

No. 12026

Supreme Court of Illinois

Conkling, et al,

vs.

Carson, et al

Thomas Borkling et al. } In Supreme
v. } Court
Robert W. Carson et al. } June 2, 1880.

And now at this day came
the said Complainant, by their
solicitors, and set down and assign
for error the following causes, to wit:

1. The Court below erred in sustaining
the demurrer to the said bill
of the said Complainant and dismissing
the same.

2. The Court erred in rendering
judgment for the defendant, when
it should have been in favor
of the Complainant.

For the above and other errors
apparent on the face of the record,
the said Complainant pray that
the judgment of the Court may
be reversed.

Collins & Wackelmaier
Attys for Compt.

And the said respondents Carson & Holmes
come by their solicitor and say that
in the record & proceedings ~~in~~ in
the rendition of the decree herein
there is no error & pray that the
same may in all things be affirmed.

Hoffm. Attys for Carson & Holmes

19
Counting stals.
Carson st als.
With of sun + joiner

Fild June 19. 1850.
L. Deland Clk.

State of Illinois
Jo Davenport County

Pleas in the Jo Davenport County Court begun
and held at the Court House in Galena in
said County on Tuesday the 20th day of
April a d 1847 before the Hon Hugh S
Dickey, presiding judge of said Court.

William P Millers Sheriff - George M Mitchell clerk

Jonas Conkling and
Abner J Conkling

Complainants

^{vs}
Robert W Carson
John C Gammis &
Arthur L Holmes

Defendants

Be it known that heretofore
to wit on the 2nd day of April a d 1847 the
Complainants by their Solicitors filed in the
Office of the Clerk of the Jo Davenport County
Court, in and for said County their Bill of
Complaint, which is in the words and figures
following to wit:

To the Honorable Hugh S Dickey judge of the Jo
Davenport County Court Illinois, sitting in Chancery

Humbly complaining in to your honor

Your orators Jonas Conkling and Abner J Conkling

traders and copartners under the name firm and style of Sonas Conkling & Co. sheweth unto your honor that heretofore, to wit, in the month of March A.D. 1845 they sold a certain quantity of Merchandize to Robert W. Carson & John C. Gains at that time and up to the 32^d day of June 1846. trading as merchants under the firm of Carson & Gains, in the city of Galena and State of Illinois, and also sold to the said Carson & Gains a certain other quantity of merchandize in the months of June and September 1845. And in the month of April 1846, which said merchandize was sold by your com-
-plainant in the city of New York, where then and now they are engaged as partners under the style of said as traders in Merchandize, And your orators further show that for the Merchandize aforesaid, the said Carson & Gains give to your orators their certain six prom-
-issory notes of the dates, amounts and in the time as follows

One note dated	March 3,	1845,	at 9. months	for	\$369.97
"	"	"	" 15	1845	" " " " 80. 80
"	"	"	Sept 9,	1845	" " " " 336. 46
"	"	"	June 16,	1845	" " " " 375. 34
"	"	"	April 3	1846	: 6 months for 177. 00
"	"	"	" " 1846	" 8.	" " 177. 04

upon which said first note there is a Credit of three hundred dollars, and your orators show that on the 10.th day of Nov. 1846, they obtained a judgment in the Joe Davis County Court, Illinois for a portion of the said indebtedness to wit, \$522.87 upon which said judgment an execution was issued Dec. 7. 1846 and returned March 7. 1847. by the proper officers not satisfied

Our orators further show that the said Carson & Guinn
at the time when the said merchandise was so sold to them
as aforesaid made large purchases of merchandise of other
merchants in New York, Philadelphia, and elsewhere,
which they caused to be transported to Galena, their place
of business. And your Orators further show that in the
Spring of 1846, John C. Guinn of the said firm of Carson &
Guinn left his place of business in Galena and proceeded
to the Eastern Cities in order to purchase goods for the
said firm. And your Orators further state that at
the time of his arrival in the East to make the said pur-
chase, the said Carson & Guinn ^{was} largely indebted to eas-
tern merchants for purchases previously made -
And your orators further show that the amount of
said indebtedness at that time exceeded seven thou-
-sands dollars, which the said firm of Carson & Guinn
were totally unable to pay. And your orators further
show that prior to the arrival of the said Guinn in
New York they had forwarded to their correspondents
in Galena their notes which had matured or which
were near maturity for the purpose of collection and
the said Guinn when in New York as aforesaid
confidently assured your orators that the said notes
so forwarded to Galena as aforesaid would be paid
by his partners in Galena. And your orators having
faith in the appearance of the said Guinn, sold all to the
said Carson & Guinn, another bill of goods for which
the last two notes above mentioned were given.
And your orators further state that they are informed
and believe it to be true, that when the said notes
so forwarded to Galena as aforesaid for collections
were presented for payment by their correspondents in Galena

James Carter & Co. to the said Carson he the said Carson informed the said James Carter & Co. that the said notes would be paid in New York by the said Gains. And your orators charge the fact to be that no one of the said notes was paid either to your orators in New York by the said Gains or to James Carter & Co. in Galena by the said Carson.

And your orators further show that the said Carson & Gains being so indebted as aforesaid at the time that the said Gains went East for the purpose of purchasing goods did make large purchases of goods in the Eastern Cities to an amount exceeding ten thousand dollars, which goods were forwarded to their place of business in Galena and which goods so purchased in the spring of 1846, by the said Gains were purchased upon the representations as your orators expressly charge the fact ^{was, namely, that they were unable to meet their liabilities & pay for the same expenses in point of fact your orators charge that the said Carson and Gains} to be that the said Carson & Gains at the time the representations were made were utterly insolvent and unable to pay either the debts then due or which were then incurred and which were thereafter to become due which fact was well known to the said Carson & Gains.

