

No. 12838

Supreme Court of Illinois

Russel^l, et al.

vs.

City of Chicago.

71641  7

244-129

Jaesl Russell et al

City of Chicago

1859

12838

Be it remembered, that heretofore, to wit, on the ninth day of October, in the year of our Lord, One Thousand, Eight Hundred, and Fifty-six, the City of Chicago, by Marsh and King, its Attorney, filed in the office of the Clerk of the Court aforesaid, its certain Preceps, which is in the words and figures following, to wit—

State of Illinois }
Cook Co. Cir. Court }
The City of Chicago }

Jacob Russell,
Nathaniel P. Wilder,
William B. Cyden, &
Gordon S. Hubbard }

Debt. \$ 50,000.00

Das 1,000.00

The Clerk will please issue summons in the above entitled suit, and returnable in to the October Term, A D. 1856. of said Court, and oblige.

Marsh & King

Oct. 9th 1856.

Plffs Atty.

And thereupon, afterwards, to wit, on the day and year last aforesaid, there was issued out of the office of the Clerk of said Court, and under the seal thereof, the Peoples Writ of Summons, directed to the Sheriff of said County to execute, and

clothed in the words and figures following, to wit:
 State of Illinois }
 County of Cook } ss.

The People of the State of Illinois,
 to the Coroner acting Sheriff of said County - Greeting.

We command you, that you summon Jacob Russell, Nathaniel P. Wilder, William B. Cyden, and Gordon S. Hubbard, if they shall be found in your county, personally to be and appear before the Circuit Court of Cook County, on the first day of the next Term thereof, to be holden at the Court House in the City of Chicago, in said County, on the fourth Monday of Oct. inst, to answer unto the City of Chicago, in a plea that they render unto said City of Chicago, their debt of Fifty thousand Dollars, that they owe to, and unjustly detain from it to the damage of the said plaintiff, as is said, in the sum of One Thousand Dollars—

And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same—

Witness, Louis D. Hoard, Clerk of our said Court, and the seal thereof, at Chicago aforesaid, this Ninth day of October, A. D. 1856.



L. D. Hoard, Clerk

And afterwards to wit, the 17th day of October,

United States of America }

STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable George Manion

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sol^d Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the
third Monday, (being the fifteenth day) of

November in the year of our Lord one thousand eight hundred and
fifty eight and of the Independence of the said United States the
Eighty third

Present, Honorable

George Manion Judge of the 7th Judicial
Circuit of the State of Illinois. }

Charles Nason States Attorney.

John S. Wilson Sheriff of Cook County.

Attest:

Wm L Church Clerk.

in the year last aforesaid, said writ was returned into the Court aforesaid, by said Sheriff, endorsed as follows, to wit— Served by reading this writ to the within-named Jacob Russell, Nathaniel P. Wilder, & Gordon S. Hubbard, the 17th day of October, 1856. Defendant William B. Cyden not found in my county, the 17th day of October, 1856. 3 Services, \$ 1.50— 3 miles, 15— 1 Return, 10— \$ 1.75. per J. Beach, Coroner, and Ex-officio acting Sheriff— Bz J. C. Linn, Deputy—

And afterwards, to wit, on the said 17th day of October, in the year last aforesaid, the said Plaintiff, by its said Attorneys, filed in the Court aforesaid, its certain declaration, and afterwards, to wit, on the 6th day of February A.D. 1857, refiled the same with certain amendments— amendments being here written in red ink— which declaration, as originally filed and as amended is in the words and figures following, to wit:
State of Illinois }
Cook County ss } In the Cook Circuit Court.
October Term, 1856.

The City of Chicago, plaintiff in this suit, by her Attorneys, Marsh & King, complains of Jacob Russell, Nathaniel P. Wilder, William B. Cyden and Gordon S. Hubbard, defendants, of a plea that they render unto said plaintiff, the sum of Fifty Thousand Dollars, which the said Defendants owe to, and unjustly detain from the Plaintiff—

And that whereas the said defendants, heretofore
 to wit, on the nineteenth day of March, in the
 year of our Lord, One Thousand, Eight Hundred
 and Fifty-five, at Chicago, in the County aforesaid,
 by their certain, Writing Obligatory, sealed with their
 seals, and now to the Court here shown, the date
 whereof, is the same day and year aforesaid, acknowl-
 edged themselves to be held and firmly bound
 unto the City of Chicago, in the penal sum of fifty
 thousand dollars, for the payment of which sum
 of money, well and truly to be made, the said de-
 fendants bound themselves, their heirs, executors,
 and administrators, jointly and severally, firmly
 by the said writing obligatory —

The Plaintiff says said writing obligatory, was,
 and is subject to a certain condition, thereunder writ-
 ten, whereby after reciting to the effect following, to wit:
 that whereas the above bounden Jacob Russell was
 on the sixth day of March, A. D. Eighteen Hundred
 and fifty-five, elected to the office of City Collector,
 in and for the City of Chicago, to hold said office
 for the period of ~~one~~ year, and until his successor
 should be duly elected, and qualified, or until the
 said office should be otherwise legally vacated, it
 is provided that if the said Jacob Russell should
 faithfully execute the duties of his said office, and
 account for, and pay over all moneys received by him
 as such collector, in accordance with the orders there

before passed, or which thereafter might be passed, by the Common Council, and deliver all books, papers, and all other property, belonging to the City, to his successor in office, then the said obligation to be void, otherwise to remain in full force and effect.

Said Plaintiff for assigning a breach in the said writing obligatory, in fact, says, that the Common Council of the City of Chicago, on the 29th day of September, in the year, 1851. passed an order of said Council, entitled "An Ordinance concerning the Assessments and Collection of Taxes" (which said order or Ordinance is numbered as Chapter LVIII. in page 418. of George W. and John A. Thompson's Compilation of the Charter and Ordinances of the City of Chicago, reference to which is hereto made) part of which said ordinance, viz- the part entitled "Article II of the Collection of Taxes" prescribes, defines, and regulates, as the order of the Common Council, the duties of the City Collector, and particularly in the Section thereof, numbered six, (6) directs and prescribes, among other things, that the Collector shall pay into the City Treasury, all moneys collected by him, as fast as collected, and at least as often as every Monday, the like funds collected by him, which said Ordinance the second article thereof, and the sixth section of said second article, were orders of said common Council, in full force and effect, during

all the term of time, the said Jacob Russell held and exercised the duties of the office of Collector of said City of Chicago—

And the plaintiff further says that the ~~in accordance with the provisions of an ordinance of the~~ Common Council of said City, having duly, and ~~of said City of Chicago, authorized on Jan 15th 1855, and directed~~ in proper form of law, levied and assessed the tax ~~pay 1855, directed to said Jacob Russell and warrant to~~ es for the year 1855. the Clerk of said City, in accordance ~~with the provisions of said Ordinance, here-~~ before on the 18th day of October, in the year, 1855, delivered to said Jacob Russell, a warrant in due form of law, directed to said Russell as City Collector — for the year 1855. stating that whereas the Common Council of the City of Chicago, had levied and assessed upon the assessed value for the year Eighteen hundred and fifty five, of the real and personal Estate thereafter described, the several sums set opposite thereto, in the appropriate column respectively for the City, school Interest, lake barrier, and Lamp taxes, of the City of Chicago, for the Municipal Year, Eighteen Hundred and fifty five, as follows (therein making a perfect copy of the assessment rolls, and incorporating said rolls thereby as part of said warrant) and commanding him, said Jacob Russell, to make, levy, and collect the said several sums of money, set opposite to the real and personal estate, therein above described, as the taxes for the year aforesaid, of the goods and chattels of the respective owners of said real and personal

estate, and thereof, make due return, of the manner in which he should execute said Warrant, within ninety days from the date thereof— which said Warrant, bearing date day and year last aforesaid, afterwards and before the said return day thereof, to wit, on the 18th day of October, in the year Eighteen hundred and fifty five, at the County aforesaid, was delivered to said Jacob Russell, who then, and from thence, until, and at, and after the day of the return of the said Writ, was Collector of the City of Chicago, to be executed in due form of Law—

