

No. 12649

Supreme Court of Illinois

People

vs.

Wesco.

FILED 

1858 = 34
Ch. R. R.
185
General A. M.

8 P.D.

12649

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Prepared

1858

State of Illinois
Lancaster County ss

Present before the Honorable
John S. Thompson Judge of the Fourth Judicial
Circuit in the State of Illinois at a
Court begun and held at the Court house
in the City of St. Louis on the First
Monday in the month of April in the
year of our Lord one thousand eight
hundred and fifty six, it being the
Twenty Eight day of said month.

Present Honorable John S. Thompson Judge
A. H. Gray State Attorney
Complainant Plaintiff vs
William S. Morse Defendant

Be it remembered, that at said Term of
said Court there was pending in said Court
a Suit wherein The People of the State of
Illinois were Plaintiff and Samuel Morse
was Defendant in an Indictment for a crime
brought into this Court by charge of "bribe" from
John S. Thompson in said State the Prosecution
was taken up by the People of the State of Illinois on the 10th day of April 1856
and of said Defendant, is as follows
to wit.

Then came Samuel Morse as principal
and William S. Morse as Security, and jointly
and severally acknowledged themselves to owe and
to be indebted to the People of the State of Illinois
in the just and full sum of One Thousand
Dollars good and lawful money of the United States
to be paid of their goods and chattels, lands

and judgments if default be made in the
condition following which is this, that if the
said Samuel Morse shall well and truly be
and appear before the circuit court of the county
of Sioux on the first day thereof at the time & place
hitherto at the Court house in Newville in the
County of Sioux and State of Illinois on the
fourth Monday in the month of April next then
and there to answer and abide the issue of
said Court in a matter now pending and
undetermined wherein the People of the State
of Illinois are Plaintiffs and the said
Samuel Morse is defendant, on an Indict-
ment for Arson, and shall be and remain
about said Court from day to day during
the said term thereof and not depart there
without leave of the Court, then this com-
missance to be void otherwise to remain
in full force and virtue

And afterwards on the second day of said
Term to wit on the 27th day of said month
the following, among other proceedings, were had

The People of the State of Illinois;

vs
Samuel Morse

} Charge of
Arson

This day came the People
aforesaid by A. McHenry State Attorney
and the said Samuel Morse the principal
herein being then & was solemnly called
came not, and made default and William
Morse his Son-in-law being there

Indictment

Indignant

Thus solemnly called in open Court to ap-
pear and produce the body of the said
defendant Samuel Mase, but did not
appear or produce the body of the said
Samuel Mase but also made default
Therefore it is considered by the Court that the
thegnisance of the said Samuel Mase
as principal and William S. Mase
his surety herein therefore taken and by
them jointly and severally entered into, and
for which they were jointly and severally
bound, be taken hold and declared to
be forfeited Therefore it is considered by the
Court now here that the said People of the
State of Illinois have and bear of the
said Samuel Mase & William S. Mase the theg-
nisance herein the sum of One thousand dollars
the amount of their said thegnisance,
and it is further ordered by the Court that
a writ of Scire facias upon herein doled
to the Sheriff of Fulton County, returnable
to the next term of this Court commanding
him to summon the said Samuel
Mase and William S. Mase personally
to and appear before the Circuit Court of
said County on the first day of the next
term thought to be holden at the Court House
in the City of Mexico on the fourth
Monday of September next there and there
to show cause if any they have why final
Judgment should not be rendered against
them for the amount of their thegnis-
ance aforesaid & costs and why

Indigent

Execution should not ^{be} thrown for the
same. And this cause is continuous
until the next term of this court

The fees for this cause are as follows

2

State of Illinois } The people of the State of
County of Cook } Return to the Sheriff of
Fulton County, Illinois

State of Illinois

X

Whereas an indictment was lawfully pending
in the Circuit Court for the County of Fulton
and State of Illinois against Samuel Muse
for the crime of arson at the February
term thereof A.D. 1856 which had before
that time been duly found ^{at a full} and returned
into open court by a Grand Jury lawfully
organized for the February term A.D.
1855 for the said Circuit Court and the
said indictment being then and there
so pending therein at the February term A.D.
1856 aforesaid, the said Samuel Muse
applied for a change of the venue thereof
from the said County of Fulton and the
said Circuit Court ordered the venue
to be changed to the County of Cook in said
State and thereupon then and there the
said Samuel Muse as principal and
William S. Muse as security appeared
in open Court and entered into a
recognizance the record whereof is in
the hands and figures following that is
to say Then came Samuel Muse as

principal and William S. Hesse as Security and jointly and severally acknowledged themselves to owe and be indebted to the people of the State of Illinois in the just and full sum of One thousand Dollars good and lawful money of the United States to be paid of their goods and chattels and tenements if default be made in the conditions following which is this that if the said Samuel Hesse shall not and truly be and appear before the Circuit Court of the County of Knox on the first day thereof at the time to be held at the Court House in the Village in the County of Knox and State of Illinois on the fourth Monday in the Month of April next then and then to await and abide the issue of said Court in a matter now pending and undetermined wherein the people of the State of Illinois are Plaintiff and the said Samuel Hesse is defendant in an indictment for larceny and shall be and remain about said Court from day to day during the said term thereof and not depart there without leave of the Court then this recognizance to be void otherwise to remain in full force and virtue

And whereas afterwards on the second day of a term of the Circuit Court for the County of Knox aforesaid begun and held on the fourth Monday of April A.D. 1846 the said indictment then and

Said Process

them pending, come on for trial and
the said Samuel Morse being called
came not but made default, and the
said William S. Morse being called
failed to produce the body of his said
principal and therefore judgment of for-
feiture was rendered against them the
said Samuel Morse and William
S. Morse for the said sum of One Thousand
dollars and an order entered that
said sum be paid upon them against the said
Samuel Morse and William S. Morse
to appear & show cause &c at the next
term of of said court thereafter

And therefore you are command-
ed to serve the said Samuel Morse
and William S. Morse to be and appear
before the Circuit Court of the County of
New York aforesaid on the first day of
a term to be held on the fourth Monday of
September A.D. 1856 then and there to show
cause if any they have why execution
shall not issue on the judgment aforesaid
and abide the action of the Court in the
premises & have you then this writ

Witness the Seal of said Circuit
Court of the County of New York the
first day of August in the year
of our Lord Eighteen hundred &
fifty six

Horatio L. May clerk

upon the back of said writ there appears the
following endorsement
State of Illinois }
Tulsa County }

I do hereby certify that
I have served by reading the within writ
to the within named Samuel Mure and
William S Mure this 22nd day of August
A.D. 1856

Summa 100

120 miles travel 6,00

Return 20

David S Mayhew Sheriff of
Tulsa County Illinois

State of Illinois }
Moor County }

Read before the Honorable
John S Thompson Judge of the Fourth
Judicial Circuit in the State of
Illinois at a court begun and held
at the Court House in the City of
Hannibal on the fourth Monday of
September in the year of our Lord One
thousand eight hundred and fifty
six it being the twenty second day
of said month

Present Hannibal John S Thompson Judge
McLary State Attorney
Cornelius P. Noble Sheriff
Henric J. Henry Clerk

The following among other proceedings were
had on the 25th day of September aforesaid to

Same being the 4th day of said term of the
Court

The People vs }
vs } Arson
Samuel Mose }

This day came the defend-
- ant by his counsel who moves the Court
to quash the said indictment

Which motion made as
follows to wit

3 People }
vs } In the Supr CC
Samuel Mose & } Sept 2. A.D. 1856
William S. Mose }

And now comes the said
defendant by Manning & Bond their attorneys
and move the Court to quash the said indictment
for the following reasons

1st Because said indictment is contradictory & uncertain in that it does not show
when nor at what term of the Court
said Recognition was entered into

2d It does not show or set forth that said
Recognition was taken before any Court

3d It does not show that said Recognition
was entered of record or approved by
the Court.

