

No. **12174**

Supreme Court of Illinois

Cooper, et al

vs.

McCleur

71641  7



Proceedings continued and had at the Court house
in Bloomington, within and for the County of McLean,
in the eighth Judicial Circuit of the Circuit Court
of the State of Illinois, before the Honorable David
Davis, Judge of said Eighth Judicial Circuit, of the
Term of April, to wit: on the twenty first day of
April in the year of our Lord One thousand eight
hundred and fifty four.

Alfred Cooper, Benton F. Henderson
and Franklin Cooper, under the
name and style of -

Cooper, Henderson & Co.

versus

John E. McClun, George W. Sandford
Adam Booth, William H. Brown,
Isaac C. Jones jr. William H. Howell
and Anderson & Shultz.

Bill in Chancery

To enforce
a Trust

Be it remembered that heretofore, to wit: on the
fifth day of March in the year of our Lord One thousand
eight hundred and fifty three, Alfred Cooper, Benton F.
Henderson and Franklin Cooper, by their Solicitor Walker,
filed in the office of the Clerk of the Circuit Court of the
said County of McLean, a Bill in Chancery, in the
words and figures following, to wit:

To the Honorable Judge of the W. Leon Circuit Court
in Chancery sitting -

Your Complainants Alfred Cooper, Benton F. Henderson and Franklin Cooper, Partners under the name and style of Cooper, Henderson & Co. would represent that George W. Sandford and Adam Booth, Partners trading under the name and style of G. W. Sandford & Co., on the 28th day of March 1851, by their promissory note bearing that date made part hereof marked "A," promised six months after the date thereof to pay to the order of Complainants at the Bank of Missouri in St. Louis, with current rate of Exchange, three hundred and seventy eight $\frac{68}{100}$ dollars, without deduction for value received, which said note on the 1st day of October 1851 was duly presented and protested for non-payment by Mann Butler, Notary Public, as will appear from his Certificate made part hereof marked "B." - And the said makers thereof have hitherto failed and neglected to pay the same or any part thereof to Complainants or to their order, and the same with the interest, cost of protest &c. remains due and wholly unpaid -

Complainants further charge that on the 29th of October 1851, Adam Booth, one of the members of the firm of G. W. Sandford & Co. transferred to John E. Mc. Clun, a note of hand on N. B. Newman & Co. dated 1st September 1851, due four months from date calling for nine hundred and ten dollars, for the purpose and con-

= consideration of securing the payment of said debt of G. W. Sandford & Co. to Complainants and others, and the said John E. M. Clun executed and delivered a written receipt in substance as follows, viz:

'Received Bloomington Oct. 29 1851 of Adam Booth
'a note of hand on W. B. Newman & Co. dated Sept. 1st
'1851, four months from date and calling for \$910. which
'I am to hold as collateral security for a debt due by
'said ~~Adam~~ Booth, Sandford & Co. to Anderson &
'Shultz & others, and when paid I am to apply the
'same to the payment of said Anderson & Shultz of
'Philadelphia and others that Mr. Booth may designate
J. E. M. Clun'

And afterwards to wit, on the 10th day of December
1851, said Adam Booth directed and designated
that the proceeds of said note should be applied, first
to the payment of the debt of Anderson & Shultz,
against G. W. Sandford, and secondly, to the pay-
ment of Complainants said note against said G. W.
Sandford & Co. after which, the whole of the balance to
W. H. Brown & Co.; And the said John E. M. Clun made
a written endorsement to that effect on the back of said
Receipt, substantially as follows:

'In accordance with the instruction of Mr. Booth now
'given me by him, I will pay from the proceeds of the within
'described note on W. B. Newman & Co. when the same
is collected, as follows, viz: I will first pay the whole of
the debt due to Anderson & Shultz of Philadelphia

'secondly I will pay a claim due by Sandford & Co. to
'Cooper Anderson & Co. (written Cooper, Anderson & Co. thro'
'a mistake) of Philadelphia, supposed by Mr. Booth to
'be about \$360.; after which, I will pay the whole of the
'balance to W. H. Brown & Co. of Philadelphia -
'Dec. 10th 1851 - J. E. McClun'

a copy of which said receipt and the endorsement
thereon is made part herof marked "C" -

Your Complainant charges that the 'claim supposed
'by Mr. Booth to be about \$360.' as expressed in said en-
-dorsement is the said note of three hundred and seventy
eight $\frac{68}{100}$ dollars, due from said G. W. Sandford & Co.
to Complainants and made part of this Bill as Exhibit
'A', and it was to secure the payment of that note sec-
-ond in order to the debt of Anderson & Shultz that said
directions were given and said written Endorsement made,
& your Complainant charges that by the terms of said re-
-ceipt and the Endorsement thereon the said John E. McClun
obligated himself to pay to Complainants their said
note and interest before he applied any part of the
proceeds of the Newman note to payment of W. H. Brown & Co.
or any other Creditors of G. W. Sandford & Co. Except Ander-
son & Shultz = Your Complainant further charges
that said John E. McClun collected the whole of said
note on W. B. Newman & Co. nine hundred and ten
dollars with interest from 1st September 1851, and by
said arrangement he was created a trustee and bound
himself by said writing to execute the trust, and he re =

received and held the proceeds of said Newman note in trust, first, to pay the debt to Anderson & Shultz (which Complainant charges did not exceed two hundred dollars) and secondly, to pay said debt to Complainant.

And your Complainant charges that an Equity and right to the funds in said John E. McClun's hands were thereby created in favor of said Anderson & Shultz and Complainants, prior and paramount to the claims of all others, And your Complainant further charges that on - day of - 1851 and at sundry subsequent times they presented their said note to said John E. McClun for payment, and demanded that he should out of the said funds in his hands settle their claim and your Complainant charges that after paying the debt to said Anderson & Shultz, he had more than sufficient of the proceeds of the Newman note in his hands to satisfy Complainants said debt, but said McClun has hitherto failed neglected and refused to comply with his said obligation and undertakings to pay Complainants said debt as aforesaid, has violated the trust which was in good faith reposed in him, and as a pretext alleges that he has paid out the means in his hands to said W. H. Brown & Co. & others who had no right to receive it and which course was in direct conflict with the letter, spirit, and intention of said agreement and for which said McClun should be held personally responsible to your Complainant, as said Brown & Co. were only entitled to receive the balance of said funds after Complainants said debt was paid.

