

No. 12303

Supreme Court of Illinois

Bank of Auburn.

vs.

^D
Shepar~~X~~, et al.

To The Honorable The Judges of
The Supreme Court of the State
of Illinois.

The Petitioner of Jonathan R. Salisbury
of the City of Chicago, State of Illinois. Cook County
Respectfully sheweth, that Said Petitioner is
unjustly held and detained in the Custody of
James Andrew, Esq, our Sheriff of Cook County
who refuses to discharge him, or set him at
liberty, And Said Petitioner is thus detained
and unlawfully restrained of his liberty by
Said Sheriff

Said Petitioner further saith that
on the 13th day of July A.D. 1855 an affidavit
was made by Israel Nickerson a non-resident
of this State, before the Clerk of the Circuit
Court of Cook County, State aforesaid, a
copy of which, duly certified is herunto annex-
ed.

That upon the said affidavit Said Petiti-
oner was arrested, by a process issuing out
of said Circuit Court, a copy of which is
herunto annexed,

Said Petitioner alleges and
assigns, the following reasons, wherein the
illegality of his imprisonment consists

1st. Because the Affidavit is wrongly
Entitled

2nd. That the Affidavit does not state
how Affiant is Authorized to act as
~~an~~ agent; it stating a conclusion of law
+ not a matter of fact.

3rd Because the Affidavit is not sworn
to by the proper parties according to the
Statute in such case made & provided

4th Because the jurat is not taken
by a person duly Authorized by Statute
to administer Oaths in such cases.

5th Because it does not show that
Plaintiff has ever issued an Execution
upon the said judgement recited as having
been obtained in the Supreme Court of the
State of New York.

6th Because it does not set forth the
facts at large with sufficient precision
to make out a prima facie case.

7th. Because the second Section of the Act Entitled
Bail, approved March the Third A.D. 1845, Chapter
Fourteen page 80 of the Revised Statutes of the
State of Illinois & upon which this Affidavit is
founded, is unconstitutional & void

8th that

Your Petitioner therefore prays, that
Your Honor will direct to be issued
a writ of Habeas Corpus, returnable forth-
with, agreeable to the Statute in such case
made & provided; Against the said Sheriff
or such other person, in whose custody Your
Petitioner may be found; That cause
may be shown if any exist why Your
Petitioner should not be discharged
and set free.

And Your Petitioner will

ever pray &c &c

J. R. Salisbury

Sworn & subscribed

before me this

16th day of July

A.D. 1855

W. M. J.

Justice of the Peace

The Petition of
J. R. Salisbury
for
Writ of Habeas
Corpus—

Raw + Bro
Atty—

The Circuit Court of Cook County
State of Illinois

Cook County S. S. Israel Nicklepor on being
duly sworn says that he is agent of The Bank of
Auburn, which is a body politic & corporate
organized & doing business as a Bank under the
Laws of the State of New York, and is duly
Authorized as such agent, to take ^{all, and} any ~~and~~
~~any~~ measures in his discretion for the collection
of the judgment herinafter mentioned

And this deponent further says that
Charles O. Sheppard, Jonathan R. Salisbury
Robert S. Stevens Joel S. Smith Taylor G. —
Goodwill, Rufus L. Whitaker, Solva Buntzall
& Herman Wilson are jointly indebted to
the Bank of Auburn aforesaid in the sum
of Ten Thousand Nine Hundred and
Eighty Eight Dollars & Seventy four Cents on
a judgment recovered & rendered in favor
The Bank of Auburn aforesaid against the
said Charles O. Sheppard Jonathan R. Salisbury
Robert S. Stevens Joel S. Smith, Taylor
G. Goodwill, Rufus L. Whitaker Solva
Buntzall & Herman Wilson, as defendants
in the Supreme Court of the State of
New York & entered in the County of Wyo-
ming in said State of New York ^{on} the
Eighteenth day of November in the year
of our Lord 1854 for the sum of Ten
Thousand nine Hundred & Eighty eight
& forty Eight Cents being the amount of
Recovery & Costs in ^{an} action of Assumpsit
& on Contract brought by said Bank of
Auburn against the said Charles O. Shep-
ard

Jonathan R. Salisbury. Robert S. Sterens Joel
S. Smith, Taylor G. Goodwill Rufus L. Whitaker
Solva Brintnall & Herman Wilson and also
for and in the sum of four thousand and
fifty Eight Dollars, & Twenty Six Cents, with
for interest accrued, and now due and
unpaid upon said judgment making in all
the said sum of Ten thousand nine hundred
& Eighty Eight dollars & Seventy four ~~dollars~~
cents just above named.

