13744

No._____

Supreme Court of Illinois

Cook

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vs.

Renick

71641

116-1

[illegible]

vs

Isaac Cook

Opinion?

176

1850

1374

Refused

Isaac Cook
vs
Robert M. Renick
} Appeal from Cook County.

The printed points of the appellee in this case were prepared under the expectation that the case would be argued orally; as this can not now be done, it becomes necessary to submit some additional views upon the questions which arise.

It is contended by the appellant that there are no days of grace allowed in this State upon bills of exchange and promissory notes.

It appears from the accompanying points that the days of grace allowed in England are generally adopted in this Country & ~~[illegible]~~ the cases cited refer alike to bills of exchange & promissory notes. These instruments however do not belong to the same class and are not necessarily governed by the same rules. The position of the Appellant may be correct as to promissory notes & not so as to bills of exchange; they drive their claim to days of grace from different sources.

Bills of exchange are commercial instruments & the person on whom it was circumstances to pay a bill became entitled to days of grace by the customs

of Merchants which formed part of the Law of England.

Promissory notes were considered only as evidence of debt and not assignable, and no action could be maintained on them until the passage of 3 & 4 Anne C. 9., which placed them on the same footing in many particulars with Inland Bills of Exchange.

This Statute was not adopted in this State, and that which the ~~General Assembly~~ Legislature passed relating to the same subject differs from it in one or two essential particulars. But the Law regulating Bills of Exchange & the time when they should become due & payable was adopted in this State & became part of its law.

The instrument sued on in this case is a foreign Bill of Exchange.

II. It is contended by the Appellants — that the Record does not show the order under which the Court was held, nor when it was made, nor what if any notice was given of the holding thereof.

No principle of law is better settled than that a want of jurisdiction will never be presumed against a Court of general jurisdiction.

The rule is different as applied to inferior Courts of limited jurisdiction where upon the face of the

proceedings the jurisdiction must appear, - but as applied to Courts of General jurisdiction where the jurisdiction is not required to appear upon the face of the proceedings, the rule is, that every reasonable intendment is to be made in favor of their regularity.

Heirs of Biggs v. Blue 5. Mc Lean. 149

Rochers v. The Bank of the U. S. 10 Peters 449.

It is therefore submitted that it is not necessary "that the record should show the order upon which the Court was held," & that until the contrary appear it will be presumed that it was regularly held & that all the requirements of the Law were complied with.

The Counsel for the appellant seems to suppose that this rule does not apply in this case, for the reason, that the term ~~of the~~ of the Court in question was a special term & refers in support of this position to the case of Archer v. Ross 2. Scam 308. In that case it appeared from the Record, that the case before the Court was tried at a special term of Pike County Circuit Court begun & held on the very day the jury was required by law to hold a term of the Circuit Court in the County of Calhoun. It was the day of the commencement of the regular term in that County; and the Law imperatively required the judge to attend and open such court at such time if practicable

on the ground of the direct influence with his duty we are of opinion that the special term was unauthorized." page 304.

No one can question the conclusions of that opinion A contrary determination of the question would have invaded the absurdity — that the Circuit Judge could in his discretion repeal the law regulating the regular terms of the Court in the several Counties in his Circuit, or post-pone its operation to suit his convenience.

In the case now under consideration nothing appears in the record against the proper exercise of authority on the part of the Judge calling the term at which the judgment appealed from was rendered. In the absence of ~~error~~ evidence in the record showing that the special term was called contrary to law, & in the absence of the order calling the term, it will be presumed that the order calling the ~~term~~ term was duly made & that it was duly held. Such was the opinion of the Court in the case of Spackman v. Dansby 13 Fred 168 where the question was directly presented for determination.

But the Counsel for the Appellant is in error in supposing the order calling the special term of the Court in

in this case is not in the record: it is in the record, and appears to be perfectly regular in its character and designates a day for the meeting of the Court which does not conflict with the duties the law requires the Judge to perform in other Counties in the Circuit.

The order also appears to have been made at a regular ~~term~~ term of the Court.

The authority of the Circuit Judges of the several Judicial Circuits of this State to call Special terms of Court is derived from the 43rd: & 50th: Sections of the act relating to Courts. 1. Purples Statutes, pages. 314. & 316.

By Sec 43. the Judges of the several Circuits are authorized "at any regular term of the Court in any County to make an order appointing a time for holding a special term" &c &c. The Section further provides that "the County Commissioners of such County shall attend and cause to be summoned a grand & petit jury & attend the Special term for the trial of civil and criminal ~~business~~ causes"

It is to be observed that the only duty imposed upon the Judge by this Section is, to make the order for holding term - The County Commissioners are then required to summon a grand and petit jury - Neither the

juryz nor the Clerk is required to give notice of the order of the County Commissioners,- nor is any notice, whatever, of the order required to be given by any one.

By the 50th Section it is provided "that the Circuit Judges of the several Judicial Circuits of this State shall have power in vacation to appoint a special term" &c &c

The section then provides that whenever any special term shall be held the Clerk shall give the Sheriff of the County notice in writing at least twenty days before said Court is to be held - & that the Sheriff shall summon a grand & petit jury to attend on the day appointed - and shall put up notices of the time of holding the Court in at least five of the most public places in the County -

It will be seen that Sec 43 refers exclusively to special terms called during the sitting of a regular term - and that Sec 50 refers exclusively to Special terms called in vacation.

The reasons for the careful provisions in the latter section as to notices and their publication is sufficiently apparent without comment.

As already observed the order for

the special term at which the case now under consideration was tried, was made at a regular term of the Court.

Beckwith & Merrick
Counsel for Appellee

IN THE SUPREME COURT.

ISAAC COOK
vs.
ROBERT M. RENICK.
} *Appeal from Cook County.*

APPELLEE'S POINTS.

I. The days of grace allowed on bills of exchange and promissory notes depend upon the usage of trade, and form part of the contract between the parties, and evidence as to the usage will be admitted to explain the understanding of the parties.

Renner v. Bank of Columbia, 9 Wheaton, 581.
Mills v. United States Bank, 11 Wheaton, 431.
Bank of Washington v. Triplett 1 Peters, 25.
Cookendorfer v. Preston, 4 Howard, 317.
Savings Bank of N. H. v. Bates, 8 Conn., 505.
Noble v. Kennoway, 2 Doug., 510.
Cutler v. Powell, 6 Term., 320.

II. Days of grace in England were originally gratuitous, and could not be claimed as a right by the person on whom it was incumbent to pay the bill; they still retain the name, though the custom of merchants, recognized by law, has long reduced them to a certainty, and established a right in the acceptor to claim them.

