

12194

No. _____

Supreme Court of Illinois

Aldrich.

vs.

Dunham, et al.

Supreme Court of Illinois

James F Aldrich

vs

John H. Dunham

} appeal -

Cook Co. Co. Co. Pleas

And now comes said Appellant
by J. L. Dickey - his attorney - and
says that there is manifest error
in the proceedings & judgment ^{of the court below} on
said Cause - and that said judgment
ought on that account to be reversed
and held for naught -

And for special assignment
of errors said appellant shows the
following -

1st The Court had no jurisdiction
of the subject matter -

2nd The Court had no jurisdiction
of the person of appellant & other depts below

3rd The declaration in the Case
is insufficient & shows no cause of
action -

4th The Court erred in admitting
evidence against appellant - which
ought to have been excluded -

5 The Court erred in excluding
evidence offered by appellant - which
ought to have been admitted -

6th The Court erred in giving each
and every instruction given to the jury
~~which was not requested by~~ by the Court

7th The Court erred in refusing to give
~~instructions~~ each & every instruction to the
jury - which the Court was requested to give

and which the Court refused to give -
8th The Court erred in overruling the
motion for a new trial -

9th The Court erred in rendering
judgment against appellant in the
manner in which the same is
rendered -

T. L. Dickey atty
for appellant -

And the said defendant comes along then on no
such more as an above supposed in the
said record, and the said defendant prays that the
said ~~verdict~~ judgment may in all things be
confirmed

Grant Goodrich
for def.

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James F. Aldrich

vs

John W. Cunham, et al

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

Pleas before the Honorable John M. Wilson
Judge of the Cook County Court of Common Pleas within and
for the County of Cook and State of Illinois at a regular
Term of said Cook County Court of Common Pleas begun and
held at the Court house in the City of Chicago in said
County and State on the first Monday being the fifth day of
February in the year of our Lord one thousand eight hundred
and fifty five and of the Independence of the United States
the seventy ninth.

Present the Hon: John M. Wilson Judge
Daniel McShay. Prosecuting Attorney
James Andrew. Sheriff
Walter Kimball. Clerk
Absent

Be it Remembered that heretofore to wit on the Eleventh
day of November A. D. Eighteen hundred and fifty four
came Henry W. Hinsdale of the firm of J. H. Dunham & Co.,
composed of John H. Dunham and the said Henry W.
Hinsdale, Plaintiffs in this suit, and filed in the Office of the
Clerk of the Cook County Court of Common Pleas, his Affidavit
of debt and praying and attachment against Hezekiah H. Smith
Martin B. Medbury, John W. Medbury and William Aldrich
and Summons against James F. Aldrich, Defendants,
together with a Bond for costs, which said Affidavit
and Bond are in words and figures as follows
to wit,

9.
State of Illinois
Cook County } Ss.

Henry W. Hinsdale of the firm of
Litt. Dunham & Co composed of John H. Dunham and
himself being duly sworn says that Ezekiah H.
Smith, Martin B. Medbury & John W. Medbury
William Aldrich and James F. Aldrich doing business
under the name and style of Aldrich, Smith & Co
are justly indebted to this affiant and his said
partner in the sum of One thousand eighty eight
dollars & nineteen cents for Goods Merchandise
and groceries sold to them, and thirteen dollars & sixty
cents for interest on the same since the same was
due, and that the said Ezekiah H. Smith, Martin
B. & John W. Medbury & William Aldrich are not
residents of this State, and that they have property
in this State, subject to attachment and this affiant
lays an attachment against the said Ezekiah H.
Smith, Martin B. Medbury, John W. Medbury and
William Aldrich and Summons against James F.
Aldrich

Subscribed and sworn to }
before me this 11th day } Henry W. Hinsdale,
of December A.D. 1854 }
W. Kimball. Clerk

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Know all Men by these presents That we John
H. Dunham, Henry W. Hinsdale & Robert W. Offier
are held and firmly bound unto H Ezekiah H. Smith
Martin B. Medbery, John W. Medbery, William W.
Aldrich and James F. Aldrich in the penal sum of
Twenty two hundred & three dollars and seventy nine
cents, lawful money of the United States for the
payment of which said sum well and truly to be
made we bind ourselves our heirs executors and
administrators jointly and severally by these presents

Sealed with our Seals and dated this 11th day
of Nov^r, A. D. 1854,

The condition of the above obligation is such
that whereas the above bounden Dunham & Hinsdale
by the said Henry W. Hinsdale have on the day
of the date hereof prayed an attachment out of
the Cook County Court of Common Pleas of Cook
County at the suit of said Dunham & Hinsdale
against the Estate of the above named Smith, Martin
B. & John W. Medbery & William and James F.
Aldrich for the sum of Eleven hundred and one
dollars & seventy nine cents, and the same being
about to be sued out of said Court returnable on
the first Monday of January next, to the term of
the said Court then to be holden. Now if the
said Dunham & Hinsdale shall prosecute their
said suit with effect, or in case of failure therein
shall well and truly pay and satisfy the said
Smith, Martin B. and John W. Medbery & William
and James F. Aldrich all such costs in said suit
and such damages as shall be awarded against
the said Dunham & Hinsdale their heirs executors
or administrators, in any suit or suits, which may

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4. Hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void otherwise to remain in full force and effect

Signed Sealed and delivered L. H. Dunham (Sd)
in presence of J. W. Hinsdale (Sd)
R. W. Officer (Sd)

And thereupon Attachment issued out of the Office of the Clerk of said Court in words and figures as follows, to wit,

State of Illinois }
Cook County . . } Sd. The People of the State of
Illinois to the Sheriff of said County Greeting
Whereas Henry W. Hinsdale hath complained on
Oath to Walter Kimball Clerk of the Cook County Court
of Common Pleas of Cook County that Hezekiah H.
Smith, Martin B. Medbery, John W. Medbery, William
Aldrich and James H. Aldrich are justly indebted to
the said Henry W. Hinsdale & John H. Dunham
composing the firm of J. H. Dunham & Co. to the amount
of eleven hundred and one dollars and twenty nine cents
and oath having been also made that the said
Hezekiah H. Smith, Martin B. Medbery, John W.
Medbery and William Aldrich reside out of this State
so that the ordinary process of law cannot be served
upon them And the said John H. Dunham and
Henry W. Hinsdale having given bond and security
according to the directions of the act in such case made
and provided We therefore, command you, that you
attach so much of the Estate, real or personal, of the
said Hezekiah H. Smith, Martin B. Medbery, John

