No. 13004

Supreme Court of Illinois

Bancroft

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vs.

Speer

71641

STATE OF ILLINOIS,

SUPREME COURT

Third Grand Division.

1880

No. 116.

Richard
Bancroft
vs
Loeer

1

Supreme Court

Thomas Speer

ads

Samuel B. Bancroft

In addition to the brief already filed I desire to call the attention of the Court to the following Statutes and considerations which were overlooked by me, and yet

The third section of the act entitled "An act fixing the times of holding the Courts in the 7th Judicial Circuit" passed Feby 7th 1849 (Session Laws of 1849 page 78) provides "That it shall be lawful for the associate Justice of the Supreme Court presiding in the aforesaid circuit and the Judge of the Cook County Court by agreement or exchange to hold any of the Courts authorized by law to be holden in said circuit, or in said Cook County Court and whenever Special Jurisdiction is conferred upon the Circuit Court, the same shall be taken to extend to and include the Cook County Court

At or at the time this Statute was passed it had been held by repeated decisions of the Supreme Court that

this power of the Circuit Court to send its process out of the County being restricted to special cases was a special and limited power and hence the Circuit Courts in exercising this power were to be regarded as exercising a "special or limited jurisdiction in contra distinction to general jurisdiction, and therefore the right to exercise this special jurisdiction must appear affirmatively ~~the declaration~~ by special averment in the declaration, such indeed was at that time considered the settled law of this State (see cases referred to and overruled in Kinney vs Greer 13 Ills 432)

It is fair to presume then that the phrase "special jurisdiction as used in this statute was designed to cover this very case of sending process out of the County and such was ~~the~~ the legislative intent and the history of this enactment will show conclusively that this clause of this section was inserted to meet this precise case, and to remove any doubt that might otherwise exist as to the true construction of the original act organizing the Cook County Court. Indeed

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rules so construed it can have no effect whatever since the original act conferring jurisdiction covers every possible case that can arrise where the process is not sent out of the County of Cork, the language is that the County Court shall have concurrent jurisdiction "in all matters civil and criminal and in all ~~proceedings~~ suits and proceedings either at law or in equity within the limits of said County" to give the Statute any force, therefore, it must receive the construction which I claim and it is a well settled rule that a Statute shall be so construed if possible, as to give force and effect to all its provisions.

Again the general scope and design of the whole section is obviously to give the Cork County Court concurrent Jurisdiction in all respects and and particulars with the Circuit Court the Judges are to interchange with each other indifferently each being equally qualified with equal powers and jurisdiction to hold Courts and preside for the other

2 d

The 8th Section of the act to change

the time of holding courts in the 7th and 13th Judicial Circuits and regulate the practice therein and in the Cook County Court of Common Pleas passed Jany 14th 1857 (Sec 8 acts 1853 compilation of Statutes 774) provides that the plaintiff shall be entitled to a default if he shall have served "a copy of the declaration and rule to plead not less than fifteen days before the entry thereof where the defendant is a resident of said County or twenty days where he resides without the County" by this statute the declaration and rule to plead stand in place of process and their service is equivalent to the service of process, this statute therefore is an additional provision securing the jurisdiction of this Court to send its process out of the County—

Chr R Chr Wallace
Counsel for Defts

Supreme Court

Thomas Spicer

ads

Samuel B Barnett

Additional

Brief

W B M Wallace

Counsel for Defts

Bancroft
vs
Speer

T. Lyle Dickey Suggests for defts in error — that the Clause defining the jurisdiction of the Cook County Court means — the words "within the limits of said County" — has reference to the words "suits & proceedings at law or in equity". In this case it is a "suit" at law "within the limits of said County"

It does not require that the "matters" or the parties should be within the County of Cook — but in suits which may properly be brought in the Circuit Court of Cook County —

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the jurisdiction to "suits" in that county so as to make the jurisdiction co-extensive with the Circuit Court of that County & not co-extensive with that of every Circuit Court in the State —

Such has been the practical construction of the act for many years —

II

As to the service — its date is good — a date attached to a statement of that kind means that it was done on that day — unless another date is stated — It is the duty of the officer to make the memorandum of the service when it is done & unless it appears affirmatively to have been other wise such will be presumed to be the fact —

As to the use of the "initials" instead of the full name "Samuel" it is no matter — If in fact the service were on the wrong man — the judgment is utterly void — but if in fact it was served on the right man — it is good against the man upon whom the writ was in fact served — although his name may have been "Haines" — The misnomer — will not avail unless challenged in the first instance — —

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And the record recites – just before the default – that "due personal service" of process of summons issued herein having been had "on the said defendant" &c &c – this recital of the record is not in any event to be disputed for it imports "absolute verity"

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T. Lyle Dickey

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Bancroft
vs
Sheers

Argument Appellee
left in error
by J. Lyle Dilley

Filed May 28, 1860
L. Leonard
Clerk

Jameson & Morse, Printers, 14 La Salle Street, Chicago.

IN THE SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1860.

SAMUEL B. BANCROFT,
PLAINTIFF IN ERROR,
vs.
THOMAS SPEER, ASSIGNEE OF ISAAC SPEER,
DEFENDANT IN ERROR.

POINTS AND AUTHORITIES OF THE PLAINTIFF IN ERROR.

I.

