11/11

Sept 1840

No 1303

Waid Howard
v
State of Missouri } Debt of $1500 to State

Howard was county collector + sheriff

Morgan County

State of Missouri }
Morgan Circuit } Set

Pleas before the Honorable William Scott Judge of the first Judicial Circuit within and for the State of Missouri and Judge of the Morgan Circuit Court (Viz)

Be it Remembered that heretofore towit on the first day of September in the year of our Lord Eighteen Hundred and forty came the State of Missouri by her Attorney General and filed in the Clerks Office of the Circuit Court of Morgan County her Declaration in the following words and figures towit

State of Missouri }
County of Morgan }

In the Circuit Court
November Term 1840

The State of Missouri plaintiff complains of Ward Howard William C. Scott and George T. Robertson defendants of a plea that they render unto said plaintiff the sum of fifteen Hundred Dollars which they owe to and unjustly detain from said plaintiff for that whereas the said Defendants heretofore towit on on the fifth day of February in the year of our Lord Eighteen Hundred and thirty Nine at the County of Morgan aforesaid by their certain writing obligatory sealed with their seals and now to the Court here shewn, the date whereof is the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiff in the just and full sum of fifteen Hundred Dollars which said writing obligatory is and was subject to a certain condition thereunder written that if the above bound Defendants

Ward Howard as Collector of the State tax for the County of Morgan aforesaid should well and truly perform all the duties of said Office according to law then the above obligation mentioned was to be void otherwise it was to remain in full force and virtue, as by the said writing obligatory and the condition thereof will more fully and at large appear and the said plaintiff for assignment of breach of the said condition of the said writing obligatory, says that the said defendant Ward Howard as Collector of the Revenue and taxes of said State within and for said County of Morgan for the year aforesaid, during said year collected and received in payment of taxes due said State for said year within said County of Morgan a large sum of money to wit, the sum of three Hundred and Seventeen Dollars and seventy five cents, which said last mentioned sum of money (or any part thereof) he the said Ward Howard wholly neglected and refused and still does neglect and refuse to pay into the Treasury of said State, And the said plaintiff for a further plea assignment of the breach of the said condition of the said writing obligatory according to the form of the Statute in such case made and provided. says that the said Defendant Ward Howard as collector of the Revenue of said State within said County of Morgan for the year aforesaid, heretofore to wit, on the first day of December in the year aforesaid was charged upon the Books of the Auditor of Public Accounts of said State for the sum of Three Hundred and Seventeen Dollars and Seventy five cents as so much money by him the said Ward Howard as Collector

as collector as aforesaid received and collected during the year aforesaid in payment of the Revenue of said State within said County of Morgan and being on the day and year last aforesaid justly due and unpaid to said State which said last mentioned sum of money he the said Ward Howard has hitherto wholly neglected and refused and still does neglect and refuse to pay into the Treasury of said State, And the said plaintiff for a further assignment of the breach of the said condition of the said writing obligatory according to the form of the Statute in such case made and provided, says that the said Defendant Ward Howard as principle (together with the said other Defendants William C Scott and George J Robertson as the securities of him (the said Ward Howard) entered into and executed said writing obligatory as ex officio collector of the Revenue of said State within said County of Morgan for the year aforesaid, and that he the said Ward Howard as said collector afterwards to wit on the day and year first aforesaid at the County of Morgan aforesaid as said collector of the Revenue of said State within and for said County of Morgan for the year aforesaid received and collected within said County in payment of the Revenue of said State within said County (of Morgan) for said year a large sum of money to wit, the sum of three Hundred and Seventeen Dollars and seventy five cents which said last mentioned sum of money by him the said Ward Howard as collector as aforesaid collected and received as aforesaid he the said Ward Howard has wholly neglected and refused and still does neglect and refuse to pay

(or any part thereof) into the Treasury of said State contrary to the form and effect of the ~~Statute~~ said writing obligatory and said Condition thereof by reason of which said breaches the said writing obligatory became forfeited, and whereby an action hath accrued to the said plaintiff to demand and have of and from the said Defendants the said sum of fifteen Hundred Dollars above demanded

Yet the said defendants (although often requested so to do) hath not as yet paid the sum of money last above demanded or any part thereof to the said plaintiff but to pay the same or any part thereof have hitherto wholly neglected and refused and still neglects and refuse so to do towit at the County aforesaid to the damage of the said plaintiff of One thousand Dollars and therefore said plaintiff brings suit &c

S. Mansfield Bay
Attorney General

Accompanying said Declaration was filed the following account in these words and figures towit

Dr Waid Howard Collector of Morgan County, In Account with the State of Missouri — Cr.

1839.	For amt Recd on License to May 7. 1839.	
	~~Tax list 1839~~	61 " 63
	Tax list 1839	436 " 30
	Recd on License to Aug 7 . .	35 " 27
	Recd on License to Nov 7 . .	14 " 55
		$ 547 " 75

1840. May 11

By Treasurers recpt ... 230 " 00
Balance due 1st Decr 1839. 317 " 75
547 " 75

For Balance as per Contra ... $317 " 75.

