

13292

No.

Supreme Court of Illinois

Mix, et al

vs.

People

State of Illinois } And Third Grand Division
Supreme Court } thereof, April Term AD 1860

Henry A. Mix et al. } Appeal from Ogle.
vs } Scire facias on Recog.
The People of the State of Illinois } = ~~insolence~~

And now comes
The said People by W B. Whipple their
Attorney, and say, that there
is no Error, nor manner of
Error in said proceedings and
record, wherefore they pray that
said judgment, may in all
things be affirmed.

W B. Whipple
States Atty

Supreme Court--
76 5

Henry B. Mix, et al
~~vs~~

The People &c

Joinder in error

Filed Apr 19, 1860

Leland

Clerk

State of Illinois } Third Grand Division
Supreme Court }

April Term AD 1860

Henry A. Mox et al.

vs

The People of the State of Illinois

} Appeal from Oyle
} Scire facias on
} Recognizance

If there be any error in this case,
such error is in favor of Appellants, they
having entered into a joint recognizance
of five hundred dollars, - & the judgment
against them, being only for five hundred
or two hundred & fifty dollars each,
or in other words the judgment releases
each from the payment of two hundred
& fifty dollars, -

The recognizance
in this case is a joint & several recognizance, -

See - *Chumasco vs the People*

18th Ill 406

and therefore a judgment might
have been rendered for five hundred
dollars, against each of Appellants
instead of two hundred & fifty dollars

See 3rd Blackf - 280

7th - do 417

The 3rd Plea, is not a good plea, it
a Scire facias upon recognizance, as
it only alledges a willingness & readiness
to surrender the body of the prisoner
whereas it ought to have alledged
the fact of an actual surrender
of the principal.

See R.S. p 181 - see 196
Davison v Mull 1st May, 364

And further even though the plea
remained unanswered, yet if appellee
went to trial without objection
there want of replication is cured

See 1st Scarr 74 -
2nd do 57.

It was not necessary for the jury to find
upon the trial, any specific amount
of damages - it was their duty to say
simply whether they found a verdict
for the People or defendant, - for the
only issue the jury were to try, was not
how much the People were to recover
but whether they were to have execution
for an amount already fixed & absolute
by the Record of Court duly acknowledged
by Appellants - If the People recover
upon a Scire facias upon recognizance

by the very terms of the record, they
recover the full amount - or, nothing
& the verdict of jury was not to recover
but to have execution according to the
form, force and effect of the recogni-
-izance -

See 2nd Tidds Practise 1099
Samels v People - 3rd Gilman - 332

Not one of the cases cited by Counsel
for appellants are applicable to this
case,

W Burtwell

For the People

Supreme Court-

N^o 10

Mary et al

v

The People &c

Prison for Appelle

Filed April 30. 1860
L. Deland
Clerk

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

HENRY A. MIX, *et al.*,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

} *Appeal from Ogle ;*
scire facias
on recognizance.

^{1, 2, 3,} Scire facias issued Sept. 16, 1857. Recites that C. J. Groendyke was
^{4 5} held to bail on a charge of Larceny before C. S. Pride, justice of the
peace, April 8th, 1857, in the sum of \$500, and for want of bail, com-
mitted to jail, May 20th, 1857. Groendyke, Mix and Woodcock entered
into recognizance before C. S. Pride, J. P., E. F. Dutcher, J. P. Groen-
dyke in the sum of \$500, the others in \$250 each, conditioned that Groen-
dyke should appear at the next term of the Ogle circuit court, to answer
said charge of larceny; said recognizance was filed June 1st, 1857, in
clerk's office, at June term of circuit court; recognizance forfeited. The
scire facias commands defendants, Groendyke, Mix and Woodcock to be
summoned to show cause why execution should not be issued against them
for the aforesaid sum of \$500, the penalty in said recognizance men-
tioned.

Pleas by Mix and Woodcock, filed Oct. 17, 1857.

⁸ 1st plea; That there is no such record as in the scire facias is alleged.

⁸ 2d plea; No judgment of forfeiture in Ogle circuit court.

¹⁰ 3d plea; that they were always ready and willing to surrender Groen-
dyke, but no judgment was found against him, and nothing to surrender
him upon.

4th plea; that Groendyke is dead and cannot therefore be discharged.

5th plea; no indictment vs. Groendyke.

6th plea; that there never was an indictment vs. Groendyke.

¹¹ Demurrer to all the pleas, filed Feb. 25th, 1858.

¹² Demurrer withdrawn, Oct. 5th, 1858.

¹⁴ Replication to 1st plea filed Feb. 25th, 1858.

The other pleas never were answered.

^{18 19} Trial by jury. The verdict was in these words: We, the jury, find the
issues for the plaintiffs.

¹⁹ Motion for new trial overruled, and defendants at the time excepted.

" Motion in arrest of judgment overruled, and the defendants at the time excepted.

"Judgment for \$500, against Groendyke; for \$250 each against Mix and Woodcock. Appealed by Mix and Woodcock.

ERRORS ASSIGNED.

²³ 1st. The court erred in proceeding to try the case with the pleas unanswered

2d. The court erred in overruling motion in arrest of judgment.

3d. The court erred in overruling motion for new trial.

4th. The court erred in rendering a judgment not warranted by the finding of the jury.

5th. The court erred in rendering judgment aforesaid in manner and form aforesaid.

POINTS AND AUTHORITIES FOR APPELLANTS.

There was a variance between the judgment prayed for in the scire facias and the judgment rendered; defendants were summoned to show cause why judgment should not be rendered against them for \$500 jointly, and the judgment is a several one for \$250 each.

The 3d plea was a good one, and should have been answered; and not having been answered, it is a good defence.

12 Illinois, 372; Ibid 373; 11 Ill. 549; 15 Ill. 13.

2 Scam. 223, 3 Scam. 426, 4 Scam. 338, Ibid 53.

5 Gilm. 249.

The jury did not find a verdict for any amount; no judgment could be rendered upon the verdict.

