

No. 14686

Supreme Court of Illinois

Rawleigh

vs.

Rawleigh

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14686
STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 256

J. W. Middleton & Co., Stationers, 196 Lake St.

Rainbolt
vs
Rainbolt

004
Ready

Supreme Court.

James J. Pawling	{	Appeal from Superior Court of Chicago.
Abram Heath.		
App'ts.		
v.		In Chancery -
Thomas Pawling	{	Plaintiffs of Appellate.
Oliver P. M. Latta		
Julius R. Atwood		
App'ees.		

On the argument of the demurrer to the complainant's bill in the court below. the appellees insisted that the writ sought by the bill ought not to be granted - and assigned in support of the proposition the following reasons -

1st It is not alleged in the bill that the complainant Pawling ever individually promised the defendant Pawling to pay him the note -

2^d It is not alleged in the bill that the complainant Pawling ever promised the complainant Heath that he would pay the note -

3^d It is not alleged in the bill that defendant Pawling ever promised any one to accept Compt. Pawling

as sole payor of the note -

4th It is not alleged in the bill that deft. Praulingh ever promised either complainants to discharge Heart from liability on the note -

5th It is not alleged in the bill that deft. Praulingh ever promised anyone that the alleged board bill should apply on note towards payment thereof.

6th It is not alleged in the said bill that credit for board was ever solicited or given on account of said note.

7th It is not alleged in the said bill that deft. Praulingh is insolvent. but does aver that he "took his wife and all the property he had in this state and returned to the state of New York and is now residing in Onida County."

8th The bill alleges that the entire alleged indebtedness for board accrued before the note was given (vide fol. 43-44) and that thereafter the complainants paid a part of said note and it is not ever claimed that the note was not to be paid by them according to its terms. It will also be

observed that the note is negotiable
in terms - "to the order of Thomas Raw-
liff" - The paragraph on page 3. printed
case. Though not a true abstract of
the bill - admits that there was no
agreement between the Rawliffs
as to James paying the note to Thomas.

In consequence of the probable
early adjournment of the court and
the illness of the writer - we are
unable to submit our argument
at this time - or to furnish au-
thorities in support of the posi-
tions assumed. A list of author-
ities - we beg permission to file
during next week.

Wm. A. Atwood
Sols. for Appellants.

256 136
The Supreme Court.

James T. Pawling
vs.

Thomas Pawling
vs.

Argument
of Appellants. sub-
mitted under stip-
ulation.

Filed May 14, 1864,
S. Ireland
Clk.

Samuel Wood
Attys.

Abram Heath	{	Supreme Court.
James I. Pawley		Third General
"		Division -
Thomas Pawley		April Term 1864.
Atty. Genl.	{	Appeal -
J. P. Atwood -		

It is hereby stipulated that the above case shall be submitted at the present term of this court and that either party may submit either an oral or printed argument during said term.

April 20th 1864.

Harwood Blanches
Atty.

John P. Atwood
Clerk for Appeals.

286 136
Supreme Court

Abram Hartford

vs

Thomas Bawling
+ others

Disputation

Filed April 21. 1864

L. Leland
Clerk

**JAMES T. RAWLEIGH, &
ABRAM HEARTT,**

vs.

THOMAS RAWLEIGH,

ET AL.

Points of Appellants.

The bill of complaint is short, and printed in full in all its material allegations, and therefore no full statement of the case is made.

We insist the note, ought to be delivered up and cancelled, and the suit thereon perpetually enjoined; as the demand for board of James T. Rawleigh, as a set off cannot be given in evidence in the suit on said note. That Heartt now is but a mere surety thereon; that the board &c. was obtained on the credit of the note in question; that the defendant so understood it; and that he promised to settle the said board bill and said note with James T. Rawleigh; and that without doing so, defendant secretly left the state, taking with him all his property; and is now a NON-RESIDENT, and has sent back the note to be sued, and he and his Attorneys now refuse to allow any part or portion of the above demand of James T. Rawleigh as payment or as set-off to the same. We insist a court of equity under the above state of facts, will allow such set-off, if from no other reason than to prevent multiplicity of suits, 12 Vesey 346—and fully admitting that where no equitable facts, or grounds are shown, that the general rule is the same in equity as at Law, that a separate debt cannot be set off against a joint one; we claim and insist, we have shown such facts and grounds, and clearly bring ourselves within the exceptions to said general rule.

I.

The furnishing of the board by one of the complainants and the giving of the note by both, was under the circumstances of this case clearly a mutual credit—particularly after Heartt sold out, and received as pay the obligation of his partner James, that he would

take up said note—defendant knowing such fact at the time, and the principal part of his indebtedness occurring after such sale.

Courts of Equity will decree a set-off if it appears the credit was mutual, and arose out of a course of dealing between the parties, although the debts may not be mutual.

Lindsay vs. Jackson, 2 Paige 581.

Reed vs. Bank of Newberg, 1 Paige 215--218.

Hanson Exparte, 12 Vesey 346, 348.

