

No. 12725

Supreme Court of Illinois

People

vs.

Beach, et al

288-216.

Cyrus P. Albee

07

The People for mass.

1859

285

12725

1009

283 - 216
State of Illinois
Cook County Court of
Common Pleas

The People for use of
Lamb. T. Olney . . .
— vs —
James. S. Beach
et al.
—

Record

Filed Apr. 21. 1859.
L. Leland
Clk.

Transf. \$14.50 paid by R. S.
Blackwell. M. K. Cox

State of Illinois
Cook County . . .)

Held before the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas within and for the County of Cook and State aforesaid at a Special Term of said Cook County Court of Common Pleas, begun and held at the Court house in the City of Chicago on the first Tuesday being the fourth day of January in the year of our Lord one thousand eight hundred and fifty nine, due notice of the time and place of the holding said Special Term of Court, having been printed & published in the 'Daily Democrat,' the Corporation Newspaper of the City of Chicago, said notices having been printed and published twenty days previous to the holding of said Special Term of Court, in accordance with the Statute in such case made and provided and in pursuance of an order made by the Judge of said Court on the day of December A.D. Eighteen hundred and fifty eight.

<u>Present</u>	John M. Wilson Judge
	Charles Hawes Prosecuting Attorney
<u>Also</u>	John Gray Sheriff
Walter Kimball .	Clerk.

Be it remembered that heretofore to wit on the
sixth day of July A. D. Eighteen hundred and fifty
seven, there was filed in the Office of the Clerk of said
Court a Precept for Summons in or out wherein The
People of the State of Illinois for the use of John
Copeland was Plaintiff and James S. Beach and others
were Defendants; together with security for costs;
Which said Precept and Bond for costs, is in the words
and figures following, that is to say.

"The People of the State of Illinois for the use of John Copeland	Cook County Court of Com: Pleas.
vz	
James S. Beach, principal & Carlton Drake, Joseph St. Gray Martin G. Walker & Cyrus P. Albee, purchasers	

The Clerk will please issue
a Summons in the above entitled cause, in an action
of Debt on Official Bond \$11,000, Damages \$350
and returnable according to law.

July 6, 1857

Yours &c

To the Clerk of Cook County Court of Com: Pleas. S. A. Irwin
The City

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sixth day of July A. D. Eighteen hundred and fifty
seven, there was filed in the Office of the Clerk of said
Court a Precept for Summons in or out wherein The
People of the State of Illinois for the use of John
Copeland was Plaintiff and James S. Beach and others
were Defendants; together with security for costs;
Which said Precept and Bond for costs, is in the words
and figures following, that is to say.

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The City

State of Illinois }
Cook County . . } p.

Book County Court of
Common Pleas.

The People of State of Illinois
for the use of John Copeland

Of the September
Term A. D. 1857.

James S. Beach, Carlton Drake
Joseph H. Gray Martin. O'Hacker
and Cyrus. P. Olber

I do hereby enter myself Security
for costs in this cause and acknowledge myself bound
to pay or cause to be paid all costs which may accrue
in this action either to the opposite party, or to any
of the officers of this Court, in pursuance of the laws
of this State. Dated this 6th day of July A.D. 1857
S. A. Irwin.

And thereupon accordingly in the said Sixth day of July A. D. Eighteen hundred and fifty eight seven there was issued out of and under the Seal of the Clerk of said Court, the proper Summons directed to said Defendants; Which said Summons, with the Sheriffs return thereon endorsed is in the words and figures following, to wit.

State of Illinois
County of Cook

State of Illinois The People of the State of
County of Cook Illinois

To the Sheriff of said County, Greeting:

We command you that you Summon James S. Beach Principal and Carlton Drake, Joseph H. Gray, Martin C. Walker Cyrus J. Elbee, jointly, if they shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said County on the first day of the next term thereof to be holden at the Court house in the City of Chicago in said County on the second Monday of September next, to answer unto the People of the State of Illinois for the use of John Copeland, in a Plea that they render unto the said People of the State of Illinois for use of John Copeland their debt on official Bond, in the sum of Ten thousand dollars which they owe to and unjustly detain from them, to the damage of the said Plaintiffs as they pay in the sum of Three hundred and fifty dollars And have you then and there this Writ with an endorsement thereon in what manner you shall have executed the same.

Seal.

Witness Walter Kimball, Clerk of our said Court and the Seal thereof at the City of Chicago in said County this 6th day of July A.D. 1857.

Walter Kimball. Clerk.

"Served by reading to the within named James S. Beach and Cyrus J. Elbee the 1st day of September A.D. 1857, other defendants not found in my County."

John L. Wilson Sheriff

(11)

By Ira Snow. Deputy

And thereafter to wit on the fourth day of September
A. D. eighteen hundred and fifty seven the said plaintiffs
by their said Attorney filed in the Office of the Clerk of
said Court their Declaration, together with a copy of the
Bond sued upon; Which said Declaration and Bond is
in the words and figures following, to wit.

State of Illinois } Cook County Court of Common
Cook County .. } Pleas. Of the September Term
A. D. 1857.

The People of the State of Illinois for the use of John
Ceseland Plaintiff in this Suit by S. A. Irwin his
Attorney complains of James S. Braach, Carlton Drake,
Joseph H. Gray, Martin C. Walker and Cyrus J. Allen all
of said Cook County, defendants of a Plea that they render
to the said People of the State of Illinois for the use of
John Ceseland the sum of Ten thousand dollars lawful
money of the United States, which they owe to and unjustly
detain from him. For that whereas the said defendants here
before to wit on the third day of March in the year of our
Lord one thousand eight hundred and fifty six at the City
of Chicago in the said County of Cook and State of Illinois
by their certain writing obligatory sealed with their seals
and now shown here to the Court, the day whereof is the day
and year aforesaid to wit March 3rd A. D. 1856
acknowledge themselves to be held and firmly bound
unto the said People of the State of Illinois in the sum
of \$10,000. above demanded to be paid to the said plaintiffs

And whereas the condition of said obligation is such that whereas the above bounden James. S. Beach, coroner in and for the County of Cook and State of Illinois has by the decease of James Andrews late Sheriff of said Cook County succeeded to the rights duties office &c of Sheriff of said County by virtue of his said office of Coroner. Now if the said James. S. Beach shall faithfully and truly perform and discharge all the duties required or to be required of him by law as acting Sheriff of said County of Cook then the above obligation to be void, otherwise to be and remain in full force and Effect.

And whereas the said Bond or Obligation was approved in open Court the 23rd day of March A.D. 1856 by the Honorable George Manierre, Judge of the 7th Judicial Circuit of the State of Illinois and Presiding Judge of the Cook County Circuit Court according to the Statute in such cases made and provided and was filed in the Office of the Clerk of said Court on the 23rd day of March A.D. 1856 and was duly entered upon the records of said Court, according to law, and the said Plaintiff brings into Court here the said writing obligatory, sealed as aforesaid - which gives sufficient Evidence to the said Court here of the debt aforesaid in form aforesaid, the date whereof is the said 3rd day of March 1856.

And whereas afterwards to wit on the said 3rd day of March A.D. 1856 the said James. S. Beach Coroner & Ex officio acting Sheriff aforesaid, appointed
(D)

according to the Statute in such case made and provided
one Fayette S. Bulkley as his Deputy, which appointment
was in writing, dated the 3rd day of March A.D. 1856
and was filed in the office of the Clerk of the Circuit Court
of said County of Cook on said 3rd day of March A.D. 1856
and was entered of record according to Law.

And whereas on the thirteenth day of September
A.D. 1856 a certain Execution on a judgment previously
rendered in the Recordors Court of the City of Chicago wherein
the said John Copeland was Plaintiff and George S.
Copeland was Defendant, was issued from the office of the
Clerk of said Recordors Court for the collection of the sum
of \$255⁰⁰ Damages and \$9⁰⁰ costs, and returnable Ninety
days from the date thereof; which execution was on the 14th
day of September A.D. 1856 placed into the hands of said
Fayette S. Bulkley, he being then and there Deputy Sheriff
acting under said written appointment heretofore described.

And whereas although the said Ninety days have long
since elapsed the said Bulkley Deputy as aforesaid did not
nor never has, nor did the said Beach nor hath he ever
returned said Writ to the Office of said Clerk of the Recordors
Court of the City of Chicago as by law was required to be
done whereby the said Defendants became liable to pay the
said sums of money as aforesaid to said Plaintiff.

