

12604

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

# Supreme Court of Illinois


Skelton

---

vs.

Cook

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71641  7

Timothy J. Skelton  
178- W-  
Isaac Cook

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Recd

Filed April 26, 1858  
Leland  
Clk

\$5.00 Clk.

\$6.00



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 Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a <sup>special</sup> term thereof begun and held at the Court House in the City of Chicago, in said County, on the

*Fourth*

Monday, (being the *twenty second* day) of

*June*

in the year of our Lord one thousand eight hundred and

*fifty seven*

and of the Independence of the said United States the

*eighty first in pursuance of the order of the Jury of said Court heretofore made and entry of record*

Present, Honorable

*George Manion*

Judge of the 7th Judicial

Circuit of the State of Illinois. }

*Charles Haven*

States Attorney.

*John L. Wilson*

Sheriff of Cook County.

Attest:

*Wm. L. Church*

Clerk.



Be it remembered that heretofore, to wit on the second day of June in the year of our Lord one thousand eight hundred and fifty seven Timothy J. Skelton Plaintiff by Shumway Waite and Towne his attorneys filed in the office of the Clerk of the Circuit Court in and for said County in the State aforesaid his certain petition which is in the words and figures following, to wit,

Cook County Circuit Court  
Timothy J. Skelton }  
vs. } Dams. \$3000  
Isaac Cook }

The Clerk will please issue a  
Summons in this case in a plea of trespass on the case  
on promises

Shumway Waite & Towne  
for Plff.

And afterwards, to wit, on the same second day of June last aforesaid there was issued out of the office of the Clerk of said Court and under the seal thereof, the Peoples writ of of Summons directed to the Sheriff of said County and clothed in the words and figures following, to wit,

State of Illinois }  
County of Cook } vs.

The People of the State of Illinois  
to the Sheriff of said County Greeting:  
We command you that you summon Isaac Cook



if he 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 Chicago, in said County, on  
the fourth Monday of June inst. to answer unto  
Timothy J. Skellton in a plea of trespass on the  
case on promises to the damage of the said plaintiff  
as is said, in the sum of Three thousand dollars.  
And have you then and there this writ, with an  
endorsement thereon, in what manner you shall  
have executed the same.



Witness William L. Church, Clerk of our  
said Court, and the seal thereof at  
Chicago aforesaid, this Second day of  
June A.D. 1857

(Wm L. Church Clerk)

And afterwards, to wit, on the 4<sup>th</sup> day of  
June in the year last aforesaid said writ was  
returned into the Court aforesaid by said Sheriff  
with the following endorsement thereon, to wit,  
Served by reading to the within named Isaac  
Cook the 4<sup>th</sup> day of June 1857, Fees: 1 Service, 50,  
1 Mile 5, 1 Return 10 - 8 - 65 John S. Wilson Sheriff  
by John H. Dart Deputy.

And afterwards, to wit, on the 12<sup>th</sup> day of  
June in the year last aforesaid the said plaintiff  
by his said Attorney filed in the Court aforesaid his



certain declaration which is in the words & figures following, to wit,

In Cook County Circuit Court  
of the June Special Term A.D. 1887

State of Illinois }  
Cook County } ss.

Timothy J. Shelton plaintiff in this  
suit by Shumway Waite & Towne his attorneys complain  
of Isaac Cook Defendant in a plea of trespass on the  
case on promises—

For that whereas, heretofore, to wit, on the fifth day  
of December in the year of our Lord Eighteen hundred  
and fifty five at Chicago, to wit, at Cook County afore-  
said James S. Spude, George Steuber under name of  
George Stealer, Herschick G. Mc Culloch and W. G. Mc  
Culloch made their certain promissory note in writ-  
ing bearing date the day and year aforesaid and  
thereby then & there promised to pay to the order of said  
Isaac Cook twelve months after <sup>the</sup> date thereof which  
period has now elapsed the sum of Fifteen hundred  
dollars with interest at the rate of six per cent thereon  
and then and there delivered the same to the said  
Isaac Cook and the said Isaac Cook afterwards to wit on  
the day and year aforesaid at Cook County aforesaid en-  
dorsed the same in writing under the name of I. Cook  
and delivered the same to the plaintiff and thereby then  
and there directed the said sum of money as therein  
mentioned <sup>to be paid</sup> to this plaintiff, and the said plaintiff avers  
and says that although the said note was duly presented



24  
to the said makers thereof when it became due and payable to wit, on the eighth day of December A. D. 1856 at said County and payment thereof was then & there demanded by the said Plaintiff the said makers have not nor hath either of them paid or caused to be paid to the said plaintiff, the said sum of money in said note mentioned or any part thereof, either of principal or interest, but hitherto hath to do the same wholly neglected & refused

And the said plaintiff avers and says that the first term of Court in said County was the January Term of the Cook County Court of Common Pleas held on the first Wednesday of January A. D. 1857 at the Court House in said County and that before that time he sued & prosecuted a certain process of the People of the State of Illinois in due form of law, called a summons, under the seal of said Court & directed to the Sheriff of said County commanding him to summon the said makers under the name of James S. Speed, George Araton and Heretiah G. Mc Culloch to be and appear at the Court House at Chicago in said County on the first Monday of said Term, to answer unto the said plaintiff in a plea of trespass on the case on promises to the damage of the plaintiff as he said of Two thousand Dollars and to make return of the said process on the first day of said Term which said process bore date on the day of issuing and was issued the 18<sup>th</sup> day of December A. D. 1856 & before his return thereof to wit, the 18<sup>th</sup> day



of December aforesaid was delivered to said Sheriff who thereafter & more than ten days before the return day thereof to wit, on the 19<sup>th</sup> day of December A.D. 1856 duly served on the said Speed & Scale - but was returned by said Sheriff not served as to said Mr. Bullock, to wit, on the 19<sup>th</sup> day of December A.D. 1856 & more than ten days before said Term.

Whereupon such proceedings were had in said Court that the said plaintiff recovered on the seventh day of January A.D. 1857 & during the term aforesaid by the consideration of said Court, a judgment in said suit on the note above described against the said Speed & Scale so served as aforesaid & impleaded with the said Mr. Bullock in the sum of Fifteen hundred & ninety seven Dollars & Fifty cents the amount due & then found to be due on said note as damages by said plaintiff sustained and seven dollars and fifty five cents costs of suit, by him in that behalf expended whereof said Speed & Scale so, impleaded were convicted all which will by the record of said Court, therein remaining more fully appear.

The plaintiff further avers and says that on the 9<sup>th</sup> day of January next thereafter he sued & prosecuted out of said Court an execution under the seal of said Court directed to the Sheriff of Cook County aforesaid commanding him that he cause to be made of the lands & tenements, goods & chattels of said Speed & Strater impleaded as



aforsaid the said sum of money for damages & costs, and to have the same ready to render to the said plaintiff and to make a return of said execution with an endorsement thereon in what manner he should have executed the same in ninety days from the date thereof - which said execution thereafter to wit, at 3 o'clock P. M. of the nineteenth day of January A. D. 1857, was delivered to the said Sheriff and by him on the seventh day of April A. D. 1857, returned no property found, and in no part satisfied, by him the said Sheriff by John H. Part his Deputy.

And the said plaintiff avers and says that the said Mc Culloch was at the time said note became due and ever since has left the State of Illinois -

And the plaintiff avers and says that neither the said Isaac Cook, James S. Speed, George Stealer or Herkiah Mc Culloch has paid said judgment - or said sum of money in said note specified or any part thereof.

By reasons whereof and by force of the Statute in such case made & provided the said defendant <sup>there & there</sup> became liable to pay to the said plaintiff the said sum of money in the said promissory note specified when he the said defendant should be thereunto afterwards requested, and being so liable, he the said defendant in consideration thereof afterwards to wit, on the day & year last aforesaid, at the County aforesaid undertook and then and there faithfully



promised the said plaintiff to pay him the said sum of money in the said note specified when he should be thereunto afterwards requested, yet although often requested, yet the said Isaac Cook nor the said George Shealer or Herkiah Mc Bulloch, and George Spude has paid the same or any part thereof to wit, at Cook County aforesaid.

