

No. 12614

Supreme Court of Illinois

Rucker.

vs.

Patrick.

71641  7

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

Pleas before the Honorable John W. Wilson
Judge of the Cook County Court of Common Pleas
within and for the County of Cook and State of Illinois
at a regular term of said Cook County Court of
Common Pleas, begun and holden at the Court House
in the City of Chicago in said County on the first
Monday being the second day of February,
in the year of our Lord one thousand eight hun-
dred & fifty seven and of the Independence
of the United States the eighty first,

Present the Hon. John W. Wilson Judge
David Mc Leroy Pro. Attorney
John L. Wilson, Sheriff
Attest, Walter Kimball, Clerk.

Be it Remembered that heretofore
to wit, on the thirty first day of August in
Eighteen hundred & fifty five, Henry S
Ricker County Judge of Cook County, for the
use of William Walbert and La Fayette Wal-
bert, plaintiff, filed in the office of the Clerk

of the Cook County Court of Common Pleas
a declaration in Debt, by their Attorneys
Goodrich Hannell & Scoville, against Milton
S. Patrick and Nelson C. Roe defendants,
which said declaration and copy of bond
thereto attached is in words & figures as
follows to wit,

State of Illinois }
Cook County } ss

Henry S. Rucker County Judge
of Cook County plaintiff in this suit by Goodrich Seaville
his attorney for the use of William Hurlbut and La Fayette
Hurlbut complainants of Nelson B. Roe and Milton S. Patrick
defendants of a plea that they render unto the said plaintiff
the sum of Twenty seven thousand dollars which they owe
to & unjustly detain from the said plaintiff. For that whereas
heretofore to-wit on the first day of December A. D. eighteen
Hundred and fifty four to-wit at the County aforesaid
the said defendants by their certain writing obligatory
sealed with the seals of said defendants respectively & now
shown to the Court the date whereof is a certain day &
year therein mentioned the same day & year last aforesaid
acknowledged themselves to be held & firmly bound unto the
said Henry S. Rucker so being the County Judge of Cook
County & his successor in Office by the name and addition
of County Judge of Cook County in the penal sum of
Twenty two thousand dollars to be paid to the said Henry-
S. Rucker County Judge of Cook County aforesaid
and under a certain condition thereunder written wherein
it was declared that whereas the said Nelson B. Roe on
the seventeenth day of November A. D. 1854 was brought into
Court (the County Court of Cook County meaning) in custody
of Cyrus P. Bradley Sheriff of Cook County aforesaid on
a capias ad satisfaciendum issued out of the Cook

County Court of Common Pleas & under the Seal thereof
at the suit of William Neubert & La Fayette Neubert
and made application to the said Court to be discharged
from his arrest & imprisonment upon his complying with
the provisions of the laws of this State (the State of Illinois
meaning) for the relief of insolvent debtors and whereas
such proceedings were thereupon had that the said
County Court of Cook County on the first day of December
A. D. 1854. did refuse to make an assignee & grant a
discharge from such arrest & imprisonment to the said
Nelson L. Roe, and whereas the said Nelson L. Roe had
prayed before said Court for an appeal to the then
next term of the Cook County Court of Common Pleas
if the said Nelson L. Roe should appear on the first
day of the next term of the said Cook County Court of
Common Pleas to be next thereafter holden in said County
& abide the decisions thereof & also would not sell or
dispose of or remove or lessen in value any or all of
the estate or property mentioned in the Schedule of the
said Nelson L. Roe but the same should ^{be} then to
forthcoming & subject to the order of the said Cook
County Court of Common Pleas then said obligation
should be null & void otherwise to remain in full
force & virtue and the said Plaintiff in fact paid
that the said Nelson L. Roe did not appear on the first
day of the then next term of the Cook County Court of
Common Pleas & abide the decision of said Court
according to the terms & condition of said writing

obligatory but therein wholly failed & made default.
By means whereof & by force of the Statute in such case
made and provided an action hath accrued to the
said Plaintiff to demand & have of and from the said
defendants the said sum of twenty two thousand dollars
above demanded yet the said defendants although often
requested so to do hath not yet paid the same or
any part thereof but have hitherto wholly neglected &
refused & still do neglect to pay the same or any part
thereof.

