

12306

No. _____

Supreme Court of Illinois

Cook.

vs.

Geaydon. *et al*

71641  7

100

John Geo Nelson et al
vs
Franc Crook

100

~~1856~~

12306

1.
State of Illinois, S.S.
County of Cook

Now before the Honorable
John M. Nelson Judge of the Cook County Court
of Common Pleas at a regular term of said
Cook County Court of Common Pleas begun and
holden at the Court House in the City of Chicago
in said County and State on the first Monday
being the fourth day of February in the year
of our Lord one thousand eight hundred
and fifty six and of the Independence
of the United States the Eightieth -

Present the Honorable John M. Nelson Judge
Daniel M. Hoon County Attorney
James Andrew Sheriff
Attest Walter Kimball Clerk

It is remembered that heretofore to wit: on the nineteenth day of April in the year of our Lord one thousand eight hundred and fifty four there was filed in the office of the Clerk of the Cook County Court of Common Pleas a Transcript in which Isaac Cook is Plaintiff and John G. Nelson & William Graydon are Defendants, which said Transcript is in words and figures as follows to wit:

United States of America }
 State of Illinois } S.S.
 Lake County }

Shes before the Honorable Buckner S. Morris Judge of the seventh Judicial Circuit of the State of Illinois at a special term of a Circuit Court for the County of Lake in said Circuit, began and held at Waukegan in said County on the second day of March in the year of our Lord one thousand eight hundred and fifty four and of the Independence of the United States the seventy eighth said term of Court being held pursuant to a special order of the Honorable Buckner S. Morris Judge of the seventh Judicial Circuit of said State and presiding Judge

of the Circuit Court of Lake County aforesaid bearing date on the sixth day of February A.D. 1854 and calling said special term to commence on the second day of March A.D. 1854 for the trial, hearing and determination of all pleas that may be depending in said Court civil criminal and chancery due notice of said special term having been given by the Sheriff of said County according to the Statute in such case made and provided -

Present the Honorable Rufus S. Morris Judge
 Augustus Wanger Sheriff
 of Lake County
 Attest: A. B. Bates Clerk

Be it remembered that heretofore to wit; on the sixteenth day of March A.D. 1854 the same being one of the days of the March special term of the Circuit Court of Lake County in the State of Illinois for this year last aforesaid proceedings were had in said Court which are entered of Record in the words and figures following to wit;

Isaac Cook

John G. Nelson and
 William Graydon

Attachment

4.

In pursuance of a stipulation on file in the
~~the~~ above entitled cause it is ordered that
 said cause be removed to the Cook County
 Court of Common Pleas, and it is further
 ordered that the clerk of this Court make
 and certify a full transcript of the record
 and proceedings in said cause and
 transmit the same to the said Cook
 County Court of Common Pleas together
 with all papers filed therein and appertai-
 ning or forming part of this record -

Sease Cook	} Lake County Circuit Court
John G. Nelson and William Graydon	

State of Illinois ss.

Lake County } J. Augustus Bates
 Clerk of the Circuit Court in and for said
 County of Lake, do hereby certify the afore-
 going to be a true transcript from the
 records of my office of the record of the
 proceedings of said Court in the
 above entitled cause and that the accom-
 panying papers numbered from one to
 eight inclusive are all of the papers filed
 in my office in said cause -

In witness whereof I have

humbly, set my hand and the seal of said Court at Waukegan in said County this 18th day of March A.D. 1854 -

L. S. 3

A. B. Coter Bliss

And thereupon on the same day and year last aforesaid there was filed in the office of the Clerk of said Court, affidavit for attachment, Attachment Bond, Attachment Writ and Sheriff Return, Publication Notice & certificate and Declaration - which said affidavit for attachment, Attachment Bond, Attachment Writ and Sheriff Return, Publication Notice & certificate and Declaration are in words and figures following to wit;

State of Illinois } S. S.

Cook County } Isaac Cook aforesaid County being duly sworn, says that John G. Nelson and William Graydon are jointly indebted unto him in the sum of Seven thousand two hundred dollars upon an implied contract arising as follows, namely: That this deponent on the twelfth day of June 1848 was Sheriff of Cook County in the State of Illinois and continued to be such Sheriff for two years and upwards thereafter, and while this deponent was such Sheriff and on or about the twelfth day of

In the year 1848, the said John G. Nelson and William
 Graydon who were then Partners in trade in the
 City of New York as Creditors of Augustus E.
 Miller and David R. Clements then of Chica-
 go in said County of Cook partners in trade
 and Merchants under the Style and firm
 of Miller and Clements sued out a writ of
 Attachment from the Cook County Court
 of Common Pleas of Cook County at the
 suit of said Nelson & Graydon against the
 Estate of said Miller & Clements which was
 directed to the Sheriff of Cook County to be
 executed and the said writ of attachment
 was delivered to this deponent by the attorney
 and agent of said Nelson & Graydon to be exe-
 cuted, and in pursuance of the instructions
 of said Graydon and his attorney this depon-
 ent attached and seized a stock in trade
 consisting of Dry Goods & Groceries and ~~and~~ ex-
 actly a store building at the City of Chicago in
 said County and State of the value of three
 thousand dollars or thereabouts which said
 goods and building were then and there
 claimed by one Jacob Miller as his property
 but this deponent was instructed and directed
 by said Graydon and his attorney to seize and
 attach the same in virtue of said writ as the
 Estate and property of Augustus E. Miller

7.

and Grand R. Clements the Defendants in said writ named and in pursuance of said instructions this deponent did seize and attach said goods and building on said writ on or about the twelfth day of June 1848 - And this deponent further says that afterwards in the February Term 1850 of the Cook County Court of common Pleas within and for said County of Cook Jacob Miller the Claimant of said good and building in an action of trespass de bonis asportatis by him commenced against this deponent for attaching the same as the property of the firm of Miller & Clements under said writ at the suit of said Nelson & Graydon. did recover Judgment against this deponent for the sum of Three Thousand two hundred dollars and upwards, besides costs of suit, which Judgment was affirmed by the Supreme Court of the State of Illinois, and this deponent was compelled to pay the amount of said Judgment with costs and expenses and that the amount of damages sustained by this deponent by reason of attaching said goods and building as aforesaid is the sum of four thousand two hundred dollars and in which sum the said John & Nelson and William Graydon are by

implied promise indebted to this defendant -
 And this defendant further says that neither
 said Nelson or Graydon are residents of this
 State but reside out of this State and
 this defendant prays that a writ of attach-
 ment may issue out of the Lake County
 Circuit Court against the Estate of said
 John G. Nelson and William Graydon
 in pursuance of the Statute in such case
 provided and that Henry A. Reid
 Eliakin, C. Deason and John C. Deason
 comprising the firm of Reid Deason & Co
 may be summoned as Garnishers -

Subscribed and sworn
 before me this third day
 of December 1853

I. Cook

Edw. H. Stebbins
 Notary Public

Know all men by these presents that we
 Isaac Cook of the City of Chicago in
 the State of Illinois and Henry Woodgett
 of Lake County in said State are held and
 firmly bound unto John G. Nelson and William
 Graydon in the sum of Eight thousand five
 hundred Dollars lawful money of the United

9.

States to be paid to the said John & Nelson
and William Graydon their heirs executors
administrators or assigns to which payment
well and truly to be made we bind ourselves
our heirs executors and assigns firmly by these
presents jointly and severally. Sealed with
our seals and dated December third A.D. 1853

The condition of this obligation is such
that whereas the above bounden Isaac Cook
hath on the day of the date hereof procured
an attachment out of the Circuit Court
of Lake County at his suit against the
Estate of John & Nelson and William Gray-
don above named for the sum of four thou-
sand two hundred dollars and the same being
about to be sued out of said Court returnable
on the first day of the next term thereof—

Now if the said Isaac Cook shall prosecute
his suit with effect—or in case of failure
therein shall well and truly pay and satis-
fy all such costs in said suit and such
damages as shall be awarded against
the said Isaac Cook his heirs executors
or administrators in any suit or suits which
may hereafter be brought for wrongfully securing
said attachment then the above obligation
to be void, otherwise to remain in full force and effect.

Approved by me at my office this 7th day of October, A.D. 1853. A.B. Curtis clerk

Isaac Cook seal
H. W. Blodgett seal

State of Illinois ss
 Lake County }

The people of the State
 of Illinois to the Sheriff of said County - Greeting

Whereas Isaac Cook of the County of Cook
 and State of Illinois hath complained on
 oath to Augustus B. Bates Clerk of the Cir-
 cuit Court of Lake County that John G.
 Nelson and William Graydon are jointly
 and jointly indebted to the said Isaac
 Cook to the amount of four thousand and
 two hundred Dollars, and oath having
 been also made that neither said Nelson
 or Graydon are residents of this State -

And the said Isaac Cook having given
 bond and security according to the directi-
 on of the act in such cases made and
 provided -

We therefore command you that you
 attach so much of the estate, real & personal
 of the said John G. Nelson and William
 Graydon and of each of them to be found
 in your County, as shall be of value suffic-
 ient to satisfy the said debt and costs
 according to the said complaint; and
 such estate so attached in your hands
 to secure or so to provide that the same

may be liable to further proceedings thereupon according to law at a Circuit Court to be holden at Waukegan within and for the County of Lake aforesaid on the second Monday of January next; so as to compel the said John & Nelson and William Graydon to appear and answer the complaint of the said Isaac Cook, and that you also summons Henry A. Reid, Eliakim C. Deacon and John C. Deacon composing the firm of Rein Deacon & Co as garnishees to be and appear before the said Court on the said second Monday of January next then and there to answer to what may be objected against them when and where you shall make known to the said Court how you have executed this writ; And have you then and there this writ;

Witness - August B. Cote Clerk of our said Court and the seal thereof at Waukegan aforesaid this seventh day of December in the year of our Lord one thousand eight hundred and fifty three -

L. B. C.

A. B. Cote

Clerk

Executed the within writ this 7th day of Dec. A.D. 1853, by reading to & in presence of & hearing of the within named Henry A. Reid Eliakim

C. Deacon and John C. Deacon - the within
named John G. Nelson & William Graydon
not served they not being found in my
county and I certify that I have not
been able to find any property of the within
named defendants in my county -

A. Krueger
Sheriff

State of Illinois ss. Lake County Circuit Court
Lake County } Term Dec 1854 -

Isaac Cook }
John G. Nelson } Attachment
William^{ann} Graydon }

Public notice is hereby
given to the said John G. Nelson and William
Graydon that a writ of attachment issued
out of the office of the Clerk of the Lake County
Circuit Court dated the 7th day of December A.D.
1853. at the suit of the said Isaac Cook against
the estate of you the said John G. Nelson and
William Graydon for the sum of forty two
hundred dollars directed to the Sheriff of Lake
County which said writ has been returned
served on garnishes - And therefore unless you
the said John G. Nelson and William Graydon

shall personally be and appear before the
said Lake County Circuit Court on or before
the first day of the next term thereof to be
holden at the Court House in the town of
Haukegan on the first Monday of June
next give special bail and plead to said
plaintiff's action Judgment will be enter-
ed against you and in favor of the said
Isaac Cook, and the estate so attached
will be sold to satisfy the same with costs
Dated Jan. 14. 1854 -

A. B. Cotes Clerk
Abdger & Upton plffs. attys

I A. B. Coby one of the publishers of
the Haukegan Chronicle a weekly news-
paper published in Lake Co Illinois do
hereby certify that the annexed notice
was published ^{successive} in ~~the~~ said paper
the first publication being on the 18th day
of January A.D. 1854 & the last publica-
tion being on the 28th day of February
A.D. 1854

A. B. Coby

State of Illinois } Circuit Court of Lake
 Lake County ss } County Of the January
 Term in the year of our Lord
 One thousand eight hundred
 and fifty four

Deas Cook plaintiff in the suit by
 Blodgett & Winton his attorneys complainants of John
 G. Nelson & William Graydon defendants
 in this suit whose estate has been proceeded
 against by writ of attachment in pursuance
 of the statute in such case provided in a
 plea of trespass on the case upon promises.