For that whereas also the said James S. Spude, George Shealer & Herkiah J. Mc Bulloch heretofore to wit, on the fifth day of December in the year of our Lord, one thousand eight hundred and fifty five at Chicago, to wit, at Chicago, in said County of Cook made their certain other promissory Note in writing bearing date the day and year aforesaid, and then and there delivered the same to Isaac Cook, the said Defendant, in and by which said Note, said Spude, Shealer & Mc Bulloch by the name, style and description of James S. Spude, Geo. Shealer & H. J. Mc Bulloch promised to pay the order of the said Isaac Cook twelve months after the date thereof which period hath now elapsed, the sum of Fifteen hundred Dollars with interest at six per cent from the date thereof for value received. And the said Def. Isaac Cook to whom or to whose order said note was payable, afterwards to wit, on the day and year aforesaid, at Chicago that is to say, at Chicago, in the County of Cook aforesaid, endorsed said note in writing, by which said endorsement the said Cook under name of I. Cook then and there



ordered and appointed the said sum of money in said note mentioned to be paid to said plaintiff, and then and there delivered said note so endorsed to the said Plaintiff, and the said plaintiff avers that although the said note was duly presented to the said makers and payment thereof demanded by him of them, when it became due to wit, on the 8th day of December A. D. 1856, to wit at said County, neither the said makers either of them have paid to the plaintiff the said sum of money in said note mentioned nor any part thereof but to do so hath hitherto wholly refused, and the plaintiff avers that the January Term A. D. 1857 of the Cook County Court of Common Pleas was the first term of Court in said County after the said note became due, that at the said term the said plaintiff recovered judgment against the said Speed & Shealer impleaded with the said Mr. Culloch on said note for the sum of fifteen hundred ninety seven Dollars and fifty cents damages by him sustained and seven Dollars and forty five cents costs of suit by him therein expended, the said Speed & Shealer then & there being residents of said County & therefore to wit on the 19th day of December 1856 & under ten days before said award of Court duly served with summons in said suit in a plea of trespass in the case on promises - and that said judgment is wholly due and uncollectable & was remaining in full force & effect, and that the said Mr. Culloch, on the said 5th day of December A. D. 1856 said note became due and from thence hitherto hath been & still is a born resident of the State of Illinois, and the plaintiff also avers that process of



the people of the State of Illinois from thence hitherto  
could not be served on him.

By means whereof the said defendant became liable  
to pay said sum of money in said note mentioned &  
being so liable at the time & place aforesaid promised to  
pay the said sum of money to the plaintiff when thereunto  
afterwards requested - The plaintiff also avers that he  
is a resident of Cook County & that said cause of action  
arose.

For that whereas also James S. Speed, George Stealer  
& H. G. McCulloch heretofore to wit, on the fifth day of  
December in the year of our Lord one thousand eight  
hundred and fifty five at Chicago, to wit, at Chicago  
in said County of Cook made their certain promissory  
note - in writing bearing date the day and year afore-  
said, and then and there delivered the same to the  
said defendant Isaac Cook in and by which said  
note said Speed Stealer & McCulloch, by the name  
style and description of James S. Speed, Geo. Stealer  
& H. G. McCulloch promised to pay the order of the  
said Isaac Cook - twelve months after the date thereof  
which period hath now elapsed, the sum of fifteen  
hundred dollars with interest at six per cent from  
the said date thereof, for value received. And  
the said Isaac Cook deft. to whom or to whose  
order said note was payable, afterwards, to wit, on  
the day and year aforesaid, at Chicago, that is to  
say, at Chicago, in the County of Cook aforesaid,  
endorsed said note in writing, by which said



endorsement the said Isaac Cook under name of J. Cook then & there ordered and appointed the said sum of money in said note mentioned to be paid to said plaintiff - and then and there delivered said note so endorsed, to the said Plaintiff. And the said plaintiff avers that although the said note was duly presented for payment to the said maker when it became due to wit, on the 8<sup>th</sup> day of December A.D. 1856 to wit, at said County neither the said maker, nor either of them have paid to the ~~said~~ plaintiff the said sum of money in said note mentioned or any part thereof but to do so have hitherto wholly refused. And the said plaintiff further avers that the institution of a suit against the said makers of said note from the time the same became due till the commencement of this suit would have been unavailing. By means whereof, and by force of the Statute in such case made and provided, the said Defendant became liable to pay said Plaintiff said sum of money mentioned in said note, and being so liable in consideration thereof then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect, true intent and meaning of the said note, and of the endorsement aforesaid, to wit, at the place aforesaid.

And the said Plaintiff avers that the said cause of action accrued in the County of Cook and State of Illinois, and that the said Plaintiff did, at the commencement of this suit, and still



doth reside in said County and State.

And the said Plaintiff avers that the said cause of action accrued in the County of Cook, and State of Illinois, and that the said Plaintiff did, at the commencement of this suit and still doth reside in said County and State.

And whereas also the said Defendant afterwards to wit, on the first day of May in the year of our Lord one thousand eight hundred and fifty seven, to wit, at Chicago in said County, became and was indebted unto the Plaintiff in a large sum of money, to wit, Three thousand dollars for money before that time lent and advanced to said Defendant by said Plaintiff at said Defendants request; and also in the like sum, for money before that time paid, laid out and expended, for said Defendant by the said Plaintiff at the like special request of said Defendant; and in the like sum for money before that time had and received by said Defendant to and for the use of said Plaintiff; and also in the like sum, for goods, wares and merchandise, before that time sold and delivered by said Plaintiff to said Defendant at the like special instance and request; and also in the like sum for the labor and diligence of said Plaintiff before that time done and performed by said Plaintiff for said Defendant and at the like instance and request of said Defendant; and also in the like sum then and there found to be due and owing to said Plaintiff on an account stated between them;



and being so indebted said Defendant in consideration thereof, then and there undertook and promised to pay said Plaintiff said several sums of money above mentioned, when thereunto afterwards requested.

Yet the said Defendant not regarding his said promises and undertakings, but contriving &c. although often requested so to do, hath not paid said Plaintiff either of said sums of money above mentioned, or any part thereof, but so to do hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of said Plaintiff of Three thousand Dollars, and therefore he brings this suit. &c.

Shurnway, Waite & Towne  
Plaintiff's Attorneys

Copy of Instrument and account sued on

\$1500

Chicago December 3<sup>rd</sup> 1855-

Twelve months after date we promise to pay to the order of Isaac Cook Fifteen hundred Dollars for value received with interest from date at rate of 6 per cent

(Sign)

James S. Speed  
Geo. Stearns  
H. G. McCulloch

Endorsed on back

(I. Cook)



Isaac Cook

To Timothy J. Shelton Dr.

To money lent and advanced	\$ 3000
To money paid, laid out and expended	\$ 3000
To money had and received for the use of said Plaintiff	\$ 3000
To Goods, Wares and Merchandise sold and delivered	\$ 3000
To labor and services	\$ 3000
To balance due on account stated	\$ 3000

And afterwards, to wit, at the June Special Term of said Court, to wit, on the 24<sup>th</sup> day of June in the year last aforesaid the following proceedings among others in said Court were had and entered of record therein, to wit,

1713 Timothy J. Shelton }  
vs } asst  
Isaac Cook }

This day comes the said plaintiff by his Attorney and due personal service of process of summons issued in this cause having been had on said defendant, and he being three times solemnly called in open Court comes not, nor does any person for him but therein he makes default which on motion is ordered to be taken and entered of record. Wherefore said plaintiff ought to have and recover of said defendant his damages herein sustained by occasion of the premises. And the Court after hearing the allegations and proofs submitted by said plaintiff and being fully advised in the



premises now assesses said plaintiff's damages herein to the sum of sixteen hundred and thirty nine dollars and thirty nine cents.

81639<sup>35</sup> Therefore it is considered that said plaintiff do have and recover of said defendant his damages of sixteen hundred and thirty nine dollars and thirty nine cents in form as aforesaid assessed together with his costs and charges by him in this behalf expended, and that he have execution therefor.

And afterwards, to wit, of the same term of said Court last aforesaid, to wit, July 7<sup>th</sup> in the year last aforesaid, the following proceedings among others in said Court were had and entered of record therein, to wit,

1713 Timothy J. Skelton  
vs.  
Isaac Cook } asst.

This day comes the said defendant and by his attorney and moves the Court to set aside the assessment of damages heretofore assessed by the Court herein.

