

No. 12623

Supreme Court of Illinois

Nelson, et al.

vs.

Cook

71641  7

Ms. 77.

John G. Nelson &
William Graydon
vs
Jane Cook

79

12623

1858

Original

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United States of America
State of Illinois
Cook County —

Shas before the
Honorable John Mc Wilson Judge of the Cook County Court
of Common Pleas within and for the County of Cook and State
aforesaid at a special term of the Cook County Court of
Common Pleas begun and held at the Court House in the
City of Chicago in said County in pursuance of an order of
the Judge thereof and to public notice given in accordance
with the Statute in such case made and provided on the first
Tuesday being the second day of June in the year of our Lord one
thousand eight hundred and fifty four and of the Independence
of the United States the eighty first.

Subscribed the Hon. John Mc Wilson Judge

Charles Havin Prosecuting Attorney of Cook County
John L. Wilson Sheriff of Cook County
Attest Hollis Hunt our clerk

Be it remembered that on the nineteenth day of
April A.D. one thousand eight hundred and fifty four
there was filed in the Office of the Clerk of said Court a Transcript
from the Circuit Court of Lake County Illinois Affidavit for
Attachment, Attachment Bond, Attachment Writ & the return
thereon endorsed, Declaration, Certificate of publication of Notice
which said Transcript Affidavit for Attachment, Attachment
Bond, Attachment Writ & Return thereon, Declaration, Certificate
of publication of Notice are in the now as cases follows
transcribed.

United States of America }
 State of Illinois Lake County } ss

Hear 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 begun 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 Buckner S. Morris Judge.
 Augustus Gauger Sheriff of
 Lake County

Attest A. R. Coates Clerk.

Be it remembered that heretofore Court 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 the year last aforesaid proceedings were had in said Court which are entered of records in the words and figures following to-wit:

98

Space Book

A

John E. Nelson and
William Graydon.

Attachment

99

Isaac Cook

2

Henry A. Row Eliakim
C. Deacon & John E-
Dearborn, composing the
firm of Row, Deacon &c.
Successors of John A. Nason &
William Graydon

Attacheur

In terms of a stipulation on file in the two above entitled causes it is ordered that said causes be removed to the Cook County Court of Common Pleas, and it is further ordered that the Clerk of that Court make and certify a full transcript of the record and proceedings in said causes and transmit the same to the said Cook County Court of Common Pleas, together with all papers filed therein and appertaining or forming part of the record.

Space Book

is

John G. Nelson, and
William GraydonLake County Circuit Court
Attachment

Space Book

is

Henry A. Rev. Elias Rinn
to Deacon and John E. Deacon
composing the firm of
Rev. Deacon H. C. Gannish of
John G. Nelson & William GraydonLake County
Circuit Court
AttachmentState of Illinois
Lake County Sps.

I Augustus B. Cotes Clerk
of the Circuit Court in and for said County of Lake do
hereby certify the foregoing to be a true transcript from
the records of my Office of the record of the proceedings of
said Court in the two above entitled causes and that
the accompanying papers numbered from one to eight
inclusive are all of the papers filed in my Office in said
causes



In witness whereof I have hereunto set my hand and
the seal of said Court at Waukegan in said
County this 18th day of March A. D. 1857.

A. B. Cotes Clerk

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Isaac Cook vs John E. Nelson and William Graydon
Attachment

1854

Haindliff costs

January Term	Taking attachment Bond 40. isy writ 35	75	
Deputy Clerk	Duty sent 10. fily 5 pap? 25	25	
Granger Shff	Relg writ 10		10
Mch. sps. term	Duty sent 10. fily 2 pap? 10	20	
Cotes Clerk	Ent. order to change venue 10 20	20	
	Transcript (5 fls) & certif. 75	75	2 25
			\$ 2 35

99 Isaac Cook vs Henry Alben Eliakim Co. Deacon and
John E. Deacon composing the firm of
Rev. Deacon Wm. Jarvis of John Nelson and
William Graydon — Attachment

1854

Jany term Haindliff costs

Cotes Clerk	Duty sent 10.	10	
Granger Shff	Servg. 3 writ attach. 1.50 3 miles travel 15		1 65
Mch. sps. term	Duty sent 10. city order to change venue 20	30	
Cotes Clerk	fily writs 5.	05	45
			\$ 2 10

State of Illinois

Lake County, Ill. — I, Augustus B. Cotes Clerk
of the Circuit Court in and for said County of Lake
in the State aforesaid do hereby certify the foregoing to be
true copies of the costs in the above entitled cases
from my fee book as taxed by me



In witness whereof I have hereunto set
my hand and the seal of said Court
at Hannegau in said County this
18th day of March A. D. 1854.

A. B. Cotes Clerk.

(Affidavit)

State of Illinois }
Cook County Sps.

Space Cook of said County being
duly sworn says that John G. Nelson and William
Graydon are jointly indebted unto him in the sum of
two thousand two hundred dollars upon an implied
contract arising as follows namely that the 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 the
deponent was such Sheriff and on or about the twelfth
day of June 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. Columbus then of Chicago in said County of
Cook. partners in trade and Merchants under the
style and firm of Miller Columbus sued out a writ
of Attachment from the Cook County Court of
Common Pleas of Cook County at the suit of said
Nelson and Graydon against the estate of said

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Mellor and 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 and Graydon to be executed, and in pursuance of the instructions of said Graydon and his Attorney this deponent attached and seized a stock in trade consisting of dry goods & Groceries and a Store building at the City of Chicago in said County and State of the value of three thousand dollars or thereabouts which goods and building were then and there claimed by one Jacob Mellor 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. Mellor and David 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 Mellor the claimant of said goods and building in an action of trespass deboned & forfeited by him commenced against this deponent for attaching the same as the property of the firm of Mellor & 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

inwards 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 G. Nelson and William Graydon are by implied promise indebted to this deponent.

And this deponent further says that neither said Nelson or Graydon are residents of this State but reside out of this State and this deponent prays that a writ of Attachment 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 made and provided and that Henry A. Reu, Eliakim L. Deacon and John E. Dearborn comprising the firm of Reu, Deacon & Co may be summoned as Garnishees.

Subscribed and sworn before
me this third day of
December 1853

J. Cook



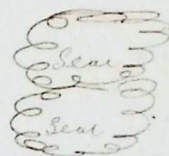
H. B. Stillings
Notary Public

(Attachment Bond)

Know all men by these presents that we Isaac Cook of the City of Chicago in the State of Illinois and Henry H. Mudgett of Lake County in said State are held and firmly bound unto John G. Nelson and William Graydon in the sum of eight thousand four hundred dollars lawful money of the United States to be paid to the said John G. 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 jointly 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 prayed an attachment out of the Circuit Court of Lake County at his suit against the Estate of John G. Nelson and William Graydon above named for the sum of four thousand two hundred dollars and the same being about to be paid 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 satisfy 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 serving said attachment then the above obligation to be void otherwise to remain in full force and effect.

I do hereby
H. H. Blodgett



Approved by me at my
Office this 7th day of
October A.D. 1853.

A. B. Coles Clerk

(attachment - writ)

State of Illinois }
Lake County } ss.

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 as oath to Augustus B. Coles
Clerk of the Circuit Court of Lake County that John E. 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 directions of the act in
such cases made and provided.

We therefore command you that you attach so
much of the estate real or personal of the said John E.
Nelson and William Graydon and of each of them to be
found in your county as shall be of value sufficient
to satisfy the said debt and costs according to the said

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complaint and such estate as attached in your hands to secure, or so to provide that the same may be liable to further proceedings thereon, 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 G. Nelson and William Graydon, to appear and answer the complaint of the said Isaac Cook, and that you also summon Henry A. New, Eliakim C. Deacon and John E. Dearborn comprising the firm of New, Deacon & Co. as Garnishers 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 Augustus B. Coles 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

A. B. Coles - Clerk

(On the back is the following writ)

Executed the within writ this 7th day of Dec A. D. 1853. by reading & in presence & hearing of the within named Henry A. New, Eliakim C. Deacon & John E. Dearborn, the within named John G. Nelson and 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. Granger
Sheriff

Filed Jan'y. 14. 1854

A. B. Coates Clerk

(Copy of Recd.)

State of Illinois.

Current Court of Lake County of the term of
January in the year of our Lord one thousand eight
hundred and fifty four

Lake County of.

Loane Cook plaintiff in this suit by
Blodgett & Upton his attorney complains of John E. 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 made and provided in a plea of
trespass on the case upon promises.

For that whereas heretofore to-wit on the twentieth
day June in the year of our Lord one thousand eight hundred
and forty eight the said plaintiff was Sheriff of the County of
Cook in the State of Illinois, and one John Reach was
then and there Deputy Sheriff of said County duly appointed
by said plaintiff, and the said defendants afterwards
to-wit on the day and year last aforesaid, at Chicago in the

County of Cook aforesaid then and delivered to the said John Beach such Deputy Sheriff as aforesaid to be by him duly executed a Writ of Attachment then lately tenet 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 shall be sufficient to satisfy the debt of the plaintiffs in said Writ (being as alleged the sum of eleven hundred twenty six dollars & three cents and cents) 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 & David R. Clements the said defendants afterwards tenet 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 House 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. Clements 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
 directions of said defendants attach and seize said
 building and Merchandize. Whereby then and there the said
 defendants plaintiff in said writ of Attachment became and
 are 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 Merchandize as
 aforesaid, and the said plaintiff avers that the said
 Jacob Miller afterwards brought on the thirteenth day of
 February in the year eighteen hundred and fifty in the
 Cook County Court of Common Pleas recovered 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 Merchandize under said Attachment as aforesaid
 and the sum of twenty one dollars and twenty three and
 three fourth 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 & 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 in 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 lent on the first day of November in the year eighteen hundred and fifty three at Chicago Court at Waukegan in said Lake County undertook and faithfully promised said plaintiff to pay to him said sums 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 Beach was then and there deputy Sheriff of said County duly appointed by said plaintiff. And the said defendants by Morris & Brown their attorney and agents afterwards to-wit on the day and year last aforesaid at Chicago in said County of Cook then and delivered to the said John Beach such Deputy Sheriff as aforesaid 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 & 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 & 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 and eleven cents and the costs) which said writ

of attachment is 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. Clements the said defendants by their said
 Attorney Morris Brown 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 and stock of goods and Merchandise
 in said building at Chicago aforesaid as the property of
 said Augustus E. Miller and David R. Clements
 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 Merchandise
 whereby then and there the said defendants plaintiff in said
 writ of Attachment became and were bound to indemnify
 and give guarantees the said plaintiff as such Sheriff
 from all damages 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
 of Common Pleas recovered 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 attacking of said building and Merchandise under said Attachment, and the sum of twenty one dollars and twenty three one three fourth 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 sums 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.

Yet 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 to said plaintiff either of said sums of money or any part thereof to the damage of said plaintiff of six thousand dollars and therefore he brings suit.

Blougett & Upson
attys for plaintiff

(Publication Notice)

State of Illinois }
Lake County Sps.

Lake County Circuit
Court Session A.D. 1854

Isaac Cook

"

John G. Nelson

William Graydon

} Attachment

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. Now 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 Waukegan on the first Monday of June next. give special bail and answer to said plaintiffs action Judgment will be entered 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 June 11th 1854

A. Blevins Clerk

Blouger & Upson
Sffs attys

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I. H. B. Foly one of the publishers of the
Haukegan Chronicle a weekly newspaper printed in
Lake Co. Illinois do hereby certify that the annexed
notice was published six successive weeks in said
Paper the first publication being on the 8th day
of January A.D. 1854 the last publication being
on the 28th day of February A.D. 1854.

H. B. Foly.

Be it further remembered that on the twenty seventh
day of March A. D. eighteen hundred and fifty five is
being one of the days of the February term of said Court
the following among other proceedings were had and
entered of record in said Court in this cause to-wit:

James Cook

vs

John G. Nelson

William Graham

} Attachment.

This day came the said defendants
by Williams & Woodbridge their attorneys and leave is given
them to withdraw their demand 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.

Be it remembered that on the Sixteenth day of April A. D. 1855. came the said Defendants by their said Attorney and filed in the Office of the Clerk of said Court their pleas which said pleas are in the words and figures following to wit

John G. Nelson &
William Graydon
ads Cook Co Grof Com Pleas
Isaac Cook

And the said defendants by William Woodbridge their Attorney, come and defend the wrong and injury whereof, and say that they did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against them; and of this they put themselves upon the country for trial.

And the said plaintiff doth the like

Shedd & Frink

2 And for a further plea in this behalf the said defendants by leave of Court were 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 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 & form as the said plaintiff hath above in his said declaration alleged and although further true it is, that the said defendants did serve 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 sheriff did levy the same in manner and form as the said plaintiff hath above in said declaration alleged; and although ^{it is} 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 ^{it is} 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 same and in the manner and form as the said plaintiff hath above in his said declaration alleged, and although ^{it is} further true it is, that the said plaintiff was compelled to pay and did pay the several sums of money as the said plaintiff hath above in his said declaration alleged: for plea nevertheless in this behalf the said defendants say, that they did not undertake or promise 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. 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 Cook 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 sue out 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 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 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's custody and possession; without this that the said defendant did assume and promise in manner and form as the said plaintiff hath above thereof complained against them. And ^{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.

14 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 cases 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 time nor in the manner and form as the said plff hath above in his said declaration alleged and further protesting, that the said defendant 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, by 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 recover 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 ^{and did not pay} to pay the several sums of money in said declaration mentioned, as the said plff hath above in his said declaration alleged. ^{supra}for pleasure 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 the custody and possession of all which the said John Beach then and there has notice without this, that the said defendants did affirm & promise in manner and form as the said plff 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

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 afore-
 said action thereof against them, because protesting that the said defendants
 did not undertake or promise in manner and form as the said plaintiff
 hath above in his said declaration complained against them: for plea never
 theless in this behalf the said defendants say, that the suit of the said Jacob
 Miller against the said plaintiff in which the judgment in the said de-
 claration mentioned was recovered, 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 mentioned 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 there-
 of 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 different causes of action as for the lying
 upon seizure and attachment of the said merchandise stock of goods and build-
 ing 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 Miller against the said plaintiff in the said declaration mentioned
 was obtained & recovered for the cause and in manner & form as the said plain-
 tiff 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 & form as the said plaintiff
 hath above in his said declaration alleged: And this the said defendants
 are ready to verify: Whereupon they pray judgment of the said plaintiff

ought to have or maintain this aforesaid action thereof against them &c

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 this 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 merchandize, stock of goods and building in said declaration mentioned, the said merchandize stock of goods and building were the property of one Jacob Miller and that after the levy upon seizure and attachment of the said merchandize, stock of goods and building in the said declaration mentioned by virtue of the said writ of attachment 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 plaintiff 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 quashed and held for naught; and the said defendants aver that the said plaintiff before the said writ of attachment was quashed did not and would not deliver the said Merchandize stock of goods and building to the said Jacob Miller although by him often requested so to do to wit on First day of December A.D. 1848, but that the said plaintiff first regarding his duty in that behalf before that time to wit on the 30th day of December A.D. 1848 at Chicago aforesaid without the consent of the said defendants, converted and disposed of the said merchandize stock of goods and building to his own use: And this the

said debts, are ready to verify, whereupon they pray judgment of the said
 plff ought to have or maintain his aforesaid action thereof against them &c

7 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 so much the money 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
 money by reason of the taking, seizing or detention of the said merchan-
 dize 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 de-
 fendants against the said Augustus Miller & David Clement in said de-
 claration mentioned but they aver that the said merchandise stock of
 goods and building were afterwards to wit on the 25th day of May A.D. 1849
 released & discharged from said writ attachment and that after 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 dis-
 posed of the said merchandise stock of goods and building to his own use
 and that the said judgment so recorded 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 converted and disposed of the same to his
 own use as aforesaid: And thus the said debts are ready to verify.
 Wherefore they pray judgment of the said plaintiff ought to have

or maintain his aforesaid action thereof for part of the money mentioned in the introductory part of this plea against them &c.