Auditors Office Missouri

City of Jefferson July 10th 1840

I Hiram H Baber Auditor of Public Accounts of the State of Missouri Do hereby certify that the above and foregoing account of Ward Howard Collector of Morgan County State afore said is truly copied from the Books of this Office and that the balance therein Stated of Three Hundred & Seventeen Dollars and Seventy five cents is Justly due to the State of Missouri and remains unpaid for the year 1839.

In Testimony whereof I have hereunto set my hand and Seal of said Office at Office in the City of Jefferson the day and year above written

L.S.

Hiram H. Baber Andr.

And then on the same day and year afore said the following Writ of Summons issued from the Clerks Office of the Morgan Circuit Court in these words and figures towit

The State of Missouri

To the Sheriff of Morgan County; Greeting

We command you to Summon Ward Howard William C Scott and George J Robertson to appear before the Judge of our Morgan Circuit Court at the Court House in Versailles on the first day of the next November Term of said Court to be Holden for said Circuit (commencing

on the fourth monday of said month) to answer the State of Missouri of a plea of Debt on Collectors bond damage one thousand Dollars

And have then there this writ

Witness Thomas Grayson Davis Clerk of our said Court at the Court House afore said (with the Seal of said Court hereunto affixed) on the 1st day of September 1840 and in the 21st year of the State

G.S.

Thos G. Davis

Which said writ of Summons Attached to a Copy of the declaration herein was delivered to the Sheriff of Morgan County and by him afterwards returned into our said Court with his return endorsed thereon in these words and figures to wit

"I G L Douthit Shff of M.C. do hereby certify that on the fifth day of October I served the within Summons on Ward Howard by Reading the same in Morgan City Mo, P on George Robertson P. William Scott on the 2 day of November 1840

G. L. Douthit Shff M.C.

And then afterwards to wit, At a Court Continued and held for the Morgan Circuit at the Court House in Versailles on the twenty fourth day of November in the year of our Lord Eighteen Hundred and forty when the following proceedings were had in these words and figures to wit

State of Missouri — Plaintiff

Against } In Debt

Ward Howard et. als. — Defendants

This day came the parties aforesaid by their Attorneys and on motion leave is given Defendants to file special pleas herein on or before the first day of the next Term of this Court as being filed at this Court, so as not to prejudice a trial at the next Term until which time this cause is continued

And then afterwards towit on the twenty second day of February in the year of our Lord Eighteen Hundred and forty one the Defendants by their Attorney comes and files in the Clerks office of the Morgan Circuit Court their plea which read in the words and figures following towit

Morgan Circuit Court
November Term 1840

Ward Howard, William C Scott and George I Patterson v adm The State of Missouri

And the said Defendants by P R Hayden their Attorney come and defend the wrong and injury when &c and say, that the said supposed writing obligatory in the said declaration above mentioned is not their deed, and of this they put themselves upon the Country &c

P R Hayden Atty for Defts

And the said plaintiff doth the like

Bay Atty Genl

And for a further plea in this behalf the said Defendants come, and defend the wrong & injury when &c, and say that as to the said supposed first breach of said condition of said Bond assigned by said plaintiff in said declaration the the said State of Missouri ought not to have or maintain her said action thereof against them the said Defendants by reason of any thing in said supposed first breach of said condition assigned because they say that the

the said Ward Howard as the Collector of the Revenue and taxes of said State for said County of Morgan for the year 1839. during said year did not collect and receive in payment of taxes due said State for said year within said County the said sum of three Hundred and Seventeen Dollars and seventy five cents or any part thereof in manner and form as the said plaintiff hath above in said supposed breach of said condition first assigned in that behalf above alleged and of this they put themselves upon the Country &c

Hayden Atty for Defts

And the said plaintiff doth the like

Bay Atty Genl

And the said Defendants for a further plea in this behalf, come and defend the wrong & injury when &c and say that as to the said supposed breach of the condition of said Bond by said Plaintiff thirdly above assigned in said declaration the said State of Missouri ought not to have or maintain her aforesaid action thereof against them the said Defendants by reason of any thing in said supposed third breach alleged and stated because they say that the said Ward Howard as collector of the Revenue of said State within and for said County of Morgan for the year 1839. did not receive and collect within said County in payment of the Revenue of said State within said County for said year last mentioned the sum of Three Hundred and Seventeen Dollars and seventy five cents or any part thereof in manner and form as the said plaintiff hath above thereof in said supposed third breach of said condition in that behalf alleged and of this they put themselves upon the Country &c

P R Hayden Atty for Defts

And the said plaintiff doth the like

Bay Atty Genl

And the said Defendants for a further plea in this behalf comes and defends the wrong and injury when &c and say that as to the said second supposed breach of said condition of said bond secondly above assigned in said declaration by the plaintiff that the said State of Missouri by reason of anything stated in said last mentioned supposed breach of the said condition of said bond, ought not and cannot by the law of the land have or maintain her said action thereof against them the said Defendants nor are they the said Defendants by the law bound to answer the same and this they are ready to verify; wherefore they the said Defendants pray the Judgement of the Court whether they are bound to make answer to the matter & things set forth in said second supposed breach of said condition &c

