

12384

No. _____

Supreme Court of Illinois

Waugh.

vs.

People.

James Waugh
vs
The People

GPD.

1856

12384

²⁴
The People of the State of Illinois }
vs }
Joseph Pittshur }
James Waugh }
vs }
} Locas on
} Recognizance

Be it Remembered that on the
Tenth day of March A.D. 1856. In the above entitled
Cause, there was issued in the Bureau Circuit
Court, a certain writ of Habeas Corpus, in the words
and figures following to wit.

State of Illinois }
Bureau County ss. } The People of the State of Illinois.

To the Sheriff of said County Greeting.

Whereas heretofore to wit on the 18th day of December
A.D. 1855. Joseph Pittshur, as principal, and James Waugh
as Security, Came before Stephen H. Paddock, then
and there being, and acting in the capacity of Sheriff,
within and for the said County aforesaid. The said
Joseph Pittshur having been duly arrested by the said
Sheriff, by virtue of a certain writ of Capias ad respon-
dendum, issued from the Circuit Court in and for said
County, for and concerning the Crime of Petit
Larceny, against the said Joseph Pittshur. And
the said Joseph Pittshur, and the said James Waugh,
did then and there in said County of Bureau sign
Seal and execute and deliver to the said Sheriff, a
certain Bond or recognizance, whereby they severally
acknowledge themselves to owe to the People of the

State of Illinois, the sum of Two Hundred Dollars. that is to say. The said Joseph Pittsham, the said sum of Two Hundred dollars, and the said James Maugh, the said sum of Two Hundred dollars. To be made and levied of their respective goods and chattels, lands and tenements to the use of the said People, if defaults should be made in the conditions following To wit,

Whereas the said Sheriff has this day arrested the said Joseph Pittsham upon a writ of Capias addressed and returned from the Circuit Court of said County, for and concerning the crime of Petit Larceny, with which he stands charged as by a certain bill of indictment prepared against him by the Grand Jury of said County. Filed in our said Court in that behalf appears. Now therefore if the said Joseph Pittsham shall well and truly be and appear on the first day of the next term of our said Circuit Court, to be holden at the Court House in Princeton, in and for said County on the second Monday of the month of January next A.D. 1856. Then and there in our said Court, to answer unto the said bill of indictment, and abide the order of the Court; and not depart the Court without leave, then this recognizance to be void, otherwise to remain in full force and virtue.

Which said Bond or recognizance was then and there taken and approved of by said Sheriff, and was then and there certified by the said Sheriff, and by him delivered to the Clerk of the Circuit Court of said Bureau.

County, and was duly filed & record. in the office
of the Clerk of the Circuit Court of Said Bureau County
on the 14th day of January A.D. 1856.

And whereas at the next succeeding Term of
the Said Circuit Court in and for Said County of Bureau
To wit. at the January Term thereof begun and held
at the Court House in Princeton in Said County, on
Tuesday the 15th day of January A.D. 1856, Joseph Fittshur
being three times solemnly called to come into Court here
and answer as required to do by his said recognizance,
comes not, but makes default, and the said James Waugh
the Security in the said recognizance being three times
solemnly called, to bring into Court, the body of the said
Joseph Fittshur, as required to do by his said recogni-
zance, brings him not, but makes default. It is there-
fore considered by the Court, that the said recognizance
be forfeited. It is therefore further considered by the
Court, that the People of the State of Illinois, have
and recover of the said Joseph Fittshur and James Waugh
the said sum of One hundred Dollars the amount of the
penalty in the said recognizance, and the Court further
considers that a *Scirefacias* be issued herein against
the said defendants directed to the Sheriff of Bureau
County, commanding him to summon said defendants
to show Cause if any they have, why the said People
shall not have Execution against them for the
Collection of the said sum of One Hundred dollars
aforesaid, with their Costs and Charges herein expen-
ded.

We therefore Command you that you summon the Said Joseph Fitzhugh, and the Said James Waugh if to be found in your County, to personally be and appear before the Judge of our Said Circuit Court, on the first day of the next Term thereof to be holden at the Court House in Princeton in Said County, on the fourth Monday in the month of March Inst. To show Cause if any they have, why the Said People of the State of Illinois shall not have execution against them severally for the Said Sum for which they are respectively bound, according to the force form and effect of their Said recognizance, and further to do and receive whatever our Said Court, shall then and there consider and adjudge against them in that behalf, hereof fail not, and make return of this writ with an endorsement thereon of the time and manner of serving the Same on or before the first day of the term of Said Court, to be holden as aforesaid,

(S.S.)

Witness Our hand & the Seal thereof
at Princeton in Said County this 10th
day of March A D 1856.

Edward Mc Fisher Clerk

Copy of Sheriffs Return on Said writ
Served by reading to James Waugh this 11th day of
March 1856. Joseph Fitzhugh not found in my County.