And whereas also the said Execution having been issued
as aforesaid and placed in the hands of the said Fayette S.
Bulkley as aforesaid, he being then and there acting Deputy
as aforesaid and having failed to return said Writs of Execution

In the Office of the Clerk of the Recorders Court of the City of Chicago as aforesaid, and as by Law he was required to do afterwards to wit on or about the sixth day of February A.D. 1857 notice in writing having been given to said James S. Beach Coroner and Ex Officio Sheriff as aforesaid of said John Copeland's intention to apply to said Recorders Court of the City of Chicago for relief under and by virtue of the Statute in such cases made and provided and said James S. Beach Sheriff as aforesaid having accepted due service of Affidavits and notice of Motion and consented that said Motion should be heard on the Eighteenth day of November 1856; and said James S. Beach Sheriff as aforesaid and he the said Fayette S. Bulkley Deputy as aforesaid having failed to return said Execution or pay the monies collected thereon or to show any cause why return had not been made of said Execution and the monies made thereon paid over according to law in satisfaction of said execution an order was made & granted by said Recorders Court at the November term A.D. 1856 thereof, requiring the said James S. Beach or his Deputy the aforesaid Bulkley to make return of the said Execution heretofore issued and delivered to said Deputy Bulkley in favor of said John Copeland and to pay to the Clerk of said Recorders Court the monies made thereon on Sale of the property attached and levied upon or before the 9th day of February 1857. That a Copy of said Order was duly served on said James S. Beach Sheriff as aforesaid and demand made according to the Statute in such cases made and provided, and said James S. Beach

Sheriff and the said Deputy Buckley having failed to comply with the Order aforesaid the said Recorder Court did on the 13th day of February A.D. 1854 order Judgment to be entered and Judgment was accordingly entered upon the records of said Court at the February Term A.D. 1854 against said James S. Beach Coroner and Ex Officio Sheriff as aforesaid for the money the said John Copeland had recovered as aforesaid against the said George S. Copeland with twenty per cent thereon, as by Statute in such case made and provided being damages Two hundred and fifty five dollars and fifty one dollars interest and nine dollars and ten cents costs, and amounting together to the sum of \$315. And by the consideration of said Court Judgment was accordingly rendered at the February Term A.D. 1854 of said Court according to the Statute in such case made and provided which said Judgment the said Plaintiffs aver remains in full force and Effect, not reversed patiosed or otherwise vacated Whereby an action hath accrued to the said Plaintiffs to demand and have of and from the said Defendants the said sums of money as aforesaid Yet the said Defendants altho' often requested so to do have not as yet paid the said sums of money above mentioned and demanded or any part thereof And the said Deputy S. Buckley Deputy as aforesaid though often requested so to do has neglected and refused to pay to said John Copeland, the said sums of money above demanded or any part thereof and both he and the said Defendants still do refuse to the damage of the said Plaintiff of Two hundred

and fifty dollars And therefore they bring Suit for

S. A. Irvine
Atty for Plt.

Copy of Bond paid on

"Know all Men by these Presents That we James S. Beach, Carlton Drake, Joseph H. Gray, Martin C. Walker and Cyrus P. Elbert are held and firmly bound unto the People of the State of Illinois in the penal sum of Ten thousand dollars lawful money of the United States of America for the payment of which said sum well and truly to be made we bind ourselves our heirs executors & administrators jointly and severally firmly by these Presents - Sealed with our seals and dated this third day of March A.D. 1836.

Now the condition of the above obligation is such that whereas the above bounden James S. Beach Coroner in and for the County of Cook and State of Illinois has by the decease of James Andrews late Sheriff of said Cook County succeeded to the rights duties office &c of Sheriff of said County by virtue of his said office of Coroner Now if the said James S. Beach shall faithfully and truly perform and discharge all the duties required or to be required of him by law as acting Sheriff of said County of Cook then the above obligation to be void otherwise to be and remain in full force and effect.

Approved in open Court this) James S. Beach (Seal)
 25th day of March 1856 ...) Carlton Drake (Seal)
 George Manierre J. H. Gray (Seal)
 Judge of 7th Judicial Circuit W. C. Walker (Seal)
 & Presiding Judge of Cook Co. Court. C. P. Albee (Seal)
 Endorsed on the back thereof
 " Filed 25th March 1856
 " Recorded " L. D. Heard Clerk "

And afterwards to wit on the sixteenth day of September
 (being one of the days of the September Term of said Court)
 A. D. eighteen hundred and fifty eight, the following
 proceedings were had in said cause, and entered of
 record in said Court, to wit:

" The People of the State of Illinois)
 vs of John Copeland) Debt
 (vs)) in Official Bond
 James S. Beach, Carlton Drake, Joseph H. Gray
 Martin C. Walker & Cyrus P. Albee . .)

This day comes the said Plaintiff by his Attorney S. A. J. and
 it appearing to the satisfaction of the Court that due personal
 service of process of Summons issued in this cause had been had on
 James S. Beach & Cyrus P. Albee two of the above named defendants
 represented with Carlton Drake, Joseph H. Gray & M. C. Walker & they
 being severally three times solemnly called in open Court came
 nor did any person for them but herein they make default which
 motion is ordered to be taken and entered of record therefore said

Plaintiff ought to have and recover of said defendants James S. Beach
H. P. Albee, unpleaded with Carlton Drake, Joseph H. Gray & M. O.
Walker her debt in her Declaration mentioned as well as her damages
for the detention thereof & this suit being founded on an instrument in
writing for the payment of money only & the Court having heard the
proofs & allegations submitted & being fully advised now finds the
said Defendants as aforesaid indebted to said Plaintiff in the sum
of Ten thousand dollars debt & assesses said Plaintiff's damages to the
sum of Three hundred & twenty one dollars & seventy five cents.

Therefore it is considered that said Plaintiff do have & recover
of said debts James S. Beach & Cyrus P. Albee, unpleaded with Carlton
Drake, Joseph H. Gray & M. O. Walker her debt of Ten thousand dollars
& damages and also her damages of Three hundred and twenty one dollars
and seventy five cents, in sum aforesaid assessed by the Court,
together with her costs and charges in this behalf expended
and have execution therefor.

And it is further ordered by the Court that
the Debt of Ten thousand dollars as aforesaid adjudged
against said defendants shall stand as a security for the
payment of any damages that may accrue by reason of any
breach in the condition of said Bond hereafter occurring
and that Execution issue upon this judgment endorsed with
an order to the Sheriff to make paid sum of Three hundred
and twenty one dollars and seventy five cents together
with interest thereon and the costs of this suit, in satisfaction
of such execution.

And thereafter to wit on the second day of October
A.D. Eighteen hundred and fifty seven there issued out of
and under the Seal of the Court of said Court, an Execution
on said Judgment; Which said Execution with the Sheriff
return thereto, is in the words and figures following, that
is to say.

State of Illinois }
County of Cook } To the Sheriff of the State of Illinois
To the Sheriff of said County, Greeting.

We command you that of the Lands and Tenements, Goods
and Chattels of James S. Beach and Cyrus J. Albee
implicated with Carlton Drake, Joseph H. Gray and Martin
C. Walker Defendants in your County, you cause to be
made the sum of Ten thousand dollars, which the People
of the State of Illinois for use of John Cepelard, Plaintiff
lately in the Cook County Court of Common Pleas of said
County at a term thereof begun and held at Chicago in said
County on the Second Monday of September A.D. 1857
recovered against the said Defendants and which by said
Court was adjudged to the said Plaintiff for their Debt, and
also the further sum of Three hundred twenty one dollars
and seventy five cents which by the said Court was adjudged
to the said Plaintiff for their Damages, and also the further
sum of Seven dollars and fifty five cents, which were
adjudged for their Costs and charges in that behalf expended
whereof the said Defendants were convicted, as appears to me
of Record, and have you these Monies ready to render to

the said Plaintiffs for their Debt, damages and costs afore
said, and make return of said Writ, with an endorsement
therein, in what manner you shall have executed the same
in thirty days from the date hereof.

(Seal) Witness Walter Kimball, Clerk of our said
Court, and the Seal thereof at Chicago in said
County this 2nd day of October A. D. 1857.
Walter Kimball. Clerk.

By virtue of the Annexed Writ of Execution No 9119 I did on
the 29th day of December 1857 levy upon, Sixty eight (68)
and Sixty nine (69) in Cottage Grove Subdivision of part
and in the North east quarter of Section Thirty four (34)
Town Thirty nine (39) North range fourteen (14) East of
the Third T. M. at Three dollars per lot (\$3.00)
Also the East quarter of Lot one (1) Block one hundred and
forty one (141) School Section addition to Chicago for the sum
of Three hundred and forty one dollars and thirteen cents
and on the 22nd day of January 1858 between the hours of
nine in the morning and the setting of the Sun of the same
day at the North Door of the Court house in the City of
Chicago in Cook County (the time and place of Sale having
been duly advertised according to law) I did sell at public
Auction, to the highest and best bidder at said Sale the
property levied upon as aforesaid for the sum of Three
hundred and fifty one dollars and thirteen cents to A. W.
Encs \$351.13
And after deducting my fee &c in execution \$4.90

and the amount of fees Bills accompanying execution

I have paid the balance to Plaintiff's Attorney \$336.23 \$336.13

And I return the said annexed Execution satisfied this
22nd of January 1858.