[See authorities referred to above.]
Brown v. Harraden, 4 Term, 151, 852.
Jackson v. Richards, 2 Caines, 343.
Griffin v. Goff, 12 Johnson.

III. The days of grace allowed in England are generally allowed in the United States, and the usage of making the demand on the third day of grace, has become so general that courts of justice will notice it *ex officio;* and in the absence of proof to the contrary, the legal presumption is, that it was the understanding of all the parties to the bill, when they put their names to it, that three days' grace should be allowed.

Wood v. Corl, 4 Met., 203. [ton, 102, 104.
Bussard v. Levering & Leidenberger & Beall, 6 Whea-
Renner v. Bank of Columbia, 9 Wheaton, 581.
Mills v. United States Bank, 10 Wheaton, 431.

BECKWITH & MERRICK,
Attorneys for Appellee.

Isaac Cook - 176-164

vs

Robt M. Renicks

Argument submitted by
Counsel for Appellee

IN THE SUPREME COURT.

ISAAC COOK, Appellant,

vs.

ROBERT M. RENICK, Appellee.

Appeal from Cook.

ABSTRACT OF RECORD.

Fol. 1. Placita of the January Special Term, begun and held on the 11th January, 1858, "in pursuance of the order of this Court, heretofore made and entered of Record." But does not give the order nor state that any notices were given, or when the order in fact was entered.

2 Suit commenced by Summons March 27, 1857,—Robert M. Renick, Plaintiff, against Isaac Cook, Defendant.

3 Declaration in assumpsit, filed April 3d, 1857.

4 1st count, on bill of exchange, dated St. Louis, Oct. 16, 1854, drawn by George Hulme on Hulme & White for $2000, to his own order for value received. Bill accepted by Hulme & White, and endorsed by Defendant, to James T. Peters, and by him endorsed to the Plaintiff. When the same became due, presented, payment demanded and refused, and Defendant had notice, and bill protested for non-payment.

2d and 3d counts substantially the same.

12 Common counts for money lent, had and received, goods sold, and account stated.

15 Plea General Issue.

18 Dec. 30, 1857, cause tried, verdict for plaintiff for $2363.33, and motion for new trial Jan. 29, 1858. Motion argued, denied, and final judgment and appeal prayed.

19 Bill of Exceptions filed January 30, 1858.

In the Cook Circuit Court.

ROBERT M. RENICK
vs.
ISAAC COOK.
} Of the March Special Term.

Be it remembered that on the trial of this cause, the Plaintiff introduced and read to the Jury a certain Bill of Exchange in the words and figures following, to wit:

Accepted, Hulme & White.

$2000. SAINT LOUIS, Oct. 16, 1854.

Sixty days after date, pay to the order of I. Cook, Two Thousand Dollars, and charge the same to account of

Yours, GEO. HULME.

To Messrs. HULME & WHITE,
Young America, Chicago, Ill.

20 upon which is the following endorsement:

I. COOK,
JAS. Y. PETERS,
ROBERT M. RENICK.

And thereupon introduced as a witness John Forsyth, who, being sworn, testified: I protested the said draft on the 18th December, 1854. I left a notice of the protest at Cook's, the defendant's, office. I went to the office of the acceptors on that day, and demanded payment of a clerk there, and he said it could not be paid, and I gave notice to all parties. I went to the office of Hulme & White at the Young America building, their place of business. I saw a person there who was pretending to act as clerk. Hulme & White had a drinking saloon in one part below, and an eating room or hotel up stairs. I went into the basement and they sent me up stairs for Hulme & White. I saw a person there, a stranger to me. I asked him for Hulme & White, and told him what I wanted; he said they were not in—did not tell me what his business was, but said he was authorized to give an answer; no recollection of seeing him before. I don't know that I ever saw him afterwards—was
21 standing behind a small counter, not doing any thing—there was a small counter at which they registered names, and he was standing behind that counter. I may have left the notices that day or the next, not certain; but am certain it was done within forty-eight hours. I left the notice for Cook at the Post Master's room. Defendant was then Post Master. I don't know where he lived at the time.

RE-EXAMINED.

The counsel for the Plaintiff proposed to the witness the following question: Is there any universal, well-understood custom about days of grace among merchants and bankers in this city, in relation to the presentation of bills of exchange for payment?

To which the Defendant's counsel objects, the Court overrules the objection, and the Defendant then and there excepted, and the witness answered the question: The custom is universal, been so, so far as I am aware, that is to allow days of grace on all bills not payable at sight; on those on demand no days of grace are allowed; on sight drafts some allow and some do not. The custom on drafts not payable at sight is three days grace.

I have protested for a great many banks in this city, the Marine Bank, Birch's, Adsit's Tinkham's, Swift's, and have had occasion to present

notes and checks at almost every Bank in the city. Have been notary over five years. So far as I know, merchants have always claimed and recognized days of grace.

And here the Plaintiff rested, which was all the testimony in the case.

And thereupon the Defendant moved to exclude from the Jury, all the evidence given by the witness upon the subject of custom as to days of grace, which the Court refused, and the Defendant then and there excepted.

The Defendant moved to exclude all the evidence from the jury, but the Court overruled the motion, and the Defendant then and there excepted.

The Defendant then asked the Court to instruct the Jury as follows, in writing, to wit:

For the Defendant—That in this State there are no days of grace, and that in order to entitle the Plaintiff to recover, he must show that the notice of protest for non-payment was given on the 16th, or at the farthest, on the 17th December, 1854; and that notice on the 18th December, 1854, is not sufficient in law, and that if they believe from the evidence that notice was not given until the 18th December, 1854, they will find for the Defendant.

23 Which instruction the Court refused to give, and the Defendant then and there excepted.

And the Jury having brought in their verdict for the Plaintiff, the defendant entered his motion for a new trial—

Because the evidence was not sufficient to warrant the finding of the Jury.

Because of the various rulings of the Court on the trial of this cause, to which the defendant had excepted.

Because the Court refused to exclude evidence, and allowed improper evidence to go to the Jury.

Because the Court refused the instructions asked by the defendant.

Which motion was overruled by the Court, and the defendant then and there excepted to such ruling; and rendered judgment upon the verdict.

And inasmuch as the several and various matters aforesaid do not appear of Record in said cause, to that end the said defendant offers now, here in open Court, this 30th day of January, 1858, this, his bill of exceptions, in the premises, to be signed and sealed by the Court, and
24 it is accordingly so done in open Court the day and year aforesaid, the defendant having twenty days to prepare the same in.