Downer vs. Dana, 17 Vermont 518.

1 Craig & Phillips 54, 154, 160, 180.

2 Story Eq. J, sections 1434, 1435, 1436, 1437, & notes to same.

18 Vesey 232.

5 Mason 208.

8 Viner abr. page 560.

7 Monroe 456.

9 Vesey 23.

3 J. J. Marshall 86.

4 Conn 297.

2 Dev Ch. R. 356.

Insolvency is universally held to be a sufficient ground, for the aid of a court of equity to allow a set-off.

6 Dana 33, and cases there cited.

10 Paige 376.

See above authorities.

2 Bar. S. C. R. 258.

Non-residence of the party against whom the set off is asked, stands as one of the principal grounds for the interference of the court to allow the set-off.

1 Monroe 194, Robbins vs. Holley.

6 Dana 33, Chamberlain vs. Stewart & Powell.

2 Eq. Cases Abr.

2 Eq. Dig 92 pl. 15.

II.

The bill of complaint distinctly alleges, that the defendant Thomas Rawleigh acted with the fraudulent intent to defraud the defendants, especially James T. Rawleigh out of his demand and set off.

The rule of Equity, is that if the creditor conducts himself, with such intent, then the separate demand will be allowed.

2 Story Eq. J, 1437, 1437.

11 Vesey 24.

19 Vesey 466.

12 Vesey 348.

3 Meriv, R. 621.

III.

The defendant Thomas Rawleigh well knowing, James was to pay the note, and having in the meantime increased his debt, to him, and leaving as he did, with intent, not to pay the board bill, if he is permitted to go on, and collect the note; he certainly defrauds the complainant Heartt, who has paid his part of the note, and the defendant is permitted in a court of equity to take advantage of his own wrong and fraud.

GARRISON & BLANCHARD,

Attorneys for Appellants.

256 136

Supreme Court

James T. Rawleigh et al

vs.

Thomas Rawleigh

Plff's Points

Filed April 21. 1864

L. L. L. C. M.

SUPREME COURT OF ILLINOIS.

JAMES T. RAWLEIGH, &
ABRAM HEARTT,

vs.

Appellants.

THOMAS RAWLEIGH,

ET AL.

IN CHANCERY.

Appeal from Superior Court
of Chicago.

ABSTRACT.

Copy of Bill of Complaint.

*To the Honorable John M. Wilson, Chief Justice of
the Superior Court of Chicago in Chancery sitting.*

2 Your Orators James T. Rawleigh and Abram Heartt complain-
ing show unto your Honor, they are residents of Chicago, Cook
County, Illinois, and that on the 18th day of February 1863 a suit
was commenced in this Court by Precipe and Summons in favor of
Thomas Rawleigh, against your orators as defendants. The Narr.,
in said suit is upon a promissory note of which the following is a
copy.

"\$318.38.

Chicago, Feby. 9th 1860.

"On the first of May next we promise to pay to the order of
"Thomas Rawleigh Three hundred Eighteen ³⁸/₁₀₀ dollars at our
"office in Chicago Value Received.

"Heartt & Rawleigh."

"Ballow"

Endorsed on said note (as given in the bill of particulars)

"Received Chicago July 31. 1860

"on the within Twenty dollars"

To which said Narr. your orators have pleaded denying indebt-
ness—and which suit is now pending in this Court.

And your orators further aver that in Justice and in Equity
they are not indebted to said Thomas Rawleigh upon said note or
for the consideration thereof nor for any thing else, although the said

Narr. contains the common counts, the bill of particulars specifies the note and nothing else and they are not in fact otherwise indebted, reference being hereby made to said papers and records in said cause.

3 And your orators further show that at the time the said note was given they were engaged as copartners under the firm name of Heartt & Rawleigh in the flour and feed business at No. 22 Market Street, Chicago, Illinois, and had a store at that place; that at the request of our orator, James T. Rawleigh, the said Thomas Rawleigh lent said firm the sum of \$318 ⁸⁸/₁₀₀ the amount and consideration of said note, and that said Thomas Rawleigh is the father of your orator James T. Rawleigh,

Your orators further show that in January or February 1861 your orator Abram Heartt sold to said James T. Rawleigh, all his title, right and interest in said stock and business and store at N. 22 Market Street, and said firm of Heartt and Rawleigh was dissolved, and said store and business was owned by and continued on in the name of your orator James T. Rawleigh, and for his benefit alone.

At the time of said purchase, and sale above mentioned and as part payment thereof, by said James T. Rawleigh to said Heartt, said James T. Rawleigh agreed and promised and undertook to see paid and discharged the note above mentioned. In fact your orator Heartt was to be saved from any payment thereon and from all liability by reason thereof in the premises.

