

No. 12931

Supreme Court of Illinois

Warner

vs.

Carlton

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

FRANCIS WARNER, plaintiff in error, }
vs. } *Error to LaSalle.*
ROWLAND CARLTON, defendant in error.

ARGUMENT ON THE PART OF THE PLAINTIFF IN ERROR, SUBMITTED BY STRAIN & BULL,

The principal point of this argument will be directed to the competency, (or incompetency) of the witness, Rowland H. Carlton, produced and examined by the defendant in error on the trial below; and this may seem strange, as the counsel for the defendant in error was stopped by this court on the argument of that point, which would seem to indicate that this court regarded him as a competent witness. But in view of the fact that in almost every case of a contest in regard to the title to personal property, the vendor is offered as a witness to sustain the sale: and whether the sale is fraudulent or not, the history of the jurisprudence of the country shows that they usually try, by their testimony, to sustain the sale.

This being the case, if the court can, in accordance with principle and authority, exclude the vendor from the stand almost as much would be done for the prevention of perjuries as was accomplished by the statute of frauds and perjuries.

In the first place, then, we will remark, that the law is not settled in this State as to the admissibility of the vendor as a witness to sustain the sale; and this court is, therefore, free to pass upon the question.

In the case of *Miller vs. Dobson*, 1st Gil., 572, the objection to the competency of the vendor, was based upon the idea that he was rendered incompetent by the spirit, if not the letter, of the Statute in relation to the trial of the right of property, by which he was, in such cases, rendered incompetent; and no question seems to have been made in that case as to his competency at common law, or on principle; and indeed it was admitted by the counsel for the plaintiff in error, that at common law he was competent. And this court, after quoting the Statute in regard to the trial of the right of property, say—“This language, it will be perceived, confines the operation of that rule of evidence, settled by it to cases arising under the act to which it is an amendment; it cannot, therefore, be extended by construction to cases arising under any other statute. *If it would admit of such construction, we would not hesitate to extend it so as to make it reach this case.*”

So that case was one in which the court was called upon to decide not as to the vendor's competency at common law, that was admitted, but to exclude him by a construction of the law in relation to the trial of the right of property; and all the court say is, "We can't so construe that law, but would gladly do so if we could." And the witness was permitted to testify, because he was admitted by the opposite party to be competent at common law.

The court is, then, we apprehend, for the first time called upon to settle the question as to the competency of a vendor of personal property, with warranty, in a replevin suit, brought by his vendee against the sheriff, who seizes the goods on execution against the vendor; and under the intimation of this court in the case above quoted from, if the court can consistently exclude the vendor they will do so.

We hold, then, that this is not a case of balanced interest on the part of the witness. He is liable to the vendee, in case of failure of title, for the price paid, the interest on the purchase money and the costs which may be adjudged against the vendee in case of a failure of the title, when the vendor has notice of the suit. But if the defendant in the replevin suit (the plaintiff in error) fails, the responsibility of the vendor to him is not at all enhanced thereby, but remains the same.

The case at bar is a case of a sale, by the witness, with express warranty; and the rule of exclusion for which we contend, has been held by the Supreme Court of New Hampshire, in the case of *Kingsbury vs. Smith*, 13 N. H., 109, which was an action of trover for a colt. In this case the court below admitted the vendor as a competent witness for his vendee; but the court, upon a pretty full review of the authorities, decide him to be incompetent, and they say—"The principle deducible from the cases cited, would seem to be, that the grantee, in an action upon a covenant of warranty, express as in a deed, or implied as upon the sale of personal property, is entitled to recover as part of his damages sustained by reason of the failure of the title conveyed, the reasonable and necessary expenses incurred, in a proper course of legal proceedings, for the ascertainment and protection of his rights under the purchase, as well as a reasonable compensation for his trouble and expense to which he may have been put in extinguishing a paramount title."

In *Armstrong vs. Percy*, 5 Wendell, 535, it was decided that the measure of damages, in an action brought for a breach of an implied warranty of title in the sale of a horse, is the price paid and interest thereon, and the costs recovered against purchaser or his vendee, in case of a suit by the owner and notice to the vendor. The same doctrine is also substantially held in the case of *Blasdale vs. Babcock*, 1st Johns., 517.

So, also, in the case of *Whitney vs. Haywood*, 6 Cush., 82, the court hold that the vendor of personal property in possession, is not a competent witness for the vendee, in an action against him, in which the title to the property is in controversy.

So in 2nd Swan, (Tenn.) 310, the vendor of a slave, who sells with warranty as to soundness as well as title, is not a competent witness for his vendee in a suit involving the soundness of the slave. And in *Edwards vs. Ballard*, 14 B. Monroe, 289, the same doctrine is held. The same doctrine is also substantially held in the following cases:

- | | |
|--------------------------------|--------------------------|
| 6 Cush., 82. | 7 New Hamp., 521 |
| 7 Taunt., 252. | 1 Greenl. on Ev., § 390. |
| 13 Johns, 225. | 4 Cowan. 340. |
| 6 Greenl., 416. | 13 Conn., 54. |
| 32 Maine, (2 Red.,) 87 or 230. | |
| 2 Swan, (Tenn.,) 310. | |

These are only a few of the cases that might be cited, showing clearly that the vendor, not only on principle but by the weight of authority, is incompetent.

It will be observed that in the case at bar there was what is equivalent to the notice by the vendee to the vendor, spoken of in the above cases. The goods were levied by the plaintiff in error whilst in the possession of the witness, he was present at the trial, and the vendee was in the state of Maine.

Again: the witness has a direct interest in the record. According to several of the cases above cited, in a suit by the vendee against the vendor to recover damages for the failure of title, the record of the judgment in the suit in which the title was adjudged against the vendee, was held to be competent evidence to show the eviction or loss, and also the amount of the costs of the suit.

Then if we apply the principle as laid down in 1st Greenl., sec. 390, "That the witness will either gain or lose by the direct legal operation of the judgment, or that *the record will be legal evidence for or against him in some other action*," it becomes apparent that the interest of the witness is so to testify that the record shall not be evidence against him at all.

The witness, then, was improperly admitted as a witness, and should have been excluded on the ground of his interest, arising from his liability over on his express warranty of the title of the property in dispute, as well as his liability for the costs and charges of his vendee expended in and about this suit, in case the title of his vendee had failed, and also on account of his interest in the record, which might be used against him by his vendee in a suit for a failure of title.

224-195
Francis Warner
vs

Rowland Carlton

Argument of Rff

Filed May 18. 1859
L. Deland
Clerk

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

FRANCIS WARNER, Plaintiff in error, }
 vs. } *Error to La Salle.*
ROWLAND CARLTON, Defendant in error.

POINTS AND AUTHORITIES.

1st. The witness, Rowland H. Carlton, should have been excluded from the stand, for the reason that he was interested in the event of this suit, at least to the amount of costs; and also was interested in the record in this suit, which would be proper evidence in a suit against him by his vendee for failure of title.

Kingsbury vs. Smith, 13 New Ham., 109.

7 New Ham., 54.

1 Greenl., on Evidence, § 390, § 391, note 3, § 401, and § 402.

5 Wendell, 536. 7 Taunt., 252.

1 Johns., 517. 2 Greenl., 199.

13 do., 225. 14 East., 565.

16 do., 70. 4 Cowan, 340.

6 Greenl., 416. 13 Conn., 54.

32 Maine, (2 Red.) 87 or 230. 14 B. Monroe, 289.

2 Swan, (Tenn.) 310. 6 Cush., 82,

STRAIN & BULL, *Att'ys for Plff.*

224 224-105

Francis Warner
vs

Bowland Carlton
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Print of Anthon's  
of Mass.  
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End May 18. 1877.
L. Leland
clerk

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STRAIN & BULL, Att'ys for Plff.

