

No. 14585

Supreme Court of Illinois

Gingrich et al

vs.

People

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

People's Causes.

No. 13

J. W. Middleton & Co., Stationers, 196 Lake St.

Longue
J. K.

People

1864

1864

THE STATE OF ILLINOIS, THIRD GRAND DIVISION,

IN SUPREME COURT,

To April Term, A. D., 1864.

BRIEF.

CHRISTIAN GINGRICH, *et. al.*,

vs.

THE PEOPLE OF THE STATE
OF ILLINOIS.

Appeal from Woodford, April Term Supreme Court, A. D. 1864.

6th. The recognizance was improperly admitted in evidence. It did not show he was recognized to answer an indictable offense. The recognizance is to answer for "an assault with a sharp knife." This is not of itself indictable, and if any other offense had been charged, the securities might have refused to become bail. Nothing can be taken by implication against bail. They cannot be held beyond their express undertaking.

In 1st Dana 165, the Court says: "The latter (recognizance) requires an appearance to answer a charge of "gaming" simply. As therefore gaming is not of itself and alone, and indictable offense, the recognizance cannot be the foundation of a judgment, and, therefore, according to the principle decided in 3 J. J. Marshall (641) the demurrer to the *scire facias* was properly sustained.

1 Dana, 523: "The recognizance is not good on its face. It contains nothing to show that the principal cognizor was charged with felony."

4 Mass. 643: "In the condition of the recognizance the Justice ought to have recited so much of the cause that it might appear that he had legal cognizance of it.
* * * * * We cannot presume anything in favor of the jurisdiction of a Justice of the Peace."

16 Mass. 446. The condition of the recognizance was, that defendant should personally appear to answer such matters and things as should be objected against him on behalf of the commonwealth, and should do and receive that which the Court should then and there enjoin upon him and not depart without leave. The Court says: "It is essential to a recognizance of this kind that it shows the cause of taking it."

In 19 Texas 293: It was held a recognizance to answer an indictment "for betting money upon a certain game of cards" was void, the charge recited not being an indictable offense of itself. So also, a recognizance to appear and answer an indictment for "playing at a game of cards is bad, because simply "playing at a game of cards" is not indictable. (7 Texas 547, 8 Texas 173, 6 Mich. R. 385, 7 Hill 39 and 44.)

A recognizance "to answer to the complaint brought against him for having been concerned in a row in the Orleans ball room, within the jurisdiction of the Court" does not show *per se* an indictable offense, and is void. (10 La. A. R. 302, 3 La. A. R. 15 and 225, 4 La. A. R. 515.)

The recognizance cannot be explained by reference to the indictment. (8 La. A. R. 471.)

The Court cannot infer anything against a security, or hold him liable for any more than he agrees to become bound for. If the principal were charged with a different offense they might refuse to become bound. (3 La. A. R. 15 and 225.)

6th. The Court having admitted the recognizance in evidence improperly, a new trial should have been granted.

7th. The replication of the people to the first plea of defendant, Christian Gingrich, and the demurrer to the second plea not having been signed by counsel, the same were nullities, and the motion in arrest should have been allowed, as also upon the whole record it did not appear that the people were entitled to execution.

The object in requiring the signature of counsel to pleas and demurrers is to prevent sham, absurd, and frivolous allegations from being placed in the record, "and if the signature be omitted, or if the pleas on their face be manifestly sham and intended for delay, they are nullities." (5 Johnson R. 235, Macnamara on Nullities 4.)

This is so even when there are other pleas going to the whole declaration which do not require to be signed. (9 Dowl. 751, Mac. on Nullities 152.)

There is the same necessity for signing replications and demurrers that there is for signing pleas.

M. WILLIAMSON,
Attorney for Plaintiff.

13, - 147

In the Supreme Court,

APRIL TERM, A. D., 1864.

CHRISTIAN GINGRICH, *et al*,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

BRIEF.

Emery & Andrews, Printers and Blank Book Manufacturers, Peoria, Ill.

Filed April 19. 1864
L. Leland
Clerk

Christian Gingrich } Supreme Court
John Lutz et al } April term 1864
19 }
The People vs }
}

Argument of M. Willardson

In addition to the authorities cited in the brief of plaintiff I wish to call the attention of the Court to the following
The Case of The People vs. New-York Common Pleas 2 Wendell R 251 was a writ on recognizance of bail - The defense was that the principal was imprisoned for debt in another State. The Court extended the time for surrender of the principal from term to term until November 1828 and it then still appearing that the principal was still in imprisonment for the debt an order was made staying proceedings on the recognizance and giving the bail 30 days to surrender the principal after his discharge from imprisonment. Application was then made to the Supreme Court for a mandamus to compel the Common Pleas to proceed and try the case - but the Supreme Court held the decision of the Common Pleas was correct and proper and refused the writ.

This authority supports the plea as well as the affidavits for continuance. They show it to have been utterly out of the power of the bail and without any fault or neglect of their own to surrender the principal and that he was not allowed to surrender himself in discharge of his recognizance. They also show the principal to be beyond the jurisdiction of the state and subject to military authority and for the purposes of this suit as much imprisoned and restrained of his liberty as though he were within the walls of a dungeon for debt or crime. It would be a strange anomaly in law if the bail would be relieved from liability when the principal was imprisoned or restrained from his liberty for debt or crime and yet would hold them liable when he was in just as much confinement and deprived of his liberty and under necessary restraint and fighting to preserve that very government that was then prosecuting him. The government says to him the Crisis and peril of our institutions are so great that you can not be allowed to surrender yourself and the court says ~~there is no~~ ~~matter~~ ~~that~~ ~~the~~ ~~court~~ ~~order~~ ~~that~~ ~~you~~ ~~are~~ ~~in~~ ~~default~~ ~~for~~ ~~not~~ ~~surrendering~~ ~~yourself~~ ~~when~~ ~~the~~ ~~land~~ ~~the~~ ~~peril~~ ~~of~~ ~~the~~ ~~government~~

Again the Case of Thomas vs Buckley
5 Cowen R 25 - decides that an exonerator
will be entered where the bail have made
a bona fide attempt to surrender the
principal but were prevented on account
of sickness of the principal and this also
after liability of bail had become fixed
and after the 8 days allowed by law for
his surrender - The fact of the sickness
unknown to bail may be set up after
the liability has been fixed by law - because
the bail has not been guilty of laches

16 Mass 218 - This case proceeds upon the
principle that bail can procure a writ of
Habeas Corpus and surrender the principal
and when that can be done bail will be
helden - The pleas and affidavits
show that the principal could not have
been procured nor surrendered by writ
of Habeas Corpus and therefore being
out of the power of his bail without fault
of any one, to surrender the principal, the
bail should not be charged with the
debt particularly after having made such
extraordinary effort to procure his surrender

I think the true and just practice is
and should be in view of the object of the
law being to compel the surrender of the

principal and where the bail are not guilty of laches and where the principal cannot from any cause be surrendered is to extend the time as in the New York Case to some limited time after the principal is set at liberty so that he can be surrendered - They are only his jailors and the design of the law is not to punish them with penalties and forfeitures but to enable them to discharge their duties as such jailors when it can be done - And when it is shown that it is beyond their power on account of the address of the principal they are released unless the Court in its discretion should extend the time or continue the cause until that address is removed - The principle on which bail is held is that they have the power and authority to arrest and surrender the principal

Theobald on Security page 210 says "If the Defendant succeeds to peerage or becomes a member of the house of Commons or receives sentence of transportation - or is sent out of the Kingdom under the alien act or dies before the bail is fixed, the bail are discharged because the effect of either of these events is to deprive the plaintiff

of his authority or power over the person of the defendant and the bail of right have no power to render the defendant "

So in this case the reason applies as given above. The bail of right have no power to take the defendant from the active military service of the Country when the military authorities are daily expecting a battle to be fought that would settle the fate of the nation for weal or woe as was the case when the bail endeavored to arrest the principal and when as secretary Stanton when application was made to him said there was no time to attend to such small matters. - At that time the Court judiciously Refuse for it is a matter of history that the two contending armies were facing each other just after the battle of Gettysburg and another battle daily expected and the peril seemed so imminent that all communication between the army and civilians prohibited by the proper authorities - To tell the ^{Securities} ~~prosecutors~~ that notwithstanding all this it was his duty to arrest and surrender the principal ^{would be} ~~was~~ an insult to common sense. - They did not have the power - There was no civil

Authority in the land to do so - It was
an impossibility to do so - And in the
language of Theobald quoted above "The bail
of right have no authority to do so"

