

No. 12537

Supreme Court of Illinois

Cooley, et al.

vs.

Culton.

71641  7

Be it remembered that heretofore to wit; on the
sixth day of September A.D. 1855 there was filed
in the office of the clerk of the circuit court in and for
the county of Marshall in the State of Illinois a
transcript from the county court of said county
of certain proceedings had in a cause therein pending
which together with the appeal bond are in the
words & figures following to wit;

Transcript.

"Lewis Shinkle" To the August Special term
of the County Court of Marshall
County State of Illinois A.D. 1855,
John W. J. Culton

Now on this the 18th day of August
A.D. 1855 appeared in Open Court A Gardner Sheriff
and Jailor of Marshall County with the said John W. J.
Culton in his custody who applied to the court to be
discharged from custody and imprisonment under
and by virtue of Chapter fifty two of the Revised Statutes
entitled insolvent debtors and offered under the provisions
of said Chapter to schedule and assign his property and
effects to some proper person to be by the court appointed
and it appearing to the court that the said John W. J. Culton
was held in custody and imprisonment by said Sheriff and
Jailor on a "capias ad satisfaciendum" issued by D. F.
Fuller a Justice of the Peace within and for said Mar-
shall County at the instance of Lewis Shinkle upon
a judgment rendered in favor of said Shinkle and
against the said Culton, the said Shinkle being present
by his attorney E. W. Hazard, Esq and the said John W. J.
Culton having made out a schedule of his property
and effects as required by law and presented the
same to the court and he also having taken and sub-
scribed the oath prescribed by law in such cases on his motion
the said schedule and oath were received and the court

Having

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heard the testimony and the examination of the said
Culton on his Corporal oath and being fully advised in
the premises and being satisfied after a full investigation and
examination of the said Culton and all the testimony offered
that the proceeding on the part of the said Culton
are fair, just and honest, it was ordered by the court
that E. W. Hazard Esq. be appointed as the assignee
of the said John W. J. Culton and the said John
W. J. Culton having by endorsement on the back
of his said schedule assigned all the property and
effects of every name, mention and description what-
soever therein mentioned and set forth except
such property as is by law exempt from levy and
sale on execution which was set off and allowed
to the said Culton by the court and the said Culton
having produced to the court the receipt of the said
Hazard assignee as aforesaid certifying that he has
received all the estate property goods chattels and
effects assigned to him it is therefore ordered by the
court that the said John W. J. Culton be discharged
from his said imprisonment and go hence without
delay.

State of Minn's 3

Marshall County 3

Washington E. Cook, clerk
of the County court in and for the
County and State aforesaid do hereby certify that
the foregoing is a true and correct copy of the
proceedings had in the above named cause as
appears from the record in this office.

E. W. Hazard

In witness whereof I have hereunto
subscribed my name and affixed
the seal of said court at my office in
the city of Lacrosse the sixth day of September
A. D. 1855, Washington E. Cook, Clerk.

On the 4th day of September A.D. 1855 there was filed in the office of the Clerk of said circuit court an appeal bond which is as follows, to wit

Appeal Bond

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"Know all men by these presents that we Francis B Cooley Elisha S Nadsworth, John V Farwell and C. A Henderson all of the County of Cook and State of Illinois and Wm H Randall of Marshall Co are held and firmly bound unto P M Senney Judge of the County Court of Marshall County in the State of Illinois or his successor in office in the penal sum of One thousand dollars lawful money of the United States of America to the payment of which well and truly to be made to the said Judge of the said County Court of Marshall County or his successor in office we bind ourselves, our heirs, executors & administrators jointly severally & firmly by these presents, Sealed with our seals and dated this twenty seventh day of August A.D. 1855

