

No. 13345

Supreme Court of Illinois

Brown

vs.

People

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

14 P.D.
No. 229.

14 P.D.

Brown
vs

People

1861

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SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

GEORGE W. BROWN }
 vs. } *Appeal from Warren.*
THE PEOPLE. }

POINTS AND BRIEF FOR APPELLANT.

The special pleas, 2, 3, 4, and 5 are each of them good. The demurrer was wrongfully sustained.

Brown, the security on the recognizance, made a lawful surrender of Marquet, the principal, which discharged him from liability.

This Court held that the liability was fixed as to the principal when forfeiture was had upon default.

Weese vs. People, 19 Ill, 646.

But §196, ch. 30 R. S. 1845, p. 187, enters into and becomes a part of the contract of the security. The effect of the recognizance, on the part of the security, is, that in case the recognizance is forfeited, he will either pay the amount or surrender up the principal before final judgment for execution on the *sci. fa.* The surrender of the principal is a matter of right, and plead in bar is a good defence for him. Under our statute the obligation of the security is *executory*, and is not *fixed* until final judgment on the *sci. fa.*

This Court has expressly decided these questions.

Mather vs. People, 12 Ill, 9.

The Supreme Court of Indiana, on a like statute, has decided the same.

Woolfolk vs. The People, 10 Indiana, 532.

But it is said the *letter* of the statute requires a surrender to the sheriff of "*the county where the recognizance shall be taken*," when he is to be discharged "on the payment of costs occasioned thereby," while the pleas aver a surrender to the sheriff of Knox county, and not to the sheriff of Warren county, where the recognizance was taken, and do not aver the payment of costs.

14 P.D.

George W. Brown
as

The People

Appls Briefs

Fried May 2 1861

L. Leland

Clerk

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The sheriff of Knox had a *capias* for the principal to arrest Marquet, to answer to the same indictment, and Brown voluntarily surrendered him to the sheriff, who was authorized by his writ to take him into custody, and did receive him.

It is not necessary to comply with the letter of the statute. The object of the law is to secure the accused for trial, and not to collect a forfeiture; the policy is to encourage the security to arrest and produce his body.

If the *letter* is to be complied with strictly to obtain a discharge, the surrender in open Court would not be sufficient, and that has been the universal practice.

After forfeiture, it being the *right* of the security to surrender for the whole period, until final judgment is rendered, if the principal dies, his death may be plead in bar by the security. This is a departure from the letter but within the spirit and true construction.

Mather vs. People, 12 Illinois, 9.
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Therefore the surrender, in this case, answered the object of the law, and was a good defence.

Warren vs. Gilmore, 11 Cushing, 16.
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It is true that the cost must be paid occasioned thereby.

This cost is only the costs of the *scire facias*.

People vs. Phelps, 17 Illinois, 200.

He avers that no *sci. fa.* had issued and no costs thereon had accrued; therefore there was a sufficient excuse averred for not paying them.

Brown did all he could do, and his defence was complete.

W. C. GOUDY,
Attorney for Appellant.

14 P.D

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App'ts Briefs

Fri May 2, 1861
L. Leland
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W. C. GOUDY,
Attorney for Appellant.

14 P.D.
George W. Brown

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Filed May 2, 1861
L. Leland
Clerk

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W. C. GOUDY,
Attorney for Appellant.

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Geo H Brown
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Authorities

SUPREME COURT.

April Term, 1861.

THIRD DIVISION.

GEORGE W. BROWN, }
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THE PEOPLE. }

A B S T R A C T.

A writ of *scire facias* upon a bail bond in a criminal case was issued from the Warren Circuit Court against Levi Marquet and George W. Brown, which was returned to said Warren Circuit Court, served upon the said George W. Brown, and returned *non est inventus* as to Marquet.

The defendant, Brown, filed several pleas to *scire facias*; to all which pleas, except the plea of the general issue, the plaintiff below filed a general demurrer, which demurrer was afterwards sustained by said Court to all of the pleas No. 2, 3, 4, and 5. Thereupon, by leave of the Court, the defendant below withdrew his plea of general issue; whereupon the Court rendered final judgment against Brown.

Thereupon, the said Brown, prayed an appeal to this Court, which was allowed.

1 The *scire facias* sets out that at the November Term, 1856, of said Warren Circuit Court, the grand jury of said County returned into Court an indictment against Levi Marquet, for the crime of an assault with an intent to commit a rape, which indictment is set out *hæc verba*.

3 Avers that at the same term, said Marquet, and George W. Brown,
4 as his security, entered into a recognizance in open Court in the sum of \$800 for the appearance of said Marquet before the Judge of said Court at the next term thereof, to be holden on the *Second Monday of April*, 1857.

5 Avers that said Marquet failed to appear at a term of said Court holden on the *Third Monday of March*, 1857; and that at said *March Term* default was taken, and a conditional judgment rendered against Marquet and Brown; and a *scire facias* ordered to issue against both Marquet and Brown, returnable to the next term, commanding them to appear and show cause why final judgment should not be rendered against them.

6 The *scire facias* further avers that at the September Term, 1857, an
7 alias *scire facias* was ordered; that the bail required of Marquet was raised to \$1,000, and a new *capias* ordered to issue to the Sheriff of Knox County; and at the March Term, 1859, a like order was made.

8 The *scire facias* commands both Marquet and Brown to appear and show cause, at the October Term, 1859, why final judgment should not be rendered against them severally.

 The appellant, George W. Brown, filed special pleas, numbered 2, 3, 4, and 5, as follows.

