

12703

No. _____

Supreme Court of Illinois

Campbell, Imp.

vs.

People

71641  7

111 2

2 P.D.

12703

1859

The People

vs

~~Off.~~

John F. Gould

James Campbell

~~James~~ ~~Campbell~~

Jeffrey Erwin

The People vs
Error to ~~and~~ Recording
Complete Record Court
vaunt of errors

Filed April 21, 1858

in Telam
Tel H.

W.S.P.

Howin & Meachwell

State of Illinois }
County of Cook }
City of Chicago } S.S.

Hear before the Honorable
Robert S. Wilson Recorder of the City of Chicago
and Presiding Judge of the Recorders Court of the
City of Chicago at a term thereof begun and held
at the Court House in said City of Chicago on the
first Monday in April it being the second day of April
in the year four Lord one thousand eight hundred
and fifty five and of the Independence of the United States
of America the Seventy ninth

Present

Honorable Robert S. Wilson Recorder of the City of Chicago
Daniel M. Elroy States Atty 7th Ind. & Civ.
James Andrews Sheriff of Cook County
Attest Philip A. Hoynes Clerk of said Court

The Sheriff of Cook County County returned into Court
the names 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 served by summoning the following named
persons to wit, D. C. Kelly, Joseph. Pollock Paul B. Ring
D. B. Furke Jacob Lang, E. B. Rebbington John B. Rice
Nathanial Hebbel R. A. B. Mills, Daniel Exp. J. M. Richards
E. L. Sherman. Joseph Richmond. E. H. Knight Henry -
Blentye and Albert Thompson. who upon being called

answered to their names respectively and gave their attendance as Grand Jurors at this term.

Whereupon for sufficient reasons made known to the Court. E. L. Sherman. Joseph Richmond. E. H. Wright. Henry Alentyp and Albert Thompson. were excused from further attendance as Grand Jurors at this term.

The following named persons were returned on the venire "not found". Asa Carter. William Dex con. William Cook. R. Canfield. Henry Moore. William B. Prop. & Thomas J. Field.

It is ordered by the Court that a Special Venire issue for eleven good and lawful men, to complete the panel of the Grand Jury, returnable instantaneously, which was duly returned executed by summoning the following named persons who upon being called answered to their names as follows, and gave their attendance at this term. B. F. Hayes. Samuel Miles. Andrew Nelson. James M. Lane. B. B. Barnes. Charles Douglass. S. A. Staples. D. O'Hara. Theodorus Doty. Jacob Sauter & Robert Higinia whom together with D. C. Kelly. Paul B. Ring. D. B. Fiske. Jacob Lang. E. R. Bebbington. John B. Rice. Nathaniel Hebbert. R. A. B. Mills. Daniel Cox. J. M. Richards & Joseph Pollock were duly sworn in as a Grand Jury, in and for the body of the City of Chicago and the Court having appointed Paul B. Ring one of their number as foreman of the said Grand Jury, and they having received the charge of said Court retired to consider of their presentments.

And afterwards on the nineteenth day of April A.D. 1855, it being one of the days of the April term of said Court the Grand Jury heretofore empanelled came into Court and made among other presentments the following presentment endorsed a true bill, which said presentment is in the words and figures following to-wit:

The People &c
J. F. Gould

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

Of the April Term of
the Recorder Court of the City of Chicago in said
State County in the year four Lord one thousand
eight hundred and fifty five

The Grand Jurors chosen selected and
sworn in and for the City of Chicago in the County
of Cook and State of Illinois in the name and by
the authority of the People of the State of Illinois, upon
their present that John T. Gould late of said City
on the fifteenth day of February in the year four
Lord one thousand eight hundred and fifty five in
said City of Chicago in the County State aforesaid
One Bank Bill for the payment of twenty dollars
and of the value of twenty dollars, and one bank
bill for the payment of ten dollars and of the value of
ten dollars the personal goods of John E. Kessler then
and there being found did then & there feloniously
steal take and carry away contrary to the
Statute in such case made provided and
against the peace & dignity of the same People
of the State of Illinois

and the Grand Jurors aforesaid upon their oaths
aforesaid & in & by the authority aforesaid do further
present that the said John T. Gould late of said City on
the said fifteenth day of February in the year of our Lord one
thousand eight hundred and fifty five in said City of Chicago

in the County & State aforesaid having become Bailers
of two certain Bank Bills to wit, one Bank Bill for the
payment of twenty dollars and of the value of twenty -
dollars, and a certain other bank bill for the payment
of ten dollars and of the value of ten dollars the personal
goods of one John G. Kessler then & there being found
did then & there convert said bank bills to his own
use with an intent to steal the same contrary to
the Statute in such case made & provided and
against the peace & dignity of the same People of
the State of Illinois

