

8756

No. _____

Supreme Court of Illinois

Wm. Glenn, et al,

vs.

People

At a Supreme Court, begun and held
at Mount Vernon, on Monday the
twelfth day of November, in the year
of our Lord one thousand eight hun-
dred and fifty-five to wit: On Saturday
the twenty-fourth day of November,
in the year of our Lord one thousand
eight hundred and fifty-five.

Present, the Honorable William B. Scott, Chief Justice.

" " John D. Catron, Associate "

" " O. C. Skinner, " "

William Glenn &

Hiram Lory

vs

The People

} Error to Marion.

On this day came again the said
parties, and the Court having examined
and inspected, as well the records and
proceedings aforesaid, as the matters and
things therein assigned for error, and being
now sufficiently advised of and concerning
the premises, are of opinion, that in
the record and proceedings aforesaid,
and in the condition of the judgment
aforesaid, there is manifest error: Therefore
it is considered by the Court, that for that
error and others in the record and proceeding

aforesaid, the Judgment of the Circuit Court in this behalf rendered, be reversed, annulled, set aside, and wholly for nothing esteemed, and that this Cause be remanded to the Circuit Court for such other and further proceedings as to Law and Justice shall appertain. The whole with the costs against the said People.

Opinion by
Miner. J.

William Glenn, a negro, on the 31st day of January 1855, was arrested under the third section of an act entitled, "An Act to prevent immigration of free negroes into this State," Approved February 12, 1853.

He was tried before a Justice of the peace of Marion County, found guilty, and fined \$50.

Glenn appeared to the Circuit Court, and H Torrey became his security in the appeal bond. In the Circuit Court, Glenn appeared and moved to dismiss the prosecution; the motion was overruled, a trial by jury was had, a verdict of guilty returned, and Judgment rendered against Glenn and Torrey, his security, for \$50.

From this Judgment Loney appealed to
this Court, and assigns for error the refusal
of the Court to dismiss the prosecution,
and the giving of instructions on the
part of the plaintiff. The instructions
complained of are as follows: "That if
" the acts and conduct of the negro were
" contradictory to his statements as to his
" intention of remaining here, then the jury
" should disregard his statements made to
" witnesses and find the defendants guilty,
" if the other material allegations are
" proved."

"That it is not necessary for the prosecution
" to prove how long the negro
" intended to remain here, if he did
" remain here more than ten days, and
" it was evident from his acts and conduct,
" that he intended to remain longer, -
" then the jury should find him guilty."

The Court erred in
giving these instructions.

The affidavits which is the foundation
of this proceeding, charges, "That William
" Glenn, a negro, is now remaining in the
" town of Salem, where he has been so
" residing more than ten days with
" the evident intention of residing in

" This State."

The first instruction directs the Jury to disregard the statements of the Negro, if his statements and acts were contradictory. These statements and acts were detailed by the witnesses in connection, as evidence of his intention to reside in this State, and with his acts, were the res jure of the inquiry. They should have been taken and considered together by the jury in determining upon the question, attaching such weight to any of them as to the jury, upon consideration of the whole evidence, they seem to deserve.

The last clause of the instruction is equally objectionable. The "material allegations" must be understood referring to the charge in the affidavit.

This charge amounts to no offense in law. The offense consists in "Coming into this State and remaining ten days, with the evident intention of residing in the same." The affidavit does not allege that the Negro came into this State, and for aught that appears, he may have resided in this State

at the time of the passage of the act of 1853, or have been born in this State.

The second instruction is based upon the supposition, that the offense consists, in remaining in the State more than ten days, with the intention of remaining longer, and is erroneous for the reason before stated.

The Circuit Court should have dismissed the prosecution, for want of an affidavit charging an offense under the law. In this, as in all other criminal prosecutions, the negro had a right "to demand the nature and cause of the accusation against him;" and if the accusation did not amount to an offense against the public law, and no sufficient charge was made by amendment, he was entitled to be discharged from the prosecution.

Judgment reversed.

State of Illinois vs.
Supreme Court, First Grand Division.

I, Noah Schuster Clerk of the
Supreme Court, within and for the first
Grand Division of the State of Illinois,
do hereby certify that the foregoing is
a true copy of the final Order, and
of the Opinion, of the said Supreme
Court, in the above entitled cause, of
record in my office.

In Testimony Whereof, I have
hereunto set my hand and
affixed the Seal of the said
Supreme Court, at Mount Carmel,
this seventh day of March,
in the year of our Lord
One thousand eight hundred
and fifty-six.

Noah Schuster C. S. C.