224-195

Francis Warner

vs

Rowland Carlton

~~~~~

Points & Authorities  
of Fact

Filed May 18, 1839  
L. Leland  
Clerk



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*Third Division—April Term, 1859.*

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STRAIN & BULL, *Att'ys for Pt'ff.*

224-195

Francis Warner

vs

Rowland Carlton

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Points & Authorities  
of Plff.

Filed May 18, 1857  
L. Leland  
Clerk



State of Illinois }  
 LaSalle County }  
 Shas before the Honorable  
 Madison E. Hollister, <sup>2d</sup>  
 Judge of the Ninth Ju-  
 dicial District of ~~the~~ State of Illinois, and the  
 Presiding Judge of the LaSalle County Circuit  
 Court, at a term of Said Court commenced  
 and held at the Court House in Ottawa  
 in Said County and State, on the first  
 Monday in February, the same being the  
 Seventh day of February, in the year  
 of Our Lord one thousand Eight hundred  
 and fifty nine, and of the Independence  
 of the United States of America the Eighty  
 third.

Presents The Honorable Madison E. Hollister  
 Presiding Judge.

John F. Nash Clerk,

Washington Bushnell State Attorney

Francis Warner Sheriff.

Be it remembered that on the 18<sup>th</sup> day of January  
 AD 1859. security for costs was filed in the  
 office of the Clerk of the Circuit Court, in a  
 certain cause, in the words and figures follow-  
 ing, to wit:

"Rowland Carlton } LaSalle County Circuit Court  
 vs } February Term AD 1859  
 Francis Warner } Replevius



2 I do hereby enter myself security for costs  
in this cause, and acknowledge myself bound  
to pay, or cause to be paid, all costs which  
may accrue in this action, either to the op-  
posite party or to any of the officers of this  
Court, in pursuance of the laws of this State.

Dated this 18<sup>th</sup> day of January AD 1859  
S. Postishnaite & Co

Rouland Carlton } LaSalle County Circuit Court  
vs } February Term AD 1859 -  
Francis Warner } Replevin

State of Illinois }  
LaSalle County } David L. Hough being first  
duly sworn, on oath depose  
& says that he is attorney for the plaintiff in  
the above entitled suit & that Francis Warner  
the defendant in said suit is Sheriff of said  
County of LaSalle

Subscribed & sworn to before me } David L. Hough  
this 18<sup>th</sup> day of January AD 1859 }  
J. F. Nash Clerk }

And afterwards, on the same, said 18<sup>th</sup> day  
of January AD 1859, an affidavit was filed  
in said cause, in the words and figures following  
to wit:



3

Rowland Carlton } LaSalle County Circuit Court  
 vs } February Term A.D. 1859  
 Francis Warner } Replevin - Damages  
 The Clerk of said Court,

Will please issue, a writ  
 of replevin for the goods & Chattels in the written  
 memorandum, herunto annexed, marked (A)  
 mentioned & described.

Greenwood & Hough  
 Attys for Plff.

State of Illinois }  
 LaSalle County } ss. Rowland H. Carlton, on  
 behalf of Rowland Carlton  
 the plaintiff in the above præcipe named, being  
 first duly sworn, on oath deposes & says that  
 the said Rowland Carlton is the owner of the  
 goods & Chattels referred to in the above præcipe  
 & about to be replevied, & is lawfully entitled  
 to the possession thereof, and that the same  
 have not been taken for any tax, assessment  
 or fine levied by virtue of any law of this  
 State; nor seized under any execution or at-  
 tachment against the goods and Chattels  
 of said Plaintiff, liable to execution or  
 attachment. Rowland H. Carlton.

Subscribed & sworn to before me  
 this 18<sup>th</sup> day of January A.D. 1859  
 Alfred Putnam J.P.



Four Barrels C Powdered Sugar, three Barrels B,  
 five yellow Sugar, five Boxes family Soap, Eight  
 boxes Chemical Soap, Seven boxes Starch, four  
 boxes candles, three boxes saleratus, two half chests  
 tea, fourteen boxes Tobacco, twenty three boxes tobacco,  
 three boxes ginger wine, One Keg prunes, five  
 boxes cream tartar, four boxes ground all-spice,  
 two boxes piment, one box pepper, two boxes  
 pepper-sauce, three boxes tomato catsup, One  
 box pickles, one box chocolate, one box citrons,  
 Eight boxes herrings, two and one half dozen  
 wooden pails, four thousand and ninety pounds  
 cheese, one dozen half-bushel measures, twenty  
 reams of wrapping paper, ten reams wrapping  
 paper, one barrel lard-oil, four barrels vinegar,  
 One barrel spirit gas, one barrel eye whiskey,  
 two barrels Sugar, six half-barrels Mackerel,  
 three half-barrels white fish, two boxes cod-  
 fish, One and one half barrels rapeseed oil,  
 Sixteen Kits mackerel, Sixty boxes Segars, twenty  
 one boxes Segars, fifteen boxes Segars, Sixty two  
 bottles brandy, one cask gin, twenty gallons  
 brandy; One cask port-wine, one part-barrel  
 bourbon whiskey, one Keg Jamaica rum, one  
 Cream colored hose, one wagon, one harness,  
 One fire proof safe. "



And afterwards, on the said 18<sup>th</sup> day of January A.D. 1859, the Plff by his attys filed his declaration, in said cause, in the words & figures following, to wit:

"State of Illinois <sup>3</sup> La Salle County Circuit Court  
 La Salle County <sup>3</sup> February Term A.D. 1859.  
 Rowland Carleton, plaintiff  
 in this suit by Greenwood & Hough, his attornies, complains of Francis Warner, Sheriff of said County, defendant in this suit in a plea of replevin, for that whereas he unlawfully took & unjustly detained the goods & chattels of the said plaintiff, for that the said defendant heretofore, to wit: on the 18<sup>th</sup> day of January A.D. 1859, to wit, at the County aforesaid, unlawfully took & unjustly detains from the said plaintiff,

Four Barrels C. Powdered Sugar, three Barrels of fine Yellow Sugar, five boxes Family Soap, Eight boxes Chemical Soap, Seven boxes Starch, four boxes candles, three boxes Saleratus, two half Chests Tea, fourteen boxes tobacco, twenty three boxes tobacco, three boxes ginger wine, one bag prunes, five boxes cream tartar, four boxes ground allspice, two boxes pimento, one box pepper, two boxes pepper-sauce, three boxes tomato catsup, one box pickles, one box Chocolate, one box citrus,



6 Eight boxes herrings, two and one half dozen wooden pails, four hundred and ninety pounds cheese, one dozen half-bushel measures, twenty reams of wrapping paper, ten reams wrapping paper, one barrel lard-oil, four barrels vinegar, one barrel Spirit gas, One barrel rye whiskey, ~~two~~ barrels Sugar, Six half-barrels Mackerel, three half barrels white fish, two boxes cod-fish, one and one half barrels-mapes and fins, Sixteen Hils Mackerel, Sixty boxes Segars, twenty one boxes Segars, fifteen boxes Segars, sixty-two bottles brandy, one cask gin, twenty gallons brandy, One cask port wine, one port barrel bourbon whiskey, One Keg Jamaica Rum, One cream-colored horse, one wagon, one harness, one fire proof Safe. —

Which said goods & Chattels were then & there the property of Said Plaintiff & of great Value, to wit: of the value of fifteen hundred dollars. & from thence hitherto the Said defendant hath unlawfully, & unjustly detained the Said goods & Chattels from the Said Plaintiff, and Still detains the Same, against oaths & pledges, to the damage of the Said Plaintiff in the Sum of Three Thousand dollars & therefore he brings this suit.

Greenwood & Hough  
Plffs Attornies.



7 And afterwards, to wit, on the said 18<sup>th</sup> day of January A.D. 1857 a writ of replevin issued out of and under the Seal of said Court in the words and figures following, to wit:

"State of Illinois <sup>3</sup>/<sub>388</sub>. The People of the State  
La Salle County <sup>3</sup>/<sub>3</sub> of Illinois, To the Com<sup>rs</sup> of said County greeting:  
If Rowland Carthage of said County, Shall give you good and sufficient security to prosecute his Suit to effect and without delay and to make return of the following described goods and chattels, the property of him the said Rowland Carthage, to wit:

Four Barrels C. Powder  
Sugar, three barrels B. fine yellow sugar, five boxes family Soap, Eight boxes Chemical Soap, Seven boxes Starch, four boxes candles, three boxes Saleratus, two half chests tea, fourteen boxes tobacco, twenty three boxes tobacco, three boxes ginger wine, one Keg prunes, five boxes cream tartar, four boxes ground allspice, two boxes pimento, one box pepper, two boxes pepper sauce, three boxes tomato catsup, one box pickles, one box Chocolate, one box citron, Eight boxes herrings, two and one half dozen wooden pails, four hundred and ninety pounds Cheese, One dozen half-bushel measures, twenty name



8 of wrapping paper, ten reams of wrapping paper, one barrel lard oil, four barrels vinegar, one barrel Spirit gas, one barrel rye whiskey, two barrels Sugar, six half-barrels Mackerel, three half-barrels white fish, two boxes Cod fish, one and one half barrels napes and fins, sixteen Kils mackerel, sixty boxes Segars, twenty one boxes Segars, fifteen boxes Segars, sixty two bottles brandy, one cask gin, twenty gallons brandy, one cask port wine, One part barrel Bourbon whiskey, one Keg Jamaica Rum, One Cream Colored horse, One wagon, One harness, One fire proof Safe,

which Francis Warner also of Said County, forcibly and unlawfully took and unjustly detains - and returns the said property, if returns thereof, be awarded - and further to Save and keep you harmless in replevying said property; thus you are to cause the said goods & chattels to be replevied and delivered to said Rowland Carlton without delay. And Summon the said Francis Warner, personally, to be and appear before our Circuit Court in and for said County, on the first day of the next term thereof, to be holden at the Court House in Ottawa in Said County, on the first Monday of February next, - to answer to the said Plaintiff



9 of the Said Carlton for unjustly detaining  
the goods and chattels aforesaid. And make  
due return of the bond to be taken of the Said Plain-  
tiff as aforesaid, together with this writ, to the  
Clerk of Our Said Court, with an endorsement  
hereon, as to your doings in the premises.



Witness John F. Nash, Clerk, and the  
Seal of Our Said Circuit Court, at Ottawa  
this 18<sup>th</sup> day of January AD 1859.

J. F. Nash clk.

which writ was returned by the Coroner, on  
the 19<sup>th</sup> day of January AD 1859 with an en-  
dorsement thereon in the words & figures following  
to wit: " 194

Rowland Carlton vs Francis Warner  
Writ of Replevin.

Executed this writ by reading to Defendant  
Francis Warner and delivering the within des-  
cribed goods and chattels to David L. Heff  
Att for Plaintiff.

Robt M. McArthur Coroner,

Sec & Rt 60, 16 m 80, Bond 50, Bail 25,-

Repley 50 = \$ 2.65

And afterwards on Tuesday February 8. 1859  
the same being one of the days of the February term  
of said Court for said term an order in said  
cause was entered of record in the rolls and



10 Signs following to wit:

"Rowland Carleton

vs

In Replevin

Francis Warner

} On motion of the plaintiff by  
D. L. Knepp his attorney the  
defendant is ruled to place herein on or before  
Friday morning next."

And afterwards, to wit on February 10, 1859 the  
defendant filed his plea in the words and  
signs following to wit:

"State of Illinois

} LaSalle County Circuit  
LaSalle County } Court at the February Term  
thereof AD 1859.

Francis Warner