P R Hayden Atty for Defts

Joinder in demurrer

Bay Atty Genl

And the said Defendants as to the said supposed breach of the condition of said bond secondly above assigned in said declaration, say that as to anything stated and alleged in the said second supposed breach she the said State of Missouri ought not to have or maintain her said action thereof against them the said Defendants, because they say that the said Wm Stewart Collector of the Revenue of the State of Missouri within the County of Morgan for the year 1839. Court, on the said first day of December 1839. was not lawfully and rightfully charged upon the Books of the Auditor of Public Accounts of said State

Plea to Second Breach

for the sum of three Hundred and Seventeen Dollars and Seventy five cents, as so much money by him the said Howard as Collector as aforesaid received & collected during the year 1839. in payment of the Revenue of said State within said County of Morgan in manner and form as the said plaintiff hath above thereof in said second supposed breach of said condition stated and set forth & of this the said Defendants put themselves upon the Country &c

Hayden Atty for Defts

And for a further plea in this behalf the said Defendants come and defend the wrong and injury when &c, and say that the said plaintiff ought not to have or maintain her aforesaid action thereof against them said Defendants because they said that the said Ward Howard heretofore towit, on the 25th day of July in the year of our Lord 1839. towit at the County of Morgan aforesaid was then and there Sheriff of said County of Morgan and as such was Exofficio Collector of the State and County Revenue within said County for the year aforesaid, and that he the said Ward Howard so being Sheriff and Collector as aforesaid before the collection of the Revenue & taxes of the State or any part thereof within said County of Morgan by him said Howard for the year last mentioned & whilst the same remained wholly due and unpaid, afterwards towit, on the day and year last aforesaid towit at the County of Morgan aforesaid by his certain instrument of writing then and there made and subscribed by the said Ward (Howard) did then and there renounce yield up and resign to the people of said County his said office of Sheriff

And then and there delivered up to Thomas Grayson Davis Esqr. then and there being Clerk of the County Court duly elected qualified as such. within and for said County at his office in said County the said written renunciation of said Office of Sheriff and prayed the said Clerk then and there to accept the same & to certify to the Governor then & there of this State that said Office had thereby then and there become vacant and which Office of Sheriff did thereby become then and there vacant which vacancy he the said Clerk thereupon then and there immediately certified to Sulbourne W Boggs then being Governor of the said State

And the said Defendants do aver that afterwards and before the said Revenue or any part thereof had been collected for the year aforesaid for said State in said County, the said Sulbourne W Boggs then and there being Governor as aforesaid to wit on the 30th day of July 1839. duly appointed and commissioned by Letters under the great Seal of said State as Governor as aforesaid one Joseph M Taylor of said County Sheriff thereof in the place of the said Wain Howard so resigned as aforesaid thereby authorised and empowered the said Taylor to discharge the duties of said Office according to Law and to hold the said Office with all the powers privileges and emoluments to the same appertaining until the legal termination thereof a copy of which said Letters under the Seal of said State the original being in the possession of persons unknown to the Defendants which therefore they cannot produce is now here shewn to the Court the date whereof is the day and year last aforesaid. And the Defendants also now here bring into Court and shew to the Court

the said written resignation of said Office so made as aforesaid by the said Ward Stewart the date whereof is the said 25th day of July 1839 to wit at the County of Morgan aforesaid

And the said Defendants in fact aver that afterwards to wit on the 5th day of August 1839 the said Joseph McTaylor so being commissioned to fill said Vacancy in the Office of Sheriff as aforesaid went and appeared before the Clerk of said County Court at the Office of said Clerk in Versailles in the County aforesaid and made affidavit in writing among other things upon Oath duly administered by said County Court Clerk as Clerk aforesaid, that he the said Taylor as Sheriff aforesaid would support the Constitution of the State and of the United States and faithfully perform the duties of the Office of Sheriff within said County according to law during his continuance in Office and thereupon then and there entered into Bond agreeably to law and became And was duly qualified to act as Sheriff during the remainder of the Term of said Office of Sheriff so vacated as aforesaid by the resignation of said Ward Stewart and being so qualified he the said Taylor then and there took upon himself the duties and burthens of said Office of Sheriff & so remained and continued to act & perform the duties of said Office from the said 5th day of August for a long time to wit for the term of one year then next following, during which time and prior to the said first day of December 1839 he the said Taylor by virtue of his said Office as Sheriff as aforesaid as collector of said County

Collected and received within said County for the year 1839. the whole of the State Revenue & tax of said State and within said County for said year 1839. amounting in the whole to a large sum of money towit to the sum of Three Hundred & Seventeen Dollars & seventy five cents - and this they the said Defendants are ready to verify; wherefore they pray the Judgement of the Court whether the plaintiff ought to have or maintain her aforesaid action thereof against them the said Defendants &c