And afterwards, to wit, at the term of said Court last aforesaid, to wit, July 11<sup>th</sup> in the year last aforesaid, the following among other proceedings in said Court, were had and entered of record therein, to wit,



1713 Timothy J. Skellon  
 vs.  
 Isaac Cook } asst.

This day comes the said defendant and moves the Court to set aside the assessment of damages heretofore assessed by the Court herein, and also to set aside the execution issued against said defendant herein, And the Court having heard counsel on said motion, and being well advised in the premises, orders that said assessment and execution be and they hereby are vacated, set aside and for nothing held.

And afterwards, to wit, at the same term of said Court last aforesaid to wit, July 13<sup>th</sup> in the year last aforesaid, the following among other proceedings in said Court were had and entered of record therein, to wit,

1713 Timothy J. Skellon  
 vs.  
 Isaac Cook } asst.

This day comes again the said defendant and moves the Court for leave to file affidavit of merits herein. And the Court having heard counsel on said motion and being well advised in the premises overrules said motion.

Whereupon said defendant further moves the Court for a continuance of this cause to the



next term of this Court on the ground that one assessment of damages has been made during the present term, and due consideration being thereupon had and the Court being fully advised on said motion overrules the same. To which ruling of the Court the said defendant by his Attorney excepts.

And afterwards, to wit, at the same term of said Court last aforesaid to wit, July 16<sup>th</sup> in the year last aforesaid, the following among other proceedings in said Court were had and entered of record therein, to wit,

1713 Timothy J. Skelton }  
 vs. } asst  
 Isaac Cook }

This day come the said parties by their Attorneys and the default of the said defendant having been heretofore (to wit, on June 24<sup>th</sup> last past) taken and entered of record, and the Court being well advised in the premises now assesses said plaintiff's damages herein to the sum of sixteen hundred and forty four dollars and twenty cents

Whereupon the said defendant moves the Court to set aside the assessment aforesaid, and the Court having heard Counsel on said motion and being well advised in the premises overrules said motion.

Therefore it is considered that said plaintiff



do have and recover of said defendant his damages of sixteen hundred and forty four dollars and seventy cents in form as aforesaid assessed together with his costs and charges by him in this behalf expended and have execution therefor.

And afterwards to wit, on the 17<sup>th</sup> day of July in the year last aforesaid the said defendant filed in the Court aforesaid his certain Bill of Exceptions which is in the words and figures following to wit,

In the Cook Circuit Court  
of June Special Term  
A. D. 1857

Timothy J. Shelton }  
vs. } asst  
Isaac Cook }

Be it remembered that at and during this term before the Hon. George Manierre Judge of said Court on the 24<sup>th</sup> day of June A. D. 1857 the said Plaintiff upon the assessment of damages in this cause by the Court, introduced & read in evidence a note and its endorsements as follows, to wit,

\$ 1500

Chicago December 5<sup>th</sup> 1855

Twelve months after date we promise to pay to the order of Isaac Cook Fifteen hundred Dollars, 100  
Value received with interest from date at rate of 6 per cent

James S. Speed.  
Geo. Shaler  
H. G. McCulloch



I. Cook — A. Gilbert Secy. Com. Ex. Co.  
 J. J. Shelton & Co. — Protested for non payment  
 December 8<sup>th</sup> 1856

John Forsythe  
 Notary Public

which was all the evidence introduced, the Court assessed the Plaintiff's damages at one thousand six hundred and thirty nine dollars and thirty five cents and entered judgment & awarded execution for the same & costs - and that on the      day of July during the same term the said defendant moved to set aside the said assessment of Damages which motion was duly entered and on the      day of July during same term the (Def.) prayed an appeal from said judgment which was allowed upon his filing appeal bond in the penal sum of twenty five hundred dollars with Edwin J. Canfield as his security, conditioned as the law directs, and that afterwards & on the      day of July during said term the Court ordered said assessment to be set aside and a new assessment to be made - And that on the day of July being Monday of the week the Judge of the Court ordered the Court to be adjourned over until Thursday of the same week and no Court was in fact held on Tuesday or Wednesday of that week and that on said Thursday being the 16<sup>th</sup> day of July again came the parties - and the Court ordered the said assessments & the judgment thereupon entered and execution issued to be vacated &



set aside.

X

And thereupon the defendant asked leave of the Court to file a plea and affidavit of Merits, which was denied by the Court to which the defendant then & there excepted.

And thereupon the defendant asked for a continuance of this cause because there had been an assessment of damages this term - which was refused by the Court & The Deft. then & there excepted & thereupon the Court on motion of Off. proceeds to assess the damages of the Off. to which the Defendants then & there excepted & the Off. introduced a note & its endorsements as follows

\$1500.

Chicago December 3<sup>rd</sup> 1855

Three months after date we promise to pay to the order of Isaac Cook Fifteen Hundred Dollars

Value received  
with interest from date  
at rate of 6 per cent

James S. Speed  
Geo. Shaler  
H. G. McCulloch

I. Cook — D. Gilbert Secy. Com. Exc. Co.  
J. J. Shelton — Protested for non payment  
December 8<sup>th</sup> 1856 John Forsythe  
Notary Public

and also introduced F. H. Winston as a witness who being duly sworn testified —

I know Speed and Shaler the other man I know by sight — on the 5<sup>th</sup> December 1856 I can't tell where Shaler resided except by hearsay



He never told me where he lived. I know where his family was then by reputation. He is a wandering man being a surveyor, his family has always lived in Kentucky. Shely told me he traveled round, he never told me where he resided - but has told me he thought of bringing his family up here - have not seen Stead here within the last 8 months. I know Mr Cullock by sight - I don't recollect to have seen him here within a year or two. Firm of Speed Shely & Mr Cullock were dissolved over a year ago. I have not seen him Mr C. in a year. I consider & know Speed insolvent Shely's condition I know by reputation. Don't know anything of Mr Cullock.

Cross ex<sup>am</sup> I got judgt against Speed & he made an assignment in Probate Court. I have an unsatisfied judgt against him.

The Plaintiff here introduced the Record of a Judgt in the Common Pleas as follows viz,  
Timothy J. Skelton

vs.  
James S. Speed, George  
Shaler and Heretick J. Mc Cullock } asst

This day comes the said Plaintiff by Shumway Waite and Towne his Attorneys and due personal service of process of summonses issued in this cause being had on the said defendants James S. Speed & George Shaler only and they being three times solemnly called in open Court come not nor does any one for.



them <sup>but</sup> ~~namer~~ herein make default which is on  
motion of the said plaintiff ordered to be taken  
and is hereby entered. Wherefore the said plaintiff  
ought to have and recover of the said defendants  
James S. Speed & George Stealer impleaded with  
Heretiah G. Mc. Culloch his damages herein sus-  
tained by occasion of the premises. And the Court  
after hearing the allegations and proofs submitted  
being now fully advised in the premises assesses  
the said plaintiff's damages to the ~~of~~ <sup>sum</sup> thousand  
five hundred and ninety seven Dollars and fifty  
cents.

Therefore it is considered that the plaintiff  
do have and recover of the said defendants James  
S. Speed and George Stealer impleaded with  
Heretiah G. Mc Culloch his damages of fifteen  
hundred and ninety seven Dollars and fifty cents  
in full as aforesaid by the Court here assessed and  
also his costs and charges by him about this suit in his  
behalf expended and have execution therefor.

\$1597<sup>50</sup>

Also an execution as follows to wit,  
State of Illinois } ss.  
County of Cook }

The People of the State of Illinois  
to the Sheriff of said County, Greeting;

We Command you, that of the Lands and  
Tenements, Goods and Chattels of James S. Speed  
& George Stealer impleaded with Heretiah G.



The Bullach defendants in your County, you cause to be made the sum of Fifteen hundred and thirty seven Dollars and Fifty cents, which Timothy J. Shelton Plaintiff lately in the Cook County Court of Common Pleas of said County, at a term thereof begun and held at Chicago, in said County, on the first Monday of January A. D. 1857 recovered against the said Defendants and which by the said Court was adjudged to the said Plaintiff for his Damages. And also the further sum of Seven Dollars and forty five cents which were adjudged to the said Plaintiff for his costs and charges in that behalf expended, whereof the said Defendants were convicted as appears to us of Record. And have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid, and make return of said writ with an endorsement thereon, in what manner you shall have executed the same in ninety days from the date hereof.