5.
H. Medbury and William Aldrich to be found in your County as shall be of value sufficient to satisfy said debt and costs, according to the said Complaint and such Estate, so attached, in your hands to receive, or so to provide that the same may be liable to further proceedings thereupon according to law at a term of said Cook County Court of Common Pleas to be holden at Chicago, within and for the County of Cook on the first Monday of January next, so as to compel the said Smith - Martin B. & John H. Medbury & William Aldrich to appear and answer the Complaint of the said John H. Dunham & Henry H. Hinsdale and that you also summon the said James T. Aldrich if he shall be found in your County personally to be and appear at the said Court on the said first Monday of January next, then and there to answer unto the said Dunham & Hinsdale in a plea of trespass on the case upon promises to their damage as they pay of Two thousand dollars; when and where you shall make known to the said Court, how you have executed this Writ. And have you then and there this Writ.

Seals.

Witness Walter Kimball, Clerk of our said Court, and the Seal thereof at Chicago in said County; this Eleventh day of November in the year of our Lord One thousand eight hundred and fifty four.

Walter Kimball - Clerk

"Served this Writ by reading to E. W. Williard and Edward J. Tuckham as garnishees of the within named Defendants to said Williard as a Member of the firm of George Smith & Co and to said Tuckham as Secretary of the Chicago Marine & Fire Insurance

Company this 14th day of Nov 1854

C. D. Bradley. Sheriff

By J. W. Regan, Deputy.

And thereafter to wit on the twenty second day of December A. D. Eighteen hundred and fifty four the said Plaintiffs by Goodrich Scoville and Seelye their Attorneys filed their Declaration herein in the office of the clerk of said court, which Declaration is in words and figures as follows, to wit.

State of Illinois } In the book County Court of
County of Cook } S. S. Common Pleas of the January
Term A. D. 1855.

John H. Dunham and Henry W. Hinsdale partners of the name style and firm of J. H. Dunham & Company Plaintiffs in this suit by Goodrich Scoville & Seelye their Attorneys complain of Hezekiah H. Smith, Martin B. Medbery and John W. Medbery, William Aldrich and James J. Aldrich defendants in this suit who are summoned &c of a plea of Trespass on the case, upon promises. For that whereas heretofore to wit, on the tenth day of November in the year of our Lord one thousand eight hundred and fifty four to wit, at the said County of Cook the said Defendants became and were indebted to the said Plaintiffs in the sum of Fifteen hundred dollars, for divers goods, wares and merchandise by the said Plaintiffs before that time sold and delivered to the said Defendants and at their special instance and request. And being so indebted the said Defendants in consideration thereof afterwards to wit, on the day and year last aforesaid, to wit, at the County aforesaid undertook and then and there

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faithfully promised the said Plaintiffs to pay them the said sum of money when they the said Defendants should be thereunto afterwards requested And whereas also afterwards to wit on the day and year last aforesaid at the County of Cook aforesaid in consideration that the said Plaintiffs had before that time at the like special instance and request of the said Defendants sold and delivered to them the said Defendants divers other goods wares and merchandise they the said Defendants undertook and then and there faithfully promised the said Plaintiffs to pay them so much money as the said last mentioned goods wares and merchandize at the time of the said Sale and delivery thereof were reasonably worth, when they the said Defendants should be thereunto afterwards requested and the said Plaintiffs aver that the said last mentioned goods wares and merchandize at the time of the said Sale and delivery thereof were reasonably worth the further sum of Fifteen hundred dollars to wit; at the County aforesaid whereof the said Defendants afterwards to wit on the day and year last aforesaid had notice. And also for that Whereas afterwards to wit on the day and year last aforesaid to wit at the County aforesaid the said Defendants became and were indebted to the said Plaintiffs in the further sum of Fifteen hundred dollars for so much money before that time by the said Plaintiffs paid laid out and expended to and for the use of the said Defendants at the like special instance and request and being so indebted they the said Defendants afterwards to wit on the day and year last aforesaid, to wit, at the County aforesaid in consideration thereof undertook and then and there faithfully promised the said Plaintiffs to pay them the

said last mentioned sum of money when they the said Defendants should be thereunto afterwards requested.

And also for that whereas the said Defendants afterwards to wit on the day and year last aforesaid at the bounty aforesaid accounted with the said Plaintiffs of and concerning divers other sums of money from the said Defendants to the said Plaintiffs before that time due and owing and then in arrear and unpaid and upon such accounting the said Defendants was then and there found to be in arrear and indebted to the said Plaintiffs in the further sum of Fifteen hundred dollars and being so found in arrear and unpaid they the said Defendants in consideration thereof undertook and then and there faithfully promised the said Plaintiffs to pay them the said last mentioned sum of money when they the said Defendants should be thereunto afterwards requested. Nevertheless the said Defendants not regarding their said several promises and undertakings but contriving and fraudulently intending to deceive and defraud the said Plaintiffs in this behalf have not as yet paid the said several sums of money or any or either of them or any part thereof to the said Plaintiffs, although often requested so to do, but the said Defendants to pay them the same have hitherto wholly neglected and refused To the damage of the said Plaintiffs of Two thousand dollars and therefore they bring suit &c. by

Gordrueh, Seville & Seelye
Attorneys for Plaintiffs

Copy of account sued on
 Goods wares & Merchandize sold &c. \$1500.00
 Goods wares & Merchandize sold & delivered which were worth } 1500.00

Money paid laid out and expended \$1500.00
Money found due upon account stated 1500.00

And thereafter to wit on the twenty third day of January A. D. Eighteen hundred and fiftyth there was filed in the Office of the Clerk of said Court, in this case, a Certificate of the Publication of Attachment Notice, which Certificate and notice is in words and figures as follows to wit.

The undersigned do hereby certify that they are the Editors publishers and Proprietors of the Chicago Tribune a daily Newspaper of general circulation printed and published in the City of Chicago, County of Cook and State of Illinois, and that a Notice of an Attachment in the case of Dunham & Hinsdale vs. J. H. Smith et al of which the printed notice hereto annexed is a true Copy, was published in said paper once each week, for four successive weeks and that the first insertion of said notice in said paper was on the sixth day of Dec. A. D. 1854

Dated Chicago Jan'y 19. 1855.