Hayden Atty for Defendants

And for a further plea in this behalf the said Defendants come & defend the wrong and injury when &c and say the the plaintiff ought not to have or maintain her aforesaid action thereof against them the said Defendants, because they say that the said Nath Howard as Sheriff of said of said County of Morgan & as such Exofficio Collector of said County in the year 1839. without having collected or received the State tax & Revenue of said County for said year, or any part thereof heretofore towit on the 25th day of July in the year our Lord 1839. towit at the County aforesaid resigned renounced and yielded up said office of Sheriff within & for said County whereby the said office became vacant for the remainder of the term for which which said Nath had been duly elected and qualified as Sheriff to fill being a long space of time then next towit, until the first monday in August 1840 & until his successor should be duly qualified, and the said Defendants aver that after said office of Sheriff had become vacant by the said resignation thereof as aforesaid. and before the said State

Tax and Revenue for said County for the year 1839 or any part thereof had been collected or received by any person whomsoever his Excellency Lilburne W Boggs then being Governor of the State of Missouri by Letters under the Great Seal of the State of Missouri thereunto affixed on the 30th day of July in the year of ~~our~~ 1839 in due form of Law as Governor aforesaid appointed and commissioned one Joseph McTaylor of said County Sheriff of said County in the place and stead said Mark Stewart resigned & thereby then and there authorized and empowered said Taylor to discharge the duties of said office according to Law in the place and stead of said Stewart with and for said County for the remainder of said Term, and to have and to hold said Office with all the powers and privileges and emoluments thereof until the legal termination thereof — whereupon said Joseph McTaylor accepted said Office of Sheriff for the remainder of said Term for said County, under said Commission and appointment & thereupon entered into bond and security & took the Oath of Office and then and there towit on the 5th day of August in the year 1839 at the County aforesaid became and was duly qualified to act as Sheriff of said County to fill said Vacancy occasioned as aforesaid and being so qualified as Sheriff & as such Ex officio Collector of said County for the year last mentioned afterwards towit on the day & year last mentioned towit at the County aforesaid he the said Joseph McTaylor then and there collected & received the

Said State tax and Revenue within said County due in the year 1839 amounting in the whole to a large sum of money towit to the said sum of three Hundred & Seventeen Dollars & Seventy five cents & converted and disposed of the same as collector to his own use, And this the said Defendants are ready to verefy wherefore they pray Judgement if the plaintiff ought to have or maintain her aforesaid action thereof against them said Defendants &c

P R Hayden Atty
for Defts

And then afterwards towit At a Court continued and held for the Morgan Circuit at the Court House in Versailles on Tuesday the twenty third day of March in the year of our Lord Eighteen Hundred and forty One the following proceedings were had in these words and figures towit

The State of Missouri — Plaintiff
Against
Ward Howard } In Debt
William C Scott & } Defendants
George J Robertson }

This day came the parties aforesaid by their Attornies And the Defendants demurrer to the second breach of the condition of the writing obligatory assigned by the plaintiff argued and by the Court overruled. And the Defendants with the leave of the Court withdraws their first, second and third pleas. and the plaintiff by her Attorney files her demurrer to the fourth fifth and sixth pleas of the Defendants

which demurrer reads in the words and figures following to wit " The State of Missouri vs Ward Howard & others. Circuit Court March Term 1841. And the said plaintiff as to the same pleas of the said Defendants to the same second breach in said declaration ~~mentioned~~ assigned and as to the two last pleas of the said defendants says that the same are not sufficient in Law, therefore said plaintiff prays Judgement. S. M. Bay Atty Genl, which demurrer was argued and by the Court sustained

And thereupon by consent of the parties the breaches assigned in the plaintiffs declaration are enquired into by the Court, and the Court assess the plaintiffs damages by reason of the breaches of the contention of the writing obligatory in the declaration mentioned to Seven Hundred and thirty Nine Dollars and fifty four Cents

Therefore it is considered by the Court that the plaintiff recover against the said Defendants fifteen Hundred Dollars the debt in the writing obligatory in the declaration mentioned, and that the plaintiff have execution for the damages aforesaid by the Court in manner and form aforesaid assessed, and also that the said plaintiff recover against the said Defendants her Costs by her about her suit in this behalf laid out and expended and the said Defendants in mercy &c

This Judgement is to bear interest at the rate of Five and one half per cent per Month until paid.

Whereupon Ward Howard one of the Defendants herein comes and files his—

affidavit and prays an Appeal from the Judgement rendered herein against them to Supreme Court which is granted on his entering into a recognizance with two sufficient securities in the sum of One thousand Dollars which was deemed sufficient, whereupon the said Wade Hovard with Howard Chism and John Gist his securities who are approved of by the Court comes and acknowledge themselves to owe and stand justly indebted to the State of Missouri in the just and full sum of One thousand Dollars to be levied and made of their respective Goods and chattles Lands and tenements and to the use of said State to be rendered, yet upon this condition that if the said Wade Hovard William C Scott and George J. Robertson will prosecute their Appeal with due diligence to a decision in the Supreme Court and if the Judgement Appealed from is affirmed or their Appeal dismissed they will pay whatever of Debt damages and costs have been recovered against them by the Judgement of the Circuit Court together with the interest that shall grow due thereon or that they will otherwise perform the Judgement of the Circuit Court, and that they will also pay the costs and damages that may be adjudged against them in the Supreme Court on their Appeal then the above Recognizance to be void otherwise to remain in full force and vertue —

State of Missouri }
Morgan Circuit } Set

I Thomas Grayson Davis Clerk of the Circuit Court within and for the County of Morgan in the State of Missouri do hereby certify that the foregoing fifteen pages contain a true full and complete transcript of the Record and proceedings in the Case of the State of Missouri against Maria Howard William C Scott and George T Robertson as ample and full as the same now remains of Record in my office

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Office in Versailles on the 1st day of June A D 1841

Thos G. Davis Clk

$250 1303 7

$250 $250 ~~31~~ (30)

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Waid Howard

Appellant,

agt } Appeal.