Witness, Walter Kimball, Clerk of our said Court, and the seal thereof at Chicago, in said County this 9<sup>th</sup> day of January A. D. 1857



(Walter Kimball Clerk)

Also the return

I have demanded payment on the within Execution of within named James S. Speed or that he surrender property to satisfy the same. He has failed to either. Says he has no property, none found.



The within named George Shale not found in  
any County I therefore return this execution no part  
satisfied the 7<sup>th</sup> day of April 1857

Fee 1 Return 10

John L. Wilson Sheriff  
(By John H. Dart Deputy)

to all of which Def. objected overruled and  
exception taken

The Plaintiff then called Charles Von Soden  
who being duly sworn testified - I know Speed,  
have had opportunities of knowing his circum-  
stances since the 5<sup>th</sup> Decr. last In March I had  
him arrested for debt, I did not succeed in collecting  
anything on the judgment I know that nothing can  
be collected of him.

The Plaintiff also called H. F. Waite who being  
duly sworn testified The note became due 5 Decr  
last - previous & about that time I made inquiry  
for the Defendants and could not find that either  
Shale or Mr Cullock resided in the State. The  
result of my inquiries I found that at that time  
both resided out of the State, also learned just  
before suit brought that Shale was coming here  
soon to remain a few days temporarily, under-  
stood that Mr Cullock resided in St Louis  
or Kentucky and understood same fact as to  
Shale

On cross examination Witness stated  
I learnt these facts from a variety of sources. I



made all the enquiries I could of those knowing the parties. Think Cook told me <sup>when</sup> ~~whether~~ Stealy was coming.

The Plff also introduced Dr. Pfuhl who was sworn and said I know Spud since 5<sup>th</sup> Dec last I had a judgment which I recovered against him in Dec which still is unsatisfied. Heard his statements before insolvent Court, he then said he was unable to pay (to this the Deft. objected, objection overruled and testimony admitted, exception taken. Witness says I think him entirely insolvent.

Which was all the testimony introduced.

The Court thereupon assessed the plaintiff's damages at sixteen hundred and forty four Dollars and twenty cents.

And afterwards comes the Defendant and moves the Court to set aside said assessment of Damages on account of the insufficiency of the evidence, the admission of improper evidence and that the evidence did not warrant the assessment of Dam<sup>t</sup> - which motion is denied by the Court and the Defendant then & there excepts to the ruling of the Court, and tenders this his bill of exceptions to the Court to be signed and sealed by the judge according to the Statute and it is done accordingly in open Court this 16<sup>th</sup> July 1857 ten days being given to the parties to settle bill of exceptions

George Manierre (seal)  
Judge of 7<sup>th</sup> Judicial Circuit Ill.



And afterwards to wit, on the 20<sup>th</sup> day of July  
in the year last aforesaid the said defendant filed  
in said Court his certain appeal bond which is  
in the words & figures following to wit,

In the Cook Circuit Court

Timothy J. Skelton }  
vs. } asst  
Isaac Cook }

Know all men by these presents  
that we said Isaac Cook as principal and Edmund  
Canfield as his surety are held and firmly bound  
unto the said Skelton in the penal sum of Twenty  
five hundred Dollars (\$2500) for the payment  
of which well and truly to be made unto the said  
Skelton, his executors, administrators or assigns  
We do bind ourselves, our heirs, executors & admin-  
istrators jointly, severally and firmly by these pres-  
ents

Signed Sealed and dated  
this 17<sup>th</sup> day of July A. D. 1857

The condition of the above obligation is such  
that whereas the said Timothy J. Skelton plaintiff  
did recover in said Court in said cause against  
said Cook on the 16<sup>th</sup> day of July last at a term of  
said Court then in session a Judgment for  
Sixteen hundred and forty four dollars & twenty  
cents damages and costs of suit, from which  
judgment the said Cook hath prayed an



appeal to the Supreme Court of this State which hath been allowed by the Court on filing bond as required by law.

Now therefore if the said Cook shall prosecute his said appeal to effect and without delay & pay the judgment interest, costs and damages in case said judgment of said Circuit Court be affirmed by the Supreme Court—then the above bond to be void or otherwise to remain in full force.

J. Cook

(Seal)

(Edmund Canfield) (Seal)

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 and entered of record in a certain cause late pending in said Court on the law side thereof, wherein Samuel J. Shelton was Plaintiff and Isaac Cook defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this 26<sup>th</sup> day of March A. D. 1858

Due for record \$6<sup>00</sup>

Wm L Church  
Clerk.



In the Supreme Court for the  
third Grand Division of the State  
of Illinois -

Of April Term 1858 -

Isaac Cook

Appellant

Matthew J. <sup>as</sup> ~~Shelton~~  
Robert B. ~~Reese~~

Appellee

Appeal from  
Cook Circuit Court -

And the said Isaac

Cook appellant by his Attorney  
W. G. Prupp comes and says that in  
the record & proceedings aforesaid and  
also in the giving the judgment  
aforesaid, there is manifest error in  
this to wit -

First The Term of the court at which  
in which final judgment was rendered  
in said cause does not appear by the  
record to have been held at the time &  
place & convened in the manner and  
notice thereof given as required by law -

Second - For that before the rendition  
of said judgment during the said  
term of Special Term - after the first  
day thereof the court adjourned over  
from 13<sup>th</sup> July to the 16<sup>th</sup> July  
without any court being held on the  
14 & 15<sup>th</sup> days of that month.



Third because the Court heard improper evidence on the assessment of damages -

Fourth because the evidence before the Court was insufficient for the assessment of damages, & nothing but nominal damages should have been thereunder assessed -

For that the judgment aforesaid was for the left blow whereas it should have been for the right blow

Wherefore & for the errors aforesaid & for other errors material, apparent of record - the said appellant prays that the judgment aforesaid may be reversed &c.

M. J. P. B. B. B.



book  
or  
Skilton

Asst. of Enns

Filed April 21<sup>st</sup> 1858  
L. Selam  
C. M.



The State of Illinois

do Supreme Court per the  
Anthem Decisions

Timothy Skilton  
at  
Isaac Cook &

And now comes said Timothy  
Skilton defendant in error &  
says that there is no error in  
said record and proceeding as  
in said assignment of error alleged  
and he therefore prays that said  
judgment be affirmed with costs.  
And finally so

By Shinnay Ward & Son  
Defendants Atty



178

Timothy J. Skilton

at

Isaac C. Cook

founder in 1848

Filed April 22, 1878  
Leland  
C. K.



# IN THE SUPREME COURT.

ISAAC COOK, Appellant,

vs.

} Appeal from Cook.

TIMOTHY J. SKELTON, Ap'lee.)

## ABSTRACT OF RECORD.

Fol. 1. Placita of the June Special Term, 1857, begun and held on the 22d day of June, 1857, "in pursuance of the order of the judge of said court, heretofore made and entered of record," but not does not give the order, nor state when it was entered, nor what, if any notices were given.

2. Suit commenced by summons. Skelton, plaintiff, and Cook, defendant. June 2, 1857. Returnable to the said special term.

Declaration in assumpsit, filed June 12, 1857.

4. 1st count states that on 5th December, 1855, James S. Speed, George Steeley, and H. G. McCulloch, and H. Y. McCulloch, made their note to the order of Cook for \$1,500, payable with interest twelve months after the date thereof. Cook endorsed the same to the plaintiff; that the note was presented for payment 8th December, 1856, and payment refused; that the first term of court in said county was the January term of Cook Common Pleas, held on 1st Wednesday of January, 1857; that the plaintiff commenced suit on the 18th December, 1856, on said note against the makers in said Common Pleas, and issued summons to that term, which was served on Speed and Steeley, and not served on McCulloch; that such proceedings were thereupon had, that on the 7th January, 1857, he recovered judgment in that court on said note against Speed and Steeley, impleaded with McCulloch, for \$1,597 50 and costs.

6. That on 9th January, 1857, he issued execution on that judgment to the Sheriff of Cook County, which being delivered to the Sheriff on 19th January, 1857, was by him, on the 7th April, 1858, returned no property found. That at the time the note became due, and ever since, McCulloch had left the State. By reason whereof defendant was liable, and in consideration thereof promised to pay, yet had not so paid.

