

P15588

JOHN N. HALL, & Co.,

vs.

THOMAS RHEA.

J. N. Hall

5644



131-578-F

Law

DISTRICT COURT.

TENTH JUDICIAL DISTRICT OF VIRGINIA.

FAIRMONT.

JOHN N. HALL AND OTHERS vs. THOMAS RHEA.

TO THE HON. JUDGES OF THE DISTRICT COURT OF APPEALS HELD AT FAIRMONT, MARION COUNTY, VIRGINIA :

The petition of John N. Hall respectfully sheweth that he is aggrieved by the final decree of the circuit court of Marion, pronounced on the — day of February, 1858. A transcript of the record in the said cause is herewith presented, by which it will be seen the case is as follows :

On the 19th day of March, 1856, Thomas Rhea, the complainant, filed in the clerk's office of said court, his bill of foreign attachment, to recover a debt against your petitioner therein named, and had the same levied on the real and personal estate of your petitioner, also had the same served on certain persons therein named, as garnishees. Also complainant afterwards filed his amended bill, and made other parties, as appears from the record. Upon which, various proceedings were had, and among other things, process in the cause was served upon your petitioner. Your petitioner appeared by his counsel, at rules in the clerk's office, and demurred to the complainant's bill, and afterward, at the next term of the court, filed his answer. It will be seen by reference to his answer, that he first set up in bar of the complainant's said debt, want of consideration, the complainant having no title in the servants for which said debt was incurred. And secondly, he alleges in his answer, that he was a resident of this Commonwealth at the time of bringing said suit, and that complainant was not entitled to the extraordinary remedy adopted by him to recover his said debt, and asked that said bill be dismissed and he allowed his costs and damages incurred by reason of his suing out the same according to the law governing such cases.

At the hearing of the cause, it was maintained for the complainant, that the petitioner could not rightfully set up the defence of "wrongfully suing out the attachment" in his answer, having, before filing the same,

appeared at rules and demurred to the complainant's bill. See Ses. Acts of 1852, Chap. 95. To which objection the petitioner replied that Ses. Acts of 1852 only amended the 11th Sec. of Chap. 151 of the Code of Virginia, and left the 30th Sec. of Chap. 151 of the Code unamended. The defence contemplated in the 30th Section, applies as well to attachments in equity as at law. The extraordinary right of the attaching creditor, is given exclusively on the ground that the defendant is a non-resident, or is removing, &c. It is not a ground of jurisdiction; the non-residence is simply a fact that entitles the complainant to this extraordinary remedy, and that reason for the remedy must be set up in the bill, accompanied by affidavit, and proved on the trial. A failure of either is fatal to the proceedings. There are three facts necessary to maintain a foreign attachment. In the absence of the proof of either, the court cannot rightfully pronounce judgment or decree in favor of complainant. 1st. A debt subsisting. 2d. Non-residence of the defendant. 3d. Property on which it is levied be'onging to the defendant. These facts must all appear in proof to the court; none of them can be supplied by allegations in the bill or dec. It makes no difference *when* the question is raised, if there is no defence, the court cannot give judgment without proof of all. The proceeding is a creature of the statute. And the 30th Section of the Code, giving the privilege of defence, is in the broadest terms, "upon defence being made." A foreign attachment proceeds on the idea that the defendant is a non-resident, and will not be in the clerk's office to tender his pleas before decree *nisi*, or common order confirmed. Hence none of the technical rules of the common law are engrafted in the statute, prescribing the manner, but the broadest latitude of defence is given.

It was further contended for the complainant, on the trial, that the proof in the cause showed the petitioner to be a non-resident, which the petitioner controverted, and maintained that the testimony showed conclusively that at the time of the institution of the suit he was a resident of Virginia. The court overruled all the petitioner's objections to the decree, and pronounced the final decree aforesaid.

The evidence of John Jones, produced by the petitioner, and fully corroborated by the other witnesses, proves that the petitioner was reared in Virginia, did business for many years in this county, married in this county. That some four or five years before the institution of this suit, he went to Iowa, purchased real estate there, and had a store there; that in the spring of 1855, he determined to remove to Iowa, and started with his wife and children, but before he arrived at his contemplated home, his wife died; he wrote back immediately that his wife had requested, and that he with his children intended, to return immediately to live in Virginia; engaged a room for himself and children, but was detained by sickness, and the loss of a child, and did not return until August; in the mean time had a vault here provided for his wife, and brought her here and his remaining child; took the room rented, and continued here until November afterwards, but returned then to be gone a short time West, to see after his business. While gone, got his arm broken, and was detained in all, about two months; returned the 1st of January, and remained here until the bringing of the suit in March; that he expressed his intention to go into the mercantile business as soon as he returned in

August, as soon as he got his own house in Fairmont, which was then rented until the next spring; [that as soon as the house was vacated, he went to merchandising, and has continued in the State ever since, except occasional trips to Iowa to see after his business and settle it.

The question of residence is mixed, and consists of intention and acts, neither of which can deprive a man of his residence; they must be joint. The day the petitioner departed the limits of Virginia with the intention to make Iowa his future home, he became a non-resident of Virginia. But the day he returned into the limits of his old native State with the *bona fide* intention to make her territory his future home, that day he became, to all intents and purposes, a resident of the State of Virginia. To say that he had business in Iowa unsettled, which required his occasional personal attention, and that he could not procure a residence in Virginia until all his business in Iowa was settled, is a most singular legal conclusion. The petitioner's business may never be closed in Iowa, yet he may reside in Virginia for 30 years. When does his residence commence here? Does it depend on occasional trips to Iowa? If so, how many? Does it depend on the fact whether the greater amount of his business is in Iowa or Virginia? If so, an inventory of a man's business might be necessary to ascertain his residence. No, his residence commences the moment he crosses the outer limits of the State, coming into the territory of Virginia with the *bona fide* intention to make it his future home.

Your petitioner assigns the following for error to said decree:

1st. The court erred in overruling the plea of illegal consideration for the complainant's debt.

2d. It erred in deciding that after demurrer at rules to foreign attachment the residence of the defendant in the State at the time of suing out the attachment could not be plead in bar of the remedy adopted in this case.

3d. In ruling the evidence in the cause sufficient to prove the non-residence of the petitioner.

JNO. N. HALL.

I, the undersigned, an attorney at law, practicing in the district court of appeals held at Fairmont, Marion county, Virginia, certify that in my opinion there is error in the foregoing decree, and that the same ought to be reversed.

F. H. PEIRPOINT.

THOMAS RHEA

vs.

JOHN N. HALL and others.

} *In Chancery.*

VIRGINIA: Proceedings in chancery, in the circuit court for Marion county, at the court-house thereof, on Thursday the eleventh day of February, in the year of our Lord, one thousand eight hundred and fifty-eight, and 82nd year of the Commonwealth.

