

No. 13678

# Supreme Court of Illinois

Harris & Co.

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vs.

Miner

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. ~~278~~

178

Harris

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Mayer

13678

Prepared

Instructions asked by Juffs counsel.

1. The Court instructs the jury, that in order to support the action of "Trespass de bonis, asportatis" it is necessary to prove a wrongful taking or seizure of the goods of the Plaintiff by the Defendant, while the action of assumpsit may be maintained for the proceeds of goods of Plaintiff sold by the Defendant, whether wrongfully seized or not: And if the jury find from the evidence, that the suit pleaded, in bar of this action, was decided in favor of the Defendant, solely on the ground, that there was no wrongful taking, because he was lawfully in possession under the levy of the Tracy writ of attachment, mentioned in the pleadings & further find from the proof, that the property in controversy was the property of Plaintiff at the time it was sold subject only to the lien of said writ, and sold by the Defendant after the same was discharged from the lien of the Tracy writ, then in that case, they should find for the Plaintiff in this action, the amount said property sold for, less any amount received from the proceeds of the sale, notwithstanding, said former recovery pleaded in this action.

2<sup>nd</sup> In the action of "Trespass de bonis, asportatis," when the title of property is in issue under special pleas, the question of property is material, and must be passed upon in order to bar a subsequent action of assumpsit. The plea of "not guilty" in an action of "Trespass de bonis asportatis" puts in issue only the wrongful taking, and the simple verdict "not guilty" applies only to the plea of not guilty & determines only the question of wrongful taking, when the title of the property is in issue under special pleas.

3. The law requires the Sheriff first to levy and sell the land of Defendants, in execution, and if the jury find from the proof, that the writ of attachment is in favor of

2  
Erastus S. Tracy (mentioned in said Defendants' special plea of former recovery) was first levied on lands of Bruce Pinto & Co. Defendants in said writ, and also on the raft of logs in said plea described, and that the Plaintiffs without notice of said levy, afterwards found the raft of logs in possession of Bruce Pinto & Co. (the owners subject to said levy) and purchased the same in good faith and for a valuable consideration, and took possession of the same, under said sale, they thereby became the owners thereof, subject only to the lien of said writ of attachment, and if the jury further find from the proof that afterwards, while the same were in their possession, the writ of attachment, in favor of B. H. Campbell, (in said special plea mentioned,) was levied on the same property, and if the jury should further find, from the proof that the lands of Defendants, Bruce Pinto & Co. levied on by said writ of attachment, in favor of Erastus S. Tracy was afterwards sold under the special writ of fieri facias, issued on said judgment of Erastus S. Tracy in said attachment suit against the property attached, for a sum sufficient to pay & fully satisfy said judgment & all costs, commissions and charges thereon, then in that case, the raft of logs would be thereby released, from said levy by operation of law, and if sold by said Defendant after such release, the jury should find for the plaintiffs in this action the amount said logs sold for, unless bound by the <sup>former</sup> recovery of said Defendant in the action of Trespass.

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If the jury believe from the proof that Plaintiffs became the owners of said raft of logs, after the levy of Tracy's writ of attachment, in said plea mentioned & before the levy of B. H. Campbell's writ of attachment in said plea mentioned, then in that case, said Plaintiffs took the said raft of logs

subject only to the lien of Tracy's writ aforesaid: And all the proceeds of the sale of said raft of logs, over and above what was necessary for the satisfaction of said writ in favor of Tracy, was the money of said Plaintiffs, and may be recovered in this action, except what has been paid over, unless barred by the former recovery of said Defendant, in the action of Trespass.

2<sup>nd</sup> If the jury believe from the proof that the plaintiffs were the owners of the raft of logs, in controversy, before and at the time of the levy of the writ of attachment of B. S. Campbell in said plea mentioned & if the jury further find from the proof, that all or any or any portion of the proceeds of the sale of said raft of logs, in controversy was paid over by said Defendant on said writ; or on Campbell's judgment in said suit, such proceeds so paid over, or so much of said proceeds as was so paid by said Defendant on said Campbell judgment, was paid by him in his own wrong and not according to Law, and should be recovered by said plaintiffs from said Defendant in this action, unless barred by a former recovery of said Defendant in the action of Trespass.

3<sup>rd</sup> The Statutory question of pro rata distribution of goods attached, under process in favor of different creditors, returnable at the same term of Court, is one solely and entirely between the attaching Creditors & being in derogation of common Law, cannot effect in any manner, the intervening rights of bona fide purchasers, and incumbrancers or operate to give to a writ of attachment levied, subsequently to the accrual of said rights, of purchasers or incumbrancers, any other position in relation thereto, than is dictated at common Law.

## Endorsed

I hereby certify that the within are the instructions asked by counsel for Plff in this case, at the October Term, 1861, and refused instructions excepted to by plaintiffs & those given excepted to by the defendant. Benj. R. Sheldon.

The Dfts Counsel asks the following instructions.

The jury is instructed that where personal property is wrongfully taken, unless it is converted into money or moneys worth, or there has been a subsequent promise to pay for it, the action of assumpsit will not lie. The jury are instructed, that the action on trial is assumpsit, and if they believe from the evidence that the defendant wrongfully took the property of the plaintiff, sued for in this action, then they must believe further from the evidence, that the defendant converted the property into money, or moneys worth, before they can find for the plaintiff.

If the jury believe from the evidence that there was a former suit between the same parties for the same cause of action, which was tried upon its merits and determined in favor of the defendant, and that the trial was had in this Court, and that the same question was tried and determined which is in controversy in this case, then they should find for the defendant.

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If the jury believe from the evidence, that the plaintiffs assigned of the Tracy judgment, forbid the sale of the logs in dispute, on the execution issued upon that judgment; and afterwards received a portion of the money for which said logs were sold, as such assignment of said judgment, then the jury may infer from this act, that the plaintiffs have ratified the sale and so far as that amount is concerned, they should find for the Defendant.

Before the plaintiffs can recover, in this case, they must trace the money sued for, to the hands of the defendant, or show that he has promised to pay it, or show some act of the defendant tantamount to the receipt of the money.

W. W. W.

Endorse d

I hereby certify that the within are the instructions asked by counsel for defendant at the October Term of said Court 1861, and accepted to by Plaintiffs  
Benj. R. Sheldon.

State of Illinois vs. William R. Rowley, Clerk of Davis County of the Circuit Court, in and for the County of Davis State of Illinois, do hereby certify the foregoing to be a true full and correct copy of the instructions asked by counsel for Plaintiffs and Defendant at the October Term, A.D. 1861, of said Davis County Circuit Court <sup>the records</sup> in the case wherein R. S. Harris & Co were plaintiffs, and Simon H. Miner was Defendant as they same appear on file in my office and that the marginal words given and inserted are correctly copied from the records.  
In testimony whereof I hereunto

set my hand and affix ~~the~~ seal of said Circuit  
Court at my office in Galena this  
the fifteenth day of February A.D.  
1862.



Attest. Wm R. Rowley Clerk  
by J. R. Bird Deputy.

R. E. Harris & Co

<sup>vs</sup>  
S. H. Miner

Instructions  
Amended and  
Additional Record

Filed Apr 21. 1862  
J. Seland  
Clerk.

## STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1862.

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R. S. HARRIS & CO. } <i>Appellants,</i> <i>vs.</i> S. K. MINER, <i>Appellee.</i>	}	<i>Appeal from Circuit Court, Jo Daviess County,</i> <i>Action of Assumpsit,</i>
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## ABSTRACT OF RECORD.

*Page of Record.* This is a suit brought by appellants to recover the proceeds of a sale of a raft of lumber in logs, made by appellee, as Sheriff of said County, in A. D. 1857, under color of process.

2,3,8 Declaration contains only the Common Counts.

11 & 12 1st. Pleas, The general issue and simileter.

18 2nd. Set off in the form of Common Counts, with replications, (common traverse) and issue.

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Record.  
13  
17

3d. Special plea of former recovery ; setting up levy by defendant as sheriff of two several writs of attachment, one in favor of Erastus S. Tracy, and the other in favor of B. H. Campbell, and both levied against the goods and chattels, lands and tenements of Bunce, Pinto and Co. The one in favor of Tracy, levied on the 16th day of January 1857, the one in favor of Campbell, levied on the 12th day of February 1857. ; both returnable to the March term of the Circuit Court of said County, 1857, That the logs in controversy were levied and sold under special writs of *fi. fa.*, issued on the judgments rendered at the May term of said Court, and the proceeds applied *pro rata*, in said writs. That said plaintiffs sued said defendant to the August term of said Court, A. D. 1857, in an action of trespass "*de bonis asportatis*," for taking and conveying away the same identical logs sued for in this action ; and that the whole matter in controversy in this action, was determined in said action of trespass.

To which special plea, by leave of a Court, plaintiffs filed several replications as follows :

13 1st. Denies allegation that the trespass suit was for the same identical logs.

19 2d. Denies allegation of a levy of Campbell's writ of attachment on logs sued for in this action.

20 3d. Denies allegation that said logs were sold under Tracy and Campbell's writs, jointly.

To these replications issue to the country is tendered and similiter added.

20 4th. Avers in avoidance of plea in bar, that the merits of the action of trespass, was not reached, in this ; that there were issue of property in said action, which were not passed upon by the Jury, their verdict of "not guilty" being only applicable to the plea of "not guilty" in said action of trespass.

21 5th. Sets up the want of lien of Campbell's writ, and the sale of other property sufficient to satisfy the Tracy writ, and thereby a release of said property by operation of law from the lien of Tracy's writ.

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Record.  
22 6th. That there were issues of property in said trespass suit, not passed upon and determined by the Jury.

23 Defendant rejoined to 4th replication that the issues of property were determined in said trespass suit, and issue to the country.

24 To 5th replication denies that said property was the property of plaintiffs, and not the property of defendant, and avers trial on merits and issue to the country.

To 6th replication rejoins trial on the merits and issue to the country.

25 Cause brought to trial before a Jury, October 30th, 1861, when the following evidence was offered and heard.

25

*Plaintiffs' Evidence.*

31 E. D. SWEET, was clerk for plaintiffs during February, A. D. 1857. On the 7th day of February 1857, bought for them the logs in controversy, of Bunce, Pinto & Co., and took bill of sale of that date. Consideration of purchase and sale, \$770,56. That was the amount of debt owing to plaintiffs, from Bunce, Pinto & Co. I took possession of the raft that same day. Pinto delivered it to me. The raft remained in the same place until spring, when I pointed it out to Chas. H. Merry and Mr. L. Holmes who took possession of it for plaintiffs. Bill of sale from Bunce, Pinto & Co., to R. S. Harris & Co., dated February 7th 1857, conveying the logs for \$770,56, described as about  $\frac{3}{4}$  of a raft of logs, &c. Chas. H. Merry was the clerk of plaintiffs in February, A. D. 1857. The logs were pointed out to me by Mr. Sweet, sometime in the spring of 34 1857. I with LaFayette Holmes marked them. I think the mark was a double X. It was made by a hammer used for marking lead. Employed a man by the name of Shields to watch them, until plaintiffs sent one Mr. Stoddard to raft them. They were marked for plaintiffs, and they paid the men for watching and rafting them to Galena.

The bill of sale from Bunce, Pinto & Co., to R. S. Harris & Co., for the logs in controversy, was then read to the Jury as evidence, without objection.

See Record, page 31.

Page of  
Record.  
35 J. A. PINTO, one of the late firm of Bunce, Pinto & Co. stated that he had no interest in event of this suit, and had a release from plaintiffs. Stated same as Mr. Sweet as to sale and delivery of logs to the plaintiffs, and also consideration of sale.

Stated that these logs were not included, in the levy of Tracy's attachment. That levy only included logs in the boom about the mill, and certain lands on which the mill stood; these logs were from a quarter to a half mile below the mill by themselves.

39 GIDEON STORDARD, was employed by plaintiffs to raft the logs; they were all marked by a hammer used for marking lead. When I went there the ice was breaking away. I retained charge of the Harris raft all the time for the Harris' who paid me for watching it, and finally run it to Galena, when it was seized by defendant and sold by him.

The logs lay in a slough, below a sand bar, nearly  $\frac{1}{2}$  a mile below the mill at Dunleith. The logs about the mill were confined by a boom, until the boom broke in the spring; there were no other logs in the vicinity of the Harris raft. After that, the logs above came down, and some lodged against this raft. I put none of them in the raft. There were none but the marked logs in the raft, except a few I bought and paid for, and brought round with them; my logs were not claimed by either plaintiffs or defendant. The Harris logs had only the lead marks and the Pinery boom marks. Bunce, Pinto and Co., marks same. It was agreed by attorneys that this testimony of witness was given in action of trespass between same parties, about the same logs.

45 THOMAS GOOCH, knew the logs in controversy; knew them when lying below Dunleith, and after they were brought to Galena. Bought part of the raft from Mr. Nelson, who bought at Sheriff's sale. There was over one hundred thousand feet of lumber in the raft. I was to have one half, but could not divide equally, without dividing a string; we got 57000 feet, which was less than one half. I knew the logs by quality, size and length; I knew them the same way you know your house, and as well. They sold for some \$7,75 per thousand. Mr. Harris was present when the logs were sold and forbid the sale. I paid the money to Mr. Nelson for our share of the logs.

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Record.  
45 J. L. JOHNSON, was one of the firm of Nelson and Co., when the logs were purchased. They measured or scaled upwards of one hundred and twenty one thousand feet. We paid in full the sum of nine hundred and forty dollars for the raft ; it was \$7,75 per thousand.

46 A. L. CUMMINGS was the attorney of E. S. Tracy in the attachment  
46 suit above mentioned. Before the sale by Miner of the logs in contro-  
47 versy, said Tracy sold and assigned the judgment on attachment above  
mentioned to the plaintiffs in this suit. The assignment was shown to  
witness and identified as the one executed by Tracy, to plaintiffs, which  
was then read in evidence. Tracy then executed an assignment to plaintiffs  
on the judgment docket, where the judgment was entered, which was  
also read in evidence. Was present when Miner sold the logs, and heard  
James M. Harris, one of the plaintiffs forbid the sale under the Tracy  
execution, stating the assignment above mentioned.

Witness also stated to Miner, that if he sold under the Tracy execution,  
he sold at his peril, and Tracy would not be held liable on his bond of  
indemnity for such sale,

Defendant Miner was then ordered by B. H. Campbell and his attorney,  
to go and sell the logs, they stated he was fully indemnified. The logs  
were then sold by defendant to Nelson & Co.

49 Plaintiffs then admitted the receipt of \$368,34-100, part of the pro-  
ceeds of said sale as assignees of the Tracy judgment, and rested their  
case,

*Defendant's Evidence.*

58 WM. PITTAM was deputy Sheriff in 1857. In January Miner instructed  
me to take charge of mills and logs ; told witness to take charge of all  
the logs in the State of Illinois ; took charge of logs in the slough, and  
had charge of them 3 or 4 weeks. Miner said Pinto had turned out  
500,000 feet of logs, and that those were all the logs belonging to Bunce,  
Pinto & Co., in the State of Illinois.

55 WM. FRIEND was present when levy was made on mills and logs in  
favor of E. S. Tracy, vs Bunce, Pinto & Co. Was attorney for Tracy ;  
levy was in January or February 1857 ; writ was levied after dark. Pinto  
said they had some 600,000 feet of logs, and that included all the logs in

*Page of Record.* the County of Jo Daviess belonging to the firm. Inquired about some logs lying up the river above the mill; he said those were not in Jo Daviess County, they were in Wisconsin. Mr. Pinto was the only member of the firm present; he gave memorandum of quantities himself.