John L. Wilson. Sheriff

By George Anderson. Deputy."

And thereafter to wit on the Discount day of September
in the year of our Lord one thousand eight hundred
and fifty eight, came the People of the State of Illinois
appeared for the use of Daniel J. Olney by C. M. Hawley
their Attorney, and filed in the Office of the Clerk of said
Court their Suggestion of further and other Breaches in the
Condition of the aforesaid Bond, together with Security for
Costs; Which said suggestion and Security for costs is in
the words and figures following, that is to say.

"The People of the State of Illinois
who sued for the use &c.

— in —
James S. Beach and Cyrus J. Albee
unpleaded with Carlton Drake,
Joseph H. Gray, & Martin G. Walker

In the Cook County
Court of Common Pleas

Afterwards to wit on the 16th day of September
A. D. 1858 and during the September Term of this Court
before the Judges thereof came the People of the State of

Illinois who were due for the use of Daniel J. Ahney by
G.M. Hawley his Attorneys and according to the form of
the Statute in such case made and provided gives the same
Court here to understand and be informed that the said debt
so by the People of the State of Illinois recovered as aforesaid
was and is a certain penal sum of Ten thousand dollars
mentioned in a certain Bond or Writing obligatory sealed with
the Seals of the said Beach, Albee, Drake, Gray & Walker
and bearing date the third day of March A.D. one thousand
eight hundred and fifty six, which said Writing Obligatory
was and is subject to a certain Condition thereunder written
as follows, to wit.)

"Now the Condition of the above Obligation is such
that whereas the above bounden James S. Beach, Coroner in
and for the County of Cook and State of Illinois has by
the decease of James Andrew late Sheriff of said Cook
County succeeded to the rights, duties, office &c of Sheriff of
said County by virtue of his said office of Coroner, Now if
the said James S. Beach shall faithfully and truly perform
and discharge all the duties required or to be required of him
by law as acting Sheriff of said County of Cook then the above
Obligation to be void otherwise to be and remain in full
force and effect."

And the said people Plaintiffs also give the
Court here to understand and be informed that the said
action in which the People recovered Judgment as aforesaid
was commenced on the sixth day of July A.D. 1857 and
that the said Action was brought and commenced upon and

for a certain Breach of the said Condition of said Bond by the said Defendants before the Commencement of the Suit aforesaid.

But the People of the State of Illinois upon the relation and for the use of Daniel J. Alney for further and other Breach of the aforesaid Condition of said Bond according to the Statute in such case made and provided give the said Court to understand and be informed that heretofore to wit on the Seventh day of February A. D. 1856 at the North door of the Court house in the City of Chicago in said County, James Andrew, then Sheriff of said County by virtue of a certain Writ of Execution to him as such Sheriff directed from the Circuit Court of Cook County in favor of William H. Adams and against Matthew Saffin, Benjamin Wilder and George A. Springer defendants for Three hundred and thirteen dollars and ninety eight Cents damages and Costs of Suit dated the first day of November A. D. 1855 did sell (the time and place aforesaid having been duly advertised according to Law) At public Auction, All the right title and interest of Matthew Saffin in and to that certain piece of Land known and described as Lot two (2) in Block Seven (7) in Port Dearborn Addition to Chicago to Mark T. Green for the sum of Three hundred thirty nine dollars and ninety cents (\$339.90) and thereupon issued his Certificate of such Sale to said Mark T. Green and filed a Duplicate thereof in the Office of the Recorder of said County as by said Certificate now on file therein, will more fully and at large appear And that afterwards and on the first day of September 1856 the

said Mark T. Green sold and assigned his said Certificate
of said Sale to said Daniel T. Green by writing endorsed
on a Copy thereof under his hand and seal And that after
the death of said James Andrew who departed this life
on the 1st day of March A.D. 1856 after said Sale, the
said Matthew Laflin to redeem said Land from said
Sale paid into the hands of said James S. Beach for
then being Coroner and Ex Officio Sheriff of said County of
Cook as aforesaid the sum of Three hundred sixty three
dollars and fifty two Cents, which said sum of money
the said Beach then and there accepted and received as
such Coroner and acting Sheriff as aforesaid for the use
of said Green the purchaser at said Sale and his assigns
And thereupon made and granted to the said Laflin
a Certificate of such redemption under his hand, in the
words and figures following, to wit.

State of Illinois }
County of Cook ...

I James S. Beach Coroner and acting
Sheriff of Cook County Do hereby Certify That by virtue of
a certain Writ of Execution from the Circuit Court of Cook
County in favor of William H. Adams and against
Matthew Laflin Benjamin Wilder and George C. Springer
dated the first day of November Eighteen hundred & fifty
five on the seventh day of February Eighteen hundred
and fifty six James Andrew then Sheriff of Cook County
did sell lot two (2) in Block Seven (7) in Fort Dearborn
Addition to Chicago to Mark T. Green for the sum of

Three hundred thirty nine dollars and ninety cents, and on this 17th day of October A. D. 1856 Matthew Saffin has paid to me as such Coroner and acting Sheriff of said County the sum of Three hundred sixty three dollars & fifty two cents for the benefit of said purchaser, on the purchase of said Lot together with interest there on at the rate of Ten per Centum from the time of Sale "

" James S. Beach, Coroner
His office acting Sheriff
"Cook Co."

As by said Certificate now on file in said Records Office, will more fully appear.

And that afterwards and after the said assignment to him the said Daniel J. Olney of said Certificate of Sale, to wit; on the first day of January A. D. 1857 at Chicago aforesaid the said Daniel J. Olney demanded of and from the said James S. Beach the said sum of money so paid to him as aforesaid Yet the said Beach did not then or at any time since nor have any of the said Defendants then or at any time since paid the said Olney as aforesaid or the said Olney the said sum of money, or any part thereof, but to say the same have hitherto wholly refused, Of all which promises the said Defendants afterwards and before the making of this suggestion to wit on the first day of September 1858 at Chicago aforesaid had notice to the damage of said Olney five hundred dollars. By means whereof the Condition of said Bond

hath become broken and the penalty thereof forfeited, which
said breach of the said Condition of the said writing obligatory
do herein assigned the said Plaintiffs do aver and give the
Court here to understand and be informed was a further
and other breach than the breaches by reason whereof they
obtained the said judgment so recovered by them as
aforesaid.

And hereupon the people for the use of said
Daniel. F. Clary according to the form of the Statute in such
case made and provided pray that upon the said judgment
so obtained as aforesaid a Writ may be issued to the Sheriff
of said County suggesting the said further and other
breach of the said Condition of the said Bond or Writing
Obligatory heretofore assigned and commanding the said
Sheriff (the said Defendants or their Attorneys having due
Notice of the time and place of executing such Writ) that
by the Oath of twelve good and lawful Men of the County
he enquire what damages the People of the State of Illinois
for use of the said Daniel. F. Clary hath sustained by
reason of the further and other breach of the Condition of
said Writing Obligatory, returnable as the Court shall
direct.

G. M. Hawley
Plt's Atty.
(Security for costs)

The People of the State of Illinois
who sued vs and who sue for
the use of Daniel, J. Olney

In the Cook County
Court of Common Pleas

— (vs) —
James S. Beach & Cyrus J. Albee
impeached with Carlton Drake,
Joseph H. Gray & Martin C. Walker

Suggestion of
Further Breach.

I do hereby enter myself
security for costs in this cause and acknowledge myself
bound to pay or cause to be paid all costs that may
accrue herein either to the opposite party or to any of
the officers of the Court under the laws of this State.
Sept. 16. 1858. H. J. Burgess.

And thereafter to wit on the twentieth day of
September A. D. eighteen hundred and fifty eight there
was filed in the Office of the Clerk of said Court, a certain
Notice to said Defendants, which said Notice, with the
proof of service thereon endorsed is in the words and
figures following, to wit.

The People of the State of Illinois } In the Cook County
who sued vs. } Court of Common Pleas

— (vs) —
James S. Beach & Cyrus J. Albee impeached } Suggestion of further
with Carlton Drake, Joseph H. Gray and } Breach of Official
Martin C. Walker } Bond.

To said Defendants

You are hereby notified that a suggestion for the use

and on behalf of Daniel. T. Olney of further breach of the
Official Bond of said Beach as Coroner of said County
upon which Bond judgment has been entered at the
September Term of said Court A.D. 1857 has this day
been filed and that I shall apply on the 20th inst: at the
opening of the Court in the morning for a Writ of
Inquiry to assess the damages under the Statute in that
behalf - Dated September 16: 1858.

Yours &c

C. W. Hawley.

Att'y.