State of Illinois }
Marion County } Proceedings had in the
Circuit Court within and for the County of
Marion and State of Illinois in a certain
cause heretofore pending in said Court wherein
The People of the State of Illinois were plaintiffs
and William Glenn and Wiram Perry were
defendants

Be it remembered that on the second
day of February A D 1853 the said Defendants
Filed in the office of the Clerk of the Circuit
Court of said County an Appeal Bond in the
words & figures following to wit:

Know all men by these presents that we William
Glenn and Wiram Perry of the County of
Marion and State of Illinois are held and
firmly bound unto the People of the State
of Illinois in the Penal sum of one hundred
and twenty five dollars for the payment of
which well and truly to be made and per-
formed we bind ourselves our heirs Executors
and administrators jointly and severally by
these presents. Witness our hands and seals
this 2nd day of February A D 1853

The condition of the above obligation is such
that whereas the above bounden William
Glenn was on the 31st day of January A D
1853 before John W. Merritt a Justice of
the Peace within and for said County
convicted of a violation of the third section
of the act entitled "An act to prevent the
immigration of free Negroes into this State"
Approved February 12th A D 1853 and fined
fifty dollars and costs of suit taxed at

seven $5\frac{1}{100}$ Dollars and committed by order
of said Justice to the common jail of said
County. Now if the above bounden William
Glenn shall personally be and appear before
the Circuit Court of said County of Monroe
on the first day of the next term thereof to be
held at the Court House in the Town of Salem
on Monday the last day of April next, and
not depart said Court without leave, and
shall pay said fine and all costs if the
same shall be so adjudged by said Court then
this obligation to be void and of no effect other-
wise to remain in full force and virtue

William ^{with} Glenn

W. Torrey

Great Seal
of the State of Missouri

Approved by me at my Office this 2nd day
of February A.D. 1853

B. F. Marshall Clerk

Upon the filing of which said bond a Supersedeas
issued in the words & figures following viz

State of Illinois }
Monroe County }
} ^{was}

The People of the State of
Illinois. To John W. Merritt Justice of the
Peace and James Chance Sheriff of said County
Greetings. Whereas in a certain suit lately depen-
ding before you the said John W. Merritt wherein
the People of the State of Illinois are plaintiffs
and William Glenn defendant judgment has been
rendered in favour of said plaintiffs for the sum
of fifty dollars (fine) and seven dollars and
eighty cents costs. And whereas the said William

Glenn has taken an Appeal from the said Judgment and has given bond with security to the People of the State of Illinois for the due prosecution thereof according to Law: Which said bond is filed as of Record in the Clerk's Office of the Circuit Court of said County. We therefore Command and enjoin you the said John W Merritt and James Chance so being Justice & Sheriff as aforesaid: that you do entirely supersede and desist from proceeding any further with said Suit and that you do forthwith suspend all proceedings in relation thereto and cease from molesting the said William Glenn in any wise on that account until the said Circuit Court shall make an order to the contrary. And this you are in no wise to omit

To the Coroner of said County to Execute
Witness B F Marshall Clerk of said Circuit
Court & seal thereof this 2nd day of
February A D 1855

B F Marshall Clk

Upon the reverse of which is the following return
to wit "Service admitted this 2nd Feb'y 1855. John W
Merritt J.P. Executed by reading to James Chance
Esquire Sheriff of Marion County Ills this 2nd day of Feb-
ruary A D 1855. John W Merritt Coroner of Marion County"

And afterwards to wit on the 10th day of February
A D 1855 the said John W Merritt Justice as aforesaid
filed in the Office of the Clerk of the Circuit Court
of said County the original affidavit, Narrout &
a transcript of ~~the~~ Judgment in said Court
where said affidavit is in the words & figures following
to wit:

State of Illinois
Marion County } Andrew Moore being duly sworn
saith that W^m Glenn a Negro is now remaining
in the Town of Salem, whos he has been so
residing more than ten days with the evident
intention of residing in this State contrary to
the Statute in such case made and provided
Sworn before me this 31st day } Andrew Moore
of January A^d 1853 }

John W Merritt J.P. }

And which said original Warrant is in the
word of figures following viz
State of Illinois }
County of Marion }

The People of the State of Illinois
To any Constable in said County Greeting
Whereas Complaint has been made before me
on the oath of Andrew Moore that one William
Glenn a Negro man has been in the Town of
Salem more than ten days and still remains
with the evident intention of residing in this
State contrary to the Statute in such case
made and provided, We therefore command
you that you take the body of the said William Glenn
and bring him forthwith before me at my office
in Salem to answer said Charge and to be
further dealt with according to law

