facias* issue thereon, against the said Samuel Weese and William S. Weese, to appear and show cause, &c., at the next Term of said Court thereafter.

Now therefore, you are commanded to summon the said Samuel Weese, and William S. Weese to be and appear before the Circuit Court of the County of Knox, aforesaid, on the first day of a term to be held on the fourth Monday of September 1856, then and there to show cause, if any they have, why execution shall not issue on the judgment aforesaid, and abide the action of the Court, in the premises, and have you there this suit.

Witness the seal of said Circuit Court of the County of Knox, this first day of August, in the year of our Lord, eighteen hundred and fifty-six.

HIRAM S. MOREY, *Clerk*.

At the September Term, A. D. 1856, the Defendant filed the following motion, to quash said Scire Facias, as follows:

PEOPLE, vs. SAMUEL WEESE, AND WILLIAM S. WEESE.	IN THE KNOX CIRCUIT COURT, SEPTEMBER TERM, A. D. 1856.

And now comes the said Defendant, by Manning and Wead, their attornies, and move the Court to quash the Scire Facias herein, for the following reasons:

1. Because said Scire Facias is contradictory and uncertain, in that it does not show when, nor at what Term of the Court said Recognizance was entered into.

2. It does not show or set forth that said Recognizance was taken before any Court.

3. It does not show that said Recognizance was ever entered of the record, or appears by the record.

4. It does not show that said Defendants were called in open Court.

5. It does not allege that any Judgment by default, or of forfeiture, was rendered against the Defendants, or either of them.

6. It does not show against whom the Judgment was rendered.

7. It does not show that the matter or any portion thereof appears of record.

8. It does not make profert of the record.

Wherefore, Defendants pray that said Scire Facias may be quashed, set aside, and for naught held.

By MANNING & WEED, their Attornies.

On the 26th day of September, A. D. 1855, William G. Weese, the security in the Recognizance, came into open Court, and surrendered his principal, and he was ordered by the Court, into the custody of the Sheriff; whereupon, the counsel for the Defendant, moved for the discharge of the principal and security, but the Court ordered the release of the surety, upon payment of the costs, and refused to discharge the principal.

At the October Term, A. D. 1857, the Defendant filed the following Pleas:

SAMUEL WEESE, & WILLIAM S. WEESE,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } *On Scire Facias.*

And the said Defendant, Samuel Weese, comes and shows cause before the Court here, why execution should not issue on the said Scire Facias mentioned,

1. And for plea thereto, says: The said People ought not to have their said execution, because he says that there is not, and has not been any such indictment lawfully pending in the said Circuit Court of said Fulton County, as in said writ of Scire Facias is alleged. And this said Samuel prays may be inquired of by the Court here: Wherefore, he prays judgment of the Court, whether said people ought to have their said execution, or maintain their said action, on said writ of Scire Facias, &c.

MANNING & DOUGLAS,

Attornies for SAMUEL WEESE.

2. And for further plea in this behalf, the said Defendant, Samuel Weese says, actio non, because he says there is no such record of any such cause or indictment against the said Samuel Weese, as by said writ is alleged or supposed. And this said Samuel prays may be inquired of by the Court here, wherefore he prays judgment, &c.

MANNING & DOUGLAS,

Attornies for SAMUEL WEESE.

Plea - Surrender is a discharge of Recognizance 15 Ill. 221

3. And for further plea in this behalf, the said Defendant, Samuel Weese says, actio non, because he says that heretofore, to wit, on the 26th dav of September, A. D. 1856, and before the judgment upon said scire facias, at the September Term of the Circuit Court, in and for the County of Knox, and State of Illinois, said Defendant delivered himself up in open court, and surrendered himself to said court, in discharge and satisfaction of said Recognizance; whereupon, said court ordered that William S. Weese, the surety of said Defendant, be discharged from said Recognizance, upon payment of cost, which cost Defendant then and there paid, as appears by the record of said court, now ready to be produced. And this he is ready to verify; wherefore he prays judgment, etc.

By MANNING & WEAD,

His Attornies.