J. A. Stewart & Co.

Copy printed Notice above referred to
State of Illinois } Cook County Court of
Cook County } J. S. Common Pleas January
Term A. D. 1855.

John H. Dunham and
Henry W. Hinsdale . . .

vs.
Ezekiah H. Smith, Martin
B. Medbury, John H. Medbury
William Aldrich and Jas,
J. Aldrich

Public Notice is hereby

given to the said Hezekiah H. Smith, Martin Medbery, John W. Medbery and William Aldrich that a Writ of Attachment issued out of the office of the clerk of the Cook County Court of Common Pleas dated the Eleventh day of November A. D. 1854 at the suit of the said John W. Dunham and Henry W. Hunsdale for the sum of Eleven hundred and one dollars and seventy nine cents directed to the Sheriff of Cook County which said Writ has been returned executed. Now therefore unless you the said Hezekiah H. Smith, Martin B. Medbery, John W. Medbery, and William Aldrich shall personally be and appear before the said Cook County Court of Common Pleas, on or before the first day of the next term thereof, to be holden at the Court House in the City of Chicago on the first Monday of January A. D. 1855, give special bail and plead to the said Plaintiffs action, judgment will be entered against you and in favor of the said John W. Dunham and Henry W. Hunsdale, and so much of the property attached as may be sufficient to satisfy the said judgments and costs will be sold to satisfy the same.

Godrich, Scoville

Walter Kimball. Clerk

Seelye. Its Atty.

And thereafter to wit on the twenty sixth day of January A. D. eighteen hundred and fifty five there was filed in the Office of the Clerk of said Court the Bill of Items of the account of said Plaintiffs against said defendants herein, which Bill is in words and figures as follows, to wit,

Chicago March 23^d 1854

Messrs Aldrich, Smith & Co

Bought of J. W. Dunham & Co
Wholesale Grocers

11.

Hans Lash

Nos 92 and 94 South Water Street,

2 doz. Brooms

18/- 4. 50

2 " do,

12/- 3. 50

3 Bottles Ink

4/- 1. 50

1 Box Cream Tartar

10²⁶ 140 4. 00 13. 50Apr. 3. 1 Hhd Sugar ¹³¹⁰₁₃₁

1179. 4 1/2 53. 05

50 Bags Salt

17 8. 50

1 Bbl of Crushed Sugar

142. 9 1/2 13. 74

2 Matto Capia

8 1/4 3. 47

3 Bags Shot

16/- 6. 00

2 Boxes clothes Pins

12/- 3. 00

2 " Mop Handles

8/- 2. 00

2 " Sugar Boxes

18/- 4. 50

1 " Raisins

30/- 3. 75

1 Keg do

50 12 6. 00

Apr. 18 6 Boxes of Candles

Dray 50 1041. 51

252

6 Bags Shot

1/- 33. 00

5 lbs Cloves

16/- 12. 00

15 i Spices Bag of

2/- 1. 25

2 Doz. Brooms

17 2. 80

2 " do

12 1/2 3. 50

4 Reams Paper

16/- 4. 00

4 do do

8/- 2. 50

2 do do

4/- 2. 00

2 do do

8/- 2. 00

1 Box Mustard

12 3. 00

1 Bbl of Smoking Tobacco

12 1. 50

1 " of do do

42 7 3. 19

76 10 7. 85

Dray 25

78. 84

Forward 196. 85

12.

Amount Forward

196 " 85

	1	2hd	Sugar	9 ⁰⁸ ₉	818	4 1/2	36	"	81
	1	Bbl	2/ Fine Smoking Tobacco	66 1/2		10	6	"	90
	1	"	2/ Common Do	100		6 1/2	6	"	75
	1/2	"	2/ Fine Do	41		8 1/2	3	"	75
	25		Bags Salt			17	4	"	25
	2	"	Louisville Apples	236		9 1/2	12	"	05
	5	"	Best Do	368		11 1/2	22	"	94
									93 " 43
May 27	1	Bbl	2/ N. O. Sugar	218		4 3/4	10	"	55
	1	"	2/ N. O. Do	208		6 1/2	13	"	77
	1	Bag	Coffee	168		11 1/4	18	"	90
	1/2	Chest	Kate Ways Tea	83 1/2	67	4 1/2	33	"	50
	1	Box	2/ Saleratus	100		5 1/2	5	"	75
	5	Hds	Caps			45	2	"	25
	1	Bbl	2/ Hor Syrup	51		40	20	"	40
	1	Box	2/ Candles	43		13 1/2	5	"	92
						Dray	38		111 " 42
June 5	16	Doz.	Brooms			2 1/2	10	"	00
	6	Bags	Apples	340		11 1/2	21	"	25
	9	Bbls	Coarse Salt	320 lbs ea 22 1/2 for 280 lbs			28	"	26
	1	Doz.	Brooms			1 1/2	2	"	13
"	22	25	Bags Salt			Dray	25		61 " 89
	2	2hd	Do			17	4	"	25
	1	2hd	Sugar	1244, 124, 1120		4 1/2	50	"	40
	200	lbs	Codfish			4 1/2	9	"	00
	1	Bbl	2/ Crackers	67		7	4	"	94
July 1	1	Keg	Powder				5	"	50
	2	Bags	Buck Shot			19 1/2	4	"	75
"	8	2	" Apples	164		12 1/2	12	"	18
	1	Bbl	2/ Coffee B. Sugar	226		7 3/4	17	"	77
	1	leatty	Living Age #15 Tea	15 1/2		65	10	"	08
	50	lbs	Codfish			4 1/2	2	"	25
	1	Bag	Coffee	80		11	8	"	80
	1/4	M	Oregon cigars			828	7	"	00
						Forward	58	"	08
							5700	"	51

Am't. found \$600. 51

1	Barl 4/	Vinegar	39 1/2	12	4. 94
2	Bags	Peaches	20 1/4	13	26. 52
6	"	Apples	300	10 1/2	17. 04
1	Keg	Prunes	117	7 1/2	8. 77
4	Boxes	Matches		7 1/2	3. 50
1	"	Suff		9 1/2	1. 13
4	Chairs		146	11	15. 33
1	Barl 2/	Peaches	66	13	8. 83
1	Ream	Paper		5 1/2	. 63