46 E. S. COVELL. I acted as deputy sheriff; was present when the levy was made. I took charge of the logs at the request of the sheriff in the fore part of March 1857. The logs were scattered along the shore for half a mile or more below Bunce, Pinto & Co's mills. I do not think there were so many logs as 400,000 feet; do not think the logs placed in my possession would exceed 250,000 feet.

Also the following papers in the trespass suit spoken of in the pleadings, were then read in evidence:

68 The writ, the declaration, verdict of the Jury "not guilty," and judgment  
71 on verdict.

72 Also two instructions given by the Court in the trespass suit, to which  
73 defendants objected and excepted to the ruling of the Court.

Also papers in attachment suit of Tracy vs. Bunce, Pinto and Co.

73 The writ of attachment, with levy on land and mill, and also lumber  
75 and logs described as 500,000 feet of lumber in logs. The judgment in  
76 attachment suit, \$3,072 85. The special writ of *fi. fa.* for sale of prop-  
78 erty levied in attachment and endorsements thereon, by virtue of the  
within writ: I have this 16th day of June 1857, levied upon the within  
described property.

S. K. MINER, Sheriff."

"This execution is returned this 13th day of September 1857, made the costs and \$2,223,69-100 on the judgment which has been paid to plaintiffs' attorney, and costs to clerk except my fees; also the further sum of \$368, 34-100, made on the judgment and paid to clerk.

S. K. MINER, Sheriff."

*Page of Record.* Defendant then offered the record in the case of B. H. Campbell vs. Bunce, Pinto & Co., to the reading of which, plaintiffs by their attorneys objected, because it appeared by the record that the writ issued long after the plaintiffs were the owners of the logs. Objection overruled, and exceptions taken to ruling of Court.

The following papers were then read in evidence of the record of said suit, to wit :

78 Writ of attachment B. H. Campbell vs. Bunce, Pinto & Co., with levy on land and mills, and also logs described as 500,000 feet of lumber in logs ; also judgment B. H. Campbell vs. Bunce, Pinto & Co., \$3,988.59 ;  
81 also special writ of *fi. fa.* issued on said judgment for sale of property levied in attachment and endorsements therein.

83 "By virtue of the within writ, I have this 16th day of June 1857, levied upon the within described property ; also levied on the following property, on the 9th day of August 1857, to wit : one house 18 by 20 feet, one two horse wagon, one cart, small lot of iron and small lot picketing.

S. K. MINER, Sheriff."

83 "13th of September 1857 made the costs in full, and \$3,364.80-100 on the sale of the within described property, and the plaintiff in the execution being the purchaser, that amount is paid to him and the costs paid to the clerk, except my fees ; also the further sum of \$86.00 by sale of the levy made 9th of August 1857, and that amount paid to plaintiff.  
S. K. MINER, Sheriff."

83 Defendant offered to prove by George Karmann, a juror on the trespass suit mentioned in the pleadings, that all the issues in said trespass suit were passed upon by the Jury in that case ; objection to said testimony sustained and defendant excepts.

84 Wm. R. ROWLEY testified that the Sheriff paid into his hands \$368.34 on the 25th of February 1858, and payment of same to plaintiffs' attorney. It was paid to Harris & Co. as assignees of the Tracy judgment.

*Plaintiff's Rebutting Evidence.*

*Page of Record* Plaintiff then offered certificates of purchase of Real Estate levied on by Tracy's writ of attachment, to prove by defendant's admission, sale of said Real Estate for more than amount of Tracy's Judgment and costs.

84 Objected to by defendants; objection over ruled and exceptions taken. Evidence suffered to go to the Jury.

The plaintiffs by attorney then asked the following instructions, to wit:

*Instructions  
should have  
been given -*

*This is the  
law and  
should have  
been given*

Which instruction was refused by the Court, to which refusal plaintiffs by attorney then and there excepted.

The Jury found the issue for the defendant, and plaintiffs moved to set aside the verdict and for a new trial. Motion over ruled and Judgment on the verdict. Appeal prayed and bond given.

#### ERRORS ASSIGNED.

1st. The Court erred in admitting in evidence for the defendant, the instructions given by the Court in the trespass suit.

2d. The Court erred in admitting in evidence for the defendant, the writ levy, Judgment and execution in the case of B. H. Campbell vs. Bunce, Pinto & Co.

3d. The Court erred in refusing the second instruction asked by the plaintiffs.

4th. The Court erred in refusing the third instruction asked by plaintiffs.

5th. The Court erred in granting the third instruction asked for defendant.

6th. The Court erred in over ruling the motion for a new trial.

7th. The Court erred in rendering the Judgment rendered in this case.

## BRIEF OF POINTS AND AUTHORITIES.

## I.

Aside from the errors of admitting improper evidence, and giving instructions that misled the Jury, we are entitled to a reversal of the Judgment.

We show a perfect title to the property bought, and paid for, before the Campbell writ of attachment was sued out, and that it remained in our possession, from the 7th of February, until May following, when it was seized in Galena river, and sold under the Campbell writ, and the amount of the sale, this suit being brought to recover the money.

What is set up in defence in this suit is.

1st. The general issue.

2d. That this suit is barred by a former recovery in a trespass suit between the same parties, in which the merits were determined.

This makes it necessary to examine what was determined in the trespass suit. The issues were, in that suit.

1st. The general issue.

2d. A lien by virtue of the Tracy writ of attachment, and levy.

3d. A lien by virtue of the Campbell writ of attachment and levy.

4th. Special property in the Sheriff under said writs and levy.

The whole defence then is presented in the record of the trespass suit, if any. Now what as shown by the record.

1st. That the defendant as sheriff had in his hands a writ of attachment against Bunce, Pinto & Co., on the 16th of January 1857, which was levied on the logs in controversy, with lands and other property in value more than twice the amount he was directed to collect by the writ.

The plaintiffs purchase the logs on the 7th of February and on the 12th of said February Campbell sued out his writ and the sheriff levies on the same property.

## 11

A trial is had, and the Jury find the defendant not guilty of the trespass. The right of property was ~~not~~ in controversy, and not passed upon. The Jury simply found by their verdict, that the officer, having a writ of attachment in his hands, that was levied, and a lien on the property, was not a trespasser, and they found the only verdict consistent with the law, that of "not guilty." That is, that the sheriff was not guilty of committing the trespass alleged, but do not pass on the plaintiffs property therein.

Chitty Pleadings, page 520, Sec. 3.

The plaintiffs then bring this suit to recover the money. In addition to showing the facts of our purchase, delivery, and possession of the logs, we show the sale by the Sheriff under Campbell's writ (that was not a lien on the logs) the amount he received for them, and that Tracy's writ, had been satisfied, from the sale of real estate.

The plaintiffs held the logs subject to the lien of Tracy's attachment, when that was satisfied, by a sale of other property, then the plaintiffs took the property discharged of all liens.

Cushing's Repts.

## II

The second instruction asked by the plaintiffs, should have been given. The law is well settled as to what is put in issue by the plea of "not guilty." Chitty says, "In actions of trespass" "*de bonis asportatis*," the plea of "not guilty" shall operate as a denial of the defendant having committed the trespass alleged, by taking or damaging the goods mentioned, but not of the plaintiff's property therein."

Chitty plead. page 520.

The Jury found by their verdict of "not guilty" in the trespass suit pleaded in bar, simply that there was no unlawful seizure of the goods but determined no issue of property in the goods in controversy; in other words the verdict could reach no further than the general issue.

If then the Jury did not find the issues of property in said logs, either for or against the plaintiffs, but only that defendant was not technically guilty of an unlawful seizure, by reason of the process in his hands, in that case, the finding of the Jury would be no bar to an action for the property, or the proceeds when sold.

In case of bailment or other liens, the general owner could not maintain trespass; yet a verdict and judgment in favor of defendant by reason of his lien and right to the possession of goods consequent thereon would not be held a bar to a suit for the property after the termination of the lien or for the proceeds thereof if wrongfully sold and converted.

The court should have given the 3d instruction asked by plaintiffs. It is founded on the principles of *pro rata* distribution, between attaching creditors and intervening incumbrances and purchasers, in 16 Ill. Rep. 117 and the law requiring the sheriff to first levy and sell real estate for payment of debts.

According to said principles, the fact that Tracy's and Campbell's writs now both returnable to the same term, furnished a rule of distribution between said attaching creditors, but did not affect plaintiffs intervening rights.

As between Campbell's writ and plaintiffs', the case must be tried precisely as if the Tracy writ had never been issued, while as between Tracy's writ and plaintiffs', we acknowledge the liability of the property for the satisfaction of the writ, plaintiffs then as to Tracy's writ must await the sale of other property sufficient to satisfy the same and costs, and when Tracy's writ was satisfied, or sufficient property sold for its satisfaction, plaintiffs held the property conveyed to them by absolute title discharged of the lien.

Nor does the fact that the subsequent writ comes in under the statute for *PRO RATA* distribution, and takes away and appropriates a part of the proceeds so that it is not in fact satisfied, make any difference. The money so appropriated on the Campbell writ is Tracy's loss, not defendant's.

The defendant in this case attempted to make up the deficiency, not out of Bunce, Pinto and Co's. property, but out of plaintiffs. He went upon the ground that a satisfaction of both writs was necessary before plaintiffs took their property released from his lien.

The third instruction given for defendant should have been refused, because there was nothing in controversy before the Jury to which it was applicable. Plaintiffs expressly admitted the payment alluded to in said instruction, and all the facts hypothetically stated in said instruction and claimed only the balance over the amount already paid, and for which the instruction says the Jury should find for the defendant. (See 48 page Record.) The admission is full and explicit of all the facts contained in said instruction, the receipt of \$368,34-100, part of the proceeds of said sale as the assignees of the Tracy judgment and claiming only the balance of the \$940 and interest, or 6 per cent. Now let us see the relevancy of the instruction.

Does it tell the Jury not to give the plaintiffs the \$368,34-100 already paid? That cannot be since we are not claiming it, and to find that for defendant would be finding something not in controversy. What is in controversy? the balance of the \$940 and interest. Then the instruction to the Jury, if it has any relevancy, is a direction to them to deduct from the balance claimed, the sum \$368,34-100, since they are expressly directed to find as to that amount for the defendant. But this has been already allowed by plaintiffs, and to find for defendant as to that amount would be a double credit for the payment.

There is another objection to said instruction. It is worded in such a manner as to convey a double meaning. The Jury are told that they may infer from the acceptance of \$368,34-100 as assignees, that plaintiffs ratified the sale. Now this following the argument before the Jury, is calculated to mislead in this. The Jury are left to infer from the term ratify the sale, the acceptance of all consequences, and among them the wrongful payment of the money claimed in this suit to B. H. Campbell on his execution. The only possible motive in asking it was to mislead the Jury, in one of the ways above indicated, for surely no one could be so stupid, as to apprehend a verdict for the \$368,34-100 which plaintiffs had expressly disclaimed.

The Jury was undoubtedly misled by said instruction, into the belief that plaintiffs had ratified the sale, and were estopped thereby from recovery in this action.

The ruling of this Court has ever been against allowing decisions of Courts in other cases, either of this Court or Courts of other States, to be read to the Jury on trials, still less could the rulings of a *nisi prius* Court in another case, be proper to go before a Jury as evidence. They were not given as law, in that or any other case, but were intended for law in the trespass suit. They were not evidence in any just sense of the term, and should not have been admitted.

### III.

The record of the attachment suit of B. H. Campbell vs. Bance, Pinto & Co. was read in evidence, and as we think improperly. We had previously established our claim to the logs in controversy, and it devolved on defendant to show either that we were barred by judgment in the tres-

pass suit, or defeat our title by showing a better one. Now this record clearly could show nothing in relation to the trespass suit pleaded in bar. If we are bound by that, it is a bar of record, and to be proved by its own record, not the record of another suit between other parties. It is equally inadmissible as evidence, tending to show either a defect in our title, or a better title in defendant. There is no question of mitigation of damages in this action, but only a question of title aside from the special bar.

According to the principles of the case of *Jones vs. Jones et. al.* in 16 Ill. Repts. page 117, already referred to, a levy subsequent to the accrual of our title can be no defence to our action.

If we had sufficiently established our title, it could not be defeated by proof of a subsequent levy. The proof shows our title five days prior to Campbell's levy, and possession from that time, until seizure by defendant in Galena, shortly before the sale on execution. The proof shows the sale to be under Campbell's writ.

The above causes of error were urged on the Court below, on motion for a new trial, and for the reasons assigned, a new trial should have been granted. We find nothing in the proof to sustain the verdict and judgment in this case. The trespass suit not reaching the merits of this action is not a bar, nor can it be said in this case, that the merits might have been reached and tried in the action of trespass.

#### IV.

The logs in controversy were seized under the Tracy attachment before the accrual of our title, and were lawfully in possession of the sheriff, under that levy; hence there was no technical trespass. Some Courts have held that trespass might be sustained when property was seized under a valid writ, and afterwards sold under a void one, but that is not the case at bar. The writ under which the property was sold, was regular on its face, and regularly issued on a judgment authorizing its issue. Nor yet was it voidable, for it issued on a valid judgment and was full authority and protection to the officer in all matters relating to the sale of the property attached. Having thus become lawfully possessed, defendant could not by a sale under Campbell's writ become a trespasser *quod in illo*.

If this suit is not barred by the judgment in the trespass suit, the plaintiff must recover. The proof is clear that the property in controversy became the property of plaintiffs on the 7th day of February 1857, subject only to the lien of the Tracy writ, and the proof is equally clear that before the sale of the logs in controversy, the lien of Tracy was extinguished by sale of a large amount of property more than sufficient to satisfy said writ. It appears that the amount of the sale as shown by the sheriff's returns on the two *fi fa's* is \$5956,83 above all costs, commissions and charges, deduct amount of the sale of Harris' raft \$940. That leaves \$5016, while Tracy's judgment was only \$3072,85; we further see that the real estate alone sold for \$4600, a much greater amount than was necessary to satisfy Tracy's writ.

See Record Page 84 78 and 33.

The property in controversy thus released from the lien of Tracy's writ never was subject to Campbell's writ, which issued on the 12th of Feb. five days after plaintiffs title accrued. The verdict was not sustained by the proof, and the Court should have granted a new trial, instead of rendering judgment on the verdict.

M. Y. JOHNSON, AND A. L. CUMINGS,  
*For Appellants.*

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R. S. Hoar's et al.

vs

S. R. Munn

Appellants

Abstract & Brief

Filed May 2, 1862

J. Leland

Clerk

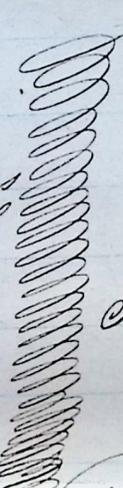
State of Illinois  
Jo Daviess County  
Fourteenth Judicial Circuit



Pleas in the Circuit Court be-  
gun and held, within and for  
the County of Jo Daviess and State of Illinois on  
the Third Monday of October A.D. 1861. before the  
Honorable Benjamin R. Sheldon sole judge of the  
said Fourteenth Judicial Circuit of the State of  
Illinois

R. H. M. Clellan, Prosecuting Attorney Per Petit  
William R. Rowley Clers  
Simon K. Miner Sheriff.

Robert S. Harris and  
James M. Harris, partners  
under the firm name & style of  
R. S. Harris & Co



Trespass on the case  
on promise.

vs  
Simon K. Miner

Be it remembered that  
heretofore to wit on the 18<sup>th</sup> day of February A.D.  
1859, the said Plaintiffs by W. G. Johnson Esq their  
attorney, filed in the office of the clerk of the said  
Jo Daviess County Circuit Court, their Declaration  
and process, in the above entitled cause, which said

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declaration and procepi are in the words and figures  
following to wit:

State of Illinois of the Circuit Court,  
of Davis County March Term A.D. 1859

Robert S. Harris and  
James M. Harris partners  
under the firm name and style of  
R. S. Harris & Co  
vs  
Simon K. Minor

Robert S. Harris and  
James M. Harris, partners doing business under  
the firm name and style of R. S. Harris & Co  
the Plaintiffs in this suit, by M. G. Johnson their  
Attorney, complain of Simon K. Minor, the defen-  
dant in this suit of a plea of trespass on the case  
upon promises. For that, whereas the said defendant  
heretofore to wit, on the First day of February, A.D.  
1859, at Galeua, to wit, at the County aforesaid, was  
indebted to the said Plaintiffs, in the sum of One Thousand  
and dollars, lawful money of the United States of  
America for divers Goods, wares and merchandises  
by the said plaintiff, before that time sold and deliv-  
ered to the said defendant and at the special instance  
and request of the said defendant, And being so indebted

In the said defendant in consideration thereof afterwards to wit: on the same day and year last aforesaid at the County aforesaid, undertook and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiff, the said sum of One thousand dollars when he the said defendant should be thereunto afterwards requested.

