

14219

No. _____

Supreme Court of Illinois

People

vs.

Bloyd

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4 Hancock County }
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Pleas before the Honorable Joseph
Sibley Judge of the Fifth Judicial
Circuit of the State of Illinois at a
Circuit Court begun and held at the
Court House in Carthage on the first
Monday in the month of March in
the year of Our Lord One thousand
Eight hundred and fifty seven at
the second day of said month

Present the Honorable

Joseph Sibley Judge

Calvin A. Warren State Attorney

Samuel R. Davis Clerk

Benjamin G. W. Clarkson Sheriff

The People of the State of Illinois } Plaintiffs

vs

Elijah Boyd

Indictment for cutting Timber

Defendants

Be it remembered that heretofore
to wit on the first day of October A D 1855 at a regular
term of said Court then begun and held in and for said
County the Recognizance of David Barbera witness in said
cause was taken and entered upon the Records of said Court
having which Recognizance is in the words and figures following
to wit:

" And now Comes David Barber a witness herein and acknow-
 " ledged himself to come and be indebted to the People of the
 " State of Illinois in the sum of One hundred dollars to be
 " levied of his goods and chattels Land and Tenements for
 " the payment of the same if default be made in the Conditions
 " following to wit; Now if the said David Barber shall
 " personally be and appear before the Circuit Court of said
 " County on the first day of the next Term thereof to be holden
 " at the Court House in Carthage on the first Monday in
 " the month of March next then and there to give testimony
 " in the above entitled cause and not depart the Court without
 " the leave thereof then this Recognizance to be void otherwise
 " to remain in full force and virtue.

And afterwards to wit on the 5th
 day of March A. D. 1856 at a regular Term of said Court
 begun and held in and for said County an order of forfeiture
 of Recognizance was entered of Record in said Cause which
 said order is in the words and figures following to wit:

" Now Come the People aforesaid by their Attorney,
 " Thereupon David Barber a witness herein although three
 " times solemnly called in open Court came not and failing
 " to appear according to the Conditions of his Recognizance
 " taken herein at the last term of this Court, It is ordered that
 " the said Recognizance be taken and held as forfeited as to
 " the said David Barber It is further ordered on motion
 " of the State Attorney that a Scire facias issue against the

1 said David Barber requiring him to appear before this
2 Court on the first day of the next Term thereof to be holden
3 at the Court House in Carthage on the first Monday in the
4 Month of June next and show cause if any he have why
5 the People aforesaid should not have judgment against
6 him for the amount of his recognizance so forfeited as
7 aforesaid and why Execution should not issue against him
8 for the same together with costs,

And afterwards to wit on
the Fifth day of May A D 1856 a Scirefacias was issued
in said cause which said Scirefacias is in the words and
figures following to wit:

1 State of Illinois } } Set The People of the State of Illinois
2 Hancock County } } In the Sheriff of said County greeting
3
4 Whereas David Barber did on the
5 First day of October A D 1855 the same being at a regular
6 Term of the Circuit Court in and for the County of Hancock
7 and State of Illinois acknowledge himself in open Court to
8 owe and he indebted to the People of the State of Illinois
9 in the case of the People of the State of Illinois
10 against Elijah Lloyd in the penal sum of One hundred
11 Dollars as appears by his Recognizance entered into of that
12 date which said Recognizance is in the words and figures
13 following to wit

14 The People of the State of Illinois } Plaintiff
15 } }
16 } } Indulment for letting Amber
17 } } Defendant
18 Elijah Lloyd } }

4
11 And now comes David Barber witness herein and acknowledged
11 himself to owe and be indebted to the ^{People of the} State of Illinois in the
11 sum of One hundred dollars to be levied of his goods and
11 Chattels Lands Tenements and Real Estate for the payment of
11 the same if default be made in the conditions following to wit
11 Now if the said David Barber shall personally be and appear
11 before the Circuit Court of said County on the first day of
11 the next term thereof to be holden at the Court House in Carthage
11 on the First Monday in the month of March next then and
11 there to give testimony in the above entitled cause and not
11 depart the Court without the leave thereof then this Recognizance
11 to be void otherwise to remain in full force and
11 virtue. And whereas afterwards to wit on the Saturday
11 of March A D 1836 at a regular Term of the Honorable Circuit
11 Court Illinois then held at Carthage an order was entered
11 of Record in the case of the People of the State of Illinois
11 against Elijah Boyd which said order is in the words
11 and figures following to wit: Now come the People aforesaid
11 by their Attorney and move the Court for a Continuance herein
11 which motion after being heard and by the Court here fully
11 understood is overuled Thereupon David Barber witness
11 herein although three times solemnly called in open Court
11 came not and failing to appear according to the conditions
11 of his Recognizance taken herein at the last term of
11 this Court. It is ordered that the said Recognizance be taken
11 and held as forfeited as to the said David Barber

and held as forfeited as to the said David Barber

" It is further Ordered an motion of the State Attorney that
" a Scirefacias issue against the said David Barber requiring
" him to appear before this Court on the First day of the next
" term thereof to be holden at the Court House in Carthage
" on the first Monday in the Month of June next and show
" cause if any he have why the People aforesaid should
" not have judgement against him for the amount of his
" Recognizance so forfeited as aforesaid and why Execution
" should not issue against him for the same together with costs