8 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 against them for any further or greater sum of money than the sum of one hundred & ten 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 of the detention of the same by virtue of said writ of attachment in manner and form as the said plaintiff hath in said declaration alleged: for plea nevertheless in this behalf the said defendants 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 11th 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, recovered 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 11th 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 the said last mentioned sum of money from the day and year last aforesaid to the time of the

execution of said judgment writ on the 13th day of February A.D. 1830. ma-
 king the sum two hundred and ninety three dollars and twenty three cents
 beside the value of said merchandize, stock of goods and buildings as and
 for the use of the said value thereof: And the said defendants fur-
 ther say, that the said plff on the 30th day of December A.D. 1848 conver-
 ted and disposed of the said merchandize stock of goods and building
 to and for his own use: And that the value of the said merchandize
 stock of goods and building at the time of the conversion thereof by the said plff
 as aforesaid was the sum of twenty nine hundred and forty three dollars: And that
 the said Jacob Miller did not in and by the said judgment in the said
 declaration mentioned, against the said plff, 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 merchandize stock of goods, and building from the time of
 the said levy upon seizure and attachment of the same as in the said de-
 claration mentioned to wit on the 17th day of June A.D. 1848 to the time of the
 conversion of the same by the said plff 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 sum of money in said declaration mentioned except the
 sum of ten dollars, the said defendants say, that the said plff was
 compelled to pay & did pay them and each of them by reason of his the
 said plff attempting to justify the wrongful conversion of the said
 merchandize 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
 merchandize stock of goods and building by virtue of said writ of at-
 tachment as in the said declaration alleged, And as to the said
 sum of one hundred dollars and ten dollars, the said defendants
 cannot say might why the said plff should not have judgment a-
 gainst them for the said sums over and above his costs by him in

this behalf expended. And thus the said debts are ready to verify whereupon the said defendants pray judgment if the said plaintiff ought to have or maintain his aforesaid action for any further or other sums than those herein confined thereof against them &c.

9 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 and 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 & merchandises 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 sums of money due & owing from the said plaintiff to the said defendants & by the defendants forbore to the said plaintiff for divers long spaces of time before then elapsed for other money due & owing from the said plaintiff to the said defendants 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 nonperformance by

then the said defendants of the several supposed promises & undertakings in the said declaration mentioned & out of which said sums of money so due & owing from the said plaintiff to the said defendants then the said defendants are ready & willing & hereby offer 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 & thus the said defendants are ready to verify, wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them &c

Williams & Woodbridge
Defts Attys

Spas Cook

1848	To Nelson & Grayson	Dr
Dec 30	To Cash Received for own use	\$949.83
" "	To Cash Received for own use	785.72
" "	To Goods Delivered	2000.00
	To Interest	1000.00

Be it further remembered that on the sixteenth day of April A.D. 1855, came the said plaintiff by Isaac Smith his attorney and filed in the office of the clerk of said court his replication which said replication is in the words and figures following to wit:

Isaac Cook

vs

John G. Nelson &

William Graydon

Cook County Court of
Common Pleas.

And the said plaintiff as to the said plea of the said defendants jointly above pleaded says, praecludi non. 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 alleged, and thus the said plaintiff prays may be required of by the court &c.

Isaac Smith

and the deft. doth the
like By his atty

Atty for Plffs

C Beckwith,

Be it further remembered that on the 16th day of April in the year A.D. 1855 aforesaid came the said plaintiff by Isaac Smith his attorney and filed in the office of the clerk of said court his Demurrer which said Demurrer is in the words and figures following to wit:

Isaac Cook
vs
John E. 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 as are not sufficient in law to bar the said plaintiff from having or maintaining his aforesaid action thereof against the said defendants, and that the said plaintiff is not bound by law to answer the same and that the said plaintiff is ready to verify. Whereupon he prays Judgment re. And for causes of demurrer to said plea the said plaintiff shews to the Court that said plea answers 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 as are not sufficient in law to bar the said plaintiff from having or maintaining his aforesaid action thereof against the said defendants and that the said plaintiff is not bound by law to answer the same. And that the said plaintiff is ready to verify. Wherefore he prays Judgment re. And for causes of demurrer to the

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 &c.

And the said plaintiff as to the said plea of the said defendants by them fourthly above pleaded, says that the same and the matters therein contained are not sufficient in law to bar the said plaintiff from having or maintaining his aforesaid action thereby against the said defendants and that the said plaintiff is not bound by law to answer the same, and that the said plaintiff is ready to verify. Therefore he prays Judgment &c.

And for cause of demurrer to the 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 &c.

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

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

And the said plaintiff as to the said plea of the said defendant severally above pleaded says that the same and the matter therein contained in manner and form as are not sufficient in law to bar the said plaintiff from having or maintaining his aforesaid action thereof against the said defendants and that the said plaintiff is not bound by law to answer the same and that 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 severally above pleaded

says that the same and the matters therein contained in onamur and form re are not sufficient in law to bar the said plaintiff from having or maintaining his aforesaid action against the said defendants: that the said plaintiff is not bound by law to answer the same, and that the said plaintiff is ready to verify. Wherefore he pray Judgment re.

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 o'rnise

Plff.'s atty

And afterwards to wit on the nineteenth day A. D. 1855. the following among other proceedings were had and entered of record in said Court in the case to wit

Isaac Cook

is

John G. Nisbet

William Graydon

May. 19. A. D. 1855,

attachment

And now at this day came the said parties by their attorney and the Court after hearing the argument of counsel on said plaintiff's demurrer to the defendants' special plea to the said plaintiff

Declaration herein being now fully advised in the premises
sustain said demand as to the first, second, third, fourth
and fifth special pleas. And overrule the same as to
the sixth and seventh special pleas

John M. Wilson

And afterwards being on the seventeenth day of September
A. D. 1885, came the said plaintiff by Simeon Smith his
attorneys and filed in the office of the clerk of said court
his replications, which said replications are in the words and
figures following to wit

James Scott

vs

John G. Nelson &

William Grayson

Scott vs. Court of Com. Pleas

And the said plaintiff as to the said
pleas of the said defendants severally above pleas and
says "procedi 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 &
David R. Clement and for no other cause of action.

James
Scott

37.

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 the time in said plea alleged.

And this he pray may be inquired of by the
 Country &c.

And the said plaintiff as to the said plea of
 the said defendants rightly above pleaded says, prays and men-
 because 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 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 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 and ³/₄ cents as alleged
 therein.

And this he pray may be inquired of by
 the Country.

And Friend
 Jeff. atty

And the deff. doth the like - By C. Beckwith.

And afterwards tennit on the ninth day of October
A. D. 1855. the following among other proceedings were
had and entered of record in said Court in the cause
tenit.

Isaac Cook
vs
John G. Nelson &
William Graydon } att.

And now comes the said plaintiff
by his said attorney and withdraws his demand
to defendants first plea & leave is given said plaintiff
to file replication to pleas which is done.

And on the 9th day of October A. D. 1855. aforesaid
the following Replication was filed in the Office of the Clerk
of said Court tenit

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

And the said plaintiff as to the said plea
of the said defendants firstly 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 plaintiff had no notice that the said goods and chattels were the property of said Miller, and that he pray may be enquired of by the Country

Wherefore he pray Judgment &c

Thurs. & Winston

Attorneys

And the said deft. doth the like

By his atty

C. Beckwith

Demurrer filed in the Office of the Clerk of said Court Nov. 10. 1855. in the words and figures following to-wit.

John G. Nelson &
William Gregdon
as
Lease Cook

Lock County Court of
Common Pleas

And the said defendants say that the replication of the said plaintiff to the said several pleas of the said defendants and the matters 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 thereof against the said defendants, and that they the said defendants are not bound by law to answer the

saw; and that the said defendants are ready to verify
 therefore by reason of the insufficiency of said replication
 in this behalf the said defendant prays judgment if
 the said plaintiff ought to have or maintain his aforesaid
 action thereof against them &c.

Williams Woodbridge
 & Beckett

Jdges Accy

And afterwards took on the seventeenth day of November
 A. D. 1855. the following among other proceedings were had and
 entered of record in said Court in this cause to wit

Isaac Cook
 vs
 John G. Nelson &
 William Grayson } attachment

And now at this day comes the said
 plaintiff by T. Miss & Winston his attorney and the said
 defendants by Williams & Woodbridge their attorney also come
 and after argument of counsel heard on said plaintiff
 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
 therefore withdraw their sixth and seventh pleas and said
 plaintiff withdraws his replication to said defendants
 seventh plea.

And afterwards took on the 9th day of February A. D. 1856 the following among other proceedings were had and entered of record in the said Court in this cause. To wit

Isaac Cook

vs

John G. Nelson &

William Graydon

} Attachment

And now again come the said parties by their attorney 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.

Therefore it is considered that the said plaintiff 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 days time is given said defendants to file their bill of exceptions herein

and issue being therefore joined herein by
 argument of said parties this cause is submitted
 to the Court for trial without the intervention of a
 Jury and the Court, after hearing the allegations
 and proofs submitted argument of counsel, and
 being now fully advised in the premises finds the
 issue for the plaintiff and awards 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.

Order remanding this cause from Supreme Court
 filed January 8th 1857. in the words and figures
 following to-wit:

At a Supreme Court begun and held at
 Ottawa on Monday the 9th day of June in the year of
 our Lord one thousand eight hundred and fifty six
 within and for the third Grand Division of the State
 of Illinois

Present the Honorable Walter B. Seates Chief Justice
 " " " John J. Eaton Associate Justice
 " " " O. C. Skinner " "

Monday June 30. A. D. 1856

John T. Adams et al.
 or
 Isaac Cook } Error to the Cook County Court
 of Common Pleas

On this day came again the said parties and the Court having diligently examined and inspected as well the Record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises and of opinions that in the Record and proceedings aforesaid, and in the rendition of the Judgment aforesaid, there is manifest error. Therefore, it is considered by the Court that, for that error, and others in the Record and proceedings aforesaid, the Judgment of the Cook County Court of Common Pleas in this behalf rendered, be reversed, annulled, set aside, and wholly for nothing esteemed and that this cause be remanded to the Cook County Court of Common Pleas for such other and further proceedings as to law and justice shall appertain. And it is further considered by the Court that the said plaintiff in error, recover of and from the said defendant in error their costs by them in this behalf expended and that they have Execution therefor.

J. George Lelana Clerk of the Supreme Court
 of the State of Illinois do hereby certify that the

foregoing is a true copy of the final order of the said
 Supreme Court in the above entitled cause of record
 in my Office.



In testimony whereof I have set my
 hand and affixed the seal of the said
 Supreme Court at Ottawa this 7th day
 of January in the year of our Lord one
 thousand eight hundred and fifty seven

L. Gilman Clerk of

the Supreme Court

By J. B. Rice Deputy

And afterwards to wit on the twenty sixth day of
 March A. D. 1857 the following among other proceedings
 were had and entered of Record in the Court County
 Court of Common Pleas of Cook County Illinois in
 this cause to wit:

Spas Book

or

John G. Wilson &

William Grayson

} Attachment

And now comes the said plaintiff
 by Furusworth & Burger his attorney and the said
 defendants by Beckwith & Williams their attorney also
 come and issue being joined herein by agreement
 of said parties this cause is submitted to the Court

for trial at the April term next without the
intervention of a Jury.

And afterwards tried on the nineteenth day of June
A. D. 1857 the following among other proceedings were had
and entered of Record in said Court in this cause to-wit

Spade Cook

John F. Nelson &
William Graydon

} Attachment

And now at this day comes the said
plaintiff by Farnsworth and Briggs his attorney and
the said defendants by Rickwith and Williams their
attorney also come and issue being joined herein it
is ordered that a Jury come and thereupon come a
Jury of good and lawful men to-wit

J. W. Kelly Paul Holland S. J. Grannis E. R. Holladay
A. Rhinston J. Campbell M. Sinks B. H. Craven
A. Sutton A. T. Richards Peter Brackets H. Everett

who being duly sworn tried and sworn well and truly to
try the issue joined herein as aforesaid after hearing a part of
the evidence adduced and the time for the adjournment
of the Court having²⁰⁰⁰ arrived the further consideration of this
cause is postponed until eight O'clock tomorrow morning

and by agreement of the said parties the jury is
allowed to separate to meet the Court here at that
time.

June 20th 1857

Isaac Cook

John H. Nelson &

William Gaydon

} Attachment

And now comes the said plaintiff
by his said Attorney and the said defendants by their
said Attorney also come and the Jury come and
after hearing the remaining part of the evidence and
the arguments of counsel and the instructions of the Court
retire to consider of their verdict and afterwards come
into court and say ave. The Jury find the issue for
the plaintiff and assess said plaintiff's damages
to the sum of thirty six hundred and seven dollars
and thirty two cents and thereupon the said
defendants enter their motion for a new trial of this
cause.

June 30th A. D. 1857

The following among other proceedings were had
and entered of record in said Court in this cause
to wit

Isaac Cook

John H. Nelson &

William Gaydon

} Attachment

and now at this day

again comes the said plaintiff by his said attorney
and the said defendants by their said attorney also
come and in argument of the motion for a new trial of
this cause heretofore entered herein by the said defendants
the court here now being fully advised in the premises
it is ordered that defendants said motion be overruled
to which ruling the said defendant enters his
exceptions.

Therefore it is considered that the said plaintiff
do have and recover of the said defendants his damages
of three thousand six hundred and eleven dollars and
thirty two cents in form aforesaid by the jury here
affixed and also his costs and charges by him about
his suit in this behalf expended and have Execution
therefor.

And on motion of the said defendants it is
ordered that ten days be given them to file their bill
of Exceptions in this cause.

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Cook County Court of Common Pleas

John G. Nelson and
William Graydon
vs
Isaac Cook

Be it remembered that
on the nineteenth day of June
in the year of our Lord Eighteen
Hundred and fifty seven of the same
Special Term of the above named Court
before the Honorable John M. Wilson
Judge of said Court and a Jury
only empanelled the above cause
came on for trial and upon the trial
thereof and in order to sustain the issue
on his part, the plaintiff introduced
in evidence: -

An attachment writ in the suit of John G.
Nelson & William Graydon vs Augustus Miller and David
R. Clement with the endorsements & return thereon
filed in the Cook County Court which is as follows:

State of Illinois }
Cook County } ss.

The People of the State of Illinois to
the Sheriff of said County Greeting:
Whereas William Graydon hath complained
on oath, to James Curtis, Clerk of the Cook
County Court of Cook County, that Augustus
Miller & David R. Clements are justly indebted

to the said William Graydon and John G. Nelson to the amount of one thousand one hundred & twenty six dollars, and eleven cents, and 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 chattels 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 H. Kimball, C. B. Ingham, J. H. Ingham, Barr & Guild A Carpenter, McDonald & Scott E. D. Huntton, S. P. Putnam James Braumigan M. Williams J. C. Clark L. C. Holliday, M. Walrod
Patten

49

Potter & Flanders, P. W. Ballinger, C. M. Osterhout
M. Calvin, M. E. Barises 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 known to the said Court, how you
have executed this writ. And have you
then and there this writ,

Witness the Honorable Hugh T. 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 Hundred and
forty eight

James Curtis Clerk

Attached as per sched: on mar
1 mile

\$ 4 - 80
674

And reading the within in the presence
of August B. Miller & David R. Clements
H. Kink & S. C. Clark, J. C. Holliday &
J. Braumigan, the other persons within
not found

6 pms

3, —

6 miles

— 75

Retn

— 12

\$ 4. 44

June 12th 1848

P. Cook Shpp
By J. Beach
Depy

By virtue of the within Attachment I have
levied upon the following property,
(To wit)

1 pair Black Cloth 10 yds.	1 pair Ducking 3 yards
1 " Cassimere 10 "	2 " Cambric 52 1/2
1 " Satinet 21 "	1 plaid 15
1 " Cassimere 6 3/4 "	1 " Woolly 26
1 " B. Black Cloth 12	1 " Flannel 25
1 " Satinet 18	1 " Red do " 8
1 " Beum 10 1/4	1 " Cotton " 8
1 " 6 3/4	5 pr. Pants
1 Cassimere " 3/4	3 1/2 doz Web Suspenders
2 do 2	14 " Wooted
1 Pilot 6 1/4	14 " others
1 Satinet 15 1/2	14 Silk Kerchiefs
1 " 17 1/2	15 do
1 S. Gray 11	15 Gingham Cravats
1 " Brown 23 1/4	19 pr. Cotton Hoes
1 Satinet " 9 1/4	5 Gross C. Buttons
1 Black B. Cloth 17 3/4	2 " "
3 " Calicoes 110 1/4	10 Comforters
1 " 34 1/2	18 Bundles Cotton yarn
1 " 29	1 piece Bagging 47 yards
2 " 54	1 " Camvass 72 "
2 " 34 1/2	50 Caps
2 " 57 3/4	66 C. Hats
2 " 39 3/4	4 pr. Hecapins
4 " 65	1 " Shirting
29 S. Slates	35 L.S. Slates
1 1/2 doz S. Soaps	12 Curly Combs
300 S. Pencils	4 Pants
9 1/2 doz Blackings	6 pr. B. Gloves
	11 1/2 doz Spooks

