12606

Supreme Court of Illinois

Stafford

VS.

Low

71641

Michel States of States of Mining april
State of Cellins 3 138 1909
Cent County Henratte Siege Menine Suga The Smuth Judicial Circuit of the State of Ollinois and foresiding Judge of the Circuit Court of Court County in Said State at a true to the Court of Court of Court of the Court of af Chicago la Said County on the Second Jamiday Heing the Thirteness deny) of the la the year of the Level Our Thinsand Eight hundred and fifty Inn, and of the Chalipendouse of The United States
The Eighty Girst Present stourable Jong e Meniore Judge of Judicial Circuit Oarles Hann States Others attent Milliam & Mohand Color 212606-17

Be it Of Emembered that here to fore to mit Ou the 1st clay of april a 2 1804 there mis file in the Office of the Clark of the Circuit Court of Cook County in the State of Allins a Certain Braccipe Which is in the Miras and Jugares Jollining Bride Affred I Sim Della 26 cm M. Burlingrame D. Danning 18 Acha Staffer & Still St. For Some of Brice & State Comment of Brief Court South County Am Church Esur Plense éfaue a Surround for Defendants in above Enteled Cause tabliga Jans to Ballingall & Oldand Coul appearands to mit Ou the Some day there essued out of the

Office of the Obertraf the Circuit Cours of Cook County in The State aferciair a certain temples thrib Convenily Called Securion which is en the Monds and Ligures following to with ! State of Olllein's 3 f Ohe Penple of the State of Ollins A the Sheriff of One County Me commence you that you farmen Hay It Burlingame Steller Change ifthey Shall be found in Your County , personally to be and applying County ou the first day of the heat term thereaf , to be hillen at the Dourt House, in Chicago in said county, on the Secund Monday of afind Such to ausur, cento agnes I den cui a falen of Dell and to Six humand & faty Que dollars teightly fire 12400-1A]

Couts to costs to the damage of the said Maintiff as is said of in the Sum of Clover hereaded and Eighty Doctors Mit, with an Enclosement Therem, in what manner Heme Hace have Edgenters the Turne Method; Welliam I Church Cha of Our Said Court, and the feat thereof at Chiago afresaid this Herst day of april as 1867 Mul Chunh and in the fact of said last Incutioned think our Endorsements thick are in the trinds and Typured fallening To mit, ! Derned by peading to the methin Married Chafford, Chris And 1807 Houng 11 Burlingame, Ethan Of Brice and Thelan O leve Not found in my Country The \$200 Clay of Office 1807 Odlan I Hillian Shewiff My George Hommerip Day

And coftemands to hit on the fame day (the lot day of april) ad 1859 mas filed in the Office of the Clock of the Circuit Court of Cook County afracad a contain declaration which is in the hards and figures following to his! State of Chiling 3 f On Circuit Court of Cort County afanil From 1819 Ciffred & Lin Maintiff in this Suit by Backingall & Selams his allineys Complains of Hing It Bushingams, Ethan a Bonce, Milan C Roe and John Stafford defendants in this suit of a plea of deth that They Lender unto the said palaintiffs The Sum of Elena Hundred and Eighty doctors which they me to and empusty elethen John him, For that Whereas heretofine I with. On the 29 day of May in the efear of Clar Lin Eighten hundred and

and fifty four the Said Maintiff down and porsecuted what the Circuit Court for the County of Cook en Said State a certain Init of Capies a D yes formend Climated to the Sheriff of Said County Asherely the Said Theriff bodies of steeny It Burlingame Osaac, J. Occudenser James C Formery and allosa I Hour if They Think be found in his County and them Tafely Keep on that They Shined be and appear before The Circuit Court of said County on the first day of the heat torm thereof to be hadden at the Cust house in Chicago in Jaid County On the Just & Minay of October heat Eusueing to. ausner out the daw Plainteff in a filer of thres fout on the Case on formises, Which Daid Mit, afternants, and before the Cleling Thereof to the said Sheriff to be Esserte as kerrin after mentioned, to with on the 29 day of May a D 1854 at the County

aforesaid in cluly marked en under seel for tail for the sum of Hire Hundred and Eighty Eight Dollars and there two Cents by Cirtu of an affidants of the Cause of action Chay made and fifed and according to the Statute in Such Case made and provided which said enit So enderser lefterwards, and Eufire the Veturn day thereof, to with On the 20 day of May a DINS at the County afre air was delivered to Cyms I Brund who then can from thence, until making of the sorting ofligating here in after trentined roas Sherig of the said County of Coule in due form of law to be Edwenteil By Cirtue of which daid mit The Said Theriff , afterwards and before the daid return of the Said Mit, to with, On The 7 day of June aD1854 took and Cerrested in daid County, as such Theniff the Daid Henry It. Burlingame by his troly and then and there destained him in his Custody as Such Sheriff at

