

No. 13508

Supreme Court of Illinois

Vincent

vs.

People

71641  7

STATE OF ALABAMA

SUPREME COURT,

Third Grand Division.

12 Peoples Court
NO. 18.

*Vincent
vs
Peoples
13508*

1861.

Peoples

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

GEORGE VINCENT, *Appellant*, } *Appeal from Recorder's Court*
vs. } *of La Salle.*
THE PEOPLE, &c. *Appellees.*

PLAINTIFF'S POINTS AND AUTHORITIES.

1. The erasure of the name "*George*," in the condition of the recognizance upon which this suit was brought, and the insertion of the name "*William*," so as to make a recognizance which was originally conditioned for the appearance of "*George Vincent*," a recognizance conditioned for the appearance of "*William Vincent*," was a material alteration, and having been done without appellant's knowledge or consent, some time after the execution of the recognizance by appellant, rendered the same absolutely void as to him.

Sans vs. The People, &c. 3 Gilman, 327.
Graves vs. The People, 11 Illinois Reports, 542.
21 Illinois Reports, 535 (Garrison vs. The People.)
Decker's Case, 6 Cowan, 59.
6 Rand. (Virginia Reports,) 86.
4 Term Reports, or Dunford & East's, 194 (328.)

2. The Court ought to have excluded the recognizance from the evidence in the cause as soon as the alteration was made to appear, and to have rendered judgment in favor of appellant.

Sans *vs.* The People, 3 Gilman, 327.
Graves *vs.* The People. 11 Ill. R. 542.

3. The Court below rendered judgment upon the recognizance at the term to which the recognizance was returnable. No subsequent judgment has been rendered, but simply an award of execution upon the judgment already rendered. The Court could not render a judgment until *sci. fa.* had been returned served.

The People, &c. *vs.* Watkins *et al*, 19 Illinois, 117.

E. F. BULL,
Attorney for Appellant.

No. 12. P. D.

Rev. Vincent

Appt.

vs:

The People &c

App^e.

Appt. Pints & Authentication

Filed May 3-1861

L. Ireland

Clerk.

State of Illinois } as Third Grand Division
Supreme Court } April Term A.D. 1861

George Vincent. Appellant }

^{vs.}
The People &c Appellus } Appeal from Recorders
Court of LaSalle -

Argument submitted on part of Appellant.

May it Please Your Honors:

The principal question to be passed upon by this court will be found, stated in the first and second of appellants printed points.

The recognizance upon which this suit was brought was entered into before Alfred Putnam Esq. one of the justices of LaSalle County Illinois, and was made returnable to the October Term A.D. 1859 of the Recorders Court for the city of LaSalle -

By that recognizance George Vincent, William Vincent and William Kelly acknowledged themselves to owe and be indebted unto appellus in the sum of Four Hundred dollars, to be paid upon

condition that George Vincent and William Kelly should be and appear at the October Term A.D. 1889 of said Recorders Court.

Some days or weeks after the execution of said recognizance by appellant, the said justice, of his own motion, without the consent of any of the parties to said recognizance changed the same by erasing the name George in the condition thereof, and the insertion of the name William, so that the recognizance read, after its alteration as aforesaid, "To be void upon the appearance William Vincent instead of George."

This alteration was not made in the presence of any of the parties to said recognizance. None of the parties thereof gave their assent to said alteration either before or after the same was made.

Now the question is will the courts sanction such high handed interference ^{with} such unauthorized alterations of the obligations of parties, by any person? Will they allow ^{persons} ~~parties~~ to tamper with the bonds of parties in this way?

Did not such alteration make the recognition absolutely void at least as far as the Appellant was concerned? Was it not a material alteration? if so all the authorities you that Appellant is discharged from his obligations?

My understanding of the law is, that, if a forfeiture is sought to be enforced, as in this case, that the party against whom it is sought to be enforced, has a right to stand upon the strict letter of the bond as originally executed by him.

I would respectfully call the attention of the court to the authorities cited in Appellants Brief, without quoting therefrom.

In Decker's case 6 Cowan Rep. p. 89. the court lays down the principle strongly in favor of Appellants position.

The case of Sans vs. The People 3rd Ed. Ill. Rep. page 327., is it seems to me directly in point and sustains to the fullest extent the Appellants position. That is a well considered opinion and many of the cases in the books are reviewed in the opinion of the court. That portion of the decision directly in point will be found from page 334. to 338.

All of the cases, in all the books, say clearly and emphatically, that if the alteration in an obligation is made without the obligors assent, that such alteration voids the instrument and the only point wherein they differ is to what extent a prior or subsequent assent to the alteration will be ^{such} a ~~total~~ ^{total} revocation of the instrument as to render the obligor liable thereon -

As to the materiality of the alteration I believe I have simply to refer the court to *Boars vs. The People*, 11 Ills. 542. and to the case of *Harrison vs. The People* 21st Ill. Rep.

However if there were no cases to be cited upon that point it seems to me that there can be no doubt thereof - The alteration seems such to me, in its very nature as must be material - one that materially changes the obligations of the parties to the recognition - one that ought not to have been made under any circumstances without the express consent of the obligors:

The Appellant first raised the question in the court below on a motion to quash found on pages 22 and 23 of the record - page two of the printed abstract which motion was founded on affidavits showing the alteration.

But the question was finally raised on the pleas of Appellant found on pages 46 to 57 of record - and a stipulation was filed in addition to the pleas found on page 59, of record and page 3 of the printed abstract - The fact of the alteration was pleaded in several different ways, to which pleas, no exceptions were taken, and finally admitted by said stipulation -

If this court sustains the first point made by appellant the next will be sustained as a matter of course -

The third point made by Appellant, is one of minor importance, but one which if well taken, that will reverse the judgment at least. - At the October term of the court A.D. 1859, the term to which the negligence was returnable, one absolute judgment was

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The third point made by Appellant, is one of minor importance, but one which if well taken, that will reverse the judgment at least. - At the October term of the court A.D. 1859, the term to which the negligence was returnable, one absolute judgment was

rendered against appellant, upon
the recognizance before a scire facias
had issued to him - which judg-
ment will be found on page 11 of record -
no subsequent judgment was ren-
dered against appellant, but simply
an award of execution upon the said
judgment, which will be found
on page 61- of the record -

My understanding is that although
the court has not the power to enter
such a judgment until scire facias
issues and is served, still the fact
that the court does do so, will not
vitiate any subsequent judgment
that may be rendered upon the
recognizance after service of sci. fa.
or two returns of nihil but that
in order to entitle the People to
an execution, an absolute judge-
ment must be rendered after the
service of the sci. fa. or two returns
thereon of nihil and that a simple
award of execution will not an-
swer the purpose

The People vs. Watkins. 19 Ells. 117

Respectfully submitted

E. F. Bull

Atty for Appt -

No. 12. P. D. 179

George Vincent. app^t

^{vs}
The People &c App^{rs}.

Argument - Submitted
on part of Appellant

Filed May 3rd 1861

Loranger Deland
Levee

E. F. Bull

Atty for app^t

Supreme Court of the State of Illinois
April Term A.D. 1861

George Vincent }
vs. } Appeal from
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Depts Pointy & Authority

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The judgement is correct - it should
be for execution & nothing more
3 Feb 327 D. J. Jones
State Atty

George Lincoln
no N^o 12-177-¹⁷⁷P.D.

The People

Prints & Authorities
for Dept

Filed May 4-1861

L. Leland
Clark

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION,

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vs. } *of La Salle.*
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E. F. BULL,
Attorney for Appellant.

No. 12, P. 3

Geo. Vincent

Appt vs 12-179

The People &c

Appt.

Appts. Bonds & Authorities

Filed May 3-1861.

L. Leland

Clerk

Supreme Court of the State of Illinois
April Term A.D. 1861

George Vincent

vs

The People &c } Appeal from Recorders
Court of the City of
the City of La Salle

Def's Points & Authorities

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The People &

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L. Ireland
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D. Jones
State Atty

Geo. W. W. W.
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Prints & Authentication
for Deft

Filed May 4-1861

G. Leland
Clerk

Geo. W. W. W.
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SUPREME COURT OF ILLINOIS,

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PAGE OF REC. This action was a *scire facias* upon a recognizance entered into by the appellant, as security with William Vincent and William Kelly as principals, running to the said People, and dated September 29th, 1859, returnable to the October Term of the said Recorder's Court. At said October Term said recognizance was defaulted and a judgment rendered thereon and a *scire facias* issued to said appellant, and to said Wm. Vincent and Wm. Kelly, returnable at the January Term, A. D. 1860, of said Recorder's Court.

- 1 Warrant, recognizance, and transcript, filed October 1st, 1859.
- 2 Copy of warrant for the arrest of Wm. Vincent and Wm. Kelly, dated September 28th, 1859.
- 3 Return on warrant dated Sept. 29th, 1859.
- 4 Copy of recognizance dated Sept. 29th, 1859.
- 5 Transcript from Justice's docket.
- 6 Certificate of Justice attached to transcript.
- 7 Return of indictment by Grand Jury, and order for *capias* against William Vincent and William Kelly.
- 8 Copy of indictment, commencing at bottom of page 7; also endorsements on the back of the same.
- 10 Order of Court, appointing D. P. Jenkins State's Attorney, *pro tem.*
- 11 Record of default of the Recognizance, and judgment entered thereon; and of order for *scire facias* to issue, taken October 10th, 1859.
- 12 A copy of the *scire facias*, issued upon said order, will be found from the 12th to the 21st pages, inclusive.
- 21 Return of service on *sci. fa.* made Dec. 15th, 1859, upon George Vincent; William Vincent and William Kelly not found. Filed Dec. 15th, 1859; filed as amended, April 7th, 1860.
- 22 Motion by appellant to quash *sci. fa.*

- 23 Motion to quash overruled, and exceptions.

From pages 23 to 29 is found a bill of exceptions taken to the ruling of the Court in overruling said motion to quash said *scire facias*. In said bill of exceptions are the affidavits of the appellant and of E. F. Bull, showing that the said recognizance was altered after the same had been signed by appellant, without appellant's knowledge or consent. The alteration consisting in the erasure of the name of George, and the insertion of the name of William, in the condition of the recognizance.

- 29 Said affidavits were filed January 2d, 1860.

Jan. 9th, 1860, demurrer filed by appellant to the *sci. fa.*, being general demurrer with special causes assigned; which demurrer will be found on pages 30, 31 and 32.

- 33 Demurrer sustained, Jan. 10th, 1860, with leave to the People to amend. Cause continued until next term of court. Wm. Vincent and Wm. Kelly called and defaulted, and *alias sci. fa.* ordered as to them.

- 34 March 6th, 1860. Amended *sci. fa.* issued, which will be found from pages 34 to 43, inclusive.

- 45 Motion by appellant to continue the cause.

Motion by Wm. Vincent and Wm. Kelly to quash *sci. fa.*, which motion is overruled and cause continued.

- 46 1st plea, by appellant, "*non est factum*," sworn to by appellant.

2d plea, by appellant, of "*nul tiel record*."

- 47 3d plea, by appellant, will be found on pages 48 and 49 of the manuscript record, and is, in substance, as follows, viz: "That although it is true that on the said 29th day of Sept., 1859, this defendant, together with said Wm. Vincent and Wm. Kelly, did execute a recognizance to the People, &c., in the sum of \$400, as charged in said *sci. fa.*; yet this defendant avers, that since the time this defendant executed said recognizance, and before the same was returned into this, the said recognizance was, without the knowledge or consent of this defendant, altered in a material part thereof; that is to say, when said recognizance was executed by this defendant, a portion of the condition thereof read as follows, viz: 'Now, the condition of this recognizance is such that if the above bounden George Vincent and William Kelly shall be, &c.,' but that this portion of said recognizance was so altered as to read, 'Now, the condition of this recognizance is such that if the above bounden William Vincent and William Kelly, &c.;" the plea contained also formal allegations, that the recognizance so altered, and the one mentioned in the *sci. fa.*, are one and the same, &c. Concludes with verification.

- 50 Affidavit of appellant, verifying truth of plea.

From page 50 to page 52, inclusive, will be found fourth plea of appellant, substantially like the 3d, alleging the erasure of the word or name George, and the insertion of the name William after the recognizance was signed, and without the knowledge or consent of appellant.

- 53 5th plea of appellants sets up the same alteration as in 4th plea without appellant's knowledge, but varies the statement as to time.

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- 56 7th plea of appellant similar in substance to the 6th plea.
- 57 July 2d, 1860, a jury waived, and cause submitted to Court for trial.
- 59 Filed, October 13th, 1860, a stipulation entered into between D. P. Jenkins, State's Attorney *pro tem.*, and E. F. Bull, appellant's Attorney, which recites in substance that the Court is to pass upon the question of the materiality of the alteration of the recognizance claimed by appellant, which alteration was admitted to have been made, and the Court would render a judgment in accordance with its finding on the recognizance. All the legal rights of the parties were respectively saved, except as to the pleadings, each having the right to an appeal or writ of error to the Supreme Court.
- 60 October 13th, 1860, execution ordered against the said William Vincent and William Kelly, upon judgment, entered at October Term, 1859.
- 61 Execution ordered against appellant upon judgment rendered at October Term, 1859.
- 62^m October 13th, 1860, motion by appellant for new trial; motion overruled, and exceptions by appellant.
- Motion by appellant in arrest of judgment; overruled and exceptions; appeal prayed to Supreme Court; granted on condition that appellant enter into bonds in \$600, with John Armour as security; bond to be filed, and bill of exceptions to be presented within 30 days from the rising of the Court.
- 63 Appellant's appeal bond filed October 23d, 1860.
- 64 Bill of exceptions filed October 24th, 1860, and will be found from pages 64 to 71, inclusive, which shows that upon the trial of said cause, which had been submitted to the Court for trial without the intervention of a jury, the said People, in order to maintain the issues on their part, offered in evidence a certain recognizance.
- 65 Copy of Recognizance offered in evidence.
- 66 Copy of Recognizance offered in evidence, continued.
- 67 To the reading of said recognizance in evidence, said appellant, by E. F. Bull, his Attorney, then and there objected, which objection was overruled, and said recognizance was permitted to be read in evidence. To which ruling of the Court, the appellant, by his said Attorney, excepted.

