

14712

No. _____

Supreme Court of Illinois

People

vs.

Bulson

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

People's Causes.

No. 16.

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

People's

1864

Bulson

~~1864~~

~~1864~~

State of Illinois }
Knox County } S.S.

The People of the State
of Illinois to any Constable of the said
County, and the Keeper of the Common Jail
of said County.

Whereas Isaac Bulson
has been arrested and this ^{day} brought before
James Cook, one of the Justices of the Peace
of the said County charged on the oath
of John Rensted with feloniously stealing
taking & carrying away, at the Town of
Copley in the County aforesaid on the
2nd day of October A. D. 1858, one red
cow three years old with white in the
face, of the value twenty Dollars, the
property of the said John Rensted, which
was then & there stolen, and having in-
quired into the truth and probability
of the charge exhibited against him
by the oath of all witnesses attending
& upon consideration of facts and cir-
cumstances, the said justice did
adjudge that the said offence had
been committed and there was probable
cause to believe the said Isaac Bulson
to be guilty thereof and required him
to enter into a recognizance with good
and sufficient securities in the sum of

Five hundred Dollars, for his personal
appearance at the next term of the Circuit
Court to be held in & for the County of
Knox, on the first day there of with which
requisition he has failed to comply. We;
therefore, Command you the said Constable
forthwith to carry the said Isaac
Bulson, to the Common Jail of the said
County, and deliver him to the Keeper
thereof; and you the said Keeper are
thereby required to receive the said
Isaac Bulson into your custody, in the
said Jail, until he shall be dischar-
ged by due course of law. Witness
the said Giles Cook at Victoria
in the County of Knox the 22^d day
of April. A.D. 1859.

Giles Cook Justice of the Peace

Rec'd the body of the within named
Isaac Bulson on the 22nd day of April
1859. who was by consideration of Bond
Security before Two Justices of the Peace
admitted to Bail on the 23rd day of
April 1859.

And, Thomson,
Sheriff & Jailor.

People & People &c

Isaac Bulson

Mittimus

Constable Cost one

Milage 1.00

Delivery 28

Bond & convey. 4.00

Ham. H. Low const.

People Witnesses

John Rensted

George Goodwell

John W. Goodwell

Edwin Goodwell

Charles Smith

George Suydam

George C. Stanley

Col. W. Clark

Hans Stegell

Supreme Court;-
of the
State of Illinois
Third, Grand, Division:
April Term A.D 1864 at Ottawa

Frederick Bulson and
James Downing } Appeal from
vs. } Knox
The People &c. }

Your petitioner John
D. Bennett Attorney and Council for
said Frederick Bulson and James Downing,
of the County of Knox and State of Illinois,
Appellants in the above entitled Case: Humbly
petitioning Sheweth unto Your Honors the
Hon. Pinkney H. Walker, Sidney Beese,
and, C. Beckwith Judges of the Supreme
Court of the State of Illinois: By way
of petition for a re-hearing, in the above
entitled Cause, that said Cause ^{was submitted} to the
Hon. Supreme Court of the State of Illinois
at the Ottawa April Term of said Court
A.D 1863, upon the part of said Appellants,
upon printed abstracts and points, and
authorities and the written arguments of
your petitioner and the Hon. Aaron Tyler
Attorneys for Appellants:-

Your petitioner further sheweth unto your
Honor that the opinion of the Court, has
been recently and during the last vacation
filed. That the said Cause was a *Scire facias*
Scire facias, brought to recover a judgment
against said Appellants upon an alleged
forfeiture of recognizance, as bailors of
one Isaac Bulson. Your petition further
States unto your Honor, that your
petitioner and said Tyler, as attorneys for
said Appellants, caused to be printed and
filed in said Cause, in compliance with
the rules of said Court, Abstracts of the
record in said Cause which said Abstracts,
Your petitioner is informed by Lorenzo Seland
Esq., Clerk of said Court, his minutes show
to have been delivered to the Court, ^{or} about
or soon after the time said Cause was submitted;
but Your petitioner is informed by the opinion
of said Court, recently filed, ^{as} aforesaid, that said
printed Abstracts were not before the Court,
when the said Cause was considered by the
Court, and infers ^{that} the same must have been
mislaid or lost. That the Court say in
their said Opinion, "We have not been furnished, in"
"this case, with any abstract of this record which is very"
"voluminous and very ^{made up} and would have"
"been well warranted in disposing of the case, in a summary"

if for want of an abstract, in future cases, when abstracts
shall be wanting, we will not search into the record,
to find the facts but take them as we find them in
the brief, or dispose of the case in the most
summary way."