Your Complainants charge further that said G. W. Sand-
ford & Co. are non-residents and insolvent, and they have
no other means of making their said debt only as provi-
ded for them in said agreement - Wherefore as your
Complainants are without remedy at Law, and only
relievable in Equity, they pray your Honor to take cog-
nizance of their cause and grant them the appropriate
relief - And to the end that justice may be done they
make the said John E. Mc. Clun, George W. Sandford
& Adam Booth, Partners trading under the name and
style of G. W. Sandford & Co., William H. Brown, Isaac
C. Jones jr. and William H. Howell, partners trading
under the name and style of W. H. Brown & Co., and
Anderson & Shultz, whose individual names are unknown
to your Complainants, Defendants to this Bill and re-
quired ~~the~~ to answer the same on oath, and on final
hearing that said trust be specifically Executed and En-
forced, and that said John E. Mc. Clun be Ordered
and decreed to pay your Complainant said note three
hundred and seventy eight $\frac{68}{100}$ dollars with interest
from the 28th September 1851 till paid, and cost
and the costs of this proceeding, or for general relief, for
the People with of Summons &c.

Jell & Walker

for Complainant "

And thereupon afterwards to wit on the fifth day of March
aforesaid, the said Cooper, Henderson & Co. by their Solicitor
aforesaid, filed in said Clerk's Office an affidavit and

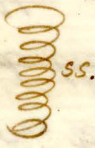
Solicitor aforesaid filed with the said Bill in the said Clerk's Office, Exhibits marked "A", "B", "C", each of which are hereinafter respectively set forth in the words and figures following to wit:

Exhibit "A" " \$378 $\frac{68}{100}$ - Philadelphia - 28th March 1851

Six months after date we the subscribers residing in Bloomington, Illinois, promise to pay to the Order of Cooper Henderson & Co. at the Bank of Missouri in St Louis, with current rate of Exchange, Three hundred & seventy eight $\frac{68}{100}$ Dollars without defalcation for value received - G. W. Sanford & Co. "

Upon the face of the said Exhibit there was the following:
"Protested for non-payment - 1st Oct. 1851

"Esc \$1.35 Mann Butler - Not. Pub. "

Exhibit "B" " State of Missouri 
County of St. Louis 

Be it Known, that, on the day of the date hereof, I, Mann Butler, Notary Public, for the County of St Louis, in the State of Missouri, duly commissioned and qualified, residing in the City of St. Louis in the said State, at the request of Messrs. E. W. Clarke & Bros. holders of the original promissory note, a copy of which is on the reverse hereof written, presented said note at the Bank of the State of Missouri to the Teller thereof, and demanded payment of the same, which he refused - Whereupon I, the said Notary, at the request aforesaid, have protested and do hereby solemnly protect against the maker of the said note, and all others concerned, for all Exchange

Præcipe, each in the words and figures following, to wit:
Affidavit - "State of Illinois - M. Dean Circuit Court -
Cooper, Henderson & Co.

vs.

In Chancery

John E. M. Chun, George W. Sandford

Adam Booth, William H. Brown, Isaac

C. Jones jr., William H. Howell, and

Anderson & Shultz, Partners -

Kersey H. Fell, being duly sworn
states that said defendants George W. Sandford, Adam
Booth, William H. Brown, Isaac C. Jones jr., William
H. Howell and Anderson & Shultz (Partners) in the above
entitled cause are now residents of the State of Illinois
as he verily believes and that the individual names of
said Anderson & Shultz are unknown to him -

Subscribed and affirmed to before the } K. H. Fell "
undersigned, this 5th day of March 1853

W^m M. Cullough - Clk "

Præcipe - " M. Dean Circuit Court -
Cooper, Henderson & Co.

vs.

In Chancery

John E. M. Chun & others

The Clerk of the M. Dean Circuit Court will
please issue summons against all the Defendants in the
above cause returnable to the next April term of Court
(see names in Bill) - Fell & Walker - Compl't. Solicit.
- And thereupon afterwards to wit: on said fifth
day of March, the said Cooper, Henderson & Co. by their

Re-Exchange, damages, interest and Costs, accrued and to accrue to the said Messrs. Clark & Bros. by reason of the non-payment of the said note -

Thus done and protested at the City of St. Louis aforesaid, this 1st day of October A.D. 1851 -

In Testimony whereof, I, the said Notary, have
L. S. hereunto set my hand and affixed my Notarial seal, the day and year above written -

Mann Butler - Notary Public -

Recorded Book B, folio 252 - "

And upon the reverse side of Exhibit "B" is the following:

"378. $\frac{68}{100}$ Philadelphia 28th March 1851

Six months after date, we the Subscribers residing in Bloomington, Illinois, promise to pay to the order of Cooper Henderson & Co. at the Bank of Missouri in St. Louis, with current rate of Exchange, Three hundred & seventy eight $\frac{68}{100}$ Dollars without defalcation for value received -

G. W. Sandford & Co.

Endorsed "Pay to order of E. W. Clark & Co.

Cooper Henderson & Co.

Pay E. W. Clark & Bros, or order

E. W. Clark & Co.

Be it known, that I, Mann Butler, Notary Public, for the County of St. Louis, in the State of Missouri, duly commissioned and qualified, residing in the City of St. Louis in the said State, do certify that on the day of the date of this protest, I notified the endorers of the hereto attached note of the within protest, by notice in writing and print, by

one signed, of the same date with the said protest, and which, &c., on the same day at 7 P. M. put in the Saint Louis Postoffice, directed to Cooper Henderson & Co. also to E. W. Clark & Co. enclosed to last endorsers at Philadelphia Pa. - In Testimony Whereof, I, the said Notary

have hereunto set my hand and affixed my Notarial Seal this 1st day of October 1851

Mann Butler - Notary Public

Sworn to and subscribed before me this 1st day of Oct. 1851 -

Exhibit "C"

"Copy of Receipt

"Received Bloomington, Oct. 29 1851 of Adam Booth 1 note of hand on W. B. Newman & Co. dated Sept. 1st 1851 Four months from date and calling for \$910, which I am to hold as Collateral Security for a debt due by said Booth & Sanford & Co. to Anderson, Shoults & others, and when paid I am to apply the same to the payment of said Anderson and Shoults of Philadelphia & others that Mr. Booth may designate - J. E. McClun -

Copy of Endorsement

"In accordance with the instructions of Mr. Booth now given me by him, I will pay from the proceeds of the within described note on W. B. Newman & Co. when the same is collected as follows, viz: I will first pay the whole of the debt due to Anderson & Shoults of Philadelphia, Secondly I will pay to a claim due by Sanford & Co. to Cooper Anderson & Co. of Philadelphia, supposed by Mr. Booth to be about \$360, after which I will pay the whole of

the balance of the proceeds of said note to W. H. Brown & Co.
of Philadelphia -

Dec. 10 - 1851 -

J. E. Mc. Clun. "

And thereupon afterwards to wit, on the said fifth
day of March in the year of our Lord One thousand eight
hundred and fifty three, the said Cooper Henderson & Co.
by their Solicitor aforesaid filed in the said Clerk's of-
-fice the following Bond for costs, to wit:

"State of Illinois - Mc.lean Circuit Court -

Cooper, Henderson & Co.

vs.

