

13147

No. _____

Supreme Court of Illinois

Wood et al

vs.

Goss et al

71641  7

63
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 4.

Prepared
Ward
vs
Goss

1860

13144

STATE OF ILLINOIS, SS. . . . IN THE SUPREME COURT AT OTTAWA.

OF THE APRIL TERM, A. D. 1859.

MERRITT D. WOOD & PATRICK W. DUNNE,

vs.

GEORGE GOSS, MOSES M. JACKMAN,
AND RANSOM GARDNER.

ERROR TO
PEORIA CIRCUIT COURT.

BRIEF OF PLAINTIFFS ON DEMURRER TO PLEA OF RELEASE OF ERRORS.

1. The release pleaded, even it be otherwise sufficient, extends only to work, &c., on the Peoria & Bureau Valley Railroad and actions therefor, yet no such work is specified in the declaration or other pleading of the plaintiffs. And if the words of release were not expressly confined to the work aforesaid, the law would so restrict them.

Bac. Abdg Release A, p. 247. I. p. 283 K, pp. 289, 290, 291, and cases cited.
Saunders Plead. and Ev. Vol. 2 Pt. 2, pp. 759, 761.

2. But a release of all actions does not bar a writ of error.

Bac. Abdg. Release I. 2 p. 287, citing.
2 Inst. 40. Yelv. 209. Co. Lit. 288.

3. But this release is not made as the deed of the firm of Wood & Dunne, but of said Wood only, and being not a negotiable instrument, but a writing under seal, it applies to Wood only, and does not bind the firm.

Story on Partnership, Sec. 102, 102a and authorities cited.
James v. Bostwick, Wright's Ohio R. 142.
Button and al. v. Hampson Ibid. 93.

BRIEF OF PLAINTIFFS ON ERRORS ASSIGNED.

1. The non-residence of "the plaintiff or person for whose use the action was commenced," is not sufficiently shown by the affidavit of Chester Warner, nor otherwise.

Statute of Costs, Sec. 1, 2.

2. The court below erred in dismissing the action. The whole *object of the statute* was satisfied by the residence of the plaintiff Dunne within the jurisdiction of the court, and subject to its process. It is not pretended that he was not "able to pay the costs of suit."

Statute of Costs, Sec. 1, 2.
Thulman and al v. Barbour and als. 5 Indiana R. (3 Porter,) 178.
Sedgwick Statutory and Constitutional Law, 229.

3. But if sufficient cause for the dismissal of the suit were shown, the judgment upon such dismissal should have been against the attorneys commencing the action, and not against the plaintiffs.

Statute of Costs, Sec. 2.

CHARLES C. BONNEY,
of Counsel for Plaintiff in Error.

4-63

In the Supreme Court

Merrett D. Wood et al

v.

George Goss et al

Error to Peoria Circuit Court

Brief of Plaintiffs

Filed Apr 18, 1860

L. L. Linnell
Clerk

State of Illinois *set*

In the Supreme Court
at Ottawa

Merritt D. Wood &
Patrick H. Dunn

George Goff
Moses W. Jackman &
Ransom Gardner

Error to Peoria
Circuit Court

And the said Patrick
H. Dunn by Charles C. Donney
his attorney moves the said Supreme
Court here to set aside or strike
from the files of this court
the said plea of the said
defendants, for that the same
is insufficient in law and
fraudulent in fact as
appears by the affidavit of
the said Patrick H. Dunn
in this behalf on file herein,
and thereupon to reverse the judgment
aforesaid, for the errors above
= assigned &c.

Charles C. Donney
att'y for P & in Error.

4 # 5

Hood et al v Goss et al

Motion to set
aside plea &c

Filed April 20. 1858
L. Leland
Clk.

State of Illinois

In the Supreme Court at Ottawa

Merritt D. Wood &
Patrick W. Dunn

vs
George Ross
Moses W. Sackman &
Hanson Gardner

Error to Peoria Circuit Court

State of Illinois

County of Peoria ss.

The above named Patrick W. Dunn being first duly sworn upon his oath says, that: the plea of release herein pleaded by the above-named defendants is false and fraudulent as against this affiant in this town; that this suit was commenced and prosecuted both in the said Circuit Court, and in this the said Supreme Court, at the sole proper instance, cost and expense of this affiant; that before the commencement of said suit in said Circuit Court, the business work and labor done by this affiant and said Merritt D. Wood for said defendants, and to recover the value of which, said suit was brought, was entirely completed; that said Wood had become and was a non-resident of this State of Illinois; that said Wood quit said business work and labor before the same was finished, and left the same to be completed by this affiant, and that at the time of commencing said suit there was not, nor

since has been any partnership existing between said Word and this affiant; that said Word was made a co-plaintiff in said suit by this affiant for the sole purpose of preventing said defendants from pleading his non-joinder in abatement; that as this affiant verily believes there is justly due from said defendants to said Word and this affiant the sum (\$2,000) Two Thousand Two Hundred and Sixty Two ²²/₁₀₀ Dollars or thereabouts. of which if recovered the said Word would not be equitably entitled to more than the sum of Five Hundred and Seventy Eight ⁸⁸/₁₀₀ Dollars (\$578 ⁸⁸/₁₀₀) or thereabouts after paying expenses and liabilities; that this affiant verily believes said Word when he left said work, and removed from this state had no knowledge of the state of the accounts between this affiant and himself, or of the amount due from said defendants, that as this affiant verily believes said Word is insolvent, and has no property subject to any process of law, that as this affiant verily believes said Word abandoned said work, and left this state for the purpose of avoiding liabilities incurred by this affiant and said Word, and to leave this affiant to bear alone the burden of this work and settlement with said defendants; that as this affiant verily believes, said defendants had at the time of the date of the release mentioned in their said plea, and for a long time theretofore had had through said Messrs W. Jackson and the Hon. Oliver W. Powell their Attorney full knowledge

or information of the facts herein above set forth,
and having such knowledge or information procure
and obtained from said Court the said release
above mentioned for the purpose and with the design
of cheating, wronging and defrauding this affiant
out of the money fairly due him upon and for the
causes of action declared on in the Court below,
that the obtaining and pleading of such release
by said defendants, is a gross fraud against this affiant
that if said plea be allowed, and said release
sustained, this affiant will be thereby cheated and
defrauded out of the ~~said~~ sum of (\$1183 ^{79/100})
Sixteen Hundred and Eighty Three ^{79/100} Dollars
or thereabouts; and that the plea aforesaid of said
defendants ought to be set aside or stricken from
the files by the said Supreme Court here, and
this affiant allowed to prosecute said suit
without regard thereto or hindrance thereby

And further this deponent saith not:

Subscribed and Sworn

to before me this 15th } Patrick Wm. Gurnee
day of April 1858 }

Army Inter
Notary Public



Supreme Court

~~11~~ 5

Wood & Drunne

— v —

Goss, Jackson & Co.

Affidavit

Filed April 20, 1878
H. Leland
Clerk



State of Illinois } In the Supreme Court
Ottawa Term 1860
Wood & Durme
v.
Goff, Jackson & Co. } Error to Peoria

Suggestions of plaintiffs in support of motion for judgment on verdict; and against allowing defendants to move in arrest.

- 1 No objection is made to the leave asked to withdraw the motion for judgment non obstante verdicto, and so, of course, that motion will be allowed.
- 2 By entering the motion for judgment non obstante, the defendants admitted a sufficient verdict to warrant a judgment, and thereby effectively waived any right to move in arrest.

3. If a motion in arrest of judgment on the verdict, could have been made at all, it should have been in the court below. No such motion was made there, and ought not to be entertained here.
4. On withdrawing the motion for judgment non obstante the case will stand upon the motion for judgment on the finding of the jury: and no sufficient cause to the contrary appearing, this motion will be allowed of course.
5. It would seem from the suggestions filed by the defendants, that they had forgotten the fact, that this court deter-
mined on the demurrer
to the replication of fraud,
that if the replication, ~~is~~ ~~was~~
should be found true in fact,
the release was no bar. The jury have so found, never-
theless the defendants come

again, and allege, against the decision of the court on that demurrer, that the release is a bar, notwithstanding the facts alleged in the replication.

We take it for granted that the court will adhere to its decision on this mere preliminary matter, and proceed to hear the errors assigned upon the record.

6. The defendants suggest that no one should take advantage of his own wrong. Apply this rule to them, and they have no place in court.

7. The defendants, in their suggestions admit that the case of Blewster ~~vs~~ v. Mott & al, is against them, but they wish the court here to overrule that decision and adopt a new rule, not on any solemn argument, but on their mere suggestion - 4 Penn. 378.

8 The defendants cite Jones v. Yates
 9 Barnwell & Creswell 532 - but
 it is not in point, as the
 court will readily observe by noting
 that part of the opinion commen-
 -cing 18th line from top of page
 43 of 17th Common Law Reps.
 But the case of Henderson
 v. Wilde, 2 Camp. 561,
 is in point, and against
 the defendants.

9 If the fraudulent release be
 good against Wood, it is void
 not merely against Dunne,
 but against the firm.
 Story on Partnership Sec 128. 9th line.
 "There is no color for insisting on
 the ground of estoppel".
 Stainer v. Typer 3 Hill 281. 29th
 line from top.
 Story on Partnership Sec. 130. 131.
 are sweepingly against the posi-
 -tion assumed by the defendants.
 As the court will probably prefer
 to read ~~the firm from~~ the book
 rather than my manuscript,
 I forbear to make extracts.

10. In the case of Wallace v. Kelsall, 7 Meeson & Wells = by, cited by defendants, the court expressly say that they give no opinion on the question of fraud -

11. The very case of Horner & al, v. Hood, also cited by defendants, 11 Crashing 68, 18th line from top, 69, 16th line from top, shows, at least, that the law is not settled in favor of the defendants; and in that same case 70, 4th line from top, the point of the judgment is that the party acting with the dishonest partner, did so in good faith, without actual fraud and collusion with him!

12. The air of "injured innocence" with which the defendants, - coming into court as they do, convicted of fraud by the verdict of a jury, - close their suggestions, is an eloquent

reminder of the astonishing development of polite impudence in this fertile section of the confederacy—!

"Only this, and nothing more".

13. The plaintiffs therefore respectfully suggest that judgment ought to be given upon the finding of the jury according to their motion therefor and that the case ought now to be set down without further delay for hearing upon the errors assigned.

Charles C. Bornev

att'y
for plffs in error

4

Hood & al
v
Gop & als }

Suggestions of
Pff on Mo. for
judgment &
Crap motions

Filed Apr 21, 1865
L. Leland
Clerk

R.

State of Illinois, } ss.
COUNTY OF PEORIA,

In the Supreme Court, at Ottawa
Of the April Term, A. D. 1859

Merritt D. Wood &
Patrick W. Dunne
George Goss, vs. Moses M. Jackson
and Hanson Gardner

In Error to Peoria Circuit Court.

Demurred to _____

(Sleg.)

And the said plaintiffs as to the said plea of the said defendants by them above pleaded, ~~and severally as to each of the said pleas,~~ say that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude ~~them~~ the said plaintiffs from having or maintaining their aforesaid action ^{and writ of error} thereof against the said defendants: and that they the said plaintiffs are not bound by law to answer the same. And this they the said plaintiffs are ready to verify; wherefore by reason of the insufficiency of the said plea ~~and each of them~~ in this behalf, the said plaintiffs pray judgment and ~~that the judgment aforesaid for the errors aforesaid may be reversed &c.~~ ~~damages, by reason of the not performing of the said several promises and undertakings in the said declaration mentioned to be adjudged to h &c.~~

And the said plaintiffs state and show to the Court here the following special causes of demurrer to the said pleas ~~respectively~~, that is to say:

1. The release pleaded doth not extend to the said writ of error -
2. The release pleaded doth not extend to the causes of action mentioned in the declaration of the plaintiffs -
3. The release pleaded, is not executed as the deed of the firm of Wood & Dunne, but as the deed of said Wood only -

The said pleas ~~and each of them are~~ ^{is} otherwise uncertain, informal and insufficient &c.

Charles C. Bonney J.
Attorney for Plaintiff.

5 4

In the Supreme Court at
Ottawa

Meritt D. Wood Val.

vs.

George Goss Val.

Error to Peoria Circuit Court

Demurrer to Pleas.

Filed April 18 1859
L. Leland
clerk

Charles C. Bonney

Attorney for Plaintiff

4-63
Merrett D. Wood et al.
v.
George Goss et al.

Supreme Court
at Ottawa
April 1868 -

The opinion fully sustains the errors assigned, but the order entered affirms the judgment below. The mistake is in saying that the Circuit Court overruled the motion to dismiss. That motion was sustained, and the sustaining of it assigned for error. The last sentence of the opinion is: "There was therefore no error in overruling the motion, and the judgment of the Court below is affirmed."

The whole case will be made consistent and correct by so changing this sentence, as to state error in sustaining motion to dismiss, and reversal and remanding for that cause.

