

No. 12474

Supreme Court of Illinois

Chumasero

vs.

People

71641  7

William Chapman

The People

170

Chumasco

People

1857

12474

X

LaSalle County Circuit Court May term
A.D. 1835

State of Illinois LaSalle County p. Chas
Before the Honorable Edwin S. Leland Circuit Judge
in and for the ninth judicial District in said
State, at a term of the Circuit Court in and for
said County of LaSalle, in said District, begun
and hold at the Court House in Ottumwa in said
County, on the second Monday, the fourteenth day
of May A.D. one thousand eight hundred
and fifty five
Present

Wm. Edwin S. Leland
Wm. S. Wallace
Francis Warner
John H. Cook

Judge &c
State Attorney
Sheriff
Clerk

On Wednesday May 23rd 1835 the same
having been one of the days of the May term of said
Court, the year 1835 the Grand jury of said County
dugress and charged at said term according to
Law returned into said Court the following bill
of Indictment as a true bill, to wit:

"The People
vs
William Trapping
"Henry Gerhart
Indictment for Sundry

"which is ordered to be filed
and that said William Trapping & Henry Gerhart
be held to said in the sum of Eight hundred
dollars each"

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Said Indictment is in the words and figures following, to wit:

"State of Illinois, LaSalle County ss.
Of the May term of the said LaSalle County Circuit Court, in the year of our said Eighteen hundred and fifty five.

The Grand jurors chosen, selected and sworn in and for said LaSalle County, in the name and by the authority of the People of the State of Illinois, upon their oaths present that William Trubbing and Henry Burkhardt late of said County on the nineteenth day of May in the year of our said Eighteen hundred and fifty five, at and within the County aforesaid, one certain bill of exchange for the payment of the sum of seven hundred and fifteen dollars in money, said bill of exchange being then and there the personal property of Henry & Co. then and there being found and then and there being of the value of seven hundred and fifteen dollars to the said Henry & Co. the owners thereof - then and there feloniously 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 said people of the State of Illinois.

And the jurors aforesaid upon their oaths aforesaid in the name and by the authority of the people aforesaid, do further present that the said William Trubbing and Henry Burkhardt, on the day and year aforesaid at and within the County aforesaid, feloniously did steal, take and carry away a certain Instrument in writing, commonly called a draft, for the payment of the sum of seven hundred and fifteen dollars, which said Instrument in writing was then

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and there the personal property of one Henry Ashe and
which said Instrument of writing, was then and
there of the value of seven hundred and fifteen dollars
to the said Henry Ashe who was then and there the
owner thereof contrary to the form of the Statute in
such case made and provided and against the
peace and dignity of the people of the State
of Illinois

W. H. L. Wallace

State Atty

On the back of said Indictment, and before the
filing thereof, which was on said 28th day of May 1833.
were the following endorsements to wit:

"The People vs William Trashing & Henry
Gerhart - Indictment for Larceny - John Will
Iron Worker Foreman - Witnesses Henry Ashe
Serge Crawford Wm Rouse - Bail \$800 each - S. S. L."

On Tuesday May 29th 1833 the following order
was entered of record in said cause viz:

"The People vs
William Trashing & Henry Gerhart
Indictment for Larceny
This day came personally before
the Court Henry Gerhart as
principal and Conrad Sapp as his
security who severally acknowledge themselves to owe and be
indebted to the People of the State of Illinois in the sum
of Three hundred dollars each, to be levied of their
respective goods and chattels, lands and tenements as the
law directs. To be void upon condition that said
Henry Gerhart shall personally be and appear before
the Circuit Court of said Saline County on the first day

of the next term thereof, and answer to an Indictment preferred against him and one William Trabling by the Grand jury of said County, for Sundry, and not depart said Court without leave, otherwise in force."

Attendants to wit: on Friday June 1st 1833 the same having been one of the days of the said May term of said Court, the following further matter was entered of record in said case, that is to say:

"The People	vs	Indictment for Sundry
William Trabling	vs	
Henry Gerhard	vs	

This day comes the People by the State Attorney and the defendants William Trabling, in his own proper person who is furnished with a copy of the Indictment together with a list of the names of the petit jury. And more said Trabling is enquired of and concerning the premises how he would acquit himself herein for a plea saith he is not guilty in manner and form as charged in the Indictment."

