No. 13345

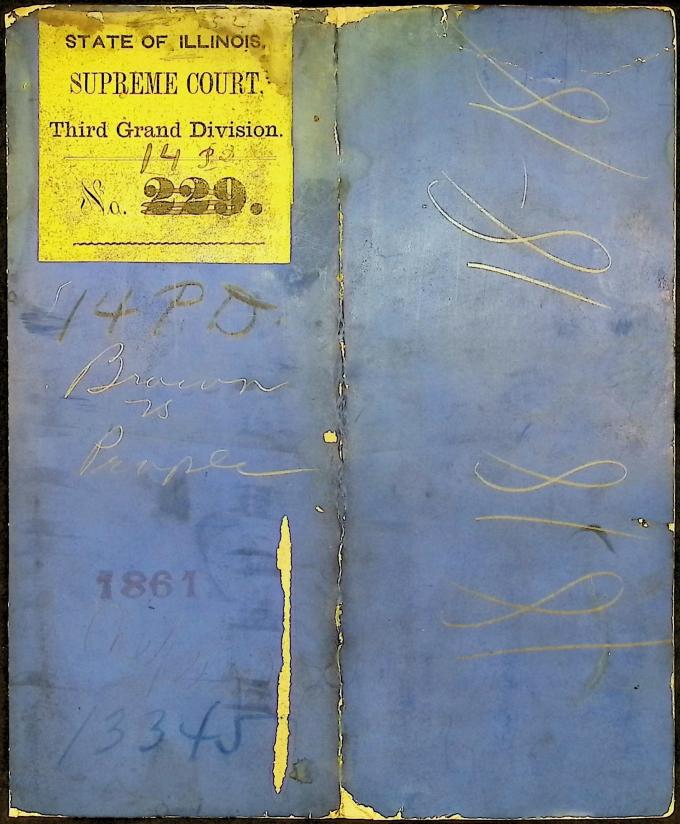
Supreme Court of Illinois

Brown

VS.

People

71641



SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

 $\left. \begin{array}{c} \text{GEORGE W. BROWN} \\ vs. \\ \text{THE PEOPLE.} \end{array} \right\} Appeal \ \textit{from Warren}.$

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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.

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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.

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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. Woolfolk vs. The State, 10 Indiana, 532. Griffin vs. Moore, 2 Kelley, 331.

Therefore the surrender, in this case, answered the object of the law, and was a good defence.

Warren vs. Gilmore, 11 Cushing, 16. People vs. Stager, 10 Wend. 433. Milner vs. Green, 1 John. Cas. 283. People vs. Manning, 8 Cow. 297.

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.

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W. C. GOUDY,
Attorney for Appellant.

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SUPREME COURT.

April Term, 1861.

THIRD DIVISION.

GEORGE W. BROWN,

vs.

THE PEOPLE.

Appeal from Warren.

ABSTRACT.

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.

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 hace verba.

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Avers that at the same term, said Marquet, and George W. Brown, 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 6 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. 2. And the said defendant, George W. Brown, for further plea to the 13 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,

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 dicharged 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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SUPREME COURT.

April Term, 1861.

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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.

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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 6 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. 3. And the said defendant, by leave, &c., for further plea to the 14 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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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 dicharged 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.

Jeo. M. Brenn The People Alstrack

Filed Apr 18.1861 Scheland lelur Supreme Court of the state of Illucions
April Term AD, 186, Levre M. Brien) appel from

he People de 3 Smits seed authorities for the DEG in Erron A surrender to an officer acting sender commas process is not Such a Duneuslen as mould discharge the security. it must be voluntary The Statute requires the security to surrender his principal & the Sheriff of the County where the Recquience was taken. Sec. 196 bin. bode. There is a reason my this should be done. The County where the weder Ament was found was bound to keep the prisiner, after hes surrenden, mutil the time of his trad, and it was also leable for the Expenses of the trad in the country to orderch the cause or as removed Rev. Stat. p529 See. 14

Blonge Ar Bonero va - N. P.D. The People se

Firsto & authorities for DEfts in Emm

Filsd May 4-1861 Le Leland Clerk Supremo Court of the State of Serving April Term 4,2, 1861 George Gr. Brown 3 as, Explain Jone Marreno The Scople & e 3 Vouitz & Controreties for Deft in emor Dumender to an Officer acting under commends pracelo ig not such a sumender as moules descharge the security of must be Colmulary - he statute regimes the security to surrender hig Josensofoab & the Sheriff of the ceruty orhere the acaquiques mas latten- Sec 196 Com, Code. There is a reason why this should be done. The County where the indicarment mas found was Cound & Reef the Jarisoner, after his surrender, sould the time of his trial, and it mag also liable to the expenses of the trad in the county to which the cause mas Removed New. Star, 10529 Lee. 4