8. 2d count sets forth making of note by Speed, Steeley, & McCulloch, and its endorsement by Cook, as in first count; that it had been presented and not paid; that the January term of the Cook Common Pleas was the first term of court in said county after note fell due. That at that term the plaintiff recovered judgment against Speed and Steeley, impleaded with McCulloch on said note, for \$1,597 50 and costs; Speed and Steele then being residents of said county, and on 19th December,



1856, served with process in that suit. That McCulloch, when note fell due, and ever since, was a non-resident of the State, and process could not be served on him. That said judgment was wholly due and uncollectable, whereby defendant became liable, and being liable, promises to pay said note.

3d count sets forth making note and its endorsement as in 1st count, and that the commencement of a suit against the makers of the note from the time same became due till commencement of the present suit would have been unavailing. By means whereof plaintiff became liable, and being liable, promised to pay said note.

Common counts for money loaned, money paid, had, and received, for goods sold, for labor done, and account stated.

June 24, 1857. Judgment by default; court assess damages at \$1,639 39, and final judgment.

July 11, 1857. On motion defendant, assessment damages set aside.

July 16, 1857. Damages assessed at \$1,644 20, and final judgment.

Bill of exceptions filed in court July 16, 1857, sets forth the first assessment and its vacation by the court; and then, that on Monday, the 13th July, court adjourned to Thursday the 16th July, and no court, in fact, held on Tuesday or Wednesday. That on the 16th, again come the parties. And thereupon the defendant asked leave of the court to file a plea and affidavit of merits, which was denied by the court, to which the defendant then and there excepted.

And thereupon the defendant asked for a continuance of this cause, because there had been an assessment of damages this term, which was refused by the court; and the defendant then and there excepted, and thereupon the court, on motion of plaintiff, proceeds to assess the damages of the plaintiff, to which the defendant then and there excepted, and the plaintiff introduced a note and its endorsements, as follows:

\$1,500.

CHICAGO, December 5, 1855.

Three months after date we promise to pay to the order of Isaac Cook fifteen hundred dollars, value received, with interest from date at rate of six per cent.

JAMES S. SPEED,  
GEO. STEALEE,  
H. G. McCULLOCH.

I. COOK,  
T. J. SKELTON.

A. GILBERT, Sec'y Com. Exchange Co'y.

Protested for non-payment.

JOHN FORSYTHE, Notary Public.

December 8, 1856.



20 And also introduced F. H. Winston, as a witness, who being duly sworn, testified: I know Speed and Stealey, the other man I know by sight; on the 5th December, 1856, I can't tell where Stealey resided, except by hearsay. He never told me where he lived. I know where his family was then by reputation. He is a wandering man, being a surveyor, his family has always lived in Kentucky. Stealey told me he traveled round; he never told me where he resided, but has told me he thought of bringing his family up here. Have not seen Stealey here within the last eight months. I know McCulloch by sight; I don't recollect to have seen him here within a year or two. Firm of Speed, Stealey & McCulloch were dissolved over a year ago. I have not seen him, McC., in a year. I consider and know Speed insolvent. Stealey's condition I know by reputation. Don't know any thing of McCulloch.

*Cross Examined.*—I got judgment against Speed, and he made an assignment in Probate Court. I have an unsatisfied judgment against him.

21 The plaintiff here introduced the record of a judgment in the Common Pleas in favor of Timothy J. Skelton, against James S. Speed, George Steele, impleaded with Hezekiah G. McCulloch, rendered at the — term, for 1,597 50 and costs.

And an execution from same court in favor of and against same parties to the Sheriff of Cook County, dated January 9, 1857; returned 7th April, 1857, no property found. Demand made of Speed; Steele not found.

To which the defendant objected; overruled and exception taken.

23 The plaintiff then called Charles Van Soden, who being duly sworn, testified: I know Speed; have had opportunities of knowing his circumstances since the 5th December last. In March I had him arrested for debt. I did not succeed in collecting anything on the judgment; I know that nothing can be collected of him.

The plaintiff also called H. F. Waite, who being duly sworn, testified: The note became due 5th December last; previous, and about that time, I made inquiry for the defendants, and could not find that either Stealey or McCulloch resided in the State. The result of my inquiries I found that at that time both resided out of the State; also learned just before suit brought, that Stealey was coming here soon, to remain a few days temporarily. Understood that he, McCulloch, resided in St. Louis or Kentucky, and understood same fact as to Stealey.

24 On cross examination witness stated: I learned these facts from a variety of sources. I made all the inquiries I could of those knowing the parties. I think Cook told me when Stealey was coming.

The plaintiff also introduced De Pfull, who was sworn, and said: I know Speed since 5th December last. I had a judgment, which I recovered against him in December, which still is unsatisfied. Heard his statements before Insolvent Court, he then said he was unable to pay.



To this the defendant objected. Objection overruled, and testimony admitted. Exception taken.

Witness says: I think him entirely insolvent. Which was all the testimony introduced.

The Court thereupon assessed the plaintiff's damages at \$1,644 20.

And afterwards comes the defendant, and moves the Court to set aside said assessment of damages on account of the insufficiency of the evidence, the admission of improper evidence, and that the evidence did not warrant the assessment of damages. Which motion is denied by the Court, and the defendant then and there excepts to the ruling of the Court, and tenders this, his bill of exceptions to the Court, to be signed and sealed by the Judge according to the statute. And it is done accordingly in open Court this 16th July, 1857, ten days being given to the parties to settle bill of exceptions.

GEORGE MANIERRE, [SEAL.]  
*Judge of Seventh Judicial Circuit, Illinois.*

25

Appeal bond filed July 20.

*Errors Assigned.*

*First.* The term of the Court at and during which final judgment was rendered in said cause, does not appear by the record to have been held at the time and place, and convened in the manner, and notice thereof given as required by law.

*Second.* For that before the rendition of said judgment during the said pretended special term, after the first day thereof, the court adjourned over from 13th July to the 16th July, without any court being held on the 14th and 15th days of that month.

*Third.* Because the Court heard improper evidence in the assessment of damages.

*Fourth.* Because the evidence before the Court was insufficient for the assessment of damages, and nothing but nominal damages should have been thereunder assessed.

*Fifth.* Judgment should have been for the defendant.

W. T. BURGESS,  
*For Appellant.*



178  
Isaac Cook

vs  
Timothy Shelton

Filed April 21, 1838

A. Deland

Clerk

178



Isaac Cook

~~vs.~~ W.

Timothy & Skilton

3  
3  
3

In Supreme Court  
Appeal from  
Cook County  
Circuit Court

It is stipulated in this case that  
Timothy & Skilton the defendant  
in error brought suit against  
the makers of the note on which  
Isaac Cook the plaintiff in error  
was sued as endorser in the  
Cook County Court of Common  
Pleas within the County of  
Cook State of Illinois  
Dec 18. 1856, returnable to the  
Court at the County Term at ~~1856~~ <sup>1857</sup> Grand  
County; that a declaration was  
filed Dec 26. 1857, & judgment  
obtained at the County Term  
at 1857, Grand County; and on  
the 4<sup>th</sup> day of January 1857,  
which is the judgment upon  
the merits in this case;  
That the papers hereto attached  
are true copies of the process  
return, declaration, &  
verdict and of the return  
on the process and of the  
in the above case &



Timothy D. Kitter. & James I.  
 Speed. George Walker, and  
 Reuben K. & M. C. Bullock; and  
 that this population is to be  
 made part of the record  
 filed in the Supreme Court  
 by said Isaac C. Cook

W. G. Burgess  
for aff.



STATE OF ILLINOIS,

COUNTY OF COOK,

We command you that you summon

} ss.

The People of the State of Illinois,

To the Sheriff of said County—Greeting:

*I James S. Speed, George Stearns  
McCorkish G. McCulloch*

if *they* shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said 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 *first* Monday of *January* next, to answer unto

*Timothy A. Skilton*

in a plea of *Dispass on the Case on promises*

to the damage of said plaintiff as

*he*

says in the sum of

*Five Thousand*

Dollars

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

WITNESS, WALTER KIMBALL, Clerk of our said Court, and the seal thereof, at the City of Chicago, in said County, this *18* day of *December*

A. D. 185*6*

*Walter Kimball*

CLERK.



G. D. No. 113214

COOK COUNTY  
COURT OF COMMON PLEAS.

*Samy* Term, A. D. 1857

*Timothy S. Skilton*

vs.

