

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

To the Sheriff of the County of Kane

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 Kane County, before the Judge thereof, between Bela T. Hunt

plaintiff, and Gordon N. Roundy assignee of William S. Atcherson

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

Defendant

as we are informed by his 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

Bela T. Hunt

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the 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 Bela T. Hunt

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this 24th day of February in the
Year of Our Lord One Thousand Eight Hundred
and Fifty-nine.

S. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

Ex & Cuted this writ- March 8th 1839 by Reading
 the same to the within named Bela T Hunt
 E. J. Allen Sheriff
 Ham County
 By H. M. Clark
 Deputy

Gordon H. County
 Assignee. 27

Bela T. Hunt
 Secy

Filed April 28 1839
 L. Leland
 Clerk

Shoff fees	
Services	50
4 miles	20
Return	10
	<u>\$1.00</u>
28	

STATE OF ILLINOIS---THIRD GRAND DIVISION,

Supreme Court thereof, April term, 1830.

GORDON N. ROUNDY }
vs. } Error to Kane.
BELA T. HUNT. }

An appearance of an attorney of the Court without warrant is good as to the Court, and the defendant's remedy is against the attorney.

Denton *et al* vs. Noys, 6 John. Rep., 295, and the authorities there cited.

Where an attorney commences an action in the name of another, or appears for another, the Court will presume that he has authority to do so until the contrary appears. The appearance of an attorney without authority is good. Should an attorney appear for a party without authority, the attorney would be liable, or equity might set aside the judgment; but at law it would be good.

Breese Rep., 259 and 260—Rust vs. Frothingham.

The power to confess judgment will be found on page 417, sec. 27, Revised Statutes 1845, and also in Scates' Statute, p. 637, sec. 2.

Where a debtor gives a note and warrant of attorney authorizing a confession of judgment upon a note at any time after date, then the note and warrant are to be taken together, and judgment may be confessed before the note becomes due.

Sherman vs. Boddley, 11 Ill., 622.

The Supreme Court will presume that the Circuit Court decided correctly.

Eaton vs. Graham, 11 Ill., 620.

The Court will observe there is no bill of exceptions in this case. I assume, therefore, that the Court cannot notice the affidavits in this case. They were merely copied by the Clerk, and form no part of the record.

11 Ill., 622; McDonald vs. Arnout, 14 Ill., p. 58.

I would also refer the Court to Freeman's Digest, vol. 2, page 818, and the authorities there referred to on the same point.

W. D. BARRY, Att'y for Def't.

27 3
Roundy
is
Bunt
To aunts &
Brief

Filed Apr 27. 1860
L. Ireland
Ch.

Supreme Court
April Term 1860

Gordon N. Kennedy }
Assignee &c }
vs }
Bela T. Hunt }

Error to Kane Co.

Argument of plaintiff in error.

This is a judgment entered up by Hunt vs Wm. G. Atcherson, assignor of Kennedy, by virtue of a warrant of attorney, in vacation after the May Term 1858 of the Kane Circuit Court, of the sum of \$1930.50- upon a note before the same was due and payable.

The affidavit filed with the note, is as to the genuineness of the signature to the note, and not of the signature to the warrant of attorney.

The warrant of attorney provides that judgment may be entered on said note, before it becomes due, if the said Hunt or his assigns shall believe there is danger of losing the sum secured thereby.

The declaration is in usual form, and contains no avowment that said Hunt believes there is danger of losing the sum secured by said note. - And order for judgment shows that judgment was confessed by an "attorney in fact" - and not an attorney of a court of record.

At the November Term of said Court, Gordon N. Kennedy, as assignee of Atcherson, files a copy of Atcherson's assignment to him, and affidavits of Atcherson and himself, in said Court, showing ^{on ground of usury} the said judgment to be illegal, usurious and inequitable in the sum of \$1256.51- and enters a motion to quash the execution issued on said judg-

setting forth rebutting the power of attorney, and that the judgment was entirely illegal, usurious and unjust, as the note upon its face was not due, and

ment and to set aside the judgment.

On this motion the court orders that said judgment be opened, and the defendant allowed to file his pleas and defend said suit, on condition that he file his bond in the penal sum of \$1800, 00 conditioned for the payment and satisfaction of whatever judgment may be obtained against him upon the trial, - and thereupon the said assignee brings this case, by writ of error, to this court.

The first point is, that it does not appear affirmatively of record that the execution of warrant of attorney was duly proven.

The affidavit is not to the signature of the warrant of attorney. - The statute relieving the party, from proving a signature, as required by the common law, until the ^{negation} ~~execution~~ of the instrument is denied under oath, extends only to the instrument sued on, and cannot in this case relieve the party from proving the execution of the warrant of attorney.

When a judgment is entered in open court, upon a trial before the court, or before the jury, there must be evidence to authorize it, - and if the evidence being oral is not preserved of record, it is presumed that sufficient evidence was introduced to authorize the court to give judgment.

But in this case no such presumption arises. It is a proceeding out of Term time, without notice to the defendant, and no court ^{in fact} is present, and the record ought to show that the attorney who assumes to act for the defendant and confess a judgment in his name, has authority so to do.

This position, counsel think, is fully sustained by the cases cited in 4 Eng. (Ask) 428. & Black 133. 1 Scam 441. 1 Ohio 656.

It is not sufficient to say, that because the attorney having assumed to act for the defendant, he is thereby authorized to act for him.

The cases cited in ²⁰ Ala 313 and ²¹ Ala 317, contradict this position.

This question too should be considered in view of public policy. The fact shows us that judgment-notes in the hands of merciless creditors, are instruments of oppression, subject to abuse, and lead to many hardships, especially against the unlearned and uninitiated, many of whom are our most worthy and industrious citizens.

Legislation has been called in to relieve and protect the interests of the judgment-note debtor, and all the acts of the holders of such notes, should be closely scrutinized. The public good demands it, and a rule requiring the creditor to prove, or file an affidavit of the genuineness of the signature to the warrant of attorney, before judgment is confessed thereon, would tend to promote the public good. It would prove no hardship to the creditor, and would protect the attorney confessing the judgment, the clerk and the court.

If this first position be correct, the court should have set aside the judgment as unauthorized and invalid, without affixing any conditions.

The second point is, that the declaration contains no avowment that the plaintiff believes there is danger of losing the sum secured by said note. Until such a contingency arises, there is no authority to confess judgment on said note.

before maturity thereof by virtue of said warrant of attorney.

The plaintiff had no right to recover judgment until he believed himself in danger.

Had the case been in open court, and his right to recover depended upon the happening of a certain event, he would necessarily have had to aver and prove the happening of such an event.

In this case he should have averred it, and until he did aver it, the attorney assuming to act for the defendant had no authority to confess judgment before maturity of the note.

The authority to confess judgment is a special authority and should be strictly pursued, otherwise the exercise of the authority is illegal and void - The cases cited Comyn on Con. 1 Vol 236. 7. Chitty on Con 200 & note 8c, fully sustain this position.

The attorney was authorized to confess judgment after the note became due - and before the same became due, if the plaintiff believed himself in danger, and if the plaintiff had averred in his declaration that he believed himself in danger of losing the sum secured by said note, the attorney would have had evidence of his belief, and the same would have appeared of record.

If this second position be correct, the Court should have set aside the judgment. &c

The third point is, that upon the motion entered by the plaintiff in error, the Court erred in affixing the condition that the defendant should file his bond, ^{in sum of \$1800} with security, conditioned for the payment and satisfaction of whatever judgment might be obtained against him.

In the cases cited 12 Wend 222, 2 Cowan 465, 9 Johns 80, 2 Gil. 635, 1 Sam. 441, 15 Ills 353 and in the last case the doctrine is fully and ably discussed, and the rule is laid down that if it clearly appears that the plaintiff is not entitled to his judgment, or the same is unauthorized, the judgment should be vacated - the court it seems has no discretionary power, but if the case is involved in doubt the court should open the judgment and direct an issue to be made up, and the practice is to allow the judgment and even a levy on an execution to stand as security for whatever judgment may be obtained against the defendant.

This is an equitable rule. The plaintiff loses none of his rights, and is only delayed in recovering his debt.