Be it remembered, that heretofore, to wit, on the 19th day of March, 1856, came Thomas Rhea by his counsel, and filed in the clerk's office of the said court his bill of complaint against John N. Hall and Ephraim B. Hall, with an affidavit thereto annexed, which said bill and affidavit are in the words and figures following, to wit:

"To Gideon D. Camden, Judge of the circuit court of Marion county:

The prayer, petition, and bill of complaint of Thomas Rhea against John N. Hall: Thereupon your orator, Thomas Rhea, showeth unto your Honor: That on the 24th day of October, 1853, the said John N. Hall executed to your orator his single bill for \$212.00, payable on the 24th day of October, 1855, which said single bill is herewith filed as part of this bill as part of the consideration for which the said Rhea had assigned the balance of an unexpired term of service in two mulattos, Lethe page 2 } and Richard, to the said John N. Hall—a copy of the said assignment and the order of the county court of s'd county in that behalf made, is filed as part of this bill, marked "A":—That the said John N. Hall is not a resident of this State, but as your orator is informed and believes, is a resident of the State of Iowa; and that he has now, in the county of Marion aforesaid, two parcels real estate, to wit, one lot containing 36 rods and 108 feet, adjoining Fairmont, in said county, conveyed to him by E. L. Boydston and wife, by deed dated April 24th, 1851, and duly recorded in the clerk's office of said county; also one other parcel of land, being a fraction of town-lot No. 47, in Fairmont aforesaid, fronting on ——— street 18 feet, and running back that width 36 feet—the same conveyed by deed by James M. Prickitt and wife, to said Hall, dated the 17th November, 1853, and recorded as aforesaid—copies of both of which deeds are herewith filed as parts of this bill, and marked "B" and "C." The said lots have been improved by the said Hall, and are owned by him in fee simple: That your orator understands, and believes, that Ephraim B. Hall is indebted to the said John N. Hall in large sums of money, to wit, in the sum of \$—— dollars.

Your orator is advised that in consideration of the premises, the estate of the said deft. Hall will be attached, the realty sold, and the proceeds of the same, together with the money due from the Bank aforesaid, and page 3 } from s'd E. B. Hall, be applied to the satisfaction of your orator's claim.

Your orator therefore prays your Honor, that the said John N. Hall and Ephraim B. Hall be made parties defendant to this bill, that they be required to answer the same, that the two lots aforesaid of the said Jno. N. Hall, with the appurtenances, be attached and sold, and that from the proceeds thereof, together with the money in the hands of the s'd E. B. Hall and of the s'd Bank, which your orator prays may also be attached, your orator be paid and satisfied the debt of \$212.00,

with interest as aforesaid, and the costs of this suit, and that such other relief be granted as the case may require; may spa. issue, &c.

THOMAS RHEA,

By his Counsel, U. S. WILLEY.

MARION COUNTY, TO WIT:

Thomas Rhea, complt. in the foregoing bill, this day made oath before me, Thomas G. Watson, clerk of Marion circuit court, in my office, that John N. Hall, defendant in the foregoing suit, is justly indebted to him in the sum of \$212.00, payable the 24th day of October, 1855; as claimed in said bill—that he has present cause of action therefor, and that said John N. Hall has certain real and personal property in the county of Marion, as described in the said bill, and that the said Hall, according to the affiant's information and belief, resides out of the State of Virginia, and in the State of Iowa.

page 4 } Given under my hand this 19 day of March, 1856.

T. G. WATSON, Clerk."

And thereupon sued out of said office a writ of summons against the said John N. Hall and Ephraim B. Hall, with an order endorsed thereon directing the officer serving the same to attach the estate of the defendant John N. Hall to answer the further order of the court; which said writ was made returnable at rules to be held in said office on the first Monday in April then next following, and with the endorsement and sheriff's returns thereon made, is as follows, to wit:

"THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Marion County, Greeting:

You are hereby commanded to summon John N. Hall and Ephraim B. Hall to appear before the Judge of our circuit court of Marion county, at rules to be held in the clerk's office of the said court, on the first Monday in April next, to answer a bill in chancery exhibited against them in our said court by Thomas Rhea. And have then there this writ. Witness, Thomas G. Watson, clerk of our said court, at the courthouse of said county, the 19th day of March, 1856, and in the 80th year of the Commonwealth.

THOMAS G. WATSON.

Endorsement:—The complainant in this suit having made the proper affidavit, it is ordered that the officer serving the within writ do attach the property mentioned in said affidavit, viz: one lot containing 36 rods and 108 feet, adjoining Fairmont, in Marion county, conveyed to John N. Hall, by E. L. Boydston and wife, by deed dated 24th April, 1851, and duly recorded in the clerk's office of said county; also one } other parcel of land, being a fraction of town lot No. 47, in } Fairmont aforesaid, fronting on ——— street 18 feet, and running back that width 36 feet, the same conveyed by deed by James M. Prickitt and wife to said Hall, dated the 17th November, 1853, and such debts as are already due or to become due to the defendant John N. Hall from the defendant E. B. Hall; also any other estate of the said defendant John N. Hall, whether in his own hands or in the hands of the other defendant, to answer the future order of this court.

Test,

T. G. WATSON, Clerk.

Sheriff's Returns:—Pursuant to the within, I levied on a lot containing 36 rods and 108 feet, adjoining Fairmont, in Marion county, conveyed to John N. Hall by E. L. Boydston and wife, by deed dated 24th

April, 1851; also on fraction of town lot No. 47, in Fairmont, fronting on Adams street 18 feet, and running back that width 36 feet, and conveyed by deed by James M. Prickitt and wife, to said Hall, dated 17th November, 1853, at 26 minutes after 3 o'clock, P. M., on 20th day of March, 1856; also on one bay horse, at 14 minutes after 4 o'clock, P. M., on same day, and on one brown mare, saddle and bridle, at 15 minutes before 5 o'clock, P. M., on same day.

GEO. C. KERR, D. S.

For WM. KERR, S. M. C.

Executed the within on Ephraim B. Hall at 32 minutes after 3 o'clock, P. M., on 20th day of March, 1856, and on John N. Hall at 2 minutes before 5 o'clock, P. M., of same day, by delivering to each of them

page 6 } a copy hereof.

GEO. C. KERR, D. S.

For WM. KERR, S. M. C."

And at another day, to wit, on the 25th day of March, 1858, came the said complainant by his counsel, and filed an amended bill against said John N. Hall and John Hunsaker, with an affidavit there-to attached; which said bill and affidavit are as follows, to wit:

"To G. D. Camden, Judge of the Circuit Court, &c.:

The amended bill of Thoma Rhea to the original bill filed by him in your honorable court against John N. Hall: Thereupon your orator further sheweth unto your Honor: That since he filed his original bill in this cause, he has ascertained that the said John N. Hall has certain other personal property not mentioned in said bill: That he has large sums of money, to wit, \$—, now in the hands of John Hunsucker, and payable by him to the said Hall.

Your orator therefore prays that the said John Hunsucker and John N. Hall be made a parties to this amended bill, that they be required to answer the same, that the s'd sums of money aforesaid be attached, and the same be applied to the payment of your orator's debt mentioned in the said original bill mentioned, and that such other relief be granted to your orator as is just.

THOMAS RHEA,

By his Counsel, U. S. WILLEY.

MARION COUNTY, TO WIT:

Thomas Rhea, complt. in the foregoing bill, this day made oath
page 7 } before me, Thomas G. Watson, Clerk of Marion circuit court,
in my office, that John N. Hall, defendant in the foregoing suit
and bill, is justly indebted to him in the sum of \$212, payable
the 24th day of October, 1855, as claimed in said bill—that he has present cause of action therefor, and that said John N. Hall has certain personal property, not mentioned in the original bill filed in this cause, in the said county of Marion, as described in this amended bill, and that the said Hall, according to the affiant's belief, resides out of the State of Virginia and in the State of Iowa.

Given under my hand this 25th day of March, 1856.

T. G. WATSON."

And thereupon sued out of said office a writ of summons against the said John N. Hall and John Hunsaker, with an order endorsed thereon; directing the officer serving the same to attach such debts as are already due or to become due from the defendant John Hunsaker to the defendant John N. Hall, to answer the further order of the court, which said writ was made returnable at rules to be held in said office on the first

Monday in April then next following, and with the endorsement and sheriff's return thereon made, is as follows, to wit:

“THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Marion County, Greeting:

You are hereby commanded to summon John Hunsaker and John N. Hall to appear before the Judge of our circuit court of Marion county, at rules to be held in the Clerk's office of the said court, on the first Monday in April next, to answer an original and an amended bill in page 8 } chancery exhibited against them in our said court by Thomas Rhea. And have then there this writ. Witness, Thomas G. Watson, Clerk of our said court, at the court-house of said county, the 25th day of March, 1856, and in the 80th year of the Commonwealth.

