

12783

No. \_\_\_\_\_

Supreme Court of Illinois

Garrison

---

vs.

People

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7-205

Andrew Garrison  
vs  
The People &c.

7 P D

~~7 P D~~

1859



Supreme Court  
Andrew Garrison  
vs. upfold  
The People &c

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Appellant of Error

Garrison & Hudson

Filed April <sup>city</sup> 28. 1839  
L. Leland  
Clerk

7 - 208

Supreme Court

Andrew Garrison

vs <sup>impld vs</sup>  
Puffin Error

The People of the State  
of Illinois

Record from Records at  
Chicago

Filed Apr. 21. 1889.  
L. Veland Clerk.

Garrison

Garrison & Wallace  
attys for Puffin  
Error



State of Illinois } Supreme Court thereof  
3rd Grand Division  
April Term AD 1859

Andrew Garrison  
vs. - vs

The People &c

And now come  
the said People and

say, that there is no error nor  
manner of error, either in said  
record or proceedings aforesaid  
or in giving the judgment  
aforesaid and therefore they pray  
that the said judgment may  
be affirmed. & that their costs  
may be adjudged to them. &c

By W. B. Whipple  
States Atty



No 7  
Garrison  
vs  
The People &c  
Union in Error

Filed April 21. 1859

L. H. Arnold

Clerk



STATE OF ILLINOIS, } ss. The People of the State of Illinois,  
SUPREME COURT,

To the Sheriff of the County of *La Salle* — Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment  
of a plea which was in the *Recorder's* — Court of *the City of Chicago*  
*Court* before the Judge thereof, between *The People of the State of Illinois*

plaintiffs and *Andrew Garrison and Henry Free love* —

defendants, it is said that manifest error hath intervened, to the injury of the said

*Andrew Garrison & Henry Free love* —

as we are informed by *their* complaint, — the record  
and proceedings of which said judgment we have caused to be brought into our Su-  
preme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct  
the errors in the same, in due form and manner, according to law; Therefore, We  
Command You, That by good and lawful men of your County, you give notice to ~~the said~~

*Washington Bushnell State Attorney for the*  
*Supreme Court within & for the 3<sup>d</sup> Grand Division of the State*  
*of Illinois* —

that he be and appear before the Justices of our said Supreme Court, at the next  
term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the  
term of said Court, to be assigned; if *he* shall see fit; and further to do and receive what said  
Court shall order in this behalf; and have you then there the names of those by whom  
you shall give the said *Washington Bushnell* —

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice  
of our said Court, and the Seal thereof, at Ottawa,  
this *9<sup>th</sup>* — day of *April* in the  
Year of Our Lord One Thousand Eight Hundred  
and Fifty-nine.

*L. L. Land*  
Clerk of the Supreme Court.

*by J. B. Rice Deputy*



by  
The People's  
Seifer

Served this writ by reading the same  
to Washington Bushnell on the  
9<sup>th</sup> day of April 1859

For Cause Shk  
By G. W. Fox & Co

Ind \$260

1 mile

5  
65-4

Paul by A. Garrison

Filed April 9, 1859

L. Leland  
Clerk



Supreme Court

Andrew Garrison <sup>v</sup>pleaded with Henry Freelon  
et al Plffs in Error

vs

The People of the State of Illinois

Defendants in Error

---

Clerk Issue a writ of Error to  
The Recorder Court of the City of  
Chicago in the Case of the People of the  
State of Illinois vs Henry Freelon &  
Andrew Garrison &c &c

And that Scire facias issue to Sheriff  
of Cook's County Illinois re

April 6. 1839

A. Garrison

Atty -

in proper person &  
for himself alone



2051  
Andrew Garrison et al

vs  
The People vs

Recipe

Supreme Court

Andrew Garrison

et al  
vs Peffie in Error

The People of the  
State of Illinois

vs

Filed April 2, 1859  
S. Leland  
clerk

A. Garrison

att'y



# SUPREME COURT.

ANDREW GARRISON,  
Impleaded, &c.,  
vs.  
THE PEOPLE OF, &c.

ERROR FROM RECORDER'S  
COURT OF CHICAGO.

## ABSTRACT.

Pleas of April Term, 1858, of the Recorder's Court, held the first Monday of April, 1858.

"And afterwards, to wit:

"Be it remembered that a recognizance was filed in the office of the clerk of the Recorder's court, of the city of Chicago, being in the words and figures as follows (endorsement of filing as on the back of "the same"):

(Here is copy of Recognizance in the words and figures the same as in the *Scire Facias* hereinafter inserted.)

(On the back thereof endorsed.) "Filed April 17, 1858."  
~~JOS. K. C. FORREST, Clerk.~~

SATURDAY, April 17, 1858.

THE PEOPLE OF THE STATE  
OF ILLINOIS  
vs.  
HENRY FREELOVE.

This day comes the said People, by Carlos Haven, State's Attorney, and the said defendant, being three times solemnly called, came not, nor any one for him, but herein fails and makes default, and Andrew Garrison, security for the said Henry Freelove being three times solemnly called, that he produce the body of said defendant, and failing therein, thereupon



It is ordered by the court that the default of the defendant and his security be entered of record, and that *scire facias* issue returnable to the next term of this court.

(Copy of *Scire Facias*.)

