

12189

No. _____

Supreme Court of Illinois

Cornstalk, et al

vs.

People

Be it remembered that heretofore, to wit, on the twenty first day of November in the year of our Lord one thousand eight hundred and fifty three there was filed in the office of the clerk of the Circuit Court of Peoria County in the State of Illinois a Recognizance taken before two Justices of Peace of said County in the words & figures following, to wit,

Recognizance. Know all men by these presents that we James Comstock and Julius S. Starr are held and firmly bound to the People of the State of Illinois in the penal sum of two hundred dollars to be levied of our goods & chattels lands and tenements, to be void upon the condition following.

Whereas the said James Comstock was on the 14th Nov. 1853 in due form of law arrested and brought before James M. Cunningham one of the Justices of the Peace of Peoria County upon a charge of larceny and upon examination was adjudged guilty of the said charge and required to give security for his appearance at the next term of the Circuit Court of said County to answer the same & in default thereof was committed to the jail of said County there to remain until discharged by due course of law. Now if the said James Comstock shall be and appear at the next term of the Circuit Court of Peoria County to answer the said charge and shall not depart the Court without leave then this recognizance shall be void, otherwise in force.

James Comstock *J.S.*

Julius S. Starr *J.S.*

Taken executed and acknowledged before the undersigned two Justices of the Peace of said County this 16th Nov. 1853

J. A. M. Coy J.P.

D. Blakeley J.P.

Proceedings in the Circuit Court in and for the County of Peoria in the State of Illinois at a term thereof begun and held at the Court house in Peoria on the third Monday in the month of November in the year of our Lord one thousand eight hundred and fifty three it being the twenty first day of said month. Present the Honorable Onslow Peters, judge of the sixteenth Judicial Circuit in the State of Illinois, to wit:

Monday, November 21st A.D. 1853.

default &
Judgment

The People of the State of Illinois }
vs } Recognizance for larceny
James Cornstock & Julius S. Starr }

This day came the States attorney, and the said James Cornstock being three times solemnly called came not but made default and Julius S. Starr, surety on the recognizance entered into by the said James Cornstock for his appearance herein herein at this term being solemnly called to produce in Court the body of the said James Cornstock made default therein, whereupon it is considered and adjudged by the Court that the said recognizance be and the same is hereby forfeited to the people of the State of Illinois for the use of Peoria County and that the said people have and recover of the said James Cornstock and Julius S. Starr the sum of two hundred dollars the debt in the said recognizance mentioned, together with the costs of this proceeding. Ordered that a writ of Habeas Facias issue against the said James Cornstock and Julius S. Starr requiring them to appear on the first day of the next term of this Court, to show cause if any they can why execution should not issue against them severally on this judgment.

Tuesday November 22nd 1853

The Grand Jury came into Court and presented the following
Bills of Indictment as true Bills to wit,

The People of the State of Illinois
vs.
Daniel Comstock, David Comstock
James Comstock } Indictment for larceny

The People of the State of Illinois
vs.
Daniel Comstock, David Comstock
James Comstock } Indictment for larceny

And having other business before them retired to consider thereof.

The Bill of Indictment presented by the Grand Jury as aforesaid
first above mentioned is in the words and figures following,
to wit,

Indictment - State of Illinois } Of the November term of the
Peoria County } Peoria County Circuit Court
In the year of our Lord 1853

The Grand Jurors chosen, selected and sworn in and for the
County of Peoria aforesaid, in the name and by the authority of the
People of the State of Illinois upon their oaths present that Daniel
Comstock, David Comstock and James Comstock late of the
County of Peoria aforesaid, on the third day of November in the
year of our Lord one thousand eight hundred and fifty three at
and within the County aforesaid one cask of molasses, containing
twenty gallons of molasses of the value of ten dollars of the goods
chattels and property of Peter O Loucks then and there being found
then and there feloniously did steal take and carry away contrary
to the form in the statute in such case made and provided and
against the peace and dignity of the same people of the State of Illinois

And the Grand Jurors aforesaid in the name and by the authority of the People of the State of Illinois aforesaid upon their oath aforesaid do further present that the said Daniel Cornstock David Cornstock and James Cornstock on the third day of November in the year of our Lord one thousand eight hundred and fifty three at and within the County of Peoria aforesaid twenty gallons of Molasses of the value of ten dollars of the goods chattels and property of Peter O Loucks then and there being found then and there feloniously did steal take and carry away, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the same people of the State of Illinois

