

No. 14445

Supreme Court of Illinois

Bulson

vs.

People

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 13

PEOPLE'S CAUSES.

Reported.

Bulson
vs

People

1863

14445

ISAAC BULSON, FREDERICK BULSON, AND JAMES DOWNING,
vs.
THE PEOPLE, &c.

STATE OF ILLINOIS.
In the Supreme Court,
APRIL TERM, A. D., 1863.

APPEAL FROM KNOX.

ABSTRACT.

1 THIS was a proceeding by *Scire Facias* of Appellee against Appellants, in the Knox Circuit Court, upon a recognizance
56 tried and judgment rendered, on the verdict of a jury, at the Feb. Term, A. D., 1862. Motion for new trial and in arrest of
judgment, overruled.

10 The amended *Scire Facias* is as follows, substantially:

"STATE OF ILLINOIS,
Knox County,"

"THE PEOPLE OF THE STATE OF ILLINOIS,

"To the Sheriff of said County, Greeting:

"Whereas, John Rensted, Jan'y 19th, 1859, complained on oath before Giles Cook, a Justice of the Peace in and for said
county, and State, that Isaac Bulson did feloniously steal, take and carry away, one red cow, three years old, with white in
the face, of the value of \$20, the property of said Rensted, on the 4th day of Oct. 1858; and the said Giles Cook, J. P. as
aforesaid, having on the 22d day of Jan'y, 1859, enquired into the truth of the charge against the said Isaac Bulson, and upon
consideration of the facts then proved, ordered the Isaac Bulson to be admitted to bail in the sum of five hundred dollars;

"And whereas, said Isaac Bulson having failed to give the bail required, was committed to the county jail of said Knox
county, in pursuance of an order of commitment issued by the said Giles Cook, J. P., as aforesaid;

11 "And whereas, afterwards, to wit: on the 23d of April, 1859, said Isaac Bulson as principal, and Frederick Bulson and
James Downing of the Co. and State aforesaid, personally came before Wm. McGowan and Levi Massie, two Justices of said
Co., and entered into a recognizance, which is as follows:

"Be it remembered, that on the 23d day of April, 1859, Isaac Bulson, of Knox County, State of Illinois, and Frederick
Bulson and James Downing, of the same place, personally came before William McGowan and Levi Massie, two Justices of
the Peace of said county, and severally and respectively acknowledged themselves to owe to the People of the State of Illinois,
the sum of five hundred 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, to wit: The condition of this recognizance
is such, that if the said Isaac Bulson, who has been committed to the common jail of said county for want of securities, shall
12 "be and appear at the next term of the Circuit Court to be held in and for said county of Knox, on the first day thereof, to
wit: on the first Monday of the month of June next, to answer to an Indictment to be preferred against him for feloniously
stealing, taking and carrying away, at the town of Copley, in the county aforesaid, on the 4th day of October, A. D., 1858,
one red cow, three years old, with white in the face, of the value of twenty dollars, the property of one John Rensted, and
to do and receive what shall then and there by the Court be enjoined upon him, and shall not depart the Court without
leave, then this recognizance to be void, otherwise to remain in full force.

"ISAAC BULSON, [L. s.]

"FREDERICK BULSON, [L. s.]

"JAMES DOWNING, [L. s.]

"Taken, subscribed, and acknowledged, the day and year first above written, before

"WM. MCGOWAN, J. P.

"LEVI MASSIE, J. P."

"And whereas, the said recognizance so taken and entered into as aforesaid, was returned into the office of the Clerk of the
Circuit of said Knox county, and was by said Clerk duly filed on the 2d day of June, 1859, and thereby became a record of
said Court.

13 "And whereas, during said next term of said Court on the 15th day of June, 1859, at and during a term of said court,
begun and held at the Court House in the city of Knoxville, on the first Monday of the month of June, 1859, the said Isaac
Bulson being called, came not but made default, and the said Frederick Bulson and James Downing, his said securities, being
called came not, but failed to produce the body of their said principal. Therefore judgment of forfeiture was rendered against
them, the said Isaac Bulson, Frederick Bulson and James Downing for said sum of Five hundred dollars, and an order entered that
Scire Facias issue thereon against the said Isaac Bulson, Frederick Bulson and James Downing to appear and show cause, &c.,
at the next Term of said Court thereafter," which said *Scire Facias* had the usual command or summons, and was signed and
sealed by the Clerk and was filed June 4th, 1860, the first day of the Term, and cause was continued to next Term.

14 The following Pleas were filed to said *Scire Facias* by the Def'ts:

17 1st. Not their deed.

2d. *Nul tiel* record.

3d. Plea was as follows, to-wit:

18 And for further Plea in this behalf leave of the Court first had and obtained the said Def'ts., Isaac Bulson, Frederick
Bulson and James Downing, by Patrick H. Sanford, their attorney, come and defend the wrong and injury when, &c., and say
that the said People of the State of Illinois, ought not to have judgment against them by the said *Scire Facias* on said Rec-
ognizance, and ought not to have Execution against them because they say that the said Giles Cook, the Justice of the Peace
of said county, who ordered said Isaac Bulson committed to the common jail of said county, did not endorse on the mittimus, or
Writ of commitment by him issued, the sum or amount in which bail might be taken by officers authorized to take bail in such cases,
but that the said Levi Massie and William McGowan, two Justices of the Peace of said County, unlawfully and without any
authority, took said Recognizance in the sum of Five hundred dollars, so these Def'ts. say the same is illegal and void, and
that no Judgment ought to be rendered or Execution issued, thereon or in consequence thereof, and this said Def'ts. are ready
19 to verify, wherefore they pray Judgment, &c.
P. H. SANFORD, Att'y. for Def'ts.

21 4th Plea:

22 And for further Plea in this behalf leave of the Court being first had the said Def'ts., Isaac Bulson, Frederick Bulson and
James Downing, by P. H. Sanford, their attorney, come and defend the wrong and injury when, &c., and say that the said
People of the State of Illinois, ought not to have Judgment against them by said *Scire Facias* on said Recognizance, and ought
not to have Execution against them, because they say that on the 16th day of February, A. D., 1859, James Soles, a Justice of
the Peace in and for the county of Knox and State of Illinois, issued his Warrant under his hand and seal, upon the
oath of one Phineas Cragan against the said Isaac Bulson, charging the said Isaac Bulson with feloniously stealing in said
county, one cow, the property of John Rensted, and that the said Isaac Bulson was on the said sixteenth day of February duly
arrested upon said Warrant and taken before the said James Soles, the said Justice of the Peace, and duly examined before said
Justice as such Justice, upon the said charge of larceny, and upon the said examination before said Justice on the said 16th day of
February, A. D., 1859, after the hearing of the Evidence by said Justice was required to give bail in the sum of Fifty Dollars,
for his appearance to the then next Term of the Circuit Court of the said County of Knox and State of Illinois, to answer to said
charge of Larceny, and said Def'ts. further aver that the said Isaac Bulson did, on the said 16th day of February, A. D., 1859,
before the said James Soles, Justice as aforesaid, who was duly authorized by law to issue said Warrant, examine said Isaac
23 Bulson, Def't., in said charge of larceny and hold said Bulson to bail, and to take a Recognizance for the said Bulson's ap-
pearance to said term of the said Circuit Court, enter into a recognizance with one Frederick Bulson, as for his appearance at
said Circuit Court to answer to said charge of Larceny, and that the said James Soles, as such Justice of the Peace so autho-
rized did, on the 16th day of Feb. A. D., 1859, approve said security, and accept said Recognizance and discharge the said

Isaac Bulson from further arrest for said alleged offence; and the said Def'ts. further aver that the said James Soles, as such Justice of the Peace, did duly return and certify said Recognizance into the said Circuit Court of the said county of Knox, and that the same was duly filed in said Court, and became a record thereof on the 7th day of April, A. D., 1859, and that at the June Term of said Circuit Court, in and for said county, on the 15th day of June, A. D., 1859, upon the motion of the State's Attorney in and for said Court, the said Circuit Court dismissed and discharged the said Def't., Isaac Bulson and his security from said Recognizance. And said Def'ts. further aver that after the said Def't., Isaac Bulson, had been so arrested, entered into the said Recognizance and been so discharged by the said Soles, said Justice, he, the said Isaac Bulson, was on or about the 22d day of April, A. D., 1859, again arrested for the same offence and none other, by a constable named Low, upon a Warrant issued by one Giles Cook, a Justice of the Peace in and for said county of Knox and State aforesaid, and on the said 22d day of April, A. D., 1859, taken before said Justice Cook, and there examined upon the same charge and for the same offence, and for the stealing of the same cow, that the said Isaac Bulson had been examined and bound over to appear at the said Circuit Court to answer for before the said Justice of the Peace, James Soles, and for no other or different offence, and the said Def'ts. further aver that the said Giles Cook, Justice of the Peace as aforesaid, after hearing the evidence did, on the said 22d day of April, A. D. 1859, require the said Isaac Bulson to enter into Bail before him in good Security in the sum of five hundred dollars, for his appearance to the next Term of the said Circuit Court, and that the said Isaac Bulson failed to give said Security before the said Cook, and in default thereof the said Giles Cook as such Justice did, on the 22d day of April, issue his supposed *Mittimus*, and by virtue thereof the said Isaac Bulson was, on the 22d day of April, A. D. 1859, confined in the County Jail of said county of Knox until the 23d day of April, A. D. 1859, when the said Isaac Bulson was discharged from said jail, upon entering into the supposed Recognizance which the said *Scire Facias* is issued upon in this cause, and the said Def'ts. further aver that the said supposed Recognizance taken by Levi Massie and Wm. M. Gowan, two Justices of the Peace in and for said county, upon which this *Scire Facias* is issued, was taken to require the appearance of the said Isaac Bulson to appear and answer to the charge for which he had been examined and held to bail by the said Giles Cook, as aforesaid, and no other or different offence; and said Def'ts. further aver that the supposed recognizance entered into before Wm. McGowan and Levi Massie, and the said recognizance entered into before the said James Soles, were for the same offence and none other, and that the said supposed recognizance upon which this *Scire Facias* is issued is void that the said Cook had no right to hold the said Isaac Bulson to bail after he had once been bailed for the same offence, before the said James Soles, and that the said Wm. McGowan and Levi Massie had no legal right to take bail or require the said Isaac Bulson to enter into a second recognizance for the same offence, so these Def'ts. say that the same is illegal and void, and that no judgment ought to be rendered or execution issued thereon or in consequence thereof, and this the said Def'ts. are ready to verify, wherefore they pray judgment, &c.

The People filed a General Demurrer to 1st, 2d, 3d, and 4th Pleas and each of them. Demurrer sustained as to 1st and 2d overruled as to 3d and 4th Pleas; leave was granted to the people to reply, and they replied as follows: to 2d Plea of *Nul tiel record*, that there was such a record, and to 3d Pleas as follows:

THE PEOPLE VS. ISAAC BULSON, ET AL.

And the said Piff by the State Atty come and say as to Def'ts third Plea *Precludi non*, because they say that although they confess it is true that Giles Cook, a Justice of the Peace, who made out the *Mittimus* referred to by Def'ts, in said Plea, did not endorse the amount in which bail should be taken on the back of said *Mittimus*; yet Piffs aver and alledge that said Giles Cook, Justice of the Peace, as aforesaid, in the body of said *Mittimus* did direct in writing the amount in which bail should be taken, to wit, \$500.00, and that the said Justices, Levi Massie and William McGowan did take bail from Defendants in the amount so directed by Giles Cook, aforesaid, and this they are ready to verify. Whereas they pray judgt. if they should be barred by anything contained in said Plea, &c.

J. H. STEWART, States Att'y.

And to the 4th Plea as follows:

And the said Piffs as to the said Plea of the Def'ts fourthly above pleaded say, that Piffs by reason of anything in said Plea by Def'ts alleged *Precludi non*, because they say that no valid and binding recognizance was entered into by said Defendants before the said James Soles, as in said Plea alleged, and that the same was and is void, because the same was entered into by fraud and connivance between said Def'ts, Phineas Cragan and the said James Soles, in order to prevent the taking of a valid Recognizance in a proper amount for said offence; that said offence of which said Bulson was accused, was for larceny of a cow of the value of \$20.00, subjecting said Bulson to punishment in the penitentiary; That the bail required by said James Soles, J. P., was but \$50.00 by fraud and connivance with said Def'ts, that said Def'ts and said Phineas Cragan well knew that a Warrant had been issued to compel the attendance of the said Frederick Bulson before another Justice of the Peace to answer for the same offence—and that fraudulently conniving and colluding together, the said Def'ts and Phineas Cragan, procured the arrest of the said Frederick Bulson, and proceeded without procuring the attendance of any of the Witnesses, having a knowledge of the facts of said case—and without the examination of any Witnesses, having a knowledge of the commission of said offence fraudulently to procure the taking of the Recognizance in said fourth plea mentioned, to be taken before the said James Soles in the sum of \$50.00, a sum inadequate to the nature of the offence. Wherefore the said People by the States Att'y. pray judgment for the said sum in said *Sci. Fe* and recovery set forth and alleged, &c.

