No. 14835

Supreme Court of Illinois

Hessing

vs.

McGuskey

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 152

J. W. Middleton & Co., Stationers, 195 Lake St.

UNITED STATES OF AMERICA,

State of Illinois, } ss.
COUNTY OF COOK.

PLEAS, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court house, in the City of Chicago, in said County and State, on the first Monday, being the Fourth *day of* January *in the year of our Lord One Thousand Eight Hundred and Sixty-four and of the Independence of the United States of America the Eighty-Eighth*

Present, The Honorable John M. Wilson *Chief Justice of the Superior Court of Chicago.*

Van H. Higgins } *Judges.*
Joseph E. Gary }

Joseph Knox *Prosecuting Attorney.*

David S. Hammond *Sheriff of Cook County.*

Attest, Thos: B. Carter *Clerk.*

Be it remembered that heretofore to wit, on the twenty second day of April A. D. Eighteen hundred and sixty one, there was issued out of and under the Seal of said Court the Peoples Writ of Summons in a certain Suit therein, wherein Maria C. McCloskey is Plaintiff and Anthony C. Hesing is defendant: Which said Writ with the return thereon Endorsed by the Coroner of said County, is in words and figures as follows, to wit:

"State of Illinois }
County of Cook } ss.

The People of the State of Illinois

to the Coroner of said County, Greeting:

We command you that you Summon Anthony

C. Hessing if he shall be found in your County personally to be and appear before the Superior Court of Chicago of said Cook County on the first day of the next term thereof to be holden at the Court House in Chicago in said Cook County on the first Monday of May next to answer unto Maria O. McCloskey in a plea of trespass to the damage of the said Plaintiff as is said in the sum of Six thousand dollars.

And have you there this Writ with an Endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball Clerk of our said Court and the Seal thereof at Chicago aforesaid, this 22nd day of April A. D. 1861.

(Seal)

Walter Kimball, Clerk.

(Endorsed) "Served by reading to the within named Anthony C. Hessing this 24th day of April A. D. 1861.

Wm. James, Coroner."

And also on the said twenty second day of April A. D. 1861, the said Plaintiff by her Attorneys filed in the office of the Clerk of said Court, in said cause, a Bond for Costs in Words and figures as follows, to wit:

(Security for Costs)

"Maria C. McCoskery
vs
Anthony C. Hesing } Superior Court of Chicago.

I do hereby enter myself Security for costs in this cause and acknowledge myself bound to pay, or cause to be paid all costs which may accrue in this action, either to the opposite party, or to any of the officers of this Court in pursuance of the laws of this State.
Dated this Twenty Second day of April A. D. 1861. } J. Woodbridge Smith."

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And thereafter to wit on the twenty second day of April AD 1861 came the said Plaintiff by his attorneys and filed in the office of the Clerk of the said Court his declaration in said cause. which declaration is in the words and figures following to wit:

State of Illinois }
Cook County } ss

In the Superior Court Chicago. Of the May term thereof AD. 1861.

Maria A McLaskey the Plaintiff in this suit complains of Anthony C. Helsing being heretofore ~~attached~~ summoned &c of a plea of trespass

For that the said Defendant heretofore to wit on the first day of April AD 1861 to wit at said County of Cook with force and arms seized took and carried away a large amount and quantity of the personal goods and chattels then and there belonging to said Plaintiff to wit. Five thousand Men and Boys Coats - Five thousand Men and Boys Vests. Five thousand Men and boys Coats. Five thousand Men and boys pantaloons. Five thousand Mens Shirts Five thousand pairs Mens drawers Five

Thousand pairs Mens Hose, Five Thousands pairs Ladies Hose, Five Thousand pairs Mens Wrappers, Five Thousand Mens Slocks, Five Thousand Mens Handkerchiefs Five Thousand Mens Shirt Collars and Shirt bosoms, Five Thousand pairs Mens drawers, Five Thousand Neck ties Five thousand Mens Over Coats Five thousand Mens Undershirts Five Thousand pieces Broadcloth, Five thousand pieces Cassimeres, Five thousand pieces of Vestings.

Said goods and Chattels then and there then being and found and Converted the same to his own use, said goods and Chattels & then so being and Converted being of great value to wit

6 of the Value of Six thousand Dollars

Count Second

And also for that the said Defendant on the day and year aforesaid, with force and arms &c at Chicago aforesaid, seized took and carried away certain other goods effects and chattels the property of the said Plaintiff Maria Q. McLoskey and to wit those named in the exhibit herewith filed marked Exhibit A, in the words and figures following to wit.

4 1/2	Yds	Brace	11/-	5 62
3/4	"	"	8/-	45
1	"	"	4/6	56
3	"	"	1 30	3 90
1/8	"	"	22/-	2 41
3/4	"	"	10/-	94
3/4	"	"	12/-	1 12
1 1/2	"	"	12/-	2 25
1 3/8	"	"	12/-	2 06
7/8	"	"	6/-	65
80	doz	Wadding	24	19 20
1 1/4	Yds	Blue Cloth	3 50	6 12
12 1/4	"	Doe Skin	1 70	20 82
14 3/4	"	Cass	1 10	16 22
6 1/2	"	Canvass	12 c	78
2 1/2	"	"	8	20
31 1/2	"	"	8	2 52
2 1/2	"	"	8	20
6	"	"	8	48
21	"	"	9	1 89
7	"	"	8	56
25	"	"	8	2 00
17	"	"	8	1 36
5 1/2	"	Cass	9/6	6 52
4	"	"	1 45	5 80
7 1/2	"	Blk "	12/-	11 25
19	"	F. Canvass	24 c	4 56
6 1/2	"	F. Satin	8/-	2 44
11 1/2	"	Silicia	18 c	2 07
24 1/2	"	"	1/-	3 06
29	"	"	1/-	3 62
28	"	"	1/-	3 50

7

32½	"	"	1/	4 06
22	"	"	16	3 52
15½	"	"	10½	1 63
3	"	"	10c	30
2 5/8	"	Linen	70c	1 83
15	"	Briggin	8	1 20
13	"	"	8	1 04
9	"	Canvass	17c	1 53
9	"	Mohair	45	4 05
19	"	drilling	10	1 90
19	"	Canvass	24	4 56
3	"	Drill	9	27
5	"	S. dechine	9/	5 63
1 3/4	"	Canvass	10c	17
2 3/4	"	"	9	25
23	"	Holland	18c	4 14
6	"	Selicia	2/6	1 87
8		Cases		12 00
3	Pants.		14/	5 25
2	"		2 37	4 81
1	"		14/	1 75
6	"		70c	4 20
2	"		1 38	2 76
4	"		11/	5 50
8	"		1 30	10 40
2	"		10/	2 50
8	Blk vests		2 27	18 16
4	Coats		14 60	58 40
2	"		9 19	18 38
3	pr Pants		13/	4 87
14	" "		1 67	23 38
1	"		4 25	4 25
1	"			5 00

8

1	"	Pants		3 44
5	"		2.44	12 20
3	"		.92	2 76
12	"		2.76	33 12
9	"		1.68	15 12
5	"		.92	4 60
2	"		1.18	2 36
1	"		1.53	1 53
5	"		.87	5 00
11	"		1.36	15 00
1	"			2 70
1	"			2 87
1	"		2.70	2 70
3	"		2.63	7 89
4	"		2.06	6 24
2	"		1.50	3 00
1	"		1.50	1 50
1	"		2.14	2 14
1	"			1 67
1	"			4 25
1	"			4 25
1	"			1 83
1	"			3 00
1	"			3 64
1	"			4 27
3	"		ct.	12 00
1	"			3 50
1	"			5 31
1	"			4 50
6	"		3.50	21 00
1	"			3 90
2	"		4.	8 00
1	"			3 83

9

1	Pr Pants	412	4 12
1	" "	465	4 65
2	" "	351	7 02
3	" "	390	18 70
1	" "		4 25
1	" "		5 00
1	" "		3 13
1	" "		4 19
1	" "		3 00
1	" "		3 06
1	" "		4 50
1	" "		5 12
1	" "		3 75
1	" "		3 56
1	" "		3 56
1	" "		4 19
1	" "		2 59
1	" "		2 44
1	" "		2 50
2	" "	201	3 00
1	" "		3 12
1	" "		5 00
1	" "		1 19
1	" "		2 50
1	" "		3 25
1	" "		1 19
1	" "		4 19
1	" "		3 19
1	" "		3 25
1	" "		2 66
2	" "	305	6 10
1	" "		3 00
1	" "		2 63

10

1	pr pumps		3 00
2	"	3 05	6 10
2	"	2 70	5 40
1	"		3 00
6	"	3 69	22 14
1	"		3 72
1	"		4 38
1	"		3 25
1	"		4 68
1	"		3 19
1	"		4 00
1	"		4 50
1	"		3 25
1	"		3 00
1	"		6 00
1	"		4 50
1	"		3 25
1	"		4 25
1	"		3 64
2	"	4 38	8 76
1	"		4 50
1	"		4 40
1	"		4 80
1	"		3 75
1	"		4 00
3	"	3	9 00
1	"		4 80
1	"		4 40
1	Shirk	6 18	83
1	"		87
1	"		1 48
4	"	1	4 00
1	"		1 62

3	Shirts	4/-		1 50
1	"	166		1 66
1	"			1 42
1	"			1 08
1	"			1 21
3	"	14/4		6 50
2	"	13/4		3 33
1	"			1 12
2	"	8/-		2 00
1	"			2 12
2	"	18/-		4 50
1	"			1 31
1	"			1 66
3	"	11/-		4 12
1	"	6/-		5 25
3/4	doz " Collars	20/-		1 87
1	" "	8/-		1 00
1	" "	10/-		1 25
3 3/3	" "	9/-		4 12
2	" "	9c		18
14/12	" "	14/-		2 33
2 1/3	" "	12/-		3 50
3	" "	10		30
11	" "	1/-		1 37
1	" "	9/-		1 12
1	" "	1/8		1 45
1/2	" "	13/-		81
5	Shirts	3/4		2 08
1	"			1 33
2	"	16/-		3 34
11/12	doz " Socks	22/-		2 52
8	pr "	23c		1 87
4	" "	36		1 44

12

4	Shirts	83	332
3	"	91c	273
4	Ties	1/8	83
1	"	9r	113
3	"	10r	375
1	"		100
1	"		62
1	"		96
1	"		112
3	"	4r	150
1/2	doz "	6.	300
2	" "	4r	100
5	" "	45.	225
1	~~—~~ "		46
1	~~#~~ "		42
1	"		50
10	"	7c	70
1	"		44
2	"	10c	20
4	"	40c	160
4	"	2r	100
3	"	2/10	106
2	"	3r	75
3	"	4r	150
1	"	3/4	44
1	"	1/6	18
2	"	3/6	88
1	"		81
5	"	3/4	208
5	"	1/6	94
1	"		100
1	"		87
1	"		66
1	"		75

13

5	Jus	1.	5 00
5	"	7/	4 37
5	"	4/4	2 70
5	"	3/4	2 08
2	"	9/8	91
2	Hakfs	14c	28
2	"	10	20
6	"	8	48
4	for Rocks	1/	50
2	" "	24	48
4	" "	1/6	75
6	" "	10	60
4	" "	1/	80
6	" "	10	60
1	" Gloves	98c	98
1	" "	96	96
2	" "	4	1 00
3	" "	7/	2 63
7	" "	8/	700
1	" "	8/9	1 09
6	" "	1/10	1 37
13	" "	7c	91
2	" "	2/2	54
1	Scrfs	20/	2 50
1	"		1 75
2	"	16/	4 00
1	"	18/9	2 34
3	"	10/-	3 75
1	"		50
1	"		3 03
1	"		4 03
1	"		4 12
1	"		2 25

14

1	Reams		1 00
1	"		1 37
1	"		2 25
1	"		60
5	Jackets	278	13 90
4	"	188	7 52
1	"	245	245
3	"	237	7 11
3	"	225	6 75
1	"	245	2 45
1	"	20	2 50
1	"		2 54
2	"	209	4 18
1	"	263	263
5	"	270	13 50
6	"	145	8 70
1	"	9	1 13
2	"	307	6 21
4	"	131	5 24
2	"	253	5 06
6	"	236	14 16
1	"		180
1	"		183
3	"	225	6 75
3	"	204	6 12
1	"		2 24
7	"	180	12 60
7	"	183	12 81
4	"	224	8 96
6	"	80	4 80
1	"	6	75
7	"	96	6 72
14	"	84	11 76

15

8	Vests	1.00	8 00
1	Coat	12/-	1 50
11	"	2nd	10 00
1	Vest	1 80	1 80
1	"		2 13
1	"		1 75
3	"	108	3 24
1	"	175	1 75
1	"	80	80
2	"		2 13
1	"		2 13
3	"	325	9 75
1	"	19/6	2 44
2	"	2nd	5 00
1	"		1 62
1	"		1 75
1	"		1 16
2	"	2nd	5 00
1	"	11/-	1 38
2	"	16/-	4 00
2	"	13/6	3 37
1	"		1 75
1	"		2 25
1	"		1 12
1	"		1 06
1	"		1 44
1	"		3 44
1	"		2 31
1	"		2 31
1	"		1 19
1	"		2 19
2	"	106	2 12
1	"		1 12

16

1	Tent			1 81
1	"			94
1	"			2 06
1	"			1 61
1	"			2 00
1	"			1 50
1	"			1 25
1	"			1 60
2	"		186	3 72
1	"			2 00
2	"		137	2 74
1	"			1 56
1	"			1 12
1	"			2 50
1	"			2 37
3				1 37
8	prs	Over Alls	3/	3 00
10		Shirts	3/	3 75
1		pr Pants		1 50
1		"		1 25
1		"		1 50
1		"		1 75
1		"		1 62
3		"		1 54
1		"		1 37
1		"		2 50
1		"		3 14
1		"		1 75
1		"		2 57
1		"		1 33
2		"	10/	2 50
2		"	1476	3 63
1		"		1 85

17

1	pr Kent Pants		1 09
1	" "		3 25
2	" "	185	3 70
2	" "	15/-	3 75
3	" "	13/-	4 50
1	" "		1 40
1	" "		1 75
2	" "	135	2 70
3	" "	140	4 20
11	" "	7/-	3 50
1	" "		1 00
2	" "	140	2 80
4	" "	19/-	9 80
1	" "		1 75
2	2 cuffs	6/-	1 50
1	"	8/-	1 00
1	"		22
8	pr " Overalls	4/-	1 50
1			37
1			75
2		3/-	75
10	2 Shirts	2/-	2 50
5		90c	4 50
4		6/-	3 00
1	2 cuffs		2 75
1	"		2 12
1	2 Shirts		1 42
1			1 21
1			92
1	pr Drawers		88
2	Shirts	7/4	1 83
1	"		2 25
1	pr Gloves		3 00

18

1	pr Gloves		6 50
~~1/2~~	"	1 31	65
1/2	Scarfs	35	1 40
4	pr Cuffs	8/8	2 16
2	Halfs	7/8	3 83
4	"		75
1	"	1.00	3 50
3 1/2	"		
2	pr Gloves	1/8	42
4	"	46	1 84
2	"	9	18
1	"		48
6	Halfs	2/8	2 00
12	Pus.	2/	1 50
5	doz Collars	6/	3 75
4	Shirts	5	2 50
1/3	doz Drawers	7 50	2 50
1	pr Socks	~~2 00~~	44
2	Vest	241	4 82
1	"	14/	1 75
1	"		1 75
1	"		1 85
1	"		2 25
2	"	14/	3 50
1	"		1 82
4	"	16/-	8 00
1	"		1 82
1	"		2 14
2	"	196	3 92
1	"		1 64
1	"		1 82
7	"	196	13 72
1	"		2 27
1	"		1 83

19

2	Vests			182
21/2	Yds	Cass	450	1125
13 5/8	"	Ducskin	16/	2725
1	"	Blk Cloth	200	200
1 3/4	"	Blue Casler	3.	525
2 1/4	"	Cass	12/	337
2 1/2	"	"	10/	281
2 5/8	"	"	3.	787
2 1/2	"	"	1.	250
4 5/8	"	"	14/	809
4 1/8	"	"	135	557
14 3/4	"	"	120	1770
2	"	"	10/	250
2 5/8	"	"	20/	656
3	"	"	337	1125
1 1/2	"	"	475	712
10	"	"	13/	1875
6 1/4	"	"	9/	703
13 5/8	"	"	9/6	1618
1 7/8	"	"	500	937
2 1/4	"	"	325	731
7 1/2	"	"	20/	1875
7 1/8	2yds	Mull Cloth	28/	2494
23/4	"	Blk "	425	1168
13 1/2	"	" "	28/	5425
11 3/4	"	" "	28/	4112
5 1/8	"	" "	28/	1793
9 5/8	"	" "	12c	1636
9	"	" "	5.00	4500
7	"	" "	4.00	2800
6	"	" "	5.50	3300
4 1/8	"	" "	4.50	1856