Dray 37 87. 06

July 26	1	Box 3/	codfish	336	4 1/4	14. 66
	1	Barl	crackers			6. 00
	4	Doz	Brooms		18 1/2	9. 00
	100	Bags	Salt		17	17. 00
	2	Boxes 2/	Soap	130	43 1/4	6. 67
	50	Bar	Lead		7 1/2	3. 75
	3	M. H. D.	Caps		45	1. 35
	3	Bags	shot		16 1/2	6. 00

Augt 8	1	White M.	Sugar		Dray	50	64. 93
				(1126 - 112. 1014		5 50. 70	
	4	Barl 4/	Vinegar	155		12 20. 60	

Dray 6 1/2 75 72. 05

" 14	1	Keg	Powder			5. 50
	2	Bags	shot		16 1/2	4. 00
	1	Barl 2/	Matches	51 1/2	20	10. 55
	2	Boxes	Cheser	136 114 122	10	12. 20
	1	Barl 2/	Rice	247 19 228	5 1/4	12. 22
	1	Bag 2/6	Pepper	25	1/2	3. 38
	1	Doz.	Brooms		20 1/2	2. 50 50. 35
" 23	5	Boxes 2/	Soap	328	5	17. 65
	3	" 2/	Saleratus	300	5 1/2	17. 25
	1	Keg 3/	Lead	100	10	10. 38 45. 66

Dray 38

Forward 920. 56

14-

	Amount forward	\$ 920. 56
1 Feb 2/ Crackers	73	7 5. 36
1 " 4 N. O. Sugar	258	5 14. 411
1 " 2 Coffee & S.	230.	8 18. 65
1 Hha Sugar	1244, 124, 1120.	5 1/2 61. 60
2 Hogs Lard	238 36 202	10 20. 20
	Dray	50 120. 75

Sep. 27 Interest 14. 117
1125. 16

Aug. 15. Dr By L. Brown 36. 97
1088. 19
69. 38
1018. 81

New balance after striking out \$ 69. 38
item above

And thereafter to wit on the sixth day of February A. D. one thousand eight hundred and fifty four being one of the days of the February Term of said Court the following proceedings were had and taken in said cause and entered of record to wit.

John H. Dunham et al
(vs)
Hezekiah H. Smith et al & Att.

This day come the said Defendants by Mather and Taft their Attorneys And on their Motion It is Ordered that the Rule to Plead in this cause be extended Two weeks from this day.

And thereafter to wit on the nineteenth day of February A. D. Eighteen hundred and fifty five the said defendants by Mather & Taft their ^{attorneys} filed in the Office of the Clerk of said Court their Plea, together with a Notice and Particulars of set off, which said Plea, Notice and Particulars are in words and figures as follows to wit.

Hezekiah H. Smith, Martin
B. Medbery, John H. Medbery
William Aldrich & James F.
Aldrich

Cook County Court of
Common Pleas.

^{also}
John H. Dunham and
Hedy W. Hinsdale

Of the February Term
A. D. 1855.

And the said Hezekiah H. Smith, Martin B. Medbery, John H. Medbery, William Aldrich and James F. Aldrich, defendants in this suit by Mather & Taft their Attorneys, come and defend the wrong and injury, when &c., and say that they did not undertake or promise, in manner and form as the said Plaintiffs have above thereof complained against them And of this they put themselves upon the country. And the said Plaintiffs do the like &c.

Mather & Taft
Defts Attys.

Agent:

Please to take Notice that the said Defendants at the Trial of the above cause will insist upon & give in evidence under the general issue above pleaded that the said Plaintiffs at the time of the commencement of the action aforesaid against the said Defendants to wit on the 11th day of November A. D. 1854 was and still is indebted unto them the said Defendants in the

sum of One thousand dollars lawful money of the United States of America for the work and labor care and diligence of the said Defendants by the said Defendants and their servants & agents before that time done performed & bestowed in & about the business of the said Plaintiffs & for the said Plaintiffs & at their special instance & request And also in the further sum of One thousand dollars of like lawful money for money before that time lent and advanced by the said Defendants to the said Plaintiffs & at the like request of the said Plaintiffs And for other money by the said Defendants before that time paid laid out & expended for the said Plaintiffs & at the like request of the said Plaintiffs And for other money by the said Plaintiffs before that time had & received to & for the use of the said Plaintiffs: And also that the said Plaintiffs before the commencement of this action to wit, in the 1st day of November A. D. 1854 accounted together with the said Defendants of & concerning the said demand of the said Plaintiffs against the said Defendants & also of & concerning divers other sums of money & accounts between the said Plaintiffs & the said Defendants And upon such accounting the said Plaintiffs were found to be in arrear & indebted to the said defendants in the further sum of One thousand dollars of like lawful money which the said Plaintiffs undertook & then & there faithfully promised the said Defendants well & truly to pay unto the said defendants when the said Plaintiffs should be thereunto afterwards requested. Which said several sums of money or so much thereof as will be sufficient for that purpose the said Defendants will set off against the demand of the said Plaintiffs to be proved at the Trial & have the balance certified in their favor. Dated Feb 19th 1855.

To Messrs. Goodrich, Seville & } Yours &c. Mather & East
 Julyr, Atty. for Pliffs } Attorneys for Defendants.

Ezekiah H. Smith, Martin B. Medbery, John H. Medbery, William Aldrich & James F. Aldrich } In Cook County Court of Common Pleas.
(at)
John H. Dunham and Henry W. Hinsdale } State of Illinois }
Cook County Ill.)

James F. Aldrich being duly sworn says that he is one of the Defendants in the above entitled cause and that the said Defendants have a good substantial defence upon the merits herein as they are advised by Mather & Tapp their Attorneys and Counsel to whom he this Defendant has fully and fairly stated the case & their said defence and as he this Defendant verily believes to be true and further saith not.

Subscribed & sworn to
July 19th 1855 before
Mr. Walter Kimball
Clerk

James F. Aldrich.

The Defendant herewith files a true account of his set off under the notice above accompanying the general issue. That is to say,
J. H. Dunham & Co.