4th It does show that said defendant
were called in open Court

5th It does not allege that any Judgment
by default or of forfeiture was rendered
against the defendants or either of
them

6th It does not show against whom
the Judgment was rendered

7th It does not show that the matter, or
any portion of thing appears of record

8. It does not make pretense of the record

Wherefore defendants pray that said
writs may be granted, let aside
for naught the

By Manning & Mad. their Attorneys

And afterwards to wit on the 26th day of Sep-
tember aforesaid the following proceedings
were had to wit

The People of the State of Wisconsin

as } Attest

Samuel Muse

This day came William
A. Muse the security therein and sworn-
dosed the principal in open Court. Thereupon
it is ordered by the Court the Sheriff take the
defendant into custody. Thereupon the defendant
came before the Court for the discharge of the
principal and security from their responsi-
bility herein. Thereupon it is ordered by
the Court that the motion be allowed

as to the security only upon the payment
of upon the payment of the costs of this pro-
cedure, the recognisance to remain in full
force and effect until such payment of
costs, and upon the payment the said se-
curity William Ware to be fully discharge
from his said recognisance

And this cause was continued under the
following order of Court made Oct 4th
being the last day of said Term to wit
Ordained that all causes not otherwise
disposed of to continue to the next term of
this court

And afterwards to wit at 11

At a circuit begun and held at the
Court House in the
City of Knoxville on the third Monday
of April, it being the twentieth day of said
Month AD 1857

Present Hon. John S. Thompson Judge
James Stewart State Attorney
George W. Carter Sheriff
Leaches Amos Clerk

This cause was again continued under
an order of said Court made on the last
day of said term to wit to wit on the 5th day
of May in said year as follows

Ordained that all Civil and
Criminal causes not otherwise disposed
of shall continue until the next term of
this court

State of Illinois }
Harris County }

Plas before the Honorable
John S. Thompson Judge of the South
Judicial Circuit in the State of Illinois
at a court begun and held at the
Court House in the City of Harris on the
Third Monday in the Month of October in the
year of our Lord One thousand eight hundred
and eight fifty seven, being the nineteenth
day of said Month

Present Honorable John S. Thompson Judge
James H. Stewart State Attorney
George W. Luke Sheriff
Leopold Adams Clerk

And afterwards to wit on the 30th day of October
in said year. Defendant by his Attorneys filed
his Pleas herein in words & figures following
to wit

State of Illinois }
County of Harris } In the North Circuit Court
Oct Term AD 1857

4 { Samuel Ware &
William S. Ware }
vs } On Scire Facias
The People of the State of Illinois }

Alced the said
Defendant Samuel Ware comes and
shows cause before the court here why a
writ should not issue on the said
Judgment in the said Scire facias mentioned

1 And for plea Chute says. The said People
ought not to have their said execution because
he says that there is not and has not been
any such indictment lawfully pending
in the said Circuit Court of said Fulton
County as in said writ of Habeas Corpus is
alleged And this said Samuel says
may be inquired of by the Court here
wherefore he prays judgment of the Court
whether said People ought to have their said
execution or maintain their said action
on said writ of Habeas Corpus &c.

Manning & Douglas Attys for Plaintiff

2 And for further plea in this behalf the said
Defendant Samuel says Actio non
because he says there is no such record
of any such cause or indictment against
the said Samuel where as by said writ
is alleged or supposed And the said Samuel
prays may be inquired of by the Court here
wherefore he prays judgment &c.

Manning & Douglas.

Atty for Samuel

3 And for further plea in this behalf the
said Samuel says Actio non because
he says that before is not on the 26th day of
September A.D. 1860 And before judgment upon said
writ of Habeas Corpus at the September term of the Circuit
Court in and for the County of New & State of
Missouri. Said Defendant Samuel himself upon
open Court and surrendering himself to said Court
in discharge and satisfaction of said process.

Whereupon said Court ordered that William S
Thorn the surety of said defendant be discharge
-ed from said recognisance upon payment of
cost which cost defendant then and there
paid as appears by the record of said Court now
ready to be produced. And that he is ready to
satisfy Whereupon he prays judgment &c
By Wm. H. Wood his attorney

2nd Court for further Plea in this behalf the
said Samuel Morse says Acts then become
he says that hereupon to wit on the 26th day of
September A.D. 1836 & before Judgment on the said
pleas having at a term of the Circuit Court
in and for the County of West and State of
Maine then being held at Newcastle in said
County the said Samuel Morse was delivered
up and surrendered in open Court which
Court in discharge of satisfaction of his
recognisance and was then and there
ordered into custody by said Court &
afterwards on the said day said Court
fixed the amount of bail, on the same said
must upon which defendant was recognized
in this case, at One Thousand Dollars.
Whereupon defendant afterwards on said
day in open Court entered into a new
recognisance in the sum of One Thousand Dollars with
William Morse as security, which was accepted
by said Court, conditional for his appearance
at the next term of said Court, to answer unto
the same indictment for which the recognisance
in this case was made & had Whereupon

Said Cause (the presentation for Arre. which
was then pending in said Court) was confined
to the next term of said Court & the Defendant
saith that he has been, and is discharged from
said recognisance & that he is ready to satisfy
y^e same. By Matthew T. Ward his Atty

5th And for further plea in this behalf said
Defendant Samuel Morse saith Actionable
because he says that heretofore Court on
the 27th day of April A.D. 1846 at a term of
the Circuit Court in and for the County of
Pike & State of Illinois there being held at
Vandalia in said County, said Circuit Court
rendered Judgment against the said De-
fendants on the same recognisance now shown,
"that the said Dept^y of the State of Illinois
have and receive of the said Samuel Morse
and William Morse the sum of One Thou-
sand Dollars the amount of their said re-
cognisance" which Judgment ^{has} is passed on
in the same recognisance set forth in the
scire facias herein, as will more fully app-
by the next thing herein said, which is a
final Judgment, wherefore the said De-
fendant saith that plaintiff ought not to
have and maintain his said writ upon
said and that he is ready to satisfy y^e same
By Matthew T. Ward