The condition affixed by the court was inequitable and oppressive.

It was virtually asking of the defendant to give the plaintiff security for his claim which ^{the plaintiff} ~~he~~ did not have, and could not get, in order to have justice administered to him.

The defendant Atcherson was insolvent, he had assigned his property to plaintiff in error for the benefit of his creditors, and it was his duty to them he was not in a position to give the required security: he could not do it and therefore he would fail to have justice done him.

The assignee represented the interests of Atchersons creditors, and it was his duty to them to have said judgment, if erroneous and illegal, set aside, yet she was under no obligation to Atcherson, or Hunt, legal, moral or otherwise, to furnish

the required security, and his duty to Atcherson's creditors did not allow it.

The judgment being unauthorized, illegal and void, the court should have vacated the same.

And if it appears from the affidavits on file, that the judgment is usurious, and the court so considered it, the judgment should have been opened up, the defendant been allowed to come in to plead and defend, and the judgment stand as security for whatever judgment might have been obtained against the defendant on the trial of the suit.

Counsel consider that sufficient errors appear of record, to have the case reversed and remanded.

The last joint issue is considered too well settled to need argument.

Eastman & Botford
J. L. Beveridge, for
Plaintiff in error

By J. L. Beveridge

27 - 332

Supreme Court

Charles K. Rowley

assessors

Bela F. Hunt

Argument of
Plaintiff in error

Filed Nov 2, 1860.

L. L. Hunt
Clerk

J. L. Beveridge
for Plaintiff in error

[1 2 3 4 5 6 7 8 9]

Gordon W Roundy }
 assignee & c } Error to Name
 28 }
 Bella J Hunt }

The first question which I wish to call the attention of the Court to in this case is that there is no Bill of exceptions. The Court will see when they come to examine the Record that all there is of the case is simply a judgment rendered by confession and a motion afterwards made by the Defendant and to quash the execution & set aside said judgment which the Court ordered to be done upon the condition that the Defendant file a bond for the indemnity of the Plaintiff which was not objected to by the Defendant at the time. The above is the substance of all that the Record contains.

The first point made by the Plaintiff in error is that the power of attorney was not duly proved. The Record recites that this day comes the Defendant by his attorney and by virtue of a warrant of attorney filed herein the execution of which by said Defendant is duly proved, it is thereupon & c.

It is true the Record does not set forth in what manner the warrant of

attorney was proved, whether by parole or affidavits, or by the admission of the Defendant himself at the time of the entering up of said judgment; nor does the Record pretend to set forth all the evidence in the cause, the question arises (admitting the premises of the Plaintiff in error to be correct) Was not the warrant of attorney fully proved, admitting that such was necessary, but I think under our Statute that no such proof is necessary at least until after the question in some way is put in issue.

On page 417 Sec. 27. Revised Statutes of 1845 it provides "Any person for a debt bona fide due may confess judgment by himself or attorney duly authorized without process, and every confession of judgment whether with or without process shall operate as a release of all errors in the entering up of the judgment or making record thereof."

Now I think by a fair construction of that Statute that a judgment entered by virtue of a warrant of attorney even without any proof whatever of the signature of the Defendant would be good until the same was brought in question by affidavit of the Defendant denying his signature to the warrant of attorney, or the same to be put

~~it is in some other way~~

in issue in some other way.

In the case of *Shuman vs Badley* the question raised in that case was whether the affidavits copied into the transcript could be considered a part of the Record and the Court Justices in the 11 Ill. Rep. (referred to in brief) uses this language "The affidavits copied into the transcript not being incorporated in the bill of exceptions do not properly form a part of the Record, the case must therefore be determined without taking them into consideration. The only question was whether the judgment was properly entered in the first instance

The Court will see so far as the affidavits are concerned, ^{& other papers filed of assignment} in the case now under consideration that they are very nearly in the same situation as those referred to 11 Ill. In the present case the Record ^{filed of assignment} simply shows that the affidavits & other papers made by Roundy, Atcherson & Hunt were simply made & filed in court, and the Record does not even show that any or either of them were ever read or any other use was ever made of them except the making and filing them in court. I therefore think that I may safely come to the conclusion that neither the affidavit of Roundy Atcherson & Hunt or the deed of assignment

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can cut any figure in the deciding of this cause as neither of them have ever been incorporated or made a part of the Record in this cause, the case then stands as shown by the Record to contain the declaration of the Plaintiff, the copy of the note & warrant of attorney & the Plea of the Defendant; ^{judgment} & the order of the Court opening the judgment & allowing the Defendant to plead, and I can see nothing in this Record (leaving out of the question the affidavit & deed of assignment) erroneous or any thing that would require the Court to reverse the judgment.

The next question I wish to call the attention of the Court to is the fact that the note was not due at the time of the entering of judgment, but the Court will observe that ~~in~~ the warrant of attorney uses this language "At any time after the said note may have become due or before the said note becomes due if the said B. T. Hunt or his assigns shall believe there is danger of losing the said sum secured by said note. The substance of this provision in the warrant of attorney authorized Hunt to enter up judgment at any time after the date of said note & warrant of attorney."

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and the only question that seems to be raised in the case by the Plaintiff in error is whether the same should appear in the Declaration. Now it was entirely at Hunt's option when he should enter up the judgment; and he was not bound to give any reasons for so doing. It certainly could be of no avail to the Defendant for Hunt to have stated in his Declaration that he believed that there was danger that the debt would be lost. But it would have been a statement entirely superfluous, the fact that he entered up the judgment before the note became due was sufficient evidence to the Defendant that he believed there was danger that the same would be lost; that Hunt had a right to enter up the judgment before the note became due I think there can be no doubt. The case before referred to in 11 Ill. on page 623 the Court say. "The note & warrant of attorney having been executed at the same time & in reference to the same subject matter must be construed together & considered as forming but one transaction. It amounts to this the debtor is to have a credit of ninety days with the right on the part of the creditor if he chooses to assert it of having a judgment entered up at any

moment for the amount of the debt:

I cannot see how the cases differ
 The cases seem to be the same on principle
 and I think the same rule must govern both
 but again this case may be likened unto a
 note payable on demand which has uni-
 formly been held by our Courts that a suit
 may be brought & maintained for the same
 without making any demand for the pay-
 ment of the note, and that the bringing of the
 suit is a sufficient demand. I ask the
 Court to ~~testify~~ ^{run the record} ~~run the record~~ ^{written on it} ~~it~~
~~will be then a sufficient demand.~~

W L Barry

Atty for Sept:

27 - 32

Round

is

Hint

Argument for
Defendant in
Error

Filed Apr. 27. 1860
L. Island
Ct. W.

United States of America } 186
State of Illinois Kane County }

Pleas in the Circuit
Court of said Kane County in
Vacation after the May Term of said
Court in the year of our Lord one
thousand eight hundred and fifty

