

12637

No. _____

Supreme Court of Illinois

Orendorff, et al.

vs.

Stanberry, et al.

71641  7

93

James Orendorf Atal.

vs

William Stanbury

93

12637

1858

prepared

And now come the plaintiffs in Error herein
And say that Manifest Error in the Record,
proceedings and judgment of said Circuit
Court in this case hath intervened, to their
prejudice in this -

- 1st Said Court erred in allowing judgment of
depanelt to go against the said dependants
below - the plaintiffs in Error in this court =
- 2nd = Said Court erred in rendering judgment of
depanelt against said dependant Daniel
Crabb =
- 3rd = Said Daniel Crabb was not duly served with
process in said Cause, and not in court =
- 4th Said dependants, James Wendrop & Colley
Morris, were not duly served with process in
said Cause =
- 5th Said summons to ~~the~~ ^{Logan} County was is-
sued imprudently and is void =
- 6th The Court erred in rendering final judgment
said dependants =
- 7th Said Court erred in rendering final judgment
against said dependants, Crabb, James Wendrop
& Morris =
- 8th Said judgments are against law -

Wherefore for other good & sufficient rea-
sons appearing in said Record, ~~opp~~ the plaintiffs in
Error, pray that the judgment of said court
herein, may be set aside, reversed & wholly

for nothing esteemed:-

James

Roberts ~~vs~~

for plaintiffs in
Error

And the said respondents say
in Error come & say that within
in the record & proceedings aforesaid
now in the giving of the judgment
aforesaid if there any Error Whichever
they say that the judgment aforesaid
in form aforesaid given be in all
things affirmed by the Court now
here

A. L. Davison
for D^f in Error

1
Hear to a term of a Circuit Court
begun and held at Pekin
within and for the County of
Tazewell and State of Illinois
on the Second Monday of the
Month of October in the year
of our Lord One Thousand Eight
Hundred and Fifty Seven. Before
the Honorable James Harriott
Judge of the 21st Judicial Circuit
of the State of Illinois composed
of the Counties of Sangamon Woodford
Tazewell &c.

Be it remembered that on the 1st day of
August in the year of our Lord one Thousand
Eight Hundred and Fifty Seven William
Stanbery and John W. Casey filed their
Receipt in the words and figures following
to-wit:

"State of Illinois" } Tazewell Circuit
"Tazewell County" } Clerk to the October
" " " " Term 1857.

"William Stanbery" }
"John W. Casey" } Testimony on the Case
" " " } Supra Promises

"James Audenroff Colby Morris Damages
"John L. Audenroff Quintus \$1000⁰⁰
"Audenroff and Daniel Crabbe

2.
The Clerk will issue sum-
mons in the above case to the Sheriff of Izewell
County & Logan County returnable as above
Dated 7 August 1837

Waisson & Perkins

Defts Attys.

Amo

Now afterwards to wit, on the day and year
last aforesaid. A summons issued to
the Sheriff of Izewell County in the words
and figures following to wit:

State of Illinois The People of the State
Izewell County Esq of Illinois to the Sheriff
of Izewell County Greeting;
We command you to summon James
Orendorff, John L. Orendorff, James
Orendorff, Calvey Morris and Charles
Cralle if found in your county personally
to 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 the City
of Illinois on the second Monday of the month
of October next to answer unto William
Stankery and John M. Casey in a plea of
Assumpsit to the damage of the said
Plaintiffs as they say in the sum of Six Thousand
Dollars

25. And have you there and there this write
and make return thereon in what manner
"you recoute the same

" Witness Merrill C. Young clerk of
(S.S.) the said Circuit Court and the
" Prob. Secy of the said Circuit at Pitts-
" this 7th day of August A.D. 1837
" M.C. Young Clerk
" by W.D.A. Means S.C."

Which said write was returned into Court in
some time with the following endorsements
thereon.

" Served on John S. Mendorff and
Quintus Mendorff. by reading the within
" write to them August 2^d of the 1837
" C. Williams S.C.