"State of Illinois"
County of Cook

Moses Hallett being duly sworn says
that he did on the sixteenth day of September 1858 serve
a true Copy of the within Notice upon Lorenzo. P. Albert
and also upon the 17th Sept 1858 a Copy thereof upon
James. S. Beach, by delivering the same to them in
person.

Subscribed & sworn to before Moses Hallett,
me this 20th Sept 1858 ...
C. W. Hawley
Notary Public

And afterwards to wit on the twenty fifth day of
September (being one of the days of the regular September
Term of said Court) A.D. Eighteen hundred and fifty
eight, the following proceedings were had in said cause

and entered of record in said Court, to wit:

"The People of the State of
Illinois who sued for the use
of Daniel. T. Olney

Debt on Bond.

James S. Beach & Cyrus P. Albee
impleaded with Carlton Drake,
Joseph H. Gray & Martin Walker

And now on this day comes
the said People who now sue for the use of Daniel. T.
Olney, by C. W. Hawley his Attorney, and it appearing
to the Court from the Suggestions heretofore filed herein
by said Plaintiff that further and other breaches of the
Condition of the said Bond or Writing Obligatory of the
said James S. Beach former and Ex Officio acting Sheriff
have occurred, it is therefore Ordered that a Writ of inquiry
issue to the Sheriff of Cook County returnable tenth of October
next, suggesting the said further and other breaches of the
said Condition of the said Bond or writing obligatory hereto
fore assigned, commanding him, the said Defendants, or their
Attorneys, having notice of the time and place of executing
said Writ, that by the oath of twelve good and lawmen
of his County, he enquire what damage the People of the
State of Illinois for the use of the said Daniel. T. Olney
hath sustained by reason of the further and other breaches
of the Condition of said writing obligatory complained of.

And thereafter to wit on the twenty fifth day of September A. D. Eighteen hundred and fifty eight, in pursuance of the said Order of said Court, there accordingly issued out of the Office and under the Seal of said Court a Writ of inquiry directed as in said Order mentioned, Which said Writ of inquiry, with notice thereof and the Sheriffs return thereto, duly filed in the office of the Clerk of said Court on the twenty sixth day of October in the year last aforesaid, is in the words & figures following, to wit,

"State of Illinois
County of Cook &c.

The People of the State of Illinois
To the Sheriff of said County. Greeting

Whereas the People of the State of Illinois who sued for the use of Daniel. F. Olney heretofore to wit in the September Term in the year of our Lord one thousand eight hundred and fifty seven in the Cook County Court of Common Pleas before the Judge thereof at the Court house in the City of Chicago by Writ and by the Judgment of the said Court recovered against James. S. Beach & Cyrus. F. Albion unpleaded with Carlton Drake, Joseph H. Gray and Martin. O. Walker a certain Debt of Ten thousand dollars and also their costs of suit whereof the said Beach and Albion unpleaded &c were convicted as by the record and proceedings thereof remaining in the said Court before the Judge thereof manifestly

appears. And afterwards to wit on the 16th day of September
in the year of our Lord one thousand eight hundred and
fifty eight the said People, Plaintiffs for the use and
upon the relation of Daniel J. Olney by C. W. Hawley his
Attorney came into the said Court before the Judges then
at Chicago aforesaid and according to the form of the
Statute in such case made and provided gave the same
Court here to understand and be informed that the said
Debt so by the People of the State of Illinois recovered
as aforesaid was and is a certain penal sum of Ten
thousand dollars mentioned in a certain Bond or writing
obligatory, sealed with the Seals of the said Beach, Albert
Drake, Gray and Walker, bearing date the third day of
March A. D. one thousand eight hundred and fifty six
which said writing obligatory was and is subject to a
certain Condition thereunder written as follows, to wit;

"Now the Condition of the above obligation is such that
"whereas the above bounden James S. Beach Coroner is
"for the County of Cook and State of Illinois, has by the
"decease of James Andrew late Sheriff of said Cook County
"succeeded to the rights duties Office &c of Sheriff of said County
"by virtue of his said office of Coroner, Now if the said Jas.
"S. Beach shall faithfully and truly perform and discharge
"all the duties required or to be required of him by law as
"acting Sheriff of said County of Cook, then the above obligation
"to be void, otherwise to be and remain in full force & effect."

And the said People Plaintiffs also gave the said
Court here to understand and be informed that the said

action in which the People recovered judgment as aforesaid was commenced on the sixth day of July A.D. 1857 and that the said action was brought and commenced upon and for a certain Breach of the said condition of said Bond by the said Defendants before the commencement of the suit aforesaid.

But the People of the State of Illinois upon the relation and for the use of Daniel J. Olney for further & other breach of the aforesaid condition of said Bond according to the Statute in such case made and provided give the said Court to understand and be informed that therefore to wit on the seventh day of February A.D. 1856 at the North door of the Court House in the City of Chicago in said County, James Andrew then Sheriff of said County by virtue of a certain writ of Execution to him as such Sheriff directed from the Circuit Court of Cook County in favor of William H. Adams Plaintiff and Matthew Laffin, Benjamin Wilder & George A. Springer, defendants for Three hundred & thirteen dollars and ninety eight Cents damages and costs of suit dated the first day of November A.D. 1855 did sell (the time and place aforesaid having been duly advertised according to law) at public Auction, All the right title and interest of Matthew Laffin in and to that certain piece of Land known and described as Lot two (2) in Block seven (7) in Fort Dearborn Addition to Chicago, to Mark J. Green for the sum of Three hundred thirty nine dollars and ninety cents (\$339.90) and thereupon issued his Certificate of such Sale to said Mark J. Green and filed a Duplicate

thereof in the Office of the Recorder of said County as by said Certificate now on file therein will more fully and at large appear.

And that afterwards and on the first day of September 1856 the said Mark, T. Green sold and assigned his said Certificate of said Sale to said Daniel, T. Clary by writing Endorsed on a Copy thereof, under his hand and seal, and that after the death of said James Andrew, who departed this life on the first day of March A. D. 1856 after said Sale, the said Matthew Lashin to redeem said Lands from said Sale paid into the hands of the said James, S. Beach so then being Coroner and Ex Officio acting Sheriff of said County of Cook as aforesaid the sum of Three hundred sixty three dollars and fifty two cents, which said sum of money the said Beach then and there accepted and received as such Coroner and acting Sheriff as aforesaid for the use of said Green the purchaser at said Sale and his assigns - and thereupon made and granted to the said Lashin a Certificate of such redemption under his hand in the words & figures following, to wit.

State of Illinois }
County of Cook }

I, James, S. Beach Coroner and acting Sheriff of Cook County do hereby certify That by virtue of a certain Writ of Execution from the Circuit Court of Cook County in favor of William H. Adams and against Matthew Lashin Benjamin Wilder and George A. Springer dated the first day of November Eighteen hundred and fifty five, on the

Seventh day of February Eighteen hundred and fifty six
James Andrew then Sheriff of Cook County did sell lot two
(2) in Block Seven (7) in Fort Dearborn Addition to Chicago
to Mark J. Green for the sum of Three hundred thirty nine
dollars and ninety cents And on this 1st day of October
A.D. 1856 Matthew Laflin has paid to me as such Coroner
and acting Sheriff of said County, the sum of Three hundred
sixty three dollars and fifty two cents for the benefit of
said purchaser on the purchase of said lot together with
the interest thereon at the rate of ten per centum from the
time of Sale."

"James S. Beach, Coroner -
Ex Officio acting Sheriff
Cook County "

As by said Certificate now on file in said Records
Office will more fully appear

And that afterwards, and after the said assignment
to him the said Daniel J. Olney of said Certificate of Sale
to wit on the first day of January A.D. 1857 at Chicago
aforesaid the said Daniel J. Olney demanded of & from
the said James S. Beach the said sum of money so
paid to him as aforesaid Yet the said Beach did not then
or at any time since, nor have any of the said Defendants
then or at any time since paid the said Olney as
aforesaid or the said Green the said sum of money or
any part thereof, but to pay the same have hitherto wholly
refused, of all which premises the said defendants, afterwards
and before the making of this suggestion to wit on the first

day of September 1858 at Chicago aforesaid had notice, to the
damage of said Olney, five hundred dollars. By means
whereof the Condition of said Bond hath become broken
and the penalty thereof forfeited, which said breach of the
said Condition of the said writing obligatory do herein assign to
the said Plaintiffs do aver and give the Court here to
understand and be informed was a further and other breach
than the breaches by reason whereof they obtained the said
Judgment so recovered by them as aforesaid And thereupon
the People for use of said Daniel J. Olney according to the
form of the Statute in such case made and provided having
prayed that upon the said judgment so obtained as aforesaid
a Writ may be issued to the Sheriff of said County suggesting
the said further and other breaches of the said condition
of the said Bond or writing obligatory hereinbefore assigned
and commanding the said Sheriff (the said Defendants or
their Attorneys, having due notice of the time and place
of executing said Writ) that by the oath of twelve good and
lawful Men of the County he inquire what damages the
People of the State of Illinois for the use of the said Daniel
J. Olney hath sustained by reason of the further and
other breach of the Condition of said writing obligatory
returnable as the Court shall direct and we being willing
that Justice should be done. Therefore according to the
form of the Statute in such case made and provided the
said defendants pleaded that they being first notified according
to the Statute We command you that by the oath of twelve
good and lawful Men of your Bailiwick you inquire

what damages the People of the State of Illinois for the
use of said Daniel. T. Olney hath sustained by occasion
of the premises aforesaid and that you send to the said
Court, before the Judge thereof on the third day of
November next if the said Court shall then be in session
if not, then on the first day of the next term thereof the
inquisition you shall thereupon take under your seal and
the seals of those, by whose oath you shall take that
inquisition together with this Writ.