vs

In Replevin

Rowland Carleton

And the said

Francis Warner comes and  
defends &c and says that he does not wrong-  
fully detain the Goods and Chattels in the  
plaintiffs declaration mentioned nor any part  
thereof in manner and form as therein al-  
leged; And of this he puts himself upon  
the Country. And the Plaintiff doth the  
like by Wallace, atty.

Jenkins & Blanchard Attys for Defs.



And for a further plea in his behalf The Said defendant comes and defends &c and Says - That The said plaintiff ought not to have or maintain his aforesaid action against him because he Says That The said goods and Chattels in The said declaration mentioned at the said time when &c were the property of One Rowland H. Careno and not the property of the plaintiff, and thus he is ready to verify wherefore he prays Judgment,

3<sup>rd</sup>

And for a further plea in his behalf The said defendant comes and defends &c and Says and says That The said plaintiff ought not to have or maintain his aforesaid action against him, because he Says That The said goods and Chattels in the said declaration mentioned, at the said time when &c were the property of the defendant and not of the Plaintiff, and thus he is ready to verify wherefore he prays Judgment &c.

4

And for a further plea in his behalf The said defendant comes and defends &c and Says That Said plaintiff Ought not to have or maintain his aforesaid action against him because he Says That before and at the time of levying upon <sup>and</sup> taking the property mentioned in the said plaintiff's declaration he was the acting Sheriff of Law,



Page 12 - LaSalle County in the State of Illinois duly elected  
and qualified - And that heretofore, to wit:  
on the first day of January A.D. Eighteen  
Hundred and fifty nine to wit at and within  
The County and State aforesaid - The Clerk  
of the County Court of the County of LaSalle  
issued a certain writ of Execution in due  
form of law under the Seal of Said County  
Court, which said Execution bore date  
the said day and year last aforesaid  
and by which said writ of Execution  
The People of the State of Illinois Commanded  
The Sheriff of said County of LaSalle, That  
of the Goods and Chattels, Lands & Tenements  
of One Rowland H. Carlton in Said County  
to make the Sum of Four Hundred and  
forty Three dollars and Sixty two cents dam-  
ages and Seven dollars costs which one Sam-  
uel Engler had then lately recovered before  
The said County Court in a certain plea  
against The said Rowland H. Carlton  
and to make return of said writ to said  
Court within ninety days from the date  
thereof, - And also that heretofore to wit  
on the Eighth day of January A.D. Eighteen  
Hundred and fifty nine, to wit: at and  
within the County aforesaid The said Clerk

P. 12  
11



13.

of the said County Court of LaSalle County  
aforesaid issued two other certain writs com-  
monly called executions in due form of  
law and under the Seal of said County  
Court- which said writs both bore date  
the day and year last aforesaid and by  
which said writs of execution aforesaid, the  
People of the State of Illinois commanded  
the Sheriff of LaSalle County aforesaid that  
of the goods and Chattels, lands <sup>and</sup> tenements  
of One Rowland H. Carlton in said County  
in behalf of John <sup>m</sup> Seimyer and John Fowler  
to make the sum of Two Hundred and fifty  
Three dollars and forty seven cents damages  
and Eleven dollars and forty five cents  
costs - and in behalf of William O. George  
James S. Dudley and William M. Linneman  
the sum of Seven Hundred and Seventy nine  
dollars and six cents Damages and Eleven  
dollars and thirty cents costs - which the  
said Seimyer and Fowler, and the said George  
Dudley and Linneman had then lately recov-  
ered before the said County Court aforesaid  
in pleas by them against the aforesaid Rowland  
H. Carlton, and to make return of said  
writs within ninety days from the date thereof  
and said defendant avers that afterwards



144 to wit, on the first day of January A.D.  
Eighteen Hundred and fifty nine to wit at  
the County aforesaid, The said writ of exe-  
cution aforesaid in favor of the said Engler  
was delivered to the defendant as such Sheriff  
aforesaid to execute. And that on, to wit  
The Eighth day of January A.D. Eighteen Hundred  
and fifty nine, at to wit the County aforesaid  
The other two executions aforesaid, one in  
favor of Keimyer & Fowler and the other in  
favor of the said George Dudley & Luneman  
were delivered to him as such Sheriff to  
execute, and said defendant further avers  
that afterwards and while he so held said  
Several executions and within ninety days  
after the date thereof to wit on the Thirteenth  
day of January A.D. Eighteen Hundred and  
fifty nine to wit, at and within the County  
aforesaid he as such Sheriff aforesaid did  
levy said Several executions aforesaid upon  
the goods and Chattels in said Plaintiff's  
declarations mentioned, and did thus and  
there take the same upon said Execution  
as the property of the said Rowland H.  
Carlton and defendant further avers that  
the said goods and Chattels were then and  
there the property of the said Rowland H.  
Carlton and not the property of the said



15 Plaintiff. And this the said defendant is  
ready to verify, wherefore he prays Judgment  
Penkins & Blanchard  
& Strain & Bull  
Defts attys "

And afterwards, to wit; On the 16<sup>th</sup> day of Febru-  
ary AD 1859 the plaintiff files his replication  
to defendants pleas, in the words and figures  
following, to wit;

"Laballe Circuit Court, February Term 1859,

Rouland Carlton

vs

Francis Warner

Replevin

And Now Again Comes  
the said Plaintiff by Wallace his Attorney  
And for replication to defendants second plea  
by him secondly above pleaded, the said  
Plaintiff saith precludi non &c because  
he says that the said goods and Chattels  
at the said time when &c were the property  
of said Plaintiff, and this he prays may  
be enquired of by the Country &c

And for replication to defendants third plea  
by him thirdly above pleaded said Plaintiff  
saith precludi non &c because he says that  
the said goods and Chattels at the said time



16 when &c, were the property of said plaintiff  
and not the property of said defendant, and  
thus the said plaintiff prays may be enquired  
of by the country &c.

And for replication to defendants fourth  
plea by him fourthly above pleaded said  
plaintiff saith precludi non &c because he  
says that the said goods and chattels at  
the said time when &c were the property of  
said plaintiff and not the property of said  
Rowland H. Carlton and thus he prays may  
be enquired of by the country &c

W. H. L. Wallace

Atty for plff "

And afterwards to wit; on Friday February 18, 1857  
the Court being on of the day of the February term  
of said Court for said year, an order was entered  
pursuant in said cause in the words and figures  
following to wit;

Rowland Carlton }  
vs }  
Francis Warner }

Replevin

This day the

plaintiff comes by  
Hough and Wallace his attorneys and the  
defendants by Strain & Bull and Perkins  
& Blanchard his attorneys, who move the



Court for a continuance of this cause, which motion is overruled by the Court,

Whereupon come the following jurors of a jury to wit; George Harris, Elisha Card, M. Deais, Daniel Snell, Eli Signor, S. B. Grover, Daniel Arnold, Samuel Porter, Gideon Mace, B. E. Hadley, John Frayer & Jeremiah Pembroke who are duly Elected, tried and sworn to well and truly try the issues herein according to the evidence; and after hearing the testimony and arguments of Counsel, the jury retires to consider of their verdict, and after <sup>the</sup> deliberations thereon had returns into Court with the following verdict, to wit; "We the jury find the issues joined in favor of the plaintiff and assess his damages at one cent.

The defendants counsel move the Court for a new trial."

And afterwards to wit; on Saturday the 19<sup>th</sup> day of February, the same being one of the days of the February term of said Court for the year 1859, the following further order was entered of record in said cause in the words and figures following, to wit;

"Rowland Carlton  
vs  
Francis Warner

Replevin.



18 After hearing the arguments of Counsel the Court overrule the defendants motion for a new trial, Defendants attorneys now move the Court in arrest of judgment, which motion is also overruled by the Court.

It is therefore considered by the Court that the plaintiff have and recover of the defendant one cent for his damages, also his costs and charges by him herein expended, and that he have execution therefor. "

And afterwards, to wit on Saturday, March the 5<sup>th</sup> the same being one of the days of the February Term for the year 1859, the following final order was entered of records in said Cause, in the words and figures following to wit:

"Rouland Carlton }  
vs } Replevin  
Francis Warner }

It is ordered by the Court that the bill of exceptions be settled and filed within three times in thirty days from this date. "

And afterwards to wit, on the 12<sup>th</sup> day of March as of March 5<sup>th</sup>, 1859, the plaintiff filed his Bill of exceptions herein, in the words and figures following to wit:



State of Illinois } In the LaSalle County Circuit  
 LaSalle County } Court at the February Term  
 thereof A.D. 1859.

Rowland Carlton

vs

Francis Warner

Be it remembered that  
 on this 18<sup>th</sup> day of February  
 A.D. 1859 the above entitled

cause being called for trial - The defendant  
 by his attorneys moved the Court for a continu-  
 -ance and in support of said motion presented  
 to said Court a certain Bill for discovery on file  
 on the Chancery Side of said Court and on the  
 docket at this present term of said Court - being  
 number 121. on the Chancery list, which said  
 Bill was in the words and figures following  
 to wit: "

To the Honorable M. E. Hollister Judge  
 of the Circuit Court of the Ninth Judicial  
 Circuit of the State of Illinois in and for the  
 County of LaSalle, in Chancery sitting:

Respectfully represents unto your Honor,  
 your Orators, William O. George, James S.  
 Dudley, and William M. Tureman - that  
 at the December Term A.D. 1858, of the County  
 Court of said County, your Orators recovered  
 a judgment against Rowland H. Carlton,  
 of said County, for the sum of Seven hundred  
 and Seventy nine dollars and six cents (\$779.06)



and Costs of Suit= and which judgment is still wholly unpaid and unsatisfied.

And Your Orator, <sup>further</sup> represent that on the 7<sup>th</sup> day of January A.D. 1859 your Orator caused a writ of Execution to be issued upon said judgment and placed in the hands of Francis Warner, Sheriff of said County, in and by which writ said Sheriff was commanded that of the lands and tenements, goods & chattels of said Rowland H. Carlton he cause to be made the said sum of (\$779.06) and the costs of said suit;= And your Orator further represent that on or about the 13<sup>th</sup> day of January A.D. 1859, the said Francis Warner, as such Sheriff, (by C. J. P. Buck his deputy) levied said writ of Execution upon a quantity of personal property, as the property of said Rowland H. Carlton a description of which is given by said Sheriff in his levy of said writ, and to which, for greater certainty reference is hereby made.

