

11811

No. _____

Supreme Court of Illinois

^L
Downely

vs.

People, ex. rel.

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McIll Downelly
vs

People, ex. rel.
Denick C. Bush

11811

1850

Prepared
Beck

United States of America

State of Illinois } p. Pleas before the Honorable
McHenry County } p. Hugh Henderson presiding
Judge of the Eleventh Judicial
Circuit of the State of Illinois of which McHenry
County forms a part at a Circuit Court begun and
held at the Court house in Woodstock in said
County on the Eighth day of April in the year
of our Lord one thousand eight hundred and
fifty and of the Independence of the said United
States the Seventy-fourth.

Present the Hon Hugh Henderson
Judge

P. W. Platt

Attest J. A. Johnson State Attorney
A. W. Donnelly Sheriff

And hereofore to wit, on the 18th day of June in
the year of our Lord one thousand eight hun-
-dred and forty nine, it being one of the days of
the late June Special term of said Court the follow-
ing proceedings was had to wit:

The People of the State of Illinois
vs. Kel Dennis & Bush

A. W. Donnelly

And now come
the People by Platt

State attorney and files the affidavits of the said

relator and for reasons therein set forth move the Court
for a rule upon the defendant to show cause why
an information in the nature of a Quo warranto
should not be filed herein. And the Court having
heard the Relator thereon orders that the said defen-
dant show cause why an information in the nature
of a Quo warranto should not be filed herein by
Friday Morning next.

And heretofore to wit, on the 15th day of June in the
year last aforesaid, the said Relator filed his said
affidavit herein in the words and figures following
that is to say.

State of Illinois }
McHenry County } ^{S.S.} Dennis C. Bushy
being duly sworn on oath says that he is an attorney of
this Court and that he has examined the records of
this Court in order to ascertain whether Beilly Donnelly
the present Sheriff of this County has taken the oath re-
quired to be taken by him as such Sheriff by the 26th Section
of the 13th article of the Constitution of this State, and
could find no record that he has done so - that this
deponent was informed by said Beilly Donnelly
Septimo he thinks in the month of January last
that he the said Beilly Donnelly had never taken
such oath which this deponent believed then and
still does believe to be true and further says not
Subscribed and sworn to
before me this 14th day of
June 1849

Dennis C. Bushy

J. A. Johnson

which is entered

Filed June 15th 1849 J. A. Johnson Clerk

And thereafter to wit on the 22^d day of June A.D. 1849
the said Court being then in session as aforesaid. the
following proceedings were had to wit.

The People by Rep
Derrick C. Bushy } Information in the nature
vs } of a Juror's return.
Paul Donnelly }

And now
comes the People by Platt Stans
Attorney and moves the Court for leave to file his infor-
mation herein, and if appearing to the Court that
the said defendant had failed to comply with the
rule formerly entered herein. It is therefore ordered
by the Court that the said Relator have leave to file
his said information.

And thereupon on motion of Bushy
the relator it is ordered by the Court that the defen-
dant plead herein by two o'clock this afternoon.

And thereafter to wit on the day and year last aforesaid
the following proceedings were had to wit and
the following information was filed to wit and which
is in the words and figures following that is to say

State of Illinois } Of the June Special Term of
McHenry County } 55 the McHenry County Circuit
Court A.D. 1849.

And now
comes Alvaro Platt Circuit Attorney for the Eleventh
Judicial Circuit of the State of Illinois and on the
Relation of Derrick C. Bushy (who sues for the said
People in this behalf) and for the said People gives the

Court here to understand and he informed that at
the September Term of the Circuit Court of said County
in the year A.D. 1848, on the 15th day of said September
one Heill Connelly gave bond as is required by law
for Sheriffs and took and subscribed the following
oath to wit.

State of Illinois }
McHenry County } I do solemnly swear that I will
support the Constitution of the
United States of the State of Illinois and that I will
faithfully and impartially perform all the duties
required or to be required of me as Sheriff of
McHenry County according to law and the best of
my abilities to help me God.