Stephen G. Pad dock

Sheriff Bu Co Ills By
George W. Reese Dy

Pleas before the Hon^{ble} Mr. C. Hollister
Judge of the ninth Judicial Circuit, of the Cir-
cuit Court of the State of Illinois at the March Term
of Said Circuit Court. begun and held at the Court
House in Princeton in Said County, on the Twenty
fourth day of March in the year of Our Lord
One Thousand Eight Hundred and fifty six.

Present Mr. C. Hollister Judge
C. Mc Fisher Clerk
S. G. Paddock Sheriff

To Wit on the 3^d day of Said Term
The People of the State of Illinois.

vs. Scifa on Recog.

Joseph Pittsham & James Waugh

Now comes James
Waugh one of the defendants, by Milo Wendall
his attorney, and files his plea herein in the words
and figures following To Wit.

And. Now comes the Said James Waugh
one of the defendants in this Cause, impleaded
with the Said Joseph Pittsham, and defends the
same and says when &c. and says that the
Said People ought not to have judgment against
this defendant, by the Said Scifas on the Said
Recognizance, and ought not to have execution
against him, because he says that at the

October Term of said Circuit Court 1855. the said Court made an order fixing the sum of one hundred dollars as the amount of bail. to be endorsed by the Clerk on the said writ of Capias ad respondendum, in said Senefaces mentioned, and the Clerk of said Court, on issuing the said Capias, endorsed the said sum of one hundred dollars on the said process, as the amount of bail ordered by the Court to be taken thereon by the said Sheriff, but the said Sheriff instead of taking the said Recognizance in the said sum of one hundred dollars, unlawfully and contrary to the express order of the said Court, took a recognizance for the sum of two hundred dollars. So this defendant says the same is illegal and void, and that no judgment or execution ought to be rendered or awarded thereon, or in consequence thereof and this the defendant is ready to verify, wherefore he prays judgment.

Wendall for Deft
James Waugh

and the said People says that the within plea is not sufficient in law & they pray judgment &c.

Milton L Peters atty for
People

Now comes M. L. Peters in behalf of the People and files his demurrer to said defendants plea. and the defendant James Waugh. comes by Wendall his attorney, and after argument of Counsel

Filed March 25-1856
Celler Sirhan cllr

and the Court being fully advised in the premises said demurrer is sustained by the Court. It is therefore considered by the Court. that said People have Execution against the said defendant James Wauzgh. for the Collection of the said judgment for the amount of One hundred dollars. herein before entered against said defendants. Together with all their Costs and Charges herein expended.

And the said defendant by his said Attorney moves the Court for an appeal to the Supreme Court, which is allowed by the Court, on Condition that an appeal bond be filed herein in the sum of Three Hundred dollars. with Michael Kennedy or Milo Kendall as Security, within thirty days from this date.

Copy of appeal bond to Supreme Court
 We know all men by these presents that we James Wauzgh as principle, and Michael Kennedy as security both of the County of Bureau and State of Illinois, are held and firmly bound, unto the people of the State of Illinois, in the penal sum of Three hundred dollars, current money of the United States, for the payment of which well and truly to be made, we bind our selves our heirs Executors and administrators, jointly severally and firmly by these presents, witness our hands and seals this 17th day of April A.D. 1856.

The Condition of the above obligation is such

8 That whereas The People of the State of Illinois, did on the 25th day of March A.D. 1856, in the Circuit Court in and for the County of Bureau obtain an order for Execution on a Conditional judgment on forfeiture of Recognizance rendered by Said Circuit Court at the January Term thereof A.D. 1856, against the above bounden James Waugh, Impleaded with one Joseph Fittsbur for the Sum of One Hundred dollars debt, and dollars & Cents Cost of Suit from which Said judgment and order of the Said Circuit Court, the Said James Waugh, has prayed for and obtained an appeal to the Supreme Court of the Said State. Now if the Said James Waugh, shall duly prosecute his Said appeal with effect, and shall moreover pay the amount of the judgment, Interest and damages and Costs rendered or to be rendered against him in case the Said judgment shall be affirmed in the Said Supreme Court. Then this Obligation to be void, otherwise to remain in full force and virtue

James W. W. (Seal)
Michael Kennedy (Seal)

Clerk's fees
 Copy of Record \$2.50
 cfft. + seal 35
\$2.85

State of Illinois

Princeton County Ill

I Edward M. Fisher Clerk
of the Circuit Court within
and for said County, in the State aforesaid do
hereby Certify that the foregoing is a true copy
& Transcript of the Scintificas. Defendants plea.
Ordeal of the Court, & Copy of appeal bond, in the
foregoing entitled Cause as on file & of Record in
my office.



In Testimony whereof I have here
unto subscribed my name and
affixed the Seal of said Court at
Princeton in said County this 14th
day of May A.D. 1856.