State of Illinois
In the Supreme Court at Ottawa
Of the April Term A.D. 1857
Merritt D. Wood &
Patrick W. Dunne
v.
George Goff,
Moses M. Jackman &
Ransom Gardner
Error to Peria
Circuit Court
"

Amended or Further Replication of Fraud

And the said Patrick W. Dunne,
by Charles C. Boney his attorney,
for replication to the said plea of
the said defendants, says precludi
now, because he says that the
said release which is set out in
the said plea, was obtained by
the covin and fraud of the said
defendants, and therefore is fraudu-
=lent and void as against the
said firm of Wood & Dunne, and
him the said Patrick W. Dunne,
for that the action below was com-
=menced and prosecuted at the
sole instance and expense of
him the said Patrick W. Dunne;

that said action was brought and prosecuted, and this writ of error sued out and prosecuted for the use of him the said Patrick W. Durne; that before the completion of the work and labor mentioned in said declaration, said Hood abandoned the same and absconded from this state; that thereafter said Durne went on and completed the same to the acceptance and satisfaction of said Goss, Jackson & Co. so that by law and of right there was at the time of the commencement of this suit, and still is justly and lawfully due and payable from the said defendants to the said firm of Hood & Durne for the use of the said Patrick W. Durne, the sum of fifteen thousand dollars; that said Hood at the time of the commencement of said action was, and thence hitherto hath been, and still is insolvent, and a non-resident of this state; that the said defendants

had full notice and knowledge
 of all and singular the matters
 and things herein above set forth;
 that said defendants procured
 and obtained said writing of
 release from said Hood for
 the purpose and with the design
 of cheating, wronging and defrauding
 him the said Patrick H. Durne
 out of the sum aforesaid, to
 recover which the action aforesaid
 was brought. that said firm
 of Hood & Durne was dissolved
 before and at the time of the
 making of said release, and that
 this fact also was known to the
 said defendants; and that said
 Patrick H. Durne then had, and
 thence hitherto hath had and
 still hath and of right ought to
 have full right and authority
 to employ counsel, commence
 and carry on said action and
 to prosecute this writ of error
 in the name of said firm of
 Hood & Durne, the said writing
 of release to the contrary notwithstanding.
 All which he the

said Patrick H. Dunn is ready to verify, wherefore he prays judgment, and that the judgment aforesaid, for the errors aforesaid, may be reversed, annulled and altogether held for nothing; and that the action aforesaid, for the damages aforesaid, in form aforesaid, may be maintained against the said defendants, and so forth.

Charles C. Bonney
attorney for said
Plaintiff

"

Wood & Dummer

— V —

Cops. Jackson Ho.

Amended or
Further Rep=
= lication —

Filed April 28. 1839

L. Leland Clerk

State of Illinois
In the Supreme Court
at Ottawa Of the April
Term A.D. 1859-

Merritt D. Wood &
Patrick W. Dunn

Plaintiffs
v
Error to Review

George Goss
Moses M. Jackson &
Ransom Gardner

Defendants

Suggestions of Plaintiffs against
Denurrer of defendants to
Replications &c.

- 1 It is only upon the ground that the act of one partner is in law the act of both, that the release pleaded, can possibly be sustained.
- 2 That the second replication is properly pleaded, see 1 Chitry Pldgs 437, 582, and 3 Chitry Pldgs 436 where the precedent of this replication is given. See also 2 Saund. Pldgs & EN. Pt 2 49757-
- 3 The objection that the second rep =

=lication is filed without leave of court is no ground of demurrer. Nor can the defendants make such an objection after or upon filing a demurrer to the very replication in question.

But the objection is altogether frivolous. The plaintiffs had leave of court to reply, that is to reply as their rights might require. And such leave is always taken as of course.

4 The replications are both drawn verbatim according to the precedents. If Mr. Clitty knew how to draw such replications, these are rights -

Charles C. Bonney
attorney for
Plaintiffs

F. 4
Wood & Dunn

- v -

Gop, Jackson & Co.

Plaintiffs

Suggestions
against Defendant

Filed April 21, 1839

L. Leland
Clerk

H.

Wood & Durre
vs
Goss, Jackson
et al

Supreme Court
April Term 1859
At Ottawa

And now come the said
Defendants by H B Hopkins their Atty
And demur to the said replication
of the said Plaintiff Parick W Durre
above pleaded and say that the same
is no sufficient answer in law to
to Defendants plea above pleaded, and
that they are not bound in law to
answer the same

And for special cause say that the
facts set up in the said replication
do not show any fraud on part of de
fendants in procuring the release
by them pleaded as aforesaid

H B Hopkins
Atty of Defts

In support of Durre's Defen-
dants suggest

1st Replication alleges that the suit was brought
by Durre & ought to be & was intended for his
own benefit.

The suit was brought in the usual way ~~against~~
in favor of Wood & Durre & not for the use of

any other person. And equities between Plaintiffs as to their partnership affairs cannot be adjusted in this action

2^d

That Replication sets up that Defendants are Wood & Durme for use of Durme. The judgment for Plaintiffs even in this cause could be only a general one in favor of Wood & Durme which might be paid to or released by either of them

That Wood is insolvent

3rd & a nonresident

These facts do not deprive him of the right to participate in the settlement of the partnership affairs. nor render void his receipt for payment of, or release of the partnership debts

4th

That Defendants knew the above facts.

The conduct of Wood may have been such as to render him liable to his partner Durme but the facts above stated do not prevent his receiving payment of partnership debts nor render void his receipt therefor. — Consequently a knowledge of the same facts could not deprive Defendants of the right to pay partnership debts to him

5th & taking his receipt therefor
That Defendants procured
the release for the purpose of cheating
Dunne.

(This as matter of fact is untrue)
However, receiving pay of the partner-
ship debt was a lawful act on the
part of Wood. making payment ~~was~~
~~to him~~ was a lawful act on part
of Defendants. consequently their
motive cannot be inquired into
It makes no difference with what
motive a man does a lawful act
Humphrey vs Douglas 11 Vermont # 22

6th That partnership ~~was~~ is
of Wood & Dunne was dissolved before
suit brought

Both partners have right to settle
partnership debts after dissolution

7th The validity of the release is not affected
by any bad faith on part of Wood
toward his partner Dunne to which De-
fendants were not parties

Hopkins atty
of Depts.

Wood & Dunne
4. vs &
Goss, Jackman et al.

Demurre to Replication of
Dunne
&
Suggestions

Filed April 28, 1857
L. Leland
Clerk

K.

Merritt Wood } Supreme Court
 Patrick W Dunne } Ottawa April Term
 vs } AD 1857
 Goss, Jacksonman }
 and ~~and~~ Gardner } ~~Defendants~~

Rejoinder

And now come the said Depen-
 dants by H B Hopkins their Atty. and
 say that the said Plaintiffs ought not
 to here and maintain their said action
 by reason of anything in ~~the~~ ^{their} replica-
 tion aforesaid mentioned. Because they
 say that the said release mentioned
 in the said Replication and set up in
 the defendants plea was not obtained
 by said Defendants by fraud or covin
 or any illegal or improper means
 whatever. And of this they put
 themselves upon the Country &c
 H B Hopkins
 Atty

And the plaintiff likewise
 Charles C. Bonney
 attorney &c

⁵⁻⁴
Wood & Durrie
vs

Goss, Jackson & Co

Rejoinder

Filed May 3^d 1859
L. Leland
Clerk

L.

State of Illinois
In the Supreme Court at Ottawa
Of the April Term A.D. 1859
Merritt J. Hood &
Patrick H. Dunne
v
George Goss Error to Peoria Circuit
Moses M. Jackson & Court -
Ransom Gardner

Additional Suggestions of Plaintiffs
against the Demurrer of Defen-
=dants to Replications to Plea
of Release &c.

1 As to the Replication of non est
factum.

It is admitted that if the plain-
=tiffs desired to deny the signature
to any instrument in writing,
they ought to verify their plea
by affidavit. But a failure to
do so would not be cause of
demurrer. And under the ^{issue} ~~plea~~
of non est factum, the plaintiffs
may if they desire show the
following defences, or any of them.

1. that the deed was delivered as an escrow;
 2. that there is a material variance;
 3. that it was obtained by fraud;
 4. that it was made under insanity;
 5. that it was made under intoxication;
 6. that it was never properly delivered;
 7. that it has been altered or cancelled;
- or other defences -

See Sec. 14 Practice Act,
11 Greenleaf Ev. Sec. 300 & 300
and cases cited.

Surely it cannot be contended
that the Replication of Non est
factum has been abolished!

This replication is verbatim ac-
=cording to the precedent in
3 Chitty Pleadings 1158 and has
been uniformly followed by the
profession, and held sufficient
by the courts.

As to the objection that the replication
should not deny that the release
is the deed of plaintiffs, but
should allege that it is not
the deed of ~~It~~ Wood only.

Surely, this objection was never heard before! Do not all the authorities hold that the act of one partner binds both &c. for no other reason than that in law, the act of one is the act of both?

If it is not the act of both, then certainly it does not bind the firm.

2 As to the Replication of fraud.

This replication is pleaded verbatim according to the precedent in 3 Chitty's Pleadings, 1158. And in 1 Chitty's Pleadings, 437, 582, and in 2 Saunders Pleading & Evidence Part 2 p 757 it is stated ~~that~~ not only that it is unnecessary to state the particulars of the fraud but that it is injudicious to do so. It might take a day to give such particulars to a

jury. The plaintiffs are confident
that they have pleaded correctly,
and respectfully pray the
court to reconsider the opinion
intimated in favor of the de=
=murder, &c.

Charles L. Bouney
Attorney for
Plaintiffs

11

Wood & al
v
Goff & als

Plaintiffs suggestions
against Defendants
demurrer

Filed April 23. 1839

L. Leland
clerk

d.

State of Illinois

Merrett D Wood et al

vs
George Boss et al

In the Supreme
Court of Ottawa

April Term

A D 1859

And the said
Defendants by H B Hopkins their
Att'y come & answer to the Plaintiffs
replications above and say that the same
are nor in law a sufficient answer
to Defendants plea above pleaded & that
Defendants are nor bound to answer
the matters & things therein alleged And
that they are ready to verify when &c
Wherefore they pray judgment &c

And for special causes Defen
dants further show First

1st Replication shows that said release pleaded is
not the deed of Defendants while it is not pleaded as
such, but as the deed of said Wood only. Said Replica
tion may be true & still the release be sufficient
for the deed of release of said Wood only is suffi
cient to release said errors. The deed not of "Plaintiffs"
but of Wood only as above pleaded has been decided
sufficient upon Plaintiffs Demurrer

Second. Said 2nd replication is too general
indefinite & insufficient. 3rd The same is filed
without leave of court. 4th The same is otherwise in
sufficient
H B Hopkins Att'y of Defts

Word & Drenne
vs
Groos & Tackman
Defendants Demur-
rer to Replication

Filed April 20. 1839
L. Leland
clerk

- Demur sustained
1. First replication
does not answer the plea
 2. The facts constituting
plea & answer or circum-
stances as stated

G.

Wood and Paine Supreme Court
vs April Term
Goss, Guckman & D 1859
and Gardner

Motion for judgment
against Wood.

And now come the said
Defendants by their Attys and move
the said Court here for judgment in
due form of law against said Plain-
tiff Wood for want of Replication
to Defendants plea filed herein
H B Hopkins
Att'y of Defts

Wood & Dunne
4
vs
Grass Tackman
et al.

Motion for Judgment

Filed May 4. 1859
L. Leland
clerk

M.

Be it remembered that heretofore, to wit, on the sixteenth day of November in the year of our Lord one thousand eight hundred and fifty four, there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois a precept in the words and figures following, to wit:

precept = x State of Illinois } In the Circuit Court
Peoria County } To the November Term A.D. 1854

Merritt D Wood &
Patrick W. Dunne
 plaintiffs

George Goss
Hosier M. Sackman &
Randome Gardner
 defendants

Assumpsit
Damages: Fifteen thousand Dollars

The Clerk of said Court will please issue process in this cause against the said Defendants, returnable as the law directs.

Peoria Oct. 31st 1854.

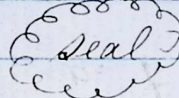
Austin V. Bonney
Attorneys for Plaintiffs.

Whereupon on the same day, to wit the 16th day of November A.D. 1854, there was issued by the Clerk of said Court under the seal thereof a summons directed to the Sheriff of Peoria County to execute, as follows, to wit:

Summons- The People of the State of Illinois

To the Sheriff of Peoria County, Greeting:
We command you to summon George Goss, Hosier M. Sackman and Randome Gardner, if they may be found in your County, to appear before our Circuit Court on the first day of the next term thereof, to be held at Peoria, within and for said County of

ia, on the third monday of November instant then and there,
our said Court, to answer unto Merritt D. Wood and Patrick
W. Dunne of a plea of trespass on the case upon promises, To their
damages fifteen thousand dollars as they say and make return of
this writ, with an endorsement of the time and manner of serving
the same, on or before the first day of the term of the said Court
to be held as aforesaid.

 Witness, Jacob Gale, Clerk of our said Court and
the seal thereof at Peoria this 16th day of November
in the year of our Lord one thousand eight hundred
and fifty four. Jacob Gale Clerk

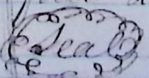
return = Which summons was returned by said Sheriff endorsed as follows, to wit,
The within named Goss, Sackman & Gardner are not found in
my County. Nov. 18th 1854

L. B. Cornwell, Sheriff

And afterwards, to wit, on the twenty first day of November in
the year of our Lord one thousand eight hundred and fifty four,
said clerk issued under the seal of said Court an alias summons, as follows, to wit,

H. Summons The People of the State of Illinois

To the Sheriff of Peoria County Greeting
We command you as we have heretofore commanded you to
summon, George Goss, Moses M. Sackman & Ransom Gardner
if they may be found in your County, to appear before our Circuit
Court on the first day of the next term thereof to be held at Peoria
within and for the said County of Peoria, on the first monday of
March A.D. 1855, then and there in our said Court to answer
unto Merritt D. Wood, and Patrick W. Dunne, of a plea of tres-
pass on the case upon promises, To their damages fifteen thousand
dollars as they say, and make return of this writ, with an endorse-
ment of the time and manner of serving the same, on or before the
first day of the term of the said Court, to be held as aforesaid.

