

No. 12337

Supreme Court of Illinois

Hitchcock

vs.

Watson, et al

143

William Hitchcock

vs
John S. Watson

1857

1857

143

1233

Admitted
Revised
to union
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State of Illinois
Fourteenth Judicial Circuit
St. Davids County

Plas in the Circuit Court began and
held within and for the County of St. Davids
aforesaid on the Third Monday in the month
of August AD 1856. before the Honorable
Benjamin R. Sheldon presiding Judge of the
fourteenth Judicial Circuit of the State of Ill.

George W. Mitchell Esq. Clerk

William R. Rowley Sheriff

John H. Watson John P. Ritter

& Ralph Clark partners doing
business under the firm name & style
of Watson Ritter & Co.

vs.
Robert Henry

Be it remembered that herefore
to wit on the 24th day of May AD 1856 the
Plaintiffs above named by their attorneys
filed in the office of the Clerk of the Circuit
Court in and for said County his affidavit
-vit- and precepi against the defendant
afore-said which Affidavit and precepi
are in the words and figures fol-
-lowing to wit;

The State of Illinois
County of Jo Davies

3 p This day personally
appeared before me the undersi-
-gued Clerk of the Circuit Court within and for
said County and State J S Kimball, who being
duly sworn according to law deposes and says
that he is the Agent of the Mercantile Firm of
Watson Ritter & Co doing business in the City
of New York. That said Firm is composed of
John A Watson John P Ritter and Ralph Clark
That Robert Henry is justly indebted to the
said Firm of Watson Ritter & Co in the full
sum of One hundred and thirty six $52\frac{1}{100}$ Dollars
by a promissory note executed by the said
Robert Henry bearing date the 21st day of
August A D 1855 whereby the said Robert Henry
promised to pay Eight months after the date
thereof to the order of the said Watson Ritter & Co
the sum of One hundred & thirty six $52\frac{1}{100}$ Dollars
aforesaid for value received & then & there
delivered to the said note to the said Watson
Ritter & Co which said note is now due and
wholly unpaid and this affiant further
says that the said Robert Henry has de-
-parted from the State of Illinois with the
intention of having

having his effects removed from said state
He therefore prays that an Attachment may issue
according to Law

Subscribed & sworn to before
me this 24th day of May A.D. 1856

Geo M Mitchell & Thos S Kimball

John A Watson John F Ritter & Ralph Clark
Partners doing business under the firm name & style
of Watson Ritter & Co In the Circuit Court
us of Adams County, Illinois
Robert Henry To the August Term A.D. 1856

Geo M Mitchell
Clk of said Court

On filing the within Affidavit
and the necessary Bond in your Office let a writ
of Attachment issue according to Law in an action
of Trespass on the Case upon promises Damages Two Hundred
Dollars And a summons to John C Garner
& William Hotchkiss as Garnishees returnable
to the next term of said Court

Wigley & Jewett Attys for
Off.

Endorsed Filed 24th May 1856

Geo M Mitchell Clk.
p. W A Maddell Secy

The Attachment Bond in the above entitled Cause
is in the words and figures following to wit

Know all men by these presents
that we J S Kimball & Robert H Carson of the
County of Jo Daviess and State of Illinois, are
held and firmly bound unto Robert Henry
in the penal sum of Three Hundred Dollars
lawful money of the United States, to be paid to
the said Robert Henry, for which payment
well and truly to be made, we bind ourselves our
heirs, Executors, and Administrators, jointly
and severally, firmly by these presents, sealed
with our seals, dated this 24th day of May A D
1856. The Condition of this obligation is such that
whereas the above bounden J S Kimball as
agent of Watson Ritter & Co has on the day of
the date hereof prayed an Attachment at the
Court of Watson Ritter & Co, against the Estate
of the above named Robert Henry for the
sum of One hundred and Thirty Six Dollars
and 52¹/₁₀₀ Cents and the same being about
to be sued out of the Circuit Court for the County
of Jo Daviess in the State of Illinois, returnable
on the third Monday of August next to the
term of said Court then to be holden. Now
if the said Watson Ritter & Co shall prosecute

their said suit with effect or in case of failure therein shall well and truly pay and satisfy unto the said Robt Henry all such costs in said suit and such damages as shall be awarded against the said Robt Henry. heirs, Executors or Administrators in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment. then the above obligation to be void otherwise to remain in full force and effect.

Taken and acknowledged before Thos S Kimball TSB
me this 24th day of May Jt of Wilson Ritter & Co
1856. R W Carson TSB

Geo M Mitchell Clerk
for W A Waddell Deputy
Endorsed

Filed 24th May 1856.

Geo M Mitchell Clerk
for W A Waddell Deputy

The Bond for costs is in the words & figures following to wit

John H Watson John P Ritter & Ralph Clark
partners under the firm name & style of
Watson Ritter & Co In the Circuit Court
of the County of Adams Illinois
Robert Henry
20th of the August Term 1856

I do hereby enter myself security for Costs in
the above entitled cause and acknowledge myself
bound to pay or cause to be paid all costs that
may accrue in this action either to the opposite
party or to any of the officers of this Court in
pursuance of the law of this State

Dated this 24th day of May AD 1856
approved 24th May 1856

Geo M Mitchell Clerk R. W. Carson

Endorsed

Filed 24th May 1856

Geo M Mitchell Clerk
per H. A. Waddell Deputy

And afterwards to wit on the day and year last
aforesaid to wit on the 24th day of May AD 1856
a writ of Attachment issued out of the Clerk's office
of said Circuit Court against the said Defendant
which said Writ is in the words and figures
following to wit

State of Illinois,

In Davis County,

The People of the State of Illinois to the

Sheriff of said County Greeting

Whereas S. S. Kimball agent of the firm of Watson
Ritter & Co doing business in the City of New York
plaintiff has complained on oath to the clerk of
our Circuit Court for the County aforesaid that

