

No. 13261

Supreme Court of Illinois

Cooley et al

vs.

Sears & Co.

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 242.

Cooley
vs
Hewlett

Prayer

1861

STATE OF ILLINOIS---SUPREME COURT.

APRIL TERM, A. D. 1861.

APPEAL FROM LEE.

FRANCIS B. COOLEY, ET AL, Appellants,

VS.

ANDREW B. SEARS AND HORATIO G. HOWLETT,

APPELLEES.

BRIEF.

This was an action of assumpsit and an attachment in aid, to collect three Promissory Notes made by Sears & Howlett, then due and payable to Cooley, Wadsworth & Co., Appellants. Howlett filed his plea to Declaration, interposing,

1. The general issue.
2. That in July, 1855, Sears & Howlett made an assignment of a large amount of their property to J. L. Adams, to pay their creditors, including Cooley, Wadsworth & Co. ; that in August, 1855, Cooley, Wadsworth & Co., and other creditors, took and assumed the control of property out of the hands of Adams, and directed him to deliver the same to Sears, to pay Sears & Howlett's debts, and that

he so did ; and thereupon Sears took possession thereof, and disposed of the same, without the knowledge and against the wish of Howlett.

On these pleas issues were joined ; a trial had by Jury, and a verdict rendered in favor of Appellees.

PLAINTIFFS' EVIDENCE.

The three Promissory Notes.

DEFENDANTS' EVIDENCE.

1. The assignment of Sears & Howlett to J. L. Adams.
2. An instrument in writing, with the signatures of plaintiffs and other creditors.

See Abstract, page 3.

3. J. L. Adams' testimony. See Abstract, pages 3, 4 and 5.

Plaintiffs objected to the reading of the said instrument in writing to the Jury, as follows :

1. It is not material to the issue.
2. Its execution had not been proven.
3. All the creditors had not signed it.
4. Howlett was knowing to and consented to the same ; which were overruled by the Court and the instrument read, and the plaintiffs excepted thereto.

Plaintiffs then asked the Court to instruct the Jury by written instructions, Nos. 1, 2, 3 and 4, (see Abstract, page 5,) which instructions were refused ; and the plaintiffs thereupon entered their exception to such ruling.

The Jury returned their verdict in favor of appellees.

Plaintiffs entered their motion for an arrest of Judgement and for a new trial, which were overruled by the Court, to which plaintiffs excepted and prayed an appeal to correct all of said errors, and to that end they say :

1. The said special plea in fact allowed no issue, it being contradictory.

2. There is no evidence to show that plaintiffs assumed control or took possession of the property assigned, as said plea alledges. (See plea in Abstract, page 2.)

3. Neither the said assignment, nor the said agreement, were proper evidence under the testimony of Adams ; because—

1. Its execution was not proved. Adams testifies, that "he did not see all the firms sign their names, and was acquainted with only a part of the signatures to it."

2. All the creditors of Sears & Howlett did not sign it, nor is it proven that all the creditors in Chicago signed it, as by its terms was required. Adams testifies, "that the paper was left with some member of each firm, whose signatures are to it, and they represent all the creditors in Chicago he knew of. E. A. Damon & Co., of St. Louis, were creditors and would not sign the agreement."

3. Howlett originated and planned the procurement of the said instrument, and he cannot take advantage of his own act. Adams testifies: "*I think Howlett and myself (before I went to Chicago to get the consent of the creditors of Sears & Howlett to give the property assigned into the hands of Sears,) talked the matter up. I know the matter was talked up between us. It is my impression that Howlett suggested to me the making of this arrangement with the creditors. I don't remember whether Howlett was in Chicago at the time I went in to get the creditors' consent to transfer the property assigned to Sears. I presume he was in Chicago at the time I was there.*"

4. Howlett & Sears, so far as plaintiffs were concerned, took the extension of the time of payment mentioned in said agreement. This was not a consideration by which Howlett could take anything more than the extension. By taking this he consented to the agreement.

Wadsworth vs. Thompson, 3 Gill 428.

5. The instrument itself is evidence of such consideration.

6. There was no agreement to release and discharge Howlett from his liability on the notes, and no consideration for such release, and there was no intention to release Howlett. "A release must be the voluntary act of the creditor, and not by the operation of law."

The People vs. White, *et al*, 11 Ills. 246.

"A consideration of some kind is necessary to support a release not under seal."

Kidder vs. Kidder, 33 Penn. R. 268.

McLarren vs. Robertson, 20 Penn. 125.

"A release of an insolvent, provided that it should be null and void,

if not agreed to by all the creditors in Philadelphia. Held that he must prove that all such creditors had assented to it."

Lower vs. Clement, 25 Penn. 63.

A cause of action accruing from a breach of covenant or agreement cannot be discharged by any act of plaintiff, short of release, or the acceptance of something in satisfaction of that cause of action.

Nesbitt vs. McGehee, 26 Ala. 748.

Miller vs. Fenton, 11 page 18.

Nothing whatever has been paid to plaintiffs for a release of their debt. They have received no benefit ; they have not agreed to release it, and have had no intention of releasing Howlett from liability.

7. Said instrument was not in any sense material or proper evidence, either under the issue or proof.

8. The instructions, Nos. 1, 2, 3 and 4, were proper, and should have been given to the Jury.

9. The verdict was contrary to law and the evidence.

C. M. HAWLEY,

Appellants' Attorney.

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Supreme Ct of Ills
Francis B Cooley et al

vs

Horatio G Howlett
et al

Brief

Filed Apr 17, 1861

L. Delano

clerk

STATE OF ILLINOIS---SUPREME COURT.

APRIL TERM, A. D. 1861.

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VS.

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APPELLEES.

B R I E F.

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he so did ; and thereupon Sears took possession thereof, and disposed of the same, without the knowledge and against the wish of Howlett.

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The Jury returned their verdict in favor of appellees.

Plaintiffs entered their motion for an arrest of Judgement and for a new trial, which were overruled by the Court, to which plaintiffs excepted and prayed an appeal to correct all of said errors, and to that end they say :

1. The said special plea in fact allowed no issue, it being contradictory.

2. There is no evidence to show that plaintiffs assumed control or took possession of the property assigned, as said plea alleged. (See plea in Abstract, page 2.)

3. Neither the said assignment, nor the said agreement, were proper evidence under the testimony of Adams ; because—

1. Its execution was not proved. Adams testifies, that "he did not see all the firms sign their names, and was acquainted with only a part of the signatures to it."

2. All the creditors of Sears & Howlett did not sign it, nor is it proven that all the creditors in Chicago signed it, as by its terms was required. Adams testifies, "that the paper was left with some member of each firm, whose signatures are to it, and they represent all the creditors in Chicago he knew of. E. A. Damon & Co., of St. Louis, were creditors and would not sign the agreement."

3. Howlett originated and planned the procurement of the said instrument, and he cannot take advantage of his own act. Adams testifies: "*I think Howlett and myself (before I went to Chicago to get the consent of the creditors of Sears & Howlett to give the property assigned into the hands of Sears,) talked the matter up. I know the matter was talked up between us. It is my impression that Howlett suggested to me the making of this arrangement with the creditors. I don't remember whether Howlett was in Chicago at the time I went in to get the creditors' consent to transfer the property assigned to Sears. I presume he was in Chicago at the time I was there.*"

4. Howlett & Sears, so far as plaintiffs were concerned, took the extension of the time of payment mentioned in said agreement. This was not a consideration by which Howlett could take anything more than the extension. By taking this he consented to the agreement.

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7. Said instrument was not in any sense material or proper evidence, either under the issue or proof.

8. The instructions, Nos. 1, 2, 3 and 4, were proper, and should have been given to the Jury.

9. The verdict was contrary to law and the evidence.

C. M. HAWLEY,

Appellants' Attorney.

Supreme Ct of Illinois

Francis W. Cooley et al

vs
Horatio G. Howlett
et al

Brief

Filed Apr 17, 1861
A. Leonard
Clerk

STATE OF ILLINOIS, SUPREME COURT.

TO APRIL TERM, A. D. 1861.

APPEAL FROM LEE.

FRANCIS B. COOLEY, ELISHA S. WADSWORTH AND
JOHN V. FARWELL, Composing the Firm of COOLEY,
WADSWORTH & CO., APPELLANTS.

VS.

ANDREW B SEARS & HORATIO G. HOWLETT, Composing
the Firm of A. B. SEARS & CO. APPELLEES.

ABSTRACT OF THE RECORD.

This Suit was commenced by said Cooley, Wadsworth & Co., appellants, against said A. B. Sears & Co., Appellees, on the 9th day of June, 1857, by Summons in assumpsit in the Circuit Court of Lee County, to collect three promissory notes made by the said Sears & Howlett, which were then the property of the said Cooley, Wadsworth & Co., which said notes are as follows :—

“ \$78 ²⁵/₁₀₀.

Chicago, Sept. 26th, 1854.

“Thirty days after date, we, the Subscribers, of Paw-
“ Paw, State of Illinois, promise to pay to the order of
“ Cooley, Wadsworth & Co., Seventy-eight ²⁵/₁₀₀ Dollars at
“ their Office, value received.

“A. B. Sears & Co.”

“955⁸²₁₀₀. Chicago, Nov. 17, 1854.
 “Six months after date, we, the Subscribers, of Paw-Paw,
 “State of Illinois, promise to pay to the order of
 “Cooley, Wadsworth & Co., Nine Hundred Fifty five ⁸²₁₀₀
 “Dollars at their Office, in Chicago, value received.
 “A. B. Sears & Co.

Page 23. “258⁹⁸₁₀₀. March 21, 1854.
 “Six Months after date, we promise to pay to D. M.
 “Vanolinda or order, Two Hundred and Fifty-eight
 “Dollars ⁹⁸₁₀₀ for value received.
 “Andrew B. Sears,”
 “Endorsed, “H. G. Howlett.”
 “D. M. Vanolinda.”

On the 14 day of July, 1857, an attachment in aid was issued upon the affidavit of said Farwell, which was returned executed, by service upon *Hiram Fuller and Dwight Foster*, as garnishees.

Pleadings.

Pages 17, 18, 19, 20, 21, 22 and 23. On the 29th Oct., 1857, Declaration was filed declaring upon the said three promissory notes with the ordinary common counts ; to which Defendant, Howlett, replied :

Page 27. 1st. The general issue.