*James S. Speed*  
*Chal*

SUMMONS,

*Sept. 20 1857*  
Served by reading to the  
within named *George Stealy*  
and *James S. Speed* this 19<sup>th</sup>  
day of December 1856. At  
L. McCulloch not found  
in my County

*For 28 hours 1.00*

*John L. Wilson Sheriff 2 miles 10*

*My Thos. J. Holt Deputy Return 10*

*Summary wait & house Attorney's*  
*Plff*



The State of Illinois }  
Coke County ss }

Timothy J. Hutton

vs

James S. Speed

George Wallace

Elizabeth G. McCulloch

Common Pleas  
Damages \$2000

Trespass on the Case  
on Promises

I have a summons in the above case  
returnable at the next term of said Court.

Dec. 18, 1836

Sherray waits & more  
Plaintiffs Atty's



Timothy C. Skilton  
vs  
James S. Speed  
et al  
Prairie

Filed this 18<sup>th</sup> day  
December 1856



## Cook County Court of Common Pleas

Of the *January*

Term, A. D. 1857

State of Illinois, } SS.  
COUNTY OF COOK.*Timothy J. Skilton*

Plaintiff in this suit, by SHUMWAY, WAITE &amp; TOWNE,

Attorneys, complain of

*James S. Speed, George Steacie & H. G. McCulloch*

Defendant who ~~were~~ summoned, &c., of a plea of trespass on the case on promises: For that whereas the said Defendant heretofore, to wit: on the *fifth* day of *December* in the year of our Lord one thousand eight hundred and *fifty five* at *Chicago* to wit, at said County of Cook, made ~~them~~ certain Promissory Note in writing, bearing date the day and year aforesaid, and then and there delivered the same to *Isaac Cook*

in and by which said Note said Defendant by the name, style and description of *James S. Speed Geo. Steacie & H. G. McCulloch* promised to pay to the order of the said *Isaac Cook* *twelve months* after the date thereof which period has now elapsed *fifty five hundred Dollars*, with interest from date at rate of 6 per cent

for value received. And the said *Isaac Cook* to whom or to whose order said Note was payable, afterwards, to wit, on the day and year aforesaid, at *Chicago* ~~under the name & style of Isaac Cook~~ that is to say, at the County of Cook aforesaid, endorsed said Note in writing, by which said endorsement the said *Isaac Cook*

then and there ordered and appointed the said sum of money in said Note mentioned to be paid to ~~said~~ *and then*

~~and there delivered said Note, so indorsed, to the said~~ *The Commercial Exchange Company - and the Commercial Exchange Company by the name & style of A. Gilbert Esq. Com. Ex. Co.* *then & there indorsed said note to the Plaintiff and then & there delivered the same to the Plaintiff.*

By means whereof, and by force of the statute in such case made and provided, the said Defendant became liable to pay said Plaintiff said sum of money mentioned in said Note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect of the said Note, and of the indorsement aforesaid, to wit, at the place aforesaid.



AND WHEREAS, ALSO, the said Defendant, afterwards, to wit, on the  
day of                      in the year of our Lord one thousand eight hundred and  
to wit, at said County, became and                      indebted unto the Plaintiff in a large sum of money,  
to wit,  
dollars, for money before that time lent and advanced to said Defendant by said Plaintiff at said De-  
fendant request; and also in the like sum, for money before that time paid, laid out, and expended for  
said Defendant by the said Plaintiff, at the like special request of said Defendant; and in the like  
sum for money before that time had and received by said Defendant to and for the use of said Plain-  
tiff; and also in the like sum, for goods, wares and merchandise, before that time sold and delivered  
by said Plaintiff to said Defendant, at the like special instance and request; and also in the like  
sum for the labor, care and diligence of said Plaintiff before that time done and performed by said  
Plaintiff for said Defendant, and at the like instance and request of said Defendant; and also in  
the like sum, then and there found to be due and owing to said Plaintiff on an account stated between  
them; and being so indebted said Defendant in consideration thereof, then and there undertook and  
promised to pay said Plaintiff said several sums of money above mentioned, when thereunto after-  
wards requested.

Yet the said Defendant, not regarding said promises and undertakings, but contriving,  
&c., although often requested so to do, has not paid said Plaintiff either of said sums of money above  
mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused, and still do  
neglect and refuse, to the damage of said Plaintiff of

Dollars, and therefore he brings this suit, &c.

SHUMWAY, WAITE & TOWNE,

*Plaintiff's Attorneys.*



~~Of the~~~~Term, A. D. 185~~

~~State of Illinois,~~ } ss.  
 COUNTY OF COOK.

~~Plaintiff~~ in this suit, by ~~SHEMWAY, WAITE & TOWNE,~~ ~~Attorneys, complain~~ of

also

~~Defendant who~~ summoned, &c., of a plea of trespass on the case on promises: For that  
 whereas the said Defendant heretofore, to wit: on the *fifth* day of  
*December* in the year of our Lord one thousand eight hundred and *fifty five*  
 at *Chicago* to wit, at said County of Cook, made *thus* certain  
 Promissory Note in writing, bearing date the day and year aforesaid, and then and there delivered  
 the same to *Isaac Cook*

in and by which said Note said Defendant by the name, style and description of *James S. Speed*  
*Geo. Stearns, N.Y., McCulloch* promised to pay to the order of the said  
*Isaac Cook* *Twelve months after the date thereof*  
*which period has now elapsed* *fifty hundred*  
*Dollars with interest at the rate of six percent*

for value received. And the said *Isaac Cook by the style of J. Cook*  
 to whom or to whose order said Note was payable, afterwards, to wit, on the day and year aforesaid,  
 at *Chicago* that is to say, at the County of Cook aforesaid,  
 endorsed said Note in writing, by which said endorsement the said *Isaac Cook*  
 then and there ordered and appointed the said sum of  
 money in said Note mentioned to be paid to said *Plaintiff* and then  
 and there delivered said Note, so indorsed, to the said *Plaintiff*

By means whereof, and by force of the statute in such case made and provided, the said Defendant became liable to pay said Plaintiff said sum of money mentioned in said Note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect of the said Note, and of the indorsement aforesaid, to wit, at the place aforesaid.



AND WHEREAS, ALSO, the said Defendant, afterwards, to wit, on the *First* day of *January* in the year of our Lord one thousand eight hundred and *fifty six* to wit, at said County, became and indebted unto the Plaintiff in a large sum of money, to wit, *Three thousand* dollars, for money before that time lent and advanced to said Defendant by said Plaintiff at said Defendant's request; and also in the like sum, for money before that time paid, laid out, and expended for said Defendant by the said Plaintiff, at the like special request of said Defendant; and in the like sum for money before that time had and received by said Defendant to and for the use of said Plaintiff; and also in the like sum, for goods, wares and merchandise, before that time sold and delivered by said Plaintiff to said Defendant, at the like special instance and request; and also in the like sum for the labor, care and diligence of said Plaintiff before that time done and performed by said Plaintiff for said Defendant, and at the like instance and request of said Defendant; and also in the like sum, then and there found to be due and owing to said Plaintiff on an account stated between them; and being so indebted said Defendant in consideration thereof, then and there undertook and promised to pay said Plaintiff said several sums of money above mentioned, when thereunto afterwards requested.

Yet the said Defendant, not regarding *their* said promises and undertakings, but contriving, &c., although often requested so to do, has not paid said Plaintiff either of said sums of money above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said Plaintiff of *Two thousand* Dollars, and therefore he brings this suit, &c.

SHUMWAY, WAITE & TOWNE,

*Plaintiff's Attorneys.*



COPY OF INSTRUMENT AND ACCOUNT SUED ON.

Chicago December 3<sup>rd</sup> 1888

\$1500

Twelve months after we promise  
to pay to the order of Isaac Cook, Fifteen  
Hundred Dollars in value received with  
interest from date at rate of 6 per cent

Signed James S. Speed

" Geo. Steele

" A. S. McCulloch

Endorsed I Cook

" A. Gilbert Secy

Com. Ex. Co.

The Defendants

To F. D. Skilton

Dr.

To money lent and advanced, .....	\$ 500.00
To money paid, laid out, and expended, .....	\$ 500.00
To money had and received to and for the use of said Plaintiff, .....	\$ 500.00
To goods, wares and merchandise, sold and delivered, .....	\$ 500.00
To labor and services, .....	\$ 500.00
To balance due on account stated, .....	\$ 500.00



11344

*Timothy D. Skilton*

vs.