By virtue of which said Warrant, the said Jacob Russell, so being City Collector of the City of Chicago as aforesaid, afterwards, and before the return day of said Warrant, to wit, on the 18th day of January, in the year Eighteen Hundred and fifty^{Six}, levied, received, and collected of the taxes in said Warrant, specified, a very large sum of money, to wit, the sum of Two hundred and fifty thousand dollars, the taxes aforesaid, and proper monies of said City of Chicago— which said taxes, or monies so collected, by the said Jacob Russell, it was his duty, in pursuance of the ordinances, and the aforesaid section 6th of Article Second thereof, to pay into the City treasury, as fast as the same was collected, and at least as soon as the next Monday thereafter, in the like funds collected by him— Yet the said Jacob Russell, so being

Such City Collector, as aforesaid, not regarding his
 duty as such City Collector, but continuing wrongfull-
 ly, and unjustly intending to injure, prejudice and
 aggrieve the said City of Chicago in that behalf;
 and to deprive the City of Chicago, of a portion of the
 said monies, to wit, of the sum of Three Thousand,
 one hundred and eighty-eight dollars, thirteen
 cents, did not pay over into the City Treasury, and
 account for a large portion of said monies, to wit,
 the sum of Three Thousand, one hundred, and
 eighty-eight dollars, and thirteen cents, fast as and
 when the same were collected, or as soon as the Mon-
 day succeeding their collection, and in the like
 funds collected by him, according to the order of the
 Common Council, contained in the Ordinance,
 and section aforesaid—Nor hath the said Jacob
 Russell paid the said sum of Three Thousand, One
 Hundred, and eighty-eight dollars, and thirteen
 cents, or any part thereof, or accounted for the same,
 or any part thereof, since the same were collected,
 or during, or since the return day of said Warrant,
 or at any time, but refused and neglected to pay
 over and account for said sum, and every part there-
 of, and yet retains the same—By means of which
 said several premises, the City of Chicago has been,
 and is greatly injured, and deprived of the means
 of obtaining the said moneys so withheld, and is
 likely to lose the same—to wit, at the County aforesaid

9.

and by means of which said several premises, the said writing obligatory became forfeited, and thereby an action hath accrued to the said plaintiff to demand, and have, of, and from the said defendants, the sum of fifty thousand dollars, a
 bove demand—

And for that whereas also the said defendants heretofore, to wit, on the nineteenth day of March, in the year of our Lord, Eighteen Hundred, and fifty five, at the county aforesaid, by their certain other writing obligatory, sealed with the seals of said defendants, and to the Court, here now shown, the date whereof, was on the same day and year last aforesaid, acknowledged themselves to be held, and firmly bound unto the City of Chicago, in the penal sum of fifty thousand dollars, for the payment of which sum of money, well and truly to be made, the said defendants bound themselves, their heirs, executors and administrators, jointly and severally, firmly by the said writing obligatory last mentioned— which said writing obligatory last mentioned, was, and is subject to a certain condition, thereunder written, whereby after reciting to the effect following, to wit— That, whereas the above bounden Jacob Russell, was on the sixth day of March, A.D. Eighteen Hundred and fifty-five, elected to the office of City Collector, in and for the City of Chicago, to hold said office for the period of one year, and until his

successor should be duly elected and qualified, or until the said office should be otherwise legally vacated, it is provided, if the said Jacob Russell shall faithfully execute the duties of said office, and account for, and pay over all monies received by him, as such collector, in accordance with the orders theretofore, or which might thereafter be passed, by the Common Council, and deliver all books and papers, and all other property belonging to the City, to his successor in office, then the said writing obligatory to be void, otherwise to remain in full force and effect—

And the said plaintiff for assigning a breach of said last-mentioned writing obligatory, says that heretofore on the 29th day of September, in the year 1851, the Common Council of said City of Chicago, passed an Order or Ordinance entitled, An Ordinance concerning the Assessment and Collection of Taxes, to which reference is here made—prescribing and defining the duties of the City Collector of said City—and it is provided and declared by Section Six of Article Two of said Ordinance that said Collector shall pay into the City Treasury, all money collected by him, as fast as collected, and at least as often as every Monday, the like funds collected by him—which said Ordinance, and said section were, and continued in force, during all the term of office, of said Jacob Russell—

That while said Jacob Russell was such City Collector, & certain other Warrant, and the Common Council of said City, having duly levied and assessed the taxes for the year, 1855, a certain other warrant directed to him as collector, and bearing date the 18th day of October, in the year, 1855. for the collection of taxes due to the City of Chicago, for the Municipal Year 1855. was delivered to said Jacob Russell, commanding him, to make, levy and collect the several sums of money as taxes therein specified, and to make due return of said Warrant, in Ninety days, by virtue of which said last-mentioned Warrant, the said Jacob Russell proceeded to collect, and did collect, to wit, on the 1st day of March, in the year 1856. of said city taxes, a very large amount, to wit, the sum of Two hundred and fifty thousand dollars, which sum, by the ordinance aforesaid, it was his duty, as City Collector, to account for, and pay over into the City Treasury, as soon as collected, and in funds like those collected, or at least as often as every Monday, after such sums were so collected.

Yet the said Jacob Russell, so being such City Collector as aforesaid, not regarding the duty of his office as such collector, but continuing and wrongfully, and unjustly intending to injure, prejudice, and aggrive the said Plaintiff, and deprive her of a portion of the money so collected, did not, nor would account for, or pay over a large amount there

of, to wit, the sum of Three Thousand, and One Hundred Eighty eight dollars, thirteen cents, as soon as the same was collected, or as soon as the Monday succeeding such collection, or at any time before the return day of said Warrant, nor hath he, at any time since the collection of said last mentioned sum, paid over into the City Treasury, the said amount of Three Thousand, one hundred, eighty eight dollars, and thirteen cents, or any part thereof, although his term of office has long since expired, and his successor has been elected and qualified, but retained from the date of its collection, ever since, the said sum, and still retains the same, and hitherto hath, and still doth wholly neglect, and refuse to pay over the said sum of money, or account for the same.

By means of which said several premises, the said last mentioned writing obligatory, became forfeited, and thereby an action hath accrued to the Plaintiff, to demand, and have of, and from the said defendants, the sum of Fifty Thousand dollars.

