

No. 13473

Supreme Court of Illinois

Pullian, et al.

vs.

Nelson.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 135.

1861
Pullian
vs
Hils

1861

13472

Office of E. S. Smith,

Nos. 108 & 110 Adams St. P. O. Box 1885.

Chicago, Feb 27 1861

Black Supreme Court
Ottawa Ill

Sir

You will find enclosed
first two bills of exception, and secondly a
check for Ten dollars. I wish you would
send me a cert of error in each case and
I will attend to the service.

Yours very Respectfully
E. S. Smith

135
Puliam 800
2
Nelson

Receipt

Given March 2 1861
L. Leland

135-88

Robert Puliam & Co
Appellants

vs.

Geo. W. Nelson
appellee

Appellants Points

Filed April 29, 1866
L. Leland Clerk

IN THE
SUPREME COURT OF ILLINOIS,
THIRD GRAND DIVISION.

April Term, A. D. 1861.

ROBERT PULLIAN,
ANDREW J. WILLS,
DAVID RANKIN & EBEN MASON,
Appellants.

vs.
GEORGE W. NELSON,
Appellee.

BRIEF AND POINTS

FOR APPELANT.

POINT I.

The Court below erred in permitting the several Witnesses in the case, to testify where the defendant resided.

This case was commenced by attachment; one of the grounds of which was, that the defendant was not a resident of the State of Illinois.

A plea in abatement was interposed taking issue on the fact of his residence.

The residence of a party defendant is, in all such cases, to be determined

by a variety of facts and circumstances, upon and from which it is determined as a legal conclusion.

If a party has his domicil within the State, and his family reside here — if he makes it his permanent place of abode, and there exercises his political rights, he is then, in legal contemplation, a *resident* of the State. Residence is, therefore, a *conclusion of law* from facts and circumstances, and it would, therefore, seem clear, that whenever that question is in controversy, and the fact is to be determined by a jury, the only proper method for the jury to arrive at a conclusion would be from the facts and circumstances themselves. Where those are shown, their legal effect, as determining the question, will be embodied in the instructions given by the Court, and thus the jury will find whether the facts which constitute a party defendant a resident, do or do not exist. In the course adopted in the Court below, the witnesses were permitted to swear to the law; thus taking the entire question practically from the jury, and furnishing them no proper basis upon which to arrive at a verdict. The witnesses testified that the defendant was a *resident*, when, upon stating the facts, the law might have established an altogether different conclusion.

The *opinion* of the witnesses, as to the law, was thereby substituted for the law itself; and it would seem too clear for argument, that the jury must take their instructions of the law from the court, and not from the witnesses.

POINT II.

The Court erred in modifying the plaintiffs' instructions.

E. S. SMITH,

Appellant's Attorney.

135-88

Robert Pullman
Exar

vs.

Geo. W. Chelson

Appellants Points

Filed April 29. 1864
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ANDREW J. WILLS,	
DAVID RANKIN & EBEN MASON,	
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<i>vs.</i>	
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<i>Appellee.</i>	

BRIEF AND POINTS

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The *opinion* of the witnesses, as to the law, was thereby substituted for the law itself; and it would seem too clear for argument, that the jury must take their instructions of the law from the court, and not from the witnesses.

POINT II.

The Court erred in modifying the plaintiffs' instructions.

E. S. SMITH,

Appellant's Attorney.

Be it Remembered That hereofore to wit: on
the 24th day of December A.D. 1889 an affidavit
was filed in the Office of the Clerk of the Circuit
Court of Wauver County Illinois, which is in the
words and figures following to wit:

The State of Illinois } ss.

Wauver County } Philo E Reed being duly sworn
upon his oath says. That he
is the agent of Robert Pulliam, Andrew J Wells
David Rankin & Eben Mason partners under the
Name & style of Pulliam Wells Rankin & Co and
that he makes this affidavit in their behalf.

This Dependant further saith that he is
informed and believes that George W Nelson
is indebted to said firm of Pulliam Wells Rankin
& Co - in the sum of One Hundred & twenty four $63\frac{1}{100}$
dollars for goods wares & merchandises sold & deliv-
ered to said George W Nelson by said firm and at
his request. which said sum of money is still
due and unpaid.

Dependant further saith that he is informed
and truly believes that said George W Nelson is
a Non Resident of Illinois, and has property
rights and credits in said County of Wauver State
of Illinois.

Subscribed & sworn to } 3 Philo E Reed.
before me this 24th day of December A.D. 1889.

Wm Lapsley clerk

Filed Dec 24th 1859. W^m Lafayette Clerk.

Copy of Bond.

State of Illinois }
Macon County }

I know all Men by their presents
That we Philo E Reed & Ezekiel
S Smith are held and firmly bound unto George
W Nelson in the penal sum of One Hundred & fifty
Dollars, lawful money to the payment of which
well and truly to be made, we bind ourselves
ourselves executors and administrators jointly
and severally firmly by their presents.

Sealed with our seals and dated this 24th of
December A.D. 1859.

The Condition of this obligation is such
that whereas the above bounden Philo E Reed as
agent hath on the day of the date hereof prayed
an attachment out of the Circuit Court of said
County at the suit of Robert Pulliam, Andrew J
Wells, David Rankin & Eben Mason partners under
the name & style of Pulliam Wells Rankin & Co
against the Estate of the above named George W
Nelson for the sum of One Hundred & twenty four
Dollars; and the same being about to be sued out
of said Court returnable on the third Monday of
March next to the Term of the Court then to be
holden, Now if the said Pulliam Wells Rankin & Co

shall prosecute their suit with effect or in case of
failure therein shall well and truly pay, and satisfy
by the said George W Nelson all such Costs in said
suit, and such damages as shall be awarded
against the said Pulliam Mills Rankin & Co their
heirs executors or administrators in any suit or
suits which may hereafter be brought for wrong
fully suing out the said Attachment, Then the
above obligation to be void, Otherwise to remain
in full force and effect.

Witness our Hands and Seals the day
and year first above written.

Phil C Reed (Ls)

E S Smith (Ls)

Approved by me this 24th day
of Dec ad 1859. Wm Laforty clerk

Filed Dec 24th 1859 W Laforty Clerk.

Copy of Writ.

State of Illinois } ss.

