

No. 13531

Supreme Court of Illinois

Young

vs.

Nelson.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 136.

Young

vs

Nelson

1887

Proved

13531

"Be it Remembered that heretofore to Wit
on the 16th day of December A.D. 1889 an affidavit
was filed in the office of the Clerk of the Circuit
Court of Hannu County Illinois, which is in the
words and figures following to Wit;

State of Illinois }
Hannu County }
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George Rice being first duly
sworn, says that he is the agent of Archibald
Young, Dennis S. Hoaglan, Thomas Rutherford
who are partners under the name and style of
Archibald Young & Hoaglan and makes this
affidavit on their behalf.

Affiant further saith that he is informed
and verily believes that George W. Nelson is
justly indebted to said firm of Archibald
Young & Hoaglan in the sum of nine hundred
& fifty dollars upon his promissory note given
by him for goods, wares and Merchandise by
them sold and delivered to him and which
matured on the 13th day of June A.D. 1889 and
which was not paid by said Nelson and
still remains due and unpaid.

Affiant further saith that said George W. Nelson
is a non resident of the State of Illinois, and
that his place of residence is unknown to this
affiant, and so conceals himself that process
cannot be served upon him but as this affiant

is informed and believes has property in said
County which can be reached by attachment
which affiant prays may issue forthwith)

George Rice

Sworn to & Subscribed before me this 16th day
of December AD 1859

Wm Laferty Clerk

Filed Dec 16th 1859

Wm Laferty Clerk

(Copy of Bond)

State of Illinois }
Warren County }

Know all men by these presents
that we George Rice & Philo E Reed are held
and firmly bound unto George W Nelson in
the penal sum of Nineteen hundred dollars
lawful money to the payment of which well and
truly to be made, we bind ourselves our heirs
executors and Administrators jointly and
severally. Firmly by these presents sealed with
our seals and dated this 16th day December AD
1859. The Condition of this obligation is such
that whereas the above bounden George Rice
hath on the day of the date hereof prayed an
attachment out of the Circuit Court of said County
at the suit of Archibald Young, Dennis Hoag-
lan & Thomas Rutherford partners under the name

& Style of Archibald Young & Moaglan, against
the estate of the above named George W Nelson
for the sum of Nine hundred & fifty dollars
and the same being about to be sued out of
said Court returnable on the Third Monday
of March next to the term of the Court there to be
holden. Now if the said Archibald Young
Dennis S Moaglan & Thomas Rutherford shall
prosecute their suit with effect, or in case of failure
therein shall well and truly pay, and satisfy
the said George W Nelson all such costs in said
suit, and such damages as shall be awarded
against the said Archibald Young, Dennis S
Moaglan & Thomas Rutherford their heirs executors
or Administrators, in any suit or suits which
may hereafter be brought for wrongfully suing
out the said Attachment, then the above Obligation
to be void otherwise to remain in full force and
effect, Witness our hands and seals the
day and year first above written

George Rice *ESQ*
Philo C Reed *ESQ*

Approved by me this 16th day of December A D 1889
Wm Laferty Clerk

Filed Dec 16th 1889

Wm Laferty Clerk

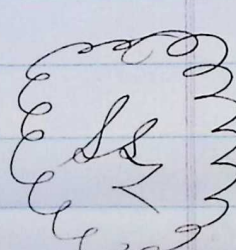
(Copy of Writ)
State of Illinois 3
Warren County 3

The People of the State of Illinois
To the Sheriff of said Warren County "Greeting"
"Whereas George Rice of the County of Cook,
and State of Illinois hath complained on Oath
to me William Lafayette Clerk of the Circuit
Court of said County of Warren that George W
Nelson is justly indebted to Archibald Young
Dennis S Hoaglan & Thomas Rutherford partners
under the name and style of Archibald Young
& Hoaglan upon his promissory note in the sum
of nine hundred and fifty dollars, which
matured on the 15th day of June A D 1889 and
which is still unpaid, And that said George
W Nelson is a non resident of the State of
Illinois & so conceals himself that process cannot
be served upon him, And that he has property
in said County of Warren.

And the said George Rice having given Bond
and Security according to 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 George W Nelson
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

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estate is attached in your hands to secure or
to provide that the same may be liable to
further proceedings thereupon according to law,
at a Circuit Court to be holden at the Court
House in Warrmouth within and for the
County of Warren aforesaid on the Third Monday
of March AD 1860 so as to compel the said Defendant
to appear and answer the Complaint of the said
Plaintiff and that you also summon Elisha Ayer
James D McLean, Hezekiah W Beggess John Porter
Philo E Reed, Robert A Davis & Charles W
Nelson as Garnishers to be and appear
before the said Court on the said Third Monday
of March AD 1860 then and there to answer
what may be objected against them, when
and where you shall make return to the said
Court how you have executed this Writ, And
how you then and there this Writ.

 Witness Mr Laferty Clerk of said Court and
the Seal thereof at Warrmouth in said
County this 16th day of December AD 1859
Mr Laferty Clerk

On the back of the foregoing Writ is the following
return made by the Sheriff of Warren County
which is in the words & figures following Viz

I have served the within Writ, by reading the

Same to the within named Elisha Ayer, James
D McLean, W B Boggess, John Porter, Philo
E Reed, Robert A Davis & Charles W Nelson
this day December 16th 1859 And by reading the
same to the within named George W Nelson
this 37th day of December AD 1859

Seth Smith Sheriff
Warr County
dated this 2^d day of January 1860

By virtue of the within writ I did on the 16th
day of December AD 1859 levy upon the following
goods taken as the property of George W Nelson
Dated this day Dec 16th 1859

Filed Jan 19th 1860

Seth Smith Sheriff
W. County

Warr County

{ Copy of Declaration }

State of Illinois }
Warr County }

Circuit Court

Archibald Young, Dennis S Hoaglan, March Term AD 1860

& Thomas Ruthford parties under the } Attachment
name & style of Archibald Young & Hoaglan }
vs }

Damage \$

George W Nelson }

Archibald Young, Dennis S
Hoaglan & Thomas Ruthford parties under the name
& style of Archibald Young & Hoaglan Plaintiffs
in this cause complains of George W Nelson
defendant in this cause whose estate has been
attached to answer unto the said Plaintiffs of a

plea of Trespass on the Case on promises. For that
whereas the said Defendant by the name and style
of Geo W Nelson, heretofore to Wit, on the 15th day
of October, in the year of our Lord One thousand
eight hundred and fifty eight at New York
to Wit, at and within the County of Nassau and
State of Illinois made his certain promissory
note in writing, and then and there delivered the
same to said Plaintiff, and thereby by the name
& style of Geo W Nelson, promised to pay to the order
of said Plaintiff by the name style & Description
of Arch^d Young & Hoaglaw eight months after the
date thereof the sum of Nine hundred & twenty
100 dollars lawful money, for Value received at
the Nassau County Bank at Marmouth Illinois
with Current rate of Exchange on New York
and the said Plaintiff aver that the Current rate
of Exchange at the Nassau County Bank at Mon-
mouth, Illinois on the day the said note became
due was 3 per cent. By reason whereof and by
force of the Statute in such cases made and
provided the said Defendant then and there became
liable to pay to the said Plaintiff the said sum
of money in the said note specified according
to the tenor and effect of the said note; and being
so liable the said Defendant in consideration
thereof afterwards to Wit on the same day and
year and at the place aforesaid undertook and
then and there faithfully promised the said