2
And also for that whereas heretofore to wit on the first
day of December A. D. eighteen hundred and fifty four to wit
at the County of Cook aforesaid the said defendants by
their certain writing obligatory sealed with the seal of
said defendants respectively & now shewn to the Court
the date whereof is (a certain day and year therein mentioned)
the same day and year last aforesaid acknowledged themselves
to be held and firmly bound unto the said Henry L. Rucker
Judge of Cook County & his successor in Office in the penal
sum of Twenty two thousand dollars to be paid to the said
Henry L. Rucker County Judge of Cook County aforesaid
and under a certain condition thereunder written wherein
it was declared that whereas the said Nelson L. Roe on
the Seventeenth day of November A. D. 1854, was brought
into Court (the County Court of Cook County meaning)
in custody of Cyrus P. Bradley Sheriff of Cook County
aforesaid on a capias ad satisfaciendum issued out of
the Cook County Court of Common Pleas & under the seal

thereof at the suit of William Hulbert & L. Fayette Hulbert and under application to the said Court to be discharged from his arrest & imprisonment upon his complying with the provision of the laws of this State (the State of Illinois meaning) for the relief of Insolvent debtors and whereas such proceedings were thereupon had that the said County Court of Cook County on the first day of December A. D. 1854 did refuse to make an assignee and grant a discharge from such arrest & imprisonment to the said Nelson C. Roe. And whereas the said Nelson C. Roe. had prayed before said Court for an appeal to the then next term of the Cook County Court of Common Pleas if the said Nelson C. Roe. should appear on the first day of the next term of the said Cook County Court of Common Pleas to be next thereafter holden in said County and abide the decision thereof & also would not sell or dispose of or remove or lessen in value any or all of the estate or property mentioned in the Schedule of the said Nelson C. Roe. but the same should be thenceforth coming and subject to the order of the said Cook County Court of Common Pleas then said obligation should be null & void otherwise to remain in full force and virtue

And afterwards to-wit at the February term of the said Cook County Court of Common Pleas to-wit on the seventh day of March 1855. being one of the days of said Court said Nelson C. Roe filed in the said Court his affidavit & a prayer for a change of the venue of ~~the~~

said proceedings & appealed case for the causes therein stated & according to the provisions of the Statute in such case made and provided and thereupon by order of said Court duly made the venue of said cause was ordered & decreed to be changed to the Cook County Circuit Court and the Clerk of said Cook County Court of Common Pleas thereupon duly made out a copy of said order & a full transcript of the record & proceedings in such case & certified the same to the said Cook County Circuit Court together with all the papers filed in said cause & appertaining or forming part of the record therein. And the Clerk of said Cook County Circuit Court thereupon filed said papers & docketed said cause according to the form & direction of the Statute in such case made and provided.

And the said plaintiff in fact saith that the said Nelson C. Roe, did not appear on the first day of the then next term of the Cook County Court of Common Pleas and abide the decision of said Court according to the terms and condition of said writing obligatory but therein wholly failed & made default by means whereof and by force of the Statute in such case made and provided an action hath accrued to the said plaintiff to demand and have of and from the said defendants the said sum of twenty two thousand dollars above mentioned. yet the said defendants although often requested so to do hath not yet paid the same or any part thereof but have hitherto wholly neglected & refused & still do neglect to pay the same or any part thereof.

And also for that whereas heretofore to wit on the
 sixteenth day of November in the year eighteen hundred
 and fifty four to wit at the County of Cook aforesaid the
 said William Hulbert & La Fayette Hulbert were and
 duly prosecuted out of the Cook County Court of Common
 Pleas against the said Nelson C. Roe according to the
 Statute in such case made and provided a certain Writ
 of the People of the State of Illinois called a *habeas*
ad satisfaciendum directed to the Sheriff of the County
 of Cook aforesaid by which said writ the People of the State
 of Illinois commanded the Sheriff of said County that he
 take Nelson C. Roe defendant if he should be found in his
 County & him safely keep so that he should have his body to
 satisfy William Hulbert & La Fayette Hulbert plaintiffs
 the sum of ten thousand five hundred and seventy three dollars
 & forty five cents which said plaintiffs (William Hulbert &
 La Fayette Hulbert meaning) lately in the Cook County
 Court of Common Pleas for the said County at a term
 thereof began and held in the City of Chicago in said
 County on the second Monday of September last past. (
 September 1854. meaning) recovered against the said defendants
 (Nelson C. Roe meaning) for their debt & also the further
 sum of two hundred and eighty three dollars & seventy
 cents which was also adjudged to said plaintiffs
 (said William & La Fayette Hulbert meaning) for their
 damages & the further sum of eight dollars & five cents
 for their costs & charges about their suit in that behalf
 expended whereof said defendant (Nelson C. Roe meaning)