Wauver County & The People of the State of Illinois

To the Sheriff of said Wauver County
Greeting. Whereas Phil C Reed of the County of
Wauver and State of Illinois hath Complaind on
Oath to William Laforty Clerk of the Circuit Court
of said Wauver County that George W Nelson is
jointly indebted to Robert Pulliam, Andrew J Mills,
David Rankin & Eben Mason Partners under the

name & style of Pulliam Wells Rankin & Co in the
sum of One Hundred & twenty four & 3/100 Dollars
for goods wares & Merchandise sold & delivered to
said George W Nelson by said firm of Pulliam Wells
Rankin & Co, and that said George W Nelson is
a Non resident of the State of Illinois, and has
property in rights & credits in said County of
Warren & State of Illinois, And the said Philo E
Reed having given bond and security according
to the acts in such cases made and provided,

We therefore Command you, that you
attach so much of the estate real or personal of
the said George W Nelson to be found in your
County as shall be of value sufficient to satisfy
the said debt and costs according to the said
Complaint; and such estate so attached in your
hands to secure or so to provide that the same
may be liable to further proceedings thereupon
according to law, at a Circuit Court to be holden
at the Court House in Mammouth within and
for the County of Warren aforesaid, on the third
Monday of March A.D 1867 so as to Compel the
said Defendant to appear and answer the
Complaint of the said Plaintiffs, and that you
also summon Hezekiah H Biggers, James D McLean
Daniel B Eidenberger, Elisha Hys, Harry G Hardin
Robert Clark, John Porter, Robert A Daines, Philo E
Reed, Charles H Nelson, John S Clark & James

McCartney as Garnishee to be and appear before the said Court on the said Third Monday of March ad 1860 then and there to answer what may be objected against them when and where you shall make known to the said Court how you have executed this writ, And have you then and there this writ, Witness William Laferty Clerk of said Court, and the Seal thereof, at Morn-mouth in said County, this 24th day of December ad 1859.

(Seal)

Wm Laferty Clerk.

On the back of the foregoing Writ is the following return made by the Sheriff of Warren County which reads as follows Writ,

"I have served the within writ by reading the same to the within named Charles H Nelson & Philip E Reed on the 24th day of December ad 1859 and by reading the same to the within named Hezekiah H Beggess, James D McLean, John Porter, Elisha Hys, Daniel B Eilenberger, Harry G Hardin, John S Clark & Robert A Davies on the 26th day of December ad 1859, and by reading the same to the within named George W Nelson on the 27th day of December ad 1859, and by reading the same to the within named Robert Clark, on the 3 day of January ad 1860; I hereby accept service of the

within numerous this 4th day of January ad 1860
Jas McCartney.

Dated this 4th day of January ad 1860
Seth Smith

Sheriff W Co.

By virtue of the within writ I did on the 24th
day of December ad 1859 levy upon the following
goods taken as the property of George W Nelson
Junk. Six Vests, Twenty More Antiques, Twenty silk
Vests, six silk & worsted do, Twenty four silk
Vests, Twenty four do, silk vests; Twenty four
Worsted Vests, six More antique Vests; Twenty
four silk & worsted Vests, Twenty four 'do'
do do; six More antique Vests.

Dated this day December 24th 1859,

Seth Smith

Sheriff W County.

Filed Jan'y 19th 1860

W. LaForte Clerk.

(Copy of Declaration)

In Hannu County Circuit Court.

Of the March Term ad 1860

State of Illinois 3 ss.

Hannu County & Robert Pulliam, Auditor of Wells

David Rankin, & Eben Mason

partners under the name & style of Pulliam

Wells Rankin & Co, Plaintiffs in this suit by
Smith Dewey Kellogg & Reed attorneys Complain
of George W. Nelson Defendant in this suit who
was attached to answer the Plaintiffs of a
Plea of trespass on the case on promises. For
That Whereas the said Defendant hereunto
on the 23^d day of December in the year of
our Lord One Thousand Eight Hundred and fifty
Nine at Monmouth in said County of Warren &
State of Illinois became and was indebted to the
said Plaintiffs in the sum of Five Hundred
Dollars of lawful money of the United States of
America for divers goods wares and Merchandise
by the said Plaintiffs before that time sold and
delivered to the said Defendant, and at the
special instance and request of the said defend
ant and being so indebted to the said Plaintiffs
the said Defendant in consideration thereof
afterwards took on the same day and year and
at the place aforesaid, undertook, and then
and then faithfully promised the said Plaintiff
well and truly to pay unto the said Plaintiffs
the sum of money last mentioned when the
said Defendant should be thereunto afterwards
requested. And Whereas also the said Defen
dant afterwards took on the same day and
year and at the place aforesaid in consideration
that the said Plaintiffs had before that time at

expended for the said defendant and at the
 like request of the said defendants; And in the
 like sum for other money by the said defendant
 before that time had and received to and for the
 use of the said Plaintiffs And in the like sum
 for other money before that time and then due
 and owing the said plaintiffs for Interest upon
 and for the forbearance of divers other sums of
 money before that time and then due and
 owing from said defendant to said plaintiffs,
 And in the like sum for the price and value of
 work then done and material for the same pro-
 vided by the Plaintiffs for the defendant, and at
 the like request of the defendant. And being so
 indebted the said defendant in Consideration
 thereof afterwards took on the same day and
 year and at the Place aforesaid undertook and
 then and there faithfully promised the said
 Plaintiffs well and truly to pay unto the said
 Plaintiffs the several sums of money in this Count
 mentioned when the said defendant should be there-
 unto afterwards requested; And Whereas also the
 said Defendant afterwards took on the same
 day and year and at the place aforesaid accom-
 ted together with the said Plaintiffs of and con-
 cerning divers other sums of money, before that
 time due and owing from the said Defendant to
 the said Plaintiffs and then and there being in

arrears and unpaid, and upon such accounting,
the said Defendant then and there was found
to be in arrears, and indebted to the said plain-
tiffs in the further sum of Five Hundred Dollars
of like lawful money as aforesaid. And being so
found in arrears and indebted to the said Plain-
tiffs and the said Defendant in Consideration
thereof afterwards took on the same day and
year and at the Place aforesaid undertook, and
then and there faithfully promised the said
Plaintiffs well and truly to pay unto the said
Plaintiffs the said sum of money last mentioned
when the said defendant should be thereunto,
afterwards requested. Nevertheless the said
Defendant (although often requested etc) has not
yet paid the several sums of money above
mentioned or any or either of them or any
part thereof to the said Plaintiffs but to pay
the same or any part thereof to the said Plain-
tiffs the said Defendant has hitherto altogether
refused, and still does refuse, to the damage
of the said Plaintiffs Five Hundred Dollars and
therefore the said Plaintiffs bring suit etc.

Smith Dewey Kellogg & Reed,
Plaintiffs Attorneys.

(Copy of the Account sued on)

Geo W Nelson &

1859 M²²². Pulliam Mills Rankin & Co Dr.
Apr 16 - 6 Albion leas Sacks \$3.50 \$21.00
" M¹³⁴ - 6. Hankinists Sacks " 2.75 \$16.50
" " 207 - 6 Blaud linen Socks " .75 4.50
" " 4745 - 6 Blay " " " .75 4.50
" " 251 - 3 Cotton Check " " 50 1.50
" " 26 - 6 Pss Fancy Cass Prints \$3.00 18.00
" " 188 - 6 " " Sack do 1.75 10.50
" " 61 - 4 " " " " 2.50 10.00
" " 171 - 2 " " Cass " 4.50 9.00
" " 818 - 2 " " " " 4.75 9.50
" " - 5 " " " " 3.50 17.50
Break & Mending 1.63
Cartage 50
\$124.63

Dr Money lent and advanced \$500.
Dr Money paid, laid out, and expended \$500.
Dr Money had and received to and for the use of
said Plaintiffs \$500.
Dr Goods, Wares and Merchandise sold
and delivered \$375.37
Dr Labor and services \$500.
Dr Balance due on account stated \$500.