4 And your orators further show unto your Honor that said Thomas Rawleigh at about the time of sale was informed and knew the note was to be paid by your orator James T. Rawleigh, and was fully informed of the terms of said sale and who was to pay the note, and always thereafter never treated nor claimed of your orator Heartt that he said Thomas Rawleigh had any claim or demand against him, said Heartt, by reason of said note, never demanded payment, or pretended to your orator Heartt, at any time he should in any way or manner look to him for payment upon the same or any part thereof.

And your orators further show that prior to the making of said note said Thomas Rawleigh had been boarding with said James T. Rawleigh and was indebted to him. And after said note was given and after the same became due, he never presented the note for payment, or demanded payment thereof at the office as required by the terms of said note, nor did he ever demand payment of either of your orators.

The said Thomas Rawleigh in the summer of 1861 did say he wanted twenty dollars, and got the same of your orators. And that amount was and is endorsement of so much payment on said note

—but the same was not expressly paid or anything stated by which either of your orators understood that he wanted that amount on the note in question—he wanted the money and he received it.

And your orators further show that after the sale of the store above mentioned said Thomas Raleigh never looked to said Heartt for payment on said note. And said Thomas Rawleigh well knew and understood that the debts that he had already incurred and became liable to pay to said James T. Rawleigh, and the further liability that he was then daily incurring and becoming liable to pay said James T. Rawleigh, was by said James, and himself understood as so much payment on said note although no distinct—agreement was made or which can be proved to that effect, yet your orators charge that said James T. Rowleigh well supposed he had fully paid said note before the commencement of said suit and that said Thomas Rawleigh would never ask payment, but would only ask and demand that your orator James T. Rawleigh would allow said amount of said note as so much payment by said Thomas Raleigh to him James T. Rawleigh on the amount debt and claim which said Thomas owed him.—Said Thomas owed and now owes to said James T. Rawleigh on the following account and the following amount.

Thomas Raleigh.

To James T. Rawleigh. Dr.

To board and washing from Sept. 25th 1859	
to Feb. 9th 1860.—4 months and 9 days	
a \$16 00 per month	\$ 70.28
" Board for nephew C. D. Rawleigh	
same time	70.28
" Board for wife from Sep. 25th 1859 to	
August 1st 1860. 10 months and 5 days	
a \$16.00. per month	163.20
" Medicin for same	100.00
" Board for Thomas Rawleigh from April 1st	
1861 to Dec. 1st 1861. 8 months at \$16	
per month	128.00
" Board for nephew, C. D. Rawleigh from	
April 1st 1861 to Jan. 1st 1863. 21 months	
a \$16.00	336.00
" Bed and bedding	40.00
" 1 Black horse	125.00
	\$1032.76

And your orator James T. Rawleigh further shows unto your Honor, that the above bill and demand is honestly and justly due from said Thomas Rawleigh to him, and said Thomas Rawleigh agreed to pay at the time incurring the above debts for such board and articles ; and it was expressly agreed and understood that the said Thomas should pay for the same and that the same should not be given or received as a gratuity.

And your orators further show that they are informed by Counsel that said above demand of James T. Rawleigh against said Thomas so long as no agreement can be proved that the same should be received as so much payment on said note by said Thomas. That upon the trial of said suit neither they nor either of them can be allowed to prove said account above mentioned as a sett-off to said note or any way avail themselves of the same ; and therefore they insist unless the Court of equity shall assist them in the premises both of said defendants will be wronged and injured in the premises said James T. Rawleigh not being a person of affluence or well able to pay said note.

And your orators further show unto your Honor, that said Thomas Rawleigh continued to reside in this State until the latter part of the spring or fore part of the summer 1862. He then left this State unbeknown to your orators or either of them, nor had either of your orators, any intimation that he was going to leave the State, and took his wife and all the property he had in this State and returned to the State of New York and is now residing in Oneida County in said State, as your orators are informed, and believe, and whether he has any property now in his hands they are unable to say.

And your orators further show unto your Honor, that said Thomas Rawleigh was often requested in the spring of the year 1862, to bring his note and have a settlement with your orator James T. Rawleigh. And often promised so to do, but never did come or make a settlement with your orator James T. Rawleigh who was desirous and anxious for such settlement.

And your orators further show that after going to New York in the latter part of 1862, or the forepart of the year 1863, said note was sent by said Thomas to his Attys. Lull & Atwood, or one of them for collection— And your orators charge that all of the acting and doings of said Thomas Rawleigh were and are done with the fraudulent intent to cheat and defraud said James T. Rawleigh out of the just demand above mentioned and given.

And said O. R. W. Lull and said J. R. Atwood who compose the firm of Lull & Atwood, Attys. are now after being informed of the facts aforesaid still pressing said note and suit to judgment, and refuse to give a stipulation to allow said above demand of James T. Rawleigh against said Thomas Rawleigh to be given in evidence as either payment of or as a sett-off to said note as your orators are informed and believe.

