No. 12471

## Supreme Court of Illinois

Cook

VS.

Wood

71641

Isan book aniel S. Wood 142 12471

United States of american State of Illinois Country of books Jage 1 Pleas falore the Winnelle George Maniance. Judge of the Seventh judicial bricult of the State of Illinois, and sole presiding Judges of the Circuit bourhof book bounds. in the State aforesaid, at a special Derm thereof begun and hald, at the bount House in the bilty of Chicago in Said bounty on the Second Monday of Jehruang Cherny the fourtenth day of Siehruang in the year of our Sord Oper Show and Eight Houndred and Sifty Eight and of the Independence of the United States the Eighty Shird in pursuance of an order made and Entered of record. at a former time of said fourt &= still at the Nor - Emfer term and on the and on the shirty D'inst day of Orcember in the year of Our Dord, Oner Thousand Eight hundred and Sifty Eight: which said order is in the mords and figures following to-mil. Ordered that a special term of the bircuit -bourh of said bounty for the trial of lowil and Criminal Causes. be and the same hereby is appointed to be heldadethe bout house in the Sarriany nest being in the year matheward Eight hundred and Jefly nine; £12471-1] and it is further ordered that the blesse

notify the superrolons of Said bymy, of they appointment of Said term, with a request that the Said Superrolons, cause jurors to be summed to attend upon Said term as required by lan.

Present yourable a george Manager Judger of the It Judicial Circut of the State of Illinois John Ogray Sheriff of book boundy atter William & Church. Club

Be it remembered that herstofore to with one these day of November all 1851. - Is an Cook by Judd and Winston his attorners sued out of the office of the Clark of the Court aforesaid the Peoples moritral Dummars. directed to the sheril of Gook Gounty to Execute and clothed in the words and figures a following. to. rich; State of Illinois) so Oorle Ounty She People of the State of Illinois to the sheriff of Raid County Opruling We command you that you Summon Daniel & Trord John Mc S'all Dorin 9 Butter, Martin Dodge. Peter M. Bigaton, WB Bay and Shomas & Wamilton, if they shall be found in your bounty pensonally to be and appear beforethy aranh Court of Said County, on the first day of the next term thereof, to be holden af the Court House in Chicago in baid County, on the first Monday of DEcember necht, to ansmer unto Isaac Corte in a plea that they render to the said Ovole the sum of their thousand Dollars, which they over to and you with detain from him to the daniage of the paid plaintiff as har days in the sum of ten trousand bollars, and have you than aled there this with and Endorsement Thereon in orlabonannary on executatha same Witness Donis 19 Hound. Olive of an said anh

and the Deal thereof, at Chicago this 21 rdays of drow anno Domini 1851 Se 19 Woord Clube and aftermands, to with on the 212th days of I wan for in the year last aforesaid. He gaid writerras oraturned to the Church aforas aid by Said Shariff Endoroed as follows to-rich: I Enved by reading to Daniel & Word John Mc Dall. Donin & Butter. Martin Rodge, PW Bigalow. NOBBay. Nov 21. 1851, Shonius &C Marvillen Cannof ter formal 6 Services. 0)110 10 Miles 1 Return Wischmeh Sheriff \$0360 By Mich Regan Daphy and aftermands to mit on the day and year last aforesaid to mit: on the Detday of nevember an 1831, the said plaintiff by his said astorney filed in the Court oforward his certain declaration mich was afterward refiled as amended -November 19th and 1856, and which with the amendments theralo is in the mords and figures following, tomb: State of Illinois) & Circuit Court of Cook Candy.
Ovole Country Of the December Sorm, in the
year of Our Sord Onethousand Eight hundred and
fifty One

Isaac Goody late sheriff of said Goods Compy plaintiff in this suit by Judd and Wilson his attorneys. Complains of Daniel & Word John rice D'all Dorin Of Butter, Martin Dodger Pelar Ho Bigglon Ho B Bay 5 — E Hamilton. dafandants in this suit, of a plear that they render to the said plantiff the sum of Sen Showand Dollars. which they were to and unjusty detain from him. D'or that mhereas the said defendants, haratofore to-mit, on the Smalth day of March in the year of Our Siond Oner Showard Sight hundred and Sifty, at the City of Chicag, in the said Country of Cook and State of Illinois, by their certain monthing obligatory scaled with their seals, and now shown to the Court have, the data orhereof is they day and your last of oresaid, acknowledged thems alvas to be feld and firmly bound, unto said plaintiff by the name style description title and addition of Isaac Cork Sheriff of Cook Ounty, in the sum of Sen Shonsand Dollars, above demanded to be paid to the said Isaac Cork and his legal refores entatives, orden they the said defandants should be there unto aftermands requested, orbich said writing obligatory, was and is subject to a certain Condition there underwritten to the Effect following that is Whereas the above bounder Daniel & Word has been appointed by said Isaac Gook, to the office of Deputy sheriff in and for paid Country of Cook

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It on Diarefore the condition of the above obligation is such that if the said Daniel & Wood as such daputy shariff as aforesaid shall faithfully discharge all the duties required of him as such daputy shariff + shall sava said Issac Cooler + his legal representatives harmalus from all Coals and damages on account of or by reason of any and all acts of said deputy as such diputy or by Golor of his said Office, then this obligation shall be void, otherwise to remain in full forece and virtue after the rating of the said Bond and while the said Daniel & Woodman deputy sturing as afore Said, he did not in all tuniop during the continuance of his said appointment of aithfully discharge all the duties required of him as such deputy Shings and did not sava said I save Coole late sheriff as a foresaid harmlus from all costs and domages on account of and by reason of any and all acts of said deputy as such deputy and by Color of his said office, but on the Outrary after the making of the said bond and while the said Daniel & Word mas deputy Sheriff as a foresaid to-mir: on the Seventeenth day of may in the year of pur Sord One Shons and Eight hundred and ifty a judgment mas recovered in the Cools County Court of Common Pleas. in Lavor of William B clapp and against Joseph Johnston for

the sum of three hundred and eighty dollars and fire dollars costs. up on which judgment an Execution may issued out of the said Cook Consty Court of Common Pleas directed to the shariff of Cook Country to Executa. And the said plaintiff further south that the Said defendant Daniel & Word as deputy Shariff as aforesaid received the said Execution and by virtua of the same to wit: on the first day of august in the year of our Sord Once There and eight hundred and fifty ones coll Ected and received the full amount of said judgment and costs from the said Joseph Johnston defendantin said Execution as afore - said, which said pums of money he the said Danial D'Word deputy Sheriff as aforesaid failed neg-lected and refused to payorer, and the said plaintiff further saith that on the seventh day of Hovembar in the year of Our Sord on & Showand Eight toundred and fifty one, a motion mas made ni Said Combof Common pleas for an order to com -fall baid I saac Cook late sheriff as afores and to pay the namy so collected by said word deputy Sheriff as aforesaid and interest therein to Said William B Clapp plaintiff in said ete culin as afgresaid, and thereupon of armands to-mit: on the day and your last aforesaid such forecedings over had in said shatter that the said plaintiff, to mit: Isaac Cook late shorff

as aforesaid was ordered to pay over to said plain it is in said Execution mentioned work: to William B Clapp the Fallance of the money so Collected by the said defendant brood, defeuty shiriff as aforesaid. with merest at the rate of thronly parting per annum from the time of collection until the surrais paid: And said plaintiff further part that said falancement bronty per cent perannum thereon as aforesaid, amounted on the seventh day of Herember in the year of Our Sord Ong Show and Eight hundred and fifty on a to once hundred and forty Dix dollars and sixty Centyand the said plaintiff further south that apon the Entry of Said order apon the records of the said Court of Common pleas, and up on notice thereof he did pay war to the said William B Clapp the sum of One hundred and forty the said Judgment and for assigning a further treach of the condition of said bond according to the form of the Statute in such case made and for ovided, said plaintiff says that the said Daniel Nord deputy shiriff as aforesaid after the making of his said bond and during his continuous in office as deputy sheriff as aforesaid, did not in all times faithfully discharge all the duties oreguired of him as such deputy as aforesaid and did not save said Corte late sheriff as

aforesaid. harmeless from all costs and damage on account of or hyreason of all acts of said deputy as such deputy or by color of his said office. but on the contrary of tarthe making of the said bond and while the said Danial & Thord mas deputy Shiriff as aforesaid. Ha said plaintiff being Shariff of Said County of Cook during the year of Our Sord Eighten hundred head Jifly and ex officio Collector of Stata and County Sates. assessed for the year eighteen hundred and forty mines the list of lates for they can last afores aid (and also the list of tures for they can Eighten hundred forty bix Eighten hundred forty baran and eighten hundred forty Eight + Eighten hun dred and forty mina), duly assissed mas de hirared to him said plaintiff as such collector for Collection and of termands, territ: on the Smalfth day of april in the year Eighten hundred and fifty has aid plaintiff Collector as a foresaid, dehvered to said defandant Mord as deputy Shariff as aforesaid, a large amount of Said lates, to-mit. Dix Thousand Jourhundred and Jorry Dollars and thirty four Cents to be collected or returned to him baid plantiff as shariff as a forgsaid and the said plaintiff arens that said defen dant Daniel & Hood Collected the said last mentioned burns of money for taxes as aforesaid as deputy shoriff as aforesaid and that he has neglected and refused and still does neglect

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and refuse to pay said sum or any partitioned to said plaintiff as sharely as aforesaid as shoriff a aforesaid he said plaintiff econ whed for and fully paid said tures so collec-ted by said Hord as aforesaid to the said Commy of Cork and said state of Illinois according to the amount duar said County and state raspectively according to the assessment agore Said And for assigning further breach of the condition of baid bond according to the form of the Statute in and casa made and provided, said plaintiff bays that the baid Danial & Wood after The making of his said fond, and during his con trainer in office as deputy shiriff as afore Said, did not in all things faithfully discharge all the duties required of him as such deputy as aforasaid, and did not saver said Corte late Shariff as aforasaid harmles from all costs to damages on account of orby reason of allads of Said deputy as such deputy or by color of this said office, but on the contrary of the making of his said tond and while the said Danial & Frond mas deputy Sheriff as afores aid the said plaintiff barney sheriff being shariff of Said Country of Cook during the year Eighten Mindred and fifty and Ex officio Collection of State and Country Sortes, assessed for the year

Eighten hundred and fortyning the list of last as for the year last aforesaid duly assessed on as delivered to him the said plaintiff as such Collector for Collection, and affarmands to mot: on the Smonty Second day of July in the year Eighten hundred and fifty, her said plaintiff Collector as aforesaid, delivered to Said dajan - dank Word as deputy shariff as aforesaid, a large amount of said taxes the four Houndred and forty one Wolland and brondy two cents, to be collected and paid to said Cook or to the - turned to him gaid plaintiff as shariff as a aforesaid and the said plaintiff avens that said defendant Daniel & Wood collected the said burn of money for tures as afgrasaid as deputy. Shariff as a foresaid and that he has mighedent and rafused and still does neglich and rafuse to pay Said sum or only part thereof to said plaintiff as Shariff as a foresaid, and the said plaintiff further avens that as Shariff as a foresaid has said plaintiff accounted for and fully paid said taxes so collected by Said Word as aforesaid to the the Said Crinty of Cook and Said State of Illmiss, according to the animits due said Country and Statal ora -spactivaly according to the assessment af ora - said By rewin of which said breach the Said worting obligating has become forfated and travaly an action but account to the said

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12 plaintiff to have and demand of and from the Said defendants the said sum of Sang Thousand dollars above demanded by at the Said dafandants have not, although oflan requested do to do as yet paid the said sum thereof but buthanto have onto ly nighted and refused so to do and stilly do rapusal to pay the same or any park thereof, to the damager of the said plaintiff of San Showard Dollars, and therefore he trings this suit te guld Milson attip for plantiff Know all men by these porcents, that we Danial & Work of ohn the Sall & Butter Martin Dodger Peter 16 Bigalon and 1913 Buy and & & Hamilton of the alyof Chicago in the Country of Cook and Stata of Illinois, are held and firmly bound Anto Isaac Cook Shariff of Cook County mi the penal sum of San Shonsand Dolland to to paid to the Said Is and Cork and his c legal representatives for which payment orll and ruly to be foundaring bind our and Each oner his &te culos and administrators somtly and savarally firmly by the a pracents sealed with our Seals and dalid this 12th day of Murch 1850 -

orderew the above bounder Daniel & Word has been appointed by said Isaac Cook. to the office of deputy Sharif, in and for suid country of Cook now thanafore the gondition of 13 the above obligation is such that if the said Daniel & Wood as such deputy shariff as aforesaid, shall faithfully dis charge all the duties required of him as such deputy shariff and shall save said I sace Cook and his legal representativas, harmeles from all Oakts and damage, on account of or by or such deputy or by color of his said officer than this obligation shall be vised officer ramain in full force and virtua Danial & Wood John modiall Sea Barretin Martin Dodga Den Petar de Brigalon 2013 Pays & E Hamittin Dea Den and aftermands to more; on the 8th day of December in the year last aforgsaid the said defendants by Samed and Hours their atterneys. I did in the Count of greated their certain denures to the declaration of the said plantiff, heratofora filed risaid caus a which is in the words and figures following to mis 512471-7

14 State of Illinois) es Corte Cornty) saar Corte Goods Circuit Orns De cember Demo as 1851 DerhonBond Danial & Word Eta. and the Said defendants by Samed and Houses their attorneys come and defend to and crave on ar of the Said minting obliquous to condition and the Sama is read to them Hord John Mi S'all, & Butter, Marlin Hodga Pelger Vo Biegalow and Novo Bay and & Erlametten of the alty of Chicago ni the Country of Cook and Stata of Ellinois, are held and firmly boundants I save Corke shariff of Cook County, in the penal sum of Sen shows and dollars to be paid to the said Is are Cook and his legal representatives for which payment well and truly to be paid me bind in and Each once his Executing and administrations joint and savarally firmly by the pompents. Is also with our beals and dated this 121 Holary of March 1850, Othereas the above brinden Daniel & Word has been appointed by said Isaac Cook to the affice of deputy shariff in and for said Country of cooks now therefore they condition of the above obligation is such that if the said Daniel & Word as such deputy Shariff as a foresaid. Shall faithfully

discharge all the duties orequired of thin as such deputy shareff, and shall save Baid Isaac 15 Corte and his legal orepresentativas harmeless from all costs and damage on account of or by creason of any or all acts of Darch deputy as each deputy or by color of his Said Office, then this obligation should arrive to cremain in full force and Virtua, Daniel & Hood Sew John Mc Scall Sew John no D'all Sea Sea Martin Dodgra De Polar Marigalon Ser No Bray Sew 3 EMountitin. Sed and say that the said declaration + the first Second and third assignments of breaches severalle and the matters therein centained in manner form as the Dame are abory stated + och forth are not sufficienting law for the said plaintiff to have of maintain his aforagaid action there of against the said defter, and they the said defte aranor bound by law to an orrar the same. And this they are ready to variyy, orbirafore by means of the insuffic iancy of the said declaration in their takalf the said defts pray judgment and that the said plaintiffmay By their atter Samuel May I and for cause of Special denumar, in conformity with the statute in such case made and provided

the said defto ussign the following -16 1. The said declaration is bad from duplicity 2 That said declaration is trad because the respective breaches therein mentioned are not set out in distinct counts. 3 because the treaches mentioned in the said declaration are not set out with sufficient particularity 4 Sha statement of the 213 breaches in said declaration is insufficient for the reasons following 1. It assigns as a breach the non-payment of last lists for years forior to the time of the Execution of the Said morting obligatory & forier to the said Words appointment to the said office of deputy Sheriff 2. The alliqations in the first assignment of a breach are repugnent to each other-3 It assigs as a treach. the non payment of tates on the last for the year Eighten hundred a period being antecedent to the said defte said appointment 4 Die allegations in the 2d & assignments of treaches are insensible and repugnent 5. It does not specify what taxes more given to the said deff word to collect 6. There is no Expluit averment in the 2d + Fine m

the 3d assignment of freachis of the assessment of the lates. He lists of which are charged to have 17 I It does not specify what takes collected by the said aft word he has neglected to pay over 8 Don't allege delivery of marriant with the lest By their city & Samuel SS Aurs and aftermands to might arthe november term of Said Cryp. to mit: on the 17th day of November as 1896 the following perocedings, among others. mare had and enterred therain to mit: I saac Corte Do Wood Inc beh D'all & 9 Butter Martin Dodga. Do Bigalon Hors Bay "Non cama on to be heard the demurran haratofora filed by the defendants by their attorney to the declaration of the plantiff which deminer after agument is sustained by the Court and on motion of the plaintiffs attorney leave is granted him by the Count to amend his declaration, and on motion the defan dants have leave to plead by rednesday morning

and afternoonds, to-mil: at the april term of said Court to mit: on the 13th day of about at 1857 the following for ocedings, among others, mare had and antered therein, to-mit: Isaac Corle Dorond, Ima Sall & Butter DEM Martin Dodga 976 Bigalon, Hors Bays and SE Hamilton This day comes the said plan tiff by his attorney, and suggests to the Court, the death of the Said defendant of medall, and due personal Dervice of forous of summons issued in this causa hiring been had on said defendants, Do Wood Das. Butter. Martin Dodga. WB Bayrand Plo Bigalom only, and they being three times severally solemness called in opan Courte, Comarnot, oner does any person for tham, but herein they make default, which on motion of said plaintiffs is ordered to be and inherapy is, taken and Enteraglofracord; Whereforg said plaintiff ought to have and re - over of the said defandants Do Word Sily Butter, Martin Dodga P 76 Bigalom and 2013 Bay impleaded with S & Hoamulton, his danages herain sustained by occasion of the foremises and Marenpon reference is had to the Court to assess the Sama herain heraflar,