was convicted as appeared of record in county days from
the date thereof & that he have then & there said writ with an
endorsement thereon in what manner he had executed the
same which said writ ~~was~~ before the return day thereof
torn on the seventeenth day of November A. D. 1854 was
delivered to Cyrus P. Bradley who was then & there or until
& after the arrest hereinafter mentioned Sheriff of said
County of Cook in due form of law to be executed which said
writ was under the Seal of said Court and duly ~~herebefore~~
been torn on the sixteenth day of November A. D. 1854
by virtue of which said writ the said Sheriff afterwards
& before the return day thereof torn on the seventeenth
day of November A. D. 1854 & within his bailiwick torn
at the County of Cook aforesaid by virtue of said writ
took & arrested the said Nelson C. Roe by his body & then
& there held & detained him in custody as such Sheriff
for the cause aforesaid. And the said Nelson C. Roe being
so arrested & in custody of said Sheriff as aforesaid by
virtue of said writ being as he professed desirous of
releasing himself from such arrest by delivering up his
property according to the provisions of the Statute, ^{in such case made and provided} the said
Sheriff in pursuance of the Statute in such case made and
provided & on request of said Nelson C. Roe conveyed him
before the Honorable Henry L. Rucker as such Judge of the
County Court of Cook County and the said Henry L.
Rucker then being such Judge as such Judge required of the
said Nelson C. Roe so being before said Judge according to
the Statute in such case made and provided a full fair

& complete Schedule of all his the said Roe's estate real or personal, including money, Notes, bonds, bills, obligations & contracts for money or property of any and every description or kind name or nature whatsoever together with a true & perfect account of all the debts which he should or might be owing and that the said Roe should subscribe such Schedule & take the oath by the Statute in such cases made & provided and the said Nelson & Roe under such request thereupon made & presented to Henry S. Rucker so being such Judge as aforesaid a certain Schedule in substance as follows

Schedule of A. L. Roe an insolvent debtor showing all his real and personal estate including money Notes Bills, obligations contracts for money or property of any & every description or kind name or nature whatsoever together with a true and perfect account of all debts due & demands of every nature owing by him to other persons at the present time.

(Indiana case)

One bed & bedding, one Stove, 1 bureau, 1 set of chairs, 1 Table, 1 Workstand, Carpet, 1 Sofa, necessary amt of clothing for self & family, one watch and chain, about five dollars worth jewelry - have no real estate, no money, no notes, or bonds due, owns nothing else whatever.

I owe Mrs Reynolds for board
" H. Ballard Atty

\$ 100 -
50.

I owe L. Reynolds about \$ 1300.
Wm Neubert also claims this and \$ 10. 8
and the head of a family & reside in this State with
the same.

I am one of the firm of N. C. Roe. also & paid
has the following assets & owes the following debts

L. D. Gibson paper in acceptances	\$ 10. 000
Van Duzer heard also in Judgments	3. 000
John S. Wright over draft & note	12. 400
Due from Depositors	5,447. 83
Earns Gray also. check & note	728. 89
Elliott Hyatt " "	100.
O. J. Roe. " "	500.
W. B. Egan " "	250.
A Judgment against J. E. Greenleaf about	6. 400.
Fixtures about \$ 330 E. B. Bruce note 500	830.
On watch & chain worth about	140
W. T. Bartlett note 700. E. B. Humbolt 600	1300.

We owe depositors	4,142
L. D. Gibson on ap	10. 000
Due Depositors by certificate	6,812
on bills out about	7. 000
G. T. Deroe has also. notes about.	21. 000
Thos. Hale about	1. 020
Signew	

N. C. Roe

And thereupon the said Henry S. Rucker such
Judge as aforesaid proceeded to an examination of Nelson
C. Roe according to the Statute in such case made and
provided and after a full investigation & fair examination
of said Nelson C. Roe it not appearing to said Judge
that the proceedings of said Roe were fair just honest
the said County Judge of Cook County refused to make
an assignee or to grant a discharge of the said Nelson
C. Roe from the imprisonment aforesaid whereupon the
said Nelson C. Roe prayed an appeal from the decision
of said Court and on that occasion thereupon for the
perfecting of said appeal according to the Statute in
such case made & provided to wit on the first day of
December A. D. 1854 took at the County aforesaid
the said Nelson C. Roe & the said Milton S. Patrick
as his security by their certain writing obligatory commonly
called an appeal bond sealed with their respective
Seals of the said defendants & now here shown to the
Court acknowledged themselves to be held and firmly bound
unto Henry S. Rucker County Judge of Cook County his
successor in Office in the sum of twenty two thousand dollars
to be paid to said Henry S. Rucker County Judge of
Cook County with under a certain condition hereunder
written that if the said Nelson C. Roe should appear on
the first day of the next term of the Cook County Court
of Common Pleas to be next thereafter held in said County
(of Cook meaning) and abide the decision thereof and
also should not sell or dispose of or remove or lessen