6 And for further Plea in this behalf the
said Samuel Morse says Actionable
because he says that heretofore Court on the

On 26th day of September A.D. 1886 at a
term of the circuit ^{Court} in and for the County of
Scott and State of Missouri then being held
at Warrenton in said County the said
Samuel Morse was delivered up in Court in
discharge and satisfaction of the judg-
ment decreed in said Sam Jones vs
Morse and then ordered into custody by
said Court to answer said Indictment for
larceny ~~and~~ the said Court did then &
there discharge and release the said William
J. Morse of & from said judgment upon payment of
costs, which said costs were then and there paid
wherefore the said Samuel Morse says that
said judgment is discharged released &
fully satisfied as to him & that he is ready
to satisfy whenever he pays judgment &c.
By Wm. J. Morse
his atty

And afterwards on the 3^d day of November A.D.
1887 further proceedings were had herein on
defendant's motion to set aside default and
motion reads as follows

The People
vs
Samuel Morse } In the Court to be Oct 2^d 1887

And was moved the said de-
fendant by Wm. J. Morse his attorney
and moved the Court to set aside the default
return herein against the said defendant
at the next Term A.D. 1886 of said Court

became he says that the said Defendant
did on the 26th day of September A.D. 1856 detain
himself up in the Court viz the Circuit Court
aforesaid when and where said indictment
for Arson was pending, to be tried upon
said indictment all which appeared by
the record of said Court
Manning & Mead Attorneys

The order of Court on the above motion is
as follows to wit

The People vs }
vs } Sci Ho
Samuel Morse }
} This day came the

Defendant by his Attorney and moves
the Court to set aside the forfeiture of recogni-
sance taken herein before - after hearing
the argument of counsel thereon, it is ordered
by the Court that the motion be overruled
Thompson came the Plaintiffs by their Attorney
and filed their demand to the Defen-
dants 30th day of the Month

Whole demand reads as follows to wit
and the said Plaintiffs as to the third &
fourth fifth & sixth Pleas by the Defendant
Samuel Morse to the said writ of Scire facias
say that the same are each & every one
and the matters and things therein
alleged are insufficient in Law to bar the
Plaintiffs from having and maintaining

their oppressive actions and their right
to an exemption on the judgment of propriety
therein set forth. And that they are ready
to verify the. Sheriff State Attorney &
County Judge Off. Atty

And for special causes of demurrer to the
said Plea they say: 1. that the same
amounts to the Plea of not true count
2. That the same facts attempted to be proved
therein must be shown by the Plaintiffs to entitle
them to judgment under the other Pleas

The replication to defendants Plea, filed herein
reads as follows

State of Illinois }
County of Cook } D. Circuit Court
Oct. Term A.D. 1887

The People
vs
Samuel Messer } Sci fa as negroes and

1. And the said Plaintiff as to the said
first plea of the defendant Samuel Messer
to the said facts herein, the said Plaintiff
say, plead not because they say that has
been and was an indictment lawfully found
in the said circuit Court of Justice County of Cook
said out of said facts alleged: And that
the said Plaintiff are ready to verify by the
said record, when, where, And in such

measures as the Court here shall direct and
advise and they pray that the said re-
cord may be seen and inspected by the
Court here &c

Sheweth States Attorney &
County Judge Pff Attorney

2. And the said Plaintiffs as to the second
plea of the defendant Sheweth these things
says presently now because they say that
there is such record of the cause civil in-
dictment against the said Samuel Mason
as is by said writ of Sequestrations alleg-
ed And that they are ready to verify
when, when and in such manner as the
Court here shall direct and advise
And they pray that the said record may
be seen and inspected by the Court here &c

Sheweth States Attorney &
County Judge Pff Attorney

And the said People of the State of Illinois
by their States Attorney as to the fifth plea
of the defendant says presently now because
because he says, that there is no such record
of a judgment as is in said Plea al-
leged And that the said People pray
may be removed of by the Court here
whereupon they pray the Judgment of the
Court &c.

I H. Howard States Attorney

And the defendant doth the like
By Man. his Atty

And afterwards on the same day to wit
November 8th in said year further proceedings
were had herein as follows to wit

The People &c
vs
Samuel Morse } Sci fa

This day came the
plaintiffs by their attorney and withdrew
their Demurrer to the defendants 5th plea.
Thereupon after hearing the argument of
counsel on the demurrer, it is ordered by the
Court that the Demurrer be sustained as to the
said 5th & 6th pleas. Thereupon leave is given to the
defendant to amend his 5th plea.

And afterwards to wit on the 7th day of November
in said year further proceedings were had
herein the record of which is in words &
figures following to wit.

The People of the State of Illinois }
vs
Samuel Morse } Sci fa

This day came the
parties by their attorneys and when a jury
and for trial put themselves upon the Court
after hearing the evidence the Court finds
the issues for the Plaintiffs and awards
their damages at the sum of One thousand
dollars. Hence it is considered by the Court that
the Plaintiffs have and recover of the said
defendant the sum of One thousand dollars.

together with their own by those with
their respective and only non-spiritual
ten things

and opponents the defendant, and on the 22^d
day of January 1837, the 10th day of 1837
and having as follows

The 10th day }
" } In the year 1837
January 1837

On the 10th day of January 1837, the 10th
day of January 1837, the 10th day of January
the 10th day of January 1837, the 10th day of January
the 10th day of January 1837, the 10th day of January
the 10th day of January 1837, the 10th day of January

The 10th day }
" } In the year 1837
January 1837

On the 10th day of January 1837, the 10th
day of January 1837, the 10th day of January
the 10th day of January 1837, the 10th day of January
the 10th day of January 1837, the 10th day of January
the 10th day of January 1837, the 10th day of January

Records of said Court

Manning & Brad Attorneys

Whole motion was by the Court overruled on the 3rd day of November A.D. 1857 to which decision of the Court the defendant then & there accepted.

And upon the trial of said cause the plaintiff to sustain the issue on his part introduced the original Patent must for seen in this case as follows

State of Illinois }
Tallaw County }
In the Petition of the
Tallaw County Circuit Court in the year of our
Lord 1855

The Great Jurors chosen electors and sworn in and for the County of Tallaw, in the name and by the authority of the people of the State of Illinois, upon their oath pursuant that Samuel Wiser, late of the County of Tallaw and State of Illinois, on eighth day of September in the year of our Lord one thousand eight hundred and fifty three, at and within the County of Tallaw and State of Illinois, certain dwelling under, then situate, and being then and there the property of one John Fitz, did then and there feloniously, wilfully, and unlawfully burn contrary to the form of the Statute in such case made and provided & against the peace and dignity of the same People of the State of Illinois

And the Great Jurors
expressed in the name and by the authority
of the People aforesaid, upon their oath aforesaid

further present that the said Samuel Mess. loc
of the County and State aforesaid, on the day
and year aforesaid, at and within the County
and State aforesaid, on certain building, the said
building being then and then a house, used ordi-
narily as a dwelling house, but then and then
unoccupied, and situate in the town of Woodlawn
in the County and State aforesaid, and the
same building being then and then the prop-
erty of one John Fitz, did then and then
feloniously, wilfully and maliciously, burn, con-
vey to the form of the Statute in such case made
and provided, and against the Act and dignity
of the same Acts of the State of Illinois

(W. C. Lindsey)

State Attorney

upon the back of said Indictment there appears the fol-
lowing endorsement "The People vs. Samuel Mess.
Indictment for arson. to wit: Will. C. L.
McFarland. Foreman of the Grand Jury.
Witness: Almon Lindeman, John Fitz, John. Carleton
Filed Feb 15th 1855 Township Clk. - Filed
April 16th 1856 H. M. M. Clk. Copies inst.
Bail \$1000 H. M. M. Clk.