For that whereas heretofore to wit on the
 twelfth day of June in the year one thousand
 and eight hundred and forty eight the said
 plaintiff was sheriff of the County of Cook
 in the State of Illinois and one John
 Beach was then and then deputy sheriff
 of said County, duly appointed by said
 plaintiff, and the said defendants after-
 wards to wit on the day and year last
 aforesaid at Chicago in the County of Cook
 aforesaid, then and there, delivered to the
 said John Beach such deputy sheriff as afo-
 said to be by him duly executed a writ of
 Attachment then lately to wit on the day
 and year aforesaid at Chicago in Cook

County by the said defendants sued out of the Cook County Court within and for said County of Cook at their suit as plaintiffs against the estate of Augustus E. Miller and David R. Clements and directed to the sheriff of Cook County aforesaid, and therein and thereby commanding said Sheriff among other things that he attach so much of the estate real and personal of the said Augustus E. Miller and David R. Clements to be found in said County as should be sufficient to satisfy the debt of the plaintiffs in said suit being as alleged the sum of Eleven hundred twenty six dollars & Eleven cents and costs, which said writ of attachment so as aforesaid issued out of said Cook County Court at the suit of said defendants against the estate of said Augustus E. Miller and David R. Clement the said defendants, afterwards to wit on the twelfth day of June in the year Eighteen hundred and forty eight at Chicago, in the County of Cook aforesaid, directed the said John Beach the deputy of said plaintiff Sheriff as aforesaid to levy the said attachment upon a certain Wood Building or Store and a Stock of goods and Merchandise situate in said Building at Chicago aforesaid as the property of said

Augustus E. Miller and David R. Clement
 which said building and merchandise
 were then and there claimed by one Jacob
 Miller as his property and the said John
 Beach deputy of said plaintiff did in obe-
 dience to said directions of said defendant
 attach and seize said building and
 merchandise, whereby then and there the
 said defendant plaintiffs in said writ
 of attachment became and were bound
 to indemnify and save harmless the said
 plaintiff as such Sheriff from all damage
 by reason and on account of attaching
 said building and merchandise as afore-
 said - And the said plaintiff avers that
 the said Jacob Miller afterwards to wit
 on the thutenth day of February in the
 year eighteen hundred and fifty - in
 the Court County Court of Common Pleas
 returned against said plaintiffs the sum
 of three thousand two hundred and thirty
 six dollars and twenty three cents damages
 in an action of trespass for the wrongful
 attaching of said building and merchand-
 ise under said attachment as aforesaid
 and the sum of twenty one dollars and
 twenty three and three fourths cents costs in said
 suit which said judgment was removed

17.

by said plaintiff to the Supreme Court of the State of Illinois by writ of Error and was by said Supreme Court affirmed which said Judgment for damages and costs with interest thereon the said plaintiff was compelled to pay together with the expenses and charges of removing said Cause to said Supreme Court to a large amount to wit the sum of four thousand dollars whereby the said defendants became liable to pay to the said plaintiff the said sum of money and being so liable the said defendants in consideration thereof afterwards to wit on the first day of November in the year Eighteen hundred and fifty three at Chicago to wit at Hannegon in said Lake County undertook and faithfully promised said plaintiff to pay to him said sum of money on request —

And whereas also heretofore to wit on the twelfth day of June in the year one thousand eight hundred and forty eight the said plaintiff was Sheriff of the County of Cook in said State of Illinois and one John Buech was then and there deputy sheriff of said County duly appointed by said plaintiff — and the said defendants by Morris Brown their attorneys and

agents afterwards to wit on the day and
 year last aforesaid at Chicago in said
 County of Cook then and then delivered
 to the said John Beach such deputy sheriff
 as aforesaid to be given by him duly executed
 a writ of attachment then lately to wit
 on the day and year aforesaid at Chicago
 in Cook County by the said defendants
 said out of the Cook County Court within
 and for said County of Cook at their suit
 as plaintiffs against the estate of Augus-
 tus E. Miller and David R. Clement
 and directed to the Sheriff of Cook
 County aforesaid and therein and thereby
 commanding said Sheriff among other
 things that he attach so much of the est-
 ate real and personal of the said Augustus
 E. Miller and David R. Clement to be
 found in said County and should be
 sufficient to satisfy the debt of the plain-
 tiffs in said suit, being as alleged the
 sum of Eleven Hundred twenty six doll-
 ars and Eleven cents and the costs, which
 said writ of attachment so as aforesaid
 issued out of said Cook County Court
 at the suit of said defendants against
 the estate of the said Augustus E. Miller
 and David R. Clement, the said defendants

19.

By their said attorneys Morris & Brown, afterwards
to wit: on the twelfth day of June in the year
eighteen hundred and sixty eight at Chicago
in the county of Cook aforesaid, directed the
said John Beach the deputy of said plaintiff
Sheriff as aforesaid, to levy the said attachment
upon a certain wood building and stock of
goods and merchandise in said building at
Chicago aforesaid as the property of said Ang-
ustus E. Miller and David R. Clement which
said building and merchandise were then
and there claimed by one Jacob Miller as
his property and the said John Beach
deputy of said plaintiff did in obedience
to said direction of said defendants
attach and seize said building and mer-
chandise. Whereby then and there the said
defendants plaintiffs in said writ of attach-
ment became and were bound to indemnify
and save harmless the said plaintiff as
such Sheriff from all damage by reason and
on account of attaching said building and
merchandise as aforesaid - And the said
plaintiff avers that the said Jacob Miller
afterwards to wit on the thirteenth day of February
in the year eighteen hundred and fifty in
the Cook County Court aforesaid, plea
verged against said plaintiff the sum
of three thousand two hundred and thirty six

dollars and twenty three cents damages in an action of trespass for the wrongful attaching of said building and Merchandise under said attachment and the sum of twenty one Dollars & twenty three & three fourths cents & costs in said suit. which said judgment was removed by said plaintiff to the Supreme Court of the State of Illinois by writ of error and was by said Supreme Court affirmed which said judgment for damages and costs with interest thereon the said plaintiff was compelled to pay together with expenses and charges of removing said cause to said Supreme Court to a large amount to wit the sum of four thousand dollars. Whereby the said defendants became liable to pay to the said plaintiff the said sum of money and being so liable the said defendants in consideration thereof afterwards to wit on the first day of November in the year eighteen hundred and fifty three at Chicago to wit; at Waukegan in Lake County aforesaid undertook and faithfully promised to pay to said plaintiff said sums of money on request -

But the said defendants not regarding their said promises and undertakings although often requested have hitherto wholly neglected and refused and still do neglect

and refuse to pay the said plaintiff either of said sum of money or any part thereof to the damage of said plaintiff of six thousand dollars and therefore he brings suit —

Blodgett & Martin
Attorneys

And thereafter to wit on the twenty seventh day of March in the year of our Lord one thousand eight hundred and fifty five, said day being one of the days of the February Term of the Cook County Court of Common Pleas, the following among other proceedings were had in said cause and entered of Record to wit:

Isaac Cook	} Attachment
John G. Nelson	
William Graydon	

This day came the said defendants by William Woodbridge their attorneys and leave is given them to withdraw their demurrer filed herein and that they have leave to file their plea herein by Thursday of the first week of next April Vacation term of this court —

And thereafter to wit: on the sixteenth day of April in the year last aforesaid. there was filed in the office of the Clerk of said Court Pleas. Replication to Ninth Plea and Demurrer to Pleas - which said Pleas. Replication to Ninth Plea - and Demurrer to Pleas are in words and figures as follows to wit:

John S. Nelson

William Graydon

ad

Isaac Cook

Cook Co. let of Court Pleas

And the said defendants by William Woodhidge their attorneys come and defend the wrong and injury where and say that they did not undertake or promise in manures and firm as the said plaintiff hath above thereof complained against them and as they put themselves upon the country for trial.

And the said plff hath the like. Judd & Smith

2 And for a further plea in this behalf the said defendants by leave of court here put had and attained, according to the force of the Statute in such case made and provided say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because although true it is, that the said plaintiff was Sheriff

of Cook County and the said John Beach was his deputy at the time and in the manner and form as the said plaintiff hath above in his said declaration alleged, and although further true it is that the said defendants did send out & deliver to the said John Beach as such deputy Sheriff the said writ of attachment in said declaration mentioned; and did direct him the said John Beach as such deputy Sheriff to levy, and the said John Beach as such deputy did levy the same in manner and form as the said plff hath above in said declaration alleged; and although further true it is, that the said building stock of Goods and Merchandise in the said declaration mentioned were claimed by said Jacob Miller as his property in manner and form as the said plaintiff hath in his said declaration alleged; and although further true it is; that the said Jacob Miller did recover the said Judgment against the said plaintiff in the said declaration mentioned for the cause and in the manner and form as the said plaintiff hath above in his said declaration alleged and although further true it is; that the said plaintiff was compelled to pay and did pay the several sums of money as the said plff hath above in his said declaration alleged; for plea nevertheless in this behalf, the said defendants say that they did not undertake

or furnish in manner and form as the said plaintiff hath above thereof in his said declaration complained against them; and of this they put themselves upon the country for trial —

3

Drummond

And for a further plea in this behalf the said defendants by leave of Court here first had and obtained according to the form of the Statute in such case made and provided say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them because protesting that the said plaintiff was not Sheriff of Cumberland County and that the said John Beach was not his deputy at the times. nor in the manner and form as the said plaintiff hath above in his said declaration alleged; and further protesting that the said defendants did not arrest nor deliver to the said John Beach as such deputy sheriff the said writ of attachment in the said declaration mentioned; and that the said defendants did not direct him the said John Beach as such deputy sheriff to levy, nor did the said John Beach levy the said writ of attachment in manner and form as the said plaintiff hath above in his said declaration alleged and further protesting that the said Jacob Miller in said declaration mentioned did not reverse the Judgment against the said plaintiff in the said declaration mentioned for the cause therein

mentioned in manner and form as the said plaintiff hath above in his said declaration alleged; and further protesting that the said plaintiff was not compelled to pay, and did not pay the several sums of money in said declaration mentioned as the said plaintiff hath above in his said declaration alleged; for plea nevertheless in this behalf the said defendants say, that the said Merchandise Stock of goods and building in the said declaration mentioned before and at the time of the levy upon seizure and attachment of the same by the said John Beach as such deputy sheriff as in the said declaration mentioned, were the property of the said Jacob Miller in said declaration mentioned, and were before and at the time last aforesaid in his the said Jacob Miller custody and possession without this that the said defendants did assume and promise in manner and form as the said plaintiff hath above thereof complained against them; and this the said defendants are ready to verify - Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them &c —

4 And for a further plea in this behalf the said defendants by leave of Court they first had and obtained according to the form of

the statute in such case made and provided
 say that the said plaintiff ought not to have or
 maintain his aforesaid action thereof against them
 because protesting that the said plaintiff
 was not sheriff of Cook County and that the said
 John Beach was not his deputy at the times in
 the manner and form as the said plff hath
 above in his said declaration; and further
 protesting that the said defendants did not
 sue out, nor deliver to the said John Beach
 as such deputy sheriff the writ of attachment
 in the said declaration mentioned; and
 that the said defendants did not direct
 him the said John Beach as such deputy
 sheriff to levy, nor did the said John Beach
 levy the said writ of attachment in manner
 and form as the said plaintiff hath above
 in his said declaration alleged; and further
 protesting that the said Jacob Miller did
 not receive the judgment against the said
 plaintiff in the said declaration mentioned
 for the causes therein mentioned in manner
 and form as the said plaintiff hath above
 in his said declaration alleged; and further
 protesting that the said plaintiff was compelled
 to pay and did not pay the several sums
 of money in said declaration mentioned
 as the said plff hath above in his said
 declaration alleged; for plea nevertheless

27.

in this behalf, the said defendants say that the said Merchandise stock of goods and building in the said declaration mentioned before and at the time of the levy upon, seizure and attachment of the same by the said John Beach as such deputy Sheriff as in the said declaration mentioned were the property of the said Jacob Miller and were before and at the time last aforesaid in his custody and possession of all which the said John Beach they and then had notice - With out this that the said defendants did assume promise in manner & form as the said plff hath above thereof complained against them; and thus the said defendants are ready to verify & therefore they pray Judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them &c