Respectfully represents also unto your Honor, your Orator John M. Nimmeyer John Fowler that at the same term of said County Court they obtained a judgment against said Rowland H. Carlton for the sum of two hundred and fifty three dollars and



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and forty Seven cents and costs of Suit, which judgment is still unpaid, unsatisfied and in full force, = that on or about the 27<sup>th</sup> day of January 1859, they caused an execution to be issued out of the office of the Clerk of said said Court on said Judgment in due form of law, and placed in the hands of said Francis Warner, Sheriff of said County, in and by which said Sheriff was commanded that of the goods and Chattels lands and tenements of said Rowland H. Carlton he cause to be made the amount of said Judgment and costs = that on or about the 13<sup>th</sup> day of January 1859 the said Sheriff (by C. J. P. Buck his deputy) by virtue of said writ levied upon a quantity of personal property, as the property of said Rowland H. Carlton, as the same is described in the levy of said writ and to which for greater certainty reference is hereby made.

Also respectfully represents unto your Honor your Orator Samuel Engler that at the same time of said County Court your Orator recovered a judgment against the said Rowland H. Carlton, for the sum of four hundred and forty three dollars and sixty two cents (443.62) and



costs of Suit, which judgment is still unpaid, unsatisfied and in full force - that on or about the first day of January A.D. 1859, Your Orator caused a writ of execution to be issued upon said judgment in due form of law and duly placed in the hands of said Francis Warner Sheriff of said County, in and by which writ, said Sheriff was commanded that of the goods and Chattels, Lands and tenements of said Rowland H. Carlton he cause to be made the amount of said judgment and Costs; that on or about the 13<sup>th</sup> day of January A.D. 1859 said Sheriff, (by C. J. P. Buck his deputy) under and by virtue of said writ of execution levied upon a quantity of personal property as the property of said Rowland H. Carlton, to satisfy said Execution, a description of which is set forth in the levy of said writ by said Sheriff, and to which for greater certainty reference is hereby made.

And Your Orator represent that the aforesaid property levied upon as aforesaid by said Sheriff, was at the time of the aforesaid several levies, and now is the property of the said Rowland H. Carlton, as they verily believe.



But now so it is - may it please your Honor, that the said Rowland H. Carlton and one Rowland Carlton, a resident of the State of Maine, the father of said Rowland H. Carlton, confederating together fraudulently, as your Orator verily believe, for the purpose of hindering and delaying your Orator in the collection of their several demands aforesaid, pretend that at some time prior to the receipt of said several executions by said Sheriff, the said Rowland H. Carlton made a bona fide sale of said property to the said Rowland Carlton, that on or about the 19<sup>th</sup> day of January A.D. 1859 the said Rowland H. Carlton assuming to be the agent of said Rowland Carlton, caused said goods to be replevied from the said Francis Warner, Sheriff as aforesaid by virtue of a writ of Replevin issued out of the office of the Clerk of this Court, where the said Replevin suit is now pending, and numbered on the law side thereof as No. 194.

And Your Orator further represent that the said Rowland H. Carlton, has as your Orator believe, no other property in the State of Illinois, liable to be seized on Execution to satisfy the aforesaid



24 judgments of your Orators, except the/ properly  
aforesaid.

To the End therefore that Your Orators  
be not without remedy in the premises, and  
that they be not defrauded, hindered and  
delayed in the collection of their several  
judgments aforesaid, they pray that the  
said Rowland H. Carlton, the said Row-  
land Carlton and the said Francis Warner  
may be made parties defendants to this Bill:

that the said Rowland H. Carlton  
and Rowland Carlton, and each of them  
may upon their corporal oaths answer all  
and singular the matters and things set  
forth in this Bill, = And that said Francis  
Warner Sheriff as aforesaid may answer  
said Bill but not under oath, which  
is hereby waived, and particularly that  
the said Rowland H. Carlton, and Rowland  
Carlton and each of them may to the best  
and utmost of their several knowledge,  
remembrance - information and belief, full  
true, direct, and perfect answer make  
to the several interrogatories hereinafter  
set forth, to wit:

1st. Interrogatory to the said Rowland Carlton.  
Are you the father of said Rowland H. Carlton?



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2<sup>nd</sup> 11

Where do you now reside, and where have you resided for the last two or three years?

3<sup>d</sup> 11

Did you sometime in the Summer or Fall of A.D. 1858 purchase from the said Rowland H. Carlton a Stock of Groceries &c in the City of LaSalle, Illinois, if so, what price did you pay for the same, and what were the terms of payment?

4<sup>th</sup> 11

Was it not your intention, that any money you may have advanced to said Rowland H. Carlton, should be, and was by way of advancement to him as your son, and not as a loan of money that was to be repaid by him to you?

5<sup>th</sup> 11

Did not you know at and before the time of your supposed purchase of said goods, that said Rowland H. Carlton was embarrassed pecuniarily, and deeply in debt? and did not the said Rowland H. Carlton some time before said supposed purchase, inform you by letter, or otherwise of his embarrassment and request you to come to LaSalle and purchase his property to save the same from seizure and sale on execution, and if such information was by letter, produce any and all such letters and make them a part or parts of your answer hereto?



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he commenced business in said LaSalle?  
and did you not know that said Rowland  
H. was a Spendthrift, and careless and reckless  
in business?

11<sup>th</sup>

Have you not at some time or other told  
said Rowland H. Carleton, or in some way  
intimated to him that under certain circum-  
stances you would never call upon him  
for repayment of any moneys, you may  
have advanced to him, & if so state fully  
and particularly under what circum-  
stances?

And that said Rowland H. Carleton  
may <sup>fully</sup> answer the following interrogatories:

1<sup>st</sup>  
11

Are you the Son of said Rowland Carleton?

2<sup>nd</sup>  
11

Is your Father a man of consider-  
able property, & if so about how much?

3<sup>d</sup>  
11

How did your father pay for the stock  
of groceries, he is said to have bought of  
you in LaSalle, some time last fall, give  
an exact statement of the manner in  
which the payment was made?

4<sup>th</sup>  
11

Did not you make said sale to your  
Father for the purpose of delaying, hind-  
ering or delaying your creditors, or some  
of them, and did not you request your father  
to come from the State of Maine to buy



your property in LaSalle for the purpose of placing the same beyond the reach of your creditors, or some of them? and did not your Father know at and before the time of such purchase that such was your object?

And Your Orators further represent unto Your Honor that they have reason to believe and do believe that the charges in this Bill contained, that said Sale made by said Rowland H. Carleton to <sup>say</sup> Rowland Carleton was fraudulent as to your Orators and made for the purpose of hindering delaying or defrauding your Orators and true.

And your Orators further represent that they had hopes until recently that they would have been able to prove the same by witnesses to be produced in Court on the trial of said Replevin suit. But upon ~~condition~~ consultation of their counsel it is thought that there is no witnesses by whom the same can certainly be proved,

And that if the answer of said Rowland Carleton can be obtained, enough will appear in said answer to show said Sale to be fraudulent as to your Orators, and



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Page 29 That it was only within a day or two past,  
that upon consultation of your orators counsel  
it was deemed necessary and material to  
have the testimony of Said Rowland Carleton  
in order to prove the facts as your Orators  
believe the facts to be.

To the End therefore that your Orators  
be not without remedy in the premises they  
pray that this Bill may be Taken as an  
affidavit for a continuance of Said Reple-  
in Suit in order to enable your Orators  
to obtain the discovery herein prayed for,  
herein, and that they may have such  
other and further relief in the premises as  
Equity and good conscience may require  
& they will ever pray &c

Strain Ball & Jenkins & Blanchard  
Complts Sols.

State of Illinois }  
LaSalle County } E. Follett Ball being duly sworn  
Says that the several matters & things  
set forth in the foregoing bill, by positive averments - are true  
as he verily believes, and that those things which are  
stated as upon information and belief are true to the  
best of knowledge and belief.

Subscribed & sworn to before me this 17<sup>th</sup> day of February A.D. 1859

E. Follett Ball  
J. F. Nash Clerk



Which said motion after being heard, was by the said Court over ruled and directed the trial of this cause, Thence and Thence to proceed - To which decision of said Court the said defendant by his attorneys Thence and Thence accepted -

A Jury was Thence called in said Cause and the plaintiff to maintain the issues on his part called to the Witness Stand Volney G. Hatch who testified in substance in said cause as follows - "I am acquainted with Rowland Carlton; he resides in Sedgwick, Maine; he has been making investments in this County - Real Estate - have known R. H. Carlton about three years - have been in partnership with him in LaSalle - we went into Partnership two years ago last June - remained in Partnership about Eighteen months - He put in \$1600 - That money was furnished him by his father, the Plaintiff - I sold out my interest in the business to R. H. Carlton - he paid me for my interest and assumed the liabilities of the firm - The liabilities were about \$4000, - Between \$2400. and \$2600, was a debt due the Plaintiff for money furnished Hatch & Carlton - Rowland Carlton



31 held Hatch & Carlton's notes for that amount  
— When I sold out to R. H. Carlton, R.  
Carlton took up Hatch and Carlton's notes  
— and R. H. Carlton gave R. Carlton, his  
notes for that amount, — a portion of the debts  
secured by R. Carlton were due to Chicago  
parties — and R. Carlton and R. H. Carlton  
gave joint notes for those debts — Some of  
the debts were due to Laflin, Smith & Boies  
and to M. D. Gilman and Co — The firm  
of Hatch & Carlton purchased goods at  
Chicago, New York and St Louis, — we  
purchased most of our goods of M. D.  
Gilman & Co. — We owed Laflin, Smith,  
& Boies about \$1200. and M. D. Gilman  
& Co about the same — I sold out  