" We therefore Command you that
" you make known to and that you Summon the said
" David Barber that he he and appear before the Circuit Court
" of said County of Hancock on the First day of the next
" term thereof to be holden at the Court House in Carthage
" on the first Monday in the Month of June next A D 1856
" and show cause if any he have why judgement should
" not be ^{Entered} ~~made~~ against him for the amount of his Recognizance
" so forfeited as aforesaid and why Execution
" should not issue against him for the amount of the said
" Recognizance forfeited as aforesaid: and further to examine
" receive whatever on said Court shall think and then consider
" of him in this behalf and have you then show this
" writ and make return thereon in what manner you
" execute the same.

" Witness David E Head Clerk of
" the said Circuit Court and the



Seal thereof at Carthage this fifth⁶
 day of May A.D. 1856

David E. Head Clerk

On the back of which said Senjacias
 is enclosed the Sheriff's return which is in the words and
 figures following to wit

I cannot in my County find
 the within named David Barber
 Jun 2^d 1856

S. R. Davis Shff

By A. Winston Deputy

And afterwards to wit on the third day of
 June A.D. 1856 an order was entered of Record ^{in said cause} which
 said order is in the words and figures following to wit

On motion of the State Attorney, ordered that an alias
 Senjacias issue herein returnable to the next term of
 this Court until which time this cause is continued

And afterwards to wit on the 29th
 day of August A.D. 1856 an alias Senjacias was issued
 in this cause which said alias Senjacias is in the words
 and figures following to wit

State of Illinois } vs The People of the State of Illinois

Hamilton County } In the Sheriff of said County Greeting


Whereas David Barber did

on the first day of October A.D. 1855 the same being
 a regular Term of the Circuit Court in and for the
 County of Hamilton and State of Illinois acknowledge

8
" An order was entered of Record in the case of the
" People of the State of Illinois against Elijah Boyd
" which said order is in the words and figures following
" Grant Now come the People aforesaid by their attorney
" and move the Court for a continuance herein which
" motion after being heard and by the Court was fully
" understood is overruled Thereupon David Barber
" witness herein although three times solemnly called in
" open Court came not and failing to appear according
" to the conditions of his Recognizance taken herein at
" the last term of this Court It is ordered that the said
" David Barber, It is further ordered on motion of the
" State attorney that Scirefacias issue against the said
" David Barber requiring him to appear before this
" Court on the first day of the next term thereof to be
" holden at the Court House in Carthage on the first
" Monday in the month of June next and show cause
" if any he have why the People aforesaid should not
" have judgement ^{against} him for the amount of his Recognizance
" so forfeited and why Execution should not issue against
" him for the same together with costs afterwards to wit
" on the third day of June A D 1856 at a regular term
" of said Court then begun and held an order of
" said Court was entered upon the Record thereof which
" said order is in the words and figures following to
" wit

" The People of the State of Illinois Plaintiff
" vs Scifa on forfeiture of Recy.
" David Barber Defendant

" On motion of the States
" Attorney, Ordered that an alias Scifaia herein
" returnable to the next term of this Court until which time
" this cause is continued, We therefore command
" you as we have before commanded you that you
" make known to and that you summon the said David
" Barber that he be and appear before the circuit Court of
" said County of Hancock on the first day of the next term
" thereof to be holden at the Court House in Carthage on
" the first Monday in the month of October next A D 1856
" and show cause if any he have why judgement should
" not be entered against him for the amount of his Recy.
" and why execution should not issue against him for the amount of the
" said recognizance forfeited as aforesaid, and further to do
" and receive whatever our said court shall then and
" there consider of him in this behalf and have you
" then ^{then} this writ and make return thereon in what manner
" you Execute the same,

" 

" Witness D E Head Clerk of our
" said Circuit Court and the
" Seal thereof at Carthage this twenty
" seventh day of August A D 1856
" D E Head Clerk

On the back of which said alias Scire facias is endorsed
the Sheriff's return which is in the words and figures following
to wit:

" I cannot in my County find the
" within named David Barber this 6th Oct 1856
S B Davis Shff

And afterwards to wit on the 7th day
of October A D 1856 at a regular Term of said Court then held
at Carthage in said County an order was entered of Record in
said cause which said order is in the words and figures
following to wit:

" On motion of the State Attorney ordered
" that an alias Scire facias issue here returnable to the next
" Term of this Court until which time this cause is continued.

