

No. 13104 . . .

Supreme Court of Illinois

Phillips et al

vs.

Arick et al

71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 113.

Phillips

75

Arick

3104

Preface

Supreme Court

Agud A. Lincoln Wal

vs

Boydell W. Phillips Wal

And now comes the Agents
into in Error & move to strike out
the Bill of Exemption on the ground
that the ship had no right to extend
the time to make the bill of Exemption
after beyond the time stipulated
by the parties - See Bond Record page 47 -

Paul Bremer & Gentry

Weyford Sept 10 1861

We suppose that after the time allowed
by the Court had expired, the Court
had no further Control over it - The
Stipulation made by the parties
was a matter between themselves,
& gave the Court no right to give
further time after that

W. B. Gentry

113
Supreme Court

Alfred A. Lincoln
vs

vs
Reginald W. Phillips
vs

—
Mother

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Superior ~~Court~~ ^{of Chicago} ~~for the County of Cook~~ Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Superior Court of Chicago Cook County, before the Judge thereof, between Bezaleel W. Phillips, William Hogg & George Y. Hogg

plaintiffs, and Alfred A. Arick, George A. Anderson, Asa Dow, Joseph L. Hurd, and Duncan Stewart

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

as we are informed by them complainants 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 judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaints 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 first Tuesday after the third Monday in April 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 23 day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty.....

L. Leland

Clerk of the Supreme Court.
by J. D. Rice Deputy

Alfred A. Arick et al,

No.

vs.

Beulah W. Phillips et al,

WRIT OF ERROR.

~~This writ of error is made a
Supersedeas and as such is to be
obeyed by all concerned.~~

Gleek.

FILED

March 22 A. D. 1860

L. Leland

Gleek.

United States of America
State of Illinois, Cook County } S.S.

Pleas before the Honorable the Judges of
Superior Court of Chicago, within and for the
County of Cook and State of Illinois at a
regular term of said Superior Court of Chicago
begun and holden at the Court House in the
City of Chicago in said County and State on
the first Monday being the fourth day of June
in the year of our Lord one thousand eight-
hundred and fifty nine and of the Independence
of the United States of America the eighty-four.

Present The Hon: John M. Wilson Chief Justice of
Superior Court of Chicago.

Wm. H. Higgins Grant Goodrich . . . Judges
Charles Haven . . . Prosecuting Attorney
John Gray . . . Sheriff of Cook County.

Attest

Walter Kimball. Clerk.

Be it remembered that heretofore to wit on the twenty eighth day of January in the year of our Lord one thousand eight hundred and fifty nine, there was filed in the Office of the Clerk of the Cook County Court of Common Pleas a Certain Precept for Summons in the words and figures following to wit

"State of Illinois }
County of Cook }

Bezaleel W. Phillips, William
Hogg and George F. Hogg

vs

Cook County Court of
Common Pleas.

Alfred A. Crick, George W.
Anderson, Asa Dow, Joseph L.
Hurd and Duncan Stewart.

February Term A. D. 1859.

The Clerk of said Court will issue a summons in the above cause directed to the Sheriff of Cook County in a Plea of Trespass on the Case upon promises returned at the February Term of said Court A. D. 1859, to the damage of the Plaintiff of Two thousand dollars

To

Wm Bureau & Gary

W. Knibbs Esqrs. Clerk

Plaintiffs Attorneys "

Chicago, Jan'y 28. 1859."

And thereupon accordingly on the said twenty eighth day of January A. D. Eighteen hundred and fifty nine, there was out of the Office of the Clerk of said Court, Peoples Writ of Summons; which said summons with the Sheriffs return there

Enclosed, is in the words and figures following, to wit,

"State of Illinois }
County of Cook } ss.

The People of the State of Illinois to the
Sheriff of said County, Greeting;

We command you that you summon Alfred A. Crook, George
W. Anderson, Asa Dow, Joseph S. Hurd, and Duncan Stewart
if they shall be found in your County personally to be and
appear before the Cook County Court of Common Pleas of said
County on the first day of the next term thereof, to be holden at
the Court House in the City of Chicago, in said County on the
first Monday of February next to answer unto Reginald W.
Phillips, William Hogg and George W. Hogg in a plea of trespass
on the case or promises, to the damage of said Plaintiffs as they
pay in the sum of Two thousand dollars.

Also have you then and there this writ with an endorsement
thereon in what manner you shall have executed the same.

Witness Walter Kimball, Clerk of our said Court and
the Seal thereof at the City of Chicago in said County
this 28th day of January A. D. 1859.

Walter Kimball, Clerk."

Enclosure

"Defendants not found in my County, Feb 5: 1859

John Gray, Sheriff

by W. P. Gray, Deputy."

And thereafter to wit on the seventh day of April A. D. Eighteen hundred and fifty nine, there issued out of and under the Seal of said Court, Alias Writ of Summons; Which said Summons with the Sheriffs return thereon indorsed is in words and figures following, to wit,

"State of Illinois }
County of Cook }

The People of the State of Illinois to the Sheriff
of said County, Greeting.

We again command you that you summon Alfred A. Quick George M. Anderson, How Don Joseph, L. Hurco and Duncan Stewart if they shall be found in your County personally to be and appear before the Cook County Court of Common Pleas of said County, on the first day of the next term thereof, to be holden at the Court House in the City of Chicago, in said County on the first Monday of June next to answer unto Bezabael W. Phillips, William Hogg and George J. Hogg in a plea of Trespass on the case on promises, to the damage of said Plaintiffs as they pay in the sum of Two thousand dollars.

And have you then and there this Writ with an endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball, Clerk of our said Court
and the Seal thereof at the City of Chicago in said County this 7th day of April A. D. 1859.

Walter Kimball, Clerk "

Endorsed "Served by reading to the within named Charles

Dow and Joseph L. Sturdevant this 11th day of April 1859, the
other defendants not found in my County.

John Gray. Sheriff

By A. C. Hedding. Deputy."

And thereafter to wit on the twelfth day of February A.
D. Eighteen hundred and fifty nine, the said Plaintiffs by their
said Attorneys, filed in the Office of the Clerk of said Court,
their Declaration in said cause; Which said Declaration, with
the instruments thereupon sued, is in the words and figures
following, to wit:

"State of Illinois } In the Cook County Court of Common
County of Cook } Pleas. Of the February term A. D. 1859
Bezaleel W. Phillips, William Hogg and
George Y. Hogg, partners in trade in the name firm and style
of B. W. Phillips & Co. Plaintiffs by Van Buren & Gary their
Attorneys, complain of Alfred A. Arick, George W. Anderson, Ad-
Dow, Joseph L. Sturdevant and Duncan Stewart, partners in business
and trade, defendants, who were summoned to of a plea of
responde in the case upon promises.

For that whereas the said Defendants heretofore to wit
on the 24th day of December A. D. 1858 at Mendota, Illinois,
to wit, at the County of Cook aforesaid, by the name style
and description of Arick and Anderson & as partners as
aforesaid, made their certain Bill of Exchange in writing to
bearing date a certain day and year therein mentioned to wit
the day and year aforesaid and thereby then and there requested

Certain persons by and under the name style and firm of Dow, Hurd & Co. at sight thereof to pay to the Order of one G. W. Price the sum of Five hundred dollars for value received and then and there delivered the said Bill of Exchange to the said G. W. Price, who then and there endorsed and delivered the same bill to the said Plaintiffs. And the said Plaintiffs aver that afterwards and before the payment of the said sum of money in the said bill of Exchange mentioned to wit, on the day and year aforesaid at Chicago to wit, at the County aforesaid the said bill of Exchange was presented and shown to the said Dow, Hurd & Co. for their acceptance thereof, according to the usage and custom of merchants & the said Dow, Hurd & Co. were then and there required to accept the same, but that the said Dow, Hurd & Co. did not nor would at the said time when the said Bill of Exchange was so presented & shown to them for their acceptance thereof as aforesaid or at any time afterwards accept the same or pay the said sum of money therein specified or any part thereof, but then and there wholly neglected and refused so to do, of all which said several premises the said defendants afterwards to wit on the day & year aforesaid, at the County aforesaid had notice - by means whereof the said Defendants then and there became liable to pay to the said Plaintiffs the said sum of money in the said bill of Exchange specified when they the said defendants should be thereunto afterwards requested, and being so liable they the said defendants in consideration thereof afterwards to wit on the day and year aforesaid at the County aforesaid undertook and then and there faithfully promised the said Plaintiffs to pay them the said sum of money in the said bill of Exchange specified when they

the said defendants should be thereunto afterwards requested.

