

14558

No. _____

Supreme Court of Illinois

Wood

vs.

Cook

105
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 71

1863
Ward
v
Cook

1863

14553

In the Supreme Court.

No 71-

Cook

and

Prayer that



know to cook in court

And the deft by Boney's his
Attorney comes & says that there is no
man in the said program & present
days &c

Mr. J. Boney
for deft

No 71-105-

Cook

ad

May 1st

Journal

Friday Apr 25. 1863

L. L. Allen

Chase, Storrs & Munson,

Attorneys and Counselors at Law,

102 Washington Street,

HIRAM M. CHASE,
EMERY A. STORRS,
HENRY S. MUNSON.

Chicago, Dec. 1st 1869

Lorenzo Island Osg
Clerk Supreme Court
Ottawa Ill.

Enclosed please find Recd
Abstract of Recd. Points and Bond for
writ of Error to be made a Supersedeas in
Fahm & Bay. ^{and} Elgar T Bay. Refs in
Error vs. Isaac Cook Defendant in Error
~~Re~~ Enclosed also find you fees \$ 5.00
Issue the writ making it a Supersedeas in
proper form and send to me by Ex press without
delay as it must be served before the 5th inst
as the property is advertised to be sold
on that day

Went to E. A Storrs of Chase
Storrs & Munson 102 Washington Street
Chicago Illinois

Yours etc.
E. A Storrs

Elgar T Bay is an infant & cannot execute
a bond. This was so stated to & understood
by Judge Walker.

71

Bay

(b)

cook

price

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Cook County, 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 Cook County, before the Judge thereof, between Isaac Cook

plaintiff; and Daniel T. Wood, John McFall, Lorin G. Butler, Martin Dodge, Peter H. Bigelow, Henry B. Day and Thomas E. Hamilton

defendants; it is said that manifest error hath intervened, to the injury of ~~the said Edgar Day heir of said Henry B. Day, by John S. Day his Guardian~~
~~John S. Day executor of Henry B. Day, Daniel T. Wood, John McFall, Lorin G. Butler~~
~~Martin Dodge & Peter H. Bigelow and Thomas E. Hamilton~~

as we are informed by their complainant 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 Isaac Cook

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he 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 Isaac Cook

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 27th day of May in the year of our Lord One Thousand Eight Hundred and Sixty-two,

L. Leland

Clerk of the Supreme Court.
J. D. Rice Deputy



Shenly ~~accepts~~ admits series
on me of this unit any. 23/62
J. Booth

89.

Edgar T. Barry &c

No.

vs.

Lucas Cook

SCIRE FACIAS.

FILED
APR. 4 1862
CITY OF NEW YORK
CLERK

S. Veland Clerk.

In the Supreme Court of the State of Illinois
Third Grand Division -

Edgar J. Ray heir of Henry B. Ray
by John S. Ray his Guardian. John
S. Ray Executor of the last will and
testament of Henry B. Ray - L. G.
Butler. Martin Dodge P. H. Higelow
and Daniel B. Wood impleaded with
J. E. Hamilton

vs

Isaac Cook

error to
Cook County
Circuit
Court -

State of Illinois

County of LaSalle Sp. William J. Ringels of said
~~said~~ Cook County being duly sworn doth
depone and say that P. Butler - one of the
Plaintiffs above named was not a resident of
the State of Illinois when this suit was com-
menced and is not now - and that Edgar J.
Ray heir of said Henry B. Ray and one of said
Plaintiff was at a minor under the age of
twenty one years and that this depONENT is
informed by the Clerk of this Court that no
bond or other security for costs has been filed
in this cause

Subscribed and sworn to before me this
day of April
A.D. 1863 -

L. Deland

Clk.

W. J. Ringels

71

Sup Court

Pray bar
us

Exotic

affr in motion to
Dismiss

Filed Apr 21. 1863
L. Deland
Clerk

Pray

Supreme Court of Illinois
Third Judicial Division

Edgar T. Bayless of Henry
B. Bay, by John S. Bayless,
Guarantor. John S. Bay
Executor of the last will and
testament of Henry B. Bay.
S. G. Butler, Martin Doty, P. H. Bigelow
and Samuel M. Wood
impleaded with Samuel M. Wood
~~impleaded with Samuel M. Wood~~
Plaintiffs in Error

vs.
Isaac Cook
Defendant in Error

And now come the above named Plaintiffs
in Error by Chase Stone and Munson their
Attorneys. And say that in the Record
and proceedings aforesaid and also in
the giving the judgment aforesaid, there is
manifest Error in this Court

1. The above named plaintiffs were
under the bond set out and described
in the declaration, liable as sureties
for the said Daniel T. Wood for his acts &
as deputy Sheriff, and the breach assigned
is for a failure to perform and discharge
his duty as Sheriff.

his duties as collector of taxes

2. The Court erred in overruling the demurrer to the declaration

3. The Court erred in giving judgment against the said plaintiffs in Error for the amount of money in the hands of Daniel T. Wood. as collector of taxes and received by him as such. - The plaintiffs in Error. were not bound for the defaults of said Daniel T. Wood. as collector of taxes -

4. The Judgment is against law & equity

And the said plaintiffs in Error pray that the judgment aforesaid for the Error aforesaid may be set aside, reversed

Alleged by

Chas. Stone & Munson
Alleged by

Edgar F. Bay

is

Isaac Cook

Frid May 29 1862
L. Lewis
Clerk

Supreme Court of Illinois
Third Grand Division
April Term AD 1863.

Edgar M. Baychal
Plffs in Error

vs.

