

No. **12163**

Supreme Court of Illinois

People

vs.

Kennedy, et al

71641  7

Supreme Court - June Term 1854

Demmond Kennedy & Ruth Kennedy
vs ⁵ Error to Will County
The People of the State of Illinois

And now Comes said plaintiff
in Error by Dickey & Eastman
their attorneys and says there is
manifest error in the proceedings
and judgment aforesaid and
that said judgment ought to be
reversed and held for naught

And assigns the following as errors appe-
rent upon the record -

1st The Court erred in ordering said
Sci fa to issue -

2nd The Court erred in rendering
judgment against said plaintiffs
in error -

3rd The Court erred in rendering judgment
in the form rendered -

- The recognizance recited in the sci
fa - does not show the cause of its cap-
tion - nor does the sci fa -

The recognizance was not taken
by competent authority - two justices
having no authority to take recognizance
in such case -

The forfeiture of the recognizance ^{is not shown by sci fa to have been}
~~was~~ entered of record before sci fa issued.

The service of process on Ruth Kennedy
was by the Sheriff of Kendall - while
the writ was addressed to the Sheriff
of Will County - and it does not
appear whether such service was
in the County of Will or in the Co

of Kendall - neither of which would be
valid -

4th - The Court Erred in ordering the
alias Sci fu - to issue - no sufficient
return having been made upon
the original -

J. L. Dickson atty
for plffs in error

The People of the State of Illinois To all to
whom these presents shall come Greeting
Know Ye that we having caused to be inspected the
Records now remaining in the Office of our clerk
of our Circuit Court in and for our County of Will
do find therein certain Records and Proceedings of said
Court in Words and Figures following, to wit:

"State of Illinois
"Will County } I was before the honorable Hugh
"Henderson Judge of the Eleventh Judi-
"cial Circuit of said State of Illinois, assisted by the
"Honorable Theophilus S. Dickey Judge of the Ninth
"Judicial Circuit of the State aforesaid, at the January
"Special Term of the Will County Circuit Court begun
"and held at the Court house in Joliet in said Will
"County pursuant to the Statute in such case made
"and provided on the first Monday of the month
"of January (the same being the seventh day of said
"month of January) in the year of our Lord one thou-
"sand eight hundred and fifty and of the year of the
"Independence of the United States of America the
"seventy fourth

Present the Hon Hugh Henderson Judge as aforesaid
Along Platt States atty 11th Judicial Cir
Along Leach Sheriff of Will County
Michael W. Coyle Clerk Will. Co, Cir. Court,

And thereupon the said Sheriff

upon Proclamation made returned into Court the
writ of Venise Facias heretofore directed to him under the
Seal of the late County Commissioners Come of said
County as personally served upon the following named
persons to wit-

David Willard	J. P. Havilland	Philip Filer
Josiah Richardson	Franklin Mitchell	Sam Johnson
Benjamin Richardson	John Cooper	George Lyon
Robert Strong	Edmund Wiley	Lyons B. Ingham
Henry Thornton	Stephen S. Buffum	Simon Mack
William Tallman	Myron Pison	George Bayford
John Grant	Leander Hamlin	William Sanburn
Alfred Rowley	Henry Spague	

personally to appear
before the Circuit Court of said County to be holden as
aforesaid on Monday the seventh day of January A.D.
1830 at or before the hour of eleven o'clock in the forenoon
to serve as Grand Jurors

Whereupon the said Court
were ordered to be called and the following named per-
sons answered to their names and gave their attendance
to wit-

David Willard	Leander Hamlin	Alfred Rowley
Franklin Mitchell	J. P. Havilland	Benjamin Richardson
John Cooper	George Lyon	Sam Johnson
Edmund Wiley	Josiah Richardson	Henry Thornton
Robert Strong	Simon Mack	Myron Pison
George Bayford	John Grant	Henry Spague

And William Sanburn for good cause ^{shown} was excused from
serving on said Jury And Stephen S. Buffum. Lyons
B. Ingham And William Tallman being made
defaulter which is entered of Record. And it is or-
dered by the Court that a Summons issue against

"the said Buffum, Ingham and Gallman to the next
term of this court to answer for a contempt of court
in not appearing in obedience to their Summons of
Grand Jurors aforesaid.