GEORGE MANIERRE, [SEAL.]

Judge of the 7th Judicial Circuit, Illinois.

Appeal Bond filed 2d February.

ERRORS ASSIGNED.

First. That 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, convened in the manner, and notice thereof given as required by law.

Second. That the Court, upon the trial of the cause, allowed improper evidence to be given to the Jury.

Third. That the Court allowed improper questions to be put to the witness, and answered by him upon the stand, before the Jury.

Fourth. Because the Court refused the instruction asked for by the defendant.

Fifth. Because the Court refused the motion for a new trial.

Sixth. Because the Court rendered judgment for the plaintiff, whereas it should have been for the defendant.

W. T. BURGESS, *for Appellant.*

176-164

Isaac Cook

vs

Robert M. Benick

Filed April 21, 1858

L. Lelond

Clerk

Isaac Cook
vs.
Robert M. Renick

Supreme Court

It appears from the Evidence of John Forsyth, a Notary Public, that he protested the bill of Exchange sued on, in this cause, on the 18th day of December A.D. 1854 and that within forty Eight hours, he left a notice of said protest at the office of the Appellant: that he left the notice at the Room of the Post Master of Chicago and that the Appellant was at that time Post Master of said City -

The 6th Section of the act relating to Notaries Public, Enacts, as follows: "It Shall be the duty of Each and Every Notary Public, personally to serve the notice upon the person or persons protested against, provided he or they reside in the town where such protest was made or within one mile thereof: but if such person or persons reside more than one mile from such town, then the said notice may be forwarded by mail or other Safe conveyance" By the fourth Section: it is made the duty of Every Notary Public in this State, whenever any bill of Exchange &c shall be protested by him, to give notice thereof in writing to the

Endorser, maker &c within forty Eight hours from the time of such protest -

It is apparent from reading the Statute that the purpose contemplated by it was - to prohibit the transmission of a notice of protest through the mail, where the party to be charged by it resided in the City where the protest had been made, or within one mile thereof - and to substitute therefor a transmission by the Notary himself -

The general rule of law is, that where the party Entitled to notice and the holder of the note both reside in the same town, notice shall be served personally upon the party so entitled by the holder or by some agent or other person duly authorized by him -

It will be seen therefore that the only difference between the rule Established by the Commercial or Common Law in a case where the holder and the party charged by the protest reside in the same town and that prescribed by the Statute of this State, in a case where the party resides in the same town where the protest is made, is - that under the Statute, notice is required to be in writing and the duty of serving it is imposed upon the Notary - Each rule requires that a notice should be served

same foundation of the
personally - Each rests upon the relative
rights of the parties to the instrument - and
Each proposes to accomplish the same result -

In treating of this subject
the language ordinarily used in the books is -
that "where the party entitled to notice and
the holder reside in the same town, notice
should be given to the party entitled to it
either personally or at his domicil or place
of business"

This mode of Expression might suggest
that notice given at the domicil or place of
business of a party is not personal
notice but is a constructive notice, which a
party is authorized and allowed to Elect as
an alternative under an arbitrary rule of law
Such however is not a logical deduction
from the language. The law applicable to such
cases does not recognise any such thing as
constructive notice - it demands actual
notice in Every instance, and actual notice
is personal notice. The right to give the
notice at the domicil or place of business of
a party is a right which by legal construc-
tion is necessarily incident to the obligation
to Serve it personally. A man is presumed
to be found at his domicil or place of business
and what is left there for him is presumed

to reach him. The law has therefore determined that notice left at the domicil or place of business is not an alternative for personal service upon the party, but is itself, in legal contemplation, a personal service of the notice.

The Statute of this State is silent as to the consequences of a failure to serve the notice it requires, and the consequences of such failure could only be determined and visited upon the holder of a bill or note by the rules of the common law; and if the rules of the Commercial or Common law would apply to determine and inflict the consequences of the Notary's delinquency upon the holder, the rules of the same law, should be resorted to, to ascertain what amounts to a discharge of his duty and what will excuse its performance. And if by the rules of that law leaving a notice, at the domicil or place of business of a party is not personal service, but tantamount with and sufficient, we must regard a notice so left as sufficient under our Statute -

It is submitted that the language used in the Statute is used in a technical sense, and whatever had been at the time of its Enactment determined to be a substantial compliance with a rule, in every particular

similar to that which it prescribes, must, under the Statute, be regarded as a sufficient discharge of the obligation it imposes - The Legislature is presumed to have known what was a personal service of notice under the Common law and what was regarded as tantamount to a personal service - and by simply requiring a personal service, without defining what it intended a personal service to mean - and without Excluding by Express provision, the idea of the sufficiency of such notice as had been determined by the Courts; who tantamount to personal service, it left the rule Established by their adjudications to apply in the construction of the provisions of the Statute and the performance of the duties they imposed - This rule is of universal application wherever the Legislature Enacts a law relating to rights and duties which have been the Subject of Judicial determinations -

What was under the Common law deemed personal service of notice or tantamount to personal service of notice, will be found fully discussed in the following authorities:

Chitty on Bills - 5th Am. Ed. 475 note

Hoyt vs. Bowne - 2 Mee. & Wel. 348 -

Stewart vs. Eden 2 Caines 120 -

Williams v. The Bank of the U.S. 2 Peters 96
Dickens v. Beal 10 Peters 572-

The authorities above cited determine the principle among others that under the common or Commercial law notice was not required to be in writing - That it should be in writing under the Statute in question is Expressly provided by its fourth Section, and this provision very manifestly contemplates that the Notary may leave the notice at the domicil or place of business of a party -

The principle, however, Established by these authorities and most directly affecting the question under consideration, is, that where due diligence has been used by the holder of a bill or note to serve notice of protest upon the party to be charged thereby, the question of the actual receipt of the notice becomes an immaterial inquiry - What amounts to due diligence must depend upon Each particular case; it seems however to have been decided, as a general rule, that where the holder or his agent calls at the residence or place of business of the party Entitled to receive the notice and he is not to be found, or any other person who can receive notice it may be left there

Dickens v. Beal 10 Peters 581

It is respectfully submitted that the Statute in imposing the duty of serving the notice on the Notary Public, required from him the same degree of diligence as had, by the rules of Law, Existing at the time of its Enactment, been required of the holder - The Notary is required by the provisions of the Statute to serve the notice within forty Eight hours from the time of making the protest - and he is forbidden to send it by mail or deposit it in the Post Office - Could the Legislature have designed that he should devote the forty Eight hours within which the notice must be served to Searching for the party protested against? Such a construction of the Statute is scarcely admissible - But what is the Notary to do, where the party to be served resides in the Town and is temporarily absent for the forty Eight hours? The suggestion of the inquiry will at once make the necessity of the rule we contend for, apparent to the Court -