E. G. Johnson,
States Attorney

And afterwards, to wit, on the twelfth day of January A.D. 1854 there was issued by the clerk of said Court under the seal thereof a writ of Habeas Corpus, which with the return of the Sheriff of Peoria County, as thereon endorsed is as follows, to wit,

Sci. Ga:

State of Illinois }
Peoria County } The People of the State of Illinois
To the Sheriff of Peoria County, Greeting
Whereas James Cornstock of the County of Peoria in the State of Illinois was on the 16th day of November A.D. 1853 under arrest on the charge of larceny and to release himself from said arrest the said James Cornstock with Julius S. Starr then at said County of Peoria came before Dennis Blakeley and John A. McCoy two of the Justices of the Peace in and for said county duly commissioned and qualified and entered into a recognizance in writing in the sum of two hundred dollars conditioned for the appearance of the said James Cornstock at the then next term of the Circuit Court to be holden on the second Monday of September then next in and for said county of Peoria on the first day of the term thereof to answer to the said people of the State of Illinois for and concerning the charge of larceny with which he stands charged and whatever might then and

there be objected against him and that he should abide the order of the said Court and not depart without leave. The said Dennis Blakeley and John A. McCoy being the proper officers and having full power and authority by the laws of the State of Illinois to take said recognizance - which recognizance was then and there taken and acknowledged before the said J. Blakeley and John A. McCoy, and afterwards on the twenty first day of November A.D. 1853 filed of record in said Circuit Court & is in the words and figures following to wit:

"Know all men by these presents, that we James Comstock and Julius S. Starr are held and firmly bound to the people of the State of Illinois in the penal sum of two hundred dollars to be levied of our goods and chattels lands and tenements to be void upon the condition following. Whereas the said James Comstock was on the 14th Nov. 1853 in due form of law arrested and brought before me James M. Cunningham, one of the justices of the peace of Peoria County upon a charge of larceny and upon examination was adjudged guilty of the said charge and required to give security for his appearance at the next term of the Circuit Court of said County to answer the same & in default thereof was committed to the jail of said County there to remain until discharged by due course of law. Now if the said James Comstock shall be and appear at the next term of the Circuit Court of Peoria County to answer the said charge and shall be and appear at the next term of the Circuit Court of Peoria County to answer the said charge; and shall not depart the court without leave then this recognizance shall be void otherwise in force

James Comstock *E.S.P.*

Julius S. Starr *E.S.P.*

Taken executed and acknowledged before the undersigned two Justices of the Peace of said County this 16th Nov. 1853

J. A. McCoy J.P.

D. Blakeley J.P. "

And the said James Comstock having failed to appear at the term of said Court held at the city of Peoria in and for said County of Peoria and State of Illinois on the second Monday

of September A. D. 1853, which was the next term of said Court held after taking of said recognizance, to answer to the said people of the state of Illinois for and concerning the charge of larceny, according to the condition of said recognizance, but made default, the said recognizance was on the twenty first day of November A. D. 1853 by the said Court at the said term thereof adjudged to be forfeited to the People of the State of Illinois, against the said James Comstock and Julius S. Starr for the sum of two hundred dollars the debt in said recognizance mentioned together with the costs of that proceeding.

We therefore command You, to summon the said James Comstock and Julius S. Starr if they may 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 held in the city of Peoria, and State of Illinois on the fourth monday in the month of January instant, to show cause if any they can, why the said People of the State of Illinois should not have execution against each of them on said judgment. Witness Jacob Gale, Clerk of our said Court, and the seal thereof at the city of Peoria, this twelfth day of January in the year of our Lord one thousand eight hundred and fifty four

Jacob Gale, Clerk.

[Endorse]

Return - State of Illinois }
Peoria County } The within named James Comstock and Julius
S. Starr was not found in this County this 23rd day of January
A. D. 1854
S. B. Cornwell, Sheriff
by John Bryner Dpt.