3 Gilm. 475; 3 Gilm. 133; Wright, 577;

3 J. J. Marsh, 600; 10 B. Monroe, 155; 4 Texas 38.

B. C. COOK,

For Appellants.

Mix¹⁰ et al
vs

The People
of the State of Illinois

Abstract

Filed May 3, 1839
S. Leland
Clerk

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

HENRY A. MIX, *et al.*,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

} *Appeal from Ogle ;*
} *scire facias*
} *on recognizance.*

^{1, 2, 3,} Scire facias issued Sept. 16, 1857. Recites that C. J. Groendyke was
^{4, 5} held to bail on a charge of Larceny before C. S. Pride, justice of the
peace, April 8th, 1857, in the sum of \$500, and for want of bail, com-
mitted to jail, May 20th, 1857. Groendyke, Mix and Woodcock entered
into recognizance before C. S. Pride, J. P., E. F. Dutcher, J. P. Groen-
dyke in the sum of \$500; the others in \$250 each, conditioned that Groen-
dyke should appear at the next term of the Ogle circuit court, to answer
said charge of larceny; said recognizance was filed June 1st, 1857, in
clerk's office, at June term of circuit court; recognizance forfeited. The
scire facias commands defendants, Groendyke, Mix and Woodcock to be
summoned to show cause why execution should not be issued against them
for the aforesaid sum of \$500, the penalty in said recognizance men-
tioned.

Pleas by Mix and Woodcock, filed Oct. 17, 1857.

⁸ 1st plea; That there is no such record as in the scire facias is alleged.

⁸ 2d plea; No judgment of forfeiture in Ogle circuit court.

¹⁰ 3d plea; that they were always ready and willing to surrender Groen-
dyke, but no judgment was found against him, and nothing to surrender
him upon.

4th plea; that Groendyke is dead and cannot therefore be discharged.

5th plea; no indictment vs. Groendyke.

6th plea; that there never was an indictment vs. Groendyke.

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issues for the plaintiffs.

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“ Motion in arrest of judgment overruled, and the defendants at the time excepted.

“Judgment for \$500, against Groendyke; for \$250 each against Mix and Woodcock. Appealed by Mix and Woodcock.

ERRORS ASSIGNED.

- ²³ 1st. The court erred in proceeding to try the case with the pleas unanswered
- 2d. The court erred in overruling motion in arrest of judgment.
- 3d. The court erred in overruling motion for new trial.
- 4th. The court erred in rendering a judgment not warranted by the finding of the jury.
- 5th. The court erred in rendering judgment aforesaid in manner and form aforesaid.

POINTS AND AUTHORITIES FOR APPELLANTS.

There was a variance between the judgment prayed for in the scire facias and the judgment rendered; defendants were summoned to show cause why judgment should not be rendered against them for \$500 jointly, and the judgment is a several one for \$250 each.

The 3d plea was a good one; and should have been answered; and not having been answered, it is a good defence.

12 Illinois, 372; Ibid 373; 11 Ill. 549; 15 Ill. 13.
2 Scam. 223, 3 Scam. 426; 4 Scam. 338, Ibid 53.
5 Gilm. 249.

The jury did not find a verdict for any amount; no judgment could be rendered upon the verdict.

3 Gilm. 475; 3 Gilm. 133; Wright, 577;
3 J. J. Marsh, 600; 10 B. Monroe, 155; 4 Texas 38.

B. C. COOK,
For Appellants.

Mit¹⁰ et al
vs
The People

Abstract

Filed May 3, 1839
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,
Third Division—April Term, 1859.

ABSTRACT OF RECORD.

Daniel J. Groendyke, Henry A. Mix, and Albert Woodcock, <i>vs.</i> The People of the State of Illinois.	}	<i>Appealed from</i> <i>Ogle County Circuit Court.</i>
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This was a proceeding on Scire Facias on a recognizance which was as follows:

Record p 1.	STATE OF ILLINOIS, OGLE COUNTY,	}	ss. People of the State of Illinois, To the Sheriff of said County, Greeting:
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Whereas on the eighth day of April, A. D., 1857, complaint was made on oath before David S. Pride, Esqr., one of the Justices of the Peace within and for the County of Ogle, Daniel J. Groendyke did at and within the County of Ogle aforesaid, on the said eighth day of April, A. D., 1857, feloniously steal, take, and carry away one bay horse, of the value of (\$150) one hundred and fifty dollars, of the goods and chattels of H. M. Cash; and, whereas, upon the examination of said charge before the said David S. Pride, Justice of the Peace as aforesaid, on the said eighth day of April aforesaid, the said Daniel J. Groendyke was, by the said David S. Pride, considered and adjudged guilty of the felonious stealing, taking, and carrying away of the said bay horse, of the goods and chattels of the said H. M. Cash, at and within the County of Ogle aforesaid. And that the said Daniel J. Goendyke should be held to bail in the sum of five hundred dollars, for his personal appearance at the then next term of the Ogle County Circuit Court, on the first day of said term, in default of which bail so required by the judgment of the said David S. Pride, Justice of the Peace in and for said County of Ogle as aforesaid, the said Daniel J. Groendyke was, on said eighth day of April, A. D., 1857, committed to the common jail of the County of Ogle.

And, whereas, the said Daniel J. Groendyke being so in jail by virtue of the proceedings aforesaid, and being desirous of having his body released from arrest and confinement as aforesaid, we, the said Daniel J. Groendyke, Henry A. Mix and Albert Woodcock, under their hands and seals, did, on this twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, at and within the County of Ogle aforesaid, make and execute to the people of the State of Illinois, their certain bond or recognizance, which bond or recognizance is in the words and figures following, that is to say:

STATE OF ILLINOIS, }
 OGLE COUNTY, } ss.

