

SUPREME COURT OF ILLINOIS.

Third Grand Division, }
APRIL TERM, A. D. 1863. }

EDWARD F. STONE AND JOHN M. HALL,
IMPLEADED WITH EDWARD STONE, WIL-
LIAM F. KORTRIGHT, JAS. C. LITTLE-
WOOD, HENRY BURWELL AND EDWIN
II. WYANT,

Appellants,

vs.

CLIFTON ANGRAVE,

Appellee.

ABSTRACT OF RECORD.

STATEMENT OF CASE.

This was originally an action in attachment, brought in the Circuit Court of Cook County, on the 10th day of September, 1861, by the appellee against said Edward Stone, Wm. F. Kortright and James C. Littlewood, who were co-partners in trade in the city of New York, under the firm-name of E. Stone & Co., upon their certain promissory note, for \$450, owned and held by the appellee. Henry Burwell and Edwin H. Wyant, co-partners in trade in the city of Chicago, under the firm-name of Burwell & Wyant, were supposed on said 10th September, 1861, to be indebted to said E. Stone & Co. for goods, etc., by them (said Stone & Co.) to them (said Burwell & Wyant,) sold and delivered, and upon the filing of the præcipe in the attachment case, against said E. Stone & Co., September 10th, 1861, they, (said Burwell & Wyant,) were summoned as garnishees. Subsequently, said appellants come in, and defend

the action under the garnishee process, claiming that they are assignees of the indebtedness of said Burwell & Wyant, to said E. Stone & Co.

- 10 Sheriff's return. "Served by reading this writ to E. H. Wyant and H. Burwell, as garnishees; Wyant on the 10th day of September, inst., and Burwell this 27th day of September, 1861; the within named defendants not found in my county, and no property whereon to levy."
- 12 Judgment by default, rendered January 8, 1862, in attachment suit against E. Stone & Co., favor of appellee, for the sum of \$460 57, and costs, and a conditional judgment for the same sum, rendered against the garnishees. A writ of *scire facias* was issued, returnable to the next term of the court, requiring said garnishees to appear and show cause why final judgment should not be entered against them.
- 15 Answer of Burwell & Wyant, garnishees, filed February 18th, 1862, as follows: "These respondents upon oath say, that they are indebted to said Edward Stone, William F. Kortright, and James C. Littlewood, in the sum of \$681 28, being upon a book account for goods sold and delivered, and which account was due prior to January 1st, 1862."
- 16 Judgment against Burwell & Wyant, garnishees, rendered February 18th, 1862, in favor of E. Stone & Co., use of said appellee, for \$479 74, being amount of original judgment entered against said defendants, with interest and costs. Execution ordered to be issued.
- 17 March 10th, 1862, order of Court to stay execution upon the judgment against garnishees.
- 18 March 13th, 1862, motion of Burwell & Wyant, garnishees, to vacate the judgment against them, and leave to amend their answer touching notice of ~~judgment~~ *assignment*
- 18 Judgment against Burwell & Wyant vacated, upon the payment by them into Court of \$479 47, and leave to file an additional answer, and bring into Court, as parties defendant, Edward F. Stone and John M. Hall, who claim to be assignees of said defendants, E. Stone & Co.
- 19 Amended answer of Burwell & Wyant, filed March 15th, 1862, as follows:
- "These respondents, upon oath say, that the garnishee process in the above entitled cause, was first served on them on the 27th day of September, 1861. That they were then indebted, as *they supposed*, to

the said E. Stone & Co., in the sum of \$681 28, as appears by their former answer, filed with this Court. That, during the pendency of this garnishee suit against them as aforesaid, these respondents were served with a notice of assignment of their said indebtedness to said E. Stone & Co., by Stone & Hall of New York, assignees of said E. Stone & Co., on the 18th day of September, 1861, and during the pendency of this action as aforesaid. And these respondents further state, that on the 17th day of February, 1862, they made out on oath, their answer in the above entitled cause, and that the same was filed with this Court, February 18th, 1862, but no mention was made by these respondents in their said answer in any respect, of said notice of assignment served upon them by said Stone and Hall, assignees of E. Stone & Co., on said 18th day of December, 1861, as aforesaid."