To Ezekiah H. Smith, Martin B. Medberry, John H. Medbery, William Aldrich, & James F. Aldrich
Drs

1853.
Aug & Sept. For services in settling an a/c with Charles Kuehn, postage, Letters & business done } \$20.00
For money lent & advanced Defts to Plffs
" " paid laid out & expended defts for Plffs }
" " had & rec'd by Plffs for Defts } \$1000.00
" " due defts from Plffs on an a/c }
Stated } 1000.00
Mather & Tapp. Attys for Defts.

And thereupon to wit on the Twenty fourth day of March being one of the days of the said February Term of said Court A.D. eighteen hundred and fifty five the following proceedings were had & taken and entered of Record, to wit.

John H. Dunham & Henry W. Hinodale

H Ezekiah H. Smith, Martin B. Medbery, John W. Medbery William Aldrich & James F. Aldrich

Attachment.

And now upon this day come into open Court James F. Aldrich, one of the Defendants in this suit and George W. Foster his security, and enter into the following Recognizance, according to the Statute in such case made and provided, to wit

We James F. Aldrich and George F. Foster do severally acknowledge ourselves to owe and be indebted unto John H. Dunham and Henry W. Hinodale their heirs executors administrators or assigns in the sum of Eleven hundred and one dollars and seventy nine cents lawful money of the United States to be levied and made of our Lands and tenements goods and Chattels, Yet this recognizance to be void on condition that the said James F. Aldrich shall pay or cause to be paid the amount of the judgment and costs which may be rendered in the suit of said Dunham and Hinodale Plaintiffs against Ezekiah H. Smith, Martin B. Medbery, John W. Medbery, William Aldrich and James F. Aldrich in attachment now pending and undetermined in the Cook County Court of Common Pleas

on a final Trial thereof, within Ninety days after such judgment shall be rendered, then and in that case this recognizance to be void, otherwise to remain in full force and effect.

And thereupon it is Ordered by the Court that the Attachment in the above entitled suit be dissolved, and the property taken thereunder be restored by the Sheriff to said Defendants, and all proceedings against the garnishees in this case be set aside.

And thereafter to wit on the twenty seventh day of March being another of the days of the said February Term of said Court A. D. Eighteen hundred and fifty five, the following proceedings were had and taken, in said cause, and entered of Record, to wit:

John H. Dunham and
Henry W. Hinsdale ..

vs,
Hizekiah H. Smith, Martin
B. Medbery, John W. Medbery
William Aldrich and James
J. Aldrich

Attachment

And now come the said Plaintiffs by Goodrich & Scoville their Attorneys, and the said defendants by Mather & Taft their Attorneys also come and issue being joined herein it is Ordered that a Jury come, and thereupon a Jury come of good and lawful men to wit

S. M. Johnson, B. W. Fisk, Oron Felt, D. N. Chappel,
Theodore Hubbard, Lyman Staples, Thomas Hells, William
H. Shook, Jacob Sauter, Daniel Hall, Charles Douglass,
& George E. Ross who being duly elected tried and sworn
well and truly to try the issue joined as aforesaid after

having the testimony adduced argument of counsel and instructions of the Court retire to consider of their Verdict and the hour of adjournment having arrived, it is by consent of said parties Ordered that when the Jury shall have agreed upon a Verdict they may reduce the same to writing sign & seal it and afterwards be permitted to separate, and that they meet the Court tomorrow morning -

And thereafter to wit on the twenty eighth day of the same month of March being another of the days of the said February Term of said Court A. D. Eighteen hundred and fifty five the following proceedings were had and taken, in said cause, and entered of Record, to wit.

John H. Dunham &
Henry W. Hustedale

(vs.)
Ezekiah H. Smith, Martin

B. Medbery, John W. Medbery

William Aldrich & James F.

Aldrich

Attachment.

And now again come the parties aforesaid by their said Attorneys and the Jury empanelled in this Cause also come and say in the Jury find the issue for the Plaintiffs and in assent their damages to the sum of One thousand and forty one dollars and seventeen cents And thereupon said Plaintiffs enter a remittitur of the sum of Fifteen dollars on the Verdict of the Jury herein. And the said Defendants enter their Motion herein for a new Trial in this Cause which is thereupon overruled by the Court To which the said Defendants enter their

Exceptions Thereupon it is considered that the said Plaintiffs do have and recover of the said Defendants their damages of One thousand and forty one dollars and seventeen cents less the sum of Fifteen dollars permitted on the Verdict of the Jury herein in form aforesaid, by the Jury here aforesaid and also their costs and charges by them about their suit in this behalf expended and have execution therefor.

And thereupon to wit on the thirty first day of March being another of the days of the said February Term of said Court A. D. Eighteen hundred and fifty five the following proceedings were had and taken, in said cause, and entered of Record, to wit.

John H. Dunham and
Henry W. Hinsdale

(2) }
Hezekiah H. Smith et al.

Attys

And now upon this day come the said Defendant James F. Aldrich by his said Attorneys Matthew F. Taft and prays an Appeal in this Cause to the Supreme Court of the State of Illinois which is allowed on his filing Bond with the usual conditions in the sum of Two thousand dollars with George F. Foster as security and time is given said Defendant to prepare and file his Bill of Exceptions herein to the first day of May next.

And hereafter to wit on the thirty first day of March A. D. eighteen hundred and fifty five the said defendants by their said Attorneys filed their Bond on Appeal in the Office of the Clerk of said Court which said Bond is in words and figures as follows to wit

Know all Men by these presents that we James F. Aldrich & George F. Foster of the City of Chicago are held and firmly bound unto John H. Dunham and Henry W. Hinsdale in the final sum of Two thousand Dollars to be paid to the said Dunham and Hinsdale and for the payment whereof well and truly to be made we bind ourselves our and each of our heirs executors and administrators jointly and severally firmly by these presents Sealed with our Seals and Dated this thirty first day of March A. D. 1855.

The Condition of the foregoing obligation is such that whereas the said John H. Dunham and Henry W. Hinsdale did on the twenty eighth day of March instant recover a judgment against the above bounden James F. Aldrich, together with Hezekiah H. Smith, Martin B. Medbury, John H. Medbury, and William Aldrich in the Cook County Court of Common Pleas in an action of Assumpsit for one thousand and twenty six dollars & seventeen cents damages and costs of suit And whereas the said James F. Aldrich hath prayed for and obtained an Appeal from such Judgment to the Supreme Court of the State of Illinois returnable to the said Supreme Court to be holden at Ottawa in the third grand division of said State on the second Monday in June next.