The Cook County Court of Common Pleas had no power to send its writ of summons to a foreign county.

The act organizing the Cook County Court, afterwards entitled the Cook County Court of Common Pleas, and now the Superior Court of Chicago, by statutes not affecting the extent of its powers, confers its jurisdiction in the following terms:

"The said Court shall have jurisdiction concurrent with the Circuit Courts of this State, in all matters, civil and criminal, and in all suits and proceedings, either at law or in equity, *within the limits of said County.*"

Scates, T. & B's Stat., 647 *Sec.* 2.

The act defining the jurisdiction of the Circuit Court is as follows:

"The said Judges respectively, in their respective circuits, shall have jurisdiction over all matters and suits at common law and in chancery, *arising* in each of the Counties in their respective circuits, where the debt or demand shall exceed twenty dollars."

Rev. Stat. 146 *Sec.* 29.

There are no words fixing a territorial limit to the jurisdiction of these Courts.

Transitory actions are supposed *to arise* in the County where the suit is brought.

Brewster vs. Scarborough, 2 *Scam.* 280.
Trumbull in Kenney vs. Greer, 13 *Ill.* 447.

The word "arising" is omitted in the statute organizing the Cook County Court, and every inference to be drawn from that word is to be excluded.

If the act provided that said Court should have jurisdiction concurrent with the Circuit Court of Cook County, its writs would run into foreign counties, but the statute, in terms, confines such jurisdiction *within the limits of said County.*

In the act changing the name of the Cook County Court, the following language is used in reference to criminal jurisdiction:

"And the said Cook County Court of Common Pleas and the said Circuit Court of Cook County shall have equal and concurrent jurisdiction in all cases of misdemeanor *arising* under the criminal laws of this State."

Scates, T. & B's Stat. 651.

This change of phraseology shows the intention of the Legislature.

The object of the statute was to furnish a local court of superior jurisdiction for Cook County, and it was not designed to implead therein residents of distant counties.

Similar language in the charters and statutes of England, organizing local courts of general jurisdiction, has received a construction restraining mesne process within the territorial limits of the Court.

The charter of the County palatine of Lancaster (*Coke's Inst., Pt.* 4, *p.* 204—*title, The Court of the Duchy Chamber,*) contains a grant of jurisdiction in the following terms: Concessimus pro nobis et hæredibus nostris præfato filio nostro quod ipse ad totam vitam suam habeat *infra comitatum Lancastriæ* cancellariam suam ac brevia sua sub sigillo suo pro officio, cancellarii deputando consignando justiciarios tam ad placita

coronæ quam adquæ cunque alia placita communem legem tangentia tenenda ac cognitiones eorundem et quæcunque executiones per brevia sua et ministros suos faciendas.

"We have granted, for ourselves and for our heirs, to our worthy son, that he may for his whole life hold *within the County of Lancaster*, his own court, and may issue his own commissions, under his own seal, for the appointment of justices for the office of the court, not only for holding pleas of the crown, but also any other pleas touching the common law, and taking jurisdiction thereof and doing any soever execution by his own writs and officers."

The charter of the County Palatine of Chester—*Coke's Inst., Pt.* 4 *p.* 211—appointed the court judge of "all matters at the common law *within the said County.*"

The charter of the Isle of Ely—*Coke's Inst., Pt.* 4 *p.* 220—granted, "*jura regalia*," royal rights and privileges within the Isle of Ely.

The charters of the Cinque Ports and of the Great Sessions of Wales contain similar language.

It is obvious that within the territorial limits of the grants, jurisdiction was conferred as broad and general as that of the Court of King's Bench and The High Court of Chancery, in other parts of England, and yet original process of the courts of the counties palatine, Isle of Ely and the Cinque Ports, did not run beyond the limits of the counties, Isle and Ports.

Coke's Inst., Pt. 4, *p.* 213, § 2.

"If the defendant dwell out of the county palatine, the plaintiff must complain in the Chancery of England."

Coke's Inst., Pt. 4, *p.* 213, § 2.

When the language of old statutes and grants that have received a judicial construction, is adopted by the Legislature, the construction becomes a part of the statute or grant.

Rigg et al. vs. Wilton et al., 13 *Ill.* 15.
Campbell vs. Quinlan, 3 *Scam.* 289.

But it will not be necessary to determine this question, for other errors are fatal to the judgment.

II.

The return of the sheriff is insufficient to give the Court jurisdiction of the person of the plaintiff in error.

The return is in the following terms:

"Served the within by reading the same to and in hearing of S. B. Bancroft, June 21, 1858.

OZIAS WHEELER, Sheriff Lee Co.,
By E. A. SNOW, Deputy."

1st. The Court cannot presume that S. B. Bancroft and Samuel B. Bancroft are the same persons. S. B. Bancroft may be Stephen, or Simon, or Sanford, or Solomon, and not Samuel.

Boyden vs. Hastings, 17 *Pick.* 200.
Bowen vs. Mulford, 5 *Halsd.* 230.

It has been held that the middle initial is no part of the name, but the christian name is the very best evidence of identity. Patronymics are general, but christian names are specific. There is no more common name than Bancroft, and if a writ against Samuel B. Bancroft, served on S. B. Bancroft, will support a judgment against Samuel, then no man of that name is safe in person or property.