Yet the said defendants, although often requested so to do, have not as yet, paid the said sum of Fifty Thousand dollars, above demanded, nor any part thereof, to the plaintiff, but have hitherto wholly neglected, ~~and refused, and still refuse to do so, to the damage of the plaintiff, one thousand~~

~~dollars, and therefore plaintiff brings suit~~
~~Marsh & King~~
~~Plffs Attys~~

And whereas also, the said Jacob Russell, Nathaniel P. Wilder, William B Ogden, and Gurden S Hubbard, on the 10th day of March, 1856, at the county aforesaid, are indebted to the plaintiff, in the sum of Five Thousand Dollars, on an account then and there stated between them — and in the like sum of Five Thousand Dollars, for so much money before that time had and received by the said defendants, to the plaintiff's use, which said several sums were to be paid to the plaintiff on request, and which said several sums remaining unpaid by Defendants, an action hath accrued to the plaintiff, to demand and recover of said defendants, said sums — Yet though requested to pay the same, defendants have not, nor has either of them paid the same, or either of them, or any part of both, or either — To Plaintiff's damage One thousand dollars — Wherefore Plaintiff sues —

Marsh & King
Atty. for Plff

Copy of the Bond —

Know all men by these presents, that we Jacob Russell, N. P. Wilder, W. B. Ogden, and G. S. Hubbard, of the County of Cook, and State of Illinois, are held and firmly bound unto the City of Chicago, in the penal sum of Fifty Thousand dollars, for the

payment of which sum of money, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly, by these presents, Sealed with our seals, and dated this nineteenth day of March, A. D. 1855.

The condition of the above obligation is such, that whereas the above bounden Jacob Russell was on the sixth day of March, A. D. Eighteen Hundred and fifty-five, elected to the office of City Collector, in and for the City of Chicago, to hold said office for the period of one year, and until his successor shall be duly elected and qualified, or until the said office shall be otherwise legally vacated—Now therefore if the said Jacob Russell shall faithfully execute the duties of said office, and account for, and pay over all monies received by him as such collector, ^{in accordance} with the orders heretofore passed, or hereafter may be passed, by the Common Council, and deliver all books, papers, and all other property belonging to the City, to his successor in office, then this obligation to be void, otherwise to remain in full force and effect.

	Jacob Russell	
Signed, and sealed,	N. P. Childers	
and delivered in presence	W. B. Ogden	
of H. W. Zimmerman,	Ch. L. Hubbard	

City Clerk.

Approved by the Common Council

March 19th 1855.

H. W. Zimmerman City Clerk.

And afterwards to wit, on the Seventh day of November, in the year AD 1856 - the said Defendants, by J. P. Clarkson, their Attorney, filed in the Court aforesaid, their certain Demurrers to the Declaration aforesaid, which is in the words and figures following, to wit -

Cook County Circuit Court
October Vacation Term A.D. 1856.

Jacob Russell,
Nathaniel P. Wilder, & } Defts.
Gordon S. Hubbard }

impleaded with Wm B. Ogden, who
is not served with process -

ads
The City of Chicago } Plff.

And the said defendants impleaded &c. by J. P. Clarkson, their Attorney, come and defend the wrong and injury, when &c. and say that the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain her aforesaid action thereof, against the said defendants impleaded, and that the said defendants impleaded &c. are not bound by law, to answer the same - and this they are ready to verify, wherefore they pray judgment, and that the said plaintiff may be barred from having or

maintaining her aforesaid action thereof against them &c.

J. P. Clarkson

Defts Atty—

And the said defendants impleaded &c. for special cause of demurrer to the said first Count of the ^{said} first declaration, state and show to the Court, the following, that is to say—

1- That there is not in the said first Count, of the said declaration, any cause of action stated or shown by or for the said plaintiff to maintain her aforesaid action against the said defendants impleaded &c. inasmuch as in the said first count, the time or day in which the said Warrant in said first count mentioned, was delivered to said defendant Jacob Russell, to be executed in due form of law, is not in said Count stated, nor specified—nor is anywhere stated or specified in said count, at what time the said defendant Jacob Russell levied, received and collected the taxes, or monies in said Warrant specified— and for that, there are divers blanks left in the said first Count, and divers omissions of material averments and statements, namely, of times and dates in the said first Count— and for that, the said first Count, is drawn in a negligent and untechnical manner—

2- There is no cause of action stated or shown in

said first Count, against said defendants im-
pleaded &c. inasmuch as it is in said Count stated,
that the said Warrant alleged to have been delivered,
to said Defendant Jacob Russell, was a Warrant for
the Collection of the Taxes levied and assessed upon
the City of Chicago, for the year 1850 - and it is further
alleged and stated in said first Count, that the
said Defendant, on the day of 1850, levied,
collected, and received the monies and taxes in
said first Count charged to have been retained, and
not paid over by him, the said Defendant, Jacob Russell.

3— It is stated and alleged in said first Count,
that the said Defendant Jacob Russell, levied and
collected the monies charged in said first Count,
to have been held over, and retained, and for
which, the breach of said Bond is alleged, in the
year 1850. prior to the passage of the Ordinance,
under which, the action is brought, and the breach
stated, and it is therefore impossible that any breach
could have been made by said Defendant, of the
conditions of said Ordinance—

4— There is no allegation in said first Count,
that the City of Chicago made an assessment of
taxes, for the year 1850. in accordance with the or-
dinance of Sept. 29. 1851. referred to in said ^{first} Count—

5. There is no allegation in said first Count, that the
Warrant alleged to have been delivered, to said Defend-
ant Russell, by the City Clerk of said City of Chicago,

was a warrant executed in due form of law—

6. There is no allegation in said first Count that the taxes and monies alleged to have been collected by said Defendant Russell, were the legally assessed taxes for the Municipal Year, 1855.

7— There is no sufficient breach of said alleged writing obligatory stated and shown in said first Count, There is no sufficient allegation that the said defendant Jacob Russell, refused to account for, and pay over all monies received by him, as such collector, in accordance with the order theretofore passed, or that thereafter might be passed, by said Common Council—

There is no allegation that the said defendant Russell, did not, or refused, or neglected to make a final settlement with the finance Committee, as soon after the tenth of February in each year, as said Committee might require.

There is no allegation in said first Count, that the said sum of Three Thousand, one hundred and eighty-eight dollars, and thirteen cents, alleged to have been, and to be, wrongfully withheld, and retained by said defendant Russell, was, and is over and above all lawful credits to him, said Russell, for uncollected personal taxes, all of which, are provided, and necessary to be alleged, by the terms of said ordinance, of Sept 29. 1851. referred to in said first Count—

8— There is no allegation in said first Count, that the term of office of said defendant Russell, had expired before the commencement of said suit, and that

the said defendant Jacob Russell, was collector of the City of Chicago, at the time he is alleged to have collected and received the said taxes, and monies, in said Count charged, by him to have been collected and received—

6— The said second Count is in other respects, uncertain, informal, and insufficient, &c.

J. P. Clarkson,

Deft's Atty—

And afterwards, to wit, at the ^{November} term of said Court, to wit, on the 10th day of January, in the year ¹⁸⁵⁷ ~~last~~ ~~past~~, the following proceedings, among others, were had, and entered of Record therein, to wit—

The City of Chicago
vs

Debt.

Jacob Russell, Nathaniel P. Wilder, William B. Ogden, and
Gordon S. Hubbard

This day comes the said Plaintiff, by Mr. King, of Counsel, and confesses the demurrer of the said Defendants Jacob Russell, Nathaniel P. Wilder, and Gordon S. Hubbard, impleaded with William B. Ogden, to its said declaration, filed in said cause, and on motion, no objection being made thereto— It is ordered that said Plaintiff have leave to amend its said declaration—

And afterwards, to wit, on the 17th day of November, A D 1858. the said defendants, by their said Attorney,

filed in the Court aforesaid, their certain Pleas,
which are in the words and figures following, to wit.

In the Cook County Circuit Court—
Of the April Term, A. D. 1857.

Jacob Russell, Nathaniel P. Wilder,
and Gordon S. Hubbard, impleaded } Defts—
with William B. Ogden, who is not
served with process in this cause
ads

The City of Chicago } Plff.

