

12527

No. _____

Supreme Court of Illinois

Connor, et al.

vs.

People.

71641  7

Supreme Court of the State of Illinois.

3^d GRAND DIVISION.

ERROR TO McLEAN.

JOHN CONNOR AND PATRICK RYAN,
PLAINTIFFS IN ERROR,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS.

ABSTRACT OF RECORD.

On the 11th day of April, 1855, the Grand Jury of McLean Co. presented an indictment against John Connor, to the McLean Circuit Court, then in session, and on same day a capias issued, which was returned "not found."

And on the 24th of April, 1855, an alias capias issued, which was returned "Executed—by arrest of Connor and his discharge by executing Bond in penal sum of \$200, with Patrick Ryan and Daniel Kinney as securities.

At the September Term, 1855, a forfeiture of said bond or recognizance was declared, and a Scire Facias ordered to be issued—

And on the 4th day of February, 1856, a Scire Facias issued out of the Clerk's office of said Court to the Sheriff of McLean County to execute, and returnable on the first Monday in April, 1856.

And said writ of Scire Facias was returned executed by reading to John Connor and Patrick Ryan, March 22d., 1856, and Daniel Kinney "not found."

And at the April Term, 1856, of said Court, said proceedings were continued.

And at the September Term, 1856, final judgment was rendered on said Bond or recognizance against John Connor and Patrick Ryan, for the sum of \$200, and costs.

And upon the record of said proceedings, plaintiffs assign the following errors :

1st. The said Scire Facias does not show that the Bond taken by the Sheriff was returned to the Court, filed, or in any way made part of the Record.
Noble et al vs. The People, 4 Gilm., 434.
Bacon et al vs. The People, 14 Ills., 312.

2d. The Scire Facias fails to show that the recognizance was declared forfeited.
Alley et al vs. The People, 1 Gilm., 112.
Thomas vs. The People, 13 Ills., 696 :—Kennedy vs. The People, 15 Ills., 418.

SWETT & ORME,
Attorneys for Plaintiffs in Error.

At a regular Term of the Circuit
Court of the Eighth Judicial Circuit of the
State of Illinois - begun and held at the Court
House in Bloomington - within and for the
County of McLean and State of Illinois - on
the Ninth day of April in the year of our
Lord One Thousand Eight Hundred and
Fifty Five =

Present -

Hon. David Davis - Judge of 8th Judicial Circuit
John J. Ponce - Esq. Sheriff
Wm. McCullough, Clerk
A. McWilliams Esq. Pros. Atty.

Among the proceedings of said Court
are found the following - in a case wherein
the People of the State of Illinois are Plain-
tiffs and William Enos - Patrick Rogers
John Connor are Defendants =

L.H. People
vs. Indictment for
Gaming
William Enos - Patrick Rogers
And John Connor

Be it remembered,
that heretofore, to-wit - at said April Term
of said Circuit Court - to-wit - on the
Eleventh day of April AD 1855 - came

the Grand Jury of said County - to the
bar of said Court and presented an
Indictment in words and figures fol-
lowing - to wit =

Of the April Term of the McLean
Circuit Court in the year of our Lord
Eighteen Hundred and Fifty Five =

State of Illinois ss.

McLean County

The Grand Jury chosen
selected and sworn in and for the County of
McLean in the name and by the authority of
the People of the State of Illinois & upon their
oaths present. That on the Twenty Sixth
day of March in the year of our Lord
Eighteen Hundred and Fifty Five - at the
County of McLean and State of Illinois
aforesaid. William Enos. Patrick Rogers.
John Connor and two other persons to
the Grand Jurors unknown - did play
for money - to wit - they did then and
there play at a certain game with cards -
contrary to the peace and dignity of the same
People of the State of Illinois =

A. M. Williams -

Pros. Atty.

On the back of said Indictment was

Endorsed as follows -

McLean Circuit April 2. /85=

People

vs.

William Enos - Patrick Rogers -
And John Leamon -

Indict. for
Gaming

A true Bill - J. E. McLean foreman -
of the Grand Jury -

Witness. William Fisher =

Whereupon afterwards - to wit: on the
day and year last aforesaid issued out of said
Court a certain writ of Capias - in words and
figures, following - to wit:

State of Illinois, ss.