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Answer of Edward F. Stone and John M. Hall, by order of the Court, made parties to the suit of Clifton Angrave *vs.* Henry Burwell and Edwin H. Wyant, garnishees, alleges :

That on the 5th day of September, 1861, said E. Stone & Co. made an assignment, (which assignment is hereinafter set forth,) of their choses in action and effects, to said Stone & Hall. That said choses in action, etc., so assigned are set forth in Schedule A, of said assignment, (see Record, page 24,) among which, is the claim against said Burwell & Wyant. That more than fifty per cent. of the said accounts, mentioned in said schedule, are worthless, being the indebtedness of Southern firms, which it is now impossible to collect. That said assignment was made in consideration that said assignees would pay or cause to be paid, certain liabilities of said assignees, which said assignees agreed and obligated themselves to pay, and which liabilities amounting to some \$3,100, are set forth in Schedule B, of said assignment. (See Record, page 26.) That at the time of the commencement of this attachment suit, and the service of the garnishee process, said E. Stone & Co. had, and have had, no interest whatever in the said claim against Burwell & Wyant, but said interest had vested in the assignees, by virtue of said assignment.

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Copy of Assignment. "For and in consideration of the sale and delivery to us, of the notes and accounts mentioned and referred to in Schedule A, hereto annexed, by E. Stone & Co., we do hereby promise and agree to pay to the persons and firms, the respective sums set opposite their respective names, in Schedule B, also hereto annexed; said Schedule B, containing the amount of indebtedness of said E. Stone & Co. to the persons and firms therein described; and we hereby agree

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to pay to each of said persons or firms, said sums with interest, on or before the 1st day of November, 1862.”

Signed,
STONE & HALL,
E. STONE & CO.

Dated September 5th, 1861.

- 28 & 29 Trial of cause by a jury ; issue to be determined, whether there was an assignment of said indebtedness in good faith, from E. Stone & Co., to said Stone & Hall, before the service of garnishee process in this cause. Jury retire with instructions by the Court, to bring in a sealed verdict the next morning.
- 30 Verdict of jury for the plaintiff, for the amount of former judgment and interest.
- 31 Motion for a new trial, by the assignees, Edward F. Stone and John M. Hall.
- 32 Motion for new trial overruled. Exception taken by defendants Edward F. Stone and John M. Hall, and appeal prayed ; which was granted on condition that good and sufficient bond be filed, in the sum of \$959 48, on or before June 1st, 1862.
- 82 Appeal bond.

BILL OF EXCEPTIONS.

Plaintiff's Evidence :

Plaintiff by his attorney, read the first answer of Burwell & Wyant, garnishees, filed Feb. 17th, 1862, (which answer is fully set forth on page 2, of this Abstract,) and thereupon rested his cause.

Defendant's Evidence :

36 Henry Burwell sworn as a witness in behalf of defendants, testified, that at the time the garnishee process was served upon them, (Burwell & Wyant,) to-wit, on the 27th Sept., 1861, *they supposed* they were indebted to E. Stone & Co., to the amount mentioned in their answer, having at that time received no notice of an assignment having been made ; that, on the 18th day of Dec., 1861, they received notice, by mail, from Stone & Hall, that their, (Burwell & Wyant's,) indebtedness to E. Stone & Co, had been

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assigned to them, (Stone & Hall); *that on the 17th day of February, 1862, they, (Burwell & Wyant,) subscribed and swore to the said answer, being then under the impression that the statement made by them on the 24th September, 1861, was conclusive, and therefore in their said answer sworn to on the 16th February, 1862, they made no mention of the fact, that Stone & Hall had on the 18th December, 1861, sent them notice that their (Burwell & Wyant's,) indebtedness to E. Stone & Co., had been assigned to them, (Stone & Hall).*

37 **Cross-Examination, by Plaintiff:**

Burwell & Wyant, in October, 1861, received by mail a letter from E. Stone & Co., telling them that they, (E. Stone & Co.,) were greatly in need of money, and asking payment of their account, or a part of it, not mentioning any assignment; *but witness was not certain that he had ever received such a letter, or that, (if it was received by him,) it was in the month of October, but it was his best impression that he had.* He further stated that he was in the habit of filing his business letters, that he had searched for it, but had been unable to find it.

The following depositions were then read for the defendants, by their attorney; which depositions were taken in New York City, under a *dedimus potestatum*, issued out of said Court, and which depositions, by an express written stipulation, were subject to all exceptions as to the competency of the witnesses, etc. [See Record, page 44.]