to R. H. Carlton about the 6<sup>th</sup> February AD  
1888. — R. H. Carlton carried on business  
at the same stand after I sold out to him,

The business was Grocery and provision store —  
The plaintiff was not there when I sold out  
to R. H. Carlton — but R. H. Carlton sent on  
his notes for what Hatch & Carlton owed the  
plaintiff, and Hatch & Carlton's notes came  
back cancelled — I saw Pettif in LaSalle  
in October last; he remained there about two  
weeks. There was a sale of said Grocery Store  
by R. H. Carlton to the plaintiff — The sign  
was changed.



On Cross Examination Said Witness testified as follows — The Sale took place in LaSalle — dont know who was present; was not present myself — dont know anything about the terms of the Sale — Dont know positively that R. H. Carlton owed the Plaintiff any thing at that time — Plaintiff owns considerable Real Estate about LaSalle, — Know nothing about his property East, but the general reputation is that he is a man of considerable property, Dont know whether the \$1600, furnished by his Father (The Plff) was intended as a gift or loan — The Plaintiff said he would advance the \$1600 for the purpose of setting R. H. Carlton in business with me — The Plaintiff had another Son at LaSalle some time ago — The Plaintiff came into our Store one morning and said he had bought out R. H. Carlton, meaning R. H. Carlton, his Son, — That he would attend to the business himself, and see if he could not get matters into better shape — This was after the Sale — The Plaintiff said that all they wanted was time — That every thing would be paid — They only wanted time to make collections — R. H. Carlton had



his name painted on each window as Incer-  
 on top of the awning he had a board with  
 his name - This awning projects twelve feet  
 over the side walk - This sign was at the  
 lower edge of the awning and could not be  
 read from the side walk - I have not been  
 out in the street very often where I could see  
 the sign - did not see him change that  
 sign - could not state but it may have  
 remained there some time - This sale was  
 made in the fore part of October last -  
 The first time I noticed the sign on the awn-  
 ing was changed was within two weeks  
 - dont know when it was changed -  
 it now reads R. Carlton, - There is an-  
 other sign suspended over the side walk  
 under the awning - dont know when it  
 was placed there - I think within four or  
 five weeks - It reads "Carlton's" - dont  
 know who put it up - It is most conspicuous  
 to those on the side walk - Most of the  
 people that trade at the store pass on the  
 side walk - The signs on the windows  
 are taken off entirely - dont know when  
 they were changed - Dont know of any  
 of the window glass being broken - I dont  
 know whether the plaintiff went in and



34 conducted the business or not; - he has not been in LaSalle since he bought out - he resides in the State of Maine.

Direct examination resumed - I saw a notice of the Sale in the Newspaper (Notice in the LaSalle Press, here Shown to the Witness - In No 32 of said Paper and which said paper purported to have been published on the 16<sup>th</sup> of October A.D. 1858)

This is the notice I refer to as having seen - Notice offered in Evidence, received and read to the jury as follows, to wit:

(Notice not on file)

I understood that the Plaintiff wanted time on his indebtedness and on Rowland & that the intention was to pay all the debts.

Plaintiff then introduced the said R. H. Carlton as a witness, to the competency of which said Witness on the ground of interest, the defendant by his attorneys then and there objected - The Court overruled the objection & Defendant then and there excepted to the decision of the Court therein.

The said Witness then gave in substance the testimony following, to wit:

I am the son of R. Carlton - I was



35 indebted to R. Carlton \$1600, at the time I went into business with Hatch — Hatch & Carlton were indebted to R. Carlton, at the time I bought Hatch out \$2400, and he R. Carlton was Security for about \$1800, which was on Notes — R. Carlton signed notes with me for about \$1800. In last October

at the time of Sale, there was an inventory of amount of Stock, notes, and accounts —

This indebtedness was released, Security was entered into — Possession was given of Store & Books and all that belonged to the Store — R. Carlton Employed two clerks and discharged two, he thought there was too much help, — He signed blank notes for K. J. Adams to fill up with amounts due and K. J. Adams took these notes to Chicago and brought back other notes —

The very day the Sale was made the Sign in front of the awning was taken down & the next day the painter made it "R. Carlton" — R. Carlton was here at the time of the Sale and staid three weeks more or less —

He has money invested in lands in this Vicinity — He has been here three or four times —

(The Inventory heretofore referred to by the Witness was here introduced, identified



and offered and received in evidence)

And by which said Inventory it appears  
 that the Stock amounted to \$4781. 23

Notes, good, bad & doubtful were valued at \$1854. 59

And Book account were valued at \$823. 11

And Lot 12 in Block 6 in City of LaSalle \$150. 00

And following said Inventory and in the  
 same Book, there was a Bill of Sale or deed  
 of assignment in the words and figures fol-  
 lowing to wit:

"Know all men by these presents  
 that Whereas S. Rowland Still ~~was~~ Carltho  
 of the City of LaSalle, County of LaSalle, and  
 State of Illinois, am justly and truly indebted  
 unto Rowland Carltho, of the Town of Brooklyn,  
 County of Hancock, and State of Maine, for money  
 borrowed and interest, in the Sum of One thousand  
 Eight hundred and twenty four Dollars (\$1824.<sup>00</sup>)  
 also for other monies had and received from him  
 and on Book-Account, in the Sum of Three  
 Hundred and Seventy <sup>25</sup>/<sub>100</sub> Dollars; also in the  
 further Sum of Two thousand Five hundred  
 and forty seven <sup>24</sup>/<sub>100</sub> Dollars, being debts assumed  
 and Satisfied for me and on my behalf in my  
 business with my former partner Volney G. Hatch



37

Now in consideration of said indebtedness, and of the further assumption and Satisfaction by the said Rowland Carltan of the following Debts now owing by me to said parties respectively, to wit:

|                                       |                                                          |          |
|---------------------------------------|----------------------------------------------------------|----------|
| To J. Gallagher                       | One hundred dollars                                      | \$100.00 |
| L. C. Parsons                         | Fifty Dollars                                            | 50.00    |
| Laflin Smith & Boies                  | Six hundred & fifty dollars                              | 650.00   |
| Same for interest                     | Thirty three $\frac{4}{100}$ Dollars                     | 33.04    |
| M. D. Gilman & Company                | Four hundred ninety three $\frac{35}{100}$               | 493.35   |
| V. S. Hatch                           | Six hundred & Seventy seven $\frac{68}{100}$ Dollars     | 677.68   |
| Day & Allen                           | Ninety seven $\frac{65}{100}$ dollars                    | 97.65    |
| W & S. Todd Co                        | One hundred twenty five $\frac{45}{100}$ $\frac{2}{100}$ | 125.45   |
| Joseph Cutting                        | Thirty five $\frac{83}{100}$ Dollars                     | 35.83    |
| H. Cook                               | Twenty five $\frac{63}{100}$ Dollars                     | 25.63    |
| Northern Illinois Coal & Iron Company |                                                          | 120.30   |
|                                       | One hundred and twenty $\frac{30}{100}$ Dollars          |          |
| George W. King                        | Two hundred fourteen $\frac{95}{100}$ Dollars            | 214.95   |
| E. W. Cook                            | Eighteen $\frac{43}{100}$ Dollars                        | 18.43    |
| W. C. Hewitt                          | Eight $\frac{44}{100}$ Dollars                           | 8.44     |
| Laflin, Smith & Boies                 | Eighty eight $\frac{71}{100}$ Dollars                    | 88.71    |
| Emree Bullard                         | Eighty seven $\frac{50}{100}$ Dollars                    | 87.50    |

Amounting together to the Sum of Two Thousand Eight hundred twenty five  $\frac{60}{100}$  Dollars \$2825.60  
 : As also of the further Payment to me of the Sum of Forty one  $\frac{24}{100}$  Dollars, at and before the sealing and delivery of these presents, the receipt



whereof is hereby acknowledged, I have bargained  
 Sold and delivered, and by these presents do  
 bargain, Sell and deliver unto said Rowland  
 Gaulton, all and Singular my Stock of goods,  
 wares and merchandize, now in the Store occupied  
 by me in said City of LaSalle, as inventoried and  
 Enumerated in the preceding pages of this Book,  
 numbered respectively one to Seven, amounting  
 to Four Thousand Seven hundred and Eighty  
 one  $\frac{23}{100}$  Dollars; also the Notes of hand now  
 owing to me and unpaid, enumerated <sup>as</sup> set forth  
 in pages Eight and nine of said book, amounting  
 to Two Thousand Seven hundred and Sixty  
 five  $\frac{17}{100}$  Dollars; some of which Notes being  
 doubtful and bad, I have bargained, Sold  
 and delivered the Same, at the Sum of  
 One thousand Eight hundred and fifty four  
 $\frac{9}{100}$  Dollars; together with the book-debts,  
 and accounts now due and owing to me,  
 as enumerated and inventoried in pages  
 ten, eleven and twelve of said book, and  
 amounting to One thousand and four  $\frac{44}{100}$   
 Dollars, some of which accounts being also  
 doubtful and bad, I have bargained sold and  
 delivered the Same at the Sum of Eight hundred  
 and twenty three Dollars and eleven cents;

Also lot twelve, in Block sixty seven in



in said City of LaSalle, at the price or  
Sum of One Hundred and fifty dollars is  
to have and to hold the said goods, wares  
and Merchandize, notes of hand, and book-debts  
and accounts, unto Said Rowland Carlton  
his executors, Administrators and Assigns to  
his and their proper use and benefit for ever;  
with full power and authority to collect, sue  
for, recover, and receive such other Notes of  
hand, book debts and accounts in such  
manner, and at such times, as may by him  
and them be deemed advisable. And I  
the said Rowland Hill - Carlton for myself  
my Executors and Administrators shall and  
will for ever warrant and defend all and  
singular the said goods, wares and Mer-  
chandize, Notes of hand, book debts, and  
accounts, unto the said Rowland Carlton,  
his Executors, Administrators and Assigns a-  
gainst me, my Executors and Administrators  
and against all and Every other Person,  
and persons, whatsoever; of which goods,  
wares and Merchandize, notes of hand,  
book-debts and accounts, I the said Row-  
land Hill-Carlton have put the said  
Rowland Carlton in full possession by  
delivering the Same to him at the Sealing  
and delivery hereof, this Eighth day



40 of October, one thousands eight hundred and fifty eight.

