

No. **12392**

Supreme Court of Illinois

Besemer, et al.

vs.

People.

71641  7

4
Charles Besmer et al
vs.
The People &c.

4 P D.

12392

Prepared

1854

Charles Beremer &
 Albert Sherrin }
 The People &c } Ena to the
 Circuit Court
 of Bureau County

And the said Beremer & Sherrin
 (who were the defendants in the Court
 below) now come and say, that in
 the record and proceedings aforesaid
 there is manifest error in this to wit.

- 1st That the Recognizance was void.
 - 2^d That the two Scire facias were void.
 - 3^d That the 2^d Scire facias was out-
 issued two days before the term of the
 Court, at which final Judgment was rendered
 - 4th that 2^d Scire facias was a nullity
 not being under the Seal of the Court or Clerk
 - 5 That the Judgment against defendants
 was premature and illegal
 - 6th That the Judgment was given in
 favor of the People. When by the laws
 of the land it ought to have been
 given in favor of the Plaintiffs in error
 therefore they pray that said Judgment
 and order for execution may be reversed
 and annulled, and they restored to all things
 they have lost by reason thereof
- Milton T. Peters atty
 for Plaintiffs in error

Supreme Court

Charles Rosemer
vs Albut - Sherwin
19 cna to Dmca

The People & D

Assignment of
Errors

Filed June 9th 1854.

L. Leland Clk

By P. K. Leland Depy

Be it Remembered that on 3^d day of
October A^d 1853. Came Asmyr Smith acting in
the Capacity of Sheriff, and as the Sheriff of the
County of Bureau in the State of Illinois,
and Filed in the Office of the Clerk of the
Circuit Court of Bureau County in the State
of Illinois, a Bond or Recognizance, which
Said Bond or Recognizance is in the words and
figures following to wit.

State of Illinois }
Bureau County } Be it Remembered that on this
2nd day of April A^d 1853. before
me the Subscriber Sheriff of Said County, personally
appeared Charles Bessimer, as principal & Albert
Sherwin as Security. who severally acknowledge
Themselves to owe to the people of the State of
Illinois the Sum of Three Hundred Dollars.

To be levied upon their goods and Chattels
lands and Tenements if default be made in the
Condition following (To Wit) Whereas the Said
Sheriff has this day arrested the Said Charles
Bessimer, upon a writ of Capias ad respondendum
Issued from the Circuit Court of Said Bureau
County for and Concerning the Crime of Adultery
of which he stands charged by a certain Bill
of Indictment preferred against him by the
Grand Jury of Said County.

Now Therefore if the Said Charles Bessimer
Shall well and truly be and appear on the first
day of the next Term of the Said Court, to be
holden at the Court House in Princeton, in and
for Said County on the first Monday in October
next. Then and there in our Said Court, to answer
unto the Said Bill of Indictment, and abide the order
of the Court, and not depart the Court without leave
Then this Recognizance to be void, Otherwise to
remain in full force and effect.

Chas Bessimer *(Seal)*

Taken Signed and acknowledged Albert Sherwin *(Seal)*
before me this 2^d day of April

A.D. 1853. Osmyrn Smith

Sheriff Bureau County. Ill

Filed before the Hon^{le} Edwin S. Belland
Judge of the Ninth Judicial Circuit of the Circuit
Court of the State of Illinois, at the October Term
of the Said Circuit Court in and for the County of
Bureau and State of Illinois, begun and held
at the Court House in Princeton in Said County
on Tuesday the fourth day of October in the
Year of Our Lord One Thousand Eight Hundred
and fifty Three

