

No. 8815

Supreme Court of Illinois

Andrew Mather

vs.

People

71641  7

No 38
Supreme Court

8815

Andrew Mather

vs.

The People &c -

Error to Madison

Prepared
EP

State of Illinois }
Madison County } ss

Plas of Record in the
Circuit Court of Madison County
and State of Illinois—

Be it Remembered that on the 11th day
of February AD 1850 a Recognizance was
filed in the Clerks office of the Circuit Court
in and for the County of Madison and State
of Illinois, as follows

"
State of Illinois
Madison County } Recognizance to appear

Be it remembered that
on the Eleventh day of February AD 1850, Elisha
McGunn, Andrew Mather of Madison County
and State aforesaid personally appeared be-
fore me S W Robbins & Charles Cooke Two
of the Justices of the Peace of the said County
of Madison and jointly and severally
acknowledged themselves to owe to the
People of the State of Illinois the sum of
Fourteen hundred Dollars, to be levied

of their goods and chattels, lands and tenements, if default be made in the following condition to wit: The condition of this Recognizance is such, that if the above named Elisha W Dunn shall personally be and appear before the next Circuit Court, in and for the said County of Madison, on the first day of the next Term thereof, to be holden at Edwardsville, in said County on Monday the Eighteenth day of March A.D. 1850. And then and there to answer a charge of having in his possession counterfeit Coin of the Coin current in this State & apparatus for making the same, and then and there to abide the Judgment of the said Court, and not depart without leave of said Court, then this Recognizance shall be void otherwise it shall be and remain in full force and virtue in Law

Elisha W Dunn *[Signature]*
Andrew Mather *[Signature]*

Taken and Acknowledged
before me this 11th day
of February A.D. 1850

Chas. Cook *[Signature]*

And afterwards to wit: on the 21st day of March A.D. 1850, an Indictment

for Counterfeiting, was filed - in said Court, as follows:

"
Of the March Term of the Madison Circuit Court in the year of Our Lord 1850

State of Illinois }
Madison County } ss

The Grand Jurors
chosen selected and sworn in and
for the County of Madison in the name
and by the Authority of the People
of the State of Illinois upon their
oaths present that Elisha W Dunn
on the Eighth day of February in the
year of Our Lord One thousand eight
hundred and Fifty at the County
of Madison aforesaid One hun-
dred pieces of false and counterfeit
Coin each piece thereof resembling,
and apparently intended to resemble
and pass for a certain species of silver
Coin called Dollars now current in
the State of Illinois, falsely, feloniously
and knowingly did make and coun-
terfeit, contrary to the form of the Statute
in such case made and provided,
against the peace and dignity of the
people of the State of Illinois

(2) And the Jurors aforesaid by the
Authority aforesaid upon their oaths
aforesaid do further present that

Elisha W Dunn on the day and year
and at the County aforesaid on him
and pieces of false and counterfeit
Coin, each piece thereof resembling,
and apparently intended to resemble
and pass for a certain species of
Silver Coin called Half Dollars now
current in the State of Illinois,
falsely, feloniously and knowingly
did make and counterfeit contrary
to the form of the Statute in such
Case made and provided, and
against the peace and dignity of
the People of the State of Illinois -

3 And the Jurors aforesaid, by the
Authority aforesaid upon their oaths
aforesaid do further present that
Elisha W Dunn on the day and year
and at the County aforesaid, on
hundred pieces of false and coun-
terfeit coin, each piece thereof res-
embling, and apparently intended
to resemble and pass for a species
of Silver Coin now current in the
State of Illinois called Quarter Dol-
lars, falsely, knowingly and felon-
iously did make and counterfeit
contrary to the form of the Statute
in such Case made and provi-
ded and against the peace and
dignity of the People of the State
of Illinois

Whereupon the Court made an entry as follows, to wit:

"The People of the State of Illinois }
vs } Indictment for
Elisha W Dunn. } Counterfeiting

It is ordered
by the Court that Capias issue herein and
Bail is fixed at Fifty hundred Dollars-

And afterwards, to wit: On said 21st day
of March AD 1850 a further order was
made in said cause as follows, to wit:

"The People of the State of Illinois }
vs } Indictment for
Elisha W Dunn } Counterfeiting

And now at this
time come the People by the States Attorney and
on his Motion the said Defendant as well
as his Bail Andrew Mather were each
three times solemnly called, and the
said Defendant neglects to surrender
himself up to answer to the said in-
dictment - It is therefore ordered that his
default be entered and that Scire Facias
issue herein returnable to the next Term of
this Court commanding the said Elisha
W Dunn & Andrew Mather to be and ap-
pear at the next Term of this Court to show

4 And the Jurors aforesaid by the Authority aforesaid upon their Oaths aforesaid do further present that Elisha W Dunn on the day and Year and at the County aforesaid One hundred pieces of false and Counterfeit Coin, each piece thereof resembling and apparently intended to resemble and pass for a Species of Silver Coin now current in the State of Illinois called Five Frank pieces, falsely, knowingly and feloniously did make and counterfeit contrary to the form of the Statute in such case made and provided and against the peace and dignity of the People of the State of Illinois.