Page 28. 2nd. That after the said notes became due, &c. to wit :—on the 2nd day of July, A. D. 1855, Sears & Howlett made an assignment of a large amount of their property to J. L. Adams, to pay their creditors, including the said promissory notes, and that the property so assigned was only sufficient to pay their debts, and leaves to said defendants a large surplus, to wit, Eight Thousand Dollars ; that in August, 1855, Cooley, Wadsworth & Co., and other creditors took and assumed the control of the property out of the hands of the said assignee, and directed the assignee to surrender and deliver the property assigned to Sears, to dispose of for the use of said creditors, and to pay Sears & Howlett's said debts, and the said assignee, in
 Page 29. pursuance thereto, so done ; and Sears thereupon took possession and control thereof, and disposed of the same, all which was done without knowledge of Howlett and against his wish, by means whereof, he has suffered damage to the amount of \$8,000, all of which he is ready to verify.

Page 30. On the 13th Nov., 1857, Cooley, Wadsworth & Co. filed their
 Page 31. demurrer to said plea, which was overruled.

Pages 33, 36,
37, 38 and 39. On the 15th April, 1858, Replication was filed, denying the
Page 40. matters in said pleas, and issue was joined thereon, by defendants
filing the Similiter to said Replication.

TRIAL BY JURY—PLAINTIFF'S EVIDENCE.

Pages 47, 48,
49 and 50. On the 20th day of April, 1858, a trial was had by jury, and the
plaintiffs, Cooley, Wadsworth & Co., introduced, in evidence, the said
three promissory notes above recited, with the endorsements thereon,
and rested their case.

Defendant's Evidence.

TESTIMONY OF J. L. ADAMS.

Page 50. "I know of Sears & Howlett making an assignment ; I was the
assignee ; it was in writing, and being produced, is as follows, in
substance :

Pages 51, 52,
53, 54 and 55. Date, 2nd day of July, 1855, made by Andrew B. Sears and
Horatio G. Howlett to James L. Adams, and S. & H. being unable
to pay their creditors, and to secure them as far as possible, in con-
sideration, &c. assign, &c. to James L. Adams, his heirs and assigns,
"all the stock in trade, goods, wares and merchandise, debts, choses
in action, real estate, property and effects of every description,"
in trust, to sell and dispose of for cash, and pay over to their
creditors ratably, share and share alike, and return the balance, if
any, to them, and for that purpose appointed said Adams their
lawful attorney irrevocable, &c., which said assignment was read
in evidence.

Howlett & Sears then produced an instrument in writing, which
was as follows :

Page 57. "The undersigned, creditors of the firm of A. B. Sears & Co.
in consideration of this agreement, and for the further consideration
of the sum of one Dollar in hand paid, the receipt of which is hereby
acknowledged, agree and bind ourselves to extend the time of pay-
ment on the entire indebtedness of A. B. Sears & Co., so that it shall
be due and payable in three equal payments, at three, six and nine
months, from the date hereof, and the said A. B. Sears, of the firm of
A. B. Sears & Co., is to resume his business of selling goods, wares
and merchandise in the town of Paw Paw, Lee County, Illinois, per-
suant to which the assignee, J. L. Adams, shall forthwith deliver
up to the said A. B. Sears, all the goods and chattels and accounts
and notes assigned to him by the late firm of A. B. Sears & Co.

This agreement shall only be binding upon the undersigned, when all the creditors in Chicago, of the said firm of A. B. Sears & Co., shall have signed the same.

Witness our hands, which we have hereto set, in the City of Chicago, this 18th day of July, A. D. 1855.

CARPENTER, DIX & Co.,
C. C. THOMPSON & Co.,
M. D. GILLMAN,
REYNOLDS, ELY & Co.,
MILLS & Co.,

COOLEY, WADSWORTH & Co.,
BOND & MILLER,
JAMES P. WILLING,
J. A. SMITH & Co.,
OSBORN, ADAMS & Co.

Page 55. This instrument was shown to said witness, Adams, and he said :
“ I think I have seen that writing before. I took it into Chicago to have the creditors of Sears & Howlett sign it. I think I called upon the firms who have signed it, for the purpose of procuring their signatures to the paper. *I did not see all of the firms sign* their names to the paper. Am acquainted with the signatures of some of the firms whose names appear to this paper. Think the signature of J. A. Smith & Co. to this paper is genuine. Am acquainted with their signature. Think the signature of Osborn, Adams & Co. to this paper is genuine. I think I know their signature. Don't know as I saw the plaintiffs sign this paper, but I think that it is their signature. The paper was left by me with some member of each of the firms whose signature appears to it, and was afterwards returned to me signed in the firm name, as it at present appears, and that the signatures to the paper represented all the creditors of Sears & Howlett that he knew of in the City of Chicago, and that he delivered up and surrendered to A. B. Sears the property assigned to him, on the execution of said agreement ; that Sears took the property assigned and disposed of it. I think *Howlett and myself, before I went to Chicago to get the consent* of the creditors of Sears & Howlett to give the property assigned to me into the hands of Sears, *talked the matter up*. I don't remember as Howlett consented to the arrangement, *but I know the matter was talked up between us. It is my impression that Howlett suggested to me the making of this arrangement with the creditors.*

Page 56.

Pages 58 and 59.

Page 59. I don't remember whether Howlett was in Chicago at the time I went in to get the creditors' consent to the transfer of their property into Sears hands or not ; think he went East about that time, and presume he was in Chicago about the time I was there, but don't remember certain, it has been so long. E. A. Damon & Co., of St. Louis,

were creditors of A. B. Sears & Co., but they would not consent to the transfer of the property of A. B. Sears & Co. to Sears, and did not sign the agreement.

Page 58.

Howlett and Sears then offered the said agreement in evidence, to which Cooley, Wadsworth & Co. objected, and among others, assigned the following reasons :

- 1st. Said instrument is not material to the issue.
- 2d. That its execution had not been proven.
- 3d. That all the creditors of Sears and Howlett had not signed it.
- 4th. That Howlett was knowing to and consented to the execution of the same.

Page 58.

Whereupon the Court overruled the said objection, and the said Cooley, Wadsworth & Co. excepted thereto, and the said instrument was then read to the jury in evidence.

INSTRUCTIONS ASKED AND REFUSED.

Page 43.

1st. If the jury believed from the evidence that defendant, Horatio G. Howlett, was a joint maker with defendant, Sears, of the notes produced and read in evidence, that there was an extension of the time of three, six and nine months in equal payments, and that that time has expired, they will find for the plaintiffs.

Page 43.

2nd. If the jury believe from the evidence that said plaintiffs, with all the creditors of the said Sears & Howlett, residing in Chicago, signed an agreement for the surrender of the property assigned or any portion thereof to Sears, and Sears had an equal and undivided interest in said property with Howlett, said Sears would be equally entitled to the possession thereof with Howlett, and such delivery, if made in conformity to such direction, would not operate as a discharge of the said Howlett from his liability on the said notes.

3d. If the jury believe from the evidence that the said defendant Sears was a partner of the said Howlett, and that they made an assignment of their property to J. L. Adams, for the benefit of their creditors, and that plaintiffs with other creditors, directed the said assignee to deliver the possession of said property to Sears, he being a party in interest equally with Howlett, he was equally entitled to the possession of the same, and plaintiffs cannot be held responsible for any misapplication of the property by Sears.

4th. To release a joint obligor or a joint maker of a promissory note, given for a bona fide consideration, the intention to release and discharge him must clearly and unequivocally appear by the contract made and entered into between the parties, and it must also appear that a valuable consideration was paid therefor.

Page 62. Whereupon Cooley, Wadsworth & Co. excepted to the ruling of the Court in refusing said instructions.

Page 62 & 63. The said cause then being fully submitted, the said jury returned their verdict as follows: "We, the jury, find the issues in the above entitled cause for the defendant."

Page 63. Whereupon the appellants, then and there entered their motion for an arrest of judgement and for a new trial, which motion was overruled by the Court, to which said appellants excepted and prayed an appeal therefrom to the Supreme Court of the State of Illinois, which was granted. Bill of exceptions filed and signed by John V. Eustace, Judge of the 22 J. C.

C. M. HAWLEY,
Attorney for Appellants.

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Supreme Ct Illinois

Laurie B Cooley
et al

vs

Horatio G Howlett
et al

Abstract

Filed April 22. 1861
L. Leland
Clerk

State of Illinois. On the
Supreme Court. Appeal
from the Circuit Court of
the County of Lee in
Francis B. Hoodby John W.
Hawwell & Elisha S. Howlett, Appellants,
vs Attachment
Andrew Bears and in aid -
Horatio Howlett, appellees.

And the said appellants by
John W. Hoodby their attorney come and
make the following assignment of
errors to the proceedings and judgment
of the said Court below; to wit:

1st The said Special plea of Dfts in fact
allowed no issue upon the same, it
being contradictory, in this, it says
"that the property so assigned was only
sufficient to pay their indebtedness." Then
it says, "It was sufficient, to leave to
said defendants a large surplus, to wit
Eight thousand dollars"

2d It was error to allow the introduction
of the said assignment of Sears & Howlett
in evidence under the proofs in the
case.

3d It was error to allow the introduction
of the said alleged agreement in evidence

under the proofs in the case, in this,
1st Its execution was not proved.

2^d All the creditors of Sears & Howlett
did not sign it

3^d Howlett originated and planned its
procurement and execution

4th Howlett & Sears received a valuable
consideration for the same and for
the delivery of the property to Sears
under it by the extension of their
indebtedness, of which they availed
themselves of -

5th The instrument itself is evidence
of such consideration

6. There was no agreement to release
and discharge said Howlett from
his liability to his creditors, nor
from his liability to appellants
upon said promissory notes, & no
consideration for such release paid
by, or agreement to be paid by Howlett
for such release

7th Said instrument was not material
or proper evidence under the evidence
or under the issue or proof -

8th It was error to refuse the first
instruction asked for by the said
plaintiffs -

and said judgment should
have been against the appellees
and in favour of appellants -

5th It was error to refuse the 2^d instruction.

6th It was error to refuse the 3^d instruction.