Proceedings in the Circuit Court in and for the County of Peoria in the State of Illinois at a special term begun and held at the Court house in the city of Peoria in said County on the fourth monday in the month of January in the year of our Lord one thousand eight hundred and fifty four, it being the twenty third day of said month. Present the Honorable Orelow Peters Judge of the eighth Judicial Circuit in the State of Illinois to wit:

Monday January 23rd 1854.
The People of the State of Illinois
vs
James Comstock & Julius S. Starr } On recognizance for larceny

On motion of the States attorney this cause is continued with alias Scire Facias to said defendants returnable to next term

And afterwards, to wit, on the twenty fourth day of January A.D. 1854 there was issued by the clerk of said Court under the seal thereof an alias writ of Scire Facias, which with the return of the Sheriff of Peoria County thereto as thereon endorsed is as follows, to wit,

At Sci: Fa. State of Illinois }
Peoria County }
To the Sheriff of Peoria County Greeting
Whereas James Comstock of the County of Peoria in the State of Illinois was on the 16th day of November A.D. 1853 under arrest on the charge of larceny and to release himself from said arrest the said James Comstock with Julius S. Starr, then at said County of Peoria came before Dennis Blakeley and John A. McCoy, two of the Justices of the Peace in and for said county duly commissioned and qualified and entered into a recognizance in writing, in the sum of two hundred dollars conditioned for the appearance of the said James Comstock at the then next term of the Circuit Court to be holden on the second Monday of September, then next, in and for said county of Peoria on the first day of the term thereof to answer to the said people of the State of Illinois for and concerning the charge of larceny with which he stands charged and whatever might then and there be objected against him and that he should abide the order of the said Court and not depart without leave. The said Dennis Blakeley and John A. McCoy being the proper officers and having full power and authority by the laws of the State of Illinois to take said recognizance — which recognizance was then and there taken and acknowledged before the said D. Blakeley and John A. McCoy and afterwards on the twenty first day of November A.D. 1853 filed of record in

said Circuit Court & is in the words and figures following to wit,
Know all men by these presents, that we James Comstock and
Julius S. Starr are held and firmly bound to the People of the State
of Illinois in the penal sum of two hundred dollars to be levied
of our goods and chattels lands and tenements to be void upon the
condition following.

Whereas the said James Comstock was on the 14th Nov. 1853
in due form of law arrested and brought before James M. Cunningham
one of the Justices of the Peace of Peoria County upon a charge
of larceny and upon examination was adjudged guilty of the said
charge and required to give security for his appearance at the next
term of the Circuit Court of said County to answer the same & in
default thereof was committed to the jail of said County there to re-
main until discharged by due course of law. Now if the said James
Comstock shall be and appear at the next term of the Circuit
Court of Peoria County to answer the said charge and shall not
depart the Court without leave, then this recognizance shall be void
otherwise in force.

James Comstock

Julius S. Starr

Taken executed and acknowledged before the undersigned two justices
of the Peace of said County this 16th Nov. 1853

J. A. McCoy J. P.

D. Blakeley J. P.

And the said James Comstock having failed to appear at the
term of said Court held at the city of Peoria, in and for said County
of Peoria and State of Illinois on the second Monday of September
A. D. 1853 which was the next term of said Court held after taking
of said recognizance to answer to the said People of the State of
Illinois for and concerning the charge of larceny according to the
condition of said recognizance but made default, the said recognizance
was on the twenty first day of November A. D. 1853 by the said
at the said term thereof adjudged to be forfeited to the people of
the State of Illinois against the said James Comstock and
Julius S. Starr for the sum of two hundred dollars, the debt in
said recognizance mentioned together with the costs of that proceeding.

We therefore command You, as we have heretofore commanded You to summon the said James Cornstock and Julius S. Starr if they may 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 held in the city of Peoria in and for said County of Peoria and State of Illinois, on the first Monday of March next, to show cause, if any they can why the people of the State of Illinois should not have execution against each of them on said judgment.

Seal Witness Jacob Gale, clerk of our said Court and the seal thereof, at the city of Peoria this twenty fourth day of January in the year one thousand eight hundred and fifty four
Jacob Gale Clerk

[Indorsed]

return.

The within named James Cornstock and Julius S. Starr was not found in this county this 6th day of March 1854

L. B. Cornwell Sheriff
by John Bryner Deft.

Proceedings in the Circuit Court in and for the County of Peoria in the State of Illinois at a term thereof begun and held at the Court house in the city of Peoria in said County on the first Monday in the month of March in the year of our Lord one thousand eight hundred and fifty four, it being the sixth day of said month - Present the Honorable Enslow Peters, judge of the sixteenth Judicial Circuit Court in the State of Illinois to wit

Thursday March 30th A. D. 1854

The People of the State of Illinois

vs

James Cornstock and Julius S. Starr

{ Recognizance for larceny

On motion of the States

Attorney this cause is continued with pluries Scire Facias returnable to next term.