Present Hon^{le} Edwin S. Belland Judge

Edward M. Parker Clerk

Osmyrn Smith Sheriff

Wm. H. S. Wallace Attorney

The people

vs. Indictment for
Charles Besimer & Adultery,
Olga Toddard

This day came W. H. L. Wallace, the attorney
for the people, and it appearing to the Court, that the
said defendant Charles Besimer, had been arrested
and held to bail herein, the said defendant is
ordered to be called, and the said defendant
Charles Besimer, being three times solemnly called
to come into Court here and answer according to the
tenor of his said Recognizance, comes not but
makes default. And the said Albert Sherwin
Security in the said Recognizance being three times
solemnly called to bring forth in Court here the
body of the said Charles Besimer, according to
the tenor and effect of the said Recognizance,
brings him not, but makes default. It is therefore
further considered by the Court, ^{that said Recognizance be forfeited it is}
considered by the Court, that the said people of the
State of Illinois, have and recover of the said
Charles Besimer and Albert Sherwin, the sum of
Three Hundred dollars, the amount of the said
Recognizance, and also all their costs and
charges in and about their suit in this behalf
expended. And it is further considered by the
Court that a scire facias be issued herein against
the said defendants, returnable to the next term
of this Court, requiring them to show Cause if any

they have. Why the Said People shall not have
Prosecution against them for the amount of the said
Recognizance and Costs as aforesaid.

On the 16th day of December AD 1853
Scirefacias Issued Out of the office of the Clerk of
the Cir. Court. Court of Said Bureau County against
Said Charles Besimer. & Albert Sherwin. in the
words and figures following to wit.

State of Illinois } The People of the State of Illinois
Bureau County } To the Sheriff of Bureau County
Greeting -

Whereas heretofore to wit on the second
day of April AD 1853 Came before Asmyr Smith
Sheriff of Said County of Bureau. acting in the
Capacity of and as the Sheriff of Said County.
Charles Besimer as principal. and Albert Sherwin
as Security. the said Charles Besimer having been
duly arrested and Taken in Custody of. and by said
Sheriff. By virtue of a certain writ of Capias. duly
Issued Out of the Office of the Clerk of the Circuit
Court. of Said Bureau County. and directed to the
said Asmyr Smith Sheriff of Said Bureau County.
Commanding him to Take the Body of the said
Charles Besimer and him safely Keep so that he have
him to appear before the Circuit Court of Said Bureau
County on the ^{first day} the Then next Term Thereof -

to be holden on the first Monday in the month of
October A.D. 1853. to answer unto the people of the
State of Illinois. for and concerning the crime of
Adultery. with which he had been charged before
said Court. by the Grand Jury of said Bureau County.
and on which said writ was endorsed by the Order
of the said Circuit Court, that the said Charles
Besimer should be admitted to bail in the sum of
Three Hundred Dollars. and the said Charles Besimer
and Albert Sherwin. did then and there in said County
of Bureau. Sign Seal Execute. acknowledge and
deliver to the said Asmyr Smith. Sheriff as aforesaid
a certain Bond or Recognizance. whereby they severally
acknowledge themselves to owe to the People of
the State of Illinois. the sum of Three Hundred
Dollars. to be levied of their goods and chattels
lands and tenements for the use of the People
aforesaid, if default should be made in the
condition following to wit. If the said Charles
Besimer shall well and truly be and appear
on the first day of the next term of the said Court.
to be holden at the Court House in Princeton in
and for said County. on the first Monday in October
next. then and there in our said Court. to answer
unto the said bill of Indictment. and abide the
Order of the Court and not depart the Court
without leave. Then this Recognizance to be void
otherwise to remain in full force and effect.

And whereas the said Asa W. Smith Sheriff as aforesaid. Caused the said Bond or Recognizance to be duly filed of Record in the office of the Clerk of the Circuit Court in the said County of Bureau on the Third day of October A.D. 1853. And whereas at the October Term A.D. 1853 of the Circuit Court in and for the said County of Bureau. the said Charles Besimer being three times solemnly Called. Came not. but utterly failed to be and appear as required to do by the said Recognizance. And the said Albert Sherwin having failed and neglected to present the body of Charles Besimer before said Court. The said Bond or Recognizance was adjudged by the said Court to be forfeited.