Whereas the said Francis, B Cooley Elisha S Nadsworth & John V Farwell composing the firm of Cooley Nadsworth & Company heretofore caused one John W Culton to be arrested upon civil process for a debt due from the said Culton to the said Cooley Nadsworth & Company and the said Culton after such arrest applied to the said Judge of the County Court of Marshall County acting as Probate Judge of said County for a discharge from imprisonment under the insolvent laws of the State of Illinois which discharge was granted by said Judge and the said Culton was by an order of said Court granted upon the 18th day of August instant forever released & discharged from any and all imprisonment & arrest for & on account of the debts by him owing

in a certain schedule mentioned & filed in the office
of the said County Court in which Schedule the
debt due from said Culton to said Cooley Wads-
worth & Company was mentioned, and whereas
said Cooley Wadsworth & Company are aggrieved
by such discharge, and have prayed an appeal
to the Circuit Court of Marshall County aforesaid
at the next term thereof. Now therefore if the
said Cooley Wadsworth & Company shall prose-
cute the said appeal at the next term of said
Circuit Court of Marshall County & shall pay all
costs and damages which may accrue to the said Culton
then the above obligation to be void, otherwise to
be and remain in full force & virtue

Signed Sealed & delivered

In presence of

J. B. Cooley *Seal*

by Lin. Farnell *Att'y in fact*
E. S. Wadsworth *Seal*

by Lin. Farnell *Att'y in fact*
John V. Farnell *Seal*
Chas. W. Henderson *Seal*

W. H. Randall *Seal*

And afterwards to wit on the 10th day of September in
the year of our Lord 1855 there was issued out of the
office of the clerk of
said Circuit Court of Marshall County a writ of Summons
under the seal of said Circuit Court which with the
return of the Sheriff endorsed thereon is in the words
and figures following to wit:

"The People of the State of Illinois to the Sheriff
of Marshall County, Greeting, We command you to
Summon John M. J. Culton to appear before our Cir-
cuit Court on the first day of the next term thereof to
be held at Lacon within and for the said County of

Summons

5- Marshall on the 15th day of October next then and
there in our said Court ~~Court~~ to answer Francis B.
Corley, Elisha S. Wadsworth & John V. Fenwick
on an appeal by them obtained from a judgment
of the County Court of Marshall County, State of Illinois
Hereof full and true return of your
doings hereon, Witness my hand and seal of
our said Court and the seal thereof at Lacon



this 10th day of September in the year of
our Lord one thousand eight hundred
and fifty five.

G. L. Fort, Clerk,

(endorsed)

"I have served this writ by reading the same to
the within named J. W. E. Culton on the 21 day
of Septemr A.D. 1855, as within Commanded

A. Gardner Sheriff of
Marshall Co. Ills

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Pleas before the Honourable Circuit Court of Marshall County, in the State of Illinois, at a Term thereof begun and holden at the Court-house, in Lacon, in said County, on Monday, the twentieth day of October, A. D. one thousand eight hundred and fifty six.

Present, the Honourable Madison E. Hollister, Judge of the Ninth Judicial Circuit of the State of Illinois; William H. L. Wallace, State's Attorney; Greenberry L. Fort, Clerk; and Abram Gardner, Sheriff.

Be it remembered, that in the case of Francis B. Cooley, E. J. Wadsworth and John L. Farwell, against John W. J. Culton, appeal from the County Court of said County, on the 24th day of October, 1856, being one of the days of said Term, the plaintiffs filed herein the following Affidavit, to wit:

Affidavit for
Continuance.
Silas Ramsey
H.

In matter of the application of J. W. J. Culton for a discharge from arrest.

referred to in
bill of exceptions

N. H. Purple, being sworn, says that it is necessary that the applicant for a discharge in this, J. W. J. Culton, should be present in court, to be personally examined upon the hearing of this application, and that he is not present.

Sworn to before me, this 24th Oct., 1856.

N. H. Purple.

Silas Ramsey, Notary Public.

Motion for contin-
uance. - Overruled.

Upon this Affidavit the parties in interest, appellants, move for a continuance, which the Court overrules.

Oct. 24, 1856.

And on the back of said Affidavit is the following endorsement:

In matter of the application of J. W. J. Culton. - Affidavit of N. H. Purpl. - Filed, Oct. 24, 1856. G. L. Fort, Clerk.