Isaac Cook,
Defn in Error

~~~~~  
Suggestions

by Plaintiff in Error on motion to dismiss

- 1. -

The want of Error in this Case was based  
only several <sup>Plffs.</sup> defendants in Error, &  
non residence is alleged only as to one.

This it is conceived is no sufficient reason  
for dismissing the Case under the practice  
adopted by this Court. At all events there  
can be no reason for dismissing the  
Case as to those parties who are residents

, 2.,

The Statute to which the defendant in  
Error refers as to requiring security from



Guaranties has no application to this Case.  
It is not made obligatory upon the Guaranties  
to file the bond, nor is there any time indicated  
when it shall be filed. It would seem  
rather to Contemplate that the Suit  
might be Commenced without the filing  
of the bond, for after the bond is filed, then  
the Suit may progress. If the bond were  
necessary, then it there could be no  
objection to filing it at any stage of the  
Case. The Statute with regard to non  
residents imperatively requires the  
filing of the bond upon the Commencement  
of the Suit, and is as imperative that  
unless the bond be then filed the Suit  
shall be dismissed. But as conclusive  
upon ~~the necessity~~ of this question, the  
Statute referred to by Counsel, only requires  
the filing of a bond in Cases Commenced  
in the Circuit Court before a justice of  
the peace. The next friend is required to file  
the bond with the Clerk of the Circuit  
Court or justice of the peace, before whom  
the Suit may be brought - Cases in this  
Court are not reached by the Statute

Edw Morris  
for Effie Ennis.

Edgar Bay

<sup>n</sup>  
Isambard

Suggestions in  
Answer to motion

Helena April 22<sup>d</sup> 1863

L. L. L.  
C. M.



In the Supreme Court of the State of Illinois -

Isaac Cook

vs

Edgar T. Ray

Chall

Error to Cook Circuit  
Court -

The said Cook by his Atty  
Burgess moves the court to dismiss this  
suit because the said E. G. Buttrick one of the  
Pls in error was at the commencement  
of this suit and is now not a resident of the  
State of Illinois. And there is no security  
for costs filed in the cause -

And also because John S. Ray the  
Guardian of Edgar T. Ray hath not filed  
any bond for costs -

W. B. Burgess  
for Plt in error

71

Sup Court

Co. 12

ad

Day Mar

Motion to Dismiss

Filed Apr. 21. 1869.  
L. Kiland  
Clk.

Motion Overruled

N. J. P. King  
Sept. 1869.



# Supreme Court.

Court  
71- ad  
Bay

} error to Court ci: Court.

The motion to dismiss this writ is based upon the fact of non residence of Butler one of Pffs in error. & minority of Wm J. Bay another - & no security for costs filed by or under Guardian -

The Statute Sec. 1. p 126. R.S. Chapter costs. requires that in all cases when the pff is not a resident of the State that security for costs shall be given - This is held to be a disqualification - Now can he avoid this because he is associated with others who are residents - must not all parties who join in a suit be qualified to sue - a plea defective as to one is defective as to all who join in it -

Under the act of Congress upon the qualification of citizenship. it has been repeatedly held that all each one must possess the requisite character -

Conkling's Treatise p. 152 and cases cited 3 Cranch 267. Parson C.C. 410. 15 Pet. 167

§ 13. p. 267 requires bonds to be given by Guardian, other suit may be prosecuted as in

71

Cook

and

Bay char

Pring on motion  
to 5 miles -

Filed April 22, 1863  
J. Leland M.

Other cases -

Wm. B. Burroughs  
Judge.



STATE OF ILLINOIS, }  
SUPREME COURT, }

ss. The People of the State of Illinois,  
of Chicago  
To the Clerk of the Superior Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of  
the judgments of a plea which was in the Superior  
Court of Chicago Cook County, before the Judge thereof, between  
Isaac Cook

Plaintiff and Complainant  
and Edgar T. Bay, Daniel T. Wood, Loren G. Butler,  
Martin Dodge, R. H. Bigelow, John B. Bay executor  
of the last will & testament of Henry B. Bay deceased & Uriah  
& Uriah N. Hubley guardians at Litem of Edgar T. Bay & John B. Bay  
defendants, it is said manifest error hath intervened, to the injury of the  
aforesaid defendants

as we are informed by their  
complaints and we being willing  
that error should be corrected, if any there be, in due form and manner,  
and that justice be done to the parties aforesaid, command you that if  
judgments thereof be given, you distinctly and openly, without delay, send  
to our Justices of the Supreme Court the record and proceedings of the  
plaint aforesaid, with all things touching the same, under your seal, so that  
we may have the same before our Justices aforesaid at Ottawa, in the County  
of La Salle, on the first Tuesday after the third Monday in April next,  
that the record and proceedings, being inspected, we may cause to be done  
therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of  
our said Court, and the Seal thereof, at Ottawa, this  
fourth day of December  
in the Year of Our Lord One Thousand Eight Hun-  
dred and Sixty two

L. Leland  
Clerk of the Supreme Court.  
J. B. Rice Deputy



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Edgar T. Bay & Miss

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No.

vs.

Isaac Cook

---



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**WRIT OF ERROR.**

*This Writ of Error is made a  
Supersedeas, and as such is to be  
obeyed by all concerned.*

L. Leland

---

J. B. Rine Clerk  
Deputy

---

FILED December 4<sup>th</sup> A. D. 1862

L. Leland

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Clerk.

---





delivered the opinion of the Court:-

Mr. Justice

Preise. This was an action of debt brought in the Cork circuit Court against a deputy Sheriff and his sureties on their bond to the Sheriff to save him harmless from the official acts of the deputy. The condition of the bond was that Daniel J. Wood as such deputy shall faithfully discharge all the duties required of him as deputy Sheriff, and shall save said Isaac Cook and his legal representatives harmless from all costs and damages on account of, or by reason of any and all acts of said Deputy, or by color of his said office.

The breaches alleged were, the collection by Wood, as deputy Sheriff, of certain moneys on <sup>as deputy</sup> execution. The other, ~~and~~ was, that, he had collected a large amount of State and County taxes, for which he had failed to account, and pay over.

A judgment was entered by default against Wood and his sureties for the debt to be discharged by the payment of the damages specified, and they were assessed at five thousand three hundred and eighty two <sup>17</sup>/<sub>100</sub> dollars.