Which said oath was
taken and subscribed before Joel W. Johnsons Clerk
of the Court in open Court on the said 15th day of
September A.D. 1848. and that he the said Heill
Connelly took no other oath whatever than the one
above recited - that the said Heill Connelly has
not taken the oath required by the 26th section of
the 13th article of the Constitution of the State of
Illinois - and yet the said Heill Connelly entered
upon and usurped the said office of Sheriff as
aforesaid on the said 15th day of September and from
thence hitherto hath used occupied and enjoyed
the liberties privileges and franchises of said
office as aforesaid and still does usurp and
intrude into the said office of Sheriff aforesaid
to the great damage and prejudice of the said
People of the State of Illinois whereupon the said
Attorney of the said People brings before the said
Court in the premises and due process of law against

the saidNeill Donnelly in this behalf, and that
he be required to answer to the said People by whom
warrant he claims to have use and enjoy the liberties
privileges and franchises aforesaid

Alonzo Platt
State Attorney for the 11th Judicial
Circuit.
Which has endorsed thereon
Filed June 22nd 1849.

J. H. Johnson Clerk

And thereupon on the day and year last aforesaid
the following proceedings was had to wit.

The People ex Rel
Derrick C. Bush
Neill Donnelly } Information in the nature
of a Quo Warranto.

And now
Alonzo Platt State attorney and
it appearing to the Court that the defendant had failed
to plead herein in obedience to the order heretofore made
in this behalf, and thereupon the said State attorney
moved the Court for judgment of order by default
which motion is overruled by the Court. It is therefore ord-
ered by the Court that this cause be continued and
that a summons issue herein.

And thereafter to wit. on the 14th day of August A.D. 1849.
a certain writ of summons was issued herein in the words
and figures following to wit.

State of Illinois } The People of the State of Illinois
McHenry County } ss. to the Coroner of said County
Greeting.

You are hereby commanded to Summon Neill Donnelly
if he 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 Woodstock in said County on
the fourth Monday of September next to answer to a
certain information herein filed in which The People
of the State of Illinois on the relation of Carriek C.
Bush are plaintiffs and Neill Donnelly is defendant
And make due return of this writ with an endorsement
thereon as to the manner in which you executed the
same to the first day of the next term of this Court

Seal

Witness Earl H. Johnson Clerk of our
said Court and the seal thereof at
Woodstock this 14th day of August
A.D. 1849

J. H. Johnson

And which said writ of Summons has
enforced therein

Executed the within by reading the
same to Mr. Neill Donnelly 20 August 1849

Jesse Slavin
Clerk of McHenry Co ty
Illinois.

Done 20 August 1849.

J. H. Johnson Clerk

And afterwards to wit on the 26th day of September A.D.
1849. it being one of the days, on which said Court was
in session, the following among other proceedings was
had to wit

The People of the State of Illinois
vs. Carriek C. Bush

Neill Donnelly

} Information
And non cum

in his own proper person
the relator, and moves the Court for a rule upon the
defendant to plead herein by Monday Morning next.

And
thereupon Gene Platt defendants attorney and
moves the Court to dismiss this cause for reasons
filed

The following are the motion and reasons filed by
Platt defendants attorney upon which the above motion
was made to wit,

The People of the State of Illinois } McHenry Circuit
vs. Robt of A.C. Bushy } Court Spt Term
vs. } 1849.
Neil Donnelly } Infamy

Duo Warrants

Now comes the said defendant and moves the Court
to dismiss this suit for the following reasons to wit
That there was no copy of the rule entered for said
defendant to show cause served on him either by copy
or reading. And that leave was improperly granted
to file said Duo Warrants.

State of Illinois } Neil Donnelly being duly
McHenry County } sworn deponent and says that
there was no copy of the rule entered in the above
entitled suit for him to show cause why a Duo Warrants
should not be filed against him nor was the same read
to him
Neil Donnelly

Sworn & Subscribed to
before me this 29th day
of Sept 1849. J. A. Johnson Clerk
Endorsed thereon. Filed Oct 4th 1849.
J. A. Johnson C. C.

And thereafter to wit, on the 4th day of October in the year last aforesaid, it being one of the days of said term of Court, the following proceedings was had to wit.

The People of the State of Virginia
Ex Rel Dennis C. Bush } Information.