And this cause coming on for trial on the 29th day of October, A.D. 1856, being one of the days of said Term, the Court, at the request of the plaintiffs, gave the following Instructions to the jury, to wit:

Plaintiffs'
Instructions.

Cooley, Wadsworth & Co. } Plffs' Instructions.
J. W. J. Culton. } vs.

1. That unless the jury believe from the evidence that Culton did not, at the time he filed his Schedule in the County Court to his file of instruction of Marshall County, make a full, fair and complete schedule of all his estate, real or personal, including money, notes, bonds, bills, obligations, and contracts for money, or property of any and every description or kind, name or nature whatsoever, together with a true and perfect account of all the debts which he was owing at the time, they will so find.

2. That before the jury can find for Culton they must be satisfied from all the evidence that the proceedings on the part of said Culton are fair, just and honest

3. That the jury have a right, in making up their verdict, to consider the declarations of Culton as evidence against him;

and if they are satisfied from this evidence that Culton had money or effects belonging to him which were not included in his schedule, they will so find.

4. That if the jury believe from the evidence that Culton had in his possession property not included in the schedule, over which he has exercised continued acts of ownership, it is a circumstance tending to show fraud on the part of Culton, and the jury have a right to take the same into consideration in making up their verdict.

5. That in making up their verdict, the jury have a right and are the sole judges of the weight to be given to the testimony, and may take into consideration the relation of the witness to the parties, the manner in which they testify, and their means of knowledge as to the matters to which they testify.

6. Unless Culton has made it appear to the satisfaction of the jury, that his proceedings have been fair, just and honest, in relation to his property and the schedules thereof, they will so find the facts; but the presumptions are in favour of the fairness and honesty of the proceedings, and it becomes necessary for the plaintiffs to show by proof that they are unfair and dishonest.

7. If the jury believe from the evidence that Culton has attempted to either hinder, defraud or delay any of his creditors, in the collection of their debts by scheduling his property on this application, the jury will, then find for the Plaintiffs.

8. If the jury believe from the evidence that Culton was arrested by his own consent, and for the purpose of obtaining his discharge from the County Court, then he is not entitled to a discharge, and the jury should find against him.

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Given.

9. If the jury believe from the evidence that Culton, prior to the time of his scheduling in Marshall County, had transferred, sold or assigned any of his property or effects, for the purpose of hindering or delaying his creditors, or any of them, in the collection of their debts, the jury will so find.

Given.

10. If the jury believe from the evidence that Culton got himself arrested and filed his schedule in Brown County for the purpose of hindering or delaying any of his creditors, this is evidence tending to prove that he has not acted fairly, justly and honestly in that case; and if the jury believe he has not acted fairly and honestly in this case, they will so find.

Given.

11. That if the jury believe from the evidence that the defendant Culton used any of his own money in the purchase of the lot, or for the erection of the house thereon in which he now resides, that is a circumstance tending to show fraud on the part of said Culton, and they will so find the fact.

12. That the jury, in making up their verdict, have a right to compare the schedule filed in the County Court of Marshall County with the schedule filed in the County Court of Brown County, and if said schedules do not agree, that is a circumstance tending to impeach the schedule of Culton in Marshall County; and if the jury so believe, then the jury will find the facts so to be, and wherein the schedule filed in Marshall Co. is not honest, just and fair.

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And the following are the Instructions given by the Court to the jury, at the time aforesaid, at the request of the defendant, to wit:

Defendant's
Instructions.

Cooley, Madeworth & Co. et al., } Marshall Co. Circuit Court,
vs. John W. J. Culton. } Oct. Term, 1856.