In considering this question, it is necessary to keep in view the distinction between the rules of Law applicable to the Service of process and those applicable to the service of notice -

A process issues under judicial authority and is intended to

bring a party before a Court, that it may take jurisdiction of some matter affecting his rights and that he may abide by its judgment in the premises - The law in such cases will as a general rule admit of no presumptions and there must be a corporeal service of the writ and upon such service the party must answer it or be in contempt -

A notice is given in order that a party may be advised of a certain liability, to which he is held, and proceed to take such measures to protect himself as he may deem Expedient, and upon its receipt he may act as he thinks proper in the premises - The law in such cases, as has been shown - does not admit of presumptions and does not require corporeal service -

The distinction is very Emphatically announced by Lord Kenyon in the case of Jones on the demises of

Griffiths v. Marsh 4 Term Reb. 464 -

This case also Establishes the principle that when the Legislature requires notice to be given to a party, leaving it at his residence is sufficient - The defendant was tenant from year to year and the only question before the Court, was, whether the defendant had been served with due notice to quit - It appeared that the notice had been served

on the defendants maid servant at his house - which was not situated on the demised premises and the contents Explained to her at the time: but there was no evidence that it ever came to the defendants hands Except as above -

Lord Kenyon in giving the opinion, says - "In every case of the service of a notice, leaving "it at the dwelling house of the party, has been "always deemed sufficient - to where ever "the Legislature has enacted, that before a party "shall be affected by any act, notice shall be "given to him, leaving that notice at his house "is sufficient -

In the case of Johnston v. Robins 3d Johnsons Reports - The Court determined, that leaving a declaration with a Young man at the residence of the defendant, in his absence was to be considered as personal service on the defendant - and referring to the case above quoted from 4th Term Reports - says - "It was decided in that case that in every case of the Service of the notice, leaving it at the dwelling house of the party was to be considered as personal service for every purpose, Except to bring the party into Contempt"

Respectfully submitted -
Beckwith & Mercer
For Appellee

Isaac Cook

v.

Robert M. Renick

United States of America } Pleas, before the Honorable George Manierre
STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

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 Special term thereof begun and held at the Court House in the City of Chicago, in said County, on the Second Monday, (being the Eleventh day) of January in the year of our Lord one thousand eight hundred and Sixty Eight and of the Independence of the said United States the Eighty Second in pursuance of the order of this court heretofore made and entered of Record.

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Carlos Haven States Attorney.

John L. Wilson Sheriff of Cook County.

Attest: Wm. L. Church Clerk.

Be it remembered that heretofore, to wit, on the twenty ~~second~~ seventh day of March, in the year of our Lord, one thousand Eight hundred and fifty seven, Robert M. Renick, by Messrs. Higgins and Coventry, his attorneys, filed in the office of the clerk of the circuit court, in and for the county of Cook, in the State aforesaid, his certain Precipe and Bond for costs, which are in the words and figures following, to wit—

Cook County Circuit Court—

Robert M. Renick
vs
Isaac Cook
} Assumpsit
Damages
$4000.00

The clerk will please issue summons in the above entitled cause, returnable at the April term of this Court—

Chicago
March 27th 1857.

Higgins & Coventy
Atty's for Pff

Cook County Circuit Court.
Robert M. Renick
vs
Isaac Cook—

We do hereby enter ourselves as

security for costs in the above entitled cause, and acknowledge ourselves bound to pay, or cause to be paid, all costs that may accrue therein, either to the opposite party, or to any of the officers of this Court, in pursuance of the laws of this State—

Higgins and Coventry—

Chicago

March 26th 1859.

Whereupon afterwards to wit, on the same day and year last aforesaid, there was issued out of the office of the clerk of the Court aforesaid, and under the seal of said County, the Peoples writ of summons, directed to the Sheriff of Cook 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 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 second Monday of April next, to answer unto Robert M. Kenich, in a plea of Trespass on the case on promises, to the damage of the said Plaintiff, as is said, in the sum of Four 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 Twenty seventh day of March, A. D. 1857.

Wm. L. Church, Clerk—

And afterwards, to wit, on the thirtieth day of March, in the year last aforesaid, said Summons was returned to the Court aforesaid, by said Sheriff, endorsed as follows—to wit—

Served by reading to the within named Isaac Cook, the 30th day of March, 1857. Fees—1 Service 30. 1 Mile, 3. 1 Return, 10—$65. John L. Wilson, Sheriff, by John H. Dart Deputy—

And afterwards, to wit, on the third day of April, in the year last aforesaid, the said Plaintiff, by his said Attorneys, filed in the Court aforesaid, his certain declaration, which is in the words and figures following, to wit—

Circuit Court of Cook County—

Of April term in the year of our Lord, one thousand, Eight hundred and fifty seven—

State of Illinois }
Cook County } ss.

Robert M. Renick, plaintiff, in this suit, by Scammon, Higgins, and Coventry, his attorneys, complains of Isaac Cook, defendant in this suit, of a plea of trespass, on the case on promises—

For that whereas, one George Hulme, under the name, style and description of Geoge Hulme, heretofore, to wit, on the sixteenth day of October, in the year of our Lord, one thousand, eight hundred and fifty four, at Saint Louis, to wit at Chicago, in the County of Cook, aforesaid, made his certain bill of Exchange, in writing, bearing date a certain day and year therein written, to wit the day and year aforesaid, and thereby then and there requested Hulme, and White, under the name, style, and firm of Hulme and White, sixty days after the date thereof, which period has now long since elapsed, to pay to the order of the said defendant, under the name, style and description of I. Cook, the sum of Two thousand dollars, value received— and then and there deliv-

ered the said bill of exchange, to the said defendant — which said bill of exchange, the said Dulme and White afterwards, to wit, on the day and year aforesaid, to wit, at Chicago, in the County of Cook aforesaid, upon sight thereof excepted, and the said defendant, to whom, or to whose order, the payment of the said sum of money, in the said bill of exchange, specified, was to be made, after the making of the said bill of exchange, and before the payment of the said sum of money, on the said bill of exchange specified, to wit, on the day and year aforesaid, to wit, at Chicago — in the County of Cook aforesaid, under the name, style and description of J. Cook, endorsed the said bill of exchange, by which said endorsement, he, the said defendant then and there ordered and appointed the said sum of money, in the said bill of exchange specified, to be paid to one James F. Peters, and then and there delivered the said bill of exchange, so endorsed as aforesaid, to said James F. Peters, and the said James F. Peters, to whom or to whose order, the payment of the said sum of money, in the said bill of exchange specified, has to be made, after the making of the said bill of exchange, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, to wit at Chicago, in the County of Cook aforesaid,

