

No. 12450

Supreme Court of Illinois

Conner, et al

vs.

People

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5th - 60

John Comstock

The People

J P L

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1858

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Preserved

Supreme Court of the State of Illinois.

3^d GRAND DIVISION.

ERROR TO McLEAN.

JOHN CONNOR AND PATRICK RYAN,
PLAINTIFFS IN ERROR,
VS.
THE PEOPLE OF THE STATE OF ILLINOIS.

ABSTRACT OF RECORD.

On the 11th day of April, 1855, the Grand Jury of McLean Co. presented an indictment against John Connor, to the McLean Circuit Court, then in session, and on same day a capias issued, which was returned "not found."

And on the 24th of April, 1855, an alias capias issued, which was returned "Executed—by arrest of Connor and his discharge by executing Bond in penal sum of \$200, with Patrick Ryan and Daniel Kinney as securities.

At the September Term, 1855, a forfeiture of said bond or recognizance was declared, and a Scire Facias ordered to be issued—

And on the 4th day of February, 1856, a Scire Facias issued out of the Clerk's office of said Court to the Sheriff of McLean County to execute, and returnable on the first Monday in April, 1856.

And said writ of Scire Facias was returned executed by reading to John Connor and Patrick Ryan, March 22d., 1856, and Daniel Kinney "not found."

And at the April Term, 1856, of said Court, said proceedings were continued.

And at the September Term, 1856, final judgment was rendered on said Bond or recognizance against John Connor and Patrick Ryan, for the sum of \$200, and costs.

And upon the record of said proceedings, plaintiffs assign the following errors :

- 1st. The said Scire Facias does not show that the Bond taken by the Sheriff was returned to the Court, filed, or in any way made part of the Record.
Noble et al vs. The People, 4 Gilm., 434.
Bacon et al vs. The People, 14 Ills., 312.
- 2d. The Scire Facias fails to show that the recognizance was declared forfeited.
Alley et al vs. The People, 1 Gilm., 112.
Thomas vs. The People, 13 Ills., 696 :—Kennedy vs. The People, 15 Ills., 418.

SWETT & ORME,
Attorneys for Plaintiffs in Error.

Abstract

THE PEOPLE OF THE STATE OF ILLINOIS

PROPERTY OF RECORD

At a regular Term of the Circuit Court of the Eighth Judicial Circuit of the State of Illinois. begun and held at the Court House in Bloomington - within and for the County of McLean in said State - on the Ninth day of April in the year of our Lord one Thousand Eight Hundred and Fifty Five =

Present =

Hon. David Davis - Judge of 8th Judicial Circuit

John J. Price Esq. Sheriff.

Wm. McCullough - Clerk.

A. McWilliams - Esq. Prob. Atty.

Among the proceedings of said Court are found the following. In a case wherein the People of the State of Illinois are Plaintiffs and John Connor is Defendant.

People

vs.

John Connor.



Indictment for

Permitting Gaming =

Be it remembered. That heretofore to wit, at said April Term of said Circuit Court, ^(to wit, on the Eleventh day of April at 8.55) came the Grand Jury of said County - to the bar of said Court - and presented an Indictment in words and figures following - to wit =

Of the April Term of the McLean
Circuit Court in the year of our Lords
Eighteen Hundred and fifty Five =

State of Illinois }
McLean County } The Grand Jurors
chosen, selected and sworn in and for
the County of McLean in the name and by
the authority of the People of the State of Illinois
upon their oath present. That on the
Sixth day of March in the year of our
Lord Eighteen Hundred and fifty five -
at the County of McLean in the State of
Illinois a foresaid - John Connor for his gain
did permit divers persons to come together in
a house occupied by him to play at a certain
game for money - to wit a game of Cards - con-
trary to the form of the Statute in such case
made and provided - and against the peace
and dignity of the said People of the State
of Illinois =

C. M. Williams, Atty Gen

On the back of said Indictment
was endorsed the following =

McLean Circuit April T - 55:

People

vs.

Indict. for Permitting Gaming =
John Connor } A true Bill =

J. E. McBlun - Foreman of the
Grand Jury =
Witness - William Fisher =

Whereupon afterwards to wit: on the
day and year last aforesaid - issued out
of said Court a certain writ of Capias -
in words and figures following to wit =

State of Illinois } The People of the State of
McLean County } Illinois -

To the Sheriff of said
County - Greeting =

We command you to take John
Connor and him safely keep - so that
you have his body before the Circuit Court
of McLean County in starter - at the Term
now holden at Bloomington to answer
the People of the State of Illinois on an
Indictment preferred against him by the
Grand Jury of said County for Permitting
Gaming - And have you there and there
this writ.

Witness - Wm McCallough - Clerk
of our said Circuit Court and
the seal thereof hereto affixed at
Bloomington this 1st day of April 1852
Wm McCallough Clerk
by H. Burr D. Fly Clerk



Which said Capias was by the Sheriff of
Said County - returned into said Court.
Endorsed as follows - to wit -

"The within
named Defendant not found"
April 20th 1853.

fee "10
J. J. Price Sheriff
by J. H. Moore Dpty

Whereupon afterwards - to wit - at said
April Term of said Court - on the Twenty
first day of April in the year aforesaid -
the following order was made by said Court
in the above cause as appears of Record -

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People
vs.
John Connor

Indictment for Permitting
Gaming.