R. H. Carlton *Sealed*

Sealed and delivered and lying and possession of said described property given by said Rowland Hill - Carlton to said Rowland Carlton in the presence of

W. G. Telfer

W. C. Hewitt "

Sale Took place about October 6<sup>th</sup> 1858, The Sign across Side walk which reads "Carlton's," has been up three weeks or more, - The letters on it are about six inches long - My father thought he could let me have money to go into business with Hatch - He has had conversations with me in which he said he would assist me in going into business - He said no Son of his should have money unless it was loaned to him - He loaned me money to go into business - He loaned me money to invest in property - and I invested it.

He took back the property and let me have the money - it was sold back to Rowland Carlton - He loaned me in the first



41 place \$300, and subsequently enough to make  
\$2100, or \$2200, - I drew on him for first  
money. - I afterwards had a Settlement  
with him - & think I did not get my  
drafts but think I did get a receipt from  
him - my impression is that he holds the  
drafts now - Dont know when I got  
receipt. - In October I got his receipt  
in full of Indebtedness - I drew drafts  
on him from LaSalle - he was in Maine  
at time of Settlement - I allowed him  
Six per cent interest on money - I told  
my Father I needed more money -  
Did not tell him I was Embarrassed;  
asked him for more money, I told him  
I needed more money to carry on the  
business; It was partially understood  
that he was to let me have another  
loan - I was indebted at the time of Sale  
over and above what he assumed to pay,  
from \$2000. - to \$4000. at the time of  
Sale the amount I owed my Father and  
for which he was liable was computed  
and the difference between that and the  
amount of Stock, notes & accounts was  
paid me in cash - The amount of  
cash payment was I think about \$50 -



A large proportion of assumed debts were debts for which my Father was bound - I did not communicate to my Creditors, that I had sold out & was not able to pay them any thing - George Dudley & Tureman were Creditors of mine; so were Steinyer & Fowler & Samuel Engler. I have no property in this State subject to execution that I know of - In making the Sale I did not act under the advice of Council except to draw papers - I think there were no remarks made about our making the Sale in such a manner, as to prevent, Creditors from getting it. - At the time of making the Sale the Bill of Sale was read over in presence of Telfour and Hewitt and I said that I delivered up possession of the Store to my Father. They were called upon to Witness the transaction - Mr Greenwood the Lawyer that drew the papers was present and said that was the way to do it - An account of Stock was taken by Telfour, Cook & Hewitt - I was in the Store at the time - was taking part a little; my Father was there looking on taking no



43 very active part; Don't know that Father  
knew of his own knowledge that the property  
was all on hands - My books showed very  
nearly the state of my affairs - The books  
were not very generally balanced up  
at the time of sale - Sold the accounts  
to my Father - Jefferson gave a statement  
of them - My Father - all of them at  
at the time of sale - The opposite ac-  
-counts were taken and deducted from  
debit &c - The balance was what my  
Father bought - The books were not ex-  
-amined by either me or my Father -  
I suppose he thought I was indebted  
to other parties - Have requested my  
Father to go my security for more - My  
Father asked me how I was getting  
along - I told him I thought I could  
get along and pay my debts, Re-  
-collect of speaking to my father about  
the notes on which he was bound - Don't  
know that he sought to find out  
how my affairs stood - Don't know what  
induced <sup>my father</sup> to buy me out - Don't know  
why he should buy a stock of groceries  
out West, - My Father bought the  
stock but do not know what his intention



124 times were - There was an invoice taken before the sale - Some three or four were taken since I bought Hatch out, which was about the 6<sup>th</sup> February A.D. 1858. to October 6<sup>th</sup> A.D. 1858. - The last invoice taken prior to the sale was not taken with a view of selling out to my Father; At the time Hatch went out of the store we thought we were something like \$1200. ahead that left me some \$600 or \$700 as capital - The stand was a good one for business - one of the best in town, and I had a large number of customers.

There was one lot sold about this time by me to Rowland Carleton for \$150. The lot was in one bargain - He sent a deed to me for some land in Township N<sup>o</sup> 34 - R 1 East 3<sup>d</sup> P. M. I made a deed to him for the land back. The land was conveyed to me for the purpose of raising money.

Direct Examination resumed

My Father made an investment of some \$800 or \$900 - after I sold out to him; afterwards about \$400 - there was a turn of a further loan from R. Carleton



12  
45 To me: He found out after getting here that there was a Trust Deed on some of his Real Estate and he had to take land & pay the Trust Deed. As far as I know neither R. Carlton or myself had any intention, to cheat, hinder or delay creditors —

### Cross Examination

I have been in the Store ever since the Sale to R. Carlton, & have taken charge of matters as formerly, only that I acted as agent for my father; I kept one key to the Safe and I self kept one; <sup>total</sup> charge of business same as others in the Store. I have not taken quite as much charge of business since as before — Most of the goods since that time have been bought in LaSalle — I self often made purchases without letting me know — He never assumed to act in the Store in opposition to my expressed wishes — Father did not give I self a Power of Attorney, But he did give me a Power of Attorney to transact his business, He gave a written order to Chickshanks to honor I self's checks — It was not understood then that there was any Head Managing the business for R. Carlton —



## Direct Examination Resumed

R. Carlton employed and paid me - some of the goods Taken - quite a large portion that were Taken - were purchased by my Father after the Sale -

## Cross Examination resumed

4 Could not state what the articles were that were Taken, that were purchased after the Sale to R. Carlton - some Sugar and other articles that I cannot Enumerate - R. Carlton has not personally bought any of the goods after the Sale - nor been notified of the purchases - I have not advised him of the profits or losses of the concern. I have been paid Seventy five dollars per month since the Sale -

George M. Cook was then called by the Plaintiff and who testified in substance as follows;

I was Employed in the Store by Carlton - was there at the time of the Sale to R. Carlton - helped to take an account of Stock - Book contains a correct account of the amount of Stock - Could not state that all the articles are correct



47 I called off correctly, - Telfour did the writing  
- was one of the Clerks - R. Carlton kept  
me till after inventory - told me he should  
want me to stay there until after the in-  
ventory and should want me no longer -  
The Store was open as much as usual while  
we were inventorying.

### Cross Examination.

There was nothing more there to indicate a  
Sale except taking account of Stock. - Don't  
know that there was anything more than  
my being out of the Store - That would indi-  
cate a change - Saw nothing different after  
Sale from what it was before - To all appear-  
ance things were same after as before the  
Sale - Signs on windows was changed  
from R. H. Carlton to R. Carlton, by scratch-  
ing out the (H) - part of name on one window  
prior to Sale was broken out by the glass  
getting broken - Don't know that I should  
have known anything about the Sale had  
I not been in the Store at the time - Part  
of the time R. Carlton was around with  
me while I was calling and a part  
of the time he was not in the Store at all  
- Don't know when the Signs were  
changed - One of the window Signs were  
changed by me, and the other by some one



48' else - part of the paint was left on the glass after the (H) was scratched.

The Plaintiff then introduced W. G. Selfour who testified in substance as follows;

Was Clerk for R. H. Carlton, at time of Sale, took account of Stock correctly as called by Cook - Have been since employed by R. Carlton - R. H. Carlton has been there since the sale and in his absence I took charge of the store. I was there at the time of the levy by the Sheriff - Some of the goods that were purchased since the sale was taken by the Sheriff - R. Carlton invested at one time since sale \$900 - and at another time \$400.

On the 6<sup>th</sup> October New Books were opened in name of R. Carlton - Receipts, Bank Accounts &c were kept in name of R. Carlton - Have told customers and so has R. H. Carlton, that the goods had been sold to R. Carlton - The signs on the windows was "R. H. Carlton Grocer" - The (H) was scratched out - The sign under the awning was changed to R. Carlton it formerly being down under the awning - but was subsequently put on top - R. Carlton took charge of the



49 Business and continued it while he remained -  
I never had any direct or definite authority  
from R. Carlton to purchase goods.

- Cross Examination. -

I never went to Chicago to purchase goods  
when R. H. Carlton was there without his  
advice - both I & R. H. Carlton kept key  
to safe - The assignment of the notes and  
Book accounts was made in my presence  
- The books were all posted up at that time  
except one account - There was an actual  
delivering of Books by R. H. Carlton to  
R. Carlton - They delivered a Book in  
the name of all the accounts - There  
was money paid at time of Sale to R. H.  
Carlton - There was a legal Gentleman  
present at time of Sale - R. Carlton  
did not figure up amount of Books  
at any time - at the time we took ac-  
count of Stock he was with me all the  
time - The difference between the accounts,  
notes & Stock and amount of indebtedness  
of R. H. Carlton to R. Carlton, not  
paid was about \$50. - Amount of indebt-  
edness of R. H. Carlton to creditors not  
paid was about \$300. - The accounts due  
due R. H. Carlton's Creditors were in the



50 Same books turned over to R. Carlton - The  
Bill book if properly kept up would show  
amount of R. H. Carlton's indebtedness - I  
think R. Carlton had the means of knowing  
the amount of R. H. Carlton's indebtedness -  
There were notes transferred - not by actual  
Endorsement on the back but on another  
piece of paper - R. H. Carlton got money  
whenever he wanted it - He did not take  
out \$70 per month - I kept cash book  
until Sale - Some of the notes that were  
transferred have been paid to R. H. Carlton  
- There has been no remittances made to  
R. Carlton who lives East as far as I know  
- R. H. Carlton corresponds with R. Carl-  
ton - I know how books have been kept -  
account of James Strain \$25 charged  
to R. H. Carlton - There never was any  
balance sheet of old books - Any stranger  
glancing through the books might ascertain  
amount of R. H. Carlton's indebtedness -  