Now if the said James F. Aldrich shall duly prosecute his Appeal & pay to the said Dunham and

Hinsdale such judgment costs interest and damages as shall be awarded by the said Supreme Court in case the said Judgment shall be affirmed, then the foregoing obligation to be void else to remain in full force and effect.

Approved
John M. Wilson.

James T. Aldrich (J.S.)
George T. Foster (J.S.)

And thereafter to wit on the first day of May A. D. Eighteen hundred and fifty five the said Defendants by their said Attorneys filed in the Office of the Clerk of said Court their Bill of Exceptions which is in words and figures as follows to wit—

John H. Dunham and Henry M. Hinsdale (vs.) H Ezekiah St. Smith, Martin B. Medberry, John H. Medberry William Aldrich and James T. Aldrich	The Cook County Court of Common Pleas. Be it remembered that on
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the 27th day of March in the year 1855 being one of the days of the February Term of said Court in the year 1855 this cause coming on to be heard before the Hon. John M. Wilson. Judge of said Court and a Jury the Plaintiffs to prove the case on their behalf called as a Witness.

Thomas P. Dunham, who being duly sworn testified that he was clerk for the Plaintiffs (L.H. Dunham & Co.) sold the Goods mentioned in the Bill of items shown him (being the bill of items filed by the Plaintiffs with their Declaration in this suit which bill of items

was handed to the witness / sold said Goods to James J. Aldrich of the firm of Aldrich Smith & Co. said Aldrich bought the Goods in person & the prices charged are as agreed.

The following is a copy of the Bill of items referred to by the Witness

Chicago

March 23^d. 1854

Messrs Smith, Aldrich & Co.

Bought of J. H. Durham & Co.

Wholesale Grocers

Terms Cash.

No^s 92 and 93 South Water Street,

2 doz Brooms	18/	4.50	
2 " do	14/	3.50	
3 Bottles Ink	4/	1.50	
1 Box Cream Tartar	10 ^{cts} / 40	4.00	13.50
April 3 1 Hba Sugar ^{13¹⁰} ₁₃₁	1179 4/	53.05	
50 Bags Salt	17	8.50	
1 But 2/ Crushed Sugar	142 9/	13.74	
2 Wtatts Cassia	8 1/4 42	3.47	
3 Bags Shot	16/	4.00	
2 Boxes Clothed Pins	12/	3.00	
2 " mop Handles	8/	2.00	
2 " Sugar Boxes	18/	4.50	
1 " Raisins	34/	3.45	
1 Keg do	50. 12	6.00	
	Dray	50	104.57
Apr. 18 1 Boxes handles 202	1/	33.00	
1 Bags shot	16/	12.00	
3 lb Cloves	2/	1.25	
15 ¹⁰ Spies Bag 2/	17	2.80	
2 doz Brooms	14/	3.50	

26

2 doz ⁿ Brooms		16/	11.00
4 Brooms Paper		5/	2.50
4 doz Do		4/	2.00
2 Do Do		8/	2.00
2 Do Do		12/	3.00
1 Box Mustard		12/	1.50
1 Btl 2/ Smoking Tobacco	42	7	3.19
1 " 2/ Do Do	76	10	7.85
		Dray	25 78.84

1 Hbr Sugar	908 90	818	4 1/2	36.81
1 Btl 2/ fine Smoking tobacco	66 1/2		10	6.90
1 " 2/ Common Do Do	100		6 1/2	6.75
1/2 " 2/ fine Do Do	41		8 1/2	3.73
25 Bags Salt			17	4.25
2 " Louisville Apples	236		9 1/2	12.05
5 " Best Do	368		1 1/2	22.94
May 27 1 Btl 2/ N. O. Sugar	218		4 3/4	10.55
1 " 2/ A A	208		6 1/2	13.77
1 Bag Coffee	168		11 1/4	18.90
1/2 Chest Kate Hays Tea	53 1/2 67		4/	33.50
1 Box 2/ Sateratus	100		5 1/2	5.45
5 W Caps			40	2.25
1 Btl Golden Syrup	57		40	20.40
1 Box 2/ Candles	42		13 1/2	5.92

Dray 35 111.42

June 5 4 Doz ⁿ Brooms		20/	10.00
4 Bags Apples	340	11/	21.25
9 Btls Coarse Salt	330 160 ca 22/ pr 280		28.26
1 Doz Brooms		17	2.13

Dray 25 61.89

22 25 Bags Salt		17	4.25
1 Hbr Sugar	1244 - 1240 1120	4 1/2	50.40
200 Codfish		4 1/2	9.00

27.

July 1	1	Barl 1/2 Crackers	67	7	4.94	68.59
	1	Keg Powder			8.50	
	2	Bags Buckshot		19 1/2	4.75	10.25
	8 1/2	Apples	164	12 1/2	12.18	
	1	Barl 1/2 Coffee B. Sugar	226	7 3/4	17.77	
	1	Galley Living Age * 15 Tea 15 1/2		6 5/8	10.08	
		50" cod fish		4 1/2	2.25	
	1	Bag Coffee	80	11	8.50	
	1/4	M. Oregon Cigars		828	7.00	58.08
	1	Barl 1/2 Vinegar	39 1/2	12	11.94	
	2	Bags Peaches	204	13	26.52	
	6	" Apples	300	10 1/2	17.04	
	1	Keg Prunes	117	7 1/2	8.77	
	4	Boxes Matches		7 1/2	3.50	
	1	" Ink		9 1/2	1.13	
	4	Cheeses	146	11	15.33	
	1	Barl 1/2 Peaches	66	13	8.83	
	1	ream Paper		5 1/2	63	

Dray 37 87.06

July 26	1	Box 3/4 Crasfish	336	4 1/4	14.66	
	1	Barl Crackers			6.00	
	4	Doy. Brooms		18 1/2	9.00	
	100	Bags Salt		17	17.00	
	2	Boxes 1/2 Soap	130	4 3/4	6.67	
	50	Bar Lead		7 1/2	3.75	
	3	M. 1/2 D. Caps		4 5/8	1.35	
	3	Bags Shot		16 1/2	6.00	