It is ordered by the
Court that an alias Capias issue herein &
that said Defendant be held to bail in the
sum of "Two Hundred Dollars."

And Whereupon - by the Judge
of said Court - said Indictment was en-
dorsed as follows,

Capias Bail \$ 200.

Whereupon afterwards to wit - on the

Twenty Fourth day of April in the year
last aforesaid. An alias writ of Habeas
was by the Clerk of said Court issued against
said Defendant - in words and figures
following - to wit -

State of Illinois
McLean County  ss. The People of the State
of Illinois.

To the Sheriff of McLean County -
Greeting -

We command you to take John
Cannon and him safely keep - so that you
have his body before the Circuit Court of
McLean County - on the 2nd Monday in
Sept. at the Term to be holden at Bloom-
ington - to answer the People of the State of
Illinois - an indictment preferred against
him by the Grand Jury of said County for
Permitting Gaming - And have you then
and there thus writ -

Witness Wm. M. Bullough - Clerk of
our said Circuit Court, and the
 seal thereof hereto affixed at
Bloomington - this 24th day of April
A.D. 1855 -

Wm. M. Bullough Clerk.

by his Deputy -

Hudson Burr -

Upon the back of said writ was endorsed - "Shff. will take bail in 200"

Which Capias was by the Sheriff of
said County returned to said Clerk's Office -
endorsed as follows. To wit.

"Executed by taking
Bond & Security of John Cannon this
April 24th 1835"
J. J. Price - Sheriff
By Jno W. Leammore City.

The Bond returned by said Sheriff
is in words and figures following - to wit.

Know all men by these Presents, That
we John Cannon - Patrick Ryan - Daniel
Kenny - of the County of McLean and State
of Illinois - are held and firmly bound unto
the People of the State of Illinois - in the penal
sum of Two Hundred Dollars for the pay-
ment of which well and truly to be made -
we do hereby bind ourselves - our heirs - executors
and administrators - jointly - severally and
firmly - by these presents - signed with our
hands - sealed with our seals - and dated
this 24th day of April AD 1835.

The condition of the above obligation
is such - that whereas the above bounden
John Cannon has been arrested by virtue of
a certain writ of Capias - issued out of the
Circuit Court of the State of Illinois for the

County of McLean - upon an indictment
preferred against him by the Grand Jury
of said County. at the April 1855 Term
of said Court. for the crime of Permitting
Gambling - Now if the said John Cannon
shall personally be and appear before the
said Circuit Court. from day to day during
the term thereof - to be holden at the Court
House in Bloomington - in said County -
on the 2nd Monday in September next. to
answer said charge - alide the order of the
Court thereon - and not depart without
leave of said Court - then this obligation
to be void - otherwise to remain in full force
and virtue =

Approved by me Jm
24th 1855

J. J. Price - Shff.
by J. H. Moore - Dpty.

John Cannon. 
Patrick Ryan. 
Daniel Henry. 

And Thereupon afterwards to wit.
at the September Term of said Court. to wit.
on the Twenty Second day of September
AD. 1855 - The following further order was
made in the above Cause -

People

vs.

John Cannon

Indictments for Permitting
Gaming.

This day came the Prosecuting Attorney, and said Defendant being three times solemnly called to come into Court, as by the terms of his Recognizance herein filed - came not but herein made default. Also Patrick Ryan and Daniel Kenney cognizors of said Defendant herein, being each three times solemnly called to come into Court, and bring with them the body of said Defendant, came not but herein made default. It is therefore considered by the Court, that said Recognizance be and the same is hereby declared forfeited. And it is ordered by the Court that a writ of Scire Facias and an alias Capias issue herein, returnable to the next Term of this Court.

And Thereupon afterwards to wit, on the Fourth day of February in the year of our Lord one Thousand Eight Hundred and Fifty Six, issued out of said Clerks Office a Writ of Scire Facias - in words and figures following - to wit -

State of Illinois ^{SS.}
McLean County ^{SS.} The People of the State of
Illinois -

To the Sheriff of said County - Greeting -
Whereas on the 24th day of April AD 1855 -
John Connor - Patrick Ryan & Daniel Wemy
came before John J. Price - Esq. Sheriff of the
County and State aforesaid and executed
their certain Bond to the People of the State of
Illinois - in the penal sum of Two Hundred
Dollars acknowledging themselves to be held and
firmly bound unto the said People of the
State of Illinois in said sum - Provided, the
said John Connor against whom an
Indictment for the Crime of Permitting Gaming
had been preferred in the Circuit Court
of the County aforesaid - and to arrest whom
in said charge the said John J. Price Sheriff
as aforesaid - had then a writ from the
Clerk of said Court - should fail to appear
before the Judge of said Circuit Court. on
the first day of the next Term thereof. to be
holden at the Court House in Bloomington
on the Second Monday in the Month of
September AD 1855 to answer to the said
charge and the said John Connor having
failed to appear at the said Term of the
said Court. to answer to said charge.