And afterwards, to wit, on the 19th day of April A.D. 1854
the clerk of said court issued under the seal thereof a fieri writ of
Scire Facias, which with the return of the sheriff as therein endorsed
is in the words and figures following, to wit,

Pluris Sci: Ga:

State of Illinois
Peoria County

To the Sheriff of Peoria County, Greeting:
Whereas James Comstock of the County of Peoria in the State of
Illinois was on the 16th day of November A.D. 1853, under
arrest on the charge of larceny and to release himself from
said arrest the said James Comstock with Julius S. Starr, then
at said County of Peoria came before Dennis Blakeley and John
A. McBay two of the Justices of the peace in and for said County,
duly commissioned and qualified and entered into a recognizance
in writing in the sum of two hundred dollars conditioned for
the appearance of the said James Comstock at the then next
term of the Circuit Court to be holden on the second Monday
of September then next in and for said County of Peoria on the
first day of the term thereof to answer to the said People of the
State of Illinois for and concerning the charge of larceny with which
he stands charged and whatever might then and there be objected
against him and that he should abide the order of the said
Court and not depart without leave. The said Dennis Blakeley
and John A. McBay being the proper officers and having full
power and authority by the laws of the State of Illinois to
take said recognizance - which recognizance was then and there
taken and acknowledged before the said D. Blakeley and John
A. McBay and afterwards on the twenty first day of November
A.D. 1853 filed of record in said Circuit Court & is in the words
and figures following, to wit:

"Know all men by these presents that we James Comstock and
Julius S. Starr are held and firmly bound to the People of the
State of Illinois in the penal sum of two hundred dollars to be
levied of our goods and chattels, lands and tenements to be void
upon the condition following,

Whereas the said James Cornstock was on the 1st day of November in due form of law arrested and brought before James Mc Cuningham one of the Justices of the Peace of Peoria County upon a charge of larceny and upon examination was adjudged guilty of the said charge and required to give security for his appearance at the term of the Circuit Court of said County, to answer the same and in default thereof was committed to the jail of said County there to remain until discharged by due courses of law. Now if the said James Cornstock shall be and appear at the next term of the Circuit Court of Peoria County to answer the said charge and shall not depart the Court without leave then this recognizance shall be void otherwise in force.

James Cornstock 
Julius S. Starr 

Taken executed and acknowledged before the undersigned two Justices of the Peace of said County this 16th Nov. 1853

J. A. Mc Coy J. P.
D. Blakeley J. P.

And the said James Cornstock having failed to appear at the term of said Court, held at the City of Peoria in and for said County of Peoria and State of Illinois on the second Monday of September A. D. 1853, which was the next term of said Court held after taking of said recognizance to answer to the said people of the State of Illinois for and concerning the charge of larceny according to the condition of said recognizance, but made default, the said recognizance was on the twenty first day of November A. D. 1853 by the said Court at the said term thereof adjudged to be forfeited to the People of the State of Illinois against the said James Cornstock and Julius S. Starr for the sum of two hundred dollars; the debt in said recognizance mentioned, together with the costs of that proceeding.

We therefore command ^{You} as we have often heretofore commanded You, to summon the said James Cornstock and Julius S. Starr if they may be found in your county to be and appear before the judges of our said Circuit Court on the first day of

the next term thereof to be held in the city of Peoria in and for said County of Peoria and State of Illinois on the second Monday of May next to show cause if any they can why the said People of the State of Illinois should not have execution against each of them on said judgment. Witness Jacob Gale, clerk of our said Court (Seal) and the seal thereof at the city of Peoria this nineteenth day of April in the year of our Lord one thousand eight hundred and fifty four Jacob Gale clerk

[Endorsement]

I served this writ by reading the same to the within named Julius L. Starr April 28th 1854 but James Cornstock is not found

L. B. Cornwell Sheriff
P. C. Ills.

And afterwards, to wit, on the eleventh day of May in the year of our Lord one thousand eight hundred and fifty four, there was filed in said cause the demurrer of the defendants to said Sci Facias which is in the words and figures following, to wit,

demurrer - The People of the State of Illinois

vs James Cornstock & Julius L. Starr

In the Peoria Circuit Court
Sci Fa on recognizance -

And the said defendants by Purple & Sanger their attorneys come and defend the wrong and injury when &c. and say that the said Sci Facias and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law for the plaintiffs to have or maintain the said action against the said defendants and that they are not bound to answer the same - And this they are ready to verify wherefore they pray judgment &c.