Lord Kenyon decided that when the
impossibility to surrender the principal
did not arise from any act they could
control but from the operation of an act
of parliament the bail would be dis-
charged - This arose from the act of
Congress and the government - It arose
from the duty that the subject owes to
his government which is the highest duty on
earth - It was a legal duty of the principal
to protect and defend the government even
to the offering of his life on the bloody battle
field which again and again he did
It was a duty paramount to that of answer-
ing a petty indictment - He was lawfully
defending his Country but the peril was
too great to spare him for a day and he
was justly and rightfully restrained from
going and the bail were rightfully and
legally refused permission to arrest and
take him and this being right the judg-
ment that condemns and imposes a pen-
alty on him and the bail must be wrong
In 3 Hill R 570 the declaration

was upon a recognizance to appear
and answer a Criminal Charge - Plea
that after the making of the recognizance
and before the appearance day the prin-
cipal was arrested on a charge of larceny
and committed to the jail of another
County and was afterwards convicted
and sent to the State prison where he
had ever since remained - This plea was
demurred to and the Court held the plea
good - The Court say when the perform-
ance of a Condition has been rendered im-
possible by the act of God or the Law, or
of the obligee the default is excused - The
Court then cite a passage from Comyns
as follows, "So if there be a recognizance to
the King for appearance and the party is
imprisoned by A & B who acted by lawful
authority of the King" that the performance
of the Condition is excused -

And I apprehend that when the fact
of imprisonment is shown the Court would
not stop to inquire whether the imprison-
ment was legal or illegal, only so far as to
know that the principal could be released
on Habeas Corpus to be surrendered.

The fact that the principal entered the
service voluntarily should make no

difference - He did his duty and no more
even if he did wrong his bail should not
suffer for that - He certainly occupies
no worse position than a principal on bail
bond who commits Crime voluntarily and
thereby places himself beyond the
power of the bail to arrest and surrender
him - Nor could he know at the time
that he enlisted that he would ever be
ordered out of the jurisdiction of the State
nor that he would be absent 60 days as
all persons hoped the rebellion would
be short lived and our soldiers soon
be permitted to return - But all
authorities agree that imprisonment for
Crime is a good defense and if so I
am at a loss to see why any kind of
legal restraint that puts it beyond the power
of the bail to surrender is not a good defense
It may be that no precedent can be found
where the mere fact of voluntarily entering
the military ^{service} would alone be sufficient to
exonerate bail but where he once enters and
is held beyond the reach of legal process and
under such circumstances as set forth in
the pleas and motion for a continuance
a Court should not hesitate to hold that the
bail are exonerated or at least that the

Cause should have been continued until the time arrived when he could be surrendered - There may be authorities found that it is not a good defense that the principal has entered the military service - but the entering of the military service is not the defense so much as the restraint under which the principal was, rendering it utterly impossible that he could have been surrendered - It is a grievous hardship upon both principal and bail to impose a penalty upon them for a thing wholly beyond their power or control and one which was intended to aid the country and preserve the government in the sorest hour of its calamity. Such motives and conduct ought to cover a multitude of shortcomings instead of being made the means ~~for~~ or cause of penalties or punishment - Even if there were no precedent in favor of it, it is so manifestly just that it would be creditable that the Court should make one. When the widow whose only son had been slain in battle made application to Secretary Stanton for his remains to be conveyed to her and some one told

him there was no precedent for it. "Then,"
said Stanton "I will make a precedent,"
and he did. - So if the law is that a
Criminal and his bail are excused
because the principal commits a serious
crime the Court is certainly justified
and required to make a precedent giving
the brave defenders of our country as many
benefits and privileges as are accorded
to criminals. - If it is the law that the
soldier when defending his country is such
peril that he cannot leave his post of duty
must with his bail suffer a forfeiture on
account of absence caused by that peril
while a dungeon bound Criminal would
be excused then it is high time that law
was changed and I know of no State
more entitled to lead the van in this good
work than the gallant and glorious State
of Illinois. - It is but a simple duty to
our soldiers that ~~it should~~ they should have
all the rights accorded to criminals and
none too. - But I can not believe but
what they have. - I think the principle of
law cited in the authorities sustains this
position. - but if the Court should differ
with me on that then let them make a
precedent giving the soldier under military

restraint in times of gigantic struggles for
the life of our republic - in times of national
peril - when they dare not leave the post
of duty and carnage - all the rights that
the Court would give a penitentiary con-
vict absent on account of crime voluntarily
committed -

In view of the principles cited above and if
they are correct then the Court erred in over-
ruling the motion for a continuance and
also in sustaining the demurrer to the 5th
plea - The plea showed that execution
should not issue and the truth of the
matters alleged therein are admitted
by the demurrer - It is hard to con-
ceive of stronger reasons why execution
should not be issued - The people should
have denied the facts alleged in the
plea, or taken issue thereon or made
application for postponement of the law
until the principal was discharged from
such arrest - The object of the law is to
compel the bail to surrender the principal
not to impose forfeitures on them

So when defendants asked time to be
allowed to surrender the principal the

Should have been continued and opportunity given them to do so after the peril that then threatened had passed away - For these reasons above given I think the judgment ought to be reversed and the bail to have time to surrender the principal after his release -

In addition to the authorities in the brief as to the recognizance showing the Commission of a crime I refer the court to the following

The case of *The State of Miss vs Broom* 25 Miss 206 was a case where the recognizance was for the appearance of the principal to answer a charge of buying and receiving from a particular slave naming him - Whereas the *Scire facias* recites a recognizance to appear and answer to a charge of buying from a slave generally and without identity - The Court say for this variance the demurrer must be sustained and judgment below affirmed

The principle of all the authorities in this respect is that bail cannot be held further than he has himself contracted to

become liable and must be allowed as
all other sureties to make his own contract.
So when a recognizance is presented to him
to be signed and upon inspection of the
terms of the recognizance he sees that he is
arrested and required to give bail in order
to release his body from a charge which
is not an offense in law the bail can not
be held - Had the recognizance specified
and set forth a crime the sureties might have
refused to become bail - They as much as
any others must be allowed to make their
own bargains - and the recognizance cannot
be aided by the finding of an indictment
nor by averment in the scire facias - Had
an indictment set forth the offense in the
same way (an assault with a sharp knife)
it would have been quashed on motion
or if not and the defendant found guilty
what sentence could the Court have passed
upon the defendant? Would he have been
punished merely for assault which is not
indictable or for assault with a deadly
weapon or for assault with intent to com-
mit murder? The recognizance specifies
only a simple assault which is not indict-
able and therefore the same should not
have been admitted in evidence - and.

The motion in arrest should have prevailed - There was no Cause shown why the execution should issue

Having full confidence in the answers to the questions raised I will not add any comments upon the others raised by the record - but would refer the Court to the brief for the points and authorities

W. Williamson

Atty for pffs

13. ~~13~~ P.S.
much it is
The People &c

No 17 Copies docket

Filed May 18. 1864.
L. Keland
Clerk.

The clerk will please file
with the papers in this case
the following

Supreme Court of the State of Illinois
April Term 1864

Christian Guigovich
et al
vs.
The People &c

Prints & Authorities for Defts in Error

The recognizance describes the offense as "an assault with a sharp ^{knife} upon Elizabeth Gingrich". The Sci. Fa. alleges that an indictment was subsequently found against the principals for an assault upon Elizabeth Gingrich with a certain knife with an intent her feloniously, unlawfully, & with malice aforethought to kill &c. & that the assault charged in the indictment is the same mentioned in the recognizance. This averment cures the defects in the recognizance.

McHardy et al vs People 13 Ill. 9

Thomas et al vs Same " " 696

People vs Baughman 18 Ill. 153

The indictment is that a sharp knife, is a deadly weapon & that a party, making an assault with a deadly weapon intends the natural consequences viz. a killing; from which malice is implied. Besmer et al vs People 15 Ill. 439

People vs Baughman 18 Ill. 152

Young et al vs People 18 Ill. 567

State vs Williams 17 Ark. 371

The effect of the recognizance is
it requires the principal to appear
& answer ~~to~~ ^{to} charge whatever
~~for any offense for~~
~~which he may be indicted.~~

Gildersleeve vs Peop 10 Barb R. 33

The name of the prosecutor
appears in the body of the
prepetition & return
this is sufficient.

D. P. Jones

Statically

13-147
Kriegsmann et al.

vs
The People

Points for People

Filed August 21st 1864
L. Leland
Clerk

IN THE SUPREME COURT,

APRIL TERM, A. D. 1864.

CHRISTIAN GINGRICH,
JOHN LUTZ,
FREDERICK DONNER,
AND
CHARLES SCHNEIDER,

vs.

THE PEOPLE OF THE
STATE OF ILLINOIS.

APPEAL FROM WOODFORD.