All of which actings, doings and refusals are contrary to equity and good conscience and your orators are remediless in the premises at law,

Your orators ask that defendants fully answers this their bill of complaint—defendant's answer under oath being hereby waived, also ask and pray that your Honor consider the facts aforesaid—and order and decree that said note be cancelled and discharged as paid and delivered up to your orators deducting from the amount found due from said Thomas to James T. Rawleigh upon the demand aforesaid the full amount of said note and the interest thereon, and decree said suit be dismissed at pltf's. costs. Also enjoin and restrain said Thomas Rawleigh as plaintiff and said Lull & Atwood as his Attorneys from further proceeding in any way or manner in said suit towards obtaining judgment.

Also enjoin and restrain them from selling or disposing of said note.

Or for such other or further relief as may be just in the premises.

Please to grant your writ of injunction enjoining and restraining defendants as above prayed.

Please to grant a Summons in this case in the usual form in favor of your orators as Complainants against Thomas Rawleigh, O. R. W. Lull, and J. R. Atwood as defendants, returnable at the next term of this Court and your orators will ever pray.

JAMES T. RAWLEIGH.

ABM. HEARTT.

A. GARRISON, }
Sol. & Counsel. }

By A. GARRISON, his Solicitor.

- 10 Affidavit of the truth of the above bill.
- 11 & 12 Order for Injunction and Bond.
- 15 & 17 Injunction with Summons and service.
- 18 General demurrer to bill of complaint.
- 19 Joinder in demurrer.
- 20 Demurrer sustained and Bill dismissed at Complainants cost.

A. GARRISON,

Atty. for Appellants.

ASSIGNMENT OF ERRORS.

That demurrer should have been overruled and Bill of Complaint sustained.

The Court upon the demurrer should have granted the relief prayed,

The Court erred in sustaining the demurrer to said Bill of Complaint and in dismissing the same.

A. GARRISON.

Atty. for Appellants.

256 186
Supreme Court

James T. Rawleigh
et al

vs
Thomas Rawleigh

Abstract

Filed April 21st 1884
L. Leland
Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Fourth day of May in the year of our Lord One Thousand Eight Hundred and Sixty three and of the Independence of the United States of America the Eighty Seventh

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Saml. H. Higgins and } Judges.
Grant Goodrich }

Joseph Knox Prosecuting Attorney.

David S. Hammond Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that on the Twentieth day of April in the year of our Lord one thousand eight hundred and sixty three, James T. Rawleigh and Abram Heatt filed in the office of the Clerk of said Superior Court their certain Bill in Chancery, which Bill is in the words and figures following, to wit:

To the Honorable John M. Wilson, Chief Justice of the Superior Court of Chicago in Chancery sitting.

Your Orators James S. Rawleigh and Abram Heartt, Complaining show unto your Honor, they are residents of Chicago, Cook County, Illinois, and that on the 18th day of February 1868 a suit was commenced in this Court by Pricipe and Summons in favor of Thomas Rawleigh, against your orators as defendants. The Narr in said suit is upon a promissory note of which the following is a copy.

"\$318³⁸"

"Chicago Feby 9th 1860"

"On the first day of May next we promise to pay to the Order of Thomas Rawleigh, Three hundred, Eighteen³⁸/₁₀₀ Dollars, at our Office in Chicago
"Value received."

"Heartt & Rawleigh"

"Ballou"

Endorsed in said Note (as given in the bill of particulars)

"Received Chicago July 31 1860 on the
"within, Twenty dollars."

To which said Narr your Orators have pleaded denying such indebtedness - and which suit is now pending in this Court.

And your Orators further aver that in justice and in equity, they are not indebted to said Thomas Rawleigh upon said note, or for the consideration thereof, nor for any thing else, although the said Narr contains the Common Money Counts, the bill of particulars specifies the note, and nothing else, and they are not in fact otherwise in-

1
debted, reference being hereby made to said papers and records in said Cause.

And your Orators further show, that at the time the said Note was given, they were engaged as Copartners under the firm name of Heartt & Rawleigh in the flour and feed business, at No 22 Market Street, Chicago Illinois, and had a store at that place, that at the request of your Orator, James S. Rawleigh the said Thomas Rawleigh lent said firm the sum of \$318³⁸/₁₀₀, the amount and consideration of said Note, and that said Thomas Rawleigh is the father of your Orator James S. Rawleigh.

3
Your Orators further show, that in January or February 1861 your Orator Abraham Heartt sold to said James S. Rawleigh, all his title, right and interest in said stock and business & store at No 22 Market St., and said firm of Heartt & Rawleigh was dissolved, and said store and business was owned by and continued on in the name of your Orator James S. Rawleigh, and for his benefit alone.

At the time of said purchase, and sale, above mentioned, and as part payment thereof by said James S. Rawleigh to said Heartt, said James S. Rawleigh agreed and promised, and undertook to see paid, and discharged the Note above mentioned. In fact your Orator Heartt was to be saved from any payment thereon, and from all liability by reason thereof, and entirely protected in the premises

4
And your Orators further show: unto your Honor that said Thomas Raleigh at about the time of sale was informed and knew that the note was to be paid by your orator James T. Rawleigh, and was fully informed of the terms of said sale and who was to pay the note, and always thereafter never treated or claimed of your Orator Heartt that he, said Thomas Rawleigh had any claim or demand against him, said Heartt by reason of said note, never demanded payment, or pretended, to your Orator Heartt that, at any time he should in any way or manner look to him for payment upon the same or any part thereof.

