

No. 12820

Supreme Court of Illinois

People ex-rel.

vs.

Wilson.

The People's Carrel

vs.
Isaac G. Wilson

1659

12 PD

12820

read to the court the Records of the
County Court of McHenry County in
probate in the words & figures following
to wit (here in cert No 2)
and particularly as to the last order reciting the allowance
to which the Dft cutter then and there
objected. but the court allowed the same
to be read to which the Dft then and there
excepted - and the same was read in
evidence to the court.

And the said Pff further offered to read
to the Court a certain paper writing in
the words ~~and~~ figures following.

Whereas the undersigned are creditors of
L C Hull & Co Chicago Illinois and the
conditions of their bond as understood by
us, renders it important that we should
official measures for the recovery, settlement
or security of our said Debts. and we
have agreed to act in concert to that end,
Sharing in the results both as to proceeds
and expenses pro rata according to the
amount of our respective debt. -
(except Confidential)

Now we hereby constitute
and appoint Richard M. Coffey, Algeo
D Brewster James Myers and Henry D

Warbell a committee of the undersigned
creditors our true and lawful attorneys
for us and in our names respectively
to collect and receive all moneys owing to
us respectively by said L. C. Kull and
for that purpose, to take any proceedings
in law or equity and to settle with and not
compromise or secure our said debts, on
such terms and for such ~~sums~~ ^{sums} ~~secured~~, or
per centage as they may deem advisable.
and on such settlement, settlement, com-
promise or security, to execute in our respective
names such receipts, acquittances, discharges
releases or agreements as they may deem
advisable and to receive in their names
in trust for us any real estate or interest
therein or other property or securities, and
to sell and convey and grant the same on
such consideration as they may deem
advisable, and to lease, let or contract any
such Real Estate or interest therein on
such terms and for such time as they
may deem advisable.

And we hereby also
authorize and empower the said Guffray
Brewster Myer and Warbell to appoint
any proper person whom they shall deem
it advisable to select and authorize him

to proceed to Chicago and such other
places as may be necessary or proper
in his judgment & to take such measures
by legal proceedings or negotiations and
arrangements as may be necessary or proper
in his judgment & to settle, adjust, collect,
or compromise our said claims against
said E. L. Hall on such terms and
for such percentage as he may deem advis-
able and to take and obtain all such
securities real or personal as he may deem
it advisable to do and to execute ^{any} proper
instruments in writing to carry out any
agreements made by him in relation to
said claims, hereby ratifying and confirming
all that the said agent may do in the
premises. Witness our hands and seals
this 29 day of July 1830.

Witnessed the 1, 2, 3, 4,
5, 6, 7, 8, signatures
from No 1 to 8
inclusive.

D. C. Roberts

- 1 Lee & Brewster Seal
- 2 Gumbard & Bastedo Seal
- 3 John Fullmer & Co Seal
- 4 Widdifield & Cohn Seal
- 5 Lewis, Becker & Blasius Seal
- 6 F. S. & D. Lathrop & Co Seal
- 7 J. Wells & Co Seal
- 8 Lee Austin & Phelps Seal

(9 Thompson & Co Seal)

Witnessed the
signature from No
9 to 13 inclusive
W. Rogers

10 Ira Beard Seal
11 Myers Gayden & Co Seal
J. Myers Seal
12 Tubell, Young & Co Seal
13 J. R. Jaffray & Sons Seal

Witnessed the signatures
of Nos 14 & 16

Witnesses ~~H. B. Keall~~
James H. Mandall

14 J. L. Revan

Or H. & Revan Seal

15 Solomon & Hunt Seal

16 M. A. Hoppock & Co Seal

Witness No 17

W. F. Bradbury

17 Saml. Parsons & Co

By S. Parsons Seal

Witness No 18.

Charles H. McCumb

18 Wm. T. Tunny & Co Seal

Witness No 19 J. E. Crannier

Crannier & Stewart Seal
J. A. R. May Seal

Power of Attorney
from
Creditors of L. LeHalle Co
copy

also the paper writing following viz
(copy)

Whereas in and by certain Power of Attorney bearing date on the 29th day of July 1830 executed by creditors of McCall & Co of Chicago Illinois the following persons viz Richmond W Jaffray Ulysses B Brewster James Myers and Henry S Ferrell all of the city of New York were duly constituted and appointed agents and Attorneys for the creditors who executed said Power for the purpose therein set forth, and whereas the said Power of Attorney duly authorizes and empowers said Richmond W Jaffray and the others above named to appoint any proper person whom they shall deem it advisable to select to accomplish the objects for which said Power was given

Now therefore we the Richmond W Jaffray Ulysses B Brewster James Myers and Henry S Ferrell do constitute and appoint William T. Cutler of the City of Brooklyn and State of New York, by these Presents our true and lawful attorney for us and for the said creditors of McCall & Co

in their and our names, to collect and receive all moneys owing to us respectively to said L. Hall & Co and for that purpose to go to Chicago and such other places as he may think it necessary to go to, to make such arrangements commence and carry out such negotiations, and take such legal or equitable measures as he may think necessary, to settle, adjust, collect, compound or compromise our said claims against said L. Hall & Co on such terms and for such a per centage as to him shall seem advisable; also to take all such securities real or personal, execute all instruments in writing, or do any other act or thing for the purpose of carrying into effect any agreements he may make in relation to said claims, also to recover in our names or in his name in trust for us any real or personal property or security or rights in action and dispose of the same by sale or otherwise as he may think proper and expedient or to do, perform, and execute every act and thing which we might or could do in, by and under the said Power to us given hereby ratifying and confirming all that the attorney and substitute hereby made and appointed shall do in the premises

by virtue hereof and of the said letter of
Attorney.