And also for that whereas the said defendants heretofore to wit on the 24th day of December A. D. 1858 at Mendota in Illinois, to wit at the County aforesaid by the name style & description of Erick P. Anderson and as partners do aforesaid made their certain other bill of Exchange in writing bearing date a certain day and year therein mentioned to wit, the day and year last aforesaid, and thereby then and there requested certain persons by & under the name, firm & style of Dow, Hurd & Co. at sight thereof to pay to the order of one Geo. W. Price the sum of Five hundred dollars for value received & then & there delivered the said last mentioned bill of Exchange to the said Geo. W. Price, who then & there endorsed and delivered the same bill to the said Plaintiffs. And the said Plaintiffs aver that afterwards & before the payment of the said sum of money in the said bill of Exchange last mentioned specified to wit on the day and year last aforesaid at Chicago to wit, at the County aforesaid the said last mentioned bill of Exchange was presented and shown to the said Dow, Hurd & Co. for their acceptance thereof according to the usage and custom of Merchants, and the said Dow, Hurd & Co. were then and there required to accept the same - but that the said Dow Hurd & Co. did not nor would at the said time when the said last mentioned bill of Exchange was so presented and shown to them for their acceptance thereof as aforesaid, or at any time afterwards accept the same, or pay the said sum of money therein specified or any part thereof but then and there wholly neglected and refused so to do, of all which said several premises the said defendants afterwards to wit

in the day and year last aforesaid at the County aforesaid, having notice by reason whereof and according to the usage and custom of Merchants, the said defendants then & there became liable to pay to the said Plaintiffs the said sum of money in the said last mentioned bill of Exchange specified, when they the said defendants should be thereunto afterwards requested and being so liable they the said defendants in consideration thereof afterwards to wit on the day and year last aforesaid at the County aforesaid undertook and then and there faithfully promised the said Plaintiffs to pay them the said sum of money in the said last mentioned bill of Exchange specified, when they the said Defendants should be thereunto afterwards requested.

And whereas also the said Defendants as partners as aforesaid, afterwards to wit, on the first day of January in the year of our Lord one thousand eight hundred and fifty nine, to wit, at said County, became and were indebted unto the Plaintiffs and such partners as aforesaid in a large sum of money to wit Two thousand dollars, for money before that time lent and advanced to said defendants by said Plaintiffs, at said Defendants request and also in the like sum for money before that time paid laid out and expended for said defendants by the said Plaintiffs, at the like special request of said Defendants; and in the like sum for money before that time had and received by said Defendants to and for the use of said Plaintiffs, and also in the like sum for goods, wares and merchandize before that time sold and delivered by said Plaintiffs to said Defendants, at the like special instance and request; and also in the like sum for the labor care and diligence of said Plaintiffs before that time

done and performed by said Plaintiffs for said Defendants, and at the like instance and request of said Defendants; and also in the like sum then and there found to be due and owing to said Plaintiffs on an account stated between them; and being so indebted said Defendants in consideration thereof then and there undertook and promised to pay said Plaintiffs said several sums of money above mentioned when thereunto afterwards requested.

Yet the said defendants not regarding their said promise and undertakings, but contriving to, although often requested so to do, have not paid said Plaintiffs either of said sums of money above mentioned, or any part thereof, but so to do have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said Plaintiffs of Two thousand dollars and therefore they bring this suit &c.

Wm Bureau & Gary

Plaintiffs Attorneys."

(Copy of instrument and account filed on.)

"\$500⁰⁰"

Mendota Ills., Dec 24th 1858.

At sight pay to the Order of G. M. Price Five hundred too dollars for value received and charge to account of -

Wm & Anderson.

To Messrs Dow, Hurd & Co.

Chicago, Ills."

Endorsed " Pay B. H. Phillips & Co."

G. M. Price - Cash."

"No 3. \$500⁰⁰"

Mendota Ills., Dec 24, 1858.

At sight pay to the Order of Geo. M. Price Esq
Cash Five hundred dollars value received and charge

same to account of

To "Crick & Anderson"
Messrs Dow Hurd & Co.

Chicago, Ills."

Enclosed "Pay B. W. Phillips & Co or order

of W. Price. Cash."

Messrs Crick, Anderson, Dow

Hurd & Stewart aforesaid

To B. W. Phillips & Co. Dr

To money lent and advanced	\$ 2000
To money paid laid out and expended	\$ 2000
To money had & received to & for the use of said Plaintiff . . .	\$ 2000
To goods wares & Merchandize sold and delivered	\$ 2000
To labor and services	\$ 2000
To balance due on account stated	\$ 2000

And thereafter on the said Twelfth day of February A. D. Eighteen hundred and fifty nine, came the said defendants Alfred A. Crick and George W. Anderson and filed in the office of the clerk of said Court, their appearance in the words and figures following to wit,

"Bezaiah W. Phillips, William
Hogg & George J. Hogg
(vs)

In the Cook County Court
of Common Pleas,

Alfred A. Crick vs George W. Anderson
Dow, Joseph S. Hurd, Duncan
Stewart

February Term A. D. 1859.

That Alfred A. Crick and George W. Anderson do hereby
enter our appearance in the above entitled cause, waiving
the service of any process upon us, with the same effect as
if we had been duly served with process, ten days before the
first day of said term of said Court.

(signed) A. A. Crick

George W. Anderson."

And hereafter to wit on the fifth day of May, A.
Eighteen hundred and fifty nine came the said defendants
Asa Dow and Joseph L. Hurd, and severally filed in the
Office of the Clerk of said Court, their several and respective
pleas to said Declaration, in the words and figures following
to wit:

"State of Illinois } Superior Court of Chicago.
Cook County } ss. Of the May term A. D. 1859.

Alfred A. Crick, George W. Anderson }
Asa Dow, Joseph L. Hurd, & Duncan Stewart }

vs }
Reuben W. Phillips, William Hogg and }
George T. Hogg. }

1st And the said Defendant Asa Dow by Smith, Dancy
& Kellogg his Attorneys comes and defends the wrong and
injury when it is and says that he together with the said
Alfred A. Crick, George W. Anderson Joseph L. Hurd and
Duncan Stewart, did not undertake or promise in manner
and form as the said Plaintiffs, have above thereof complain

Page 12 against him and of this, ~~he~~ puts himself the said Defendant
the said Cesa Dow puts himself upon the Country &
And the said Plaintiffs do the like.