Filed March 5th 1860

W Lafferty Clerk.

State of Illinois 300.
Warren County 8

Plas before the Honorable John
S Thompson Judge of The Sixth Judicial Circuit of The
State of Illinois, At a Circuit Court begun and held at
the Court House in Monmouth in the said County of
Warren and State of Illinois on the Third Monday
in the month of March in the year of our Lord
One Thousand Eight Hundred and sixty, It being the
19th day of said month & year.

Present

John S Thompson Judge
James H Stewart State Attorney
Geth Smith Sheriff
Wm Laferty Clerk.

Robert Pulliam, Andrew J Wills
David Rankin & Eben Mason
Partners under the name & style of
Pulliam Wills Rankin & Co

vs

George W Nelson

} Attachment.

And afterwards to wit: On the 21st day of March
ad 1860, the following order was entered upon the
Records of said Court, which is in the words
and figures following to wit:

Robert Pulliam, Audun J Wills
David Rankin & Eber Mason
partners by name of Pulliam
Wills Rankin & Co

vs
George W Nelson

Attachment.

This day came the
Defendant by his attorney and moves the Court to
quash the writ and dismiss this suit. Thereupon
came the Plaintiff and enters his cross
Motion for leave to amend his affidavit, and
after hearing the same it is ordered by the
Court that the first motion be overruled, and
the second motion allowed, and the Plaintiff
has leave to amend his affidavit.

(Copy of Amended Affidavit)

The State of Illinois ss.

Warren County & Philo E Reed being duly
sworn upon his oath says

that he is the agent of Robert Pulliam, Audun
J Wills, David Rankin & Eber Mason partners
under the name and style of Pulliam Wills Rankin
& Co and that he makes this affidavit in their
behalf, This deponent further saith that George
W Nelson was indebted to said firm of Pulliam
Wills Rankin & Co in the sum of One Hundred
and Twenty four 63/100 Dollars for goods, wares and

Merchandise sold and delivered to said George
W Nelson by said firm at his request which
said sum of money is still due and unpaid

Deponent further saith that the
said George W Nelson is a now Resident of the
State of Illinois and has property rights and credits
in said County of Wauver State of Illinois
Phil & Reed.

Subscribed and sworn to before me
this 21st day of March 1865
W Lafferty Ck.

Filed March 21st 1865
W Lafferty Ck.

(Copy of Pleas)

State of Illinois } 00. Wauver Circuit Court.
County of Wauver } March Term A.D 1865

George W Nelson
at

Robert Pallian, Andrew J Wills
Daniel Rankin and Eben Mason
partners under the name & style of
Pallian Wills Rankin & Co

} Attachment

And the said George W Nelson
in his own proper person comes and saith, that
at the time of the making of the said affidavit

in the above cases. And the time therein set forth
the said Defendant George W Nelson was not a
now resident of the State of Illinois as set forth
in said affidavit, And this the said George W
Nelson Defendant is ready to verify, Wherefore he
prays Judgment of the said suit and that
said suit may be quashed &c.

Geo W Nelson

Holloway & Luce

attys for Deft.

Pulliam et al } Warren County Circuit Court,
vs } March Term A.D 1869
George W Nelson } Attachment,

And now comes George W Nelson
Defendant in this case, who being duly sworn
doth depose and say that the above and foregoing
Plea is true in substance and in fact.

Geo W Nelson

Subscribed and sworn to before

me on this the 19th day of March A.D 1869

Wm Safford ck.

and the said Plaintiffs

doth the likes, C S Smith &c, P.A.

Filed March 21st 1869 Wm Safford ck.

And afterwards Term, on the 24th day of March ad 1860, the following order was entered upon the Records of said Court as follows viz.

Robert Pulliam, Andrew J Wills
David Rankin & Eben Mason
partners under name & style of
Pulliam Wills Rankin & Co

vs

George W Nelson

Attachment

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

And afterwards Term on the 26th day of March ad 1860, the following order was entered upon the Records of said Court which is as follows viz.

Robert Pulliam, Andrew J Wills
David Rankin & Eben Mason
partners by the name & style of
Pulliam Wills Rankin & Co

vs

George W Nelson

Attachment.

This day again this came coming on to a hearing on the Plaintiffs Motion for a continuance herein, And after hearing the same it is ordered by the Court that the Motion

be allowed, at the Plaintiffs Costs. Therefore it is considered by the Court that the said Defendant has and recovers of and from the said Plaintiff his Costs by him at this Term of this Court laid out and expended and may have execution therefor.

State of Illinois } ss.

Wauver County } Pleas before the Honorable Aaron
Tyles, Judge of the South Judicial
Circuit of the State of Illinois. At a Circuit Court
begun and held at the Court House in Monmouth
in the said County of Wauver and State of Illinois,
On the fourth Monday in the month of October
in the year of our Lord One Thousand Eight Hun-
dred and sixty. It being the 22^d day of said
Month and year.

Present Hon Aaron Tyles Judge
James H Stewart States attorney
Leth Smith Sheriff
Mr Lafferty Clerk.

And afterwards took on the 24th day of
October A.D 1865, the following order was
entered upon the Records of said Court
which Reads as follows To wit.

Robert Pulliam, Andrew J Wells
David Rankin & Eben Mason
parties by name & style of
Pulliam Wells Rankin & Co

vs

George W Nelson

Attachment

This day came the
Plaintiffs by their attorney and enter their Motion

to suppress the Depositions of Oscar Turk and Louis Richmond filed herein.

And afterwards Trist, on the 14th day of November ad 1860, The following order was entered upon the Records of said Court, which is in the words & figures following to wit:

Robert Palliam, Andrew J. Wills,
David Rankin & Eben Mason
partners by name & style of
Palliam Wills Rankin & Co

vs
George W. Nelson

} Attachment.

This day came the Plaintiff and withdrew his motion to suppress the Depositions of Oscar W Turk. Thereupon came the Parties by their attorneys and issue being joined on the affidavit and Plea in abatement and for trial put themselves upon the Country.

Thereupon came a Jury Trist, Robert Dunn, John Stewart, Isaac L Prath, Sanford Barnes, Jonathan Ratchin, Wm Cannon, A S Smith, John Martin, Ira Ingersoll, Samuel Douglas, S J McBride & H A Rankin, who being elected tried and sworn to well and truly try the issue joined herein. And after hearing the evidence and argument of Counsel, retired in charge of an Officer to

Consider of the Verdict.

And afterwards, Trint on the 15th day of Novem
ber a.d 1865, The following order was entered
upon the Records of said Court which is as
follows viz.

Robert Pulliam, Andrew J Wills	}	Attachment.
David Rankin & Eben Mason		
Partners by name & style of		
Pulliam Wills Rankin & Co		
^{vs}		
George W Nelson	}	

This day again came
the Jury empanelled herein heretofore, And upon
their Oaths do say. We the Jury find for the defend
ants. Thereupon came the Plaintiffs and enter
their motion for a new trial herein.