 Witness, Jacob Gale, Clerk of our said Court and

the seal thereof, at Peoria this 21st day of November in the year
of our Lord one thousand eight hundred and fifty four

Jacob Gale, Clerk

return = which ^{alias} ~~summons~~ was returned by said sheriff endorsed as follows, to wit,
Served this writ on Moses M. Jackman by reading the same to
him November 21st 1854. George Goss and Ransom Gardner
not found in my County David D. Irons
Sheriff Peoria Co. Ill.

declaration = And afterwards, to wit, on the tenth day of January in the year of
our Lord one thousand eight hundred and fifty five, the plaintiffs filed
their declaration in said cause in the words and figures following, to wit,
with copy of cause of action thereunder written -
State of Illinois } In the Circuit Court of Peoria County
Peoria County } Of the March Term A. D. 1855

Merritt D Wood and Patrick W. Dunne
(doing business under the name & style of Wood & Dunne)
plaintiffs in this suit by Austin & Bonney their attorneys, com-
plain of George Goss, Moses M. Jackman and Ransom Gardner
(Rail Road contractors doing business under the name & style of
Goss Jackman & Co) defendants, of a plea of trespass on the case
upon promises: For that whereas the said defendants on
the twenty eighth day of October in the year of our Lord one thousand
eight hundred and fifty four at Peoria in the County of Peoria
State of Illinois were indebted to the said plaintiffs in the sum
of fifteen thousand dollars, lawful money of the United States
of America, for the work & labor, care & diligence of the said plain-
tiffs and their servants, before that time done performed & bestowed
in & about the business of the said defendants & for the said
defendants & at the special instance & request of the said defend-
ants, and also for divers materials & other necessary things, by
the said plaintiffs found, provided used & applied in & about
that work & at the special instance & request of the said defend-

And being so indebted to the said plaintiffs, the said defendants in consideration thereof afterwards to wit on the same day and year & at the place aforesaid, undertook & there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when they the said defendants should be thereunto afterwards requested. And whereas also the said defendants afterwards to wit on the same day & year at the place aforesaid, in consideration that the said plaintiffs had before that time, at the like special instance & request of the said defendants, done performed and bestowed divers other work & labor care & diligence in & about the business of the said defendants, and for the said defendants, and had before that time found provided used & applied divers other materials & other necessary things in & about that business the said defendants then & there undertook & faithfully promised the said plaintiffs, that the said defendants would well & truly pay to the said plaintiffs so much money, as the said plaintiffs reasonably deserved to have of the said defendants for the same, when the said defendants should be thereunto afterwards requested, and the said plaintiffs aver that the said plaintiffs therefor reasonably deserve to have of the said defendants for the same the further sum of fifteen thousand dollars, of like lawful money as aforesaid, to wit at the place aforesaid, whereof the said defendants afterwards to wit on the same day & year & at the place aforesaid had notice. And whereas also the said defendants afterwards to wit on the same day & year & at the place aforesaid were indebted to the said plaintiffs in the sum of fifteen thousand dollars of like lawful money as aforesaid for divers goods, wares & merchandizes by the said plaintiffs before that time sold & delivered to the said defendants & at the like request of the said defendants. And in the further sum of fifteen thousand dollars, of like lawful money as aforesaid for so much money before that time lent & advanced by the said plaintiffs to the said defendants & at the like request of the said defendants. And for other money by the said plaintiffs before that time paid, laid out & expended for the said defendants & at the like request of the said defendants. And for other money by the

said defendants before that time had & received to & for the use of the said plaintiffs. And being so indebted the said defendants in consideration thereof afterwards to wit on the same day & year & at the place aforesaid undertook & then & there faithfully promised the said plaintiffs well & truly to pay unto the said plaintiffs the several sums of money in this count mentioned when the said defendants should be thereunto afterwards requested. And whereas also the said defendants afterwards to wit on the same day & year & at the place aforesaid, accounted together with the said plaintiffs of & concerning divers other sums of money, before that time due & owing from the said defendants to the said plaintiffs & then & there being in arrear & unpaid & upon such accounting the said defendants were then & there found to be in arrear & indebted to the said plaintiffs in the further sum of fifteen thousand dollars of like lawful money as aforesaid. And being so found in arrear & indebted to the said plaintiffs, the said defendants in consideration thereof afterwards to wit on the same day & year & at the place aforesaid undertook & then & there faithfully promised the said plaintiffs well & truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendants should be thereunto afterwards requested.

Nevertheless the said defendants (although often requested) have not yet paid the several sums of money above mentioned or any or either of them or any part thereof to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs the said defendants have hitherto wholly neglected & refused & still do neglect & refuse to the damage of the said plaintiffs of fifteen thousand dollars & therefore they bring suit &c.

Austin V Bonney
Attys. for Plffs.

Copy cause of action
To work & labor & materials for same \$ 15,000.00
Merchandizes &c. 15,000.00
Money lent to defts 15,000.00
Money paid out for defendants 15,000.00
Money received by defts for plffs. use 15,000.00
Money found due on account 15,000.00

And afterwards, to wit, on the fifth day of March in the year 1855, there was filed in said Clerk's office an affidavit, which as amended by leave of said Court and re-sworn to is in the words and figures following, to wit,

" Merritt D Wood
Patrick W. Dunn
vs
George Goss
Moses M. Sackman
Ransom Gardner

State of Illinois
Peoria County ss

This day personally¹
appeared before me the undersigned²
Clerk of the Circuit Court for said County³
Chester Warner, who being duly sworn⁴
deposes and says that Merritt⁵
D. Wood one of the plaintiffs in the⁶
above entitled suit at the time of⁷
the commencement of said suit⁸
was and still is a now resident of the⁹
State of Illinois and further saith¹⁰
not.¹¹

Chester Warner
Subscribed & sworn to before me this
5th day of March 1855

Jacob Gale Clerk
Afft. amended & re-sworn to on
8th day of March A.D. 1855

Jacob Gale Clerk "

Proceedings at a term of the Circuit Court begun and held at the Court-house in the City of Peoria in and for the County of Peoria in the State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty five it being the fifth day of said month - Present the Honorable Anselm Peters, Judge of

the sixteenth Judicial Circuit in the State of Illinois,
to wit,

Monday, March 5th A.D. 1855
Meritt D. Wood
Patrick W. Dunn.

^{vs}
George Goss, Moses M. Jackman,
and Ransom Gardner. ^{assumpsit}

This day came the defendants by Powell and Hopkins
their attorneys and entered a motion to dismiss this suit
for reasons set forth in affidavit on file.

Thursday, March 8th A.D. 1855
This day came the plaintiffs by Austin and Bonney
their attorneys and the defendants by Powell and Hopkins
their attorneys and this cause came on to be heard on
the motion of the defendants heretofore entered to dismiss
this cause for reasons set forth in affidavit on file.
Whereupon the defendants entered a motion for leave
to amend said affidavit, which was allowed by
the court; and the court being now fully advised
in the premises do order and adjudge that this
cause be dismissed; and it is considered that the
said George Goss and Moses M. Jackman and
Ransom Gardner ^{go home without day and} have and recover of the said
Meritt D. Wood and Patrick W. Dunn their costs
and charges by them about their defense in behalf
expended and that they have execution therefor.

And afterwards, to wit, on the fourteenth day of March A.D. 1855, there was filed in said cause a Bill of Exceptions by the plaintiffs duly signed & sealed in the words & figures following to wit,

State of Illinois }
County of Peoria } In the Circuit Court for said County,
Of the March Term A.D. 1855.

Merritt D. Wood &
Patrick W. Dunne } plaintiffs
versus
George Goss
Moses M. Jackman } defendants
Ransom Gardner }

Action of Assumpsit.

Be it remembered that on the fifth day of March in the year of our Lord one thousand eight hundred and fifty five, at the term of said Court aforesaid, the said defendants by their attorneys entered their motion to dismiss this cause which said motion is as follows to wit:

Merritt D. Wood } Motion to dismiss suit
Patrick W. Dunne } as per affidavit on file
vs } March 5th 1855
George Goss et al } Powell & Hopkins

which said affidavit, mentioned in the said motion is as follows to wit.

Merritt D. Wood }
Patrick W. Dunne }
vs } State of Illinois
George Goss } Peoria County
Moses M. Jackman }
Ransom Gardner }

This day personally appeared before me the undersigned, Clerk of the Circuit Court for said County

Chester Warner who being duly sworn deposes and says that
Merritt D. Wood one of the plaintiffs in the above entitled
suit at the time of the commencement of said suit and still
is a now resident of the State of Illinois and further saith
not

Chester Warner
Subscribed & sworn to before me the 5th day of March 1855
Jacob Gale Clerk

And that on the eighth day of the same month this cause came
on to be heard upon the motion aforesaid and pending the decision
of the said motion, the said defendants by their attorneys, made
their further motion for leave to amend the affidavit aforesaid,
which said last mentioned motion was allowed and sustained
by the said Court, and thereupon the said defendants by their
attorneys inserted the word "was" in the ninth line from
the top of the said affidavit, thereby making the said word the
first word of the line aforesaid; and that the said Court after
hearing the arguments of counsel allowed and sustained the
said motion of the said defendants to dismiss this cause, and
ordered the same to be dismissed, and that the said plaintiffs
by their counsel then and there excepted to the opinions and
decisions of the said Court in allowing and sustaining the
motions aforesaid, and each of them and prayed the Court
to sign and seal this Bill of Exceptions, which is accordingly
done.

Orslove Peters L.S.

State of Illinois
Poria County

J. Jacob Gale clerk of the
Circuit Court in and for the County of Poria in
the State of Illinois do hereby certify that the
foregoing is a full and correct transcript from
the Records of all the proceedings in a certain

Cause in said Court wherein Merritt J. Wood
and Patrick W. Dunne are plaintiffs and George Goss
Moses M. Jackman and Ransom Gardner are defendants
as the same remain of record and on file in my office
In witness whereof I hereto set my
hand and affix the seal of said
Circuit Court at my office in Peoria
this thirty first day of May in
the year of our Lord one thousand
eight hundred and fifty five -
— Robt. Hale, Clerk.

Clerk's fees: for transcript certificate and seal \$3.50
Remaind payment of C. C. Bonney city for 1/10
— Robt. Hale

Merritt D Wood &
Patrick W Dwyer
vs

George Goff
Moses Mc Jackson &
Ransom Gardner

In the Supreme Court
June T. 1855

Error to Reorn

And now comes the said plaintiff by D M Wood his attorney and says that in the record & proceedings aforesaid and in the judgment aforesaid, there is manifest error in this

- 1st The Court erred in permitting the affidavit to be amended after it had been sworn to
- 2^d The Court erred in ruling the ^{Plaintiffs} defendant to give security for cost
3. In dismissing said action, when by law it ought to have proceeded, one of the parties being a resident
4. In rendering judgment against the said plaintiffs for costs
5. In refusing to let the case proceed

For these & other manifest errors in the record & proceedings aforesaid, the said plaintiff prays that said judgment may be reversed & for nought held, & that he may be restored to all his rights lost by such decision

By D M Wood
his Attorney

Will the same Synagogue by their
 Atty H. B. Hopkins come and say
 that there is no error whatever in
 the rulings or judgment of the Court
 below as the same appears from
 the ferry record & that they are
 ready to verify whenever they may
 judge so c
 W B Hopkins Atty

Merrett & Wood sal
 vs
George Goff & al
 Apportionment of Errors

Filed July 7. 1855.
 J. Leland Clk.

= 125- 36
 \$ 4

~~122~~ ~~123~~ ~~124~~ ~~125~~
Wood & Dunk
v2

Leaf rollers

Records &
Errors -

Filed July 7, 1855.
A. Kel and Ch.

A-

Proceedings at a Term of The Circuit Court of Georgia
County, began and held at The Court house in the City
of Georgia, in said County and State of Illinois, on the
third Monday in the month of November, in the year of
our Lord One Thousand Eight hundred and fifty nine,
it being the twenty first day of said month - Present,
the Honorable Oliver N. Powell Judge of the 16th Judicial
Circuit in said State, John Bryner Sheriff, and Enock L. Shaw
clerk to wit:

Tuesday November 22nd A.D. 1859.

Merritt W. Hood vs al

vs Redocketed from Supreme Court
George Goss vs al.

This day there was presented to the Court
a certified copy of an issue of fact from the Supreme Court of
this State to be tried in this Court and certified thereto
whereupon it is ordered that this Cause be redocketed for
further proceedings in conformity with the opinion of said
Supreme Court. At the suggestion of the Court, the Court
having been of Council in this Cause, this Cause is
submitted to Julius Manning for trial Mr Manning
agreeing thereto, and this Cause is continued.