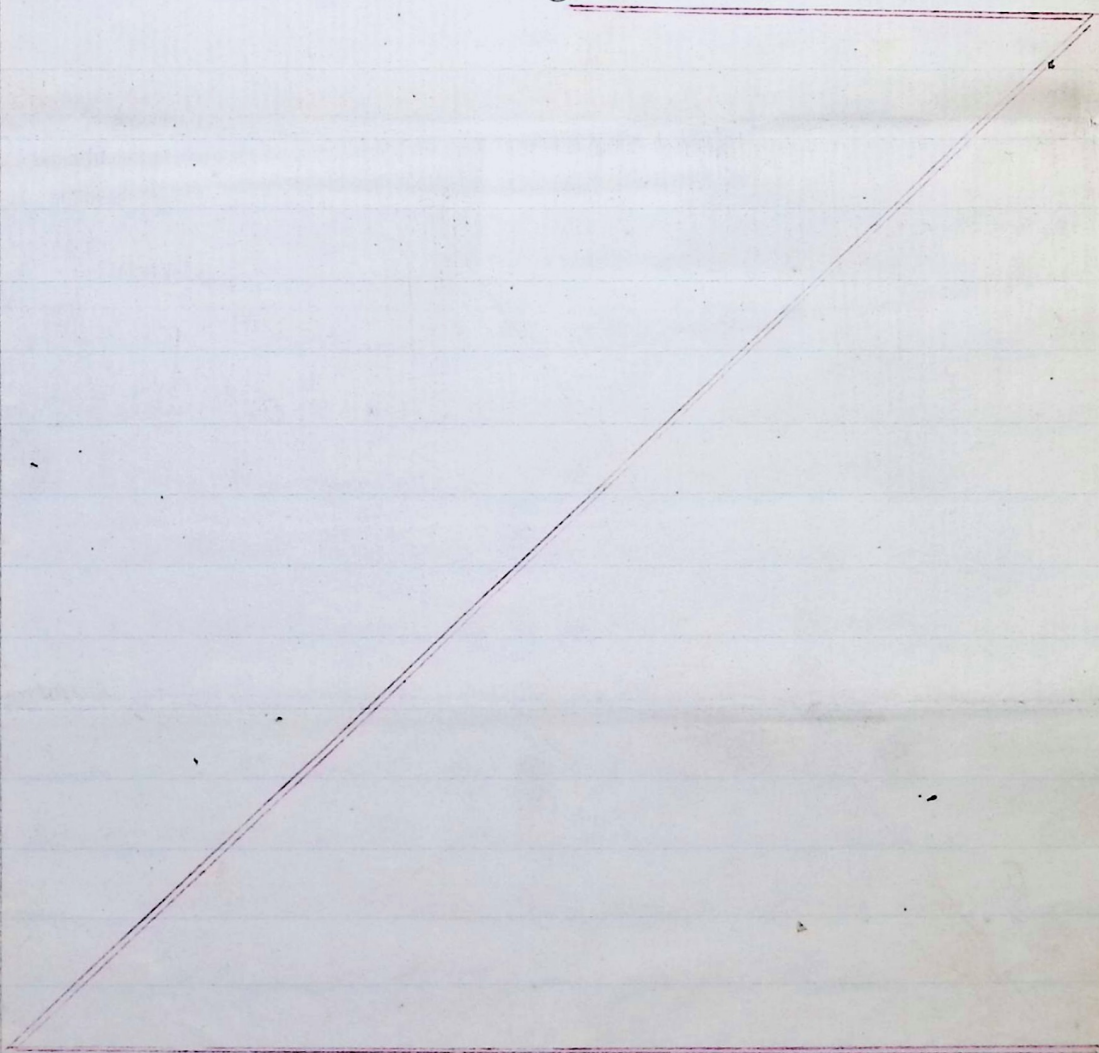
Eight

The Hon. Isaac H. Wilson

Presiding Judge of said Court

Paul R Wright

Clerk



Be it Remembered that afterwards to wit
on the 21st day of September A.D. 1858 there
were filed in the office of the Clerk of said Kane
County Circuit Court a note warrant of attorney
affidavit declaration and Cognovit which are in the words
and figures following to wit:

\$1824 $\frac{41}{100}$

(Copy of note)

St. Charles Dec. 18th 1857

One year after date I promise to pay to B. J. Hunt, or order at his office in St. Charles Eighteen hundred and Twenty four $\frac{41}{100}$ dollars for value received, with interest.

W. S. Atchison
(Copy of warrant of attorney)
Know all men by these presents, that whereas the subscriber is justly indebted to B. J. Hunt upon a certain promissory ^{note} bearing even date herewith for the sum of Eighteen hundred and Twenty four $\frac{41}{100}$ dollars, made payable to the said B. J. Hunt or order and due one year after date, at 6 per cent interest.

Now Therefore I do make, constitute, and appoint W. S. Atchison or any Attorney of any Court ^{at any time & as of my time & as of my time} a lawful Attorney for me in my name, place & stead, to appear in any Court of Record, in term time or vacation, in any of the States and Territories of the United States at any time after the said Note may have become due, or before the same becomes due, if the said B. J. Hunt or his assigns shall believe there is danger of losing the said sum secured by said Note, waive service of process and confess ⁱⁿ judgment in favor of said B. J. Hunt, or his assignee or assignees upon the said Note for the above sum, with interest, and in addition thereto ten per cent on the amount due, as liquidated damages for delay, if said Note is not paid on the day it becomes due together with all the costs; also the sum of

Twenty five Dollars as Attorney's fees. to be added to the amount due on entering up judgment and also to consent to immediate execution upon such judgment; hereby waiving all errors in entering up such judgment and ratifying all that my said attorney may do by virtue hereof.

Witness hand and seal This 16th day of December

A.D. 1837
In presence of

W. S. Atcherson

State of Illinois }
Horne County }

(copy of affidavit)

Adam S. Banvost - being duly sworn on oath deposes and says that he has seen William S. Atcherson write and knows his hand writing and this affiant further says that the signatures to the within note are in the genuine hand writing of the said William S. Atcherson.

A. S. Banvost

Subscribed and sworn to before me

This 21st day of September A.D. 1838

A. H. Bann

Notary Public

(Copy of Declaration)

Kane County Circuit Court

State of Illinois

Kane County

} S.S.

In Vacation after the May Term A.D., 1858

Bela T. Hunt

Plaintiff in this Suit

by A. H. Barry his Attorney complains of William S. Atcherson Defendant in a plea of trespass on the Case on promises: For that whereas the said Defendant heretofore to wit, on the sixteenth day of December in the Year of our Lord one thousand eight hundred and fifty seven, at St. Charles, to wit, at said County of Kane made his certain promissory Note in writing bearing date the day and year aforesaid and then and there delivered the same to Bela T. Hunt, in and by which said note, said Defendant by the name, style and description of W. S. Atcherson, promised to pay to the order of the said Bela T. Hunt, Eighteen hundred and twenty four dollars and forty one cents, one year after date for value received. Yet the Defendant although often requested, ~~etc.~~, hath not yet paid the said sum of money, or any part thereof to the Plaintiff, but so to do hath hitherto wholly refused and still does refuse, to the damage of the Plaintiff of the

sum of Two thousand dollars and therefore
he brings suit.

A. H. Barry, Plaintiff's Attorney.
(Copy of Cognovit)

In Vacation after the May Term A.D. 1858.)

William S. Atcherson }
Ads. } Cognovit
Bela T. Harris }

And the said William
S. Atcherson, Defendant in the above
entitled suit by W. D. Barry, his Attorney
comes and defends the wrong and injury
then &c., and waives service of process
and says that he cannot deny the action
of the said Plaintiff, nor but that the said
Plaintiff has sustained damages on occasion
of the nonperformance of the several promises
and undertakings in the said declaration
mentioned, including the sum of twenty
five dollars for his reasonable Attorney's
fees for entering up this judgement over
and above his other costs and charges by
him about his suit in this behalf expended
to the full amount of Nineteen hundred and
thirty (\$1,930.) dollars and fifty cents and the
said Defendant further agrees that no writ
of error or appeal shall be prosecuted on
the judgement entered by virtue hereof

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nor any bill in equity filed to interfere in any manner with the operation of said judgement, and that he hereby release all errors that may intervene in entering up the same, or issuing the Execution thereon and consent to immediate execution upon such judgement:

(\$1930.50)

H. D. Barry, Defendant's Attorney.

And afterwards to wit on the said 21st day of September A.D. 1858 a Judgment was entered upon the Records of said Court upon the aforementioned note in the words and figures following to wit:

Bela D. Hunt

Tuesday, Sept 31st 1858.

v

Appraiser

William S. Atcherson

This day comes the Plaintiff by A. H. Barry his attorney and files his declaration herein.

Thereupon comes the defendant by H. D. Barry his attorney in fact by virtue of a warrant of attorney filed herein the execution of which by said defendant is duly proven waives service of process and enters his appearance herein and says that he cannot deny the action of the said plaintiff nor but that the said plaintiff has sustained damages on occasion of the non performance of the several promises and undertakings in the said declaration mentioned including the sum of twenty five dollars for his reasonable attorneys fees for entering up this judgment over and above his other costs and charges by him about his suit in this behalf expended to the full amount of One thousand nine hundred and thirty dollars and fifty cents for which amount the said defendant hereby confesses a judgment in favor of the said plaintiff.