J. H. STEWART, States Att'y.

Def'ts. filed a Demurrer to Piffs. Replication to the 3d and 4th Pleas, and each of them, and special cause of Demurrer to the Replication to 4th Plea because it was double. The Court overruled the Demurrer to the said Replications, and Def'ts. excepted and stood by the Demurrers to the Replication to the 3d Plea, asked leave to Rejoin to the Replication to the 4th Plea. Leave granted by the Court and Rejoinder filed, which is as follows:

People, &c.,

vs.

Isaac Bulson.

And the said Def'ts. as to the said Replication of the said Piffs to the 4th Plea of the said Def'ts, saith that the said Piff. ought not by reason of anything by him in that Replication alleged to have or maintain his aforesaid action thereof against them: because they say that a valid Recognizance was entered into by said Def'ts before James Soles as in their 4th plea is alleged, and that the same was not entered into by fraud and connivance between said Def'ts, Phineas Cragan and the said James M. Soles, in order to prevent the taking of a valid recognizance in a proper amount for larceny of a cow, as alleged in said Replication, and of this the said Def'ts. put themselves on the country.

TYLER & SANFORD, Attys for Def'ts.

Issue was joined on 2d Plea and Rejoinder to the 4th Plea. A Jury empanelled and sworn.

The People to maintain the issue on their part introduced the Record of forfeiture of Recognizance and Recognizance, and then called and swore as a witness Phineas Cragan, who stated that he swore to the affidavit upon which Isaac Bulson was arrested and carried before James Soles, Justice of the Peace, for trial; that he was acquainted with Isaac Bulson; that he swore to the affidavit upon request of Bennet, who lived near Altona, brother of the Bennett, who was attorney for Isaac Bulson on the examination before Soles; that he was informed by Bennet, the Attorney's brother, that Bulson was charged with stealing a cow, and that was the reason he made the affidavit and because he was a friend of Bennett's, who asked him to make it; that he did not of his own knowledge know that the offence had been committed.

Cross Examined by Def't., and stated that he made the affidavit in good faith, and that there was no fraud or collusion on his part with Isaac Bulson, or any one else.

Giles Cook next sworn for Piffs., and stated that he was a Justice of the Peace for Victoria Town, Knox Co., Ill., in Jan'y, 1859; was acquainted with Isaac Bulson; as Justice Jan'y 19th. 1859, issued a Warrant for Isaac Bulson for stealing a cow of John Reinstead and delivered it to H. H. Low, Constable. Warrant returned by Low March 21st, 1859. Case continued till 22d of Jan'y. Examination then took place before him. Witnesses were sworn and Isaac Bulson bound over; that they proved there upon the part of the defence that he, Isaac Bulson had been examined before James Soles, J. P., and bound over by him in the sum of \$50.00. Esq. Soles was there with his Docket at the examination before me afterwards. That the Warrant issued

¹³
Isaac Bales et al

vs

The People

Abstract

Filed April 28, 1863

J. L. Lane
CLERK

350
212
500
1062
689
373

134
237
212
589

In the Supreme Court of the State of Illinois
April Term thereof A.D. 1863

Bulson et al }
vs }
The People & c } 3

Defts Brief

The statute requires the amount of bail to be indorsed on the mittimus that the officers taking the recognizance may know in what amt. to fix the penalty

A statement in the body of the ~~law~~ mittimus effects the object of the law as fully as an indorsement on any other portion of the paper would, for the officer must necessarily see it if he reads the mittimus.

The statute is merely directory & a failure to make the indorsement would not vitiate the recognizance if taken in the amount actually fixed by the justice

Crim. Code Sec. 210

3 Porters Ind. R 151

~~The taking of the second~~
the subsequent committal
and taking of the second
recognizance was a waiver
of the first and if pleaded
to a *scif*a upon the grounds
constitute a good defense

If a justice be so far imposed
upon as to suffer a prisoner
to be bailed by insufficient
persons, that or any other justice
may require the party to find
better sureties, & to enter into
a new recognizance with them,
and may commit him on
his refusal, for that insufficient
sureties are no securities

2 Hawk Pl. Brown 139

If a justice has the authority to
require a new recognizance
when he has been imposed
upon as to the sufficiency of
security may he not do so when
he has been fraudulently induced
to fix the bail at an insufficient

amount?

But if it were otherwise, the
defence comes too late - it
should have been interposed
before the justice - It is not
a plea to the jurisdiction,
but in the nature of a plea
of autrois convict.

The record shows that
the justice had jurisdiction
and it cannot be impeached
for illegality in the proceedings
before him - but must be
taken as absolute verity
7 Watts & Serg R 469
13 Ill, R, 13 - 19 Ill, R 117

The legal effect of the recog-
nizance was not to bind the
principal to appear and
answer a particular charge
solely - but it included every
charge that ^{would have been} ~~may be~~ presented
^{against him} at the term at which he
was
recognized to appear
Hawk Pl, Crown vs ch. 15 sec 84

and if void as to the larceny
it was valid as to any other
offense which might ^{have been} ~~be~~
presented

The 4th plea therefore prese-
nted an immaterial issue
S. D. James
State Atty.

Bulmer et al
no. -

The People

Depto. Bury

In the Supreme Court of the State of Illinois
April Term A.D., 1862.

Bulson et al
vs -
The People &c

Depts. Brief

The statute requires the amount of bail to be indorsed on the mittimus that the officer taking the recognizance may know in what amount to fix the penalty.

A statement in the body of the mittimus effects the object of the law as fully as an indorsement on any other portion of the paper would, for the officer must necessarily see it if he reads the mittimus.

The statute is merely directory and a failure to make the

indorsement does not vitiate the
recognizance if taken in the
amount actually fixed by the
justice

Crown, Code Sec, 210
& Porter's Ind. R., 151

2nd
The subsequent commitment
and taking of the second
recognizance was a waiver
of the first and if plead to
a sci fa upon it would consti-
tute a good defense

If a justice be so far
imposed upon as to suffer
a prisoner to be bailed by
insufficient persons, that or
any other justice may
require the party to find
better sureties, and to enter
into a new recognizance with
them, and may commit him
on his refusal, for that
insufficient securities are
no securities

2 Hawk R., Crown 139

If a justice has the authority to require a new recognizance when he has been imposed upon as to the sufficiency of security, may he not do so when he has been fraudulently induced to fix the bail at an insufficient amount?

But if it were otherwise, the defense comes too late - it should have been interposed before the justice. It is not a plea to the jurisdiction, but in the nature of a plea of outrageais conviction.

The record shows that the justice had jurisdiction and it cannot be impeached for illegality ⁱⁿ of the proceedings before him - but must be taken as absolute verity.

7 Watts & Sergt, R. 469
13 Ill. R. 13 - 19 Ill. R. 117

The legal effect of the recognizance was not to bind the principals to appear and answer the

particular charge solely, but
it included every charge that
might have been
~~presented~~ presented at the term
to which he ^{was} ~~is~~ being urged to
appear

Hawth. Pl. Brown, b. 2 ch. 15
Sec. 84

and if void as to the larceny
it was valid as to any other
offense that might ^{have been} ~~be~~ presented.

The fourth plea therefore presented
an immaterial issue

D. T. Jones
States Atty.

158
Billion et al
vs

The People

Depts Brief

Filed May 12, 1853
L. L. Linn
Clerk

In the Supreme Court of the State of Illinois
April Term A.D., 1863

Bulson et al
vs -
The People &c

Defts Brief

The statute requires the amount of bail to be indorsed on the mittimus that the officer taking the recognizance may know in what amount to fix the penalty.

A statement in the body of the mittimus effects the object of the law as fully as an indorsement on any other portion of the paper would, for the officer must necessarily see it if he reads the mittimus -

The Statute is merely directory

and a failure to make the endorsement would not vitiate the recognizance, if taken in the amount actually fixed by the justice

Cosin, Code Sec 2110

3 Porter's L. & P., 151

Quo

The subsequent committals and taking of the second recognizance was a waiver of the first, and if plead to a sci fa upon it, would constitute a good defense

If a justice be so far imposed upon as to suffer a prisoner to be bailed by insufficient persons, that or any other justice may require the party to find better securities, and to enter into a new recognizance with them, and may commit him on his refusal, for that insufficient securities are no securities

2 Hawk R. Crown 139

If a justice has the authority to require a new recognizance when he has been imposed upon as to the sufficiency of security, may he not do so when he has been fraudulently induced to fix the bail at an insufficient amount?

But if it were otherwise, the defense comes too late - it should have been interposed before the justice - It is not a plea to the jurisdiction, but in the nature of a plea of autrefois convict.

The record shows that the justice had jurisdiction and it cannot be impeached for illegality in the proceeding before him, but must be taken as absolute verity.

7 Watts & Serg. R. 469
13 M. 13. - 19 M. 117

The legal effect of the recogni-
zance ^{was} ~~is~~ not to bind the prin-
cipal to appear and answer a
particular charge solely, but
it included every charge that
~~might have been~~ ^{presented} ^{against him} at the
term at which he ^{was} ~~is~~ recog-
nized to appear.

Howe. Pl. Cr. b. 2 ch. 15 Sec. 84
and if void as to the larceny
it was valid as to any
other offence which might
have been presented.

The 4th plea therefore presented
an immaterial issue.

D. Jones

States Atty.

158
13. P.O.
Bulmer & Co

in
the papers

Drafts Brief

Filed May 12. 1883
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1868.

FREDERICK BULSON AND JAMES DOWNING, }
Impleaded with ISAAC BULSON, } *Appeal from*
vs. } *Knox.*
THE PEOPLE, &c. }

BRIEF AND AUTHORITIES OF APPELLANT.

I.

This was an action by *scire facias* on a recognisance entered into before two Justices of the Peace by Isaac Bulson and his securities, while he was confined in jail upon a *mittimus* issued by one Giles Cook, a Justice of the peace, upon which there was not any *sum endorsed in which bail should be taken.*

II.

By the statute of Illinois, when a person is committed to the county jail, it is the duty of the Justice so committing a person in a *baillable case, to endorse on the mittimus* in what sum bail should be taken. If there is not *any sum endorsed upon the mittimus*, there is no authority for two Justices of the Peace to bail and release a prisoner so confined, and the *statute confers no jurisdiction upon such Justices to take bail* in such cases.

Rev. Stat. 1845, chap. 30, sec. 206.
Solomon *vs.* The People, 15 Ill. 292.
Waugh *vs.* The People, 17 Ill. 563.

III.

The replication of appellees to the 3d plea admits no sum was endorsed on the *mittimus*, but avers that a sum of \$500, in which bail should be taken, was stated in the body of the *mittimus*. This was not sufficient, and the demurer to the replication to the 3d plea should have been sustained.

1V.

The Justices took bail in an amount or sum exceeding the sum endorsed on the mittimus; hence their *acts* were *void*, and the recognisance void. The law fixes the place where the sum in which bail shall be taken shall be endorsed, and unless the amount or sum is found there, there is no authority for the Justices to take bail and fix the sum, either from the sum in the body of the mittimus or from the docket of the Justice binding over.

V.

The issue presented by the replication to the 4th plea was, that a warrant had been issued for Frederick Bulson and he arrested for larceny; That Phineas Cragan, James Soles, the Justice, taking the 1st recognisance, and defendants below, fraudulently conniving and colluding together, procured the arrest and took the 1st recognisance.

This issue was not maintained by the evidence, because the evidence did not show that a warrant ever issued for Frederick Bulson, or that he was held to bail for any offence, but was only the security of Isaac Bulson. Neither did the evidence show that Phineas Cragan or James Soles, the Justice who took the recognisance, ever colluded with any one in the arrest or holding Isaac Bulson to bail, or in taking the 1st recognisance.

The Court erred in permitting the People's attorney to ask, and witness, Soles, to answer, the following question, to wit: "If any of the witnesses sworn before him on the examination swore that Isaac Bulson stole the cow?" The question was leading, and also calling for a conclusion from what witnesses swore to, instead of what the witnesses stated under oath, their language.

- 1 Greenleaf Ev. sec. 434.
- 1 Starkie Ev. 163, note (q q.)
- 1 Starkie Ev. 149.
- 2 Phil. Ev. 401.

The Court erred for the above reasons in refusing a new trial, in arresting judgment and in rendering judgment for the People.

A. TYLER,
For Appellant.

Bulmer et al
vs

Joseph W

Plffs. Brief

Filed May 8, 1863
J. L. Leland
CLR

Supreme Court of Illinois
Third Grand Division
April Term A.D. 1868.

Frederick Pulson & James
Armstrong impeached with
Isaac Pulson
vs
The People

Appeal from
Kent.

Of the Court please.