Walter Walter Kimball Clerk of our said
Court and the Seal thereof at Chicago in
said County, this 25th day of September
A. D. 1858.

Walter Kimball
Clerk

(Copy Notice)

The People of the State of Illinois In the Cook County
for use of Daniel T. Olney . . . Court of Common Pleas

James S. Beach, Cyrus J. Alden }
impleaded vs } Suggestion &c

To said Defendants,

The Plaintiffs will proceed before John L. Wilson
Sheriff of Cook County at his office in Chicago on the 26th
day of October just at 10 o'clock A. M. of that day to
appear by a Jury of inquest the damages under the
suggestion in this cause. Dated October 15th 1858
Yours &c C. M. Hawley, Plt. Atty.

State of Illinois
County of Cook

Moses Hallett being duly sworn says that he did on the 15th day of October A. D. 1858 serve a Notice of which the above is a true Copy upon James S. Beach and also that he did on the 16th day of October A. D. 1858 serve another and similar Notice of which the above is a true Copy upon Cyrus P. Elbee by delivering the same to them respectively.

Subscribed and sworn to
before me this 25th day of } Moses Hallett
October A. D. 1858 . . . }

W. Kimball,

Clark

(Copy Inquisition)

State of Illinois
County of Cook

An inquisition taken at the

Sheriff's office in Chicago in the said County on the 26th day of October in the year of our Lord one thousand eight hundred and fifty eight before John L. Wilson Sheriff of the County aforesaid by virtue of a Writ of the People of the State of Illinois to the said Sheriff directed and to this inquisition annexed to inquire of certain matters in the said Writ contained and specified by the oath of Thomas Madley, M. J. Miles, C. G. Conkey William Updegraff, Herain Lewis, James Pithers, D. J. Wood

J. A. Barker, L. W. Church, O. S. Fay, R. K. Armstrong
 J. M. Hustis, being good and lawful Men of the County
 aforesaid who being sworn and charged upon their oaths
 say that the said Plaintiff for the use aforesaid hath
 sustained damage by occasion of the breaches suggested
 as specified in said Writ of inquiry the sum of Three
 hundred, eighty nine dollars and ninety two cents
 (\$389.92),

Before swearing and empanelling the Jury.
 the Defendants appeared by Blackwell Hummings their
 attorneys and made the exceptions to these proceedings
 which signed by them are hereto attached.

In witness whereof as well the said Sheriff as the
 said Jurors have set our hands and seals to this
 inquisition the day and year above written.

(Signed)	Thomas Maddy	(Seal)
	A. S. Fay	(Seal)
	Hiram Lewis	(Seal)
	Daniel T. Wood	(Seal)
	G. L. Conkey	(Seal)
	Wm. H. Veberton	(Seal)
	L. W. Church	(Seal)
	James Jithay	(Seal)
	J. A. Barker	(Seal)
	R. K. Armstrong	(Seal)
	J. M. Hustis	(Seal)
	M. J. Mills	(Seal)
	John L. Wilson, Sheriff	(Seal)
	By Ada Snow Deputy	

In the Cook County
Court of Common Pleas.

The People of the State of Illinois October 26: 1858.

for the use of Daniel. P. Olney

Assessment of Damages

vs

on Writ of Inquiry

James, S. Beach Cyrus P. Alden

Before the Sheriff.

unpleaded &c - - - - -

Before the Jury were empanelled to view
the defendants objected to any further proceedings in this
cause before the Sheriff on the ground that the Sheriff has
no jurisdiction to assess the damages in said cause upon
the Writ of Inquiry issued therein.

Second - The assessment of damages by the Sheriff
being a judicial act, and the Sheriff being absent, his
Deputy, Ira Snow, before whom the assessment in this cause
is now to be taken, has no jurisdiction to perform such
judicial act,

Third - The defts also object to any further proceeding
in this cause before the Sheriff or his Deputy on the ground
that no notice was given the defts of the application for
or issuing the Writ of Inquiry to assess the damages herein.

Blackwell & Humming

Attys for Defts.

Objections overruled by Ira Snow, deputy Sheriff, to
which decision the defts duly excepted

Defts further objected to the several items of evidence
given before the Jury before the same was given

Objections overruled by Deputy Sheriff as above and
Defendants duly excepted.

Defendants also object to the Jury assessing the damages
in this cause for want of sufficient proof to authorize
the panel.

Blackwell & Humming
Attys for Defts.

The proof offered and given being as follows.

J^r Waite. Being sworn says I am Deputy recorder,
this is the Certificate Record Book kept in my office
Book is No 2.

Certificate of Sale by former Sheriff, recorded
in Book No 2, of Certificates page 67 ^{read} produced in Evidence.

Objected to by Defendants.

Assignment of Certificate read in Evidence after
the Execution thereof was duly proved.

Objected to by Defendants.

Moses Walcott. Sworn. In middle of June 1858 I
called on Deft Beach for the money named in the
Certificate of Sale.

Objected to by Defendants.

Date of redemption Oct 17: 1856.

Amount \$363.50

Blackwell & Humming
Attys for Defts.

And thereafter to wit on the twelfth day of November
A. D. Eighteen hundred and fifty eight the said D. J.
Olney by his Attorney filed in the Office of the Clerk of said
Court a precept for Seis facias, which thereupon issued
Which said precept and Writ of Seis facias, with the Sheriff's
return thereto, is in the words and figures following, to wit,

" People of }
as }

Beach Et als } Ipsos Sei fa to make N. C. Walker, Carlton
Drake and Joseph H. Gray, parties to the judgment in
this cause.

Edw. McHawley
for D. J. Olney.

"State of Illinois }

County of Cook }

The People of the State of Illinois
To the Sheriff of said County greeting
Whereas at the Term of the Cook County Court of
Common Pleas held in and for the County of Cook and State
of Illinois to wit on the 16th day of September A. D. 1857
before the said Court then judicially sitting at the Court
House, in the City of Chicago in said County, The People
of the State of Illinois for the use &c. plaintiffs by the
judgment and consideration of our said Court, recovered a
judgment in a certain Plea of Debt then pending in said
Court against James S. Beach and Cyrus J. Albee who
was impleaded with Martin C. Walker, Carlton Drake and
Joseph H. Gray, for the sum of Two thousand dollars.

Debt and the Costs of Suit; which said judgment still remains in full force and undisturbed as to the said Beach and Allen, And whereas at the time of the rendition of the said Defendants judgment the said Defendants Walker & Drake and Gray had not been found, as appears by the return of the Sheriff of Cook County, endorsed upon the process issued against the said Defendants therein, so that judgment could not be entered against them, together with the said Beach and Allen & Gray for the said damages & Costs.

We do therefore hereby command you, that you summon the said Martin C. Walker, Charles Drake and Joseph H. Gray, if they shall be found in your County, personally to be and appear before the said Cook County Court of Common Pleas, in the first day of the next term thereof, to be held at the Court House in the City of Chicago, in said County on the fifth Monday of November instant there and there to show cause if any he have or can show, why he should not be made a party to said judgment and further to do and receive what shall then & there be adjudged by our said Court in the premises.

And have you then and there this Writ, with your return thereon in what manner you shall have executed the same.

Seal,

Wm. H. Kimball, Clerk of our said Court
and the Seal thereof at Chicago in said
County, this 10th day of November A.D. 1885.

Wm. H. Kimball - Clerk

Endorsed "Served by reading to the within named Defendants Martin C. Walker and Joseph H. Gray, the other defendant not found in my County this 16th day of November 1838.

Arthur S. Wilson, Sheriff

By George Anderson, Deputy,

And afterwards to wit on the twenty ninth day of November (being one of the days of the November Special term of said Court A.D. Eighteen hundred & fifty eight the following proceedings were had in said cause and entered of record in said Court to wit,

"The People of the State of Illinois
who sued for the use of John Copeland

(vs)

James S. Black, Carlton Drake,
Martin C. Walker, Joseph H. Gray
& Cyrus P. Albee

And now comes the said Plaintiff
by its Attorney aforesaid and the said Defendant Martin
C. Walker by Blackwell its Attorney, as well the said
Defendant Joseph H. Gray by Homer his Attorney also
comes, and on Motion of Defendants Attorneys and by
Consent of Plaintiffs Attorney, it is Ordered that ten days
time be allowed said Defendants to plead on *Scire facias*
issued herein.