The ~~case~~ record is brought here by writ of error and the following errors are assigned upon it: 1, That the judgment is against law; 2, The bond runs on covers acts of Wood as deputy Sheriff, and breaches assigned and the judgment, as for his default, as coll-



ector of Taxes. 3 The declaration is insufficient.

The only question argued is, as to the liability of the Sheriff, for <sup>the</sup> default of the Deputy Sheriff, in not paying over the State and County taxes collected by him as such deputy or the moneys placed in his hands for collection by the Sheriff.

The counsel for the Plaintiff  
in error, in ~~the~~<sup>an</sup> very able and ingenious argu-  
ment which he has submitted, maintains ~~that~~  
that the offices of Sheriff and Collector of  
taxes, ~~are,~~<sup>are,</sup> although imposed in the same indi-  
vidual, entirely distinct and independent in  
their character.

He presents, in parallel columns, the distinctive duties of each of those officers, and argues from them, their distinct characters.

We are not disposed to deny, or question the proposition the Council seeks to maintain, if it be true the offices are distinct, but <sup>this</sup> we deny. ~~they~~  
<sup>are</sup> distinct and independent character.

By the act of 1839 entitled, "an act con-  
cerning the Public Revenue." ~~Before 1839 passed,~~  
the County Commissioners Courts of each County  
were required, at their March term, to appoint  
some suitable person to act as collector, who was  
required, before he entered upon the duties of  
his office to take an oath faithfully to



perform the duties required of him as collector. He was also required, before he entered upon the duties of his office, to execute a bond in a penalty at least double the amount of the tax to be collected by him, with security &c. From this time, up to 1845, the offices of Sheriff and Collector were distinct and independent, neither one having any relation to, or connection with, the other. ~~But~~ Whilst the Sheriff obtained his ~~power and~~ authority directly from the people, the Collector derived his, from the appointment of an inferior Court. Whilst the bond of the first named was to be approved by the Circuit Court, that of the other, was to be approved by the County Commissioners Court while their duties were wholly dissimilar. They were different persons holding <sup>offices</sup> distinct and independent of each other.

By the revenue act of 1845, it is provided, by Section 27, that the Sheriff of each County shall be, ex officio, the collector of taxes, and his refusal to act, shall vacate his office of Sheriff, which shall be filled as in other cases of vacancy. (Stats. Comp. 992)

This Section merges the office, <sup>and duties</sup> of Collector into that of <sup>the</sup> Sheriff, and though he is, in the same act, referred to, and designated as collector, yet he is then Sheriff as collector he no longer has



a legal existence. The use of the word "Collector" in subsequent sections of the act, does not create or revive the office which had been before merged into another office, nor was it the design of the Legislature, <sup>to do so.</sup> It would be strange <sup>indeed,</sup> if, by one breath, an office was extinguished, by the same breath, it was brought again to life. The use of this word, is but another evidence of the want of care manifested in many of our Statutes, by those who <sup>drafted and</sup> enacted them.

4  
ygg  
After uniting the offices and imposing the duties on one person, thereby repeating the twelfth section of the act of 1839, the remainder of this act was preserved, in ~~which~~ various sections of which, the collector is named, such an officer not then being then known to our law. ~~The~~ ~~offices were extinguished,~~ ~~though the duties remained,~~ and the sections were framed to designate them. The 28th. section of the act of 1845, is identical with that part of section 12, which ~~is~~ ~~essentially~~ directly follows the provision in it, for the appointment of a collector. The form and condition of the bond are the same. Sections 32, 33, and 34, are made up of section sixteen of the act of 1839, and in all the various sections of the act of 1845, where the collector is named, the Sheriff, evidently, is the officer intended. How could it be otherwise when the law says in so many words, there shall be



No such officer as collector, but the Sheriff shall be, ex officio, such officers. The office of collector was gone, but the duties remaining they were cast upon the Sheriff. This <sup>view</sup> makes the whole statute consistent, and applies the law to the person and to the officers who, by the law, is required to perform the duty of collecting the taxes.

It does not seem to follow, as argued by the defendants Counsel, ~~that~~ because the Sheriff was required to give a bond faithfully to collect, that thereby, ~~that~~ the duty of ~~the collector~~ <sup>as</sup> ~~the collector~~ <sup>created</sup> an office distinct from that of Sheriff. The legislature cannot be presumed to have designed the creation of an office, when by the very act creating it, they had merged it ~~in~~ in another office. The design simply, was, to secure the State in <sup>performance of the</sup> the new duties imposed on the Sheriff.







So appointed and having taken and subscribed the several oaths required to be taken by the Sheriff, shall be, and is authorized to perform any and all <sup>of</sup> the duties required of the Sheriff in the name of the Sheriff; and the Sheriff shall be liable for any neglect or omission of the duties of his office when occasioned by any such deputy, in the same manner as for his own personal neglect or omission. And any bond or security taken by any Sheriff from a deputy to indemnify such Sheriff shall be good and available at Law.

(Scots Comp. 1124)

It is made the duty of the Sheriff, to collect the taxes, so soon as he executes the required bond. It is his duty as Sheriff, and in no other Capacity, and when he qualifies, <sup>his</sup> ~~the~~ deputies are at the same moment, qualified to collect, As it is one of his duties to collect <sup>the</sup> taxes, and as his deputies are authorized to perform any and all of his duties, the duty of collecting taxes would seem, necessarily, to be included, and if the deputy is delinquent, his Sureties must be responsible.

The Counsel for the plaintiffs in error ~~also~~ insist that Sheriff and collectors must be regarded as distinct and independent of



each other, from that provision of the statute  