Saving \$100
40 miles 200
Relates \$310 James Mendorff & Co. laury
" Morris not found in my County Oct 7th 1837
" Served on David Grant on the 8th day
" of September 1837 who attempted to avoid
" Service by concealing himself and running
" from me at the time I read this process
" to him at the place I last saw him
" C. Williams S.C.
" A.S. McKean Deputy

And afterwards twice, on the day and year last

aforesaid. a Summons issued to the Sheriff
of Logan County. in the words and figures
following to wit:

"State of Illinois & The People of the State
"Jesseville County In Illinois to the Sheriff of
"Logan County; Greeting;
"We command you to summon James
"Orendorff Calvey Morris. John L. Orendorff
"Huntis Orendorff and Samuel Crabb. if
"found in your County. personally to 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 the City of
"Pekin on the Second Monday of the month
"of October next. to answer unto William
"Stanbery and John W. Casey in a plea
"of Assumpsit to the demand of the said
"Plaintiffs as they say in the sum of One
"Thousand Dollars And Have you thereunto
"there this writ. and make return thereon
"in what manner you deem to the said
"Arthur Merrill C. Young Clerk of the
"said Circuit Court and the Seal thereof
"heto affixed at Pekin this 7th day
"of August A.D. 1837
"Wm. C. Young Clerk
"By W. Don, Marshal &c."

Which said summons was returned on the 14th day
5 of August A.D. 1837, with the following endorsement
to wit:

"Ex parte this writ August 20th 1837
"By reading to the within named James Wendorf
"Calvin Morris the within named John L.
"Wendorf. James Wendorf & Daniel Crab
"Not found in the County.
"Gas. Arming 1.00
"18 miles travel .90
"Feb \$2.00
"J. M. S. C.
"Sherriff Logan Co."

And now afterwards it is to be seen on the
24th day of December A.D. 1837 the Plaintiff
finds their Declaration in the words and
figures following to wit:

"State of Ohio Of the October Term of the
"Circuit Court of the Northwest Circuit Court
"in the year of our Lord one
"Thousand Eight Hundred and fifty seven.
"William Strawberry and John W.
"Casey Trading and doing business under
"the name and style of W. Strawberry & Co. Complain
"of James Wendorf. Calvin Morris. John L.
"Wendorf. James Wendorf. Daniel Crab
"in a plea of Assumpsit, for that whereas
"the said James Wendorf. Calvin Morris
"John L. Wendorf. James Wendorf and

"Daniel Crabbe on the twenty first day of
"October in the year of our Lords one Thousand
"Eight Hundred and Fifty six at the County
"and State aforesaid. Made their promissory
"note in writing of that date and delivered
"the same to the said W. Stansbury & Co. and thereby
"promised to pay to the said W. Stansbury & Co.
"or order jointly or severally the sum of
"Fifteen Hundred Dollars on or before the
"first day of March 1857. which period
"has now elapsed, and the said Defendant
"then and there in consideration of the
"premises promised to pay the amount of
"said note according to the tenor and effects
"thereof. And also for that whereas the
"said James M. Woodruff, Calvin Morris
"John L. Woodruff, Quintus Woodruff
"and Daniel Crabbe on the twenty first day
"of October in the year of our Lords one
"Thousand Eight Hundred and Fifty six
"at the County and State aforesaid made
"their promissory note in writing of that
"date and delivered the same to W. Stansbury
"& Co. and thereby promised to pay to the said
"W. Stansbury & Co. or order on or before the first
"day of June 1857 jointly and severally
"the sum of Twenty Nine Hundred and
"Fifty Dollars. which period has now elapsed