And for a further plea in this behalf the said defendants by leave of court here first had and obtained according to the form of the statute in such case made & provided say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them because protesting that the said defendants did not undertake or promise in manner and form as the said plaintiff

demanded

hath above in his said declaration compl-
 ained against them, for plea nevertheless in
 the behalf the said defendants say that
 the suit of the said Jacob Miller against
 the said plaintiff in which the Judgment
 in the said declaration mentioned was re-
 covered, was instituted and commenced for
 and the said Judgment therein in favor
 of the said Jacob Miller against the said
 plaintiff in the said declaration mention-
 ed was recovered for other and different
 causes of action as well as for the lying
 upon seizure and attachment of the said
 merchandise stock of goods and building
 by the said John Beach as such deputy
 sheriff as the said plaintiff hath above alleged
 in his said declaration alleged; and that
 the said costs charges and expenses in the
 said declaration mentioned which the
 said plaintiff was compelled to pay and
 did pay accrued were incurred expended
 and paid as well for such other and diff-
 erent causes of action as for the lying upon
 seizure and attachment of the said March-
 andise stock of goods and building by
 the said John Beach as such deputy
 sheriff as the said plaintiff hath in his
 said declaration alleged; without this
 that the said Judgment of the said Jacob

Writ against the said plff in the said declaration mentioned was obtained & recovered for the cause and in manner of form as the said plaintiff hath above in his said declaration alleged; and that the said costs, charges and expenses in the said declaration mentioned were paid by the said plaintiff by reason of the cause and in manner of form as the said plaintiff hath above in his said declaration alleged; And thus the said defendants are ready to verify - whereupon they pray Judgment of the said plaintiff, ought to have or maintain his aforesaid action thereof against them &c

withdrawn

6 And for a further plea in this behalf the said defendants by leave of Court here first had and obtained according to the form of the Statute in such case made and provided say, that the said plaintiff ought not to have or maintain his aforesaid action thereof against them because they say, that before & at the time of the serving out of the writ of attachment in the said declaration mentioned and before and at the time of the levy upon and by virtue of said writ of the seizure and attachment of said Merchandise stock of goods and building in said declaration mentioned the said Merchandise stock of goods and

building were the property of one Jacob Miller
 and that after the levy upon seizure and attache-
 ment of the said merchandise, stock of
 goods and building in the said declaration
 mentioned by virtue of the said writ of attache-
 ment in favor of the said defendants
 against the said Augustus Miller and David
 R. Clement in said declaration mentioned
 and in manner and form as the said pla-
 ntitiff hath above in his said declaration
 alleged such proceedings were had
 upon said writ of attachment that at a
 term of the Cook County Court begun and
 held on the first Monday of May A.D. 1849
 the said writ of attachment was annulled
 and held for naught; and the said defen-
 dants aver that the said plaintiff before
 the said writ of attachment was annulled
 did not and would not deliver the said
 merchandise, stock of goods and building
 to the said Jacob Miller although by him
 often requested so to do to wit; on 4th day
 of December A.D. 1848 but that the said pl-
 aintiff not regarding his duty in that
 behalf before that time to wit on the 30th day
 of December A.D. 1848 at Chicago afterwards
 without the consent of the said defendants
 converted and disposed of the said merch-
 andize stock of goods and building to his use

and this the said defendants are ready to verify: wherefore they pray judgment of the said plff ought to have or maintain his aforesaid action thereof against them &c

withdrawn

And for a further plea in this behalf the said defendants by leave of court here first had and obtained according to the form of the Statute in such case made and provided say that the said plff ought not to have or maintain his aforesaid action thereof against them for parcel the moneys paid out by the said plff to wit the sum of thirty two hundred thirty six dollars and twenty three cents in said declaration mentioned because they say that the said Jacob Miller did not in and by his said judgment against the said plaintiff in the said declaration mentioned recover against the said plaintiff any damages by reason of the taking, seizing, or detention of the said merchandise stock of goods and building in the said declaration mentioned under and by virtue of the said writ of attachment in favor of the said defendants against the said Augustus Miller & David R. Clement in said declaration mentioned; but they aver that the said merchandise stock of goods and building were afterwards to wit in the 25th day of May 1849 released & discharged from said writ of attachment and that the same were detained by virtue of said writ of attachment, the said defendant wrongfully to wit on the 30th day of December A.D. 1848 converted and

disposed of the said Merchandise Stock of goods and building to his own use, and that the said Judgment so recovered by the said Jacob Miller against the said plaintiff was for no further or greater sum of money than the value of said merchandise Stock of goods and building at the time when the said plaintiff so committed and disposed of the same to his own use as aforesaid; And thus the said defendants are ready to verify. Wherefore they pray Judgment if the said plaintiff ought to have or maintain his aforesaid action thereof for parcels of the money mentioned in the introductory part of this plea against them &c.

ifue joined

8 And for a further plea in this behalf the said defendants by leave of court heretofore had and obtained according to the form of the Statute in such case made and provided say that the said plff ought not to have or maintain his aforesaid action against them for any further or greater sum of money than the sum of one hundred & five dollars because although they cannot deny that they did assume and promise to pay to the said plaintiff all such sums of money as he had necessarily been compelled to pay in consequence of the levy upon, seizure and attachment of the said Merchandise Stock of goods and building, and the detention of the same by virtue of said writ of attachment in manner and form as the said plff hath in said declaration alledged.

for, plea nevertheless in this behalf the said defend-
 ants say, that the value of the said merchandise
 stock of goods and building at the time of the
 levy upon and seizure and attachment of the same
 in the said declaration mentioned to wit: on the 12th
 day of June A.D. 1848, was the sum of twenty nine
 hundred and forty three dollars; and no other or
 greater sum of money; And that the said Jacob-
 miller in and by his said Judgment against
 the said plaintiff in the declaration mentioned
 returned as for the value of the said merchandise
 stock of goods and building at the time of the
 levy upon seizure and attachment of the same
 in the said declaration mentioned to wit: on the
 12th day of June A.D. 1848 the said sum of twenty
 nine hundred and forty three dollars, and no
 further or greater sum of money, together with
 interest at the rate of six per cent per annum on
 said last mentioned sum of money from the
 day and year last aforesaid to the time of the
 rendition of said Judgment to wit on the 13th
 day of February A.D. 1850 making the sum of
 two hundred and ninety three dollars and twen-
 ty three cents, besides the value of said mercha-
 ndise stock of goods and building as and for
 the use of the said value thereof; And the said
 defendants further say that the said plff on
 the 20th day of December A.D. 1848 converted
 and disposed of the said merchandise stock

of goods and building to and for his own use; And
 that the value of the said merchandise, stock of
 goods and building at the time of the conversion there
 of by the said plaintiff as aforesaid was the sum of twenty
 nine hundred and forty three dollars; and that
 the said Jacob Miller did not in and by his said
 judgment in the said declaration mentioned
 against the said plaintiff, recover any further or greater
 sum of money than the sum of one hundred dollars
 as and for the use of the value of the said merch-
 andise, stock of goods and building from the time
 of the said levy upon seizure and attachment
 of the same as in the said declaration mentioned
 to wit on the 12th day of June A.D. 1848. to the time
 of the conversion of the same by the said plaintiff to
 his own use and benefit as aforesaid to wit on the
 30th day of December A.D. 1848; And as to the rest
 and residue of the said sums of money in said decl-
 aration mentioned except the sum of ten dollars
 the said defendants say that the said plaintiff was
 compelled to pay & did pay them and each of them
 by reason of his the said plaintiff attempting to justify
 the wrongful conversion of the said merchandise
 stock of goods and building to his own use as
 aforesaid and not by reason of said levy upon, and
 seizure and attachment of said merchandise &
 stock of goods and building by virtue of said
 writ of attachment as in the said declaration
 alleged; and as to the said sum of one hundred

dollars and ten dollars the said defendants cannot say aught why the said plff should not have judgment against them for the said sums over and above his costs by him in this behalf expended; and thus the said defts are ready to verify wherefore the said defendants pray Judgment of the said plff ought to have or maintain his aforesaid action for any further or other sums than those herein confessed thereof against them &c.

And for a further plea in this behalf the said defendants by leave of the court for this purpose first had and obtained according to the form of the statute in such case made & provided say that the said plaintiff ought not to have and maintain his aforesaid action thereof against them because they say that the said plaintiff before and at the time of the commencement of this suit to wit: on the first day of January in the year of our Lord Eighteen hundred & fifty three at Waukegan to wit at Chicago aforesaid was & still is indebted to the said defendants in a large sum of money to wit the sum of One Thousand dollars of lawful money for so much money by the said plaintiff before that time had and received to and for the use of the said defendants and also in the further sum of Two Thousand dollars for divers goods wares & merchandise by the said plaintiff delivered by the said defendants to the said

plaintiff at his request — and also in the further
 sum of One thousand dollars for money due & owing
 from the said plaintiff to the said defendants
 for interest upon & for the forbearance of divers
 large sum of money due & owing from the said plain-
 tiff to the said defendants. By the defendants
 for ~~causes~~ the said plaintiff for divers large spaces
 of time before then elapsed & for other moneys due
 & owing for the said plaintiff to the said defend-
 ants upon an account stated between them
 which sums of money so due & owing from the
 said plaintiff to the said defendants exceed
 the damages sustained by the said plaintiff by
 reason of the non performance by them the
 said defendants of the said several supposed
 promises & undertakings in the said declarati-
 on mentioned & out of which said sum of money
 so due & owing from the said plaintiff to the
 said defendants they the said defendants are
 ready & willing & hereby offered to set off and
 allow to the said plaintiff the full amount
 of the said damages according to the form
 of the statute in such case made & provided
 that the said defendants are ready to verify
 wherefore they pray judgment if the said plain-
 tiff ought to have or maintain his aforesaid
 action against them &c

Williams Woodbridge
 Deft's atty.

37.

Isaac Cook

1848

J. Nelson & Graydon Dr

Dec 30

To Cash received for m m

\$949.83

"

" Cash received for m m

785.72

"

" Goods delivered

2000.00

" Interest

1000.00

Isaac Cook,

John S. Nelson &

William Graydon

Cook County Court of
Common Pleas

And the said plaintiff as
to the said plea of the said defendants mthly
above pleaded says precludi m. Because he
saith that he the said plaintiff was not nor is
indebted to the said defendants in manner and
form as the said defendants have above in their
said last plea in that behalf alledged -

And this the said plaintiff prays may
be inquired of by the country &c -

Judd & Smith
Atty for Plff

And the deft doth the like

By his atty

C. Bushwith

Isaac Coak

John S. Nelson
William Graydon

Cook County Court
Of Common Pleas

And the said plaintiff as to the said plea of the said defendants by them secondly above pleaded say the same and the same and the matter therein contained in manner and form &c are not sufficient in law to bar the said plaintiff from having or maintaining his aforesaid action thereal against the said defendants, and that the said plaintiff is not bound by law to answer the same and this the said plaintiff is ready to verify - Therefore he prays Judgment &c - And for cause of demurrer to said plea the said plaintiff shews to the Court that said plea amounts to the general issue and is in other respects uncertain informal and insufficient -

And the said plaintiff as to the said plea of the said Defendants by them thirdly above pleaded say that the same and the matter therein contained in manner and form &c are not sufficient in law to bar the said plaintiff from having or maintaining his aforesaid action thereal against the said defendants, and that the said plaintiff is not bound by law to answer the same -

And this the said plaintiff is ready to verify
Wherefore he prays Judgment &c

And in answer of demurrer to the said plea
the said plaintiff shews to the Court that said
plea amounts to the general issue and is in
other respects uncertain informal and insufficient

And the said plaintiff as to the said plea of the
said defendants by them fourthly above plea-
ded, says that the same and the matter there-
in contained are not sufficient in law to
bar the said plaintiff from having or main-
taining his aforesaid action thereof against the
said defendants and that the said plaintiff
is not bound by law to answer the same.