 which ~~provides~~ declares that upon a vacancy  
 in the office of Sheriff, by his death or resignation,  
 the coroner is authorized to discharge all the  
 duties of his office, whilst, <sup>revenue</sup> the law expressly  
 provides in such an event, <sup>that</sup> the duties of  
 Collector of Taxes <sup>shall</sup> ~~be~~ be discharged by  
 some person especially appointed <sup>by the County Court</sup> for that  
 purpose. He argues with great force, and  
 we confess it is a very strong point in his  
 favor, that ~~this is a direct legislative determination~~  
~~action of the entire question, & since the legis-~~  
~~lature from this legislation it is clear~~  
 that wherever the duties of the Sheriff are  
 spoken of, or whenever reference is made  
 to the duties of the office of Sheriff, it in-  
 cludes and embraces only those duties which  
 the law has devolved on the Sheriff as such;  
 and that this is a direct legislative determina-  
 tion of the whole question, for the Legislature  
 has, by the case put, declared that all the  
 duties of the office of Sheriff, may be  
 discharged, without the discharge of any  
 of those duties, which the law has devolved  
 upon the collector of taxes. He argues, very  
 forcibly, if the words "all the duties of the  
 office of Sheriff" used in the statute, do  
 not, as they do not in fact, embrace the



Duties of collector of taxes, it must follow the same words used in a bond, could have as wider meaning, nor be considered as of a more comprehensive character.

This is put very strongly, but we do not think it is decisive of the question, for the reason that the bond in this case is ~~not~~ <sup>not for the performance of the duties of the</sup> ~~for the performance of the~~ <sup>not for the performance of the</sup> duties of the office of sheriff, but it is, for the performance of "all the duties required of him as deputy sheriff."

By the law, the sheriff is required to collect the taxes, his deputy is required to perform <sup>and all</sup> any duties imposed on the sheriff, therefore he is required to collect the taxes and he is undertaken by his bond. This is the covenant of the parties.

We have some cases we referred to by the plainiffs counsel as ~~decisions~~ <sup>authorities</sup> which we have examined. The

The first is the case of The People v. Edwards, 9 California, 291. By the law of California the sheriff is made ex officio tax collector, and it provides that he shall be liable on his bond for the discharge of <sup>his</sup> ~~the~~ duties in the collection of taxes, and does not require the execution of any new bond; nor is any other bond required than the one executed



by him as Sheriff, except when he acts as collector of taxes for Miners' licenses. The bond in suit ~~was~~<sup>was</sup> deemed to have been submitted in view of the provisions of the Revenue act. For moneys collected for Miners' licenses, <sup>the Court say</sup> the defendants are not responsible, but all delinquencies in the collection of other taxes are covered by the bond in suit.

This Court would decide the same way, were the duties of the Sheriff on his bond as such, based on his delinquency in not paying over the taxes. They would not be responsible, because of the special bond which he has given to cover such a delinquency.

As to the idea entertained by that Court, and by the Court of Mississippi in the case of Moore et al. vs. Foote, Governor, 32 Miss. 480, also cited by plaintiffs, that the offices of collector and Sheriff are separate and distinct, it must be based on some provision of statute, differing from ours with which we have not been favored.



The California case decides, and in this we concur, that the ordinary duties of Sheriff relate to the execution of the order, process and process of the courts; the preservation of ~~order~~ the peace; the arrest and detention of persons charged with the commission of a public offence; the service ~~of~~ of papers in actions and the like, and, <sup>that they</sup> more or less, connected with the administration of justice, but there is nothing in the office, to inhibit the Legislature from imposing other duties upon them, ~~and~~ ~~there is really no great difficulty~~ even if incongruous in their nature.

But there is really, no ~~form~~  
in congruity between the collection of trays  
on a wariant or too bit, which empowers  
the sheriff to buy and sell in case of de-  
fault, and the collection of money on an  
ordinary  
1 fr. fa. In fact, the one is quite germane  
to the other.

The cases cited from 1 Devereux (A.C.)  
we have not been able to examine, but we  
have examined the case of Loxley vs. Mort <sup>111</sup> post,  
3 Devereux and Balth, 73, which refers to, and  
approves them.

them.  
(end of sig. 17)



~~But the court is not to be bound by the~~  
~~and approves them. Decided in the same manner.~~

The case of Exr. vs. Montfort was  
 debt upon a bond executed by the defendants  
 as sureties of one Foxville, for the faithful  
 discharge of his duties of Sheriff. The

~~Upon open the conditions appeared~~  
 breach of which was, that the Sheriff had  
 not paid over to the wardens of the poor,  
 the Parish Taxes for the year 1831.

Upon open the condition of the bond  
 declared on, was, that <sup>Foxville</sup> ~~Sheriff~~ should  
 well and truly execute, and see a true  
 make of all process and precepts to him  
 directed, and pay, and satisfy all fees  
 and sums of money by him received,  
 or levied, by virtue of any process, into the  
 proper office, to which the same, by the  
 laws thereof, ought to be paid to, and in  
 all other things, well and truly and faith-  
 fully execute the said office of Sheriff  
 during his continuance therein.

The Circuit Court held the default  
~~was not within the condition~~ as a breach, was  
 not within the condition, and this decision  
 was affirmed <sup>on appeal to</sup> by the Circuit Supreme Court;  
 and very properly, as we think, but <sup>we</sup> do not  
 see its application to this case, on its merits.



hearing upon it. It is undoubtedly, good law.

The case of Amos ~~vs.~~ Tolson,  
3 Harris & M Henry, 218, is also cited.  
The bond sued on in this case, was given by  
a deputy sheriff, with the condition, that  
he would well and faithfully make return  
of all such sums of money, or tobacco,  
as he might receive, during the sheriffship  
of the sheriff, either by taxes, fines, penalties, &  
that ~~he~~ <sup>might</sup> be put into his hands for collec-  
tion. The cause was referred to arbitra-  
tors who decided, that the condition of the  