The State of

Missouri

1303

filed 15th April 1841.

Robert P. Clark

CMC

Supreme Court
April Term 1841.

Waid Howard & others
agt ⅌ Upon Appeal. From Morgan Circuit Ct.
The State of Missouri.

And now on this day comes here into Court the Appellants and say that it appears from the record and proceedings aforesaid, as well as in the giving the judgment aforesaid, manifest Error hath been committed, for that by said Record & proceedings it appears that the Judgment in the Cause aforesaid was rendered by the said Circuit Court for said State of Missouri, whereas by the law of [illegible] land the judgment ought to have been [illegible] for the Defendants; therefore said Circuit Court manifestly Erred.

And there is also Error in this, to wit; For that it appears from said Record, ~~that~~ that the said Circuit Court sustained the Demurrer of said State to the said pleas of said Defendants to the said second breach of Covenant assigned by said plaintiff in said Declaration, and also said Demurrer to said two last pleas of said Defendants; whereas by the law of the land the said Demurrer of said State ought to have been overruled & judgment given thereon for said Defendants - in this therefore said State manifestly Erred -

Said Circuit Court also Erred in overruling the Demurrer of said Defendants to said second breach of Covenant mentioned in said declaration - For which said several Errors, & other Errors in the record apparent said Defendants pray that said Judgment may be reversed &c, &c -

Hayden atty for Dfts -

Ward Howard &
Others

agt { Error assignment
of -

The State of Mo

filed 23rd August 1841.
B Clellan

Supreme Court,
August Term 1841.

Waid Howard, William Scott, and
George J. Robertson - Plff
against } In Error.
The State of Missouri - Deft.

This was an action brought by the State of Missouri against the plaintiffs in Error on the official Bond given by said Waid Howard as Sheriff and Collector of Morgan County, with Sd Scott and Robertson as his securities, for the Collection of the State and County Revenue within said County for the year 1839.

There are three ~~sp~~ breaches of the Condition of the Bond assigned by the plaintiff - 1st That said Howard as Collector of the State Revenue within said County received & collected the sum of $317.75/100, being the amount of the State Revenue for the year 1839 - And which revenue so collected & rec.d by him he wholly failed and neglected to pay over to the Treasurer of the State.

2d Breach is that said Waid Howard as Collector aforesaid for said year 1839, on the 1st day of December 1839, was charged upon the Books of the Auditor of Public accounts of

the State of Mississippi for the sum of $317.75/100 as so much money by him collected as Collector of said County as received and collected by him for the year aforesaid, in payment of the Revenue of the State in said County, and which said sum of money so ~~collected~~ charged upon the Books he the said Howard has hitherto wholly failed and neglected to pay over in to the Treasury of the State.

3d — Breach alleges that said Howard as principal together with said other Defendants, his Securities entered into said Bond as Ex officio Collector of the Revenue of the State within said County, and that said Howard as Collector collected and received said sum of $317.75/100 the amount of the State Revenue for said Year 1839, which he failed & refused to pay ~~over~~ into the Treasury of the State.

The Defendants as to the 2d breach of the Condition of the Bond ~~Demurrer~~ ~~And~~ pleaded that ~~did~~ he the said said Howard was not lawfully & rightfully charged upon the Auditor's Books with said sum of $317.75 Cents, as so much money by him said Howard collected as Collector of the State Revenue of said County for the year 1839, in manner and form as the plaintiff supposed & alleged in said 2d breach of 2d Condition of the Bond.

The Defendants then plead two other pleas to the whole declaration in Bar of the action, and which pleas are in substance the same - Wherein they allege in substance that on the 25th day of July 1839, and before the collection of the State Revenue or any part thereof, of said county, ~~the said~~ due for said year, the said Ward Howard, as Sheriff and Collector of the county duly resigned the office and had the resignation made known in due form to Lilburn W. Boggs, (the Governor of the State of Missouri) who thereupon afterwards on the 30th day of ~~August~~ July 1839, before the collection of the said State Revenue, or any part thereof, duly appointed and commissioned under the seal of the State, one Joseph Taylor as Sheriff of said county, in the place and stead of said Howard to resigned, and thereby commissioned and authorised said Joseph Taylor to discharge the duties of said office according to law, and to hold said office with all the powers, privileges and emoluments to the same appertaining until the legal termination thereof - And defendants aver that afterwards on the 5th day of August 1839, the said Taylor so being commissioned Sheriff, took the oath of office required by law, that he would faithfully perform the duties of the office of Sheriff in & for said county during his continuance therein, according to law, and thereupon entered into Bond with security as presented by