Oud afternards, to-mit; at the same term of said Bout te-mit: on the 30th day of May in the year 19 hash afores aid, the following, among other, proceedings were had and entered of record thurain, to web; Isaac Cook 19 S Wood Jmc Sall & Os Mutter Martin Dodger 9 76 Bigalon, To B Bay and SE Mamettan This day comes the paid plaintiff by Samsmorth and Burgess this attorney and the default of the baid defendants 103 Word & BButter. Martin Dodge HeBBigglon and Hops Bay, having been hard of ore, to with on the 13th day of aprillasty assed taken and entered of record, and a reference than had to the Comb to assess said plaintiffs damages hercein, Murgon Said plaintiff oright to have and recover of said defendants, Do Wood & & Butter, Martin Dogge Hot Bigalom and Hoto Bay mpleaded with DE Hamilton, his debr in this declaration man hined, to the sum of Sen Thousand Wollaws, and the Court having heard the allegations and proof submitted by Said plaintiff, and being July advised in the promises, assesse said plaintiff damages herein by occasion of the freaches of the \$12441-10] condition of the said bond assigned in the declaration

to the sum of Sighty three hundred and eighty thro Dollars and Seventen Cents, Signefore it is con 20 sidered that said plaintiff do have and recover of the said defendants DS Hord & & Butter Martin Dudga Pro Bigalon and Word Bay mipleaded with o Erbamilton, his debto Den Showand Dollars, in form aforesaid together with his costs and charges by him in this behalf expended, and have Execution therefor, and that Said Execution be returned satisfied his ullupon the payment of the damages aforesaid assessed orith interest and costs -and aftermands, to-mit, at the October Term of said Court, to-orich, on the 9th days of November in the year lash aforesaid, the following for ocedings, amoning other, mere had and Enlared of record therain, to-mil. Isaac Onter Daniel & Word Sorm 1597 & Butter, Martin Dodger Plo Big dom. Wenry B Bay Surairons of Inc Stall impleaded with & & Hamilton on to be heard the rection of the said defendants to open their default Entered in said causer upon affidavits filed, and may argued by console

and the Court being fully advised in the foremises sustains said notion and orders the default entered 21 in said cause to be opened and all subsequent for ocedings thereon had set aside at the goods of the defendants, to orbich ruling of the Court the said plaintiff by his attorney non here excepts, and forceys the Court here to sign his fell of exaptions. In a it is further ordered that he be allowed ten days to filefils till of Exceptions 
And afterwards to-mir, on the 12 thay of
Chovernbar, in the year last aforesaid, the said plaintiff by William & Burges his attorney filed in the Office of the Clube of the Court afresaid his certain Bill of Exceptions, which is in the words and figures following-to-mit:
In the Ovoler Circuit Court Isauc Order L'On notion by Dallo to schasida default Daniel & Mord & G Butter, Martin Dodger Ph Bigalon Ver Bay Survivore of John no Hall Impleaded mit & Edamidin & Ochoharderm and 1857 State of Illinois \s. Corle County 185 it remembered that on the 18th day of & Eptember UD 1857. He said defendants foresented to the Yor Of Enga Manierra Judgard 2/2471-11]

this Court. in racalin, an affidavit of which the following is a copyr- Corter Country Court Court 22 Cooler Country Circuit Court

Suit ran

Judge Rendered May 30 1857

Jor Dark \$10,000

Dand 5382 1110 + Coels Daniel & Word Etal Isaar Cork State of Illinois so Overlar County Houry B Bay of the defaudants in the above Entitled suit, being duly smoon, Says that some three or Johns Smear, he mas informed by the defandant Wood, that this suit had been dismissed for manh of proseculin and and that he, Word, had received a letter from & Commed Esy, the attorney employed to defand this suitfor his services, which letter and bill the affair his seen, that this affiant relying upon such state - ment, garagno further allentin to the matter, and heard nothing further about such suit untill about the middle of July last passed, when Openga Anderson, Deputy Sheriff, informed this offiant that ha had an execution against this affiant issued on the judgment grandered in this suit! This affiant further Dasp that immediately after learning such fact from anderson this affian Called on Constall, to take the necessary steps, to

Set aside such judgment and execution, and. . 25 Galled at the office of Said Damed, to see him on the subject, but mas notable to find him mas told he mas absent from the State + mould not return until about the 1st day of October next; that this affiant was also informed. that his Honor I udga Manieme was absent from the City; that at the Earliest moment after learning of the return of said judge, this affiant has odused this affidavil to be drammin order to apply to have such Judgment and execution set asidas.
This affiant Justin says, cut on information and balast. Hat the forecadings on the part the plaintiff by which said judgment was obtained, more not had in good faith humans wrag war and fraudelint as against the defendants + mara without their Knowledges + mithout notice to Said defendants, that at the now Som 1853, an order mas granted by his Honor Bucknar & -Morris. Hat the said should be dismissed for mant of grosquition, and a memorandum, man mader to that effect on his docked; which but as this affiant befeires, without authority. Shis affrant further says that the defendants in said suit have, Each and every of them, a good defend to said suit on the ments, as this affrant really believes, and this affrant, further says that the Shariff (12471-12] has by virtua of baid execution, levied upon personal

foroparty, of this afficient sufficient in value to-24 Satisfy said Execution, and has advertised the same, to be sold, on the Dod day of september met, and will forocede to sell foroceedings are stayed by this Honorabler Court. This Monorabler Court.
This afficients further Days, that the defendant Mood resides in Deer County, and Do far distant that his affidavit Cannot be conveniently obtained in time for this application, fur said Wood has informed this afficient that there was a good defence to said suit on the merits, and that there was nothing due from him to said plaintiff but that on the Contrary there was a balancer dua from the plaintiff to Word on his accounts as Daputy Shariff, which Statement of Said Grood the affiant felcives to be true -19th day of Deplambur 7/13 13 ay Endorsed turan avorder in the mords and figures following mamaly On the mithin affidurits, let the Execution therein mentioned by stayed until further order \_ + no further forocedings to had theren, Chicago Dept. 18= 1857 Judge The Judicial Coronit

the atterney of record for early Self on the 19th day of Deptembar 1857 - a notice of which the following is a copy - Oook County arcuit Comb Isaac Corks arthe nexh term of this Oruh, to be holden at the Ourh House in the City of Chicago, on the Decond Monday of Ochober next, on the opening of the Count was som transaffar, as counsel can be heard, a motion mill be made in behalf of the defendants, against orhum judgment mas entared in this suit; that such fudgment and the execution issued thereon, be set aside, on for such often further or different order, as the Court shall deen much which motion will be founded on the necords and papers on file in this suit, and on the affidavit of which that Joragomy is a copy party of the man of the m

Shar in the 12th day of October a 21857 todoring the present time of this Court the Said Burgess field the affidarile following -rix 26 Isaac Corter In the Gorle Circuit Court
On Nestin State of Illinois ) 65 Country of Coole I Saac Coole fle said plaintiff being duly brown. Says that the Knowledge has has of the matters. which were in controversy in this suit is formal ally derived from In Purday who was smoon as a writness in this casal on the assessment of the damages and who had from - cipal charge of the matter. + James Sitsimmons his clarks and from their statements the amount of the recovery in this cause is correct, he believes, That he has no knowledge that this suit was even dismissed and does not believe that such ever mas the case sharif any entry of the 12md Ever reas mader by the Judger, it was Either a mistate a or was racated during the barne term it was made by the agreement of Comsalfeloramattus 12th day of Ochober a19 1854 Moss & allit Thotung Public!

Isaac Cooler . Cooler Circuit Court 27 on neolin by Defut to set asida Judgo re Danial Sword Sch Butta, Martin Dodge. ProBigelon, BBBay Surviviors of John Me S'all and Impliaded with 3 & Mamillan State of Illinois Is: Orinty of Corte J William & Burges an allomy at law of said County, being duly shrom dotted day of daposa and say, that on or about the first day of November ap 1856, he was retained by said Cook to prosecula this suit. That as this deponantmas informed the Counsal onto proceded him in the management of this Casar, ma Harry Strink Egy Juna 1856: Shar on Examining the state of ther Jecord, he this deponant found of demuniar to the declaration, not disposed of that he either sent to by left, or left himself, at the Office of arnold Samed and Say, directed to Ev Samed Esy a member of that lan firmy one of that at attorners for the defendants in this caira, as mitten notice of the time, hashould call up the denumer for argument. Shar said demumer 210481-14

was called up aftermands on the 14th day of November at 1856 by this deponent. Said -Surned not appearing to any just purtained by the Court, that this deponent thereupon tools leaved to amond + than + there in open court, amon - ded said declaration by neighbourneds and forty eight and eighten hundred and forty nina". and handed the said declaration so amended to the Clerk of the Court to file, and applied for and obtained a mean upon the defendants to plead to the declaration as amended. Shat immediately upon Entering said orular according to the best orecollection of this deponent has ount a nota to Mr Surned informing him of the fact and a fram days afternands. he say him " said Samed " parsonally advised him what had from dona in this casa, that said Darmed in rapply applied to this deponent to extend the time of the rule to plead untill he could hear from and advisa mith said Word, at the same time stating that said Wood, had not been to see him latety about the suit, that have hiring out in the country near Chicago the porecisa place he did not know that ha said Word had not paid him any thing and that he, Said Samed, had not recioned any thing for his services in they Causar but did not intimate then or at any ofter time but that the Cause mas regularly on the dodect the plaintiff entitled to have it tried in its order

That this deponent conceded to the request of said Danned. for further time to plead, that after 29 that time had classed this deponent again personaly capled upon said Samed, and called his attention to the case, that said samed then applied for further Throad: that this deponant again acceded to his raquest, + agreed to Extend the time still further. that several times this deponent called the attention of said Darned to the casar aftermands & at inter rate of a north or but after the time thus agreed on por for time to plead in had Expired untill har concluded that he defendants had no real defense to the case & insisted upon their default assessed the damages upon Examination of mitnesses in open Court. And this deponent Jurthar Days that the said defendant, Martin Dodge. 9 to Bigelow + 1013 Buy from the time of amending said declaration to the present time resided treside with City of Chicago in said County, openly & notoriously their-places of residence appearing in the aly directories published + in general circulation for + in Said aty, that said Martin Dodgaris + masthan, one of the Keepang of the Sharman House. a Hotel fronting aponthe Court House pquare in said City a and this deponent further anomering Day. Hat he has no doubt but that if the case Ever mas in Jach dismissed + stated by said defendant in \$12471-15]

his affidavit on file in this motion, that it was rein 30 - stated, by agreement of Coursel. Fecause not until after the execution in this case had nearly run out did he hear of any thing of the Kind. This deforent of wither answering Day) and moists. that he took Every means in his porray to notify the defendants Counsal in this cause of his intended action theyein, Sharthe Court Severa times refused to take the matter up, of ter the plaintiff was entitled to default + judgment and requested this deponent to notify the Counsal for the defause again, which this deponent duly did, That this deponent did not suppose him self to be under the obligation of notifying the defendants poersonally. Inhan they had counsal acting for them in Court + they had been duly served with summon, in the Cause. that the amount assessed in this cause is my appeared from do cymantary Evidence the and the statement of mitres or mylneses smom and produced on the trial before the Court to be duce from said defendants to the plaintiff Surscribed Domonto before me this 12th day of Ochron as 1857 ON Stangers

And the said William & Burgers tung M Maurgess

further smoon in said cause above entitled, Says that hereto attached is a copy of a notice or hich he has smoother above affidavir. Jounds among his papers, that the same is a copy of the note he senot said & O Samuel of the mule to plead 31 to the amended declaration, That baid Samed in his Dutsequent convensation, spoke to this de foodent about having recieved such a note Durscribed & Smom To. before methis 22 days Mo Burges of October as 1854 In the Book Circuit Court Dethon And Daniel & Word Eta De Messieurs Darmed & Houges Attys for Deflo Gento Methis day Enfared agulorn this cause requiring you to plead to the declaration as amended morein.
The declaration as a morein.
The declaration 212421-16

and on the day of Ochober 1857 during the 32 Same term. Called up the niction for disposal by the Court Sharttereupon the said defendants applied for leaves to file additional afficients to which the pff then there objected. Fur the Our overrules de the objection and granted to the said defendants to file further affidavids to which ruling the felf then Altera prespedentid mas noted, filed the following affeduids Ook Camber arank Comb Isaac Corles Danial & Word cotal) State of Illinois Cook Crinty 158 City of Chicago Edmin O Darned on Oath States hat har ma employed several years ago in com nection with & S Hayer Egy, to attend to a suit of Cook & Hord Etal. Shara denumannas filed to the original declaration one ground of which mas, in substance, that a deputy shirt or his bondomen merer not liable on his bond for defaults in the non-payment of taxes collected by him, this being no past of his Official duty as such deputy. That the demurrantas according to his bash

recollection, Either sustained or confessed and 33 leave taken to amend, and that the case hung along in this may for a long time, and this depon and supposed that the defaults to complained of overe mainly if not wholly on account of lay collections, and that the suit would not be further pryseculad, and is of impression that he conversed with my fudd about it and told him there was no usa tol keep it on the docker; affair it had gramained in this condition for one or two years. this afficient is of the importantion, that other it mas called in the order of the dockat by Judga Morris a long tima since that this affiaht had it dis missed for manh of forms ecution, and has ad vised by said Word, that he received a fitter from this afficient, approxing him that it had been so dismissed: and this afficient further prote said Word to request him to pay him for services te: His affiant, considered his connection mit the case ended at that time, and has no further Knowledge of it, or how it came again on the dockets to him by W & Burgess, in oreference to the case, and This asking Burges, if that old thing had come up again, and his informing Burges, that he did not deem that harras any longer in the casar and did not intend to ach as counsal this, that he considered 512471-17] his connection with it classed a long time Ince

but formould like to have time to more to Wood 34 So that he could employ Orinsal to attend to it. That this affigure did accordingly to his teah precollection and taking morda, Word directions the letter to Wheeling Ills. which was the last place he knew of his residing in, and heard nothing further from him, and other agains about the Case, this affiant preplied that he had heard nothing from Novel that he did not form methan farmes aliveredead or mhere harmes to by found, and that he considered his connection with the Casa, had long ceased, and advised said clerk to sea & & Wages Eser, who had oney maly acted as counsel in the Causa, and who might still be in correspondence with mor wood Shar this affiant did not like to projudica Mr Wood by assuming to act in any mannar. and did not ful authorised to appear or to ach further, and so advised On Burges dute, That his affiant never mas employed by any on a fut Word in the original suit and had no remembrance of their faing any other parties, defandant but Wood. John kyrras spokan to the Burgess or his click, about the case; That this affiant never made any agreement, to racata the order dismissing Said Suit, and had no knowledge of said order

being racated or the time it was racated. That the said Burges was not the original 35 attorney for plaintiff, but ItB fuddery, and this affiant was not arrane of any action being taken in the case at all or that it was intended further to forosecula the claim until notified by Burgess, nor had heavy Knowledge have or when the casarmal continued on the docket after such dismissal a or whather a new spith had been instituted, or what was the condition of the case at any time after said order of dismissal. Shar no amended declaration or a gran filed in the course up to the time, that it was dismissed to this affiants Knowledge. over mos he ever notified of any being filed to his Knowledge or remembrance until ha reciared the notice from Burges referred to This affiant has some recollection of his procuring the order for dismissal, but sud recall Ection is not strong enough to enable him to somean positively, to it independently, of his letter to Word. and the entry on the doctest, but if, as he is advised by said Wood, he more to him, he had obtained i such an order, this affiant would have no doubt that he did so, Edmin Samed Durscribed & monto talores merties 22 days of October } all 185/ Chas algregori