bond extended only to the duty of a deputy  
sheriff, and not to the collection of  
public assessments with which the plain-  
tiff might have been entrusted by the  
State. The plaintiff put in his caveats  
to the award, and assigned for reason,  
that the arbitrators were mistaken in point  
of law, inasmuch as the condition of  
the bond did include the public taxes  
of the State and County of Harford.

The caveats and reason, was over-  
ruled by the Court and judgment entered on  
the award, and on appeal the judgment  
was affirmed. The case was not argued, nor  
did the Court give any reasons for its judgment,  
nor do we know what the law of Maryland was



on this subject. If that Law made the Sheriff Collector of the public revenue, and imposed it as a duty on him, and authorized and required the deputy Sheriff to do and perform any and all of the duties of Sheriff, we think, with due deference, the arbitrators and Court decided wrong, and

are not inclined to the authority of the Case. We do not see the bearing of the case in 4 Gill 302 on this case.

~~It appears~~ <sup>have found</sup> on behalf of the defendant in error we ~~are~~ <sup>have found</sup> referred to the Case of Jarnagin vs. Atkinson, 4 Humphreys, 470, which was a motion by the Sheriff against his deputy, for failing to pay over taxes collected by him as deputy Sheriff, wherein it was urged, that the bond of the deputy, which was <sup>given</sup> for the faithful performance of the duties of deputy, was not broad enough to cover this responsibility - that the office of Sheriff and collector of the revenue, are distinct and separate offices, and the deputy Sheriff was not the deputy collector.

The Court said, It has been held in this State that the collection of the revenue is devolved by Law, upon the Sheriff; and although he gives a bond as collector, yet he collects as Sheriff, and not under a distinct, separate authority created by another

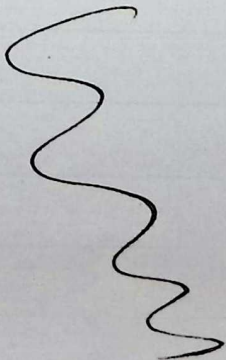


authority officers. This being so, the deputy  
sheriff may collect; and if in doing so,  
he act so negligently or faithlessly as to  
~~discharge~~ his principal, he is responsible  
therefor as deputy sheriff and of  
course his securities.

This case, "runs on all fours" with  
the one before us - it is a case "in point"  
And <sup>decided</sup> ~~the decision~~ by a most <sup>able and</sup> respectable  
Court, and <sup>the decision</sup> ~~it~~ is in full accordance with  
our views.

Since then, it was the duty of the sheriff  
to collect the taxes by virtue of his office as  
sheriff and in no other capacity, and as  
the deputy is authorized and required to  
perform any and all duties imposed on the  
sheriff, <sup>we think</sup> his bond is broad enough to  
cover the default with which he is  
charged in the declaration, and his sureties  
must answer for it if proved -

~~The protest of the Court below~~  
~~must be affirmed.~~





Any other decision would bring great injury in its train, for the reason that deputy sheriffs, ~~now~~ have, for near twenty years, collected for the sheriff, the public taxes and given their receipts therefor. If they had no power to collect these taxes, these receipts might be dead and void, and those who claim title to land in virtue of color of title and payment of taxes for several successive years, and they are now a vast number in our State, ~~would lose~~ ~~their estates~~ such taxes having been paid to deputy sheriffs, would lose their possessions. It will not be to say, that it might be urged, they acted as agents of the collector in receiving the taxes, and the courts would so consider them. This is quite uncertain, they acted as deputy sheriffs as their receipts ~~and~~ will show, and not as agents, and the courts might not be willing to say, that an act done as deputy sheriff, and so certified, was not so done. But we think, there should be no doubt of the authority of a deputy sheriff to receipt for taxes in the name of the sheriff, and that, by a fair construction of the revenue act of 1845, and of the act respecting sheriffs and coroners. \* ~~deputy~~ ~~sheriff~~

The judgment must be affirmed.

*Order of Dismissal*

In this opinion Mr. Justice Walker concurred.  
Mr. Chief-Justice Caton dissented.

Judgment affirmed



\* Such too, has been the public judgment of these laws, and a uniform and general practice has obtained throughout the State in conformity therewith, and under which, titles to land are asserted and recognized. The practice under a law, is <sup>strong</sup> ~~powerful~~ evidence of what the law is. "Contemporanea expeditio, fortissimè est in lege"



71 - 105

Bay at a  
14

Cook

—  
Spencer by  
Messrs

Recorded  
13, pp 12 -

Complete



# UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Maniemi Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Second Monday, (being the thirteenth day) of April in the year of our Lord One Thousand Eight Hundred and fifty Seven and of the Independence of the said United States the eighty first

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

Charles Haven States Attorney.

John L. Wilson Sheriff of Cook County.

Attest, Wm L. Church Clerk.

Be it remembered that heretofore  
to-wit: on the Twenty-first day of November, in the year  
of Our Lord One thousand Eight hundred and fifty  
one, there was filed in the office of the clerk of said  
Court a certain Process and Declaration, in words and  
figures following. To-wit:—  
Process  
" Isaac Cook  
Cook Circuit Court

3187

|                        |              |                |
|------------------------|--------------|----------------|
| Daniel T Wood.         | John Mc Fall | Debt \$ 10,000 |
| Samuel B. Butler.      | Martin Dodge | Dam 10,000.    |
| Peter H. Sigel.        | W. B. Bay    |                |
| and Thomas E. Hamilton |              |                |

The clerk will issue  
a summons in the above entitled cause returnable at the  
next term of this Court, Judd & Mielke atty for peff



Declaration

"

" Circuit Court of Cook County

State of Illinois }  
Cook County }

Of the December Term in the year  
Of Our Lord One thousand eight hundred + fifty one  
Isaac Cook late Sheriff of  
said Cook County, Plaintiff in this suit by Budd  
and Winston his Attorneys, Complain of Daniel T.  
Wood, John Mc Fall, Lorin S. Butler, Martin  
Dodge, Peter H. Bigelow, H. B. Bay and T. E.  
Hamilton, defendants in this suit of a plea that they  
render to the said plaintiff the sum of Ten thousand  
dollars, which they owe to and unjustly detain  
from him;  
For that whereas the said defen-  
dants heretofore to-wit: on the twelfth day of  