Your petitioner further sheweth unto
Your Honors that the record in said case is
very voluminous, and is by the Clerk very
unskillfully gotten up, and, that in fact without
very much time and labour expended by the
Court, it could not be possible for the Court
to get a clear idea of the case, and, that in fact
the Court having no printed abstracts, before it
has in its Opinion and decision misconceived
some of the material facts of the case, as
appears from the Statements of the Opinion.
The leading facts in the case are:— That
one Isaac Bulson was arraigned before James
Sales Esq., a Justice of the Peace of said County
of Knox on the 16th day of February A.D. 1859.,
upon a warrant charged with Larceny, and bailed
over in the sum of fifty Dollars. That he entered
into recognizance, before said Sales in due form
of Law. Satisfactory bail which recognizance
was afterwards by said Justice duly filed in
the Circuit Clerk's office of said County.

That afterwards and on the 22^d day of April
A.D. 1859 said Isaac Bulson was again arraigned
before Giles Coak, an other Justice of

County upon a Warrant, issued by
said Cook and charged with the same offense.
That at said second examination, said
Sales was subpoenaed and appeared with his
Docket, as a witness for said Pulson and,
that the previous binding over before, Sales
was by said Pulson made to appear to
said Cook; but that, the said Cook, ^{there}
disregarded the previous action of said Sales
and held the said Pulson to Bail, in the
sum of five hundred Dollars. That said
Isaac Pulson being unable or unwilling
to submit to giving said bail, and acknowledg-
ing the jurisdiction of said Cook, the said
Cook issued his mittimus committing the
said Pulson to the Common Jail of said
County of Knox - That the said Cook ~~now~~
where endorsed on said mittimus the amount
in which bail might be taken, nor did it appear
upon the face of said mittimus in what sum
bail was authorized to be taken by any Constable
Sheriff, or other officer authorized by Law
to take bail in such Cases, and that, the
only place where any sum is named, is in the
preliminary recital, showing what proceeding
were had before said Cook. and that
said Pulson had been required to enter into
~~and~~ recognizance before said Cook, in the
sum of five hundred dollars and by way of

showing said Cook's right to issue said
mittimus: That a Copy of said said
mittimus together with all the endorsements
thereon is herein filed with this petition, and
this Honorable Court is respectfully asked
to examine the same. Carefully in Connection
herewith. That said Pulsin was afterwards
taken by the Sheriff of said Knox County, upon
said mittimus before two Justices of the peace
of said County, who, without hearing any
evidence, or without the authority of any
endorsement on said mittimus, arbitrarily
fixed the amount of bail at five hundred
dollars - That the Appellants signed said
bail bond; that the original bail taken before
said Sales was afterwards, by the prosecuting
Attorney of said County, dismissed, and
discharged, and these Cognizors called and
defaulted.

Your petitioners further shew unto your
Honors, that the issues made by the pleadings
in the Court below, ^{and the assignment of errors} raised the following questions:
(These there are endorsements by Cook upon the
mittimus, in compliance with the Statute)

6
Here the Justices who took the second recognizance
Authorized, without hearing evidence, and without
there being an endorsement of bail on the
mittimus to fix the amount. Was the
binding over by Soles (as a matter of fact)
done in fraudulently ^{conspicuously} with Bulson, the witnesses
and Soles for the purpose of evading the law?²

Upon these questions, so far as the facts are
concerned, this Honorable Court, owing to the
absence of printed Abstracts, on the part of
Appellants, properly exhibiting the Evidence,
has misconceived and labored under errors of
fact. In their opinion, this Honorable Court says:-
"When these proceedings were had before the ^{Court} ^{Justice} ^{Soy},
Conviction of the same offense, before Soles, was not"
"Alleged or set up by way of defense to the proceeding;"
"but the same was acquiesced in by the assent &c."
"At this subsequent investigation was the time to"
"urge his previous Conviction and ~~lead his~~ ^{lead his} ^{biding}"
"to bail. It is now too late to urge any such"
"objection"

In this Statement of Supposed facts,
this Honorable Court is in error, as to the facts
stated. The Transcript of Cook, and his testimony
in the Court below established the fact, when
properly presented and understood, that said
Soles was subpoenaed as a witness, with his
decret, and was a witness before Cook.

with the part of defence, and the former conviction before Sales of the same offence was alleged and set up by way of defence to the proceeding, afterwards had before Cook; and, this would clearly appear if the abstracts filed by Appellants had been before the Court in its consideration of this Cause.

If the Court had been satisfied of this last mentioned fact, it is quite manifest from the opinion, that a different result would have been arrived at, by the Court, as the Court lays considerable stress upon the supposed fact, that, the former Conviction was not brought to the knowledge of, and used as a defence before Cook.

Secondly, the Court makes a mistake of fact, as to the nature of the supposed inducements of bail on the mittimus. The Court says in their Opinion, "A Strict Compliance with law is not indispensable to the officer," gets the knowledge from the warrants,

"If it is conveyed to him by the written direction of the Justice of the peace appearing on the face; it ought to be regarded as efficacious as if it was on the back of the warrant."