The Court will *indulge no presumptions as to jurisdictional facts.* It is not until jurisdiction over the person is obtained that there is room for presumption.

If the return were in the usual form, "served on the within named, &c.," or, "served on the defendant, &c.," perhaps it would have been sufficient, but there is nothing in the return to aid a presumption of identity.

2d. The time of service is uncertain. It is doubtful whether the date is the day of service or return. It should be sufficiently accurate to enable the party to determine whether the return is true or false.

The statute expressly requires the sheriff to endorse "the time of serving."

Rev. Stat. title, Practice, § 2.

In *Ogle vs. Coffey*, 1 *Scam.* 239, the return was as follows:

"Executed October 18th, 1832, as commanded within." And the Court say, "Whether the date specified is intended for the date of the day of service, or is the day on which the summons is returned, is wholly uncertain."

In the case of *Orendorf et al. vs. Stansberry*, 20 *Ill.* 89, the Court recognise the necessity of fixing by the return the time of service, but say that the ambiguity is explained by a subsequent endorsement, showing that the date in that case *could be* no other than the date of service. There is nothing in this case to explain the ambiguity.

III.

There is an ambiguity as to the County in which the court is located. *Orendorf et al. vs. Stansberry*, 20 *Ill.* 89.

Charles Hitchcock

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Supreme Court

Saml B Bancroft

vs

Tho Speer

Brief

Filed Apr 20. 1865

L Delano

Clerk

Chas Fitchcock

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1860.

SAMUEL B. BANCROFT,
vs.
THOMAS SPEER,
Assignee, &c.

ERROR TO SUPERIOR COURT OF CHICAGO.

Argument and Authorities of Counsel for Defendant in Error:

The first question presented by the assignment of errors and the record in this case is, had the Cook County Court of Common Pleas, the power to issue process of Summons to Lee County? Plaintiff in error says, it had not such power.

It is not contended, but that the several Circuit Courts of this State, had and have such power. Plaintiff in error to sustain his position cites:

1. The 2nd Section of the Statute creating the Cook County Court as follows: "The said Court shall have jurisdiction concurrent with "the Circuit Courts of this State, in all matters, civil and criminal, "and in all suits and proceedings, either at law or in equity, *within* "*the limits of said County.*

Scates T. & B.'s Statutes, 647 Sec. 2.

2. The act defining the jurisdiction of the Circuit Courts, as follows :

"The said Judges respectively, in their respective Circuits, shall "have jurisdiction over all matters and suits at common law and in "chancery, arising in each of the Counties in their respective circuits, "where the debt or demand shall exceed twenty dollars."

Rev. Stat. 146, Sec. 29.

We think that the *language* of the act creating the Cook County Court is clear and explicit, so much so, that the necessity for a Judicial construction of it does not arise. The evident intention of the Legislature being to give to said Cook County Court, *concurrent* jurisdiction with the Circuit Courts of this State ; the words of limitation being thrown in for the mere purpose of confining the Court, the venue, and the powers of the Judges thereof to the County of Cook. The Circuit Judges held Courts in different Counties, different venues of the same Court.

But admit, for the sake of argument, that the necessity for construction, aside from the plain meaning of the words used, does arise, and let us endeavor to ascertain the intention of the Legislature from other sources.

1. Subsequent legislation on the same subject.

Section 2nd of the act creating the Cook County Court, so far as the same relates to this question of jurisdiction, is as follows :

"The said Court shall have jurisdiction *concurrent with the Cir-* "*cuit Courts* of this State in all matters civil or criminal, and in all "suits and proceedings, either at law or equity, within the limits of "said County, and shall have *exclusive* jurisdiction in all appealed "cases arising within the same, and in *all cases of misdemeanor* "which are prosecuted by indictment.

Section 3rd of same act provides, "that the process of said Court "shall be issued and executed in the *same manner* as the process of "the *Circuit Court* of said County.

Section 4 provides, "that the *Judge of said Court* shall have the "*same* powers in vacation as are now vested in the Judges of the

"Supreme Court when acting as *Circuit* Judges in vacation." This last of course means within the limits of Cook County; the Judge could not go out of the County, for the reason that his Court and its venue is confined to Cook County.

Sess. Laws 1849 and 1851, p. 14, Sec. 11, among other things provides, "that the name of the Cook County Court shall be changed to "the Cook County Court of Common Pleas, and the said Circuit "Court shall have *equal and concurrent jurisdiction* in all cases of "misdemeanor arising under the criminal laws of this State, and in "all cases of appeal from Justices of the Peace, arising or instituted "within said County of Cook." This restores the jurisdiction of the Circuit Court over that class of cases *arising* in Cook County.

This is a Court of Superior jurisdiction, being made concurrent with the Circuit Court, and therefore nothing is presumed to be out of its jurisdiction.

Kenney et ux vs. Greer 13 Ills., 445.

The 3rd Section of the act "to regulate the practice in the *Cir-* "*cuit Court* of *Cook County*, and the *Cook County Court of Com-* "*mon Pleas*," provides, among other things, "That in all cases where "it shall appear by affidavit or otherwise, that the *defendant* "*resides out of the County*, the Court may allow time to procure "an affidavit of merits.

This, it seems, ought to be conclusive as to the *intention* of the Legislature on this question.

