

8691

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

# Supreme Court of Illinois

John J. Sloan, et al,

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vs.

people

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71641  7

Pleas had before H. N. S. O'Melveny, Judge of the second judicial circuit, of which the county of Randolph forms a part; at the April term A.D. 1858; viz the Grand Jury of said County at said term after being duly impaneled and sworn returned into court with others the following bill, marked a true bill; viz, The People vs James Campbell, Indictment for Rape which said indictment was filed by J. M. Pales Clerk of said court on the 6<sup>th</sup> day of April A.D. 1858. of which said indictment the following is a true copy;

State of Illinois vs Of the April term of the Randolph  
Randolph County of Circuit Court in the year of our Lord  
one thousand eight hundred and fifty eight. The grand jurors  
chosen, selected and sworn in and for the county of Randolph  
in the name and by the authority of the people of the state of  
Illinois upon their oaths present that James Campbell of the  
county aforesaid on the second day of December in the year  
of our Lord one thousand eight hundred and fifty seven at  
and in the county of Randolph aforesaid in and upon one  
Mary Anderson in the peace of God and the people of the state  
of Illinois then and there being with force and arms, unlaw-  
fully, violently and feloniously, did make an assault and  
kiss the said Mary Anderson then and there forcibly and again-  
st her will feloniously did ravish and carnally know, con-  
trary to the form of the statute in such case made and pro-  
vided and against the peace and dignity of the people of the  
state of Illinois.

And the Grand Jurors aforesaid upon their oaths aforesaid in the name and by the authority aforesaid do further present that the said James Campbell of the county aforesaid on the second day of December in the year of our Lord one thousand eight hundred and fifty seven at and in the county of Randolph aforesaid in and upon one Mary Anderson then and there being unlawfully and feloniously did then and there with force <sup>and</sup> arms make an assault with intent

then and there, unlawfully, forcibly and feloniously, to have carnal knowledge of her the said Mary Anderson forcibly and against her will, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Illinois

Amos Watts, State Attorney

Whereupon an order of Court was entered of which the following is a copy; Randolph County Circuit Court April Term AD 1858, April 6<sup>th</sup> AD 1858

The People

vs  
James Campbell

Indictment for Rape

It is therefore ordered that recognisance and bail be taken from said Deft in the sum of eight hundred dollars whereupon afterward this cause is continued till next term of this Court on affidavit of Defts &c;

Whereupon Capias issued, of which the following is a copy; State of Illinois; Randolph County

The People of the State of Illinois to the Sheriff

of Randolph County; greeting We command you that you take James Campbell if he shall be found in your County and him safely keep so that you may have him before the Judge of our Circuit Court within and for the County aforesaid on the first day of the next term thereof to be commenced and holden at the Court house in the city of Chester in said County on the first Monday of September next to answer unto the People of the State of Illinois of and concerning a certain bill of indictment with which he the said James Campbell stands charged in our Circuit Court which said bill was preferred against him by the Grand Jury of said County, as in that behalf appears; and have you then and there this writ and make return thereon as to the manner in which you have executed the same

Witness James M Ralls Clerk of our said Court and the Judicial Seal thereof this six<sup>th</sup> day of August AD 1858 J M Ralls Clerk

ES

Bail \$ 800

Of which the following is a copy of the return of the Sheriff of said County endorsed upon said writ, to wit:

I herewith return this writ the said James Campbell having given bond which is herewith enclosed as I am therein commanded August 27<sup>th</sup> 1858

S. S. Train Chff R. C. Ellis

Whereupon the following Recognizance was taken and acknowledged before the Sheriff of said County on the 30<sup>th</sup> day of April A.D. 1858, which was also filed by the Clerk of the Circuit Court in his office on the 30<sup>th</sup> day of April 1858 of which the following is a copy viz " Know all men by these presents that we James Campbell as principal and John Coulter, David Munford, James McMill, J. J. Sloane Wm S. Alexander, James Train, John White, junior, David Curry, James Robt, D. C. Campbell, John J. Woodsidge, Thomas Campbell, W. P. Murphy as securities are held and firmly bound unto the People of the state of Illinois in the penal sum of eight hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs & each of us jointly & severally firmly by these presents Sealed with our seals and dated this Twenty sixth day of April A.D. 1858 Now the condition of the above bond is such that whereas the Grand Jurors in and for the County of Randolph, State of Illinois at the April term A.D. 1858 of the Randolph Circuit Court found a true bill of indictment against the above named James Campbell said indictment charging the said James Campbell with the crime of rape. Now therefore if the said James Campbell shall personally appear & be before the Circuit Court in and for said County on the first day of the September term A.D. 1858 thereof to answer said indictment and not depart the Court without leave then this obligation to be void, otherwise to remain in full force & effect

