No. 11884

Supreme Court of Illinois

Grave, et al.

vs.

People.

71641 7

No. 1
Criminal Docket

Harrison Graves
vs
The People &c.

50

Prefixed
11884

Pleas before the Hon Theophilus
C Dickey judge of the Ninth Judicial
Circuit. At a Special Term of the
Circuit Court of the County of Kane
in the State of Illinois, began and held at
the Court house in Geneva in said
County on the Sixteenth day of
January in Year of our Lord one Thousand Eight
hundred and Forty Nine, the said Term having been
called according to Law by an Order of the Hon Theophilus
C Dickey judge of the Ninth Judicial Circuit of said
State, dated the 4th day of December AD 1848 which
was duly filed and Recorded

Present Hon Theophilus C Dickey Judge
B. C. Yates Sheriff
B. C. Cook States Atty
Attest Chas. B. Mills Clerk

And afterwards to Wit on 25th day of January AD 1849
it being one of the days of the December Special Term
AD 1848 of Kane County Circuit Court, the following among
other Proceedings were had to Wit.

43 The People &c
v
Harrison Graves } Indictment for Larceny

This day come the People by Cook
States Attorney and the said defendant being three times
solemnly called comes not but made default, and Isaac
Graves and David Root the securities for the appearance
of the said Harrison Graves in the recognisance heretofore
filed in this Court, being also three times solemnly called
to produce the body of the said Harrison Graves
come not nor produce the body of the said Harrison

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Graves; It is therefore considered by the court that the recognizance aforesaid be forfeited, and that the People of the State of Illinois have judgment against the said Harrison Graves for the sum of one hundred dollars, and that the said People have judgment against the said Jesse Graves, for the sum of Seven hundred and Fifty dollars, and the said David Root for the sum of Seven hundred and Fifty dollars and that a Scire facias be issued to the said Harrison Graves, David Root, and Jesse Graves commanding them to show cause if any they have, why Execution should not be issued against each of them respectively for the amount of the above judgments and that said Scire Facias be made returnable to the next term of this court.

And afterwards to Wit on the 27th day of March AD 1850 there issued from the Clerks Office of said Court in pursuance of said order a Sci. Fa. of which the following is a copy to Wit

State of Illinois } The People of the State of Illinois
Kane County ss } to the Sheriff of DuPage County
Greeting

Whereas on the 14th day of October AD 1848 there was filed in the Office of the Clerk of the Circuit Court of said Kane County a recognizance in the words and figures following to wit

State of Illinois }
Kane County ss } Be it remembered that on the second day of October eighteen hundred and Forty Eight William H Graves of the County of DuPage and State aforesaid, and Jesse Graves and David Root of the same place personally came before us Thomas A Scott and Albert W Gluck Esquires two of the justices of the

Peace of the said County of Kane, do severally and respectfully acknowledge themselves to owe to the People of the State of Illinois, that is to say the said William H Graves the sum of one hundred dollars, and the said Jesse Graves and David Root each in the sum of seven hundred and fifty dollars severally to be made and levied of their respective goods and Chattles, lands, and tenements to the use of the said People if default be made in the Condition following; The condition of this recognisance is such that if the said William H Graves who has been committed to the Common Jail of said County of Kane for the want of sureties, shall personally be and appear at the next term of the Circuit Court to be held in and for said County of Kane on the first day thereof to answer to an Indictment to be preferred against him for stealing and riding away four horses from said County and to do and receive what shall by the Court be then and there enjoined upon him, and shall not depart the Court without leave then this recognisance to be void or else to remain in full force and virtue

Taken subscribed and acknowledged the day and year first above written before Thomas Abbott Justice of the Peace

Albert H Graf Justice of the Peace

W. H. Graves [Seal]
Jesse Graves [Seal]
David Root [Seal]

and whereas afterwards to wit on the 19th day of January AD 1849 at a special Term of the Circuit of said Kane County County, the following proceeding was had as appears from the records of our said Court: "This day comes the Grand Jury and answer to their names

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and present to the Court as true bills of Indictment which is endorsed as follows

The People
v
Harrison Graves } Indictment for Larceny
a true bill Noah W. Spalding foreman

and afterwards at the same term of said Court to wit. on the 25th day of January AD 1849 the following proceedings were had in said Court in said Cause as appears from the Records thereof

The People &c
v
Harrison Graves } Indictment for Larceny

This day come the People by Cook States Atty and the said defendant being three times solemnly call'd comes not but makes default, and Jesse Graves and David Root the sureties for the appearance of the said Harrison Graves in the recognizance heretofore filed in this Court being also three times solemnly called to produce the body of the said Harrison Graves, come not nor produce the body of the said Harrison Graves: It is therefore considered by the Court that the recognizance be forfeited, and that the People of the State of Illinois have judgment against the said Harrison Graves for the sum of one hundred dollars, and the said People have judgment against the said Jesse Graves for the sum of Seven hundred and fifty dollars and against the said David Root for the sum of Seven hundred and fifty dollars, and that a Scire Facias be issued to the said Harrison Graves, David Root and Jesse Graves, commanding them to shew cause if any they have, why execution should not issue against each of them respectively for the amount of the above judgment, against them respectively, and that the

Scire Facias be made returnable to the next Term of this Court

You are therefore hereby commanded to Summons the said William H Graves, Jesse Graves and David Root if to be found in your County personally to be and appear before the Circuit Court of said Kane County to be holden at the Court House in Geneva in said County on the 23d day of April AD 1849 to show cause if any they have why Execution should not be issued against them respectively for the amount of the above judgments against them respectively, and make return of this writ with an endorsement thereon in what manner you executed this writ.