And the Grand Jurors aforesaid upon their
oaths aforesaid do further present that said John T.
Gould on said fifteenth day of February (A.D. 1855)
in the year of our Lord one thousand eight hundred
and fifty five at and within the City County
& State aforesaid became possessed as a Bailor of
certain Bank Bills for the payment of money to wit,
one bank bill for the payment of twenty dollars
and of the value of twenty dollars, and one bank
bill for the payment of ten dollars and of the
value of ten dollars the personal goods of
John G. Kessler then & there being found, and the
said John T. Gould then & there being such
Bailor as aforesaid of said property feloniously
converted the same to his own use with an intent
to steal the same contrary to the Statute in such
case made & provided and against the peace

and dignity of the same people of the State of Illinois

D. M. Elroy
State Atty

On the back of which is the following writ:

Recorder Court City of Chicago April Term 1855

The People of the State of Illinois

John T. Gould

} Indictment for Larceny

A True Bill

J. B. Parig - Foreman

Witnesses Allen Finckerton

H. Hynkeorp. John G. Messler

Filed Apr. 19, 1855

J. A. Hogue - Clerk

Be it remembered that on the 21.st day of April A.D. 1855, the following motion to quash was filed in the Office of the Clerk of said Court which said motion is in the words and figures following to-wit:

State of Illinois

John T. Gould } In the Recorder Court - April Term A.D. 1855

And now comes the said defendant by his Attorney and moves to quash the Indictment herein and each count thereof for the reasons following to-wit:

The first count because

- 1 The said count was not presented by the "Grand Jurors" of the City of Chicago

2 The said Court does not conclude. "contrary to the force of the Statute in such case made and provided"

The second Court because.

- 1- The said Court does not charge an unlawful or felonious conversion of the said Bank Bills by the said defendant.
- 2- The said Court does not charge who bailed the said Bank Bills to the said defendant.
- 3- The said Court alleges a finding of the said Bank Bills by the said defendant instead of a bailment to him by the owner thereof.
- 4- The said Court does not charge the said Offence to have been committed "contrary to the force of the Statute in such case made and provided."
- 5- The said Court does not show that it was presented in the name of the "People of the State of Illinois"

The third Court because

- 1- The said Court does not charge an unlawful or felonious conversion of the said "Bank Bills" by the said defendant.
- 2- The said Court does not charge who bailed the said Bank Bills, to the said defendant.
- 3- The said Court alleges a finding of the said Bank Bills by the said defendant, instead of a bailment to him by the owner thereof.
- 4- The said Court does not charge said Offence to have been committed "contrary to the force of."

the Statute in such case made & provided "

5- The said Court does not show that it was
presented in the name of the People of the State of Illinois
and lastly the said second & third counts each
charge the commission of the same identical offence
Blackwell, Ballingall & Underwood
Attorney for defendant

Be it further remembered that on the day & year last aforesaid
the following among other proceedings were had and
entered of record in said Court in this cause to-wit

The People vs
" } Larceny
John T. Gould

This day come the said people by
Daniel M. Elroy Esq. States Attorney and the said
defendant as well in his own proper person as by
Messrs Blackwell, Ballingall & Underwood his counsels
also comes and the defendant by his counsels aforesaid
moves the Court to quash the Indictment herein
which motion is overruled by the Court to which
overruling by the Court the said defendant by his
counsels then and there excepted. Thereupon moves the
defendant by his said counsels the Court for a
change of venue on affidavit filed which motion is
overruled by the Court to which overruling by the
Court the said defendant by his counsels aforesaid
then and there excepted.

Be it further remembered that on the 22.nd day of April
A.D. 1855 it being one of the days of the April term
of said Court the following answer to the motion
to quash was filed in the Office of the Clerk of said
Court which said answer is in the words and
figures following to-wit:

People of Ill

John T. Gould } Answer of People on mo. to quash Indictment

1st The Counts of the Indictment are all presented by
the Grand Jurors - of the County in & for the City of
Chicago

2^d - Every one of the Counts concludes - against the
Statute -

To 2^d Count

The word felonious unnecessary if the Count charges
the offence. "in the language & terms of the Code".

