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No. _____

Supreme Court of Illinois

Knapp et al

vs.

Marshall

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STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 155.

*Knapp
vs
Marshall*

73185

In the Supreme Court of Illinois.

JAMES H. KNAPP,

Plaintiff in Error,

vs.

JOHN A. MARSHALL,

Defendant in Error.

Points of Defendant in Error.

T. G. FROST AND G. W. FORD,

Attys for Deft. in Error.

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The object and legal effect of the assignment was to pay each creditor, including the preferred creditor, the actual amount of the indebtedness in his favor, against the assignors. The amount stated either in the schedule or assignment was in no respect decisive of the question. The amount as stated in the assignment may or may not have been correct and if correct, may have been *reduced* by subsequent payments, proceeds of collateral securities, &c. All this was open to investigation; all this the other creditors had a right to contest. As the preferred creditors' share was increased or diminished, the other creditors lost or gained, and the funds would become appropriated by the decree, beyond their

reach or control, and their rights be thus cut off without giving them any day in court, or opportunity to defend.—4 Paige N. Y. Chancery Reports, page 33. 2 Paige N. Y. Chancery Reports, page 280, 281. 23 Pickering Report, 508, 23 Maine Rep., 28.

Burrill on Assignment, pages 252, and cases cited: “where a debt due a creditor was put down in the assignment as about eleven thousand dollars, which was in fact upwards of thirteen thousand, it was held, the trust included the latter sum.” So likewise when the debt “was described as about \$4,500, and claims were proved to the amount of \$5,867, it was held the party was entitled to a dividend on the latter sum.”

In the case of *Wakeman vs. Grover*, 4 Paige R., 32, 33, the Chancellor uses the following language: “If the complainants were seeking to carry into effect the assignment, and to obtain their share of the assigned property, it would undoubtedly have been necessary either that they should have made all the creditors parties, or that they should have filed their bills in behalf of themselves and all others who might claim to come under the decree.”

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See also cases referred to in *Story's Equity Pleading*, pages 115, 117, 188, Sec. 101, 102, 103, 157.

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SEC. 157. "When an assignment is made by a debtor for the benefit of his creditors, if any creditor seeks to enforce the trust, he cannot sue alone; but he must make all the other creditors, provided, for in the assignment, parties, either by name, or by bringing the suit on behalf of himself and all the other creditors, who may choose to come in, and take the benefit of the decree."

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The legal operation of the assignment is to secure to the equitable holder and real owner of the claim, the payment of his debt irrespective of the person who may happen to be described in the assignment (whether correctly or not) as the individual to whom the demand belongs or is payable.—4 Pickering 518. 7 Paige N. Y. Rep. 615. Burrill on Assignments 353, 354.

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4th. If the creditors are too numerous to be all made parties, there is no excuse for not filing the bill in behalf of the complainant and all the other creditors. This would have given them the right to come in under the decree and take the benefit of it or appeal therefrom.—See cases above cited.

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SEC. 103. After stating the difficulty of making all the creditors parties by *name*, "when the debts are unliquidated," or, "any of the creditors have a preference," it is nevertheless stated that "a single creditor, in cases of this sort, would not be permitted, by a court of equity, to sue for

his own single demand without bringing the other creditors, in some form or manner before the court, from the obvious inconvenience and apparent injustice in deciding upon the extent of their rights and interest in their absence. The substitution, therefore, of a few, to sue for the benefit of the whole, at the same time that it subserves the interest of all the creditors by enabling them to make themselves active in the final apportionment and distribution of the trust funds, gives to the watchful and diligent an opportunity of having justice done to them, without any wanton sacrifice of the rights of the others, or any sacrifice, not caused by the laches or indifference of the latter."

And in note to Sec. 103, the following language, cited from 1 Wash. Cir. R. 417, is used: "When the creditors are to be paid out of a particular fund, or are united in the same transaction so as to produce a privity between them, all are to join, &c., either by name or by being represented by a part suing in the name of all."

2d. It was proper that the other creditors should be made parties, in order not only that all the parties intended to be affected by the decree might be before the court, but also to save the assignee from as many separate accountings as there were creditors named in the assignment, and in order that the decree to be made by the court, affecting so many different parties, as well as the assignee, might be consistent with itself and the interest both of the creditors and the assignee.

—2 Paige Rep. 281.

2d. The bill shows Wilson G. Hunt to be interested in the application of this particular portion of the trust fund sought to be reached by the bill and exhibits accompanying it and made a part of it, was intended to be appropriated to the payment of the Shepperd & Reeves debt assigned to Hunt, and for which Taylor was security, who was protected therefore by this assignment, the creditor being equitably

entitled to be subrogated to all the securities he held for the same debt.

The legal operation of the assignment is to secure to the equitable holder and real owner of the claim, the payment of his debt irrespective of the person who may happen to be described in the assignment (whether correctly or not) as the individual to whom the demand belongs or is payable.—4 Pickering 518. 7 Paige N. Y. Rep. 615. Burrill on Assignments 353, 354.

The Court of Appeals in Vail vs. Foster, 4 Comstock N. Y. Rep. 314, says: "It is a settled rule in equity, that the creditor shall have the benefit of any counter bonds or collateral securities which the principal debtor has given to the surety or person standing in the situation of surety for his indemnity. Such securities are regarded as trusts for the better security of the debt, and chancery will compel the execution of the trust for the benefit of the creditor"—citing, also, 9 Paige Ch. Rep. 432. 11 Vesey 22. 18 John. 505. 4 Kent 307. Story's Equity 502, 638.

4th. If the creditors are too numerous to be all made parties, there is no excuse for not filing the bill in behalf of the complainant and all the other creditors. This would have given them the right to come in under the decree and take the benefit of it or appeal therefrom. See cases above cited.

See page 34 of Record (also find in Equity)

5th. The rule requiring all persons interested to be made parties, is a reasonable one, and its application to this case eminently fit and proper. It is impossible to reconcile all the authorities bearing on this question, but the application of the rule to this class of cases is well sustained both on principle and by precedent, and it is the only just and practicable rule that can be adopted.

6th. Although it is said, "that a demurrer for want of parties must show who are the proper parties," it is at the same time qualified by the following language, viz:—"not by name, but in such a manner as to point to the complainant the objection to his bill, and to enable him to amend by making proper parties."—1st Smith's Chancery Practice, 202, 203.

Clark

J. Deland

Filed Apr. 25-1861

Mumhall

Knapp

155

In the Supreme Court of Illinois.

JAMES H. KNAPP,

Plaintiff in Error,

vs.

JOHN A. MARSHALL,

Defendant in Error.

Points of Defendant in Error.

T. G. FROST AND G. W. FORD,

Attys for Deft. in Error.

The demurrer to the bill was well taken. 1st, for the reason that all the other creditors named in the assignment which was made a part of the bill, were interested in the subject matter of the suit, and would be affected by the decree. The assigned property was a common fund set apart for the payment of the debts of the creditors named in the assignment. All were interested in it; the assignment itself, recognizing the insolvency of the assignors and providing for a pro rata distribution, in the case of the inadequacy of the fund to pay all the debts.

The object and legal effect of the assignment was to pay each creditor, including the preferred creditor, the actual amount of the indebtedness in his favor, against the assignors. The amount stated either in the schedule or assignment was in no respect decisive of the question. The amount as stated in the assignment may or may not have been correct and if correct, may have been *reduced* by subsequent payments, proceeds of collateral securities, &c. All this was open to investigation; all this the other creditors had a right to contest. As the preferred creditors' share was increased or diminished, the other creditors lost or gained, and the funds would become appropriated by the decree, beyond their

reach or control, and their rights be thus cut off without giving them any day in court, or opportunity to defend.—4 Paige N. Y. Chancery Reports, page 33. 2 Paige N. Y. Chancery Reports, page 280, 281. 23 Pickering Report, 508. 23 Maine Rep., 28.

Burrill on Assignment, pages 252, and cases cited: "where a debt due a creditor was put down in the assignment as about eleven thousand dollars, which was in fact upwards of thirteen thousand, it was held, the trust included the latter sum." So likewise when the debt "was described as about \$4,500, and claims were proved to the amount of \$5,867, it was held the party was entitled to a dividend on the latter sum."

In the case of Wakeman vs. Grover, 4 Paige R., 32, 33, the Chancellor uses the following language: "If the complainants were seeking to carry into effect the assignment, and to obtain their share of the assigned property, it would undoubtedly have been necessary either that they should have made all the creditors parties, or that they should have filed their bills in behalf of themselves and all others who might claim to come under the decree."

In 2 Paige Rep., 280, 281, on a bill against the assignee to compel an accounting, it was held "necessary to make all the creditors parties," and a demurrer was sustained on this ground. The Chancellor in this case held "That the creditors should be parties so as to subject the assignee to but one account," "and that it was a universal rule not to allow an account to be taken in the absence of any person interested therein, who is within the jurisdiction of the court and can be made a party."

See also cases referred to in Story's Equity Pleading, pages 115, 117, 188, Sec. 101, 102, 103, 157.