The plaintiff, further to maintain the issues on his part, produced Alfred Putnam, Esq., as a witness, who testified, that he was the Justice of the Peace who took the said recognizance offered in evidence by said People; that some time after the execution of the recognizance by the

PAGE OF REC. appellant, he altered or changed the same in the condition thereof, as follows: "Now the condition of this recognizance is such, that if the above bounden William Vincent and William Kelly, shall be, &c.," so as to make the recognizance read *William* Vincent, whereas it formerly
 68 read *George* Vincent; that at the time of its execution it read *George* Vincent, and continued to read so for some time thereafter; that some two or three weeks after its execution he erased the word *George*, in said recognizance, and inserted the word or name *William*; that such erasure was made without the knowledge or consent of appellant; that the recognizance by such alteration was so changed that it read as a recognizance for the appearance of William Vincent, at the next term of this Court, after its execution, whereas, at the time of its execution it read as a recognizance for the appearance of *George* Vincent.

69 The appellant then, to maintain the issues on his part, introduced E. F. Bull as a witness, who testified, that he saw said recognizance, a few days after the same had been executed, and that the recital in the condition then read as a recognizance for the appearance of *George* Vincent, and not *William*; that the next time he saw said recognizance, was about the first days of the October term, A. D. 1859, of the said Recorder's Court, when he found that the word or name *George* had been erased, and the word or name *William* written over the same, in the condition of the recognizance, so as to change the recognizance from a recognizance conditioned for the appearance of *George* Vincent to the October term, A. D. 1859, of the said Recorder's Court, to a recognizance conditioned for the appearance of *William* Vincent at the same term.

70 The bill of exceptions shows that no other or further testimony was offered or produced by either party on the trial of said cause.

The appellant then made a motion to exclude the said recognizance from the evidence in said cause, which motion was by said Court overruled, to which said ruling of the Court the appellant then and there excepted.

The Court then ordered execution against appellant on judgment for \$400 and costs. Entered at October term, A. D. 1859.

71 Appellant made motion for new trial, which was by the Court overruled, and exceptions taken by appellant. Appellant then made a motion in arrest of judgment, which motion was overruled, and exceptions taken by appellant; and appellant prayed that this his bill of exceptions should be signed and sealed by the Court, which was done.

Signature and seal of the Judge of said Court to bill of exceptions.

Bill of exceptions filed October 24th, 1860.

73 Certificate of Clerk to the Record, and seal of Court attached.

E. F. BULL,
Attorney for Appellant.

Errors Assigned.

1. The Court erred in refusing to quash the *scire facias*.
2. The Court erred in permitting said recognizance to be read in evidence against appellant.
3. The Court erred in refusing to exclude the recognizance from the evidence in said cause.
4. The Court erred in entering judgment against the appellant.
5. The Court erred in refusing appellant new trial.
6. The Court erred in overruling motion in arrest of judgment.
7. The judgment, entered by the Court against appellant, is erroneous in point of form.

E. F. BULL,
Attorney for Appellant.

12 P.O

George Vincent

vs

The People vs

Abstract of Record

Filed May 1 1861
L. Leland
Clerk

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The plaintiff, further to maintain the issues on his part, produced Alfred Putnam, Esq., as a witness, who testified, that he was the Justice of the Peace who took the said recognizance offered in evidence by said People; that some time after the execution of the recognizance by the

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69 The appellant then, to maintain the issues on his part, introduced E. F. Bull as a witness, who testified, that he saw said recognizance, a few days after the same had been executed, and that the recital in the condition then read as a recognizance for the appearance of *George* Vincent, and not *William*; that the next time he saw said recognizance, was about the first days of the October term, A. D. 1859, of the said Recorder's Court, when he found that the word or name *George* had been erased, and the word or name *William* written over the same, in the condition of the recognizance, so as to change the recognizance from a recognizance conditioned for the appearance of *George* Vincent to the October term, A. D. 1859, of the said Recorder's Court, to a recognizance conditioned for the appearance of *William* Vincent at the same term.

70 The bill of exceptions shows that no other or further testimony was offered or produced by either party on the trial of said cause.

The appellant then made a motion to exclude the said recognizance from the evidence in said cause, which motion was by said Court overruled, to which said ruling of the Court the appellant then and there excepted.

The Court then ordered execution against appellant on judgment for \$400 and costs. Entered at October term, A. D. 1859.

71 Appellant made motion for new trial, which was by the Court overruled, and exceptions taken by appellant. Appellant then made a motion in arrest of judgment, which motion was overruled, and exceptions taken by appellant; and appellant prayed that this his bill of exceptions should be signed and sealed by the Court, which was done.

Signature and seal of the Judge of said Court to bill of exceptions.

Bill of exceptions filed October 24th, 1860.

73 Certificate of Clerk to the Record, and seal of Court attached.

E. F. BULL,
Attorney for Appellant.

Errors Assigned.

1. The Court erred in refusing to quash the *scire facias*.
2. The Court erred in permitting said recognizance to be read in evidence against appellant.
3. The Court erred in refusing to exclude the recognizance from the evidence in said cause.
4. The Court erred in entering judgment against the appellant.
5. The Court erred in refusing appellant new trial.
6. The Court erred in overruling motion in arrest of judgment.
7. The judgment, entered by the Court against appellant, is erroneous in point of form.

E. F. BULL,
Attorney for Appellant.

George Vincent

^{vs}
The People &c

Abstract of Record

Filed May 1, 1861
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

GEORGE VINCENT, Appellant, } *Appeal from the Recorder's Court*
vs. } *of the City of La Salle.*
THE PEOPLE, &c., Appellees. }

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PAGE OF REC.

55 6th plea alleges in substance, "that there is no such record of recovery or forfeiture against the said George Vincent, at the suit of said People, upon any recognizance executed by him, the said George Vincent, &c. Prayer if the said People ought to have judgment, &c. Affidavit of truth of plea.

56 7th plea of appellant similar in substance to the 6th plea.

57 July 2d, 1860, a jury waived, and cause submitted to Court for trial.

59 Filed, October 13th, 1860, a stipulation entered into between D. P. Jenkins, State's Attorney *pro tem.*, and E. F. Bull, appellant's Attorney, which recites in substance that the Court is to pass upon the question of the materiality of the alteration of the recognizance claimed by appellant, which alteration was admitted to have been made, and the Court would render a judgment in accordance with its finding on the recognizance. All the legal rights of the parties were respectively saved, except as to the pleadings, each having the right to an appeal or writ of error to the Supreme Court.

60 October 13th, 1860, execution ordered against the said William Vincent and William Kelly, upon judgment, entered at October Term, 1859.

61 Execution ordered against appellant upon judgment rendered at October Term, 1859.

62 October 13th, 1860, motion by appellant for new trial; motion overruled, and exceptions by appellant.

Motion by appellant in arrest of judgment; overruled and exceptions; appeal prayed to Supreme Court; granted on condition that appellant enter into bonds in \$600, with John Armour as security; bond to be filed, and bill of exceptions to be presented within 30 days from the rising of the Court.

63 Appellant's appeal bond filed October 23d, 1860.

64 Bill of exceptions filed October 24th, 1860, and will be found from pages 64 to 71, inclusive, which shows that upon the trial of said cause, which had been submitted to the Court for trial without the intervention of a jury, the said People, in order to maintain the issues on their part, offered in evidence a certain recognizance.

65 Copy of Recognizance offered in evidence.

66 Copy of Recognizance offered in evidence, continued.

67 To the reading of said recognizance in evidence, said appellant, by E. F. Bull, his Attorney, then and there objected, which objection was overruled, and said recognizance was permitted to be read in evidence. To which ruling of the Court, the appellant, by his said Attorney, excepted.

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The Court then ordered execution against appellant on judgment for \$400 and costs. Entered at October term, A. D. 1859.

71 Appellant made motion for new trial, which was by the Court overruled, and exceptions taken by appellant. Appellant then made a motion in arrest of judgment, which motion was overruled, and exceptions taken by appellant; and appellant prayed that this his bill of exceptions should be signed and sealed by the Court, which was done.

Signature and seal of the Judge of said Court to bill of exceptions.

Bill of exceptions filed October 24th, 1860.

73 Certificate of Clerk to the Record, and seal of Court attached.

E. F. BULL,
Attorney for Appellant.

Errors Assigned.

1. The Court erred in refusing to quash the *scire facias*.
2. The Court erred in permitting said recognizance to be read in evidence against appellant.
3. The Court erred in refusing to exclude the recognizance from the evidence in said cause.
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E. F. BULL,
Attorney for Appellant.

12 P.D.,
George Vincent
as
The People's,

Abstract of Record

Filed May 1. 1861
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

GEORGE VINCENT, Appellant, } *Appeal from the Recorder's Court*
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THE PEOPLE, &c., Appellees. }

PAGE OF REC. This action was a *scire facias* upon a recognizance entered into by the appellant, as security with William Vincent and William Kelly as principals, running to the said People, and dated September 29th, 1859, returnable to the October Term of the said Recorder's Court. At said October Term said recognizance was defaulted and a judgment rendered thereon and a *scire facias* issued to said appellant, and to said Wm. Vincent and Wm. Kelly, returnable at the January Term, A. D. 1860, of said Recorder's Court.

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- 12 A copy of the *scire facias*, issued upon said order, will be found from the 12th to the 21st pages, inclusive.
- 21 Return of service on *sci. fa.* made Dec. 15th, 1859, upon George Vincent; William Vincent and William Kelly not found. Filed Dec. 15th, 1859; filed as amended, April 7th, 1860.
- 22 Motion by appellant to quash *sci. fa.*

- 23 Motion to quash overruled, and exceptions.

From pages 23 to 29 is found a bill of exceptions taken to the ruling of the Court in overruling said motion to quash said *scire facias*. In said bill of exceptions are the affidavits of the appellant and of E. F. Bull, showing that the said recognizance was altered after the same had been signed by appellant, without appellant's knowledge or consent. The alteration consisting in the erasure of the name of George, and the insertion of the name of William, in the condition of the recognizance.

- 29 Said affidavits were filed January 2d, 1860.

Jan. 9th, 1860, demurrer filed by appellant to the *sci. fa.*, being general demurrer with special causes assigned; which demurrer will be found on pages 30, 31 and 32.

- 33 Demurrer sustained, Jan. 10th, 1860, with leave to the People to amend. Cause continued until next term of court. Wm. Vincent and Wm. Kelly called and defaulted, and *alias sci. fa.* ordered as to them.

- 34 March 6th, 1860. Amended *sci. fa.* issued, which will be found from pages 34 to 43, inclusive.

- 45 Motion by appellant to continue the cause.

Motion by Wm. Vincent and Wm. Kelly to quash *sci. fa.*, which motion is overruled and cause continued.

- 46 1st plea, by appellant, "*non est factum*," sworn to by appellant.

2d plea, by appellant, of "*nul tiel record*."

- 47 3d plea, by appellant, will be found on pages 48 and 49 of the manuscript record, and is, in substance, as follows, viz: "That although it is true that on the said 29th day of Sept., 1859, this defendant, together with said Wm. Vincent and Wm. Kelly, did execute a recognizance to the People, &c., in the sum of \$400, as charged in said *sci. fa.*; yet this defendant avers, that since the time this defendant executed said recognizance, and before the same was returned into this, the said recognizance was, without the knowledge or consent of this defendant, altered in a material part thereof; that is to say, when said recognizance was executed by this defendant, a portion of the condition thereof read as follows, viz: 'Now, the condition of this recognizance is such that if the above bounden George Vincent and William Kelly shall be, &c.,' but that this portion of said recognizance was so altered as to read, 'Now, the condition of this recognizance is such that if the above bounden William Vincent and William Kelly, &c.;' " the plea contained also formal allegations, that the recognizance so altered, and the one mentioned in the *sci. fa.*, are one and the same, &c. Concludes with verification.

- 50 Affidavit of appellant, verifying truth of plea.

From page 50 to page 52, inclusive, will be found fourth plea of appellant, substantially like the 3d, alleging the erasure of the word or name George, and the insertion of the name William after the recognizance was signed, and without the knowledge or consent of appellant.

- 53 5th plea of appellants sets up the same alteration as in 4th plea without appellant's knowledge, but varies the statement as to time.

PAGE OF REC.

- 55 6th plea alleges in substance, "that there is no such record of recovery or forfeiture against the said George Vincent, at the suit of said People, upon any recognizance executed by him, the said George Vincent, &c. Prayer if the said People ought to have judgment, &c. Affidavit of truth of plea.
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- 57 July 2d, 1860, a jury waived, and cause submitted to Court for trial.
- 59 Filed, October 13th, 1860, a stipulation entered into between D. P. Jenkins, State's Attorney *pro tem.*, and E. F. Bull, appellant's Attorney, which recites in substance that the Court is to pass upon the question of the materiality of the alteration of the recognizance claimed by appellant, which alteration was admitted to have been made, and the Court would render a judgment in accordance with its finding on the recognizance. All the legal rights of the parties were respectively saved, except as to the pleadings, each having the right to an appeal or writ of error to the Supreme Court.
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- 64 Bill of exceptions filed October 24th, 1860, and will be found from pages 64 to 71, inclusive, which shows that upon the trial of said cause, which had been submitted to the Court for trial without the intervention of a jury, the said People, in order to maintain the issues on their part, offered in evidence a certain recognizance.
- 65 Copy of Recognizance offered in evidence.
- 66 Copy of Recognizance offered in evidence, continued.
- 67 To the reading of said recognizance in evidence, said appellant, by E. F. Bull, his Attorney, then and there objected, which objection was overruled, and said recognizance was permitted to be read in evidence. To which ruling of the Court, the appellant, by his said Attorney, excepted.