Robert Henry defendant is justly indebted unto
the said plaintiffs to the amount of One hundred
and thirty six dollars and $5\frac{3}{4}$ cents, ^{and} also
that the said Robert Henry has departed from
the State of Illinois with the intention of having
his Effects removed from said State &c &c
And the said Watson Ritter & Co Plaintiffs having
given bond and security according to the direction
of the act in the act such case made and provided
We therefore Command you that you attach so
much of the Estate, Real or personal, of the said
defendant to be found in your County, as shall
be of value sufficient to satisfy the said debt
and Costs, according to the ^{said} Complaint; and
such estate so Attached, in your hands to
secure or so to provide, that the same may be
liable to further proceedings thereupon, according
to law, at the term of the Circuit Court of St
David County to be holden in and for the County
aforesaid, at Galena in said County, on the
Third Monday of August next. And that you
Summon the said Robert Henry to appear
before and answer the Complaint of the said
Watson Ritter & Co plaintiffs, And that you
also Summon John C. Barnes and William
Nitchavok as Garnishees to be and appear

before the said Court on the said third Monday
of August next then and there to answer what
may be objected against them when and where
you shall make known to said Court how you
have executed this writ; And have you shew them
this writ. Witness George M Mitchell Clerk of the

Circuit Court of So Davis County, County
Ills and the Seal thereof at Galena, this
24th day of May AD 1856.

Seal

Geo M Mitchell Clerk
per J. A. Waddell Deputy

Which said writ was returned by the said sheriff
into the said Clerk's office with an endorsement
thereon in the words and figures following to wit
Executed the within writ this 24th day of May,
AD 1856 by Reading the same to the within named
John C. James & Wm Hitchcock as Garnishers &c
The within named Robert Henry not found
within my County.
Sheriff's fee \$1.20

J. R. Rowley Sheriff
So Davis County Illinois

And afterwards to wit on the 8th day of August
AD 1856 the Plaintiffs by their Attorneys filed
with the Clerk of said Circuit Court, their dec-
laration in the above entitled Cause which
said declaration is in the words & figures
following to wit

The State of Illinois

County of St. David } In the Circuit Court

To the August Term AD 1856

John A. Watson, John P. Ritter and Ralph Clark
partners in Business under the Firm name and
style of Watson Ritter & Co Plaintiffs in this suit
by Wiegley & Jewett, their Attorneys Complain of
Robert Henry Defendant in this suit who
has been attached &c of a plea of Insuper
on the Case upon promises

For that whereas the said
Defendant heretofore to wit on the 21st day of
August in the year of our Lord One thousand
Eight Hundred & fifty five, at New York at Co.
County aforesaid, made his certain promising
note in writing bearing date a certain day
& year therein mentioned, to wit the year
aforesaid and thereby then & there promised
to pay to the order of the said Plaintiffs by the
firm name, of Watson Ritter & Co aforesaid

Eight months after the date thereof at the
office of James Carter & Co the sum of one
hundred & thirty six $5\frac{1}{2}$ /₁₀₀ Dollars with the current
rate of Exchange for value received and
then & there delivered the said promissory
note to the said Plaintiffs By reasons whereof
& by force of the Statute in such case made
& provided the said Defendant became liable
to pay to the said plaintiffs the said sum
of money in the said promissory note
specified according to the tenor & effect
of the said promissory note and being li-
able he the said Defendant in consideration
thereof afterwards to wit on the day and year
aforesaid at the County aforesaid undertook
& then & there faithfully promised the said
Defendant to pay ^{the} said sum of money
in ^{the} said promissory note specified according
to the tenor & effect of the said promissory
note

Yet the said Defendant not regarding
his said promise & undertaking but contriving
to injure & defraud the said plaintiffs in
this behalf hath not as yet paid the said
sum of money or any part thereof to the
said plaintiffs (although often requested so

to do) but to pay them the same hath hitherto
wholly neglected & refused, & still does neglect
& refuse to the damage of the said plaintiffs
of Two hundred Dollars & therefore they bring
suit &c

Wiegley Jewett
Atty. for Plffs

Copy of note sued on
\$136 ⁵²/₁₀₀ New York Aug 21st 1855
Eight months after date I the subscriber
of Galena, County of Jo Daviess State of Ills promise
to pay to the order of Watson Ritter & Co One
hundred and thirty six ⁵²/₁₀₀ Dollars at
Office of James Carter & Co Galena value received
payable with the Current note of Exchange
Robert Henry

Endorsed

Filed 8th August 1856.

Geo M Mitchell Clerk
pr W A Waddell deputy

And afterwards to wit on the 21st day of
August AD 1856 as yet of the said August
Term AD 1856 of said Jo Davie County Circuit
Court in the Record, of the proceedings thereof
is the following entry, to wit

128 John H Watson, John
P Ritter & Ralph Clark } Foreign Attachment
vs.
Robert Henry } Now at this day came

the plaintiffs by their Attor-
-ney and files proof of Publication according to
Law and the Defendants being three times solemn-
-ly called, came not but made default

It is thereupon Considered by the Court that
the plaintiffs have and recover of the Defendant
their Damages. But as these damages are
not certainly known. And it appearing to the
Court that this Action was founded upon
a certain promissory Note of hand for the
payment of money only. It is thereupon ordered
by the Court that the Clerk assess the same
And the Clerk having reported the same at
the sum of One hundred and thirty nine
Dollars and twenty five Cents. Which report
is approved by the Court. It is thereupon
Considered by the Court that the plaintiffs

have and recover of the defendant the said sum of One hundred and thirty nine Dollars and twenty four cents, so as aforesaid, assessed by the Clerk together with their Costs by them about their suit in this behalf expended. And that a Special Execution issue therefor against the property attached

The Notice & Proof of Publication referred to in the above recited order is in the words and figures following to wit

State of Illinois,

So Davis County, } In Circuit Court of said County
said County, to August Term AD 1856

John N. Watson John P. Ritter and
Ralph Clark partners doing business

under the name & style of Watson Ritter & Co

vs.