Plaintiffs well and truly to pay unto the said
Plaintiffs the said sum of money in the said note
specified according to the tenor and effect of
the said note. And for that Whereas also the said
defendant afterwards to Wit. on the 15th day of
December AD at the place aforesaid was indebted
to the said Plaintiffs in the further sum of Twelve
hundred dollars of like lawful money for debts
goods, wares and merchandise by the said
Plaintiff before that time sold and delivered to
the said defendant and at his special instance
and request; and also, in the further sum of
Twelve hundred dollars of like lawful money
for money by the said Plaintiffs before that time
lent and advanced to and paid laid out and
expended for the said defendant and at his
like special instance and request and also
in the further sum of Twelve hundred dollars
of like lawful money for other money by the
said defendant before that time had and received
to and for the use of the said Plaintiffs, and also
in the further sum of Twelve hundred dollars
of like lawful money for money found to be
due from the said defendant to the said Plaintiff
on account then and there stated between them
And whereas the said defendant afterwards
to Wit. on the day and year last aforesaid and
at the place aforesaid, in consideration of the

premises respectively. then and there promised to pay the last mentioned several monies respectively to the said Plaintiff on request. Nevertheless the said Defendant (although often requested) has not yet paid the said several sums of money above mentioned, or any or either of them or any part thereof to the said Plaintiff but to pay the same or any part thereof to the said Plaintiff the said Defendant has hitherto altogether refused and still does refuse to the damage of the said Plaintiff Twelve hundred dollars, and therefore the said Plaintiff bring suit &c

Smith, Dewey & Kellogg Attorneys for Plaintiff

Copy of Note Sent on

New York October 15th 1858

920 67/100

Archibald Young
Dennis & Kellogg
Thomas Rutherford

Eight months after date of the subscriber of "Mommouth County of Warren State of Ill. promise to pay to the order of Arch Young Hoaglan Nine hundred & twenty ⁶⁵/₁₀₀ dollars at the Warren Co Bank Mommouth Ill. value received with current rate of exchange on N.Y.

Geo W Nelson

Copy of Acc under Common Counts

Dec 15 1859

Geo W Nelson Dr

To Arch^d Young & Hoaglan

Money paid laid out and expended \$1200,

" had and received \$1200

Goods Wares & Merchandise \$1200

Money due on acc Stated \$1200

Paid March 5th 1860

Wm Laferty clk

State of Illinois
Warrick County

Pleas before the Honorable John S. Thompson Judge of the tenth Judicial Circuit of the State of Illinois. At a circuit Court began and held at the Court House in Mammouth in the said County of Warrick and State of Illinois on the third Monday in the month of March in the Year of our Lord One thousand eight hundred and Sixty It being the 19th day of said month & year

Present John S. Thompson	Judge
James W. Stewart	State Attorney
Seth Smith	Sheriff
Wm. L. Asbury	Clerk

Archibald Young, Dennis S. Hoaglan	} Attachment
Thomas Rutherford parents by the name	
& style of Archibald Young & Hoaglan	
vs	
George W. Nelson	}

And Afterwards to Wit on the 21st day of March A.D. 1860 the following order was returned upon the records of said Court, which is in the Words and figures following to Wit:

Archibald Young, Dennis S Moaglan &
 Thomas Rutherford parties by the name of
 & Style of Archibald Young & Moaglan
 vs
 George W Nelson } Attachment

This day came the defendant by his attorney, and moves the Court to dismiss this suit for want of security for costs, the Plaintiff being nonresidents. And after hearing the same it is ordered by the Court that the motion be overruled.

Then came the said defendant and moves the Court to quash the writ filed herein for insufficiency of the affidavit. Thereupon came the Plaintiff and enters his cross motion for leave to amend. And after hearing the same it is ordered by the Court that the first motion be overruled, and the second motion allowed to said Plaintiff to amend his affidavit.

(Copy of Affidavit)
 State of Illinois
 Warren County

George Rice being duly sworn says that he is the agent of Archibald Young, Dennis S Moaglan and Thomas Rutherford, who are parties under the name and style of Archibald Young & Moaglan. And makes this affidavit in their behalf. Affiant further saith that George

W Nelson was and is now justly indebted to
said firm of Archibald Young & Hoaglan in
the sum of Nine hundred and fifty dollars upon
his promissory note given by him for goods wares
and Merchandise by them sold and delivered to
him and which matured on the 13th day of June
A D 1859 and which was not paid by said
Nelson and still remains due and unpaid.

Affiant further saith that said Geo W Nelson is
a nonresident of the State of Illinois, and that
his place of residence is unknown to this affiant
and that he so conceals himself that process
cannot be served upon him, but said Nelson
has property in said Warren County which
can be reached by attachment which affiant
prays issue forthwith,

Sworn to before me this George Rice
Twenty first day of March

A D 1860. Wm Laferty Clerk

Filed March 21st 1860

Wm Laferty Clerk

(Copy of Plea)

State of Illinois } Warren County Circuit Court
Warren County } March Term A D 1860

George W Nelson
vs

Attachment

Archibald Young Dennis S Hoaglan }
Thomas Ruthford (parties by the name & }
style of Archibald Young & Hoaglan) }

And now,

the said George W Nelson Defendant herein
in his own proper person Comes and saith that
at the time of the making of the said affidavit
in the above entitled Cause, And at the time
therein set forth the said Defendant George W
Nelson was not a nonresident of the State
of Illinois And then did not so conceal himself
that process could not be served upon him.
And this the said George W Nelson Defendant
is ready to verify, wherefore he prays judgment
of the said Court. And that said writ may be
quashed &c

Geo W Nelson

Holloway & Luce

Atty for Deft

And the said Plaintiff
doth the like, Read for Plff

Archibald Young stetg Warr Circuit Court
vs } March Term AD 1860
George W Nelson } Attachment

And now comes said defendant
George W Nelson who being duly sworn doth
depose and say that the above and foregoing
purs is true in substance and in fact,

Geo W Nelson

Subscribed and sworn to before me this 22^d day of

March AD 1860

Wm Lafayette Clark

Filed March 23^d 1860

Wm Lafayette Clark

"And Afterwards to Wit on the 24th day of March AD 1860 the following order was entered upon the records of said Court as follows Viz;

Archibald Young, Dennis S Hoagland	}	Attachment
Thomas Rutherford partners by the name		
& style of Archibald Young & Hoagland		
VS		
George W Nelson	}	

This day came the Plaintiff by their Attorney and files his affidavit and moves the Court for a continuance herein.

And afterwards to Wit on the 26th day of March AD 1860 the following order was entered upon the record of said Court which is as follows Viz;

Archibald Young, Dennis S Hoagland	}	Attachment
Thomas Rutherford partners by the name		
& style of Archibald Young & Hoagland		
VS		
George W Nelson	}	

This day again this cause coming on to a hearing on the Plaintiff motion for a continuance herein. And after hearing the same it is ordered by the Court that the motion be allowed, at the Plaintiff cost. Therefore it is considered by the Court that the said defendant

have and recover of and from the said
Plaintiff his costs by him at this term of this
Court in this suit laid out and expended and
may have Execution therefor.