2nd. In addition to this repeated legislation, all tending directly to show that the Legislature intended to make the said Cook County Court equal and concurrent in all respects with the Circuit Court, we have the uniform practice of said Court, and other Courts other than the Circuit, for fifteen years.

The second objection, that the return of the Sheriff is insufficient to give the Court jurisdiction of the person of the plaintiff in error, is, we think, not well taken. The objection to the return, as to the use by the officer of "S. B," instead of "Samuel B," is not tenable. It is considered a frivolous objection.

Sims vs. Kline, Bresse 299.

The cases cited by appellant on this question are not in point.—Case in 17 Pick. the objection that the designation of "Junior" was omitted, and the case 5 Halsted, it was the omission of the middle letter of defendant's name.

The objection as to the time of service, cannot be sustained. In the case cited by appellant, 1 Scam, 239, the Court say:

"The return of the Sheriff is not in compliance with the provisions "of the law directing the *manner* of *making* the service and return "by the Sheriff.

"The *manner* of making the service is still more doubtful. Wheth-"er it was by reading the summons to the defendant or by delivering "a copy, is left to conjecture, and it is impossible to say which course "was adopted, or whether either was pursued." The return was as follows: "Executed October 18th, 1832, *as commanded within*."—This last was the reason of the reversal of the judgment in that case. In the cases cited by the Court in 1st Scam 239, there was no date whatever, either to the return or as to time of service.

The Statute does not require the officer to give any date to his *return*—his *duty* as to time is done when he dates the *service*, and it is presumed that an officer of the law does his *duty* until the contrary appears—the Court, therefore, has the right to presume—if any presumption is necessary—that the time given relates to the time of service.

In view of these considerations and others that may occur to the mind of the Court in the investigation of this case, the defendant in error, by his counsel respectfully asks that said judgment may be affirmed, etc.

M. R. M. WALLACE,
Counsel for Defendant in Error.

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Bancroft
v
Speer

Deft's Points

Filed May 28. 1860
L. Leland
Clk.

Mr. R. M. Wallace

State of Illinois.
County of Cook. ss

Pleas before the Honorable John M Wilson Sole Judge of the Cook County Court of Common Pleas. Within and for the County of Cook and State aforesaid. Had at the regular Vacation Term of said Cook County Court of Common Pleas, begun and holden at the Court House in the City of Chicago On the first Monday being the fifth day of July. In the year of our Lord Eighteen Hundred and fifty Eight. And of the Independance of the United States of America the Eighty Third.

Present John M Wilson Judge
Attest Walter Kimball Carlos Haven Prosecuting Attorney
Clerk, John L Wilson Sheriff.

Be it remembered that heretofore to wit. that on the nineteenth day of June in the year of Our Lord One thousand eight hundred and fifty eight Thomas Speer assignee of Isaac Speer by Wallace and Whitney his Attorneys. filed in the office of the clerk of the Cook County Court of Common Pleas. A certain Precipe for Summons. Which is in words and figures as follows to wit

State of Illinois, } Cook County Court of
Cook County. } ss. Common Pleas, of the
July Vacation A.D. 1858.

Thomas Speer assignee
of Isaac Speer plaintiff
vs
Samuel B. Bancroft. Ap summit Dam 1250
Defendant,

You will please issue a summons in the above entitled cause, directed to the sheriff of Lee County and make the same returnable to said Court on the first day of the next term thereof,

Dated the nine teenth day of June AD 1858

Ogden & Wallace & Whitney
To the clerk of said Court, Plffs Attorneys

And afterwards to wit on the day and year aforesaid, There issued out of the office of the clerk of said Court, the People writ of Summons. Which writ with the Sheriffs return thereon, is in words and figures as follows to wit,

State of Illinois, } The people of the
County of Cook, } ss. State of Illinois to the
Sheriff of Lee County
Greeting, We command you that you summon
Samuel. B. Bancroft. If he shall
be found in your—

County personally to be and appear before the Cook County Court of Common Pleas, 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 first Monday of July next. To answer unto Thomas Speer. Assignee of Isaac Speer in a plea of trespass on the case on promises, to the damage of ~~$20,000~~ said plaintiff as he says in the sum of twelve hundred & fifty Dollars. And have you then and there this writ, with an endorsement in what manner you shall have executed the same. Witness Walter Kimball Clerk of our said Court, and the seal thereof at the City of Chicago in said County this 19th day of June A.D. 1838. Walter Kimball Clerk

L. S.

Served the within by reading the same to and in hearing of J. B. Bancroft, June 21, 1838. Ozias Wheeler Sh'f Lee Co

By C. A Snow Deputy.

And afterwards to wit on the twenty first day of June in the year aforesaid. Thomas Speer Assignee &c By Wallace & Whitney his Attorneys filed in the Clerks Office aforesaid a certain declaration in words and figures as follows, To wit

State of Illinois } The Cook County Court
Cook County } ss of Common Pleas.
To July Vacation Term. 1838. Thomas Speer

Assignee of Isaac Speer, plaintiff complains of Samuel B. Bancroft, defendant. Who hath been duly summoned. &c Of a plea of trespass on the case upon promises. For that whereas said defendant, heretofore to wit, on the seventh day of September in the year of Our Lord One thousand Eight hundred and Sixty seven. At Chicago to wit, at the County of Cook & State of Illinois, made his certain note in writing commonly called a promissory note, bearing date a certain day and year therein mentioned. to wit the day and year last aforesaid. and then and there delivered the said note to the said Isaac Speer. By which said note, the said defendant promised then and there to pay to the order of the said Isaac Speer, the sum of One thousand and thirty three Dollars, and fifteen cents. at I Speers No 77 Lake St. Chicago, for value received One day after the date thereof. Which period hath now elapsed. And the said Isaac Speer then and there assigned & endorsed the said note to the plaintiff. Whereof the defendants had then and there notice. And then and there in consideration of the premises, promised to pay the amount of the said note to the plaintiff according to

the tenor and effect thereof.