Persons might have come in and stolen  
goods without our knowing it - R.  
Carlton is about sixty years old and is  
a stout, hale hearty old man -

The Plaintiff then introduced N. J. Adams  
who testified in substance as follows, viz:



51

I know Plaintiff - heard of his buying out  
R. H. Carlton - I went to Chicago and  
took R. Carlton's notes in blank and took  
up R. H. Carlton's and R. Carlton notes  
- They were part due - gave some notes  
half in thirty days, and half in sixty  
days extension - I. Changed about  
\$1500. - The manner of business <sup>in side</sup> was  
changed so that I would have noticed  
it - Telfour took more charge of business  
than formerly - There was a radical  
change in doing business - It consisted  
in discharging two clerks and fixing up  
store and putting things in order, looked  
as if some one had charge; The radical  
ex difference was the result of Telfour's  
taking charge - There was no such  
change as necessarily to lead a person  
of ordinary observation to a knowledge  
of a change of ownership - I have seen  
Telfour do things I think people might  
have known of a change of possession  
I saw the ~~H~~ scratched out in the sign  
on the window - R. Carlton told me he  
had bought out R. H. Carlton, - said  
they wanted time - that he thought the  
debts would all be paid in time - the  
reason the amount was not filed in the



\$2 notes I took to Chicago, was that they did not know what extension of time could be obtained, nor the terms of such extension - The amount of the indebtedness which these notes were to extinguish was ascertained by C. & R. H. Carlton at the time the trade was made -

The Plaintiff then introduced as a witness D. L. Hough who testified in substance as follows - I know that Mr Buck Deputy Sheriff said he had made a levy - I came up to Ottawa and got the papers for this suit - Warner Sheriff of this County gave me an order for the goods levied upon -

The Plaintiff then recalled the Witness Sefton who testified as follows, - The Sign on the West Window was, was very much worn away - and on the other window was partially broken away - they were rubbed out -

#### Cross Examination

They - the Signs on the Windows were rubbed out some five or six weeks after Sale

#### Direct Examination resumed

The goods in question were levied on by Buck some two days before they were replevied in this suit -



Don't know that R. Carleton knew that B. & Carleton was in debt -

Direct Examination resumed

The Store was never closed - We went on selling as before -

The Witness D. L. Hough was here recalled by Plff - Warner gave me a letter to Buck and Buck delivered the goods to me - The purport of the conversation between Warner and myself, was that he had levied upon the goods - I can't tell the words that was used - The order alluded to was in writing (The Court here ruled out the above testimony about the order)

Here the Plaintiff rested his case - The Defendant then to maintain the issue on his part called to the stand N. B. Hatch who testified as follows -

The witness was here shown the LaSalle Press, a newspaper published at LaSalle - And the Witness recognized it as being such paper and published as aforesaid - I knew of Sale from R. M. Carleton to L. Eggleston - The aforesaid Newspaper was then by defendant offered in Evidence for the purpose of showing that - It was advertised



54 in said paper to the public that "R. W. Carlton  
had sold out his grocery Store to L. Eggleston  
The putting said paper in evidence was  
objected to by the Plaintiff, and said ob-  
jection sustained by the Court, because it was  
shown by the testimony of J. Hampton that it  
was an editorial paragraph - no name  
was signed to the item - So which de-  
cision the said defendant, then & there excepted  
- The decision of said Court was based on  
the want of proof to show that the plaintiff  
had authorized the publication of said para-  
graph - The Court then ruled that defend-  
ant should not introduce said Evidence -  
So which <sup>said</sup> ruling of the Court, the said de-  
fendant then and there excepted.

Here the Defendants introduced in Evidence  
Three Several Judgments rendered in the La-  
Salle County Court against the said R. W.  
Carlton at the December Term thereof A.D. 1858,  
as follows - one in favor of Messrs George,  
Dudley and True-maid for the Sum of \$779.00  
and costs dated December 6<sup>th</sup> 1858 One in  
favor of Messrs Neimyer & Fowler for the  
Sum of \$263.47 and costs Dated December  
6<sup>th</sup> 1858, And the ~~the~~ third in favour  
of Samuel Engler for something over \$400.



35 and costs and which bore date on or about the 9<sup>th</sup> day of December aforesaid - One of said Judgments was entered by confession, and they were all in due form of law, and in full force and effect - It was further shown by the defendant, by the introduction in evidence of the declarations and the several promissory notes on which they were founded - That the several debts due from the said R. H. Carltons to the said George Dudley and Tuermain - Kemper & Fowler and the said Samuel Ogler were in Existence and either due or about to become due, at the time of said Sale from R. H. Carltons to R. Carltons - It was then admitted that Executions issued severally on all of said Judgments in due form of law and were delivered to the defendant as Sheriff of LaSalle County and that the said defendant took the goods in question, claiming to take & hold them as the property of R. H. Carltons by virtue of said several Executions, and so held them at the time they were replevied from him in this suit - It was then and there admitted that defendant was at the time of taking charge of said Executions the Sheriff of LaSalle County Illinois and <sup>has</sup> ever since



page 54 So continued to be Sheriff, and that he Seized  
Said goods claiming to act by virtue of valid  
process of law -

The defendant here Submitted his case -

Though one of the Attorneys for the Plaintiff then and there proceeded and addressed the Jury on behalf of his Client and after he closed, D. P. Jenkins one of the Attorneys for the Defendant commenced addressing the Jury - and in stating the positions he should assume in the argument was stopped by the Court and told that the Court would not permit him to argue the question to the Jury, that the facts in this case, made a case of fraud per se - The said Jenkins was followed in the argument of the cause by James Strain for Deft - and W. H. L. Wallace on the part of the Plaintiff then closed the arguments in the cause - The Plaintiff Instructions were given by the Court to the Jury as follows viz: "1<sup>st</sup>

Pliff Instructions

1<sup>st</sup> Of the property was in possession of the plaintiff by his agent or agents, claiming to be the owner thereof, at the time it was taken on the executions mentioned in the plea, and that the same



Page 57 was taken by the defendant, the jury should  
find for the plaintiff - unless it is shown  
by the proof that the plaintiff did not own  
the property or that the sale thereof from  
R. H. Carlton to the plaintiff was made  
with the view on the part of both R. H.  
Carlton and the plaintiff of hindering, de-  
laying or defrauding the creditors of R. H.  
Carlton. —

2<sup>d</sup> Fraud cannot be presumed, but must  
be proved - and the jury are not at liberty  
to infer that the sale from R. H. Carlton to  
the plaintiff (if such sale was made) was  
fraudulent, but the same must be proved  
to the satisfaction of the jury before they  
can find the property to be the property of  
R. H. Carlton.

3<sup>d</sup> A sale of property for a valuable con-  
sideration, where there is a delivery of the property  
sold, passes the title to the purchaser, and  
the fact that the seller was in debt will  
not of its self invalidate the sale, although  
the purchaser may have known that fact  
at the time of the purchase.

4<sup>th</sup> If R. H. Carlton was indebted to the  
plaintiff, and the plaintiff assumed, and  
agreed to pay debts due from R. H. Carlton



Given <sup>1st</sup> ~~2nd~~ 38 to third persons, these constitute a good  
Consideration for the Sale (if proven) from  
R. H. Carlton to Plaintiff.

Given 5<sup>th</sup> If there was a delivery of the property sold  
to the plaintiff by R. H. Carlton, that  
was all that was necessary to vest the title  
in the plaintiff (if there was a Sale on a  
good consideration) and the fact that  
the plaintiff afterwards employed R. H.  
Carlton to assist in carrying on the busi-  
ness, and left him in connection with  
others, in charge of the property as plain-  
-tiff's agent, that fact would not invalidate  
the Sale

Given 6<sup>th</sup> Although a delivery of property sold is  
necessary to pass the title thereto - yet  
Such delivery need not be an actual  
manual delivery - but anything which  
Clearly shows a Surrender of ownership  
by the Seller - and an assumption of owner-  
ship by the purchaser, accompanied by  
Such circumstances as would reasonably advise  
the world of such Change of ownership - is  
all that is necessary on that point -

hair 2nd



Page 579

7<sup>th</sup>

Given

Even if the jury should believe from the evidence that the object and purpose of R. H. Caillat in making the Sale, was to hinder, delay or defraud his creditors, yet unless, the jury are satisfied by the proof that R. Caillat (the Plaintiff) knew that fact, and bought the goods with such knowledge - the jury cannot find that the Sale was fraudulent for that reason.

8<sup>th</sup>

Given

A party may be in possession of property by his agent as well as by himself - and if the goods were sold for a valuable consideration, and the possession delivered to the purchaser - it is not necessary that he should remain in the actual possession of the property sold to guard his title - but such possession may be by an agent or agents - and such agent may be the seller of the property if such possession is such as to advise creditors of the change in the title of the property. "

---

The Defendant then & there asked the Court to instruct the Jury in his behalf as follows:



1st

If the jury believe from the Evidence that the Sale alleged to have taken place on or about the 8th day of October A.D. 1858, was made by Rowland H. Carlton with the intention of preventing his creditors from collecting their demands against him - And if they further believe that Plaintiff had notice of such intention on the part of the said Rowland H. Carlton or was so situated that he might to have known it - Then the Sale was void as to Rowland H. Carlton's creditors although a valuable and adequate consideration may have been paid by the Plaintiff for the goods in question and the jury should find for the defendant.

2d

If the jury believe from the Evidence that the Sale in question was made by Rowland H. Carlton, with the intent to <sup>delay</sup> hinder or defraud his creditors, And that such intent was at the time of said alleged sale known to the Plaintiff in this Suit - Then the Sale would not be legal as against the creditors of the said Rowland H. Carlton and the Jury should find for the Defendant.



Page 61 And for the purpose of deciding upon this question, the Jury may consider the means of Knowledge possessed by the Plaintiff at the time of the alleged sale, of R.H. Carlton's business affairs, and the relationship existing between the parties.