It is therefore considered that the plaintiff have and recover from the defendant the said sum of One thousand nine hundred and thirty dollars and fifty cents his damages aforesaid and also his costs herein expended and that he have execution therefor.

4930 50

United States of America
State of Illinois Kane County 1858

8

Plays before the Honorable
Isaac H. Wilson Judge of the Thirteenth
Judicial Circuit and presiding Judge of the
Kane County Circuit Court in the State of
Illinois at a Term thereof begun and held at
the Court House in General in said Kane
County on the Eighth day of November in the
Year of our Lord one thousand eight hun-
dred and fifty eight and of the Independence
of the United States the Eighty third

Present

The Honorable Isaac H. Wilson Judge
Edward Foslyn State Attorney
George E. Brown Sheriff

Must

Paul B. Wright Clerk

Be it Remembered that afterwards to wit on the
Third day of December A.D. 1858 there were filed in
the Office of the Clerk of the said Kane County Cir-
cuit Court two affidavits in the words and figures
following to wit:

Copy of Affidavits

9

Gordon A. Roundy, of lawful age
on his oath states that he is a resident of the
County of Du Page and State of Illinois, that
on the 18th day of September A.D. 1858 and
prior thereto one William S. Atcherson,
and Eugene A. Raney were Copartners doing
business at said Du Page County under the
style of "Atcherson & Raney" that on the said
18th day September A.D. 1858 the said
William S. Atcherson and Eugene A. Raney
by their deed of Assignment of that date, duly
executed, acknowledged and delivered,
conveyed all their Assets both real personal
and mixed to this affiant as their Assignee,
both as Copartners and individuals, which
deed of Assignment was on or about

the 19th day of said September duly recorded in the proper Office at Stapersville, in said DuPage County and which said original deed is here in Court ready to be produced if necessary, and which is here especially referred to and made a part of this Affidavit for the purposes hereinafter mentioned.

That by the provisions of said deed of Assignment this Affiant is first to pay and discharge the debts of said Copartners as such, from the Assets so assigned as aforesaid, should there be sufficient, if not, pro rata, so far as such Assets would go, and in case there were more than sufficient to pay all the said debts of said firm, then should there be sufficient left for that purpose to pay and discharge the debts of said Partners as individuals, and if not sufficient for that purpose, then to pay such in proportion or ratably so far as they would go, after paying the expenses of said Trusts.

Affiant would further state that he immediately entered upon the execution of said Trusts upon the execution of ^{the} said deed to him as aforesaid, and that he believes he has been diligent in investigating the Assets so assigned him and the liabilities of the said Copartners as a firm and as

individuals and that he does not believe
 there can be sufficient realized from such
 assets to more than pay the indebtedness of
 said firm, but as to such fact he cannot
 speak definitely as such assets were in
 a stock of ~~boots~~ boots and shoes and out-
 standing claims in notes and accounts
 of small amounts, scattered over several
 Counties adjoining to said Du Page, together
 with a lot and store erected upon it,
 situated at the Junction in the town of
 Turner and County of Du Page, which
 lot and building is not available for
 moneyed purposes at present for sale or
 rent. Affiant would further state that one
 Bela T. Hunt, knowing that said assign-
 ment had been made as aforesaid and
 after this Affiant had taken possession
 under said deed of assignment to wit;
 on the 21st day of September A.D. 1858,
 in the Kane County Circuit Court in
 the State of Illinois in vacation, caused
 a judgement to be entered up by Confession
 upon a certain judgement note & made
 by said William S. Atcherson, pur-
 porting on its face to bear date December
 16th 1857 and due in one year from
 its date to wit; December 16th 1858,

with interest for the sum of \$1834.41 payable to B. T. Hunt or order by virtue of a power of Attorney a copy of which is as follows:

Know all men by these presents that whereas the subscriber is justly indebted to B. T. Hunt upon a certain promissory note bearing even date herewith for the sum of Eighteen Hundred and Twenty four ²/₁₀₀ Dollars and payable to the said B. T. Hunt or order and due one year after date, at ten per cent interest. Now therefore I do make, constitute and appoint W. D. Barry, or any attorney of any Court of Record in ~~times~~ ^{and} ~~times~~ or vacation, in any of the States ^{and} Territories of the United States, at any time after said note becomes due, or before the same becomes due, if the said B. T. Hunt or his assigns shall believe there is danger of losing the same secured by said note, waive service of process, and confess Judgment in favor of said B. T. Hunt or his assigns or assigns upon said note, for the above sum, with interest & in addition thereto ten per cent on the amount due as liquidated damages for delay, if said note is not paid on the day it becomes due, together with all costs, also the sum of Twenty five Dollars as attorneys fees to be added to the amount due on entering up Judgment.

and also to consent to immediate execution upon
 hereby waiving all error in entering up such judgment
 such judgment and ratifying all that my said
 Attorney may do by virtue hereof Witness - hand
 and seal the 16th day of December A.D. 1857.

W. J. Atcherson

(Seal)

Which said judgment was confessed as
 aforesaid for the sum of \$1930.50 - which said
 judgment - your affiant is informed by counsel
 & fully believes is entirely erroneous & unjust, as
 the said Note upon its face is not yet due, as
 fully appears by the said Note, which is on file
 in the Kane County Circuit Court - aforesaid, in
 the said case of Conception wherein Bela T Hunt is
 plaintiff & William J Atcherson is defendant,
 which Note and the proceedings in such case are
 hereby referred to & asked to be considered by The Court -
 that said Hunt caused execution to issue upon
 the said judgment so confessed as aforesaid to the
 Sheriff of Du Page County aforesaid and caused
 to be levied upon the assets of said Copartnership &
 so assigned to your affiant as aforesaid, which levy
 prejudices the action of affiant in the sale and
 duties of said Trust, and may force said assignee
 to repeated suits & litigation unless the said judg-
 ment is opened and the proper party be allowed
 to defend said suit upon its merits.

Affiant further states that he is credibly
 informed and believes that the said Note of 1834, 41

is not a "bonafide" note. such as in law is or
 or ought to be held good as between the parties thereto
 or as between the creditors of said Atcherson and
 said Hunt, that the same is largely usurious
 and that the consideration for which the same
 was given was not bonafide, but the result of
 error in fact; arising as follows to wit; That on
 or about the 24th day of March A.D. 1856 the said
 Atcherson owed to Cha Minard (or to his exchange
 office the note being due there) four hundred
 dollars, secured to be paid by a promissory note
 made by said William S Atcherson and George J.
 Atcherson & Hiram S Brown - which said note
 at the instance of said W.S. Atcherson said Hunt
 took up from said Exchange office, but kept
 the said note himself, that on or about 24th
 day of March 1856 said W.S. Atcherson, gave said
 Hunt his note for \$24, for the interest on said
 note of \$400, as taken up, for 3 months. That on the
 11th day of July 1856. said W.S. Atcherson gave said
 Hunt his note for \$416, in payment of said \$400.
 note as taken up from said Exchange office
 due in two months from date - Hunt still
 keeping the said \$400. note first mentioned &
 the said \$24. note & said Atcherson still neglecting
 to take up the same. That on or about the 14th day
 of April 1856 Hunt at the instance of said Atcherson
 let him have in money \$173.75 for which said

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Atcherson gave him his note due in one month which notes as given as aforesaid all remained unpaid & in said Hunt's hands together with collaterals to secure the payment of the same, which collaterals affiant cannot now fully set forth.