On Tuesday June 5th 1833 the same having been one of the days of the said May term of said Court the following further matter appears of record in said case viz:

"The People	vs	Indictment for Sundry
William Trabling	vs	
Henry Gerhard	vs	

This day the defendant Henry Gerhard by Counselors his attorney moves the Court to quash the Indictment herein."

Thursday June 7th 1833 having been one of the days of said May term of said Court, an order was made and entered of record in said cause in the words and figures following viz:

"The People vs
 William Trabling
 Henry Gerhard
 Indictment for Sarceny
 This day the defendant Gerhard comes in person as well as by Chumason & Blanchard his attorneys who withdrew the motion heretofore made to quash the Indictment herein. And now said defendant Gerhard is furnished with a copy of the Indictment and a list of the names of the jury. And being inquired of and concerning the premises how he would acquit himself herein for a plea saith he is not guilty in manner and form as charged in the Indictment. Said defendant Trabling being in Court in person as well as by his counsel, and the People by the State Attorney. Thereupon come the following names of a jury to wit: Joseph Porter William J. Bangs, Jacob Keiler, P. L. Porter, Thomas Franklin, Edward Hollander, John Houston, William Griggs, Samuel Lewis, William Hadley, Samuel Hadley and Watson F. Cox who are duly elected tried and sworn to well and truly try the issues herein according to the law and the evidence.

On Friday June 8th 1833 the same having been one of the days of said May term of said Court the following further order was entered of record in said cause viz:

"The People &c
 vs
 William Trastling &
 Henry Gerhart
 Indictment for Larceny
 This day again came the
 People of the State Attorney and
 the defendants in person as well as by their
 Counsel, together with the jury sworn herein, and
 after hearing the balance of the evidence and
 arguments of Counsel, the jury retire to consider of
 their verdict."

And again on Saturday June 9th 1835 the
 same having been one of the days of the said
 May term of said Court the following further order
 was entered & read in said cause viz:

"The People &c
 vs
 William Trastling &
 Henry Gerhart
 Indictment for Larceny
 This day again came the
 People of the State Attorney and
 the defendants in their own proper persons as
 well as by their Counsel together with the jury
 sworn herein who came into Court and before
 they are made to agree upon a verdict. Whereupon
 it is ordered by the Court that the jury be discharged
 from further consideration herein."

And now come personally before the Court
 Henry Gerhart as principal and William Chambers
 as his security who severally acknowledge themselves
 to owe and be indebted to the People of the State of Illinois
 in the sum of Three hundred dollars each to be
 paid of their goods and chattels, lands and tenements

As the Court directs. To be said upon condition that said Henry Gerhart shall personally be and appear before the Vice's Court of said County on the first day of the next term thereof and answer to an Indictment preferred against him and one William Trabling by the Grand Jury of said County for Larceny, and not depart said Court without leave, otherwise in full force."

And again on Tuesday November 15th 1855 the same having been ^{on} of the days of the November term of said Court for the year 1855 the following further order was entered of record in said cause viz:

"The People	Indictment for Larceny
William Trabling	
Henry Gerhart	

This day come the People by the State Attorney who enters a Writ Prosequi herein as to William Trabling. And the defendant Gerhart being three times solemnly called in open Court comes not but makes default. And William Chumason said Defendant Gerhart's security on the recognizance heretofore entered into herein at the last term of this Court being three times solemnly called in open Court to produce the body of said Henry Gerhart comes not, nor produces the body of said Gerhart, but makes default. Whereupon on motion of the State Attorney it is ordered that said recognizance be forfeited, and that the People of the State of Illinois have and receive of said Henry Gerhart the sum of Three hundred dollars, and that they have and receive of said William Chumason the sum of Three hundred dollars the amount so specified in their said recognizance.

And it is further ordered on motion of the State Attorney that a Writ of Scire Facias issue to the said Henry Gerhart and the said William Christensen commanding them to be and appear before the Circuit Court of this County on the first day of the next term thereof and show cause if any they can, why execution should not issue against them finally on this judgment, according to the form, force and effect of their said recognizance.

