

No. **11945**

Supreme Court of Illinois

Thomas

vs.

People

71841  7

No 1

William Thomas

vs

The People &c.

96

1852

11945

No. 2

William Thomas

vs

The People &c.

Prepared

It was begun and held at the Court house in the town of Middelport in the county of Prognas and state of Illinois before the Honorable Hugh Henderson judge of the eleventh judicial circuit in the state of Illinois at a term of the circuit court for said county that in said county began on Monday the twenty ninth day of October in the year of our Lord one thousand eight hundred and forty nine.

Be it remembered that on the fifth day of said term of said court, the following proceedings were had before said court to wit

The People of the State
of Illinois

vs

Indictment

James Ellis, Henry

Hugh Isaac Hesk & William Thomas } Recognizance

And now at this time came into open court James Ellis, Henry Hesk, Isaac Hesk & William Thomas and entered into a recognizance of one hundred dollars each James Ellis as Principal, & Henry Hesk Isaac Hesk & William Thomas as securities, conditioned that the said James Ellis be and appear personally before the circuit court of said county of Prognas on the first day of the next term thereof to be holden at Middelport on the eighth Monday after the fourth Monday in the month of March next, and shall then & there answer to an indictment against him preferred by the grand jury of said county and shall obey the order sentence and decree of said court therein and shall not depart the Court without leave thereof, then this Recognizance to be void otherwise to remain in full force.

And afterwards to wit at the May term of said court, began on Monday the 13th day of May AD 1850 it being the eighth Monday after the fourth Monday of March 1850 the following proceedings were had before said court, on the first day of said term to wit

"This day comes the people by P. M. Platt Esqr states Attorney and the defendant James Ellis came not but made

default and being three times solemnly called did not appear and Henry High Isaac High & William Thomas being also three times solemnly called and notified to produce the body of the James Ellis aforesaid or that their recognizance would be forfeited came not nor produced the body of the said James Ellis but made default. Therefore it is ordered and considered that by the court that the said recognizance herein be forfeited and a scire facias issue herein returnable to the next term of this court.

And afterwards to wit on the 23^d day of July AD 1830 there was issued out of the office of the Clerk of said Troqueus Circuit court a scire facias which reads in the words & figures following to wit

"State of Illinois
Troqueus County of The People of the state of Illinois
To the Sheriff of said county greeting
Whereas James Ellis as principal and Henry High Isaac High & William Thomas as sureties of the county and state aforesaid on the second day of November in the year of our Lord one thousand eight hundred & forty nine became bound unto the people of the state of Illinois by a certain Bond a Recognizance which reads in the words & figures following to wit
And now at this time came into open court James Ellis Henry High Isaac High & William Thomas & entered into a Recognizance of one hundred dollars each. James Ellis as principal & Henry High Isaac High & William Thomas as sureties conditioned that the said James Ellis be and appear before the circuit court of the county of Troqueus on the first day of the next term thereof to be holden at Middleport on the eighth Monday after the fourth Monday in the month of March next. and shall then & there answer to an indictment against him preferred by the Grand jury of said county and shall abide the order sentence & decree of said court therein & shall not depart the court without

leave thereof then this recognizance to be void otherwise to remain in full force.
And the said James Ellis having failed to appear at this said term of said Court to answer to the said indictment as well by the suggestion of the People aforesaid by this State Attorney have understood

We therefore commend you to summon the said James Ellis Henry High and Isaac High & William Thomas if they shall be found in your county personally to be and appear before the circuit Court of said county on the first day of the next term thereof to be holden at the Court house in the town of Middletown on the second Monday in the month of October next to show cause if any they have why the said people of the State of Illinois ought not to have execution against them in the said sum of one hundred dollars for which they are respectively bound according to the force form and effect of this said recognizance and further to do and receive whatever the said Court shall think them and advise against them in that behalf

Hereof make return as the law directs & have you them & them this writ.

J. J. Bennett Clerk of the said circuit Court & the seal thereof hereto affixed at my office at Middletown this 23rd day of July A. D. 1850.

J. J. Bennett Clk
Which said *scire facias* was afterwards delivered to Sander Hazle Sheriff of said county to execute & who returned the same into open Court at the October term of said Court beyond & held on the 15th day of October A. D. 1850. at the Court house in the town of Middletown in said county with the following endorsement thereon to wit:

"Oct 1st 1850. Served the within writ by reading the same to the within named William Thomas tho' athis not found in the county.

S. Hazle Shff

By M. Hazle Sept 1st

and at which time & place last aforesaid the following proceedings were had before said court in the premises to-wit.