Letter "B" as
referred to (1)
in Bill of Exceptions

The Court is asked to instruct the jury on part of the defendant, as follows, viz:

If the jury believe from the evidence that the defendant Culton was, on the 18th day of August, 1855, arrested upon a Ca. Sa. issued by B. F. Fuller, a Justice of the Peace of said County of Marshall, charged with failing and refusing to surrender his property to satisfy an execution issued against his goods and chattels by said Justice, upon a judgment rendered against said Culton; and that said Culton did, upon such arrest, go before the County Judge of said County, and apply for his discharge as an insolvent debtor; and that said Culton did, before said County Judge, make a full, fair and complete schedule of all his property and the debts he was then owing, and subscribe and testify to the truth of his said schedule, and assign over such property so scheduled by him to C. W. Hazard, who was appointed his assignee, to be applied to the payment of his debts; and was by said County Court discharged from imprisonment; then the jury should find the defendant Culton not guilty.

Given.

2. The defendant Culton is entitled to the property set apart to him, as being exempt from execution, by the.

11

Given

County Court of said County; and unless the plaintiffs have shown to the satisfaction of the jury that said Cutton has fraudulently failed to schedule some portion of his property, or to schedule some claim due from the defendant Cutton to the plaintiffs or some of them, or some of his creditors, the jury should find the defendant not guilty.

3. The defendant Cutton was only required to schedule such property before the County Court as he was owner of at the time of making & filing his schedule and such debts only as he was then owing and unless the Plaintiffs have shown to the satisfaction of the jury that said Cutton had in his own right as his own property some property which he failed to schedule or has failed to show to the satisfaction of the jury that the said Cutton has failed to schedule some claims or claims owing by him to the Plaintiffs or some of them or some of his creditors, at the time of filing his said schedule then the jury should find the defendant not guilty.

Given

Ath₁₁

The defendant is entitled to hold and retain as exempt from execution the wearing apparel of himself and family the necessary beds, bedsteads & bedding, necessary utensils for cooking necessary household furniture not exceeding in value fifteen Dollars one pair of cards two spinning wheels, one weaving Loom & appendages one stove and necessary ^{bits} therefore being in use in any house occupied by his family one Milch cow & calf two sheep for each member of his family & the fleeces taken from

Given

the same and the yarn or cloth manufactured from the same & sixty Dollars worth of other property suited to his occupation or condition in life to be selected by him and necessary provisions & fuel for the use of his family for three months and the said Cutton was not bound to turn out said property on said execution issued against his goods & chattels though he may have had the same or any part thereof but is at all times entitled to retain ~~the same~~ any such property as exempt from the payment of his debts.

Given 5th The jury may take into consideration the facts proven in this case showing or tending to show that the defendant Cutton was about the time of filing his schedule before the County Court & since that time in want of means to support himself & family and that it has been necessary for him to depend on the daily labour of himself & wife and the assistance of his friends for his support in determining whether said Cutton has made a just full & fair schedule of all his property.

Given 6th If the jury believe from the evidence that the brick house in which the defendant Cutton resides was built upon the lots of Blanchard and was built by Blanchards with his Blanchards means though they may further believe that said Blanchard built said house for the purpose of suffering & allowing said Cutton & his family to occupy the same

13 without any other right or interest in the same than the right to occupy the same as a dwelling either with or without any agreement for the payment of rent therefor this would not vest in Cutton such a right or interest in or to such property as would render it or such interest or right as Cutton may have therein liable to execution against Cutton and said Cutton would not be required to schedule the same as an insolvent debtor

7th If the Jury believe from the evidence that the defendant Cutton was arrested in the County of Marshall on a *ca sa* and scheduled his property and his debts & liabilities as required by law before the County Court of said Marshall County and that E W Hazard was by said Court appointed the assignee of said Cutton and said property in such schedule was assigned by said Cutton to said Hazard & that said Cutton was discharged by said Court as such insolvent and that the schedule so made by said Cutton as aforesaid was full fair & complete as stated in the first instruction above

And if the jury further believe from the evidence that said Cutton was afterwards arrested in Brown County in this State and again scheduled before the County Court of said Brown County and scheduled the same property as scheduled

in the County of Marshall or a portion of the same and assigned the said property so scheduled as last aforesaid to Shubal Tabor an assignee appointed by the said County Court of Brown County, such scheduling and assignment in said County of Brown, would not prejudice the rights of the assignee Hazard or of the plaintiffs in this suit & though the jury may believe from the evidence that a portion of the notes first scheduled were afterwards taken from the possession of said Hazard & placed in the hands of Tabor the latter assignee without the knowledge or consent of said Hazard upon this state of facts alone the jury should find the defendant Culton not guilty.