James <sup>his</sup> Campbell  
John Coulter <sup>mark</sup>

Witness as to Campbell's signature }  
Henry Kollerman }  
Wm P. Murphy }  
}

David Munford }  
James McWille }  
J. J. Sloan }  
W. S. Alexander }  
James Ervin }  
John White jun }  
David Leury }  
James Robt }  
D. C. Campbell }  
John J. Woodside }  
Thomas Campbell }  
W. P. Murphy }  
J. M. Bair }

Taken and acknowledged by me }  
this 31<sup>st</sup> day of April A.D. 1858 }  
S. S. Strain }  
Shff Randolph County, Mo }  
}

Upon which an order was

by the Court made and entered of record of which the fol- }  
lowing is a copy, " Randolph County Circuit Court }  
September term A.D. 1858; September 6<sup>th</sup> A.D. 1858 }  
People vs }  
James Campbell }  
Indictment for Rape }  
And now on this day come said }  
People by Watts their attorney and said defendant being }  
three times solemnly called comes not but makes default }  
and said people move the court for judgement of forfeiture }  
of the recognisance entered into by said defendant and others }  
in this cause whereupon it is ordered by the court that said }  
People have judgement of forfeiture of said recognisance for the }  
penalty therein named of eight hundred dollars and scire }  
facias issue against said defendant and John Coulter, David }  
Munford, James McWille & J. J. Sloan returnable to the next }  
term of this court to show cause why they should not render to }  
said People said sum of eight hundred dollars as aforesaid &c }  
Upon which a writ of Scire facias issued }  
of which the following is a copy:

Indictment for Rape }  
And now on this day come said }  
People by Watts their attorney and said defendant being }  
three times solemnly called comes not but makes default }  
and said people move the court for judgement of forfeiture }  
of the recognisance entered into by said defendant and others }  
in this cause whereupon it is ordered by the court that said }  
People have judgement of forfeiture of said recognisance for the }  
penalty therein named of eight hundred dollars and scire }  
facias issue against said defendant and John Coulter, David }  
Munford, James McWille & J. J. Sloan returnable to the next }  
term of this court to show cause why they should not render to }  
said People said sum of eight hundred dollars as aforesaid &c }  
Upon which a writ of Scire facias issued }  
of which the following is a copy:

State of Illinois  
Randolph County

The People of the state of Illinois  
To the Sheriff of Randolph County; greeting Whereas  
James Campbell was on the 6<sup>th</sup> day of April A.D. 1858 by the  
Grand Jury within and for said County who had been previous-  
ly elected & sworn to enquire for the County of Randolph &  
state of Illinois, indicted on a charge of Rape; whereupon  
the following order was made by the Court, of which the fol-  
lowing is a copy "April 6 1858 The People vs  
James Campbell, Indictment for Rape It is therefore orde-

d that recognisance and bail be taken from the said Deft in  
the sum of eight hundred dollars, whereupon afterwards this  
cause is continued till next term of this Court on affidavit of  
Deft &c And whereas on the 30<sup>th</sup> day of April 1858 there was  
executed before Savinien S. Vrain Sheriff of said County a  
bond or recognisance by said James Campbell & John Coulter  
David Mumford, James McDill, J. J. Sloane, Wm S Alexan-  
der, James Ervin John White jr David Curry, James Robt  
D. C. Campbell, John J. Woodside, Thomas Campbell, Wm P  
Murphy & J. M. Bair as his securities said S. S. Vrain being  
duly commissioned & qualified as such sheriff & having a perfect  
right to take such bond or recognisance, said bond or recognisan-  
ce being signed & executed by said James Campbell & John  
Coulter, David Mumford, James McDill, J. J. Sloane, Wm S.  
Alexander, James Ervin, John White jr, David Curry, James  
Robt, D. C. Campbell, John J. Woodside, Thomas Campbell  
Wm P. Murphy & J. M. Bair as aforesaid in the penal sum of  
eight hundred dollars and payable to the people of the state  
of Illinois which said bond or recognisance was filed in  
the office of the Circuit Clerk by James M. Rales Clerk of the  
Circuit Court within and for said County the said Clerk  
being duly elected, qualified & Commissioned & having a per-  
fect right to file such recognisance on the 30<sup>th</sup> day of April  
A.D. 1858 & thereby said recognisance became a matter of