This was a proceeding by *scire facias* on forfeited recognizance, in which Christian Gingrich was principal, and the other plaintiffs above were securities.

Page 1. The *scire facias* alleges that Christian Gingrich was brought before Adino Page, J. P., and examined upon a charge of committing an assault ~~and battery~~ with a sharp knife, and held to bail in the sum of \$800, and that the above named other plaintiffs became his securities conditioned for the appearance of the said Christian Gingrich before the then next term of the Circuit Court of Woodford county, to be holden in December, 1862, shows default and forfeiture, &c. This was served on two of the securities in Woodford county, alias issued to Peoria county and served on the other two securities; all the securities appeared and pleaded, and the cause

ASSIGNMENT OF ERRORS.

1. The Court erred in sustaining the demurrer to 5th and 6th pleas of the securities, Lutz, Donner, Schneider and Gingrich.
2. The Court erred in sustaining the demurrer to second plea of the principal.
3. The Court erred in overruling defendants motion for a continuance.
4. The Court admitted improper evidence to the jury.
5. The Court erred in overruling defendants motion to set aside the verdict and for new trial.
6. The Court erred in overruling the motion of defendants in arrest.
7. The Court erred in amending the verdict of the jury.

M. WILLIAMSON,

The people's attorney offered in evidence the record of forfeiture, which was objected to.

The prosecution then offered in evidence the recognizance which was also objected to, but the Court overruled the objection and defendant excepted.

One objection to the recognizance was that it did not show the principal was recognized to answer an indictable offense, and further, because it is void. The principal was recognized to appear and answer "on a charge of assault with a sharp knife upon Elizabeth Gingrich," and was not stamped.

The jury found a verdict for the plaintiff and assessed the damages at \$800, which the Court, against the objection of defendants, altered as follows:

"We, the jury, find the issues found for the plaintiff, and find the amount acknowledged to be due by defendants in the recognizance to be the sum of eight hundred dollars."

Motion to set aside verdict and for a new trial.

1st. Because the Court admitted improper evidence for plaintiff.

4th. Verdict is against the law.

5th. It should have been for defendants.

6th. Because the Court erroneously changed the verdict.

The Court overruled the motion and defendants moved in arrest of judgment.

1st. Because *scire facias* issued against one of the defendants was not stamped.

2d. The *scire facias* is void and does not show the people entitled to execution.

3d. The issues were not made up, the replication and demurrer of plaintiffs not having been signed.

The Court overruled the motion and rendered judgment.

Defendants excepted and prayed an appeal, and filed bond.

73-147

In the Supreme Court,

APRIL TERM, A. D., 1864.

CHRISTIAN GINGRICH, *et al*,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

ABSTRACT.

Emery & Andrews, Printers and Blank Book Manufacturers, Peoria, Ill.

Filed April 19, 1864
Leland C. M.

Page 1
Proceeding in the Circuit Court of Woodford
County in the State of Illinois in a certain cause wherein
The People of the State of Illinois are Plaintiff and Christian
Kingrich, Charles Schneider, Jacob Kingrich, John Lutz and
Frederick Donner are Defendants, Scire facias on Recognizance

(Copy of Scire facias to Woodford County)

State of Illinois ss

Woodford County ss The People of the State of Illinois

To the Sheriff of said County Greeting.

Whereas heretofore to wit, on the second day of September
AD 1862 one Christian Kingrich was brought before Adino
Page Esquire one of the Justices of the Peace in and for said
County of Woodford and examined upon a charge of
committing an assault with a sharp knife upon one
Elizabeth Kingrich; and the said Justice having inquired into
the truth or probability of said charge by the oath of all
the witnesses attending, did order and require that said
Christian Kingrich give bail with good and sufficient
security in the sum of eight hundred dollars for his
appearance, at the then next term of the Circuit Court
of said County of Woodford on the first day of the term
to answer the said charge, and to do and receive what
might be then and there enjoined upon him by the said
Court and not depart the said Court without leave.

Whereupon on the said second day of September AD 1862
the said Christian Kingrich as principal and Charles Schneider
Jacob Kingrich, John Lutz and Frederick Donner as sureties
personally came before said Adino Page Esquire one of the

Justices of the Peace in and for the County of Woodford
aforesaid, and then and there, by their recognizance in writing
by them duly signed and sealed, jointly and severally,
acknowledged themselves to owe and be indebted unto the People
of the State of Illinois the sum of eight hundred dollars, to
be levied of their respective lands and tenements, goods and
chattels; Yet upon the condition, that if the said Christian
Gingrich should personally be and appear before the Circuit
Court of the County aforesaid on the first day of the then
next term thereof, and from day to day thereafter untill discharged
by order of the said Court, then and there to answer to the
said People on the said charge, abide the order and judgment
of the said Court, and not depart the same without leave,
then the said recognizance should become void, otherwise
should remain in full force; which said recognizance was
then and there taken and approved by the said Justices and
afterwards to wit, on the fourth day of September A.D. 1862
by him filed in the office of the Clerk of the said Circuit
Court and became a matter of record therein; as by the
record of the said recognizance still remaining in the
said Court will appear. And whereas afterwards to wit
at the December Term of the said Circuit Court, A.D. 1862
the Grand Jurors for the County aforesaid preferred against
the said Christian Gingrich and returned into the said Court
on the ninth day of the said month of December, a
certain Bill of indictment, wherein it was presented, that
the said Christian Gingrich, on the first day of September,
in the year aforesaid, at the County aforesaid, with a
certain knife made of steel, iron and horn, which he the

3
said Christian Kingrich in his right hand then and there
had and held (the blade of the said knife then and there
being of the length of three inches and of the width of
half an inch) in and upon one Elizabeth Kingrich did
make an assault with an intent her the said Elizabeth
Kingrich then and there feloniously wilfully and of his
malice aforethought to kill and murder which said assault
in the said indictment charged is the same assault in the
said recognizance mentioned, And whereas afterwards
to wit, at the said December term of the said Woodford
County Circuit Court A.D. 1862, the same being the
first term of said Court next succeeding the date of
the aforesaid recognizance, and the said Court being then
judicially sitting, the said Christian Kingrich was three times
solemnly called, yet he came not, but made default; and
the said Charles Schneider, Jacob Kingrich, John Lutz and
Frederick Donner were each likewise three times solemnly called
to bring into Court the body of the said Christian Kingrich,
yet they came not, but likewise made default, and failed to
bring into Court the body of the said Christian Kingrich;
whereupon it was considered and adjudged by the said Court
that the said recognizance be taken for and declared forfeited,
and that a scire facias issue against the said Christian
Kingrich, Charles Schneider, Jacob Kingrich, John Lutz and
Frederick Donner, These are therefore to command
you that you make known to the said Christian Kingrich,
Charles Schneider, Jacob Kingrich, John Lutz and Frederick
Donner that they and each of them personally be and
appear before our Circuit Court, to be holden in and

for the County aforesaid at Metamora on the second Monday
of April A.D. 1863, then and there to show cause, if any they
may or can have, why execution should not issue against
them, upon their aforesaid recognizance, according to the
form, force and effect thereof, and of the forfeiture aforesaid,
And have you there this writ, with a return of your
doings thereon

Seal

Witness James D Perry Clerk of our said
Court and the seal thereof at Metamora
this eighteenth day of February A.D. 1863
James D Perry Clerk

Filed April 13th 1863

James D Perry Clerk

(Upon which writ is the following return)

I have duly served the within writ by reading the
same to the within named Jacob Gingrich and Frederick
Donner fees 2.40 April 3rd 1863 L. H. Bullock Sheriff W. C.
Charles Schneider and John Lutz not found
in my County April 11th 1863

L. H. Bullock Siff

(Copy of Scire facias to Peoria County)

State of Illinois 33
Woodford County 3

The People of the State of Illinois To
the Sheriff of Peoria County Greeting;

Whereas heretofore, to wit, on the second day of September
A.D. 1862, one Christian Gingrich was brought before Elders
Page, Esquire, one of the Justices of the Peace in and for
said County of Woodford, and examined upon a charge

After cert. revenue
Stamp affixed
and cancelled

(5)

of committing an assault with a sharp knife upon one Elizabeth Gingrich; and the said Justice, having inquired into the truth or probability of said charge by the oath of all the witnesses attending, did order and require that said Christian Gingrich give bail with good and sufficient security, in the sum of eight hundred Dollars, for his appearance, at the then next term of the Circuit Court of said County of Woodford, on the first day of the term to answer the said charge, and to do and receive what might be then and there enjoined upon him by the said Court, and not depart the said Court without leave.