And whereas also the said defendant, afterwards to wit: on the same day and year last aforesaid, and at the County aforesaid, in consideration that the said plaintiffs at the like special instance and request of the said defendant, had before that time sold and delivered to the said defendant, divers other goods, wares and merchandise of theirs, the said plaintiffs, the said defendant, undertook and then and there faithfully promised, the said plaintiffs to pay them so much money as the said last mentioned, goods, wares and merchandise, at the time of the <sup>said</sup> sale and delivery thereof were reasonably worth, when the said defendant should be thereunto afterwards requested, and the said plaintiffs aver, that the said last mentioned goods, wares and merchandise, at the time of the sale and delivery thereof, were reasonably worth the further sum of One thousand dollars, of like lawful money as aforesaid to wit: at the County aforesaid, whereof the said defendant afterwards to wit: on the same day and year last aforesaid had notice.

And whereas also the said defendant, heretofore to wit:

on the same day and year last aforesaid, and at the county aforesaid, ~~was indebted~~ was indebted to the said plaintiffs, in the sum of One thousand dollars, lawful money of the United States of America, for the work and labor, care and diligence of the said plaintiffs by the said plaintiffs before that time done, performed and bestowed, in and about the business of the said defendant, and for the said defendant, at his special instance and request, And also for divers materials and other necessary things, by the said plaintiffs before that time found and provided, and used in and about that work and labor, for the said defendant, and at his special instance and request. And being so indebted to the said plaintiffs, the said defendant in consideration thereof, afterwards to wit: on the same day and year last aforesaid and at the County 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 last mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, afterwards to wit: on the same day and year last aforesaid, and at the County last aforesaid, in consideration that the said plaintiffs had, before that time at the like special instances and request, of the said defendant done, performed and bestowed, divers other labor, care and diligence, in and about the business of the said

5-

defendant; and for the said defendant; and had before that time, found, provided, used and applied, divers other materials, and other necessary things, in and about that business, the said defendant, undertook and then and there faithfully promised, the said plaintiffs, that he the said defendant, would well and truly pay to the said plaintiffs, so much money as the said plaintiff reasonably deserved to have of the said defendant for the same, when he the said defendant, should be thereunto afterwards requested. And the said plaintiffs aver, that they reasonably deserved to have of the said defendant for the same, the further sum of One Thousand dollars of like lawful money as aforesaid to wit, at the County aforesaid: Whereof the said defendant afterwards to wit, on the same day and year last aforesaid, at the County aforesaid had notice.

And whereas also the said defendant, afterwards to wit on the same day and year last aforesaid at the County aforesaid was indebted to the said plaintiffs, in the sum of One Thousand dollars, like lawful money as aforesaid, for so much money before that time lent and advanced, by the said plaintiffs to the said defendant, and at the special instance and request of <sup>the</sup> said defendant. And being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the same day

and year last 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 last above mentioned, when the said defendant should be thereunto afterwards requested.

And whereas <sup>being the Defendant</sup> afterwards, to wit, on the same day and year last aforesaid, and at the county aforesaid, was indebted to the said plaintiff in the further sum of One thousand dollars, of like lawful money as aforesaid, for so much money before that time paid, laid out and expended by the said plaintiffs to and for the use of the said defendant and at the like special instance and request of the said defendant.

And being so indebted, the said defendant, in consideration thereof afterwards, to wit, on the same day and year last aforesaid, 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 last above mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards to wit, on the same day and year last aforesaid, and at the county aforesaid, was indebted to the said plaintiffs in the further sum of One thousand dollars, of like lawful money as aforesaid, for so much money, before that time had and received by the said defendant to and for the use of the said plaintiffs, and being

7 so indebted, the said defendant in consideration thereof afterwards, to wit, on the same day and year last aforesaid at the county aforesaid, undertook and there and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendant, should be thereunto afterwards requested.

And Whereas also the said defendant afterwards, to wit, on the same day and year last aforesaid and at the County aforesaid, accounted together with the said plaintiffs, of and concerning divers other sums of money, before that time due and owing from the said defendant, to the said plaintiffs, and there and there being in arrear, and unpaid, and upon such accounting the said defendant there and there was found to be in arrear, and indebted to the said plaintiffs in the further sum of Two Thousand dollars, of like lawful money as aforesaid; and being so found in arrear, and indebted to the said plaintiffs, the said defendant, in consideration thereof afterwards to wit, on the same day and year last aforesaid and at the County aforesaid, undertook, and there and there faithfully promised, the said plaintiff well and truly to pay unto the said plaintiffs the said sum of money last above mentioned when he the said defendant, should be thereunto afterwards

requested.

reach. And yet the said defendant, not regarding his said several promises and undertakings, hath not as yet, paid the said several sums of money, or any or either of them or any part thereof, to the said plaintiffs, though often requested so to do. but the said defendant to pay them the same, hath hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiffs of \$ one thousand, and therefore they sue &c -

M. Y. Johnson,  
Plt's Atty.

Copy of account sued on.

Simon K. Minor	To	R. S. Harris & Co	Dr.
To 121,000 feet pine logs			
at \$8. per 1000 ft.			\$1,000.-
To money had and received			
to and for our use			\$1,000
To money loaned			\$1,000

Galena Feby 1<sup>st</sup> 1859.

State of Illinois In Circuit Court  
of Davis County 18<sup>th</sup> March Term A.D. 1859

9 Robert S. Harris and  
James M. Harris, partners  
under the name, firm & style  
of R. S. Harris & Co

vs  
Simon. K. Minor

The Clerk will please  
issue a summons to the  
above named defendant, in the above entitled suit  
in the plea of trespass on the case upon promises  
Damages \$1000 -  
W. Y. Johnson  
Plffs atty

Endorsed

Filed Feby 18 1859  
At R Rowley Clerk  
Per H Postwick Svy

Upon the filing of which Declaration and  
process, there issued out of the Office of the  
Clerk of the said Jo Daviess County Circuit Court  
a summons, which said summons is in the  
words and figures following to wit:

State of Illinois }  
Jo Daviess County } sch.

The people of the State of Illinois  
to the Sheriff of said County, Greeting:  
We command you to summon Simon. K. Minor  
to appear before the Circuit Court of Jo Daviess

County, at the next term to be holden at Galena  
on the 2<sup>nd</sup> Monday of March next, to answer Robert  
S Harris and James W Harris, partners under  
the firm name and style of R. S. Harris & Co. in  
a plea of Trespass on the <sup>case</sup> upon premises.  
damages one thousand dollars, and have you  
then and there this writ:



Witness William R Rowley Clerk of  
the Circuit Court of Jo Daviess County  
Illinois, and the seal thereof at Galena  
this 18<sup>th</sup> day of Feby A D 1859

attest: W R Rowley Clerk  
Per F. Postwick <sup>Deputy</sup>

Upon which summons was endorsed the following  
return, to wit:

Executed the within summons by read-  
ing the same, to the within named Simon K. Miner  
this nineteenth day of February A D 1859

J. H. Conley Sheriff Jo Daviess Co.

The pleas filed by the defendant in this suit are in  
the words and figures following to wit:

In Jo Daviess Circuit Court.  
March Term 1859

Simon K. Miner

ats,

R. S. Harris & Co

} Assumpsit

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1. And the said defendant by his attorney, comes and defends the wrong and injury, when &c. and says that he did not undertake and promise in manner and form as the said plaintiffs hath above thereof complained against him, and of this he puts himself upon the County &c. and the said plaintiffs do the like &c. *Cummings & Johnson Pliffs atty.*

2. And for a further plea on this behalf, the said defendant says that the said plaintiffs ought not to have and maintain their aforesaid action thereof against him, because he says that the said plaintiffs before and at the time of the commencement of the suit to wit. at the County aforesaid. aforesaid, were and still are indebted to the said defendant, in a large sum of money, to wit. the sum of One thousand dollars, lawful money of the United States, for work and labor, care diligence and attendance of the said defendant, by the said defendant, and his servants before that time done, performed and bestowed in and about the business of the said plaintiffs, and for the said plaintiffs at their request, and for divers materials and other necessary things, by the said defendant before that time found and provided and used and applied in and about the said work, and labor for the said plaintiffs, and at their like request, and for divers goods, wares and merchandises sold and delivered by the said defendant, to the said plaintiffs at their like request, and for money by the said defendant, before

That time lent and advanced to said, laid out and expended for, the said plaintiffs and at their like request; and for money before by the said plaintiffs before that time had and received, to and for the use of the said defendant; and for money due and owing from the said plaintiffs to the said defendant for interest upon and for the forbearance of diverse large sums of money due and owing from the said plaintiffs to the said defendant; and by the said defendant, forbore to the said plaintiffs for diverse long spaces of time before then elapsed; and for money due and owing from the said plaintiffs to the said defendant, upon an account, stated between them, which said sums of money, so due and owing to the said defendant, exceed the damage sustained by the said plaintiffs, by reason of the non performance, by the said defendant, of the said several supposed, promises and undertakings, in the said declaration mentioned, and out of which said sum of money, so due and owing from the said plaintiffs to the said defendant, and the said defendant is ready and willing and hereby offers to set off and allow to the said plaintiffs the full amount of the said damages, according to the form of the Statute in such case made and provided. And this the said defendant, is ready to verify, wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action, they

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against him, &c.

Hugley & Small  
Attys for Deft.

Endorsed

Filed March 28<sup>th</sup> 1859

W R Rowley Clerk.

The amended plea, filed by the defendant by leave of the Court first obtained, is in the words and figures following to wit:

Simon & Giner 3 Circuit Court of  
ats 3 Jo Daviess Co Ill  
R. S. Harris & Co 3 of the Oct. Term 1859

And the said defendant for a further amended plea, in this behalf, as to so much and such parts of the said plaintiffs declaration, wherein they seek to recover for logs, sold and delivered, and for money had and received by the said defendant to and for the use of the said plaintiffs, the said defendant, says actis non, because he says that on the 15<sup>th</sup> day of January A.D. 1859, one Craster S. Tracy, sued out of the Circuit Court of Jo Daviess County Illinois, a certain writ of attachment under the seal of said Court, against the firm of Bounce, Pinto & Co for the sum of three thousand dollars, and 79 cents, and interest from the 10<sup>th</sup> day of

A

14 January 1857, returnable, to the March term 1857 of said  
Circuit Court, which said writ of attachment, was on  
the 16<sup>th</sup> day of January A.D. 1857 levied by this defendant  
he then and there being the Sheriff of said Jo Daviess County,  
upon the logs sought to be recovered for in the plaintiff's  
said declaration. That on the 12<sup>th</sup> day of February A.D.  
1857, one Benjamin H. Campbell sued out of said  
"B" Jo Daviess County Circuit Court, a certain other writ  
of attachment, under the seal of said Court, against  
the same firm of Bruce Pinto & Co for the sum of three  
thousand, seven hundred and sixty eight dollars  
and seventy seven cents, returnable to the March term  
of said Court, aforesaid. Which said last mentioned  
writ of attachment, was levied by this defendant  
he then and there still being the Sheriff of said Jo  
Daviess County upon the same logs previously levied  
on by the former writ, on the 12<sup>th</sup> day of February  
A.D. 1857. That on the 25<sup>th</sup> day of May A.D. 1857  
being then of the May term of said Circuit Court  
"C" judgment was rendered in said attachment suit  
in favor of Tracy & against said Bruce Pinto & Co  
for the sum of three thousand seventy two dollars  
and 83 cents damages, and twenty one dollars and  
thirty cents costs; and on the 26<sup>th</sup> day of May A.D. 1857,  
being then of the May Term A.D. 1857 of said Circuit  
Court, judgment was rendered in favor of said Ben-  
jamin H. Campbell, in his said attachment suit  
"D" for the sum of three thousand nine hundred and

eighty eight dollars & fifty nine cents damages and  
thirteen dollars and sixty ~~seven~~<sup>two</sup> cents costs.

That on the 13<sup>th</sup> day of June, A.D. 1857, a special writ  
of fieri facias was issued upon said judgment of Erastus  
S. Tracy against Bruce Pinto & Co. and on the same  
day a similar writ was issued upon the aforesaid  
judgment of Benjamin H. Campbell against  
Bruce Pinto & Co. both of which said writs of fieri facias  
were under the seal of said Court, and directed the  
sale of said logs, so seized as aforesaid, and were  
duly delivered to this defendant, he then and there  
still being the Sheriff of Jo. Davis County Illinois  
aforesaid, to execute. And this defendant avers that  
he proceeded to sell all the property levied upon in  
said attachment suits, and did sell all the  
property so attached, and directed to be sold, by  
said special writs of fieri facias; and that he sold said  
logs, so levied on as aforesaid, and sought to be recov-  
ered for in this suit, and converted the same into  
money, and paid the proceeds of said sale to the  
respective plaintiffs in said attachment suits  
pro rata, according to law. And this defendant avers  
that, after selling all of said property, and applying  
the proceeds of said executions, there remained a  
large amount of said judgments unpaid, and  
of said special writs of fieri facias, unsatisfied.

And the said defendant, avers that  
afterwards to wit, on the 7<sup>th</sup> day of August A.D. 1857

the said plaintiffs A. S. Harris & Co. sued this defend-  
 ant in the Circuit Court of Jo Davis County, Illinois  
 aforesaid, in and action of Trespass de bonis asportatis,  
 to the August Term, A. D. 1857, of said Court, for wrong-  
 fully seizing and selling the same identical logs -  
 sought to be recovered for in this ~~case~~<sup>suit</sup>, and which were  
 levied on by this defendant by said attachment writs  
 against said Buncie Pinto & Co. and afterwards sold and  
 converted into money as aforesaid by virtue of said spec-  
 ial writs of fi. fa. issued in said attachment suits as  
 aforesaid. That afterwards, to wit on the 17<sup>th</sup> day  
 of November, being then of the October Term, A. D. 1857  
 of said Circuit Court, said cause came on to be tried  
 upon the issues joined therein: and upon a trial of  
 said cause before a jury and the Hon. Benj. R.  
 Sheldon, presiding judge of said Court, a verdict  
 of not guilty, was rendered, in favor of said defend-  
 ant, on all the issues in said cause, upon which  
 verdict a judgment was afterwards rendered  
 by said Court, which judgment still remains  
 in full force, unreversed, and in no wise, made  
 void. And the said defendant avers, that in the trial  
 of said action of trespass, the right to said logs was claimed  
 by said plaintiffs, who claimed to have been the owners  
 of said logs when this defendant seized the same by  
 said writs of attachment as aforesaid, and that this  
 said right was put in issue by special plea, setting up  
 that said logs were the property of said Buncie Pinto & Co.