in value any or all of the estate or property mentioned
in the said Schedule of said Nelson C. Roe but that
the same should be therewith coming & subject to the order
of the said Cook County Court of Common Pleas then said
obligation should be null & void otherwise to remain in full
force & virtue as by the said writing obligatory & the conditions
thereof reference therunto being had will more fully appear
which said bond being presented by said Roe to said
Judge of said County was approved by said Court & said
appeal was allowed & perfected & said proceedings & case
taken by such appeal to said Cook County Court of Common
Pleas according to the Statute in such case made and
provided. And the said plaintiff avers that afterwards
to-wit at the February term of the said Cook County
Court of Common Pleas to-wit on the seventh day of March
A. D. 1855. being one of the days of said Court said
Nelson C. Roe filed in said Court his affidavit verified
& prayer for a change of the venue of said proceedings
& appeal case for the causes therein set forth & according
to the provisions of the Statute in such case made and
provided & thereupon by order of said Court duly made
the venue of said cause was ordered & directed to be
changed to the Circuit Court of Cook County and the
Clerk of said Cook County Court of Common Pleas
thereupon duly made out a copy of said order & a
full transcript of the records & proceedings in such case &
certified the same & transmitted the same to the said
Circuit Court of Cook County together with all the

papers filed in said cause & appertaining or forming part
of the Record therein and the clerk of said Circuit
Court of Cook County thereupon filed said papers in said
Court & docketed the said cause according to the Statute
in such case made and provided. And the said plaintiff
avows that the said Nelson C. Roe did dispose of a
large quantity of the estate or property in said Schedule
mentioned to wit. Over draft or note of John S. Wright
of twelve thousand four hundred dollars. C. D. Gibsons
paper in acceptances ten thousand dollars. amounts due
from depositors five thousand four hundred one forty seven
dollars and eighty three cents. Earns. Graybles check or note
\$728.89 a Judgment against J. E. Greenleaf about
six thousand four hundred dollars. E. H. Bruce note
five hundred dollars. E. B. Whitbolls note six hundred
dollars. H. F. Bartletts note seven hundred dollars and
other property in said Schedule mentioned and that the
same was not forth coming or subject to the order of said
Circuit Court of Cook County to which as aforesaid
the venue of said case was changed according to the
terms and condition of said writing obligatory

and for appearing a further breach of the said
condition of said writing obligatory according to the
form of the Statute in such case made and provided
the said plaintiff saith that the said Nelson C. Roe
did not appear on the first day of the next term of
the circuit Court of Cook County after the said
change of venue as by the condition of said writing

Obligatory & the law in such case made & provided he was bound to do. And for assigning a further breach of said condition of said writing obligatory the said plaintiff according to the form of the Statute in such case made & provided said that a large amount & quantity of the property in said Schedule mentioned to wit the property last aforesaid named & described was not forthcoming and subject to the order of said Circuit Court of Cook County according to the condition of said writing obligatory by reason of which said breaches the said writing obligatory became forfeited & thereby an action hath accrued to the said plaintiff to demand & have of & from the said defendants the said sum of twenty two thousand dollars above demanded, yet the said defendants although often requested so to do have not as yet paid the said sum of money above demanded or any part thereof to the said plaintiff according to the said writing obligatory & condition but to pay the same have hitherto wholly refused & still do refuse.

* 4 And also for that whereas the said defendants heretofore to wit on the first day of December A. D. 1854 to wit at the County of Cook aforesaid by their certain writing obligatory sealed with their respective seals & now here shown to the Court acknowledged themselves held & firmly bound to said plaintiff Henry S. Rucker Judge of Cook County & his successors in Office in the penal sum of twenty two thousand dollars to be paid to said plaintiff yet the said defendants although often requested so to do

have not as yet paid the said sum of twenty two thousand dollars or any part thereof to said plaintiff but so to do have hitherto wholly neglected & refused & still do neglect & refuse so to do.

And also for that whereas heretofore to wit on the sixteenth day of November in the year eighteen hundred and fifty four to wit at the County of Cook aforesaid the said William Hulbert & La Fayette Hulbert sued & duly prosecuted out of the Cook County Court of Common Pleas against the said Nelson C. Roe according to the Statute in such case made and provided a certain Writ of the People of the State of Illinois called a *habeas ad satisfaciendum* directed to the Sheriff of the County of Cook aforesaid. by which said Writ the People of the State of Illinois commanded the Sheriff of said County that he take Nelson C. Roe defendant if he should be found in his County & him safely keep so that he should have his body to satisfy William Hulbert & La Fayette Hulbert Plaintiffs the sum of ten thousand five hundred and seventy three dollars & forty five cents which said plaintiffs (William Hulbert & La Fayette Hulbert meaning) lately in the Cook County Court of Common Pleas for the said County at a term thereof began and held in the City of Chicago in said County on the second Monday in September last past (September 1854 meaning) recovered against the said defendant (Nelson C. Roe meaning) for their debt & also the further sum of two hundred and eighty three