20

11 1/4	yds	Blk cloth	4	17	00
5	"	" Satin	18	11	25
5	"	" "	20	12	50
3/4	"	Worsted	16	1	50
7/8	"	Silk	20	2	19
5 5/8	"	"	20	14	06
1 3/4	"	"	18	3	94
1 2/4	"	"	28	6	12
1 1/2	"	"	28	5	25
1 3/4	"	"	20	4	37
1	"	"	20	2	50
7/8	"	"	20	2	19
2 1/2	"	"	19	5	93
4 1/8	"	"	20	10	31
5	"	"	20	12	50
1	"	"	20	2	50
7/8	"	"	32	2	84
1/4	"	Light Vesting	2		31
3	"	Wool	9	3	37
3 1/8	"	"	8	3	12
3 1/8	"	"	11	4	30
3 1/2	"	"	9	3	94
3/4	"	"	10		94
3/4	"	"	8		63
1 1/4	"	"	10	1	56
1		Vest		1	82
3		"	183	5	49
3		"	196	5	88
1		"		1	40
1		"		2	50
1		"	14/3	1	78
1		"		2	37
2		"	3.33	6	66

21

1	Vest			4 00
2	"		2.50	5 00
1	"			1 31
1	"			3 62
1	"			1 51
1	al. Coat			3 89
1	"			4 64
1	"			3 97
1	"			4 40
1	"			3 40
2	"		1.75	4 25
1	"			3 50
1	"			3 75
1	"			4 50
1	"			3 06
1	"			4 00
4	pr	Pants	3.	12 00
2		"	3.69	7 38
1		"		3 30
1		"		3 69
2		"	4.40	8 80
1		"		3 40
2		"	4.45	8 90
1		"		4 64
1		"	3.50	3 50
1		"		3 85
2		"	4.	8 00
4		"	4.40	17 60
10		Shirts	3.75	37 50
11		"	3.75	41 25
26½		Caps	2.50	66 25
26		"	2.50	65 00

22

28		Cash	6¢	21 00
8		"	95	7 60
8½		"	20¢	13 75
14 1/2		"	6¢	10 87
42 3/4		Pelicia	10½	4 48
36 3/4		"	13	4 78
42 3/4		"	11	4 70
42		"	11	4 62
36 1/2		"	8	2 90
31 3/4		Jean	10c	3 19
26		"	10½	2 73
25 1/2		"	9c	2 91
17		"	16	2 72
37 1/2		"	16	6 00
23 1/2		"	10	2 32
36		"	8	2 88
36		"	10	3 60
		Buttons &c		4 50
20	Yds	Alapaca	6¢	1 50
34	"	padding	18	6 12
9	"	Cash	120	10 80
1½	"	Velvet	28¢	1 75
43/4	"	"	23¢	12 08
1	"	"	20¢	2 50
24	"	Jean	10	2 40
55 3/4	"	Lining	18	10 03
12	"	"	18	2 16
20	"	Alc	19	3 80
7 3/4	"	Brown Velvet	5¢	4 84
6 3/4	"	Blk "	4¢	3 37
4	"	Drab "	44	1 76
1 1/2	"	Blk "	7¢	1 31
1 1/2	"	" "	6¢	1 12

23

10 3/4	Yds	Blk velvet	80	8 60
35 1/2	"	Padding	1/	4 43
47 1/2	"	"	16	7 60
34	"	"	1/	4 25
39	"	"	19	7 41
35	"	Cloak Lining	23 1/2	4 72
2 1/2	"	Blue flannel	42 1/2	1 06
11 1/2	"	Cottonade	30	45
43 1/2	"	Check	8	3 48
9 1/4	"	Jean	10	92
40	"	Canvas	16	6 40
40	"	Cottonade	8	3 40
30	"	F Satin	65	19 50
1	"	Blue Cloth	17/6	2 19
17	"	Jean	40	6 80
2 1/4	"	Cap	12/	3 37
15	"	Cottonade	1/	1 88
1 1/4	"	Beaver	3 50	4 37
2 1/4	"	Cap	2 31	5 20
2 1/2	"	"	2 37	5 92
2 1/2	"	"	11/	3 44
2 1/2	"	"	12/	3 75
1 1/4	"	"	5 25	6 56
1 3/8	"	"	2 00	2 75
2 1/2	"	"	12/	3 75
1 1/4	"	"	20/	3 12
2 1/2	"	"	20/	6 25
2 3/4	"	"	14/	4 81
2	"	"	15/	3 75
2 1/2	"	"	8/	2 50
1 3/8	"	"	3 50	5 81
14 1/4	"	"	10/	17 81

24

3/8	yd	Cap	1/03
2 1/2	"	"	2 50
2 1/2	"	"	3 44
5	"	"	6 25
1		Coat	4 25
1		"	4 30
1		"	4 25
1		"	6 00
1		"	1 39
1		"	5 07
1		"	4 38
1		"	3 50
1		"	3 80
1		"	1 12
1		"	1 87
1		"	6 38
1		"	6 00
4		"	10 00
3		"	6 56
5		"	10 63
6		"	14 10
1		"	4 30
1		"	6 04
1		"	1 87
1		"	1 38
1		"	4 88
2		"	1 88
1		"	2 75
1		"	2 50
1		"	3 37
1		"	2 38
1		"	2 63
1		"	

18	
8	
11	
10	
20	
17/6	
17	
2.35	
11	
2.44	
15	
22	
20	
27	
19	
21	

25

2	Coats	10/	2 50
1	"	6/	75
1	"	142	1 42
1	"		2 25
1	"		1 44
1	"		1 73
1	"		1 42
1	"		75
2	"	135	2 70
1	"		4 35
1	"		2 00
1	"		3 75
1	"		2 75
1	"		1 75
1	"	11/6	1 44
1	"		4 00
1	"		2 50
1	"		1 40
1	"		1 31
1	"		1 53
2	"	135	2 70
4	"	21/	10 50
6	"	178	10 68
2	"	11/6	2 88
1	"		2 35
11	"	16/	22 00
1	"		1 87
2	"	155	3 10
4	"	22/	11 00
48	"	11/	66 00
1	"		3 00
10	"	13/	16 25

26

9	Coats	12/	13 50
33	"	14/	57 75
1	"		4 25
2	"	2 35	5 10
3	"	16/	6 00
3	"	2 30	6 90
8	"	18/	18 00
1	"		3 25
1	"		8 00
1	Pr Pants		6 75
1	"		5 75
2	"	5 50	11 00
1	"		5 75
2	"	4 25	8 50
1	"		6 75
2	"		6 00
1	"		1 84
1	"		1 80
1	"		1 67
1	"		1 60
1	Boys Suit		2 86
2	"	5 41	10 82
7	Jackets	2 08	14 56
4	"	2 05	8 20
1	pr Pants		1 50
2	"	1 91	3 82
1	"		1 50
8	"	12/	12 00
3	Jackets	14/	5 25
1	"	1 65	1 65
1	"	2 39	2 39
3	"	14/	5 25

27

1	Jacket	14/-	1 75
1	"	13/-	1 30
1	"		2 02
1	"		1 70
1	"		1 75
1	"		1 65
1	"		4 00
4	"	16/-	6 60
4	"	17/8	7 12
1	"		1 75
2	"	26/3	5 26
5	"	26/3	13 15
3	Raya Pants	23/5	7 05
2	"	20/4	4 08
2	"	12/0	3 80
1	"		3 25
5	Jackets	24/5	12 25
1	"		2 37
1	Dressing gown	20/-	2 50
5	Gris Caps	11/-	6 87
2½	" "	12/-	3 75
5	" "	12/-	7 50
1	pr Socks		37
1	"		40
3	"	3/-	9 5
1	"		25
1	"		34
4	"	2/-	1 00
3	"	10	30
2	Gris	2/6	62
4	"	3/6	1 75
2	"	2/6	62

28

1	Shirt	9r	9r
1	"		95
1	"		175
1	"		220
5 1/2	doz Collars	6f	387
4 2/3	" "	6f	350
3	" "	10f	375
5	" "	6f	375
1	pr Pants		391
1	Vest		182
8	Umbrellas	6f	600
1	Vest		175
1	pr Pants		375
1	"		283
1	"		450
1	"		383
1	"		360
1	"		150
1	Jacket		262
1	"		278
1	"		270
1	"		188
1	pr Pants		390
1	"		360
1	"		350
1	"		304
1	"		350
1	"		328
1	"		360
2	"	466	932
4	"	381	1524
3	"	4.	1200
1	"		436

29

2	pr Pants	4.21	12 63
3	"	2.46	7 38
1	"		1 93
1	"		1 75
2	"	1.89	4 50
3	"	1.89	6 75
2	"	4.12	
3	"	3.12	9 36
1	"	4.	4 00
1	"		3 90
1	"		4 40
1	"		3 75
1	"		4 00
1	"		2 40
2	"	1.89	4 50
1	"		3 81
2	"	2.00	5 00
1	"		3 75
1	"		3 81
1	"		3 88
5	"	3.52	17 60
1	"		2 06
1	"		4 75
1	"		4 71
1	"		2 75
1	"		5 79
1	"		3 84
1	"		3 60
4	Shirts	1.14	5 50
6	"	1.14	5 25
6	"	1.04	7 50
4	"	1.24	6 00
6	"	1.14	6 75

30

6	shirts	11/-	8 25
6	"	14/-	10 50
3	"	14/-	5 25
6	"	10/-	7 50
5	"	6/-	3 75
1	"	6/6	81
1	"	5/-	62
5/12	doz	Wrappers	8.	3 33
1/2	"	"	8.	4 00
5/12	"	"	6.50	2 71
1/2	"	Drawers	6.50	3 25
1/2	"	"	6.50	3 25
1/2	"	"	6.50	3 25
2	pr	"	6/-	1 50
4	"	"	10/-	5 00
8	"	"	3/-	3 00
1	"	"		41
5	"	Socks	2/2	1 35
3	"	"	17c	51
8	"	"	24c	1 92
3	"	"	1/6	56
7/12	doz	"	21/-	1 53
5	pr	"	1/4	83
2	shirts		6/8	1 66
1	"		8/-	1 00
2	"		7/-	1 75
4	"		6/-	3 00
5	"		14/-	8 75
2	"		12/-	3 00
1	pr	Pants		3 00
7	"	"	3.49	24 43
1	"	"		4 00
1	"	"		4 14

31

1	Jar Reels			2 67
3	"		3 45	5 24 43
1	"			5 69
1	"		3 94	3 94
1	"			1 87
1	"			6 80
1	"			4 87
1	"			4 30
1	"			8 34
1	"			3 50
1	"			3 62
2	"		3 41	6 82
5	"		3 07	15 35
1	"			3 41
1	"			3 62
1	"			3 30
1	"			3 62
2	"		3 50	7 00
1	"			3 36
7/8	Yds	Velvet	6 25	5 46
1 5/8	"	Frosted	4 00	6 50
2	"	Silk	20 f	1 50
7/8	"	Plaid	22 f	2 40
1 3/4	"	Silk	28 f	6 12
1 3/8	"	"	20 f	3 43
7/8	"	Velvet	6 00	5 25
~~1 1/4~~ 7/8	"	~~Satin~~ Velvet	6 00	5 25
~~1/2~~ 1 3/4	"	~~Frosted~~ Silk	12 f	2 62
~~1/4~~ 7/8	"	~~Silk~~ Frosted	26 f	2 84
~~1/4~~ 3/4	"	~~Velvet~~ Silk	28 f	2 62
7/8	"	~~Silk~~ Velvet	5 00	4 37
~~1/4~~ 7/8	"	Silk	4 50	3 94

32

3/4	yd Silk	4.00	3 00
1	" Test		26
1	pr Pants		3 81
2	"	360	7 20
1	Jacket		2 44
1	"		2 63
1	"		2 50
1	"		2 78
1	"		2 71
1	pr Socks		37
1	" "		62
1	" "		25
1	Shirt		87
1	"		66
1	"		1 00
1	Scarf		50
1	"		75
1 1/4	yds Cass	4.00	5 00
2 1/2	" "	4 00	10 00
1	pr Pants		4 12
1	"		4 63
2 1/2	yds Cass	12½	3 75
2 5/8	" Silk	3 00	7 87
6	Shirts	5½	3 75
1	"	92¢	92
2	pr Drawers	4½	1 00
2	Shirts	1½	1 75
1	"		1 33
1	"		62
3	"	92	2 76
3	"	4½	1 30
10/12	doz Scarfs	3 50	2 91
1	"	55¢	55

33

1	Lamb			31
1	"			75
5/12	doz Ties	5.00	2	08
9/12	" "	6.00	4	50
2	Scarfs	4f	1	00
2	"	6f	1	50
5	Shirts	4f	2	50
2	"	92c	1	84
2	"	92	1	84
2	pr Drawers	5f	1	25
1	"			54
1	Shirt			92
7/8	yd Plaid	22f	2	40
7/8	" "	22f	2	40
7/8	" "	3.00	2	62
2	" Silk	16f	4	00
7/8	" "	4.00	3	50
7/8	" Velvet	6.00	5	25
7/8	" "	6.50	5	69
7/8	" "	5.00	4	37
7/8	" "	6.50	5	69
1 7/8	" Silk	3.00	4	87
7/8		30f	3	28
7/8		3.	2	62
7/8		26f	2	83
2 7/8		20f	7	19
7/8	Plaid	28f	3	06
7/8		28f	3	06
7/8	Velvet	6.00	5	25
3/4	" Plaid	4.00	3	00
3	Vests	2.30	6	90
1	pr Pants		3	93

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1	Rr Reels			3 49
1	" "			2 70
1	" "			2 17
1	" "			2 25
2	" "	20f		5 01
2 1/2	Gds Quss	11f		3 44
2 3/8	" "	8f		2 37
3 1/4	" "	9f		3 65
				4275 99

of great value to wit of the value of Six thousand Dollars_ and converted And disposed of the same to his own use

35—

Brackett, Sumbard & Smith
Plffs attorneys

And other wrongs to the said Plaintiff then and there did to the Damage of the said Plaintiffs of Six thousand Dollars and therefore the brings suit &c.

Brackett Sumbard & Smith
Plaintiffs attorneys

And afterwards to wit on the 8th day of May A.D. 1861 being one of the days of the May term of said Court the following proceedings were had in this cause and Entered of Record of said Court to wit,

Marie O'M Lostey
vs
Anthony C. Hefsing
} Trespass

This day comes the said Plaintiff by Brackett Lumbard and Smith her attorneys and does. personal service of process of summons issued in said cause having been had on the said defendant, being three times solemnly called in open Court comes not nor does any person for him but herein he makes default which is on motion ordered to be taken and is hereby entered of record. ~~Thereupon~~ Wherefore the said Plaintiff ought to have and recover of and from the said defendant her damages sustained herein by occasion of the premises. And thereupon reference is had to the Court to assess damages herein hereafter.

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And afterward to wit on the 14th day of May (being one of the days of the May term of said Court) A D One thousand Eight hundred and sixty one the following proceedings were had in this cause and entered of record of said Court to wit

Maria O'M Loskey
vs
Anthony B Hopkins } Trespass

This day again comes the said Plaintiff by Bartlett Sumbard and Smith her attorneys and the said Defendant by Farwell & Smith his attorneys also comes and upon agreement of the parties as shown by stipulation filed it is ordered that default of the said defendant heretofore entered herein be and is hereby set aside and that the said defendant have leave to plead by first day of June next.