7th It was error to refuse the 4th instruction.

8th The verdict of the jury was contrary to the evidence.

9th It was contrary to the law of the case.

10th It was contrary to both the law and the evidence.

11th It was error to refuse a new trial by the Court below.

~~Wm. H. Hildrey~~ appellants
attorneys -

12th The verdict should have been a judgment in favor of the appellants for the amount due upon said note, and costs, and against the said appellees.

Wm. Hildrey.
appellants attorney

Charles B. Boney
of counsel

Account of Ills

V.B. Cooley et al
vs Appellants

ly Newlett et al
appellees

Argument & errors

United States of America
State of Illinois, Lee County, } ss.

Hear in the Lee
County Circuit Court in the Twenty second
Judicial Circuit of the State of Illinois
in the matter of Francis B. Cooley, Elisha
S. Wadsworth and John S. Barwell late partners doing
business under the name style & description of
Cooley, Wadsworth & Co. Plaintiffs, against
Andrew B. Sears, and Coratio S. Hewlett late
partners doing business under the name style
and description of A. B. Sears & Co. Defendants

Be it remembered that on the Twenty seventh
day of June Anno Domini 1854, the above named
Plaintiffs, commenced two certain actions
in Open Court, against the said Defendants &
(which said actions were afterwards consolidated)
and the Summons which were issued in the
two said Causes were in the words & figures
as follows to wit:—

" State of Illinois, } ss.
Lee County

The People of the State of Illinois
to the Sheriff of said County Greeting: We
command you that you summon Andrew B.

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Sears, and Horatio G. Howlett late partners
doing business, under the name style & description
of A. B. Sears & Co. if they shall be found in your
County, personally to be and appear before the Circuit
Court of said County on the first day of the next
Term thereof, to be holden at the Court House in Dixon
in said County on the 2^d Monday of November next
to answer unto Francis B. Cooley, Edward S. Wadsworth
and John V. Farwell, late partners doing business under the name
style and description Cooley, Wadsworth & Co in a
plea of Indebtedness the Case on premises to the
damage of said Plaintiffs as they say in the
sum of Five Hundred Dollars. And have you then
and there this writ with an endorsement thereon in
what manner you shall have executed the same

{ L.S. }
{ of Court }

Witness George E. Haskell Clerk of our
said Court, and the date thereof at Dixon
aforesaid this 29th day of June A.D. 1854
George E. Haskell Clerk

And upon the above Summons was the following
endorsement to wit: "Served the within by reading
the same in the presence and hearing of the within
named H. G. Howlett Augst 7th 1854 J. O. Wheeler Sheriff
" by James Early Deft
" the within named A. B. Sears not found in my County
" Aug 18th 1854 O'Wheeler Sheriff by James Early Deft"

here

Order of Summons }
Said County }

The People of the State of Illinois
to the Sheriff of said County Greeting:—

We command you that you Summon Andrew B. Sears and Horatio S. Howlett if they shall be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next term thereof to be holden at the Court House in Dixon in said County on the 2^d Monday of November next to answer unto Francis B. Cooley, Elisha S. Wadsworth and John O. Farrell late partners doing business under the name & style and description of Cooley, Wadsworth & Co in a plea of Trover on the Case on promises to the damage of the said plaintiffs as they say in the sum of Four Hundred Dollars. And hence you then and there this Writ with our endorsement thereon, in what manner you shall have executed the same.

{ L.S. } Witness George E. Haskell Clerk of our
of Court } said Court and the Seal thereof at Dixon
this 29th day of June A.D. 1857,
George E. Haskell Clerk.

And on the back of said Summons is the Sheriff's endorsement to wit:— "Served the within by reading the same in the presence and hearing of the within named H. S. Howlett August 4th 1857 @ Dixon Mo. by James Cooley Dpty

4 page

"the within named A. B. Sears, not found in the County,
"August 18th 1854 O'Wheeler Sheriff by James C. O'Neil,

And afterwards to wit on the 14th day
of July in the year of Our Lord One thousand
Eight hundred and fifty seven, the said
Plaintiffs in said suits, before the said
Suits were consolidated, filed their certain
Affidavits in each of said suits for
a Writ of Attachment in each of said suits
in aid thereof, against the estate of the
said Andrew B. Sears one of the Defendants
in said suits who had not been found as
appears by the return of the Sheriff of said
Lex County; and at the said time of suing
out said Attachments in aid, good and
sufficient Bonds were also filed, and
the said Affidavits, and Bonds and
Writs of Attachment, were each in the
words following that is to say:

— Affidavits —

page

Francis B. Cooley, Eliza S. Wadsworth
and John V. Farwell, late partners,
doing business under the name, style
and description of Cooley Wadsworth & Co.,
vs.

Andrew B. Sears and Horatio C.
Kewell, late partners, doing
business under the name style
and description of A. B. Sears & Co.,

John V. Farwell, being duly sworn on
his oath according to law, says that the
said Defendant are justly indebted to the
said Plaintiffs in the sum of Two Hun-
dred and Sixty nine Dollars and ninety
Two cents (\$269.92) that the same is due
upon the said Defendants Two certain
promissory Notes, to wit: One dated Septem-
ber 26th 1854, due thirty days after date for
the sum of Seventy Eight ²⁵/₁₀₀ Dollars,
upon which there are endorsements amount-
ing to Seventy Seven Dollars, leaving a
balance now due said Plaintiffs of the
sum of Two ⁸⁴/₁₀₀ Dollars, also one note
dated November, 17, 1854, due six months

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after date for the sum of Nine Hundred and fifty five ⁰⁰/₁₀₀ Dollars, with endorsements thereon leaving a balance now due on said note to said Plaintiffs from said Defendants, of Two Hundred and Sixty Seven ⁰⁰/₁₀₀ Dollars, interest having been reckoned on said note up to and including the 26th day of June, A. D. 1857, both of said notes being made payable to said Plaintiffs at their office — This affiant further saith, that the said Andrew B. Sears, one of the said Defendants has departed this State of Illinois, with the intention of having his effects removed therefrom to the injury of said Plaintiffs. This affiant further saith that the said Plaintiffs are about to sue out a writ of Attachment against the Estate of the said Andrew B. Sears, from the above entitled Court in aid of a certain suit of Trespass on the case on promises now pending in said Court, between the said Cooley, Wadsworth and Farwell, and the said Andrew B. Sears and Horatio S. Howlett. This affiant further saith not.

John V. Farwell.

Endorsed — Subscribed and sworn to before me
"Noted July 14th 1857. This 30th day of June, A. D. 1857.
S. B. [illegible] James [illegible]

Francis B. Cooley, Olisha S. Wadsworth
 and John V. Farnell, ^{late partners} doing business
 under the name, style and description
 of Cooley, Wadsworth & Co.,

vs.

Andrew B. Sears and Horatio G.
 Howlett.

John V. Farnell, one of the said Plaintiffs
 being duly sworn on oath, according to law
 says that the said defendants are justly in-
 debted to the said Plaintiffs in the sum
 of Three Hundred and one ⁸⁸/₁₀₀ Dollars,
 that the same is due upon a certain prom-
 isory note in the words and figures following
 to wit:

\$258.88 =

March 21, 1854

Six Months after date we prom-
 ise to pay to D. M. Vanolindo or order Two
 Hundred and fifty Eight Dollars ⁸⁸/₁₀₀
 for value received

Andrew B. Sears
 H. S. Howlett.

Interest having been reckoned on said note up
 to and including the 26th day of June, A. D.
 1857.

8/10/57

This affiant further saith that the said R. M. Vanolind to whose said note is made payable endorsed the same over, to said Plaintiffs before the same became due and payable.

This affiant further saith that the said Andrew B. Sears one of the said Defendants has departed the State of Illinois, with the intention of having his assets removed therefrom, to the injury of said Plaintiffs.

This affiant further saith that the said Plaintiffs are about to sue out a writ of Attachment against the Estate of the said Andrew B. Sears from the above entitled Court, in aid of a certain Suit of Trespass on the case on promises now pending in said Court, between the said parties hereto. And further, this affiant sayeth not.

John V. Farwell.

Subscribed and sworn to before me this 30th day of June, A. D. 1857.

C. B. Farwell,

Clerk of the County Court of Cook County Illinois.

Endorsed "Filed July 14th 1857.

Geo. C. Hurd, Clerk of said Court.

The people of the State of Illinois to the Sheriff of said ^{Lee} County, GREETING:

WHEREAS, *John V. Farwell* one of the Plaintiffs herein after named of the County of Cook, and State of Illinois hath complained on oath to *George E. Haskell* Clerk of the Circuit Court of Lee County, that *Andrew B. Sears & Horatio G. Howlett* late partners under the name style and description of *A. B. Sears & Co.* of the County of Lee and State of Illinois are ~~is~~ justly indebted to ~~the said~~ *Francois B. Chesley, Elisha S. Wadsworth, & John V. Farwell*, late partners doing business under the name style & description, *Howlett, Wadsworth & Co.* in the sum of *Two Hundred and Sixty Nine Dollars and Ninety two cents*

and oath having also been made that the said *Andrew B. Sears* one of the said Defendants has departed the State of Illinois, with the intention of having his effects removed therefrom (this being an Attachment in said ~~of~~ *an* certain suit of *Jessie Spade* on the Case on promises, now pending in said Court between the said parties) And the said *Francois B. Chesley, Elisha S. Wadsworth & John V. Farwell* late partners as aforesaid -

having given bond and security according to the act in such cases made and provided:

We therefore command you, that you attach so much of the estate, real or personal, of the said

Andrew B. Sears

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 to be holden at ^{the Court House in} Dixon within and for the county of Lee on the *2^d* Monday of *November* next; so as to compel the said *Defendants*

to appear

and answer the complaint of the said

Plaintiffs

and that you also summon

Hevane Fuller and Dwight Foster in your County

as garnishee & to be and appear before the said Court on the said *second Monday* of *November 1854* next, then and there to answer what may be objected against them when and where you shall make known to the said

Court how you have executed this writ. And have you then and there this writ.