In Chancery

John E. Mc. Clun & others

I do hereby enter myself security for
Complainant's costs in this cause and acknowledge my-
-self bound to pay or cause to be paid all their costs
which may accrue in this action either to the opposite
party or to any of the officers of this Court in pursuance
of the laws of this State -

Dated this 5th day of March 1853 -

Approved March 5th 1853

J. C. Walker

W. M. Cullough - Clk. "

And thereupon afterwards to wit, on the fifth day of
March aforesaid there issued out of the said Clerk's office
a writ of Summons in the words and figures following, to wit:

"State of Illinois

vs.

The People of the State of Illinois

Mc.lean County

vs.

To the Sheriff of Mc.lean County, Greeting:

We Command you to summon John E. Mc. Clun,
George W. Sandford, Adam Booth, William H. Brown

Isaac C. Jones jr., William H. Howell, and Anderson & Shultz, Partners, 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 at the Court House, in Bloomington, on the 2nd Monday in the month of April next to answer to a certain Bill of Complaint, filed in our said Circuit Court, on the Chancery side thereof against them by Alfred Cooper, Benton F. Henderson and Franklin Cooper, Partners under the name and style of Cooper Henderson & Co. —

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

Given under my hand and the seal of the said
L.S. Circuit Court at Bloomington, this fifth day of
March A.D. 1853 —

W^m M. Cullough - Clerk —

And thereupon afterwards to wit, on the seventh day of March aforesaid the said Writ of Summons was returned into the said Clerk's Office, Endorsed as follows:

"Served the within by delivering a copy of the same to
J.E.W. Clum - March 7/53 - The other defendants not
found in this County — Geo. Parker - Shff

by J.H. Moore, Dpty. "

And thereupon afterwards to wit: on the eleventh day of April in the year aforesaid the said Cooper Henderson & Co, by his Solicitor aforesaid filed with the Clerk of the Circuit Court, the following notice and the Certificate of Publication, in the words and figures following, to wit:

"State of Illinois } Circuit Court -

McLean County } To the April Term 1853

Alfred Cooper, Benton F. Henderson

and Franklin Cooper

Bill in Chancery

vs.

John E. Mc. Clun, George W. Sandford,

To enforce

Adam Booth, William H. Brown,

an Express trust

Isaac C. Jones jr. W^m H. Howell, and

Anderson and Shultz, Partners

Affidavit having been made and filed in this cause, satisfactorily showing that the said Defendants, George W. Sandford, Adam Booth, William H. Brown & Isaac C. Jones jr. William H. Howell, and Anderson and Shultz, Partners, are non-residents of the State of Illinois, and that the individual names of said defendants, Anderson & Shultz are unknown - Now notice is hereby given to all of said defendants, that unless you be and appear at the next term of the McLean County Circuit Court to be holden at the Court house in the City of Bloomington, on the second Monday in April A.D. 1853, and plead, answer or demur to the Complainant's Bill of Complaint in the above entitled cause filed, that the same will be taken for confessed as against you, and decree rendered according to the prayer of said Bill -

W^m Mc. Cullough - Clerk

Bloomington - March 9th 1853 -

Certificate of Publication

This may certify that the annexed notice has been pub-

-lished in four consecutive numbers of the "Bloomington In-
-telligencer" a public newspaper printed and published
weekly in Bloomington, McLean County, State of Illinois,
the first publication being on the 9th day of March A.D. 1853
C.P. Merriman - Publisher "

And afterwards to wit at the April Term of said Court
in the year of our Lord One thousand eight hundred
and fifty three the following Order was made, to wit:
on the thirteenth day of April aforesaid -

"Alfred Cooper, Benton F. Anderson
and Franklin Cooper

vs.

John E. McClun, George W. Sanford
Adam Booth, William H. Brown,
Isaac C. Jones jr. W^m H. Howell,
& Anderson & Shultz, Partners

Bill to Enforce
an Express trust

And now come the Complainants by
their Solicitors and pray the Court here that the Defendants
may be ruled to answer in sixty days - And it appearing
to the Court here that said Defendant John E. McClun
has been regularly served with process herein, and that
Publication has been duly made against said non-resident
defendants, It is therefore considered that said defen-
-dants answer the said Complainants Bill of Com-
-plaint within sixty days, And that this cause be
continued to the next term of this Court."

And thereupon afterwards to wit, on the seventeenth
day of September in the year of our Lord One thousand

eight hundred and fifty three, the said Defendant John E. Mc. Clun, by Gridley and Wickizer, his Solicitors, filed with the Clerk of the said Circuit Court, a demurrer to the said Complainants Bill, in the words and figures following to wit:

"The Demurrer of John E. Mc. Clun, one of the Defendants, to the Bill of Cooper Henderson & Co.

This Defendant by protestation not confessing or acknowledging all or any of the matters and things in the said Complainants Bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, does demur to the said Bill and for cause of demurrer shows that the complainants have not by their said Bill made such case as entitles them in a Court of Equity to any discovery from said defendant or any of them, or to any relief against him or them as to the matters contained in the said Bill, or any of such matters, and that any discovery which can be made by this Defendant or any of defendants in the said Bill touching the matters complained of in the said Bill or any of them, cannot be of any avail to the said Complainants for any of the purposes for which a discovery is sought against this defendant by the said Bill, nor to entitle the said complainants to any relief in this Court touching any of the matters therein complained of - Wherefore and for divers other good causes of demurrer appearing in the said Bill this defendant does demur thereto, and he

prays the judgment of this Honorable Court whether he should be compelled to make any further or other answer to the said Bill - And he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained - "

"And the Complainants join in demurrer -

J.C. Walker for Complainant"

And thereupon afterwards at the September Term of said Circuit in the year of our Lord One thousand eight hundred and fifty three, to wit on the seventeenth day of September aforesaid the following further order was made, to wit:

" Alfred Cooper, Benton F. Henderson and Franklin Coopers, Partners	Bill to enforce
vs.	an
John E. Mc. Clun, George W. Sandford Adam Booth, William H. Brown, Isaac C. Jones, jr. William H. Howell and Anderson & Shultz.	Express trust

This day Come the Defendant Mc. Clun, by Guidley and Wickizer, his Solicitors, and files with the Clerk of the Court his demurrer to the Bill of the said Complainants herein - And the said Complainants by J.C. Walker, having joined in the said demurrer, move the Court here to overrule the same - And the Court being fully advised in the premises, It is considered that the Bill of the said Complainants is good and sufficient in Equity to be answered unto

and the demurrer of the said Defendant ought not to be sustained to the said Bill."