45 **Deposition of Edward Stone:**

I have known plaintiff 7 or 8 years. I, as a member of the firm of E. Stone & Co., executed to Stone & Hall the assignment, set forth on page 6 of this Abstract, and delivered the same to said Stone & Hall on the 5th day of September, 1861, or a day or two afterwards. I also at the same time, executed and delivered to said Stone & Hall the schedules hereinbefore mentioned, on page 3 of this Abstract; they were executed in duplicate; one I kept, and I delivered the other to them. [See Record, pages 50 and 51.]

Cross-Examination, by Plaintiff:

“The signature to the said assignment and schedules of E. Stone & Co., was made by me. The said assignment and schedules marked “A”

and "B," were executed at Stone & Hall's store, and *Exhibit B*, was executed at my house; which exhibit reads as follows: (See Record, page 43).

53 "For value received, we hereby sell, assign, and transfer the within account, to Stone & Hall, of the City of New York; and do hereby authorize them to collect the same in our name or otherwise, but at their own expense."

"E. STONE & CO.

"September 5th, 1861."

NEW YORK, — — —, 186—.

Messrs. Burwell & Wyant, *Chicago, Ill.*,

Bought of E. Stone & Co.,

No. 404 Broadway, N. Y.

Importers and jobbers of all descriptions of English, French, German, and Swiss goods, etc., etc.

Terms Cash.

To balance of open account - - - - - \$595 97

46 The signature of Stone & Hall to the assignment and schedules, is in the hand writing of my son, Edward F. Stone, of said firm of Stone & Hall. I think Mr. Hall was present when I signed Schedule A. I don't recollect or know that any one else was present. The list of accounts was drawn off on the 5th of September, 1861. I think this assignment was executed on said 5th September, or a day or two afterwards; the reason why I think so is, because the 5th of September was my wife's birth-day, and the *Exhibit B* was made then; and *Exhibit A* was executed then, or a day or two afterwards. The firm of Stone & Hall was formed on the 3d of August, 1861. E. Stone & Co. sold out to them at that time. My daughter, Mary L., was present when I executed *Exhibit B*; and I think my daughter Ellen was also present. Edward F. Stone might have been present, but I don't recollect. After I executed said papers, I personally delivered them to Stone & Hall, either on the 5th of September, or a day or two afterwards; I cannot state the day of the week. Kortright and I occupied a desk in Stone & Hall's store for the purpose of settling up the affairs of E. Stone & Co. I notified Burwell & Wyant of said assignment, and mailed the notice some time in December, 1861. I think I did not call upon them for payment, after the 5th September, 1861. I don't know that I ever asked any body to do so. I don't know that Mr. Kortright knew of this assignment; I had told him that I meant to sell notes and accounts to pay debts of the firm, and afterwards I told him that I had done so.

49 **Direct Examination resumed:**

E. Stone & Co. were indebted to the different persons mentioned in Schedule B, (see Record, page 24,) in the amounts therein set forth. Stone & Hall have paid some of these debts since the assignment. I attended to the financial department of the firm of E. Stone & Co., paying debts, negotiating and signing notes and checks, giving credits, etc. Mr. Kortright attended to the buying, selling, and manufacturing of goods.

Re-Cross Examination by Plaintiff:

Witness produces paper marked Exhibit C, (see Record, page 53,) which reads as follows:

“Notice is hereby given, that the co-partnership heretofore existing between the undersigned, under the firm-name of E. Stone & Co., is hereby dissolved by limitation. The business of the firm will be settled by E. Stone and Wm. F. Kortright, who are alone authorized to adjust the same.

Signed,

“EDWARD STONE,

“WILLIAM F. KORTRIGHT,

“JAMES C. LITTLEWOOD.

“*New York, August 1, 1861.*”

Jared S. Torrance. Deposition:

54 I am an attorney at law, in the City of New York; I drew the form of the assignment of E. Stone & Co., to Stone & Hall, Exhibits A and B, about the 1st September, 1861; and a short time afterwards, I saw them executed by E. Stone & Co., in the hands of Stone & Hall, and a duplicate executed by Stone & Hall, in the hands of E. Stone.

Cross-Examination by Plaintiff:

55 I drew the assignment about the 1st September, 1861, and within a week or ten days afterwards, I cannot say positively, I saw them executed in the hands of Stone & Hall. I know I drew the assignment about the 1st September, but I have nothing to fix my recollection as to when I saw it in their hands. Stone & Hall called my attention to it soon after it was executed, and asked me if it should not be witnessed by a subscribing witness.