Notwithstanding the numerous and apparently conflicting authorities collected in Story's Equity Pleadings, relative to

the general rule as to parties, still, in the application of the rule to this very class of cases in question, the absolute necessity of making all the creditors parties, or filing the bill on behalf of all the creditors, is unequivocally laid down in the following language, viz :

SEC. 157. "When an assignment is made by a debtor for the benefit of his creditors, if any creditor seeks to enforce the trust, he cannot sue alone; but he must make all the other creditors, provided for in the assignment, parties, either by name, or by bringing the suit on behalf of himself and all the other creditors, who may choose to come in, and take the benefit of the decree."

SEC. 101. "Upon the same ground it has also been held that if the plaintiff seeks to establish a priority of right or charge, he cannot file a bill on behalf of all the creditors, but the latter must be made actual parties, for the suit is not homogeneous, or for objects equally beneficial to all the parties, and therefore each creditor has a distinct right and interest to contest the plaintiff's claim."

SEC. 102. "Upon similar grounds, where there are a number of creditors, who are parties to the deed of trust for the payment of debts, a few have been permitted to sue on behalf of themselves and the other creditors, named in the deed, to enforce the execution of the trust."———"It is obvious, that in such cases, unless all the creditors were brought before the court, or were allowed to come before the court, the due execution of the trust might be impracticable, or be enforced injuriously to the interest of the creditors not parties."

SEC. 103. After stating the difficulty of making all the creditors parties by *name*, "when the debts are unliquidated," or, "any of the creditors have a preference," it is nevertheless stated that "a single creditor, in cases of this sort, would not be permitted, by a court of equity, to sue for

his own single demand without bringing the other creditors, in some form or manner before the court, from the obvious inconvenience and apparent injustice in deciding upon the extent of their rights and interest in their absence. The substitution, therefore, of a few, to sue for the benefit of the whole, at the same time that it subserves the interest of all the creditors by enabling them to make themselves active in the final apportionment and distribution of the trust funds, gives to the watchful and diligent an opportunity of having justice done to them, without any wanton sacrifice of the rights of the others, or any sacrifice, not caused by the laches or indifference of the latter."

And in note to Sec. 103, the following language, cited from 1 Wash. Cir. R. 417, is used: "When the creditors are to be paid out of a particular fund, or are united in the same transaction so as to produce a privity between them, all are to join, &c., either by name or by being represented by a part suing in the name of all."

2d. It was proper that the other creditors should be made parties, in order not only that all the parties intended to be affected by the decree might be before the court, but also to save the assignee from as many separate accountings as there were creditors named in the assignment, and in order that the decree to be made by the court, affecting so many different parties, as well as the assignee, might be consistent with itself and the interest both of the creditors and the assignee.—2 Paige Rep. 281.

2d. The bill shows Wilson G. Hunt to be interested in the application of this particular portion of the trust fund sought to be reached by the bill and exhibits accompanying it and made a part of it, was intended to be appropriated to the payment of the Shepperd & Reeves debt assigned to Hunt, and for which Taylor was security, who was protected therefore by this assignment, the creditor being equitably

entitled to be subrogated to all the securities he held for the same debt.

The legal operation of the assignment is to secure to the equitable holder and real owner of the claim, the payment of his debt irrespective of the person who may happen to be described in the assignment (whether correctly or not) as the individual to whom the demand belongs or is payable.—4 Pickering 518. 7 Paige N. Y. Rep. 615. Burrill on Assignments 353, 354.

The Court of Appeals in *Vail vs. Foster*, 4 Comstock N. Y. Rep. 314, says: "It is a settled rule in equity, that the creditor shall have the benefit of any counter bonds or collateral securities which the principal debtor has given to the surety or person standing in the situation of surety for his indemnity. Such securities are regarded as trusts for the better security of the debt, and chancery will compel the execution of the trust for the benefit of the creditor"—citing, also, 9 Paige Ch. Rep. 432. 11 Vesey 22. 18 John. 505. 4 Kent 307. Story's Equity 502, 638.

4th. If the creditors are too numerous to be all made parties, there is no excuse for not filing the bill in behalf of the complainant and all the other creditors. This would have given them the right to come in under the decree and take the benefit of it or appeal therefrom.—See cases above cited.

See page 34 of Record (abstracted)

5th. The rule requiring all persons interested to be made parties, is a reasonable one, and its application to this case eminently fit and proper. It is impossible to reconcile all the authorities bearing on this question, but the application of the rule to this class of cases is well sustained both on principle and by precedent, and it is the only just and practicable rule that can be adopted.

6th. Although it is said "that a demurrer for want of parties must show who are the proper parties," it is at the same time qualified by the following language, viz:—"not by name, but in such a manner as to point to the complainant the objection to his bill, and to enable him to amend by making proper parties."—1st Smith's Chancery Practice, 202, 203.

Stark

J. G. Stark

Filed Apr 25-1861

Murchie

Knapp

155

STATE OF ILLINOIS,
SUPREME COURT,

The People of the State of Illinois,

To the Sheriff of the County of

Knox

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Knox County, before the Judge thereof, between James H. Knapp and Lydia S. Knapp

plaintiffs, and John A. Marshall and Abraham D. Fitzworth

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

as we are informed by their complaints the record and proceedings of which said judgments 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 John A. Marshall and Abraham D. Fitzworth

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 first Tuesday after the third Monday in April A.D. 1861, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John A. Marshall and Abraham D. Fitzworth

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 1st day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Deland

Clerk of the Supreme Court.
by J. De Rivecourt



155

Know

James H. Marshall

No.

vs.

John A. Marshall et al

SCIRE FACIAS.

Service
Mileage & Copy, 30
Return & Postage, 95
E. C. Pratt Shff 15
Filed April 20th 1861

L. Leland

Clerk.

Last day of service
6th day of April 1861

Served the within by reading to
John A. Marshall and gave him
a true copy of the within that
cannot find Abraham D. Littleworth
in my County this 4th day of
April A.D. 1861

E. C. Pratt Shff
Know co
L. L.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

JAMES H. KNAPP AND
LYDIA L. KNAPP,

vs.

JOHN A. MARSHALL AND
ABRAHAM D. TITSWORTH.

} *Error to Knox.*

ABSTRACT OF RECORD.

PAGE OF REC.

1 Plaintiffs in error filed their bill of complaint, for discovery and relief, in the Knox county circuit court, at the February term, A. D. 1861.

2 Complainants set forth they are administrator and administratrix of the estate of Sarah E. Currier, deceased; that, March 20th, 1858, George W. Wisner and Martin G. Taylor, comprising the firm of Wisner and Taylor, made and executed an assignment of
3 all their estate, &c., to John A. Marshall, in trust for the benefit of their creditors. By the terms of said assignment, after paying all costs and reasonable expenses of the same, the assignee was required to pay and discharge the debts set forth and enumerated in schedule B, accompanying said assignment as class number one, in full, with lawful interest.

The assignee was next to pay, if the assets were sufficient, class No. 2—if not sufficient, said debts were to be paid rateably and in proportion to their respective amounts. A third class was provided for in the same manner, and the balance, if any should be left, was to be divided *pro rata* among the individual creditors of the members of said firm.

4 The assignment was duly acknowledged before a Notary Public, and the same was accepted by the said John A. Marshall, in writing, and filed for record, and duly recorded in Knox county, Ill. A copy of the assignment and acceptance was filed with said bill of complaint, marked A.

5 Complainants show that Wisner & Taylor were indebted to Morse K. Taylor in the sum of \$1339.871-2, on their promissory note, dated February 18th, 1858, a copy of which was filed with said bill of complaint, marked Exhibit B.

The complainants show that Morse K. Taylor, the payee of

PAGE OF REC.

said note, alone constituted class No. 1, as appears from Schedule B, a copy of which is filed and marked Exhibit C.

Complainants show that the said Morse K. Taylor, for a valuable consideration, under his hand and seal, under date of December 1st, 1858, assigned and set over to Mrs. Sarah E. Currier, all of his right and interest, both in law and equity, in said assignment, and, at the same time, endorsed and delivered the promissory note aforesaid to her.

6 The complainants show that the assignee had, at and before the time of said assignment of said note to Mrs. Currier, realized, out of sales of property and collection of debts assigned to him by said Wisner & Taylor, more than sufficient to pay all reasonable costs and expenses of said trust, together with the principal and interest due upon said note, included in class No. 1.

7 The complainants show a demand, in behalf of Mrs. Currier, made December 1st, 1858, on said Marshall, for payment of said note, and a refusal of said Marshall to pay, and that he still doth refuse to pay.

7, 8 Complainants show that Sarah E. Currier died Jan. 23d, 1857; that letters of administration were issued to complainants Feb. 8th, 1859.

8 Complainants show request of payment on their part.

9, 10 Bill shows various pretences on the part of defendant for refusing to pay, and charges A. D. Titsworth with confederacy, &c.

10 Charges that said Marshall has put into the hands of his confederate, A. D. Titsworth, the full amount of the money due Complainants, and that said Titsworth has converted the same to his own use.