And thereupon afterwards to wit, on the twenty second day of September aforesaid, of the Term of September aforesaid, the said Defendant John E. Mc. Clun filed with the Clerk of said Court his answer to the said Bill, in the words and figures following, to wit:

"The separate answer of John E. Mc. Clun, one of the defendants to the Bill of Complaint of Cooper Henderson & Co.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections of the said Complainants said Bill of Complaint contained for answer thereunto or unto so much and such parts thereof as this Defendant is advised is or are material or necessary for him to make answer unto, This defendant answering saith, - That he admits it to be true that on the 29th Oct. 1851, Adam Booth one of the firm of G. W. Sanford & Co. placed in the hands of this defendant a note on W. B. Newman & Co. for \$10. due four months from date, which note defendant was to hold as collateral security for a debt due by said Sanford & Co. to Anderson & Shultz of Philadelphia and others, and when said note should be collected to be paid by defendant to Anderson & Shultz of Philadelphia, and others that W. Booth should designate. Deft. further answering admits that on the 10th december

1851, said Booth directed Drft. to pay the avails of said N. B. Newman & Co's note when collected, first, the whole of the claim of Anderson & Shouttz of Philadelphia against said G. W. Sandford & Co. - And secondly, the claim of Cooper, Henderson & Co. of Philadelphia against said G. W. Sandford & Co. supposed by said Booth to be \$360. - After which Defendant was directed to pay the whole of the balance of the avails of said N. B. Newman & Co's note to W. H. Brown & Co. of Philadelphia All of which more fully appears by the Records on the Common Law side of this Court in the case of W. H. Brown & Co. against G. W. Sandford & Co. -

Defendant further says that on 24th February 1852, W. H. Brown & Co. sued out a writ of Attachment in this Court against George W. Sandford & Co., and that on the 25th of same month & year a writ of Garnishment was served on this Defendant by the Sheriff of this County in said case of attachment, by which garnishment this defendant was required to answer at the April Term of this Court 1852 certain interrogatories touching moneys & effects in defendant's hands belonging to said G. W. Sandford & Co. -

And further answering says that on 17th March 1852 Peter Reed sued out a writ of Attachment against G. W. Sandford & Co., and garnished this defendant to answer certain interrogatories touching the moneys & effects in Drft's hands belonging to said G. W. Sandford & Co. - And defendant further says that he appears

ed at the Sept. Term of this Court 1852, & answered
on oath fully and truly all the interrogatories propounded
to him by said W. H. Brown & Co. and said Peter Weed
touching the money & effects in defts hands belonging
to said G. W. Sandford & Co. All of which fully appears
by the record of said cases on the Common Law side
of this Court. And defendant further says, that upon
the said answers of this defendant in said garnish-
ment, It was ordered and adjudged by the Court that
this defendant should pay over to said W. H. Brown & Co.
& Peter Weed, the money in Defts. hands belonging to
said G. W. Sandford & Co., amounting to \$324. - And
this Court gave judgment therefor against Deft., And
Deft. further says that in pursuance of said judgment
Deft paid the said money of \$324. - All of which
fully appears by the records of those cases in this Court -
And deft. by way of explanation further says that before the
aforesaid Newman note was placed in deft's hands, Deft.
had a note in favor of Anderson & Shoultz on said
G. W. Sandford & Co. for about \$211. dollars for collection,
and that said Newman note was placed in Defts. hands
to secure payment of said note specially, and that before
Deft. was garnished in either of the above named cases
Deft. paid from the avails of said Newman's note the said
claim of Anderson & Shoultz.

Subscribed & sworn to before me } J. E. W. Clun
this 22^d day of Sept. 1853 - }

W. M. Cullough - Clk. - by Jno. N. Lawrence - Dpty "

and thereupon the said Complainants by their Solicitor afterwards to wit on the said twenty second day of September, filed their Replication to the answer of the said defendant, in the words and figures following to wit:

"The Replication of Cooper, Henderson & Co., Complainants to the answer of John E. W. Clum -

These repliants saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto say that they will aver and prove their said Bill to be true, certain and sufficient in the Law to be answered unto, and that said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants - without this that any other matter or thing whatsoever in the said answer contained material or effectual in the Law to be replied unto, confessed and avoided traversed or denied, is true - And all which matters and things these repliants are & will be ready to aver and prove as this Honorable Court shall direct - And humbly pray as in their said Bill they have already prayed -

J. C. Walker - for complainants "

And thereupon afterwards to wit, on the said twenty second day of September aforesaid, at the said September Term of said Court, the following further Order was had and made, to wit:

"Alfred Cooper, Benton F. Henderson & Franklin Cooper Partners under the name and style of Cooper, Henderson & Co.

versus

John E. Mc. Clun, George W. Sandford,	Bill to enforce an Express Trust
Adam Broth, William H. Brown,	
Enos C. Jones jr. William H. Howell	
and Anderson & Shultz	

This day came again the said defendant Mc. Clun, by his Solicitors and prays leave of the Court here that he may answer over to the Bill of Complaint of the said Complainants, and it is granted him. And thereupon the said Defendant by his Solicitors aforesaid files herein his answer to the said Bill of Complaint, And the said Complainants likewise come and file their replication to the answer of the said Defendant - And the said parties submit the matters in issue between them to the Court here, But because the Court here is not yet advised what judgment to give of and upon the premises, a day is given to the parties aforesaid, before the Court here, on the first day of the next term hereof to hear judgment thereon, for that the Court here is not yet advised thereof."

And thereupon afterwards to wit, at the April Term of the said Circuit Court in the year of our Lord One thousand eight hundred and fifty four, to wit, on the twenty first day of April aforesaid, the following final decree was entered in the premises, to wit:

"Alfred Cooper, Benton F. Anderson
and Franklin Cooper, under the

name and style of Cooper, Stenderson & Co. Bill in Chancery
vs.

John E. M. Clun, George W. Sandford, To Enforce a
Adam Booth, William H. Brown, Trust
Isaac C. Jones jr., William H. Howell,
and Anderson & Shultz

This cause at the last term of this Court having come on for trial on Bill of Complaints, answer of John E. M. Clun and the Replication thereto, and the Complainants having offered in evidence without objection the note referred to in said Bill given by G. W. Sandford & Co. to them 28th March 1851 for Three hundred and seventy eight dollars and sixty eight cents, due six months after date, and having further offered in evidence without objection the receipt referred to in said Bill as Exhibit "C" rested their case - There was no evidence of what Mr. Booth, to whom said Mr. Clun had given said receipt, had done with said receipt -

Thereupon the said Defendants proved by the production of the Records of the M. Lean Circuit Court, that William H. Brown, Isaac C. Jones junior, and William H. Howell, partners in trade under the name and firm of William H. Brown & Co., and Peter Weed regularly sued out writs of attachment, on the Common Law side of the M. Lean County Circuit Court, at the times stated in the answer of the said Mr. Clun, on which writs judgments were regularly had, - that writs of garnishment

in said suits were regularly served on said W. Clun,
and the proceedings in said suits were properly had,
until the September Term 1852 of the said W. Dean
Court, the said W. Clun filed his answer in each of
said suits, one of which answers (the other being alike)
was as follows:

W^m H. Brown Isaac C. Jones

and W^m H. Howell

vs.