WITNESS, *George E. Haskell* Clerk of our said Court, and the seal thereof at Dixon this *14th* day of

July *1854* in the year of our Lord one thousand eight hundred and

George E. Haskell Clerk.
for Joseph Ball Deputy

{ *LS* }
{ *A Court* }

Endorsed "Know made, and no property found to satisfy the within Attachment & served the within by resolving the same in the presence and hearing of the within named Hiram Fuller & Dwight Foster August 2^d 53

O Wheeler Smith
By Jerome Coley Sept 11

No. **WRIT OF ATTACHMENT.**

Filed in the Court Clerk and
afforded by me this 31st day of August 1854
G. W. C. Handwell Clerk.
Wm. H. Bull Deputy

Atty.

WHEREAS *John C. Smith and wife* of the County of *Cook* and State of Illinois, hath complained on oath to *George E. Haskell* Clerk of the Circuit Court of said *Lee* County, that *Andrew P. Sears*

and *Horatio G. Howlett* of the County of *Lee* and State of Illinois, are jointly indebted to *Francis Bleoley, Elisha S. Wadsworth & John V. Farnell* late partners doing business under the name style & description of *Bleoley, Wadsworth & Co* in the sum of *Three Hundred and One Dollars & Eighty Eight Cents*, and Orth having been also made that the said *Andrew P. Sears* one of the said Defendants has departed the State of Illinois with the intention of having his effects removed therefrom this being an attachment in aid of a certain suit at Law in a plea of *Writ of Habeas Corpus* on promises now pending in said Court between the parties hereto -

And the said *Francis Bleoley, Elisha S. Wadsworth & John V. Farnell* late partners *plaintiffs* having given bond and security according to the act in such cases made and provided:

WE THEREFORE COMMAND YOU that you attach so much of the estate; real or personal, of the said *Andrew P. Sears* 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 a Circuit Court to be holden at the Court House in *Dixon* within and for the County of *Lee* aforesaid. on the *2^d* Monday of *November* A. D. 1857 so as to compel the said Defendant to appear and answer the complaint of the said Plaintiff, and that you also summon *Thomas Keller and Dwight Foster*

as garnishee & to be and appear before the said Court on the said *second* *Nov* day of *November* A. D. 1857 then and there to answer what may be objected against them when and where you shall make known to the said Court how you have executed this Writ. And have you then and there this Writ.

WITNESS *George E. Haskell* Clerk of said Court, and the seal thereof. at *Dixon* in said County, this *14th* day of *July* A. D. 1857

George E. Haskell Clerk.
Joseph D. Hall

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Endorsed

" Search made and no property found to satisfy the within Attachment & served the within by passing the same in the presence & hearing of the within named Norman Fuller & Dwight Foster August 26/57

O. Wheeler Sheriff
By Jerome Peoley Deputy "

WRIT.

Page

Seal Court.

And on the issuing of said Writs of Attachment the said Plaintiffs filed their Bonds

Approved by me this

Clerk.

Attorney.

are held and firmly bound unto Andrew B. Sears and Horatio G. Howlett late partners doing
business under the name style & description of A. B. Sears & Co.
in the penal sum of Five Hundred, thirty nine dollars, & eighty five
cents, lawful money of the United States, for the payment of which said sum, well and truly to be

made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this thirteenth day of July A. D., 1857

The Condition of the above Obligation is such, That whereas the above bounden

Francis B. Cooley, Elisha S. Wadsworth and John V. Farnwell

ha on the day of the date hereof, prayed an attachment out of the Circuit Court of Del

County, at the suit of Francis B. Cooley, Elisha S. Wadsworth & John V. Farnwell (in and

an certain suit of trespass on the case on premises now pending in said Court between the
said parties hereto Andrew B. Sears
against the estate of the above named

for the sum of Two Hundred Sixty nine dollars & ninety two cents, and

the same being about to be sued out of said Court, returnable on the first Monday of November

next, to the term of the said Court, then to be holden. Now if the said Francis B. Cooley, Elisha S.

Wadsworth and John V. Farnwell

shall prosecute their said suit with effect, or in case of failure therein, shall well and truly pay and satisfy

the said Andrew B. Sears & Horatio G. Howlett

all such costs in said suit, and such damages as shall be awarded against the said Francis B. Cooley

Elisha S. Wadsworth and John V. Farnwell

their 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.

Signed, Sealed and Delivered }
In presence of }

L. J. White

Francis B. Cooley {SS}

E. S. Wadsworth {SS}

John V. Farnwell {SS}

Enoch Wood {SS}

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Endorsed

" Approved & Filed July 14th 1857
Geo. E. Haskell Clerk
for Joseph Ball Dcty "

in said State are held and firmly bound unto Andrew B Sears, and Horatio G. Henslett

in the penal sum of Six Hundred Three dollars, and seventy
six cents, lawful money of the United States, for the payment of which said sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this thirteenth day of July A. D., 185 7

The Condition of the above Obligation is such, That whereas the above bounden Francis B Cooley, Elisha S Wadsworth and John V. Farnell
have on the day of the date hereof, prayed an attachment out of the Circuit Court of See
County, at the suit of Francis B Cooley, Elisha S Wadsworth and
John V. Farnell
against the estate of the above named Andrew B Sears in a certain suit of trespass on the
case on promise now pending in said Court between the said parties hereto
for the sum of Three Hundred & One dollars Eighty Eight cents, and
the same being about to be sued out of said Court, returnable on the first Monday of November
next, to the term of the said Court, then to be holden. Now if the said Francis B Cooley, Elisha
S Wadsworth and John V. Farnell
shall prosecute their said suit with effect, or in case of failure therein, shall well and truly pay and satisfy
the said Andrew B Sears and Horatio G. Henslett

all such costs in said suit, and such damages as shall be awarded against the said Francis B Cooley
Elisha S Wadsworth and John V. Farnell
their 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.

Signed, Sealed and Delivered }
In presence of }

L. White

Approved

Geo E Haskell, Clerk }
Joseph Ball, Secy }

Francis B. Cooley {Ss}

E S Wadsworth {Ss}

John V. Farnell {Ss}

Enoch Wood {Ss}

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Endorsed

"

Approved & Filed July 14th 1884
Geo. E. Haskell Club
for Baseball Dept "

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And the respective Observations filed in each
of said Causes are in the words and
figures as follows to wit:

In the See County Circuit Court

OF THE

November

TERM, A. D. 1854

STATE OF ILLINOIS,

COUNTY.

ss.

James D. Cooley, Eliza S. Wadsworth and John D. Barwell late partners doing business under the name, style & description of Cooley, Wadsworth & Co

Plaintiff in this suit, by *C. A. Severance* their Attorney complain of *Andrew Sears, and Horatio E. Barwell late partners doing business under the name, style & description of A. B. Sears & Co*

Defendant &

who were summoned, etc., in a plea of trespass on the case on promises: For that whereas the said Defendant & heretofore, to wit: on the *16th* day of *September* in the year of our Lord One Thousand Eight Hundred and *fifty four* at *Chicago* to wit: at *Dexon* in said County of *See*, made ~~their~~ certain promissory Note ^{bearing date the day & year aforesaid}, and then and there delivered the same to said Plaintiff &

in and by which said note, said Defendant &, by the name, style and description of *A. B. Sears & Co* promised to pay to the order of the said Plaintiff &, ~~by the name, style and description of~~ *Thirty days after the date then of the sum of Seventy Eight 2500 Dollars at their office*

for value received. By means whereof, and by force of the statute in such case made and provided, the said Defendant & became liable to pay said Plaintiff & said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect, true intent and meaning of the said note, to wit, at the place aforesaid.

And for that whereas also the said Defendants afterwards to wit: on the *17th* day of November AD 1854 at Chicago to wit: at Dexon in said County of See, made their one other certain promissory note in writing, bearing date the year last aforesaid and then and there delivered the same to said Plaintiff, in and by which said Note the said Defendants by the name style & description of *A. B. Sears & Co*, promised to pay to the order of said Plaintiff in six months after the date thereof the sum of Nine Hundred & fifty five ⁸⁵00 Dollars at their office in Chicago, for value received. By means whereof, and by force of the statute, in such case made and provided, the said Defendants, became liable to pay said Plaintiff, said sum of money mentioned in said Note, and being so liable in consideration thereof, then and there undertook and promised to pay the same

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to said Plaintiffs, according to the tenor and effect
true intent and meaning of the said note to wit at
the place aforesaid

AND WHEREAS, also, the said Defendant Q, afterward, to wit: on the First day of
June in the year of our Lord One Thousand Eight Hundred and fifty seven
to wit, at Depon in said County, became and were indebted unto the Plaintiff s in a
large sum of money, to wit, Five Hundred
dollars, for money before that time lent and advanced to, and paid, laid out and expended for said
Defendant s by said Plaintiff s at said Defendant s request; and for money before that time had and received
by said Defendant s to and for the use of said Plaintiff s; and also in like sum for goods, wares and mer-
chandise, before that time sold and delivered by said Plaintiff s to said Defendant s at like special instance
and request; and also in like sum for the labor, care, and diligence of said Plaintiff s before that time
done and performed by said Plaintiff s; for said Defendant s, and at the like instance and request of said
Defendant s, and being so indebted, said Defendant s, in consideration thereof, then and there undertook
and promised to pay said Plaintiff s said last mentioned sum of money, when thereunto afterward
requested.

* Yet the said Defendant s, not regarding their said promises and undertakings, but contriving, etc.,
although often requested to do, have not paid said Plaintiff s either of said sums of money or any part
thereof, but so to do have hitherto wholly neglected and refused, and still do neglect and refuse, to the
damage of said Plaintiff s of Five Hundred
dollars, and therefore they bring this suit, etc.

Subscribed by me as Clerk of the Court

INSTRUMENT AND ACCOUNT SEED UPON

9 page COPY OF INSTRUMENT AND ACCOUNT SUED UPON.

