

No. 12811

Supreme Court of Illinois

Greenleaf.

vs.

Roe.

5 78 79
James C. Greenleaf
vs
Nelson C. Roe

128 11

1855

James E. Prentiss

Nelson C. Roe

Supreme Court of Illinois
to the King's grand division
of the Court Term Apr. 1854

But now comes the said James
E. Prentiss by Elisha W. Trevis
his attorney and says that it
is the duty of the proceeding and
undisturbed of the judgment & report
manifest error. He intervenes
to his jurisdiction in this to wit

1. Because it appears by the
said record that the said
Cook County Court of Common
Pleas Error is overruling the
decision of the said James
to the first count of said Roe's
declaration.

2. Because the said Cook
County Court of Common
Pleas Error is overruling the
said decision of the
said Prentiss to the second
count of the said Roe's
declaration.

3. Because the said Cook
County Court of Common
Pleas Error is overruling
the said Prentiss's decision
to the said third count of
the said Prentiss's
declaration.

4. Because the said
Cook County Court of Common

pleas and is ordering the said
pleas of the said Sheriff to be
striken from the files of said
Court.

5. Because the said Cook
County Court of Common
Pleas and is rendering
^{judgment} the default against said
Sheriff.

6. Because the said
Cook County Court of Common
Pleas and is refusing to set
aside the default in said
cause on the motion of said
Sheriff filed in said cause
on the fourth day of March,
and in overruling said
motion to set said default
aside.

7. Because the said
Cook County Court of Common
Pleas and is overruling ^{the motion}
the said said default
means to said Sheriff
on a writ on the fifteenth
day of March in said cause.

8. Because the said Cook
County Court of Common
Pleas and is making
the appointment in said
cause.

9. Because the said
Cook County Court of
Common Pleas and is

overruling the motion to set
aside said appointment of
damages.

10. Because the
Circuit Court of the
Plaintiff is rendering its
judgment against said
Defendant.

And this the said James
E. Spruick is ready to satisfy
by the record herein.

Wherefore ask for other
ends to the record upon
proceedings against the plaintiff
that the judgment against
may be reversed, annulled,
and for nothing to remain,
and that he may be restored
to all things which he may
have lost by reason thereof.
Elihu W. Tracy
attorney for the
plaintiff in error.

Supreme Court
of Illinois.

Gruntz

v

Ree.

Assignment of
Assets.

United States of America
State of Illinois
County of Cook

Plas before the Hon John McWilliam
Judge of the Cook County Court of Common Pleas
within and for the County of Cook and State of
said at a Special Term of said Court begun and
held at the Court House in the City of Chicago
in said County in pursuance of an Order of the
Judge thereof, and to public notice given in
accordance with the Statute in such case made
and provided on the second Wednesday being
the eighth day of March in the year of our Lord
one thousand eight hundred and fifty four
and of the Independence of the United States
the Seventy eighth.

Present the Hon John McWilliam Judge
Samuel McIlroy Pros Attorney
Cyrus P. Bradley Sheriff
Walter Kimball Clerk

It is Remembered that heretofore to wit
on the thirteenth day of September in the year eighteen
hundred and fifty three Nelson C. Roe plaintiff
by Charles Wheaton his attorney filed in the office
of the Clerk of the Cook County Court of Common
Pleas within and for the County of Cook and State of Illinois
his affidavit for attachment, which said affidavit

is in words as follows to wit.

State of Illinois } Cook County Court
County of Cook } of Common Pleas
Nelson C. Roe of the City of Chicago
in the County of Cook in the State of Illinois maketh
oath and saith that James E. Greenleaf is justly in-
debted to this deponent in the sum of six thousand
dollars for money had and received by the said
James E. Greenleaf for the use of this deponent and
this deponent further saith that said sum of six
thousand dollars is now wholly due and owing
from said James E. Greenleaf to this deponent
as aforesaid and this deponent further saith that
the said James E. Greenleaf is not a resident
of this state and this deponent further saith that
process from the Court of this state cannot be ser-
ved upon said James E. Greenleaf and that he
the said James E. Greenleaf has property and
effects in the County of Cook aforesaid subject
to attachment.

Subscribed & Sworn Nelson C. Roe
to before me this 3 day
of September 1853
W. Kimball C. R.

And said plaintiff also filed on the said
thirtieth day of September in the year aforesaid
in the office of the Clerk of said Court a process
for attachment writ, and also his Bond on
attachment, which said Process and attach-
ment bonds are as follows to wit.

Nelson C. Roe
James C. Greenleaf
to \$6,000.00.

Receipt for writ of attachment
in an action of Trespass
upon the Case on Promises
Damages \$10,000 amount \$6,000
Garrison William J. Hoar
Davis & Martin. Siffatt

Copy of Bond.

Know all men by these presents that we
Nelson C. Roe and C. A. Bruce John W. Clafford and
Milton S. Patrick are held and firmly bound
unto James C. Greenleaf his executor administrator
and assigns in the penal sum of Twelve Thousand
Dollars for the payment of which said sum well
and truly to be made we bind ourselves our heirs
executors and administrators forever. Given by these
presents. Sealed with our seals and dated this thir-
teenth day of September in the Year of our Lord one
thousand eight hundred and fifty-three.