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And thereafter to wit on the 28th day of May A.D. 1861 came the said Defendant by her attorneys and filed in the office of the Clerk of the said Court her Plea in the said Cause which plea is in the words and figures following to wit:-

State of Illinois } Superior Court
County of Cook } ss. of Chicago

Anthony B. Hopkins }
and }
411 Maria C. McLaskey } And the said Anthony B Hopkins defendant in this suit by E.S. Smith his attorney comes and defends the wrong and injury when &c and says that he is not guilty of the said supposed trespass above laid to his charge or any part thereof in manner and form as the said Plaintiff hath above thereof Complained against him. And of this he puts himself upon the Country. And for a further plea in this behalf as to the seizing and taking the said goods and chattels in the said first Count of the said declaration mentioned and converting and disposing of the same to his own use above supposed to have been done by the said defendant to the said Defendant

by leave of the court he says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that before the time when &c in the said declaration mentioned to wit on the 27th day of March A. D 1861 an application was made in due form of law to the Circuit Court of Cook County on behalf of Charles Griffith, John Prentiss and Perkins S. McCombs for a writ of attachment against the goods and chattels of Thomas Bellamy and Cyrus M. Bellamy and affidavit in due form that they were non residents of the State of Illinois and Bond in due form according to the Statute in such case having been filed with the Clerk of said court a writ of attachment was thereupon issued out of and under the seal of said Circuit court directed to the Sheriff of said County commanding him to attach the estate, real and personal of the said Thomas Bellamy and Cyrus M. Bellamy which said writ was made returnable on the 2nd Monday of April then next. And this defendant then being Sheriff of the County of Cook aforesaid received the said writ and by virtue thereof and before the return day aforesaid on the 29th day of March A. D. 1861 at the city of Chicago, county aforesaid, did seize and take the said goods and chattels as the property of

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the said Thomas Bellamy and Cyrus M. Bellamy defendants above named in said writ of attachment said goods and chattels then being the property of the said Thomas Bellamy and Cyrus M. Bellamy in their possession and under their control and this defendant having so seized and taken the said goods and chattels as the property of the defendants in said writ of attachment, by virtue of said writ as aforesaid and now holds the same to answer said attachment writ, which are the said supposed trespasses in the said declaration mentioned and whereof the said plaintiff hath above thereof complained against him the said defendant, and this he is ready to verify wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action &c.

And for a further plea in this behalf as to the seizing and taking the said goods and chattels in the said first count of the said declaration mentioned and converting and disposing of the same to his own use above supposed to have been done by the said defendant he the said defendant by leave of the Court &c says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him because he says - that before the time when &c in the said declaration

mentioned on the 24th day of April A.D. 1861, an application was made in due form of law to the Circuit Court of said County on behalf of Charles Griffith, John Prentiss and Hezekiah S. McCombs for a writ of attachment against the goods and chattels of Thomas Bellamy and Cyrus M. Bellamy an affidavit that they were non-residents of said State and had property in said County subject to levy together with a bond in due form according to the Statute in such having been filed with the Clerk of said Court a writ of attachment was thereupon issued out of and under the seal of said Circuit Court directed to the Sheriff of said commanding him to attach the estate real and personal of the said Thomas Bellamy and Cyrus M. Bellamy to satisfy the debt therein specified which said writ was made returnable on the 4th Monday of May then next, and the defendant then being Sheriff of the said County of Cook, received the said writ and by virtue of the same and before the return day thereof to wit: on the 27th day of March A. D. 1861 at the City of Chicago, County aforesaid did seize and take the said goods and chattels as the property of the said Thomas Bellamy and Cyrus M. Bellamy, defendants aforesaid named in said attachment writ, said goods and chat-

tels then being the property of the said Thomas Bellamy and Cyrus M. Bellamy in their possession and under their control and this defendant having so seized the said goods and chattels as the property of the said defendants in said writ of attachment named by virtue of the said writ aforesaid and now holds the same to answer said attachment writ which are the said supposed trespasses in the said declaration mentioned and whereof the said plaintiff hath in his declaration complained, and this he is ready to verify, wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him &c.

4 And for a further plea in this behalf as to the seizing and taking of said goods and chattels in the said second count of the said declaration mentioned and converting and disposing of the same to his own use above supposed to have been done by the said defendant, he the said defendant by leave of the Court &c says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that before the time when &c in the said declaration mentioned, to wit, on the 27th day of March A.D. 1861 an application was made in due form of law to the Circuit Court of Cook

County on behalf of Charles Griffith John Prentiss, Herkimer S. McCombs for a writ of attachment against the goods and Chattels of Thomas Bellamy and Cyrus Jr. Bellamy an affidavit in due form that they were non-residents of the State of Illinois, and Bond in due form according to the Statute in such case having been filed with the Clerk of said Court a writ of attachment was thereupon issued out of and under the seal of said Circuit Court directed to the Sheriff of said County commanding him to attach the estate real and personal of the said Thomas Bellamy and Cyrus Jr. Bellamy which said writ was made returnable on the 2nd Monday of April then next and this defendant then being Sheriff of the County of Cook aforesaid received the said writ and by virtue thereof and before the return day aforesaid on the 27th day of March A. D. 1861 at the City of Chicago, County aforesaid, did seize and take the said goods and chattels as the property of the said Thomas Bellamy and Cyrus Jr. Bellamy defendants above named in said writ of attachment Said goods and chattels then being the property of the said Thomas Bellamy and Cyrus Jr. Bellamy in their possession and under their control, and this

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defendant having so seized and taken the said goods and chattels as the property of the said defendants in said writ of attachment by virtue of said writ as aforesaid and now holds the same to answer said attachment writ, as aforesaid which are the said supposed trespasses in the said declaration mentioned and whereof the said plaintiff hath above thereof complained against him the said defendant and this he is ready to verify, wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action &c.

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And for a further plea in this behalf as to the seizing and taking of said goods and chattels in the second count of the said declaration mentioned and converting and disposing of the same to his own use above supposed to have been done by the said defendant he the said defendant by leave of the Court &c says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him because he says that before the time when &c in the said declaration mentioned to wit on the 24th day of April A.D. 1861 an application was made in due form of law to the Circuit Court of Cook County on behalf of Charles Griffith, John Prentiss and Jenkins

S. McCombs for a writ of attachment against the goods and chattels of Thomas Bellamy and Cyrus M. Bellamy an affidavit that they were non-residents of said State and had property in said County subject to levy, together with a bond in due form according to the Statute in such case having been filed with the Clerk of said Court, a writ of attachment was thereupon issued out of and under the seal of said Circuit Court directed to the Sheriff of said County commanding him to attach the estate real and personal of the said Thomas Bellamy and Cyrus M. Bellamy to satisfy the debt there-in specified which said writ was made returnable on the 4th Monday of May then next and this defendant then being Sheriff of said County of Cook received the said writ and by virtue of the same and before the return day thereof to wit: on the 27th day of March A. D. 1861 at the City of Chicago County aforesaid, did seize and take the said goods and chattels as the property of the said Thomas Bellamy and Cyrus M. Bellamy in their possession and under their control and this defendant having so seized and taken the said goods and chattels as the property of the defendants in said writ of attachment

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named by virtue of the said writ aforesaid and now holds the same to answer said attachment writ, which are the said supposed trespasses in the said declaration mentioned and whereof the said plaintiff hath in his declaration complained, and this he is ready to verify. Wherefore he prays judgment if the plaintiff ought to have & maintain his aforesaid action against him &c,

E. S. Smith,
Defts Atty.

49

And thereafter to wit on the 13th day of June A.D. 1861 came the said Plaintiff by his Attorneys and filed in the office of the Clerk of the said Court his Replications in said Cause. which Replications are in the words and figures following to wit.

Superior Court of Chicago
Maria O'McSorley } June Term A.D. 1861
vs
Anthony C. Hesing }

And the said Plaintiff as to the Plea of the said Defendant by him first above pleaded. and whereof he hath put himself upon the Country, doth the like

51

And the said Plaintiff as to the said Pleas of the said Defendant by him secondly thirdly, fourthly and fifthly above pleaded saith that the said Plaintiff by reason of of any thing by the said defendant in those pleas alleged ought not to be barred from having and maintaining her aforsaid action thereof against the defendant because she saith that the said goods and Chattels in the said 2d 3d 4th & 5th pleas mentioned were not at the time of the taking of the same by the said defendant nor have they since become the property of the said Thomas Bellamy

and Lyons M. Bellamy or either of them but the same them were and now are the property of the said Plaintiffs and this the said Plaintiff prays may be enquired of by the Country &c

Sumbard & Smith
Plffs attys

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And afterward to wit on the 9th day of June (being one of the days of the June term of said Court) A.D. One thousand Eight hundred and sixty two the following proceedings were had in this Cause, and entered of record of said Court to wit,

Maria O'M Loskey
vs
Anthony C. Keesing
} Trespass

This Cause being this day called for trial. Comes said Defendant by E.S. Smith his attorney and on his motion upon affidavit filed it is ordered by the Court that above entitled Cause be and is hereby continued to the next term of this Court at Costs of said Defendant of the present term of the Court

53

and afterwards to wit on the 13th day of January A.D. 1864 (being one of the days of the January term of said Court) the following proceedings were had in this cause, and entered of record of said Court to wit,

Maria O'M Lostey
vs
Anthony C Helping
Trespass

This cause being this day called for trial came said Plaintiff by Lumbard & Smith her attorneys and said Defendant by E L Smith his attorney also comes and issues being joined herein it is ordered that a jury of twelve men be impanneled to try the issues joined herein as aforesaid after hearing part of the testimony and the hour of adjournment having arrived it is ordered upon agreement of the parties that the jury separate and meet the Court on coming in and opening Court to morrow morning

and afterwards to wit on the 14th day of January A.D. 1864 being one of the days of the January Term of said Court) the following proceedings were had in this Cause and entered of record to wit -

Maria O'Mc Loskey
vs
Anthony C. Hesing.
} Trespass

And this day comes again the parties to this Cause by their attorneys as aforesaid and the jury empannelled herein on yesterday for the trial of said Cause also come as on yesterday and after hearing further part of the testimony and the hour of adjournment having arrived it is ordered upon agreement of the parties that the jury separate and meet the Court on coming in and opening thereof to morrow morning

57

And afterwards to wit on the 15th day of January AD 1864 (being one of the days of the January Term of said Court) the following proceedings were had in this Cause and entered of Record to wit

Maria O'N Loskey
vs
Anthony C Hessing } Trespass

And now at this day again comes the parties to this Cause by their Attorneys as aforesaid and the Jury herein to[fore] empanelled herein for the trial of said Cause also comes as on yesterday and having heard all the evidence Arguments of Counsel and the instructions of the Court retire to consider of their Verdict and the hour of adjournment having arrived it is ordered upon agreement of the parties that when the jury shall have agreed upon a Verdict herein they shall reduce the same to writing sign and seal the same and afterwards separate and be discharged

58

And afterwards to wit on the 16th day of January AD 1864 being one of the days of the January Term of said Court the following proceedings were had in this cause and entered of record to wit,

Maria A.M. McLoskey
vs
Anthony C Hesing
& Trespass
& And now again

57 comes the parties to this cause by their attorneys as aforesaid and the jury herefore impanelled herein for the trial of said cause having agreed and submitted their verdict say We the jury find the said defendant guilty and we assess the Plaintiffs damages herein against the said defendant to the sum of Two Thousand Four hundred and Seventeen Dollars and fifty one Cents

And thereupon said defendant submits his motion herein for a new trial in said cause

And afterwards to wit on the 26th day of March AD 1864 (being one of the days of the March Term of said Court) the following proceedings were had in this cause and entered of record to wit:

Maria O'McCloskey
vs
Anthony B Hopkins
} On motion new trial in Trespass

And now again comes the parties to this cause by their attorneys as aforesaid and the same coming on now to be heard upon the motion of said Defendant heretofore submitted herein to wit on the sixteenth day of January AD 1864 for a new trial in said cause and Counsel being heard thereon and the Court being fully advised in the premises it is considered by the Court that the motion of the said Defendant be and the same is hereby overruled and that a new trial be and the same is hereby refused to said Defendant in said cause to which ruling of the Court in overruling his said motion said Defendant then and there excepted.

Therefore it is considered by the Court that said Plaintiff do have and recover of and from said Defendant her damages of Two thousand four hundred

and Seventeen dollars and fifty one cents in form aforesaid by the Jury aforesaid found and assessed together with her Costs and Charges in this behalf expended And have Execution therefor

And thereupon said Defendant says an Appeal herein to the Supreme Court of this State which is allowed on filing bond in the penalty of three thousand five hundred Dollars with Security to be approved by one of the Judges of this Court and to be filed with this bill of Exception within sixty days from this day

Ordered that all proceedings and Motions and other matters remaining undisposed of on the dockets of this Court be and the same are

61

And afterwards to wit; on the 24 May 1864. came the Defendant by his Attorneys & filed in the Office of the Clerk of said Court his bill of Exceptions in said Cause which Bill of Exceptions is in the words and figures following to wit

State of Illinois } S.S. In the Superior Court
Cook County } of Chicago

Maria O. McCosky
vs.
Anthony C. Hessing } Bill of Exceptions

62 Be it remembered that on the trial of this Cause at the January term A.D. 1864. to wit; January 13. 1864. in the said Superior Court of Chicago before his Honor J. Gary Judge and a Jury, the plaintiff came by her Attorneys E.A. Brackett and George D. Townsend and the defendant by his Attorneys Sidney Smith and E. A. Storrs; and the plaintiff to maintain the issue on her part, called W. D Shurd as a witness, who being duly sworn, testified as follows.

TESTIMONY.

FIRST DAY, WEDNESDAY, 13th January, 1864.

W. D. SHUARD—*Called on behalf of the plaintiff, being first duly sworn, was examined in chief by* MR. BRACKETT, *and testified as follows:*

Question. State to the court and jury where you reside, what is your occupation, where you resided in the Spring of 1861, and what business transactions you had or completed for Mrs. McLosky, with Cyrus M. Bellamy, of the city of New York; state, in detail, all the circumstances connected with the transaction, how it happened you became instrumental in purchasing these goods (if you did purchase them) for Mrs. McLosky, and all about it. *Answer.* In 1860, and for some years previous, I had resided in the city of Rochester; that is my present residence. My business is that of a lawyer. In the Spring of 1860, in March, I think, while at the city of New York, I shipped a quantity of clothing for Mrs. McLosky, to McGregor's Landing, Iowa. 1

Q. What year was that—1860 or 1861? A. I stated 1860; it was in 1861. It was in March, 1861.

Q. What kind of goods were these? A. Ready-made clothing, some cloaks, and miscellaneous articles for furnishing a store. 2

Q. State whether, previous to the shipment of these goods, they were in the possession of Mrs. McLosky.

(Objected to—objection overruled.)

A. At the time I shipped the goods they were in the possession of Mrs. Maria O. McLosky.

Q. What were these goods? A. Ready-made clothing, cloths, and articles such as are used in a fancy clothing store; coats, vests, pants, shirts, batting, &c.

(Declaration shown to witness.)

Q. Look at this declaration; see what articles are described in the first and second counts, and state to the jury whether these articles were or were not embraced in the
3 goods that McLosky shipped in the Spring of 1861. A. I think these are the same kind of goods as those that were shipped.

Q. I desire you now to state to the jury the exact marks, if any, that were put upon these boxes, who marked them, and all about it. A. The mark, to my recollection, was , care of Geo. W. Counts, McGregor's Landing, Iowa. They were marked, in part, by Geo. T. Bellamy, and in part by another young man, whom I engaged for that purpose. I do not recollect his name now.

Q. Who is Geo. T. Bellamy? A. He is a brother of Mrs. McLosky.

Q. By whose direction did they mark them? A. By my own direction.

Q. In what character or capacity were you acting at
4 that time? A. I was acting as agent for Mrs. McLosky.

Q. Where did she then reside? A. At New York city.

Q. You resided at Rochester? A. I resided at Rochester.

Q. Mr. Townsend here is a brother-in-law of her's? A. He is.

Q. At whose instance, and at whose request, did you act in this capacity? A. Mrs. McLosky's.

Q. How many boxes were there altogether? A. I think there were 21 boxes.

Q. Were they ordinary dry goods boxes? A. Yes, sir.

Q. How many, if any, bales were there? A. I think there were only two bales, but I do not recollect now positively.

Q. Where, when, and under what circumstances, did you
5 next see any portion of these boxes and bales of goods; what did you do with reference to them, and at whose request? A. I next saw 8 boxes and 2 bales of these goods at Barrett, King & Co.'s store, in this city. It was, I think, the latter part of March, 1861.

Q. How do you know that these 8 boxes and 2 bales were a portion of those 21 boxes and 2 bales? A. By recognizing them from the marks and the boxes.