*James T. Speed*  
*Chal*

NARR.

Filed this *26* day  
of *December* A. D. 185*6*.

*W. Kimball* Clerk.

SHUMWAY, WAITE & TOWNE,  
Plaintiffs Attorneys.



STATE OF ILLINOIS,  
COUNTY OF COOK,

} ss.

The People of the State of Illinois to the Sheriff of said County,—GREETING:

WE COMMAND YOU, that of the Lands and Tenements, Goods and Chattels of *James S. Speed*  
& *George Steater* impleaded with *Moszekiah G.*  
*McCulloch*

Defendant in your County, you cause to be made the sum of *fifteen Hundred & ninety Seven*  
dollars and *fifty* cents, which *Samuel C. Skilton*

Plaintiff lately in the Cook County Court of Common Pleas of said County, at a term thereof begun and held at Chicago, in  
said County, on the first Monday of *January A.D. 1857*

~~last past~~, recovered against the said Defendant and which by the said Court  
was adjudged to the said Plaintiff for *his Damages*

And also, the further sum of *Seven* dollars and *forty five* cents  
which were adjudged to the said Plaintiff for *his* costs and charges in that behalf expended, whereof the said Defendant  
convicted, as appears to us of Record. And have you these moneys ready to render to  
the said Plaintiff for *his Damages* and costs aforesaid, and make a return of  
said writ with an endorsement thereon in what manner you shall have executed the same,  
in ninety days from the date hereof.

Witness, WALTER KIMBALL, Clerk of our said Court and the seal thereof, at  
Chicago, in said County, this *9* day of *January* A. D. 1857

*Walter Kimball*

CLERK.



COOK COUNTY COURT  
OF COMMON PLEAS.

Fi. Fa. No. 7198

Case No. 1134

Fee Book. R 27

Date 9<sup>th</sup> Aug. 1837

Return.

Timothy B. Skilton

vs.  
James S. Speed &  
George Steele imp<sup>rs</sup>

Debt,	06
Damage,	1597.50
Plaintiff's Cost,	7.45
Defendant's Cost,	

\$1604.95

The Sheriff will collect interest from

7 Aug. 1837

Filed April 6<sup>th</sup> 1837  
W. Kimball

Sumnerway Waile Thum Plff At'y.

Rec at 3 P.M. 19 Jan. 1837  
Pay Cost to Plff Atty  
W. Kimball Clerk

1837  
I have demanded pay ment on the within recd order of within name  
James S. Speed or that he deliver the property to satisfy the claim. He has  
failed to do so. Says he has no property. I now foreclose. The within  
named George Steele's not found in my County (I have fore-  
closed) this foreclosures no part satisfied the day of April  
1837  
John A. Corbin Sheriff  
By John A. Corbin Deputy



178

Isaac Cook.

55

Amos D. Kellen  
— " — " —

Reputation

Filed April 27, 1858

Leland  
C. B.



# IN THE SUPREME COURT.

ISAAC COOK, Appellant,

vs.

} Appeal from Cook.

TIMOTHY J. SKELTON, Ap'lee.

## ABSTRACT OF RECORD.

Fol. 1. Placita of the June Special Term, 1857, begun and held on the 22d day of June, 1857, "in pursuance of the order of the judge of said court, heretofore made and entered of record," but not does not give the order, nor state when it was entered, nor what, if any notices were given.

2. Suit commenced by summons. Skelton, plaintiff, and Cook, defendant. June 2, 1857. Returnable to the said special term.

Declaration in assumpsit, filed June 12, 1857.

1st count states that on 5th December, 1855, James S. Speed, George Steeley, and H. G. McCulloch, and H. Y. McCulloch, made their note to the order of Cook for \$1,500, payable with interest twelve months after the date thereof. Cook endorsed the same to the plaintiff; that the note was presented for payment 8th December, 1856, and payment refused; that the first term of court in said county was the January term of Cook Common Pleas, held on 1st Wednesday of January, 1857; that the plaintiff commenced suit on the 18th December, 1856, on said note against the makers in said Common Pleas, and issued summons to that term, which was served on Speed and Steeley, and not served on McCulloch; that such proceedings were thereupon had, that on the 7th January, 1857, he recovered judgment in that court on said note against Speed and Steeley, impleaded with McCulloch, for \$1,597 50 and costs.

6. That on 9th January, 1857, he issued execution on that judgment to the Sheriff of Cook County, which being delivered to the Sheriff on 19th January, 1857, was by him, on the 7th April, 1858, returned no property found. That at the time the note became due, and ever since, McCulloch had left the State. By reason whereof defendant was liable, and in consideration thereof promised to pay, yet had not so paid.

8. 2d count sets forth making of note by Speed, Steeley, & McCulloch, and its endorsement by Cook, as in first count; that it had been presented and not paid; that the January term of the Cook Common Pleas was the first term of court in said county after note fell due. That at that term the plaintiff recovered judgment against Speed and Steeley, impleaded with McCulloch on said note, for \$1,597 50 and costs; Speed and Steele then being residents of said county, and on 19th December,



1856, served with process in that suit. That McCulloch, when note fell due, and ever since, was a non-resident of the State, and process could not be served on him. That said judgment was wholly due and uncollectable, whereby defendant became liable, and being liable, promises to pay said note.

3d count sets forth making note and its endorsement as in 1st count, and that the commencement of a suit against the makers of the note from the time same became due till commencement of the present suit would have been unavailing. By means whereof plaintiff became liable, and being liable, promised to pay said note.

Common counts for money loaned, money paid, had, and received, for goods sold, for labor done, and account stated.

June 24, 1857. Judgment by default; court assess damages at \$1,639 39, and final judgment.

July 11, 1857. On motion defendant, assessment damages set aside.

July 16, 1857. Damages assessed at \$1,644 20, and final judgment.

Bill of exceptions filed in court July 16, 1857, sets forth the first assessment and its vacation by the court; and then, that on Monday, the 13th July, court adjourned to Thursday the 16th July, and no court, in fact, held on Tuesday or Wednesday. That on the 16th, again come the parties. And thereupon the defendant asked leave of the court to file a plea and affidavit of merits, which was denied by the court, to which the defendant then and there excepted.

And thereupon the defendant asked for a continuance of this cause, because there had been an assessment of damages this term, which was refused by the court; and the defendant then and there excepted, and thereupon the court, on motion of plaintiff, proceeds to assess the damages of the plaintiff, to which the defendant then and there excepted, and the plaintiff introduced a note and its endorsements, as follows:

\$1,500.

CHICAGO, December 5, 1855.

Three months after date we promise to pay to the order of Isaac Cook fifteen hundred dollars, value received, with interest from date at rate of six per cent.

JAMES S. SPEED,  
GEO. STEALEE,  
H. G. McCULLOCH.

I. COOK,  
T. J. SKELTON.

A. GILBERT, Sec'y Com. Exchange Co'y.

Protested for non-payment.

JOHN FORSYTHE, Notary Public.

December 8, 1856.



20 And also introduced F. H. Winston, as a witness, who being duly sworn, testified: I know Speed and Stealey, the other man I know by sight; on the 5th December, 1856, I can't tell where Stealey resided, except by hearsay. He never told me where he lived. I know where his family was then by reputation. He is a wandering man, being a surveyor, his family has always lived in Kentucky. Stealey told me he traveled round; he never told me where he resided, but has told me he thought of bringing his family up here. Have not seen Stealey here within the last eight months. I know McCulloch by sight; I don't recollect to have seen him here within a year or two. Firm of Speed, Stealey & McCulloch were dissolved over a year ago. I have not seen him, McC., in a year. I consider and know Speed insolvent. Stealey's condition I know by reputation. Don't know any thing of McCulloch.

*Cross Examined.*—I got judgment against Speed, and he made an assignment in Probate Court. I have an unsatisfied judgment against him.

21 The plaintiff here introduced the record of a judgment in the Common Pleas in favor of Timothy J. Skelton, against James S. Speed, George Steele, impleaded with Hezekiah G. McCulloch, rendered at the — term, for 1,597 50 and costs.

And an execution from same court in favor of and against same parties to the Sheriff of Cook County, dated January 9, 1857; returned 7th April, 1857, no property found. Demand made of Speed; Steele not found.