dollars & seventy cents which was also adjudged to
said plaintiffs (said William & La Fayette Hulbert
meaning) for their damages & the further sum of eight
dollars & five cents for their costs & charges, about their
suit in that behalf expended whereof said defendant
(Nelson & Roe. meaning) was convicted as appears of record
in ninety days from the date thereof. & that he have
then & there said writ with an endorsement thereon in
what manner he had executed the same, which said writ
before the return day thereof to wit on the seventeenth
day of November A. D. 1854 was delivered to Cyrus P.
Bradley who was then & there & until & after the arrest
hereinafter mentioned Sheriff of said County of Cook in
due form of law to be executed which said writ was
under the Seal of said Court and duly bore test. on the
sixteenth day of November A. D. 1854 by virtue of which
said writ the said Sheriff afterwards & before the return
day thereof to wit on the seventeenth day of November
A. D. 1854, & within his bailiwick to wit at the County
of Cook aforesaid by virtue of said writ took &
arrested the said Nelson & Roe by his body & then
& there held & detained him in custody as such
Sheriff for the cause aforesaid and the said Nelson
& Roe. being so arrested & in custody of said
Sheriff as aforesaid by virtue of said writ being
as he professed desirous of releasing himself from such
arrest by delivering up his property according to the
provisions of the Statute in such case made & provided

the said Sheriff in pursuance of the Statute in such case made & provided & on request of said Nelson & Roe. conveyed him before the Honorable Henry S. Rucker as such Judge of the County Court of Cook County, and the said Henry S. Rucker then being such Judge as such Judge required of the said Nelson & Roe. & being before him said Judge according to the Statute in such case made and provided a full, fair & complete Schedule of all his the said Roe's estate real & personal including money, notes, bonds, bills, obligations & contracts for money or property of any and every description or kind name or nature whatsoever together with a true & perfect account of all the debts which ^{he should} or might be owing, and that the said Roe. should subscribe such Schedule & take the oath by the Statute in such case made and provided and the said Nelson & Roe under such requisite thereupon made & presented to said Henry S. Rucker as being such Judge as aforesaid a certain Schedule in substance as follows.

Schedule of N. & L. Roe an insolvent debtor showing all his real and personal estate including money, notes, bonds, bills, obligations & contracts for money and property of any and every description or kind, name or nature whatsoever together with a true and perfect account of all debts, dues & demands of every nature owing by him to other persons at the present time, in dividually one bed & bedding, one stove, one bureau, one set of chairs

one. table. one work stand. Carpet. one Sofa. necessary amount of clothing for self & family. one watch & chain about five dollars worth of jewelry. Have no real estate no. money. no notes or bonds due. own nothing else whatsoever.

I owe Mrs Reynolds for board. \$ 100.

" H Ballars atty 50.

L. Reynolds about 1300.

H. Hurlbut also claim their due 10.8

am the head of a family & reside in this State with the same

I am one of the firm of. A. C. Roe & Co. & paid to have the following assets & owe the following debts.

L. D. Gibbons paper in acceptances	\$ 10.000
Van Duzer & Co. also in Judgment & notes	3.000
John S. Wright over draft & note	12.400
Due from depositors	5.447.83
Edmund Gray also. Check & note	728.89
Elliott & Lyat	100.
O. J. Roe	500.
H. B. Egan	250.
A. Judgment against J. E. Greenleaf about	6.400
Furniture books \$ 330. E. K. Bruce. note \$ 500	830
One watch & chain worth about	140
H. F. Bartlett note 700 E. B. Hurlbut 600.	1300
Nowe depositors	4,142
L. D. Gibson on apd	10.000

Due Depositors by Certificate	\$ 6,812
On bills out. about	7,000
G. F. De Roe has Co. Notes about	21,000
Thos. Hale about	1,020

(Signed) A. C. Roe.

And thereupon the said Henry L. Rucker such Judge as aforesaid proceeded to an examination of said Nelson C. Roe according to the Statute in such case made and provided and after a full investigation & fair examination of said Nelson C. Roe & the witnesses it not appearing to said Judge that the proceedings of said Roe were fair just honest the said County Judge of Cook County refused to make an affidavit or to grant a discharge of said Nelson C. Roe from the imprisonment aforesaid whereupon the said Nelson C. Roe prayed an appeal from the decision of said Court and on that occasion & thereupon for the perfecting of said appeal according to the Statute in such case made & provided to wit on the first day of December A.D. 1854 to wit at the County aforesaid the said Nelson C. Roe & said Milton J. Patrick as surety by their certain writing obligatory commonly called an appeal bond sealed with their Seals respectively & now here shown to the Court acknowledged themselves to be held & firmly bound unto the Henry L. Rucker County Judge of Cook County Judge of Cook County this