In the introduction of which the defendant then
and then objected, but the objection was over-
ruled & the defendant at the time ap-
peared.

The Plaintiff next introduced the back
of the indictment and proceedings as follows

Placed at the Court House in Lewistown, before
the Hon. H. M. Mess. Judge of the Peace

Judicial District of the State of Illinois
let a circuit Court begin and held at the
Court House in Leiestown in the County of
Fulton and State of Illinois on Monday the
fourteenth day of February 1854

Isaac Hawkins Whitwell Justice
William Leary State Attorney
Daniel J. Rogers Sheriff
Edward Ryan Clerk

And now on this day the Sheriff returned
into your Court a return of a writ of habeas corpus
of the Board of Supervisors by the Clerk of the
County Court and of the Clerk of the
Board of Supervisors. While said writ is
in the process and figures following to wit

State of Illinois
Fulton County ss. Clerk of the County Court
Leiestown October 10th 1854

To the Sheriff of Fulton County greeting
We command you to summon
Robert McMillan Oscar Brown
John Cummings Abraham Maguire
James H. Kinney Benjamin S. Perkins
A. C. Rogers Andrew McFarland
John Dancy Eliza Jennings
Anthony Thompson Milton Shreve
Henry Hargrave Lewis C. Babcock
Isaac Stewart John S. Harris
Editha Johnson A. D. Alder
William Harris Milton Foster
Robert Kearney Benjamin Backelshymer
C. G. Roe

William Maxwell, Hyman L. Voth, Andrew
McFarland, Milton Thayer, H. H. Adkins,
Alfred Foster & Benjamin W. Pillsbury
And there not being a sufficient number
present to constitute a full Grand Jury it
was ordered by the Court that the Sheriff
Summon six persons from among the best
as to act as such Grand Jurors and thereupon
the Sheriff summoned Joseph McCamphrey,
Richard Tompkins, Thomas McWhorter,
Marshall & John H. Reed of like name
And lawful men who gave their oaths
Accordingly. And by order of the Court Andrew
McFarland was appointed Clerk of the Court
at Law. And the Grand Jurors aforesaid
having been duly sworn and charged, stood
in charge of the office to consider of Indictments
And Subpoenas.

And afterwards, that on
the 15th day of January aforesaid the same being
the third day of said Term of the Court the
following among other proceedings were had.

This day came into Court the Grand Jurors
incapacitated at the present time of this Court
and presented the following bill of Indictment
The People of

Indictment for Murder
Samuel Morse & the Bill Attest Andrew
foreman of the Grand Jury

Ordered by the Court that this cause be continued
till the next term of this Court

Civil & Criminal Court At a Circuit Court
begun and held at the Court House in Laramie
in the County of Teton and State of Wyoming on
Monday the 25th day of May 1885

Present the Hon. Elias A. Stearns Judge of the
fifth Judicial Circuit presiding in place of the
Hon. Roschick M. Reed

William C. Fordy Attorney
David J. Wagoner Sheriff
Edward Taylor Clerk

The following among other proceedings were
had on the 25th day of May aforesaid the
same being the second day of said term of
Court

The People
vs
Samuel Ware } Arson

This day came the People
by the Atty. Genl. and moved the Court
for a continuance herein

And afterwards to wit on the 26th day of May aforesaid the same being the third day of
said term of the Court the following among other proceedings were had

The People
vs
Samuel Ware } Arson

This day the Court coming
on for a hearing on the motion of Defendant

to his Attorney for a continuance herein
It is ^{now} ordered by the Court that the motion be
sustained and that the cause be contin-
ued till the next term of this Court.

And afterwards to wit

At a Council Court begun
and held at the Court House in Swanton
in the County of Fulton and State of Illinois
on Monday the 8th day of October A.D. 1855

Present Hon. John S. Thompson Judge
Michael J. Ford, State Attorney
David J. Thompson Sheriff
Edmund Sayre Clerk

The following summary of the proceedings hereof
on the 11th day of October opposite the same
being the fourth day of said Term of the
Court.

The People }
vs } Grand
Michael Wese }

This day came the People
by the State Attorney and moved the Court
for a continuance herein which motion is
sustained by the Court. And again came the
People by the State Attorney and moved the Court
for a attachment herein against Oliver Anderson
a witness in this case which motion is sustained
by the Court, and it is ordered by the Court that
attachment issue for the said witness returnable at
the next term of this Court, and that he be held
to bail in the sum of One hundred dollars

And afterwards to wit

At a Circuit Court begun and held at the Court House in Louisiana in the County of St. Louis and State of Louisiana on Monday the fourth day of February A.D. 1861

Present Hon. John S. Shreve, Judge
John C. Davis, State Attorney
David H. Thompson, Sheriff
Edward T. Ryan, Clerk

The following among other proceedings were had on the 2nd day of February aforesaid the same being the third day of said term of the Court.

The People }
vs Isaac }
Samuel West }

This day came the defendant by his Attorney and moved the Court for a change of venue herein for affidavit as set, which motion is overruled by the Court. Where the defendant by his Attorney, says

And afterwards, on the same day the following proceeding was had, to wit

The People }
vs Isaac }
Samuel West }

And again on this day came the defendant by his Attorney and moved the Court for a change of venue herein for affidavit as set. Which motion is sustained by the Court, and the venue of the cause

chaunced by order of the Court to the County
of Knox. And it is further ordered by the
Court that the Clerk of the Court make
and certify a complete transcript of the
Record herein and transmit the same together
with the papers herein to the Clerk of the
Circuit Court of Knox County.