Purple & Sanger
for defts -

Proceedings at a term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty four it being the twentieth day of said month - Present the Honorable Basil W. Peters Judge of the sixteenth Judicial Circuit in the State of Illinois, to wit:

Monday, November 27th A.D. 1854

The People of the State of Illinois

vs
James Bonstock
Julius S. Starr

On Recognizance for larceny

This day this cause came on to be heard on the removal of the said Bonstock and Starr to the Seire Vacias herein, on consideration whereof the Court being fully advised in the premises is of opinion that said Seire Vacias is sufficient in law for the said People to have and maintain this action against the said James Bonstock and Julius S. Starr; Whereupon it is considered by the Court that the said judgment on said Recognizance recovered by the said People against the said James Bonstock and Julius S. Starr on the twenty first day of November A.D. 1853 be and is hereby confirmed and that execution issue on said judgment against said James Bonstock and Julius S. Starr for the sum of two hundred dollars debt and costs according to the form, force and effect of said recovery.

Wednesday, December 6th A.D. 1854

This day came the defendant Julius S. Starr by Norman H. Purphle his attorney and prayed an appeal from the judgment of the Court in this cause to the Supreme Court of this State which is allowed on his filing in the office of the Clerk of this Court in thirty days from the adjournment of this term of Court an appeal bond in the sum of three hundred dollars with John Bonstock as surety and conditioned according to law.

And afterwards, to wit, on the twenty eighth day of December A.D. 1854, there was filed in the office of the clerk of said Court in said cause an appeal bond, which is in the words and figures following, to wit,

Appeal Bond.

Know all men by these presents, that we Julius S. Starr and John Bonstock are held and firmly bound to the People of the State of Illinois in the sum of three hundred dollars lawful money of the United States, to which payment well and truly to be made and done we do bind ourselves our heirs executors and administrators jointly and severally by these presents - witness our hands and seals this seventh day of December A.D. 1854 - The condition of this obligation is this Whereas on the 27th day of November A.D. 1854 in the Circuit Court of Peoria County, the People of the State of Illinois recovered a judgment upon a Scire Facias or recognizance against the above bound Julius S. Starr and James Bonstock for the sum of two hundred dollars, from which said judgment the said Julius S. Starr has prayed for and obtained an appeal to the Supreme Court of the State of Illinois, Now if the said Julius S. Starr shall well and truly pay the judgment, cost, interest and damages in said suit in case the judgment shall be affirmed and shall also duly prosecute his said appeal in the Supreme Court, then this obligation shall be void otherwise in force.

Julius S. Starr Seal
John Bonstock Seal

State of Illinois
Peoria County } I, Jacob Gale clerk of the Circuit Court
in and for the County of Peoria in the State of Illinois do hereby
certify that the foregoing is a full and correct transcript
from the Record of all the proceedings in said Court in
a certain cause therein of the People of the State of
Illinois against James Comstock and Julius S. Starr on a
recognizance of said Comstock to answer to the charge of larceny,
with said Starr as his surety, together with a copy of an indictment
for larceny found by the Grand Jury at the term of said Circuit
Court to which said recognizance was returnable - as the same
remain of record or are on file in my office -

In witness whereof I hereto set my hand
and affix the seal of said Circuit Court at
my office in Peoria this fourth day of
June in the year of our Lord one
thousand eight hundred and fifty five,
Jacob Gale, clerk.

Clerk's fees: for transcript, certificate & seal \$6.00

Remains payment of appellant -

Jacob Gale, clerk

James Comstock Esq of Appeals from Peoria

vs
The People

} And now Comes the said
Appellant and says that
in the Record and proceedings and in the
 rendition of the Judgment aforesaid there
is manifest Error in this to wit

1st

The Circuit Court erred in over-
ruling the demurr of the Appellant.

to the Scin facias in this case

And In rendering Judgment against
Appellant on overruling said demur

For this and other manifest error in
the Record and proceedings aforesaid he
prays that said Judgment may be reversed
set aside & wholly for nothing entered

June 26th 1855

Filed
June 8. 1855
J. W.eland Clk.

J. W.eland
Atty for Appellant
People &c.
Record
James Bennett & H. M.

And the said people join in error
W. H. Wallace
Atty for people

James Cornstock & al.
vs
The People &c.

7 P. O.

1855

12/89