T. G. WATSON.

Endorsement:—The complainant in this suit having made the proper affidavit, it is ordered that the officer serving the within writ do attach such debts as are already due or to become due from the defendant John Hunsaker to the defendant John N. Hall, to answer the further order of the court.

Teste, T. G. WATSON, Clerk.

Sheriff's Return:—Executed the within on John Hunsaker and John N. Hall on the 25th day of March, 1856, by delivering to each of them a copy hereof, and said John N. Hall, desiring to release the estate attached in the hands of said John *Hunsucker*, this day executed a bond with Ephraim B. Hall his security, in a penalty of 500 dollars, conditioned to abide the decree of the court in this cause, which bond is herewith returned.

WM. KERR, S. M. C.”

And at another day, to wit, at rules held in the Clerk's office of said court on the first Monday in April, 1856, the writs of summons awarded in this cause being returned executed, and the defendants failing to appear and plead, answer, or demur to the complainant's original page 9 } and amended bills, on motion of the complainant by his attorney, it is ordered that it be entered of record that said original and amended bills will be taken for confessed as to the defendants there- to if they continue in default.

And at another day, to wit, at rules held in the Clerk's office of said court on the first Monday in May, 1856, on motion of the defendant John N. Hall, by his counsel, the decree *nisi* entered against him in this cause at the last rules is set aside, and thereupon said defendant, by his counsel, demurs generally to complainant's original and amended bills, and the complainant sets this cause down for argument upon said demurrer. And on motion of the defendant Ephraim B. Hall, by his counsel, the decree *nisi* entered against him in this cause at the last rules is set aside, and thereupon said defendant here files his separate answer to complainant's original bill, to which the complainant replies generally, which said answer is as follows, to wit:

“*To the Hon. G. D. Camden, Judge of the circuit court of Marion county:*

The separate answer of Ephraim B. Hall to the bill filed in said court by Thomas Rhea against John N. Hall and this respondent. Reserving to himself the full benefit of all just and proper exceptions to complainant's said bill, this respondent, for answer to so much thereof as he is advised it is necessary for him to answer, nevertheless says it is not true

page 10 } as alleged in said bill that respondent was at the time of the institution of said suit, or the filing of said bill by complainant, indebted to said John N. Hall in large amounts or sums of money. That he was not at that time, has not at any time since been, and is not now indebted to, or had in his hands moneys of said John N. Hall in any amount, sum or sums whatever. Nor had respondent at any recent period prior to said time had with said John N. Hall any transaction by which said complainant could have reasonably suspected such an indebtedness or possession of effects; and respondent verily believes and charges that he did not really suspect such an indebtedness or possession of effects by respondent. That the defendant John N. Hall had ample means and effects both real and personal, visible, known to complainant, and convenient to be levied upon, to secure the amount claimed to be due him, without proceeding vs. respondent, that he did in his processes in this case *seize* upon near \$4000 worth of effects of said John N., and respondent verily believes and charges that the primary object in making respondent a party defendant in this case, was to drag him into a malicious or vindictive litigation, and to harass, vex, and annoy, the parties defendant; and having answered, respondent asks to be hence dismissed at once, and that he recover his costs, &c.

E. B. HALL, *Per his Counsel, &c.*

VIRGINIA, MARION COUNTY, TO WIT:

page 11 } Ephraim B. Hall this day made oath before the subscriber, Clerk of the circuit court of said county, that the statements, representations, and allegations, in the foregoing answer or writing, are correct and true to the best of his knowledge and belief. Given under my hand, at my office in said county, this 6th day of May, 1856.

T. G. WATSON."

And at another day, to wit, at rules held in the Clerk's office of said court, on the first Monday in June, 1856, came the complainant by his counsel, and set this cause down for hearing.

And at another day, to wit, at a circuit court held for the county of Marion at the court-house of said county, on the 18th day of June, 1856,

The defendant John N. Hall by his counsel, here files his separate answer to the complainant's bill, to which the complainant replies generally, which said answer is as follows, to wit:

page 12 } "The separate answer of John N. Hall to the bill and amended bill of complaint of Thomas Rhea against him and others, filed in the circuit court of Marion: After saving all the just exception to which he may be entitled according to law, to said bill, for answer to so much thereof as he is advised it is necessary for him to answer, answering, saith: That some time about October, 1853, the complainant represented to this def't. that he had two persons of color, viz: Richard and Lethe—that he was entitled according to law to the service of Lethe for upwards of 2 years, and to the service of Richard for about 9 years. That complainant represented that said children had been bound apprentices to him by the order of the county court of Marion, according to law. That this defendant at that time, and before, made known to comp't that he intended to remove to the State of Iowa, and desired to take said servants with him; that comp't informed this def't that he had competent authority to sell said servants' time to him, and that by

his, comp's consent, he could take them to the State of Iowa and compel their service. This defendant saith that he was unacquainted with the law at the time, that comp't had been a judge in the county court of Marion, and professed to be acquainted with the law in such cases, confided in his representations and agreed to pay the comp't about \$372.00 as he now thinks, \$160, a parcel thereof, in hand, and gave the said supposed bond, in the bill mentioned, for \$212 for the residue, for the service of said servants. That compt. represented to def't. that there were some forms of law on his part to be complied with in the *the* said county court, such as giving bond to perform certain conditions such as the said compt. represented he had to perform, viz., teach the said servants the art of household servants, clothe them, and pay the said Lethe \$12 dollars and the said Richard \$20 dollars, when they arrive respectively at the age of

page 13 } 18 and 21 years of age. That said Rhea procured the county court of Marion to make some order in the case, and he the def't. executed a bond accordingly. But this defendant is advised that the whole transaction was a *fraud* on the part of said Rhea. That there was no representation that he made to him respecting the legal rights of the parties that was true. He is advised that said servants were never legally bound to the said Rhea according to the act of Assembly in such cases made and provided. That said Rhea fraudulently procured the county court of Marion, (he being a member of the same,) to make an order directing John Clayton, one *one* of the overseers of the poor for Marion county, and Thos. S. Haymond, another of the said overseers, to bind the said servants on the — day — 1844, to the compt. That said court never fixed any price that was to be paid by said Rhea annually to the said servants' mother or father, or to the overseer of the poor, altho' the mother of the said servants was living in the county at the time, which was known to compt. That said John Clayton never bound said servants or either of them to compt. But that Thos. S. Haymond, without any authority, bound the said servant Lethe to compt. And that between complainant and said Haymond, they fixed in said bond \$20 to be paid to the said Richard on his arriving at the age of 21 years, and 12 dollars to be paid to the said Lethe, which sums were grossly inadequate, and fraudulently inserted in order to evade a plain statute in such cases made and provided for the protection of help-

page 14 } less infancy and old age. And this def't. is advised that the said Rhea, on account of such acts, had no legal title to the service of said servants, and therefore could sell none. That before this def't. attempted to remove to Iowa, and after he had purchased said servants of compt., he ascertained that he had no authority whatever by law to take the said servants out of the State of Virginia, and that all the representations of compt. respecting his right to sell for that purpose, *was* false. This def't. took said servants into his possession, and the said Lethe served him until she became of the age of 18 years, but it was under a contract with def't's wife that she was to go with him and wife to Iowa, and was to serve him five years at one dollar and fifty cents per week; but def't's wife died, and he brought the said Lethe back to Virginia, and she became free, and he paid her the 12 dollars according to his supposed contract. That he, acting under the presumption that he had the legal title to said *said* servants, sold the time of the said Richard to George T.