law, and then and there became and was duly qualified to act as Sheriff during the remainder of the Term of said office of Sheriff so vacated as aforesaid by the resignation of said Howard of the office - And that he the said Taylor thereupon took upon himself the burthens and duties of the Office of Sheriff for the Term of One Year from the said 5th day of August then next following - And that prior to said first day of December 1839, & whilst he the said Taylor ~~Howard~~ was Sheriff as aforesaid, by virtue of his said office as Shff Sheriff af.d & as Collector of the County of Morgan Collected & rec.d within said County for the year 1839, the whole of the State Revenue & Tax, amounting to the whole of said sum of $317.75/100, and converted the same to the use of him said Taylor -

To these pleas of the Defendants the State by her attorney General demurred Generally, which demurrers were sustained by the Court, & Judgment rendered for plff for Damages for the sum of ~~$4~~ $439. and 54 Cents - To bear interest at the rate of 2½ per centum per month until paid.

The Appellants will rely upon the following points in their argument for a reversal of the Judgment of the Circuit Court.

1st That by the Demurrers filed to the pleas of Defendants the State admits that said Howard as Sheriff resigned his office of

Sheriff of the County before the Collection of the Revenue or any part thereof, & whilst the Same was wholly due and unpaid, And that Joseph Taylor was duly Commissioned and specified as Sheriff of the County, and as such, was ex officio Collector, & did Collect the State Revenue for the Year 1839, Amounting to the Said Sum of $317.75 Cents, And Converted the Same to his own use; And that therefore, the State of Mississippi having duly appointed and Commissioned him, Taylor, her Collector Ex-officio, ought not, and Cannot Charge him Said Howard with Said Sum of Money Collected at her own instance and by her own appointed agent.

2d That by the 1st Section of the Revenue Law ~~536~~ in the Digest of 1834-5, Sheriffs are made Ex-officio Collectors of their respective Counties; And upon the resignation of their offices as Sheriffs, they Cease to be Collectors of their Counties; And Cease to be liable for the performance of the duties imposed upon them as such.

Weid Howard

agt { Brief of
Appellants -

The State of
Missouri -

Hayden's brief.
See Digest 536. § 1.

filed Jany 19. 1844
H. L. Boon clk

Wade Stewart et al
vs
The State

Appeal from Morgan Circuit Court.

1. The entries in the books of the Auditor of Public Accounts against Collectors of the Revenue for revenue by them collected, are prima facie evidence of the ~~[illegible]~~ of the indebtedness of such officers: the entries being made by a ~~public officer~~ in public books, by a public officer, in the performance of a duty enjoined on him by law.

1. Philips on Ev. 413. to 425. McKendry v. Taylor's lessee. 4. Peters. Rep. 349. In this case, the official tax books of the Corporation of the City of Washington, made up by the Register, from the official returns of the assessors laid before the board of Appeals, were held sufficient evidence to show the tax assessed upon an individual. The Court remarked, that the book "was made out by and arranged by an officer, in pursuance of a duty expressly enjoined by law. This not only makes the tax book evidence, but the best evidence which can be given of the facts it contains"

1. Starkie on Ev. 208 to 212. 4. Pick. R. 280. Moore v. Bank of Mo. 6. Mo. R. 379.

II. By the 1. sect. of 2d Art. of the act of 9. March 1835. (R. S. p. 606) The Auditor of Public accounts is declared to be the "general accountant" of the State, and the keeper of all public books &c, relating to the accounts and contracts of the State, and is revenue &c, and by the 4th subdivision of the 3d section of the same article, it is made his duty, "To audit, settle

and adjust the accounts of all Collectors of the revenue", &c. By the 28th Sect. of the 3d Article of the act of March 14th 1835, Concerning the Revenue. (R. S. p. 538) it ~~is made the duty of the Clerk of the County Court~~ is provided, that, "immediately after every Settlement made by a any Collector with the County Court, a Copy of the record thereof shall be Certified and Sent to the Auditor of Public accounts." And by the 33d Sect. of Same Article, it is made the duty of the Collector, to pay into the State treasury "the whole amount of revenue with which he may Stand charged".

The obvious meaning of which, is, all the revenue with which he may Stand Charged upon the books of the Auditor of Public accounts.

For the foregoing reasons the Court properly overruled the Demurrer to the Second assignment of breaches.

III. 2. The 9. Sect. of 1st Art. of the Act Concerning the Treasury Department. (R. S. 1835. p. 606. Makes Certified Copies of papers &c required to be kept in the Auditor's Office evidence in the Same manner, and with the like effect, as the originals. In Gurns v. Lanis. (6. Mo. R. 330,) this Court decided that, "Whenever the law requires an Officer to give a Certificate of the existence of any fact, that the Certificate so given is to be received in evidence of the existence of the fact."