17 at the time they were attached and sold by this defendant as aforesaid, and were not the property of the said plaintiffs, upon which plea issue was taken by said plaintiffs, and that in the trial of said cause, said issue was passed upon by the jury, and determined in favor of this defendant as aforesaid

And this defendant avers that the said logs sought to be recovered for in this suit, are the same identical logs so sued for in the action of trespass aforesaid, And that the said <sup>plaintiffs</sup> bringing this suit to recover as money had and received by the said defendant to and for the plaintiffs use, the same identical money for which said logs were sold, and which money this defendant paid upon said judgments as aforesaid.

All which this defendant is ready to verify by the said records, wherefor he prays judgment &c.

Higley & Small  
Defts Attorneys.

Enclosed

Filed Nov 2<sup>nd</sup> 1889

W. R. Rowley, Clerk

The Replication filed by defendant to plaintiffs pleas are in the words and figures following to wit:

State of Illinois of the Circuit Court. March Term 1856  
 In Davis County

R. S. Harris & Co

<sup>Singon</sup>  
 S. P. Homer

And the said Plaintiff

by their attorneys reply, to the said defendants second plea. Their said declaration pleaded, & say, precludi non, because they say that they are not, indebted to said Defendant, in the said sum of One thousand dollars, as in said second plea alleged, or any part thereof, in manner and form as is there alleged & set forth, and this they pray may be enquired of by the Country &c. And the said Deft. doth the like. Strigley & Small, Attys for Dfr.

And the said Plaintiffs by their attorneys reply to the said fourth and last amended plea, of the said Defendant, by him in this behalf pleaded to the said Plaintiffs Declaration, and for replication thereto say, precludi non, because they say that it is not, true, as in said plea, erroneously supposed and alleged, that on the 7<sup>th</sup> day of August A. D. 1857 the said Plaintiff, said said Defendant, in the Circuit Court of Davis County Illinois, in an action of Trespass, de bonis, asportatis, to the August Term, A. D. 1857 of said Court for wrongfully seizing and selling the

same, identical logs, sought, to be recovered, for in this suit, as appears by the said Records, cited in verification of their said plea, and of this they put themselves upon the Country &c. and the said Dft. doth the like. (Heigley & Small, Dfts attys.

And for a further replication, to said fourth and last amended plea of the said Defendant, as aforesaid, by special leave of the Court for that purpose first had and obtained, the said Plaintiffs by their Attornies aforesaid, say, precludi non, because they say, that it is not true as is in said plea erroneously supposed, and alleged, that one Benjamin H. Campbell, sued out of said said District Circuit Court, a certain other writ of attachment, &c. which said writ of attachment, was levied by said Defendant, upon the same, identical logs, levied on by said Defendant, by a former writ, as the property of Bance, Pinto & Co. And the said Plaintiffs, specially deny, that any levy whatever was made by said Defendant, upon any of the same, identical logs, for which said plaintiffs seek, to recover, in this suit by virtue of said last mentioned writ of attachment in favor of Benjamin H. Campbell as is in said plea alleged, and set forth. Or that any lien was created thereon by virtue of said last mentioned writ of attachment, or any supposed, levy thereon to entitle the said Benjamin H. Campbell, to any of the proceeds thereof, and of this they put themselves

upon the Country, &c. And the said Deft. doth  
the like. *Brigley & Small, attys for deft.*

And for a further replication to said Defen-  
dants fourth and last amended plea, to their  
said Declaration, pleaded by special leave of the  
Court for that purpose, first had and obtained  
said Plaintiff by their attorneys as aforesaid, say  
"precludi non" because they say that it is not  
true as in said plea erroneously supposed, and  
alleged, that said Defendant, sold the same ident-  
ical logs, sought to be recovered for, in this action  
under and by virtue of special writs of execution  
issued on said judgments, in Attachment, one in  
favor of Erastus S. Tracy & the other in favor of  
Benjamin H. Campbell, and paid the proceeds  
of said sale, to the respective Plaintiffs in said  
attachment suits, pro rata, according to law.  
And of this they put themselves upon the Country &c  
And the said deft. doth the like.

*Brigley & Small, Dft's attys.*

And for a further replication to said fourth and  
last amended plea of said Defendant, by special  
leave of the Court, for that purpose, had and  
obtained, the said plaintiffs by their attorneys  
say, "precludi non", because they say that said  
case of Trespass de bonis asportatis, in said plea  
set up, in bar of said Plaintiffs action, and was  
not determined on the issue of Property in said plain-

21

-tiffs, in said trespass suit, as is in said plea erroneously supposed, and the said Plaintiffs aver that there were distinct and separate issues in said suit of Trespass de bonis asportatis and that the finding was general for the Defendant, and not special, on each particular issue, That one of said issues set up that said logs in said plea mentioned were in the custody of the law, when said logs were sold, and delivered to said Plaintiffs by said Bunch Pinto & Co. by reason of the levy of said writ of attachment of Erastus S. Tracy in said plea mentioned & that no possession was in said Plaintiffs on which trespass could be maintained, which was traversed & an issue made, And the said Plaintiffs aver that the said trespass suit was determined against said Plaintiffs on the question of possession, alone, and not on the question of title, and that the true merits of Plaintiffs claim & title was not reached in said action by reason that said Plaintiffs had mistaken their form of action, and brought trespass instead of assumpsit, and this they are ready to verify, wherefore they pray judgment, and their damages by them sustained, on account of the non performance of the said several promises, & undertakings in the said Declaration mentioned to be adjudged to him &c.

And for a further replication to the defendants 4<sup>th</sup> and last plea, the said Plaintiff says precluditur. Because, they say that said property was the property

of said Plaintiffs, and not of the said defendant, and that although, said defendant, was lawfully in possession of the same, by reason of the <sup>plea</sup> writ of attachment, in favour of Erastus S. Tracy and against Buyer, Pinto & Co, as in said plea mentioned.

Yet that said property was still the property of said plaintiffs, subject only to the lien of said writ, and that the proceeds of said property, when sold, except so far as the same were necessary for the satisfaction of said writ, was money had and received for the use of said Plaintiff by said Defendant, and the said Plaintiff further avers, that the only issue passed upon by the Jury was the unlawful seizure of said goods in said plea mentioned, and the said Plaintiff avers, that the merits of said former suit was not passed upon by the Jury by reason that said Plaintiff failed to sustain their action, by proving the illegal seizure of said goods in their said declaration alleged, and this they are ready to verify.

Wherefore they pray Judge &c

And for a further replication to defendant & amended plea, said Plaintiff says, "precludi non" Because they say that said action of trespass de bonis asportatis in said Defendants plea mentioned and pleaded in Bar of their said action, was not determined on the issue in said plea of property, as in said plea erroneously set forth, but that said issue of property was not passed upon by the Jury in said suit

23 and of this they put themselves upon the Country &c  
Johnson & Cummings  
And the said defts. Jeffs atty.  
doeth the like.

Emended  
Filed March 21<sup>st</sup> 1860  
W. R. Rowley Clerk

The Rejoinder to ~~the~~ 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> replications to  
4<sup>th</sup> Amended Plea, is in the words & figures follow-  
ing to wit:

Simon K. Hooper In the Circuit Court of  
at  
A. S. Harris & Co. vs. J. Davis, County Illinois  
of the October Term A.D. 1860  
And the said  
defendant, as to the said 5<sup>th</sup> replication of the said  
plaintiff to the said 4<sup>th</sup> amended plea, of the said  
defendant, says, actis non, because he says, that  
the issue of property in the said trespass suit was  
determined in said cause, that, there was not any  
issue setting up, that said logs in said plea men-  
tioned, were in the custody of the law, when said logs  
were sold and delivered to said plaintiffs by said  
Bunce Pinto & Co. by reason of the levy of the writ  
of attachment, of Erastus S. Tracy in said plea  
mentioned, and that no profusion was in said

24 plaintiffs, in which trespass could be maintained,  
which was Traversed and an issue made. That said  
Trespass suit was not determined against said  
plaintiffs on the question of possession alone, and  
not on the question of title. That the true merits of  
said plaintiffs claim, and title were reached in  
said action of trespass, notwithstanding, they aver  
in their said 5<sup>th</sup> replication, that they had, mis-  
taken their remedy, and brought trespass instead of  
assumpsit. And of this the said defendant puts  
himself upon Country &c. And the said plaintiffs  
doth the like &c.

Johnson & Cummings, for Defts  
And for rejoinder, to the 6<sup>th</sup> replication  
to the said defendants. 4<sup>th</sup> amended. Pleas, the said  
defendant, says actio non, because, he says that  
the said property, was the property of the said defen-  
dant, and not the property of the said plaintiffs  
at the time when &c. That although, said defend-  
ant was lawfully in possession, of said logs in  
controversy in said trespass suit as in said 6<sup>th</sup> replica-  
tion is admitted, by reason of the levy of the writ of attach-  
ment, in favor of Erastus S. Tracy, and against Rocco  
Pinto & Co. yet that said property, was not the property  
of the said plaintiff, subject only to the lien of said  
writ, And that the proceeds of said property when  
sold, except so far as the same, were necessary for  
the satisfaction of said writ, was not money had, and

25<sup>r</sup> received, for the use of said plaintiffs, by said defendant. And that other issues, besides the unlawful seizure of said property were passed upon by said Jury in said trespass suit. That the merits of said former action, were passed upon by the Jury, notwithstanding the said plaintiffs failed to sustain their action, and proving the illegal seizure of said goods in their said declaration, in said trespass suit, alleged, and of this they put them selves upon the Country, &c. And the said plaintiffs doth the like, &c.

Johnson & Cummings

Attys for Plffs.

And for rejoinder to the 7<sup>th</sup> replication to the 4<sup>th</sup> amended plea, of the said defendant, the said defendant, the said defendant says actio non, because, he says, that the said action of trespass de bonis, asportatis, in said defendants plea mentioned and pleaded in bar, to this action, was determined on the issue in said plea of property, was passed upon by the jury in said suit, and of this he the said defendant, puts himself upon the Country, &c. and the said plaintiffs doth the like, &c.

Cummings & Johnson,  
attys.

Wrigley & Small  
Attys for defts.

Condensed,  
Filed Oct 19<sup>th</sup> 1860  
J. R. Rowley Clerk.

And afterwards to wit. On the 30<sup>th</sup> day of October  
A.D. 1861. at the October Term A.D. 1861. of said  
Judicial County Circuit Court, in the Records of  
The records of said Court in this cause, appears the  
following entry, to wit:

Robert S Harris & James M.  
Harris, partners under the name  
& style of R. S. Harris & Co

vs  
Simon H. Miner

Assumpsit

Now at this day came  
the parties by their attorneys, and upon issue joined  
thereupon came a jury of good and lawful men  
to wit: Thomas Edwards, Henry Roberts, David  
Reynolds, W. P. Beck, Robert Starr, John Rogers,  
James Temple, William Harrington, David  
Peters, Peter M<sup>c</sup> Gough, Henry Partell, and  
Jm<sup>r</sup> F. Taylor, who were duly elected, tried and  
sworn, and after hearing the evidence and arguments  
of counsel, retire to consider of their verdict and by  
consent of counsel, It is ordered, by the Court, that  
when they shall have agreed upon a verdict they  
may seal the same, and return the same into Court  
Tomorrow morning.

And afterwards to wit on the 31<sup>st</sup> day of October  
A.D. 1861. as yet of the said October Term A.D. 1861

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of said Court. in the Record of the proceedings there  
of in said cause, appears the following entry, to wit

Robert S. Harris & James M  
Harris, partners under the  
firm name & style of R S Harris & Co. Assumpsit

vs  
Simon. H. Miner

Now at this day came  
again the jury, here  
before impeached in this cause, and return the  
following, sealed verdict, To Wit: That the jury find  
the issue for the Defendant, and the Plaintiffs by  
their attorneys, move the Court for a new trial, and  
file their reasons therefor.

The motion referred to in the last above recited  
entry, is in the words and figures following to wit:

R. S. Harris & Co. vs  
S. H. Miner

In the Circuit Court of  
Jo Davis County, Ill.  
Oct Term 1861.

and now at this day comes  
the said Plffs and moves the Court for a new  
trial in this cause.

1. Because the verdict is contrary to Law;
2. Because the verdict is contrary to the evidence
3. Because the Court admitted improper evidence in  
allowing the instructions of the Court in the Trespas

- case, to be read as evidence to the Jury.
- 4. Because the Court. refused proper instructions for the Plffs.
- 5. Because the Court gave improper instructions for the deft.
- 6. Because the Court. admitted other improper evidence on the part of Defendant.
- 7. Because the Verdict is contrary to the <sup>true</sup> instructions given by the Court.
- 8. Because there is no evidence to sustain the verdict rendered in the case.

Cummings + Johnson  
Plffs Attys.

Endorsed

Filed Oct 31<sup>st</sup> 1861  
W R Rowley Clerk.

And afterwards to wit on the 11<sup>th</sup> day of November A. D. 1861. as yet of the said October Term A. D. 1861. of said Ia Davis County Circuit Court in the Record of the proceedings thereof in said cause appears the following entry to wit:

A. S. Harris & Co  
vs  
Simon H. Miner

Assumpsit

Now at this day

came on to be heard the motion heretofore filed by plaintiffs by their

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attornies, for a new trial, which motion after argument by counsel, is taken under advisement by the Court.

And afterwards to wit on the 14<sup>th</sup> day of November A D 1861. as yet of the said October Term A D 1861. of said Jo Daviess County Circuit Court. in the record of the proceedings thereof in said cause appears the following entry to wit:

Robert S Harris + James M Harris partners under the firm name & style of R S Harris & Co

*[scribble]*

Assumpsit

vs  
Simon H. Miner

Now at this day came on to be heard, the motion heretofore filed by the Plaintiffs by their attornies, for a new trial, which motion after argument by counsel is overruled by the Court, to which the plaintiffs by their attornies except. <sup>the plaintiffs by their attorney</sup> And pray an appeal to the Supreme Court, which is granted, conditioned, that they enter into and file with the Clerk of this Court within thirty days from this date, a good and sufficient appeal Bond, in the penal sum of Three hundred Dollars, with Daniel S. Harris as security.

\* It is thereupon considered by the Court that the said Plaintiffs take nothing by this writ and that the said defendant, have and, enjoy of the said Plaintiffs his estate by them in this behalf spoken, and that execution come therefor.

And afterwards to wit On the 15<sup>th</sup> day of  
November A.D. 1861 as yet of the said October Term  
A.D. 1861 of said Jo Daviess County Circuit Court  
in the Record of the proceedings of said Court  
in this cause, appears the following entry to wit:

R. S. Harris & Co  
vs  
S. K. Hiner Assumpsit  
The Plaintiffs  
by their attorney come and  
file their Bill of Exceptions, which is certified  
by the Court.