Then not being a sufficient
number of qualified persons present by reason of the ex-
cuse and delinquency aforesaid to constitute a full
Grand Jury panel, the Sheriff was ordered to summon
from the bystanders four like good and lawful men
for that purpose who thereupon summoned Allen
Denny Philip Worcester Jesse M^r Allen and Will-
iam M^r Cline who on being called answered to their
names and gave their attendance. Whereupon Edmund
Milroy of said panel was appointed foreman of said
Jury who were then all duly sworn and continued upon
their duties under an officer of the Court.

And afterwards to wit

On the 12th day of
January A.D. one thousand eight hundred and fifty. It
being one of the regular ^{days} of the January Special Term of said
Court for the year last aforesaid certain proceedings were
had and entered of record in the words and figures fol-
lowing to wit:

And said Grand Jury this day also for the present to
the Court the following indictment to wit:

The People of the State of Illinois

67
Demand ^{as} Kennedy and Henry Cook } Indictment
for larceny

which said Indictment in substance

following to wit,
State of Illinois,
Will County. ss:

Of the January Special Term of the
Will County Circuit Court, in the
year of our Lord one thousand
eight hundred and fifty.

The Grand Jurors chosen selected and sworn
in and for the county of Will in the name and by the
authority of the people of the State of Illinois upon their
oaths present that Edmund Kennedy and Henry
Cook late of the county of Will on the twelfth day of
October in the year of our Lord one thousand eight
hundred and forty nine at the county of Will in the
State of Illinois aforesaid. One pair of shirts of the
value of three dollars - four cotton Pillow cases of the
value of fifty cents each - two table clothes of the value of
two dollars each of the personal goods and chattels
of one Oscar S. Rogers then and there being found felon-
iously did steal take and carry away contrary to the
form of the Statute in such case made and provided
and against the peace and dignity of the same people
of the State of Illinois

Alonzo Platt
States attorney for the ^{1st} Judicial
district

Enclosed on the back thereof
January Special Term Will County Circuit Court
A.D. 1850

The People of the State of Illinois.

Edmund Kennedy	Indictment
Henry Cook	for Larceny
Witneses.	A true Bill
J. H. Knight	Edmund Walters
W. S. Rogers	Juryman of the Grand Jury
J. F. Randall	

Bail \$250 each,

Platt. State Attorney for the 11th
Judicial Circuit

And afterwards to wit on

On the 5th day of June
A. D. eighteen hundred and fifty three. It being one of the
regular days of ^{the May} ~~the May~~ ^{of said Court} Term for the year last aforesaid
certain proceedings were had and entered of Record in the
words and figures following to wit:

1. To the People of the State of Illinois

2. Command Kennedy vs. Henry Cook } Indictment
for Larceny

Now comes the
said People by Randall and Gardiner prosecuting
Attorneys for time. On whose motion the said
defendant Command Kennedy is brought by the
Sheriff into court and said defendant also appear-
ing by Agood and Little his attorneys and the said
Kennedy being furnished with a copy of said Indict-
ment a list of the names of the Jurors and Witnesses
and being arraigned at the bar of this court in due
form of Law and said Indictment being read to him
and forth with demanded of and concerning the
crime alleged against him in said Indictment
how he would acquit himself thereof for Plea in this
behalf says that he is "not Guilty" in manner and
form as he is charged in said Indictment and of
this puts himself upon the Country and the said
People by their said Attorneys do the like. And
thereupon on motion of the said People it is or-
dered by the court that this case be continued to the

best term of this Court. And that the said defendant
Demmond Kennedy be and he is hereby required
to give bail in this case in the sum of two hundred
and fifty dollars, and in default of giving bail as
aforesaid it is ordered by the court that the said
defendant Demmond Kennedy be remanded
to the Common Jail of said Will County from
whence he came there to remain in custody until
he give bail as aforesaid or he otherwise be discharged
according to law.

