

No. 13117

Supreme Court of Illinois

^L
Somer

vs.

People

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 12.

PEOPLE'S CAUSES.

*Repaud,
Slomer
vs*

People

13117

STATE OF ILLINOIS,
SUPREME COURT,

The People of the State of Illinois,

To the Clerk of the Recorder's Court ~~for the~~ County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Recorder's Court of the City of Chicago County, before the Judge thereof, between The People of the State of Illinois —

plaintiff, and Randolph A. Slomer and John Ries

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Randolph A. Slomer —

as we are informed by him —
complainant — 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 first Tuesday after the third Monday in April 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. John D. Catton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 19th day of March — in the Year of Our Lord One Thousand Eight Hundred and Sixty —

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

Randolph A. Slower
indicted with John Rees
No. 18.

The People of the State
of Illinois

WRIT OF ERROR.

This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.

L. Leland

by J. B. R. Deputy
Clerk.

FILED March 17 A. D. 1860

L. Leland

Clerk.

13117

SUPREME COURT OF THE STATE OF ILLINOIS,

THIRD GRAND DIVISION.

RUDOLPH A. SLOMER,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

DEFENDANTS IN ERROR.

Ottawa, April Term,
1860.

BRIEF AND POINTS FOR PLAINTIFF IN ERROR.

POINT I.

This case does not fall within the language or spirit of the Statute.

The Statute (*Purple's Statutes, Criminal Jurisprudence, page 366, sec. 54*) under which the indictment in this case was found, is as follows: "False imprisonment is an unlawful violation of the personal liberties of another, and consists in confinement or detention without sufficient legal authority."

The violation of the personal liberty of Fernhaber was not unlawful, neither was his confinement or detention without sufficient legal authority, because,

1. The warrant upon which he was arrested, confined and detained was regular on its face, and in that respect the authority was legal. *See copy of warrant, pages 12 and 13.*
2. The warrant being regular, the only remaining ground which could render the confinement or detention without sufficient legal authority, would be "*want of probable cause.*"

The Statute not having defined what "sufficient legal authority" is, leaves the law upon that point unchanged, and therefore the 1st and 2d instructions given for the people (*see page 29 and 30*) were erroneous.

The first clause of the section of the Statute defining false imprisonment to be "an unlawful violation of the personal liberties of another,

is limited by the clause following, which provides in what that unlawful violation shall consist; and if the "confinement or detention" is upon "sufficient legal authority," then it follows that the "violation of the personal liberties of another" is not unlawful, no matter what motives may have prompted that violation.

The Statute leaves the law, as to what shall constitute false imprisonment, precisely where it found it. It does not declare what is sufficient legal authority, and that must be determined by the common law.

POINT II.

At common law, an action for false imprisonment may be sustained against an officer making the arrest, or the party procuring the arrest to be made, when the warrant is *void upon its face*, and it may be sustained upon that ground alone, without reference to any other; but where the warrant is regular, the action proceeds entirely upon *want of probable cause*, which must be expressly proved, and which is the *essential ground of the action*.

Johnstone vs. Sutton, 1 T. R. 510.

Willans vs. Taylor, 6 Bing. 183, 188.

Taylor vs. Willans, 2 B. & Ad. 857, 858, 859.

Mitchell vs. Jenkins, 5 ib. 594.

Musgrove vs. Newell, 1 Mes. & Wels. 585, 587.

Probable cause is, "a reasonable ground of suspicion, supported by "circumstances sufficiently strong in themselves to warrant a cautious "man in the belief that the person accused is guilty of the offence with "which he is charged;" per—*Washington, J., Munns vs. Dupont et al.*, 3 Wash. C. C. 31, 41; *Willmarth vs. Mountfort et al.*, 4 Wash. C. C. 82; *Forhay vs. Ferguson*, 2 Denio 617, 619—it cannot be inferred from the existence of any other facts. Malice, which is an element of the action of false imprisonment, may be, and is, frequently presumed upon proof of want of probable cause, *but from the most express malice, want of probable cause cannot be implied.*—*Johnstone vs. Sutton*, 1 T. R. 510. It must be affirmatively established that the prosecution was carried on without probable cause, and the burden of showing it devolves upon the plaintiff.

Incedon vs. Berry, 1 Camp. 202 n. *Willans vs. Taylor*, 6 Bing. 183, 187. *McCormick vs. Sisson*, 7 Cow. 715. *Gorton vs. DeAngelis*, 6 Wend. 418, 420. *Stone vs. Crocker*, 24 Pick. 81, 84.

The warrant upon which Fernhaber was arrested being regular upon its face, only one ground remained which could render the arrest and imprisonment unlawful, as being made without sufficient legal authority,

to wit, the want of probable cause, and so it devolved upon the prosecution to show expressly, not only that Fernhaber was *innocent of the crime of perjury*, but that there were no reasonable grounds of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that he was guilty.

The prosecution failed even to establish the innocence of Fernhaber, and there is no evidence whatever in the case tending to establish want of probable cause. The violation of his personal liberty was, so far as appears from the evidence, lawful, and was made upon sufficient legal authority. The jury, therefore, were not warranted in finding a verdict of guilty, and the Court erred in refusing to discharge Slomer, and in denying the motion for a new trial and arrest of judgment. (Page 32 and 33.)

POINT III.

Probable cause being a mixed question of law and fact, (*Johnstone vs. Sutton*, 1 T. R. 110,) the Court should, from the evidence in the case, have held and ruled as a question of law, that the want of probable cause had not been shown, and therefore should have directed the jury to discharge the defendant.

POINT IV.

The Court erred in refusing defendant's instruction, number 1, p. 31.

See authorities cited to point 2.

The warrant to have been procured to be issued "in good faith" must have been upon the belief that a felony existed, and that is *probable cause*. *Braveboy vs. Cockfield*, 2 McMullan, 270. *Winn vs. Leland*, 1 Greenleaf, 135. *Thompson vs. Mussey*, 3 id. 305, 311.

And the latter clause of the instruction number 1, viz: "for the purpose of having him punished for a criminal offence," relates not only to the *motive* of the defendant Slomer, but connects that motive with absolute guilt, and the proposition of law contained in the instruction simply is, that a party is justified, who, in good faith, causes the arrest of a person guilty of a criminal offence.

POINT V.

The Court erred in refusing to give instruction number two as requested by defendants' counsel. (Page 31.)

POINT VI.

The Court erred in refusing to give instruction number three, as requested by defendants' counsel. A private individual does not render himself liable in advising and encouraging an arrest, where the arrest is made upon a warrant regular on its face, and therefore the modification of instruction number three made by the Court was erroneous. (Page 31 and 32.) *Saund. on Pl. and Ev. vol 2, part 1, page 18, Et. Seq.*

POINT VII.

The Court erred in instructing the Jury verbally.

POINT VIII.

The Court erred in giving instructions numbers one and two, requested by the people, (page 29 and 30,) for the reason, among others, stated in point one and two. See authorities cited on those points.

POINT IX.

The Court erred in refusing to give defendants instruction number two.

POINT X.

The verdict is against evidence.

HERVEY, ANTHONY & GALT,
Att'ys for Plaintiff in Error.

12-150
Sloman vs The People

Plffs. Brief

Filed Apr 21, 1860

A. Selman
Clerk

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

Heas before the Honorable Robert S Wilson,
Recorder of the City of Chicago, and presiding Judge of
the Recorders Court of said City, at a Term thereof, begun
and held at the Court House in the City of Chicago,
in the County and State aforesaid on the first Monday
of it being the sixth day of February in the year of our
Lord, one thousand eight hundred and sixty, and of the
Independence of the United States the Eighty fourth.

Present Hon. Robert S Wilson Recorder
of the City of Chicago
Charles Heaven State's Attorney
John Gray Sheriff of
Cook County

Attest: Geo. K. C. Forrest, Clerk of said Court.