11 Charges that the assignee was appointed at the request of Titsworth, and that he, Titsworth, in consideration thereof, gave to said Taylor a writing guaranteeing that said Marshall should faithfully apply the proceeds arising out of assignment to the payment of the debt then due said Taylor, or to the payment of a certain mortgage made by said Taylor to Sheppard & Reeves, a copy of which is on file with exhibits marked F.

Charges that said Marshall had not paid any money on said mortgage or on said note included in Class No. 1.

Shows that at the time that said Morse K. Taylor assigned

PAGE OF REC.

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Charges that said Marshall had not paid any money on said mortgage or on said note included in Class No. 1.

Shows that at the time that said Morse K. Taylor assigned

PAGE OF REC. said note, &c., to Mr. Currier, he gave both the defendants, Marshall, and Titsworth, notice that he revoked all authority to pay said money upon the mortgage aforesaid.

13 Bill prays a decree that said confederates be compelled to pay to said complainants the amount of principal and interest due upon the note of said Wisner & Taylor, which was assigned by Morse K. Taylor to Sarah E. Currier in her life time, and which is now held in trust by said complainants.

16 to 23 Exhibit A., being a copy of assignment, also copy of acceptance of assignee.

24 Exhibit C., being a copy of schedule B. accompanying the assignment A.

26 Exhibit B., copy of the note from Wisner & Taylor to Morse K. Taylor, with copy of endorsement thereon.

Exhibit D., copy of assignment of Morse K. Taylor to Mrs. S. E. Currier, of his interest in the assignment of Wisner & Taylor.

29 Exhibit E., copy of Letters of Administration issued to complainants.

Exhibit F., copy of guaranty from A. D. Titsworth to Morse K. Taylor.

Præcipe for summons.

30 Summons to Titsworth.

31 Summons to Marshall.

Copy of Demurrer.

32 to 35 The demurrer alleges that it appears upon the face of complainants' bill, that Wilson G. Hunt, Albert N. Sheppard, and Charles H. Reeves, and the other persons named in the assignment of Wisner & Taylor as creditors, are interested in the fund created by said assignment, and should have been made parties thereto, and also that said assignors, Wisner & Taylor, should have been made parties to complainants' bill.

36 The Court sustained the demurrer of the defendant, and the complainants then and there excepted to the ruling and decision of the Court.

The Plaintiffs say the Court erred in sustaining the defendants demurrer.

E. W. HAZARD,
Attorney for Plaintiff.

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SUPREME COURT OF ILLINOIS :

APRIL TERM, 1861.

JAMES H. KNAPP AND
LYDIA L. KNAPP

vs.

JOHN A. MARSHALL AND
ABRAHAM D. TITSWORTH.

ABSTRACT.

E. W. HAZARD,

Attorney for Appellants.

Filed Apr. 25-1861

L. Leland

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

JAMES H. KNAPP AND
LYDIA L. KNAPP,

vs.

JOHN A. MARSHALL AND
ABRAHAM D. TITSWORTH.

BRIEF AND POINTS FOR PLAINTIFFS IN ERROR.

1. "EVERY defendant has an interest in not having any persons made co-defendants but those whom the nature of the case renders it necessary to bring before the Court. Persons who are not necessary parties cannot have any interest in the matters of the suit; and to combine defendants having no interest, is a species of multifariousness."—*Edwards on Parties in Chancery*, page 13.

2. "It is not all persons who have an interest in the *subject-matter* of the suit, but, in general, those only who have an interest in the *object* of the suit, who are ordinarily required to be made parties."—*Story's Equity Pleadings*, Sec. 72, page 77.

3. "The expression 'That all persons interested in the subject must be parties to the suit,' is not to be understood as extending to all persons who may be *consequentially* interested."—*Story's Equity Pleadings* Sec. 140, page 143.

4. "Where the assignment is absolute and unconditional, leaving no equitable interest whatever in the assignor, and the extent and validity of the assignment is not doubted or denied, and there is no remaining liability of the assignor to be effected by the decree, it is not necessary to make the latter a party."—*Story's Equity Pleadings*, Sec. 153, page 175.

5. "In case of an assignment of real estate, it is not requisite, where a bill is filed against an assignee, to make the creditors parties. The *assignee* is supposed to *represent* and *protect* their interests."—*Johnson vs. Candage*, 31 Maine (1 Redington) 28.

6. "Where the trust has been so far executed that the distributive shares of the creditors have been ascertained by the assignee, and a dividend declared, an action will lie against him to recover such share or dividend in favor of a creditor from whom it is withheld; and such action may be either in the form of a bill in equity or an action at law for money had and received." —*Burrill on Assignments*, page 539.

7. "If an assignee violates his trust, to the injury of a particular *cestui que trust*, the latter has his separate remedy in equity." —*Dummock vs. Bixly*, 368; *Gray vs. Thompson*, Johnson's Chancery Rep. 82.

8. "If each party is entitled to an aliquot part, such as a quarter or a half of an ascertained and definite trust fund, in that case he may sue for his own portion thereof without making the other *cestui que trust* (or beneficiaries) parties, for there is no community of property, or other matter, in virtue of which they have, or can have, any interest in the suit or subject of the suit." —*Story's Equity Pleadings*, Sec. 207, pages 224, 225. (See also Sec. 212, page 231.)

Hutchinson vs. Townsend, 2d Keen R. 675.

Morley vs. Rennoldson, 2d Hare R. 570.

Smith vs. Snow, 3d Madd. R. 10.

Hares vs. Stringer, 15 Beavan 206.

9. The assignors should not have been made parties for the reason, if their interest is to have the debt provided for paid, in accordance with the provisions of the assignment, then a decree to that end could not prejudice them; if their interest is adverse to such a decree, it will be sufficiently protected by the Trustee, who is bound to defend against unlawful demands, and in all respects to protect the interests of the assignors. The assignors have admitted the debt, provided for its payment, by placing a fund in the hands of the Trustee with which to pay it. That fund is the property of the *cestui que trust*, and no other party has any interest in it.

10. The creditors need not be made parties, because they have no share in the particular fund which the complainants seek to have applied in discharge of their debt. It is not a case where there are distributive shares to be ascertained, but the entire fund is appropriated to a specific object. If it can be said that the decree sought is adverse to their interest, then we reply, that whatever cause they could have for resisting, the prayer of the complainants can be set up, and should be set up, by the Trustee, and they are therefore sufficiently protected. They are only *consequentially* interested, and are therefore unnecessary parties to the bill.

11, Neither Hunt, or Reeves & Sheppard are parties to the assignment, in consequence of the instrument made between Taylor and Titsworth, in which Titsworth binds himself to Taylor that Marshall shall either pay the money to him, or upon the mortgage of Taylor to Reeves and Sheppard which was assigned to Hunt. It was at the option of Taylor whether he would receive it himself or have it applied upon the mortgage, and Marshall was not at liberty to apply it upon the mortgage unless directed so to do by Taylor. Marshall was no party to the instrument, neither was Hunt, the owner of said mortgage, They should not be parties to the suit.

12. The bill charges that this specific fund has been placed in the hands of the confederate, Titsworth, and the prayer is for a decree against both Marshall and Titsworth, that they pay over the money to the complainants.

E. W. HAZARD,
Attorney for Plaintiffs,

SUPREME COURT OF ILLINOIS :

APRIL TERM, 1861.

JAMES H. KNAPP AND
LYDIA L. KNAPP

vs.

JOHN A. MARSHALL AND
ABRAHAM D. TITSWORTH.

POINTS.

E. W. HAZARD,

Attorney for Appellants.

Filed Apr. 28th 1861

L. J. Leland

Clerk

6. "Where the trust has been so far executed that the distributive shares of the creditors have been ascertained by the assignee, and a dividend declared, an action will lie against him to recover such share or dividend in favor of a creditor from whom it is withheld; and such action may be either in the form of a bill in equity or an action at law for money had and received." —*Burrill on Assignments*, page 539.

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8. "If each party is entitled to an aliquot part, such as a quarter or a half of an ascertained and definite trust fund, in that case he may sue for his own portion thereof without making the other *cestui que trust* (or beneficiaries) parties, for there is no community of property, or other matter, in virtue of which they have, or can have, any interest in the suit or subject of the suit." —*Story's Equity Pleadings*, Sec. 207, pages 224, 225. (See also Sec. 212, page 231.)

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9. The assignors should not have been made parties for the reason, if their interest is to have the debt provided for paid, in accordance with the provisions of the assignment, then a decree to that end could not prejudice them; if their interest is adverse to such a decree, it will be sufficiently protected by the Trustee, who is bound to defend against unlawful demands, and in all respects to protect the interests of the assignors. The assignors have admitted the debt, provided for its payment, by placing a fund in the hands of the Trustee with which to pay it. That fund is the property of the *cestui que trust*, and no other party has any interest in it.

10. The creditors need not be made parties, because they have no share in the particular fund which the complainants seek to have applied in discharge of their debt. It is not a case where there are distributive shares to be ascertained, but the entire fund is appropriated to a specific object. If it can be said that the decree sought is adverse to their interest, then we reply, that whatever cause they could have for resisting, the prayer of the complainants can be set up, and should be set up, by the Trustee, and they are therefore sufficiently protected. They are only *consequentially* interested, and are therefore unnecessary parties to the bill.