This cause having been assigned
and William S. Ware as Security and
jointly and severally acknowledge themselves
to be jointly and severally indebted to the people of the
State of Illinois in the just and full sum
of One Thousand dollars, good and lawful
money of the United States to be bound of their
goods and chattels lands and tenements of
default to be made in the conditions following
which is this, that if the said William S. Ware
shall well and truly be and appear before the
Circuit Court of the County of Knox on
the first day thereof at the term to be held
at the Court House in Knoxville in the County
of Knox and State of Illinois on the fourth
Monday in the month of April next then
and then to answer and abide the issue
of said Court in a matter now pending
and undetermined wherein the People of
the State of Illinois are Plaintiffs and the
said William S. Ware is defendant, or an
Indigent must for Assure that I will be and
remain before said Court from day to day during
the said term thereof and not depart thence without
leave of the Court, then this recognizance to be
void otherwise to remain in full force

And Victor

State of Illinois
Jesse County

I Edward Sayre
Clerk of the Circuit Court within and for
the County aforesaid, do hereby certify that the
foregoing is a true and perfect copy of the pro-
ceedings of Court in the case therein named,
as the same appears upon the records in
my office. That that the papers first and
subscribed from 187 are all the original
papers filed during the progress of this suit.



In testimony whereof I have hereunto
subscribed my name (and affixed
my seal of office at Springfield
this 11th day of September A.D.
1836

Edw Sayre Clerk

State of Illinois }
Harris County } I Thus before the Honorable
John S. Thompson Judge of the
Circuit Judicial Circuit in the State of Illinois
at a Court begun and held at the Court House
in the City of Knoxville on the First Monday
of April in the year of our Lord one thousand
Eight hundred and fifty six it being
the 2^d day of said month.

Present Honorable John S. Thompson Judge
C. M. Craig Att. Geny
Comptrolr Noble Sheriff
Hiram S. Mowry Clerk

It is immaterial that at said term of Court there was pending in said Court a suit wherein the People of the State of Illinois were Plaintiffs and Samuel Muse was Defendant on an Indentment for Carriage, which suit was brought into the Court by change of venue from the County of Fulton in said State the record of which is in words and figures following to-wit:
The following causes also previously being once laid on the 25th day of said month being the second day of said term

The People of the State of Illinois }
Samuel Muse } Carriage Change
of Venue

This day came the People as aforesaid by C. M. Craig States Attorney and the said Samuel Muse the plaintiff herein being there times solemnly called can not but make default and William S. Muse his Security herein being there times solemnly called in open Court to appear and produce the body of the said Samuel Muse he did not appear or produce the body of the said Samuel Muse he also made default Therefore it is considered by the Court that the Recognition of the said Samuel Muse as principal and William S. Muse as his Security has not been taken care by them jointly and severally entered into, and so each of them jointly and severally bound to take, hold and defend as forfeited. Therefore it is considered by the Court that the said people of the State of Illinois

Companions for the February term A.D. 1835 for the
said Circuit Court, and the said Indentment being
then and there so pending therein. at the February
term A.D. 1836. before said the said Samuel Ware applied
for a change of ^{the} venue thereof from the said County of
Jettie. and the said Circuit Court ordered the
same to be changed to the County of Clark in said
State. And thereupon then and there the said Samuel
Ware as principal and William Stark as se-
curity appeared in your Court and entered
into a recognizance the read whereof is in ^{the} words
and figures following that is to say. That on
Samuel Ware as principal and William Stark
as security and jointly and severally
acknowledged to me and to the Justices of the
People of the State of Illinois in the just and
full sum of One thousand dollars good and
lawful money of the United States to be true
repear of their goods and chattels, Lands and
Innouncements, if default be made in the execution
following, which is this, that if the said Samuel
Ware shall well and truly be and appear
before the Circuit Court of the County of Clark
on the first day thereof at the term to be held
at the Court House in Newville in the County
of Clark and State of Illinois on the fourth
Monday in the Month of April next then and then
to answer and abide the issue of said Court
in a matter now pending and undetermined
wherein the People of the State of Illinois are Plaintiffs
and the said Samuel Ware is defendant on an In-
dentment for Treason, and shall be and remain
about said Court from day to day during the

the said time of day and not depart thence with
out leave of the Court that this Provisoance to be
void. Otherwise to remain in full force and
virtue.

And whereas afterwards on the said
day of a term of the Circuit Court for the County
of those aforesaid began on the fourth Monday
of April A.D. 1836 the said Indictment then and
then pending: came on for trial and the said
Samuel Price being called, came not but made
default; and the said William S. Price being
called failed to produce the body of his said
principal, and therefore judgment of forfeit-
ure was rendered against them the said
Samuel Price and William S. Price
for the said sum of one thousand dollars and
an order entered that Leon Davis should
do against the said Samuel Price and
William S. Price to appear and show cause
&c. at the next term of the said Court the
after

Therefore you are commanded to show
why the said Samuel Price and William
S. Price do not appear before the Circuit
Court of the County of those aforesaid on the
first day of a term to be held on the fourth
Monday of September A.D. 1836 then and there to
show cause if any they have why execution
shall not issue on the judgment aforesaid and
close the record of the Court in the premises:
Have you the the writ

Dated the said of said Circuit Court
of the County of those the first day of August

21

in the year of our Lord Eighteen
hundred & fifty Six

Meriam S. Morry clerk

upon the back of said writ there appears the fol-
lowing endorsement

State of Missouri

John A. Conant } I do hereby certify that I have
verified by reading the within writ & the return
named Samuel More and William S. More
this 22 day of August A.D. 1856

Deacons 100

120 miles travel 600

Return 20

Daniel J. Wrayman Sheriff 1.20

Justice County Missouri

State of Missouri

Wray County Mo.

Thus before the Honorable John
S. Thompson Judge of the South District
Circuit in this State of Missouri at a Court held
and held at the Court House in the City of Wray
color on the fourth Monday of September in the year
of our Lord one thousand eight hundred and
fifty Six it being the twenty second day of
said month

Present Honorable John S. Thompson Judge
Circuit State Attorney
Comptroller Public Sheriff
Meriam S. Morry clerk

The following being other proceedings were had
herein on the 30th day of September aforesaid

by the 4th day of said term of the Court

The People vs }
Samuel Mose } Crown

This day came the defendant
by his Attorney Counsel but none the Court
to quash the said Fines herein

Wherefore
reads as follows to wit

People }
vs } In the Year 18
Samuel Mose & } Sept 3. A.D. 1856
William S Mose }

And now comes the
said defendants by Manning & Ward their Att-
ornies And move the Court to quash the said
Fines herein for the following reasons

1. Because said Fine is contradictory &
uncertain in that it does not show when nor
at what time of the Court said Recognizance
was entered into

2. It does not show or set forth that said
Recognizance was taken before any Court

3. It does not show that said Recognizance
was in default of Record or appears by the
Record

4. It does show that said defendant were
called in free Court

5. It does not allege that any Subpoena by
default or of forfeiture was returned against

the Defendants or either of them
6th It does not stand against whom the Judgment
was rendered

7th It does not show that the matter or any por-
tion of it was before of record

8th It does not make proof of the record

Whereupon Defendants pray that said Henry Harris
may be quashed, set aside and for naught held

By the Court & the Attorney

And afterwards, on the 26th day of September
aforesaid the following proceedings. Among other
things had to wit

The People of the State of Illinois }
at } Anne
Samuel Harris

This day came William
S. Davis the security herein and surrendered
the principal in open Court. Therefore it is
ordered by the Court the Sheriff take the de-
fendant into custody. Therefore the defendants
caused moved the Court for the discharge of the
principal and security from their recognisance
herein. Therefore it is ordered by the Court
that the motion be allowed as to the security
only, upon the payment of the costs of the pro-
secution the recognisance to remain in full
force and effect until such payment is made.
And upon the payment, the said Security
William S. Davis to be fully discharged from
his said recognisance

And on the last day of said Court Court Oct
4th it was.