George W. Sandford & Adam Booth

In the W. Dean Circuit

Court Oct. Term 1852

In Attachment

The answer of John E.

W. Clun to the interrogatories filed against him as Garnisher
in the above entitled Cause -

This respondent answering says that on the 29th day of
October 1851, Adam Booth placed in this Respondent's hands
for Collection one note for \$910. on W. B. Newman & Co. for
which he gave the following receipt, to wit:

Received, Bloomington Oct 29 1851 of Adam Booth
1 note of hand on W. B. Newman & Co. dated Sept. 1st 1851,
four months from date and calling for \$910. which I am
to hold as collateral security for a debt due by said Booth
& Sandford & Co. to Anderson & Shultz & others, and when
paid I am to apply the same to the payment of the said
Anderson & Shultz of Philadelphia & others that W. Booth
may designate - (Signed) J. E. W. Clun -

But afterwards to wit on the 10th day of Dec. 1851 the
following endorsement was made upon said Receipt
to wit:

In accordance with the instructions of Mr. Booth now given me by him, I will pay from the proceeds of the within note, on W. B. Newman & Co. when the same is collected as follows, viz: I will first pay the whole of the debt due to Anderson & Shultz of Philadelphia; Second I will pay a claim due by Sandford & Co. to Cooper, Anderson & Co. of Philadelphia supposed by Mr. Booth to be about 360 dollars, after which I will pay the whole of the balance of the proceeds of said note to W. H. Brown & Co. of Philadelphia.- Signed - J. E. M. Clun.

That the said Cooper, Anderson & Co. in the said indorsement on the said receipt was intended for Cooper Anderson & Co., That with the exception of the said mistake the said receipt and indorsement contain a true and correct statement of the terms, conditions and undertakings upon which the said note was placed in this respondent's hands for collection, and upon which this respondent took the same; that this respondent has collected the money on said note, and that all the money after deducting expenses for collection except the sum of \$324.00 has been paid to said William H. Brown and Anderson & Shultz, that the said \$324. is now in the hands of this respondent. That this respondent has no other moneys or effects of any sort belonging to the said Adam Booth, that this respondent is garnished in three other cases at the suit of Peter Wed against the above defendants, And is required to make this answer in each - And now having fully answered this respondent

by the Clerk."

And thereupon afterwards to wit, on the fourth day of May in the year of our Lord One thousand eight hundred and fifty four, the said Cooper, Henderson & Co. by their Solicitor J.C. Walker, filed a Power of Attorney in the words and figures following, to wit:

"We members of the firm of Cooper, Henderson & Co. hereby authorize & empower J.C. Walker to sign our names to an appeal Bond required by the W. Lean Circuit Court of the State of Illinois, upon granting to us an appeal from the Decree rendered in the suit in Chancery pending in said Court wherein we were Complainants, and John E. Mc. Clun & others, Defendants, hereby ratifying whatever our said Attorney may do or have done in the premises -

Alfred Cooper

B.F. Henderson

J.F. Cooper

L.S.
L.S.
L.S.

State of Pennsylvania

County of Philadelphia

ss. Be it remembered that on this 28th day of April A.D. 1854 before me David B. Birney, a Commissioner of the State of Illinois for the County of Philadelphia & State of Pennsylvania, personally appeared Alfred Cooper, B.F. Henderson, and J.F. Cooper, known to me as the individuals composing the firm of Cooper, Henderson & Co., and acknowledged that they Executed the foregoing instrument of writing as their act and deed -

Witness my hand & official seal the day & year aforesaid - Done at my office in said

L.S.

prays to be hence dismissed -

Subscribed & sworn to before me Oct. 2^d 1853. J. E. M^r. Clun
W^m. M^r. Cullough. Cl. pr. E. H. Wood
Dpt. Cl.

And that thereupon the Court gave Judgment against said M^r. Clun in favor of said attaching Creditors (apportioning the amounts to their respective judgments) for the sum of (\$324) Three hundred and twenty four dollars; there being no evidence before said Court but the answer of said M^r. Clun. And the said Defendant further proved that he had paid said judgments against him. And that he had no moneys in his hands belonging to said Sandford & Co., or any of their Creditors, which was all the evidence in this Cause.

And the said Cause having been submitted on the foregoing evidence, and the arguments of Counsel, and the Court having taken said Cause under advisement, and having considered the Cause, Now at this day

It is Ordered by the Court that said Bill be dismissed, and that said John E. M^r. Clun recover of and from the said Complainants his costs and charges by him about his defence in this behalf expended, And that he have Execution therefor.

Thereafterwards the said Complainants prayed an appeal to the Supreme Court sitting at Ottawa, which is granted on the Complainants (within sixty days from the rising of this Court) filing Bond, with the Clerk of this Court in the penalty of Two hundred dollars, conditioned as the Law directs, with Security to be approved

by the Clerk."

And thereupon afterwards to wit, on the fourth day of May in the year of our Lord One thousand eight hundred and fifty four, the said Cooper, Henderson & Co. by their Solicitor J.C. Walker, filed a Power of Attorney in the words and figures following, to wit:

"We members of the firm of Cooper, Henderson & Co. hereby authorize & empower J.C. Walker to sign our names to an appeal Bond required by the W. Lean Circuit Court of the State of Illinois, upon granting to us an appeal from the Decree rendered in the suit in Chancery pending in said Court wherein we were Complainants, and John E. Mc. Clun & others, Defendants, hereby ratifying whatever our said Attorney may do or have done in the premises -

Alfred Cooper	L. S.
B. F. Henderson	L. S.
J. F. Cooper	L. S.