In witness whereof we have hereunto
set our hands and seals the 19th day of
August in the year one thousand eight hundred
and fifty

sealed and delivered
in presence of

At

Richmond W. Jaffray Seal

James Myers Seal

W. B. Brewster Seal

H. S. Tarbell Seal

Copy
Richmond W. Jaffray and
others
To
William S. Luther
Power of Attorney

also the paper writing following viz:

Sales of Two Stocks of Merchandise and Fictives
received from L. C. Ball & Co. by assignment on
account of Creditors

Chicago Store

Sept 30	Sales by Retail	280	91		
Oct 1	" of balance of stock to Jas D Sherman on credit of 12, 15, 18, 21, 24 months	54	15	03	
" 9	" of Fictives	132	00		5825 94
" 8-	<u>Crystal Lake Stock to</u> R. Sedgwick on credit of \$500. Cash & 128 18 mos charges				12.00 00
					70 25 94
	Spd. Recording deed \$206 telegraph 4.25	6	51		
	" Clerk Wein	173	77		
	" 2 mos Rent of Store \$700. per a.	116	67		
	" Cash expenses to C. Lake for my Commission & fees for agreement	7	89		
	Spd Wm J. Cutler for assistance in making Sales	362	27		
	" Taxes due on property say	130	00		
	" Recorder for transcripts	50	00		
		15.	30		882 61
	<u>Net Sales</u>				\$6143 35

Errors & Omissions Excepted
Chicago Oct 25th 1880

William J. Butler Esq. Agent for certain Creditors
of L. C. Hull & Co. in af with J. W. Chickering

Dates	Items	Debits	Credits
1850			
Sept	To cash for you at Store	70 00	
	" " " " " "	16 00	
Oct	9 " " " order on Sedgewick	500 00	
"	" " " " you by L. C. Hull	25 00	
"	10 By you proportion of sales of index for af }		5034 50
"	25 " you bill services		100 00
"	" To fees in case vs Shumpend for agreement }	30 00	
"	" R. Sedgewick note 60 days	73 00	
"	" do note 12 mos for Oct 1/50	350 00	
"	" do do 18 " " do	350 00	
"	" J. D. Sherman note dated Oct 1/50		
	12 mos do	1004 73	
	15 " do	1021 16	
	75¢ Endorsed 21 " do	979 03	
	24 " do	1070 66.	
	By cash to balance		305 08
		5489 58	5489 58

Errors Excepted
Chicago Oct 25th 1850

Copy of Settlement
with Chuchering by
Wm J. Cutler.

And the paper writing following viz.

Whereas Lambert C. Hall and William S. Thompson late Copartners in trade and doing business at Chicago in the County of Cook and State of Illinois under the name style and firm of L. C. Hall & Co. lately were and now are indebted to us the undersigned in the sum of and for the amounts set opposite to the names of our respective firm in the Schedule hereto annexed marked "A" and made a part of these Presents, and whereas the said Lambert C. Hall has upon our request applied toward the satisfaction of the said indebtedness so due to us from said L. C. Hall & Co. as aforesaid all the assets and property as he says belonging to the said firm of L. C. Hall & Co. and has given us various securities additional upon the condition & in consideration that we shall not & will not at anytime hereafter prosecute to collection against the said Hall personally any balance that may be now due us upon our said debts, nor attempt to collect the same from the said Hall his heirs or legal representatives nor from his property or assets, nor seek to enforce from him the payment of any remaining unpaid balance due to us respectively from the said late firm of L. C. Hall & Co.

Now therefore in consideration of

The premises aforesaid we the undersigned
creditors as aforesaid each for ourselves respect-
ively do hereby covenant & agree to and with
the said Lambert C. Hall his heirs & legal
representatives that neither we nor either or
any of us or his legal representative or assigns
shall or will attempt at any time hereafter
to collect from the said Lambert C. Hall his
heirs or legal representatives any balance
that may be due us or either or any of us
from said L. C. Hall & Co, it being however express-
ly understood that we & each of us are to have
the right & retain the right to collect & recover
such balance from the said William C. Thompson
personally, and also from any property or
effect belonging to the said late firm of
L. C. Hall & Co, not now surrendered to us in
whichever hands or wherever the same may
be found, whether in the hands or under the
control of said Lambert C. Hall or however
situated and to take and prosecute any
legal steps for obtaining the same that
may be necessary in the premises and
it is further expressly agreed & these Presents
are upon the express condition that these
Presents or any thing therein contained
shall not release or be construed to release
or in any manner to prejudice or affect

any claims or demands which the undersigned
respectively may have or ever had upon or
against the said William R. Thompson either
separately or as Partner with the said Lam-
bertson C. Hall or upon or against the joint
Partnership's Estate or effects of the said L. C.
Hall & Co or any part thereof in respect of
the debts so due to the undersigned respectively
from ^{the said} L. C. Hall & Co, and also that it shall be
lawful for the undersigned respectively from
time to time as they may think proper to
commence and prosecute any actions,
suits or other proceedings either at Law or
in Equity against the said William R.
Thompson or against the said Lambertson C.
Hall jointly with the said William R.
Thompson and their respective heirs, Executors
Administrators or assigns for the purpose
of recovering or Compelling or of enabling
the undersigned to recover or compel pay-
ment or satisfaction of the balance due
and owing to them respectively as above
mentioned from the said late firm of
L. C. Hall & Co, out of the separate Estate
of the said William R. Thompson or out
of the joint Partnership's Estate or effect
of the said L. C. Hall & Co and their
Representatives shall not be taken or pleaded in

law in law to any such actions suits
or other proceedings -

And the undersigned for themselves respectively do covenant and agree to and with the said Lambert C. Hall & his heirs Executors and administrators that they will not ^{at} any time institute any action suit or other proceedings to recover or to attempt to recover or to compel payment or satisfaction from him or them of the debts claims & demands aforesaid or any part thereof. Except as aforesaid nor will they at any time harass, perplex or interrupt him or put him to any hindrance, damage cost or expense, concerning or in respect to any of the debts, claims, demands, and matters herein contained, and should they at any time commence, institute or prosecute any actions suits or other proceedings either at law or in equity against the said Lambert C. Hall, his Executors, Administrators and assigns jointly with the said William R. Thompson his heirs Executors, Administrators and assigns for the purpose and with the intent here before mentioned then and in that event the undersigned respectively will indemnify for

shold harmless from and pay and
satisfy to the said Lambertson & Hall
and his heirs, Executors and admin-
istrators any and all damages, injury,
Cost & Expenses that he or they may
receive or sustain or that may accrue
to him or them or that he or they may
incure in and about or that may pro-
ceed from or be occasioned by or in
Consequence of such actions, suits or
other proceedings as witness our hand
& seals the tenth day of October A.D.
1850.

