

No. **12083**

Supreme Court of Illinois

People.

vs.

Garton, et al

71641  7

Supreme Court. June Term 1853

Bacon et al

vs

People

And now comes the said plaintiffs in error by Dickey & Jones his attorneys and say there is manifest error in judgment and proceedings of the circuit Court & that said judgment ought to be reversed and held for naught.

and as a specification of errors assigns

Xth The following - It was error to render judgment ^{in sci fa}
The Scirefacias - does not show a sufficient record on which to found the judgment - because

1st The recognizance never became a record in the circuit - not having been certified by the officer taking the same - or delivered to the Clerk of the circuit Court by the officer taking the same - The sanction & approval of the J. P. must be shown affirmatively in one or the other mode -

2nd The recognizance was not filed until after the first day of the term & the law does not provide for its becoming a record except by being returned on or before the first day of the term -

3rd ~~The~~ recognizance does not show on its face The Cause of its Caption or that any offence was charged against the principal - nor that he was a prisoner

4th The sci fa does not show that the default was entered of record -

5th - The Sci fa shows that the default if any was made before the recognizance was filed in the Circuit Court -

6th - The Sci fa does not show ^{by record} any indictment found before default made & by the terms of the recognizance he was not bound to appear unless there was an indictment to be answered unto -

There is no averment in the Sci fa that any of the matters therein stated - appear of record - -

7th - Sci fa does not aver that an indictment for larceny was found vs Hile: & he was not bound ^{by recognizance} to answer any other -

8th - The Sci fa does not allege that the matters set out or any of them are matters of record -

9 - It was error to sustain demurrer to the 4th plea -

Dickey & Jones
attys for plffs in error

And the defendants join in error and allege deny that there is any such error as alleged - & asks that said judgment be affirmed

W H L Waller
for the people

State of Illinois Bureau County } Be it Remembered That on
The 30th day of October 1853. Constantine Hill. of The County
of Bureau. and Frederick Bacon John D. Garton & Marion Hill.
of The County aforesaid. personally came before William McKee
Esquire a justice of the Peace in and for said County and severally
and respectively acknowledged themselves to owe to The People
of the State of Illinois. That is to say The said Constantine
Hill. The sum of one Hundred and fifty Dollars. and The
said John D. Garton. Frederick Bacon and Marion Hill. one
Hundred and fifty dollars Separately to be 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 Condition following. — The Condition of This Recognizance
is such That if the said Constantine Hill shall personally be
and appear at the next Term of The Circuit Court. to be
held in and for The County of Bureau on the first day there-
of to answer to an indictment to be preferred against him
for feloniously Stealing and Carrying away a quantity of boots
and shoes. The property of Jonathan Nigercy. on The 13th day
of June 1853. 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 to remain in full force and virtue

Subscribed and acknowledged
before me the day and year
above written

William McKee J.P.

C. A. Hill (Lst)
J. D. Garton (Lst)
Fred W. Bacon (Lst)
Marion Hill (Lst)

Bureau Circuit Court
Held before the Honorable W. A. Leland Judge of
the Ninth Judicial Circuit of the State of Illinois
at the Autumn Term of the said Circuit Court. in
and for The County of Bureau. begun and held at the
Court House in Princeton in said County on Monday

The tenth day of January in the year of our Lord
one Thousand Eight Hundred and fifty three.

Present. Hon^{ble} L. G. S. Leland Judge.

Edmund M. Fisher Clerk.

Conyn Smith Sheriff.

Wm. H. S. Wallace States atty.

The People

vs Ind^t for Larceny
Constantine Hill

Now Comes Wm. H. S. Wallace the attorney
for the People, and the said defendant being three times
solemnly called to come into Court, and answer according to
the tenor and effect of the said Recognizance comes not but
makes default. And John D. Fulton, Frederick W. Bacon,
and Marion Hill the securities in the said Recognizance
being each three times solemnly called to bring forth into
Court here the body of the said defendant Constantine
Hill, bring him not, but make default. It is therefore
considered by the Court that the said people of the
State of Illinois, have and recover of the said defendant
Constantine Hill, and the said securities, John D. Fulton
Frederick W. Bacon, and Marion Hill the sum of one
hundred and fifty 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
Scirefacias against the said defendant, and the said
securities herein be issued herein returnable to the
next term of this Court, requiring them to show cause
if any they have why the said people shall not have execution
against them for the amount of said Recognizance so fol-
-feited as aforesaid