And ^{this} the said plaintiff is ready to verify
Wherefore he prays Judgment &c —

And in answer of demurrer to the said
plea the said plaintiff shews to the Court
that said plea amounts to the general issue
and is in other respects uncertain informal
and insufficient &c

And the said plaintiff as to the said plea of
the said defendants by them fifthly above
pleaded, say the same and the matter therein
contained in manner and form &c are not suffi-
cient in law to bar the said plaintiff from having
or maintaining his aforesaid action thereof agai-
nst the said defendants and that the said

plaintiff is not bound by law to answer the same
and thus the said plaintiff is ready to verify
Wherefore he prays Judgment &c -

And the said plaintiff as to the said plea of the
said defendants by them sixthly above pleaded
says that the same and the matter therein
contained in manner and form are not
sufficient in law to bar the said plaintiff from
having or maintaining his aforesaid action thing
against the said defendants and that the
said plaintiff is not bound by law to answer
the same, and thus the said plaintiff is ready
to verify - Wherefore he prays Judgment &c -

And the said plaintiff as to the said plea of
the said defendant seventhly above pleaded
says that the same and the matter therein con-
tained in manner and form are not suffi-
cient in law to bar the said plaintiff from having
or maintaining his aforesaid action thing against
the said defendants; And that the said plain-
tiff is not bound by law to answer the same
And thus the said plaintiff is ready to verify
Wherefore he prays Judgment &c

And for cause of Demurrer to said plea the
said plaintiff shows to the Court that said plea
amounts to the general issue and is in other respects
uncertain informal and insufficient -

And the said plaintiff as to the said plea of the said defendant seventhly above pleaded says that the same and the matter therein contained in manner and form &c are not sufficient in law to bar the said plaintiff from having or maintaining his aforesaid action thereof against the said defendant & that the said plaintiff is not bound by law to answer the same, and thus the said plaintiff is ready to verify. Wherefore he prays Judgment &c

And for cause of demurrer to said plea the said plaintiff shews to the Court that the said plea amounts to the general issue and is in other respects uncertain informal and insufficient ~

And d & Arrick
 Atty. Atty.

And thereafter to wit on the nineteenth day of May in the year of our Lord one thousand eight hundred and fifty five. before the Judge in Vacation. the following further proceedings were had in said cause and Record entered of Record to wit;

Isaac Cook
 " "
 John G. Nelson &
 William Graydon

Attachment -

And now at this day come the

said parties by their attorneys, and the Court after hearing the argument of counsel on said plaintiffs demurrer, to the defendants Special Pleas to the said plaintiffs declaration herein being now fully advised in the premises, sustains said Demurrer as to the first, second third fourth and fifth ^{special} pleas - And over-rules the same as to the sixth and seventh special pleas -

And thereafter to wit; on the seventeenth day of September in the year last aforesaid; coming the said plaintiffs by his said attorneys and filed in the office of the Clerk of said Court his Replication to defendants seventh and eighth Pleas, which said Replication is in words and figures as follows to wit;

Isaac Cook	}	Cook Co. Court of Com Pleas
"		
John G. Nelson		
William Graydon		

And the said plaintiff as to the said plea of the said defendants seventhly above pleaded says "precludi non" because he says that the said Jacob Miller did by his said judgment against the said plaintiff recover the said sum in said declaration mentioned as damages for taking, seizing and detention of said Merchandise, Stock of

goods and building in said declaration mentioned under and by virtue of the said writ of attachment in favor of the said defendants against the said Augustus Miller and R. Clement, and for no other cause of action whatsoever without this that the said plaintiff wrongfully converted and disposed of the said Merchandise Stock of goods and building to his own use as alleged in said plea and without this the time in said plea alleged. And this he prays may be inquired of by the country &c.

And the said plaintiff as to the said plea of the said defendants eighthly above pleaded says ^{because} precludi non, he says that it is not true as alleged in said plea that said plaintiff has not necessarily been compelled to pay in consequence of the levy upon, seizure and attachment of said Merchandise, Stock of goods and building, and of the detention of the same, by virtue of said writ of attachment in said declaration mentioned any other or greater sum or sums of money than said sum of One Hundred and ten dollars in said plea mentioned, but the said plaintiff avers the contrary thereof to be true and that said plaintiff did not necessarily pay in consequence of said levy &c. as alleged in said declaration the sum of thirty two Hundred and sixty five dollars and thirty one $\frac{1}{4}$ cents as alleged

therein and thus he progs may be engaged of by the country

Judd & Frink
Plffs Attys

And the deft doth the like

By C. Beckwith

And afterwards to wit: on the ninth day of October in the year last aforesaid; said day being one of the days of the September term the following further proceedings were had in said cause and entered of Record to wit:

Isaac Cook	}	Att
John S. Delmont		
William Graydon		

And now comes the said plaintiff by his said attorney and withdraws his demurrer to defendants fourth plea there is given said plaintiff to file Replication to the plea which is done

And thereafter to wit: on the ninth day of October in the year last aforesaid comes the said plaintiff by his said attorney and filed in the office of the clerk of said Court his Replication to fourth plea which said Replication is in words and figures as follows to wit:

Isaac Cook

²¹
John G. Nelson &
William Graydon

} Cook County Court
Of Common Pleas

And the said plaintiff
as to the said plea of the said Defendants
fourthly above pleaded says precludi non
because he says that protesting that said goods
and chattels in said declaration mentioned
were not the property of the said Jacob Miller
And that the same were not in his possession
& the said plaintiff nevertheless says that ^{he the said} plai-
ntiff had no notice that the said goods
and chattels were the property of said Miller
and this he prays may be enquired of by the
country - Wherefore he prays Judgment

Frank Austin
Plffs Atty

And the said deft doth the like

By his atty C. Beckwith

And thereafter to wit: On the tenth day of November in
the year last aforesaid: comes the said defendants
by their said attorney, and filed in the office of the
Clerk of said Court their Demurrer to Replication
to seventh plea - which said Demurrer is in
words and figures as follows to wit:

John G. Nelson &
William Graydon } Cook County Court
ads } of Common Pleas
Isaac Cook }

And the said defendants say that the replication of the said plaintiff to the said seventh plea of the said defendants and the matter therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law for the said plaintiff to have or maintain his aforesaid action there against the said defendants, and that they the said defendants are not bound by law to answer the same and this the said defendants are ready to verify - Wherefore by reason of the insufficiency of said replication on this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action there against them &c

William Woodbridge Richmond
Dist atty

And thereafter to wit, on the seventeenth day of November in the year last aforesaid, said day being one of the days of the September term of said Court the following for the proceedings were had in said cause and entered of record to wit.

Isaac Cook

²¹
John G. Melmont
William Graydon

} Attachment

And now at this day
comes the said plaintiff by Amos Winston
his attorney and the said defendants by
William Woodbridge their attorney also come
and after argument of counsel heard on said
plaintiffs demurrer to defendants second
third and fifth pleas by them pleaded herein
the court being now fully advised in the
premises sustains said demurrer and said
Defendants thereupon withdraw their sixth
and seventh pleas and said plaintiff with-
draws his replication to said defendants seventh
plea - And issue being thereupon joined here-
in by agreement of said parties this cause
is submitted to the Court for trial without the
intervention of a jury and the Court after hear-
ing the allegations and proofs submitted
argument of counsel and being now fully
advised in the premises finds the issue for
the plaintiff and assesses his damages
to the sum of Two thousand six hundred
and three dollars -

And thereupon said defendants enter
their motion herein for a new trial in this cause -

And thereafter to wit: on the ninth day of February
in the year of our Lord one thousand eight
hundred and fifty six: the following among
other proceedings were had in said Cause and
entered of Record to wit:

Isaac Cook	} Attachment
John G. Nelson	
William Graydon	

And now again come the
said parties by their attorneys aforesaid and the
court after hearing the argument of counsel on the
said defendants Motion for a new trial in this
Cause entered herein at the November Term last
past of this Court being now fully advised in
the premises overrules said motion.

Wherefore it is considered that the said plain-
tiff do have and recover of the said defendants
his damages of two thousand six hundred
and three dollars in form aforesaid by the court
assessed and also his costs and charges by
him about his suit in this behalf expended
and have execution therefor. And
thereupon the said defendants enter their exceptions
herein to the opinion of the Court in overruling
said motion for a new trial in this Cause and twenty
daystime given said defendants to file
their bill of Exceptions herein.

And thereafter to wit on the twenty seventh day of February in the year of our Lord one thousand eight hundred and fifty six - came the said defendants by their said attorneys and filed in the office of the Clerk of said Court their Bill of Exceptions which said Bill of Exceptions is in words and figures as follows to wit

Isaac Cook
 " John G. Nelson &
 William Graydon

Cook County Court
 of Common Pleas

Be it remembered that last
 five to wit on the seventeenth day of November
 A.D. 1855 of the Term of the said Cook County
 Court of Common Pleas holden in and for the
 County of Cook & State of Illinois before the Hon-
 able John M. Nelson Judge of said Court the
 above cause came on for trial without the inter-
 vention of a Jury, a Jury being expressly waived
 by the Plaintiff Parties and upon such trial
 to sustain the issue on his part the Plff offered
 no evidence -

An affidavit for an attachment in the
 suit of John G. Nelson & William Graydon vs Ang-
 ustus Miller & David R. Clement filed in the
 Cook County Court which is as follows -

State of Illinois }
Cook County }

William Graydon being duly sworn deposes and says that Augustus Miller and David R. Clements merchants and partners of Chicago trading and doing business under the name style of firm of Miller and Clements. sometimes using the signature of A. Miller and Clements are jointly indebted to John G. Nelson and William Graydon, merchants and partners of New York City trading and doing business under the name style of firm of Nelson and Graydon in the sum of nine hundred and fourteen ⁰⁰/₁₀₀ Dollars by virtue of a certain promissory note made signed and delivered to them by the said A. Miller and Clements on the 33^d day of September 1847 payable to the order of said Nelson & Graydon at their office six months after the date; and in the further sum of two hundred and twelve ⁰⁰/₁₀₀ Dollars by virtue of another promissory note made signed & delivered by said A. Miller & Clements bearing date 17th day of October 1847, payable to said Nelson & Graydon at their office six months after the date thereof in all the sum of eleven hundred and twenty six ⁰⁰/₁₀₀ Dollars with interest thereon since the said notes severally became due -

And the said William Graydon further states that the said defendants Miller and Clements are about to depart from the State of

Illinois with the intention of having their goods
and chattles and effects removed therefrom, as
he is informed and verily believes wherefore he
prays that a writ of attachment may be issued
etc etc

Shown before me this 12th Assn Wayden
day of June 1848-

J. Curtis Cl.

An attachment Bond
duly executed & filed in said cause ~ ~ ~

An attachment writ with the inducements &
return thereon as follows-

State of Illinois } ss
Cook County }

The People of the State of Illinois
to the Sheriff of said County - Greeting ~

Whereas William Wayden hath complained
on oath to James Curtis, Clerk of the Cook County
Court of Cook County that Augustus Miller & David
B. Clements are jointly indebted to the said William
Wayden and John G. Nelson to the amount of
one thousand One hundred & twenty six dollars
and eleven cents; an oath having been also made
that the said Miller and Clements are about to
depart from the State of Illinois with the intention
of having their goods and chattles and effects
removed therefrom - And the said William

Graydon having given bond and security according to the directions of the act in such case made and provided.