13 2. And the said defendant, George W. Brown, for further plea to the said writ of *scire facias*, by leave of the Court first had and obtained, the said defendant says *actio non*, because he says that after the said recognizance in said writ of *scire facias* set out, was taken and entered as therein stated, to-wit: on the 25th day of November, A. D. 1857, a *capias* was issued by the Clerk of the Circuit Court in for the County of Warren aforesaid, in pursuance of an order of said Court, before that time made and entered, of record in the same cause, wherein the said recognizance was taken and entered into, directed to the Sheriff, Coroner and Constables of Knox County, which said *capias* was delivered to the Sheriff of said Knox County; and afterwards, to-wit: on the 1st day of December, A. D. 1857, before the return day of said writ, the said Sheriff of Knox County, at and within the County of Knox aforesaid, arrested the said Levi Marquet as commanded by said *capias*, and there and then had and held the custody of said Levi Marquet, to answer to the indictment in said writ of *scire facias* described; and this he is ready to verify, wherefore, he prays judgment, &c.

14 3. And the said defendant, by leave, &c., for further plea to the said writ of *scire facias*, says *actio non*, because he says that after the said recognizance in said writ of *scire facias* described, was taken and entered into, that is to say, at a term of the Circuit Court began and held on the third Monday of September, A. D. 1857, in the same case wherein the indictment was presented, and the recognizance taken and entered into as alleged in said writ of *scire facias*, an order was made that a *capias* be issued to Knox County in the State aforesaid, returnable to the next term thereafter, and afterwards, to-wit: on the 25th day of November,

A. D. 1857, in pursuance of and compliance with said order, the Clerk of said Circuit Court issued a *capias ad respondendum*, directed to the Sheriff, Coroner, and Constables of Knox County, commanding in the name of the People of the State of Illinois, to take the said Levi Marquet, and him safely keep, so as to have his body before the Circuit Court of Warren County on the first day of the next term thereafter, to be holden at the Court House, in Monmouth, on the third Monday of March next, to answer concerning the crime of assault with intent to commit rape, with which he stood charged in a certain bill of indictment, which is the same indictment described and mentioned in said writ of *scire facias*, which said *capias ad respondendum* was after its issue delivered to the Sheriff of Knox County aforesaid, to execute; and afterwards, to-wit: on the first day of December, A. D. 1857, at and within the County of Knox aforesaid, and while the said *capias* was in the hands of the Sheriff of Knox County to execute, the said defendant, George W. Brown, surrendered to the said Sheriff the body of the said Levi Marquet in satisfaction of the said recognizance, and there and then and thereby the said defendant George W. Brown, was discharged therefrom, and this he is ready to verify, wherefore, he prays judgment, if the People should have execution, etc.

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5. And now comes the defendant George W. Brown, one of the said defendants, and for further plea to the said *scire facias*, says *actio non*, because he says that after the said recognizance was taken and entered into, when the Sheriff of Knox in the State aforesaid, had lawfully in his possession to execute, a *capias* issued from the Circuit Court of Warren County aforesaid, in the said cause, where said recognizance was taken, directing him to arrest the said Levi Marquet to answer to said indictment, and before any writ of *scire facias* had issued on said recognizance, and before any costs had accrued on any writ of *scire facias*, the said defendant, to-wit: on the 1st day of December, A. D. 1857, at and within the County of Knox aforesaid, voluntarily surrendered the said Levi Marquet to the said Sheriff of Knox County, who received the custody of the said Levi Marquet from the said defendant George W. Brown, whereby he was discharged from the said recognizance, and this he is ready to verify, whereupon, he prays judgment, etc.

The appellant now assigns the following errors, to-wit:

1st. The Circuit Court erred in sustaining the demurrer to pleas second, third, fourth and fifth.

2d. The Circuit Court erred in not carrying the demurrer to the pleas back to the *scire facias* and sustaining it thereto.

3d. The Circuit Court erred in rendering judgment against the appellant and awarding execution against him.

W. C. GOUDY,
Attorney for Appellant.

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Geo. W. Brown

no

People

Alstrada

Filed Apr 14, 1861

L. Leland
Alstrada

SUPREME COURT.

April Term, 1861.

THIRD DIVISION.

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The defendant, Brown, filed several pleas to *scire facias*; to all which pleas, except the plea of the general issue, the plaintiff below filed a general demurrer, which demurrer was afterwards sustained by said Court to all of the pleas No. 2, 3, 4, and 5. Thereupon, by leave of the Court, the defendant below withdrew his plea of general issue; whereupon the Court rendered final judgment against Brown.

Thereupon, the said Brown, prayed an appeal to this Court, which was allowed.

1 The *scire facias* sets out that at the November Term, 1856, of said Warren Circuit Court, the grand jury of said County returned into Court an indictment against Levi Marquet, for the crime of an assault with an intent to commit a rape, which indictment is set out *haec verba*.

3 Avers that at the same term, said Marquet, and George W. Brown,
4 as his security, entered into a recognizance in open Court in the sum of \$800 for the appearance of said Marquet before the Judge of said Court at the next term thereof, to be holden on the *Second Monday of April*, 1857.

Avers that said Marquet failed to appear at a term of said Court holden on the *Third Monday of March*, 1857; and that at said *March Term* default was taken, and a conditional judgment rendered against Marquet and Brown; and a *scire facias* ordered to issue against both Marquet and Brown, returnable to the next term, commanding them to appear and show cause why final judgment should not be rendered against them.

The *scire facias* further avers that at the September Term, 1857, an alias *scire facias* was ordered; that the bail required of Marquet was raised to \$1,000, and a new *capias* ordered to issue to the Sheriff of Knox County; and at the March Term, 1859, a like order was made.

The *scire facias* commands both Marquet and Brown to appear and show cause, at the October Term, 1859, why final judgment should not be rendered against them severally.

The appellant, George W. Brown, filed special pleas, numbered 2, 3, 4, and 5, as follows.