The Sheriff, returned into Court the Venire
facias formerly issued, by which it appears to the Court
that the following named persons were duly summoned to
appear this morning to serve as Grand Jurors at this Term of
Court, to wit:

Wm H Bolton	Joseph Bresler	P F Roffinot
Sherman W Rossiter	A Bell	Isaac H Little
Charles Schumacher	F R Clapp	Fred Albrecht
Daniel Cook	Nathan Eisenbraun	Chas. Sandell
Edward Gilbert	Heriam Wheeler	Ben Jennings

Jacob Portman

Amos L Flint

Ernest Rennie

James L Bates

Frank Hettlinger

H. Dupuy

John W. Stearns

Wm. Y. Daniels

Who upon being called answered to their names, and gave their attendance at this Term, thereupon William H. Bolton, one of their number, was appointed Foreman of the said Grand Jury, who were duly sworn in and charged by the Court, and thereupon retired to consider of their presentments.

And afterwards, to wit, on the tenth day of February in the year aforesaid, it being a regular Term day of the ^{February} ~~March~~ Term of the Court aforesaid, the following proceedings were had among others and entered of Record in said Court, which said proceedings were in the words and figures following to wit:

The Grand Jury, came into open Court and (among others) made the following presentment endorsed True Bill to wit:

The People of the State of Illinois

2661

vs

Rudolph W. Stoner and John Rees

} False imprisonment

which said Indictment is in the words and figures following to wit:

State of Illinois

City of Chicago

Cook County

} ss.

Of the February term of the Recorder's Court of the City of Chicago, in said State and County, in the year of our Lord, one thousand eight hundred and sixty.

Page 3

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 oaths, present that Rudolph A. Slomer and John Rees late of said City, on the seventeenth day of December in the year of our Lord one thousand eight hundred and fifty nine, in said City of Chicago, in the County and State aforesaid, in and upon one Frederick Finnerhoper in the peace of the said people then and there being unlawfully did make an assault and him the said Frederick Finnerhoper unlawfully did arrest confine and detain and the personal liberty of him the said Frederick Finnerhoper unlawfully did violate without any sufficient legal authority so to do and contrary to the statute, and against the peace and dignity of the same People of the State of Illinois

Carlos Haven State's Attorney

Endorsed

True Bill

Wm H. Bolton Foreman of the Grand Jury

Witnesses

Frederick Finnerhoper

Wm J. Wallis

Lafayette Bingham

William Klinger

Filed February 10th A.D. 1860

Geo. H. G. Forrest

Clerk

And afterwards, to wit: on the fourteenth day, of February in the year aforesaid, it being a regular Term day of the February Term of the Court aforesaid the following proceedings were had among others and entered of Record in said Court, which said proceedings were in the words and figures following, to wit:

2661

The People of the State of Illinois

vs

Rudolph A. Ellmer and John Rees

False imprisonment

This day came the said Defendants by their Counsel and moved the Court to quash the Indictment herein; which motion was overruled by the Court.

And afterwards, to wit: on the sixteenth day of February in the year aforesaid, it being a regular Term day of the February Term of the Court aforesaid, the following proceedings were had among others and entered of Record in said Court, which said proceedings were in the words and figures following, to wit:

2661

The People of the State of Illinois

vs

Rudolph A. Ellmer and John Rees

False imprisonment

Having been furnished with a copy of their Indictment and a list of the Jurors and Witnesses, and they being now here duly arraigned for Pea severally say that they are not Guilty.

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And now issue being joined, it is ordered by the Court that a Jury come, thereupon comes a Jury of good and lawful men to wit:

B. W. Morse.	H. Deverman	Frederick Tuttle
Oliver F. Fuller	S. W. King	Richard Williams
Peter Cunniff	John Tyler	O. B. Meaples
Eli Bates	J. S. Williams	Augustus Triggell

who having been duly empanelled and sworn and sworn and they hearing the testimony of witnesses, arguments of Counsel and instructions of the Court retire to consider of their Verdict, and afterwards return and for Verdict say, we of the Jury find the Defendants guilty but recommend John Rees to the mercy of the Court.

Thereupon come the said Defendants by their Counsel and move the Court for a new Trial herein and in arrest of judgment, which motions were overruled by the Court. Thereupon it is ordered by the Court that the Prisoners be remanded.

And afterwards, to wit: on the same day of February in the year aforesaid, it being a regular Term day of the February Term of the Court aforesaid, the following proceedings were had among others and entered of Record in said Court, which said proceedings were in the words and figures following to wit:

The People of the State of Illinois
 vs
 John Rees impl eto } False imprisonment

This day come the People by Carlos Haven State Attorney and the said defendant with his Counsel also comes and now neither he nor his Counsel for him saying anything further why the Judgment of the Court should not now be pronounced against him on the verdict of guilty heretofore rendered in this cause,

Therefore, it is ordered and adjudged by the Court that the said defendant John Rees ^{and half by} pay the costs of these proceedings, and that he further stand committed until said costs are paid, and that he be thereafter discharged.

The People of the State of Illinois

vs

Rudolph A. Slomer in p'te

} False imprisonment

This day come the People by Carlos Haven State's Attorney and the said defendant with his Counsel also comes and now neither he nor his Counsel for him saying anything further why the Judgment of the Court should not now be pronounced against him on the verdict of guilty heretofore rendered in this cause.

Therefore, it is ordered and adjudged by the Court that the said defendant Rudolph A. Slomer be fined the sum of Five Hundred Dollars, and ^{pay half} the costs of these proceedings, and that he further stand committed until said fine and costs are paid, and that he be thereafter discharged.

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Supreme Court of the State of Illinois
Third Grand Division

The People of the State
of Illinois

vs

Rudolph W. Slomer
and John Rees

Be it remembered that at the Recorders
Court of the City of Chicago in the State of Illinois
and at the February Term of the said Court A.
D. 1866, and on the sixteenth day of February of said
year that being one of the days of the said February
Term before the Honorable Robert S. Wilson Recorder
of said City and Judge of the said Court according
to the form of the Statute in such case made
and provided the aforesaid issue so joined
between the said parties as aforesaid came on
to be tried by a Jury of the said City of Chicago
for that purpose duly empanelled good and
lawful men of the said City at which day came
there as well the said People of the State of Illinois
by Carlos Heaven Esquire the States Attorney in
that behalf, as the said Defendant Rudolph W.
Slomer by his Attorney Robert Hervey and the
said Defendant John Rees by his Attorneys Arthur W.
Windett and H. Clay Conde and The Jurors of the Jury

being called also come and were then and there in due manner of law chosen and sworn to try the said Issue.

And upon the trial of the said issue the Counsel for the said People of the State of Illinois to maintain and prove the said issue on their part produced one Frederick F. Finkhaber or Finkhaber who testified, as follows:

My name is Frederick F. Finkhaber I live at Blue Island in Illinois. I know the Defendants Rudolph A. Slomer and John Rees. I was arrested on the seventh day of December 1859 at Blue Island by Rees and was brought to Chicago the Defendant Slomer was with him and came up to Chicago with us — Rees said he had a warrant against me for perjury charged to have been committed by me as a witness we arrived in Chicago about seven or half past seven o'clock in the evening by the Rock Island cars, we walked up from the cars to the corner of Randolph and Clark streets where Slomer left us, as he left he told Rees if he could not find the Justice to put me in jail till morning, Rees did not do so, he took me to Klinger's Saloon on Randolph street where we drank three or four glasses of beer then we left there and went to Rhoni's Saloon on the same street near the Sherman House, while there Ehrbe and Oswaldt & spoke together. I wanted to be taken before the Justice and we all went out and went to Mr. Bingham's office Rees and I and Ehrbe and Oswaldt

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when we went in there Mr Bingham had a paper ready written which he told me I should sign and swear to and I did so. It was not read over to me I did not understand what I was signing, we were in Bingham's office but a very short time a very few minutes as we were leaving the Defendant Slomer came in. We, that is I and Rees, Ehrbe and Chswald left Bingham's office and went to Holson's Saloon on Randolph street where we had some beer, we then went back to Klinger's. As we were going from Bingham's office I asked Rees if I might go home. He said I must pay him Two dollars. I had not as much and said to him I would try to get it from Klinger. I got \$1 from Klinger and had 3 cents in my pocket which I paid to Rees and he let me go. I was never again arrested on that warrant. on his Cross examination on the part of the said Defendant Slomer he stated as follows.