Martin, being unable to take him to Iowa. But this deft. is now advised that on account of the fraudulent conduct of the said Rhea in procuring the pretended binding of the said servants by the said county court, *that* he has no right to *to* sell the time of the said Richard—that the said Richard can absolve himself at pleasure from the servitude of Martin and leave the State if he likes. And that in fact this defendant is liable to an action by the parties for the service he has rec'd under the circumstances.

page 15 } This deft. herewith files copies of the pretended orders of the county court of Marion, authorizing the said Clayton and Haymond to bind out said servants, together with copies of the pretended apprenticeship bonds of the said Rhea, also a copy of the pretended order transferring said servants to this deft.—as part of this bill. That said Richard's time is becoming valuable, and is worth some \$50 dollars per annum, that he has some four years to serve yet, and if he asserts his legal rights this deft. may be liable to the said Martin. In consideration of the premises, this deft. asks that the said bond be cancelled and considered naught by the decree of this court.

And this deft. further saith the said attachment was sued out by the compt. on a false suggestion. That he is now, and was at the time of suing out the same, and always has been, a resident of this State. It is true he went to Iowa in 1852, and purchased real estate, and spent some part of his time there—that in April, 1855, he went there with his wife—she died on the road—he determined to return immediately to Virginia, his present residence, but was detained some 2½ months by sickness and the death of a child. That about the 1st of August, 1855, he returned home and engaged his boarding at John Jones' by renting of him a room for himself and child—that his child has been at said Jones' ever since—that he has been to Iowa once since, and remained about 3 months, but

page 16 } was compelled to remain a part of that time on account of having his arm *broke* while there last. That he has the real estate named in compt's bill, unincumbered, worth, as he thinks, about \$1800 to 2000 dollars,—it rents for \$225 per annum—on which attachment was served; that the horses and fixtures on which said attachment was served, are worth about \$250; all this was attached by compt. before taking out his amended attachment, which compt. served on some \$2000 dollars in cash. These attachments were all issued after the deft. had commenced his suit at law in the county court of Marion, and personal service had been had on the same on this *this* deft. This deft. submits to your Honor that the whole course of the plaintiff has been highly fraudulent and oppressive, and respectfully asks your Honor to rescind said contract, decree the said bond null and void, and quash said attachment for having issued without legal cause; also the amended attachment; with additional costs for being oppressive; and give this deft. judgment against the compt. for his reasonable damages for suing out said attachment. Having fully answered, he respectfully asks to be dismissed with his costs, &c.

F. H. PEIRPOINT, *Counsel for deft.*

John N. Hall this day personally appeared before the undersigned, Clerk of the circuit court of Marion county, and made oath that the foregoing

answer contains the truth to the best of his knowledge and belief.

page 17 } Given under my hand this 14th day of April, 1856.

T. G. WATSON."

And at another day, to wit, at a circuit court held for the county of Marion, at the court-house of said county, on the 21st day of November, 1856,

On motion of the complainant by his counsel, it is ordered that the bond executed by the defendant John N. Hall, with John Jones his security therein, conditioned for the forthcoming at such time and place as the court may require, of the property levied upon by the sheriff under the order endorsed upon the summons issued in this cause, be cancelled and annulled, and the said John Jones released from his securityship, upon said John N. Hall executing before this court bond with sufficient security, in the penalty of 400 dollars, conditioned as the former bond. Whereupon said John N. Hall, with Andrew I. Hall as his security, who testified as to his sufficiency, here in court executed and acknowledged a bond in the penalty of 400 dollars, conditioned according to law, for the forthcoming of said property at such time and place as the court may direct. And thereupon said first-named bond is ordered to be cancelled.

And at another day, to wit, at a circuit court held for the county of Marion, at the court-house, on the day and year first herein mentioned, to wit, on the 11th day of February, 1858,

page 18 } This cause came on this day to be heard upon the bill, exhibits, and amended bill of the complainant, his affidavits thereto, process and service, proceedings at rules, answer of defendant Ephraim B. Hall, and the demurrer of the defendant John N. Hall, and his answer and replication thereto, depositions, and written agreement of counsel for the parties, filed in the cause, and was argued by counsel. On consideration whereof, the court doth adjudge, order, and decree, that the demurrer of the defendant John N. Hall aforesaid, be overruled. And the court doth further adjudge, order, and decree, that the complainant recover of the defendant John N. Hall, for the debt claimed in the bill, the sum of two hundred and twelve dollars, with interest thereon from the 24th day of October, 1855, till paid, and his costs about the prosecution of this suit expended; and that the said defendant John N. Hall pay the same to the complainant.

COMPLAINANT'S EXHIBITS.

JOHN N. HALL'S SINGLE BILL.

"\$212.00.

On or before the 24th day of October, 1855, I promise to pay to Thomas Rhea, or order, two hundred and twelve dollars, for value received of him, as part of the consideration for which an assignment has this day

page 19 } been made by said Rhea to me of a ballance of time of service in two persons of color, Lethe and Richard, heretofore bound to said Rhea, &c.

Witness my hand and seal, this 24th Oct., 1853.

J. N. HALL."

EXHIBIT "A."

"THOMAS RHEA }
 to }
 J. N. HALL. } *Copy Assignment.*

For value received, as evidenced and specified in and by my receipt of this date to John N. Hall, and said Hall single bill to me of the same date, I hereby assign, transfer, and give over to John N. Hall, all the benefit, rights, privileges, &c., in any way arising or accruing to me in and by two certain writings or bonds of indenture signed by me upon one part, and by Thomas S. Haymond, (as one of the overseers of the poor of Marion county,) acting under orders of the county court of said county, made Nov. 6th, 1844, and December the 6th, 1844, respectively, of the other part, both of which writings or bonds of indenture are filed in the clerk's office of said court, one of which is dated November the 6th, 1844, by the provisions of which, Lethe, a person of color, was bound as apprentice to me until she should arrive at the age of 18 years, (being then 7 years of age,) and the other bearing date of December the 2nd, 1844, by the provisions of which, Richard, a boy of color, then of the age of five years, was bound

page 20 } as apprentice to me until he should arrive at the age of 21 years;
 } and I hereby obligate myself to obtain the necessary sanction of
 } said county court to this assignment, and relinquish to said Hall
 all my rights, claims, and interest, in and to said apprentices, respectively;
 and obligate myself to deliver said apprentices (of color) to said Hall, on
 condition that said Hall execute such bond as said court may require
 to secure the performance upon his part of all that was required of me
 in the premises, in the aforesaid writings or bonds of indenture respectively. Witness my hand and seal, this 24th day of October, A. D. 1853.

THOS. RHEA, [SEAL.]
 MARION COUNTY COURT, NOVEMBER TERM, 1853. }
November the 7th. }

The foregoing assignment was this day produced in court and proved.

WILLIAM MACDONNELL, D. C.
 A Copy. Teste, THOMAS L. BOGGESS, Cl'k.

DEFENDANT JOHN N. HALL'S EXHIBITS.

"IN THE COUNTY COURT OF MARION,
December Term, 1854. (four.)

Ordered, That Thomas S. Haymond, one of the overseers for this county, be empowered to bind Richard, aged five years next Christmas, infant son of Phebe, a woman of color, to Thomas Rhea of this county, according to law.

page 21 } Teste, THOMAS L. BOGGESS, Cl'k.

COPY ARTICLES OF INDENTURE.