3  
State of Illinois,  
COUNTY OF COOK,  
CITY OF CHICAGO.

*The People of the State of Illinois, to the Sheriff of Cook County :—*  
GREETING.

WHEREAS, on the twenty-fifth of March, A. D., 1858, Harry Freelove and Andrew Garrison appeared before John King, Jr., a justice of the peace, in and for said county, and entered in recognizance, in the words and figures as follows, to wit:

STATE OF ILLINOIS, }  
COOK COUNTY. } ss.

THIS DAY, personally appeared before the undersigned, one of the justices of the peace in and for said county, Harry Freelove and Andrew Garrison, and jointly and severally acknowledged themselves to owe and be indebted unto the People of the State of Illinois, the sum of one thousand dollars, to be levied of their goods and chattels, lands and tenements, if default be made in the premises and conditions following, to wit:

WHEREAS, the above bounden Harry Freelove, on the 25th day of March, A. D., 1858, was examined by and before John King, Jr., justice of the peace in and for the county aforesaid, on a charge preferred against him for Bigamy, and upon hearing the testimony of all the witnesses present, (they having been duly sworn) was adjudged and required by said justice to give bonds, as required by the Statute in such cases made and provided, for his appearance to answer to said charge. Now, the condition of this recognizance is such, that if the above bounden Harry Freelove shall personally be and appear before the Recorder's Court of the city of Chicago, in the said county of Cook, on the first day of the



next term thereof, to be holden at the court house in Chicago, on the first day of the next term thereof, A. D., 1858, and from day to day thereafter, until discharged by order of said court, then and there to answer to the said People of the State of Illinois, on said charge of Bigamy, abide the order and judgment of said court, and not depart the same without leave, then, and in that case, this recognizance to become void; otherwise to be and remain in full force and virtue.

As WITNESS our hands and seals, this twenty-fifth day of March, A. D., 1858.

Taken, entered into, and acknowledged, before me this 25th day of March, A. D., 1858.

JOHN KING, Jr.,  
J. P.

HENRY FREELOVE, [L.S.]  
ANDREW GARRISON, [L.S.]

Which said recognizance was filed in the clerk's office of the recorder's court, on the 25th day of March, A. D., 1858.

3  
And whereas, at the April term of said Recorder's court of the city of Chicago, began and held at the court house, on the first Monday of April, A. D., 1858, in the city of Chicago, in said county of Cook, the said Henry Freelove was three times solemnly called to answer to the charge preferred against him, in said recognizance set forth, come not, nor any one for him, but herein failed and made default; and the said Andrew Garrison being three times solemnly demanded that he bring the body of the said Henry Freelove into court, or that his said Recognizance would be declared forfeited, came not, nor any one for him, nor did he produce the body of the said Henry Freelove, but made default herein, which was taken and entered of record against the said Henry Freelove and Andrew Garrison, and their Recognizances declared forfeited.

Now THEREFORE, we command you that you summon the said Henry Freelove and Andrew Garrison if they shall be found in your County, personally to be and appear before our Recorder's Court of the City of Chicago, in the County of Cook, and State of Illinois aforesaid, on the first day of the next term thereof, to be holden at the Court House in



said Chicago on the first Monday of June next then and there to show cause if any they have or can show, why the forfeiture aforesaid should not be made absolute and the people of the State of Illinois have execution to make the amount of the same according to the force, form and effect of the said recognizance; and have you then and there this writ with an endorsement thereon, in what manner you have executed the same.

WITNESS, J. K. C. FORREST, Clerk of our said Court, and the seal thereof, at Chicago, this twelfth day of May A.D. 1858.

JOS. K. C. FORREST.

*Clerk.*

4

Sheriff's return—"Served on Garrison; Free love not found."

JUNE 9, 1858.

PEOPLE

*vs.*

ANDREW GARRISON, *impl.*  
with HENRY FREELOVE.

*Sci. Fa.*

4  
Henry ~~Free~~ Free love, being now three times solemnly called comes not nor any one for him, but herein fails, and the said defendant, Andrew Garrison, having been again called to produce the body of the said Defendant Henry Free love, and failing therein, and also failing to show cause why the said default should not be made absolute according to the force and effect of said recognizance in said *Scire Facias* mentioned.

Thereupon it is ordered by the court, that the said people of the State of Illinois, do have and recover of the said defendant, Andrew Garrison, the said sum of one thousand dollars in said *Scire Facias* mentioned, to-

gether with their costs and charges in and about this suit, in that behalf expended and have execution, therefor.

(No averment in judgment, or record that an indictment had been found.)

5 (No call to produce to answer the charge of Bigamy.)

Copy of *Fi. Fa.* return &c.

GARRISON & HUDSON,  
*Attorneys for Plaintiff in error.*



7-2054

Supreme Court

Andrew Garrison

vs wife &c

The People vs

---

Abstract

Garrison & Hudson

Filed May 16, 1859

L Leland

Clerk

# SUPREME COURT.

## STATE OF ILLINOIS.

ANDREW GARRISON,

*Impleaded, &c.*

*vs.*

THE PEOPLE, &c.

)

*Error from Recorders'*

*Court, Chicago.*

POINTS, &c., OF PLAINTIFF IN ERROR.

### FIRST.

The Scire Facias does not aver that Harry Free love was called or that Plaintiff in Error was called to produce the body of Harry Free love to answer the charge of Bigamy.