McLean County, ss. The People of the State of
Illinois - to the Sheriff of said County -
Greeting.

We command you to take Wm Enos -
Patrick Rogers - John Leamon - and them
safely keep - so that you have their body before
the Circuit Court of McLean County instant
at the term now holden at Bloomington. to
answer the People of the State of Illinois
on an Indictment preferred against them
by the Grand Jury of said County for Gaming.
And have you them and these thus writ -



Witness - W^m Mclellough - Clerk of
our said Circuit Court - and the seal
thereof hereto affixed at Bloomington
this 11th day of April A.D. 1855

W^m Mclellough Clerk.
by H. Burr - Deputy Clerk.

Which said writ of *Capias* was by the
Sheriff of said County returned into
said Court - endorsed as follows, to-wit:-

"The within named Defendants are not
found -

J. J. Price - Shff.
by J. H. Moore - Deputy

Whereupon afterwards - to-wit - at said
April Term of said Court - in the year last
aforesaid - the following order was made by said
Court - in the above cause as appears of
Records -

214 People
vs.
William Enos.
Patrick Rogers.
John Leonard.
Indictment for
Garrigue.

It is ordered by the Court
that an Alias *Capias* issue herein, and that

said Defendants be held to bail in the sum of
\$100. Each -

And thereupon ~~by the~~ judge of said
Court said Indictment was endorsed as
follows -

Capias Bail \$100. Each -

And thereupon afterwards - to wit - on
the Twenty Fourth day of April in the year
last aforesaid an alias writ of Capias was by
the Clerk of said Court issued against said
Defendants - in words and figures following -
to wit -

State of Illinois ss =
McLean County The People of the State
of Illinois -

To the Sheriff of McLean County.
Greeting -

We command you to take Wm. Enos -
Patrick Rogers - & John Connor and them
safely keep - so that you have their bodies before
the Circuit Court of McLean County on the 2nd
Monday of Sept. at the Court House
at Bloomington - to answer the People of
the State of Illinois - on an indictment
preferred against them by the Grand Jury of
said County for Gaming -

And have you then and there this writ.

Witness Wm. McCallough. Clerk of our
said Circuit Court. and the seal thereof
hereto affixed at Bloomington. this
24th day of April A.D. 1855 =

Wm. McCallough Clerk

by his Deputy. Hudson Burns.

Upon the back of said writ was endorsed,
"Shiff will take Bail in \$200 ="

Which Copias was by the Sheriff of
said County returned to said Clerk's office
Endorsed as follows: to wit =

Executed by taking

Bond and Security of John Connor this
8th day of September 1855 - the within named,
Wm. Enos & Pat Rogers not founds =

Executing Copias & Return 60

Takeg. Bond 50

1 mile travel 5

J. J. Price Shiff 1.15
By Geo. W. Sammons Dpty.

The Bonds returned by said Sheriff
is in words and figures following - to wit =

Know all men by these Presents. That
we John O'Connor - Patrick Ryan and

Daniel Henry. of the County of McLean
and State of Illinois - are held and firmly
bound unto to the People of the State of Illinois
in the penal sum of one Hundred Dollars
for the payment of which - well and truly to
be made - we do hereby bind ourselves. our heirs
executors and administrators. jointly and
severally & firmly by these presents - signed with
our hands and sealed with our seals - and
dated this 24th day of April AD 1855 =

The condition of the above obligation
is such - that whereas the above bounden John
Connor has been arrested by virtue of a certain
Writ of Capias - issued out of the Circuit
Court of the State of Illinois for the County
of McLean - upon an indictment preferred
against him by the Grand Jury of said
County. at the April 1855 Term of said
Court - for the crime of Garving - Now if the
said John Connor shall personally be
and appear before the said Circuit Court
from day to day during the term thereof - to be
holden at the Court House in Bloomington
in said County - on the 2nd Monday in Sep-
tember next to answer said charge - aside
the order of the Court thereon - and not
depart without leave of said Court - then
this obligation to be void - otherwise to

remain in full force and virtue -
Approved by me April 24th 1855. J. J. Priesthoff
by J. H. Moore Clerk John Connor Esq
Patr. Ryan - Daniel Kenny Esq