And for a further plea in this behalf, the said defendant
Cesa Dow by leave of the Court here for this purpose first took
and obtained according to the Statute in such case made
and provided a writ of judgment of the said writ and declaration
because he says that the said several promises & undertakings
in the said Declaration mentioned in manner and form as
therein mentioned, if any such were made, were not made
nor were any of them made by this defendant Cesa Dow as
copartner or otherwise with the said defendants Alfred. C. Arrick,
George St. Anderson, Joseph E. Hurd and Duncan Stewart,
with either or any of them, under the said firm name style
of Arrick and Anderson, nor by this Defendant as copartner
or otherwise with any person or persons under the name style
and description of Arrick and Anderson, nor in any other way
or manner And the said defendant Cesa Dow further says
that at the time of making the said several supposed
promises and undertakings in said Declaration mentioned, in
manner and form as therein mentioned, if any such were made
or at any time before or after this time, he the said defendant
Cesa Dow was not a copartner with the said Alfred. C. Arrick,
George St. Anderson, Joseph E. Hurd and Duncan Stewart,
nor with either of them by the said name style & description
of Arrick & Anderson, nor was this Defendant a copartner with
any person or persons whatsoever, by the said name, style &
description of Arrick and Anderson. And the said Defendant

Asa Dow further says that the said several promises and undertakings in said Declaration mentioned in manner & form as herein mentioned, if any such were made, were made by the said defendants Alfred A. Arick and George W. Anderson alone, and not as copartner or otherwise with him the said Asa Dow And this the said Asa Dow is ready to verify, Therefore inasmuch as the said several supposed promises and undertakings in manner or form as aforesaid, if any such were made, were not made by this Defendant as copartner or otherwise with the said defendants Alfred A. Arick, George W. Anderson Joseph L. Hurst and Duncan Stewart; nor at the said time or times of the making of the said supposed promises in manner and form as in the said Plaintiffs declaration mentioned, if any such were made, nor at any time before or after that time was this Defendant copartner with the said defendants Alfred A. Arick, George W. Anderson, Joseph L. Hurst and Duncan Stewart or either, or any of them, or with any person or persons whomsoever under the name style & description of Arick and Anderson, nor with the said Alfred A. Arick, George W. Anderson, Joseph L. Hurst and Duncan Stewart ^{however, or by whatever name style or description} under any name, style or description, designated called or known, by this defendant Asa Dow prays judgment of the said Court & Declaration and that the same may be quashed &c

Smith, Denny & Kellogg.

Attys for Asa Dow, "

"State of Illinois)
Cook County .. } ss.

Page 14 The above Plea by him secondly pleaded is true in substance and matter of fact.

Sworn and subscribed before
me this 5th day of May A.D. 1859 } A. Dow.
Walter Huibald. Clerk }

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

(A. Dow being duly sworn on oath says that he is one of the Defendants in the above suit and that he believes he has a good defence to said suit upon the merits.

Sworn and subscribed to before
me this 5th day of May A.D. 1859 } A. Dow."
Walter Huibald. Clerk }

"State of Illinois } Superior Court of Chicago
Cook County, . . } S.S. Of the May term A. D. 1859.

Alfred A. Trick, George W.
Anderson, Asa Dow, Joseph L. Hurd
and Duncan Stewart

and
Reuben W. Phillips, William Hogg
and George F. Hogg

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And the said Defendant Joseph L. Hurd by Smith
Denney & Kellogg his Attorneys comes and defends the wrong and
injury when it is said and says that he together with the said
Alfred A. Trick, George W. Anderson, Asa Dow, and Duncan
Stewart, did not undertake or promise in manner & form as the
said Plaintiffs have above thereof complained against him and

this the said defendant the said Joseph L. Hurd put himself upon the Country &c

And the said Plaintiffs do the like.

2nd And for a further Plea in this behalf, the said Defendant Joseph L. Hurd by leave of the Court here for this purpose first had and obtained according to the Statute in such case made and provided, prays judgment of the said Court and Declaration, because he says that the said several promises and undertakings in the said Declaration mentioned in manner and form as therein mentioned, if any such were made, were not made, nor were any of them made by this Defendant Joseph L. Hurd as copartner or otherwise with the said Defendants Alfred A. Arick, George W. Anderson, Asa Dow and Duncan Stewart, nor with either or any of them, under the said firm name and style of Arick & Anderson, nor by this Defendant as copartner or otherwise with any person or persons under the name style and description of Arick & Anderson, nor in any other way or manner. And the said defendant Joseph L. Hurd further says that at the time of making the said several supposed promises and undertakings in said Declaration mentioned in manner and form as therein mentioned, if any such were made, or at any time before or after this time, he the said Defendant Joseph L. Hurd was not a copartner with the said Alfred A. Arick, George W. Anderson, Asa Dow and Duncan Stewart, nor with either of them by the said name style and description of Arick & Anderson; nor was this defendant a copartner with any person or persons who were by the said name, style and description of Arick & Anderson. And the

Page 16 said defendant Joseph L. Hurd further says that the said several promises and undertakings in said declaration mentioned in manner and form as therein mentioned, if any such were made, were made by the said defendants Alfred A. Crick and George W. Anderson alone, and not as Copartners or otherwise with him the said Joseph L. Hurd And this the said Joseph L. Hurd is ready to verify Wherefore inasmuch as the said several supposed promises and undertakings in manner or form as aforesaid, if any such were made, were not made by this defendant as Copartner or otherwise with the said defendants Alfred A. Crick & George W. Anderson, Asa Dow and Duncan Stewart, nor at the said time or times of the making of the supposed promises in manner and form as the said Plaintiffs declaration mentioned, if any such were made, nor at any time before or after that time was this Defendant Copartner with the said Defendants Alfred A. Crick, George W. Anderson, Asa Dow and Duncan Stewart or either or any of them, or with any person or persons whomsoever under the name, style or description of Crick and Anderson, nor with the said Alfred A. Crick, George W. Anderson, Asa Dow and Duncan Stewart under any name style or description however, or by whatever name style description designated called or known, he this Defendant Joseph L. Hurd prays judgment of the said Court and Declaration, and that the same may be quashed &c

Smith, Demery & Kellogg

Attys for Deft Joseph L. Hurd."

"State of Illinois)

Cook County, ... } s.s. Joseph L. Hurd being duly sworn

on oath says. That the above ^{un}pleaded by him secondarily pleaded
is true in substance and matter of fact.

Sworn and subscribed to before }
On this 3rd day of May A. D. 1859 } Joseph L. Hurd.
Walter Kimball. Clerk "

"State of Illinois }
Cook County } ss.

Joseph L. Hurd being duly sworn on oath
says that he is one of the Defendants in the above suit, and
that he believes he has a good defense to said suit upon
the merits.

Sworn and subscribed to before me } Joseph L. Hurd.
On this 3rd day of May, A. D. 1859 }
Walter Kimball. Clerk."

And thereafter to wit on the Eleventh day of May
A. D. Eighteen hundred and fifty nine came the said Plaintiffs
by their said Attorneys, and filed in the Office of the Clerk of
said Court, their Replications to the General Pleas of the said
Defendants Dow & Hurd, in the words and figures following
that is to say.

"Reuben H. Philips Et al

— (vs) —

Asa Dow impleaded with

Alfred A. Arick Et al

In the Superior Court of Chicago

May Term A. D. 1859

And the said Plaintiffs as to the said

Plea by the said Defendant Asa Dow secondarily above pleaded

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say that the said writ and Declaration ought not by reason of anything in that Plea contained to be quashed &c because they say that the said promises and undertakings in the said Declaration mentioned were and each of them were made by the said defendant Asa Dow, with the said Alfred A. Chick, George W. Anderson, Joseph L. Hurd and Duncan Stewart in manner and form as in said Declaration alleged and of this they the said Plaintiffs put themselves upon the Country &c

Now Comes & Says

Attys for Plffs."

"And the said defendant Asa Dow doth the like &c."

"Bezaleel W. Phillips Etal

Joseph L. Hurd impleaded
with Alfred A. Chick et al

In the Superior Court of Chicago

May Term A.D. 1859.

And the said plaintiffs as to the said Plea by the said Defendant Joseph L. Hurd secondly above pleaded say that the said writ and Declaration ought not by reason of anything in that Plea contained, to be quashed &c because they say that the said promises and undertakings in the said Declaration mentioned were and each of them were made by the said Defendant Joseph L. Hurd with the said Alfred A. Chick, George W. Anderson, Asa Dow and Duncan Stewart in manner and form as in said Declaration alleged and of this they the said Plaintiffs put themselves upon the Country

Now Comes & Says - Plffs Attys."