Ordered by the Court that all
Cases not otherwise disposed of be continued to
the next term of this Court.

And which order
this cause was continued

And afterwards to wit

At a Circuit Court begun and held
at the Court House in the City of Knoxville
on the third Monday in the month of April it
being the 20th day of said month (A.D. 1857)

Present Hon. J. S. Thompson Judge
James H. Stewart Clerk
George W. Lake Sheriff
Josephus Ames Clerk

This cause was again continued under a
general order made on the last day of said
Court to wit on the 5th day of May in said
year as follows

Ordered that all common
Law and criminal Cases not otherwise dis-
posed of stand continued until the next term
of this Court

State of Illinois }
Fulton County } ss.

Plas before the Honorable J. S. S.
Thompson Judge of the South Judicial Circuit
in the State of Illinois at a Court begun and

held at the Court House in the City of
Knoxville on the third Monday in the Month
of October in the year of our Lord one thousand
eight hundred and fifty Seven being the thir-
teenth day of said Month

Present Honorable John L. Thompson Judge
James M. Stewart State Attorney
George W. Enke Sheriff
Leophas Combs Clerk

Orsd appeared to wit on the 30th day of October in
said year defendant by his Attorney. filed his
Plead herein in words and figures following to wit.

State of Illinois }
County of Knox } In the then and now Court Oct
Term A.D. 1857

Samuel Mass }
William L. Mass }
vs }
Eds } on their Pains
The People of the State of Illinois }

And the said defendant
Samuel Mass comes and shew come before the
Court here why execution should not issue on
the said judgment in the said Scire facis
mentioned and for plea that says The said Eds
ought not to have this said Execution because he
says that there is not, and has not been any such
indictment lawfully pending in the said Circuit
Court of said Polk County at in said writ of
Scire facis is alleged. And this said Samuel
prays may be assigned of by the Court here.

Whereupon he prays Judgment of the Court whether said
People ought to have their said operations & warrants
therein said actions on said writ of Habeas Corpus &c
Manning & Douglass Atty for Saml Ware

2 And for further Plea in this behalf the said被告
and Samuel Ware says Ceteris non, because he says
there is no fact, record of any such cause, or in-
dictment against the said Samuel Ware as
by said Writ is alleged & supposed. And
that said Samuel prays may be enjoined of by
the Court here. Whereupon he prays Judgment &c
Manning & Douglass Atty
for Samuel Ware

3 And for further Plea in this behalf the said
Samuel Ware says Ceteris non, because he
says that herefor to wit on the 26th day of
September AD 1836 And before Judgment upon said
Habeas Corpus at the September term of the Circuit
Court in and for the County of Knox and State
of Illinois, said defendant delivered himself
up in open Court and surrendered himself
to said Court in discharge and satisfaction
of said recognizance. Whereupon said Court
ordered that William S Ware the Surety of said
defendant be discharged from said recognizance
upon payment of Costs, which Court defendant
then and there paid as appears by the Record
of said Court now ready to be produced. And
that he is ready to obey. Whereupon he prays
Judgment &c

By Manning & Menard Attorneys

14th And for further plea in this behalf ^{Shall} Defendant
^{Samuel} says C. C. is now because he says that
hereafter to wit on the 26th day of September C. C.
was before Judgment on the bench James Green, at
a time of the Circuit Court in and for the
County of Sag and State of Illinois. then being
held at Knoxville in said County the said
Samuel Moore was delivered up and for-
warded in open Court to said Court in
discharge & Satisfaction of said recognisance
and was then and there ordered into custody
by said Court & afterwards on the same day
said Court fixed the amount of bail on the
same Indictment upon which defendant was
recognised in this case at One Thousand
Dollars Whereupon defendant afterwards on
said day in open Court entered into a new
recognisance in the sum of One thousand
Dollars with William Moore as security which
was accepted by said Court. Conditional for his
appearance at the next term of said Court
to answer unto the same Indictment for which
the recognisance in this case was made & that
whereupon said Court (if the justice for then
which was then pending in said Court) was continued
to the next term of said Court and so defendant
saith that he has been and is discharged from said
recognisance and that he is ready to verify &c
By examining & reading his Oath

And for further plea in this behalf that the
defendant Samuel Moore saith October because
he says that hereafter to wit on the 27th day of

April 1886 at a term of the Circuit Court in and
for the County of Nassau and State of Florida then
being held at Marietta in said County. Said Circuit
Court rendered Judgment against the said defend-
ants on the same recognisance now said on that
said date of the State of Florida have and been
of the said Samuel Wren and William S
Wren the sum of One thousand dollars the amount
of their said recognisance. As for as the said
facts herein which Judgment was & is founded on the
same recognisance so far as the same facts herein
as will manifestly appear by the record thereof now
on file which is a final Judgment. Wherefore the said
defendant said that Plaintiff ought not to have and
maintain his said facts as a cause and that he is ready
to satisfy.

By Samuel Wren

6th And for further than in the behalf the said Samuel
Wren says before me because he says that before
me on the 26th day of September A.D. 1886 at a
term of the Circuit Court in and for the County of Nassau
and State of Florida, then being held at Marietta in said
County, the said Samuel Wren was detained upon
Court in discharge and satisfaction of the judg-
ment described in said said facts and was then
and there ordered into custody by said Court to answer
said said Judgment for costs. And the said Court
did then and there discharge and release the
said William S Wren of & from said judgment upon
payment of costs which said costs were then and
there paid. Wherefore the said Samuel Wren
says that said Judgment is discharged and released.

And fully satisfied as to him and that he is ready
to satisfy whatever he may judge proper

By Manning & Mead his
Attys

And afterwards on the 3^d day of November A.D. 1837
further proceedings were had herein on defendants
motion to set aside the default herein wherefore
reads as follows to wit

The People

vs

Samuel Morse

} In the Court of Cr. S. 1837

And now comes the said defendant
by Manning & Mead his Attornies and moves the
Court to set aside the default entered herein
against the said defendant at the Special Term
A.D. 1836 of said Court. because he says that the said
defendant died on the 26th day of September A.D.
1836 before being off up in open Court, via the
Circuit Court of said State where and when said In-
dictment for same was pending. To be tried upon said
Indictment All which appears by the record of
said Court

Manning & Mead Attys

The order of Court on the above motion is as
follows to wit

The People &c

vs

Samuel Morse

} In the Court of Cr. S.