7 made the said James Muddorff Colley Morris
" John L. Muddorff ^{2nd} Muddorff and
" Daniel Crabt then and there in con-
" sideration of the premises promised to pay
" the amount of said note to the said W.
" Staubery & Co according to the tenors
" and effects thereof. And also for that
" whereas the said James Muddorff Colley
" Morris, John L. Muddorff ^{2nd} Muddorff and Crabt on
" the 11th day of July 1837 at the County and
" State aforesaid, was indebted to the said
" W. Staubery & Co in the sum of Six Thousand
" Dollars for the price and value of goods there
" and there ^{bargained} sold by the Plaintiffs to the defendant
" at their request, and in the sum of Six
" Thousand Dollars for the price and value of
" goods there and there sold and delivered
" by the Plaintiffs to the defendant at their
" request, and in the sum of Six Thousand
" Dollars for the price and value of work
" there and there done and materials for
" the same provided by the plaintiffs for the de-
" fendants at their request, and in the sum
" of Six Thousand Dollars for money there
" and there lent by the plaintiffs to the de-
" fendants at their request, and in the sum
" of Six Thousand Dollars for money there
" and there paid by the plaintiffs for the

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"ms. of the defendants at their request, and
"in the sum of Six Thousand Dollars for
"Money then and there received by the
"Defendants for the use of the Plaintiffs, and
"in the sum of Six Thousand Dollars for
"Money found due from the defendants to the
"Plaintiff on an account then and there
"stated between them. And whereas the
"Defendants afterwards wrote on the day
"and year last aforesaid in consideration
"of the premises then and there promised
"to pay the said several sums of money
"to the Plaintiff on request. Yet they hath
"disregarded their promises and hath
"not paid the several sums of money
"nor either of them nor any part to the
"damage of the Plaintiff Six Thousand
"Dollars and therefore they bring suit

By Wm. W. & Father, Plaintiff's Attorney,
Copy of Notes declared on.

"On or before the first day of March 1834. We
"do hereby promise to pay Mr. Stauber & Co. or order
"the sum of fifteen hundred Dollars
"October 21 1836

\$1500.

James Wadsworth
Calvin Morris
John L. Orendorff
Quintus Wadsworth
Warren C. Cady

9 "Wherefore the first day of June 1897. Wee
 "Either of us promise to pay W. Strawberry & Co
 "or order the sum of Twenty Nine Hundred
 "and Forty Dollars. James Overbort
 "October 21 Calvary Morris
 "\$2940. John. S. Overbort
 " Quintus Overbort
 " William Crabbs
 "To goods Bargained and sold \$6000
 " " " " " " 1000.
 " " " " " " 1000
 " " " " " " 1000
 " " " " " " 1000
 " " " " " " 1000
 " " " " " " 1000
 " " " " " " 1000

And now afterwards, Court, at a circuit
 Court begun and held at Chittenden
 and for the County and State of New York
 on the second Monday of the Month of
 October 1897, the 12th day of said month
 in the Year of our Lord one Thousand
 Eight Hundred and Fifty Seven, and
 on the day of said Term. Present the
 Hon. James Hamette Judge, Hugh
 Fullerton Prosecuting Attorney, Chapman
 Williams as Sheriff and Merrill C. Clegg
 And the following proceeding were had to wit:

Monday October 12. 1857

"William Stacey and

"John W. Casey

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Assumpsit

"James Madoff

"Calvin Morris

John S. Madoff

"Juntas Madoff

"Wm. Crabbs

And now on this day
 "came the Plaintiff by their attorney
 "Nathan Walker and the Defendants having
 "been regularly served with process were
 "three times solemnly called came not
 "but made default. It is therefore ordered
 "and by the Court that the Plaintiff have
 "sustained damages by reason of the breach
 "of promises in the declaration mentioned
 "but because those damages are unknown
 "to the Court the Clerk is ordered to make
 "an assessment thereof and he having
 "assessed those damages to the sum of
 "Forty Five Hundred and Sixty Dollars
 "and Eighteen cents \$456.18, and made
 "report thereof which is approved by
 "the Court. It is therefore ordered and
 "adjudged by the Court that the Plaintiff
 "recover of the said defendants the damages

13
W. Aubrey & Co
14

John Orndorff & Co

Records
11

Filed March 12, 1858

L. Leland

Clerk

by J. S. Rice Deputy

Fee \$3.25

STATE OF ILLINOIS, }

Supreme Court. }

3d GRAND DIVISION,

April Term, A. D. 1858.

