

No. 12543

Supreme Court of Illinois

Gorton.

vs.

Frizzell

Pleas before the Honorable J
Wilson Drury Judge of the Sixth Jud-
- icial Circuit of the State of Illinois
At a term of said Court begun and
held at the court house in and for
the County of Rock Island and State
of Illinois, on the second Monday
(the ninth day) of June A.D. 1856
and on the 24th day of said month
of June, in the said June Term.

Present. Hon. Wilson Drury Judge &c.

G. W. Pleasant States atty, pro tem

Truman B. Horton Sheriff.

William Frizzell

vs.

Truman B. Horton

Debt.

Be it remembered that here-
tofore tried on the twenty fifth day of October
A.D. 1856. the said named William Frizzell
by his attorney caused to be filed in the clerk's
office of the Circuit Court aforesaid, his precipe
for a summons, in the words and figures
following to-wit. "Rock Island Circuit Court
November Term A.D. 1855. William Frizzell
vs Truman B Horton - In debt - Debt. \$102.⁰⁰
Damages \$200.⁰⁰. The clerk of the Circuit Court will
please issue a Summons directed to the Coroner of said
County returnable to the next term - Oct. 24.th 1855. -

Precipe.

Knox, Manning & Wilkinson, Attys for Plff. "

And afterwards ~~sent~~: on the same twenty fifth day of October, ~~a~~ summons issued out of the Clerks office of said Circuit Court, at the suit of said William Figgell and against the said Truman B. Gorton, which said summons is in the words and figures following: -viz-

Summons.

"State of Illinois, Rock Island County, ss. The people of the State of Illinois to the Coroner of said County: Greeting: We command you to summon Truman B. Gorton, if to be found in your County, personally to be and appear before the Circuit Court of the County of Rock Island on the second day of the next term thereof to be holden at the Court house in Rock Island on the first Wednesday after the first Monday in the month of November next, to answer William Figgell, of a plea that he render unto him the sum of One hundred and two dollars, which to him he owes and from him unjustly detains, to his damages, the sum of Two hundred Dollars, as he says; and have you then there this Writ, and make return thereon in what manner you execute the same. Witness, Frazier Wilson Clerk of our said Circuit Court at Rock Island this 25th day of October in the year of our Lord, one thousand eight hundred and fifty five. Frazier Wilson. Clerk. By Quincy McNeil - dpy - "

And the said summons was afterwards and on the twenty sixth day of October 1855, returned into the said Clerk's Office, with an endorsement thereon as follows,

" I acknowledge Service on the within summons, dated
" October 26. 1855. J. B. Gorton. "

And be it remembered that afterwards and on the twenty
seventh day of October 1855 the above named plaintiff
by his attorneys caused to be filed in the Clerk's Office
of said Court his declaration in ~~his~~ the said entitled
cause, which is in the words and figures following: viz -
" State of Illinois. Rock Island County. ss. Rock
Island Circuit Court. November Term. AD 1855.

William Triggell. Plaintiff in this suit by Knox,
Manning & Wilkinson his attorneys, complains of Truman
B. Gorton. Sheriff of the County of Rock Island, de-
fendant in this suit, being in Custody &c. of a plea that
the said defendant, render unto the said plaintiff, the
sum of One hundred and Two dollars and — cents of
debt, which he owes to and unjustly detains from him.
For that, whereas the said plaintiff heretofore to wit: On
the tenth day of July AD 1855, before E. B. Bean, one
of Justices of the Peace within and for the aforesaid
County of Rock Island, by the consideration and
judgement of the said court, recovered against one James
Bowie, One Hundred and Two dollars and — cents,
which was adjudged to the said plaintiff, in and by the
not performing certain promises and undertakings be-
fore then made by the said James Bowie, to the said
plaintiff, as for his costs and charges by the said plain-
tiff about his suit in that behalf expended. Whereof
the said James Bowie was convicted as by the record and

proceedings thereof still remaining in the office of the said Justice of the Peace, more fully and at large appears. And the said Plaintiff in fact says, that he the said Plaintiff for having execution of the said judgment afterwards to wit: On the twentieth day of July. AD 1855, sued and prosecuted out of the said Court, a certain writ of the People of the State of Illinois, called a capias ad satisfaciendum upon the said judgment directed to any constable of the aforesaid County to execute, which said writ was delivered by the aforesaid Justice of the Peace, to J. B. Harrington, one of the Constables of the County of Rock Island aforesaid, by which said writ the said People of the State of Illinois commanded the said Constable to arrest the said James Bowie, and him convey to the ~~Common~~ Common Jail of said County, and further commanding the Sheriff or Jailor to receive and safely keep him the said James Bowie in said jail till he pay the aforesaid debt or be discharged by due course of law. By virtue of which said writ the said J. B. Harrington, Constable as aforesaid, at the place aforesaid, took and arrested the said James Bowie, by his body, and then and there by virtue of the said writ, conveyed him the said James Bowie to the common jail of the County of Rock Island aforesaid, and then and there delivered him the said James Bowie to the aforesaid Truman B. Gorton, who then and thenceforth until ^{and at} the commencement of this suit was Sheriff of the County aforesaid, - And by virtue of said writ the said Truman B. Gorton Sheriff as aforesaid then and there had and detained the said James Bowie in his

custody in execution for the said sum of money so mentioned
in and endorsed on the said writ as aforesaid, and kept and de-
tained him the said James Bowie in his custody from there
until the said defendant so being Sheriff as aforesaid and
afterwards to wit: on the day and year last aforesaid and at
the place aforesaid without the leave or license and against the
will of the said Plaintiff suffered and permitted the said
James Bowie to escape and go at large, and the said James
Bowie did then and there escape and go at large whitherso-
ever he would, out of the custody of the said defendant, he the said
defendant, so then being Sheriff as aforesaid: and the said
sum of money so endorsed on the said writ as aforesaid to-
gether with the interest and Sheriff fees being then and
still wholly unpaid and unsatisfied to the said Plaintiff
to wit, at the place aforesaid: Whereby an action hath
accrued to the said Plaintiff to demand and ~~have~~^{have} and
from the said defendant the said sum of money above de-
manded. And for that whereas also to wit on the tenth day
of July A.D. 1855, by the consideration and judgment of C. B.
Pear one of the justices of the Peace within and for the county
of Rock Island aforesaid, the said Plaintiff recovered
against one James Bowie one Hundred and Two dollars
and ~ cents which was adjudged to the said Plaintiff in
and by the not performing certain promises and undertaking
before then made by the said James Bowie to the said Plain-
tiff, as for his costs and charges by the said Plaintiff about
his suit in that behalf expended whereof the said James
Bowie was convicted as by the record and proceedings thereof