That on the 14th day of April 1857, or thereabouts said Atcherson and Hunt met & the parties then and there consolidated the above mentioned notes the only consideration of which was the said \$400 advanced by said Hunt as aforesaid March 24th 1856 & the said \$143.75 so advanced April 14, 1856, and the interest thereon, for which said W.S. Atcherson gave his new note for the sum of \$1272 $\frac{13}{10}$ due in 8 months, to wit July 14th 1857 without interest - said Atcherson still neglecting to take up said note of \$400, first mentioned, Dec. 16th 1857 - The said Atcherson & Hunt met again and for the same and no other consideration as aforesaid, gave and except the interest upon the money so advanced and the said Atcherson by the procurement of said Hunt executed to him another note in payment for the money so advanced as aforesaid and no others and for the interest thereon until said last note should become due, to wit; until Dec. 16, 1858 for the sum of \$1824.71 yet retaining the said note first above mentioned in his hands of \$400, which said Atcherson still neglected to take up - Affiant would state that

he is credibly informed and believes that the
 said $\$1272\frac{1}{10}$ note made the 14th day of April A.D.
 1857, was made up of the item the $\$400$. note taken
 up from bank interest thereon at the rate of
 about 2 per cent per month. The said note of
 $\$416$, made July 11, 1856, given in payment for said
 last mentioned note & interest thereon at the rate
 of about 2 per cent per month - note for $\$173.73$ and
 interest thereon from April 14, 1856 at the rate of about
 2 per cent per month (although the interest was paid
 upon said last note in advance). The interest on the
 said $\$27$ note from the time it was given as
 aforesaid to the making of said $\$1272\frac{1}{10}$ - said last
 note not only being largely usurious in itself
 but is based upon the item of $\$400$. and interest on
 the same from March 24, 1856 to April 14th 1857
 at the rate of about 2 per cent per month making
 in all the sum of $\$511.50$ or thereabouts - of false con-
 sideration for said note of $\$1272\frac{1}{10}$. so accruing
 from the fraud & miscalculation of the amounts
 so due and owing from said Atcherson to said
 Hunt - at the time said last mentioned note was
 executed as aforesaid, which error was not dis-
 covered by said Atcherson at this affair ~~is~~ in-
 formed and verily believes until long after the
 said Judgt. of $\$1930.50$ was entered up as aforesaid
 and which enters into and forms a part of
 said note $\$1827.41$ with the interest thereupon

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at the rate of about 30 percent per annum - as
 fully appears ^{by} computation thereof - Affiant further
 states that he is creditably informed and verily
 believes that the true and just amount due by
 Law from said Atcherson to said Hunt - at
 the date of the conferring of said Judgment is as
 follows. The sum of \$400 advanced March 24, 1836

Interest to Sept. 21, 1858 (27.5 mo. 27 ds)

\$4.50
 39.80

The sum of \$173.75 advanced April 4, 1836 - -

173.75

Interest to Sept. 21, 1858 (27.5 mo. 27 ds)

25.38

Making in all the sum ^{of} six hundred forty eight
 Dollars ^{and} ninety nine cents - lawfully and justly due as
 aforesaid - and Affiant states that he is informed
 and verily believes that the balance of said judgment
 is erroneous and erroneous as follows to wit: Erroneous in
 double computation in the sum of - - - \$400.00

Erroneous in the sum of - - - - - \$56.31

Making the error in the sum of \$456.31 the using in
 the sum of \$556.31 and in the aggregate a Judgment
 illegal and unequivocal in the sum of \$1256.31 over
 and above the sum legally and justly due as aforesaid
 of \$648.99. which said sum, together with the sum of
 \$25 - Attorney's fees - enter into and from the said
 Judgment of \$1930.50 and costs, upon which execution
 issued as above set forth - and your Affiant therefore
 prays that all said proceedings may be quashed
 subsequent to the filing of the Declaration in said
 cause and that the proper party may be permitted

to enter his appearance and defend said suit as may be in accordance with law & equity incident to the case.

State of Illinois }
 Kane County }²⁰ Gordon N Roundy on his oath saith
 that he has ^{read} heard the foregoing Affidavit &
 knows the contents thereof and that so far as he
 states of his own knowledge the same is true and
 so far as he states of his information & belief he verily
 believes the same to be true.

Subscribed and sworn to before me } G. N. Roundy
 This 3^d day of December A. D. 1858 }
 P. R. Wright, Clerk.

State of Illinois }
 Kane County }²⁰ William S. Atcherson of lawful age
 on his oath saith that he has carefully read the
 foregoing Affidavit and knows the contents of
 the same, that he is the William S. Atcherson
 named therein, and is the person who transacted
 the business set forth & referred to in said Affidavit
 with said ~~Ben~~ J. Hunt - that since the Judgment
 was confessed as stated therein he has carefully
 examined his books, vouchers, and business mem-
 oranda and carefully called to mind every trans-
 action named or referred to in said Affidavit &
 and that from every means of information in his pos-
 session or control the facts set forth in said Affidavit
 are true in substance and fact according to his
 best knowledge, ~~and~~ information, remembrance & belief.

Subscribed and sworn to before me } W. S. Atcherson
 This 3^d day of December A. D. 1858 }
 P. R. Wright, Clerk

(Copy of assignment referred to in foregoing affidavit.)

Schedule

This Indenture made the day of September A.D. 1855. between William S. Atcherson and Eugene A. Ranney, as individuals and copartners under the name style or firm of Atcherson & Ranney, of the first part and G. H. Roundy, of the second part. Whereas the said parties of the first part are justly indebted in sundry considerable sums of money and have become unable to pay and discharge the same with punctuality or in full and being desirous of making a fair and equitable distribution of their property and effects among their creditors. Now therefore this Indenture witnesseth that the said parties of the first part in consideration of the premises, and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged have granted bargained and sold, released assigned transferred and set over and by these presents do grant bargain and sell, release assign, transfer and set over unto the said party of the second part, and to their heirs and assigns forever all and singular the lands Tenements and hereditaments, situate lying and being within the State of Illinois, with all the goods chattels merchandise, bills, bonds Notes Books accounts claims demands choses in action judgments

evidences of debt & property of every name and nature whatsoever of the said parties of the first part, more particularly enumerated & described in the schedule hereunto annexed marked "Schedule A" intending hereby to convey to the said party of the second part all the property and effects of the said parties of the first part, whether the same be enumerated in said "Schedule A" or not, to have and to hold the same and every part thereof and parcel thereof with the appurtenances to the ^{said} party of the second part their heirs, executors, Administrators and assigns

In trust nevertheless for the following uses, intents and purposes. That is to say, that the said party of the second part shall take possession of all and singular The Lands, Tenements and hereditaments, property and effects hereby assigned & sell & dispose of the same upon such terms & conditions at private or public sale for cash as in his judgment may appear best and most to the interest of all concerned herein and convert the same into money and shall also collect all and singular The said debts, dues, Bills, Bonds, Notes, Accounts, Claims, Demands, choses in action or so much thereof as may prove collectable and thereupon execute acknowledge and deliver all necessary conveyances & Instruments for the purposes aforesaid, and by and with the proceeds of such sales & collections the said party of the second part shall first

pay and discharge all the just and reasonable expenses, costs, charges and commissions of executing and carrying into effect this assignment, and all rents, taxes and assessments, due or to be come due on the Lands, Tenements & Hereditaments aforesaid until the same shall be sold and disposed of and by and with the residue or net-proceeds or avails of such sales and collections the said party of the second part shall,

First pay and discharge in full the several & respective debts, Bonds, Notes & Sums of money due or to be come due from the said parties of the first part or for which they are liable to the several persons and firms designated in the Schedule hereto annexed marked "Schedule B" together with all lawful interest money due or to grow due thereon and if said net-proceeds and avails shall not be sufficient to pay and discharge the same in full, then such net-proceeds & avails shall be distributed pro rata share and share alike among the said several persons & firms named in said "Schedule B" according to the amount of their respective claims and,

Secondly, By and with the residue & remainder of the net proceeds and avails of any there shall be, the said party of the second part shall pay and discharge all the then existing debts, demands and liabilities, whosoever now

existing whether due or to ~~become~~ hereafter to become due, provided such remainder shall be sufficient for that purpose, and if insufficient then the same shall be applied pro rata share and share alike to the payment of said debts, demands, and liabilities, according to their respective amounts and.