8th The Schedule of the appellee Culton is to be taken as a full, fair and complete Schedule of all of his Estate both real and personal, and a true and perfect account of all the debts which he was owing at the time he scheduled until the contrary is proven. Fraud is never to be presumed but always to be proved by the party alleging fraud. The presumption is that the defendants transactions are all bona fide and fair until the contrary be shown.

9th If the Jury believe from the evidence that the defendant Culton lives in a fine house such fact of itself does not impeach his Cultons Schedule but the Plaintiffs must prove to the

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Satisfaction of the Jury that the house in which he so resides is his property & was his at the time of the schedule, and that he has fraudulently refused to schedule the same -

Given

10th If the Jury believe from the evidence that the defendant Culton after scheduling his property and debts in Marshall County and assigned his property therein to E N Hazard his assignee again scheduled the same property & debts in Brown County the act of scheduling in said County of Brown would not prejudice the rights of the assignee Hazard and the plaintiffs in this case, and if the said Culton made a full fair & perfect schedule before the County Court of Marshall County, upon this State of Facts alone the Jury should find the defendant Culton not guilty.

Given

11th Though the Jury may believe from the evidence that ~~one of the evidence~~ that one of the items in the schedule made by Culton was changed after the making of such schedule and assignment of the property therein yet if the Jury believe from the evidence that said schedule when made & filed in the County Court was fully & fairly made as stated in the first instruction above the Jury should find the defendant not guilty.

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12th

Given

If the Jury believe from the evidence that the debt scheduled in favour of Cooley & Madsen was at the time it was passed upon by the Probate Court set down at the sum of \$3500.00 no alteration of the amount afterwards would at all invalidate said Schedule.

13th

Given

The defendant Coulton had a right before he scheduled his property in the County of Marshall as an insolvent debtor to prefer his creditors and had a right to pay the claims against him which he has paid as shown by the receipts upon such payments given in evidence in this cause without paying at the same time the claims against him in favour of the plaintiffs in this suit, or any portion thereof and if the Jury believe from the evidence that the defendant Coulton had appropriated all his property in discharge of his debts as aforesaid except such property as he has scheduled before the County Court of Marshall County, and that such Schedule was full fair & perfect as stated in the first instruction above the Jury should find the defendant not guilty.

14th

Given

[12537-2]

If the Jury believe from the evidence that the witness Healey has knowingly and wilfully testified falsely in this cause in any

17 one material matter they may disregard his whole testimony.

15th The defendant in swearing to his schedule swears to the best of his knowledge and belief and if he should err in any amount due his creditors and set it down too much or too little if such scheduling was done honestly and without any intention to defraud his creditors, such errors would not impeach defendant's schedule.

Given

16 If the defendant is discharged by the Jury in this proceeding such discharge does not operate to release the defendant from any of his just debts, but all property hereafter acquired by the defendant and such property if any not assigned by the defendant in his schedule will be subject to levy and sale the same as though said discharge had not been granted.

Given

Instructions by the Court The jury in this case are to find the facts. If they find for the debt they will so say in their verdict. If they believe from the testimony that the proceedings of the debt in procuring his discharge have not been fair just and honest they will find in what respect they have not been so, and return the same into court with their verdict.

Endorsed: Cooley, Madgworth v. Co., vs. J. M. J. Culton. - Debt Instructions. - Filed, Oct. 29, 1856. J. L. Fort, Clerk.

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And on the same day last aforesaid the following Verdict and judgment were rendered in said cause, to wit:

Verdict.