And now at this time comes the People of the State of Illinois by P. W. Platt, States Attorney and it appearing by the return of the Sheriff that the scire facias herein has been served upon William Thomas, one of the defendants more than ten days prior to the first day of the present term of this court, and returned not found, as to the other defendants, the said William Thomas being three times solemnly called comes not but makes default.

It is therefore considered, by the court, that the People of the State of Illinois have & recover of & from the defendant William Thomas, the sum of one hundred dollars the amount of the recognizance described in the scire facias and also their costs & charges in this behalf laid out & expended and they have execution therefor.

State of Illinois
Troyes County

I Jesse Bennett Clerk of the Troyes Circuit Court in the State of Illinois do hereby certify that the above and foregoing is a true, full & complete transcript of the record judgment & proceedings of the above case as appears from the records thereof now remaining in my office.

In testimony whereof I have hereunto set my hand & affixed the seal of said Circuit Court at my office in Madaket in said County of Troyes & State of Illinois this 14th 29th day of July, A.D. 1851.

J. Bennett Clk.

State of Illinois Supreme Court, Term AD 1852

William Thomas
vs
The People of the State of Illinois

} Error to the Supreme
} Circuit Court

And now at this time comes, the said William Thomas, & says that there is manifest error in the judgment and proceedings of the above cause in this that judgment was rendered for the defendants, when by the laws of the land, it appears, by the records & proceedings aforesaid judgment ought to have been rendered for the plaintiff.

And further he says there is manifest error in this that it appears from the record aforesaid that it is not stated in the recognizance, aforesaid for what offense, the said indictment against said John Ellis, was preferred, when it should have been fully stated in said recognizance for what offense said indictment was found.

And also in this, that the return of the sheriff on the scire facias was not sufficient to authorize a judgment against one of the recognizances only, # all of which he is ready to verify. He therefore prays that the judgment of the said circuit court, may be reversed, & that he may have restored that which he has lost, &c.

He also prays that a writ of error may be granted unto him to operate as a supersedeas &c.

George Form Atty for Plaintiff

And the said defendants in error by Gardner an attorney of this Court, comes & for answer in error says that the said errors in the said Pff in error, aforesaid of error aforesaid do not exist in manner before as the same are stated to be forth, wherefore the said defendants in error pray an affirmation of judgment and that they be hence discharged with the reasonable costs &c.

Gardner
for affds in error

also in this that the scire facias is joint & the recognizance upon which the same is issued is several, also that the defect of Ellis is not sufficiently shown upon the record.

Let the writ of error be made a supersedeas
on the part of error, William Thomas, as principal,
and George B. Jones, as surety, entering into bond
to the People of the State of Illinois, in the penalty
of two hundred dollars, conditioned as the law
directs. October 15th 1857.

A. H. Heat. Clk. Supreme Court

Ch. 2

Wm Thomas

vs

The People

Transcript Advt. of
Errors & join den -

Filed July 8th 1857.
S. Ireland Clk.
By W. Ireland Dwyer

Know all men by these presents that ^{we Wm Thomas} ~~Wm Thomas~~ & ~~Geo B Jamin~~ ^{Geo B Jamin} are held and firmly bound unto the people of the state of Illinois in the penal sum of two hundred dollars for the payment of which well & truly to be made & done we bind ourselves and heirs executors & administrators jointly severally & firmly by these presents signed with our hands & sealed with our seals this 28th day of October A.D. 1851.

The condition of the above obligation is such that whereas William Thomas is about to prosecute a writ of error from a judgment against him of the Trazus Circuit court in the state of Illinois wherein the people of the state of Illinois are plaintiffs for one hundred dollars to the Supreme Court of the State of Illinois

None of the said William Thomas shall duly prosecute said writ of error and pay a court to be paid the judgment interest costs & damages in case said judgment be affirmed then this obligation to be void otherwise to be & remain in full force & effect ~~Wm Thomas~~

Geo B Jamin
Geo B Jamin

State of Illinois
Trazus County

Personally appeared before me Jesse Bennett clerk of the Trazus Circuit court the above named George B Jamin & solemnly swears that he is worth more than five hundred dollars own & alone his legal representative & further saith not.

Geo B Jamin

Sworn to & subscribed before me this 28th day of October A.D. 1851

J. Bennett clk

State of Illinois

Rocky Mountain County

I Adam Barr a justice of the peace in & for said county do hereby certify that the within named William Thomas & George B Joines who are personally known to me to be the real persons whose names are subscribed to the within bond as here executed the same this day personally appeared before me & acknowledged that they signed the within bond for the uses & purposes therein mentioned

Given under my hand & seal this 10th day of November A.D. 1857

Adam Barr J.P.