And thereafter to wit on the first day of December A. D. Eighteen hundred and fifty eight the said Defendants accordingly filed in the Office of the Clerk of said Court their Pleas to said Writ of Scire facias; which said Pleas are in the words and figures following, that is to say.

"The People of the State of Illinois In the Cook County
for the use of the Court of Common Pleas
(in) of the Term of November

Carlton Drake, Joseph H. Gray and { A. D. 1858 - Delin
Martin C. Walker unpleaded with { Sheriff's Bond. Sci fa
James S. Beach & heirs P. Albee { to make parties to a
former Judgment.

1. And now come the said Martin C. Walker (the said Carlton Drake not being served with process) by Blackwell Humming his Attorneys and defend the wrong and injury when &c and say that the said writing obligating in the said Original Declaration, and in the said Writ of Scire facias mentioned is not his Deed, and thus they pray may be inquired of by the Country &c.
Blackwell Humming -

2. And the said Defendants for further Plea in this behalf by leave of the Court here first had & obtained &c say Plaintiffs Oath Men because they say, that on the Tuesday next after the first Monday of November 1851, at an Election then held at and within the County of Cook aforesaid one James Andrew was

by the legal qualified voters of said County duly Elected
Sheriff of the said County for the term of two years or
until his successor should be Elected and qualified
And the said Defendants further aver that the said
James Andrew so Elected Sheriff as aforesaid, afterwards
that is to say on the 20th day of November 1851 was
duly commissioned and qualified as such Sheriff And
the said Defendants further aver that the said James
Andrew under and by virtue of the Election commission
and qualification aforesaid assumed to act as such Sheriff,
and did act as such Sheriff from the said date of his
qualification aforesaid until the 27th day of February
A.D. 1852, where the said James Andrew died, leaving
the said Office of Sheriff within and for the said County
Vacant, And the said Defendants further aver that
on the said Tuesday next after the first Monday of
November 1851 at the said Election aforesaid the said
James S. Beach was duly and legally Elected Coroner
within and for the County of Cook aforesaid, and was
afterwards, that is to say, on the 20th day of November
1851 duly commissioned and qualified as such Coroner,
and afterwards he was on the said 20th day of November
1851, the said James S. Beach executed and delivered to
the said Plaintiffs an official Bond as such Coroner in
the words and figures following, that is to say.

"Know all Men by these Presents, That we James S.
Beach, Theodore Dety, A. Repster, D. C. Thatcher, &c.
Clybourne are lawfully bound unto the People of

the State of Illinois in the sum of \$2000. lawful
Money of the United States, for the payment of which
sum well and truly to be made we bind ourselves
our heirs executors administrators jointly and severally
jointly by these presents. Sealed with our seals and
dated this 18th day of November A.D. 1854.

The Condition of the above obligation is such That
whereas the said James S. Beach has been duly elected
to the Office of Coroner of Cook County in the State of
Illinois, Now if the said James S. Beach shall faith-
fully and truly discharge and perform all the duties
required or to be required of him by law as such
Coroner of such County of Cook, then the above obligation
to be void, otherwise to be and remain in full force
and Effect.

Approved in open Court this 20th day of November A.D. 1854
James S. Beach (Seal)
R. S. Morris (Seal)
Judge of Circuit, Ill. D. C. Thatcher (Seal)
A. Clybourn (Seal)

Filed November 20th 1854.

Which said Bond was duly approved by the Judge
of the Circuit Court, within and for said County, and
duly filed and Entered of record in the said Circuit
Court according to the form of the Statute in such case
made and provided; which said Official Bond is still
in full force and Effect; And the said Defendants
further aver that after the death of the said James

James Andrew Sheriff as aforesaid, to wit, on the said
24th day of February 1857 Charles B. Farnett Clerk of
the said County of Cook Notified the Governor of the
said State of Illinois of the death of the said James
Andrew in due form of law; And the said defendants
further aver that the said Governor failed & neglected
to issue a Writ of Election to supply the vacancy aforesaid
in the said Office of Sheriff in the said County of Cook
according to the form of the Statute in such case
made and provided; And the said James, S. Beach
Coroner as aforesaid assumed to exercise and continued
to execute the duties of the said office of Sheriff by virtue
of his said Office of Coroner from the said day of the
death of the said James Andrew Sheriff Elect as aforesaid
until John L. Wilson the successor of the said James
Andrew Sheriff Elect as aforesaid, was duly Elected,
Commissioner, qualified and entered upon the duties of
his Office as Sheriff of said County, to wit; until the
day of November A.D. 1856. And the
said defendants further aver that afterwards, that is to
say on the 23rd day of March 1856 at and within the
County of Cook aforesaid, the said James, S. Beach
Carlton Drake, Joseph H. Gray, Martin C. Walker and
Cyrus J. Allen made and executed the Bond in the
said Original Declaration and Writ of Seire facias
mentioned, and afterwards to wit on the day and year
last aforesaid, delivered the same to the said Plaintiffs
And thus the said defendants are ready to verify &c

Wherefore they pray judgment &c
Blackwell & Humming.

And the said defendant for further Plea in this behalf say Plaintiff, Actio Non, because they say, that at the time of the issuing and delivery of the Execution in the said Original Declaration and Writ of Seire facias mentioned James Andrew the Sheriff of said County of Cook was dead and the said Office of Sheriff Vacant, that the Clerk of said County of Cook duly notified the Governor of the said State of Illinois of said Vacancy in said Office of Sheriff, within and for said County by reason of the death of the said incumbent, and the said Governor wholly neglected and refused to supply said Vacancy by Ordering an Election of a successor to the said James Andrew the deceased Sheriff aforesaid And the said defendants aver that at the said time when the said Writ of Execution was issued and delivered to the said James S. Beach - no Coroner of the said County as aforesaid the said John Copeland for whose use this suit is brought, and who was the Plaintiff in said Execution wholly failed to make and file in said Court any Affidavit of the death of the said James Andrew, nor did the death of the said James Andrew appear of record or upon the files of the said Recorders Court in any manner or form whatsoever And this the said defendants are

ready to verify.

Wherefore they pray judgment &c
Blackwell & Humming

11. And the said Defendants for a further Plea in this behalf say, Plaintiff Actio non, because they say, that the said Fayette S. Bulkley was not at the time of the issuing and delivery of the said Writ of Execution in the Original Declaration and Scire facias mentioned to him the said Bulkley a deputy of him the said James S. Beach Coroner and acting Sheriff as aforesaid And this the said Defendants are ready to verify &c.
Wherefore they pray judgment &c
Blackwell & Humming

And thereafter to wit on the first day of December A D. Eighteen hundred and fifty eight, the said Plaintiff filed in the Office of the Clerk of said Court its Similitur, Demurrer and Replication to said Pleas, in the words and figures following that is to say.

"In the Cook County Court
of Common Pleas

The People of the State of Illinois, Of Novr. Special
Term 1858

Carlton Drake, Accepto H. Gray & Son for to make
Martin, O. Walker imple &c . . . party to

And the said plaintiffs as to the said Plea

of the said Walker by him firstly above pleaded, and whereof he hath put himself upon the Country, doth the like &c

And as to the said Plea by Walker secondly above pleaded, they say that the same and the matters and things therein contained are not sufficient in law to bar or preclude them &c and they demur thereto, Wherefore for the insufficiency of said Plea they pray judgment &c

And as to the said Plea by said Walker thirdly and fourthly above pleaded they say that the same and Each of them and the matters & things therein alleged & contained are not sufficient to bar or preclude them &c and they demur thereto. Wherefore for the insufficiency of said Pleas and Each of them, they pray judgment &c

And thereafter to wit on the sixth day of December A. D. Eighteen hundred and fifty eight the said Defendant Gray by Hooper his Attorney filed in the Office of the Clerk of said Court his Demurrer to said Declaration; Which said Dotal Demurrer is in the words and figures following, that is to say.

Peoples &c for use of	Brook County Court of
John Copeland	Common Pleas
(w)	November Special Term
Joseph W. Gray et al on	A. D. 1858.
Sci fa implo &c	(44)

And the said Defendant Joseph H. Gray by
Wosmer his Attorneys comes and defends the wrong and
injury when he and says that the said Declaration
and the matters therein contained are not sufficient
in law for the said Plaintiff to have or maintain his
aforesaid action thereof against the said Defendant and
he is not bound by law to answer the same And this
he is ready to verify Wherefore he prays judgment of
and the said Defendant states and shows the following
Causes of demurrer viz^t

1st Said declaration contradicts itself, it shows that a
Notice was served on Beach in Feby 1857 to return
Ex: yet an Order was made in the Records Court
at Nov Term 1856. A final judgment entered against
Beach at the Feby Term 1857

2nd The Declaration shows that the Plaintiff Copeland
Elect to pursue Beach under the Statute for the Debt
and Penalty and thereby discharged Beach's duties.