1st Plea— And the said Defendants impleaded &c.
by Clarkson & Tree, their Attorneys, come and defend
the wrong and injury when &c. and as to the said
first and second counts, of the said declaration, say
that the said supposed writing obligatory therein men-
tioned, is not their deed, and of this, they put them-
selves upon the Country &c.

2nd Plea— And as to the said Third Count of the
said declaration, the said defendants impleaded &c.
say that they do not owe the said sum of money
therein mentioned, or any part thereof, in manner
and form as the said plaintiff hath above thereof
complained against them, and of this, they put
themselves upon the Country—

3rd Plea— And the said Defendants impleaded
&c. for further plea to the said first and second counts

of said declaration, say actio non, because they say that the said defendant, Jacob Russell, did, from time to time, and at all times after the making of the said writing obligatory, and the said condition thereof, and whilst he was City Collector in, and for the said City of Chicago, faithfully execute the duties of his said office, and did account for, and pay over all monies received by him, as such collector, in accordance with the orders, before the sixth day of March. A.D. 1855. the said day of his election to said office as City Collector, and after said day, up to the time of the commencement of this suit, passed by the Common Council of the said City of Chicago, and did deliver all books, papers, and all other property belonging to the said City, to his successor in office, according to the tenor and effect, true intent and meaning of the said condition of the said writing obligatory, in said first and second counts mentioned, and set forth. And this, they, the said defendants, impleaded &c. are ready to verify. Wherefore they pray judgment &c.

4th Plea—And for further plea in this behalf, to the said first and second counts of the said declaration, the said defendants impleaded &c. say actio non—because they say that the said defendant Jacob Russell, so being City Collector in, and for, the said City of Chicago, as in said first and second counts mentioned, did well and truly pay over into the City

Treasury of said City of Chicago, and account for the said sum of Three Thousand, One Hundred, and eighty-eight dollars, and thirteen cents, and all other moneys, and sums of monies, by him received as such collector, as in said first and second counts of said declaration mentioned, and set forth, as soon as the same was collected, and in the manner appointed and provided, in and by the said sixth section of said second article of said Ordinance, entitled "an ordinance concerning the assessment and collection of taxes," passed by said Common Council of said City of Chicago, on the 29th day of September A.D. 1851. and mentioned, and referred to in said first and second counts of said declaration, according to the tenor and effect, and the true intent and meaning of the said sixth section, and of the said Condition of the said writing obligating, to wit at Chicago aforesaid, in the County aforesaid. And this the said defendants impleaded &c. are ready to verify wherefore they pray judgment &c.

3rd Plea — And for further plea in this behalf, as to the said declaration, the said defendants impleaded as aforesaid, say actio non — because they say that the said defendant, Jacob Russell was, at the time set forth in said first and second counts, duly and lawfully elected the City Collector in, and for the said City of Chicago, for the period in said first and second counts set forth, and that as

such collector, and for the collection of the taxes of said City of Chicago, for said year 1855, he was of right, and by the laws and Ordinance of said Common Council of the said City of Chicago, entitled to certain fees, and commissions for such collections, and upon all monies, and sums of money, by him, so collected, as such collector, of the taxes aforesaid, for said year 1855, and that he, the said Jacob Russell, so being collector as aforesaid, as he well and lawfully might, did keep and retain the said sum of Three Thousand one hundred, and eighty-eight dollars, and thirteen cents, which were a portion of said fees and commissions lawfully due, and belonging to him, for the collection, as aforesaid, of the taxes aforesaid, as such collector aforesaid, to wit, at Chicago aforesaid, in the County aforesaid. And this, the said Defendants are ready to verify. Wherefore they pray judgment &c.

6th & last Plea. — And for a further plea in this behalf, to the said declaration, the said defendants impleaded &c. say actio non, because they say that the said defendants Jacob Russell, so being elected collector for the said City of Chicago, at the time, and for the period, and for the purposes, in said first and second counts in said declaration mentioned, and set forth, he, the said Jacob Russell, so being such Collector as aforesaid, was by law, authorized and empowered solely to collect as well all the monies

due, and accruing to said City of Chicago, during said Municipal year 1855. for, and upon all special assessments for improvements, and other Municipal purposes, levied and assessed by said City of Chicago during said Municipal year 1855. as the regularly assessed taxes of said year, and that he, the said Jacob Russell was, by law, and of right, as such collector as aforesaid, wholly and solely entitled to all fees and commissions for the collection of such special assessments, so levied as aforesaid by said City of Chicago, during said year, 1855.

And the said Defendants impleaded &c. aver that the said defendant was, at all times, during his said term of office, as such collector, ready and willing to collect all the monies due, and owing to said City of Chicago, for, upon, and by virtue of all special assessments levied, and assessed by said City, during said Municipal year, 1855. and during his said term of office, for improvements, and other municipal purposes, and did notify the said City upon, and immediately after his said election. as such collector as aforesaid, of such, his readiness and willingness, and did offer to collect as such collector, all such said monies and collections for said special assessments made, levied, and assessed during his said term of office - but that the said City wholly refused, unlawfully and without right, to allow him, the said Jacob Russell

so being such collector as aforesaid, to collect the same, or any part thereof, and improperly, unlawfully, and without right, appointed and authorized certain others not having legal authority so to do, to collect all the said monies so levied and assessed by said city, during said year, for said special assessments—

And the said Defendants impleaded &c. further aver that the said sum of Three Thousand, one hundred, and eighty eight dollars, and thirteen cents alleged in said declaration to have been retained, and to be due and owing, by said Jacob Russell, to said City of Chicago, was, and is, the just amount of fees and commissions for and upon the whole amount of said special assessments so levied and assessed by said City of Chicago, for said Municipal year, 1853. and collected, and no more, and that the said defendant, Jacob Russell, being such collector as aforesaid, as he well and justly, and lawfully, might, kept and retained the said above specified sum of money, as fees and commissions to him lawfully due, and belonging, as such collector as aforesaid, for and upon the said special assessments, so levied and assessed as aforesaid, to wit, at Chicago aforesaid, in the County aforesaid.

And this the said defendants impleaded &c. are ready to verify—Wherefore they pray judgment &c.

Clarkson & Free.

Defts Attys

And afterwards, to wit, on the 18th day of the month and year last aforesaid, the said Plaintiff, by its said Attorney, filed in said Court, its certain demurrer and Replication, to the Pleas of the said Defendants, which are in the words and figures following, to wit—

In the Circuit Court of Cook County—

Of the April Term A. D. 1857.