Be it remembered, that on the twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, Daniel J. Groendyke, of Oregon, in said county of Ogle, State of Illinois, and Henry A. Mix and Albert Woodcock, of Oregon, the county aforesaid, personally came before David S. Pride, Esqr., and Edward F. Dutcher, two of the Justices of the Peace of said town of Oregon, and county of State aforesaid, and severally acknowledged themselves to owe to the people of the State of Illinois, that is to say, the said Daniel J. Groendyke, the sum of five hundred dollars, and the said Henry Mix and Albert Woodcock each the sum of two hundred and fifty dollars, separately to be made and levied of their respective goods and chattels, lands and tenements, to the use of the said People. If default shall be made in the condition following the condition of this recognizance is such that if the said Daniel J. Groendyke shall personally be and appear at the next term of the Circuit Court to be held in and for the County of Ogle and State of Illinois, on the first day thereof, to answer to an indictment to be preferred against him for feloniously stealing, taking and carrying away, at, and within the County of Ogle aforesaid, one bay horse, of the value of one hundred and fifty dollars, the property of one H. M. Cash, of Bureau County, in said State of Illinois, at and within the county aforesaid, to do and receive what shall by the Court be then and there enjoined upon him, and shall not depart the Court without leave, then their recognizance to be void, else remain in full force.

DANIEL J. GROENDYKE, [L. s.]

HENRY A. MIX, [L. s.]

ALBERT WOODCOCK, [L. s.]

Taken and subscribed and acknowledged the twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven. The alteration made in the name before signing.

E. F. DUTCHER, J. P.

DAVID S. PRIDE, J. P.

Which said recognizance was taken and approved at and within the county of Ogle, by the said David S. Pride, and the said E. F. Dutcher, two of the Justices of the peace within and for said county of Ogle, acting as such, for and within the county of Ogle aforesaid, on the day and date of the execution of said recognizance by the said Daniel J. Groendyke, the said Henry A. Mix and the said Albert Woodcock, and the said recognizance was by the said David S. Pride and the said E. F. Dutcher, Justices of the Peace within and for the county of Ogle and State of Illinois, before whom the same was taken and acknowledged, and delivered to the Clerk of the Circuit Court in and for the county of Ogle, on the first day of June, in the year of our Lord one thousand eight hundred and fifty-seven, and the said recognizance was on the said first day of June, in the year aforesaid, filed in the office of the said Clerk of the said Circuit Court, as a matter of record in said Court, in and for the county of Ogle aforesaid. And, whereas, at the June term of said Ogle County Circuit Court begun and holden at the Court House in Oregon, in said county of Ogle, on the first Monday in the month of June, A. D., 1857, came the people by their attorney, and the said defendant, Daniel J. Groendyke, being three times solemnly called, came not, but made default, and the said Henry A. Mix, and the said Albert Woodcock, were called to produce the body of the said defendant, Daniel J. Groendyke, but they failed to do so, and thereupon, at the June term aforesaid, it was ordered and adjudged by the Court, that the said recognizance be taken and considered as forfeited, and owing to the said people which said judgment of

forfeiture was by the order of the said Circuit Court at the June term
 5 aforesaid, duly entered of record in said Court, and the defendant of the
 said Daniel J. Groendyke, and said Henry A. Mix, and the said Albert
 Woodcock, was by the order of the said Court, entered of record in said
 Court; all of which appear from the record of our said Court, and, where-
 as, the said sum of five hundred dollars, the penalty in recognizance men-
 tioned, has not been paid by the said Daniel J. Groendyke, or the said
 Henry A. Mix, or the said Albert Woodcock. We, therefore, commend
 you that you make known to the said Daniel J. Groendyke, and the said
 Henry A. Mix, and Albert Woodcock, if they are to be found in your
 county, that they are required to be and appear before our said Circuit
 Court of said county of Ogle, on the first day of the next term thereof, to
 be begun and holden at the Court House in Oregon, in said county, on the
 first monday of October, A. D., 1857, to show cause, if any they have,
 why execution should not be issued against them, for the aforesaid sum of
 five hundred dollars, the penalty in said recognizance mentioned as afore-
 said, and have you then and there this writ.

Witness Mortimer W. Smith, Clerk of our said Circuit Court, and
 the seal thereof at my Office in Oregon, this 10th day of Sep-
 [SEAL.] tember, A. D., 1857. MORTIMER W. SMITH,
 Clerk.

On the back of said Scire Facias was the following endorsement:
 STATE OF ILLINOIS—OGLE COUNTY.

6 I have duly made known the contents of the within *Scire Facias*, by
 reading the same to the within named Henry A. Mix and Albert Wood-
 cock, and by delivering each of them a true copy of the same, this twenty-
 first day of September, A. D., 1857, the within named Daniel Groenkyke
 not found in my county.

E. R. TYLER, Sheriff,
 By M. C. STODDARD, Deputy.

Filed October 5, 1857.

M. W. SMITH, Clerk.

7 Demurrer to scire facias filed October 7, 1857.

8 Demurrer overruled.

1st, Plea, nul teil, record.

12 Replication to said plea, and similtater.

8 2d Plea as follows:

“And for a further plea in this behalf, the said defendants say *actio non*,
 because they say that there is no such judgment of forfeiture now remain-
 10 ing upon the records of said Ogle County Circuit Court, as by the scire
 facias is supposed and alleged, and this they are ready to verify, where-
 fore they pray judgment against, &c.

3d Plea as follows:

“And for a further plea, said defendant say *actio non*, because they
 were always ready and willing to surrender the body of the said Groen-
 dyke according to the form, force and effect of said recognizance in said
 10 scire facias mentioned, but that there was and is no indictment pending,
 and now remaining of record in said Ogle County Circuit Court, on which
 to surrender the body of the said Groendyke, and this they are ready to
 verify, wherefore they pray judgment, &c.