11. Neither Hunt, or Reeves & Sheppard are parties to the assignment, in consequence of the instrument made between Taylor and Titsworth, in which Titsworth binds himself to Taylor that Marshall shall either pay the money to him, or upon the mortgage of Taylor to Reeves and Sheppard which was assigned to Hunt. It was at the option of Taylor whether he would receive it himself or have it applied upon the mortgage, and Marshall was not at liberty to apply it upon the mortgage unless directed so to do by Taylor. Marshall was no party to the instrument, neither was Hunt, the owner of said mortgage. They should not be parties to the suit.

12. The bill charges that this specific fund has been placed in the hands of the confederate, Titsworth, and the prayer is for a decree against both Marshall and Titsworth, that they pay over the money to the complainants.

E. W. HAZARD,
Attorney for Plaintiffs.

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SUPREME COURT OF ILLINOIS:

APRIL TERM, 1861.

JAMES H. KNAPP AND
LYDIA L. KNAPP

vs.

JOHN A. MARSHALL AND
ABRAHAM D. TITSWORTH.

POINTS.

E. W. HAZARD,

Attorney for Appellants.

Filed Apr. 23. 1861

L. Leland

Clerk

State of Illinois
Knox County ss.

Knox County Circuit Court
February Term A.D. 1861

Proceedings in Chancery, at a
Court begun and held at the Court
House in the City of Knoxville, on the
Third Monday in February, in the
Year of our Lord the thousand Eight
Hundred and Sixty one.

Present,

Hon. Aaron Tyler, Judge,
James H. Stewart, State atty.,
John H. Lewis Clerk
C. C. Pratt, Sheriff,

In the matter of,

James H. Kuapp
and Lydia S. Kuapp

February Term 1861,

vs.
John A. Marshall and
Abraham D. Fetsworth

Copy of Bill of Complaint,

" To the Honorable Aaron
" Tyler, Judge of the Knox County
" Circuit Court, Illinois;
" Humbly complaining,
" Sheweth unto Your Honor, Your Orator,

" James S. Knapp, Administrator and,
 " Youratrix Lydia S. Knapp, adminis-
 " tratrix of the Estate of Sarah C. Courier,
 " deceased, of Galesburg, Knox County, Illinois
 " That on or about the 20th day of Feb-
 " ruary A.D. 1858, George W. Wisner and Martin
 " G. Taylor, Merchant Tailors, doing business
 " at Galesburg, aforesaid, in the firm, name
 " and style, of Wisner & Taylor, being in
 " failing circumstances, and largely in-
 " debted, beyond their ability to pay in full,
 " their just debts, and being desirous of
 " providing for the payment thereof, did
 " on the day and year aforesaid, bar-
 " gain, sell, assign, transfer and set
 " over unto John A. Marshall, then
 " of Chicago, now of Galesburg, all and
 " singular the lands, tenements, here-
 " ditaments, and appurtenances, goods
 " chattels, Stocks, promissory notes, debts,
 " choses in action, claims, demands, prop-
 " erty, and effects of every description, be-
 " longing to the said George W. Wisner
 " and Martin G. Taylor, and then and
 " there delivered the same, into the pos-
 " session of the said John A. Marshall, To
 " Have and hold the same, and every
 " part and parcel thereof, with the ap-
 " purtenances, unto the said John A. Marshall
 " his heirs, executors, administrators and

assigns In Trust, and to and for the
 uses, intents and purposes following, to
 wit: To sell and dispose of all the prop.
 erty, assigned, with all convenient dili-
 gence, either at public or private sale, as
 he might deem most beneficial to the
 interests of the creditors of said Wisner
 & Taylor, and convert the same into
 money; and also use all reasonable
 diligence to collect, get in and recover all
 and singular the debts, dues, bills, ^{Bonds} notes,
 accounts, judgments, securities, claims and
 demands, assigned by said Wisner & Taylor
 as aforesaid, and with the proceeds of such
 sales and collections, said Assignee
 was first to pay and disburse all the re-
 asonable, expenses, costs, charges and com-
 missions, attending the due execution of
 said Trust, and out of the residue of the
 net proceeds of said sales and collections,
 the said Assignee, was, first to pay and
 discharge all and singular the debts,
 set forth and enumerated in the Sched-
 ule "B." accompanying said assignment
 as class number one, which he was to
 pay in full, with lawful interest; if the
 proceeds of said sale and collections of
 debts, were sufficient for that purpose.
 Said Assignee was next to pay,
 if said proceeds were sufficient, the debts,
 enumerated as class No. 2, if not sufficient

then said debts were to be paid rateably,
 and in proportion to the respective amounts
 thereof, and, thirdly, if the proceeds were
 sufficient, he was to pay the debts enu-
 merated, in class No. Three, and if not
 sufficient, then the same were to be paid
 rateably in proportion to the ^{respective} amounts
 thereof; and lastly, after paying all costs,
 attending the execution of the Trust, and
 the payment and discharge in full, of all
 the lawful debts, due and owing by the
 said Wisner & Taylor, as Co-partnership debts,
 the said Assignee was to pay out of the
 residue, if any there should be, the private
 and individual debts of the said Wisner
 & Taylor, due or to become due, provided the debts
 of each did not exceed the surplus, that
 might remain, after paying the Partnership
 debts, and if it should, then the interest
 of each in such surplus fund was to be
 divided pro rata, among their individual
 creditors, in proportion to their respective
 demands; which said assignment
 was in writing, under the hand and
 Seal of the said Wisner and Taylor, and
 duly acknowledged by them before an
 acting Notary Public of Galzburg, Knox
 County, Ill. and was then and there
 accepted by the said John A. Marshall,
 which acceptance was also in writing

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"and duly acknowledged before said
 "Notary Public, a copy of which Assign-
 "ment and acceptance is filed herewith
 "marked "Exhibit A."

"And your Orator & Oratrix further
 "show unto your Honor, that at the time
 "of making of said assignment, the said Winsor
 "& Taylor were jointly indebted to one Morse
 "H. Taylor, on their promissory ^{note}, dated February
 "18th A.D. 1858, in the full sum of One Thou-
 "and, Three Hundred and Thirty nine
 "Dollars, and Eighty seven Cents and one
 "half, with interest from date of said
 "note, at the rate of ten per cent per annum,
 "a copy of which said note, is filed here-
 "with marked "Exhibit B"

"And your Orator and Oratrix
 "further show unto your Honor, that the
 "said Morse H. Taylor, alone constituted
 "Class Number One of the Creditors of said
 "Winsor & Taylor, as appears from Schedule
 "'D' annexed to said assignment, a copy
 "of which is filed herewith marked "Ex-
 "hibit C."

"And your Orator and Oratrix
 "further show unto your Honor, that on
 "the first day of December A.D. 1858, the
 "said Morse H. Taylor under his hand
 "and seal, for a valuable consideration
 "assigned and set over to Mrs. Sarah E.
 "Carriger, for her own use benefit and behoof

"all of his right and interest both in law
 "and equity, to the monies due him, and
 "arising from and out of the foregoing
 "Assignment, and at the same time, he
 "Endorsed and delivered to the said Sarah
 "Eleanior the aforesaid Promissory Note, by
 "virtue of which assignment and endorsement
 "the said Sarah Eleanior, became entitled
 "to demand of and receive from the said
 "John A. Marshall, the monies arising
 "out of the proceeds of said assignment
 "to an amount sufficient to fully satisfy
 "and discharge said Note, principal
 "and interest, providing the proceeds, a-
 "rising from said sales, and the collection
 "of debts under said Assignment, exceeded
 "the reasonable expenses of said Trust,
 "and was sufficient, over and above said
 "expenses, to satisfy the principal and interest
 "due upon said Note, a copy of which as-
 "signment is herewith filed, marked "Exhibit
 "A."

"And Your Orator and Oratrix
 "further show unto your Honor, that some
 "time prior to the 1st day of December, A.D. 1858,
 "the time when the said Morse K. Taylor
 "assigned his interest in said Assignment
 "to Mrs. Sarah Eleanior, and endorsed and
 "delivered said Note, as aforesaid, the
 "said John A. Marshall, had realized from

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"Said Sales of the goods and chattels, as-
"signed to him as aforesaid by the said
"Wisner & Taylor, and from the collection
"of the debts, demands &c. so assigned an
"amount of monies more than sufficient
"to pay and discharge all the reasonable
"expenses of said Trust, as provided for, in
"said assignment, together with the
"principal and interest due upon the note
"aforesaid included in class No. one, in
"said assignment,

"Your Orator and Oratrix
"further show unto your Honor that the
"said Sarah Cleaver, by her agents and
"attorneys; Hazard & Beardsley, pre-
"sented the aforesaid assignment and note
"to the said John R. Marshall, on the first
"day of December, aforesaid to wit: A. D. 1858,
"and demanded payment of the same, a-
"greeable to the provisions contained in the
"Deed of Trust aforesaid, and that the
"said John R. Marshall, absolutely
"refused to pay said note, or any part
"thereof, and that he still does neglect
"and refuse to pay said note, or any part
"thereof, and that the whole of the principal
"and interest on said note, remain due
"and unpaid,

"Your Orator and Oratrix fur-
"ther show unto your Honor, that on the
"23^d day of January, A. D. 1859, the said

„ Sarah O. Courier, Deed, and that on
 „ the 8th day of February A. D. ~~1857~~ 1859,
 „ Letters of Administration were issued to your
 „ Orator and Oratrix, on the Estate of the
 „ Deceased, by the Probate Court of Cook
 „ County Illinois, a Copy of which Letters
 „ are herewith filed marked "Exhibit C."