Whereupon, on the said second day of September, A.D., 1862, the said Christian Gingrich as principal, and Charles Schneider, Jacob Gingrich, John Lutz and Frederick Donner as sureties personally came before said Adino Page, Esquire one of the Justices of the Peace in and for the County of Woodford aforesaid, and then and there, by their recognizance in writing, by them duly signed and sealed, jointly and severally acknowledged themselves to owe and be indebted unto the People of the State of Illinois the sum of eight hundred dollars, to be levied of their respective lands and tenements, goods and chattels; Yet upon the condition, that if the said Christian Gingrich should personally be and appear before the Circuit Court of the County aforesaid, on the first day of the then next term thereof, and from day to day thereafter, until discharged by order of the said Court, then and there to answer to the said People on the said charge, abide the order and judgment of the said Court, and not depart the same without leave, then

the said recognizance should become void, otherwise, should remain in full force; ^{which} said recognizance was then and there taken and approved by the said justice, and afterwards to wit, on the fourth day of September, A.D. 1862, by him filed in the office of the clerk of the said Circuit Court, and became a matter of record therein; as by the record of the said recognizance, still remaining in the said Court will appear. And whereas afterwards, to wit, at the December Term of the said Circuit Court, A.D. 1862 the grand jurors for the County aforesaid preferred against the said Christian Gingrich, and returned into the said Court on the ninth day of the said month of December, a certain bill of indictment, wherein it was presented, that the said Christian Gingrich, on the first day of September, in the year aforesaid, at the County aforesaid with a certain knife made of steel, iron and horn, which he the said Christian Gingrich in his right hand then and there had and held (the blade of the said knife then and there being of the length of three inches and of the width of half an inch) in and upon one Elizabeth Gingrich did make an assault, with an intent her the said Elizabeth Gingrich then and there feloniously wilfully and of his malice aforethought to kill and murder which said assault in the said indictment charged is the same assault in the said recognizance mentioned. And Whereas, afterwards, to wit, at the said December term of the said Woodford County Circuit Court, A.D. 1862, the same being the first term of said Court next succeeding the date of the aforesaid recognizance, and the said Court being then judicially sitting, the said Christian Gingrich was three times solemnly called, yet he came not, but made default; and the said Charles Schneider Jacob Gingrich, John

(8)

The within named Christian Kingrich Jacob Kingrich & Frederick Donner are not found in my County
This 21st Feb 1863

J. A. J. Murray
(Filed March 26th 1863
James D. Perry Clerk)

(Copy of Alias Scire facias)

State of Illinois 388

Woodford County 3

The People of the State of Illinois
To the Sheriff of said County Greeting,
Whereas heretofore to wit, on the second day of
September A.D. 1862 one Christian Kingrich was brought before
Adino Faye Esquire one of the Justices of the Peace in and
for said County of Woodford and examined upon a charge
of committing an assault with a sharp knife upon one
Elizabeth Kingrich; and the said Justice having inquired into
the truth or probability of said charge by the oath of all
the witnesses attending, did order and require that said
Christian Kingrich give bail with good and sufficient security
in the sum of eight hundred dollars for his appearance
at the then next term of the Circuit Court of said County
of Woodford on the first day of the term to answer
the said charge, and to do and receive what might be
then and there enjoined upon him by the said Court
and not depart the said Court without leave.

Whereupon on the said second day of September A.D. 1862
the said Christian Kingrich as principal and Charles Schneider
Jacob Kingrich, John Lutz and Frederick Donner as sureties

(9)
personally came before said Adino Page Esquire one of the Justices of the Peace in and for the County of Woodford aforesaid, and then and there, by their recognizance in writing, by them duly signed and sealed, jointly and severally, acknowledged themselves to owe and be indebted unto the People of the State of Illinois the sum of eight hundred dollars, to be levied of their respective lands and tenements, goods and chattels, Yet upon the condition, that if the said Christian Kingrich should personally be and appear before the Circuit Court of the County aforesaid on the first day of the then next term thereof; and from day to day thereafter until discharged by order of the said Court then and there to answer to the said People on the said charge, abide the order and judgment of the said Court, and not depart the same without leave, then the said recognizance should become void otherwise should remain in full force, which said recognizance was then and there taken and approved by the said Justice, and afterwards to wit, on the fourth day of September A.D. 1862 by him filed in the office of the Clerk of the said Circuit Court, and became a matter of record therein; as by the record of the said recognizance still remaining in the said Court will appear.

And whereas afterwards, to wit, at the December Term of the said Circuit Court A.D. 1862 the grand jurors for the County aforesaid preferred against the said Christian Kingrich and returned into the said Court on the ninth day of the said month of December, a certain Bill of Indictment wherein it was presented, that the said Christian Kingrich, on the first day of September, in the year aforesaid, at the

County - aforesaid, with a certain knife made of Steel iron and horn, which he the said Christian Kingrich in his right hand then and there had and held (the blade of the said knife then and there being of the length of three inches and of the width of half an inch) in and upon one Elizabeth Kingrich did make an assault, with an intent her the said Elizabeth Kingrich then and there feloniously wilfully, and of his malice aforethought to kill and murder which said assault in the said Indictment charged is the same assault in the said recognizance mentioned.

And whereas, afterwards to wit, at the said December Term of the said Woodford County Circuit Court A D 1862, the same being the first term of said Court next succeeding the date of the aforesaid recognizance, and the said Court being then judicially sitting, the said Christian Kingrich was three times solemnly called, yet he came not, but made default, and the said Charles Schneider Jacob Kingrich, John Lutz and Frederick Donner were each likewise three times solemnly called to bring into Court the body of the said Christian Kingrich, yet they came not but likewise made default and failed to bring into Court the body of the said Christian Kingrich, whereupon it was considered and adjudged by the said Court that the said recognizance be taken for and declared forfeited and that a Scire facias issue against the said Christian Kingrich, Charles Schneider, Jacob Kingrich, John Lutz and Frederick Donner. These are therefore to command you (as before we have commanded you) that you

(11)

make known to the said Christian Gingrich, Charles Schneider Jacob Gingrich, John Lutz and Frederick Donner that they and each of them personally be and appear before our Circuit Court, to be holden in and for the County aforesaid at Metamora on the Second Monday of August A.D. 1863, then and there to show cause, if any they may or can have, why execution should not issue against them upon their aforesaid recognizance, according to the form force and effect thereof, and of the forfeiture aforesaid.

And have you there this writ, with a return of your doings thereon



Witness James D. Perry Clerk of our said Court, and the seal thereof at Metamora this first day of July A.D. 1863
James D. Perry Clerk

(on which writ is the following note)

(Serve on Christian Gingrich if found only)

(And on the foregoing writ is the following return

August 4th 1863 I Return the within writ Christian Gingrich not found in my County
per 10 cts
L. H. Bullock Sheriff

(Pleas)

The People of the State of Illinois	}	Circuit Court of Woodford
vs		County April term 1863
Christian Gingrich Charles		Scire facias
Schneider and others		

And now comes the said defendants Charles Schneider Jacob Gingrich John Lutz and Frederick

Domer and for plea to the said Scire facias herein issued say that said People ought not to have execution in said cause against them or either of them because they say there is no such record as in said Scire facias described and this they pray may be enquired of by the Court wherefore they pray judgment &c

M Williamson Defts atty

- 2 And for further plea in this behalf the said Defendants say Actio Non because they say there is no such recognizance remaining of record as in said Scire facias described and this they pray may be enquired of by the Court wherefore they pray judgment &c

M Williamson

Defts atty

- 3 And for further plea in this behalf the said Defendants say Actio Non because they say the said Adino Page was not a Justice of the Peace in & for the County of Woodford legally commissioned as such and qualified to take recognizances in said cause and of this they put themselves upon the Country &c

M Williamson

for Defts

- 4 And for further plea in this behalf the said Defendants by M Williamson their attorney say Actio Non because they say that heretofore to wit on the 1st day of April 1863 at and in the State of Virginia to wit at Woodford County aforesaid the said Christian Gingrich the principal in said bond & recognizance mentioned departed this life and this they are ready to verify wherefore they say the said

(13)

people should not have execution in said cause and
wherefore they pray judgment &c

M Williamson

Atty for Defts

5 And for further plea in this behalf the said Defendants
by M Williamson their attorney say actis Non because
they say that heretofore to wit on 8th day of September
1862 the said Christian Kingrich the principal in said
recognizance mentioned did without the knowledge or
consent of these defendants enlist in the Military service
of the United States of America to wit at the County of
Woodford and State of Illinois in Company "E" of
the 85 Regiment of Illinois Volunteers for the term
of three years or during the present war as a private
in said Company and Regiment and that now
and at all times since the said 8th day of September
1863 the said Christian Kingrich has been and still is
such private in said Company and Regiment, and the
said Defendants further aver that after the said Christian
Kingrich entered into said Military service of the United
States as aforesaid in said Company and Regiment and
whilst the said Company and Regiment were stationed
at the City of Springfield in the State of Illinois the
said Company and Regiment were ordered by the proper
Military authority of the United States of America into
the State of Virginia. And the Defendants further aver
that in obedience to such order afterwards to wit on
the 5th day of October 1863 the said Company and
Regiment departed from the City of Springfield and

