

12485

No. \_\_\_\_\_

# Supreme Court of Illinois


Bowers

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vs.

People

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71641  7

State of Illinois  
County of Cook  
City of Chicago

Shew before the Honorable  
Robert J. Wilson Recorder of the City of  
Chicago and presiding Judge of the Recorders  
Court of said City at a term thereof begun  
and held on the first Monday it being the  
seventh day of January in the year of our  
Lord one thousand eight hundred and fifty  
six and of the Independence of the United  
States the Eightieth

Present Hon Robert J. Wilson Recorder  
Daniel M. Troy States attorney  
James Andrew Sheriff  
Attest Philip W. Hoynes Clerk of said Court

The Sheriff returned into Court the  
return for a Grand Jury issued from  
the names selected by the Common Council  
of the City of Chicago in pursuance of the  
provisions of the act of the General assembly  
of the State of Illinois creating the  
Recorders Court of the City of Chicago  
performed by summoning the following named  
persons who upon being called answered

of their names as follows to wit Stephen  
Deer E H Sargent Samuel Barber John  
S Newhouse Roswell Carter James Crow  
William Justice William Cooper E H  
Huntington A T Spencer Otis Shepard  
Neman Hatch W A Jones Arnold Bigelow

The  
following named persons were returned on  
the venire "not found" to wit Usa Howe  
George Scoville John West C S Dole J M  
Mumner Miriam Hastings C S Johnson  
William N Miller and Levi Chipman

Thereupon  
it is Ordered by the Court that a special  
venire issue returnable forthwith for nine  
good and lawful men to complete the  
panel of the Grand Jury which was duly  
returned served by summoning the follow-  
ing named persons to wit E H Aiken

Jacob Sauter William Fleming James  
M Keo Daniel O'Hara J H Purdue Jacob  
Rehm W G Talton and J A Howe who  
together with Stephen Deer E H Sargent  
Samuel B Barber John S Newhouse  
Roswell Carter James Crow William  
Justice William Cooper E H Huntington  
A T Spencer Otis Shepard Neman Hatch  
W A Jones and Arnold Bigelow

answered to their names and gave their attendance as Grand Jurors at this term. and were duly sworn in as a Grand Jury in and for the body of the City of Chicago in the County of Cook and State of Illinois and the Court having appointed C. H. Aiken one of their number Foreman of said Grand Jury and they having received the charge of said Court relative to consider of their presentments

And afterwards to wit on the nineteenth day of January in the year last aforesaid it being one of the days of the term aforesaid the Grand Jury came into Court and among others made the following presentment endorsed a true bill to wit

The People vs

162

or  
Elijah Bowers

Assaulting an officer

Which said presentment is in the words and figures following to wit

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

Of the January term of the Recorder's Court  
of the City of Chicago, in said State and  
County, in the year of our Lord one  
thousand eight hundred and fifty six

The Grand Jurors, chosen, selected and  
sworn, in and for the City of Chicago of  
the County of Cook in the State of Illinois  
in the name and by the authority of the  
people of the State of Illinois, upon their  
oaths present that Elijah Bowers late  
of said City on the twenty first day of  
December in the year of our Lord one  
thousand eight hundred and fifty five  
in said City of Chicago in the County and  
State aforesaid in and upon one  
Michael Hickey in the peace of the said  
people then and there being and being then  
and there a public officer to wit a con-  
stable and being then and there in the  
due execution of his duty as such con-  
stable and being then and there attempt-  
ing to serve a lawful process, did then  
and there unlawfully knowingly and  
wilfully resist obstruct and oppose and  
him the said Hickey acting as such

officer he the said Elijah Power did  
then and there beat wound and ill treat  
conerary to the Statute and against the  
peace and dignity of the same people of  
the State of Illinois

D. M. Troy  
State Attorney

And on the back of the said presentment  
is the following endorsement to wit 162  
P Gen no 1138 Recorder Court of the City  
of Chicago January term 1856 The people  
of the State of Illinois vs Elijah Power  
Indictment for assaulting an Officer  
A true bill E Walker Foreman of the  
Grand Jury Witnesses Michael Kickey  
Michael Ryan P Ballingall Wm H  
Prince D C Johnson Wm Abbott W  
P Austin E S Hagan Jan 19. A D 1856  
P A Payne Clerk

And afterwards to wit on the twenty  
third day of January in the year last  
aforesaid it being one of the days of  
the term aforesaid the following proce-  
dings among others were had and entered  
of Record in the Court aforesaid which  
said proceedings are in words and

figures following to wit

The People vs.