The City of Chicago Plff }
vs }
Jacob Russell, Nathaniel P. }
Wilder, & Gurdson S. Hubbard, }
(impleaded with William B. }
Agden, who is not served with }
Process in this cause) Defts }

And the said Plaintiff, as to the plea of the said Defendants impleaded &c. by them first above pleaded, and whereof they have put themselves upon the country, &c. doth the like—

And the said Plaintiff, as to the plea of the said Defendants impleaded &c. by them secondly above pleaded, and whereof they have put themselves upon the country, &c. doth the like.—

And the said Plaintiff, as to the plea of the said Defendants impleaded &c. by them thirdly above pleaded, says precludi non, because it says that the said Jacob Russell did not faithfully execute the duties of his said office, and did not account for, and pay over all monies by him received as such collector,

in accordance with the said order in said third plea mentioned, in manner and form as the said Defendants have in their said third plea, alleged, and this the said Plaintiff prays may be enquired of by the Country &c. And the said Defendants impleaded &c. do the like — Clarkson & Tree Defts Attys

And the said Plaintiff, as to the plea of the said Defendants impleaded &c. by them fourthly above pleaded, says *precludi non*, because it says that the said Defendant Jacob Russell did not pay over into the City Treasury, of the said City of Chicago, nor accounted for the said sum of Three Thousand, one hundred, and eighty-eight dollars, and thirteen cents, nor any part thereof, in the manner appointed and provided by the said ordinance, in the said fourth plea mentioned, in manner and form as the said Defendants have in their said fourth plea in that behalf alleged, and this the said plaintiff prays may be enquired of by the Country, &c. And the said Defendants impleaded &c. do the like — Clarkson & Tree Defts Attys

And the said Plaintiff, as to the pleas of the said Defendants impleaded &c. by them fifthly and lastly above pleaded, says that the said fifth and last pleas, and the matters therein contained, in manner and form as the same are above pleaded, and set forth, are not sufficient in law to bar or preclude the said plaintiff from having or maintaining its aforesaid action thereof, against the said

Defendants impleaded &c.— And that the said plaintiff is not bound by law to answer the same, and this the said Plaintiff is ready to verify—wherefore, by reason of the insufficiency of the said fifth and last plea in this behalf, the said Plaintiff prays judgment, and its debt aforesaid together with its damages, by it sustained, on occasion of the detention thereof, to be adjudged to it &c.—

And the said Plaintiff, according to the form of the Statute, in such case made and provided, states and shews to the Court here, the following Causes of Demurer to the said fifth plea as follows, that is to say,

1— That the said fifth plea is no answer to the said Declaration— That said writing obligatory is conditioned for the payment of by said Jacob Russell, of monies by him collected, as such collector, in the manner prescribed by the said City Ordinances, and said plea attempts to set up in answer thereto, an alleged indebtedness by the said City, to the said Jacob Russell, for services rendered as such collector, and a right to retain monies by him received, as such collector, in liquidation thereof, which is contrary to the condition of said writing obligatory—

2— That by said fifth plea, Defendants attempt to plead in an inartificial manner, a set off existing between the said plaintiff, and the said Jacob Russell, one of the said Defendants, for services

rendered to the said City, no such defence being legally pleadable in this action, which is between the parties—

3— That there is no allegation in said fifth plea, that said Defendant, Jacob Russell, collected any sum whatever for taxes, during his said term of office, or accruing during the Municipal year of 1855— on which he was by law, entitled to any commission, or remuneration whatever—

4— That said Jacob Russell had no right to retain or keep any sum of money whatever, for such commissions, but was bound according to the Condition of the said writing obligatory, to pay over all monies by him collected by virtue of his said office, in accordance with the said Ordinance of the said City—

5— That the said Defendants, in and by their said fifth plea, attempt to raise an immaterial issue, and one not warranted by the said Declaration—

6— And also that the said fifth plea, is in other respects, uncertain, informal, and insufficient &c.

And the said Plaintiff, according to ^{form of} the Statute in such case made and provided, states and shows to the Court here, the following Causes of Demurrer to the said last plea, as follows, that is to say—

The same special causes, firstly, secondly, fourthly, and fifthly, specially assigned to the said fifth plea, the plaintiff specially assigns as Causes of Demurrer to the said last plea—

5- That in and by the said last plea, the said Defendants impleaded &c. attempt to plead matter of law, and not any matter of fact to be tried by a jury

6- That the said last plea is in other respects, uncertain, informal and insufficient &c.

E. Anthony Atty for Plff-

And afterwards, to wit, at the November Term of said Court, to wit, on the 20th day of November, A.D. 1858. the following proceedings, among others, were had, and entered of Record therein, to wit-

City of Chicago

vs

7481 Jacob Russell, Nathaniel } Debt.
P. Wilder, William B. Ogden }
and Gordon S. Hubbard - }

This day come again the said parties, by their respective Attorneys, and the Court being fully advised in the premises, sustained the demurrer of said plaintiff, to the 6th plea of Defendants, to said Declaration - And there upon, on motion, leave is given said Defendants, to amend their said plea, by two o'clock, P.M. of this day - And the Court now overrules the demurrer of said plaintiff, to the 5th plea of said Defendants, to said declaration -

And afterwards, to wit, on the same day and year last aforesaid, there was filed in the Court aforesaid by said Plaintiff, a Replication, which is in the words

and figures following, to wit—

In the Circuit Court of Cook County—

Of the April Term. A.D. 1857.

The City of Chicago—Plff

vs.

Jacob Russell, Nathaniel
P. Wilder, and Gordon S.
Hubbard, impleaded with
William B. Ogden, who is not
served with process in this
Cause—

Defts

And the said Plaintiff, as to the plea of the said Defendants, impleaded &c. by them fifthly above pleaded, say, precludi non—because it says that there was not due to the said Defendant, Jacob Russell, any sum of money whatever, for Commissions or fees, for taxes by him collected, as such collector, during the said year, 1855. for, or on account of which, the said Jacob Russell retained the said sum of Three Thousand, one hundred, and eighty-eight dollars, and thirteen cents, in manner and form as the said Defendants impleaded &c. have in their said fifth plea, alleged, and this, the said plaintiff prays, may be enquired of by the Court &c.

E. Anthony, Atty for Deft—

And the said Defendant doth like

Clarkson & Tree, Plffs Atty—

And afterwards, to wit, at the same term of said Court, last aforesaid, to wit, on the 24th day of the month, and year aforesaid, the following proceedings among others, were had and entered of Record therein, to wit—

City of Chicago

vs

7481

Jacob Russell, Nathaniel
P. Wilder, William B. Ogden
and Gurden S. Hubbard

Debt—

This day come again the said parties, by their respective Attorneys, and the said Defendants elect to stand, by their 6th plea to said declaration, and now except to ruling of the Court, in sustaining the demurrer of said plaintiff, to said plea—

And afterwards, to wit, at the same term of said Court, to wit, on the 26th day of the month, and year aforesaid, the following proceedings, among others, were had, and entered of Record therein, to wit—

City of Chicago

vs

Jacob Russell, Nathaniel
P. Wilder, William B. Ogden,
and Gurden S. Hubbard

Debt—

This day comes again the said plaintiff, by its aforesaid counsel, and the

said defendants, Jacob Russell, Nathaniel P. Wilder, and Gorden S. Hubbard, impleaded with William B. Ogden, by their counsel, also comes, and by agreement of parties, given in open Court, the trial of matter at issue, herein, between said parties, is submitted to the Court, and the coming of a jury waived, and the Court after hearing the evidence introduced, by the parties, the arguments of counsel, and being fully advised in the premises, doth find the issues for said plaintiff, and that said defendants, Jacob Russell, Nathaniel P. Wilder, and Gorden S. Hubbard, impleaded as aforesaid, owe and are indebted to the said plaintiff, as in the declaration herein mentioned, in the sum of Fifty thousand dollars, Debt— And assesses said plaintiffs damages herein, for the detention of said debt, to the sum of Three Thousand, Six hundred, and Eleven Dollars and nine cents—

Whereupon the said Defendants impleaded as aforesaid, by their counsel, move the Court for a new trial of this cause, and in arrest of judgment— which motion the Court overrules— to which decision of the Court in overruling said motion, the defendants by their Counsel now except—