Plea 4th as follows:

And for further plea the said defendants say *actio non*, because they
 say that the said defendant, Groendyke, the principal named in said re-
 cognizance in said scire facias mentioned, is dead, and cannot therefore

be surrendered in discharge of this said recognizance, and this the said defendants are ready to verify; wherefore they pray judgment, &c.

Plea 5th, as follows:

And for further plea the said defendants say actio non, because they say that there is no indictment now pending of record in said Ogle County Court against the said Groendyke, and this they are ready to verify; whereupon they pray judgment, &c.

Plea 6th, as follows:

And for further plea in this behalf, the said defendants say actio non, because they say that no indictment was ever returned into the said Ogle County Circuit Court, and become a matter of record therein against the defendant, Groendyke, and this they are ready to verify, &c.; wherefore they pray judgment, &c.

Demurrer to 2nd, 3d, 4th, 5th and 6th Pleas, filed February 25th, 1858.

¹² Demurrer withdrawn, Oct. 5th, 1858, and leave to reply given by Court, vrs. replication filed.

¹⁸ March 10th, 1858, Trial by a Jury, which rendered the following ver-
¹⁹ dict: "The Jury in this case find the issues for the plaintiff."

Motion in arrest of judgment by Mix and Woodcock. Overruled.

Judgment against Mix for \$250, and against Woodcock for \$250;
²⁰ appeal taken and perfected.

ERRORS ASSIGNED.

1st. Overruling motion in arrest of Judgment.

2nd. Overruling motion for new trial.

3d. In trying the case with the Pleas unanswered.

4th. The judgment is not authorized by the verdict in this. The verdict does not find any amount of debt or damages.

5th. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

10
Christ nat. & People
at Stet.

SUPREME COURT OF ILLINOIS,
Third Division—April Term, 1859.

ABSTRACT OF RECORD.

Daniel J. Groendyke, Henry A. Mix, and Albert Woodcock, <i>vs.</i> The People of the State of Illinois.	}	<i>Appealed from Ogle County Circuit Court.</i>
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Whereas on the eighth day of April, A. D., 1857, complaint was made on oath before David S. Pride, Esqr., one of the Justices of the Peace within and for the County of Ogle, Daniel J. Groendyke did at and within the County of Ogle aforesaid, on the said eighth day of April, A. D., 1857, feloniously steal, take, and carry away one bay horse, of the value of (\$150) one hundred and fifty dollars, of the goods and chattels of H. M. Cash; and, whereas, upon the examination of said charge before the said David S. Pride, Justice of the Peace as aforesaid, on the said eighth day of April aforesaid, the said Daniel J. Groendyke was, by the said David S. Pride, considered and adjudged guilty of the felonious stealing, taking, and carrying away of the said bay horse, of the goods and chattels of the said H. M. Cash, at and within the County of Ogle aforesaid. And that the said Daniel J. Goendyke should be held to bail in the sum of five hundred dollars, for his personal appearance at the then
2 next term of the Ogle County Circuit Court, on the first day of said term, in default of which bail so required by the judgment of the said David S. Pride, Justice of the Peace in and for said County of Ogle as aforesaid, the said Daniel J. Groendyke was, on said eighth day of April, A. D., 1857, committed to the common jail of the County of Ogle.

And, whereas, the said Daniel J. Groendyke being so in jail by virtue of the proceedings aforesaid, and being desirous of having his body released from arrest and confinement as aforesaid, we, the said Daniel J. Groendyke, Henry A. Mix and Albert Woodcock, under their hands and seals, did, on this twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, at and within the County of Ogle aforesaid, make and execute to the people of the State of Illinois, their certain bond or recognizance, which bond or recognizance is in the words and figures following, that is to say:

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 OGLE COUNTY, } ss.

Be it remembered, that on the twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, Daniel J. Groendyke, of Oregon, in said county of Ogle, State of Illinois, and Henry A. Mix and Albert Woodcock, of Oregon, the county aforesaid, personally came before David S. Pride, Esqr., and Edward F. Dutcher, two of the Justices of the Peace of said town of Oregon, and county of State aforesaid, and severally acknowledged themselves to owe to the people of the State of Illinois, that is to say, the said Daniel J. Groendyke, the sum of five hundred dollars, and the said Henry Mix and Albert Woodcock each the sum of two hundred and fifty dollars, separately to be made and levied of their respective goods and chattels, lands and tenements, to the use of the said People. If default shall be made in the condition following the condition of this recognizance is such that if the said Daniel J. Groendyke shall personally be and appear at the next term of the Circuit Court to be held in and for the County of Ogle and State of Illinois, on the first day thereof, to answer to an indictment to be preferred against him for feloniously stealing, taking and carrying away, at, and within the County of Ogle aforesaid, one bay horse, of the value of one hundred and fifty dollars, the property of one H. M. Cash, of Bureau County, in said State of Illinois, at and within the county aforesaid, to do and receive what shall by the Court be then and there enjoined upon him, and shall not depart the Court without leave, then their recognizance to be void, else remain in full force.

DANIEL J. GROENDYKE, [L. s.]

HENRY A. MIX, [L. s.]

ALBERT WOODCOCK, [L. s.]

Taken and subscribed and acknowledged the twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven. The alteration made in the name before signing.

E. F. DUTCHER, J. P.

DAVID S. PRIDE, J. P.