Ook arouit Court Och S. 1857 State of Illinois } so Corre County In the matter of the application of Do Word, to Daharde -judgment in the case of Isaac Cools DS Word Etw Daniel & Word on out Statas, that he is a defendant to the above entitled suit that a suit mas instituted against him some time in the year, 1851, by said Cook, and he employed & Samuel + & & Heaves Eay to def and for him That subsequently + some time in the year, 1800 he rece a letter from said Damed advising him that said suit had been demissed formant of forosecution, which letter this affiant " handed to Grant of ordrich Esyx the Sameris nor in his poses bin, but has been mislaid by him. Dhat subsequent to the reculst of the letter, this affiant informed Honry B Bay that said suit had bean dismissed talso organin Doger another of the del sharouts equent to the receipt of said letter advising him of said dis missal of said oasa, this affiant never heard any . thing more of the matter, or knew that any such mas pen - ding against lum until he was advised sometime in August last that a judgment had been obtained

and execution issued thereon; Sharthis affiant That this affiant had no knowledge that there mus 37 any case against him in Court & pupposed the orlole on after Ended + required no further altertion from him That he never are served with any new process or any notice of any new procedings or had any -Knowledge of the Same in any manner or form. That this affeart, has as he is advised treatly believes a good + sufficient defence to said suit on the meints. that they action is brought on a bond given by the affiant onthe the other delle as suretie which is dated the 12 day of mar 1850 + is given to indemnify baid Cooke against the default re of this affection as such deputy Shareff. Shar all the default against this affiant alleged by said Cook in said declaration of which any Evidence ma offered consisted as her is advised in alleged failures to pay war money optledged on tay lists put into his hands for collection - That the only fish on which this affiant made any collections. which Shar shortly after this affiant mar Mr. Bently who was acting for cook in all collection of taxes. presented a lab of tax receipts some signed rema not signed, accompanied by a list of them with a reciept, at the botton for this affait to sign, advising this affant that harmas to collect pay over the money, and the amount paid mas to be credited to Sum. This affair in attempting to college said 512471-19] land found that in many cases the parties had receipts 38 for the Sama lates grean him to collect from Caok -a Pendry & Sidz Simmons, Shis affiant of land trought people to Corle, who had such receipts and Cook offen told the affiant that there mare old laxes and his Clerks had been garales and that he mished this affiant to do the fear that he could mith them, and this affiant did to and Collected all he could on said tax recieptrand paid all over which her collected That subsequently & Some time in 1850, the Board of Dupagordons called upon said Corrector a settlement of the last lists, that a committee mas appointed by said board to invastigate the matter That the said Corle than desired of this affight that he should go before the Committee and End the matter by somearing that all taxes which had not bean collected, mary not collectable, that the parties could not all tow found which mas ma, and that such as could bufound more not able to pay which mas untrue in part, This affairt refused to do so but mont bafore the Committee + Shirred to than or har tates this afficient could not could rete same, the tat receipts for which many either left with the committee on taken by Correland this officiant has summothing of them singer, Subsequently the said Cook himself made oath that the alance of the lates not collected were not collectable, and thurupon the Committee reported

that the amount collected for the list of 1848 478,99 59 the talance of lax list was mas moderant Sharland list of 1849 Collected uncollected + moderant 51296 6436.77 1196.60 That the Collector reported cheasury rechts for all amounts collected except commissions + fills ter and recomended that the Click Execula the proper papers to the Collector according to the above returns which this affiant balianas on dona, and this Ended tha chins except that this affiant offen tried to gat said Cook to pay him for his services in collecting prhathadid Collection which is credited to him in tha list: affant further saith that harner ar recraved a dollar in Said las receipts or tymayor collection of lases for esthan of said years 1848 + 1849 mhich he did not pay over not avantetaining his commissions or charges for cottationsand this affiant part that he never collected only money for paid Cook on any accounts impater or dyring the mole time of his connection with said Cook which has failed to pay + account for, and that ha is not oming they said Cook or indebted to him for any matter or thing orhatever, but on the contrary that altho the said Cook is maletad to him in a large amount for services randered by him for which he has repeatedly snight payment of said

Coole, that this offiant has never fear able to get any money from him, The afficient may appointed. Deputy of Said Corke in March 1850. has accepted Said Officer at the solutation of said Corte, and the said Corte to induce this afficient to accept said appointment of ared to marrant to fun that has should receive of 1000 for his part of the few for the year. That this affaint during the year did the great part of the business of the office. Dummoning of mas, and attending Comband Derving Jagrocess, and for his Dormices rendered during the time he acted as such deputy. he never has been able to obtain compansation from Sud Gaok, X That the money collected on the execution against Johnson in Javor of Clapp, set forth in the declar oration, mas all baild over by this affiant, according to the order of said Corte, and this affiant never oratained or received any portion thereof unless it may have been his parties of the few . That the bail Corte is individed to this affiant. in a larga sum of money, for one half of all the services of forous made by him, and also his commissions on the amount of taxes collected by him, as appears by tragreculato rentrias on the tas lists + also for other services, and said Cook has never baid these althorrepeadly reque sted & to do by this appears.

and this affiant really fel viewes that the said 41 Coole is justly indebted to lum in the amount of at least Dix Houndred Dollars, over above every offset or dain of said Cook against him aforesaid doft Stata + Smean that there is no foun dation in right or justice for the judgment rendered in the said suit adainst him in favor of said Coole, that he doth not one the said Cook a single sollar. and has committed no default mouved no lian - filety to the said Cook malaver apon said official bond - on pon which Either have his bondsmen can be made liable. and this affigure believes that the said tydament in fraud of the rights of this affiant it his suration, and without any notice to him or to than as he is advised, and his affiant further stems, that ha has had no day in court, and no opportunity to defand against said action and that a judgment for a + very large amount has been Entered up against this affrant + his suralies. mithout a hearing and writtens the Knowledger of this affant & contrary to the right and justice of the case Snom + Subscribed Daniel & Mrod reforementis 23 day of October 1857 Oms Chinch ale, and the fell the following

In the Coole arcuit Court 42 Isaac Cook On notion to Daniel & Word Etal State of Illipoist, Country of Corte William & Burges of said County Jania duly Smoon, doth depasa and say, that has has examined the Docker of the Clube of this Court for the November Somm 1853. Shat has there finds Enlared under this cause in pencil mander a memor andum as follows. "28 Suit Dodmant of Jones 90" That said memorandum is scored on mit "percil mark, and under with the mord" Contof is contiten with pericil grante in the goroparhand maiting of Dis Hovard than the clube of this court as he is informed, and also from his knowledge of his hand morting baliavas to ba so.

Sharthis deponent is unable to find Esthar of those Entries Entered of record, + they Each lack the mark usually affixed by the clirk to Chade them off and show them Entered. That this deponent is informed and believas sud to be the casa! that it was not mor boards foractica at that time, to Enter an order for the general confinuance of a cales, c. That this deponent has examined as an as he could the Dockels of this Court since and

particularly, that of the next term of inds said cause Entered in the same order, as it was at the Novamber Som a101853, and that said Cause appears at no tima at or after build last named term, to have been off the docker until finally disposed of by judgment. That this diponents bast recollection of the impressions produced super his mind from his interrians with buil Damed galarged to in his Jonner affidavit in this Casar is that the Said Samuel had not tean paid anything for his Sarvices + myndd not ach any longer in the Caser but mished this deponent not to take action until be, said Damed, Could hear from Said Wood, and advisa him so that hamight employ ofter Counsal, too allusion mas made by him to the suit Evan being desmissed, Subscribed reminito before mathis 28 day of Ochthar Mo Burgas

april 1851 Mrs Amel Isaac Orle Corte & Oir Count October Dem US 1887 (Interface a State of Illinois ; [12471-22] D' Ho Winston being duly smom

daposas and Ray. Hear during the years 1854 and 1855. he mas connected in turiness with Mafons 44 Judd & Stranck, and that said from of Auddand atterney of Isaac Cook plaintiff in aborg Entitled Cause, and had the sole and orchegina Charge. as such attorneys, of said suit, and this deponent further states. That during the mola, time above stated (as this deponent baliavas) Said casa stood on the dockat of Said Court, upon demuning to the Declar Each and every term of Court during said tima, and that this deponent was frequently in Court at the time and times when said case was called, and that this deparent answered for said plain - liff, and they defoudants Counsel for squid defon - dank, and this albonish further states that has taken has taken that & Barned Esgr. mas on a of said defondants Counsal and that he answard for baid of defendants. at one or more temps of said Court during the time aforesaid, and this deponent further states that ha is quite populira and cer I tain, that said causarmas never dismissad from the dockat of said Court during the time aforesaid for mant of prossecution or for any other cause, but that the same stord cregularly on said docket as before stated Subscribed to i Shorm beforeme? I do Moslon this of Holay of Ochobar 1857 Semis to Devis. Noture Public

Isaac Coole ) In Coole County arount Court Daniel & World and others ER Hooper having fran first duly smorn states. that according to the best of his recollection and bedrif hymris employed as coun - see by the plaintiff in the above entitled suit at the term of said Court in which said cause mas stricken from the docker, and that as such counsel he aided to have said cause reinstated upon the Docket of Said Court, Shar after said cause mas ore-instated has attended to it for several terms, and convarsed with & Barned coer Gunsel for the da - Jandanto, in regard to the Sama, that have garded Said Samed, a coursel for the defondants, and never heard him say to the Contrary, norminated that had did not know that said cause, gras rains - stated, and no reason from any thing that brans - forred to suppose of turnisa, than that said Darnyl So considered himself, Surther this deponents at Arrom r Subsonibed to feel over ERWorpen methis 28th day of Och 1834 Den John Duray tha Mulary Partic 112471-23

Cook Circuit Court I saw Cook Danial & Word Ehres) Corte County 89 droman Boudd bring duly smym saith. that he was one of the atterney yor the plant who material the above suit and this deponent Feliavas that they long ohn Milon, mas his partner orher tha sint mas brought, that after Judge Wilson cras Efected Judga, Vegny Frink He came a painer of this deponent, and the puil or as looked after by the said or me. This deponent recollects that Mr Frinte, stated to him or returning from Court, one day that the docker had later a turn and the above causa with sayaral others had bean dismissed, but that he had got them crainstated, and this da forent is of the impression. that Mr Sprime had the order dismissing the Cause set aside and the course creinstated, That this deportent has no recollection of gran after hearing of any dismissal of Said Causa Durscribada Smorato Palorar (mathis 31 Pday of October Denis Vo David Molany Public

and non on this 9th day of thorambar and 1851 + during this October 3 orm this motion came on to be heard up on they said affidavils. 47 toras argued by Coursal the Court famer July advised in the foremises, sustains said motion order the default entered in this cause to by obened + the subsequent procedures thereinhad to farset asida, at the cost of the defendants, to which ruling of the Court the said pof them - there excepted + tenders this his bill of exceptions to be signed + sealed by the Court in open Court Court of is done according a to the statute in such casa made sporrided Organiama Cea Sudge of J" Sudicial circur, ells. and on the 11th day of storember in the grave last aforesaid, the said defendants impleaded as a foresid filed in said Court, their certain demurrant to the amen - ded declaration of the said plainty, which is in the mords and figure following to-mit: Daniel & Word Dome? 9 Butter Martin Dodger & Over County Circuit Court Pro Bigdon: Vanny B Bay & October Vacation Serm Survivors of Mc S'allim to-mh: Nov 11th ale. 1857 e pleaded with S. E Wamitton 512471-24] Dave. Corte

and the said defendants. Wood. Butter. Dodgas 48 Bigalow. Bay. by Danned and Starrall their attornup come and defend re. and crave ager of the baid writing obligatory and conditions, and the Dame is read to them, Smorr all men by these presents that we Danial S Wood, John Modall De Butter, Martin Dodger. Pelar to Bigalow and to B Bay and & & Hoandton of the City of Chicago in the County of Cook and State of Illinois, are hald and firmly found unto Isaac Corlespariff of Cook County, in the Spenal sun of Den Thousand Dollars, to be paid to the said Isaac Cook and his legal representatives, formhick paym Sent well and truly to be made, one find our and each one his executors guid administrators jointly severally and firmly by these presents. Dealed with our seals and dated this 12th day of march 1850, . Wherea the above founder Daniel & Wood has fren appointed by said Isaac Cook, to the office of deputy speriff, in and for said country of cook, non therefore the condition of the above obligation is such. that if the said Danied & Word as such deputy Sparcely as aforasaid shall faithfully discharge all the duties prequired of him as such deputy sheriff, and shall sava said Isaac Corb and his legal representations hamiles. from all easts and damage on account of or by reason of any for all acts of baid deputy as such deputy or by color of his said office. then the obligation shall be void Otherwise to remain in full

force and virtue. 49 Daniel & Word Sea Somme Sall (sea) 18 9 Butter Sea Martin Dodge 600 Getar Wordigator (Dea) 26 Hamitten Dea Deal and say that the amended declaration and the matters therein centained in mannar and form as the Same are above stated and sel-forth, are not suff icient ni lan for the said plaintiff to have or maintain his aforesaid action thereof against the said defan auto, are not found by lanto anomar the same, And this thay are ready to praify, mharafore by reason of the insufficiency of the said amended declaration, in this tehall the said defendants fray judgment, and that the said plaintiff may be found se Darmed + Darmall attyp for above named Dafts and the Pffjoins in Domumar Bugus from and aftermands to mit artha March Dermof said Ourt to mit on the 15th day of March al. 1858. the following, among other, proceding mera had was entered of record therein, to wit. 112491-25]

Laac Corte Daniel & Word John me S'all Domin & Butter. 5187 Dar Martin Dodga, Petar Vo Bigdon, lo B. Bayrand Thomas & Wamilton parties by their attorneys. and the Court being mall advised in the said defendants demumar to the first second and third breaches assigned in said plaintiffs declaration. Overrules said deprumer as to the fight breach and sustains it as to the second and third breaches, Whereupon said plaintiff elects. to stand by the breaches arrighed in his said declaration, and on motion, ordered that said defendants plead to said declaration by Showday Morning. and aftermands, to-mit; at the same term of baid Court to-mit: on the 16th day of Maich in the grave last aforesaid the following, among other, proceedings mare had and entered of recort therein Gaar Corter Daniel Sword John M. S'all & Webt Sorin 9 Butta, Martin Dodger Peter Vo Bigglow. Ho B Bays and Shoma & Hamitten

rule to plead, be extended in this cause until april first: 57 Gove araut Court March Sorm as. 1858 Stata of Illinois Iss Corte Orinty Is D. SWood. Sorin & Butter Martin Dodge Felor do Bigalow, + 2013 Bay, survivors. Fads. Isaac Corle of John no Stall impleaded mit E. Wamidton and the said above named defendants, by Darmed + Darmel tyrightomis, come and defaud the moring and injury, when to, and up to the said morting obligatory in the said first breach of said declaration mentioned, says that the said supposed monting obligatory, is not their dud, and of this they put themsalvas upon the Country; "and the Pff doth the like } By their attorneys Burned & Starmell And for a further plea to the said finch assigned breach in said declaration set forthery leave of the Court to, the said defendants say actio non, because they say that the said Danigh Nood while such deputy sheriff did in all things during the continuance of his said appointment, faithfully discharge all the duties required of him as such 212471.26] deputy. and did saver the Said Leaur Cook, harm

less. from all costs and damages on account of and by new or any and all acts of the baid Hood as such deputy. By color of his Office, and did not receive, or fail, neglect or rafus a to pay over the Sum of \$ 308 200 and \$ 5. costs. or any other sum orpon an Execution issued out of the Cook County Court of Common Pleas upon a judgment recor - arged in said Curry by William B Clapp. vs Joseph Johnson on the 19th day of may all 1850, as in said Girst freach in baid declaration assigned, alledged and of this they put thenselves upon the Country? + the Pf doth the like } By their attyp
Burges for Pf } Samed + Samrall and for a further plea to the said first assigned breach in said declaration set forth by leave a Court oc. the said defendants Say action on. Grecausa they say that the Said Danial & Wood, deputy shoriff as aforesaid. in manner and form as afore said. did not recaire or fail reglect or reque to pay over the sum of \$ 3" 82" + \$ 5. Costs. or any other sum upon an execution, issued out of the Cook County Bourt of Common Reas. up on a judgment recovered in Said Court by William B clapper oseph Johnson on the 14th day of May, 1850, as in said final, theach assigned in said declaration is alleged, and of this they put themselves up on the County; the fell doth the like ? By their attorney Burges of Pf & Durned & D'annall

Isaac Cook 5.3 Daniel & Wood Soring Buttle. Martin Dodge & DEH Peter W Bigelow. HoB Bay Survivor of John Mc S'all impleaded with DE Wamidton and aftermards, to-rule, white april term, of said Court to-mir: on the 26th day of april had and entered of record therain, to ret. Isaac Oork Daniel & Wood Soring Butter. Martin Dodger > Debh Pelan do Big alon. To B Bay Survivors of John no Scall mipleaded with SE Hamdler This day again comethe said of arting by their attorneys, and by stipulation in writing filed therein, a Jury is raived, and said cause submitt Jed to the Court of or trial report the issues joined between the parties: And afterwards. to-mot at the D'etruary special Damof Said Court to mot: on the 17th day of Debruary in the year Last aforesaid. the following proceedings, among ofters, were had and antered of record therain, to-mit: 212471-27

Laac Cork Daniel & Word Doring Butter, Martin Dodge - Well Pro Bigalow Ho B Bay survivors of John me S'all impleaded with S & Houndton This day again comes the said plaintiff by William & Burges Esy his attorney, and the said defendants impleaded to. by Samuel and Samuelthin attorney also come, and said cause having been, by the etipulation of the parties heretofore filed therain, but mitted to the Court for trial, upon the issues joined, and a jury waired, and the bour having heard the able gations, and proofs submitted, and arguments o counsel, and being fully advised in the promises, dothe find the issues aforesaid for said plaintiff:

Whyreupon, said plaintiff oright to have Ed recover of the said Defendants, Daniel & Hovel, Sorin Q Butter, Martin Dodge Peter to Bigelow and Sols - Bay survivors of John me Sall impleaded with Shomas & Hamilton, his debt of Den Styrsand Dollan in his declaration therein mentioned, And the Court non here assesses the plaintiffs damages. In reason of the treach of the Bind, finetassigned in his daid, de claration, to the sum of. On a loundred and Shirty Seven Dollars and Sevan Cents, the bourt that the said plaintiff do have and

recover of the said Defendants. Daniel & Word Sorin ay Butter, Martin Dodge, Poler Ho Bigalow and World Brown Stall impleaded with Shomes & Sou Show and Dollar Shomes & Damitton. Hat sum of Son Shows and Dollar his debh africand together with his costs and charges by him in that behalf expended, and that he have Execution therefor; and that said Execution be satisfied upon bayment of the sum of One Houndred and Shirty savan Dollars and seven Cents the damages, by the lourh aforesaid assessed, with interest therein and all coster:

of the state of Alliers of April Jenn 1839 Isaac Cook Pff in cron Daniel J. Wood Lovin G. Error to Cook Butter. Martin Docep. P. H Bijalow Henry B. Bay. Sur vivosof I metall impladed with J. E. Harrelton And now comes the said Plaintiff in error by Mr. I Prujet his Altoney Isays that in the record this cucuify aforesard there is manifest and matinal error appearing of rent in this I That the coul allours the defin dants to fele additional affidair to un Support of their motion to dit asion the piaguent. 2' That the court est aside the pragment by default and subsequent procuding theren had 3 that the court sustained the demenus to Defendantsastothe 2° & that Braches assegned in the Naus 4 that the progress of the court blow was for the sejentants in creer 512471-29] upon said demuries

whenfor they mays that the said pidgment of the Johnay Special Lenn AS, 1859. Atta orders selding asede Raid polyment by default of and the fruit pi cepricul thionen & subsequent proceedings may be remses arrivally and altogether holden for naught the restored de M. J. Bryt Suprene Court. 3 Grend Drusien April dern Ad 1859 Dewe Flind Herry 18 Bay Louis. G. Porter Marlew Dvage O. H Bigalem drinnis of I de Fale impleaded with J. E. Hamillan-Isaac: Cerk And now come the said A defendant of E.C. Samed their Altery and sog Mar there is no euro. in the receid & Jefment. A afrencied - I fry to he have dumped med Met cell Is Elfamel, for West in ling

State of Illinois, county of cook.