2. And the said defendant, George W. Brown, for further plea to the said writ of *scire facias*, by leave of the Court first had and obtained, the said defendant says *actio non*, because he says that after the said recognizance in said writ of *scire facias* set out, was taken and entered as therein stated, to-wit: on the 25th day of November, A. D. 1857, a *capias* was issued by the Clerk of the Circuit Court in for the County of Warren aforesaid, in pursuance of an order of said Court, before that time made and entered, of record in the same cause, wherein the said recognizance was taken and entered into, directed to the Sheriff, Coroner and Constables of Knox County, which said *capias* was delivered to the Sheriff of said Knox County; and afterwards, to-wit: on the 1st day of December, A. D. 1857, before the return day of said writ, the said Sheriff of Knox County, at and within the County of Knox aforesaid, arrested the said Levi Marquet as commanded by said *capias*, and there and then had and held the custody of said Levi Marquet, to answer to the indictment in said writ of *scire facias* described; and this he is ready to verify, wherefore, he prays judgment, &c.

3. And the said defendant, by leave, &c., for further plea to the said writ of *scire facias*, says *actio non*, because he says that after the said recognizance in said writ of *scire facias* described, was taken and entered into, that is to say, at a term of the Circuit Court began and held on the third Monday of September, A. D. 1857, in the same case wherein the indictment was presented, and the recognizance taken and entered into as alleged in said writ of *scire facias*, an order was made that a *capias* be issued to Knox County in the State aforesaid, returnable to the next term thereafter, and afterwards, to-wit: on the 25th day of November,

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14 P.D. = 15° 2'
Gen. W. Brown
by
The People.
Abstract

Filed April 18, 1861
L. Island
C.H.

SUPREME COURT.

April Term, 1861.

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13 2. And the said defendant, George W. Brown, for further plea to the said writ of *scire facias*, by leave of the Court first had and obtained, the said defendant says *actio non*, because he says that after the said recognizance in said writ of *scire facias* set out, was taken and entered as therein stated, to-wit: on the 25th day of November, A. D. 1857, a *capias* was issued by the Clerk of the Circuit Court in for the County of Warren aforesaid, in pursuance of an order of said Court, before that time made and entered, of record in the same cause, wherein the said recognizance was taken and entered into, directed to the Sheriff, Coroner and Constables of Knox County, which said *capias* was delivered to the Sheriff of said Knox County; and afterwards, to-wit: on the 1st day of December, A. D. 1857, before the return day of said writ, the said Sheriff of Knox County, at and within the County of Knox aforesaid, arrested the said Levi Marquet as commanded by said *capias*, and there and then had and held the custody of said Levi Marquet, to answer to the indictment in said writ of *scire facias* described; and this he is ready to verify, wherefore, he prays judgment, &c.

14 3. And the said defendant, by leave, &c., for further plea to the said writ of *scire facias*, says *actio non*, because he says that after the said recognizance in said writ of *scire facias* described, was taken and entered into, that is to say, at a term of the Circuit Court began and held on the third Monday of September, A. D. 1857, in the same case wherein the indictment was presented, and the recognizance taken and entered into as alleged in said writ of *scire facias*, an order was made that a *capias* be issued to Knox County in the State aforesaid, returnable to the next term thereafter, and afterwards, to-wit: on the 25th day of November,

A. D. 1857, in pursuance of and compliance with said order, the Clerk of said Circuit Court issued a *capias ad respondendum*, directed to the Sheriff, Coroner, and Constables of Knox County, commanding in the name of the People of the State of Illinois, to take the said Levi Marquet, and him safely keep, so as to have his body before the Circuit Court of Warren County on the first day of the next term thereafter, to be holden at the Court House, in Monmouth, on the third Monday of March next, to answer concerning the crime of assault with intent to commit rape, with which he stood charged in a certain bill of indictment, which is the same indictment described and mentioned in said writ of *scire facias*, which said *capias ad respondendum* was after its issue delivered to the Sheriff of Knox County aforesaid, to execute; and afterwards, to-wit: on the first day of December, A. D. 1857, at and within the County of Knox aforesaid, and while the said *capias* was in the hands of the Sheriff of Knox County to execute, the said defendant, George W. Brown, surrendered to the said Sheriff the body of the said Levi Marquet in satisfaction of the said recognizance, and there and then and thereby the said defendant George W. Brown, was discharged therefrom, and this he is ready to verify, wherefore, he prays judgment, if the People should have execution, etc.

20

5. And now comes the defendant George W. Brown, one of the said defendants, and for further plea to the said *scire facias*, says *actio non*, because he says that after the said recognizance was taken and entered into, when the Sheriff of Knox in the State aforesaid, had lawfully in his possession to execute, a *capias* issued from the Circuit Court of Warren County aforesaid, in the said cause, where said recognizance was taken, directing him to arrest the said Levi Marquet to answer to said indictment, and before any writ of *scire facias* had issued on said recognizance, and before any costs had accrued on any writ of *scire facias*, the said defendant, to-wit: on the 1st day of December, A. D. 1857, at and within the County of Knox aforesaid, voluntarily surrendered the said Levi Marquet to the said Sheriff of Knox County, who received the custody of the said Levi Marquet from the said defendant George W. Brown, whereby he was discharged from the said recognizance, and this he is ready to verify, whereupon, he prays judgment, etc.

The appellant now assigns the following errors, to-wit:

1st. The Circuit Court erred in sustaining the demurrer to pleas second, third, fourth and fifth.

2d. The Circuit Court erred in not carrying the demurrer to the pleas back to the *scire facias* and sustaining it thereto.

3d. The Circuit Court erred in rendering judgment against the appellant and awarding execution against him.

W. C. GOUDY,

Attorney for Appellant.

14, P.D.