State of Illinois Bureau County & The People of the
State of Illinois. To The Sheriff of Bureau County Greeting.
Whereas heretofore to wit, on the thirtieth day of September
A.D. 1853. Constantine Hill as principal and John D. Gorton
Frederick W. Bacon. and Marion Hill as security came
before William McKee an acting Justice of the Peace in and
for the County of Bureau, The said Constantine Hill having
been duly arrested and brought before the said Justice
on a Warrant issued by E.S. Seland, Judge of the Ninth
Judicial Circuit on a complaint for Larceny against The
said Constantine Hill, and the said Constantine Hill
John D. Gorton, Frederick W. Bacon, and Marion Hill
did then and there in said County of Bureau do & seal
execute and deliver to the said Justice a certain bond
or Recognisance whereby they severally acknowledged their
debts to owe to the People of the State of Illinois the sum
of one hundred and fifty dollars to be made and
levied of their respective goods and Chattels lands
and tenements to the use of the said people if default
should be made in the Condition following to wit,
That if the said Constantine Hill shall personally be and
appear at the next term of the Circuit Court to be held
in and for the County of Bureau on the first day thereof
to answer to an indictment to be preferred against him on
the Charge for larceny as aforesaid. which said bond or
recognisance was duly filed of Record in the office of the
Clerk of the Circuit Court of said Bureau County on the
eleventh day of January A.D. 1853. and whereas at the next
succeeding term of the said Circuit Court, in and for
the said County of Bureau to wit at the January term
thereof begun and held at Princeton in said County
on Monday the tenth day of January A.D. 1853.
the said Constantine Hill being three times solemn-
ly called to come and answer to the said indictment

Which were 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 recognisance and the said John D. Garton, Frederick W Bacon and Marion Hill, being each severally three times solemnly called to appear and produce the body of the said Constantine Hill, before said Court, failed and neglected to present the body of the said Constantine Hill, before said Court as by the said recognisance they were required to do.

It was therefore then and there considered by The Court that the said Recognisance was forfeited, and that the People of the State of Illinois, have and recover of the said Constantine Hill, John D. Garton, Frederick W. Bacon and Marion Hill, the sum of One hundred and fifty dollars the amount of the said recognisance together with all their costs and charges in and about their suit in this behalf expended, and that a writ of scirefacias be issued herein against the 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 recognisance so forfeited as aforesaid.

We therefore Command you to summon the said Constantine Hill John D. Garton, Frederick W Bacon and Marion Hill, if to be found in your County 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 fourth Monday in the month of March A.D. 1853. 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 the said Recognizance
and further to do and receive whatever our said Court
shall then and there consider and adjudge against them
in that behalf - hereof fail not and make due
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
held as aforesaid.



Witness Edward M. Fisher Clerk of our
said Court and the Seal thereof at
Princeton in said County. This seventeenth
day of March in the Year of our Lord
one Thousand Eight Hundred and
fifty Three Edward M. Fisher
Clerk

I have executed the within writ by reading the same
to and in the presence and hearing of the within named
John D. Barton & Frederick W. Bacon. This 17th day of
March A.D. 1853. The within named Constantine Hill
and Marion Hill not found in this County

Osmyn Smith Sheriff
Bureau County Ills

Plas before The Hon^{ble}. Edwin S. Leland Judge of the Ninth
Judicial Circuit of the State of Illinois at the March
Term of said Circuit Court in and for the County of Bureau
begun and held at the Court House in Princeton in said
County, on Monday the twenty eighth day of March, in the
Year of our Lord one Thousand Eight Hundred
and fifty Three

Present Hon^{ble} Es S. Leland Judge

Edward M. Fisher Clerk

Osmyn Smith Sheriff

Mrs H. G. Wallace States atty.

The People

vs

Sci fa on forfeiture of Recogn.

Constantine Hill

Frederick W. Bacon

John D. Garton &

Marion Hill

Now come The defendants Frederick W Bacon
and John D. Garton. by Johnson their attorney and file
their plea herein in the words and figures following
to wit,

State of Illinois Bureau County &

The People

vs

ss. Debt on Recognizance

Myraim Hill

John D. Garton

Frederick W. Bacon

The said defts. by J. W. Johnson their atty.
Come and defende the wrong and injury when &c.
and say that the said supposed Recognizance is not
their deed and of this they put themselves upon the Country
and the people do the like by Wallace States atty.
and the said defts by their said atty Come and defend
the wrong and injury when &c. and say that they they
do not owe the said sum of money above demanded
or any part thereof in manner and form as the said plff
hath above thereof complained against them, and of
this the said defts put themselves upon the Country
& the People do the like - by Wallace States atty.