„ Your Oratrix & Orator further
 „ show unto Your Honor, that at various
 „ times since their appointment as Admin-
 „ istrators and Administratrix of the Estate of
 „ the said Sarah O. Courier, Deceased, they
 „ have applied to the said John A. Mar-
 „ shall, requesting him to pay them the
 „ amount due upon said note aforesaid
 „ for the benefit of the Estate of the said
 „ Sarah O. Courier, and Your Orator and
 „ Oratrix well hoped, that he would have
 „ complied with such reasonable request,
 „ as in conscience and equity he ought to
 „ have done.

„ But now it is may it please
 „ Your Honor, that the said John A.
 „ Marshall, combining and confederating
 „ together with one Abraham N. Fitchworth
 „ of Chicago Illinois, and to and with di-
 „ vers other persons, as yet unknown to your
 „ Orator and Oratrix (but whose names
 „ they pray, when discovered may be inserted
 „ herein, as Defendants, and made parties to

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" this suit, with proper and sufficient words,
 " to charge ^{them} with the premises) in order to ob-
 " ject and injure your Orator and Oratrix
 " in their representative capacity of Admini-
 " strator, and Administratrix of the Estate
 " of Sarah E. Canier deceased, do absolutely,
 " refuse to pay for the benefit of said Estate
 " the money due upon said note afore-
 " said, or any part thereof, according to the
 " provision of the Trust created by said
 " Wisner & Taylor, for reason whereof the
 " said confederates sometimes alledge,
 " and pretend no valid assignment was
 " ^{ever} made, and at other times they admit,
 " such Assignment to have been made,
 " and that the same was good and
 " valid, and that they possessed them-
 " selves of all the real and personal es-
 " tate of the said Wisner & Taylor, and
 " sold the same, for cash, but then
 " they pretend that the same was very
 " small and inconsiderable, and by no
 " means sufficient to pay the reasonable
 " expenses of said Trust, and the Debt
 " provided to be paid in class number one,
 " on Schedule "B," of said Assignment;
 " and then they pretend, that by virtue
 " of some Agreement, or some order made
 " by the said Morse H. Taylor, before the
 " making of said assignment by him to
 " Mrs Sarah E. Canier, the said John

„ A. Marshall was authorized to pay
 „ the money going to said Morse N. Taylor,
 „ by virtue of said Assignment, on a certain
 „ mortgage made and executed by said
 „ Morse N. Taylor Wife, in favor of Albert
 „ N. Shepherd, and Charles H. Reeves,
 „ bearing date the 12th day of June A.D.
 „ 1857, and which said mortgage, has since
 „ been assigned by said Shepherd & Reeves
 „ to Wilson G. Hunt of New York, and that
 „ they have applied the said money
 „ in payment of ^{said} mortgage; and then again
 „ admit, they have not applied said money
 „ in payment of said mortgage, but
 „ that they hold the same, in their
 „ possession, with the intention of apply-
 „ ing said money on said mortgage,
 „ providing said Assignment is good, and
 „ valid, and at the same time the said
 „ Confederates refuse to discover how much
 „ money they have realized out of said col-
 „ lections and sales, made under said
 „ assignment, and what they have done
 „ with the money which they have col-
 „ lected and received under and by
 „ virtue of said assignment, or how the
 „ same has been disposed of particularly,
 „ Whereas Your Orator and Oratrix
 „ charge the truth to be, that a good
 „ and valid Assignment was executed

" by the said George W. Wisner, and
 " Martin G. Taylor, on the 28th day of
 " February A. D. 1858, as herein before stated,
 " and that the property, debts, and demands
 " assigned by said Wisner & Taylor, to
 " said John A. Marshall, were more
 " than sufficient to pay the debt in-
 " cluded in class number One, in said
 " assignment, together with all reasonable
 " expenses attending the execution of the Trust
 " created in said assignment, and that
 " the said John A. Marshall has received
 " more than a sufficient amount of money
 " to pay the debt aforesaid, and the ex-
 " penses of said Trust, and that the said
 " Confederates, or one of them, have possessed
 " and converted the same to their own uses,
 " without making any satisfaction of the
 " Debt due your Orator and Oratrix as
 " aforesaid,

" Your Orator and Oratrix fur-
 " ther charge that the said John A. Mar-
 " shall has put into the hands of his Con-
 " federate, Abraham R. Titworth the full
 " amount of money due your Orator and
 " Oratrix out of money arising from said
 " Trust, and that the said A. R. Titworth
 " has converted the same to his own use, and
 " refuses to pay the same to your Orator and
 " Oratrix —

" Your Orator and Oratrix admit

that in consideration of said Wisner
 Taylor appointing said John A. Marshall
 their assignee at the request of the afore-
 said A. D. Fittsworth, he the said A. D.
 Fittsworth gave to Morse K. Taylor a writing
 by which said Fittsworth guaranteed
 to said Taylor, that said Marshall
 should faithfully apply the proceeds
 arising out of said assignment to the
 payment of the debt then due said Morse
 K. Taylor, or to the payment of the mortgage
 herein before described, a copy of which said
 guaranty is filed herewith marked "Exhibit
 A."

Your Orator and Oratrix further
 show unto your Honor, that the said
 John A. Marshall, has not paid any
 money upon said mortgage, nor has
 he paid any portion of the debts mention-
 ed in Class No. one of said Assignment,

Your Orator and Oratrix further
 show unto your Honor, that at the
 time said Morse K. Taylor, assigned his
 interest in said Assignment, to Mrs. Sarah
 Clavier, notice was given to said John
 A. Marshall, and also to said Abraham
 D. Fittsworth by said Morse K. Taylor, that
 he revoked all authority & pay said money
 upon the aforesaid mortgage —

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To the end therefore that the said
 "Confederates may, respectively, full, true
 "direct and perfect answer make, but not
 "upon their respective corporal oaths, (as their
 "answer upon oath is hereby expressly waived,
 "according to the best of their respective
 "knowledge, information and belief, to all
 "and singular the charges and matters a-
 "foresaid, as fully in every respect, as if the
 "same were here again repeated, and they
 "hereunto particularly interrogated, and more
 "especially that they may respectively set
 "forth, ~~the amount~~ and discover, according
 "to the best of their knowledge information and
 "belief,

1. " Whether an assignment, such as has
 "been described in this Bill, was not ~~made~~,
 "duly executed by George W. Wisner, and
 "Martin S. Taylor on the 21st day of
 "February A. D. 1858 - ?

2. " Whether said John A. Marshall, did
 "not accept of said assignment, and
 "receive the goods & chattels, rights & credits
 "of the said Wisner & Taylor into his possession,
 "and whether he did not dispose of the same
 "for cash, according to the terms of said
 "assignment ?

3. " What amount of money has the said
 "John A. Marshall received in the execution

"of said Trust?

4. " What has been done with the money
"received by the said John A. Marshall in
"the execution of said Trust?

5. " What were the expenses attending the
"execution of said Trust?

6. " Has any part of the money been paid
"upon the Debt, scheduled in class number
"one, in favor of Morse K. Taylor?

7. " Has any sum of money received by said
"assignee in the execution of his Trust,
"been placed in the hands of Abraham R.
"Pittsworth? If so, for what amount
"and for what cause?

8. " Was not the said assignee noti-
"fied of the Assignment of the interest
"of Morse K. Taylor to Sarah Clunier
"on the day the same was made?

9. " Was not demand made by Henry Beards-
"ley Esq. of the firm of Hazard Beardsley
"on behalf of said Sarah Clunier for the
"money due her, by virtue of said assign-
"ment, and did not said assignee re-
"fuse to pay it?

- 10 Was not said assignee and also
 " said Abraham D. Fitzworth notified
 " by M. K. Taylor, that he revoked all au-
 " thority to pay anything upon the mortgage
 " given by said Taylor to Shepherd & Remes?
 " If so when?
- 11 Is not said Trust fully executed,
 " and complete, so far as selling and dispo-
 " sing of the Real & Personal Property, assigned
 " is concerned, and also so far as relates to
 " the collection of the dues and demands
 " &c. assigned is concerned?
- 12 What proportion, if any has been paid
 " of the debts of said Wisner & Taylor?
- 13 What is the amount now due on the
 " note of Wisner & Taylor, given to M. K. Taylor,
 " and provided for in Class number One,
 " in their assignment?