Proceedings at a Term of The Circuit Court began and
held at the Court house, in the City and County of Georgia,
and State of Illinois, on the first Monday in the month of
March, in the year of our Lord One Thousand Eight hundred

and sixty, it being the fifth day of said month - Present,
the Honorable Elisha N. Powell Judge of the 16th Judicial Circuit
in the State of Illinois, John Bryner Sheriff and Enoch P. Shaw
Clerks to wit:

Wednesday March 21st A.D. 1860

Merritt D. Wood

Patrick H. Dunn

vs

Issue of Fact from Supreme Court

George Goss, Moses M. Jackson,

Ransom Gardner

This day this cause came on for trial, and
thereupon the Hon. Elisha N. Powell, presiding Judge, declined
to hear the same, for that he had been of counsel for the said
defendants in this behalf, and thereupon it was agreed as
well by the said Circuit Court, as by the said plaintiffs, by
G. C. Donney and William O'Brien their attorneys, and the
said defendants by Henry Groove and Henry B. Hopkins their
attorneys, that to save the expense and delay of a change of
venue, Julius Manning Esq, one of the attorneys of the said
Circuit Court and Supreme Court, should preside as judge
during the trial of said issue, and that no exception should
be taken thereto, by either party, either in the Supreme Court
or elsewhere, but that the acts of said Julius Manning as such
presiding judge, should in all things whatsoever, as effectually
bind and conclude the parties aforesaid respectively as though
the same had been done by any one of the Circuit Judges of
the State &c. And therefore the said Julius Manning, at the

Special request, as well of the said Circuit Court, as of the said Plaintiffs and the said defendants, consented to preside upon said trial, and accordingly took the bench of the said Circuit Court therefor, and it is ordered by the court that a jury be impanelled to try the issue aforesaid, whereupon come a jury of twelve good and lawful men to wit: J. M. Sheffield, Levi Lapham, Herman Bleakely, James Dougherty, J. J. Thomas, John Hanna, John Weaver, J. S. Hornbaker, A. C. Garrett, J. Q. Otis, Willis Griefelt and Joel Thurston who were duly chosen tried and sworn to well and truly try the issue joined in this cause and a true verdict give according to the evidence, And the said jury having heard the evidence &c. in the case, retired to consider of their verdict

Sunday March 22nd 1860

Merritt D. Wood v Patrick McGunn

vs

Issue of fact from Supreme Court

George Goss. Moses M. Jackman v
Ransom Gardner

This day again come the parties to this suit, and also come the jury impanelled and sworn on yesterday to try this cause, &c. Julius Manning Esq. on the bench. And the jury aforesaid upon their oaths aforesaid do say, "we the jury find the issues for the Plaintiff" And hereupon it is ordered by the court, that the Clerk of this court do with all convenient speed, certify to the said Supreme Court the verdict aforesaid, of the jury aforesaid, together

with the costs of trial of the issue aforesaid to be taxed &c.

State of Illinois
Perry County, ^{Ind}

I, Enock D. Sloan, clerk of the circuit court in and for said county and state do certify that the foregoing is a full, true and complete transcript of the proceedings of said court upon the issue of fact sent down from the Supreme court of this state to the circuit court aforesaid to be tried &c, in the case wherein Merritt D. Wood & al are plaintiffs and George Goss & al are defendants, as the same appears of record in my office.

Given under my hand and seal of said court at Perry this 14th day of April A.D. 1860
Enock D. Sloan, Clerk

Circuit Court of Peoria County, }
 Marsh Term, A. D. 1860 }

Merritt D. Wood Val

Plaintiff,

VERSUS

Defendant.

Issue of fact

George Goss Val

PLAINTIFF'S COSTS, viz:

Clerk's Fees: docketing Cause 10, Agreement to trial by Manning 20, Continuance 20,
 docketing 10, Ass. & Sub. 160, Calling & answering jury 15, drawing witnesses 30, taking
 & witnesses off. 60, receiving verdict 10, Ent. in Sep. 20, Ent. order to certify 20, making
 certificate 150, bill costs 30, Est. & Ad. 35, Subpoena 15 ————— \$600

Shant's fees - John Pigner on sub

Jury fees

Witness fees - W. G. Wheaton 14 days — \$14.00
 John Conway 5 " 5.00
 Smith Lige 15 " 15.00
 L. Berge 12 " 50th. 14.50
 C. Greenleaf 14 " 14.00
 W. S. Moses 14 " 14.00

\$210
 \$8.15
 \$3.00
 \$11.15

\$76.50
 \$87.65

I, ENOCH P. SLOAN, Clerk of the Circuit Court of Peoria County, do hereby certify,
 that the above is a true bill of costs in the above entitled cause, as appears of record.

WITNESS, my hand and the seal of said Court, this 14th
 day of April 1860

E. P. Sloan

CLERK.

2
Wednesday March 28th A.D. 1860

Merrill G. Hood Val

vs Issue of fact from Supreme Court

George Goss Val

This day this cause came on to be heard on the motion of defendant for a new trial of this cause and the Court being fully advised in the premises overruled said motion. By agreement it is ordered that the bill of exceptions in this case may be signed by Mr Manning after the adjournment of this Court.

⁴
Wood Val

⁴
Goss Val

Transcript from
Plover circuit court

Filed April 16. 1860
L. Leland
Clerk

O.

State of Illinois

In the Supreme Court at Ottawa
April Term A.D. 1866.

Merrett D. Wood &
Patrick W. Dunne

v.

George Goss
Moses M. Jackman &
Ransom Gardner

Error
to Peoria

Motion for judgment on Verdict &c.

The said Patrick W. Dunne
by Charles C. Bonney his Attorney, files
herein a certificate by the Clerk of the
said Circuit Court of Peoria County, of
the verdict of the jury which tried the issue
of fact sent herefrom to the said Circuit
Court for trial, and hereupon the said
Patrick W. Dunne moves the Court here
for judgment upon the verdict aforesaid
that the release aforesaid, pleaded herein
by the said defendants is fraudulent and
void as against him the said Patrick W.
Dunne in manner and form as he hath
in his replication thereto alleged &c.
And the said Patrick W. Dunne also

moves the Court here for judgment for
his costs and charges, by him, about the
trial of the issue of fact aforesaid, ex-
pended which are duly taxed and cer-
tified by the Clerk of the said Circuit
Court &c.

And thereupon the said Patrick
H. Dunne again prays that the judgment
aforesaid for the errors aforesaid may be
reversed, annulled, and altogether held
for nothing, and that he may be re-
stored to all things which he hath
lost by occasion of said judgment &c.

Charles L. Bonney
" Attorney for
Dunne -

4
In the Supreme Court

Wood et al

v.

Goff et al

Motion for judgment
on Verdict &c

Filed April 16: 1860

L. Deland
Clerk

P.

Merritt D Wood } Supreme Court
et al } Ottawa, for 3^d
vs } Grand Division
George Goss et al } of Illinois April
Term AD 1860

Arguments of Defendants in sup-
port of Motion in Arrest

This motion is of decisive im-
portance to this case. And in our
judgment involves a very important
doctrine. And an attempt is made
to present all the authorities in re-
lation to it.

This suit was brought
by M. D. Wood & P. W. Danner partners
vs. Geo. Goss. M. W. Jackson & R. Garman
partners. Brought here by Plffs. by
writ of error. After which, the Defen-
dants settled the matter in controversy
with Wood, one of the Plaintiffs, and took
his discharge in full, which discharge
is pleaded in release of error in this
court, To which plea replication
is filed alleging that the release is
fraudulent. which is traversed & the
issue of fact tried by jury & verdict for
the Plffs. Testimony preserved by bill of
exceptions & filed in this Court.

It may be admitted that if Wood took pay for, or settled this claim when he had no right to, as between himself & his partner Durre, it was a fraud upon Durre. And if Defendants make this settlement with Wood knowing that as between Wood & Durre, ~~Durre~~^{Wood} had no right to make it, or at least if this be done for the purpose of erasing the rights of Durre as between himself & Wood, such settlement was a fraud upon ~~Wood~~^{Durre} in an equitable point of view. But, denying the existence of these facts, we wish to examine their effect, supposing them to exist as alleged in the Pleading.

The replication alleges certain facts, tending to show that Defendants obtained the release pleaded by collusion with Plaintiff Wood in fraud of M^r. Durre.

It is insisted that in order to defeat said release, as a defence to this action, on the ground of fraud, it must be affected with such fraud as to make it void as against Wood himself.

If the release were ~~made~~ obtained by deceit practiced upon Wood, by force

by duress or any fraudulent means, so as to render it a void instrument against him, it would be repeated as a defence to this action. This is not alleged in the replication nor is there any proof of it.

And so long as Wood executed it vol-
untarily & intentionally, for the pur-
poses expressed in it, yet knowing it
to be a fraud upon Durre, it is a good
defence against Wood. consequently
against his firm, the Plaintiffs

The difficulty in the case is that
the action is upon a partnership contract,
& is, & necessarily must be, in the partner-
ship name, by joining the fraudulent
with the innocent partner, and they
can only recover by alleging fraud in
one of themselves. The recovery can only
be joint and on the ground of fraud
in the Plaintiffs, and no man shall
take anything by reason of his own
fraud, or be heard to allege as ground
of recovery.

The Plaintiffs cannot recover at all
except by joining the fraudulent partner
in the action. and while they rely upon
his strength (that is his fraud) they are

bound by his ~~in~~firmity. To wit. his fraud
will not release.

A recovery would be, not only, on account
of the fraud of the fraudulent partner,
& directly on the ground of his fraud,
but immediately for his benefit. If the
firm be solvent, then money is in his
pocket by his fraud, if insolvent, then
his liabilities are cancelled to the full
extent of the recovery, for he is liable for
all the debts of the firm.

~~The~~ The legal inconsistency is strongly il-
lustrated by supposing the defrauded
partner dies. Then the surviving fraud-
ulent partner may bring an action
in his own name as survivor & defeat
his own release on the ground of his own
fraud & recover again the very debt he
has once received & discharged by his
own release.

Now, who has debarred himself from
all right to recover in this action by rea-
son of his release, valid against him, but
fraudulent against his partner, cannot
remove his disability, and entitle him-
self to recover, by reason of his jointure
with his innocent partner.

His fraudulent act defeats his own right.

and is not cured by the influence of
his Partner, so that they may jointly recover
And it is not competent for the Court
to render any but a joint judgment in
this case for the equal benefit of both

And further, the release being only
fraudulent as to Turner, is in force as
to Wood, & will defeat a recovery as to
him, consequently defeat the whole action
as the judgment must be joint

Hence we say that in order to de-
feat the release, it must appear that there
was such actual fraud in the procur-
ing of it as to render it void as against
Wood, which is neither alleged nor proven
And so long as it will bind Wood himself
~~it~~ must necessarily defeat this action

This doctrine results from the intimate
and peculiar relations established by the law
of partnerships. And the apparent inequity
of it is abundantly relievable in Chancery,
where the recovery is not necessarily con-
sistent with the parties to the contract.

And the position is so well estab-
lished by the elementary works and the
most learned authorities, that we be-
lieve it will be ~~established~~ as the law
of this Court

In Collier on Partnerships, sec. 643, the doctrine is stated substantially thus,

'Partners are, as a general rule, not bound by the frauds of their copartners, but it seems clear, that the equity, to which the defrauded partners are entitled, cannot be supported in a Court of Law, when the Partners appear as Plaintiffs, for they must join with them the fraudulent partners. They are thus placed in a dilemma which makes their suit at Law a nullity.'

In Story on Partnerships, thus, 'Unless all the Plaintiffs are entitled to recover, the suit must fail. If the acceptance or other security be a fraudulent contrivance, between the guilty partner and a third person, in fraud of the partnership, there can be no suit at Law against such third person founded thereon, since the guilty partner is at Law a necessary party to every such suit.'

These authorities apply expressly in case that the said Defendants and Plaintiff Wood were both guilty of a fraudulent attempt against the partnership.

The first case I find, ~~was~~ (1 Starkie N.P. 122 Com. Law 83. Richmond v Heapy) decided A.D. 1816 arose under the English Bankrupt Law, as to the validity of a commission in Bankruptcy; which Law requires the petitioning creditor to have a claim upon which a judgment at law could be rendered. The claim, was a Bill of Exchange, drawn by Heapy Spear & Wright upon Richmond, the Bankrupt & accepted by him, and it was agreed by Richmond & Spear one of the partners, that by collusion to defraud the partnership, that said firm should pay the Bill when it fell due. It was contended that the right of action of the innocent partners was not destroyed by the fraud & that agreement in discharge of it made by Spear & Richmond. Ld. Ellenborough assumes the transaction to be ~~the~~ ^{substantially} most fraudulent in the world & says, "Once you must needs through him (Spear) if he has so behaved that he cannot recover as one of the three he cannot be a petitioning creditor & that the uncertainty of Spear would have been an ^{answer} ~~answer~~ to an action at law."

The case of Jones vs Yates et al
9 Barn. & Cres. 532 (19 Conn Law 436)
decided in 1829 is a case exactly
in point, and the attention of the
Court is particularly called to it.
Sykes, who was a member of the firm
of Sykes, Yates & Young, was indebted to
said firm. He was also a member
of the firm of ~~Bury & Sykes~~ Sykes & Bury,
and, to pay his debt to the firm of
Sykes, Yates & Young, Sykes endorsed a
Bill of Exch. the property of the firm of
Sykes & Bury, to the firm of Sykes,
Yates & Young, & then, in the name
of the latter firm, endorsed them to
Alzido, whom they were owing.
Sykes also drew sums of money from
the firm of Sykes & Bury, & paid Yates, in
further discharge of his indebtedness to
the firm of Sykes, Yates & Young.
All with the knowledge of Yates, and
without the knowledge, and in fraud
of Bury.

The case reported was two actions,
one of trover, for the value of the said
Bills, one of assumpsit, for the said
sum of money. It was decided that
Sykes & Bury could maintain neither

action, and Ld. Tenterden in his opinion
^{substantially} says, It is contended that Sykes &
Bury cannot maintain an action
against Yates & Gerry, & we are of this
opinion. We are not aware of any
instance in which a person has
been allowed, as Plaintiff in a Court
of Law, to rescind his own act on the
ground that such act was a fraud
on some other person. Whether the party
seeking to ^{do} rescind in his own name, or
jointly with such other person.

And suggests the remedy in equity,
which he says is free from the in-
consistency of a party suing on the
ground of his own misconduct.