JAMES ORENDORFF, *Et Al.*WILLIAM STANBERY ^{vs.} and JOHN W. CASEY. }

Error to Tazewell.

This was an action of assumpsit, by William Stanbery and John W. Casey, the Plaintiffs' below, against James Orendorff, Colvey Morris, John L. Orendorff, Quintus Orendorff, and Daniel Crab, the defendants below.

Declaration.

The Declaration contained the special counts upon promissory notes, and the usual common counts. Pages of Record, 5 to 8.

Writ to Taz. Co.

A writ was issued to the Sheriff of Tazewell county against all the defendants, upon which the sheriff made the following return :

Return of witness to Taz. Co.

Served on John L. Orendorff and Quintus Orendorff by reading the within writ to them. August 27th, 1857. C. WILLIAMSON, S. T. C.

James Orendorff and Colvey Morris not found in my county, Oct. 2d 1857. Served on Daniel Crabb on the 8th day of September, 1857, who attempted to avoid service by concealing himself and running from me at the time I read this process to him at the place I last saw him. Page of Record 3. C. WILLIAMSON, S. T. C.
N. H. MCKEONE, Deputy.

Writ to Logan Co.

A writ was also issued to the Sheriff of Logan County, against all the defendants, which writ is in the words and figures as follows to-wit :

STATE OF ILLINOIS, } *The People of the State of Illinois, to the Sheriff of Logan*
Tazewell County. } *County, Greeting :*

We command you to summon James Orendorff, Colvey Morris, John L. Orendorff, Quintus Orendorff and Daniel Crabb, if found in your county, personally to 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 the city of Pekin, on the second monday of the month of October next, to answer unto William Stanbery and John W. Casey in a plea of assumpsit to the damage of the said plaintiffs, as they say in the sum of six thousand dollars ; and have you then and there this writ, and make return thereon, in what manner you execute the same.

Witness, M. C. Young, clerk of the said Circuit court and the Seal thereof, hereto [Seal.] affixed at Pekin, this 7th day of August A. D. 1857. M. C. YOUNG, clerk.

Page of record 4.

By DON W. MAUS, D. C.

Upon which writ the Sheriff made the following return, which is in the words and figures as follows to-wit :

Return of writ to Logan Co.

Executed this writ August 20th, 1857, by reading to the within named James Orendorff and Colvey Morris, the within named John L. Orendorff, Quiutus Orendorff and Daniel Crabb, not found in the county. Page of record 5. G. MUSICK, Sheriff Logan co.

Judgment.

A judgment by default was rendered against the defendants below for \$4560.18. Page of Record 10. JAMES ROBERTS, *Att'y for Plaintiff.*

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Orendoff Et al

vs

Stenberg Et al

Filed Mar 12, 1857

L. Leonard
Clerk

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Supreme Court 3rd Grand
Division April Term 1888

James Orendorff & al.
Plffs in Error

vs
William Stauber &
John W. Casey
Defls in Error

Points for
Defls in Error

The plaintiff in error seeks to reverse
this judgment upon two grounds
First the insufficiency of the Sheriff's
return, and Secondly the informality
of the writ sent to the Co. of Logan
where part of the Defls resided

As to the Defendant Daniel Crabb, the
Sheriff of Tazewell returns that he served
it on him, on the 8th Sept 1887 that
Crabb attempted to avoid service by
concealing himself & running from the
Sheriff at the time the Sheriff read the
same to him — This is all that can
be required of the Sheriff his return
shows that he commenced to read the
Summons to Crabb, and that Crabb
thereupon ran and hid himself —
It seems to me that he did in

this case all he could be required to do it was his duty to notify the deft. of the pendency of the action by reading to him the process; but it would be unreasonable to require the Sheriff to make the defendant hear the ^{read} process if he was determined not to do so — Indeed the thing would be physically impossible, unless the Sheriff should in all such cases first arrest and bind the deft.