Q. At Barrett, King & Co.'s? A. Yes, sir, that is the name of the firm, I think.

Q. What did you do about them? A. I went to the sheriff.

Q. What sheriff? A. Mr. Hessing, the defendant.

Q. Who went with you, and what did you do? A. I 6
went to the sheriff's office several times, and on part of these occasions, Julius Lombard was with me. I went to the sheriff to procure the release of these goods. The sheriff told me he had taken them, and he thought he should hold them. I tried to procure the release of a part of them; he stated that he had some claim upon them for some parties in New York, amounting to $600, I think. I suggested to him then that if he was satisfied that he ought to detain them, he had better release a portion of them. I told him that these goods were goods belonging to Mrs. McLosky, and that I myself, as her agent, had shipped them. After a day or two I had another conversation with him—one or two conversations with him—he told me he would see the parties and would let me know what he would do. I staid here several days—two or three days—and finally went to 7
his office again. He told me could not release any of the goods; he had got a good bond; was perfectly well indemnified, and that if they belonged to Mrs. McLosky we should have to bring our suit for them. I told him we should certainly bring a suit unless he released the goods. I then told him that, as agent of Mrs. McLosky, I demanded the goods of him. He stated that he would not deliver them; that he would regard that as a sufficient demand for the goods. Then I told him we should bring an action for them. He said it did not matter to him, as he was perfectly well indemnified.

Q. By what line were these goods shipped by you in the city of New York for Mrs. McLosky to McGregor's Landing. A. The New York and Erie Railroad.

8 Q. Were the boxes marked in that manner—by the "New York and Erie Railroad." A. Well, sir, that I do not recollect—whether there was any mark on them or not. That was the route they were sent by, is my recollection.

Q. Who employed the carting for hauling the goods from the store in New York? A. I did.

Q. Who for? A. For Mrs. McLosky.

Q. Who did you ship them for? A. Mrs. McLosky.

Q. What was the value of the goods shipped and their quality; those that were detained here as well as those that went on to McGregor? State what was the value of the whole, and then state what was the value of those that were detained here—those 8 boxes and 2 bales.

(Objected to on the ground that he was not a witness who knew the value of goods.)

9 Q. What do you know of the value of these goods, if anything? A. I am not very much acquainted with the value of goods.

Q. I understand you to say that you are not acquainted with the value of goods? A. No, sir, I am not.

Q. State whether they were invoiced or not? A. They were.

Q. State whether you saw the goods? A. I did, all of them.

Q. State whether you personally supervised the whole thing? A. I personally took charge of the whole matter.

Q. What number was that in New York, and what street? A. The number I do not recollect. It was on Fourth Avenue.

10 Q. I suppose there is no dispute about the place; it was No. 14 Fourth Avenue? A. Yes, sir, that is it.

Q. Who had been running this establishment? A. Cyrus M. Bellamy.

Q. State whether or not Cyrus M. Bellamy delivered the goods to you for Mrs. McLosky? A. He delivered the goods and possession of the store to me for Mrs. McLosky.

Q. State to the jury whether or not you demanded the

goods from Mr. Hessing, as agent for Mrs. McLosky? A. I stated I did as the agent of Mrs. McLosky, and he refused to give them up, saying that he was indemnified.

Q. Did he make any other objection? No other objection whatever.

11

Q. Any objection as to your authority? A. None whatever.

CROSS-EXAMINED—By Mr. Storrs:

Q. Where do you reside? A. I reside in Rochester.

Q. What is your business? A. I am a lawyer.

Q. Have you a partner? A. I have not.

Q. Had you in 1861? A. I had.

Q. Who was it? A. Mr. Townsend.

Q. This gentleman here? A. Yes, sir.

Q. He was your partner at the time you were at New York? A. Yes, sir.

Q. You resided at Rochester? I did.

12

Q. Who sent you to New York? A. I went at the request of Mr. Townsend.

Q. Where did you go to? A. I went to the place where Mrs. McLosky was residing.

Q. Where was that? A. I do not know the number of the street now.

Q. Where was she? A. She was boarding with her parents.

Q. With Mr. Thomas Bellamy? A. Yes, sir.

Q. He was her father, and the father of Cyrus M. Bellamy? A. Yes, sir.

Q. Where did Cyrus M. Bellamy live? A. I do not know where he did live.

Q. Did he board with his father? A. That I do not know.

Q. What did Mr. Townsend send you to New York for? 13
A. To secure Mrs. McLosky's claim.

Q. Against whom? A. Against Cyrus M. Bellamy.

Q. Did he direct you how to secure that claim? A. Yes, sir, I think he did.

Q. What was his directions to you? A. His directions were to go there, and if Mr. Cyrus M. Bellamy could not, in some way, pay a portion of it in money, then to make him turn over enough property to pay it, if he had it, or if he would not, to enter a judgment against him and sell the property, or act as I thought best under the circum-
14 stances.

Q. How were you going to enter a judgment? A. All that we have to do is to enter a judgment when the time has elapsed.

Q. Was there a suit there? A. A suit was then pending against C. M. Bellamy.

Q. Where was it pending? A. In the Supreme Court of the State of New York.

Q. Was New York city the venue? A. It was.

Q. Who was the the attorney of Mrs. McLosky in this suit? A. I was the attorney on record.

Q. How long had it been pending? A. Some several weeks; I do not know how long.

Q. Did you procure a judgment to be entered there? A. I did.

15 Q. The time for answer had expired? A. It had.

Q. Did you call upon Cyrus M. Bellamy shortly after going to New York? A. I went to the store, and found he was not at home.

Q. Where was he? A. That I did not know, but his father thought he was somewhere West, and he said he had expected him home for several days.

Q. When did you see him? A. I waited there two or three days.

Q. Did you ascertain where he had been upon his return? A. Yes, I think I did.

Q. Did you learn that he had been West? A. Yes, sir.

Q. Where did you ascertain he had been to? A. McGregor's Landing, for one place.

Q. That was the farthest point west that he had reached, was it not? A. That I do not now recollect. 16

Q How long after he had advised you of having been West, and to McGregor's Landing, was it before this arrangement was completed? A. He did not advise me before the arrangement.

Q. Did he advise you before the goods were marked? A. Yes, sir.

Q. What did he advise you he had been there for? A. I think he said he had been there to procure some place where, if he could not make arrangements to go on with his business in New York, he could take his goods, or whatever he could get, and go on in his business.

Q. There at McGregor? A. Yes, sir.

Q. How large a stock of goods had he on hand? A. It inventoried then about $10,000, the whole. 17

Q. Were all these goods shipped to McGregor's Landing? A. They were, all of them.

Q. Who directed you to mark the goods McGregor's Landing, or to have them so marked? A. I do not know that any one directed me.

Q. Why did you have them so marked? A. Because upon a consultation with Mrs. McLosky, I having been there myself, it was that that would be the best place to dispose of them in order to realize the money she was entitled to.

Q. Were there no facilities for selling goods at that time in the city of New York? A. There were facilities for selling goods?

Q. Why did she think McGregor's Landing was the most advisable? A. It was thought that the West was a much better place to sell ready made clothing then than the city 18 of New York.

Q. The currency of the West was generally then very low? A. Not at that time.

Q. What time in the Spring of 1861 were these goods so directed by you? A. It was about the middle of March.

Q. Who was present at that consultation? Was Mrs. McLosky, Thomas Bellamy, and Cyrus Bellamy? A. No, sir.

19 Q. Who were? A. Mrs. McLosky and myself.

Q. So, as the result of that consultation, you concluded that the West was the best place to send $10,000 worth of ready made clothing, and for the purpose of resale that McGregor was the best place in the West? A. Yes, sir.

Q. Did you make any enquiry with reference to that? How did you come to that conclusion? A. Cyrus M. Bellamy spoke of that place, having been there very recently, and according to his idea was a very good place to send the goods.

Q. Was it not at the advice of Cyrus M. Bellamy that you had them sent there? Was not that the controlling consideration with you? A. Well, his opinion as to the proper place had a good deal of weight.

Q. He advised that to be done? A. He said that if he

20 were going to sell them he would rather take them there.

Q. That was his advice, was it not? A. Yes, sir.

Q. And you followed his advice? A. It seems we did.

Q. You had found out that the West was the best place, and that that market was the best market in the West. Did you also ascertain in that consultation that George W. Counts was the best man at McGregor's Landing to send the goods to? A. I did not ascertain that he was the best man.

Q. Why did you direct them to him? A. Well, Cyrus Bellamy said he had made the acquaintance of Counts, and I did not know any one else to send them to.

Q. Had you any previous acquaintance in any way with him? A. I had never seen him—never heard of him.

Q. Had you any personal knowledge of his responsibili-

21 ty? A. No, sir.

Q. You never had seen him at all? A. No, sir.

Q. You say you sent them to him on the representation of Cyrus M. Bellamy, who had just returned from there? A. Yes, sir.

Q. He went West for the purpose of finding some location? A. That I do not know.

Q. You knew he had gone West before you started for New York? A. I do not think I did. I expected to find him in New York.

Q. Had you not learned so before you went there? A. No, sir, I never had learned.

Q. Did not Mr. Townsend tell you that Cyrus Bellamy had gone West? A. Not to my recollection.

Q. What is your best recollection? A. My best recollection is that I knew nothing about his going West—my best impression is that Mr. Townsend said nothing about his going West. 22

By Mr. Brackett. Q. You knew nothing about his being absent from New York? No, sir.

CROSS-EXAMINATION—Resumed by Mr. Storrs.

Q. What did you go to New York for? A. I went down there for the purpose of either enforcing a judgment or taking a sufficient of these goods to pay Mrs. McLosky's demand against Cyrus M. Bellamy.

Q. You had instructions from Mr. Townsend to do it in one or several ways? A. I stated that I had instructions from him that, unless it could be paid in part and settled up satisfactorily, then to enter the judgment and sell the goods there, or send them wherever I thought it was best. 23

Q. Before you determined upon the method which should be adopted, you waited till Cyrus Bellamy's return? A. Yes, sir.

Q. What proposition did you make to him? A. I made a proposition to him to turn over goods enough to pay Mrs. McLosky's claim.

Q. Was that the first proposition you made to him? A. I think it was.

Q. Was it immediately acceded to by him? A. It was not. He absolutely refused.

24 Q. What did he propose to do? A. He proposed to run along; he said that he was satisfied that trade would be better, and that he could pay her a part.

Q. How long did you negotiate before he concluded to make this transfer? A. I think it was some three days.

Q. After it was agreed to make the transfer, what was next done? A. The transfer was made and I took possession.

Q. What was done? A. A bill of sale was made of the goods, an inventory having been taken.

Q. When was that taken? A. It was taken during the two or three days we were negotiating.

Q. And before he came to any conclusion to let you have the goods? Yes, sir.

Q. Who took it? A. The young men in the store.

25 Q. What were their names? A. George T. Bellamy was one.

Q. A brother of Cyrus Bellamy? A. Yes, sir.

Q. A son of Thomas Bellamy? Yes, sir.

Q. And a brother of Mrs. McLosky? A. Yes, sir.

Q. And a relative of Mr. Townsend? A. So I have said.

Q. Who else was there? There were two others in the store whose names I do not recollect.

Q. They were clerks? A. Yes, sir.

Q. Clerks in that store? A. Yes. sir.

Q. These young men commenced taking this inventory three days before he had agreed to turn out the goods at all? A. Yes, sir.

Q. Who directed them to take it? A. Mr. Bellamy did?

26 Q. What did he direct them to take it for? A. He insisted that he had a larger quantity of goods there; that he had goods enough to go along with to pay his debts; and before I would take the statement, I told him I must see an inventory.

Q. How long a time did it take to make that inventory? A. I do not now recollect. I think they were doing it during two or three days.

Q. Was the bill of sale made directly after the inventory was completed? A. No, sir, it was not. The inventory was completed by Friday or Saturday, and the bill of sale was not made out until Monday morning.

Q. Who drew the bill of sale? A. That I cannot tell 27
now.

Q. Did you draw it? A. Well, that I could not say, whether I drew out the heading or not.

By Mr. Smith: Q. Don't you remember whether you did or not? A. No, sir.

By Mr. Storrs: Q. You went down as a lawyer in Mrs. McLosky's interest? A. Yes, sir.

Q. Do you not now recollect whether you drew out the bill of sale or not? A. That I could not say, Mr. Storrs.

Q. Refresh your recollection? A. I cannot say whether I drew it or not. I do not know whether Mr. Bellamy or myself drew it or not. I did not employ any other lawyer.

Q. To whom was the bill of sale given? A. The bill of sale was given to me, and I took it to her house.

Q. Was the bill of sale a separate document to the in- 28
ventory? A. The bill of sale was made on the inventory; that is my recollection now; they are one and the same instrument; that is my recollection.

Q. Then you took the inventory and bill of sale to Mrs. McLosky? A. Yes, sir.

Q. When did you take it? A. I think it was on the Monday morning.

Q. Who handed it to you? A. Cyrus M. Bellamy.

Q. And the same day you handed it to Mrs. McLosky? A. I think so.

Q. Was that the first time you had had it? A. It was the first time I had had the bill of sale.

Q. Was it the first time you had the inventory? A. I had seen the inventory. As he was taking the inventory I was in the store, and saw it progressing from day to day, 29
and when it was completed I examined the footings.

Q. This inventory was completed on Saturday? A. Friday or Saturday, I think.

Q. And the bill of sale was made on the Monday? A. Yes, sir.

Q. Was there any talk of Cyrus Bellamy's pecuniary matters during the pendency of these negotiations? A. There was talk on this question.

Q. Was there any talk about his debts? A. Not spe-
30 cifically as such.

Q. Was there any about his debt? A. There was about his indebtedness.

Q. Was there any about his debts, I ask? A. Yes, sir.

Q. Go ahead, and tell what it was. A. I told him from what I had heard, I was satisfied he could not go on in business there and pay Mrs. McLosky out of what he could realize, over and above expenses, and pay his indebtedness.

Q. What had you heard? A. I had heard that he was indebted to some parties in New York, but I do not know who they were.

Q. Did you hear the amount, and what it was for? A. I will not say whether I heard the amount or not.

Q. About how much? A. It would be mere guess work.

31 Q. Well take a guess. A. If you want a guess, I think it was $3,005 or $4,000.

Q. Was it for goods sold to Mr. Bellamy? A. I think it was.

Q. For goods that were put into that store? A. That I do not know. It was for goods they had been having and selling.

Q. And had been part of their stock? A. Yes, sir.

Q. What was next done? A. The next thing I had done was to have the goods packed, after we had determined what she had better have done with them.

Q. Who helped to pack them? A. Geo. T. Bellamy.

Q. Where were they packed? A. Packed right in boxes in the store.

Q. What did Cyrus M. Bellamy do? did he not help to
32 pack them? A. No, sir.

Q. Where was he all the time the goods were being

packed? A. I would not undertake to say; but he was there, sometimes in and sometimes out; whether he was there all the time I could not say; I think not.

Q. Did you commence packing them on the Monday? A. Yes, sir. 33

Q. Geo. T. Bellamy and the clerks helped to pack them? A. Yes, sir, and I employed two other men from another clothing store. They were packed during the day.

Q. Did you finish it during the day and night? A. Yes, sir; I know I packed them in great haste, for I had been away longer than I expected to be.

Q. While the goods were so being packed Cyrus M. Bellamy was in and out of the store? A. Yes, sir, I think he was.

Q. What did you do with the goods as you packed them? A. As they were packed in boxes, when they were in readiness they were sent to the depot and shipped.

Q. Marked, as you have already said? A. Yes, sir.

Q. When did you leave New York? A. I think I left New York on the Tuesday. 34

Q. The very next day? A. Yes, sir.

Q. Do you know whether Cyrus M. Bellamy left next day or not? A. No, I do not know.

Q. What is your understanding? A. My understanding is that he did not.

Q. When did he leave? A. I do not know.

Q. What is your understanding about that? A. So far as I have any understanding, I should not think he left for some time.

Q. You understand that he did leave? A. Yes, sir.

Q. For McGregor's Landing, Iowa? A. Whether he left there for that place, or not, I do not know.

Q. But he went there? A. I have heard so, but do not know anything at all about it.

Q. When did Geo. T. Bellamy leave New York? A. 35
That I do not know.

Q. Had you been acquainted with Mrs. McLosky before you started for New York city. A. I had.

Q. How long had she lived there? A. That I don't know.

Q. Where did you make her acquaintance? At Rochester? A. Yes, sir.

Q. Thos. D. Bellamy formerly lived there? A. He did.

Q. Did Cyrus M. Bellamy? A. I do not know that I knew Cyrus M. Bellamy at Rochester. I knew him while he lived in the country, at Pentfield.

