No. 8509

Supreme Court of Illinois

Slater & Biggott

vs.

People

71641 7

State of Illinois } At a Circuit Court begun and held
Jersey County. } at the Court House in Jerseyville on
Monday the 21st Day of September 1857
in and for Jersey County.

Present Hon. D. M. Woodson Judge —
and afterwards on 24th Day of September 1857 the following
order was made a Matter of Record in said Court
as follows. to wit.

The People of the State of Illinois
vs } Indictment for Larceny.
John Morain.

Now on this Day Came the State attorney,
and the Defendant being Called Came not but made
default. And Benjamin H Slater & Jno. A. Piggott
being Called to bring in the body of their principle
in Discharge of their recognizance Came not but made
default. Whereupon it is Considered and adjudged by the
Court that the recognizance herein be taken and
esteemed as forfeited. And it is ordered that a Scire
Facias be issued returnable at the next term of this Court

and afterwards on the 12th Day of April AD 1858. a
Scire facias from the Clerks office of said Court.
as follows to wit. State of Illinois. Jersey County
The People of the State of Illinois

To the Sheriff of Jersey County Greeting

Whereas heretofore to wit. 1st Day of September
AD 1857. Before Brook Stafford Esq a Justice of the Peace
of Jersey County State of Illinois Personally appeared
John Morain as principle. James A Piggott and Benjamin
H Slater his Securities and entered into the following
recognizance and Signed and Sealed the Same with
their hands & Seals — as follows, to wit —

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State of Illinois }
Jersey County } ss. Personally appeared before me the undersigned D. Stafford one of the Justices of the Peace within and for said County John Morain James A Piggott and Benjamin H Slater and jointly and severally acknowledged themselves to owe and be indebted to the People of the State of Illinois in the sum of one Hundred & fifty dollars for the payment of which they bind themselves their heirs Executors and administrators as also their goods & Chattles Lands and tenements. Signed and Sealed this first day of September 1857—

The Condition of the foregoing ~~Bond~~ Recognizance is such that whereas the above Bounden John Morain was this day examined before said Justice on a Charge of Larceny for Maliciously Stealing or taking a Pistol belonging to L. J. M Dougherty (a Revolver) and was required to give Bail for his appearance at or on the first day of the next Circuit Court to be holden on the Third Monday of September 1857, within and for the said County of Jersey in the State of Illinois at the Court House in the said County in the sum of one Hundred and fifty dollars.

Now if the said John Morain shall be and personally appear at the said Court House on the said first day of said term to answer said Complaint, and whatever may be objected then and there against him and shall abide the order of the Court and not depart the Court without leave then this obligation shall be void. otherwise to remain in full force & vertue.

Taken & acknowledged before me this 1st Day of September 1857

D. Stafford J.P.

John his X mark Morain
B. H. Slater
James A. Piggott

And the said People do aver that said B Stafford Justice of the Peace aforesaid had full and Competent authority to take the above recognizance. And on the said first Day of September 1857, the said Justice of the Peace did take and certify and approve the above recognizance. and that on the 7th Day of September 1857, was returned into the Jersey County Circuit Court by the said Justice aforesaid. and that on the 7th Day of September 1857, the said recognizance was filed in the office of the Clerk of said Jersey County Circuit Court as a matter of Record according to Law.

And afterwards at a Circuit Court begun and held at the Court House in Jerseyville in and for the County of Jersey aforesaid on Monday the 21st Day of September A D. 1857,

Present Hon. D. M Woodson Judge

And on Wednesday the third Day of said term the of said Court. The grand Jury duly empanneled and sworn for said term of said Court and presented the following Indictment. Endorsed. "a true Bill" and signed by "Cyrus Tolman" as foreman "Grand Jury" and said Indictment was on the same Day to wit on the 23rd September 1857 filed by the Clerk of said Court and became a matter of Record in said Court. as follows to wit

State of Illinois }
Jersey County } ss. of the September term of the Jersey Jersey County Circuit Court in the year of our Lord 1857. ~~Thousand~~

The Grand Jury Chosen Selected and sworn in and for the County of Jersey in the name and by the authority of the people of the State of Illinois upon their oaths do present — That one John Morain on the first Day of August in the year of our Lord one