And your Orators further show that prior to the making of said note said Thomas Rawleigh had been boarding with said James T. Rawleigh and was indebted to him, and after said note was given, and after the same became due, he never presented the note for payment, or demanded payment thereof at the office as required by the terms of said note, nor did he ever demand payment of either of your orators. The said Thomas Rawleigh in the Summer of 1861, did say he wanted twenty dollars, and got the same of your Orator, and that amount was and is the endorsement of so much payment on said note. but the same was not expressly paid or any thing stated, by which either of your Orators understood that he wanted that amount on the note in question — he wanted the money and

he received it.

5 And your orators further show that after the sale of the store above mentioned said Thomas Raleigh never looked to said Heartt for payment on said note - and said Thomas Raleigh well knew and understood that the debts that he had already incurred, and became liable to pay to said James T. Rawleigh, and the further liability that he was then daily incurring, and becoming liable to pay, said James T. Rawleigh, was by said James and himself understood as so much payment on said note, although no distinct agreement was made, or which can be proved to that effect, yet your orators charge that said James T. Rawleigh well supposed he had fully paid said note before the commencement of said suit, and that said Thomas Rawleigh would never ask payment, but would only ask and demand, that your orator James T. Rawleigh would allow said amount of said note as so much payment by said Thomas Rawleigh to him James T. Rawleigh, on the amount debt and claim which said Thomas owed him. — said Thomas owed and now owes to said James T. Rawleigh on the following account, and the following amount,

Thomas Rawleigh

To James T. Rawleigh Dr

To Board & Washing from Sept 25th/59

to Feb 9th/60 - 4 months & 9 days @ \$16.00

per month - - - - -

\$ 70.28

" Board for Nephew C. D. Rawleigh, same
time - - - - -

70.28

" Board for Wife from Sept 25th/59 to
August 1st/60 - 10 months and 5 days

@ \$16 per month - - - - -

163.20

" Medicine for same

100.00

" Board for Thomas Rawleigh from April
1st/61 to Dec 1st/61 - 8 months @ \$16.00

128.00

" Board for Nephew C. D. Rawleigh from
April 1st/61 to Jan 1st/63 - 21 months
at 16.00 - - - - -

336.00

" Bed & Bedding - - - - -

40.00

" 1 Black Horse - - - - -

125.00

\$ 1032.76

And your orator James S. Rawleigh further shows unto your Honor that the above bill and demand is honestly and justly due from said Thomas Rawleigh to him, and said Thomas Rawleigh agreed to pay at the time of incurring the above debts for such board and articles and it was expressly agreed and understood that he said Thomas, should pay for the same and that the same should not be given or received as a gratuity.

7 And your orators further show that they are informed by Counsel, that said above demand of James S. Rawleigh against said Thomas so long as no agreement can be proved that the same should be received as so much payment on said note by said Thomas - that upon the trial of said suit, they, nor either of them, can not be allowed to prove said account above mentioned, as a set-off to said note, or any ways avail themselves of the same; and therefore they insist unless the Court of equity shall assist them in the premises both of said defendants will be wronged and injured in the premises, said James S. Rawleigh not being a person of affluence, or well able to pay said note.

And your Orators further show unto your Honor, that said Thomas Rawleigh continued to reside in this State until the latter part of

the Spring, or fore part of the Summer of 1862, he then left this State unbeknown to your Orators, or either of them, nor had either of your orators any intimation that he was going to leave the State and took his wife and all the property he had in this State, and returned to the State of New York, and is now residing in Onida County in said State as your orators are informed, and believe, and whether he has any property now in his hands they are unable to say.

And your orators further show unto your Honor that said Thomas Rawleigh was often requested in the Spring of the year 1862, to bring his note and have a settlement with your orator James T. Rawleigh and often promised so to do, but never would come or make a settlement with your orator James T. Rawleigh who was desirous and anxious for such settlement.

And your orators further show, that after going to New York in the latter part of 1862, or the forepart of the year 1863, said note was sent by said Thomas to his Attys Lull and Atwood, or one of them, for Collection - And your orators Charge that all of the acting and doings of said Thomas Rawleigh, were and are done with the fraudulent intent to Cheat and defraud your orators, and especially Cheat and defraud said James T. Rawleigh out of,

the first demand above mentioned and given.

And said O.R.W. Lull and said J.R. Atwood who compose the firm of Lull & Atwood Attys are now, after being informed of the facts aforesaid still pressing said note & suit to judgment and refuse to give a stipulation to allow said above demand of James T. Rawleigh against said Thomas Rawleigh to be given in evidence as either payment of, or as a set-off to said note as your orators are informed and believe.