See Record, 2 and 3.

The Scire Facias is both the writ and declaration.

16 Ill. 171, Wood vs. People.

There is no averment that Harry Free love and Henry Free love are one and the same person. Such averment was necessary.



11 Ill. 542, Graves vs. The People.

## SECOND.

There was no indictment found against either Harry or Henry Freelove.

The defendant, Freelove, could only be held to answer to an indictment.

See Const. of Illinois Scates' Statute, page 73, Section 10 :  
 "No person shall be held to answer for a criminal charge, unless on  
 "the presentment or indictment of a grand jury."

16 Ill. 171, Wood vs. People.

13 Ill. 696, Thomas vs. People.

## THIRD.

There was no judgment of forfeiture of the recognizance. ]

See Record, page 2.

There should have been a judgment of forfeiture.

13 Ill. 696, Thomas vs. The People.

20 Ill. 381

15 Ill. 418

The words *default* and *forfeiture* are not the same in meaning.

## FOURTH.

The recognizance not being filed of Record, the court had not jurisdiction to call or default Plaintiff in Error.

See Record, page 1.

20 Ill. 381

Neither could it order a Scire Facias.

17 Ill. 252; 7 Hill, R. 24.

4 Gil. 433, and cases there cited.



"The Scire Facias is a judicial writ, based upon a matter of record, *and is but a continuation of the previous proceedings in the case.*"

16 Ill. 171, Wood vs. People.

You cannot acquire jurisdiction by averment.

See 6 Barbour, 607, Harrington vs. People.

5 Ill, 168.

7 Barbour, R. 39.

#### FIFTH.

The Scire Facias issued was a nullity. The court, at the April Term, ordered a Scire Facias to issue, returnable at the next term.

See page 2.

It was issued in May, returnable in the June term.

Statute, Seates, page 663, sec. 12.

The law fixes *the term of the Recorders' Court monthly*, and by no *power* but by order of the Common Council, can any of the terms be dispensed with.

Session Laws, 1853, 147.

R. S. 313, sec. 1.

1 Chitty's Pleading, 223.

1 Term R. 144.

6 Term R. 559.

GARRISON & HUDSON.



<sup>7-20</sup>  
Supreme Court  
Andrew Garrison  
vs. Impover

The People

Power & Authority  
of Plaintiff

7 P.D.

Garrison & Hudson  
attys

Filed May 17, 1859

L. Leland  
Clerk

1859

12783



Supreme Court  
Andrew Garrison Impl<sup>ty</sup>  
Plff in Error

Plff's Plea  
"

The People of the State of  
Illinois - Deft. in Error

## II

On the 25<sup>th</sup> day of March 1858 one  
Harry Teelove. was examined by & before  
John King Jr a Justice of the Peace of the City  
of Chicago on a Charge of Bigamy, and such  
proceedings were thereupon had by & before  
the said Justice that the said Harry Teelove  
was then & there adjudged and required by  
said Justice to give bonds as required by  
Statute for his appearance at the Records  
Court of said City of Chicago at the next Term  
thereof to answer said charges

That in pursuance of such requirement  
the said Harry Teelove as principal and  
Andrew Garrison his Surety did on said  
25<sup>th</sup> day of March 1858 appear before  
said Justice and then & there enter into a  
Recognizance in the sum of one thousand  
dollars; Conditioned that the said Harry  
Teelove, should personally be & appear before  
the <sup>said</sup> Records Court &



Now in order to forfeit such  
Recognition and thereby Establish the  
legal liability of the Society, certain  
things are absolutely necessary to be  
acted, done and performed,

It therefore becomes important  
to Enquire

First - What these necessary things  
are, and

Second - Whether they have been  
done and performed,

First Then. In order to fix the legal  
liability of the Society: We say, the Principal  
Harry Freelove should have been Indicted  
upon the charge of Bigamy, and this  
should appear upon the face of the  
Record see 4<sup>th</sup> Gilmer - 434. Constitution  
of Ill. Sec - 10<sup>#</sup>. For unless such Indict-  
ment had been found at the Term of the  
Recorder's Court ~~to~~<sup>at</sup> which the prisoner  
was bound to appear, he should have  
been discharged,

Second - The prisoner Harry Freelove  
should by that name, and none other,  
have been 3 times solemnly called in open  
Court to answer the charge preferred  
against him and that he made default

Third - That Andrew Garrison

\* 13 2A 696 -



13 JU 696  
20 JU 381  
15 JU 418

the Prisoners, Surety also should have been 3 times solemnly called & demanded to bring before the Court, the body of Harry Freelove the Person <sup>whom</sup> he had undertaken to produce, (and name either) or that his recognizance be declared forfeited, <sup>also that Judgment of forfeiture be ordered</sup> Entered of Record Forth - That before a Scire Facias can issue against the Bail, the Recognizance must be made Matter of Record,

Second - Have these things been done and performed? Clearly not. - The Contract & agreement of Andrew Garrison as Surety for the Prisoners appearance & was and is, a simple civil undertaking or agreement, and the duty of our Courts is, to construe & enforce it, not make, change or modify it. - And before a contract or agreement can be enforced in our Courts of Law, it must be shown, that there has been some breach of the contract or agreement. - 11<sup>th</sup> Illinois 548. Here no breach of the agreement appears from an inspection of the Record.