78²⁵ Chicago Sept 26th 1854

Thirty Days after date we the subscribers of
 Iowa Iowa State of Illinois promise to pay to the order of Cooly
 Wadsworth & Co Security Eight ⁸²/₁₀₀ Dollars at their
 office value received

A B Sears & Co
 endmnd Rec^d hereon Jan 13/55 Forty seven Dollars ⁴⁷/₁₀₀
 Rec^d hereon April 3/55 Thirty Dollars ³⁰/₁₀₀

955⁸²/₁₀₀ Chicago Nov 14. 1854

Six months after date we the subscribers
 of Iowa Iowa State of Illinois promise to pay to the
 order of Cooly, Wadsworth & Co Nine Hundred
 fifty five ⁸²/₁₀₀ at their office in Chicago Value received

A B Sears & Co
 endmnd
 Rec^d hereon June 26/55 One Hundred Dollars ¹⁰⁰/₁₀₀
 Rec^d hereon July 3/55 One Hundred & fifteen Dollars ¹¹⁵/₁₀₀
 Rec^d hereon July 30/55 Seventy Dollars ⁷⁰/₁₀₀
 Rec^d hereon Sept 26/55 J E Woodbridge One Hundred & ten Dollars ¹¹⁰/₁₀₀
 Rec^d hereon Sept 26/55 Forty five Dollars W B Wadsworth ⁴⁵/₁₀₀
 Rec^d hereon Oct 12/55 One Hundred Forty three Dollars ¹⁴³/₁₀₀
 Rec^d Nov 22/55 J E Woodbridge Eighty five Dollars ⁸⁵/₁₀₀
 Rec^d hereon Jan 30/55 Sixty five Dollars J E W ⁶⁵/₁₀₀

To

Dr.

To money lent and advanced

To money expended and paid out for

To money received for use of

To Goods, Wares and Merchandise

To labor and services

To balance on account stated

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Wm. A. Co

Wm. A. Co

vs.

Wm. A. Co

NARR.

9 day of

18 54

Wm. A. Co CLERK.

Wm. A. Co

DEPT.

Declaration, of which the within is a
 and in the office of the Clerk of the
 and that upon
 he was entered in the above entitled

to said declaration within ten days
 copy thereof, and notice of said rule,
 default, will be entered against you

18

Yours, etc.,

Levenum
 Att'ys for P.M.



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In the Lee County Circuit Court

OF THE November TERM, A. D. 1857.

STATE OF ILLINOIS, }
Lee COUNTY, } ss.

Francis B. Cooley, Elshad. Wadsworth & John D. Farrell late partners
doing business under the name style and description of Cooley
Wadsworth & Co

Plaintiff in this suit, by Charles N. Seaman their Attorney, complain of
Andrew B. Sears and Horatio G. Howlett

Defendant &

who were summoned, etc., in a plea of trespass on the case on promises: For that whereas the
said Defendant &, heretofore, to wit: on the Twenty first day of March in the
year of our Lord One Thousand Eight Hundred and fifty four at Ceyon
to wit: at Lee in said County of Lee, made their certain prom-
issory Note, in writing, bearing date the day and year aforesaid, and then and there delivered the same to
one J. M. Vanolinda in and by which

said Note, said Defendant &, by the name, style and description of
promised to pay to the order of the said J. M. Vanolinda
or order six months after the date thereof the sum of
Two Thousand and Fifty Eight Two Dollars

for value received. And the said

J. M. Vanolinda
to whom or to whose order said note was payable, then and there indorsed, and under his hand assigned
the said note to the said Plaintiff & and then and there delivered the same, so indorsed, to the said Plain-
tiff &. By means whereof, and by force of the statute in such case made and provided, the said Defend-
ant & became liable to pay said Plaintiff & said sum of money mentioned in said note, and being so liable, in
consideration thereof, then and there undertook and promised to pay the same to the said Plaintiff & accord-
ing to the tenor and effect, true intent and meaning of the said note, and of the indorsement aforesaid,
to wit: at the place aforesaid.

AND WHEREAS, also, the said Defendant 4, afterward, to wit, on the Twist day of June in the year of our Lord One Thousand Eight Hundred and fifty seven to wit, at Dixon in said County, became and were indebted unto the Plaintiff in a large sum of money, to wit, Seven Hundred dollars, for money before that time lent and advanced to, and paid, laid out and expended for said Defendant 4 by said Plaintiff 4 at said Defendant 4 request; and ^{above like sum} for money before that time had and received by said Defendant 4 to and for the use of said Plaintiff 4; and also in like sum for goods, wares and merchandise, before that time sold and delivered by said Plaintiff 4 to said Defendant 4 at like special instance and request; and also in like sum for the labor, care, and diligence of said Plaintiff 4 before that time done and performed by said Plaintiff 4; for said Defendant 4, and at the like instance and request of said Defendant 4, and also in like sum, then and there found due and owing said Plaintiff on an account stated between them, and being so indebted, said Defendant 4, in consideration thereof, then and there undertook and promised to pay said Plaintiff 4 said last mentioned sum of money, when thereunto afterward requested.

Yet the said Defendant 4, not regarding their said promises and undertakings, but contriving, etc., although often requested so to do, ha not paid said Plaintiff either of said sums of money above mentioned, or any part thereof, but so to do have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said Plaintiff 4 of Seven Hundred dollars, and therefore They bring this suit, etc.

Charles V. Looney
Attorney at Law

\$288.98

March 28 1834

Six months after date we promise
to pay to D M Comolinda or order Two Hundred
& Eighty Eight Dollars \$288.98 for value received
Andrew B Sears
H G Howlett

Enclosed

D M Comolinda

To

Dr.

To money lent and advanced

\$

To money expended and paid out for

\$

To money received for use of

\$

To Goods, Wares and Merchandise

\$

To labor and services

\$

To balance on account stated

\$

Volnaid

Widow of the late

vs.

Wm. A.

Howlett

NARR.

2nd day of October 1857

E. H. Henshell

CLERK.

Wm. Ball Dft.

DEFENDANT.

a declaration of which the within is a
filed in the Office of the Clerk of the
and that upon
rule was entered in the above entitled

and to said declaration within ten days
a copy thereof, and notice of said rule,
default will be entered against you for

185

ours, etc.

Levanway

ATTY'S FOR PLTFF.

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Court began and now at the Court House
in Dixon in said Lee County on the second
Monday of November in the year of Our
Lord One Thousand Eight Hundred and Fifty
Seven

Present Honorable John C. Ruston Judge
Robert C. Churchill State Attorney
George E. Haskell Clerk
Joseph Ball Deputy Clerk
Ozias Wheeler Sheriff

It is remembered that on the Eleventh
day of November A.D. 1857, the same being
one of the regular days of said November term
the following record entry appears to us
in this behalf: that is to say:-

" Francis B. Cooley, Charles W. Waddsworth & John T. Farnell
late partners doing business under the name, style & description
of Cooley, Waddsworth & Co

Applicant
vs
the
Attendants
in said

And now B. Sears & Horatio L. Hewlett late partners &c

On this

day come the Defendants by Attorney Weston their attorney
and move to consolidate Numbers 98 and 99 on the
Common Law Docket of this term of this Court

And afterwards at another regular day of
the said November Term of said Court, to wit
on the 12th day of November AD 1854 the following
entries appear to us of Record in said cause

Francis Bleeker, Elisha S. Wardwouter & John O. Samuel	} Plaintiff with Attachment in aid of
late partners &c	
Andrus B. Sears, and Horatio S. Howlett	
late partners &c	

Again on this day
come the said Plaintiffs by Leaveway their
attorney & the Defendants by Hartson & Thornton
& Macey & Wood, and their motion heretofore made
to consolidate Numbers 98 and 99 on the present
Common Law Docket, is now sustained.

And now comes Dwight Foster a Garnishee,
by Putney his attorney, and moves the Court to
Dismiss proceedings as to him the said Garnishee.

And afterwards on the said twelfth day
of November AD 1854 comes the Defendant
Howlett and files his pleas in this behalf in
the words following to wit:-

Lee County)

of the November Term, A.D. 1857.

Francis B. Cooley, Elisha S. Wadsworth
John V. Farwell late partners, &c.,

vs.

Andrew B. Sears and Horatio S. Howlett

And the said Horatio S. Howlett, one of
the above named defendants comes and
defends the wrongs and injuries when &c., and says
he did not undertake and promises in
maner and form as the said Plaintiffs have
above thereof declared against him and of
this he puts himself upon the country. ~
And for further plea in this behalf the
said Defendant says, actio non. because
he says that, heretofore to wit: after the
said notes in the said Plaintiffs declaration
mentioned become due and payable,
to wit: on the 2 day of July, A.D. 1855;
the said Defendants Sears and Howlett made
an assignment of a large amount of
real and personal property accounts and
chose in action to the amount and value
of Twelve Thousand ^{dollars} to one J. L. Adams
of Saw Saw Grove, in said Lee County,
in trust to pay all and singular the creditors

of the said

defendants, including the said promissory notes in said Plaintiff's declaration mentioned and all the amount due from said Defendants to said Plaintiffs, and this defendants avers that the whole amount of the indebtedness due to all the creditors of the said Sears and Howlett, to secure which the said assignment was made was the sum of four thousand dollars and not more, and that the amount of property so assigned was only sufficient to pay all of the said debts of said Sears and Howlett, including the amounts so due to said Plaintiffs and leaves to said Defendants a large surplus, to wit, the sum of Eight thousand dollars after payment of all of the said debts, and that afterwards, to wit, in the month of August, A. D. 1855, the said Plaintiff and others the creditors of the said Defendants took and assumed the control of said property out and from the hands of said assignee and ordered and directed the said assignee to surrender and deliver the said goods and property so assigned to the said Defendant Sears, to sell dispose of collect and receive the same for the use of the said Plaintiff and to pay the

creditors, and the said assignee did then and there in pursuance of said order and direction of said Plaintiff and others the creditors of the said Defendants convey deliver and surrender up to said Sears, all and singular the property and effects so assigned, and the said Sears took the control possession and management of the same under and by virtue of the said order, and sold collect received and disposed of the same, all of which actings and doing of the said Plaintiff, & Sears were without the knowledge or consent of this defendant, and against his wish, will and desire, and by means whereof the said Defendant hath suffered great damage, to wit, to the amount of Eight Thousand Dollars and the said demands Plaintiff as against the Defendant became and were legally discharged and this he is ready to verify, wherefrom he prays judgment &c.,

Horton & Atherton. "

Endorsed "Filed Nov. 12, th 1857,"

"Sec. C. Hastee, Clerk, per Joseph Ball, Depy."