J. 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 in a certain cause lately pending in said Court on the Common law side thereof, wherein Vaae Cool was Plaintiff and

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

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United States of America, STATE OF ILLINOIS, County of Cook,

Pleas before the Honorable George Manierre, 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, at a Special Term thereof begun and held at the Court House in the City of Chicago, in said County, on the second Monday of February, (being the fourteenth day of February,) in the year of our Lord one thousand eight hundred and fifty-eight, and of the Independence of the United States the eighty-third, in pursuance of an order made and entered of record, at a former term of said Court, to wit: at the November Term, and on the thirty-first day of December in the year of our Lord one thousand eight hundred and fifty-eight; which said order is in the words and figures following, to wit:

Ordered, That a Special Term of the Circuit Court of said County, for the trial of civil and criminal causes, be and the same hereby is appointed to be held at the Court House in the City of Chicago, on the second Monday of February next, being in the year one thousand eight hundred and fifty-nine:

And it is further ordered, That the Clerk notify the Supervisors of said County of the appointment of said Term, with a request that the said Supervisors cause jurors to be summoned to attend upon said Term as required by law.

Present: Honorable George Manierre, Judge of the Seventh Judicial Circuit of the State of Illinois; Carlos Haven, States Attorney; John Gray, Sheriff of Cook County.

Attest: WILLIAM L. CHURCH, Clerk.

Be it remembered, that heretofore, to wit: on the 21st day of November, A. D. 1851, Isaac Cook, by Judd & Winston, his attorneys, sued out of the office of the Clerk of the Court aforesaid the People's 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, ss. COOK COUNTY,

The People of the State of Illinois to the Sheriff of said County, Greeting: We command you that you summon Daniel T. Wood, John McFall, Lorin G. Butler, Martin Dodge, Peter H. Bigalow, H. B. Bay and Thomas E. Hamilton, if they shall be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be holden at the Court House in Chicago, in said County, on the first Monday of December next, to answer unto Isaac Cook in a plea that they render to the said Cook the sum of ten thousand dollars, which they owe to and unjustly detain from him, to the damage of the said plaintiff as he says in the sum of ten thousand dollars, and have you then and there this writ with an endorsement thereon in what manner you executed the same.

Witness: Louis D. Hoard, Clerk of our said Court, and the seal thereof, at Chicago, this 21st day of November, Anno Domini, 1851.

L. D. HOARD, CLERK.

And afterwards, to wit, on the 21st day of November, in the year last aforesaid, the said writ was returned into the Court aforesaid, by said Sheriff, endorsed as follows, to wit: Served by reading to Daniel T. Wood, John McFall, Lorin G. Butler, Martin Dodge, P. H. Bigalow, H. B. Bay, Nov. 21, 1851. Thomas E. Hamilton cannot be found.

10

WM. L. CHURCH, SHERIFF, by MICHAEL REGAN, Deputy.

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Larred Burgof - herform all the driter of The Shiff. Must not the Ceroner performable the Juties of Shoff, on the Scatt of The Off: " ret comes he called the Cares And afterwards, to wit: on the day and year last aforesaid, to wit: on the 21st day of November, A. D. 1851, the said plaintiff, by his said attorneys, filed in the Court aforesaid his certain declaration, which was afterwards refiled as amended November 17th, A. D. 1856, and which, with the amendments thereto, is in the words and figures following, to wit;

# CIRCUIT COURT OF COOK COUNTY.

STATE OF ILLINOIS, ss.

6

Of the December Term, in the year of our Lord one thousand eight hundred and fifty-one.

Isaac Cook, late Sheriff of said Cook County, plaintiff in the suit, by Judd and Wilson, his Attorneys, complains of Daniel T. Wood, John McFall, Lorin G. Butler, Martin Dodge, Peter H. Bigalow, H. B. Bay, T. E. Hamilton, defendants in this suit, of a plea that they render to the said plaintiff the sum of ten thousand dollars, which they owe to and unjustly detain from him.

For that whereas, the said defendants, heretofore, to wit: on the twelfth day of March, in the year of our Lord one thousand eight hundred and fifty, at the City of Chicago, in said County of Cook and State of Illinois, by their certain writing obligatory sealed with their seals, and now shown to the Court here, the date whereof is the day and year last aforesaid, acknowledged them selves to be held and firmly bound unto said plaintiff by the name, style, description, title and addition of Isaac Cook, Sheriff of Cook County, in the sum of ten thousand dollars, above demanded, to be paid to the said Isaac Cook and his legal representatives, when they the said defendants should be thereunto afterwards requested, which said writing obligatory, was and is subject to a certain condition there underwritten to the effect following, that is to say:

Whereas, The above bounden Daniel T. Wood has been appointed by said Isaac Cook to the office of Deputy Sheriff, in and for the said Countv of Cook. Now, therefore, the condition of the above obligation is such, that if the said Daniel T. Wood, as such Deputy Sheriff as aforesaid, shall faithfully discharge all the duties required of him as such Deputy Sheriff, and shall save said Isaac Cook and his legal representatives harmless from all costs and damages on account of, or by reason of, any and all acts of said Deputy as such Deputy, or by color of his said office, then this obligation shall be void, otherwise to remain in full force and virtue.

Yet the said plaintiff in fact saith, that after the making of the said bond, and while the said Daniel T. Wood was Deputy Sheriff as aforesaid, he did not in all things during the continuance of his said appointment faithfully discharge all the duties required of him as such Deputy Sheriff, and did not save said Isaac Cook, late Sheriff as aforesaid, harmless from all costs and damages on account of, and by reason of, any and all acts of said Deputy as such Deputy, and by color of his said office; but, on the contrary, after the making of the said bond, and while the said Daniel T. Wood was Deputy Sheriff as aforesaid, to wit: on the seventeenth day of May, in the year of our Lord one thousand eight hundred and fifty, a judgment was recovered in the Cook County Court of Common Pleas, in favor of William B. Clapp and against Joseph Johnston, for the sum of three hundred and eighty dollars and twenty cents and five dollars costs, upon which judgment an execution was issued out of the said Cook County Court of Common Pleas, directed to the Sheriff of Cook County to execute. And the said plaintiff further saith, that the said defendant Daniel T. Wood, as Deputy Sheriff as aforesaid, received the said execution and by virtue of the same, to wit: on the first day of August, in the year of our Lord one thousand eight hundred and fifty-one, collected and received the full amount of said judgment and costs from the said Joseph Johnston, defendant in said execution as aforesaid, which said sums of money he, the said Daniel T. Wood, Deputy Sheriff as aforesaid, failed, neglected and refused to pay over. And the said plaintiff further saith, that on the seventh day of November, in the year of our our Lord one thousand eight hundred and fiftyone, a motion was made in said Court of Common Pleas for an order to compel said Isaac Cook, late Sheriff as aforesaid, to pay the money so collected by said Wood, Deputy Sheriff as aforesaid, and interest thereon, to said William B. Clapp, plaintiff in said execution as aforesaid, and thereupon afterwards, to wit: on the day and year last aforesaid, such proceedings were had in said matter that the said plaintiff, to wit: Isaac Cook, late Sheriff as aforesaid, was ordered to pay over to said plaintiff in said execution mentioned, to wit: to William B. Clapp, the balance of the money so collected by the said defendant Wood, Deputy Sheriff as aferesaid, with interest at the rate of twenty per cent. per annum from the time of collection until the same is paid;

And said plaintiff further saith, that said balance, with twenty per cent. per annum thereon as aforesaid, amounted on the seventh day of November, in the year of our Lord one thousand eight hundred and fifty-one, to one hundred and forty-six dollars and sixty cents;

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And the said plaintiff further saith, that upon the entry of the said order upon the records of the said Court of Common Pleas, and upon notice thereof he did pay over to the said William B. Clapp the sum of one hundred and forty six dollars and sixty cents, the balance due on the said judgment. And for assigning a further breach of the condition of said bond, according to the form of the statute in such case made and provided, said plaintiff says that the said Daniel T. Wood, Deputy Sheriff as aforesaid, after the making of his said bond, and during his continuance in office as Deputy Sheriff as aforesaid, did not in all things faithfully discharge all the duties required of him as such Deputy as aforesaid, and did not save said Cook, late Sheriff as aforesaid, harmless from all costs and damage on account of, or by reason of, all acts of said Deputy as such Deputy, or by color of his said office; but, on the contrary, after the making of the said bond, and while the said Daniel T. Wood was Deputy Sheriff as aforesaid, the said plaintiff being Sheriff of said County of Cook, during the year of our Lord eighteen hundred and fifty, and ex-officio Collector of State and County taxes, assessed for the year eighteen hundred and forty-nine; the list of taxes for the year last aforesaid, (and also the list of taxes for the years eighteen hundred and forty-six, eighteen hundred and forty-seven, eighteen hundred and forty-eight and eighteen hundred and forty-nine,) duly assessed, was delivered to him, said plaintiff, as such Collector, for collection; and afterwards, to wit: on the twelfth day of April, in the year Eighteen Hundred and Fifty, he, said plaintiff, Collector as aforesaid, delivered to said defendant Wood, as Deputy Sheriff as aforesaid, a large amount of said taxes, to wit: six thousand four hundred and forty dollars and thirty-four cents, to be collected or returned to him, said plaintiff, as Sheriff as aforesaid.

And the said plaintiff avers that said defendant, Daniel T. Wood, collected the said last mentioned sums of money for taxes as aforesaid, as Deputy Sheriff as aforesaid, and that he has neglected and refused, and still does neglect and refuse, to pay said sum or any part thereof to said plaintiff, as Sheriff as aforesaid.

And the said plaintiff further avers, that, as Sheriff as aforesaid, he, said plaintiff, accounted for and fully paid said taxes so collected by said Wood, as aforesaid, to the said County of Cook and said State of Illinois, according to the amount due said County and State respectively, according to the assessment aforesaid;

And for assigning further breach of the condition of said bond, according to the form of the statute in such case made and provided, said plaintiff says that the said Daniel T. Wood, after the making of his said bond, and during his continuance in office, as Deputy Sheriff as aforesaid, did not in all things faithfully discharge all the duties required of him as such Deputy as aforesaid, and did not save said Cook, late Sheriff as aforesaid, harmless from all costs and damages on account of, or by reason of, all acts of said Deputy as such Deputy, or by color of his said office; but, on the contrary, of making of his said bond, and while the said Daniel T. Wood was Deputy Sheriff as aforesaid, the said plaintiff being Sheriff of said County of Cook during the year eighteen hundred and fifty, and ex-officio Collector of State and County Taxes assessed for the year eighteen hundred and forty-nine, the list of taxes for the year last aforesaid, duly assessed, was delivered to him, the said plaintiff, as such Collector, for collection, and afterwards, to wit: on the twenty-second day of July, in the year eighteen hundred and fifty, he, said plaintiff, collector as aforesaid, delivered to said defendant Wood, as Deputy Sheriff as aforesaid, a large amount of said taxes, the four hundred and forty-one dollars and twenty-two cents, to be collected and paid to said Cook, or to return to him, said plaintiff, as Sheriff as aforesaid; and the said plaintiff avers that said defendant, Dauiel T. Wood, collected the said sum of money for taxes as aforesaid, as Deputy Sheriff as aforesaid, and that he has neglected and refused and still does neglect and refuse to pay said sum or any part thereof to said plaintiff, as Sheriff as aforesaid. And the said plaintiff further avers, that as Sheriff as aforesaid, he, said plaintiff, accounted for and fully paid said taxes so collected by said Wood, as aforesaid, to the said county of Cook and said State of Illinois, according to the amounts due said County and State respectively, according to the assessment aforesaid. By reason of which said breach, the said writing obligatory has become forfeited, and thereby an action hath accrued to the said plaintiff, to have and demand of and from the said defendants the said sum of ten thousand dollars above demanded. Yet the said defendants have not, although often requested so to do, as yet paid the said sum of money above demanded, or any part thereof, but hitherto have wholly neglected and refused so to do, and still do refuse to pay the same or any part thereof, to the damage of said plaintifi of ten thousand dollars, and therefore he brings this suit, etc.

JUDD & WILSON, Atty's for Plaintiff.

Know all men by these presents, that we, Daniel T. Wood, John McFall, L. G. Butler, Martin Dodge, Peter H. Bigalow, H. B. Bay and T. E. Hamilton, of the City of Chicago, in the County of

Cook and State of Illinois, are held and firmly bound unto Isaac Cook, Sheriff of Cook County, in the penal sum of ten thousand dollars, to be paid to the said Isaac Cook and his legal representatives, for which payment, well and truly to be paid, we bind our, and each one his executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 12th day of March, 1850.

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Whereas, the above bounden Daniel T. Wood has been appointed by said Isaac Cook to the office of Deputy Sheriff, in and for said County of Cook, now therefore, the condition of the above obligation is such that if the said Daniel T. Wood, as such Deputy Sheriff as aforesaid, shall faithfully discharge all the duties required of him as such Deputy Sheriff, and shall save said Isaac Cook and his legal representatives harmless from all costs and damage on account of, or by reason of, any and all acts of said Deputy as such Deputy, or by color of his said office, then this obligation shall be void, otherwise to remain in full force and virtue.

DANIEL T. WOOD,	L.S.
JOHN McFALL,	L.S.
L. G. BUTLER,	L.S.
MARTIN DODGE,	L.S.
PETER H. BIGALOW,	L.S.
H. B. BAY,	L.S.
T. E. HAMILTON,	L.S.

And afterwards, to wit: on the 8th day of December, in the year last aforesaid, the said defendants, by Larned and Hayes, their attorneys, filed in the Court aforesaid their certain demurer to the declaration of the said plaintiff, heretofore filed in said cause, which is in the words and figures following, to wit:

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STATE OF ILLINOIS, ss.

COOK CIRCUIT COURT.

December Term, A. D. 1851.

$$\left. \begin{array}{c} \text{Isaac Cook,} \\ vs. \\ \text{Daniel T. Wood, } \textit{et al.,} \end{array} \right\} \text{Debt on Bond.}$$

And the said defendants, by Larned and Hayes, their attorneys, come and defend, &c., and crave over of the said writing obligatory and condition, and the same is read to them:

Know all men, by these presents, that we, Daniel T. Wood, John McFall, L. G. Butler, Martin Dodge, Peter H. Bigalow, H. B. Bay and T. E. Hamilton, of the City of Chicago, in the County of Cook and State of Illinois, are held and firmly bound unto Isaac Cook, Sheriff Cook County, in the penal sum of ten thousand dollars to be paid to the said Isaac Cook and his legal representatives, for which payment, well and truly to be paid, we bind our, and each one his, executors and administrators, jointly and severally, firmly by the presents.

Sealed with our seals, and dated this 12th day of March, 1850.

Whereas, the above bounden Daniel T. Wood has been appointed by said Isaac Cook to the office of Deputy Sheriff, in and for said County of Cook; now therefore, the condition of the above obligation is such, that if the said Daniel T. Wood, as such Deputy Sheriff as aforesaid, shall faithfully discharge all the duties required of him as such Deputy Sheriff, and shall save said Isaac Cook and his legal representatives harmless from all costs and damage on account of, or by reason of, any or all acts of said Deputy, as such Deputy, or by color of his said office; then this obligation shall be void, otherwise to remain in full force and virtue.