Garrison agreed with the People of the State of Illinois, that the Prisoner Harry Freelove, should personally be and appear before the Recorder's Court of the City of Chicago at the then next Term



Thereof, to answer to the charge of  
Bigamy - We say for aught that appears  
in the Record Harry Freelove the  
person for whom Garrison became bound,  
did appear and was ready to answer  
to said charge of Bigamy when called  
upon so to do, and that Garrison had  
him in Court pursuant to his agreement  
for that purpose - But in as much as  
he was not called upon to answer, his  
omission to answer cannot be construed  
into a breach of his agreement,

We say that the language employed  
in the agreement is simple, plain and  
direct, therefore not open to construction  
besides - If this Court had the power of  
construction, how can they say as the  
Record now stands, that Harry Freelove  
is the real and bonafide name of the  
person for whom Garrison became  
bound and holder; and that Henry  
Freelove the person called was and is  
another and different person altogether -  
Garrison contracted to have Harry Freelove  
in Court to answer &c, and no Court has  
the right to change that contract so as  
to compel him to have in Court an  
other person by the name of Henry Freelove.  
This Court cannot say from an



Neither is it averred in the same facts  
that Harry & Henry Freelow are  
one and the same person  
11 Ill 542

inspection of the Record say that Harry  
Freelow and Henry Freelow are one and  
the same person - For it is not averred  
in the Record that the Prisoner was  
known as well by the name of Henry  
Freelow as Harry Freelow, nor that they  
were or are the same person - If they  
are the same, this should have been  
averred in the Record, and then if not  
averred the fact would have been taken  
as true - This Court could then say  
from the facts in the record that they  
were the same - But as the Record now  
is no such inference can be drawn  
from it - See 11<sup>th</sup> Illinois 543,

But it is sufficient for us to  
say, that we neither undertook nor  
promised to have Henry Freelow in  
Court to answer said charge of Bigamy -  
That is not our agreement; and no  
Court by its adjudication can make  
an agreement for us.

Second - The Prisoner Harry Freelow  
by that name, was never 3 times solemnly  
called in open Court to answer to the charge  
of Bigamy against him.

Third - nor was Garrison 3 times  
solemnly called in open Court to produce  
the Body of Harry Freelow the person



It is entirely clear from a view of the record that no recognizance had or was filed of record on the 25<sup>th</sup> of March 1835—upon such records alone must the people in this case recover—They cannot even one thing recover or in the production by a different County

whom he had undertaken to have them or his recognizance would be forfeited—

Fourth—Written was the recognizance filed and thereby made Matter of Record before Calling the Prisoner and his Surety and the forfeiting of the recognizance. There was no record in Court until the Recognizance was filed. Hence the Court had no jurisdiction to proceed in the matter. And if any proceedings were had in the matter before the recognizance was made Matter of Record that all such proceedings were and are Coram non iudice and void. Indeed the Record shows upon its face that the recognizance has never been filed. Hence no default or forfeiture of the recognizance could legally have taken place see 17. Ill. 252—

The Record should show affirmatively that the Recognizance was legally made Matter of Record, and the time when,

But it may and perhaps will be said that the presumption in favor of judicial proceedings will supply all apparent defects in the Record, and that it must be presumed that the Court below had jurisdiction of the matter and that all things necessary to confer such



jurisdiction had been ~~done~~ #

This we deny - The filing of the Recognizance is a ministerial act, and by that act jurisdiction is conferred upon the Court below to proceed in the matter - The presumption in favor of judicial duty, does not apply to the doing of a vital jurisdictional act see - 7 Barb. S. C. Rep. N.Y. 39

We have already said that the Record upon its face shows that the Recognizance has never been filed - see Case, page 1 Hence we say that no Court or officer can acquire jurisdiction by the mere assertion of it, or by falsely alledging the existence of facts on which jurisdiction depends, 6 Barb. N.Y. Rep. 607

## II II

We say in our 2<sup>d</sup> point which we make - That in as much as the Scire Facias was sued out at the April Term of the Recorders Court, it should have been made returnable at the then next term, and not having been made returnable until the June Term renders it void - By the act of Incorporation creating the Recorders Court provision is made therein for a term of said Court to be

13 Ju 696  
20 Ju 381  
17 Ju 252



The terms are made by Statute monthly - and  
no power exists save by or der of  
the Common Council to depart with  
any of the terms, See Statute page 663 -

in the first Monday of Each & Every  
Month - Hence we say that the Scire  
facias should have been made returnable  
on the first <sup>term</sup> day of May - and not  
on the first Monday of June - see  
Sess. Laws of 1853 - Page 147, Sec. 12  
Revised Stat. of Ill. page 413. Sec. 1  
Provides that process shall issue under the  
Seal of the Court. Tested in the name of  
the Clerk of such Court dated on the  
day it shall be issued and signed with his  
name & and shall be made returnable  
on the first day of the next Court in  
which the action shall be commenced.

In pleading a Statutory right  
when there is an exception in the  
Enacting Clause, the party must show  
that the Act is not within <sup>the</sup> exemption  
1. Chit Pl. 223 - 1 Term Rep. 1445 - 6th Id. 559 -  
Bac. Ab. S. C.

