

No. 13601

Supreme Court of Illinois

Brown

vs.

People

71641  7

George W. Brown }
vs } Error to Warden
The People } 2

The Plaintiff in error moves for a rehearing in this case and assigns the following reasons.

See the case reported 26. W. 28

The opinion is directed to the 2^d & 3^d pleas in which the arrest of the principal in the bond by the Sheriff of Knox Co. on a *capias* issued in the same case wherein the recognisance was given, is set up as a discharge of the bail.

But the 5th plea which expressly avers an actual surrender of the principal by the bail is overlooked.

The Court seem to be of the impression that it was the duty of the bail to have the body of the principal at the time he was recognized to appear before the Court at the March Term 1857.

This is an error, because

§ 196 Rev. Laws Ch. 30 provides that the bail may discharge himself from the recognisance at any time before the final judgment for execution.

This Court has decided that until such final judgment the liability of the bail is not fixed but executory.

Mathews vs People 12 N. 9.

Wiese vs People 19 N. 446

The defence set up by the 5th Special plea is that the bail did before such final judgment surrender the principal to the hands of the law, as provided by § 196 Rev. Laws Ch 30.

The only exception taken to the plea was that it fails to show as required by that section that the bail had paid all costs occasioned thereby.

But this court has determined that the costs required be paid as such condition precedent are the costs of the scire facias.

The People vs Phelps, 17 N. 200

Therefore the plea avers that the surrender was made "before any writ of scire facias was issued

and before any costs had accrued
on any writ of *habeas corpus* as an
excuse for not paying any such
costs; or in other words there were
no costs to pay.

The only other question that could
arise is, was the surrender made
to the right person.

The surrender in open Court
has always been held good, although
this Section speaks only of surrender
to the Sheriff, because such surren-
der furnishes the body of the prisoner
to the custody of the law for trial;
this plea avers a surrender to the
Sheriff having a *capias* therefore
a lawful right to the custody as
much as the Court. The object
is equally as well accomplished.

C. C. Gandy
for Off in Error.

93 - 8 P.D.

George W. Brown

vs
The People.

Motion for a
Rehearing.

Filed May 1, 1862
L. Veland
Clk.

1862

13601

M. C. Gandy
for plff in error.