the Suit of the Daid Plantiffs for the Cause Oferesaid Chad the said Wenny II Durking bring do avented and in the Custody of the Seen Cerus P Bridley being Sheriff as aforesaid by einter of the can mit the said Cyms P Bondly afterwards, and before the Said . Beturn of the said sont I wil, On the day and year last afresain, in the County afresa Jork Bail for the appearance of said steing It Bushingame at the Return of our sont according to the form of The Statute in Such Case emade & Someded and that occasion the said defendant as Bail and durches for the · Said 20 Eury It Burlingame Then and There , On the day orw your last apresaid at the County afresaid by their Certain Intag Allystony Commonly Carlled a Bail Bind & Souled with the Hespectire Senes of the Oaid defendants and non othern

here to the Court the date whereof is the clay con year last enforcesaid, achemente open theuselves held and firmly Council to the said Cyms ? Bradley Theriff as aforesain of the Said County in The Sum of Closen Hernobon and Eighty Willand harful tunny If the duthel states for the payment of Irdical Same trees and though to be smile to The Said Cynes & Bradley Shariff as aforesaid or his Succepors in Office, Executors administrators or appears the Quid Clefendants Sund Themselves jointly and Seronale and the Said Mitting allegating was subject to a condition thereunder withen that if the Said Henry It Bushing aime Should be and appear at the Ourceurs Court of the County of Cook to be holden at the Court House in the City of Chicago on the & monday of October al

212201-4]

1854 ; Mid in Case the Daid Welson O los doling Stafferd and Oth and Bruce Should not be Processed as Bail in the Said action, Showed Jour en Gurd Cow Sufficient Bail which hand be Received ley the Menaleff or Money be argued Sufficients by the Court or the Stay of Burlingaine O Goe John Staylors and Ethan a Bonce being accepted as Bail, Showed pay the Costs and Condemnation Money which might be Powered against the Said Denny II Murlingame in the said Please of The Case on Januares, in Surrender the brug of the dein Horning 11 1 Deviling en Execution in Cure the daid 26 Eury IT Bustingand Shine not pay and satisfy The. Said Costs and Cond Emmathen Money or Sucrender himself en Oxecution, when by law duch Tecrneuder was Required Then The decid obligation to be evid otherme to Seurain in fill

Just the send Bleintiff in fact deits, that the said HElem C. Too, John Stafford and Ethan A Bruce nore Necessar as Buil in Said action at the said derm of the said Bush and the said Plantiff further Coms that afterwards to will at the Horsenber term of the oan Court teguir and had at the court House in the City of Chicago, County yourand, he the said Plaintiff chi in the 3 day of December a D 1855 Ving a day of said term becomes a judgement against the said Henry Il Burlingame for the Sum of Oix' Heriand and firty one dollars and Eighty fire cents Danages and Out of Court, which said Costs assumted to a large Jun of to wit The Sern of Thirten Dollars and Thirty fire Cento end think afterwards, to mit, on the 29 belong of Selmany and 1856 and Execution mas duly ifued out of said Cush and Clelinand to the Conner and Ex-

212606-57

= Officio acting Strongs of ound Creeky . James and ren The firmer Showeith of said County long at Seid time clear sed who afternands to with, in the 28th elay of May a D 1856 determed the Said Edeention "hot Satesfied" Clad afterwards, to mit, on the Sixth day of December and 1856, in the Country of resaid and by centure of an affidavid Cluby made and filed with the Clerk of Join Court in Said Cause en la condance tress the Statute in Juck Case Made and farmeled to mit of Capin an Satisfacione me essued out of said Court directed to the Sheriff of said County and Commencing him to take the body of the Said Houng It Burlingame if from in his Count and how Safely lech so as to have his Said dody to Saleshy ento the Said Plantiff the aforesaid Judgement Account by the Sand Plaintiff against the Dand Burlingame - freed to Seturn The

Said mit in sunty clays from the date ther cop which said with afterwards, to med, on the Clay and year last aforesaid, in The County aforesaid was delivered to the daid Sheriffer and eras by their, cefteriands, to mid, on the 6 May of March at 1809 Cluby between to dur Court Endersed by Said Sheriff "The wether wand 26 Eury Il Burlingame hot find on my County and the Said Haintiff Saits that heither the Said HEury It Burlingame her the other said defendants hu cany one of their has at ony time heretafore paid the said Casts in Condemnation having on any part thereof and that the daid Being It Burlingane has sich at any tem heretafine hur while the Said with of Capias the Intiafacienclum was in the hours of the Said Theriff Secrenceard his bry in Execution ; her have the other Soul defendants in has any one of them Terremond

112606-6

in Execution the body of the said Burlinganie at any time heretofore or Since the I Ecerry of the Said Judgement, but therein have tholly failed and made cliffamels Whereby said troiting has By means whereof and by fine of the Statule in Juck Case made and pomider, an action hath account to the Said Hantiff to have and Cleman from the Said defendants the Sum of Cleren Hundred and Eighty Dollars above Demanded Yet the david Defendants have hot, her has any Our of them allthough Often Frequested so todo, baid the same or any foart therent to the daid polantiff but to pay The Same or any part Thoras to the Soul Hautiff have hitherth Wholey Meglected and Refused, and Still refuse, to Haintiffs Damage Cleren Hendred and Eighty Dollars and therefore he ones Dallingall & avans Reff etty s