By Reason whereof and by force of the statute in such case made & provided the said defendant became liable to pay to the said plaintiff the said sum of money in the said note specified according to the tenor and effect of the said note. And being so liable the said defendant in consideration thereof afterwards to wit on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the said note specified according to the tenor & effect of the said note. And whereas also the said defendant afterwards to wit on the first (1st) day of June in the year of our Lord one thousand eight hundred & fifty eight at the place aforesaid was indebted to the said plaintiff in the sum of twelve hundred & fifty dollars lawful money of the United States of America for money before that time lent and advanced by the said plaintiff to the said defendant at the special instance request of the said defendant and for other money by the said plaintiff be-

fore that paid and laid out and expended for the said defendant, ~~[illegible]~~ and at the like request of said defendant, ~~[illegible]~~ for other ~~[illegible]~~ And for other money, by the said defendant before that time had and received to and for the use of the said plaintiffs And being so indebted the said defendant in consideration thereof afterwards to wit on the same day and year last aforesaid and at the place aforesaid undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sums of money in the Count mentioned when the said defendant should be thereunto afterwards requested And whereas also the said defendant afterwards to wit on the same day and year last aforesaid and at the place aforesaid accounted together with the said plaintiffs of and concerning divers other sums of money, before that time owing from the said defendant to the said plaintiffs and then and there being in arrear and unpaid and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiffs in the further sum of twelve hundred and fifty Dollars, of like

lawful money aforesaid, and being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards to wit on the same day and year last aforesaid. and at the place aforesaid undertook & then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards required. Nevertheless the said defendant, (although often requested &c. to wit on the day when the said note became due and payable "according to the tenor and effect thereof; and oftentimes since, to wit, at the place aforesaid) hath not yet, paid the said several sums of money above mentioned or any or either of them or any part thereof, to the said plaintiff But to pay the same or any part thereof, to the said plaintiff the said defendant hath hitherto altogether refused, and still doth refuse, to the damage of the said plaintiff of Twelve hundred and Fifty Dollars, and therefore the said plaintiff brings suit &c,

Wallace & Whitney &
Plaintiffs Attorneys.

Copy of Instrument and Accommodation,

1833 15 Dun. September 7th 1857,

One day after date, I promise to pay to the order of Isaac Speer One thousand & thirty three 50/100 Dollars at I. Speers. 77 Lake Street. Chicago value received,

Samuel B. Bancroft,

(Endorsed as follows)

Received Nov 7th/57, the sum of Forty Dollars in full with note Thomas Speer by I. Speer.

January 10/58 Received the sum of twenty five Dollars $25 in full Thomas Speer

1858 Samuel B. Bancroft,

To Thomas Speer Dr,

June 1st To money lent & advanced. $1250,—

" " " " Had & received $1250,—

" " " " Paid out & expended $1250,—

" " " " Furniture & Materials $1250—

" " " Goods wares & Merchandize, $1250—

" " " Work and labor done & performed. $1250—

And afterwards to wit on the Eighteenth day of July, in the year of our Lord One thousand Eight Hundred and Fifty Eight. Said day being one of the days of the July term of said Court. The following among other proceedings was had, and entered of record in said Court. to wit,

Thomas Spur.
Assignee of Isaac Spur.
vs.
Samuel B. Bancroft.

This day comes said Plaintiff by Wallace & Whitney his Attorneys and due personal service of process of summons issued herein having been had on the said defendant & being three times solemnly called in court. comes not nor does any person for him but herein he makes default, wherein is ordered to be taken and is hereby entered

Wherefore said plaintiff Assignee of Isaac Spur. ought to have and recover of said defendant his damages sustained herein by reason of the premises, And the court having heard the allegations and proof submitted by said plaintiff and being fully advised in the premises, Assigns his damages herein to the sum of one thousand and Eighteen dollars, & sixteen cents.

Therefore it is considered said plaintiff aforesaid, Assignee of said Isaac Spur, do have and recover of said defendant his damages of One thousand & Eighteen Dollars & Sixteen cents, in form aforesaid, by the court assessed, and also his costs and charges, in this behalf expended, and have execution therefor,

State of Illinois }
County of Cook } S.S.

I. Wallis Kimball Clerk of the Superior Court of Chicago in and for said County (formerly the Cook County Court of Common Pleas) do hereby certify that the foregoing is a full true and correct Transcript of all the papers on file in my office, and of the proceedings entered of Record in the said Court in the case wherein Thomas Speer assignee of Isaac Speer is Plaintiff and Samuel B Bancroft is defendant.