"The limit of bail is fixed by the proper officer, and a knowledge of it conveyed to the officer by the written direction of the Magistrate in the body of the warrant, &c."

An inspection of the Copy of the mittimus and
endorsements herewith filed as exhibits "A,"
will show the facts &c. - That there was
no "written direction" either on the back, on the
face, or in the body of the mittimus, directing the
Officer to take bail in any sum whatever, as
to take bail at all. - There is no where on the
mittimus, any thing to show that the justice of
the peace fixed the amount in which bail
should be taken by the officer or conveyed to him
the knowledge, in what sum and by his
written direction, bail should be taken.

The only reference to bail appearing
anywhere is in the reciting part, showing
in what sum the justice held the defendant
to bail, on the examination, before him, and
which is mentioned merely as a recital of
a fact ^{occurring before him} and not as a written direction to
an officer; And, as showing the ~~right~~
^{of the justice to issue his mittimus by virtue}
of a preliminary ^{a preliminary} justice to give bail ^{before him} ~~before him~~.
If proper Abstracts had been before
the Court, for its consideration containing
a printed copy of this mittimus, and, the
endorsements thereon, the above facts would
have been made clearly to appear to the Court,
and the Court would not have held, that there
was, as a matter of fact, any written direction
of the magistrate, or any officer, in what sum

to take bail;

And, if the Court had come to a different Conclusion of fact, and that there was no written direction, either on the back, or face, or in the body of the Writimus, as to what Sum bail should be taken in - It would have determined this Cause differently on the former hearing.

It is upon an entire misapprehension of this fact concerning the endorsements of bail - that the decision and opinion is based; for the Court say, "the Object of the provision is" "manifestly to inform the officer, having" "the warrant, of the Amount of bail, proper" "to be taken, in the particular Case; he himself" "having no power to fix the Amount."

They again say, "it is made the duty of the" "Judge or Justice, Committing a person to" "Jail, Charged with a Criminal Offence, to" "Endorse on the warrant of Commitment," "in bailable Cases, in what Sum bail" "ought to be taken"

If, then, as a matter of fact, there was no such endorsement as the Statute requires; the Court must have come to the Conclusion, that the writimus was void, - the Officer issuing it, as well as the Officers executing it, trespassers, and the recognizance taken by the parties, without any ^{written} direction."

as to endorsement & amount; also void.

His view of the law would not have been new in this Court; but, in accordance with its previous decisions: See

Solomon vs the People. 15th Ills. p 290.

Maugh vs the People. 17th Ills. p 563 & 4.

In the Case of Maugh against the People, above referred to, the Sheriff of Bureau was directed to take bail in the sum of one hundred dollars; he took bail in the sum of two hundred dollars. This Court held, that, the recognizance was void, and in Chew (Opinion) page 564, says

34. "The Sheriff was bound to pursue his authority"
"strictly, and the recognizance was void, as if"
"he had no authority whatever, to require "
"bail" ** "But there is in this case a principle"
"of higher moment." If the Sheriff may require "
"the Prisoner to give bail in a quoted amount, "
"then is required by the order of the Court, to "
"the extent of one hundred dollars, he may, "
"with the same propriety require \$10,000, and "
"thus exercise the most intolerable oppression, "
"and, in fact, deprive the party, altogether, of the "
"right to give bail."

"It is no satisfactory answer to say "
"that the Court may treat the recognizance "
"for the true amount authorized; for the "
"greater mischief is, in requiring the excessive

" bail, by which, the party may be demanded
" to give higher bail, than he is able to do, "
" and thus, compel him to continue in "
" prison, when he might ^{have} secured his discharge
" by giving the bail required by law."

In the Other Case referred to above
this Court held, that the committing
Magistrate had not Authority to hold
to bail; And in their opinion Cp 292,
17 Ill. Say,

"Halden was, therefore, illegally "
"restrained from his liberty."

"It follows, that the recognizance entered "
"into to procure his release, was without "
"any binding force. - It was an ~~involuntary~~
"obligation, taken without Authority of Law,
"and cannot be enforced; -

Thirdly - The Court entirely misconceived
the evidence (by reason of not having printed
abstracts) Concerning the binding over, by
Justice Doles: The People alleged in their
proceedings that there was fraudulent collusion
between Doles, the witnesses and Defendants, for
the purpose of defeating the ends of the law.

This Hon^{ble} Court seems, in its opinion, to
infer the fact to be, that - that issue of fact
is sustained by the evidence in this Cause.