successor in Office in the sum of twenty two thousand
dollars to be paid to the said Henry S. Rucker or his
successor in Office with & under a certain condition
thereunder written that if the said Nelson L. Roe should
appear on the first day of the next term of the Cook
County Court of Common Pleas to be next thereafter
held in said County & abide the decision thereof &
also should not sell or dispose of or remove or lessen
in value any or all of the estate or property mentioned
in the Schedule of said Nelson L. Roe but that the
same should be thenceforth coming & subject to the order
of the said Cook County Court of Common Pleas then
the said obligation should be null & void otherwise to
remain in full force & virtue as by the said writing
obligatory & the condition thereof reference being thereto
had will more fully appear which said bond was
approved by said Judge and said appeal allowed
& taken to the said Cook County Court of
Common Pleas according to the Statute in such case
made & provided. And the plaintiff avers that afterwards
to wit at the February term of the Cook County Court
of Common Pleas to wit on the seventh day of March
1855 being one of the days of said Court said Nelson
L. Roe filed in said Court his petition & his
affidavit according to the Statute in such case made
and provided praying a change of venue in said cause
& thereupon such proceedings were had by said Cook
County Court of Common Pleas that the venue of

said cause was duly changed to the Cook County
Circuit Court and afterwards and while said cause was
pending in said Circuit Court & at a Special term
of said Circuit Court on the 22^d day of June 1855
being one of the days of said Court said cause was
duly called for trial & said Nelson & Roe being
duly called came not nor any one for him but
made default therein and thereupon afterwards trial
on the 28th day of June 1855, being one of the days of
said Court said appeal was by order of said Court
dismissed by reason whereof an action hath accrued
to the said Plaintiff to demand & have of & from said
defendants the said sum of twenty two thousand
dollars yet the said defendants although after
requested so to do have not as yet paid the said
sum of money or any part thereof but to pay
the same have hitherto wholly refused & still do refuse
to the damage of the said Plaintiff of twenty seven
thousand dollars & therefore he brings his suit

Goodrich & Sonien
Plffs attys

Know all men by these presents that we Nelson & Roe
& Milton S. Patriess of the County of Cook & State
of Illinois are held of record bound unto Henry S.
Parker County Judge of Cook County and his

Successor in Office in the penal sum of twenty two
thousand dollars and for the payment whereof ever
and truly to be made we do hereby bind ourselves
our heirs executors and administrators jointly
severally and finally by these presents. Witness our
Hands and Seals this first day of December
A. D. 1854.

The condition of the above obligation is such
that whereas the said Nelson C. Roe on the seventeenth
day of ~~December~~^{November} A. D. 1854, was brought into Court in
custody of Cyrus P. Bradley Sheriff of Cook County
on a *habeas ad satisfaciendum* issued out of
the Cook County Court of Common Pleas at the
suit of William Hulbert & La Fayette Hulbert and
made application to the Court to be discharged from
his arrest and imprisonment upon his complying
with the provisions of the laws of this State for the relief
of Insolvent debtors and whereas such proceedings
were there^{upon} had that the said County Court of
Cook County on the first day of December A. D. 1854
did refuse to make an assignee and grant a
discharge from such arrest and imprisonment
to the said applicant and whereas the said Nelson
C. Roe has thereupon prayed before said Court
for an appeal to the next term of the Cook County
Court of Common Pleas. Now therefore if the said
Nelson C. Roe shall appear on the first day of the
next term of the said Cook County Court of Common

Plas to be next hereafter here in said County
and abide the decision thereof and also will not
sell or dispose of or remove or lessen in value
any or all of the estate or property mentioned in
the Schedule of the said applicant but that
the same shall then be forthcoming and subject
to the order of the said Cook County Court of
Common Pleas then this obligation to be null and
void otherwise to remain in full force and virtue
Signed

Nelson C. Roe 
M. J. Patrick 

State of Illinois }
Cook County } ss

I Louis D. Hoare Clerk
of the Circuit Court do hereby certify that the
foregoing is a true and correct copy of the bona
fide in my Office in the matter of appeal of
Nelson C. Roe to be discharged from arrest under
Insolvent Law. from Cook County Court.

In testimony whereof I have hereunto
 set my hand & the Seal of said
Court this 28th day of August
A.D. 1855.

L. D. Hoare
Clerk Cir Court

And afterwards to wit on the fourteenth
day of November Eighteen Hundred & fifty
five. the said defendants by Hannie and
Juley filed in said cause their Demurer
to said plaintiffs Declaration, which said
Demurer is as follows, to wit,

Nelson C. Roe &
Milton S. Patrick

as
Henry S. Ricker County
Judge of Cook County for the
use &c.

And the said defendants by Hannie
& Juley their attorneys, say that the said de-
claration is insufficient in law.