under the name and style of James T. Peters, endorsed the said bill of exchange, by which said last mentioned Endorsement, he, the said James T. Peters, then and there ordered and appointed the said sum of money on the said bill of exchange specified, to be paid to the said plaintiff, and then and there delivered the the said bill of exchange, so endorsed as aforesaid, to the said plaintiff, and the said plaintiff avers, that afterwards, when the said bill of exchange became due and payable according to the tenor and effect thereof, to wit, on the Eighteenth day of December, in the year of our Lord One thousand, Eight hundred and fifty four to wit at Chicago, in the County of Cook aforesaid—the said bill of exchange was presented and shown to the said Hulmes and White, and the said Hulmes and White were then and there requested to pay the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill of exchange, and of their said acceptance thereof, but that neither the said Hulmes and White, nor any person or persons on behalf of the said Hulmes and White, did, or would at the said time, when the said bill of exchange was presented and shown as aforesaids, or at any time before or afterwards pay the said sum of money in the said bill of exchange specified, or any part

thereof, but wholly neglected and refused so to do — and thereupon afterwards, to wit, on the Eighteenth day of December, in the year of our Lord, one thousand, eight hundred, and fifty four, last aforesaid, to wit, at Chicago, in the County of Cook aforesaid, the said bill of exchange aforesaid, was duly protested for non payment thereof, of all of which said several premises, the said defendant afterwards, to wit, on the Eighteenth day of December, in the year of our Lord, one thousand, Eight hundred and fifty four last aforesaid — to wit at Chicago, in the County of Cook aforesaid, had notice, by reason whereof, and according to the usage and custom of merchants, the said defendant then and there became liable to pay to the said plaintiff, the said sum of money in the said bill of exchange 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 and year last aforesaid, at Chicago, in the County of Cook aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill of exchange, when he, the said defendant, should be

thereunto afterwards requested

And for that whereas one George Dulme, under the name, style and description of Geo. Dulme, heretofore, to wit, on the sixteenth day of October, in the year of our Lord, one thousand, Eight hundred and fifty four, at Saint Louis. to wit, at Chicago, in the County of Cook aforesaid, according to the custom and usage of merchants, made the other certain bill of exchange in writing, bearing date the day and year aforesaid, and thereby then and there requested Messrs. Dulme and White Chicago Ills. sixty days after the date thereof, which period has now long since elapsed, to pay to the order of the said defendant, under the name and description of S. Cook, the sum of Two thousand Dollars, value received, and the said defendant, to whom, or to whose order, the payment of the said sum of money, in the said bill of exchange specified, has to be made after the making of the said bill of exchange, and before the payment of the said sum of money, therein specified, to wit on the day and year, to wit, at Chicago, in the County of Cook aforesaid, according to the usage and custom of merchants, under the name and description of S. Cook, endorsed the said bill of exchange, by which said endorsement, he, the said defendant ordered

and appointed the said sum of money, in the said bill of exchange specified, to be paid to one James T. Peters, and then and there delivered the said bill of exchange so endorsed as aforesaid, to the said Peters, and the said James T. Peters, to whom, or to whose order, the payment of the said sum of money, in the said bill of exchange specified, was to be made, after the making of the said bill of exchange, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, to wit at Chicago, in the County of Cook aforesaid, according to the usage and custom of merchants, under the name and description of James T. Peters, endorsed the said bill of exchange, by which said endorsement, he, the said James T. Peters, then and there ordered and appointed the said sum of money, in the said bill of exchange specified, to be paid to the said plaintiff, and then and there delivered the said bill of exchange so endorsed as aforesaid, to the said plaintiff— And the said plaintiff avers— And the said plaintiff avers that afterwards when the said bill of exchange became due, and payable according to the tenor and effect thereof, to wit, on the eighteenth day of December, in the year of our Lord, one thousand, eight hundred and fifty four, to wit at Chicago, in the County of Cook aforesaid, the said bill of exchange was

duly presented and shown to the said Dulmes and White for payment, according to the usage and custom of merchants, and the said Dulmes and White were then and there requested to pay the said sum of money therein specified, according to the tenor and effect of the said bill of exchange, but that the said Dulmes and White did not, nor would at the said time, when the said bill of exchange was so presented, and shown to him for payment, thereof as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do— of all of which said several premises, the said defendant afterwards to wit, on the day and year last aforesaid, to wit at Chicago, in the County of Cook aforesaid, had notice— By means whereof, and according to the usage and custom of merchants, the said Defendant then and there became liable to pay to the said plaintiff, the said sum of money in the said bill of exchange 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 and year last aforesaid, to wit at Chicago, in the County of Cook aforesaid, undertook, and then and there faith-

fully promised the said plaintiff, to pay him the said sum of money, in the said bill of exchange specified— when he, the said defendant, should be thereunto afterwards requested—

And for that whereas one George Hulmes, under the name and style of Geo. Hulmes, heretofore to wit, on the sixteenth day of October, in the year of Our Lord, one thousand, eight hundred and fifty four, at Saint Louis, to wit at Chicago, in the County of Cook aforesaid, made his certain other bill of exchange, in writing, bearing date the day and year aforesaid, and directed the same to to Messrs. Hulme and White, Chicago, Ills— and thereby requested the said Hulme and White, to pay sixty days after the date thereof, (which period has now long since elapsed) to the order of the said defendant, under the name and description of S. Cook, the sum of Two thousand dollars, and the said defendant, under the name and description of S. Cook, to wit, on the day and year last aforesaid, to wit at Chicago, in the County of Cook aforesaid, endorsed the said bill of exchange, and delivered the said bill of exchange so endorsed as aforesaid, to the said plaintiff, and the said Hulme and White did not pay the amount of the said bill of exchange, although the same was presented to them for payment thereof, on the day on which it became due, to wit, on the Eighteenth day of

December, in the year of our Lord, one thousand, Eight hundred, and fifty four, to wit, at Chicago, in the County of Cook aforesaid, of all of which, the said Defendant, on the Eighteenth day of December, in the year of our Lord, one thousand, Eight hundred and fifty four, at Chicago, in the County of Cook aforesaid, had due notice, and thereby he, the said Defendant, became liable to pay to the said plaintiff, the amount of said bill of exchange on demand on consideration thereof, promised the said plaintiff, to pay him the same accordingly—

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 seven, to wit, at Chicago, in said County, became and was indebted unto the Plaintiff, in a large sum of money, to wit, four thousand dollars, for money before that time lent and advanced to, and paid, laid out, and expended for said Defendant, by said plaintiff, at said Defendants request— and 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 merchandize, before that time sold and delivered by said Plaintiff to said Defendant, at 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 like sum, then and there found due and owing 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 last mentioned sum of money, when thereunto afterwards requested —

Yet the said Defendant, not regarding his 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 does neglect and refuse, to the damage of said Plaintiff, of Four thousand Dollars, and therefore he brings this suit &c.