record in said Court, and whereas at the September term of said Court, to wit on Monday the 6<sup>th</sup> day of September AD 1858 an order of said Court was made & entered of record of which the following is a copy viz; People vs James Campbell Indictment for Rape And now on this day come said people by Watts their attorney and said defendant being three times solemnly called came not but makes default and said People move the Court for judgement of forfeiture of the recognisance entered into by said defendant and others in this cause whereupon it is ordered by the Court that said People have judgement of forfeiture of said recognisance for the penalty therein named of eight hundred dollars and scire facias issue against said defendants and John Coulter, David Munford, James McNeill & J. J. Sloane returnable to the next term of this Court to show cause why they should not render to said People said sum of eight hundred dollars as aforesaid &c

We therefore command you that you summon the said James Campbell & John Coulter, David Munford James McNeill, J. J. Sloan, Wm. S. Alexander, James Erwin John White, David Curry, James Robt, D. C. Campbell, John J. Woodside, Thomas Campbell, Wm P. Murphy & J. M. Bair if to be found in your County to be & appear before our Circuit Court on the first day of the next term thereof to be holden at the Court house in the city of Chester in the month of April next to show cause if any they have why judgement for the sum of eight hundred dollars should not be entered against them in favour of the People aforesaid for which they are jointly bound as set forth in said bond or recognisance & further to do, abide & perform whatever said Court shall then & there consider & adjudge against them in this behalf & have you then & there this writ with your return thereon, Witness

J M Pales Clerk of said Court with the seal of said Court affixed at office in Chester this 16<sup>th</sup> day of March AD 1859 J M Pales Clk Cir Court

7  
Upon which writ are endorsements of which the following are copies: viz,

I hereby appoint W. W. Jamison my special Bailiff to execute this writ, March the 25<sup>th</sup> 1859  
Anthony Steele Sheriff of R. C.

"Served the within summons by reading to John White  
Jury, W. S. Alexander, James Erwin March 26<sup>th</sup> 1859  
Wm W. Jamison."

"Executed this writ by reading to the within  
named persons Thomas Campbell not found, April 26<sup>th</sup> 59  
A Steele Shff R C  
By J. C. McClintock Sept"

On the 25<sup>th</sup> of April, 1859  
Whereupon, the Defendants filed their demur-  
rer of which the following is a copy, viz:

People }  
vs } Sci fa on Recog  
James Campbell et al }  
And now comes J. M. Bear one  
of the depts in this case & says the said Sci fa is not  
sufficient in law. 1<sup>st</sup> Because Sci fa was only ordered  
against a part of the depts in this suit, 2<sup>nd</sup> Because it  
does not appear that the Sheriff had any writ in his hands  
or authority to take said Recognisance, 15 S. R. 292, 16 Sec 12,  
3<sup>rd</sup> Because it does not appear that the same was entered  
into before or approved by said Sheriff 14 Sec 3 13  
W. H. Underwood  
Atty for Bear"

Whereupon on the 26<sup>th</sup> of April A.D. 1859 pleas  
were filed of which the following is a copy,

"People }  
vs } Sci fa on Recognisance  
John Coulter et al }  
And now come all the securities  
of James Campbell who have been served in this case & for  
plea why the said People should not have execution



say that there is no record of the said recognisance and for future thereof in manner & form as the said people have in that behalf alleged & this they are ready to verify wherefore they pray judgement &c

And for further plea in this behalf the said defts say the said People ought not to have execution & because they say that the said Sheriff at the said time when he took said recognisance had no writ, power or authority whatever in law to take said recognisance in manner & form as the said people have in that behalf alleged & of this the said defts put themselves upon the Country &c

And for further plea in this behalf the said defts say the said people ought not to have execution & because they say that at & before the time said recognisance was taken and entered into as alleged in said sci fa, the said James Campbell was Courtier that to the common jail of said County & in the custody of the jailor thereof & the said Sheriff there & there had no writ, power or legal authority whatever to take or approve said recognisance & this the said defts are ready to verify wherefore they pray judgement &c