And afterwards during the said November Term of said Court came the Plaintiffs in said Cause to wit on the thirteenth day of November AD 1854. and filed their Demurrer to the pleas herein before filed, which said Demurrer is in the words following to wit:-

" Francis B. Cooley et al

A. D. Sears et al

} Said Plaintiffs Demur to the second plea of said Defendant 2^d above pleaded - says that the same is not sufficient in Law & C - & prays judgment - & for Cause of Demurrer say -

1st Said plea is double,

2nd That the same is argumentative,

3rd Concentric & otherwise insufficient - & amount to the general issue,

Seemingly & Henry
for Plff

And afterwards, and during said November Term to wit on the 18th day of November aforesaid, the following record entry appears to us in this behalf in

late partners etc

as

Andrew B. Sears, and Horatio G. Howlett, late partners &c

with
attachment
in aid,

On this day
again come the said Plaintiffs, by Leavitt & Hering
their attorneys & their Demurrer to the Defendants second
plea is overruled, whereupon on motion of the
said Plaintiffs, leave is given them to reply double.

And afterwards on the 20th day of November
aforesaid the same being yet one of the regular
days of said November Term the following entry
appears to us in this behalf, to wit:-

" Francis B. Cooley, Elias S. Wasson & John T. Samuel

late partners &c

as
Andrew B. Sears, & Horatio G. Howlett

late partners &c

Defendant
&c

On this
day again come the said parties by their respective
attorneys & by agreement this Cause is continued generally.

And afterwards to wit at another regular
Term of the said Superior Circuit Court
begun and holden at the Court House in
Pawson aforesaid on the second Monday of
April Anno Domini One Thousand Eight Hundred
and fifty eight

Present Honorable John B. Easton Judge

Robert C. Burdell States Attorney

George E. Haskell Clerk

Oliver Wheeler Sheriff.

Pr. it further remembered that on the
fifteenth day of April AD 1858, and
during the said April Term the said Plaintiff
in this cause filed a application in the
words following to wit: -

Lee County }^{ss.} April Term, A. D. 1858.

Francis B. Cooley, Elisha S.
Wadsworth and John V.
Farwell, late partners &c.,
vs.

Andrew B. Sears and
Horatio S. Howlett.

Replication.

The Plaintiffs as to the first plea of the said Defendant Howlett firstly above pleaded whereof he puts himself upon the Country as the like. And as to the plea of the said Defendant Howlett, secondly above pleaded the plaintiffs say that the defendants of this are wrong and without the causes by him the said Howlett in his said second plea alleged broke them said promises in the said declaration mentioned in manner and form as the said plaintiffs have above in their said declaration complained against, therefore this the plaintiffs pray may be enquired of by the country.

Loranway & Colsall,
for Plaintiff.

Endorsed "Filed April 15th 1858, Geo. E. Haswell, Clerk.
per Joseph Ball, Deputy.

And on the said 15th day of April, AD 1858
and during the said April Term the said
Defendant Howlett in said Cause, filed his
Demurrer to the Replication aforesaid, in the
words following to wit:—

"State of Illinois }
Lex County } ss In the Lex Co Circuit Court
April Term AD 1858
Francis B. Chesley et al

vs }
A. B. Sears & H. G. Howlett }
And the
said Defendant Howlett says that the sd
Replication of the sd Plffs to the sd second
plea, of sd Defendant, and the matters
therein contained are not sufficient
in Law for sd Plffs to have & maintain
their Action aforesaid against said
Defendant & that sd Defendant is not bound
by Law to answer the same, & this he is
ready to verify— Wherefore he prays judgment
&c

Horton & Cushman
Attys for Def^t Howlett "

(Enclosed) Filed April 15th 1858
Geo E Haskell Clk

day of April A.D. 1838, the same being one of
the regular days of said April Term, the
following proceedings in said Cause were
had, as appears by a Record to wit:—
“ Francis B. Cooley, Elisha S. Wadsworth & John V. Farnell
late partners &c

Andrew B. Sears & Horatio G. Howlett, late partners

Attachment

&c

On this

day came the Plaintiff by Edwin U. & Sheffield & Swannow,
their Attorneys and the Defendants by Horatio G. Howlett
& Mackey & Wood & Intrench their Attorneys & the Demurrer
joined to the Replication herein filed, is sustained:
And the Plaintiff has leave to reply severally
to Defendants second pleas herein — ”

And afterwards to wit on the said fifteenth
day of April A.D. 1838 the said Plaintiff filed
in said Cause their amended replication
in the words following to wit:—

“ Francis B. Cooley, Elisha S. Wadsworth
John V. Farnell late partners &c

Amended
Replication to
second pleas,

Andrew B. Sears & Horatio G. Howlett

The Plaintiff

for an amended replication to the said second plea

of the said Defendant Howlett say fraudulent now because they say that the said Defendants Sears and Howlett did not make an assignment of a large amount of real and personal property, accounts & choses in action to the amount & value of twelve thousand dollars, nor in any other amount to one J S Adams in trust to pay all & singular the creditors of the said defendants including the said promissory notes in said Plaintiffs declaration mentioned in manner & form as the said Defendant Howlett has avowed in his said plea alleged & of this said Plaintiffs put themselves upon the Country.

And for a further amended replication to said second plea - leave of the Court first being had - the Plaintiffs say the inadequacy of the said Sears & Howlett, to secure which said assignment was made was not the sum of Four Thousand Dollars & not more in manner and form, as the said Defendant Howlett in his said Plea has alleged, and this they pray may be inquired of by the Country:--

And for a further amended replication to said second plea, - leave of the Court being first had - the Plaintiffs say that the amount of the property so assigned was not amply sufficient to pay all of the said Debts of said Sears & Howlett, including the amounts of

plea alleged & this the said Plaintiffs pray may be
enquired of by the Country.

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And for a further amended explanation to said second
plea, — Come of the Court being first heard the plaintiffs
say that the said plaintiffs & others the creditors of the
said Defendants, did not take & assume the control
of the said property, out of & from the hands of the
said assignee & order & direct the said assignee to
commander and deliver, the said goods & property so
assigned to the said Defendant, Scars to sell & dispose
of Collect, & receive the same for the use of the said
plaintiffs & to pay the said debts & liabilities of the
said Defendants to the said Plaintiffs & others their
Creditors in manner & form as the said Defendant
Howlett has about thereof in his said second plea
alleged & of this the Plaintiffs put themselves upon the
Country.

5
And for a further amended explanation in this
behalf Come of the Court being first heard the plaintiffs
say that the said assignee did not convey, deliver &
commander up to the said Scars, all and singular the
property, assets so assigned in manner & form
as the said Defendant Howlett has about thereof
in his said second plea alleged & of this the plaintiffs
put themselves upon the Country.

And for a further amended replication in this behalf - Come of the Court first being had - the Plaintiffs say, produce now because they say that the said Sears did not take the control possession and management, of the said property and sell & collect, and receive and dispose of the same, in manner and form, as the said Defendant Howlett has above shewn in his said second plea alleged & of this the Plaintiffs put themselves upon the Country -

And for a further amended replication to the said second plea - the said Plaintiffs say produce now because they say that the order given by Jtts to the said assignee, or debt Howlett hath alleged, were not without the knowledge & consent of said Howlett, but was made by his wish, will, desire, and request, and also that of the said Sears, and of this they put themselves upon the Country - enclosed "Filed April 15 1853 Geo E Haskell Ch J Joseph Ball DC "

And afterwards to wit on the sixteenth day of April A.D. 1853 the same being y^t one of the regular days of said April Term, the following proceedings of Record were had in this behalf that is to say:-

"Francis B. Cooley, Elisha S. Wardworth &)

On this day
again come the said parties by their respective Counsel
and the Demurrer herein joined to the amended Rep-
lications, is overruled in "

(Note The Demurrer to the amended replications
above referred to is not amongst the files in the Case
and is not therefore copied herein)

And afterwards to wit on the seventh of the
day of April aforesaid (the same being as yet
one of the regular days of the April Term aforesaid
the following Record entry was made in said Cause,
"Francis D. Cooley, Elisha S. Wadsworth &
John S. Farnell late partners & c

vs
Andrew B. Sears & Horatio G. Howlett
late partners & c

} Attachment in aid

On this day again
come said parties by their respective Attorneys
and on motion of said Plaintiffs leave is given
to file additional interrogatories to the Defendants "

And on the said 14th day of April the said
Defendants filed their similites to the Plaintiffs

Amended replications are in the words as follows to wit:-

"Cooly, Wadsworth & Co

vs
Scors & Howlett

And the said Defts by Heaton & Atherton their attorneys as to the said several amended replications of the said Plff to Defts second plea wherein said Plffs put themselves upon the Country, doth she like.

Heaton & Atherton for Defts:-
Entered filed April 14 1858 Geo B Haskell Clk of p Joseph Dall J.C.

And afterwards on the twentieth day of April AD 1858 (the same being as yet one of the regular days of said April Term) the following proceedings were had in said cause as appears to us of record:-
"Francis B Cooly, Elisha S Wadsworth
& John V Furwell late partners &c

vs
Augustus B Scors & Horatio S Howlett
late partners &c

} Attachment
in aid

On this day again come the said Plaintiffs by Sewarday Howley, Edsall Shipdill their attorneys, and

and counsel men to wit: Charles Frieslee, John
H Long, H. J. Bole, J. D. Widdell, A. N. Barnes
E. B. Stiles, Amos Cussey, Oliver Arnold, John Hull
Friedrich Mc Bride, Lafayette Gale, & B. F. Burr
who were duly elected trial and sworn well and
truly to try the issues joined, having heard the evidence
and the argument of Counsel, now retire to consider
of their verdict. ~ And afterwards on this day come
the said jury into Court and return the following
verdict to wit: - "We the jury find the issue, in
"the above entitled cause for the Defendants,"
whereupon come the Plaintiffs and enter their
motion in arrest of judgment and for a New trial,"

Verdict }

And amongst the files in said cause is the
following agreement which was introduced &
offered in evidence in said cause to wit
" Copy of Writing signed by creditors of Sears & Roebuck
" of Chicago ~
" The undersigned creditors of the firm of A. B.
" Sears & Co in consideration of this agreement
" for the further consideration of the sum of
" One Dollar, in hand paid, the receipt of which is
" hereby acknowledged, agree and bind ourselves to
" extend the time of payment on the entire in-
" debtedness of A. B. Sears & Co, so that it shall

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"to be due and payable in three equal payments
"at three six and nine months from the date
"hereof, and the said A B Sears of the firm of
"A B Sears & Co, is to resume his business of
"selling goods, wares and merchandise in the
"Town of Freeport Lewis County Illinois, pursuant
"to which the assignee J. L. Adams, shall forth
"with deliver up to the said A B Sears, all the goods
"A chattels and accounts & notes, assigned to him
"by the late firm of A B Sears & Co. This agreement
"shall only be binding upon the undersigned when
"all the creditors in Chicago of the said firm of
"A B Sears & Co shall have signed the same. Witness
"our hands which we have hereto set at the City of
"Chicago, this 18th day of July AD 1855

"Carpenter Dix & Co

"C. C. Thompson & Co

"M. D. Gilman

"Reynolds Ely & Co

"Miller & Co

Cooley Wadsworth & Co

Brown & Meller

James P. Williams

J. A. Smith & Co

Osborn Adams

And the Instructions in said Case
Read to the Court use in the words
following, that is to say -

April Term A. D. 1855

April Term, A. D. 1858.