4 Thousand Eight Hundred and fifty Seven at the Said County of Jersey and State of Illinois. one Pistol of the value of Seven Dollars the personal property of Samuel Dougherty then and there being found feloniously did Steal take and Carry away contrary to the form of the Statute in Such Case made and provided and against the Peace and Dignity of the Same People of the State of Illinois

" Jno. W. English States attorney

and afterwards on the fourth day of Said term to wit on the 24th day of September AD 1857 the following order was made by Said Court. and entered as a matter of Record, to wit

The People of the State of Illinois

vs Larceny

John Morain

Now on this day Come the States attorney And the Said Defendant being Called Came not but made Default. and Benjamin F Slater and James A. Piggott. being Called ~~Came not but made Default~~ to bring in the body of their principle in Discharge of their recognizance Came not but made Default Whereupon it is Considered and Adjudged by the Court that the recognizance herein be taken and esteemed as forfeited. And it is ordered that a Scire facias be issued returnable at the next term of this Court,

These are therefore to Command you to Summon the Said John Morain. Benjamin F Slater & James. A. Piggott if to be found in your County to be and appear before the Judge of our Circuit Court on the first day of the next term of ~~our~~ Circuit Court to be holden at the Court House in Jerseyville on the fourth Monday of April 1858. then and there to Shew Cause if any they have why the People of the

State of Illinois. Should not have execution against them for the amount of the recognizance entered into as aforesaid. And that you have then and there this writ with your return endorsed thereon showing how you have executed the same.

(S S D) Witness Thos. L. McGill Clerk of our Said Court and the Seal thereof hereunto affixed at Jerseyville this 15th Day of April AD 1858

Thos. L. McGill Clerk

on Said writ is endorsed the following return to wit "I have served the within writ by reading the same to the within named B. H. Slater and James A. Pigott on the 14th day of April 1858. John Moraine not found

D. Wedding Sheriff

By John L. Johnson Dep.

and afterwards at a Circuit Court begun and held at the Court House in Jerseyville in and for Jersey County on Monday the 26th Day of April 1858.

Present Hon. D. W. Woodson, Judge

on the Second Day of Said term on the 27th day of September 1858. the following order was made a matter of Record in Said Court in the foregoing entitled cause as follows to wit —

Now on this Day Comes the States attorney, and the Said Defendants by their attorney and Demur to the Sirvi facias herein. Which being heard is overruled by the Court, whereupon it is Considered and adjudged by the Court that the Said Plaintiff recover of the Said Defendants the Sum of one Hundred and fifty Dollars the penalty of the recognizance herein together with the Costs of this prosecution, and that Execution issue therefor, And the Said Defendants by their attorney pray an appeal to the Supreme Court,

which is granted upon their entering into bond in the penalty of Three Hundred Dollars with Security to be approved by the Clerk within thirty Days from the Date

* Copy of Demurrer in the above entitled Cause, filed April 27th 1858, as follows to wit —

The People
vs Scire facias
John Morrow, D. F. Slaten &
James A Piggott.

And the said defendants Slaten & Piggott, Come and Defend &c. and Crave Oyer of the recognizance and the Scire facias mentioned which is read to them — whereupon they Say that the matters and things in said Scire facias mentioned are insufficient in law, and that they are not bound to answer the same and this they are Ready to verify Wherefore &c,

The following are the grounds of Demurrer —

1st. It does not appear that the said Recognizance was certified into the Circuit Court,

2d. The recognizance does not show that it was ever approved by the Justice,

3d. It does not appear that the person taking the recognizance had any authority so to do,

4th. The Sci. facias does not show for what offence the principle was indicted

5th. The Scire facias is in other respects informal and insufficient

6. There is no averment that the recognizance was forfeited

7. That it does not appear from the recognizance that the Principle had been guilty of an indictable offence

Hodges for Defts

State of Illinois } I Wm. L. McGill Clerk of the
Jersey County } ss. Circuit Court of Jersey County State of Illinois do Certify that the foregoing transcript Contains a true and perfect Copy of the Recognizance, Indictment, orders, Scire facias & Demurrer, & final order in the above and foregoing Cause of the People vs Morgan Platon & Piggott Copied from the Record & files in my office

In testimony whereof I have hereunto Signed my name and affixed the Seal of said Court at office in Jerseyville this 14th Day of May A.D. 1858.