Which said recognizance was taken and approved at and within the county of Ogle, by the said David S. Pride, and the said E. F. Dutcher, two of the Justices of the peace within and for said county of Ogle, acting as such, for and within the county of Ogle aforesaid, on the day and date of the execution of said recognizance by the said Daniel J. Groendyke, the said Henry A. Mix and the said Albert Woodcock, and the said recognizance was by the said David S. Pride and the said E. F. Dutcher, Justices of the Peace within and for the county of Ogle and State of Illinois before whom the same was taken and acknowledged, and delivered to the Clerk of the Circuit Court in and for the county of Ogle, on the first day of June, in the year of our Lord one thousand eight hundred and fifty-seven, and the said recognizance was on the said first day of June, in the year aforesaid, filed in the office of the said Clerk of the said Circuit Court, as a matter of record in said Court, in and for the county of Ogle aforesaid. And, whereas, at the June term of said Ogle County Circuit Court begun and holden at the Court House in Oregon, in said county of Ogle, on the first Monday in the month of June, A. D., 1857, came the people by their attorney, and the said defendant, Daniel J. Groendyke, being three times solemnly called, came not, but made default, and the said Henry A. Mix, and the said Albert Woodcock, were called to produce the body of the said defendant, Daniel J. Groendyke, but they failed to do so, and thereupon, at the June term aforesaid, it was ordered and adjudged by the Court, that the said recognizance be taken and considered as forfeited, and owing to the said people which said judgment of

forfeiture was by the order of the said Circuit Court at the June term aforesaid, duly entered of record in said Court, and the defendant of the said Daniel J. Groendyke, and said Henry A. Mix, and the said Albert Woodcock, was by the order of the said Court, entered of record in said Court; all of which appear from the record of our said Court, and, whereas, the said sum of five hundred dollars, the penalty in recognizance mentioned, has not been paid by the said Daniel J. Groendyke, or the said Henry A. Mix, or the said Albert Woodcock. We, therefore, commend you that you make known to the said Daniel J. Groendyke, and the said Henry A. Mix, and Albert Woodcock, if they are to be found in your county, that they are required to be and appear before our said Circuit Court of said county of Ogle, on the first day of the next term thereof, to be begun and holden at the Court House in Oregon, in said county, on the first monday of October, A. D., 1857, to show cause, if any they have, why execution should not be issued against them, for the aforesaid sum of five hundred dollars, the penalty in said recognizance mentioned as aforesaid, and have you then and there this writ.

Witness Mortimer W. Smith, Clerk of our said Circuit Court, and the seal thereof at my Office in Oregon, this 10th day of September, A. D., 1857. MORTIMER W. SMITH, Clerk.

On the back of said Scire Facias was the following endorsement:
STATE OF ILLINOIS—OGLE COUNTY.

I have duly made known the contents of the within *Scire Facias*, by reading the same to the within named Henry A. Mix and Albert Woodcock, and by delivering each of them a true copy of the same, this twenty-first day of September, A. D., 1857, the within named Daniel Groenkyke not found in my county.

E. R. TYLER, Sheriff,
By M. C. STODDARD, Deputy.

Filed October 5, 1857.

M. W. SMITH, Clerk.

Demurrer to scire facias filed October 7, 1857.

Demurrer overruled.

1st, Plea, nul teil, record.

Replication to said plea, and similtater.

2d Plea as follows:

"And for a further plea in this behalf, the said defendants say actio non, because they say that there is no such judgment of forfeiture now remaining upon the records of said Ogle County Circuit Court, as by the scire facias is supposed and alleged, and this they are ready to verify, wherefore they pray judgment against, &c.

3d Plea as follows:

"And for a further plea, said defendant say actio non, because they were always ready and willing to surrender the body of the said Groendyke according to the form, force and effect of said recognizance in said scire facias mentioned, but that there was and is no indictment pending, and now remaining of record in said Ogle County Circuit Court, on which to surrender the body of the said Groendyke, and this they are ready to verify, wherefore they pray judgment, &c.

Plea 4th as follows:

And for further plea the said defendants say actio non, because they say that the said defendant, Groendyke, the principal named in said recognizance in said scire facias mentioned, is dead, and cannot therefore

be surrendered in discharge of this said recognizance, and this the said defendants are ready to verify; wherefore they pray judgment, &c.

Plea 5th, as follows:

And for further plea the said defendants say *actio non*, because they say that there is no indictment now pending of record in said Ogle County Court against the said Groendyke, and this they are ready to verify; whereupon they pray judgment, &c.

Plea 6th, as follows:

And for further plea in this behalf, the said defendants say *actio non*, because they say that no indictment was ever returned into the said Ogle County Circuit Court, and become a matter of record therein against the defendant, Groendyke, and this they are ready to verify, &c.; wherefore they pray judgment, &c.

Demurrer to 2nd, 3d, 4th, 5th and 6th Pleas, filed February 25th, 1858.

¹² Demurrer withdrawn, Oct. 5th, 1858, and leave to reply given by Court, *vrs.* replication filed.

¹⁸ March 10th, 1858, Trial by a Jury, which rendered the following ver-
¹⁹ dict: "The Jury in this case find the issues for the plaintiff."

Motion in arrest of judgment by Mix and Woodcock. Overruled.

Judgment against Mix for \$250, and against Woodcock for \$250;
²⁰ appeal taken and perfected.

ERRORS ASSIGNED.

1st. Overruling motion in arrest of Judgment.

2nd. Overruling motion for new trial.

3d. In trying the case with the Pleas unanswered.

4th. The judgment is not authorized by the verdict in this. The verdict does not find any amount of debt or damages.

5th. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

Mixd. & People
abstot.

Filed Apr. 20. 1889.
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,
Third Division—April Term, 1859.

ABSTRACT OF RECORD.