Specie Donnelly } And the Court being fully advised on the motion formerly entered herein to dismiss the proceeding overules the same, to which opinion of the Court, in overruling the said motion the defendant by his counsel excepted. And thereupon the said defendant filed his answer herein to the bill of the said relator in which the relator by his attorney joins and the Court having heard the parties thereon sustains the same. It is therefore ordered, and consented by the Court that the defendant have and recover of the relator his costs and charges about his demurrer, expended and that he have execution therefor. And thereupon on motion of defendant attorney for the relator leave is given him to amend and he having amended, on motion of defendant for the relator it is ordered that the defendant plead herein by tomorrow morning at 9 o'clock.

The following is the account in said cause above referred to, filed on the 1st day of October in the year last aforesaid, the said Court then being in session as aforesaid, and which said account was taken up and argued on the 4th day of October in the year 1849, and which is in the words and figures following to wit.

People of the State of Virginia
at the relation of C. C. Busch

Neill Donnelly

And the said defendant by Glutz his attorney
comes and defends the wrong and injury aforesaid
and says that the said information and the matters
therein contained in manner and form as the same
are above stated and set forth are not sufficient in
law for the said plaintiff to have or maintain his
aforesaid action thereof against the said defendant
And he the said defendant is not bound by law to
answer the same. And this he is ready to verify when
shown by reason of the insufficiency of the said informa-
tion in this behalf the said defendant prays judge-
ment and that the said plaintiff may be barred
from having or maintaining his aforesaid action
against him.

And the said defendant according
to the form of the Statute in such case made and
provided states and shews to the Court how the following
courses of demerit to said information

1st That the matter of John Brink's having rec'd the
highest number of votes has been decided by this
Court at the September term thereof A.D. 1849, as
appears by the records of this Court which is in the
words, which Record in the words & figures following to wit,
John Brink

Neill Donnelly

Appual. Contested Election
Agreed case.

And the Court being
fully advised in this case as well upon the law
as the agreement of the parties, filed herein finds
that the votes mentioned in the agreement of the
parties

as having been polled in Cap Precinct were illegally polled and cannot be counted in the canvass of the votes at said election and that the votes in said agreement were polled as having been polled in Hartland precinct were legally polled and should be counted in the canvass of said votes, and that the said defendant Will Dinnely did on the 7th day of August last receive the highest number of legal votes then given and was duly elected to the office of Sheriff of said McHenry County. It is therefore ordered, considered and adjudged by the Court that the judgement of the Court below be reversed, and that the said defendant is entitled to the office of Sheriff of said County, and that the said defendant recover of the plaintiff his costs and charges as well in the Court below as in this Court expended and that he have execution therefor.

2 That a Quo Warranto does not lie where there is several persons contesting a right to the office of Sheriff where the only question is their right by election. The Court is divided.

Plats for defendant
Which has endorsed thereon
Filed Oct 1849 J. H. Johnson Clerk

And thereupon on the 4th day of October in the year last aforesaid the said relator filed his amended bill in the words and figures following to wit

State of Illinois } Of the Iowa special Term McHenry
McHenry County } Circuit Court A.D. 1849.

And now comes Alonzo Platt State attorney for the eleventh Judicial Circuit of the State of Illinois and

and on the relation of Derrick Bush who swears for
the People in this behalf and for the said Property gives
the Court here to understand & be informed that the
office of Sheriff of McHenry County is a public office
of great importance & hath been so for very years last
past and still is within the State of Illinois & is
at McHenry County aforesaid and thatNeill
Donnelly on the 15th day of September A.D. 1848 at
the September Term of this Court of said year in
open Court gave official Bond as Sheriff of
said County and took & subscribed the following
oath to wit.