Edward M. Fisher

Clerk

Now comes the appellant and says that in the record
aforesaid and in the rendition of the
Judgment aforesaid there is manifest error in
this to wit

- 1st The Court erred in sustaining the demurrer to defendants plea
- 2^d The Court erred in rendering the judgment aforesaid in manner and form aforesaid
- 3^d The Court erred in awarding execution against the appellant in manner & form aforesaid

B. C. Cook
for appellant

6
The People
vs
James Waugh

Copy of Record

Filed June 11, 1856
S. Leland
Clerk

JAMES WAUGH
vs
THE PEOPLE. } APPEAL FROM BUREAU.

Scire facias on Recognizance.

Page

1. *Scire facias* recites that appellant and one J. Fittsher came before S. G. Paddock Sheriff of said county, Fittsher having been arrested upon a *capias* issued from the circuit court, for and concerning the crime of larceny, and the said Waugh and Fittsher executed and delivered to said Sheriff, a bond or recognizance whereby they severally acknowledged themselves to owe and be indebted to the people of the State of Illinois, the sum of two hundred dollars each, to be paid to the People if default should be made in the condition following, to wit:

2. Whereas the said Sheriff has this day arrested the said Joseph Fittsher, upon a writ of *capias*, ad respondendum issued from the circuit court of said county, for and concerning the crime of Petit Larceny with which he stands charged as by a certain bill of Indictment preferred against him by the Grand Jury of said county; filed in our said court in that behalf, appears.

Now therefore if the said Joseph Fittsher shall well and truly be & appear on the first day of the next term of our said circuit court to be holden at the court house in Princeton, in and for said county, on the second Monday, in the month of January next, AD 1856, then & there in our said court, to answer unto the said bill of Indictment and abide the order of the court, and not depart the court without leave, then this recognizance to be void, otherwise to be and remain in full force and virtue.

Which said bond was approved by the said Sheriff and filed of record in the office of the clerk of the circuit court of said Bureau county, on the 14th day of January A D 1856.

The *scire facias* then recites that at the next term of the circuit court, Fittsher did not appear and his default was entered, and that a judgment was rendered in the following form. It is therefore considered by the court that the People of the State of Ills. have & recover of the said Joseph Fittsher and James Waugh, the said sum of one hundred dollars, the amount of the penalty in the said recogni-

3. zance, and the court further considers that a *scire facias* be issued &c. The *Scire facias* commands the defendants to show cause why the People should not have execution against them severally for the said sum for which they are respectively bound according to the form, force and effect of their said recognizance.

At the March term A D 1856, of the circuit court of said county, Waugh filed, the following plea.

THE PEOPLE OF THE STATE OF ILLINOIS

vs

JOSEPH FITTSHER AND JAMES WAUGH.

5. Now comes James Waugh one of the defendants, by Milo Kendall his attorney and defends the wrong and injury when &c. and says that said People ought not to have Judgment against this defendant, by the said *Scire facias* on said recognizance, and ought not to have execution against him, because he says that at the October Term of said circuit court 1855, the said court made an order fixing the sum of one hundred dollars as the amount of bail to be endorsed by the clerk on the said writ of *capias* ad respondendum, in said *scire facias* mentioned, and the clerk of said court on issuing the said *capias*, endorsed the said sum of one hundred dollars on the said process as the amount of bail ordered by the court, to be taken thereon by the said Sheriff, but the said sheriff instead of taking the said recognizance in the said sum of one hundred dollars, unlawfully and contrary to the express order of the said court, took a recognizance for the sum of two hundred dollars, so this defendant says the same is illegal and void, and that no Judgment or execution ought to be rendered, or awarded thereon, or in consequence thereof, and this the defendant is ready to verify, wherefore he prays Judgment.

Kendall, for defendant.

7. To which plea there was a general demurrer, which was sustained by the court.

The defendant abided by his demurrer.

7. The court rendered the following Judgment.

It is therefore considered by the court, that the said People have execution against the said defendant James Waugh, for the collection of the said judgment, for the amount of one hundred dollars hereinbefore entered against said defendants, together with all their costs and charges herein expended.

Errors Assigned.

9. 1. The court erred in sustaining the demurrer to the defendants plea.

2. The court erred in rendering the Judgment aforesaid, in manner and form aforesaid.

3. The court erred in awarding execution against the appellant in manner and form aforesaid.

B. C. COOK.

For appellant.

Leads for Relf-

3 Salmon 327 bail \$100. He took \$200 - which
he had no authority to do. The
act was veiled as if he had
had no authority in relation
to take the bail at all.

41 Humph 213. Sheriff must take bail in
pursuance of his authority.
Just for right amount must be
or nothing

JOSEPH MILLER AND JAMES WATSON

THE PEOPLE OF THE STATE OF ILLINOIS

vs

JOSEPH MILLER AND JAMES WATSON

vs

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vs

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vs

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JOSEPH MILLER AND JAMES WATSON

vs

JOSEPH MILLER AND JAMES WATSON

vs

JOSEPH MILLER AND JAMES WATSON

Wangh
The People
Abstract

Filed June 24, 1855
Leland
Clerk

THE PEOPLE
vs
JAMES WATSON