And your orators further show unto your honor that the said Gains after having made the purchases of goods as above stated and set forth returned to Galena the place of business of the said Carson & Gains about the 22^d day of April 1846, as your orators are informed and believed and shortly after his said return to wit, about the 20th day of June last past one S. R. Molony representing himself as the agent of certain Creditors of the said Carson & Gains the name of which creditor are stated in

the assignment hereinafter referred to, come
to Galena and he believing that the said Carson and
Gairns were in insolvent circumstances induced
them to make an assignment a true copy of which is
heretofore annexed and marked "A." and prayed to
be taken as a part of this bill which said assignment was
made as appears therein to Artemas L Holmes for
the purposes and trusts and upon the conditions therein
set forth. And your orators further charge that the said
assignment was and is void and fraudulent in law
and a fraud upon the Creditors of the said Carson & Gairns
and among others, a fraud upon your Orotor, And
your orators further state that the goods and effects
transferred in the said assignment were the goods
obtained from the Creditors of the said Carson & Gairns
and among others from your orators and that the said
goods & effects so assigned as appears therein constitute
all the property real and personal of the said Carson &
Gairns, And your orators further state that in purs-
uance of said assignment the said Carson & Gairns
delivered over to the said Holmes and the said
Holmes received the goods and effects and property
mentioned in the said assignment, And since
the said assignment the said Holmes has proce-
eded to execute the said trust and from time to
time has sold the property, goods and effects men-
tioned in the said assignment and from time to
time been paid over moneys to the parties designated
therein, And your Orators show that as appears
by the said assignment the said Holmes was only
authorized to pay over any money received by him

as assignee to these persons who had assented to the
provisions and Conditions contained in the said assign-
ment by becoming parties thereto, whereas your orators
Charge the fact to be that the said Holmes has paid over
divers and large sums of money to divers persons who
have not assented to the said provisions and Conditions
of the said assignment, to Wit, to James Carter & Co.
five hundred dollars to E & C Sloan & Co. one hundred
& sixty-seven dollars to Caleb F. Lindley two hundred
and eighty one ⁴⁰/₁₀₀ dollars. And your orators further
State that a suit, judgment and execution at law
have been utterly unavailing so far as your orators
and many of the other Creditors of the said Carson &
Gains are concerned for as much as before any judg-
ment was obtained and execution issued the said
property credits and effects transferred by the said
assignment were placed entirely beyond the reach
of an execution, the said assignee having sold said
goods and effects and turned them into money as
much as possible and your orators further Charge
that at the time of the said assignment the
said Carson & Gains were indebted to an
amount exceeding twenty four thousand dollars
and that the amount of money to be first paid
to the creditors particularly named in the
said assignment exceeds the sum of
Eleven thousand dollars as will appear by
reference thereto - And your orators further
state that the goods credits and effects are
not worth more than fourteen thousand dollars
and that after deducting the expenses costs

and charges of executing the trust declared
in the said assignment and paying the
Creditors preferred therein and making a
reasonable allowance for the loss in selling
goods under such circumstances as are herein
set forth then will not remove any thing
whatsoever to be paid to the Creditors who are
not particularly preferred and specified by
name in the said assignment and that
the said Creditors who are not particularly
named and specified therein and among
them your orators will utterly lose their debts
due to them by the said Carson & Gains if
the said Holmes pay over to the Creditors
particularly named and specified in the
said assignment the moneys which he may
have received as such assignee. And
your orators further state that they are informed
and believe to be true that the said Carson &
Gains, are indebted to the persons in the Memorial
annexed and in the amounts according to the
Schedule hereto annexed marked "C" and prayed
to be taken as part of this bill: and that they are
indebted also in a large amount to divers persons
to your orators unknown, which indebtedness was for
merchandise purchased of the said Creditors
by the said Carson & Gains on account, and
nearly all of which merchandise for which said
indebtedness was incurred was transferred to the said
Holmes by the assignment aforesaid, and your
orators further state that they make this application

and file this bill of Complaint as well for themselves as on behalf of the Creditors of Said Carson & Gains, who are not particularly named and proposed in the Said assignment & And your orators pray that they and the Said Creditors in whose behalf they file this bill as well those named as those unknown may have the benefit thereof, when the names of the Said Creditors shall become known; And they further state that this bill of Complaint is filed with the assent of the Said Creditors above named who are not proposed and named in the Said assignment & And your orators further shew to your honor that the Said Carson & Gains and the Said Holmes (whom your orators pray may be made defendants to the bill of Complaint) knowing that Said assignment was fraudulent and void on the 16th day of July 1846 attempted to give validity & legality to the same by a certain instrument in writing a true copy of which is hereto annexed and marked "B" and prayed to be made a part of this bill, which Said instrument was executed subsequent to the payments made by the Said Holmes as assignee as aforesaid.

And your orators further shew unto your honor that they have on their own behalf as well as on behalf of the other Creditors of the Said Carson and Gains represented by this bill of Complaint given to the Said Holmes or notice a true copy of which is hereto annexed

and marked "C" and prayed to be taken
as a part of this bill; And your orators
further pray that the Creditors particularly
preferred by name in the said assignment &
whom Christian and other names are unknown to
your orators except as stated in said assignment
and may be if deemed necessary be made
parties defendants hereto; And your orators
further show that on the 28th day of July 1856
further to give validity to said fraudulent assignment
another instrument in writing was executed by
said Carson & Gains & Holmes & certain of the supposed
Creditors of said Carson & Gains which is hereto
annexed, and marked "C" and prayed to be
taken as part of this bill is But now so
it is may it please your honor the said
Holmes combining with divers other persons
whom names are at present unknown to your
orators, but when discovered they, pray they may
be at liberty to insert herein with apt words to
charge them as parties defendants hereto and
contriving how to injure your orators in the prem-
ises has disposed of the stock in trade of the said
Carson & Gains and has collected and is now
collecting the claims in action received from them
by virtue of the said ~~fraudulent~~ pretended assign-
ment heretofore referred to, and that the said
Holmes has paid over the moneys so received
for the said goods to some of the Creditors of the
said Carson & Gains preferred & named in the
said assignment; And your orators further

show that the said Holmes assignee as aforesaid
threaten & give out that he will still go on and
pay our other moneys and collect the said Chas
in action and pay over the proceeds thereof
according to the tenor and effect of the said
pretended assignment. And your orators
further show unto your Honor that the said
Carson & Givins are wholly irresponsible and
have no means to pay their debts except the
proceeds of the said goods and chattels Chas
in action transferred to the said Holmes as
assignee as aforesaid by the said assignment
charged to be fraudulent and void. And
your orators further show that if the said
Holmes assignee as aforesaid be permitted to
go on and collect the said Chas in action and
pay over the proceeds of them and the said goods
to the said preferred Creditors named in the
said assignment the whole means and property
which the said Carson & Givins had at this time
of executing the said assignment to wit on the
22nd day of June 1856 will be exhausted and
your orators and the other Creditors of the said
Carson & Givins will not be able in any manner
to obtain the payment of their claims or any
portion thereof. And your orators further show
that unless the said assignment shall be set
aside as fraudulent and the said Holmes
assignee as aforesaid be decreed to pay over
all the moneys he has received by virtue of
the said fraudulent assignment to all the