And afterwards Trint on the 17th day of Novem
ber a.d 1865, The following order was entered upon
the Records of said Court, which reads as follows
Trint,

Robert Pulliam, Andrew J Wills	}	Attachment.
David Rankin & Eben Mason		
Partners by name & style of		
Pulliam Wills Rankin & Co		
^{vs}		
George W Nelson	}	

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

State of Illinois } Circuit Court, October
County of Warren ss. } Term a.d 1869

Robert Pulliam, Andrew J. Wills }
David Rankin & Eben Mason }
vs } Attachment.
George W. Nelson }

Be it Remembered
That on the trial of this cause before the Court
and Jury the Plaintiffs to maintain the issue
on their part called Draper Babcock as a Witness
who was duly sworn as a Witness in said cause
and testified as follows to wit, I know the Defen-
dant; have known him about two years; I cannot
say how much time he has spent in Monmouth;
He has not kept home here; he boarded round in
several places; He boarded at the Baldwin Home
and at Mr Claycomb's; He was not living in
Monmouth in the Months of November & Decem-
ber 1859;

On cross examination he testified; that he
had not as permanent a place of boarding as
some other people; Counsel for defense then
asked the Witness the following question to wit,
Where has been the residence of defendant, to
which question Plaintiffs by their Counsel then
then objected; But the Court overruled the

objection and allowed Witness to answer the same, Is the overruling by the Court of the said objection and allowing the Witness to answer the same, The Plaintiffs by their Counsel then and then excepted and still except. Is said question Witness answered, I suppose he has a Residence at Monmouth, But The Court excluded the supposition of the Witness.

Counsel for defence then asked the Witness the following question to wit: Does not the Defendant reside at Monmouth, Is which question Plaintiffs by their Counsel then and then objected But the Court overruled the objection and allowed Witness to answer the same, Is the overruling by the Court and allowing Witness to answer the same, Plaintiffs by their Counsel then and then excepted and still except, Is said question Witness answered, I consider it his Residence, But The Court excluded the Considerations of the Witness, Witness then testified, Defendant has been doing business here, he has been away some of the time and some of the time he has been here, I don't know how to answer whether he was a resident or not, He has not been keeping house in Monmouth, but he has been living here, yes he has been living here but not all the time, I do not know whether he intended to come back or not,

On re-examination the Witness testified, I do not know that defendant had any property about here, He was not here in the months of December and November 1859. His wife was here I think; His Children were east, I meant to say that when defendant was here, he was here off and on, and when he was away he was away off and on, He had no property here as I know, after he sold out to Charles H Nelson

Plaintiffs then called Alg Kirkpatrick who after being duly sworn testified as follows I think, I know the Defendant George W Nelson he came here in June 1858; I have known him about two years. He brought a stock of goods with him, when he first came here; I don't know of his having any other property, except a Horse, Defendant sold out his goods October 24th 1859 and immediately thereafter left Monmouth, previous to his selling out he was here part of the time and away part of the time, he was not in Monmouth when the attachment issued; I wanted to see him in October 1859; I received from New York on the evening of October 24th 1859 several notes against

not know when he was in those months, His Store was in the corner portion of Claycomb's building. I had charge of the building. When he came back he did not bring all his family with him. I don't know that he had any property except a few things, a trunk and a chair or two. I learned from his wife that she expected to remain East, Letters came to her from various places.

On the cross examination he testified - I did not see defendant from the time his wife came to live at my house in August 1858 till some time in the month of January following.

Counsel for defense then asked the witness the following question to wit: When has the Defendant resided since you have known him. In which question the plaintiffs by their Counsel objected; but the Court overruled the objection and allowed the witness to answer the same. In the overruling by the Court and allowing the witness to answer said question plaintiffs by their Counsel excepted and still except. In said question the witness answered He resided at Monmouth while he was here. I could not say when he resided while he was away. His wife got letters from him. She went to her father's. They left no property

except a chair or so and a trunk, a few articles of clothing which she could not pack when she went away.

On Re-Examination he testified they did not reside in Monmouth when they were absent.

The Plaintiffs then called William Dent, who after being duly sworn testified as follows: I have known Defendant between two and three years. I do not know where he was in the months of November & December 1859. He was not here in those months. I was in his employ and with him in October 1859. Just after he sold out he told me he was going to New York; did not tell me what he was going for; he sold out his goods in October 1859. Don't know of any other property that he owned beside what he sold. I kept his books while I was in his employ. He sold out his goods without inventory in October 1859.

On the cross examination he testified, I kept his books while I was in his employ. I left his books when I left his employ. He did not keep the matter of his going a secret from

us, Counsel for defense then asked The Witness the following question to wit: When did defendant reside, was not his Home here in Monmouth? to which question Plaintiffs by their Counsel then and there objected, But The Court overruled the objection and allowed Witness to answer the same. Is the overruling by The Court of said objection and allowing Witness to answer said question, Plaintiffs by their Counsel then and there excepted and still except. Is said question Witness answered, I should say his home was here, He talked some times of selling out his goods, and going away I don't remember whether his family were here or not in the months of November and December 1859, while he was absent.

Plaintiffs then called Hiram Baldwin who after being duly sworn testified as follows, to wit, I know Nelson the defendant He came here in the year 1858. He came to board with me in the Winter of 58 + 59 boarded with me about four months. Left boarding with me in April 1859. Went from my Home to another boarding house, His wife was here part of the summer of 1859, Don't

Know that he ever kept house here, did not to my knowledge. Don't know that he was here in the months of November and December 1859. I did not see him.

On Cross examination he testified, I don't know that his wife was here in the fall 1859. He was in business here while he was boarding with me.

Plaintiffs then called Milton C Munger who after being duly sworn testified as follows. I have known the Defendant Nelson from boyhood. He has been here about two years. Could not say whether he went away before November 59 or not. Think he returned sometime in December 1859. His wife was at her mother's in Lunenburg of 1859 at Marion Massachusetts. She left him in April 59 and returned about middle of October following; after her return about two weeks after defendant left. Don't recollect defendant ever said anything about bringing his wife here in order to keep a residence. His wife did live at my house. I did not board her for pay in Spring of 1859. She left one of her children back when she returned in 1859 in October.

On Cross examination he testified; His wife went East in Spring of 1859; she went because she could not get a place to suit her Condition; she had a baby while she was away, came back with a baby about middle of October 1859 Defendant was East in 1858, he was absent sometimes, he was buying goods while he was there, He might have been doing other business -

Counsel for Defenses then asked the Witness the following question, Did not the defendant reside in Monmouth? Was not this his home? In which question Plaintiffs by their Counsel then and there objected, But the Court overruled the objection and allowed the Witness to answer, In the overruling by the Court of said objection and allowing the Witness to answer said question Plaintiffs by their Counsel then and there excepted and still except, In which question the Witness answered, His home has been at Monmouth during all the time, I think this has been his residence during most of the time, His wife was at my House in fall of 1859, He went East for goods in fall of 1859 before the sale to Chas H Nelson & then went again after the sale and remained about six or eight weeks.