Francis B. Cooley, } In the matter of the application of
E. J. Wadsworth, } John W. J. Culton, an insolvent debtor, for
John L. Farwell, } discharge from imprisonment upon a Ca.
John W. J. Culton. } Sa. issued at the instance of Lewis Skinkle,
Assignee of Linout & Robinson, and appealed
from the County Court by said Francis B. Cooley, E. J. Wadsworth
and John L. Farwell, the appellants herein, as the creditors of
said Culton.

Be it remembered, that this day this cause coming on to
be heard and tried; and the said Cooley, Wadsworth and Far-
well come by Purple, Hawley, Ramsey & Fleming, and Boice, their
attorneys, and the defendant appears by Hazard & Lerley, and
Richmond, his attorneys; and the issue being joined upon the
truth of the Schedule filed herein before said County Court,
a jury comes to try the same, to wit: M. M. Boon, George Tom-
linson, Samuel Gilson, William Atwood, Ephraim Holton, Enos
Odell, Francis B. Drake, Nehemiah Merritt, William B. Thomas,
Karn Evans, Moses Webster and Samuel Robertson, twelve good
and lawful men, chosen from the body of the County, and
duly empannelled and sworn, who, after hearing the evidence
adduced, the argument of counsel and the instructions of the
Court, retire to consider of their verdict; and, after due delib-
eration, return into Court and say: we, the jury, find the
issue joined in favour of the defendant. And the Court being
now fully advised in the premises, it is therefore ordered,

Judgment.

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considered and adjudged that the said John W. J. Culton be discharged from arrest, and go hence without day; and it is further considered by the Court that the said John W. J. Culton have and recover of the said plaintiff his costs and charges by him about his defence in this behalf expended, and it is ordered that execution issue therefor.

Motion for
new trial.-

Overruled.

"D"

Whereupon come the said Cooley, Madgworth and Jarwell, by their said Attorneys, and move the Court for a new trial herein; and the Court, after hearing the arguments of counsel, and being fully advised in the premises, doth order that the said motion for a new trial be overruled.

And on the 30th day of October, A. D. 1856, being one of the days of said Term, the plaintiff filed herein their Bill of Exceptions, which is as follows, to wit:

Bill of
Exceptions.

In matter of the appeal on the application } In Circuit
of John W. J. Culton for a discharge under } Court of
the insolvent laws. } Marshall Co.

Be it remembered, that upon this cause being called for trial, the counsel for the appellants moved for a continuance of said cause, upon the following affidavit, to wit:
(See Affidavit, ^{marked "A"} ante.) The Court overruled said motion, and appellants' counsel then and there excepted. Upon the hearing of said cause before the jury, the appellants offered in evidence the deposition of Calvin C. Parks, which deposition was excluded by the Court, the same having been previously suppressed on motion of Culton's

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attorney, for want of due notice of the taking thereof, the counsel for appellants stating at the time said motion was heard, that he supposed technically the notice was insufficient in point of time. The appellants' counsel then and there excepted to the opinion of the Court in excluding said deposition. The witness Calvin C. Parks afterwards appeared in court, and was examined orally in the case by both parties.

At the request of the counsel for Cutton, the Court gave the following instructions: (See ^{instructions marked "B"} plaintiffs' and defendants' ^{marked "C"} instructions, ante.) To the giving of which instructions the appellants' counsel then and there excepted.

The jury found a verdict in favour of the defendant; and the appellant entered a motion for a new trial, for the following reasons: (See motion, ante.) marked "D"

(Reasons for
new trial.)

1st. Because the Court overruled the appellants' motion for a continuance;

2. Because the Court proceeded to the trial of the cause in the absence of the said J. W. J. Cutton;

3. Because the Court refused to permit the deposition of Calvin C. Parks, junr to be read in evidence;

4. Because the Court gave the instructions asked by the counsel for said Cutton.

The Court overruled said motion; and the appellants' counsel then and there again excepted to the opinion of the Court, and requested the Court to sign and seal this Bill of Exceptions - which is done.

W. E. Hollister.

Seal.