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69 The appellant then, to maintain the issues on his part, introduced E. F. Bull as a witness, who testified, that he saw said recognizance, a few days after the same had been executed, and that the recital in the condition then read as a recognizance for the appearance of *George* Vincent, and not William; that the next time he saw said recognizance, was about the first days of the October term, A. D. 1859, of the said Recorder's Court, when he found that the word or name *George* had been erased, and the word or name *William* written over the same, in the condition of the recognizance, so as to change the recognizance from a recognizance conditioned for the appearance of *George* Vincent to the October term, A. D. 1859, of the said Recorder's Court, to a recognizance conditioned for the appearance of *William* Vincent at the same term.

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Signature and seal of the Judge of said Court to bill of exceptions.

Bill of exceptions filed October 24th, 1860.

73 Certificate of Clerk to the Record, and seal of Court attached.

E. F. BULL,
Attorney for Appellant.

Errors Assigned.

1. The Court erred in refusing to quash the *scire facias*.
2. The Court erred in permitting said recognizance to be read in evidence against appellant.
3. The Court erred in refusing to exclude the recognizance from the evidence in said cause.
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Attorney for Appellant.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861. AT OTTAWA.

GEORGE VINCENT, *Appellant*, } *Appeal from Recorder's Court*
vs. } *of La Salle.*
THE PEOPLE, &c. *Appellees.* }

PLAINTIFF'S POINTS AND AUTHORITIES.

1. The erasure of the name "*George*," in the condition of the recognizance upon which this suit was brought, and the insertion of the name "*William*," so as to make a recognizance which was originally conditioned for the appearance of "*George Vincent*," a recognizance conditioned for the appearance of "*William Vincent*," was a material alteration, and having been done without appellant's knowledge or consent, some time after the execution of the recognizance by appellant, rendered the same absolutely void as to him.

Sans vs. The People, &c. 3 Gilman, 327.
Graves vs. The People, 11 Illinois Reports, 542.
21 Illinois Reports, 535 (*Garrison vs. The People.*)
Decker's Case, 6 Cowan, 59.
6 Rand. (Virginia Reports,) 86.
4 Term Reports, or Dunford & East's, 194 (328.)

2. The Court ought to have excluded the recognizance from the evidence in the cause as soon as the alteration was made to appear, and to have rendered judgment in favor of appellant.

Sans vs. The People, 3 Gilman, 327.
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3. The Court below rendered judgment upon the recognizance at the term to which the recognizance was returnable. No subsequent judgment has been rendered, but simply an award of execution upon the judgment already rendered. The Court could not render a judgment until *sci. fa.* had been returned served.

The People, &c. vs. Watkins et al, 19 Illinois, 117.

E. F. BULL,
Attorney for Appellant.

No. 12. P. D

Geo. Vincent -
Appt.

vs:

The People vs
Appee

Appts. Points & Authorities

Filed May 3-1861

L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

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Appts. Points & Authentication

Filed May 3-1861

L. Le Canal
Clerk

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E. F. BULL,
Attorney for Appellant.

No. 12, P. 8

Geo. Vincent Appt.

vs:

The People & c Apples

Appts Points & authorities

Filed May 3-1861

L. Leland

Clerk

SUPREME COURT OF ILLINOIS,

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E. F. BULL,
Attorney for Appellant.

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Geo. Vincent - Appt -

vs:

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Appts. Points & Authorities

Filed May 8 - 1861

L. Leland

Clerk

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- 6 Certificate of Justice attached to transcript.
- 7 Return of indictment by Grand Jury, and order for capias against William Vincent and William Kelly.
- 8 Copy of indictment, commencing at bottom of page 7; also endorsements on the back of the same.
- 10 Order of Court, appointing D. P. Jenkins State's Attorney, *pro tem.*
- 11 Record of default of the Recognizance, and judgment entered thereon; and of order for *scire facias* to issue, taken October 10th, 1859.
- 12 A copy of the *scire facias*, issued upon said order, will be found from the 12th to the 21st pages, inclusive.
- 21 Return of service on *sci. fa.* made Dec. 15th, 1859, upon George Vincent; William Vincent and William Kelly not found, Filed Dec. 15th, 1859; filed as amended, April 7th, 1860.
- 22 Motion by appellant to quash *sci. fa.*

- 23 Motion to quash overruled, and exceptions.

From pages 23 to 29 is found a bill of exceptions taken to the ruling of the Court in overruling said motion to quash said *scire facias*. In said bill of exceptions are the affidavits of the appellant and of E. F. Bull, showing that the said recognizance was altered after the same had been signed by appellant, without appellant's knowledge or consent. The alteration consisting in the erasure of the name of George, and the insertion of the name of William, in the condition of the recognizance.

- 29 Said affidavits were filed January 2d, 1860.

Jan. 9th, 1860, demurrer filed by appellant to the *sci. fa.*, being general demurrer with special causes assigned; which demurrer will be found on pages 30, 31 and 32.

- 33 Demurrer sustained, Jan. 10th, 1860, with leave to the People to amend. Cause continued until next term of court. Wm. Vincent and Wm. Kelly called and defaulted, and *alias sci. fa.* ordered as to them.

- 34 March 6th, 1860. Amended *sci. fa.* issued, which will be found from pages 34 to 43, inclusive.

- 45 Motion by appellant to continue the cause.

Motion by Wm. Vincent and Wm. Kelly to quash *sci. fa.*, which motion is overruled and cause continued.

- 46 1st plea, by appellant, "*non est factum*," sworn to by appellant.

2d plea, by appellant, of "*nul tict record*."

- 47 3d plea, by appellant, will be found on pages 48 and 49 of the manuscript record, and is, in substance, as follows, viz: "That although it is true that on the said 29th day of Sept., 1859, this defendant, together with said Wm. Vincent and Wm. Kelly, did execute a recognizance to the People, &c., in the sum of \$400, as charged in said *sci. fa.*; yet this defendant avers, that since the time this defendant executed said recognizance, and before the same was returned into this, the said recognizance was, without the knowledge or consent of this defendant, altered in a material part thereof; that is to say, when said recognizance was executed by this defendant, a portion of the condition thereof read as follows, viz: 'Now, the condition of this recognizance is such that if the above bounden *George* Vincent and William Kelly shall be, &c.,' but that this portion of said recognizance was so altered as to read, 'Now, the condition of this recognizance is such that if the above bounden *William* Vincent and William Kelly, &c.;" the plea contained also formal allegations, that the recognizance so altered, and the one mentioned in the *sci. fa.*, are one and the same, &c. Concludes with verification.

- 50 Affidavit of appellant, verifying truth of plea.

From page 50 to page 52, inclusive, will be found fourth plea of appellant, substantially like the 3d, alleging the erasure of the word or name George, and the insertion of the name William after the recognizance was signed, and without the knowledge or consent of appellant.

- 53 5th plea of appellants sets up the same alteration as in 4th plea without appellant's knowledge, but varies the statement as to time.

PAGE OF REC.

55 6th plea alleges in substance, "that there is no such record of recovery or forfeiture against the said George Vincent, at the suit of said People, upon any recognizance executed by him, the said George Vincent, &c. Prayer if the said People ought to have judgment, &c. Affidavit of truth of plea.

56 7th plea of appellant similar in substance to the 6th plea.

57 July 2d, 1860, a jury waived, and cause submitted to Court for trial.

59 Filed, October 13th, 1860, a stipulation entered into between D. P. Jenkins, State's Attorney *pro tem.*, and E. F. Bull, appellant's Attorney, which recites in substance that the Court is to pass upon the question of the materiality of the alteration of the recognizance claimed by appellant, which alteration was admitted to have been made, and the Court would render a judgment in accordance with its finding on the recognizance. All the legal rights of the parties were respectively saved, except as to the pleadings, each having the right to an appeal or writ of error to the Supreme Court.

60 October 13th, 1860, execution ordered against the said William Vincent and William Kelly, upon judgment, entered at October Term, 1859.

61 Execution ordered against appellant upon judgment rendered at October Term, 1859.

62^a October 13th, 1860, motion by appellant for new trial; motion overruled, and exceptions by appellant.

Motion by appellant in arrest of judgment; overruled and exceptions; appeal prayed to Supreme Court; granted on condition that appellant enter into bonds in \$600, with John Armour as security; bond to be filed, and bill of exceptions to be presented within 30 days from the rising of the Court.

63 Appellant's appeal bond filed October 23d, 1860.

64 Bill of exceptions filed October 24th, 1860, and will be found from pages 64 to 71, inclusive, which shows that upon the trial of said cause, which had been submitted to the Court for trial without the intervention of a jury, the said People, in order to maintain the issues on their part, offered in evidence a certain recognizance.

65 Copy of Recognizance offered in evidence.

66 Copy of Recognizance offered in evidence, continued.

67 To the reading of said recognizance in evidence, said appellant, by E. F. Bull, his Attorney, then and there objected, which objection was overruled, and said recognizance was permitted to be read in evidence. To which ruling of the Court, the appellant, by his said Attorney, excepted.

The plaintiff, further to maintain the issues on his part, produced Alfred Putnam, Esq., as a witness, who testified, that he was the Justice of the Peace who took the said recognizance offered in evidence by said People; that some time after the execution of the recognizance by the

PAGE OF REC. appellant, he altered or changed the same in the condition thereof, as follows: "Now the condition of this recognizance is such, that if the above bounden William Vincent and William Kelly, shall be, &c.," so as to make the recognizance read *William* Vincent, whereas it formerly
 68 read *George* Vincent; that at the time of its execution it read *George* Vincent, and continued to read so for some time thereafter; that some two or three weeks after its execution he erased the word *George*, in said recognizance, and inserted the word or name *William*; that such erasure was made without the knowledge or consent of appellant; that the recognizance by such alteration was so changed that it read as a recognizance for the appearance of William Vincent, at the next term of this Court, after its execution, whereas, at the time of its execution it read as a recognizance for the appearance of *George* Vincent.

69 The appellant then, to maintain the issues on his part, introduced E. F. Bull as a witness, who testified, that he saw said recognizance, a few days after the same had been executed, and that the recital in the condition then read as a recognizance for the appearance of *George* Vincent, and not *William*; that the next time he saw said recognizance, was about the first days of the October term, A. D. 1859, of the said Recorder's Court, when he found that the word or name *George* had been erased, and the word or name *William* written over the same, in the condition of the recognizance, so as to change the recognizance from a recognizance conditioned for the appearance of *George* Vincent to the October term, A. D. 1859, of the said Recorder's Court, to a recognizance conditioned for the appearance of *William* Vincent at the same term.

70 The bill of exceptions shows that no other or further testimony was offered or produced by either party on the trial of said cause.

The appellant then made a motion to exclude the said recognizance from the evidence in said cause, which motion was by said Court overruled, to which said ruling of the Court the appellant then and there excepted.

The Court then ordered execution against appellant on judgment for \$400 and costs. Entered at October term, A. D. 1859.

71 Appellant made motion for new trial, which was by the Court overruled, and exceptions taken by appellant. Appellant then made a motion in arrest of judgment, which motion was overruled, and exceptions taken by appellant; and appellant prayed that this his bill of exceptions should be signed and sealed by the Court, which was done.

Signature and seal of the Judge of said Court to bill of exceptions.

Bill of exceptions filed October 24th, 1860.

73 Certificate of Clerk to the Record, and seal of Court attached.

E. F. BULL,
Attorney for Appellant.

Errors Assigned.

1. The Court erred in refusing to quash the *scire facias*.
2. The Court erred in permitting said recognizance to be read in evidence against appellant.
3. The Court erred in refusing to exclude the recognizance from the evidence in said cause.
4. The Court erred in entering judgment against the appellant.
5. The Court erred in refusing appellant new trial.
6. The Court erred in overruling motion in arrest of judgment.
7. The judgment, entered by the Court against appellant, is erroneous in point of form.

E. F. BULL,
Attorney for Appellant.

12 P.D

George Vincent

vs

The People &c

Abstract of Record

Filed May 1 1861
L. Leland
Clerk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

GEORGE VINCENT, *Appellant*, } *Appeal from Recorder's Court*
vs. } *of La Salle.*
THE PEOPLE, &c. *Appellees.*

PLAINTIFF'S POINTS AND AUTHORITIES.

1. The erasure of the name "*George*," in the condition of the recognizance upon which this suit was brought, and the insertion of the name "*William*," so as to make a recognizance which was originally conditioned for the appearance of "*George Vincent*," a recognizance conditioned for the appearance of "*William Vincent*," was a material alteration, and having been done without appellant's knowledge or consent, some time after the execution of the recognizance by appellant, rendered the same absolutely void as to him.

Sans *vs.* The People, &c. 3 Gilman, 327.
Graves *vs.* The People, 11 Illinois Reports, 542.
21 Illinois Reports, 535 (Garrison *vs.* The People.)
Decker's Case, 6 Cowan, 59.
6 Rand. (Virginia Reports,) 86.
4 Term Reports, or Dunford & East's, 194 (328.)

2. The Court ought to have excluded the recognizance from the evidence in the cause as soon as the alteration was made to appear, and to have rendered judgment in favor of appellant.

Sans *vs.* The People, 3 Gilman, 327.
Graves *vs.* The People, 11 Ill. R. 542.

3. The Court below rendered judgment upon the recognizance at the term to which the recognizance was returnable. No subsequent judgment has been rendered, but simply an award of execution upon the judgment already rendered. The Court could not render a judgment until *sci. fa.* had been returned served.

The People, &c. *vs.* Watkins *et al.*, 19 Illinois, 117.

E. F. BULL,
Attorney for Appellant.

No. 12. P.D

Gen. Vincent
Appt. vs:

The People &c
Appt.

Appt. Binds & Authorities

Filed May 3-1861
L. Leland
Leland

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

GEORGE VINCENT, Appellant, } *Appeal from the Recorder's Court*
vs. } *of the City of La Salle.*
THE PEOPLE, &c., Appellees. }

PAGE OF REC. This action was a *scire facias* upon a recognizance entered into by the appellant, as security with William Vincent and William Kelly as principals, running to the said People, and dated September 29th, 1859, returnable to the October Term of the said Recorder's Court. At said October Term said recognizance was defaulted and a judgment rendered thereon and a *scire facias* issued to said appellant, and to said Wm. Vincent and Wm. Kelly, returnable at the January Term, A. D. 1860, of said Recorder's Court.