My name is Frederick Finkhaber I was in the employment of one Augustus Martin in 1858. I was examined as a Witness in the Superior Court of Chicago on the part of the Plaintiff in a cause in which one Frederick N Ehrenfeld was Plaintiff and Augustus Martin, Rudolph A Slomer and William Slomer were the Defendants. I was arrested by the Defendant Rees on the Warrant for perjury on the seventh day of December 1859. Slomer was I understood the party who complained against me.

we walked up from the Depot and Slomer parted from us near the corner of Clark and Randolph streets. Rees and I went to Klinger's Saloon we were cold and had some beer drank several times. We then went to Sholson's Saloon on Randolph street. I saw Ehrbe and Chswaldt either there or at Rohm's I told Ehrbe I was arrested for perjury and had got into trouble I wished to be taken before the Justice of the Peace. We all that is myself, Rees, Ehrbe and Chswaldt went to Bingham's office.

A paper was there presented to me which I did not understand I signed it and swore to it. Before we left Slomer came in. After signing the paper which I swear was all ready prepared when we went in to Bingham's office we left. I asked Rees if I might go then, I wanted to go home. He said if I gave him Two dollars I might go we then went over to Klinger's Saloon and I borrowed a dollar from Klinger and with six shillings I had myself gave it to Rees and then left Slomer did not leave Bingham's office with us. he was not present when Rees asked me for the \$2. He did not go to the Saloon with us.

I brought a suit against Slomer and the others for arresting me for Five thousand dollars they were arrested and put in Jail for some days and were then discharged Van Buren & Cary were

my attorneys. The day after I was arrested I saw Ehrenfeld the Plaintiff in the suit against the Glomers in which I was a witness and he directed me to go to Van Buren he met me there. Mr Van Buren was Ehrenfeld's lawyer in his suit. Took the capias to the Sheriff's office myself Ehrenfeld went with me and lent me money to pay the Sheriff's fees which I have since paid him. He did not pay Van Buren & Sary anything for me. He did not say he would be responsible for their fees in my suit, ^{nor} ~~he~~ direct them to charge same to him. He were at Bingham's office a very short time, very few minutes. Mr Bingham did not write the paper. I signed after we went there, it was all ready when we got there and as soon as I signed it and swore to it we left.

I went a few days after to Justice Wallis who issued the Warrant Ehrenfeld went with me and gave his word that I should appear on the following Wednesday. I did not appear, Glomer was in Jail on the Capias I had med out, when I went before Mr Wallis with Ehrenfeld, I have never since been arrested on this charge. I did not appear before Esquire Wallis because Mr Sary told me it was unnecessary.

And the said People further to maintain and prove the said issue on their part called as a witness William P Wallis, who testified, that he is a Justice of the Peace for Cook County and was so in

December 1859 that he issued the Warrant produced against Frederick F. Farnhaber on a charge of perjury, which said Warrant was produced by Defendants, the same never having been returned to the Magistrate who issued it, which said Warrant is in the words and figures following to wit:

State of Illinois

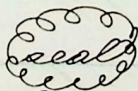
Cook County } ss.

The People of the State of Illinois
to all Sheriffs, Coroners and Constables
within said State, Greeting;

Whereas, complaint, under oath, has been this day entered before the undersigned, a Justice of the Peace, within and for said County, by Rudolph A. Blomer that a perjury has been committed in said State, and that said complainant has just and reasonable grounds to suspect that Frederick F. Farnhaber guilty of said perjury

You are therefore hereby commanded forthwith to arrest the said Frederick F. Farnhaber and bring him before me, (or in my absence, before some other Justice of the Peace, in said County, to answer to the people of the State of Illinois, on said charge, and abide such further order as may be made concerning him and hereof make due service and return as the law directs

Given under my hand and seal at my office in Chicago this Sixth day of December A. D. 1859

William J. Hallis 
Justice of the Peace.

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Endorsed
The People

vs

Friedrich Finkhaber } Warrant
Cost \$1.00

Exercutade the within by araising the Body of
the Deft and the Deft as escape from mee this
13 Dec 1859

Fees 5.00 paid

John Rees Const

that said Warrant was issued on the Complaint
of the Defendant Rudolph A. Slomer:

That Finkhaber was never brought before him
on said Warrant nor has the same ever been
returned to him,

On his Cross Examination he testified, That
the Defendant Rees offered to return the warrant
but that he (Witness) declined to receive it as Rees
had not the prisoner with it. That Finkhaber and
one Ehrenfeld appeared before him some days
after the Warrant had been issued and Ehrenfeld
gave his word that Finkhaber should appear
on the following Wednesday to be examined, & he
did not appear at the time when Finkhaber and
Ehrenfeld appeared as stated and also on the day
named for the hearing the Defendant Slomer was
in Jail on the Copias sued out by Finkhaber.

And the said People further to maintain
and prove the said issue on their part called as a

witness one William Klinger who testified that on the evening of the seventh of December 1859, the Defendant Rees came to his saloon on Randolph street in Chicago with the witness Finkhaber in his custody, they staid there a short time and then went away after some time Rees and Finkhaber came back with several others and Finkhaber asked him (Klinger) to lend him Two dollars. He (Klinger) declined to lent him the Two dollars but lent one dollar and Finkhaber paid that and six shillings which he had himself to Rees. Rees stepped out and Finkhaber then went away and did not return again that night.

On his Cross Examination by the Counsel for the Defendant Slomer he testified that he did not see the Defendant Slomer at all that evening.

And the said People further to maintain and prove the issue on their part then called as a Witness Sir Fayette Bingham who testified as follows. I am a practising Attorney and Solicitor for Claims against the United States and a Notary Public. I administered the affidavit produced to the witness Finkhaber, which said Affidavit is in the words and figures following to wit:

To the Superior Court of Chicago

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Frederick K W Ehrenfels Plaintiff

vs

Augustus Martin,
Rudolph A Stoner
and William Stoner
Defendants

State of Illinois
Cook County

Frederick K. Finkhaber of
Blue Island in the County of Cook, being
first duly sworn, makes oath and says that he
was sworn as a witness on the trial of the case
on the part of the Plaintiff Frederick K Ehrenfels
where he, this deponent, testified to the fact that
one of the Defendants Augustus Martin, in the
Summer of 1858, sent him this deponent, to a certain
Gentleman living on Wabash Avenue to bring up
a horse to be driven on trial, with a verbal direction
to tell the owner of the horse, if it should suit him
that is Martin, and his Partners - (the other Defendants)
he then said Martin would likely buy it.
And this deponent further says, that since said
trial on which he this deponent gave such evidence
he has been thinking it over again, and that he
this deponent has become satisfied that he was
at that time greatly mistaken in his evidence
which he then gave and that said Augustus
Martin never did send him this deponent with a
verbal message for that horse, as stated in such
evidence, but that he, this deponent, only received a

note from Augustus Martin, with the verbal direction to deliver it to that Gentleman Mr Harkness N. 901 on Wabash Avenue, and get the horse, which he this deponent did,

And this deponent further says, that he makes this Affidavit freely and voluntarily without fear, favor to or from anyone to correct himself before the Court, and that Justice may be done.

Subscribed and Sworn
to before me at Chicago
in said County this
17th day of December A.D. 1859

} Frederick Finkhaber

L. F. Bingham
Notary Public

Endorsed

Superior Court
Ehrenfels

vs

Martin et al

Aff't of Finkhaber

Filed Jan'y 10. 1860

W. Kimball Clerk

The affidavit was made on the day it bears date.
Finkhaber and several other persons whom I did not know came to my office that evening and asked for me.
Finkhaber said he wanted to make an affidavit to correct some evidence he had given (in the Superior

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Court of Chicago) in a suit between Ehrenfeld and the Slomers and Martin. I did not know him, nor did I know he had been a witness till he told me. there was a good deal of talking in the room and I could not very well take his directions to prepare the affidavit on account of the noise so I took him into my inside room and he told me what he had sworn to and what he wanted to correct. He told me what he wanted to make affidavit to and after I got the information from him I went out with him again into the outside room and sat down at a desk and drew up the affidavit, after it was drawn up I read it over to him and asked him if it was what he wanted and he said it was all right and he then signed it and swore to it. he seemed perfectly to understand it and it was written from his dictation. they were in my office altogether about half an hour or thereabouts after the affidavit was sworn to and just as they were about leaving my officer Slomer came in. Finhaber asked Rees if he might go home and Rees spoke to Slomer and asked him if he should let Finhaber go. Slomer told him to put him into Jail until next day and then to take him before the Justice.