22537-21

Endorsed: Cooley, Madenworth & Co., vs. John W. J. Cutton. - Bill of Exceptions. - Filed, October 30, 1856. G. L. Fort, Clerk.

State of Illinois, ss.
 Marshall County, } I, James Mescott, Clerk of the Circuit
 Court for said County, do certify, that
 the foregoing Record, from page 1 to page 21 inclusive, is a
 true transcript of the proceedings had, and the papers on
 file, in the case of Francis B. Cooley et al., vs. John W.
 J. Culton, in said Court.

Witness my hand and the Seal of
 said Court, at Lacon, this fifth
 day of December, A.D. 1856.

James Mescott
 clerk

Clerk's fees:

Record & Cert., \$4.75

Postage, $\frac{.25}{3.00}$

additional

1.75

Let a supersedias issue upon the plaintiffs
 in Error Francis B. Cooley, E. S. Moeswarth
 + John L. Farwell filing the record together
 with a bond in the proper form in the penal
 sum of fifteen hundred dollars with
 Burton C. Leach or Joseph C. Blower sureties
 March 6th 1857. J. D. Carson

2 2 And now come the said Francis B. Leoley
Ed. Madsenworth & John S. Horwell and
say that in the record & proceedings of said
and said in the rendition of the ~~judgment~~
aforesaid there is manifest error in
this to wit

1st The court erred in overruling the motion
made by appellants in the court below for
a continuance

2^d The court erred in proceeding to the trial of the
said cause in the absence of the said
J. W. J. Leulton

3^d ~~Because~~ The court ~~was~~ erred in refusing
to permit the deposition of Calvin C. Parks
to be read in evidence

4th The court erred in refusing to give each of the
instructions which were asked by the appellants
and refused by the court

5th The court erred in ~~refuse~~ giving the
instructions asked by the appelle in the circuit
court and each of them respectively

6th The court erred in overruling the appellants
motion for a new trial

7th The court erred in rendering the ~~judgment~~
aforesaid in manner & form aforesaid
for which errors & others in said Record

apparent said appellants pray that said
Judgment be reversed

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Wm Hook & Hawley

atty for appellants

And now comes the defendant and says
in the Record and proceedings aforesaid
there is no error.

E. W. Hazen
Atty for deft. in error.

Francis B. Cooley
Elisha S. Madson &
John V. Larwell
applicants

12537-15

^{70 34}
Francis B. Cooley et al
³³
John W. J. Bulton
Transcript of Record

Filed Dec. 5, 1856
L. Leland
Clerk

~~X~~
Prepared

Francis B. Cooley et al,
vs.
John W. J. Bulton.

STATE OF ILLINOIS, }
SUPREME COURT, }

ss. The People of the State of Illinois,
TO THE SHERIFF OF THE COUNTY OF *Marshall*

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Marshall* county, before the Judge thereof, between *Francis B. Cooley, Eliza J. Wadsworth, & John V. Farwell* plaintiffs and

John W. J. Bulton

defendant, it is said that manifest error hath intervened, to the injury of the said

plaintiffs

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said

John W. J. Bulton

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *first Monday* in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

notice, together with this writ.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *2nd* day of *September* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Seven*.

S. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

Francis B. Cooley
& others

vs
John W. J. Cuttton

Scire facias

Filed March 12, 1858
L. Leland clk

I have served this writ by
reading the same to the
within named John W. Cuttton
on the 19th day of January
AD 1858

Service 50
8 miles extra 40

Retainer $\frac{10}{\$1.00}$

H. L. Crane Sheriff
of Marshall
County
Icog

STATE OF ILLINOIS, }
SUPREME COURT,

ss. The People of the State of Illinois,
TO THE SHERIFF OF THE COUNTY OF *Marshall*

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Marshall* county, before the Judge thereof, between *Francis B. Cooley, E. T. Wadsworth & John L. Farwell* Plaintiffs, & *John W. J. Bulton* defendant,

it is said that manifest error hath intervened, to the injury of the said Plaintiffs

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said *John W. J. Bulton*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *second* Monday in *in June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John W. J. Bulton* notice, together with this writ.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *5th* day of *December* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Six*.

L. Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy

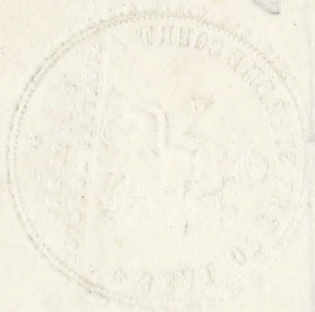
Francis B. Coolidge & others
 by
John W. J. Cutton
 Serje atias

I cannot find the within
John W. J. Cutton in my Court
 April 13th AD 1857

H. L. Crane Sheriff
 of Marshall Co
 Illinois

Return 10

Filed Apr. 16. 1857
 L. Leland
 Clerk



In the Supreme Court for the
State of Illinois Third division

Francis M. Cooley }
Elisha Madsen }
& John V. Harwell } Error from the
Plaintiffs in Error } Marshall County
vs } Circuit Court -
John W. Gorton }
Defendant in Error }

State of Illinois }
Cook County }

John V. Harwell being duly
Sworn doth depose and say that he is one
of the plaintiffs in error in the above enti-
tled Cause now depending in the said
Supreme Court in the Third division
thereof at Ottawa; and that the said
John W. Gorton defendant in error in
the said Cause left the said State
of Illinois with his family some time
during the fall of 1856, and that this
affiant is informed and verily belie-
ves went to the State of Indiana, and
has not since returned to reside in this,
state and still resides in the State of
Indiana, so that the process of said
Supreme Court of the State of Illinois
cannot be served upon him -

John V. Harwell

State of Illinois
Cook County

I, Cyrus W. Hawley, a Notary
Public in and for the said County, do
hereby certify, that John V. Harwell, perso-
nally appeared before me, and subscribed
the foregoing affidavit and was by me
sworn to the same in manner in form
as therein stated.

In witness whereof I have this
29th day of August A.D. 1857
subscribed my name and
affixed my Notarial Seal

C. W. Hawley
Notary Public

Hawley & others
by
Culston Afford
of non-residence

Filed Sept. 2, 1857
J. Leland
Clerk.

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Marshall* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Marshall* County, before the Judge thereof, between *Francis B. Cooley, E. J. Wadsworth and John S. Farwell* _____

plaintiffs, and *John W. J. Culton* _____

defendant it is said manifest error hath intervened, to the injury of the aforesaid

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

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *5th* day of *December* in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six.

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

05
John W. P. Button
Writ of error

This Wort of Ennis
made a Surprize
and as such is to be
obeyed by all Con-
cerned.

S. Leland
Clerk

By J. B. Rice
Deputy

Supreme Court - Northern Division

In the matter of the application of John
W. Culton for a discharge ~~under the~~
from arrest under the Insolvent
act of the State of Illinois, ~~between~~
Francis Bleeker, Elisha S. Madenorth
and John V. Fairwell Creditors of
Said applicant, resisting Said
application -

Error from Marshall County -
Know all men by these presents,
that we, Francis Bleeker, Elisha
S. Madenorth, John V. Fairwell, as
principals and J. C. Glover
as Surety, are held and firmly bound
unto John W. Culton in the penal
Sum of One Thousand five hundred
Dollars, for the payment of which
we bind our selves our heirs - Ex-
ecutors & administrators jointly, and
severally unto the Said John W. Culton
his heirs, executors and administrators,
by their present, signed and Sealed
by us this 6th day of March A.D.
1857

Get upon this Condition, that
at the last October Term of the Marshall
County Circuit Court, Illinois a

By ~~their~~ C. W. Hawley, their atty, in fact
J. O. Glover Seal

Francis B. Cooley vs

John W. J. Culton

Superior Court

Filed March 1887

S. Lilans
Clerk

70 N 33.

Francis B. Cooley et al

vs
John W. J. Culton

33.

33

12537

1858