"And the said Defendant Joseph L. Hurd doth the like."

And afterwards to wit on the fourteenth day of May
(being one of the days of the May term of the said Court)
in the year of our Lord one thousand eight hundred and fifty
nine, the following proceedings were had in said cause, and
entered of record in said Court, to wit:

Bezaiah H. Phillips, William
Hogg George, T. Hogg

— (3) — Assumpsit.

Alfred A. Crick, George W.
Anderson, Cesa Dow, Joseph L.
Hurd and Duncan Stewart

This day come the said Plaintiffs by
Nath Burens & Gary their Attorneys and thereupon comes the said
Defendants Alfred A. Crick and George W. Anderson in person and
enter their appearance herein, and being three times severally &
solemnly called in open Court comes not, nor does any person for
them but herein they severally make default, which is on Motion
ordered to be taken and their default is entered of record herein
for want of a Plea therefore said Plaintiffs ought to have and recover
of the said defendants Alfred A. Crick and George W. Anderson
impleaded with Cesa Dow, Joseph L. Hurd and Duncan Stewart
their damages sustained herein by reason of the premises.

And thereupon reference is had to the Court to assess the
damages herein hereafter.

Page 19 And afterwards to wit on the Twentieth day of May (being
yet of the said May Term of said Court) A.D. Eighteen hundred

and fifty nine, the following further proceedings were had in said Cause and entered of record in said Court, to wit,

"Bezaleel W. Phillips, William
Hogg and George T. Hogg

(vs)

Alfred A. Brick and George W.
Anderson impleaded with Asa
Dow, Joseph L. Hurd and
Duncan Stewart

Assumpsit.

This day comes the said Plaintiff
by Van Buren & Gary their Attorneys and the said Defendants
Asa L. Dow and Joseph L. Hurd by Dewey Smith & Kellogg their
Attorneys also come and issues being joined herein with them,
upon agreement of the parties this cause is submitted to the Court
for trial, without intervention of a Jury, and the Court now here
after hearing the allegations & proofs submitted and arguments of
counsel takes the matter under advisement.

And afterwards to wit on the fifth day of July (being
one of the days of the July term of said Court) A.D. Eighteen
hundred and fifty nine, the following proceedings were had in
said Cause and entered of record in said Court, to wit,

"Bezaleel W. Phillips, William
Hogg and George T. Hogg

(vs)

Alfred A. Brick & George W. Anderson
impled with Asa Dow, Joseph L. Hurd
and Duncan Stewart

Assumpsit.

And now again comes the said Plaintiffs by their Attorneys
aforesaid and the Defendants Asa Dow and Joseph L. Thurd
by their Attorneys also come and the Court having had the issues
joined with said defendants Dow & Thurd under advisement and
being now fully advised in the premises finds issues joined for
said Plaintiffs and assesses their damages against all the defendants
except Duncan Stewart, not proved, to the sum of Eight hundred
and ninety six dollars.

And thereupon said defendants Asa Dow and Joseph L.
Thurd submit their Motion herein for a new trial in this cause.

And afterwards to wit on the sixth day of July (being
yet of the said July term of said Court) A.D. Eighteen
hundred and fifty nine, the following further proceedings were
had in said Cause, and entered of record in said Court, to wit

"Reuben W. Phillips, William
Hogg and George T. Hogg

Alfred A. Vick, George W. Anderson
Asa Dow and Joseph L. Thurd
impleaded with Duncan Stewart.

Assumpsit.

Motion for New Trial.

And now again comes the said
Defendants Asa Dow and Joseph L. Thurd and submit their
Motion herein for a new trial in this Cause upon Verdict of the
Court rendered herein on issues joined with them on yesterday.

And afterwards to wit on the nineteenth day of July (being still of the said July term of said Court) A. D. Eighteen hundred and fifty nine, the following further proceedings were had in said Cause, and entered of record in said Court to wit:

Rezael W. Phillips, William Hogg and George L. Hogg

(vs)

Accomplices.

Alfred A. Arick, George W. Anderson, Asa Dow and Joseph L. Sturges
impleaded with Duncan Stewart

And now again comes the said Plaintiffs by New Burens & Gary their Attorneys and the said Defendants Dow & Sturges by Smith, Demery & Kellogg their Attorneys also come and Counsel being now heard on the Motion heretofore submitted by the aforesaid defendants herein for a New trial in this Cause and due deliberation being thereupon had and the premises fully understood it is considered by the Court that said Motion for a New trial be overruled Whereupon said defendants enter their Exceptions.

Therefore it is considered said Plaintiffs do have & recover of said defendants Alfred A. Arick, George W. Anderson, Asa Dow and Joseph L. Sturges impleaded with Duncan Stewart, the damages of Eight hundred and ninety six dollars in form aforesaid by the Court here found and assessed and also their costs and charges in this behalf expended, and have Execution therefor.

And Whereupon said defendants Asa Dow & Joseph L. Sturges having entered their Exceptions pray an Appeal herein for

\$896.00

Supreme Court, which is allowed upon filing their Appeal Bond the sum of Twelve hundred dollars, with security to be approved by one of the Judges of this Court within one week from this day, and that they have thirty days time within which to file their Bill of Exceptions

And thereupon accordingly on the twenty fifth day of July A. D. eighteen hundred and fifty nine, the said defendants Dow & Huron, filed in the Office of the Clerk of said Court, their Appeal Bond, in the words and figures following, to wit,

"Know all Men by these Presents that we Asa Dow and John Mainland of the City of Chicago are held and firmly bound unto Bezaleel W. Philips, William Hogg and George T. Hogg in the special sum of Twelve hundred dollars for payment of which well and truly to be made to the said Bezaleel W. Philips William Hogg and George T. Hogg their executors, administrators or assigns, we bind ourselves jointly and severally, our heirs executors and administrators firmly by these presents.

Sealed with our seals and dated this Twenty third day of July A. D. 1859.

The Condition of the above Obligation is such that whereas in a certain suit lately pending in the Superior Court of Chicago wherein said Bezaleel W. Philips, William Hogg and George T. Hogg were Plaintiffs and Alfred A. Arick George W. Anderson, the said Asa Dow and Joseph L. Huron together with Duncan Stewart were defendants, the said Plaintiffs on the nineteenth day of July A. D. 1859 did recover a judgment

Page 24 against the said Alfred. G. Orick, George W. Anderson, Asa Dow and Joseph L. Hurd for the sum of Eight hundred and twenty five dollars damages besides costs of suit from which judgment the said Defendants Asa Dow and Joseph L. Hurd prayed an Appeal to the Supreme Court of the State of Illinois which Appeal has been granted upon said Defendants Asa Dow and Joseph L. Hurd giving this Bond. Now if the said Asa Dow and Joseph L. Hurd, shall well and truly pay the judgment costs, interest and damages in case the said judgment shall be affirmed by said Supreme Court and shall duly prosecute their said appeal, then the above obligation to be void, but otherwise of force."

(Signed) "Asa Dow (Seal)"

"Approved by me John Mainland" (Seal)
"Wm H. Higgins."

"We consent that the above Bond be approved by the Court."
"Wm Burens Elgar."

And afterwards to wit on the day of
in the year of our Lord one thousand eight hundred and fifty nine
the said defendants filed in the Office of the Clerk of said Court
their Bill of Exceptions in the words and figures following, to wit:

State of Illinois }
Cook County. } ss.

Of the May term of the Superior Court of Chicago
A. D. 1859.

Rezael M. Phillips, William
Hogg and George F. Hogg

vs
Asa Dow and Joseph S. Hurd
impleaded &c

Be it remembered that on the
23rd day of May 1859 at the May term of the Superior Court
holden in and for the City of Chicago in the State of Illinois
before the Honorable Wm. H. Higgins Judge of said Court upon
issue joined came on to be tried the above entitled cause,
whereupon the following proceedings were had to wit:

A Jury having been waived since the cause by consent
submitted to the Court without the intervention of a Jury.