March, in the year of Our Lord One thousand  
Eight hundred and fifty, at the City of Chicago  
in said County of Cook and State of Illinois  
by their certain writing obligatory, sealed with  
their seals, and now shown to the Court here  
the date whereof is the day and year last afore-  
said, acknowledged themselves to be held and  
firmly bound unto said plaintiff by the name of the  
description title and addition of Isaac Cook  
Sheriff of Cook County, in the sum of Ten thousand  
dollars above demanded to be paid to the said  
Isaac Cook and his legal representatives when they  
the said defendants should be thereunto afterword



2  
requested, Which said writing obligatory was and is subject to a certain condition thereunder, written to the effect following, that is to say —

"Whereas the above bounden Daniel Wood has been appointed by said Isaac Cook to the office of Deputy Sheriff in and for said County of Cook,

Now therefore the condition of the above obligation is such, that if the said Daniel Wood as such deputy Sheriff as aforesaid shall faithfully discharge all the duties required of him as such deputy Sheriff and shall save said Isaac Cook & his legal representatives harmless from all costs and damages on account of or by reason of any and all acts of said deputy as such deputy or by Color of his said Office then this obligation shall be void, otherwise to remain in full force and virtue"

And the said plaintiff in fact saith that at the making of the said Bond and while the said Daniel Wood was deputy Sheriff as aforesaid, he did not in all things during the continuance of his said appointment faithfully discharge all the duties required of him as such deputy Sheriff, and did not save said Isaac Cook late Sheriff as aforesaid harmless from all costs and damages on account of & by reason of any and all acts of said deputy as such deputy and



by color of his paid office, but on the contrary after  
the making of the paid bond and while the said Daniel S.  
Wood was deputy Sheriff as aforesaid to-wit: on the 17<sup>th</sup>  
day of May in the year of Our Lord One thousand Eight-  
hundred and fifty-one a judgment was rendered in the  
book County Court of Common Pleas in favor of William  
B. Klapp and against Joseph Johnston for the sum of  
three hundred and Eight-dollars and twenty Cents and  
five dollars Costs upon which judgment an execution  
was issued out of said book County Court of Common  
Pleas directed to the Sheriff of book County to Ex-  
ecute; And the said plaintiff further saith that  
the said defendant Daniel S. Wood as deputy Sheriff  
as aforesaid received the said execution and by virtue  
of the same to-wit: on the first day of August in the  
year of Our Lord One thousand Eight-hundred and  
fifty-one collected and received the full amount  
of said judgment and Costs from the said Joseph  
Johnston defendant in said execution as aforesaid  
which said sums of money he the said Daniel S. Wood  
deputy Sheriff as aforesaid failed neglected and  
refused to pay over; And the said plaintiff further  
saith that on the seventh day of November in the year  
of Our Lord One thousand Eight-hundred and fifty  
one, a motion was made in said Court of Common  
Pleas for an order to Compel said Deane book late  
Sheriff as aforesaid to pay the money so collected by said  
Wood deputy Sheriff as aforesaid and interest thereon



to said William B. Clapp plaintiff in said Execution  
aforesaid, and thereupon afterwards, to-wit, on the  
day and year last aforesaid, such proceedings were  
had in said matter that the said plaintiff to-wit,  
said Book-Late Sheriff as aforesaid was ordered  
to pay over to said plaintiff in said Execution mention-  
ed to-wit, to William B. Clapp the ~~the~~ balance  
of the money so collected by the said defendant Wood  
deputy Sheriff as aforesaid, with interest at the  
rate of twenty per cent per annum from the time of  
collection until the same is paid, and said  
plaintiff further saith that said balance with twenty  
per cent per annum thereon as aforesaid, amounted on the  
said seventh day of November in the year of our Lord  
One thousand eight hundred and fifty one, to one  
hundred and forty six dollars and fifty Cents.

And the said plaintiff further  
saith that upon the entry of the said order upon  
the records of said Court of Common Pleas and  
upon notice thereof, he did pay over to the said  
William B. Clapp the sum of one hundred and  
forty six dollars and fifty Cents the balance due  
on the said Judgment.

And for assigning a further  
breach of the Condition of said bond according to the form  
of the Statute in such case made and provided, said  
plaintiff says that the said Daniel T. Wood deputy  
Sheriff as aforesaid after <sup>the</sup> making of his said bond



and during his continuance in office as deputy Sheriff  
as aforesaid, did not in all things faithfully discharge  
all the duties required of him as such deputy as  
aforesaid, and did not save said levied late Sheriff  
as aforesaid harmless from all costs and damages  
on account of or by reason of all acts of said deputy  
as such deputy or by color of his paid office but  
on the contrary after the making of the paid bond  
and while the said Daniel T. Wood was deputy  
Sheriff as aforesaid the said plaintiff being Sheriff  
of said County of Cook during the year of Our Lord  
Eighteen hundred and fifty and Ex Officio Collector  
of State and County Taxes assessed for the year  
Eighteen hundred and forty nine the list of taxes  
for the year last aforesaid, and also the list of  
taxes for the years Eighteen hundred forty five  
Eighteen hundred forty seven and Eighteen hundred  
duly assessed was delivered to him said plain-  
tiff as such Collector for collection, and afterwards  
to-wit: on the twelfth day of April in the year Eighteen  
hundred and fifty he said plaintiff Collector as  
aforesaid delivered to said defendant Wood as deputy  
Sheriff as aforesaid a large amount of paid taxes  
to-wit: six thousand four hundred and forty dollars  
and thirty four Cents to be collected or returned to  
him said plaintiff as Sheriff as aforesaid, And  
the said plaintiff avers that said Defendant Daniel  
T. Wood collected the said last mentioned sum of

"and forty eight by Eighteen hundred and forty nine"  
in question matter assessment



money as aforesaid for taxes as aforesaid as deputy  
Sheriff as aforesaid, and that he has neglected  
and refused and still does neglect and refuse to  
pay said sum or any part thereof to said plaintiff  
as Sheriff as aforesaid.

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