Therefore it is considered that said plaintiff doth and recover of the said defendants, Jacob Russell, Nathaniel P. Wilder, and Gorden S. Hubbard, impleaded as aforesaid, its debt of Fifty thousand dollars, with

together with its costs and charges, by it, about its suit
in this behalf, expended, and have execution there-
for. And it is further ordered that the said judg-
ment be discharged, upon payment of Three Thousand
six hundred and eleven dollars, and nine cents, the
damages aforesaid, by the Court assessed, with in-
terest thereon, and costs of suit and thereupon,
the said defendants impleaded as aforesaid, pray
an appeal to the Supreme Court of the State of
Illinois - which is granted, upon condition that
the said defendants impleaded as aforesaid,
execute and file their appeal bond herein,
in the penal sum of seven thousand dollars,
conditioned according to law, with J. W. Chicker-
ing as surety, in ten days from this date - and on
motion, ten days is allowed said defendants, to
file their Bill of exceptions herein -

And afterwards to wit, on the 2nd day of De-
cember, in the year last aforesaid, the said defend-
ants filed in said Court, their certain Bill of ex-
ceptions in said cause, which is in the words and
figures following, to wit -

Cook County Circuit Court -

Jacob Russell, Nathaniel
P. Wilder, and Gurdon S.
Hubbard, impleaded with
William B. Ogden.

ads

The City of Chicago

Be it remembered that on the 26th day of November, in the year of our Lord, one thousand, eight hundred and, fifty-eight, (that being a day of the November Term A. D. 1858 of said Court) this Cause came on for trial before the Honorable George Maniere, Judge of said Court, upon the aforesaid issues joined therein, and thereupon, then and there, the said parties appeared by their Counsel, and by agreement of said Counsel, the said Cause was then and there submitted for trial, upon said issues, to the said Court, a jury being then and there, waived—

And the Counsel for the plaintiff to maintain and prove the said issues, on their part then and there produced and offered in evidence, a certain writing obligatory made and executed by the said defendants, and the said William B. Ogden, which is in the words and figures following to wit—

Copy of the Bond

Know all men by these presents, that we, Jacob Russell, N. P. Wilder, W. B. Ogden, and G. S. Hubbard, of the County of Cook, and State of Illinois, are held and firmly bound unto the City of Chicago, in the penal sum of Fifty thousand dollars, for the payment of which sum of money, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents—

Sealed with our seals, and dated this nineteenth
day of March, A.D. 1855

The condition of the above obligation is such, that
whereas, the above bounden Jacob Russell was on the
sixth day of March A.D. Eighteen hundred and
fifty-five, elected to the office of City Collector in, and
for the City of Chicago, to hold said office for the period
of one year, and until his successor shall be duly elect-
ed and qualified, or until the said office shall be
otherwise legally vacated. - Now therefore, if the said
Jacob Russell shall faithfully execute the duties of
said office, and account for, and pay over all monies
received by him as such collector, in accordance with
the orders heretofore passed, or hereafter may be passed,
by the Common Council, and deliver all books, papers,
and all other property belonging to the city, to his suc-
cessor in office, then this obligation to be void, otherwise
to remain in full force and effect -

Signed, sealed, and
delivered, in presence of
H. W. Zimmerman

City Clerk -

Jacob Russell (seal)

M. P. Wilder (seal)

W. B. Ogden (seal)

G. S. Hubbard (seal)

Approved by the Common
Council - March 19th 1855.

H. W. Zimmerman - City Clerk -

which was then and there admitted as evidence
by the said Court, without objection, on behalf of the
said defendants -

The Plaintiff further to maintain and prove the said issues, on its part offered as a Witness, one J.

J. Putnam, a deputy of the clerk of City of Chicago, who being duly sworn, produced a certain book, one of the Records of the City of Chicago, containing what purports to be an account current between the said defendant, Jacob Russell, and the said plaintiff, stated the 15th day of July, A.D. 1856. and witness testified thereupon, that said account was in the handwriting, and signed by the said defendant Jacob Russell, which account is in the words and figures following, to wit—

City of Chicago

An account with Jacob Russell, City Collector — Dr.

To assessment on Lot 65. B. 1. Canal Trus Sub	
of $10\frac{1}{2}$ & $10\frac{1}{2}$ of N E $\frac{1}{4}$ sec. 17. Public Square	2, 80
" Error in Extending S L 7. L. 4. B. 17. 6 T	2 "
" Amt deducted personal Tax E. McAlvares	
W J ^{Comm.} Council	20 "
" " " " G. D Bruce Dobson	93, 10
" Error in Variant Lot 25. in B. 67. C 3.	61, 20
" " " " " 4 " 5 assessment Sub L	
S W $\frac{1}{4}$ sec. 22	2, 80
" Return Road. — Tax Sam Myers Co. 4 —	7, "
" 19 $\frac{1}{3}$ ft Lot 8. B. 38. 0 T	87, 100
" Personal Tax W. B. Farrell, impost	20, 47.
Error Variant S. D Lot, B. 12 0 T —	21. 56.
" " Lot 75, B 61, sec. 7. 39, 14	88
	233. 61

To Amount brought forward			233, 61
To Canal Lands E 1/2 B, 35 in E 1/2 of W 1/2 of S 1/2 of Sec 19			6, "
" " " 36 " " "			5, 60
" " Blocks 37, 38, 43, 44			38, 46
" " E 1/2 Blocks 45, & 46			10, 80
" " Blocks 51 to 62 inclusive			120, "
S L 12, S 2, B, 14 S E 1/4 sec 21 W L alley			60
Erra of Gas light At 100 ft. of E 1/2 of W 1/2 B 39			
Kingie Add			2, 80
Apmt remitted 10 ft in Alley Lot 6 & 7. 1342.			
Carpenters Addn	Pay 2, 12 Cost 20		2, 32
Canal Lands Sub of W 1/2 of W 1/2 of S 1/2 of Sec. 19	Taxes 40, 00 Cost 20 00		60, "
" " Lots 8 & 9 B 64 0 9	Taxes 14 40 Cost 20		14, 60
City Lots W 3/4 S 1 & 2, B 83 S. S. add	Taxes 13, 13 Cost 20		13, 50
Church Lot. Lot 1, B 54. Carpenters add	Taxes 9, 20 Cost 10		9, 30
" " " 1 & 2 " 80 R, M & R add	Pay 12 60 Cost 20		12, 80
Canal Lands B, 4, Sec. 7	Taxes 44 00 Cost 10		44 10
" " " 21 " 7	Taxes 43, 20 Cost 10		43, 30
" " " 3 " 7-	Taxes 40 10 Cost 10		40, 10
Church Lot Lot 7, B, 38, 0 9	Taxes 40 Cost 10		40, 10
" " " 2, " 54 " "	Taxes		32,
" Streets front Lots 12 & 37. 13 & 36. 13 & 7.			
W 1/2 sec 39, 39, 14			2, 31
" Canal Land Lot 3, B 24, 0 9			19, 20
" " " " 10 " 62,	Pay 7 20 Cost 10		7, 30
" " " " 18 "			7, 20
" " " 7, 8, 9 & 10 B 63 0 9			28, 80
Amount carried forward			567, 13

To	Amount brought forward		561. 13
"	Canal Lands Lot 19 B 70, 0 9. ^{Pay 8 17} Cost 10		8, 10
"	Personal Tax not collected		
	S D	1546, 54	
	W D	417, 59	
	N D	547. 61	2511, 74
"	Amt deposited with City Treasurer as per receipts		200686, 67
"	Commissions of 106 270, 94		3188, 13
	Collected of special Taxes 3 70		206935, 77
	Gr.		
B _y	Increase assessment Lot 2, B. 18, 03. ²²⁴	22, 40	201, 60
"	" " " " 3 " " "	¹⁷⁶⁰⁰ 17, 60	158, 40
"	Esor Newbury, Folley & Winfall S D		12, 60
"	" W. H. Demmeck & Co	x	84, "
"	" S J White & Bro	"	49, "
"	" E. B. Winbolt & Co	"	11, 55
"	" N. Ludington & Co	W. D	24, "
"	" Norton & Bro	"	20, "
"	" Bernard Shidhuin	S. D	5, 60
"	" D. L. Jacobus	W. D	8, "
"	" J. Wilde.	"	12, 80
"	" Stephani & Bro.	"	3, 20
"	" E. H. Castle	"	3, 20
"	Esor in Warrant Lot 1 to 14 inclusive B to O 9		446, 40
	Amount carried forward.		1040, 35.