3rd The Declaration seeks to charge Beach's duties for
a Penalty as well as the Debt, which cannot be legally
done.

4th The Declaration although it sets out a Bond is really
upon a Judgment against Beach obtained in Records
Court to which this defendant was no party.

5th That the said Declaration is in other respects
defective, illegal and insufficient.

Wosmer & Peck

Atty for Deft Gray.

And thereafter to wit on the twenty fourth day of January
(being one of the days of the January Special Term of said
Court) A. D. eighteen hundred and fifty nine, the following
among other proceedings were had and entered of Record in
said Court, to wit,

The People of the State of Illinois
vs. of Daniel J. Olney

vs

Seis facias &c.

James S. Beach, Carlton Drake, Martin
C. Walker, Joseph H. Gray, Hyman J. Allen

And now at this day come the People
by Hawley their Attorney and the Defendants Beach, Gray, Walker
& Allen by their respective Attorneys also come. And the Motion
of the defendants Allen and Beach to suppress the Writ of Inquiry
issued and returned in this cause, came on to be heard and was
sustained by the Court. (The said last named defendants
submitting the agreement of damages under the suggestion filed
on behalf of said Olney to the Court, without further notice of the
time and place of taking the same).

And now comes on to be heard the Demurrer of the
Defendant Gray to the Declaration and the Court being of the
opinion that said Declaration is sufficient in law, overrules
said demurrer And the said Defendant Gray excepts thereto and
stands by his demurrer, and being solemnly called comes not
nor does he say aught why judgment should not be rendered
against him.

And the said demurrer of the said People to the D^c

3rd and 11th Pleas of the Defendant Walker came on to be heard and the Court (per force without agreement) sustain the same and are of the opinion that the said Pleas are insufficient in law to bar or preclude said Plaintiff, and the defendant Walker accepts thereto and stands by his Pleas and the issue joined upon said first Plea of said Defendant Walker unpleaded came on for trial, and the trial of the same & the assessment of the damages under the breaches assigned in the said suggestion as to said Defendants Gray, Beach and Allen unpleaded it is by agreement submitted to the Court, a jury to try the same being waived by the parties. And the Court being fully advised in the premises finds said issue for the Plaintiff & that the said Bond is the Debt of the said defendants, and that the said Walker & Gray unpleaded with said Beach, Allen & Drake owe and are indebted unto the said Plaintiff in the said sum of ten thousand dollars in form aforesaid recovered against said Beach and Allen, penalty of the said Bond - and the Court assesses the damages by occasion of the further breaches suggested of the Condition of said Bond - at the sum of Four hundred and Seven dollars and ninety five Cents.

It is therefore Ordered and Considered by the Court that the said Walker and Gray unpleaded be made parties to the judgment heretofore rendered in favor of said Plaintiff against said Defendants Beach and Allen unpleaded & that the People of the State of Illinois for the use aforesaid do have and recover against the said Walker & Gray unpleaded with said Drake, Allen & Beach the said sum of Ten thousand

dollars their debt in form aforesaid recovered against said Oliver
and Beach unpleaded to and their costs of this suit to be taxed
and that execution issue therefor against said Beach, Oliver
Walker and Gray unpleaded with said Drake with an order
to make the said sum of
interest and costs, in satisfaction of such execution and that
said judgment stand as a security for such further breaches as
may happen of the condition of said Bond.

And the Defts Gray, Beach, and Walker and Oliver
may an Appeal to the Supreme Court of this State and it is
granted them on filing an Appeal Bond in ten days in the
penalty of Six hundred dollars conditioned as the law directs
to be approved by the Court and twenty days is given to
prepare and file Bill of Exceptions.

State of Illinois
Cook County } P.

I Walter Kimball Clerk of the Cook County Court
of Common Pleas within and for the County and State aforesaid
Do hereby Certify the foregoing to be a full true and correct
Manuscript of the papers now on file in my Office, together
with all orders entered of Record in said Court in a certain
Suit therein wherein The People of the State of Illinois for
the use of — and Plaintiffs and James S. Beach
impleaded with others are defendants.

In testimony whereof I the said Walter
Kimball have hereunto set my hand and
affixed the Seal of said Court at Chicago
in said County this twelfth day of April
A. D. 1859.

Walter Kimball
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1859.

CYRUS P. ALBEE, *et. al.* }
vs. }
THE PEOPLE OF THE STATE OF ILLINOIS. }

The facts are, that on the first Tuesday next after the first Monday of November, 1854, James Andrew was elected Sheriff, and James S. Beach Coroner of the County of Cook, and State of Illinois. That on the 27th of February, 1856, the said Sheriff died. The Clerk of the County Court of Cook County notified the Governor of the vacancy. The Governor neglected to issue a Writ of Election to fill said vacancy. On the March 25th, 1856, the said Beach, with Carrolton Drake, Joseph H. Gray, Martin O. Walker, and the said Cyrus P. Allbee entered into a bond which was approved by the Circuit Court of said Cook County, in the penal sum of \$10,000, and payable to the People of the State of Illinois, conditioned as follows: "That, whereas the above bounden James S. Beach, Coroner in and for the County of Cook, and State of Illinois, has by 'the decease of James Andrew, late Sheriff of said Cook County, succeeded to the rights, duties, office, &c., of Sheriff of' Said County, by virtue of his said office of Coroner, now if the said James S. Beach shall faithfully and truly perform and discharge all the duties required or to be required of him 'by law as acting Sheriff' of said County of Cook then the above obligation to be void; otherwise to be and remain in full force and effect."

On July 6, 1857, the People of the State of Illinois, for the use of John Copeland, sued the bond aforesaid in the Common Pleas Court of Cook County aforesaid. The writ of summons was served upon the said Beach and Allbee alone. On September 16, 1858, a judgment by default was entered against the said Beach and Allbee, for \$10,000, the penalty aforesaid, and the damages were assessed in favor of the said Copeland to the amount of \$321.75. An execution issued upon said judgment for the damages aforesaid October 2d, 1857, *vs.* the said Beach & Allbee. On September 16, 1858, Daniel T. Olney suggested a further breach of said bond, and recovered, on September 25, 1858, upon an assessment, damages for such further breach to the amount of \$389.92. On November 12, 1858, a *sci. fa.* was issued on the original judgment aforesaid, to make Walker, Drake and Gray parties thereto. This writ was served upon Walker and Gray. Drake not found. To this *scire facias* Gray demurred, and Walker plead in substance the facts aforesaid. The plaintiff demurred to the said several pleas. Judgment was rendered upon the demurrer, making Gray and Walker parties to the said original judgment.

Errors assigned:

1. The Court erred in rendering the original judgment aforesaid.
2. The Court erred in assessing damages in favor of the said Copeland.
3. The Court erred in assessing damages in favor of the said Olney.
4. The Court erred in making the said Gray and Walker parties to the said original judgment.

R. S. BLACKWELL, *Pliffs. Attorney.*

285-216

Byrus P. Albee
v7

The People
Abstract

- Given May 20, 1859
L. Leland
clerk

In the Supreme Court -
Cyrus P. Allen et al

vs
The People of the State
of Illinois

vs Cook,
Com. Pleas -

The vacancy occasioned
by the death of the Sheriff is filled by the
coroner until a new Sheriff is elected
either by a special election or at the
next succeeding general election -
In this case Andrews died in March
and Prach the Coroner acted as Sheriff
of the county until in November
following the Governor not deeming
it advisable to call a special election
During all this time Prach was not
only Coroner but also Sheriff of the
county. He could execute writs
directed to the Sheriff - In fact held
two distinct offices -

"In case of a vacancy in the office
of Sheriff of Sheriff by death &c &c the
coroner shall do and perform all
the duties pertaining to the office of
Sheriff receive the proper fees and
emoluments and be liable to the same
penalties and proceedings as if he
were Sheriff until such vacancy
shall be filled by the election and qualifi-
cation of a new Sheriff" - S18. C. 99. RS.