Geo. W. Brown

20

The People
Abstract

Filed Apr 18. 1861

Adelard
Leland

Supreme Court of the State of Illinois
April Term A.D. 1861

George W. Brown } appeal from
vs. } ~~Essex~~ Warren
The People &c }

Points and Authorities for
the Def in Error

A surrender to an officer
acting under criminal process
is not such a surrender as
would discharge the security - it
must be voluntary

The Statute requires the security
to surrender his principal to
the Sheriff of the County where the
recognizance was taken. Sec.
196 Crim. Code. There is a reason
why this should be done. The
County where the indictment was
found was bound to keep the
prisoner, after his surrender,
until the time of his trial, and
it was also liable for the expenses
of the trial in the County to which
the cause was removed

Rev. Stat. p 529 Sec. 14

George W Brown
vs - No¹⁴ P.D.

The People vs

Prison & Authorities
for Defts in Error

Filed May 4 - 1861

Li Leland
Clerk

Supreme Court of the State of Illinois
April Term A.D. 1861

George W. Brown }
as, } Appeal from Warrant
The People &c }

Point & Authorities for Deft in error

A surrender to an officer acting under criminal process is not such a surrender as would discharge the security - It must be voluntary

The statute requires the security to surrender his principal to the Sheriff of the county where the recognizance was taken. Sec 196 Crim. Code. There is a reason why this should be done. The county where the indictment was found was bound to keep the prisoner, after his surrender, until the time of his trial, and it was also liable to the expenses of the trial in the county to which the cause was removed

Rev. Stat. p 529 Sec. 4

The security before he can be
discharged from the recognizance
must pay all the costs

Crim Code Sec. 196

There is no allegation in either
of the pleas that this was done
the last merely avers that the
prisoner was surrendered
"before any costs had accrued on
any writ of *scire facias*" Costs
had accrued in entering up the
forfeiture by the clerk and the
security was bound to pay them
and all others growing out of
the forfeiture or occasioned
by the surrender. The demurrer
was therefore properly sustained

D. Jones
State Atty

Geo W Brown
no - N^o 14. P.D.

The People

Left Points
& Authorities

Filed May 4-1861

G. Leland
clerk

Supreme Court of the State of Illinois
April Term A.D. 1861

George W. Brown }
vs } Appeal from Warrant
The People &c }

Repts Points & Authorities

A surrender to an officer acting under criminal process is not such a surrender as would discharge a security - it must be voluntary

The statute requiring the security to surrender his principal to the Sheriff of the county where the recognizance was taken - Sec 196 *Crim Code*. There is a reason why this should be done. The county where the indictment was found was bound to ~~pay~~ ~~cost~~ to keep the prisoner, after his surrender, until the time of his trial, and it was also liable for the expenses of the trial in the county to which the cause was moved.

Rev Stat p 529 Sec 14

The security before he can be discharged from the recognizance must pay all the costs

Crim Code Sec 196

There is no allegation in either of the pleas that this was done. The last merely avers that that the principal was surrendered "before any costs had accrued on any writ of *habeas corpus*" cost had accrued in entering up the forfeiture by the clerk and the security was bound to pay them and all others growing out of the forfeiture or occasioned by the surrender. The demurrer was therefore properly sustained.

W. S. Jones
State Atty -

Geo W Brown
No 14-P.D.

The People

Depts Prints
& Authorities

Filed May-4-1861

L. Leland
Clark

Supreme Court of the State of Illinois
April Term A.D. 1861

George H. Brown
vs
The People &c } Appeal from Warren

Depts. Prints & Authorities

A surrender to an officer
acting under criminal process
is not such a surrender as
would discharge the security
- it must be voluntary

The statute requiring the security
to surrender his principals to
the Sheriff of the county where
the recognizance was taken
Sec 196 Crim. Code. There is a
reason why this should be done

The county where the indictment
was found was bound to keep
the prisoner, after his surrender,
until the time of his trial,
and it was also liable for the
expenses of the trial in the county
to which the cause was moved
Rev. Stat §529-Sec 14

The security before he can be discharged from the recognizance must pay all the costs

Crim. Code. Sec 196

There is no allegation in either of the pleas that this was done. The last merely avers that the principal was surrendered "before any costs had accrued on any writ of *scire facias*" costs had accrued in entering up the forfeiture by the Clerk and the security was bound to pay them and all others growing out of the forfeiture or occasioned by the surrender. The demurrer was properly sustained

D. Jones
State Atty

Geo W Brown
vs No 14. P.D.

The People

Depts Prints
& Authorities

Filed May 4-1861

L. Leland

Clerk

12

(1.)

Be it Remembered that heretofore to wit
on the 19th day of May AD 1859 a Writ of
Scire facias issued out of the Office of the
Clerk of the Circuit Court of Warren County Illinois
which is in the words and figures following to wit.
State of Illinois } ss. The People of the State of Illinois
Warren County } to the Sheriff of Knox County Greeting
Whereas at the November Special
Term of the Circuit Court of the County of Warren
and State of Illinois AD 1856 to wit on the 26th day
of November AD 1856 the Grand Jury of said County
returned into open Court an Indictment against
Levi Marquett for the Crime of an assault with an
Intent to Commit a Rape which said Indictment
was endorsed "a true bill" and signed by James
Jucker Foreman of the Grand Jury, and which
said Indictment reads in the words and figures
following to wit.

State of Illinois } Of the November Special
Warren County } Term of the Warren County
Circuit Court in the year of
our Lord 1856. The Grand Jurors Chosen selected
and sworn in and for the County of Warren in the
Name and by the authority of the People of the
State of Illinois upon their oaths present that Levi
Marquett on the third day of October in the year
of our Lord One Thousand Eight Hundred and fifty
six at and within the County of Warren and State
of Illinois with force and arms in and upon and

(2)

Harriet Mahon in the Peace of God, and of the People of the State of Illinois then and there being, did make an assault and her the said Harriet Mahon, then and there did beat wound and ill treat, with an intent her the said Harriet Mahon violently forcibly and against her will, then and there unlawfully and feloniously to ravish and carnally know and other wrongs to the said Harriet Mahon then and there did to the great damage of the said Harriet Mahon contrary to the form of the Statute in such case made and provided and against the Peace and dignity of the same People of the State of Illinois.