- 1 Warrant, recognizance, and transcript, filed October 1st, 1859.
- 2 Copy of warrant for the arrest of Wm. Vincent and Wm. Kelly, dated September 28th, 1859.
- 3 Return on warrant dated Sept. 29th, 1859.
- 4 Copy of recognizance dated Sept. 29th, 1859.
- 5 Transcript from Justice's docket.
- 6 Certificate of Justice attached to transcript.
- 7 Return of indictment by Grand Jury, and order for *capias* against William Vincent and William Kelly.
- 8 Copy of indictment, commencing at bottom of page 7; also endorsements on the back of the same.
- 10 Order of Court, appointing D. P. Jenkins State's Attorney, *pro tem.*
- 11 Record of default of the Recognizance, and judgment entered thereon; and of order for *scire facias* to issue, taken October 10th, 1859.
- 12 A copy of the *scire facias*, issued upon said order, will be found from the 12th to the 21st pages, inclusive.
- 21 Return of service on *sci. fa.* made Dec. 15th, 1859, upon George Vincent; William Vincent and William Kelly not found. Filed Dec. 15th, 1859; filed as amended, April 7th, 1860.
- 22 Motion by appellant to quash *sci. fa.*

- 23 Motion to quash overruled, and exceptions.

From pages 23 to 29 is found a bill of exceptions taken to the ruling of the Court in overruling said motion to quash said *scire facias*. In said bill of exceptions are the affidavits of the appellant and of E. F. Bull, showing that the said recognizance was altered after the same had been signed by appellant, without appellant's knowledge or consent. The alteration consisting in the erasure of the name of George, and the insertion of the name of William, in the condition of the recognizance.

- 29 Said affidavits were filed January 2d, 1860.

Jan. 9th, 1860, demurrer filed by appellant to the *sci. fa.*, being general demurrer with special causes assigned; which demurrer will be found on pages 30, 31 and 32.

- 33 Demurrer sustained, Jan. 10th, 1860, with leave to the People to amend. Cause continued until next term of court. Wm. Vincent and Wm. Kelly called and defaulted, and *alias sci. fa.* ordered as to them.

- 34 March 6th, 1860. Amended *sci. fa.* issued, which will be found from pages 34 to 43, inclusive.

- 45 Motion by appellant to continue the cause.

Motion by Wm. Vincent and Wm. Kelly to quash *sci. fa.*, which motion is overruled and cause continued.

- 46 1st plea, by appellant, "*non est factum*," sworn to by appellant.

2d plea, by appellant, of "*nul tiel record*."

- 47 3d plea, by appellant, will be found on pages 48 and 49 of the manuscript record, and is, in substance, as follows, viz: "That although it is true that on the said 29th day of Sept., 1859, this defendant, together with said Wm. Vincent and Wm. Kelly, did execute a recognizance to the People, &c., in the sum of \$400, as charged in said *sci. fa.*; yet this defendant avers, that since the time this defendant executed said recognizance, and before the same was returned into this, the said recognizance was, without the knowledge or consent of this defendant, altered in a material part thereof; that is to say, when said recognizance was executed by this defendant, a portion of the condition thereof read as follows, viz: 'Now, the condition of this recognizance is such that if the above bounden George Vincent and William Kelly shall be, &c.,' but that this portion of said recognizance was so altered as to read, 'Now, the condition of this recognizance is such that if the above bounden William Vincent and William Kelly, &c.;" the plea contained also formal allegations, that the recognizance so altered, and the one mentioned in the *sci. fa.*, are one and the same, &c. Concludes with verification.

- 50 Affidavit of appellant, verifying truth of plea.

From page 50 to page 52, inclusive, will be found fourth plea of appellant, substantially like the 3d, alleging the erasure of the word or name George, and the insertion of the name William after the recognizance was signed, and without the knowledge or consent of appellant.

- 53 5th plea of appellants sets up the same alteration as in 4th plea without appellant's knowledge, but varies the statement as to time.

55 6th plea alleges in substance, "that there is no such record of recovery or forfeiture against the said George Vincent, at the suit of said People, upon any recognizance executed by him, the said George Vincent, &c. Prayer if the said People ought to have judgment, &c. Affidavit of truth of plea.

56 7th plea of appellant similar in substance to the 6th plea.

57 July 2d, 1860, a jury waived, and cause submitted to Court for trial.

59 Filed, October 13th, 1860, a stipulation entered into between D. P. Jenkins, State's Attorney *pro tem.*, and E. F. Bull, appellant's Attorney, which recites in substance that the Court is to pass upon the question of the materiality of the alteration of the recognizance claimed by appellant, which alteration was admitted to have been made, and the Court would render a judgment in accordance with its finding on the recognizance. All the legal rights of the parties were respectively saved, except as to the pleadings, each having the right to an appeal or writ of error to the Supreme Court.

60 October 13th, 1860, execution ordered against the said William Vincent and William Kelly, upon judgment, entered at October Term, 1859.

61 Execution ordered against appellant upon judgment rendered at October Term, 1859.

62² October 13th, 1860, motion by appellant for new trial; motion overruled, and exceptions by appellant.

Motion by appellant in arrest of judgment; overruled and exceptions; appeal prayed to Supreme Court; granted on condition that appellant enter into bonds in \$600, with John Armour as security; bond to be filed, and bill of exceptions to be presented within 30 days from the rising of the Court.

63 Appellant's appeal bond filed October 23d, 1860.

64 Bill of exceptions filed October 24th, 1860, and will be found from pages 64 to 71, inclusive, which shows that upon the trial of said cause, which had been submitted to the Court for trial without the intervention of a jury, the said People, in order to maintain the issues on their part, offered in evidence a certain recognizance.

65 Copy of Recognizance offered in evidence.

66 Copy of Recognizance offered in evidence, continued.

67 To the reading of said recognizance in evidence, said appellant, by E. F. Bull, his Attorney, then and there objected, which objection was overruled, and said recognizance was permitted to be read in evidence. To which ruling of the Court, the appellant, by his said Attorney, excepted.

The plaintiff, further to maintain the issues on his part, produced Alfred Putnam, Esq., as a witness, who testified, that he was the Justice of the Peace who took the said recognizance offered in evidence by said People; that some time after the execution of the recognizance by the

PAGE OF REC. appellant, he altered or changed the same in the condition thereof, as follows: "Now the condition of this recognizance is such, that if the above bounden William Vincent and William Kelly, shall be, &c.," so as to make the recognizance read *William* Vincent, whereas it formerly
 68 read *George* Vincent; that at the time of its execution it read *George* Vincent, and continued to read so for some time thereafter; that some two or three weeks after its execution he erased the word *George*, in said recognizance, and inserted the word or name *William*; that such erasure was made without the knowledge or consent of appellant; that the recognizance by such alteration was so changed that it read as a recognizance for the appearance of *William* Vincent, at the next term of this Court, after its execution, whereas, at the time of its execution it read as a recognizance for the appearance of *George* Vincent.

69 The appellant then, to maintain the issues on his part, introduced E. F. Bull as a witness, who testified, that he saw said recognizance, a few days after the same had been executed, and that the recital in the condition then read as a recognizance for the appearance of *George* Vincent, and not *William*; that the next time he saw said recognizance, was about the first days of the October term, A. D. 1859, of the said Recorder's Court, when he found that the word or name *George* had been erased, and the word or name *William* written over the same, in the condition of the recognizance, so as to change the recognizance from a recognizance conditioned for the appearance of *George* Vincent to the October term, A. D. 1859, of the said Recorder's Court, to a recognizance conditioned for the appearance of *William* Vincent at the same term.

70 The bill of exceptions shows that no other or further testimony was offered or produced by either party on the trial of said cause.

The appellant then made a motion to exclude the said recognizance from the evidence in said cause, which motion was by said Court overruled, to which said ruling of the Court the appellant then and there excepted.

The Court then ordered execution against appellant on judgment for \$400 and costs. Entered at October term, A. D. 1859.

71 Appellant made motion for new trial, which was by the Court overruled, and exceptions taken by appellant. Appellant then made a motion in arrest of judgment, which motion was overruled, and exceptions taken by appellant; and appellant prayed that this his bill of exceptions should be signed and sealed by the Court, which was done.

Signature and seal of the Judge of said Court to bill of exceptions.

Bill of exceptions filed October 24th, 1860.

73 Certificate of Clerk to the Record, and seal of Court attached.

E. F. BULL,
 Attorney for Appellant.

Errors Assigned.

1. The Court erred in refusing to quash the *scire facias*.
2. The Court erred in permitting said recognizance to be read in evidence against appellant.
3. The Court erred in refusing to exclude the recognizance from the evidence in said cause.
4. The Court erred in entering judgment against the appellant.
5. The Court erred in refusing appellant new trial.
6. The Court erred in overruling motion in arrest of judgment.
7. The judgment, entered by the Court against appellant, is erroneous in point of form.

E. F. BULL,
Attorney for Appellant.

12 P.D.

George Vincent

vs

The People.

Abstract of Record

Filed May 1, 1861

L. Leland

Clk

Records Court of the City of La Salle
October Term thereof AD 1859
State of Illinois, La Salle County
City of La Salle

Pleas, Proceedings, Judgments
and Decrees held and taken in and before
the Records Court of the City of La Salle, in La
Salle County, in the State of Illinois. At a
regular Term thereof, commenced and
held at the Records Court Room in
said City and County, on the third day
of October AD 1859, and of the Indepen-
dence of the United States of America
the Eighty fourth

Present Hon. John William Chumars, Judge.
Charles S. Miller - Clerk
Francis Warner - Sheriff
Washington Busbuck State Attorney.

Be it remembered, that heretofore
to wit on the first day of October AD
1859, there was filed, in the office of the
Clerk of the Records Court of the City
of La Salle in La Salle County, a
Certain Warrant, Recognizance, and
Transcript, (which said Warrant is
in the words and figures following
to wit: - State of Illinois, La Salle County,

The People of the State of Illinois to all Sheriffs, Coroners and Constables within said State. Greeting: Whereas, Complaint under oath has been this day entered before the undersigned a justice of the peace, within and for said county, by John R. Wilson that a Larceny (to wit. seven head of cattle viz. 2 two year old Steers, one Red Cow branded "S" on the hip, one 3 year old Heiffer red & white, 2 yearling calves & one 2 year old Heiffer. of the value of one Hundred & twenty five Dollars has been committed in said State, ^{and county} and that said Complainant has just and reasonable grounds to suspect that William Vincent & William Kelly are guilty of said Larceny (three head of said cattle were feloniously taken & driven away about one month ago & the other three per stated & driven away on the 26th inst. from) are therefore hereby commanded forthwith to arrest the said William Vincent and William Kelly, and bring them before me (or in my absence, before some other justice of the Peace, in said county) to answer to the People of the State of Illinois, on said Charge and abide such further order as maybe made concerning them, and hereby make due service and return as the law

directs, Given under my hand and seal
at my office in La Salle this 28th day of
September AD 1859. Alfred Putnam *(Seal)*
Justice of the Peace."

Upon the back of which said warrant
is the following endorsement to wit:
"Executed by arresting the within named
William Vincent and William Kelly
and have them before the within named
justice this the 29th day of September 1859.
M. Neustadt. Const. - Filed October
1st 1859. L. S. Miller Clerk." - And which
said Recognizance is in the words and
figures following to wit: - "State of Illinois
La Salle County $\frac{3}{4}$ ss. This day personally
appeared before the undersigned one of the
Justices of the Peace in and for said County
George Vincent, William Vincent & William
Kelly, and jointly and severally acknowledged
themselves to owe and be indebted unto the
People of the State of Illinois in the sum of
Four Hundred dollars, to be levied of their
goods and Chattel, Lands and Tenement,
if default be made in the premises and
conditions following, to wit:

Whereas the above bounden William Vincent
& William Kelly on the 29th day of September
AD 1859, waived an examination before

Alfred Putnam a Justice of the Peace in and for the County aforesaid, on a charge preferred against ^{by John B. Wilson} them for the ~~the~~ ^{the} larceny of seven head of cattle, valued at \$125⁰⁰ whereupon they were required by said Justice to give bonds as required by the Statute, in such case made and provided, for their appearance to answer said charge.

Now the conditions of this recognizance is such, that if the above bounden ~~William~~ Vincent + William Kelly, shall personally be and appear before the Recorder's Court of the City of Los Angeles in said County of Los Angeles, on the first day of the next term thereof, to be holden at the Court House in the City of Los Angeles on the first Monday of October A.D. 1857 and from day to day thereafter, until discharged by order of said Court, and not depart the same without leave, then and in that case this recognizance to become void; otherwise to remain in full force and virtue. As witness our hands and seals this 29th day of September

A.D. 1857.

Taken entered and acknowledged

before me this 29th day of September

A.D. 1857. Alfred Putnam. J.P.