Wm. L. McGill, Clerk

Benjamin F. Platon
James A Piggott
vs
The People of the state of Illinois } Error to Jersey

And now comes the said pltffs. and say that there is manifest error in the foregoing record and proceedings aforesaid and also in the rendition of the judgment to wit:

1st The Court erred in overruling the demurrer to said Scire facias.

2 The Court erred in rendering judgment against said pltffs.

Underwoods
Pltffs attys.

Joinder in error -

J S Robinson
States Attorney

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Benjamin F Staten
James A Piggott
vs
The People of the
State of Illinois

Error from Jersey
to 1st Grand Division

The Clerk of Supreme
Court will please docket
this case and issue
writ of error &c
Oblige
Underwoods
Pltffs attys

Filed July 28. 1858.
N. Johnston Clk

Prepaid by U.S. $5.00

Supreme Court.

1st Grand Division.

Benj F Slater et al

vs. } Error to Jersey County

The People

1st Error. "It does not appear that the recognizance was certified into the Circuit Court."

It appears from Page 3 of the Record, that the Justice of the Peace "did certify and take and approve the recognizance". And that it was on the 7th day of September 1857, by the Justice, filed in the office of the Jersey Circuit Court, as a matter of record according to law". The averments of the scire fa are in the usual form. ~~It is not~~

2d Error. "It does not show that it was approved by the Justice of the Peace"

Page 2. of record. says. "taken & acknowledged before me this 1st day of Sept 1857. B Stafford J.P." And the scire fa avers in page 3. that it was approved by the Justice of the Peace. In McFarlan et al vs the People XIII Illinois page 13. the Court decides that averment is sufficient. And the fact of approval admitted by the Demurrer. in that case

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the Justices of the Peace signed -
"Attest Peter Holland. Thomas Cowsex"

3rd Error - "It does not appear that the Justice taking it had any authority"
It is enough that he signed the recognizance as "J.P." or that it was acted in the sci fa. that he was a Justice of the Peace - The law will presume his authority - Mr Farland vs The People XIII page 43

4th Error "The sci fa does not show for what offence the principal was indicted or that he had been guilty of an indictable offence"
It is not necessary for the sci fa to show that the principal was indicted Alley et al vs The People 1st Gilm Ill - but this sci fa does. see record page 3rd where indictment is copied. The original recognizance shows that Defendant "had been examined on a charge of larceny for maliciously stealing or taking a pistol"

5th Error. "There is no averment that the recog was forfeited." See Record page 144.

J. S. Robinson
States Attorney

Benj. F. Slater et al

vs. } Error to Jersey County

The People

Brief of
J. S. Robinson

Submitted
Nov 13 -

affirmed
Breese

Belleville, July 24, 1858.

Dear Sir:

I enclose you another record & have made out the abstract which we will have printed here as soon as we have time to finish the brief. We also enclose $5. Please file the record & issue writ of error as in People's cases & docket the cause.

Politics and the weather have both been warm lately. Each party here is sanguine of success this fall.

Yours truly

Wm H. Underwood

[8509-1]

BENJAMIN F. SLATEN, JAMES A. PIGGOTT,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Error to Jersey County.

ABSTRACT OF RECORD AND PROCEEDINGS.

(PAGE 1 and 4.) September Term, 1857, of Jersey County Circuit Court.

" " SEPT. 24.—People *vs.* John Morain, Indictment for Larceny; States Attorney appears; Defendant called; defaulted. Benjamin F. Slaten and James Piggott, called to bring in body of principal, in discharge of recognizance; came not; defaulted. Judgment that recognizance be taken and esteemed forfeited, and sci. fa. ordered.

APRIL 12, 1858.—Paper, purporting to be sci. fa. issued.

(" 4.) APRIL 14, 1858.—Returned served by reading to plaintiffs in error. Morain not found

The sci. fa. recites that on 1st September, 1857, before Brook Stafford, Esq., a Justice of the Peace of Jersey County, the said Morain principal and Plaintiffs herein as securities, entered into following re-

(" 2.) cognizance, and signed and sealed the same. Copy of recognizance: Recites Stafford, a Justice of the Peace of Jersey County; penalty $150; recites that Morain had been examined before the Justice of Peace on a charge of larceny, for maliciously stealing or taking a pistol belonging to S. J. M. Dougherty, and was required to give bail, &c. No seals attached to signatures of parties, nor to that of J. P., (certified by J. P.,) "*Taken* and *acknowledged*" before me, &c.