36 Q. Where had you last seen him, before you went to New York on the business? A. Well, I could not tell you.

Q. Was it in Rochester? A. My recollection now is, I think I met him the last time I saw him, previous to seeing him in New York, was going on the cars from Chicago, I think.

Q. Going on the cars where? A. He was going East to some place.

Q. Where was it? A. I think it was on the Southern Michigan Road.

Q. Where on the Southern Michigan Road? A. I cannot tell you just where. It was between here, I think, and Toledo.

Q. When was it? A. It must have been some five or
37 six months previous to this; that is my best recollection now. I may have seen him at other times.

Q. Do you know who served the summons on him in that suit? A. No, sir, I do not know. I probably have known, but I do not now know.

Q. Did you enter the summons? A. Yes, sir.

Q. While at New York? A. Yes, sir.

Q. Was there a service? A. I presume so.

Q. Was it by an officer, or by a private individual? A. We usually do that by private individuals, in New York.

Q. Was it so in this case? A. That I cannot say.

Q. Do you know where he was served? A. I do not.

Q. Do you know when he was served? A. I do not.

Q. Neither where, nor when, nor by whom? A. No, sir, I do not.

Q. Did you issue the summons yourself? A. Whether I did or Mr. Townsend, I do not know.

Q. Your name appears as the attorney of record? A. Yes, sir.

Q. Who issued the summons? A. I think very likely I did myself.

Q. You issued it at Rochester? A. Yes, sir; at the of- 38
fice.

Q. Where did you get service? A. In New York city, I suppose.

Q. Did you sent it to New York city? A. That would be the natural order of things.

Q. Was it not served upon him on his way West, at Rochester? A. I do not know whether it was or not.

By Mr. Brackett. Q. You stated in your cross-examination, during these two or three days time, more or less, you was in New York after Mr. Bellamy had returned from the West, that you remained in the store constantly? A. Yes, sir.

Q. State to the jury why you remained in the store durinn the time the inventory was going on? (Objected to; objection sustained.) 39

Q. State to the jury what you did during the time the inventory was being taken? A. I stayed in the store and watched the taking of the inventory. It was my business to ascertain how many were there, if I wished to know what to do; and I wished to ascertain definitely what goods there were there, what they were, and what their amount was.

Q. State whether or not there was any apprehension that Bellamy might make a sale of the goods himself? (Objected to.)

Q. You stated the fact that you remained there? A. I did.

Q. Constantly; up to the time of the completion of the inventory, and the execution of the bill of sale? A. I did, with the exception of a portion of Saturday. 40

Q. When the bill of sale was completed, you took it to

Mrs. McLosky and delivered it? A. Yes, sir. Prior to that, however, when I ascertained what goods there were, and that he refused to turn them over, *I went then and entered a judgment, and handed the execution to the sheriff.* I told him I would call on Monday morning and have him go and levy upon the goods and sell them.

Q. You have already stated that the inventory amounted to about $10,000? A. Yes, sir.

Q. State to the jury whether that was the inventory at cost price, and whether that was the actual value? A. That was the inventory at cost price.

Q. What was the actual value? (Objected to.)

Q. What did you take them at? A. I took them at,
41 some 15 or 16 per cent. below cost price.

Q. And the inventory was about $10,000? A. Yes, sir.

Q. You have stated what the goods consisted of, I believe? A. Yes, sir.

Q. Have you stated how long they had been in trade there, at that establishment? A. Well, that I do not know.

Q. Their stock consisted of clothing—children's clothing, &c.? A. Men's and children's clothing.

Q. Remnants, and so on? A. Yes, sir; clothing of various kinds—cashmeres, sattinets, silesia, and various other articles.

Q. You stated that it was your impression that you entered up the judgment. Are you certain about that? might Mr. Townsend have not done it? A. I am certain
42 that I did it. I went to the county clerk's office to enter up the judgment. I found it necessary to do it.

By Sydney Smith. Q. You found it necessary to do it to bring Mr. Bellamy to terms? A. Yes, sir; that is what I mean.

By Mr. Brackett. Q. You could not bring him to terms in any other way? A. No, sir. I am not positive whether I was the attorney of record; on that my recollection is not now perfect.

Q. You said something about this "stump-tail" business. State to the jury whether you had ever been out in this western country before? A. I was here at the time I found these goods, on my own business.

Q. Where had you been at? A. I was at Joliet, and 43
Morris, and this place. I have been here three or four times a year.

Q. Had you ever been at McGregor's Landing? A. Well, sir, I have been at McGregor's Landing in the Fall.

Q. I want to know if you had been at McGregor's Landing? A. Yes, sir.

Q. Well, about stump-tail business. You stated, if I recollect right, that the decline had not occurred when this took place? A. No, sir; it was during the month of April that the great change took place here in Chicago, according to my recollection, of the currency.

By Sydney Smith. Q. Had it not declined in March? A. In March, when I first came here, it was some 2 per cent. in exchange on New York.

By Mr. Brackett. Q. We want this thing settled. It 44
has been a very disputed thing a long time. A. I know that while I was here, it ranged from 2 per cent. to 25 per cent., while I remained here.

Q. Did you have any money here with anybody while you were here? A. Yes, sir.

Q. Who with? A. With Mr. Woodruff, commission merchant.

Q. With anybody else? A. Principally with him.

Q. What did you buy exchange for in the month of April? A. I think it varied from 2 to 25 per cent.

Q. Was that in April, 1861? A. April, 1861, sir.

Q. When you went to New York, where did you expect to meet Mr. Cyrus M. Bellamy, if at all? A. At his store.

Q. You had no knowledge of his having gone West, at all? A. No, sir. 45

Q. Why did you remain there? A. I remained there because his father did not wish me to go on and take the stock under a judgment before he returned.

Q. Are you quite confident that Cyrus M. Bellamy did not assist in packing up the goods? A. I know he did not assist.

Q. Who is this George T. Bellamy? A. He is a brother of Cyrus, and a clerk in the store.

By Mr. Smith. Q. You came here to Chicago, and you got here after the levy of the attachment? A. Yes, sir.

Q. How long after? A. No; I think I came here be-
46 fore the levy of the attachment.

Q. Why did you come here before that time? A. I came here on my own business.

Q. You happened here—just before the levy? A. Yes, sir.

Q. What time did you get here? A. I cannot tell when, but I think it was at the latter end of March.

Q. How did you learn about that attachment? A. I received a telegram from Mr. Townsend.

Q. Did you buy any Eastern exchange at 2 per cent.? A. I did, sir.

Q. Where? A. I think I got it at the Marine Bank.

Q. You commenced the suit here? A. Yes, sir.

Q. How long after you first got here did you commence the suit? A. It must have been two weeks, or three weeks;
47 I do not know how long after it was the declaration was filed. I know I gave instructions to have it commenced. It was immediately after making a demand upon Mr. Hessing.

Q. I want to know how long after you first got here it was that that suit was commenced? A. Some two or three weeks after I got here, I think.

Q. So you say that at that time you bought axchange with Illinois currency, from the Marine Bank, at 2 per cent., after you got here? A. Yes, sir.

Q. How long after was it? A. I think it was about ten days or two weeks after I got here.

By Mr. Brackett. Q. This is matter of recollection, merely? A. Yes, sir.

Q. You have a data? A. No, sir.

Q. You say you happened here on business. What was your business? A. I had matters of my own here; the collection of money, &c.

Court adjourned till 10 o'clock, A. M., to-morrow. 48

SECOND DAY, THURSDAY, 14th January, 1864.

W. D. SHUARD — Recalled and Examined by MR. BRACKETT.

Q. State to the jury what arrangement was made, if any, between you and Mrs. McLosky, in reference to who should take custody of these goods, from the time of their leaving New York? A. Yes, sir; there was.

Q. What was the arrangement? A. The arrangement was, that her brother Geo. T. Bellamy, was to go on with the goods, and should go West and attend to the sale of the goods. If he needed any specific instructions, he was to stop on his way and see Mr. Townsend, who had charge 49 of her matters, and he would direct him.

Q. This Mr. Townsend here? A. Yes, sir.

CROSS-EXAMINED—BY MR. SMITH.

Q. I understood you to say that the last time you had seen Cyrus M. Bellamy, before the transaction in New York, was on the cars, going out towards Cleveland? A. My recollection is, that the last time was there.

Q. How long was that prior to your seeing him in New York? A. My recollection is, that it was five or six months; though I have it not perfectly in my mind.

BY MR. BRACKETT. Q. Where did you meet him? A. I either met him here in Chicago, or on the cars; I do not remember where I saw him first. He was on the same 50 train, when I went from here on one occasion.

Q. Was your meeting accidental? A. Yes, sir; I had not seen him for some time. I did not know where he was. I knew nothing about him.

WILLIAM P. GRAY—*Called on behalf of the plaintiff, being first duly sworn, was examined in chief by* MR. BRACKETT, *and testified as follows:*

Q. State to the jury what capacity you were actingi n, in the Spring of 1861? A. I was deputy sheriff, sir.

Q. Of Cook county? A. Yes, sir.

Q. Tell the jury what you know with reference to some boxes of clothing, and some bales—8 boxes and two bales
51 —being levied upon; when it was, and what was done with the goods. Likewise describe to the jury what were the marks on the boxes and bales; how many boxes and bales there were, and all you know about it? A. I attached eight boxes of merchandise, clothing, and cloths, and two bales of cotton bats. In March, 1861, I believe it was I took them, and stored them with Bassett, King & Co., the same day, and took their receipt for them.

Q. State first how these boxes of goods were marked? A. They were marked care of Geo. W. Counts, McGregor's Landing, Iowa.

Q. Each package had that mark on? A. Yes, sir.

Q. Who was the sheriff you were acting under? A. A. C. Hessing.

Q. The defendant in this suit? A. Yes, sir.

52 Q. State whether you afterwards went and showed these boxes and bales to Mr. Shuard, here, and Mr. Lumbard; and if so, where it was? A. I showed them to Mr. Lumbard. I don't recollect whether the other gentleman was there or not. There was some one there, but I do not recollect its being him.

Q. You saw Mr. Shuard on the stand? Yes, sir. I met him here before the case was brought up.

Q. What occurred between Mr. Lumbard and the other gentleman and yourself, with reference to the goods? A. Mr. Lumbard said that there had been application made to him to demand the goods of the sheriff, and he wanted to see them. I told him I could not show him the goods; I could show him the packages, and thas was all I could do.

And the counsel of the plaintiff then called R C. Garibrand as a witness, who being duly sworn testified as follows.

Q. Did he make a demand for the goods? A. He made a demand of the sheriff; he did not of me. 53

Q. What did you do with the goods? A. The goods were turned over to the custodian, and sold at sheriff's sale.

Q. Were you present at the sale? A. Yes, sir.

Q. How much did the goods sell for? A. I cannot state the amount; it was upward of $2,000. I cannot state the amount exactly now.

(Writ handed to witness.)

Q. State whether, on that writ, you made that report, as endorsed there? A. That is not the first writ, sir; that is a writ that was afterwards issued, and levied on the same goods. There is an execution accompanying these papers that will show what they sold for.

(The execution was here produced, and the amount stated thereon as the proceeds of the sale was admitted to 54
be correct by the respective counsel—$2,053.01.

Q. Suppose you read that to the jury. A. "By virtue "of the within writ of attachment, I have levied in and "upon all the right, title and interest of the within named "defendants, Thos. and Cyrus M. Bellamy, &c., &c., to-"wit: 8 boxes merchandise and 2 bales bats, this 27th "March, 1861."

By Sidney Smith. Q. Is that the first writ? A. Yes, sir.

Q. The first levy, then, is March 27, 1861? A. Yes, sir.

By Mr. Brackett. Q. This money you paid over to Mr. Smith? A. Yes, sir, I paid it to Mr. Smith.

By the Court. Q. E. S. Smith? A. Yes, sir.

By Mr. Brackett. Q. He acted as attorney for the plaintiff in these attachment proceedings? A. Yes, sir; 55
I did not know anybody else at the time of the sale.

Q. What kind of goods were these? what did they consist of? A. They were ready made clothing, some broadcloths, cassimeres, shirts, collars, hose, &c.; such goods as generally comprise a gents' furnishing store.

CROSS-EXAMINED—By Sidney Smith.

Q. These are the two writs you took the goods on—one of $600 odd, and the other of $1,200 odd? A. I levied these two writs according to the dates of them.

Q. You held the goods by virtue of both these writs? A. I held the goods by virtue of the first writ till the 24th April, and then the other was placed in my hands, and it
56 was also levied on the same goods.

Q. Now here are the executions on the same writs? A. Yes, sir, these are the two executions.

Q. Do you recollect whether there was sufficient money made to pay the executions in full after satisfying costs.

(Objected to.)

A. No, sir.

Q. You did not pay over to Mr. Smith ary more than satisfied the writs? A. No, sir.

Q. They were not satisfied—one is for $470, and the other for $920. These are the returns, are they not? A. Yes, sir, these are the returns; there is a receipt on the writ. These are my returns, and you will find his receipt there for the amount of money he received on each one.

By the Court. Q. The receipts are endorsed on the writs? A. Yes, sir.

57 By Mr. Brackett. Q. You paid over to Mr. Smith all the money you got? A. I paid all, after paying expenses.

Q. State whether any parties invoiced those goods whilst they were in your possession; whether these gentlemen inventoried them? A. They caused the goods to be appraised, according to law. Mr. Turner, Mr. Howard, and, I think, Mr. Marks, were the appraisers, and, besides them, I do not know of any other.

R. C. GERRIBRAND—*Called on behalf of the plaintiff, being first duly sworn, was examined, in chief, by* Mr. Brackett, *and testified as follows:*

Q. State to the jury, if you please, what is your business, where you reside; if in the city, how long you have lived

here, and what was your business in the Spring of 1861? A. I have resided in the city a little over 9 years; in the year 1861 I was in business on Lake street—the clothing business.

Q. State whether or not you were called upon, by any parties, in the Spring of 1861, to make an invoice of appraisement of 8 boxes and 2 bales of goods that were over here in the custodian's? A. I was called upon by Mr. Lumbard to go and take an inventory of a certain lot of goods over here on LaSalle street.

Q. Did you make an inventory? A. I assisted in it with Mr. Turner.

Q. What kind of goods were they? A. They were a general assortment of goods, such as are usually kept in a clothing store.

Q. What were the marks on the boxes? A. I did not notice the marks on the boxes; the goods were not in the cases when I saw them—they were spread out.

Q. What did they consist of? A. Ready made clothing, cloths, cassimeres, some piece goods, &c.

Q. Did you make out a regular invoice? A. Yes, sir.

Q. Have you got it with you? A. Yes, sir.

Q. What does it amount to? A. The total amount is $2,075.25.

Q. State to the jury whether or not that was the actual value of the goods in your estimation? A. That was, in our judgment, the total and real value of the goods.

Q. I want to know whether you have got a bill-head? A. I saw some bill-heads laying around, and I picked one up.

(Bill-head produced.)

Q. Where did you get this? A. At the custodian's office.

[COPY.]

New York----------*186*

M----------

61



Bought of **THOS. BELLAMY & SON,**

Merchant Tailors & Clothiers,

No. 14 Fourth Avenue.

Kimmel Brothers, Printers, 78 Nassau St., N. Y.

Q. This, you say, you got there? A. Yes, sir, I saw quite a number of them laying around, and I picked this up.

62 Q. How many, about, were there, do you think? A. I should not be able to say; perhaps there might have been half a dozen, or there might have been two or three dozen. There were simply a few going about, and I picked this up.

A question here arose as to the measure of damages, plaintiff claiming that the rule was that he was entitled to the highest value the goods had attained between the time of their attachment and the time of the trial. Defendant denied this. Authorities were cited by counsel, after which

Mr. BRACKETT said: We offer to prove the value of these goods, in the first place, at the time of the commencement of the suit, which was the 22d of April, 1861; and in the second place, we propose to prove the value of the goods since that time down to the present time, taking the highest; to prove that they increased in value, and to prove the highest price they have attained since, down to the present.

63 By SIDNEY SMITH. Q. What is the date of that appraise-

ment? A. It is July 16th and 17th; we were occupied two days in taking it.

SIDNEY SMITH. We do not object to the proof of value at the time of the commencement of the suit, but we do object to the proof of what is the highest value between then and the time of the trial.

(Objection sustained.)

By Mr. BRACKETT. I will ask whether or not these goods were of the samo value on the 22d April that they were when you appraised them in July, the same year. A. I should say they were about the same value.

The COURT intimated that he would admit the testimony relative to value, subject to further consideration. 64

Mr. SMITH said he should *except* to the ruling.