still remaining in the office of the said justice of the Peace more fully and at large appears. And the said plaintiff in fact says, that the said plaintiff for having execution of the said judgment afterwards to wit: on the twentieth day of July AD 1855 issued and prosecuted out of the said justice's Court a certain writ of the People of the State of Illinois called a capias ad satisfaciendum upon the said judgment which said writ was on the day and year just aforesaid delivered to Truman B. Gorton Sheriff of the County of Rock Island as aforesaid, by which said writ the said People of the State of Illinois commanded the said Sheriff to receive and safely keep him the said James Bowie in the common Jail of the aforesaid County of Rock Island until he the said James Bowie pay the said debt or be discharged by due course of law. By virtue of which said writ the said Truman B. Gorton Sheriff as aforesaid had and detained him the said James Bowie in his custody in execution for the said sum of money so mentioned in and endorsed on the said writ as aforesaid and kept and detained him the said James Bowie in his custody from thence until the said defendant so being sheriff as aforesaid afterwards to wit on the twenty first day of July AD 1855 and at the place aforesaid: Without the leave or licence and against the will of the said plaintiff suffered and permitted the same said James Bowie to escape and go at large and the said James Bowie did then and there escape and go at large. Wheresoever he ~~was~~ out of custody of the said defendant, he ~~the~~ said defendant, so then being

Sheriff as aforesaid: And the said sum of money so endorsed
on the said writ as aforesaid together with the interest and sheriff's
fees being then and still wholly unpaid and unsatisfied to
the said plaintiff, to wit, at the place aforesaid: Whereby
an action hath accrued to the said plaintiff to demand
and have of and from the said defendant the said sum
of money above demanded, yet the said defendant al-
though often requested so to do hath not as yet paid
the said sums of money above demanded or any part thereof
to the said plaintiff but so to do hath hitherto wholly
refused and still doth refuse to the damage of the
said plaintiff. Two hundred dollars and therefore he
brings suit &c

Know Manning & Wilkinson
Attys for Plff

And afterwards and on the 22nd day of November AD 1855, the defen-
-dant by his counsel, caused to be filed in the Circuit Court of
Rock Island county aforesaid, his demurrer to the plaintiff's
declaration, in the words and figures following, to wit:

"State of Illinois. Rock Island County ss Rock Island
Circuit Court. November Term AD 1855.

Truman B. Gorton vs William Fennell & Debts And the
said defendant by Gaudy & J. O. Wilkinson his attorneys
comes & defends the wrong &c and says that the declaration of
the said plaintiff, is not sufficient in law: Wherefore he prays
judgement, &c. Gaudy & Wilkinson Attys for d. m

And afterwards and at a Circuit Court held at the city of
Rock Island in and for the county of Rock Island

emurres
declⁿ.

Order, overruling
demurred.

on the 12th day of November A.D. 1855
and State of Illinois the following order was made and entered
on record in said entitled cause. "William Fizzell vs. Truman
B. Gorton. Debt. At this day came the parties by their attor-
neys and the defendants demurred to plaintiff's declaration and
the matters thereon arising, having been heard and considered by
the court, the said demurrer is by the court overruled. "

Pleas.

- And afterwards and on the 19th day of March A.D. 1856 the defen-
dant by his counsel caused to be filed in the Circuit Court aforesaid
his pleas. Numbered 1. 2. 3. & 4., and which are in the records and fi-
gers following to wit: State of Illinois County of Rock Island
ss. Circuit Court. March Term A.D. 1856 - Truman B. Gorton
(1) vs William Fizzell. (1) And the said Truman B. Gorton, the defen-
dant herein comes by his attorneys and defends the wrong and in-
juries, when &c and says that he does not owe the said sum of
money in said declaration demanded or any part thereof in man-
ner & form as the said Plaintiff hath above thereof complained
against him and if this he puts himself on the country &c
(2) (2) And the said defendant for further plea in this behalf to the
said Plaintiff's declaration, by leave of the Court first had and
obtained, says actio non, because he says that the said writ
of capias ad satisfaciendum, in said declaration mentioned
and in each of the counts thereof and by virtue of which the
said James Bowie was arrested and delivered into the custody
of said defendant as alleged was null and void and insufficient
in law for the defendant to detain the said James Bowie, where-
fore he permitted the said James Bowie to go at large as he of
right might and ought to do and this he is ready to verify,
wherefore he prays judgement if the said Plaintiff ought to

(3^d) have and maintain his action aforesaid &c. (3.) And for further plea in this behalf by leave of this Court &c. the said defendant says actio non, because he says that after the said arrest and delivery of the body of the said James Bowie to the said defendant and at the first regular Term of the County Court holden in & for the County of Rock Island and State of Illinois, to wit. on the 6th day of August A.D. 1855 at and within said County, before said County Court by lawful proceedings therein had in pursuance of the Statute of said State with reference to such cases the said James Bowie made a Schedule of all his property and effects under oath and thereupon the said Court appointed an assignee who received the same, and discharged the said James Bowie from further arrest and imprisonment. And the said defendant avers that at the time when the said James Bowie was so arrested and committed to custody the said County Court was not in session and was not until the commencement of the Term at which the said proceedings were so had as aforesaid & this he is ready to verify, wherefore the said defendant says that the said Plaintiff ought not to have and maintain his aforesaid & prays