State of Illinois
Warren County

Pleas before the Honorable
Aaron Tyler Judge of the tenth Judicial Circuit
of the State of Illinois. At a Circuit Court began
and held at the Court House in Marmouth in
the said County of Warren and State of Illinois
On the fourth Monday in the month of October
in the year of our Lord one Thousand eight
hundred and sixty. It being the 22^d day of said
month and year

Present Hon Aaron Tyler	Judge
James H. Stewart	State's attorney
Seth Smith	Sheriff
Wm. Lafeerty	Clerk

And afterwards to wit on the 13^d day of November
1860 the following order was entered upon the records
of said Court which is as follows viz:

Archibald Young, Dennis S Hoaglaw & Thomas Ruthford partners by the name & style of Archibald Young & Hoaglaw vs George W. Nelson	} Attachment
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This day came the parties by
their Attorneys and issue being joined on the plea
in abatement for trial they put themselves upon

the County. Thereupon Came a Jury to Wit:
Smith Shephard. Jesse Beathers. Moses Robertson
T. C. Curtis. A. W. Weaver. T. B. Beakley, Jacob
Clippinger. George Claycomb, Addison Bosworth
Elisha Dye, William Condy & J. R. Harris who
being duly elected tried and sworn to well
and truly try the issue joined herein, and
after hearing the evidence, were permitted to
separate under the charge of the Court, and
required to meet the Court at 8 o'clock tomorrow
morning

And afterwards to Wit on the 14th day of November
AD 1860 the following order was entered upon the
records of said Court as follows Witz:

Archibald Young, Dennis S. Hoaglan
& Thomas Rutherford by the name & style of
of Archibald Young & Hoaglan }
vs } Attachment
George W. Nelson } 3

This day again came the
Jury Empaneled herein on Yesterday. And
after hearing the argument of Counsel, retired
in charge of an officer to Consider of their
Verdict,

And Afterwards to Wit on the 15th day of November
AD 1860 the following order was returned upon
the records of said Court which is as follows Viz:

Archibald Young, Dennis S Moaglan
& Thomas Ritchford partners by the name
& style of Archibald Young & Moaglan
vs
George W Nelson } Attachment

This day again came the jury
empaneled herein heretofore and upon their
Oaths do say, "We the jury find for the defendant".
Thereupon came the Plaintiff and enter their
motion for a new trial herein,

And afterwards to Wit on the 17th day of November
AD 1860 the following order was returned upon
the records of said Court which is as follows Viz:

Archibald Young, Dennis S Moaglan
& Thomas Ritchford partners by the name
& style of Archibald Young & Moaglan
vs
George W Nelson } Attachment

This day again this Cause
coming on to a hearing on the Plaintiff's motion
for a new trial herein, And after hearing the
same it is ordered by the Court that the motion

And Afterwards to Wit on the 15th day of November
AD 1860 the following order was entered upon
the records of said Court which is as follows Viz:

Archibald Young, Dennis S Moaglan
& Thomas Ritchford partners by the name
& style of Archibald Young & Moaglan
vs
George W Nelson } Attachment

This day again came the jury
empaneled herein heretofore and upon their
Oaths do say, "We the jury find for the defendant".
Thereupon came the Plaintiff and enter their
motion for a new trial herein,

And afterwards to Wit on the 17th day of November
AD 1860 the following order was entered upon
the records of said Court which is as follows Viz:

Archibald Young, Dennis S Moaglan
& Thomas Ritchford partners by the name
& style of Archibald Young & Moaglan
vs
George W Nelson } Attachment

This day again this Cause
coming on to a hearing on the Plaintiff's motion
for a new trial herein. And after hearing the
same it is ordered by the Court that the motion

be overruled, Therefore it is Considered by the Court that the said Defendant have and recover of and from the said Plaintiffs his costs by him in this suit laid out and expended and may have Execution therefor, Thereupon came the said Plaintiffs by their Attorney and may an appeal to the Supreme Court, which is allowed by the Court, upon the said Plaintiffs entering into Bond in the Sum of Seven hundred dollars with Security to be approved by the Clerk by agreement of Parties, Bond and Bill of exceptions to be filed in Forty days from this date, And leave is given the Earnshaws herein to answer at the next term of this Court,

State of Illinois
Warrick County Plaintiff Come October Term AD 1860

Archibald Young
Dennis Woodland
Thomas Rutherford
vs
George W. Nelson

Attachment

Be it remembered that on the trial of this cause before the Court and jury, the Plaintiff to maintain the issues on their part called Isaac M. Kirkpatrick as a witness, who was duly sworn as a witness in said cause, and testified as follows to wit: I know the defendant he was a dry goods Merchant at Monmouth in this County, on the 24th day of October AD 1859 we rec^d several notes for collection against him from a firm in New York. I presented the notes to Nelson def^t, on the evening of the 24th of October 1859 I presented the notes to him for payment, He said he could not settle them that evening, it was after seven o'clock in the evening, I told him if he did not settle them he would be sued He promised to call around on the morning next and see my brother about it. I cannot say the amount of the notes, they were for within a few dollars of Two thousand three hundred dollars Defendant did not call around the next.

morning. And I did not see him the next morning. We was not here in the months of November and December 1889. Cannot say where he was. I made inquiry for him, but could not find him.

On Cross examination he stated that the notes were in favour of Mr Lewis of New York. we returned the notes, they were returned for the purpose of seeing Reuben Nelson who was the indorser on these notes. I never heard of Mr Nelson (deft) having been sued up to that time. I don't know that any other papers came to town against him.

The Plaintiffs then called A. G. Kirkpatrick who after being duly sworn testified as follows to wit; I know the defendant knew him in October 1889. I had the claims just mentioned by Isaac Kirkpatrick my Brother. I rec'd said notes by the mail on the evening of the 24th of October 1889 they belonged to Isaac Lewis of New York. I made inquiries about defendant next morning and was told he had left. did not inquire in the store. I made diligent inquiry next day, was told that Charles W. Nelson had bought defts entire stock of goods. I made diligent inquiry from time to time of several persons at Monmouth for defendant but could not find him. I made inquiry of Charles W. Nelson & for the purpose of collecting the notes or seeing how I could make the money. I wanted to see if the sale from

deft to Charles W Nelson was not fraudulent
If the sale was a fair one there was no way
of getting the money, because he (defendant) had
no other property in this Country. Defendant never
kept house here. I think his wife was not here
He was away part of the time & a part of time
here. He was not here in the months of November
& December 1889. I don't know where he was,
I was unable to learn, he was not in Mommouth

On Cross Examination he testified that upon
reference to his Memorandums & to Affidavit that
the time I rec'd the notes was the 24th of October
1889 the notes were recalled from two to four
weeks afterwards. Lewis wrote me to return
them, as he could collect them of Rues Nelson
the indorser. I did not see defendant for three
months after that time, he might have been here
but I could not find that he was. I had other
notes against him for Collection. I know I had
the other notes before he returned. I thought
the sale was not a good one. Deft never kept
house to my knowledge here. Counsel for defence
then asked witness the following question to wit
was not the defendant a resident of Mommouth
while he was doing business here. To which
question the Plaintiff by their Counsel then said
there objected, But the Court Overruled the objection

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and allowed the witness to answer the same to the overruling by the Court of said objection and allowing the witness the same. The Plaintiff by their Counsel then and there excepted and still excepts. To said question the witness answered I can hardly answer whether he was a resident or not. I had doubts of it myself, I had some knowledge of Reuben Nelson and knew the money could be collected of him. Since the 7th day of January 1860 defendant has been in town. Should say he had resided here since that time. The conversation defendant had with my Brother was on the 24th October 1859. There are not the same reasons to think that his residence was here before the time of sale that there are to think he is now a resident, previously he was here only a part of the time. Since he has been here all the time.