3 1/2 doz. S. Brushes	1 1/2 lb Cotton Thread
3 lb Cotton Thread	1 doz Pen Knives
1/4 lb Linen Thread	2 1/2 " "
5 pack of pins	12 3/4 lb Cinnamon
41 " Chocolate	13 Box Segars
2 Chats of Pen 127 lbs	part Keg Sulphur
5 doz Ink	1 Keg Cloves
1 Box B. Sugar 46 lb	61 Brooms
part 1/4 Cask Brandy 41 1/2 lb	part B. Whisky 14 Gallons
" P. Mann 17 1/2 "	" Vinegar 24 "
" M " 15 "	" Gin 24 "
" Pen Spints 15 "	12 Empty Barrels
1 Box Medicines	1 Counter Scale
9 fassets	1 Oil Can
2 Fruit, & Mums	1 stove & Pipe
6 Sugar Barrels	3 B. Hams
8 Empty sugar Barrels	1 Building or store which
part of Box Garden Seed	has been occupied
by Miller and Clements	
Chicago June 12 th 1848	

P. Cook Shff
By John Beach
Deputy

3 1/2 Boxes Pepper	Part Box of Soaps
2 " Alpice	10 doz Soap
3 " Box Mustard	part Box Sperm Candles
5 Candle Boxes	4 1/2 nut mugs
5 3/2 doz Chewing Tobacco	29 Looking glasses
32 Larders	38 pepper Cartons
20 Candy Jars	9 Lamp chimneys

9 7/12 doz Glasses
 4 Bottles Peppercorne
 56 7/8 Tobacco
 10 Enns
 25 g. Cups
 3 Tea Sets
 6 doz Common Sauces
 5 1/4 " Cups
 20 large blue Plates
 5 " S. Edged
 2 " " "
 94 Common Bowls
 42 " " "
 9 doz Vegetable dishes
 19 Tea Bt's
 14 " Twine
 58 " Y. H. Tea
 6 1/2 " Pepper
 4 1/2 " Indigo
 45 " Ginger
 18 " "
 1 B. B. Crist Sugar 238
 2 " rubs 492
 20 Barrels Whiskey
 10 Sums Sugar 90
 1 Keg Saltpetre 34
 7 " Scotch Snuff
 14 " Black d
 1 Chst Y. H. 42

20 Flasks
 3 Samps
 1 Cunt Stand
 21 wash basins
 18 W. Pitchers
 14 S. do
 13 S. do
 5 1/3 doz. blue Sauces
 5 9/12 " " Cups
 8 1/4 " W. Plates
 8 1/4 " small do
 1 1/2 doz small cages
 11 " " "
 22 dining plates
 2 ston Samps
 1 Bag all Spice
 part Bag of Corks
 60 chests Tea B. 25 n
 " Y. R. G. 64
 " " " " 30
 32 n Copper
 1 1/2 B. Markorel
 1 B. Brown Sugar 234
 1 Hogshead do 1119 1/2
 1 Keg ginger 45
 1 " E. Satts 28
 42 n Cinnamon
 2 Boxes Rasins
 2 Cadys of Tea 25

also the affidavit, which is as follows:

State of Illinois }
Cook County, Ill. }

William Graydon being duly sworn deposes and says that Augustus Miller and David R. Clements merchants & partners of Chicago trading and doing business under the name style and firm of Miller & Clements sometimes using the signature of "A. Miller & 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 and firm of Nelson & Graydon, in the sum of nine hundred and fourteen ⁰⁷/₁₀₀ dollars by virtue of a certain promissory note made signed and delivered to them by the said A. Miller & Clements on the 23rd 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 ⁰⁴/₁₀₀ dollars by virtue of another promissory note made signed and 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 ¹¹/₁₀₀ dollars with interest thereon since the

said notes severally became due, And
 the said William Graydon further states
 that the said defendants, Miller & Clements
 are about to depart from the State of
 Illinois with the intention of having
 their goods and chattels and effects removed
 therefrom as he is informed and verily
 believes, wherefore he prays that a
 writ of attachment may be issued by
 Wm. Graydon

Sworn before me this
 12th day of June 1848.
 J. Curtis Clerk.

The Clerk of the Cook Co. County Court
 will please issue upon examination of
 Affidavit &c

Morris Brown
 12 June 1848 J.P.

filed June 12th 1848 J. Curtis Clerk

also the bond, which is as follows:

also the security for costs, which reads as follows:

John G. Nelson & William Graydon	}	Cook County Court of October Term A.D. 1848
vs Augustus Miller & David R. Clements		Attachment.

I hereby enter myself security for costs in the above case and acknowledge myself held and firmly bound to pay all costs which may accrue to the defendants or opposite party or to any of the officers of this Court, pursuant to the statute of the State of Illinois; Dated this 12th day of June A.D. 1848

O. J. Rose.

filed June 12th 1848. J. Curtis clerk

Also, the deposition of Samuel Rattle
taken by consent of parties, which was
read as follows:

Cook County Court of Com. Pleas

Isaac Cook

vs.

John G. Nelson et al.

I know the plff
Cook and Graydon, of the firm of Nelson &
Graydon, knew them in the year 1848.

I knew there was an attachment
issued against goods of Miller & Clements
then claimed to be held by Jacob Miller.
The attachment was issued by Nelson &
Graydon. I was not here at the time ~~the~~
the attachment was issued but afterwards
I was here. I had a conversation after the
attachment was issued with Mr. Graydon
in the Sherman House at his room. He
said he had attached that property (which
was groceries & upon the Sangunash block)
Graydon said that he believed that Miller
& Clements were fraudulently disposing of
the property, and he or they, alluding to the
firm had attached it - did not mention
Cook or Beach's name as I recollect -
He said he had caused it to be attached
and the store then closed up - asked me
to go to Miller with him and see if I
could not get the matter closed up -
I was sworn in the trial of Jacob Miller

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vs Isaac Cook - The same goods were in ~~controversy~~ controversy in that suit, that were referred to in this conversation with Graydon - I saw Graydon in Ohio and he said he was coming up here to collect or secure his bill against Miller & Clements - A few days after the attachment was issued I came back to town and then had the conversation with Graydon of which I have spoken - I think it was in 1848, but the papers will show -

sworn to before me
this 19th day of June 1857.

S. Rattle

Walter Kimball Clerk Filed June 19. 1857. W. Kimball CLK

Also the deposition of Orr O. Rose, which was read as follows:

State of Illinois }
Cook County } p

Isaac Cook }
vs }
John G. Nelson & }
William Graydon }

Cook County Court of Appeals
Office of Master in Chancery,
Chicago, May 31th 1857

The deposition of Orr O. Rose taken before the undersigned Master in Chancery of Cook County, Illinois, at his office in the City of Chicago, on Saturday

the 30th day of May 1857 upon the interrogatories and cross interrogatories herein following propounded by the attorneys of the respective parties to the suit above entitled, the same taken by the stipulation of the said parties

Interrogatories administered to Orrin J. Rose by the attorneys of the respective parties produced and sworn on the part of the plaintiff in the above entitled cause

1st Int. What is your name & residence and how long have you resided there

Answer My name is Orrin J. Rose, resided in the City of Chicago and I have resided in said City since 1843

2^d Int - Do you know the parties plaintiff and defendant in this suit or either of them and how long have you known them or either and which.

Ans: I have known the plaintiff since 1843
I have known the defendant William

59
Graydon since 1847

3rd Int— Did you know the firm of Miller & Clements in the year 1848 and if so about what time in the year, what business were they engaged in & where?

Ans: I did know such a firm, it was during the whole year — They were merchants engaged in general merchandizing dry goods, boots and shoes, a general apartment. They were located on Lake street south side, between Franklin and Market streets

4th Int— Did you have any conversation with the said William Graydon about levying an attachment upon the goods in said store, if so state when that conversation took place, where and all that was said by him in detail

Ans: I did have a conversation with William Graydon on that subject — It was I think sometime in the year 1848, I think in the Fall, it was at the store of Rose & Rattler, the subject of the levy was spoken of more than once at our store — Graydon said that he believed the sale of the stock of goods by Miller & Clements to Jacob Miller was done for the purpose of

defrauding their creditors or preventing their creditors from collecting their debts out of the goods and that he meant to seize the goods — These conversations were before any levy was made.

5th Int — What did you understand as to whether or not said Graydon directed the levy to be made.

Ans: That was what I understood, that a levy was made on the goods of Miller & Clements by the Sheriff by direction of Graydon, after the sale to Jacob Miller.

6th Int. Who also claimed these goods at that time as you understood from what passed between you and Graydon

Interrogatory withdrawn by Pepp's attorney.

Ans: I do not know.

6th Int — What if anything was said by said Graydon as to any other person claiming these goods.

Ans: He said that Jacob Miller claimed the goods under an assumed purchase of Miller & Clements.

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Corp Interrogatory
1st X At what season of the year was this conversation held, which you refer to

Ans: I cannot remember distinctly - I think it was in the fall or winter of 1848.

2^d X State so far as you can the language used by Graydon in the conversation of which you have spoken

Ans: He said that he believed that the sale was made to prevent the New York creditors from making their claims that he believed it to be a fraud and that he meant to try the legality of it. He also spoke of the want of means of Jacob Miller to make such a purchase - He said Jacob Miller had been engaged in ~~the~~^a Livery stable here and failing in it and that he did not believe he had funds for such a purchase

3rd X Of Graydon spoke of directions as to the levy use so far as you can his language in speaking upon that subject.

Ans: He said that he believed the same to be a fraud, that he intended to try the legality and that he intended to levy on the goods -

62 4th X What makes you think the conversation
or conversations you have spoken of
were in the fall or winter of 1848

Ans^r I am not positive as to the month
not even of the year, I think it was
cold weather, I think it was late in the
fall, I will examine my books if it is
desired.

Direct resumed

7th Int - Did you have any conversation
with Graydon after the levy was made
and before he went away

Ans^r I did. He told me a levy had been
made, or that he had made a levy,
something to that effect.

5th X State what was said by Graydon
using his words so far as you can
about the levy

Ans^r He said that a levy had been made
or that he had made a levy. This was
about all that was said. I cannot
say which phrase he used. I cannot
give the exact language used by him,
nothing more than the substance.

Seen to and subscribed
before me this 30th day
of August 1857

L. C. P. Freer
Muster in chambers

O. J. Rose

Witness recalled June 14th 1857. by consent of parties.

The above named witness Oin J. Rose being recalled states that since his former examination he has examined a bond for costs, signed as security by him in the matter of a suit by attachment commenced in the Cook County Court of the October Term 1848 by John J. Nelson & William Graydon against Augustus Miller and David R. Clements and finds that he was mistaken as to the year 1848, when he had the conversation with William Graydon in regard to his intended levy upon the goods of said Miller & Clements. He states that he now remembers since his memory is refreshed by an examination of said bond for costs, that he held said conversation with Graydon early in June 1848.

This statement is made by the witness to correct the error in his answer to the 4th & Interrogatory.

Subscribed in presence
of the undersigned

L. C. Paine Freer

Master in Chancery
Cook County

O. J. Rose

Witness again called and examination continued.

64. 8th Int. by Pltff

Did you know John Beach during the year 1848, in what capacity was he acting, did you hear any conversation between him (Beach) and said Graydon touching the levy upon this property of said attachment, if so state fully all that occurred.

Ans: I did know John Beach during the year 1848, was well acquainted with him, he was acting in the capacity of Deputy Sheriff under Isaac Cook, the Plaintiff in this suit who was then Sheriff of this County. I did hear conversations between said Beach and said Graydon two or three times at our store about the time of the levy. Beach was there to converse with Graydon about the levy - I heard Graydon say he Beach had made the levy - and I heard Graydon say he had ordered a levy to be made - This is the substance of the conversation, I cannot remember the exact language - There was some talk about Graydon's giving an indemnifying Bond to the Sheriff, and Graydon asked me if I would sign a Bond - I hesitated about signing it, and so far as I know there was no Bond

Given
 subscribed and sworn
 before me

L. C. Saml Freer

Master in Chancery
 Cook County, Ill

O. J. Rose

I, L. C. Saml Freer, Master in Chancery of
 Cook County in the State of Illinois do
 hereby certify that the foregoing
 deposition was taken before me at
 my office in the City of Chicago upon
 the several interrogatories and
 cross interrogatories, therein propounded
 by the Attorneys of the respective
 parties, to be used by consent and
 stipulation of said parties on the trial
 of said cause on the part and behalf of
 said plaintiff subject to all legal
 exceptions

Masters fees \$5.00

L. C. B. Freer

Paid by Comptls

Opened & filed 18, June 1857. W. Kimball CLK

Also, the praecipe writ, declaration
 plea & notice in the case of Jacob
 Miller vs Isaac Cook which were
 each read in evidence.

Jacob Miller }
 vs }
 Isaac Cook } Trespass

The Clerk will please
 issue summons to the Coroner returnable
 to the next term, Plea Trespass
 Damage \$4000.

Ballingall & McShay
 for Peffs ~~Attys~~

State of Illinois }
 Cook County } p.

Jacob Miller being sworn
 says that the defendant in the above
 cause is the Sheriff of Cook County in
 the State of Illinois
 subscribed & sworn Jacob Miller
 this 14th August 1848.
 before me

James Curtiss Clerk
 & filed Aug. 14. 1848 James Curtiss clk

Summons:
 State of Illinois }
 Cook County } p.

The People of the State of
 Illinois to the Coroner of said County Greetings
 We command you that you summon Isaac
 Cook if he be found in your County
 personally to be and appear before the
 Cook County Court of said County on the
 first day of the next term thereof, to be

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holden at the Court house in the City of
Chicago in 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 have you then and there this writ
with an endorsement thereon in what
manner you will have executed the
same.

Witness the Honorable Hugh O. Dickey
Judge of our said Court and the seal
thereof at the City of Chicago in said
County this 14th day of August AD 1848

James Curtis
Clerk

Sent of
the Court,

Executed the within by reading the same to Isaac Cook Sheriff
in presence of Wm. Brown: fees 1.50
1 mile return 50
12 1/2
68 3/4

Chicago August 15. 1848
paid the fees 68 3/4 T. Kelly
Clerk Cook County

Declaration

of the October Term of the
Cook County Court AD 1848

State of Illinois }
Cook County } ss

Jacob Miller }

vs

Isaac Cook }

Jacob Miller plaintiff
complains of Isaac Cook
Defendant in a plea of Trespass for that
the said Defendant on the twelfth day
of June in the year of our Lord one
thousand eight hundred and forty eight

with force and arms at the County
of Cook and State of Illinois seized
and took divers goods and chattels
to wit:

Ninety eight Pounds Allspice
Fourteen Pounds Twine
Four & three quarter Pounds of Wicking
Ten Gros of Corks
Twenty five Pounds Black Tea
One hundred & forty eight Pounds Green Tea
Forty one & a half pounds Indigo
Sixty four Pounds Ginger
Sixty pounds Pepper
Five hundred & ninety two pounds pulverized sugar
Two hundred & thirty eight pounds crushed Sugar
Forty pounds Coffee
One Barrell and a half Mackerel
One Barrell two hundred thirty four pounds Sugar
One hoghead eleven hundred & seventeen pounds sugar
~~Seventy~~ barrels eight hundred gallons Whiskey
ninety pounds loaf sugar
forty six pounds Ginger
thirty four pounds of Saltpetre
twenty eight pounds Epsom Salts
forty two pounds Cinnamon
seven pounds Scotch snuff
fourteen pounds black snuff
two boxes raisins
twenty six pounds tea
forty two pounds tea
one hundred & twenty nine pounds tea

three and a half thousand Agars
 five dozen bottles ink
 twenty eight pounds sulphur
 four hundred & sixty six pounds Havana Sugar
 sixty two brooms
 one Keg thirty eight pounds cloves
 fifty one and a half gallons Brandy
 seventeen and a half gallons Portwine
 seventeen gallons of Madeira wine
 fourteen gallons of whiskey
 twenty gallons Vinigar
 one box Medicines
 twenty three gallons gin
 thirteen gallons of pure spirits
 fourteen empty barrels
 nine Pancits
 sundry Tin measures
 one pair Counter scales
 one stove and pipe
 Ten ~~four~~ yards Broadcloth
 Ten yards Casimere
 six and three quarters dito
 three quarters of a yard dito
 twenty one yards Satinet
 Eighteen yards do
 One yard and a half Broadcloth
 twelve yards Broadcloth
 ten and a half "
 six and a half yds Pilot Cloth
 six and three quarter yds Broadcloth
 two yards Satinet
 fifteen and a half "

seventeen and three quarters yards Satinet
 nine and three quarters yards Satinet
 Eleven yards sheeps gray cloth
 twenty three and a quarter yds Tweed Cloth
 seventeen & three quarters yds Broadcloth
 three hundred & ninety five $\frac{1}{2}$ yards Calicos
 three yards Ticking
 forty two yards Cambric
 fifteen yards Gingham
 twenty six yards Woolz
 twenty five yards white flannel
 Eight yards read "
 Eight yards cotton "
 twelve pounds three quarters Cinnamon
 seventy five pounds Pepper
 forty pounds Allspice
 four and a half pound soap
 six dozen Mustard
 fourteen pounds sperm Candles
 five boxes
 fifty five dozen and a half Chewing Tobacco
 four and a half pounds nutmegs
 twenty eight looking glasses
 one looking glass frame
 thirty two glass lamps
 thirty eight Castor bottles
 twenty Spice Jars
 seven lamp chimneys
 forty seven tumblers
 sixty eight tumblers
 four bottles pepper sauce
 twenty flasks

four hundred & ~~twenty~~^{ninety} five pounds of tobacco
 one brittania Caster
 eight basins & ewers
 forty nine pitchers
 twelve basins
 twenty three gilt Cups
 three tea sets
 six dozen cups & saucers
 five and a quarter dozen saucers
 eleven dozen cups and saucers
 three hundred & thirty two plates
 three guarded lanterns
 one hundred & forty nine bolts
 eighty four deep dishes
 twenty two platters
 nineteen tea pots
 five pair woolen pantaloons
 three and a half dozen suspenders
 & twenty four pair do
 five gross coat buttons
 fourteen silk pocket handkerchiefs
 twenty one cotton do
 fifteen Gingham Cicarats
 nineteen pair Cotton hose
 two gross buttons
 ten woolen Comforters
 ninety pounds Cotton yarn
 forty seven yards Bagging
 seventy two yards Canvas
 fifty caps
 seventeen Seghim Hats
 fifty nine palmleaf hats

four pair Moccasins
 fourteen yards Sheetin
 sixty four slates
 twenty cases soap
 Eight hundred pencils
 nine dozen and three quarter Bluckin
 forty three shoe brushes
 one dozen Curicoves
 four Gancits
 six pair black skin gloves
 eleven and a half dozen spools thread
 three pounds cotton thread
 One and a half pounds cotton thread
 One bunch linen thread
 five packs pins
 fifty two pocket knives
 forty one pounds Chocolate
 One hundred & thirty five pounds Starch
 two hanging lamps
 two chimneys
 six sugar bowls
 fourteen p. Crockery
 three hams
 eight empty barrels
 box garden seeds
 two Counter tables
 Eight Tinsers
 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 ~~XXXXXXXXXX~~ Thousand