In testimony whereof I hereunto subscribe my name and affix the Seal of said Court at the City of Chicago in said County this 21st day of March A.D. 1860.

Wallis Kimball Clerk

Samuel B. Bancroft }
Plaintiff in Error }
vs }
Thomas Speer, Assignee }
of Isaac Speer, Deft in Error }

In the Supreme Court
Third Grand Division.
April Term A.D. 1860.

And now comes the said Samuel B. Bancroft by Gallup & Kitchcock his Attorneys and says that in the record and proceedings aforesaid, there is manifest error in this, to wit:

1st The Court erred in issuing summons to Lee County.

2nd The Court erred in entering the default of the plaintiff in error.

3rd The Court erred in rendering judgment against the plaintiff in error.

Wherefore the said Plaintiff prays that the said judgment may be annulled, reversed and held for nought and that he may be restored to the rights he has lost thereby.

Gallup & Hitchcock
Attorneys for Plff in Error

And now comes said deft. in error and joins in error, and says that in the record of the proceedings & judgment aforesaid there is no such error as said plaintiff in error hath above assigned, and this he prays may be inquired of by the court. Wherefore he prays judgment &c

M. R. Mr. Wallace
for deft in error.

No. 119
Supr. Court U.S.
Samuel B. Bancroft
vs.
Reuben Ewing

Filed March 26. 1880
T. Lillard
Clerk

Gallup & Hitchcock
for Plff in Error

Supreme Court Illinois
Third Grand Division
April Term 1860

Thomas Speer
Assignee
ads
Samuel B. Bancroft } Error to Superior Court of Chicago.

I

I propose submitting a few remarks only upon one point and that is the jurisdiction of the Superior Court.
But this is a question of vital importance, not so much in a prospective as in a retrospective point of view
For upon it, not only depend thousands received under similar circumstances - but millions it may be in value of real estate, the titles of which have been derived under similar judgments
And these again are not confined to judgments

rendered upon Services made on Summonses sent out of the County — but will Equally apply to executions sent to foreign Counties and there levied & sales of Real estate or personalty there made under them

There is as much power to send its Summonses abroad for service, as to send its final process for execution — and all property purchased or moneys paid under final process sent to other counties, as well as acts done under judgments based upon Summonses so sent, may be recovered back — for such judgments and processes, if objectionable atall, are void for want of jurisdiction — and no act done under the one or the other can convey right or title. There can be no innocent purchaser without notice, as in cases of merely

erroneous judgments. Where great numbers of titles, and vast sums of money depend upon such a change of a rule of property, or the practice of the Court, this Court will pause long, and weigh well the consequences before ordering it. And while such considerations do not absolutely & imperatively demand a false interpretation to be put upon legislation — they are nevertheless weighty arguments in cases of a doubtful meaning for adhering to a rule founded upon Contemporaneous Construction, and a long & uniform practice under it

But the evil does not end even here. The same Construction must operate as a limitation also upon the right to send process

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from divers other Courts — upon which a like concurrent jurisdiction has been conferred. Jurisdiction of the Cause of action, or subject-matter, is most clearly within the language of the act. The only point for construction is how, jurisdiction of the Person is to be acquired

Now there are several Courts having general concurrent jurisdiction with the Circuit Courts, within limited districts both in Civil & Criminal Causes.

Recorder's Court in Criminal causes within City of Chicago (Coolee Stat 64.

Common Pleas Civil & Criminal " 647-651.
County Court of Lake " " Misdemeanors " 657.
& exclusive in some cases " 658-Sec 11
County Courts LaSalle, Winnebago
Boone & McHenry Civil " 659.
& exclusive in others " 660 Sec 11

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Common Pleas of Cairo Civil & Criminal
Cooke Stat p 664

Common Pleas in Elgin
Civil & Criminal " p 665-6-7

Recorder's Court LaSalle & Peru
Civil & Criminal " p 668.

And Likewise See another
Provision Common to all p 671.

Now if the language defining the territory within which the jurisdiction is to be exercised is to be understood as applying to the residence of defendants instead of the accruing of the causes of action or indictment, then how can offenders be brought to justice They must be prosecuted where the offence is committed The Commission of an offence in a particular locality gives the Court the jurisdiction over it in that boundary

6. But according to this interpretation, the offender could never be reached with process out-side the prescribed boundary

And this cannot be evaded, as one of the consequences of such a construction because the act creating the Cook County Court — now Superior Court — gave exclusive jurisdiction to it within the limits of Cook County over misdemeanors to be prosecuted by indictment.

Cook Stat p 647. Sec 2.

There is & can be no distinction between civil & criminal process, so far as this provision is concerned

It is not to this act or this language that we look for a restriction upon the power to send process abroad — but

to the act regulating the practice which puts a restriction or limitation alike upon any and all Courts having jurisdiction of Causes of action by provisions applicable to the residence of defendants. Cook Stat p 241.

II

That this is the true construction will appear by a reference to the nature of the jurisdiction of the Circuit Court.

The Circuit Courts were created by the Constitution, and by it their jurisdiction was also conferred in general language "in all Cases at law and equity, and in all Cases of appeals from all inferior Courts" Cook Stat p 624 Sec 8

The Statute adds "arising in each of the counties in their re-

8 spective circuits — where the debt or demand shall exceed twenty dollers id p 625 sec 29. And in Criminal Cases "that may be committed within any County or place within ~~which they are, or may be, united~~ their respective Circuits".