And for assigning a further  
breach of the condition of said bond, according to  
the form of the Statute in such Case made & provided,  
said plaintiff says that the said Daniel T. Wood  
after the making of his said bond and during his  
continuance in office as deputy Sheriff as aforesaid  
did not in all things faithfully discharge all the  
duties required of him as such deputy as aforesaid  
and did not save said Cook State Sheriff as aforesaid  
said harmless from all cost and damage on account  
of or by reason of all acts of said deputy as such  
deputy or by color of his said Office, but on the contrary  
of making his said bond and while the said Daniel  
T. Wood was deputy Sheriff as aforesaid the said  
plaintiff being Sheriff being Sheriff of said County of  
Cook during the year Eighteen hundred and fifty



and ex officio Collector of State and County  
taxes assessed for the year eighteen hundred  
and forty nine. The list of taxes for the year last  
aforesaid duly assessed was delivered to him the  
said plaintiff as such Collector for collection and  
afterwards to-wit: on the twenty second day of July  
in the year Eighteen hundred and fifty he paid  
plaintiff Collector as aforesaid delivered to said  
defendant Wood as deputy Sheriff as aforesaid  
a large amount of paid taxes the four hundred  
and forty one dollars and twenty two cents to be  
Collected and paid to said Cook or to return  
to him said plaintiff as <sup>Sheriff as</sup> aforesaid. And the said  
plaintiff avers that said defendant Daniel T. Wood  
collected the said sum of money for taxes as aforesaid  
~~and that he has~~ as deputy Sheriff as aforesaid  
and that he has neglected and refused and  
still does neglect and refuse to pay said sum of  
Money or any part thereof to said plaintiff as Sheriff  
as aforesaid. And the said plaintiff further  
avoids that as Sheriff as aforesaid he said plaintiff  
accounted for and fully paid said taxes so  
collected by said Wood as aforesaid to the said  
County of Cook and said State of Illinois according  
to the amounts due said County and State  
respectively according to the assessment aforesaid.  
By reason of which said  
breach the said writing obligatory has become



forfeited, and thereby an action hath accrued  
to the said plaintiff to have and demand of and  
from the said defendants the said sum of Ten  
thousand dollars above demanded. Yet the said  
defendants have not although often requested so to  
do as yet paid the said sum of money above deman-  
ded or any part thereof but hitherto have wholly  
neglected and refused so to do, and still do re-  
fuse to pay the same or any part thereof to the  
damage of said plaintiff of ten thousand dollars  
and therefore he brings this suit &

Sudd & Wilson  
Attorneys for Plaintiff

Know all men by these presents, that we Daniel T Wood  
John Mc Fall, L. S. Butler, Martin Dodge, Peter W  
Bigelow & H B Pay & T E Hamilton, of the City of  
Chicago in the County of Cook and State of Illinois  
are held and firmly bound unto Isaac Cook  
Sheriff of Cook County - in the penal sum of Ten  
thousand Dollars, to be paid to the said Isaac Cook  
and his legal representatives for which payment  
well and truly to be paid we bind our and each  
one his Executors and administrators jointly and  
severally firmly by these presents - Sealed with our  
seals & dated this 12<sup>th</sup> day of March, 1850.  
Whereas the above bounden  
Daniel T Wood has been appointed by said Isaac Cook



to the office of Deputy Sheriff in and for said  
County of Cook — Nor therefore the Condition  
of the above obligation is such that if the said  
Daniel T Wood as such Deputy Sheriff — as afore-  
said shall faithfully discharge all the duties  
required of him as such Deputy Sheriff and shall  
save said Isaac Cook and his legal representatives  
harmless from all costs and damages on account  
of or by Color of his said Office reason of any  
and all acts of said Deputy as such Deputy  
only Color of his said Office then this obligation  
shall be void, otherwise to remain in full force  
and virtue

|                  |      |
|------------------|------|
| Daniel T Wood    | Said |
| John. McFall     | Said |
| L. G. Butler     | Said |
| Martin Dodge     | Said |
| Peter H. Bigelow | Said |
| W. B. Bay        | Said |
| T. E. Hamilton   | Said |

And thereupon to-wit: on the said 21<sup>st</sup> day of  
November in the Year of Our Lord One thousand  
Eight hundred and fifty-one, there was issued out  
of and under the seal of said Circuit Court the  
People writ of summons directed to the Sheriff of  
said County to execute, in words and figures  
following To-wit: —



to the office of Deputy Sheriff in and for said  
County of Cook — Nor therefore the Condition  
of the above obligation is such that if the said  
Daniel T Wood as such Deputy Sheriff — as afore-  
said shall faithfully discharge all the duties  
required of him as such Deputy Sheriff and shall  
save said Isaac Cook and his legal representatives  
harmless from all costs and damages on account  
of or by Color of his said Office reason of any  
and all acts of said Deputy as such Deputy  
only Color of his said Office then this obligation  
shall be void, otherwise to remain in full force  
and virtue

|                  |             |
|------------------|-------------|
| Daniel T Wood    | <u>Said</u> |
| John. McFall     | <u>Said</u> |
| L. G. Butler     | <u>Said</u> |
| Martin Dodge     | <u>Said</u> |
| Peter H. Bigelow | <u>Said</u> |
| W. B. Bay        | <u>Said</u> |
| T. E. Hamilton   | <u>Said</u> |

And thereupon to-wit: on the said 21<sup>st</sup> day of  
November in the Year of Our Lord One thousand  
Eight hundred and fifty-one, there was issued out  
of and under the seal of said Circuit Court the  
People writ of summons directed to the Sheriff of  
said County to execute, in words and figures  
following To-wit: —



State of Illinois }  
Cook County }

The People of the State of Illinois to the  
Sheriff of said County - Greeting

We command you that you summon Daniel T Wood,  
John Mc Fall, Dorin S. Butler, Martin Dodge,  
Peter W Bigelow, W B Bay + Thomas E. Hamilton  
if they shall be found in your County, personally to  
be and appear before the Circuit Court of said  
County on the first day of the next term thereof  
to be holden at the Court House in Chicago  
in said County on the first Monday of December  
next to answer unto Isaac Cook in a plea that  
they render to the said Cook the sum of ten  
thousand dollars which they owe to + unjustly  
detain from him to the damage of said plaintiff  