(" 3.) Sci fa ~~Recog.~~ then avers the J. P. had full and competent authority to take Recog.—and that on the 1st day of Sep., '57, did take, certify and approve the same—and that on the 7th Sep., '57, it was returned into said Court by said J. P.,—and that the same was on said day filed of record as aforesaid in Clerk's office.—And that on the 21st of Sep., (Sep. Term,) the Grand Jury presented the following Indictment, to-wit.

(" 3 and 4.) [Here follows Indictment, charging Morain with stealing pistol of Samuel Dougherty]—balance of sci. fa. in usual form.

(" 5 and 6.) APRIL TERM, 1858.—Plaintiffs in error appear by Atty., crave oyer of the recognizance and sci. fa., and demur to sci. fa.—following causes, to-wit: 1—It does not appear that the recognizance was certified into the Circuit Court. 2—It does not show it was ever approved by the Justice. 3—It does not appear that the person taking it had any authority. 4—The sci. fa. does not show for what

(" 5 and 6.) offence the principal was indicted, or that he had been guilty of an indictable offence. 5—There is no averment that the recog. was forfeited. 6—The sci. fa. is in other respects insufficient and informal. Demur-

(" 5.) er overruled by the court. Judgment for defendant in error against the plaintiffs in error for $150 with costs of suit, and execution ordered.

(" 7.) ERRORS ASSIGNED: 1—That the Court below erred in overruling the demurrer to the scire facias. 2—That the Court erred in rendering judgment against the plaintiffs in error.

H. Morain

UNDERWOODS,
Plaintiff's Attys.

1.—The recognizance should have been certified under the seal of J. P. (R. L. of 1845, pp. 232, sec. 3.) 2—The recognizance should have been under seal of parties to it. (3 Gil. R., 337.) 3—There is no averment that the Dougherty mentioned in Indictment is the same person whose pistol was stolen, as mentioned in the recognizance. (1 Ill. R., 542.) 4—The demurrer ought to have been sustained for the special causes assigned, and for other causes apparent on the sci. fa.

The sci fa should be as precise and explicit as a declaration

The recognizance should correspond with and bear out the allegations of the sci fa — In this there is a total failure in many respects — particularly wherein it is alledged to be under seal

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660

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Supreme Court.

1st Grand Division -

Benj F Slater Ad

vs } Error to Jersey County

The People

1st Error "It does not appear that the recognizance was certified into the Circuit Court"

It appears from Page 3 of the Record, that the Justice of the Peace, "did certify and take and approve the recog. and that it was on the 7th day of Sep 1857. by the J.P filed in the Jersey Cir Court. as matter of record according to law." The averments in the scire fa are in the usual form, are full and complete -

2nd Error "It does not shew that it was ever approved by the J.P."

Page 2 of record says "taken & acknowledged before me this 1st day of Sep 1857. B Stiffed J.P." And the scire fa says in page 3, that it was approved by the J.P. See McFarland vs The People XIII. page 13. the court decides that averment is sufficient, and the fact of approval ~~entered~~ admitted by the Demurrer, in that case the J P signed recog. as follows "Attest Peter Holland Thomas Conway"

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3rd Error. "It does not appear that the J.P. taking it had any authority"

It is enough that he signed the recog' as J.P. or that it was acted in the sci fa that he was a J.P. The law will presume his authority. McFarland vs The People XIII page 13.

4th Error. "The said sci fa does not show for what offence the principal was indicted, or that he had been guilty of an indictable offence."

It is not necessary for the sci fa to shew that the principal was indicted. Alley & al vs The People 1 Gilm page 111. but this sci fa does. see record page 3. where the indictment is copied. The original recog' shews that Defendant had been "Examined on a charge of larceny for maliciously stealing or taking a pistol.

5th Error "There is no argument that recog' was forfeited".

See Record page 144 —

J. S. Robinson
State Attorney

Benj J Slater et al

vs. Error to Jersey

The People

Brief v. of

J E Robinson

STATE OF ILLINOIS, } ss. 1st Grand Division
SUPREME COURT. }

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of White **County,**

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Jersey County, before the judge thereof, between The People of the State of Illinois Plaintiffs, and John Morain, Benjamin F. Slater & James A. Piggott

defendant it is said that manifest error hath intervened to the injury of said Benjamin F. Slater and James A. Piggott as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said People of the State of Illinois

that they be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said People notice, together with this writ.