The case of Wallace et al vs
Kelsall & Meeson & Welsby 264. Martin.
was decided in 1840. Wallace & two
others brought a joint action vs ~~Kelsall~~
Kelsall, Wallace, during the pendency
of the suit, settled and released the
action, by receiving pay in part & part
by way of an off. set of a claim of De-
fendant against him (Wallace) in and
out. This adjustment was pleaded in
release. to which answer was filed
for special cause that said adjustment

was made by Wallace without the consent of the other Plaintiffs. The Courts were held to constitute a good defense upon the ground that Wallace had released effectively for himself & could not rescind his act by his joinder with the other Plaintiffs. There was no actual fraud in this case except the paying of a private debt by offsetting against it a debt due the firm, on the part of Wallace, and on the part of Kelsall by paying his debt to the firm by offsetting against it a debt due him from Wallace, both in ~~fraud~~ detriment of the partnership.

The last case we refer to is *Homer et al vs Wood et al* 11. Cushing 62 decided in 1853. This is a learned opinion and reviews all the authorities upon this question & worthy of thorough examination.

The Defendants were indebted to the Plaintiffs, & Homer one of the Plffs, was individually indebted to the Defendants. & Homer paid his own debt to the Defendants by offsetting the partnership debt ~~indiv~~ individually indebted to the Defendants. Plaintiffs sued as on a subsisting debt. Held that Homer was guilty of a moral & legal fraud, & the defendants guilty of a technical fraud & that

no recovery could be had by the plaintiffs
& they could not set up the fraud of
one of them to maintain the action.
It was stipulated in this case that
there was no fraud on part of defendants
beyond that arising from the
circumstances stated.

The question of fraud upon the partnership
in part of Wood & Defendants
in the giving & procuring of the release
pleaded is wholly immaterial to this
case. Unless there was such fraud
in procuring it as to nullify it void
against Wood, collusion on his part
with Defendants to defraud Durrie
cannot make it void against him.
In the cases cited the plaintiffs are
not prevented from recovery because
the Defendants ~~were~~ are innocent
but because they are themselves guilty.
The obstacle in the way of Wood & Durrie's
recovery ~~is not~~ against their own re-
lease, is not the Defendants good faith
but their own fraud, which they are
estopped from setting up. Nor is it
any answer to their fraud that the
Defendants are in pari delicto. ~~XX~~
The release which is valid against

On Wallace as held by no actual fraud against the partnership. ~~XX~~ on part of the Debt was alleged
but on R.I. (modules of page 273) says if there was fraud he should put it on the same ground of Jones
as stated in which there was fraud. On Jones's statement (bottom of page 43) Defendants' statement is finally
as the fraud which Debt pleads was not found by the jury of fraud is immaterial. The fraud which
plaintiff is estopped. Even apparently the fraud, by the release.

one partner operates by way of is
toppel & prevents a recovery at law.
Hence the finding of the jury upon the
issue tried is wholly immaterial and
does not entitle Plaintiff to any judgment.

The case of Brewster vs
Mott et al 4 Conn 378. goes upon
a ground opposed to all the foregoing
authorities as to a part of the amount
in controversy. This case was decided
in 1843. before some of these au-
thorities and clearly without refer-
ence to any of them, and without
consideration of the well settled le-
gal principle on which they rest
and allows a partnership to recover a
debt which one partner has discharged.
By receiving a set off on his private ac-
count with the debtor. The court seem
to have remembered only that the part-
ner had no right to make the set off,
without considering the inconsistency
of allowing him to set up the same
misconduct as a ground of recovery.
But so far as this case ~~conflicts~~ clashes
with the foregoing ~~authorities~~ it is believed
to be unsupported by the sound prin-
ciples & better authority upon this sub-
ject.

It is confidently claimed that the testimony preserved in the Bill of exceptions among the files marked "Q" ^{from page 7 to 29 inclusive} contains no proof that the Defendants acted ^{with} ~~as~~ ^{were} fraudulent or any party in the procuring of said release

The replication alleges & the evidence tends to show that Plaintiff Durre is the active man in prosecuting the suit. But it is wholly immaterial which Plff. instituted it. It is not a suit any more for the benefit of Durre than Wood. Nor does it ~~appear~~ appear to which party the money if recovered would belong as between themselves. nor can that question be inquired into in this action. Nor does it appear that Defendants knew which Plff. instigated the suit. There is no fraud in this part of the subject.

The Replication further states that before the contract of Plaintiff was completed Wood left the job.

The testimony shows that Plffs. commenced this job about 16th of March AD 1854. that 10th or 20th of June Wood quit work ~~the~~ remained about the

vicinity till close of ~~August~~ July.
Danne went on & completed the work
in August, and some proof tending to
show that Defendant Jackson knew
of Woods leaving.

We submit that it makes no differ-
ence which of the partners super-
tended the work. they had a right to
arrange that among themselves. And
either partner had a right to receive
pay for & give a discharge for all work
done under the partnership contract
by either partner. And any claim for
work done by P W Danne not by the firm
could not be recovered for in this ac-
tion & is not affected by Woods release.
We see no fraud thus far on part of Defts..

Replication charges that there is a
large amount due from Defts.. to Plffs
for use of Danne..

The imperfect data given by the witnesses
show Plffs not paid in full. This balance
we claim that we have paid to a prop-
er party to receive it & got our discharge.
The suit is not for the benefit of Danne nor
is there anything to show that the pay did
in fact belong to one more than the other.
And we think there was no fraud in our
paying the money & taking a release with

a legal nominal consideration expressed
Replication alleges that firm of Wood &
Dunne was dissolved. Wood was insolvent
& a non resident.

Payment to insolvent partner is sufficient
Mayor as H. Chs 12 Ill 299

Payment may be made to either partner
after dissolution 11. Ill 16

Nor can non residence alter the rule
There is no evidence that the firm of
Wood & Dunne was dissolved unless it be held
that Woods leaving the work amounted to a
dissolution & that Defor had notice of the dis-
solution by knowing of Woods absence. If
that be a dissolution. Then we insist
that the work done by Dunne after that time
was done on his private account & can-
not be recovered for in this action & Woods
right to receive payment & accept therefor
~~for~~ in the name of the firm is coextensive
with Plffs right to recover in name of firm

Replication charges that Defen-
dants with fraudulent design against
Dunne colluded with Wood to procure the
Release. This can only be answered by
asking the Court to look into the testimony
in the bill of exceptions We insist that
that shows no intention or design against

During whatever We honestly & fairly
attempted to buy our peace and get
out of Court by compromising &
settling the dispute with one of the
Plffs & co partners whom we then thought
& still intend was just as competent as
the other to settle with us. And it does
not appear that Wood was not on
settlement of the partnership accounts
entitled to receive our payment rather
than Durme. Nor can that question be set-
tled in this action. Much less were we
obliged to settle it in order to know wh-
to pay, or to pay either at our peril.
Among so many immaterial issues
the jury have found against us. But
we insist that the whole testimony fails
to show any fraud to affect the said
release. And that Defendants ought
not to be adjudged to join in error
in said cause. And this they respect-
fully submit

A B Hopkins
for Defendants

And Defendants further submit that
the utmost the testimony tends to show
in any view of it is that Defendants ob-
tained this release of Wood knowing

that as against Durre they had no right
to do it. And that this amounts pre-
cisely to what the court call a mere
technical fraud in the case of Homer
vs Wood. A Debtor of a firm who
pays his debt by offsetting a claim of
his own against one of the partners
knows (for he is bound to know the
law at his peril) that he has no right
as against the other partners &
this the only sort of fraud if any
that can be claimed from the
testimony in this case.

A B Hopkins
Atty

Merritt D Wood⁴ et al.

vs
George Goss et al
Argument in support of
Motion in Arrest

Filed April 18. 1861
L. L. Lawrence
Clerk

D.

Mount Vernon
14th Nov 1860

Dear Sir/ I am
directed to request
you to lay the enclosed
papers, together with
the record in the cause
before Judge Catron
at his office, so
that he may examine
them, and change the
Judgment if he thinks
proper -

Do this as soon as
the Judge returns.

Yours Wm
L Leland.

MERRITT D. WOOD AND PAT-	}	STATE OF ILLINOIS, SCT.
RICK W. DUNNE,		IN THE
PLAINTIFFS IN ERROR,		SUPREME COURT AT OTTAWA.
<i>versus</i>		
GEO. GOSS, MOSES M. JACK-	}	ERROR
MAN & RANSOM GARDNER,		TO
DEFENDANTS IN ERROR.		PEORIA CIRCUIT COURT.

ABSTRACT.

Præcipe in assumpsit. Damages \$15,000. Filed Nov. 16, 1854.

Summons accordingly. Alias summons Nov. 21, 1854. Served same day on Moses M. Jackman.

Declaration. Damages \$15,000. No averment of partnership. Austin & Bonney, Attorneys. Filed Jan. 10, 1855.

Affidavit by Chester Warner of non-residence of Merritt D. Wood filed March 5, 1855.

Motion by all defendants to dismiss suit for want of security for costs, entered March 5, 1858.

March 8, 1855, motion heard. Pending hearing, leave to defendants to amend affidavit. Exception taken. Suit dismissed. Exception taken. Bill of exceptions filed.

ERRORS.

1. The Court erred in allowing the motion of defendants to amend their affidavit at the hearing.

2. The Court erred in allowing the motion of said defendants to dismiss said suit.

3. The Court erred in giving judgment against the plaintiffs for costs.

PLEA.

Plea by all defendants of release of errors. That plaintiffs since assignment of errors, to-wit: April 4, 1856, at State of Illinois, said Wood then

MERRITT D. WOOD AND PAT-	}	STATE OF ILLINOIS, SCT.
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and there being a partner of said Dunne, by his writing of release, &c., for FIFTY DOLLARS released all sums due to Wood & Dunne, from defendants, and all work done &c., and all other indebtedness, &c., and all suits now or hereafter pending, &c. Verification and prayer of dismissal of writ of error.

AFFIDAVIT.

Affidavit of Patrick W. Dunne, that plea is false and fraudulent as to him. Suit commenced and prosecuted by him alone, &c. Wood joined to prevent abatement. Work left by Wood before completion, and completed by Dunne. Wood left to avoid liabilities of Wood & Dunne, and to leave Dunne alone to finish work and to settle with defendants. No partnership existing at commencement of suit or since. Wood non-resident. \$2262 28 justly due from defendants. Wood not equitably entitled to more than \$578 44 thereof. Wood insolvent. Defendants' knowledge of facts in affidavit mentioned before release obtained. Release obtained for express purpose of cheating, wronging and defrauding affiant. Release fraudulent as against affiant, &c., and if sustained will defraud affiant out of sum of \$1683 79.

MOTION.

Motion of Dunne to set aside plea or strike it from the files, &c., and to reverse judgment below.

AUTHORITIES, &c.

The plea is to the further maintainance of the suit, and if not technically a plea *puisdarrein continuance*, is clearly in the nature thereof. It is so defective in substance and in form that it ought to be treated as a nullity, and is sufficiently shown to be fraudulent to warrant the Court in setting it aside. If the defendants are permitted at all to plead it, that should be only on remanding the cause.—Story on Partnership, Sec. 132, and cases cited. 1 Chitty's Pleading, 658, 659, 660, 661, and cases cited. *Note P*, page 658, and cases cited. *Note 6*, page 659, and cases cited. "It is in the discretion of the Court to receive the plea or not, and this discretion will be governed by circumstances extrinsic and which cannot appear on the face of the plea." 7 Taunt, 421; Jones v. Herbert; 6 Hill, 237; Firnan v. Leland.

The Court erred in dismissing the suit. The whole object of the statute was satisfied by the residence of Dunne within the jurisdiction of the Court, and subject to its process.—Statute of Costs, Sec. 1, 2; Thulman and al. vs. Barbour and als.; 5 Indiana, 178; 3d Porter.

CHARLES C. BONNEY, of Counsel, &c.

In the Supreme Court

Merritt D. Wood & al.

vs.
George Goss & al.

Error to Peoria Circuit Court

Abstract -

Wood & Burnell
vs
Goss, Jackson
et al.

Argument of
Defendants

We maintain that the
Court below properly dismissed
the suit for want of security for
costs under Sec 1. page 275
Purple Stat.

The security provided by this stat-
ute should not be ~~ever~~ narrowed
and has in fact received an
enlarged construction

Smith vs Robinson 11 Ill. 119

Blackman vs Beams 3 Gil 97

Barndolph vs Erick 13 Ill 345

Ripley vs Morris 2 Gil 381

Robertson vs County Comm. 5 Gil 559

Our statute requiring a
surety to give security for cost
is of a more stringent & stric-
ter nature than that of any other
State which we have noticed

and guarantees to the citizen a
full immunity for his costs
in case he is wrongfully sued
by a nonresident

In case the Defendant is suc-
cessful in a suit his costs be-
come a debt or claim of the
highest order against the Plff^t
or Plaintiffs. ~~What reason is there~~
~~for saying that~~
Now, if, by law, he is entitled
to security for this debt or claim
what good reason is there for
saying that his security should
not extend to all who are liable
to him upon the debt or claim?

We carry the doctrine laid
down as to the Indiana Stat-
ute in 5 Porter 178. as applicable
here, viz. that the statute does
not apply when one joins
Plff. residing in the State.

If the Defendant is entitled to
have every responsible party for
the costs, why is he not entitled
to have the responsibility of all who

are liable to him by law, for ~~the case~~

His judgment for costs is against two. Why should he be compelled to look only to the responsibility of one.

When Defendant is sued by two. He is not bound to take the risk of the responsibility of only one for his costs, while his claim is meritorious wholly improper against the other on account of his non residence.

The resident may become insolvent before he can make his costs of him, and in that case he is entitled to the responsibility of the other by way of the security provided by the Statute.