In accordance with the above recited order, on the 26th day of January A.D. 1836 a writ of Scire Facias issued in words and figures following viz:

"State of Illinois $\int$ The People of the State of Illinois to the
 LaSalle County $\int$ Sheriff of said County Greeting
 Whereas heretofore to wit: on the 28th
 day of May A.D. 1835 the same being one of the days
 of the May term of the LaSalle County Circuit Court for the
 year 1835, a Grand Jury of said County duly empanelled
 & sworn at said term of said Court, returned into open
 Court the following Indictment as a true bill to wit:

"The People $\int$
 " $\int$ Indictment for Larceny"
 William Trullinger $\int$
 Henry Gerhart $\int$ which was ordered to be filed and
 that said defendants be admitted to
 bail in the sum of Eight hundred dollars each

And afterwards to wit: on Thursday June 7. 1835 the
 same being one of the days of said May term of said
 Court, a grand jury was called & sworn to try said cause

and after hearing the evidence & arguments of counsel, afterwards on the 9th day of June in the same year and at the same May term of said Court the following matter was entered of record in said cause viz:

The People
 vs
 William Trullinger
 Henry Geckert

Indictment for Larceny

This day again come the People by the State Attorney and the defendants in their own proper persons as well as by their counsel, together with the jury sworn herein, who come into Court and say they are unable to agree upon a verdict. Whereupon it is ordered by the Court that the jury be discharged from further consideration herein.

And now come personally before the Court Henry Geckert as principal and William Chammasero as his security who severally acknowledge themselves to owe and be indebted to the People of the State of Illinois in the sum of three hundred dollars each to be paid of their goods and chattels, lands and tenements as the law directs. To be paid upon condition that said Henry Geckert shall personally be and appear before the Circuit Court of LaSalle County on the first day of the next term thereof and answer to an Indictment preferred against him and one William Trullinger by the Grand Jury of said County for Larceny and not depart said Court without leave, otherwise in full force.

And again afterwards to wit: on Thursday November 15th 1835 the same being one of the days of the November term of said Court for the year 1835 and said November term being the next term after said May term of said Court the following further order was entered of record

in in said cause viz:

The People }
 78 } } Indictment for Sundry
 William Trapping }
 Henry Gerhart } This day come the People by the
 States Attorney who enters a Nolle
 Prosequi herein as to William Trapping. And the
 defendant Gerhart being three times solemnly called in
 open court, comes not but makes default, and
 William Chumason said defendant Gerharts security on
 the recognizance heretofore entered into herein at the
 last term of this Court being three times solemnly called
 in open Court to produce the body of said Henry Gerhart
 comes not, nor produces the body of said Gerhart, but
 makes default. Whereupon on motion of the States
 Attorney it is ordered that said recognizance be forfeited
 and that the People of the State of Illinois have and
 receive of said Henry Gerhart the sum of three
 hundred dollars, and that they have and receive of said
 William Chumason the sum of three hundred
 dollars the amount so specified in their said
 recognizance. And it is further ordered on motion of
 the States Attorney that a writ of Scire facias issue to
 the said Henry Gerhart and the said William Chum-
 ason commanding them to be and appear before
 the Circuit Court of this County on the first day of the
 next term thereof and show cause if any they can
 why execution should not issue against them severally
 on this judgment according to the form force and effect
 of their said recognizance — all of which appears
 record in said Court.

We therefore Command you to Summon the said Henry Burkard and William Chumarsen if they shall be found in your County 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 Attainee on the 12th day of May next. to show cause if any they have why execution should not issue against them on the above recited judgment according to the form force and effect of said recognizance.

And make return in what manner you shall have executed this writ.

Witness John F. Mark Clerk of said Court and the Seal thereof at Attainee this 26th day of January A.D. 1836 J. F. Mark Clerk

Said writ of *scire facias* was returned by the Sheriff of said County and filed in the office of the Clerk of said Court on the 10th day of May 1836 with an endorsement made thereon by said Sheriff in the words and figures following viz:

"Executed this writ by making the same to William Chumarsen Feb. 4th 1836 - Henry Burkard and found in my County F. Warner Sheriff by L. S. Harris Deputy

And afterwards to wit: on Monday May 12th 1836 the same having been one of the days of the May term of said Court for the year 1836 the following further order was entered & record in said cause viz:

"The People vs
Henry Burkard &
William Chumarsen
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Sci Fa On Recognizance

This day the People come by Wallace their attorney and the defendant William Chumaseen bring three times solemnly called in open Court, comes not, nor any one for him, but makes default. And it appearing to the Court that said William Chumaseen has been duly served with *Scire Facias* more than ten days before the first day of the present term of this Court; and he still failing to appear, and then cause why execution should not issue against him on the judgment entered herein against him and said Henry Gerhart at the last term of this Court for the sum of Three hundred dollars; On motion of the State Attorney it is ordered by the Court that execution issue against said William Chumaseen on said judgment according to the form force and effect thereof And that as to said Gerhart that this cause be continued with an alias *Scire Facias*."