And the said defendants shew to the Court
here the following causes of demurer to the
said Declaration; that is to say,

That it is not sufficiently averred in any
of the Counts of the said Declaration, that the
said William Hulbert & La Fayette Hulbert
obtained a judgment against the said Nelson
C. Roe before instituting proceedings against
him under the Insolvency act.

That it is not averred in any of the Counts

of the said declaration that an execution issued against said Roe in pursuance of such judgment.

That it is not averred in any of said Counts that said Roe refused to Surrender his goods, lands &c in Satisfaction of such execution.

That it is not in any of said Counts averred that the Cu Sa upon which said Roe was arrested was issued in pursuance of an affidavit filed in the proper Court & setting out that the said Roe had refused to Surrender his estate, lands &c in Satisfaction of an execution, or that there was a strong presumption of fraud against said Roe.

That the breaches in all each of the several Counts of the declaration are not sufficiently stated, & that the penalty of the bond is made the cause of action, instead of the breaches & the special damages arising thereon.

And for other & further Cause of Demurrer to the first, second & third Counts of the said declaration, the Defendants shew to the Court that it is not averred therein that a term of the Court was actually held, & the time when at which by the Condition of the bond the defendant Roe was to appear & abide the order of the Court.

And for further cause of demurrer to the said
Second Count the defendants show to the Court
that it is repugnant & contradictory.

And for further cause of demurrer to the
said Fourth Count, the defendants show that
the conditions of the bond sued on are not there-
in recited, nor proper breaches stated.

And for further cause of demurrer to said third
Count the defendants show that it is bad for du-
plicity; and that one of the breaches therein sto-
red is for disposing of property & rights which
appear from the schedule therein set out to have
been part of partnership funds & effects, and
also that the said declaration is in other
respects uncertain, informal, & insufficient
H.C.

Waverie & Juley
Defts Attys

And afterwards to wit on the third day
of January Eighteen hundred & fifty six
said Plaintiff by his attorneys filed in said
Court his joinder in demurrer. Which said
joinder is as follows to wit

Cook County Court
of Common Pleas

Henry L. Rucker
County Judge &c

vs
Nelson C. Roe &
Milton S. Patrick

And the said plaintiff saith that the said declaration & the matter therein contained in manner & form as the same are above stated & set forth are sufficient in law for the said plaintiff to have and maintain his aforesaid action there of against the said defendants, &c.

Wherefore &c the Plaintiff prays judgment &c.

Goodrich & Service
Plffs attys

And on the third day of January Eighteen Hundred & Fifty Six, said Plaintiff filed in said Cause a Notice, in words as follows to wit,

Cook Co Ct of Com Pleas
Henry L. Rucker

County Judge of Cook
County, for use &c

vs
Wilson C. Roe &
Nelson S. Patrick

Debt

Please to take Notice that
on the first day of the next term of this Court, or
as soon thereafter as a hearing can be had we
shall call up for disposal the demand to
the declaration filed in this case

Yours &c

Goodrich & Seaville

Plffs attorneys

Chicago Jan^y 2nd 1856

To J. H. H. H.

Kansie & July

Defts attys

"We admit service of a copy of the within
notice Jan^y 2nd 1856.

Kansie & July"

And afterwards, to wit on the Ninth
day of February A.D. Eighteen Hundred
& Fifty Seven, said day being one of the
days of the February Term of said Court
in the year last aforesaid the following
proceedings were had in said cause & entered of

record, to wit,

Henry L. Rucker County
Judge of Cook County for
use of William Kunkel
La Fayette Kunkel

^{vs}
Milton S. Patrick &
Nelson C. Roe

Debt

And now upon this
day comes the said plaintiff by Goodrich & Scanlon
his attorneys, and the said defendants by Hannie
& Sulley their attorneys also come, and the court
after hearing the argument of counsel on said
defendants' answer to said plaintiff's declara-
tion herein, being now fully advised in the
premises overrules said answer.

And thereupon on motion of said plaintiff's
attorneys, it is Ordered, that the said defendants
plead to said plaintiff's declaration herein
instantly; and said defendants failing to
plead herein, it is Ordered that the default
of said defendants be taken and entered herein,
which is hereby done, wherefore the said
plaintiff ought to have and recover of
the said defendants his debt in his said de-
claration mentioned, and also his damages
herein sustained by occasion of the premises,

and the Court now after hearing the allegations & proofs submitted by said Plaintiff, being fully advised in the premises finds the said Defendants indebted to said Plaintiff in the sum of Twenty two thousand dollars as in his declaration alleged; and thereupon said Plaintiff by his said Attorney enters a remittitur on said debt of the sum of nine thousand six hundred & twenty three dollars, leaving a balance of Twelve thousand three hundred and seventy seven dollars.