By Amt. brought forward,
" " of Warrant

1040, 35.
206,209.03

207,249, 36

Errors and omissions Excepted

Chicago, July 13th, 1856.

Jacob Russell -

which ^{account} request was admitted as evidence, by said Judge, without objection to it made by said defendant.

This was all the evidence offered and produced to said Judge, on said trial, on behalf of said plaintiff, and no evidence was then and there offered on behalf of the said defendant -

And thereupon the said Judge rendered a judgment against the said Jacob Russell, Nathaniel B. Wilder, and Gordon S. Hubbard, impleaded with William B. Ogden, in favor of the said City of Chicago, for Fifty thousand Dollars (\$50,000) Debt, ~~and~~ ^{assessing the plaintiffs damages at the sum of} and, Three thousand, Six Hundred and Eleven Dollars, and nine cents (\$3,611.09) ~~thereupon~~ the debt to be discharged upon payment of damages and costs.

And thereupon the said Russell, Wilder, and Hubbard, impleaded with the said Ogden, by their Counsel, Clarkson & Tice, moved the said Court for a new trial in said cause, and that the said judgment so rendered, be arrested for the reasons,

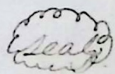
1 - That the Court erred in allowing interest from July 13, 1856. to November 26 - 1858. on the sum of

§ 3188.13. and in rendering judgment for said interest against said Russell, and his co-Defendants.

2— The said judgment was erroneous in amount, and in form—

3— The Court erred in rendering said judgment upon the pleadings, and evidence in the case—

Which said motions the said Judge then and there overruled, to which decision and overruling of the said Judge, the said Russell, Wilder, and Hubbard, impleaded with the said Ogden, by their said Counsel, then and there excepted, and prayed an appeal to the Supreme Court of said State of Illinois. And upon the prayer of the said parties praying such appeal, by their Counsel, the said Judge hath to this Bill of Exceptions, put his seal, according to the form of the Statute, in such case made and provided, this twenty-sixth day of November, A.D. 1858.

George Manierre 
Judge of 7th Judicial
Circuit, Ills—

And afterwards, to wit, on the same day and year aforesaid, the said defendants, by their said Attorney, filed in said Court, their certain appeal bond, which is in the words and figures following, to wit—

Know all men by these presents, that we, Jacob Russell, Nathaniel P. Wilder, and Gideon S. Hubbard,

and John W. Chickering, of Chicago, in the County of Cook, and State of Illinois, are held and firmly bound unto the City of Chicago, in said State, in the penal sum of Seven Thousand Dollars, (\$7000) lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents, Witness our hands and seals, this twenty seventh day of November, A. D. 1858.

The condition of the above obligation is such, that whereas the said City of Chicago did on the twenty-sixth day of November, A. D. 1858. recover a judgment in the Cook County Circuit Court, of the County of Cook aforesaid, before the Honorable George Manierre, Judge of said Court, against the above bounden Jacob Russell, Nathaniel P. Wilder, and Gurden S. Hubbard, impleaded with William B. Ogden, for the sum of Fifty Thousand Dollars, Debt, ^{and costs of suit,} (\$50000), and ^{reassess the plaintiff's damages to} ~~Three~~ ^{cents of} Thousand, Six Hundred and Eleven Dollars, and Nine cents (\$3,611.09) ~~damages and costs of suit,~~ the debt to be discharged, upon payment of the damages and costs from which judgment, the said Jacob Russell, Nathaniel P. Wilder, and Gurden S. Hubbard, impleaded &c. aforesaid, have taken an appeal to the Supreme Court of the State of Illinois—

Now if the said Jacob Russell, Nathaniel P. Wilder, and Gurden S. Hubbard, impleaded as aforesaid, shall duly prosecute their said appeal, and

shall pay the judgment, costs, interest and damages, in case the said judgment shall be affirmed, then the above obligation to be void, otherwise to remain in full force and virtue

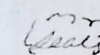
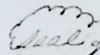
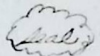
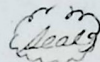
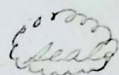
Approved by me this
2nd day of December,
A. D. 1858

Jacob Russell

G. S. Hubbard

Nathl. P. Wilder

J. W. Chickering



State of Illinois, }
COUNTY OF COOK. } s. s.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect, and complete copy of the papers filed & proceedings had entered of record in a certain cause pending in said Court on the Common Law side thereof, wherein the City of Chicago was Plaintiff and

Jacob Russell et al. vs. et al. defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this twenty sixth day of February, A. D. 1859

Dues for Record \$11. ²⁵/₁₀₀

W. L. Church

Clerk.

Errors assigned by Jacob Russell,
Nathaniel P. Miller, and Gordon L. Lullant, impleaded with
William B. Ogden Appellants -

1. The Court erred in sustaining the Demurrer of the
Plaintiff below (Appellee) to the 6th Plea of the Defendants below.
2. The Court erred in rendering judgment for the Plaintiff
below for \$50000 Net, and in assessing its damages
at \$3188.09.
3. The Court erred in allowing interest from July 15 1856 to
November 26 1858 at the sum of \$3188.13 and in including said
interest in the damages assessed -
4. The Court erred in rendering said judgment in its
Amount and form.
5. The Court erred in overruling the motion for a new
trial and in arrest of judgment, and in rendering the said
judgment against the said defendants below impleaded to

Charles K. Rice
Attorneys Appellants.

Circuit Court of Cook Co.

244-124

City of Chicago

VS

Jacob Russell et al
Apprs.

Record

Filed April 20 1859

L. Leland

Clk

Chas. Adams & Son
Jd \$5 to Recd

7/11/50

And now comes the
said Defendant in Error by Elliott
Anthony, its attorney, and says
that there is no error in in the
record & proceedings, aforesaid
and in the rendition of judgment
aforesaid in manner & form
as the said plaintiff in error
has alleged. &c wherefore this
Defendant prays that said judgment
may be in all things affirmed
E. Anthony
att. for Def. in
Error.

Printed by Jameson & Morse, 14 La Salle St., Chicago.

SUPREME COURT.

APRIL TERM, A. D. 1859.

JACOB RUSSELL, NATHANIEL P. WILDER, and GURDON S. HUBBARD, Impleaded with WILLIAM B. OGDEN, Appellants, vs. THE CITY OF CHICAGO, Appellee.	}	APPEAL FROM COOK COUNTY CIRCUIT COURT.
--	---	---

BRIEF OF POINTS AND AUTHORITIES ON BEHALF OF APPELLANTS.

The first error in the record to which the court is directed is, we think, fatal to the judgment.

The action brought below was an action of debt, on a penal bond in which the penalty was \$50,000.

The præcipe, summons and declaration are in debt, claiming the penalty of \$50,000, and laying the damages at \$1,000.