as he pays in the sum of Ten Thousand dollars  
And have you then and there this writ, with an en-  
dorsement thereon, in what manner you executed the  
same

Witness Louis D Hoard clerk of  
our said Court, and the seal  
thereof at Chicago this 21<sup>st</sup> day  
of Nov<sup>r</sup> Anno Domini 1857  
L D Hoard clerk

And afterward, Do-writ, on the same day and  
year last aforesaid, said writ of summons was re-  
turned into said Court, by said Sheriff Endorsed



as follows. To-wit:

"Served by reading to Daniel  
Wood, John McFall, Simon S. Butler, Martin  
Dodge, P. W. Bigelow, W. B. Bay Nov 21<sup>st</sup> 1851 Thomas  
& Hamilton cannot be found

6 ferrices 3.00 10 Miles 20.1 Return 10. 3.60

Orville Church Sheriff  
By Richd. Regan Deputy



And afterwards, to wit: at the April Term of  
said Court, to wit: on the Thirteenth day of  
April in the year of our Lord One thousand  
Eight hundred and fifty seven, the following  
proceedings - among others were had and entered  
of record, to wit:  
Isaac Cook

vs  
A T Wood, J Mc Fall  
L G Butler, Martin Dodge Debt.  
P H Bigelow N B Bay  
and J E Hamilton

This day comes the said  
Plaintiff by his attorney and suggests to the Court  
the death of the said Defendant J Mc Fall  
and due personal service of process of summons  
issued in this cause having been had on said  
defendants A T Wood, L G Butler, Martin Dodge  
N B Bay and P H Bigelow only, and they being  
three times severally solemnly called in open Court,  
comes not, nor does any person for them, but herein  
they make default. Which, on motion of said  
Plaintiff is ordered to be, and it hereby is taken  
and entered of record. Therefore said plaintiff ought  
to have and recover of the said defendant A T  
Wood, L G Bigelow Butler, Martin Dodge  
P H Bigelow and N B Bay <sup>with J E Hamilton third named party in put in</sup> impleaded by reason  
of the premises and thereupon reference is had to the

Warrants are set aside by order of the Court made Nov 9, 1857 (see memo D page 173)  
(Only receding default & judgment - returned & set aside by Supreme Court per Chief Clerk only  
on file)



Court to assess the same herein hereafter.

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

Isaac Cook

"

A T Wood J McVall

L G Butler, Martin Dodge Debt

P H Bigelow, N B Bay

and T E Hamilton

This day comes the said plaintiff by Farnsworth & Burgess his attorneys and the default of the said defendants A T Wood L G Butler, Martin Dodge, P H Bigelow & N B Bay having been heretofore (to wit: on the 13th day of April last past) taken and entered of record and a reference then had to the Court to assess said Plaintiff's damages herein. Wherefore said Plaintiff ought to have and recover of said Defendants A T Wood, L G Butler, Martin Dodge, P H Bigelow and N B Bay implicated with T E Hamilton his debt in his declaration mentioned to the sum of Ten thousand dollar, and the Court having heard the allegations and proofs submitted by said plaintiff and being fully advised in the

Default & judgment vacated 6 November 9th 1857 (See Record "D" page 273)  
Under setting aside default & judgment, reversed vacated and order original  
Inquest of this Court affirmed by the Supreme Court - (see Antiphil copy of order of  
Supreme Court on file Nov 14. 1860) Wm L Church Clerk



12  
premises, assesses said Plaintiff, damages herein  
by occasion of the breaches of the condition of the  
said bond assigned in the declaration to the sum  
of Fifty three hundred and eighty two dollars and  
seventeen Cents.

Therefore it is considered that said Plaintiff do  
have and recover of said defendants R J Wood  
L G Butler, Martin Lodge, P M Pigelow and  
N P Bay impleaded with J E Hamilton  
his debt of Ten thousand dollars <sup>in full</sup> aforesaid  
together with his costs and charges by him  
in this behalf expended and have execution  
therefor, and that said execution be returned  
satisfied in full upon payment of the  
damages aforesaid assessed with interest and  
costs.



I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of Reciprocity Declaration, as originally filed, as amended by leave of Court November 17, 1886 (amendment shown in red in 16) process return, order defaulting defendants & judgment of the Court in a certain cause currently pending in said Court, on the Common Law side thereof, wherein Isaac Cook was Plaintiff and Samuel J. Wood & others were Defendants

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this twenty day of May A. D. 1887.

Wm L. Church Clerk.



Supreme Court of Illinois  
Third Grand Division

In Error.

Of the term of April  
in the year of our  
Lord ~~Ad~~ One thousand  
Eight hundred and  
Sixty three

Daniel T. Hoard, Et al  
Plaintiffs in Error  
vs.

Isaac. Cook.  
Defendant in Error.

Afterwards to wit. On the first  
Tuesday after the third Monday of April  
in this same term before the Justices of the  
Supreme Court of the State of Illinois at the  
Court house in the City of Ottawa. Comes the  
said Daniel T. Hoard, Et al. by their Attorneys  
their Attorney. And says that in the record and  
proceedings aforesaid. And also in giving the  
Judgment aforesaid there is manifest error in  
this Court. that the declaration aforesaid and  
the matters therein contained. are not sufficient  
in law for the said Isaac Cook. to have or  
maintain his aforesaid action against the said  
Daniel T. Hoard Et al. there is also error in this Court  
that the bond committed on and described on in the  
declaration in this action. covered simply the  
acts of the said Daniel T. Hoard as deputy Sheriff



while the breaches assigned are for failure  
to pay over taxes. And the judgments for taxes  
alleged to have been collected by him. And that  
the judgment is against the law.

And the said Daniel T. Wood. S. G. Butler  
Clinton Dodge. Peter H. Sigelow. <sup>and</sup> John S. Bay  
Executor of the last will <sup>and</sup> testament of Henry  
B. Bay deceased. pray that the judgment aforesaid  
for the errors aforesaid. And other errors in the  
record <sup>and</sup> proceedings aforesaid, may be reversed  
annulled and set aside <sup>and</sup> held for nothing &  
that they may be restored to all things which they  
have lost by occasion of the said judgment.

Omnif. A. Storrs

Atty for Plffs in Error.



Supreme Court of Illinois  
Thurston and Durson  
April Term AD 1863

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Daniel T. Heard et al  
Deft in Error

vs.

Isaac Cooks.

Deft in Error.

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Record.

and

Assignment of Errors.

Filed Apr. 2<sup>d</sup> - 1863.  
L. Seland  
Clk.