Daniel J. Groendyke, Henry A. Mix, and Albert Woodcock, <i>vs.</i> The People of the State of Illinois.	}	<i>Appealed from</i> <i>Ogle County Circuit Court.</i>
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This was a proceeding on Scire Facias on a recognizance which was as follows:

Record p 1. STATE OF ILLINOIS, OGLE COUNTY,	}	ss. People of the State of Illinois, To the Sheriff of said County, Greeting:
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Whereas on the eighth day of April, A. D., 1857, complaint was made on oath before David S. Pride, Esqr., one of the Justices of the Peace within and for the County of Ogle, Daniel J. Groendyke did at and within the County of Ogle aforesaid, on the said eighth day of April, A. D., 1857, feloniously steal, take, and carry away one bay horse, of the value of (\$150) one hundred and fifty dollars, of the goods and chattels of H. M. Cash; and, whereas, upon the examination of said charge before the said David S. Pride, Justice of the Peace as aforesaid, on the said eighth day of April aforesaid, the said Daniel J. Groendyke was, by the said David S. Pride, considered and adjudged guilty of the felonious stealing, taking, and carrying away of the said bay horse, of the goods and chattels of the said H. M. Cash, at and within the County of Ogle aforesaid. And that the said Daniel J. Goendyke should be held to bail in the sum of five hundred dollars, for his personal appearance at the then
2 next term of the Ogle County Circuit Court, on the first day of said term, in default of which bail so required by the judgment of the said David S. Pride, Justice of the Peace in and for said County of Ogle as aforesaid, the said Daniel J. Groendyke was, on said eighth day of April, A. D., 1857, committed to the common jail of the County of Ogle.

And, whereas, the said Daniel J. Groendyke being so in jail by virtue of the proceedings aforesaid, and being desirous of having his body released from arrest and confinement as aforesaid, we, the said Daniel J. Groendyke, Henry A. Mix and Albert Woodcock, under their hands and seals, did, on this twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, at and within the County of Ogle aforesaid, make and execute to the people of the State of Illinois, their certain bond or recognizance, which bond or recognizance is in the words and figures following, that is to say:

STATE OF ILLINOIS, }
 OGLE COUNTY, } ss.

Be it remembered, that on the twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, Daniel J. Groendyke, of Oregon, in said county of Ogle, State of Illinois, and Henry A. Mix and Albert Woodcock, of Oregon, the county aforesaid, personally came before David S. Pride, Esqr., and Edward F. Dutcher, two of the Justices of the Peace of said town of Oregon, and county of State aforesaid, and severally acknowledged themselves to owe to the people of the State of Illinois, that is to say, the said Daniel J. Groendyke, the sum of five hundred dollars, and the said Henry Mix and Albert Woodcock each the sum of two hundred and fifty dollars, separately to be made and levied of their respective goods and chattels, lands and tenements, to the use of the said People. If default shall be made in the condition following the condition of this recognizance is such that if the said Daniel J. Groendyke shall personally be and appear at the next term of the Circuit Court to be held in and for the County of Ogle and State of Illinois, on the first day thereof, to answer to an indictment to be preferred against him for feloniously stealing, taking and carrying away, at, and within the County of Ogle aforesaid, one bay horse, of the value of one hundred and fifty dollars, the property of one H. M. Cash, of Bureau County, in said State of Illinois, at and within the county aforesaid, to do and receive what shall by the Court be then and there enjoined upon him, and shall not depart the Court without leave, then their recognizance to be void, else remain in full force.

DANIEL J. GROENDYKE, [L. s.]

HENRY A. MIX, [L. s.]

ALBERT WOODCOCK, [L. s.]

Taken and subscribed and acknowledged the twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven. The alteration made in the name before signing.

E. F. DUTCHER, J. P.

DAVID S. PRIDE, J. P.

Which said recognizance was taken and approved at and within the county of Ogle, by the said David S. Pride, and the said E. F. Dutcher, two of the Justices of the peace within and for said county of Ogle, acting as such, for and within the county of Ogle aforesaid, on the day and date of the execution of said recognizance by the said Daniel J. Groendyke, the said Henry A. Mix and the said Albert Woodcock, and the said recognizance was by the said David S. Pride and the said E. F. Dutcher, Justices of the Peace within and for the county of Ogle and State of Illinois, before whom the same was taken and acknowledged, and delivered to the Clerk of the Circuit Court in and for the county of Ogle, on the first day of June, in the year of our Lord one thousand eight hundred and fifty-seven, and the said recognizance was on the said first day of June, in the year aforesaid, filed in the office of the said Clerk of the said Circuit Court, as a matter of record in said Court, in and for the county of Ogle aforesaid. And, whereas, at the June term of said Ogle County Circuit Court begun and holden at the Court House in Oregon, in said county of Ogle, on the first Monday in the month of June, A. D., 1857, came the people by their attorney, and the said defendant, Daniel J. Groendyke, being three times solemnly called, came not, but made default, and the said Henry A. Mix, and the said Albert Woodcock, were called to produce the body of the said defendant, Daniel J. Groendyke, but they failed to do so, and thereupon, at the June term aforesaid, it was ordered and adjudged by the Court, that the said recognizance be taken and considered as forfeited, and owing to the said people which said judgment of

forfeiture was by the order of the said Circuit Court at the June term
 5 aforesaid, duly entered of record in said Court, and the defendant of the
 said Daniel J. Groendyke, and said Henry A. Mix, and the said Albert
 Woodcock, was by the order of the said Court, entered of record in said
 Court; all of which appear from the record of our said Court, and, where-
 as, the said sum of five hundred dollars, the penalty in recognizance men-
 tioned, has not been paid by the said Daniel J. Groendyke, or the said
 Henry A. Mix, or the said Albert Woodcock. We, therefore, commend
 you that you make known to the said Daniel J. Groendyke, and the said
 Henry A. Mix, and Albert Woodcock, if they are to be found in your
 county, that they are required to be and appear before our said Circuit
 Court of said county of Ogle, on the first day of the next term thereof, to
 be begun and holden at the Court House in Oregon, in said county, on the
 first monday of October, A. D., 1857, to show cause, if any they have,
 why execution should not be issued against them, for the aforesaid sum of
 five hundred dollars, the penalty in said recognizance mentioned as afore-
 said, and have you then and there this writ.