Copy of Bond chiclared on Thun all men by these foresents, that Mr. Henry the Burlingame Chilen, C. Mas, Och Staffind & End. Bruce of The County of Cook, and State of Allievis, are her and firmly Sound cento Cyms. Po Bradley, Sheriff of Cut County in the State of Ollier's in the Dein of Eleren Heimore and Eighty Dallans langue money of the Chartiel States for the Journant of which Dern, Melland lines to be made to the Said Cyms & Bradley Theriff as afiresaid or his Sucifous. in office, Executions admirest or apigns the hereby jointly and Severally bind ourselves, our heirs, Edecators, and adminstrate Withef our hands and Jeals this Serenth day of June Eighteen Muchael and fifty four The Condition of this ofligation is Such, That whereas alfred Itm has lately sued out of The Cercuit Court of the County of Cook, a Certain mit of Capain as

Meshouslemelum, in a certain files of Chreshop on the Case en formises against, Henry II Bushingame Isaar landuser James C Perneny and allays & Heard Withmakle to the next time of this said Court to be holden at the Court House, in the City of Chicago in Said County on the Junto Monday of October heat Amel The Said Heavy Million Shall be and appear at the Fame Such Court, to be holden at Chrisque Offeresein on the Daid Jours Manday of October heat and en Case the said Sterry Manlingame Felson C Too John Stafferd tea Bruce Shall not be deceined as Muil en Said action Mall furt en ford and Sufficient Bail which Shall be received by the Muntiff to Male be adjudged Sufficient by the Court or the Said HEing It Bushingame Melen O Cas John Shaffind O.a. Bruce deing acceptual as Hail, Shall pay and Sutory

The Cuts and Convenienten Money Which may be hendered against The Said Henry It Burling ame in The plea Oferesaid, or duriender The Said HE Ewy I Barlingame in Execution, in Case the said Heavy It Barlingame Shall mul pay and satisfy The Said Costs and Condemnathen Miney or Surrender himself en Edeentim when by law, Such Surrender is begain Then this obligation I be evid ! Ther wise to Herrain en fall fince and Effect In Inserver of Wenny M. Burlingame Evend Of Cife Gent John Staffard Edend Coll Bruce Edead Olud afterings to mit! On the hh (w) clay of april and 1857 There Mas filed in the Office of The Clerk of The Circuit Ourt of Gook Ounty aforesaid a certain afficient of Merits which is in the trines and figures following to mit

alfred I Lin Zeriait Country Con M Burlingame & Cook County Ahan A Bruce & april Jenn Allem O Coe 2 1859 Cohn Staffen State of Allinis 3
Coch County so Sohn Istaffond of Sering Muly Seven deposes and says That he is one of The defendants in the atme Entitled Course and that he is advesed and believes That he has a good and valid defence to Said Suit upon the Sum to duscribe de Stafford of the start of the start of the said duy of afral 12 1859 3 May Church 3 Clare afterinands to mit. Ou the Same day last aforesaid to mis The 22 m day of chail and 1853 has filed in the Office of the

Clark of the Circuit Court of Cork Court apresaid a Certain Plea which is in the Monds and figures Tollowing to last John of Stafford Cercial Court of Cook County Impleaded mits april Jem Heing M Dunlingains 1807 Othan a Bonce Nelson C leve ales o alped of Len and the said defendant by Barker Heyatt I finish his Colleres comes and defends The trong and laying when to and Jays action non, because he ears that the affidarit whom Which the mithal Capies and Week underdum to as essued again Said Burlingame enform the Said Bushingaine mas held I fail as alleged in the Cleclaration, close not comply well the Statute in Such Once made and formided and is Wholly mesufficents in the land \$12606-97

in that daid affidant does not Show by Jacks therein States or Cercinistances Outailed Either that the defendant had Required to Surrender Their Estate for the tenefit of Their Oreditor or com foresembly that david defendants hail live guilty of franch, and so this defendant days that he is discharged from all listely when the bound in daid declary Mentioned and this he is deady I crify whenfore be harry's Judgement of said plantiff myll further to have or en aintain his aferesaid action though against Barler Eligate of Smith and afterwards to hot Ou the 15 thay of May a D1859 There tons filled in The Office of the Clash of the Circuits Court of Cork County a certain Demuster which is in the binds and Ligures following to his,

Alfred & Lon 3 John I Staffind 3 Implemented with 3 Houry Il Buslingame Ethan a Bruce and Chelen C Was Circuity Court of Court Courty april Tehn 187 and her Comes said Plainty by Dallingall and Orans his atterney and Jays That the Jolen Kerein Joleaded by the Said defending John of Stafford is not Sufficient en land Dallingall & trans aty In Refl and afterwards to but on the 22 Clay of May a D 1859 it being ine of the days of the Chail Shoul Herm of the Jaid Circuit Court of Cork County afines air , the fallering lung other proceedings were had en Entered of General en dein Court \$ 12201-10]