We therefore Command you to Summon the said Charles Besimer and Albert Sherwin. if to be found in your ^{County} personally to be and appear before the Judge of our said Circuit Court on the first day of the next term thereof to be holden at the Court House in Princeton in said County on the second Monday in the month of January next to show Cause if any they have why the said people of the State of Illinois shall not have Execution against them severally for the said several sums for which they are respectively bound according to the force form and effect of their said Recognizance and further to do and receive whatever our said Court shall then and there Consider and adjudge

against them in that behalf. Hereof fail not
and make return of this writ with an endorsement
thereon of the time and manner of serving the same
on or before the first day of the term of said Court,
to be holden as aforesaid.

Witness Edward M Fisher Clerk of
our said Court, and the Seal thereof at Princeton
in said County this 16th day of December 1853
S.S. Edward M Fisher Clerk

Copy of Sheriffs Return on Scifa

The within named Charles Besmer and
Albert Sherwin, is not to be found in my
County January 9th A.D. 1854.

Wm Smyth Smith Sheriff
By C. Chamberlain Deputy

Pleas before the Hon^{ble} Edwin S. Seland Judge
of the Ninth Judicial Circuit of the Circuit Court of the
State of Illinois, at the January Term of said Circuit
Court, begun and held at the Court house in Princeton
in the County of Bureau on Tuesday the Tenth day
of January in the Year of our Lord One thousand
Eight Hundred and Fifty Four.

Present Hon^{ble} Edwin S. Seland Judge
Edward M Fisher Clerk
Wm Smyth Smith Sheriff
Wm H S Wallace States atty

The People

vs Scifa or Recogniz-
Charles Besimer &
Albert Sherwin

Now Comes W. H. A. Wallace the
attorney for the people and on motion of said attorney
it is considered by the Court. that this cause be
continued to the next term of this Court, and that
an alias Scirfacias be issued herein returnable
to said term

State of Illinois }
Bureau County } The People of the State of Illinois
To the Sheriff of Bureau County Greeting,

Whereas heretofore to wit on the second
day of April A.D. 1853. Came before Asmyr Smith
Sheriff of said County of Bureau acting in the Capacity
of and as the Sheriff of said County. Charles Besimer
as principal, and Albert Sherwin as security.
The said Charles Besimer having been duly
arrested and taken in Custody of and by the said
Sheriff. by virtue of a certain writ of Capias
duly Issued out of the office of the Clerk of the
Circuit Court of said Bureau County and directed
to the said Asmyr Smith Sheriff of said Bureau
County Commanding him to take the body of said
Charles Besimer, and him safely keep. So that

he have him to appear before the Circuit Court
of Said Bureau County on the first day of the
(then) next term thereof to be held on the first
Monday in the month of October A.D. 1853. to
answer unto the people of the State of Illinois, for
and concerning the crime of Adultery with which he
had been charged before said Court, by the Grand
Jury of Said Bureau County, and on which said
mit was endorsed by the order of the said Circuit
Court, that the said Charles Besimer should be
admitted to bail in the sum of Three Hundred
Dollars, and the said Charles Besimer and Albert
Sherwin did then and there in said County of
Bureau, sign seal execute acknowledge and
deliver to the said Ormyn Smith Sheriff as aforesaid
a certain Bond or Recognizance whereby they
severally acknowledge themselves to owe to the
people of the State of Illinois, the sum of Three
Hundred Dollars, to be levied of their goods
and chattels lands and tenements for the use
of the people aforesaid if default should be
made in the Condition following to wit.
If the said Charles Besimer shall well and
truly be and appear on the first day of the
next term of the said Court to be holden at
the Court House in Princeton in and for said
County, on the first Monday in October next
then and there in our said Court to answer.

unto the Said Bill of Indictment and abide the order of the Court, and not depart the Court without leave. Then this Recognizance to be void otherwise to remain in full force and effect.

And whereas the Said Amyn Smith Sheriff as aforesaid caused the Said Bond or Recognizance to be duly filed of Record in the office of the Clerk of the Circuit Court in the Said County of Bureau on the third day of October A.D. 1853.

And whereas at the October Term A.D. 1853 of the Circuit Court in and for the Said County of Bureau the Said Charles Basmer being three times solemnly called. Came not but utterly failed to be and appear as required to do by the Said Recognizance, and the Said Albert Sherwin, having failed and neglected to present the body of Charles Basmer before Said Court, the Said Bond or Recognizance was adjudged by the Said Court to be forfeited.