State of Illinois }
McHenry County } I do solemnly swear that I will
support the Constitution of the United States of the
State of Illinois and that I will faithfully and
impartially perform all the duties required or to be
required of me as Sheriff of McHenry County
according to law & the best of my knowledge so
help me God which said oath was taken & subscrib-
ed before Joel H Johnson Clerk of this Court in
open Court on the said 15th day of September A.D. 1848
and that the said Neill Donnelly took no other oath
whatever than the one above recited on the day aforesaid
said that the said Neill Donnelly has not taken the
oath required by the 26th section of the 13th article
of the Constitution of the State of Illinois. Yet he the
said Neill Donnelly notwithstanding the premises did
unlawfully enter upon the duties of Sheriff of McHenry
County aforesaid on the day last aforesaid & hath
usurped the said office & unlawfully hath from that
time till now continued to usurp & exercise the liber-
ties privileges & emoluments of said office and

Chetty 824
2. Summary p 411
C. C. Johnson

and intrudes into the same contrary to law and to the
damages & prejudice of the said People of the State of
Illinois. Whereupon the said attorney of the People prays
the advice of the Court in the premises & law process of
law against the said Will Donnelly in this behalf that
he be required to answer to the said People by what man-
ner he claims to have hold enjoy the liberties &
privileges & franchises aforesaid

Always Just

Which has undergone Verdict. 11th Judicial Circuit
Filed Oct 4th 1849

J. A. Johnson Clerk.

And afterwards
to wit on the 5th day of October in the year last aforesaid
the said Court then being in session as aforesaid the
said defendant by his said attorney files his plea herein
in the words and figures following to wit.

Will Donnelly

at
The People of the State
of Illinois at the relation
of D. C. Bushy

And now comes the said Will
Donnelly, by Platt, his attorney
and having heard said
information read, says because
protesting that the said infor-
mation and the matters therein contained are not
sufficient in law and he is not obliged by the law
of the land to answer thereto for a plea says that he does
not think that the said People ought to impeach or
trouble him by reason of the premises in said
information specified. Because he says that he was
duly elected to the office of Sheriff of the County of
McHenry in ^{the} State of Illinois at an election there held
in said County pursuant to law on the first Monday
of August in the year 1848 and that he received

the highest number of votes for said office of Sheriff
and a Certificate of his election to said office and
afterwards to wit on the 23rd day of August A.D. 1848
was duly commissioned by the Governor of said State
which Commission has the seal of said State appended
thereto, and that afterwards to wit on the 15th day of
September 1848 he took all the oaths of office required
by the laws of said State of Illinois and that he then
and then took upon himself the duties of the office of
Sheriff of said McHenry County. And by virtue of the prem-
ises he then and then became to wit at the County of McHenry
aforesaid on the fifteenth day of of September A.D. 1848,
and from thence hitherto continuously until the time of
exhibiting said information was and still is Sheriff
of said County and for and during all that time
in said information specified at the County aforesaid
has used and exercised the office of Sheriff of
said County and for and during all that time
had claimed to be such Sheriff and to have and
enjoy all the liberties privileges and franchises
of said office thereto belonging as was and is lawful
for him to do. Notwith this that the said defendant the
said office privileges liberties franchises in said infor-
mation above mentioned has usurped or did usurp
upon the People of the State of Illinois in manner and
form as in said information is above alleged against
him, of which the said defendant is ready to verify.
Wherefore he prays judgement that the said office
liberties privileges and franchises by him claimed
in manner aforesaid may be allowed and adju-
ged to him and that he may be dismissed and
discharged by the Court hereof and from the premises
above charged against him

21811-27

Answered.

Recd Oct 5th 1849. H. H. Hobson Clerk
P. W. Platt attorney for defendant

And thereafter to wit, on the day and year last aforesaid
the following order and proceedings had to wit

The People ex Rel
Dennis C. Bush } Information

vs
Wm. Donnelly }
relator, by Sturtevant his Attorney
and the defendant by Potts and
the said defendant having filed his plea herein. And
thereupon on motion of the relators Attorney it is order-
ed that he have leave to reply herein by the first day of
November next, and it is further ordered that this
cause be put in issue by first day of next term.

And thereafter to wit, on the 18th day of April in the year
of our Lord one thousand Eighteen hundred and fifty
it being one of the days of the late April term of said
Court the said relator filed his demand to the pleas of
the said defendant, which is in the words and figures
following to wit.