Lee & Brewster Seal

Signed sealed & delivered
in presence of us the Lambertson & Boston Seal
witness, "and has given us
various securities - John Falconer Seal
additional" having been
previously interlined - Weddfield & Leckie Seal

J. W. Chickering

R. Sedgwick Luntz Beckin & Chidister Seal
as witnesses to all the
signatures to, J. C. & D. Lathrop Seal

J. Wells Seal

Lee & Brewster Seal

Thompson & Company Seal

Ira Beard Seal

Meyer Suydam & Co Seal

Tibbels & Son Seal

J. R. Saffray & Son Seal

J. L. Revier Seal

Solomon & Hart Seal

M. A. Hoppock & Co Seal

Samuel Parsons & Co Seal

Wm. J. Tunny Seal

Graham & Stewart Seal

James R. Hoyt & Son Seal

By Wm. J. Cutler Seal
Attorney

~~Seal~~

Copy
Lamberton C. Hall

Release from

Credits

And proved the signatures of said defendant subscribed to the last paper writing

To the introduction of which as evidence the defendant then & there objected, but the Court overruled the objection and allowed the paper to be read to which the said defendant then & there excepted & the same was noted & the paper read in evidence to the Court -

And thereupon the said Plaintiff further introduced & offered to read in evidence to the Court the records of this Court in a certain appeal case lately pending therein in the words and figures following, to wit -

here insert record -

To the introduction of which the Deft then & there objected, the Court overruled the objection & allowed the same to be read to which the Deft then & there excepted which was noted

And thereupon the said Plaintiff introduced as a Witness W. R. Boardman who being duly sworn testified that William J. Cutler the Defendant was

Thew & had been for ten years last
past a resident & citizen of the State
of New York—

And this being all the testimony
on part of Plffs— They having closed
their case—

The Defendants introduced to
The Court J. D. Murphy as a witness
who being duly sworn testified

I know the deft Cutler—
My first acquaintance with him was
he consulting with me about certain
claims that he had against the estate
of said William R. Thompson deceased
he applied to me to assist him in
procuring letters of Administration upon
his estate from the Probate Court of
McHenry County— I did so. I went
with him to the then Judge Gotten
he stated to me and also to the
judge at the time of granting the
letters that he was a citizen & resident
of the State of New York— he never
to my knowledge pretended otherwise
at any time at that time among
other claims against said Thompson
he held & produced to me the note

now among the files of the McHenry
County Court in Probate of which the
following is a copy.

\$317.02 New York April 17 - 1850

Eight months after date are the
subscribers of Chicago Illinois promised to
pay to the order of Meyer Suydam & Co.
Three Hundred & Seventeen ⁰²/₁₀₀ Dollars
at the office of J. H. Burch & Co. in C
with Exch over 1/2 of value received

(3d) L. C. Hall & Co.

upon which at that time was the
endorsement of payee as follows
"Meyer Suydam & Co"

The defendant also introduced from
the files of the said probate court

Affidavit of Death of William
R. Thompson

(here insert No 3)

Proof Publication Notice by
printer certificate.

(here insert No 4)

Proof posting Notice affidavit
of J. D. Murphy

(here insert No 5)

Report & inventory of Wm J
Cutter Adm^r

(here insert No 6)

And the said Deft also
further introduced & read to the
Court from the files of said probate
Court the following being the papers
upon which the allowance was made
in said Court of the date of 14th May
1853 viz -
1st

The claim originally held by Lee &
Brewster - which the affiant filed
therewith is as follows to wit (here insert No 7)
upon which is in the hand
writing of E. W. Smith then Clerk of the
County Court the figures "823. 28"
2^d

The claim originally held by Solomon &
Walt, which the affiant filed therewith
is as follows to wit (here insert No 8)
upon which in the hand writing
of said Smith are the figures "674. 70"
3^d

The claim originally held by Talcott
& Co. which with the affiant filed

Thereunto is as follows to wit (here inserted)
upon which in the hand writing of
said Smith are the figures "121.44"

4- also the claim originally held by
J. R. Gaffray & Sons of which with the
affidavit filed therewith the following
is a copy (here insert No 10)

On which in the hand writing of
said Smith are the following figures "953.93"

4 The claim originally held by Lowitz
Becker & Claudius - of which the following
is a copy (here insert No 11)
and two notes viz

"\$176.47/100

New York, April 19 1858

Six months after date we promise
to pay to the order of Lowitz Becker &
Claudius at Chicago Illinois One
Hundred and seventy six $47/100$ Dollars
with current rate of exchange in
New York. value received

L. O. Hall & Co. "

Enclosed "Lowitz Becker & Claudius" &
on which in the hand writing of
said Smith are the figures "218.47"
& filed Sept 19. 1858. E. W. Smith clerk."

\$ 260. ²⁶/₁₀₀ New York Sept 15th 1849

Six months after date We promised to
pay to the order of Lovitz Becker & Cludius
at New York 38 John St. two hundred
& sixty ²⁶/₁₀₀ Dollars value received
L. C. Ball & Co."

endorsed "Lovitz Becker & Cludius" &
on which in the hand writing of
said Smith are the figures - "343.54"
"Filed Sept 19 1853. - Geo W Smith Clerk"

5 The claims originally held by Lumbard
& Postwick of which the affiant
filed therewith the following is a copy
(here insert to 12) upon which in
the hand writing of said Smith are
the figures "437.77"

6 The claims originally held by Geo
Denton & Phelps of which the ac-
companying affidavits filed therewith
the following is a copy (here insert to 13)
upon which in the hand writing
of said Smith are the figures "520.43"

7 The claims originally held by
Grannis & Stewart of which and
the affiant filed therewith the

following is a copy (here insert to 14)
upon which in the hand writing of
said Smith are the figures 51.57

8 The claim originally held by Mc
A. Hoopack & Co. of which & the affidavit
filed therewith the following is a
copy (here insert to 15) upon which
in the hand writing of said Smith
are the figures 517.95

9 The claim originally held by Wid-
dield & Cohen of which & the affidavit
filed therewith the following is a copy
(here insert to 16)

upon which in the hand writing
of said Smith are the following figures 176.91

10 The claim originally held by Serbell
Serrings & Co. of which & the accompanying
affidavit filed therewith the following
copies (here insert to 17)

on which in the hand writing
of said Smith are the following figures 2641.09

11 also a note of which the following
is a copy

"\$721.²/₁₀

Boston Sept 5 1849

Eight months after date we
promise to pay for Wm P. Seamy or
order seven hundred and seventy one
2/100 Dollars for value received

L. P. Hall Sec.

endorsed "Wm P. Seamy"