Therefore it is considered that the said Plaintiff for the use of the said William Warb but & La Fayette Warb but do have and recover of the said Defendants the said sum of Twelve thousand three hundred & seventy seven dollars in form aforesaid by the Court assessed and also his costs and charges by him about his suit in this behalf expended and have execution therefor.

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

I Walter Kimball Clerk of the
Cook County Court of Common Pleas in and
for the County & State aforesaid, do hereby cer-
tify that the foregoing transcript, contains
a true copy of the Declaration, Returner,
Returner in Returner, Notice, Copy of Bond
attached to Declaration. & proceedings had
and entered of record in said Court, in the
Case of Henry S. Rucker County Judge of
Cook County for the use of William Hulbert
& La Fayette Hulbert against Milton S.
Patrick & Nelson C. Rye, defendants.

In Testimony Whereof I have
unto set my hand & affix the seal
of said Court at the City of
Chicago this 15th day of May
A.D. 1857.

Walter Kimball Clerk
3

Supreme Court at Orleans

William D. Buttrick &

Adversely to Roe. Plffs in error

Henry C. Rucker County Judge
of Cook County for use of
Wassell & Lafayette Husted

Error to the
Clerk & Court of
Cook Pleas -

And now coming the
said Plaintiffs in error by Wm. H. Higgins
their Attorney say that in the record and
proceedings of said Clerk & Court of Cook
Pleas there is manifest error in this to wit:

1st Court erred in overruling the demurrer
to the Declaration -

2nd The Bond was illegal as taken before
officer

3rd The Court erred in rendering Judgment
in debt for the penalty only and
awarding execution for the penalty of
the Bond -

4th The judgment is erroneous in form
and substance -

5th Declaration is insufficient

6th Court erred in the finding - and
should have entered judgment pro
fine for amount of penalty while
the verdict should have been
on an assessment of damages -

7th The notice of trial was insufficient
Law. H. Higgins -
for Plffs in Error -

And the said deflation more considerable
than can be made in any one direction
as is expressed.

James Goodrich
for Alfred E. E. E.

Know all Men by These Presents, That *Me Milton*
S. Patrick and William Jones
as principal, and *William Jones*
as security, are held and firmly bound unto *Henry L. Rucker County Judge*
of Cook County for use of Wm. Hubbard & Sufayette Child in the
penal sum of *Fifteen thousand dollars 15000* good
and lawful money of the United States, for the payment of which, well and truly to be made, the said
Milton S. Patrick & William Jones

bind *themselves their* heirs, executors, and administrators, jointly, severally, and firmly by
these Presents.

Witness, *our hands & seals*

this *18th* day of *May* A. D. 185*7*

The Condition of the above Obligation is such, That, whereas, the above named *Henry*
S. Rucker Judge of Cook County for use of William Hubbard & Sufayette Child
did, at the *February* Term of the *Cook County Court of Common Pleas* Court,
held in and for the County of *Cook* in the State of Illinois, A. D. 185*7* recover a
judgment against the above bounden *Milton S. Patrick & one Nelson*
B. Roe -

for the sum of *Twelve thousand three hundred*
& seventy seven dollars & cents - to reverse which said judgment, the said *Milton S.*
Patrick has sued out a Writ of
Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said
Milton S. Patrick
shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and
damages which the said Supreme Court shall adjudge against *him or himself & the said*
Roe and abide the order and judgment of said
Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Milton S. Patrick [SEAL.]

William Jones [SEAL.]

[SEAL.]

[SEAL.]

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,
TO THE CLERK OF THE ~~CIRCUIT COURT~~ *Circuit Court of Cook* FOR THE COUNTY OF *Cook* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~Circuit Court of Cook~~ *Circuit Court of Cook* County, before the Judge thereof, between *Henry S. Rucker for the use of William Hulbert and La Fayette Hulbert.*

plaintiff, and *Milton S. Patrick & Wilson C. Roe*

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

Milton S. Patrick as we are informed by *his* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint 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* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *25th* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*seven*

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



Milton S. Patrick
vs
Henry S. Knepper
Writ of error

This writ of error is to
operate as a supersedeas
and as such is to be
obeyed by all concerned
L. Leland
Clerk
By J. B. Rice Deputy

Filed May 20, 1887
L. Leland
Clerk

has finally

~~209~~ 70

Henry S. Rucker
vs
Milton S. Patrick

Opinion

12614

Repaired

X

1858

~~209~~ 70

Henry S. Rucker
County Judge of
Cook County for use
of Wm. Houlbert &
La Fayette Houlbert

vs

Milton S. Patrick
vs
Milton S. Roe

Filed May 16. 1857

L. Leland
Clerk

Two supersedeas

Dec 15. 57

[12614]