P. B. Fouke
States Attorney

Upon the back of which are the following inclosures: To wit: People vs Elisha W Dunn - Indict for Counterfeiting - A True Bill - Witnesses: Wm G Pinckard, Amos L Corson, Thomas B Stearns, Thomas Brown, J C Clark, H M Filly, Ismael Ash, John Lown, Henry Beach, Lewis Kellenburger, M G Atwood - Beale Lobb Barry - Felps - Christopher Cowden
Filed March 21st 1850 Wm T. Brown Clerk

cause if any they have why the said People shall not have a Judgement And Execution against them for the sum of Fourteen hundred Dollars the penalty of said Recognizance - And this Cause is continued -

And afterwards, To wit: on the 30th day of August AD 1850, a Scire Facias was issued out of And under the seal of said Court, in the above Entitled Cause as follows

"
State of Illinois }
Madison County } ss.

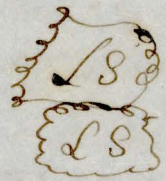
The People of the State of Illinois
To the Sheriff of Madison County - Greeting -
Whereas heretofore, To wit on the Eleventh day of February AD 1850 Elisha W. Dunn Defendant as principal and Andrew Mather his Bail, entered into Recognizance to the People of the State of Illinois in words and figures as follows - to wit:

"
State of Illinois }
Madison County } Recognizance to appear

Be it remembered, That on the Eleventh day of February AD 1850 Elisha W. Dunn Andrew Mather of Madison County And State aforesaid personally appear

red before us J W Robbins & Chas Cook
two of the Justices of the Peace of the said
County of Madison And jointly and sever-
ally acknowledged themselves to owe to the
People of the State of Illinois, the sum of
Fourteen Hundred Dollars, to be levied
of their goods and Chattels, lands and
tenements, if default be made in the
following Condition To wit: The Condition
of this Recognizance is such that if the
above bound Elisha W Dunn shall pers-
onally be and appear before the next
Circuit Court, in and for the said County
of Madison on the first day of the next
Term thereof, to be holden at Edwardsville
in said County on Monday the Eight-
eenth day of March A D 1850, and then
and there to answer a charge of having
in his possession counterfeit coin of the
Coin current in this State & Apparatus
for making the same, and then and there
to abide the Judgement of the said Court,
and not depart without leave of said
Court, then this Recognizance shall be
void - Otherwise it shall be and remain
in full force and virtue in law

Elisha W Dunn
Andrew Mather



Taken and acknowledged
before me this 11th day of
February A D 1850

Chas Cook, J.P.



And whereas at the March Term AD 1850 of
the Circuit Court of Madison County aforesaid.
To wit: On the Twenty first day of
March AD 1850 a Bill of Indictment was
preferred against said Elisha W Dunn in words
and figures, To wit:

"

Of the March Term of the Madison Circuit
Court in the Year of Our Lord 1850
State of Illinois
Madison County

The Grand Jurors Chosen,
Selected and sworn in and for the County
of Madison, in the Name and by the
Authority of the People of the State of Illinois
upon their oaths present That Elisha
W Dunn on the Eighth day of February in
the Year of Our Lord One Thousand eight
hundred and fifty at the County of
Madison aforesaid On Hundred pieces
of false and counterfeit coin; Each piece
thereof resembling, and apparently intended
to resemble and pass for a certain species
of Silver Coin called Dollars now current in
the State of Illinois, falsely, feloniously,
and knowingly did Make and Counter-
feit, Contrary to the form of the Statute
in such Case made and provided against
at the peace and dignity of the people
of the State of Illinois

(2) And the Jurors aforesaid by the Au-
thority aforesaid upon their oaths aforesaid

said do further present that Elisha W Dunn on the day and year and at the County aforesaid One hundred pieces of false and counterfeit coin, each piece thereof resembling and apparently intended to resemble and pass for a certain species of silver coin called half Dollars now current in the State of Illinois, falsely, feloniously and knowingly did make and counterfeit contrary to the form of the Statute in such made and provided and against the peace and dignity of the People of the State of Illinois.