Seammons, Higgins & Coventry
Plffs Attys

Copy of Instrument, and Account sued on—

$2000 00/00   Saint Louis. Oct 16th 1854.

Sixty days after date, Pay to the order of J. Cook, Two thousand Dollars—value received, and charge the same to account of

yours
Geo. Hulme

To
Messrs. Hulme & White
Young America
Chicago
Ills.

Endorsed
J. Cook
James T. Peters x

Accepted
Hulme & White

Isaac Cook to Robert M. Renick— Dr.

To money lent and advanced	$4000
To money expended and paid out &c.	$4000
To money received for use of	$4000
To Goods, wares and merchandise "	$4000
To labor and services	$4000
To balance on account stated	$4000

*

*

And afterwards, to wit, on the fifteenth day of April, in the year last aforesaid, the said defendant, by William T. Burgess, his attorney, filed in said Court, his certain Plea, with an affidavit attached, which said Plea and affidavit, are in the words and figures following, to wit—

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In the Cook Circuit Court

Isaac Cook
ads
Robert M. Renick } ast.

And the said Defendant, by Farnsworth and Burgess, his attorneys, comes and defends the wrong and injury when &c. and says that he did not undertake and promise in manner and form as the said Plaintiff hath above thereof complained, against him, and of this he puts himself upon the country, &c.

Farnsworth & Burgess, for Deft—

Plaintiff doth the like—

Higgins & Coventy, Plffs Attys—

In the Cook Circuit Court—

Isaac Cook
ads
Robert M. Renick—

State of Illinois
County of Cook } ss.

Isaac Cook,

being duly sworn, doth depose and say that he has a good defense upon the merits in this cause, as he is advised and believes—

I. Cook.

Subscribed and sworn to before me, this 14th day of April A D 1857. Wm L. Church, Clerk.

And afterwards, to wit, on the thirtieth day of December, in the year last aforesaid, to wit, at the November term of said Court, the following proceedings among others, in said Court, were had and entered of record therein, to wit—

591. Robert M. Renick vs Isaac Cook } Apl.

This day comes the said parties, by their attorneys, and issue being joined herein, it is ordered that a jury come. Whereupon come the jurors of a jury of good and lawful men, to wit,

C. W. Penn	P. Connerton	A Hough
G. C. Cook	M. L. Nichols	C. Wilson
W. P. White	J. A. Reed	L. K Osborne
Benj. Chase	L. Gerber.	J. L. Spears—

Who being duly elected, tried and sworn, well and truly to try the issue joined aforesaid, after hearing the evidence adduced, arguments of counsel, and instructions of the Court, retire to consider of their verdict, and afterwards come into Court, and say, We, the ~~Jurors~~ find for the plaintiff, and assess his damages herein to the sum of Twenty three hundred and sixty three Dollars, and thirty three cents—

Whereupon the said defendant moves the Court, for a new trial of this cause—

And afterwards, to wit, on the 25th day of January, A.D. 1858. the said defendant by his said attorney, filed in the Court aforesaid, his certain motion, for a new trial, which is in the words and figures following, to wit—

In the Cook Circuit Court

Isaac Cooks
ads
John M. Penicks } Asst—

The Defendant moves for a new trial in this cause—

1st Because the Court allowed improper evidence to go to the Jury—

2nd Because the Court refused to exclude the evidence of the witness Forsyth, upon the subject of custom—

3rd Because the Court refused them instructions asked for by the Defendant—

4th Because the evidence was not sufficient to warrant the finding of the Jury—

5th Because the verdict was contrary to the law of facts of the case—

W. J. Burgess
for Deft—

And afterwards, to wit, on the 29th day of January, in the year last aforesaid, to wit, at the

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January special term of said Court, for said County, the following proceedings, among others in said Court, were had and entered of record therein, to wit—

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Robert M. Renick
vs
Isaac Cook
} Apt.

This day again come the said parties, by their respective attornies, and the Court, after hearing the arguments of Counsel, on the said defendants motion, entered in this cause for a new trial, and after due consideration, the premises being now fully understood, doth overrule said motion, to which ruling of the Court, the said Defendant by his Attorney excepts—

Thereupon it is ordered and considered by the Court, that said Plaintiff do have and recover of the said defendant, the sum of Two thousand, Three hundred and sixty three Dollars, and Thirty three cents, in sum by the Jury aforesaid, assessed, together with his costs and charges, by him, in this behalf expended, and have execution therefore—

Whereupon the said defendant by his counsel, now here, prays an appeal to the supreme court, of the state of Illinois, which is granted, yet upon condition that the said defendant enter into a bond in the penal

sum of five thousand Dollars, with E. J. Canfield and Hugh Maher as sureties, conditioned as the law directs, and file the same with his bill of exceptions within twenty days.

And afterwards to wit, on the 30th day of January, in the year last aforesaid, the said Defendant filed in said Court, his certain bill of exceptions, which is in the words and figures following, to wit -

In the Cook Circuit Court.

Robert M. Renick }
vs } Of the March
Isaac Cook } Special Term.

Be it remembered that on the trial of this cause, the Plaintiff introduced and read to the Jury, a certain bill of exchange, in the words and figures following, to wit -

$2 000 Saint Louis Oct 16. 1854

Sixty days after date, Pay to the order of I. Cook, Two thousand Dollars, value received and charge the same to account of

Yours Ulys. Hulme

To Messrs. Hulme & White
Young America
Chicago, Ills.