See Sec 162. Crim. Code

also see Perry vs People 14 Ill. 497

"where the omission of the word unlawfully, was not
held to vitiate if the essential terms to charge the
intent are to be found in the Indictment

This count charges the offence in the precise
language of the Code, which punishes a Baile for
for Larceny. - See Sec. 11 - the words are if
any Baile &c. - "shall convert the same to his
own use with an intent to steal the same" This
language embraces the offence. - The words with an
intent to steal supplies the essential terms

necessary to charge the party in the language of the Statute, and no other words could supply the place of these words, while the addition of the words cannot aid in making out the offence and would be mere surplusage.

2^d

It is entirely ridiculous to suppose that we are bound to set out all the circumstances of the Bailment - which is to be matter of evidence on trial - This is repeatedly decided.

The fact that defendant received the property was received as Bailee - is sufficiently Certain - with the facts that we charge the property as belonging to John L. Kessler - who bailed the property is entirely immaterial and is proper matter of evidence - The Prosecution under this count would be bound to show that a bailment was made - that defendant received the money in question as a Bailee, which is a question compounded of Law & fact, but the circumstances of which are not proper to be set out in the Indictment -

3^d

The count is in usual form of all counts on Larceny as to finding & that the defendant found some property as bailor which in the language of the Statute he converted &c

It is submitted that the other points are generally worth noticing -

Third count

The third count does allege a felonious conversion" but that it does not charge that

such conversion ~~in the very language of~~ was
unlawful is assumed by the fact that it charges
such conversion in the very language of the
Statute which shows it to be "unlawful."

See also in this point the case
already cited of *Perry vs the People*

14 Ills. 497

It is submitted that the other objections are
unworthy of notice - as they are negatived
by inspection of the Indictment -

It is sufficient in all cases to charge
an offence created by statute as this is -
(because at common law a bailee was not
punishable for Larceny) in the terms & language
of the Statute itself this has been repeatedly
decided *U. S. vs Lancaster 2 McLean C.*
where it was held unnecessary to describe who
sent Bank Notes by Post or their description
because the exact language of the Statute
was used - see also *Wharton Com. Law 2126*

McHoy & Hays
for People

Be it further remembered that on the 21st day of April
A.D. 1885 an Affidavit for continuance was filed
in the Office of the Clerk of said Court which said
Affidavit is in the words & figures following
to-wit

He. People }
John T. Gould } Larceny

At the April term, A.D. 1855
of the Recorder's Court of the City of Chicago
Cook County Illinois

State of Illinois }
Cook County }

John F. Gould upon oath says that
he is indicted in the above case for stealing two
Bank notes the property of one John G. Kessler —
that the Larceny charged is founded upon the
following supposed state of facts that the said
Kessler about the 12th day of February last sent
from Lockport Indiana by mail a letter containing
said bills directed to W. J. Buck & Co. Chicago
Illinois as a payment or advance to said W. J. Buck
& Co. and that said bills and letter after being
received in the Chicago Post Office were feloniously
taken therefrom by this defendant & feloniously
converted to his own use.

This defendant says he can prove by
David M. Devit, & Philip M. Pyfer hereafter
named, that the said firm of Buck & Co. as now &
was at the time this supposed larceny was
committed composed of David M. Devit and
Philip M. Pyfer and who then did and still
do business under said style of W. J. Buck & Co.
at Chicago Illinois the former of whom resides

in Cleveland Ohio and the latter in
Baltimore Maryland. and that this deponent
has been acting with full authority from them
as their Agent, in the City of Chicago Illinois
to receive all letters and money directed to
them for and during the last year, and at
the time of the supposed larceny and that
as such authorized Agent of the firm of
Wm. J. Buck & Co. and with the consent of
the Post Officers the said letter and bills
were taken if taken at all. and not otherwise

This deponent expects to prove by other
evidence that all the letters directed to said
Buck & Co. for the last year by agreement
with the Post Officers of Chicago aforesaid to
be put into a drawer rented by this deponent
for said Buck & Co. more than a year ago,
and that the letters directed to said firm were
put into said drawer of which this deponent
had carried the Key with the knowledge & consent
of said Post Officers for more than a year
last past.