The Plaintiff then called William Dent who after being duly sworn testified as follows to wit; I know Geo W Nelson the deft. knew him during fall & winter of 1859 I was in the employ as a clerk of defendant up to some time in October 1859 I was so employed until the time of the sale of his stock of goods at this place to Charles W Nelson. The sale was made some time in October 1859 I think the latter part of October. I was not present.

when the sale was made, there was no inventory of the goods taken. Cannot say whether the sale was made at night, was not present. It was either the night before or the morning of his going away that the sale was made. The defendant told me he was going to New York. He went to New York the next day or soon after the sale. He remained there until after the Attachment was levied in this case. He remained there some two or three months & did not return until after attachment was levied. I had been in his employ about eleven months or a year. I could not tell how long he was here in business. He was gone twice, while I was with him. One time he was away three months. After he sold out to Charles W. Nelson. He told me the morning after that he was going to New York. Did not tell me why he was going. Do not know of any inventory of the goods being made. Was not present when sale was made. Defendant was not here in months of November & December 1859. The morning deft went away he told me had sold the goods, but I do not recollect that he told me when the sale was made. I kept Nelsons Books part of the time, there was no account of the sale written in the Books. The Books were taken away by Mr. Lucas. Mr. Lucas took the books to his house. he had them part of the time in room over the Store after the sale.

I don't know, what became of them.

On Cross Examination he testified that he went to Work for Defendant in November 1858. Counsel for defense then asked the Witness the following question to Wit. where did the Defendant reside while he was doing business here. To which question the Plaintiffs by their Counsel then and then objected. But the Court overruled the objection and allowed the witness to answer the said question To the overruling by the Court of said Objection and allowing the Witness to answer the same. The Plaintiffs by their Counsel then and then excepted and still excepted. To said question the Witness answered, that he supposed he resided at Marmouth but the supposition of the Witness was excluded by the Court. The Counsel for the Defendant then asked the Witness the following question to Wit, Do you know of the Defendant Concealing himself so that process could not be served upon him. To which question Plaintiffs by their Counsel then and then objected. But the Court overruled the objection and allowed the Witness to answer the same. To the overruling by the Court and allowing the Witness to answer said question, the Plaintiff by their Counsel then and then excepted and still excepted. To which question the Witness Answered: I do not. — He lived here part of the time, he was away twice the first time he was the longest away

I knew he was going to New York the morning he left after the Sale. because he told me so, he told me the morning he sold out, he had sold to Charles W. Nelson and that I must look to him for my pay. after that time, I know that he lived here all the time. did not inform me he was going on any business. He did not buy any goods after that Counsel for defense then asked the witness the following question to wit: Do you not know the defendant lived at Monmouth while you knew him as well as you know you live in Monmouth. To which question the Plaintiff by their Counsel then and then objected. But the Court overruled the objection and allowed the witness to answer the same. To the overruling by the Court and allowing the witness to answer said question. The Plaintiff by their Counsel then and then excepted and still except. To said question witness answered, I do.

The Plaintiff then called Andrew Claycomb, who after being duly sworn testified as follows to wit: I know George W. Nelson the defendant have known him for eighteen months. He has occupied the store building which is under my charge. Defendant was here some time before I knew him, cannot state how much of the time he was here in 1859. In August two years ago he came to my house to get his family boarded

which he went East. He said he wanted to get them boarded about four weeks. His family stayed twelve weeks lacking one day. The day he brought his family to my house he went East. He never eat a meal of Victuals in my house. He corresponded with his Wife. His wife went East about the first of November 1858. He went East about the first of August 1858. Defendant and his wife came back some time in January or February 1859. Defendant was gone about five months. His family went East to meet him. I know of no property of the defendant in Monmouth after he sold his goods.

On cross examination he testified my impression is that he went away in August 1858 his family went to him about first of November 1858. he came back with his wife and one child. his family did not go from my house to board at Mr Baldwins they went East. he was to meet them at some place on the way. we cooked chickens for his family which they took when they went away. I went with them to the Cars. defendant never occupied a house in Monmouth. never kept House here. they boarded round from place to place. Counsel for defense then asked the Witness the following question to Wit: Where did defendant reside in 1858 & 1859 to which question. Plaintiff by their Counsel then objected. But the Court overruled their objection

and allowed the witness to answer the same,
To the overruling by the Court of the said objection
and allowing the Witness to answer the same. The
Plaintiff by their counsel then and then excepted
and still except. to said question the witness
answered. He resided part of the time at Momm-
outh, his wife said she did not like the Country
and often talked of going home, she went East
on a visit

The Plaintiff then called Miram Baldwin who
after being duly sworn testified as follows to wit,
I have known defendant since 1858, he has been
in town since I have known him, he has lived
in town a part of the time, a portion of the time
he has been away. He was away twice three
months at a time

On Cross Examination he then testified I supposed
he resided at Mommouth but the Court excluded
the supposition of the Witness. He boarded with
me in the winter of 1858 & 1859 I never knew him
to conceal himself. Counsel for defense then
asked witness the following question to wit, did
you ever know of defendant concealing himself
so that process could not be served upon him
To which question Plaintiff by their counsel then
& then objected, But the Court overruled the objection
and allowed the witness to answer said question

To the overruling by the Court of said objection and allowing the Witness to answer said question. The Plaintiff by their Counsel then asked them excepted and still except. The Witness then answered, I never did. I do not know where he was in the months of November & December 1859. Cannot say whether it was the fall or winter of 1858 or 1859 he came to my house to board. I think it was early in the winter Cannot tell the time he came to board with me, his wife and he boarded with me, he never brought any of his children to board at my house.

On re-examination the witness testified that he never knew that defendant did not conceal himself.

The Plaintiff then called Azro Pattison who after being duly sworn testified as follows to wit; I have known the defendant since the Spring of 1858. He came to Monmouth in the Spring of 1858. He was gone in the Summer or fall following, and returned again in the Winter. I knew of his sale to Charles W. Nelson. He went East immediately after the sale. He said he did not like this Country as well as he did the East. I did not see him after the sale for some weeks, he resided here part of the time. Did not see him in months of November & December 1859. I could not say where he was, On Cross Examination the Witness

testified that he did not know when Nelson went away or came back only by Report. He has been here the most of the time since 1858

The Plaintiff then called Willis B Greer who after being duly sworn testified as follows to Wit:
I know the defendant George W Nelson. I have known him for some time. In the fall of 1859 I had notes in my hands against him for Collection Amounting to about seven hundred dollars. I received them some time in December 1859. I did not inquire for Mr Nelson. I knew he was absent, he returned about two Weeks after I received the notes. On Cross Examination the Witness testified. that the defendant was gone about six weeks after the sale. He had resided here before that time, dont know of his changing his residence. I had a claim against him from New York. tried to get him to pay it. & he did not. I sued him. got service. Could get service at any time after he came back. I was not personally acquainted with him until after he returned after he had sold out to Charles W Nelson.