Ch 2

W Thomas Bond
as
The People

Bond

Filed July 8th 1852
J. L. Leland Clk.
By J. M. Leland Depy.

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Troy* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Troy* county, before the Judge thereof, between

The People of the State of Illinois plaintiffs and *William Thomas*

defendant it is said manifest error hath intervened, to the injury of the aforesaid

William Thomas

as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *2^d Monday in June* — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *eighth* — day of *July* — in the year of our Lord one thousand eight hundred and fifty *two* —

S. Leland Clerk of the Supreme Court.
By P. W. Leland Esq.

Shas began and held at the court house in the town of Middlepat. in the County of Troguas and state of Illinois before the Honorable Hugh Henderson judge of the eleventh judicial circuit in the State of Illinois at ~~the~~ a term of the circuit court for said County ^{begin} on ~~the~~ Monday the twenty ninth day of October in the year four thousand eight hundred & forty nine

Be it remembered that on the fifth day of said term of said court. the following proceedings were had before said court to wit

The People of the State
of Illinois

Indictment.

vs
John High

Recognizance

And now at this time comes into open court. John High as principal and Henry High Isaac High & William Thomas as securities and enter into recognizance in the sum of one hundred dollars each conditioned that the said John High be and appear before the circuit court of the county of Troguas on the first day of the next term thereof to be holden at Middlepat. on the eighth Monday after the fourth Monday in the month of March next. and shall then & there answer to an indictment against him prepared by the grand jurors of said county. and shall abide the order of the court or decree of said court therein and shall not depart the court without leave thereof then this recognizance to be void otherwise to remain in full force.

and afterwards to wit ~~at~~ the May term of said court. began on ~~the~~ Monday the 13th day of May A.D. 1850. it being the eighth Monday after the fourth Monday of March. A.D. 1850. the following proceedings were had before said court ~~on~~ the first day of said term to wit

This day comes the people. by P.W. Platt Esqr State attorney and the defendant John High came not but made default and being three times solemnly called

did not appear, and Henry Hesk Isaac
Hesk & William Thomas being also three times
solemnly called and notified to produce
the body of said John Hesk or that their recogni-
zance would be forfeited came not nor
produced the body of the said John Hesk but
made default. Wherefore it is ordered &
considered by the court, that the said recogni-
zance herein be forfeited and that a scire
facias issue herein returnable at the next
term of this court.

And afterwards ^{on the 23^d day of July 1850} there was issued out
of the office of the Clerk of said Troqueus
Circuit Court, the scire facias which reads
in the words & figures following to wit

"State of Illinois
Troqueus County"

The People of the State of

To the Sheriff of said County Greeting
Whereas John Hesk as principal, and Henry Hesk
Isaac Hesk & William Thomas as sureties at
the October term of the Troqueus County Circuit
Court, 1849, became bound unto the People
of the State of Illinois by a certain bond or recogni-
zance which reads in the words & figures following
to wit. And now at this time came into open
court, John Hesk Henry Hesk Isaac Hesk and
William Thomas and entered into a Recognizance
of one hundred dollars each John Hesk as
principal and Henry Hesk Isaac Hesk & William
Thomas as sureties. And it is ordered that the said
John Hesk be and appear before the Circuit
Court of the County of Troqueus on the first day
of the next term thereof to be holden at Middle
port, on the eighth Monday after the fourth
Monday in the month of March next, and
shall then & there answer to an indictment
against him preferred by the grand jurors
and shall abide the order, sentence and
decree of said court, therein and shall not
depart the court without leave thereof, then
this recognizance to be void otherwise to
remain in full force.

And the said John High having failed to appear at the said term of the said court to answer to the said indictment as we by the suggestion of the People aforesaid by their States Attorney have understood - We therefore Command you to summon the said John High Henry High Isaac High & William Thomas if they shall be found in your County & personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at Middleport on the second Monday in the Month of October next to show cause if any they have why the said people of the State of Illinois ought not to have execution against them in the said sum of one hundred dollars for which they are respectively bound according to the force form & effect of their said recognizance and further to do & receive whatever the said Court shall then & there consider and adjudge therein in that behalf. Hereof make return as the law directs and have you then & there this writ.