This indenture, made this 2nd day of December, in the year 1844, between Thomas S. Haymond, one of the overseers of the poor of the eastern district in the county of Marion, of the one part, and Thomas Rhea of said county of the other part, witnesseth: That the said Thomas S. Haymond, one of the overseers of the poor as aforesaid, by virtue of an order of the court of the aforesaid county, bearing date the 2nd day of December, 1844, have put, placed, and bound, and by these presents

do put, place, and bind, Richard, a person of color, of the age of five years, to be an apprentice with him the said Thomas Rhea, and as an apprentice with him the said Thomas Rhea, to dwell, from the date of these presents, until the said Richard shall come to the age of 21 years, according to the act of the General Assembly in that case made and provided; by, and during all which time and term, the said Richard shall the said Thomas Rhea, his said master, well and faithfully serve, in all such lawful business as the said Richard shall be put unto by his master, according to the power, wit, and ability of him the said Richard, and honestly and obediently in all things shall behave himself towards his said master, and honestly and orderly towards the rest of the family of the said Rhea. And the said Thomas Rhea for his part, for himself, his executors, and administrators, doth hereby promise and covenant to and

page 22 } with the said overseer of the poor and his and every of his successors for the time being, and to and with the said Richard, that the said Thomas Rhea shall the said Richard, in the craft and mystery and occupation of a house servant, which he the said Thomas Rhea now useth, after the best manner he can or may, teach, instruct, and inform, or cause to be taught, instructed, and informed, as much as thereunto belongeth, or in any wise appertaineth; and that the said Thomas Rhea shall also find and allow unto the said apprentice sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice, during the time aforesaid; and will moreover pay to the said Richard the sum of twelve dollars, at the expiration of the aforesaid term.

In witness whereof, the parties to these presents have interchangeably set their hands and seals, the day and year first above written.

T. S. HAYMOND, [SEAL.]
THOS. RHEA, [SEAL.]

1844, Dec'r 2, received.

True copies. Teste,

THOMAS L. BOGGESS, Cl'k.

MARION COUNTY COURT,
November Term, 1844. }

Ordered, That John Clayton, overseer of the poor for this county, be

page 23 } empowered to bind Lethe, orphan daughter of Phebe, a woman of color, to Thomas Rhea of this county, until she attains the full age of 18 years.

Teste,

THOMAS L. BOGGESS, Cl'k.

COPY ARTICLE OF INDENTURE.

This indenture, made this 6th day of November, in the year of our Lord, 1844, between Thomas S. Haymond, one of the overseers of the poor of the eastern district of Marion county, of the one part, and Thomas Rhea of said county of the other part, witnesseth: That the said Thomas S. Haymond, one of the overseers of the poor, as aforesaid, by virtue of an order of the court of the aforesaid county, bearing date the 6th day of November, in the year 1844, have put, placed, and bound, and by these presents do put, place, and bind, Lethe, a person of color, of the age of seven years, to be an apprentice with him the said Thomas Rhea, and as an apprentice with him the said Thomas Rhea to dwell, from the date of these presents, until the said Lethe shall come to the age of 18

years, according to the act of the General Assembly, in that case made and provided; by, and during all which time and term, the said Lethe shall the said Thomas Rhea, her said master, well and faithfully serve, in all such lawful business *as the said Thomas Rhea shall be put unto by her master*, according to the power, wit, and ability, of her, the said Lethe, and honestly and obediently in all things, shall behave herself towards her said master, and honestly and orderly towards the rest of the family of the said Thomas Rhea. And the said Thomas Rhea for his part, for himself, his executors, and administrators, doth hereby promise and covenant to and with the said overseer of the poor, and his and every of his successors for the time being, and to and with the said Lethe, that the said Thomas Rhea shall the said Lethe, in the craft, mystery and occupation of a house servant, which he the said Thomas Rhea now useth, after the best manner he can or may, teach, instruct, and inform, or cause to be taught, instructed, and informed, as much as thereunto belongeth or in any wise appertaineth. And, that the said Thomas Rhea shall also find and allow unto the said apprentice sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice, during the term aforesaid; and will moreover pay to the said Lethe the sum of \$12 dollars at the expiration of the aforesaid time.

In witness whereof, the parties to these presents have interchangeably set their hands and seals, the day and year first above written.

THOMAS S. HAYMOND, [SEAL.]
THOS. RHEA, [SEAL.]

Rec'd 6 Nov., 1844.

True copies. Teste,

THOMAS L. BOGGESS, Cl'k.

MARION COUNTY COURT,
November Term, 1853.

page 25 } On motion of John N. Hall, and with the assent of Thomas Rhea, evidenced by a paper writing purporting to be an assignment, it is ordered that the indentures by which Lethe and Richard, a colored boy and girl were bound unto said Rhea, be assigned and transferred to said Hall, upon his giving security. Whereupon the said Hall, together with his security, entered into and acknowledged bond in the penalty of \$500, conditioned according to law.

Teste,

THOMAS L. BOGGESS, Cl'k.

MARION COUNTY COURT,
December Term, 1853.

It appearing to the court, that John N. Hall, who at last term of the court had been required to give bond to indemnify and save harmless Thomas Rhea, by reason of said Rhea's assigning to him the articles of indenture of Lethe and Richard, two persons of color, was absent from the county and failed to give said bond, it is ordered that the taking of said bond be continued until next term.

Teste,

THOMAS L. BOGGESS, Cl'k.

MARION COUNTY COURT,
January Term, 1854.

page 26 } Thomas Rhea having at the November term last of the court, with the approbation of the court, transferred the indentures of apprenticeship of Lethe and Richard, a boy and girl of color, to John N. Hall; and the court requiring bond, this day came the

said Hall, together with John M. King his security, and acknowledged bond in the penalty of five hundred dollars, conditioned for the performance of the covenants and agreements contained in said indentures, and the indemnification of said Rhea, for or in respect of said covenants and agreements.

Teste, THOMAS L. BOGGESS, Cl'k."

COMPLAINANT'S DEPOSITIONS.

November 12th, 1856.

James Loughrey, a witness of lawful age, produced by the complt., being first duly sworn, deposes and says:

"I live in Marion county, and am acquainted with the parties to this suit. Last spring, the defendant John N. Hall and I were talking about this suit, when he told me that he had intended to pay the complt's demand, but that since he, the compl't, had brought suit against him, he intended to keep the compl't out of it as long as he could. The said deft. had moved his family to one of the western States, from this county, before the said conversation took place between us. The said deft. formerly kept a store in this county. As far as I knew, the said deft's

page 27 } business here was all closed when he removed west.

} And further this deponent saith not.

JAMES LOUGHREY."

Nov. 12, 1856.

William B. Fleming, another witness of lawful age, produced by the complt., being first duly sworn, deposes and says:

"I have been acquainted with the defendant John N. Hall for some time. I knew him when he was a resident of this county, a few years ago. He was a married man here, and carried on business in this county. Some time since he stopped business here and left this place. He went to the State of Iowa, where I afterwards met him engaged in business. I first saw him at Sigourney, Keokuk county, Iowa, in the fall of 1855. He was then engaged in the mercantile business and in farming. He at that time had a room in a house of his own, which was furnished, and boarded at another house near it. I was at the same place, viz., Sigourney, in June, 1856; the said defendant was then engaged in preparing to build a house in Sigourney; he had the foundation already completed. The lower part of the house the said deft. told me, was intended for business rooms, and the upper part for a hotel. I advised him not to build there. He stated that by building he could get in his little debts, that he intended to complete his building for the purpose of renting, and

page 28 } then he would make Fairmont his future residence. When

} I was in Iowa in the fall of 1855, he told me he was going to erect said building. He was concerned in two stores in Iowa last fall.

And further this deponent saith not.

WM. B. FLEMING."

Nov. 12, 1856."