The Plaintiff then called Geo Rice who after being duly sworn testified as follows to Wit:
I know the defendant George W Nelson. In the

mouth of December 1859 I came to Mommouth
as the agent of the Plaintiff with the claim against
defendant upon which this action is brought. It was
long past due. I did not find defendant in Mom-
mouth. The day I was in Mommouth was the sixteenth
day of December 1859 I inquired for defendant at
the store where he had done business up to the time
of sale of his stock of goods to Char Mc Nelson, I
made a great deal of inquiry in Mommouth to
find defendant. I inquired of several persons
I inquired of Charles Mc Nelson. I was unable
to find defendant though I made diligent inquiry
after him. Could not learn where he was.

On Cross Examination he testified that the Plaintiffs
were Merchants doing business in the City of New
York. that he himself resided at the City of Chicago that
he came to Mommouth in December 1859 as the agent
and Attorney of Plaintiffs for the purpose of collecting a
debt against defendant in favor of Plaintiffs.
Plaintiff offered in evidence in their behalf a
certain promissory note of which the following
is a true Copy.

\$ 920 ⁶⁵/₁₀₀

New York October 15 1858

Eight months after date I the subscriber of
Mommouth County of Warren State of Ills promise
to pay to the order of Arch Young & Hoaglan Nine
hundred & twenty ⁶⁵/₁₀₀ Dollars at the Warren Co Bank

Wormouth Ills Value Rec^d with Current rate of
Exchange on N.Y

No 1088 due June 15/18/59

Geo W Nelson

which said note was admitted in evidence by
the Court

The Plaintiff here rested

The defendant on his part then called Elijah
C Babcock as a witness who after being duly sworn
testified as follows to Wit: I know the defendant
Geo W Nelson. have always known him. he came
here in the Spring of 1858. in May or June. he has
been here most of the time since. Counsel for the
defense then asked the Witness the following question
to Wit: Where has the defendant Geo W Nelson resided
the last two years. To which question the Plaintiff
by their Counsel then and then objected. But the
Court overruled the objection and allowed the Witness
to answer the same. To the overruling by the Court
of said objection and allowing the Witness to answer
said question. The Plff by their Counsel then and
then excepted & still excepts. To said question
Witness answered. He has been here most of the
time. he lived here in this City. Counsel for
defense then asked witness the following question
to Wit: Do you know of defendant ever having
concealed himself so that process could not be
served upon him. To which question Plaintiff

by their Counsel then and there objected, But the Court overruled the objection & allowed witness to answer the same. To the overruling by the Court of said objection and allowing the witness to answer the same the Plaintiff by their Counsel then and there excepted and still excepts. To said question witness answered, I never knew that he concealed himself.

On cross Examination he testified he did not know whether he was ~~absent~~ or not from Missouri in the Months of November & December 1859, I know he sold out. I cannot say whether or not he was here in November & December 1859, don't know that he was not hiding himself so that process could not be served on him, think I did not see him in the months of November & December 1859

The defendant then called George W. Simpson who after being duly sworn testified as follows, to wit: I know George W. Nelson, when Nelson sold out I was told he had gone East. Counsel for defense then asked witness the following questions to wit, where does the defendant reside. To which question the Plaintiff by their Counsel then and there objected, But the Court overruled the objection and allowed witness to answer the said question To the overruling by the Court of the said objection and allowing the witness to answer the same. The Plaintiff by their Counsel then and there

excepted and still except. To said question
Witness answered, when he was doing business
I suppose he resided here. But the Court over-
-ruled the supposition of the Witness, his family
was here some of the time. Counsel for defense
then asked the Witness the following question to Wit:
As you or not know of defendant ever concealing
himself so that process could not be served upon
him. To which question Plaintiff by their counsel
then and then objected. But the Court overruled
the objection and allowed the Witness to answer
the same. To the overruling by the Court and
allowing witness to answer said question. The
Plaintiff by their counsel then and then excepted
and still except. To said question witness answered,
-med, I don't know that he ever concealed himself
He went away after the sale. Didn't know any
thing of his whereabouts during the month of Novem-
-ber & December 1889. I did not see him in Norrmouth
His wife was here some time after he went away.

The defendant then called James D Mackey who
after being duly sworn testified as follows to Wit:
I know the defendant, have known him since the
Spring or Summer of 1888. know he did business
in town, had his family here. Counsel for
defense then asked the Witness the following ques-
-tions to Wit, where did the defendant reside in

1858 & 1859, To which question the Plaintiff by their Counsel then and there objected, but the Court overruled the objection and allowed the Witness to answer the same. To the overruling by the Court of said objection and allowing the Witness to answer the same, the Plaintiff by their Counsel then and there excepted and still except. To which question witness answered, He resided in this place most of the time. Counsel for defense then asked the Witness the following question to wit, Do you or not know of defendant ever concealing himself so that process could not be served upon him. To which question the Plffs by their Counsel then and there objected, But the Court overruled the objection and allowed the Witness to answer the same. To the overruling by the Court and allowing the Witness to answer the same, the Plaintiff by their Counsel then and there excepted and still except. To said question the Witness answered Dont know of him ever concealing himself.

On cross examination he testified, I dont know that he did not conceal himself. I know his wife, dont know whether they were here on visits or living here. Cannot say whether or not he was here in November and December 1859. I did not see him here.

The defendant then called Stephen Gamber who after being duly sworn testified as follows to Wit, I know defendant, have known him since 1858. He was here in Marmouth, do not know that he ever concealed himself.

On Cross examination he testified. I do not know that he did not conceal himself, do not know that he was here in November & December 1859. I did not see him here,

The defendant then called John D Collins who after being duly sworn testified as follows to Wit, I have known defendant since the Spring of 1858 Counsel for defense then asked the Witness the following question to Wit, where has defendant resided since you have known him. To which question Plaintiffs by their Counsel then and then objected. But the Court overruled the objection. and allowed the Witness to answer said question To the overruling by the Court and allowing witness to answer the same, the Plaintiffs by their Counsel then and then excepted and still except. To the said question the Witness answered He resided in Marmouth to the best of my knowledge. Counsel for defense then asked the Witness the following question to Wit, Do you or not know of defendant ever concealing himself so that process could not be served upon him. To which

question Plaintiff by their Counsel then and then objected. But the Court overruled the objection and allowed the Witness to answer said question. To the overruling by the Court of said objection and allowing the Witness to answer the same. The Plaintiff by their Counsel then and then accepted and still except. To said question witness answered. I do not. On cross Examination he testified I do not know that he did not conceal himself in November and December 1889. I know his family never know of his keeping house in Womouth do not know where he was in November & December 1889. did not see him in Womouth

The defendant then called Christopher B Lucas who after being duly sworn testified as follows to Wit. I have known defendant since February 1888. Counsel for defense then asked witness the following question to Wit. When did Geo W Nelson reside in 1888 & 1889 To which question the Plaintiff by their Counsel then and then objected. But the Court overruled the objection and allowed witness to answer the same. To the overruling by the Court and allowing witness to answer the same. the Plaintiff by their Counsel then and then accepted, and still except. To said question witness answered. He has resided in Womouth. Since I have

known him. Counsel for defense then asked the ~~defendant~~ the following question to wit, Did you or not know of the defendant Mr Nelson ever concealing himself, so that process could not be served upon him, To which question Plaintiff by their Counsel then and then objected. But the Court overruled the objection and allowed the witness to answer the same, To the overruling by the Court of said objection and allowing witness to answer the same, The Plaintiffs by their Counsel then and then excepted and still except. To the said question witness answered, I never knew him to conceal himself.