It is a rule of construction that if an affirmative  
Statute which is introductory of a new law or mode of  
proceeding, direct a thing to be done in a certain way  
that it shall not even although there are no negative words  
be done in any other manner. - 9 Bac. Ab. 2307

Green Court  
Green Garrison & Co  
vs  
People of Illinois  
Defendant



The point is raised also in this case  
that no "judgment of forfeiture" was  
entered prior to the order of Sequestration.  
(in fact never entered)

We consider this fatal Kennedy vs People 418.15 Ill R

In that case the Court say "a judgment of forfeiture must be entered upon a recognizance before a *Scire Facias* can issue —

In this case see Record page 2' after calling the parties the Court—make the following order which is the only order upon the subject.

"It is ordered by the Court that the default of the Defendant this security be entered of Records and That a Scire Facias issue be returnable to the next term of this Court"

This then is identical with the above case

But the People State in their  
 With of Siero Hacias that the Recognizance  
 was declared forfeited

The insist still this does not help  
The defendant did not appear  
in the case. did not waive any  
right or error — And that  
by the above decision the Court  
had not the power to order a Scire  
facias —

Further this being a thing of Record  
that must exist — no false affirmation  
or assertion in the writ can cure it



6 Barbour 607 - "no Court or  
officers can acquire jurisdiction  
by the mere assertion of it or by falsely  
allying the existence of facts upon which  
jurisdiction depends

"  
— Neither does the Records show or  
does the Scin Facias aver that any  
Indictment had ever been found  
against either Henry or Harry Frober  
"See authority" on the point —  
Garrison could not hold Frober to answer  
any more than an officer. The Court forbids either  
The Defendant in this case has had  
a great <sup>or here to</sup> arrest the principal — had him  
in Irons bringing him <sup>from</sup> St Louis to  
Chicago — when he jumped from  
the Cars, <sup>while in motion of</sup> this side of Bloomington Ill  
escaped the officers — he is now  
tracked to and is in the high confinement  
of Rock Island —

The Principal had obtained  
a divorce from his first wife —  
"upon personal service" long before  
this arrest his solicitor therein being  
the Defendant herein impleaded  
— And why he should own is a  
mystery — Decree from Cook Co of Cook Plaz

A Garrison

The principal part of the above written  
opinion is from the hand of J R Anderson



# SUPREME COURT.

## STATE OF ILLINOIS.

ANDREW GARRISON, <i>Impleaded, &amp;c.</i>	}	<i>Error from Recorders' Court, Chicago.</i>
<i>vs.</i> THE PEOPLE, &c.		

POINTS, &c., OF PLAINTIFF IN ERROR.

### FIRST.

The Scire Facias does not aver that Harry Freelove was called or that Plaintiff in Error was called to produce the body of Harry Freelove to answer the charge of Bigamy.

See Record, 2 and 3.

The Scire Facias is both the writ and declaration.

16 Ill. 171, Wood vs. People.

There is no averment that Harry Freelove and Henry Freelove are one and the same person. Such averment was necessary.



7-

205

Supreme Court  
Andrew Garrison  
vs. United  
The People  

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Garrison

Filed May 18, 1859  
L. Leland  
Clerk

Garrison & Anderson  

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attys



11 Ill. 542, Graves vs. The People.

## SECOND.

There was no indictment found against either Harry or Henry Freelove.

The defendant, Freelove, could only be held to answer to an indictment.

See Const. of Illinois Scates' Statute, page 73, Section 10:  
 "No person shall be held to answer for a criminal charge, unless on  
 "the presentment or indictment of a grand jury."

16 Ill. 171, Wood vs. People.

13 Ill. 696, Thomas vs. People.

## THIRD.

There was no judgment of forfeiture of the recognizance.

See Record, page 2.

There should have been a judgment of forfeiture.

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20 Ill. 381

15 Ill. 418

The words *default* and *forfeiture* are not the same in meaning.

## FOURTH.

The recognizance not being filed of Record, the court had not jurisdiction to call or default Plaintiff in Error.

See Record, page 1.

20 Ill. 381

Neither could it order a Scire Facias.

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+ Gil. 433, and cases there cited.



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You cannot acquire jurisdiction by averment.

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#### FIFTH.

The Scire Facias issued was a nullity. The court, at the April Term, ordered a Scire Facias to issue, returnable at the next term.

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The law fixes *the term of the Recorders' Court monthly*, and by no *power* but by order of the Common Council, can any of the terms be dispensed with.

Session Laws, 1853, 147.

R. S. 313, sec. 1.

1 Chitty's Pleading, 223.

1 Term R. 144.

6 Term R. 59.

GARRISON & HUDSON.



117-205

Supreme Court  
Andrew Garrison  
vs impd re

The People

---

Prints vs of Peff

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Garrison & Hudson  
Attys —

Filed May 17, 1859  
L. L. Clark  
Clerk



STATE OF ILLINOIS, }

Cook COUNTY, } ss.