We therefore Command you that you attach so much of the estate, real or personal of the said Augustus Miller & David R. Clements to be found in your county as shall be of value sufficient to satisfy the said debt and costs, according to the said complaint; and such estate so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereupon according to law at a term of said Cook County Court to be holden at Chicago within and for the County of Cook on the first Monday of October next, so as to compel the said Augustus Miller & R. Clements to appear and answer the complaint of the said John G. Nelson and William Graydon and that you also summon W. Kimball, C. B. Ingham, G. S. Lingham Barn & Child, A Carpenter, M. Donald & Leath, C. D. Hinton, S. P. Putnam James Brannigan, C. W. Astubunt, M. Galvin, W. Williams & Coe Clark, L. C. Halliday, W. Walrod, Pottut & Saunders J. A. Ballinger, M. E. Barnes as garnishees to be and appear at the said Court on the said first Monday of October, next, then and there to answer to what may be objected against them; when and where you shall make return to the said Court how you have executed this writ; and have you then and there this writ; Witness the Honorable Hugh D. Dickey Judge

of our said Court and the seal thereof at Chicago
in said County this Twelfth day of June in
the year of our Lord one thousand eight hun-
dred and sixty eight -

James Curtis Clark

Endorsements & Return

Attaching as per Schedule, and reading the
within in the presence of Augustus Miller, D and R,
Clement H Kimball, J. C. Clark, J. C. Holiday & J
Branigan the other persons within named not found -

J. Cook Sheriff

By C. Beach, Deputy

By virtue of the within attachment I have seized
upon the following property - To-wit:

1 Piece Black cloth 10 yds	1 Piece Dickie 3 yards
1 " Cassimere 10 "	2 " Cambric 52 1/2 "
1 " Satinett 21 "	1 " Flannel 15 "
1 " Cassimere 6 3/4 "	1 " Woolsey 26 "
1 " B. Black cloth 12 "	1 " Flannel 25 "
1 " Satinett 18 "	1 " Red do 8 "
1 " Beaver 10 3/4 "	1 " Cotton 8 "
1 " " 6 1/4 "	5 Pairs Pants
1 " Cassimere 3 1/4 "	3 1/2 Doz Neck suspenders
2 " " 2 "	14 " Woollen
1 Hat 6 1/4 "	6 others

1 Nice Satinett	15 1/2	14. Silk Handkerchiefs
1 " "	17 1/2	15. do
1 " S. Gray	41	15 4 ningham kerchiefs
1 " Brown	23 1/4	19 pr Cotton Kers
1 " Satinett	9 3/4	5 Truf C. Buttons
1 " Black B. cloth	17 3/4	2 " "
3 " Calico	110 1/4	10. Comforters
1 " do	34 1/2	18 Bundles cotton yarn
1 " "	29	1 Nice Bagging 47 yds
2 " "	34	1 " Camrap 12
2 " "	34 1/2	50 Caps
2 " "	57 3/4	66. C. Hats
2 " "	39 3/4	4 pr Moccasins
4 " "	65	1 " Shooting
29 S. Slates		35 L. S. Slates
1 1/2 Doz S. Soap		12 Curry combs
800 S. Pencils		4 Fanets
9 1/2 Dyz Blacking		6 pr B Gloves
3 1/2 S. Brushes		11 1/2 Dyz Spools
3 1/2 Cotton Thread		1 1/2 Cotton Thread
1/4 " Linen Thread		1 Dyz Pen Knives
5 packages Pins		2 1/2 " "
41. Chocolate		12 3/4 Crivaman
3 1/2 Boxes Supper		Port Box Soap
2 " Allspice		10 Dyz Soap
3. Boxes Mustard		Fast Box Spun Candles
5 Candles Boxes		4 1/2 Nutmegs
55 1/2 Dyz Chewing Tobacco		29 Looking Glasses
32 Lamps		36. 1/2 pr Castors

20. Candy Jars
 9 7/8 Doz Globes
 4 Bottle Sippusance
 56 7th Tobacco
 11 Cans
 25. 4. Cans
 3 Seal Hats
 16 Doz from Sances
 20. Large Blue Plates
 5 1/2 Doz Cans
 5 1/2 Edgwood "
 2 1/2 do
 92 Common Bins
 42 — —
 9 Doz. Vegetable Dishes
 19 Sm Pls
 14 2 Wine
 58 1/2 YH Tea
 160 2 Pepper
 4 1/2 Indigo
 45 1/2 Ginger
 18 — —
 1 B. B. brown Sugar 238
 2. Pul 492
 20 Barrells Whiskey
 10 Sars Sugar 90
 1 Keg Salt Peter 34
 7 1/2 Scotch Snuff
 14 1/2 Black do

9. Lamp Chimneys
 20 Glarks
 3 Lamps
 1 1/2 Stand
 21. Wash Basins
 18. W Pitcher
 14 L. do
 13 S. do
 5 9/12 Doz Blue Cans
 5 1/3 Doz Blue Sances
 8 1/4 " W Plates
 8 1/4 " Small do
 1 1/2 Doz Small Cages
 11. — —
 22 Dining Plates
 2 Stone Lamps
 1 Bag Allspice
 Port Bag of Cnts
 do Chest Tea B 250
 do YR Y 160
 50 — — 30
 32 1/2 Caffer
 1 1/2 B Macnail
 1 B. Brn Sugar 334
 1 Hog Heads do 0119
 1 Keg Ginger 45
 1. C Salt 28
 4 1/2 Guinness
 2 Boxes Raisins

1 Chest Y. H	42-	2 Caddys of Tea	25
2 Chests Tea	12 7/2	13 Boxes Regans	
5 24 Pints		Port Key and Phm	
1 Box B Sugar	46 6	1 Key Closes	
Port 1/2 Cask Brandy	41 1/2 lbs	61. Brorons	
" P. Wine	17 1/2	Port B. Whiskey	14 1/2 gals
" M "	15	" Vinyon	20
" Pine Apples	15	" Gin	20
1 Box Medicine		13 Empty Bonells	
9 Fancets		1 Camter Seals	
2 Drums + Meams		1 Oil Can	
6 Sugar Bowls		1 Stone Pipe	
8 Empty Sugar Bowls		3 B. Hams	
Port of Box Garra In 15		1 Building or Store	
which has been occupied by Miller & Clements			

Chicago June 12th 1848

J. Cook Shuff
By John Beach Deputy

The Notice of publication, declaration & plea
filed in said cause

State of Illinois } Cook County Court of
Cook County } Oct Term 1848

John A. Nelson & William Graydon
merchants & copartners of New York City trading
& doing business under the name style and firm
of Nelson & Graydon complain of Augustus

57.

Miller & David R. Clements, merchants and partners of Chicago State of Illinois trading and doing business under the name style and firm of Miller & Clements in custody &c of a plea of assumpsit - For that whereas the said Defendants heretofore to wit on the 28th day of September in the year 1847 at New York to wit, in the County aforesaid made their certain promissory note in writing and thereby promised to pay to the said plaintiff or order at their office the sum of Nine hundred and fourteen ⁰⁰/₁₀₀ Dollars six months after the date thereof for value received, which period has long since elapsed; and delivered the said note to the plaintiff.

2 And also for that whereas the said defendants afterwards to wit on the 18th day of October in the year 1847 at the place aforesaid to wit, in the County aforesaid made & delivered their certain other promissory note in writing of that date and thereby promised to pay to the said plaintiff or order the sum of Two hundred & twelve ⁰⁰/₁₀₀ Dollars six months after the date for value received which period has elapsed.

And also for that whereas the said defendants heretofore to wit on the 18th day of June in the year 1848 in the County aforesaid, were indebted to the said plaintiff in the further sum of Fifteen hundred Dollars for money paid by said plaintiff for the said defendants

for the use of the said plaintiffs and in the further sum of fifteen hundred dollars for money then and there found due to the said plaintiffs from the said defendants upon an account then there stated between them and being so indebted and in consideration thereof of them and there promised to pay said several sums of money in this declaration mentioned on request: Yet the said defendants although often requested have never paid the said several sums of money or either of them or any part thereof to the said plaintiffs but so to do have refused & still do refuse to the damage of the said plaintiffs of five thousand dollars and therefore they bring this suit &c.

By Morris Brown their Attys.

Copy of note in suit above named -
\$914⁰⁰

New York Sept 23 1847

Six months after date we the subscribers of Chicago State of Illinois promise to pay to the order Nelson Graydon nine hundred and ten 4/100 dollars at their office value received.

No 1544 - due 26 March A. Miller Clements

2. Note decd
and on \$212⁰⁰

New York October 18 1847

Six months after date we the subscribers of Chicago State of Ills promise to pay to the order

5-9

of Nelson & Graydon two hundred & twelve \$100
Dollars at their office value Received
No. 1597. Dated April 21st A. Miller Clements

Miller Clements } Cook County Court
ad. } Oct Term 1848
Nelson & Graydon }

And now come the said
defendants by George W. Gardiner their Attorney
and defend the wrong & injury when &c and
say that on the 12th day of June 1848 the time
when the affidavit to procure the attachment
in this cause was made and at the time when
the said writ of attachment issued they the said
defendants were not about to depart from the
State of Illinois with the intention of having their
goods & chattels & effects removed therefrom.

Wherefore they pray judgment
that the said writ of attachment be quashed.
G. W. Gardiner

State of Illinois } Supt. Atty
Cook County ss } Augustus Miller being duly
sworn deposes & says - that he is one of the defend-
ents in the above entitled cause and that
he has read the foregoing plea & that the matt-
ers therein stated are true in substance and
matter of fact - A. Miller

Subscribed & sworn this 4th
day of October A.D. 1848. before me - James Smith

And the Plaintiff comes & says that said defts
were about to depart from this State with the
intention of having their goods chattels effects
removed from this State as alleged &c

Wherefore he prays Jnst &c

Morris Brown

for

the order of dismissal in said cause

John G. Nelson & William Graydon } Att.
Augustus Miller & David R. Clements }

This day come

the said Plaintiff by Morris Brown their attorneys
and the said defendants by Gardiner & Ballingall
their attorneys also come and issue being joined
herein let a Jury come and then upon come
the Jurors of a Jury of good and lawful men to wit
John A. Oliver, S. W. Shade, James Leese
John L. Hibbard, Francis Shanley, Henry Reynolds
H. Sullivan, A. Barborn, James Campbell
Peter Ellis, John McFall and William Brown
who being duly elected tried and sworn well
and truly to try the issue joined as aforesaid
after hearing the evidence adduced argument of
counsel and instructions of the court retire under
charge of an officer of the Court to consider of their
verdict and afterwards come in to court and say
that the Jury find the issue for the defendant

And thereupon the said Plaintiffs enter their motion for a new trial herein ~

John G. Nelson & William Graydon } Att.
 v
 Augustus Miller & David R. Clements }

This day again came the said parties by their attorneys and after argument heard on the said Plaintiffs motion for a new trial herein the court being now fully advised on the premises doth order that the said motion be overruled ~

Wherefore it is considered that the said defendants recover of the said Plaintiffs their costs and charges in this behalf expended and have Execution therefor ~

Also the same writ, declaration, plea & notice in the case of Jacob Miller vs Isaac Cook were offered in evidence by the Plaintiff to the admission of each & every one of which the said defendants objected & the objection being overruled by the court the defendants then & there excepted ~ The papers were then read as follows ~

Jacob Miller }

v } Trespass

Isaac Cook } The Clerk will please issue Summons to the answer returnable to the next term. Plea trespass. Damages \$4000 Ballingall & McIlroy for Plff.

State of Illinois } s.s.
Cook County } Jacob Miller being sworn
says that the Defendant in the above cause
is the sheriff of Cook County in the State of
Illinois -

Subscribed and sworn to
before me this 14th August
A.D. 1848. James Curtis
Clerk

Jacob Miller

State of Illinois } s.s.
Cook County } The People of the State of
Illinois to the Coroner of said County Greeting -

We command you that you summon
Isaac Cook if he shall be found in your county
personally to be and appear before the Cook con-
nty Court of said County, on the first day of the
next term thereof to be holden at the Court House
in the City of Chicago in the said County on
the first Monday of October next to answer
unto Jacob Miller in a plea of trespass
to the damage of the said Plaintiff as he
says in the sum of Four Thousand Dollars -

And having you then and there this writ with an
endorsement thereon in what manner you shall
have executed the same - Witness the Honorable
Nathl. S. Dickey Judge of our said Court and the
seal thereof at the City of Chicago in said County
this 14th day of August A.D. 1848. James Curtis Clerk

63.

Executed the within by reading the same
to Isaac Cook Sheriff in presence of Wm Brown

Chicago August 15 1848.