He is to be liable to the same penalties
and proceedings. That is shall do all
acts which are required to be done by the

Sheriff - The Sheriff is required to give bond in the penalty of ten thousand dollars or vacate his office - When the coroner succeeds to him he must do the same otherwise it is a refusal to qualify and the office remains vacant - It is better that it should be so than that an irresponsible person should assume to act under the new responsibilities placed upon him without giving any security whatever. His bailiff ~~as~~ ^{for} ~~him~~ acts as coroner. but he is now acting as Sheriff - additional duties are added for which additional security should be required - By holding this to be the proper construction of the law no injury is done to any one and the public good is subserved - It cannot be supposed that it was the intention that the only security suitors in court should have for the acts of the coroner for the time he might act as Sheriff should be only the paltry sum of two thousand dollars - That bond is given in reference to such acts as casually the coroner may be required to do through the inability of the Sheriff - But then the whole responsibility of the office of Sheriff is thrown upon him and may be for the whole term of two years lacking one day - A construction of the law should be adopted if possible to favour the security of suitors others who are compelled by law to trust to the fidelity, integrity of

public officers - These sureties
gain this bond with their eyes open
voluntarily and it can be saying
them no injury to hold them to their
obligation while the public may
suffer if they are discharged -

I contend therefore that this is an
official bond required by law to be given
and as such the jffs in error are bound
upon it -

But calling this a common law
obligation - It is upon its face for the
benefit of third persons It is given to the
People of the State of Illinois - in their
corporate capacity for the benefit of
such persons as might be injured
by the misfeasance malfeasance or
nonfeasance of Prach while acting
as Sheriff of the County filling a
vacancy occasioned by the death of a
former Sheriff - Has this bond terms
to the People & its penalty payable to
them and has its condition provided
for the duties which Prach as Sheriff
owes to the People of the State of Illinois
in their collective or corporate capacity
alone. The proposition made by the
counsel that no change to it could
have a suit instituted upon it for his
benefit might hold - But that is not so
upon its face it is given for the use
of third persons - and can it lie in
the mouth of the obligors of the bond to
say we have done a useless thing

True we gave our bond for the benefit of those persons who should intrust Mack with the execution of process, running to the People in their corporate capacity but inasmuch as no particular piece of Statute can be found authorizing a suit to be brought upon it therefore we are not liable -

The objection that this suit was not instituted in the Court below by the State Attorney comes too late now. This Court will presume all things necessary to sustain the regularity of the proceedings in the Court below - Admits that this should be prosecuted by the State Attorney. How does this Court know but that the Attorney who appeared ~~was~~ was the State Attorney at that particular time - How does this Court know even if they can judicially know that the State Attorney was another person - but that he was intrusted or absent and so the Court appointed those who did in fact act to act in his place. It is not to be presumed that the Court below recognized any persons as acting on behalf of the people unless they were authorized so to act. And if the defendants below claimed that they had authority so to act it was their duty to call the attention of the Court below to it at the outset. It is in the nature of a plain statement, supposing a

better remedy but not denying the right
and like all other dilatory matters should
be opposed in the first instance -

The question upon which the
counsel submits this case is not
presently the point at all - a
stranger does not recover in this
instance - The People of the State of Illinois
are the obligees in the bond. The plain-
tiffs of Riccio and recover the judgment
they sue for the use of the persons,
whose benefit the court must hold the
~~defendants~~ ^{obligors} had in view when they
signed the bond to give it any efficacy
whatever. If the persons for whose
use this bond was given had signed on
it in their own names there
might be some propriety in the question.
But the distinction between the obligee
sueing for the use of persons interested
though not expressly named - and
those persons sueing in their own name
strangers as they are upon the face of
the writing & matters aliunde con-
necting them with it is most obvious -

The real point is this - The bond
may be sued on as a common law
bond that the counsel concedes - but
the State Attorney must appear for the
people - But some body did appear
for them who styled himself plaintiff
attorney but whether State Attorney or
not does not appear. The court below
had the power to appoint some one to

Non constat but they did appoint
in any court that court recognized
an appearance for the people and
will not this court presume rightly
unless something affirmatively
appears to show that it was otherwise.

The case of the appointment of
a special master is analogous -
and that of a sheriff acting under
a writ in chancery -

M. J. Phipps
for Shfts -

285 - 216
Sup Court

Albu
as

Proper

Deputy.

Frid May 28. 1889
Leland
Clark

W. M. Rupp
for sh

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1859.

CYRUS P. ALLBEE, *et. al.* }
vs. }
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R. S. BLACKWELL, *Plffs. Attorney.*

28B-212

Cyrus R. Albee

vs

The People

Abolition

Filed May 20, 1859

Leland

clerk

vs. P. Allbee Et al

vs.

The People of the State of Illinois

vs.

In the Supreme Court
of the State of Illinois
of the Third Grand Division
April Term 1839.

The only question I purport discussing
in this Cause is as to the validity of
Beach's bond - The bond is not a
statutory obligation. There is no law
of this State which authorizes the
giving of a bond by the Coroner
upon the death of the Sheriff. If
there is let the opposing Counsel
point to it. On the contrary
the Statute contemplates that upon
the death of the Sheriff the vacancy
shall be filled by the election of a
new Sheriff - that until such
vacancy is filled the Coroner
shall perform the duties and
receive the emoluments of the
Sheriff, and that law evidently
contemplates that the Coroner's
bond of Two Thousand Dollars
is ample security to indemnify
all persons injured either by
the malfeasance or nonfeasance

or nonfeasance or misfeasance
of the Coroner until the Clerk
of the County and Coroner of the
State perform their duty by
calling an election to fill the
vacancy. (Cook's Statute, 1126
Sec 18 - 1125. Sec 15 - 799 -
802 - 471 Section 35 - 479 - no
Section top of the page - 1122 Secs
1. 2. 3 & 4) This Statute Book
is not therefore upon a fair
Construction of these Statutes a
Statutory obligation - although
the condition is a substantial
compliance with the form pre-
scribed.

2^{dy}

Is this a voluntary Common Law
obligation independent of the
Statute? I answer yes - but
what is the extent of the obli-
gation? upon this interrogation
this cause must turn - The
Court will remember without
the citation of authorities that
it is a well settled principle
of the Common Law that duties
cannot be held beyond the

3d

the very terms of this under-
-taking. That nothing is to
be taken by implication
against them - That they have
a right to stand upon the
letter of their bond - That the
Court will give them the benefit
of even a technicality to save
them from liability. This
doctrine has been peculiarly
illustrated by two decisions of
this Court - and the Sureties
discharged. "The first Case"
was that of Young vs Mason
3d Gilman R.S. in
which an appeal Bond varied
from the Statutory form in
omitting the words "or tried"
in all other respects the bond
was in strict conformity with
the requirements of the Statute,
Mason appealed - His appeal
was neither tried nor dismissed
but a judgment of affirmance
was entered in the Circuit
Court. It was insisted that an
affirmance was equivalent
to a dismissal of the appeal,
and the bond therefore forfeited

4

It was also insisted that the condition "to prosecute the appeal with effect" was broken by the judgment of affirmance. This Court held first that the bond was not a statutory obligation because of the omission aforesaid - Secondly - that it was a common law obligation - third - that the surety was only liable to the extent of his obligation - fourth - that the extent of that particular obligation made the surety liable only for six cent damages.

The second case was that of Sharp v Redell D. C. 88. which was also an action upon an appeal bond. The Statute provided that the Appellant should pay "whatever judgment may be rendered by the Court upon demurrer or trial of said appeal". The Bond in question recited an appeal from the judgment

5th

judgment of a justice of the
Peace of Hancock County to
the Circuit Court - but the
condition was in fact to prosecute
the appeal with effect - and
pay whatever judgment might
be rendered by the Circuit
Court of Hancock County upon
the trial or dismissal of
said appeal - The Appellant
obtained a change of venue
from Hancock to McDougal
County and in the latter
Court upon the trial of said
appeal a judgment was
rendered in favor of the
appellee - This Court held
that the surety upon the
appeal bond was not liable
because the Statute form was
departed from - Their decision
we rely upon as establishing
the principle that a surety
is not liable beyond the extent
of his obligation according
to its very letter - Now let
us apply this principle to the
fact of this case - The Bond

6

The Bond in this suit is payable to the People of the State of Illinois - The People of the State of Illinois have not been injured by a breach of the Condition aforesaid nor could they be except under Cook's Statute 644 Sec 58 and 797 Sec 2 - and other sections which provide for the collection of debts due to the State through the instrumentality of State Attorneys. At Common Law no Stranger to an obligation could sue and recover upon it - There is no provision in our Statute which authorizes a Stranger to sue for a breach of an official bond ^{except in Special Cases}. Now the simple question I present to this Court is whether or not when a Sheriff or Coroner bond does not conform to the Statute and there is no general law authorizing a recovery upon the bond in behalf a stranger to the obligation can that stranger recover?

7
as upon a common Law obli-
-gation. This you I
submit without further
argument.

W. J. Maclellan
for plaintiffs in error

Cyrus Beecham

vs $\frac{1}{3}$.

The People & c

Argument of R S
Blackwell for
Appeal from the
Cook County Court
of Common Pleas

Filed May 28. 1859

Leland
Black

Prepared