The People ex Rel
D. C. Bush

vs
Wm. Donnelly }
Defendant of the matters & things therein contained in
manner & form as the same are above pleaded. It is
further are not sufficient in law to bar or preclude
the said Plaintiff from having or maintaining his aforesaid
said action thereof against the said defendant & that
the said Pff is not bound by law to answer the
same. And thus the said Pff is ready to verify
Wherefore by reason of the insufficiency of the
said Plea in this behalf the said Plaintiff prays
Judgment &c

And according to the form of the Statute in such case made and provided the said P^lff shews to the Court here the following Causes of Demurrer to the said plea.

For that the said plea though it professes to be an answer to the information yet in truth it doth not answer the same.

That it is not denied in
by the said plea that the said Defendant did not take the oath of office required by the 26th Section of the 13th article of the Constitution of the State of Illinois as in said information set forth & averred

And also that the said plea is in other respects unavailing & insufficient.

Wherefore the said P^lff prays Judgment of Court against the said defendant C. Aulbut & Bush

Which has incurred therein

Done April 18th 1850 J. H. Johnson Clerks

And thereupon on the day and year last aforesaid the following proceedings was had to wit.

The People vs. Rel^y
Demitt C. Bush } Information

vs. And now comes the
Auld Donnelly relator by Aulbut his attorney
and the defendant by Platt and thereupon the said
attorney for the relator files his demurrer to the pleas of
the said defendant by him in this behalf pleaded
in which the defendant by Platt his attorney joins
and the Court having heard the parties thereon takes
the same under advisement.

And afterwards to wit on the 19th day of April in the year last aforesaid the following proceedings was had to wit

The People ex Rel }
Derrick C. Bush } Information

And now from the return by Deulbut his attorney and the Court being fully advised as to the Plaintiffs demand to the defendants pleas filed herein yesterday sustains the same it is therefore ordered and considered by the Court that the return have and recover of the Defendants his costs and charges about his demand expended and that he have execution therefor.

And thereupon the defendant by Platt and Church his Counsel moves the Court for leave to amend their said pleas instanter which motion is denied by the Court and thereupon the said defendant demanded a Jury which is denied by the Court, to the overruling the motion to amend and trial by Jury the said defendant by his Counsel excepts. And it appearing to the Court that the said Seile Donnelly had unlawfully intruded into the office of Sheriff of said County, it is therefore ordered and adjudged by the Court that the said Seile Donnelly be ousted from the office of Sheriff of the County aforesaid and that the said People have and recover of the said defendant their costs and charges in and about this information expended and that they have execution therefor to which decision of the Court in entering a judgement of ouster the defendant by his Counsel excepts.

And then upon the said defendant prayed an appeal herein which is granted upon his entering into bond conditioned according to law in the sum of two hundred and fifty dollars.

with Ones M. Smith George Warren and Henry M
Thick as his security which is accordingly done and
approved by the Court

The following is the motion made filed heard by the defen
dants counsel to wit

The People of the State of Illinois } McHenry Circuit Court
at the relation of D. C. Bushy } April Term A.D. 1850

Will Donnelly } Now comes defendant
by his attorney and
moves the Court for leave to amend plea heretofore
filed herein. } Pleas for defendant
Which has endorsed therein
Filed April 19th 1850 J. H. Johnson Clk

And thereupon to wit. on the day and year last aforesaid
the said defendant filed his certain appeal bond in
the name and figures following to wit.

Know all men by these presents that the Will Don-
nelly principal and Ones M. Smith Henry M Thick &
George Warren security of the County of McHenry and
State of Illinois are held and firmly bound unto the
People of the State of Illinois upon the relation of Dennis
C. Bushy in the sum of two hundred and fifty dollars
which payment well and truly to be made we and
each of us bind ourselves our heirs executors admin-
istrating and assigns jointly by these presents. Witness
our hands and seals at Woodstock this 19 day of April
A.D. 1850.