Thomas G. Watson, another witness of lawful age, produced by the complt., being first duly sworn, deposes and says:

"I have been acquainted with the defendant John N. Hall for some years. He left this county for the State of Iowa in the year 1853, I think. Before he left here he had been engaged in the mercantile busi-

ness in this county and in Monongalia. When he first went west, he had not entirely closed his business here. In 1854 or 1855, he closed his business here by stopping his mercantile concerns. In the fall of 1853 or 1854, he took his wife to the west, and in a few months returned with her to Fairmont. Her father lives in the neighborhood of Fairmont. In the spring of 1855, I think, the said defendant and his family returned to the west, and his wife died somewhere in the west, before they reached their destination. I understood the said def't was engaged in the west in speculating, buying and selling lands, merchandizing, and farming. The said def. removed his store or a portion of it from here to page 29 } the west. The def't's father and father-in-law, and his connections, live about here. In this community it was generally understood, while the said def. was in the west, that he had made or was about to make the west his permanent residence. I never understood anything to the contrary. I am clerk of the circuit court of this county. One other attachment besides the one in this case, for between \$350 and \$400, was issued out of my office against the said def. as a non-resident, at the suit of Nelson Brumage, which was levied upon the same property that was levied on in this case. It was issued previous to the attachment issued in this case. After the said def. had been in the west, and just before he removed with his family to the west the last time, a motion was made to the county court of this county in his name and on his behalf by his brother E. B. Hall, an attorney at law, for permission and authority to remove Lethe, one of the negroes mentioned in his answer, to the State of Iowa. My impression is that the court rejected his application. I understood from the said def. that he afterwards had the said negro, Lethe, in the State of Iowa. The other negro, Dick, went into the service of George T. Martin, of this place, and remained in his service until recently. Before he was in Martin's service, he was in the service of James O. Watson a few months. And further, this deponent saith not.

T. G. WATSON."

DEFENDANT JOHN N. HALL'S DEPOSITIONS.

page 30 } Henry H. Boegel, witness.

May 28, 1857.

"Interrogatory 1st—Are you acquainted with the parties to this suit?

Ans.—I know nothing about Rhea, but I am acquainted with John N. Hall.

Int. 2nd—How long have you been acquainted with John N. Hall?

Ans.—I got acquainted with John N. Hall on or about the 20th day of April, A. D. 1855.

Int. 3d—Please state what were the circumstances under which you became acquainted with John N. Hall?

Ans.—I became acquainted with him by traveling with him in his company, on the same boats, between Wheeling, Va., and Keokuk, Iowa.

Int. 4th—Have you or have you not known John N. Hall to be in business in the state of Iowa, and if so, what business?

Ans.—He had been in the mercantile business, and was carrying on farming business, and was also trading in lands.

Int. 5th—Were you intimately acquainted with his business, and if so, in what way were you so acquainted?

Ans.—I was somewhat acquainted with his business on and after the 3d day of November, 1855. I commenced clerking on that day in the store of S. E. Hall & Co., in which he was a partner, and clerked until page 31 } May the 3d, 1856, at which last-mentioned time John N. Hall sold his interest in the store.

Int. 6th—During the time you so clerke for John N. Hall, where did you understand his residence to be?

Ans.—Fairmont, Virginia.

Int. 7th—Did you at any time previous to the time you so clerked for John N. Hall, understand that his residence was in the State of Iowa?

Ans.—To my knowledge he never was considered a resident, neither did he claim a residence.

Int. 8th—Have you, since you became acquainted with John N. Hall, known him to make any effort to close his business in the State of Iowa, and if so, for what purpose?

Ans.—I have known him at different times to make efforts to close his business and sell out, and further, he is not in any business at this time to my knowledge, with the exception of closing his business, and has not been engaged in business here for the last year.

HENRY H. BOEGEL.”

Ausburn E. Lowe, witness.

May 28, 1857.

Interrogatory 1st—Are you acquainted with the parties to this suit?

Answer—I am personally acquainted with John N. Hall. I do not know the other party.

Int. 2d—Have you ever known John N. Hall, the defendant herein, to page 32 } have resided or to have had his boarding and washing in the State of Iowa, at different times?

Ans.—I have, at different times.

Int. 3d—Have you or have you not ever known John N. Hall to be in business in the State of Iowa, and if so, please state what business?

Ans.—I have known him to be in the mercantile and farming business both, in the State of Iowa.

Int. 4th—Were you or were you not acquainted with John N. Hall before and at the time he moved to the State of Iowa?

Ans.—I was.

Int. 5th—Do you or do you not know whether John N. Hall, in the spring of A. D. 1855, intended to become a resident of the State of Iowa, or do you know whether such was his intention at any time since that time?

Ans.—All I know about it is what John N. Hall himself told me at that time, that he did not expect to remove from Fairmont, that he was going to wind up his business here as soon as possible, and then was to make Virginia his home permanently, and that is what he told me at different times since.

A. E. LOWE.”

James M. Adams, witness.

May 29th, 1857.

page 33 } “Interrogatory 1st.—Are you acquainted with the parties to this suit?

Ans.—I am acquainted with John N. Hall.

Int. 2d—What length of time have you been acquainted with John N. Hall?

Ans.—To the best of my recollection, I have been acquainted with him between three to four years.

Int. 3d—Since you became acquainted with John N. Hall, what was your understanding of his citizenship in the State of Iowa?

Ans.—All the knowledge or information I have of his citizenship, is what he told me, and what he was considered at the time I assessed his property in 1855. He then did not claim a citizenship in this State, but said that he was a citizen of Virginia, and he was assessed accordingly.

Int. 4th—Were you at that time the lawfully authorized assessing officer in and for any portion of Keokuk county, Iowa?

Ans.—I was, for Sigourney township, in Keokuk county.

JAMES M. ADAMS.”

June 6th, 1857.

John Jones, a witness of lawful age, produced by the defendant John N. Hall, being first duly sworn, deposes and says:

“I am acquainted with the defendant John N. Hall; he married my daughter. On the 18th of April, 1855, he and his family left my house for the State of Iowa. While he was gone I received a letter from him, dated at Keokuk, in Iowa, about the 3rd day of May, 1855, stating that
 page 34 } his wife had died at Keokuk, on the 1st day of May, 1855. I answered that letter, asking what he intended doing. In his answer he stated that he had agreed with his wife while on their voyage, that provided she did not live, he was to return to my house with the children, and make my house his home, and asked my consent for him to do so. In one of his letters, which I have mislaid, the said Hall wanted to know whether the family desired the remains of my daughter to be brought to this country. I replied that if he intended to make this country his home, that I desired him to bring her remains here. Afterwards the said Hall, by a letter herewith filed, marked A, on two sheets, dated May 21, 1855, gave directions concerning the preparation of a vault here. I also received from him two other letters respecting his return to this State, dated respectively, June 10th and June 19th, 1855, herewith filed, marked B and C. In pursuance of the arrangements above referred to, the said Hall returned here on the 4th day of August, 1855, with the remains of his wife and child, and with his other child. A few days after he came back, he told me he wanted a room at my house for himself and son, saying he wished to make my house his home; to which I consented, and he took possession of one of my rooms. He stated to me when he came back, that he was going to make this State his permanent home. He furnished his room except with a bed. He kept that
 page 35 } room and continued at my house until the 1st of September, 1856. I understood from him that he had unfinished business in the west, which would occasionally require his presence there. After August, 1855, and before the garnishee was served in this case, the said Hall was gone to the west for about two months. He intended to stay but about six weeks when he went, but was detained longer than he intended, in consequence of his brother remaining here longer than he expected. He could not leave there, as I understood, until his brother returned there. The said Hall returned here about the 1st of January, 1856. When he came home in August, he told me he intended to go

into the mercantile business in a small way, to give him some employment. He had a store-house in Fairmont, that was rented for nearly a year at that time, and he stated that he did not think of going into business until he got his own house. Some time in 1856, he brought on a stock of goods to Fairmont. He has been carrying on business here ever since; but he himself has made occasional trips to the west. When he left here in April 1855, and when the garnishee was served in this case, the said Hall, as I have been informed, owned a house and lot in this county, near Fairmont, which is reputed to be worth about \$1000, and which rents for \$80 per year; and a store-house and a lot in Fairmont, worth about \$800. So far as I know, it was generally understood in my family, where it was no secret, that the said Hall, after page 36 } his return here, intended to make this place his home. I kept it no secret; and if I had occasion to speak of it to other persons, I have no doubt I did so, though I have no recollection of so doing.