When the Sheriff finds the deft. & commences to read the process to him fairly with the intent to make him know the contents of the writ, it then becomes the duty & interest of the deft. to be made acquainted with its contents and if he runs or hides he does so in his own wrong & ought not to complain — If he really is ignorant of the nature of the process it is his own fault & by no means the fault of the officer —

It is also objected to the return that it does not appear when the process was served — The Sheriff

is directed to the Sheriff of a
particular County and therein
he is commanded to Summon the
deft if found in his County - The
proper officer under his official
signature returns the process served
on a particular day - He had no
right to serve the process in any
other County and when he returns
as sheriff that he has served it,
the intendment is that he did so
in the Co, where he might lawfully
do it & not else where -

The return is in the form
universally used as far as I know

But this objection if there was
any reason for it comes too late
It should have been made if at
all in the Circuit Court where
the omission of the Sheriff to state
the place of service might have
been supplied by amending his
return -

The objection that the writ
issued to Logan Co. was returnable
in the Circuit Court of that County
is wholly unfounded as will appear
by inspection of the writ on the

printed abstract. The venue of
the writ, indicating the County
& State in which the suit is
brought is in the usual place
& form and shows that the Court
from which the process issued was
the Cir. Court, of Tazewell Co.

As to the objection that
the writ sent to Logan contained
the names of all the depts. This is
conceived to be the right practice and
expressly authorized by our practice
act, Section 2.

The case relied on
by the plff in error, 3 Ark. Rep
which holds a contrary doctrine
is put upon the ground of the
Statute of that State expressly requiring
that the Sum. when sent to different
Counties should only contain the
names of the defendants residing in
the County to which the writ
should be sent. This practice
regulated by the Arkansas Statute
is a clear innovation upon the

Common law practice which
has not been adopted by our
Statutes & ought not to be by
our Courts vide Black Key at page
128.

A. L. Davison

The objection that it does not
appear when the writ sent to
Logan was served is also without
the least foundation, as will appear
by reference to the printed abstract
The words of the return as to the
time are "Executed this writ August
20th 1857"

A. L. Davison
for Deft in Error

James Orendoff
 vs. Piffin

by

Stanbery Healey

Argument for
 Deft in Error

Filed May 1st 1858

S. Ireland
 CLK

State of Illinois } 3^d Grand Division
Supreme Court } April Term 1858

James Brundoff et al }

v.

William Stordy and

John W. Casey }

Argument for
Plaintiffs in Error

1st We insist that the judgment
against the Defendants by default
was ~~erroneous~~ erroneous

1st The return as to Crabb was
so uncertain as to leave it in
doubt whether the writ was
personally served or not. In
fact the fair inference from this
~~return~~ ^{is} ~~instruction~~ that the officer read
the writ when he last saw Crabb
and did not read the writ to
him at all. Now when the
officer states in so many terms
that he has served the writ by
reading, in proper time and
place, and the return is false the
party has his remedy against

the officer but in this the return is so uncertain, so ambiguous, as to prohibit any such writ for the reason that we cannot show by this return that the officer pretends to have made personal service.

The return of the Sheriff must be certain, and if ^{it} be uncertain in day year or place it is insufficient. *Smell on Sheriff* page 385. (side paging), being 21 Vol. of Law Library 4th Series. The return is also bad for not showing the place where the service was made. There is nothing to show that the writ was served in the county to which it was directed and the return is therefore void.

2^d The return of the Sheriff as to the ^{service} on John L. Brendorff and Quintus Brendorff is insufficient in not showing the time when the service was made, the return is dated Aug. 27th 1857 but the return no where shows when the writ was served

*This point has been expressly
decided in 1 Common Pleas
239 (Ogle vs. Coffey)

The writ to Logan County was
improvidently issued and is
void, there was already one
writ out against ^{all} the defendants
Two writs to different counties
against all the ~~counties~~ defend-
ants, is not authorized by law
The clerk might as well issue
a writ to every county in the
State, and ruin defendants with
costs. Heath vs. Farnstall 3 Pike
Arkansas Rep. page 119 is
expressly in point.