(4th) judgement &c. (4.) And for further plea in this behalf by leave &c. the said defendant says actio non, because he says that at the time when the said James Bowie was so arrested and committed to the custody of the said defendant as aforesaid the County Court of the County of Rock Island and State aforesaid was not in session but had adjourned to its next regular Term in course and that immediately afterwards said arrest and while the said James Bowie

was in the custody of the said defendant, the said James Bowie to wit on the 21. day of July. A.D. 1855, at and within the County and State aforesaid requested the said defendant to take him, the said James Bowie, before the said County Court for the purpose of making an application for release and discharge from such imprisonment under the provisions of the laws and the State aforesaid in relation to Insolvent debtors, and because the said County Court was not then in session the said defendant could not comply immediately with said request, but the said defendant as he lawfully might permitted the said James Bowie to go at large and did not confine him in the common jail of said County until the time that said County Court again commenced to sit, on the first Monday of August A.D. 1855 when the said defendant produced the said James Bowie before said County Court as he had before requested, and then and there such proceedings were had by & before said County Court, the same having then & there jurisdiction thereof that the said James Bowie was under the provisions of the statute of said State discharged from arrest and imprisonment: and the said defendant avers that the said James Bowie was at the time when the said defendant so permitted him to go at large entitled to his discharge under the provision of the statute aforesaid upon making a schedule of all his property, effects & indebtedness which the said James Bowie then & there intended to and afterwards, to wit on the day and year aforesaid, there did make, & was discharged. And this the said defendant is ready to verify. Wherefore he prays judgment &c. - D. O. Wilkinson & Gandy, Attorneys for Deft. - "

And afterwards and on the 20. day of March AD 1856 the said Plain-
tiff by his counsel caused to be filed in said Circuit Court
his joinder in issue to the said first plea and his demurrer
to the others of said pleas which joinder and demurrer
are in the words and figures following to wit - "State of Illinois
County of Rock Island Rock Island Circuit Court.

March Term AD 1856 - William Frizzell vs Truman B.

Gorton. (1) The plaintiff as to the first plea of the defen-
dant whereof he hath put himself upon the country doth the
like &c. (2) And the said plaintiff comes and says that
the said second plea of the said defendant above pleaded is
not good and sufficient in law to bar the said plaintiff
from having and maintaining his action aforesaid & wherefore
(3) And the said plaintiff comes and says that the said
third plea of the defendant is not good and sufficient in law
to bar the said plaintiff from having and maintaining his
action aforesaid &c. (4) And the said plaintiff says the
said fourth plea of the said defendant is not good and
sufficient in law to bar the said plaintiff from having
and maintaining his action aforesaid, Wherefore &c.

Manning, Knox & Wilkinan. Atty for Plff. "

And afterwards and at a Circuit Court held in and for
the County of Rock Island and State of Illinois at the Court
house in the city of Rock Island on the 22nd day of March
AD 1856 the following order was made and entered of record
by said court in said entitled cause viz: "William
Frizzell vs. Truman B. Gorton. - Debt. - At this day
came the parties by their attorneys and the plaintiff's

joinder in issue
to 1st plea.

demurrer
to 2nd plea.

demurrer to 3rd plea.

demurrer to 4th plea.

demurrer overruling

demurrer to 2nd plea

sustaining it as

the other pleas.
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said motions overrules the same and orders that plaintiff have and receive of and from defendant the sum of One hundred and two Dollars and ninety one cents assessed by the Jury heretofore impanelled; together with his costs and that he have execution therefor. Whereupon defendant prayed an appeal to the supreme court which is granted on condition that defendant file a bond in the sum of three hundred dollars with Holmes Hakes or Henry A Porter as his security within five days from this date. "

And be it remembered that afterwards and on the 25th day of June A.D. 1856 in the same term of the court last aforesaid the said defendant by his attorneys caused to be filed in said court his bill of exceptions ~~in said~~ entitled

Bill of
Exceptions. *State of Illinois. County of Rock Island. f.*
William Fessell vs Truman B. Gordon. } Circuit Court
June Term A.D. 1856

Be it remembered that upon the trial of this cause the Plaintiff in support of the issues on his part produced E. R. Bean who was sworn as a witness and testified that he was an acting Justice of the Peace for the County of Rock Island during the whole of the year A.D. 1855. and thereupon a docket was produced which the witness stated was his docket kept by him during that year & a summons which reads as follows, to wit: "State of Illinois, Rock Island County. ss. The People of the State of Illinois, To any Constable of said County, Greeting: You are hereby commanded to summon James Bowie to appear before me,

at my office at 10 o'clock O. M. to answer the complaint of William Finnell for a failure to pay him a certain demand not exceeding one hundred dollars, and thereof make due returns as the law directs. Given under my hand and seal this 5th day of July 1855. E. B. Bean J. P. L. P."

endorsed, "I return this summons served by reading to the within Bowie this 5th of July 1855. S. B. Harrington. Const." and the witness stated that the same was issued by him and that the suit thereby commenced and the proceedings thereof were entered on his docket, which was pointed out by him and reads as follows, to wit:

"William Finnell	}	D	on note	
No. — vs. 1937			100.	00
James Bowie	}	Summons issued to S. B. Harrington. Const. on the 5 th of July 1855, returnable on the 10 th inst. at 10 A. M. at this day and hour of trial	56.	
			30	

deft made default whereupon judgment is rendered in favor of the Pff and as debt for \$100. — & costs taxed at \$6 July 17. 1855 on oath of the Pff. ex. issued to S. B. Harrington. Const. July 20. 1855, ex returned no property found, same day an oath of Pff. ca: ex: issued to S. B. Harrington. Const. — " —

and the Plaintiff then offered said summons and docket entries in evidence, to which the defendant by his counsel objected because the same shows no valid judgment against the defendant in said suit of the Plaintiff against James Bowie, and because the evidence offered varies from the allegations in the declarations, but the Court overruled the

objection and allowed the same to read to the jury to which the defendant then and there excepted.