Robert Henry

Attachment

Public Notice is hereby given to the said Robert Henry that a writ of Attachment issued out of the Clerk's office of the said Davis County Circuit Court in and for the County of Davis and State of Illinois on the suit of John N. Watson, John P. Ritter and Ralph Clark partners doing business under the name firm

and Style of Watson Ritter & Co And against
the Estate of the said Robert Henry for the
sum of One hundred and thirty six
Dollars and fifty two Cents dated the 24th
day of May AD 1856. Directed to the Sheriff
of Goddard County to Execute Which said
Writ has been returned by the said Sheriff into
the said Clerk's office with the following
being endorsed thereon to wit: Executed
the within Writ this 24th day of May AD 1856
by reading the same to the within named
John C. Barnes and William Hitchcock
as Garnishees of the within named Robert
Henry "Not found within my County. Now
unless you the said Robert Henry, shall
personally be and appear before the judge of
the said Goddard County Court on the first day
of the next term, thereof to be holden at the Court
House in Galena on the third Monday in the month
of August next give special Bail and plead
to the said plaintiffs Action judgment will be
rendered against you in favor of the said
plaintiff

George M. Mitchell Clerk
Weigley & Jewett Attys for Plaintiff
Galena June 14th 1856

This is to Certify that the Notice, a copy of which is herewith annexed, was published in the Galena Daily Advertiser a newspaper published in Galena Illinois 4 weeks successively, the first of which publications was on the 16th day of June A.D. 1856.

N H Houghton & Co. Publishers
of said paper. Galena Aug 17th 1856.
Charge for publication \$8.00

Endorsed

Filed 21st August 1856.

Geo M Mitchell Clerk

And afterwards to wit on the 22nd day of August in said August Term A.D. 1856 of said Circuit Court in the Records of the proceedings of said Circuit Court in said cause is the following Entry to wit
John A Watson. John D Ritter
and Ralph Clark } Attachment
vs
Robert Henry }

The Plaintiffs by their Attorney comes & files Interrogatories to Garnishees.

The Interrogatories referred to in the last recited Entry are in the words & figures following to wit;

Aⁿ The State of Illinois }
 County of Jodavies } In the Circuit Court
 of the August Term A.D. 1856

In the Case of John N. Watson John P. Ritter &
 Ralph Clark partners in business under the
 firm name & style of Watson, Ritter & Leonard
 Robert Henry Defendants. In which John C.
 Gaines and William Hitchcock were duly
 summoned as Garnishees

Interrogatories to the Garnishee summoned,
 in this Case, to be administered to & answered
 by them both severally as partners in business
 under the firm name & style of William Hitch-
 -cock

Inter 1st Had you in your possession, charge,
 Custody, or control at the date of the service
 of the writ in this case upon you, to wit on the
 24th day of May A.D. 1856, any money rights
 credits or effects of any kind due to or owned
 or belonging to Robert Henry? If so state
 what rights the amount thereof, by whom
 due & when payable?

Inter 2nd Were you indebted to said Defendant
 Robert Henry at the date of the service of said
 Writ of Attachment. If so how much for
 what due & when payable?

Interrogatories

Inter 3^d Had you in your possession, Charge, or
Custody, at the date of the service of said
Writ of Attachment any Lands, Tenements,
goods or Chattels of said Robert Sperry.
If so state the description of each and the
return value thereof.

Inter 4th Had you at the date of the service
of said Writ, any rights credits or effects
of said Defendant, not heretofore specified
in your possession, Charge or Custody, from
you, or from any other person or persons
due and owing at the service of said
Writ, or at any time since, or which may
hereafter become due? If so state the
value Amount, When due & how payable
= ble?

Inter 5 Had you at the date of the service of said
Writ of Attachment in your possession a note
of R. W. Carson, or of any other person or
persons payable to said Defendant, and
placed in your hands by said Defendant
and the proceeds of which when collected
would belong to said Defendant. If so
state the date of said note or notes, when
they would become due, what was the
amount of the same, whether they or

either of them have been paid & when
& what has been done with such note or
notes & the proceeds thereof

Wigley & Jewett
Atty for Plffs

Endorsed

Filed 22nd Aug 1856

Geo M Mitchell Clk

And afterwards to wit on the 22nd day
of October AD 1856. in the October Term
AD 1856. of said Toxaway County Circuit
Court in the Record of the proceedings
thereof in said Cause. Appears of Record
the following entry to wit

John H Watson John
P Ritter & Ralph Clark } Attachment

vs
Robert Henry

Robert H Watson. Sheriff
Charles & Hitchcock & Gaines, Garnishees
summoned herein Come & file their answers
herein.

The answers of Hitchcock & Games
Referred to in the last recited entry
are in the words of figures following
to wit

"B"

State of Illinois } In the Circuit Court of
St Davie County } St Davie County
Oct Term 1856.

The joint and separate answer of William Hitchcock
and John C. Barnes to the Interrogatories filed
against them in the suit of John H. Walton et al
in Attachment against Robert Henry now
pending in the Circuit Court of St Davie
County. These Affiants making answer to
the various Interrogatories. Answering states
in answer to the first Interrogatory
That they or either of them have nothing
belonging to said Robt Henry in their
possession, Charge, Custody, or Control
neither money rights credits or effect of
any kind or nature whatever either due or
to become due. Neither lands or tenem-
ents. Goods or Chattels rights or credits at
the date of the service of the Garnishee
process in this case or at any time since
Neither are they indebted to the said
Henry in any amount or were they or either
of them indebted to him at the date of the
service of the Garnishee in this case or at
any time since in any sum whatever
neither had they or either of them any goods,
chattels, rights credits or effects from any

Answer to Interrogatories

other officers person for the use of said Henry in their Custody, possession or control

These Affiants furthering Answering States that before the Service of the Garnished process in this Case said Robert Henry endorsed And assigned to William Hitchcock a promissory Note of Robt W Carson drawn in favor of said Henry in satisfaction and payment of the following Claim Against said Henry To wit. To pay and satisfy an Endorsement of Wm Hitchcock for said Henry amounting to \$2105.00, also to pay and satisfy in full a claim of M S Lincoln Sec of Boston for the sum of \$2200⁰⁰ And the Balance of said Note to be paid pro Rata on the following

Gardner & Thayer Boston	\$400 ⁰⁰
Lee & Co "	1000 ⁰⁰
B L Merriell & Co "	1400 ⁰⁰

which said Note of Robt W Carson was for the sum of \$7699.22 drawn and dated on the 10th May 1856 at 12 Mos And the same was endorsed and assigned to the said Wm Hitchcock in payment and satisfaction of the above Claims by said

Henry before the suing out or service of the
process in this case.