And for further plea in this behalf the said defts say the said People ought not to have execution &c because they say that the said recognisance was not taken & approved & entered into before the said Sheriff of said County in manner & form as the said People have in that behalf alleged & of this said defts put themselves upon the Country &c

Wm. H. Underwood

Attys for dft

And sd Plffs comes and for replication to dfts plea first pleaded say there is a record of the said recognisance &c

And for replication to said defts 2<sup>nd</sup> plea by them above pleaded say the said Sheriff had authority &c to take said recognisance &c

And to 3<sup>rd</sup> plea above pleaded plffs demur & say the same is not sufficient joined Underwood atty for dft

And for replication to 4<sup>th</sup> plea by dfts above

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pleaded plffs say said recognisance was taken, approved  
& entered into before said Sheriff of said County in manner  
in form as said plffs hath alleged & this said plff may be enquired  
of &c  
Watts states atty

Plffs do the like & take issue on all the replications filed  
in short  
W. H. Underwood

Atty for securities

Whereupon at the April term of said Court to wit  
on the 30<sup>th</sup> day of April A.D. 1859 an order was by the Court  
made and entered of record of which the following is a copy  
to wit: "

Randolph Circuit Court April term Saturday 30<sup>th</sup>  
A.D. 1859

The People of the State of Illinois

vs

James Campbell, John Coulter, David } & c / a  
Munford, James McWile, J. J. Sloane Williams } on  
Alexander, James Erwin, John White jun } recogni  
David Leury, James Robt, W. C. Campbell } sance  
J. J. Woodrider, Thomas Campbell, Wm P. Murphy }  
W. J. Baird }

And now on this day come said People by  
Watts their attorney and said defendants by Underwood  
their atty and said defendants having filed their plea &c  
said People by their attorney interpose their demurrer to said  
defendants third plea herein &c whereupon the being fully  
advised of & concerning said demurrer sustains the same &c  
whereupon replications being filed &c and issue joined this  
cause is submitted to the Court for trial without a jury &c and  
said People by their attorney introduced as evidence the bail  
bond &c by said defendants entered into &c which was objected  
to by said defendants counsel which objections were over-  
ruled by the Court & said bond read &c to which ruling of  
the Court Counsel for defendants excepted &c, said People

by their atty next introduced the order of this court affixing  
 the amount of bail at \$ 800 which was read &c. Said People  
 by their atty next offered in evidence the order of forfeiture of said  
 recognisance &c which is objected to by defendants counsel &c  
 which objection is overruled by the court and said order read  
 &c to which ruling of the court said defendants counsel  
 excepted to &c and after being fully advised of &c concerning said  
 evidence &c & hearing arguments of counsel &c the court finds  
 for the plaintiff and against defendants, John Coulter, David  
 Munford James McMill and J. J. Sloane &c whereupon it is  
 considered by the court that said People have and recover of &  
 from said defendants John Coulter, David Munford, James  
 McMill & J. J. Sloane for the penalty of said bond to wit the sum  
 of eight hundred dollars &c whereof <sup>judgment of</sup> forfeiture of ~~judgment~~ &c  
 was by this court thereupon endorsed &c against said defen-  
 dants last aforesaid and that said People have execution  
 for said penalty of eight hundred dollars to be levied &c

Whereupon said defendants by their atty enter their motion  
 a new trial herein &c which motion after being fully advised  
 of &c is by the court overruled to which ruling of the court  
 said defendants by their counsel except &c and pray an ap-  
 peal to the Supreme Court of the State of Illinois which appeal  
 is granted upon said defendants entering into bond for the sum  
 of \$1,000 with security to be approved by the Clerk of this court  
 James M. Pells within sixty days from this date &c

Whereupon on the 30<sup>th</sup> day of April Ad 1859 there  
 was filed by the Clerk of said court a bill of exceptions

of which the following is a copy 11

People

vs

Campbell et al

Sci fa on Recognizance

Be it remembered that on the trial of this cause the People offered in evidence the following recognizance ~~first~~ of which the following is a copy