All of which actings, doings, and refusals are contrary to equity and good conscience and as your orators are remediless in the premises at law.

Your Orators ask that defendants fully answer this their bill of Complaint. — Defendants answer under oath being hereby waived, also ask and pray that Your Honor consider the facts aforesaid, and order and decree, that said note be cancelled and discharged as paid and delivered up to your Orators deducting from the amount found due from said Thomas to James T. Rawleigh upon the demand aforesaid the full amount of said note and the interest thereon, and decree said suit be dismissed at plffs costs. Also enjoin and restrain said Thomas Rawleigh as plaintiff, and said Lull and Abbott as his attorneys from further pro-

-ceding in any way or manner in said suit towards obtaining judgment.

Also enjoin and restrain them from selling or disposing of said note.

Or for such other or further relief as maybe just in the premises.

Please to grant your writ of injunction enjoining and restraining defendants as above prayed.

Please to grant a Summons in this case in the usual form in favor of your orators as complainants against Thomas Rawleigh, O. R. W. Lull and J. P. Atwood as defendants, returnable at the next term of this Court, and your orators will ever pray

10
A. Garrison }
Solicitor & Counsel }

James T. Rawleigh
Abm Heath
by A. Garrison, his Solicitor

State of Illinois
Cook County - ss.

James T. Rawleigh one of the above named complainants being duly sworn says, that he has heard read the above bill of Complaint, and knows its contents, that it is true of his own knowledge, except what is set forth on information and belief, and ~~that~~ as to those

matters he believes it to be true

James T. Rawleigh
Subscribed and sworn to before me }
April 20th 1863.

H. F. Mather, Master in Chancery
of the Superior Court of Chicago.

State of Illinois } ss.
Cook County - }

Andrew Harrison being duly
sworn says, as Atty. for your Orators, he called
and demanded of said O. R. W. Sull one of the Attys
of said Thomas Rawleigh, that he give the stipulation
in said Bill of Complaint above mentioned and
said Sull refused so to do.

A. Garrison

Subscribed and sworn to }
before me April 20th 1863 }

H. F. Mather, Master in Chancery
of the Superior Court of Chicago

James T. Rawleigh & Abram Hearts }
Thomas Rawleigh & others (Defendants) }

Let an order be entered in the within cause
authorizing an Injunction to be issued according
to the prayer of the within Bill on the Complain-

-ants, or said James T. Rawleigh executing to
~~the~~ defendants in the penal sum of \$600 Con-
ditioned according to the Statute. April 20, 1863
(with John E. Fry as Surety.)

John M. Wilson C. J.
Superior Court of Chicago

12 And afterwards to wit, on the ~~thirtieth~~^{and} day of
~~May~~^{and} in the year aforesaid, (20th April 1863) said
Complainant James T. Rawleigh filed in the
Office of the Clerk of said Court his Injunction
Bond, which is in the words and figures fol-
lowing to wit,

Know all men by these presents, that
we, James T. Rawleigh and John E. Fry of the
County of Cook, and State of Illinois, are held
and firmly bound unto Thomas Rawleigh of
the same place in the penal sum of six
hundred dollars, lawful money of the United
States to be paid to the said Thomas Rawleigh
his executors, administrators, or assigns: for
which payment, well and truly to be made
we bind ourselves jointly and severally, and
our respective executors and administrators

firmly by these presents.

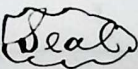
Sealed with our Seals, and dated at Chicago this 20th day of April A.D. 1863.

13 The Condition of the above obligation is such, that whereas the above bounden James S. Rawleigh and Abram Heartt have on the day of the date hereof, filed their bill of Complaint in the Superior Court of Chicago in said Cook County, State of Illinois on the Chancery side thereof against the above named Thomas Rawleigh, O.R.W. Lull and Atwood his Attys., Defendants therein praying, among other things, for an injunction to restrain the said Thomas Rawleigh from proceeding, in a suit at law in this Court against said James S. Rawleigh and Abram Heartt.

And whereas an injunction for that purpose, according to the prayer of said bill has been duly allowed and ordered to be issued upon the said Complainants giving ^{the} security required by law in such cases.

Now therefore if the above bounden James S. Rawleigh and John E. Fry shall well and truly pay all costs that may be adjudged against them on the dissolution of said injunction together with all such damages as the said Thomas Rawleigh or his said Attorneys may

or either of them may sustain, or which may be assessed and awarded by the Court by reason of the issuing of said injunction, in case the same shall be dissolved, then this obligation shall be null and void; otherwise to ^{be &} remain in full force and virtue.

James J. Rawleigh 
John E. Fry - 
Taken and entered -
before me in pursuance
of an order duly made
this day of
 A.D. 186
 Clerk

14

And afterwards to wit, on the day and year aforesaid there issued out of the office of the Clerk of said Court, the People's Writ of Injunction, which writ of Injunction ^{with the Sheriff's Return thereon} is in the words and figures following, to wit.