The security begins he can be discharged from the occaringance smust pay are the coats

Crim Code Sec, 196

There is no allegation in Either of the flast merely avery that the principal oras surrendered before any costs had account on any onit of seine facias losts had account in entering up the for fridance by the cliebs and the security oras bounds to pay them and all others growing out of the forfeiture or accasional by the dessurrer oras therefore, The dessurrer oras therefore yeroperly enetonical acts they are there or as therefore yeroperly enetonical

Ger Ir Bown 20_N: 14.P.D. The Perple Defto Parilo Filed May 4-1861 Go Lelind Clark

Supreme Court of the State of Illinois April Term 42, 1861 George It. Brown J vez Sappeal from France The People & e 3 Defts Posito & Authorities A surrenden to an officer acting muder criminal process is not such a surrenden de would descharge a securityit amst be voluntary The statute requiries the security to ourrender his Innicipal to the Theriff of the County other the neeg nigance mas latien - Sec 196 Come lovele There is a clasion why this should be derice. The county where the sudictioned or as formed was bound to prof soll to Keep the presences, after his surrender, mutel the time of his toral, and I mas also liable for the Expenses of the total in the county to which the Cause was nevert Ken Shat \$ 529 See 14

The security before he can be discharged from the recognizance must pay all the costs Orum bode See 196 There is no allegation in Either of the pleas that this oras done. The last merely over that that the principal ras surrendered before den costs had seemed only mis grinfaciso cost had acorned in Entering refs the genfecture by the clark and the security mas bound to pay there and all others growing out of the fir fecture or accusioned & the Durrender the demunes was therefore properly sustamed De Jones States alty

Les W Brown 10 Nº 14-P.D. The Propole

DESTO Souts

Filed May - 4-1861 J. Leland Clark Luprence Court of the State of Muiois April Jenn AD, 1861 Heorge Ar. Bruer. Supposed from Warnew The People se & Defts Points & authorities A surrender to de Officer acting under crimenal process is not such a surrender as would descharge the security - A must be voluntary

The statuto required the security to surpender his principal to the Sheriff of the country where the reorganizance was taken fee 196 brim. books. There is a reason when this shereld in done the country where the indichment was formed to teep the prisoner, after his surrender and it was branched to the surrender the prisoner, after his surrender and it was branched for the surrender of the straight of which the course was moved to which the cause was moved to which the cause was moved there the sheet the same was moved

The eccurity before he can be deschargest from the recognizance must pay all the costs Crim, bode. Sec 196 here is no allegation in Either of the pleas that this mas done - The last merely averg that the principal mas surrendered before any costs had account on any med of seine facias" leats had account in Entering up the ferfesturo by the clerk and the security mas bound to pay them and all others growing out of the ferfeiture or occasioner by the surrender the Clemuner was properly Rustaniel Do Janes States Alty

Ger M Brown 20 St. 4. P.D. The People Diffs Parts Filed may 4-1861 L'Island Clark

Be it Remembered that heretoford tout On the 19 The day of May ad 1859 a Histof Scira facias issued out of the Office of the Clerk of the Circuit Court of Waren County Mines which is in the words and figures following trint. State of Illinois 3 11. The Ceople of the State of Illine Haven County It the Shiriff of Knex Country freeting When at The Hovember Special dern of the levent Cond of the Country of Hanen and State of Illinois ad 1856 front in The Heth day of November ad 1856 the Grand Juny of said County returned into open const an Indictment against Leve Margust for The Crand of an awault without Intent to Count a Rape which and Indictment was andoned "a how bell" and legued by James Jucker Foreman of the Grand Jung and which said Indictment reads in The words and figures Itali of Illinois 3 Of The Movember Special
Marien Country & Term of the Wanen Country
Circuit Court in The year of
our Lord 1856, The Spand Jurors Chosen Relected and limin in and for the Country of Hanewin The Mand and by the authority of the People of the State of Illinois upon their oath present that Lin Marguet on the third day of October in The year of our Ind Our Thousand leight Hundred and Ffly less at and nothing the Country of Nounew and State of Illuous that force and arms in and whom and