Geo Vincent

Seal

Wm E. Vincent

Seal

Wm. W. Kelly

Seal

Upon the back of which said Recognizance is the following writ: "filed in the Clerk's Office of the Recorder's Court of the City of Los Angeles the first day of October A.D. 1887. Charles S. Miller Clerk". And which said Transcript is in the words and figures following writ: "No 1013. The People of the State of Illinois vs. William Vincent and William Kelly, } On the 29th day of September 1887. On Complaint of John E. Wilson under oath. I did issue a warrant for the arrest of William Vincent and William Kelly for the larceny of seven head of Cattle to wit: Two 2 year old Steers one red cow Branded "S" on the left hip one three year old heifer red and white 2 yearling calves and one 2 year old heifer of the Value of one hundred and twenty five Dollars. Warrant delivered to M. Neustadt Constable. - Warrant returned by said Constable. Endorsed, Executed by arresting the within named William Vincent and William Kelly. And have them before the within named Justice this 29th day of September 1887. fees 00. Mileage \$1.00. Expenses \$1.00 Board \$1.50 assistance \$2. = \$4.50 M Neustadt, Constable - Suit called

parties in cause. D. Evans appeared for the People. E. H. Bull for the Defts. Defts by their attorney waived an Examination & Entered into a recognizance in the sum of Four Hundred Dollars for their appearance at the next Term of the Records Court of the City of La Salle. Transcript of Proceedings (with papers delivered to C. S. Miller Clerk of the Records Court.) State of Illinois La Salle County. I Alfred Putnam one of the Justices of the Peace in and for said County. Do hereby certify that the foregoing is a correct Transcript of the proceedings, as appears from my Docket. And all the papers belonging therewith are hereby transmitted. Witness my hand and seal this 1st day of October 1859. Alfred Putnam ^{Justice of the Peace} Seal
 "Justice of the Peace" — Upon the back of which transcript is the following Verit.
 "Filed October 1st 1859. C. S. Miller Clerk."

And also the following. Verit.

"State of Illinois La Salle County & City of La Salle ss. I Alfred Putnam a Justice of the Peace in and for the County and State aforesaid. Do hereby certify that the accompanying papers marked respectively (A) + (B) and the paper marked (A) bearing date September 29th AD 1859. and the one marked (B) bearing date September 28th AD 1859. constitute all of the papers in said cause of The People of the State of Illinois vs William Vincent and William Kelly and that the Recognizance marked (A) was only taken by me in said cause and approved, and taken and left with Charles S. Miller Clerk of the Records Court of the City of La Salle on the first day of October AD 1859."

"Alfred Putnam J.P." Seal

And be it further Remembered
that heretofore to wit: on the Sixth day
of October AD 1839 one of the days of the
October Term of said Court: certain
proceedings were had and entered of

Record in said court in the case. The People of the State of Illinois is plaintiff and William Vincent and William Kelly is defendant in the words and figures following to wit: "This day the Grand Jurors return into open court the following bills of Indictment as true bills to wit: (Among which are the following).

"The People vs

vs.
William Vincent

William Kelly -

Indictment for Larceny"

Which said Indictments are ordered to be filed. That Caproes issue severally thereon, and that the defendants be held to bail in the sum of Fifty dollars on each of the indictments against him, except William Vincent and William Kelly who are ordered to be held to bail in Five hundred dollars each. The Grand Jury now retire to consider further of presentments and Indictments".

And which said Indictment is in the words and figures following to wit: - "State of Illinois, La Salle County + City of La Salle } ss. Of the October Term of the Recorders Court of the said City of La Salle, in said County + State, in the

year of our Lord one Thousand Eight hundred and fifty nine. ~

The Grand Jurors chosen, selected and sworn in and for the City of Leasalle aforesaid, in the County of aforesaid, and in the State aforesaid, in the name and by the Authority of the People of the State of Illinois, upon their oaths present,

That William Vincent and William Kelly, both of said city and County and State, on the twenty fifth day of September in the year of our Lord one thousand eight hundred and fifty nine, at and within said city, seven head of Cattle of the value of two hundred dollars, three head of cattle of the value of twenty dollars each, two cows of the value of thirty dollars each, three steers of the value of twenty five dollars each, and seven head of other cattle of the value of ten dollars each of the personal property, goods and chattels of one John Wilson 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.

And the jurors aforesaid upon their oaths
in the name and by the authority of the
People aforesaid. do further present,

That William Vincent and William
Kelly late of said City on the first day of
September in the year of our Lord one
thousand eight hundred and fifty
nine. at and within said City. seven
head of horned cattle of the value of ten
dollars each. of the personal property, goods
and chattels of one John Wilson 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."

"W Bushnell State City"

Upon the back of which said Indictment
is the following writ: The People vs vs
William Vincent & William Kelly.

Indictment for larceny. A Trial Bill.
John Gray, Foreman. Bail \$500.

Wm. C. John Wilson; Frederick Schreyer
Amos Griffin. Henry Bush. Esq. Bail
Amos J. Griffin. Filed October 6th
1859. L. S. Miller Clerk"

And be it further Remembered that on the third day of October A.D. 1859, one of the days of the October Term of said Court. Certain proceedings were had and entered of record in said court in the words and figures following to wit: "This day by order of the court David P. Jenkins is appointed States Attorney pro tem. in the absence of Washington. Bushnell states attorney."

And afterwards to wit on the Tenth day of October A.D. 1859, one of the days of said Term of said Court. Certain other proceedings were had and entered of Record in the cause "The People of the State of Illinois vs Plaintiff and William Vincent and William Kelly and Defendants, in said Court. in the words and figures following to wit.

"The People of the State of Illinois
vs. William Vincent + William Kelly,
Monday October 10th 1859. —
Recognizance for Larceny —

This day came the people
by David P. Jenkins States Attorney
pro tem. and the defendants William

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Vincent and William Kelly, being three times solemnly called in open court come not nor any one for them, but make default. And George Vincent the defendant William Vincent and William Kelly, security on the Recognizance heretofore to wit: on the twenty ninth day of September A.D. 1839, entered into in this cause before Alfred Postnam a justice of the Peace in and for the County of La Salle and State of Illinois being also three times solemnly called in open court to produce the bodies of the said defendants (William Vincent and William Kelly) comes not nor produces the bodies of the said defendants William Vincent and William Kelly, but makes default.

Therefore on motion of the State Attorney pro tem, it is ordered by the court that the Recognizance herein be forfeited. And that the People of the State of Illinois, have and recover of the said William Vincent and William Kelly the sum of Four Hundred Dollars, And that the People of the State of Illinois have and recover of the said George Vincent, the sum of Four Hundred Dollars.

The amount so specified in their said Recognizance. ~

And on further motion of the State Attorney pro tem it is ordered by the court that a writ of Scirefacias issue herein to the said William Vincent, William Kelly and George Vincent, returnable on the first day of the next term of this court commanding them, and each of them to appear and show cause, if any they have, why Execution should not issue against them, on the above and foregoing judgment, according to the form, force and effect of their said Recognizance and of the Statute in such case made and provided." =

And afterwards to wit on the twenty eighth day of November A.D. 1859, there did issue out of said court, a Writ of Scirefacias against the said William Vincent, William Kelly and George Vincent. Which said Writ is in the words and figures following to wit:

"State of Illinois, La Salle County
City of La Salle 3rd ss. The People of the

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State of Illinois. To The Sheriff of La
Salle County = Greeting,

Be it Remembered that herebefore
to wit on the Twenty Eighth day of September,
in the year of our Lord one thousand
eight hundred and fifty nine, at
La Salle to wit at the City of La Salle in
La Salle County in the State of Illinois,
Complaint under oath was made before
Alfred Putnam one of the justices of the
peace in and for said county, by
John E. Wilson, the said John E. Wilson
being then and there at the time
and place aforesaid, first duly sworn
according to law, that a larceny of seven
heads of Cattle viz: one red cow, branded "S" ^{on}
on the hip. Two two year old steers, one three
year old heifer red and white. Two yearling
calves, and one two year old heifer, of
the value of one hundred and twenty
five dollars. And that the said Com-
plainant John E. Wilson, had just
and reasonable Grounds to suspect
that William Vincent and William
Kelly was guilty of said larceny,
and he it further remembered that
among the files of the office of the Clerks
of the Records and Court of the City of La Salle

in La Salle county in the State of Illinois
 is a Warrant in the words and figures
 following to wit: State of Illinois.
 La Salle County, Ills. The People of the
 State of Illinois. To all Sheriff, ~~Coroners~~
 and Constables within said State, Greeting.
 Whereas complaint under oath has been
 this day entered, before the undersigned
 a Justice of the Peace within and for
 said County, by John E. Wilson, that
 a Larceny (to wit, seven head of Cattle
 viz. 2 two year old Steers, one red cow
 branded "S" on the hip, one 3 year old
 heifer red + white, 2 yearling calves, +
 one 2 year old heifer, of the value of one
 hundred + twenty five dollars, has been
 committed in said State and County,
 and that said complainant, has
 just and reasonable grounds to
 suspect, that William Vincent ~~and~~
 William Kelly are guilty of said Larceny.
 Three head of said Cattle were feloniously
 taken + driven away about one month
 ago, + the other three were stolen + driven
 away on the 24th inst. You are there-
 fore hereby commanded forthwith to
 arrest the said William Vincent and
 William Kelly, and bring them before me

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(or in my absence before some other
justice of the peace in said county)
to answer to the People of the State of Illi-
nois, on said charge, and abide such
further order as may be made concern-
ing them, and hereof make due
service and return as the law
directs. Given under my hand and
seal, at my office in La Salle this 28th
day of September A.D. 1859.

Alfred Putnam ^{my} Just
Justice of the Peace.

And the said William Vincent and
William Kelly having been. to wit: on
the twenty ninth day of September in
the year of our Lord one thousand eight
hundred and fifty nine, brought
before the said Alfred Putnam a
Justice of the Peace as aforesaid, on said
charge for larceny, then and there
to wit: at the City of La Salle in La Salle
County, before the said Alfred Putnam
Justice of the Peace as aforesaid, in their
own proper persons, waived an exam-
ination. Whereupon the said Alfred
Putnam Justice of the Peace as aforesaid
caused the said William Vincent and
William Kelly to enter into a joint and

several recognizance in the sum of Four Hundred Dollars, for and to the use of the law directs, and as required by the Statute in such cases made and provided. And the said Recognizance so entered into, was filed in the office of the Clerk of the Recorder's Court of the City of La Salle in La Salle County on the first day of October in the year four Lord one thousand eight hundred and fifty nine, and is in words and figures following to wit:

State of Illinois. La Salle County ^{29th} ss.
 This day personally appeared before the undersigned one of the Justices of the Peace in and for said County, George Vincent, William Vincent & William Kelly, and jointly and severally acknowledged themselves to owe and be indebted, unto the People of the State of Illinois, in the sum of Four Hundred Dollars, to be levied of their goods and Chattels, Lands and Tenements, if default be made in the premises and conditions following, to wit:

Whereas the above burdened William Vincent & William Kelly on the 29th day

of September A.D. 1859, waived an Examination before Alfred Putnam a Justice of the Peace in and for the County aforesaid on a charge preferred against them by John E. Wilson for the larceny of seven head of cattle valued at \$125.⁰⁰. whereupon they were required by said justice to give bonds as required by the Statute in such case made and provided, for their appearance to answer said charge. Now the conditions of this Recognizance is such, that if the above named William Vincent & William Kelly shall personally be and appear before the Recorders Court of the City of La Salle, in said County of La Salle, on the first day of the next term thereof, to be holden at the Court house in the City of La Salle on the first Monday of October A.D. 1859, and from day to day thereafter, until discharged by order of said Court, then and there to answer to the said People of the State of Illinois on said charge of Larceny, and abide the order and judgment of said Court, and not depart the same without leave, then and in

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that case this recognizance to become void: otherwise to remain in full force and virtue. As witnesses our hands and seals. this 29th day of September AD 1859.

Taken entered and acknowl.

edged before me this 29th

day of September AD 1859.

Geo Vincent

Wm E. Vincent

Wm H. Kelly

seal

seal

seal

"Alfred Putnam J.P."

The writing in
the enclosed
line was inser-
ted about the 15th of
March AD 1860 as
an amendment
but not to mark
it until this 7th
day of April AD
1860. D. J. Jenkins
S. M. City. pro. tem.

Which said recognizance was by the said

Alfred Putnam Justice of the Peace as aforesaid, duly certi-
fied and delivered to the Clerk of the Recorder Court of
the City of Los Angeles, on the first day of October AD 1859

And afterwards to wit on
Monday the tenth day of October in the
year of our Lord one thousand eight
hundred and fifty nine, the same
being one of the days of the October
Term of the Recorder Court of the
City of Los Angeles, for said year, and
for said October Term of said Court,
being the first and next Term
of said Court, after the taking of the
above recited recognizance, a certain
matter and order was entered of
record in said Court in words follow-
ing, to wit:

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The People of the State of Illinois, vs. William Vincent & William Kelly, } Recognizance for Larceny.

This day comes the People by David P Jenkins States Attorney pro tem. and the defendants William Vincent and William Kelly being three times solemnly called in open Court, come not nor any one for them, but make default. And George Vincent, the defendants' William Vincent and William Kelly's Security, on the Recognizance here before, to wit on the twenty ninth day of September A.D. 1859, entered into in this cause before Alfred Putnam a Justice of the Peace in and for the County of La Salle in the State of Illinois being also three times solemnly called in open Court, to produce the bodies of the said defendants (William Vincent and William Kelly) comes not, nor produces the bodies of the said defendants (William Vincent and William Kelly) but makes default. Therefore on motion of the States Attorney pro tem. it is ordered by the Court, that the recognizance herein be forfeited, and that the People of the State of Illinois, have and recover

of the said William Vincent and William Kelly the sum of Four Hundred Dollars. And that the People of the State of Illinois have and recover of the said George Vincent the sum of Four Hundred Dollars, the amount so specified in their said recognizance. And on further motion of the State Attorney pro tem it is ordered by the court that a writ of Scire facias issue herein to the said William Vincent, William Kelly and George Vincent, returnable on the first day of the next term of this court, commanding them and each of them to appear and show cause if any they have, why Execution should not issue against them on the above and foregoing judgment. According to the form force and effect of their said Recognizance, and of the statute in such cases made and provided.

We therefore in consideration of the premises. Command you to Summon the said William Vincent and William Kelly and George Vincent, if they shall be found in your county, personally to be and appear before the Recorder's Court

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of the City of La Salle, on the first day
of the next term thereof, to be holden
at the Recorder's Court room in said
City, in La Salle County, on the first
Monday in the Month of January
next, and show cause if any they
have why Execution should not issue
against them, on the above and
before recited judgment, according
to the form force and effect of the
same, and of the Statute in such case
made and provided. And have you
then and there this writ, with an
endorsement hereon in what man-
ner you shall have executed the
same. Witness Charles S. Miller Clerk
of said Court, and the seal thereof
at La Salle in said County this 28th
day of November A.D. 1869. Charles S. Miller
Clerk.