Filed Sept 19. 1853. Enos W. Smith clk

on which in the hand writing of
said Smith are the following figures 894.30

12. Also a note of which the following
is a copy

\$1207.⁵/₁₀₀

New York April 19 1850

Seven months after date we
promise to pay to Thompson & Company
or order Twelve hundred and seven
dolls ⁵/₁₀₀ for value received

L. P. Hall Sec.

endorsed "Thompson & Company"

Filed Sept 19. 1853 Enos W. Smith clk
on which in the handwriting of said
Smith are the following figures "1494.89"

13 Also the note which is set out in
the testimony of said Murphy above
& which is endorsed "Myers Snydman & Co"
Filed Sept 19. 1853. Enos W. Smith clk
on which in the handwriting of said
Smith are the figures "393.47"

14 Also the note of which the following is a
copy.

\$1,279.76.-

New York Sept 13 1849

Eight month after date We
the subscribed of Chicago State of Illinois
promise to pay to the order of Myers Sny-
dman & Co Twelve Hundred & Seventy Five
76/100 Dollars at the office of J. W. Bruch
& Co with exch on 1/2 % Value received
L. C. Hall & Co

Endorsed "Myers Snydman & Co"

Filed Sept 19 - 1853 Enos W. Smith clk
on which in the handwriting of said
Smith are the figures "1279.26."

The Defendant also introduced and

read in evidence to the Court the following
paper the execution thereof being proved.
Wiz—

The claims of the following houses against
 L. C. Hall & Co of Chicago are here under stated
 having been settled by us with W^m Stenton
 & N. Sedgwick by the delivery to us of
 promissory notes (variously secured) for fifty
 per cent of the same. we have by request the
 said houses to deliver to said Stenton &
 Sedgwick (or bearer) such notes or evidences
 of debt as are in their possession on
 acct of said Hall & Co with necessary
 transfer of title by endorsement or otherwise.

		Brought up	6591 88
Thomson & Company	1207 51	Samuel Parsons & Co	773 93
Grannis & Stewart	67 74	Lowitz Becker & Chelino	345 02
M A Hopstock & Co	655 31	Ira Beard	234 24
Lee Fenton & Phelps	686 42	F. L. & D. Lathrop & Co	89 64
James R Hught & Son	471 91	Widdifield & Cohen	233 39
John Falconer & Co	340 81	Wm. F. Tenney	751 21
J L Beaver	25 25	Lombard & Buttrick	358 12
Lee & Brewster	1078 90	J. R. Jeffray & Sons	946 76
Myers Sydnor & Co	1633 17	Perbell & Jennings & Co	2128 98
J Wells & Co	174 86	Solomon & Hart	826 44
	6591 88		13677 61

New York June 5th 1861

Richard W. Jeffray

U. B. Brewster

H. F. Perbell

James Myers

Committee

Copy of claims

And also the following paper the
execution thereof being proved.
W₃

Received Crystal Lake July 14th 1852 of
W^m T. Cutler of Brooklyn County of Kings
State of New York. the claims of the
following named firms L. C. Hall &
Co of Chicago which claims have been
transferred by assignment to the Under-
signed and to W. T. Cutler but which
now belong to the said W. T. Cutler he
having paid for the same,

viz

Myers, Snydman & Co, Lee & Brewster, Terrell
Gunnings & Co, J. A. Gaffney & Sons J. L.
Bever, Grannis Stewart & Co John Fullerton
& Co, Solomon & Hart, J. Hall & Co, James
Hoyt & Sons W. H. Wofford & Co, Thomson & Co,
Lombard & Buttrick, Lowrie Bicker &
Gludins, A. S. & D. Lathrop & Co, Ira Beard,
Middifield & Coles, Lee, Fenton & Phelps,
W^m P. Tenny, Samuel Parsons & Co. These
claims are received ^{by me} as attorney or agent
for W. T. Cutler for the purpose of proving
them against the estate of W^m R. Thomson
deceased, who was a partner with L. C.
Hall under the firm of L. C. Hall &
Co and for the purpose of arranging and
settling the same according to my best
judgment, the avails of which after
deducting the expenses I may incur

in the matter belonging to and shall be
paid over to W^m S. Cutter his heirs or
assigns.

R. Ludgwick

Receipt of R. Ludgwick

to
W^m S. Cutter

Efa

Gall

It was here admitted that at the death of said Cutter, the said Lumberton C. Keall, & his wife the daughter of said William R Thompson, & the said Harvey M. Thompson his son were and resided in the State of Illinois —

It was also admitted that by the records of said County it appeared that there were claims due to said Thompson from persons residents in said County at that time. —

It was also admitted that the claim payable to J. R. Jaffray & Sons was claimed to belong to J. W. Chickering then at the death of said Thompson & since a resident of the State of Illinois and that he held the same at the death of said Thompson.

Which was all the evidence introduced in the cause — at the hearing thereof — and the Court after argument had finding that the said Cutter at the time of his said appointment was a creditor of said estate but not a resident or citizen of this State — and being of opinion that none but a citizen & resident of this State, could

~~case~~ then be appointed administrator—
doth affirm the judgment & order of
of the Court below. and on that ground
doth order the removal of the said
Cutter from his said office of Admin-
istrator, to which decision of the said
Court the said Defendant by his
Attorney did then & there except & In
as much as the several & various matters
aforesaid do not appear of record in
said cause said Defendant tenders
this his bill of exceptions to the
Court to be signed and sealed
according to the Statute and it is
done accordingly in open Court as of
said term—

Parties by their stipulations hereto
attached and made apart hereof
having extended the time for that purpose.

Esq

Endured on the back of the Bill
in pencil was.

"Time extended to the 15th July
Will Walker please examine &c"

¹²
Sup court

Cutter
vs

Hall & al

Copy of proposed
Bill of Recus -
as returned -

Filed Apr. 26. 1859
L. Viland
Clerk.

In the Supreme Court

In the matter of an application
by William F. Butler for a writ
of mandamus against Hon. Isaac
G. Wilson Judge &c

Brief for The Respondent.

By the written stipulations on file and the affidavits of the Attorneys in this case it appears that the time for signing a bill of exceptions was extended by order of the Court said stipulations to the 15th day of July. The further extension to the first of August is utterly denied by the affidavits of Mr. Walker and Clerk - The extension is alleged in the affidavits of the relator to have been made by altering the previous stipulation from 15 July to 1st of August. It is not claimed that this alteration was made by the attys for Plaintiff but that it was authorized by Mr. Walker. This fact is denied expressly in the affidavit of Walker. & he further denies any verbal agreement extending the time beyond the 15 July.