Alfred G Low Shell Henry It Burlingame)

The Staffend

Ethan a Bruce o Arlow Clive This day come the Jaid parties by their Cettlemens and The Court heaving heard Countel on The Clesserrer of The Said plaintiff to the Said Clefendants pleas hereinand being fully acts ised in the foremice Sustains the Summe Cond afternands to ind, on the 300 Clay of May a 2 1857 it bring me of the clays of The Chril Special Ism of said Court you said year The following Come other forcedays how had and Entered of fecul and daid Court to his !affect I Im 3 Reth Heling II Buelinganie

Othan al Druce + Milsin O Mor This day come again the said parties by their allerneys Mhereupon the Said Elefendants Elects to Staw by their plea Merefore the Said polantiff aught to have and Viciner of the Said Olyfrudant John Stafford Infolerated with Heing IP Burlingame Ethan a Brice and Helem O Mes his Well mentioner en his clockarathen commenting to Clern hundred and Eighty Classans the Court after hearing the Allegations and Jonness Sulm Men by daid Blaintiff and bring fully advised in the foremises apreses Said plaintiffs clamages herein for the Cletheutten of his Said deth to the Sum of Fren hundred and three Deft. Clothans and time Cents 1180,00 Therifore it is Considered that 1 18. 19 Said Claimtiff do have and lower 2/883.09 of Said alefendont John Staffin Impleaded mit Henry M. Burlingame Ethan a Bruce

and Kelem Chas his Jaid Mett of Eleren hours and Eighty collans tyether mets his clamages of . From hewow and Three Clothans and since Conto arguitting in all to the Jenn of Organien hundred and lighty three Mollars and home Cents in firm as afiresaid a feesa Together with his Cust and Changes by him in this Ishalf Expanded and have Carecution therefor Said Clett to be discharged whim payment of Comages Can afternands to mit on the 26 May of lawy a D 1859 Then eras filed in the Office of the Clock of the Circuit Court of Cort County aforesaid a Certain foracific for Casecution which is aid foraccipe is in the thoods and figures fallowing to this ! Illus Church En . Blende make out our Execution en the case of Low 25 Burlingame Etals in Jurgh last

Term of Circuit Court Jane 20 18 18 My Bush of Backing acc or adams. Con afternands to inthe On the 2003. elay of Jens a D 1859 There epaid at of the Office of the Clash of the Cercuit Court of Cont County in The State Ofereraid a certain Peoples mit of Fe da for Blankiffs Comans Commenty Called Executions cline to to The Sheriff of Coal Country and Mundend Seren Thousand Seren hundred and Eighten (4718) Which Said last meulianed with of Casculian, has not as eyet, to mil! on the 26 day of June Ce Dirry been Neturned by said thenthe to the Clink of the Circuit Court of Court County afores aid! State of Ollinis 3 p Mellian L'Claired Clark of the Circuit Court of Conti County in the State differesaid do herely

Liacouris

Certify that the above and Joreging trusoriph is a true perfect and Complete Copy of all The files as well as of the Ordens Entered of Meand in a costam Sent l'ateli pending en The Suid Cercial Court of Oook County in The State aforesain Inhereni alfond I have Iras Maintiff and John of Staffind Etal evere defendants, and of the thate Thomas as appears to as In Method Whereof Share Ferrunto Tel my hand and affixed the Sent of Our Jair Court This 26 Clay of fune a D 1854 Afril Church

Alfred & Loove Superice Cout Office & Source Office & Street & Str

Leftond by his attowny le Prekuithe comes?

Lars, that we the record and knowlings africand theirs is manifest error tout in soronding sustaining the posting and encurrer to the pullings please and for atter error apparatulation the free of will record of procedures Murpon be prays that buil pidet may be wound, and he trained tout the surre which he has lot by the surre which he has lot by

Let a supersedies is me upon filing the mond with plant of the plff bound in the senal Sum of two thousand dollars with proband it clothery surity

It clothery surity

and now somes the defendant in ever by PBallingan his attorney and says that in sufficiency the defendant in every De munis to the Plaintiff in enais plea there was and is no ener and that there is no other ener apparent on some Rund Wherefore he proces that said full great the affermed In A THE Mines Which I fallingale wind po wooding for Destin enor Musigne be pray that buil pidet the pure of mid grand Thursday erestor other com approvedation fitthe deminstra to the defte plea tout in why when, dutterning the ofmine there is mounted enor Lays, think in the Beard und prouding that find by his allowing to the Resille courses Much wow then said boller F. alped of Love) April Frans Hop. 3 " Grass Deins in Attum felen & Maffind inflow baparence Court

Contraction Con alpha I don * 18 /6. Charles Elected Elec Complete from Filed July 10, 1857. L'Island . Elent Aut of the teathers transis

In the Supreme Court of the Hele of Illinois; Third Grand Division; April Term 1858

Stafford Appellant Shipped from the book bounds, bir.