The Condition of the above written bond or obli-
gation is such that whereas the above bounden Nelson
C. Roe has on the day of the date hereof prayed an
attachment out of the Cook County Court of Common
Pleas against the Estate of James C. Greenleaf executor
for the sum of six thousand dollars 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 Court then to be holden. Now if the
said Nelson C. Roe shall prosecute his suit with
effect or in case of failure therein shall well and
truly pay and satisfy said James C. Greenleaf all
such costs in said suit and such damages as
shall be awarded against said Nelson C. Roe to his
executors or administrators in any suit or suits

to be hereafter brought for moneyfully, suing
out the said Attachment then the above bond or
obligation to be void and of no effect or otherwise
to remain in full force and effect.

Nelson C. Roe Seal
E. A. Bruce Seal
John W. Stafford Seal
Hilton J. Patrick Seal

And upon the said twentieth day of September
in the year aforesaid, an Attachment Writ
issued out of the office of the Clerk of said Court
in said Cause, which said Writ is in the
words and figures as follows, to wit:

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

The People of the State of Illinois,
To the Sheriff of said County, Greeting.
Whereas Nelson C. Roe hath complained on
Oath to Walter Kimball, Clerk of the Cook County
Court of Common Pleas of Cook County, that James
E. Greenleaf is justly indebted to the said Nelson
C. Roe to the amount of Six thousand Dollars,
and as the having been ascertained, that the said
James E. Greenleaf is not a resident of this State,
so that the ordinary process for cannot be served
upon him, and the said Nelson C. Roe having
given bond and security, according to the direction
of the act in such case made and provided:

We therefore, Command You, that you attach
so much of the estate real or personal of the said
James E. Greenleaf to be found in your County

as shall be of value sufficient to satisfy said
and costs, according to the said complaint: and
such estate so attached in your hands securing,
or so to provide that the same may be liable
to further proceedings thereupon, according to law
at a term of said Cook County Court of Common
Pleas to be holden at Chicago within and for the
County of Cook on the first Monday of November
next. So as to compel the said James E. Green
leaf to appear and answer the complaint of
the said Nelson C. Roe. And that you ^{also} summon
William P. Gilroy as garnishee to be and appear
at the said Court on the said first Monday of
November next, then and there to answer
to what may be objected against him, 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 Walter Kimball
Clerk of our said Court and the Seal there
of at Chicago in said County this 30th day of
September in the Year of our Lord
One thousand Eight hundred and
fifty three

Seal
Clerk

Walter Kimball Clerk

Which said writ of attachment was afterwards
returned by the Sheriff of Cook County into the
office of the Clerk of said Court, with an en-
dorsement thereon in words and figures as
follows to wit:

I have executed this writ by lev-
ying upon and attaching all the right title and
interest of the within named James E. Greenleaf

in and to the following described real estate
to wit. The North West quarter (1/4) of Section num-
ber Twenty Six (26) in Township Number Thirty eight (38)
North of Range Thirteen (13) East in Cook County, being
one hundred and sixty acres, and the East half (1/2)
of the North East quarter (1/4) of Section number twenty
eight (28) in Township Number Thirty eight North of
Range Thirteen (13) East, in Cook County, being eighty
acres, and the North West quarter (1/4) of Section
number Eleven (11) in Township number thirty seven
(37) North of Range Thirteen (13) East, in Cook County
being one hundred and sixty acres, and the North
West quarter (1/4) of Section number thirty six (36) in
Township number thirty eight (38) North of Range num-
ber fourteen East in Cook County being one hun-
dred and sixty acres, and by reading this writ
to William B. Wolf as Garnishee, September
30th 1853, the within named Defendant not
found in my County. C. P. Bradley Sheriff
By J. W. Norton Deft.

And afterwards to wit on the Eighteenth
day of November in the year aforesaid the
Said Plaintiff by David T. Martin his attorney
filed in the office of the Clerk of said Court
his Declaration in said Cause, which said
Declaration and copy of Instrument and
account thereunto attached is in words and
figures as follows to wit,

In the Court County Court of
Common Pleas of November
Term A D 1853.

County of Cook

Shant

James E Greenleaf has been attached to answer Nelson & Roe in an action of trespass upon the case on promises, and thereupon the said Nelson & Roe by Davis and Martin his attorneys complains, That whereas before and at the time of the making of the promise by the Defendant next hereinafter mentioned the Plaintiff was possessed at the City of Chicago to wit at the said County of Cook of a certain Bill of exchange or acceptance bearing date to wit on the fifth day of August in the Year of our Lord one thousand eight hundred and fifty three and then drawn by the Plaintiff upon and accepted by one Charles D Gibson and whereby the Plaintiff requested the said Charles D Gibson and the said Charles D Gibson promised and agreed with the Plaintiff to pay to the Plaintiff's order sixty days after the date thereof the sum of One thousand Dollars, and the Plaintiff was also then and there possessed of a certain other Bill of exchange or acceptance bearing date to wit on the fifth day of August in the Year of our Lord one thousand eight hundred and fifty three and then drawn by the Plaintiff upon and accepted by the said Charles D Gibson and whereby the Plaintiff requested the said Charles D Gibson and the said Charles D Gibson promised and agreed with the Plaintiff to pay to the order of the Plaintiff seventy days after the date thereof the sum of ten thousand