Mr. Walker further states in his affidavit that according to his best recollection the bill of exceptions was not left at his office until after the 15 July, and that he, ~~actually~~, refused at that and at all times to have anything to do with settling the same.

It is insisted therefore that when the Reffs Attorney was thus informed & notified of the refusal of the Attorneys for the ~~Defense~~ Defendant, ^{& informed} that they would take no part in settling a bill of exceptions he was neither bound or at liberty to wait beyond the expiration of the time for settling the bill in account of such refusal. but should have proceeded to get the same settled by the Judge. & ~~that~~ it is insisted that their refusal to act within the time as alleged in afft of relator unless some request of delay was made by them furnishes no excuse for the Taches of the relator in delaying beyond the time expressed in the stipulation.

It will be seen by the record and affidavit, that the cause was tried in May, 1858. & the time expressed in

the stipulation expired on 15th ~~August~~ ^{July}
following yet no application was
made to the Judge until April fol-
-lowing, two Terms of said Circuit
Court, ^{having intervened} one in Oct & the other in Dec
at either of which the application
could have been made.

The order of
the Court gave the Relator a definite
time to prepare ^{the bill} & procure ~~it~~ to be signed
& file it. — The stipulation merely
extends this order. — The appellants
deny all other stipulations or agree-
-ments. — Now as the relator has
not complied ~~either~~ with the order
either within the time therein & &
prescribed or as extended by the stipu-
-lation — nor shown any valid reason
(like the sickness of the Judge in
Evans vs Fisher 5 Gillman 453) it
is concluded on the authority of that
case, and Burst vs Wayne 13 Ill
664, that he is not entitled to
the rule he asks.

Mo Van Cusen

Att'y for Respondent

In Sup Court
 April Term 1859

In the matter of
 an application of
 George D. Coathu for
 mandamus

Brief for Respondent

Filed April 27, 1859

L. Heland
 Clerk

Mr Van Amman
 atty, for Respondent

To the Hon Isaac H. Wilson

Judge of the thirtieth judicial
Circuit of the State of Illinois, for
the McHenry Circuit Court sitting

I shall on the first day of the
next term of the Supreme Court ~~at~~
of said State at Ottawa or as soon thereafter
as counsel can be heard from
that Court for a rule on you to show
cause why a mandamus should
not issue against you as such
Judge to settle sign & seal a bill of
exceptions tendered you on the
day of March last by the undersigned
in a certain cause lately pending in
said Circuit Court wherein L. C. Hall
&

Thompson were plaintiffs
& the undersigned defendant by way of
appeal from the County Court of Mc
Henry County in Probate which
motion will be founded upon the
affidavits which were made by me
and filed at the time of tendering said
bill to you & upon such additional
affidavits as may then be filed by me

April 6. 1859

Yours &
William J. Cutler by
W. J. Thompson

I admit service on me of a
copy of within notice this 14th
day of April 1859 Woodstock Ills
Isaac G. Wilson

To Messrs Chickering & Walker
Attys.

I have served upon the
Hon J. G. Wilson a notice of which the within
is a copy & shall call up the matter of the
application for mandamus on the first day of
the term or as soon thereafter as counsel can
be heard.

Yours &c

April 16, 1859.

W. T. Burgess

Att'y of W. T. Cutter

April 18, 1859 This day a copy of the foregoing was
served on me

J. G. Wilson

Sup Ct. 12
People ex rel Cutter

vs

Isaac G. Wilson
Judge in

Notice motion for
order

Filed April 18, 1859
at Deland
Albino

In the Supreme Court of the State of Illinois
of April Term 1859.

In the matter of the application
of William F. Cutler for a
writ of Mandamus against
Isaac G. Wilson Judge

State of Illinois }
County of LaSalle Sp: William F. Cutler of
Cook County, in said State being duly
sworn doth depose & say - That at the
Term of the McHenry circuit court
before the Hon. Isaac G. Wilson aforesaid
Judge thereof a certain cause was heard
& tried wherein Lamberton C. Hall &
Thompson were plaintiffs and said William
F. Cutler was defendant. Then pending in
said court by way of appeal from the
county court of said McHenry County in
probate upon an application to remove
said Cutler as administrator of
Thompson deceased. That in the progress
of said cause another trial thereof various
exceptions were taken by said Cutler
to the rulings and decisions of the said Judge
upon the various questions raised and
passed upon therein by him - That a
final decision of said cause was made

at the Term of said ~~court~~ circuit
court A.D. 1858. and leave given to prepare
and file bill of exceptions on or before the
day of June then next and
such leave entered of record in the cause
That afterwards the parties through their
attorneys extended the time to prepare
such bill of exceptions as will more
fully appear by the stipulation in that
behalf a copy of which is filed in this
matter -

That on the ~~day~~
day of March last past during the
March term of said court then being held
a bill of exceptions which had been
submitted to the counsel for the plain-
tiffs within the time set for that
purpose in said stipulation and
on the application of this defendant
returned by them to him after such
time had expired without noting
or stating any objection to any particu-
lar part of the contents thereof but with-
out consenting that it should ~~thereby~~
be signed as it then was made up - was
presented to said judge for his signature
and sealing & the filed in the said cause
and the various matters therein set out

this deponent believes to be truly set out
therein. That the said judge was
then about to sign the same when
upon objection made by the plaintiffs
and on reading the affidavits copies
of which are herewith filed the said
judge refused to sign the said bill
a copy of which is filed with this
affidavit in this matter.

Subscribed and sworn to }
before me April. 26. 1859 }
L. Kelam Clerk.

W. J. Phipps

this deponent believes to be truly set out
therein. That the said judge was
then about to sign the same when
upon objection made by the plaintiffs
and on reading the affidavits copies
of which are herewith filed the said
judge refused to sign the said bill
a copy of which is filed with this
affidavit in this matter.

Subscribed and sworn to }
before me April. 26. 1859 }
L. Leland Clerk.

W. J. Phipps

12

Supreme Court

The People ex rel.

W. J. Cutler

vs

J. G. Wilson Judge

Affidavit on
Motion for Mand.

Filed Apr. 26. 1859.
L. Deland Clk.