This was an action by
Sire Facias upon Recognizance entered into
by Isaac Pulson and his securities while
he was confined in Jail on said mittimus -
it was issued by Giles Cook a Justice of the
Peace of Knox County, but upon that mittimus
there was not any sum endorsed in which
bail should be taken which is admitted by
the pleadings,

The first Question which I desire to call
the attention of the Court to, is that there
was no sum or sum endorsed on the mittimus,
I hold that where there is no ~~sum~~ sum
endorsed on the mittimus, in law there is

no duty for the two Justices to perform, the law requires that in order for a Justice who binds over for a bailable offence to fix the sum in which bail shall be taken and to endorse it on the mittimus or warrant of commitment no other person has the jurisdiction or power to do it, and a mittimus without any amt. or sum endorsed on it is utterly void and this statute is not merely directory, but the law absolutely requires it, it is a part of the judicial act of binding over a prisoner in default of bail, as no two Justices possess the power where a person is confined in jail upon the order of any other justice as in this case. The mittimus in this case was a common one except the amt. or sum endorsed on the back of it, or the want of such sum. The Justice in default of his giving bail in \$500 committed him by this mittimus without making any further order about bail so that no bail was in fact fixed for any one to take either in the body or otherwise of the mittimus, but it is immaterial about that the law has fixed the place where the bail shall be. It is to be endorsed on the mittimus if not endorsed on the mittimus there is legally no bail fixed

No place to find it except on the Mutinus
indented. If it is not there the law does
not authorize two Justices to fix it and
take bail from the unit or sum in the
Mutinus or any other place for the
law does not authorize any other sum
or any other place to fix the bail
or for the Justice not binding over
to find the unit or sum. as this Court
has clearly stated, the law in the case
of Solomon with the people, it was an
involuntary obligation ~~at that time~~ without
any authority of law. and cannot
be enforced. it was void.

I, by the Justice Cook who made this
Mutinus had no legal right to
take it as the record of this case will
show because the Dept. Boker had
been previously bound over for the same
offence by a Justice who possessed
the sum from that he did and ~~where~~
whichever Justice who first obtained
jurisdiction of the Dept. would have
the right to bind over or discharge
+ if he bound over + Dept. gave his
recognizance he was released and
no other Justice could receive his

decision and a gain bind over if that
could be done which Recognizance
would the Circuit Court send Judge
in case of default. upon both & if that
could be done where would be the limit
and what would a man liberty be
worth with those who saw fit to rest
harap a person in that way, now for
this reason I say this Writimus
was also void it was issued by book
after the said Isaac Bulmer had been
found liable by a competent Court James
Sohs a Justice & this Writimus was
issued upon a review & reversal by
Hills book of James Soh's decision, both
Justices with the same power & Jurisd-
-iction

But in defence of this objection it will be
said that the Recognizance taken by
Sohs was taken fraudulently, for argument
only it was, but which is not the fact
who is to try the question of whether one
Justice acts in good faith or not, a
Court of the same power & Jurisdiction
has the more and not higher powers. if
this be so why not allow one Justice to
review & reverse the decision of another

Sustained if it is thought the 1st Justice
acted corruptly in any other decision
in any other case. either civil or
Criminal.

The Replication to the 4th Plea of the
Defendant was insufficient & the Demurrer ought
to have been sustained to it. because it did
not present a proper issue upon the
Scire Facias. because in this, it presented
the issue whether Frederick Buleon
had been arrested upon a warrant
issued by James Tohn of and taken bound
over to him the Plea nor where alleged any
such fact as the arrest or binding
over of said Frederick Buleon, but
Isaac Buleon. for this reason the Repli-
-cation was bad and no valid Judgment
could be rendered upon such an issue
or verdict and a new trial should have
been awarded on this issue & say the
least of it.

Another objection is that the issue upon the Rejoinder to the Application to the 4th Plea was not sustained by the Evidence in the Case, there was no Evidence to show the arrest of Frederick Bulson or that a warrant was issued for him by James Solis or that he was bound over by James Solis or that there was any Commission Collusion or fraud by James Solis or any one else in relation to the arrest & binding over of Frederick Bulson & that was the only issue presented by the Rejoinder and rejoinder hence the verdict of the Jury was against the law & the Evidence.

The Evidence shows that Isaac Victor of Frederick Bulson was the man that was bound over by James Solis

But suppose for the sake of the argument that the issue had been properly made did the Evidence show that there was Collusion Connivance & fraud between Thomas Oregon James Solis & Deft. Thomas Oregon & James Solis are called as Witnesses & sworn on the part of the

People & Manton; this case and
they both swear that there was
no collusion, connivance or fraud between
them & the Deft, Solo states that he
did not know Isaac Bulson and that
what he did in binding him over was
done in good faith. Cragan states that
he did was done in good faith, they
are the only two persons from with
whom the fraud was charged and
it is disproved by both of them & no
other witness is shown in the case who
contradicts their evidence, again
Smith the Constable who served the
warrant states that what he did in
the matter was done in good faith
this evidence is uncontradicted, the facts
shown do not show any fraud or conni-
=vance on the part of the Justice &
=vance on the part of the Justice &
Thames Cragan who made the affi-
=davit the affidavit was made by Cragan
upon his information & belief the same
a many affidavits of the same kind
are made not by persons who know all
or any of the facts of this case know
as to who were the witnesses who testified
before James Solo Isaac Leophy Peters
to say they were relations of the Deft. but

Isaac Lepley did not know who they
were but says that A. A. Smith one
of them said he had testified before Solos
were Brother & Sister in law to Isaac Bulew
Bulson. the Evidence did not show
who the witnesses were that testified before
Solos, Lepley was not there ^{at} he did
not know anything about and only
told or pretended to tell what somebody
had told him which was not evidence
and if it was they were the persons who
know as much about the matter as
any one & were not incompetent if one
of them were connected by marriage
if for that reason a Judge Court is
to be pronounced guilty of fraud what
would become of the Judges of the
Court & best of Court. But ^{there} was no fraud
shown on the trial and, the issue was
not sustained by the Evidence & the
Judge ought for that reason to be
reversed

Question of the Court Erred in allowing
the Lepley Atty to ask improper Questions
& witnesses to answer the same, as referred
to in my brief asking whether the witnesses
Isaac Bulson stole the Cow. The Dis

that was an improper question, it
called for the opinion of the witness,
as to what a witness should do, the proper
rule was if it was proper to prove what
witness should do before, to have asked that
the witness should do & then lay out
as near as witness could state it, as
they stated it. The witness could not know
that for to show the Gov. could only mean
to the facts which he or they knew to
prove the stealing, the question put
to the witness was a ^{mixed} question of law
& fact. and the Court in allowing
it to be asked by the People, atty. of
his own witness, besides it was a
leading question, authorized, cited
in my brief.

Another objection the Record in this case
shows that there was no order for
a Scire Facias for Isaac Bulson
but for James Bulson & the other two
defts. and Mr. Sci. Fa. has been legally
issued against Isaac Bulson
see 1st or 2^d Page of the Record
as filed. hence can any subj. be reached
against him - without an order for a
Scire Facias for against Isaac Bulson

the Principal or against his Securities
before they got Judgt. against him
then was not this Scire Facias void
acts all the Partis, Isaac Balsom
the Principal not having had a writ
issued against him. or been made a
party to it legally. there being no order
for a writ against him.

For these reasons I think the
Judgt. ought to be reversed.

A. Tyler atty.
for Appellant.

155 P. D. 13

Rulson et al.

vs

Joseph

Appellants

Argument.

Filed May 5, 1860.

Shelton W.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

FREDERICK BULSON AND JAMES DOWNING,
Impleaded with ISAAC BULSON,
vs.
THE PEOPLE, &c. } *Appeal from*
Know.

BRIEF AND AUTHORITIES OF APPELLANT.

I.

This was an action by *scire facias* on a recognisance entered into before two Justices of the Peace by Isaac Bulson and his securities, while he was confined in jail upon a *mittimus* issued by one Giles Cook, a Justice of the peace, upon which there was not any *sum endorsed in which bail should be taken*.

II.

By the statute of Illinois, when a person is committed to the county jail, it is the duty of the Justice so committing a person in a *bailable case*, to *endorse on the mittimus* in what sum bail should be taken. If there is not *any sum endorsed upon the mittimus*, there is no authority for two Justices of the Peace to bail and release a prisoner so confined, and the *statute confers no jurisdiction upon such Justices to take bail* in such cases.

Rev. Stat. 1845, chap. 30, sec. 206.
Solomon *vs.* The People, 15 Ill. 292.
Waugh *vs.* The People, 17 Ill. 563.

III.

The replication of appellees to the 3d plea admits no sum was endorsed on the *mittimus*, but avers that a sum of \$500; in which bail should be taken, was stated in the body of the *mittimus*. This was not sufficient, and the demurer to the replication to the 3d plea should have been sustained.

IV.

The Justices took bail in an amount or sum exceeding the sum endorsed on the mittimus; hence their *acts* were *void*, and the recognisance void. The law fixes the place where the sum in which bail shall be taken shall be endorsed, and unless the amount or sum is found there, there is no authority for the Justices to take bail and fix the sum, either from the sum in the body of the mittimus or from the docket of the Justice binding over.

V.

The issue presented by the replication to the 4th plea was, that a warrant had been issued for Frederick Bulson and he arrested for larceny; That Phineas Cragan, James Soles, the Justice, taking the 1st recognisance, and defendants below, fraudulently conniving and colluding together, procured the arrest and took the 1st recognisance.

This issue was not maintained by the evidence, because the evidence did not show that a warrant ever issued for Frederick Bulson, or that he was held to bail for any offence, but was only the security of Isaac Bulson. Neither did the evidence show that Phineas Cragan or James Soles, the Justice who took the recognisance, ever colluded with any one in the arrest or holding Isaac Bulson to bail, or in taking the 1st recognisance.

The Court erred in permitting the People's attorney to ask, and witness, Soles, to answer, the following question, to wit: "If any of the witnesses sworn before him on the examination swore that Isaac Bulson stole the cow?" The question was leading, and also calling for a conclusion from what witnesses swore to, instead of what the witnesses stated under oath, their language.

- 1 Greenleaf Ev. sec. 434.
- 1 Starkie Ev. 163, note (q q.)
- 1 Starkie Ev. 149.
- 2 Phil. Ev. 401.

The Court erred for the above reasons in refusing a new trial, in arresting judgment and in rendering judgment for the People.

A. TYLER,
For Appellant.

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SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

FREDERICK BULSON AND JAMES DOWNING, }
Impleaded with ISAAC BULSON, } *Appeal from*
vs. } *Knox.*
THE PEOPLE, &c. }

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The Court erred for the above reasons in refusing a new trial, in arresting judgment and in rendering judgment for the People.

A. TYLER,
For Appellant.

¹³
Bulem et al.

vs

People vs

Brief of Appts.

Filed May 2, 1863

J. Seland
et al

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1883.

FREDERICK BULSON AND JAMES DOWNING,
Impleaded with ISAAC BULSON,
vs.
THE PEOPLE, &c. } *Appeal from*
Knoc.

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1V.

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- 1 Starkie Ev. 163, note (q q.)
- 1 Starkie Ev. 149.
- 2 Phil. Ev. 401.

The Court erred for the above reasons in refusing a new trial, in arresting judgment and in rendering judgment for the People.

A. TYLER,
For Appellant.

State of Illinois,
Supreme Court,
Third Grand Division,
April, Ottawa Term 1863.

Fred. Bulson et al. vs. The People Appeal from Knox.

There is manifest error in this Record. The record is voluminous, and the assignments of errors numerous and it is not proposed to discuss them all. Bro. Lyle has noticed in his arguments filed in this Cause, some questions which will not be further discussed by me. The fourth assignment of error is that, "the verdict and judgment is against the Law and the evidence." The facts, briefly, are that one Isaac Bulson, on the 16th day of February a.d. 1859, was arrested, upon a warrant, issued by James Lobe, a justice of the Peace, of Lynn, Knox County, upon the complaint of Phineas Brazon, that said Bulson was guilty of the larceny of a Cow. ~~about the 22nd day of April a.d. 1859.~~ Witnesses were ex-

Arrested, and Seac Balsou, held
to bail in the sum of \$50, and
bail furnished and the proceedings
of the Justice duly filed for record;
Afterwards, and on the 7th day of
April 1859, Said Balsou was ar-
rested a second time on a warrant
issued by Giles Cook, J.P. upon a
complaint of the same offense - and
^{on the same day it begins}
on the 22nd day of April 1859, held to
bail by Said Cook in the sum of
\$500, in default of which, he was
committed to the jail of Said Coun-
ty, ~~on the~~ ~~do~~ There was no order
indorsed upon the back of the mit-
timus upon which Balsou was com-
mitted, fixing the amount in which
bail should be taken. On the 23rd day
of April 1859, and without an appli-
cation by habeas Corpus; but sim-
ply upon the motion of the respective
parties concerned, without legal pro-
cess, Said Balsou went before two jus-
tices of the Peace Levi Massie and
Wm Mc Gowen, who exercised the au-
thority of fixing the amount of bail,
and accepted his recognizance, to-
gether with the other defendants, in
the sum of \$500.