The Bill of Exceptions referred to in the last  
above recited entry is in the words and figures  
following to wit:

State of Illinois Jo Daviess County  
Jo Daviess County Jo In Circuit Court, said County  
at the October Term A.D. 1861

R. S. Harris & Co  
vs  
Simon K. Hiner Assumpsit

Be it remembered that said  
cause was tried by a jury of said County before the  
Hon. Benjamin R. Sheldon, Judge re, on the 30<sup>th</sup> day  
of October, A.D. 1861, it being of the October Term in

said Court At which Trial the following testimony was offered and proceedings had in relation thereto to wit: Edward Sweet, a witness for Plaintiffs testified, as follows. Was the Clerk of R S Harris & Co, Plaintiffs, at Dunleith Ill during February, 1857, Bought of Bance Pinto & Co the raft of logs in controversy, & took a Bill of sale therefor to R S Harris & Co, was acting for them, but cannot state, whether at their special direction in this matter or not The Bill of Sale, (here showed to witness & identified as the one spoken of by witness) was executed on the 7<sup>th</sup> day of February 1857, the day it bears date. It is all in my own handwriting except the description of the property & the signature they are in the hand writing of Jacob A Pinto, of the firm of Bance, Pinto & Co, who filled in the description & then executed and delivered, the same on behalf of the firm to me, as the agent of R. S. Harris & Co. The Bill of sale was then offered, & read without objection, in words & figures following to wit:

Know all men by these presents that we John F. Bance and Jacob A. Pinto of the City of Dubuque, County of Dubuque, and State of Iowa, doing business under style and firm of Bance, Pinto - in the town of Dunleith, County of Jo Davis and State of Illinois, in consideration of the sum of Seven Hundred and Seventy dollars and fifty six cents, to us in hand paid by Robert S.

Harris, and James M Harris, lately doing business under the style and firm of Harris & Co. in the town of Dunleith, County of St Davids and State of Illinois, do grant, sell and deliver, to the said Robert S. + J M Harris, the following goods and chattels, Viz: About 2/3 of a Raft of logs, purchased of Gruby, and lying directly below the Sand bar, in the Slough, below the Mills, and on the East side of the Slough, adjoining the East bank, being all remaining of said Raft, not sawed.

To Have and To Hold, the said goods, unto the said Robert J Harris + James M Harris, their executors administrators, and assigns forever.

In Witness Whereof, we have hereunto set our hands and seals, this Seventh day of Feby, 1857.

Signed Sealed & delivered

James Pinto & Co.

*James Pinto*

in presence of  
E D Sweet

by J. A. Pinto

Upon which Bill of Sale, was the following endorsement, to wit:

We hereby authorize, E D Sweet, to enter into the within sale, the Interest, now due, on the money due, <sup>paid</sup> to Harris & Co, this day as part of the consideration, and in full consideration, for the within sale, this 7<sup>th</sup> day of Feby; A. D. 1857.

James Pinto & Co

The Bill of Sale was executed in the office of R. S. Harris & Co. at Dunleith, immediately after it was executed Mr. Pinto & Co. went down to the raft, & he delivered it to me for Plaintiffs. The raft was lying tied up to the East bank of the Mississippi River, at the foot of the Slough. This was delivered at the date of the Bill of Sale. I received it for R. S. Harris & Co. the Plaintiffs, I acted for Plaintiffs as their agent. don't remember whether I had special instructions from them before or not. This was in the winter. In the Spring, I pointed out the raft to La Fayette Holmes, & Charles H. Merry. It was in the same place as when Pinto first delivered it to me in the winter, the amount of consideration is correctly stated in said Bill of Sale. It was the amount due to R. S. Harris & Co. from Ponce Pinto & Co. (Cross Examined) Went down same day. Bill of Sale was dated. Know nothing about any attachment, at that time we went to the logs by land. It was in the winter time, & there was snow on the ground, and ice in the river. I don't know that the logs were marked. I don't know how many feet in the Raft. they were not measured at the time. There was a sand bar at the head of the Slough, the raft was below, and at the foot of the sand bar, there was a slough above the sand bar, and in very high water the sand bar was covered, at this time there was considerable snow on the ground. I saw no logs near them there were logs about the Mill, <sup>we</sup> went right down to the raft after the Bill of Sale was executed and I received the raft from Mr. Pinto.

Charles H. Merry, sworn and examined for Plaintiff testified as follows to wit. Was employed by Plaintiff in February A.D. 1857, at Danville, a raft of logs was pointed out to me, by Mrs Sweet, sometime in the Spring of 1857, can't be positive about the time. I marked some of the logs, of said raft, and Mr La Fayette Holmes, marked some of them, the raft was in a slough, in the river below the Mills, I believe the mark was a double x, it was made by a hammer used for marking lead, the logs were virtually in my charge, I had a cable put on the raft, and employed a man named Shields to watch them, I paid Shields \$25 or \$30, for watching them for R. J. Harris & Co. They are the same logs, pointed out to Mr. Stoddard, but I don't know, as I went down to the raft myself. It was about two thirds of a raft of Pine logs, they were the same logs pointed out by Mrs Sweet, & delivered, that were delivered to Stoddard, (Cross. Examined) I know nothing about a levy of my own knowledge I heard of some trouble between Deputy Sheriff & Stoddard about the logs, there were Choppers marks on the logs, before they were marked for R. J. Harris & Co. I don't know, by whom the marks were put on I did not state at last time, that they were marked R. J. Harris & Co. or R. J. H. & Co. I think they were marked xx, I think we went down to the raft by land, but we may crossed, a part of the bottom in a

35- skiff. The whole bottom is inundated, when the river is very high, but I think we crossed no water when we went to mark the logs. Stoddard, came over to raft the logs and fix them for running, the raft was two pieces, part of the middle, having been sawed, and was not fastened together for running. I do not know that Stoddard acted for the Sheriff, I only know there was said to be an interference by the Sheriff. I know at that time there was difficulty about the logs from what I heard.

Jacob A. Pinto, sworn for Plaintiffs, testified to wit: I am the Pinto, spoken of as having executed the bill of Sale. (Defendant here interposed & examined witness as to his interest. Witness testified, that he had no interest, and that he had a release from Plaintiffs of all claims, in regard to the subject matter of the suit.) The raft was near the head of the slough and not at the foot of it as I understood Mr Sweet to say. It was on the East Bank, and just below a sand bar. & when the River was high the water came over. The raft was purchased from Gruly. There was about two thirds of the raft sold to Plaintiffs, there were no other logs lying around there. We had four or five hundred thousand feet of logs, lying round the mill. I executed Bill of Sale 7<sup>th</sup> of February 1857, and gave possession immediately to Plaintiffs agent. The consideration was \$477.56, indebtedness of Ponce Pinto & Co to R. S. Harris & Co, besides some interest

on the same, the logs had not been levied on I think by any one. Campbell's writ had not been sued out at that time. When I gave the Sheriff the levy on Tracy's writ, I gave the logs in the vicinity of the Mill, and there were not among them. These logs were not in sight, when the levy was made. These logs ~~were~~ were wholly disconnected with the other logs around the mill. My intention was, to give the Sheriff, all the logs in the vicinity of the Mill by my books. I make out that there should have been at least four or five hundred thousand feet of lumber in the logs around the Mill. There was a raft above the Mill, that was not levied on or pointed out to the Sheriff. This raft was in Illinois but not in sight: the Sheriff was standing in front of the Mill and I showed him the logs around the mill. I have no knowledge of what became of the logs sold Plaintiff after I delivered them to Mr. Sweet. (Cross Examined).

The firm of Pounce Ponto & Co., was originally Pounce Ponto & Rogers, but Rogers was out of the firm before the Bill of Sale was made. Rogers ceased to be a partner in July or August, 1854. Mr Pounce bought the logs, don't know what he represented about the firm to Gouley when the logs were purchased. It was late in the afternoon, near sundown when the levy of Tracy's writ, was made, it was not dark, we did not go into the Mill. There was no office

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in the Mill; He went into some dwelling house near the Mill and found some writing materials for the Sheriff. I don't think we had any candle, it was not dark. Mr Miner, Mr Covill, Mr Friend, and myself were present. I was in the Mill when they came up. Mr Friend, stated, stated this business I pointed out the logs in the Slough, near the Mill I don't recollect stating to Mr Miner any number of feet of logs, I stated + pointed out the logs about the mill. I did not state they were all the logs we had in the County of J. Dairif - did not state it was not necessary to look at them, They were covered with snow. I did not state to Mr Friend anything about logs in Wisconsin, I think the raft was in Illinois. I did not state they were all the property in the County. I don't recollect giving the Sheriff any memorandum, If they asked me as to the amount of lumber in logs, I probably told them there was about five hundred thousand feet. I was not acquainted with Mr Friend until about the time of the levy. I don't recollect seeing the writ or telling the Sheriff it was unnecessary to examine the property. The Mill is one fourth or one half mile below town, of Dunsmith on a Slough; there is another slough, one half or three fourths of a mile below the Mill, in which the raft sold to Harrisles was lying. The logs pointed out for the levy of Tracy's writ were West of the Mill. The Slough on

which the Mill stands, runs down to a Sand bar, below the sand bar, was the raft. In very high water the two sloughs are connected by water, over the bar. I recollect, going into the building near the Mill, but don't remember for what purpose. I did not state to the Sheriff that the logs were in the river from a hundred yards to One half a mile below the Mill. I think the levy was not on those logs sold to Harris & Co. Friend and Miner came to the Mill in a sleigh, I don't know whether they came from Galena by train or by Sleigh. I gave a bill of sale to some Banking House in Dubuque, but I did not state to them that they were in Wisconsin. The Bill of sale, could not have been dated in Wisconsin. Campbell got the raft above the town, I state this from hearsay. The firm in Dubuque to whom I gave the Bill of Sale, may have got it. I gave the Bill of Sale, to the successors of F. D. Jessup & Co. Redmond is one of the firm, I can't say who are the others in the firm.

The deposition of Sidney Stoddard, was here read without objection, as follows to wit:

Which said deposition as taken before the Master in Chancery, is in the words & figures following to wit:

State of Illinois, In and Circuit Court, of said County  
 In Davis County, Of the May Term A D 1860.

R. S. Harris & Co, Plaintiff  
vs  
S. K. Hooper, Defendant

The parties in the above suit by M. G. Johnson and Keigley and Small, their attorneys, appeared before the undersigned Master in Chancery in & for said County, & waive notice & consent, to take the testimony of Gidem Stoddard, a witness in said suit, who is about to leave said County, to be absent at the next term of said Court. And said Gidem Stoddard, after being duly sworn by me to testify, in said suit, deposes in narrative form as follows,

I was employed by R. S. Harris & Co. to go over to Danleith & take charge of a Raft, or a lot of Logs which were pretty badly broken up at the time, this was about the 10<sup>th</sup> of May 1857. The logs that I was put in charge of by Mr Sweet, lay, I think, perhaps more than a quarter, & perhaps half a mile below Bruce Pinto & Co. Mill, in what is called a slough. When I went there the ice was breaking away, I went there to fix them up, so that they would not get away, the Logs were considerably washed up, or broke apart, but were still hanging together as they had been rafted. Other logs had floated down and lodged, against them on the upper end I knew what Logs I wanted, There were here

= blocks on the upper end of the Raft, & our blades  
 as they had been run there. There was a mark put  
 on all the logs, Harris claimed by a hammer, used,  
 for marking lead. The mark was put on before  
 I went there. I went to work and Rafted those  
 which were in the most danger of breaking away  
 & secured them first; while I was doing so, and after  
 I had been there about two days, & perhaps had  
 commenced on the third day. John Corib or per-  
 haps, Pittau, or both at the same time, came  
 & forbid me from doing anything more with them.  
 They told me that there was an attachment on  
 the logs, and that I had no right to do anything  
 with them. They told me that Miner had the  
 attachment & I would get into trouble, if I did  
 anything with them. I then quit work, and came  
 over to see Miner & Harris. I went to see the  
 Harris, and they told me to go back, and go  
 to work, but I was afraid to do so until I saw  
 Minor. I saw Minor & he told me, I might se-  
 cure the logs, but not to move them. I went back  
 that night and went to work, and secured the  
 Raft, that I was put in charge of, by Mr Swab.  
 In rafting the logs, I paid but little attention  
 whether the marks were up or down. The first  
 two days I got some logs in that did not belong  
 and I went to work when I went back the second  
 time and took them all out, except fourteen

pieces which were of a different mark, and belong-  
ed to some body else, not connected with this suit.  
When I finished up the Harris Logs, I went  
to work, for Miner, Campbell and others, secur-  
ing other logs that were there; These Logs were  
coming down the River and we caught them  
as we could, some below the Harris Raft, and  
some above it, and secured them as best we could.  
The River was rising very fast, I retained  
charge of the Harris Raft, all the time, for the  
Harris I was paid for watching it by the Har-  
ris and Miner paid me for securing the other  
logs, and watching them. I then brought Har-  
ris Raft to Galena, when I started with it  
Levil requested me not to move it; I came and  
saw Miner, and he told me I might move it  
if I would not take it out of the State or  
County. I had contracted with the Harris  
to bring it to Galena, When I got to Galena  
with it Miner came aboard of it & took posses-  
ion of it from me. He claimed it by virtue of  
an attachment, and took possession of it as  
Sheriff. Harris was on board of the Raft  
at the time, and told him not to touch it  
that the property was his, Miner took the Raft,  
and afterwards, sold it. I was present at the sale  
I do not recollect what it sold for, I sealed the  
logs, or apointed the officer of the City to do it, &

don't remember the amount now. The Logs were bid off by Nelson, who was concerned in the Barrows + Johnson Mill, don't remember his first name. Thine Harris paid me Sixty odd dollars for watching and rafting the logs, and sixteen dollars for bringing them to Galena. Miner paid me nothing for what I done for Harris. Miner paid me for what I done on the other logs. I worked for him by the day. The Harris's sent me over twice to look after the logs, before I was employed by them, don't recollect the date, it was while it was froze up, and the snow was about a foot deep. The Mill was not running at the time.

When I was there in the winter I could not see many logs, but when I went over in the Spring I could see them, and there was a good many Logs there. When the river broke up, it was stormy and the River rose very fast. The Logs at the Mill were boomed in, There was a boom between the Harris Raft, and Ponce Ponto Leo's Mill after the River broke up the boom broke, and all the logs that were afloat, except what were caught at the head of the Harris Raft, went down the River. There was a great many logs on both sides of the Slough, and as the water raised it floated them off, + I caught them. The logs in the boom floated off, down the river. The boom was about six hundred feet long. I identified the

logs by the Lead marks, and by the Boom marks from the Pinery. They had not Ponce Pinto's marks on them, but the Pinery Boom mark.

Before the boom broke there were no logs there except this Raft.

### Logs Examination -

I calked a portion of the Ponce Pinto's Logs sometime in July, about three miles below, near the Trenton Farm, for Miner, & sold them for Miner, by his direction. This was after the sale by Miner. I don't know Ponce Pinto's marks. The logs at the mill had two fresh hacks on them. The Boom mark and the Lodd mark was all the marks I saw on the ~~logs~~ Logs in the Harris Raft. Miner never told me that the two hacks on the Logs meant anything. I don't know how or where the mark (two hacks) was put on but all the logs at the Mill, had this mark on them, besides the boom mark. I don't know that the two Hacks was Ponce Pinto's marks. I testified before J in case between Harris & Miner in the Circuit Court. don't remember when it was. I was in relation to the same logs that I have been testifying about today. &

It was agreed by the attorneys, of the parties in this case, that the witness's testimony, as referred to above was given at the October Term of the Circuit Court 1857, in an action of Trespass, between R S Harris vs. S H Miner, about the same Logs. I never testified

44 in but one case before between the parties to this suit  
Gideon Stoddard

I, the undersigned Master in Chancery in & for  
said County, do hereby certify that M. G. Johnson  
& H. Heigley, Esqrs, attorneys for Plaintiffs and  
Defendant, in the above cause, appeared before me  
this day and waived notice and agreed to take the  
testimony of Gideon Stoddard in narrative form  
in said suit. That the said Gideon Stoddard was  
duly sworn by me to testify in said cause: and  
that his testimony was written down by me in narra-  
tive form, at the time, that I afterwards read the  
same to him, and he signed it as his testimony  
in said cause, and that the foregoing is the testimo-  
ny of said Stoddard, as written down by me, at  
the time, and signed by him.