And these Affiants
further state they have collected the same
from Robt McCarson, and Cancelled and
surrendered said Note to him before the
service of the process in this case. And that
they have nothing either Money Goods, Chattels
rights Credits or effects Lands or tenements
debts due or to become due owing to said
Robt Henry in their hands. Nor have
they had any thing at any time since
the service of the process in this case
in their hands of said Robt Henry
or for his use.

And having answered fully prayer
to be discharged with costs &c

Subscribed & sworn to
before me this 22nd day
of October 1856

Wm Stetchecock
John C. Gaines

Benj. Coombe J.P.

Endorsed

Filed 22nd Oct 1856.

Geo M. Mitchell Clerk

And afterwards to wit on the 30th day of
October as yet of said October Term AD
1856. of said So. Davis County Circuit
Court in the Record of the proceedings thereof
in said Cause. appears of Record the
following Entry to wit-

John H. Watson John
Ritter & Ralph Clark

vs
Robert Henry

Attachment

On Motion of Plaintiffs
Attorney leave is granted them by the Court to
file additional Interrogatories to the Garnishers
summoned herein. And said Interrogatories
^{accordingly} are filed

^{additional}
The Interrogatories referred to in the last-
mentioned order are in the words and figures
following to wit

Watson Ritter & Co

vs
Robt Henry

In the Circuit Court
of the Oct Term 1856

Additional interrogatories to
be answered by William H. Hish-
cock & John C. Gaines
Garnishers.

I Have you paid Lincoln & Co of Boston

Additional
Interrogatories

the sum of \$22000 or any part of it; and if so how much and when did you pay the same and how did you do it; by paying the money or by giving obligations?

2. Have you or either of you paid Gardner & Thayer of Boston \$900.00 or any portion of that sum and if so how much? And when did you pay it?

3 Have you or either of you paid Lee & Co of Boston \$1000.00 or any part of the amount and if so how much and when?

4 State whether or no you or either of you compromised the claim of B & L Merrill & Co for \$1400.00 after receiving the note of R W Carson, by giving the note of William Hitchcock for \$425.00? And if so have you or either of you paid said note of \$425.00? Have you or either of you ever paid B & L Merrill & Co any money? Did you not refuse to pay them their claim?

5 Was there any written assignment executed to you by Robt Henry of the note of Robt W Carson for \$7699.22? If there was file a copy of the same with your

Answers to these Additional Interrogatories

C. State how much of the money received by you for Carsons Note, ^{in your hands for} now remains in ^{the} your hands of either of you? State how much you have paid out & to whom?

Wiegley & Jewett
Attys for Dfnd.

Endorsed

Filed 30th Oct 1856

Geo M Mitchell Clerk

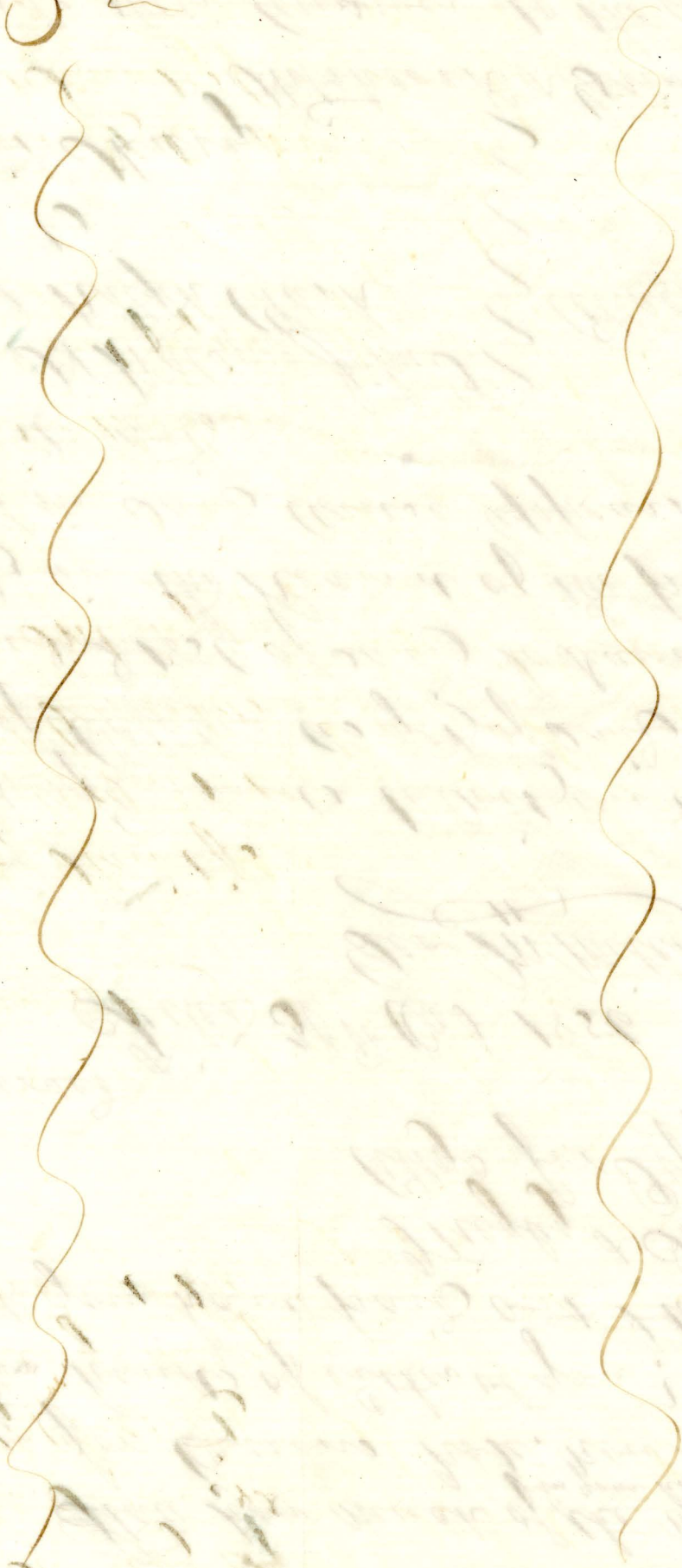
And afterwards to wit, on the 31st day of October as yet of said October Term A.D. 1856 of said, Lordavup Circuit Court, in the Record of the proceedings thereof in said Cause appears the following entry to wit

John H Watson John P
Ritter & Ralph Clark } Attachment

vs
Robert Henry

Hitchcock & Games. come
and file their answer to the Additional
Interrogatories of the Plaintiff filed herein

The Answers to the additional Interrogatories
referred to in the last recited Entry are
in the words and figures following
to wit



"D"

Walter Rutter & Co

vs

Robert Henry

In the Circuit Court

Oct Term 1856.