And upon the back of
which writ of Scire facias is the follow-
ing return: "The People &c vs. William
Vincent, William Kelly & George Vincent
Scire facias to Jan^y Term 1860. = served the
within writ by reading same to George Vincent,
Dec^r 15th 1869. William Vincent and William

Kelly no found in my pr.

F. Warner. Shff. By F. W. Matthews sept.

Fees sen & ret. \$1.20. 12 miles 1.20 = \$2.40

Filed this 15th day of December A.D. 1859.

Charles S. Miller clerk. Filed as amended this 7th day of April 1860 to S. Miller clerk.

And afterwards to wit on the second day of January A.D. 1860 said day being one of the days of the January Term A.D. 1860 of said Court. Certain other proceedings met had and entered of record in said Court in said cause in the words and figures following, to wit: "The People vs. William Vincent, William Kelly & George Vincent, $\frac{2}{3}$ Monday January 2. 1860. Seize facias."

This day serves the defendant George Vincent by Strain and Bull his attorneys, and move the court to Quash the Seize facias."

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And afterwards to wit on the Sixth day of January A.D. 1860. said day being one of the days of said January Term of said Court. certain other proceedings were had and entered of record in said Court in said cause, which are in the words and figures following, to wit:

"The People & vs. W. William Vincent
William Kelly & George Vincent $\frac{3}{4}$
Friday January 6th 1860.

This day again comes the parties by their attorneys, and the Court having fully considered the motion heretofore made herein by defendant attorneys to Quash the Scire facias, does order that the said motion be overruled. For overruling said motion defendant by his said attorneys except.

And the said bill of Exceptions signed and sealed by the Court and filed, is in the words and figures following, to wit: = "State of Illinois, LaSalle County & City of LaSalle $\frac{3}{4}$ ss. Records Court for said City January Term A.D. 1860. The People of the State of

Illinois. vs. William Vincent. William Kelly and George Vincent. $\frac{3}{4}$ Scire facias on recognizance. = Be it remembered that on the 6th day of January A.D. 1860 the same being one of the days of said Term of said court. the said Defendant George Vincent by Strain & Bull his attorneys. made his motion herein to Quash the said writ of Scire facias herein. and in support of ^{his} said motion read to the said court. his the said defendants George Vincent Affidavits which are in the words and figures following, to wit: = "State of Illinois LaSalle County & City of LaSalle $\frac{3}{4}$ ss. Records Court for said City January Term thereof A.D. 1860. The People vs. William Vincent. William Kelly and George Vincent. $\frac{3}{4}$ Scire facias on Recognizance. George Vincent being first duly sworn according to law. ~~on oath~~ says, that he is one of the above named defendant. and that the recognizance recited in the Scire facias herein. has been since he signed the same. and without his knowledge or consent, altered in a material part thereof.

that is to say. When he signed the said Recognizance. the Conditions thereof read as follows. To wit:—"Now the conditions of this Recognizance is such. that if the above bounden George Vincent & William Kelly shall personally be &c." but that he now finds said Conditions has been changed or altered. as to read as follows. To wit: "Now the conditions of this Recognizance is such. that if the above bounden William Vincent & William Kelly shall personally be &c;"- Affiant states that said alteration consists in the erasure of the word George in said Condition in said Recognizance and in the insertion of the word William in the place thereof.

For these reasons Affiant states that said Recognizance in said Scire facias mentioned is not his deed, and that he did not acknowledge himself to owe and be indebted to the said People in manner and form as set forth in said Scire facias and he therefore prays that said Scire facias may be Quashed.

Geo Vincent

Subscribed + sworn to before me this
 2nd day of January A.D. 1860, Charles S.
 Miller Clerk. (Second affidavit of
 George Vincent) = State of Illinois
 La Salle County + City of La Salle 3rd ss.
 Records current for said City January
 Term thereof A.D. 1860.

The People of the State of Illinois vs.
 William Vincent, William Kelly +
 George Vincent, } Scire facias on
 Recognizance. George Vincent one of the
 above named defendants being
 first duly sworn on oath says
 that he did not execute the recognizance
 mentioned and described and set
 forth in the said Scire facias herein
 and that the same is not his deed,
 And that he never acknowledged
 himself to owe and to be indebted to
 the People of the State of Illinois in
 manner and form as is set
 forth in the said Scire facias and
 in the recognizance herein recited,
 Affiant therefore prays that the said
 writ of Scire facias issued herein
 upon the said recognizance may
 be quashed. = Geo. Vincent.
 Subscribed and sworn to before me

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this 2nd day of January AD 1860.
Charles S. Miller Clerk, -

And also the affidavit
of Geo. F. Bull, which ~~last~~ mentioned
affidavit is in the words and figures
following, to wit: "State of Illinois
La Salle County and City of La Salle
3d. Records Court for said City of La
Salle January Term thereof AD 1860
The People vs. W. William Vincent
William Kelly & George Vincent. $\frac{3}{4}$
Scire facias on Recognizance
Geo. F. Bull being first duly sworn
according to law on oath says, that he
saw the Recognizance set forth in the
Scire facias herein at the time the same
was signed by ~~the~~ said defendants,
that the next day or two thereafter
he examined said Recognizance
carefully, and that he then for the
first time discovered that the con-
ditions of said Recognizance read as
follows, to wit: "Now the condition of
this Recognizance is such that if the above
bounden George Vincent & William
Kelly shall personally be &c". But
affiant further states that said condition
in said Recognizance has been so changed

and altered. Since the same was signed as aforesaid, as to read as follows, to wit: "Now the condition of this recognizance is such, that if the above bounder William Vincent & William Kelly shall personally be se." Affiant state that the said alteration consists in this, to wit: The erasure of the word or name of "George" in the said conditions, and the insertion of the name or word "William" in the place thereof. And affiant further states that he has every reason to believe that said alteration was made without the knowledge or consent of said defendants. (Signed) E. Fallett Bull. Subscribed and sworn to before me this 2nd day of January A.D. 1860. Charles S. Miller, Clerk.

And thereupon the said Court overruled said motion To the overruling of which motion the said defendant George Vincent by Strain and Bull his attorneys then and there appeared, and prays that this his bill of exceptions may be

signed and sealed and made ^apart
of the records of this court in said cause
which is accordingly done"

"Wm. Chumason" Jury 20
Seal 3

And upon the back of said bill
of Reception is the following writ:
"Filed this 6th day of January AD
1860. L. S. Miller. clerk"

And upon the back of each of
the affidavits set out in the above
and foregoing bill of Reception,
is the following writ: "Filed this
2nd day of January AD 1860. L. S. Miller.
clerk"

And afterwards to wit. on the
Ninth day of January AD 1860. one of
the days of said January Term of said
court, certain other proceedings
were had and entered of record in
said court in said cause in
the words and figures following to wit:

"The People vs W. William Vincent
William Kelly & George Vincent."

Monday January 9th 1860. Seneca Co.

This day came the defendant George
Vincent by Strain & Bull his attorneys

P. 30 - and files their demurrer herein to
the "Seine facias." - Which said
demurrer is in the words and fig-
ures following: to wit:-

State of Illinois. La Salle County &
City of La Salle $\frac{3}{4}$ ss. Recorders court for said
City. January Term thereof A.D. 1860 -
The People of the State of Illinois, vs.
William Vincent. William Kelly and
George Vincent. $\frac{3}{4}$ - And now comes
the said defendant George Vincent
by Strain & Bull his attorneys, and
says that the Seine facias issued and
filed herein is not sufficient in
law, and of this he is ready to verify,
wherefore he prays judgment so -

And for special cause of
demurrer to said Seine facias, the
said defendant George Vincent
shows to the court the following, to
wit: - $\frac{12}{15}$ The said Seine facias does not
aver or show that the recognizance
had been returned and made
a part of the record of this court.

2nd The defendants are not
summoned to show cause why
judgment should not be entered
by why Execution should not issue

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on a judgment already rendered
when they had had no say in Court.

3rd The Scire-facias does not show
that any larceny or other offence had
been committed in the said
city of La Salle-

4th The Scire facias does not
show that any larceny or other offence
had been committed in the State
of Illinois:

5th The Scire facias does not
show that any Indictment had ever
had been found against the said
William Vincent and William Kelly.

6th There is no averment
that said recognisance was taken
by a person authorized by law to take
it. - 3 W. S. 391 § 161.

7th There is no averment in said
Scire facias that said William Vincent
and William Kelly committed the
larceny mentioned in said Scire
facias within the jurisdiction of this court,
or that this court has jurisdiction
of said cause.

8th The said Scire facias shows
that judgt. has already been entered
in said cause and the defendants are

required to show why Execution should not issue thereon. and not as the law requires why judgment should not be entered herein.

9th. The Scire facias does not allege or show that the Magistrate taking the Recognizance returned the same into this Court.³³ —

Upon the back of which said Denunner is the following, to wit:

"Dennr to Sci-fa. & Filced this 9th day of Jan 1860. B.S. Miller to Lent"
"Strain & Bull depts attys"

And afterwards to wit on the tenth day of January A.D. 1860. Said day being one of the days of said term of said Court. Certain other proceedings met had and entered of record in said Court in said Cause. in the words and figures following, to wit: =

³³ The People vs W. William Vincent
William Kelly & George Vincent.³³

Thursday January 10th 1860.

Scire facias. = This day again comes the People by the States attorney

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pro tem, and the defendant George Vincent by Strain and Bell his attorneys. - and the court having heard argument of counsel both for and against the sustaining of the demurrer heretofore filed herein by the defendant does order that the said demurrer be sustained. And it is further ordered by the court that leave be and is given to the People to Amend their Scire facias. - And this day also on motion of the State Attorney pro tem the defendant William Vincent and William Kelly, are each three times solemnly called - but do not appear nor any one for them - but make default. And on further motion of the State Attorney pro tem it is ordered by the court that an alias scire facias issue here in against the said William Vincent and William Kelly, returnable at the next term of this court, to which time this cause stands postponed. -

And afterwards, to wit: on the Sixth day of March A.D. 1860. there did issue out of said Court. under the hand of the clerk thereof, and under the seal of said Court, a certain ~~announced~~ writ of habeas facias. which said habeas facias. was and is in the words and figures following, to wit: =

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State of Illinois. La Salle
County and City of La Salle 3rd. —

The People of the State of Illinois,
To The Sheriff of La Salle County =
Greeting =

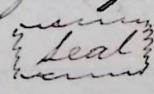
Be it Remembered that heretofore to wit: on the Twenty Eighth day of September, in the year of our Lord one thousand eight hundred and fifty nine, at La Salle, to wit: at the City of La Salle, in La Salle County in the State of Illinois. Complaint under oath was made before Alfred Putnam, one of the Justices of the Peace in and for said County, by John E. Wilson, the said John E. Wilson being then and there, at the time and place aforesaid, first only

R36.

Sworn according to law. that a Larceny
of seven head of cattle viz: one red cow
branded "S" on the hip. Two two year old
steers, one three year old heifer red and
white, two yearling calves, and one
two year old heifer, of the value of one
hundred and twenty five dollars,
and that the said complainant
John E. Wilson had just and reason-
able grounds to suspect that William
Vincens and William Keely were
guilty of said Larceny. = And he
it further remembered that among
the files of the office of the Clerk of the
Recorders Court of the City of La Salle
in La Salle County in the State of
Illinois, is a warrant in the words
and figures following, to wit: =

State of Illinois, La Salle County $\frac{3}{4}$ ss.
The People of the State of Illinois. To
all Sheriff, Coroners and Constables
within said State - Greeting.

Whereas complaint under oath has
been this day entered, before the
undersigned a Justice of the Peace,
within and for said County, by
John E. Wilson, that a Larceny (to wit:
seven head of cattle viz: 2 two year old

steers, one red cow branded "S" on
the hip, one 3 year old heifer red & white,
2 yearling calves, & one 2 year old heifer,
of the value of one hundred & twenty five
dollars, has been committed in
said State and County, and that
said complainant has just and
reasonable grounds to suspect that
William Vincent and William Kelly
are guilty of said larceny, (Three
head of said cattle were feloniously taken
& driven away about one month ago,
& the other three were stolen & driven
away on the 26th inst. You are there-
fore hereby commanded forthwith
to arrest the said William Vincent
and William Kelly and bring them
before me (or in my absence before
some other Justice of the Peace in said
County) to answer to the People of the State
of Illinois on said charge and abide
such further order as may be made
concerning them: And hereby make
due service and return as the
law directs. Given under my
hand and seal of my office in said
County this 28th day of September A.D. 1868
Alfred Putnam  Justice of the Peace

And the said William Vincent and William Kelly having been, to wit, on the twenty ninth day of September in the year of our Lord one thousand eight hundred and fifty nine, brought before the said Alfred Putnam a Justice of the Peace as aforesaid on said charge for Larceny, then and there, to wit, at the city of La Salle in La Salle County, before the said Alfred Putnam Justice of the Peace as aforesaid, in their own proper persons waived an Examination. Whereupon the said Alfred Putnam Justice of the Peace as aforesaid, caused the said William Vincent and William Kelly, to enter into a joint and several Recognizance in the sum of Four Thousand Dollars conditioned as the law directs, and as required by the Statutes in such case made and provided. And the said Recognizance so entered into was filed in the office of the Clerk of the Recorders Court of the city of La Salle in La Salle County on the first day of October in the year of our Lord one thousand eight hundred and fifty nine.

and is in words and figures following to wit: =

State of Illinois La Salle
County } ss. This day personally appeared before the undersigned, one of the justices of the peace in and for said county George Vincent. William Vincent & William Kelly, and jointly and severally acknowledged themselves to owe and be indebted unto the People of the State of Illinois, in the sum of Four Hundred Dollars, to be levied of their goods and chattels, lands, and Tenements, if default be made in the premises and conditions following, to wit:

Whereas the above bounden William Vincent & William Kelly, on the 27th day of September A.D. 1887, waived an examination before Alfred Putnam a Justice of the Peace in and for the County aforesaid, on a charge preferred against them by John E. Wilson for the larceny of seven head of cattle valued at \$125.00, whereupon they were required by said Justice to give bonds

1 1 1 1 0

R. B. 9. as required by the Statute in such cases made and provided, for their appearance to answer to said Charge. Now the condition of this Recognizance is such, that if the above bounden William Vincent & William Kelly, shall personally be and appear before the Resorders Court of the City of La Salle in said County of La Salle on the first day of the next term thereof, to be holden at the Court House in the City of La Salle, on the first Monday of October A.D. 1859, and from day to day thereafter, until discharged by order of said Court, then and there to answer to the said People of the State of Illinois, on said Charge of Larceny, and abide the order and judgment of said Court, and not depart the same without leave, then and in that case this Recognizance to become void, otherwise to remain in full force and virtue. As our hands and seals this 29th day of September A.D. 1859.