" and that said Confederates,
 " may be compelled by a Decree of this
 " Honorable Court, to pay to your Orator
 " and Oratrix the amount of principal
 " and interest due, upon the note of
 " said Wisner & Taylor, which was assigned
 " by Morse K. Taylor, as aforesaid, to Mrs Sarah
 " Connor in her life time, and which is now,
 " held by Complainants in Trust, as administrators

upon the back of said Bill of Complaint, is the
following filing viz: "Filed Dec. 27 1862. J. H. Lewis Clerk"

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"and administratrix of the said Sarah
"Clouin Deceased, and that they, Your
"Orator and Oratrix may have such other
"and further relief in the Premises as
"the nature of their case shall require,
"and as to your Honor, shall seem meet,
"May it please your Honor, & grant
"unto your Orator and Oratrix the most
"gracious Writ of Subpoena, of the State of
"Illinois, & be directed to the said John
"A. Marshall, and Abraham D. Fitzworth,
"and the rest of the Confederates, when
"discovered, thereby commanding, them
"and every of them, at a certain day, and
"under a certain pain, therein & be spec-
"ified, personally & be and appear, before
"Your Honor, in this Honorable Court,
"and then and there to answer,
"all and singular the premises, but
"not under oath, as that is hereby ex-
"pressly waived, and to stand to and
"abide perform and abide such order
"and decree therein, as to your Honor shall
"seem meet: and your Orator & Oratrix shall ever
"pray.

"Harvard & Peaslee, J. A. Knapp,
"Compt. Solicitors } Lydia S. Knapp
"Administrator and admini-
"stratrix of Sarah Clouin Deceased."

Copy of Exhibits.

Exhibit A.

" Know all men by these presents that we
 " George W Wisner and Martin G Taylor Copartners
 " under the name and style of Wisner & Taylor
 " of the City of Galzburg in the County of
 " Knox and State of Illinois in consideration
 " of the sum of One dollar to us in hand
 " paid by John A Marshall of the City of
 " Chicago in the State aforesaid the receipt
 " whereof is hereby acknowledged and of the
 " uses purposes and trusts hereinafter men-
 " tioned have granted bargained and sold
 " assigned transferred and set over and by these
 " presents do grant bargain and sell assign
 " transfer and set over unto the said John A
 " Marshall his heirs and assigns all our lands
 " tenements goods chattels and effects and
 " Merchandise and stock in trade belonging
 " to said firm of Wisner and Taylor and all
 " accounts debts and demands due owing or
 " belonging to said parties of the first part
 " which said lands tenements goods chattels
 " debts and demands are particularly en-
 " numerated and described in a schedule
 " herewith annexed Marked 'Schedule A' and
 " also all the books of account of the said
 " parties of the first part and all papers
 " documents and vouchers relating to their
 " business

" I have and to hold the same
 " and every part and parcel thereof unto
 " the said party of the second part his

" his Executors administrators and assigns
 " In trust nevertheless to and for the uses
 " and purposes following that is to say
 " that the said party of the second part
 " shall take possession of the said property
 " hereby assigned or intended so to be and
 " shall with all convenient diligence
 " sell and dispose of the same at public or
 " private sale as he may deem most bene-
 " ficial to the interests of the creditors of the
 " said parties of the first part and convert
 " the same into money and shall also with
 " all reasonable diligence collect ~~get~~ in and
 " recover all and singular the said debts
 " dues bills bonds notes accounts and bal-
 " ance of account judgments securities claims
 " and demands hereby assigned or intended
 " so to be And with and out of the proceeds
 " of such sale and collections that the said
 " party of the second part shall pay and dis-
 " burse all the just and reasonable expenses
 " costs charges and commissions attending
 " the due execution of these presents and carrying
 " into effect the trusts hereby created together
 " with a reasonable and lawful compensation
 " or commission for his own services and with
 " and out of the residue or net proceeds of
 " such sale and collections the said party
 " of the second part shall pay and discharge
 " the debts due and owing by the said

" parties of the first part in the order and
 " manner following that is to say

" First the said party of the first part
 " shall pay all and singular the debts set forth
 " and enumerated in a Schedule of debts
 " hereto annexed marked "Schedule B" and design-
 " ated in said schedule as Class number one
 " the same to be paid in full with lawful
 " interest, if the said proceeds shall be suf-
 " ficient for that purpose, And if the same
 " be not sufficient then the said party of
 " the second part shall apply the said
 " net proceeds to and in the payment of
 " the said debts

" Secondly, After the payment in
 " full of all the debts designated in said
 " Schedule "B" as class number one in manner
 " above directed the said party of the second
 " part shall pay in full all and singular
 " the debts enumerated and designated in
 " Schedule "B" as class number two if there
 " be sufficient of the said net proceeds
 " remaining in his hands for that purpose
 " and if there be not sufficient then the said
 " party of the second part shall apply the
 " same so far as they will go for that purpose
 " to and in the payment of the said last
 " mentioned debts ratably and in pro-
 " portion to the respective amounts
 " thereof

"Thirdly after the payment in full of all the
 "debts designated in said Schedule B" as class
 "number two, if there should be any residue or
 "surplus of the said net proceeds remaining
 "in his hands the said party of the second part
 "shall with and out of the said residue pay
 "if any there be and use and apply the
 "said rest and residue of the said net
 "proceeds if any in and towards the payment
 "of all debts designated in said "Schedule B"
 "as class number three equally ratably
 "and without distinction or preference

"Lastly - After the payment of all
 "costs charges and expenses attending the
 "Execution of the Trust hereby created, and
 "the payment and discharge in full of all
 "the lawful debts due and owing by the
 "said parties of the first part of any and
 "every kind and description as copartner-
 "ship debts then with and out of the residue
 "and remainder of said net proceeds if any,
 "the said party of the second part shall
 "pay and discharge all the private and
 "individual debts of the said parties of the
 "first part or either of them whether due or
 "to grow due provided the respective amounts
 "of the individual debts of each of said parties
 "does not exceed his portion of the surplus
 "that may remain after paying all the said
 "partnership debts and if it should then

" his interest in said surplus is to be divided
 " pro rata among his individual creditors
 " in proportion to their respective demands
 " it being understood that no part of the
 " said surplus which will belong to each of
 " said individual parties of the first part.
 " respectively after the payment of the
 " copartnership debts is to be made liable
 " for the individual debts of the other of them
 " and if any surplus shall remain of the
 " said proceeds after payment of all the
 " debts due by said parties of the first part
 " or either of them, the said party of the
 " second part shall return the same to the
 " said parties of the first part their executors
 " administrators or assigns. And for the
 " better and more effectual execution of these
 " presents and of the trusts hereby created and
 " reposed the said parties of the first part
 " do hereby make constitute and appoint the
 " said party of the second part our true
 " and lawful attorney irrevocable with full
 " power and authority to do transact and
 " perform all acts deeds matters and things
 " which may be necessary in the premises
 " and to the full execution of said trust
 " and for the purposes of said trust to ask
 " demand recover and receive of and from
 " all and every person and persons all
 " the property debts and demands belonging

" and owing to the said parties of the first
 " part and to give acquitances and dis-
 " charges for the same and to sue prosecute
 " defend and implead for the same and
 " to execute acknowledge and deliver all
 " necessary deed and instruments of con-
 " veyance and also for all the purposes
 " aforesaid or any part thereof to make
 " constitute and appoint one or more attor-
 " nays under him and at his pleasure to
 " revoke the same hereby ratifying and
 " confirming whatever the said party of
 " the second part or his substitute shall
 " lawfully do in the premises In witness where-
 " of the said parties of the first part have
 " herunto set their hands and seals this
 " twentieth day of February AD One thousand
 " Eight hundred and fifty eight

Geo W Wisner *Geo W Wisner*
 Martin G Taylor *Martin G Taylor*

" State of Illinois }
 " Knox County } ss.

" J J A Boyd a Notary
 " Public in and for said County do certify
 " that George W Wisner and Martin G Taylor
 " whose signatures appear to the foregoing
 " deed of assignment and who are person-
 " ally known to me to be the persons
 " whose names are subscribed to such
 " deeds as having executed the same appeared

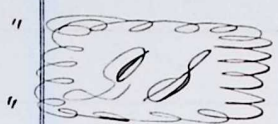
" and owing to the said parties of the first
 " part and to give acquitances and dis-
 " charges for the same and to sue prosecute
 " defend and implead for the same and
 " to execute acknowledge and deliver all
 " necessary deed and instruments of con-
 " veyance and also for all the purposes
 " aforesaid or any part thereof to make
 " constitute and appoint one or more attor-
 " nays under him and at his pleasure to
 " revoke the same hereby ratifying and
 " confirming whatever the said party of
 " the second part or his substitute shall
 " lawfully do in the premises In witness where-
 " of the said parties of the first part have
 " herunto set their hands and seals this
 " twentieth day of February AD One thousand
 " Eight hundred and fifty eight

Geo W Wisner *Geo W Wisner*
 Martin G Taylor *Martin G Taylor*

" State of Illinois }
 " Knox County } ss.