DANIEL T. WOOD,
JOHN McFALL,
L. G. BUTLER,
MARTIN DODGE,
PETER H. BIGALOW,
H. B. BAY,
T. E. HAMILTON,

[L.S.]

And say that the said declaration, and the first, second and third assignments of breaches severally, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have and maintain his aforesaid action thereof against the said defendants, and they, the said defendants, are not bound by law to answer the same, and this they are ready to verify, wherefore, by means of the insufficiency of the said declaration in their behalf, the said defendants pray judgment, and that the said plaintiff may be barred, &c.

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By their attorneys, Larned and Hays, and for cause of special demurrer, in conformity with the statute in such case made and provided, the said defendants assign the following:

- 1, The said declaration is bad from duplicity.
- 2. The said declaration is bad because the respective breaches therein mentioned are not set out in distinct counts.
- 3. Because the breaches mentioned in the said declaration are not set out with sufficient particularity.
- 4. The statement of the 2d and 3d breaches in said declaration is insufficient for the reasons following:
- 1. It assigns as a breach the non-payment of tax lists for years prior to the time of the execution of the said writing obligatory and prior to the said Wood's appointment to the said office of Deputy Sheriff.
  - 2. The allegations in the first assignment of a breach are repugnant to each other.
- 3. It assigns, as a breach, the non-payment of taxes on the tax list for the year eighteen hundred, a period being antecedent to the said defendant's said appointment.
  - 4. The allegations in the 2d and 3d assignments of breaches are insensible and repugnant.
  - 5. It does not specify what taxes were given to the said defendant Wood to collect.
- 6. There is no explicit averment in the 2d and none in the 3d assignment of breaches of the assessment of the taxes, the lists of which are charged to have been received by said defendant.
- 7. It does not specify what taxes collected by the said defendant Wood he has neglected to pay over to the said Cook.
  - 8. Don't allege delivery of warrant with the tax lists.

By their Atty's,

E. C. LARNED, S. S. HAYS.

And afterwards, to wit: at the November Term of said Court, to wit: on the 17th day of November, A. D. 1856, the following proceedings, among others, were had and entered of record therein, to wit:

ISAAC COOK,
vs.

D. T. Wood, J. McFall, L. G. Butler,
Martin Dodge, P. H. Bigalow, H.
B. Bay, and T. E. Hamilton.

Now came on to be heard the demurrer, heretofore filed by the defendants, by their attorneys, to the declaration of the plaintiff; which demurrer, after argument, is sustained by the Court, and, on motion of the plaintiff's attorney, leave is granted him by the Court to amend his declaration; and, on motion, the defendants have leave to plead by Wednesday morning.

And afterwards, to wit: at the April Term of said Court, to wit: on the 13th day of April, A. D. 1857, the following proceedings, among others, were had and entered of record therein, to wit:

ISAAC COOK,
vs.

D. T. Wood, J. McFall, L. G. Butler,
Martin Dodge, P. H. Bigalow, H.
B. Bay and T. E. Hamilton.

This day comes the said plaintiff, by his attorney, and suggests to the Court the death of the said defendant J. McFall, and due personal service of process of summons issued in this cause having been had on said defendants, D. T. Wood, L. G. Butler, Martin Dodge, H. B. Bay and P. H. Bigalow only; and they being three times, severally, solemnly called in open Court, came not, nor does any person for them, but herein they make default; which, on motion of said plaintiff, is ordered to be and it hereby is taken and entered of record. Wherefore said plaintiff ought to have and recover of the said defendants D. T. Wood, L. G. Butler, Martin Dodge, P. H. Bigalow and H. B. Bay, impleaded with T. E. Hamilton, his damages herein sustained by occasion of the premises, and thereupon reference is had to the Court to assess the same herein hereafter.

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And afterwards, to wit: at the same Term of said Court, to wit: on the 30th day of May, in the year last aforesaid, the following, among other, proceedings were had and entered of record therein, to wit:

ISAAC COOK,
vs.

D. T. Wood, J. McFall, L. G. Butler,
Martin Dodge, P. H. Bigalow, H.
B. Bay and T. E. Hamilton.

This day comes the said plaintiff, by Farnsworth and Burgess, his attorneys, and the default of the said defendants D. T. Wood, L. G. Butler, Martin Dodge, P. H. Bigalow and H. B. Bay, having been heretofore, to wit: on the 13th day of April last passed, taken and entered of record, and a reference then had to the Court to assess said plaintiff's damages herein, wherefore said plaintiff ought to have and recover of said defendants, D. T Wood, L. G. Butler, Martin Dodge, P. H. Bigalow and H. B. Bay, impleaded with T. E. Hamilton, his debt in this declaration mentioned, to the sum of ten thousand dollars; and the Court having heard the allegations and proof submitted by said plaintiff, and being fully advised in the premises, assess said plaintiff's damages herein by occasion of the breaches of condition of the said bond assigned in the declaration to the sum of fifty-three hundred and eighty-two dollars and seventeen cents. Therefore, it is considered that said plaintiff do have and recover of the said defendants, D. T. Wood, L. G. Butler, Martin Dodge, P. H. Bigalow and H. B. Bay, impleaded with T. E. Hamilton, his debt of ten thousand dollars, in form aforesaid, together with his costs and charges by him in this behalf expended, and have execution therefor, and that said execution be returned satisfied in full upon the payment of the damages aforesaid assessed, with interest and costs.

And afterwards, to wit: at the October Term of said Court, to wit: on the 9th day of November, in the year last aforesaid, the following proceedings, among others, were had and entered of record therein, to wit:

ISAAC COOK,

vs.

DANIEL T. WOOD, LORIN G. BUTLER,

MARTIN DODGE, P. H. BIGALOW,
HENRY B. BAY, Survivors of John
McFall, inpleaded with T. E. HamTON.

And now, on this day, come on to be heard the motion of the said defendants to open their default entered in said cause upon affidavits filed, and was argued by counsel; and the Court being fully advised in the premises, sustains said motion and orders the default entered in said cause to be opened, and all subsequent proceedings thereon had set aside at the costs of the defendants, to which ruling of the Court the said plaintiff, by his attorney, now here, excepts and prays the Court here to sign his bill of exceptions; and it is further ordered, that he be allowed ten days to file his bill of exceptions.

And afterwards, to wit: on the 12th day of November, in the year last aforesaid, the said plaintiff, by William T. Burgess, his attorney, filed in the office of the Clerk of the Court aforesaid his certain Bill of Exceptions, which is in the words and figures following, to wit:

### IN THE COOK CIRCUIT COURT.

ISAAC COOK,

vs.

Daniel T. Wood, L. G. Butler, Martin Dodge, P. H. Bigalow, H. B.
Bay, Survivors of John McFall, impleaded with T. E. Hamilton,

Of October Term, A. D. 1857.

STATE OF ILLINOIS, ss.

Be it remembered, that on the 18th day of September, A. D. 1857, the said defendants presented to the Hon. George Manierre, Judge of this Court, in vacation, an affidavit, of which the following is a copy:

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## COOK COUNTY CIRCUIT COURT.

Daniel T. Wood, et al, ads.
ISAAC COOK.

Suit rer.
Judgm't Rendered, May 30th, 1857, for debt, \$10,000.
Damages, \$5,382 17-100, and costs.

STATE OF ILLINOIS, ss.

Henry B. Bay, one of the defendants in the above entitled suit, being duly sworn, says that some three or four years since, he was informed by the defendant Wood that this suit had been dismissed for want of prosecution, and that he, Wood, had received a letter from E. C. Larned, Esq., the attorney employed to defend this suit, which stated that he had got the suit dismissed, with which letter was a bill from said Larned for his services, which letter and bill the affiant has seen; that this affiant, relying upon such statement gave no further attention to the matter, and heard nothing further about such suit, until about the middle of July last passed, when George Anderson, Deputy Sheriff, informed this affiant that he had an execution against this affiant issued on the judgment rendered in this suit.

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This affiant further says, that immediately after learning such fact from Anderson, this affiant called on counsel to take the necessary steps to set aside such judgment and execution, and called at the office of said Larned to see him on the subject, but was not able to find him, and was told he was absent from the State and would not return until about the 1st day of October next; that this affiant was also informed that his Honor Judge Manierre was absent from the city; that at the earliest moment after learning of the return of said Judge, this affiant has caused this affidavit to be drawn in order to apply to have such judgment and execution set aside.

This affiant further says, upon information and belief, that the proceedings on the part of the plaintiff, by which said judgment was obtained, were not had in good faith, but were irregular and fraudulent as against the defendants, and were without their knowledge and without notice to said defendants; that at the November Term, 1853, an order was granted by his Honor Buckner S. Morris, that the said should be dismissed for want of prosecution, and a memorandum was made to that effect, on his docket, which memorandum some one has since then erased, but, as this affiant believes, without authority.

This affiant further says, that the defendants in said suit have, each and every one of them, a good defence to said suit on the merits, as the affiant verily believes.

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And this affiant further says, that the Sheriff has, by virtue of said execution, levied upon personal property of this affiant sufficient in value to satisfy said execution, and has advertised the same to be sold on the 22d day of September inst., and will proceed to sell unless proceedings are stayed by this Honorable Court.

This affiant further says, that the defendant Wood resides in Lee County, and so far distant that his affidavit cannot be conveniently obtained in time for this application, but said Wood has informed this affiant that there was a good defence to said suit on the merits, and that there was nothing due from him to said plaintiff, but that on the contrary there was a balance due from the plaintiff to Wood, on his accounts as Deputy Sheriff, which statement of said Wood the affiant believes to be true.

н. в. вач.

Sworn to before me this 17th day of September, A. D. 1857.

WM. L. CHURCH, Clerk.

And thereupon the said Judge endorsed thereon an order in the words and figures following, namely:

On the within affidavits let the execution therein mentioned be stayed until further order, and no further proceedings be had thereon.

GEORGE MANIERRE,

Снісадо, Sept. 18, 1857.

Judge 7th Judicial Circuit, Ills.

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That there was served on Wm. T. Burgess, the attorney of record for said plaintiff, on the 19th day of September, 1857, a notice, of which the following is a copy:

#### COOK COUNTY CIRCUIT COURT.

DANIEL T. WOOD, et al., ads.
ISAAC COOK.

Please take notice that at the next term of this Court, to be holden at the Court House in the City of Chicago, on the second Monday of October next, on the opening of the Court, or as soon thereafter as counsel can be heard, a motion will be made on behalf of the defendants against whom judgment was entered in this suit, that such judgment and the execution issued thereon be set aside, or for such other further or different order as the Court shall deem meet; which motion will be founded on the records and papers on file in this suit, and on the affidavit of which the foregoing is a copy.

Yours, &c.,

GOODRICH, FARWELL & SMITH,

Dated Sept. 19th, 1857.

Att'ys for Defendants.

To WM. T. BURGESS, Esq., Att'y for Plaintiff.

That on the 12th day of October, A. D. 1857, and during the present term of this Court, the said Burgess filed the affidavit following, viz:

IN THE COOK CIRCUIT COURT.

ISAAC COOK,
vs.
DANIEL T. WOOD, et al.

STATE OF ILLINOIS, county of cook.

Isaac Cook, the said plaintiff, being duly sworn, says that the knowledge he has of the matters which were in controversy in this suit is principally derived from J. N. Purdry, who was sworn as a witness in this case, on the assessment of the damages, and who had principal charge of the matter, and James Fitsimmons, his clerks; and from their statements the amount of the recovery in this cause is correct, he believes. That he has no knowledge that this suit was ever dismissed, and does not believe that such ever was the case. That if any entry of the kind ever was made by the Judge, it was either a mistake, or was vacated during the same term it was made by the agreement of counsel.

I. COOK.

Sworn to and subscribed before me this 12th day of October, 1857.

Moses Hallett, Notary Public.

### IN THE COOK CIRCUIT COURT.

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ISAAC COOK,

vs.

Daniel T. Wood, L. G. Butler, Martin Dodge, P. H. Bigalow, H. B.

Bay, Survivors of John McFall, and impleaded with T. E. Hamilton,

STATE OF ILLINOIS, ss

William T. Burgess, an attorney at law of said County, being duly sworn, doth depose and say, that on or about the first day of November, A. D. 1856, he was retained by said Cook to prosecute this suit; that, as this deponent was informed, the counsel who preceded him in the management day of June, 1856; of this case was Henry Frink, Esq., who departed this life on or about the that on examining the state of the record, he, this deponent, found a demurrer to the declaration not disposed of; that he either sent to be left, or left himself, at the office of Arnold, Larned and Lay, directed to E. C. Larned, Esq., a member of that law firm and one of the attorneys for the defendants in this cause, a written notice of the time he should call up the demurrer for argument; that said demurrer was called up afterwards and on the 17th day of November, A. D. 1856, by this deponent, said Larned not appearing to argue, and sustained by the Court; that this deponent thereupon took leave to amend, and then and there, in open Court, amended said declaration by inserting the words "and forty-eight and eighteen hundred and forty-nine," and handed the said declaration so amended to the Clerk of the Court to file, and applied for and obtained a rule upon the defendants to plead to the declaration as amended; that immediately upon entering said rule, according to the best recollection of this deponent, he sent a note to Mr. Larned informing him of the fact, and

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a few days afterwards he saw him, said Larned, personally and advised him what had been done in this case; that said Larned in reply applied to this deponent to extend the time of the rule to plead until he could hear from and advise with said Wood, at the same time stating that said Wood had not been to see him lately about the suit; that he was living out in the country near Chicago, the precise place he did not know; that he, said Wood, had not paid him anything, and that he, said Larned, had not received anything for his services in the cause, but did not intimate then or at any other time but that the cause was regularly on the docket and the plaintiff entitled to have it tried in its order.

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That this deponent conceded to the request of said Larned for further time to plead; that after that time had elapsed, this deponent again personally called upon said Larned and called his attention to the case; that said Larned then applied for further time, saying he had not yet heard from said Wood; that this deponent again acceded to his request and agreed to extend the time still further; that several times this deponent called the attention of said Larned to the case afterwards, and at intervals of a month or so, and after the time thus agreed upon for time to plead in had expired, until he concluded that the defendants had no real defense to the case and insisted upon their default and assessed the damages upon examination of witnesses in open Court.

And this deponent further says, that the said defendants, Martin Dodge, P. H. Bigalow and H. B. Bay, from the time of amending said declaration to the present time, resided and reside in the City of Chicago in said County, openly and notoriously, their places of residence appearing in the City Directories published and in general circulation for and in said City; that said Martin Dodge is, and was then, one of the keepers of the Sherman House, a hotel fronting upon the Court House square in said City.

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And this deponent further answering says, that he has no doubt but that if the case ever was in fact dismissed, and stated by said defendant, in his affidavit on file in this motion, that it was reinstated by agreement of counsel, because not until after the execution in this case had nearly run out did he hear of anything of the kind.

This deponent further answering says and insists, that he took every means in his power to notify the defendants' counsel in this cause of his intended action therein; that the Court several times refused to take the matter up after the plaintiff was entitled to default and judgment, and requested this deponent to notify the counsel for the defense again, which this deponent duly did; that this deponent did not suppose himself to be under the obligation of notifying the defendants personally when they had counsel acting for them in Court and they had been duly served with summons in the cause.

And this deponent further answering says, that the amount assessed in this cause is what appeared from documentary evidence, and the statement of witness or witnesses sworn and produced on the trial before the Court, to be due from said defendants to the plaintiff.

W. T. BURGESS.

Subscribed and sworn to before me this 12th day of October, A. D. 1857.

WM. L. CHURCH, Clerk.

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And the said William T. Burgess being further sworn in said cause above entitled, says that hereto attached is a copy of a notice which he has, since making the above affidavit, found among his papers; that the same is a copy of the note he sent said E. C. Larned of the rule to plead to the amended declaration; that said Larned, in his subsequent conversation, spoke to this defendant about having received such a note.

W. T. BURGESS.

Subscribed and sworn to before me this 22d day of October, A. D. 1857.

WM. L. CHURCH, Clerk.

# IN THE COOK CIRCUIT COURT.

 $\begin{array}{c} \text{Isaac Cook,} \\ vs. \\ \text{Daniel T. Wood, } \textit{et al.} \end{array} \right\} \text{Debt on Bond.}$ 

To Messrs. Larned & Hays, Att'ys for Def'ts:

Gents—We this day entered a rule in this cause, requiring you to plead to the declaration as amended therein, by Wednesday morning next, at the opening of the Court.

Yours, &c.,

Nov. 17, 1856.

FARNSWORTH & BURGESS, for Plaintiff.

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And, on the day of October, 1857, during the same term, called up the motion for disposal by the Court,

That thereupon the said defendants applied for leave to file additional affidavits, to which the plaintiff then and there objected, but the Court overruled the objection and granted to the said defendants to file further affidavits, to which ruling the plaintiff then and there excepted, which was noted.

That afterwards the said defendants filed the following affidavits:

COOK COUNTY CIRCUIT COURT.
October Term, 1857.

ISAAC COOK,

vs.

DANIEL T. WOOD, et al.

STATE OF ILLINOIS,

COUNTY OF COOK,

CITY OF CHICAGO.