This day came the defendant by
his Attorney and moves the Court to set aside the
first one of recognizance entered herein heretofore

After hearing the argument of counsel thereon, it is ordered
by the Court that the motion be overruled. Thereupon came
the Plaintiff by their Attorney, and filed their demand
to the defendant I was sick & did not

Shook Down

heads as follows & viz

And the said Plaintiff
as to the third fourth fifth & sixth Plea by the defendant
and answer there to the said writ of said Pleas
say that the matters same and each of them are, and
the matters aforesaid things therein severally alleged
are insufficient in law to bar the Plaintiff
from having and maintaining their aforesaid
action. And their right to be execution on the
Judgement of forfeiture therein set forth. And that
they are ready to try &c.

Shook State Attorney?

Shook & Judge Piff atty

And for special causes of demand to the Court
they say 1st That the same amounts to the plea
of Multit Pleas 2. That the same facts al-
leged to be pleaded therein, must be shown by
the Plaintiff to entitle them to judgement under
the other issues

The replication to defendants plea
filed herein reads as follows

State of Illinois }
County of Cook } A Circuit Court Oct Term
A.D. 1857

The People }
vs }
Samuel Moore } And the said Plaintiff as to

the said first plea of the defendant Samuel Ware to the
said issue herein. the said Plaintiff say preclude and
because they say there has been, and was an indis-
criminate lawfully finding in the said Circuit Court of
Jackson County as in said writ of Habeas corpus
alleged. And this the said Plaintiff are ready to
verify by the record, when, where, and in such manner
as the Court here shall direct and award. And they
pray that the said record may be seen and inspec-
ted by the Court here &c

Sheweth Says Attorney
Gardner & Judge Rags Attorneys

2 And the said Plaintiff as to the second plea of the
defendant Samuel Ware herein, say preclude now, because
they say there is such record of the cause and in-
dictment against the said Samuel Ware as is by
said writ of Habeas corpus alleged. And this they are
ready to verify when, where, and in such manner
as the Court here shall direct and award
And they pray that the said record may be seen
and inspected by the Court here &c

Sheweth Says Attorney

Gardner & Judge Rags Attorneys

And the said People of the State of Illinois by
their State Attorney as to the fifth plea of the de-
fendant say Aliter now, because he says that there
is no such record of a judgment as is in said Plea
alleged and that the said People pray may be inspected
by the Court here whenever they pray the judgment
of the Court &c

I am Sheweth Says Attorney

And the defendant shall the like

By. Marshall Attorney

And afterwards on the same day, to wit November 5th in said year, further proceedings were had herein as goes to wit

The People vs }
vs } Sci Sa
Samuel Morse }

This day came the Plaintiff by their attorney and with and their witnesses & the Defendants 5th John Thompson. After hearing the argument of counsel on the depositions, it is ordered by the Court that the deposition be sustained as to the 5th & 6th Thos. Thompson being a joint & dependent to answer his 5th plea

And afterwards to wit on the 7th day of November in said year, further proceedings were had herein, the record of which is in words and figures following to wit

The People of the State of Illinois }
vs } Sci Sa
Samuel Morse }

This day came the parties by their attorneys and gave a jury and for trial put themselves upon the Court. Upon hearing the evidence, the Court finds the issue for the Plaintiff and awards their damages at the sum of One thousand dollars.

Therefore it is considered by the Court that the Plaintiff have and become of the said Defendant and the sum of One thousand dollars together with their costs by them in this said action

you did and may have executed therefore

It which the defendant objected, but the objection was overruled and the defendant then and there excepted.

Demurrer having been interposed to the 5th and 6th pleas & joined therein which demurrers were sustained by the Court the defendant at the time excepted.

The defendant then offered in evidence the record of the judgment entered upon the recognisance against the said Samuel Wace & William Wace as follows

The People of the State of Illinois

vs
Samuel Wace

} Case Change of Venue

This day came the People appearing by A. M. Brown, State's Attorney, and the said Samuel Wace the principal herein being three times solemnly called upon not to make default and William S. Wace his surety herein being three times solemnly called in open Court to appear and produce the body of the said Samuel Wace, but did not appear or produce the body of the said Samuel Wace, but also made default. Therefore it is considered by the Court that the recognisance of the said Samuel Wace as principal & William S. Wace his surety herein heretofore taken, and by them jointly & severally entered into and for which they were jointly and severally bound, be taken hold &

declared as forfeited, therefore it is considered
by the Court now here, that the said People
of the State of Illinois, have and have of the
said Samuel Morse & William S. Morse the
prognosis being the same of Can. Charles
Collins the amount of their said prognosis is

And it is further ordered by the Court that
a writ of Habeas Corpus issue being directed
to the Sheriff of Fulton County returnable at the
next term of this Court commanding him to
summons the said Samuel Morse and William
S. Morse personally to be and appear before the
Circuit Court of Knox County on the first day
of the next term there to be holden at the Court
House in the City of Knoxville on the fourth
Monday of September next there and there to
show cause if any they have why final
Judgement should not be rendered against them
for the amount of their prognosis expenses
and costs. And why if certain should not pay
therein for the same. And this cause is con-
tinued until the next term of this Court.

Which Record was & checked by the Court
and the Deputy Clerk at the time & before
All which exceptions were allowed - This
was all the evidence in the case.

Whereupon it is ordered that said exceptions
be signed upon the record and signed &
sealed. All which is done

J. M. S. Thompson

State of Illinois }
Knox County }

I Joseph Lewis Clerk of the
Circuit Court within and
for the County aforesaid do hereby state that the
foregoing is a true and perfect copy of the
proceedings of said Court in the case therein
mentioned, as the same appear upon the records
in my office



In testimony whereof I have hereunto
subscribed my name and af-
fixed the Seal of said Court
at the City of Knoxville this 10th
day of February A.D. 1858
Joseph Lewis Clerk

Samuel More } In the Supreme
The People of the } Court
State of Illinois } April 2, 1858

And now comes the said
~~Samuel More~~ ^{plaintiff} says that in
the record & judgment aforesaid
manifest error hath been
to his injury in this

- 1st In not rendering judgment for
Plaintiff in error
- 2^d In not discharging the said
plaintiff as asked for
3. In overruling the said
plaintiff. Hear
4. In rendering judgment
against the said plaintiff
in error

wherefore because of said
error said plaintiff prays that said
judgment may be set aside and the
reverse thereunto be held.

By Wm. H. Harrison
for Plaintiff

at the trial the said People of the
State of Ohio's Cause and say
there is no such error as is above
alleged and that they pray may be
enquired of by the Court.

Gandy & Judd

Attorneys for Respondents in
Error.

Transcript

The Pope

Samuel Wise

Feb 5 April 26, 1878
L. S. Lane
Chk.

Jan 18, 20
Postage 20

State of Missouri, 3rd Grand Division
Supreme Court, April Term 1851.
Samuel Hecie
vs
The People

2 Error to Writ
2

Gandy & Judd for the People.