Now these are Superior Courts in the fullest sense of the King's Bench and Common Pleas in England They could always take jurisdiction of any & all causes not local — as yet ment — & send their process throughout the Kingdom

So may the Circuit Courts unless restrained. But no one ever understood the language of the act as Confining them to Causes "arising in each of the Counties in their respective Circuits" It was the practice act that placed the restriction & not this act. The plaintiff's attorney

does not contend that the above language operates as a restriction — while at the same time he professes to find it in other language that imports the same thing that is that their jurisdiction is to be confined ~~to~~ as to the place of exercising it, "within the limits of the County"

They must sit within the County, and adjudicate there upon such causes of action, as fall within their jurisdiction. Now in doing so is the Circuit Court limited to such causes as arise in the particular County? Not at all — else what becomes of their jurisdiction over transitory causes? I am not to be told that they may take it under this language wherever the defendant

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can be found & served in the County. For the restriction upon the power of serving him in another County is not found in, or derived from this language — but from the positive restriction in the practice act as before stated bookstab p 241.

So it is this last act, and not the former that restricts

When two are Concurrent jurisdiction is conferred over all civil & Criminal Causes "within the limits of the County," We should understand, that all the necessary means of exercising that jurisdiction are Conferred — unless there be some other act fixing a limitation upon it. For this language imports none.

The common Law did not fix a ~~limit~~ a jurisdictional limit by to the place of the defendant's residence, or

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being found. The vicinage was that of the crime or cause of action, & not of defendant The Common law gave one accused of crime, a jury of the vicinage — and so he could demand that the issue be tried by a jury of the vicinage unless before that time, the Court at Nisi prius be held, when instead of sending down for a jury — the issue was sent down to the locality where it originated

Here instead of the Circuit Court's being Exchequer, as the King's Bench & Common Pleas were in England — they perform the same services as did those Courts and the Justices at Nisi prius do now our Circuit Courts, ~~have the di~~ and those having Concurrent jurisdiction in particular districts, are invested with precisely the same power as the King's

or Common Pleas would have, while sitting in the County where the cause of action did accrue or may have been ~~or was~~ supposed to ~~have~~ accrued. In transitory actions, defendant might be sued wherever he might be found — and the King's Bench Summons could find him anywhere in the Kingdom.

The Superior Court is invested with all the jurisdiction of the King's Bench & High Court of Chancery both had in England.

Cook Stats p 647. Sec 2-3.

We find no parallel in the creation of Special Superior Courts of limited jurisdiction as cited by plaintiffs — as the County Palatine of Lancaster — of Chester, of the Isle of Ely and the Cinque Ports — to the Superior Court of Illinois, which was like the creation of the King's Bench — and we shall look for very positive & unequivocal expressions to oust it — instead of words of grant. It is not true

13 as assumed that the act
created an superior Court like
the County Palatine of
Lancaster.

Instead of citing a Royal
Patent to the Prince of Wales
or Heir Apparent, to create
& Commission a Miniature
proceeding in one County-
a parallel case would
be a Commission to the
Lord High Chancellor
or Justices of the King's Bench
to hold those high
Prerogative Courts.

For this Court possesses
all the Powers of both
so far as Causes arise
or are brought within
the County of Cork

And but the the re-
striction upon its high
prerogative powers, as
contained in the practice
act, it might summon
all persons within
its jurisdiction, by
personal service or

them any where in the State

III

Contemporaneous Construction ought to have great weight in all cases - and especially in doubtful ones.

This act has received such a judicial and legislative Construction with the entire approbation of the legal profession for the last fifteen years.

Beside the great mischief that would result from overturning so many titles, and renewing so much litigation - it will be found impracticable for the Superior Court as a Court of Chancery

to execute its high powers and functions in endless causes before it — in cases indisputably within its jurisdiction, by service upon part of the defendants in the County, — unless it can summon others from abroad

It might & would be impossible to enforce the collection of judgments before it, — the statute requiring the bill for that purpose to be filed in the Court where the judgment is rendered — in cases where the plaintiff might be a non-resident of the County

All this endless chain of difficulties must arise, by holding — to say the most of it — a doubtful meaning against the jurisdiction

16. "Within the limits of the County" has a much more natural application to the Accruing of the Causes of action — or the bringing of suits, than it has to the residence of defendants, in its Connection in that Section. As it were true that, the residence of defendant, and jurisdiction of the Superior Courts at Common Law were synonymous terms — then such a reading would be natural — But Such is not the truth.

Walter F. Scates

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Thomas Speer
ads
Saml B. Bancroft-

Argument for Defts

Filed May 28. 1860
L. Leland
Clk.

W. B. Scates

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1860.

SAMUEL B. BANCROFT,
vs.
THOMAS SPEER,
Assignee, &c.

ERROR TO SUPERIOR COURT OF CHICAGO.

Argument and Authorities of Counsel for Defendant in Error.

The first question presented by the assignment of errors and the record in this case is, had the Cook County Court of Common Pleas, the power to issue process of Summons to Lee County? Plaintiff in error says, it had not such power.