The said Plaintiffs to prove and maintain the issues on
their part produced and caused to be sworn

William Wiley, a witness, who testified as follows:

I am Bookkeeper for the firm of Dow, Hurd &c,
the Members of the firm are Asa Dow, Joseph S. Hurd

Page 26 and A. S. Hurd & Co of Detroit, said Company consist of Dunes Stewart, Ellwood Burns and A. S. Hurd, knows the handwriting of the firm.

Seven letters were here introduced in evidence, which were admitted to be in their handwriting, which letters are as follows.

" Chicago. Saturday.

August 21st 1858.

" We sold the last car load of Barley to day & it brings a fine profit.

" D. H. & Co "

" P.S. Mr Hurd just in and says you have not got the corn off yet and that you have 10,000 bus. there.

" Do not send any more there till you get it off.

" Let everything come in by Rail, we shall yet make a bad thing out of the Sasale Mine.

" There is no mistake at the present prices we are running a great risk in not getting purchases forward & we prefer not touching another bus till it does come forward.

" In haste. Dow H & Co."

(Copy of letter No 2)

" Yours,

" Yours of yesterday received, the boat from Sasale got in last night, and we let it go to day at 64^c afloat, at which it closes dull, We have not heard whether the balance was shipped by Rail or not. Markets still looks down and everything dull. As stated yesterday we think it best to

"stop buying entirely at the South. till we get what is already
bought forward and see how we stand.

"We have advised your Mr Erick to this effect?

"Respect yours

"Dew Hurd H&C."

(Copy of letter No 3)

"Gentle

"Yours of yesterday recd We send the list of bars
to Mr Erick, at Decatur to night. The Market closes dull
at the inside quotations.

"We sold last night 4000 lbs. of the No 1 Red which
at 108 in store and will put it into the joint account unless
you prefer to hold longer. If so please let us know.

"Respect yours

"Dew Hurd H&C."

(Copy letter No 4)

"Chicago Dec 14/68.

"Messrs Chick & Anderson,

"Gentle,

"Yours of yesterday is recd We did not
expect your draft to day for the reason that we had several
other parties to supply besides having about 800 bags on hand
which we are carrying along a few days hoping the Market may
 rally a little. 5⁰⁰ and 6⁰⁰ being the best we can do, dividing
on 200.

"Mr Hurd says you mentioned having recd an advance

Page 28

"of some \$700 within the past few weeks & yet you do not
"lessen your balance any. This is certainly not as it should be
"We have a right to expect you to draw down the balance at
"least to the extent that you receive on advances Besides we feel
"if we continue the business on joint life that you should permit
"us to the extent talked of when your Mr. Cnick was here, if
"no more, & you certainly cannot think us unreasonable to ask it

"Let us hear from you without delay on this subject.
"Do not buy any more hogs at over $4\frac{1}{2}$ to 5^{c} - bar #76
"in and sold at 50^{c} for 70^{c}

"Respectfully yours

"Dow Hurd & Co."

(Copy letter No 5)

"Chicago Thursday Dec 16/38.

"Gentles,

"Yours of yesterday received, also dispatch of to day. We
"had your draft to day. We wrote you day before yesterday
"giving the reason why it was not paid when first presented.
"We are delivering the hogs as fast as possible, but having so many
"we shall not get round to your lot till tomorrow. The Eastern
"news comes in a little better to night and possibly prices may
"stiffen up here a little, and you had better take your share of
" $4\frac{1}{2}$ to $4\frac{3}{4}$ for light and 5^{c} to $5\frac{1}{4}$ for heavy. We should have
"held on another day but the R. R. folks were getting so full that
"they could not keep them

"Corn and Wheat unchanged.

"Yours truly - Dow Hurd & Co."

(Copy of letter No 6)

"Chicago, Thursday Dec 23/58.

"Gentle,

"Enclosed we send you a/c sale Hogs & Corn. The cold weather makes corn active & at full price.

"You had better take your share at Market rates & same for Corn and Wheat.

"Yours truly,

"Dow, Hurd & Co."

(Copy letter No 7)

"Chicago Dec 28/58.

"Messrs Chick & Anderson

"Gentles,

"Yours of yesterday is recd. Two more of your drafts were presented to day, but for reasons mentioned yesterday we could not consistently honor them, nor do we think that you can reasonably feel that we have done very wrong in not doing so, considering all the circumstances of which you of course as well as ourselves are fully advised. However we are willing, had as matters are to go on and do the best we can to wipe the loss out if you feel disposed to make up security to the amt. of \$1000. I will give you a reasonable time to do it & until you decide either pro or con, we will furnish to Mr Thompson what funds may be necessary to carry along the business. I have written him to draw on us for whatever may be needed for that purpose.

"Enclosed we send you a statement of the joint a/c from

"The beginning also of sales of 2 hogs owing to the first weather
 "if a lower market we shall hold over the lot of 29 for a few
 "days for colder weather and better prices."

"Respectfully yours
 Dow Hurd & Co."

The statements of account are all in my handwriting and
 was sent to Erick & Anderson as bookkeeper for Dow Hurd &
 or else he gave them to Mr Dow for that purpose. (Several bills
 like the two shown me (the bills paid upon) were presented to
 Dow Hurd & Co & all but one paid, I know that many bills
 have been presented, an average of one a week since 25th Mar
 1858 up to Dec 25. many of them were made payable to the
 order of George W. Price (same as shown me)

Statements of account were here introduced in evidence which
 are as follows.

Statement of Account

Marked 1.

Mendota Joint in account with

Dow Hurd & Co. Dr

1858				
May 3.	To Cash paid Telegraph			40
19	" " "			40
21	" 3262 ²¹ 2194.95 by Hunt 115 ¹⁵ by Com - Seales & putting up 131 ¹ 37		3148	11
"	" Cash paid Telegraph			40
21	" " " "			50
June 17	" " " "			40

June

15. To Cash paid Telegraph 445

July 16 " Historic Salary 150 00

Aug 5 " Statement Aug 3 & 4. less amt chgs May 24 Wheat & Corn ^{3011.74} 22363 92

21 " Cash Insurance at S. P. H. Co. 4 30

21 " Express charges on Books . 25

Sept 28 " Grain as per statements 170411.96. ⁵⁷ 41.281.170 18326 83

30 " Cash paid Sundry Telegraphs 13 00

Oct. 12 " 41.00 interest on 2652. ⁷⁸ 78 Dinebrights Cargo 30 20

13 " ^{262.89} 784.40 ^{160.34} Barley - 281 ^{162.518} Corn. 2136 ¹⁸ 46 Wheat 1388 61

14 " 25537 ⁰⁹ Bu W. Wheat as per statement 26061 25

19 " ^{271.13} 265. ^{270.58} \$1192 541 71

21 " ^{1226.15} 2798 ^{341.71} 50 Wheat Error Sep 20. ^{10.00} 24. ^{108.98} 306.40 Bu Corn 6006 1389 84

30 " Cash Telegraphs in Oct. 2 15

Nov. 11 " 1254. 300 bu W. Wheat @ 1.12 Less freight Buchanan ^{28.90} to Chicago 301 10

11 " \$232. S. Wheat. ^{148.39} \$168. ^{461.97} 603 Cato 600 56

13 " ^{151.92} 346. ^{21.62} Oka R. 65 20 bu; 173 54

19 " \$5039 Barley. ^{134.114} \$371. ^{169.64} Wheat. 304 08

20 " \$162 E. Corn 62 60

23 " ^{73.64} 271. ^{77.36} 265 E. Corn. ^{105.82} \$394. ^{161.07} 288 S. Wheat. 447 89

23 " \$2963 ^{131.37} Wheat. 671 ^{357.8} E. Corn. & ^{53.41} E. Corn - 11 hogs ^{32.62} 725 26