Know all men by these presents that we James Campbell as principal and John Coulter, David Mumford James Mc Dill, J. J. Sloane, Wm S. Alexander, James Irwin John White junior David Barry, James Robt, D. C. Campbell John J. Woodside, Thomas Campbell, W. P. Murphy, as securities are held and firmly bound unto the People of the State of Illinois in the penal sum of eight thousand dollars, lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs & each of us jointly & severally firmly by these presents, sealed with our seals and dated this twenty sixth day of April A.D. 1858

Now the condition of the above bond is such that when as the Grand Jurors in & for the county of Randolph State of Illinois at the April term A.D. 1858 of the Randolph Circuit Court found a true bill of indictment against the above named James Campbell, said indictment charging the said James Campbell with the crime of Rape Now therefore if the said James Campbell shall personally appear & be before the circuit court in and for said county on the first day of the September term A.D. 1858 to answer said indictment and not depart the court without leave then this obligation to be void otherwise to remain in full force and effect

Witness as to Campbells signature  
Henry Kollerman  
Wm P Murphy

James Campbell  
John Coulter  
David Mumford  
James Mc Dill  
J. J. Sloan  
W. S. Alexander

James Erwin *Recd*  
 John White jun *Recd*  
 David Curry *Recd*  
 James Post *Recd*  
 D. C. Campbell *Recd*  
 John J. Woodside *Recd*  
 Thomas Campbell *Recd*  
 W<sup>o</sup> Murphy *Recd*  
 J M Bair *Recd*

Taken and acknowledged by me this 30<sup>th</sup> day of April 1858

J. J. Train }  
 Sheriff Randolph County Ill }

Which was objected to by the defendants but the objection was overruled by the court and the same read in evidence. The People then read in evidence the following forfeiture of record of said recognisance at the September term of said Court 1858, the following order was entered of record to wit:

"People vs James Campbell } Monday September 6<sup>th</sup> 1858  
 } Indictment for Rape  
 } And now on this day come said People by Watts their attorney and said defendant being three times solemnly called comes not but makes default and said People move the Court for judgement of forfeiture of the recognisance entered into by said defendants and others in this cause whereupon it is ordered by said Court that said People have judgement of forfeiture of said recognisance for the penalty therein named of eight hundred dollars and scire facias issue against defendant and John Coulter, David Munford, James McNeill & J. J. Sloane returnable to the next term of this Court to show cause why they should not render to said People said sum of eight hundred dollars as aforesaid &c

Which order was read in evidence and to which defendants objected the plaintiffs then read in evidence the following order of said Court made April

6<sup>th</sup> AD 1858

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Randolph County Circuit Court  
April term AD 1858 April 6<sup>th</sup> AD 1858


The People

James Campbell

}  
}  
}

Indictment for Rape

It is therefore ordered that recognisance and bail be taken from said deft in the sum of eight hundred dollars whereupon afterwards this cause is continued till next term of this court on affidavit of deft & c<sup>o</sup>. It was admitted that the Sheriff of said County took the recognisance in this case in vacation under said order of Court without having any writ or capias in his hands at the time. This was all the evidence in the case. After the finding of the Court defendants against whom the Court found moved for a new trial because the finding was not warranted by the law or the evidence which motion was overruled by the Court and to which decision of the Court defendants at the time excepted and prays this his bill of exceptions may be signed, sealed and made a part of the record which is done.

H. N. S. O. Melvany   
Judge &c &c

Whereupon on the 14<sup>th</sup> day of June AD 1859 there was filed in the Clerks office of said Court an appeal bond of which the following is a copy to wit:

"Know all men by these presents that we John Coulter, James McMill, John J. Sloan, David Mumford, John Campbell & Jacob M. Fair are held and firmly bound to the People of the State of Illinois in the penal sum of one thousand dollars for the payment of which well and truly to be made we bind our selves, our heirs, executors and administrators jointly and severally and each of them firmly by these presents in witness whereof we have hereunto set our hands and seals this the 6<sup>th</sup> day

of June 1859 The condition of the above bond is such that whereas the people of the state did at the April term of the Circuit Court 1859 recover a judgement against the said John Coulter, James McWille, John J Sloan, Thomas Campbell and David Munford for the sum of one thousand dollars and costs of suit, from which said judgement the said John Coulter, James McWille, John J Sloan & David Munford has prayed and obtained an appeal to the Supreme Court of the State of Illinois, now if the aforesaid John Coulter, James McWille, John J. Sloan, Thomas Campbell and David Munford shall duly prosecute the said appeal and shall pay the said judgement and costs of suit and interest and damage in case said judgement shall be affirmed in said Supreme Court upon the hearing thereof then the aforesaid bond and obligation to be void otherwise to remain in full force & effect