Witness Jesse Bennet Clerk of our said Circuit Court and the seal thereof hereunto affixed at my office in Middleport this 23 day of July A.D. 1850

J Bennet Clk

Which said scire facis was afterwards delivered to the hands of Leander Hazle Sheriff of said County of Craigus & who afterwards returned the same with the following endorsement thereon to wit

" Oct. 4th 1850. Served this writ by reading the same to the within named William Thomas none of the rest found in the county

L Hazle. Sheriff By M Hazle Deft

into open court at the October term thereof A.D. 1850 when the following proceedings were had in the premises before said Craigus Circuit Court ^{on the first day thereof} to wit
And now at this time comes the said People by J. W. Platt States attorney and it appearing by the return of the Sheriff that the scire facis herein has been served upon William Thomas one of the defendants more than ten days prior to the

Just day of the present term of this court and returned
ed not found as to the other defendants

And the said William Thomas being three
times solemnly called comes not, but makes
default. - It is therefore considered by the
court that the People of the State of Illinois have
and recover of and from the defendant William
Thomas the sum of one hundred dollars the
amount of the recognizance described in ^{the} ~~the~~
scire facias and also the costs & charges
in this behalf laid out and expended and
that execution issue therefor

State of Illinois
Troyes County. I Jesse Bennett clerk of
the Troyes Circuit Court in the state
of Illinois do hereby certify that the above
and foregoing is a true full & complete
transcript of the record judgment & proceedings
of the above cause as appears from the record
thereof now remaining in my office

In witness whereof I have hereunto set
my hand & affixed the seal of said
circuit court at my office in the
Town of Milledgeport in said County
of Troyes and State of Illinois
this 19th day of July A.D. 1851.

J. Bennett Clk

State of Illinois Supreme Court January 1832

William Thomas

Error to the Judges
in Court.

The People of the State of Illinois

And now at this time comes the said William Thomas & says that there is manifest error in the judgment and proceedings of the above cause in this that judgment was rendered for the defendants when by the laws of the land it appears by the records & proceedings aforesaid judgment ought to have been rendered for the plaintiff.

And further he says there is manifest error in this that it appears from the record aforesaid that it is not stated in the recognizance aforesaid for what offense the said indictment against the said John High was preferred when it should have been fully stated in the recognizance for what offense said indictment was preferred.

And also in this that the return of the Sheriff on the scire facias was not sufficient to authorize a judgment against me of several recognizances only all of which he is ready to verify. He therefore prays that the judgment of the said Circuit Court may be reversed & that he may have restored that which he has lost.

He also prays that a writ of Error may be granted unto him to operate as a supersedeas.

Gods friend & ally for
H. Hoff

And the said defendants in Error by Counsel their attorney Counsel for Plaintiff in Error say that the said errors in the said Plaintiff in Error assignment of Error aforesaid do not exist in manner & form as the same are stated & set forth - wherefore the said defendants in Error pray an affirmation of judgment & that this be hence dismissed with the reasonable costs &c
Charles Gardner
for Plaintiff in Error

also that the sci fa is joint & the recognizance is several also that the default of John High is not sufficient to shew upon the face of the sci fa

Let the writ of error be made a supersedeas on this
plea, in favor, William Thomas, as principal,
and George B. Jones, as surety, entering
into bond to the People of the State of Illinois,
in the penalty of two hundred dollars,
conditioned as the law directs.

October, 15th 1851.

A. H. Treat
Clerk Sup. Court

Vol. 1.
The Thomas

The People of the State

Remanded. A. H. Treat
of errors & findings.

Filed July 8th 1852.
J. P. Delaney Clerk
of the Supreme Court

Charles Gardner for def. in Error

The character and legal effect of
the obligation under our Statute
is materially different from one at
Common Law, and no good reason
is presented for requiring the same
strictness, and previous in matters
of form Rev Stat 183. Shalluck vs
the People 4 Scam 480

A man defrauds in form when
there is none in substance, should
not vitiate or annul an obligation
entered into in good faith by the party
4 Scam 480. 3 Black. 334

The Recogissance in this case is in its
terms in strict compliance with the
terms of the ^{of the authorizing} Statute, Rev Stat 183

^{the Recogissance}
Nor is not strictly formal nec
ception could be taken Rev Stat 183

The presumption of Law is in favor
of the Grand Jury having acted
within the scope of their authority
Shalluck vs the People 4 Scam 480

^{scilicet}
The Proceedings under this ~~form~~ in
it are substantially correct. - Sands
vs. the People 3 Gill 327, ~~affirmed~~
vs the People 3 Gill 406.

1
Jm Thomas

The People

2

Jm Thomas

The People

Proof of
Depth in Error

State of Illinois Supreme Court

June Term AD 1852

William Thomas

The People of the State of Illinois } Error to the Circuit
} Civ Court.