The Plaintiff then produced a writ of capias ad satisfaciendum together with the endorsement thereon by an affidavit attached thereto which the said witness stated he issued as a Justice of the Peace on the said judgment against James Bowie and which reads as follows, to wit:

affidavit for

Ca: Sa:

"State of Illinois, Rock Island Co., ss. I do solemnly swear that I do verily believe James Bowie to be able to pay \$101.66 the amount of a judgment, costs and interest recovered by me on the 10th day of July 1855, before E. R. Bean, J. P., and that he withholds his money or secretes his property from the officer so that the debt cannot be levied. Subscribed and sworn to before me this 20th day of July 1855. E. R. Bean J. P. } Wm. Fennell

writ of

Ca: Sa:

- State of Illinois, Rock Island Co., ss. The people of the State of Illinois, To any constable of said County Greeting: Whereas, Wm Fennell recovered a judgment against James Bowie before E. R. Bean, a Justice of the Peace, on the 10th of July 1855, which judgment, costs and interest amounts to \$101.66 and whereas he has this day made oath before me E. R. Bean, a Justice of the Peace for said Rock Island County, as follows, to wit: That he does verily believe James Bowie to be able to pay \$101.66 the amount of a judgment, costs and interest recovered by Wm. Fennell on the 10th day of July 1855 before E. R. Bean, a Justice of the Peace and that he withholds his money or secretes his property from the officer so that the debt cannot be levied. You are therefore, hereby commanded to arrest the said James Bowie

and him convey to the common jail of said county, and the Sheriff or Jailor is commanded to receive and safely keep him in said jail till he pay the debt or be discharged or by due course of law. Given under my hand and Seal this day of July A.D. 1855. C. R. Bean. J. P. Seal (upon which there is no impression).— and offered the same in evidence, to which the defendant by his attorneys objected, because the same was invalid and void, because there was a variance between the evidence offered and the allegations of the declaration, and because the same was irrelevant, but the court overruled the objection and permitted the writ aforesaid to be read in evidence, to which the defendant by his counsel then and there excepted.

J. B. Harrington was then produced by the Plaintiff and sworn as a witness and testified that he was a constable during the month of July 1855 for the County of Rock Island and thereupon the Plaintiff proposed the following question: Did you ever have this writ, (exhibiting the la. la. before set out) in your hands and if yea, state whether you executed it and how? To this question the defendant by his attorney objected because there is better proof of such fact and the facts sought to be proven cannot be proven by parol, but the court overruled the objection and permitted the witness to answer the interrogatory, to which decision the defendant then and there by his counsel excepted.—

The witness in answer to the question stated that he served the writ on James Bowie on the same day he received the writ, which was the day of its date

arrested him and conveyed him to the jail of Rock Island County, where he delivered the writ to & left the said Bowie with Ezra M. Beardsley, who was at that time the jailor, Beardsley saying that he would take charge of him and that he paid Beardsley \$3 or a little less which the Plaintiff gave him for the purpose, as the price of a weeks board that he knew he paid him that full amount of the fees & one weeks board. The witness stated that on the next day he saw Bowie at large in the street & from day to day for a long time thereafter.

The plaintiff then produced Ezra M. Beardsley as a witness who being sworn testified that during July last (1855) the defendant was Sheriff of Rock Island County, and the witness was jailor under him that the witness Harrington handed him the writ of La Sa offered in evidence and he received the said James Bowie & kept him there about two hours. Bowie told the witness that he wanted to apply to the County Court under the Insolvent law for the purpose of making a Schedule of his effects and obtaining a discharge and would do so at the first opportunity. Mr. Flakes, Dr. Minier & Dr. Lathrop came to the jail and told the witness if he would let Bowie go, they would be responsible for his appearance when required at the County Court, and thereupon the witness allowed Bowie to go with them. The defendant had no knowledge whatever of the matter. That Harrington paid \$2 to the witness that he could not make the change & said he would

pay the balance next day which I told him was satisfactory, but has not done so. that \$2.80 was the sum due for receiving the prisoner & one week's board. The Plaintiff in further support of the issues on his part produced an execution & the return thereon which was admitted to be an execution issued in the case of the Plaintiff vs. Bowie by the witness E. R. Bean and which as follows.

Execution.

"State of Illinois, Rock Island County ss. The People of the State of Illinois to any constable of said County... Greeting: We command you that of the goods and chattels of James Bowie in your county you make the sum of One hundred dollars and — cents debt, with interest at the rate of six per cent. per annum from the 10 day of July 1855, when judgement was rendered and — dollars and 86 cents cost; which Wm. Finnell lately recovered before me, in a certain plea against said James Bowie and hereof make due return to me within seventy days from date. Given under my hand and seal this 17th day of July 1855.

E. R. Bean. J. P. 

endorsed, "I return this execution found whereon to levy to make the debt & cost this 20th of July 1855 S. B. Harrington. So." "Received this ex this 17th of July at 9 o'clock A.M. S. B. Harrington." — and offered the said execution and the return thereon in evidence, to which the defendant by his counsel objected, but the court overruled the objection and allowed the same to be read to the Jury to which the defendant

then and there excepted.

Which was all the evidence offered by the Plaintiff.

The defendant thereupon in support of the issues on his part proposed and offered evidence to prove that on the next day after the arrest of the said James Bowie, he gave notice as required by law of his intention to apply on the first day of the next term of the County Court to occur thereafter, namely, on the first Monday of August A D 1855 for the purpose of making a Schedule and obtaining a discharge under the Insolvent laws from such imprisonment and that in pursuance ~~there~~ of such notice that said James Bowie did apply on the first Monday of August A D 1855 to the County Court of Rock Island County and made a full schedule of his indebtedness & effects according to the provisions of the Insolvent laws, which was accepted by the Court, an assignee appointed and the effects delivered by the said Bowie to the assignee and the said Bowie was thereupon discharged by the Court and that from the time of such arrest until the time he was so discharged the County Court was not in session and that the said Bowie was arrested about fifteen days before such action of the County Court. To this evidence the Plaintiff by his counsel objected because the same was improper & irrelevant and the Court sustained the objection and excluded the evidence, to which the defendant there and then excepted. — The foregoing is all the evidence introduced in said cause by either party.

Thereupon the Plaintiff prayed the following Instructions which were given against the defendants objections

Plff instructions by the Court to-wit.

(1.) If the jury believe from the evidence that judgement was obtained by the plaintiff against James Bowie and a capias ad satisfaciendum was issued thereon as alleged in the declaration in this cause, that he was arrested on such capias and committed to the custody of the jailor of Rock Island county who was then and there the jailor and deputy of the defendant and that afterwards said jailor and deputy voluntarily permitted said Bowie to go at large, then the plaintiff is entitled to recover against the defendant in this cause and the measure of damages is the amount of the plaintiff's judgement against said Bowie with the plaintiff's cost on said judgement and interest on said judgement at the rate of six per cent. per annum from the time it was rendered until the present time.