In the McHenry Circuit Court
Harvey M. Thompson vs
or
Wm. T. Cutler admr. &c

} affidavit of
J. M. Walker

State of Illinois }
McHenry County } J. James M. Walker
of the County of Cook
in said State being duly sworn says
that at the hearing of this above
entitled Cause in this Court this deponent
left before the close of the trial and
before the decision of the Court was
made therein

That sometime in the month of
June last this deponent was applied
to by William T. Burgess to extend the
time to prepare a Bill of Exceptions
in this Cause, that this deponent then
for the first time learned that the said
William T. Cutler had prayed an appeal
and obtained time in which to prepare
& file in this Court his Bill of Exceptions
and so stated to the said Burgess as
deponent now recollects the circumstance
that this deponent then learned in
reference to said application that if
an appeal had been prayed and time

obtained as stated by said Burgess this deponent would ~~extend~~ consent to an extension of time and signed a stipulation extending the time to the first day of July then next, that this deponent then or subsequently stated in substance that he knew nothing about such order and could not and should not agree upon or settle or ~~do~~ any thing about settling a Bill of exceptions in the case and this statement was at all times made and repeated by this deponent to said Burgess whenever any thing was said in relation to said Bill of exceptions. Deponent further says that some one came to the office of Deponent and stated that the said Burgess was sick at Kenosha and desired the time to be further extended and this deponent then further extended the time to the fifteenth day of July last and obtained the stipulation heretofore made to that effect, that this deponent has no recollection of having given any further extension of time or of ever having signed or authorized any other person to sign a stipulation for any further extension of time

And this deponent states that he is positive he never signed any stipulation to extend the time beyond the fifteenth day of July last to prepare the Bill of Exceptions in the above cause and he has no recollection whatever of authorizing or directing one Moses Hallett or any other person to alter or sign any such stipulation.

This deponent further says that a paper purporting to be a Bill of Exceptions in the above entitled cause was brought to and left at the office of this deponent by a person this deponent now supposes to have been ^{one} Moses Hallett that the same was left there without any request on the part of the deponent and without the assent of deponent and with a knowledge on the part of said Burgess as deponent believes - that deponent did not intend to look at said Bill of Exceptions or do any thing whatever towards settling for a fee thereupon the same - Deponent does not ~~now~~ ^{now} recollect the precise day on which said Bill of Exceptions was left at his office but deponent has at all times been under the

impression that the same was not left
there till after the time in which the
Bill of Exceptions was to have been
prepared and filed in this Court as
specified in the stipulation had elapsed
and such is now deponent's best
recollection and belief. This deponent
further says that the said Wicket never
to his recollection either requested him
to examine said Bill of Exceptions
or fix a day when deponent would go
before the Judge of this Court to settle
the same. Deponent further says he
was never at any time by any person
requested to fix a day for the settlement
of said pretended Bill of Exceptions
before the Judge of this Court - that he
was never by any person requested
to come before the Judge of this Court
for that purpose and that he never
received a notice that an application
would be made to this Court or to the
Judge thereof for the settlement or allowance
of any Bill of Exceptions in
this Cause until the
instant at which time a notice was
served upon deponent that an appli-
-cation for the allowance of a Bill of

exceptions would be made on the day
in said notice named or as soon there-
after as counsel could be heard. Depo-
nent further says that he was never
requested by the said Rullet to accept
of said Bill of Exceptions nor did the
said Rullet ever to deponent's knowledge
express any desire that deponent
would do so

-day of July
This deponent ~~says~~ further
says that he has since the fifteenth
been frequently spoken to by William T.
Purgess in reference to agreeing upon
a Bill of Exceptions in this cause
and this deponent has at all times
refused to do any thing about it
that he has never read, but has at all
times refused to read the papers left
at the Office of deponent and has at
all times absolutely and unequivocally
stated to Mr. Purgess & given him
fully to understand that he could
not if he should try and certainly
would not settle or undertake to settle
a Bill of Exceptions in this cause
and utterly and at all refused to do so
Subscribed & sworn to before J. W. Walker
on this 24th day March 1859

G. H. Rapson Clerk

Entered file March 26 1859
G. H. Rapson Clerk

State of Illinois
McHenry County J. P. J. P. H. H. H.
Clerk of the Circuit
Court in & for said County in the State
aforesaid do hereby certify that the
above & foregoing is a true & complete
copy of an affidavit of J. C. M. Walker
filed in this Court pending a motion
to file ^{signed} Bill of exception in case
of Heall & Thomas vs. James William
T. Cutler Adm.

In Witness whereof I
have hereunto set my hand
& seal of said Court at Woodstock
this 19th day of ^{April} ~~February~~
A.D. 1859 J. P. H. H. H.

12
Heall & al
W. T. Cutler Adm.
Affidavit
J. C. M. Walker
Copy.

Filed Apr. 26. 1859
L. H. H. H.
Clerk.

In the McHenry Circuit Court
Hale & Thompson
vs
Cutter Admr &c Appeal

The stipulation about
the Bill of Exceptions in this cause
was obtained by my Clerk Mr.
Hallett in my absence from Chicago
in pursuance of instructions I
gave him. I understood Mr.
Walker gave it to him - I never
heard that Mr. Chickering had any
thing to do with the giving of it.
On my return to Chicago my recollection is that I found the Bill and
accompanying papers in Mr. C.
hands and spoke about the stip-
ulation & Mr. C. assured me he
would meet me & Mr. W. at any time
when it should be convenient &
settle the Bill. - that as he had not
given the stipulation he should not
act further without the presence and
consent of Mr. W.

Mr. C. has always expressed himself
so that Mr. W. now declines to act.

W. J. Purgey
atly for Cutter

Mar 24/59.

(Endorsed). The remarks made by me to
Mr. Burgess were in consequence of
his assurance that he had a stipulation
with Mr. Walker to extend the time for
filing Bill of Exceptions — which
I fully believe J. W. Chichester
The March 26. 1859
G. D. Kesson Clk

State of Illinois
McHenry County J. George T.
Kesson Clerk of
the Circuit Court in and for said
County in the state aforesaid do hereby
certify that the above & foregoing is
a full true & complete copy of a
paper on file in my office in a
case wherein Lamberton & Hall are
Plaintiffs, and Wm T. Carter & Co
defendants.

Witness my hand and
Seal at Woodstock Ill,
20th day of April
1859
G. D. Kesson Clk

In the McCauley }
Circuit Court. } Jt.