They all then left except Slomer who remained and to whom I gave the affidavit either that night or next day.

I had taken some affidavits before that for Slomer of other parties in the same Ehrenfelsuit vs Slomer. I don't know who the parties were who swore to them, they were affidavits contradicting the testimony they had given in the case. I did not prepare any affidavit except the one sworn to by Firnhaber, the others were brought to my office by the persons who were to swear to them and I administered the oaths, that is all I had to do with them, Slomer never to my recollection told me he expected to get an affidavit from Firnhaber. He never told me what Firnhaber had sworn to or what he wanted to correct in his evidence. I had all of this information from Firnhaber himself.

I knew the suit of Ehrenfels against Martin and the Slomers was in the Superior Court, I myself was examined as a witness in that case, so I know in what Court it was, I knew the names of the parties and was thus enabled to entitle the affidavit as it is entitled, I am an Attorney and hope I know how to draw up an affidavit. I charged Mr Slomer Five dollars for drawing the affidavit. I was not paid for it at the time, but have since collected Twenty dollars of rent for Slomer and have paid myself the Five dollars. That is the way I have got my pay. Slomer took the affidavit away from my office. Slomer came to my office some days before the

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affidavit was prepared and told me he wanted me to draw up affidavits for parties that were going to change their testimony, the witnesses who I understood had sworn against him in the suit of Ehrenfels vs Slomer.

On his Cross Examination on the part of the Defendant Slomer he testified as follows.

I did not know Firnhaber at all before he came to my office that evening. I did not know he had been a witness on the trial of the Ehrenfels suit, he and others came to my office on the evening in question and asked for ^{Mr} Bingham I told them that was my name, Firnhaber then told me that he had been a witness for Ehrenfels in the suit against Martin and the Slomers, that he had made a mistake in his evidence which he wished to correct, I asked him in what particular, and he was proceeding to tell me, but there was so much noise and conversation in the room that I could not understand him well. I asked him to walk with me into the back room which he did. He there told me what he had sworn to and in what particulars he was in error and after I had got the facts from him we went out into the front room and I sat down at a table, Firnhaber sitting down by me, and drew up the affidavit. I read it over to him carefully after I had prepared it and asked

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him whether that was right and he said it was and signed it and swore to it. I had not seen Mr Slomer that day nor for some days before. He never at any time gave me any instructions about drawing up an affidavit for Finkhaber. He never told me Finkhaber was going to make an affidavit or that he was going to get an affidavit from him, only that the parties were going to change their testimony and he wanted me to draw the affidavits. I never prepared any other affidavit in the Ehrenfels case. I have administered the oath to one or two parties who wished to make affidavits about it. I don't know who they were nor do I recollect their names. The affidavits were I presume prepared by the attorneys of the Slomers. I can not recollect who wrote them, if I saw them I could tell the handwriting of Mr Hervey if they were in his hand writing.

I heard Slomer tell Rees to take Finkhaber to Jail. Finkhaber was not drunk but had been drinking he understood quite well what he was saying and doing and seemed to understand the affidavit which I wrote for him perfectly. It was all written from his dictation I had no information from any other source from which I could have prepared said affidavit. I had no personal

Page 21

Knowledge of what Firnhaber had testified to on the Ehrenfels trial nor what the facts were about which he testified. I never saw him to my knowledge before the evening he came to my office.

This was all of the evidence given on the part of the People on the trial of said cause and thereupon the said Defendant Rudolph A. Slomer by his Counsel moved the said Court to discharge the said Defendant Rudolph A. Slomer from the said Indictment and then and there to direct the Jury to acquit the said Rudolph A. Slomer on the grounds that there was no evidence whatever to go to the said Jury tending to implicate the said Rudolph A. Slomer on said charge, but which said motion of the said Defendant Rudolph A. Slomer so made as aforesaid the said Court then and there denied and did then and there give his opinion and decision that there was evidence to go to the said Jury against the said Rudolph A. Slomer in said cause. And to which ^{said} opinion and decision of the said Court the said Counsel for the said Defendant Rudolph A. Slomer did then and there on behalf of the said Defendant Rudolph A. Slomer except.

And thereupon the said Defendants in support of the said issue on their part called as a Witness William Elorbe who testified, as follows:

I know Firnhaber and the Defendants Slomer and Rees I was in Rohm's Saloon on the evening of the seventh day of December last in company with one Adolph Chswaldt when Rees and Firnhaber came in it was about 1/2 past 7 or 8 o'clock Firnhaber spoke to me and said he had got into trouble about the evidence he had given on the Ehrenfels trial and that he had been arrested for perjury. He asked me to go to see if any Justice's office was open, I went to Justice D Wolf's and Justice Wallis's office at his request they were both closed I went to the office of Mr Bingham the Notary and enquired for him I was told he would be in, in about half an hour. I returned to Rohm's Saloon, ^{and} I told Firnhaber in a little while, we all, that is Firnhaber, Rees myself and Chswaldt went up to Mr Bingham's office, and found him, Firnhaber told Mr Bingham what he wanted, and Bingham took him with him into an inside room to take his instructions to prepare the papers, there was a great deal of talking and noise in the front room. After Bingham and Firnhaber had been a short time in the back room, they both came out into the

Page 23

front room and Mr Bingham sat down at a desk and commenced to write the affidavit, Firnhaber sat down beside him while he wrote it. After it was finished Mr Bingham read it over and Firnhaber signed it. Bingham then read it again to Firnhaber and asked him if it was all right as he had directed it to be drawn, and Firnhaber said it was and Mr Bingham then swore him to it. We then got up to leave, as we were about leaving the office Slomer came in, Firnhaber asked Rees to let him go home he said he had business to attend to and Rees asked Slomer, we that is Chewalt and I urged Slomer to let Firnhaber go as he had corrected his evidence but Slomer refused to do so and told Rees to take him to Jail. Rees replied I know my business. We then all left and went back to Klinger's Saloon except Slomer who did not go with us. As we left Bingham's office Firnhaber again asked Rees to let him go and Rees asked him for Two dollars, we went to Klinger's Saloon and Firnhaber borrowed a dollar from Klinger and paid it with six shillings he had himself to Rees.

Rees then went out for a necessary purpose and I told Firnhaber now is the time to go and he went, when Rees came back he was gone. And I did not see Firnhaber any more.

On his Cross Examination by the Counsel for the People, he testified as follows:

I was a witness on the Ehrenfeld trial for the Plaintiff, I am a Carpenter. He is asked whether he made an affidavit correcting his testimony on that trial - he answers I don't know that has any thing to do with this matter, I made a statement which I gave to Mr Slomer. I live in Slomer's house. I told Fimhaber that he could make an affidavit to correct his evidence before a Notary as well as a Justice, I went at his request to see if there was a Justice office open, I went to D'Wolf's and Wallis' they were both closed, I then went to Bingham's and found it open, but Mr Bingham was not in I was told he would be in, in about half an hour, I went back to the Saloon and told Fimhaber and after a little we went up to Bingham's. I have described in my evidence what took place there, it is just as I stated it.

I lived in a house built for Slomer, it was part of the bargain, I never lived in the same house with Slomer.