And we submit further that if this case is not held to be within the provisions of the Statute properly construed. Then as a motion for costs not provided for by the statute, it is added to the discretion of the Court below, its decision cannot be assigned for error. Selby & Hatchinson
4. J. 319

Wood & Durrie

Georgi^{or} Goss

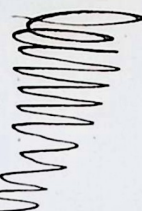
et al
Defendants
Argument upon
the errors assigned

Filed April 27, 1860
L. Leland
Clerk

State of Illinois }
In the Supreme Court at Ottawa,
Of the April Term A.D. 1859.
Merritt D. Wood &
Patrick H. Dunn
v.
George Goss
Moses M. Jackson &
Ransom Gardner



Error to Supreme
Court -



Replications -

And the said plaintiffs by their
said attorney, for replication to
the said plea of the said defendants
say precludi non, because they
say that the said supposed writing
of release in the said plea men-
-tioned, was not nor is the deed
of them the said plaintiffs,

And thus the said plaintiffs pray
may be required of by the country,
&c.

Charles C. Bonney
attorney for plaintiffs

And the said plaintiffs, by their
said attorney, for a further rep=

=lication to the said plea of the said
defendants, by leave of the court
therefor, say precludi non, because
they say that the said supposed
writing of release in the said plea
mentioned, was had and obtained
from the said plaintiffs, by the
fraud and covin of the said defen=
=dants, to wit at the state of Illinois
aforesaid. And this they the said
plaintiffs are ready to verify, wherefore
they pray judgment &c.

Charles C. Boney
attorney for Plaintiffs.

⁵⁻⁴
In the Supreme Court

Wood & Dunn
v

Gov. Jackson & Co.

Replications -

Filed Apr. 20. 1859.
L. Island
Clerk.

⁷¹
Bourne

SUPREME COURT OF ILLINOIS,
Third Division—April Term, 1859.

WOOD & DUNN,
vs.
GOSS, JACKMAN, *et al.*

BRIEF OF AUTHORITIES CITED BY APPELLEES.

One partner may release debt due firm.

Collyer on partnership, ~~259 and 379~~

Story on partnership, ~~171~~ § 115-8-116

Bruen *vs.* Marquand, 17 John 58.

Piersons *vs.* Hooker, 3 John 68.

Stead *vs.* Talt. 11 Con. L. R. 50.

Release of errors.

Morgan *vs.* Ladd *et al.* 2 Gil. 414.

Thomas *vs.* Negus, 2 Gil. 700.

Suit was properly dismissed for want of security for costs, sec. 1 page 275 Purple's stat. This statute has received a comprehensive rather than a restricted construction.

Smith *vs.* Robinson, 11 Ill. 119.

Blackmaster *vs.* Beams, 3 Gil. 97.

Randolph *vs.* Emerick 13 Ill 345.

Ripley *vs.* Morris, 2 Gil. 381.

Robertson *vs.* County Com. 5 Gil. 559.

Motion to dismiss for want of security for costs, is addressed to discretion of court and cannot be assigned for error.

Selby *vs.* Hutchinson 4 Gil. 319.

E. N. POWELL and H. B. HOPKINS,

Attorneys for Appellees:

Good & al
Gof^v & als

Ommy

My Brief

SUBSTITUTED COUNCIL OF ILLINOIS

1893. Mrs. T. A. - 1893. Mrs. T. A.

Does' grandchild of 18.
18.
Wood 2 Dues.

CHICKEN AND RICE CROCK POT

Conf. on Partnership 228 and 210.

1901. 1. 15. 20

1000

1890

100

[illegible]

Proceedings at a term of the Circuit Court of Peoria County
began and held at the Court-house in the City of Peoria
in said County and State of Illinois, on the third Monday
in the month of November in the year of our Lord
one thousand eight hundred and fifty nine it being the
twenty first day of said month - Present, the Honorable Elihu
N. Powell Judge of the 16th Judicial Circuit in said State,
John Bryner Sheriff and Enoch P. Sloan clerk to wit:

Tuesday November 22nd A.D. 1859.

Memitt S. Wood vs

George Goss vs Redocketed from Supreme Court

This day there was presented to the Court
a certified copy of an issue of fact from the Supreme Court
of this State to be tried in this Court, and certified thereto,
whereupon it is ordered that this cause be redocketed for
further proceedings in conformity with the opinion of said
Supreme Court. At the suggestion of the Court the
Court having been of Council in this cause, this cause is
submitted to Julius Manning for trial, Mr Manning
agreeing thereto, and this cause is continued.

Proceedings at a term of the Circuit Court began and
held at the Court-house in the City and County of Peoria
and State of Illinois, on the first Monday in the month
of March, in the year of our Lord one thousand eight
hundred and sixty, it being the fifth day of said month
present, the Honorable Elihu N. Powell Judge of the 16th

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Judicial Circuit in the State of Illinois, John Bryner
Sheriff and Enoch G. Sloan clerk to wit:

Wednesday March 2, rd A.D. 1860.

Merritt D. Wood

Patrick M. Dunne

vs

Issue of fact from Supreme Court

George Goss

Moses M. Jackson

Ransom Gardner

This day this cause come on for trial, and
thereupon the Hon. Oliver N. Powell, presiding judge &c. declined
to hear the same, for that he had been of counsel for the said
defendants in this behalf &c. and thereupon it was agreed
as well by the said Circuit Court, as by the said plaintiffs by
Leb. Bonney and William O'Brien their attorneys and the
said defendants by Henry Grove and Henry B. Hopkins
their attorneys that to save the expense and delay of a change
of venue, Julius Manning Esq., one of the attorneys of the said Circuit
Court, and Supreme Courts, should preside as judge during
the trial of said issue, and that no exception should
be taken thereto by either party, either in the Supreme Court
or elsewhere, but that the acts of said Julius Manning as
such presiding judge, should in all things whatsoever,
as effectually bind and conclude the parties aforesaid
respectively, as though the same had been done by any one
of the Circuit Judges of this State &c. And therefore the said
Julius Manning at the special request as well of the
said Circuit Court as of the said plaintiffs and the

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said defendants, consented to Gueside upon said trial and accordingly took the bench of the said Circuit Court therefor; and it is ordered by the Court that a jury be empannelled to try the issue aforesaid, whereupon came a jury of twelve good and lawful men to wit: J. M. Sheffield, Levi Sapham, Herman Blakely, James Dougherty, J. J. Thomas John Hanna, John Weaver, J. S. Hornbaker, A. O. Garrett, J. D. Otis Willis Triplett and Joel Thurston, who were duly chosen tried and sworn to well and truly try the issue joined in this cause and a true verdict give according to the evidence. And the said jury having heard the evidence &c. in the case retired to consider of their verdict.

Thursday March 22nd A.D. 1860.

Merritt D Wood & Patrick H Dunn
vs Issue of Fact from Supreme Court
George Goss. Moses M Gaekman
Ransom Gardner.

This day again come the parties to the suit, and also come the jury empannelled and sworn on yesterday to try this cause vs. Julius Manning Esq on the bench. And the jury aforesaid, upon their oaths aforesaid, do say, "we the jury find the issues for the Plaintiff Dunne and hereupon it is ordered by the Court, that the clerk of the Court do, with all convenient speed certify to the said Supreme Court the verdict aforesaid, of the jury aforesaid, together with the costs of this trial of the issue aforesaid to be taxed &c.

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Wednesday March 28th A D 1860

Merritt D Wood v al

vs Issue of fact from Supreme Court.

George Goss v al

This day this cause come on to be heard on the motion of defendants for a new trial of this cause, and the Court being fully advised in the premises overruled said motion. By agreement it is ordered that the bill of exceptions in this case may be signed by Mr. Manning after the adjournment of this Court.

And afterwards to wit: on the Eleventh day of April in the year of our Lord one thousand eight hundred and Sixty the was filed in the the office of the Clerk of the Circuit Court of Peoria County, and State of Illinois, a Bill of Exceptions in words and figures following to wit:

State of Illinois
County of Peoria S.S.

In The Circuit Court of The March
Term A.D. 1860.

Merritt D. Wood &

Patrick W. Dunn

vs.

George Goss.

Moses M. Jackson

Ransom Gardiner

Issue of Fact

From Supreme Court.

Bill of Exceptions

Be it remembered that upon the calling of this issue for trial The Hon Elisha N. Powell presiding judge, declined to hear the same, for that he had been of counsel for the said defendants in this behalf, & And therefore it was agreed as well by the said Circuit Court, as by the said plaintiffs by Charles E. Bonney and William W. O'Brien their attorneys, and the said defendants by Henry Grove and Henry B. Hopkins their attorneys that to save the expense and delay of a change of Venue, Julius Manning Esq. One of the attorneys of the said Circuit ~~Court~~ and Supreme Courts, shall preside as judge during the trial of said issue, and that no exception should be taken thereto; by either party, either in the Supreme Court or elsewhere, but that the acts of said Julius Manning as such presiding judge, should in all things whatsoever as

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effectually bind and conclude the parties aforesaid respectively, as though the same had been done by any one of the Circuit Judges of this State and thereupon the said Julius Manning, at the special request as well of the said Circuit Court, as of the said plaintiffs, and the said defendants consented to preside upon said trial, and accordingly took the bench of the said Circuit Court therefor: Whereupon a jury was empanelled and the following proceedings had thereupon to wit:

The plaintiffs offered and introduced the following evidence that is to say,

An affidavit filed by the defendant in the original case in the Circuit Court in the words and figures following to wit:

Merritt D. Hood
Patrick H. Dunn
vs.
George Goss.
Moses Mofackeman
Ransom Gardner

State of Illinois
Peoria County, I.L.

This day personally
appeared before me the undersigned
Clerk of the Circuit Court for said County
Chester Warner who being duly sworn
deposes and says that Merritt
D. Hood one of the plaintiffs in the
above entitled suit at the time of
the commencement of said suit

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was and still is a non resident of the 9
State of Illinois and further said 10
not 11

Subscribed and sworn Chester Warner
to before me this 3rd day of
March 1855. Jacob Gale Clerk
Afft amended & re sworn to
on 8th day of March A.D. 1855
Jacob Gale Clerk.

The defendants objected to the introduction of said affidavit, but the Court overruled the objection, and said affidavit was read as evidence tending to prove the alleged non-residence of said Wood. The plaintiffs then called Smith Frye who being first duly sworn, testified as follows to wit: I know the parties - know the work, we had 20 miles under defendants - Plaintiffs worked on same 20 miles. Plaintiffs had the putting up of the culverts - laid some track - dug out some excavation for culverts - built some cattle guards - took iron from Boats to grade to lay the track with - They laid several miles - 5 or 6 miles I think - Defts furnished the ties - plaintiffs were delayed some 3 or 4 days for want of ties - they had 6 or 8 men. Work commenced in Spring of 1854, and ended in August 1854 - Wood remained after he quit the work - In June Wood quit the work on the job - he was engaged in no business after he quit the work. Mr Jackman of Goss Jackman & Co had supervision of the work for Defts, he was along the road sometimes once or twice a week, sometimes once a month.

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living along the line at Peoria Schillicothe &c.
Mr Jackman I think must have known of Wood's quitting
the work, There was some delay at the Narrows - I think
2 or 3 days <sup>3 Dunn helped to dig spring culvert. There was some objection at
spring culvert for want of ties - The culverts on Naughts division
were dug by other parties besides us,</sup>
Hood and Dunn got Money for work - I presume they
got estimate - I think they were paid certain proportions -
20 per cent was kept back from us - Wood left some time
in June, he staid about here part of July - I think
Jackman told me Wood had quit. Dunn and the work
Wood was not looking after the work after the 10th or
25th of June, he was about here sometime after - I don't
think he did much after August. Jackman was here
pretty generally about that time, he was gone about 4
weeks once, I think that was later than July - the work
was all done that year - Our Contract was 20 miles -
I understood plaintiffs had the putting up the Culverts
the whole 20 miles Defts had Mr Warner acting as
their clerk under them, he was here part of the time;
he had no general overlooking of their business, he was
along looking after Defts interest and keeping their accs -
Jackman was here about the first of July - he was here
generally - Mr Warner was here seeing to ties &c off and
on all the while - Sometimes would be here 2 or 3 weeks
at a time - The whole of this work was done in the Peoria
and Bureau Valley Rail Road for Goss Jackman & Co.,

Henry S Austin Sworn - Know P. W. Dunn of the firm
of Hood and Dunn - I was one of the original attorneys

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employed to prosecute this suit - never saw Mr. Hood -
Mr Dunne was the only one that I knew - I don't know
of Woods doing anything in the case - I believe it was
prosecuted for Dunne's benefit principally, may have known
Hood, but have no recollection - Dunne was the acting man.