Examined by Compt's Counsel.

When my son-in-law and daughter left here in April, 1855, they were moving to Keokuk county, in the State of Iowa, and that was to be their future home. At Wheeling, Va., on his way, he wrote to me; there was no change of intention at that time. The next place he wrote to me from, was from Louisville, Ky.; the next from St. Louis, Mo., on his route; and the next place from Keokuk City, Iowa, informing me of the death of his wife. From Keokuk City to Sigourney, in Keokuk county, his destination, about 80 or 90 miles, he proceeded with his two children. Before the said Hall's removal to Sigourney, he had been out there, purchased lands, and had taken a stock of merchandize there, which he had in two stores, and had been conducting this business there before he removed there permanently. When he removed from here, I think he had entirely ceased conducting any business in this country. I do not know of the said Hall, during the interval between the time he removed from here in April, 1855, and the date of the service of the attachment in this case in February, 1856, engaging in any other business than that of settling up his unfinished business on his old books, except page 37 } that he bought two horses, and purchased some articles of furniture for his room, as above stated. One of said horses he bought for the purpose of riding in this country, and the other he ordered to Iowa, which was sent there while he himself was there. The said horse was shipped to Iowa about the 12th of May, 1856. I received the order for the said horse from said Hall, by a letter from him in Iowa. The said Hall had previously gone to Iowa, in April, 1856. After the said Hall returned here in August, 1855, he remained here until October or November following, when he again went to Sigourney, where he was then still carrying on business. He next returned to my house from Iowa, about the 1st of January, 1856. He next went back to Iowa, in April, 1856. I knew for some time before he went back to Iowa in April, 1856, that he intended to go back. When said horse was sent to Iowa, the said Hall had all his other movable effects in that State, except the remaining horse, and the furniture with which said room was furnished. The said furniture, consisting of chair, stand, and desk, was worth from \$10 to \$15. I rented him said room by the month, at the rate of one dollar per month. The said Hall still has real estate in the

neighborhood of, and in the town of Sigourney. I do not know whether or not the said Hall has in his possession my letters in answer to the letters hereinbefore mentioned and herewith filed. For anything I know, they may be in his possession. I have heard that Nelson Brumage had a suit in the circuit court of Marion county, against said Hall. I do not know when I heard it, whether before or after the institution of this suit. I do not know that said Brumage's suit was against the real estate of said Hall, in this county. The said house and lot near Fairmont, ought to be worth \$1000, though I do not think it would sell for that much at a cash sale. The said Hall has offered it for sale for \$1000 cash, but could not get it. About 3 years ago, I heard Dr. Hawkins say he would give \$1200 for it, without reference to the terms and manner of payment. I think it doubtful whether it would bring \$800 now, at a cash sale. It rents for \$85 per year, now. The store-house I spoke of is a frame building, on Main street, in the town of Fairmont, over the run, without any ground except what it stands on. I do not know what it rents for. It is now used as a workshop. I do not know whether it is rented or not.

Re-examined by Compt's Counsel.

I suppose said house near Fairmont, cost said Hall some \$1200 or \$1300. It was built in 1852, I think. It is in good repair and condition.

JOHN JONES."

LETTER MARKED "A," FILED WITH JOHN JONES' DEPOSITION.

page 39 }

"SIGOURNEY, IOWA, MAY 21, 1855.

DEAR FATHER AND MOTHER: I am in receipt of your favour of the 10th inst.,—the first I had from home. I was glad to hear that you *wear* all well. I am *sorrow* that I cannot say the same, *altho'* I am not sick, but one half of my life is *gon*. God send how soon the other shall go along, for I can not live *hear* alone. O father, father, and mother, what will ever become of me? You know something of trouble, but you know nothing about it—there is no mind *could* comprehend it. There is something that tells me in my *dreames* that she was *takin* away; that I worshiped *hear in sted* of the Lord. If such was the fact, I could not help it, for she was always first in my mind, and something to make *hur* happy was all I did live for; but *alass*, that day is *gon*, and I am bound to *morne* the *ballence* of my days, untill it may be the Lord's good will to bring us *to geather* in another world. *All tho'* she was perfectly willing to *dy*, *onley* she said she hated to leave me and the children *hear* alone. She said nothing about any of you for *to* days before she died. She tho't she was getting better, and would see you all. She *expressed* an anxiety to be *taking* back before she got as we tho't better, if she did *dy*, and that I should try to make some *arangement* to make your *hous* my home and the childrens' *to*. I would be glad if it could be *don*, how ever I could not ask mother to take them, for fear she would get sick from the

page 40 } fatigue. Lee is but little trouble *know*, but the *deare* little babe appears very hard to get the milk to agree with it. Should I live to see it have its growth, I should like it to live too, as it and Lee is all I have to live for. As to what I am a going to do, it is more than I can tell—the Lord only knows. As to where we are, we are at Mareah

Shawhan's. She has been a mother to me, I do *asure* you. She has done every thing in *hur* power. She has *takin* care of Lethey with my *asistance*, while sick. I had to *hyre* another girl to do the *hous*-work; I cannot come back untill Lethey gets well again, and the babe gets so it can *bare* a *chang* of milk. It will take a great deal of care to *wrais* it, I fear. As to my *choyice* wheather I would bring Eliza back or not, I cannot tell. I have long since resolved that *durt* should never be thrown on her coffin; and should I make that countrey my home untill my children got grown, I, if cousins had rather have *hur* there, so I have tho't I would bring her if you wished, *eaven* if I brought *hur* back at some future *peariod*, must have a *vall mad* to put *hur* in, for where ever she *lyes* thare I must, when *ded*, and if you will be so kind as to see *Alison* Fleming and see wheather he could put up one; and how long it would take him to do it. I would want it 10 feete long and 8 feete wide and 7 high in the *clar*, and then arched over so as to be covered all up in a bank except one end. I would want it made of cut stone, the wall 12 inches page 41 } thick, all drest on the in side, so as to plaster to, and the front end cut and polished, and the *ballence* of the outside might be left rough, for it would be covered with earth and shrubbery; and *ascertain* what it would be worth per perch, and let me know, and I will send you a draft or plan of the whole of it. I remain your most affectionate son,

J. N. HALL."

LETTER MARKED "B," REFERRED TO IN JOHN JONES' DEPOSITION.

"SIGOURNEY, IOWA, JUNE 10TH, '55.

DEAR MOTHER: I am *sorrow* to know that I have brought so much trouble in your cares and mind; could I retrace thousands of my paces, I would *cheerfully*, but alas, it is too late. But all the requests that you have made will be *complide* with, as soon as we are able to perform them. I hope your health is better than in the winter, altho' I feare different. I am in common health. Lee and the babe *is* well. Lethey is *sittin'* up two or three *hour* of a day. She is nearly white or cream colour. I think she will get along after while. She is *aflicted* in a *delacte* point, like Lib used to be. I fear it will be 3 or 4 *weeaks* or more before she can travel, but at the *earlyest* time we will start for home again. May the Lord be with you and us all, is the *prare* of your son,

J. N. HALL."

LETTER MARKED "C," FILED WITH JOHN JONES' DEPOSITION.

page 42 }

"SIGOURNEY, IOWA, JUNE 19th.