And the said Defendants further to maintain and prove the issue on their part called as a Witness Adolph Chawaldt who testified as follows:

Page 23

I know Rees and Stoner I know Frederick Fimhaber I was present in Rohm's Saloon on the evening of seventh of December last, when Rees and Fimhaber came in. Ehrbe the last witness was there, we were playing a game of cards to see who should pay for the beer, it is a Lager beer Saloon, when Fimhaber and Rees came in, Fimhaber told Ehrbe he was arrested and in trouble. I told him if he would make an affidavit correcting his testimony it would clear him, that if he had made a mistake and would correct it he could get out of it, the trial of the Ehrenfels case I thought that would clear him and he asked Ehrbe to go and find a Justice and he went, when he came back, he said the Justice's offices were shut, but he had found a Notary's office open and that he could swear there if he wished. Fimhaber requested to be taken there. Rees said it was not his business to take him to a Notary's office, but Fimhaber insisted and we all went to Bingham's office. Bingham took Fimhaber into the back room to take his directions, there was much talking in the front room. Fimhaber told Bingham when he first went in what he wanted.

After Bingham and Fimhaber had been in the back room a few minutes they came out again and Bingham sat down at a desk

and wrote a paper Firnhaber sat by him, after it was done Bingham read it to Firnhaber who said it was all right and signed it - Bingham then read it to him again and asked him if it was what he wished and Firnhaber said it was and he was then sworn to it.

Just as we were leaving Mr Slomer came in. Firnhaber asked Rees to let him go home, and Rees said he could not do so unless Slomer was willing, we all urged Slomer to let Firnhaber go as he had made a correction of his evidence, Slomer refused and told Rees he must put Firnhaber in Jail till morning, Rees said I understand my business and then take him before the Justice. We then all went back to Klinger's Saloon except Slomer, Firnhaber when we got ^{out} into the street, asked Rees to let him go and Rees asked Two dollars to pay him for his trouble, when we got to Klinger, Firnhaber borrowed a dollar from Klinger, and paid Rees One dollar and seventy five cents, Rees shortly afterwards went out at one door and Ehrbe told Firnhaber he had better go out at the other which he did, and I saw him no more when Rees came back he found his prisoner gone and he went out also, and I did not see him any more.

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On his Cross Examination on the part of
the People he ^{deposed} testified as follows:

I was not a witness in the Ehrenfels trial, I know Biren who was a witness, I have known him since 1844. I was very glad to see him in Chicago and I have talked with him about the evidence he gave, I told him when he told me what he had testified to, that I thought it was strange he should recollect so exactly what had taken place so many years ago. He said he had a good memory. He said I was a greenhorn I did not know that a man was paid in this Country for having a good memory. I knew Biren in Europe, I know Ehrenfels he came to my shop to talk with me about his case with the Slossers, he knew that I had heard about it, he brought a lawyer with him a Mr De Fuhl, I told him if he had anything to say to me he might leave his witness outside or let him go outside and I would talk with him, I declined to talk with him in presence of Mr De Fuhl, and he went out and sat on the steps while Ehrenfels and I talked, I did not tell Ehrenfels in presence of De Fuhl that some of the witnesses of Ehrenfels were going to make affidavits correcting their testimony, I did not in the presence of De Fuhl and Ehrenfels say that Slosser was going

to get affidavits of the witnesses in the case of Ehrenfeld vs Slomer to correct their testimony or anything to that effect.

I think we must have been at Kingham's office in all about half an hour.

This was all the evidence offered on the part of the Defendants.

And the said People further to maintain and prove the said issue on their part did call as a witness.

Francis De Puhl who testified as follows.

I went with Ehrenfeld to the place of the last witness. Ehrenfeld was afraid to go alone he was afraid of violence. Chwaldt objected to talk in my presence and I told Ehrenfeld to go in, and that I would sit down on the steps within call. After I had sat there a while they called me in and Chwaldt asked me or referred a question to me as a lawyer about what he said he and Ehrenfeld had been talking about, whether, if, some of the Jurors who tried a case would make affidavits that they had misunderstood some of the evidence and that the verdict was wrong the Court would not grant a new Trial I told him I thought not that such affidavits would not be received. He (Chwaldt) then said but if some of the witnesses were to swear that they had been mistaken and had given wrong

Evidence how would that be. I said that would be a different matter and I thought that then the Court would grant a new trial.

Cswaldt then said that ^{Slomer} was going to get affidavits of the witnesses to contradict the evidence they had given in Court, this was some time before the seventh day of December and some time before the complaint was made against Finerheper for Perjury, Ekrenfels and Cswaldt were together at the time of this conversation.

This was all the evidence given on the trial of the said issue and the said People thereupon asked the Court to instruct the Jury as follows. And the Court did then and there instruct the Jury as follows:

1, If the Jury believe from the Evidence that the Defendants or either of them procured a Warrant charging the witness Frederick Finerheper with Perjury, and that the Defendants or either of them proceeded to arrest the said Finerheper and did arrest him, then it was the duty of such Defendant or Defendants to bring the said Finerheper before the Magistrate issuing said Warrant or before the next nearest Magistrate to be examined and dealt with according to law.

2, And if the Jury further believe from the evidence that the Defendant or either of them

made use of the said Warrant by arresting the said Finerheper to obtain from him the affidavit given in evidence and the Jury further believe from the evidence that thereupon the Defendants or either of them discharged the said Finerheper from arrest under said Warrant without taking him before a Magistrate as required by Law, then the acts of said Defendants towards the said Finerheper become unlawful from the beginning and the fact that a warrant was issued does not render the restrained and imprisonment of the said Finerheper by virtue of the said Warrant lawful - but on the contrary all restrained and detention by the said Defendants or either of them upon and over the said Finerheper by such warrant as aforesaid was unlawful.

3.^d If the name of the prosecuting witness as pronounced is the same ⁱⁿ sound as that charged in the Indictment, it is sufficient although the name may be differently spelt or pronounced in the german.

4.th If the Jury believe from the evidence that the Defendants acted in concert and with an understanding as to the objects and purposes to be obtained by either of them unlawfully then each Defendant is equally guilty. And in determining whether the Defendants did so act they will take into their consideration all the facts actually in proof.

to the giving of which said Instructions on the part of the People to the said Jury the said Defendant Rudolph A. Stoner did then and there by his Counsel except.

And the said Defendant Rudolph A. Stoner then and there requested the Court to instruct the Jury as follows:

1st If the Jury shall believe from the evidence that the Defendant ^{Stoner} in good faith caused the Warrant for the arrest of the Witness Finkhaber to be issued for the purpose of having him furnished for a Criminal offence then the Jury ought to acquit the Defendant.

2nd The Jury are instructed that the rule of law is that if a witness wilfully states what is false in his evidence in any material particular that then the Jury ought to disregard his whole testimony.

3^d The Defendant Stoner is not responsible for what was done by the Defendant Rees unless the Jury shall find from the evidence that Stoner participated in the acts of Rees, or advised and encouraged the same. If the Jury have any reasonable doubt of the guilt of the Defendant Rudolph A. Stoner they are bound by law to acquit him.

and the said Court refused to give the instructions number one and two offered by said Defendant Stoner

Refused

Refused

to which refusal the said Defendant by his Counsel then and there excepted, and the said Court before giving the third instruction offered by Defendant Slomer modified the same by inserting the words ("or advised and encouraged the same") to which modification of the said third instruction by the Court, the said Defendant Slomer by his Counsel then and there excepted.

And the said Court did then and there at the request of Counsel for Defendants verbally instruct the said Jury that they could convict either or both of the said Defendants or acquit one or both.

And thereupon the cause was submitted to the said Jury who returned a verdict of guilty against both Defendants, which said verdict is in the words and figures following to wit:

We the Jury find the Prisoners Guilty as charged in the Indictment. But recommend John Rees to the mercy of the Court

Henry Deverman
Foreman

And thereupon the said Rudolph A Slomer by his Counsel then and there moved the Court to arrest the judgment on said verdict and for a new trial which said motions the said Court then and there overruled, to which said decision

and opinion of the said Court in overruling the said motions the said Defendant Rudolph A. Slomer by his Counsel did then and there except.

And the said Court thereupon proceeded to enter final judgment on said verdict and did then and there adjudge and sentence the said Defendant Rudolph A. Slomer to pay a fine of Five Hundred dollars and the costs of the Prosecution and to stand committed to the custody of the Sheriff of Cook County till said fine and costs were paid and the said Defendant Rudolph A. Slomer was thereupon duly committed to the custody of the said Sheriff.