The judgment of the court below was for \$50,000 debt, and the court assessed the plaintiff's damages at \$3,611.09, the debt to be discharged upon payment of the damages and costs.

36 // 144 (4)
144
16
864
144
2304
18388-22

It is a rule definitely settled, that the plaintiff can recover no more damages than are claimed in his declaration.

1 *Chil. pl.* 372.

Graham's Practice 323, 324.

2 *Tidd's practice*, 896.

Pickwood vs. Wright, 1 *H. Bl.* 642.

L Jones vs. Mloyd, Bre. 174.

Fournier vs. Faggott 3 *Scam.* 347.

Stephens et al vs. Sweeney, 2 *Gil.* 375.

Chenot vs. Lefevre, 3 *Gil.* 637.

Pickering vs. Pulsifer et al 4 *Gil.* 79.

Oaks vs. Ward et al 19 *Ill.* 46.

In an action of debt on a penal bond, the penalty of the bond is not the cause of action, nor the true amount of recovery. The breach of the condition is the gist of the action, and the damages occasioned by it are the true amount of recovery.

Murphy vs. Somerville, 2 *Gil. In. argu. pp.* 362.

Fournier vs. Faggott, 3 *Sc.* 347, was an action on an appeal bond; penalty \$126; *ad damnum* \$50.

Judgment below—debt \$126—damages \$63,87.

The court there says: "The ground of recovery here, is the non-payment of the debt, and costs adjudged on the appeal, not as a debt *in-numero*, ascertained in the bond, but as *damages* to be proved and assessed under the assignment of breaches; and the damages should have been laid sufficiently high to cover the injury. The court has no power to award the party more than he asked. He is supposed to know the full extent of the wrong and to lay his damages high enough to remunerate him for his loss and injury."

"The condition to pay the penalty of the bond is not the *gist* of the action. The condition of the bond to perform another act, to pay another sum exhibits the true nature of the contract between the parties, and its violation entitles the party to recover the penalty, out of which he may collect his damages only."

Fournier vs. Faggott 3 *Scam.* 350, and cases there cited.

first
The ~~second~~ assignment of error on the Record presents the question of the legality of the office of collector of Special Assessments, under the Charter of the city of Chicago, in force whilst the defendant Russell held the office of City Collector of said city of Chicago.

The Act entitled "An Act to reduce the law incorporating the city of Chicago, and the several acts amendatory thereof, into one act, and to amend the same."

Approved February 14, 1851,

And which was in force in 1856, during the said Russell's term of office as such City Collector, is relied upon as the authority of the appellants, in support of the position taken by them, and urged in their sixth plea, the demurrer to which was sustained by the Court below; that the City Collector under said act, elected by the people, was alone authorized by law to collect as well the Assessments levied and imposed by said city of Chicago, and its Common Council, for special purposes, as the regularly assessed and ordinary taxes for general purposes.

Charter and Ordinances of the City of Chicago; compiled by G. W. and J. A. Thompson, 1856. Chapter 1 to 12, inclusive; pages 3 to 63, inclusive.

And the appellants, in support of this position, refer particularly in said Charter to—

Chapter II, sections 1, 3, and 9.

Chap. III, sect. 10.

Chap. VIII, sect. 6, 7, 8, 9.

Chap. LVIII of Charter and Ordinances before referred to, Article II, of the Collection of Taxes.

Clarkson Schenck
Attorney for Appellants

In *Stephens, et al. vs. Sweeney*, 2 *Gil.* 375, the action below was on debt upon a penal bond (appeal bond).

Penalty \$200, *ad damnum* \$50.

Judgment below for \$200 debt, and \$116 03 damages.

This was a case precisely analogous to the one now before the court.

The judgment was reversed because the damages assessed exceeded the *ad damnum*.

Nor can the plaintiff below have a *remittitur* entered in this court. His only remedy is to apply to the court below, after remanding of the cause, to amend his writ and declaration.

Fournier vs. Faggott, 3 *Sc.* 347.

Stephens et al. vs. Sweeney, 2 *Gil.* 375.

Chenot vs. Lefevre, 3 *Gil.* 637.

Pickering vs. Pulsifer et al., 4 *Gil.* 79.

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Charles J. Davis
Counsel for appellant

254-125
Jas. H. Russell
et al
Appellants

The City of Chicago
Appellee

City of Pontiac and
Associates

Prepared

Charles H. Wood
for Appellants

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

JACOB RUSSEL,
NATHANIEL P. WILDER and
GURDON S. HUBBARD, *impleaded with*
Wm. B. OGDEN, *Appellees,*
vs.
CITY OF CHICAGO, *Appellant.*

POINTS FOR APPELLEE.

I.

In an action of debt upon an official bond, the *penalty* is the *legal debt*, and the damages are only *nominal*—for the detention of the debt—therefore a *judgment* for the amount of the penalty—to be discharged upon payment of the damages and costs is correct, even if *such* damages exceed the *ad damnum* laid in the declaration.

Todd's Practice, 2d vol., page 879.

Stephens' Pleadings, 427.

Selwyn's Nisi Prius, vol 1, page 604.

Saunders on Pleading, v. ev. vol 1, p 903.

Gainsforth vs. Griffith, 1 Saunders Rep., 51.

See form of Narr in this case as to *ad damnum*.

Archibald's Nisi Prius, page 309; Law Library Editon, form of Narr, page 308.

See, also, 2 Saunder's Rep., 183.

See D. K. Allen *et al.* vs. Smith, 7 Halstead N. J., page 168-9, 170, which is directly in point, and reviews the whole subject.

Sedgwick on Measure of Damages; title "Debt on Bond," 416, 417.

Hodges vs. Suffelt, 2 Johns cases 406.

2 Wilson, 477; 5 Tennessee Rep, 538.

8 Tennessee Rep. 127; 4 Johns, 189.

These cases all show that by the common law pleadings, no *damages* whatever need have been stated; but it was sufficient, simply to declare upon the bond; the *penalty* was the *legal debt*; when the statute of 8 & 9 Will. was passed, it only changed the rule of pleading, making it necessary for the party to *assign* breaches—it did nothing more—the penalty of the bond was still the *legal debt*.

Any case in this State, which establishes a different rule, is contrary to common law, and should be overruled.

The first and second counts, on the 8th and 12th pages of the record, are so drawn as to make each of them independent narr.'s—especially the second count; I call the particular attention of the court to this point. The *ad damnum*, at the close of the narr, in the way and manner in which the narr is drawn, applies to the common counts, and leaves the 1st and 2d counts wholly independent; this peculiarity will be noticed at once, upon inspection of the record.

Chitty, in his works on pleadings, vol. 1 page 373, says:

"The damages in an action for debt, are, in general, merely nominal, and not, as in assumpsit, the principal object of the suit; and therefore a small sum as £10, is usually inserted.

See form of narr. *Gainsford vs. Griffith*, 1 Saunders 51.

D. K. Allen et al., vs. Smith, 7 Halstead, 168-9.

II.

The demurrer to the 6th plea was properly sustained because it was *no answer whatever* to the declaration, in any way, shape or manner. See the special causes which are assigned in the demurrer to the 5th plea; the same being assigned to the 6th plea.

III.

The other errors assigned by the appellants, are believed to be fully answered and disposed of by the record itself, and by principles so well settled in this court, that authorities are entirely unnecessary.

E. ANTHONY,
For Appellee.

244 = 125

Rufel Hals

as

City of Chicago

Appellee's Points

Filed May 6. 1859

Leland
Clark