And afterwards court

On the 6th day
of November in the year aforesaid a certain Recognizance
was filed in the Office of the clerk of the said Court in
words and figures following, To wit,

State of Illinois

Will County & Be it remembered that on the twelfth
day of July in the year 1830
Demmond Kennedy and Ruth Kennedy personally
appeared before Daniel Curtis and Harrison D
Parks two Justices of the Peace in and for said
County and jointly and severally acknowledged them-
selves to owe and be indebted to the People of the
State of Illinois the sum of two hundred and fifty
dollars to be levied of their goods and chattels lands
and tenements if default be made in the condition
following to wit, The condition of this Recognizance
is such that if the above named Demmond
Kennedy shall personally be and appear before the
Circuit Court of said County on the first day of the

Term next to be holden in and for said County of Will
then and there to answer an indictment for larceny
found and preferred against said Desmond Kennedy
and pleaded thereto with one Henry Cook by
the Grand Jurors in and for said County at the last
General Special Term of said Circuit Court in rela-
tion to said indictment and not depart the Court with-
out leave thereof then this Recognizance to be void oth-
erwise to remain in full force and effect.

Taken and acknowledged } Desmond Kennedy Seal
before us the day and } Ruth Kennedy Seal
year first above written }
Daniel Curtis S.P. } J. A. Parks S.P. }

And afterwards to wit

On the seventh day
of November in the year aforesaid it being one of the
regular days of the November Term of the said Circuit
Court for said year certain proceedings were had and
entered of Record by said Court in words and figures
following to wit

The People of the State of Illinois

15 Desmond Kennedy vs Henry Cook } Indictment
for Larceny
Now came the
said People by Mr. Platt State Attorney in whose
motion it is ordered by the Court that the said de-
fendant Desmond Kennedy be called. Where-
upon the said Desmond Kennedy was three times
solemnly called but came not nor any one for him

But when said court
but when said court which is out of record. And
thereupon it was ordered that Ruth Kennedy who is
bound in recognizance for the appearance of the said
defendant Edmund Kennedy before this Court
at its next term to answer to the said indictment
herein be called to produce the body of the said Ed-
mund Kennedy defendant as aforesaid. And when
Court as her said recognizance would be taken as for-
feited yet the said Ruth Kennedy came not nor did
she produce the body of the said defendant Edmund
Kennedy as bound to do in her said recognizance.
Whereupon it is ordered by the Court that the said re-
cognizance of the said Ruth Kennedy and Ed-
mund Kennedy be taken as forfeited and that a
writ of Habeas Corpus issue thereon directed to the
Sheriff of Kendall County returnable to the next
term of this Court.

Whereupon was issued a writ of
Habeas Corpus in words and figures following to wit

The People of the State of Illinois. By the Grace of God
free and Independent to the Sheriff of our County of
Will. Greiving. Whereas Edmund C. Kennedy
and Ruth Kennedy did on the twelfth day of July
in the year of our Lord one thousand eight hundred
and fifty before Daniel Curtis and Garion Eli Perkins
two Acting Justices of the Peace in and for our said
County of Will make and execute in due form of
Law a certain instrument in writing under their
hands and seals in substance following to wit

State of Illinois
Will County
Be it remembered that on
the twelfth day of July in the year
1850 Almon and Nancy and Rich. Kennedy
personally appeared before Daniel Curtis and John
S. Parks two Justices of the Peace in and for said County
and jointly and severally acknowledged themselves
to owe and be indebted unto the People of the State
of Illinois in the sum of two hundred and fifty dollars
to be twice of their goods and chattels, lands and
tenements if default be made in the conditions fol-
lowing to wit: The condition of this Recognizance is
such that if the above named Almon and Nancy
shall personally be and appear before the Circuit
Court of said County on the first day of the Term
next to be holden in and for said County of
Will then and there to answer and indure themselves
for Larceny being and proving against said Almon
and Nancy, displayed therein with one Henry
Cook by the Grand Jurors in and for said County
at the last Term and Special Term of said Circuit
Court in relation to said indictment without and
not depart the Court without leave thereof then this
Recognizance to be void otherwise to remain in full
force and effect (Signed)

Taken and acknowledged before me
the day and year first above written
Almon C. Kennedy (L.S.)
Nancy Kennedy (L.S.)
Daniel Curtis J.P.
John S. Parks J.P.