(3) And the Jurors aforesaid, by the authority aforesaid, upon their oaths aforesaid do further present, that Elisha W Dunn on the day and year and at the County aforesaid, One hundred pieces of false and counterfeit coin, each piece thereof resembling and apparently intended to resemble and pass for a species of silver coin now current in the State of Illinois called Quarter Dollars, falsely, knowingly and feloniously did make and counterfeit contrary to the form of the Statute in such case made and provided and against the peace and dignity of the People of the State of Illinois.

(4) And the Jurors aforesaid by the authority aforesaid, upon their oaths aforesaid, do further present, that Elisha W Dunn

on the day and year and at the County
aforesaid on hundred pieces of false and
counterfeit coin, each piece thereof resembling,
and apparently intended to resemble
and pass for a species of silver coin now
current in the State of Illinois called Five
Frank pieces falsely, knowingly and felon-
iously did make and counterfeit, contrary
to the form of the Statute in such case
made and provided and against the
peace and dignity of the People of the
State of Illinois

P B Houke

State Attorney

Upon the Back thereof, is the follow-
ing enclosures, To wit: People
vs Elisha W Dunn - Indict for Coun-
terfeiting - A true Bill - Sworn
Blakeman Foreman - Witnessed
Wm G Pinckard, Amos L Corson,
Thomas B Stains, Thomas Brown,
J E Clark, H M Filley, Israel Ash,
John Lown, Henry Beach, Lewis
Kellinberger, M G Atwood -
Beale - Jas G Barry - Helps -
Christopher Cowden - Filed March
21st 1850 Wm T Brown Clerk -

Whereupon the Court made an entry
as follows, To wit:

The People of the State of Illinois }
vs } Indictment for
Elisha W Dunn } Counterfeiting

It is ordered by the Court
Capias issue herein And Bail is fixed at
the sum of Fifty hundred Dollars -

And afterwards To wit: on said 21st
day of March A.D. 1850 a further Order
was made in said Cause, as follows To
wit

"
The People of the State of Illinois }
vs } Indictment for
Elisha W. Dunn } Counterfeiting,

And now at this time come the People
by the State Attorney and on his Motion the
said Defendant as well as his Bail
Andrew Mather were each three times
solemnly called, and the said Defendant
neglects to surrender himself up to answer
to the said Indictment - It is therefore
ordered, that his default be entered, and
that Scire Facias issue herein returnable
to the next Term of this Court. Commanding
the said Elisha W. Dunn & Andrew Mather
to be and appear at the next Term of
this Court to show cause if any they
have, why the said People shall not
have a Judgment and execution against
them for the sum of Forty hundred
Dollars the Penalty of said Recognizance,
and this cause is continued -

We therefore in consideration of
the aforesaid premises Command

We therefore in consideration of the aforesaid premises Command you that by good and lawful men of your County you make known to said Elisha W Dunn and Andrew Mathew, that they be and appear before the Circuit Court of Madison County on the first day of the next Term to be holden at the Court-house in the Town of Edwardsville on the third Monday of August A.D. 1850 to show cause if any they have or can, why the People of the State of Illinois should not have judgement and execution against them for the amount of their said recognizance so forfeited as aforesaid. And have you then and there the names of those by whom you shall give them notice, together with this writ with your return thereon



Witness Wm. T. Brown
Clerk of our said
Circuit Court and the
Seal thereof at Edwardsville
this 30th day of August
A.D. 1850

Wm. T. Brown
Clerk

And afterwards, to wit: on the 30th
day of August A.D. 1850 - was filed
a Plea in Bar in the above entitled
Cause, as follows -

^{1^a}
Andrew Mather }
 ads } Scire Facias and
The People of the } Recognizance -
State of Illinois }

And now at this day
comes the said Defendant by Davis &
Edwards his Attorneys, and waives
service of process, and for plea says
the said Plaintiff their action upon -
said against him to have and main-
tain ought not, because he says that
since the last Term of this Court, to
wit: on the 18th day of April A.D. 1850
the said Elisha W. Darn departed this
life, and thus the said Defendant is
wady to verify, wherefore he prays
judgement &c

Davis & Edwards
Attys for Defendant

The People of the }
State of Illinois }
 as }
Andrew Mather } And the said Plain -

tiff by their Attorney come and say Plain-
tiff (precludi non) because they say that
the foregoing plea of the said Defendant
and the matters and things therein sta-
ted are not sufficient in law to bar
or preclude the said Plaintiff from
having and maintaining their action
aforesaid against the said Defendant
and this they are ready to verify, wherefor
for want of a sufficient plea in this
behalf they pray Judgment &c