On Re examination he stated, Defendant came to me to engage board for his wife, before he went East, He was East all the fall and winter of 1858, He came back in May and went away again in August 1859. He went East to buy goods,

Plaintiffs then called Philo E Reed who after being duly sworn testified as follows: I know defendant Nelson, have known him about two years. he has lived about from place to place. Could not say where his place of residence is, he has spent but a portion of his time at Monmouth. His wife has been here a portion of the time only. I should think Nelson here not more than half of the time. I could not find him in the months of November and December 1859. I had claims against him to collect in December and I looked for him to get him to settle them, I know he was not in Monmouth in November & December 1859. He was not here the time the attachment was issued in this case. He returned on the 27th of December ad 1859.

On Cross examination he testified, I do not know when Defendant resided, he was here only

a portion of the time, he had a store in the place, until he sold out to Chas H Nelson

Plaintiffs then offered in evidence in their behalf the following Deposition of William B Symmes.

The State of Illinois } In Circuit Court
Wauwau County } March Term AD 1869

Robert Pulliam, Andrew J Wills }
David Rankin & Eben Mason }
partners under the name & style of }
Pulliam Wills Rankin & Co }
vs } Attachment
George W Nelson }

A Maure Holloway Luce
attorneys for the Defendant.

You are hereby notified that we shall on the 20th day of February AD 1869 enclose out of the Office of the Clerk of the Circuit Court of Wauwau County Illinois a dedimus potestatem under the seal of said Court directed to any Judge or Justice of the Peace of the County of New York in the State of New York authorizing and requiring him to take the depositions of William B Symmes & Charles M Robbins Witnesses who reside in said County & State of New York (to be

read in evidence on the part of the Plaintiffs on the trial of said cause) in answer to the several interrogatories hereto annexed at which time & place of seeing out said depositions, you can attend and file cross interrogatories if you see proper.

E S Smith & Co & Phil E And
Pltffs attorneys.

Interrogatories to be propounded to the Witnesses
William B Symms & Charles M Robbins,

- Int 1st State your name age & Residence?
- Int 2^d Are you acquainted with the Parties to this suit or either of them, and if so, how long have you known them?
- Int 3^d State if you know the Plaintiffs to this suit what their business is - where they reside and how long they have been in such business,
- Int 4th State in whose employ you were during the month of April A.D 1859 and how long you have been in their employ, and what was the particular capacity in which you acted?
- Int 5th State whether you know any thing about the defendant George H Nelson's purchasing a Bill of Goods of the Plaintiffs during said

Month of April 1859 and if so where they were purchased, when, and who sold & delivered the goods to him, give the kind & quality of each separate article and the prices at which they were sold to him. Please be very explicit, and how long credit was given to said defendant on said goods.

Int 6th State by whom the said goods (if any were sold by the said Plaintiffs to the said Defendant) were delivered to said Defendant and how delivered and whether by his direction or not, State particularly all you know with reference to the sale and delivery of any goods to said Defendant by the said Plaintiffs?

Int 7th Did you or not see the said Defendant George W Nelson in the City of New York & State of New York at any time during the months of November & December ad 1859. and if so what was his apparent business and what if any thing did you hear him say about having left the State of Illinois?

Int 8th Do you or not know of said Defendant George W Nelson being in the State of New York during the months of November & December ad 1859

Int 9th State whether or not you have heard the said Defendant George W Nelson at any time say any thing about when he resided and how long he intended to stay there if so when did you hear him say it and what did he say. State fully.

Int 10th If you know of any other matter or thing of benefit to either party to this suit. Please state the same fully.

We acknowledge service of a copy of the foregoing Notice and interrogatories this 9th day of February A.D. 1865

Holloway & Luce
Attys for Deft.

Veris Interrogatories propounded by Holloway & Luce to each of Pltffs. Witnesses William B Symms & Charles M Robbins in said cause against Geo W Nelson

Quest 1st If you saw Geo W Nelson in the months of November or December A.D. 1859 & had any conversation with him relative to his place of Residence, will you please state all of that conversation & the exact time said conversation took place also who if any person was present & the exact place, the conversation was had.

" 2^d If you heard Geo W Nelson the Defendant in this suit say any thing relative to when he Resided and how long he intended to stay there, State when and where you heard him say the same & who were present if any one?

" 3^d If you know that George W Nelson bought a bill of Goods of said Plaintiffs in April AD 1859 or at any other time State how you know that such was the fact,

Interrog^y 4th State whether or not you are acquainted with Geo W Nelson,

5th State whether or not you ever saw Geo W Nelson the Defendant in this suit, if ayes, State how often you have seen him,

6th If you had any Conversation with Geo W Nelson relative to when he resided & how long he intended to stay there, will you please state as near the day of the month & in what month you had said Conversations,

State of Illinois } ss.

Warren County } The People of the State of
 Illinois, to any Judge or
 Justice of the Peace of the County of New
 York in the State of New York, Greeting,
 Whereas it has been represented to us that
 William B Symms & Charles M Robbins
 are material Witnesses in a certain cause
 now depending in our Circuit Court in and
 for the County of Warren aforesaid, between Robert
 Pulliam, Andrew J Wells, David Rankin & Eben
 Mason partners under the name & style of
 Pulliam Wells Rankin & Co, Plaintiffs and
 George W Nelson Defendant, and that the
 said Witnesses reside in said County & State of
 New York aforesaid, without the said State of
 Illinois and that their personal attendance can
 not 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 Witnesses
 and do therefore authorize and require you
 to cause the said Witnesses to come before you
 at such time and place as you may therefore
 designate and appoint and diligently to
 examine the said Witnesses on the oath
 or affirmation of the said Witnesses by you
 first duly in that behalf administered, and
 faithfully to take the deposition of the said

Witness upon all interrogatories inclosed with
or attached to these presents, both on the part
of the said Plaintiffs and of the said Defend-
ant and none others; And the same when
thus taken together with this Commission and
the said Interrogatories to certify into our
said Circuit Court with the least possible delay
Witness Wm Safford Clerk of said Court and
the Seal thereof at Monmouth in said County
this 20th day of February ad 1865

Wm Safford Clerk

(Seal)

Supreme Court, City & 3
County of New York 3

William Wells Rankin & Company

vs

George W Nelson

Before Wm F Allen Justice
of the Supreme Court, Thursday March 1st 1865
in pursuance of an order directed by Circuit
Court of Illinois held in Warren County to any
Justice of the Supreme Court in the County of New
York to take testimony of William B Symmes on
Interrogatories annexed to said order,

William B Symmes being duly sworn says
in answer to the first interrogatory.

I am thirty six years of age & upwards, my
name is William B Symmes, and I reside
at 34 East 12th St in New York City.

In answer to the second interrogatory he
says.

I am acquainted with both parties to the
action, and have been acquainted with them
for over one year.

In answer to the third interrogatory, he says
They are in Wholesale Clothing business, they
reside at 200 Broadway in City of New York
& been in said business since 1st day of
December 1858,

In ans to fourth interrogatory he says
I was in the employ of the firm of
William Wells Rankin & Co Plffs, been in
their employ since Dec 1. 1858 as salesman.