*Back of the same*

This Day, personally appeared before the undersigned, *one* of the Justices of the Peace in and for said County, *Warren Freelove & Andrew Garrison* and jointly and severally acknowledged themselves to owe and be indebted unto the People of the State of Illinois, the sum of *One Thousand* dollars, to be levied of their Goods and Chattels, Lands and Tenements, if default be made in the premises and conditions following, to wit:

WHEREAS the above bounden *Warren Freelove* on the *25<sup>th</sup>* day of *March* A. D. 18*58* was examined by and before *John Thring* a Justice of the Peace in and for the County aforesaid, on a charge preferred against him for *Bigamy*

and upon hearing the testimony of all the witnesses present, (they having been duly sworn) was adjudged and required by said Justice to give bonds, as required by the Statute, in such case made and provided for his appearance to answer to said charge. Now, the condition of this recognizance is such, that if the above bounden

*Warren Freelove* of the City of *Chicago* in shall personally be and appear before the *Recorder's* Court of the said County of *Cook* on the first day of the next term thereof, to be holden at the Court House in *Chicago* on the *first day of the next term thereof* A. D. 18*58* and from day to day thereafter, until discharged by order of said Court, then and there to answer to the said People of the State of Illinois, on said charge of *Bigamy*

abide the order and judgment of said Court, and not depart the same without leave, then and in that case this recognizance to become void: otherwise to be and remain in full force and virtue.

As witness our hands and seals, this *25<sup>th</sup>* day of *March* A. D. 18*58*  
Taken, entered into and acknowledged, before me this *25<sup>th</sup>* day of *March* A. D. 18*58*

*John Thring, J. P.*

*Warren Freelove* [L. S.]

*Andrew Garrison* [L. S.]

[L. S.]



~~Filed April 17~~  
~~1888~~

~~Wm. C. Forrester~~  
Wm. C.



1  
State of Illinois }  
County of Cook } ss. Pleas before the Honorable  
City of Chicago } Robert S. Wilson Judge of the  
Recorder Court of said City at a Term  
begun and held at the Court House of the City of  
Chicago, County and State aforesaid, on the First Monday  
of, it being the Fourth day of April in the Year of our  
Lord One Thousand Eight hundred and Fifty nine  
And of the Independence of the United States the  
Eighty third.

Present: Hon Robert S. Wilson Recorder of the  
City of Chicago.      Charles Hawen. State Attorney  
John Gray Sheriff of Cook County  
Attest: Jas. H. L. Forrest Clerk of said Court.

Be it Remembered, that ~~on the Twenty fifth~~  
~~day of March A.D. 1858~~ a Recognizance was filed  
in the Office of the Clerk of the Recorder Court of the  
City of Chicago being in the words and figures as follows  
~~may~~ to wit: (Endorsement of filing as on the)



Endorsed

Witnesses

Chas Furundiff

John Flynn

Julia Inelove

J.A. Haisington & wife  
all of Chicago

And afterwards to wit on the seventeenth day of April 1858, it being one of the days of the <sup>April</sup> Term of Court aforesaid the following among the proceedings were had and Entered of Record in said Court which proceedings are in the words and figures following to wit:

The People of the State of Illinois  
vs

Henry Inelove

1 Begun

This day comes the People by ~~James~~ <sup>James</sup> States Attorney and the said Defendant being three times solemnly called comes not nor any one for him but herein fails and makes default and Andrew Garrison, security for the said Henry Inelove being three times solemnly called that he produce the body of the said Defendant and failing therein thereupon

It is ordered by the Court that the default of the Defendant and his security be entered of Record and that a *Scire Facias* issue returnable to the next Term of this Court.

And afterwards to wit on the Twelfth day of May. ad. 1858 a *Scire Facias* was issued by the Clerk of the said Recorders Court being in words and figures <sup>as follows</sup> to wit:



State of Illinois, }  
County of Cook,  
3 City of Chicago, }

The People of the State of Illinois, to the Sheriff of Cook County:—GREETING.

WHEREAS, on the *Twenty fifth* day of *March* A. D. 185 *8* *Henry*  
*Freelove and Andrew Garrison* appeared before  
*John Thier, Jr. a Justice of the Peace in and for said County*  
and entered into a Recognizance, in the words and figures as follows, to wit:

STATE OF ILLINOIS, }  
Cook County, } ss.

THIS DAY, personally appeared before the undersigned, *one* of the Justices of the Peace in and for said County, *Henry Freelove and Andrew Garrison* and jointly and severally acknowledged themselves to owe and be indebted unto the People of the State of Illinois, the sum of *One Thousand* dollars, to be levied of their goods and chattel-, lands and tenements, if default be made in the premises and conditions following, to wit:

WHEREAS the above bounden *Henry Freelove*  
on the *25<sup>th</sup>* day of *March* A. D. 185 *8*, was examined  
by and before *John Thier, Jr.* Justice of the Peace in and for the County  
aforesaid, on a charge preferred against *him* for *Begamy*

and upon hearing the testimony of all the witnesses present, (they having been duly sworn,) was adjudged and required by said Justice to give bonds, as required by the Statute in such cases made and provided, for *his* appearance to answer to said charge. Now, the condition of this recognizance is such, that if the above bounden

*Henry Freelove*  
shall personally be and appear before the Recorder's Court of the City of Chicago, in the said County of Cook, on the first day of the next term thereof, to be holden at the Court House in Chicago, on the *first day*  
*of the next term thereof* A. D. 185 *8*, and from day to day thereafter, until discharged by order of said Court, then and there to answer to the said People of the State of Illinois, on said charge of

*Begamy*  
abide the order and judgment of said Court, and not depart the same without leave, then and in that case this recognizance to become void; otherwise to be and remain in full force and virtue.