Creditors of the Said Carson & Gairns pro rata
and a receiver appointed by your Honor to
Collect the Said Chans in action and hold
the proceeds thereof for the Common benefit
of all the Creditors of the Said Carson & Gairns
great & irreparable injury will be done to
your orators and the other Creditors of the Said
Carson & Gairns.) All which actings & doings
are contrary to equity and good conscience and
tend to the manifest and great wrong & injury of your
orators in the premises. And in as much
as your orators Can only have adequate relief
in a Court of equity, where matters of this kind
are properly Cognizable and releuable, To the end
thereup that the Said Dependents may, upon
their respective Corporal oaths answer the premises
and particularly set forth the amount of the
indebtedness of the Said Carson & Gairns, the
persons to whom they are indebted and the
Several amounts to each and when the Same fell
due. And that the Said Holmes may answer
under oath and set forth how much money he has
received into his possession by virtue of the Said
assignment, how much he has paid out to the
Said preferred Creditors and to whom he has paid
it, and state what he has done with the money
which he has received by virtue of the Said assign-
ment, which he has not paid over to the Said
preferred Creditors, whether or not he has used
it himself or loaned it out to others, and if loaned
to whom, and at what interest, whether with or
without Security, and if with Security, what

Security, And what he has done with the goods
and merchandise received by virtue of the said
assignment and if he has sold them, to whom
and for how much whether for Cash or on credit
and if on credit, for how long a time and whether
with or without security, and if with security,
what security, and at what discount from the
original cost of said goods, And further that
he may answer whether he received the said
notice marked "C" and at what time;

And your orator prays your Honor that
the said deed of assignment may be set aside
as fraudulent and void, and that the said
Holmes assigned as aforesaid may be decreed
to pay over to all the Creditors of the said
Carsons & Givins pro rata all the money he
has received, or may receive by virtue of the
said assignment, and that a receiver may
be appointed by your honorable Court to collect
the debts due the said Carson & Givins and
pay over the proceeds thereof to the said Cred-
itors of the said Carson & Givins pro rata &
that your orator may have such other and further
relief in the premises as may be deemed
just and right. And that a subpoena may
issue to said Defendants &c

Summoned, Hempel }
& Washburn } For
BB Howard } Comps

Jonas Conkling
Attest J Conkling

"L"

Edwin Hunt } Judge in the 7th Sec of County
" } Const Illinois Nov 10. 1846 for
Carson & Givins } \$137.43 Execution issued Dec
7. 1846 returned March 7. 1847
} No property found

James A. Armstrong } Judge in the 7th Sec of County
& Thornton } Const Illinois Nov 10. 1846 for
" } \$191.79 Execution issued Dec
Carson & Givins } 7. 1846. Returned March 7
1847 no property found

A B Marvin } Judge in the 7th Sec of County
" } Const Illinois Nov 10. 1846 for
Carson & Givins } \$142.95 Execution issued
Dec 7. 1846 returned
March 7. 1847 no property found

J B Meeker and
Herbert } Judge in the 7th Sec of County
" } Const Illinois Nov 10. 1846 for \$180.20
Carson & Givins } Execution issued Dec 7. 1846
Returned March 7. 1847 no property
found

Reimer & Mecke
" } judge in the 2d damp county
Carson & Givins } Cont Illinois Nov 10, 1846 for
\$409.07 Executions issued Dec 7
1846, Returned March 7, 1847
no property found

David Leavitt
" } judge in the 2d damp county
Carson & Givins } Cont Illinois Nov 10, 1846 for
\$1289.17 Executions issued Dec 7
1846 Returned March 7, 1847
no property found

Alfred Edmunds & Co
" } judge in the 2d damp county
Carson & Givins } Cont Illinois Nov 10, 1846 for
\$491.62 Executions issued Dec
7, 1846 Returned March 7
1847 no property found

Jonas Conkling & Co
" } judge in the 2d damp county
Carson & Givins } Cont Illinois Nov 10, 1846 for
\$522.87 Executions issued Dec
7, 1846 returned March 7
1847 no property found

Jonas & Snow } judge in the 2d damp county

⁵
 Carson & Gavins } Cont Illinois Nov 10. 1846 for
 } \$385.50 Execution issued
 } Dec 7. 1846 Returned
 } March 7. 1847 no property
 } found

John F. Seaman
⁵
 Carson & Gavins } just in the Jo Damp County
 } Cont Illinois Nov 10. 1846 for
 } \$116.22 Execution issued
 } Dec 7. 1846 Returned
 } March 7. 1847 no property
 } found

Robert B Porter
⁵
 Carson & Gavins } just in the Jo Damp County
 } Cont Illinois Nov 10. 1846 for
 } \$363.78 Execution issued Dec 7. 1846
 } Returned March 7. 1847 no
 } property found

Michael Rogers
⁵
 Carson & Gavins } just before N C Postwick
 } S. for \$30.58 Execution issued
 } and returned Dec 31. 1846 no property
 } found

Marcus J. Howland
⁵
 Carson & Gavins } just before N C Postwick S
 } for \$98.07 Execution issued and
 } returned no property found

George Seafieid { first in the Jo Samp County
 Carson & Gairns { Court Illinois July 24, 1846 for
 \$188.40 Execution returned
 July 4. 1847 but not satisfied
 in full

Carson & Gairns

To Ashest & Remington D
 1846. To the amount due by note
 dated March 17, 1846 payable
 in 8 months from date ————— \$469.42
 " " amt due by note dated March
 17, 1846 payable in 8 months
 from date ————— 469.43
 " " amt paid for insurance 17.23

Carson & Gairns

To Barnard & Barnum D
 1846, To balance due by note dated Feb, 27
 1845 payable 9 months after date 70.87
 " To this amt due by note dated Sept
 3, 1845 payable in 9 months 592.80
 " To this amt due by note dated
 March 31, 1846 payable in
 9 months 893.90

Carson & Gains

To Lewis & Mallet Dr

1847 To this amt due by note dated
apl 1847 payable in 6 months 293.81

Carson & Gains

To Saml B Wacker Dr

1847 To this amt due by note dated Mar 10
1847 payable in five months 236.00
" this amt due by note dated " 10
1847 payable in 8 months for 235.97

"A" This Indenture made this twenty second day of June in the year a 1856 between Robert W Carson and John C Garins partners in business under the style and firm of Carson & Garins of Galena Illinois, Merchants of the first part and Artemus L Holmes of Galena, of the second part And the several persons and firms, Creditors, Debtors or sureties of or for the said parties of the first part, who have executed, or who shall hereafter execute or accede to these presents within sixty days from the date of these presents, of the third part. Whereas the said parties of the first part, are at present unable to pay the immediate demands upon them and deem it just and reasonable to secure pay, and indemnify the several persons and firms parties or to become parties to these presents, in the manner hereinafter mentioned. Now therefore this Indenture Witnesseth that for the Consideration and purpose herein contained and in consideration of one dollar to them paid by the said party of the second part (the receipt whereof is hereby acknowledged) the said parties of the first part, do by these presents grant bargain sell convey assign transfer and set over unto the said party of the second part, and his assigns all the stock in trade goods wares & merchandise, debts, choses in action property and effects of every description belonging to them; And all their lands and tenements and property of every name nature and description (Excepting their necessary house hold furniture and property exempt from seizure by law from levy and sale) a schedule of which is to be made as