P B Frank

Atty -

The People of the State
of Illinois

vs

Andrew Mather impeached
with Elisha W Deen

Scire Facias an
forfeited Recogn-
izance

And now at this
day comes the said People by the States
Atty as well as the Deft by David Edwards
his Atty and issue being joined upon the
plea in Bar above pleaded by the Deft
by consent the same is submitted to the
Court for trial. And the Court being suffici-
ently advised in the premises considers
and adjudges that the law is with the said
people and finds the issue for the Plffs.
It is therefore considered by the Court
that the People have Judgment for and
recovery of and from the said Andrew Mather
the sum of Fourteen thousand Dollars the

penalty of the said Recognizance so forfeited
as aforesaid - And that they have execution
therefor &c

State of Illinois
Madison County

I Wm. T. Brown Clerk of
the Circuit Court in and for the said
County and State. do hereby Certify the
following to be a true and complete
copy of the Record, Proceedings and
Judgment in the above Entitled
Cause as truly and completely as the
same is now of Record in said Cir-
cuit Court -

In Testimony whereof I
have hereunto signed my
name and affixed the seal
of said Circuit Court, at
Edwardsville this 4th day
of November AD 1850
Wm. T. Brown
Clerk

No 44.31

Andrew Mather - Plff in error

^{vs}
The People of the State
of Illinois - Def^t in error

And now at this day comes the said Plaintiff in error, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to-wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said People of the State of Illinois against the said Andrew Mather; whereas by the law of the land the said judgment ought to have been given for the said Andrew Mather against the said People of the State of Illinois. And the said Andrew Mather Plaintiff in error, prays that the judgment aforesaid, for the error aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgments. &c.

Davis & Edwards
Attys. for Plff in error

Forinde in Error
D.B. Foulke for Secd

In the Supreme Court

Nov 28

Andrew Mathur

Def in error

The People of the State
of Illinois - Expts in error

Filed 13th November

1850

J. A. Peaton,

Att.

J. Davis Esq

Galena, Ill.

Prepared by
W. R.

The People of the State of Illinois }
and }
Andrew Mather }
3

In the Supreme Court
Bene facias on Recognizance
— —

Elisha W. Duran on the 11th day of February 1850 entered into a recognizance before Charles Cook - Justice of the Peace of Madison County, with Andrew Mather the Plaintiff in error, as his surety, to appear at the next Term of the Madison Circuit Court to answer a charge of having in his possession counterfeit coin and apparatus for making the same.

At the next Term of the said Court being the March Term 1850, ^{an} indictment for counterfeiting was found against said Duran, and he failing to appear, the aforesaid recognizance was forfeited and a bene facias ordered returnable to the next Term.

At the next Term of said Court being the August Term 1850, the said Andrew Mather appeared and waived answer of process, (no bene facias having been ~~forfeited~~ served upon him) and pleaded in discharge of his recognizance, that the said Duran since the last Term of the Court went on the 18th day of April A.D. 1850, departed this life. To this plea the Prosecuting Attorney interposed a demurrer, which was sustained by the Court, and a judgment rendered against said Mather for the amount of the recognizance.

To reverse this Judgment, the said Mather brings this case to the Supreme Court by writ of error. - and assigns for error, that the Court below should have overruled the demurrer and given judgment in favor of the said Andrew Mather, instead of sustaining the said demurrer and giving judgment for the People of the State of Illinois upon the said bene facias. -

Javis & Edwards
Atty for Plff in Error

(Over)

The plea of the said Andrew Mather set forth a good defense to the said *scire facias*. If the principals die before the return day of the process against the bail, this fact constitutes a good plea in bar of an action against the bail.

Revised Laws of 1845. pag- 83 Sec. 10

do

" 187 " 196

Bail in the Common law means the freeing or setting at liberty of one arrested or imprisoned upon any action either civil or criminal.

Jacobs Law Dictionary Vol. 1. pag 208.

That the 10th Section of our statute of Bail, applies as well to bail in criminal as in civil cases, is manifest from a reference to other sections of the statute. - Sec. 8. provides that no suit shall be commenced upon any bail bond or recognizance of bail in any civil action &c. Sec. 12 provides, when any defendant in any civil action &c. Sec. 13 provides that proceedings by *scire facias* against bail in Civil cases, shall not be allowed. -

In all these three last mentioned sections, civil actions are expressly mentioned & the provisions of these sections are confined to civil actions. - But the 10th section applies to bail in all cases. The language is general & if it had been intended to apply it only to civil cases, the language would have been "In all actions against bail in civil cases", as is the case in sections 8. 12. & 13. -

In the Supreme Court

Andrew Mather - Plaintiff

^{vs}
The People be - Defendants

Abstract of

Filed 14th November
A.D. 1852

F. D. Preston
CLK