Hall & Thompson }

vs
William Cutter }

Admr &c. }

Affidavit of
J. W. Chickering

State of Illinois }
Cook County } Jt.

John W. Chickering

being duly sworn etc

upon his oath say that he never made
any stipulation or agreement with the
counsel for the defendant in regard to
settling a Bill of Exceptions in this
case, nor was there ever any understanding
or communication between them
in regard to the same except that
this affiant always expressed him-
self willing as he ever has been and
now is to carry out and perform
any stipulation or agreement thereto
made between J. M. Walker Esq who
is the Attorney for H. M. Thomson one
of the Plaintiffs and W. P. Burgess Counsel
for the defendant in this cause
this affiant further states that the
accompanying paper signed W. P.
Burgess

details what occurred between said
Purges & this affiant except that any
inference drawn therefrom that this
affiant ever agreed to settle a Bill
of Exceptions is not so! inasmuch as
all that this affiant ever stated was
his willingness to meet with said Purges
and Walker to aid in perfecting what-
ever agreement might have been made
between them; this affiant never
being personally cognizant of the
purport thereof and further saith not.
Subscribed & sworn to J. W. Chickering
before me this 24th day
of March A.D. 1859

J. D. Thomas

Notary Public.

(Endorsed.) Filed March 24, 1859
G. D. Kesson Ck

State of Illinois }
McHenry County } Sp. J. Geo. Kelson,
Clerk of the Circuit
Court in and for said County in the
State aforesaid do hereby certify
that the above and foregoing is a true
complete copy of the affidavit of J. W.
Chickering filed in this Court pending
a motion to ^{sign} ~~file~~ Bill of Exceptions
in Case of Hall & Thomson vs
J. M. T. Carter Admr &c.

In Witness whereof I have
hereunto set my hand
and seal of said Court
at Woodstock this 18th
day of April 1859
J. Geo. Kelson Clerk

12
Hall Stal.

v

W. T. Cutter & Son.

Affidavit

J. M. Chickering

Copy.

Filed Apr. 26. 1857

L. Leland

Clk.

In the McKenry Circuit Court

William T. Cutler ad^r. & d^r

ad^r.
Hall & Thompson

It is hereby
Stipulated that the time to prepare
bill of exceptions in this cause be
extended to the ~~1st~~ ^{15th} day of ~~July~~ ^{August}

J. M. Walker
for Hall & Thompson
W. T. Burgess
for Def^t.

In the McKenry Circuit Court

Hall & Thompson

vs

William T. Cutler

Affidavit of
Moses Walle

State of Illinois }
County of Cook } ss. Moses Walle
of said County being
duly sworn deposes and says that
in the month of June last, ^{past} he was
and from thence hitherto has been the
law-clerk of William T. Burgess
defendants counsel in the above

Entitled Cause. That early in said month of June he received a letter from said Burgess who was then staying at Kenosha Wisconsin directing this affiant to take a stipulation extending the time to prepare Bill of Exceptions in said cause to the 1st. day of July then next and theretofore entered into between him said Burgess & J. M. Walker of Counsel for said Plaintiffs which said Stipulation was then in the Office of said Burgess & procured said Walker to further extend the time to prepare said Bill of Exceptions to the first day of August then next. This affiant accordingly applied to said Walker for such Extension of time whereupon said Walker stated that if said Burgess should be unable to prepare said Bill before the 1st. day of July he would grant such extension of time. That on the 29th. day of the said month of June this affiant received another letter from said Burgess stating that he would be unable to prepare said Bill of Exceptions in time. Whereupon this affiant took said Stipulation to said

Walker, who upon affiant's request to extend
the time to August ~~1st~~ in said ~~Stip-~~
~~ulation~~ erased the figure "1st." in
said Stipulation & inserted 15th. in
place thereof. That on the 1st. day of
said month of July this affiant received
from said Burgess a Bill of Exceptions
in said Cause & within a few days thereafter
carried the same to said Walker &
delivered the same to him requesting
him to examine the same and fix a
day when he would go before the Judge
of said Court to settle the same; that
on or about the said fifteenth of July
this affiant called upon said Walker
in regard to said Bill of Exceptions
that said Walker told this affiant to so
alter said Stipulation as to extend the
time to the said 1st. day of August
which this affiant did upon returning
to the office of said Burgess by
erasing the figures "15th." and inserting
1st. and the word July inserting
August. This affiant called on said
Walker in relation to said Bill of Exceptions
several times between said 15th. July
and 1st. August and once or twice
during that period upon Mr. Chickering

of Counsel for said Plaintiffs and
desired them to accept said Bill of
Exceptions or fix the time when they
would go before said Judge to settle
the same - said Stipulation is hereto
attached and forms part of this aff-
idavit

Moses Hallett.

Sworn to & Subscribed before
me this 24th. day of March
A.D. 1859.

Witness my hand & Notarial
Seal. C. M. Hawley

Seal. Notary Public

(Endorsed.) Filed Mar. 24. 1859

G. H. Rapson clk.

State of Illinois

McHenry County } G. H. Rapson
Clerk of the Circuit

Court in and for said County in the State
aforesaid do hereby certify that the
above & foregoing is a true & complete
Copy of an affidavit of Moses Hallett
filed in this Court pending a motion
to ^{sign} file Bill of Exceptions in case of
Hull & Thompson vs. Wm. J. Cutler
Adm^r.

In Witness whereof I have
hereunto set my hand and Seal
of said Court at Woodstock
this 1st day of April A.D. 1859

G. H. Rapson clk

12
Hall Ital
v1

Young Luther Adm.

Affidavit
Moses Hallet.

Copy.

Filed Apl. 26. 1859.
L.eland
Clerk.

In the McHenry Circuit Court

L. C. Hall &

Harvey M. Thompson

vs
William T. Cutler

Adm^r &c

Appeal

Affidavit
of W. T. Burgess

State of Illinois }
County of McHenry } ss.

William T. Burgess of Cook County
being duly sworn says that he is
the attorney for the defendant in this
cause and has had the principal
charge of the case, that being
unable on account of his health
to prepare the Bill of Exceptions
within the time limited by the Court
in this cause, he directed his Clerk
Moses Kallet to procure the Stip-
=ulation which is attached to the
affidavit of said Kallet made on the
day of March Instant in
this cause, that this deponent has
read over said affidavit and believes
the statements therein contained
to be true.