(14)

State of Illinois and went to the State of Virginia where they still remain and that the Christian Gingrich was then and at all times since his said enlistment as afore said a member of said Regiment and company and at all times with the same and under the control and command of the proper officers thereof and and was at the time of the forfeiture of the recognizance herein and at all times since such Soldier ^{and} in said Company and Regiment and without the jurisdiction of the State of Illinois and in the State of Virginia and under military law authority and rule and was not at any time at liberty to surrender himself in discharge of said recognizance nor could these said defendants at any time take arrest deliver or surrender him the said Christian Gingrich in discharge or satisfaction of said recognizance and the conditions thereof And defendants aver that they could not at any time get or procure the custody of the said principal by writ of Habeas Corpus or in any other manner or by any other means all of which they are ready to verify - Wherefore they say that the said people should not have execution to levy & collect said amount of said recognizance & Wherefore they pray Judgment &c

W Williamson

Atty for depts

6. And for further plea in this behalf the said defendants say Actio Non because they say that at the time of the taking of the forfeiture ~~in~~ in said Scire facias specified the said Christian Gingrich was and for a long time previous and at all times since then thereto ~~had been~~

(15)

diseased to wit in the State of Virginia sick and disabled
inso~~much~~ that he could not be removed nor brought &
surrendered to this Court or any officer thereof by his
said Securities or bail without great danger of the
loss of his life all of which they are ready to verify
Wherefore they pray judgment if the said People should
have execution to levy & collect said amount of said
recognizance &c

M Williamson

for depts

(Filed April 17th 1863
James D Perry clerk)

(Replication to 1st 2nd 3rd & 4th pleas)
Demurver to 5th & 6th pleas

In the Woodford Circuit Court
of the April Term, A.D. 1863,

The People &c

141

vs

Christian Kirgrich Charles
Schneider Jacob Kirgrich
John Lutz and Frederick Donner

} Seire facias on
recognizance

And James St Clair Boal
States Attorney, who prosecutes for the said People on
this behalf, as to the pleas of the said Charles Schneider
Jacob Kirgrich, John Lutz and Frederick Donner
by them firstly and secondly above pleaded and whereof they
have put themselves upon the Court, doth the like

And the said States attorney, who prosecutes &c, as to
the plea of the said Charles Schneider, Jacob Kirgrich, John

(16)

Lutz, and Frederick Donner by them thirdly above pleaded, and whereof they have put themselves upon the country, and the like

And the said States Attorney, who prosecutes &c, as to the plea of the said Charles Schneider, Jacob Gingrich, John Lutz and Frederick Donner by them fourthly above pleaded, says, that the said Christian Gingrich did not depart this life, in manner and form as the said defendants last above named have have above in that plea alleged; and thus he the said States Attorney prays may be inquired of by the country, &c

And the said States Attorney, who prosecutes &c, as to the pleas of the said Charles Schneider, Jacob Gingrich, John Lutz and Frederick Donner by them fifthly and sixthly above pleaded, says, that the said pleas, and each of them, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said People from having execution against them the said last named defendants upon their aforesaid recognizance and thus he the said States Attorney is ready to verify, wherefore for want of sufficient pleas in this behalf, he prays judgment, and that the said People have execution, &c

James St Clair Boal

States Attorney

(Filed April 20th 1863
James D Perry Clerk)

(17)

People of the State of Illinois }
as } Circuit Court April
Christian Gingrich } Term 1863
John Lutz & al } Woodford Co et

And now comes the said defendant Charles Schneider Jacob Gingrich John Lutz and Frederick Donner and say the said fifth & sixth pleas by them above pleaded and each of them are sufficient in law and that the said People should not have execution on said recognizance and joins in demurrer and this he prays may be enquired of by the Court &c Wherefore he prays Judgt &c

M Williamson
their Atty

(Filed April 23rd 1863)
James D Perry Clerk

(Plea of Christian Gingrich)

The People &c

as } Circuit Court Poria County
Christian Gingrich } Aug Term 1863

And now comes the said Christian Gingrich defendant by M Williamson his Attorney and says that the People &c ought not to have execution aforsaid because he says there is no such recognizance and record as in said Scire facias described and this he prays may be enquired of by the Court &c

M Williamson
his Atty

2 And for further plea the said defendant says the

(18)

People aforesaid ought not to have execution against this defendant aforesaid because he says that at the time of the forfeiture taken upon the recognizance herein and at all times since he was in active Military Service of the United States and subject to Military rules and regulations and the said Military authorities in command of the Army of the Potomac where this defendant was refused to suffer or allow this defendant to surrender himself or be surrendered by his bail in discharge of his said recognizance although he often requested said Military authorities and the proper Military officers to suffer him to surrender himself or be surrendered by his bail herein in discharge of his said recognizance in said Scire facias described all of which he is ready to verify Wherefore he prays Judgment &c

M Williamson

(Filed August 12th 1863
James D Perry clerk)

for Deft

In the Woodford Circuit Court
of the August Term, A.D., 1863

The People &c

vs

Christian Gingrich, Charles
Schneider, Jacob Gingrich,
John Lutz and Frederick
Donner

} Scire facias on recognizance

} And James St Clair Beal
States Attorney, who prosecutes

for the said People in this behalf, as to the plea of the said defendant Christian Guigrich by him firstly above pleaded, and whereof he hath put himself upon the Court, doth the like.

And the said States Attorney, who prosecutes &c. as to the plea of the said Christian Guigrich by him secondly above pleaded, says, that the said plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said People from having execution against him upon his aforesaid recognizance and this he the said States Attorney is ready to verify: Wherefore for want of a sufficient plea in this behalf, he prays judgment, and that the said People have execution, &c.

Filed August 14th 1863

James D Perry Clerk

(Verdict)

In the case of the People vs Christian Guigrich Charles Schneider, Jacob Guigrich John Leutz Frederick Donner, the Jury find the issues joined for the Plaintiffs and find the amount acknowledged to be due by defts in the recognizance to be the sum of Eight hundred dollars (\$800.00)

J E Stitt

J J Smith

Abraham Lovelass

Henry Newell

Wm Bateman

Garman Gish

A B Meek

W M Carson

W. W. Egbert

Mc Newton

Ho S Geer

Joel H Varble

Filed August 15th 1863

James D Perry Clerk By W Sumner Esq

United States of America
 State of Illinois
 Woodford County

ss
 ss
 ss

At a regular term of the Circuit Court of the twenty third Judicial Circuit of the State of Illinois began and held in the Town of Metamora within and for the County of Woodford on the second Monday of August in the year of our Lord one thousand eight hundred and sixty three, being the tenth day of said month.

Present the Honorable Samuel L. Richmond Judge

James D. Perry Clerk

Louis H. Bullock Sheriff

James St. L. Boal State Attorney

Attest James D. Perry Clerk

Saturday August 15th 1863

The People of the State of Illinois

vs

Scire facias No 141

Christian Gingrich, Charles Schneider

Jacob Gingrich, John Lutz and

Frederick Donner

Now on this day the jury empaneled in this cause yesterday August 14th 1863 return their verdict as follows "We the Jury find the issues joined for the Plaintiff and find the amount acknowledged to be due by Defts in the recognizance to be the sum of eight hundred dollars (\$800.00)" And now comes the said Defendants by Williamson their attorney and enter their motion for a new trial, which motion is on consideration by the Court overruled. And now again come the

(21)

said Defendants by their attorney and enter their motion in arrest of judgment, which motion is also on consideration by the Court overruled. It is therefore ordered and adjudged by the Court that the said People of the State of Illinois have and recover of the Defendants Christian Kuegrich Charles Schneider Jacob Kuegrich John Lutz and Frederick Dornier the said sum of eight hundred dollars (\$800.) being the amount found to be due, by the jury aforesaid, also their costs and charges by them in this behalf expended and that they have execution therefor. And now again come the said Defendants by Williamson their attorney and pray an Appeal to the Supreme Court of this, which is by the Court allowed upon the Defendants entering into bond in the penal sum of Eleven hundred dollars conditioned according to law, with security to be approved by the Clerk of this Court by agreement, bond to be filed in thirty days.