SS.

Edwin C. Larned, on eath, states that he was employed several years ago, in connection with S. S. Hayes, Esq., to attend to a suit of Cook vs. Wood, et al; that a demurer was filed to the original declaration, one ground of which was, in substance, that a deputy sheriff or his bondsmen were not liable on his bond for defaults in the non-payment of taxes collected by him, this being no part of his official duty as such deputy; that the demurrer was according to his best recollection either sustained or confessed and leave taken to amend; and that the case hung along in this way for a long time, and this deponent supposed that the defaults, &c., complained of were mainly if not wholly on account of tax collections, and that the suit would not be further prosecuted, and is of impression that he conversed with Mr. Judd about it and told him there was no use to keep it on the docket; after it had remained in this condition for one or two years, this affiant is of the impression that when it was called in the order of the docket by Judge Morris, a long time since, that this affiant had it dismissed for want of prosecution, and he is advised by said Wood that he received a letter from this affiant apprising him that it had been so dismissed; and this affiant further wrote said Wood to request him to pay him for services, &c.

This affiant considered his connection with the case ended at that time, and has no further knowledge of it, or how it came again on the docket.

This affiant remembers an application made to him by W. T. Burgess in reference to the case, and his asking Burgess if that old thing had come up again, and his informing Burgess that he did not deem that he was any longer in the case, and did not intend to act as counsel in it; that he considered his connection with it ceased a long time since, but he would like to have time to write to Wood, so that he could employ counsel to attend to it.

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That this affiant did accordingly, to his best recollection and belief, write Wood, directing the letter to Wheeling, Ill., which was the last place he knew of his residing in, and heard nothing further from him; and when again applied to by the clerk of said Burgess about the case this affiant replied that he had heard nothing from Wood, that he did not know whether he was alive or dead, or where he was to be found, and that he considered his connection with the case had long ceased, and advised said clerk to see S. S. Hayes, Esq., who had originally acted as counsel in the cause, and who might still be in correspondence with Mr. Wood.

That this affiant did not like to prejudice Mr. Wood by assuming to act in any manner, and did not feel authorised to appear or to act further, and so advised Mr. Burgess' clerk.

That this affiant never was employed by any one but Wood in the original suit, and had no remembrance of there being any other parties defendant but Wood when he was spoken to by Burgess and his clerk about the case.

That this affiant never made any agreement to vacate the order dismissing said suit, and had no knowledge of said order being vacated, or the time it was vacated.

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That the said Burgess was not the original attorney for plaintiff, but N. B. Judd, Esq; and this affiant was not aware of any action being taken in the case at all, or that it was intended further to prosecute until notified by Burgess, nor had he any knowledge how or why the case was continued on the docket after such dismissal, or whether a new suit had been instituted, or what was the condition of the case at any time after said order of dismissal.

That no amended declaration was ever filed in the cause up to the time that it was dismissed to this affiant's knowledge, nor was he ever notified of any being filed to his knowledge or remembrance until he received the notice from Burgess referred to.

This affiant has some recollection of his procuring the order for dismissal, but such recollection is not strong enough to enable him to swear positively to it independently of his letter to Wood and the entry on the docket, but if, as he is advised by said Wood, he wrote him he had obtained such an order, this affiant would have no doubt that he did so.

EDWIN C. LARNED.

Subscribed and sworn to before me this 22d day of October, A. D. 1857.

CHAS. A. GREGORY, Notary Public.

COOK CIRCUIT COURT. Oct. T., 1857.

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STATE OF ILLINOIS, ss.

In the matter of the application of D.
T. Wood to set aside judgment in the case of

ISAAC COOK,
vs.
D. T. Wood, et al.

Daniel T. Wood, on eath, states that he is a defendant to the above entitled suit; that a suit was instituted against him sometime in the year 1851, by said Cook, and he employed E. C. Larned and S. S. Hayes, Esqs., to defend for him.

That subsequently, and sometime in the year 1855, he received a letter from said Larned advising him that said suit had been dismissed for want of prosecution, which letter this affiant handed to Grant Goodrich, Esq., and the same is now in his possession but has been mislaid by him; that subsequent to the receipt of the letter, this affiant informed Henry B. Bay that said suit had been dismissed, and also Martin Dodge another of the defendants; that subsequent to the receipt of said letter advising him of said dismissal of said case this affiant never heard anything more of the matter, or knew that any suit was pending against him until he was advised, sometime in August last, that a judgment had been obtained and execution issued thereon; that this affiant had no knowledge that there was any case against him in Court, and supposed the whole matter ended and required no further attention from him.

That he never was served with any new process or any notice of any new proceedings or had knowledge of the same in any manner or form.

That this affiant has, as he is advised and verily believes, a good and sufficient defence to said suit on the merits; that the action is brought on a bond given by this affiant with the other defendants as sureties, which is dated the 12th day of March, 1850, and is given to indemnify said Cook against the default, &c., of this affiant as such deputy sheriff; that all the default against this affiant alleged by said Cook in said declaration of which any evidence was offered consisted as he is advised in alleged failures to pay over money collected on tax lists put into his hands for collection; that the only lists on which this affiant made any collections, which acting as such deputy, were those of 1848 and 1849.

That, shortly after, this affiant met Mr. Bently, who was acting for Cook in all collection of taxes, presented a lot of tax receipts, some signed and some not signed, accompanied by a list of them, with a receipt at the bottom for this affiant to sign, advising this affiant that he was to collect and pay over the money, and the amount paid was to be credited to him; this affiant in attempting to collect said taxes found that in many cases the parties had receipts for the same taxes given him to collect from Cook—a Pendry and Fitz Simmons; this affiant often brought people to Cook who had such receipts, and Cook often told this affiant that these were old taxes and his clerks had been careless, and that he wished this affiant to do the best he could with them; and this affiant did so and collected all he could on said tax receipts, and paid all over which he collected.

That, subsequently and sometime in 1850, the Board of Supervisors called upon said Cook for a settlement of the tax lists; that a committee was appointed by said board to investigate the matter.

That said Cook then desired of this affiant that he should go before the committee and end the whole matter by swearing that all taxes which had not been collected were not collectable; that the parties could not all be found, which was true, and that such as could be found were not able to pay, which was untrue in part; this affiant refused to do so, but went before the committee and showed to them what taxes this affiant could not collect and swore to the same, the tax receipts for which were either left with the committee or taker by Cook, and the affiant has seen nothing of them

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since; subsequently the said Cook himself made oath that the balance of the taxes not collected were not collectable, and thereupon the committee reported that the amount collected for the tax list of 1848

 Was
 473
 99

 And the balance of tax list was insolvent
 512
 96

 The tax list of 1849, collected
 6436
 77

 Uncollected and insolvent
 1196
 60

That the Collector reported treasury receipts for all amounts collected, except commissions and bills, &c., and recommended that the Clerk execute the proper papers to the Collector according to the above returns, which this affiant believes was done, and this ended the whole of this affiant's connection with the tax collections, except that this affiant often tried to get said Cook to pay him for his services in collecting what he did collect, and which is credited to him in the list.

And this affiant further says that he never received a dollar in said tax receipts, or by way of collection of taxes, for either of said years 1848 and 1849 which he did not pay over, not even retaining his commissions or charges for collections.

And this affiant saith, that he never collected any money for said Cook on any accounts whatever, during the whole time of his connection with said Cook, which he failed to pay and account for; and that he is not owing the said Cook or indebted to him for any matter or thing whatever, but on the contrary, that although the said Cook is indebted to him in a large amount for services rendered by him for which he has repeatedly sought payment of said Cook, that this affiant has never been able to get any money from him.

That when this affiant was appointed deputy of said Cook, in March, 1850, he accepted said said office at the solicitation of said Cook, and the said Cook to induce this affiant to accept said appointment offered to warrant to him that he should receive \$1000 for his part of the fees for the year; that this affiant, during the year, did the great part of the business of the office, summoning, fines, and attending Court and serving process, and for his services rendered during the time he acted as such deputy, he never has been able to obtain compensation from said Cook.

That the money collected on the execution against Johnston in favor of Clapp, set forth in the declaration, was all paid over by this affiant, according to the order of said Cook; and this affiant never retained or received any portion thereof, unless it may have been his portion of the fees.

That the said Cook is indebted to this affiant in a large sum of money, for one-half of all the services of process made by him, and also his commissions on the amount of taxes collected by him, as appears by the receipts and entries on the tax lists, and also for other services; and said Cook has never paid these, although repeatedly requested so to do by this affiant.

And this affiant really believes that the said Cook is justly indebted to him in the amount of at least six hundred dollars, over and above every offset or claim of said Cook against him.

And this affiant, upon his solemn oath aforesaid, doth state and swear that there is no foundation in right or justice for the judgment rendered in the said suit against him in favor of said Cook; that he doth not owe the said Cook a single dollar, and has committed no default and incurred no liability to the said Cook whatever upon said official bond, upon which either he or his bondsmen can be made liable.

And this affiant believes that the said judgment in fraud of the rights of this affiant and his sureties, and without any notice to him or to them as he is advised.

And this affiant further shews, that he has had no day in Court, and no opportunity to defend against said action, and that a judgment for a very large amount has been entered up against this affiant and his sureties, without a hearing and without the knowledge of this affiant, and contrary to the right and justice of the case.

DANIEL T. WOOD.

Sworn and subscribed before me this 23d day of October, A. D. 1857.

WM. L. CHURCH, Clerk.

And the plaintiff, the following:

IN THE COOK CIRCUIT COURT.

ISAAC COOK,
vs.
DANIEL T. WOOD, et al. On Motion.
STATE OF ILLINOIS,
county of cook.

William T. Burgess, of said County, being duly sworn, doth depose and say, that he has

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examined the docket of the Clerk of this Court for the November Term, 1853; that he there finds entered, under this cause, in pencil mark a memorandum as follows, "28, suit dis'd, want of pros p. c."

That said memorandum is scored out with pencil mark, and under with the word "cont'd" is written with pencil mark in the proper hand writing of L. D. Hoard, then the Clerk of this Court as he is informed, and also from his knowledge of his hand writing believes to be so.

That this deponent is unable to find either of those entries entered of record, and they each lack the mark usually affixed by the Clerk to check them off and show them entered.

That this deponent is informed, and believes such to be the case, that it was not Mr. Hoard's practice at that time to enter an order for the general continuance of a cause.

That this deponent has examined as far as he could, the dockets of the Court since, and particularly that of the next term, and finds said cause entered in the same order as it was at the November Term, A. D. 1853; and that said cause appears at no time at or after said last named term to have been off the docket until finally disposed of by judgment.

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That this deponent's best recollection of the impressions produced upon his mind from his interviews with said Larned, referred to in his former affidavit in this case, is that the said Larned had not been paid anything for his services and would not act any longer in the case, but wished this deponent not to take action until he, said Larned, could hear from said Wood, and advise him so that he might employ other counsel, and no allusion was made by him to the suit ever being dismissed.

W. T. BURGESS.

Subscribed and sworn to before me this 28th day of October, A. D. 1857.

WM. L. CHURCH, Clerk.

COOK COUNTY CIRCUIT COURT.
October Term, A. D. 1857.

ISAAC COOK,
vs.
DANIEL T. WOOD, et al.

STATE OF ILLINOIS,
county of cook.

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F. H. Winston, being duly sworn, deposes and says, that during the years 1854 and 1855 he was connected in business with Messrs. Judd & Frink, and that said firm of Judd and Frink and this deponent were the general attorneys of Isaac Cook, plaintiff in the above entitled cause, and had the sole and exclusive charge, as said attorneys, of said suit; and this deponent further states, that during the whole of the time above stated, (as this deponent believes,) said case stood on the docket of said Court, upon demurring to the declaration; that said cause was regularly called at each and every term of Court during said time; and that this deponent was frequently in Court at the time and times when said case was called, and that this deponent answered for said plaintiff and the defendant's counsel for said defendant; and this deponent further states, that he believes that E. C. Larned, Esq., was one of said defendant's counsel, and that he answered for said defendants at one or more terms of said Court, during the time aforesaid; and this deponent further states, that he is quite positive and certain that said cause was never dismissed from the docket of said Court during the time aforesaid for want of prosecution or for any other cause, but that the same stood regularly on said docket as before stated.

F. H. WINSTON.

Subscribed to and sworn before me this 27th day of October, 1857.

[L.S.] LEWIS. H. DAVIS, Notary Public.

IN COOK COUNTY CIRCUIT COURT.

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ISAAC COOK,
vs.
Daniel T. Wood, and others.

E. R. Hooper, having been first duly sworn, states that according to the best of his recollection and belief, he was employed as counsel by the plaintiff in the above entitled suit at the term of said Court in which said cause was stricken from the docket, and that as such counsel he aided to have said cause re-instated upon the docket of said Court; that after said cause was re-instated he attended to it for several terms, and conversed with E. C. Larned, Esq., counsel for the defendants, in regard to the same; that he regarded said Larned as counsel for the defendants, and

never heard him say to the contrary, nor intimated that he did not know that said cause had been re-instated, and no reason from anything that transpired to suppose otherwise than that said Larned so considered himself. Further this deponent saith not.

E. R. HOOPER.

Sworn and subscribed to before me this 28th day of October, 1857.

[L.S.] JOHN FORSYTHE, Notary Public.

#### COOK CIRCUIT COURT.

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Isaac Cook,
vs.
Daniel T. Wood, et al.

Norman B. Judd, being duly sworn, saith, that he was one of the attorneys for the plaintiff who instituted the above suit, and this deponent believes that the Hon. John M. Wilson was his partner when the suit was brought; that after Judge Wilson was elected Judge, Henry Frink became a partner of this deponent, and the suit was looked after by said Frink.

This dependent recollects that Mr. Frink stated to him on returning from Court one day that the docket had taken a turn and the above cause with several others had been dismissed, but that he had got them re-instated; and this deponent is of the impression that Mr. Frink had the order dismissing the cause set aside and the cause re-instated.

That this deponent has no recollection of ever after hearing of any dismissal of said cause.

N. B. JUDD.

Subscribed and sworn to before me this 31st day of October, 1857.

[L.S.] LEWIS H. DAVIS, Notary Public.

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And now, on this 9th day of November, A. D. 1857, and during this October Term, this motion came on to be heard upon the said affidavits, and was argued by counsel, and the Court being fully advised in the premises, sustains said motion and orders the default entered in this cause to be opened, and the subsequent proceedings thereon had to be set aside, at the cost of the defendants, to which ruling of the Court the said plaintiff then and there excepted, and tenders this, his bill of exceptions, to be signed and sealed by the Court, in open Court, this 13th day of November, A. D. 1857, in open Court, and it is done according to the statute in such case made and provided.

GEORGE MANIERRE, [L.S.] Judge of 7th Judicial Circuit, Ills.

And on the 11th day of November, in the year last aforesaid, the said defendants, impleaded as aforesaid, filed in said Court their certain demurrer to the amended declaration of the said plaintiff, which is in the words and figures following, to wit:

DANIEL T. WOOD, LORIN G. BUTLER, MARTIN DODGE, P. H. BIGALOW, HENRY B. BAY, Survivors of Mc-FALL, inpleaded with T. E. HAMIL-TON,

ads. Isaac Cook. COOK COUNTY CIRCUIT COURT.

Of October Vacation Term.

To-wit: Nov. 11th, A. D. 1857.

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And the said defendants, Wood, Butler, Dodge, Bigalow, Bay, by Larned and Farwell, their attorneys, come and defend, &c., and crave over of the said writing obligatory and conditions, and the same is read unto them.

Know all men by these presents, that we, Daniel T. Wood, John McFall, L. G. Butler, Martin Dodge, Peter H. Bigalow and H. B. Bay and T. E. Hamilton, of the City of Chicago, in the County of Cook and State of Illinois, are held and firmly bound unto Isaac Cook, Sheriff of Cook County, in the penal sum of ten thousand dollars, to be paid to the said Isaac Cook and his legal representatives, for which payment well and truly to be made we bind our and each one his executors and administrators, jointly, severally and firmly by these presents. Sealed with our seals, and dated this 12th day of March, 1850.

Whereas the above bounden Daniel T. Wood has been appointed by said Isaac Cook to the office of Deputy Sheriff, in and for said County of Cook; now therefore, the condition of the above obligation is such, that if the said Daniel T. Wood, as such Deputy Sheriff as aforesaid, shall faithfully discharge all the duties required of him as such Deputy Sheriff, and shall save said Isaac Cook and his legal representatives harmless from all costs and damage on account of or by reason of any

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or all acts of said Deputy as such Deputy, or by color of his said office, then this obligation shall be void, otherwise to remain in full force and virtue.

DANIEL T. WOOD,	[L.S.]
JOHN McFALL,	L.S.
L. G. BUTLER,	L.S.
MARTIN DODGE,	L.S.
PETER H. BIGALOW,	L.S.
H. B. BAY,	L.S.
T. E. HAMILTON,	L.s.

And say that the amended declaration, and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendants, are not bound by law to answer the same.

And this they are ready to verify, wherefore by reason of the insufficiency of the said amended declaration, in this behalf the said defendants pray judgment, and that the said plaintiff may be bound, &c.

LARNED & FARWELL, Att'ys for above named Defts.

And the plaintiff joins in demurrer.