" J J A Boyd a Notary
 " Public in and for said County do certify
 " that George W Wisner and Martin G Taylor
 " whose signatures appear to the foregoing
 " deed of assignment and who are person-
 " ally known to me to be the persons
 " whose names are subscribed to such
 " deeds as having executed the same appeared

22 " before me this day in person and did
" acknowledge the same to be their free
" act and deed Given under my hand and
" notarial seal this twentieth day of
" A.D. 1858

" 

J A Boyd
Notary Public

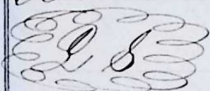
" And the said party of the second part
" doth hereby accept the trust created
" and in him reposed by these presents
" and doth for himself his heirs executors
" and administrators hereby covenant and
" agree to and with the said parties of the
" first part their executors administrators and
" assigns that he the said party of the second
" part will honestly and faithfully and
" without delay execute the same ac-
" cording to the best of his skill knowledge
" and ability - In witness whereof the
" said party of the second part has hereunto
" set his hand and seal this twentieth day
" of February A.D. one thousand eight hundred
" and fifty eight

" J A Marshall Seal
" State of Illinois }
" Knox County } ss

" J A Boyd a Notary
" Public in and for said County do certify
" that John A Marshall whose signature
" appears to the foregoing deed of assignment

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" as party of the second part and who is
" personally known to me to be the person
" whose name is subscribed to such deed
" as having executed the same appeared
" before me this day in person and did ac-
" knowledged the same to be his free act
" And did Given under my hand and
" Notarial seal this 30th day of February
" A.D. 1858.

" 

J W Boyd Notary Public

a

at

" Schedule B" referred to in the foregoing
 " assignment

" Clap Number One

" Amount due Morse & Taylor as per note
 " dated February 18th AD 1858 \$1339.87

" Clap Number Two

" Wilson & Hunt & Co for goods as per note dated
 " August 28th AD 1857 due in 8 months from date \$427.54
 " Thomas W Dale & Co for goods as per note dated
 " August 27th AD 1857 due in six mos from date \$ 288.63
 " Brokan Butler & Co for goods as per note dated
 " August 27th AD 1857 due in 8 mos from date \$ 1138.15
 " Herrick Ferris & Co for goods equal half of note
 " dated August 27th 1857 due in 6 mos \$ 330.00
 " J W Hutchins & Co for goods equal ^{one} half of note
 " dated Aug 28 AD 1857 due in 6 mos from date \$182.60
 " Sawtry Freeman & Co for goods Book & Co
 " dated Aug 28th 1857 due in 6 mos \$64.10
 " Field Benedict & Co for goods as per note
 " dated Sept 30, 1857 due in six months from date \$540.50
 " Barnum & Bro for goods book & Co \$ 22.67
 " A D Fittsworth & Co for goods as per note
 " and & Co \$1947.72
 " Sheppard & Reeves for goods as per note
 " and & Co \$1045.72

Class Number three

James H Hubbard & Co for goods as per notes (3)
 dated March 26, 1857 balance \$ 118.03
 2nd May 27th 1857 for 149.57
 3rd Oct. 1st 1857 for 218.23
 Whole Amounts \$ 345.80

H B Brockwell for goods as per note dated
 Aug 27, 1857 (6 mo) \$ 172.73
 Mott Weaver & Richardson as per note
 dated Aug 27, 1857 (6 mo) \$ 180.11
 Parsons & M^cNab. as per note dated
 Sept 30, 1857 (3 mo) \$ 266.75
 Herrick Ferris & Co other one half of note
 dated Aug 27, 1857 and ap (\$ 34.00) \$ 384.00
 Benedict Mallory & Farnham balance
 of note dated \$ 53.69
 H W Schandler for goods as per two
 notes dated Sept 22, 1857 (\$ 482.61) and
 Oct. 16, 1857 for (\$ 144.91) \$ 627.52
 J A Bonell as per two notes dated
 Sept 22, 1857 for (\$ 448.44) and other
 dated Oct. 8, 1857 for (\$ 226.19) \$ 662.41
 J W Hutchins other one half of
 note dated Aug 28, 1857 \$ 182.60

"Exhibit B."

" \$1339.87 1/2

" One day after date we promise to
 " pay Morse & Taylor or order the sum of
 " Thirteen hundred and thirty nine 87 1/2 dollars
 " with interest at ten per cent per annum
 " for value received

" Galisburg Feb. 16th 1858

Witnessed by Taylor
 W.

" Endorsed as follows.

" Pay to S E Currier or order
 " Galisburg Dec 1st 1858

" M R Taylor

"Exhibit C"

" For a valuable consideration to me in
 " hand paid I hereby assign and set over
 " to Mrs Sarah E Currier for her own use
 " benefit and behoof all of my right and
 " interest both in law and equity to the
 " monies due me and arising from and out
 " of an assignment made by George W Wisner
 " & Martin S Taylor for the benefit of their creditors
 " dated February 20th AD 1858 making constitut^{ing}
 " and appointing John A Marshall their
 " assignee, And I hereby and herein authorize
 " the said Sarah E Currier to demand and
 " receive of the said assignee the monies

" due me from said assignee by virtue of
 " said assignment Witness my hand and
 " seal this first day of December AD 1858.
 " _____ Morse K Taylor. Seal

" State of Illinois }
 " Knox County } sch.

" The People of the State
 " of Illinois to all to whom these presents
 " shall come greeting

" Know ye that whereas
 " Sarah E. Currie late of the County of
 " Knox and State of Illinois. died intestate
 " as it is said on or about the twenty third
 " day of January AD 1859. having at the
 " time of the time of her decease personal
 " property in this state which may be
 " lost or destroyed or diminished in value
 " if speedy care be not taken of the same

" To the end therefore that said property
 " may be collected and preserved for those
 " who shall appear to have a legal right
 " or interest therein we do hereby appoint
 " Lydia S. Knapp and James H. Knapp
 " of the County of Knox and State of
 " Illinois Administratrix and admin-
 " istrators of all and singular the goods
 " and chattels rights and credits which were
 " of the said Sarah E. Currie at the time
 " of her decease with full power and authority
 " to secure and collect said property and

" Exhibit C

Exhibit C

debts whosoever the same may be found
in this state and in general to do and
perform all other acts which now are
or hereafter may be required of them by
law

Witness John S Winter Clerk of the
County Court in and for the said County
of Knox at his office in Knoxville this Eighth
day of February A.D. 1859 and the Probate
seal of said Court hereunto affixed
John S Winter
Clerk of County Court

Know all men by these presents that whereas
the firm of Wisner & Taylor have this day
made an assignment of all their stock in
trade and book accounts in their store in
the City of Galzburg Knox County Illinois
to one John Marshall assigned for the
benefit of their creditors and whereas there
is in said assignment a provision that
the said John Marshall shall pay to one
W H Taylor (a preferred creditor in said
assignment the sum of thirteen hundred
and thirty nine dollars and eighty seven
cents to be applied on a certain mortgage
bearing date June 19. 1857 Mortgagor.

Exhibit F

" In K Taylor and Mortgagees Sheppard &
 " Reeves And signed to Wilson & Hunt & Co
 " Now it is understood that in Consideration
 " of the premises that I hereby guarantee
 " to the said Taylor that the said John
 " Marshall will faithfully apply the
 " proceeds arising out of said assignment
 " to the payment of the sum aforesaid
 " according to said assignment or that
 " the said sum shall be applied by
 " the said Marshall to the payment
 " of the Mortgage aforesaid
 " Galusburg Feb. 18. 1858
 " (Signed) A D Pittsworth "

upon the back of which Exhibits
 was the following filing, viz:

" Filed Dec. 27. 1861.
 " J. W. Lewis C.M. "

Copy of Process for Summons, viz

" James A. Knapp
 " Lydia S. Knapp
 " John A. Marshall and
 " Abraham W. Fitzworth } In the Circuit
 " } Court, of Knox
 " } County, Illinois
 " February Term A.D. 1860,
 " In Chancery,
 " Of the Clerk of said Court,
 " Please issue a Summons
 " in Chancery, for John A. Marshall
 " of the Shff. of Knox County, and for
 " Abraham W. Fitzworth, of the Shff.
 " of Cook County, returnable on the
 " first day of the next Term of said
 " Court,
 " Henry and W. Beardsley
 " Solicitors for Compts.
 " Decr. 27, 1860, "

" Upon the back of which Process
 " is the following endorsement of filing,
 " "Filed Decr. 27, 1860
 " J. H. Lewis clk"

Copy of Summons, issued to
Cook County viz:

State of Illinois, }
KNOX COUNTY, } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To THE SHERIFF OF ^{Cook} KNOX COUNTY, GREETING:

WE COMMAND YOU TO SUMMON

Abraham H. Newirth
impleaded with John H. Marshall

If to be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden in the Court House, in Knoxville, on the 3^d Monday in the month of February next, to answer a certain Bill of Complaint, filed in our said Circuit Court, on the Chancery side thereof, against him by James S. Knapp &

Lidia S. Knapp.

And have you then and there this writ, and make return thereon in what manner you execute the same.

Leab

WITNESS, J. H. Lewis
~~George Arms~~, Clerk of our said Circuit Court, at Knoxville, this 27th day of December, A. D., 1856, the seal of said Court being hereunto attached.