Argument Brief for Appeller

This Action was brought upon a Bail Band, given by one Builingame, as Principal, and Stafford, the present appellant, as surely, upon a Capias ad respondendum, sued out by Low in the Court below, against Burlingame tothers. Service was had on Bulingame only; and Stafford became surety for him.

Low having obtained judgment against Builingame, in his suit in the piccut bout, sued out Hi: Ha: bu! So to, and thereafter brought a suit against Burlingame and Stafford on the Bail Bond:

The cause was tried in the Circuit Court, May Term 1857.

The action was in Debt. -The Record shows, that the Defendant Stafford, was alone served with process: The Record also shows that Stafford did not plead any other Blea than one, which raises all the questions supposed to be investiged, That Plea, shipping it of its formal parts, is as follows; " actio now, because he surgo, that the ", afficiant, upon which the Capias are 's respondendem ifored against said " Bulingame, upon which said Bur "lingame was held to bail, as alleged " in the Declaration, does not com-"ply with the Statute in such case "made and provided pand is wholly "inoufficient in Low, in that the " affidarit does not show, by facts Therein stated, or circumotances de-"tailed either that the Defendants Thave refused to surender their "estate for the benefit of their fore "ditors or any presumption that said "Defendants have been quilty of fraud. 1 And so this Defendant says that "he is discharged from all liability

yin said Declaration mentioned. There-" fore to ge Low filed a general Demuner to this Plea; and the fourt sustained the Demsurer. on the 25th May 1857/gf the same Term, Stafford elected to stand by his Pleanand the bout, thereupon, heard the evidence for Low ; and rendered a judgment for . One thousand one hundred and eighty (Dollars (Debt: - found the dam. ages to be seven hundred and three Delleus and nine cents: the debt to be discharged on payment of the damages. Hafford appealed to this bout; and now assigns for ever, the sustaining of Louis Demuner to his Hew "und other ever apparent on" There is joinder in ever by the Appellace Before adverting to the main point raised by appellant, the Appellee insists that the Demuner was properly sustained; 1st Because the Plea is De-

fective: It ought to have set out the afficiant, in have verba, upon which the original Capias are respondendum ifoud coupled with proper allegations as to parties to 2ª Because the state = ments in the Plea, are mere regardine afsections, of what a Record close not contain, without professing to state substantially its contents 3d Because the statements are the mere conclusions of the Pleader, and of the Law resulting (in the Pleaders judgment from these conclusions. On these grounds alone, then, the Plea was adjudged bad; the Demuner sustained, evidence heard, and Judgment, as before stated, gien against Stafferd But in the Court below, Staffard not only maintained the sufficiency of his Pleasin all respects no properly pleaded; but also that, (con reding the affedarit to be as alleged in the Plea the Bail, Stafford could, when sued on the Bond, take advantage of the insufficiency of the Affrolant to

I hold his principal (Bulungame) to

As this point have, at a former term of the birewit bout, been
raised, and fully argued, before furge
Manniew, and the firege has himself,
examined the authorities then submitted
by Counsel, and had also examined
other authorities not alluded to by
Counsel, he intimated that under
these even motances further argument
was unnecessary on that point.

But even if the Plus were
froperly pleaded, it is no defence
to a suit against Bail, that there
was no acter for Bail, and that

And so in a case when
the Plaintiff obtained judgment
against the Principal, and hought
suit against the Bail; the Bail
pleaded that, at the time of the
arest of his principal, he, the principal, was a Resident, and not
liable to arest! - But the Court
held that it was for the principal,

the affedairs was not sufficient.

butshow vBrigeret al 4 Blackf: 511

and not the Back, to take the effection and the Court also decided, that if the Bail could have ever been heard he is too late. Stever 1. Flomberger 19 Thendew 121 And so the Statute of Allinois provides how Bail may be dis. charged; thus; "The Bail latter, as " herein directed, may be descharged, " or the amount thereof reduced by the " bout to which the Writ is resumed, I on application during the Term to "which it is returned, whom satisfactory "proof"-Blackwells Statutes P. 237 and of Sec. 2: So it would appear that if the Bail suffer the return Term of the Writ to elapse if the bout be held, or, at all events, if he differ judgment to has against his prima cipal, without moving for his own discharge as bail, on account of the insufficiency of the afficiant, such insufficiency cannot, when he is sued on his Bond, avail him. bette his principal Bulangamed to