Mr. BRACKETT withdrew his offer of proof.

Mr. SMITH withdrew his exception.

WILLIAM TURNER—*Called on behalf of the plaintiff, being first duly sworn, was examined, in chief, by* MR. BRACKETT, *and testified as follows:*

Q. You acted with Mr. Garribrand in making the appraisement and invoice? A. I assisted him.

Q. At whose request? At Mr. Lumbard's.

Q. You are acquainted with this clothing business? A. Yes, sir.

Q. These goods were over here at the custodians, across 65 the square? A. Yes, sir.

Q. Was there anybody else assisted at the appraisement, on the part of other parties? A. There were two other parties taking an appraisement at the same time.

Q. Who were they? A. Mr. Marks, and Mr. Hoard, I believe.

Q. The goods consisted of clothing, &c.? A. Clothing, cloths, cassimeres, furnishing goods, and trimmings.

Q. You heard the other gentleman's testimony, as to the

value of the goods; do you agree with him as to that? A. Yes, sir.

Q. $2,075.25? A. Yes, sir.

66 No cross-examination.

JULIUS LUMBARD—*Called on behalf of the plaintiff, being first duly sworn, was examined in chief by* Mr. Brackett, *and testified as follows:*

Q. State to the jury, if you please, what connection you had, if any, with reference to these matters to which these witnesses have been testifying, relative to these goods? A. I was employed as attorney to commence this action, on behalf of Mrs. McLosky. I went with Mr. Shuard to see the sheriff. I think that deputy sheriff Gray showed me the goods in the boxes and bales. We then made demand on the sheriff for the goods; he refused to surrender them; they were subsequently taken to the custodian's office.

67 A day or two before the sale, I directed Mr. Garribrand and Mr. Turner, as appraisers on the part of the plaintiff, and there were two others on the part of the sheriff, also, to appraise the goods. They were appraised, as has been related by the witnesses, on our behalf; and also by the other gentlemen, Mr. Marks, and another, on behalf of Mr. Smith.

Q. You made demand of the sheriff? A. Yes, sir.

Q. What sheriff? A. Mr. Hessing.

Q. He did not give them up? A. No, he declined.

Mr. Smith. *Oh! we concede that we took them.* Storrs admitted it in the opening.

Mr. Smith. *I move to strike out all the evidence* here (in fact I do not know that there is any legitimate evidence) of a transfer of these goods from Bellamys to Mrs. Mc-

68 Losky. If there is a transfer it is in writing; the writing must be produced.

After considerable discussion on this point—

Mr. Brackett *offered in evidence the paper referred to in Mr. Shuard's testimony, as the bill of sale.*

And the Counsel for the Plaintiff, then called William Turner as a witness who being duly Sworn testified as follows.

ment? A. It is July 16th and 17th; we were occupied two days in taking it.

SIDNEY SMITH. We do not object to the proof of value at the time of the commencement of the suit, but we do object to the proof of what is the highest value between then and the time of the trial.

(Objection sustained.)

By Mr. BRACKETT. I will ask whether or not these goods were of the samo value on the 22d April that they were when you appraised them in July, the same year. A. I should say they were about the same value.

The COURT intimated that he would admit the testimony relative to value, subject to further consideration. 64

Mr. SMITH said he should *except* to the ruling.

Mr. BRACKETT withdrew his offer of proof.

Mr. SMITH withdrew his exception.

WILLIAM TURNER—*Called on behalf of the plaintiff, being first duly sworn, was examined, in chief, by* MR. BRACKETT, *and testified as follows:*

Q. You acted with Mr. Garribrand in making the appraisement and invoice? A. I assisted him.

Q. At whose request? At Mr. Lumbard's.

Q. You are acquainted with this clothing business? A. Yes, sir.

Q. These goods were over here at the custodians, across the square? A. Yes, sir. 65

Q. Was there anybody else assisted at the appraisement, on the part of other parties? A. There were two other parties taking an appraisement at the same time.

Q. Who were they? A. Mr. Marks, and Mr. Hoard, I believe.

Q. The goods consisted of clothing, &c.? A. Clothing, cloths, cassimeres, furnishing goods, and trimmings.

Q. You heard the other gentleman's testimony, as to the

value of the goods; do you agree with him as to that? A. Yes, sir.

Q. $2,075.25? A. Yes, sir.

66 No cross-examination.

JULIUS LUMBARD—*Called on behalf of the plaintiff, being first duly sworn, was examined in chief by* MR. BRACKETT, *and testified as follows:*

Q. State to the jury, if you please, what connection you had, if any, with reference to these matters to which these witnesses have been testifying, relative to these goods? A. I was employed as attorney to commence this action, on behalf of Mrs. McLosky. I went with Mr. Shuard to see the sheriff. I think that deputy sheriff Gray showed me the goods in the boxes and bales. We then made demand on the sheriff for the goods; he refused to surrender them; they were subsequently taken to the custodian's office.

67 A day or two before the sale, I directed Mr. Garribrand and Mr. Turner, as appraisers on the part of the plaintiff, and there were two others on the part of the sheriff, also, to appraise the goods. They were appraised, as has been related by the witnesses, on our behalf; and also by the other gentlemen, Mr. Marks, and another, on behalf of Mr. Smith.

Q. You made demand of the sheriff? A. Yes, sir.

Q. What sheriff? A. Mr. Hessing.

Q. He did not give them up? A. No, he declined.

MR. SMITH. *Oh! we concede that we took them.* Storrs admitted it in the opening.

MR. SMITH. *I move to strike out all the evidence* here (in fact I do not know that there is any legitimate evidence) of a transfer of these goods from Bellamys to Mrs. Mc-

68 Losky. If there is a transfer it is in writing; the writing must be produced.

After considerable discussion on this point—

MR. BRACKETT *offered in evidence the paper referred to in Mr. Shuard's testimony, as the bill of sale.*

And the Counsel for the plaintiff then called Julius Lumbard as a witness who being duly sworn testified as follows -

Julius Lumbard. - called on behalf of the plaintiff being first duly sworn, was examined in Chief by Mr. Brackett and testified as follows.

Q - State to the jury if you please, what connection you had, if any, with reference to these matters to which these witnesses have been testifying, relative to these goods?.

A. I was employed as Attorney to commence this action on behalf of Mrs. McLoaky. I went with Mr. Shuard to see the Sheriff. I think that deputy Sheriff Gray showed me the goods in the boxes and bales - We then made demand on the Sheriff for the goods; he refused to surrender them; they were subsequently taken to the Custodian's office.

A day or two before the Sale I directed Mr. Garribrand and Mr Turner as appraisers on the part of the plaintiff and there were two others on the part of the Sheriff, also, to appraise the goods. - They were appraised, as has been related by the witnesses on our behalf; and also by the other gentlemen Mr. Marks, and another, on behalf of Mr. Smith.

Q. You made demand of the Sheriff?.

A. Yes, Sir

Q What Sheriff?

A Mr. Leasing

Q He did not give them up?

A No, he declined -

Mr. Smith. - Oh we concede that we took them. Storrs admitted it in the opening

Mr Smith - I move to strike out all the evidence here (in fact I do not know that there is any legitimate evidence) of a transfer of these goods from Bellamys to Mr McLosky - If there is a transfer it is in writing; the writing must be produced -

After considerable discussion on this point Mr Brackett offered in evidence the paper referred to in Mr Shuard's testimony, as the bill of Sale (objected to, because it was not, in fact, a bill of Sale; and secondly, its genuineness had not been established)

Mr Brackett to establish genuineness, recalled Mr W D Shuard.

it was here admitted by the defendants Counsel that the defendant took the goods claimed

The Counsel for the defendant here moved to strike out all the evidence of a transfer ~~of said transfer~~ of these goods from Bellamys to Mr. McDoskey - On the ground that if there is a transfer it is in writing and the writing must be produced

The Counsel for the Plaintiff here offered in evidence the paper, referred to in Mr. Shuards testimony as the bill of Sale.

63

But the Counsel for the defendant objected to the admission of said paper in evidence, because it was not in fact a bill of Sale; and Secondly, its genuineness had not been established.

The Counsel for the Plaintiff, to establish the genuineness of said paper then recalled W. D Shuard as a witness, who then testified as follows.

(Objected to, because it was not, in fact, a bill of sale; and secondly, its genuineness had not been established.) 69

Mr. Brackett, to establish genuineness, recalled—

Mr. W. D. SHUARD.

Q. Tell the court and jury about that paper, whether or not it is the one you testified about yesterday? A. This is the paper about which I testified.

Q. Does it contain the goods specified in the declaration? A. Yes, sir; this is a list of all the goods, as well those at McGregor's Landing, as those that were here.

By the Court. Q. Is that the paper of which you spoke yesterday, as an inventory, which had a bill of sale attached? A. It is the paper which I delivered to Mrs. McLosky. 70

Q. Was there any other bill of sale than that? A. I don't think of any other.

By Mr. Smith. Q. Do you know of no other? A. To my best recollection it is so.

CROSS-EXAMINED by Mr. Storrs.

Q. In whose handwriting is that signature? A. It is Cyrus M. Bellamy's.

Q. Are you acquainted with his handwriting? A. I am.

Q. Is the body in his handwriting? A. I believe it is.

Q. It is the same as the others? A. Yes, sir. I think the whole paper is in Cyrus M. Bellamy's handwriting.

By Mr. Brackett. Q. This is the paper you gave to Mrs. McLosky? A. Yes, sir. 71

Mr. Brackett. *All the paper is in evidence*, and I will read the receipt. It is thus:

"Received of Maria O. McLosky, payment in full for "the goods mentioned in the foregoing bill.

"[Signed.] CYRUS M. BELLAMY.

"New York, March 16th, 1861."

The amount of the footing is $10,335.44.

Admitted.

MR. SMITH. I suppose *all the attachment records are considered as in evidence;* these executions, and the writs of attachment, and all the files.

MR. BRACKETT. Yes, sir.

72 Admitted.

Plaintiff rests her case.

MR. SMITH. We now make this point. It appears on the plaintiff's case, that these goods were originally the Bellamys'; that we took them as creditors of the Bellamys. They undertake to defeat the creditors of the Bellamys by showing that they are *bona fide* purchases for value. Under these circumstances, they should prove affirmatively, a valuable consideration. Having failed to do that (there is no proof on the subject), *we move to exclude the evidence, as against us.*

THE COURT. I don't think it is shown that these goods were taken on behalf of the creditors.

Motion overruled. To which ruling the counsel for the

73 defendant then and there excepted.

CASE FOR THE DEFENDANTS.

MR. STORRS offered in evidence, and read to the jury, the following depositions:

Deposition of JOHN BELLAMY, taken in N. Y. Sept. 9, 1851.
" " W. H. STEVENS, " " " 13, 1861.
" " JAS. H. DALSON, " " " 27, 1861.
" " THOS. BELLAMY.
" " JOHN A. MAPES.

Court adjourned to 2 P. M.

74

The Counsel for the plaintiff then read the receipt (said paper was then admitted in evidence) on said papers - which is as follows.

(Objected to, because it was not, in fact, a bill of sale; and secondly, its genuineness had not been established.) 69

Mr. Brackett, to establish genuineness, recalled—

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" " W. H. Stevens, " " " 13, 1861.
" " Jas. H. Dalson, " " " 27, 1861.
" " Thos. Bellamy.
" " John A. Mapes.

Court adjourned to 2 P. M.

74

It was here admitted by the Counsel for the plaintiff and defendant that the amount of the footing of said paper is £1033 5. 44.

It was here admitted by the Counsel for the plaintiff that all the attachment Records, the executions, writs of attachment, and all the files, shall be considered as in evidence which are as follows.

The plaintiff here rested her case.

The Counsel for the defendant then addressed the Court as follows

64 We now make this point - It appears on the plaintiffs case that these goods were originally the Bellamys; that we took them as creditors of the Bellamys -

They undertake to defeat the creditors of the Bellamys by showing that they are bona fide purchasers for value. - Under these circumstances they should proove, affirmatively a valuable consideration - Having failed to, so that (there is no proof on the subject) we move to exclude the evidence as against us -

But the said Court then and there over-ruled said Motion - To which decision of the Court in over ruling said motion, the Counsel for the defendant did then and there except. And the said defendant to maintain the said issue on his part then Offered in evidence and read to the jury the following depositions

Deposition of John Bellamy (Pages 91 & 96 inclusive testimony
" " W. H. Stevens (" 96 & 97 testimony)
" " Jas H. Dalson (" 97. 98 & 99 ")
" " Hos. Bellamy (" 99. 100. 101. 102 & 103 ")
" " John A. Mapes (Pages 89. 90 & 91 ")

The Court having revised the following depositions, and excluded certain portions objected to by Counsel for the plaintiff, the Counsel for the defendant read in evidence the balance of them

Deposition of H. W. Burlingham (Pages 103. 104 & 105 testimony
" " Alonzo Burlingham (" 105 & 106 ")
" " W. C Turner (" 106. 107 & 108 ")
" " Hos. Arnold (" 109 & 110 ")

The defendant here rested his Case.

And the plaintiff further to maintain the said issue on his part, then Offered in evidence as rebutting testimony, the Judgement Record of the Supreme Court of the State of New York showing the rendition of the Judgment in favor of Maria O. Mc Laskey against Cyrus W. Bellamy - The Judgment is dated March 16 1861.

65

The Counsel for the defendant objected to the admission of said Record in evidence on the grounds - First - that the authentification fails to show that the Judge, who certified it was the presiding Judge of the district in which the Judgment was rendered; and Second, that it did not appear to have upon it the Seal

of the Clerk of the Court.

At the suggestion of the Plaintiff's Counsel the Court Consented to reserve his decision on the objection until such time as the other Evidence was in.

The Counsel for the Plaintiff then introduced in evidence the following letter of attorney. its execution being admitted

Power of Attorney.

Know all Men by these Presents, That I. Maria O. McLoskey of the City of New York in the State of New York, have made, constituted and appointed, and By these Presents, do make, constitute and appoint George J Bellamy my true and lawful attorney for me and in my name place and stead to do and perform any and all business & acts whatever, connected with the possession, control & Sale of a certain Stock of Goods & property, lately shipped by me from said City of New York, to McGregors Landing in the State of Iowa, for the purpose of converting said Goods and property into money so soon as may be practicable, using his discretion as to time, fully empowering my said Attorney to bring suits at Law if necessary in his opinion in relation to said Goods & property or any matter connected with or growing out of the Same & to make all needful obligations & releases for the purposes aforesaid, giving and granting unto my said Attorney full power and authority to do and perform all and every act and thing whatsoever requisite and

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necessary to be done in and about the premises as fully to all intents and purposes, as I might or could do if personally present; with full power of substitution and revocation, hereby ratifying and confirming all that said attorney or his substitute shall lawfully do or cause to be done by virtue thereof.

In Witness Whereof I have hereunto set my hand and seal the 22 day of March One thousand eight hundred and sixty one.

Sealed and delivered in
presence of
John A Bellamy
Wm H Riblet

M. O. McLoskey [Seal]

United States of America
State of New York, City & } ss.
County of New York

Be it Known, that on the thirtieth day of March One thousand eight hundred and sixty one before me personally appeared Marin O Mc Loskey above named who is to me known to be the person described in and who executed the above Letter of Attorney and acknowledged the same to be her free act and deed.

67

In Testimony Whereof I have hereunto subscribed my name the day and year last above written

Seal

Wm H. Riblet
Notary Public

The Counsel for the Plaintiff then called

Chas C Wheeler as a witness, who being duly sworn testified as follows.

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AFTERNOON SESSION—SECOND DAY.

THE COURT *having revised the following depositions, and excluded certain portions objected to by counsel for the plaintiff*, MR. STORRS *read in evidence the balance of them:*

Deposition of H. W. BURLINGHAME.
" " ALONZO BURLINGHAME.
" " N. C. TURNER.
" " THOS. ARNOLD.

MR. SMITH. I want to produce Mr. Rogers, the cashier at the bank, to prove that exchange was dearer than the witness, Shuard, said it was, at the time these goods were sent. 75

MR. BRACKETT. I object to it. It has nothing whatever to do with this case.

MR. SMITH. Well then, we do not offer it.

Defendant rested his case.

REBUTTING TESTIMONY—On behalf of the Plaintiff.

MR. BRACKETT. We offer the judgment record of the Supreme Court of the State of New York, showing the rendition of the judgment in favor of Maria O. McLosky, against Cyrus M. Bellamy. The judgment is dated March 16th, 1861. 76

(Objected to, on the grounds—*first*, that the authentication fails to show that the judge who certified it was the presiding judge of the district in which the judgment was rendered; and *second*, that it did not appear to have upon it the seal of the clerk of the court.