dollars, and the Plaintiff ^{or} then and then posses-
sed of a certain other Bill of Exchange or accept-
ance bearing date to wit on the fifth day of
August in the Year of our Lord one thousand
eight hundred and fifty three and then un-
der the Plaintiff upon and accepted by the said
Charles D. Gibson and whereby the Plaintiff re-
quested the said Charles D. Gibson and the said
Charles D. Gibson promised and agreed with the
Plaintiff to pay to the order of the Plaintiff thirty
days after the date thereof the sum of Three thou-
sand dollars, and thereupon heretofore to wit on
the thirteenth day of August in the Year of our
Lord one thousand eight hundred and fifty
three at Chicago aforesaid at the said County
of Cook and in consideration that the Plaintiff
at the request of the Defendant would then and
there return and employ him to get the said ^{three} several
Bills of Exchange or acceptances discounted for the
Plaintiff for moneys to the Defendant in that be-
half and would deliver to him the same three
several Bills of exchange or acceptances for that
purpose he the Defendant promised the Plaintiff
to endeavour to get the said three several Bills
of exchange or acceptances discounted for the
Plaintiff and to render him an account of the
said three several Bills of exchange or accept-
ances and the proceeds thereof respectively on
request and that in case he the Defendant
should not succeed in getting the said three seve-
ral Bills of exchange or acceptances respectively
discounted he the Defendant would return the
same to the Plaintiff on request. and the

Plaintiff avers that he did afterwards on the day and year last aforesaid at the County aforesaid retain and employ the Defendant and deliver the said three several Bills of Exchange or acceptances to the Defendant upon the terms and for the purpose aforesaid. Yet the Defendant disregarding his said promise in this to wit, that he hath not rendered to the Plaintiff any account of the said three several Bills of exchange or acceptances or either of them or of the proceeds thereof or returned the said ^{three} several Bills of exchange or acceptances or either of them to the Plaintiff although he the Defendant was afterwards to wit on the twentieth day of August in the Year of our Lord one thousand eight hundred and fifty three requested by the Plaintiff s. to do and a reasonable time for so doing hath elapsed.

2^d Count.

And whereas before and at the time of the making of the promise by the Defendant next hereinafter mentioned the Plaintiff was possessed to wit at the County of Cork aforesaid of a certain other Bill of Exchange bearing date to wit on the fifth day of August in the year of our Lord one thousand eight hundred and fifty three and then drawn by the Plaintiff upon and accepted by one Charles Gibson and whereby the Plaintiff requested the said Charles Gibson and the said Charles Gibson promised and agreed with the Plaintiff to pay to the order of the Plaintiff sixty days after the date thereof the sum of one thousand Dollars and the Plaintiff was also then and there

possessed of a certain other Bill of Exchange bearing date to wit on the fifth day of August in the year of our Lord one thousand eight hundred and fifty-three, and then drawn by the plaintiff upon and accepted by the said Charles D Gibson and whereby the Plaintiff requested the said Charles D Gibson and the said Charles D Gibson promised the Plaintiff to pay to the order of the Plaintiff Seventy days after the date thereof the sum of two thousand dollars and the plaintiff was also then and there possessed of a certain other Bill of Exchange bearing date to wit on the fifth day of August in the year of our Lord one thousand eight hundred and fifty-three and then drawn by the Plaintiff upon and accepted by the said Charles D Gibson and whereby the Plaintiff requested the said Charles D Gibson and the said Charles D Gibson promised the plaintiff to pay to the order of the Plaintiff ninety days after the date thereof the sum of Three thousand dollars, and thereupon heretofore to wit on the thirteenth day of August in the year of our Lord one thousand eight hundred and fifty-three at the said County of Cook in consideration that the Plaintiff at the request of the defendant would then and there return and employ him the defendant to negotiate the said three several last mentioned Bills of Exchange for the plaintiff for remittance to the defendant in that behalf, and would deliver to him the defendant the same three several Bills of Exchange for that purpose he the defendant then and there promised the Plaintiff to require

the same three several Bills for the Plaintiff
for Currency and to remit the proceeds there-
of to the Plaintiff on request, or that he the
said Defendant would return the same to the
Plaintiff on request, and the Plaintiff avers
that he did afterwards to wit on the day and
year last aforesaid at the said County of Cook
retain and employ the Defendant and deliver
to him the Defendant the said three several
last mentioned bills of exchange upon the terms
and for the purposes aforesaid, and the
Plaintiff also avers that afterwards to wit
on the fifteenth day of August in the year of
our Lord One thousand eight hundred and
fifty-three at the County of Cook aforesaid
the said Defendant did negotiate the said three
several last named Bills of exchange for the
Plaintiff for Currency and did then and there
receive a large sum of money for the Plaintiff
for the proceeds of the said negotiation to wit
the sum of Six thousand Dollars and that
although the Plaintiff afterwards and after
a reasonable time had elapsed after said
sale to wit on the twentieth day of August
in the year of our Lord one thousand eight
hundred and fifty-three requested the defend-
ant to remit to him the Plaintiff the said sum
of money so received by the Defendant as last
aforesaid yet the Defendant hath not re-
mitted the same or any part thereof to the
Plaintiff but hath hitherto wholly neglected
and refused and still doth neglect and refuse
so to do.