John J Sloan *JS*

David Munford *DM*

John Coulter *JC*

James McWille *JM*

*TS*

*DM*

J M Pair *JM*

John Campbell *JC*

State of Illinois  
 Randolph County, S. S. I James M. Kalls Clerk of the  
 Circuit Court within and for said County hereby certify that  
 the foregoing contains a true copy of the Record & proceedings  
 in the case of the People vs James Campbell & others  
 his securities as appears by the Records & files of my  
 office as also a copy of the bill of exceptions  
 filed in said case as also a copy of the appeal bond  
 executed by J. J. Sloan & others

Given under my hand & seal of said  
 Court this 17th day of October A.D. 1859.

J. M. Kalls cl<sup>rk</sup>  
 Cir Court N. C. Ill



John J. Sloan } November Term of the  
et al. } Supreme Court 1859.  
vs. } 1st Grand division.  
The People } Appeal from Randolph.

And the said appellants come & say that in the record and proceedings aforesaid there is manifest error in this to wit. The court below erred in sustaining the demurrer of appellee to appellants 3<sup>d</sup> plea - 2<sup>d</sup> - In finding for the appellee on the evidence - 3<sup>d</sup> - In refusing appellants a new trial. Wherefore appellants pray that said judgment be reversed &c.

Underwoods

Atty for appellants.

And now comes Appellee per Amos Watts their atty say there are no errors in the foregoing record &c and pray that said judgment be affirmed &c

Amos Watts atty for appellee

8251-97

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John J. Sloan  
et al.

vs.

The People

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Appeal from  
Randolph

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The Clerk of the  
Supreme Court  
will please file  
this record & docket  
this cause

Woods  
Atty for appellants

Filed Nov. 14. 1859.

By N. Johnston atty  
Paid by Wm. Hammond \$5.00

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

JOHN J. SLOAN, ET AL.,  
VERSUS  
THE PEOPLE, & C.

} Appeal from Randolph.

- PAGE 5 This was a scire facias on a recognizance in the Randolph Circuit Court. It recites that James Campbell was indicted for a rape on the 6th of April, 1858, in said County, and recognizance ordered in \$800; and on the 30th of April, 1858, "there was executed before the Sheriff of said county a bond or recognizance" by said Campbell, and said appellees and others, in the penal sum of \$800, which was filed on the day last aforesaid, with the Clerk of said Circuit Court. And on the 6th of September, 1859, an order of forfeiture was entered of record in said Court, and scire facias ordered against said Campbell and the appellees, returnable, &c.
- PAGE 6 To this scire facias the appellees plead. 1st—Nul tiel record of the recognizance and forfeiture. 2nd—
- PAGE 8. That the said Sheriff, at the said time, when he took said recognizance, had no writ, power or authority to take said recognizance, &c. 3rd—That, at and before the time said recognizance was taken, &c., the said Campbell was committed to the common jail of said county, and in the custody of the jailer thereof, and the said sheriff then and there had no writ, power or legal authority to take or approve said recognizance, &c. 4th—That the said recognizance was not taken and approved and entered into before the said sheriff in manner and form, &c.
- PAGE 8 & 9 All the pleas were traversed except the third, which was demurred to by The People, and the demurrer sustained by the court. The bill of exceptions recites that a recognizance was introduced in evidence, " 11 purporting to have been "taken and acknowledged by the Sheriff" on 30th of April, 1858. Also, a forfeiture of record as stated in said scire facias.
- " 12
- PAGE 13 Also, an order of record dated April 6th, 1858, that recognizance and bail in \$800 be taken of said Jas. Campbell. It was admitted that the sheriff took said recognizance in vacation under said order of court, without any writ or *capias* in his hands at the time. The court found for The People. Defendant below moved for a new trial, because the finding was not warranted by the law or the evidence, which motion was overruled, and appellees excepted at the time, and bring this cause by appeal here, and assign for error. 1st—The court below erred in not finding for them on the evidence, and in not granting them a new trial. 2nd—The court below erred by sustaining a demurrer to appellant's third plea.