On cross examination he testified. I don't think defendant was here in November & December 1859. I knew of his going away. I went with him to the cars. I was a Clerk of his in his employ. I was not present when the sale of his stock of goods, was made to Charles H Nelson was not present when the sale was talked over there was no Inventory made of the goods they were sold in the lump. I think the sale was made in the day time. I don't remember whether it was made in the forenoon or the afternoon. I was not present when the sale was made, it was some time the latter part of

October. I took the books of defendant after the sale, I took them to my House, I afterwards brought them to the store & kept them in a room up stairs, they were in the store sometimes. I do not know when they now are, The books were open for inspection. I continued to club for Chas W Nelson after sale.

The defendant then called Daniel P Denman who after being duly sworn testified as follows to Wit; I know the defendant, have known him since 1858, Counsel for the defense then asked the Witness the following questions to Wit, do you or not know of the defendant ever concealing himself so that process, could not be served upon him. To which question Plaintiff by their Counsel then and then objected. But the Court overruled the objection and allowed the Witness to answer the same. To the overruling by the Court of said objection and allowing witness to answer the same, Plaintiff by their Counsel then and then accepted and still accepts. To the said question witness answered, I do not.

The defendant then called Milton C Minger who after being duly sworn testified as follows to Wit; I have known the defendant since he was a boy. I have known defendant since he came to Monmouth in May 1858, with his

wife, when they first came here they boarded at the Warren House two or three months, from there they went to Andrew Blaycombs, boarded there for about three months, from there they went to Hiram Baldwins boarded there till the latter part of the Winter of 1858 & 1859 when he went home his wife went home with him when he went to buy goods in the Spring of 1859 his family went with him. I dont know when he came back he left his Wife east, he left her because she was going to have a Baby, She ret^d about the middle of October 1859 to Monmouth. She had a Baby while she was gone. She was with her Father & Mother while she was away, they reside at Monson Massachusetts. Counsel for defense then asked the Witness the following questions to Wit. Where did the defendant reside while he was doing business here. To which question Plaintiffs by their Counsel then and there objected. But the Court overruled the objection and allowed the witness to answer the same. To the overruling by the Court of said objection and allowing witness to answer said question. Plaintiffs by their Counsel then and there excepted and still except. To which question witness answered. I suppose he resided at Monmouth. But the Court excluded the supposition of Witness. I have

been well acquainted with defendant.
 Counsel for defense then asked Witness the
 following question to Wit, did you or not know
 of Mr Nelson the deft ever concealing himself so
 that process could not be served upon him. To
 which question Plff. by their Counsel then and there
 objected. But the Court overruled said objection and
 allowed witness to answer the same. To the over-
 ruling by the Court of said objection and allowing
 witness to answer the same The Plaintiff by their
 Counsel then & there excepted and still except.
 To said question witness answered, I never knew
 that he concealed himself. Defendant has boarded
 with me. he engaged me to board his family when
 they returned. they returned from the East and came
 to board at my house about the middle of October
 1859. Just before he sold out. They boarded with
 me till the first of August 1860. Came to my house
 in October just prior to the sale. his Wife was up in
 Knox County some of the time. he was absent
 about six weeks or so. After the sale was made he
 went to New York. He has been absent as much
 as twice since he has been doing business here.
 I have held correspondence with him. He has
 been married Eleven or Twelve years. He has
 never kept House in Monmouth if he had I
 think I should have known it. I dont think
 he ever kept house since he was married. He lived
 in New York before he came to Monmouth

On Cross Examination he testified, Defendant first boarded at the Warren house went from there to Mr Claycombs. I know that he did not go East from Claycombs. Cannot say that they did not go East to spend Thanksgiving, about first of November 1858. I knew he went East in Spring of 1859. He went to buy goods. His Wife went on at the same time. She remained till middle of October 1859. He came back after he bought goods. He remained in New York to buy goods. I sent him orders. His Wife was East in Summer of 1859. He remained there a number of weeks. He might have been engaged in other business while in New York. I dont know what else he did besides buying goods for his store in Monmouth. Cannot remember whether his wife went East to spend Thanksgiving. One of her children was at her Fathers in 1859. She was there for Confinement. One of their boys was at his Grand fathers, told Nelson I would not board his children. He brought one of his ^{little} boys back and the little baby when they returned in the fall of 1859.

The defendant then called William Gregg who after being duly sworn testified as follows to wit, I have known Nelson since the fall of 1858. He has lived here most of the time. dont know of his ever having lived any where else since 1858.

do not know of his having concealed himself,

On cross examination he testified. I was in exchange business. Had notes against Nelson sent to me from New York for collection. He did not pay them. Had the notes presented to him by Notary for protest, the notes were protested for non payment. Had some in the month of September 1859. I do not know where he was in November & December 1859. Could not tell,

On reexamination he testified. I had some notes against defendant in September. Can't say when they became due don't recollect the date.

The defendant then called Joel E. Ragland who after being duly sworn testified as follows to wit, I have known defendant since May 1858. Counsel for defendant then asked the witness the following question to wit, Where was the defendant Geo H Nelson residing during the years 1858 & 1859. To which question Plaintiffs by their Counsel then and then objected. But the Court overruled the objection & allowed witness to answer the same. To the overruling by the Court of said objection. and allowing witness to answer the same. the Plaintiffs by their Counsel then and then excepted and still except. To the said question the witness answered. He resided at Moosmouth most of the time

Have seen him in New York City buying goods
Counsel for defense then asked witness the fol-
-lowing question to Wit. Do you or not know of
the defendant ever concealing himself so that
process could not be served upon him. To which
question Plaintiffs by their Counsel then and
then objected. But the Court overruled the objection
and allowed the witness to answer the same.
To the overruling by the Court of said objection
and allowing witness to answer the same, the
Plaintiff by their Counsel then and then except-
-ed & still except. to the said question witness
answered. I do not know as he ever concealed
himself.

On cross examination he testified. I
went away from Monmouth in April and
returned in June 1859. Defendant was not here
in April. I do not know that he did not con-
-ceal himself. I do not know that he was here
in November and December 1859. I did not
see him here in those months.

This was all the evidence in the case
for either party.

The Plaintiff then asked the Court to give the
following instructions to the Jury.

1st If the Jury believe from all the facts & circumstances

in evidence in the case that the defendant concealed himself, so that process could not be served upon him that fact affords grounds good & sufficient for issuing the attachment in this case and they will find for the Plaintiffs.

2^d If the defendant actually absented himself from the State with the intention to avoid the service of process, at the time of the commencement of this suit that is concealment within the meaning of the Statute.

3^d If there was an actual intention to avoid the service of Process by his creditors, it is of no importance as affecting this question whether the concealment be of a long or short duration or whether he intended to avoid the service of process in this particular case, so that the intention existed at the time of the commencement of this suit. A defendant's embarrassed condition, his impaired credit, his disposal of his stock of Merchandise in an unusual & extraordinary and hasty manner - his immediately absenting himself from his usual place of business, and his protracted absence therefrom - his not disclosing to any of his creditors, his intention of going abroad are circumstances affording strong presumptive proof of fraudulent intent on his part in absenting himself, and thereby avoid the service of process,

4th It is concealment to avoid service of process no matter whether for an hour a day or a week, whether with a view to defraud creditors or merely to have time to make a disposition lawful or otherwise of his property before his creditors get at him. It is placing himself designedly so that his creditors cannot reach him with process which constitutes concealment under the Statute.