as we - by the suggestion of the said people
of the State of Illinois - by their States Attorney
have understood - we therefore command
you to summon the said John Connor
Patrick Ryan & Daniel Kenney if to be
found in your County - to be and appear
before the Judge of said Circuit Court. on
the first day of the next Term thereof to be
holden at the Court House in Bloomington
on the first Monday in the Month of April
next - to show cause if any they can - why the
said People of the State of Illinois - ought
not to have execution against them for the
said sum of money - for which they are
respectively bound according to the form -
force and effect of their said Recognizance -
and further to do and receive whatever our
said Courts shall then and there consider and
adjudge against them in that behalf - and
hereof make return as the law directs. and
have you then and there this writ -

Witness William McCallough Clerk
of the said Court. and the seal
thereof - at Bloomington. in said
County - this 4th day of February 1856.

Wm McCallough Clerk
by H. Burr - Deputy Clerk

Which writ of Scire Facias was by the Sheriff of said County returned to said Clerk's Office endorsed as follows - to wit -

"Executed the within writ by reading to John Connor and Patrick Ryan and the within named Land. Henry is not found, in my County. this March 27th 1836.

Service Retn \$1.10

Travel 2 miles $\frac{10}{1.20}$

John J. Price - Shff.

And thereupon afterwards to wit - at the April Term of said Circuit Court - to wit on the Nineteenth day of April AD 1836. this Cause was by general order of Court continued to the next Term thereof - which order of Court is in words and figures following - to wit -

And now at this day. It is ordered by the Court. that all causes now pending in this Court. and not otherwise disposed of - be and the same hereby are continued to the next Term of this Court -

And thereupon afterwards to wit - at the September Term AD 1836. to wit on the Eighth day of September - final judgment

on said Unit of Scire Facias was rendered - in words and figures following - to wit =

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People

vs..

John Connor



Indictment for Permitting
Isamings =

And now at this day came the Prosecuting Attorney - And the said Defendant John Connor being three times solemnly called - came not - but herein made default - And Patrick Ryan Cognitor of said Defendant herein - being also - three times solemnly called to appear in Court to show cause why the forfeiture of Recognizance herein before taken should not be made absolute against him - came not - but herein makes default - It is therefore considered by the Court that the People of the State of Illinois recover of the said John Connor and Patrick Ryan the sum of Two Hundred Dollars - being the amount of their Recognizance so forfeited as aforesaid - And likewise their costs in this behalf expended - And that execution issue therefor =

State of Illinois }
McLean County } ss. I William McCullough
Clerk of Circuit Court in and for said
County do hereby certify that the foregoing
is a true Copy of the Record in the
above entitled Cause =

In testimony whereof I have hereunto
set my hand and seal of office
at Bloomington this 27th day
of January - A. D. 1857 =
Wm McCullough, Clerk
by his Deputy =
Hudson Dunn

Clerk's fees \$4 ⁵⁰/₁₀₀

Received above costs
of Depts. Atty =

Wm McCullough
Per Hudson Dunn

No. 215 = P.C.

People

vs.

John Connor

Copy of Record
abstracts of records
filed April 17. 1858
Leland
Clk.

Sweet & Orme - Attys.

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State of Illinois } ss.

Supreme Court
3rd Grand Division. - April Term
A.D. 1858

John Connor & Patrick Ryan
as

The People of the State of Illinois

And now come the People of
the State of Illinois, by Wth
Bushnell States Attorney, and
says that there is no error
nor manner of error, either
in the record or proceedings
aforesaid, or in giving the
judgment aforesaid. And
therefore they pray that the
said judgment may be
affirmed, and that costs
may be adjudged to them
H
By Wth Bushnell
States Attorney

John Connor et al
as
the People of

No. 5

Consider in Error

Filed April 26th 1858

L. Leland
clerk

Supreme Court of the State of Illinois
April Term 1858 -

John Connor et al. }
vs. }
The People et }
}

By agreement of W. Bushnell attorney
for Defts. in error this Cause is submitted to the
Court by attorneys for plaintiffs in error on the
following argument

First= The Writ of Sci. Fa. must affirmatively show
that the Bond taken by the Sheriff was returned
into the Circuit Court and made part of the record.

And this Court has repeatedly so decided
but more particularly in the following cases:

Noble et al. vs. People 4 Gil. 434

Bacon et al vs People 14 Ills. 312 -

The Scire Facias in this case does not show that
the Bond was so returned into Court & - And therefore
is defective and the judgment must be reversed -

Second-

The Sci. Fa. in this case fails to show that the
Bond or recognizance was declared forfeited by
the Court - And for want of that argument the
Writ is defective as decided in

Alley et al vs The People 112
1 Gil. 1

Thomas vs. People 13 Ills. 696 - Kennedy vs the People 15 Ills. 418 -

And the judgment should be reversed -

Orme - Atty.
for plffs in error -

Connor et al

vs.

The People

No. 7 —

Argument of ptiffs in
Error

Filed April 28 1858
L. Deland
Clerk