And finally on Friday June 6th 1836 the same having been one of the days of said May term of said Court for the year 1836 an order was entered in this cause in the words and figures following, to wit;

"The People vs
Henry Gerhart &
William Chumaseen

3 *Sci Fa On Recognizance*
3 This day the defendant Chumaseen
comes in his own proper person
and moves the Court to set aside the order heretofore entered
herein, for an execution; which motion is granted by the
Court, to which ruling of the Court said Chumaseen
excepts and prays an appeal to the Supreme Court; which
is granted upon condition that said defendant within
thirty days from this date file an appeal bond payable to the

People of the State of Illinois in the penal sum of Five hundred dollars with Theron D. Brewster as his security.

And afterwards, to wit: on the same day last aforesaid, that is to say, on the 6th day of June A.D. 1836, the said defendant William Chumason filed a bill of exceptions in the words and figures following viz:

"The People of the State of Illinois vs. William Chumason & Henry Gerhart - Saballe County Circuit Court May term 1836 - Be it remembered that on the sixth day of June 1836 that day being one of the days of the May term of the Circuit Court viz for Saballe County came William Chumason one of the defendants and moved the Court to set aside the order made in this cause at the present term of this Court on the ground that the said Scire facias issued in this cause was insufficient inasmuch as the said Scire facias purports to set out an Indictment alleged to have been found against William Trabing and Henry Gerhart for Larceny without setting out the said Indictment in said Scire facias and produced said Scire facias to the Court, which said Scire facias is in the words & figures following to wit: (See the said Scire facias as set out above) And said Chumason also objected to the said Scire facias on the ground that it was in other respects informal incorrect and insufficient - which motion was overruled by the Court, to which decision of the Court the said William Chumason then and there excepted at the time the same was made and prays the Court to sign & seal this his bill of exceptions which is done in open Court

Wm. E. Hollister Secy

14) On the 23^d day of June A.D. 1836 William Chumarsen filed his bond in words & figures following to wit:

"Know all men by these presents that we William Chumarsen and Thos. D. Brewster of said County Illinois are held and firmly bound unto the People of the State of Illinois in the penal sum of five hundred dollars for which payment well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents.

Sealed with our seals and dated the 23^d day of June 1836.

The condition of this obligation is such that whereas the said People of the State of Illinois at the May Term 1836 of the Circuit Court of said County did obtain a certain order against said Wm Chumarsen for the issuing of an execution upon a certain judgment of recognizance entered against said Chumarsen at the November term of said Circuit Court for the sum of three hundred dollars besides costs from which said order said William Chumarsen has taken an appeal to the Supreme Court of the State of Illinois. And if the said William Chumarsen shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force & effect

Wm Chumarsen Seal
Thos. D. Brewster Seal

State of Illinois J. John F. Nash Clerk of the
LaSalle County J. B. Circuit Court in and for said
County and State do hereby
Certify that the above and foregoing record comprises
a true, full, perfect and complete copy of all the
orders of said Court in the foregoing and above
entitled cause, as the same appear of record in
my office, also of all the papers on file in my office
appertaining to said cause.

In Testimony Whereof I have hereunto set
my hand and the seal of said Court at
Ottawa this 19th day of March A.D. 1837
J. F. Nash Clerk

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William Chumason

vs
The People of the State
of Illinois

Record

Filed April 21, 1887

L. Leland
Clk

Fees \$ 5.00

ABSTRACT OF RECORD.

WM. CHUMASERO, Appellant,
vs
THE PEOPLE, Appellees,

In the Supreme Court of the State of Illinois.