(2.) The permitting a person who is committed to jail to go out of jail and at large is an escape within the meaning of the law in such a case as the one under consideration.

(3.) The sheriff is responsible for the acts of his deputy, and of the jailor in permitting an escape.

(4.) If the jury believe from the evidence that a portion of the jail fees for one week were paid by the plaintiff and a promise made to pay the residue and the jailor accepted such promise and thereupon

received Bowie in custody this is a sufficient payment of jail fees to prevent the defendant from setting up that such fees were not paid for one week to clear himself in this action.

To the giving of which, and each one thereof, the defendant ~~thas~~ and there excepted.

And the defendant prayed the Court to give the following instructions, to-wit:

- (1.) "Unless the jury believe from the evidence that James Bowie was committed to the custody of the defendant under and by virtue of the writ offered in evidence and that the defendant unlawfully allowed and permitted the said Bowie to escape from such custody without the consent and against the will of the Plaintiff and without the debt having been paid by the said Bowie or some one for him by the Plaintiff and without any lawful authority to discharge him then they will find for the defendant.
- (2.) If the jury believe from the evidence that the Plaintiff failed to pay the fees allowed by law for the keeping of said James Bowie in jail for one full week then the defendant or his jailor was not bound to detain the said Bowie and if he was permitted to go at large the defendant is not liable to the Plaintiff in this case.
- (3.) If the Jury believe from the evidence that the said James Bowie was committed to Ezra M. Beardsley the jailor of Rock Island County and was permitted

Given

Given

Refused

by the said Beardsley to escape and go at large without the knowledge or consent of the defendant and that the act of Beardsley was not confirmed afterwards by the defendant, and that the defendant had no other or further connection with said escape, then they will find for the defendant

(4.) If the Jury believe from the evidence that the Ca. La. by which Bowie was arrested and committed to jail was void then they will find for the defendant and they are further instructed that the Ca. La. offered in evidence in this case is void. "

And the court gave those numbered 1 & 2, but refused to give those numbered 3 & 4. To which decision of the Court in refusing to give the 3^d & 4th Instructions the defendant by his counsel then & there excepted. And be it further remembered that upon the return of the Verdict herein the defendant entered his motion for a new trial and assigned in support thereof the following reasons, to wit,

1. The Court erroneously admitted evidence offered by the Plaintiff.
2. The Court wrongfully excluded evidence offered by the defendant.
3. The Court erred in giving the Plaintiff's Instructions.
4. The Court erred in refusing the 3 & 4th Instructions asked by the defendant.
- 5th The Verdict of the Jury is not sustained by the law and the evidence.

Refused

mo for
new trial.

6th The Verdict of the Jury is for more than the Plaintiff is entitled to recover.

To the allowance of which motion the Plaintiff objected and upon consideration the Court overruled the motion and refused to grant a new trial, to which decision the defendant by his counsel then and there excepted.

And thereupon the defendant, because his motion in arrest of judgement, because there is no sufficient cause of action shown by the declaration herein, but it discloses the fact that the pretended judgement on which the Ct. Ex. issued was void for the want of jurisdiction in the Justice of the Peace, and because the Verdict finds more for the Plaintiff than he can have judgement for which motion the Plaintiff opposed and the Court overruled the same and rendered judgement on the Verdict to which the defendant by his counsel then & there excepted.

And for as much as the same matters do not appear of Record the defendant prays that this his Bill of Exceptions be signed and sealed by the Court and the matters & things therein contained be made a part of the record, which is accordingly done.

J. W. Drury. Chas 3.

And afterwards and on the 26. day of June A.D. 1856 the said defendant caused to be filed in said Court his appeal bond to the supreme Court with Holmes Hakes and Henry A. Porter as securities in the sum of three hundred dollars which

no in arrest
of judg^t

appeal bond
to Sup. Court.

bond was then and there approved by said Court
and is in the words and figures following to wit:

"Know all men by these presents that we Truman
B. Gorton Holmes Hakes & Henry A. Porter of the County
of Rock Island and State of Illinois are held and firmly
bound unto William Firrell of the same County
and State in the penal sum of Three hundred Dollars
lawful money of the United States to be paid unto the
said William Firrell his heirs executors administra-
tors and assigns and to which payment well and
truly to be made we bind ourselves our heirs executors
and administrators jointly and severally firmly by these
presents. Sealed with our seals and dated at Rock Is-
land this 25th day of June A D 1856. The condition of
the above obligation is such that whereas the above
named William Firrell did on the 24th day of June
A D 1856 in the Circuit Court held within and for the
County of Rock Island and State of Illinois recover
a judgement against the above bounden Truman B.
Gorton for the sum of One hundred and two dollars &
ninety one cents. debt Five dollars and sixty six cents
damages and costs of suit from which judgement the said
Truman B. Gorton has prayed for and obtained an
appeal to the supreme Court of said State. Now if
the said Truman B. Gorton shall duly prosecute
said appeal and shall moreover pay the amount of the
judgement, costs interest and damages rendered and to
be rendered against him the said Truman B. Gorton

Franker Wilson. Clerk

Henry A. Parker

Edal

Aug

Darnings & Costs—

186

S. B. Hamington 2 days

8.90

Defendants Costs

annual payed 20. for paper 25 Bill costs 30 cut and 30 copy 20 188

Dependments Costs 185

Total 10.75



State of Illinois
Rock Island County } I Quincy McNeil Clerk
of the Circuit Court within and for said
County do hereby certify that the foregoing
pages contain a true and perfect copy
of the precept summons, declaration
demurrer ~~and~~ pleadings, and motions,
and of all orders and judgments of said
Court, and of the bill of exceptions, appealed
bond to supreme Court, and bill of costs
in the case of William Frizzell against
Luman B. Horton, pending and decided
in said Court at the June Term thereof
AD 1856, and is a true and perfect
transcript of the records and files, of the
proceedings in said entitled cause
in the said Circuit Court, as fully
and completely made as the same
remain of record or on file in the
Clerks office of said Court.

In Witness Whereof I have
hereunto set my hand and
affixed the seal of said Court
at office in the city of Rock
Island this 12 day of January
AD 1858.