And the said Court ^{then} did and there adjudge and sentence the said Defendant John Rees to pay as a fine the costs of the said Prosecution and to stand committed till said costs were paid.

And because none of the Exceptions so offered and made to the opinions and decisions of the said Judge do appear upon the Record of said trial therefore on the prayer of the said Defendant Rudolph A. Slomer by his said Counsel the said Judge hath to this Bill of Exceptions put his seal according to the statute in such case made and provided this 23^d day of February A.D. 1860.

R. S. Wilson

Recorder &c

I hereby certify that the foregoing
 Record & Bill of exceptions is correct
 a true history of the proceedings in said
 Cause
 Carlos H. Brown
 State Clerk
 State of Illinois
 City of Chicago

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

J. Jos. M. C. Forrest, Clerk of
the Records Court of the

City of Chicago, County and State aforesaid, do
 hereby certify that the foregoing is a true and
 complete ~~Copy~~ Transcript of the Record and of
 the Judgment of said Court, as also of the Bill
 of Exceptions, in a case wherein the People of
 the State of Illinois were Plaintiffs and
 Rudolph A. Slomer and John Pies Defendants.



In witness whereof I have hereunto
 set my hand and affixed the seal
 of this Court this third day of
 March A. D. 1868

J. Jos. M. C. Forrest
 Clerk

Supreme Court -

For the third Grand Session - April Term 1868

Rudolph A. Slomer } Plaintiff in Error

vs

The People of the State of Illinois -

And now comes the said

Rudolph A. Slomer, by Henry Anthony Galt, his
 attorneys and says, that in the record and proceedings
 aforesaid, and also in the rendition of the judgment

Page 35

aforsaid, there is manifest error in this to wit;

- I That the indictment aforsaid and the matters therein contained are insufficient and the Court erred in refusing to quash the same —
- II The Court erred in giving to the jury the instructions for the people —
- III The Court erred in refusing to give to the jury, instructions Number one and two asked for by Defendant Slomer
- IV The Court erred in modifying instruction number three asked for by Defendant Slomer and in the same to the jury as so modified —
- V The Court erred in instructing the jury verbally —
- VI The Court erred in refusing to grant a new trial
- VII The Court erred in refusing to arrest the judgment
- VIII The Verdict is not supported by the evidence —

And the said Rudolph S. Slomer prays that the judgment aforsaid, for the errors aforsaid and for other errors apparent in the record and proceedings aforsaid, may be reversed, annulled, and altogether held for nothing and that he may be restored to all things which he has lost by occasion of the said judgment —

Forcider in Error

Hervey Anthony & Galt

C. Harve

atly for Plaintiffs in Error

Let a supersedeas issue in this cause
bail \$1000. William Slomer Surety

J. Harve

Randolph A. Storer

2
The People & c

Record & assign
of errors.

Filed March 19. 1860
L. Leland
Clerk

Supreme Court of the State of Illinois

Rudolph A. Slomer

Plaintiff in Error

vs.

The People of the State of
Illinois

Defendants in Error

Abstract of the Record

Page

1.

Placita and return of the *habeas corpus*
1st Monday of Feb. A.D. 1860.

Page

2 and 3.

Indictment for false imprisonment
Charging that Rudolph A. Slomer and John
Reed on the 7th Dec 1859. at Chicago. unlawfully
made an Arrest, and unlawfully did
arrest Confine and detain And the personal
liberty of Frederick Furber unlawfully did
violate without any sufficient legal authority.

Page

H.

Motion to quash indictment. motion
overruled and Exception by counsel for deft

Slomer

Page

5.

Arrangement of prisoners And plea of not guilty

Page
5

Trial. Verdict of Guilty And defendant John Rees recommended to the mercy of the Court.

Page

5.

Motion by defendants for new trial And arrest of judgment. - Motion overruled And prisoners remanded.

Page

6.

Judgment upon the Verdict
Rees ordered to pay one half the Costs of the prosecution And to stand Committed until paid

Slomer fined \$500 - And one half the Costs of the prosecution And to stand Committed until paid

Page

7.

Bill of Exceptions

~~Plaintiffs~~ Peoples Testimony

Page

8 to 11.

Frederick Fenchel. Testifies to his arrest. On 7th Dec. 1859. at Blue Island by Rees. brought to Chicago. Left Slomer present. Warrant for seizure charged to have been committed by Fenchel as a witness. Arrived in Chicago at 7 1/2 O'clock PM. - Slomer directed Rees that if witness could not be found to put witness in jail. Went to Bingham's office and signed a paper which witness did not understand. Witness paid Rees \$1.75. And was suffered to go. (page 8 & 9)

On Cross Examination testified
My name is Frederick Fenchel. - Was examined as a witness in the Superior Court of Chicago on part of plaintiff in a cause in which one Frederick N. Ehrenfest. was plaintiff and Augustus Martin. Rudolph A Slomer and William Slomer were defendants. Slomer was not present when I paid Rees

Witness went a few days afterward to office of Justice Hallis who issued warrant with Chenfield. And agreed to appear on following Wednesday. - did not appear. (Page 11).

Page

11. - 12.

Qw 13.

William J. Hallis

A witness for people.

Issued Warrant on oath of
Rudolph A. Slomer Dec 6th 1859 for arrest of
Frederick Fernhaber for Peijny

p. 12 Qw 13.

Warrant produced & set out

Warrant was never returned, and Fernhaber
never brought before him on Warrant.

Reus offered to return Warrant. Witness declined
to receive it as Fernhaber was not present.

Fernhaber & Chenfield appeared before Witness
Some days after Warrant issued. & Chenfield gave
his word that Fernhaber should appear on
following Wednesday. He did not appear. When
Fernhaber & Chenfield appeared and also, on
day for a few Examination, Jst Slomer was in
jail on capias sent out by Fernhaber. (Page 13)

Page
~ 14 ~

William Klinger
A Witness for the People.

Testified: That On Evening of Dec. 1859. left Rees
and Fembaler came to his Saloon, in Chicago
Staid a short time and went away. They came
back with several others. Witness lent Fembaler
\$.1.00 which Fembaler together with 75 cents
more paid Rees. - Rees stepped out. And Fembaler
then went away and did not return. Did not see
defendant Slomer at all. that Evening

Page
14. to 20.

Safayette Bingham

A Witness for the People testified

: That he is a practicing Attorney and notary
public in Chicago, Administered Affidavit
produced to Fembaler. (page 14)

Page 14. Affidavit states. That Fembaler was a
witness ^{for Rees} in a suit in the Superior Court of Chicago
wherein Frederick W. Chenfeldt was Plaintiff
and Augustus Martin. Rudolph A. Slomer
and William Slomer were defendants.

States facts sworn to by Fembaler on that

that And that he was mistaken in the
Evidence given on that trial (Page 15).
And that the Affidavit was made volun-
tarily -

He further testified, that Fembaler ^{and}
Several other persons came to Wits office
and Fembaler requested Witness to draw
an Affidavit; that this Affidavit was
drawn at the request of Fembaler and
at his dictation, was read to him and he
seemed to understand it and signed it
, After Affidavit was drawn and as Fem-
baler and those who came with him
were leaving. Slomer came in, Fembaler
asked Rees if he might go home, Rees
asked Slomer, who told him to put him
into jail until next day. And then take
him before the Justice. They all left except
Slomer who remained (Page 17).

Page
21.

Evidence on part of people closed.
Motion by Counsel for defendant Slomer
to discharge him from indictment. And to
direct jury to acquit him. On the ground
that there was no Evidence whatever to
go to the said jury tending to implicate

Suit Slomer on said charge. Motion denied. Court gave as its opinion and decision that there was evidence to go to said jury against said Slomer. Exception by defendants Counsel.

Defendants Proof.

Page.
22 & 23.

William Chbe. testimony

Showing the arrest of Fenchaber. - His request to be taken to a justices office for the purpose of making an affidavit contradicting his testimony in Slomers Suit. going to Buryhams office and making an affidavit there at request of Fenchaber: the refusal of Slomer to permit him to be set at liberty.