3^d Count. And whereas the defendant on the first day of September in the year of our Lord one thousand eight hundred and fifty-three at the said County of Cook was indebted to the Plaintiff in the sum of Ten thousand dollars for money then and there paid by the Plaintiff for the use of the Defendant at his request, and in Ten thousand dollars for money then and there had and received by the Defendant for the use of the Plaintiff, and in ten thousand dollars for interest upon and for the forbearance by the Plaintiff to the Defendant at his request of monies due and owing from the Defendant to the Plaintiff, and in Ten thousand dollars for money found to be due from the Defendant to the Plaintiff on an account then and there stated between them, and the Defendant afterwards to wit on the day and year last aforesaid at the said County of Cook in consideration of the premises respectively promised the Plaintiff to pay to him the said several moneys on request. Yet the Defendant hath disregarded the said last mentioned promises, and hath not paid any of the said last mentioned moneys or any part thereof to the damage of the Plaintiff of Ten thousand dollars and therefore he brings this suit &c.

Harris & Martin
Plffs attys

The following is a copy of the Instrument or account on which this action is brought.

New York

Aug 13 53

Recd of N C Roe to D Gibbons acceptances
for six Thousand Dollars to negotiate for him
(N C Roe) for currency and remit to him on
return

James E Greenleaf.

Money Lent	\$6.000
Money paid	\$ 6.000.
Money had & received	\$ 6.000
Interest	\$ 1.000
Account stated	\$ 6.000

James E Greenleaf

And afterwards to wit on the sixth day of
January Eighteen Hundred & Fifty Four the
said Plaintiff filed in said Court a notice
with a certificate of publication thereof, which
said Notice & Certificate are as follows
To wit,

State of Illinois, Cook County ss.
Cook County Court of Common Pleas

January Term A D 1854.

Nelson C. Roe, vs James E. Greenleaf, Attachment.

Public Notice is hereby given to the said
James E Greenleaf, that a writ of attachment issued
out of the office of the Clerk of Cook County Court of
Common Pleas, dated the 30th day of September 1853,
at the suit of the said Nelson C. Roe against the
estate of the said James E Greenleaf for the sum
of Six Thousand Dollars directed to the Sheriff
of Cook County, which said writ has been returned

executed. Now therefore, unless you the said
James E Greenleaf shall personally be and appear
before the said Cook County Court of Common
Pleas, on or before the first day of the term
thereof to be holden at the Court House in the
City of Chicago on the first Monday of Febru-
ary A D 1854, give special bail and plead to
the said plaintiffs action judgment will be
entered against you, and in favor of the said
Nelson & Rae and so much of the property at-
tached as may be sufficient to satisfy the said
judgment and costs will be sold to satisfy the
same.

Walter Kimball Clerk
Davis & Martin Plffs attys.

Certificates The Undersigned, do hereby certify
that they are the Editors, Proprietors, and Pro-
prietors of the Democratic Press a daily news
paper of general circulation printed and
published in the City of Chicago, County of Cook
and State of Illinois and that a notice of which
the printed notice hereto annexed, is a true copy
was published in said paper six times each
week for four successive weeks, and that
the first insertion of said notice in said paper
was on the nineteenth day of November A D
1853. Dated at Chicago 5 January 1854

Scriffs & Co
Publishers

And afterwards. To wit on the Ninth
day of February in the year Eighteen Hundred
fifty four came the said defendant

by E. W. Tracy his attorney and filed in
said cause his Demurer, which said Demur-
er is as follows to wit.

James E. Greenleaf } Clerk of Court of
vs }
Nelson C. Roe } Court Pleas

And the said Defendant
by E. W. Tracy his attorney says that the first Count
of the said Plaintiff's Declaration and the matters
and things therein contained are not sufficient
in law, and that he is not bound to answer
the same, wherefore he prays judgment &c

E. W. Tracy, Deputy
And the said Plaintiff saith that the said first
Count mentioned and the matters and things there-
in contained are sufficient in law.

David S. Martin, Deputy Atty.
And the said Defendant by E. W. Tracy, his
attorney says that the second Count of the said
Plaintiff's Declaration and the matters and things
therein contained are not sufficient in law
and that he is not bound to answer the same
wherefore he prays judgment &c

E. W. Tracy, Deputy
And the said Plaintiff saith that the said
second Count mentioned and the matters and things
therein contained are sufficient in law.

David S. Martin, Deputy Atty.
And the said Defendant by E. W. Tracy, his
attorney says that the third Count of the said
Plaintiff's Declaration and the matters and things
therein contained are not sufficient in law and

that he is not bound to answer the same, where
for the Grays judgment &c.

And the Plaintiff saith that the things aforesaid
mentioned and the matters and things therein
contained are sufficient in Law

Davis & Martin

Deft atty
And afterwards to wit on the Eighth day of
February in the Year aforesaid the said Day be-
ing one of the days of the February term of said
Court in the Year Eighteen Hundred & fifty four
the following proceedings were had and en-
tered of record in said Court to wit

Newton C. Roe

James C. Greenleaf

Attachment

This day comes the
said Plaintiff by Davis & Martin his attorneys &
the said Defendant by C. W. Tracy his attorney and
comes and after argument of Counsel held on
the Defendants demurs to the first second and
third Counts in said Plaintiffs Declaration for
in the Court not being more fully advised in the
premises takes the matter under advisement

And afterwards to wit on the twenty second
day of February as yet of the said February
Term of said Court in the Year aforesaid
the following proceedings were had in said
Court and entered of record to wit

Nelson C Roe
James E Greenleaf } Attachment

And now again come the said parties by their said attorneys and the Court after mature deliberation on the said defendants Remoires to the first second and third Counts in the plaintiffs Declaration and being now fully advised in the premises overrules said Demurrer. And thereupon time is given said Defendant to file his plea herein until Friday Morning next.