The condition of the above obligation is such

that whereas the said People of the State of Illinois upon the relation of Dennis L. Bush did on the 19th day of April A.D. 1850 before the Circuit Court of said McHenry County in the said State receive a judgement against the said above named Shill Donnelly as Sheriff of McHenry County of ouster from said office and costs of said suit from which said judgement of the said Shill Donnelly has taken an appeal to the Supreme Court of the State of Illinois Now if the said Shill Donnelly shall prosecute his said appeal to effect and shall stand by and abide the decision of the said Supreme Court upon the trial or dismissal of said appeal and shall well and truly pay and satisfy whatever judgements costs interest and damages may be awarded in case the said judgement shall be affirmed in the said Supreme Court then the above obligation to be void else to remain in full force and virtue.

Taken and approved in open Court this 19 th day of April A.D. 1850 & acknowledged before me. Joel H. Johnson	Shill Donnelly	<u>Seal</u>
	George Murren	<u>Seal</u>
	Henry M. Neils	<u>Seal</u>
	Enos W. Smith	<u>Seal</u>

Chas. W. Clark, Clk. McHenry Co.

We do hereby approve of the securities and the form of the within bond
 April 19th 1850
 Surety for Relator
 Platt for Deft

Which said bond has undergone the
 trial April 19th 1850 J. H. Johnson Clk

State of Illinois }
McHenry County }

I the undersigned Clerk of the Circuit Court in and for the said County and State aforesaid do hereby certify that the foregoing is a true, complete and perfect copy of the Record and papers on file in the above entitled cause, in my office, and all proceedings had therein.

Witness Joel W. Johnson Clerk
of our said Circuit Court
and the seal thereof at Wood-
stock in said County this 8th
day of May, A.D. 1850.

Joel W. Johnson
Clerk

Neill Donnelly
vs
People ex rel
Jenick C. Bush

Transcript
Transcript

Filed May 21. 1850.
L. Keland Clk.



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this -

3 Penn 36

Hill Donnelly } Supreme Court
vs } June Term 1850
The People ex rel }
D. C. Bush }

The said plaintiff alleges the following errors in the above entitled suit

1st The court erred in ~~not~~ sustaining the demurrer of the relator to the plea of the plaintiff in error. The court erred ~~in~~ ~~erroneously~~ in rendering judgment of acquittal.

2nd The court in not sustaining the demurrer of the relator to information as ~~it~~ ^{extended} related back to the first proceeding

3rd The court erred in refusing the said Hill Donnelly leave to amend his plea

4th The court erred in refusing a trial by jury

The proceedings by 2110 Warrants are in the nature of criminal proceedings and the information should run in the name and by the authority of the People of the State of Illinois and conclude contrary to their peace and dignity. Constitution of State art 4 sec 7 4 Black Com 313 15 Johns Rep 388 Stevens Mus. press 9 Wend 388 18 ib 6032 Bowlers law dec 382 Cole on Crim in Law Library Vol 31 - p 90 - 91 - 146

2 How plus crown 2 vol 334-357
4 Cow 108-118 Espinasse digest 701
digest American com law vol 1 p 143
1 John 386

As to Amendments see 4 Cowen R 96
4 Term R 610 digest of American law
vol 6 p. 308 Cole cum informations 151
Sancraft 318

The plea is good How Pleas of the crown
27 338 4 Cowen R 108-118 Sancraft
app 28 34-41 43 69 Chit p vol 1-246
Cole on cum informations 150 1 Term
220

trial by jury state constitution art
8 sec 9

A Donnelly

People ex rel
D. B. Bush

Error & Brief

Beall Donnelly
vs
The People ex rel
J. C. Bush

This is ~~an~~ ex parte Warranto
filed by defendants in error vs
the plaintiff in error for unlawfully
entering into the office of Sheriff
of McHenry. The quo warranto sets
that on the ~~15th~~ day of Sept 1848
that Beall Donnelly in open Court filed
his bond as Sheriff of McHenry
County and took the following oath
State of Illinois

McHenry County, I do solemnly swear
that I will support the constitution of the
United States of the State of Illinois and
that I will faithfully and impartially
perform all the duties required of me
as Sheriff of McHenry County and
to the best of my knowledge so help me
God

The information then alleges that he
did not nor has taken the oath required
by the 21st Sec of the 13th article of
the Constitution

The information does not show that
it was filed in the name and
by the authority of the People of
the State of Illinois and does not
conclude contrary to the peace and
dignity of the same People,