And afterwards to wit on the second
day of December A D 1856 a Pluries Scire facias was issued in
said cause which said Scire facias is in the words and
figures following to wit:

" State of Illinois } set The People of the State of Illinois
" Hancock County } or the Sheriff of said County Greeting
" Whereas David Barber did on the
" first day of October A D 1855 the same being at a regular
" term of the Circuit Court in and for the County of Hancock
" and State of Illinois acknowledge himself in open Court
" to come and be indebted to the People of the State of Illinois
" in the case of the People of the State of Illinois against

motion after being heard and by the Court here fully und-
 -erstood is overruled Thru upon David Barber witness herein
 although three times solemnly called in open Court cannot
 and failing to appear according to the conditions of his
 Recognizance taken herein at the last Term of this Court It
 is ordered that the said Recognizance be taken and held
 as forfeited as to the said David Barber. It is further
 ordered on motion of the States Attorney that a Serificias
 issue against the said David Barber requiring him to appear
 before this Court on the first day of the next term thereof
 to be holden in the Court House in Carthage on the first
 Monday in the month of June next and show cause if
 any he have why the People aforesaid should not have
 judgment against him for the amount of his Recognizance
 forfeited as aforesaid and why Execution should not
 issue against him for the same together with costs.
 Afterwards to wit: on the third day of June A D 1856
 at a regular Term of said Court then begun and held an
 order of said Court was entered upon the Record thereof
 which said order is in the words and figures following to
 wit:

The People of the State of Illinois	Plaintiffs
vs	Defendant
David Barber	Defendant

In witness whereof I have hereunto set my hand and the seal of said Court
 this 3rd day of June 1856

On motion of the States Attorney
 ordered that this cause stand continued until the next term

1) Am said Circuit Court and the seal thereof at Carthage
1) the second day of December A D 1856
1) Squire R Davis Clerk



On the back of which said scire facias is endorsed the Sheriff's return which is in the words and figures following to wit-

" I cannot in my County find
1) the within named Joseph Barber this 2nd day of
1) March A D 1857 B Y W Clarkson Sheriff"

And afterwards to wit on the third day of March A D 1857 at a regular term of said Court then held at Carthage in said County and order was entered of Record in said cause which said order is in the words and figures following to wit:

" Have come the People aforesaid
1) by their attorney and it appearing to the satisfaction of the
1) Court that three writs of Scire facias have been issued herein
1) and respectively returned nihil It is therefore ordered by
1) the Court that the People aforesaid have and receive of
1) the said David Barber the sum of one hundred dollars
1) the amount of his Recognizance so forfeited as aforesaid
1) as also their costs by them in this behalf laid out and
1) expended and that they have execution therefor"

State of Illinois 3d ct
Hancock County 3

Squire R Davis Clerk of the Circuit

Count in and for said County and State do hereby certify
that the foregoing Transcript contains a true and correct copy
of the convening order of said Court at the March Term 1857.
the Recognizance of David Barber a witness in said cause;
The forfeiture of said Recognizance; The orders awarding Scire-
facias's thereon; Copies of said writs of Scirefacias and the
Sheriff's return thereon in as full and ample a manner as the
same now appear of Record in my office

In testimony whereof I have hereunto
set my hand and affixed my
official seal at my office
at Carthage this 7th day of
April 1858

Samuel R. Davis Clerk
of the Court

Said David Barber plaintiff in error says
that in the foregoing record and proceedings
there is manifest error in this to wit:

- 1st The Court erred in rendering judgment as
+ ordering execution on said recognizance
said plaintiff in error upon said recognizance,
it being wholly insufficient in law to
base a judgment upon.

- 2^d The Court erred in ^{that sea} issuing execution upon said supposed perfected recognizance, it being taken wholly without law and being void.
- 3^d The Court erred in rendering final judgment and ordering execution to issue upon said supposed recognizance without a sufficient judgment of fact or law on said recognizance.
- 4th The Court erred in rendering final judgment & ordering execution on said recognizance without personal service or sufficient returns of writ found on scire facias - the return on last scire facias being non est inventus as to Joseph Barber and not as to plaintiff in error ^{David} Barber.

25 mo. H. Keogh
 David Barber
 vs. Joseph Barber
 Let the writ of
 Habeas Corpus be
 granted and the
 writ of Habeas Corpus
 be granted - \$2000
 Joseph Barber or
 any other person
 according to law.
 Given at New York
 the 16th day of
 April 1838
 J. H. Keogh
 J. H. Keogh

174219
 David Barber
 vs. Joseph Barber
 J. H. Keogh

Wherefore & for divers other errors apparent in said
 record said plaintiff in error prays that said
 judgment be reversed William Whinspan & Williams
 for plff in error