Quincy McNeil Clerk

State of Illinois, 3^d Grand Division
Supreme Court April Term 1858.

Gunnar B. Gorton,

vs

William Griggel

} Error to Rock Maud
}

And the said Gunnar B. Gorton
Plaintiff in Error comes by his attorneys
and says that manifest error hath
intervened in the proceedings of the
Circuit Court of Rock Maud whereof
the foregoing is a copy and exemplifi-
cation to his injury and he assigns
as errors therein the following, to-wit:

1st The said Circuit Court erred
in sustaining the demurrer to the 3^d &
4th Pleas & each of them.

2^d The said Circuit Court erred
in admitting improper evidence

3^d The said Circuit Court erred
in refusing proper evidence offered
by the Plaintiff in Error.

4th The said Court erred in giving
the instructions prayed for by the Plaintiff
below.

5th The said Court erred in refusing
to give to the Jury the 3^d & 4th Instructions

asked by the defendants below.

6th The said Circuit Court erred in refusing to grant a new trial

7th The said Circuit Court erred in refusing to arrest the judgment

8th The said Circuit Court erred in rendering judgment for the Plaintiff on the Verdict.

9th The said Circuit Court erred in rendering the judgment in the manner & form as set forth in the record. and for the amount therein

10th The proceedings are otherwise informal & erroneous.

Wherefore he prays the judgment of the Court that the said judgment be reversed & the said cause be remanded &c.

Wilkinson & Measanti
Gandy & Gidd

Atty for App in Error

And the said Appellee says that in the Record aforesaid there is no error & prays that the Judgment may be affirmed. *W. H. P. Atty for Appellee*

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Norman B. Gorton

my
William Grizzle

En route to Rock Island

Filed April 3, 1888
Leland
OK

STATE OF ILLINOIS--Third Grand Division.

SUPREME COURT.---April Term, A. D. 1858.

TRUMAN B. GORTON, }

vs.

WILLIAM FRIZZEL. }

Error to Rock Island.

ABSTRACT.

This is an action of debt for an Escape commenced by the Defendant in error against the plaintiff in error in the Rock Island Circuit Court.

The summons and declaration claim \$102 debt, and \$200 damages.

The Déclaration, (1st count,) avers that the plaintiff on the 10th of July 1855, before E. R. Bean, J. P. of Rock Island county recovered a judgment against James Bowie for \$102 and the Plaintiff's costs; that on the 20th of July 1855 the plaintiff sued out a *capias ad satisfaciendum* upon the judgment, which was delivered to a constable, by virtue of which writ he arrested James Bowie and conveyed him to the common jail where he delivered Bowie to the defendant, Gorton, who was Sheriff of the county; that the defendant received and detained Bowie by virtue of the writ; and afterwards, without the leave and license and against the will of the plaintiff, the said Bowie escaped and was permitted to go at large by the defendant, the said judgment interest and costs being wholly unpaid.

The 2d count is the same except that it avers that the ca. sa. was delivered by the J. P. to the defendant Gorton for execution and that he arrested Bowie.

The defendant filed his pleas.

1. Nil debet. 2. That the ca. sa. was null and void, and not sufficient to justify the defendant in detaining Bowie.

On these two pleas issue was joined.

The defendant also filed pleas 3 and 4, to which demurrer was sustained, and the defendant abided by his pleas and excepted.

The 3d plea avers that after the arrest and commitment of Bowie, at the first regular term of the County Court for Rock Island county, on the 6th day of August 1855, at said county, before said county court by lawful proceedings therein had in pursuance of the Statute, &c., the said Bowie made a schedule of his effects under oath, an assignee was appointed who received the property, and the County Court discharged Bowie. He avers that at the time when Bowie was arrested and committed the County Court was not in session, and was not until the time the proceedings were had, which was the commencement of the term.

The 4th plea avers that at the time Bowie was arrested and committed the County Court was not in session but had adjourned until its next regular term in course, that immediately after the arrest and commitment and while Bowie was in the custody of the defendant, the said Bowie on the 21st of July 1855, at said county requested the defendant to take him before the

County Court for the purpose of making an application for discharge under the insolvent law, and because the County Court was not in session, he could not comply then with the request, and he permitted the said Bowie to go at large, and did not confine him in the common jail until such Court convened, to-wit: on the first Monday of August 1855, when the Defendant produced Bowie before the County Court as he had requested, and there such proceedings were had by and before such Court, the same having jurisdiction therefor, &c., And he avers that Bowie was entitled to his discharge at the time the defendant permitted him to go at large under the insolvent law upon making a schedule, &c., which he then intended to, and afterwards, on the first Monday of August, did do, and was thereupon discharged.

At the June term of the Rock Island Circuit Court, A. D. 1856, Hon J. W. Drury presiding, the cause was tried and the issues joined before a jury.

On the trial the plaintiff produced E. R. Bean who testified that he was a J. P. for Rock Island during the year 1855, and that a docket shown by him was his docket kept during that year, and that a summons produced was issued by him.

The summons is in the usual form to summons James Bowie to answer William Frizzel for a failure to pay him a demand not exceeding one hundred dollars, bears date July 5th, 1855; and is returnable July 10th 1855, at 10 o'clock, a. m. On the back there was no endorsement of amount claimed, but the following return, "I return this summons served by reading to the within Bowie this 5th day of July 1855. S. B. Harrington, const."

The docket entry is as follows:

William Frizzel

vs.

James Bowie,

Summons issued to S. B. Harrington const on the 5th of July 1855, returnable on the 10th inst., at 10 a. m. at this day and hour of trial debt made default whereupon judgment is rendered in favor of the plff. and vs. debt for \$100 and costs taxed at .86.

on note.

100.00

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July 17, 1855. on oath of Pff ex issued to S. B. Harrington const.

July 20, 1855, ex returned no property found. Same day on oath of Pff ca. sa. issued to S. B. Harrington const."

The plaintiff offered the summons and docket entry in evidence to which the defendant objected, because there was no valid judgment against James Bowie, and the judgment offered varied from that described in the declaration, but the court overruled the objection to which the defendant excepted.

The plaintiff offered a paper in evidence which reads as follows, to-wit:

"State of Illinois. Rock Island Co.—ss.