Luther Birge sworn says; I know the parties -
I knew the work, worked on the Rail Road and furnished
a good part of timber for the bridges & Culverts & ties for the
track - Wood and Dunne done all the work between
Peoria and Chillicothe a distance of 20 miles in the Culverts
I suppose - I was on the Road daily - I saw only him
and his hands - I was on the Road for several months -
There were a great many Culverts I can't tell how many -
I think they built them all - knew the men were working
under Mr Dunne. Wood left quite early in the season
Dunne continued the work; from being acquainted with
Dunne, and being there I ^{knew} that they were at work - I
think Jackman told me Wood left the work and went off -
Wood & Dunne commenced back at narrow, saw them
to work at Peoria had 10 or 12 Carpenters working at
Bridges or Culverts he paid \$1.75 per day - I hired some
of the men for him. They were detained at the first
Culvert about 8 hands 3 or 4 days. - The reason was the
timber wasn't there at the Stone Culvert it was framed
over 2 or 3 times - it wasn't Dunne's fault, Dunne
had to go back and forth because the timber wasn't ready,
wasn't over 10 days work on the stone Culvert -

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There was a good deal of time lost at another Culvert about 8 or 10 days - There was a culvert at the Narrows which had to be altered, it was removed - I would not do it for less than \$10⁰⁰. The timber in it was hauled to back Mrs Stewartson, it took 3 days at \$2⁰⁰, to \$2⁰⁰ per day - There was another Culvert above it changed and reframed - Dunne dug out in a great many places for Culverts - One changed twice was worth \$10⁰⁰ to dig - Dunne worked at Pile Bridges - The ties had to be taken off he did it and distributed them in the Road Bed - It took a team 8 days, he bolted the Pile Bridges - They were detained for planks probably 30 days in all - I would not have dug the Spring Culvert for \$10⁰⁰ - Dunne moved the Iron - They were 2 to 3 days moving it from the River to the land, they employed 4 or 5 hands and 2 Teams - ~~They laid a side track about 20 rods~~ for moving Iron to grade - Dunne built the Cattle guards as far as I knew - I only saw Wood when they first commenced the job - I didn't see him do anything.

Wood & Dunne Came in to see the Road in April They were at work for defendants - I know this by what Jackman told me and by what I saw; I have seen Deft pay Dunne money - Wood had quit 2 or 3 months before I did. Dunne then went on alone and did the work as I understood it Wheaton was ^{the} Engineer - He made some of the Estimates - I had the impression that Dunne was not at work by the day - his services were worth \$3.00 per day - Deft claimed to pay off monthly - I think

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 Jackman gave Dunne \$1800, Once of which he
 paid me \$500, The balance went to Moss & Co
 I didn't know if he kept any of it -

Wm G Wheaton sworn says: was engineer, I estimated
 all between defendants and Farnham & Co, - Farnham & Co
 took the work Defendants were under them, and they
 sublet to different persons - I kept the account between
 defendants and Farnham & Co. Dunne worked on the
 Road Made Culverts, I can tell the monthly estimates -
 Jackman said he had Wood & Dunne to work for him
 Dunne framed Culverts and laid track - Dunne & Wood
 had Contract on Sec 12 for grading, Sec 1 begins at Peoria
 Sec. 10 ends at Chillicothe - 2 miles to the Sec. Sec 12
 is above Chillicothe - There was 50 chains grubbing on
 Sec 12 - to June 21st 1854.

16,000	Cub yards Earth Excavation	"	"	"
900	" " Cemented Clay	"	"	"
7,992	Framing is estimated in Sec 1	-		
13,144	Feet Do	"	"	" 2 -
17,640	" Do	"	"	" 3 -
14,670	" Do	"	"	" 4 -
22,300	" Do	"	"	" 5 -
75,746	" Do	Sec 1 to 5	Inclusive	
25,260	" Do	in	Sec	6 -
10,544	" Do	"	"	7 -
12,620	" Do	"	"	8 -
12,390	" Do	"	"	9 -
2,932	" Do	"	"	10 -
139,492				

12
Myself and Clerk made the estimates. I know them to be correct - Dunne raised wood work of Culverts between Georgia and Chillicothe - Dunne laid iron, 5³⁸/100 miles of track: I think this is correct - he built the Cattle Guards there were 28 - about 800 feet in each Dunne excavated considerably for Cattle Guards & Culverts There were wood Culverts in Sec 1 - 3 Men could put in a Culvert in 3 or 4 days - good workmen - there were 3 Culverts on Sec 1 -

Edw^d H Cantwell Sworn says: Am a contractor 3 years engaged on Rail Road Superintending 9 years was employed as Foreman by Dunne - Wood was there I worked for them - work was for them as I supposed Wood left, ^{between} Dunn went on with same work Wood left the work 10th & 20th of June, know value of such work - I was foreman on Sec. 12. There was some 200 yds moved before they commenced - the 20 yds was cemented clay the common excavation was worth 24¢ the cemented clay worth 6¢ extra per yard, they did grubbing worth \$5.50 per Chain - Framing Culverts & furnishing the timber is worth \$40.50 to \$45.50 per M. The framing is worth 1/2 that per thousand, I am not much acquainted with framing, track laying is worth \$300.50 per mile, Culvert work worth same as tressel work, worth more to dig Culvert pits than ordinary excavation if wet worth twice as much, I get 10¢ per yard more for dry Culverts than for common excavation - was worth same to lay side track as the

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other track, was some grading for side track - Wood boarded with me when he was here - There was 5 or 6 hundred feet where we had to put in extra ties - worth twice as much as laying ~~the~~ other tracks - The iron was not delivered by the defendants on the track it is the usual custom to deliver the iron daily at the end of the iron last laid in the grade - It would take 3 or 4 men & a horse daily to deliver the iron or draw it up in the grade - I commenced about the 1st of May to work on Sec 12. and continued until the 8th or 10th of June, Wood left about the time I left Sec 12. which was 10th or 12th. I then worked for them on track until I fell sick - Dunne completed the same work. Wood & Dunne commenced - worth 35¢ per yard to dig wet culverts - worth double to put in ties after track is laid - Mens time was worth \$1²⁵ per day, Horse worth about \$1.5 per day - Came out here 16th April 1854. Wood & Dunne commenced work on Sec. 12. about some time - the laying of the side track is worth the same as the other track

John Conway, Sworn says: Mr. Dunne made side track witness worked at it there were 6 or 8 men laying the side track the larger part of a week - Myself & 2 men more took the iron from the water up on the track and worked until some time in September from the latter part of May - worked at excavating the Spring Culvert and assisted at Culvert near home - was paid by

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Dunne for my labor -

Charles Greenleaf, Sworn says: Knows the Spring Culvert
recollects it was a bad one - just above Thurston's place
another, at Massville there was two, the others were
dry. Wood & Dunne hadn't ties always to go in -
There were not sufficient ties in several places - Wood
left sometime in the spring - I boarded with him - I
never saw him superintending the laying of the track.
He was about superintending the work generally

The Plaintiff rested and the Defendants called

William C. Wheaton Examined for defense.

There was 300 yds Excavation done on Dec 12 before
Wood & Dunne commenced in April - also 900 yds
cemented clay - also 7 chains of grubbing - this would give
them 43 chains grubbing which I value at \$10.25 per chain

Say \$430.00

15,900 Cub yds Earth Excavation at 20¢ . 3,140.00

120 000 feet Framing deducting 3
work on Pile Bridges I value at \$8.00 3 960.00

28 Cattle Guards I value at \$6.00 168.00

5 58/100 Miles Track at \$175.00 per mile 980.00

It is worth \$8.00 per thousand to frame Culverts - Excavation
is worth 18¢ per yard, If I was going to do the work
I should want 20¢ per yard - The laying of the tracks
was worth \$150.00 to \$200.00 per mile situate as it was -
I know Dunne's hand writing, have seen him write,

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this is his - The Bill is Charges for extras - Bill admitted - The last excavation on the line was on Sec 12. - The work was suspended in July - up to last of June The excavation was 16 000 yards Common Earth when the Road was all ballasted up I should count the laying of track and ballasting worth \$400 per mile - the ballasting was worth \$200 to \$250 per mile. First mile from Peoria could be ballasted for \$100 - I have had charge of track laying heretofore - my information in regard to the value of framing Culverts is from what I heard from 2 or 3 men - I have as a rule kept back \$10.00 in estimating timber work - which I consider enough for framing

Extra Bill put in evidence by defendant dated May 31/54.

The defendants then read in evidence the following receipts and ~~and~~ account to wit:

\$320.00/100

Peoria Aug 10th 1854.

Received of Goss Jackman & Co by the hand of M M Jackman ^{and twenty} Three Hundred dollars on account for grading Bridging & Track Laying on the P & B V.R.R.

P. W. Dunne

Aug 12 Paid P W Dunne on a/c twenty five dollars

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\$1500.

Received of Goss Jackman & Co at the hands
of M M Jackman fifteen hundred dollars to be
applied in grading and constructing Section twelve
of the Peoria & B.V. Railroad

Wood & Dunne

Newry June 8th 1854 By M. D. Wood

Peoria April 8th 1854

Rec^d of Goss Jackman & Co by the hand of
M M Jackman One Hundred dollars on acc^t
for Bridging on the P & B V R R.

Wood & Dunne

\$300 Received of Goss Jackman & Co at the hand,
of C Warner three hundred dollars on account said
money to be applied in grading section twelve of the
Peoria and Bureau Valley Railroad

Newry May 7th 1854.

Wood & Dunne

By Wood.

\$100.00 Received Peoria Ill., May 26th 1854 from
Mess^{rs} Goss Jackman & Co per M M. Jackman,
One hundred dollars on acc^t

Wood & Dunne

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\$300

Received of Goss Jackman & Co at the hand of
C Warner three hundred dollars on account for
Bridging on Peoria and B & O Railroad.

Henry June 8th 1854 Wood & Dunne

\$242.⁰⁰/₁₀₀

Received of Goss Jackman & Co at the hand of
C. Warner Two Hundred and forty two ⁰⁰/₁₀₀ dollars
on acc^t Superstruction on the Peoria & Bureau Valley
R R.

Wood & Dunne

Henry Ill July 12th 1854.

Henry July 1st 1854

Recd. of M M Jackman thirty five dollars
on acc^t for work on P. B. & O. R.R.

Wood & Dunne

\$600

Received Henry July 7th A D 1854 of
Goss Jackman & Co. at the hands of M M Jackman
Six hundred dollars on account

Wood & Dunne

Received of Goss Jackman & Co at the hand of
M M Jackman two hundred dollars on account

Wood & Dunne

Henry June 22nd 1854.

18 Newy Ill June 22nd 1854
 Messrs Goss Jackson & Co
 Gents

Please pay D Ferguson or order
 (\$53 1/100) Fifty five 1/100 Dollars. and charge to accy
 Yrs. v.
 Hood & Dunne

Received amount of above order
 Newy July 19th 1854.

Davis Ferguson

Newy May 23^d 1854:
 Recd of Goss Jackson & Co one hundred dollars on
 a/c grading Sec. 12. P. & B. C. R. R.
 Hood & Dunne

Hood & Dunne

In accp Goss Jackson & Co

1854

April 9.	To Cash paid	M D Hood per M M. J	\$ 100. "
May 6.	"	P. H. Dunne " C Warner	160. "
" 8.	"	M D Hood " M M J.	300. "
" 23	"	do " do	100. "
" 26	"	P. H. Dunne " do Peria	100. "
June 8	"	M D Hood " C Warner Newy	300. "
" "	"	" P. H. Dunne " do "	300. "
" 22	"	do " M M J.	200. "
" 22	"	Acceptance D Ferguson Lewis Bell	53. "

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July	1 st	"	Cash paid by W Collins for C Warner	52.	"
"	"	"	" J. W. Dunne " M M f.	33.	"
"	7 th	"	" Do " Do	600.	"
"	12	"	" Do " C Warner	242.	"
"	23	"	" Do " M M f.	15.	"
Aug	10	"	" Do " Do	300.	"
"	"	"	" Old Gorman " Do	20.	"
"	12	"	" J. W. Dunne on track M M f.	25.	"
				<u>4,104.</u>	

Aug 30th 1854. Total Cash rec^d to date.

Amounting in the whole to \$4,104.

The Defendants then offered in evidence the following receipts, where to the plaintiffs then and there objected, and which were thereupon excluded by the Court, to wit:

\$52.

Received of Goss, Jackman & Co at the hands of
C Warner fifty two dollars in full of all demands
for service on the Peoria & R.R. Railroad on account
for Wood & Dunne George W. Collins
Given July 3rd 1854.

\$20. / 100 Received Peoria Ill. Aug 23rd 1854. from
Messrs Goss, Jackman & Co. for C. Warner Twenty Dollars
on acc^t P. W. Dunne

\$98. ⁰⁰/₁₀₀ =

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Massville Sept. 26th 1854

Mess^{rs} Goss Jackman & Co

Gents

Please pay Mr. William

Wadleigh Ninety eight ⁰⁰/₁₀₀ Dollars and charge the
same to acc^t of

Yours &

P. W. Dunne

Same order Endorsed on back as follows to wit:

Received Henry Sept 26th 1854 of Goss Jackman & Co
by the hands of M M Jackman the amount of the within order. Wm J. Wadleigh.

\$12 ⁵⁰/₁₀₀ =

Massville Sept. 29th 1854

Mess^{rs} Goss Jackman & Co

Gents

Pay James Briarly

Twelve ⁵⁰/₁₀₀ Dollars and charge to acc^t

If presented later than date

P. W. Dunne

retain board at rate of 20¢

Peoria Ill Sept 2nd 1854

Mess^{rs} Goss Jackman & Co

Gents

Please pay John Loyd (\$20. ⁰⁰/₁₀₀)

Twenty Dollars and charge to acc^t

Yours &

He has paid all board Bill

P. W. Dunne

This was all the evidence - The court gave the
jury the following instructions, where to the said
defendants then and there expected to wit.

Instructions of the Court.

The only question for your determination is whether the release from Wood to the defendants, which has been offered in evidence, and which is mentioned in the pleadings in this cause, was fraudulently executed and obtained as against the rights of Dunn.

In order to authorize you to render a verdict in favor of Dunn you must believe from the evidence,

1. That Wood and Dunn were partners, and that the services to recover compensation for which this suit was originally brought, were rendered under a contract, express or implied, with that partnership. It is not necessary that both partners should have participated personally in performing the services, one partner may have done the work, so that it was done under a contract with the partnership.