At the suggestion of plaintiff's counsel, the court consented to reserve his decision on this objection until such time as the other evidence was in.

CHAS. C. WHEELER—*Called on behalf of the plaintiff, being first duly sworn, was examined in chief by* Mr.
77 BRACKETT, *and testified as follows:*

Q. State to the jury what is your occupation; if you reside in Chicago, how long have you resided here; and what has been your business? A. I am freight agent of the Erie Railroad, in Chicago, and have resided here ten years.

Q. I wish now to ask you the fact, as to whether it is usual or unusual, or otherwise, for goods being shipped from New York, to and through Chicago, to Iowa or elsewhere, to be marked or any other letter or character?

(Objected to. Objection overruled. To which ruling, counsel for the defendant then and there excepted.)

Q. Of what road are you the freight agent? A. Of the Erie Railroad, formerly known as the New York and Erie Railroad.

Q. You have been freight agent for ten years? A. Not
78 for them; but I have been in the freight business 10 years.

Q. I now ask you whether it is usual, or otherwise unusual, to ship goods from New York City, say to McGregor, Iowa, or any other place, marked with characters in the manner these goods were marked, as appears from the testimony of the other witness?

(Objected to. Objection overruled. To which ruling counsel for the defendant then and there excepted.

A. Many of the largest houses in Chicago mark their goods with initials. D. J. Ely & Co. mark their goods with Cooley, Farwell & Co. mark theirs Potter Palmer's are marked P. P.; A. H. Blackall's are marked

By Mr. SMITH: Q. That is the case with those houses who do a large amount of business; smaller ones, when
79 they have business, it is usual for them to do it with a Is it usual for other houses to use this? A. There is J. B. B———, his goods are marked J. B. B.

Q. I mean this business. Is it usual for any house to do it except D. J. Ely & Co.? A. I do not know.

Q. If any other house used it it would get mixed up a little, would it not? A. I do not know of any other house that uses it.

Q. Do you mean to say that it is an ordinary way to use such hieroglyphics as that? A. It is quite their fancy. I do not know that there is any difference between using the name or the initials, unless it be that it is shorter. 80

Q. Do you know any other firms in the city that use this A. I cannot call their names to mind. I see them every day.

Q. You take heavy dealers, and they adopt such a thing for short, so as to make it easier to mark their goods? A. I do not know that they do. I do not know their purpose for doing it.

Q. What made you drag that in about the length of the name? A. It does sometimes depend on that, perhaps.

Q. Sometimes it depends on something else, don't it? Some do it for one motive and some from another? A. I do not know their motioes. 81

By Mr. BRACKETT. Q. You know the fact that it is done? A. Yes, sir.

A. Done with some things going through to Iowa? A. Yes, sir, done with them going through.

WILLIAM TURNER—*Recalled, on behalf of the plaintiff, and examined by* MR. BRACKETT:

Q. What is your business? A. Merchant tailor.

Q. How long have you been in this business? A. Thirteen years in Chicago.

Q. You stated, this forenoon, you invoiced this stock? A. I did.

Q. I want to ask you this question: Taking into consideration the character of the goods composing, this particular stock, tell the jury, if you please, whether they would be of more or less value in a Western market than they would in the city of New York, and what difference would 28

there be, from your knowledge of prices in both places, and the particular kind of goods they were.

(Objected to.)

THE COURT. I think he may be fully presumed to know
83 about the prices in Chicago, but not about the prices at the East.

Q. You know what these goods were? A. Yes, sir.

Q. Do you know the fact as to whether they would be of the same value in Chicago, or more than they would be in the city of New York?

(Objected to.)

THE COURT. You must lay a foundation first.

Q. What do you know in reference to the value of goods, of this particular kind, taking the season into consideration, in the city of New York, (as a retail market for retail purposes)?

[The part in parentheses was appended by Mr. SMITH.]

A. I am not acquainted with the retail trade in New York, not having done business there.

84 Q. You have bought goods there? A. Yes, sir.

Q. You have been in the habit of buying goods in that market for the last 13 years? A. For about 10 years.

Q. In the city of New York—goods of this character? A. Yes, sir.

BY MR. SMITH. Q. You bought at wholesale? A. Yes, sir.

BY MR. BRACKETT. Q. Goods of this kind for the purpose of retailing? A. Yes, sir.

BY MR. SMITH. Q. Not retailed there? A. Retailed here.

BY MR. BRACKETT. Q. This was in the Spring of 1861? A. It was the Summer of 1861.

Q. Have you ever bought, in the city of New York, stocks somewhat similar to these remaining stocks? A.
85 No, sir.

Q. Was this stock, taken just as it was, worth more here than it was in the city of New York?

(Objected to. Objection sustained.)

And the Counsel for the Plaintiff then recalled
William Turner who then testified as follows.

Q. If any other house used it it would get mixed up a little, would it not? A. I do not know of any other house that uses it.

Q. Do you mean to say that it is an ordinary way to use such hieroglyphics as that? A. It is quite their fancy. I do not know that there is any difference between using the name or the initials, unless it be that it is shorter. 80

Q. Do you know any other firms in the city that use this A. I cannot call their names to mind. I see them every day.

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Q. What made you drag that in about the length of the name? A. It does sometimes depend on that, perhaps.

Q. Sometimes it depends on something else, don't it? Some do it for one motive and some from another? A. I do not know their motioes. 81

By Mr. BRACKETT. Q. You know the fact that it is done? A. Yes, sir.

A. Done with some things going through to Iowa? A. Yes, sir, done with them going through.

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Q. How long have you been in this business? A. Thirteen years in Chicago.

Q. You stated, this forenoon, you invoiced this stock? A. I did.

Q. I want to ask you this question: Taking into consideration the character of the goods composing, this particular stock, tell the jury, if you please, whether they would be of more or less value in a Western market than they would in the city of New York, and what difference would 28

88 shall be 30 on the 10th day of February; I reside at Cedar Falls.

Q. When did you leave home? A. I left on Wednesday night.

Q. For what purpose? A. To attend this suit.

Q. As a witness? A. Yes, sir.

Q. You left on what day? A. Wednesday night.

Q. What time did you get here? A. I got here on Saturday morning.

Q. I wish you now to state if you know Maria O. McLosky? A. I do.

Q. What relation, if any, is she to you? A. Sister.

Q. Where did you live in 1859 and in what business, if any, were you engaged? A. I was in the hardware trade in Port Washington, Wisconsin.

89 Q. What business transaction, if any, had you with Maria O. McLosky, during that year, in the way of money? A. There never were any except borrowing $1,000 of her. I think some time in January, 1859.

Q. State who delivered that $1,000 to you. A. Geo. P. Townsend.

Q. This gentleman here? A. Yes, sir.

Q. Where did you receive the money? A. I received a check, I believe, on Ward & Bro's, of Rochester, New York.

Q. What security, if any, did you give your sister for that $1,000? A. My own individual note.

(Judgment record shown to witness.)

Q. Here is a description, in this judgment record, of a note; I wish you to look at it and tell the jury whether that is the note you gave? A. That is the note I gave; it

90 don't make any difference.

(Objected to. Objection sustained.)

Q. You say you gave her a note for $1,000? A. Yes, sir.

Q. Where was it given? A. It was given in Rochester.

Q. Who was it made payable to? A. Maria O. McLosky, I believe.

And the Counsel for the plaintiff then called Cyrus M Bellamy as a witness.

The Counsel for the defendant objected to his being examined on the ground that he is an interested party in this Suit.

But the Court then and there overruled said objection; to which decision of the Court in overruling said objection, the Counsel for the defendant then and there excepted.

And said witness being duly sworn testified as follows.

By Mr. Townsend. Q. Are you acquainted with this fact, as to whether goods in the city of New York, which are fashionable and in style, or those which are out of style and unfashionable, will sell the best?

(Objected to.)

The Court. You must show that he has known something of it.

Q. Do you know anything as to whether goods in New York, that are in style, sell for more than those that are not in style? A. I do. 86

Q. Well, goods in New York, that are in style, sell for more than those that are out of style? A. Merchantable goods will bring better prices than those that are out of style; those that are fashionable more than those that are not.

Q. What do you mean by fashionable goods? A. Goods that are in style. Goods that are in style, and made up the season they are sold, will bring a better price than the goods which are carried over, and have become out of style.

Q. How, comparing New York with Chicago or the West, do goods out of style sell—near or any way near, to goods of that character in New York?

(Objected to. Objection sustained; to which ruling counsel for the plaintiff then and there excepted. 87

CYRUS M. BELLAMY—*Called on behalf of the plaintiff, being first duly sworn, was examined, in chief, by* Mr. Brackett, *and testified as follows:*

Mr. Smith. We object to his being examined, on the ground that he is an interested party in this suit.

(Objection overruled; to which ruling counsel for the defendant then and there excepted.

Q. State to the jury what is your name? A. Cyrus M. Bellamy.

Q. Where do you reside, and what is your age? A. I

88 shall be 30 on the 10th day of February; I reside at Cedar Falls.

Q. When did you leave home? A. I left on Wednesday night.

Q. For what purpose? A. To attend this suit.

Q. As a witness? A. Yes, sir.

Q. You left on what day? A. Wednesday night.

Q. What time did you get here? A. I got here on Saturday morning.

Q. I wish you now to state if you know Maria O. McLosky? A. I do.

Q. What relation, if any, is she to you? A. Sister.

Q. Where did you live in 1859 and in what business, if any, were you engaged? A. I was in the hardware trade in Port Washington, Wisconsin.

89 Q. What business transaction, if any, had you with Maria O. McLosky, during that year, in the way of money? A. There never were any except borrowing $1,000 of her. I think some time in January, 1859.

Q. State who delivered that $1,000 to you. A. Geo. P. Townsend.

Q. This gentleman here? A. Yes, sir.

Q. Where did you receive the money? A. I received a check I believe, on Ward & Bro's, of Rochester, New York.

Q. What security, if any, did you give your sister for that $1,000? A. My own individual note.

(Judgment record shown to witness.)

Q. Here is a description, in this judgment record, of a note; I wish you to look at it and tell the jury whether that is the note you gave? A. That is the note I gave; it
90 don't make any difference.

(Objected to. Objection sustained.)

Q. You say you gave her a note for $1,000? A. Yes, sir.

Q. Where was it given? A. It was given in Rochester.

Q. Who was it made payable to? A. Maria O. McLosky, I believe.

Q. What has become of that note? A. That note was given to me, I think, with the balance of orders, in New York, at the time we made a final settlement. 91

Q. When was that? Look at that receipt.

(Receipt on bill of sale shown to witness.)

A. March 16th, 1861. I think that is about the date—very nearly the date. That note was given up to me—all the notes and papers of the indebtedness that I owed Maria O. McLosky was given up to me at the time I signed this invoice.

Q. March 16th, 1861? A. Yes, sir.

Q. You say it was then given up to you? A. Yes, sir.

Q. Who gave it to you? A. I think Mr. Shuard did; I am not positive.

Q. That is this gentleman here? A. Yes, sir.

Q. What other, if any, business transactions did you, had you ever, with Mrs. McLosky, in the way of borrowing money from her? when was it, and what was the 92 amount? A. I went to New York and went in business with my father there.

Q. At what time was it you went in business with your father? A. I started from Port Washington on the 28th of July.

Q. What year? A. 1860.

Q. How soon after that did you go into business with your father in New York? A. The 8th of August, I think.

Q. Of 1860? A. Yes, sir.

Q. State to the jury whether you had any business transactions with Mrs. McLosky, in the way of money, and if so, what it was? A. When I went in with my father (he was very anxious I should go into business with him) my uncle was there at the time, and he was dissatisfied 93 some way with doing business, and he wished to divide the stock. I was very much indisposed to go in with him at all, but he was anxious I should, and I told him whatever money I received from Wisconsin I would put in and we would do the best we could. We did so.

Q. What money, if any, did you borrow from Mrs. McLosky? A. We borrowed $2,000; $1,000 at one time, and $1,000 afterwards.

Q. When was the first $1,000? A. I cannot remember the date.

Q. About what date? A. I could not state anything about that.

Q. About how soon after you went into business there? A. I think it was some time in October.

94 Q. What did the money consist of? A. The first was a Brook & Water bond.

Q. One bond of $1,000? A. Yes, sir.

Q. What interest did it bear? A. I think there were 6 per cent. coupons attached to it.

Q. What did you do next in the way of borrowing money? A. We did as well as we could with that, and in time became fast, and borrowed $1,000 more.

Q. What did that consist of? A. The same thing; another bond of $1,000.

Q. What did you give her as security for these $2,000? A. Nothing but our notes.

Q. What became of those notes? A. Those notes were delivered to me at the time I made the transfer of these goods.

95 Q. What, if anything, do you know about $5,000 having been loaned from Mrs. McLosky to your father? A. I do not know anything particular about that—nothing more than the family told to me.

Q. You did not know anything of your own knowledge? A. No, sir, I do not.

Q. Nothing but what the family told you? A. I do not.

Q. What were the terms of the dealing when you bought your father out? A. I agreed to pay the whole of the indebtedness of the concern; the indebtedness to my sister, and to the balance of the creditors.

Q. How much was the indebtedness to your sister at the time? A. There was $5,000 in the private account, and

the interest amounted to $520 odd; and then there was the $3,000 besides—between $8,000 and $9,000 altogether. 96

Q. What became of the $5,000 note of your father? A. It was turned over to me at the time I made the transfer of these goods.

Q. I wish to ask you now in reference to your having gone up to Iowa prior to the time you sold these goods to Mrs. McLosky; if you went up, state how long it was before that sale, how long you was up there, and how long after you returned back it was before you made the sale, and what influenced or induced you to make the sale? A. I got embarrassed in business and I went to Rochester to see Mr. Townsend, and I talked the matter over with him as to what I was to do. I had been drawing drafts upon him, upon the Citizen's Bank, New York, and he had written that he did not wish to accept any more drafts. I saw him there, and said that I would go on and try to straighten 97 up my business, and look out a location, and compromise with my creditors, and pay my indebtedness in some way.

Q. What did you next do? A. I started and went to Wisconsin, and I collected what was coming to me, as far as I could. I had made the acquaintance of Geo. W. Counts, in Cleveland, going up. He told me he was going into trade at McGregor's Landing, and I told him I thought I would myself. I went up towards ———— and from there I went to McGregor's Landing; and there I saw Counts again, and made arrangements to hire a store there. At that time I expected to take the same stock of goods to McGregor's Landing.

Q. That was previous to your having sold them? A. Yes, sir.

Q. *You went back to New York after that?* A. *No; I* went to Rochester first, and saw Mr. Townsend. He said that he had sent Mr. Shuard on to New York to attach the goods.

Q. That occurred whilst you were absent? A. Yes, sir. I asked him why he had done it, and I think he said he had received letters from our folks, that I had gone out West, and that I had made up my mind to stay there.

Q. Who did you meet when you got to New York? A. Mr. Shuard.

Q. What occurred between you and Mr. Shuard on your meeting there? A. I saw him there. He said that he had attached the goods; that he had put an execution into the hands of the sheriff, and entered up some papers. I do
99 not know what it was. I told him I thought I was able to go on with my business, and that I might take my stock of goods out West and get out of the difficulty. He then wanted me to make an inventory, and I did so. It was some over $10,000. My indebtedness to her was some $8,000. I went to work to satisfy him, and entered up the whole stock of goods.

Q. What was your supposition as to the quantity of goods, before you inventoried them? A. I do not know.

Q. It amounted to somewhere over $10,000. A. Yes, sir.

Q. What did you do with these goods? A. When I made the statement to him, he said I could not go on.

Q. What did he insist upon, if anything? A. He in-
100 sisted that I should turn the stock of goods to cover that indebtedness.

Q. Did you do that? A. I did.

Q. He delivered you up the notes. A. Yes, sir.

Q. Where was Mrs. McLosky at that time? A. In New York.

Q. What was said, if anything, about taking the goods, the price at which they should be taken; likewise whether or not they were worth par? A. I think the most of the goods were worth all they were turned out for.

Q. What were they all worth on the average—what per centage? A. I should not have been willing to give over 80 cents, taking the stock all through.