56 **Mary L. Stone. Deposition :**

I know the assignment of E. Stone & Co. to Stone & Hall was made about the 5th September, 1861. I saw the draft of Exhibit A, on the 5th September; it was not then executed. Exhibit B (see Abstract, page 6,) was written by me, on the 5th September, 1861, and my father, E. Stone, executed it on the same night.

Cross-Examination, by Plaintiff:

57 I know that Exhibit B was executed on the 5th September, because it was my mother's birth-day. My father executed a number of these assignments at the same time. They were all signed on the same evening.

58 **John Woodhead. Deposition :**

I know an assignment was made by E. Stone & Co. to Stone & Hall, for benefit of certain creditors of E. Stone & Co. I saw it soon after it was made; one copy in Edward Stone's possession, and one in the possession of Stone & Hall. I am a member of the firm of Woodhead & Son; the amount set forth in *Schedule B*, of the assignment, (605 38,) is fully owing by E. Stone & Co. to the firm of Woodhead & Son, besides other amounts not therein set forth, and for which my said firm is liable. I recognize Stone & Hall as the assignees of E. Stone & Co., and I hold said Stone & Hall liable for said indebtedness.

Cross-Examination by Plaintiff:

60 I saw the assignment duly signed, in the hands of E. Stone, (I do not know whether or not it was in the hands of Stone & Hall,) on the last of August or beginning of September, 1861, it could not be as late as the middle or latter part of September; I cannot fix the day. I know of no circumstance by which I can fix it. I might have taken said assignment in my hands; I did not read it all through; I had an interest in it; at the same time I noticed the amount carried to the name of my firm. E. Stone & Co. and Stone & Hall were together. I have never
61 seen the paper since, until within a day or two past, and now. The indebtedness of \$605 38, of E. Stone & Co., to my firm, was for a note of my firm, given in payment of a debt of E. Stone & Co.'s, which note, E. Stone & Co. agreed to protect. That note is now paid by Stone & Hall; I know that Stone & Hall paid it, because I have got it back honored. I know that E. Stone & Co. could not pay it; I have called upon them to take care of said note.

Direct Examination resumed :

62 I also called upon Stone & Hall to pay and protect the said note. Woodhead & Son are endorsers on the notes mentioned in *Schedule B*, of the assignment, and held by the following banks: "Importers and Traders," \$400; "Bank of New York," \$300; "Manhattan," \$600; and also to Hunt & Tillinghast, \$287 50.

63 **The Plaintiff**, by his attorney, then offered the deposition of William F. Kortright.

"Counsel for defendant objected "to that portion of the said deposition being admitted to the jury, which set forth any written or oral statement, or any act or acts of the said Kortright, or of Edward Stone, in relation to said sale, made subsequent to the date of said sale, on the ground that any such subsequent statements or acts of the vendors were inadmissible to prejudice the rights of the vendees already vested in them by such sale."

The Court overruled the said objection, and said that "as there was a question in the case, as to the exact time when the bill of sale was made and delivered, and as he could not determine whether the declarations objected to were made before or after such delivery, (that being a question for the jury to determine from the evidence,) he would allow the evidence to go to the jury, subject to an instruction then and there given to the jury, that they would entirely disregard such declarations, if they found from the evidence, that the declarations were made in fact subsequent to the delivery of the bill of sale."

The evidence was then read to the jury, to which overruling by the Court, of the objection to the admission of said evidence, and allowing the same to go in evidence upon such instruction, the defendants by their counsel, then and there took exception.

64 **William F. Kortright. Deposition :**

I was a member of the firm of E. Stone & Co.; said firm dissolved by limitation, August 1st, 1861. I do not know any thing about Schedules A and B; I never saw *Exhibit B*, before now. Edward Stone never consulted me on the subject of these Exhibits. I am not positive, but my impression is, that in October or November, 1861, Edward Stone requested me to ask Burwell & Wyant for payment of their account.

Cross-Examination, by Defendants :

66 "If Mr. E. Stone requested me to write to Burwell & Wyant, I did so; and if I did write, I copied the letter in the Letter-Book; and that will show the date of the letter, and the time I wrote. (Witness examines Letter-Book.) "This is the Letter-Book referred to, the last letter I wrote therein, is dated October 21, 1861. I don't know that Stone & Hall knew any thing about my writing this letter; I suppose they did not. I mailed the letter myself."

Re-direct Examination :

I wrote the letter at the request of E. Stone, the morning it bears date; as near as I can recollect, he told me to tell them to send on the money for their account.