And whereas the said above
reciting instrument in writing duly certified by the
said Daniel Curtis & John S. Parks Justices of the
Peace was afterwards to wit on the sixth day of
November in the year of our Lord one thousand

Eight hundred and fifty filijs in the office of our
Clerk of the Circuit Court of our said Tall County
and then he became a Recor of said Court and
whereas afterwards to wit on the fourth day of
November in the year last aforesaid being one of
the days of the November Term of the said Circuit
Court for the year last aforesaid the said Court being
judicially sitting certain proceedings were had
before the said Court in the matter of the aforesaid
Judgment and return of Return therein whereby
it appears that said Samuel Kennedy made
default herein and also that said Samuel Kennedy
and Ruth Kennedy made default of their aforesaid
Recognizance herein. And thereupon it was or-
dered by the Court that a writ of Seque Facias
issue against the said Samuel Kennedy and
Ruth Kennedy returnable to the next Term of
this Court. And whereas the said Recognizance
nor any part thereof hath been paid or in any
wise satisfied by the said Samuel Kennedy and
Ruth Kennedy or either of them, nor by any one
for them or either of them but still remains in
full force and virtue. Now therefore we com-
mand you that you do forthwith make known
to the said Samuel Kennedy and Ruth Kennedy
(if they shall be found in your County) that they are
required personally to be and appear before the
Circuit Court of our said County on the first day
of the next term thereof to be holden at the Court
House in Joliet in said County on the fourth Monday
of May next to show cause (if any they have) why
the said People of the said State of Illinois shall
not have judgment and execution against
them for the said sum of two hundred and fifty

dollars And the Costs of this Suit according to the
Tenor and effect of the Laig above Reciting Recogni-
zance And further to do any Recceir whatever
shall by the judgement or order of our Laig Court
be awarded in the premises. Have you then then
this writ



Witness Michael M. Ewing Clerk
of our Laig Court and the Seal of
Laig Court hereunto affixed at
Lohis in Laig County this 11th
day of February in the year
of our Lord one thousand eight
hundred and fifty one

M. M. Ewing Clerk
By A. E. [Signature]

Which Laig foregoing Reciting writ of Return
Facias was returned with the Sheriffs return and
dorses thereon in following words & figures To wit
"Served the within Laig Facias upon the with
"in names Ruth Kennedy on the 30th day of
"April A.D. 1857 by exhibiting and reading the
"Laig to her And on the 16th day of March left a
"true Copy of the Laig at her Residence it being
"delivered to her by her daughter Emma Kennedy
"who is about the age of 21 years Laig Ruth Ken-
"nedy not being found at that time

" C. L. Townsend Sheriff of Russell County
" Emma Kennedy not found in this County May
"16, 1857 C. L. Townsend Sheriff

" Five 5 miles travel 25

" One Service 50

" 1 Copy 1.00

" 1 Per 10 = \$1.55

The People of the State of Illinois, by the grace
of God free and independent. To the Sheriff of our
County of Heydall - Greeting. Whereas Leonard
Mond H. Kennedy and Ruth Kennedy did on the
twelfth day of July in the year of our Lord one
thousand eight hundred and fifty, Before David
Lentis and William D. Parks two acting Jus-
tices of the Peace in and for our said County of
Will make and execute in due form of law a
certain instrument in writing under their
hands and seals in substance following to wit:

State of Illinois

Well County & Be it remembered that on the twelfth day of July in the year 1830
Demmond Kennedy and Ruth Kennedy personally appeared before Daniel Huntis and Aaron D. A. Parks two Justices of the Peace in and for said County and jointly and severally acknowledged themselves to owe and be indebted unto the People of the State of Illinois in the sum of two hundred and fifty dollars to be levied of their goods and chattels lands and tenements if default be made in the condition following, to-wit:

The condition of this Recognizance, if the above named Demmond Kennedy shall personally be and appear before the Circuit Court of said County of the first day of the term next to be holden in and for said County of Well then and there to answer an indictment for Larceny found and preferred against said Demmond Kennedy, impelled therein with one Henry Cook by the Grand Jurors in and for said County at the last Autumn Special Term of said Circuit Court in relation to said indictment and not depart the Court without leave thereof then this Recognizance to be void otherwise to remain in full force and effect.