John D. Caton

Witness, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this twenty eighth day of July in the year of our Lord, one thousand eight hundred and fifty-eight

Noah Johnston
Clerk of Supreme Court.

[8509-11]

Acknowledgment made in the within
this 26th day of May 1874.

J. S. Johnson
Clerk of Mining

B. F. Slater &
Wm. H. Diggins
Diggins in Error
vs
The Bayou City Min.
& Mining Co.
Diggins in Error

24

STATE OF ILLINOIS } ss.
SUPREME COURT,

WRIT OF ERROR.

THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of Jersey GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Jersey county, before the Judge thereof, between

The People of the State of Illinois

plaintiffs, and John Morain, Benjamin F. Slater and James A. Piggott

defendants it is said manifest error hath intervened, to the injury of the aforesaid Benjamin F. Slater and James A. Piggott

as we are informed by this complaint, 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 Count, 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 Mount Vernon, in the county of jefferson, on the 1st Tuesday after the 2d Monday of November 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:

John D. Caton

Witness, the Hon. ~~WALTER B. SCATES~~ Chief Justice of our said court, and the seal thereof, at Mount Vernon this twenty eighth day of July in the year of Our Lord One Thousand Eight Hundred and Fifty-eight

Noah Johnston
Clerk Supreme Court.

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[2509-12]

24

B. F. Slater &
J. A. Doggett
vs } Writ of Error
The People of the
State of Illinois

Issued & filed 28 July 1858
N. Johnston Clk

BENJAMIN F. SLATEN, JAMES A. PIGGOTT,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS.

Error to Jersey County.

ABSTRACT OF RECORD AND PROCEEDINGS.

(PAGE 1 and 4.) September Term, 1857, of Jersey County Circuit Court.

" " SEPT. 24.—People *vs.* John Morain, Indictment for Larceny; States Attorney appears; Defendant called; defaulted. Benjamin F. Slaten and James Piggott, called to bring in body of principal, in discharge of recognizance; came not; defaulted. Judgment that recognizance be taken and esteemed forfeited, and sci. fa. ordered.

APRIL 12, 1858.—Paper, purporting to be sci. fa. issued.

(" 4.) APRIL 14, 1858.—Returned served by reading to plaintiffs in error. Morain not found

The sci. fa. recites that on 1st September, 1857, before Brook Stafford, Esq., a Justice of the Peace of Jersey County, the said Morain principal and Plaintiffs herein as securities, entered into following re-

(" 2.) cognizance, and signed and sealed the same. Copy of recognizance: Recites Stafford, a Justice of the Peace of Jersey County; penalty $150; recites that Morain had been examined before the Justice of Peace on a charge of larceny, for maliciously stealing or taking a pistol belonging to S. J. M. Dougherty, and was required to give bail, &c. No seals attached to signatures of parties, nor to that of J. P., (certified by J. P.,) "*Taken* and *acknowledged*" before me, &c.

(" 3.) Sci fa ~~Recog.~~ then avers the J. P. had full and competent authority to take Recog.—and that on the 1st day of Sep., '57, did take, certify and approve the same—and that on the 7th Sep., '57, it was returned into said Court by said J. P.,—and that the same was on said day filed of record as aforesaid in Clerk's office.—And that on the 21st of Sep., (Sep. Term,) the Grand Jury presented the following Indictment, to-wit.

(" 3 and 4.) [Here follows Indictment, charging Morain with stealing pistol of Samuel Dougherty]—balance of sci. fa. in usual form.

(" 5 and 6.) APRIL TERM, 1858.—Plaintiffs in error appear by Atty., crave oyer of the recognizance and sci. fa., and demur to sci. fa.—following causes, to-wit: 1—It does not appear that the recognizance was certified into the Circuit Court. 2—It does not show it was ever approved by the Justice. 3—It does not appear that the person taking it had any authority. 4—The sci. fa. does not show for what

(" 5 and 6.) offence the principal was indicted, or that he had been guilty of an indictable offence. 5—There is no averment that the recog. was forfeited. 6—The sci. fa. is in other respects insufficient and informal. Demur-

(" 5.) er overruled by the court. Judgment for defendant in error against the plaintiffs in error for $150 with costs of suit, and execution ordered.