The first recognizance, was, afterwards, voluntarily discharged, by the People's attorney; and it is now sought to enforce the collection of this second recognizance. These are facts, admitted on the Record, by both parties. Others proven at the trial, will be noticed hereafter.

Laying aside, now, the question of fraudulent collusion, on the part of defendants, Craigow, and Loles - set up affirmatively in Plaintiff's Reply to Defendant's fourth Plea - there is no question of the illegality of these proceedings, and the futility of the attempt of the Plaintiff to collect this recognizance.

The freedom of the citizen from unreasonable seizures, and arrests, and from twice being put in jeopardy, for the same offense, are fundamental principles in our Constitution, and necessary to the safety, well being, and prosperity of a free people. These are the safeguards, the sheet anchors, which a well ordered government furnishes to the weak against the strong and oppressive, the right against the wrong. They are essential to the growth and

of those elements of manhood, which are the strength of States, and, without which, men are slaves. It is the glory of our civilization, that, pano-plied about by the law, men can feel safe in their property, their persons, and their liberties. Neither legislatures, nor monopolies, nor individuals, can strike these down.

The violence of passion, or of prejudices, can not invade these rights. The Courts ~~stand~~ are a drawn sword, to protect them. This is the theory, the policy of our law, the right of American citizenship, and it is the duty of Courts to realize them in practice. That is their office-work.

The Case at Bar, is a fitting illustration. Is it not a dangerous exercise of power over the rights of persons - not authorized by law?

But it is said, that the examination, and proceedings had before soles _____, were fraudulent and void. A replication to defend - ant's fourth Plea, tendered - though imperfectly and insufficiently - that issued. It was metted affirmatively

set up by the Plaintiff, and the onus probandi was upon the people to prove it. I pass, now, for the present and for the sake of the argument the insufficiency of Plaintiff's replication to defendant's fourth plea - and for argument's sake, will suppose that the issue of fraud in Soles, Crage and the defendant, was properly the decided. The replication admits the truth of the fourth plea, and seeks to avoid it, by setting up the new matter of fraud. Did the plaintiff prove it? Does the evidence show it? Who are the witnesses who swore to it?

Was Soles guilty of fraud? He says he "was not acquainted with any of the witnesses except Crage. Did not know the Bulsons. Never saw them before that." "I took the recognizance in good faith, and there was no arrangement of any kind between me and any other persons about binding him over. I fixed the bail at fifty dollars on account of the evidence not being very strong before me. I, at the time thought it high enough" &c -

It can not be claimed that Soles acted in fraud or collusion. He knows none of the parties except the complaining witness - Cravon. He issued subpoenas and waited several hours for witnesses. Several witnesses were sworn. He held Bulson to bail, in a sum which, in the exercise of his best judgment, under the evidence he thought adequate. These statements of Soles are uncontradicted by other evidence. How can the Plaintiff show fraud, or fraudulent connivance, on the part of Soles?

Wherein was the fraud of Cravon? He made the affidavit in good faith, and there was no fraud, or collusion, on his part, with Lease Bulson or any one else.

Was defendant Bulson guilty, by the proof of fraud or collusion? Soles did not know Bulson. Cravon did, but had passed no words with him on the subject. He had learned from the brother of the attorney who appeared for Bulson - at the examination - that Bulson was charged with

being guilty of larceny and re-
quested to make the complaint! Phes
does not appear. What of all
that. — But can this be a fraud-
ulent or collusive transaction, when
the actors, themselves, are not guilt-
ty of fraud or Collusion? Must
it be inferred because relatives
were witnesses, or because the Com-
plaint was in the hand writing
of the attorney for the defendant (which
is not true in fact, Soles being
Mistaken — but being a part of
this record must be taken as true)?

There is no proof that Bul-
son had any knowledge of the war-
rant issued by Lock at the time
she was bound over by Soles.

Instruction number one (1) given
by the Court on the part of the de-
fendants was the Law, and Must
have been entirely disregarded by
the jury.

The instruction given by the Court
on behalf of the Plaintiff was clearly
erroneous, and, misled the jury.

There was no evidence to sustain
it.

This proceeding of Magistrates in examining into the probability of the truth of alleged Criminal Charges, is auxiliary to the Grand Jury of the County. One Justice of the Peace acquires no superior jurisdiction over another, from the simple fact that he may have issued a warrant first - unless first served. Such upon proper Complaint made properly issued his warrant and in case of service, first would have full jurisdiction, and, if the proceeding were bona fides, would properly exercise jurisdiction, and his acts would be valid.

Soler, upon the application of Brayon properly issued the warrant. By its service acquired jurisdiction to hold Defendant Isaac Bulson to bail, and, acting bona fide in the exercise of a sound discretion, his decision was binding upon Bulson and not subject to collateral investigation.

The subsequent acts of Cook, were void. He should have discharged Bulson, when as soon as it appeared that he had been previously held

to bail for the same offered. The law should discourage the practice of allowing one Justice of the Peace to review, on the ground of alleged fraud, the findings and acts of another Justice of the Peace, with power to declare void. Despotism often assumes the veriest garb and speaks the language of liberty. The practice is dangerous!

The holding of Bulson to bail by Cook was void. In so doing Cook and the Constable who committed him to jail were trespassers.

Bulson was illegally restrained of his liberties and could have been discharged on habeas Corpus.

Sole had exhausted the power of an examining Magistrate; in reference to that crime. Cook had no more authority to act thereafter, as Justice of the Peace than Sole, Sole Cook as an individual or the President of the town of Canton. - See 15th Illinois. Solomon v. The People, 292.

It follows therefore, from the doctrine in that case that, even if Cook had endorsed on the back of the mittimus the amount of bail to

be taken - at \$500 - yet the recognizance
taken before Massie and
McGowan was void. In the
language of this Court, in the Case
above cited, "It was an involuntary
obligation, taken without authority
of law, and can not be enforced."
It is void because the act of
the Magistrate committing is void.

But there is another view,
to be taken of this Case, in which it
must be held that this recognizance
was taken without authority of law
and can not be enforced.

Admitting, for the sake of the argu-
ment that Cook had jurisdiction to
hold to bail what then? It is ad-
mitted by the pleadings on the part
of the Plaintiff, that there was no
endorsement on the warrant of Com-
mitment - in what sum bail might
be given! How could Massie and
McGowan take the recognizance?
In that Case they had no power
to enquire into the truth of the charge
nor authority to fix the amount of
bail. That was a judicial act
to be determined by the Justice
binding over, in view of all of

of the circumstances in evidence.
The duty of the two justices taking
the recognizance was simply
Ministerial - to take recognizance
in the sum endorsed, in due form
of law and approved of the Sureties.
If they exceed this Ministerial
act, in so far, their act is void.
If no sum is endorsed - then it
follows, that no Ministerial act
can be performed by them, and
if they act at all, and admit
to bail, their entire acts are
void and the recognizance is
not obligatory and can not be
enforced. And this leads me to
suggest whether a warrant of
Commitment upon which no
Amount of bail is endorsed - is
not for that reason itself void
in toto - although the justice may
have had the power to hold to
bail. What would be the conse-
quences of the opposite doctrine?
The Constitution ^{and laws enacted thereunder} provides that
the offense of larceny shall be bailable, and that excessive bail shall
not be demanded. What adequate
remedy would the law furnish in

a case such as this may be.
We can readily imagine cases, where
from various exciting causes, other
than the guilt of the accused, in-
tense animosity, bitter feeling, deadly
hate, strong bias, and unbridled
unrestrained, phrenzied expectations
may lash the people into a state of
feeling, in which justice to the ac-
cused, is impossible. He is pre-
judged to be guilty, though innocent.

Every old grudge, every vice
discretion, of his life, every offensive
trait of his natural, or acquired char-
acter, are brought to bear upon his
case, to ensure his binding over
in excessive bail.

Then let the Mittimus deny the consti-
tutional right of the accused to
bail by an arbitrary act - from which
there is no escape, except by the ex-
pensive process of Habeas Corpus
which may be beyond the means of the
accused. Is not the paper rule - to
hold - that such an instrument, is-
sued arbitrarily in defiance of
the law, and the sacred rights of
the accused - is absolutely void -
and bears the evidence of it in its

face and the officer who executed
it - as well as the justice who issued
it - are chargeable with notice of it?

Is it not more than
probable that this was just such
a case? That the facts conten-
plated in the first instructions
the part of defendants, existed here
in fact. That the people of Victoria
were prejudiced, excited, malignant
towards Bulson - that they were bent
on his conviction guilty or innocent
and the arbitrary machinery
was set in motion to accomplish that
purpose. That Cragon, through an
honest desire that he should have
a fair, impartial examination -
in good faith, made the complaint
before Soler and that Soler, in good
faith, without bias or previous
knowledge of the parties or the
facts heard the evidence, without
collusion with Bulson or any one
else, and held him to bail.

So it seems to me.

But I have argued these ques-
tions, as though the issue of fraud-
ulent collusion in Soler, Cragon,
and the defendants - was properly

formed by the pleadings. Plaintiff's Special Replication to defendant's fourth Pleas, did not answer the pleas.

The demurrer to the Replication, ought, on that account, to have been sustained, and in overruling the Demurrer, the Court erred.

The special matter alleged in the Replication in avoidance of the fourth plea - (the facts in that plea set up being admitted) - is, that Crago (& defendant) well knew, at the time he made the Complaint before Sole, that a warrant had issued against Frederick Bulson, before another justice of the Peace, to answer the same offense - that they fraudulently colluded together, to arrest said Frederick Bulson &c. &c.

These facts set up in this replication are clearly no answer to the Pleas.

Nor can any intendment in favor of the averments of the replication be entertained by any known rules of pleading and in a proceeding of this nature.

Defendants were entitled to judgment against the Plaintiffs for want of a Replication.

There are other errors in this record, which are properly assigned and before the Court for decision.

These are fully noticed in the points, authorities and written argument on file, of Brother Lyles. On full and careful consideration of the whole Record it is confidently believed, that the judgment below, must ~~not~~ not only be reversed, for manifest error, at the trial and in the pleadings; but that a recovery upon this recognizance, can never be had. There was one valid recognizance made and filed of record. By the voluntary act of the Plaintiff, that recognizance has been discharged. This Court can not aid the Plaintiff, who has done a rash act - by holding a void recognizance, obligatory upon the Cognizors.

D. J. Bennett
Attorney for Appellants.

158 13. P. J.

Bulson et al.

vs.

The People

Written arguments

for Appellants.

Filed May 4, 1867.
S. Ireland
Clk.

J. S. Bennett
of Counsel for
Appellants.

Transcript of the Record
and
Files in the

Circuit Court of
Wood County
in
the Cause of

The People &c.
vs.
Isaac Pulson et al
" "

1
A True and Complete

Copy of the Record and Files of
the Circuit Court of Knox County Illinois in
a cause in said court wherein the People
of the State of Illinois are Plaintiffs and
Isaac Pulson, Frederick Pulson and
James Downing are Defendants. Action:
Scire Facias on Recognizance.

July 26th AD 1839.

This day was issued as follows by the clerk
of said court in said cause a scire facias:

State of Illinois,
Knox County Ss.

The People of the State
of Illinois The Sheriff of said County,
Greeting:

Whereas Isaac Pulson, Frederick
Pulson and James Downing, all of the county
of Knox & State of Illinois, on the 23^d day
of April AD 1839, personally came before
Wm McGowan and Levi Massie, two of the
Justices of the Peace in and for said coun-
ty and entered into a recognizance, which
said recognizance ^{in words and figures} is following, to-wit:

'Be it remembered that on 23^d day of April
AD 1839, Isaac Pulson of Knox County
State of Illinois, and Frederick Pulson &

2

James Downing of the same place, personally came before me William McGowan and Levi Massie, two Justices of the Peace of said county, and severally and respectively acknowledged themselves to owe to the People of the State of Illinois, the sum of Five Hundred 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, to-wit:— The condition of this recognizance is such that if the said Isaac Pulson who has been committed to the common jail of said County for want of sureties, shall personally be and appear at the next Term of the Circuit Court to be held in and for the said County of Knox on the first day thereof, to-wit, on the first Monday of the month of June next, to answer to an Indictment to be preferred against him for feloniously stealing, taking and carrying away at the town of Copley in the county aforesaid, on the 4th day of October AD 1838, one red cow, three years old, with white in the face of the value of Twenty Dollars, the property of one, John Rusted, and to do and receive what shall then and there by the Court be enjoined upon him and shall not depart the Court without leave, then this recognizance to be void, otherwise to remain in full force

Isaac Pulson (seal)
 Frederick Pulson (seal)

James Downing Seal

Taken, subscribed and acknowledged the day
and year first above written before
John McGowan J. P.
Levi Massie J. P.