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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 the said defendant
on the twelfth day of June in 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 lying
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 at the
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, equality, description and
value as the said goods and chattels
in the first Count of this declaration
mentioned then and there found and

12628-27

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 & enjoyment of the said last mentioned store and kept and continued him so ejected and expelled for a long space of time to wit from thence hitherto whereby, the said plaintiff for and during all that time lost and was deprived of the use and benefit of his said last mentioned store to wit at the County aforesaid to the damage of said plaintiff of ~~the~~ ~~xxxxx~~ ~~xxx~~ four thousand dollars

Ballingall & McSherry
Attys for Plaintiff

filed Sept. 22. 1848

J. Curtis CLK

Plea & Notice

Isaac Cook

advs

Jacob Miller

Trespass

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 complained and of this he puts himself upon the country &c and the plaintiff doth the like By Morris Brown & Jack by Ballingall Attys his Attorneys

- 1 ~~And~~ The plff in this suit will take notice that on the trial of this cause he will give in evidence and insist thereon in bar of this action that at the said time when &c he was the acting Sheriff of said County of Cook and from thence until the commencement of this suit &c continued to be the acting Sheriff of said County and at the time and place in the alleged declaration mentioned he did by John Beach his lawfully authorized Deputy levy upon seize and take the goods and 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 & David R. Clements found in their store in Chicago in their possession and 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 dept as such Sheriff to attach so much of the Estate real or personal of Augustus Miller and David R. Clements aforesaid which were to be found in said County as should be of value sufficient to satisfy the debt and costs in the recital of said writ mentioned and said Dept as such Sheriff and by virtue of said writ by his said Deputy levied upon and took the said goods and chattels mentioned in said declaration to wit in said schedule hereto annexed as the property of said Augustus Miller and David R. Clements found in their possession and the same were then and there the property of said Augustus Miller and David R. Clements and liable to be so seized and taken and were not the property of said plaintiff as is supposed by the said declaration

2^d The defendant will further give in Evidence and insist thereon in his

defense that the said defendant
 before at the time and since the
 alleged taking of said goods and
 chattels mentioned he was Sheriff of
 said Cook County and that a Henry
 Yelverton, Robert Yelverton and George
 A. Yelverton at the June term of the
 year 1846 obtained a judgment against
 the said Augustus Miller and David R.
 Clements for the sum of \$1309.92 cents
 damages and \$5.68 costs as taxed
 by the Clerk of said Court upon which
 judgment and execution was duly
 issued and placed in the Deft's hands
 to be executed as Sheriff of said
 County, he then and there being Sheriff
 of said County by which writ or
 execution he was commanded that of
 the goods and chattels lands tenements
 and real Estate of said Miller and
 Clements which were to be found in
 said County he make the said damages
 and costs as by said execution when
 produced will more fully show and
 that by virtue of said execution the
 Deft as such Sheriff by his Deputy
 John Beach levied upon and took in
 custody the goods and chattels in
 said declaration mentioned at the
 said term whereas the property of
 said Miller & Clements which was
 found in their possession in said County

to pay and satisfy said judgment and execution as he lawfully might and he will further prove that said goods and chattels at the said time when the levy was made were the property of said Miller & Clements and not the property of the said plaintiff

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

Morris Brown & Peck
for Deft

The plaintiff excepts to the third

Notice = It is general, indefinite, it is included in the 1st and 2d notices

Ballingall for Deft

Filed May 18. 1844. M. Kimball
Clerk

The plaintiff then introduced the record of the verdict in the suit of Jacob Miller vs Isaac Cook, the motion for new trial, the judgment, the Execution issued on said judgment, the endorsements and return upon said Execution and the receipts thereon which were severally read in evidence:

Jacob Miller

vs

Isaac Cook

Now comes the said defendant and enters his motion for a new trial herein 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 defendant 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 Yelverton and Fellows against Miller & Clements under the notice filed with the plea herein,

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 appeared 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.P. Brown & Peck
 for Deft

"filed Feby 27th 1850 W. Kimball Clerk

Verdict Jacob Miller }
 " } Jurors
 Isaac Cook }

This day again were the said parties
 by their attorneys and the Jury heretofore empanelled herein
 also come into Court, and say in the Jury find the sum for
 the plaintiff and of 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 herein

Judgment Jacob Miller }
 " } Jurors
 Isaac Cook }

May. 25, 1850

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 record 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 apportioned together with his costs and charges by him in the behalf expended and have execution therefor.

Whereupon the said defendant enters his exceptions and brings an appeal to the Supreme Court of this State of Illinois, which is allowed upon the said defendant's filing Bond with the usual conditions in the penal sum of four thousand dollars with Philander Cady as security in five days from the date hereof.

Giles Spring

State of Illinois }
 County of Cook } P

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 tenements goods and chattels of Isaac Cook defendant in your County you cause to be made the sum of Three Thousand Two hundred and 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 $\frac{3}{4}$ cents which was adjudged to the said plaintiff for his costs and charges in that behalf expended; whereof 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 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 AD 1850.

Walter Kimball Clerk

By virtue of this writ of Fi fa 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 Townships
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 sublots three (3) four
(4) five (5) six (6) and seven (7) in
Lots one (1) and four (4) in Block
twenty ~~XXXXX~~^{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 Fort Dearborn Addition to
Chicago, September 30th 1850.

N. Berdel, Coroner
C. C. Illinois

Rec'd \$29.18 - costs on the within Execution

N. Berdel

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I return this execution satisfied as to the
Recd of the Plaintiffs Attorney and costs in full
N. Berdel
Cook County Ill.
Chicago October 1st 1856

Cook County Court of Common Pleas
Ab Pl Pa No 2046 Case No: 2004

See Book D 267

Date 11. Sep. 1856 Return 11th Dec.

Jacob Miller

vs
Isaac Cook

Damages \$ 3236. 23

Plaintiffs Cost 21. 23 ³/₄

Defendants Cost 7. 85

\$ 3265. 31 ³/₄

The Sheriff will collect interest from 13th Feby
1856. -

Recd Sept. 30th at 30'clock P. M.

N. Berdel

Recd of Isaac Cook The sum of \$ 3359. ⁷³/₁₀₀ dollars
in full of damages in this case, the costs not
yet paid Oct. 1, 1856

P. N. Arnold

Atty for Deff

Recd Twenty three ⁸/₁₀₀ dollars costs in full
Apr 17, 1857

W. Kimball

filed Dec. 4, 1857. W. Kimball Clk

The plaintiff thereupon rested and the defendants to sustain the issue on their part introduced in evidence -

The record of the Court containing the entry of the Judgment in the case of Nelson & Graydon on the 7th day of May AD 1849 quashing the said writ of attachment which was read in evidence as follows:

John G. Nelson & William Graydon } May 12 1849
" } attache
Augustus Miller & David R. Clements }

This day came the said plaintiffs by Morris & Brown their attorney and the said defendants by Gardner & Ballingale their Attorneys also come and issue being joined herein let a Jury come and thereupon come the Jurors of a Jury of good and lawful men to-wit

John A. Oliver	S. H. Slade	James Lusk
John L. Hibbard	Francis Shandy	Henry Reynolds
J. H. Sullivan	A. Barlow	James Campbell
Peter Ellis	John McFall	William Brown

who being duly elected tried and sworn well and truly to try the issues joined as aforesaid after hearing the evidence adduced, arguments of Counsel and instructions of the Court retire under charge of an Officer of the Court to consider of their verdict and afterwards come into Court and say, we the Jury find the issue for the defendants.

And thereupon the said plaintiffs enter their motion for a new trial herein.

May 28/1849

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

This day again come the said parties by their Attorney and after argument heard on the said plaintiffs motion for a new trial herein the Court being now fully advised in the premises doth order that the said motion be overruled. Therefore it is considered that the said defendants recover of the said plaintiffs their costs and charges in this behalf expended and have execution therefor.

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Also The praecipe summons, declaration
plea and judgment in the case of
Henry Yelverton et al. vs Miller &
Clements, which were severally
read in evidence as follows:

State of Illinois }
Cook County } p

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 Yelverton Robert Yelverton &
George A. Fellows in a plea of Trespass
on the case on promises, to the damage
of the said plaintiff as they say in the sum

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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 Saml Howard Clerk of our said Court and the seat thereof at Chicago in said County this 9th day of May AD 1848

Saml Howard Clerk

Seal of
the Court

Cook Circuit Court
June Term 1848

Henry Yelverton, Robert Yelverton
and Geo. A. Fellows

vs
Miller & Clements

Sum. in apt.

Executed by reading the within
in the presence of the within named

Augustus Miller May the 9th 1848

1848
25 in \$1.00

2 miles " - 12 1/2

Return " - 12 1/2
\$1.25

J. Cook Shff

By John Beach
Deputy

Declaration.

State of Illinois }
Cook County } ss Cook Circuit Court.
June Term AD 1848

Henry Gelverton, Robert Gelverton, and George A. Fellows merchants trading under the name and style of Gelvertons & Fellows plaintiffs in this suit complain of Augustus Miller and David R. Clements merchants trading under the name and style of A. Miller & Clements defendants in a plea of trespass on the case upon promises:

For that whereas the said defendants at New York town, at the County of Cook and State of Illinois on the twentieth day of September AD. 1847 by their note under their hand of that date for value received promised the plaintiffs to pay to their order the sum of six hundred and forty five dollars and twenty nine cents (\$645.²⁹/₁₀₀) at their office in New York five months after date which period has long been elapsed.

And whereas also the said defendants at New York town at the County of Cook in the State aforesaid on the twentieth day of September AD 1847 by their certain other note under their hand of that date for value received promised the plaintiffs to pay to their order ~~six months after date~~ six hundred

and forty five Dollars and twenty nine cents at their office in New York seven months after date which period has long elapsed.

Yet though often requested the said dependants have never paid the said sums or either of them or any part thereof but wholly refuse and neglect so to do to the damage of said Plaintiff of two thousand dollars and therefore they bring suit by

Cross their Atty

Copy of Notes

(\$645. $\frac{29}{100}$)

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 Yelverton & Fellows

Six hundred forty five $\frac{29}{100}$ Dollars at their office in New York,
value received

(Signed) A. Miller Clements

(\$645. $\frac{29}{100}$)

New 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 $\frac{29}{100}$ Dollars at their office in New York
value received

(Signed) A. Miller Clements

filed May 11, 1848
Saml. Hoard CLK.

Harry Yelverton Robert Yelverton
George A. Yelverton

Augustus Miller r.
David R. Clements

assumpsit

This day came the said plaintiffs by R. V. M. Croes their attorney and the said defendants being solemnly demanded come not nor any one for them but herein fail and make default which is ordered to be entered of record. Therefore the said plaintiffs ought to recover of the said defendants their damages herein sustained on occasion of the premises 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 plaintiff 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 they have execution therefor.

The defendants then offered in evidence & read the execution issued in the Cause of Yelverton et al. vs Miller & Clements with the jury endorsed thereon and then offered to read the Sheriffs return as the same was at first made & as the same stood when the cause was tried before the reading of which return was objected to by the plaintiff & the objection being overruled by the Court the plaintiff then & there excepted.

The original return having been torn off from the execution the return hereinafter set forth was admitted to be a Copy of said return by the plffs Counsel & was then read to the jury, as follows:

State of Illinois }
County of Cook } p.

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 Thirteen hundred and nine
Dollars and ninety two cents, which Henry
Yelverton Robert Yelverton and George
H. Fellows 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

inst. recovered against the said
 defendants and which by the said
 Court was adjudged to the said
 Plaintiffs for their damages

And also, the further sum of Five
 Dollars and sixty eight cents, which
 were adjudged to the said Plaintiffs
 for their costs and charges in that
 behalf expended, whereof 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 endorse-
 ment 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

Saml. Hoard
 Clerk

By virtue of this writ, and by the direction
 of the plaintiffs attorney, I levied the
 same upon certain goods and chattels of
 the defendants which had been previously
 taken by me on a writ of attachment
 issued from the Cook County Court on the 12th

day of June 4th 1848, in favor of John G. Nelson and William Graydon against the estate, real or personal, of the said defendants Miller & Clements, and executed on the same day, which property attached and levied upon is more fully described by schedule hereto annexed, which levy is subject to said attachment, and I herewith return this writ and schedule. The property not sold, for the reason that said attachment 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 have levied upon the following property subject to attachment, issued from the office of the Clerk of the Cork County Court dated June 12th 1848 in favor of John Nelson and William Graydon and against Augustus Miller and David R. Clements (to-wit:) all the goods and store which has been occupied by Miller & Clements as will appear from the within schedule June 13th 1848.