BURGESS, for Plaintiff.

And afterwards, to wit: at the March Term of said Court, to wit: on the 15th day of March, A. D. 1858, the following, among other, proceedings were had and entered of record therein, to wit:

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This day comes the said parties, by their attorneys, and the Court being well advised in the said defendants' demurrer, to the first, second and third breaches assigned in said plaintiff's declaration, overrules said demurrer as to the first breach, and sustains it as to the second and third breaches; whereupon said plaintiff elects to stand by the breaches assigned in his said declaration; and, on motion, ordered that said defendants plead to said declaration by Thursday morning.

And afterwards, to wit: at the same term of said Court, to wit: on the 16th day of March, in the year last aforesaid, the following, among other, proceedings were had and entered of record therein, to wit:

ISAAC COOK,

vs.

DANIEL T. WOOD, JOHN MCFALL, LORIN
G. BUTLER, MARTIN DODGE, PETER H.
BIGALOW, H. B. BAY AND THOMAS E.
HAMILTON.

Ordered that the rule to plead be extended in this cause until April first.

COOK CIRCUIT COURT. March Term, A. D. 1858.

STATE OF ILLINOIS, cook county.

D. T. Wood, Lorin G. Butler, Martin Dodge, Peter H. Bigalow, and H. B. Bay, Survivors of John McFall, impleaded with T. E. Hamilton.

And the said above named defendants by Larned and Farwell, their attorneys, come and defend the wrong and injury, when, &c.; and as to the said writing obligatory in the said first breach of said declaration mentioned, says that the said supposed writing obligatory is not their deed, and of this they put themselves upon the country.

By their Attorneys,

LARNED & FARWELL.

And the Plaintiff doth the like.

BURGESS, for Plaintiff.

And for a further plea to the said first assigned breach in said declaration, set forth by leave

of the Court, &c., the said defendants say, actio. non., because they say that the said Daniel T. Wood, while such Deputy Sheriff, did in all things during the continuance of his said appointment, faithfully discharge all the duties required of him as such Deputy, and did save the said Isaac Cook harmless from all costs and damages on account of and by reason of any and all acts of the said Wood, as such Deputy, by color of his office; and did not receive or fail, neglect or refuse, to pay over the sum of \$308 20 and \$5 costs, or any other sum upon an execution issued out of the Cook County Court of Common Pleas upon a judgment recovered in said Court by William B. Clapp vs. Joseph Johnson, on the 17th day of May, A. D. 1850, as in said first breach in said declaration assigned, alleged; and of this they put themselves upon the country.

By their Att'ys,

LARNED & FARWELL.

And the plaintiff doth the like.

BURGESS, for Plaintiff.

And for a further plea to said first assigned breach in said declaration, set forth by leave of court, &c., the said defendants say, actio. non.; because they say that the said Daniel T. Wood, Deputy Sheriff as aforesaid, in manner and form as aforesaid, did not receive, or fail, neglect or refuse to pay over the sum of \$308 20-100 and \$5 costs, or any other sum upon an execution issued out of Cook County Court of Common Pleas, upon a judgment recovered in said Court by William B. Clapp vs. Joseph Johnson, on the 17th day of May, 1850, as in said first breach assigned, in said declaration is alleged; and of this they put themselves upon the country.

By their Attorneys,

LARNED & FARWELL.

And the plaintiff doth the like.

BURGESS, of Plaintiff.

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ISAAC COOK,

vs.

Daniel T. Wood, Lorin G. Butler,

Martin Dodge, Peter H. Bigalow,

MARTIN DODGE, PETER H. BIGALOW, H. B. Bay, Survivors of John Mc-Fall, impleaded with T. E. Hamil-TON.

Town of said Court to wit: on the 26th day of April

And afterwards, to wit: at the April Term of said Court, to wit: on the 26th day of April, A.D. 1858, the following proceedings, among others, were had and entered of record therein, to wit:

ISAAC COOK,

vs.

DANIEL T. WOOD, LORIN G. BUTLER,

MARTIN DODGE, PETER H. BIGALOW,

H. B. BAY, Survivors of John McFALL, impleaded with T. E. HAMILTON.

This day again come the said parties by their attorneys, and by stipulation in writing filed therein a jury is waived and said cause submitted to the Court for trial upon the issues joined between the parties.

And afterwards, to wit: at the February Special Term of said Court, to wit: on the 17th day of February in the year last aforesaid, the following proceedings, among others, were had and entered of record therein, to wit:

ISAAC COOK,

vs.

Daniel T. Wood, Lorin G. Butler,

Martin Dodge, P. H. Bigelow, H.

B. Bay, Survivors of John McFall,
impleaded with T. E. Hamilton.

This day again comes the said plaintiff, by William T. Burgess, Esq., his attorney, and the said defendants impleaded, &c., by Larned and Farwell, their attorneys, also come; and said cause having been, by the stipulation of the parties heretofore filed therein, submitted to the Court for trial, upon the issues joined, and a jury waived, and the Court having heard the allegations and proofs submitted, and arguments of counsel, and being fully advised in the premises, doth find the issues aforesaid for said plaintiff.

Whereupon, said plaintiff ought to have and recover of the said defendants, Daniel T. Wood, Lorin G. Butler, Martin Dodge, Peter H. Bigalow and H. B. Bay, survivors of John McFall, impleaded with Thomas E. Hamilton, his debt of ten thousand dollars in his declaration therein men-

tioned; and the Court now here assesses the plaintiff's damages, by reason of the breach of the bond first assigned in his said declaration, to the sum of one hundred and thirty-seven dollars and seven cents.

Therefore, it is ordered and considered by the Court, that the said plaintiff do have and recover of the said defendants, Daniel T. Wood, Lorin G. Butler, Martin Dedge, Peter H. Bigalow and H. B. Bay, survivors of John McFall, impleaded with Thomas E. Hamilton, the sum of ten thousand dollars, his debt aforesaid, together with his costs and charges by him in that behalf expended, and that he have execution therefor.

And that said execution be satisfied upon payment of the sum of one hundred and thirty-seven dollars and seven cents, the damages, by the Court aforesaid assessed, with interest thereon and all costs.

STATE OF ILLINOIS, county of cook.

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 pleadings, papers and proceedings, had and entered of record in a certain cause lately pending in said Court on the common law side thereof, wherein Isaac Cook was plaintiff and Daniel T. Wood, et al impl'd, &c., were defendants.

In witness whereof, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this fifth day of March, A. D. 1859.

Fees for Record, \$13 50.

WM. L. CHURCH, Clerk.

# IN THE SUPREME COURT OF THE STATE OF ILLINOIS. Of April Term, 1859.

ISAAC COOK, Plaintiff in Error,
vs.

DANIEL T. WOOD, LORIN G. BUTLER,
MARTIN DODGE, P. H. BIGALOW,
HENRY B. BAY, Survivors of J. McFALL, impleaded with T. E. HAMIL-

Error to Cook Circuit Court.

And now comes the said plaintiff in error, by W. T. Burgess, his attorney, and says that in the record and proceedings and judgment aforesaid, there is manifest and material error appearing of record in this:

- 1. That the Court allowed the defendants to file additional affidavits in support of their motion to set aside the judgment.
  - 2. That the Court set aside the judgment by default and subsequent proceedings thereon had.
- 3. That the Court sustained the demurrer of the defendants to the second and third breaches assigned in the Narr.
  - 4. That the judgment of the Court below was for the defendants in error upon said demurrer.

Wherefore, the said plaintiff in error prays that the said judgment of the February Special Term, A. D. 1859, and the orders setting aside said judgment by default, and the final judgment thereon and subsequent proceedings, may be reversed, annulled and altogether holden for naught, and be restored, &c.

W. T. BURGESS, for Plaintiff in Error.

Cook UB Modelals Alstrast, Fred Spil 19. 1859 Letens Clark

Supreme Court State of Schinis D' Provd, Ho B Bay et al ads Jaac Cook

The first two errors a pigned in the Record are as follows 1st That the Court all med the defendants in Error to file additional affidavits in support of their motion to set aside the default.

2. That the Court set aside the default first rendered in the suit.

These are grounds which can not be apigned for error in this bourt. They seek to review the action of the bourt whon matters of discretion in regard to which this bourt has frequently held that no error could be apigned.

Harrison vs blaske. I Seam. 131
Gamer vs breushaw " " 143.
Woodneff vs Tyler 5 Isil 457. Do 169.
Morrison vs Silverburgh. 13 dll. 551.

The overruling the motion to set aside the default does not come within the Statute paped July 21.1837, authorsing exceptions to be taken to the opinions and decisions of the loircuit bourt over ruling motions in arrest of Judgement for new trials and continuances."

Wallace vs Jerome. 1 Seam 524.

a distinction is however sought to be made so far as the second Error is concerned - that the default was set aside at a subsequent term from that at which it is rendered, and that the bourt have no power to set aside a Judgement at a subsequent term.

So far as this case is concerned I am unable to perceive that the question whether the default was properly set aside or not has any importance. The defendant upon being admitted to plead filed a general Demurrer Mich was sustained. If the Declaration contained no cause of action upon its face, it would have been reversed upon a mit of error to this bourt, and of course the Judgement of the bourt will be affirmed on that ground alone. If the Demurrer was improperly over ruled, then of course that will be sufficient ground of reversal in itself.

as a matter of practice however the point is one of some importance and deserving of being considered and settled in this cause.

We do not understand that there is any legal obstacle to the exercise of the power of the bourt to set aside a Judgement at a subsequent term.

The lapse of time, the allowing one or more terms to intervene between the default and the motion to set it aside is a matter which materially influences the

discretion of the bourt in the exercise of the hower, but which does not at all affect the hower itself.

In Preese. App. 6. Ken is Whiteside it appears that the Defendants default was entered at the Mar. J. 1824. Defendant moved to set aside the same March I 1825motion granted Indgement affirmed whom error to this bourt-the bourt being equally divided.

In Sloo is State Bank I Seam 428 the application to set aside the Judgement was made at the august derm 1837 - the Judgement was rendered at the may Term 1837 and the Supreme bourt held it ought to have been vacated.

In Gamer vs breushaw. I Seam. 143. the application to set aside the default was made at the second term after it was rendered. The reason which the bourt apigned for its refusal was that one term had intervened and it was objected that this reason was not a sufficient one. The bourt say that the ground for refusing the application was sufficient, but there is no intimation of any want of power in the bourt.

The motion to set aside a Judgement by default in an execution is the modern substitute for the ancient memedy by audita querela, and whenever an audita querela ela would be sustained

Com Digest Andita Querela (a) (d) Tumer vs Davis. 2 Saunders. 148. 21.

4 Burrows. 2287.

Saunders in his learned note cited supra says, The indulgence which of late has been shew hybourts of law in granting a summary relief by motion in most eases of evident oppression for which the only remedy formerly was by audita generala has occasioned this rewedy now to be seldom resorted to."

So too in this Country it has been usual to allow in motion what wened by the old law have been obtained by audita greerela

> 4 John 191-198 2 Hoile S.C. R. 298 17 Vermont, 253

The mit of audita Querela was always ifued subsequent to the term at which the Judgement was obtained and after Execution had ifued. This was in fact the ground upon which it ifued

Com Digest Tit Audita Querela (a)

2 mod 49, where two defendants are in Execution and one escapes for which the plaintiff has satisfaction - the other shall have his audita querela

Lovejoy vs Webber 10 map 101. was a case where the dudgement had been obtained and execution ifued theired

In this case the bourt say it lies after Judgement satisfied and party taken in execution and is a concurrent remedy with summary proceeding by motion.

It is the proper remedy where defendant committed

in Execution after the plaintiffs death.

10 Rickening. 439.

In 17 map 153 the Judgement was rendered nor. 5. 1818 and Execution and alias Execution ifued in it and the mit of audita guerela issued march 1819, which was sustained.

It is clear that the mit of audita operela as a general thing ifued after Judgement and Execution and was for the very purpose of considering any injury or injustice occasioned by the Judgement or Execution, and being a proceeding invariably had at a term subsequent to that at which the Judgement was rendered, by analogy and upon finiciple the remedy by motion, which by the modern fractice is substituted for it, lies to set aside a Judgement or Execution at a term subsequent to that at which the Judgement was rendered.

In South Carolina the remedy by motion has entirely superseded that by audita querela Longworth of Screven. 2 Hill. 298. Durend vs Hallock. 1 miles. 46 The express point has been ably argued and expressly decided in buchfield is Porter 3 Hammond (Ohio) 518.

This was a tile to set aside a Judgement by default of a precious term, Upon Demurer to the lile on the ground of an adequate remedy at law. The Court say "It has been contended that the principle recognised by this Court in I Ohio 375. would prohibit the Court from either setting aside or suspending the Judgement previously rendered by them unless it was done at the term it was rendered. It was decided in that case that the Court could not amend a Judgement in a sustaintial and material part at a term subsequent to the rendition of the Judgement. The Court after sustaining the new taken in that case proceed

But these objections do not exist nor can these incomveniences ever result from the bourt of bommon Pleas exercising Junsdiction in setting aside for irregularity a Judgement previously rendered. The cause mill then stand as if no Judgement had ever been entered be.

The right to set aside a Judgement by default is the sole point ruled in I well as John 2 I mes (n6/p 402. The Court say, When the Judgement is by default or interlocuting or not taken according to the Course of the Court, they are always under the control of the Court.

the defines to be one "signed by the plaintiff in the course "of the Court mithant any actual adjudication by the Court" one where by the force of some Statute "the party is entitled

" us a matter of course to his Indgement", and states that this class of Indgements is always under the control of the bourt rending it.

In Countler vs Guewar 1 Dev n. 6. 52 Indyement was entered punmanly by the Statute on the sureties on a Sheriffs Bond which was set aside at a succeeding term.

In the following cases Indgement by default was set aside at a subsequent term to that at which it was rendered. Acre v. Poss. 3 Sterr. (Mat) 288 - Dr 296.

20 Ohio 344. Reynolds vs Haustring 3 Inva 418. Barly vs Hearn 2 Harr 270. Bell vs Kelly 1 Comstrele 431. Stale v. Warren.

These authorities abundantly sustain the power of the lourt to set aside the default at the subsequent term.

Such being the case the action of the bourt is a matter of Discretion and can not be apigned for ever; but if it could it would be abundantly justified by the affidaints filed, sheiring that a Judgement has been rendered for over \$5000. in a suit in a Deputy Sheriffs brands after it had slept since six years and been once dismissed and reinstated without notice, where no new notice was given to the parties but only to any attorney who expreply stated that he was no longer

acting for the parties, and it being shewn that there is a full defense to the action whom the ments.

But whether the setting aside of the Indquient were night or many is as before stated a matter of no consequence if the decision of the bourt sustaining the general Decurrer to the Declaration be correct.

This is a suit upon the bond of the Deputy Sheriff the condition of which is as follows,

It is very clear that no suit and lie whon the bond of a Deputy Sheriff for a malfeisauce which would not lie whom the bond of a Sheriff for the sauce malfeisauce

We maintain that no suit would lie when the bond of the Sheriff for a defunct in the non collection of the taxes.

It would involve an absurdity to maintain that while the Sheriff's suraties would not be liable for his own defaleations in the non collection of the taxes, that the sureties of the Deputy Sheriff could be liable for such defulcations. The Deputy is not greater than the Chief, and the responsibilities of the subordinate certainly do not exceed those of the principal.

It is clear from an examination of the Statutes that the sureties on the bond of the Sheriff are not liable for any defulcations by him as collecter of Taxes.

The offices of Sheriff and Collecter of Taxes are two distinct offices held by the same individual

Laws 1845 page 514. Title Sheriff

Sec 2. The Sheriff to give bond to the People to be approved by the bircuit bourt at the term next after its date in the sum of \$10.000 conditioned for the fuithful discharge of all the duties required of him by law as Sheriff; also to subscribe an outh to perform the duties of his office.

Sec. 5.6. 47. Prescribe the duties of the Sheriff; (in the enumeration of duties the collection of taxes is not included)

Sec 3. This bond to filed in the Clerks office of that Court. Sec 10. authorises the appointment of Deputies. The Dep-

authorises the appointment of Deputies. The Deputies when appointed to perform any and all of the duties required of the Sheriff in the name of the Sheriff and the Sheriff in the name of the Sheriff and the Sheriff shall be liable for any neglect or omission of the duties of his office nhew occasioned by any such deputy in the same manner as for his own personal neglect. And any bind taken by the Sheriff from his deputy to indemnify such Sheriff shall be good and available.

See 15. Orrides for suing on sheriffs bonds in behalf in be-

half of any person aggineved

"sheriff of such sheriff; but such deputy may do "all acts and things which he could have done, had the

" sheriff remained in full life, until his howers be superseded " by the appointment of a principal sheriff."

See 18. In case of a vacaucy by death or otherwise, the Corner is to perform the duties of the office until the vacaucy be filled.

By the Revenue act. Rev St 1845. fi 441. See 27. "The Sheriff shall be ex officio the Collecter of Saxes and his refusal to act shall vacate his office of Sheriff.