J H Stewart States Attorney
Pro tem.

And upon the back of said Indictment is the following endorsement to wit "The People of the State of Illinois vs Levi Marquet, Indictment for an assault with intent to Commit a Rape, "A true bill" James Tucker foreman of the Grand Jury Witnesses Harriet Mahan, Thomas Faircliff Filed 26th day of November A D 1856, Wm Billings Clerk, Capias Instantes Bail \$800 J S Thompson Issued Nov 26th 1856, which said Indictment was then and there to wit, On the 26th day of November A D 1856 filed in The Clerks Office of the Circuit Court aforesaid by the Clerk thereof, and

(3.)

thence became a matter of Record in said Court
And afterwards to wit: On the 26th day of
November A.D. 1856, an order was entered of
Record in said Court which reads in the words
and figures following to wit: "The Grand Jury
empanelled at the present term came into Court
and presented the following bills of Indictment
to wit: The People

^{vs} Leni Marquet } Indictment for an assault
with Intent to commit a
Rape. A true Bill. James

Nichols Foreman, Ordered by the Court that a
Capias issue herein directed to the Sheriff of
Wauken County returnable to the present Term of
this Court, and that the said Defendant be
held to bail in the sum of Eight Hundred Dollars
And afterwards to wit: On the 27th day of
November A.D. 1856 an order was entered of
Record in said Circuit Court which reads as
follows to wit,

The People }
^{vs} Leni Marquet } Indictment for Rape &c.

This day came the Defendant
as principal and George W Brown his security
and in open Court acknowledged themselves
to owe and be indebted to the People of the
State of Illinois in the penal sum of Eight Hundred
and no dollars each, and that of their goods and

(4.)

Chattel, lands and tenements the same to be made and rendered; if default be made in the following Condition which is this that if you Levi Marquet shall be and appear before the Judge of the Warren County Circuit Court on the first day of the next Term thereof to be commenced and holden at the Court House in Mammouth on the Second Monday in the Month of April next 1857. And answer to an Indictment for the crime of an assault with an intent to commit a Rape which is now pending in the Circuit Court of Warren County Illinois; and shall not depart said Court without leave thereof then this obligation shall be void otherwise to be and remain in full force and effect and with this they both express themselves content,

Yet the said Levi Marquet has not Complied with the said Condition in the said recognisance specified; and has wholly failed to appear at a Term of said Circuit Court holden in Mammouth on the Third Monday of the month of March ad 1857 and answer the said Indictment, whereby the said recognisance remains in full force and virtue; and is in no wise set aside, paid off or satisfied,

And Whereas afterwards to wit; on the 18th day of March ad 1857 at a Term of the Circuit Court then holden in said Warren

County, an Order was entered of Record in
said Court which reads in the Words and
figures following to wit:

The People }
25 } In for Rape &c.
Lui Marquet }
N. 1 } # 1

This day came the People
afforaid by James H Stewart States attorney
and the Defendant Levi Marquet being three
times solemnly called came not but made def
ault, and George W Brown his security being
three times solemnly called to appear and
produce the body of the said Levi Marquet
in open Court wholly failed to appear and
produce the body of the said Levi Marquet
but also made default. Therefore It is ordered
Considered by the Court that the recognisance
herein be taken, held and is hereby declared
forfeited. And it is further Considered by the
Court that the Plaintiffe have and Recover of the
said Defendant Levi Marquet and George W
Brown the sum of Eight Hundred Dollars, the
Amount of their said recognisances, which they
jointly and severally bound themselves to
pay. And it is further ordered by the Court
that a Scire facias issue herein directed to
the Sheriff of Warren County Commanding him
to Summons the said Levi Marquet and George

(6.)

W Brown to be and appear before the Circuit Court of said County on the first day of the next Term thereof to be holden in Monmouth on the third Monday of September next and show cause if they have why final Judgment should not be rendered against them. And it is further ordered by the Court that an Alias Capias issue herein against the said Leni Marguet returnable to the next Term of this Court, to Knox County,

And whereas afterwards to wit: On the 23^d day of September AD 1857 at a Term of the Circuit Court of Warren County then holden an order was entered upon the Records of said Court which reads in the words and figures following to wit,

The People	{	Ind. Assault with intent to
^{vs} Leni Marguet		Rape &c.

This day came the People by James H Stewart States Attorney and on his motion it was ordered by the Court that an alias Capias issue herein directed to the Sheriff of Knox County returnable to the next Term of this Court to which Term this cause be continued. And that the said Defendant be held to bail in the sum of One Thousand dollars

(7.)

And Whereas afterwards to wit: on the 16th day of March A.D. 1858 an order was entered on the Records of said Court which reads as follows to wit:

The People	}	Indictment for an assault
^{vs} Levi Marguet		

On Motion of the States attorney it is ordered by the Court that an alias Capias issue herein against the said Defendant directed to the Sheriff of Knox County returnable to the next Term of this Court.

And Whereas afterwards, to wit: on the 22^d day of March A.D. 1859 an order was entered upon the Records of said Court which reads in the words of figures following to wit,

The People	}	Assault with intent &c.
^{vs} Levi Marguet		

On Motion it is ordered by the Court that a Scire facias issue herein against the Defendant and his security directed to the Sheriff of Knox County returnable to the next Term of this Court.