**Brief:**

1st—The sheriff had no power, or writ, or authority to take the recognizance.—[*Vancil vs. The People*, 16 Ill. R., 121. 171, 172, *Solomon vs. Do.*, 15 Ill. R., 292.

2nd—It was not proved that that the said recognizance was approved by the sheriff, which is indispensable.—[14 Ill. R., 312.

3rd—Nor was it proved that said recognizance was filed in the court below, which is equally necessary—[14 Ill. R., 312—20 *Id.*, 383.

UNDERWOODS,  
*Attorneys for Appellants.*

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John J. Hoar & Co

25  
The People  
Abstracts

8691

FIRST GRAND DIVISION.

JOHN J. SLOAN, ET AL.,  
VERSUS  
THE PEOPLE, & C.

} Appeal from Randolph.

PAGE 5 This was a scire facias on a recognizance in the Randolph Circuit Court. It recites that James Campbell was indicted for a rape on the 6th of April, 1858, in said County, and recognizance ordered in \$800; and on the 30th of April, 1858, "there was executed before the Sheriff of said county a bond or recognizance" by said Campbell, and said appellees and others, in the penal sum of \$800, which was filed on the day last aforesaid, with the Clerk of said Circuit Court. And on the 6th of September, 1859, an order of forfeiture was entered of record in said Court, and scire facias ordered against said Campbell and the appellees, returnable, &c.

PAGE 6. To this scire facias the appellees plead. 1st—Nul tiel record of the recognizance and forfeiture. 2nd— That the said Sheriff, at the said time, when he took said recognizance, had no writ, power or authority to take said recognizance, &c. 3rd—That, at and before the time said recognizance was taken, &c., the said Campbell was committed to the common jail of said county, and in the custody of the jailer thereof, and the said sheriff then and there had no writ, power or legal authority to take or approve said recognizance, &c. 4th—That the said recognizance was not taken and approved and entered into before the said sheriff in manner and form, &c.

PAGE 8 & 9 All the pleas were traversed except the third, which was demurred to by The People, and the demurrer sustained by the court. The bill of exceptions recites that a recognizance was introduced in evidence, " 11 purporting to have been "taken and acknowledged by the Sheriff" on 30th of April, 1858. Also, a forfeiture of record as stated in said scire facias. " 12

PAGE 13 Also, an order of record dated April 6th, 1858, that recognizance and bail in \$800 be taken of said Jas. Campbell. It was admitted that the sheriff took said recognizance in vacation under said order of court, without any writ or capias in his hands at the time. The court found for The People. Defendant below moved for a new trial, because the finding was not warranted by the law or the evidence, which motion was overruled, and appellees excepted at the time, and bring this cause by appeal here, and assign for error. 1st—The court below erred in not finding for them on the evidence, and in not granting them a new trial. 2nd—The court below erred by sustaining a demurrer to appellant's third plea.

**Brief:**

1st—The sheriff had no power, or writ, or authority to take the recognizance.—[*Vancil vs. The People*, 16 Ill. R., 121. 171, 172, *Solomon vs. Do.*, 15 Ill. R., 292.

2nd—It was not proved that that the said recognizance was approved by the sheriff, which is indispensable.—[14 Ill. R., 312.

3rd—Nor was it proved that said recognizance was filed in the court below, which is equally necessary— [14 Ill. R., 312—20 *Id.*, 383.

UNDERWOODS,  
Attorneys for Appellants.

17 Ill 172 It is decided where  
the certificate states that  
this was good  
Scatter 402-412

39-6

John J. Slown et al  
vs.

The People

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Abstract of Brief

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Chester Illinois  
Jan'y 31<sup>st</sup> 1860

Clerk, Supreme Court  
Or Sir

There was a case appealed to the Supreme Court from Randolph County - People vs James Campbell et al - Just Etow here on Bail Bond for \$8000. I appealed - Will you be so kind as to send the necessary papers here to authorize me to Issue Executions &c, also send your full bill to the Clerk to collect the Dpts and amply able to pay. I understand that it was decided against the Dpts.

Yours &c  
J. M. Kallahan  
Clerk Court

No 39-6

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Nov. Term 1859.

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Sloan et al

vs

People

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App. for Remedy

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Affirmance

8691