P. Kelly

Common Cook County

State of Illinois } Of the October Term of the
Cook County } Cook County Court 1848

Jacob Miller }

Isaac Cook } Jacob Miller Plaintiff compl-
ains of Isaac Cook Defendant in a plea of
Trespass for that the said Defendant on the twe-
lfth day of June in the Year of our Lord one
thousand eight hundred and forty eight with
and arms at the County of Cook and State of
Illinois seized and took divers goods and chattels
to wit: Twenty eight pounds Allspice Ten ten
Pounds Spice Iron & three fourth Pounds of Miking
Sun Trap Cans twenty five Pounds Black Tea
one hundred & forty eight Pounds Green Tea
Forty one & a half Pounds Indigo Sixty five pounds
Sixty pounds Pepper. Five hundred & ninety two
Pounds pulverized Sugar - Five hundred & thirty
eight pounds crushed Sugar - Forty pounds coffee
One Barrell & a half Mackrel - One Barrell two
hundred thirty four Pounds sugar - one hoghead
Eleven hundred seventeen pounds sugar

Twenty Barrels, Eight hundred gallons whiskey
 Ninety pounds Loaf Sugar - Forty six pounds
 Sugar - Thirty four pounds Saltpetre - Twenty
 Eight pounds Epsom Salts - Forty two pounds
 Cinnamon, Seven pounds Scotch Snuff, Fifteen
 pounds Black Snuff - Two Boxes Raisins - Twenty
 six pounds Tea - Forty two pounds Tea - one hun-
 dred & twenty nine pounds Tea - Three and a half
 thousand Segars - Five Dg. Battly Ink - Twenty
 eight pounds Sulphur - Four hundred & sixty
 six pounds Havana Sugar - Sixty two Brown
 One Hog & a half thirty eight pounds cloves -
 Forty one & a half gallons Brandy - Seventeen
 & a half Gallons port Wine - Fifteen gallons
 Madeira Wine - fourteen gallons Whiskey
 Twenty gallons Vinegar - One Box medicine
 Twenty three gallons Gin - Thirteen gallons
 pure spirits. Fifteen Empty Barrels - Nine fan-
 cets - Sundry Iron Measures - one pair counter
 scales one Stone and Pipe - Ten yards broad cloth
 Ten yards Musymer - Six & three Quarters ditto -
 Three Quarters of a yard ditto - Twenty one yards
 Satinett, Eighteen yards ditto - one yard
 & half broad cloth, Twelve yards Broad
 cloth, Ten & a half ditto - Six & a half yards
 pilot cloth - Six an three Quarters yards broad
 cloth two yards Satinett Fifteen & a half
 yards ditto - Seventeen & three Quarters yards
 Satinett - Nine & three Quarters yards Satinett -

eleven yds cheap gray cloth - twenty three & a
 quarter yds broad cloth - seventeen & three quarters
 yds broad cloth - three hundred & ninety five &
 a quarter yds Calico - three ydsicking forty
 two yds Cambric - fifteen yds Lingham - twenty
 six yds Mobery - twenty five yds white Flannel
 eight yds Red ditto - eight yds Cotton ditto -
 twelve pounds three quarters cinnamon - twenty five
 pounds pepper - thirty pounds allspice - four & a
 half pounds Soap - six doz Mustard - fifteen pounds
 sperm Candles - five Boxes - fifty five Dzen & a
 half chewing tobacco - four & a half pounds
 nutmeg - twenty eight looking Glasses - one
 Looking Glass Frame thirty two glass lamps -
 thirty eight castor Batts - twenty Spice Jars
 seven Lamp Chimneys - forty seven Annulars -
 sixty eight Annulars - four Batts Repousseance
 twenty Blasts - four hundred & ninety five
 pounds Tobacco - one Britannia Castor eight
 Basins & Syces - forty nine Pitcher - twelve Basins
 twenty three gilt Cups - three Sea sets - six dozen
 Cups & Saucers - five & a quarter Dzen Saucers -
 Eleven Dg. cups & Saucers - three hundred & thirty
 two plates - three guarded lanterns - one hundred
 & forty nine bowls - eighty four Deep Dishes
 twenty two platters - nineteen Sea Pots - 5 Pairs
 Wallen Pantaloons - three & a half Dzen Suspenders
 twenty four Pair ditto - five Grog Coat Buttons
 fourteen Silk Pocket Handkerchiefs twenty cotton do

Fifteen Gringham Cravats = nineteen pairs cotton
 Hose = two Grap buttons = ten wollen comforters
 ninety pounds cotton Yarn = forty seven yards
 Bagging. Seventy two yards Canvas = fifty caps
 seven leg horn Hats fifty more palm leaf
 Hats four pairs Moosies = twenty yds sheeting
 sixty four Mats = twenty cakes soap = eight
 hundred pencils = nine dozen & three quarters
 Blacking = forty three shoe Brushes. one Dy Curry
 Combs = four fanets = six pair Buck Skin gloves
 Eleven & a half Dozen spools thread = three pounds
 cotton thread = one & a half pounds cotton thread
 one bunch linen thread = five Paks Pins = twenty
 two Pocket Knives = twenty one pounds Chocolate
 one hundred thirty five pounds starch
 two hanging lamps = two chimneys six
 sugar bowls = twenty P. Crockery = three Pans
 Eight Empty Barrell = Box Garden Seeds = two
 Ammie Sables = Eight Icecream = One Wooden
 building occupied as a Store — of the
 said plaintiff then and there being found and
 being of great value to wit: of the value of three
 thousand five hundred dollars and. carried
 away the same and converted and disposed
 thereof to his own use = And other wrongs to
 the said plaintiff then and there did against
 the peace of the people of said State and
 to the damage of the said plaintiff of four
 thousand Dollars — And for that also

67

the said Defendants on the twelfth day of June
in the year of our Lord one thousand Eight
Hundred and forty eight at the County of
Cook in the State of Illinois - with force and
arms broke and entered a certain Store of the
said Plaintiff situated and being in the
said County and then and there forced and
broke open and damaged divers to wit: two
doors of the said Plaintiff and damaged
and spoiled the locks and hinges of said
doors respectively of great value to wit of the
value of twenty dollars -

And also on the day
and year last aforesaid with force and arms
and also the said Defendant on the
day and year last aforesaid with force and arms
at the County aforesaid seized and took divers
goods and Chattels of the said Plaintiff of the
like number, quantity, quality description and
value as the said goods and Chattels in the
first count of this declaration mentioned then
and then found good being, and converted
and disposed thereof to his own use to the
damage of the said Plaintiff of four thousand
dollars - And also for that the said Defendant
on the twelfth day of June in the year of our
Lord one thousand Eight hundred and forty
Eight at the County of Cook in the State of
Illinois with force and arms broke and

entered another store of the said plaintiff
situate in said County and then and
there ejected expelled put out and removed
the said plaintiff from the possession use
occupation and enjoyment of the said
last mentioned store and kept and conti-
nued him so ejected and expelled for
a long space of time to wit from then
hitherto whereby the said Plaintiff for and
during all that time last and was deprived
of the use and benefit of his said last men-
tioned store to wit at the County aforesaid
to the damage of the said Plaintiff of
four thousand dollars -

Ballingall & McShore
attys for Plaintiff

Isaac Cook
ads } Trespass.
Jacob Miller

And the said defendant
comes and defends &c and says that he is not
guilty of the trespass or either or any of them
above alleged against him in manner and
form as the said Plaintiff hath thereof com-
plained and of this he puts himself upon the
Country &c By Morris & Brown & Beck
And says that the like by his attys
Ballingall atty

69.

1 The plff in this suit will take notice that on the trial of this cause he will give in evidence & insist thereon in bar of this action, that at the said time when he was the acting Sheriff of said County of Cook and from then until the commencement of this suit so continued to be the acting Sheriff of said County, and at the time & place in the alleged declarations mentioned he did by John Beach his lawfully authorized Deputy levy upon & take the goods & chattels mentioned in the said declaration to wit: those set forth in the schedule hereto annexed as the property goods and chattels of Augustus Miller & Daniel R. Clements found in their store in Chicago in their possession & control by virtue of a certain writ of attachment duly issued by the Clerk of this Court under the seal of this Court directed to the Sheriff of said County of Cook at the suit of William Graydon & John G. Nelson, thereby among other things commanding the Dft as such Sheriff to attach so much of the estate real or personal of Augustus Miller & Daniel R. Clements as may be found in said County as shall be of value sufficient to satisfy the debt & costs in the recital of said writ mentioned and said Dft as such Sheriff & by virtue of said writ & by his said Deputy levied upon and took the said goods & chattels mentioned in said declaration to wit: in said schedule hereto annexed as the

property of said Augustus Miller & David B. Clement found in their possession and the same were then the property of said Augustus Miller & David B. Clement liable to be so seized taken and were not the property of said Plaintiff as is supposed by the said declaration -

- 2 The Defendants will further give in evidence in support thereof in his defence that the said defendant before at the time & issue the alleged taking of said goods & chattels mentioned he was Sheriff of said Court County and that a Henry Selverton Robert Selverton and George A. Fellows at the same term of the Year 1846 obtained a Judgment against the said Augustus Miller & David B. Clements for the sum of \$139.92 cts. damages & \$5.68 costs as taxed by the Clerk of said Court upon which Judgment and execution was duly issued & placed in the Defts hands to be executed as Sheriff of said County he then & then being Sheriff of said County by which writ or execution he was commanded that of the goods & chattels lands tenement & real estate of said Miller & Clements which were to be found in said County, he make the said damages & costs as by said execution when produced will more fully show - and that by virtue of said execution the defendant as such Sheriff by his deputy John Beach, being upon took in custody the goods & chattels in said declaration mentioned at the said time when as the property of said Miller

& Clements which was found in their possession in said County to pay & satisfy said Judgment & execution as he lawfully might; and he will further prove that said goods & chattels at the said time when the levy was made, were the property of said Miller & Clements & not the property of the said Plaintiff.

3 The Deft will further give in evidence that he as Sheriff of said County by virtue of said writ of attachment & fieri facias above mentioned he levied upon & took the goods & chattels in the declaration mentioned at the said time when & and he was then & there Sheriff of said County and that said goods & chattels were the property of said Deft in said writs mentioned & not the property of said Plaintiff.

Morris Brown & Clerk
for Deft

The Plaintiff excepts to the third Notice. It is general: indefinite it is included in the 1st & 2^d Notices.

Ballingall for Plff

The Plaintiff then introduced in evidence the record of the Indict. Motion for New Trial & Judgment in said Suit of Miller & Cook which were severally read in evidence as follows.

Jacob Miller } Trespass

Chaac Cook } This day again come the said parties by their attorneys and the Jury hitherto impannelled

heun also come into court and say we the Jury find the issue for the plaintiff and assess his damages to the sum of three thousand two hundred and thirty six dollars and twenty three cents —

And thereupon the said defendant enters his motion for a new trial heun —

Jacob Miller }

Isaac Cook } I now come the said defendant
and enter his motion for a new trial heun for
the following among other reasons — Because the
verdict of the Jury in this behalf was against law
and evidence — Because the Court gave instructions
on the part of the plaintiff which ought to
have been refused — Because the Court refused
to give instructions on the part of the defen-
dant which ought to have been given —
Because the Court refused to permit the defendant
to offer in evidence to the Jury the execution issued
on behalf of Selverton and Fullons against
Miller & Clement under the notice filed with
the plea heun — Because the Court refused to
permit the defendant to amend said notice
Because of newly discovered evidence — Because
of the error in the evidence of John Beach one
of the witnesses examined on the trial of said
cause as appears by the affidavit of said
Beach filed in this cause — Because the said notice

if defective was so defective by reason of a clerical omission which ought to be corrected by leave of the Court —

B. S. Morris, J. C. Brown & Co
Attys

Jacob Miller }
" }
Isaac Cook } Jurors.

This day came the said parties by their attorneys and after argument heard on the said defendants motion for a new trial in this cause — the Court not being sufficiently advised in the premises takes the matter under advisement —

Jacob Miller }
" }
Isaac Cook } Jurors.

This day came the said parties by their attorneys & the Court having the motion for a new trial under advisement — continuing the same under advisement with opinion to be given in vacation and judgment to have same effect as if entered in term time by agreement of parties —

On vacation May 25th AD 1850

Jacob Miller

" "

Isaac Cook

Trespas

The motion for a new trial in this cause having been taken under advisement by the Court at the last February term thereof and the Court being now fully advised in the premises It is ordered that the said motion for a new trial herein be overruled and that Judgment be entered on the verdict of the Jury as of the last February term of this Court by virtue of agreement of parties on Record entered at last March Special Term of said Court & that appeal may be prayed & allowed & exceptions filed as of the last February term of this Court.