D. Cook Sheriff

By John Beach Deputy

Invoice of Miller & Clements' Goods taken by O. Beach. Sheriff

1 piece Black Cloth	10 yds	1 piece Tickng	3
1 " " Casimere	10	2 " Cambric	52 1/2
1 " Satinet	21	1 " Plat.	15
1 " Black Casimere	6 11 3/4	1 " Wooley	26
1 " " "	1 1/2	1 " Flanel	25
1 " blue Broadcloth	12	1 " red "	08
1 " Satinet	18	1 " Cotton "	8
1 " Beaver	10 1/4	5 pair Pants	
1 " "	6 3/4	3 1/2 dozen web suspenders	
1 " Casimere	3/4	14 worsteds	
2 " "	2	14 silk kerchiefs	
1 " Pilot	6 1/2	6 cotton do	
1 " Satinet	15 1/2	15 " "	
1 " "	17 3/4	15 Gingham Cravats	
1 " S. Gray	11	19 pair Cotton hose	
1 " Brown	23 1/4	5 gross C. Buttons	
1 " Satinet	9 3/4	2 p. P. do	
1 " Black B. Cloth	17 3/4	10 Comforters	
3 " Calicoes	110 1/4	18 Bunches Cotton yarn	
1 " "	34 1/2	1 piece Bagging 4 Tyds	
1 " "	27	1 Canvas 72 "	
1 " "	27	50 Caps	
1 " "	14 1/2	66 C. Hats	
1 " "	20	4 Pairs Moccasins	
1 " "	27	1 piece Sheetng 18 yds	
1 " "	30 3/4	35 S. S. slates	
1 " "	28 1/4	29 S. do	
1 " "	16	1 1/2 doz. S. Soap	

95-

1 piece Calicre	16	800 S. pencils
3 " "	49	9 7/12 doz. Blacking
1 1/4 lb linen thread		3 7/12 " S. Brushes
5 packages pins		12 Army Combs
1 dozen pen knives		4 Facets
2 1/2 " " "		6 pairs B. Gloves
4 1/2 lb Chocolate		11 1/2 doz. Spools
3 1/2 boxes Starch		3 do cotton thread
12 3/4 pounds Annam		1 1/2 do do
3 1/2 boxes pepper		18 W. Pitchers
12 " allspice		14 L. " do
point box a Soap		13 S. " "
10 doz - do		3 ten sets
3 boxes Mustard		6 dozen common Sancers
point box sperm Candles		5 1/2 " " Cups
five Candle boxes		5 1/3 " blue sancers
fifty five and a half doz chem. Tobacco		5 9/12 " " Cups
four and a half pounds minting		8 1/4 " W. Plates
twenty nine looking glasses		8 1/4 " small "
thirty two lamps		20 L. blue "
thirty eight pepper Asters		5 " " edged "
twenty candy Bars		2 " " " "
seven lamp chimneys		1 1/2 " " small
nine x 7 1/2 doz glasses		94 common Bowls
four bottles pepper sauce		42 " "
twenty flasks		11 " "
three lamps		9 dozen vegetable dishes
five hundred & sixty seven		20 dining plates
pounds tobacco		19 tea pots
One Crut stand		2 stove lamps
21 wash basins		1 bag all spice
10 Covers		14 pounds Wine

Eight Terines		part of a bag Corks	
23 S. Cups		" " " chest blacktea	
part chest of y. m. g. Tea ⁵³			25 pounds
" sack pepper 60 lbs		" " " W. K. G. do 60 "	
1 keg Indigo 41 1/2		" " " " " 30 "	
40 1/2 pounds do		1 box B. Sug ^r	466 "
1 keg Ginger 46 "		61 brooms	
part " " 18 "		pt ^r quarter Cask brandy 41 1/2 gals	
1 bal crushed Sugar 238,		" do do P. Wine 17 1/2,	
2 do put ^d do 492		" do do M. do 15,	
part of a B B L Coffee 32		" do do Whiskey 14,	
1 1/2 B B L Mackerels -		" do do Vinegar 20	
1 B B. Brown Sugar 234		" do do Gin 20	
1 14 14 ² do do 1117		" do do pure sp ^t 13	
20 B B L Whiskey		1 box medicine	
10 Soaves W. Sug ^r 90		12 Empty B B L	
1 Keg Ginger 46		9 facets	
1 dr Salt petre 34		1 Counter Scale	
1 do E. Salts 28		2 Tunnels & measures	
42 nd Cinnamon 20		1 Oil Can	
77 Scotch rumff		1 Store and pipe	
14 Black "		6 Sug ^r Bowls	
3 boxes raisins		3 B. Hams	
2 Cadys Tea - 26 ^{as}		8 Empty Sug ^r B B L	
1 chest y. H. do 42 "		part box Garden seeds	
2 do do do 127 ³		1 Building or store	
13 boxes Cigars		which has been	
5 doz Ink		occupied by Miller &	
part Keg Sulph.		Clements	
1 Keg Cloves			

The defendants then introduced as a witness L. D. Hoard, who being duly sworn says:

That he was Clerk of the Circuit Court of Cook County from the year 1848 to 1856 - He was confident that the Execution in the case of Yelverton et al vs Miller & Clements was returned into the Circuit Court & was among the files there and that he brought it into the Common Pleas Court some years ago upon the trial of some cause in that Court -

It was not the practice at that time to mark final process filed, but one in a hundred is so marked - I do not know whether the costs were charged to the Sheriff or not - It was usual to charge them upon a return of the Execution - I have examined one account book and the other I cannot find - We enter returns when made in the return books or within a few weeks after the Executions came to our hands, There was no return entered in the return Book until about two weeks ago -

Witness left the stand and after making an examination of books and papers states that he now has no impression as to whether the Execution was among the papers in the Clerks office or not, at first he

thought it was, but now cannot say that he has any impression on the subject - or that he ever saw it before except in this Court. That it was always the practice while he was Clerk to enter the returns on Executions within a week or two at farthest after execution returned on the exⁿ docket, that from the fact of no return having been entered on the docket, he is now satisfied the writ never was returned. It was then admitted by the plaintiffs attorney, that the amended return to the Execution of Jelverton & Fellows vs Miller & Clements was made by the Sheriff about one month before this trial without leave of the Court -

The defendants then offered in evidence an affidavit of the plaintiff, presented to the Judge of the Circuit Court in support of a motion to amend the return which motion was made some weeks previous to this trial, which was objected to by plaintiff & the objection being overruled by the Court the plaintiff then and there excepted.

The affidavit was then read in evidence as follows:

Affidavit:

In the Cook Circuit Court

Henry Yelverton, Robert
Yelverton & George A. Fellows

vs

Augustus Miller & David
R. Clements

Judgt of same
Term 1848.

On motion to
correct return
to fi fa:

State of Illinois

County of Cook

J. Isaac

Cook being duly sworn doth depose that
he was during the year 1848 Sheriff of
said County, that as such Sheriff there
came into his hands to be executed
on the 13th day of June AD 1848 an
Execution issued in the above entitled
Cause dated that day that by direction
of the plaintiffs attorney therein
H. V. M. Croft he levied said execution
upon a quantity of personal property
as specified in the Schedule attached
to said fi fa and now on file

that said levy was made subject
to the lien of an attachment writ
as specified in the levy endorsed
on said writ that after said levy
had been made the said H. V. M. Croft
the attorney for said plffs and Buckner
S. Morris one of the attorneys for
the attaching creditors directed this
deponents deputy John Beach
to sell said property under said
Execution and hold the proceeds

of the sales subject to the order of the Court as to the disposition and application ~~of the~~ ~~the~~ to be made thereof — That accordingly on the 30th day of December 1848 said property was sold by said John Beach and he realized from said sale the sum of \$949.83/100 which sum after deducting the taxed costs of \$5.68³/₄ cents ~~the~~ Sheriff's fees \$29.48²/₂ and Clerk hire in keeping goods \$184.63/100 in all \$169.79/100 is yet in the hands of the Deponent not applied in fact anywhere —

That said attachment writ was quashed and said plaintiffs have disavowed the direction to levy made by their agent said Crews. And said money is still in affiant's hands subject as aforesaid.

This deponent thereupon asks for leave to amend his return according to the facts of the case

Sworn to & subscribed
before me this 28th day of
March 1857

J. Cook

John G. Sumner
Notary Public

The plaintiffs then introduced B. S. Morris, who being sworn says that he had seen the attachment writ in the

case of Nelson & Graydon vs Miller &
 Clements, that John G. Brown and
 himself were the Attorneys who
 brought the suit, and that execution
 had been issued upon a judgment
 obtained by Yelverton Fellows et al
 vs Miller & Clements, it was in the
 Sheriff's hands, Croup was the Attorney
 of the execution creditors - He
 spoke to me about a sale of the
 property levied on under the
 attachment and execution and said
 they were going to have a sale of the
 property; I said Beach and Beach
 said the goods ought to be disposed of
 as they were perishable and liable to
 be pilfered and stolen. I told him
 he must not sell unless the money
 was returned into Court subject to
 its order. - I told him if he sold to
 keep the money and bring it into
 Court and that if this was agreed
 to he might make the sale; I learnt
 afterwards that the sale had been
 made - I consented to a sale
 being made upon the terms that the
 money should not be paid over to
 either party but retained by the
 Sheriff and paid into Court to
 abide the order of the Court.
 Croup & I by depts.

The only terms upon

which I consented to sell were that the money should be brought into Court to abide its order and not to be paid over until our suit was disposed of. I knew nothing about the levy of the attachment or about any special directions given to the Sheriff about levy. I do not think that the dependants knew anything about the sale of the goods. They resided in New York were not here at the time of sale, we had no instructions from them about sale. Croes was the person insisting on the sale, Beach died a year or two after the sale of the property at 1850.

I know that if Beach sold under the Execution he would return the proceeds as he said, ^{he would} into Court to abide its order.

The plaintiff then offered to read the whole return of the Sheriff to the writ as the return now stands, the deft. having read the levy only, as part of the evidence introduced by the deft, objected to and sustained -

The plaintiff then offered in evidence the return of the Sheriff upon the execution in favor of Yelverton et al vs Miller et al, as the same is now filed of record to

the admission of which the Defts objected and the objection being overruled by the Court the defendants then and there excepted, ~~the~~
~~The return now on file to the writ~~
~~was then read in evidence as follows:~~
 On further ex^{ts} witness said Croes claimed he was entitled to the goods & I claimed I was. I told him I did not want to be in their way that they could sell under the execution but I did not want the Sheriff to pay the money over and I knew Beach would not do so if he said so.

The return now on file to the writ was then read in evidence as follows:

By virtue of this writ ex^{ts} 4972 and by the direction of the Defts Attorney I levied the same upon certain goods and chattels as the property of the defendants therein, which had been previously taken by me on a writ of attachment issued from the Cook County Court on the 12th day of June ex^{ts} 1848 in favor of John G. Nelson and William Graydon ~~against~~ against the real and personal estate of the said Defts Miller & Clements and executed on the same day - which property attached and levied upon is more fully described by a

schedule hereto annexed and which
 levy is subject to said attachment -
 and I return this writ that by and
 with the advice and consent as well
 of the Plaintiffs in the said attachment
 writ as of the plaintiffs in said
 execution, I proceeded on the 30th
 day of December 1848 to sell said
 property with the understanding
 between them that the proceeds of
 such sale should not be paid over
 to either of them but brought into
 Court to abide the order of the Court
 in the premises, and that having
 duly advertised such sale I proceeded
 on the said 30th day of December 1848
 at the store of Millwrights
 in the City of Chicago between the hours
 of 10 A.M. and sundown of the same
 day to sell said property at public
 auction to the highest bidder and
 that thereupon J. D. Donoghue and
 others bid therefor in separate parcels
 the sum of \$946.⁸³/₁₀₀ and after
 deducting Sheriffs fees of \$29.⁴⁸/₁₀₀
 and expenses in keeping goods \$134.⁶³/₁₀₀
 in all \$64.11 the proceeds of said
 sale 785.⁷⁴/₁₀₀ I now have in Court to
 abide the order of the Court.

J. Cook Sheriff

Dec. 30th 1848.

The plaintiff then introduced as a witness

William T. Burgess

who being sworn said that he came into the case as attorney since the former judge was reversed by the Supreme Court; upon examining the case I found the execution above spoken of and deemed it necessary to amend the return to correspond with what I supposed were the facts. I found the execution among the papers in this case and supposed it had been returned into Court by the Sheriff; under this impression I made the motion to amend the return in the Circuit Court and drew up the affidavit of work heretofore introduced in evidence and presented the same to the Judge of the Circuit Court; I drew up the affidavit under the impression that the execution had been returned, Cook swore to it, I afterwards saw that the writ did not appear to be filed, there was no endorsement on it, I then withdrew the motion to amend and the affidavit; the old return was torn off from the writ and the new one annexed about a month ago. I also examined the Clerk's office and found no entries there

on the Execution docket or elsewhere showing that it had been returned.

It is admitted by the Attorneys for Plaintiffs and defendants that the money received on the sale of the goods is in the hands of the Sheriff and always has been.

The Plaintiff here offered the following notice:

To Messrs Nelson & Graydon
Gents

You are hereby notified that I have in my hands subject to the order of the Court the moneys by me made upon the sale of the property levied upon under an attachment issued at your suit against Miller & Clements from the Cook County Court on the 12th day of June 1848, and under an execution issued from the Cook Circuit Court in favor of Yelverton & Fellows against the same defendants, dated the thirteenth day of June 1848 and such application thereof can be made as you may be advised to require

Yours &c
Isaac Cook

in evidence & to prove its service upon the Attys of Defts - its service was admitted as being made to day but the

deft objected to its introduction as evidence & the plffs then withdrew it -

This was all the evidence introduced in the cause either on the part of the plaintiff or defendants

The plaintiff then asked the Court to give to the jury the following instructions which were given as follows:

1 For the plaintiff -

The Court is requested to instruct the Jury -

1 That if they believe from the evidence in this cause that the defendants sued out a writ of attachment from the Look County Court directed to the Sheriff of Look County and that the plaintiff on this writ was at the time the Sheriff of said County and that the defendants caused the said Look by himself or his deputies to levy upon and take under said writ goods and chattels described in the return to that writ the said Nelson & Graydon or either of them at the time representing them to be the goods of said Miller & Clements and directing a levy to be made thereon then the law implies an agreement on the part of said Nelson & Graydon

Given

with the said Cook to indemnify him against any damages he might suffer by reason of such levy — And if the Jury believe from the Evidence that Jacob Miller afterwards recovered from the said Isaac Cook damages for having so made such a levy then the said Cook is entitled to recover in this case the amount paid by said Cook to satisfy said judgment and interest from the time of payment to the present —

- 2 That if the Jury believe from the Evidence that the sale of the goods in question was made under the execution with the understanding between the plaintiff and the attorneys of the defendants that the proceeds should be held to apply on the attachment of the defendants on the execution of Yelverton & Fellows as the Court might direct and not to be paid over to either party until the attachment suit was disposed of then unless they also believe from the Evidence that said Cook did in fact pay over the money to said Yelverton & Fellows upon said attachment suit before the same was disposed of he was not guilty

Given

of any breach of trust towards said Nelson & Graydon and is entitled to recover against them such damages as he may have sustained and proved to the Jury.

- 3 That if the said Cook still has the said money in his hands and it is applied it is the province of the Jury if requested by the said Nelson & Graydon to apply that money by way of deduction from the amount paid by said Cook to said Jacob Miller - the said Cook expressing his willingness that such discount should be made

Given

- 4 That in order to charge said Cook with a conversion of the property so as to take away his right of recovery it should appear to the Jury that return of Deputy Beach was in fact made before the disposal of the attachment suit - That if it was made after that time then that it is of no consequence to the defendants if the Jury believe the sale was made with the understanding between the Sheriff or his Deputy and the Attorneys of the defendants that the money from the sale should be paid to the party who in the end should be entitled to it & they

Given

will find for the plaintiff

Given

- 5 That the return of the Sheriff to the Yelverton & Pellows Execution is in the nature of an admission by the Sheriff - & the action not being on that return - the same is open to an Explanation - and the real facts of the case may be shown - viz. that the sale was made with the consent of the said Nelson & Graydon either through their Attorney or by themselves & that the money over was not paid over to either party, if the Jury believe those facts proved by the evidence.

to the giving of each & every one of which the defendants then and there excepted -

(The defendants then asked the Court to give to the Jury the following instructions which were refused by the Court)

- 3rd If the Jury shall believe from the Evidence that the plaintiff made a sale in the manner set forth in the return upon the Execution as it was before it was amended such sale is such an act as will deprive the plaintiff of his right to recover against the

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dependants unless the Jury shall
further believe that such sale was
made by the assent of the dependants.

7th That the statement in the amended
return that by and with the advice
and consent of the plaintiffs in
said attachment suit the officers
proceeded to sell under an order
standing on the part of the plaintiffs
in the attachment suit, that the
proceeds of the sale should be
brought into Court is not evidence
of any such advice consent or
understanding on the part of the
plaintiffs

to which refusal of the Court to give
said instructions the dependants then
and there, excepted

The defendants then asked the Court to give the following instructions which were severally given by the Court as follows:

2^d That if the Jury should believe from the evidence that Morris as the Attorney of the defendants consented to the sale of the property attached upon condition that the money arising therefrom should be brought into Court and remain subject to its order and if the Jury shall believe that a sale was made and the proceeds applied on the execution then the plaintiff cannot insist upon such consent as an excuse for the sale then made

Given

3rd If the Jury shall believe from the evidence that the plaintiff made a sale in the manner set forth in the return upon the execution as it was before it was amended such sale is such an act as will deprive the plaintiff of his right to recover against the defendants unless the Jury shall further believe that such sale was made by the agent of the defendants or their Attorneys

Given as amended

Given

4th If the Jury shall believe from the evidence that the execution of Yelverton & Fellows was returned to the Clerks Office from which it issued so that it came into the custody and control of the Clerk before the amended return was made, then the Jury will disregard the amended return and the plaintiff is bound by the return as it stood before the amended return was made.

Given

5th The Jury must be satisfied from the evidence that the recovery in the suit of Jacob Miller vs Deft was no other cause of action than for the levy, seizure and attachment in the declaration mentioned.

Given

6th If the Jury shall believe from the evidence that any portion of the sum recovered against Deft in the suit of Jacob Miller vs him was by reason of the Defts attempting to justify the levy under the execution of Yelverton & Fellows, then such sum as was recovered by reason of the Defts attempting to justify under such exⁿ cannot be recovered of the Defts in this case.

to the giving of each and every one of which instructions the plaintiff then and there excepted.