And now at this day
comes William Hitchcock and John
C. Games and makes answer to the add-
itional interrogatories filed in this case.
Makes answers and states in answer to the
first Interrogatory. We nor neither of us
have paid M. S. Lincoln & Co anything on
said Indebtedness.

In Answer to second Interrogatory.
We nor either of us have paid Gardner & Thayer
anything on said Indebtedness.

In answer to third Interrogatory.

We nor either of us have
paid Lee & Co anything on said Indebtedness.

In answer to fourth Interrogatory.
These Garnishees answer that Wm Hitchcock
compromised with the agents of B. S. Merrill & Co
by purchasing from him the notes of Robt
Henry for fourteen hundred dollars and
in payment for said notes of Henry so said
to said Wm Hitchcock by the agents of said
Merrill & Co. he the said Wm Hitchcock

Answers to Additional
Interrogatories

Executed his promissory note for four hundred
and ^{twenty five} dollars at thirty days after date. Which last
note has not been paid. Which last note
has not been paid for the reason that
before said note became due said Merrill
slew by their ^{said} Agent sued out an Attachment
against said Henry on another claim
due them by said Henry and Garnished
these Affiants by And other Garnishees being
served on these Affiants by other Creditors
of said Henry. These Affiants were adv-
ised not to pay said Notes until the ma-
tter was adjudicated.

In answer to fifth Interro-
-gatory

Answering. States. The only assignment
of Robt Carson's note to Wm Hitchcock
was his endorsement of his name "Robt Henry"
on the back of the note when he delivered the
same to Wm Hitchcock.

In answer to sixth Interrogatory
These Affiants Answer that Wm Hitchcock
arranged with Robt Carson to receive pay-
ment of said Note in Goods and Merchandise
And on Carson delivering said Goods his note
was delivered up to him. No part of which was paid in Money by said Carson.

These affiants further state. they have
disposed of said Goods and have
the proceeds in money and in the
notes of the purchasers in the
possession of Wm. Hitchcock who
hold the same as the agent for the
parties for whose benefit the same
was received

and having answered fully prays
to be discharged with their costs

Wm. Hitchcock

Sworn & Subscribed

before me this

the 30th Oct 1856

Benj. Coombs J.P.

Endorsed

Filed 31st Oct 1856

Geo. M. Mitchell

CLK

And afterwards to wit on the 18th day of November as yet of said October Term A.D. 1856. of said Jo Daviess County Circuit ^{Court} (the Honorable J. Wilson Drury. Judge of the Sixth Judicial District of Illinois presiding in the absence of the Honorable Benjamin R. Sheldon) in the Records of the proceedings thereof in said Cause is the following entry to wit

John A. Wilson John P. Ritter
vs
Ralph Clark partners & Co Attachment

Robert Henry

Now comes on to be heard the motion heretofore filed in this Cause to discharge the Garnishes herein and the Cross motion for judgment against Garnishes which motions after argument, are taken under advisement by the Court,

And afterward to wit on the 19th day of November as yet of said October Term A.D. 1856 of said Jo Daviess County Circuit Court, in the Record of the proceedings thereof in said Cause appears the following entry. To wit;

John H. Watson John P
Ritter & Ralph Clark *Plaintiffs* Attachment
vs
Robert Henry

"E" Now at this day came on
to be heard the motion of the plaintiffs by their
Attorneys for judgment against the Garnishes
John C. Barnes and Wm. Hitchcock upon
their answers to the Interrogatories heretofore
filed in this Cause. Which after argument
by Counsel was submitted to the Court.
After hearing the arguments and upon
inspection of the answers and being fully
advised in the premises sustains the motion
and renders judgment against the Garnishes
William Hitchcock for the sum of One thousand
and sixty nine dollars and Twenty two cents
the amount appearing by the said answer
to be in the hands of the said Garnishes belonging
to the said Defendant. It is thereupon con-
sidered by the Court that the said Plaintiffs
have and recover of the said Garnishes the
said sum of One thousand and sixty nine
dollars and twenty two cents and that Execution
issue therefor. And it is further ordered by
the Court that the Clerk make an estimate

Judgment

of the several Amounts to be paid^{to} by each
creditor upon judgments in Attachments
rendered or that may be rendered against
the said Defendant upon process return-
=able to the August Term AD 1856 of this
Court and certify the same to the Sheriff

And afterwards to wit on the 22nd day of
November as yet of said October Term
AD 1856 of said Jo Davie County Circuit
Court in the Record of the proceedings thereof
in said Cause appears the following entry to wit.

John A Watson. John P Ritter

and Ralph Clark

vs

Robert Henry

Attachment

Now at this day comes on
to be heard the motion heretofore filed in this Cause
by the Garnishee Hitchcock by his Attorney to set
aside the finding ~~of the jury~~ and Judgment
heretofore found in this Cause. Which motion
after argument by Counsel is taken under
advisement by the Court

And afterwards to wit on the 24th
day of November as yet of said October Term

The motion Referred to in the last recited
Entry is in the words and figures following
to wit

John A Watson et al

vs

W Hitchcock

Cir Court

October Term 1856

And now at this day comes
the defendant Wm Hitchcock by his Attorney and
moves the Court to vacate and set aside the
order and Judgment in the above entitled Cause
for the following reasons to wit

- 1 Because said finding is Contrary to Law
- 2 Because said finding is Contrary to the
facts and answers on file
- 3^d Because said finding and Judgment
should have been for the Defendant

M Johnson

Atty

Endorsed

Filed Nov 21st 1856

W R Rowley Clerk

And afterwards to wit on the 24th day of November 1856 as yet of said October Term 1856 of said So. Davis County Circuit Court in the Record of the proceedings thereof in said Cause is the following entry to wit,

John H. Watson John P

Ritter and Ralph Clark *procurator* } Attachment

20
Robert Henry }

The Court being fully advised upon the motion to vacate the order overrules the same. Which ruling by the Court is excepted to by the Garnishee William Hitchcock. And thereupon the said Garnishee William Hitchcock prays an appeal to the Supreme Court which is granted by the Court upon said William Hitchcock entering into an Appeal Bond in the sum of Fifteen hundred dollars within thirty days from the rising of this Court with James Carter and Madison Y. Johnson or either of them as security and it is further ordered by the Court that Robert H. Carson and John C. Games summoned as Garnishees be discharged.