In Conformity with the foregoing order We Command You that you make known to and Summons the said Levi Marguet

(8.)

and George W Brown if to be found in your County personally to be and appear before the Circuit Court of said Warren County on the first day of the next term of this Court to be holden at the Court House in Marmouth on the fourth Monday of October next, and show cause if any they can why the said People of the State of Illinois should not have final Judgment and execution thereof against them severally for the said sum of Eight Hundred dollars for which they are bound according to the force and effect of their said Recognisances, and further to do and receive whatever our said Court shall then and there consider and adjudge against them in that behalf. Hereof make due return as the law directs and have you there and there this writ.

Witness William Laferty Clerk
of our said Court at Marmouth, and the
Seal thereof hereto attached this 19th day
of May May A.D. 1859.

Wm Laferty Clerk

(Seal)

(9)

And upon the back of the foregoing Sceri
Facias is the following return made by the
Sheriff to wit.

"Read the return to George W Brown &
have not been able to find Leri Marguet in my
County this 13th day of June ad 1859

And Thomson Sheriff

By H H Wilner Depty Sheriff

Sheriff bus Service 50⁰ Miles 85⁰ Return 15
150

And Thomson Sheriff

F'ded June 14th 1859 W^m Safety clk.

(10.)

State of Illinois }
Warren County }

Pleas before the Honorable
John S. Thompson Judge of the
Tenth Judicial Circuit of the
State of Illinois.

At a Circuit Court begun and held at the
Court House in Monmouth in the County of
Warren and State of Illinois on the fourth
Monday in the month of October in the year
of our Lord One Thousand Eight Hundred and
fifty nine. It being the 24th day of said
month and year,

Present Hon

John S. Thompson Judge
James H. Stewart States attorney
Seth Smith Sheriff
Wm. Laferby Clerk.

The People

^{vs}
Leri Marguet &
Geo W Brown

{ Indictment for assault
with intent to commit Rape

And afterwards to wit: on the 24th day of
October AD 1859 the following order was entered
upon the Records of said Court, which is in
the words and figures following to wit,

(11.)

The People

vs

Levi Marquet &
Geo W Brown

Sci fa

This day came the People
appeared, by the States attorn-
ey, and the said Defendant George W Brown
having been duly served with Process, and having
been three times solemnly called came not nor
any person for him to show cause why final
Judgment should not be rendered against him
but makes Default, Therefore it is considered by
the Court that the Plaintiffs recover of the
said Defendant George W Brown, the sum of
Eight Hundred Dollars the amount of the
Conditional Judgment rendered against him
heretofore, together with their costs by
them in this suit expended and may have
execution therefor.

And afterwards to wit, on the 25th day of
October ad 1859, the following order was
entered upon the Records of said Court which
reads as follows to wit,

The People

vs

Levi Marquet &
George W Brown

Sci fa

(12.)

This day came the Defendant George W Brown
by his attorney and moves the Court to set
aside the Default entered herein on Yester-
day, and for leave to plead to the Scirefacias
filed herein. Whereupon by agreement of
parties it is ordered by the Court that the
motion be allowed and that the default
be set aside, and that the Defendant have
leave to plead herein.

Copy of Pleas.

State of Illinois, County of Warren
The People

vs

Lui Marquet &
George W Brown

{

Circuit Court

{

October Term AD 1859

{

Sci fa on Recognisance

And the said Defendant

George W Brown comes by his attorney and
Defends the wrong &c and says that there is
no such Record remaining in the said Circuit
Court as is in & by the said writ of Scirefacias
stated and alleged and this he prays
may be enquired of by the Court &c.

Gondy & Inghel

Kite & Watts

Attorneys for Brown

(13.)

And the said Defendant George W Brown for further Plea to the said writ of Scire facias by leave of the Court first had & obtained, the said Defendant says actis now because he says that after the said recognisance in said writ of Scire facias set out was taken and entered into as therein stated to wit on the 28th day of November AD 1857 a Capias was issued by the Clerk of the Circuit Court in & for the County of Warren aforesaid, in pursuance of an order of said Court before that time made and entered of Record in the same cause wherein the said recognisance was taken and entered into, directed to the Sheriff, Coroners and Constables of Knox County, which said Capias was delivered to the Sheriff of said Knox County, and afterward, to wit, on the 1st day of December AD 1857 before the return day of said writ, the said Sheriff of Knox County at and within the County of Knox aforesaid, arrested the said Levi Marguet as commanded by said Capias, and then and there had and held the custody of said Levi Marguet to answer to the Indictment in said writ of Scire facias described, and this he is ready to verify. Wherefore he prays Judgment &c.

Goudy & Ingham

Kile & Mott

Attys for Brown

3.

(14.)

And the said Defendant by leave & for further Plea to the said writ of Scire facias says adit now because he says that after the said recognisance in said writ of Scire facias described was taken and entered into, that is to say, at a term of the Circuit Court begun & held on the third Monday of September A.D. 1857 in the same case wherein the Indictment was presented and the recognisance taken & entered into as alleged in said writ of Scire facias an order was made that a Capias be issued to Knox County in the State aforesaid returnable to the next Term thereafter, and afterwards to wit, on the 25th day of November A.D. 1857 in pursuance of & compliance with said order the Clerk of said Circuit Court issued a Capias ad respondendum directed to the Sheriff, Coroners and Constables of Knox County, Commanding in the name of the People of the State of Illinois to take the said Levi Marguet and him lawfully keep & as to have his body before the Circuit Court of Warrick County on the first day of the next Term thereafter to be holden at the Court House in Muncie on the third Monday of March next thereafter, to answer concerning the crime of Assault with intent to Commit Rape with which he stood charged in a certain Bill of Indictment which is the

(15.)

same Indictment described & mentioned in
said writ of Scire facias, which said Capias
ad respondendum was after its issue deliv-
ered to the Sheriff of Knox County aforesaid
to execute, and afterwards took on the 1st day
of December a.d. 1857 at and within the County
of Knox aforesaid & while the said Capias
was in the hands of the Sheriff of Knox County
to execute, the said Defendant George W Brown
surrendered to the said Sheriff the body of
the said Levi Marguet in satisfaction of the
said Recognisance & then & there & thereby the
said Defendant George W Brown was discharged
therefrom and this he is ready to verify.
Wherefore he prays judgment if the People should
have execution &c.