4. And for further plea in this behalf, the said Samuel Weese says, actio non, because he says that heretofore, to wit, on the 26th day of September, A. D. 1856, and before judgment on the scire facias herein, at a Term of the Circuit Court, in and for the County of Knox, and State of Illinois, then being held at Knoxville, in said County, the said Samuel Weese was delivered up and surrendered in open court, to said court, in discharge and satisfaction of said Recognizance, and was then and there ordered into custody by said court, and afterwards, on the same day, said court fixed the amount of bail, on the same Indictment upon which De-

fendant was recognized in this case, at one thousand dollars; whereupon, Defendant afterwards, on said day, in open court, entered into a new Recognizance, in the sum of one thousand dollars, with William Weese, as security, which was accepted by said court, conditional for his appearance at the next Term of said Court, to answer unto the same Indictment for which the Recognizances in this case was made and had; whereupon, said cause, (i. e. the prosecution for Arson, which was then pending in said court,) was continued to the next Term of said court, and so Defendant saith that he has been and is discharged from said Recognizance, and this he is ready to verify, etc.

By MANNING & WEAD,

His Attornies.

5. And for further plea in this behalf, said Defendant, Samuel Weese saith, actio non, because he says that heretofore, to wit, on the 29th day of April, A. D. 1856, at a term of the Circuit Court, in and for the County of Knox, and State of Illinois, then being held at Knoxville, in said County, said Circuit Court rendered judgment against the said Defendants, on the same Recognizance now sued on: "That the said People of the State of Illinois, have and recover of the said Samuel Weese, and William S. Weese, the sum of one thousand dollars, the amount of their said Recognizance." Which judgment was and is founded on the same Recognizance, set forth in the scire facias herein, as will more fully appear by the record thereof, now in court, which is a final judgment; wherefore, the said Defendant saith that Plaintiff ought not to have and maintain his scire facias aforesaid, and this he is ready to verify, etc.

By MANNING & WEAD,

His Attornies.

6. And for further plea in this behalf, the said Samuel Weese says, actio non, because he says that heretofore, to wit, on the 26th day of September, A. D. 1856, at a term of the Circuit Court, in and for the County of Knox, and State of Illinois, then being held at Knoxville, in said County, the said Samuel Weese was delivered up in court, in discharge and satisfaction of the judgment described in said scire facias, and was then and there ordered into custody by said Court, to answer said Indictment for Arson, and the said court did then and there discharge and release the said William S. Weese, of and from said judgment, upon payment of costs, which said costs were then and there paid; wherefore, the said Samuel Weese says that said judgment is discharged, released, and fully satisfied, as to him, and this he is ready to verify; wherefore, he prays judgment, etc.

By MANNING & WEAD,

His Attornies.

At the same Term, the Defendant filed his motion to set aside the default of the Recognizance against Defendant, entered at the April Term, A. D. 1856, "because said Defendant did on the 26th day of September, 1856, deliver himself up in open court," in discharge of said Recognizance.

This motion was overruled by the Court.

The Plaintiff then filed his demurrer to the 3rd, 4th, 5th and 6th Pleas of Defendant.

To the 1st Plea, Plaintiff filed his replication, alleging "that there has been and was an indictment lawfully pending in the Circuit Court of Fulton County, as in said Writ is alleged." Issue was joined on this Plea.

To the 2nd Plea the Plaintiff replied that there was such a record as the Scire Facias, set forth, and issue was joined.

To the 5th Plea Plaintiff replied that there was no such record of a judgment as in said Plea, is alleged; and prayed the judgment of the Court. The demurrer was withdrawn to the 5th Plea.

The demurrer was sustained to the 3rd, 4th and 6th Pleas, and the Defendant stood by his demurrer.

A Jury was waived and trial had by the Court, who rendered judgment for the people, for $1000, and cost.

Exceptions were regularly taken and allowed to all the foregoing decisions of the Court.

The original papers and record certified from Fulton County, were read in evidence, upon the trial against the objections of the Defendant, who excepted to the introduction of the same.

WEAD & WILLIAMSON,

For Plaintiff.

8.

Samuel Rivers

vs

The People

April 29 —

Filed April 23, 1858

L. Leland

Clerk

13807