It is not contended, but that the several Circuit Courts of this State, had and have such power. Plaintiff in error to sustain his position cites:

1. The 2nd Section of the Statute creating the Cook County Court as follows: "The said Court shall have jurisdiction concurrent with "the Circuit Courts of this State, in all matters, civil and criminal, "and in all suits and proceedings, either at law or in equity, *within "the limits of said County.*

Scates T. & B.'s Statutes, 647 Sec. 2.

2. The act defining the jurisdiction of the Circuit Courts, as follows :

"The said Judges respectively, in their respective Circuits, shall "have jurisdiction over all matters and suits at common law and in "chancery, arising in each of the Counties in their respective circuits, "where the debt or demand shall exceed twenty dollars."

Rev. Stat. 146, Sec. 29.

We think that the *language* of the act creating the Cook County Court is clear and explicit, so much so, that the necessity for a Judicial construction of it does not arise. The evident intention of the Legislature being to give to said Cook County Court, *concurrent* jurisdiction with the Circuit Courts of this State ; the words of limitation being thrown in for the mere purpose of confining the Court, the venue, and the powers of the Judges thereof to the County of Cook. The Circuit Judges held Courts in different Counties, different venues of the same Court.

But admit, for the sake of argument, that the necessity for construction, aside from the plain meaning of the words used, does arise, and let us endeavor to ascertain the intention of the Legislature from other sources.

1. Subsequent legislation on the same subject.

Section 2nd of the act creating the Cook County Court, so far as the same relates to this question of jurisdiction, is as follows :

"The said Court shall have jurisdiction *concurrent with the Cir-* "*cuit Courts* of this State in all matters civil or criminal, and in all "suits and proceedings, either at law or equity, within the limits of "said County, and shall have *exclusive* jurisdiction in all appealed "cases arising within the same, and in *all cases of misdemeanor* "which are prosecuted by indictment.

Section 3rd of same act provides, "that the process of said Court "shall be issued and executed in the *same manner* as the process of "the *Circuit Court* of said County.

Section 4 provides, "that the *Judge of said Court* shall have the "*same* powers in vacation as are now vested in the Judges of the

"Supreme Court when acting as *Circuit* Judges in vacation." This last of course means within the limits of Cook County; the Judge could not go out of the County, for the reason that his Court and its venue is confined to Cook County.

Sess. Laws 1849 and 1851, p. 14, Sec. 11, among other things provides, "that the name of the Cook County Court shall be changed to "the Cook County Court of Common Pleas, and the said Circuit "Court shall have *equal and concurrent jurisdiction* in all cases of "misdemeanor arising under the criminal laws of this State, and in "all cases of appeal from Justices of the Peace, arising or instituted "within said County of Cook." This restores the jurisdiction of the Circuit Court over that class of cases *arising* in Cook County.

This is a Court of Superior jurisdiction, being made concurrent with the Circuit Court, and therefore nothing is presumed to be out of its jurisdiction.

Kenney et ux vs. Greer 13 Ills., 445.

The 3rd Section of the act "to regulate the practice in the *Cir-* "*cuit Court* of *Cook County*, and the *Cook County Court of Com-* "*mon Pleas*," provides, among other things, "That in all cases where "it shall appear by affidavit or otherwise, that the *defendant* "*resides out of the County*, the Court may allow time to procure "an affidavit of merits.

This, it seems, ought to be conclusive as to the *intention* of the Legislature on this question.

2nd. In addition to this repeated legislation, all tending directly to show that the Legislature intended to make the said Cook County Court equal and concurrent in all respects with the Circuit Court, we have the uniform practice of said Court, and other Courts other than the Circuit, for fifteen years.

The second objection, that the return of the Sheriff is insufficient to give the Court jurisdiction of the person of the plaintiff in error, is, we think, not well taken. The objection to the return, as to the use by the officer of "S. B," instead of "Samuel B," is not tenable. It is considered a frivolous objection.

Sims vs. Kline, Bresse 299.

The cases cited by appellant on this question are not in point.—Case in 17 Pick. the objection that the designation of "Junior" was omitted, and the case 5 Halsted, it was the omission of the middle letter of defendant's name.

The objection as to the time of service, cannot be sustained. In the case cited by appellant, 1 Scam, 239, the Court say:

"The return of the Sheriff is not in compliance with the provisions "of the law directing the *manner* of *making* the service and return "by the Sheriff.

"The *manner* of making the service is still more doubtful. Wheth-"er it was by reading the summons to the defendant or by delivering "a copy, is left to conjecture, and it is impossible to say which course "was adopted, or whether either was pursued." The return was as follows: "Executed October 18th, 1832, *as commanded within*."—This last was the reason of the reversal of the judgment in that case. In the cases cited by the Court in 1st Scam 239, there was no date whatever, either to the return or as to time of service.

The Statute does not require the officer to give any date to his *return*—his *duty* as to time is done when he dates the *service*, and it is presumed that an officer of the law does his *duty* until the contrary appears—the Court, therefore, has the right to presume—if any presumption is necessary—that the time given relates to the time of service.

In view of these considerations and others that may occur to the mind of the Court in the investigation of this case, the defendant in error, by his counsel respectfully asks that said judgment may be affirmed, etc.

M. R. M. WALLACE,
Counsel for Defendant in Error.

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Bancroft

v

Spurr

Defts. angt. &c

Filed May 28. 1860

L. Leland

Clk.