We therefore Command you to Summon the Said Charles Basmer and Albert Sherwin if to be found in Your County, personally to be and appear before the Judge of our Said Circuit Court on the first day of the next term thereof to be holden at the Court House, in Princeton in Said County on the fourth Monday of March Instant; to Show Cause if any they have why the Said people of the State of Illinois

The within named Charles Peasner and Albert
therein not named in my County March 21st Ad 1854
Origny Smith Sheriff
184 & Chas. Baker Deputy

Shall not have Execution against them severally
for the said several sums for which they are
respectively bound, according to the force form
and effect of their said Recognizance, and
further to do and Receive whatever Our said
Court shall then and there Consider and adjudge
against them in that behalf.

Hereof fail not and make return of this
writ with an endorsement thereon of the time and
manner of serving the same on or before the
first day of the Term of said Court, to be holden
as aforesaid. Witness Edward M. Fisher Clerk of Our
said Court and the Seal thereof at
Princeton in said County this 24th day
of March Ad 1854.

Edward M. Fisher Clerk

Takes before the Hon^{ble} Edwin S. Leland Judge
of the Ninth Judicial Circuit of the Circuit Court
of the State of Illinois. at the March Term of said
Circuit Court, begun and held at the Court House
in Princeton in Bureau County, on Monday the
Twenty Seventh day of March in the Year of our
Lord One thousand Eight Hundred and fifty four

Present Hon^{ble} Edwin S. Leland Judge

Edward M. Fisher Clerk

Origny Smith Sheriff

W. H. & Wallace States atty

The People

vs Scifa
Charles Besmer &
Albert Sherwin

Now Comes Wm H Wallace Attorney
for the people, and it appearing to the Court that
Alias Scifacias herein had been returned Endorsed
dependants not found, and Said dependants being three
times Solemnly Called, Come not but make default
It is considered by the Court, that the Said people
have execution herein against Said dependants
for the Collection of the Judgment herein before
rendered against them.

State of Illinois 
Bureau County  J Edward M Fisher Clerk
of the Circuit Court in and for the County and
State aforesaid do hereby Certify that the foregoing
Transcript Contains the full and Complete Record
of the above Entitled Cause as of Record & on
file in my office. In witness whereof I have
hereunto Subscribed my name and
attached the Seal of Said Court at
Princeton in Said County This 2^d day
of June AD 1854

Edward M Fisher
Clerk

Clarks Fees

Transcript 24 folio \$ 2.40

Cptt & Seal

\$ $\frac{25}{2,75}$ paid by M. J. Peters
C. M. Fisher clerk

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The People
vs
Boomer + Shewin

Transcript Bn Ct Ct

Filed June 9th 1854.
L. Leland Clk.
By P.K. Leland Depy.

Prepared

Besemer et al.

v.
The People.

Error to Bureau.

Petition for writs in Error.

The negligence void - does not
show a crime - Adultery not a
criminal offence.

The writ was not issued
in time. Should have been issued
10 days before Court.

2nd Seize was not under Seal.

12 Illinois, 232.

Halluc for the People.

Admits the 2nd writ to be void - not
being under Seal.

Deserter v. The People.

Good to business

Good to business

Good to business

Good to business

Good to business

Good to business

Good to business

Good to business

Good to business

Good to business

Good to business

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of Bureau Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of Bureau — county, before the Judge thereof, between *The People of the State of Illinois* —

plaintiffs and *Charles Kesner & Albert Sherwin*

defendant *S*, it is said manifest error hath intervened, to the injury of the aforesaid *defendants*

as we are informed by *their* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the *Monday in June* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. **SAMUEL H. TREAT**, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *7th* day of *June* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*four*.

S. Leland Clerk of the Supreme Court.

By *P. K. Leland* Dep. Clk.