Taken and acknowledged before

on the day and year first above written. (Signed)

Daniel Huntis J.P. (Demmond Kennedy)
A. D. A. Parks J.P. Ruth Kennedy

And whereas the said above recited instrument in writing duly certified by the said

Samuel Kentis and Is D A Parks & others
of the Peace as aforesaid was afterwards (to wit) On
the fifth day of November in the year of our Lord
one thousand eight hundred and fifty filed in
the Office of our Clerk of the Circuit Court of our
said Will County and thereby became a Record
of the said Court. And whereas afterwards (to wit)
on the seventh day of November in the year
last aforesaid being one of the days of the Novem-
ber term of the said Circuit Court for the year
last aforesaid the said Court being judicially sit-
ting certain proceedings were had before the said
Court of the matter of the aforesaid indictment and
entered of Record therein whereby it appears
that said Demmond Kennedy made default there-
in and also that said Demmond Kennedy
and Ruth Kennedy made default of their afore-
said Recognisance herein and thereupon it was
ordered by the Court that a writ of *Scire Facias* is-
sue against the said Demmond Kennedy and
Ruth Kennedy returnable to the next term of
this Court. And whereas the said Recognisance
nor any part thereof hath been paid or in any
wise satisfied by the said Demmond Kennedy
and Ruth Kennedy or either of them nor by
any one for them or either of them but still re-
mains in full force and virtue: And whereas
the said Demmond Kennedy was returned
Nihil by you on said original *Scire Facias* is-
sued herein. Now therefore we command you
that you do forthwith make known to the said
Demmond & Kennedy Jun^r with Ruth
Kennedy if he shall be found in your County

that he is required personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in said County on the second Monday of September next to show cause (if any he has) why the said People of the State of Illinois shall not have judgment and execution against them for the said sum of two hundred and fifty dollars and the costs of this suit according to the terms and effect of the said above recited Recognizance and further to do and receive whatever shall by the judgment or order of any said Court be awarded in the premises. Have you then there this writ

Witness Michael M. Egan clerk
of said County and the said David
Coont. Hereunto affixed at Follet in
said County this 10 day of July in
the year of our Lord one thousand eight
hundred and fifty one

By W. E. Barber Dep.

Which said foregoins recited alias writ
of Scire Facias was returned by the said Sher-
iff with the following return. Endorsed (Hieron-
Wright). Executed the within Scire Facias by reading
and leaving a true copy of the same with the within name
& I Discontinue Remedy.

" Sheriff Recs. 1 Since 30 August 17 1821
" 1 copy 100
" 1 Mail 15
" 1 Rel 10 \$1.65

And afterwards To Wit on the 7th day of
September in the year of our Lord one thousand eight
hundred and fifty two it being one of the regular
days of the September Term of said Court for the
year last aforesaid certain other proceedings were
had and entry of Record in the last aforesaid en-
titled cause in words and figure following To Wit

"The People of the State of Illinois

vs
Almon and Kennedy & Nath Kennedy

} Scire Facias on
Recognizance
Now come the said

People by S^r W. Rowan State Attorney and moves the
Court for execution against the said defendants herein
upon said writ of Scire Facias And it appearing
to the satisfaction of the Court that the said writ of
Scire Facias and Alias herein were both personally
served on each of the said defendants Almon and Kennedy
& Nth Kennedy - and the said defendants through their
counsel solemnly called come not nor either of
them nor any one for them or either of them but
herein make default which is entry of Record

And the Court being fully advised in the premises
it is ordered that said Motion be sustained and that
said Plaintiffs do have Judgment against the
said defendants Almon and Kennedy & Nth Kennedy for
their penalty in said writ of Scire Facias mentioned to
two hundred and fifty dollars

It is thereupon ordered by
the Court that said Plaintiffs do recover of the said
Almon and Kennedy & Nth Kennedy the sum of two hundred and
fifty dollars together with their costs and charges by them
about their suit in this behalf expended and that they
have execution therefor"

upon which foregoing Reciting Judgment execution
was issuing from the office of said Clerk of said Mill
County Circuit Court on the 10th day of August
A.D. 1853 directed to the Sheriff of said Kendall
County to execute

State of Illinois

Mill County

I Royal E Barber Clerk of the Circuit
Court of said County in the State aforesaid do
hereby certify the preceding to be true & correct copies
of the said several Indictment, Recognizance, Writ
& Return of Service thereon, and of the Records of the
proceedings of said Court therein Reciting and State-
ments containing therein

In Attestation whereof I have hereunto
subscribed my name and affixed the
Seal of said Court at office in Solicitor
in said County this 13th day of
September A.D. 1853

R. E. Barber Clerk.

The Clerk of the Supreme Court will issue a supersedeas
in the above Case upon the plaintiffs in error entering into bond
as by law required in the penal sum of five hundred dollars
with William Proyd as their security

J. H. Mason

The People of the State of Illinois }
 vs. }
 Common Kennedy & North Kennedy }
 Circuit Court.
 And now come the said
 defendants by W. P. Boyd their attorney and
 say that in the Record and proceedings aforesaid
 there is manifest Error in this to wit:

1. That the said Recogizance in said Record mentioned was not taken by any officer authorized by law to take the same upon the facts appearing on said Record.
2. That the Scire facias in said Record mentioned was never duly served upon said defendants nor was the alias scire facias in said Record mentioned ever duly served.
3. For other errors appearing upon the face of said Record.