— And whereas the said recognizance
so taken and entered into as aforesaid was
returned into office of the clerk of the
Circuit Court of said Knox County and
was by said clerk duly filed on the second
day of June A.D. 1859 and thereby be-
came a record of said court;

— And whereas during said next term
of said court, to wit, on the fifteenth day
of June A.D. 1859 at & during a term
of said court begun and held at the court
house in the city of Knoxville on the
first Monday of the month of June
A.D. 1859, the said Isaac Pulson
being called, came not but made default,
and the said Frederick Pulson & James
Downing his said securities, being called
came not, but failed to produce the body
of their said principal — Thereupon
judgment of forfeiture was rendered against
them the said Isaac Pulson, Frederick
Pulson & James Downing for the said sum
of five hundred dollars and an order
entered that Seire Facias issue thereon

4
Isaac

against the said James Pulson, Frederick
Pulson and James Downing to appear and
show cause why &c. at the next term of
said court thereafter ; —

— Now therefore We Command you
to summon the said Isaac Pulson, Fred-
erick Pulson and James Downing, if to be
found in your county, personally to be and
appear before the circuit court of said
County on the first day of the next term
thereof, to be holden at the Court house in the
City of Knoxville in said County on the
4th Monday of the month of September next
then and there to show cause ~~why~~ if any
they have, why final judgment should not
be rendered, against them for the amount
of their said recognizance and why ex-
ecution should not issue against them for
the collection of the same — and further
to do and receive whatever our said Court
shall then and there consider and adjudge
against them in that behalf, and herof
make due return as the law directs with
an endorsement thereon of the manner
in which you execute the same

Witness Cephas Arms, clerk of our
said court, and the seal thereof
at Knoxville this 26th day of
July, A.D. 1839
Cephas Arms clerk
" "

September 1st 1839

5 On this day the Sheriff of Knox County Illinois, returned into the office of the clerk of said court the above recited summons, *scire facias*, with the following endorsement on the back of it:—

" ? Read to the within named Frederick Pulson & James Downing this 31st day of August AD 1839

Andrew Thomson Sheriff,
By J. H. McIntosh, Deputy
I cannot find the within named Isaac Pulson in my county this 31st day of August 1839.

Andrew Thomson, Sheriff,
By J. H. McIntosh Deputy.

Sheriff's fees: 2 services \$, 50 — 40 miles
travel \$ 2,00 — Return \$ 0,10. — Total
\$ 2,60

Andrew Thomson, Sheriff
By J. H. McIntosh Deputy

There appears on the back of said instrument of writing also the following:—

" Filed Sept. 1. 1839

" C. Arns clerk."

6 September 26th A.D. 1859

On this day met the said Circuit Court of Knox County, Illinois in court in course of the September Term, — The record of which is as follows: —

State of Illinois }
Knox County S.S.

Pleas before the Honorable John Thompson, Judge of the Fifth Judicial Circuit of the State of Illinois at a court begun and held at the Court House in the City of Knoxville, on the fourth day of Monday of September in the year of our Lord One thousand, eight hundred and fifty nine, it being the twenty-sixth day of September in the year aforesaid.

Present
Honorable John S. Thompson Judge
James H. Stewart, State's Attorney
Cephas Arms Clerk
Andrew Thompson Sheriff

October 15th A.D. 1859.

61. The People &c. }
Isaac Pulson et al } Seire Facias &c

This day came the Defendants by their Attorney and filed their Remuner to the Seire Facias filed

4
Herein. Thereupon comes the State's Attorney
and confesses the Return And on his mo-
tion it is ordered by the court that
leave be given to amend the scire facias
filed herein. And this suit is continued
until the next term of this court.

11 11

The Return referred to in the above
order of this court is as follows:—

State of Illinois }
Know County } ss. Judge Circuit Court }
Sept. Term A.D. 1839 }
The People &c }
vs } Scire Facias in Recognizance
Isaac Pulson et al }

And the said Defts.
in said cause come and defend the wrong
& injury when &c, & say that the said
scire facias & the matters therein contained
in manner & form as the same are above
stated and set forth, are not sufficient in
law for the Plaintiff to have or maintain
their aforesaid action thereof against
them & they are not bound in law to
answer the same, and this they are ready
to verify. Therefore they pray judgment &c
Tyler & Sanford atty for Defts.

And for special cause of Return the
said Defts. assign the following, to-wit:—
1st — Because there is not any warrant in

8, The Scire Facias showing the authority of the
officers to take the recognizance
2nd Because the recognizance & Scire
Facias does not show upon its face any
authority of any court having jurisdiction
of subject matter or person of the W^{ft}, Isaac
Fulson, to require him to give bail,
3^d Because the recognizance or Scire Fa-
cias does not show that he was ever re-
quired to give bail by a court or person
authorized by law to require bail or
imprison
Tyler & Sanford for W^{ft}.

— and on the back of said instrument
in writing appears as follows:
"Filed Sept. 28, 1859. C. Arns clerk"
" "

March 14th and 15th.

This day met the said Knox County Circuit
Court of Illinois, in Court in course of the
February Term — Pursuant to adjournment
the record of which is as follows:—

"State of Illinois"
"Knox County, Ss.
"Plea before the Hono-
"rable John S. Thompson, Judge of the South
"Judicial Circuit Court of the State of

9. Illinois, At the court begun and held at
the Court House, in the city of Knoxville
on the Third Monday of February in the
year of our Lord One thousand, eight
hundred and sixty, it being the twentieth
day of February, in the year aforesaid

Present:

Hon. John S. Thompson Judge
James H. Stewart, State's attorney
Leophas Arms, Clerk
Andrew Thomson Sheriff.

20. The People of the State of Illinois }
v. Isaac Pulson et. al. } Seire Facias

On motion,
it is ordered by the court that leave be
granted to amend seire Facias herein.
And it is further ordered that this cause
be continued until the next term of this
Court.

June 11th A. W. H. C.

This day came the State's Attorney, of this
Court, and placed upon the files of this
court an amended Seire Facias, in accord-
ance with an order of this court heretofore
made herein as aforesaid. Which is as follows:

State of Illinois,
Knox County Sps.

The People of the State
of Illinois to the Sheriff of said County
Greeting:

Whereas one John Rusted on the 19th day of January A.D. 1839, complained on oath before Giles Cook, then being a Justice of the Peace in and for the County of Knox and State of Illinois, that one Isaac Pulson did feloniously steal, take and carry away one red cow three years old with white in the face of the value of twenty dollars, the property of the said John Rusted, on the 4th day of October A.D. 1838. — And the said Giles Cook so being Justice of the Peace as aforesaid having on the 22nd day of January A.D. 1839 enquired into the truth and probability of the charge against him the said Isaac Pulson, and upon consideration of the facts and circumstances then proved ordered the Isaac Pulson to be admitted to bail in the sum of Five hundred dollars; —

— And whereas the said Isaac Pulson, having failed to give the bail required, he was committed to the County Jail of said Knox County in pursuance of an order of commitment issued by the said Giles Cook, so being Justice of the Peace as aforesaid; —

And Whereas afterwards, to-wit, on the 23^d day of April A.D. 1839, the said Isaac Pulson as Principal and Frederick Pulson and James Downing, all of the County of Knox and State of Illinois, personally, came before William McGowan and Levi Massie, two of the Justices of the Peace in and for said County, and entered into a recognizance; which said recognizance is in the words and figures following to-wit:—

“Do it remembered that on the 23^d day of April A.D. 1839, Isaac Pulson of Knox County, State of Illinois and Frederick Pulson & James Downing of the same place, personally, came before William McGowan and Levi Massie two Justices of the Peace of said County and severally and respectively acknowledged themselves to owe to the People of the State of Illinois, the sum of Five Hundred 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, to-wit:—

“The condition of this recognizance is such that if the said Isaac Pulson who has been committed to the common jail of said County for want of sureties shall personally be and appear at the next term of the Circuit Court

to be held in and for said county of Knox
 On the first day thereof, to-wit: On the first
 Monday of the month of June next, to
 answer to an indictment to be preferred a-
 gainst him for feloniously stealing, taking and
 carrying away at the town of Hopley in the
 county aforesaid, on the 4th day of October
 AD 1855 one red cow three years old with white
 in the face, of the value of twenty dollars
 the property of one John Reusted and
 to do and receive what shall then and
 there by the court be enjoined upon him
 and shall not depart the court without leave,
 then this recognizance to be void; otherwise
 to remain in full force

Isaac Pulson (seal)
 Frederick Pulson (seal)
 James Downing (seal)

Subscribed and acknowledged the day and
 year first above written, before

W^m W^m Cowan J.P.
 Levi Massie J.P.;

— And whereas the said recognizance so
 taken and entered into as aforesaid was
 returned into the office of the clerk of the
 Circuit Court of said Knox County, and
 was by said clerk duly filed on the
 2nd day of June AD 1857 and thereby became
 a record of said court;

— And whereas during said next term
 of said court, to-wit: on the fifteenth

13

day of June A.D. 1839 at and during
a term of said court begun and held
at the court house in the city of Knoxville
on the first Monday of the month
of June A.D. 1839, the said Isaac
Fulson being called came not but
made default, and the said Frederick
Fulson and James Downing, his said
securities, being called, came not, but
failed to produce the body of their said
Principal. Thereupon judgment of forfeit-
ure was rendered against them the said
Isaac Fulson, Frederick Fulson and
James Downing for the said sum of Five
Hundred dollars and an order entered
that Seire Facias issue thereon against
the said Isaac Fulson, Frederick
Fulson and James Downing to appear
and show cause &c, at the next term of
said court thereafter; -

Now therefore we command you to sum-
mon the said Isaac Fulson, Frederick
Fulson and James Downing if to be found
in your County personally to be and ap-
pear before the Circuit Court of said coun-
ty on the first day of ^{the} next term thereof to
be holden at the court house in the city
of Knoxville in said County on the 1st
Monday of the month of September next
then and then to show cause, if any they
have why final judgment should not
be rendered against them for the amount

14

of their said recognizance — And why execution should not issue against them for the collection of the same and further, to do and receive whatever our said Court shall then and there consider and adjudge against them in that behalf, and thereof make due return as the law directs with an endorsement thereon of the manner in which you execute the same.

— Witness Cephas Arns, clerk
{ L.S. } of our said Court, and the
seal thereof at Knoxville this 26th
day of July A.D. 1839
C. Arns, clerk.

On the back of said instrument of writing
appears as follows:—

"Filed June 4th 1839.

" C. Arns clerk. "

" "

And on the same day, June 4th A.D. 1839,
met the Circuit Court of Knox County, Ill-
inois, in Court in course of the June Term
pursuant to adjournment. The record of
which is as follows:—

"State of Illinois?

"Knox County S.S.

Plas Before the Hon.

15

John S. Thompson, Judge of the Fifth
Judicial Circuit of the state of Illinois
At a court begun and held at the court
house in the city of Knoxville in said
county, on Monday the fourth day of June
in the year of our Lord one thousand,
Eight hundred and sixty, said day being
the first Monday of said month.

Present.

Honorable John S. Thompson Judge
James H. Stewart, States Attorney
Cephas Arnes Clerk
Andrew Thomson Sheriff

June 6th A.D. 1860.

On this day the cause
of The People of the state of Illinois versus
Isaac Fulson, Frederick Fulson and
James Downing, ~~was~~ seise Tacias in
Recognizance. — as aforesaid, was con-
tinued under a general order of this
court to the next term of this said court.
— Which said order is as follows: —

"June 6th A.D. 1860.

"Ordered by the court
that all causes now pending before the
Court, not otherwise disposed of, be con-
tinued until the next term of this court"

16. At said Term of said Court there was no special order made in the above entitled cause.

September 24th and 25th.

On this day met the said Circuit Court of Knox County, Illinois, in court in course of the September Term, pursuant to adjournment. - The Record of which is as follows:-

" September Term and 25th
" State of Illinois?
" Knox County ss
" Pleas before the Honorable
" Aaron Tyler Judge of the Tenth Judicial
" Circuit of the state of Illinois at a court
" begun and held at the Court house in
" the city of Knoxville in said County
" On Monday the 24th day of September
" in the year of our Lord one thousand,
" eight hundred and sixty, being the
" fourth Monday of said month.

Present:

" Honorable Aaron Tyler, Judge,
" James H. Stewart, State Attorney
" Cephas Arms, Clerk
" Andrew Thomson Sheriff.??