Witness my hand and seal this 31st day
of January A^d 1853

John W Merritt J.P. (Seal)

I have arrested the body of the within named
Glenn and have him present

J D Byers Const "

And the aforesaid transcript with the words
and figures following to wit

The People of the State
of Illinois

vs } On Affidavit under Statutes
} against Negroes
William Glenn }

1855 Jan 31 took affidavit of Andrew Moore
and issued warrant venire and Subp^a to Bryant
cons. Warrant ret^d with det^r in Custody Subp^a et^d
served - Venire et^a with jury. Jury sworn -
three witnesses sworn, verdict of guilty - Judge
of guilty, and fine assessed at \$50, and costs
made out Execution Feb 1st 1855 put up three
notices of Sale in three public places in Salem
Feb 2nd rec^d Sapersedeas - served Sapersedeas on
Sheriff by reading to him

Justices fees	Cons fees	Jurors
docket 12 1/2	Serg Mt 50	fee - 300
affdt 25	" venire 50	
Warr 25	Attg jury 25	
venire 25	Serg Sub 37 1/2	Coroner fee
Subp 25	Serg Ex - 50	Serg Saper - 50
Swearing jury 75	262 1/2	
3 witnesses 18	292	
Recy & enty	300	
verdict 12 1/2	50	
Judgt 25	<u>790 1/2</u>	
Ex 25		
Notices 25		
	292	

State of Illinois }
Harris County } I certify the foregoing to be a true
transcript from my docket Feb 10th 1855

John W. Merritt

J P [Signature]

And afterwards to wit on the 1st day of May of
the April Term 1853 of said Circuit Court
the said defendant filed his affidavit in the word
figures following viz

State of Illinois } Of the April Term A.D. 1853 of
Marion County } the Marion Circuit Court

Meram Tomy surety on appeal for
defmt herein being first duly sworn does depose
and say that Andrew Moore who made the origi-
nal complaint herein as prosecutor against said
defendant for coming into the State is not a
resident of the County of Marion and State
of Illinois, but is a resident and citizen of the
County of Clay Illinois and further swears not
sworn to and subscribed

H. Tomy

before me this 1st day
of May A.D. 1853

B. F. Marshall Clk

And afterwards to wit on the day and year last
aforesaid the following proceedings were had in
said cause and duly entered of Record to wit
The People

vs } Appeal
William Glenn }

And now at this day comes
the said plaintiffs by Robinson States attorney
and the said defendant by Neuts his attorney enters
his motion to dismiss this suit which motion
is observed by the court And afterwards to wit on the
day and year aforesaid the said defendant being
three times solemnly called came not but
but makes default

And afterwards to wit on the 5th day of May 1853 of the April Term 1853 of said Circuit Court the following proceedings were had in said court and duly entered of record to wit:

The People

vs

Appeal

William Glenn

And now at this time comes the said People by Robinson their Attorney and the said defendant being three times solemnly called came not but made default whereupon issue being found let a jury come and thereupon came the following jury to wit: Francis Warner, John Foster, William Dault, Presley Larris, George Mendick, Thomas C. Smith, William C. Morgan, Samuel McClelland, James Egan, James Bryant, Jackson C. Jones, & William Wilkins twelve good and lawful men who being elected tried and sworn well & truly to try the issue joined who after having heard the Evidence and arguments of Counsel for their verdict say "We the jury find the defendant guilty whereupon the said defendant's Counsel files Motion for a new trial and in arrest of judgment - which said motion is overruled by the Court. It is therefore considered by the Court that the said defendant do make his fine to the People aforesaid in the sum of fifty dollars, ordered therefore that the said Plaintiff do recover of & from the said William Glenn and Hiram Torry his Security herein the sum of fifty dollars fine as aforesaid together with their cost in this behalf expended and that they have Execution therefor &c Whereupon Defendants pray an appeal to the Supreme Court which

is granted upon defendant entering into bond with Security to be approved by the Clerk of the Court within thirty days in the Sum of Two hundred dollars

And afterwards to wit on the 17th day of May A.D. 1855 the said Defendants filed in the office of the Clerk of the Circuit Court their Bill of exceptions in the words & figures following to wit

Circuit Court Marion County
April Term A.D. 1855.