And thereupon afterwards - to wit - at
the September Term of said Court. to wit -
on the Twenty Second day of September AD
1855. The following further order was made in
the above cause -

214 People vs. Indictment for
Wm. Enos, Patrick Rogers & Garring -
And, John Connor.

This day came the
Prosecuting Attorney and said John Connor
being three times solemnly called came not.
but herein made default - And Patrick
Ryan & Daniel Kenny being each three
times solemnly called to come into open court
and with them bring the body of said Defen-
dant - as by the terms of a certain Recognizance
by them filed in this behalf - they were
bound to do - came not. but herein made
default - It is therefore considered by the
Court that said Recognizance be & the same
is hereby declared forfeited - And, It is

ordered by the Court that a writ of Scire Facias
issue herein returnable to the next Term of this
Court = And further - That an alias Capias
issue against said Defendants =

And Thereupon afterwards - to wit -
on the Fourth day of February in the year of
our Lord Eighteen Hundred and Fifty Six -
issued out of said Clerk's office a writ of Scire
Facias in words and figures following - to wit -

State of Illinois ss.
Madison County ss. The People of the State of
Illinois - To the Sheriff of said County. Greeting.

Whereas on the 24th day of April A.D. 1855.
John Connor - Patrick Ryan & Daniel Kenney
came before John J. Price - Esq. Sheriff of the
County and State aforesaid and executed their
certain Bond to the People of the State of Illinois
in the penal sum of One Hundred Dollars -
acknowledging themselves to be held and firmly
bound unto the said people of the State of
Illinois in the said sum - Provided the said
John Connor against whom with others an
indictment for the crime of Gaming had been
preferred in the Circuit Court of the County
aforesaid - and to arrest whom in said charge
the said John J. Price - Sheriff as aforesaid had

then a writ from the Clerk of said Court. should
fail to appear before the Judge of said Circuit Court
on the first day of the next term thereof - to be hold-
den at the Court House in Bloomington - on
the second Monday in the month of Septem-
ber A.D. 1855 - to answer to the said charge
and the said John Connor having failed to
appear at the said Term of the said Court to
answer to said charge - as we by the suggestion
of the said people of the State of Illinois - by their
States Attorney have understood - we therefore
command you to summon the said John
Connor - Patrick Ryan & Daniel Kenny if
to be found in your County - to be and appear
before the Judge of our said Circuit Court
on the first day of the next Term thereof - to be
holden at the Court House in Bloomington
on the first Monday in the month of April next
to show cause if any they can - why the said
People of the State of Illinois ought not to have
execution against them for the said sum of
money - for which they are respectively bound
according to the form - force and effect of
their said Recognizance - and further to do and
receive whatever our said Courts shall then
and there consider and adjudge against
them in that behalf - and hereof make
return as the law directs - and have you

then and there this writ =

Witness - Wm. McCullough Clerk of
our said Court and the Seal thereof -
at Bloomington - in said County
this 4th day of February A.D. 1836 -
Wm. McCullough Clerk.
by his Deputy Anderson Burn =

Which writ of Scire Facias was by the
Sheriff of said County returned to said Clerks
Office endorsed as follows - to wit =

Executed by
Reading to John Connor & Patrick Ryan
this 2nd March A.D. 1836. Daniel Kenny
not found =
J. J. Price Sheriff.
by Jno. W. Linniman

Thereupon afterwards to wit = on the
Nineteenth day of February A.D. 1836 = issued
out of said Clerks office an alias Capias - in
words and figures following - to wit =

State of Illinois
McLean County
Illinois =

The People of the State of
Illinois =

To the Sheriff of said County being:
We command you to take Wm. Enos. Patrick
Rogers, John Connor - and them safely keep,

so that you have their bodies before the Circuit
Court of McLean County on the first day of the
next Term thereof - to be holden at the Court
House in Bloomington on the First Monday
in the month of April next - to answer the
People of the State of Illinois on an Indictment
preferred against them ^(by) the Grand Jury of said
County for Gaming - And have you then
and there this writ =

Witness Wm M. Cullough Clerk of our
 said Circuit Court - and the seal thereof
hereto affixed at Bloomington this
19th day of February A.D. 1856 =

Wm M. Cullough Clerk
by J. B. Burt Dpty =

Which copies was endorsed as follows. Shff takes \$100. each

Which copies was by the Sheriff of said
County returned to said Clerk's office endorsed
as follows - to wit =

Returned this copies and the within
named Connor and Rogers are not found
in my County this April 5th 1856 =

John J. Price Shff.