If the Certificate is evidence, then a fortiori is the original, evidence, And the Second assignment of breaches avers that defendant was charged &c upon the books of the Auditor &c -

IV The demurrer to the plea to the second assignment of breaches was properly sustained

1. Because the plea referred matter of law to the determination of the Jury.

Fugate & Young v. Carter. 6. Mo. R. 267
Bennett v. Martin " " " 460
Newman v. Landers " " " 279.

2. Because the plea does not state facts with sufficient certainty. 1. Chitty's Pl. 271.
Thomas v. Cantlon et al. 6. Mo. R. 201

V The demurrer to the two last pleas was properly sustained. Because.

1. The Sheriff, by the resignation of his office of Sheriff, does not thereby cease to be Collector. Although the Statute declares that the Sheriff shall be ex officio Collector, yet the Collectorship is not in the proper sense of the term an ex officio office. The Sheriff does not become Collector until five months after his election as Sheriff, and he continues to be Collector for five months after his term of service as Sheriff, expires. So that for a period of ten months the Sheriff is not Collector, and the revenue is collected by a person who is not Sheriff.
(R. S. 1835. title "Revenue". Act 2d. sect. 1. p. 536.)

2. Even admitting that the Sheriff by the resignation of his office of Sheriff ceases to be Collector; yet the pleas are bad, for the Collector, upon the receipt of the tax book is charged with the whole amount due for taxes, which charge is certified to the Auditor of Public accounts, and the Collector becomes liable for the amount due, which liability certainly

cannot be avoided by the resignation of his office of Sheriff, but only by payment into the State Treasury of the amount charged against him, deducting, known, the amount of the delinquent list, if any there be.

R. S. 1835, title Revenue, Art. 3d Sections 8-9-10. p. 536. and Revenue laws passim

3. If the Collector, by a resignation of the office of Sheriff, could avoid the payment of the amount of the tax book received by and charged against him, the whole amount thereof would be a loss to the State, as his successor in the office of Sheriff would not be required to collect the amount of the tax book charged against the former Collector, nor to make any settlement in relation thereto; nor would any charge appear against him, on account of such tax book, either on the records of the County Court, or on the books of the Auditor of Public accounts. ib

VI. Courts have always paid great deference to the contemporaneous construction of laws by officers whose duty it was to execute those laws; and the uniform construction given to the Revenue laws by those officers has always been directly the reverse of that contended for by the appellant. Contemporanea expositio est optima et fortissima in lege. 2. Inst. 11.

S. Bay. Atty Genl

Wade Howard et al

vs

The State of Mississippi

Points & Authorities

By [illegible]
Atty. Genl

filed Jany 19. 1844
H L Boon clk

Howard v. The State

Error to Morgan C.C.

This was an action brought by the state against the plaintiff in error, upon his official bond, as collector of the revenue in 1839. The first breach assigned in the declaration, is, that defendant, as collector for the county of Morgan, during the year 1839, received in payment of taxes due the state $317.75, which he refused and neglected to pay into the state treasury. The second breach is, that the said Howard, as collector of the revenue within the county of Morgan, for the year aforesaid, was on the first day of December of said year, charged upon the books of the auditor of public accounts of said state, with the sum of $317.75, as so much money by him received and collected during the year aforesaid, and being justly due and unpaid; and that said Howard has hitherto wholly neglected &c.

The defendant pleaded in answer to the second breach, that he was not rightfully and lawfully charged upon the auditors books &c. He further pleaded, in bar to the action, that on the 25th day of July, and before the collection of the state revenue, or any part thereof, due for said

year, the said Howard as sheriff & collector of said county resigned his office, according to law; and had his resignation made known, in due form, to the then governor of this state, who thereupon, on the 30th day of July, and before the collection of the state revenue or any part thereof, appointed one Joseph Taylor sheriff of said county, and commissioned and authorized said Taylor to exercise all the powers and duties, appertaining to his said office of sheriff. The plea further avered, that said Taylor, so being commissioned as sheriff, took the prescribed oath of office, and entered into bond pursuant to law, and entered upon the duties of his office, and that said Taylor as sheriff, by virtue of his office &c. did collect all the revenue of said county for the year 1839, and converted the same to his own use.

It is not material to notice the other pleas which were filed, the disposition of which in no wise affects the merits of the question presented on the record. The attorney general demurred to the above recited pleas; the demurrer was sustained, and judgment given for the state, on the demurrer.

The only important question presented by the pleadings, is, whether the resignation of a sheriff, after he has given bond as collector, and the appointment of a successor, will relieve him from the obligations of his bond

The sheriff is, by the act ~~regulating~~ relating to the Revenue, declared to be <u>ex officio</u> collector; yet in examining ~~the~~ all the provisions of the same act, we find, that the offices are only so far inseparable, that before a person can be collector he must fill the office of sheriff. But the sheriff is not always the collector; nor is the collector necessarily the sheriff. From the first Monday in ~~Jan.~~ August until the first of January succeeding, the sheriff and collector are two different persons. The sheriff cannot, by the law as it was in 1835, ~~when~~ under which this case was determined, assume the duties of collector until after the first of January, and he continues in office as collector, five months after the expiration of his office as sheriff. He gives bond as sheriff, and bond as collector, and the whole scope of the law indicates the intent of the legislature to impose on the sheriff the burthen of collecting the revenue, leaving at the same time the duties, and liabilities, & term of service of

of the two offices distinct & separate.