"
" During the last mentioned (this) term of this

14

said court, and on the 4th day of October A.D. 1860, came Defendants by their attorney and placed upon the files of this said court, Pleas, Numbers 1, 2, and 3, as follows:—

“State of Illinois }
” Knox County } ss

Knox Circuit Court
September Term A.D. 1860

The People of the State of Illinois }

vs.
Isaac Gulson, Frederick Gulson (Sci. Fa.)
and James Downing

And now comes
The said Defendants, by their Attorney
Patrick H. Sanford, and say that
the said supposed writing obligatory or
Recognizance, is not their deed and of
this they put themselves upon the country &c.
P. H. Sanford

And for further plea in this behalf, leave of
the court here first obtained for this pur-
pose, The said Defendants say that there
is not any record of the said supposed
recovery in said Scire Facias mentioned
& form as the said People of the State of
Illinois have above in said Scire
Facias alleged & this these Defendants
are ready to verify, therefore they

Pray judgment &c.

P. H. Sanford
Atty for Defts.

And for further Plea in this behalf, leave
of the Court first had and obtained,
The said Defendants, Isaac Pulson,
Frederick Pulson & James Downing, by
Patrick H. Sanford their attorney, come
and defend the wrong and injury
when &c., and say that the said People
of the State of Illinois ought not to have
judgment against them by the said Lewis
Macias in said Recognizance and ought
not to have execution against them; be-
cause they say that the said Giles Cook
the Justice of the Peace of said County
who ordered said Isaac Pulson committed
to the Common jail of said County,
did not endorse on the writs, or writ
of commitment. By him issued, the
sum or amount in which bail might
betaken by officers authorized to take bail
in such cases, but that the said Lewis
Macias and William McLowan, two Justices
of the Peace of said County, unlawfully
and without any authority took said re-
cognizance in the sum of Five Hundred
dollars. So these Defendants say the
same is illegal and void and that no
judgment ought to be rendered or execution
issued thereon or in consequence there
of. And this, said Defendants are

19 ready to verify, Wherefore they pray judgment &c.

" P. H. Sanford atty for Defs.?"

And on the back of said instrument of writing appears as follows:—

" Filed October 4th 1860
" C. Arms clerk."

October 1st de a^d 1860. This day the following was in court:—

11. " The People of the State of Illinois }
" v. Isaac Pulson et al } Scire Facias

" This day came the Plaintiff by the State's Attorney and filed his Demurrer to Defendants Pleas therein numbered one, two and three

— Which said Demurrer is as follows:—

State of Illinois }
Knox County Ss. } September Term a^d 1860
The People &c. } Knox Circuit Court
115 Isaac Pulson et al } And the said People

"By J. H. Stewart, State's Attorney, come
 "Pray as to Pleas of Defendant undivided
 "(1) One, (2) two & three (3) and to each
 "of them severally, precludi non. And
 "because, they say, that the said Pleas
 "and each of them severally are not
 "sufficient in law, and that they
 "are not bound to answer the same
 "Therefore they pray judgment, &c.
 " J. H. Stewart
 " States Attorney "

as it is upon the files of this said court.

And upon the back of said Remuneration
 there appears as follows:—

"Filed Oct. 15, 1860, C. Arns clerk"

" "

February 18th 1861.

On this day again met the Circuit Court
 of Knox County, Illinois in Court
 in course of the February Term, pur-
 suant to adjournment. The Record of
 which is as follows:—

"February Term 1861
 State of Illinois,

"Knox County, ss.

"Pleas before the Hon-
 orable Aaron Taylor, Judge of the Peace

Judicial Circuit of the state of Illinois
 At a court begun and held at the Court
 house, in the city of Knoxville in said
 County, on Monday, the eighteenth day
 of February in the year of our Lord one
 thousand eight hundred and sixty one,
 being the third Monday of said month
 Present;

Hon. Aaron Tyler Judge

James H. Stewart State's Attorney

John H. Lewis Clerk

Elijah C. Pratt Sheriff.

Court opened by proclamation.
 " "

February 19th a/c 1861.

On this day and during the last mentioned
 (this) term of this said court came the
 Defendants by their Attorney and placed
 upon the files of this Court Plea
 No. 4 in the above entitled cause,
 as follows:—

And for a further Plea in this behalf,
 leave of the Court being first had, the
 said Pleas, Isaac Bulson, Frederick
 Bulson & James Downing, by P. H. Sanford
 their atty, Counsel and defend the wrong
 injury when &c, and say that the said
 People of the state of Illinois ought

not to have judgment against them by said Scire Facias on said Recog-
nizance & ought not to have execution
against them. — Because they say
that on the 16th day of February and
1839, James Soles, a Justice of the Peace
in & for the County of Knox & State of
Illinois issued his warrant under his
hand and seal upon the oath of one
Phineas Cragon against the said Isaac
Bulson, charging the said Isaac Bulson
with feloniously stealing in said County
one cow, the property of John Keusted,
— And that the said Isaac Bulson
was on the said sixteenth day of February
duly arrested upon said warrant
and taken before the said James
Soles, the said Justice of the Peace
and duly examined before said Justice
as such Justice upon the said charge
of larceny, & upon the said exam-
ination before said Justice on the said
16th day of February and 1839, after
the hearing of the evidence by said
Justice was required to give bail
in the sum of Fifty Dollars for his
appearance to the then next term of
this Court the Circuit Court of the said
County of Knox & State of Illinois to ans-
wer to said charge of larceny. And said
Defendants further aver that the said
Isaac Bulson did on the said
16th day of February and 1839, before

23

the said James Soles, Justice as aforesaid who was duly authorized by law to issue said writ warrant, examine said Isaac Pulson, Deft., on said Charge of Larceny & hold said Pulson to Bail & to take a Recognizance for the said Pulson's Appearance to said Term of the said Circuit Court, enter into a recognizance with one Frederick Pulson as security for his Appearance at said Circuit Court to answer to said Charge of Larceny; And that the said James Soles as such Justice of the Peace so authorized, did on the 16th day of Feb, A.D. 1839, approve said security & accept said Recognizance & discharge the said Isaac Pulson from further arrest for said alleged offence.

And the ^{said} Defts. further aver that the said James Soles as such Justice of the Peace did duly return & certify said Recognizance into the said Circuit Court of the said County of Knox & that the same was duly filed in said court and became a record thereof on the 4th day of April A.D. 1839, & that at the June Term of said Circuit Court in and for said County on the 15th day of June A.D. 1839, upon the motion of the States Attorney in and for said Court, the said Circuit Court dismissed &

24 discharged the said Defendant Isaac
Sols, ^{Pulson} his security from said recogni-
zance.

And said Wlts. further aver that
after the said Wlts., Isaac Pulson
had been so arrested, entered into
the said Recognizance & been so dis-
charged by the said Sols, said Justice,
tht the said Pulson Isaac Pulson was
on or about the 22^d day of April A.D.
1839 again arrested for the same offence
& none other by a constable named Low
Wason upon a Warrant issued by one
Giles Cook a Justice of the Peace in
& for said County of Knox & state afor-
said; And on the said 22nd day
of April A.D. 1839, taken before said
Justice Cook & there examined upon
the same charge & for the same offence
& for the stealing of the same cow that
the said Isaac Pulson had been ex-
amined & bound over to appear at the
said Circuit Court to answer for, be-
fore the said Justice of the Peace, James
Sols. and for no other or different offence
— And the said Defendants further aver
that the said Giles Cook, Justice of
the Peace as aforesaid, after hearing
the evidence did on the said 22nd day
of April A.D. 1839 require the said
Isaac Pulson to enter into Bail before
him in good security in the sum of
Five Hundred dollars for his

Appearance & the next term of the said circuit court; & that the said Isaac Pulson failed to give said security before the said look & in default thereof the said Giles look as such Justice did on the 22nd day of April issue his supposed mittimus. & by virtue thereof the said Isaac Pulson was on the 22nd day of April 1859 confined in the county jail of said County of Knox until the 23rd day of April A.D. 1859 - when he the said Isaac Pulson was discharged from said jail upon entering into the supposed Recognizance which the said Levi Massie is issued upon in this cause.

And the said Defendants further aver that the said supposed Recognizance taken by Levi Massie & Jm McGowan, two Justices of the Peace in & for said county upon which this Levi Massie is issued was taken to require the appearance of the said Isaac Pulson to appear and answer to the charge for which he had been examined & held to bail by the said Giles look as aforesaid & for no other or different offence.

And said Defendants further aver that the supposed recognizance entered into before Jm McGowan & Levi Massie & the said recognizance entered into before the said James Solis were

for the same offence & none other; and that the said supposed Recognizance upon which this *Seire Facias* is issued, is void; — That the *Dei* Clerk had no right to hold the said Isaac Pulson to Bail after he had once been bailed for the same offence before the said James Soler and that the said *Sp^{er}*, McGowan & Levi Massie had no legal right to take bail or require the said Isaac Pulson to enter into a *see and* Recognizance for the same offence. So these *Defts.* say that the same is illegal & void and that no judgment ought to be rendered, or execution issue thereon or in consequence thereof and this, the said *Defts.* are ready to verify, Wherefore they pray judgment &c,

P. H. Sanford
Atty for *Defts.* ??

— as it, (said Plea No. 4), appears on the files of this court. And on the back of said instrument of writing appears as follows:—

"Filed Feb 19, 1861, J. H. Lewis clerk?"

February 26th 1861

On this day the following were the proceedings of his said court at his said (Feb, 26th) term,

24 in this said cause:—

4 " The People of the State of Illinois }
" vs. Isaac Bulson et al } Sci. Ta.

" This day came
" the People aforesaid by the States Attorney
" and files his Demurrer to Defendants
" 1st, 2nd, 3^d, and 4th Pleas therein
" and each of them, And the Court having
" heard said Demurrer, — It is ordered
" by the Court that the Demurrer to the first
" Plea be sustained; that Demurrer to see
" and and third Pleas be overruled; and
" Demurrer to fourth Plea, taken under
" advisement, to be decided, by agree-
" ment of parties, in vacation and entered
" as of this Term —

" — June 1st A. D. 1861, Ordered by the Court
" that Demurrer to 4th Plea be overruled.?"
— SEE — under date June 1st A. D. 1861. —

Which said Demurrer as it is upon
the files of this Court is as follows:

The People — }
vs. Isaac Bulson et al } Knox Circuit Court }
And the said People by J. H. Stewart }
States Attorney, } February Term A. D. 1861 }

28

& The said Pleas of the said Defendants by them firstly, secondly, thirdly, and fourthly above pleaded, say that the same and each of them and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude them the said People from having or maintaining their aforesaid action thereof against the said Defendants and that they are not bound by law to answer the same, and this he is ready to verify

Therefore by reason of the insufficiency of the said plea in this behalf, the said People pray judgment &c

J. H. Stewart
State's Atty.

On the back of said Memorial appears as follows: "Filed Feb 26 / 61. J. H. Lewis clk?"

June 1st 1861.

On this day came Defendants, by their attorney, and placed upon the files of this said court a letter from Honorable E. S. Powell, Judge Presiding in said cause, because Honorable Aaron Taylor was attorney for the Defendants herein. &c &c. Which letter is as follows:—

29

Provia May 31st 1841
Tyler & Sanford Esqrs.

Gents:-

Your favor of the 29th is before me. In the case of the People vs Pulson et al., - the matter as I understand it, stands upon demurrer to the 4th plea of Defendants.

That plea is in substance: - that the accused was duly arrested & examined before a Justice of the Peace on a charge of Larceny and was required to give bail in \$50. - which he did & the recognizance duly filed in the clerk's office, that after the accused had given bail & been discharged, he was again arrested by another Justice for the same offence and required to give bail in the sum of \$500. & in default was committed to jail.

That afterwards he gave bail before two Justices & the recognizance filed in Court and forfeiture taken and Sei. Fa. issued &c.

I have given the case some consideration and I am compelled, having a due regard for human rights and to avoid oppression on the part of public officers, to declare that the second Justice had no jurisdiction of the matter. Although the first Justice may have made the bail entirely too small, still if such a

principle was to be sanctioned, then the great constitutional right would entirely be subverted.

I think the plea is good and the demurrer must be overruled & the order may be so entered.

I have consulted also with Mr. McCoy, our state's Attorney and we have examined it together and he fully agrees with me.

Yours Truly
E. A. Powell

On the back of said letter is as follows:
"Filed June 1. 1861 J. H. Lewis clk."
" " " "

June 3rd 1861.

On this day met again the Circuit Court of Knox County Illinois, in court in course of the June Term 1861. Pursuant to adjournment. The record of which is as follows:—

June Term 1861.
State of Illinois,
Knox County, S.S., Pleas before the Honorable Aaron Tyler, Judge of the Fourth Judicial District of the state of Illinois at a court begun and held at the

31

Courthouse in the city of Knoxville
in said County, on Tuesday, the fourth
day of June ~~1861~~ One thousand
eight hundred and sixty-one, being the
first Tuesday of said month, — The
opening of said Court having been post
poned one day on account of Judicial
election, held on Monday June 3rd and
1861, by order of court

Present

Hon: Aaron Tyler Judge

James H. Stewart States atty.