Soon as Conveyance and assigned hereto. To have and
to hold all and singular the premises herein assigned
or intended to be to the Said party of the Second part
his heirs and assigns, to their use and behoof forever
But in Trust and Confidence nevertheless to sell and
dispose of said goods, wares and Merchandise real and
personal Estate, and to collect the said Choses in action
and debts, using a reasonable discretion as to the time
and mode of selling and disposing of the same, as
it respects making Sales for Cash or on Credit at private
Sale by Contract or at auction and with the right to
compromise for said Choses in action, taking a part
for the whole, where the party of the Second part
shall deem it expedient so to do. Then in trust
to dispose of the proceeds of said property, in the
Manner following Viz

First, to pay the costs and charges of these presents
and the Expenses of executing the trust declared
in these presents.

Second, to pay James Carter & Co a balance
of about Six hundred dollars due, and save
Harmless Elizabeth W Strother Secy, & Mortgagee
to secure the same, and a Judgment in favour
of C B Sloan & Co for about \$165, and also another
Judgment in favour of Lindsey & Co for about
\$378, and also an accommodation acceptance
of Speers & Vandervoort for about \$278.89
Endorsed by Wm O Maloney

Third, to pay the following named Creditors
of the parties of the first part the amount
of their respective claims pro rata in proportion

tion to the amount due them to First;		
Marsh & Compton	about	3407.99
Spears & Van der Knaf	"	1385.42
West Oliver & Co	"	543.06
D & C Hyde & Co	"	224.64
Harrell Calhoun & Co	"	165.26
Qu M Beck	"	332.97
Levens Benedict & Co	"	329.49
M S Simeon	"	365.35
Cataract fire Co	"	50.00
John Charles	about	178.00
L P Sanger	about	200.00
Hugh Boyer	about	100.00
A C Davis	about	58.00
James Matley	about	90.64
L M Miller & Co	"	1634.13
John F Seamon	"	112.00
George Eckert & Co		
Hays & Meyer		

Fourth, To distribute and pay the remainder of the said property and proceeds to and among all the other parties of the third part ratably, and in proportion to their respective debts, and if there shall be any surplus after paying the same in full; then in trust

Fifth, To pay over such surplus to the parties of the first part then Executors administrators or assigns

And the parties of the first part hereby constitute and appoint the party of the second part their attorney

irrevocable with power of substitution, authorizing
him in the names of the parties of the first part
Or otherwise as the case may require to do any &
All acts matters and things, to carry into effect
the true intent and meaning of these presents
which the parties of the first part might do if
personally present. And the parties of the
Second part hereby accepting these trusts, Covenants
to and with each of the other parties hereto to execute
the same faithfully, promised he shall not be
liable for any loss or damage which may happen
except the same shall happen or arise by or
through his own wilful default and negligence,
And the respective Cr. or deb. parties hereto do
and each and every of them for themselves severally
and respectively, and for their several and respective
executors administrators partners and assigns hereby
accept and take the property and effect herein
fore assigned in full payment satisfaction &
discharge of all their respective debts and
demands and of all loss and damage sustained
or to be sustained by reason of any liability
aforesaid, and do each and every of them, absol-
utely, remise, release, discharge, and quit claim
the parties of the first part, of and from all
demands, which they or any of them now have
or ever had against the parties of the first part
and it is understood that any creditor shall
be entitled to the benefit of these presents
upon, and for, and only upon & for, the just
amount of indebtedness whether stated greater

or smaller than it really is; And the parties
of the third part by signing these presents
express their assent to this assignment and
accept the provisions therein made for them.

And in Witness whereof the parties of
the first ^{part} and second part, have hereunto set
their hands and seals the day and year first
above written

Signed Sealed & delivered

in presence of

J D Charles

R. W. Carson (init)

Geo. C. Gairns (init)

Artemus Holmes (init)

Marsh & Compton

West Oliver & Co

Hager & Hager

Spencer & Co

D. C. Hyde & Co

Lewis, President & Co

J M Matley

B. R. McElroy

Geo M Peck

John D Charles

S M Wiley & Co

B. R. Bloomer

Recorded this twenty third day of June A D 1856
at 12 past 10 o'clock A M

Lemuel Betts Recorder

State of Illinois }
Jo Dauph County } p

I hereby certify that the foregoing assignment is a true and correct copy from Book B of Mortgages & pages 31 and 32

Attest,

Jeremiah Betts Recorder
Jo Dauph County,
State of Illinois

Records office Salem
July 13th 1846

"B" Whereas the undersigned Robert W Carson and John C Givins late partners under the style of Carson & Givins, did by their deed of assignment bearing date June the twenty second in the year A D 1846 recorded in the Records office in and for the County of Jo Dauph and State of Illinois Book B of Mortgages & pages 31 & 32 convey assign and set over unto Artemus L Holmes in trust for the and purposes therein described declare and set forth, all the property real and personal rights Credits & effects belonging to them as set forth in said deed. And whereas at the time of making and executing said deed, the undersigned had good reason to believe, and did believe that their property thereby conveyed for the purposes therein set forth to be sufficient

to pay and satisfy all the just debts of the
undersigned, and in consideration of such
help a promise was inserted in said deed
whereby all the Creditors who should consent to
become parties thereto, and did become parties
thereto, did thereby each and every of them severally
and respectively, for themselves their executors
administrators and assigns, accept and take
the property and effects thereby assigned in
full payment satisfaction & discharge of all their
debts and demands, loss and damage sustained
or to be sustained by reason of any liability,
therein mentioned, and did thereby each and
every of them absolutely, remise, release, discharge
and quit claim the undersigned Carson & Gairns
of, and from all demands they or any of them
then had or ever had against the said under-
signed Robert W Carson & John C Gairns; and
whereas since the execution of said deed of
assignment, on taking an inventory of the goods
property and effects thereby assigned, the undersigned
doubt, and do not believe there is sufficient prop-
erty and effects to pay and satisfy in full, all
their just debts. Now therefore in consideration
of the premises the undersigned Robert W Carson and
John C Gairns, do hereby Covenant and agree
to and with all the several persons, and firms
Creditors endorsers, and sureties of and for them
the said Robert W Carson & John C Gairns, who
have executed or hereafter shall execute or accede
to said deed of assignment, any thing therein

to the contrary notwithstanding, that the said deed
and its provisions shall not operate, nor any thing
therein contained, as a payment, discharge release
or satisfaction of their respective debts and demands
or any of them; nor of any loss or damage sustained
or to be sustained by reason of such liability upon
them respectively, becoming parties thereto or not, but
all the said Creditors parties or to become parties
thereto shall be entitled to the benefit of the
avails of said assignment, without releasing the
undersigned or discharging them from any of their
just debts - And the undersigned hereby agree
to pay the whole of their indebtedness to all and
each of their Creditors parties, or to become parties
to said deed of assignment or not, any thing
therein contained to the contrary notwithstanding.