Witness Charles B Wells Clerk of said Court and the seal thereof at Geneva this 27th day of March AD 1849.

(Seal)

Cha. B. Wells
Clerk.

And the said Writ is endorsed as follows" Executed the within Writ by reading the same in the hearing of David Root and Jesse Graves April 16th 1849 Fees 10-16 miles 1.00 $1.12 Geo Roush Sheriff by Geo F Lenhart Dep. William H Graves not found in my County. G.R.

And afterwards to wit on the 20th day of December AD 1849 the defendants filed a Demurrer to the Scire Facias of which the following is a copy to wit

State of Illinois

William H Graves
Jesse Graves &
David Root
vs
The People of the
State of Illinois

} Scire Fa on Recognisance

And now comes the said defendants David Root and Jesse Graves by Dudley and

Wilson their Attorneys and defend &c. and say that the Scire Facias issued herein is not sufficient in law. and that they are not bound to answer unto the same. and this they are ready to verify &c: Whereupon they pray Judgment &c

Tridley & Wilson
Attys for defendants

And the People by B.C. Cook States Atty also come & say that the said Scire Facias is sufficient and that said defendants are bound to answer the same whereupon for want of any sufficient answer they pray Judgment &c

B.C. Cook
States Atty

And afterwards to wit on the 20th day of ~~January~~ December AD 1849. it being one of the days of the December Special Term of Vanw County Circuit Court AD 1849 the following proceedings were had to wit

The People of the State of Illinois
v
Harrison Graves, Jesse Graves & David Root } Sci: Fa. on Recognizance

This day comes the People by B.C. Cook States Atty. and the said defendants Jesse Graves and David Root by Tridley & Wilson their Attys and ~~being~~ the States Attorney entered his Motion, that an order for execution upon the Judgment mentioned in this Scire Facias as against the said Jesse Graves and David Root be entered. there being no plea on file in pursuance of the general rule heretofore entered, and the said defendants moved the Court for leave to file his Demurrer to the Scire Facias instanter, which was granted by the Court upon the terms that the said defendants shall abide by their demurrer; and the said cause coming on to be heard upon the said demurrer of the said defendants

after hearing the argument of Counsel, and being fully advised in the premises, overrules the demurrer, and said defendants, no further answering; it is considered that the said People have execution against the said Jesse Graves for the sum of Seven hundred and Fifty dollars and against the said David Root for the sum of Seven hundred and Fifty dollars upon the judgments heretofore rendered ~~rendered~~ upon forfeiture of recognizances in said Scire Facias mentioned, and they also recover their costs by them in this behalf expended as against the said Root and Jesse Graves, and that they have Execution therefor against the said Jesse Graves and David Root

State of Illinois }
Kane County ss } I Charles B Wells Clerk of Kane County Circuit Court do hereby certify that the foregoing is a true copy of the Record in the cause of the People v Harrison Graves ordering a Sci. Fa.; also copy of the Sci. Fa. and Demurrer on file in said cause; also copy of the final order of judgment as appears of Record.

Witness Charles B. Wells Clerk of said Court and the seal thereof at Geneva in said County this 30th day of May AD 1849

Chas B. Wells, Clerk.

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And now comes the said Plaintiffs in Error and say that in the Record and proceedings aforesaid there is manifest Error in this To Wit:

1.st The Court below Erred in overruling the Demurrer to the Scire facias.

2. The Judgment of the Court below is against the law.

3.d Judgment below ought to have been for the said Daniel Root & Jesse Graves & not for the said plaintiffs below.

Wherefore for the Error aforesaid & for other Errors apparent on the face of the Record the said pltffs. in Error pray that the judgt. below may be reversed &c.

Tridley & Wilson Attys.
for pltffs in Error

Harrison Graves
vs
People of State of Ills.
Record

Filed June 21. 1859.
A. Delano Clk.

Ans. by Clk. by J. G. Wilson

And the said People also come & say that in the record & proceedings aforesaid and in the rendition of the judg't aforesaid no error hath intervened to the prejudice of the said plaintiffs in error in manner & form as above alledged. And this they are ready — by the record &c. Therefore they pr affirmance of judg't &c.

Cook atty for People.

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There is a fatal objection to the *scire facias*. The recognizance was conditioned for the appearance of William H Graves. An indictment was presented against Harrison Graves, and a forfeiture of the recognizance entered for his non-appearance. This does not show any breach of the obligation. If the facts of the case warranted it, there should have been an averment in the *scire facias*, that Harrison Graves was the same person who entered into the recognizance by the name of William H Graves. As the *scire facias* shows no cause of action, the judgment must be reversed; but another *scire facias*, containing proper averments, may be prosecuted.

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Spaves et al. vs The People.

Opinion.

Neat.

Filed July 24. 1850.
S. Nelson Clk.

The two justices having jurisdiction to ~~take~~ admit to bail in one particular case, the presumption is that they were one of them.

The recog. when filed becomes a record of the circuit court & the presumption is in favour of the recog.

Shattuck v People 4 Scam 481
Adair v People 1 Blackf R 401.
McCarty v State 1 id 339.

The recog. states he was committed for want of bail on a charge of Larceny — this implies the regularity of the proceeding
4 Scam R 481

As to question of Name

See Jardy vs State 4 Blackf 152
Stewart vs State " " 171
" " " 269
Hull vs Blaisdell 15 Cam 334
Stevens vs Stebbins 3 " 26
Sim vs Buckingham 1 " 451
Great house vs Kipp 3 " 371
Pettering vs Pelsider 4 Gilm 87
Prathy vs Vinegard 4 " 40

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Graves vs The People

Brief on part of
The People