This deponent further says that
he returned from Kenosha to his

business about the 20th of August 1858
that he immediately called upon both
the Attorneys for the Plaintiffs in this
Cause Mr Walker & Mr Chickering. His
best recollection is that he found the
Bill of Exceptions that he had pre-
pared in the hands of Mr. Chickering
That this deponent frequently requested
both of said Counsel to meet him
and settle the same. That on his return
and at his first interview with Mr.
Chickering he Mr. Chickering said that
he could not do any thing about it
in the absence of Mr. Walker and
that he would meet this deponent and
Mr. Walker at any time that was
convenient and look over the Bill
which promise was frequently made
afterwards. That this deponent said
Mr. Walker soon after his this depon-
-ent's return & he Mr. Walker made
Substantially the same statements
that he would meet this deponent
with Mr. Chickering & look the Bill
over - This deponent finally got the
Counsel together at the office of Mr.
Walker, when Mr. Walker for the first
time absolutely ~~refused~~ declined to look

over the Bill & Mr Chickering expressed
himself willing to look it over so far
as he was concerned but without
Mr. Walker's consent would do nothing
This occurred about six weeks ago
and this deponent then notified the
said Counsel that he should present
the said Bill to the Judge of the Court
on the first day of the next Term

That this deponent always sup-
posed from what took place between
him and said Walker & Chickering before
his interview at Walker's Office that there
would be no difficulty in an amicable
settlement of said Bill or he should
sooner have applied to the Court in
the matter

And this deponent further says that
the memorandum in pencil mark on
back of Bill as prepared he believes
is in hand writing of said Chickering
that it is not his nor that of his
Clerks.

W. D. Purges

Subscribed & sworn to
before me this 26th.

March A.D. 1859

G. B. Kason Ck.

(Endorsed)

Filed Mar 24. 1859

G. B. Kason Ck.

State of Illinois
McHenry County
I George
Napson clerk
of the Circuit Court in & for said
County in the State aforesaid do
hereby certify that the above and
foregoing is a full true & complete
copy of the affidavit of W. T. Burgess
filed in this Court ^{signed} a motion to
file Bill of Captions in the Case
of Hall & Thompson vs Wm. T.
Cutler Admr. &c.

In Witness whereof I have
hereunto set my hand
and seal of said Court
at Woodstock this 18th
Day of April A.D. 1859
G. Napson Clerk

12
Woodstock

Cutler Admr.

Affidavit
W. T. Burgess.

Copy.

Filed April 26. 1859.
J. H. Land
Clerk

In the Supreme Court

April Term 1859

In the matter of an application by
William I. Cutler for a Writ of mandamus
against Hon. Isaac G. Wilson Judge &c.

Brief For Relator

(Affidavits + Bill of Exceptions are filed herewith)
Case

This is an application for an alternative writ against
a Circuit Court Judge for refusing to sign and seal
a Bill of Exceptions.

The Exceptions were duly taken at the trial - The time
for filing the Bill of Exceptions extended by the Court
and entered of Record - Before the expiration of that
time The attorneys on both sides stipulate in
writing, and which is filed in the Cause, to extend
the time for preparing the Bill of Exceptions to
the first of July and by further like stipulation
until the 15th July and afterwards to the 1st of
August -

Within a few days after the first of July the
Bill of Exceptions was left with the opposite
attorney accompanied with a request that he
would examine the same and fix a day to go
before the Judge upon it - The Bill is returned
by the opposite attorney and he neither returns
or approves or objects to it but after the first of

August it is found in his possession but he then declines to have any thing to do with it - He is notified to go before the Judge on the first day of the next Term - The Bill is then presented to the Judge - He is about to sign it when on the objection of the opposite attorney made on the sole ground that the Bill is presented to the Court too late and the Judge then refused to sign it

Points

1st The proper time for filing a Bill of Exceptions is at the trial or during the Term but it is in the discretion of the Court to extend the time

Buckmaster v Beams 4 Gil 448

2nd The practice of submitting the Bill first to the opposite attorney before presenting it to the Judge is approved in;

4 Peters 102 Weatherford v Nelson 2 S. 256
People v Person 2 S. 205 Williams v Taylor 6 Bing 512

3rd On receiving the Bill of Exceptions it was the duty of the opposite attorney to return it either approved or with objections;

And he cannot retain it to the prejudice of the party preparing it

Williams v Taylor 6 Bing 512 cited Supra

4 an agreement between Counsel on this subject reduced to writing and filed with the papers will be regarded by this Court.

Evans v. Fisher 5 Gil 543

It is submitted that the opposite attorney kept the Bill of Exceptions in Bad Faith - and that he cannot avail himself of an advantage obtained in Bad Faith, where there is a written stipulation in which the understanding between Counsel in the matter is explicitly stated -

Samuel Martin

Atty for Relator

In Answer to the Brief filed by Respondent,
The Relator Replies -

Walker admits that he did make a stipulation to extend the time to prepare the Bill to the 15th July

Hallett states that whilst the Bill was in Walker's hands to settle he Walker told Hallett to extend the time to the 1st of August this was a concession by Hallett to Walker this is not denied ^{by Walker} Walker only denies that there was any such concession by him to Hallett which is an evasion.

Walker admits that he had the Bill in his possession - It is probable that it would have been left with him had he stated what he says he did.

Hallett states that it was left a few days

after the 1st of July and on the 15th he saw him again about it - Walker does not deny this but merely says he has no recollection about it

Walker says he always told Burgess he would not settle the Bill as Burgess says he, Walker, would not settle the Bill (alone), but, that he would do so in conjunction with Chickering this latter qualification is no where denied by Walker

Chickering admits that he and Burgess frequently talked the matter over and that he agreed with Burgess to go ^{about six weeks before the application to the judge} and in fact, ^{did go to Walker's office to look} it over Burgess says that there the first refusal to settle occurred. There was no term between that time and the presentation of the Bill to the Court.

It appears from the affidavits that in the first instance the delay was occasioned by the sickness of Counsel - There was then a fair stipulation in writing which the parties thereto were conversant to carry out liberally in good faith as professional men and thus the case is taken out of the Rules in Dick & Hayne et al by Respondent.

Wm. H. H. H.

In the Supreme Court

April Term 1859

In the matter of an
application of Geo. S. Cutler
for mandamus.

Doyle For Relator

Filed April 27, 1859

L. Island
Clerk

Wm. H. H. H.