W. P. Boyd
 atty for defts.

#3
 3 P. D.
 Will Circuit Court
 The People of the State of Ill.
 vs.
 ats.
 Common Kennedy
 & North Kennedy
 vs. J. P. McG.
 12163
 They for \$5.12 receiving
 sum of W. P. Boyd say
 W. P. Boyd et al.
 Filed Sept. 17. 1853
 J. C. Lewis Clerk.
 Prepared

Supreme Court. June Term 1854

D & R. Kennedy vs The People &c

The judgment sought to be reversed - was rendered
on Sci fa upon an alleged recognizance

Feb 11. 1851. Sci fa from ^{clerk's office of} Will Circuit issued

Reciting That D & R Kennedy did on 12th July
1850 - before Daniel Curtis & G. L. A. Parks - two acting justices
of the peace, make & execute an instrument in writing
under their hands & seals - "in substance following viz

State of Illinois } Be it remembered, that on the
Will County } 12th day of July in the year 1850
D Kennedy & Ruth Kennedy

personally appeared before Daniel Curtis and Garrison
L. A. Parks - two justices of the Peace in & for said
County - and jointly & severally acknowledged them
selves to ~~owe~~ & be indebted unto the People of the
State of Illinois in the sum of \$250, to be levied
&c

The condition of this recognizance is such
that if the above bounden D. Kennedy shall personally
be and appear before the Cir Court of said County
on the first day of the term, next to be holden in
& for said Co of Will - then & there to answer and indictment
for larceny - found & preferred against said Demond Kennedy
impleaded therein with one Henry Cook - by the the grand jurors
in & for said County - at the last term Special Term
of said Circuit Court in relation to said indictment
not depart the Court without leave thereof - then this recog
nizance to be void otherwise of force

Taken & acknowledged

D. C. Kennedy Seal

before us - the day & year

Ruth Kennedy Seal

1st above written -

Daniel Curtis J. P.
Garrison L. A. Parks J. P.

That said instrument, duly attested
by said J. P. was on 6th Nov 1850 filed in the Clerk's office Will
Co - And afterwards on 7th Nov 1850 (one of the days of Court Term)

Certain proceedings were had before said Court in the matter of said
indictment & entered of record - whereby it appears that said
D Kennedy made default herein and that said D. R. & R. K
made default of their said recognizance herein - And it was
ordered by the Court - That a writ of Sci fa issue vs said D. R. & R. K
and whereas said recognizance nor any part thereof hath been paid

Concluding with Summons -

This writ was added to the Sheriff of Will county -
and it was returned by the Sheriff of Kendall county with
his certificate - that he had served the same upon Ruth
Kennedy on 30th April 1851 by reading the same to
her & delivering a copy at her residence on 16th of March
~~1851~~ - which was delivered to her by her daughter Larina
(over 21 years old) since Ruth not being found at that
time - Dated 16th May 1851 -

At May Term Will in Court - this cause was continued &
it was ordered that an alias writ issue to Kendall
18th July 1851. Alias writ was issued to Sheriff of
Kendall - recitals substantially as above
& also that the original sci-fa had been returned
nihil as to Demand - & commanding to sum-
mon - Demand & Kennedy -
Which writ was on 17th August 1851 - returned
served on Demand Kennedy - by the Sheriff
of Kendall

7th September 1851 - Judgment by default ~~of~~ that
plain-tiff recover of Demand K. & Ruth Kennedy
\$250 & costs & have execution therefor -

Kennedy & co
Debit
Abstract

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of Will — Greeting:

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

plaintiffs, and *Ruth Kennedy & Edmund Kennedy* —

defendants it is said manifest error hath intervened, to the injury of the aforesaid *defendants*

as we are informed by *their* 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 *2^d Monday in June* — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. **SAMUEL H. TREAT**, Chief Justice
of our said Court, and the Seal thereof, at Ottawa, this *17th* day of *September*
— in the Year of Our Lord One Thousand Eight Hundred and Fifty-*three*.