Taken entered and acknowledged before me this 29th day of September A.D. 1859.

Alfred Putnam, J.P."

Geo. Vincent

Wm E. Vincent

Wm. H. Kelly

Seal

Seal

Seal

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Which said Recognizance was by the said Alfred Putnam, justice of the Peace as aforesaid, duly certified and delivered to the clerk of the Recorders court of the city of La Salle, on the first day of October A.D. 1859.

And afterwards to wit: on Monday the tenth day of October in the year of our Lord one thousand eight hundred and fifty nine, the same being one of the days of the October of the Recorders court of the city of La Salle, for said year, and for said October Term of said court, being the first and next term of said court after the taking of the above recited recognizance, a certain matter and order was entered of record in said court in words and figures following, to wit:

The People of the State of Illinois
vs William Vincent & William
Kelley } Recognizance for Barring.

This day comes the People
by David P. Jenkins State Attorney
pro tem. and the defendants

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William Vincent and William Kelly being three times solemnly called in open court, come not nor any one for them, but make default. And George Vincent the defendant William Vincent and William Kelly's security on the recognizance heretofore to wit on the twenty ninth day of September A.D. 1857, entered into in this cause before Alfred Putnam a Justice of the Peace in and for the county of La Salle in the State of Illinois being also three times solemnly called in open court to produce the bodies of the said defendants (William Vincent and William Kelly) comes not nor produces the bodies of the said defendants (William Vincent and William Kelly) but makes default. Therefore on motion of the State attorney pro tem it is ordered by the court that the Recognizance herein be forfeited, and that the People of the State of Illinois have and recover of the said William Vincent and William Kelly the sum of Four Hundred

Dollars. And that the People of the State of Illinois have and recover of the said George Vincent the sum of Four Hundred Dollars. the amount so specified in their said Recognizance. And on further motion of the State Attorney pro tem it is ordered by the court that a Writ of Scire facias issue herein to the said William Vincent William Kelly and George Vincent. returnable on the first day of the next term of this court. Commanding them and each of them. to appear and show cause if any they have, why Execution should not issue against them. on the above and foregoing judgment. according to the form force and effect of their said Recognizance. and of the Statute in such cases made and provided."

We therefore in consideration of the premises again command you. that you Summon the said William Vincent and William Kelly. impleaded with

P. 43.

George Vincent) if they shall be found in your County. personally to be and appear before the Recorders Court of the City of La Salle on the first day of the next term thereof. to be holden at the Recorder's court Room in the City of La Salle, on the first Monday in April next. And show cause if any they have. why Execution should not issue against them, on the above and foregoing judgment, according to the form force and effect of the same, and of the Statute in such cases made and provided. And have you then and there this writ. with an Endorsement hereon, in what manner you shall have executed the same, Witness Charles S. Miller Clerk of said court and the seal thereof
at La Salle in said county this
5th day of March A.D. 1860
Charles S. Miller Clerk =

And on the back of which
scirefacias is the following writ:
"The People vs. William Vincent and

P. H. H.

William Kelly, } Amended Scire facias
to April Term 1860, } "The within
named Wm Vincent + } Wm Kelly was
found in my court. Mar 23rd 1860.
F. Warner Shff. By F. W. Mattacks dect."
Filed this 24th day of March AD 1860
to S. Miller, Clerk. "2"

And afterwards to wit on the
the fourth day of April AD 1860. one of
the days of the April Term of said
court. certain other proceedings
were had and entered of record
in said court in said cause in
the words and figures following, to wit:

"The People vs Wm William
Vincent. William Kelly, impleaded
with George Vincent } Wednesday
April 4th 1860. Scire facias.

This day again comes the people
by David P. Jenkins State Attorney
pro tem, and the defendants by E. F.
Bull their attorney, and the defen-
dant George Vincent by his said
attorney, moved the court to continue
the cause as to himself. This day also

P.H.B.

the defendants William Vincent and William Kelly, by E.F. Bull their attorney, moved the court to Quash the alias Scire-facias." -

And afterwards to wit on the sixth day of April AD 1860, one of the days of said April Term of said court. Certain other proceedings were had and entered of record in said court in said cause in words and figures following, to wit:

"The People vs William Vincent & William Kelly pleaded with George Vincent³. Friday April 6th 1860. Scire facias."

This day again comes the People by David P. Jenkins States Attorney pro tem. and the defendants by E.F. Bull their attorney, and the court having fully considered the motion heretofore made herein by defendants attorney to Quash the alias Scire facias. as to William Vincent and William Kelly, does order that the same be and is overruled

And it is further ordered that this cause be continued to the next term in course of this court. ³³ =

And afterwards to wit: on the second day of July A.D. 1860. there was filed and placed with the papers in said cause, the pleas of the defendant George Vincent, which said pleas was and are, in the words and figures following: to wit: ³³

State of Illinois La Salle County & City of La Salle ³³ ss. Records court for said City January Term A.D. 1860. - The People of the State of Illinois vs. William Vincent. William Kelly and George Vincent. ³³ ³³
Scire facias on Recognisance.

pt.

And now comes the said Defendant George Vincent by Strain & Bull his attorney and defends &c. when &c. and says. that judgment ought not to be rendered against him upon the said supposed Recognisance mentioned in said Scire facias herein because he says. the said supposed

P. H. 7

recognizance is not his deed. And
of this he puts himself upon the country
to try. - Straim & Bull. Attys for Geo Vincent.
State of Illinois. La Salle county &
city of La Salle 3rd ss. George Vincent
one of the above named defendants
being first duly sworn according
to Law on oath deposes and says
that above plea by him pleaded is
true in substance and in fact.
Subscribed and sworn to } Geo Vincent,
before me this 9th day of }
January A.D. 1860. }
L. S. Miller - Clerk }

2nd

And for a further plea in that
behalf, by leave of the court for that
purpose first had and obtained
said defendant - George Vincent says
actio non because he says. that there
is no such record now remaining
in the court in manner and form
as the said People have in their
Scire facias herein alleged, and
this he is ready to verify. Wherefore
he prays judgment if the said People
&c, ought to have and maintain their
said action against him.

R. H. S. George Vincent, By Strain & Bull his
Atty =
3rd

And for a further plea in that behalf said Defendant George Vincent by leave &c, comes and says that the said People &c ought not to have their judgment against him the said George Vincent for the said debt aforesaid because he says that although it is true that on the said twenty ninth day of September A.D. 1839, this defendant together with said defendant William Vincent and William Kelly - did execute a recognisance to the People of the State of Illinois, in the sum of Four Hundred Dollars as charged in said Scire facias. Yet said Defendant George Vincent avers that since the time this defendant executed said recognisance, had, before the same was returned into this Court, said recognisance was, without the knowledge or consent of this defendant altered in a material part - to wit, that is to say, when the said recognisance was executed by the

P. H. 9.

defendant as aforesaid, a portion of
the conditions thereof read as follows.
To wit: "Now the condition of this recog-
nizance is such, that if the above
burdened George Vincent & William
Kelly shall personally be " &c.", but that
said portion of said condition has
been so altered as aforesaid, since
the same was recited by this defendant
as aforesaid, without the knowledge
or consent of this defendant, as aforesaid
and before the same was returned into
this Court as aforesaid, as to read
as follows. To wit: "Now the condition
of this recognizance is such that if the
above burdened William Vincent
& William Kelly be " &c." And said
defendant avers that said recognizance
in said scire facias mentioned, and
the said recognizance altered as
aforesaid, are one and the same.
And all this said defendant George
Vincent is ready to verify.

Wherefore he prays judgment if
the said People &c ought to have their
judgment aforesaid. - George Vincent
By Strain & Bull his attys.

State of Illinois, La Salle County &
City of La Salle ³/₄ ss.

George Vincent one
of the above named defendants, being
first duly sworn according to law
on oath says that the above ~~to~~ forego-
ing plea by him pleaded, in substance
and in fact.

Subscribed & sworn to }
before me this 9th day
of January A.D. 1866
L. S. Miller - Clerk

George Vincent

4th

And for a further plea &c by
leave &c said defendant George Vincent
comes & defends &c and says that said
People &c ought not to have their judg-
ment against him, said George
Vincent, for the debt &c aforesaid
because he says, that since the time
said defendant entered into said
supposed recognizance in said
scire facias mentioned, before said
Alfred Putnam Justice of the Peace
&c. and before the said supposed

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recognisance was returned into this Court by said Justice as alleged in said scire facias. the said supposed recognisance was without the knowledge or consent of this defendant altered in a material part thereof in this. To wit: At the time of the execution of ~~the~~ said supposed recognisance by this defendant a portion of the condition thereof was as follows. To wit: "Now the condition of this recognisance is such that if the above named George Vincent & William Kelly shall personally be "re. but that the same was so altered as aforesaid before the same was returned into this Court as aforesaid after the same was executed by this defendant as aforesaid, and without the knowledge or consent of this defendant as aforesaid, as to read as follows. To wit: "Now the condition of this recognisance is such, that if the above named William Vincent & William Kelly shall personally be "re. and that the said recognisance so altered as aforesaid

P. 32.

is the only recognisance ever ~~executed~~ executed by this defendant in this cause. and is the same recognisance now on file among the papers of this cause, and that is set out in the said Scire facias herein

And all this said defendant is ready to verify. Wherefore he prays Judgment if the said People ought to have their said Judgment aforesaid &c. =

George Vincent

By Strain & Bull his attys.

State of Illinois, La Salle County &
City of La Salle³ss. George Vincent

one of the above named defendants being first duly sworn according to Law, on oath says that the above and foregoing plea by him pleaded is true in substance and in fact.

Subscribed & sworn } George Vincent,
to before me this 9th
day of Jan^y. AD 1860
J. S. Miller - Clerk }

5th
11

And for a further plea &c by leave &c

P. 33.

said defendant George Vincent says said People ought not to have their judgment against him, because he says that since the time this defendant entered into said supposed recognisance in said Scire facias mentioned before said Alfred Putnam Justice of the Peace as aforesaid, the said recognisance was without the knowledge or consent of this defendant, altered in a material part thereof, in this to wit: At the time of the execution of said recognisance by this defendant a portion of the condition thereof read as follows, to wit:

"Now the condition of this recognisance is such that if the above bounden George Vincent & William Kelly shall personally be" &c but that the same was so altered as aforesaid, without the knowledge or consent of this defendant as aforesaid as to read as follows, to wit: "Now the condition of this recognisance is such that if the above bounden William Vincent & William Kelly shall personally be, and that the said recognisance so altered as aforesaid, is the only recognisance ever presented by this

P. 5H

defendant in this cause, and is the
same recognisance now on file among
the papers of this cause, and that is set
out in the Scire facias herein, and all
this the said defendant George Vincent
is ready to verify. Wherefore he prays
judgment if the said People be ought
to have their said judgment of record.
George Vincent
By Strain & Bull his Attys

State of Illinois La Salle County & City of
La Salle^{Ills.}

George Vincent one of the above
named defendants being first duly
sworn according to law, on oath
deposes and says that the above
and foregoing plea by him
pleaded is true in substance and in
fact - = George Vincent
Subscribed & sworn to before me this
9th day of January A.D. 1860.
W. S. Miller, Clerk

6th And for another and further
plea in that behalf by leave of the court
for that purpose first had and

P. 88. - obtained. said defendant George Vincent comes and says that the said People &c ought not to have their judgment against him the said George Vincent for the debt aforesaid because he says there is no such record of recovery or forfeiture against the said George Vincent at the suit of said People &c upon any recognisance executed by said George Vincent as set forth in the said Scire facias herein. And this said defendant George Vincent is ready to verify. Wherefore he prays judgment if the said People &c ought to have their judgment aforesaid &c

George Vincent
By Strain & Bull his attys -

State of Illinois, La Salle county & City
of La Salle ss. George Vincent one
of the above named defendants
being first duly sworn according
on oath deposes and says that
the above and foregoing plea by
him pleaded is true in sub-
stance and in fact.

George Vincent,

P. 36,

Subscribed and sworn to before
me this 9th day of January A.D. 1860
W. S. Miller Clerk -

7th And for a further plea in that behalf
by leave to said defendant George Vincent
comes and says that said People &c ought
not to have their judgment against the
said George Vincent for the debt aforesaid
because he says that there is no such record
of recovery or forfeiture against him the
said George Vincent at the suit of said
People &c in manner & form as the said
People &c have complained against him,
upon any recognizance presented by him
the said George Vincent, and that the
said defendant George Vincent is
ready to verify. Wherefore he prays
judgment if the said People &c ought
not to have their judgment aforesaid
&c - George Vincent
By Strain & Bull his attys.

State of Illinois, La Salle county & City of La Salle.