(" 7.) ERRORS ASSIGNED: 1—That the Court below erred in overruling the demurrer to the scire facias. 2—That the Court erred in rendering judgment against the plaintiffs in error.

UNDERWOODS,
Plaintiff's Attys.

1.—The recognizance should have been certified under the seal of J. P. (R. L. of 1845, pp. 232, sec. 3.) 2—The recognizance should have been under seal of parties to it. (3 Gil. R., 337.) 3—There is no averment that the Dougherty mentioned in Indictment is the same person whose pistol was stolen, as mentioned in the recognizance. (Ill. R., 542.) 4—The demurrer ought to have been sustained for the special causes assigned, and for other causes apparent on the sci. fa.

The sci fa should be as precise and explicit as a declaration

The recognizance should correspond with and bear out the allegations of the sci fa. In this there is a total failure in many respects—particularly wherein it is alledged to be under seal

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BENJAMIN F. SLATEN, JAMES A. PIGGOTT,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS.

Error to Jersey County.

ABSTRACT OF RECORD AND PROCEEDINGS.

(Page 1 and 4.) September Term, 1857, of Jersey County Circuit Court.

" " Surv. 24.—People vs. John Morrin, Indictment for Larceny; State's Attorney appears; Defendant called; defaulted. Benjamin F. Slaten and James Piggott, called to bring in body of principal, in discharge of recognizance; came not; defaulted. Judgment that recognizance be taken and estreated forfeited, and sci. fa. ordered.

APRIL 12, 1858.—Paper, purporting to be sci. fa. issued.

(" 4.) APRIL 14, 1858.—Returned served by reading to plaintiffs in error.

The sci. fa. recites that on 1st September, 1857, before Nicoll Stafford, Esq., a Justice of the Peace of Jersey County, the said Morrin principal and Plaintiffs herein as sureties, entered into following recognizance, and signed and sealed the same. Copy of recognizance: Nicoles Stafford, a Justice of the

(" 2.) Peace of Jersey County; personally sworn; recites that Morrin has been examined before the Justice of Peace on a charge of larceny, for maliciously stealing or taking a pistol belonging to S. J. M. Dougherty, and was required to give bail, &c. No seals attached to signatures of parties, nor to that of J. P., certified by J. P. Tyler, acknowledged before me, &c.

(" 3.) Recognizance then says the J. P. had full and competent authority to take Recog.—and that on the 1st day of Sep., '57, did take, certify and approve the same—and that on the 7th Sep., '57, it was returned into said Court by said J. P.—and that the same was on said day filed of record as aforesaid in Clerk's office—And that on the 21st of Sep., (Sep. Term,) the Grand Jury presented the following Indictment, viz.:

(" 3 and 4.) Here follows Indictment, charging Morrin with stealing pistol of Samuel Dougherty.—Balance of sci. fa. in usual form.

(" 5 and 6.) APRIL TERM, 1858.—Plaintiffs in error appear by A. J. Crave over of the recognizance and sci. fa., and demur to sci. fa.—following reasons, to-wit: 1—It does not appear that the recognizance was filed in the Circuit Court. 2—It does not show it was ever approved by the Judge. 3—It does not appear that the person taking it had any authority. 4—The sci. fa. does not show for what

(" 5 and 6.) offence the principal was indicted, or that he had been guilty of an indictable offence. 5—It does not averment that he was forfeited. 6—The sci. fa. is in other respects insufficient and informal. Wherefore

(" 6.) for overruled by the court. Judgment for defendant in error against the plaintiffs in error for $150 with costs of suit, and execution ordered.

(" 7.) ERRORS ASSIGNED: 1—That the Court below erred in overruling the demurrer to the scire facias. 2—That the Court erred in rendering judgment against the plaintiffs in error.

UNDERWOOD,
Plaintiff's Attys.

1—The recognizance should have been certified under the seal of J. P. (R. L. of 1845, pp. 232, sec. 3.) 2—The recognizance should have been under seal of parties to it. (3 Gil. R., 327.) 3—There is no averment that the Dougherty mentioned in Indictment is the same person whose pistol was stolen, as mentioned in the recognizance. (Ill. R., 542.) 4—The demurrer ought to have been sustained for the special causes assigned, and for other causes apparent on the sci. fa.

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Slates & Piggotts

by

The People

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