This deponent denies having appropriated
said Bank Bills to his own use. and that he
expects also to prove a good and unexceptionable
reputation for honesty for the last eight years by
James A. Root and Nathaniel Pierce of Medina
County Ohio and B. D. Tyler & G. E. Starkweather
of Cuyahoga County Ohio where this deponent

formerly received. This deponent further states that all of said witnesses are material in his said case, and that he knows of no other person by whom he can prove the facts of his being the agent aforesaid of the firm of Buck & Co. and the facts concerning his reputation for honesty as well as satisfactorily as he can by the witnesses above enumerated. That he has not had a sufficient time to procure the attendance of said witnesses since the nineteenth of this month when this Indictment was found by the Grand Jury. That he cannot safely go to trial without said witnesses whose attendance he cannot procure during the present term of this Court. That he believes he can procure the attendance of the aforesaid witnesses by the next term of this Court.

That this affidavit is not made for delay but that justice may be done.

John F. Gould

Subscribed and sworn to

before me this 21. April 1855

P. A. Stoyne C. J.

And on the 21st day of April A.D. 1855. the following affidavit was filed in the Office of the Clerk of said Court, to-wit

The People of the State of Illinois }
vs } Larceny.

John F. Gould

To the Honorable Recorder Court

Of the April term A. D. 1855. of the Recorders Court
of the City of Chicago Cook County
John F. Gould defendant in the above suit would
respectfully represent unto your Honor that he verily
believes that he will not receive a fair and impartial
trial in the above entitled cause on account that
the minds of the inhabitants of the County of Cook
Illinois are prejudiced against him.

Wherefore he prays that said trial may be
removed to the next County where the causes above
complained of. do not exist.

State of Illinois }
City of Chicago }
Cook County }

John F. Gould being duly sworn
according to law. deposes and says that
the facts set forth in the above Petition are true in
substance and in fact according to the best of his
knowledge and belief

John F. Gould

Subscribed and sworn to
before me this 21. April 1855.

J. A. Stoyne C. W.

And afterwards to wit on the 24. day of April A. D. 1855. the following
among other proceedings were had and entered of record in
said Court in this cause to wit)

The People vs }
 John T. Gould } Larceny.

And now at this day come the said People by Daniel M. Slavy Esq. States Attorney and the said defendant as well in his own proper person as by Messrs. Ellingall Blackwell & Underwood his counsels also comes and the defendant by his counsels aforesaid moves the Court on affidavit filed for a continuance in this cause which is allowed by the Court.

And on the 26th day of April A.D. 1853. the following proceedings were entered of record in this Court in this cause to-wit

The People vs }
 John T. Gould } Larceny.

This day comes into open Court John T. Gould as principal and James Bampfield as security and severally acknowledge themselves to owe and be indebted unto the People of the State of Illinois in the penal sum of one thousand dollars to be levied of their goods and chattels lands and tenements respectively

Yet to be void upon the condition that the said John T. Gould personally be and appear before the Recorders Court

of the City of Chicago now in session at the Court House in said City on the first day of the next term thereof to answer unto the People of the State of Illinois on an Indictment for Larceny therein pending against him and shall abide the order of said Court and not depart the same without leave otherwise to be and remain in full force and effect.

And afterwards to wit on the 13th day of June. A.D. 1858
it being one of the days of the same term of said Court the following among other proceedings were had and entered of record in said Court in this cause which said proceedings are in the records and figures following to wit:

The People	}	Larceny.
"		
John T. Gould		

This day come the said People by Daniel M. Elmy States Attorney and the said defendant being three times solemnly called comes not nor any one for him but herein fails and makes default and now James Campbell security of the said defendant being three times solemnly called and forthwith demanded to produce the body of the said defendant in Court but failing herein.

It is ordered by the Court that the

default of the said defendant and his security
be entered of record and that the said Recognizance
be taken and declared as forfeited and that a
capias facias ipso returnable instant requiring
the said defendant and his security then and
there to appear and show cause why the said
People should not have Execution of the said
recognizance according to the force and the effect
thereof

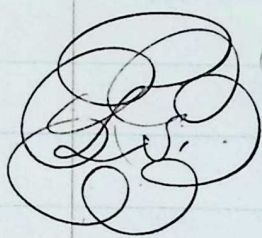
It is further ordered by the Court that
a capias ipso for the bodies of the said defendant
and his security returnable instant

and on the 19th day of June A.D. 1885. a capias was issued
out of the Office of the Clerk of said Court which said
Capias and the endorsement thereon is in the words
and figures following to wit.