John H. Lewis Clerk

E. C. Broth Sheriff

Court opened by proclamation
" "

June 4th and 1861 —

4 The People of the State of Illinois }
vs. Isaac Pulson et al. } Seors Facias

This day
came the people by the States Attorney
and moved the court for leave to reply
to Defendants Pleas herein. And the
court being advised, it is ordered
that said motion be sustained and the
Plaintiff have leave to file replication
ten days before the next term of this
court until which term this cause
is continued.

32

September 23d A.D. 1861.

This day again met the Circuit Court of Knox County, Illinois in Court in course of the September Term A.D. 1861 pursuant to adjournment, the record of which is as follows:—

September Term A.D. 1861
State of Illinois }
Knox County } ss.

Pleas before the Honorable Charles B. Lawrence, Judge of the Tenth Judicial Circuit of the State of Illinois, at a Court begun and held at the Court house in the City of Knoxville in said County on Monday the 23d day of September A.D. 1861.— Being the fourth Monday of said month.

Present:—

Hon. Charles B. Lawrence, Judge
James H. Stewart, Prosecuting Attorney
John H. Jewis Clerk
E. C. Broth Sheriff.

Court opened by proclamation.

September 23d A.D. 1861.

The People of the State of Illinois }
v. Isaac Pulson et al. } Sci. Pa.

On motion, it

33

is ordered by the Court that the Plaintiff have leave to reply to Defendants Pleas herein.

October 14th and 18th.

4 The People of the state of Illinois)
v. Isaac Bulson et. al.) Sec. 7th.

On Motion of the State's Attorney, It is ordered by the Court that the Plaintiff# have leave to reply to Defendants Pleas herein, within ninety days and this Suit continued until the next term of this Court.

February 13th and 18th.

On this day came J. A. Stewart, State's Attorney for the Fifth Judicial Circuit of State of Illinois, and placed upon the files of this said Court the People's Replication to Defendants 2nd & 3rd Pleas as aforesaid, in compliance with the last order of this Court heretofore made herein. Which Replication is as follows:—

The People —
v
Isaac Sulson et al }

And the said Plaintiff as to the said plea of Writs, secondly above pleaded say that Plaintiff by reason of anything in said Plea by Writs, alleged precludi non, because they say that there is a record of the said recovery in said seire Facias mentioned remaining in said Court in manner and form as the said People have above in said seire Facias, alleged — and of this Plaintiff put themselves upon the country

{ And Writs, do the like
Tyler & Sanford attys for Writs }

J. H. Stewart
States Atty

And the said Plaintiff as to the said ~~Writ~~ plea of the Writs fourthly above pleaded say that Plaintiff by reason of anything in said plea by Writs, alleged, precludi non; because, they say, that no valid and binding recognizance was entered into by said Defendants before the said James Soles as in said plea alleged and that the same was and is void because the same was ~~and~~ ~~is~~ entered into by fraud and connivance between said Defendants, Phineas Cragan and the said James Soles, in order to prevent the taking of a valid recognizance in a proper amount for said offence; that said offence of which Sulson was accused was for Larceny of a

Cow of the value of \$20.00 subjecting
 said Fulson to punishment in the Peniten-
 tiary; — That the bail required by said
 James Soles J.P. was but \$50.00 by fraud
 and connivance with the said Defendants;
 — That said Defendants and said Pincas
 Oregon well knew that a warrant had been
 issued to compel the attendance of said
 Frederick Fulson before another Justice
 of the Peace to answer for the same
 offence — and that fraudulently con-
 siving & colluding together, the said
 Defendants and Pincas Oregon pro-
 cured the arrest of said Frederick
 Fulson and ~~procured~~ proceeded
 without procuring the attendance of any of
 the witnesses having a knowledge of the
 facts of said case — and without the
 examination of any witnesses having
 a knowledge of the commission of said
 offence fraudulently to procure the
 taking of the recognizance in said
 fourth plea mentioned to be taken
 before the said James Soles in the sum
 of \$50.00, a sum inadequate to the
 nature of the offence, Therefore the
 said People by the State's attorney
 pray judgment for the said sum
 in said sec. 4a, and recovery
 set forth and alleged &c
 J. H. Stewart
 State's Atty

And on the back of said instrument of writing appears as follows:—
 Filed Feb. 13/62 J. H. Lewis clk

And on the same day the said State's Atty filed in said Court the process for subpoena for witnesses which was duly obeyed and a subpoena issued in due form of law commanding James Soles, Phineas Cragan Giles Cook, Aaron A. Smith, Absalom Smith, Isaac C. Smith and Alden Bennett personally to be and appear before said Circuit Court at on the 14th day of Feb. inst. to testify &c
 {L.S.} John H. Lewis clk

February 14th and 15th

On this day again met the said Circuit Court of Knox County Illinois in Court in course of the February Term, pursuant to adjournment. The Record of which is as follows:—

February Term at the
 State of Illinois
 Knox County Sp. Pleas before the
 Honorable Charles B. Lawrence
 Judge of the Fifth Judicial Circuit

34

Court of the state of Illinois, at a court begun and held at the Court house in the City of Knoxville in said County on Monday the 15th day of February in the year of our Lord One thousand, eight hundred and sixty two, being the third Monday of said month.

Present:

Hon Charles P. Gausence Judge

James H. Stewart States Attorney

John H. Lewis Clerk

E. L. Froth Sheriff

Court opened by Proclamation

February 21. 1862

On this day came said J. H. Stewart State's Attorney, as aforesaid and places upon the files of this said court his Replication to Defendants' 3d plea therein which is as follows, as it is on the files of this said court:

The People —

vs Isaac Sulron et al

And the said P. P. by the States Atty, come and say as to the aforesaid third plea, preclude you, because they say that although

They confess it is true that Giles Cook
 a Justice of the Peace who made out
 the mittimus referred to by Def^t: in
 said plea, did not indorse the
 amount in which bail should be
 taken on the back of said mittimus
 & yet Plaintiff aver and allege
 that said Giles Cook, Justice of
 the Peace as aforesaid in the body
 of said mittimus did direct in writing
 the amount in which bail should be
 taken, to wit \$500.00 - and that said
 Justices Levi Massie & William
 Mcowan did take bail from Defend
 ants in the amount so directed by
 Giles Cook aforesaid, and this they
 are ready to verify. Therefore they
 pray judgt if the should be barred
 by anything contained in said Plea &c
 J. H. Stewart
 State's Atty

And on the back of said Replication
 appears as follows
 Filed February 27/62 J. H. Stewart, Atty
 " " " " " "

February 26th 1862

The People &c.

Isaac Pulson et al

Ver. Fa.

This

39

day came the Defendants by Attorney
and demurred to Plaintiff's replication
to Defendants' pleas No. three and four.

— Which said demurrer, as it is
on the files of this said court, is as fol-
lows:—

State of Illinois }
County of Knox } Sd Knox Circuit Court }
February Term 1862 }
The People of Illinois } Sci. Fa.
v. }
Isaac Pulson et al }

And the said
Defts. by their attys, come into court
and having heard the said 3d and 4th
Replications to the 3d & 4th Pleas
made, say that the said 3d and 4th
Replications and each of them to
the said 3d and 4th pleas of said
Defts, pleaded, and the matters
& things contained in the said 3d and
4th Replications & each of them are
insufficient in law and that the said
Defts. are not bound to answer the
same — And this they are ready to
verify. Therefore, for want of suffi-
cient replications the said Defts. pray
judgt. of the said 3d and 4th
Replications & that the said suit

40

be dismissed & said Defts, discharged
& that they recover their costs &c
Tyler & Sanford
Attys for Defts,

& for special cause of demurrer the
Defts. assign the cause that said
replication & 4th plea is double.

And on the back of said demurrer
appears as follows
"Filed Feb. 26/62 J. H. Lewis clk"
" " " " " "

February 27th and 28th. (see after the two
following orders of Court, Defts' rejoinder to Pff's rep: &c, here left out by error)

2. The People &c. } Sci. Fa.
Isaac Pulson et al. }

This day came
the Defendants by attorney and abides
by his demurrer & replication & his
third plea, And it is ordered by the
Court that demurrer & first Plea
be sustained

And on the same day in this said
Court the following were the proceedings
had in this cause;

2. The People of the State of Illinois } Sci. Fa.
vs. Isaac Pulson, Frederick Pulson (James Manning) }
This day

41

Came the People aforesaid, by the States Attorney and also came the Defendant and his attorneys, and issues being joined, for trial put themselves upon the country. Thereupon came a jury, to wit: James McGraw, George Woodmancee, Joel Thurman, Stephen Smith, Joseph Summers, Hiram Ward, James Osborne, E. Hollister, F. J. Dunn, F. A. Baldwin, Paul Kahn and G. B. Stevens, who being duly elected, tried and sworn well and truly to try the issues joined, after hearing the evidence and arguments of course upon their oaths do say:—"The jury find the issues for the Plaintiff." Thereupon came the defendants by attorney and moved the court for a New Trial and in arrest of judgment herein

~~March 1st 1872~~
Defendants' rejoinder to Plaintiff's replication to Defendants' 4th plea. Which should have been inserted before the last two orders of this court. Left out by Error.

March 24th 1872.

On this day came the Defendant by their

42

Attorney and placed upon the files of this said court their Rejoinder to Plaintiff's Replication to Defendants' 4th Plea filed herein, which is as follows as it is on the file: -

People vs
vs.
Isaac Pulson }

And the said Defendants as to the said Replication of the said Plaintiff to the fourth plea of the said Defendants, saith that the said Plaintiff ought not (by reason of anything by him in that Replication alleged to have or maintain his aforesaid action thereof against them; because they say that a valid recognizance was entered into by said defendants before James Soles as in their fourth plea is alleged and that the same was not entered into by fraud and connivance between said defendants Phineas Cragan and the said James M. Soles in order to prevent the taking of a valid recognizance in a proper amount for larceny of a cow as alleged in said replication.

And of this the said Defendants put themselves on the country

Tyler & Sanford
Atty for Defs.

And the Plaintiff do the like

J. Stewart States Atty.

43

On the back of said instrument of writing is as follows:-

"Filed Feb. 27 '62 J. H. Lewis clk"

March 1st 1862

The People of the State of Illinois

vs.
Isaac Pulson, Frederick Pulson and
James Downing

Seize
Yacias

This cause
again coming on for hearing on the
defendants' motion for a new trial and
in arrest of judgment, — and the
court having heard said motion,
It is ordered by the court that
the same be overruled. It is there-
fore ordered and considered by the
court that the Plaintiffs recover of
the Defendants the sum of (\$581.25)
Five hundred and eighty one dollars
and twenty five cents, the penalty of
the bonds with interest added thereon
from the date of forfeiture thereof, to wit
June 13th A.D. 1859, together with the
costs by them in this suit expended,
and may have execution therefor.

Thereupon came the Defendants
by attorney and excepted to the ruling
and decision of the court and prayed
an appeal to the Supreme Court of
the State of Illinois

44

Whereupon it is ordered by the Court that said prayer be allowed and an appeal granted upon the Defendants filing their Bill of Exceptions together with a good and sufficient Appeal Bond in the sum of eight hundred dollars to be approved by the Clerk of this court by agreement of parties, within sixty days of the date hereof,

“ ”

April 19th 1882

On this day came the Defendants herein by atty. and placed upon the files of this said court. their Bill of Exceptions &c as by the last mentioned order of this court heretofore made herein they were allowed &c. Which is as follows; as it is on the said files.

State of Illinois }
 Knox County Sct. Knox Circuit Court }
 February Term 1882 }
 The People }
 Isaac Nelson et al } Sci. Fa. in Recognizance

Be it remembered that on the 26th day of Feb. 1882, the said Defendants filed in this cause

45

their demurrer to the Off^s Replications to
The 3^d & 4th Pleas of the said Def^s
and the Court upon the hearing of said
demurrer overruled the same to the said
3^d & 4th Replications; to the overruling of the
said demurrer the said Def^s then & there
at the time of the overruling the same in
open court on the 24th day of Feb. 1868
objected & excepted and stood by the
demurrer to the 3^d Replication and
asked & obtained leave to rejoin to
the 4th replication to the 4th Plea
and afterwards, on the 24th day of
Feb. 1868 filed their rejoinder
to said 4th replication to the 4th
plea. And issue being joined and
this cause coming on for trial & a jury
called, empannelled & sworn, the said
People to maintain the issue on the part
of the People introduced the record
of forfeiture of recognizance and re-
cognizance and called & sworn as a
witness Phineas Cragan, who testified
that he swore to the affidavit upon
which Isaac Pulson was arrested
and carried before James Soles, Justice
of the Peace for trial; that he was ac-
quainted with Isaac Pulson, that
he swore to the affidavit upon request of
of Bennett who lived near Alton,
brother of the Bennett who was attorney for
Isaac Pulson. On the examination
before Soles.

that he was informed by Bennett the Attorney's brother that Pulson was charged with stealing a cow and that was the reason he made the affidavit and because he was a friend of Bennett, who asked him to make it, that he did not of his own knowledge know that the offence had been committed.