Galena April 22 1861.

J. L. Charles, Master  
in Chancery in & for said  
County.

Master J. L. Charles

Endorsed

Filed May 22<sup>nd</sup> 1861.

Opner R. Rowley C. C.

Thomas Groch, was sworn, and testified for plain-  
tiffs, as follows, to wit:

I know the logs in controversy, &

43- saw the raft of logs before they were brought to Galena, I was then and am now running a saw Mill on the East side of Galena River. I went to see the logs at Harris & Lee's request, with a view of buying them. They were then in a slough below Dunleith. There was over One hundred thousand feet of lumber in the raft. I was at the sale of the logs, by the Sheriff. They sold for seven <sup>75</sup>/<sub>100</sub> Dollars, per thousand, by agreement between myself and Mr Nelson, we were to divide the logs equally between the two mills. We got 57000 feet, which was as near one half as we could get, without dividing a string. Harris was present when the logs were sold, and forbid the sale, there were a good many persons present. - Cross Examined I know them to be the same logs, Harris showed me below Dunleith, I know them by quality, size and length, and by the marks, I know them in the same way you know your horse, and as well, they were afloat, when I saw them at Dunleith partly on the ground, & partly off, and not in a condition to move them, to Galena, I didn't get quite half the logs, but as near it as I could, without dividing a string. I paid the money to Mr Nelson for our share of the logs.

J. S. Johnson, sworn for Plaintiffs testified as follows; was a member of the firm of Nelson & Lee when the logs were purchased, they measured or scaled upwards of One hundred and twenty one thousand

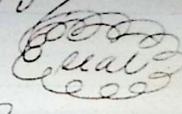
46 feet. We paid in full the sum of nine hundred & forty dollars for the Raft, it was \$7.75 per thousand, the money was paid to Mr Campbell by direction of Mr Miner. Campbell gave us time on the sale, and we gave our notes to him, and afterwards paid the money on the notes. One we paid in Praus, the rest to Campbell. The notes were given to Campbell to carry out an arrangement with him, time was given, in order to make the logs sell higher. It was done by Miner's consent, and direction.

The Plff. then introduced and examined A. L. Cummings as a witness, who testified that he was the atty of E. S. Tracy, in the above mentioned attachment suit. That before the sale by Miner of the logs in controversy, said Tracy sold and assigned the Judgment on Attachment, above mentioned, to the Plaintiff in this suit - Paper here shown to witness and identified, as the assignment which was read to the Jury in evidence -

Which said assignment is in the words and figures following to wit:

State of Illinois )  
In Danvers County ) Know all men by these pres-  
ents, that S. Erastus S. Tracy  
of the State of New York, do hereby assign and trans-  
fer, to R. S. Harrodes, which firm is composed of  
Robert S. Harris & James M. Harris, all my right

47 title and interest in and to a certain judgment, of record, in an attachment suit in the Circuit Court of Jo Davis County, entered at the May term A.D. 1857, in my favor <sup>(against)</sup> against Bruce Ponto & Co., for the sum of \$3100<sup>00</sup> or thereabouts, being the only judgment of Record, in said Court, in my favor at said Term, and I do hereby transfer to said firm all my right to control a certain Execution, issued on said Judgment, now in the hands of the Sheriff of said County, against the property attached in said suit for which I hereby acknowledge myself to have received, a valuable consideration, this day from said firm of R. S. Harris & Co. - July 24<sup>th</sup> 1857

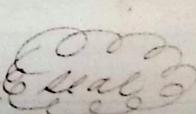
Ernestus S. Tracy 

Said judgment also to be assigned of Record in said Court, immediately

Witness also stated, there was an assignment on the Judgment Record, which was read in evidence,

Which said assignment as the same appears of Record in this Office, is in the words and figures following to wit

For value received I hereby assign the within judgment to R. S. Harris & Co. this 24<sup>th</sup> day of July A.D. 1857

Ernestus S. Tracy 

Witness further testified that he was present at the sale

when Miner sold the logs, and heard James Mc Harris one of the Plaintiff, forbid the sale under the Tracy execution, stating that Harris & Co were the owners of the Tracy Judgment, and Execution by an assignment of Tracy. Witness then stated to said Miner, that if he sold under the Tracy execution, he sold at his peril, as Tracy had no longer any interest in said execution, and would not be held liable on his Bond of Indemnity for such sale. Defendant Miner was then ordered by P. H. Campbell and his attorney to go on and sell the logs, they stating he was fully indemnified. Miner then sold the logs and Nelson & Co became the purchasers.

Plaintiffs here rested their case admitting the receipt of Three hundred & sixty eight <sup>34</sup>/<sub>100</sub> Dollars, part of the proceeds of said sale, as a sign of the judgment of E. S. Tracy against Prince Pinto & Co, and claiming only the balance of the Three hundred & forty dollars & interest on the same at six per cent.

Defendant, then read by consent from Bill of Exceptions, the testimony of William Pittman, taken on a former trial, as follows to wit:

The defendant then called William Pittman as a witness, who testified that he resided in Dunsmuir last winter and spring. Some time in January Miner wanted him to take charge of Mill and

49

logs. Said witness to take charge of all the logs in the State of Illinois, the Mill was about 1 1/4 miles from the State line. Latter part of January, 1857, witness went down to the Mill to take charge of the logs. found some of the logs opposite the mill, and some below about one half a mile. Took charge of the logs in the slough; had charge of them three or four weeks. Mr Cowel, took them off of witness's hands. Mr Miner said Pinto had turned out 500 000 feet of logs, and that those were all the logs belonging to Bruce Pinto & Co, in the State of Illinois. An expert examination by Plaintiff's counsel witness testified that defendant told him that he had levied on 500 000 feet of logs, and told him to take charge of all the logs in the State

Defendant then read deposition of William C. Friend, in words and figures following to wit:

The notice given by Defendant to Plaintiffs of their intention to take deposition of Wm. C. Friend is in the words and figures following to wit:

Please to take notice, that on the same day the 17<sup>th</sup> day of August, A.D. 1861, between the hours of 9 in the morning and 4 in the evening of the same day I will by myself or attorneys attend at the Clerk's office of the Circuit Court in and for the County of Jo Daviess and State of Illinois

for the purpose of suing out a dedimus potestatem, or commission, under the seal of the said Court, directed to H. H. Mills, a commissioner to be appointed, in and for the County of Dubuque, and State of Iowa, or in case of his absence or inability to attend, to any judge or justice of the peace, in and for said County and State last aforesaid, to take the deposition of William C. Friend, a citizen of the last mentioned County and State, on the annexed interrogatories to be read as testimony on the trial of a certain suit at common law, now pending and undetermined in the said Circuit Court, wherein you are the Plaintiffs and I am the Defendant.

You can then and there attend and file cross interrogatories if you think proper.

Dr. R. S. Harris & Co. et al  
 Joshua Cummings their attys,

Simon K. Miner  
 by Heigley & Small, his attys.

Interrogatories to be administered to William C. Friend, of the County of Dubuque and State of Iowa a witness to be produced, sworn and examined in a certain case at common law, now pending and undetermined in the Circuit Court in and for the County of Jo Daviess and State of Illinois wherein Robert S. Harris et al are plaintiffs and Simon K. Miner is the defendant, on the part and behalf of the said Defendant, as follows viz:

5-1 Question 1. - Do you know the parties, plaintiff and Defendant, in the title of interrogatories mentioned neither, and which of them, and how long have you known them respectively?

Question 2. Did you know the firm of Ponce Pinto & Co. in 1854, and if yes, in what business were they engaged, and where?

Question 3. Were you present at any time in said year when the Defendant made a levy on certain logs, said to belong to Ponce Pinto & Co. - if yes, state when and where it took place, who was present, and all facts respecting said levy?

Question 4. If you say that Mr Pinto of the firm of Ponce Pinto & Co., was the only member of that firm present, at the time the levy was made, state what he said about the quantity of logs, levied upon. - Did he say anything about any other logs, than those levied upon, and if so, where were those logs?

Question 5. What was your business there at that time, if you answer, that you were attorney for the Plaintiff in the execution then levied, state the name of the said plaintiff on execution, and any, all other facts, respecting said levy upon which you have not been herein interrogated, which will be of advantage to the Defendant. -

Cross Interrogatories.

If in answer to 3<sup>d</sup> direct Interrogatory, you state that you were present, at such a levy will you state in addition to other particulars, at what hour of the day the same was made, and whether made at all in your presence, or only Pinto's memorandum in writing given to the Sheriff on which a levy was afterwards to be made?

2<sup>nd</sup>

If in answer to Question 4 you state what Pinto said about the number of logs included in said memorandum state also what was stated by you at Galena on former trial of said suit, about Pinto claiming that they had 60000 feet of logs altogether lying in the river about and below the Mill.

Cummings & Johnson  
Plffs atty.

The consent, a dedimus may issue at any time  
Cummings and Johnson  
Plffs atty.

The Dedimus issued out of the Office of the Clerks of the Circuit Court, for this County, is in the words and figures following to wit:

Circuit Court Dedimus

State of Illinois  
Illinois County

The People of the State of  
Illinois, to W. H. Miller a

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Commissioner appointed to take Deposition, in and for the County of Dubuque, in the State of Iowa  
Greeting:

Whereas, it has been represented to us that William C. Friend, a material witness in a certain cause now pending, in our Circuit Court in and for the County of Jo Daviess aforesaid, between R. S. Harris vs Plaintiffs, and Simon H. Hines Defendant, and that the said Witness resides at Dubuque, in Dubuque Co Iowa, aforesaid, without the said State of Illinois, and that his personal attendance cannot be procured, at the trial of the said cause. Now Know Ye, that we, in confidence of your prudence and fidelity have appointed you Commissioner to examine the said Witness, and do therefore authorize and require you to cause the said witness to come before you at such time and place, as you may therefor designate and appoint, and diligently to examine the said witness, on the oath or affirmation of the said witness, by you first duly in that behalf administered, and faithfully to take the deposition of the said witness upon all interrogatories, included, with or attached to these presents, both on the part of the said plaintiff and of the said Defendant, and none others, and the same when thus taken, together with this commission and the said Interrogatories to certify into our said <sup>Circuit</sup> Court with the least possible delay

Witness *Wm R Rowley* Clerk of said Court  
 and the seal thereof at Galena in  
 said County this Tenth day of August  
 A. D. 1861  
*Wm R Rowley* Clerk

The deposition taken in pursuance with the above  
 Dedimus, is in the words & figures following, to wit:

The deposition of *William C. Friend* of the County  
 of Dubuque, and State of Iowa, a witness of lawful  
 age produced, sworn and examined, upon his corporate  
 oath, on the 26<sup>th</sup> day of October, A. D. 1861 at the Office  
 of *James H. McKinlay* (a notary Public of Iowa,  
 in the City of and County of Dubuque, and State  
 of Iowa, by me said *James H. McKinlay*, a commis-  
 sioner, acting by agreement, of parties, (as is said) as if duly  
 appointed by the annexed commissions issued out of  
 the Clerk's office of *J. Davis* Circuit Court, Illinois,  
 for the examination of the said *William C. Friend*  
 a witness in a suit now pending in said Court, where  
*R. S. Harris* & Co are plaintiffs and *Simon  
 McMiner* is def. The said *William C. Friend*  
 being first duly sworn by me, as a witness in  
 the said cause, previous to the commencement of  
 his examination, to testify the truth as well on the  
 part of Plaintiffs as of defendant, in relation to the

53- matters in controversy between them, so far as he should be interrogated; testified and deposed as follows.

Oswald Friend sworn.

Question 1. Do you know the parties plaintiff and defendant in the title of interrogatories mentioned or either, and which of them, and how long have you known them respectively.

Answer. I know a member of the firm of R. S. Harris & Co. at least a reputed member, usually called Capt. Harris, also the Defendant. I have known the defendant, since the winter of 1856-7, if I remember correctly; I did not become acquainted with Capt. Harris, until the Spring after I knew defendant.

Question 2. Did you know the firm of Bruce Pinto & Co in 1857, and if yes, in what business were they engaged and where?

Answer. I knew that firm, and that Mr Bruce and Mr Pinto were members of it, but I do not know who was the Co partner. They were then engaged in the manufacture of lumber from logs, in Jo Daviess County Illinois, in or near Dunleith.

Question 3. Were you present at any time in said year (1857) when the defendant made a levy on certain logs, said to belong to Bruce Pinto & Co, and if yes, state when and where it took place, who was present and all facts respecting said logs.

answer.

I was present at the time a levy was made by the  
 deft. on the logs of Prince Pinto & Co. at the suit of Ernest  
 S Tracy, for whom I acted as attorney, the levy was by  
 writ of attachment against the property of Prince Pinto  
 & Co. it took place, to the best of my recollection, sometime  
 in January or February 1854, it was in the evening  
 after dark, when the writ was levied; I was present,  
 the deft. (the sheriff) was there with his writ, and Mr  
 Pinto of Prince Pinto & Co. was there, I told Pinto our  
 business, he took us into the Mill office (at or near  
 Danville) among other things he stated that the firm  
 owned a certain amount of logs, which layed in the  
 slough, near the mill. He said that it was not necessary  
 for us to look at the logs, he represented, as far as my  
 recollection serves me now, that there was some 600,000  
 feet in the said logs, and that, that included all the  
 logs belonging to the firm in St. Davids County. That  
 was my impression at the time and is still my impres-  
 sion. My intention and effort was to levy on all the  
 property of Prince Pinto & Co in St. Davids County,  
 at that time, I asked Mr Pinto about some logs  
 which I had been informed belonged to Prince  
 Pinto & Co & which were moored up the river above  
 Danville some distance. He said that those logs  
 were not in St. Davids County, but were within  
 the State of Wisconsin. At the time the levy was made  
 the ground was covered with snow and the logs were  
 fast in the ices

57  
 Question 4. If you say that Mr Pinto, of the firm of Bruce Pinto & Co. was the only member of that firm present at the time the levy was made, state what he said about the quantity of logs levied upon. Did he say anything about any other logs than those levied upon, and if so where were those logs?

Answer. Mr Pinto was the only member of the firm present that I know of at the time the attachment was levied. Mr Pinto represented that there was some 600,000 feet of logs, and he stated that we had got all their property in Do Davis's Co. he pointed to the slough, saying the logs were laying there frozen up. He gave the Sheriff a memorandum of quantities himself. He had a conversation about other logs in Wisconsin, as mentioned in my answer to the 3<sup>d</sup> interrogatory.

Question 5. What was your business there at the time? if you answer that you were attorney for the plaintiff in the execution then levied, state the name of the said plaintiff in execution, and any, all other facts respecting said levy, upon which you have not been herein interrogated, which will be of advantage to the defendant.

Answer. I was atty for C. S. Tracy was plff. in the attachment which was levied against Bruce Pinto & Co out of which this litigation has grown. I have stated about all the facts that occurred under that attachment, as far as I have known them, as far as I recollect.

1<sup>st</sup> Cross. Int. If in answer to the 3<sup>d</sup> direct interrogatory you state that you were present at such a levy, will you state in addition, to other particulars at what hour of the day the same was made, and whether made at all in your presence, or only Pinto's memorandum in writing given to the Sheriff, on which a levy was afterwards to be made?