24 " \$536 E. Corn ^{73.24} 5 hogs ^{43.45} 953 121 72

27 " \$711 E. Corn 78 69

30 " Grain as per statements 3934. ³⁰ 239 54 4473 84

A. Dec 1 " \$171 S. Corn & E. Corn - 11 hogs ^{183.75} 3582 274 59

B 11 " \$466 Wheat. ^{122.87} 388 E. Corn. ^{73.08} 12259 less hogs ^{164.15} 850 17

C 7 " \$221 S. Wheat. ^{130.78} 718 E. Corn. ^{73.39} 10 hogs ^{128.98} 2425 333 12

a 10 " 24 Hogs. ^{165.59} 65 366 50

E	Dec 11	No 136 S. Wheat ^{148.77} #169 E. Corn ^{81.75}	280. 50
f	13	" 140 hogs 9513 lbs	550 03
g	15	" ^{94.20} 744. 762 E. ^{81.39} Corn 6 hogs 1330 lbs. #455 S. ^{140.72} Wheat	627 20
		208 W. Wheat ^{233.34} Manas	
h	16	" #533 E. Corn	91 24
i	17	" 20 hogs 4438 lbs dead hog. 14 hogs 2875 lbs.	371 00
k	18	" #306 E. Corn	97 40
l	20	" #654 S. Wheat	186 43
m	21	" ^{78.30} 561. ^{97.12} 3140. E. Corn	195 62
n	22	" ^{147.79} #769 Wheat. ^{91.81} #626 E. Corn. 11 hogs ^{57.00} 1092 lbs	296 60
o	24	" ^{147.11} #371 Wheat #76 E. Corn ^{90.15}	237 26
	25	" ^{38.20} inspection - ^{125.00} insurance. ^{334.37} Mandata Expenses	
		W. Thompsons Salary to Dec 13.	700. 07
		" Cash Sundries Telegraphs	3 40

contra

Dr

May 25	By as per a/c Sales	1692 87
27	" " " " "	1593 19
June 16	" " " " "	1332 79
21	" " " " "	1646 35
29	" " " " "	3469 79
July 5	" " " " "	3587 26
6	" Storage to July 1.	289 25
8	" 23 per Error in a/c Sales \$456.43 @ 111c6	14 72
1	" as per a/c Sales	426 40
12	" " " " "	506 12
21	" " " " "	2572 87
23	" " " " "	153 69

July

34 By as per a/c Sales 124.11. 397.49. 224.17 1246 07

Aug. 9 " " " 3414 00

13 " " " 4386 82

14 " " " 196 48

16 " " " 2132 39

20 " " " 380 29

21 " " " 219 44

23 " " " 2199 44

24 " " " 380 29

30 " " " 219 44

Sept. 2 " " " 124 06

4 " " " 932 97

9 " " " 330 20

13 " " " 1103 37

17 " " " 4010 06

18 " " " 1780 93

21 " " " 1263 29

23 " " " 3014 73

29 " " " 3819 33

30 " " " 323¹⁵ & 29.40 332 15

Oct. 1 " " " 331 85

12 " " " 2253¹⁸ & 327⁸⁴ 3663 02

" " Cash put proceeds of \$2255 from Debt Car 338 00

19 " as per a/c Sales 266 89

" " " 4662 42

22 " " " 1110 84

23 " " " 311 45

Oct 26.	By cash as per a/c Sales	696 86
28	" " " "	125 33
Nov 2	" Cash freight refunded by B. B. & L. R. R. Co.	231 80
3	" as per a/c Sales 742 ³² & 1141 ³⁵	883 80
4	" Net proceeds of 125 H sold in Minnesota	279 113
6	" Storage Aug. 1. Sept.	201 29
7	"	"
9	" as per a/c Sales	3113 29
17	" " "	186 67
22	" " "	99 67
25	" " "	141 68
27	" " "	83 29
29	" " "	77 21
3	" " "	293 112
11	" " "	983 33
17	" " "	461 09
8	" " "	276 30
16	" " "	120 20
11	" " "	99 97
13	" " "	397 16
15	" " "	367 71
18	" " "	3147 85
21	" " "	1203 92
23	" " "	246 81
25	" Statement as below	114617 61

Barby #232. 310 ²⁰ R R Frts 70. 77. 1118. 53
 407. 327 ⁴⁴ 638 ¹ less @, 30. 33. 61 74. 76

Wt Wheat 10000 bu in Buffalo @ 8/- 10.000.-

365 damaged 372.50

111211. 15614 in hands of H. R. R. Co 199.20 11071.70

Oats # 603. 523 66 25.13

168. 505.25 1029.07 bu @ 50 201.21.00 1468.118

S. Wheat # 298 132.10 bu: Rg 36.90

594. 299.50 " " 26.99

1155. 322.10 " " 29.00

136. 342.10 " 1596.20 @ 53 201.30.80

371. 749. 834 Est 147.51 147.52.186.42 702.37 481.33 1183.70

Car corn # 626. 501. 540 Est 91.51 98.50 97.12 287.113

Loss on joint of 1460.80 14617.64

Chicago Dec 28/85

Dow Hurd & Co

W. Wiley.

(Copy Statement No 2)

Sales by Dow Hurd & Co

At joint of with Quick & Anderson,

1885

Aug 24. # 1611. 312.40 R. R. ft 28.14

5106 288.50 26.00

5112 331.40 29.85

933.10 bu Rg S. Wheat @ 45 199.87

5121 340.20 30.68

597 311.00 28.00

25 335.50 30.23

1855. 324 29.16
1311 40 bu No 2 S O Heat @ 85

1114 92

1814 79

R. R. freight as above

202 06

Bal. to C. R. of joint a/c

1612 73

1814 79

Chicago Aug. 26/55

Dow Hurd & Co.

Wm Wiley.

(Statement No 3)

Chick & Anderson

1855

in a/c with Dow Hurd & Co Dr

Dec. 1	To balance as per a/c rendered	\$ 6938 02
3	" Cash drft Dec 2 for G. M. Prier	500 00
4	" " " 3 " "	500 00
7	" " " 6 " H. Woodward	150 00
8	" " " 7 " G. M. Prier	500 00
10	" " " 9 " "	500 00
13	" " " 11 " "	500 00
16	" " " 13 " "	1000 00
20	" " " 20 " "	500 00
21	" " " 18 " "	500 00
25	" half loss on joint a/c	730 40
24	" Cash drft Dec 23 for G. M. Prier	500 00

12768 42

Contra Cr

Dec 1	By item marked a in joint a/c statements	2711 59
4	" b	850 04
7	" c	333 12
9	" funds sent to G. L. Warren	300 00
10	" d	365 50
11	" e	230 52
12	" f	552 23
13	" g	627 32
16	" h	91 24
17	" i	371 00
"	" " L. L. Warren	200 00
18	" k	97 40
20	" l	186 43
21	" m	195 62
22	" n	296 60
23	" A. H. B. Soaps Note	150 00
24	" o	237 26
25	" Merchants Expenses ^{336.87} W. Thompsons ²⁰⁰ Feb ch 13	536 84
"	" your Note for balance	6853 75 12768 42

6853 75

Chicago Dec 28/35.

5914 64

Dow, Hunt & Co

1/2 W. Wiley.

Sales by Dow Hunt & Co

in a/c with

Chick & Anderson.

1859
 Jan'y 11.

778 - 274.¹⁰

R. R. fr
 23 " 03

171. (270 ⁴⁰

22 " 43

544 50 Bu & born @ 50.

272 36

R. R. fr

45 46

Bat to Cr of joint a/c

226 60

272 36

Chicago Jan'y 11. 1859.

Dow Hurd & Co

Wm Wiley."

Examination of Witness resumed.