Sec 28. p 441. Said bollecter (not Sheriff) is to give bind in a penalty of double the amount of the tax

to be by him collected

The condition of the bond is that if the above bounder a B shall perform all the duties required to be performed by him as Collecter of the country of — and when he shall be succeeded in said office surrender and deliver to his succepor all books papers and money belonging to said country or to the state te. He is also to take and subscribe an outh that he will faithfully diligently and inhartially to perform all the duties required of him by law as bollecter.

See 29. Provides that the bind when approved by the bounty

Commissioners bourt is to be entered on the records and transmitted to the Secretary of State.

See 30. Suits on Collecters bonds are to be directed by the auditor of the State when he shall deem it for the public interest, and it shall be his duty to cause suits to be commenced whenever the collectors fail for two months to settle.

See 32. The collector on receiving the apepment list is to proceed to collect the taxes.

See 74. In case of the death or removal from office of any collector the Leauty Commissioners Court appoint a succepar to continue in office until a new election.

See 99. If any collector by limself or deputy shall fail to attend any sale of lands he shall be liable te.

See 100. If any collector or clerk shall fail to pay into the State Treasury the taxes due to, he shall be liable to pay ten per cent per month

Sec 101. If the collector fails to hay, the bounty Freasurer is to deliver notice in mitting to such collector and his securities informing them that at the mext term of the birewit bourt a motion nice be made for Judgement te.

See 102. On default to pay State money, the auditor to proceed against such collector in the Supreme Court by motion for Indgement.

See 1. page 588. appendix Collectors out of office authorised to collect old taxes.

act of nor 6. 1849 p. 38. Black Stat p 1023. See 6. The collector by himself or agent shall attend at his office to neceive taxes te.

Page 144. See 13. The Supreme Court have jurisdiction in all cases against Sheriffs and all collectors of the public revenue:

Page 4417. See 70. no collector or clerk of Cauty Commissioners Court shall be concerned in the purchase of lands sold for taxes

See 11. no Sheriff, Defuty Sheriff or boroner shall be come the purchaser of any property sold on Execution.

By act of February 25. 1853 See 5, Blackwells Laws & 1085
The bind of the Collector when approved is a lieu in his
real estate. This is a sube great Can-but is ene
pair materiae and great or sheet
the distinction in the law between the lieu
opposes

By same act See 32 + 33 page 1093. In case of death of collector the blesk of the Circuit bout is to have the tax books and to appoint a sintable person to complete the collection, who is to execute a bond in same manner to.

Oblack Statules h 800: See 7.

Any person who is surely for a Sheriff may be released by filing notice with blerk of livewit bourt te, and any person who is surely for a boleector may be released by filing notice with believe of bounty born bourt.

See 8. provides for notice to Sheriff and new bind to be approved by blerk of bircuit bourt, and for notice to the bollector and new bind to be approved by blerk of liquity bounificaers bourt.

Do page 10 98. Sec 48

Gives remedy by attachment on collectors bond by sureties against collector.

Act of Felmany 17. 1851 Black St. page 1026. See 2. recognises the two offices as distinct by providing that the Sheriff shall pay money evelected by him as Sheriff to bollecter.

The act of Avr. 8. 1849, Law 1849, p 38. Duf Stats 911

4. At Dec I of Court Court the Collection shall file
a good. had to be apposed of said Court

6. The Collection of himself a his agent

Shall allend as his office in the
much of Jehrer, to receive the layer

Lec

Sec. 11. In case of the death of any collection during the time the tax his are on his hands so the clerk of the Charle Court family the ale demand and latte charge of the tax hishs of

Lee 12. In case of such racancy the Cerent Cerest may appoint a duitable person to collect the Taxes Provided block a then an antoncer of therease isotoposints

Gee. 14. If the Collecter shall fail to obtain furface at the drive Lenn of his our neglect he shall be hable for the whole amo of her tay list

originately sath latina of leastilly bear loveto

The bollector is no where authorised to appoint Deputies, or to take bonds from them.

In ease of the death of the Sheriff the Coverer succeeds
but the Deputy Sheriffs have the sauce power as before;
but the collectors becomes vucant and the learning Commissioners learn appoint a successor and take a new bond.
and such seems centimes in office and take a new bond.
The scant shelfs have same power as topice and weeper the spines
or edicin tasks has an a from the fine cloud theuper the spines
The sheriff or Deputy can not bid in lands sold on Execution. The bollecter and blerk of the bounty Commissioners bourt can not bid in lands sold at Tax sale.

The law recognises the Collector acting by himself or his agent, but nowhere ne coursises Deputy Sheriffs as Deputy Collectors.

The modes of proceeding against a defaulting Sheriff and his sureties, and a defaulting Collector and his sureties are entirely district; and the mode of a surety's obtaining a release from the official bond of Sheriff and that of Collector is distinct.

The Sheriff is directed to pay over money received by him as Sheriff in certain cases to himself as Collector, this viewing the offices as distinct as if held by two different individuals

The Law compels the Deputy Sheriff before he can act as such to take the same outh of office the Sheriff himself takes

but nowhere authorises the Deputy Sheriff to take the outh required of the Sheriff when he aprunes the office of Collector The Deputy Sheriff could not legally serve a nort until properly qualified. bear he legally assume the responsible duties of Collector of the revenue mittant qualifying himself by an outh.

The Sheriff is expressly made liable for the neglects and onificons of his deputy in same manner as for his own. If then the sureties of the deputy are liable to the Sheriff for neglect to collect taxes, then as such neglect is a neglect of the Sheriff by his deputy, by consequence the sureties on the Sheriffs bond are liable for deficiencies in the tax collection which is contradicted by the entire legislation on the subject.

The shewiff is respirible for all the official acts of his departus - and for any nonfeasance or unententimed inframes the alene is liable no can any action be mount acred against the Defut. - The said amend he against the April. - The said amend he against the April.

Ouene of atomo. 4 Both. 494, b Sheply. 279. Harryten viller 1. Mash. (Va). 159

Bac At. Jelo Sheuff = #=

The shoulf a hable andles for the acts of his deputies done under color of office whenever the de put mice he hable for the same acts.

1. Noch 271.

4 daf. 50

7 ", 123.

Som whenever the sheriff is hable the Securities for approbus sheriffs hand are liable -. Can it their be centereded that the :- sheriff hands men can be made liable for the defaults of the Deputies in not correcting the taxes. -. If he the sheriff might place the entire tax list in the hands of his Deputies and charge his smeties mite a responsibility for which the laws has princed an entirely deferent liability -

It is admitted in argument the Pheriffs secuntres are not liable for defalcations in the Collection of taxes on his how as sheriff - I follows there that they are not acts included metion a deputy shorff and - In the sheriff a his swretter are liable & law. for every default- committed of a Deputy by under color of his office - ( and the securities for the Deputy are liable pe no others hence if defaults in the taxes are act inducted under the theuff Deputy Shouffis and - they are necessary to be considered ands dene. Theuff ar sheriff and in ende case the sheriff & his securities much necessary be liable for wear - It is not punible to adopt any reasoning which makes the deputy sheriff to Lecurties liable while more not as the same time make the Theriffs securities liable - I maintain that the Defut can not commit a default-fur which his securities an legally liable - for which the Sheriff & his Sureties mored not also

From these references the following differences between the offices of Sheriff and loollector are apparent. The Sheriff gives bond to the People in the sum of \$10.000. The bolle eter gives bind to the People in double the amount of the tax list. The Sheriffs Bond is to be approved by the Circuit Court. The Collectors Bond is to be approved by the County Commissioners Court. The Sheriffs Bond is conditioned for the fuithful discharge of his duties as Sheriff. The Collectors Bond is conditioned for the discharge of the duties of his office as Collector. The Sheriff subscribes and swears an outle of office as Sheriff " Collector " " The duties of Sheriff are defined by law and the collection of tures is no part of them. The duties of bollector are defined and they consist in the collection of the revenue tc. The Sheriffs bond is to be filed with lesseuit lourt The bollectors band is to be entered of record in the bounty Commissioners Court and transmitted to secretary of State. Suits in Sheriffs bonds may be instituted by any person aggrieved by his official miscenduct. Suits on bollectors bonds are under the direction and control of the auditor of the State The Sheriff is authorised to appoint Deputy Sheriffs and take binds from them.

The following cases are cited in support of the foregoing position

When a statute imposing a tax, prescribed that a bond should be given by the collector, a suit against him cannot be maintained, to recover the amount of such tax, which he has collected, when his official bond given in hursuance of a previous statute, requiring a bond for the performance of his general duties

Waters vs State. I Gill (manyland) R. 302.

broces, and pay over moneys to "and in all things well to to execute the said office", is not broken by a neglect to collect and pay the parish taxes.

Imes vs montfort. 3 Devereux & Buttle (nbar) R. 73.

1 Supplement M.S. Dig. 315.

Isovernor vs. Birr. 1 Devereux R. 65.

Nor can the public tax be collected on his bind to collect the cuulty tax, and in all things perform his duty as Sheriff.

Gnumpler vs The Governor, 1 Dev R, 52.

Sovemor vs Mattock 1 Dev R, 214.

Amold vs Johnson, 3 Har & Mc Hen R 216.

1 Met + Perk Dig 442.

ex. - miled the Deputy become ding the

Contra a bond given by definity sheriff as definity

a definity sheriffs bond for the faithful performance
of his duty is not binding as to the collection of State and
Country taxes, in manyland, through taxes be specially
mentioned in the condition

Mus vs Johnson 3 Har + Me Hen 216. Met + Perk Dig.

In an action upon the sheaff's line in Maganie when he is ex officio certestar - as in the State had the smetter on such hand men not liable for a heads defendt in not certesting the taxes massauch as the act which made sheriffs allesters founded that brook should be given as articlas & in case of nights to selile parkedar remoder are furicled the fireman.

The obligation of sureties upon an official and has always ken street anothered and can not be extended by complication -What is the obligation into which there sure hes have enlered - . It is that hard as defruly Theriff" mile faithfull perform the duties of Quele office - here not the securities entitled to counciler that they were to be heed only for his duties in that office - and that the law. defined there duties to be such acts as the sheriff in his capacity of theriff conece perform and no others - and that althe the Theriff maght be elected to Serval other officers and made to pulpe their duties That such election mued not acter a enlarge his dukes as Deputy - Suppose the law made a sheriff eligible to the office of Mayor - a Seering Commpierer - & the People saw for to deal hew - mied the Deputy become thereby autoured to act as Mayn - a Consepience -There is no difference beto an legal effect between the People electing him and the Legislature appearating him to the office miliant any election - The office of allectie & its duties are distinct: & independent and the fact that the thereff is also apparted to that Office due not change a enlarge in any more his duties as heriff - a the duties of his departes.

The only cases se I have seen centro. are as fillers

(Atom a bound given by definity sheriff as definity
embraces a defalcation in not harying over taxes.

Jamazin vs Atkinson, 4 Bumph (Jenn) R. 4170.

Raney vs Governor, 4 Blackf (In) R. 2.

1 Sup. U.S. Dig. 320.

suby : as such - and of he most or the

that the should shall be collected and

But in Tennepee the Sheriff is the only collector, and it is a part of his official duty as Sheriff to collect 4 Yerger R 567.

Mouth thate cultist the laster. I day

I met & Perk Dig. 522.

Und in Indiana by statute "such (tax) collections shall be a part of his official duty as sheriff"

Rev Laws Indiana 1831 h 432 (Rucker)

In 4 "Jayer. the Cent sex - That the sheriff numbered on his election enters into lind po the collection of the large - and. "This hand is given a special section of a special purpose. And so in Illenos the hand is given as a dortines of peer - & to be approved of a distinct to themat, - under a destinal name of yeyer. 197. Is appears that the sheriff executes the time as sheriff to collect. In other innost the two offices are one. In other innost the two offices are

Is is said that if the court how that thee Deputy shoulf are not deputy collectors then are large paid to them are contampled paid. This is about - The Shoulf Collector may emply them as his clerks in agents and latter birds from them to secure thee fauttiful performance of their duties

The lew cuating and defining the office of theiff and defining its duties nos paned ling before the act making the Theriff Collection ... The new office out which the sheiff i compelled to enter at the same time that he enter upon his office of sheuff is no part of the duty of the office of theriff either as Commentain a & Patrile The Statute does not even say that the Theuff shall collect the laxes, it says that the Collection shall collect them and that the Shouff shall be collected and qualify. at such and of he went do this he shall not be theiff any larger. There is not a mid in the law bluck anywhere makes it any part of a sheiff dules w collect taxes - . He dies not collect We laxes as sheiff - His receifts are alung signed as allectio. - . He is not

putte taxes - It must be some in the

It is contended that the Deputy can celled the layer in the name of the Sheiff - That the law authorises hein to do anythere which the Sheiff cened do en the name of the Sheiff. - but he can not celled the layer in the name of the Sheriff for the Sheriff is not authorised & we collected them? - but only in the name of the Collected of whis own where in the name of the Deputy Sheiff use the name of the Deputy Sheiff use the name of the Collected

If the Deputy Pheirf had any former to collect the laxes he mined have that former after the death of the Pheirf for more of his formers are later acred from heir het alle of them are expressly continued - The fact that a new collecter of laxes is appointed - they nes lessen, any of his formers - If he has authorized of nitre of his office to collect laxes - he nimeles that he authorized - for the law express continues to him every former - But it is manifest this man not so considered of the Legislation on are to lay lot are later away for and given in another of ficer Colland for the first and lay lot are later away for and given in another of ficer Colland for these

112471-67

Supreme Court State of Illinis DI Wood et al Isaac Cook Defendants mitten argunent. Find Mery 13,1859 L. Leland Clark

STATE OF ILLINOIS, ss. The People of the State of Illinois,
To the Sheriff of the County of Cook Greeting:
Because, In the record and proceedings, and also in the rendition of the judgment
of a plea which was in the bircuit — Court of beach
County, before the Judge thereof, between Leave beat
plaintiff, and Daniel J. Wood, Loren G. Butter, Martin Dordge, P. H. Bigelow, H. B. Bay impleaded with Thomas Hermilton survivors of John Me Fall—
Doedge, P. H. Digelow, H. B. Bay impleaded with Thomas
Hernelton Survivors of John Me Kall-
defendant, it is said that manifest error hath intervened, to the injury of the said
Isaue book
Let IN Y BALLAND THE
as we are informed by his - complaint, - the record
and proceedings of which said judgment we have caused to be brought into our Su-
preme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct
the errors in the same, in due form and manner, according to law; Therefore, We
Command You, That by good and lawful men of your County, you give notice to the said
Daniel J. Wood Loren J. Butter, Martin Dodge, P. H. Bigel
VH.B. Bay
that they be and appear before the Justices of our said Supreme Court, at the next
term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the
third Monday in April next, to hear the records and proceedings aforesaid, and
the errors assigned, if they shall see fit; and further to do and receive what said
Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Daniel J. Wood, Loven J. Butter, Martin Dadye, L.H. Dige
while May make motice, together with this writ.
Colitness, The Hon. JOHN D. CATON, Chief Justice
of our said Court, and the Seal thereof, at Ottawa, this 27 day of Much — in the
TO THE TOTAL THE TENT OF THE T
and Fifty- wine, Leland
Lead Ledeland
Clerk of the Supreme Court.
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## SUPREME COURT OF ILLINOIS.

Third Division - April Term, 1859.

ISAAC COOK,

vs.

DANIEL T. WOOD, et. al.

Error to Cook.

#### POINTS AND BRIEF OF PLAINTIFF.

The 1st error assigned is that of allowing the defendants to file additional affidavits. This is a question of practice, and should be regulated in some way, but I am not prepared to say that it is not entirely as a question of practice in the discretion of the court below.

The 3d error, setting aside the judgment by default.

1st. As to the power of the court after the lapse of the term, when judgment was rendered. This court, in 4 Gil., 418, has held that the court has a concurrent power with a court of equity, to open and set aside judgments. It then must be done subject to the same power of revision that would be exercised if done by a court of chancery.

2. Was there a sufficient cause shown to set it aside? We claim that there was not, and that a case of gross laches was made out on their own showing.

On the 17th November, 1856, the demurrer was sustained; their counsel of record had notice; a rule was taken to plead, and he had notice of that; and on the 13th of April, 1857, a default was taken for want of a plea.

All of the defendants, except Wood, reside in the city. Notice is repeatedly given to the attorney, his attention called to the case, and no excuse whatever is given for the neglect, except that five months before default was taken, he had written to Wood and got no answer.

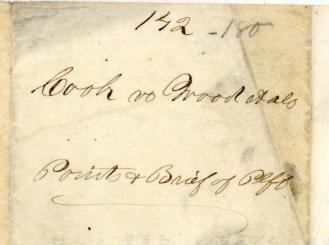
The 3d and 4th errors. The sustaining the demurrer to the 2nd and 3d breaches.

This demurrer being a general one, and to the whole Narr, if there is one good breach assigned it should have been overruled.

But taking it as a demurrer to the 2d and 3d breaches, it involves a construction of S. 10, of Act concerning Sheriffs and Coroners, page 515, R. S., and the Revenue Act, p. 441, R. S.

And we contend that as "the Deputy Sheriff is authorized to perform any and all of the duties required of the sheriff," and the revenue law imposing on the sheriff the duty of collecting taxes, therefore the deputy sheriff, as such, was, ex-officio, a deputy collector, and authorized to collect and receipt for taxes, and needed no new appointment no more than the sheriff did to authorize him to act.

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