Refused

5 The jury have a right to take into consideration in making up their verdict, all the circumstances surrounding the case as proven before them

Given

6 If the jury believe from the evidence that the defendant for a space of time previous to the issuing of the Attachment writ in this case and up to the time of issuing the Attachment writ, absented himself from the State of Illinois or from his usual place of residence and that the necessary effect thereof was to avoid the service of process upon him, then they are instructed that that they may presume that he intended the necessary result of his action, unless they further believe from the evidence that his absence was caused by his intention to attend to his usual business

Refused

7 It is not necessary in order for the Plaintiffs to make out a case of concealment that they should prove that the defendant concealed himself so that process could not be served in this case. It is enough if he placed himself designedly so that his creditors could not reach him with process.

8 If the jury believe from all the evidence in the case that at the time the writ of Attachment issued the defendant was not a resident of this State that fact affords good & sufficient ground for issuing the attachment in this case and they will find for the Plaintiffs.

9 The word residence as used in the Statute means legal residence, and a legal residence means the place of a mans fixed habitation.

10 There must be to constitute an actual residence within the place the intention that it is to be a principal and permanent residence.

11 Although the jury may believe from the evidence that the defendant had been doing business in Illinois, yet that fact is not sufficient alone to show that he was a resident of the State of Illinois. There must be a permanent fixed abode with the intention to remain permanently to create a residence.

12. If the jury believe from the evidence that the defendant George W. Nelson had not maintained a residence in the State of Illinois previous to the issuing of the attachment in this case according to the legal interpretation of the word, that he had no fixed place of abode or habitation, that his family resided out of the State, that he had never kept house in Monmouth; that he spent only a portion of his time in Illinois; that his family was divided unsettled and constantly moving about, part of the time in Illinois and part of the time at some place in some of the Eastern States, then the defendant was not a resident of the State of Illinois in the true intent and meaning of the Statute and they will find for the ~~defendant~~ Plaintiff.

13. If the jury find for the Plaintiff in this case they will assess the damages at the amount of the note offered in evidence, and the interest thereon.

14. The opinions and suppositions of witnesses as to the residence of the defendant are not evidence for the jury and should be wholly disregarded by them.

15. If the jury believe from the evidence that the

Given
defendant at the time of the issuing of the writ of Attachment in this case was a nonresident of the State of Illinois, or so concealed himself that process could not be served upon him they will find for the Plaintiff and assess their damages at the amount of the note offered in evidence and the interest thereon from the time the same became due.

The Court then gave the instructions of the Plaintiff numbered One, Five, eight, nine, ten, eleven, fourteen and fifteen and refused to give said instructions numbered three (3) four (4) and six (6) the Court also refused to give instructions aforesaid numbered two, seven & as they were asked by the Plaintiff but gave the same modified as follows to wit;

2 Given
If the jury believe from the evidence that the defendant actually & secretly absented himself from the State with the intention to avoid the service of process, at the time of the commencement of this suit, that is concealment within the meaning of the Statute,

7 Given
It is ^{not} necessary in order for the Plaintiff to make out a case of concealment that they should prove that the defendant concealed himself so that process could not be served in this case. It is enough if he concealed himself designedly at the time of the commencement of this suit so that his creditors could not reach

him with process,

Seven If the jury believe from the evidence that the defendant George W. Nelson had not maintained a residence in the State of Illinois previous to the issuing of the attachment in this case according to the legal interpretation of the word - that he had no fixed place of abode or habitation, that he had never kept house in Marmouth - that he spent only a portion of his time in Illinois; that his family was divided, unsettled and constantly moving about, part of the time in Illinois and part of the time at some place or places in some of the Eastern States & that Defe was not a resident of Illinois at the time of the commencement of this suit, they will find for the Plaintiff.

To the refusal of the Court to give the said instructions numbered 3, 4 & 6, and to the modification as aforesaid by the Court of said instructions numbered two & seven & thirteen - the Plaintiff by their Counsel then and there in open Court accepted and still except.

The said defendant then asked Court to give to the jury the following instructions,

- 1 The Court will instruct the jury that unless

they believe from the evidence that on the 16th day Decr AD 1859, the defendant was either a nonresident of the State or was then so concealing himself that process could not have then been served upon him they will find for the defendant,

2 The Court will instruct the jury that a man may reside in this State and be a resident thereof though he may spend most of his time in another or different other States, and may have never kept house in it and that notwithstanding he may have had during such time a family who may at times be absent from the State with or without him,

Which said instructions numbered One & Two were then and there given by the Court. To the giving of said instructions by the Court, the Plaintiffs by their Counsel then & there ~~expressed~~ in open Court excepted & still except,

And the Court refused to give the instructions numbered 3, 4, & 5

3 The Court will instruct the jury that unless they believe from the evidence, that on the 21st day of March AD 1860 the defendant was a non resident of this State and was then so concealing himself

that process could not then be served upon him they should find for the defendants.

4 The Court will instruct the jury that the defendant could not ^{have} at any time without this State concealed himself so that process could not have been served upon and that to do so he must have at the time have been in this State, and that under no circumstances or evidence can they find that he has so concealed himself. If they from the evidence believe that he was then out of the State although they may believe from the evidence that he then resided in it,

5 The Court will instruct the jury that the defendant could not have at any time without the State concealed himself so that process could not have been served upon him, that to do so he must at the time have been in the State. And that under no circumstances or evidence can they find that he has so concealed himself unless they not only believe from the evidence that he was in the State at the time of such concealing, but also intentionally so concealed himself within it to avoid service of process and that he then did within it so conceal himself that process could not have been served upon him.

Thereupon the jury retired to consider of
their verdict and after having considered of
their verdict ret^d into Court with the following
Verdict to Wit;

We the jury find for the defendant

Elisha Nye

T. B. Deakney

A. B. Roseworth

C. J. Crites

L. W. Claycomb

William Goudy

J. B. Harris

Smith Shephard

Jesse Beathus

O. W. Weaver

Moses Robison

Jacob Clippinger

Jurors

Frid Nov 15 1860

W. Lafaty clk

Thereupon in Open Court the Plaintiff by their
Counsel entered their motion for a new trial
for the following reasons to Wit;

State of Illinois

Warrin County

Circuit Court

Oct Term 1860

Arch Young & McLaughlin

vs

George W. Nelson

} Attachment

And now comes

the Pliffs. by their Attorneys and moves the Court
for a new trial in this Cause for the following
reasons to wit;

1st Because the verdict is against the law and the evidence.