But again; The Bail, in an action against him on his Bond, cannot dispute the preliminary olaps taken to sue out the Capias ad res against his principal; Thus in a case where aller, the Plantiff below, brought an action of Oelt upon a Bail Bind against Keles & others, Hunt, one of the defendants being one of the surefies on said Bond - The Defendants pleaded that no affectivit of the rouse of artion, had been made and filed before the iforing of the Copias in the enginal suit against the defendants in that suit to the The Plaintiff below demuned to this Plea: the Denumer was ourtained, and judgment below en tered for the Plaintiff - Hunt, one of the Bail, hought a triet of Enorm The Supreme Court of New Jersey, review the authorities, sand affirmed the Judgment below, New Juseys Reports (Jahristies) Hunt is allen 533: The same principles are declared in 3d Richardson (So: Car.) Resenberg 18 Mikain 145. 3d McLean's Rep: Greathouse 15 Dunlap 303:

Bail; when sued cannot question the sufficiency of the affoliant, has been 2d Lord Raymond: Henriques as Dutch West India Company 1535. 12 Barbs Reps Gragory Sit Front No. Levy et al 611-2. 22 Kendells White is Blake 612. 24 " Stever is Stomberger 275: I Chitty's Pleading 7th amen Edition - Pleas in Bar 502. Herques of Hoard flast pail of opinion P. 362 15th Flla Rep. The appellandoes not deem it necessary to enter upon the question of how a surety stood at Common Law; that is well selled! 1 Petersaafal: 5. Jenn Rep 254 1 " 3 332 mill Miles & March, Hunty & " any Is anial wind Poll whom allace What the other errors ap = I parent on the Record are, the appelle is not advised: Probably one is supposed tobe that the order toheld tobail is in

the sum of their hundred and eighty eight dollars and thirty two cents; and that in doubling that amount, the Sheriff inserted the sum of \$1180. inotead of the exact amount; 1176.64 \$3,36 of eyels- Suely, if urged, it cannot be senously unged. The authorities, and the principles contained in them, already referred to, sufficiently answer the point if made. The Bond is taken by the Sheriff; but, in contemplation of Law, is offered and given by the Defendant The Band by Statute is to be in double the amount of the order. The Sheriff cannot take a Bond in less. than doubt , but if the defendant offers and gives him a Bondpin more than double the amount of the order, it does not invalidate the Bond Mallingall Counsel for Appellee

212606-19

Nº75 Stafford Low Appellee for appellant Filed May 12 1858 Leland Elk P. Ballingall Course for appellant

Know all men by these presents that me John I. Stafford and Richard Moblevey of the bornty of book and state of Illinois are held and firmly bound write Afred G. Low in the penal error of two thousand dollars for which said error well and truly to be paid we do bird arrelves our heirs executors and administrators printly severally

and firmly by these presents.

The condition of the above obligation is such that whenas on the tricrity fifth day of May AD 1857 a Judgment was rendered in the birent boart of book borrety against the above borreden John I. Stafford compleaded with Herry M. Horrslingame Ethan A. Amree and Allow to thee at the suit of Affrid G. Son for the sever of clever hundred and eighty dollars debt and sever hurridred and three dollars and nine cents as darrages, together with costs, said debt to be descharged upon payment of danrages, from which said Indgment sais John I Stafford has sued out a writ of error and prayed that the same be made a sorpersedias thor if the said John I Stafford shall duly prosecute his said writ of error and in case said prodgerent shall be affirmed, shall duly pay said paragarent costs irrlined and darrages. Then this obligation to be void otherwise to remain in full force and effect In intrees whereof said parties have heremuto

set their hands and seals this first day of duly in the year of our Good one thousand eight hundred and fifty deven

Ameleny Eals

from which said I redgenerat sais liken

State of Illinois of book bornety es }

Richard Moblevy being duly seven deposes and says that he is the person who executed the above bond as servety, and that he is worth The full arrow of two throwaid dollars over and above all debts and habilities

was thousand usband for orbital said decor with

Derbsenbed and servin before

me this 11" day of Irely AD 1857 Edward M. Smith Am Corey

excellent till a marifialation santly unionally

John & Alufford Alfied g. Low Super Bond Filed July 13.1857 Leland Bleck STATE OF ILLINOIS, ss. The People of the State of Illinois, supreme court, supreme court for the County of 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 South County, before the Judge thereof, between Alfred J. Sow

plaintiff, and fo hu & Stafford impleaded with Henry W. Burlingame, Ethen H. Bruce and Nelson B. Roe

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

by he complaint, and we being willing that error should be corrected if any there be, 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 first messay of the thin monday 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.

Justice of our said Court, and the Seal thereof, at Ottawa, this / day of fully in the Year of Our Lord One Thousand Eight Hundred and Fifty-Lewin

Clerk of the Supreme Court.

John & Staffordunted.

Alfred g. Lowe
Writ of Envi County, before In the record and proceedings, as also in the rendition of the judgment This wit of Envi is to operate as a superadous one of as such is to be obiged by all concerned, I Leloudy by f. B. Fire Deput Jesun Alan form below to the find of the films of the first of the films of the find of th of a plea which was in the Circuit Court of the Judge thereof, between

SUPREME COURT,

APRIL TERM, 1858.

JOHN F. STAFFORD

VS.

Error to Cook Circuit Court.

ALFRED G. LOW.