(Orders of Court)

United States of America
State of Illinois
Woodford County

33
3

At a regular Term of the Circuit Court of the twenty third Judicial Circuit of the State of Illinois began and held at the Town of Metamora within and for the County of Woodford on the thirteenth day of April in the year of our Lord one thousand eight hundred and sixty three

Present the Honorable Samuel L. Richmond Judge

Attest James D. Perry Clerk

James D. Perry Clerk
Lewis H. Bullock Sheriff
James S. Le Boeuf State Attorney

Tuesday April 14th A.D. 1863

The People of the State of Illinois

vs

Christian Gingrich, Charles Schneider
Jacob Gingrich, John Lutz and
Frederick Donner - - -

Scire facias

No 141

Now on this day come the securities
Charles Schneider, Jacob Gingrich, John Lutz and Frederick Donner
by Williamson their attorney, and enter their motion to set aside
the default, and to be allowed to enter into a new recognizance
for the appearance ~~of Christian~~ of Christian Gingrich at the next
term of this court, which motion is upon consideration by the
court overruled, and now again come the said securities by
their attorney and move the court for continuance. And
now come the said People of the State of Illinois by James St
L Boal their attorney, and move the court for a rule on
the Defendants to plead, which motion is by the the Court
sustained, and a rule is herein entered on the Defendants to
plead by Friday first week April 17th 1863

Thursday April 23rd A.D. 1863

The People of the State of Illinois

vs

Christian Gingrich Charles Schneider
Jacob Gingrich John Lutz and
Frederick Donner - - -

Scire facias on
Recognizance

No 141

This day came the parties the

(23)

People of the State of Illinois by James St L Boal their Attorney
and the Defendants Charles Schneider, Jacob Lingrich John Lutz
and Frederick Donner by Williamson their Attorney and this cause
again came on to be heard on the demurrer of the said People
to the fifth and sixth pleas of the Defendants Charles Schneider
Jacob Lingrich John Lutz and Frederick Donner, And
the Court being fully advised in the premises is of opinion
that the said fifth and sixth pleas are insufficient in law
and it is considered that the Plaintiffs be not barred from
maintaining their action by anything in said pleas contained
and set forth; thereupon the said Defendants abide by their fifth
and sixth pleas, And this cause is continued with alias
Sci fa as to the Defendant Christian Lingrich

United States of America }
State of Illinois } ss
Woodford County } 3

At a regular Term of the Circuit
Court of the twenty third Judicial Circuit of the State
of Illinois began and held in the Town of Metamora
within and for the County of Woodford on the second
Monday of August in the year of our Lord one thousand
eight hundred and sixty three being the tenth day of said
month

Present the Honorable Samuel L Richmond Judge
James D Perry Clerk
Louis H Bullock Sheriff

James St L Boal State Attorney
Attest James D Perry Clerk

Wednesday August 13th A.D. 1863

The People of the State of Illinois
 vs
 Christian Kingrich Charles Schneider
 Jacob Kingrich John Lutz and
 Frederick Donner

} Seire facias No 141

On this day come the People of the State of Illinois by James St L Boal their attorney and move the court for a rule on the Defendant Christian Kingrich to plead by tomorrow morning, which motion is by the court allowed, and a rule is herein entered on the said Defendant Christian Kingrich to plead by tomorrow morning

Friday August 14th A.D. 1863

The People of the State of Illinois
 vs
 Christian Kingrich, Charles Schneider
 Jacob Kingrich, John Lutz and
 Frederick Donner

} Seire facias No 141

Now on this day come the parties The People of the State of Illinois by James St L Boal their attorney and the said Defendants by Williamson their attorney and this cause came on to be heard upon the demurrer of the said People to the Defendant Christian Kingrich's second plea filed herein, and the court being fully advised in the premises, it is ordered and adjudged that the said demurrer be sustained and that the said People have judgment

(25)

on the same. And now again come the said Defendants by their attorney and move the court for continuance which motion is by the court overruled, and thereupon a jury came to try the issues joined, to wit, William Bateman, W.W. Egbert, Job E. Stitt, Henry Newell, King & Geer, William Carson, Abraham Loveless, Melvin Newton, Garman Kish, Joel Baible, Noel B. Meek and J. J. Smith who are duly empanelled and sworn to well and truly try the issues joined between the parties. And the evidence not being closed are adjourned till eight o'clock tomorrow morning.

Saturday August 15th 1863

The People of the State of Illinois	}	Seire facies	No 141
v.			
Christian Gingrich, Charles Schneider	}		
Jacob Gingrich John Lutz and			
Frederick Donner			

Now on this day the jury empanelled in this cause yesterday August 14th 1863 return their verdict as follows "We the jury find the issues joined for the Plaintiffs and find the amount acknowledged to be due by Defts in the recognizance to be the sum of Eight hundred dollars (\$800.00)" And now come the said defendant by their attorney and enter their motion for a new trial, which motion is on consideration by the court overruled. And now again come the said Defendants by their attorney and enter their motion in arrest of judgment, which motion is also on consideration by the court overruled. It is therefore

26)
ordered and adjudged by the Court that the said People of the State of Illinois have and recover of the Defendants Christian Gingrich, Charles Schneider, Jacob Gingrich John Lutz and Frederick Donner the said sum of Eight hundred dollars (\$800-) being the amount found to be due, by the jury aforesaid, also their costs and charges by them in this behalf expended and that they have execution therefor. And now again come the said Defendants by Williamson their Attorney and pray an appeal to the Supreme Court of this State, which is by the Court allowed upon the Defendants entering into bond in the penal sum of Eleven hundred dollars conditioned according to law, with security to be approved by the Clerk of this Court by agreement, bond to be filed in thirty days—

(Bill of exceptions)

People &c }
vs }
Christian Gingrich et al } Circuit Court Aug Term 1863
} Scire facias

Be it remembered that on this day came on this cause to be heard upon the affidavits filed herein for a continuance which affidavits are in the words and figures following to wit,

126 People of the State &c }
141 as } Recognizance
Christian Gingrich et al }

Me Williamson being duly sworn deposes and says that the said defendants have been using all reasonable diligence to arrest and surrender the principal in this case Christian Gingrich in discharge of their said recognizance.

(27)

That affiant believes and so advised the said securities on said recognizance that since the advance of the Rebel General Lee into Pennsylvania the Military authorities were so engrossed with business that it would be useless to attempt to procure the discharge of the said principal to surrender in discharge of his bail until within a short time past to wit until about the last of July 1863. That as affiant recollects on the last days of July 1863 affiant informed the securities that he thought said Kingrich might be procured to be surrendered as aforesaid and that under the advice of affiant the said securities immediately procured a certified copy of the recognizance and indictment from the clerk of this Court and in the certificate thereto stating when the next term of this Court would be holden and went to Springfield Illinois where he procured a letter from Hon Richard Yates Governor of the State of Illinois to Hon Secretary Stanton requesting the Secretary of war (Stanton) to give the said Securities an order & requisition upon the Colonel of the Regiment directing Colonel Becker of the 86th Illinois Regiment to deliver said Kingrich into the custody of the securities or one of them to be surrendered as aforesaid. That immediately thereupon the securities executed a power of Attorney to one of their number & sent that one on to Washington to procure said order and requisition from said Secretary of war upon Col Becker. That the said security with the certified copy of the indictment & bond and request of the Governor as aforesaid started for Washington D C about the 29 or 30th day of July 1863 but has not yet returned. That affiant fully believes that said security procured the proper requisition from Hon E M Stanton Secretary

of war for the delivery of said principal as affiant directed him to return forthwith from Washington unless he procured said order and requisition - and that there has been time enough for him to return from Washington if the request had been refused but not sufficient time to have gone to the Army of the Potomac and have got the principal & returned. He says he fully believes that the said securities will have arrested and surrendered said principal in a short time if time can be extended a few days or at farthest by next term of this court. He therefore asks that said cause be continued for that purpose - And that this application is not made for delay - but because affiant believes said sureties have used due diligence to surrender said principal and will be able to surrender said principal at some early day in discharge of the recognizance

M Williamson

Subscribed and sworn to before

me this 13th day of August 1863

James D Perry Clerk

(Filed August 13th 1863
James D Perry Clerk)

People &c

vs

Christian Gingrich Et al

}
}
}

Scire facias

Jacob Gingrich being duly sworn deposes and says that since the last term of this court to wit about the last day of July 1863 this affiant together with the other securities in this cause procured from the Clerk of this court