DEARE FATHER AND MOTHER: I have yours of the 29th of last month. I was glad to hear that you *weare* all well, and I very thankful to you for your kind offers for a home for my children and myself. You say you do not know how long you will be there; that is true, but I hope you will be thare as long as I shall need a home. for I feel, or hope, that I shall not want one long on earth. We are all in common health, except Lethe; she has the *intermittant* *feaver*, but not very bad. It is no use for me to try to write, for I cannot. I hope we will all *meete* again,

soon. May the Lord's blessing wrest with us all. My love to father, and Eph. and Elley, and all the ballence.

J. N. HALL.

N. B. I wish you would be so kind as to pick a place in the steep part of the bank, on the far side of the grave-yard, to put the *vault*, so it will all be under ground but the end facing the river. J. N. H."

June 6th, 1857.

Ephraim B. Hall, another witness of lawful age, produced by the deft. Hall, being first duly sworn, deposes and says:

I was made a defendant in this cause, and the attachment was served
 page 43 } on me as a garnishee. My answer is in the cause. I am a
 } brother of the deft. John N. Hall. Some time prior to the
 spring of 1855, I understood from said John N. Hall that he was making preparations to remove to, and reside in the State of Iowa. In April or May, of that year, he with his family, started to remove to Iowa. A short time after they started, I received a letter from him, informing me of the death of his wife before they had reached their destination, a week or two after which, I received another letter or letters from him, saying that as soon as he could arrange some business there, he should return with his children, with a view of making his home here, asking if I could take his oldest child, saying that the youngest he would get Mrs. Jones, his mother-in-law, to keep. That he desired to find homes for his children where he could be with and near them. Before he returned, his youngest child also died, and with his oldest child and the corpse of his wife and youngest child, he, some month or six weeks thereafter, returned here. Upon his return, he told me he intended to remain here and go into business after a time. He said he intended to go to merchandising. After the death of his wife, I always so understood from the said John N. Hall, that he intended to make this country his permanent home. He has remained here ever since, except that he has made two or three trips to Iowa, to settle his business there, as I
 page 44 } understood. Since his return in the spring of 1855, the said
 } John N. Hall brought on goods here, and has been engaged here in merchandizing for some ten months past. I think that in the fall or winter before the institution of this suit, the said John N. Hall was engaged here in buying grain and shipping it to Baltimore. When the said John N. Hall returned here, as above stated, it was no secret that he was going to remain here. I did not regard it as a secret. I heard him speak frequently of arranging his business in Iowa with the view of remaining here. In the fall after he returned here, he went out to Iowa. He sold out some of his land there, and an interest in one of his stores, and half of his interest in another.

Examined by Compl't's Counsel.

My recollection is not distinct that the said John N. Hall was engaged in the buying of grain here in the fall or winter before the institution of this suit. I remember that he certainly was before he removed west, and my impression is that he was, during said fall or winter. When he was engaged in that business, he took in his grain at Benton's Ferry, at Mannington, and at this place, and probably at other places. I cannot state whether he took in grain at those places during the said fall or winter, or whether it was when he was engaged in the business before. From the time the said John N. Hall returned from Iowa, in April,

page 45 } 1855, to the time he engaged in merchandising in this place, I do not know that he was engaged in any regular business in this State, unless it was the buying of grain as above stated. From the time he removed to Iowa, as well as I can recollect, it was not more than three months before he returned. He went out to Iowa in the fall of 1855, and remained there some five or six weeks before he returned. Before he went to Iowa at that time, he had been engaged in the grain business, though I am not sure of it. I do not think that he had been engaged in any other business. After his return, he was engaged in the grain business, I think, but how long after, I do not recollect. The said John N. Hall was here when the attachment was issued in this cause, and I think was then calculating on going to Iowa. He went to Iowa soon afterwards, but how soon I do not recollect. I do not recollect whether he was or was not engaged in any regular business here at that time. I do not remember how long he was absent in Iowa.

Re-examined by Def't's Counsel.

I drew the bond on which this suit is instituted. It was executed in part payment of the consideration for the unexpired term of service of two free negroes who were apprentices of the complt. The said negroes were known as the Boggess negroes. Their mother's name is Phebe. The said Phebe at that time lived in or about Fairmont, where she had been page 46 } living since I have been about the place. I came here about 1846 or 1847. There was an action at law brought by the complt, before the institution of this suit, in the county court of this county, against said John N. Hall, for the recovery of the same debt, as I understood, for which said bond was executed.

Re-examined by Compl't's Counsel.

The names of said negroes were Richard and Lethe. The said John N. Hall, some time after he got him from complt., sold the unexpired term of said Richard to George T. Martin. I had knowledge of the price Martin paid him, but I have forgotten it. And further this deponent saith not.

E. B. HALL."

WRITTEN AGREEMENTS OF COUNSEL.

"THOMAS RHEA }
v. } In Marion Circuit Court.
JOHN N. HALL, }

It is agreed as evidence in this case, that the price paid to defendant Hall by George T. Martin, for the service of the negro boy Dick, sold by Hall to him, mentioned in the defendant Hall's answer, was three hundred and fifty dollars, (\$350.00,) which was paid by said Martin to said Hall. Signed 27th June, 1857.

F. H. PIERPOINT,
JAMES NEESON,

Counsel for the parties."

page 47 } THOMAS RHEA }
v. } Pending in the Circuit Court for Marion }
JOHN N. HALL, &c., } County.

The attachment spoken of by me in my deposition given in this cause, was in favor of Nelson Brumage, and founded upon a judgment of said Brumage against John N. Hall and Allen E. Brumage, recovered in the county court of Marion county. It was an attachment in equity.

Phebe, the mother of the servants named in the proceeding in this cause, was a free woman of color, and resided about Fairmont, from the year 1844, to about the year 1856. She and her children formerly belonged to Richard Boggess, now deceased, and *was* emancipated by the will of said Richard, and declared to be free by the county court, of Marion, (I think,) in the year 1844. She resided in or about Fairmont at the time, and for some time previous to the time she and her children were declared free, and at the time her children were ordered to be bound out.

T. G. WATSON.

June 17, 1847.

We agree that said statement shall be received in said cause as if taken by deposition for deft. J. N. Hall.

J. N. for Rhea,
F. H. PEIRPOINT,
At'y for deft. Hall."

A true transcript.

Teste,

T. G. WATSON, Clerk.

TABLE OF CONTENTS.

Bill.....	page 1
Amended Bill.....	6
Answer of Ephraim B. Hall.....	9
Answer of John N. Hall.....	11
Final Decree.....	18
Complainant's Exhibits:	
John N. Hall's Single Bill.....	18
Exhibit "A".....	19
Defendant John N. Hall's Exhibits:	
Order of County Court, December Term, 1844.....	20
Article of Indenture—Richard.....	21
Order of County Court, November Term, 1844.....	22
Article of Indenture—Lethe.....	23
Order of County Court, November Term, 1853.....	25
do. December Term, 1853.....	25
do. January Term, 1854.....	25
James Loughrey's Deposition.....	26
William B. Fleming's do.	27
Thomas G. Watson's do.	28
Henry H. Boegel's do.	30
Ausburn E. Lowe's do.	31
James M. Adams' do.	32
John Jones' do.	33
Letter marked "A," filed with John Jones' Deposition.....	38
Do. " "B," " " " " do.	41
Do. " "C," " " " " do.	42
Ephraim B. Hall's Deposition.....	42
Agreements of Counsel.....	46

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