State of Illinois,
County of Cook } ss

The People of the State of Illinois, to Thomas Rawleigh, O.R.W. Lull and A.P. Atwood, and to your attorneys, solicitors

4

Agents, and servants, and to each and every of them Greeting:

15 Whereas it hath been represented to the Honorable John M. Wilson, one of the Judges of the Superior Court of Chicago, in said County and State aforesaid, on the part of James H. Rawleigh and Abram Heatt Complainants in their certain bill of Complaint exhibited before said Judge and filed in said Court, against you, the said Thomas Rawleigh O.R.W. Sull and A.P. Atwood to be relieved, touching the matters and things therein Com-
-plained of. In which said bill, it is stated among other things, that you are combining and confederating with others to injure the Complainant touching the matters set forth in said bill and that your actings and doings in the premises are contrary to equity and good conscience. And the said Judge having under his hand endorsed upon said bill an order ~~with~~ ^{that} a writ of injunction issue out of said Court, according to the prayer of said bill; We therefore in consideration thereof, and of the particular matters in said bill set forth do strictly command you, the said Thomas Rawleigh and O.R.W. Sull and A.P. Atwood and the persons before mentioned, and each and every of you that you do absolutely desist and

refrain from further proceeding in any way or manner towards obtaining judgment in the suit in this Court, wherein Thomas Rawleigh is plaintiff, and James T. Rawleigh are Defendants, and from selling said note in said suit mentioned, until this honorable Court in Chancery sitting, shall make other order to the contrary. Hereof fail not under the penalty of what the law directs.

To the Sheriff of said County to execute and return in due form of law.

Witness Thomas B. Carter, Clerk of our said Court, and the seal thereof at Chicago in said County, this 20th day of April A.D. 1863.

Thomas B. Carter
Clerk



Served this writ by delivering thereof to the within named defendants O.R.W. Lull and A.P. Atwood the 20th day of April 1863.

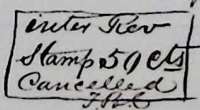
David S. Hammond Sheriff
By F. Harding Deputy

And, afterwards, to wit, on the day and year aforesaid, there issued out of the office of the Clerk of said Court, the People's writ of Summons in

Chancery, which writ with the Sheriff's Return thereon is in the words and figures following, to wit,

17
State of Illinois } ss
County of Cook } The People of the State of
Illinois, to the Sheriff of said County: Greeting
We Command you that you Summon
Thomas Pawleigh, O.R.W. Sull and A.P. Atwood
if they shall be found in your County, personally to be
and appear before the Superior Court of Chicago
of said Cook County on the first day of the term thereof
to be holden at the Courthouse in the City of Chicago
in said Cook County on the first Monday of May
next, to answer unto James T. Pawleigh & Abram
Hearts in their certain bill of Complaint, filed
in the said Court, on the Chancery side thereof.

And have you then and there this writ, with
an endorsement thereon, in what manner you
shall have executed the same. Witness
Thomas B. Carter, Clerk of our said Court and
the Seal thereof at Chicago, aforesaid this 20th
day of April 1865.



Thomas B. Carter,
Clerk

Served this writ on the within named O.R.W. Sull

and A. P. Atwood, by delivering a copy thereof to them, the 20th day of April 1863.

David S. Hammond Sheriff
By J. Harding Deputy

16
And afterwards, to wit, on the first day of May in the year aforesaid, said Defendants by their Solicitors Lull & Atwood filed in the office of the Clerk of said Court their certain demurres which demurres is in the words and figures following to wit

Superior Court of Chicago of May Term A.D. 1863
Thomas Rawleigh—
Oliver R. W. Lull &
Julius P. Atwood
ads
James T. Rawleigh
& Abram Heath

The Demurres of the
Defendants herein.

These Defendants respectfully by protestation not confessing or acknowledging all or any of the matters and things in Complainants Bill alleged in manner and form as the same are set forth, doth demur thereto and for cause of demur shows that the

said Complainant hath not in and by his said Bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for, from or against these Defendants.

Wherefore these defendants demanded the judgment of this Court, whether they shall be compelled to make any further or other answer to said Bill or any of the matters therein contained and pray that they may be hence dismissed with their costs.

Lull & Atwood
Sols for Defs.

And now comes the said James T. Rawleigh and Abram Heart Complainants by A. Garrison their Solicitor and joins in demurrer, and says said Complaint is sufficient, and prays that demurrer be over-ruled and defendants answer said Bill of Complaint. - May 1st 1863

A Garrison
Solr for Comps

Defendants Notice for trial of Demurrer
Thomas Rawleigh et al — } Superior Court of Chicago
and
Abram Hearts & James T. Rawleigh }

To Compt^{ts} Solr

Please, take notice, on Monday
the 11th day of May A.D. 1863 at the hour of
10 A.M., or as soon thereafter as Counsel can be
heard, we will call up for argument the Demurres
filed by us, to Compt^{ts} Bill in this Cause.