Francis B. Cooley, et al.

vs

Andrew B. Sears, and
H. Gates Howlett.

The Court is ask on the part of
the plaintiff, to instruct the jury as
follows:

"Rebused"
1st If the jury believes from the evidence
that Defendant Horatio G. Howlett was a
joint maker with Defendant Sears of
the notes produced and read in evidence
and if they further believe that there was
an extension of the time of 3, 6 & 9 months
in equal payments and that that time
has expired they will find for the plaintiff

"Rebused"
2^d If the jury believes from the evidence
that said plaintiff with all other creditors
of the said Sears and Howlett residing in
Chicago, signed an agreement for the sur-
render of the property assigned or any
portion thereof, to Defendant Sears, had
an equal and undivided interest in said
property with Howlett, said Sears would
be equally entitled to the possession there-
of with Howlett and such delivery if made

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in conformity to such direction would not operate as a discharge of the said Howlett from his liability upon the said notes.

3^d If the jury believe from the evidence that the said Defendant Sears was a partner of the said Howlett and that they made an assignment of their property to J. L. Adams for the benefit of their Creditors and that plaintiffs with other creditors directed the said assignee to deliver the possession of said property to Defendant Sears, he being a party in interest equally with Howlett he was equally entitled to the possession of the same and plaintiffs cannot be held responsible for any misapplication of the property by Sears.

4th To release a joint obligor, or a joint maker of a promissory note given for a bona fide consideration the intention to release and discharge him must clearly and unequivocally appear by the contract ~~and~~ made and entered into between the parties and it must also appear that a valuable consideration was paid thereupon.

"Y Adams the apigee was made without the knowledge and assent of the Defendant Howlett the jury should find for the plaintiff.

" Given " Also that if the jury believe from the evidence that Howlett at the time such property was placed ^{back} in the hands of Sears or at any time previous thereto advised and assented to the same as the same was done then said Howlett is chargeable with notice and bound thereby and the jury should find for the Plaintiff "

Emdorsed "Filed April 20th, 1888

Geo. C. Haskell, Clerk, per Joseph Ball, Deputy,

And afterwards to wit on the seventh day of May, in the year of Our Lord One thousand eight hundred and fifty eight, (the same being as yet one of the regular days of the April Term of said Court) the following entries appear to us of Record in said cause in the following words to wit:—

Francis B. Woolley, Elisha S. Wadsworth
 & John V. Farnell, late partners doing
 business; under the firm name & style
 of Woolley Wadsworth & Co.

Andrew B. Sears, and Horatio T. Hewlett
 late partners doing business under the name
 firm & style of A. B. Sears & Co.

Amended
 with
 Attachment
 in aid,

On this
 day again come the said parties by their
 respective Attorneys, and the motions
 heretofore made, for a new trial and in
 error of judgment, are now overruled, to
 which ruling the plaintiffs except. and
 thereupon leave is given them to have Bill
 of Exceptions signed on the first day of
 next Term. It is considered and adjudged
 by the Court, that the defendants have and
 recover of the Plaintiffs all their costs and
 charges by them in and about this suit
 expended, and that they have execution therefor.

And afterwards to wit on the seventh
 day of March A.D. 1861 the said Plaintiffs
 filed their Bill of Exceptions in said
 cause, which said Bill together with the

State of Illinois } S.S. In the Lee County Circuit
Lee County } Court of the April Term. A.D. 1858

Francis P. Cooley, Elisha
Wadsworth and John V.
Farwell late copartners
doing business under the
name, style and description
of Cooley Wadsworth & Co.

vs.
Andrew P. Sears and Horatio
G. Howlett.

Be it remembered, that, on the twentieth day of
April, A.D. 1858. said day being one of the days
of the April Term of said Court in the year
aforesaid, the said cause came up for trial
upon the issue joined, and a jury of twelve
good and lawful men who were duly elected,
tried, and sworn, the Plaintiffs offered in ev-
idence, three certain promissory notes, the first of
which was in the words and figures following.
to wit,

"Chicago. Sept. 26, 1858

4 \$ 78. ²⁵/₁₀₀

Thirty Days after date We the subscribers

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" of Paw Paw, State of Ill promise to pay
" to the order of Cooley, ~~Full~~ Wadsworth
" & Co. Seventy Eight ²⁰/₁₀₀ Dollars at
" their office. Value received -
" No Due A. D. Sears, & Co.

Upon the back of which said promissory
note, at the time when the same was
offered in evidence, as aforesaid, were
written indorsements in the words and
figures following, to wit:

" Recd. Heron Jan^y 13/55 Forty Seven

" Doll. & 47. -

" Recd Heron April 3/55 Thirty Dollars,

" \$30.00 "

The second of which said notes so offered in
evidence as aforesaid, was in the words
and figures following, to wit:

" Chicago Nov 17. 1854

" \$955. ⁸²/₁₀₀

" Six Months after date we the sub-
" scribers of Paw Paw, State of Illinois,
" promise to pay to the order of Cooley.
" Wadsworth & Co. nine hundred fifty
" five, ⁸²/₁₀₀ Dollars at their office in
" Chicago - Value received.

9 page Upon the back of which said promissory note, at the time when the same was offered in evidence, as aforesaid were written indorsements in the words and figures following, to wit:

- " Recd, hereon June 26/55. One Hundred
- " Dalls. \$ 100.⁰⁰/₁₀₀"
- " Recd, hereon July 3/55. One Hundred
- " Fifteen Dalls. \$ 115.⁰⁰/₁₀₀"
- " Recd hereon July 30th, 1855 Seventy
- " Dollars \$ 70.⁰⁰/₁₀₀"
- " Recd. hereon Sept. 26/55 of J. E. Woodbridge
- " One Hundred & ten Dalls. \$ 110.⁰⁰/₁₀₀"
- " Recd hereon Sept 26/55. Forty five Dalls.
- " S. P. Warner's order. \$ 45.⁰⁰/₁₀₀"
- " Recd hereon Oct. 12/55 One Hundred
- " Forty three Dollars. \$ 143.⁰⁰/₁₀₀"
- " Recd. Nov 22/55 of J. E. Woodbridge,
- " Eighty five Dalls. \$ 85.⁰⁰/₁₀₀"
- " Recd hereon June 30th 1856. Sixty five dalls
- " \$ 65.⁰⁰/₁₀₀ - J. E. W. -

The third of which said promissory notes so offered in evidence as aforesaid was in words and figures following, to wit:

- " \$ 258.98 March, 21, 1856.
- " Six Months after date we promise
- " to pay to D. M. Vanolinda or order Two
- " Hundred & fifty eight Dollars 98/100 for value

received -

No -

Andrew J. Sears
H. E. Hewlett

Upon the fact of which said promissory note,
at the time when the same was offered in
evidence, as aforesaid, was a written in-
strument, in the words following, to wit:
"D. M. Vanolind" -

The Plaintiffs hereupon rested their case.

The Defendants then called as a witness,
J. L. Adams, who, being duly sworn,
testified as follows: "I know the parties

"to this suit - I know of the Defendants
"making an assignment; I was the assignee,
"the assignment was in writing."

Defendants then produced an instru-
ment of writing, which said writing was shown
to said witness Adams, who then tes-
tified as follows, to wit: "This is the as-
signment of which I testified."

57 page evidence the said assignment, which was in the words and figures following, to wit.

This indenture made this second day of July in the year of our Lord Eighteen Hundred and fifty five between Andrew D. Sears and Horatio G. Howlett of the County of Lee and State of Illinois party of the first part, and James S. Adams of the County and State aforesaid, party of the second part mutually appointed for the purpose hereinafter mentioned, witnesseth that whereas the said party of the first part have heretofore been conducting business as partners in trade under the name and style of A. D. Sears & Co. and by reason of certain losses and misfortunes have become at present unable to pay and satisfy their creditors in full and are desirous of securing, paying and indemnifying their said creditors as far as possible, equally. Now therefore this indenture witnesseth that the said parties of the first part in consideration of the premises, and for the purposes hereinafter mentioned and in consideration of the sum of ten dollars, to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged,

and the said party of the second part forever discharged therefrom, the said party of the first part does hereby and by these presents grant, bargain, sell, assign, transfer, convey, and set over unto the said party of the second part, his heirs and assigns, all the stock in trade, goods, wares and merchandise, debts, choses in action, real estate, property and effects of every description, and wherever situated, belonging to them, the said party of the first part, or in which they have any right and interest, whatever jointly or severally.

To have and to hold all and singular the premises and property, herein and hereby assigned or intended to be assigned to the said party of the second part, his heirs and assigns forever.

But upon trust nevertheless, that the said party of the second part shall with all reasonable speed sell and dispose of the said property or all such parts of said property and effects, as are of a saleable nature, for cash, and shall use his best endeavors, to obtain, recover and receive such parts of the same, as consist of debts or other outstanding interests into his hands and possession after deducting all such costs, charges, expenses, and disbursements, as shall be incurred or reasonably due, in favor of or in

3 page
power to the execution of the trusts hereof, including
the costs, charges and expenses of preparing and
executing these presents. Then upon trust, that
the said party of the second part do and shall
divide, distribute and pay over all the residue of
said trust property, or such proportion of the proceeds
thereof to and among the creditors of the said
A. B. Sears, & Co. rateably and in proportion to
their respective debts or claims, share and share
alike without preference or priority, so much as
may be due or owing by the said party of the
first part, to each of them respectively, and
in case there shall be any surplus of the said
trust property or effects after fulfilling the said
trust, then upon trust, that the said party of
the ~~second~~ part do and shall convey, deliver, and
pay over the same to said party of the first part,
their executors, administrators, or assigns re-
spectively.