Cross Examined by defense and stated that he made the affidavit in good faith and that there was no fraud or collusion on his part with Isaac Pulson or any one else.

Giles Cook sworn as witness for People & swore that he was a Justice of the Peace in Victoria Township Knox Co. Ill. in Jan'y 1839 — that he was acquainted with Isaac Pulson, that he as Justice on the 19th day of January A.D. 1839 issued a warrant for Isaac Pulson for stealing a cow of John Reinstead and delivered it to H. H. Gow constable, and that the warrant was returned by Gow on the 21st of March 1839 & case continued until the 22nd of Jan'y & that the examination then took place before him witnesses were sworn & Isaac Pulson bound over, that they proved there upon the ^{fact of the} offence that he Isaac Pulson had been examined before James

44
Sols J. P. & found over by him in the
sum of fifty dollars. And Esq. Sols
was there with his book at the exam-
ination before me afterwards, And that
the warrant issued by Esq. Sols was issued
after the warrant issued by me but the
examination took place before Sols before
the one before me.

James M. Sols was next called & sworn
on the part of the People & testified as follows:
I was a Justice of the Peace for Linn
Township Knox Co. Ill. in 1839, On
the 16th day of Feb. A.D. 1839 Phineas
Cragan & some man by the name of
Smith came to my house and wanted
a warrant issued against Isaac Pulson
for the stealing of a cow said to belong to
some man in Victoria, - Think
Rinstead was his name. Phineas Cragan
made ~~his~~ ^{the} affidavit & I issued the
warrant in forenoon of that day -
- said they wanted the warrant right
a way as Isaac Pulson was to be in
the neighborhood & they wanted to arrest
him, Some one took the warrant
did not recollect who, I issued
subpoenas for People's witnesses by the
name of Smith & one woman & one
for Caldwell of Walnut Grove, who
was said to have bought the cow of Pulson
- did not recollect the names of all
the witnesses, Some time in the afternoon

of the same day the M^{rs}. Isaac
 Bulson was brought before me by constable
 Smith and the witnesses appeared with
 the exception of Caldwell and
 Bennett an attorney from Galva appear-
 ed for Bulson as his counsel
 " Smith, constable then went to Altona
 " with subpoena for ^{Geo.} Caldwell, We waited
 " some time for the return of the subpoena
 " for Caldwell - did not know how long
 " they waited for the return of the subpoena
 " for Caldwell, Towards night, between
 " three and four o'clock commenced
 " the examination, some witnesses by the
 " name of Smith were sworn, could
 " not tell what they swore to, now -
 " The attorney for the People then asked
 " the witnesses: - "If any of the witnesses
 " sworn before him on the examination,
 " swore that Isaac Bulson stole the
 " cow?" To which question the
 " attys for the defence then & there objected
 " but the court overruled the objection
 " and permitted the atty to ask it & the
 " witness to answer the same, and
 " the defendants then & there in open
 " court to the overruling of the objection
 " by the court and permitting the witness
 " to answer the same, objected & excepted
 " - The witness answered that he
 " could not tell what they swore to, but
 " thought they did not swear directly
 " that he stole the cow, The affidavits

49

Was written by Pulsons atty., Bennett.
after the witnesses were examined,
I told them I did not think the evi-
dence was hardly sufficient to bind over
the deft. Then there was considerable
conversation between the witnesses
& attorney for the defence in my presence
and before the case was fully decided
by me. And in that conversation some
of the witnesses expressed a desire
that he should be bound over for the
reason that the people round Victoria
where deft. lived, were very strongly
prejudiced against him. And his
Atty requested that he should be bound
over, I from the testimony & the con-
versations in my presence at that time
thought perhaps he was guilty, and
it was my duty to bind him over,
& I did so, fixing the bail at one hundred
dollars - and afterwards reduced it
to fifty upon statements made by his
counsel & others as to his circumstan-
ces, A short time after the examin-
ation was over Smith, Constable
returned and said he could not find
Kealdwell, that he was away from home
- I was not acquainted with any of
the witnesses except Cragan, did not
know the Pulsons, never saw them
before that he recollected, was
acquainted with Bennett, his atty.

Cross Examined by Meigs, :- I took the recognizance in good faith and there was no arrangement of any kind between me and any other person about binding him over, I fixed the bail at fifty dollars on account of the evidence not being very strong before me. I at the time thought it high enough considering the evidence and his circumstances as represented before me at the time of the examination.

J. S. Smith was next called & sworn as a witness on the part of the people and stated that he was the constable that served the warrant for Isaac Bulson issued by Soles that he arrested him & took him before Soles, He found him near a sand bank, Smith one of the witnesses showed the place where I would find him. I found him there, He went along with willingly, The warrant was brought to me to my place by a boy, after I had delivered the prisoner to the Justice & returned the writ, I went to Walnut Grove after Caldwell - but he was away from home & I did not get him, When I got back to the Justice the examination was over.

57

I am not related to the Smiths who were witnesses in the case, Altona is about six miles west of Soles.

Cross Examined by Defence: - stated that so far as he acted in the matter he acted in good faith

Isaac Copley was next called & sworn on the part of the People & stated that Bulson & the witnesses Smiths lived about six or eight miles south west from Esq Soles, that the Smiths were related to Isaac Bulson by marriage, I was present at the examination before Esq Cook, Aaron A. Smith was father in law to Isaac Bulson, and the rest of them said to have testified at Soles were brothers & sisters in law to Isaac Bulson

The Pff. & Defence here rested

This was all the evidence in the case

The People then asked the following
Instructions which the Court gave
to the jury:—

"That if the jury believe from the Evidence
that a warrant had been issued by
"Esquire Cook for the arrest of Pulson
"for the crime of larceny and that Pul-
"son well knew the same and sought to
"evade ~~the same~~ service of the same;
"And that in order to procure his en-
"largement by giving bail in an inadequate
"amount, Pulson and his attorney Fen-
"ner fraudulently and by collusion with
"Phineas Cragan procured the arrest of
"Pulson before Esquire Soles and
"proceeded to trial without procuring
"the attendance of the witnesses who
"had a knowledge of the commission
"of the offense and that the said
"James Soles and Defendants and
"Phineas Cragan in order to prevent
"the taking of a valid recognizance
"in a proper amount for said offense
"fraudulently and by collusion permitted
"the said Pulson to enter into a recog-
"nizance in the sum of fifty ^{dollars} to secure
"his appearance ^{at Court for said offense} they will find
"the issues for the Plaintiff?"

"Filed Feb. 24. '62 J. H. Lewis clk"

55

State of Illinois }
Knox County } ss. Knox Circuit Court
People of the State of Illinois }
vs. } Sci. Fa.
Isaac Bulson et al }

And now comes
The said Defts & moves The Court for a
new trial and in arrest of judgment
for the following reasons:—

1st Because the Verdict of the jury
was against the law & evidence

2nd Because the Verdict of the
jury was against the instructions of
The Court

3^d Because the issue was —
Whether the justice was guilty of fraud
in taking said recog^c; & there was
no evidence to show that fact

4th Because the Court gave
erroneous instructions on the part
of the People.

5th Because the Court modified
& refused proper instructions as
asked by the Defts

6th Because the Court per-
mitted the People's Atty, to put im-
proper questions to witnesses — &
witnesses to answer the same; such
as "whether the witnesses swore before
the justice that the Deft, Isaac
Bulson stole the cow?"

7th Because the Court permitted

improper evidence to go to the jury
 Tyler & Sanford
 Atty's for Defts.

"Filed Mar. 1. '62 J. H. Lewis clk"
 " " " " " "

Whereupon the Court overruled the motion for a new trial & in arrest of judgment, and rendered judgment on the verdict, to the overruling of said motion for a new trial & in arrest of judgment, & the rendering of said judgment by the Court, Defts. then & there objected & excepted

To all of which said opinions & decisions the Defts. except severally and pray the Court to sign & seal this Bill of exceptions & make it a part of the record in this cause,

Which is done

C. S. Lawrence
 Judge 7th Judicial Circuit

"Filed April 19. '62"

J. H. Lewis clk
 J. M. Gilson Dep. clk

54

April 23 A.D. 1862

On this day came Defendants by their Attorneys and placed upon the files of this said Court their Appeal Bond as required by an order of this Court heretofore made herein, which is as follows, as it appears on these said files:—

Know All men by these Presents that we Frederick Pulson, James Downing and John Becker are held and firmly bound unto the People of the State of Illinois in the penal sum of Eight Hundred Dollars, For the payment of which well & truly to be made, we bind ourselves, our heirs & Administrators jointly, severally and firmly by these presents.

Witness Our Hands & seals this 22nd day of April A.D. 1862

The condition of the above obligation is such, Whereas the said People of the State of Illinois did on the 1st day of March A.D. 1862 in the Circuit Court of Knox County, State of Illinois recover a judgment against Isaac Pulson, Frederick Pulson & James Downing for the sum of Five Hundred and Eighty one Dollars & twenty five cents & interest & costs of suit from which judgment the said

587

The Frederick Pulson & James Downing
Prayed an appeal which was allowed
to the Supreme Court of the state of
Illinois; Now if the said Frederick
Pulson & James Downing shall pay
the judgment, costs, interest, and
damages in case the judgment shall be
approved by said Supreme Court
of the state of Illinois, and shall duly
prosecute their said appeal, then
this obligation shall be void, other
wise to remain in full force and virtue

Frederick Pulson *Seal*
James Downing *Seal*
John Becker *Seal*

State of Illinois
Know County SS

First duly sworn, ^{being} deposes and says that
he is a freeholder of said state and county
worth at least one thousand ~~dollar~~
dollars after all his just debts are
paid, besides the property exempt by
law from execution, Frederick Pulson *Seal*

Subscribed and sworn to before me this 27th
day April A.D. 1862 G. H. Marshall J.P.

" "

Approved and filed April 23rd 62
G. H. Lewis C.R.

53

To the giving of the said instruction by the court, the Defts, then and there in open court objected and excepted

Thereupon the Defts. asked the following instructions:-

1. If the jury believe from the evidence that Bulson the accused together with Cragan & others, went before James M. Soles to have an examination of the accused because of the prejudice of the People of Victoria against him & that they had no other motive in going before Soles and that Soles acted in good faith in fixing the amount of the bail in the sum of \$50. - then the jury will find for the Defendants?

Given }

"Filed Feb 24 '62 Ex J. H. Lewis C/M"

- 2 Defendants' Instructions
Unless the jury believe from the evidence that James Soles, the Justice of the Peace who took the first recognizance, acted fraudulently in taking the recognizance they will find for the Defendants?"

Given (as afterwards modified)

The court gave the 1st instruction as read and modified the second

574 by crossing out the word "fraudulently" after the word "acted" and interlined the words after the words acted; "in fraudulent collusion with the Defts. and Cragan" — To the refusing of the 2nd instruction as asked and modifying the same & giving the same as modified, the Defts. then there objected and excepted.

(Instruction No 2 of Defts. as modified aforesaid and given:—)

"Unless the jury believe from the evidence that James Soles, the Justice of the Peace who took the first recognizance acted in fraudulent collusion with the Defendants and Cragan in taking the recognizance, they will find for the Defendants."

Whereupon the jury retired and returned into court the following verdict:— "We, the jury find the issues for the Plaintiff."

Upon the return of the verdict into court by the jury, the Defendants moved the court for a new trial and in arrest of judgment for the following reasons:—

State of Illinois }
Spoo County } ss.

I, John H. Lewis, clerk
of the Circuit Court of Spoo County and
state of Illinois, do hereby certify that
the above and foregoing instrument
of writing is a true, complete and
exact copy of the record and files
of said court in the above entitled
cause



In testimony whereof I
have hereunto set my hand
and affixed the seal of
said court at Spooville
this 3d day of April
1883

John H. Lewis clerk
J. E. Cheaney Deputy

The said appellant Crimes and assigns
the following Errors & viz,

1st Because the ^{Court} admitted improper Evidence

2^d Because the Court gave improper instructions

3^d Because the Court refused proper Instructions

4th Because the Judgment & verdict is against the
Law & the Evidence

5th Because the Court overruled the Demurrer & ~~Staffs~~
appellor's Replication of the 3^d & 4th Pleas,

6th Because the Court overruled the Motion for new trial
& in arrest of Judgment.

7th Because the Court permitted the Appellor to ask
improper questions & to take & answer the same

Alvan Tyler atty for
appellant.

Supreme Court of the State of Illinois
April Term thereof A.D. 1863
Isaac B. Benson et al. vs the people & on
and now comes the said people
of the State of Illinois by D. T. Jones
States Attorney & says that in
the record & proceedings aforesaid
in the rendition of the judgment

As a result there is no error
therefore they pray indulgences
&c

D. P. Jones
State ally

188 13 P. 8.

Bulson

^{ry}
People

Record &
Asst. of Enos

Filed April 22nd 1873

L. Leland
Clerk