Hancel Mahow in the Peace of God, and of the (2) Verple of the State of Illiness Then and Then bung, ded make an arrand and her Tho said Hand Mahow, Then and then ded bent wound and all head with an entered her the land Hancet Mahow Violently forcedly and against her will then and then unlawfully and felomonly to ravest and causally know and other mongs to The faid Hamet Mahon Then and Then did to The great damage of the each Hancet Mahan Contrary to the from of the Statute in each Allinos. J H Stewart States attorney Org tem, And whom the back of said Indictment is The following endorsement trust " The People of The State of Selivors 25 Len Marquet, Indectment for an amoult with intent to Council a Rape, "a how bill " James bucker foreman of the France Juny Wetween Hancet Mahan, Thomas Fair cett I'ded 26th day of November a & 1856, Mm Billings Clerk Capias Instanter Bul \$800 & S Thompson Issued Nov 26 th 1856, Which said Indictment was then and then tonit, On the 26 th day of Nov ember ad 1856 filed in The clerks Office of The Circuit Court aforesaid by the Click Thereof, and

(3.)Thereby became a matter of Record in said Court and afterwards tomit, On the 26 th day of Morember ad 1856, an order was entered of Record in said Court which reads in The Mords and figures following truit, The Frand hung empanelled at the present term carrie into Court and presented the following hells of Indictment Louit, The People 3 Indictment for an annall Len' Marquet & with Intent to commit a Rape, a huo Bell fames Inches Formand, Ordered by The Court that a Cupias four herein directed to The Sheriff of Haven County returnable to the present Term of This Court, and that the said Defendant he held to bail in the from of leight Hundred Hollows and afterwards tomit; On The 27 th day of Movember ad 1856 an Order was entered of Record in each Ceronick Const which reads as follows tout, The People 3 Indictment for Rupe & c., Len Marquet I Thus day came the Defendant as principal and George Il Brown his securety and in open Court acknowledged themselves to one and be indetted to the Verples of the · State of Illuis in the kend fund of leight Hund red dollars ruch, and that of your goods and

Chattel, lands and tenements the same to be 14.1 made and rendered if defanct he much in the following Condition which is this that of you Len Marquel shall be and appear before The Judge of The Wanen County Ceveril Court on the find day of the next Jern Thereof to he Commenced and holden at the Const Home in Mounouth on the Second Monday in the Month of april next 1857, and annex to an Indichment for the Creme of an arrand with an intent to commit a Rape which is now hending in the Circuit Court of Hanen Country Illinis, and shall not deput faid Court mithout learn thereof then This Abligation Shall he void otherwise to be and remain in full force and offect and with This They both express themselves Content, get the land Lei Marquet has not Complied with The jaid Condition in the said recognisance specified, and has wholly failed to appear at a Lorn of said Cercuit Court holden in Mounto on the third Monday of the month of March ad 1857 and annow the land medictment, Whenly the land recognismed Verniamo in full force and virtue, and is in no his pet and paid aff or putisfied, and Whenas afternands tont; on The 18 th day of March ad 1857 at a derm of the Ceraint Court then holden in land Harren

(5,) lounty, an order was entend of Recordin find Court which reads in the Words and Liquer following truit; The People 3 In for Rape ve, Len Marquet V. This day Came the People aforeined by James H Stewart States attorney and the Defendant Leis Marquet being three times columnly Culled Come not but made def auth, and George It Brown his wearity being Three times erlennly Culled to appear and produce the body of the land Lin Marquet in open Court wholly failed to appear and produce the body of the said Levi Marquet but also made default. Thereford It is andered Considered by the Court that the recognisioned herein he taken, held and a hereby declared forfeited, and it is further Coundered by The Court that the Hountiffe hand and Recover of the Jail Defendant Lin Marquet and George III Brown the sun of light Hundred Dollars, the Amount of Their enel recognisance, Which They fointly and leverally bound themselves to pay, and it is further ordered by the Court that a Seina facias une heren directed to The Shendf of Wanen County Commanding him to Summers the said Lei Marquet and George