Aug 18	1	1/2 lb No. Sugar		Dray	50	64.93
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			1126. 112. 1014	5	50.70	
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	4	Barl 1/2 Vinegar	155	12	20.60	
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Dray 6 1/2 76 72.05

	14	1	Keg Powder		5.50	
	2	Bags Shot		16 1/2	4.00	
	1	Barl 1/2 Matches	51 1/2	20	10.55	

	2	Bboxes	Chico	$\frac{136}{14}$	122	10	12	"	20
	1	Bbl	$\frac{2}{3}$ Rice	$\frac{247}{19}$	228	$5\frac{1}{2}$	12	"	22
	1	Bag	$\frac{2}{3}$ Pepper		25	$\frac{1}{2}$	3	"	38
	1	Doz.	Brooms			$20\frac{1}{2}$	2	"	50
Aug ^{to} 23	5	Bboxes	$\frac{2}{3}$ Soap		528	5	17	"	65
	3	Do	$\frac{2}{3}$ Galvanized		300	$5\frac{1}{2}$	17	"	25
	1	Keg	$\frac{3}{4}$ Lead		100	10	10	"	38
						Dray			38
	1	Bbl	$\frac{2}{3}$ Crackers		73	7	5	"	36
	1	"	$\frac{2}{3}$ C. O. Sugar		558	$5\frac{1}{2}$	14	"	44
	1	"	$\frac{2}{3}$ Coffee		230	8	18	"	65
	1	Skd	Sugar	1244 - 124 - 1120		$5\frac{1}{2}$	61	"	60
	2	Kegs	Lead	$\frac{238}{36}$	202	10	20	"	20
						Dray			30
									120 " 75

Sept
27

Interest

14 " 47

\$ 1125 " 16

Aug^{to}
15

C^o

By L. Brown

36 " 97

\$ 1088 " 19

69 " 38

New balance \$ 1018 " 81
after striking out
\$ 69 " 38 item
above

was handed to the witness) sold said Goods to James F. Aldrich of the firm of Aldrich, Smith & Co. - said Aldrich bought the Goods in person & the prices charged are as agreed.

* On his Cross Examination by the counsel for Defendant witness stated that Aldrich to whom he sold the Goods resided here in Chicago & was the only person he sold the Goods to, witness did not know where the other Defendants resided; speaks of the firm from general reputation only. Question. Do you personally know them to be partners? Answer. No, I do not."

On the Plaintiffs attempting to prove by this witness that the Defendants were partners, Defendants Counsel objected on the ground that such partnership was in no manner or form averred or stated in the Declaration. The Court decided that the Plaintiffs might prove that fact by this or any other witness. The Defendants counsel accepted. In answer to a question for that purpose by Pliffs counsel, witness stated he did not know the other Defendants at all, except by what Aldrich said, nor that they were partners, except by general reputation.

Sevi. B. Taft one of Pliffs Attys being then called by Pliffs to prove the Partnership of defendants & sworn testified that he knew nothing of the supposed partnership, except by general reputation, all he knew was from Aldrich & as counsel also.

R. W. Miller was then called by Pliffs to prove Partnership of Defendants (the objection by Defts counsel of want of that averment in Narr. being overruled & exception thereto) who being sworn testified that the Defendants on the 23 March 1854 constituted

two firms as partners, all were members of each firm, One in Chicago in the lumber business another at Two Rivers Wisconsin where they manufactured lumber and sold goods; that James F. Aldrich was the active member and manager of the business in Chicago, he did the buying of supplies here and was in the habit of sending the same up in the country, supplies on being purchased here by him were generally marked for Two Rivers taken to vessel to be forwarded or sometimes to their place of business in Chicago. Witness don't know of any goods purchased by them of Dunham. Witness went there (Two Rivers) as clerk for Defts in April 1853 & stayed till April 1854. The different members composing the firm have all been here in Chicago, but at different times, not all at once. The Books of the concern were taken up to Two Rivers yearly & then settled. I saw the different members of the firm at the office here doing business talking it over. They kept a general assortment of goods (dry) groceries and provisions.

Cross Examined by Defts Counsel

I know nothing of any goods being bought of Dunham & Co. Two Rivers is in Wisconsin. Aldrich (J.F.) is since also become a member of a firm in Michigan. Thomas J. Dunham recalled by Pltffs testified. The goods were sent from our Store to Aldrich's lumber yard in Chicago & sometimes directly to a vessel just as he ordered. I don't know as I ever saw any other member of the firm. The goods were billed to Aldrich, Smith & Co. Aldrich said the goods were to go to Two Rivers.

Cross Examined by Defts Counsel as to his knowledge of the items charged & making up the account, witness answered that he sold March 23^d 1854 goods sugars

and groceries, but could not tell the items particularly. I cannot tell and do not remember independently of this Bill drawn off (referring the original bill of items shown him then and now referred) the particular goods or the prices of goods. Questioned as to a charge of Lard in Aug. 1854. Witness said he (Aldrich) bought some Lard there either himself personally or sent an order for it, I can't say which. Questioned as to charges Dated July 8, 1854. Witness can't say whether Aldrich was in Chicago at this time or not. Questioned as to items, under date July 12, 1854. Witness answered can't tell the items he bought general groceries at different times.

Questioned as to June 5, 1854. Witness says, I cannot say I myself packed up the goods all of them or not. The last I saw of the goods was on the dray being sent to deliver. I was never at the place of business of Defendants, either here in Chicago, or at Two Rivers. I can't tell and don't know whether Aldrich bought personally at any given time mentioned in the bill or sent an order nor can I tell any prices from memory independent of the Memorandum on the bill as carried out. Re Examined by Plaintiff's Counsel.

The prices charged on the Bill are Merchantable prices for such goods at the times stated in the Bill of items. Aldrich ordered us to send goods to his lumber yard or to Vepch. The last Bill I can't say whether he got personally or not. Aug. 15. to Prof. L. Brown. Don't know what it was for.

Cross Examined by deff's counsel.

I cannot tell the amount of goods sold to Aldrich independent of the Memorandum or bill of items.

Re Examined by Pliffs counsel, Aldrich directed us when

his men came to let them have the goods

Cross Examined. - I knew only one of the men by sight not by name, he used to come, I don't know of any others coming.

This was all the testimony in the case.

The Pliffs requested the Court to instruct the Jury as follows.