Thirdly, By and with the residue & remainder of the said net proceeds and avails of any shall remain after paying all partnership debts, the said party of the second part shall pay and discharge all the private and individual debts of the said parties of the first part or either of them, whether due or to become due, appropriating one half of the net proceeds and avails of their said partnership effects thus remaining & the private and undivided assets and effects of the said William S. Atcherson to the discharge & payment of his the said William S. Atcherson private and individual debts, and the other half of the net proceeds and avails of their said partnership effects thus remaining and the private and individual assets and effects of the said Eugene A. Rammy to the discharge & payment of his the said Eugene A. Rammy's private & individual debts provided the same shall be sufficient for such purpose and if insufficient then the one half of the net proceeds and avails of the said

copartnership effects thus remaining and the private & individual assets and effects of each of the parties of the first-part shall be applied pro rata share and share alike to the payment and discharge of their respective and individual debts. according to the respective amounts of such debts. it being understood that no part of the said surplus of partnership effects which will belong to each of said individuals parties of the first-part respectively after the payment of the copartnership debts nor the private and individual assets of either of them is to be made liable for the individual debts of the other of them and.

Lastly. The said parties of the second part shall return the surplus of the said net proceeds and avails if any there shall be. according to their respective interest therein to the said parties of the first-part their Executors, Administrators or assigns.

And for the better execution of these presents and of the several trusts hereby reposed, the said parties of the first-part do hereby make nominate and appoint the said party of the second part our true and lawful Attorney of the said parties of the first-part and with full power and authority to do, transact and perform all acts, deeds matters and things which can or may be necessary in the premises as fully and ^{completely} ~~completely~~ as the said parties of the first-part or either of them might or could do

24 were not these presents executed, hereby ratifying
and confirming all and everything that our said
Attorney shall do or cause to be done in the premises.

In witness whereof The said parties of the first
part have hereunto set their hands and seals the
day and year above written.

Signer sealed and delivered
in presence of
Charles Garry

^{signed} William S. Alkerson (Seal)
Engine A. Rammy (Seal)

I accept the trust created by the above
Indenture of assignment and do for myself my
Executors, & Administrators hereby Covenant and
agree to and with the said parties of the first part
their Executors, Administrators and assigns, that
the said second party will honestly, faithfully
and without delay execute the same according
to the best of my skill knowledge & ability

signed

G. A. Roundy (Seal)

State of Illinois }
 Du Page County } 20

I Charles Gary a Justice of the peace
 in and for said County do hereby certify that
 William S. Cleghorn and Eugene A. Ramey
 who are personally known to me as the same
 persons whose names are subscribed to the
 foregoing instrument of writing as having executed
 the same appeared before me this day in person
 and acknowledged that they signed sealed and
 delivered said instrument freely and voluntarily
 and for the use and purposes therein expressed.

Witness my hand and seal this
 18th day of September A.D. 1898

Charles Gary, (Seal)
 Justice of the Peace

Schedule A

Containing a list of the property owned by the parties of the first part to the foregoing assignment and by them assigned as per said Indenture of assignment.

Real Estate.

A part of the N.W. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of Section ten (10) in Township thirty nine (39) north of Range nine (9) East of the 3 P.M. adjoining the Town of Junction in Du Page County State of Illinois and more particularly described as follows, Beginning at the intersection of the South line of Depot Street in said Town of Junction with a continuation of the East line of Lot two (2) in Block Three (3) Thence at right angles to said South line of Depot Street sixty feet; Thence westerly parallel with Depot Street fifty five (55) feet; Thence southerly 24 $\frac{1}{2}$ (60) feet to the South line of Depot Street & thence easterly along said South line to the place of beginning, together with the store building situate thereon.

Also, Lots one (1) and two (2) in Block Three (3) in the Town of Junction Du Page County & State of Illinois as the same are recorded in the Recorder's Office of said Du Page County.

Of the said last above described Lots said parties of the first part hold a contract for a deed, upon which contract there is no unpaid

27 The sum of Three hundred and fifty Dollars
Merchandise

3 2/3	Cases Mens 1 dip Boots
4 1/3	" Boys " "
3/4	" " Calf "
1 1/4	" Youths 1 dip Boots
5	" " Calf "
1	Dog. Misses Rubber "
1/4	" Workmen " "
4 2/3	Cases Mens Calf Boots
1 1/2	" " " "
2 1/2	Rip " Single sole
2 1/3	" " " "
2/3	" " 18 Inch 1 dip Boots
1/3	" " " " Thick "
6 1/4	Dog. Ladies walking Shoes
4 5/12	" Misses Shoes
2 1/3	" Children Rubber Shoes
1 1/12	Dog. Girls Rubber Shoes
1 1/3	" Boy " "
1 1/10	" " " "
2 1/10	" Men " "
1 3/12	" Women's Boots
1/3	" Men's " "
6	" Children's Boots
61	Pairs Ladies Calf overshoes
3 99	" Men's Calf "
20	" Boys Buffaloes "

Schedule A Continued

- 1 Iron Safe
- 1 Counter
- 1 Pair Platform Scales
- 1 Desk.

Folio, & Book & Accounts.

Wm. Geary	2.00
A. White	1.05
Spencer Smith	4.93
H. M. Hance	4.06
J. Scott & Son	24.18
E. C. Walrup	35.00
C. Beach	1.46
W. Amisworth	3.50
Thomas Kelly	2.83
Clement Bradley	9.75
Albert Jones	6.00
David Root	4.68
A. A. Gates	2.43
Robt Benjamin	5.11
Russel Manville	9.24
J. H. Laxey	1.00
Wm. Bates	2.50
Newton Hawkes	29.69
John Barry	4.93
Thomas McAuley	3.00
A. S. Emory	9.89
James Bartley	3.12

Schedule A Continued

Daniel Benjamin	3.45-
John Sargeant	1.63✓
R. A. Watkins	3.30
Nathan Benjamin	4.50
J. G. Reynolds	1.23-
Wottingham Wile	9.50
Thomas Moore	1.30
E. S. Randall	121.43-
Sarah Rubankes	2.56
John Carr	8.00
W. G. Sargeant-	2.43-
Joshua Wright-	6.37
Butler & Meier	95.00
Parker Eastman	4.50
Oliver Bonney	3.29
R. S. Reynolds	9.50
Mrs. Jones	7.50
John Smith	5.53
David McKee	15.64
E. H. Hetchum	5.85
George Bridges	19.00
Mrs. Dickerson	9.07
D. R. Rusk & Bro.	44.30
Potter & Co	27.30
Robt. Barker	4.50
Joseph Wright-	9.23-
Charles A. Davis	13.14

Schedule A. Continued

H. S. Gassett	5.62
Allen Benjamin	4.00
L. Goslyn	3.50
Patrick Moore	4.00
Thomas Murphy	8.05
Henry Wood	4.00
Stevell & Co.	153.53
L. B. Church	3.50
McIntudge	2.50
John Barber	2.98
L. A. Cargy	3.50
Jacob Keller	4.00
Silas Stobbins	48.79
Frank Parmeter	3.23
Scott, R. & Co.	187.68
James Watson	383.00
Charles Watson	5.10
William Free	4.00
Gerry McDonald	2.73
Eli S. Jewell	4.00
Samuel Bishop	37.20
Thomas Evenden	6.29
Thompson & Simmons	898.43
George Tucker	7.23
Spencer Tucker	3.50
Marion Wilson	3.75
William Bradley	9.84

Schedule A Continued

Peter Baker	14.28
David Wallisshaw	4.50
William Spencer	4.50
G. A. Roundy	.83
E. C. Van Gorder	6.63
James Deming	4.50
John Burke	2.91
Henry Denoran	4.50
David Wame	5.00
John Sisor	1.68
Thomas Rasfield	3.00
J. L. & George Hagaden	38.63
John Stransen	146.21
Thomas Curry	3.63
Michael Curry	3.64
J. G. Munroe	4.50
Smith & Brower	203.10
M. J. Cooper	3.50
Charles Geary	43.00
James Billings	3.00
Geo. W. Suffrage	8.88
Charles Atcherson	11.50
Thomas Cochrane	4.00
James Rollins	43.40
Henry Wartin	9.13
B. A. Hilo	3.03
Daniel Jacobs	1.41