L. Leland

Clerk of the Supreme Court.

43.

But the Kennedy et al.
^{vs}
The People State of Illinois

Writ of error

Filed Sept. 17. 1853.
Leland Clk.

This writ of error is made
a Supersedeas & as such is to
be obeyed by all concerned—
L. Leland Clk.



L. Leland
Clerk of the Supreme Court

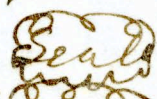
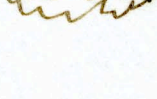
STATE OF ILLINOIS,

The People of the State of Illinois,

Know all men by these presents, that we
Ruth Kennedy ^{& Demmond Kennedy} as principals & William P.
Boyd as security are held & firmly bound
unto the People of the State of Illinois in the
penal sum of five hundred dollars for
the payment of which well & truly to be made
we bind ourselves, our heirs, executors &
administrators, jointly, severally & firmly
by these presents - Witness our hands
& seals this 14th day of September A.D. 1853.

The condition of this obligation is
such that whereas the People of the State
of Illinois did, at the September Term A.D. 1852,
of the Will County Circuit Court ^{in said Court} in said State,
recover a judgment against Demmond Kennedy
& Ruth Kennedy for the sum of two hundred
& fifty dollars & costs -

Now therefore, the said Demmond
Kennedy & Ruth Kennedy are about to sue
out of the Supreme Court of said State a
Writ of error ^{in said case} to be made a Supersedeas &
if they shall duly prosecute their said Writ
of error and the said judgment shall
be affirmed shall well & truly pay & satisfy
the said judgment all costs interest and
damages to the said People of the State of Illinois
or to whomsoever shall be entitled thereto
then the above obligation to be void, otherwise
to be & remain in full force & virtue,

Ruth Kennedy 
Demmond C. Kennedy 
William P. Boyd 

4.

Ruth Kennedy et al.

vs

People State of Illinois

Bond

Filed Sept. 17. 1853.
Shelton Clk.

for \$500

State of Illinois - Supreme Court - 3rd Grand Division
Term Term A.D. 1854

Ruth Kennedy et al plffs in error
as. } Error to
The People &c. defts in error } Will -

And the said defts in
error by Wallace their attorney
come and deny that there is
any error in the record of
the proceedings aforesaid, and
this they are ready to verify by
the record

W H Wallace
for the people

Ruth Kennedy et al
vs.

The People &c

Indict in error

Filed June 16th 1854

L. Leland Clk

By P. K. Leland Dy

Supreme Court June Term 1854 -

Ruth Kennedy + Samuel Kennedy

vs { Error to Will -
People -

Points & authorities -

1st

The only service on Ruth Kennedy of the sci fa - was by the Sheriff of Kendall County, of a writ addressed to the Sheriff of Will County,

2nd

The only service upon Samuel Kennedy is of an alias sci fa - and no return of "not found" ^{as to him} ^{by the Sheriff to whom it was addressed} was made upon the original sci fa

3rd

The sci fa does not show ^{sufficient} ~~the~~ cause of taking the recognizance - this is fatal ~~XIII Ill 696~~

XIII Ill
696

The orders of the Court copied into the record - cannot aid the sci fa - ^{same case}

4th Gilman.
434 &
Cases there
cited by
Purple I.

The recognizance is conditioned that Samuel will appear & answer to an indictment for larceny found & preferred against him at the last Jan "Special Term" and the sci fa ~~contains no other~~ ^{contains no other} ~~provisions~~ ^{provisions}. It does not appear from the sci fa that Kennedy ^{was in custody} ~~had been arrested~~ - at all - much less whether upon capias to Sheriff - or ~~by~~ ^{by} ~~written~~ ^{written} by order of the Court for want of bail -

4th

Two justices have no authority by law to take after indictment found -

R. S. page 191 - sec 206 - & preceding sections. Their jurisdiction extends only to commitments made by a Judge a Justice of the Peace - for want of bail - in vacation - and upon a preliminary enquiry - See also R. S. page 183. Sec 175

Kennedy et al
vs
People &c

Brief -
T. L. Drury
for plff in error