The Court then gave the Jury the following instruction as amended by the Court

3rd

Given as amended

Of the Jury shall believe from the evidence that the plaintiff made a sale in the manner set forth in the return upon the execution as it was before it was amended such sale is such an act as will deprive the plaintiff of his right to recover against the defendants unless the Jury shall further believe that such sale was made by the agent of the defendants or their attorneys

to the giving of which instruction the defendants then and there excepted.

The Jury then retired to consider of their verdict & afterwards came into Court and rendered the following verdict

The defendants then filed the following motion for a new trial ::

Cook County Court of
Common Pleas
John G. Nelson and
William Graydon
advs
Isaac Cook

And now come
the dependants by Williams & Woodbridge
their Attorneys and move the Court
for a new trial in this Cause and
assign the following reasons
first - That Court Erred in admitting
testimony on the part of the plaintiff
second - The Court Erred in excluding
the testimony on the part of the defendants
third - The Court Erred in giving the
instructions on the part of the plaintiff
fourth - The Court Erred in refusing
the instructions asked for by the
dependants, and in modifying

their instructions, & in
giving the defendants instructions
as modified by the Court -
fifth - The verdict is against
the Law

sixth - The verdict is against
the evidence -

Beckwith &
Williams & Woodbridge
for Depts.

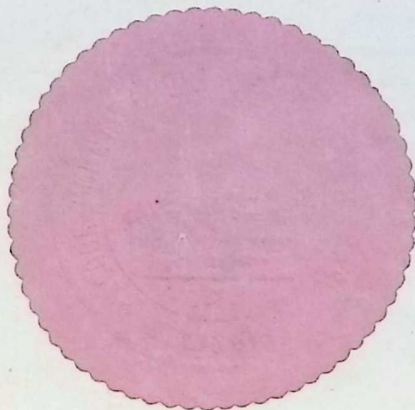
Filed June 26. 1857
W. Kimball
CLK

which motion was overruled by the
Court to which decision of the Court
in overruling said motion for a new trial
the defendants then and there excepted
& prayed the Court to sign and seal this
their Bill of Exceptions, which is done
July 9th 1857 John M. Wilson (Seal)

Bill of Exceptions
Filed July 9th 1857
W. Kimball Clerk

State of Illinois
Cook County ss.

I Walter Kimball
Clerk of the Cook County Court of Common
Pleas in and for the County and State aforesaid
do hereby certify that the foregoing is a full
true and correct Transcript of the files and
records in the case of Isaac Cook plaintiff
and Nelson & Graydon defendants in the
same now appear on file in my Office



Witness my hand & the Seal
of said Court at Chicago this
21st day of September
A.D. 1857 Walter Kimball
Clerk

Let a supersedeas issue with Charles
R. Markweather surety. Penalty of the bond
four thousand five hundred & 500 dollars.
J. H. Eaton

Supreme Court of Illinois -

John G. Nelson and
William Graydon
vs
Hase Cook

Error from Cook County

And now come the said
plaintiffs in error by C. Beckwith Williams and
Woodbridge their attorneys and say that in
the record proceedings & judgment in the above
entitled cause there is manifest error in this
court.

First. That the Court erred in admitting
evidence offered for and on behalf of the plaintiffs
in the Court below.

Second. The Court erred in excluding evi-
dence offered by the Defendants in the Court below.

Third. The Court erred in giving the
instructions asked for by the plaintiff below.

Fourth. The Court erred in refusing the
instructions asked for by the ^{defendants} ~~plaintiff~~ below.

Fifth. The Court erred in modifying &
altering the instructions of Nelson & Graydon in giving
them as modified & altered by the Court.

Sixth. The Court erred in refusing the
motion for a new trial made by Nelson & Graydon.

Seventh. The judgment should have been
in favor of the Defendants below & not for the plaintiff
C. Beckwith Williams & Woodbridge

for plaintiffs in error.

And the Dept in error by W. J. Pringle
his attorney comes & says that in
Record & there is no error wherefore
he prays &

W. J. Pringle for aff.

Isaac Cook
vs 79

John G. Nelson
William Graydon

Complete Record

Filed Sept. 23 1897

J. Deland
Clerk

Fees \$40.00 paid
by 1st offt. Atty. W. H. Cook

IN THE SUPREME COURT,

APRIL TERM, 1858.

JOHN G. NELSON, and
WM. GRAYDON,
 Plaintiffs in Error,
 vs.
ISAAC COOK,
 Defendant in Error.

Nelson and Graydon sued out an attachment from the Cook County Court of Common Pleas against the estate of Miller and Clements. Under the writ, which was directed to the Sheriff of Cook county to execute, a stock of dry goods and groceries and a store in Chicago were] attached, which were not the property of Miller and Clements, but which were claimed by one Jacob Miller, and which, in fact, were the property of said Miller.

At the February term of Cook County Court of Common Pleas, held in the year 1850, the said Jacob Miller, in an action of trespass *de bonis asportatis*, commenced against Isaac Cook, (the sheriff of Cook county, and the defendant in error in this suit,) for attaching said property, as the property of Miller and Clement, recovered a judgment for the sum of \$3,200, which sum the defendant has since paid.

The present is an action of assumpsit, brought by said Isaac Cook against the plaintiffs in error, to recover the amount of the judgment rendered against him in favor of said Jacob Miller.

The case was before this court at the June term of 1856, and will be found reported in 17th Ill., page 443.

The court then determined that Cook was not entitled to recover upon an implied indemnity nor without an express promise or peculiar directions about the levy. On this ground the judgment of the court below was reversed and the cause remanded.

The record now before the court contains some evidence to the effect that the plaintiffs in error gave particular directions as to the levy made by the sheriff, and submits several questions not raised in the record upon which the cause was tried in 1856.

A brief statement of the facts, as they appeared in evidence, is necessary to an examination of the legal propositions involved in the case.

On the 13th of June, A. D. 1848, the day after the property was taken under the attachment, an execution was issued upon a judgment before that time, rendered in Cook County Circuit Court, for the sum of \$1309²²/₁₀₀ and costs, in favor of the plaintiffs, in the case of *Yelverton, Yelverton and Fellows v. Miller and Clements*.

By the return of the sheriff to this execution, bearing date the 30th December, A. D. 1848, it appeared that he levied the same upon the property previously taken under the attachment of Nelson and Graydon on the 12th of June, A. D. 1848, a schedule of which is annexed to the return. The return then states, that by virtue of the said execution the said sheriff did, "on the 13th day of June, A. D. 1848 levy upon the property here scheduled, and, on the 30th day of December, A. D. 1848, at the store of Miller and Clements, in the city of Chicago, between the hours of 10 o'clock in the morning and sundown, of the same day, after advertising the same according to law," *sell the property scheduled, &c., &c., for a sum which, after deducting certain costs and charges on said property, left "a balance of \$785¹⁵/₁₀₀ to be applied to the payment of this execution, and no property found to make the balance, and this execution is not satisfied."*

The return is signed I. COOK, *Sheriff*, by JOHN BEACH, *Deputy*.

On the 28th day of March, A. D. 1858, said Isaac Cook filed an affidavit in the Cook County Circuit Court setting forth that after the levy of the attachment and execution, as aforesaid, the attorneys of the attachment and judgment creditors authorized and directed the sale of said property, under said execution, and agreed that the proceeds should be held *subject to the order of the court as to the disposition and application to be made thereof*, and asking leave to amend his return according to the facts set forth.

The Sheriff, *without leave of the court*, and about one month before the trial of this case, amended his said return, setting forth therein, in detail, the statement above quoted from his affidavit.

The amended return bears date the same day with the original, but is signed by the sheriff in person, and not by deputy.

It appeared from the testimony of B. S. Morris, Esq., the attorney of the attaching creditors, that the attorney of the judgment creditor claimed that the property taken under the attachment was first liable to satisfy the execution issued on the judgment, and that he had agreed with him that it might *be sold under the execution*, provided the money should be brought into court *to abide the order of the court in the premises, and not be paid over until the attachment suit was disposed of*. The attorney had no special authority from the plaintiffs in the attachment suit to make any arrangement on their behalf, and was acting under the general authority of an attorney only. The plaintiffs in the attachment suit resided in New York; were not in Cook county at the time of the sale; had given no direction in reference to it, and knew nothing about it.

The Plaintiffs in Error respectfully submit:

I. That the sale by the sheriff on the 20th day of December, A. D. 1848, was a misapplication of the property by converting the same to his own use, and excludes him from all remedy against the plaintiffs in error for any damage he may have sustained for taking said property under the attachment issued at their instance.

By the direction of the attaching creditor, the sheriff levied the attachment, not upon the property of the debtor, but upon the property of a third party. The writ directed the sheriff to attach the property of the defendant in the attachment suit and none other; it did not, therefore, authorize the caption of the property seized by him, and could not justify or excuse his trespass, nor did he rely upon the writ for his protection. Acting under the direction and by the authority of the attaching creditor, the sheriff became his agent, and the instructions given by the creditor involved the promise of indemnity to the sheriff. The creditor became liable to the sheriff for any damages he might necessarily sustain from seizing the property, and the sheriff became responsible to the creditor for the care and management of the property thus illegally taken. The relation of principal and agent was established between them, and the official character in which the sheriff assumed to act can, in no wise, affect the obligations and duties he owed to his principal. He was the agent to seize the property in the first instance, and as such it was his duty to hold it subject to the instructions of his principal, unless surrendered to the legal owner. The owner did not, however, demand its return but sued the sheriff in trespass for seizing it and recovered judgment against him. By the recovery in that action and the satisfaction of the judgment, the property became vested in the sheriff for the benefit of the attaching creditor. The measure of the judgment is usually in such a case, according to the value of the property, and its satisfaction is regarded as the payment of the purchase money.

The property having thus become vested in the sheriff, by the satisfaction of the judgment in trespass, the sheriff must be prepared to surrender it up to his principal if he would recover from the principal the amount he has paid for it.

II. The attorney of the attaching creditor exceeded his authority in making the agreement set out in the affidavit and amended return of the sheriff, and testified to by B. S. Morris, Esq., and it cannot, therefore, excuse the misconduct

of the sheriff in selling the property in question under the execution.

The property was taken to answer the attachment and was, therefore, subject to the lien of the claim sued on if it was the property of the defendant in the attachment suit. The plaintiff in that suit had the right to have it sold under the proceedings he had instituted, and according to their usual course. It is to be presumed that at the time the attachment was levied, those who directed it expected the usual order of things to be pursued and governed their actions accordingly. They left an attorney in charge of their cause whose duty it was to see it properly conducted and whose authority did not extend to any act beyond those required to be done in the ordinary progress of such a case. It was the duty of the sheriff to retain the property in his charge, and if it was deemed expedient to sell it, the statute provided the manner in which that expediency should be determined, and regulated the manner in which the sale should be made. No other disposition of the property could be legally made, except by the express authority of the attaching creditor. The authority of the attorney of an absent client to bind his client in a particular case by arrangement made in the usual course of a proceeding, with a view to the client's interest, is not denied—but it is denied that the attorney can bind the client by any arrangement or understanding that the usual course of proceeding shall be departed from.

Kellogg v. Gilbert, 10 Johnson 220.

The People v. Lamborn, 1 Scam. 123.

Nolan v. Jackson, 16 Ill. 272.

Ireland v. Todd, 36 Maine. 149

But should the authority of an attorney be supposed to be broader than it is above defined to be, it could not extend to such an agreement as was made in this case. What has been said is properly applicable to a case where the property attached is the property of the defendant in the attachment suit. But such was not the fact in this case. The title to the property was in a stranger to the attachment proceedings; it was wrongfully taken by the sheriff under the directions of

the attaching creditor, and as has been shown the sheriff as agent of the creditor, was entitled to claim indemnity from the latter for any damage he might sustain by reason of the trespass he was directed to commit; with this trespass and its consequences, the attorney of the attaching creditor in the attachment suit, had nothing to do,—it was not a part of the case in which he was employed and was a matter over which his authority did not extend. Its benefits, responsibilities, and consequences, belonged exclusively to the sheriff, the creditor, and the owner of the property.

It has also been shown that some four months before the sale, the owner instituted an action of trespass *de bonis asportatis*, against the sheriff, in which he afterwards recovered judgment—and that the recovery in that action and the satisfaction of the judgment vested the title to the property in the defendant for the benefit of the attaching creditor. The action of trespass was notice of the claim of the owner, if notice was needed, and it is to be presumed as *matter of law* that the attorney and all the parties engaged in the proceedings knew that the property attached was not the property of the defendant in the attachment suit.

Whilst the action of trespass was still pending, the attorney made the agreement now under consideration. This agreement was that the property should be sold under the execution—that the proceeds of sale should be deposited in court, to abide the order of the court in the premises—and should not be paid over to either claimant *until the attachment suit was decided*.

The necessary effect of this agreement was:

1st. That property belonging to the plaintiffs in error should be sold from considerations of no possible advantage to them.

2nd. That property for the illegal caption of which their agent had then been sued, should be disposed of, so that it could not be forthcoming to answer the damages that might be recovered against him.

3rd. That their right to the proceeds of this property should abide the determination of the court in the attach

ment suit, which, by legal operation, could in no manner affect it.

It is respectfully submitted, that under no principle of law can an attorney bind the rights of his client by such an agreement.

III. There was no evidence of the amount of damages recovered by Jacob Miller against the sheriff for committing the trespass, against which the plaintiffs in error had undertaken to indemnify him.

The *precipe*, writ, declaration, plea and notices, in the case of *Jacob Miller v. Isaac Cook*, were offered in evidence, and also the verdict and judgment in that case. The declaration contained three counts:

1st. Trespass committed by defendant (Cook) on the 12th of June, 1848, in seizing certain goods and chattels, in a wooden building or store, and converting the same to defendant's use.

2nd. Entering store of the plaintiff and damaging the same.

3rd. Seizing the goods, in the first count mentioned, and converting the same, and for entering plaintiff's store and ejecting him therefrom.

The defendant filed the general issue with notices.

The jury found a *general verdict*, and assessed the damages at \$3,236.23.

This was the only evidence offered in the case as to the amount of damage sustained by the sheriff for committing the trespass, against which the plaintiffs in error had undertaken to indemnify him.

It is a well settled principle of law, that when a declaration in trespass contains several counts for distinct causes of action, and the jury find a general verdict, the judgment will be arrested if any one of the counts are insufficient, unless it appear that evidence was given only on the good counts. If it does not so appear, damages upon each particular count is to be regarded as forming such an essential part of the judgment that it is impossible for the court to determine

over
statute
chaps
this
paragraph

what the verdict would have been if those which are insufficient had been withdrawn from the consideration of the jury. 1 Chitty's Plead. 411.

In the case now under consideration, none of the counts were defective, and the jury found a general verdict. What testimony was offered by the plaintiff, or under which count it was offered, does not appear. Under such circumstances it would seem to be somewhat difficult to determine by what rule the court should be governed, in apportioning the judgment between the several counts. But it is necessary that this should be done before a recovery can be had in this suit against the plaintiffs in error. One of the counts was for a cause of action with which the plaintiffs in error had no connection. They undertook to indemnify the sheriff for seizing the goods they designated; but by no course of reasoning can their instructions be construed into an agreement on their part to indemnify him for damaging the store in which the goods were placed. This is the cause of action set out in the second count, and until the court can determine what proportion of the judgment was rendered against the sheriff upon this count, it will be impossible to ascertain the extent of the liability of the plaintiffs in error upon their promise of indemnity; nor can the defendant in error complain of this condition of things,—he has brought it about himself, and it was not in the power of the plaintiffs either to cause it or to prevent it. It was the right of the defendant in error, in the trial of the action instituted by Jacob Miller against him, to have required that distinct damages should have been assessed on each count in the declaration; and as the declaration contained a count upon a cause of action with which the plaintiffs in error had nothing to do, it was his duty to have done so if he intended to hold them responsible upon their contract of indemnity. But it may have suggested itself to him, that if such a course was pursued, the judgment upon the counts for the trespass, covered by the contract of indemnity, would only be for the value of the goods, whilst judgment upon the other counts would be for damages for other trespasses proved in this case to have been committed by him, and for

which he would then have no prospect of a remedy over against these plaintiffs. That there was other damages proved in the case than such as resulted from the directions of the plaintiffs in error, is apparent from the record. All that could have been recovered against the sheriff for following the instructions given by them, was the value of the goods taken. The value of the goods taken, as appeared by the sale of the 20th Dec., A. D. 1848, was \$949,83.

The judgment against the sheriff in the cause now under consideration, was \$3,236.23 and costs,—leaving \$2,266.40 to represent the damages recovered against the defendant in error for trespasses committed by him, other than those directed by the plaintiffs in error, and for which they can be in no way responsible.

IV. The amended return offered in evidence in this case was not legally admissible.

It is not a matter of right for an officer to amend a return which he has once duly made, and a motion to permit such a proceeding is addressed to the sound discretion of the court. The court may either grant or refuse the motion, and if the motion is refused, the officer has no authority to make the amendment.