State of Illinois }
Cook County }
City of Chicago } Sd.

The People of the State of Illinois
To the Sheriff of said County - Greeting
We command you that you take the body of
John T. Gould - found in your County and
safely him. Keep so that he be and appear before
the Recorders Court of said City now in session
at the Court House in Chicago in said County
forthwith to answer unto the People of the
State of Illinois on an Indictment for

Larceny, and have you then and there this Writ
with an endorsement thereon in what manner
you shall have executed the same.



Witness Philip A. Hoynes Clerk of
Our said Court and the Seal
thereof at Chicago this 19th
day of June. A.D. 1855.

P. A. Hoynes

Clerk

On the back is the following endorsement

The within named John T. Gould is not to
be found in my County and has not been
since the issue of this Writ 28. June. 1855-

Jas. Andrews Sheriff

By A. Pinkerton Spl. Deputy

And afterwards writ on the 1st day of December A.D. 1855
the following among other proceedings were had and entered
of record in this Court in this cause to wit

The People

vs

John T. Gould and

James Campbell

} Seire Facias

This day come the said People by
Daniel M. Kling States Attorney and is appearing to the
Court that the Seire Facias heretofore issued in this cause

has been returned by the Sheriff "Not found" as to the said defendant John T. Gould.

It is ordered by the Court that an alias Scire Facias issue for the defendant John T. Gould returnable at the next term.

An alias Scire facias was issued but neither of said Scire Facias are in my Office the same having been taken by Mr. Ollingall.

And afterwards to wit on the 22.nd day of March A.D. 1856 it being one of the days of the March term of said Court, the following among other proceedings were had and entered of record in said Court in this cause to wit.

The People

vs.

James Campbell impleaded
with John T. Gould

}

Sci Fa on Recognisance

This day came the said People by David M. Long States Attorney and it appearing to the Court that the said defendant James Campbell has been duly served with process of Scire Facias and he being three times solemnly called to appear and show cause if any he has why Judgment should not be rendered against him according to the tenor and effect of said Recognisance in said Scire Facias mentioned

comes not nor any one for him but failing herein.

It is therefore ordered by the Court that
Judgment be entered against the said James Campbell
for the sum of one thousand dollars the amount in said
Recognisance and Scire Facias named.

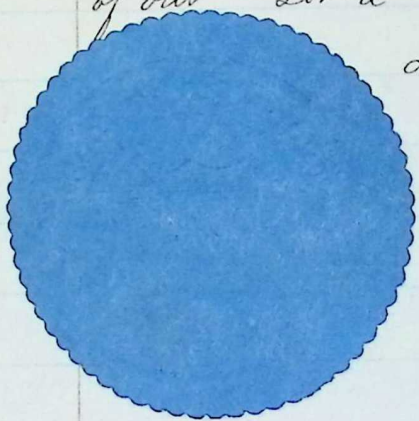
\$1000.00 Therefore it is considered by the Court that the
said people of the State of Illinois do have and recover
of the said James Campbell the said sum of one
thousand in said Scire Facias mentioned according
to the force, tenor, form and effect thereof, together with
their costs and charges in this behalf and have
Execution therefor.

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

I Philip A. Hogue Clerk of the
Recorder's Court in and for said City County State
do hereby certify that the foregoing is a full, true and
complete copy of all the papers now on file and of the
proceedings entered of Record in the above entitled cause
in my Office

Witness my hand and
the Seal of our said Court at Chicago

This Eighteenth day of March, in the year
of our Lord one thousand eight hundred
and fifty eight



Philip A. Hayne
Clerk

James Campbell vs
The People of the
State of Missouri } In the Supreme Court of
the State of Missouri.
And Grand Jurors
of the Term of April
1858.

And now comes the said
plaintiff in error by N. S. Blackwell
his attorney and says that
in the record of the proceedings
aforesaid and in the rendition
of the judgments aforesaid,
manifest error hath intervened
to his prejudice in, this to wit.

1. That the said Recorder's Court
erred in rendering a judgment
upon the forfeiture of the recognizance
aforesaid, without issuing a
Scire Facias upon said recognizance
and having the same returned
served in due form of law.

2. That the said Recorder's Court erred in rendering a judgment against the said plaintiff in error, when there was no service of the scire facias upon him the said plaintiff in error.

3. The said Recorder's Court erred in rendering a judgment ⁱⁿ favor of the said defendants in error when by the laws of the land said judgment, ought to have been rendered in favor of the said plaintiff in error.