State of Pennsylvania 
County of Philadelphia ^{ss.} Be it remembered that on this 28th day of April A.D. 1854 before me David B. Birney, a Commissioner of the State of Illinois for the County of Philadelphia & State of Pennsylvania, personally appeared Alfred Cooper, B. F. Henderson, and J. F. Cooper, known to me as the individuals composing the firm of Cooper, Henderson & Co., and acknowledged that they Executed the foregoing instrument of writing as their act and deed -

L. S. Witness my hand & official seal the day & year aforesaid - Done at my office in said

County of Philadelphia -

David B. Birney

A Commissioner of the State of Illinois

For the County of Philadelphia -

And thereupon afterwards to wit: on said fourth day of May the said J. C. Walker, Solicitor for the said Cooper, Henderson & Co. filed in the Clerk's Office of the said Circuit Court, an Appeal Bond in the words and figures following, to wit:

"Know all men by these Presents, that we, Alfred Cooper Benton F. Henderson and Franklin Cooper, Partners under the style of Cooper, Henderson & Co., as Principals and Henry H. Zell and James C. Walker as Securities are held and firmly bound unto John E. McClun, George W. Sandford Adam Booth, William H. Brown, James C. Jones jr. William H. Howell and Anderson & Shultz, in the penal sum of Two hundred dollars current money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs, Executors and administrators jointly, severally and firmly by these presents - witness our hands and seals this 4th day of May A.D. 1854

The condition of the above obligation is such that whereas that John E. McClun George W. Sandford, Adam Booth William H. Brown, James C. Jones jr. William H. Howell and Anderson & Shultz, on the 21st day of April A.D. 1854 in the Circuit Court in and for McLean County & State of Illinois, did recover a Decree against the said Alfred Cooper, Benton F. Henderson, & Franklin Cooper, that

their Bill in Chancery against them be dismissed & that they recover of said Alfred Cooper, Benton F. Henderson & Franklin Cooper the costs of the suit, from which decree of the said Circuit Court the said Alfred Cooper, Benton F. Henderson & Franklin Cooper have prayed for and obtained an appeal to the Supreme Court of said State.

Now if the said Alfred Cooper, Benton F. Henderson and Franklin Cooper shall duly prosecute their said appeal with effect, and moreover pay the costs rendered or to be rendered against them in case the said Decree shall be affirmed in the Supreme Court, then the above obligation to be void, otherwise to remain in full force and effect.

Taken and entered
into before me, & by me
approved at my office
this 4th day of May
A.D. 1854 -

W^m M^c Cullough - Clerk
by his Deputy

William Ward Orme

Alfred F. Cooper L.S.

per J. C. Walker - Attorney in fact

Benton F. Henderson L.S.

per J. C. Walker - Attorney in fact

Franklin Cooper L.S.

per J. C. Walker - Attorney in fact

K. H. Fell L.S.

J. C. Walker L.S. "

State of Illinois SS.
McLean County SS.

I, William M^c Cullough, Clerk of
the Circuit Court, in and for said County and State
do hereby Certify that the foregoing is a full, true
and complete transcript of the Record in the above

entitled Cause, taken from the Papers on file in said Cause in my office, and the Entries of Record in said Cause, as the same appear from the Records of said Circuit Court in my office -

In Testimony of all which, I have hereunto set my hand and affixed the seal of our said Circuit Court, at Bloomington, this eighteenth day of May, in the year of our Lord One thousand eight hundred and fifty four -

William M. Cullough - Clerk
by his Deputy
William Ward Orme

Bloomington - May 18th 1854
Received of James C. Walker Esq. Ten dollars and fifty cents in full of fee on this Record -

W. M. Cullough - Clerk
by his Deputy William Ward Orme

State of Illinois, } To June Term
Supreme Court, } A D 1857

Alfred Cooper
Benton & Henderson } Appellants
Franklin Cooper }

On appeal from decree
of the Circuit Court
of April Term 1854
vs
John E. McClun George
W. Sandford & Adam Booth
William H. Brown Isaac C. James Jr.
William Hamelt and
Anderson & Shultz } Appellee

The Appellants complainants below
assign for error herein that
that the Circuit Court Error & herein
in its decree rendered at the April
term 1854 ~~to their~~ prejudice
1st In dismissing their Bill
in chancery with Cost
2nd In not sustaining their Bill in
chancery and thereon decreeing
in their favor the Equitable
relief prayed for
3rd In not adjusting the rights
of priority between the different
Crested que trusts and in not marshal-
ling the assets of Sandford & Booth

on trust ^{funds} ~~reverted~~ by John E. McElhen
under the assignment of ~~transference~~
according to the respective rights of
the General parties, and in not enforcing
the Express trust of John E. McElhen
according to the terms of it,

4th In not decreeing that said John
E. McElhen should settle his account as
trustee upon Equitable principles and
^{pay} their note and interest against Sandford
& Booth,

5th The verities of the decree ~~and~~
are not sustained by the record
or Evidence in the Cause

6th The decree is erroneous in
every respect to the prejudice
of the appellants, and should be
reversed, Wherefore a reversal
is prayed for

J. B. Walker for
appellants Cooper Henderson & Co

I do hereby enter myself security
for costs in this ~~Appeal~~ Appeal to the
Supreme Court and acknowledge myself
bound to pay or Cause to be paid all
costs which may accrue on the Appeal
either to the appellees or to any of the
Officers of this Court in pursuance of
the Laws of the State Dated May 22, 1854

J. B. Walker

And the said Defendants say that
in the Records & proceedings aforesaid
and in the Rendition of the Decree aforesaid
there is no Error & pray that the
decree may be affirmed

June 27th 1855.

A. M. Purple
for depts.

Ms.
McLean Circuit Court

Cooper, Anderson Co.

vs.

John E. McLean
et al.

Transcript of Record

Filed May 23. 1854.
J. McLean Clerk.

Filed May 7. 1855
J. McLean Clerk.

Jas. C. Walker - Comptroller.

Cooper Henderson & Co

v 3

Brief of
H. H. Counsel

John E. McClun & others

The right of a
~~Creditor~~ ^{Debtor} to prefer one creditor to
another by assignment or otherwise
is recognized in England and America
Bank of U.S. vs Huth 4 Ben Moral
Ry Rep 429 Hedrick vs Roberts
2nd Johnson Chy Rep 307 Hamell
vs Edgar 3 Swannson 417 and
authorities there cited The Courts
sa for from presuming such assignment
fraudulent - always presume they
are fair and bona fide made for
the benefit of all parties concerned and
always sustain and enforce them
unless they appear fraudulent on
their face or unless fraud is
alleged & proved in the execution
thereof The assent of the Creditors
is not necessary to such assignment
Stirralls vs Mumpord 4 Johnson
Chy Rep 528 Brown vs Mitterer
& al 2nd Garrison 559 Estorick
vs Gailand 5 Linn Rep 424 Bank
of U.S. vs Huth supra
An assignment may be made of
a part only of the debtors effects.