I knew that Hutton was employed as clerk by Quinn and Anderson in grain business item of was on grain, We sent some Books to Quinn & Anderson and paid the Express charges, Telegrams were sent to Mendota, or some other place were they were interested on joint account, item of Expenses of \$38⁷⁴ is an amount given by Q & A, for joint matter. Thomson selling 200, he succeeded Hutton as clerk. Contents Case sold at Mendota item of loss on joint a/c \$1460.80.

The Plaintiffs further to maintain the issue on their behalf called as a Witness.

Bradley R. Holland, who being duly sworn testified as follows.

Presented draft for same amount and of like date and tenor. Can't tell precise day without referring to my books.

was not paid, presented at office of Defendant to his Bookkeeper
was not paid. Presented for account of Plaintiffs drafts of 24th
and 27th.

Two Telegraphic dispatches and one receipt were here
introduced as evidence, the follows are copies of same.

"Mendota, Decr 17. 1858.

By Telegraph

From Chicago Decr 17. 1858.

To Chick & Anderson,

Draw for enough to pay for what
you buy - Dow, Hurd & Co.

By Telegraph

From Chicago, Decr 25. 1858.

To Chick & Anderson,

Please send Warren Three hundred
300, and draw on us.

Dow Hurd & Co.

Merry Christmas.

(Copy Receipt)

Burlington, Ills. Decr 27/58

\$300.00

Received of Chick & Anderson per Griffiths Three
hundred dollars on a/c of Dow Hurd & Co.

G. B. Warren.

here draft copies of which are attached to declaration were read
in evidence being admitted to be genuine.

Item of Decr 29. had nothing to do with joint account
 Item of Decr 23rd same. Decr 25. same. Notes of \$1853.76
 was given in payment of the account to Dow Hurd & Co.
 Mr Anderson came into Chicago to make a settlement at that
 date, and the joint account was then closed & that ended the
 joint transactions.

Dow, Hurd & Co business was to buy and sell grain
 at different points by their Agents, they paid their agents sometimes
 by Salary and sometimes by joint account and sometimes by
 commission, never knew the arrangement with Chick & Anderson
 except that I was instructed to open the books on joint account
 they were to have half of the profits as I understood, ~~was~~
 purchasing the grain - Dow Hurd & Co were to furnish the money
 The Wheat was to be shipped to Dow Hurd & Co. by Railroad,
 Dow Hurd & Co. were to have direction & control of the business
 There did not seem to be any difference between the mode of
 conducting their affairs & that of their agents.

The full face of these Drafts were charged Chick and
 Anderson in every instance, the item of \$6000 was money
 advanced to Chick and Anderson. These amounts were usually
 made on drafts made by Chick & Anderson and the credits
 were made up of the costs of purchase of grain for defendants
 for Mendota joint account, no other credits of consequence, the
 whole expenses of the joint account of the Mendota joint account
 were charged in the books of Dow Hurd & Co. as well as
 Mendota as at Chicago, and most of the money were paid out
 on drafts, if Chick & Anderson similar to these.

There was paid in May 1858 \$4760 - in June 16670
in September 23000 in October 5000 in November 3000 in
December 6000. These drafts were all or nearly all at sight
and nearly all passed through the hands of Plaintiffs as Bankers.

Objection to because the Defendants were paid
as makers.

Crick and Anderson were credited and the Mendota joint
account charged with \$13 1/2 for scales & putting same up.

There is included in the draft \$730 for 1/3 of the loss on
the Mendota joint account. Had been no dealings between
Defendant Crick and Dow, there \$600 prior to the entry of the \$500.

Despatch was sent to Crick & Anderson at Mendota.
First freight paid on the joint account of grain was Senesch
of May.

The witness being cross examined by defendants counsel
testified as follows.

There were two distinct and separate accounts kept
one with Crick & Anderson and the other with the joint account.
The whole \$6000 was money advanced to Crick & Anderson about
what they had grain to represent. Drafts were generally presented
within one day.

All money and the payment of all drafts were charged to
Crick & Anderson who were credited with expenses and all money
paid out for grain and the proceeds were credited with joint
account and that account was charged with the costs of all the
grain and with all the expenses which Dow & Hurd & Co paid and
with all expenses which Crick & Anderson rendered to Dow,

Page 42 Hurd & Co. as paid by them.

(The whole amount of Credits to Quick and Anderson exclusive of joint account before the date of drafts is \$2000 only.)

The amount of dealings of joint account is \$85000 and upwards. Joint account is not charged with any Streetman.

At this stage of the proceedings the Defendants offered to prove that Dow Hurd & Co. and Plaintiffs are Members of the Chicago Board of Trade, and that it is a custom among Grain Dealers and generally known to them to employ men to purchase grain on joint account, the results of which was to be shared between the principals furnishing the money and the party purchasing and doing the buying the same, which was considered and understood to be a compensation for the services and that contracts made in his name, are not understood to bind the principals furnishing the money, and proposes to prove that the custom has existed five years.

Objected to by Plaintiffs Counsel and excluded.

The Minnesota joint account was but a small part of the business of Dow, Hurd & Co. The Cash that passed through the House of Dow, Hurd & Co. during the year was \$800,000.

Letters 21st August.

Objection to the reading of letters of Decr 28. because account was closed and because letter referred to was not produced - it does not appear to have come to the knowledge of Plaintiffs.

At the time the matter was settled it was agreed that there were still some matters to come in and there are the items after

that date on the books, it was agreed that all old transactions should be closed, the draft of the 16th Dec was to be paid. Draft of Dec 24. was paid Dec 31. It is admitted that Chick & Anderson were Alfred A. Chick & George W. Anderson.

Plaintiffs here rested, and

The Defendants to maintain the issues on their behalf first called as a witness.

George W. Price who being duly sworn testified as follows.

I am Cashier of the Mendota Bank which is owned by Plaintiffs, had business transactions with Chick & Anderson was in the habit of discounting their drafts, giving them currency for them, advanced on the last draft to Mr Warren \$300 and some small amounts besides, had no interest in drafts, was merely Cashier.

The course of business was to credit Chick & Anderson with amount of draft and let them check it out, as they needed the currency, both drafts were passed to the credit of Chick & Anderson, but the last one was not fully paid. Chick & Anderson had a credit of \$1114 on the Evening of the 23rd. Before witness took the draft of them, after the drafts were returned there was a balance against them of \$819 ⁸⁵/₁₀₀. The indebtedness was for money advanced on Chick & Anderson checks, saw dispatch of 14th. same day or the next evening it was shown me by Chick or Anderson at the time he got the discount, and the other of the 25th was shown me at the time by Chick, when he got the \$300. I don't suppose I should have cashed these drafts without seeing the dispatches.

Page 43 On the Evening of the 18th Dec Chick & Anderson had \$65

to their credit. Never inquired whether the checks were given for grain or not.

Witness Cross Examined by Plaintiff's Attorney and testified as follows.

\$213 paid to Woodward, \$312 was also on the 20th \$100 was to call for grain. Five items of \$35⁰⁰ don't know what for - draft was drawn that day for \$500. Quick & Anderson bought flour to retail at Mendota, they kept but no book account at that time. Had small balances before that but not very large balances. Did not let Quick & Anderson have the full face of the drafts, Had instructions that we should not pay any drafts or advances on any unless we had evidence that they had been accepted or would be accepted. Had no particular instructions as to Quick & Anderson's drafts - saw the letters and despatches at the time of advancing on the drafts sued on. I supplied Quick and Anderson with the full amount of the \$500 and did not limit it to \$300. Charged the \$300 paid to Warren on the regular account. Quick & Anderson have a street man, buying on the Street, got these letters from Anderson.

Witness reExamined by defendant's counsel as follows.

Knew that Quick & Anderson were buying produce and provisions and shipping to Dow, Hurd & Co. I did know at the time of taking these drafts the terms of doing business. Quick & Anderson were to buy at Mendota without charge. Dow Hurd & Co were to sell in Chicago without charge. Dow Hurd & Co were to furnish the money. Supposed he could hold Dow

thru H^o, whether they refused to accept it or not. Telegraph and letters have been shown me. I knew that Dow Hurd H^o were doing business at other places than at Mendota.