Thatcher v. Miller, 13 Mass. 269.

Miller & Rose v. Shackelford, 4 Dana, 264.

Fairfield v. Paine, 23 Maine, 499.

Peirce v. Strickland, 26 Maine, 278.

Emerson v. Upton, 9 Pickering, 167.

Hovey v. Wait, 17 Pickering, 196.

In the case of *Moore v. Purple*, 3 Gil. 22; it appeared that the sheriff of Peoria county, through inadvertance, had neglected to make any formal return upon a writ of inquiry. On motion of one of the parties, leave was granted to the sheriff to amend his return. One of the errors assigned in this case was, that there was no notice given of this motion to the opposite party. The court ruled that notice of the motion was not necessary, and say, "amendments by the sheriff to their

returns to process are of course. No resistance could be made to the application to amend. Should the sheriff make a false return, he is responsible for the consequences." In the case of *Morris v. Trustees of Schools*, 15th Ill., the court, in determining a similar question, quoted the above extract from the opinion in the case of *Moore v. Purple*, and adopt the rule laid down in that decision. They also say that the sheriff, who had at the time gone out of office, "in amending his return was not doing a new act, but merely furnishing the legal evidence of an act already done."

In each of these cases the amendment was made by leave of the court, granted upon motion. The only question before the court, bearing upon the question now under consideration in those cases, was the legality of the amendment of a return by an officer, when made by the authority of the court, from which the process issued.

The language quoted above from the opinion in *Moore v. Purple*, would seem at first to give to the officer the unrestricted right to amend his return in his own discretion; but the court did not so decide, and did not intend so to decide. In the case in which the language was used, there was *no return*, and the amendment spoken of was in fact *the return*. Such also was the amendment in the case of *Morris v. the Trustees of Schools*. The return in that case was upon an attachment writ, and omitted to state whether or not the same had been served upon the defendant. It was the duty of the officer to search for the defendant in his bailiwick and make return of the writ as in other cases. Unless the return stated that the defendant named in the writ was served, or not found, it was no return. The amendment allowed was, therefore, in this case as in the previous case, not an *amendment*, properly speaking, but a *return*. Apart from this, however, it cannot be supposed that the court intended to say that a return, which is "*the legal evidence of an act done*," and which affects and establishes such a multitude of rights in every community, should be subject to mutilation and alteration at the whim and caprice of the sheriff.

They did not intend to depart from the principle established by the authorities referred to, and which submits the question of amendment to the sound discretion of the court from which the process issues.

It is, however, contended that there was no return of the writ prior to the filing of the amended return about one month before the trial of this case.

The writ was issued on the 13th day of June, A. D. 1848.

The trial of this case took place in 1858, ten years after.

A return *was made* and offered in evidence, but it did not clearly appear from the evidence that it was, or ever had been, on the files of the court. It bore date the 20th day of December, A. D. 1848, and the amended return bore date the same day.

The affidavit of the sheriff offered in evidence, asked leave, upon the facts therein stated, to *amend his return*.

The return originally made by the defendant in error, as claimed by the plaintiffs in error, was used as the return in the first trial of this case, between the parties to this record, without any objection having been interposed as to its truth or regularity, as will appear by the case of *Nelson and Graydon v. Cook*, 17th Ill.

Since that time the deputy, whose name was signed to the return, and in whose hands the writ was placed to execute, has died, and the amended return is signed by the sheriff himself.

Having been used in a suit to which the sheriff was a party, without objection on his part, it is respectfully submitted, that whether the same was ever filed or not it must be regarded as his return in so far as it may affect his rights. To amend it seems to have been the suggestion of the experience of its necessity rather than the recollection of the facts.

But the particulars in which the return is amended are not material to the return itself,—it would be perfectly complete without them and they in no way ^{seem} to answer the writ. The paper filed as an amended return is in fact no return of the writ at all, but a statement made by the sheriff to be used as testimony in his own behalf in the trial of a case against

him. It is an ingenious attempt to smuggle illegal testimony before the jury in the belly of an official return.

In the case of *Peirce v. Strickland*, 26 Maine, 289, the court, in giving the opinion, uses the following language: "But an objection paramount to all others arises from the fact that the individual to make the amendment proposed is the defendant himself. Under such circumstances, to grant the motion would certainly be unprecedented, and also of a dangerous tendency. The temptation to disregard the truth in such cases would be too strong. He could not be a witness for himself in the case, and cannot be admitted under the guise of an amendment of his return, as an officer, to make that evidence which would be indispensable to the validity of his claim."

BECKWITH & MERRICK,
AND E. S. WILLIAMS,
Of Counsel for Plaintiff in Error.

Supreme Court.

State of Illinois

John G. Nelson &
William Graydon
vs
Isaac Cook

Writ of Error

I Walter Humball, Clerk
of the Cook County Court of Common Pleas,
Do hereby Certify that the return upon the Execu-
tion of Winston et al vs Miller & Elements,
hereinafter set forth is mentioned and referred to in
the Bill of Exceptions, filed in the Cook County
Court of Common Pleas, and ought to have been
copied into the transcript now on file in the
Supreme Court, in the above entitled cause, in
the words and figures following: said return having
been introduced upon trial in the Cook County
Court of Common Pleas, a part of which
return was by mistake omitted in making up the
transcript now in file in the Supreme Court

By virtue of this writ, and by the direction of the plain-
tiff's Attorney, I levied the same upon certain goods
and chattels of the defendants which had been previous-
ly taken by me on a writ of attachment issued from
the Cook County Court, on the 12th day of June A.D.
1848. in favor of John G. Nelson & William Graydon
against the Estate, real or personal of the said defend-
ants Miller & Elements, and Executed on the same

day, which property attached and levied upon is more fully described by schedule hereto annexed, which levy is subject to said attachment, and therewith return the writ and schedule. The property not sold for the reason that said attachment 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 property 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'clock in the morning and sundown of the same day, after advertising the same according to law the property scheduled, and that, therefore J. O. Donahue and others, bid therefor in separate parcels the sum of \$949.83, and after deducting the Clerk's costs of \$5.68 $\frac{3}{4}$, and the Sheriff's fees of \$29.48, and for Clerk hire in keeping said goods \$134.63, in all \$169.79 leaving a balance of \$780.72, to be applied to the payment of this Execution, and no property found to make the balance, and this Execution is not satisfied.

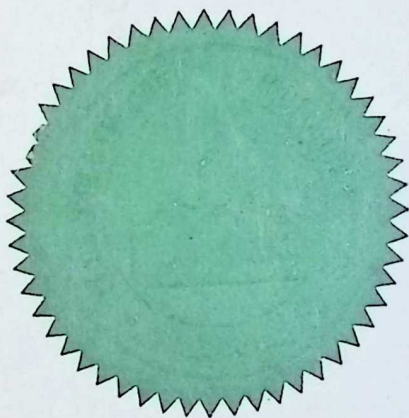
December 30th 1848

J. Cook Sheriff

By John Beach Repy.

"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 Cook County Court dated June 12, 1848, in favor of John Nelson

and William Graydon, and against Augustus
Miller and David R. Clements (to wit.) all the
goods and store, which has been occupied by Miller
& Clements, as will appear from the within Schedule
June 13th 1848. d. Cook Sheriff
By John Beach Depy "



In Testimony Whereof I hereunto
subscribe my name and affix
the Seal of said Court at Chicago
in said County the 28th day of
April A.D. 1858
Walter Kimball Clerk

79, 79
John G. Nelson et al
vs
Isaac Cook

Additional Record

Filed April 22, 1858
S. Deland
clerk.

IN THE
Supreme Court, State of Illinois.

THIRD GRAND DIVISION.

OF THE APRIL TERM, A. D. 1858.

JOHN G. NELSON and
WILLIAM GRAYDON,

Plaintiffs in Error,

vs.

ISAAC COOK,

Defendant in Error.

ERROR TO COOK.

RECORD.

ABSTRACT OF THE RECORD.

This was an action of *assumpsit* commenced by Isaac Cook, late Sheriff of Cook County, against the plaintiffs in error, in the Lake County Circuit Court, by attachment, and afterwards removed to the County of Cook and tried before the Hon. J. M. Wilson, at the September term, A. D. 1855, taken by writ of error to this Court and reversed at the June term, 1856, and again tried before J. M. Wilson in June, 1857.

Pleadings.

6—8 The affidavit for the attachment sets forth, that the plaintiffs in error were indebted to the defendant in error upon an implied contract arising as follows: That while said Isaac Cook was Sheriff of Cook County, in June, 1848, said Nelson and Graydon, as creditors of Augustus E. Miller and David R. Clements, a firm then doing business in Chicago, sued out an attachment from the Cook County Court of Common Pleas, in their own names, against the estate of the said Miller and Clements, directed to the Sheriff of Cook County to execute, which was delivered to said Cook (the then Sheriff) by the attorney and agent of said Nelson and Graydon to be executed, and in pursuance of the instructions of said Graydon and his attorney, said Cook attached a stock of dry goods and groceries, and a store in Chicago, of the value of three thousand dollars or thereabouts, which stock and store were claimed by one Jacob Miller as his property, but which said Cook was directed by said Graydon and his attorney to seize as the estate of Miller and Clements, and in pursuance of the instructions, said Cook did seize the property about the 12th of June, 1848.

That, at the February term of the Cook County Court of Common Pleas, held in the year 1850, the said Jacob Miller, in an action of trespass *de bonis asportatis*, commenced against said defendant in error for attaching said property as the property of Miller and Clements at the suit of Nelson and Graydon, did recover a judgment against said Cook for the sum of three thousand two hundred dollars and upwards, which judgment was affirmed by the Supreme Court of Illinois; and that said Cook was compelled to pay the same, with costs and expenses; and that the amount of damages sustained by him was four thousand two hundred dollars, which sum said Nelson and Graydon owed to said Cook by implied promise; and that Miller and Clements were about to leave the State with the intention of having their effects removed: upon which affidavit an attachment writ was issued, which was duly served upon certain garnishees therein named.

- 12—18 The defendant in error filed at the January term, 1854, his declaration, setting forth his cause of action substantially as embodied in the attachment affidavit.

To this declaration the plaintiffs in error filed a demurrer which was overruled by the Court, and the plaintiffs in error then filed the general issue and eight special pleas.

- 20, 21 The second plea sets forth that, although it is true that plaintiff was Sheriff and John Beach his deputy, and the defendants did sue out and deliver to said Beach said writ, and direct him, as deputy, to levy, and said Beach did levy said writ of attachment as in the declaration alleged; and although true it is that said building, stock of goods, and merchandize were claimed by Jacob Miller as his property; and although true it is that Jacob Miller did recover said judgment against said plaintiff for the cause and in the manner in the declaration mentioned alleged; and although true it is that plaintiff was compelled to pay the money in the declaration mentioned; for plea, nevertheless, defendants say they did not undertake or promise in manner and form, &c., and of this they put themselves upon the country.

- 21, 22 The third plea is as follows: protesting that plaintiff was not Sheriff and John Beach was not his deputy at the times or in the manner alleged in plaintiff's declaration; and further protesting, that defendants did not sue out nor deliver to Beach, as deputy, said writ of attachment, and the defendants did not direct him to levy, nor did Beach levy the said attachment in manner, &c.; and further protesting, that Jacob Miller did not recover the judgment against the plaintiff for the cause in the declaration mentioned; and further protesting, that plaintiff was not compelled to pay, and did not pay, the sums in the declaration mentioned. For plea, defendants say that the property at the time of the levy by Beach was the property of Jacob Miller, and was in his custody and possession; without this, that defendants did assume and promise in manner and form, &c., and this the defendants are ready to verify; wherefore they pray judgment, &c.

- 25 The fifth is a follows: protesting that the defendants did not undertake or promise in manner, &c.; for plea, nevertheless, defendants say that the suit of Jacob Miller, against the plaintiff, in which judgment was rendered, was commenced for, and the judgment recovered for other and different causes of action, as well as for the attachment by the said John Beach; and that the costs, charges and expenses which plaintiff was compelled to pay, and did pay, were paid as well for other and different causes of action as for the levying of the attachment; without this, that the judgment of Jacob Miller against the plaintiff in the said declaration mentioned, was obtained for the cause and in the manner in the declaration alleged; and that said costs, charges and expenses, in the declaration mentioned, were paid by the plaintiff by reason of the cause, and in the manner and form as plaintiff hath alleged, and this defendants are ready to verify; wherefore, they pray judgment, &c.

The plaintiff filed a general demurrer to the second and fifth pleas, and a demurrer to the third plea, assigning for special cause, that it amounted to the general issue, which demurrers were severally sustained by the Court.

- 22, 23 The fourth plea is as follows: protesting that plaintiff was not Sheriff of Cook County, and that Beach was not deputy; and further protesting, that defendants did not sue out nor deliver to said Beach the attachment writ, and the defendants did not direct Beach, as deputy, to levy, nor did Beach levy, in manner and form, &c.; and further protesting, that Jacob Miller did not recover the judgment for the causes mentioned in the declaration; 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 plaintiff hath alleged ; for plea, nevertheless, defendants say that the property, before and at the time of the levy, was the property of Jacob Miller, and was, before and at the time of the levy, in his possession, of all which, Beach then and there had notice ; without this, that defendants did assume and promise, in manner, &c., and this the defendants are ready to verify ; wherefore they pray judgment, &c.

To this plea the plaintiffs replied, protesting that said goods, &c., were not Jacob Miller's property, and were not in his possession, and the plaintiff says he had no notice that said goods, &c., were the property of said Miller ; and this he prays may be inquired of by the country ; upon which application issue was joined.

27, 28 The eighth plea is as follows : plaintiff ought not to recover for any further sum than the sum of one hundred and five dollars, because, although defendants cannot deny that they did assume and promise to pay the plaintiff all such sums as he had necessarily been compelled to pay in consequence of the levy upon said property and the detention thereof, by virtue of said attachment ; for plea, nevertheless, defendants say, that the value of said property, at the time of the levy, was the sum of \$2,943, and no other or greater sum of money ; and that Jacob Miller recovered, by his judgment, as for the value of the said merchandise, &c., at the time of the levy, the said sum of \$2,943, and no further or greater sum of money, together with interest at the rate of six per cent. per annum on the last mentioned sum of money to the time of the rendition of the judgment, making the sum of \$293.23 besides the value of said property, as and for the use of said value thereof ; and said defendants further say, that said plaintiff, on the 30th December, 1848, converted and disposed of the said property to and for his own use, and the value of said property at the time of conversion was the sum of \$2,943, and that Jacob Miller did not by his judgment recover any further or greater sum than the sum of one hundred dollars as and for the use of the value of said property from the time of the levy to the time of conversion of the same by the plaintiff to his own use ; and as to the rest and residue of said sums of money in said declaration mentioned, except the sum of ten dollars, the said defendants say, that the said plaintiff was compelled to pay, and did pay, them and each of them, by reason of the said plaintiffs attempting to justify the wrongful conversion of said merchandise, &c., to his own use as aforesaid, and not by reason of said levy ; and as to the said sums of one hundred dollars and ten dollars, the said defendants cannot say aught why the plaintiff should not have judgment against them for said sums over and above his costs, and this the defendants are ready to verify. Wherefore the defendants pray judgment if the said plaintiff ought to have or maintain his action for any further or other sums than those confessed herein.

The plaintiff's replication to the 8th plea, is as follows :

37 That it is not true that plaintiff has not necessarily been compelled to pay, in consequence of said levy upon said property and the detention thereof, any other or greater sums of money than said sum of one hundred and ten dollars in said plea mentioned ; but avers the contrary to be true, and that plaintiff did necessarily pay, in consequence of said levy, the said sum of thirty-two hundred and sixty-five dollars and thirty-one and three-fourths cents ; and this he prays may be enquired of by the country.

Upon which issue was joined by the plaintiffs in error.