I do solemnly swear that I do verily believe James Bowie to be able to pay \$101.66 the amount of a judgment, costs and interest recovered by me on the 10th day of July, 1855, before E. R. Bean J. P., and that he withholds his money or secretes his property from the officer so that the debt cannot be levied. Subscribed and sworn to before me this 20th day of July 1855. E. R. Bean, J. P.

WM. FRIZZEL.

State of Illinois, Rock Island Co.—ss.

The People of the State of Illinois to any Constable of said County. Greeting:

Whereas, Wm. Frizzel recovered a judgment against James Bowie before E. R. Bean a Justice of the Peace, on the 10th day of July 1855, which judgment, cost and interest amounts

to \$101.66 and whereas has this day made oath before me, E. R. Bean a justice of the Peace for said Rock Island county, as follows to-wit: That he does verily believe James Bowie to be able to pay \$101.66 the amount of a judgment, costs and interest recovered by Wm. Frizzel on the 10th day of July 1855 before E. R. Bean a Justice of the Peace, and that he withholds his money or secretes his property from the officer so that the debt cannot be levied. You are therefore hereby commanded to arrest the said James Bowie and him convey to the common jail of said county, and the sheriff or jailor is commanded to receive and safely keep him in said jail till he pay the debt or be discharged by due course of law. Given under my hand and seal this day of July A. D. 1855.

E. R. BEAN, J. P. [Seal.]”

—On the back of which there was no endorsement or return whatever.

To the introduction of this paper the defendant objected because the same was invalid and void as a writ of ca. sa., because the same varied from the declaration and was irrelevant, but the court overruled the objection and allowed the same to be read to which the defendant excepted.

The Plaintiff then produced S. B. Harrington who testified that he was constable during July 1855. The writ of ca. sa. being then exhibited to the witness, the plaintiff proposed this question, “Did you ever have this writ in your hands, if yea, state whether you executed it and how?” To this question the defendant objected because there was better evidence, and such facts could not be proved by parol, but the Court overruled the objection to which the defendant excepted.

The witness in answer stated that he received the writ on the day of its date and on the same day served it on James Bowie, arrested him, conveyed him to jail and delivered the said Bowie with the writ to Ezra M. Beardsly, who was the jailor, and who said he would take charge of him. The witness paid the jailor about \$3, which the plaintiff gave him for the purpose, as the price of a week's board and the fees. The witness saw Bowie the next day at large, and for a long time following.

The Plaintiff then produced Ezra M. Beardsly who testified that during July 1855, defendant was sheriff and the witness jailor under him, that Harrington gave him the writ of ca. sa. read in evidence, and delivered to the witness James Bowie, who was detained in jail for about two hours. Bowie told the witness that he wanted to apply to the County Court under the insolvent law for his discharge and would do so at first opportunity. Mr. Hakes, Drs. Mirrie, and Lathrop came to the jail and told the witness if he would let Bowie go that they would be responsible for his appearance when required at the County Court, and thereupon the witness permitted Bowie to go with them. The defendant had no knowledge whatever of the matter. Harrington paid \$2 to witness and could not make the change for the ballance and said he would pay it next day, to which the witness assented, but the sum was not paid. The fees for one week was \$2.80.

The plaintiff produced an execution with the return thereon, which was admitted to be an execution issued in the case aforesaid, and which bears date July 17, 1855 and commands the constable to make \$100 debt and \$6 cts cost. with interest from July 10, 1855; and on the back contains the following return, to-wit:

“I return this ex. nothing found whereon to levy to make the debt and cost this 20th of July 1855”,

—And offered the same in evidence, to which the defendant objected and the court overruled the objection, to which decision the defendant excepted.

This was all the evidence on the part of the Plaintiff.

The Defendant in support of the issues offered to prove that on the next day after the arrest of Bowie, he gave notice as required by law of his intention to apply on the first day of the term of the County Court for a discharge under the insolvent law, and in pursuance of the notice he did apply on the first Monday of August 1855. and upon making a full schedule, &c., was discharged, and that from the time of the arrest till the time of the discharge the County Court was not in session, and that Bowie was arrested about fifteen days before his discharge, to which the Plaintiff objected, the Court sustained the objection and the defendant excepted.

This was all the evidence.

The Court gave on behalf of the plaintiff the following instructions, to which the defendant excepted:

1. If the jury believe from the evidence that the judgment was obtained by the plaintiff against James Bowie and a capias ad satisfaciendum was issued thereon as alleged in the declaration in this cause, that he was arrested on such capias and committed to the custody of the jailor of Rock Island County who was then and there the jailor and deputy of the Defendant, and that afterwards said jailor and deputy voluntarily permitted said Bowie to go at large, then the Plaintiff is entitled to recover against the defendant in this cause, and the measure of damages is, &c.

2. The permitting a person who is committed to jail to go out of jail and at large, is an escape within the meaning of the law in such a case as the one under consideration.

The Defendant asked the court to give the following instructions, which were refused and the defendant excepted.

3. If the jury believe from the evidence that the said James Bowie was committed to Ezra M. Beardsly the jailor of Rock Island county, and was permitted by the said Beardsly to escape and go at large without the knowledge or consent of the defendant, and that the act of Beardsly was not confirmed afterwards by the Defendant, and that the defendant had no other or further connection with said escape, then they will find for the defendant.

4. If the Jury believe from the evidence that the ca. sa. by which Bowie was arrested and committed to jail was void, then they will find for the defendant and they are further instructed that the ca. sa. offered in evidence in this case is void.

The jury returned a verdict, "We the jury find for the Plaintiff the sum of one hundred and two dollars and ninety-one cents debt and five dollars and sixty-six cents damages."

The Defendant moved for a new trial, because.

- 1st. The Court erroneously admitted evidence offered by the Plaintiff.
 - 2d. The court wrongfully excluded evidence offered by the Defendant.
 - 3d. The Court erred in giving the plaintiff's instructions.
 - 4th. The Court erred in refusing the 3d and 4th instructions asked by defendant.
 - 5th. The verdict of the jury is not sustained by the law and evidence, and
 - 6th. The verdict of the jury is more than the plaintiff is entitled to recover.
- Which motion was overruled, and the defendant excepted.