Wherefore &c the said plaintiff in error prays judgment of reversal &c.

R. S. Buckwell
Atty for plaintiff in
error.

James Campbell

No 2. vs

The People of the State of Illinois

In the Supreme Court
of the Third Grand
Division of the Term
of April 1859.

Error to the Recorder's Court of the
City of Chicago Illinois.

The only point in this case,
is whether or ~~not~~ not, a judgment upon
a writ of scire facias can be sustained by this
court of error, when the writ of scire facias &
the return thereon, is not of record in the in-
ferior court, nor upon the files of the court
below, & when the only evidence of the exist-
ence of the said writ of scire facias & the
return is ~~first~~ the statement of the clerk of the
inferior court, in the transcript of the record
which he sends to this Court, as a return
to the writ of error issued in this cause.

1. That the said writ of scire facias
& the return thereon is neither on the files or
record of said inferior Court, but on the
contrary that said writ of scire facias and
return has been taken, or purloined from the
files of said court by a stranger.

2. That (in the language of the

order of the Court below) the said James Campbell, has been duly served with process of Scire facias ".

We insist that the judgement in this cause is erroneous upon the facts aforesaid for these reasons to wit

1 No one can be condemned without notice. This is a familiar axiom of the law, both constitutional & common. There is no legal evidence upon the records or in the files of the Court below, that any writ of Scire facias was ever issued by the said recorders Court & served upon the said James Campbell the ^{duly} ~~same~~ upon the recognizance aforesaid

The only reason for this allegation is that in the record or rather the transcript thereof the said writ & return is not set forth at large. We cannot therefore determine upon legal principles whether 1st the said writ ever had an existence 2^d what were its precise contents 3^d whether it ever was served upon the said Campbell & 4th whether the return of the Sheriff manifested a legal service

of the said writ.

As herein before indicated the only answer to these objections is the certificate of the clerk, that the writ & return has been taken from ^{the} files of the court below by a stranger.

The question of law upon this suggestion is, whether or not the certificate of a clerk is evidence of the existence of a fact, or a number of facts, when he neglects to set forth the files which might establish the existence of the said facts.

There are ~~several~~ ^{Several} rules of law upon this question 1st that the record must show the fact 2^d that the clerk of a court, cannot certify to his conclusions, but must set forth the facts themselves. He is a ministerial officer has no judicial powers & is simply required by law to verify to this court the accuracy of the proceedings of the inferior court of which he is an officer. 3^d The law requires him in making a return to a writ of error ^{to send up} a complete transcript of the record & files of his court.

The authorities upon this point are

Willes R 549-550 6 Cowd R 261 9 #351 14
Pick R 442-448 3 R R R 12-29 1 Green
Leaf & Eo Src 498 2 Scam R 502 8 Cowd
45

In other words an exemplification of the record below is essential.

If these rules are applicable in this case the judgment in question must be reversed but

2 It is insisted that the recital that James Campbell the plaintiff in error "has been duly served with process of scire faciens" in the Court below raises the presumption in this Court that the proceedings in the inferior Court were regular. In other words 1 the jurisdiction of the Court below is to be presumed & 2 that the manner in which it proceeded in exercising said jurisdiction was strictly regular.

The answer to this proposition is obvious 1 That jurisdiction is not to be presumed in a record like this 2^d This being a default the jurisdiction must affirmatively appear in the case 3^d All presumptio⁽ⁿ⁾

In this case are rebutted by the statement of the Clerk that the said writ & return have been removed from the files of said Court by a Stranger

Now on general principles there is no difference between a lost record & a lost deed. To base an action upon either the party that claims a right upon the lost deed or record, must prove three facts:

1st The existence of the record or deed

2nd The loss of the original record or deed

3rd The contents of the record or deed
Whether of these facts appears of record in this case unless the certificate of the clerk is to be regarded by this Court as evidence of any one or all of the facts essential to a recovery upon a lost deed or record the answer is that admitting the Clerk's certificate to be competent testimony for any purpose, it only proves the loss of the writ of Scire facias & return but does not establish either their existence

Or their contents

Robert I Blackwell
Attorney for the
plaintiff in error

Authorities additional
Pex & Coke 1 Cowper B 126

RIB

2. = ~~12~~ 61
James Campbell
vs. $\frac{5}{3}$
The People

Argument of R.S.
Blackwell for
pet in error.