And afterwards, on the third day of March in the Year aforesaid, came the said Defendant by C. H. Tracy his attorney, and filed in said Cause his Plea and Notice the same being filed within the time given by the Court, which said Plea and Notice are in words as follows to wit,

James E Greenleaf } Clerk of Court
ads } Court Pleas
Nelson C Roe

Plea

And the said Defendant by C. H. Tracy his attorney comes and defends the wrong and injury when &c. and says that he did not undertake and promise in manner and form as the said plaintiff hath herein above in his said Declaration alleged against him, and of this he puts himself upon the Country &c.
C. H. Tracy attorney
for said Defendant

Notes
The said Plaintiff will take notice that the Defendant will show and give in evidence on the trial of this cause under the foregoing plea that before and at the time of the commencement of this suit the said Plaintiff was indebted to him the said Defendant in the sum of twelve thousand dollars for money before that time had and received by said Plaintiff to and for the use of said Defendant, and in the further sum of twelve thousand dollars for two certain drafts belonging to and the property of said Defendant at the time when they were received and appropriated as hereinafter stated and drawn by Chase Brothers and Company by the name and description of Chase Bros & Co. each for the sum of Six thousand dollars and received from said Defendant by said Plaintiff and appropriated by him said Plaintiff to his own use before the commencement of this suit; and in the like further sum of twelve thousand dollars for money obtained by said Plaintiff upon the security of certain negotiable paper belonging to said Defendant and hypothecated or pledged by said Plaintiff, and in the like sum of twelve thousand dollars for money paid by said Defendant to said Plaintiff.
E. H. Tracy. Attorney
for said Defendant

And afterwards on the same day to wit the third day of March in the year last aforesaid there was filed in said cause a Motion which said Motion is in words & figures as follows to wit

In the Cook County Court of Common
Pleas. February Term Ad 1854

N. C. Roe
vs
Jas C Greenleaf

Motion

And now comes the Plaintiff by
Davis & Martin his attorneys and moves for Judg-
ment for the reason that though the Rule to plead
has expired and the Defendant has filed his plea
in bar. Yet the Defendant has not with his plea
filed an affidavit of Merits-

Davis & Martin, Plffs attys

And afterwards to wit on the fourth day of
March in the year aforesaid as yet of the said
February term of said Court. The following
proceedings were had in said Court & entered
of record, to wit

Nelson C. Roe

vs
James C Greenleaf

Attachment

And now at this day
comes the said Plaintiff by Davis & Martin his
attorneys, and on his motion, it is Ordered that
the plea of the said Defendant in this cause be stricken
from the files, the said Defendant having failed
to file an affidavit setting forth that he believes
he has a good defence to this suit on the merits;
and it appearing to the Court that due publication
of notice to the said Defendant has been made
and a Certificate thereof filed herein, and the said
Defendant being thereupon three times solemnly

called in open Court Coynes not nor any person
for him but herein fails and makes default
which is on motion of said Plaintiff's attorney
ordered to be taken, and is hereby entered of
record. Wherefore the said Plaintiff
ought to recover of the said defendant his dam-
ages herein sustained by occasion of the prem-
ises, and which said damages are hereafter
to be assessed by the Court.

And afterwards, on the same day, to wit
the fourth day of March in the year afore-
said the said Defendant by E. W. Tracy his
attorney filed in said Court an affidavit
and motion, which said affidavit and
motion are as follows to wit

James E. Greenleaf	Cook County Court of Common Pleas
advs	
Nelson C. Roe	

State of Illinois, County of Cook, S. S.
Elisha W. Tracy being first duly sworn doth
depose and say that he is the attorney of James E.
Greenleaf the defendant in the above entitled
cause, and that he is informed and advised
by said Greenleaf, and verily believes ^{that} the said
defendant has and can establish a good and
substantial defense upon the merits in said cause.
And this affiant further deposes and says that
he was not informed of the special matter which
said defendant relied upon for his defense in said
cause until yesterday morning the 3^d day of
March instant, when he received a letter from

said Greenleaf from Boston in Massachusetts.

And this affiant further deposes and says that the said defendant is a resident of Boston in the State of Massachusetts, and has been for many months last past, and this affiant verily believes that he said defendant has not been in the State of Illinois during the period of the present term of this court, and this affiant further deposes and says, that there has not been sufficient time since the filing of the plea in said cause filed by the ordinary course of mails, or by any other mode or way of communication known to this affiant by which he this affiant could have informed said defendant of the plea herein filed and have obtained his said defendant's affidavit of merits in his defense or to the truth of said plea. And this affiant further deposes and says that he believes that he can obtain and file an affidavit of said defendant of merits in his defense or to the truth of said plea within ten days from this time.

And this affiant further deposes and says that from his acquaintance with said cause and from the information which he has received from said defendant which he believes to be true, he this affiant verily believes that the said defendant's just defense in said cause cannot be prepared without the deposition of witnesses who are not residents of the State of Illinois and further this affiant swears that.