In ans to the fifth interrogatory he says.
I know of Deft George W Nelson's purchasing
a bill of goods of Plffs on the 16th April 1859
I sold the said goods as salesman & Plffs,
They were purchased in New York at Plffs store

On a credit of six months, and Consisted of Articles enumerated in bill hereto annexed Marked exhibit "A", and at the prices therein Named & delivered according to Defts directions to The American Express Co. Marked to Deft Nelson at Mount Pleasant Illinois,

In ans to 6th interrogatory he says
They were delivered by depts instructions as stated in interrogatory fifth,

In ans to 7th Interrogatory he says
I did not see deft in either of those Months,

In ans to 8th Interrogatory he says
I do not.

In ans to 9th Interrogatory he says
I heard deft say nothing as to when he resided or intended to reside. Know nothing about it,

In ans to 10th interrogatory he says
I know of nothing more than I have herein stated,

In ans to The first Cross Interrogatory he says
I did not see him. Deft. in either of those Months,

11.

In ans to 2^d Cross interrogatory he says
I did not see him in either of those
Months.

In ans to 3^d Cross interrogatory he says,
I know Drft bought bill of goods as stated in
Months of April 1859. because I sold them &
delivered them according to his drfts, direct
ions,

In ans to 4th Cross Interrogatory he says
I am, so far as selling him a bill of goods
in person I would know him if I saw him
again.

In ans to 5th Cross Interrogatory he says.
I saw him in April 1859. Don't think I saw
him since.

In ans to 6th Cross interrogatory he says
Never had any Conversation with him about
his residence & therefore knows nothing about
it.

William B Symmes.

Signed in presence
of W F Allen Justice Sup Court.

State of New York }
City and County of New York ss.

I John Delaney Clerk of the
City and County of New York and also Clerk of the
Supreme Court for the said City and County do
Hereby Certify that W F Allen whose name is

subscribed to the certificate of the annexed
 Instrument was at the date of said Certific-
 ate a Justice of the Supreme Court in and for
 the City and County of New York duly elected
 and sworn and that full faith and credit
 are due to his official acts. I further
 certify that the signature of said W. J.
 Allen to said Certificate is genuine as I
 verily believe. In Testimony whereof I have
 hereunto set my Hand and affixed the
 Seal of the said Court and County the first
 day of March 1869

(Seal)

Wm. Clancy Clerk

Exhibit "A"

New York April 16th 1869.

Mr Geo Nelson

Moments &c. Bought of Palliam Wells
 Rankin & Co. Manufacturers
 and Wholesale Dealers in Clothing, 200 Broadway

157x. 222.	6 Albion Canvas Sacks	350	21.00
134.-	6 Hankinett "	275	16.50
207-	6 Blend Linen Frocks	75	4.50
47x1	6 Blay " "	75	4.50
257	3 Cotton Check "	50	1.50

265	6	Fancy Cars Paint	3rs	18.00
188	6	" Satt "	175	10.50
61	4	" " "	250	10.00
245-171-2	"	" " Cas "	450	9.00
818-2	"	" " "	475	9.50
⁴⁶⁻⁶ 923-375-	5	" " "	350	17.50
		Trunk & Matting		1.63
		Cargo		.50
				\$124.63.

Filed March 19. 1860

W. L. Lafferty clk.

Which said Deposition was admitted in evidence by the Court.

The Plaintiffs here retied,

The Defendant on his part then called James G. Madden as a Witness who after being duly sworn testified as follows, to wit: I have known the defendant two or three years. Counsel for defence then asked the witness the following question to wit, Where has the Defendant Nelson Resided since you have known him? To which question Plaintiff, by their Counsel then and then objected, but the Court overruled the objection and allowed the Witness to answer the said question to the overruling of said objection.

and allowing the Witness to answer the said question the Plaintiff by their Counsel then and there excepted and still except, & said question the Witness answered so far as I know this has been his fixed residence; he has been away some of the time.

On the Cross examination he testified, I have not been in New York; I do not know whether he has resided in New York since I knew him, Don't know personally that he kept house in Monmouth, Would not say that he kept house.

Defendant then called James D Mackey who after being duly sworn testified as follows to wit: I have known defendant since 1858, He has been doing business here and has been living here a portion of the time and had his family here some of the time, Don't know if he was doing business at any other place, His family boarded a portion of the time at Mr Baldwin's part of the time he was away.

Defendant then called Henry G Harding who after being duly sworn testified as follows to wit: I have known Nelson Defendant since 1858 When I first knew him he was boarding at the

Harvey House. He lived there a short time and then went to Claycomb's. Sometime afterwards he went to the Baldwin House, afterwards he went to Mangers, he voted here at this fall Election and at the Spring election 1865.

On the Cross examination he testified: I do not know that Drift ever voted in Monmouth prior to last spring election; I think he did not; Could not say he ever voted in Monmouth in the year 1859; When he lived here he boarded round at the various places, I have mentioned; He has been away twice perhaps oftener; Stayed away considerable while each time he was away;

Defendant then called M W Hubbard who after being duly sworn testified as follows to wit: I have known the defendant about two years. Counsel for Defence then asked the witness the following question to wit: When did Nelson Drift reside where you knew him 1858 & 1859. To which question the Plaintiff by their Counsel then and then objected. But the Court overruled the objection and allowed the witness to answer the said question. To the overruling by the Court and of said objection and allowing the witness to answer said question Plaintiff by their Counsel then and then excepted and still except. To said question the witness answered

I should say he resided in here,

On Cross examination he testified; 'deft lived here; he did not keep house; Nelson did not keep house; because he did business here I concluded he resided here; But the Court excluded the Conclusions of the Witness,

Defendant then called Elijah C. Babcock who, after being duly sworn testified as follows to wit I have always known defendant, he has been here since 1858, Counsel for Defense then asked the Witness the following question to wit, Where has the defendant resided since 1858, To which question plaintiffs by their Counsel then and then objected, But the Court overruled the objection and allowed the witness to answer the said question, To the overruling by the Court of the said objection and allowing the Witness to answer said question plaintiffs by their Counsel then and then excepted and still except, To said question the Witness answered He has resided here most of the time,

On Cross examination the witness testified do not of my own knowledge know what he went away for, I suppose he went away on business; Did not see him doing business here before 1858;

Saw him here since; He did not keep house; saw him here previous to attachment; do not know that he was here in months of November and December 1859; did not see him here in those months.

Defendant then called C W Lucas who after being duly sworn testified as follows to wit; I have known defendant since February 1858; He lived then in New York; Have known him here since May 1858; Counsel for Defence then asked the Witness the following question to wit; Where has the Defendant resided since he came to Wm. month? In which question plaintiffs by their Counsel then & there objected; But the Court overruled the objection and allowed the witness to answer the said question; In the overruling by the Court of said objection and allowing the Witness to answer the said question plaintiffs by their Counsel then and there excepted and still except. In said question the witness answered I suppose he has resided at Wm. month. But the Court excluded the supposition of the Witness. He was here doing business part of the time; while he was absent was on business.