And deponent further saith
that the said judgment still remains in
full force & effect, not reversed, paid satis-
fied or otherwise vacated & The Bank of
Auburn aforesaid hath not obtained
any Execution or Satisfaction of or upon
said judgment so recorded as aforesaid

And this deponent further saith
that the debt aforesaid will be in danger
of being lost. And that the benefit of whatever
judgment may be obtained therefor in
an action, which the Bank of Auburn aforesaid
are about to commence in the ^{said} Circuit
Court of Cook County, ^{Illinois} against the said Charles
O. Shepard Jonathan R. Salisbury Robert S.
Sterens Joel S. Smith, Taylor G. Goodwill, &
Rufus L. Whitaker Solva Brintnall and
Herman Wilson will be in danger unless
the said Charles O. Shepard Jonathan R.
Salisbury, Robert S. Sterens Joel S. Smith
Taylor G. Goodwill, Rufus L. Whitaker Solva
Brintnall And Herman Wilson be held to
bail in said action or suit.

And with respect to the said above

named Jonathan R. Salisbury this deponent further says & charges that he has heard the aforesaid Salisbury examined on oath recently before H. L. Rucker Esq. of the City of Chicago: touching & concerning the facts, circumstances herein after stated & referred to and from which as well as from various other sources of information corroborative thereto this deponent has ascertained that in the month of December A.D. 1853. Said Salisbury was owner of a large amount of real & personal property in the State of New York consisting of farms & farm stock & implements; Houses Lands, Stores, Wherry and other real estate and also was a partner in two stores in said State of New York, One at Franklinville, Cattaraugus County where & in which he was a partner with one Lyon, Another at Mackias where & in which he was a partner with one Ober and at which stores severally said Salisbury had & owned a large amount of goods wares & merchandise & other personal property including a large amount of notes, accounts & other debts due to said Salisbury, and his said other partners at several stores respectively. That during said month of December 1853 or about that time said Salisbury made two fraudulent assignments of large amounts of real & personal property to his two several partners aforesaid respectively, thereby assigning to said several partners amounts of property of a value therein exceeding by the sum of from fifteen to twenty thousand Dollars the amount of consideration paid

or to be paid by said several partners the assignees respectively as aforesaid & thereby fraudulently intending to place the same out of the reach of his creditors & to hinder delay & defraud his creditors or some one or more of them in the collection of their just debts against him & with a view to his future benefit: And also that the said Salisbury not far from the same time last specified or in the winter or spring of A.D. 1854 sold & conveyed to Messrs Conover & Laragh of the City of New York or one of them a valuable farm which he owned in said State of New York for about One Thousand and Dollars in Cash or its Equivalent and a certain further Amount of R. Road or Canal Stock in the State of Pennsylvania or Elsewhere of ~~inconsiderable~~ value, which farm was worth Two Thousand four hundred Dollars & the Sale & Conveyance of which was for a grossly inadequate price & was intended by said Salisbury fraudulently to place said property beyond the reach of his creditors, or of some one or more of them & to hinder delay & defraud said last named Creditors in the collection of their just debts against him, & for his future benefit as aforesaid. And also that said Salisbury about the same period in the said State of New York sold & transferred to one Benjamin Howard a large amount of notes & accounts, owned by him against divers persons in said State of New York & amounting to about four Thousand Dollars which sale & transfer

was for the sum of One Thousand Dollars
payable on time by said Howard note.
& which said assigned notes & accounts
were worth a much larger sum than said
Thousand Dollars & which sale was in
fraud & bad faith towards ~~transfers~~ the
creditors of said Salisbury & intended to
hinder & delay & defraud them or some one
or more of them in the collection of their
just debts against him & done for his said
Salisbury future benefit, & further
this deponent saith not,

J. Nicklepon

Subscribed & sworn to
Before me this 13th day of
July A. D. 1855

J. J. Howard

CK

State of Illinois
Clark County ss:

I Louis D Howard Clerk of the
Circuit Court in and for said County and State
do hereby ^{certify} that the above and foregoing is a
true copy of an affidavit made and filed
in this office July 13th 1855 by J. Nicklepon
in a case commenced in said Court by the Bank
of Auburn, against Charles A. Shepard and
others,

Witness my hand and the
Seal of said Circuit Court
at Chicago this 14th day of
July A. D. 1855.