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Charles Kesimer et al
vs.
The People &c.
 writ of error

Filed June 9th 1854.
L. Leland Clk.
By P. K. Leland Sg

Charles Besemer }
 Albert Sherwin } Error to the Circuit
 vs } County Bureau County
 The People v. }

The above case is a writ taken by the plaintiffs in Error from the judgment of the Circuit Court of said County, rendered against the plaintiffs in Error at the March Term 1854 on a scire facias on a recognizance, executed by Charles Besemer as principal and Albert Sherwin as security -

Conditioned for the appearance of the said Besemer at the October Term 1853 of said Court to answer a bill of indictment for the crime of adultery, preferred against him by the Grand Jury of said County. The Recognizance was taken by the Sheriff of said County on the 2nd April 1853 and duly filed in said Court. At the October Term 1853 said defendant not appearing judgment by default was entered up against him and his security, and an order for a scire facias. A scire facias was issued against them returnable to the January Term 1854 of said Court, which was duly returned not found as to both debts. A scire facias was issued returnable to the March Term 1854 of said Court, which was returned not found on the 28th March inst. - and thereupon the People had judgment for an execution to issue against both of the above debts.

The plaintiffs in Error admit that the Recognizance & scire facias are in due form. Except that the crime specified for which the defendant stood charged, was the crime of Adultery, and the scire facias or =

against the defendant to appear before the
 Judge of the Circuit Court; and not the
 Circuit Court. These objections apply to both
seizure processes. The last seizure process was
 not issued until the 24th March, and was
 returnable on the 27th March - an interval
 of only three days, and it was not issued
 under the seal of the Court or of the Clerk of the
 Court; but there was an entire absence
 of any seal of any kind. It is assigned for
 error, that the Court erred in that the Rec-
 ognizance was void - that the seizure pro-
cesses were both void. That two days had not
 elapsed after the issuing of the 2nd seizure
process, when the judgment was rendered.
 - That the 2nd seizure process is a nullity, - not
 being under the seal of the Court. &c. &c.

Willard & Atkins Attys for
Pltiffs in error

Supreme Court

Charles Bessemer

Albert Freeman

vs 3 Lem & Barnes

The People, &c.

Defendants

Filed June 9th 1854.

L. Deland Clk.

By P.H. Deland atty.

Supreme Court at Ottawa
of Illinois June Term 1854

Charles Beremee &	}	Over to the
Albert Sherwin		Bureau County
"		Cir Court
The People &c	}	

I do hereby enter myself security
for costs in the above cause,
and acknowledge myself bound
to pay, or cause to be paid, all
costs which may accrue in the
above action either to the opposite
party, or to any of the officers
of this Court, in pursuance of
the laws of this State

June 9th 1854 -

(Seal)
L. Whitman

Bremer & Sherrin
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The People & c

Bond for costs

Filed June 9th 1854.

L. Leland Clk.

By P. W. Leland Secy

State of Illinois. Supreme Court. 3rd Grand Division
June Term A.D. 1854.

Charles Resner &	}	plffs in error
Albert Sherrin		
as	}	Error to Bureau
The People &c		Defts in error

And now comes the said
People by Wallace their attorney
and say that there ~~are~~ ^{is} no error
in the record of the proceedings in
said cause, and this they are
wady to verify by the record—
W H Wallace
for the people—

4.

Resimer & Sherwin
as
The People &

finder in error

Filed June 14, 1854.
Leland Clk.

Charles Besemer &
 Albert Sherrin
 as
 The People &c } Error to the
 } Cir Court of Benning
 } County.

The Clerk will find \$5.00 enclosed,
 please deduct the above sum &
 file the papers & you need not issue any scire
 facias. I will endeavor to get
 Mr Wallace to enter his appearance
 Milton I. Piers
 atty for Plff

June 5th - 1854

To P. Seland Esq

Resumer et al }
vs } Error to Remove
The People }
}

The recitals in the
recognition & writs are not
conclusive as to the nature of the
crime for which Resumer was
indicted - While adultery of itself
is not an indictable offence under
our law, yet the living in an open
state of adultery is - & this court will
presume ~~that~~ where an indictment
is found that it is for an offence
known to the law. ■

Wallace for
the people -

Business and
us
People

Filed June 16th 1854

L. Leland Clk.
By P. H. Leland