2^d Because the Verdict is against the instructions
of the Court

3^d Because the Court refused to give proper instructions
asked on the part of the Plaintiffs

4th Because the Court gave improper instructions
on the part of the Defendant

5th Because the Court improperly modified some
of the Plaintiffs instructions and gave them
as so modified

6th Because the Court admitted improper evidence
for Defendant

7th Because the Court refused to admit proper
evidence for Plaintiff

8th Because the Court refused to reject improper
evidence admitted on the part of the Defendant
Rice & Reed for
Pliffs

Filed Nov-15-1860

W. Lafonty clk

But the Court overruled the motion for a new trial & entered a judgment on the Verdict of the Jury as follows to Wit:

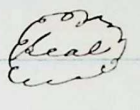
Archibald Young, Dennis S Moaglan
& Thomas Rutherford partners by the name of }
Style of Archibald Young & Moaglan }
vs } Attachment
George W Nelson }

This day again this cause coming on to a hearing on the Plaintiff motion for a new trial herein, and after hearing the same it is ordered by the Court that the motion be overruled. Therefore it is considered by the Court that the said defendant have and recover of and from the said Plaintiffs his costs by him in this suit laid out and expended and may have execution therefor. Thereupon came the said Plaintiff by their attorney and pray an appeal to the Supreme Court which is allowed by the Court upon the said Plaintiffs entering into Bond in the sum of Seven hundred dollars with Security to be approved by the Clerk by agreement of Parties, Bond and Bill of exceptions to be filed in Forty days from this date, And leave is given the Garnishees herein to answer at the next term of this Court,

To the overruling of which motion for a new trial by the Court and to the entry of judgment by the Court upon the said Verdict & to each and every of them, the said Plaintiffs then and there by their

Counsel in open Court objected and excepted
and still object and except.

In as much therefore as the foregoing do not appear
of record it is ordered by the Court that this the
Plaintiffs bill of exceptions be signed and sealed
and made a part of the record herein which is
done

A. Taylor 

Given Dec 10th 1866

Wm Safety Club

Copy of Bond

Know all men by these Presents that We Archi-
-bald Young, Dennis S. Neaglan, Thomas Rutherford
by Ezekiel S. Smith their agent and attorney in
fact, Principals and Thomas Jordan of Monmouth
Warren County Illinois and Ezekiel S. Smith
of Chicago, as Sureties, are held and firmly
bound unto George W. Nelson in the penal
sum of Seven hundred dollars for the payment
of which, well and truly to be made we bind
ourselves, our heirs, executors and adminis-
-trators, jointly, severally and finally by these
presents. Witness our hands and seals this
fifteenth day of December Anno Domini
One thousand eight hundred and Sixty

The condition of the obligation is such
that whereas George W. Nelson did on the

17th day of November 1860 in the Circuit Court within and for the County of Warren and State of Illinois, recover a judgment against the above named Archibald Young. Dennis S Hoaglan & Thomas Rutherford for the sum of And Costs of suit from which judgment of said Circuit Court the said Archibald Young, Dennis S Hoaglan and Thomas Rutherford, has prayed for and obtained an appeal to the Supreme Court of said State

Now if the said Archibald Young, Dennis S Hoaglan and Thomas Rutherford shall duly prosecute their said appeal with effect and shall moreover pay the amount of the judgment, Costs, interest and damages, rendered and to be rendered against them in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be null and void, otherwise to remain in full force and virtue

Signed Sealed & Delivered
in presence of
The names signed by
E. S. Smith as atty in fact
and Ezekiel S. Smith in
presence of Miles Almy
The name of Thomas
Gordon in presence of
Philo C. Reed

Archibald Young (S)
Dennis S Hoaglan (S)
Thomas Rutherford (S)
By E. S. Smith their agent (S)
and attorney in fact
Thos S Gordon (S)
Ezekiel S. Smith (S)

Approved by me this 17th day of December AD 1860
Wm. Laferty Clerk

Filed Dec 17th 1860

Wm. Laferty Clerk

State of Illinois
Warren County

I Wm. Laferty Clerk of the Circuit
Court in and for said County do hereby certify
that the foregoing is a true and perfect copy of
all the proceedings in the foregoing case as the same
appears from the records and files now in
my office



In Testimony whereof I have hereunto
set my hand and affixed the Seal of our
said Circuit Court at my office in Morris-
town this 20th day of February AD 1861
Wm. Laferty Clerk

Archibald Young Aals
2, 136

George W. Nelson

Filed March 2nd 1861
Leland
Blair

Supreme Court of Illinois
Third Grand Division

Archibald Young and
Dennis S. Hoagland
Thomas Rutherford
vs.
George W. Nelson

} Appene from
Circuit Court
Co.

Of the term of April in the year of our
Lord One thousand Eight hundred and
Sixty One holden at Ottawa for the Third Grand Division
Afterwards to wit On the
day of. in this same term before
the judge of the Supreme Court of the State of
Illinois at the Court house in the City of Ottawa
Came the said Archibald Young, Dennis Hoagland
and Thomas Rutherford by ~~D. S.~~ Smith their Attorney
and say that in the record and proceedings aforesaid
and also in giving the judgment aforesaid there is
manifest error in this Court

1. The Court Erred in ~~overruling~~ the objection
permitting the witness ~~Al Kirkpatrick~~ to testify
as to the residence of the defendant George W. Nelson
and in overruling the objection of the plaintiffs
Cause thereto

2. The Court Erred in permitting the witness William
Dent to testify as to the residence of the defendant
George W. Nelson, & also as to whether said Nelson
concealed himself so as to avoid service of process
& in overruling the objection made by plaintiffs
Cause thereto.

3. The Court Erred in permitting the witness Andrew
Claycomb to testify as to the residence of the defendant
Geo W Nelson and in overruling the objection of the
plaintiffs Cause thereto

4. The Court Erred in permitting the witness Henry Baldwin to ~~answer the~~ testify whether he ever knew of defendant concealing himself so that process could not be served upon him & in overruling the objection of the plaintiffs Counsel thereto

5. The Court Erred in permitting the witness Eljah Babcock to testify where the defendant George W. Nelson had resided And whether he had concealed himself so that process could not be served upon him, & in overruling the objections made by the plaintiffs Counsel thereto

6. The Court Erred in ~~allow~~ permitting the witnesses George W. Simpson James D. Mackey John W. Collins Christopher W. Lucas, Daniel T. Denman, Milton C. Munger, Peter B. Ragland & each of them to testify where the defendant George W. Nelson had resided, & also whether he had concealed himself so as to avoid the service of process, And in overruling the objections made by the plaintiffs Counsel thereto

7. The Court Erred in refusing to give instructions asked for requested by plaintiff numbered three (3) four (4) & six (6) And in modifying instructions requested by plaintiff numbered two (2) seven (7) & twelve (12).

8. The Court Erred in giving instructions for defendant numbered one (1) & two (2)

9. The Court Erred in overruling & denying the motion for a new trial

10. The Verdict is Against Evidence

11. The Verdict is Against Law & Evidence

12. By the record aforesaid it appears that the fragment aforesaid in form aforesaid given was given for the said George W. Nelson Against the said Archibald Young, Dennis S. Hoaglan and Thomas Rutherford whereas by the law of the land the said fragment ought to have been given for the said Archibald Young, Dennis S. Hoaglan & Thomas Rutherford against the said George W. Nelson

And the said Archibald Young, Dennis

G. Heagles & Thomas Rutherford pray that the
judgment for the Errors aforesaid And other Errors
in the record And proceedings aforesaid may be
reversed Annulled And altogether held for
nothing And that they may be restored to all
things which they have lost by occasion of the
said judgment.

E. D. Smith

Atty for Plaintiffs

And the said George W
Nelson appellee says there is no
such error as aforesaid
re

W. C. Gandy
Atty for Appellee

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Record & Assign-
-ment of Cross

Jacoby
v.
Hanson

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Filed Apr 18. 1861
A. Leland
Clerk