- This was a proceeding in LaSalle Circuit Court against appellant by sci. fa. on recognizance. The record shows:
- PAGES 2 & 3 An Indictment against Wm. Trabling and Henry Gerhart, for Larceny.
" 3 Endorsement on the back of the Indictment, and order to hold to bail in the sum of \$800 each
" 3 & 4 Recognizance of Henry Gerhart, as principal, and Conrad Sapp, as security, in the sum of \$300 each for the appearance of Henry Gerhart before the Circuit Court of LaSalle County at the (then) next term thereof to answer the Indictment.
" 5 Appearance and plea of not guilty by Gerhart.
" 5 & 6 Trial of defendant; disagreement and discharge of jury.
" 6 & 7 Recognizance of Gerhart as principal, and Wm. Chumasero as security in the sum of \$300 each, for appearance of defendant Gerhart on the first day of the then next term of said Court.
" 7 Nolle prosequi entered as to Trabling; defendant Gerhart called and defaulted; appellant called and made default, and recognizance forfeited, and judgement rendered against appellant for the sum of \$300, being the amount specified in recognizance.
" 8 Order for scire facias and scire facias.
" 11 Return of officer of service of sci. fa. on appellant.
" 11 & 12 Order for execution against appellant.
" 12 Motion by appellant to set aside order for execution, and overruling of said motion.
" 13 Bill of exceptions showing that motion was made to set aside order for execution, because said sci. fa. purports to set out an indictment alleged to have been found against said Gerhart and Trabling for larceny, without setting out any indictment in said sci. fa., and because said sci. fa. was in other respects informal, uncertain and insufficient; which motion was overruled by the Court, and to which decision said appellant then and there excepted.

ASSIGNMENT OF ERRORS.

- 1st. The Court erred in overruling the motion to set aside the order for execution against appellant.
- 2nd. The Court erred in making said order, for the reason that the order to hold to bail was in the sum of \$800, when the recognizance was taken for a less sum without any order having been made reducing the amount.
- 3d. The Court erred in making said order, for the reason that the scire facias does not set out the indictment and was void.
- 4th. The recognizance entered into by appellant and Gerhart, was not in pursuance of any order of the Court, and therefore void; and hence all proceedings founded thereon are void.
- 5th. That the recognizance was a several recognizance of said appellant and Gerhart respectively, and that scire facias was against them jointly.

CHUMASERO & ELDRIDGE, For Appellant.

Eldridge for Plaintiff

17 Ill R 561

7 Blackf R 417 { Joint Sci fa will not
5 Blackf R 471 { lie on a single recog-
4 Blackf R 188 { nissance.
16 Ing C. L. R 146 { 16 Jour 55
1 East 355
17 Wend 252

Barthwell States Attorney for People

1 Scam R 143-131 { Setting aside default
5 Gil 457-7 { is a matter of sound
discretion

1 Scam 47. 137. 801 { what is done in open court
5 Gil 26. { will be presumed to have
3 Scam 486. { been done by order & direction
of the court.
1 Scam 232. { Plaintiff take advantage to
his benefit
Wesce 133. 122

Filed April 24, 1867

Lo Ireland

Clark

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Chambers

The People

1 Gil R 109. { Joint & several recognisance
Wesce 257 { Joint Sci fa may issue on a
4 Scam 479 { several recognisance of principal
13 Ills 9. 14 { & surety or bail
3 Gil 327. 406. 451
1 Gil R 109

State of Illinois } Supreme Court April Term 1857
3rd Grand Division.

Will Chambers

} Finder in Error.

as

The People of } And now come the People of the
of the State of Illinois, by W. Bushnell
States Attorney, and say that there is no error
either in the record and proceedings aforesaid
or in giving the judgment aforesaid
and therefore they pray that the said proceeding
and judgment may be affirmed, and that
their costs may be adjudged to them

by W. Bushnell

States Attorney
T. R.

Supreme Court

W^m Chummar

vs

The People et.

Joinder in Error

Filed April 28. 1857
S. Seland
Clerk

William Chamasesse & Eldridge his Act & Assigns
vs
The People
Assignment of Errors

The Appellant in this cause
comes by Chamasesse & Eldridge his Act &
Assigns the following causes of Error
viz =

1. The Court Erred in overruling the
motion to set aside the order for Execution
against Appellants
 2. The Court Erred in making said
order for the reason that the order to hold
to bail was in the sum of \$800, when the
recognizance was taken for a less sum with-
out any order having been made advancing
the amount
 3. The Court Erred in making said order
for the reason that said said process does
not set out the indictment and was void
 4. The recognizance entered into by
Appellants & Guhart was not in pursuance
of any order of the court and therefore void
and hence all proceedings founded thereon
are void
 5. That the recognizance was a several
recognizance of said appellants & Guhart
respectively and that said process was
against them jointly
- Chamasesse & Eldridge
for appellants

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Superior Court

William Chumasus
Appellant

vs
The People

Assignment of Errors

Filed April 22 1893
L. Leland
Clerk

Chambers & Edwards
Atty for App't