Page
24

Cross Examination of Chbe.

Page
25 to 28.

Adolph. Ohswalot.
A witness for defendant Slomer.

Same in substance as Charles. And relating
a conversation between witness and Chenfeldt
and not in presence of DePhuel.

Page
27.

Cross Examination of Ohswalot.

Page
28.

Testimony for People.

Francis DePhuel.

Contradicting Ohswalot as to conversation
with Chenfeldt. not being in his presence

Page
29 & 30.

Instructions by the Court.
For the People.

Instructions for People. 1 & 2. Excepted to by
Defendants Counsel. At suggestion of Chief
Justice given in full

Page
29.

1. If the jury believe from the Evidence that the defendants or either of them procured a warrant charging the witness Frederick Finckhaper with perjury. And that the defendants or either of them proceeded to arrest the said Finckhaper, And did arrest him. Then shall the jury advise the defendant or defendants to bring the said Finckhaper before the Magistrate issuing said warrant or before the next nearest Magistrate to be Examined And dealt with according to law.

Page
29 & 30.

2. And if the jury further believe from the Evidence, that the defendants or either of them have used of the said warrant by arresting the said Finckhaper to obtain from him the Affidavit given in Evidence that therefore the defendants or either of them do charged the said Finckhaper from arrest under said warrant without taking him before a Magistrate as required by law. Then the Acts of said defendants towards the said Finckhaper become unlawful from the beginning, And the fact that a warrant was issued does not render the restraint and imprisonment

unlawful of Clerk & State Attorney

Of the said Finkelstein by virtue of the said
warrant lawful. but on the contrary all
restraint and detention by the said
defendants or either of them upon and
over the said Finkelstein by such warrant
as aforesaid was unlawful.

Replev.

31.

Instructions 1. & 2. requested by defts
Counsel. And refused by the Court. After
suggestion of the Chief Justice inserted
in full.

1st If the Jury shall believe from the
Evidence.. that the defendant Slomer in
good faith caused the warrant for
the arrest of the witness Finkelstein to be
issued for the purpose of having him
punished for a criminal offence, then
the Jury ought to acquit the defendant.

2nd. The Jury are instructed that the
rule of law is. that if a witness wilfully
states what is false in his Evidence in
any material particular. that then the
Jury ought to disregard his whole testimony

Page

31. & 32.

Instruction 3^d for dist. As modified by the
Court. And Exceptions by Counsel for dist
Slomer.

Page

32.

Verdict instructions by Court.

Page

32.

Verdict

Page

32 & 33.

Motion for new trial. Answer. Arrest of judgment
Denial of Motion. And Exceptions by
Counsel for dist Slomer.

Page

33.

Final judgment & Sentence

Page

34

Certificate of Clerk & State Attorney

Recd
34th 35.

Assignment of Errors.

Henry Anthony Galt
Attorney for Peff in Error

Charles Haven
State Attorney.

Supreme Court of the State of Illinois
Third Grand Division

Rudolph A. Slomer
Plff in Error.
vs.

The People of the State of
Illinois
Defts in Error.

Brief and Points
for.
Plaintiff in Error.

-1-

This case does not fall within the language
or spirit of the statute.

The statute ("People's Statutes," Criminal Jurispru-
dence" Page 366, Sec 54) under which the indictment
in this case was found provides as follows.

"False imprisonment is an unlawful violation
" of the personal liberties of another, and consists
" in confinement or detention without sufficient
" legal authority"

The violation of the personal liberty of
Emhaber was not "unlawful" neither was

his Confinement or detention" without Sufficient Legal Authority" because

1st. The warrant upon which he was arrested confined and detained him regular on its face and in that respect the Authority was legal.

See Copy Warrant Page 12 Aug 13.

2nd. The warrant being regular, the only remaining ground, which could render the Confinement or detention without Sufficient legal Authority, would be "want of probable Cause". The statute not having defined what "Sufficient legal Authority" is leaves the law upon that point unchanged. And therefore the 1. & 2 instructions given for the people. (See Page 29 & 30) were erroneous.

The first Clause of the Section of the statute defining false imprisonment to be an "unlawful violation of the personal liberties of another" is limited by the Clause following which provides in what that "unlawful violation shall consist, And if the "Confinement or detention" is upon "Sufficient Legal Authority"

then it follows that the "violation of the personal liberties of Another" is not, within the language of this Section "unlawful". no matter what motives may have prompted that violation

Point

2.

The Essential Ground. of the Action for false imprisonment is that a legal prosecution was carried on without a Probable Cause

Johnstone . vs. Sutton . 1 T. R. 510.

William " Taylor. 6 B. & Ald. 183. - 188.

Taylor " William 5 B. & Ald. 857. 858. 859

Mitchell " Jenkins 5 id 594

Musgrove " Chewell 1 M. & W. 585. 587

Probable Cause is "a reasonable ground of Suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offence with which he is charged"

R. Harbington J. 1 M. & W. vs Dupont & al. 3. Harb. CC. 31. H 1

Willmuth vs. Mountford. H " " 82

Farley " Ferguson 2 Idem 617. 619

From the most Express malice the want of Probable Cause cannot be implied

Johnstone vs Sutton 1 T. R. 510

Another burden of showing want of probable cause is on the Jeff.

Inclison v. Berry. 1 Camp. 202. n.
Hillens " Taylor. 6 Pm. 183. 184.
McCormick. " Session. of Cov. 415.
Gorton " De Angis 6 Wend 418. 420
Stone " Crocker 24 Pick. 81. 84.

There is not on this case. A scintilla of proof tending to show want of probable cause on the prosecution Against Penhale.

The People did not show. nor did they attempt to show. that he was innocent of the crime of perjury, or that there was no probable cause for procuring the warrant against him. Having failed to show this, the jury were not warranted in finding a verdict of guilty, Another Court erred in refusing the motion for a new trial (page 5); in refusing to discharge said Elmer, from the indictment and to direct the jury to acquit him (page 21) And in refusing the motion for a new trial And Arrest of judgment (page 32 & 33)

Point
~ 3. ~

"Probable Cause being a mixed proposition of law and fact" (Johnstone v. Sutton 17 R. 110)
It is claimed that from all the Evidence in the case. The Court should have determined as a question of law, that Probable Cause had been shown. And that therefore the result is Contrary to law and the Evidence

Point
~ 4. ~

The Court Erred in refusing defendants motion number 1. Page 31.

See Authorities Cited point 2.

The warrant to have been procured to be signed in "good faith" must have been upon the belief that a felony existed. And that is Probable Cause.

Bravley	v.	Cockfield	2.	M. McEllan	270. 274
Ulmer	"	Siland	1	Greenleaf	135,
Thompson	"	Mussey	3	"	305-311

And the latter Clause of the motion asked for and refused "for the purpose of having him punished for a criminal offence"

relates not only to the motives of the defendant
Stoner.. but Comments that motive with absolute
into guilt, Another proposition of law con-
tained in the instruction simply is, that a
party is justified who in good faith causes
the arrest of a person guilty of a criminal
offence

Point

5.

The Court Erred in refusing to give instruction
number two, as requested by defendants Counsel
(Page 31).

Point

6.

The Court Erred in refusing to give instruction
number six three as requested by defendants
Counsel.. A private individual does not
render himself liable in damages and
inconvenience an arrest, where the arrest
is made upon a warrant appear on its
face, and therefore the modification of
instruction number three made by the
Court was erroneous. (Page 31, 32).

Said on P & E. vol 2 part 1, page 18 & seq

Point
7f.

The Court Erred in mistaking the jury verbally

Point
.8.

The Court Erred in giving instructions numbers
1. and 2., requested by the People. (pages 29 + 30)
for the reasons among others stated in
Point 1. and 2.

See Authorities Cited On these points.

Point
.9.

The Verdict is Against Evidence

Henry Anthony and Galt
Attys for. Pepp in Error

Supreme Court of Illinois
Third Grand Division

Rudolph A. Stomen

Defendant in Error

12
vs.