Schedule A Continued

Lyman Torome	6.83
Aaron Gordon	6.50
S. W. Champlin	4.16
Shedd and Cooley	3.73
Washburn & Lawrence	26.11
Highland & Aldrich	328.17
Trall & Stark	122.42
Daniel Wood	45.37
Lucinda Hilo	.50
A. E. Leonard	70.30
Mr. Hollister	.73
Lucinda Scott	2.17
Daniel Rayson	4.25
John Moore	7.50
Martin Steffer	.50
Samuel McFarlin	4.10
Tyler Hilo	7.17
Cooper Billings	1.56
C Vandewalgen	13.69
Sarah Couley	6.23
A Latham	300.00
Primball & Ray	12.73
E. W. Lord	1.00
Samuel Bartholomew	11.73
A. N. Bartlett	27.23
Lot Church	1.81
J. Devine Ho	88.00

Schedule A. Continued

A. E. Carpenter	18.99
Martin Hancock	21.50
Henry Bradley	1.50
Wm. Martin	4.33
E. C. Bradley	3.10
George F. Remond	.50
Joseph W. Smith	4.63
Henry Seargeant	5.28
Daniel Wilson	.65
O. K. Wilson	8.50
Wm. P. Griffin	5.00
J. R. Gorman	6.63
Thomas Rackham	3.50
Daniel Pratt	5.50
J. H. Remington	4.00
Remson Lake	3.50
Francis Samson	4.00
James McCabe	4.29
L. S. Bailey	42.00
Edward Champlain	4.00
George Ketchum	6.45
Walter Wilson	4.00
Daniel Moore	4.00
A. H. Dunning	4.00
Hollis Wood	.50
John Peterson	10.06
Edward Ryan	3.00

Schedule A. Continued

Eliza Chappu	1.00
J. A. Smith	4.25
Wm Barker	3.75
Thomas J. Lacy	3.25
Stephen Chappu	3.50
S. Millard	3.25
Thomas Bartholmeu	4.00
E. Messels	2.36
Paul Warner	3.00
Daniel Kelly	6.00
Patrick Walsh	3.50
Martha Delano	1.22
Lorenzo Wright	3.50
W. J. Murry	20.02

The above Schedule marked "A." is designed and intended to be entirely correct - but if found not to be so the same shall be amended when any error is discovered.

Witness
 Given Sept: 17th 1838
 William S. Atcherson
 Eugene A. Ranney

Schedule B.

Containing a list of the Creditors of the said Atcherson & Ranney who are to be first paid according to the terms of the annexed assignment.

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West & Moore	\$500.00
Newton Hunt	200.00
Michael Carey	53.00
Eugene F Warner	1500.00
George J. Atcherson	3000.00
Joel Bryant	
Mattie G Warner	161.25
Daniel Hadley	23.13
James Delano	60.82
Bradley & Bros.	300.00
Honour & Waterman	40.00

Turner Sept. 17/1858

Signed

William J. Atcherson
Eugene A. Carey

The following is a list of the debts due and to be due from the said parties of the first part to the annexed assignment not included in Schedule B.

Ackworth Boot & Shoe Company	3432.71
Chester Boot & Shoe Company	2047.23
Mallan & Sons	88.00
George S. Chatterton	32.13
George Fowler	11.00
W. J. Mann	25.00

The Above is designed to be a complete list of the Creditors of Atcherson & Ranney, but if the same shall be found in any manner incorrect the same shall be corrected by said assignee upon the discovery of such error.

Turner. Sept: 17. 1858

Signed

William Atcherson
Eugene A. Ranney

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And afterwards to wit: on the said 3^d day of December A.D. 1858 the same being one of the days of the November Term for A.D. 1858 of said Court the following among other proceedings in said Court were had and entered of record to wit:

Bela A. Hunt

v

William S. Atcherson

} Appellant

Indgtrended for Plaintiff

Sept 21 1858

This day comes Gordon A. Roudy assignee of the defendant by Eastman his attorney and moves the Court to quash the execution heretofore issued herein and to set aside the judgment.

And afterwards to wit on the 17th day of December
A.D. 1858 there were filed in the office of the Clerk
of said Court two certain affidavits in the words and
figures following to wit:

State of Illinois

Kane County

Yes Reuben T. Hunt being first duly sworn on oath deposes and says that the Affidavit of G. N. Roundy and M. S. Atcherson has been carefully read to him & that he knows the contents of the same; this Affiant further says that he admits that he did take a judgment in the Kane County Circuit Court at the time and for the amount and against the said William S. Atcherson, and that execution has been issued thereon and placed in the hands of the Sheriff of Du Page County as charged in said Affidavit. This Affiant further states that the said Atcherson and Barney may have made an assignment as charged in said Affidavit, but of this fact this Affiant has no personal knowledge, but if the same is true as charged in said Affidavit, this Affiant believes that said assignment was made for the express purpose of defrauding creditors.

This Affiant further states that on about the 20th day of September A.D. 1838 the said William S. Atcherson met this Affiant and requested this Affiant to enter a judgment on the aforesaid promissory Note and have execution issued thereon immediately and by so doing this Affiant would be able to get his pay he also stated to this Affiant that they said Atcherson & Barney had made an assignment

but that the said Atcherson did not wish
 to defend this affiant - as this was the only
 debt of any amount - that he or the company
 owed in the State of Illinois, but that said
 assignment - was made for the purpose of
 enabling him, Atcherson, and the company
 to settle with eastern creditors on their own terms
 and time; This affiant - further says that the
 Note of \$1827 $\frac{41}{100}$ is bona fide and was given to
 this affiant - by said Atcherson for a good and
 valid consideration. This affiant - further says
 that at the date of said Note to wit; on the 16th
 day of December 1837, he this affiant and the
 said Atcherson accounted together and reckoned
 up the amount of money which he, this affiant,
 had let said Atcherson have at different times
 and the amount of expenses and time which this
 affiant - had been to during the years of 1836 and
 1837, in paying demands and liabilities for the
 said Atcherson, during the said time and the
 interest on the same at the rate agreed upon
 by this affiant - and the said Atcherson and
 the whole would amount to the sum \$1827 $\frac{41}{100}$
 with interest - at the rate of ten percent, on the
 16th day of December A.D. 1838 and this affiant -
 expressly denies that any amount or any note
 was reckoned into the amount against said
 Atcherson at the time of said Settlement to wit

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on the 16th day of December A.D. 1857, which was not then justly due owing to this Affiant from said Atcherson. This Affiant also denies that there was any mistake, error or miscalculation in reckoning up the different amounts but that said Atcherson at the time fully understood the same and reckoned them up several times and ^{explained} each item to this Affiant during said settlement. And this Affiant expressly denies that there were any higher rates of interest except such as was fully explained and agreed to by the said Atcherson put into said promissory note.

This Affiant further says that at the conversations which took place on or about the 30th of September A.D. 1858 between the said William S. Atcherson and this Affiant last above referred to, he the said Atcherson stated to this Affiant that he said Atcherson and Ramsey had given George W. Atcherson the brother of the said William S. Atcherson a judgment-note for the sum of about three thousand dollars but that said firm did not owe said George W. Atcherson anything, but that said note was given for the purpose covering up the property belonging to said firm in case there should prove to be any defect in said assignment and that said judgment-note should not in any way interfere with this Affiant in the collection of the aforesaid

promissory note.