So thus the defendant plead his election
Commission and so
and says "that ^{the 15th day of Sept 1848} he took all the oaths
of office required by the laws of the state
of Illinois
So this plea there was a ~~general demurrer~~ ^{special demurrer}
that the plea was evasive and did not
answer the information that it was not
denied by said plea that the said defendant
did not take the oath required by the
21st section of article of the constitution
of the state of Illinois

The court below sustained the
demurrer to said plea and
rendered judgment of ouster
The plaintiff in error asked leave
to amend plea instantly which was
refused

then demanded a trial by jury
which was also refused

Neill Donnelly } Supreme court Term 1850
 vs }
 The People et al }
 Derrick & Bush }

The said plaintiff assigns the following errors in the above entitled suit

1st The court below erred in sustaining the demurrer of the relator to the plea of the plaintiff in error and the court erred in sending judgment of ouster a

2nd The court erred in not sustaining the demurrer of the relator to the information ~~Two Warrants~~ as it extended back to the first proceeding

3rd The court erred in ~~Refusing~~ the said Neill Donnelly leave to amend his plea

4th The court erred in refusing a trial by jury

The proceedings by Two Warrants are in the nature of Criminal proceedings and the information should run in the name of the state of Illinois and conclude contrary to their peace and dignity

Constitution of the state Art 4
 Sec 7 4 Blackton error 313 15 John Rep
 388 Stevens Misc cases 2431 9 Wend Rep
 377 18 do 603 2 Bourne law Dic 382
 Cole on crim informations Law library Vol 31 90
 91-146 2 How pleas crown 334-357

4 Cowen 108-118 Espinape Digest 701
~~Sancraft app 28-34-41-43-69 1 Secum 320~~
Digest American Law vol 1-143
As to Amendments see 4 Cow 96 4 Term
Rep 610 Digest of American Law vol 6
Page 308 Cole Crim Informations 157
Sancraft 318

The plea is good How Pleas of the C.
338 4 Cow R 108-118 Sancraft app
28-34-41-43-69 Chit to vol 1246
Cole on Crim Informations 150 1 Secum
320 Cole 167 Comyns Digest 197
Treat by jurys state con art 8 sec 9

J. Dornally
187
Lester & Co
101
Lester & Co
101
Lester & Co
101

In reply to 1st point.

1. Plea bad for not answering Informative
Comyn's Dig. Vol. 7. p. 198 -
31. Law Library 148 & seq.
Buckmaster vs Braines 4 Gilw. 443.

Same general rules as to pleading &c,
in Quod warrantos as in Civil cases.
4 Cor. 95

Defendant must make out his title
15 Johns. 388 & 387 - 4 Burr. 2146 & 7

2. Demurrer in this case was special of
causes set out

Informative was good after plea at
all courts -

The time to take advantage was
before pleading.

Norton v. Dow. 5 Gilw. 459.

Even indictment sufficient if so drawn
that the nature of the offence may be
clearly understood by a jury - Conolly
v. People, 3 Scam. 477 - 4 Scam. 178
(Swain v People.) Eld v People, 509 -
Chambers v. People, 355 - 7 Rev. Stat.
Sec. 163 - p. 181 - Objections too late if
val - ~~Defendant must~~

3.

Repleader is a matter of discretion
with the Court not of right.
Comyn Dig. Vol. 6. p. 236 - & cases there
cited

Case from H. J. R. 608 & 610 - not sanc-
tioned by authorities

Heslop v. Patus & Scam. 45.
Matter of discretion not matter of
error -

4 Trial by jury on Demurrer not usual
Even under new constitution.

Quo Warranto quasi Criminal pro-
ceeding 15 Johns. 386 & 387 - but
now used only to try the right civil
right -

4 Cow. 97. People v Richardson
same 297 -

Quo Warranto is a proceeding ^{which} ~~is~~
Either the Atty Genl ex off. files, or by
a relator averring that some ~~subject~~
has intruded upon the Sovereign
- & calling on him to show his au-
thority - He must make up his
title - If he do not set it out suf-
ficiently & it be demanded to it is fatal.