67 Copy of letter.

"MESSRS. BURWELL & WYANT, GENTS.:

"We are very much in want of money, and if it is a possible thing for you to do, you will greatly oblige us by sending us a draft for as large an amount as you possibly can; hoping that you will not forget us, but that you will remember us, and do for us all that you possibly can, and be sure and let us have some money right away, for we are very much in want of it.

Signed,

"E. STONE & CO."

The defendants then read the further deposition of Edward Stone, who was re-called for the purpose of rebutting the testimony of Kortright.

67 "I never requested Mr. Kortright to write to Burwell & Wyant for the payment of their account, after the 5th September, 1861. Upon examination of the Letter-Book, I find that the letter which Kortright says he wrote on the 21st October, 1861, does not appear as copied in its proper place in said Letter-Book; it appears among the letters of June, 1861, and it is written with different ink from that used by us. It is copied on page 400 in the Letter-Book, and should, in the order of its date, be on page 522 of same book; Kortright has always had free access to said book.

partnership assets, without consulting other members of such firm, for the purpose of paying debts of such partnership, and he may also prefer *certain creditors*, to the exclusion of all other creditors of such firm. If the jury believe from the evidence, that a *bona fide* sale was made by E. Stone, of the firm of E. Stone & Co., (previous to the commencement of this suit by Angrave,) to Stone & Hall, of certain notes and outstanding accounts, belonging to the firm of E. Stone & Co., of which the account now in question in this cause was one, for the purpose of paying certain preferred debts of said firm of E. Stone & Co., they must find for the defendants.

72 2d. If the jury believe from the evidence, that a *bona fide* sale was made by E. Stone, one of the members of the firm of E. Stone & Co., to Stone & Hall of the account now in question in this case, (previous to the commencement of this suit by Angrave,) for the purpose of paying certain debts of said firm of E. Stone & Co., the Bill of Sale, herein produced in evidence, must be received as collateral evidence, and any want of form or error in said Bill of Sale, must not be allowed to prejudice the vendees. A written Bill of Sale is not legally necessary in the transfer of open accounts, etc., but the title to such property so sold passes by delivery, and a verbal contract coupled with a delivery, is valid.

73 3d. If the jury believe from the evidence, that a *bona fide* sale was made by E. Stone, one of the members of the firm of E. Stone & Co., to Stone & Hall of the account now in question in this case, (previous to the commencement of the suit by Angrave,) for the purpose of paying certain debts of said firm of E. Stone & Co., they must exclude any evidence on this trial adduced, showing subsequent written or oral declarations by any member of the firm of E. Stone & Co., the vendors, which would prejudice the rights of Stone & Hall, the vendees.

4th. If the jury believe from the evidence, that the sale by E. Stone, to Stone & Hall, was made in good faith, and a *bona fide* transaction, they must find for the defendants. Stone & Hall, by the laws of the State of New York, (which laws must govern the rights of the parties herein,) have made themselves liable to the creditors of E. Stone & Co., whose names are included in the list of preferred creditors, and their (Stone & Hall's,) liability to such creditors, can be enforced by an action of law against them.

5th. The jury are instructed, if they shall find from the evidence, that a *bona fide* sale of the account in question, was made by E. Stone & Co., or one of the partners of said firm, to Stone & Hall, before the

commencement of this suit, then the title to the same absolutely vested in Stone & Hall, and it makes no difference whether Burwell & Wyant, the garnishees, were notified of such sale before the service of the garnishee process on them or not.

The Court then instructed the jury for the defendants, having modified the instructions, as asked by them, as follows: (See Record, page 74.)

1st. If the jury find from the evidence, that a *bona fide* sale was made by E. Stone & Co., or by E. Stone, after the dissolution, *with the consent of his partners, or of Kortright*, (previous to the commencement of this suit,) to Stone & Hall, of the account in question, for the purpose of paying certain preferred debts of said E. Stone & Co., they must find for the claimants, Stone & Hall.

2d. If the jury believe from the evidence, that a *bona fide* sale was made by E. Stone, one of the members of the firm of E. Stone & Co., to Stone & Hall, of the account now in question in this case, previous to the commencement of this suit, by Angrave, *and with due authority from Kortright, his partner*, for the purpose, etc., etc.

3d, 4th, and 5th instructions, as given by the Court, all contained the same proviso, viz.: that the consent or authority of Kortright was necessary to the validity of the sale. See Record, pages 74, 75, and 76.

76 Defendant's counsel excepted to the instructions as given to the jury by the said Court, in so far as they instruct the jury that said sale must have been made with the co-operation or authority of Kortright, as partner of E. Stone.