Subscribed and sworn to before me } B. T. Hunt-
 This 11th day of December A.D. 1858 }

A. H. Barry

Notary Public

State of Illinois

In Page County }

20 William S. Atcherson of lawful
 age on his oath deposes and says that he is
 the same person named in an affidavit made
 by him and Gordon M. Roundy December 3rd 1858
 as the person referred to in an affidavit made
 by Bela T. Hunt - The 11th day of December A.D. 1858
 before A. H. Barry, Notary Public of St Charles Ill.
 that he has carefully heard read the affidavit
 of said Hunt made as aforesaid and knows
 the full contents thereof. Affiant deposes and
 says that the aforesaid referred to in such
 affidavit was made in good faith and for
 the purposes named therein named and not
 to defraud any of the creditors of this affiant
 or the creditors of said Atcherson & Ramey, but
 in the place of so doing, was made for the express
 purpose of avoiding litigation & the expense at-
 tending the same and placing the property and
 assets of this affiant, and of said firm of Atcher-
 son & Ramey, where they could be applied to
 the payment of the meritorious debts of said firm

as copartners and individuals as is expressed in said deed of assignment. Affiant further states, that said Hunt - came from St. Charles to the Junction in Du Page County, at that time after the assignment - referred to in his said affidavit - was executed & delivered to the assignee therein named, and after the said Hunt - knew of such fact - as affiant - was informed by said Hunt - for the purpose of arranging or getting secured a Note of \$1824.41, made Dec. 16th 1857, and due in one year from ^{its} date, by this affiant - to said Hunt - and which was not then due by the face. That on such application by said Hunt - affiant - stated to him in substance, that he could not arrange or pay said Note, that he had been obliged with his partner M^{rs}. Ramsey, in consequence of the stringency of the times, to make an assignment - in order to save what he could of his property for the benefit of his creditors. Affiant - admits that he told said Hunt - that he did not wish to defraud or wrong said Hunt - or any of his, or the creditors of the said firm, but he expressly denies that he ever requested the said Hunt - to enter a Judgment on said Note and have execution issued thereon immediately, and that by so doing said Hunt - would be able to get his pay. Affiant - also expressly denies that he ever told said Hunt - that the assignment herein referred to was made for the

purpose of enabling this Affiant and the company
 to settle with the Eastern Creditors on their own terms
 and time, or that he used language to that effect.
 Affiant admits that said Hunt - insinuated
 by innuendoes that said assignment was made
 for the purpose of obtaining a compromise with
 Eastern creditors, and ~~then~~ ^{tried} by a variety of ways to
 induce this Affiant to so treat said assignment -
 and desired Affiant to secure said note and
 that in consideration for his so doing said Hunt
 would aid said Affiant in effecting said ar-
 rangement, all of which this Affiant - expressly
 declined doing & so informed said Hunt - at the
 same time informing said Hunt that he was
 not aware of any unfairness in said assignment
 that the same was made in good faith, and that
 he was in honor & Law bound by said assignment.
 that he was sorry that he had been obliged to make
 it, and yet hoped to be able at some time to pay
 his just debts in full, but that he could not do
 so at the present time. Affiant also expressly de-
 nies that on or about the 20th of September 1858
 or at any other time he told said Hunt that
 he & Ramey had given George W. Atchison, brother
 of Affiant a Judgment note for the sum of about
 Three Thousand Dollars, and that said firm
 did not owe said George W. Atchison any thing
 and that said note was given for the purpose

of covering up the property belonging to said firm
 in case there should be any defect in said assign-
 ment and that said judgment should not in
 anywise interfere in the collection of said note
 but on the contrary affiant expressly told said
 Hunt; that his brother held a note of about \$3000.
 against said firm, that was bona fide, due and
 unpaid, but never in any way or manner in-
 timated to said Hunt that the same was not
 valid, nor is such the fact, but on the contrary
 said note was a bona fide note fairly and justly
 made and for an ^{actual} ~~entire~~ and bona fide consideration
 lawfully due from said firm to the said payee of
 said note, and affiant states that he is utterly
 amazed and surprised to learn that said Hunt
 has made affidavit to such matters as are set
 forth in his said affidavit and herein expressly
 denied as such statements are not only entirely
 false but are made as this affiant fully be-
 lieves, to intimidate or in some way to prejudice
 this affiant in this suit or with respect to said
 assignment and matters incident thereto, most
 most wrongfully and unjustly to his own benefit
 and pecuniary gain - Affiant further states
 that he has fully reflected upon the consideration
 of the said note for \$1824.41 as set forth in the
 affidavit of Gordon & Roundy and this affiant, and
 that the items as therein set out are substantially

true and correct - which enters into and makes
 the consideration of said note. Affiant - also
 states, that said Hunt - at the interview on
 or about - the 20th of September 1858, referred to
 in this affidavit; tried and insisted upon this
 affiant - getting Mr. ^{Raney} ~~Raney~~ to sign the said
 note of \$1824.51, which Affiant declined doing
 for the reason aforesaid, on learning of which
 result - Hunt - left - apparently much vexed, with
 the assertion that he would see whether he could
 get his pay or not; and before he left the Junction
 as this affiant has been informed and believes, Hunt
 asserted that if he could not break up said
 assignment - there need no more try, or language
 to that effect; & further Affiant - said no more.

Subscribed and sworn to before me } William L. Atcherson
 This 13th day of December A.D. 1858 }

J. M. Cornell

Notary Public

47 And afterwards to wit on the 24th day of Decem-
ber AD 1858 the same being one of the days of the
said November Term of said Court the following
among other proceedings in said Court were had and
entered of record in the words and figures following
to wit:

6427 }
Bela D. Hunt } Plaintiff
v }
William J. Atcherson } Defendant

This day comes the Plaintiff by
Barry his attorney and Gordon St. Roudy
assignee of the defendant by L. L. Eastman his attor-
ney also comes and the motion of the said assignee to
set aside the judgment & quash the execution heretofore
entered herein coming on to be heard after argument of
counsel the Court being fully advised in the premises it is
ordered by the Court that the Judgment heretofore entered
herein on the 21st day of September 1858 in favor of
said plaintiff be opened and the defendant allowed to
file his plea to the plaintiffs declaration and defend the
suit upon condition that he said defendant file his bond
to the plaintiff in the several sum of Eighteen hundred
dollars with security to be approved by the Clerk of this Court
conditioned for the payment and satisfaction of whatever judg-
ment may be obtained by said plaintiff against him upon
the trial of this suit.

State of Illinois } ss I Paul R Wright Clerk
 Kane County } of the Circuit Court in & for
 said County do hereby certify that the foregoing
 is a true copy of the Record and of all papers on file
 in my office in the suit of Bela J Hunt against
 William E. Atcherson

Witness my hand and the Seal of said
 Court at Geneva in said County this
 26th day of January A.D. 1859

P. R. Wright
 Clerk

State

da J Hunt

8

ium S Alchem

Recd

In the Supreme Court of the State of
Illinois, in & for the Third Grand
Division.

April Term 1859.

United States of America }
State of Illinois. ss }

Gordon M. Bunnely Assignee
of William S. Atcherson

vs

Bela T. Hunt

Error to Kane County.

And now comes the said Gordon M.
Bunnely, Assignee of William S. Atcherson,
plaintiff in error, by Estlin & Beveridge,
his Attorneys, and for error assigns
the following.

1. It was error to enter up judgment by
Confession against the said William S.
Atcherson, and in favor of said Bela T. Hunt
on said note, without it appearing affirmatively
of Record that the execution of the Power of
Attorney to said note attached, was just
duly proven.

2. The Attorney named in said Power of Attorney

had no authority to confess judgment on said note. before the same became due. only in case the said Hunt should believe there was danger of losing the sum secured thereby - And it was error to enter judgment as aforesaid upon said note. before maturity thereof. without an averment in said Hunt's declaration that he believed there was danger of losing the sum secured by said note -

- 3 Upon the motion of the Plaintiff in error to quash the execution and set aside the judgment. the Court ~~said~~ in allowing said motion, erred in offering the evidence that the defendant should file his bond to the Plaintiff with security. conditioned for the payment and satisfaction of whatever judgment might be obtained by the Plaintiff against him upon the trial of said suit -

Estlin & Beverly
Attys for Plt in error

The Clerk of said Court will issue
a Return Facies. in the above entitled cause,
to Hunt County, in accordance with the
rules of said Court.

July 22. 1859

Estimot & Beverings

Attys for Defendant

Gordon & Roundy
Assignee William & J. A. Johnson

Bela J. Hunt

Supreme
Court of the
Terr 1850

And the said Bela J.
Hunt By W. D. Barry his Attorney
Considers & says there is no error either
in the Record or proceedings of said
or in giving judgment of said
and therefore he prays that the
Judgment be affirmed

By W. D. Barry
his atty

Entered in Error
Filed April 24. 1860
L. Deland
Clerk

~~27~~ 27-82
Sup. Let. of U.S.

Gordon St. Romney
assignee of U.S. S.
Attest

20

Bela T. Hunt

Errors

Receipt & Ack.
of errors.

Filed Feb. 24. 1858
L. Leland

Entered & Received
for Petition in error