The People

vs

William Glenn

}
}
}

Be it Remembered that on the trial of the above Cause that the following Evidence was introduced

Samuel Lester being called by the people testified as follows I said defnt Wm Glenn first in Washington Indiana he then kept Barber Shop - met with defnt shortly after in Illinois near Vincennes, defnt said he was going to Salem to try the Barbering business, a while and gave witness \$300 to bring him to Salem in his Wagon Came to Salem some time in January last and opened a Barber Shop Remained in Salem three or four weeks before arrived

Logan Shelton testified on behalf of People that defnt Wm Glenn opened a Barber Shop in Salem a few days before Christmas heard defnt say a few days after he came to Salem that he was not going to remain in Salem

Some time afterwards Deput Staud told that if he could not secure a certain amount of custom to share by the month he would leave - He went around with a paper and afterwards told witness that he would remain having secured a sufficient amount of custom to justify him in so doing. He kept a Barber Shop in Salem three or four weeks - had up a pole & shaved customers, had all the necessary equipments for a Barber Shop & told witness that he had rented a house for that purpose.

This was all the evidence on the part of the People.

Francis M. Vaughn called on part of Deput Staud de put say he was not going to stay unless he could get a certain amount of custom - heard him afterwards say that he could not get it.

William Conklin testified that he knew Deput that when Deput came to town witness rented him a part of his Shoe Shop for a week for a Barber Shop & then rented it for a month, Deput he did not expect to remain longer than some time in the Spring as he followed the river in the Summer.

L. D. Skilling That Deput told him that he was going away if he did not get a certain number of subscribers, Deput went around with a paper to get them and afterwards told witness that he could not get them and was going away - This was a few days before Deput was arrested he however remained & continued the usual business up to the time

of his arrest five or six days afterwards -

This was all the evidence -

The Court then instructed the jury on behalf of the people as follows. The Court instructs the jury, That if the acts and ~~conduct~~ Conduct of the Negro were Contradicting to his Statements as to his intention of remaining here - then the jury should disregard his Statements made to witnesses and find defendant guilty if the other material allegations are proved. Given

It is not necessary for the prosecution to prove how long the Negro intended to remain here if he did remain here more than ten days and it was evident from his acts and conduct that he intended to remain longer - then the jury should find guilty. Given

(Court instructed for six as follows) Given
To which object by his Counsel then asked them ~~excepted~~ and afterwards

The jury returned a verdict of guilty against defendant

When upon object by his Counsel moved the Court for a new trial upon the following ground

- 1st The verdict is Contrary to Law
- 2 The verdict is Contrary to Evidence
- 3 The verdict is Contrary to Law & Evidence
- 4 The Court Erred in instructing the jury on the part of the ~~People~~ People
- 5th The Court Erred in refusing the Motion to dismiss the Cause

The Statute does not make the offence
of coming in to the State & remaining
for two days, but coming into the State
& remaining two days with the evident intention
of remaining longer.

Grove

Which Motion the Court overruled ^{dependant} &
then and there Excepted and pray that
this his his Bill of Exceptions May be
Signed and Sealed and then I pray
pray an appeal to the Supreme
Court
L. B. Baugh

State of Illinois
Marion County J. R. F. Marshall
clerk of the Circuit Court in and for
said County do hereby certify that
to be a true and correct ^{copy} of
the proceedings had in the above
within cause as appears by the
papers and records on file
in my office

Given under my hand and
seal of office at Salem this
7th day of September A.D. 1833
J. R. F. Marshall
Clerk of the Circuit Court
by J. S. Marshall

And the said Marum Lory appellant alleges the
following for errors

- 1st The Circuit Court erred in refusing to dismiss the
prosecution upon the affidavit of Deput Lory
- 2 The Court erred in instructing the jury on
behalf of the people
- 3 The Court erred in ^{overruling} refusing the motion for
a new trial

1 Because the Law under which Deput was
convicted is unconstitutional

2 The evidence did not authorize the verdict
Hunts vs. Lory admitted for Plaintiff in Error

Chambers, Mt Vernon Illinois
Sept 28th 1855

Upon reading within record and inspection
& consideration of the errors assigned - It is
ordered that the writ of error issued in this
cause be made a supersedeas upon the
plaintiffs entering into bond in the penalty
of two hundred dollars, with

as surety - conditioned, according
to law given under my hand this day & date
above

Walter B. Seatas Ch. J.

Rec'd
Sept 29 1855

William Gibson
Hiram Long

My
The People

Com to call him in.

Filed 29. Oct. 1855.

A. H. Johnston Ch.

Provd by Com for
Mary Ann Johnston
\$200

No 39
~~39~~

Gleanings of
V

People

1. Record

1. Opinion

2. in all

Preface

Wth Vernon Ills November 1853

No 35

Glenn & Terry

The People

Review on
Instructions

8756