Answer. It was in the evening, after the train came from Galena; the Sheriff met me and we went down there & found Mr Pinto. I introduced the Sheriff to him and told him our business. The Sheriff exhibited to him the writ, and Mr. Pinto said it was not necessary that we should go round through the premises; he would give the Sheriff a list of everything and from that he could make his levy. Mr. Pinto sat down, and gave us, I understood a list of all Bruce Pinto & Co's property, in Jo Davis County and subject to that attachment; and I understood, the Sheriff then and there made the levy. I was very particular about it as I was fearful that if the levy was not made then, the money was gone.

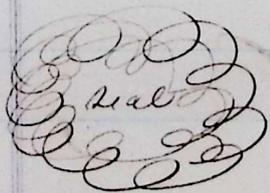
2<sup>nd</sup> Cross. Int. If in answer to question four, you state what Pinto said about the number of logs included in said memorandum, state also what was stated by you at Galena on former trial of said suit, about Pinto claiming that they had 60000 feet of logs altogether lying in the river about

60 and below the mill.

Answer: My impression is, that at Salina, I stated, just about, as I have stated today, that Pinto said there was about 600,000 feet of logs altogether, about the Mill and in Jo Davis County.

W. C. Friend

I, James M. W. Kinley of the City County of Dubuque and State of Iowa, a Notary Public, do hereby certify, that previous to the examination of William C. Friend, (the witness whose name is subscribed to the foregoing deposition) as a witness in the said suit between R. S. Harris & Co. plaintiffs and the said Simon K. Miner defendant, he was duly sworn by me to testify, the truth in relation to the matters in controversy between the said R. S. Harris & Co. plaintiffs and the said Simon K. Miner defendant, so far as he should be interrogated, concerning the same, that the said deposition was taken in my office in the City and County of Dubuque, and State of Iowa on the 26<sup>th</sup> day of October, A.D. 1861, and that after said deposition was taken, by me as aforesaid, the interrogatories and answers thereto, as written down, were read over by the said witness; and that thereupon the same was signed and sworn to by him before me at the place and on the day and year last aforesaid



Witness my hand and notarial seal, at  
Dubuque, this 26<sup>th</sup> Oct. 1861.

James M. W. Kinley  
Notary Public

Endorsed.

Filed Oct 30<sup>th</sup> 1861  
 W. P. Rowley Clerk.

also the deposition of E. G. Covill as follows to wit:

The notice given by defendant, of intention to take this deposition, is in the words and figures following to wit:

To R. S. Harris et al.

vs M. Y. Johnson, their attorney.

You will please take notice, that on Friday, the 26<sup>th</sup> day of April A. D. 1861 at 9 o'clock AM, of the same day, I will by myself or attorney appear before H. S. Calhoun a Justice of the peace, in the town of Keithsburg, County of Mercer, and State of Illinois for the purpose of taking the depositions of Elijah G. Covill, said depositions to be used in behalf of the Defendant, in the trial of a certain cause now pending and undetermined, in the Circuit Court of Jo Davis County, Illinois, wherein you are plaintiffs and I am the Defendant. The taking of the deposition of said witness, to be adjourned from day to day until the same is completed. -

at which time and place you can appear and cross examine said witness if you think proper.

62 Calusa April 15. 1861.

Simon K. Minor

by Keigley & Small

his attys.

I acknowledge service of the  $\frac{1}{3}$  above notice, waiving the time but saving all other objections

M. V. Johnson, Off. Atty.

Interrogatories, to be propounded to Elijah Coville a witness, to be sworn and examined on the part and behalf of the Defendant, in a suit now pending and undetermined in the Circuit Court of St. Louis County, Illinois, in which R. S. Harris & Co are Plaintiffs and Simon K. Minor is defendant, as follows, to wit,

Interrogatory 1<sup>st</sup>. State your name, and whether or not, you were for a period of time, a resident of St. Louis County Illinois, and if yes, how long were you a resident of said County, and when did you leave said County? Also state, if you were or not, a Deputy Sheriff of said County, & if yes, who was sheriff at that time, & if he is the same person who is defendant, in this suit? Also if you are acquainted with Jeffs, in this suit?

Interrogatory 2. Do you recollect of acting under the Sheriff of said County as his deputy, and were you present when said Sheriff made a levy upon certain Toys, belonging to a firm, styled & known as Bance, Pirtle & Co

Q 3 and if you recollect such a circumstance, state whether you took charge of such logs, by virtue of your office as Deputy Sheriff, at the request of the Sheriff of said County? What season of the year was this, and what year, as near as you can recollect? and where were said logs lying?

Interrogatory 3. Did you know either of the firm of Bruce, Pinto & Co. and if so which one? Did either of said firm state to you the number of feet of logs, which were lying at Danleith & which belonged to said firm of Bruce, Pinto & Co? If so, which member of said firm, and how many feet did he say there were? Were said logs lying together in one raft, or were they scattered along shore? If scattered, for what distance? - did the member of said firm with whom you conversed, say that they had any logs, beside those, laid on by Minor, and placed by him in your possession, in the State of Illinois? Do you think there were as many logs, in the lot, as was stated to you? If not, how many were there?

The deposition taken in presence of the above named is in the words and figures following to wit:

R. S. Harris & Co  
as  
Simon H. Minor

Deposition of Elijah Powell

64 a resident of the County of Mercer and State of Illinois, aged about 28 years, a witness on the part of the Defendant, in the above entitled suit now pending before the Jo Davis County Circuit Court, in the State aforesaid, produced and sworn and examined, before H. S. Calhoun, a Justice of the Peace, in and for said County of Mercer, on the 26<sup>th</sup> day of April A.D. 1861, at 9 o'clock A.M. at the office of said justice, in the town of Keithsburg taken by virtue of the annexed notice. Said Witness being first duly sworn, deposes and says, as follows, to wit:

Inty 1<sup>st</sup> State your name and whether or not you were for a period of time, a resident of Jo Davis County Illinois: and if yes, how long were you a resident of said County, and when did you leave said County: Also state, if you were or not, a Deputy Sheriff of said County, and if yes, who was Sheriff at the time, and if he is the same person who is defendant in this suit: Also, if you are acquainted with the Plaintiffs in this suit.

Adjourned, taking this deposition until 9 o'clock A.M. on Monday, 29<sup>th</sup> day of April 1861.

Answer to Inty 1<sup>st</sup>. My name is E. D. Corill, I was for a period of time a resident of Jo Davis

65  
County Illinois, I was a resident of said County about twenty five years. I left the County on the 4<sup>th</sup> day of April 1860.

I was deputy Sheriff of said County. Three different terms in succession. I was Deputy under Simon H. Miner, when he was Sheriff of said County. He is the same person that is defendant in this suit. I am acquainted with the Plaintiffs in this suit.

Inty. 2<sup>nd</sup>. Do you recollect of acting under the Sheriff of said County, as his deputy, and were <sup>you</sup> present when said Sheriff made a levy upon certain logs belonging to a firm, styled and known as Bruce Potts & Co and if <sup>you</sup> recollect such a circumstance, state whether you took charge of such logs by virtue of your office of Deputy Sheriff, at the request of the Sheriff of said County. What season of the year was this, and in what year as near as you can recollect, and where were said logs lying

Answer to Inty 2<sup>nd</sup>: I acted as Deputy Sheriff. I was present when the levy was made. I took charge of the logs by virtue of my office as deputy sheriff, at the request of the Sheriff. I think it was in the fore part of March 1858. The logs were scattered along shore for half a mile, or more, below Bruce Potts & Co's mill.

66

Q<sup>y</sup>. Did you know either of the firms of Pounce Pinto & Co. if so, which one, did either of said firms state to you the number of feet of logs, which were lying at Dunleith and which belonged to said firm of Pounce Pinto & Co. If so, which member of said firm, and how many feet did he say there was. Were said logs lying together in one raft, or were they scattered, along shore, If scattered, for what distance. Did the member of said firm, with whom you conversed, say that they had any logs, besides those levied on, by Minor and placed by him in your possession, in the State of Illinois. Do you think there were as many logs in the lot, as was stated to you, if not, how many were there?

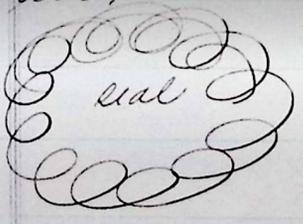
Answer to Jaty Q<sup>y</sup>. - I was acquainted with both Pounce & Pinto. Mr Pinto told me, that there was about 400000 feet, lying at Dunleith belonging to the firm, some of the logs were rafted and some were not, they were lying along shore for about half a mile. Mr Pinto told me that they had other logs, lying above the line in Indiana which they intended to run down when the river opened, he told me the logs levied on was all they had in the State of Illinois. I do not think there were as many logs as was stated to me, by Mr Pinto. I do not think the logs, that was placed in my possession would exceed, 250,000

E. L. Covill

State of Illinois J. G. C. Calhoun, a Justice  
 Mercer County J of the Peace, of the said County  
 do certify that the above deposi-  
 tion was taken by me in writing, at the time and  
 place mentioned in the Caption thereof, that the  
 said witness was first duly sworn, and that the  
 said deposition was first carefully read to the witness  
 and signed by him. Dated this 29<sup>th</sup> day of April 1861  
 J. G. C. Calhoun J.

Justice fees.  
 1 Subp. 25 Witness fee  
 Record, 2.00 E. D. Corill. 50  
 Certificate  $\frac{25}{300}$   
 Postage  $\frac{09}{309}$  blank certificate 35.

State of Illinois J. John Ramsey, Clerk  
 Mercer County J of the County Court of said  
 County, do hereby certify that  
 H. C. Calhoun, whose genuine signature appears to  
 the foregoing certificate, was on the 29<sup>th</sup> day of April  
 A. D. 1861. an acting Justice of the Peace, in and for  
 said County, duly commissioned and qualified, and  
 as such, full faith and credit are due to his official  
 act.  
 In testimony whereof I have hereunto  
 set my name and affixed the seal of  
 said County at Keithsburg this 29<sup>th</sup> day of April  
 A. D. 1861. John Ramsey, Clerk.



Endorsed

Filed & Pay'd, do, 1861, Open'd May 23<sup>d</sup> 1861,  
W. R. Rowley, Clerk.

Plus the following papers, in the trespass suit  
between, same parties to wit:

Writ, in the words and  
figures following to wit.

State of Illinois )  
In said County )  
The People of the State of  
Illinois to the Sheriff of  
said County Greeting:

The command you to summon Simon  
H. Hines, to appear before the Circuit Court  
of said County at the next term to be holden  
at Salem on the 30<sup>th</sup> Monday of August. Inst.  
to answer Robert S. Harris & James W. Hain  
partners under firm name & style of R. S. Harris & Co  
in a plea of Trespass de bonis asportatis, damages  
Eighteen hundred dollars, and have you there  
and there this writ.

Witness William R. Rowley Clerk of the  
Circuit Court of said County  
Illinois, and the seal thereof at Salem  
this Seventh day of August A. D. 1861  
attest  
W. R. Rowley, Clerk.

69 Upon which writ was endorsed the following return, to wit.

Served the within duly upon the within named S. K. Miner, by reading the same, this seventh day of August, A.D. 1857.

James C. H. Hobbs,  
Esq. Jo Davis Co. Illinois.

Declaration, In the words & figures following to wit.

State of Illinois } In Circuit Court,  
Jo Davis County } August Term A.D. 1857.

Robert S. Harris and James  
M. Harris, partners under the  
firm name and style of  
R. S. Harris & Co

<sup>vs</sup>  
Simon K. Miner

Robert S. Harris

and James M. Harris, partners in business under the firm name and style of R. S. Harris & Co. plaintiffs in this suit by their attorney, W. J. Johnson, complain of Simon K. Miner defendant, in the suit of a plea of Trespass de bonis asportatis.

For that the said defendant, on the twenty fourth day of July in the year of our Lord one thousand eight hundred

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and fifty seven with force and arms &c to wit at  
 Salina, Lemay, and Circuit aforesaid, seized to wit and  
 carried away certain goods and chattels to wit &c.  
 One raft of logs, consisting of Three hundred and  
 thirty three logs, in all One hundred and fifteen  
 thousand, Eight hundred and Eleven feet. marked  
 thus "XX", of the said Plaintiffs of great value to  
 wit: of the value of Eighteen Hundred dollars  
 lawful money of the United States, there they found  
 and being, converted and disposed of the same to his  
 own use.

And other wrongs to the said plaintiffs they and  
 there did, against the peace and to the damage  
 of the said plaintiffs, of One thousand Eight hun-  
 dred Dollars. And therefore they bring this suit, &c  
 Pledge &c.

Wm. G. Johnson  
 Plff. atty.

Endorsed.

Filed Aug 7<sup>th</sup> 1854  
 W. R. Rowley Clerk.

Verdict of Jury, in words & figures following to wit:

Robert S Harris & James McKean  
 partners under firm name & style of Action of Trespass  
 R. S. Harris & Co  
 S. A. Miner  
 De Pomis  
 asportant.

Now at this day came again the jury heretofore impaneled, in this cause and return the following sealed verdict, to wit: "We the jury, find the Defendant Not Guilty," And the plaintiffs by their attorney, move the Court for a new trial.

The judgment rendered in this cause, in the words and figures following to wit:

Robert S. Harris & James W. Harris, partners &c under the name & style of R. S. Harris & Co  
 S. H. Wines  
 Trespass de Bonis Asportatis.

Now at this day, came again the parties by their attorneys, and the Court having fully considered and being fully advised of the motion heretofore filed by the plaintiffs for a new trial, herein, overrules the same, to which ruling of the Court, the plaintiffs by their attorney except. It is thereupon considered by the Court that the Plaintiffs take nothing by their suit herein and that they pay the costs of this proceeding, and that Execution issue against them therefor. And the Plaintiffs by their attorney, pray an appeal to the Supreme Court, which is granted by the Court upon James H. Harris, one of the Plaintiffs with Daniel S. Harris as surety, filing with the Clerk

72 of this Court, an appeal Bond, properly conditioned, in the sum of Two hundred dollars, within thirty days from this date.

Defendant also offered to read the instructions of the Court to the jury in trespass suit as evidence of what was before the Court & jury at the former trial, to which Plaintiffs objected that they were irrelevant and did not tend to prove any issue, in this case, objection sustained, and instructions ruled out, & defendant excepted. Afterwards, the Court on his own motion admitted the instructions to be read, by the defendant as evidence, tending to prove what was in controversy in the trespass suit, to which ruling of the Court, the plaintiffs by their attorneys ~~then~~ urged the grounds of objection before stated to the Court, and then and there excepted to the ruling of the Court, in overruling their objections & admitting the instructions in evidence. The instructions then read in evidence were the following to wit

1. If the jury believe from the evidence that the logs described in the Plaintiffs declaration were lawfully upon by the Defendant, as Sheriff on the 16<sup>th</sup> day of January A.D. 1857, by the attachment offered in evidence in favor of Erastus S. Tracy & against Bruce Pinto & Co. & that they then owned them, then the jury should find the defendant not guilty.

2. The jury are instructed that the issue under the third plea in this cause, admits the levy of the attachment in favor of P. H. Campbell, & against Bruce Pinto & Co. upon the logs described in the Plaintiff's declaration, & on the 12<sup>th</sup> day of February 1857, and if the jury believe from the evidence, that the logs were in the possession of Bruce Pinto & Co. or their agent, for them, and they owned them on the said 12<sup>th</sup> day of February when the levy was made, then the jury should find for the defendant.