Whereas, were the evidence correct

And before the Court, at the time of considering this case, the opposite would clearly appear. The Evidence, when properly presented, to the Court, will show that until the day of binding over, Justice Doles had never seen Isaac Phuleon, the prisoner, or either of these Cognizors, or the Summits who were the relatives of the prisoner. That he knew nothing of the Case, until the examination, except what he learned from the Complaining witness, at the time of making Complaint. That he bound the prisoner over in the exercise of his best Judgment, without any understanding with any one, and fixed the bail small, because the proof was slight. The Complaining witness swears that he had no complicity with any one, such would be the evidence when properly abstracted and presented to the Court. Upon this question of fraudulent Complicity; The fact is as shown by the evidence there was no such complicity.

Your petitioner further states to your Honor, that, owing to the fact, that appellants' printed abstracts of the Record did not get before the Court, at the former hearing - there are, in the case, several material questions of Law, raised and properly brought

before the Court, by the assignment of
error, which were not passed upon
by the Court, and which these appel-
lants are entitled to have passed upon
before the judgment against them, in
the Court below, can be affirmed.

On the 15th day of
June A. D. 1859, an order was taken
for a scire facias
against James Bulson, Fredrick Bul-
son and James Downing. On the 26th
of July 1859, the scire facias was
issued against Isaac Bulson, Fred-
rick Bulson and James Downing.

The scire facias avers that
the Court entered an order for
scire facias against Isaac Bulson,
Fredrick Bulson and James Down-
ing. The Record introduced in evidence
below, proved an order against
James Bulson, Fredrick Bulson and
James Downing. The second plea to
the scire facias, ^{and the record} put in issue
the truth of this averment in the sci-
re facias. The evidence did not sus-
tain the averment in the scire facias.
; but showed no such record as aver-
red. The verdict should have been
for the appellants on that issue.

The averment is, in fact a material
avermnt of the writ. The verity of the
Record can not be questioned - much
less regarded by the Court as a cler-
ical error.

These appellants are entitled to a
reversal upon this point - a point
not considered by the Court, on
the former hearing.

The third (3^d) plea of appellants, was
that Massie & McGowan unlawfully and
without any authority ^{from book} took the Recogni-
zance. To that plea it was replied
that, it is Confessed that true that no
amount was indorsed on the back of
said Mittimus, in which bail should
be taken; but alleges, that said Justice di-
d direct on the face of said Mittimus in
what sum bail should be taken, & Con-
cludes with a verification.

This Replication to appellants third
(3^d) plea was certainly obnoxious
to the demurrer interposed by appellants
- and in overruling the demurrer, the
Court erred.

The want of authority ^{in Massie & McGowan} was broadly and
distinctly averred in the plea and
should have been denied in the Rep-

lication, with a Conclusion to the
Country. No new matter is set up
in this replication, in avoidance of
the plea, nor does the replication
answer the plea. This Replication
must either be regarded as taking
issue upon the fact of want of author-
ity in the Justices set up in the plea -
or as forming an immaterial issue.

If an immaterial issue was
formed, then the Plea was un-answered
- and appellants were entitled to a
judgment on the third Plea, below, &
a reversal of the judgment here.
If it is to be regarded as denying the
fact of authority alleged in the 3rd plea,
then appellants were entitled to jud-
gment upon the evidence; for the all-
eged Mittimus - contains no directions
for book either on the back or face
to take bail (see copy of Mittimus
herewith filed).

Again, the Demurrer to appellee's Repli-
cation to this 3rd Plea, if not sustain-
able, should have been carried back to
the amended Scire Facias - which is de-
murrable in nowhere averring Authority
in Massie & McGowan, or that there was
an indorsement, Somehow on the Mit-

inund, in what case brief should
taken. one or the other answer should
have been made, and upon this amend-
ed scind facias, the judgment is not
sustainable.

The foregoing questions have not been
passed upon, in the opinion of this
Honorable Court, now filed - and this ap-
plication is not upon the ordinary
ground that, this Honorable Court has
not decided the law correctly; and ask-
ing a reversal of an expressed legal opin-
ion; but upon the ground that owing to
the fact that the printed abstract - which
appellor had filed with the brief Apr.
28. 1863, in some manner not the fault
of appellor, was not before the Court, and
that owing to the extent and unskillful
arrangement by the clerk of the Record -
the real facts of this case were mis-
understood, by the Court; and upon the
further ground, also, that there are
material questions of law, raised by
this Record, and not brought before or
decided by this Court, - which appellor
are entitled to have passed upon.

Your petitioning is not without hope
either, but that, on a rehearing, two
questions, already passed upon by

the Court, and decided to be error in
the Court below - will be considered
as having some weight in the final
determination of this Case.

Your Petitioner, therefore, most respect-
fully asks that a Rehearing may
be granted and that this Case
be set for hearing at the Pres-
ent Term of this Court; and your peti-
tioner will ever pray &c.

John S. Bennett
att for Appellars.

The Respcave.
Petition for Re-
hearing.

Filed April 21. 1864.
L. Deland
Clerk.

J. S. Bennett
att for appellars.