Sworn to before me Eliza W. Tracy
this 4 day of March 1854
Walter Kimball Clk

Nelson C. Roe

James E. Greenleaf

Cook County Court
of Common Pleas

And now comes the
said Defendant by Est Tracy his attorney, and
moves the Court to set aside the default granted
in the above entitled cause, because the said
Defendant has a good and substantial defense
upon the merits in said cause, and said de-
fendant cannot prepare his defense and there
would not have been time to prepare it since
the filing of the plea herein during the present
term of said Court, and said Defendant is a
resident of the State of Massachusetts, and has
been ever since the commencement of the pres-
ent term of this Court, and during that period
has not been in the State of Illinois

Est Tracy attorney
for said Defendant

And on the same day to wit the fourth day
of March in the year aforesaid the following
further proceedings was had in said cause
and entered of Record to wit.

Nelson C. Roe

James E. Greenleaf

Attachment

And now at this day
comes the Defendant by Est Tracy his attorney, and
enters his Motion herein founded upon affidavit
to set aside the default this day entered in this
cause.

And afterwards to wit, on the thirteenth
day of March in the year last aforesaid. the
said day being one of the days of the March
Term of said Court in the year aforesaid.
The following further proceedings were
had in said cause and entered of Record
to wit

Nelson C. Roe

vs
James C. Greenleaf

Attachment

And now come the
said parties by their said attorneys and after
argument of Counsel heard on the said defend-
ant's motion heretofore entered herein to set a-
side the default of the defendant entered in this
cause, the Court being now fully advised in the
premises overrules said Motion to which
decision of the Court the said defendant by
his said attorney enters his Exceptions.

And afterwards to wit, on the fifteenth day
of March in the year last aforesaid comes
the said Defendant by Est. Bracy his attorney
and files in said cause an affidavit and
motion, which said affidavit and motion
are in words and figures as follows to wit

Nelson C. Roe

vs
James C. Greenleaf

Court County Court
of Common Pleas

Attachment in Affidavit

State of Massachusetts, County of Suffolk, S. S.

James E Greenleaf being first duly sworn
doth depose and say that he is the defendant in
the above entitled cause pending in said Court
in the State of Illinois, and that he has and can
prove and show on the trial of said cause, as
he is advised by counsel and verily believes, a
good and substantial defense upon the merits
therein, and further this affiant saith not.

James E Greenleaf.

State of Massachusetts ss.
Suffolk County

I Benjamin H. Currier
a Commissioner residing in said County, duly appointed
and commissioned by the Governor of the State of
Illinois to take the acknowledgments of deeds &c. and
to administer oaths and affirmations to be used
or recorded in said State of Illinois, do certify that
on the tenth day of March in the year of our Lord
one thousand eight hundred and fifty four the
above named James E Greenleaf subscribed the
 foregoing affidavit in my presence at the City of
Boston in the County of Suffolk in the State of Mas-
sachusetts, and did depose and swear that the
matters therein set forth are true,

On witness whereof I have hereunto set my hand
& affixed my Seal as Commissioner of the said
State of Illinois in the City of Boston in
the County and State aforesaid this tenth
day of March A D 1854.



Benj H Currier, Commissioner
of the State of Illinois for the
County of Suffolk

Nelson C. Roe

^{vs}
James E. Greenleaf

Cook County Court
of Common Pleas

And now comes the
said defendant by Elisha W. Tracy, his attor-
ney, and again moves the Court to set aside
the default in the above entitled cause
heretofore made, because the said defendant
had pleaded to the merits in said action
before said default was granted, and because
he has a good and substantial defense upon
the merits therein, and for other obvious and
good reasons apparent upon the records
in said cause. E. W. Tracy

Defendant's attorney

And afterwards to wit on the Eighteenth
day of March in the year last aforesaid.
the said day being as yet of the March spe-
cial term of said Court in the year aforesaid
the following proceedings were had in said
cause and entered of Record to wit

Nelson C. Roe

^{vs}
James E. Greenleaf

Attachment

This day comes the
said plaintiff by David Martin his attorney, and
the defendant by Elisha W. Tracy his attorney
also comes and files his motion herein founded on
affidavit to set aside the default of the de-
fendant heretofore entered in this cause, which
after being heard is overruled by the Court, to which

decision of the Court the said defendant enters his exceptions.

And thereupon the Court after hearing the testimony adduced by said Plaintiff and examining the proofs submitted in this cause and being now fully advised in the premises assessed the said Plaintiff's damages to the sum of Six thousand one hundred and forty dollars.

Therefore it is considered that the said Plaintiff do have and recover of the said defendant his damages of Six thousand one hundred and forty dollars in form aforesaid by the Court here assessed and also his costs and charges by him about his suit in this behalf expended and have execution against the following described property being the property attached on the writ issued in this cause to satisfy the same, to wit, The North West quarter (1/4) of Section Number twenty six (26) in Township Number Thirty eight (38) North of Range thirteen (13) East in Cook County, being one hundred and sixty acres and the East half (1/2) of the North East quarter (1/4) of Section number twenty eight (28) in Township number thirty eight (38) North of Range thirteen (13) East in Cook County, being eighty acres, and the North West quarter (1/4) of Section Number Eleven (11) in Township Number thirty seven (37) North of Range thirteen (13) East being one hundred and sixty acres, and the North West quarter (1/4) of Section Number thirty six (36) in Township Number thirty eight (38) North of Range number fourteen (14) East, being one hundred and sixty acres, all in Cook County in the State of Illinois.