And for a further plea in this behalf
The said defts by their atty. Come and defend the wrong
& injury when &c. and say that there is not any record
of the said supposed Recognizance in the said declara-
tion mentioned remaining in the said Court in manner

and from as The said plff. hath above in his said declaration alleged. and this the said defendants are ready to verify whereof they pray judgment if the said plff. ought to have or maintain the aforesaid action thereof against the said depts.

and for a further plea in this behalf the said depts. by their said atty. Come and defend the wrong and injury when &c. and say that the said plff. ought not to maintain the aforesaid action, because the said supposed Recognizance was not executed. & the bail taken by the justice in his Court, that said supposed Recognizance was executed in a Hall without the presence of the justice and did not receive his acknowledgment. and this the said defendants are ready to verify.

S. W. Johnson

Atty for depts.

And Wm H. S. Wallace States atty. Comes in behalf of the People and files his demer to the defendants first plea herein. To wit.

State of Illinois

Bureau County & Circuit Court Thereof of March

Term AD 1853.

The People of the State of Illinois

vs

Marion Hill

John D. Gaston &

Frederick W Bacon vs pleaded

With Constantine Hill

} See for on
} Recognizance

and The said People by Wallace States attorney Come and say that the matters and things alleged in the first & fourth plea of said defendant Marion Hill. John D. Gaston & Frederick W Bacon are insufficient in law to bar the said people of their right to have Execution

of said sum mentioned in said Recognizance & Scirifacius thereon against said defendants & This they pray may be inquired of by The Court.

Wallace

States atty.

And The Court Considers that said demurer be over-ruled. and by leave of The Court given on motion of said attorney. he files their replication to the said defendants pleas, and The said attorney demurs to the fourth plea of The said defendants as follows, to wit. And The said people by Wallace States Attorney Comes and to The Third plea of said defendants Bacon, Garton. & Marion Hill by Their above pleaded, says that there is a record of The said Recognizance now remaining in The said Court in manner and form as The said people have above alledged, and of This The said people put themselves upon The Country.

Wallace States atty.

which said demurer is sustained by The Court. and The Court Orders that a jury be empaneled to try The said issue herein, and There Comes a jury of Twelve good and lawful persons to wit. Dennis A. Cusic. Solomon Robinson. Michael Witterman. Joseph H. Keyes. Joseph S. Clunk. Fitzyon Cummings. John Elliott. Cyrus Colton. John H. Campbell. Alex. Holbrook. James Fisher. and Peterish Mackley. who are duly Elected tried and sworn well and truly to try The said issue according to law and evidence upon Their Oaths say we of The Jury do find The said issues for The said people.

The People

vs

Forfeiture of Recogn

Constantine Heill

Frederick W. Bacon

John D. Garton &

Marion Heill.

Now Come the said defendants
Frederick W. Bacon and John D. Garton, by Stickey
Their attorney and enter their motion for an arrest
of Judgment herein which said motion is overruled
by the Court. It is therefore Considered by The Court
that the said people have execution against The
said defendants, Frederick W. Bacon and John D.
Garton, for the said sum of One Hundred and
fifty dollars the amount of the said Recognizance
so forfeited as aforesaid. Together with all their
costs and charges in and about their suit in this
behalf expended

State of Illinois Bureau County ss 3

I Edward M. Fisher Clerk of The Circuit Court
in and for said County do hereby Certify that
The foregoing is a true and perfect Copy of the
Record in the above and foregoing entitled
Cause.

In Witness Whereof I have here
unto set my hand & the Seal of
said Court at my office in Princeton
in said County this 7th day of
May A.D. 1853.

Edward M. Fisher
Clerk

5 P.D.

The People
of the County of
Franklin, N.Y.
vs.
John A. Gorton &
Frank W. Macan

City of Record
1853

Filed May 18th 1853.
Le. Leland Clerk
By J. H. Leland Esq.,

12083

Deposited

1853

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Bureau* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which
was in the Circuit Court of *Bureau* county, before the Judge thereof, between

The People of the State of Illinois plaintiffs, and *Fredrick W. Bacon*
and *John D. Garton* impleaded with *Constantine*
Hill and Marion Hill

defendants it is said manifest error hath intervened, to the injury of the aforesaid
Fredrick W. Bacon, and John D. Garton
as we are informed by *their* complaint, and we being willing that error, if any there be, should be
corrected in due form and manner, and that justice be done to the parties aforesaid, command you that
if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the
Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same,
under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county
of La Salle, on the *second Monday in June* next, that the record and proceedings,
being inspected, we may cause to be done therein, to correct the error, what of right ought to be done
according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said
Court, and the seal thereof, at Ottawa, this *18th*
day of *May* — in the year of our Lord one thousand eight
hundred and fifty *three*.

L. Ireland Clerk of the Supreme Court.
By *L. Ireland* *sup. Clk.*

People's cause - No. 5,
Bureau Co.

Frederick W. Bacon *et al.*
vs.
The People &c -

Writ of error.

Filed May 18th 1853.
L. Leland Clk.
By P. K. Leland Depy.