And afterwards to wit on the 23^d day of December A D 1856. the Garnishee Wm. Hitchcock comes & files his appeal Bond. which said Bond is in the words and figures following to wit

Know all men by these presents that me William Hitchcock as principal and Madison & Johnson as security - are held and firmly bound unto John H. Watson, John P. Ritter and Ralph Clark Partners &c in the penal sum of Fifteen hundred Dollars for the payment of which well and truly to be made we bind ourselves our heirs executors and Administrators ^{jointly} ~~jointly~~ Generally and firmly by these presents sealed with our seals and dated this twenty third day of December A D 1856

The Condition of the above obligation is such that whereas, the above named John H. Watson John P. Ritter and Ralph Clark partners &c at the October Term of the Circuit Court of St. Louis County Missouri obtained a judgment against the said William Hitchcock as the Garnishee of Am Robert Henry for the sum of One thousand and sixty nine dollars and

twenty two
~~some~~ cents And Whereas the said
William Hitchcock did at the October
Term of the Circuit Court aforesaid pay
an appeal from said Judgment to the Supr-
eme Court of Illinois And Whereas the
said prayer of the said William Hitch-
cock was granted Conditioned that he
would enter into Bond in the sum of
Fifteen Hundred Dollars with the above
named Madison Y Johnson or James
Carter for security within thirty days of
the rising of said Court. And Whereas
the said Circuit Court at the October
term thereof aforesaid did rise on the
24th day of November A.D. 1856 now if the
said William Hitchcock shall prosecute
his said appeal with effect and shall
pay ~~the~~^{to} said John H. Watson, John F.
Ritter and Ralph Clark partners &c
whatever Judgment, Costs, interest & damages
may be rendered against him the said William
Hitchcock on the trial or dismissal of
said Appeal in the Supreme Court afo-
-said. then the above obligation to be void otherwise
to remain in full force & ~~entire~~ effect

a/signed Dec 23^d 1856.

W R Howley att

Wm Hitchcock Seal
M Y Johnson Seal

Endorsed
Filed Dec 23^d 1856

W R Rowley Clerk
By A Philley Deputy

The Bill of Exceptions in the above entitled Cause is in the words and figures following to wit.

John H. Watson et al. vs Robert Henry
In the Circuit Court of Jo Daviess County Illinois
October Term 1856.

Be it remembered on this the 19th day of November A.D. Eighteen hundred & fifty six and 40th of the October Term of said Court The motion of the Garnishees Wm. Hitchcock and John C. Barnes to be discharged on the answer and additional answer filed by them in this cause and the Cross motion of the Plaintiff's Attorney to Charge said defendants in the Garnishee came on to be heard before the Court. Which answer and motion is as follows.

State of Illinois vs
County of Jo Daviess } In the Circuit Court of the
August Term A.D. 1856

In the Case of John H. Watson, John P. Ritter and Ralph Clark Partners in business under the firm name and style of Watson Ritter & Co versus Robert Henry, Defendants, in which John C. Barnes and William Hitchcock were duly summoned as Garnishees

H.

Indemnity

Interrogations to the Garnishees summoned in this case to be administered to & answered by them both severally & as partners in business under the firm name & Style of William Hitchcock

Inter 1st Had you in your possession, Charge, Custody or Control, at the date of the service of the writ in this case upon you to wit, on the 24th day of May A D 1856. any money rights, Credits or effects of any kind due to owned by, or belonging to Robert Henry? If so State what rights, the amount thereof, by whom due & when payable?

Inter 2 Were you indebted to said Defendant Robert Henry at the date of the service of said writ of Attachment. If so how much for what due and when payable?

Inter 3 Had you in your possession Charge, or Custody at the date of the service of said writ of Attachment any lands, tenements, goods or chattels of said Robert Henry. If so State the Description of each and the value thereof.

Inter 4th Had you at the date of the service of said writ, any rights, credits or effects of said Defendant not heretofore specified in your possession, Charge or Custody, from you or from

any other person or persons, due and owing,
at the service of said writ, or at any time since
or which may hereafter become due. If so state the
value, amount, when due & how payable?

Inter & Had you at the date of the service of
said writ of Attachment in your possession a
note of R H Carson, or of any other person or persons
payable to said Defendants and placed in your
hands by said Defendants and the proceeds of
which when collected would belong to said defendant
If so state the date of said note or notes, when
they would become due, what was the amount of
the same, whether they or either of them have been
paid, when & what has been done with such note
or notes, & the proceeds thereof

Wigley Jewett

Att'y for Plffs

Enc

Endorsed

Filed 22nd August 1856.

Geo M Mitchell Clerk

State of Illinois, In the Circuit Court of So.
St. David's County, St. David's County, Oct Term 1856

"B"

The joint and separate answer
of William Hitchcock and John C. Barnes
to the Interrogatories filed against them
in the suit of John H. Watson et al. in Attachment
against Robert Henry, now pending in the Circuit
Court of St. David's County.

These affiants making
answer to the various Interrogatories, answering
states in answer to the first Interrogatory.