After the sheriff enters on the duties of collector of the revenue, the tax books are placed in his hands & he gives a receipt for the same; the aggregate amount of the tax books is certified to the Auditor of Public accounts, & that amount is charged to the collector as so much money due & owing from him ~~for~~ to the State. This account is ~~conclusive~~ prima facie evidence against the collector, and he can only discharge his liabilities by paying the amount into ~~of~~ the treasury, deducting the amount of the delinquent list.

I do not doubt but that the Collector may resign his office, as well as the sheriff, and that the sheriff when he fills both offices, as he does during nineteen months of his term of service, may by his resignation of the office of sheriff relieve himself from the duties of Collector. But this ~~principle~~ privilege or right, which may be ~~said to be~~ considered ~~a~~ ~~fundamental~~ pervading ~~principle in our government~~, applicable to all public officers ~~& applies to all public offices~~, must not be ~~construed~~ exercised so as to affect injuriously the rights of the public. ~~as private individuals~~ The resignation of the office of sheriff does not affect

the liabilities of that officer on his official bond, nor will the resignation of the office of collector, when distinct from that of sheriff or when united in the same person, release the incumbent from liabilities incurred.

When the tax books are delivered to the collector, and he receipts for the same & the amount is charged against him at the proper department of state, the collector has become responsible for the taxes, and his resignation of that office will not affect that responsibility, whether he proceeds to collect them or not. No provision is made in our law, by which his successor is required to give bond for the taxes of that year; nor does any charge appear against that successor in the office of the auditor, and ~~it is plain, that if~~ the collector who has receipted for the taxes, is ~~not liable~~ responsible, ~~it is~~ or they are a loss to the State. ~~This it is evident, could not have been doing within the intention of the act, & therefore no provision is made, authorizing the appointee successor of such resigned officer, to give bond for the taxes of that year.~~

This is like the case of a sheriff, who commences on a particular duty, & before the completion of that duty, resigns his office, or his term expires. Upon common law principles & apart from any specific regulations of our statutes, the sheriff was authorized to complete the act thus commenced, & he was of course, responsible ~~on his official bond~~, if such act was not completed or not legally performed. Cooper v. Chitty 1 Black: Reps: 2 Ld. Raymond 1072.

The collection of the revenue, due in any specified year, is ~~one act~~ one entire act, & is incapable of subdivision. For it is apparent that no means are provided by which it could be ascertained ~~how much~~ what portion was collected by one collector & what by another. The existence of two different collectors during the same year is therefore not contemplated by our statutes.

~~The plea~~ it avers, generally, that before the collection of the state revenue or any part thereof, the defendant resigned &c. This was no answer to the declaration, & we are therefore of opinion, that the judgment of the Circuit Court upon the demurrer was right.

Judgt. affirmed.

W. B. Napton

We concur

G Tompkins

W Scott

7 If the collector, previous to giving bond, resigns, the difficulty ~~may~~ does not arise, & if subsequently to giving bond, and previous to his acceptance of the tax lists or doing any ~~other~~ the act ~~which~~ towards the collection of the revenue, he resigns, he cannot be held responsible for the performance of a duty not undertaken or commenced. But the plea of ~~the~~ defendant does not make out such a special case;

No. 8.

Howard
v.
The State

Opinion

W. B. Napton

filed Jany 19. 1844
H. L. Boon clk

STATE OF MISSOURI-----Sct. The State of Missouri----To the Sheriff of the County of Morgan in said State-----**GREETING:**

Whereas, The State of Missouri

on the Nineteenth day of January in the year eighteen hundred and forty-four at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Waid Howard, William L. Scott, and George S. Robertson the sum of four Dollars and forty Cents for her costs and charges by her expended in a certain suit wherein the said Howard, Scott, and Robertson were Appellants, and the said State of Missouri was appellee, which to the said State of Missouri were adjudged, as appears to us of record:==

Therefore, we command you, that of the goods and chattels, lands and tenements of the said Howard, Scott and Roberts in your bailiwick, you cause to be made the aforesaid costs and that you have the same before the Judges of our said Supreme Court, on the first Monday in July next, to render unto the said State of Missouri the costs aforesaid: and that you certify to our said Judges, how you execute this writ, and have you then there this writ.

Witness, Hampton L. Boon, Clerk of our said Supreme Court, at office, in the City of Jefferson the tenth day of May in the year of our Lord one thousand eight hundred and forty-four.

H. L. Boon

Came to hand June 2
1844

W J Tutt Shff M C

I W J Tutt Sheriff of Morgan County do hereby certify that the within Execution is satisfied in full
July 1 1844

W J Tutt Shff M County

20.

Supreme Court
July term 1844

State of Missouri
vs Eaon
Ward Howard & others

Costs.

H. L. Boon	4.40
This writ	1.00
	$ 5.40