Il Brown to be and appear before the Cercuit (6.1 Court of said County on The first day of the next Term Thereof to be holden in Monmonth on the Mind Monday of Seplember next and thou came of they have they final Judgment thould not be rendered against Them, and it is further ordered by The Court that an alias Capias upond have against the raid Lei Marquet returnable to the next derm of this Court, to Know County, and whereas afterwards tout, On the 23° day of September ad 1857 at a Term of The Cercuit Court of Warren County Then holden an order was entered whom the Records of said Court which reads in The words and figures following trut, The People 3 In , Assault with intent to Len Marquet & Rape &c. This day come the P. 1910 H Stewart States atterney and on his motion This day came the People by James it was ordered by the Court that awalias Capies spew herein devected to the Sheriff of of Knot County returnable to the most Jern of this Court to which Term this Came be con timed, and that the said Defendant be held to bail in the sum of Our Thousand dollars

(// and Whenas afterwards tombion the 16 th day of March ad 1858 and order was entend on the Records of said Court which reads as follows tomik; The People 3 Jen Marquet 8 On Motion of the States attorney it is ordered by The Court that an alias Capias und herein against the said Defendant directed to the Sheriff of Knot County returnable to the next Lern of This Court. and Whenes afterwards, tout; On The 22 day of March ad 1859 an order was entered upon the Records of each Court Which reads in the words of igures following Len Marquet & On Motion it is ordered by The Court that a Scient facius und herein against The Defendant and his becurdy derected to The Shenff of Knot County retu mable to the next Jern of this Court, In Conformaly with The foregoing Order We Command In that you make mounts and Summondo the raid Lei Marquet

and George W Brown of to be fruit in your 18.1 County peromally to be and appear before The Circuit Court of said Waren County on The fint day of the next term of this Court to be holden at The Court Hours in Moumonth on the front Monday of October nest, and Show Cound if any they can try the find Serple of the State of Illines through not hand final Indoment and execution thereof again et them severally for the said bund of begut Hundred dollars for which They and bound according to the force and effect of their said Recognisance, and further to do and Feeene Whatever our said Court shall Then and There Consider and adjudge against Them in that behalf. Hereof make due Veturn as the law direct and hand you Then and Then This mit, Witness William Laferty Clerk Seal thereof hereto attached this 19th day of May May ad 1809. Montafirty Clerks (Seal)

(7.) And upon the back of the foreging Sceri Facins is the following return muleby The Sheinff tout. "Read the notion to George W Brown & have not have able to find Lei Marquet in my County this 13 th day of June ad 1859 By H H Wilner Depty Things Sherff fus Service 50, Wile 850 Return 15 150 and Thomson Sheriff Fided June 14# 1859 Mm Safarty Clk.

State of Illinois ? Warren County D [10.] Heas before the Honorable John & Thompson Gridge of the South Indicial Cercuit of the State of Illinois. at a Circint Court began and held at the Court House in Monmouth in the County of Warren and State of Illiers on the fronts Monday in The month of October in The year of our Lord Our Thousand leight Hundred and worth and year, John & Thompson Judgel Irecent How James H Stewart States allowing Teth Smith Sheriff's Mm Laferty Clerk, The Perplo Indictment for assault with Intent to Commit Raped Len Marquet & Ges 11 Brown and afternards tomit, on The 24 th day of October ad 1859 The following Order was intend whom the Records of said Court, which is in The Words and figures following tout,

[[]] She Scople & Scifal Sen Marquet & This day came The People The People aforesaid, by the States attern ey, and the said Defendant George W Bronn having been duly served with Porcers, and having how three times ordening called come not nor any perion for him to there Cand they final Judgment should not be rendered against him but makes Defanct, Thereford it is considered by the Court that the Claimtiffs recover of The said Defendant George W Brown, The Sund of Eight Hundred Dollars The amount of The Conditional Judgment rendered against him herein hentofon, together with Their Costs by There in This sink expended and may hand execution Therefor, And afternards tont, on the 25 th day of October and 1859, The following order was entered whom the Records of said Court which reads as follows trut, The People 3 Soi for Soi for General & Soi for George M Brown

This day come the Defendant George W Brown (12.) by his altorney and moves the Court to est and the Default entered herein on fectionday, and for leave to plead to The Scientains filed herein Whereupow by agreement of buties it is ordered by The Court that The Motion he allowed and that the defaut he set and, and that the Defendant hand leave to blead herew, Copy of Pleas. State of Illinois, County of Namen

The People & Circuit Court

Sin Marguet & October Term ad 1859

Jeorgi W Brown Sci fa on Recognisance And the earl Defendant George W Brown Comes by his attorney and Defends the mong to and ears that there is no ench Rund remaining in the said Circuit Const as is in thy The land mit of Scire facions Stated and alleged and This he prays May be engineed of by The Court re, Goody V Indel Hite & Watts Altoney for Brown