Therefore it is considered that the said Plaintiff do have and recover of the said Defendant his damages of Three thousand two hundred and thirty six dollars and twenty three cents in form aforesaid assayed together with his costs and charges by him in this behalf expended and have execution therefor.

Whereupon the said defendant enters his exceptions and prays an appeal to the Supreme Court of the ~~State~~ State of Illinois which is allowed upon the said defendant's filing Bond with the usual conditions in the penal sum of five thousand dollars with Philander Caddy as security in five days from the date hereof — " —

The plaintiff then offered in evidence the execution in the case of Miller vs Cook with the return thereon to the introduction of which the defendant objected & the objection being overruled by the Court the defendant then & there excepted - Said execution & the return thereon was then read in evidence as follows -

State of Illinois } ss
County of Cook } The People of the State of
Illinois to the Coroner of said County - Greeting

We command you as we have, that of the lands and Cements, Goods & Chattels of Isaac Cook Defendant in your County, you cause to be made the sum of Three Thousand Two Hundred & thirty six Dollars and twenty three cents which Jacob Miller Plaintiff lately in the Cook County Court of Common Pleas of said County at a term thereof begun and held at Chicago in said County on the first Monday of February last past recovered against the said defendant and which by the said Court was adjudged to the said Plaintiff for his Damages - And also the further sum of Twenty one Dollars and twenty three & 3/4 cents which were adjudged to the said Plaintiff for his costs and charges in that behalf expended during the said Defendant was convicted as appears

to us of Record - And have you these moneys ready to render to the said Plaintiff for his damages and costs as aforesaid, and make return of this writ with an endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof - Witness - Walter Kimball Clerk of our said Court and the seal thereof at Chicago in said County this 11th day of September A.D. 1859 -

Walter Kimball Clerk
 "Endorsement"

By virtue of this writ of *Habeas Corpus* to me directed I have this day levied upon the following real estate situated in the County of Cook and State of Illinois as the property of Isaac Cook Defendant therein to wit: Lot one (1) and Lot eight (8) in Block twenty four (24) old Town of Chicago also North (20) twenty feet of Lot two (2) in Block twenty five (25) old Town of Chicago also Lot five (5) in Block twenty five (25) old Town of Chicago. Also Sub-Lots three (3) four (4) five (5) and six (6) and seven (7) in Lot one (1) and four (4) in Block twenty seven in old Town of Chicago - Also Lots two and three and six in Block twenty seven (27) old Town of Chicago - also Lot eight in Block twenty eight (28) old Town of Chicago and also the North one half of Lot five (5) in Block six (6) of First Quarter addition to Chicago

September 30 1850

St. Bondel Courer S. C. Ill
Rec'd \$29.00 = Costs on the within Execution

St. Bondel Courer
Return this Execution satisfied as to the PD of
the plaintiff, attorney and costs in full

Chicago October 1, 1850

St. Bondel Courer
Cook County Ill
Rec'd of Isaac Cook the sum of \$3359.73 for
dollars in full of damages in this case the
costs not yet paid Oct. 1, 1850

J. W. Arnold

Atty for Plff

Rec'd Twenty three dollars costs in full
Apr 07, 1851.

W. Kimball clk

It was then admitted by the defendant
that Isaac Cook was at the time of the
levy of the attachment Sheriff of Cook
County & that John Beach was his deputy.

The plaintiff thereupon rested his
case -

The defendants then introduced in
evidence - The precept & Summons Decla-
ration & plea in the case of Henry Sebastian
et al vs Miller Clements to the introduction
of each & every of which the plaintiff objected
& the objection being overruled by the Court

the plaintiff then & there excepted —

They were severally read in evidence as follows —

State of Illinois } ss

Cook County } The People of the State
of Illinois to the Sheriff of said county—Greeting

We command you that you summon Augustus Miller & David R. Clements if they shall be found in your county, personally to be and appear before the Circuit Court of said county on the first day of the next term thereof to be holden at the Court House in Chicago in said County on the second Monday in June next to answer unto Henry Selverton Robert Selverton & George A. Hellard in a plea of trespass on the case on promises to the damage of the said Plaintiffs as they say in the sum of two thousand Dollars — And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness—Samuel Board Clerk of
our said Court and the Seal thereof at
Chicago in said County this 9th day of
May, A.D. 1848

[Signature]

Sam Board cl^k

"Endorsement thereon"

Executed by reading
the within in the presence of the within named
Augustus Miller May 9th 1848. Clements May
25th

Trasac Book Clerk
By John Beach Deputy
State of Illinois } Cook Circuit Court
Cook County } June Term A.D. 1848

Nemmy Yelverton Robert Yelverton
and George A. Fellows, Merchants trading
under the name and style of Yelverton & Fellows
plaintiffs in this suit complain of Augustus
Miller and David R. Clements Merchants
trading under the name and style of A.
Miller and Clements defendants in a plea
of Verdict on the case on promises —

For that whereas the said Defendant
at New York to wit at the County of Cook
and State of Illinois on the twentieth day of
September A.D. 1847 by their note under their
hand of that date for value received from
the plaintiff to pay to their order the sum
of six hundred and sixty five Dollars and
twenty nine cents (\$645.29) at their office in
New York five months after date which period
has long since elapsed —

And whereas also the said defendants

at New York to wit: at the County of Cook
and State aforesaid in the twentieth day of
September A.D. 1847 by their certain other note
under their hand at that date for value
received promised the plaintiff to pay to
their order Six Hundred and forty five Dollars
and twenty nine cents at their office in
New York seven months after date which
period has long since elapsed

Yet though often requested the said
defendants have never paid the said sum
or either of them or any part thereof but wholly
refuse & neglect so to do to the damage of said
plaintiff of Six Hundred Dollars & therefore
they bring suit by Crap their Atty

Copy of Note

\$645²⁹/₁₀₀

New York Sept 20th 1847

Five months after date we the subscribers
of Chicago County of Cook State of Illinois promise
to pay to the order of Selverton & Bellinz Six Hundred
forty five & 29/100 Dollars at their office in New York
value received

Signed A. Miller & Clement

\$645. ²⁴/₁₀₀New York Sept 20th 1847

Seven months after date we the subscribers of Chicago, County of Cook State of Illinois promise to pay to the order of Yelverton & Fellows Six Hundred Forty five ²⁴/₁₀₀ Dollars at their office in New York value received -

Signed A. Miller & Clements

The Defendants then offered in evidence the record of the Judgment rendered in said suit as follows -

Henry Yelverton Robert Yelverton
& George Fellows

Augustus Miller and
David R. Clements

Assumpsit

This day comes the said plaintiff by R. T. M. Croes their attorney and the said defendants being solemnly demanded comes not nor any one for them but herein fail and make default which is ordered to be entered of Record - Wherefore the said plaintiffs ought to recover of the said defendants their damages herein sustained on occasion of the premium but because those damages are uncertain and unknown to the Court and this suit being founded on an instrument in

writing for the payment of money only it is referred to the Clerk to assess the same and the Clerk having assessed the damages, reports that they amount to the sum of Thirteen hundred and nine dollars and ninety two cents which said report is ordered to be accepted & confirmed.

Therefore it is considered by the Court that the said Plaintiffs do have and recover of the said defendants their damages of Thirteen hundred and nine dollars and ninety two cents in form aforesaid assessed together with their costs and charges by them about their suit in this behalf expended and that therefore Execution therefor.

The defendants then offered in evidence the Execution issued in said cause with the return & endorsements thereon to the admission which the plaintiff objected & the objection being overruled by the Court the Plff then & there excepted.

The Execution and endorsements returns were then read in evidence as follows.

State of Illinois } ss
 County of Cook } The People of the State of
 Illinois to the Sheriff of said County "Greeting"

We command you that of the Lands and Tenements, Goods and Chattels of Augustus Miller and David R. Clements - Defendants in your county you cause to be made the sum of fifteen hundred and nine Dollars and ninety two cents which Henry Selverton Robert Selverton and George A. Sellers - Plaintiffs lately in the Circuit Court of said County at a term thereof begun and held at Chicago in said County on the second Monday of June next recovered against the said Defendants and which by the said Court was adjudged to the Plaintiffs for their damages - And also the further sum of nine Dollars and sixty eight cents which were adjudged to the said Plaintiffs for their costs and charges in that behalf expended whereby the said Defendants are convicted as appears to us of Record; And have you these moneys ready to render to the said Plaintiffs for their damages and costs aforesaid and make return of this writ with an endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof -

Witness - Samuel Hoard, Clerk of our said Court and the seal thereof at Chicago in said County this thirteenth day of June A.D. 1848 -

L. S.

Samuel Hoard
Clerk

"Endorsement on Writ"

By virtue of this writ & by the direction of the
 Plffs atty I levied the same upon certain
 goods & chattels of the Defts which had been
 previously taken by me on a writ of attach-
 ment issued from the Cook County Court on
 the 12th day of June A.D. 1848 in favor of John
 H. Nelson & William Graydon against the estate
 real or personal of the said Defts Miller & Clem-
 ents and executed on the same day which
 property attached & levied upon is more fully
 described by Schedule hereto annexed which
 levy is subject to said attachment and I
 herewith return this writ & schedule - the prop-
 erty not sold for the reason that said attach-
 ment writ is not disposed of but returned
 into court subject to the order of court in the
 premises -

By virtue of the within Execution I did on
 the 13th day of June 1848 levy upon the prop-
 erty here scheduled and on the 30th day of
 December 1848 at the Store of Miller & Clements
 in the City of Chicago between the hours of
 10 O.C. in the morning and sundown of the
 same day after advertising the same accord-
 ing to law the property scheduled and that
 therefore J. O. Donohue and others bid therefor
 in separate parcels the sum of \$949.85 and

after deducting the clerk's costs of \$5.68 $\frac{3}{4}$ and the sheriff fees \$29.48 and for clerk hire in keeping said goods 134.63, in all \$169.79, leaving a balance of \$785.72 to be applied to the payment of this Execution and no property found to make the balance, and this execution is not satisfied.

December 30 1848

I Clerk Sheriff
By John Beach Deputy

By virtue of the within Execution I have levied upon the following property subject to attachment issued from the office of the clerk of the Court County Court dated June 12th 1848 in favor of John Nielson & William Graden and against Augustus Miller and David R. Clements (2nd mt) all the goods and store which has been accquired by Miller & Clements as will appear from the within Schedule June 13, 1848.

I Clerk Sheriff
By John Beach Deputy

Invoice of Miller & Clements Goods taken
by J. Beach Sheriff

1 Piece Black Cloth - 10 yds	1 Piece Dickering	03 yds
1 " " " " " " " "	2 " " " " " "	52 yds
1 " " " " " " " "	1 " " " " " "	15 "

86.