On Cross examination he testified as follows to wit. Of my own knowledge I do not know that he went away on business; had a little loose

property when he left; he was absent several times; He went East fall after he came, absent 5 months; Went away spring following; was absent some time; Went away early in fall next after; and went away sometime in October/59; first time he remained away from first of August to sometime in the winter, Don't think it is usual for Merchants to stay East four or five months to buy stock of goods. We sent him orders; Can't say but if he was buying goods, that New York was as much his place business as Monmouth; He stayed there to buy goods and the Clerks were here to sell them;

Defendant then called Daniel B Eilenberger who after being duly sworn testified as follows to wit; I have known defendant since 1858; I consider this his home; But the Consideration of the witness was excluded by the Court; He left some of his business with me; I had some money I collected for him; He left other business here for me to attend to, when he went to New York in October 1859;

The Defendant then called A M Nelson who after being duly sworn testified as follows to wit; I know the Defendant; Counsel for defense then

asked the Witness the following question: 'When did the defendant reside in 1858 & 1859?' to which question plaintiffs by their Counsel then and then objected. But the Court overruled the objection and allowed the witness to answer the said question. In the overruling by the Court of said objection and allowing the Witness to answer said question, plaintiffs by their Counsel then and there excepted and still except; To said question Witness answered 'He Resided Here, His Boy lives with his grandfather He has always lived with his Grandfather.'

On Cross examination the Witness testified, 'His Home was at Brooklyn previous to his coming here in 1858; This has been his Home since 1858;'

The Defendant then called William Laferty who, after being duly sworn testified as follows 'I have known defendant since 1858; He has been living here most of the time, He has been absent part of the time.'

On Cross examination he testified as follows 'I don't know whether, when he was absent from Monmouth, he was absent from Home or had gone home.'

The Defendant then called Geo W Simpson who, after being duly sworn testified as follows to wit, I have known the defendant since 1858. He has been here most of the time, His family has been here part of the time, I expect this has been his Home, but the Court excluded the expectation of the witness;

On the Cross examination he testified, I suppose when his family is in a place it is a Mans Home, as far as I know about it this case is that I have seen Nelson and his wife here at times;

The Defendant then called Wm A Grant who, after being duly sworn testified as follows, I do not know when defendant resided during the time I have known him since 1858;

The Defendant then called Seth Smith who, after being duly sworn testified as follows to wit. I have known defendant since 1858, I think it is about eighteen months; He has been here a share of the time, I do not know that his family ever was here;

On Cross examination he testified, I am Sheriff of Macon County, Defendant has been

in my custody about nine months, ever since
he returned last time. I have had papers
against him. He has been obliged to be here
since January last.

The defendant then called Joel E. Ragland
who after being duly sworn testified as follows
to wit: I have known the Defendant since 1858
I supposed he resided at Monmouth. The
Court excluded suggestions of witness - his
family went to board with Mr Munger in
Oct 1859. about middle of the month. It was
in June previous when they went away - had
not returned since till October.

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

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

Circuit Court Warren County.

Robert Williams et al	}	Instructions for Plaintiffs
vs George W Nelson		

1st If the Jury believe from the evidence in the
case that at the time the writ of Attachment

Given

proved, the defendant George W Nelson was not a Resident of the State of Illinois, that fact offers good and sufficient ground for the issuing of the attachment in this case, and they will find for the plaintiffs

Given

2^d The Word Residence as used in the Statute Means legal residence; a legal residence means the place of a mans fixed habitation

Given

3^d To constitute an actual Residence in a certain place there must be the intention of making such place the Place of his fixed habitation.

4th If the Jury believe from the evidence that the Defendant George W Nelson, had not maintained a Residence in the State of Illinois previous to the issuing of the attachment in this case according to the legal interpretation of the word that he had no fixed place of abode or habitation; that he never kept House in Monmouth, that he spent only a portion of his time in Illinois that his family were divided; unsettled

and constantly moving about; part of the time in Illinois and part of the time at some place or places in some of the Eastern States; Now the Defendant was not a Resident of the State of Illinois in the Intent and meaning of the Statute, and they will find for the Plaintiffs,

5th " Although the Jury may believe from the Evidence that the Defendant had been doing business in Illinois yet that fact is not sufficient alone to show that he was a Resident of the State of Illinois; There must be a permanent fixed abode with the intention to remain permanently to create a residence

Grove

6th If the Jury find for the Plaintiffs in this case they will assess the damages at the amount of the account proven to them by the Evidence in this case

Grove

7th The opinions and suppositions of witnesses as to the Residence of the Defendant are not evidence for the Jury and they should disregard them,

Grove

8th

G. W. Green

The Jury should take into consideration in making up their verdict all the circumstances surrounding the case as proven before them by the evidence;

The Court then gave the instructions of the Petiffs, Numbered One, Two, Three, Four, Five, Six, Seven & eight. The Court also refused to give instructions aforesaid four as they were asked by the Petiffs, but gave the same Modified as follows to wit

4th

If the Jury believe from the evidence that the Defendant George W Nelson had not maintained a residence in the State of Illinois previous to & did not reside in this State at the time of the issuing of the attachment in this case according to the legal interpretation of the word, that he had no fixed place of abode or habitation; that he never kept House in Missouri; that he spent only a portion of his time in Illinois; that his family were divided; unsettled and constantly moving about, part of the time in Illinois and apart of the time at some place or places in some of the Eastern States, then the Defendant was not a Resident of the State of Illinois in the true intent and meaning of the Statute,

G. W. Green

And they will find for the Plaintiff.

In the refusal of the Court to give the said Instruction and to the Modification as proposed by the Court of said Instruction Numbered the Plaintiffs by their Counsel then and there in open Court excepted and still except.

The said Defendant then asked the Court to give to the Jury the following Instructions

1 The Court will instruct the Jury that unless they believe from the evidence and nothing else that on the 24th day of Decr A.D. 1859 the Defendant was a non resident of the State of Illinois they are bound under any Circumstances to find a verdict for the defendant,

2 That it is not incumbent on the defendant to prove that he was at any time a resident of the State of Illinois, But that it is on the plaintiffs to prove that he was on the 24th day of Decr A.D. 1859 a non resident Therefore in order to recover in this case,

3 That a Man may be a Resident of this state though he may be with his family absent from

Givens

it most of the time and although having a family he may never have kept house in it or anywhere else,

Givens

4 The mere fact that a Man or his family or both may be often absent from this State is not evidence of itself that he is not a resident thereof.

Givens

5 The fact that a Man's son is living or staying with his grand father within this State is not evidence that the Deft is a Non Resident of this State,

But the Court refused said Instructions Numbered (None refused) and gave Instructions Numbered

Givens

1 The Court will instruct the Jury that unless they believe from the evidence and nothing else that on the 24th day of Dec'r A.D. 1859 the defendant was a non resident of the State of Illinois they are bound under any circumstances to find a verdict for the defendant,

2 That it is not incumbent on the defendant to prove that he was at any time a

Given
 Resident of the State of Illinois. But that it is on the plaintiff to prove that he was on the 24th day of Decr AD 1859 a non resident thereof in order to recover in this case

Given
 3. That a man may be a Resident of this State though he may be with his family absent from it most of the time, and although having a family he may never have kept Home ⁱⁿ it or anywhere else,

Given
 4. The mere fact that a man or his family or both may be often absent from this state is not evidence of itself that he is not a Resident thereof

Given
 5. The fact that a Man's son is living or staying with his grandfather without this state is not evidence that the Deft is a Non Resident of this state,

In which ruling of said Court and the giving of said instructions the plaintiffs by their Counsel then & there in open Court excepted & still except,

Whereupon the Jury retired to consider of their
Verdict, and after having considered of
their verdict returned into Court with the
following verdict to wit,

Pulliam Will Rankin & Co }
vs } Attachment.
George W Nelson

We the Jury find
for the Defendant.