2, 1863

Lull & Atwood
Defts Solrs

20 And afterwards to wit on the Eleventh day of
May in the Year aforesaid, said day being one of
the days of the May term of said Court, the
following among other proceedings was had and
entered of record in said Court, to wit.

James T. Rawleigh^{and}

Abraham Hearts

v^s

Bill for Injunction

Thomas Rawleigh

This day come said complain-
ants by Andrew Garrison their Solicitor and
said Defendants by Lull and Atwood his Solicitors
also comes and this Cause coming on to be heard
at this time on the Demurres to the Bill of Complaint
in said Cause filed by said Defendant and Counsel

1071

10645

RECORDED

being heard thereon, and the Court being fully advised in the premises, it is considered by the Court that the demurrer should be sustained and the Bill dismissed.

Therefore it is, considered that said defendant do have and recover of and from said Complainants his Costs and Charges about his defense in this behalf expended and have execution therefor.

21 And afterwards to wit on the thirtieth day of May in the year aforesaid said Complainant James T. Rawleigh filed in the office of the Clerk of said Court his Appeal Bond which is in the words and figures as follows to wit.

Know all men by these presents that we James T. Rawleigh and John E. Fry of the County of Cook and State of Illinois are held and firmly bound unto Thomas Rawleigh, O.R.W. Lull and A.P. Stwood also of the same County and State in the penal sum of Seven hundred dollars lawful Money of the United States, for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly and severally and firmly by these presents. Witness our hands

and seals this 33rd day of May A.D. 1863.

The Condition of the above obligation is such that whereas ^{the said} Thomas Rawleigh, O.R.W. Lull and A.P. Stwood did on the (11th) eleventh day of May A.D. 1863 in the Superior Court of Chicago, in and for the County of Cook, and State aforesaid, and of the May Term thereof A.D. 1863 recover a judgment against the above bounden James T. Rawleigh and Abram Heath by dismissing their bill of complaint by demurrer thereto, besides costs of suit, from which said judgment of the said Superior Court of Chicago the said James T. Rawleigh and Abram Heath has prayed for and obtained an appeal to the Supreme Court of said State.

22

Now therefore if the said James T. Rawleigh and Abram Heath shall duly prosecute their appeal with effect, and moreover pay the amount of the judgment costs, interest and damages rendered and to be rendered against them in case the said judgment shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise to remain in full force and virtue.

Taken and entered into } J. T. Rawleigh Seal
before me at my office } John E. Fry Seal
in Chicago this 33rd day
of May A.D. 1863.
Chas. B. Carter clerk

being heard thereon, and the Court being fully
advised in the premises, it is considered by the
Court that the demurrer should be sustained
and the Bill dismissed.

Therefore it is considered that said Defendant
do have and recover of and from said Complainants
his Costs and Charges about his defence in this
behalf expended and have execution therefor.

State of Illinois

County of Cook

23 I, Thomas B. Carter, Clerk
of the Superior Court of Chicago, within and for
the County and State aforesaid do hereby Certify
the above and foregoing to be a full, true and complete
transcript of the papers on file in my office, and
of all orders and decrees made and entered of
record in said Court, in a certain Cause lately
pending therein on the Chancery side thereof
wherein James F. Rawley & Abraham Hearts are
Complainants and Thomas Rawleigh is
Defendant. In Witness whereof I have here-
unto set my hand and affixed the seal of said
Court at Chicago this 29th day of February¹⁸⁶⁴
Thomas B. Carter Clerk



Supreme Court
James T Rawleigh &
Abram Heartt

Of April Term 1864

vs Appellants
Thomas Rawleigh
O R W Sull &

} Appeal from
Superior Court of
Chicago

A P Atwood appellee

And now Comes the said James T Rawleigh
& Abram Heartt by Garrison their attorney
and say in the record and proceedings
aforesaid and also in rendering the judgment
and decree aforesaid in dismissing said
Bill of Complaint at their costs
there is manifest error in this Court

1st

The said Bill of Complaint being
admitted to be true & equitable which
entitles Complainant to ^{the} relief prayed
and the same should have been
granted them

2

The Court Erred in sustaining the
decree & said Bill of Complaint
the ^{same} should have been overruled

and the said James & Rawley & Abram Heath
may said decree or judgment dismissing their
bill aforesaid for the errors aforesaid
and other errors appearing in the record
and proceedings aforesaid may be reversed
and held for naught and that they be
restored in all things which they have
lost by occasion of said unjust judgment
& decree dismissing their said Bill of
Complaint & have them costs &c
Affirmed
Atty for
Appellants

And now comes the said Deft in
Error above named and joins in Error
and says in the rendering of the judg-
ment and decree aforesaid there is
not error but the same in all things
ought to be affirmed.

Full & Atty
Says for Deft

256 136

Supreme Court

Rawleigh

vs et al

Rawleigh

et al

Records

Filed April 21. 1864

L. Leland

Clk

W. Garrison

Blanchard & ~~Puffin~~

for appellant -

Dec. \$5.55.

Costs 5.55

\$9.50 paid