George Vincent one of the above
named defendants, being first
advised sworn according to law on
oath says that the above and

1257

foregoing plea by him pleaded is
true in substance and in fact.
"Subscribed & sworn to. "George Vincent"
before me this 9th day
of January A.D. 1860.
L. S. Miller - Clerk"

And upon the back of which said
several pleas is the following writ:
"The People vs W. George Vincent et al"
"Pleas of George Vincent"
"Filed this 2nd day of July A.D. 1860"
"L. S. Miller - Clerk"

And afterwards, to wit, on the second
day of July A.D. 1860, said day being
one of the days of the full Term of said
court, certain other proceedings
were had and entered of record in
said court in said cause in
the words and figures following
to wit:

"The People vs W. William Vincent
& William Kelly entered with

P. 58. George Vincent ³/₄ Monday July 2nd
1860. Leinfacia.

This day comes the People by David
P. Gentrie their attorney, and the
defendant George Vincent by R. F. Bull
his attorney, and by agreement a
jury is waived and this cause is sub-
mitted to the court for trial. And
by further agreement the argument
in this cause is to be heard by the court
during vacation, and judgment
rendered accordingly³—

And afterwards, to wit: on the thir-
teenth day of October A.D. 1860, there was
filed and placed with the papers
in said cause, a certain Stipen-
dation between the parties in the
words and figures following to wit:

"State of Illinois, La Salle County
& City of La Salle, ss. The People of the State
of Illinois vs. George Vincent Implea-
ded with William Vincent & William
Kelly, ³/₄ Before the Recorders Court of
the City of La Salle, at the October Term
thereof A.D. 1860, Suit on Recognizance

(P. 59.)

It is mutually agreed by the parties hereto. that in case the Court shall deem the Recognizance void by reason of the alteration thereof, that judgment may be rendered by the Court for the defendant - And if the Court shall be of opinion that the said Recognizance was not rendered void by reason of the aforesaid alteration, the Court may enter a judgment for the Plaintiff - And it is understood and agreed that either party may take an appeal or sue out a writ of Error & take the same to the Supreme Court for revision, the same as allowed by law in other cases without any prejudice from this agreement, there being no intention on the part of either party to waive any of their legal rights by this agreement, except as to the pleadings it being distinctly understood that the alteration of the recognizance as charged in the pleas is distinctly raised, and is before the Court for its consideration and is admitted to have been made. - Agreed to by each of us this 13th day of October A.D. 1860.

"D. P. Jenkins. State Atty General" }
"E. H. Bull. Atty for H. Vincent" }

And upon the back of which Stipulation
there is the following, to wit:

"The People vs. W. Geo Vincent & Co.
Stipulation - Filed October 13th 1860
W. S. Miller Clerk"

And afterwards to wit on the
thirteenth day of October A.D. 1860 one of
the days of the October Term of said court,
certain other proceedings were had
and entered of record in said
court in said cause, in the words
and figures following, to wit:

"The People vs. W. William Vincent &
William Kelly impleaded with George
Vincent³, Saturday October 13th 1860.
Scire facias. - This day again comes
the People by the State attorney pro tem.
D. P. Gubins, and the said William
Vincent and William Kelly still failing
to appear, and having made default
at the January Term A.D. 1860 of this
court, and it appearing to the court
that two returns upon Scire Facias
issued against the said defendants,
"not found" have been made by the

(P. 61)

Sheriff of La Salle County, and the said William Vincent and William Kelly still failing to show cause why Execution should not issue against them upon the judgment entered herein against them and the said George Vincent at the October Term AD 1859 of this Court for the sum of Four Hundred Dollars on motion of the States Attorney for then it is ordered by the Court that Execution issue against the said William Vincent and William Kelly on said judgment according to the form force and effect thereof.

And this day also comes the said George Vincent by E. F. Bull his attorney, and the Court after argument heard does find the issues joined in favor of the People of the State of Illinois. Therefore it is ordered by the Court that Execution issue also herein against the said George Vincent upon the said judgment entered in this Court at the October Term AD 1859, against the said William Vincent, and William Kelly and George Vincent for the sum of Four Hundred Dollars according to the

(162) form force and effect thereof:—
The defendant George Vincent by
E. F. Bull his Attorney now moves the
court for a new trial, which motion
is overruled by the court. For overruling
said motion said defendant E. F. Bull.
And the said defendant also moves the
court in arrest of Judgment, which mo-
tion is overruled by the court. For
overruling said motions said defendant
E. F. Bull, and prays an appeal to the Super-
ior Court, and offer on his bond
in six hundred dollars John
Armour, who is accepted by the Court
and bond ordered to be filed within
thirty days from the rising of this Court
Also bill of Exceptions to be presented
within thirty days from the rising
of this Court²³ =.

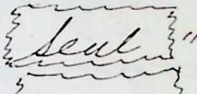
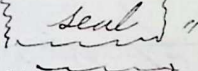
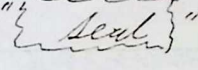
And afterwards, to wit: on the twenty
third day of October A.D. 1869, there was
filed said bill and placed with the
papers in said cause, the bond of
the defendant George Vincent in
the words and figures following.
To wit: "Know all men by these

(P. 63.)

presents that we George Vincent and John Amon are held and firmly bound unto the people of the State of Illinois in the penal sum of Six Hundred Dollars. for the payment of which well and truly to be made, we do hereby bind ourselves our heirs, executors and administrators, jointly and severally, firmly by these. Sealed with our seals and dated this Eighteenth day of October A.D. 1860. -

The condition of the above obligation is such that whereas the said People of the State of Illinois lately at the October Term of the Recorders Court of the City of La Salle in the County of La Salle and State of Illinois for the year A.D. 1860. recovered a judgment against the above bounden George Vincent for the sum of Four Hundred Dollars, in debt on a recognisance, the said George Vincent has prayed an appeal to the Supreme Court of the State of Illinois, which appeal was granted by said court. Now if the said George Vincent shall well and truly pay and satisfy

(1964) the judgment cost. interest and damages in case the said judgment shall be affirmed. and shall also duly prosecute his said appeal to effect. and without delay. then this obligation to be void otherwise to be and remain in full force virtue and effect."

"George Vincent" 
"John Armour" 
"Seal" 

And upon the back of which said Bond is the following to wit:

"The People vs. George Vincent—
Filed this 23rd day of October AD 1860"
"L. S. Miller Clerk"

And be it further Remembered that afterwards to wit on the twenty fourth day of October AD 1860. there was filed and placed among the papers in this cause a bill of Exceptions in the words and figures following to wit:

"State of Illinois. La Salle county & City of La Salle 3rd ss. Records

1065.

Court for said City October Term
Thursd^y AD 1860. The People vs W.
George Vincent-William Vincent &
William Kelly. Scire Facias in Recog-
nizance. Be it Remembered that
on the days of October AD 1860
the same being one of the days of said
Term of said Court. said cause
came on for trial by the Court a jury
having been by the parties waived.
Whereupon the plaintiffs to maintain
the issues on their part offered in
evidence a recognizance in the
words and figures following. To wit:

"State of Illinois. La Salle County ss.
This day personally appeared before
the undersigned one of the justices of
the Peace in and for said County, George
Vincent-William Vincent & William Kelly
and jointly and severally acknowledged
themselves to owe and be indebted unto the
People of the State of Illinois in the sum
of Four Hundred dollars, to be levied
of their Goods and Chattels, Lands and Ten-
ements, if default be made in the prem-
ises and conditions following. To wit:

Whereas the above bounden William
Vincent & William Kelly on the 29th day

of September AD 1859, waived an Examination before Alfred Putnam a Justice of the Peace in and for the County aforesaid on a charge preferred against them by John E. Wilson for the larceny of seven head of cattle valued at \$125⁰⁰. Whereupon they were required by said Justice to give bonds, as required by the Statute in such case made and provided for their appearance to answer said charge.

Now the condition of this Recognizance is such, that if the above bounden William Vincent & William Kelly, shall personally be and appear before the Recorders Court of the City of La Salle in said County of La Salle, on the first day of the next Term thereof, to be holden at the Court House in the City of La Salle on the first Monday of October AD 1859, and from day to day thereafter, until discharged by order of said Court, then and there to answer to the said people of the State of Illinois, on said charge of larceny - and - abide the order and judgment of said Court, and not depart the same without leave then and in that case this recognizance to become void; otherwise to remain in full force and virtue. As Witness

(P. 67.)

our hands and seals this 29th day of
September A.D. 1859.

"Taken entered and acknowledged
before me this 29th day of
September A.D. 1859

Alfred Putnam J. P.
J. P.

"Geo Vincent

Seal

"Wm E. Vincent

Seal

"Wm K Kelly

Seal

to the reading of which recognizance the
defendant by his counsel then & there objec-
ted, which objection was by the court then
& there overruled by the court and
said recognizance was permitted to
be read in evidence, to which said
ruling of the court the defendant then
& there excepted.

Be it further remembered that the
pleaistiff further to maintain the issues
on his part produced as a witness on
the stand Alfred Putnam Esq who
testified in substance that he was a
Justice of the Peace, that he was the justice
who took the recognizance in evidence.

That sometime after the execution of the
Recognizance by the defendant, he altered
or changed the following clause in the
condition of the Recognizance to wit:

"Now the condition of this recognizance
is such that if the above named
William George Vincent & William Kelly shall" &c

(P. 68)

so as to make the recognisance read William Vincent, whereas it formerly read George Vincent. That at the time of its execution it read George Vincent and continued to read so for some time thereafter. That some two or three weeks after its execution he erased the word George in said recognisance and inserted the word or name William. That such erasure was made without the knowledge or consent of the defendant. That the recognisance by such erasure was so changed that it read as a recognisance for the appearance of William Vincent at the next term of this Court after its execution. Whereas at the time of its execution it read as a recognisance for the appearance of George Vincent at the same.

Be it further remembered that the defendant to maintain the issue on his part produced as a Witness E. H. Bell who being duly sworn testified in substance as follows to wit:

That he was present at the execution of said recognisance as attorney for William Vincent and William Kelly

(P. 69)

that the same was drawn up by Alfred Putnam the justice. That he saw the same executed, but did not pay particular attention to the manner in which it was filled up more than to look at the penal sum. That some two or three days after its execution he called in said Putnam's office, asked to see the bond, then for the first time examined it carefully and saw that the condition of the bond read as follows, to wit: "Now the condition of this recognizance is such that if the above bounden George Vincent & William Kelly shall personally be" &c. This was the first time witness critically examined the bond. That the next time witness saw the same was a day or two before or a day or two after the commencement of the next term of the court succeeding the date of the bond. That he then found the word or name George in said position before Vincent had been erased and the word or name William written above the same, so that whereas the bond was originally conditioned for the appearance of George Vincent & William

(P. 70) Kelly at the next term of this Court succeeding the date of said bond, by such alteration it was made conditioned for the appearance of William Vincent and William Kelly at said term.

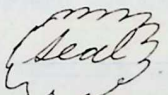
Witness did not see the alteration made but it appeared to be in hand writing of Alfred Putnam Esq. the Justice who took the recognisance -

No other or further testimony was offered or produced by either party. Whereupon the defendant by his counsel moved the Court to exclude said said recognisance from the evidence in this cause, which motion was by the Court overruled. To which said ruling of the Court the defendant by his counsel then and there excepted. And the Court thereupon entered a judgment a judgment against the defendant for the sum of \$400. debt, and ordered Execution to issue for the collection of the same with costs of suit. and the defendant then and there made a motion for a new trial which motion was by the Court overruled. To which said ruling of the Court the defendant then and there excepted.

(P. 71)

And the defendant then and there made
a motion in arrest of judgment, which
motion was by the Court there and it
there overruled, to which ruling of the
Court the defendant then and there
Accepted, and prays that this his bill
of Exceptions may be signed and sealed
by the Judge of said Court, and made
a part of the records of said Cause,
which is accordingly done.

Rec Oct 22. 1860

Wm Chumason. 

Judge of the Recorders Court of
the City of La Salle -

And upon the back of said bill of
Exceptions is the following, to wit:

"The People vs George Vincent imp the
- "Bill of Exceptions"

"Filed October 24th AD 1860"

"L S Miller Clerk"

P. 13

State of Illinois } ss
LaSalle County & City }

I, Charles S. Miller
Clerk of the Recorder's Court of the City of
LaSalle in said County and State do
hereby certify that the above and foregoing
is a full, true and correct copy of the
pleas, proceedings, records, orders and bill
of exceptions as the same appear from the
records now remaining in my office and
from the papers on file ~~there~~ in a certain
suit lately pending in the Recorder's Court
of said City of LaSalle wherein "The People
&c" were plaintiffs and George Vincent,
William Vincent and William Kelly
were defendants

Witness my hand and the seal
of said court this 17th day
April A.D. 1861.

Charles S. Miller Clerk

per James Thomas Dep. Clk.

State of Illinois } 38
Supreme Court } Third Grand
Division thereof April Term A.D. 1868

George Vincent. Appt. }
vs: }

The People &c - Apples - } Appeal from
Records Court of the City of LaSalle -

And now comes the said
Appellant by E. F. Bull his attorney and
assigns the following errors in the
above and foregoing record of record
against said appellant. viz:

- 1st The court erred in refusing to grant the
Habeas corpus -
- 2nd The court erred in permitting said recognizance
to be read in evidence against appellant
- 3rd The court erred in refusing to exclude the
recognizance from the evidence in said
case the same having been altered since
its execution -
- 4th The court erred in entering judgment against
appellant -
- 5th The court erred in refusing appellant
new Trial

(over)

Errors Brought over

- 6th The court erred in overruling motions
in arrest of judgment -
7th The judgment entered by the court against
appellant is erroneous in point of form -
Is not the fact, that ought to be rendered on
a recognizance

E. H. Bull
App'to. Atty

Supreme Court of the State of Illinois
April Term A.D. 1861

George Vincent
vs
The People &c } Appeal from Records
Court of the City of St. Louis

And now comes the said
defendants in error by D. T. Jones
States Attorney and says that in
the record, judgment & proceedings
aforesaid no error hath intervened
wherefore they pray judgment &c

D. T. Jones
States atty

12. 6. 27 179
Supreme Court.

George Vincent. App't.
vs:

The People re. app'ees

Transcript-Record

Filed Apr 18. 1861

Richard
Clark

E. F. Bull

Atty for App't.