And therefore afterwards to wit =
at the April Term of said Circuit Court
to wit on the Nineteenth day of April A.D.
1856 - this cause was by general order of Court
continued to the next Term thereof - And

is in words and figures following - to wit =

And now at this day - It is ordered
by the Court that all causes now pending
in this Court and not otherwise disposed
of - be and the same hereby are continued
to the next Term of this Court =

And thereupon afterwards - to wit = at the
September Term AD 1836 - to wit = on the Eighth
day of September - final judgment on
said writ of Habeas Corpus was rendered - and
is in words and figures following - to wit =

214
People
vs.
Indictment for Gunning =
Enos. Rogers & Connor.

And now at this day
came the Prosecuting Attorney - And said Defend-
ant John Connor being three times solemnly
called - came not - but herein made default -
And Patrick Ryan Cognizor of said Defend-
ant herein, being also three times solemnly
called, ~~appeared~~ in Court to show cause
why the forfeiture of Recognizance hereinbefore
taken should not be made absolute against
him - comes not - but herein makes
default - It is therefore considered by the

Court that the People of the State of Illinois
sever of the said John Connor and
Patrick Ryan - the sum of one Hundred
Dollars, being the amount of their Perogriam
so forfeited as aforesaid - And likewise
their costs in this behalf expended -
And that execution issue therefor -

State of Illinois

McLean County ss. J. William

McBullough, Clerk of Circuit Court in
and for said County, do hereby certify
that the foregoing is a true Copy of
the Record in Above entitled Cause -

In Testimony whereof I have
hereunto set my hand and
affixed the Seal of said Court
this 27th day of January - A.D.
1857 -

Wm. McBullough
by his Deputy -

Hudson Burns

Chas. J. Jenson Transcript \$5.00

Received above costs
of Defendants atty.

Wm. McBullough
per Hudson Burns

100-27-5

No. 214 - P. C.

People

No.

John Connor

Copy of Record
Abstract of Enos

Filed April 1st 1858

Swett & Co. Attys.

John Conna et. al
vs.
People —

Supreme Court of the State of Illinois
April Term 1858

By agreement of W. T. Bushnell atty. for defts.
in error this cause is submitted to the Court by attys
for plaintiffs in error on the following argument —

First — The Writ of Sci. Fa. must affirmatively show
that the Bond taken by the Sheriff was returned into the
Circuit Court and made part of the record — And this
Court has repeatedly so decided but more particularly
in the following cases:

Noble et al. vs. The People 4 Gil. 434

Bacon et al vs The People 14 Ills. 312 —

The Sci. Fa. in this case does not show that the
Bond was so returned into Court &c. And therefore
is defective, and the judgment rendered thereon
must be reversed —

Second — The Sci. Fa. in this case fails to show that the
Bond or recognizance was declared forfeited by the Court.
And for want of that averment the Writ is defective
as decided in

Alley et al. vs People 1 Gil. 112

Thomas vs. People 13 Ills. 696

Kennedy vs. People 15 Ills. 418

And the judgment should be reversed —

Or me — for plffs in error —

Connor et al
vs
People

No. 5

Argument for ptiffs
in error -

Filed April 27, 1858
L. Leland
clerk

State of Illinois }

Supreme Court
3rd Grand Division - April Term
AD 1858 -

John Canmar et. al }

vs
The People of

And now come the People of the
State of Illinois, by W Bushnell
their Attorney and say, that
there is no Error nor manner
of Error in the record, nor
proceedings herein, nor in the
judgment aforesaid. Wherefor
the said People pray, that
said judgment be affirmed
and that they recover
their costs in this behalf
of

By W Bushnell
States Attorney

John Cannon et al
vs
The People of

No 7

Parade in Error

Filed April 21, 1858
L. Leland
clerk

7-62

John Connor ~~et al~~

vs

The People

7 P D

1858

12527

X

Prepared