(13./ and the earl Defendant George W Bronn for further Pleas to the earl mit of Scire facions by leave of the Court fint had I ottained, the land Defendant says actio now became he longs that after the said recognisance in land mit of Scire facions set out was taken and entered into as therein Hated tont on The 25th day of Movember ad 1857 a Capier was found by The Clerk of the Circuit Court in Afre The County of Nance aforesaid, in presumes of an order of each Court heford that time made and entered of Record in The same Course Wheren the earl recognisance was taken and entered into, directed to the Sheriff, Corner and Contables of Knot Country Which and Capiers was delivered to the Shiriff of ined Knox County, and afterward brick, on The 1 st day of December and 1857 before The return day of said but the land Shings of Knot County at and motion the County of Knot afourand, corrected the said Levi Marquet as Communded by said Cupias, and then and Then had and held The centedy of earl Len Marquet to anever to the Indictment in said mit of Seire facions described, and this he as ready to verefy. Wherefor he prays budgment Goudy & mild. Hete & Hatts allys for Brown

Und The sand Defendant by leaver of for further [14.] Pleato the said mit of Scira facias longs actis now became he says that after the said recog - misunce in find mit of Seire facius descubed was taken and entered into, that is to say, at a term of the Circuit Court hegen theld on the Mird monday of September and 1857 in the land Care Wheren the indechment was presented and the recognisance taken rentered into as alleged in said but of Scire facions an order was made that a capias be fruit Know County in the State aforesied returnable to The next derm Therafter, and afternaid to Mr. on The 25 th day of Movember ad 185 Jin purenonce of & Compleance with said order The Clirk of each Circuit Court speed a Capins ad respondendum derected to the Sherriff, Corner and Constables of Knot County, Comm anding in the name of the People of the States of Ilmoss to take the said Levi Marquet and him dufely Rup er as to hear his trong before The Circuit Court of Wanen County on the fut day of the next Jerm Thenafter to be holden at the Court Home in Monworth on the third Monday of Murch nest Thereafter, to answer Concerning The Crown of Assault mit Intent to Comment Rape with which he stord Changed in a certain Bill of Indectment which is The (13.) James meliciment described & Mentioned in said bit of Scine facias, which said Cupias ad respondendum was after its issue deliv end to the Shoulf of The County afmound to execute, and afternando trust on the 1st day of December ad 1857 at and within the County of Kny aforesaid & while the said Capiers was in the hands of the Shenoff of Bux County to executo, The said Defendent George M Brown Surrendered to the said Sheriff the body of the eind Len Marquet in eatisfaction of the land Recognisance & then then t thenly the Sired Defendant George W Brown was discharged thenfrom and this he is ready to verify, Thereford he prays Judgment of the People should hand execution to, Grady Matts allys for Deft, 4. And the said Defendant by lean of the Court full had and obtained for further pleasto The said with of Sein Jacius, lays Actio now bed and he says that after the earl Recognisma in said mit of Seine facious described was taken and entered ento that is toray, at a derm of the said Hunen County Circuit Court began &. held on the third Monday of September aal 1857 in the Daw Course wherein the Indictment

[16.] Was presented and The Recognismed taken and entered into as alledged in the lind mit of Seive facias, an order was made that a Cap in he speed to Knot County in the State of Illuious returnable at the next Jerm Thereafter and afterwards tout, on the 28 th day of Movember ad 1857 in pursuance of and in Compleance with the said order the clock of The land Cir Court usued a Capias ad respondendent directed to the sheriff, Corones and Constables of said Burt County Commending in the name of the leople of The State of Illiness to take the ined Defendant Tin Marquette and him eately Keep or as to how the body of him the said Defendant Lin Marquetto before The earl Circuit Court of Howen County on the fint day of the neck dern Thenafted to be holden at The Court House in Momento on the third monday of March next thereafter to anner Concerning the Comof arrand with Intent to Commet Rape, with Which he The said Defendant Len Marquetto strod Charged in a certain Bill of Indictment which is the same Indictment described and Mentioned in land mit of Scin facions, Which said Capies ad Respondendum was after et The delivered to The Shoulf of said Knot County George W buke to execute,