AS WITNESS our hands and seals, this *twenty fifth* day of *March* A. D. 185 *8*  
Taken, entered into, and acknowledged, before *him* this *25<sup>th</sup>* day of *March* A. D. 185 *8*

*John Thier, Jr.* *Henry Freelove* [L.S.]  
*J. P.* *Andrew Garrison* [L.S.]

*which said Recognizance was filed in the Clerks Office* [L.S.]  
*of the Recorder's Court on the 25<sup>th</sup> day of March A. D. 1858*

And whereas, at the *April* Term of said Recorder's Court of the City of Chicago, began and held at the Court House, on the *first* day of *April* A. D. 185 *8*, in the City of Chicago, in said County of Cook, the said *Henry Freelove*

was three times solemnly called to answer to the charge preferred against him, in said Recognizance set forth, came not, nor any one for him, but herein failed and made default; and the said *Andrew Garrison* being three times solemnly demanded that he bring the body of the said

*Henry Freelove* into Court, or that his said Recognizance would be declared forfeited, came not, nor any one for him, nor did he produce the body of the said *Henry Freelove* but made default herein, which was taken and entered of Record against the said *Henry Freelove* and *Andrew Garrison* and their Recognizances declared forfeited.



Now, THEREFORE, we command you that you summon the said

and

and if they shall be found in your County, personally to be and appear before our Recorder's Court of the City of Chicago, in the County of Cook and State of Illinois aforesaid, on the first day of the next Term thereof, to be holden at the Court House in said Chicago, on the first Monday of                      next, then and there to show cause, if any they have or can show, why the forfeiture aforesaid should not be made absolute and the People of the State of Illinois have execution to make the amount of the same according to the force, form, and effect of said Recognizance; and have you then and there this writ, with an endorsement thereon in what manner you have executed the same.

WITNESS, PHILIP A. HOYNE, Clerk of our said Court, and the seal thereof,  
at Chicago, this                      day of                      A. D. 185

A. D. 185



PL. FA. FOR PLAINTIFF'S DAMAGES.

STATE OF ILLINOIS, }

CITY OF CHICAGO,  
COUNTY OF COOK,

ss. The People of the State of Illinois to the Sheriff of Cook County, GREETING:

WE COMMAND YOU, that of the lands and tenements, goods and chattels of

*Andrew Garrison*

*imple. with W. Freedom*

defendant in your county, you cause to be made the sum of

*One Thousand*

Dollars and

Cents, which

*the People of the State of Illinois*

plaintiff, lately in the Recorder's Court of the City of Chicago, at a term thereof begun and held at Chicago, in said county,

on the first Monday of

*June*

last past, recovered against the said defendant and

which by the said Court was adjudged to the said plaintiff for

*his damages*

And also, the further sum of

*nine*

Dollars and

*five*

Cents,

which were adjudged to the said Plaintiff for

*his*

costs and charges in that behalf expended, whereof the said Defendant

convicted, as appears to us of Record: And have you these moneys ready to render to the said

Plaintiff for

*his damages*

and costs aforesaid, and make return of this writ

with an endorsement thereon in what manner you shall have executed the same, in ninety days

from the date hereof.

*Jos. H. C. Forrest*

WITNESS, PHILIP A. HOYNE, Clerk of our said Court, and the seal thereof, at Chicago

in said County, this

*17<sup>th</sup>*

day of

*November* A. D. 185 *8*

*Jos. H. C. Forrest*  
CLERK

*Seal*



# RECORDER'S COURT

OF THE CITY OF CHICAGO.

*Fi. Fa. No.*

*Case No.*

*Fee Book*

*Date*

*Return*

*Plff.*

*vs.*

*Def't.*

*Debt - - - \$*

*Damage - - -*

*Plaintiff's Cost - -*

*Defendant's Cost - -*

*\$*

*The Sheriff will collect interest from*

*Plff's ATT'Y.*



NOW, THEREFORE, we command you that you summon the said *Henry Freeborn*  
and *Andrew Garrison* if they shall be found in your County, personally  
to be and appear before our Recorder's Court of the City of Chicago, in the County of Cook and State of Illinois  
aforesaid, on the first day of the next Term thereof, to be holden at the Court House in said Chicago, on the  
first Monday of *June* next, then and there to show cause, if any they have or can show, why  
the forfeiture aforesaid should not be made absolute and the People of the State of Illinois have execution to  
make the amount of the same according to the force, form, and effect of said Recognizance; and have you then  
and there this writ, with an endorsement thereon in what manner you have executed the same.

WITNESS, *Jos. H. C. Forrest*  
~~PHILIP A. HOYNE~~, Clerk of our said Court, and the seal thereof,  
at Chicago, this *Twelfth* day of *May* A. D. 1855 *gr*

[12783-22]



**State of Illinois,**  
**County of Cook,**  
**City of Chicago,**

*The People of the State of Illinois, to the Sheriff of Cook County:—*GREETING.