Accepted
Hulme & White

Upon which is the following endorsement—

J. Cook—

Jas. G. Peters—

Rob. M. Renich—

And thereupon introduced as a witness, John Forsyth, who being sworn, testified— I protested the said draft on the 18th December, 1854. I left a notice of the protest at Cook's, the defendant's office— I went to the office of the acceptors on that day, and demanded payment of a clerk there, and he said it could not be paid, and I gave notice to all parties—

I went to the offices of Hulme and White at the Young America building, their place of business— I saw a person there who was pretending to act as clerk— Hulme and White had a drinking saloon, in one part below, and an eating-room, a hotel upstairs— I went into the Basement, and they sent me up stairs for Hulme and White— I saw a person there, a stranger to me— I asked him for Hulme and White, and told him what I wanted, he said they were not in— did not tell me what his business was, but said he was authorized to give an answer— no recollection of seeing him before— I don't know that I ever saw him afterwards— was standing behind the counter, not doing anything— there was a small counter, at which they registered names,

and he was standing behind that counter— I may have left the notices that day or the next— not certain— but am certain it was done within 48 hours— I left the notice for Cook, at the Postmaster's room— Defendant was then Postmaster— I don't know where he lived, at the time—

Re-examined—

The counsel for the Plaintiff proposed to the witness the following question— Is there any universal, well understood custom about days of grace among merchants and Bankers in this city, in relation to the presentation of bills of exchange for Payment—

To which the Defendant's counsel objects— the Court overrules the objection— and the Defendant then and there ~~xxxxxxx~~ excepted— and the witness answered the question— The custom is universal, been so, so far as I am aware— that is, to allow days of grace on all bills not payable at sight— on those on demand no days of grace are allowed— on sight drafts, some allow, and some do not— The custom on drafts, not payable at sight, is three days grace—

I have protested for a great many banks in this city— the Marine Bank, Birch's, Edsits, Finkham's, Swifts, and have had occasion to present notes, and checks at almost every

Bank in the city— Have been notary over five years— so far as I know, merchants have always claimed and recognized days of grace—

And here the plaintiff, rested, which was all the testimony in the case—

And thereupon the Defendant moved to exclude from the jury, all the evidence given by the witness, upon the subject of custom, as to days of grace, which the Court refused, and the Defendant then and there excepted—

The Defendant moved to exclude all the evidence from the jury, but the Court overruled the motion, and the Defendant then and there excepted—

The Defendant then asked the Court, to instruct the jury as follows— in writing, to wit—

"For the Defendant— That in this State, there are no days of grace, and that in order to entitle the Plaintiff to recover he must show that the notice of Protest for non-payment, was given on the 16th inst or at the farthest, on the 17th inst December, 1854. And that notice on the 18th inst of December 1854. is not sufficient in law— and that if they believe from the evidence, notice was not given until the 18th inst December, 1854, they will find for the Defendant—

Which instruction the Court refused to give— and the Defendant then and there excepted—

And the Jury having brought in their verdict for the plaintiff, the Defendant entered his motion for a new trial—

Because the evidence was not sufficient to warrant the finding of the Jury—

Because of the various rulings of the Court on the trial of this cause, to which the Defendant had excepted—

Because the Court refused to exclude evidence, and allowed inadmissible evidence to go to the Jury—

Because the Court refused the instructions asked by the Defendant—

Which motion was overruled by the Court— and the Defendant then and there excepted to such ruling—

And rendered judgment upon the verdict—

And inasmuch as the several and various matters aforesaid, do not appear of record in said cause, to that end, the said Defendant offers now here in open Court, this 30th day of January 1858. this, his bill of exceptions, in the premises, to be signed and sealed by the Court— and it is accordingly so done.

in Open Court, the day and year aforesaid—

The Defendant having 20 days to prepare the same in—

George Manierre (seal)
Judge of 7th Judicial
Circuit, Illinois—

And afterwards, to wit, on the second day of February, the said Defendant filed in said court, his certain appeal bond, which is in the words and figures following, to wit—

In the Cook Circuit Court

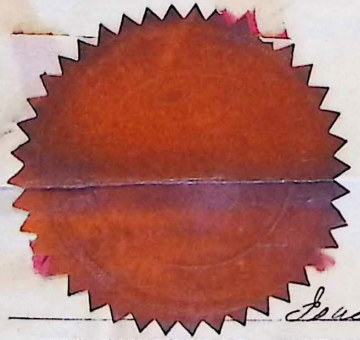
Robert M. Renick
vs
Isaac Cook. } Asst—

State of Illinois
County of Cook } ss.

Know all men by these presents, that We Isaac Cook, as principal, and E. Canfield and Hugh Maher — as his securities, are held and firmly bound unto said Robert M. Renick, in the penal sum of five thousand dollars, for the payment of which well and truly to be made unto the said Renick — we do bind ourselves, our heirs, executors and administrators, jointly, severally and

delay, and shall pay the judgments, costs, &c

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 all papers filed proceedings had & entered of record in a certain cause lately pending in said Court on the Law side thereof, wherein Robert W Reniek was Plaintiff and Isaac Cook was defendent

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this 26th day of March A. D. 1864

Fees for Record $5.35

Wm L. Church
Clerk.

firmly by these presents—

Signed, sealed and dated this 30th day of January 1858.

The condition of this obligation, is such, that whereas the said Renick did on the 30th day of January, during the Special term of said Court, begun on the 11th day of January, A. D. 1858. recover a judgment against said Cook, for twenty three hundred and sixty three dollars, 25/100 and costs of suit, from which the said Cook hath prayed an appeal to the Supreme Court, of said State— which hath been allowed by the Court—

2363 25/100

Now therefore if the said Cook shall prosecute his said appeal, to effect, and without delay, and shall pay the judgments, costs, interest and damages in case the said judgment of said circuit court, shall be affirmed, then the above bond to be void, otherwise to remain in full force and effect—

J. Cook (Seal)

Hugh Maher (Seal)

Edmund Canfield (Seal)

Appeal Bond filed 2d February.

ERRORS ASSIGNED.

First. That 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, convened in the manner, and notice thereof given as required by law.

Second. That the Court, upon the trial of the cause, allowed improper evidence to be given to the Jury.

Third. That the Court allowed improper questions to be put to the witness, and answered by him upon the stand, before the Jury.

Fourth. Because the Court refused the instruction asked for by the defendant.

Fifth. Because the Court refused the motion for a new trial.

Sixth. Because the Court rendered judgment for the plaintiff, whereas it should have been for the defendant

In the Supreme court of the
State of Illinois
For the third Grand Division
Of April Term A.D. 1858—

Isaac Cook
Appellant
vs
Robt M. Rurick
Applee—

} Appeal from Cook
circuit court—

And now during this
Term. comes the said Isaac Cook by
W. J. Bingp his Attorney— and says
that in the Record & proceedings &
giving the judgment aforesaid there
is manifest & material error appear
ing of Record in this—

[illegible] in said cause does not appear
by the Record to have been held at the time
command in the manner and other
things given as required by law—

Second— That the court upon the
trial of the cause allowed improper evi-
dence to go to the jury—

Third That the court allowed

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IN THE SUPREME COURT,

APRIL TERM, 1858.