Witness Mortimer W. Smith, Clerk of our said Circuit Court, and
 the seal thereof at my Office in Oregon, this 10th day of Sep-
 [SEAL.] tember, A. D., 1857. MORTIMER W. SMITH,
 Clerk.

On the back of said Scire Facias was the following endorsement :
 STATE OF ILLINOIS—OGLE COUNTY.

6 I have duly made known the contents of the within *Scire Facias*, by
 reading the same to the within named Henry A. Mix and Albert Wood-
 cock, and by delivering each of them a true copy of the same, this twenty-
 first day of September, A. D., 1857, the within named Daniel Groenkyke
 not found in my county.

E. R. TYLER, Sheriff,
 By M. C. STODDARD, Deputy.

Filed October 5, 1857.

M. W. SMITH, Clerk.

7 Demurrer to scire facias filed October 7, 1857.

8 Demurrer overruled.

1st, Plea, nul teil, record.

12 Replication to said plea, and similtater.

8 2d Plea as follows :

“And for a further plea in this behalf, the said defendants say actio non,
 because they say that there is no such judgment of forfeiture now remain-
 10 ing upon the records of said Ogle County Circuit Court, as by the scire
 facias is supposed and alleged, and this they are ready to verify, where-
 fore they pray judgment against, &c.

3d Plea as follows :

“And for a further plea, said defendant say actio non, because they
 were always ready and willing to surrender the body of the said Groen-
 dyke according to the form, force and effect of said recognizance in said
 10 scire facias mentioned, but that there was and is no indictment pending,
 and now remaining of record in said Ogle County Circuit Court, on which
 to surrender the body of the said Groendyke, and this they are ready to
 verify, wherefore they pray judgment, &c.

Plea 4th as follows :

And for further plea the said defendants say actio non, because they
 say that the said defendant, Groendyke, the principal named in said re-
 cognizance in said scire facias mentioned, is dead, and cannot therefore

be surrendered in discharge of this said recognizance, and this the said defendants are ready to verify; wherefore they pray judgment, &c.

Plea 5th, as follows:

And for further plea the said defendants say *actio non*, because they say that there is no indictment now pending of record in said Ogle County Court against the said Groendyke, and this they are ready to verify; whereupon they pray judgment, &c.

Plea 6th, as follows:

And for further plea in this behalf, the said defendants say *actio non*, because they say that no indictment was ever returned into the said Ogle County Circuit Court, and become a matter of record therein against the defendant, Groendyke, and this they are ready to verify, &c.; wherefore they pray judgment, &c.

Demurrer to 2nd, 3d, 4th, 5th and 6th Pleas, filed February 25th, 1858.

¹² Demurrer withdrawn, Oct. 5th, 1858, and leave to reply given by Court, *vs.* replication filed.

¹⁸ March 10th, 1858, Trial by a Jury, which rendered the following verdict: "The Jury in this case find the issues for the plaintiff."
¹⁹

Motion in arrest of judgment by Mix and Woodcock. Overruled.

Judgment against Mix for \$250, and against Woodcock for \$250;
²⁰ appeal taken and perfected.

ERRORS ASSIGNED.

1st. Overruling motion in arrest of Judgment.

2nd. Overruling motion for new trial.

3d. In trying the case with the Pleas unanswered.

4th. The judgment is not authorized by the verdict in this. The verdict does not find any amount of debt or damages.

5th. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

Mix ed. & People
Abstract. -

Filed April 21, 1859

R. Leland

Clerk

13292

SUPREME COURT OF ILLINOIS,
Third Division—April Term, 1859.

ABSTRACT OF RECORD.

Daniel J. Groendyke, Henry A. Mix, }
and Albert Woodcock, } *Appealed from*
vs. } *Ogle County Circuit Court.*
The People of the State of Illinois. }

This was a proceeding on Scire Facias on a recognizance which was as follows:

Record
p. 1. STATE OF ILLINOIS, } ss. People of the State of Illinois, To the
OGLE COUNTY, } Sheriff of said County, Greeting:

Whereas on the eighth day of April, A. D., 1857, complaint was made on oath before David S. Pride, Esqr., one of the Justices of the Peace within and for the County of Ogle, Daniel J. Groendyke did at and within the County of Ogle aforesaid, on the said eighth day of April, A. D., 1857, feloniously steal, take, and carry away one bay horse, of the value of (\$150) one hundred and fifty dollars, of the goods and chattels of H. M. Cash; and, whereas, upon the examination of said charge before the said David S. Pride, Justice of the Peace as aforesaid, on the said eighth day of April aforesaid, the said Daniel J. Groendyke was, by the said David S. Pride, considered and adjudged guilty of the felonious stealing, taking, and carrying away of the said bay horse, of the goods and chattels of the said H. M. Cash, at and within the County of Ogle aforesaid. And that the said Daniel J. Goendyke should be held to bail in the sum of five hundred dollars, for his personal appearance at the then next term of the Ogle County Circuit Court, on the first day of said term, in default of which bail so required by the judgment of the said David S. Pride, Justice of the Peace in and for said County of Ogle as aforesaid, the said Daniel J. Groendyke was, on said eighth day of April, A. D., 1857, committed to the common jail of the County of Ogle.

And, whereas, the said Daniel J. Groendyke being so in jail by virtue of the proceedings aforesaid, and being desirous of having his body released from arrest and confinement as aforesaid, we, the said Daniel J. Groendyke, Henry A. Mix and Albert Woodcock, under their hands and seals, did, on this twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, at and within the County of Ogle aforesaid, make and execute to the people of the State of Illinois, their certain bond or recognizance, which bond or recognizance is in the words and figures following, that is to say:

STATE OF ILLINOIS, }
 OGLE COUNTY, } ss.