I. The Plaintiff in Error prays for error the decision of the Circuit Court in sustaining the demurrer to the 3rd, 4th, & 6th pleas. The question involved requires a decision of this Court as to whether the surrender of the principal by the Security, after a judgment of forfeiture on a recognisance in a criminal case, and after the issue and denial of Sci. fac. on both the ~~part~~ principal and Security, and a discharge of the Security on the payment of costs, by virtue of the provisions § 196 (Criminal Jurisprudence) Rev. Stat. 1845, page 117, will also entitle the principal to his discharge.

The Defendants in Error insist that pleas 3, 4, & 6, set up, no defense to the Sci. fac. in favor of Samuel Hecie

who is the principal in the recognisance
and the party pleading these pleas,
and that a discharge of Security by
virtue of the Statutory provision
does not discharge the principal.

In support of this proposition the
Appendants in error submit,

1. At common law when the prin-
cipal fails to appear his recognisance
is broken and becomes forfeited and
absolute, and being extorted and
sent up to the Eschequer the party becomes
an absolute debtor to the Crown for
the loyalty.

1 Chit. Crim. Law 92. 106.

The manner of extorting was for
the Clerk to send to the Count of Eschequer
a list of fines and forfeitures, from
whence an execution issued immedi-
ately to the Sheriff to collect.

1 Chit. Crim. Law 815.

People vs Phelps 17 M. 200

In England there was no remedy or means by which the party could be relieved or discharged after forfeiture until the passage of 4 George 3. ch. 10.

The preamble to that Statute is as follows, to-wit:

"Whereas, many recognizances have been estreated into His Majesty's Court of Exchequer against persons for not appearing as parties or witnesses in His Majesty's Court of Records at Westminster; many of which neglect have happened by the neglect of ignorant people, some of whom are imprisoned and a great many others liable to be so, by the process constantly issued against them of the Courts of Exchequer &c."

The Law then gives a discretion in any power to the Court to discharge.

See the Statute 3 Hawkins Pleas of the Crown 137.

In this State the forfeiture is held to be absolute without any power of relief by the Courts or otherwise except by the Legislature.

Gate vs People 15 M. 221.

2. The liability of the principal, once security is fixed and absolute on judgment of forfeiture on the Recognizance, with the right to the Security to obtain a discharge for himself alone, by a Surrender &c. which right does not extend to the principal.

Stat. vs Cooper 2 Blackf. 227.

Mather vs People 12 Mc. 11.

3. A discharge of the Security by virtue of the provisions of §146 Pen. Stat. page 187, does not discharge the principal.

This is properly decided in

Loarance vs State 1 Porter 357

McGuire vs State 5 Porter 165.

II. Another question on which the Plaintiff in Error relies to reverse the judgment arises from the form of the judgment of forfeiture in the Criminal Case on which the Sci. fa. is based. It is insisted that the judgment is final & hence the inference is drawn that the issue of Sci. fa. to obtain execution upon it is irregular and no judgment for execution can be had.

The Defendants in Error reply to this position.

1. It is true that the Court remarks in Richards vs People (Sess. 18) that a Sci. fa. must have issued after forfeiture to command the defendant to show cause why judgment should not be rendered & execution awarded, but they do not say what kind of a judgment & the question involved in this case was not considered or decided in that.

The judgment is formally for the recovery of \$1000 the amount of

the Recognizance, but no execution is awarded, on the contrary, The Court proceeds to order a Sci. fa. to issue commanding the recognisors to appear at the next term and show cause "why final judgment should not be rendered against them, for the default of their recognizance aforesaid, and cost, & why execution should not be issued thereon for the same" and then orders the cause to be continued.

Clearly no execution issue on this judgment, it is interlocutory - a formal judgment of forfeiture.

That this form is supported by authority reference is made to

Thomas vs People 13 Mc. 696.

Kennedy vs People 15 Mc. 418

Ⓔ Alley vs People 1 Gil 109

Whinnell vs People 16 Mc 405

Youngs et al vs People 36 56)

2. The object of a Sci. fa. is to obtain execution according to the form, force, and effect of the recognisance and the writ originated by Statute West. 2. 15 Edw. 1. & the right thus created is merely recognised by another Statute. Sans as People 3 Gil. 331.

3. It is immaterial what the form of the judgment was rendered in the case of The People vs Samuel Hester on the Indictment for a forfeiture, that because

(A) The Sci. fa. is the commencement of a new suit & is not a continuation of the Indictment cause.
People vs Phelps 17 M. 200
Lawrence vs People 14 172
Ward vs People 16 M 171

It therefore follows that the form of the judgment cannot be questioned in this proceeding, it being merely offered in evidence to support an allegation in

the Indictment; the only way in which that judgment can be called in question so far as the form is concerned would be by a direct proceeding to set aside judgment.

(b). There was no issue that required the People to introduce this judgment & hence it is immaterial what it was. The allegation in the Sci. fa. is admitted.

(c.) If the judgment was final & of that character which would justify an execution, the People did not avail themselves of that right, but proceeded to give the defendants an opportunity to set up their defence.

They not being injured, cannot complain.

Pattfield vs People 3 Gil. 407

Whinnocross vs People 11 M. 406.

Thorn vs Watson 5 Gil. 26.

Baileys, Mott & Campbell vs Kane 47

Harrison vs Blackwell 10. 131

III.

It is insisted that because a release of one of two joint and several obligors will discharge the other that therefore the principal in this case is released by the discharge of the security.

The authorities sustaining that doctrine all relate to the release by the act of the obligee, upon the presumption that the joint demand is satisfied.

A release by the operation of law does not have the like effect.

13 Prop. 150

But in this case the right of the security to his discharge is a part of the obligation & according to its force & effect.

The fact that the Sci. fa. is joint does not prevent an judgment execution against one.

Whinneson vs. People of M. & C.

Samuel H. H. H.
as
The People

error to Knoc.

Gandy, Judd
Atty for dist. t.

Garrett & B. B. B.

Filed April 22, 1859
L. Leland
clerk

The People }
or } Knox Co. Co. Oct 7, 1857
Saml. Wells }

- 1 The surety may surrender the principal & discharge the recognizance at any time before judgment is obtained in the action of debt.

Milner vs Petit 1 Ld Raymond Rep. 720.

The State vs Hollow 26 Maine 209

Com vs Gann 12. Mass 1.

Pate vs People 15. Ill 221

- 2 There must be a formal judgment of forfeiture before the defendant can be called upon to answer.

Kennedy vs The People 15. Ill 417

Thomas vs The People 12. do 696.

3. The judgment in this case was final

A Release of one joint & several
debtor is a release of all

2° Sumner 48 Mass. notes

2 Barrelet & Patten 6 30

Masson. & Co Obligations 5 4

Tuckerman vs Newhall 17. Mass Rep 580

Hard vs Johnson 13 do 150.

Benjamin vs McConnell 4. Kil 244.

3 The defendant pleads that
the Court had rendered a final
judgment. The people replied
there was no such judgment.
The record shows the plea to be
true. The judgment should
have been for defendant.

8

People

in

Samuel Wells

Brief

Filed April 29. 1858

L. Leland
clerk

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