The Defendant moved in arrest of judgment, because,

- 1st. There is no sufficient cause of action shown by the declaration, but it discloses the fact that the pretended judgment on which the ca. sa. issued was void for want of jurisdiction in the Justice of the Peace, and

2d. Because the verdict finds more for the plaintiff than he can have judgment for.
Which motion was overruled, and the defendant excepted.

The Court entered judgment in the following form to-wit:

"That the Plaintiff have and receive of and from Defendant the sum of one hundred and two dollars and ninety-one cents assessed by the jury herein before empaneled; together with his costs, and that he have execution therefor."

To the rendition and entry of which the defendant excepted.

The case was brought by the Defendant to this Court by writ of error.

The errors assigned being in review of each of the decisions and ruling of the Circuit Court.

WILKINSON & PLEASANTS,
GOUDY & JUDD,

Atty's for Plff in Error.

Supreme Court
April Term 1858

T. B. Gordon
vs

Am Higzel

abstract

Gorey & Ince
attys for Plff in error

Filed April 28, 1858

L. Belmont

clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of

Rock Island

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment
of a plea which was in the *Circuit* Court of *Rock Island*
County, before the Judge thereof, between *William Trizzell*

plaintiff, and *Freeman B. Gorton*

defendant, it is said that manifest error hath intervened, to the injury of the said
defendant

as we are informed by *his* complaint, the record
and proceedings of which said judgment we have caused to be brought into our Su-
preme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct
the errors in the same, in due form and manner, according to law; Therefore, We
Command You, That by good and lawful men of your County, you give notice to the said
William Trizzell

that *he* be and appear before the Justices of our said Supreme Court, at the next
term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the
third Monday in April *28, 1858*, to hear the records and proceedings aforesaid, and
the errors assigned, if *he* shall see fit; and further to do and receive what said
Court shall order in this behalf; and have you then there the names of those by whom
you shall give the said *William Trizzell*
notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this *3^d* day of *April* in the
Year of Our Lord One Thousand Eight Hundred
and Fifty-*eight*.

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

I have executed this writ by reading
 the same to William Triggell this 8th day of (30)
 April. A.D. 1858 E M Beardsley Sheriff Rock Island Co
 By M D Merrill Deputy



and Eighty
 One Thousand Eight Hundred
 and Eighty
 of the said County and the Court of said County
 The Hon JOHN D. CALTON, Chief Justice
 Justice together with this writ.

You shall give the said
 Court shall order in this behalf: and make you then there the names of those by whom
 the errors in the said writ shall be made: and further to do and receive what shall
 third month in April 1858 to read the records and proceedings in the said Court and
 said Court to be held at Ottawa in said State on the first Tuesday after the
 first day of the said month of April 1858 before the Justice of said County at the next

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Freeman B. Gorton
 or
 William Triggell

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 Clerk
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Filed April 15 1858

Sherriff Beardsley
 writ by the 10th of this
 month

County before the Judge thereof between
 of a person who was in the
 to the record and proceedings and also in the rendition of the judgment
 do the Clerk of the County of
 CLERK OF THE COUNTY OF
 STATE OF ILLINOIS

STATE OF ILLINOIS,
SUPREME COURT,

To the Clerk of the Circuit

ss. The People of the State of Illinois,
Court for the County Rock Island 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 Rock Island County, before the Judge thereof, between
William Frizzell

plaintiff, and Freeman B. Gorton

defendant, it is said mani-
fest error hath intervened, to the injury of the aforesaid defendant

as we are informed
by his 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 Su-
preme 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 first Tuesday after the third Monday in April ~~next~~ ¹⁸⁵⁸, 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. John D. Caton, Chief
Justice of our said Court, and the Seal
thereof, at Ottawa, this 3^d day of
April in the Year of Our Lord
one thousand eight hundred and fifty-eight

S. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

Freeman B. Gorton

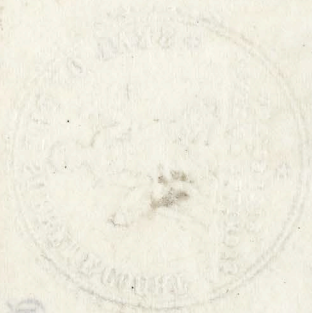
vs

William Buzzell

Writ of Error

Filed April 3. 1858

Leland
Clerk



24th Dec 1858
Clerk in the Supreme Court

STATE OF ILLINOIS,
SUPREME COURT.

County of Cook.

To the Clerk of the County

Court for the County of Cook, Illinois:

State of Illinois, ~~Eastern~~ Division
Supreme Court, April Term 1858.
Gerrard B. Gorton
vs } Error to Rock Island
William Grizzel }

William C. Gandy being duly sworn states that he is one of the attorneys for the Plaintiff in Error in this case and as such has had the entire management of this case, that he prepared an abstract and assigned errors as required by the rules of this Court about the first day of April instant, that he sent the abstract to the printer to print & the record with errors assigned to the Clerk of this Court which was filed by him on the 3^d inst. that Sci. fa was issued & served on the 8th inst. that this deponent obtained the printed abstract & brought them with him to this Court, where he arrived on the morning of the 23^d inst. & immediately filed them with the Clerk, that after this Court adjourned on the 23^d inst, this deponent discovered for the first time that on the 22^d inst.

this cause was dismissed for the want of abstract on the first call of the case, that it is numbered 113 on the docket, that this deponent supposed that from the time the record was filed the cause would not be reached till sometime in the second week of the term and also has always understood that the practice of this Court was to keep a case on the first call unless both parties were ready to try the case, and that the dismissal has taken him by actual surprise.

This deponent further states that he believes from his knowledge of the case and an inspection of the record that a part of the errors are well taken and that there is sufficient error in the proceedings of the Circuit Court to reverse the judgment.

Subscribed & sworn to before me this 26th day of April 1858

L. Leland
by J. D. Rice Deputy.

W. C. Gandy

113.

Guinan B. Gorton
vs

Wm. Griggs

Affidavit to set
aside default.

Filed April 26. 1854
L. Leland
clerk

113-58

Freeman B. Gorton

vs

~~William Frizzell~~

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12543

1858

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Wm Frizzell