3<sup>d</sup> If the jury believe from the evidence that there was an intention between the parties to the alleged sale to hinder or delay the creditors of Rowland H. Carlton - Then it is immaterial how long or how short such hindrance or delay was intended to exist.

4<sup>th</sup> If the jury believe from all the Evidence in the Case that there was an intention on the part of Rowland H. Carlton at the time he transferred his goods in question, to the Plaintiff, to hinder or delay his creditors in the collection of their debts against him and that such intention was known to the Plaintiff or that the Plaintiff was so situated that the jury can reasonably presume him to have known it, then such sale was fraudulent as to such creditors and the verdict must be for the defendant.



Page 62 5<sup>th</sup> While the jury cannot presume fraud still  
they may infer it from all the evidence  
and circumstances in the case - And  
therefore the party setting up fraud is not  
found to make strict and absolute proof  
of the same; but the jury may judge  
from all the evidence and circumstances  
in the case whether such fraud exists  
or not

6<sup>th</sup> The jury will judge from all the evidence  
and circumstances in the case whether the  
parties intended to commit fraud upon  
the credits of Rowland H. Carlton and  
if the weight of evidence satisfies them  
that the parties intended a fraud, such  
conviction is sufficient to entitle the  
defendant to a verdict though the jury  
should not be convinced beyond a reason-  
able doubt that such was the case

7<sup>th</sup> If the jury believe from the evidence in  
this cause that the said Plaintiff did  
purchase the goods in question of Rowland  
H. Carlton on or about the 8<sup>th</sup> day of Octo-  
ber last and paid the said R. H. Carlton  
a fair and adequate consideration therefor



Page 43

Given

yet this would not be sufficient to entitle the Plaintiff to a verdict in this cause - unless they can further find from the Evidence that said goods were delivered to the Plaintiff prior to the time when the Executions were delivered to the defendant by virtue of which he seized said goods - if they further believe from the Evidence that said defendant did take said goods by authority of said Executions.

8<sup>th</sup>

If the jury believe from the Evidence that in the case that the alleged delivery of the goods in question consisted in the Plaintiffs going into the Store where they were and looking round and in looking over the books and accounts or hearing a Statement or Statements made by the said R. H. Carlton in relation to the same, and engaging clerks and conversing about the business of the Store - The said R. H. Carlton still continuing in the Store, exercising acts of Control - such as transacting the business of the Store in his usual manner - by making sales and giving directions to the clerks - They will find for the defendant - unless the evidence satisfies them that there was an actual relinquishing

Given



Page 64 of ownership on the part of the Said R. H. Carlton, and an actual assumption of ownership in good faith by the plaintiff, - and that such acts, accompanied and followed the alleged delivery as would give the public a knowledge of the change of ownership.

9<sup>th</sup> If the jury believe from the Evidence in the case, that Rowland H. Carlton, continued and remained in possession of said goods from the time of said alleged Sale up to the time the same were levied upon by the defendant, They will find for the defendant, unless they also believe from the Evidence in the case that there was such notariety and means of knowledge afforded to the public of the transfer of ownership of said goods - That an ordinary observer, trading or doing business at the Store would learn the fact of Change of Ownership.

10<sup>th</sup> If the jury believe from the Evidence in the case that the transaction of delivering the goods in question by R. H. Carlton to the plaintiff in this suit was only colourable



Page 45

and not an actual delivery the law is with the defendant and the Jury should find in his favor.

Given

11. The Jury are instructed that a Sale of Goods where the Seller remains in possession after the sale is fraudulent in law & void as against the creditors of the Seller

Refused

12<sup>th</sup> If the Jury believe from the Evidence in the case - That within a very short time after the alleged sale took place, that Careton, the Plaintiff left the State of Illinois and has not since been back and that his son Rouland H. Carleton was left in Charge of the said Store, where said goods were, and that the said R. H. Carleton remained in Charge of said Store up to the time of said goods being lived upon by the defendant in this case - They will find for the defendant, unless the jury can find some from the evidence in the case some special reasons - Showing that the said Rouland Carleton could not have taken and retained the possession of said goods without violating some higher duty or engagement -



Refused

The Court is asked to instruct the jury - that the facts in this case prove, make out a case of fraud in law, and that they should find a verdict for the defendant.

- 14 If the jury believe from the Evidence in this cause that the Sale from Rowland H. Carlton to the plaintiff was fraudulent then it makes no difference with the result of this trial that a portion of the goods levied upon by the Defendant were purchased since said Sale, if they believe the subsequent purchase was only a part of the general plan to defraud the creditors of R. H. Carlton.

Given

The said Court then and there gave as asked the said Defendants 3<sup>d</sup> 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 7<sup>th</sup> 8<sup>th</sup> 9<sup>th</sup> 10<sup>th</sup> 11<sup>th</sup> and 14<sup>th</sup> Instructions and qualified the said Defendants 1<sup>st</sup> and Second Instructions as follows - The first by the insertion of the words following, to wit - " Yet if the jury believe from the evidence that Rowland H. Carlton was indebted to the plaintiff, and that the sale if any was made by R. H. Carlton to plaintiff was with <sup>the</sup> bona fide



Page 67 intention to pay such indebtedness, it is valid even against other creditors of R. H. Carlton." —

And to the second instruction by the insertion of the following words to wit! — "Yet if said Sale was made to pay a bona fide indebtedness to plaintiff it is a valid sale, if not made to defraud hinder or delay other creditors" —

And the said Court then and thus refused to give the 12<sup>th</sup> and 13<sup>th</sup> instructions asked for by the said defendant And the said defendant by his attorneys then & there excepted to the ruling of the Court in giving the Plaintiffs instructions one and all, and in qualifying the 1<sup>st</sup> and 2<sup>d</sup> instructions asked for by defendant and in refusing to give the 12<sup>th</sup> and 13<sup>th</sup> instructions asked for by the defendant —

The Jury then retired and in a short time returned and reported to the Court their verdict in favor of the Plaintiff and assessed his, the Plaintiff's damage at one cent — The attorneys for the Defendant on behalf of the defendant then and there moved the Court for a new trial in this cause for the reasons following.



To wit, —

Page 68

1<sup>st</sup> That the Court Erred in receiving the testimony of R. H. Carlton on the ground of his being an interested Witness.

2<sup>d</sup> The Court erred in refusing to decide from the evidence in the case that it showed a fraud in law, and deciding the — accordingly —

3<sup>d</sup>, The Court erred in qualifying the 1<sup>st</sup> and 2<sup>d</sup> Instructions asked for by the defendant and in refusing to hear the 12<sup>th</sup> and 13<sup>th</sup> instructions asked for, and in giving the Instructions asked for by the Plaintiff and in refusing to hear the argument and law on the question of this being a case of where fraud in law is shown —

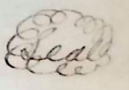
4<sup>th</sup> The verdict is against the law and the evidence in the case and for various other reasons shown by the evidence —

The Court postponed the hearing of said motion until the 19<sup>th</sup> day of February AD 1859 — at which time the court after hearing arguments of the Attorneys on both sides — overruled said motion, — To which decision the defendant by his attorneys then assented.



Page 29 thus excepted - The Defendant by his Attorneys then made a motion in arrest of Judgment in the case because there was no damages alledged or claimed in the Summons - And for other and different manifest errors appearing on the face of the record - And the Said Court then and there at the time last aforesaid overruled said motion in arrest of the Judgment, and caused Judgment to be entered on Said Verdict. To which said decision the Attorneys for the Defendant then and there excepted.

And now on this 19<sup>th</sup> day of February in the year of Our Lord Eighteen Hundred and fifty nine and being in term time of Said <sup>Circuit</sup> Court the Defendant by his attorneys presents this his bill of exceptions in said Cause and asks to the Court to allow and order the same to be made a part of the record in this Cause - Which is done accordingly this 19<sup>th</sup> day of February A.D. 1859

M. E. Hollister   
Judge of the 9<sup>th</sup> Judicial Circuit  
in State of Illinois.



Page 70 Francis Warner  
Pltff in error  
Rowland Carlton  
Def't in error

The People of the State  
of Illinois for the  
use of John W. Warner  
Pltff in error

And George Hawes  
Def't in error

In Supreme Court  
3<sup>d</sup> G. Division  
April Term  
A.D. 1859

And now comes the  
Plaintiff in error &c and says that there  
are many manifest errors and mis-  
apprehensions in the foregoing Record - among  
which the Pltff assigns the following to wit  
The court Below erred

- 1<sup>st</sup> In refusing to grant a continuance of  
the cause on the application of Pltffs Attys
  - 2<sup>d</sup> In deciding R. W. Carlton to be a competent  
Witness & receiving his testimony in the  
case -
  - 3<sup>d</sup> In admitting incompetent & refusing to admit  
competent testimony on the hearing of  
the cause -
  - 4<sup>th</sup> In refusing to give some of Plaintiffs  
the instructions asked for by Pltffs and  
in qualifying others - contrary to the  
wishes of Pltffs
  - 5<sup>th</sup> In giving ~~such~~ the instructions asked  
for by the Def't in error
  - 6<sup>th</sup> In refusing to grant a new trial
  - 7<sup>th</sup> In refusing to ~~over~~st the Judgement  
& rendering judgement against Pltff in error
- Leakins & Blanchard  
Attys for Pltff in error



And now comes the defendant  
in error by Wallace & Hough his  
counsel and joins in error and  
says that in the record of the proceeding  
aforesaid there is no such error as  
said plaintiff in error hath above  
assigned & thus he prays may be  
enquired by the court, therefore he  
prays that the judgment below may  
be in all things affirmed &c

W. H. Wallace  
& D. A. Hough  
counsel for def<sup>t</sup> in error

2246  
Francis Warner

3  
Rebecca Goodwin  
Prerel

Filed April 12 1859  
L. Deland  
Clerk

\$51.30  
... in time  
Fees \$15.00