11.1 and afterwards truit On the 1st day of Decem ber ad 1857 at and mitin the Country of Knot aforesaid of while the said Capiers ad Responden dum was in the Hands of the said shiriff of . And County, the said Sheriff proceeded to & Then of then dul anent the said Defendant Lin Marquetto as Commanded by The said Capias and Then & there had and held The Cust by of the said Defendant Len Marquello to anner to the Indictment in sind mit of Seine facius des cuted, and that afterwards trut on The 1st day of December ad 1857 while the said Def endant Lei Marquette was in the Custody of The earl Shind the country as afores and and at and inthin the earl Escalady of Knox The find Defendant Lin Marguetto as principal Any as his the find Defendants eccurity then I then made and entered ents their Certain Boul of Recognisance handing Thouselves hens executors and administrators jointly severally and firmly unto the Scople of the State of Illinois in the eum of One Thousand Dollars Current money of the Muted States; mit The Certain Condition Therein and Therete, that is to say that of the said Defendant Levi Marquetto should perioually be and appear before the Judge of the Circuit Court of the.

eard County of Hanen on The fent day of the (18.) next deron thereafter, to be holden at the Court Hours on Monmonth on the Mird Monday in the Month of Murch Then nick following then I There to cursives to an Indictment which had been profesed against said Defendant Lin Morgaitto by The Grand Jung of the said County of Namen at the wint of The earl Scople of The State of Almin for and Concerning the Crimos Assault nich Intent to Commit Hape, unto Which said Defendant otrol Changed in said Court and that ined Defendant Sen Marquette should not depart thence nothonk leave of sais Court that then the land Brud of Recognismed to be void . Othermed to remain in full free & Vestuo, and afterwards trout on The 1st day of December and 1857 at and nothing The said Country of Knox the land Should of the said County of Brox Then & There in persuance of and Compliance with our order before that time by the said Clerk of the said Cir Court of Homen County Endoned whom the back of the said mot of Cupias and Respondenden vicen ed the send Bond of Recognisance or minds tentered into as ofoured, and There and then released the said Defendant Lin Marquette from his the end Sheadfor Custraly, and their The said Defendantly W Brown is ready to verify

(19.) leople shall have execution or, Gondy & Judd Hito & Walls Dift, cettys, Filed Oct 26 Th 1859
Mandafarty clk, and afterwards bruk, on the 5 th day of Hovember ad 1859 The following arder was Entered of Record in said Court which is in the words t figures following Tink, The People Seifar.

Sein Marquett & Shis day Come the Sefendant of the Brown and on this motion leave is given him to file award think to file award think of the hering. Chy of additional Pleat, State of Illiners Country of Manen
The People & Circuit Court

Soir Marquett & Sciro Lacius,

(20.1(3) And now Comes The Defendant George W Brown Our of the said Defendant and for fur Ther plea to the said Seire faires says actio Mon hecume he lays that after the said recognisance was taken & sentered outs when the Showeff of Burt County in the State afraind had lawfully in his properante executo a capias spend from The Circuit Court of Wanen County afmind in The end Caned When said reorgans and Was taken directing him to anest the said Levi Marquete to ourses to soil Indictment and before any but of Seere facias had fuid In said recognisoned and before any Costs had account on any mit of Scire facias, The each defendant truck on The 1" day of December ad 1857 at nothin The Country of Knot aformed Voluntarily Inrendered the sind Lin Harquite to the said Shoulf of But County, who received the Cuctody of the said Lin Marquite from The end Defendant George W Brown, Whereby he was discharged from the said recognison ee, and this he is ready to verity. Whereford he prays Indgment to Grady & others for Deft. Filed Mos 5 th 1859. W Laferty Clerk,

(21.) Und afterwards Frink, On The 9 The day of Movember ad 1859 The following order was entered of Record in said Const which read as follows bout, The People to Seifa,

Lei Marginto & Seifa,

Gerryo H Brown This day came the States

atterney and files his Dem

unes to all the Defendants Pleas except the

Pleas of General issue, State of Illinois & Namen County Circuit Court Manen County & October Jerm ad 1859. The People & Sei fa on Recognization, Sein Marquet & Sein Marquet & Sein And The said Plaintiffs as to The land Olew of the land Defendant George W Brown fruitly about blended south that each Chamitiffs preclude now became They lay that there is ench a Record of the find Recognismed Fernancing on The land Coronel Coul of Homen County aforesaid as is in thy the said but of sciro facias stated and alleged to This helekewird brougs may be