H A Rankin.

Filed Nov 15th 1865

Foreman

W Lapsley clk,

Whereupon in open Court the said Plaintiff by
their Counsel entered their Motion for a
New trial for the following reasons to wit,

State of Illinois } ss. Circuit Court
Hansen County } Oct Term 1865

Robert Pulliam et al }

vs Attachment }

George W Nelson

And now comes the
Plffs by their attorn
and moves the Court

for a New trial in this cause for the following
reasons to wit,

1st Because the Verdict is against the law & the evidence

2^d Because the Verdict is against the Instructions of the Court.

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

4th Because the Court gave improper instructions on the part of the defendant.

5th Because the Court improperly modified some of the Plffs instructions & gave them as so Modified

6th Because the Court admitted improper evidence for Defendant.

7th Because the Court refused to admit proper evidence for Plffs.

8th Because the Court refused to reject improper evidence admitted on the part of the Defendant.

Filed Nov 15th 1865
W. Laferly Ck.
Rice & Reed for
Plffs.

∴ - But the Court overruled the Motion for a New trial and entered a Judgment on the Verdict of the Jury as follows to wit,

Robert Pulliam, Andrew J. Will,
David Rankin & Eben Mason
Partners by name & style of
102 Pulliam, Will, Rankin & Co } Attachment
George W. Nelson

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

In the overruling of which motion for a New trial by the Court, and to the entry of Judgment by the Court upon the said Verdict and to each and every of them, the said Plaintiffs then and there by their Counsel in open Court objected and excepted and still object and except.

Inasmuch therefore as the foregoing do not
appear of Record it is ordered by The Court
that this the plaintiffs bill of exceptions be
signed and sealed and made a part of the
Record herein, which is Done,

A. Tyler, (Seal)

Filed Dec 8th 1860

Wm Lafferty clk.

(Copy of Bond)

Know all Men by these presents, that we
Robert Pulliam, Andrew J. Wells, David Rankin
and Eben Mason by Ezekiel S. Smith their
agent and attorney in fact principals and
Thomas Gordon of Monmouth Warren County
Illinois and Ezekiel S. Smith of Chicago
sureties, are held and firmly bound unto
George W. Nelson in the penal sum of Five
Hundred Dollars for the payment of which
well and truly to be made we bind ourselves
our heirs executors and administrators jointly
severally and firmly by these presents, Witness
our Hands and seals this fifteenth day of
December Anno Domini one thousand eight
Hundred and sixty.

The Condition of the above obligation
is such that Whereas George W. Nelson did

on the 17th day of November 1865 in the
Circuit Court within and for the County of
Warren and State of Illinois, recover a judg-
ment against the above bounden Robert
Pullicum Andrew J Wells, David Rankin &
Eben Mason for the sum of and
costs of suit, from which Judgment of said
Circuit Court the said Robert Pullicum Andrew
J Wells, David Rankin & Eben Mason have
prayed for and obtained an appeal to the
Supreme Court of said State,

Now if the said Robert Pullicum
Andrew J Wells, David Rankin & Eben
Mason shall duly prosecute their said
appeal with effect, and shall moreover pay
the amount of the Judgment, Costs, interest
and damages rendered and to be rendered
against them in case the said Judgment
shall be affirmed in the said Supreme Court
then the above obligation to be null and
void, otherwise to remain in full force
and virtue.

Robert Pullicum (LS)

Andrew J Wells (LS)

David Rankin (LS)

Eben Mason (LS)

By E S Smith agent & atty in fact

Ezekiel S Smith (LS)

Thos S Gordon (LS)

Signed Sealed & Delivered
in presence of " The Names signed by Ezekiel
S. Smith as attorney in fact and Ezekiel S.
Smith in presence of Miles Almy.

The Names of Thomas Gordon
in presence of Philo E. Reed.

Approved by me this 17th day of December
A.D. 1869

Wm Laforty Clerk,

Filed Dec 17th 1869

W Laforty clk,

State of Illinois } ss. I William Laforty Clerk
Marion County } of the Circuit Court in and for
said County; in the State aforesaid
do hereby certify that the foregoing is a true perfect
& full copy of all the proceedings had in the
above entitled cause as shown & copied from the
files & records in my Office.

As Witness my Hand & the Seal
of said Court, at my Office in the
City of Monmouth this 18th day
of February A.D. 1861.

Wm Laforty Clerk
By L. C. Smith Atty.



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Robert Puliam
Hals.

George W. Nelson

Transcript of Record

Filed March 2nd 1861
L. Leland
Clerk.



Supreme Court of Illinois
Third Grand Division

Robert Pulliam, Andrew J. Miles
David Rankin & Eben Mason

vs.

George W. Olson

Of the term of April in the year of our Lord
One thousand Eight hundred and Sixty one holden
at Ottawa for the Third Grand Division

Afterwards to wit On the day of,
in this same term before the Judges of the Supreme
Court of the State of Illinois at the Court house in the
City of Ottawa Comes the said Robert Pulliam, Andrew
J. Miles, David Rankin & Eben Mason by E. S. Smith
their Attorney And say that in the record & proceedings
aforesaid And also in giving the judgment aforesaid
there is manifest Error in this Court

1. The Court below Erred in allowing the witnesses
to testify where the defendant resided & where he had
been the defendants place of residence & in overruling
the objections of the plaintiffs Counsel thereto

2. The Court below Erred in refusing to give proper
instructions asked on the part of the plaintiff

3 The Court Erred in modifying some of the
plaintiffs instructions & And giving them as so
modified

4 The Court gave improper instructions on the
part of the defendant.

5. The Court admitted improper Evidence for the
defendant.

6 The Court refused to admit proper Evidence
for the plaintiff

7. The Verdict is Against law & Evidence

8. The Verdict is Against Evidence

9. By the record aforesaid it appears that the

judgment aforesaid given was given for the said
George W. Nelson against the said Robert Pulliam
Andrew J. Wiles David Rankin Geo Eben Mason
whereas by the law of the land, the said judgment
ought to have been given for the said Robert Pulliam
Andrew J. Wiles David Rankin Geo Eben Mason
against the said George W. Nelson

- And the said Robert Pulliam, Andrew J. Wiles
David Rankin Geo Eben Mason, pray that the judgment
^{aforesaid} ~~aforesaid~~ for the errors aforesaid & other errors, in
the record and proceedings aforesaid may be
reversed, annulled and altogether held for nothing
and that they may be restored to all things which
they have lost by occasion of the said judgment.

E. S. Smith
Attorney for Plaintiffs

And the said George W. Nelson
appellee says there is no such
error or error as aforesaid
& this he prays may be inquired
of by the Court

M. C. Gordon
att'y for appellee

185-28

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Filed April 18. 1861
A. Delmon
clerk