Grady & Judd
Kite & Watts
Attys for Deft.

4. And the said Defendant by leave of the Court
just had and obtained for further plea to the
said writ of Scire facias, says Actis Non bec-
ause he says that after the said Recognisance
in said writ of Scire facias described was taken
and entered into that is to say, at a Term of
the said Waven County Circuit Court begun &
held on the Third Monday of September a.d.
1857 in the same cause wherein the Indictment

(16.)

was presented and the Recognisance taken and entered into as alleged in the said writ of Scire facias, an order was made that a Capias be issued to Knox County in the State of Illinois returnable at the next Term thereafter and afterwards to wit, on the 28th day of November A.D. 1857 in pursuance of and in compliance with the said order the clerk of the said Cir Court issued a Capias ad respondendum, directed to the Sheriff, Coroners and Constables of said Knox County Commanding in the name of the People of the State of Illinois to take the said Defendant Levi Marquette and him safely keep or as to have the body of him the said Defendant Levi Marquette before the said Circuit Court of Waukegan County on the first day of the next Term thereafter to be holden at The Court House in Monmouth on the third Monday of March next thereafter to answer Concerning the crime of assault with Intent to Commit Rape, with which he the said Defendant Levi Marquette stood Charged in a certain Bill of Indictment which is the same Indictment described and Mentioned in said writ of Scire facias, which said Capias ad Respondendum was after its issue delivered to The Sheriff of said Knox County George W. Enke to execute,

(17)

And afterwards to wit On the 1st day of December AD 1857 at and within the County of Knox aforesaid & while the said Capias ad Respondendum was in the Hands of the said Sheriff of Knox County, the said Sheriff proceeded to & then & then did arrest the said Defendant Levi Marquette as Commanded by the said Capias and then & then had and held the custody of the said Defendant Levi Marquette to answer to the Indictment in said writ of Scire facias described, And that afterwards to wit on the 1st day of December AD 1857 while the said Defendant Levi Marquette was in the custody of the said Sheriff Knox County as aforesaid and at and within the said ^{County} ~~County~~ of Knox the said Defendant Levi Marquette as principal and George W Brown of the said County of Knox as his the said Defendants security then & then made and entered into their certain Bond of Recognisance finding themselves heirs executors and administrators jointly severally and firmly unto the People of the State of Illinois in the sum of One Thousand Dollars Current money of the United States: unto the certain Condition therein and thereto, that is to say that if the said Defendant Levi Marquette should personally be and appear before the Judges of the Circuit Court of the

(18.)

said County of Wauw on the first day of the
next Term thereafter, to be holden at the
Court House in Wauw on the Third Monday
in the Month of March then next following
then & there to answer to an Indictment which
had been preferred against said Defendant Levi
Marquette by the Grand Jury of the said County
of Wauw at the suit of the said People of the
State of Illinois for and concerning the crime of
Assault with Intent to Commit Rape, with
which said Defendant stood charged in said
Court, and that said Defendant Levi Marquette
should not depart thence without leave of said
Court that then the said Bond of Recognisance
to be void, otherwise to remain in full force &
virtue. And afterwards to wit on the 1st day
of December ad 1857 at and within the said
County of Knox the said Sheriff of the said
County of Knox then & there in pursuance of
and compliance with an order before that
time by the said Clerk of the said Cir Court
of Wauw County endorsed upon the back of the
said writ of Habeas ad Respondendum receiv-
ed the said Bond of Recognisance so made
& entered into as aforesaid, and then and
there released the said Defendant Levi Marquette
from his the said Sheriff's Custody, and thus
the said Defendant by W Brown is ready to verify

(19.)

and therefore he prays Judgment of the said
People shall have execution &c.

Gondy & Judd
Wito & Watts
Deft. attys.

Filed Oct 26th 1859

Wm Laferty clk.

And afterwards to wit, on the 5th day of
November ad 1859 the following order was
entered of Record in said Court which is
in the words & figures following To wit,

The People

vs

Levi Marquette &
George W Brown

} Sci fa.

This day came the
Defendant G W Brown
and on this motion leave is given him to file
an additional Plea herein.

Copy of additional Plea,

State of Illinois County of Wauken

The People

vs

Levi Marquette &
George W Brown

} Circuit Court

} October Term ad 1859

} Sci ro facias.

(20.) (3.) And now comes The Defendant George W Brown
One of the said Defendants and for further plea
to the said Scire facias says actis non because
he says that after the said recognisance was
taken & entered into when the Sheriff of Knox
County in the State aforesaid had lawfully in
his possession to execute a capias issued from
the Circuit Court of Warren County aforesaid
in the said cause when said recognisance
was taken directing him to arrest the said
Levi Marguete to answer to said indictment
and before any writ of Scire facias had issued
on said recognisance and before any Court
had acceded on any writ of Scire facias, the
said defendant took on the 1st day of December
AD 1857 at within the County of Knox aforesaid
voluntarily surrendered the said Levi Marguete
to the said Sheriff of Knox County, who received
the custody of the said Levi Marguete from
the said Defendant George W Brown, whereby
he was discharged from the said recognisance
-ce, And this he is ready to verify.

Wherefore he prays Judgment &c.

Groudy & others

for Deft.

Filed Nov 5th 1859.

W Lafferty Clerk,

(21.)