Filed May 10 1859
L. Deland
Clerk

IN THE
SUPREME COURT, STATE OF ILLINOIS,
THIRD GRAND DIVISION.
OF THE APRIL TERM, A. D. 1858.

JAMES CAMPBELL,

IMPLEADED WITH

JOHN T. GOULD,

vs.

THE PEOPLE OF THE STATE
OF ILLINOIS.

*Error to Recorder's Court
of the City of Chicago,
Illinois.*

This was a proceeding by *scire facias* to recover judgment, against bail, in a criminal case in the Recorder's Court of the said city of Chicago.

The facts are, that on April 19, A. D. 1855, the grand jury, empaneled in said court, presented an indictment against the said John T. Gould, for the crime of larceny.

April 24, 1855, the said John T. Gould procured said cause to be continued until the next ensuing term of the said court.

On the 26th day of April, 1856, the following recognizance was entered in and before the said court by the said Gould and Campbell:

"This day into open court, John T. Gould as principal, and James Campbell, as security, severally acknowledge themselves to owe and be indebted unto the people of the State of Illinois, in the penal sum of one thousand dollars, to be levied of their goods and chattels, lands and tenements, respectively.

"Yet, to be void upon the condition, that the said John T. Gould personally be and appear before the Recorder's Court of the City of Chicago, now in session at the Court House, in said city, on the first day of the next term thereof, to answer, unto the people of the State of Illinois, on an indictment for larceny therein pending against him, and shall abide the order of said court, and not depart the same without leave, otherwise to be and remain in full force and effect."

June 13, 1855, the following order was entered, to wit:

"This day come the said People, by Daniel McIlroy, State's Attorney, and the said defendant being three times solemnly called, comes not, nor any one for him, but herein fails and makes default.

And now James Campbell, security of the said defendant, being three times solemnly called, and forthwith demanded to produce the body of the said defendant in court, but failing herein,

"It is ordered by the court, that the default of the said defendant, and his security, be entered of record, and that the said recognizance be taken and declared as forfeited, and that a *scire facias* issue, returnable *instantly*, requiring the said defendant and his security, then and there to appear, and show cause, why the said people should not have execution of the said recognizance, according to the force and effect thereof.

"It is further ordered by the courts that a *capias* issue for the bodies of the said defendant, and his security, returnable *instantly*."

No *scire facias* appears of record to have been issued upon the recognizance aforesaid.

March, 22, 1856, the following judgment was entered in said cause :

"This day come the People, by Daniel McIlroy, State's Attorney, and it appearing to the court that the said defendant, James Campbell, has been duly served with process of *scire facias*, and he being three times solemnly called to appear and show cause, if any he has, why judgment should not be rendered against him, according to the tenor and effect of said recognizance, in said *scire facias* mentioned, comes not, nor any one for him, but failing herein,

"It is, therefore, ordered by the court, that judg-

ment be entered against the said James Campbell for the sum of one thousand dollars, the amount in said recognizance and *scire facias* named.

"Therefore, it is considered by the court, that the said people of the State of Illinois do have and recover of the said James Campbell the said sum of one thousand dollars, in said *scire facias* mentioned, according to the force, tenor, form and effect thereof, together with their costs and charges in this behalf, and have execution therefor."

ERRORS ASSIGNED.

1. That the said Recorder's Court erred in rendering a judgment upon the forfeiture of the recognizance aforesaid, without issuing a *scire facias* upon said recognizance, and having the same returned in due form of law.

2. The said Recorder's Court erred in rendering judgment against the said plaintiff in error, when there was no service of the *scire facias* against him, the said plaintiff in error.

3. That the said Recorder's Court erred in rendering a judgment in favor of the said defendants in error, when, by the law of the land, the said judgment ought to have been rendered in favor of the said plaintiff in error.

R. S. BLACKWELL,

For plaintiff in Error.

61. ~~#~~ 2

Campbell Coue

vs

The People

Filed May 4, 1858

L. Belmont
Clerk

State of Illinois } Supreme Court thereof
AS 1858-9
Third Grand Division

James Campbell

vs

The People &c

And now come the
Said People. and say
that there is no error nor manner
of error in the said record or proceedings
or in giving judgment aforesaid
wherefore they pray, that said judgment
may be affirmed &c.

By W. Bushnell
States atty

No 2
James Campbell
vs
The People &c

Found in Error

Filed April 21, 1859

A. A. Daniel
Clerk