Be it remembered, that on the twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, Daniel J. Groendyke, of Oregon, in said county of Ogle, State of Illinois, and Henry A. Mix and Albert Woodcock, of Oregon, the county aforesaid, personally came before David S. Pride, Esqr., and Edward F. Dutcher, two of the Justices of the Peace of said town of Oregon, and county of State aforesaid, and severally acknowledged themselves to owe to the people of the State of Illinois, that is to say, the said Daniel J. Groendyke, the sum of five hundred dollars, and the said Henry Mix and Albert Woodcock each the sum of two hundred and fifty dollars, separately to be made and levied of their respective goods and chattels, lands and tenements, to the use of the said People. If default shall be made in the condition following the condition of this recognizance is such that if the said Daniel J. Groendyke shall personally be and appear at the next term of the Circuit Court to be held in and for the County of Ogle and State of Illinois, on the first day thereof, to answer to an indictment to be preferred against him for feloniously stealing, taking and carrying away, at, and within the County of Ogle aforesaid, one bay horse, of the value of one hundred and fifty dollars, the property of one H. M. Cash, of Bureau County, in said State of Illinois, at and within the county aforesaid, to do and receive what shall by the Court be then and there enjoined upon him, and shall not depart the Court without leave, then their recognizance to be void, else remain in full force.

DANIEL J. GROENDYKE, [L. s.]

HENRY A. MIX, [L. s.]

ALBERT WOODCOCK, [L. s.]

Taken and subscribed and acknowledged the twentieth day of May, in the year of our Lord one thousand eight hundred and fifty-seven. The alteration made in the name before signing.

E. F. DUTCHER, J. P.

DAVID S. PRIDE, J. P.

Which said recognizance was taken and approved at and within the county of Ogle, by the said David S. Pride, and the said E. F. Dutcher, two of the Justices of the peace within and for said county of Ogle, acting as such, for and within the county of Ogle aforesaid, on the day and date of the execution of said recognizance by the said Daniel J. Groendyke, the said Henry A. Mix and the said Albert Woodcock, and the said recognizance was by the said David S. Pride and the said E. F. Dutcher, Justices of the Peace within and for the county of Ogle and State of Illinois before whom the same was taken and acknowledged, and delivered to the Clerk of the Circuit Court in and for the county of Ogle, on the first day of June, in the year of our Lord one thousand eight hundred and fifty-seven, and the said recognizance was on the said first day of June, in the year aforesaid, filed in the office of the said Clerk of the said Circuit Court, as a matter of record in said Court, in and for the county of Ogle aforesaid. And, whereas, at the June term of said Ogle County Circuit Court begun and holden at the Court House in Oregon, in said county of Ogle, on the first monday in the month of June, A. D., 1857, came the people by their attorney, and the said defendant, Daniel J. Groendyke, being three times solemnly called, came not, but made default, and the said Henry A. Mix, and the said Albert Woodcock, were called to produce the body of the said defendant, Daniel J. Groendyke, but they failed to do so, and thereupon, at the June term aforesaid, it was ordered and adjudged by the Court, that the said recognizance be taken and considered as forfeited, and owing to the said people which said judgment of

forfeiture was by the order of the said Circuit Court at the June term
 5 aforesaid, duly entered of record in said Court, and the defendant of the
 said Daniel J. Groendyke, and said Henry A. Mix, and the said Albert
 Woodcock, was by the order of the said Court, entered of record in said
 Court; all of which appear from the record of our said Court, and, where-
 as, the said sum of five hundred dollars, the penalty in recognizance men-
 tioned, has not been paid by the said Daniel J. Groendyke, or the said
 Henry A. Mix, or the said Albert Woodcock. We, therefore, commend
 you that you make known to the said Daniel J. Groendyke, and the said
 Henry A. Mix, and Albert Woodcock, if they are to be found in your
 county, that they are required to be and appear before our said Circuit
 Court of said county of Ogle, on the first day of the next term thereof, to
 be begun and holden at the Court House in Oregon, in said county, on the
 first monday of October, A. D., 1857, to show cause, if any they have,
 why execution should not be issued against them, for the aforesaid sum of
 five hundred dollars, the penalty in said recognizance mentioned as afore-
 said, and have you then and there this writ.

Witness Mortimer W. Smith, Clerk of our said Circuit Court, and
 the seal thereof at my Office in Oregon, this 10th day of Sep-
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 Clerk.

On the back of said Scire Facias was the following endorsement :
 STATE OF ILLINOIS—OGLE COUNTY.

6 I have duly made known the contents of the within *Scire Facias*, by
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 cock, and by delivering each of them a true copy of the same, this twenty-
 first day of September, A. D., 1857, the within named Daniel Groenkyke
 not found in my county.

E. R. TYLER, Sheriff,
 By M. C. STODDARD, Deputy...

Filed October 5, 1857.

M. W. SMITH, Clerk.

7 Demurrer to scire facias filed October 7, 1857.

8 Demurrer overruled.

1st, Plea, nul teil, record.

12 Replication to said plea, and similtater.

8 2d Plea as follows :

“And for a further plea in this behalf, the said defendants say actio non,
 because they say that there is no such judgment of forfeiture now remain-
 10 ing upon the records of said Ogle County Circuit Court, as by the scire
 facias is supposed and alleged, and this they are ready to verify, where-
 fore they pray judgment against, &c.

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 were always ready and willing to surrender the body of the said Groen-
 dyke according to the form, force and effect of said recognizance in said
 10 scire facias mentioned, but that there was and is no indictment pending,
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Motion in arrest of judgment by Mix and Woodcock. Overruled.

Judgment against Mix for \$250, and against Woodcock for \$250;
²⁰ appeal taken and perfected.

ERRORS ASSIGNED:

1st. Overruling motion in arrest of Judgment.

2nd. Overruling motion for new trial.

3d. In trying the case with the Pleas unanswered.

4th. The judgment is not authorized by the verdict in this. The verdict does not find any amount of debt or damages.

5th. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

Mix stat. vs People
abstract.

Filed April 19. 1859
L. L. Lander
Clerk

13292

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