Witness our Hands and seals this sixteenth
day of July in the year a D 1846

Signed sealed & delivered

in presence of

By W Wilder

Wm Bathurst

R W Carson (Seal)

Mr C Cairns (Seal)

Recorded this seventeenth day of July, a D 1846 at
20 Minutes past 8 O'clock A M

Jeremiah Pettis

Recorder

State of Illinois

Jr Damp County

{ p

Recording Office Galena July
18th 1856. I hereby Certify that the
foregoing Instrument of writing is a true and
correct copy, from Book B of Montgoms &
page 445 and 446

Attest
Jesse B. Bates
Recorder
Hamp County, Illinois

"6"

J. A. S. Holmes Esq

Assignee of Robert W. Carson
and John C. Gains Constituting the firm of
Carson & Gains at Galena Illinois

You are hereby notified that the assign-
ment made by said Carson & Gains on the 22nd
day of June A.D. 1856 unto be contested by us
as Creditors of Carson & Gains as fraudulent
and void, and you are further notified not
to sell or dispose of the Goods and Merchandise
received by you as assignee under and by
virtue of said assignment nor to collect or receive
any of the monies or claims in action due the
said Carson & Gains, nor to pay over any monies
now in your hands received under and by virtue
of said assignment by you as assignee, or any
money that shall hereafter come into your hands

as assignee as aforesaid, as we shall hold you personally liable therefor & And you are hereby further notified that on this day at 2 o'clock P M or as soon thereafter as counsel can be heard an application by bill of Complaint in Chancery against you and others will be made to the Hon Hugh J Dickey Judge of the County Court of St Dampf County in the Chancery side thereof in open court for an injunction to issue against you to prevent you from paying over any monies which you may have received or may hereafter receive by virtue of said assignment - and you are hereby further notified that you will be personally held responsible for all monies Goods and Effects which you may have received or shall hereafter receive as assignee of the Said Carson & Garms whatever may be the result of the application for an injunction to the Said County Court & as it is the intention of the undersigned and others Creditors of the Said Carson & Garms if the Judge of the Said County Court, shall be of opinion that an injunction cannot now issue against you because the undersigned are not judgment Creditors or for other reasons to prosecute their Said claims immediately to judgment and Execution and then to make applications to the Said Judge to set aside the Said assignment as fraudulent and void, as to the Creditors of the Said Carson & Garms so that if you

shall pay over any monies received by you
as such assignee, it will be at the risk of
yourself being held personally responsible
therefor - as it is the purpose of the undersigned
and other Creditors of the Said Carson & Garins
to pursue all legal and equitable means to
have the Said assignment declared null
and void and fraudulent in Law, and
to cause the monies Credits and effects now
received by you or hereafter received to be
held accountable for the debts of the Said
Carson & Garins, for the benefit of all their
Said Creditors pro rata

Valencia July 18th 1846

Wm Conkling & Co
in behalf of themselves and others, Creditors
of the Said Carson & Garins

"E"

Whereas Robert W Carson and John C Garins
did on the 22^d day of June A.D. 1846 by their deed
of assignment of that date assign to Artemus S Holmes
as trustee certain property therein described in trust
and for the benefit of certain of their Creditors, endorsers
or sureties, in which deed was a provision that the
Creditors endorsers or sureties who became parties

thence by signing the same should take the property therein described in full payment of their demands against said Carson & Garms and thereby release said demands; & the said Carson & Garms by their certain other instrument in writing under the seals dated the 16th day of July, A.D. 1816 altered and modified the said deed of assignment by discharging and doing away the aforesaid promises and ~~promises~~ providing that the said Creditors, endorses or sureties of the said Carson & Garms, who had become or should become parties thereto by signing the same and assenting to its provisions, should notwithstanding be held to take the property in said assignment named in full payment of their demands against the said Carson & Garms or any part thereof, nor to release the same all which will more fully appear by reference to the said deed of assignment and instrument in writing, both which are recorded in the Recorders office of Peoria County Illinois. And whereas the said instrument in writing modifying and altering said deed of assignment was made with the assent and Concurrence of the said Trustees and all others then parties to the said assignment by signing the same, but such assent does not appear by said instrument in writing; Now be it known that the said instrument in writing modifying and altering said deed of assignment as aforesaid was made with the assent and Concurrence at the time, of the said

trustee and all the parties thereto who had then signed
the same, and acceded to its provisions, and they
do hereby assent to and concur in the alteration
and modification of the said deed of assignment
made by the said instrument in writing and
consent and agree to the execution of the trusts
declared in the said deed of assignment subject
to the alteration and modification of it made
by the said instrument in writing and the
provisions therein contained & for the purpose
of giving to said Creditors, Endorsers or Sureties
of said Carson & Gurns, who have not yet
signed the said deed of assignment and
acceded to the same an opportunity to become
parties to the same as altered and modified
by said instrument in writing and subject to its
provisions by signing the same or acceding thereto.

The time for them doing so is hereby extended fifty
days from the date hereof, In witness whereof
the said Carson & Gurns & Holmes trustee as aforesaid
have hereunto set their hands and seals and the said
Creditors, Endorsers, or Sureties who have signed
the said deed of assignment and acceded to it
have set their hands this 28th Day of July A.D. 1856

R W Carson (Seal)

John C Gurns (Seal)

Artemus L Holmes (Seal)

Marsh & Compton

Best Oliver Ho
Hays & Heger
Spurs & Wandschopf
Ab Hyde Ho
Linn, Benedict Ho
J M Matley
L. M Wiley Ho
By R Bloomer
Gu M Beck
J I Charles

Endued Filed 2nd April 1847

Geo M Fritzel.
" " Clerk

And afterwards to Put on the 2^d Day of April
a writ of Summons issued out of
the Clerk's office of said Jo Damp County Court
against the said Defendants which said
Writ is in the words and figures following to Wit

State of Illinois }
Jo Damp County } Set

The People of the State of Illinois
In the Sheriff of the County of Jo Damp
Greeting

We Command you to Summon Robert
W Carson, John C Gairns and Artemas
L Holmes to appear before the Jo Damp
County Court at the Court House in Galena at
the next term, to be holden at Galena on the
3rd Monday of April instant to answer Jonas
Conkling & about J Conkling traders and
carpenters under the name firm and
style of Jonas Conkling & Co in a Bill
in Chancery. And have you then then
this writ.