If the Jury shall believe from the evidence that said Defendants as partners together doing business in Chicago and as such partners purchased goods of the Plaintiffs and directed them to be sent to their place of business by a drayman, and they were so purchased & sent by a drayman, then the Defendants are liable for the price of said goods and interest from the commencement of the suit.

The Court gave such instruction, to which defendants counsel excepted.

The Defendants requested the Court to instruct the Jury as appears in the 2 following instructions which were both refused by the Court and the counsel for Defendants excepted thereto in each case.

That the Plaintiffs not having averred in declaration that the Defs were partners, cannot in this case recover without showing that the goods in question were sold to or came to the possession and use of the Defendants jointly or to every one of the Defendants or to the use of the firm consisting of the Defendants.

That a Sale and delivery to Aldrich & proof of Partnership is not sufficient to authorize a Verdict for Plaintiffs.

The Jury having retired from the bar under charge of an Officer, duly sworn, returned and rendered their Verdict for the Plaintiffs for \$1026⁷⁰/₁₀₀ Damages.

Whereupon The Defts moved for a new Trial, which Motion the Court afterwards on the day of March A. D. 1855 being one of the days of said Term of said Court overruled & to which decision of the Court overruling said Motion the said Defendants by their Attorneys excepted & pray the Court to sign & seal this Bill of Exceptions which is done in open Court

John M. Wilson (Seal)

State of Illinois
County of Cook } S. S.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for said County and State Do hereby Certify that the foregoing is a full true and correct Transcript of the Original papers and also of the Orders entered of Record in said Court now on file in my Office in the case of John H. Dunham and another against Hezekiah W. Smith, Martin B. Medbery and others.

In testimony whereof I have hereunto subscribed my name and affixed the Seal of said Court at Chicago in said County this Seventh day of June A. D. 1855.

Walter Kimball, Clerk



(65)

James T. Smith

of
John H. Hamilton

et al.

65

1855

12194
Manuscript

Filed June 8, 1855.
L. Leland Clk.

Copy Taxed

Filed June 8, 1855.
Recd by L. Leland

Plffs Instruction

If the Jury shall believe from the evidence that said dependants as partners were doing business in Chicago, & as such partners purchased goods of the plaintiffs, & directed them to be sent to their place of business by a drayman, & they were so purchased & sent by a drayman, then the depts are liable for the price of said goods, & interest from the commencement of the suit.

Filed for J. 1855.
A. Beland Clk.

65-
Attest as Clerk

Smith Aldrich & Co
vs
J. H. Drumham & Co Defts -

Given
That the plaintiffs not having
averred in declaration, that the defts
were partners, cannot in this case
recover without showing that the
goods in question were sold to
or came to the possession & use
of the defendants jointly or to
every one of the ~~defendants~~ defendants, or
to the use of the firm consisting of
the defendants.

2
That mere evidence of part-
nership of the defts, & the sale
of the goods to one of the firm,
is not evidence sufficient for
plff. to recover upon unless
you believe from evidence that
the goods actually came to the
use of all the defendants as
partners or otherwise.

Refused.
That a sale & delivery to Aldrich
& proof of partnership is not
sufficient to authorize a verdict
for plff.

Refused.
That a witness may look at a
memorandum to refresh his recollection
but such witness must testify inde-
pendant of such memorandum, & remem-
ber & testify to the sale & delivery of these
goods, the quantity, quality & prices of

the price of said goods, & interest
from the commencement of the suit,
to the giving of which instruc-
tion, the defendants, by their counsel
then & there excepted -

The defendants, by their counsel,
then asked the Court to instruct
the Jury as follows, to wit:

1
"That the plaintiffs not hav-
ing averred in declaration that the
defts were partners, cannot in
this case recover without showing
that the goods in question were
sold to, or came to the possession
& use of all the partners jointly
or to every one of them."

which instruction the Court
refused to give as asked, & the
defendants counsel excepted -

The Court then gave to the jury
said instruction altered so as to read
as follows, to wit:

"That the plaintiffs not
having averred in declaration that
the defts were partners, cannot
in this case recover without show-
ing that the goods in question were
sold to or came to the possession

Refused

Given.

& use of the defendants jointly or to every one of the defendants, or to the use of the firm consisting of the defendants."

To the giving of which instruction as altered by the Court, the defendants, by their counsel, then & then excepted -

The defendants, by their counsel then asked the Court to instruct the Jury as follows, to wit:

2

"That mere evidence of partnership of the depts. & the sale of the goods to one of the firm, is not evidence sufficient for plffs. to recover upon, unless plffs prove the goods actually came to the use of all the copartners at their place of business -"

which instruction the Court refused to give as asked, & to which refusal of the Court to give the same, the defendants by their counsel excepted -

The Court then gave to the Jury the last instruction, aforesaid.

altered so as to read as follows,
to wit;

"That mere evidence of partnership of the depts, & the sale of the goods to one of the firm, is not evidence sufficient for juries to recover upon, unless you believe from evidence that the goods actually came to the use of all the defendants as partners or otherwise."

To the giving of which instruction as altered, the defendants by their counsel, then & there excepted.

The defendants counsel then asked the Court to give to the jury the two following instructions, to wit-

3^d "That a sale & delivery to Aldrich & proof of partnership is not sufficient to authorize a verdict for juries."

4th "That a witness may look at a memorandum to refresh his recollection, but such witness ^{testify independent of such memoranda &} must remember and testify to the sale and delivery of these goods, the quantity, quality &

Given

Refused

Refused

prices of the goods independent
of any memoranda, paper or
account which he may look at
to refresh his recollection -

both of which instructions
the court refused to give, & to
which refusal of the court to
give each of said instructions,
the defendants, by their counsel
accepted -

The above & foregoing
were all the instructions asked
of the court, & all refused &
given by the court, on the trial
of this cause, aforesaid; and
it is stipulated & agreed that
the same may be used in the
cause in the Supreme Court the
same as if incorporated in the
record, & that this stipulation
shall be considered as a part
of the record in said cause -

Dated July 12th. 1853
Dickey Matthew & Traft
Attys for Deft -

Goodrich & Scillee
Attys for pffs -

65
Dunham et al
ad
Smith Aldrich et al
Stipulation

Filed July 14. 1855.
L. Leland Clk.