Isaac Cook, Appellant,
vs.
Robert M. Renick, Appellee. } *Appeal from Cook Circuit Court.*

1st. That the Record does not show the order under which the court was held, nor when it was made, nor what, if any, notice was given of the holding thereof.

These are positive requirements of the statute necessary to be done in order that the court may be organized. It cannot for an instant be maintained that the judge of a court can, any day he may see fit, open a court, call it a special term, and proceed to dispose of the business before it. The case in 2d Scam. Report, 303 is an authority for the position that when assailed directly the court must show affirmatively by the record that its term has been held at a time and place authorized by law.

1 Scam 454

2d. There are no days of grace in this State. This is peculiarly a question of local law. It is certain that it has not been the general custom in this State to recognize days of grace. They are not a part of the law merchant proper, being the regulation of each country, and differing in different localities in the same country.

Chit on Bills 421 top

3d. The evidence of a custom among banks or among merchants in Chicago, in the absence of all proof connecting the defendant with it, taken in connection with the fact that this bill is not payable at a bank but at the place of business of the drawer and acceptor, was clearly incompetent, and should have been excluded.

4. The question propounded to the witness was leading in its character. It should have been first as to any custom whatever on the subject, then among whom, and to what extent; but instead, the whole matter in issue, upon that branch of the case, is so put to the witness that his answer may be yes or no.

5. The notice in this case is insufficient. The statute S. 6, chap. 75, R. S., provides that the notice shall personally be served upon the persons protested against if he shall live in the town where the protest was made or within one mile thereof. Here, Cook lived in the city of Chicago, and the notice was not personally served upon him, but left at his office, and there is no proof that it ever came to his hands or knowledge, within the forty-eight hours required by the statute.

Chit Bills 532 top

The statute having stepped in and prescribed the rule, it is imperative and must be complied with. The law, as recognized by the courts, had previously provided for a delivery of such notices at a man's place of business, and needed not to have been personally made, as the statute clearly requires.

W. T. BURGESS,
For Appellant.

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Cook
vs
Russell

Aff. Brief

Filed May 18. 1858
S Leland
Clk

IN THE SUPREME COURT,

APRIL TERM, 1858.

Isaac Cook, Appellant,
vs.
Robert M. Renick, Appellee.
} *Appeal from Cook Circuit Court.*

1st. That the Record does not show the order under which the court was held, nor when it was made, nor what, if any, notice was given of the holding thereof.

These are positive requirements of the statute necessary to be done in order that the court may be organized. It cannot for an instant be maintained that the judge of a court can, any day he may see fit, open a court, call it a special term, and proceed to dispose of the business before it. The case in 2d Scam. Report, 303 is an authority for the position that when assailed directly the court must show affirmatively by the record that its term has been held at a time and place authorized by law.

1 S.R. 455

2d. There are no days of grace in this State. This is peculiarly a question of local law. It is certain that it has not been the general custom in this State to recognize days of grace. They are not a part of the law merchant proper, being the regulation of each country, and differing in different localities in the same country.

Chit Bills 421

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Chit Bills 532

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W. T. BURGESS,
For Appellant.

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Cook
vs
Runick

Pffs Brief-

Filed May 18. 1858
L. Leland
Clerk

IN THE SUPREME COURT,

APRIL TERM, 1858.

Isaac Cook, Appellant,
vs.
Robert M. Renick, Appellee.
} *Appeal from Cook Circuit Court.*

1st. That the Record does not show the order under which the court was held, nor when it was made, nor what, if any, notice was given of the holding thereof.

These are positive requirements of the statute necessary to be done in order that the court may be organized. It cannot for an instant be maintained that the judge of a court can, any day he may see fit, open a court, call it a special term, and proceed to dispose of the business before it. The case in 2d Scam. Report, 303 is an authority for the position that when assailed directly the court must show affirmatively by the record that its term has been held at a time and place authorized by law.

1 S.R 454

2d. There are no days of grace in this State. This is peculiarly a question of local law. It is certain that it has not been the general custom in this State to recognize days of grace. They are not a part of the law merchant proper, being the regulation of each country, and differing in different localities in the same country.

Chit Bills 421 top pag.

3d. The evidence of a custom among banks or among merchants in Chicago, in the absence of all proof connecting the defendant with it, taken in connection with the fact that this bill is not payable at a bank but at the place of business of the drawer and acceptor, was clearly incompetent, and should have been excluded.

4. The question propounded to the witness was leading in its character. It should have been first as to any custom whatever on the subject, then among whom, and to what extent; but instead, the whole matter in issue, upon that branch of the case, is so put to the witness that his answer may be yes or no.

5. The notice in this case is insufficient. The statute S. 6, chap. 75, R. S., provides that the notice shall personally be served upon the persons protested against if he shall live in the town where the protest was made or within one mile thereof. Here, Cook lived in the city of Chicago, and the notice was not personally served upon him, but left at his office, and there is no proof that it ever came to his hands or knowledge, within the forty-eight hours required by the statute.

Chit Bills 532 top p.

The statute having stepped in and prescribed the rule, it is imperative and must be complied with. The law, as recognized by the courts, had previously provided for a delivery of such notices at a man's place of business, and needed not to have been personally made, as the statute clearly requires.

W. T. BURGESS,
For Appellant.

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Cook

as

Runnels

Opp Brief

Filed May 18. 1838

L Leland

Clerk

IN THE SUPREME COURT,

APRIL TERM, 1858.

Isaac Cook, Appellant,
vs.
Robert M. Renick, Appellee.
} *Appeal from Cook Circuit Court.*

1st. That the Record does not show the order under which the court was held, nor when it was made, nor what, if any, notice was given of the holding thereof.

These are positive requirements of the statute necessary to be done in order that the court may be organized. It cannot for an instant be maintained that the judge of a court can, any day he may see fit, open a court, call it a special term, and proceed to dispose of the business before it. The case in 2d Scam. Report, 303 is an authority for the position that when assailed directly the court must show affirmatively by the record that its term has been held at a time and place authorized by law.

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W. T. BURGESS,
For Appellant.

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Cook
vs
Russell

Pff Bill

Filed May 18. 1858
D. Holland
Clerk