Seal of
Court

Witness the Hon Judge J
Vickrey Judge of said Court
at Galena Illinois this 2nd Day
of April 1847
Attest Geo M. Matlock
Clerk

which said writ was returned by the said Sheriff
into the said Clerk's Office, with an endorsement
thereon in the words and figures following to Wit:

Served the within Summons in Chancery
the 2^d day of April 1847, by delivering a true
& Certified Copies of the same to the within
named Robert W Carson & Artemas L Holmes
John C Garins not found

W P Willard Sheriff

And afterwards to Wit on the 23^d day of April
a d 1847 in the April special term of said Jo
Damp County Court in the record of said Court
in said Cause is the following entry to Wit

Jonas Conkling &
Abner J Conkling

vs
Robert W Carson and
Artemas L Holmes
Implicated with John
C Garins

Bill in Chancery

On motion of the Complainants
by their Solicitor the Defendants Robert W
Carson & Artemas L Holmes are ruled by the
Court to plead answer or demurr by Wednesday
morning next

And afterwards to Wit on the 28th day of April
a d 1847 as yet of the April special term a d 1847

of said Jo Damp County Court the Defendants
Robert W Carson and Artemus L Holmes, comes
by their solicitor and files their Demurrer and
Answer to the Complainant's Bill, which said
Demurrer and Answer is in the words and figures
following to wit:

The joint & several demurrer of
Robert W Carson & Artemus L
Holmes to part & then joint & several
Answer to other part of the bill of
Complaint of Jonas Conkling and
Abel J Conkling filed in the Jo
Damp County Court on the Chancery
Side thereof.

These Defendants Robert W Carson & Artemus
L Holmes, by protestations not confessing or acknow-
ledging any of the matters & things in the said
bill of Complaint contained to be true in such
manner & form as the same are therein set
forth, as to so much of the said bill as seeks
to set aside or impeach or have any relief against
the deed of assignment of the said Carson & Holmes
in the said bill named on the grounds of its being
void & fraudulent in law or that seeks a discovery
from these defendants or either of them in relation
to the property named in said assignment, its
amount the disposition made of it or its proceeds
by said Holmes as trustee (except the payment of
the debts of James Carter J^r, C C Hoag J^r & Caleb
J Lindley named in said bill) or his intended
disposition thereof or in relation to what amount

Said Carson & Gains were indebted at the time of making said assignment or at any time since or to whom, or to the rendering of any judgment or issuing or returning any Execution thereon, or their insolvency then or since, or in relation to their means of paying Complainants & their other creditors not preferred named in said assignment & whether they will or not be paid any thing if they do not receive any of such assigned property or its proceeds, or in relation to whether such assigned property embraced all the property of said Carson & Gains who they purchased the same from, how much said Holmes has received as trustee under and by virtue of said assignment or in relation to whether said note mentioned in said bill named was given, or received by sd Holmes, or that prays that said Holmes may be deemed to pay over to all the Creditors of said Carson & Gains pro rata what he has received or may receive under and by virtue of said assignment, of said assigned property or its proceeds, or that a receiver may be appointed to collect or receive the same, then defendants do demand thereunto & for cause of demand shew that the said Complainants have not by their said Bill made such a case as entitles them in a Court of equity to any discovery or relief from or against these defendants or either of them as to the matters hereinafore specified or any of such matters - wherefore & for divers other good causes of demand appearing in the said Bill, these defendants do demand to so much of the said bill as aforesaid & humbly pray the

judgment of the honorable Court whether they shall make any further or other answer thereto,

And as to so much of the said bill as these defendants have not before respectfully demurred unto these defendants in no sort moving the benefit of the said demurrer but wholly relying & trusting therein, these defendants for answer to the residue of the Complainant's said bill or to so much thereof as they are advised is material or necessary, for them to make answer unto, these defendants each speaking for himself & not the one for the other do severally answer and say as follows,

They admit it to be true that the said deed of assignment in said bill named a copy of which is therein set forth marked "A" & the said instrument in writing therein named made on the 16th day of July A D 1846 a copy of which is annexed to said bill & marked "B" & that the instrument therein named made on the 28th day of July A D 1846 a copy of which marked "C" is annexed to said bill, were all made & executed at the time & in the manner & for the purposes they purport to be & that the said last two instruments in writing were made to remove any allegations to said assignment on the part of the creditors of said Carson & Gairns who had not executed the same.

And these defendants further severally answering say they admit it to be true that the said Holmes as trustee under said assignment after the making up of the same did pay to James Carter H. C. C. Sloan & Co & Caleb F. Lindley the

Names of men, named in said bill being debts
jointly due to them as creditors of said Carson and
Garns - And these dependants say, that the said
debt due & paid James Cartwright was the proper
debt of said Carson & Garns, that Elizabeth W. Strother
was surety to said James Cartwright for its payment
by Carson & Garns & to secure its payment had mortgaged
her property to James Cartwright & that to counter secure
her against her said suretyship for them & said
debt the said Carson & Garns had mortgaged to
said Strother all the goods & merchandise named
& transferred in and by said assignment to said
Holmes, which said mortgage was then in force
& a valid & subsisting lien on all said goods
& merchandise so assigned, at the time of the
payment of said debt by said Holmes is and
these dependants further say, that for said debts
so paid to E. C. Sloan & Co & Cash & Lindley
said Sloan & Co & Lindley had previously to said
assignment, respectively obtained judgments for them
against said Carson & Garns in the J. Damp
County Court Ill & issued & placed in the hands
of the Sheriff of J. Damp County, where said goods
& merchandise were, at the time of said assignment
Executions upon their said judgments, which executions
^{of the making of said assignment & ever after to & all the time}
were in J. Damp County hands & in life at the time of
the said payment of said debts to Sloan & Co & Lindley
by said Holmes & at all such times were valid
& subsisting liens & incumbrances on said goods &
merchandise - and these dependants say that at
the time of the payment of said debts by said

Holmes, said mortgage to said brother & said
Executions were valid and subsisting liens &
incumbrances on the goods & merchandise so assigned
as aforesaid to the amount of said payments &
the said Sheriff had already levied or was about
to levy said Executions on said goods & Merchandise
& that said Holmes paid said debts with the
Knowledge assent & approval of said Carson
& Givins & thereby discharged said liens & incum-
brances, & in making such payments of said debts
these defendants believe that said Holmes acted
in accordance with the true intent & meaning
of said assignment & with his duty as trustee there-
under & that he thereby saved a sacrifice of
said goods & Merchandise by a forced sale &
the incurring of further loss & expenses to be
satisfied out of said goods & Merchandise.