This case is upon a *scie fa* against John High, Henry High, Isaac High & William Thomas upon a recognizance entered into by them at the October term AD 1849 of the circuit court of Croquis county for the appearance of the said John High at the next term of said circuit court, to answer to an indictment against him preferred by the grand jurors of said county, without setting forth in said recognizance for what offence said indictment was preferred.

At the May term AD 1850 of said court default was entered against said John High also against the ~~other~~ ^{other} recognizers and afterwards a *scie facis* was issued upon said recognizance against said recognizers which was returned at the October term of said court, 1850 served on William Thomas only the others not found - thereupon judgment by default was taken against said Thomas for the amount of the recognizance.

Now we contend that it was necessary that the recognizance should plainly & specifically set forth for what offence said indictment was preferred, as much so as is required in the indictment itself though it may not be necessary to set the offence out as having been committed with the same particularity as in the indictment yet the offence must be named in the words of the statute or the recognizance must fall

2^d *Greenleaf* Ev 62. 9th *Mass* 320 16 *id* 447.

4th *id* 647. 7th *id* 209. 1st *Stur* & *Porter* R 465

1 *Dane* R. 523 - 165. 3 *W.S.* Digest. 326.

8 *Black* *Pr* *State* - 1 *Ala* R 114 - 4 *Black* *Com* 296

1 *Chetty* *Law* S. 83

From aught that appears upon the face of the recognizance the said John High may be

indicted for doing a lawful act. & we think this Court is not bound to presume that the said John Neigh was indicted for an indictable offence. - if so why not let the word indictment be left out of the recognizance. & the court presume that he was indicted also & that to for a criminal offence.

In. 3^d Kelly (Georgia) Rept. 363. it is decided that a recognizance for the appearance of an accused to answer to answer a charge against him must show a cause of taking it.

2^d A recognizance must stand on fall by itself & if not good upon its face by failing to specify the offence for which the accused is arrested and bound to appear and answer parole evidence is not admissible to supply the defect.

It again the see fa in this case is joint against all the recognisors while the recognizance is several which may be assigned for error. 5 Blk 471

There is no averment in the see fa that the recognizance has been forfeited a mere failure to appear. when the see fa that other steps have been taken to obtain and a judgment does not authorize the issuing a see fa. - There must be a judgment by default against the principal secutors & the recognizance declared forfeited before a see fa can be legally issued & then the see fa must state & show these facts upon its face. 1st Sel 112. 2^d Blk 538.

The averment in the see fa "that the said John Neigh having failed to appear at said term of said court" when two or more terms are mentioned in the see fa is not good for uncertainty.

The return of the sheriff which reads as follows "Oct 4th 1850 Served this writ by reading the same to the within named William Thomas none of the rest found in the county

L. Haysle Shff. By M. Haysle Deputy" - is not sufficient to authorize a judgment against

No 1
The Peoples

4 Ben or 530 =
7 Hill 39, 44

7 Blue 417 -

Brief
Plaintiff Brief
Defendant

Filed July 9th 1852.
L. Island Clerk.
By P. H. Selander

15 West 9 J. H. Rolph
17 West 652
4 West 128 =
7 Blue 243 =

State of Illinois }
Iroquois county } I Adam Barr a justice
of the peace in & for said county do hereby
certify that the within named William
Thomas & George B Goin, who are personally
known to me to be the real persons whose names
are subscribed to the foregoing bond as having
executed the same this day personally appeared
before me & acknowledged that signed the
same for the uses & purposes therein
mentioned.

Given under my hand & seal
this 10th day of November A.D. 1851
Adam Barr J.P.

Cto. 1

Wm Thomas Bond

67

The People

Bond

Filed July 8th 1852.
J. Leland Clk.
By J. H. Leland Secy.

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Wyoewis* GREETING :
BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which
was in the Circuit Court of *Wyoewis* county, before the Judge thereof, between

The People of the State of Illinois plaintiffs and *William Thomas*

defendant it is said manifest error hath intervened, to the injury of the aforesaid

William Thomas
as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distintly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *2^d Monday in June* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *eighth* day of *July* in the year of our Lord one thousand eight hundred and fifty *two*.

S. Seland Clerk of the Supreme Court.
By P. P. Seland Deputy

cro1
Proyavis
William Thomas
vs.
The People &c -

Writ of error.

Filed July 8th 1852
L. Deland Clk.
By T. Deland Depy.

This writ of error is
made a Supersedeas
& as such is to be obeyed
accordingly by all
concerned -

L. Deland Clerk
By T. Deland Depy.