2. You must believe from the evidence that Wood abandoned the work and the partnership. It is alleged in the pleadings further that Wood left the state, but I do not consider it indispensable, to justify you in rendering a verdict in favor of Dunn to believe from the evidence that Wood did actually abscond, and leave the state: this however is a question for your consideration in determining whether the release was fraudulently executed.

3. You must believe from the evidence that after Wood abandoned the work and partnership, Dunn went on and performed the services, under the contract with the

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partnership, and thereby became personally equitably entitled to the compensation for those services; and that the original suit in this case was and is prosecuted for his (Dunne) benefit.

4. You must believe from the evidence that, for the services so rendered, the defendants were justly indebted to Hood & Dunne for the use of Dunne; that such indebtedness equitably belonged to Dunne. The amount of indebtedness alleged in the pleadings is \$15000.

It is not necessary that you should believe that the indebtedness was fully that amount, but you must believe that there was some amount of just indebtedness over and above all payments which had been made by the defendants.

5. You must believe from the evidence that the defendants knew these facts which I have enumerated as necessary to be proved on the part of Dunne before the release was ~~executed~~ executed.

6. You must believe from the evidence that the defendants by paying to Hood less than the amount which was actually due to Hood & Dunne, and not making an honest compromise with Hood, procured the execution of the release for the purpose of defrauding Dunne out of the whole or a part of the compensation which was equitably his due for the services which he had rendered under the partnership contract of Hood & Dunne.

The fraud must have been on the part of the defendants; not on the part of Hood merely. If the

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defendants acted honestly in obtaining the release, it is immaterial that the intentions and acts of Wood in executing the release were dishonest and fraudulent against the rights of Dunne. The defendants had a right to compromise with Wood for less than the whole amount which was actually due, so that it was an honest transaction; but they had no right in law to do it dishonestly for the purpose of cheating Dunne. The manner in which it was done, the purpose for which it was done is exclusively for your consideration upon the evidence before you.

In regard to the indebtedness which I have mentioned - that indebtedness must have been from the defendants to Wood & Dunn as partners; it must have accrued under a contract with the two as partners, not under a contract with one of them in his separate capacity. If there has been any evidence of such indebtedness, which you believe from the evidence, was to Dunne alone and not as a partner of Wood, you must entirely reject that from your consideration in determining whether there was an indebtedness from the defendants to Wood & Dunn in this case. It was upon this ground that the receipts signed by Dunne alone were excluded from your consideration. Such transactions must be adjusted between the defendants and Dunne alone. They are not in the case.

In ascertaining whether there was such indebtedness from the defendants to Wood & Dunn, you will not

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allow anything in favor of Wood & Dunne charged for the delay of their workman, unless you believe from the evidence that the work being done at that time was being done by the day or month, ~~under~~ under a contract that the defendants should furnish the materials ready to employ the workmen, or that the amount of the damages for delay has been settled between the parties.

The fraud which is charged against the defendants must be clearly proved to justify you in finding in favor of Dunne; that is you must be well satisfied from the evidence that such fraud did exist; but fraud like other things concerning the existence of which there is no direct proof, may be shown by circumstantial evidence. Indeed from its very nature, it is rarely susceptible of proof by any other species of evidence. You are therefore to consider all the circumstances which have been proved tending to show this fraud charged against the defendants, and if from them you are clearly satisfied that the release was obtained by the defendants for the purpose of defrauding Dunne, and under the state of facts which I have enumerated as being necessary to be proved on the part of Dunne then you will find the issue submitted to you for the plaintiff Dunne, otherwise you will find the issue for the defendants.

Julius Manning.

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The jury returned their verdict that: they found the release specified in the pleadings to be fraudulent and void as against the said Patrick W. Dunne in manner and form as charged in his said replication &c. And thereupon it was ordered by the Court, that the Clerk thereof do accordingly certify to the said Supreme Court the verdict aforesaid, of the jury aforesaid upon the release aforesaid together with the costs of the trial of said issue to be taxed &c and afterwards to wit, during the same term of said circuit court the said defendants entered the following motion for a new trial, to wit: -

Wood & Dunne	}	
vs	}	
Goss, Jackson et al	}	Circuit Court Peoria County
		March Term A.D. 1860

And now come the said Defendants and move the court for a new trial in the above entitled cause for the reason that the verdict of the jury is contrary to the evidence and because the same is contrary to instructions & contrary to law, and because the court gave improper instructions on part of the Plaintiffs, and because the court refused to give proper instructions on part of Defendants.

W B Hopkins
Atty

But the court overruled said motion, where to the said defendants then and there excepted, and prayed the Court to sign and seal the Bill of exceptions which is accordingly done
Julius Manning

State of Illinois
Perry County

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I, Enoch P. Sloan, clerk of
the circuit court in and for
said county and state do
certify that the foregoing
is a full, true and correct
transcript of the proceedings
of our said court in the trial
of a certain issue of fact from
the Supreme Court, in the case
of Merritt D. Woodruff vs George Gossett,
and of the bill of exceptions filed
in said case, as the same ap-
pear of record and on file in my
office. Given under my hand
and seal of said court
at Perry, this 16th day
of April A.D. 1860

Enoch P. Sloan clerk
By Newton D. Sly

4 Q

Merritt D. Wood
vs

George Goss & others

Transcript of
Bill of Exceptions
from Berrien Co. Circuit
Court

Filed April 12, 1860
L. Leland
Clerk

Q

State of Illinois
^{ex parte}
M^d Wood
vs
P^d Dunn

In the Supreme Court
Third Grand Division
April Term AD 1858

George Goff
Moors M Jackson
Ransom Gardner

In Error from Iowa

And The said George Goff
Moors M Jackson and Ransom Gardner
The said defendants in error by E. B. Powell
their Attorneys by leave of Court come and
say for a release of the errors asigned
in said record that The said plaintiffs in
error The said M^d Wood and P^d Dunn
Since the arising of the writ of error in
said Cause and since the asignment
of the errors in said record to wit on
the fourth day of April in the year of
our Lord One Thousand Eight hundred
and fifty six at ~~and~~ the State of Illinois
appeared the said M^d Wood then and
then being a partner of the said P^d Dunn
Dunn by his certain writing obligatory
of release sealed with his Seal and now
shown to the said Court here the date
whereof is a certain day and year therein
mentioned to wit the day and year
last aforesaid which said release is
in ~~the~~ substance in the words and

figures following to wit "Received
of Messrs Goss Jackman & Co which
firm is composed of George Goss Moore
Mc Jackman and Hanson Gardner the
sum of Fifty Dollars which sum is in
full for all sums due to Wood & Dunn
which firm was composed of M D
Wood and B W Dunn from said
Goss Jackman & Co for all work done by
said Wood & Dunn for said Goss Jackman
& Co in building Bridges, Culverts and
Cattle Guards on the Peoria and Bureau
Valley Rail Road and for laying any
portion of the Iron on said Road and
for any other indebtedness whatever due
to said Wood & Dunn from said Goss
Jackman & Co And I do hereby forever
remit release quit claim and discharge
the said Goss Jackman & Co from all lia-
- bility to said Wood & Dunn for any inde-
- btedness or liability whatever and from
all suits now pending or which may
hereafter be pending or brought against
said Goss Jackman & Co for any work
done for them by said Wood & Dunn
on the Peoria & Bureau Valley Rail Road
In witness whereof I have hereunto set my
hand ^{and} seal this fourth day of April A.D. 1884

Witness } A. G. Lester }
Witness } G. W. Ernest }

M D Wood Esq.

By which said release the said plain-
tiffs in error did remise release quit
claim and discharge the said defendants
from all causes of action in said record
and released all errors in the same
as by the said deed or writing of release
reference being thereunto had will fully
appear And thus they are ready to verify
wherefore they pray that said writ of
error may be dismissed with costs

E. N. Powell
Atty for Defs

Wood & Lerner
let # 5
Gos Jackson Co

Plea

Relief April 20, 1888
L. Lerner
B. K.

B.

State of Illinois

In the Supreme Court at Ottawa
Of the April Term A.D. 1859

Merritt D. Hood
Patrick W. Dunne

George Goss
Moses M. Jackson
Ransom Gardner

Attorney to
Peoria

Suggestions of plaintiffs
upon order remanding cause
for trial of issue of fact,
and against motion for
judgment against Merritt
D. Hood.

1. The motion for judgment cannot prevail for the following reasons.
 1. The court substantially decided against the question presented by it, in overruling the demurrer of the defendants to the Replication filed by Patrick W. Dunne.
 2. The court held that if the facts stated in that Replication were true, the plaintiff Dunne had the right to prosecute this action in the name of the firm of Hood & Dunne against the defendants.
 3. The defendants now stand charged with a fraud, which if sustained,

will entitle the plaintiffs to judgment. How then can they have a judgment in their favor, until exculpated from this charge?

4. But by pleading only this release the defendants admit that they have no other defence, and that if the release be set aside the judgment below ought to be reversed, and the plaintiffs ought to recover pursuant to their declaration.

2 The order remanding the cause ought to direct that if the jury find the issue joined for the plaintiffs the same jury shall assess the damages which the plaintiffs ought to recover, and for the following reasons:

1. The defendants allege no other defence, either to the writ of error, or the action.
2. There is nothing further for this court to do in the case, unless one of the parties should bring up the evidence and the rulings of the court below on the trial of the issue, and allege error therein.

Charles L. Bourney
attorney for Plf

Hood & Dunner

v

Gos. Jackson & Co.

Suggestions of Plp
against Mo. for
Judgt & on remanding
Cause -

Filed May 4, 1859

L. Leland

Clerk

A.
Bourne

MERRITT D. WOOD AND PAT-	}	STATE OF ILLINOIS, SCT.
RICK W. DUNNE,		IN THE
PLAINTIFFS IN ERROR,		SUPREME COURT AT OTTAWA.
<i>versus</i>		
GEO. GOSS, MOSES M. JACK-	}	E R R O R
MAN & RANSOM GARDNER,		TO
DEFENDANTS IN ERROR.		PEORIA CIRCUIT COURT.

ABSTRACT.

Præcipe in assumpsit. Damages \$15,000. Filed Nov. 16, 1854.

Summons accordingly. Alias summons Nov. 21, 1854. Served same day on Moses M. Jackman.

Declaration. Damages \$15,000. No averment of partnership. Austin & Bonney, Attorneys. Filed Jan. 10, 1855.

Affidavit by Chester Warner of non-residence of Merritt D. Wood filed March 5, 1855.

Motion by all defendants to dismiss suit for want of security for costs, entered March 5, 1858.

March 8, 1855, motion heard. Pending hearing, leave to defendants to amend affidavit. Exception taken. Suit dismissed. Exception taken. Bill of exceptions filed.

ERRORS.

1. The Court erred in allowing the motion of defendants to amend their affidavit at the hearing.
2. The Court erred in allowing the motion of said defendants to dismiss said suit.
3. The Court erred in giving judgment against the plaintiffs for costs.

PLEA.

Plea by all defendants of release of errors. That plaintiffs since assignment of errors, to-wit: April 4, 1856, at State of Illinois, said Wood then

and there being a partner of said Dunne, by his writing of release, &c., for FIFTY DOLLARS released all sums due to Wood & Dunne, from defendants, and all work done &c., and all other indebtedness, &c., and all suits now or hereafter pending, &c. Verification and prayer of dismissal of writ of error.

AFFIDAVIT.

Affidavit of Patrick W. Dunne, that plea is false and fraudulent as to him. Suit commenced and prosecuted by him alone, &c. Wood joined to prevent abatement. Work left by Wood before completion, and completed by Dunne. Wood left to avoid liabilities of Wood & Dunne, and to leave Dunne alone to finish work and to settle with defendants. No partnership existing at commencement of suit or since. Wood non-resident. \$2262 28 justly due from defendants. Wood not equitably entitled to more than \$578 44 thereof. Wood insolvent. Defendants' knowledge of facts in affidavit mentioned before release obtained. Release obtained for express purpose of cheating, wronging and defrauding affiant. Release fraudulent as against affiant, &c., and if sustained will defraud affiant out of sum of \$1683 79.

MOTION.

Motion of Dunne to set aside plea or strike it from the files, &c., and to reverse judgment below.

AUTHORITIES, &c.

The plea is to the further maintainance of the suit, and if not technically a plea *puisdarrein continuance*, is clearly in the nature thereof. It is so defective in substance and in form that it ought to be treated as a nullity, and is sufficiently shown to be fraudulent to warrant the Court in setting it aside. If the defendants are permitted at all to plead it, that should be only on remanding the cause.—Story on Partnership, Sec. 132, and cases cited. 1 Chitty's Pleading, 658, 659, 660, 661, and cases cited. *Note P*, page 658, and cases cited. *Note 6*, page 659, and cases cited. "It is in the discretion of the Court to receive the plea or not, and this discretion will be governed by circumstances extrinsic and which cannot appear on the face of the plea." 7 Taunt, 421; Jones v. Herbert; 6 Hill, 237; Firnan v. Leland.

The Court erred in dismissing the suit. The whole object of the statute was satisfied by the residence of Dunne within the jurisdiction of the Court, and subject to its process.—Statute of Costs, Sec. 1, 2; Thulman and al. vs. Barbour and als.; 5 Indiana, 178; 3d Porter.

CHARLES C. BONNEY, of Counsel, &c.

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In the Supreme Court

Merrett D. Wood et al.

v.
George Gap et al.

Now to be heard in the Circuit Court

Abstract

Filed Apr 18. 1860

L. L. Linn

Clerk

In the Supreme Court

Merritt D. Wood et al

vs.
George Gaps et al

Error to Perma Circuit Court

Brief of Plaintiffs

Filed Apr 18. 1860

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