And this Defendant Artemus J. Holmes
says that he is a stranger to the several other matters
& things in the said Bill charged, & not before
Answered or demanded unto by these defendants
to wit: the purchases of said goods & Merchand-
ise by said Carson and Givins of whom the
Amount, more or by means of what representations
if any they were purchased, the pecuniary ability
of said Carson & Givins at the time, or their
Knowledge or belief in regard thereto, or then or either
of their representations in regard to their debts or their
payments charged in said bill, or in regard to their
solvency, and whether any of the goods so assigned
were purchased of complainant & this defendant

Says that in regard to the said several matters & things and each of them, he is entirely ignorant and cannot set forth in regard thereto as to his belief or otherwise - He believes it to be true that at the time of making said assignment said Carson and Gains were in insolvent circumstances, & at the time of making of said assignment to him he had no knowledge whatever in regard to the circumstances & representations under & by virtue of which said goods & merchandise were purchased by said Carson & Gains as charged in said bill & this defendant Holmes denies all combination & contrivance to injure the Complementors or others as charged in said bill. And the said defendant Robert W. Carson further answering says that he admits it to be true that the Complementors sold to this defendant & John C. Gains certain merchandise at the time & that said Carson & Gains gave them notes for the price thereof as charged in said bill, & that at the time of such purchase they made other purchases of goods of other eastern merchants, that they were brought to Galena where said Carson & Gains did business under that name & that in the Spring of 1846 said Gains went to the Eastern Cities to purchase goods for them, that at the time of his arrival there said Carson & Gains were to a considerable amount indebted to eastern Merchants for former purchases to an amount this defendant does not know but will admit exceeds \$7000, & that said Gains then made purchases of

goods to the amount of near ten thousand dollars
for said Carson & Gains & that he so purchased
a lot of goods at that time of the Complainants
for the price of which, he gave the said last
two notes to them of Carson & Gains, as charged
in said bill, but the defendant Carson does not
know and cannot answer as to his belief or otherwise
whether in the Spring of 1846 at the time he
Gains made the last named purchases of goods
said Gains made the assurances or representations
charged in said bill to have been made by him,
or whether said goods or any of them were sold upon
or on the faith of such representations or assurances,
charged in said bill to have been made by said
Gains, the defendant Carson being entirely ignorant
in regard thereto - and this defendant Carson
admits it to be true that some part of the Com-
-plainants said notes, how many, or what ones,
this defendant ^{does not} ~~know~~ now recollect were sent to
Lucena as charged in said bill & in regard to
one of said notes, the smallest one this defendant
believes he did inform said James Carter & Co that
it was the understanding that said Gains would
pay it, or that he would pay it in New York, as he
really believed he would, and this is all the repres-
-entation this defendant recollects of making to
said James Carter & Co in regard to the payment
of said note by said Gains in New York
and he admits it to be true that no one of said
notes was paid in New York by said Gains
or to James Carter & Co by said Carson - and
the defendant denies that said Carson & Gains

were entirely insolvent, or that they knew they were
at the time of the last named purchase of goods
by said Carson & Gurns in the Spring of 1846
but on the contrary this defendant then believed
that they were solvent & able to pay & would pay
all their liabilities then & before contracted - and
this defendant admits it to be true that the said
goods & Merchandise assigned as aforesaid, were
purchased of the Creditors of Carson & Gurns &
that some but what portion of them this defen-
-dant does not know were purchased from the
Complainants. And these defendants deny
that there is any other matter or thing in said
bill contained material & necessary for them
to answer & not herein demanded unto or answered
true to the knowledge or belief of these defendants
all which matters & things these defendants
are ready to maintain & prove as this Court shall
direct & they ~~shall~~ pray to be hence dismissed
with their reasonable Costs & Charges in this bill
- all sustained

B R Sheldon
of Counsel for dfts

Artemus L Holmes
R. W. Gurns

State of Illinois
In said County

On this 28th day

of April a d 1857 before me the undersigned
John G Potts a justice of the peace personally
appeared the above named Artemas L
Holmes & Robert W Carson & severally made
oath, the said Holmes that he has read
& the said Carson that he has heard read
the above answer subscribed by them, and
that they know the contents thereof & that the
same, each one of them, as it purports to be made
by him, knows is true of his own knowledge
except as to the matters which are therein
stated to be on each ones own information or
belief & as to those matters as answered by him
each one believes it to be true

John G Potts J.P.

Endorsed Filed April 28th 1857

Geo F. Truesdell
Clerk

And afterwards to wit on the 14th day of September
a d 1857 in the September Special term a d 1857 of
David Jr Damp County Court in the records of
said Court in said Cause is the following entry
to wit

Jonas Conkling and
Nathaniel Conkling

^{vs}
Robert W Carson, John
C Garms & Artemus
L Holmes

Bills in Chancery

The Compliments by the Counsel
Came and filed proof of publication of notice
to John C Garms one of the above named defen-
dants

And afterwards to wit on the 17th day of April
a d 1848 in the April Special term a d 1848 of
said Jo Samp County Court, in the records of said
Court in said Cause is the following entry to wit:

Jonas Conkling &
Nathaniel Conkling

^{vs}
Robert W Carson, John
C Garms and
Artemus L Holmes

Bills in Chancery

Now came on to be heard the documents
heretofore filed by the defendants by the Counsel to
the Compliments bill - and after hearing a
part of the argument the Court postpones further
consideration of this Cause until tomorrow morning

And afterwards to Pitt on the 18th Day, of a plea
a d 1848 on part of the said April Special term
a d 1848 of said Jo Samp County Court, in the
Records of said Court in said Cause is the follow-
ing entry to Pitt.

Jonas Conkling &
Noah J Conkling

Robert W Carson
John C Savins &
Artemus L Holmes

Pitt in Chancery

Now at this day, come again
the parties by their Counsel, and after hearing
the remainder of the argument on the demurrer
the Court takes the Case under advisement

And afterwards to Pitt on the 11th Day, of May
a d 1849 in the May term a d 1849 of said Jo
Samp County Court, in the Records of said
Court in said Cause is the following entry to
Pitt.