That they or either of them have nothing be-
longing to said Robt Henry in their prop-
erty charge custody or contr of neither money
rights credits or effect of any kind or nature
whatever either due or to become due neither lands
or tenements goods or chattels rights or credits
at the date of the service of the Garnished pro-
cess in this case or at any time since. Neither
are they indebted to the said Henry in any
amount or were they or either of them indebted
to him at the date of the service of the Garnished
in this case or at any time since in any
sum whatever Neither had they or either of
them any Goods Chattels rights credits or
effects from any other person for the use

Answers to Interrogatories

of said Henry in their Custody, possession
or control

These affiants further answering
state that before the service of the Garnishee
process in this case, said Robert Henry endor-
sed and assigned to William Hitchcock
a promissory Note of Robt W Carson drawn
in favor of said Henry in satisfaction and
payment of the following claim against said
Henry. To wit To pay, and satisfy an endorse-
ment of Wm Hitchcock for said Henry. Amount-
ing to \$2105⁰⁰. also to pay and satisfy in full
a claim of M. S. Lincoln & Co of Boston for the
sum of \$2200⁰⁰ and the Balance of said
note to be paid pro rata on the following

Gardner & Thayer	Boston	\$900 ⁰⁰
------------------	--------	---------------------

Lee & Co	"	1000 ⁰⁰
----------	---	--------------------

E B & L Merrill & Co	"	1400 ⁰⁰
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Which said note of Robt W Carson was for the
sum of \$7699.22 drawn and dated on the
10th May 1856. at 12 mos. and the same was
endorsed and assigned to the said Wm Hitchcock
in payment and satisfaction of the above claims
by said Henry before the suing out or service
of the process in this case.

And these Affiants further state

they have collected the same from Robt W
Curson and Cancelled and surrendered said
note to him before the service of the process
in this case. And that they have nothing, either
money, goods, chattels, rights, credits or effects,
Lands or tenements, debts due or to become due,
owing to said Robt Henry in their hands
nor have they had any thing at any
time since the service of the process in
this case in their hands of said Henry
or for his use.

And having answered fully pray to be disch-
arged with Costs &c

Subscribed & sworn to
before me this 22nd day
of October 1856

Benj. Crambe JP

Endorsed

Wm. Vitchorek

John C. Gurns

Filed 22nd Oct 1856

Geo. Mitchell Clerk

Wataon Butler & Co In the Circuit Court
of the October Term 1856

vs
Robt Henry 3 Additional Interrogatories
to be answered by William
Nitchcock & John Charles
Garnishus

1st Have you paid Lincoln & Co of Boston the
sum of \$2200.00. or any part of it and if so
how much and when did you pay the same and
how did you do it; by paying the money or by
giving obligations?

2^d Have you or either of you paid
^{Garrison & Thayer} Lee & Co of Boston ⁽⁹⁰⁰⁾ \$900.00 or any ^{portion} of that ^{sum} amount
and if so how much? and when did you pay it?

3^d Have you or either of you paid Lee & Co
of Boston \$1000.00 or any part of the amount; and
if so how much and when?

4th State whether or no you
or either of you or either of you compromised the
claim of R L Merrill & Co for \$1400.00 after
receiving the note of R W Carson. by giving
the note of William Nitchcock for \$425.00;
and if so have you or either of you paid
said note of \$425.00? Have you or either
of you ever paid B L Merrill & Co any money.
Did you not refuse to pay them their claim?

Answers to additional Interrogatories

5- Was there any written assignment executed to you by Robt Henry of the note of Robt Carson for \$7699.22 If there was file a copy of the same with your answers to these ^{additional} interrogatories

6 State how much of the money received of you for Carsons note now remains in your hands or in the hands of either of you? State how much you have paid out - And to whom?

Wiegley & Jewett
Atty's for Plff

Endorsed

Filed 30th Oct 1856

Wm M Mitchell
Wiegley & Jewett

Watson Ritter & Co. In the Circuit Court
vs 2 Oct Term 1856
Robt Henry 3

And Now at this day comes William
Hatchcock and John C. Barnes and makes
answer to the additional interrogatories filed
in this case. Makes answer and states in
answer to the first Interrogatory. We nor either
of us have paid M. S. Lincoln & Co anything
on said Indebtedness.

Answers to Additional Interrogatories

In answer to second Interrogatory. We nor either of us have
paid Gardner & Thayer anything on said
Indebtedness. In

In answer to third Interrogatory.
We nor either of
us have paid Lee & Co anything on said inde-
btedness.

In answer to fourth Interrogatory.
This garnishes answers that Wm. Hatchcock
compromised with the agent of B. S. Merrill
& Co by purchasing from him the notes of
Robt. Henry for fourteen hundred dollars
and in payment for said notes of Henry's
sold to ^{said} Wm. Hatchcock by their agent
of said Merrill & Co. he the said Wm. Hatchcock
executed his promissory note for four hundred

and twenty five dolls at thirty days after date. which last note has not been paid, for the reason that before said note became due said Merrill & Co by their said agent sued out an attachment against said Henry on another Claim due them by said Henry ^{and other garnishees being served on these affiants} and garnished these affiants, by other Creditors of said Henry. these affiants were advised not to pay said note until the matter was adjudicated.

In answer to fifth Interrogatory answering states the only assignment of Robt W Carsons note to Wm Hitchcock. was his endorsement of his name "Robt Henry" on the back of the note when he delivered the same to Wm Hitchcock.

In answer to sixth Interrogatory

These affiants answers that Wm Hitchcock arranged with Robt W Carson to receive payment of said note in Goods and Merchandize and on Carson delivering said note Goods his note was delivered up to him no part of which was paid in money by said Carson.

These affiants further states they have disposed of said Goods and have the

proceeds in money and in the notes of the
purchasers in the possession of Wm Hatchcock
who hold the same as the agent for the parties
for whose benefit the same was received

And having answered fully prays to be
discharged with their costs

Wm Hatchcock

Sworn & Subscribed to

before me this the 30th

Oct-1856.

Benj Combs
J. J.

Endorsed

Filed 31st Oct 1856

Geo M Mitchell

J. J. Clerk

Which motion to discharge the Court
overruled and sustained said Croft
motion to charge the defendant Hatchcock
in the Garnishee and thereupon rendered
the following Judgment.