J. H. Lewis CLERK.

Cook Co.
KNOX CIRCUIT COURT.

James H. Knapp Etal,
vs.
John A. Marshall Etal

Summons in Chancery.

Filed this 1st day of
Dec. A. D., 1861.
J. H. Lewis CLERK.

Sheriff's Fees.

Service, - - - - - \$ 50
Miles travel, - - - - - 10
Copies, - - - - - 50

Return, - - - - -
Paid by app. atty \$ 12.00
A. C. H. Knapp Sheriff Cook Co.
Wm. H. Beardsley Atty.

I served the within Summons by reading the same to and giving to

William H. Beardsley a true
Copy thereof

each one a true copy of the within, this 8 day of January,
1861; but cannot find in my county

A. C. Strong Clerk
Wm. H. Beardsley Sheriff Knox Co., Ill.

~~I gave to _____, a member of his family, at his place of
abode, a true copy of the within, explaining to him the contents; and not
being able to find _____ I gave to _____, a member of his family, at his place of abode, a true
copy of the within, explaining to him the contents; and not being able to find~~

Copy of Summons issued to
 Sheriff of Knox County, viz:
 and felony viz.

State of Illinois, }
 KNOX COUNTY, } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To THE SHERIFF OF KNOX COUNTY, GREETING:

WE COMMAND YOU TO SUMMON John A Marshall impleaded
with Abraham D Fetsworth

If to be found in your County, personally to be and appear before the Circuit Court of
 said County, on the first day of the next term thereof, to be holden in the Court House, in
 Knoxville, on the third Monday in the month of February next, to answer
 a certain Bill of Complaint, filed in our said Circuit Court, on the Chancery side thereof,
 against him by James H Knapp and Lydia
Knapp

And have you then and there this writ, and make return thereon in what manner you
 execute the same.

Seal

WITNESS, J H Lewis, Clerk of our said Circuit
 Court, at Knoxville, this 27th day of
Feb, A. D., 1880,
 the seal of said Court being hereunto attached.

J H Lewis CLERK.

KNOX CIRCUIT COURT.

J Mc Knapp, et al
vs.
John A Marshall

Summons in Chancery.

Filed this 28 day of Jan
A. D., 1867.

J Mc Lewis CLERK.

Sheriff's Fees.

Service, - - - - -	\$ <u>50</u>
<u>6</u> Miles travel, - - - - -	<u>30</u>
<u>1</u> Copies, - - - - -	<u>50</u>
Return, - - - - -	<u>10</u>
	\$ <u>1.40</u>

E. C. Bratt Sheriff Knox Co
By J. C. Cover

Her Beardsley, Att'ys.

I served the within Summons by reading the same to and giving to

John A Marshall

each one a true copy of the within, this 26 day of January,
1867; but cannot find in my county

E. C. Bratt, Sheriff Knox Co., Ill.
By J. C. Cover Deputy

Not being able to find

I gave to _____, a member of his family, at his place of
abode, a true copy of the within, explaining to him the contents; and not
being able to find _____ I gave to _____

Copy of Demurer.

" Knox Circuit Court.
 " February Term AD 1861. }

" James H Knapp et al. } In Chancery
 " vs } Now Aaron Taylor.
 " John A Marshall & } Circuit Judge
 " A D Fitzworth }

" The Demurrer of John A Marshall
 " and Abraham D Fitzworth to the
 " Bill of Complaint of James H
 " Knapp & Lydia S Knapp. ad-
 " ministrator & administratrix of the
 " Estate of Sarah E. Cumie deceased
 " These defendants John A Marshall & Abraham
 " D Fitzworth by protestation not confessing
 " or acknowledging all or any of the matters
 " & things in the said Complainant's bill
 " to be true in such manner and form as the
 " same are therein set forth and alledged
 " do demur thereto and for cause of demurrer
 " show. That it appears by the said com-
 " plainant's said bill that Wilson G Hunt
 " Albert W Shepard and Charles H Reeves
 " and the other persons named in the as-
 " signment of Wisner & Taylor (viz G. H.
 " Wisner and Martin G Taylor) as credit-
 " ors. of said George H Wisner & Martin G
 " Taylor and the parties and persons
 " Creditors provided for & comprising the

" firms provided for by George W Wisner & Martin
 " & Taylor in the said assignment referred to
 " in said bill a copy whereof accompanies
 " and makes a part of said bill said persons
 " & parties being creditors of said Wisner &
 " Taylor at the time of making said as-
 " signment and still being such creditors
 " entitled to a distributive share of the
 " funds and proceeds of said assigned &
 " property in question in this suit. said
 " Wilson & Hunt being interested in and
 " entitled to the specific portion of said
 " funds sought by said bill to be decreed
 " to be paid to the complainant and said
 " Shepard & Reeves being also interested in
 " the application and appropriation of said
 " funds & said Wisner & Taylor being also
 " necessary parties to said Bill as it is
 " therein stated that said Wisner & Taylor
 " executed a general assignment of their
 " property for the benefit of their creditors
 " and of the parties and firms therein named
 " that the funds in question which said
 " Complainant seeks to have paid over to
 " them were by agreement of the parties to be
 " applied on said Shepard and Reeves
 " debt named in said assignment and
 " on a mortgage to secure said debt
 " given by said Wisner & Taylor to said
 " Shepard & Reeves which said mortgage

" was subsequently assigned to Wilson G
 " Hunt and said funds being the proceeds
 " of said assignment of said Wisner & Taylor
 " and that said Complainant hath not
 " made said Wilson G Hunt or said Albert
 " W Shepard or Charles H Reeves or said
 " George W Wisner or said Martin G Taylor
 " said assignees or any of the other creditors
 " entitled to distribution under said assign-
 " ment parties to said bill or given any
 " excuse or reason for not making them
 " or either of them parties And further that
 " said bill of complaint is not filed on
 " behalf of said complainants and the
 " other creditors under said assignment of
 " Wisner & Taylor as it should be, or of said
 " Complainants, and said Wilson G Hunt
 " and Shepard and Reeves or either of them
 " but only for and on behalf of said
 " Complainants above as administrators and
 " Administratrix of the Estate of Sarah E Currie
 " deceased. The other parties either interested
 " in the funds of the assigned property or those
 " interested in the specific portion thereof
 " sought to be paid by decree of this Court
 " to the complainants, not being made
 " by said complainants parties to this
 " suit And for further cause of demurrer
 " said defendants show that the said
 " complainants have not in and by
 " said bill made or stated such a case

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" as doth or ought to entitle him to any such
" discovery or relief as is thereby sought or
" prayed for against these defendants.
" wherefore & for divers errors imperfections
" appearing on said bill these defendants
" pray the judgment of the Honorable Court
" whether they shall be compelled to make
" any answer to said Bill and pray to be
" hence dismissed with their reasonable
" costs in this behalf sustained

Ford & Frost
Solicitors for Complainant

upon the back of said Answer
is the following filing viz:

" Filed Feb. 22, 1861
" J. H. Lewis. CLK "

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Copy from Record

" Present.

" Hon. A. Tyler Judge
 " J. H. Stewart State Atty.
 " J. H. Lewis Clerk,
 " Cleburne Sheriff

" March, 16, 1861

" James H. Kuapp Exal.

" vs.
 " John A. Marshall Exal.

Prayer for Relief

" This day came the Respondents
 " by their Solicitors and filed their
 " Answer & Complainant's Bill of Com-
 " plaint herein, and the Court having
 " heard said Answer, and being
 " advised in the premises, It is ordered
 " by the Court that the said Answer,
 " be sustained.

" Thereupon came the Com-
 " plainants by their Solicitors, and excepted
 " to the ruling and decision of the
 " Court herein."

State of Illinois,
Knox County $\frac{3}{4}$ ss.

I John H. Lewis Clerk of
the Circuit Court, in and for said
County, do hereby certify, that the
foregoing is a true ^{and} complete copy
^{and all parts thereof} of the Bill of Complaint, and Exhibits
filed therewith, the Receipt, ^{Execution of} ~~the~~ the
Summonses, Return of Complaints
Bill, filed by Dependents, and of the
Record of proceedings, in the foregoing
case in Chancery, of James H. Knapp
Et al. Complainants vs. John A. Marshall
Et al. Dependents, as appears from
the files and records of my Office,
In Testimony whereof I have
set my hand, and affixed
the Seal of said Knox Circuit
Court, at my Office in the
City of Knoxville this 23^d day
of March 1861.

John H. Lewis, Clerk
Geo. J. McElison
Dep. Clerk



And now comes the Plaintiff in error and
say there is manifest error in the Record
and Proceedings of said Court in
this that the Court erred in sustain-
ing the defendants demurrers

E. M. Hayward
Atty for Plff

And now comes the defendants in
error by Frost & Seland & Seland
their attys say there is no error
in said record & proceedings

Frost & Seland & Seland
for defts in error

James H Knapp et al
as 155-101

John A Marshall
et al

Transcript of
Record

Filed April 1st 1881
Leland
Clark

Dec. 29.00

Dec 29.00
Due