The writ is also void for the
reason that it is directed to
the Sheriff of Logan County
and commands the defendants
to appear before the Circuit
Court of said County instead of
the Circuit Court of Tipton County.
Callahan vs. Webster 2 ^{Scam} Linn. 222.

James Roberts
att. for plaintiff in error

James Wendorff

et al.

vs
George Stanley

Argument for

plaintiffs in error

Filed April 30, 1858

J. Selman
Clerk

It might be observed by the Court that by our attachment out if the defendant conceals himself so that process cannot be served upon an attachment may be served out.

James Rollett

STATE OF ILLINOIS, }

3d GRAND DIVISION,

Supreme Court. }

April Term, A. D. 1858.

JAMES ORENDORFF, *Et Al.*

WILLIAM STANBERY ^{vs.} and JOHN W. CASEY. }

Error to Tazewell.

This was an action of assumpsit, by William Stanbery and John W. Casey, the Plaintiffs below, against James Orendorff, Colvey Morris, John L. Orendorff, Quintus Orendorff, and Daniel Crab, the defendants below.

Declaration.

The Declaration contained the special counts upon promissory notes, and the usual common counts. Pages of Record, 5 to 8.

Writ to Taz. Co.

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Served on John L. Orendorff and Quintus Orendorff by reading the within writ to them. August 27th, 1857.

C. WILLIAMSON, S. T. C.

James Orendorff and Colvey Morris not found in my county, Oct. 2d 1857. Served on Daniel Crabb on the 8th day of September, 1857, who attempted to avoid service by concealing himself and running from me at the time I read this process to him at the place I last saw him. Page of Record 3.

C. WILLIAMSON, S. T. C.

N. H. MCKEONE, Deputy.

Writ to Logan Co.

A writ was also issued to the Sheriff of Logan County, against all the defendants, which writ is in the words and figures as follows to-wit :

STATE OF ILLINOIS, } *The People of the State of Illinois, to the Sheriff of Logan*
Tazewell County, } *County, Greeting :*

We command you to summon James Orendorff, Colvey Morris, John L. Orendorff, Quintus Orendorff and Daniel Crabb, if found in your county, personally to 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 the city of Pekin, on the second monday of the month of October next, to answer unto William Stanbery and John W. Casey in a plea of assumpsit to the damage of the said plaintiffs, as they say in the sum of six thousand dollars ; And have you then and there this writ, and make return thereon, in what manner you execute the same.

Witness, M. C. Young, clerk of the said Circuit court and the Seal thereof, hereto [Seal.] affixed at Pekin, this 7th day of August A. D. 1857. M. C. YOUNG, clerk.

Page of record 4.

By DON W. MAUS, D. C.

Upon which writ the Sheriff made the following return, which is in the words and figures as follows to-wit :

Return of writ to Logan Co.

Executed this writ August 20th, 1857, by reading to the within named James Orendorff and Colvey Morris, the within named John L. Orendorff, Quintus Orendorff and Daniel Crabb, not found in the county. Page of record 5.

G. MUSICK, Sheriff Logan co.

Judgment.

A judgment by default was rendered against the defendants below for \$4560.18. Page of Record 10.

JAMES ROBERTS, *Atty for Plaintiff,*

State of Illinois } 3rd Grand Division
Supreme Court } April Term A.D. 1858

James Orendorff
Calvey & Morris }
John L. Orendorff }
Darius Orendorff }
and Daniel Crab }
vs. }
William Stanbery }
and John W. Casey }

Issue to
Jury

The Hon. Clerk will
please issue, a sub poena to the
Sheriff of Agemull County for the two
above named defendants in error

James Robert
Attor for plaintiffs in error

James Orendorff
Calvey Morris
John L. Orendorff
Quintus Orendorff
and Daniel Crobb
191

William Starbuck
John W. Casey

price for
see prices

Filed March 12, 1838

L. Leland
Clerk

73

Orendorf et al.

vs

Stamberg

Abstract

73
James Orendorf
& others
vs

William Stamberg
& John W. Barsey

Abstract

12637

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
TO THE SHERIFF OF THE COUNTY OF *Saxwell*