The People of the

State of Illinois

Plaintiff in Error

Abstract of Record

And

Points

Filed March 12th 1860

L. Lehard
Clerk

Henry Anthony & Co.

Attorneys for Error

1860

SUPREME COURT OF THE STATE OF ILLINOIS,

THIRD GRAND DIVISION.

RUDOLPH A SLOMER,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

DEFENDANTS IN ERROR.

ABSTRACT OF THE RECORD.

Page 1 Placita and return of the Venire facias, 1st Monday of February,
A. D. 1860.

2 & 3 Indictment for false imprisonment, charging that Rudolph A. Slomer and John Rees, on the 7th December, 1859, at Chicago, unlawfully made an assault and unlawfully did arrest, confine and detain and the personal liberty of Frederick Fernhaber, unlawfully did violate without any sufficient legal authority.

4 Motion to quash indictment. Motion overruled and exception by counsel for defendant, Slomer.

5 Arraignment of prisoners and plea of not guilty.

5 Trial. Verdict of guilty, and defendant, John Rees, recommended to the mercy of the Court.

5 Motion by defendant for new trial and arrest of judgment. Motion overruled and prisoners remanded.

6 Judgment upon the verdict. Rees ordered to pay one half the costs of the prosecution and to stand committed until paid.

Slomer fined \$500, and one half the costs of the prosecution, and to stand committed until paid.

7

BILL OF EXCEPTIONS.

8 to 11 *Frederick Fernhaber.*

Testifies to his arrest, on the 7th December, 1859, at Blue Island,

*The witness Burgham & Ebbes directly
contradict the witness Fernhaber*

by Rees brought to Chicago. Defendant, Slomer, present. Warrant for perjury charged to have been committed by Fernhaber, a witness. Arrived in Chicago at half past seven o'clock, P. M. Slomer directed Rees that if justice could not be found to put witness in jail. Went to Bingham's office and signed a paper, which witness did not understand. Witness paid Rees \$1,75, and was suffered to go.

On cross examination testified. My name is Frederick Fernhaber; was examined as a witness in the Superior Court of Chicago, on part of plaintiff, in a cause in which one Frederick N. Ehrenfeld was plaintiff and Augustus Martin, and Rudolph A. Slomer were defendants. Slomer was not present when I paid Rees. Witness went a few days afterwards to office of Justice Wallis, who issued a warrant with Ehrenfeld and agreed to appear on the following Wednesday; did not appear. Page 11.

William J. Wallis.

11, 12 & 13 Issued warrant on oath of Rudolph A. Slomer, Dec. 6th, 1859, for arrest of Frederick Fernhaber, for perjury. Warrant produced and set out. (Page 12 & 13.) Warrant never returned and Fernhaber never brought before him on warrant. Rees offered to return warrant. Witness declined to receive it as Fernhaber was not present. Fernhaber and Ehrenfeld appeared before witness some days after warrant issued, and Ehrenfeld gave his word that Fernhaber should appear on following Wednesday. He did not appear. When Fernhaber and Ehrenfeld appeared, and also on day fixed for examination, defendant, Slomer, was in jail on capias sued out by Fernhaber. (Page 13.)

William Klinger,

14

A witness for the people, testified. That on the evening of the 7th December, 1859, defendants, Rees and Fernhaber, came to his saloon in Chicago; stayed a short time and went away. They came back with several others. Witness lent Fernhaber \$1,00, which Fernhaber, together with 75 cts more, paid Rees. Rees stepped out, and Fernhaber then went away and did not return. Did not see deft. Slomer, at all that evening.

14 to 20 *Lafayette Bingham,*

A witness for the people, testifies. That he is a practicing attorney and notary public in Chicago. Administered affidavit produced to Fernhaber. (Page 14.) Affidavit states that Fernhaber was a witness for plaintiff in a suit in the Superior Court of Chicago, wherein Frederick N. Ehrenfeld was plaintiff and Augustus Martin, Rudolph A. Slomer and William Slomer were defendants. States facts sworn to by Fernhaber on that trial, and that he was mistaken in the evidence given on that trial, (page 15,) and that the affidavit was made voluntarily. Witness further testified, that Fernhaber and several other persons came to

witnesses office, and Fernhaber requested witness to draw an affidavit; that this affidavit was drawn at request of Fernhaber and at his dictation; was read to him and he seemed to understand it and signed it. After affidavit was drawn, and as Fernhaber and those who came with him were leaving, Slomer came in. Fernhaber asked Rees if he might go home. Rees asked Slomer, who told him to put him into jail until the next day, and then take him before the Justice. They all left, except Slomer, who remained. (Page 17.)

- 21 Evidence on part of people closed. Motion by counsel for defendant, Slomer, to discharge him from indictment and to direct jury to acquit him on the ground that there was no evidence whatever to go to the said jury tending to implicate said Slomer on said charge. Motion denied. Court gave as its opinion and decision that there was evidence to go to said jury against said Slomer.

Exception by defendants' counsel.

DEFENDANTS' PROOF.

- 22 & 23 *William Ehrlic's Testimony,*

Showing the arrest of Fernhaber; his request to be taken to a Justices office for the purpose of making an affidavit contradicting his testimony in Slomer's suit; going to Bingham's office and making an affidavit there at the request of Fernhaber; the refusal of Slomer to permit him to be set at liberty.

- 24 Cross examination of Ehrlic.

- 25 to 28 *Adolph Ohswaldt,*

A witness for defendant, Slomer. Same in substance as Ehrlic, and relating a conversation between witness and Ehrenfeld, and not in presence of DePhuel.

- 27 Cross-examination of Ohswaldt.

- 28 Testimony of People.

- 28 *Francis DePhuel,*

Contradicting Ohswaldt as to conversation with Ehrenfeld, not being in his presence.

- 29 & 30 Instructions by the Court.

Instructions for people, 1 and 2, excepted to by defendants counsel, as suggestion of Chief Justice given in full.

1. If the Jury believe from the evidence that the defendants, or either of them, procured a warrant charging the witness, Frederick Fernhaber, with perjury, and that the defendants, or either of them, proceeded to arrest the said Fernhaber, and did arrest him, then it was the

duty of such defendant or defendants, to bring said Fernhaber before the magistrate issuing said warrant, or before the next nearest magistrate, to be examined and dealt with according to law.

2. And if the Jury further believe from the evidence that the defendants, or either of them, made use of the said warrant, by arresting the said Fernhaber to obtain from him the affidavit given in evidence, and the jury further believe, from the evidence, that thereupon the defendants, or either of them, discharged the said Fernhaber from arrest, under said warrant, without taking him before a magistrate as required by law, then the acts of the said defendants towards the said Fernhaber becomes unlawful from the beginning, another fact that a warrant was issued does not render the restraint and imprisonment of the said Fernhaber, by virtue of the said warrant, lawful, but on the contrary, all restraint and detention by the said defendants, or either of them, upon and over the said Fernhaber, by such warrant as aforesaid, was unlawful.

31 Instructions 1 and 2, requested by defendants counsel and refused by the Court. At the suggestion of the Chief Justice inserted in full.

1. If the Jury shall believe from the evidence that the defendant, Slomer, in good faith, caused the warrant for the arrest of the witness, Fernhaber, to be issued for the purpose of having him punished for a criminal offence, then the Jury ought to acquit the defendant.

2. The Jury are instructed that the rule of law is, that if a witness wilfully states what is false in his evidence, in any material particular, that then the Jury ought to disregard his whole testimony.

31 & 32 Instruction 3 for defendant as modified by the Court, and exceptions by counsel for defendant, Slomer.

32 Verbal instructions by Court.

32 Verdict.

32 & 33 Motion for new trial and arrest of judgment, denial of motion and exceptions by counsel for defendant, Slomer.

33 Final judgment and sentence.

34 Certificate of Clerk and States Attorney.

34 & 35 Assignment of Errors.

HERVEY, ANTHONY & GALT,
Attorneys for Plaintiff in Error.

CARLOS HAVEN,
States Attorney.

Rudolph Hauer
vs
The People

Abstract

Filed Apr 21, 1860
Leland
Clus