And afterwards Trint, On the 9th day of November ad 1859 the following order was entered of Record in said Court which reads as follows Trint.

The People vs

Levi Marquette &
George W Brown

} Sci fa,

This day came the States attorney and files his Demures to all the Defendants Pleas except the Plea of General issue.

Copy of Replication & Demures.
State of Illinois } Warren County Circuit Court
Warren County } October Term ad 1859.

The People

vs
Levi Marquette &
George W Brown

} Sci fa on Recognizance.

And the said Plaintiffs as to the said Plea of the said Defendant George W Brown firstly above pleaded saith that said Plaintiffs preclude now because they say that there is such a Record of the said Recognizance remaining in the said Circuit Court of Warren County aforesaid as is in & by the said writ of scire facias stated and alleged & this he likewise prays may be

(22.) enquired of by the Court &c.

J H Stewart.

States attorney,

And the said Plaintiffs as to the said Pleas of the said Defendant George W Brown by him secondly thirdly and fourthly & fifthly above pleaded, say that the same and the matters and things therein contained are not sufficient in law to bar or preclude the said Plaintiff from having or maintaining his aforesaid action thereof against the said George W Brown and that said Plaintiffs are not bound to answer the same, and this Plffs are ready to verify, Wherefore by reason of the insufficiency of said Pleas second, third & fourth they pray Judgment &c.

J H Stewart.

States atty.

Filed Nov 4th 1859.

(23.)

And afterwards to wit: On the 9th day of April A.D. 1869 being at a regular Term of said Circuit Court, the following order was entered of Record, upon the Records of said Court which Reads as follows to wit,

The People	}	Sci fas,
^{vs}		
Levi Marquitt & George W Brown		

This day again came on this came to a hearing on the Plaintiffs Demures to the Defendant George W Brown's Pleas N^o 2, 3, 4, 5 and after hearing the same it is ordered by the Court that the Demures be sustained. Thereupon came the Defendant George W Brown by his attorney and on his motion leave is given him to withdraw his first Plea filed herein. Thereupon came the People advised by their States attorney, and the said Defendant George W Brown having been duly served with process and having been three times solemnly called came not nor any person for him to show cause why final Judgment should not be rendered against him, but makes default. Therefore it is considered by the Court that the Plaintiffs recover of the Defendant George W Brown the sum of Eight

(24.) Hundred Dollars the amount of the Constitutional Judgment rendered herein against him heretofore, together with their costs in this suit by them laid out and expended. & may have execution therefor.

Whereupon came the Defendant George W Brown and prays an appeal to The Supreme Court, which is allowed by the Court upon the Defendant entering into bond in the sum of Twelve Hundred Dollars with security to be approved by the Clerk, by agreement of Parties bond to be filed before the first day of next Term of this Court.

(25.)

Copy of Bond.

Know all Men by these presents that we George W Brown as principal and James E Brown & M J Quinn as Securities are held and firmly bound unto the People of the State of Illinois in the Penal sum of Twelve Hundred Dollars for the payment of which, well and truly to be made we bind ourselves our heirs executors and administrators, jointly severally and firmly by these presents. Witness our Hands and seals this 24th day of July Anno Domini One Thousand Eight Hundred & sixty.

The Condition of the above obligation is such: That Whereas the People of the State of Illinois did on the Ninth day of April 1866 in the Circuit Court within and for the County of Warren and State of Illinois recover a judgment against the above bounden George W Brown for the sum of Eight Hundred Dollars and costs of suit, from which Judgment of said Circuit Court the said George W Brown has prayed for and obtained an appeal to the Supreme Court of said State. Now if the said George W Brown shall duly prosecute his said appeal with effect, and shall moreover pay the amount of the Judgment, Costs, Interest and damages rendered and to be rendered

(26.)

against him in case the said Judgment
shall be affirmed in the said Supreme
Court then the above obligation to be null
and void, Otherwise to remain in full force
and virtue,

Geo W Brown (Ls)
Jas E Brown (Ls)
M J Perrin (Ls)

Approved by me this
28th day of July A.D. 1865

Wm Saffery Clerk,

Filed July 28th 1865 Wm Saffery Clerk,

State of Illinois
Harrison County I Wm Saffery Clerk of the
Circuit Court in and for said County do hereby
certify that the foregoing is a true copy of the
record and proceedings in the foregoing case as
the same appears from the records and files
of my office

In testimony whereof I have hereunto
set my hand and affixed the Seal of
our said Circuit Court at my office in
Moundmouth this 11th day of February A.D.
1861

Wm Saffery Clerk



State of Missi, 3^d Division
Supreme Court Phil Tenn 1884
George W. Brown }
vs } Appellant
The People }
}

And now comes the said
George W. Brown the appellant and
says that there is manifest error in
the proceedings whereof the foregoing
is a record and for error of right
the following

1st The Circuit Court erred
in ~~not~~ ^{sustaining} the demurrer
to the ~~bill~~ ^{scin facia} pleas 2, 3, 4 & 5.

2^d The Circuit Court erred
in not carrying back the demurrer
to the pleas back to the scin facia
sustaining thereto

3^d The Circuit Court erred in
rendering judgment against the ap=
pellant and awarding execution
against him. Wherefore

W. C. Gandy

Atty for Appellant

Supreme Court of the State of Illinois
April Term A.D. 1861

Geo W Brown

vs
The People &c

} Appeal from Warden

And now comes the
said Defendant in Error by D. V. Jones
States Atty and says that in the
second & proceedings ~~appeal~~ judgment
aforesaid there is no error, wherefore
he prays &c

D. V. Jones
States Atty

~~285~~ 14 Feb 1861
George W. Brown
vs
The People

Appeal from Warden

Filed April 18 1861
L. Leland
clerk

W. C. Gandy
Atty. Gen.
Fees \$5.00 1/4