Jonas Conkling &
Noah J Conkling

Robert W Carson
John C Savins &
Artemus L Holmes

Pitt in Chancery

This day coming on to

he heard upon the Bill of Complaint and
the Demurrer of said Defendants Robert W
Carson and Artemas L Holmes to a part of said
Bill, and upon the said Bill and the answer
of the said Defendants to the residue of said
bill not demurred to, and the same having
been heretofore at the appointed time a 0 1846 of
this Court argued by Thomas Drummond and C^o
B Washington Esq of counsel for the Complainants
and by J P Hoge and B F Sheldon Esq of
counsel for said Defendants, Carson & Holmes
And upon the said Argument, the points
submitted to this Court upon the said Bill, answer
and demurrer being whether the instrument of assign-
ments mentioned and referred to in the said
Bill of Complaint bearing date the 22nd day
of June and 16th day of July a 0 1846 respectively,
are good and valid or fraudulent and void in
Law as against the said Complainants being
Creditors of the said Defendants Carson & Holmes
and whether if the same should be held to
be fraudulent and void as aforesaid, the assigned
property mentioned in said Instrument of
assignment or the proceeds and avails thereof
should be distributed pro rata or otherwise among
the Creditors of the said Carson & Holmes according
to the special prayer for relief prayed for in and
by said Bill & and the Court being now fully
advised upon the said questions submitted
upon the said hearing, it is considered that the
said several instruments of assignments above

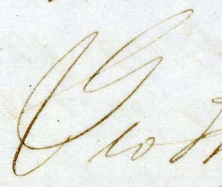
referred to and mentioned in said pleadings
taken together and in Commission the one with the
other, are good and valid in Law and ought
to be sustained, and that the said Complain-
ants have not entitled themselves to have the
same declared fraudulent and void as against
them, and that they are entitled to the relief
consequent thereupon. Specially prays for in and
by the said Bill of Complaint & It is there-
upon ordered adjudged and decreed that the
Denial of the said Defendants Carson
& Holmes to a part of the said bill be sustained
and that the said Complainants take nothing by
the said Bill, but that the same be dismissed
as against the said Defendants Carson & Holmes
And it is further ordered and decreed that
the said Defendants Carson & Holmes do have
and recover of the said Complainants their
Costs of this Suit to be taxed, and that Execution
issue therefor & And the Complainants volunteer
except to the ruling & decision of the Court & prays
an appeal to the Supreme Court.

State of Illinois }
In said County }
Jes

J. George McMichael
Clerk of the In said County Court in and
for said County, do hereby certify that the

foregoing transcript contains a true and
 correct copy from the record of all the proceedings
 which were had in the said Jo Daviess County
 Court in the aforesaid Cause of Jonas Conkling
 and Abner J Conkling against Robert B Carson
 John C Gavins and Artemus L Holmes

Witness my Signature and
 the Seal of said Court at my
 Office in Galena Illinois this
 26th Day of June a d 1859

Attest  Clerk
 Geo M. Ritchie

Counting Co.
Carson & Harris
Transcript

Filed August 23-1849.
Chas. Clark.

Fees
Transcript \$22.95
Certificate & Seal 50
\$23.45
Comptroller & Washburne
for fees

1849-26

Albany, Illinois,
August 15. 1849.

Clerk of the Supreme
Court,

Ottawa Illinois:

We enclose you here
with the record in the case of Conklein
et al. v. Carson & Gairson, which we
wish you to file. Ticker the cause &
issue the proper writ, directed to the
Sheriff of this county to execute.

We also enclose you five dollars
as the docket fee.

Yours, Respectfully,
Hempstead & Washburne,
Solicitors for Plffs.

Filed Aug. 23^d 1849.
Island Clk.

State of Illinois, Sec.

WRIT OF ERROR.—FREE TRADER, OTTAWA.

The people of the State of Illinois,
To the Clerk of the ~~County~~ *Jo Davis County* for the county of *Jo Davis*-Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~Circuit~~ *Jo Davis County* Court & _____ county, before the Judge thereof, between *Jonas Coukling and Etosh T. Coukling, Complainants* _____

plaintiff and *Robert H. Carson,*
John C. Garins & Artemus L. Holmes _____

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

Complainants _____

as we are informed by *their* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the *Second* _____ *Monday of June* _____ next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. *Samuel H. Treat*

Chief Justice of our said Court, and the seal thereof at Ottawa, this *23^d* _____ day of *August* _____ in the year of our Lord one thousand eight hundred and forty-*nine*.

Heland

Clerk of the Supreme Court.

Supreme Court
Jonas Bouklung et al.
vs
Robert W. Carson et al.

Mist of Error.

To June Term 1880.

Filed August 23-1849.
Melard Clk.

Clerk of the Supreme Court.

W. Melard

one thousand eight hundred and forty-nine.
in the year of our Lord
Chief Justice of our said Court and the
WITNESSES the Hon. Robert W. Carson et al.

State of Illinois, }
 Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF *Jo Davis* County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the ~~circuit court of~~ *Jo Davis County Court* ~~county~~, before the Judge thereof, between *Jonas Coukling & Noah T. Coukling, Complainants, & Robert W. Carson, John C. Garins & Artemus L. Holmes* —

defendants, it is said that manifest error hath intervened to the injury of the said *Complainants*

as we are informed by *their* 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 *Robert W. Carson, John C. Garins & Artemus L. Holmes* —

that *they* 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 *Second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *defendants* notice, together with this writ.

WITNESS, the Hon. *Samuel H. Treat*
 Chief Justice of our said Court, and the seal thereof,
 at Ottawa, this *23rd* day of *August*
 in the year of our Lord, one thousand eight hundred
 and forty-*nine*. —

L. Ireland

Clerk of the Supreme Court.

Supreme Court.

Jonas Boukling et al.

vs
Robert W. Carson, John C.
Gairns & Artemus L. Holmes

Sci. Fa.

To Sheriff of Jo Davis Co.

June Term 1850.

Executed the within writ of Sci. Fa. by reading
to the within named Robert W. Carson & Artemus
L. Holmes this 11th day of September A.D. 1849. the
within named John C. Gairns not found in
my custody

Shiffs H.	1.00	Mc. B. Rice Sheriff
Serving		"
Mileage	12 1/2	
Return	12 1/2	
	\$1.25	of Gallatin County M.D.

Filed Nov. 8th 1849.

L. Seland Clerk.

¹⁹
Jonas Conkling et al }
+ }
Robt W Carson et al }
} Error to Jo Davies
} Circuit Court
} In Chauncy

E B Washburne & Jas H Collins for pay

J P Hoge for Defts in error -

etc. 19.
Jonas Coukling et al.
vs
Robert W. Carson et als.

1850

12036

Pease
EP