(22) enquired of by the Const & C. & Steriort. Stales attorney, and the said Plaintiffs as to the end Pleasof the sied Defendant George W Brown by him beendly thirdly and fromthely the they atom pleaded, eary that the same and the Maller and things their Contained awnot sufficient in law to bar or preclude the said Plaintiff from having or maintuining his aforesaid action thereof against the earl George W Broms and that said Plaintiffsand not bound to anner the same, and this Olffs and ready to verity, Whereford by reason of the insufficiency of said Olean second third Hourth They pray Judgment to, States atty, Filed Nov 4 Th 1859.

and afternands truti On The 9th day of April ad 1860 being at a regular Term of said Circuit Court, The following order was entered of Record, whom The Records of said Court which Reads as follows trut, The Perple & Scifa, Seifa, Sen Marquit & Shinday anima This day again come on This came to a heaving on the Plaintiffs Demeres to the Defendant george I Brown o Oleas 10° 2, 3, 4,5 and after heaving the sund it is ordered by the Court that the Demurer be surfained. Therefor come The Defendant George A Brown by his attorney and on his motion leaves given him to nothdraw his fint Afonsied by Their States attorney, and The said Defendant George W Brown having been duly lerved with process and having keen three Times Edenny Called Cand not not any person for him to show come why final magnest should not be rendered against hum, but makes default, Thereford it is considered by the Court that The Chaintiffs recover of the Defendant Henge W Brown the sun of leight

Hundred Dollers The amount of The Condition (24,) al Judgment rendered herein against him here to fow, together with their Costs in this with Them laid out and expended trying hand execution Therefore, Therewhood Count the Defendant George W Brown and brouge an appent to The Supreme Const, which is allowed by The Court whom the Defendant entering into bond in The hund of brelow Hundred Dollars with recently to be approved by the Clerk, by agreement of Parties bond to be filed before the fint day of neck derm of this Court,

(25./ Copy of Bond. Browall Ment by Thew preent that we George Il Brown as principal and James & Brown & M. J. Omen as Securities are held and firmly bound unto The People of the State of Illinois in The Genal sund of briefed Hundred Dollars for the payment of which, well and huly to be mails no hind ourselves our heis executors and adminis trators, fourthy severally and firmly by there procents, Hotness our Hands and sends This 24th day of July anu Domini Our Thousand Coight Hundred & energy The Condition of the about Obliga how is ench! That Wheren The Perplet of the State of Illinois did on The Huth day of April 1860 in The Circuit Court within andfor The County of Wanew and State of Illinois recover a judgment against the about brunden George I Brown for the sum of Eight Hundred Dollans and cost of such from which Indyment of said Cercial Court the sind George IN Brown has prayed for and obtained an appeal to the Supreme Court of said State, Horief the said George A Brown Shallduly prosecute his said appeal with of feet, and shall moveover pay The amount of the Judgment , Cost Interest and damages rendered and to be rendered

against him in Card the said Indgment That he Offirmed in the land Supremed [26,] Court then the about obligation to be mill and vied, Otherwoods remain in full freed and virtue, Geo W Brown (251 Jas & Brown (2s/ M I Perrin (2s/ Whitmed by me this 28th day of July ad 1869 Jm Lafsty clerk, Filed July 28 th 1860 Mm Laferty Clerk, Have of Illinois of Am Laferly 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 fine of my office In testimony whereof I have hereinto Let my hand and affixed the Leal of our Said Circuit Court at my office in Moumouth this 11 day of February AD 1861 Mafeet, Clerk

State of Minor 3 Divisione Supreme Constitue State George W. Brown 3 Thooly wulland The Reople ? And now concer the soil Leonge It. Thour the objellant und Day that there is manifest ever in the proceedings whereof the foregoing is a record and for error opique the following in bookering the demine to the Scion facia, fleer 2, 3, 4, 15, 2º The Cucent Court erred in not carrying back the clemune to the pleas buch to the Scin feecien sultaining Thereto 3 The Circuit bout erred in sudering judgment against The of pelleut and awarding executive against him Wherefore 2 Mr. C. Loudy Celty for Mpellans

Suprime Court of the State of Illinois April Lerin a, D, 186 Seo Ir Brown Sappeal from Warren The Rople & of And own cernes the Paul Défendant in Error & D, Jones States alty and says that in the afererain there is no Empo, wherefre he prays & e I, pros States ally Gore H. Brown. 181831 L'alundanh M.