and this is no badge of fraud
& Levin Rep. 528 Point of the Creditors
having assented to the assignment
and transfer for their benefit
the assignment ~~and the assent~~ was
good and the acceptance of the
others will be presumed 5 Levin
Rep. 530. The answer of the
Trustee Melton and the proof
in this case show that the
dependants, Mill H Brown & Co and
Anderson & Shultz had accepted
and been paid their share of the
Trust funds under the assignment
and the Complainants being favored
Creditors and their assent and
acceptance consequently presumed
before they can be deprived of their
rights and abandonment or disclaim-
er on their part should be alleged
and affirmatively shown Bank
of U.S. vs Huth 4 Ben Manual 437
And Even though the goods are seized
in attachment or execution before
the trustee assents (he living at
a distance) the assignment is
held valid Mill H vs Franklin
1 Birney 302 Lippincott vs

Banker 2nd Binney 174 Where
part of the Creditors had accepted
the provisions of the assignment
the assent of the others was not
necessary to sustain the assign-
ment in their power—
And even though the assignment
were made pending a suit with the
intent to delay the plaintiff in Execution
the English Case ^{held} in Case of
Pytman vs Siston 3 Maccle &
Selwyn 371 that it was not
fraudulent within the Statute of
13 Eliz of which our Statute
of Frauds is a transcript
Personal property or debt, owing
and assignable and transmissible ac-
cording to the law of owners damick
Bank of U.S. vs Huth 4 Ben Massel
443 The registry act of Illinois
being similar to that of Ky does
not require that an assignment
or transfer of Chases in action
for the benefit of Creditors
should be recorded Bank of
U.S. vs Huth 4 Ben Massel 450
There is no such visible possession
of such claims or separation of

of the right from apparent
ownership, which is calculated
to deceive Creditors

It is insisted for the Plaintiff
in Error that the principle that
property or Chases in action
in the hands of an assignee
for the purpose of paying Creditors
cannot be reached ~~by~~
by garnishee process has
been settled by this Court in
the case of Kimball vs Mulhern
15 Ill Rep 205 The property
must be administered according
to the terms of the assignment
and if the assignee neglects or
refuses to carry out the trust
relief will be granted in a Court
of Equity. the jurisdiction of
which is fully asserted in the case
of Coates vs Woodworth 13 Ill Rep.
684 - and unless the answer
of the garnishee shows himself
chargeable he should be discharged
Pierce vs Bankston 12 Ill Rep 358
and will not be ^{by it} prejudiced if he
suffer an erroneous judgement
to be obtained against him. He

alone has a right to appeal &
if he do not but suffer the judgement
to stand he will be compelled to
pay it again May vs Baker
15 Illinois 89. A Court of
Law will recognize and protect
the rights of an assignee of a chose
in action whether the assignment
be good at Law or in Equity, only
Chapman vs Shattuck R 3 Gill
49. It was therefore the duty
of the Court to recognize & protect
the rights of the Complainant, in the
attachment suit referred to in the
answer of McClun - although their
right may have been only an
equitable one

But then it is insisted that as to
them the proceedings in that case
were absolutely void upon the
authority of Lawrence vs Sand
4 Gillman 360-361. in which
the Court say in an able opinion
by Justice Purple "that while on
"the one hand it cannot be questioned
"that where a party has paid money
"by compulsion of a Court of competent
"jurisdiction he will not be compelled

to pay "the same a second time yet it is
"Equally clear that no Court of Law
"Especially with the assent of the debtor
"has authority or power to
"Appropriate property of one
"to the payment of another debt"
In this case as in that "the
"Court had no jurisdiction over
"the person or rights of the Com-
"plainant, (below) No suit or proceed-
"ing had been instituted or was
"pending against them It was
"a matter in which if they had had
"actual notice of it they would
"have had no right to interfere
"either by way of objection interpleader
"Exception or Appeal There is
"no principle of justice or law
"which will thus deprive a man
"of his property without trial or
"notice It is not presumed that
"the judgment upon the garnishee
"process was rendered with a
"full knowledge of the facts. No
"Court would render such a judge-
"ment unless there was some mis-
"conception of the circumstances
"of the case" And as McClure

was the only party who could
except to or appeal from it
if he stands by and allows it
to be confirmed by such a
 lapse of time as will bar a
writ of Error he ought to
be held personally responsible
It is not shown that the Count
had any jurisdiction of the attachment
suits and for aught that appears
the proceedings in them may be
void in every respect. A judgment
relied on in bar must show on
its face that the Count had
jurisdiction 1 Binnely 25-

McClun might not have been
compelled to undertake the
trust but having actually
done so is bound to proceed &
execute the same with diligence
as if he were to receive a liberal
removal Smiltzer v. Skiles 3
Gill 529 Putger v. Lunet
2 Salmonsen 92 He was entitled
to compensation and commission
on the trust funds for renew-
ing and distributing the same

Bank of U.S. vs. Hutt 4 Ben
Monroe 439 Hendrick vs.
Rallins 2 Selinzen City Rep.
313 - and this with his
express undertaking was
sufficient to support the
assignment Bank of U.S. vs.
Hutt 4 Ben Monroe 436
and he was therefore bound
faithfully to execute the trust
and notify the creditors of the
assignment being made in their favor and
of an attempt to attach the same by other
parties and he is therefore personally
responsible for his negligence.

The omission, failures and negligence
of the trustee do not invalidate the
assignment or furnish any evidence
of bad faith, Bank of U.S. vs. Hutt
4 Ben Monroe 441. Berry vs. Hamilton
10 Ben Monroe 135 - A trustee to
whom a note was transferred failed to
bring suit for its collection at
the first term of the court by which
it was lost - was held personally
responsible in equity to the Cestui
que trust. Cross vs. Petree 10 Ben
Monroe 413

Mr. J. C. Walker

1855

To Wm Osman,

Dr

July 5. To printing abstract of Record in case of
Cooper, Henderson & Co vs Jas E. McClure &
others ————— \$6.00

Rec'd Payment,

Ottawa, July 6, 1855.

Wm Osman

McLellan has yet a right to present
a writ of Error to the judgment,
in the garnishee suits ~~The Court~~ and
nevertheless have the money that he
has paid - The Complainants have
no other relief except they obtain
it in this case and it does
seem to me that it would be
a great hardship upon them if they
are afforded no redress of their
rights - The decree absolutely
dismissing their bill even bars
them from ever suing ~~again~~ ~~the~~ on
the original note -

The decree seems to be contrary
to equity in every respect, and should
be reversed

H. Walker
for Cooper Henderson & Co
Plff in Error

In this case the plaintiffs in error
move the court to order that expense
of printing the abstracts paid by the
Plff Counsel shall be taxed in the bill of
Cost See Dagle vs Leas 4 Sumner 268

H. Walker
atty for plff

45
Cooper Pentagon 960

23 Brief of
23 ppp in color

Letter E M. C. L. M. S. S.