Defendant, then read without objection the following papers in the attachment suit of Erastus S. Tracy vs Bruce Pinto & Co. to wit:

The Writ of attachment, which said writ is in the words & figures following to wit:

State of Illinois )  
 In Davis County )

The people of the State of Illinois  
 to the Sheriff of said County Greeting:  
 Whereas, Erastus S. Tracy by his  
 agent, William C. Friend, Plaintiff, has com-  
 plained an oath to the Clerks of our Circuit Court,  
 for the County aforesaid, that Bruce Pinto & Co  
 Defendants, are justly indebted unto the said  
 plaintiff to the amount of Three thousand dollars  
 and Seventy nine cents, with interest from 10<sup>th</sup> January

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1857, and also that Bruce Pinto & Co are now residents of the State of Illinois, and the said Erastus S. Tracy, Plaintiff, having given bond and security according to the directions of the act in such case made and provided;

We therefore command you, that you attach so much of the estate, real and personal, of the said defendant, to be found in your County as shall be of value sufficient, to satisfy the said debt, and costs, according to the said complaint; and such estate, so attached in your hands to secure, or as to provide, that the same may be liable to further proceedings thereupon, according to law, at the term of the Circuit Court, of Jo Daviess County, to be holden in and for the County aforesaid at Galeana in said County, on the second Monday of March next; And that you summon the said Bruce Pinto & Co, to appear and answer the complaint of the said Erastus S. Tracy, Plaintiff, and have you there and there this writ.

*[Decorative flourish]*  
Clk

Witness William A. Rowley Clerk of the Circuit Court, of Jo Daviess County, Ills and the seal thereof at Galeana this 15<sup>th</sup> day of January A.D. 1857

W A Rowley Clerk  
by A. Phillips Deputy

73- Upon which said writ of attachment were the following  
Endorsements, to wit:

Executed this writ by attaching the South half of the  
Northwest quarter of Northwest quarter of Southeast  
quarter of Section No twenty nine, in Township No  
Twenty nine, north, of Range two West of the fourth  
Principal Meridian, in the County of St. Davids and  
State of Illinois; also Mill and Machinery, thereon;  
also five hundred thousand 500,000 feet of lumber in  
logs, taken as the property of Ponce Pinto & Co.  
this 16<sup>th</sup> day of January 1857  
S. K. Miner Sheriff.

Served by reading the within writ to Pinto, one  
of the Company of Ponce Pinto & Co., Jan'y 16<sup>th</sup> 1857  
The other defendants not found in my County.  
S. K. Miner, Sheriff.

The Judgment: in the words & figures, following  
to wit:

Orastus S. Tracy vs Ponce Pinto & Co. Attachment  
Now at this day came  
the Plaintiff by his Attorney  
and files proof of publication of notice, which is ad-  
judged sufficient by the Court, and the Defendants.

being three times solemnly called, came not but made default. It is thereupon considered by the Court, that the Plaintiff have and recover of the Defendants, his damages; but as these damages cannot be certainly known, and it appearing to the Court that this action is founded upon a promissory note for the payment of money only, it is ordered by the Court, that the Clerk assess the same, and the Clerk having reported the same at the sum of Three Thousand and Seventy two dollars and Eighty five cents, which report is approved by the Court. It is thereupon considered by the Court, that the Plaintiff have and recover of the Defendants, the said sum of Three thousand and Seventy two dollars and Eighty five cents, so as aforesaid reported by the Clerk, together with his costs, by him about his suit in this behalf expended, and that a special execution, issue therefor, against the Property attached.

The Special writ of *fi fa*, issued, in this case, in the words and figures following to wit:

State of Illinois  
 In Davis County

The People of the State of Illinois, to the Sheriff of said County, Greeting:  
 We command you, That of the goods

77 chattels, lands and tenements of Isaac Potts are attached to wit: The South half of the North West quarter, of the North West quarter, of South West quarter of Section number 29, in Township No 29 north of Range two West of 4<sup>th</sup> P.M. in Goddards Co. Ills, also Mills and Machinery thereon, also 500,000 feet of Timber in Logs. You cause to be made the sum of Three Thousand & Seventy two Dollars and Eighty five cents, Damages, and Twenty One Dollars and Thirty 1/2 cents, costs, which Erastus S. Tracy, lately recovered against them, in the 30 Davis County Circuit Court, as appears of record: and this you are not to omit under the penalty of what the law prescribes, and have those moneys at the Clerks office of said Court at Galena, within ninety days from the date hereof and also this writ:

Witness William A Rowley Clerk of  
the Circuit Court, of 30 Davis County  
Illinois, and the seal thereof at Galena  
this 15<sup>th</sup> day of June A.D. 1857.

Attest Wm A Rowley Clerk

The Sheriff will collect interest on the above  
from 25<sup>th</sup> May 1857

W A Rowley Clerk

Upon which special writ of fi. fa. were the following  
endorsements, to wit

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By virtue of the within writ, I have this 16<sup>th</sup> day of June 1857, levied upon the within described property,  
S. K. Minor, Sheriff.

This Execution is returned this 13<sup>th</sup> September 1857 made the costs, and \$2223 <sup>69</sup>/<sub>100</sub> on the judgt, which has been paid to Plaintiffs atty, and costs to Clerk except my fees; also the further sum of \$368 <sup>74</sup>/<sub>100</sub> made on the judgt and paid to Clerk,  
S. K. Minor Sheriff.

Defendant then offered the Record in the case of P. H. Campbell vs James P. H. Co. to the reading of which, plaintiffs by their attorneys objected, because it appeared by the papers, that the suit was commenced and the writ issued long after the title of Plaintiffs had accrued, which objection was overruled by the Court, and Plaintiffs attorneys then and there excepted to the ruling of the Court. The following papers in said suit were then read in evidence - To Wit:

Writ of attachment, in the words and figures following to wit:

State of Illinois )  
                  ) ss. The people of the State  
                  ) of Illinois to the Sheriff of  
                  ) said County, Greeting

Whereas, Benjamin H. Campbell, Plaintiff, has complained on oath, to the Clerk of our Circuit Court, for the County aforesaid that Bruce Pinto & Co. defendants are justly indebted unto the said Plaintiff to the amount of three thousand seven hundred & sixty eight Dollars and seventy seven cents, and also that Bruce Pinto & Co. & each member of said firm are now residents of the State of Illinois and have real and personal estate in Jo Daviess County, subject to execution or attachment, and the said Benjamin H. Campbell Plaintiff, having given bond and security according to the directions of the act in such case made and provided:

It is therefore Commanded you, That you attach so much of the estate, real or personal of the said defendants to be found in your County as shall be of value sufficient to satisfy the said debt and costs according to the said complaint; and such estate so attached, in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law, at the term of the Circuit Court of Jo Daviess County, to be holden in and for the County aforesaid, at Salina, in said County on the second Monday of March next: and that you summon the said Bruce Pinto & Co. to appear and answer

to the complaint of said Benjamin H. Campbell.

And have you there and there this writ  
 Witness William R Rowley Clerk of the  
 Circuit Court of Jo Davis County Ill  
 and the seal thereof at Salina, this  
 Twelfth day of February A<sup>d</sup> 1857  
 W R Rowley Clerk  
 by A. Phillips Deputy

Upon which writ of attachment were the following  
 endorsements, to wit:

Executed this writ this 12<sup>th</sup> day  
 of February 1857, by attaching the South half of  
 N. W. quarter of N W 1/4 of S. W. quarter of Sec-  
 tion A<sup>o</sup> 29 in Township A<sup>o</sup> 29 in Range No 2 West  
 of 4<sup>th</sup> P. M. in Jo Davis Co Ill  
 Also 50000 ft logs and the Mill and Machinery  
 as the property of Ponce Pinto & Co.

S. K. Minor, Sheriff  
 I have read this writ to the within John Ponce &  
 Jacob A. Pinto of the firm of Ponce Pinto & Co  
 this 3<sup>rd</sup> day of March, 1857.

S. K. Minor Sheriff  
 by J. Pittam Deputy

The Judgment:

Which said judgment is in the  
 words and figures following to wit

Benjamin H Campbell

vs  
Dance Pinto & CoAttachment,  
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Now at this day  
came the plaintiff by his attorney and the  
Defendants being three times solemnly called  
came not but made default. It is thereupon  
considered by the Court that the plaintiff have  
and recover of the defendants his damages  
but as these damages are not certainly known  
and it appearing to the Court that this action  
is founded upon two promissory notes for the  
payment of money only, It is ordered by the  
Court that the Clerk ascertain the same, and the  
Clerk having reported the same at the sum  
of Three thousand Nine hundred and  
Eighty Eight Dollars and fifty nine cents,  
which report is approved by the Court.

It is thereupon considered by the Court that the  
Plaintiff have and recover of the Defendants the  
said sum of Three thousand, Nine hundred and  
Eighty Eight dollars and fifty nine cents, so as  
aforesaid reported, by the Clerk, together with his  
costs by him about his ~~his~~ suit in this behalf  
expended, and that he have a special Fieri  
Facias therefor, against the property attached.

Which said <sup>special</sup> Fieri Facias is in the words and

82 figures following to wit:

State of Illinois }  
Co Davis County }  
Joh.

The People of the State of Illinois to the Sheriff of said County, Greeting:  
We command you that of the goods, chattels, lands and tenements of Pounce Pinto & Co. attached, to wit. The South half of North West Quarter of N. W. qr of South West quarter of Section No 29 in Township No 29. in Range No 2 West of 4<sup>th</sup> PM. in Co Davis County Illinois. Also 500,000 feet of Logs, also ~~the~~ and machinery, you cause to be made the sum of Three Thousand nine hundred & Eighty Eight Dollars and fifty nine cents Damages, and Sixteen Dollars and Sixty cents costs, which Benj. H. Campbell lately recovered against them in the Co Davis County Circuit Court, as appears of record: and this you are not to omit under the penalty of what the law prescribes. And have those moneys at the Clerks office of said Court at Salina within ninety days from the date hereof and also this writ:

Witness William R. Rowley  
Clerk of the Circuit Court  
of Co Davis County Illinois

Special

and the seat thereof at St. Louis  
this 15<sup>th</sup> day of June A.D. 1854

Attest. W. R. Rorley, Clerk

The Sheriff will collect interest on the above  
from 26<sup>th</sup> May 1854

W. R. Rorley, Clerk

Upon which special writ of fieri, appear the  
following endorsements to wit:

By virtue of the  
within writ I have this 16<sup>th</sup> day of June 1854  
levied upon the within described property, also  
levied on the following property on the 9<sup>th</sup> Augt 1854  
to wit 1 house, 18 by 20 ft. 1 two horse Wagon & Cart,  
small lot iron, & small lot picketing

S. K. Miner, Shff.

13<sup>th</sup> September 1854, made the costs in full and  
\$364<sup>50</sup>/<sub>100</sub> on the judgment by sale of the within described  
property, and the Plff. in the Execution being the  
purchaser, that writ is paid to him and the costs  
paid to Clerk, except my fees. Also the further  
sum of \$86 by sale of the levy made 9<sup>th</sup> August  
1854, and that amount paid to Plff.

S. K. Miner, Shff.

Defendant, offered to prove by George Kauffman  
a juror on the trial of the Trespas suit mentioned  
in the pleadings, that all the issues in said Trespas

suit were passed upon by the jury in that case. Plaintiffs objected to testimony, and the objection sustained & testimony refused, to which ruling of the Court and rejection of evidence, the Defendants Counsel then and there excepted.

William R. Morley, sworn.

The Sheriff paid into my hands from the sale of said raft, \$368.34 on the 25<sup>th</sup> of February 1858. I paid that sum to W. G. Johnson, as attorney for Harris & Co, the plaintiffs in this suit, on the 25<sup>th</sup> of February 1858. This was paid to Harris & Co as assignees of the Tracy Judgment.

Plaintiffs then offered in evidence as rebutting proof, the Certificate of Purchase of Real Estate levied on by Tracy's writ of attachment, to prove by a denial of the Defendant that the Real Estate levied, sold for more than the amount of Tracy's Writ of attachment which was objected to by Defendants attorneys on the ground, that there was better proof of the amount than the Certificate furnished, which objection was overruled by the Court, to which ruling of the Court, Defendants attorneys then and there excepted. \* It was admitted that these same logs were the subject of the trespass suit

Wm R. Sheldon



read at my office in Galena this 15<sup>th</sup> day of August  
1857.

C. H. Miner.

Recorded July 15<sup>th</sup> 1857.

W. A. Rowley, Clerk.

State of Illinois J. William R. [unclear] Clerk  
of Daviess County N. of the Circuit Court and  
his Office Recorder in and  
for the County of Daviess and State aforesaid, do  
hereby certify the above to be a true and correct copy  
of a certificate of Purchase from the Sheriff of Daviess  
County to Benjamin H. Campbell, as the  
same appears of Record in my office in Book A  
of Certificates of Purchase and Redemption my  
No 112.



In testimony whereof I hereunto set my  
name and affix the seal of said Court  
at my office, in Galena, this the  
fourteenth day of February, A.D. 1862  
Attest

Wm A Rowley Clerk.  
by J A Bird Deputy

Unadvised

Filed November 16<sup>th</sup> 1861  
 J. R. Rorley Clerk  
 by T. R. Bird Deputy.

The Appeal Bond, filed by Plaintiffs in this cause, is in the words and figures following to wit:

Know all men by these presents, that we Robert S. Harris and James M. Harris, partners under the firm name and style of R. S. Harris & Co and Daniel S. Harris, of the County of Jo Daviess and State of Illinois are held and firmly bound unto Simon K. Hoimer also of the same County and State, in the penal sum of Three Hundred Dollars, current money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. - Witness our hands and seals this 15<sup>th</sup> day of November A.D. 1861.

The condition of the above obligation is such, that when as, the above named Simon K. Hoimer did on the fourteenth day of November A.D. 1861, in the Jo Daviess County Circuit Court, in the State of Illinois recover a judgment against the above bound Daniel S. Harris & James M. Harris, partners, &c. from which said judgment of the said Circuit Court, the said Robert S. Harris & James M. Harris,

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parties &c. have prayed and appeal and obtained the same to the Supreme Court of said State.

Now if the said Robert S. Harris and James M. Harris parties &c. 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 void, otherwise to remain in full force and virtue.

Taken and entered into  
before me at my office in  
Sulphur, this 28<sup>th</sup> day of  
November, A.D. 1861.

R. S. Harris  
J. M. Harris  
J. S. Harris

Wm R. Rorley Clerk  
by F. B. Newhall deputy

Emended.

Filed Nov. 28<sup>th</sup> 1861.  
Wm R. Rorley Clerk  
by F. B. Newhall deputy



State of Illinois  
vs Joseph County<sup>es</sup>

Supreme Court of Illinois  
Third Grand Division  
April Term 1862

And now at this day comes the appellants  
and says there is manifest error in the Record proceedings  
and Judgment of the Circuit Court in the above cause  
and shows to the Court the following

1<sup>st</sup> The Court erred in admitting in evidence for  
the defendant the Instructions given by the Court in  
the Trespas suit

2<sup>nd</sup> The Court Erred in admitting in evidence for the  
defendant the Writ, lay, Judgment and Execution in  
in the case of B H Campbell vs Bruce Pinto &c

3<sup>rd</sup> The Court Erred in refusing the second instruction  
asked by the Plaintiffs

4<sup>th</sup> The Court Erred in refusing the third instruction  
asked by the Plaintiffs

5<sup>th</sup> The Court erred in granting the third instruction  
asked for by the defendant

6<sup>th</sup> The Court erred in overruling the motion for a New  
Trial

7<sup>th</sup> The Court erred in rendering the Judgment rendered  
in this case - Wherefore they pray the Judgment of this  
Court and that the same may be corrected and said cause  
remanded in permannance to Law

M. J. Johnson & A. L. Cummings  
for appellants

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~~178~~ 178

Record

R. S. Harris & Co

as

S. K. Mennen

Filed April 21, 1862

S. Seland

clerk