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Saxwell* county, before the Judge thereof, between *William Stanbery & John W. Casey* plaintiffs & *James Orendorff, Calvey Morris, John L. Orendorff, Quintus Orendorff & Daniel Crabb*

defendants; it is said that manifest error hath intervened, to the injury of the said

Defendants

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme 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 *William Stanbery and John W. Casey*

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 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 *William Stanbery & John W. Casey* notice, together with this writ. *John D. Cotton*

WITNESS, The Hon. ~~WALTER B. SCATES~~, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *twelfth* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Eight*

L. Leland
Clerk of the Supreme Court.

by J. B. Rice Deputy

James Wendorff
Guthrie

William Sturbergy
and John W. Casey

Sci. Fee

100

10

Writ 210
\$11.20

Filed April 1st 1858
W. L. Leland
clerk

Executed this writ March 17th 1858

By reading to William Sturbergy
and John W. Casey

C. Williamson

Sheriff, Jaswell County

By J. C. New
Sept

STATE OF ILLINOIS, }

Supreme Court. }

3d GRAND DIVISION,

April Term, A. D. 1858.

JAMES ORENDORFF, *Et Al.*WILLIAM STANBERY ^{vs.} and JOHN W. CASEY. }*Error to Tazewell.*

This was an action of assumpsit, by William Stanbery and John W. Casey, the Plaintiffs' below, against James Orendorff, Colvey Morris, John L. Orendorff, Quintus Orendorff, and Daniel Crabb, the defendants below.

Declaration.

The Declaration contained the special counts upon promissory notes, and the usual common counts. Pages of Record, 5 to 8.

Writ to Taz. Co.

A writ was issued to the Sheriff of Tazewell county against all the defendants, upon which the sheriff made the following return :

Return of witness to Taz. Co.

Served on John L. Orendorff and Quintus Orendorff by reading the within writ to them. August 27th, 1857. C. WILLIAMSON, S. T. C.

James Orendorff and Colvey Morris not found in my county, Oct. 2d 1857. Served on Daniel Crabb on the 8th day of September, 1857, who attempted to avoid service by concealing himself and running from me at the time I read this process to him at the place I last saw him. Page of Record 3. C. WILLIAMSON, S. T. C. N. H. McKEONE, Deputy.

Writ to Logan Co.

A writ was also issued to the Sheriff of Logan County, against all the defendants, which writ is in the words and figures as follows to-wit :

STATE OF ILLINOIS, } *The People of the State of Illinois, to the Sheriff of Logan*
Tazewell County. } *County, Greeting :*

We command you to summon James Orendorff, Colvey Morris, John L. Orendorff, Quintus Orendorff and Daniel Crabb, if found in your county, personally to 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 the city of Pekin, on the second monday of the month of October next, to answer unto William Stanbery and John W. Casey in a plea of assumpsit to the damage of the said plaintiffs, as they say in the sum of six thousand dollars ; And have you then and there this writ, and make return thereon, in what manner you execute the same.

Witness, M. C. Young, clerk of the said Circuit court and the Seal thereof, hereto [Seal.] affixed at Pekin, this 7th day of August A. D. 1857. M. C. YOUNG, clerk.

Page of record 4.

By DON W. MAUS, D. C.

Upon which writ the Sheriff made the following return, which is in the words and figures as follows to-wit :

Return of writ to Logan Co.

Executed this writ August 20th, 1857, by reading to the within named James Orendorff and Colvey Morris, the within named John L. Orendorff, Quintus Orendorff and Daniel Crabb, not found in the county. Page of record 5. G. MUSICK, Sheriff Logan co.

Judgment.

A judgment by default was rendered against the defendants below for \$4560.18. Page of Record 10. JAMES ROBERTS, *Att'y for Plaintiff.*

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Orendoff et al

vs

Stamberg et al

The summas may
duplicate but the
other is more con-
formable to ancient
practice & is better

Filed ~~of~~ Mar 12, 1838

L. Leland

clerk

distinguish this
case from the
case in 1st term
because tho it did
not appear & now
he said it - him
he read it.