Thus, in the early case of *Hitchcock* v. *Thornland*, already referred to, where it was admitted a release to one would discharge all, the distinction we have stated was recognized by Atkinson, J.; and in *Lacy* v. *Kynaston* (1 Lord Raym. 689), reported also in 12 Mod. 548, where the question came directly before the judges, it was held that a covenant not to sue was personal to the covenantee only, and could not be set up by other parties. In those cases it was well observed, that such a covenant operated as a release between the parties themselves, to avoid circuity of action, but could not extend further, "as if A. and B. be jointly and severally bound to C. in a sum certain, and C. covenants with B. not to sue him. That shall not be a release but a covenant only, because he covenants only not to sue B., but does not covenant not to sue A., against whom he still has his remedy."

Late in the last century the case of *Dean* v. *Newhall*, 8 T. R. 168, was determined by Lord Kenyon, where the defendant pleaded that his principal, with whom he was jointly bound, having been, as he claimed, released by an agreement under seal, which obligated the plaintiff not to sue him, and if he did, the agreement thus made "should be a sufficient release and discharge to all intents and pusposes, both at law and in equity, to and for the debtor, his executors, &c." It was argued that this agreenment was a release of the right of action against principal and surety, but in reply the case we have cited from Raymond was referred to, and his lordship, in giving the opinion of the whole court, said: "The case of *Lacy* v. *Kynaston* removes all difficulty on this subject, and is a direct authority for the plaintiff. I had only been doubting in my own mind on the strict law of the case, for that the honesty and justice of it are with the plaintiff, cannot be doubted. Even if the defendant had succeeded here, a court of equity would have given the plaintiff full relief. But I am glad to find, by the case cited, that we are fully warranted in deciding for the plaintiff on legal grounds." Since the determination of this case, there is not, we believe, a single reported decision opposed to the principle it affirms, to be found in the English Courts, and we might quote cases *ad libitum* to the same point, if there could be a doubt of the correctness of our statement: *Farrell* v. *Forest*, 2 Saund. 48, note 1.

In the American courts the same rule is adhered to without exception: *McLellan* v. *Cumberland Bank*, 24 Maine 566; *McAllister* v. *Sprague*, 34 *Id.* 296; *Walker* v. *McCullough*, 4 Greenl. 421; *Tuckerman* v. *Newhall*, 17 Mass. 581; *Shaw* v. *Pratt*, 22 Pick. 305; *Smith* v. *Bartholemew*, 1 Metc. 276; *Brown* v. *Marsh*, 7 Vt. 327; *Durrell* v. *Wendell*, 8 N. H. 369; *Snow* v. *Chandler*, 10 *Id.* 92; *Crane's Admr.* v. *Alling*, 3 Green N. J. 423; *Catskill Bank* v. *Messenger*, 9 Cowen 38; *Rowley* v. *Stoddard*, 7 Johns. 207; *Couch* v. *Mills*, 21 Wend. 424; *Bronson* v. *Fitzhugh*, 1 Hill 185; *Frink* v. *Green*, 5 Barb. 455.

The courts, in the examination of the numerous decided cases, have been required to give a construction to every conceivable stipulation inserted in the agreements which have been pleaded as releases of liability, and have invariably pursued the same course in yielding nothing to mere implication, wherever words of release are found in the instrument.

The intention of the parties is alone regarded, holding the established legal maxim, that where a particular purpose is to be accomplished, and language which expresses it is clear and certain, no general words subsequently used in the same agreement shall extend the meaning of the parties: *Thorpe* v. *Thorpe*, 1 Lord Raym. 235.

Dallas, C. J., in *Solly* v. *Forbes*, 2 Brod. & Bing. 46, having examined the leading cases, observes, as courts look at the intention of the parties, in modern times more than formerly, rather than the strict letter, not suffering the latter to defeat the former, held that general words of release even could not be operative to enlarge a previous statement which defined the particular object for which the agreement was made. The same principle is found in *Turpenny* v. *Young*, 5 Dowl. & Ry. 262, and is referred to and affirmed in *Thompson* v. *Lack*, 3 M., G. & Scott 551. See also *North* v. *Wakefield*, 13 Ad. & E. 540.

On similar grounds it was held in *McAllister* v. *Sprague*, 34 Maine 297, where a receipt had been given by a creditor to one of his joint debtors, which recited that the debtor had paid a certain sum in full of his half of the debt, due jointly by him and another, and which was to be his discharge in full for debt and costs, but no discharge of the co-debtor. It was decided that this could not be pleaded as a release by the other judgment debtor, the intention of the parties being that his liability should still remain. See also *Durell* v. *Wendell*, 8 N. H. 369.

Having thus ascertained what is now the established rule in deciding the question raised by the defendant, let us now examine the facts as they are found proved in the bill of exceptions, and to which there is no contradiction.

Before we proceed, however, it is proper to consider how far the entry on record, by which the defendants Taylor and Hallam were dismissed from the suit, can be explained or enlarged by parol evidence. The purpose is plainly stated, and as to the parties named therein, it was a legal discharge from the pending proceedings, but how far it was a bar to a subsequent action, is not now a question, as counsel admit it would be barred by the statute. As the only written evidence of an arrangement between the plaintiff and these parties, is the record made at the time, and without which it would be difficult to say how these parties could avail themselves of the alleged benefit they had secured, it would seem to be inconsistent with the established rule of evidence to permit any explanation where there is neither ambiguity in the terms used, or the purpose intended to be accomplished.

But to give the testimony its weight, the result of a careful analysis of the whole is this:

During the pendency of this suit, the counsel of both parties met the father (Col. Taylor) of two of the then defendants, and with James R. Hallam, another, the plaintiff also being present, when it was agreed that $1,500 should be paid, and these defendants dismissed or released from the action, reserving to the plaintiff his right to proceed against the other defendants. The money was paid by Col. Taylor, and the entry referred to made accordingly.