To which the defendant objected; overruled and exception taken.

23 The plaintiff then called Charles Van Soden, who being duly sworn, testified: I know Speed; have had opportunities of knowing his circumstances since the 5th December last. In March I had him arrested for debt. I did not succeed in collecting anything on the judgment; I know that nothing can be collected of him.

The plaintiff also called H. F. Waite, who being duly sworn, testified: The note became due 5th December last; previous, and about that time, I made inquiry for the defendants, and could not find that either Stealey or McCulloch resided in the State. The result of my inquiries I found that at that time both resided out of the State; also learned just before suit brought, that Stealey was coming here soon, to remain a few days temporarily. Understood that he, McCulloch, resided in St. Louis or Kentucky, and understood same fact as to Stealey.

24 On cross examination witness stated: I learned these facts from a variety of sources. I made all the inquiries I could of those knowing the parties. I think Cook told me when Stealey was coming.

The plaintiff also introduced De Pfuhl, who was sworn, and said: I know Speed since 5th December last. I had a judgment, which I recovered against him in December, which still is unsatisfied. Heard his statements before Insolvent Court, he then said he was unable to pay.



To this the defendant objected. Objection overruled, and testimony admitted. Exception taken.

Witness says: I think him entirely insolvent. Which was all the testimony introduced.

The Court thereupon assessed the plaintiff's damages at \$1,644 20.

And afterwards comes the defendant, and moves the Court to set aside said assessment of damages on account of the insufficiency of the evidence, the admission of improper evidence, and that the evidence did not warrant the assessment of damages. Which motion is denied by the Court, and the defendant then and there excepts to the ruling of the Court, and tenders this, his bill of exceptions to the Court, to be signed and sealed by the Judge according to the statute. And it is done accordingly in open Court this 16th July, 1857, ten days being given to the parties to settle bill of exceptions.

GEORGE MANIERRE, [SEAL.]

*Judge of Seventh Judicial Circuit, Illinois.*

25

Appeal bond filed July 20.

*Errors Assigned.*

*First.* The term of the Court at and during which final judgment was rendered in said cause, does not appear by the record to have been held at the time and place, and convened in the manner, and notice thereof given as required by law.

*Second.* For that before the rendition of said judgment during the said pretended special term, after the first day thereof, the court adjourned over from 13th July to the 16th July, without any court being held on the 14th and 15th days of that month.

*Third.* Because the Court heard improper evidence in the assessment of damages.

*Fourth.* Because the evidence before the Court was insufficient for the assessment of damages, and nothing but nominal damages should have been thereunder assessed.

*Fifth.* Judgment should have been for the defendant.

W. T. BURGESS,

*For Appellant.*



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Isaac Cook  
vs  
Timothy A. Shelton

Filed Apr 21, 1858

L. B. Clavel

Clerk

12604



Supreme court—

Isaac Cook

vs

Timothy J. Skilton

State of Illinois  
County of LaSalle Sp.  
William T. Bu

gip being duly sworn doth depose  
and say that as he is informed & believes  
the Sheriff of Cook county has made  
no return to the court <sup>below</sup> of the posting of  
any notices of the time or place of the  
holding of the June Special Term  
of said court— A.D. 1857

That this deponent has no  
knowledge whether or not such notices  
are in fact served upon the clerk of  
the county court or posted up as  
required by law but believes they are  
not—

W. T. Bu

Subscribed & sworn to  
before me this 21<sup>st</sup>  
day of April A.D. 1858  
L. Leland Clk  
by J. B. Rice



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affidavit

Filed April 21, 1858  
L. Leland



Nov 20

Whereas, it has been made apparant to the Court that it is necessary for the prompt and efficient administration of justice that a special term of this Court should be forthwith held, It is therefore Ordered that a special term of this Court be held at the Court house in the City of Chicago in said County on the second Monday (being the tenth day) of January next for the trial of civil and Criminal Cases, and that notice thereof be given to the Clerk and the Sheriff of Cook County,

State of Illinois  
County of Cook

I William L Church, Clerk of the Circuit Court in and for the County of Cook in the State aforesaid, do hereby Certify, that the above, and foregoing is a true and perfect

Copy of an order of said Court made and entered of record at the regular November term of said Court, to wit: on the 20<sup>th</sup> day of November A.D. 1857 I cannot certify ~~together with~~ <sup>together with</sup> ~~posting~~ <sup>posting</sup> ~~notice~~ <sup>notice</sup> ~~of~~ <sup>of</sup> ~~not~~ <sup>not</sup>,  
In witness whereof I have hereunto set my hand and affixed the seal of said Court at Chicago, in said County this 27<sup>th</sup> day of April A.D. 1858

Wm L Church  
Clerk



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Diary Book

vs

Timothy J. Skelton

Additional Record

Filed May 4. 1858  
L. Leland  
cl B



Timothy J. Skilton } Appual from Cook  
ads.  
Isaac Cook. }

Brief for the defendant in  
Error.

We have not had an opportunity of  
seeing the argument for the plaintiff in Error  
and have therefore to grope our way in the  
dark. We have searched this record carefully and  
can say there is no error in it.

The action below was against Isaac  
Cook as endorser of a promissory note made  
by James S. Speed, N. G. McCulloch & George  
Steele was dated Dec 5<sup>th</sup> 1855. and due  
Dec 5<sup>th</sup> 1856.

II The testimony clearly shows James S. Speed  
& have been insolvent from the time the  
note became due till the suit was insti-  
tuted against Cook. and that Steele  
& McCulloch were non residents of Cook  
County and State of Illinois at the time the  
note matured till the suit was instituted  
against Cook. This made Cook liable  
as an Endorser in the first place without  
the institution of any proceeding against  
the makers of the note and all the holder  
is required to do is to make out promissory



facie Either the insolvency or non-residency  
of the makers to charge the indorser  
The note in this case is dated at Chicago  
The defendant below did not plead and  
the action was tried on a default.

we cite Schuber v Platt 12 Ill R 417  
"Say the Court if the maker is beyond  
the limits of this State when the note matures  
so that he cannot be subjected to our juris-  
diction the liability of the assignor becomes  
fixed." So in Peine v Short It is held  
that the holder need not institute a  
suit if it would be unavailing and  
that all that need be proved is prima  
facie that a suit against the maker  
would be unavailing And in Bester vs  
Walker 4. Ill R 14. it was held  
if the makers residence be unknown he  
may treat the makers residence the place  
where the note was executed

II But in this case. Suit was instituted at  
the first term of court and was prosecuted  
with diligence and served on Speed the  
resident and State who was a citizen  
of St Louis and the execution returned  
unsatisfied. Endorsed no property found as  
to Speed and State not found He had  
returned to St Louis The suit of



course was unavailing and it showed  
diligence, it was not necessary as we  
have shown above. No property could  
be found of Steels. He was not a res-  
-ident. We were not bound to do more  
than we have done.

Again It was said below there was  
not proof enough to show the non-  
-residence. We in the absence of knowledge  
have a right to consider the makers.  
residence the place of the making the  
note the stand point for Enquiry.  
(at Gilman R. H.) we proved that they  
were not there by the return so far  
as McCulloch is concerned on the  
Summons. and so far as the Execution  
is concerned that both were not to be  
found in Cook County. An officer is  
supposed to have done his duty. We have  
proved that Steels was expected here tem-  
porarily (while a writ was served) and that  
both reside out of this State. What other proof  
can be given than was offered in this case.  
Make the Court to Examine a part of the  
records a stipulation filed in this case  
setting forth more fully than the record  
does the proceedings against the makers  
of the note.

Shirley M. H. T. D. R. M.  
for Dep. on record



III

It is assigned for error that it is not shown that proper notices were given of the calling of the Special Term at which this judgment was rendered. We cannot imagine that this will be urged. Every thing is to be presumed in favor of the jurisdiction of the Court when it being a court of general jurisdiction and of its proceedings. The judge of the Circuit Court is authorized to call Special Terms by law. From the fact of his holding the court this court will presume the proper notices were given and will not reverse a judgment because every record of that term does not show the giving of the notice.



No 178 - ~~165~~  
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Isaac Cook

14

J. S. Skilton

Arg for defendant  
in error

Filed May 28, 1838  
L. Leland  
Clerk

Shirley North  
Horne  
Def in error



inc book

178

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858

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X

Repaired