ABSTRACT.

This was an action of debt, commenced by the defendant in error against Henry W. Burlingame, Ethan A. Bruce, Nelson C. Roe, and the plaintiff in error. The plaintiff in error only was served with process.

The declaration was as follows:

For that, whereas, heretofore, to wit, on the 29th day of May, in the year of our Lord eighteen hundred and fifty-four, the said plaintiff sued and prosecuted out of the Circuit Court for the County of Cook, in said State, a certain writ of capias ad respondendum, directed to the Sheriff of said county, whereby the said Sheriff was commanded to take the bodies of Henry W. Burlingame, Isaac T. Vanduser, James C. Pomeroy, and Alasa L. Hurd, if they should be found in his county, and them safely keep, so that they should 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 Chicago, in said county, on the fourth Monday of October next ensuing, to answer unto the said plaintiff in a plea of trespass on the case on promises. Which said wit, afterwards and before the delivery thereof to the said Sheriff to be executed, as hereinafter mentioned, to wit, on the 29th day of May, A. D. 1854, at the county aforesaid, was duly marked and endorsed for bail for the sum of five hundred and eighty-eight dollars and thirty-two cents, by virtue of an affidavit of the cause of action, duly made and filed, and according to the statute in such case made and provided; which said writ, so endorsed, afterwards and before the return day thereof, to wit, on the 29th day of May, A. D. 1854, at the county aforesaid, was delivered to Cyrus P. Bradley, who then and from thence, until and at and after, the time of the arrest, and the making of the writing obligatory hereinafter mentioned, was Sheriff of the said County of Cook, in due form of law to be executed; by virtue of which said writ the said Sheriff, afterwards and before the said return of the said writ, to wit, on the 7th day of June, 1854, took and arrested in said county, as such Sheriff, the said Henry W. Burlingame by his body, and then and there had, and detained him in his custody, as such Sheriff, at the suit of the said plaintiff for the cause aforesaid; and the said Henry W. Burlingame being so arrested, and in the custody of the said Cyrus P. Bradley, being Sheriff as aforesaid, by virtue of the said writ, the said Cyrus P. Bradley, afterwards and before the said return of the said writ, to wit, on the day and year

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last aforesaid, in the county aforesaid, took bail for the appearance of said Henry W. Burlingame, at the return of said writ, according to the form of the statute in such case made and provided; and on that occasion the said defendants, as bail and sureties for the said Henry W. Burlingame, then and there, on the day and year last aforesaid, at the county afor e said, by their certain writing obligatory, commonly called a bail bond, and sealed with the respective seals of the said defendant, and now shown here to the court, the date whereof is the day and year last aforesaid acknowledged themselves held and firmly bound to the said Cyrus P. Bradley, Sheriff, as aforesaid, of the said county, in the sum of eleven hundred and eighty dollars, lawful money of the United States, for the payment of which sum well and truly to be made to the said Cyrus P. Bradley, Sheriff, as aforesaid, or his successors in office, executors, administrators or assigns, the said defendants bound themselves jointly and severally, and the said writing obligatory was subject to a condition thereunder written, that if the said Henry W. Burlingame should be and appear at the Circuit Court of the County of Cook, to be holden at the Court House in the city of Chicago, on the 4th Monday of October, A. D. 1854; and in case the said Nelson C. Roe, John Stafford, and Ethan A. Bruce should not be received as bail in the said action, should put in good and sufficient bail, which should be received by the plaintiff, or should be adjudged sufficient by the court, or the said Henry W. Burlingame, Nelson C. Roe, John Stafford, and Ethan A. Bruce, being accepted as bail, should pay the costs and condemnation money which might be rendered against the said Henry W. Burlingame, in the said plea of trespass on the case on promises, or surrender the body of the said Henry W. Burlingame in execution in case the said Henry W. Burlingame should not pay and satisfy the said costs and condemnation money or surrender himself in execution, when by law such surrender was required, then the said obligation to be void, otherwise to remain in full force and effect.