And upon the same day to wit. on the Eight
eenth day of March in the Year aforesaid the
following further proceedings were had
in said cause and entered of Record to wit,

Nelson C. Roe

vs
James C. Greenleaf

Attachment

And now comes
Elisha W. Tracy attorney for said defendant
and enters his motion herein to set aside the assess-
ment of damages made by the Court in this cause,
which said motion after being heard is overruled
by the Court, to which decision of the Court the
said defendant excepts, and prays an appeal
to the Supreme Court, which is allowed on
his filing appeal bond with the usual con-
ditions in the sum of six thousand five hun-
dred dollars to be approved by the Court, and
time is given to the tenth day of April next
to file said bond.

And thereupon, on the said Eighteenth
day of March in the Year aforesaid, the
said defendant by his said attorney filed
in said cause his bills of Exceptions, which
said bills of Exceptions are as follows, to wit:

Nelson C. Roe

vs
James C. Greenleaf

In the Cook County Court
of Common Pleas. Of the
Special term of March 1854.

Be it remembered that heretofore
to wit, on the third day of March 1854. the
said defendant filed his plea to the action
aforesaid in the words & figures following
that is to say

James Greenleaf

vs
Wilson & Roe

Book Co Court of
Com Pleas

And the said defendant
by E. W. Tracy his attorney comes and defends
the wrongs and injuries when &c. and says that
he did not undertake and promise in manner
and form as the said Plaintiff hath herein
alleged in his said declaration alleged against
him, and of this he puts himself upon the
country &c.

E. W. Tracy, attorney

for said defendant

and afterwards to wit on the fourth day of
March eighteen hundred and fifty four at the
February term of said Court, on motion of said
Plaintiff the said plea of the said defendant
was stricken from the files, to which said de-
fendant by his counsel excepted, and the said
Plaintiff caused the default of the said defend-
ant to be entered in this cause. And afterwards
that is to say on the fourth day of March eight-
een hundred and fifty four at the said
February term the said defendant filed in
said Court and in said cause an affidavit
and motion to set aside the default aforesaid
which said affidavit and motion are in the
words and figures following, that is to say.

James E. Greenleaf
vs
Selma Le Roe

Cook County Court
of Common Pleas

State of Illinois
County of Cook

Elisha W. Tracy being ~~sworn~~ first
duly sworn doth depose and say that he is the attor-
ney of James E. Greenleaf the defendant in the above
entitled cause, and that he is informed and advised
by said Greenleaf, and verily believes that the
said defendant has and can establish a good
and substantial defense upon the merits in said
cause. And this affiant further deposes and says
that he was not informed of the special matters
which said defendant relied upon for his defense
in said cause until yesterday morning the 3^d day
of March instant when he received a letter from
said Greenleaf from Boston in Massachusetts.
And this affiant further deposes and says that
the said defendant is a resident of Boston in the
State of Massachusetts and has been for many
months last past. And this affiant verily believes
that the said defendant has not been in the State
of Illinois during the period of the present
term of this Court and this affiant further deposes
and says that there has not been sufficient time
since the filing of the plea in said cause filed
by the ordinary course of mails, or by any
other mode or way of communication known
to this affiant by which he this affiant could
have informed said defendant of the plea then

facts and have obtained. His said defendant affdavit of merits in his defense, or to the truth of said plea, and this affiant further deposes and says that he believes that he can obtain and file an affidavit of said defendant of merits in his defense or to the truth of said plea within ten days from this time.

And this affiant further deposes and says that from his acquaintance with said cause, and from the information which he has received from said defendant which he believes to be true, he this affiant verily believes that the said defendant's just defense in said cause cannot be prepared without the depositions of witnesses who are not residents of the State of Illinois, and further this affiant saith not.

Sworn to before me this 4th day of
March 1854
Walter Kimball, Clerk

Elisha W. Tracy

Nelson C. Roe
James C. Greenleaf

Coast County Court
of Common Pleas

And now comes the said defendant by E. W. Tracy his attorney and moves the Court to set aside the default granted in the above entitled cause, because the said defendant has a good and substantial defense upon the merits in said cause, and said de

Defendant cannot prepare his defense and then
would not have been time to prepare it
since the filing of the plea herein during
the present term of this Court, and said
Defendant is a resident of the State of
Massachusetts, and has been ever since
the commencement of the present term
of this Court and during that period has not
been in the State of Illinois.

C. W. Tracy Attorney
for said Defendant.

And thereupon afterwards that is to say
on the fourth day of March eighteen hundred
eighty-four at the term aforesaid the said
motion was heard by the Court aforesaid and
taken under advisement, and afterwards
to wit on the thirteenth day of March
eighteen hundred and eighty-four at the
special term of said Court then in session
the said Court overruled said motion, to
which said decision the said Defendant
by his counsel then and there excepted.
And afterwards to wit on the fifteenth
day of March eighteen hundred and eighty-
four at the special term last aforesaid
the said Defendant filed in said Court in
said Cause an additional affidavit and
motion to set aside said default, which
said affidavit and motion are in the words
and figures following. That is to say

Sirron L Rao

James E Greenleaf

Book County Court
of Common Pleas

Attachment in replevin

State of Massachusetts

County of Suffolk

vs
vs

James E Greenleaf being
first duly sworn doth depose and say that he
is the Defendant in the above entitled cause
pending in said Court in the State of Illinois
and that he has, and can prove and show on
the trial of said Cause, as he is advised by
counsel and verily believes, a good and sub-
stantial defense upon the merits therein,
and further this affiant saith not.