WHEREAS, on the

day of

A. D. 185 ,

appeared before

and entered in a recognizance, in the words and figures as follows, to wit:



one of the Regular Term days of the June Term of the Court  
aforesaid, the following among the proceedings were had & entered  
of Record in said Court

People of the State of Illinois

Sci fia on

Rea a



which said Scire Facias shows on its face the following return of the Sheriff of Cook County

" Executed By being read by the within named Andrew Garrison this 20<sup>th</sup> day of May 1858 & not finding the within named Henry Freelove  
John L Wilson

Sheriff

By Joseph H Lathrop, Deputy

and afterwards to wit: on the 9<sup>th</sup> day of June a<sup>d</sup> 1858 it being  
And afterwards to wit: on the Ninth day of June  
AD 1858 ~~it being one of the days of term of Court aforesaid~~  
~~and said Scire Facias was served by the Sheriff of the~~  
~~the following among the proceedings were had and~~  
~~said recognisance being the bonds and figures in~~  
~~to wit: entered of record in said Court.~~

People of the State of Illinois  
vs

Sci fa on  
Recogn

Andrew Garrison imple  
vs Henry Freelove

And now again comes the said People by (Lathrop) Haven State Attorney and it appearing to the Court that the said defendant Andrew Garrison has been duly served with process of Scire Facias and the said defendant being now solemnly called come not nor any one for him but herein fails and the said defendant Andrew Garrison having been called to produce the body of the said defendant Henry Freelove and failing therein and also failing to show cause why the said default should not be made absolute according to the force and effect of said Recognisance in said Scire Facias mentioned  
Therefore it is ordered by the said



Count that the said People of the State of Illinois  
do have and recover of the said Defendant Andrew  
Garrison the said Sum of One Thousand Dollars in  
said Scire Facias mentioned together with their costs  
and Charges in and about this Suit on that behalf  
Expended And have Execution therefore

And afterwards to  
Writ on the Nineteenth day of June AD 1858 it being  
one of the days of <sup>the year</sup> Term of Court aforesaid the following  
Among the proceedings were had and Entered of Record  
in said Court  
People of the State of Illinois  
vs

Andrew Garrison impe  
with Henry Freelove

Scia Fa

On motion it is ordered by the  
Court that the Execution on the Scire Facias heretofore  
ordered in this case be stayed until the next term of the  
Court

And afterwards to wit on the Seventeenth day of  
November AD 1858 the following Execution was issued  
by the Clerk of said Court being in words and figures  
as follows to wit:



8 Which said execution shows on its face the following return of the Sheriff of Cook County.

" " I have demanded of the within named defendant the payment of the within Execution and that he surrender property in satisfaction thereof; he says he has none to surrender and being unable to find any whereon to levy this writ, I therefore return the same not part satisfied this fifteenth day of February A.D. 1859

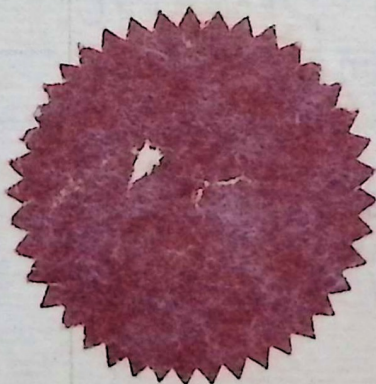
John Gray Sheriff  
By George Anderson Deputy

State of Illinois }  
Cook County }  
City of Chicago } J.

I, Joseph H. C. Forrest, Clerk of the Recorders Court of the City of Chicago, County and State aforesaid, do hereby certify, that the above is a full and true transcript of the Proceedings entered of Record, as also of a *Quia facias* ~~and~~ execution, and Recognisance, in the case of the People of the State of Illinois as Plaintiffs and Andrew Garrison Defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of this Court this 20<sup>th</sup> day of April A.D. 1859

Joseph H. C. Forrest  
Clerk





Supreme Court  
Andrew Garrison

Of April Term AD 1859

is Impled re  
The People of the  
State of Illinois

And now comes Andrew Garrison  
impled re plaintiff in Error by

Garrison & Hudson his attorneys and says that in  
the proceedings record & judgment and in giving of the same  
there is manifest error in this to wit: viz

1<sup>st</sup> Neither the Scire Facias avers, or does the orders  
& judgment show, that Harry Freelove was called  
or defendant called  
to produce the body of Harry Freelove, the person  
he had agreed to produce

2<sup>d</sup>

The Scire Facias does not aver that Harry Freelove  
& Henry Freelove were one and the same person

3<sup>d</sup>

There was no indictment found or averred

4<sup>th</sup>

There is no averment that Garrison was called  
to produce the body of either Henry or Harry  
Freelove to answer the charge of Bigamy—

The judgment shows he was not—

5<sup>th</sup>

The recognizance in said Scire Facias mentioned  
was not filed of record on the 25<sup>th</sup> day of March 1858  
—the Court had not jurisdiction to order a default  
thereon & that Scire Facias ipse re



6<sup>th</sup>

There was no recognizance filed of record in said Court. recited in the Scire Facias at the time judgment was rendered - or any recognizance of records -

7<sup>th</sup>

The court did not dispo<sup>n</sup> of the Defendant Freelove

8

There should have been 2 Nihilis returned as against Freelove -

9<sup>th</sup>

There was no such proceedings in said Court that authorized a default. forfeiture & judgment against said Garrison

10<sup>th</sup>

The Scire Facias does not show a cause of action against Plaintiff in Error

11<sup>th</sup>

The judgment is erroneous the same being upon a differant Instrument from that mentioned in the Scire Facias -

For the above & other Errors the said Plaintiff in Error prays that the said Judgment be reversed & held for naught & he be restored in all thing that he has lost -

Garrison & Hudson

Peff. atty in Error