1	Rice	Baranue	06 $\frac{3}{4}$	1	Piece	Flannel	25
1	-	-	01 $\frac{1}{2}$	1	"	Red do	08
1	-	Blue B Cloth	12	1	"	button do	08
1	-	Satinett	18	5	prs	frants	
1	-	Beaver	10 $\frac{1}{4}$	3 $\frac{1}{2}$	Web	empurder	
1	-	-	06 $\frac{3}{4}$	14	Monsted	do	
-	-	-	00 $\frac{3}{4}$	14	Silk	Kuchief	
2	-	-	02	16	button	do	
1	-	Pilot	06 $\frac{1}{2}$	15	do	do	
1	-	Satinett	15 $\frac{1}{2}$	15	Grighon	do	
1	-	-	17 $\frac{3}{4}$	19	prs	button Hoes	
-	-	Gray	11	5	Grp	O Button	
-	-	Brown	23 $\frac{1}{4}$	2	"	P do	
-	-	Satinett	09 $\frac{3}{4}$	10	Empurder		
-	-	Black B Cloth	17 $\frac{3}{4}$	18	Brincher	cutton yonon	
3	-	Calicas	110 $\frac{1}{4}$	1	Piece	Bagging	47 $\frac{1}{2}$ do
1	-	-	34 $\frac{1}{2}$	1	-	Canvas	7 $\frac{1}{2}$
1	-	-	29	50	caps		
1	-	-	29	66	b. Hats		
1	-	-	14 $\frac{1}{2}$	4	prs	Moccasins	
1	-	-	20	1	Piece	Shirting	18 $\frac{1}{2}$ do
1	-	-	29	35	S. S. State		
1	-	-	30 $\frac{3}{4}$	29	2 -	do	
1	-	-	23 $\frac{1}{4}$	11 $\frac{1}{2}$	Oz	S. Soap	
1	-	-	16	800	S. Pencils		
1	-	-	16	99 $\frac{1}{2}$	Oz	Blacking	
2	-	-	49	37 $\frac{1}{2}$	-	S. Brushes	
1	-	Washing	26	12	Curry	Combs	
1	-	Shand	35	4	Janets		

6. Ans B Gloves
 11 1/2 Dg Spools
 3rd Cotton Thread
 1 1/2 do do
 1/4th Linen Thread
 5 Packages Pins
 1 Dg Pen Knives
 2 1/2 Dg " "
 41st Chocolate
 3 1/2 Boxes Starch
 12 3/4th Cinamon
 3 1/2 Boxes pepper
 2 do allspice
 14 Box A Soap
 10 Dg do
 3 Boxes Mustard
 14 Box sperm Candles
 5 Candle Boxes
 55 1/2 Dg Cherry Tob^{acco}
 4 1/2th Nutmeg
 29 Smoking Vapes
 37 Samps
 38 Pepper Castles
 20 Candy Saws
 7 Samps Chimneys
 9 1/2 Dg Vapes
 4 Bot Pepper Sance
 20 Silaks
 3 Samps

56 1/2th Tobacco
 1 Fruit Stand
 21 Wash basins
 10 Ewers
 8 Hairpins
 23 Glups
 18 W. Ritcher
 14 L do do
 13 S do do
 3 Tea sets
 16 Dg Commemorative
 5 1/4 do do Cups
 5 1/3 do Blue Sancer
 5 1/2 do do Cups
 8 1/4 do W. Plates
 8 1/2 do Small do
 20 L Blue do
 5 S do edged do
 2 - - -
 1 1/2 Dg - Small
 94 common Bowls
 42 do do
 11 do do
 7 Dg Vegetable Dishes
 22 Dining platters
 19 Tea sets
 2 More Samps
 1 Bag allspice
 14th Sams

Pt Bay Links
 do Chest B Sea 25th
 do G.H. 9 - 60
 do - - - 30
 do Chest G.H. Sea 68th
 do sack pepper 60
 1 Key Ginger 46th
 - - Indigo 44th
 pint so so 18
 1 B. B^t East Sugar 238
 2 so put^d so 492
 Pint of a B B^t Coffee 32
 1/2 B B^t Mackie
 1 B B^t Brown Sugar 234
 1 H.H. so so 1117
 20 B B^t Whiskey
 10 Sweet M Sugar 90
 1 Key Ginger 46
 1 so Salt Peter 34
 1 so E. salt 28
 4 1/2 Cinnamon
 7 Scotch Snuff
 14th Black. so
 2 Box raisins
 2 Lady Sea 26th
 1 Chest G.H. Sea 42
 2 so so so 127
 13 Box Cigars
 5 Dry Ink

1 Box B. Sugar 466th
 61. Brown
 1/2 Anortu East India 44th
 do so so Rhine 17 1/2
 do so so M so 15
 do so so Whiskey 14
 so so Vinegar 20
 do so Gin 20
 do so fine spirits 13
 1 Box Medicine
 12 Empty B B^t ~~so~~
 9 Tarets
 1 Count scale
 2 Amulet Measur
 1 oil can
 1 Stove Pipe
 6 Sugar Bowls
 3 B Hams
 8 Empty Anya B B^t
 pint Br Cordus
 1 Building or stone
 which has been occ-
 upied by Miller & Clients
 Pt Key Sulphur
 1 Key Cloves

The plaintiffs then admitted the payment of the sum of seven hundred & eighty five 73/100 by a sale under the execution in favor of Gilverton et al vs. Miller & Clements which amount should be deducted from the plaintiffs demand - The defendants then rested

The plaintiffs then produced as a witness Buckner S. Morris who being duly sworn testified -

That he was one of the firm of Morris & Brown who were the attorneys of Nelson & Graydon in their attachment suit against Miller & Clement that he was not present when the affidavit for the attachment was made or when the writ was issued - That he knew nothing of the matter until after the attachment was levied - Graydon was in town & knew that attachment was levied - & knew that Graydon was here at the time of the levy. The attachment & execution levied within 24 hours of each other - Graydon afterwards conferred with us & directed us about the steps to sustain the attachment - The attachment suit was contested by the attorneys of Nelson & Graydon until it was quashed - This was all the testimony

introduced in the cause either on the part of the plaintiff or defendant.

The Court after hearing the evidence in the case found the issue for the plaintiff & assessed his damages at the sum of \$2603. The defendant's counsel excepted a motion for a new trial. Which said motion for a new trial was overruled by the Court to which Error of the Court in overruling said motion for a new trial the defendant then & there excepted and prayed the Court to sign & seal their bill of exceptions which is done.

John M. Wilson Secy

State of Illinois } ss.
Cook County }

I Walter Kimball Clerk of the Cook County Court of Common Pleas in & for the county & State aforesaid do hereby certify that the foregoing is a full true and correct transcript of all the papers filed in and also of the orders entered of Record in said Court in the case of Isaac Cook vs. John L. Nelson and William Graydon.

In testimony whereof I have hereunto set my hand & the seal of said Court at Chicago in said County this 7th day of June A.D. 1856. Walter Kimball, Clerk

Supreme Court of Illinois

John G. Nelson &
William Gaydon
Plaintiffs in error

vs
Isaac Cook, defend
ant in error

In Error
Term A.D. 1836

And now come the
said plaintiffs in error by William Wood-
bridge their attorneys & says that in the
record & proceedings in this cause & in the
entering up of judgment there is manifest
error in this, to wit,

First - The Court erred in sustaining the
plaintiffs demurs to the second, third, and
fifth pleas of the defendant -

Second - The Court erred in admitting
evidence for the plaintiff -

Third - The Court erred in refusing to grant
the defendant's motion for a new trial -

Fourth - The Court erred in entering
up a judgment for the plaintiff -

William Woodbridge
attys for the plffs in error -

The asst J. Cook says there is no error in this
word to the prejudice of the plffs in error - wherefore

allan a. Burton
m d p

10^c
Isaac Cook

Robert F. Johnson

Filed June 11, 1886

L. Leland
Clerk

Transcript of Record p20.00

John G. Nelson et al
Appellants

vs

Isaac Cook
Appellee

In Supreme Court at Ottawa.

May Term 1856

Brief: C. Beckwith for Appellants.

II There is no evidence in the case of any direction by the plffs to levy upon the building and goods attached - The plffs prayed out their writ of Attachment. It was delivered to the Sheriff, but by whom it was done does not appear. At the time the attachment was made the command of the writ was the only authority or direction which the Sheriff had for seizing the property. Without special instructions from the plffs to levy upon the particular property, there was no implied promise on their part to indemnify the Sheriff.

Giltner v. Gaud 7 Barr 540

Tarebrother v. Ashy 1 Camp 343

Wilson v. Clifton 2 Camp 1182

England v. Clark 4 Scam R 486

III The fact that the plffs afterwards endeavored to sustain the attachment which they had sued out does not show such an adoption of the act of the Sheriff as will make them responsible as co-trespasors. Neither is it an act from which the law will imply a promise to indemnify the Sheriff from the consequences of making a previous illegal seizure.

III But assuming that the plffs were bound to indemnify the defendant on the grounds that he acted as their agent. Then the recovery in the suit of Jacob Miller against the defendant, vested the title to the property seized in the plffs by relation from the time when the same was taken, and the defendant by a wrongful conversion of that property had forfeited all right to indemnity.

10 Adolph & Ellis 511 n.

6 M & S 640 n

3 M. S. S. 265.

- (2) If the law implied a promise on the part of the plffs it is in consideration that the defendant would perform his duties towards his principals in that transaction - His duties were to hold the goods until the attachment suit was determined.

If the attachment was quashed he was then bound to return the property to the party from whom it was taken if he would receive the same, and if not then hold it for the plaintiffs his principals. Instead of holding the property, before the attachment suit was determined the deft wrongfully converts the property to his own use. This was a distinct repudiation of the relation existing between the plffs & himself by which he renounced all claim upon the plaintiffs for indemnity; and having repudiated the relation he cannot now fall back upon it for the purposes of protection.

Story on Agency § 348

100
Nelson et al

Book

Plaintiffs' Brief

Isaac Cook

John G. Nelson +

William Haydon

Cook County Court of
Common Pleas.

On Remover to Law

Plaintiff Brief.

1st Every man who employs another to do an act which the employer appears to have the right to authorize him to do undertakes to indemnify him for all such act as would be lawful if the employer had the authority which he pretends to have.

Adams v. Jarvis & Bingham. 66.

This was a case in which the plaintiff an auctioneer had sold goods belonging to a third person on the representation of the defendant that the goods belonged to him. Defendant was held liable for contract an indemnity to the plaintiff. The Court holding that the rule of no contribution among wrong doers must be confined to cases in which the party must be presumed to know that he was doing wrong.

Story Agency Sec. 339.

The general doctrine on the subject here laid down.

Coventry vs. Burton 11 Johnson. 142.

In this case an action was brought on a promise to indemnify made to an owner of a highway by a Commissioner who had directed a trespass. The Court in deciding in favor of the plaintiff lay down the distinction between a promise made to an agent who knows and to one who does not know that the act is a trespass. In the latter case only, say the Court is the promise good. Wiles Cowper 343

Arroy vs. Halsey 14 Pickering. 174.

This was an action brought on a promise to indemnify made to the plaintiff, who had notice, before the act done, of the adverse claim to the property upon which trespass was committed. The Court sustain the doctrine above laid down, and hold that notice of adverse claims was not conclusive evidence that plaintiff knew that the property was in the claimant. N.B. Counsel's argument in case.

2nd An officer attaching property is agent of the party directing the levy and the law implies a promise to indemnify from the party to the officer.

Grove vs. Emery vol 18 Maine 79
on own case

In *Humphreys vs Platt & Blighs* New R. 154
it was decided by the house of Lords that where
a sheriff had been misinformed by a plaintiff
in an execution as to certain goods being the
property of the defendant in the execution and
had been directed by the plaintiff to levy on
them, for which he was made responsible in
damages, he might maintain an action on the
case for such representation, without alleging
either fraud or a knowledge of the falsehood.
No reasons were given but Lord Tentuden privately
informed the reporter, that he put the
case upon the ground that the sheriff was a
public officer and was placed between two
fires.

Same point sustained in
Ex parte Collins 43 E. C. L. R. 639
S. C. 5 I. B. R. 820. *Clapham's Shillito* 7 Beas 146
6 *Messon & Welby*. Ex. 387.

The law of this case correctly laid down
in numerous legal maxims 328, 329.
Betts or Gibbins 2 A & Ellis 75. per Lord
Denman C.B.

Allan A. Burton &
J. H. Munton
per de ft

The plea in error was not prejudiced by the demurrer

to their third and fifth pleas being sustained. They
had the benefit of all the evidence that could have
been presented upon those pleas, upon the general
issue of non assumpsit -

Allen A. Norton

The prosecution of the attachment and attempt to
sustain it after it was made, is evidence that
Nelson & Maydon directed the levy, and a sufficient
ratification of the act if not done originally by
their direction to make the act their own -

Even at all events, the ~~current~~ finding in the
case is not so palpably against the evidence as to
authorize this Court to interfere after the finding

Sam. Cook

ad

Nelson & Maydon

Off. Brief

Sup. Prob

1 Smith & C. 432

172

2 Smith 532

no practical good could have resulted to Nelson &
Maydon, by sustaining the attachment unless the goods
levied on were subject, or nothing else was levied -
on. The attempt to sustain the attachment was
in fact an attempt to sustain the levy - This
therefore was a ratification of the levy and equivalent
to an express direction, and from which no distinction
should be presumed after verdict -