James E Greenleaf

State of Massachusetts

Suffolk County vs
vs

I Benjamin W. Cannon a
Commissioner residing in said County, duly appointed
and commissioned by the Governor of the State of
Illinois to take the acknowledgment of Deeds, &c. and
to administer oaths and affirmations to be and
or recorded in said State of Illinois, do certify
that on the tenth day of March in the year of our
Lord one thousand eight hundred and fifty four
the above named James E. Greenleaf submitted
the foregoing affidavit in my presence at the City
of Boston in the County of Suffolk in the State
of Massachusetts, and did depose and swear that
the matters therein set forth are true.

On witness whereof I have hereunto set
my hand & affixed my seal, as Commissioner

of the said State of Illinois in the City of Boston
in the County and State aforesaid this tenth day
of March A.D. 1854

Esq.

Benj. A. Cunnier
Commissioner of the State of Illinois
for the County of Suffolk

Wilson C. Roe

vs
James E. Greenleaf

Cook County Court
of Common Pleas

And now comes
the said Defendant by Elisha H. Tracy his
attorney and again moves the Court to set
aside the default in the above entitled
cause heretofore made, because the said
defendant had pleaded to the merits
in said action before said default was
granted, and because he has a good and
substantial defense upon the merits therein,
and for other obvious and good reasons
apparent upon the record in said cause
E. H. Tracy

Defendants Attorney
which said motion was also heard and taken
under advisement by the said Court and after
wards to wit on the Eighteenth day of March
Eighteen Hundred and Fifty four, at the
Vernon last aforesaid, the said Court being suf-
ficiently advised in the premises announced
said motion, to which decision of the Court the
said defendant by his counsel then & there ex-
cepted, - And inasmuch as the matter afore-

said do not sufficiently appear from the record
of the proceedings aforesaid. The said Defen-
dant prays that this his bill of exceptions
may be signed & sealed by the Court, here
and made a part of the record herein,
which is done accordingly -
March 18 1854.

John M. Wilson *Deputy*
Judge of the Cook County
Court of Common Pleas

Nelson C. Roe	Cook County Court of Common Pleas. of the Special Term of March A.D. 1854.
^{vs} James E. Greenleaf	

Be it Remembered that heretofore to wit
on the eighteenth day of March Eighteen Hun-
dred and fifty four. the said Defendant made
entered and filed his Motion in said Cause
in the following words and Legives. That is
to say.

Nelson C. Roe	Cook County Court of Common Pleas. of the Special Term of March A.D. 1854.
^{vs} James E. Greenleaf	

And now comes the said Defendant by
E. M. Gray his attorney and moves the Court
to set aside the assessment in said Cause
heretofore made herein. The same ought
not to have been made without the inter-
vention of a Jury. because the same was
irregularly ordered and had, and

because the same was contrary to law, and
because the said Defendant had pleaded
to the merits to said action, and issue had
not been joined, and because of other
good and substantial reasons apparent.

E. W. Tracy

Atty for Defendant
And thereupon afterwards, that is to say
on the day and Year last aforesaid at the
term aforesaid the said Motion was heard
by the Court aforesaid and taken under
advisement, and afterwards to wit on
the day and Year aforesaid, at the term
aforesaid the said Court then & therein upon
the said Court reversed said Motion to
which said decision the said Defendant
by his Counsel then and there excepted.
And inasmuch as the matter aforesaid
do not sufficiently appear from the
record of the proceedings aforesaid the
said Defendant prays that this his bill of excep-
tions may be signed and sealed by the Court
here and made a part of the record herein
which is accordingly done.

March 18th 1854.

John H. Wilson
Judge of the Court
County Court of Common Pleas

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

I Walter Kimball Clerk of the
Cook County Court of Common Pleas within and
for the County & State aforesaid, Do hereby cer-
tify that the foregoing Transcript contains true
Copies of all the original papers filed in said
Cause, and also of all the Orders and proceedings
had in said Cause and entered of Record in
said Court, and that the same is a full true
and correct transcript thereof, as appears
from the files now in my office.

In Testimony whereof I have
hereunto set my Hand and affixed
the Seal of said Court at the City
of Chicago in said County this 10th
day of April A.D. 1854.

Walter Kimball
Clerk

True Transcript
Certificate of 950

2221-22

to the R

ats.

Wm. C. C. C. C.

Errors -

Filed Apl. 22. 1874.
L. Island
Clk.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of Cook ——— Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~county~~ ^{Cook County} court of Common Pleas of Cook county, before the Judge thereof, between Nelson C. Roe plaintiff ———

and James E. Greenleaf ———

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

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Nelson C. Roe ———

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *22* Monday in *June* — next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Roe ———

notice, together with this writ.

John D. Caton
WITNESS, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *4th* day of *April* in the Year of Our Lord One Thousand Eight Hundred and Fifty-five.

L. Seland

Clerk of the Supreme Court.

114) 13u. 7

Grunleaf & Roe

Sci. Ia.

June Term, 1855

N. C. Roe

Subscribed to the
within named Wilson, C.
Roe this 7th day of May 1855

Fees / Service .50

1 Mile .05

1 Return .10 65

James Andrew Sheriff
By A. S. Buckley Deputy

Filed July 9, 1855.
L. V. Law Clerk.

Chicago, March 30th 1855.

Dear Sir;

Please to send to me
the series forms with even &
Printings of Pro.
Yrs truly,

C. M. Tracy

To / Lorenzo de la Cruz
/ ~~James S. of El Paso~~
Cm h. h. C. h.