John H. Watson, John F.
Ritter and Ralph Clark
Judges &c

vs
Robert Henry

Attachment

Now as this day
came on to be heard the motion of the plaintiffs
by their Attorneys for Judgment against the
Garnishee John C. Garces and William
Hitchcock upon their answers to the Interrogatories
heretofore filed in this Cause; Which after argument
was by Counsel was submitted to the Court
after hearing the arguments, and upon inspec-
tion of the answers and inspection of the answers
and being fully advised in the premises sustains
the motion, and renders judgment against
the Garnishee William Hitchcock for the sum
of One thousand and sixty nine Dollars and
Twenty two cents. The amount appearing by the
said answer to be in the hands of the said
Garnishee belonging to the said Defendant.
It is thereupon considered by the Court that
the said plaintiffs have and recover of the
said Garnishee the said sum of One thousand
and sixty nine Dollars and twenty two cents
and that execution issue therefor and it is

E

Judgment

further ordered by the Court, that the Clerk make
an estimate of the several amounts, to be paid
to each creditor upon judgments in Attachment
rendered or that may be rendered against the
said Defendant upon process returnable to
the August Term A.D. 1856 of this Court and
certify the same to the Sheriff

To the overruling of which motion
and sustaining said Cross Motion and entering
said Judgment against Wm. Hitchcock, the
said Hitchcock then and there excepted,

This being all the evidence (The answers of said
Garnishees) in said Cause, the Defendants in
the Garnishee prayed that the exceptions to
the order & judgment aforesaid may be
certified in pursuance of Law.

Which is accordingly done

J. M. Drury Seal
Endorsed

Filed Nov 22nd 1856

W. R. Rowley, Clerk
J

State of Illinois
In Daviess County $\frac{3}{4}$ I William R Rowley, Clerk
of the Circuit Court in and
for said County hereby certify that the foregoing
transcript is a true and correct Copy from the
Record of all the proceedings which were had in
the said Circuit Court in the aforesaid case
of John H Watson et al vs Robert Henry
In testimony whereof I have hereunto set
my hand and affixed the seal of
the said Court at my Office in
Galena this 21st day of February A.D. 1857
Attest W. R. Rowley, Clerk.



Clerks fees Transcript \$12.00
Certificate Seal .35
\$12.35

State of Illinois

Supreme Court of Illinois
Third Grand Division
At Ottawa,

And now at this day comes the said William
Herchcock the Applicant and says in the above

And foregoing Record and proceedings there
is manifest error And in pursuance to
the provisions of the Statute in such cases
made and provided Shews to the Court the
following errors

1st Because the Court overruled the motion
of the Gamashiee Hitchcock to be discharged

2nd Because the Court sustained the cross
motion of the plaintiffs in the Attachment
to charge the Gamashiee

3rd Because the Court rendered Judgment
against the Gamashiee when he should
have been discharged

4th Because the Judgment is erroneous in
form, and concludes the rights and interests of
parties not before the Court #

5th And for other reasons apparent on the face
of the Record and proceedings Wherefore he prays
that said Judgment and proceedings may be reversed
annulled and made void And said Cause remanded to the

M. V. Johnson Atty
for Hitchcock Gamashiee

And the said Appellors by Seland & Seland
their Attorneys say there is no such error in said
Record & proceedings as is above specified And in
they pray that the Judgment may be affirmed
Seland & Seland

5th Because the Claim, if any existed, was
Not liable to Attachment, or garnishment
proceeding, it being purely equitable.

143.
Supreme Court

William Hitchcock

Appellant

vs.

John H. Watson et al,

Appellees.

Filed April 22, 1884
L. Leland
Clerk

5.50 pd

William Hitchcock }
 vs. } Argument on the part
 John H. Watson, } of the Appellant.
 John P. Ritter & }
 Ralph Clark }

From an Examination
 of the record in this Cause it will be
 found that no evidence was introduced
 other than the answers of Hitchcock
 and Gairns.

Their answers show that neither of
 them had any thing in their hands, possession,
 or control belonging to Robert Henry, the
 Defendant in the Attachment Suit,
 at the date of the service of the
 Garnish process upon them, and their
 answers being the only evidence, they should
 have been both discharged.

The Record presents the singular
 fact of a judgment for the sum of
 \$1069.22, rendered against Hitchcock, as
 Garnished of Henry, when the only judgment
 against Henry was for the sum of \$139.25.

It does not appear that any other
 Attachments were made returnable to the
 same terms, or that any other judgment
 was ever obtained against the Defendant
 Henry.

If ~~the~~ Hitchcocks had held
 property of Deft Henry liable to the
 process of Attachment, by what
 authority, and under what pretence was

it that a judgment for \$1069.22 should have been rendered against him? Nothing appears in the Record upon which that judgment could have been based. If it had ~~have~~ been for \$7699.22, the amount of the Carson note assigned to him by Henry, it might have been supposed that the Court had voluntarily assumed that the assignment of that note to Hitchcock was fraudulent; but there is no effort to establish fraud, and no pretence that any existed. Consequently the judgment must be erroneous.

The Carson note was assigned by Henry to Hitchcock to pay and satisfy certain debts particularly described in the answers to the interrogatories, which will be seen by reference to the printed Abstract of the case.

The Assignment, which was a mere endorsement, transferred the legal title to the note, & to the avails thereof, and the right of action on the same, to Hitchcock, and the answers show that there was nothing, either legal or equitable, remaining in Henry. It is conclusively shown that Henry had no subsisting claim against Hitchcock at the time of

the service of the garnish process upon him.

If it should be conceived that there was any species of interest, (which I deny,) remaining in Henry, what was the nature of that interest?

Hitchcock received the legal title to the note first - for his own debt, and secondly, as trustee for the Boston Creditors named in his answer -

The question whether he had or had not paid said Claims, is certainly one which cannot affect the question.

It would be a very proper inquiry as between Hitchcock & those Creditors, but I submit that it was entirely immaterial in the case before the Court.

But suppose, for the sake of the argument that Hitchcock had been holding a portion of the note for Henry, what then? The interest of Henry would have been purely Equitable. He could not have maintained an action at law for it, and unless he could have enforced a claim against him at law, Hitchcock could not be garnished by Henry's Creditor.

This doctrine is fully sustained, and is held in the Case of *May vs Baker* (15 Illinois 90).

And that that is the uniform doctrine of the several States, see *Drake on Attachments*, Sec. 412, et seq.

J. L. Cook, Atty. Gen. Ill.

143

Supreme Court.

J^m Hitchcock

vs.

John H. Watson et al.

Argument

H. Loop

for Appellant

Filed April 23, 1853

S. Leland
Clerk