L. D. Howard
CK

5234
Circuit Court
Cook County

The Bank of Auburn

vs

Charles O. Shepard
& others

Affidavit for Bail

Filed July 13. 1885

J. D. Howard
ck

Disney M. & Saff

Attys for

Plffs

Circuit

COOK CO. COURT OF COMMON PLEAS CAPIAS—Chicago Democrat, 45 La Salle Street.

STATE OF ILLINOIS,

COUNTY OF COOK.

} ss. The People of the State of Illinois, to the Sheriff of said County,
GREETING:

WE COMMAND YOU, That you take the bodies of *Charles O. Shepard, Jonathan*

R. Salisbury, Robert J. Stevens, Joel S. Smith, Taylor

G. Goodwill, Rufus L. Whitcher, Solon Brainin

& Hannan Wilson

found in your County, and safely *them* keep, so that *they* be and appear before the Cook
County Court of ~~Common Pleas~~ *Circuit* at said County, on the first day of the next term thereof, to be
holden at the Court House in Chicago, in said County, on the *fourth* — Monday of

October — next, to answer unto *The Bank of Auburn*

in a plea *that they render to the said plaintiff the sum of*
fifteen thousand dollars, which they owe to and unjustly
detain from said Plaintiff

to the damage of the said plaintiff as he says in the sum of *five thousand* Dollars.

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

WITNESS ~~WALTER KIMBLE~~ *L. D. Hoard*, Clerk of our said Court,
and the Seal thereof, at Chicago, in said County, this

thirteenth — day of *July* — A. D. 185 *5*

L. D. Hoard CLERK.

136
G. D. NO.

COOK COUNTY
~~COURT OF COMMON PLEAS~~

October Term, A. D. 1855

The Bank of America

VS.

*Chas O. Shepard
et al.*

12303 CAPIAS.

The Sheriff will hold the Defendant to bail in the
sum of *Ten Thousand Nine Hundred*
and *Eighty Eight* Dollars and *74/100*
Cents.

\$10,988.74

1855

*Served by reading to the within
named Jonathan R Salisbury
this thirteenth day of July 1855
this defendant Jonathan R
Salisbury being at the time of
the above serving in custody*

ATTY.

*James Andrew Shipt
By S. Doyle Dypt*

Dickey Mather & Capt

*Charged to be
allowed therefor
\$8.00*

*Filed July 17. 1855.
L. Ireland Ck.*

To the Honorable the Judges of the
Supreme Court Of the State of
Illinois

The Petitioner of Jonathan R. Salisbury
burg of the City of Chicago, Cook County, State
of Illinois. Respectfully Sheweth that Your
Petitioner is unjustly held and detained in
the custody of James Anderson Esq. our Sheriff
of Cook County, who refuses to discharge
him, or set him at liberty and your
Petitioner is thus detained an unreasonable
length of time, To wit, from the **Twentieth**
day of **February** — A.D. 1835 until the
issuing out of this writ and prayed for writ
of Habeas Corpus herein prayed for and
is still unlawfully restrained of his
liberty by Said Sheriff.

Your Petitioner further saith
that on the 20th day of Feb. A.D. 1835 an
affidavit was made by Israel Nicklepor
a Resident of this State before the Clerk
of the Cook County Court of Common Pleas
a copy of which is hereto annexed.

That upon the said affidavit Your
Petitioner was arrested upon a ~~copy~~ ^{copy} of which
process of which he is unable to say of what
character, as he is informed by his Counsel,

that the Sheriff has no other papers, than those of which a copy is hereto annexed.

Your Petitioner Allegs and Assigns the following reasons, shewing the illegality of his imprisonment *Con* *Sils*.

1st.

Because the affiant is wrongly entitled

2nd.

That the Affidavit does not state, how affiant is authorized as an agent, ~~But~~ ^{a matter} it stating a conclusion of Law, & not of fact.

3rd.

Because the affidavit is not sworn to by the proper parties according to Statute in such cases made and provided

4th.