Drafts were always at sight, they never were accepted but paid on presentation. I generally received the drafts and sent them for collection and did not place them to the credit of Chick & Anderson until I had advice of their payment. Don't recollect how many I bought I advanced frequently on these Drafts sometimes \$400 or \$500 on a draft of \$2000. Philip is one of the Plaintiffs does business in Chicago & these drafts were all sent through his house. Chick & Anderson were worth little or nothing at the time these drafts were presented, would not have advanced on their credit.

The foregoing was all the testimony and evidence given upon the trial of the said cause. Whereupon after argument by counsel pro and con, the Court found their decision for Plaintiffs, against the Defendants.

Whereupon the Counsel for the Defendants Dow Hurd H^o moved the Court for a new trial and in arrest of judgment upon the following grounds, to wit:

1st That the Court erred in excluding the Offer made by Defendants to prove "that Dow Hurd H^o and Plaintiffs are members of the Chicago Board of Trade, and that it is a custom among grain dealers and generally known to them to employ men to purchase grain on joint account, the result of which was to be shared between the principals furnishing the money and

the party purchasing and doing the buying the same, which was considered and understood to be a compensation for the services, and that contracts made in his name, are not understood to bind the principals furnishing the money, and that this custom has existed for five years.

2nd The Court erred in finding that defendants were Copartners or made the Drafts in question as Copartners.

3rd The Court erred in finding that the credit was given by Defendants Dow Hurd & Co. as makers of the drafts in question.

4th The Court erred in finding that the Defendants Dow Hurd & Co. were liable as makers of the said Drafts, the plaintiffs having full notice of the arrangement between Dow Hurd & Co. and Quick and Anderson.

To all of which decisions and ruling the Counsel for the Defendants Dow Hurd & Co. then and there duly excepted.

The judgment was rendered and an Appeal prayed in this cause on the 19th of July 1859 when the Court ordered that the Defendants Dow & Hurd should have 90 days to prepare and file their Bill of Exceptions - Before that time elapsed the Counsel for the respective parties extended the time for preparing & filing the Bill of Exceptions to the first day of the November term 1859 of said Court, and before that Extension expired the parties agreed to a further extension of one week which expired on the 15th November 1859. On the 10th November 1859 the Counsel of Dow & Hurd applied to the Court for a further Extension of ten days.

of which application the Plaintiffs and their Counsel had no knowledge, and the Judge supposing that the time originally fixed by the Court had not expired, and not knowing that exclusion had been made by the parties as mentioned above, informed said Counsel of Dow & Hurd that the said Bill of Exceptions might be prepared and tendered within ten days, and he would consider them as tendered *trunc* *pro* *hunc* and on the 20th day of November 1859 this Bill of Exceptions was for the first time tendered to the Judge for his signature.

Which said Bill of Exceptions the said Dow & Hurd pray may be signed and sealed and made a part of the record which is accordingly done.

Wm H. Higgins (Seal)
Judge.

Superior Court of Chicago

Phillips Et al

vs

Dow Hurd & Co imple &c

The following are the facts & the opinion of Judge Catron is desired, as to whether the Judge has authority to sign the Bill of Exceptions.

The case was tried in June and decision in favor of the Plaintiffs, a motion for a new trial was made which was decided 19th July 1859; by the order of the Court 90 days was given to file Bill of Exceptions, This was extended by parol agreement of Counsel until the 1st Monday of November. It was afterwards extended one week by written stipulation.

between the parties, before the expiration of the time granted by written stipulation, application was made to the judge for ten days further time, which was granted the judge not knowing that the time had been extended by agreement, but supposing that the time before granted by the Court had not expired. Within the ten days last given a bill of Exceptions was tendered to the judge to sign, after the time fixed by the Court and after the time agreed upon by the parties, but before the last extension granted by the Court had expired, which the judge declined, on the ground that he had no power to sign it, or make the last order, as the previous extension of time had been by agreement of parties and not by order of the Court.

The judge is willing to sign the bill if he has the power and the question is submitted whether:

When the time fixed by the Court for filing the bill of Exceptions had elapsed and after the expiration of the term and when the parties themselves have agreed to an extension beyond the time fixed by the Court, could the Court grant a further extension of time without the consent of the parties at a subsequent term of the Court,

Wm. H. Higgins - Judge
Nov 22nd

"I would advise the judge to sign the bill and leave the effect or regularity of it to be decided by the Sup. Court."
A. D. Eaton.

State of Illinois }
Cook County . . } ss.

I Walter Kimball Clerk of Superior Court
of Chicago (late Cook County Court of Common Pleas) in
and for the County of Cook and State of Illinois. Do hereby
certify the above and foregoing to be a full true and
correct Transcript of the Precise. Process. Declaration, Pleas
Replications, Appeals Bond and Bill of Exceptions, now on
file in my Office, together with all orders and judgments
Entered of record in said Court, in a certain Suit therein,
wherein Bezaleel W. Phillips, William Hogg and George J.
Hogg were Plaintiffs and Alfred A. Arick, George W.
Anderson, Asa Dow and Joseph L. Hurst impleaded with
Duncan Stewart, were Defendants.



In testimony whereof I have hereunto set
my hand and affixed the Seal of said
Superior Court at Chicago, in said County
the tenth day of December A.D. 1859.

Walter Kimball Clerk

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any day upon the bills of exchange
said upon.

Smith & Denney
cccs

State of Illinois
Supreme Court

Asa Davis
Joseph L. Hurd
impleaded &c
Plffs in Error
as
Bezabel W. Phillips Etal
Dfts in Error

Assignment of Errors

And the said plaintiffs in Error
assign the following grounds of
Error.

1st

The Court Erred in deciding that the
plaintiffs in Error were Co-partners

2^d

The Court Erred in deciding that the
plaintiffs in Error were liable as
Makers of the bills of Exchange. Sued
upon.

3^d

The Court Erred in overruling the objec-
tion of plaintiffs in Error to the admis-
sion of the letter of 28th of December
1858

4th

The Court Erred in deciding that the
plaintiffs in Error were liable in
any way upon the bills of Exchange
sued upon.

Smith & Denny

ccor

Supreme Court

Asa Dow Stat
Plffs in Error
vs

Beggs, W. Phillips
Stat
Defts in Error

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Assignment of
Errors

Filed April 24 1860
L. Deland
Clerk

Smith & Dewey
Attys for Plffs in Error

5th

the Court Erred in deciding that
the plaintiffs in Error were liable
in any way jointly with their
Co-defendants ^{below} to the defendants
in Error -

6th

The Court Erred in giving judgment
against the plaintiffs in Error

Smith & Dewey
Attys for Plffs in Error

Supreme Court.

April Term 1860.

Reuben W Phillips et al
applicants in Error
Alfred A Snick et al
Plffs in Error

And hereafter afterwards, to wit, in April
^{y. of this Court 1860}
Term, the said Reuben W Phillips, William
Hogg & George F Hogg by Van Bursum & Gary
their Attorneys, duly came here into Court
& says that there is no Error in the record
& proceedings aforesaid, or in giving the
judgment aforesaid, and they pray that
the said Supreme Court before the Justices
thereof, now here, may proceed to examine
as well the record & proceedings aforesaid
as the matters aforesaid above assigned for
Error, and that the judgment aforesaid
in form aforesaid given, may be in all things
affirmed &c

Van Bursum & Gary
Sefls Atty's

113
Superior Court

Dezaniel W Phillips
Def't in Error
at bar

Alfred A. Frick et al
Plff in Error

Joinder in Error

Filed April 24, 1860
L. Leland
Clerk

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State of Illinois
Cook County
Superior Court.

Rezael W. Phillips Et al

vs

Alfred A. Strick Et al

Record.

Filed March 22, 1860
L. Deland
Clerk

Smith
Atty