(29)

a certified copy of the recognizance in this cause together with a certified copy of the indictment against Christian Gingrich for whose appearance the securities were bound as charged in the Scire facias herein and all properly certified to as being of record and pending in this Court together with a certificate from the clerk of the time when this term of Court would be holden and also that this affiant got from the other securities on said recognizance a power of Attorney duly signed and sealed by said securities authorizing and empowering affiant in their names and stead to arrest safely keep and detain the said Christian Gingrich the principal in said recognizance and him safely keep and deliver up to and in discharge of said recognizance. Affiant further says that further about the last day of July or first of August 1863 this affiant with the papers aforesaid started to Springfield Illinois to see Richard Yates Governor of the State of Illinois from whom he obtained a request in writing directing E M Stanton Secretary of war to direct Colonel Becker of the 82 Regiment of Illinois Volunteers or other proper officer to surrender the said Christian Gingrich into the custody of said affiant. That with the papers so certified to as aforesaid together with the request of Governor Yates as aforesaid this affiant proceeded to Washington D C and saw Secretary Stanton to whom he made application as aforesaid but said Stanton refused to give affiant the required order upon Col Becker or any other officer and said he could not have time to attend to such unimportant business Affiant then made application to the provost Marshall he being the proper person to grant passes to the Potomac Army in which the said Christian Gingrich was a soldier in Co E 82 Reg Ill volunteers

but the Provost Marshall refused to give this affiant a pass to cross the lines into ^{the} Potomac Army for the purpose of arresting or procuring the arrest of the said Christian Hingrich the principal in said recognizance or for any other purpose - Affiant says that he could not without such pass as aforesaid from the Provost Marshall as aforesaid get within the lines of the Potomac Army and was therefore obliged to return - That he used every diligence in his power to procure the arrest of said Christian Hingrich in order to deliver him in discharge of his recognizance - That said Christian Hingrich is a private in Co E 82 Reg Ills Vol and in the Army of the Potomac and is there detained under military rules & discipline so that this affiant nor other securities could not arrest or deliver him in discharge of his recognizance but that affiant thinks the securities can arrest and surrender the principal at next term of this Court and that this application is not made for delay but that justice may be done & that affiant has already been at great cost to arrest and surrender the principal - He therefore asks that this cause be continued for that purpose

Sworn to & Subscribed before } Jacob Hingrich
me this 14 day of August }
1863 James D Perry Clerk

Filed August 14th 1863

James D Perry Clerk

By W Sumner Dpty

but the Court overruled the motion of the Defendants for a continuance and the Defendants then and there excepted and objected

And now on this day this cause coming on to be heard upon the merits and the defendants then & there objected to the Alias Scire facias issued herein because the same was not stamped with a revenue Stamp as required by law but the Court overruled the objection and compelled the defendants to go to trial upon the merits and the People to maintain the issued on their part before the Court & Jury offered in evidence the following record

United States of America

State of Illinois } ss

Woodford County }

At a regular term of the Circuit Court of the Twenty third Judicial Circuit of the State of Illinois began and held at the Court House in the Town of Metamora within and for the County of Woodford and State of aforesaid on the second Monday of December in the year of our Lord one thousand eight hundred and sixty two being the eighth day of said month

Present the Honorable Samuel L Richmond Judge

James D Perry Clerk

Louis H Bullock Sheriff

Attest James D Perry Clerk

& James St L Boal State Attorney

Tuesday December 9th 1862

This day the Grand Jury again appeared at the bar of the Court and presented their Bill of Indictment against Christian Gingrich "For an assault with intent to commit murder" indorsed, a true Bill L P Herford foreman. It is therefore ordered by the Court that a copias issue forthwith for the said Defendant Christian Gingrich

and the said Grand Jury not having finished the business before them again retire to their room to deliberate

Saturday December 14th A.D. 1862

The People of the State of Illinois

as
Christian Gingrich

} Recognizance No 126
} Indictment for an assault
} with intent to commit murder

This day on the motion of James St Clair Boal State Attorney, who prosecutes for the said People in this behalf, the said Christian Gingrich is three times solemnly called in open Court yet he comes not, but makes default; and Charles Schneider, Jacob Gingrich, John Lutz and Frederick Donner are also each three times solemnly called in open Court to bring into Court the body of the said Christian Gingrich, yet they come not but likewise make default, and fail to bring into Court the body of the said Christian Gingrich. And because it appears to the Court here that on the second day of September, in the present year of our Lord, the said Christian Gingrich as principal and the said Charles Schneider, Jacob Gingrich, John Lutz and Frederick Donner, as sureties personally came before Adino Page, Esquire, one of the Justices of the Peace of the said County, and then and there, by their recognizance in writing, by them duly signed and sealed, did jointly and severally acknowledge themselves to owe and be indebted unto the People of the State of Illinois the sum of Eight hundred dollars, to be levied of their goods and chattels, lands and tenements, yet upon the condition, that if the said Christian Gingrich should personally be and

appear before this Court, on the first day of the then next term thereof, and from day to day thereafter until discharged by order of the Court, then and there to answer to the said People upon a charge of an assault with a sharp knife upon one Elizabeth Gingrich, and abide the order and judgment of the Court and not depart the same without leave, then the said recognizance should become void, otherwise should remain in full force; and further, that the aforesaid recognizance was afterwards to wit, on the fourth day of the same month of September, filed in the office of the Clerk of this Court, and became a matter of record therein; And all and singular the premises being seen and examined; Therefore it is considered by the Court, that the aforesaid recognizance be taken for and declared forfeited, and that a writ of Scire facias issue against them the said Christian Gingrich, Charles Schneider, Jacob Gingrich, John Lutz and Frederick Dornier, commanding them and each of them to appear before this Court on the first day of the next term thereof, then and there to show cause, if any they have why the said People should not have execution of the aforesaid recognizance, according to the form, force and effect thereof, and of the forfeiture aforesaid.

To which the defendants then and there objected but the Court overruled the objection and admitted the record in evidence to which the said defendants then & there excepted and objected - The Prosecution then offered in evidence the following recognizance to which the defendants then & there excepted and objected but the Court overruled the objection and admitted the recognizance in evidence

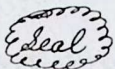
} { } { } { } { } { } { } { } { }

State of Illinois }
Woodford County }³⁹

This day, personally appeared before the undersigned, one of the Justices of the Peace in and for said county Christian Gingerich, Jacob Gingerich & Frederick Donner Charles Snyder John Lutz and jointly and severally acknowledged themselves to owe and be indebted unto the People of the State of Illinois, the sum of Eight hundred dollars, to be levied of their goods and chattels, lands and tenements, if default be made in the premises and conditions following, to wit: Whereas, the above bounden Christian Gingerich on the 2nd day of Sept. A.D. 1862. was examined by and before Adino Page a Justice of the Peace, in and for the County aforesaid, on a charge preferred against him for an assault with a sharp knife, upon Elizabeth Gingerich and upon hearing the testimony of all the witnesses present, (they having been duly sworn,) was adjudged and required by said Justice to give bonds, as required by the Statute in such case made and provided, for his appearance to answer to said charge. Now the condition of this recognizance is such, that if the above bounden Christian Gingerich shall personally be and appear before the Circuit Court of the said County of Woodford on the first day of the next term thereof, to be holden in the Court House in Metamora on the eighth day of December A.D. 1862, and from day to day thereafter, until discharged by order of said Court, then and there to answer to the said People of the State of Illinois, on said charge of Assault with a sharp knife, upon said Elizabeth Gingerich abide the order and judgment of said Court, and not depart the same without

have, then and in that case this recognizance to become void: otherwise to be and remain in full force and virtue.

As witness our hands and seals, this 3rd day of Sept.,
A.D. 1862.

Taken, entered into and
acknowledged, before me
this 3rd day of Sept., 1862.
Adamo Page JP 

Christian Gingrich [L.S.]

Charles Schneider [L.S.]

Jacob Gingrich [L.S.]

John Seutz [L.S.]

Frederick Donner [L.S.]

(On the back of which is the following Endorsement)
No 126

Recognition

The People of the State of Illinois

do

Christian Gingrich

Recognizance \$800.00 Costs 9.00

Witnesses

Elizabeth Gingrich Christian Dellenbach Fred Donner
Charles P Stodtmyer John Gingrich A. H. Kenner Charles
Molitor.

Filed September 4th 1862.