Because the jurat is not taken by a person duly authorized by Statute to administer Oaths in such cases.

5th

Because it does not show that Plaintiff has ever issued any Execution upon said judgment recited as having been obtained in the Supreme Court of the State of New York

6th Because the Affidavit does not set forth the facts at large with sufficient precision to make out a *prima facie* case, & that the aff't does not charge fraud.

Your Petitioner therefore prays that
Your Honor direct to be issued a writ
of Habeas Corpus returnable forthwith agree-
able to the Statute in such case made and
provided against the said Sheriff or such
other person in whose custody Your Petitioner
may be found, that cause may be shown
if any exist why Your Petitioner should
not be discharged and set free.

And Your Petitioner will

Ever Ray. &c. J R Salisbury

Sworn & Subscribed
before me July 13
1855

W D Wells
Justice of the Peace

The Cook County Court of Common
Pleas -

State of Illinois

Cook County

} J. F. Israel Dickerson
being duly sworn deposes
and says that he is an agent duly authorized by the
Bank of Auburn, which is a body politic &
Corporate ^{and doing business as a Bank} organized under the laws of the
Legislature of the People of the State of New
York ^{to take} all ~~and~~ & any measures in his discretion
for the collection of the judgement herein after
mentioned; And this Dependent further says
that Charles O. Shepard, Jonathan R. ^{Salisbury} ~~and~~
~~son~~, Robert S. Stevens, Joel S. Smith
Taylor G. Goodwill, Rufus L. Whitaker, Solva
Brintnall, Herman Willson & David Young,
are jointly indebted to The Bank of Auburn
in the ^{of aforesaid} sum of Thirty two Thousand and four
teen Dollars & Seven Cents, as a judgement
^{recorded} rendered in favor of The Bank of Auburn -
aforesaid, against the said nine last named
persons a defendants in the Supreme Court of
the said State of New York & entered in the
County of Wyoming in said State of New York
on the Eighteenth day of November in the year
of our Lord 1854 for the sum of Thirty one
Thousand four Hundred & Sixty three
Dollars and fifty one Cents Damages recorded
on a certain promissory note on which suit
was brought by The Bank of Auburn aforesaid
against the said nine above named defendant
and the costs of suit making together the
said last named sum of for which said
judgement was originally entered as
aforesaid, and also for & in the sum of five

One hundred and fifty Dollars & Sixty One
Cents for interest ^{and now due & unpaid} accrued upon said judg-
ment for the period of three months elapsed
since said judgement was entered & next
following thereafter and prior to the
making of this Affidavit, making in
all the said sum of Thirty Two Thousand
and fourteen Dollars & Twelve ^{first} Cents ^{above}
named; And deponent further saith
that said judgement still remains in
full force & effect not reversed, paid,
satisfied or otherwise vacated and the
Bank of Auburn aforesaid hath not
obtained any execution or satisfaction
of or upon the said judgement so accrued
as aforesaid.

And this deponent further saith
that the benefit of whatever judgement
The Bank of Auburn aforesaid may
recover against the said nine above
named persons the defendants against
whom the judgement aforesaid was en-
tered for the debt above recited & specified
will be in danger of being lost unless
the said nine persons defendants as aforesaid
be held to bail therefore
Subscribed & Sworn to
Feb 30. 1855 J. Nickerson
before me

Walter Kimball Clerk
Cook Co. Ct of Com
Plas

State of Illinois }
County of Cook } S. L.

I. Walter Kimball Clerk of said
County Court of Common Pleas in and for said County
do hereby Certify that the foregoing is a true Copy of
an Affidavit now on file in my Office in the Case
in which The Bank of Auburn is Plaintiff and
Charles O. Shepard, Jonathan R. Salisbury, Robert S.
Stevens, Joel E. Smith, Taylor G. Goodwill, Rufus A.
Whitaker, Solva Brintnall, Herman Wilson & Darius
Young are defendants.

I testifying Whereof I hereunto set my
hand and affix the seal of said Court
at the City of Chicago. this 13th day of
July A.D. 1855.

Walter Kimball Clerk

The Bank of Auburn

vs.

Jonathan R Salisbury
& others.

Affidavit
for Capt. &
Bail

Filed July 17. 1855.
A. C. Cland Clk.

1855

Chas. J. Foster & Co.
Shrewsbury, Mass.