162

Elijah Bowers assaulting an Officer

This day come the said people by Daniel M<sup>c</sup> Elroy States attor. n<sup>y</sup> and the said defendant as well in his own proper person as by Andrew Harris Esq. his counsel also comes, and he by his counsel aforesaid, moves the Court, on affidavit filed for a continuance in this cause which is overruled by the Court to which overruling by the Court the said defendant by his counsel then and there accepted, and now the said defendant being furnished with a copy of his indictment lists of the Jurors and witnesses and he being duly arraigned and forthwith demanded of and concerning the crime alleged against him in the said Indictment how he would acquit himself for plea herein in this behalf says that he is not guilty in the manner and form as he is charged in the said Indictment and of this he puts himself upon the Country and the people do the like and issue being joined it is Or<sup>d</sup>

dered by the Court that a Jury come  
thereupon come the Jurors of a Jury of  
good and lawful men to wit G. Hatfield  
J. D. Howard Dan Egan William  
Goodnow H. F. Seranway Henry Deab  
J. B. Dauphin Wm Carpenter Fernando  
Jones Wm Taylor C Lewis and Corrett  
Goodrich who being duly elected, tried  
and sworn well and truly to try the  
issue joined between the parties according  
to law and the evidence and they hearing  
the testimony of the witnesses arguments  
of counsel and instructions of the Court  
retire in charge of an officer of the Court  
to consider of their verdict and afterwards  
come into Court and say We of the Jury  
find the defendant guilty in the manner  
and form as he is charged in the said  
Indictment

Whereupon the defendant by  
his counsel moves the court in arrest  
of Judgment herein

Whereupon it is  
Ordered by the Court that the said  
defendant be remanded

And afterwards to wit on the twenty fifth  
day of January in the year last



aforesaid it being one of the days of the  
term aforesaid the following proceedings  
among others were had and entered of record  
in the Court aforesaid which said proce-  
dings are in words and figures as  
follows to wit

The People vs

162

Elijah Bowers Assaulting an Officer

This day come the  
said people by Daniel McIlroy States  
attorney and the said defendant as  
well in his own proper person as by Messrs  
Harvie & Tuley his counsel also comes and  
now the Court being fully advised on the  
motion in arrest of Judgment heretofore  
entered in this cause

It is Ordered that  
the same be overuled to which overuling  
by the Court the said defendant by  
his counsel then and there accepted  
and now neither the said defendant  
nor his counsel for him saying anything  
further why the sentence of the Court  
should not now be pronounced against  
him on the verdict of guilty heretofore  
rendered in this cause

Therefore it is Ordered and Ad-  
judged by the Court that the said defen-  
dant Elijah Powers be fined in the sum  
of One Hundred dollars and that he be  
taken from the bars of this Court by the  
Sheriff of Cook County to the Bridewell  
of this city and be delivered to the keeper  
of said Bridewell and the said keeper  
is hereby required and commanded to  
take the body of the said Elijah Powers  
and confine him in said Bridewell  
in safe and secure custody at labor  
for and during the term of six months  
from and after the delivery of the body  
of the said defendant to the said keeper  
and it is further Ordered by the Court  
that the said defendant pay all the  
costs of these proceedings and that he  
stand committed to the custody of the  
said keeper until said fine and costs  
are duly paid

Motion in Arrest of Judgment

State of Illinois

In the Recorders Court of the  
City of Chicago

Elijah Bowers

vs  
The People

of the January term of  
said Court A D 1856

And now comes the said  
defendant by Harvie Tutley his attorneys  
and moves the Court here in arrest of judg-  
ment on the verdict heretofore rendered  
in above entitled cause for the following  
reasons to wit

1<sup>st</sup> That the Indictment  
in said case is uncertain defective and  
insufficient in law

2<sup>d</sup> That there is no  
sufficient or legal averment in said In-  
dictment that the said Hickey is a Con-  
stable or public officer to bring the  
charge contained therein within the  
Statute

3<sup>d</sup> That inasmuch as the  
Indictment charges that a public officer  
was resisted and obstructed in the  
service of legal process the said Indict-

ment is insufficient and illegal in that  
there is no statement or allegation of what  
such legal process was

Chicago Jan'y 25/56 Harvie Huley  
Atty for deft

Filed January 25. 1856

*J. A. Hoynes*

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



*J. Philip Hoynes* Clerk  
of the Recorders Court of the City of Chicago  
in the County and State aforesaid Do  
hereby certify that the above and foregoing  
is a full and true copy of all the proceed-  
ings had and entered of Record and also  
of the motions in arrest of Judgment filed  
in a cause wherein the people of the State  
of Illinois are plaintiffs and Elijah  
Bowers is defendant as appears of Record  
and of the files in my office

Witness my hand and the seal of said  
Court at Chicago this 31<sup>st</sup> day of  
January A D 1856

*J. A. Hoynes* Clerk

State of Illinois  
Cook County

I the undersigned State attorney  
presenting upon the trial of the within mentioned  
Indictment of the People of the state of Illinois  
vs. Elijah Bowers do hereby certify that I am  
of the opinion that the within and preceding  
record contains a full and true history of  
the proceedings on said trial

Chicago. February 8<sup>th</sup> 1836

D. W. Thorpe  
State Atty

Recorder Court  
City of Chicago  
The People  
v.  
Elijah Bowers  
by of Records