James D Perry Clerk

The recognizance was objected to on the ground of
variance of the names alleged in the scire facias
& the names in the recognizance and further because
the bond does not show that the defendant Gingrich
the principal was recognized to answer unto any indictable
offense, and further because said recognizance is void.

but the Court overruled the objection and admitted the same in evidence to which the defendants then & there excepted. The Plaintiff then introduced Adino Page who testified I was acting Justice of the Peace of the County of Woodford on the 2 day of Sept 1862 & before & since - to this evidence the depts objected because there was better & documentary evidence if true by which it could be proven but the Court overruled the objection & depts excepted. The People then offered in evidence the commission of said Page as Police Magistrate together with the oath & certificate as follows

(Copy of Commission)

Richard Yates

Governor of the State of Illinois. To all to whom These Presents shall come Greeting;

Know All, That Adino Page having been duly elected to the office of Police Magistrate in the Town of Metamora and County of Woodford State of Illinois; I, Richard Yates, Governor of the State of Illinois, for and on behalf of the People of said State, do commission him Police Magistrate for said Town for said Town in said County, and do authorize and empower him to execute and fulfill the duties of that office according to law

To have and to hold the said office with all the rights and emoluments thereunto legally appertaining, until his successor shall be duly elected and qualified to office

In Testimony Whereof I have hereunto set my hand, and caused the Great Seal of State to be hereunto affixed. Done at the City of Springfield, this 24th day of March in the year of our



(37)

Lord, one thousand eight hundred and
Sixty-two

By the Governor

O. M. Hatch

Secretary of State

(Copy of Certificate on Commission)

State of Illinois 333

Woodford County 3

I, Robert B Hanna County Clerk of said
County, hereby certify that Adino Page has qualified as Police
Magistrate, as within named, by filing bond, and taking and subscri-
-bing the oaths as required by law

Given under my hand and the seal
of said Court this 25th day of March
1862



Robert B Hanna Clerk

(Copy of Oath endorsed on Commission)

State of Illinois. 333

Woodford County 3

I do solemnly swear that I will support
the Constitution of the United States and
of the State of Illinois, That I will faithfully perform the duties
of Police Magistrate according to law and to the best of my
understanding, that I have not fought a duel nor sent or
accepted a challenge to fight a duel the probable issue of
which might have been the death of either party nor been
a second to either party nor in any manner aided
or assisted in such duel nor been knowingly the bearer
of such challenge or acceptance since the adoption of

the Constitution and that I will not be so engaged or concerned directly or indirectly in or about such duel during my continuance in office So help me God
 Subscribed and sworn to }
 before me this 20th day of March } Adins Page
 1862

RC B Hanna County Clerk
 but the court overruled the objection, the same were read in evidence & depts excepted; this was all the evidence in the cause the Peff then asked the following instruction which was given by the court to which the Defts then & there excepted and objected

People

vs

Kingrich Etal

} The court instructs the jury that if they find for the People in this cause they will say in their verdict, We the jury find the issues joined in favor of the plaintiff and find the amount of the recognizance acknowledged by the Defendants, as charged in the writ of Scire facias to be _____ dollars

Filed August 15th 1863

James D Perry Clerk By W Summer Dpty

The jury then retired & brought into court the following verdict " In the case of The People vs Christian Kingrich Charles Schneider Jacob Kingrich John Lutz Frederick Dornier We the jury find the issues joined for the plaintiff and assess the damages at Eight hundred dollars (\$800.00)"

(Signed by the jury)

Given

(39)

which the court with consent of the jury altered as follows " In the case of the People vs Christian Gingrich Charles Schneider Jacob Gingrich John Lutz Frederick Donner Me the jury find the issues joined for the plaintiffs and find the amount acknowledged to be due by depts in the recognizance to be the sum of Eight hundred dollars (\$800.00)

(Signed by the jury)

to which the depts then & there excepted & objected and moved the court to set aside the verdict and grant a new trial which motion is as follows

People &c

vs

Christian Gingrich and others } Circuit Court
Aug term 1863

And now comes the said Defendants - moves the court to set aside the verdict and grant a new trial herein for the following reasons

- 1 Because the court admitted improper evidence to go to the jury as asked by plff
- 2 The court gave improper instructions asked by plff
- 3 The verdict is against the evidence
- 4 It is against the law
- 5 The verdict should have been for defendants

M Williamson

for depts

- 6 Because the court erroneously changed the verdict when returned in court

M Williamson
for Def

(Filed Aug 15 1863
James C Perry clk By W. Sumner D/16)

(40)

The Court overruled the motion & depts then moved in arrest of judgment which motion is in the following words to wit

People & c } Circuit Court Aug
as } term 1863
Quigrick et al } Recognizance

And now comes the defendants and move the Court in arrest of judgment for the following reasons

- 1 The Scire facias issued against one of the defendants was not stamped as required by law of Congress & was void
- 2 The Scire facias herein is void and does not show cause why execution should issue
- 3 The issues were not made up when the jury were sworn nor at any time after the Replications and den answer of the plaintiff not having been signed by counsel & therefore null & void. Wherefore the defendants pray that judgment be arrested and verdict set aside and new trial granted herein

M Williamson

Filed Aug 15th 1863

for depts

(James D Perry CLK By W Sumner Dpty)

but the Court overruled the same and rendered judgment on the verdict to which depts then & there excepted and objected and prayed the Court to sign & seal this Bill of Exceptions

S L Richmond Clerk

Judge 23rd Judicial

District

Filed August 15th 1863

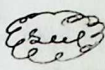
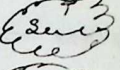
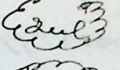
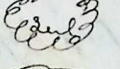
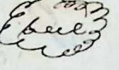
(James D Perry CLK By W Sumner Dpty)

(41)
(Copy of Appeal Bond)

We now all men by these presents that we Christian Ginzrich Charles Schneider John Lutz Jacob Ginzrich & Frederick Donner as principals and A. H. Lincoln as security are held and firmly bound unto the People of the State of Illinois in the penal sum of Eleven hundred dollars for the payment of which well and truly to be made we bind ourselves our heirs Executors & administrators jointly & severally by these presents Witness our hands & seals this fifteenth day of August 1863

The condition of the above obligation is such that whereas the said People of the State of Illinois did at the August term of the Circuit Court in and for the County of Woodford and State of Illinois recover a Judgment against the above bounden Christian Ginzrich Charles Schneider John Lutz Jacob Ginzrich and Frederick Donner for the sum of Eight Hundred dollars & costs of suit from which said Judgment the said defendants prayed an appeal to the Supreme Court of the State of Illinois Now if the said Christian Ginzrich Charles Schneider John Lutz Jacob Ginzrich and Frederick Donner shall pursue their appeal with effect and without delay and shall well and truly pay and satisfy all judgments costs interest and damages in case said Judgment shall be affirmed in the Supreme Court then this obligation to be void otherwise to remain in full force and virtue in law

Frederick Donner

Charles Schneider 
 John Lutz 
 Jacob Gingrich 
 Christian Gingrich 
 Albert H. Lincoln 

Approved by me this
 29th day of August 1863

James D. Perry Clerk

(Filed August 29th 1863)

James D. Perry Clerk

State of Illinois 3⁹⁶
 Woodford County 3 I James D. Perry Clerk of the Circuit
 Court in and for said County in the
 State aforesaid do hereby certify that the above and fore-
 going one pages one (1) to forty two (42) inclusive contains
 a true copy of the proceedings in the Circuit Court of said
 County in the cause therein mentioned viz. (The People of the
 State of Illinois vs Christian Gingrich Charles Schneider Jacob
 Gingrich John Lutz and Frederick Donner Seire facias on
 Recognizance) as appears of Record and on file in my
 office

In Testimony whereof I have hereunto
 set my hand and affixed the seal of
 said Court at my office in ~~the~~ ^{the} County
 in said County of Woodford this fifth
 day of February in the year of our Lord
 one thousand eight hundred and sixty four
 James D. Perry Clerk



Aug 15. 00

The People of the State of Illinois }
 Christian Gingrich John Lutz } Supreme Court
 and others } April term 1864

And the said Christian Gingrich John Lutz
 Jacob Gingrich Christian Gingrich and Frederick Don-
 ner by M. Williamson their attorney come and say
 that in the record and proceedings aforesaid there is man-
 ifest error in this to wit

ASSIGNMENT OF ERRORS.

1. The Court erred in sustaining the demurrer to 5th and 6th pleas of the securities, Lutz, Donner, Schneider and Gingrich.
2. The Court erred in sustaining the demurrer to second plea of the principal.
3. The Court erred in overruling defendants motion for a continuance.
4. The Court admitted improper evidence to the jury.
5. The Court erred in overruling defendants motion to set aside the verdict and for new trial.
6. The Court erred in overruling the motion of defendants in arrest.
7. The Court erred in amending the verdict of the jury.

The said judgment was given in favor of the said People
 whereas by the laws of the land it ought to have been given for the
 said Christian Gingrich John Lutz Jacob Gingrich & Frederick
 Donner Wherefore they pray that the said judgment be
 reversed annulled and for naught held & determined
 and that they may be restored to all that they have
 lost by reason thereof

M. Williamson
 attorney for Pffs

Joiner in Error

By D. P. Jones

States Attorney

Ep 13
Gingrich et al
The People vs

Reverend

Filed April 12 1864
L. Deland
Clerk