And the said plaintiff in fact saith, that the said Nelson C. Roe, John Stafford, and Ethan A. Bruce were received as bail in said action, at the said term of the said court; and the said plaintiff further avers that, afterwards, to wit, at the November term of the said court, begun and held at the Court House in the city of Chicago, county aforesaid, he, the said plaintiff, did, on the 3d day of December, A. D. 1855, being a day of said term, recover a judgment against the said Henry W. Burlingame, for the sum of six hundred and forty-one dollars and eighty-five cents, damages and costs of court, which said costs amounted to a large sum, to wit, the sum of thirteen dollars and thirty-five cents; and that afterwards, to wit, on the 29th day of February, A. D., 1856, an execution was duly issued out of said Court, and delivered to the coroner and ex-officio acting Sheriff of said county, James Andrew, the former Sheriff of said county being at said time deceased, who afterwards, to wit, on the 28th day of May, A. D. 1856, returned the said execution "not satisfied;" and afterwards, to wit, on the 6th day of December, A. D. 1856, in the county aforesaid, and by virtue of an affidavit duly made and filed with the clerk of said court, in said cause, and in accordance with the statute in such case made and provided, a writ of capias ad satisfaciendum was issued out of said Court, directed to the Sheriff of said county, and commanding him to take the body of the said Henry W. Burlingame, if found in his county, and him safely keep, so as to have his said body to satisfy unto the said plaintiff the aforesaid judgment, recorded by the said plaintiff against the said Burlingame, and to return the said writ in ninety days from the date thereof, which said writ afterwards, to wit, on the day and year last aforesaid, in the county aforesaid, was delivered to the said Sheriff, and was by him afterwards, to wit, on the 6th day of March, A. D. 1857, duly returned to said court, endorsed by said Sheriff, "The within named Henry W. Burlingame, not found in my county;" and the said plaintiff saith that neither the said Henry W. Burlingame, nor the other said defendants, nor any one of them, has at any time heretofore paid the said costs or condemnation money, or any part thereof; and that the said Henry W. Burlingame has not at any time heretofore, nor while the said writ of capias satisfaciendum was in the hands of the said Sheriff, surrendered his body in execution, nor have the other said defendants, nor has any one of them, surrendered in execution the body of the said Burlingame at any time heretofore or since the recovery of the said judgment, but therein have wholly failed and made default, whereby said writing has been forfeited, by means whereof, and by force of the statute in such case made and provided, an action has accrued to the said plaintiff to have and demand from the said defendants the sum of eleven hundred and eighty dollars above demanded; yet the said defendants have not, nor has any one for them, although often requested so to do, paid the same or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff have hitherto wholly neglected and refused, and still refuse to plaintiff damage eleven hundred and eighty dollars, and therefore he sues.

BALLINGALL & ADAMS,

Plaintiffs Attorneys.

Copy of Bond declared on.

Know all men by these presents that we, Henry W. Burlingame, Nelson C. Roe, John Stafford, and E. A. Bruce, of the County of Cook, and State of Illinois, are held and firmly bound unto Cyrus P. Bradley, Sheriff of Cook County, in the State of Illinois, in the sum of eleven hundred and eighty dollars, lawful money of the United States, for the payment of which sum, well and truly to be made to the said Cyrus P. Bradley, Sheriff, as aforesaid, or his successors in office, executors, administrators or assigns, we hereby jointly and severally bind ourselves, our heirs, executors and administrators; witness our hands and seals this seventh day of June, eighteen hundred and fifty-four.

The condition of this obligation is such that, whereas Alfred G. Low has lately sued out of the Circuit Court of the County of Cook, a certain writ of capias ad respondendum, in a certain plea of trespass on the case on promises against Henry W. Burlingame, Isaac T. Vanduzer, James C. Pomeroy, and Alonzo L. Hurd, returnable to the next term of the

said court to be holden at the Court House in the city of Chicago, in said county, on the fourth Monday of October next.

Now, if the said Henry W. Burlingame shall be and appear at the said court, to be holden at Chicago aforesaid, on the said fourth Monday of October next, and in case the said Henry W. Burlingame, Nelson C. Roe, John Stafford, and E. A. Bruce shall not be received as bail in said action, shall put in good and sufficient bail, which shall be received by plaintiff, or shall be adjudged sufficient by the court, or the said Henry W. Burlingame, Nelson C. Roe, John Stafford, and E. A. Bruce, being accepted as bail, shall pay and satisfy the costs and condemnation money which may be rendered against the said Henry W. Burlingame, in the plea aforesaid, or surrender the said Henry W. Burlingame in execution, in case the said Henry W. Burlingame shall not pay and satisfy the said costs and condemnation money, or surrender himself in execution when by law such surrender is required, then this obligation to be void, otherwise to remain in full force and effect.

In presence of

HENRY W. BURLINGAME,	[SEAL.]
	[SEAL.]
JOHN STAFFORD,	[SEAL.]
E. A. BRUCE,	[SEAL.]

To which declaration the following plea was filed:

And the said defendant, by Barker, Hyatt & Smith, his attorneys, comes and defends the wrong and injury, when, &c., and says actio non, because he says that the affidavit upon which the capias ad respondendum was issued against said Burlingame, upon which said Burlingame was held to bail, as alleged in the declaration, does not comply with the statute in such case made and provided, and is wholly insufficient in the law, in that said affiant does not show by facts therein stated or circumstances detailed, either that the defendant had refused to surrender their estate for the benefit of their creditors, or any presumption that said defendants had been guilty of fraud, and so this defendant says that he is discharged from all liability upon the bond in said declaration mentioned, and that he is ready to verify wherefore he prays judgment, if said plaintiff ought further to have or maintain his aforesaid action thereof against him.

To this plea a general demurrer was filed. The court sustained the demurrer, and rendered judgment for the plaintiff for \$1180 debt and \$703.09 damages.

The defendant, Stafford, sued out a writ of error, and brings the case to this court.

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