

Syllabus.

to his wife he could at any time revoke. *Manny v. Rixford*, 44 Ill. 129.

In the view we have taken of the case, it is not necessary to construe the act of congress in regard to the assignment of claims for bounty. The defendant testified he had received from the government a draft for the bounty money of one hundred dollars, payable to Earls, and had endorsed it to him, and produced his receipt for the money, which was admitted in evidence without objection. On this state of the evidence we can see no ground on which the jury could have properly found a verdict for the plaintiff.

The judgment is reversed and the cause remanded.

Judgment reversed.

JOHN MURPHY

v.

THE PEOPLE OF THE STATE OF ILLINOIS.

PLEADING—*certainty as to identity of the person, in a plea of former recovery.* In an action of debt on a recognizance, the defendant interposed a plea of former recovery, in which it was averred that the people “impleaded the said defendant in a certain plea of *scire facias*, in the words and figures following,” setting out the writ at length, by which it appeared the defendant was named and impleaded with a certain other person, who was his co-obligor in the recognizance: *Held*, it appeared with sufficient certainty in the plea, that the defendant was the same person who was impleaded in the *scire facias*.

APPEAL from the Circuit Court of Union county; the Hon. M. C. CRAWFORD, Judge, presiding.

The opinion states the case.

Mr. JOHN DOUGHERTY, for the appellant.

Opinion of the Court.

Mr. WASHINGTON BUSHNELL, Attorney General, for the people.

Mr. JUSTICE WALKER delivered the opinion of the Court :

This was an action of debt, brought by appellees, in the Union circuit court, against appellant, on a recognizance to keep the peace. The declaration contained one count, and to it appellant filed a plea of former recovery on the same cause of action in the Union circuit court. The plea avers that a *scire facias* was issued upon the recognizance against Record and appellant, and the *scire facias* is set out in the plea. It further avers that appellant filed a demurrer to the writ, and then sets out the judgment sustaining the demurrer, and appellees having failed to amend the writ, final judgment was rendered in favor of appellant, that he go hence without day. To this plea appellees filed a demurrer, which was sustained by the court, and appellant failing to plead over, a judgment was rendered for the amount of the recognizance. The record is brought to this court by appeal, and the rendition of the judgment on the demurrer is assigned for error.

It is urged that this plea fails to aver that appellant is the same person who was impleaded in that proceeding. We have examined the record, and find that it is averred that appellees "impleaded the said defendant in a certain plea of *scire facias*, in the words and figures following," and then sets out the writ at length. From the copy of the writ, set out in the plea, we see that appellant is named and impleaded with Philip Record. We see from the plea that it conforms, in this respect, to the strictest rules of certainty. It avers that appellant was impleaded, and avers in the fullest manner, how and with whom he was impleaded. It leaves no room for doubt.

An examination of the recognizance set out in the plea, shows incontestibly that it was the same instrument upon which this action is brought, and, taken altogether, there can

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be no question that the *scire facias* was on the same recognition, and between the same parties, except Record, involved in this suit. Counsel for appellees has suggested no other ground for holding the plea bad, and we have not looked into the *scire facias*, to see whether it presented a sufficient ground of recovery, or whether the demurrer was sustained for want of some material averment that is supplied by the declaration in this case, as neither party refers to it, but they argue the case as though the *scire facias* was in all respects good. The court below erred in sustaining the demurrer to appellant's plea, and the judgment must be reversed and the cause remanded.

Judgment reversed.

SEXTON E. SMITH

v.

ELIZABETH ARCHER, Administratrix.

TROVER—*whether it will lie.* Where the cattle of one person break into the inclosure of another, and eat and destroy the growing corn of the latter, his remedy is trespass. Trover will not lie, even though the owner of the cattle knew they were breachy, and that they had been in the habit of committing such depredations.

WRIT OF ERROR to the Circuit Court of Sangamon county ;
the Hon. BENJAMIN S. EDWARDS, Judge, presiding.

This was an action of trover, brought at the regular term of the county court of Sangamon county, in March, 1868, by Sexton E. Smith against Elizabeth Archer, administratrix of the estate of William Archer, deceased, to recover the value of corn belonging to the plaintiff, destroyed by the cattle of deceased, in his life time. It appears, from the record, that the