Fee \$ 2.00

State of Illinois

In the Supreme Court of the State of Illinois

Elijah Bowers

Plaintiff in Error

vs

The People of the State  
of Illinois

Defendant in Error

And afterwards that is to say on  
the thirty first day of January A.D. 1854 comes the  
said Elijah Bowers plaintiff in Error by Maria  
& Daley his attorneys and says that in the Record  
& proceedings aforesaid and in overruling the two  
times there is manifest and material error  
in this viz

1<sup>st</sup> That the said indictment in  
said cause is bad for duplicity in charging  
or attempting & pretending to charge two sep-  
arate and distinct offences, to wit, the resisting  
& obstructing a public officer & And an Assaulting  
& beating &c. for by section 9<sup>th</sup> Criminal Jurispru-  
dence Rev<sup>d</sup> St<sup>t</sup> 107 two distinct offences are  
provided for and while the said indictment  
attempts to comprehend both, it has failed  
utterly in legally presenting either

2<sup>nd</sup> There is no sufficient or legal  
allegation that the officer resisted & assaulted was

a public officer within the meaning of the Statute  
and as the gist of the case rests in his being  
such, and being also in the actual discharge  
of the specific duty provided for in the statute  
the omission is fatal,

3<sup>rd</sup> There is no allegation of the kind  
of legal process, nor by whom, or by what court  
Nor when the legal process, <sup>was issued</sup> which the person  
resisted and assaulted, was attempting to  
serve, and by the express language of the  
Statute this omission is fatal

4<sup>th</sup>

The process charged to be in the hands  
of the constable is not set out nor is it described  
so as to show it to have been a legal process  
within the meaning of the statute.

5<sup>th</sup>

The process charged to have been in  
the hands of the constable must appear by the  
indictment to have been issued by the superior  
court acting within the sphere of its au-  
thority which does not appear in and by  
the said indictment

6<sup>th</sup>

The judgment and sentence of the  
said Recorder's court is unauthorized by law in  
this that the said Bowers is sentenced to the

Prisoner of the city of Chicago there to be  
confined in safe and secure custody at  
labor for and during the term of six months  
whereas the statute Sec 92, Crim<sup>e</sup> Just<sup>s</sup><sup>Act</sup> provides  
as a penalty, confinement in the county jail  
and is silent as to labor, therefore the said  
plaintiff in error says that the said sentence  
of said court is illegal and not warranted  
by the law of the land,

7<sup>th</sup> That the said indictment  
is in other respects illegal & insufficient  
8<sup>th</sup>

That the overruling of the mo-  
tion in arrest of judgment was illegal &  
erroneous,

And the said Elijah Penns  
prays that a supersedeas & writ of error  
may be issued according to law and  
that the judgment aforesaid for the errors  
aforesaid & for other errors in the said record  
and proceedings being may be reversed  
annulled & altogether holden for naught  
and that he may be restored in all  
things which he hath lost by occasion of  
said judgment &c

Waver & Tully  
attest for plff in error



State of Illinois

Let the writ of Error in the foregoing cause be made a supersedeas. Also let the plaintiff in Error be discharged from imprisonment on the within judgment and admitted to bail, upon his entering into recognizance to the people of this State by and the Sheriff of Cook County in the penal sum of one thousand dollars with Leander Reed and James H. Haughey as his Sureties, Conditioned that the said plaintiff in Error will appear at the next & all subsequent terms of the said Recorders Court on the first days thereof until the determination of this writ of Error, and also that he shall appear before the Supreme Court on the first day of the next term thereof in the Third grand division that he will not depart the said Court without leave and that he will be present & submit to such order as the Supreme Court shall make in the premises, and that he will not at any of the terms of said Court depart said Court without leave. Which

Elijah Bowers

vs

People of the State of Illinois

Copy of the Record & Return of Error

Said recognizance when taken as aforesaid shall be returned by said Sheriff to the said Recorders Court.

Feb. 13, 1856.

J. H. Carter  
Just of the Peace

By J. B. Rice & Co. Clerks

~~Filed for~~  
March 4, 1856.

STATE OF ILLINOIS,

Supreme Court,

ss. The People of the State of Illinois,

To the Clerk of the Circuit Court, for the county of Cook

Greeting:

BECAUSE the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of the City of Chicago, Cook county, before the Judge thereof, between The People of the State of Illinois

plaintiffs and Elijah Bowers

defendant it is said manifest error hath intervened, to the injury of the aforesaid Elijah Bowers

as we are informed by his complaint, and we being willing that error, should be corrected if any there be 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 of 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~~ Walter B. Seales, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 14<sup>th</sup> day of February in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six.

L. Seland

Clerk of the Supreme Court.

by J. B. Rice Deputy Clerk

Bowers  
vs

The People vs  
Writ of Error

This Writ of Error is  
made a Supersedeas & as  
such should be obeyed by  
all concerned.

L. Leland Clerk  
By J. B. Rice Deputy

Filed Feb 14 1856

L. Leland Clerk  
By J. B. Rice Deputy

Elizah Bowers  
vs  
The People.

3 P.D.

12485

1856

X