7th July 1855
L. C. L. M. S. S.

A. M. W. M. S.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of *McLean* — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *McLean* county, before the Judge thereof, between *Alfred Cooper, Benton F. Henderson & Franklin Cooper, Complainants* — and *John E. McClure, George W. Sandford, Adam Booth, William H. Brown, James C. Jones Jr., William H. Howell, & Henderson & Shultz* —

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

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

defendants —

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 *2nd* Monday in *June* next, to hear the records 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 *defendants* —

notice, together with this writ.

WITNESS,

John S. Catron
the Hon. *Samuel H. Treat* Ch. of Justice of our said Court, and the Seal thereof, at Ottawa, this *7th* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*five*.

L. Leland

Clerk of the Supreme Court.

45-
Alfred Cooper et al.

John E. Alvelum et al.

Sci. Pa.

Fido May 18. 1855.
A. Deland Clk.

John E. Alvelum et al.
William County
by J. Moore & Co.

Exhibited by reading to the within named John
E. Alvelum May 12. 1855 the other defendants
not found in my County
do service return to Court 3
173

Alfred Cooper }
 vs }
 John E. McLean }
 vs }

Pris

Point

When a party has been compelled
 to pay money by a court of
 competent jurisdiction - no court
 will compel him to pay it a second
 time.

3 Term Rep 127. 128. 130

Holmes vs Renshaw 4 John. Ch. R. 467

Embree & Collins vs Hanna 5 n Rep 101

Holmes vs Renshaw 20 n n 229

Andrews vs Kenner 4 Cowen n 521

Hull vs Blake 13 Noy 153

Laurance vs Lane 4 Will 360. 354

3 Gil R 49. 529 12 Lys R 358 If answer does not show debt, should be directed

13 Lys R 654 Equity has jurisdiction

15 Lys R. 89. 205 Interest not attachable

See also 4 B. Monroe 429. 437. 443. 450

10 B. Monroe 135. 413 2 John Ch R 307. 528. 92 or 2 John R 92

3 Term R 417

2 Gallis 559

5 Term R 424

8 Term " 528

1 Brin 25. 502

2 do 174

3 Noy & Solw R 371 Rep v Lister

Alfred Cooper, Esq
John, Esq. W. C. C.

Prof

Alfred Cooper, Benton
S. Henderson & Franklin
Cooper Portman firm
Cooper Henderson & Co

Appellant

Appeal
from McLean

John E. McLean, Geo. W. Sandford
Adam Booth, William H. Brown
Space, C. Jones Jr, William H
Howard & Anderson & Shultz

Appellee

• Bill filed 5 March 1853.

^{Sandford & Booth}
On 28th March 1851, Portman made note at 6 months
\$378.68 payable to Compt^r at Bank of Missouri, St Louis
with Exchange. Only Presented & Protested for non pay^{mt}

On 29th Oct 1851 Booth one of firm transferred to
John E. McLean a note on N.B. Newman & Co
dated 1. Sept 1851 - at 4 months \$910.00 - To secure
Compliments & other debts. For which McLean gave
receipt as follows.

" Received Bloomington Oct. 29. 1851 of Adam
Booth 1 note of hand on N.B. Newman & Co dated
Sept 1. 1851, four months from date and calling
for \$910, which I am to hold as collateral security
for a debt due by said Booth & Sandford & Co to Shultz
& others & when paid I am to apply the same to the
payment of said Anderson & Shultz of Philadelphia
and others that Mr Booth may designate

J. E. McLean

On 10th Dec. 1851. Booth directed proceeds of note to be applied
to pay 1st Geo. W. Sandford's debt to Anderson & Shultz -

2. Complainants note against J. M. Sandford & Co —
Balance to W. H. Brown & Co — McClure agreed
to this by indorsement on Receipt as follows.

" In accordance with the instruction of Mr Booth
now given me by him, I will pay from the proceeds
of the within described note on W. H. Brown & Co
when the same is collected as follows (viz) I
will first pay the whole of the debt due to
Anderson & Shultz of Philadelphia; Secondly I
will pay a claim due by Sandford & Co to Cooper
Henderson & Co (Mitten Cooper Anderson & Co this, mistake)
of Philadelphia supposed by Mr Booth to be about
\$360; after which I will pay the whole
Balance to W. H. Brown & Co of Philadelphia
Dec. 10th 1851. J. E. McClure,

McClure was to pay Anderson & Shultz — 1st. Complainants
next. McClure collected all the note with the int
from 1st Sept 1851. — Shultz became a trustee
held proceeds of the note in trust to pay Anderson
& Shultz (\$200.00) 2. Complainants.

Indented note to McClure in 1851. 2 various
other times I demanded payment — McClure refused
to pay. Alledges he has paid to W. H. Brown & Co
& others who had a right to the money. Contrary to the
agreement — Personally Responsible &

J. M. Sandford & Co Non residents & insolvent
and Compts had no other means of making their
debt.

Prayer — That trust be executed and
McClure compelled to pay the note —

Answer of McClure.

Admits the deposit of the note of Newmou & Co as collateral security for debt due Soudford & Co Anderson & Shultz others to be paid when collected as charged in the Bill.

On 10th Dec 1851 Boothe deputed the Payment as charged in the Bill — which he agreed to do —

On 24th February 1852 Wm H Brown & Co sued out an attachment in this Court re George W. Soudford & Co. Garnish process served on this debt in said Court. So answer Apr Term 1852.

On 17th March 1852. Peter Wells sued out an attachment re Soudford & Co — Served on debt,

Debt. appeared and answered the interrogatories

Upon such answer Court adjudged that Defendant should pay over money in his hands belonging to G. W. Soudford & Co \$324. & gave Judgment against Defendant therefor.

Before he was garnished, he paid from avails of promissory note \$211.00 amount of Anderson & Shultz Claim.

Defendants answer to Garnish shows that he had paid all the money to Brown & Anderson & Shultz under the Judgment of the Court against him —
Rep. filed. No Evidence except of Judge's

Will be dismissed

Errors assigned

1. Dismissing Bill
2. Not Sustaining Bill & Granting Relief
3. Not adjusting Rights of Priority between Certain gu trusts
& Not marshalling assets of Sanford & Booth on trust
fund received by McClean - Not enforcing Express trust
4. Not decreeing that John E. McClean should settle his
account as Trustee on Equitable principles & pay
them their Note & Interest to Sanford & Booth

5. The Merits of decree not sustained by the Records or Evidence
in the case

6. Decree erroneous in every respect. Should be reversed
W. C. Wright for Appellee

Alfred Cooper Esq
John E. McClean
Esq
Attorney
(45)