PLAINTIFF'S INSTRUCTIONS.

77 1st and 2d instructions.

3d. If the jury find from the evidence, that the firm of E. Stone & Co., had dissolved at the time of the alleged sale to Stone & Hall of Burwell & Wyant's account, that by the terms of the dissolution, power to settle the business of the said firm was vested in Stone and Kortright, jointly, and that Stone, without the knowledge of Kortright, made a sale of a large portion of the assets of said Stone & Hall, to secure the payment of certain debts due to certain creditors of E. Stone & Co., and

that such debts were preferred by E. Stone, without the approbation of Kortright, then such sale was without authority, and absolutely void.

78 Defendant's counsel entered same exception to the 3d instruction for the plaintiff.

79 "The jury then retired, and by order of the Court, were to bring in a sealed verdict on the following morning, at the opening of the said Court. A verdict was agreed upon, which was written out and sealed, and the said jury separated for the night. At the appointed time on the following morning, before the opening and publication of any verdict, the attorneys for plaintiff and defendants, both being present, the Court informed the jury that he thought there was error of law in a part of his instructions of the previous evening, and that before their verdict was made known, he would re-instruct them in respect to those matters in which he thought such errors existed, and thereupon proceeded to do so, by giving, on the part of the defendants, the 2d, 3d, 4th, and 5th instructions, as they were originally drawn by counsel for defendants, (see Abstract, pages 12 and 13,) and withdrawing the first instruction." (See Abstract, page 13.)

"On the part of the plaintiff, the Court withdrew the 3d instruction, and gave the other two to the jury, as on the evening previous; and the said jury was thereupon, by said Court, sent out a second time to deliberate in the said case."

The jury brought in a verdict for the plaintiff, as follows: (See Record, page 30.)

"We, the jury, find from the evidence, that the debt due from Burwell & Wyant, garnishees, was not assigned to Stone & Hall, in good faith, before the process in this cause was served on the garnishees. We, the jury, find that there was not a *bona fide* assignment. We, the jury, find for the plaintiff, the amount of former judgment and interest."

80 Motion for new trial by defendants, Stone & Hall, as follows:

"And now come the defendants, Edward F. Stone and John M. Hall, by L. Proudfoot, their attorney, and move the Court for a new trial of the above named cause, for the reason that the verdict of the jury was contrary to law and the evidence. That the Court erred in admitting testimony which should have been excluded from the jury. That the proceedings were irregular, in that, the said cause was submitted *twice* to the same jury, the Court having mis-directed them, and they having re-

tired, decided upon a verdict; which verdict was sealed up, and ready to be delivered into Court, they then separated for the night. On the following morning, they were re-instructed by the Court, and they again retired and brought in a second verdict in the said cause; all of which proceedings were irregular and prejudicial to the rights of the said defendants."

Motion for new trial overruled. Exception taken by defendants Stone & Hall.

Judgment was thereupon entered, as follows:

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"It is ordered and considered by the Court, that *the said plaintiff have and recover of the said garnishees, Burwell & Wyant, the sum of \$479 74-100 out of the said indebtedness of E. Stone & Co.*, the amount of the plaintiff's judgment, including interest and costs, against the said E. Stone & Co. And inasmuch the said amount has been deposited in court by said Burwell and Wyant, subject to the order of this Court, it is further ordered that the clerk be directed to pay said sum to the plaintiff, and cause the said plaintiff to enter a satisfaction of this judgment on the record, by himself or authorized attorney, deducting therefrom such costs as are properly chargeable to the plaintiff, etc., etc."

See Record, page 32.

ASSIGNMENT OF ERRORS.

- 1st. In admitting testimony to the jury which should have been excluded from them.
- 2d. The Court erred in modifying instructions for the defendants.
- 3d. The Court erred in giving instructions for the plaintiff.
- 4th. The Court erred in submitting the case a second time to the jury, after they had arrived at a verdict; which verdict was sealed and ready to be delivered into Court, and they had separated for the night.
- 5th. The Court erred in re-instructing the jury, after they had separated.
- 6th. The Court erred in overruling motion for new trial.
- 7th. The verdict was contrary to law and the evidence.
- 8th. The Court erred in entering judgment against garnishees in favor of plaintiff.

L. PROUDFOOT,

Attorney for Appellants.

J 7 205 59

Edward F. Stone et als
vs

Clifton Angrave,

Abstract

Filed April 23-1863

L. Leland

Clerk