

State of Illinois

Supreme Court 1st Grand Division

Francis Tate et al

vs

The people &c

} Error to Jersey

At the September term of the St. Clair Circuit Court, 1850, Tate one of the appellants, was indicted for larceny and at the same term upon Petition and affidavit under the Statute. The venue in the Case was changed to Jersey County.

Tate with the other appellants, entered into a recognizance at the same term of the St. Clair Circuit Court in the sum of \$500, Conditioned that Tate should be and appear in the Circuit Court of Jersey County on the first day of the next term thereof to answer the said Indictment, and depart not from said Court without leave, and abide the order of the Court in the premises, then the recognizance to be null and void otherwise to remain in full force and virtue.

On Thursday the 24th Oct 1850 the Circuit Court for Jersey County being in session, the recognizance in this Case was forfeited without the principal Cognizor Tate ever being called, and a *Rein facias* ordered.

On the 24th day of February 1851 a *Rein facias* issued from the Jersey Circuit Court against the appellants upon the forfeited recognizance, which was returned by the Sheriff on the 12th day of May 1851, "Served on John Tate the other defendants, not found"

On the 23^d day of July 1857, an alias *Rece facias* issued from said Jersey Circuit Court against the appellants, which was, returned not executed.

At the Oct Term 1857 of the Jersey Circuit Court the Court rendered judgment against the defendants for \$500 the amount ^{mentioned in} the recognizance, and ordered an execution upon said judgment.

The said appellants by Mr. Allen their atty Come into this Court and say that in the record and proceedings and in the rendition of the judgment in this Case there is manifest error, and now here shew to the Court the following

- 1st. The Court erred in rendering judgment against the defendants, below on the *Rece facias* in this Case.
- 2^d The *Rece facias* in this Case does not set out the recognizance either in habeas verba or the legal effect thereof, and it does not appear that the principal in the recognizance was called before default, or that the default is a matter of record in any Court.
3. The Court erred in rendering judgment against the defendants, by default, because the recognizance was entered into in the St. Clair Circuit Court, and not in the Jersey Circuit Court.
4. The Court erred in rendering judgment

against the defendants below when it did not appear by the *Rece facias* that the principal Cognizer was bound by a recognizance which was a matter of record in the Jersey Circuit Court

- 5 The Court erred in rendering judgment against the defendants below, when it did not appear by the *Rece facias* that they were bound by recognizances at all
- 6 The Court erred in rendering judgment by default against the said defendants below, when the *Rece facias* did not aver a breach of the condition of the recognizances.
- 7 The Court erred in rendering a judgment by Default against the defendants in the Court below, when it appeared that the Circuit Court of Jersey County had no jurisdiction to issue said writ of *Rece facias*
- 8 The Court erred in rendering judgment against the defendants, when it did not appear by the *Rece facias* that the recognizance was, and still remained a matter of record in the Jersey Circuit Court in full force and unsatisfied
- 9 The Court erred in rendering judgment and awarding execution against the said defendants below by default when the *Rece facias* was wholly insufficient to authorize such judgment.

This Case is brought into this Court by writ of error, by all the depts below,

Francis Pate et al
vs

The People &c

Errors &c

Abstract prepared
by W. H. Allen
att. for appellant

State of Illinois
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Francis Tate et al }
as } Error to Jury
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The *Writ facias* in this Case
is insufficient to support the judgment.

- 1st The *Rei fa* does not recite the recognizance at all. The recognizance is not set out in habe verba, nor is the legal effect thereof set forth.
2. The *Writ facias* in this Case should clearly show before what Court the recognizance was entered into, and for what offense the principal in the recognizance was indicted; also that a judgment of forfeiture had been entered, Thomas vs The people 13 Ill 696
- 3 It does not appear by the *Rei fa* that the principal was called before default.
- 4 It does not appear that the principal was called to answer the indictment.
- 5 It does not appear by the *Rei fa* that the default against the principal Cognitor is a matter of record, nor of what Court the recognizance is a matter of record.
- 6 It does not appear by the *Rei fa* in what Court or before whom the recognizance was acknowledged.

7 The Reifa does not aver that the recognizance still remains a matter of record in full force & unsatisfied

8 The record in this case shows that the recognizance was entered into in the St. Clair Circuit Court. Recognizance, must be prosecuted in the Court in which they are acknowledged or taken or to which they are by law to be returned. Criminals, The People 3 fil 351

9 The Reifacias should aver every thing necessary to make a good declaration - in this case the Reifa shows nothing - no liability is shown. The condition does not appear - nor is any breach of the condition averred

10. The Reifacias in this case shows no foundation whatever authorizing its issuance - On a Reifa in a Criminal Case a record is the foundation of the writ. It is a judicial writ and must show the authority of the Court issuing the same

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Error to Jury

Brief prepared
by W. J. Allen atty
for appellants.

Gavinio Ledda

No — } Error to
V. } Pulaski

William A. Hughes

3800

Motion for Supers
deor —

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