And the said party of the first part by these
presents do appoint, name, and constitute the
said party of the second part to be their and each
of their attorney irrevocable, in their name and
style of partnership, or in the name and style
of each of them respectively or otherwise as the
case may be, or require, but to and for the trust,
herein expressed and declared, to demand,

sue for, recover, and receive the outstanding debts, interests, trust property, and effects and to institute, prosecute and defend all suits at law, or in equity, and to execute and deliver and acknowledge all such deeds, writings, acquittances, acts, matters, and things, as shall be necessary or expedient, to carry into effect the trusts, uses, intents, and purposes, herein declared and expressed, as fully as said party of the first part could or might do the same.

And the said party of the second part doth hereby covenant with the said party of the first part and with each of the creditors of said party of the first part, that he will execute the trusts hereby imposed in him to the best of his ability, judgement, and discretion.

In testimony whereof the said parties hereto have hereunto set their hands and seals this the day and year first above written.

(Signed)

Andrew B. Seare.

Seal

W. B. Howlett,

Seal

J. L. Adams,

Seal

State of Illinois }
Lee County

Set.

Be it remembered that on the sixth day of July in the year of our Lord one thousand eight hundred and fifty five personally ap-

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 appeared before the undersigned, a Notary Public
 of Wyoming, in said County. Andrew D. Sears,
 Horatio P. Howlett and James L. Adams, who
 are personally known to the said Notary Public,
 to be the identical persons, who subscribed
 the foregoing instrument of writing and ac-
 knowledged that they made and signed the
 same as their free and voluntary act and deed,
 for the purposes and uses therein set forth,
 Given under my hand and seal of office at
 said Wyoming on the day and year above
 written. (Signed) Joseph Wood
 Notary Public,

sd

And the Defendants then produced
 an instrument of writing, which said writing
 was shown to said witness Adams, who,
 then testified as follows, to wit:

I think I have seen that writing
 before. I took it into Chicago to have the
 creditors of Sears & Howlett sign it. I
 think I called upon the firms who have
 signed it for the purpose of procuring their
 signatures to the paper - I did not see all
 of the firms sign their names to the paper.
 Am acquainted with the signatures of some
 of the firms whose names appear to this

56 page paper - think the signature of J. A. Smith, & Co. to this paper is genuine - Am acquainted with their signature - think the signature of Osborn, Adams & Co. to this paper is genuine - I think I know their signatures - Don't know as I saw the plaintiffs sign this paper but I think that it is their signature. The paper was left by me with some member of each of the firms whose signature appears to it, and was afterward returned to signed in the firm name as it at present appears, witness also stated, that the signatures to the paper represent all the creditors of Sears & Howlett that we know of in the City of Chicago, & that he delivered up and surrendered to A. P. Sears the property assigned to him - on the execution of said agreement. That Sears took the property, assigned and disposed of it.

The Defendants therefore offered the said instrument of writing in evidence which said instrument is in the words and figures following to wit: *the undersigned*

7 page Creditors of the firm of A. P. Sears & Co. in
" Consideration of this agreement and for the
" further consideration of the sum of one
" Dollar in hand, paid, the receipt of
" which is hereby acknowledged agree and
" bind ourselves to extend the time of pay-
" ment on the entire indebtedness of A. P.
" Sears & Co. so that it shall be due and
" payable in three equal payments at three
" six and nine months from the date hereof
" and the said A. P. Sears of the firm of
" A. P. Sears & Co. is to resume his business
" of selling goods, wares and Merchandise
" in the Town of Paw Paw, Lee County. Ill-
" nois, pursuant to which the assignee J. L.
" Adams shall forthwith deliver up to the said
" A. P. Sears all the goods, and chattels; and
" accounts; and notes assigned to him by
" the late firm of A. P. Sears & Co. This
" agreement shall only be binding upon the
" undersigned when all the creditors in Chicago,
" of the said firm of A. P. Sears & Co. shall
" have signed the same - witness our hands which
" we have hereunto set in the City of Chicago
" this 18th day of July A. D. 1858.
" Carpenter J. Dix & Co. - Cooly, Wadsworth & Co.
" C. C. Thompson & Co. - Brown & Miller &

✓ M. D. Gillman - James P. Williams -
 Reynolds, Ely, & Co. - J. A. Smith, & Co.
 Mills, & Co. - Osborn, Adams, & Co.

which was then read in evidence, to the reading of which, in evidence the Plaintiffs, by their counsel then and there objected, and the Court overruling such objection, the Plaintiffs, by their Counsel then and there duly excepted to the ruling of the Court in receiving and allowing the said instrument of writing to be read in evidence - Grounds of objection as follows - first, that the instrument offered was not material to the issue - second, that the execution of the same had not been proved - third, that all the creditors of Sears, & Howlett had not signed said instrument - Fourth, that Defendant Howlett was knowing ~~to~~ and consented to the execution of the same.

And the said Witness Adams further testified, to wit:

I think Defendant Howlett and myself, before I went into Chicago to get the consent of the creditors of Sears & Howlett, to give the property assigned to me into the

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hands of Sears. talked the matter up -
I don't remember as Howlett consented
to the arrangement, but I know the mat-
ter was talked up between us - It is
my impression that Howlett suggested
to me the making of this arrangement
with their creditors."

"I don't remember
whether Howlett was in Chicago, at the
time I went into get the creditors consent
to the transfer of their property into Sears
hands, or not - think he was not east
about that time - and presume he was
in Chicago about the time I was there,
but don't remember certain it has been so
long. - E. A. Damon & Co of Saint
Louis were creditors of A. B. Sears & Co,
but they would not consent to the transfer
of the property of A. B. Sears & Co to
Sears and did not sign the agreement."

The Defendants herupon rested
their case. -

The Plaintiffs, by their Counsel asked
the Court to instruct the jury as follows
to wit:

"If the jury believe from the evidence
that the Defendant Horatio S. Howlett

was a joint maker with Defendant Sears of the notes produced and read in evidence, & if they further believe that there was an extension of the time of three, six & nine months in equal payments and that that time has expired they will find for the Plaintiffs."

"2nd If the jury believe from the evidence that said Plaintiffs with all other creditors of the said Sears and Howlett residing in Chicago, sign an agreement for the surrender of the property assigned or any portion thereof, to defendant Sears, had an equal and undivided interest in said property with Howlett, said Sears would be equally entitled to the possession thereof with Howlett and such delivery if made in conformity to such direction would not constitute a discharge of the said Howlett from his liability upon the said notes."

"3rd If the jury believe from the evidence that the said Defendant Sears was a partner of the said Howlett

1 page and that they made assignment of their property to J. L. Adams for the benefit of their creditors and that plaintiffs with other creditors directed the said assignee to deliver the possession of said property to Defendant Sears, he being a party in interest equally with Howlett. He was equally entitled to the possession of the same and plaintiffs cannot be held responsible for any misapplications of the property by Sears.

"^{4th}/₄". To release a joint obligation or a joint maker of a promissory note given for a bonafide consideration, the intention to release and discharge him must clearly and unequivocally appear by the contract and mode and interest into between the parties, and it must also appear that a valuable consideration was paid therefor.

"^{5th}/₄". That unless the evidence shows that the transfer of the property assigned from Adams the assignee was made without the knowledge and assent

of the Defendant Howlett. The jury should find for the plaintiffs also that if the jury believe from the evidence that Howlett at the time such property was placed back in the hands of Sears, or at any time previous thereto advised and assented to the same as the same was done, then said Howlett is chargeable with notice and fraud thereby, and the jury should find for the plaintiffs."

And the Court refusing to give the first, second, third, and fourth of said instructions, the plaintiffs by their counsel then and there duly excepted to the ruling of the Court in refusing to give said first, second, third & fourth instructions.

The jury having heard the evidence and the argument of counsel and received instructions given by the Court as aforesaid retired to consider of the verdict, and afterwards returned the following verdict, to wit:

3 page "We the jury find the issues in the above entitled cause for the defendant

wherefore the Plaintiffs then & there entered their motion in arrest of judgment and for a new trial, and in the seventh day of May A. D. 1858 said day being one of the days of the April term of said Court. said cause came up upon the said motion for a new trial and in arrest of judgment, and the court overruling said motion the Plaintiffs by their counsel, then, and there, duly excepted to the ruling and decision of the Court and prayed an appeal therefrom, which was granted.

And for as much as the several matters hereinbefore stated do not otherwise appear the Plaintiffs by their Counsel hereby pray that this their bill of exceptions may be duly signed and sealed and made a part of the record of said cause which is done

(signed) John V. Eustace ⁵²¹
Judge ex ^{off}. J. C.

Feby. 1 1861

To Hon. J. V. Eustace

Dr Sir,

I have examined the above bill
at request of Mr Hawley and
have made such corrections as I
can recollect, were necessary to
make it correct, you will please
examine it and if you recollect
anything more you can add it,
if you choose to sign it.

(signed) W. H. Weston "

advised "Filed March 7th 1861
B. F. Snow Clerk
for Joseph Ball D.C. "

J. Benjamin F. Shaw Clerk

of the Circuit Court within and for said
County in the State aforesaid, do hereby certify
that the foregoing is a full true & complete
exemplification of all the proceedings of
Record in said Cause, as appear from the
Books & files now in my office.

In testimony whereof I hereunto
set my hand and the Seal of said
Court at Dixon this 9th day of
March A.D. 1865

Benjamin F. Shaw Clerk
Joseph Ball D. C.

Cost of this Transcript \$44.00

Clerks Fees in Case 15.60

Sherriffs Fees 15.85

Witnesses 32.20

County Fees 41.25

\$81.90

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Francis B. Cooley et al
vs

Andrew B. Sears et al

Filed April 17 1881
L. Leland
Clerk

Hawley

\$50.00