The sixth and seventh pleas having been withdrawn by the defendants, and issue being joined upon the plea of the general issue and plea of set off, the cause was then

Now all men by these presents that J.
Charles. R. Starkweather of Chicago, Cook
County & State of Illinois, have made, consti-
tuted and appointed & do by these presents
make, constitute & appoint Erastus S.
Williams of Chicago aforesaid, my true and
lawful attorney, for me & in my name
place & stand to make sign, seal, ac-
knowledge & deliver as the surety of John
G. Nelson & William Maydon any bond
or written obligation which is or shall
become necessary in order to procure
a Supersedeas & stay of proceedings
in & upon a certain judgment lately
rendered against John G. Nelson &
William Maydon in favor of Isaac
Cook in the Cook County Court of Com-
mon Pleas in a suit in attachment
wherefore depending precedent upon which
said judgment & for the reversal thereof
by the Supreme Court of the State of Illinois
a Writ of Error is about to be prosecuted
by the defendants above named, in said
Supreme Court & they are about to
ask that the writ be made a Supersedeas
& all proceedings upon said judgment
stayed until the determination of the said
writ in the Supreme Court aforesaid,
and any other bond which in the
opinion of my said attorney & under
the laws of Illinois or the rules of the
Supreme Court of said State may be
or become necessary in pursuance

of & to accomplish the object above
stated & in order fully to carry out
the intention of the said Nelson & Thayer
my attorney inserting such a penalty &
such conditions in said bond as
he may deem necessary, giving and
granting unto him full power & authority
to do & to perform all & every act &
thing whatsoever, requisite & necessary
in & about the premises as fully, to all
intents & purposes as I could, were
I personally present, hereby ratifying
& confirming all that my said
attorney shall lawfully do or cause
to be done by virtue hereof.

In witness
whereof I have hereunto set my hand &
dial this tenth day of September A.D. 1857.

Signed, sealed &

delivered in presence of

Merritt Clark.

Samuel Mills

G. R. Parkweather



Please ask before Not Pub or Clerk of Court

Commonwealth of Massachusetts
Hampshire Co.

Clerks office of the Supreme Judicial
Court September 14th 1857

Be it remembered that at North-
ampton in the County of Hampshire
aforesaid and on the day last aforesaid

State of Illinois,

Cook

County,

} ss.

I,

J. L. Jenkins

a Notary Public

in and for said County, in the State aforesaid, do hereby certify that

Olof Johnson

Whelan B. Sweet

who ~~are~~ personally known to me to be the same person ^{writing} whose name ~~is~~ subscribed to the annexed ~~instrument~~ ^{instrument},

appeared before me this day, in person, and acknowledged that ~~they~~ had signed, sealed, and delivered the said instrument of writing as ~~thence~~ free act and deed for the uses and purposes therein expressed.

Given under my hand and Notarial seal, this

Twenty Third

day of

April

A. D. 18

88

J. L. Jenkins

Notary Public.

personally appeared before me the
Subscriber Clerk of the Supreme Judicial
Court for said Commonwealth within
and for the County of Hampshire aforesaid
Charles A. Haskinweather Senior and
Sealer to the foregoing instrument and
acknowledged to me that he his free
act and deed and I do further
certify that said instrument was
signed & sealed by the said Charles A.
Haskinweather in my presence and that
the same is duly executed and
acknowledged according to the laws of
this Commonwealth for the purposes
therein expressed.

The witness whereof I have hereunto
set my hand and affixed the Seal of our
Supreme Judicial Court at Northampton
aforesaid the day and year
above written

Samuel Mills Clerk



79
Power of Attorney
Chas. R. Starkweather

to
Erastus S. Williams

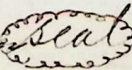
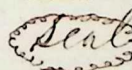
Filed Sept. 23, 1857
L. Leland
Clerk

Whereas Isaac Cook of Chicago, Cook County Illinois did on or about the twentieth day of June last recover in the Cook County Court of Common Pleas a judgment in a suit pending in said Court, wherein he was plaintiff against John G. Nelson & William Graydon for the sum of Three Thousand six hundred and eleven Dollars & thirty two cents or thereabouts with costs of suit & whereas said Nelson & Graydon feeling aggrieved at the rendition of said judgment have brought a writ of Error in the Supreme Court of the State of Illinois in order to reverse said judgment & have filed in the office of the Clerk of said Court a bond in double the amount of said judgment or thereabouts, conditioned as the Law directs with Charles R. Starkweather as security, for the purpose of obtaining a supersedeas in said suit & upon the filing of said bond obtained a supersedeas and said Nelson & Graydon are now endeavoring to secure the reversal of the judgment above mentioned and whereas the said Nelson & Graydon are desirous of furnishing further security upon said Bond which is now on file in the office of the Clerk of the Supreme Court as above mentioned, And the parties whose names are signed hereunto have

severally consented upon the application &
at the request of John G. Nelson aforesaid
and for his benefit to become surety upon
the bond above mentioned now on file in
the Clerks office as aforesaid. Now
therefore we Olof Johnson & ^(Wheeler) Wheeler B.
Sweet of Galva in the County of Henry &
State of Illinois have severally made,
constituted and appointed and by these
presents do severally make, constitute &
appoint Erastus S. Williams of Chicago
Cook County, Illinois, to be our true and
lawful Attorney and the true and lawful
Attorney of each or either of us and in each
or either of our names to sign, seal and
deliver as surety of the said Nelson and
Graydon the bond herein before mentioned
& now on file as aforesaid, hereby ratifying
and confirming all that our said Attorney
may do for us and each or either of us
in the premises by virtue hereof -

In Witness whereof we have hereunto
severally set our hands and seals this
twenty first day of April AD 1858

Witness:
The: Judge

Olof Johnson 
Wheeler B. Sweet 

Supreme Court

State of Illinois

John G. Wilson and
William Graydon

vs

Grace Cook

The clerk will please
file the Book Warrant
of attorney & the agreement
of J. C. R. Starkweather

of Wilson & Graydon
to be presented herewith
as of the 20 April last in the above
entitled cause

May 1, 1858,

Williams & Woodbridge
foriffs in and on -
W. J. P. P. P.
for Cook

Helsen et al. & Co.

Stipulation

Filed May 1, 1858.
L. Veland
Clark

79

John G. Nelson and
William Graydon

TO

E. S. William

Dated Sept 4 - 1857

Power of Att'y.

Filed Sept. 23. 1857

S. Leland
Clerk

Know all Men by these Presents, THAT

We John G. Nelson and William Graydon of the City of New York, Merchants,

have made, constituted and appointed, and by these presents do make, constitute and appoint *E. Williams Esq: of Chicago*

our true and lawful attorney for us and in our name, place and stead, to make, sign, seal, acknowledge and deliver any bond, or undertaking with or without Surety or Sureties, in such penalty and form, and with such condition as may be requisite or proper to perfect an appeal or writ of error on our part to a judgment alleged to have been recorded in some Court of the State of Illinois or of Cook County in that State by one Isaac Brock against us, or which may be requisite or proper to obtain a Superseas or other Stay, Suspension, Satisfaction or reversal of such judgment or any execution or other proceeding on the same.

giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In Witness whereof, we have hereunto set our hands and seal the *fourth* day of *September* in the year one thousand eight hundred and *fifty seven*.

Sealed and delivered in the presence of

W. E. Edwards.

3

John G. Nelson
Wm Graydon

State of New-York,
City & County of New-York, } ss.

Be it known, That on the *fifth* day of *September* one thousand eight hundred and *fifty seven* before me, *Walter Edwards a Notary Public* in and for the State

of New-York, duly commissioned and sworn, dwelling

personally came

John G. Nelson and William Graydon both of the well known to the persons described in the foregoing instrument, and acknowledged the above Letter of Attorney to be their act and deed, in the uses and purposes therein mentioned.

In Testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, the day and year last above written.

Walter Edwards
Notary Public.

John G. Nelson et al
vs

Issue Book

Power of Att^y

Filed April 26. 1858
S. Leland
clerk

Know all Men by These Presents, That we John G. Nelson
and Meliam Graydon
as principals and Charles R. Starkweather
as security, are held and firmly bound unto Isaac Cook

penal sum of Seven Thousand Three Hundred Dollars in the
and lawful money of the United States, for the payment of which, well and truly to be made, the said
Isaac Cook good

we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by
these Presents.

Witness, Our hands and seals

this

day of September A. D. 1857

The Condition of the above Obligation is such, That, whereas, the above named
Isaac Cook County Court of
did, at the June Term of the Cook Common Pleas Court,
held in and for the County of Cook in the State of Illinois, A. D. 1857 recover a
judgment against the above bounden John G. Nelson & Meliam

Graydon

for the sum of Three Thousand Six hundred & Eleven 32/100 Dollars to reverse which said judgment, the said John G.
Nelson and Meliam Graydon have sued out a Writ of

Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said
John G. Nelson & Meliam Graydon

shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and
damages which the said Supreme Court shall adjudge against said Nelson and

Graydon and abide the order and judgment of said
Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

John G. Nelson [SEAL]
By E. S. Williams his atty in fact [SEAL.]

Meliam Graydon [SEAL]
By E. S. Williams his atty in fact [SEAL.]

Charles R. Starkweather
By E. S. Williams his atty in fact [SEAL.]

Oloff Johnson
By E. S. Williams his atty in fact [SEAL.]

Wheeler B. Sweet
By E. S. Williams his atty in fact [SEAL.]

7
Johny Nelson &
William Graydon
vs
Lucas Cook

Superior Court

Filed Sept 23, 1887
J. L. Lewis
Clerk

We John G. Nelson & William
Graydon of the City & State
of New York do each severally
for our selves consent to
the addition of the names
of Olo Johnson & Wheeler, B.
Shurt to this bond heretofore
signed by us & now on file
in the Clerk's Office of the
Supreme Court of the State
of Illinois in the Suit wherein
we are Plaintiffs in error &
Isaac Cook is Defendant
in error - In witness whereof
we have severally signed &
sealed this instrument this 21st day
of April A.D., 1858.

John G. Nelson *Test*
Wm Graydon *Test*

John G. Nelson Adm

or

Issue Book

Agreement

Filed April 26, 1878

Leland

Clk

I Charles R. Starkweather of
Chicago, Cook County Illinois
do hereby consent that the names
of Olof Johnson & Wheeler, B.
Shurtlee signed in person or by
attorney to the bond heretofore
signed by me now on file in the
Office of the Clerk of the Supreme
Court of the State of Illinois in
the suit of Nelson & Gray vs Plaintiffs
in error vs Isaac Cook Defendant
in error. In witness whereof I have
hereunto set my hand & seal this
21st day of April A. D. 1858.

C. R. Starkweather *Esq.*

John G. Nelson et al
vs

Isaac Cook

agreement

Filed April 26, 1878
S. Leland
clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

Book County The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Book* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the *Book County* Circuit Court of Common Pleas of *Book* County, before the Judge thereof, between *Isaac Book*

plaintiff, and *John G. Nelson and William Graydon*

defendants, it is said manifest error hath intervened, to the injury of the aforesaid

John G. Nelson & William Graydon as we are informed by *their* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *first Tuesday after the third Monday of April* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *26th* day of *September* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Seven*

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

John G. Nelson and
William Graydon
vs
Leaac Cook

Writ of Error

This Writ of Error is ~~to~~
~~operate as a~~ ^{made} ~~supercedas~~
and as such is to be
obeyed by all concerned.

S. Leland
Clerk
by J. B. Rice Deputy

Filed September 26. 1887

S. Leland
Clerk
by J. B. Rice Deputy

In the Supreme Court

Isaac Cook

ad.

Nelson & Graydon

} Error to Cook Corn Phas-

1st The evidence in this case shows such a state of facts as clearly entitles the sheriff to an immunity from the off in error from any damage he might sustain by levying the attachment and

2^d The Property levied on being perishable property liable to depreciation in value and costing a good deal to keep it - It was clearly within the ordinary powers of the attorney in the management of the cause to consent to a sale of it. - Such a sale would be legal if made under the directions of the Statute and touching perishable property & taking those steps are a part of the proceedings in the cause. It was the duty of the Sheriff of the summons these fire holders examine the goods and as they found it was his duty to act and he should notify the off or his attorney of his intention to take these steps

and then like any other proceeding in the case
it was competent for the Attorney having
the suit in charge to waive it entirely.

They were merely the preliminary steps
to give the Sheriff the power to anticipate
a sale ~~order~~ ^{before} the final order of the Court
It is clear from the evidence in the case
that the property should have been sold for
the benefit of all parties & none of the
substantial rights of the pffs in error
were waived by the Attorney in this case.

So far as the conservation of ad-
vantage to the pff in Attachment suit
is concerned it was clearly an object
to him to realize the most that could be
made from the property. - He was responsible
- He was ~~not~~ ^{not} at all for its value at
its caption & if it was depreciating in
value from any cause the sooner it was
sold the better for him.

So far as the property being first-
coming ~~in~~ ⁱⁿ the claims - If that
suit had taken the course litigated suits
frequently do the property at the end of
it would have been of little value to any
one & any way the owner was not
under any obligation to take the ~~same~~
property back.

3
So far as the determination of the attachment suit was concerned of the Pff failed to sustain their attachment. That determined their rights even if the property were that of the deft in. attachment - in which case that deft would have been entitled to its return or its value as he chose & the moment that State of the case occurred the rights of the Pffs in the deft's attachment & they would be entitled to its proceeds -

3 The deft in error under the attachment must not stand shown by the Pffs by their direction & with the knowledge of one of the Pffs in error did on the 12th June 1845 seize certain goods and chattels in a wooden building occupied as a store & convert them to his use (as the agent of the Pff) as charged in the first count -

Did enter the store of the Pffs & damage the same; as every wrongful entry is in the eye of the law a trespass & the person intruding as charged in the second count -

+ Did seize the goods in the first

4
court mentions and converts the same
and did enter the plaintiff's store & steal
from therefrom as charged in the third
count.

The defendant denied his liability
and also sought to justify under the attack
must not follow process and the jury found
him guilty. - Another proof in the case
at bar is that the same goods were in
controversy in that suit that were in the
last declaration in that case converted
upon other trespasses & not those necessarily
growing out of the levy of this attack.
With the case might present a different
aspect. - But all the wrongs charged in
that suit as having been committed
by the thief cook are just those that the
proof shows he did commit under this
indictment. - A store was then in the occu-
pation of Jacob Miller filled with goods.
On the 12th June 1848 the Sheriff cook by
his deputy Brack at the request of the
officer in error shuts up that store turns the
occupant out puts his deputies in
openly sells the goods.

I can't see what sufficiency or
insufficiency of counts has to do with it

The Sheriff's return had in fact never been made until about a month upon the trial. The misapprehension of counsel as to the situation of the case leading the clerk to make a statement which the proof in the case shows was not so. The evidence of the Clerk is clear to the point that the paper never was returned. Such being the case the matter was exclusively in the control of the Sheriff.

13 Pick 477-

In all the cases cited so far as I have examined the witness in the Clerk's office spoke until that is done it must be that the Sheriff has not lost his control.

The counsel should not insinuate that this amendment "seems to have been the suggestion of the experience of its necessity rather than the recollection of the facts." When upon the record ~~the~~ⁱⁿ he has placed the distinct admission that at the trial of the cause this money was & always has been in the hands of the Sheriff not paid over to any one - &c.

don't look well to charge a Sheriff with
making a false return when your
own admission says it is true -

The Sheriff don't take him down
this return as evidence for himself -
He proves his case by witnesses &
the Pff in error sought to convince him
by what ~~they~~ claimed to be a return to
an writ of ~~neve~~ - which states facts
~~entire~~ contrary to their own admission
in the case. He then sought to place
himself right by introducing the
only return in fact in error & filed
of record - They had read part of his
return he read the whole of it -

It must now be manifest to this
court that the Sff in error merely
did his duty as Sheriff at the request
of Nelson & Graydon in laying this at-
tachment and has not done any act
since in contravention of their rights -
or his duty or without the consent
of those in whose hands they had placed
the management of their suit - He
sold the property with the knowledge
and assent of their attorney under

circumstances which rendered it his
duty, to see that ^{the} money kept the proceeds
for the benefit of the parties interested
and that the Pff. have had the benefit
of it being deducted from the
amount, that he would otherwise have
been entitled to receive.

Shriffin is in an awkward posi-
tion. They must either lay upon property
in dispute or take the responsibilities
of a false return - & they must in a
great measure depend upon the char-
ity of men in the cause as to their
proceedings in it - And so long as
their conduct is in good faith before
and after the levy the Court for the
protection of its own officers should
not hesitate to find out & excuse
venable a Pff. in ex. attachment
to think of upon the Sheriff the
consequences of a levy made at his
request.

I have written this in haste
not having seen the Pff. agreement until
this AM.

May 31st 1858

W. J. Phelps

Sup court

cook

11

ad

Nelson & Grayson

depts mply

Filed June 1, 1878

Leland

clerk

W. J. Bump

Att. Gen.

State of Illinois } I John A. Stark, Clerk of the
Sasalle County } Circuit Court in and for
said County and State and the
Keeper of the records of said Court, do hereby certify
that the November term of the said Court for the
year 1857 adjourned until Court in course,
on Saturday December 5th 1857.

In Testimony Whereof, I do hereby
set my hand and the seal of said
Court at my office in Ottawa this
19th day of May 1858
J. A. Stark

No. 1247-

Chicago & Rock-
Island R. R. Co

vs.
James Still

Certificate of John
F. Mack Esq. Clerk
Circuit Court of
Ladalle Co. Ill.

Filed May 19. 1854
L. Leland
Clk