Q. 80 cents on the dollar, on this inventory? A. Yes, sir; that is what I speak about.

Q. Mrs. McLosky was there? Yes, sir.

101 Q. State to the jury, if you recollect, the whole amount of your indebtedness, including this $5,000 you had as-

sumed of your father's, to Mrs. McLosky at the time he turned the goods over to you? A. I had $1,000 on my own account, in 1859; and then my father and I had borrowed, in 1860, $2,000 of her, making $3,000 and interest, besides this $5,000.

Q. What in addition to that? A. That is all.

Q. That was all of your individual notes? A. You said exclusive of this $5,000.

Q. How much did this $5,000, with interest, and this $3,000, with interest, foot up? A. Well, she had some individual account at the store; but I think it must have amounted to at least $8,500, besides what she had taken out of the store, which I do not remember the amount of.

102

Q. Had you ever paid her any of this balance? A. Oh! a very small amount; it did not amount to anything.

Q. How much would it be that you would owe her, over and above all you had paid her? A. Well, at least $8,500.

Q. State to the jury whether not you were there in the store during the time these goods were being taken an inventory of? A. I presume that I was.

Q. Was it done in the day time, or how? A. In the day time.

Q. Were the creditors in and out during the time? A. There was one in, I believe, Mr. Budd.

Q. During the time you were taking an inventory, and packing? A. During the time we were inventorying. I did not assist in the packing of the goods at all.

Q. Who did? A. My brother and Mr. Shuard; Mr. Shuard took charge of it.

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Q. Tell us your brother's name? A. Geo. T. Bellamy.

Q. He assisted? A. Well, I don't know; I turned the goods over to Mr. Shuard, and I paid no further attention to it at all. The business was out of my control, and I took no further notice of it. I know my brother was there at the time.

Q. State if you gave Mr. Dolson, or anybody else, any directions about packing these goods in New York? A. No, sir.

Q. To anybody? A. I gave no directions at all; I gave my advice, not in regard to packing, but in regard to marking them.

105 Q. Why did you give your advice about the marking?

(Objected to. Objection sustained.)

Mr. Brackett. We now offer in evidence the power of attorney to Geo. T. Bellamy.

Admitted.

Q. Look at this paper, and say whether you are acquainted with the handwriting of Mrs. McLosky, and whether you have seen her write? A. That is my sister's signature.

Q. Tell the jury if you got that paper, and where you got it from? A. I got it from my brother, Geo. T. Bellamy.

Q. Where? A. I think the first time I saw it was in McGregor.

Q. What did you receive it for? A. What I received

106 it for, was to give it to Mr. Townsend, here.

Q. To bring down here to the trial? A. I did, sir.

By Mr. Smith. You got it from your brother, Geo. T. Bellamy, at Cedar Falls, to bring here to this trial? A. Yes, sir.

By Mr. Brackett. Q. You first saw it in McGregor, Iowa? A. Yes, sir.

Mr. Brackett here read the power of attorney, and then resumed his examination.

Q. That is your brother, is it? A. Yes, sir.

Q. How soon, after you made this sale on the 16th March, 1861, was it that you went to McGregor's Landing? A. I went almost immediately after that sale, I think.

Q. Tell the jury who went with you? A. I went alone.

Q. Where, after that sale, if you know, did Geo. T. Bellamy go? A. I think he went from Rochester, and from

107 there to McGregor.

Q. How soon did he get to McGregor after you got there? A. Now I come to think of it, I met him here in Chicago. I went with him from here to McGregor.

Q. You and he went together? A. Yes, sir. In the 108
first place, I did not leave for McGregor when I started.

Q. Where did you leave to go to when you started? A. To Chicago.

Q. You and he went to McGregor together? A. Yes, sir. I met my brother at the City Hotel, Chicago, and we went to McGregor together.

Q. How long did you stay in McGregor? A. I think I stayed there two days.

Q. Did you not stay more than that? A. I cannot swear positively. I might have been three days, but I think two days.

Q. Where did you go from there? A. I came to Chicago.

Q. How long were you here after that before you went back again? A. I think it was about three weeks. I might 109
be mistaken; it was either two or three weeks.

Q. During those two or three weeks you were absent from McGregor, and were here in Chicago, where was Geo. T. Bellamy? A. I left him at McGregor's Landing.

Q. What was he doing there? A. Why, he had a stock of goods there.

Q. Who was in possession of that stock of goods? A. He was.

Q. That is, the portion of goods that got up there? A. Yes, what goods went through.

Q. State to the jury whether or not you were ever in possession of these goods at McGregor's Landing? A. No, sir; I never was.

Q. Who was in possession of them? A. My brother.

Q. George? A. George T. Bellamy.

Q. Under this power of attorney? A. That is all the 110
possession he could have.

Q. What were you doing these three or four weeks; after you came up West, what were you doing or thinking of doing? A. I had formerly been in the hardware trade, in Port Hudson, Wisconsin. I had been up there and collected some $450 or $500 which was owing to me, and I was calculating to find some small place to settle.

Q. In what branch of business? A. Tinner; the tin business.

Q. You are a tinner by trade? A. Yes, sir.

Q. You had been in business at Port Washington? A.
111 Yes, sir; three or four years.

Q. How much had you made in business there bef re you went to New York? A. I think I must have made $4,000 or $5,000.

Q. How did you get that amount? A. By working; I do not know any other way.

Q. Had you any other means? A. No, sir.

Q. You had none given to you by anybody? A. No, sir; I worked as foreman in a shop in Milwaukee, I think from some time in January till next Spring.

Q. What acts did you do, if any, with reference to these goods at McGregor's Landing; and under what arrangements or circumstances did you touch them? A. Nothing, any more than that my brother came to me; I was about eight or ten years older than he was; he would occasion-
112 ally come to me for advice, and I would tell him what I would do under the circumstances.

Q. Having in view the interest of your sister? A. Yes, sir.

Q. Do you know a man named N. C. Turner? A. Yes, sir.

Q. He lives up there? A. I do not know whether he does now or not; he did formerly.

Q. State to the jury whether you ever told Mr. Turner, or ever called the goods yours to Mr. Turner; whether you ever stated to him that that stock of goods was yours? A. I never made any such statement. I might in conversation have said something that led him to believe that, but I never made any such statement—any intentional statement.

113 Q. State whether you ever had a conversation with this man Turner, in which you offered to sell $1,000 worth of clothing for $700 in cash? A. No, sir; never.

Q. Nothing of that kind ever occurred? A. No, sir; I have never seen that deposition.

Q. Do you know Mr. Burlinghame—H. W. Burlinghame? A. Yes, sir.

Q. Did you ever have any conversation with him in which you told him that the goods belonged to you, or in which the goods belonged to Geo. T. Bellamy; and the reason was because you yourself had a suit pending in Chicago, in court, and did not know how it would turn out? 114
A. No, sir; I never did.

Q. Did you ever have any such conversation with him? A. No, sir.

Q. Nothing of the kind? A. No, sir.

Q. It is stated here by some of these parties, that you controlled the goods up there, that you had them in your possession and controlled them; how is the fact? A. I had not the control of the goods, but I think that Burlinghame might have had some reasons to think so, possibly.

Q. For what reason? A. Because George asked me about selling his stock of goods, and I was acquainted with a man named Jack Spragg there, and I talked to him about endeavoring to influence Burlinghame to buy the goods; and he might have thought that I was in possession of them. 115

Q. You acted as and for your brother? A. Yes, sir.

Q. How is the fact of your remaining there? A. I did not remain; I was gone two or three weeks.

Q. During that time, George was in possession of the goods? A. Yes, sir; in entire, sole possession.

Q. When you went back, what did you do? A. I stayed there three or four days, and then went to St. Paul.

Q. How long were you absent from McGregor? A. I must have been at that time about a month.

Q. Where was George in the meantime? A. He was at McGregor.

Q. In charge of these goods? A. I suppose so.

Q. After you had been to St. Paul for about a month, and come back to McGregor, how long did you then remain? A. It might have been one or two weeks; I could not state the exact time. 116

Q. Where did you then go? A. I went to Lansing.

Q. In what State? A. Iowa.

Q. Did you return to McGregor again? A. I staid there at Lansing, I think, over a month or 6 weeks, I think.

Q. Then when you came back to McGregor, how long did you stay there again? A. I think I staid there until the stock was sold.

Q. You were not selling these goods when you were off at Lansing? A. I did not know anything about the goods.

Q. How long was it after you came back before your brother sold out the stock? A. It must have been about 2 months.

117 Q. This stock of goods was sold out, as I understand, for some lands, finally; tell the jury what you did in reference to effecting that sale, how you did it, and how you came to do it? A. In the first place, I made a mistake in regard to my going to Lansing. I borrowed $200 to go to Lansing, and bought some wheat there; I found it was selling at 30 to 40 cents a bushel. I gained $90 the first trip I made. When I told my brother what I had done, he thought it would be better than the clothing business, and after I came back he thought I had better buy wheat for him.

Q. What have you done, if anything, in regard to the selling of this stock of goods? A. I never did anything more than to this extent: there was a man came to me to see if my brother could sell out; by certain representations he thought he could find a customer.

118 Q. Who was he? A. His name was Jack Spragg.

Q. What was done? State whether this sale was finally effected? A. The sale was finally effected, of course.

Q. What part did you take in that sale, and why did you take any part, if any? A. I took part there at the request of my brother. I took the inventory—I think I did. I was there at the time.

Q. State whether you signed the bill of sale for him? A. I think I did.

Q. You signed his name to it? A. Yes, sir.

Q. By you? A. Yes.

Q. And helped to take the inventory? A. Yes, sir.

Q. Were you interested in any manner or shape in these goods? A. Not the least—I had nothing to gain and nothing to lose? 119

Q. About how much was this sale of goods to this man Burlinghame? A. About $4,500, I think.

Q. How long had the stock been up there, and what time was the sale? A. I think it was made about October 15th.

Q. That would be some 7 or 8 months after? A. Yes, sir.

Q. During that time was your brother selling out what stock he could, and keep open the store? A. Yes, sir, he bought and sold; he bought some goods in Milwaukee.

Q. Where did he replenish his stock? A. Milwaukee.

Q. To what extent? A. I think some $1,100 or $1,200.

Q. Who bought them? A. He did.

Q. Did, or not, your brother keep a banking account up there? A. Yes, sir, he did. 120

Q. Who did he deposit his money with arising from the sale of these goods? A. Lee & Kennard, bankers.

Q. In whose name was the banking account kept? A. Geo. T. Bellamy.

Q. In whose name was it deposited? A. It was deposited in his name.

Q. Did you ever deposit a dollar in any way. A. No, sir.

Q. Do you recollect how many boxes of goods there were altogether that were shipped in New York? A. I think it was 21 or 22, I am not certain.

Q. You have heard the description of the mark &c.? A. Yes, sir.

Q. How many bales were there? A. 2 bales.

Q. Look at that exhibit and invoice and tell the jury 121 who made that out, and at whose request it was made out? A. That is my brother's hand writing.

Q. Tell the jury what that comprises; whether it com-

prises the goods that were in the 8 boxes and 2 bales or not? A. I think those goods are in this list.

Q. This list comprises the goods in the 8 boxes and 2
122 bales here? A. Yes, sir.

Q. Something has been said by witnesses about the value of the goods in the 8 boxes and 2 bales; I wish to ask you whether you are acquainted with the clothing business and the value of these goods? A. Yes, sir, I think I am, enough to know the value of these goods.

Q. These are the goods bought by you in New York? A. Yes, sir.

Q. Tell the jury what was their value. A. Those goods in the eight boxes and two bales, were mostly piece goods, and, of course, more valuable, at that time, than made up clothes.

Q. What was the value, in all? A. I think somewhere about $4,000. I don't know the exact amount.

Q. At the sheriff's sale they only brought $2,000? A. I
123 don't know anything about that.

Q. You say, they were the best goods of the stock? A. They were.

Q. You say, their value was somewhere about $4,000; be as definite as you can? A. I don't remember, because I never charged my memory with it at all—I could not say exactly.

By S. Smith. Q. You cannot say to a cent, I suppose? A. Well, perhaps I might, to a dollar or so.

By Mr. Brackett. Q. Look at that footing on the back of that bill of items and tell us whose handwriting it is in? A. It is mine.

Q. What is the footing? A. $4,275.99.

(Objected to, as the inventory was not made by the witness, the footing alone being his.)

124 Q. Were the goods in the boxes? A. Yes, sir.

Q. Do you testify that these goods were in these boxes? A. Yes, sir, I do.

Q. Now tell me, whether or not, that figuring is yours? A. That is all mine.

Q. What is the figuring? It is the footing of each page; my own footing of this inventory.

Q. What does it amount to?

THE COURT. Unless he knows that the goods mentioned there were in the boxes, he cannot testify.

Q. The footing is by you, I understood? A. Entirely; the inventory was all done at my calling off. 125

By S. SMITH. Q. You did not come here, to Chicago, to make out the bill? A. No, sir.

Q. You compared the invoice, which was made in New York, with what arrived in McGregor, and what were short you assumed to be in these boxes and bales? A. Yes, sir.

Q. You assumed that what were short, were in the boxes here? A. Yes, sir.

By THE COURT. Q. I suppose you did not know, in New York, into what particular box each parcel of goods was put? A. No, sir, I did not.

Q. But you supposed that all the goods went into these twenty-one or twenty-two boxes, and two bales? Yes, sir.

By Mr. BRACKETT. Q. And what did not arrive there you presumed to be in these eight boxes and two bales here? A. Yes, sir. 126

THE COURT. It is presumption on presumption. I don't think it will do at all; besides that, it should have been a portion of the first part of the case.

CROSS-EXAMINED—By Mr. STORRS.

Q. What is your business now? A. I am buying grain.

Q. On commission? A. Yes, sir.

Q. Is anybody connected with you in that business? A. My brother.

Q. You buy for your brother? A. Yes, sir.

Q. How long have you been engaged in that business for your brother? A. Well, it must be near two years.

Q. Ever since the breaking up at McGregor? A. No, sir, not ever since that. I think I went to St. Paul a year ago last July.

Q. How old is your brother? A. He is either twenty-three or twenty-four, on the 5th day of January. 127

Q. Does it require any capital in the prosecution of that business? A. Yes, sir.

Q. Where does the capital come from? A. Mostly borrowed, I guess.

Q. Who from? A. Bankers at Cedar Rapids.

Q. You borrowed from hand to mouth, and from day to day, as you wanted it? A. I don't know, but whenever he draws a check he gets the money.

Q. Who does the buying? I do, pricipally.

Q. You travel about the country for the purpose of making these purchases? A. No, sir, I do not.

Q. Do you stay there? A. Yes, sir.

128 Q. Does your brother stay there too? A. Yes, sir.

Q: What does your business amount to during the year? A. Three hundred or four hundred bushels of wheat per day, and some oats—I cannot tell exactly.

Q. How long has your brother been West? A. He came West when he started at McGregor.

Q. Is Mr. Bellamy an uncle of yours? A. I believe he is.

Q. That is your best impression? A. I think so.

Q. You are advised that he is your uncle? A. He is called so.

Q. Do you know Mr. Van Winkle? A. Yes, sir.

Q. Who is he? Is he a relative of your father, or your uncle? A. I think he married some connection of John Bellamy's wife.

Q. Did not he marry John Bellamy's wife's sister? A.
129 I do not know.

Q. What is your impression? A. I have no impression.

Q. He is simply a relative, and the nearness, you do not know anything about? A. No, sir.

Q. What is Mr. Van Winkle's business? A. His father was in the shoe business.

Q. Did he inherit that business? A. No, sir.

Q. In what business is he now? A. I think he is in the clothing business.

Q. Does he still continue in that business? A. He was last time I saw him.

Q. When was that? A. It was in 1860, I think.

(Objected to. Objection over-ruled).

Q. Do you know of Mr. Van Winkle's bing in the cloth- 130
ing business in 1860, in New York? A. I know he was with my uncle part of the time.

Q. He was in business next door to you? A. Yes, sir, next store.

Q. Your stores were Nos. 14 and 16 Fourth avenue? A. Yes, sir.

Q. What was your number? A. Ours was 14; theirs was 16.

Q. Were they originally occupied by your father and John Bellamy, together? A. Yes, sir.

Q. Did they open into each other? No, sir.

Q. Were they not one store originally? A. Yes, sir.

Q. And a partition was put in? A. Yes, sir.

Q. You were engaged, you say, sometime in 1859, in the hardware business at Port Washington? A. Yes, sir. 132

Q. How long had you been in that business there? A. I think I went there in the Spring of 1856.

Q. Did you go there from Milwaukee? A. Yes, sir.

Q. Were you in business in your own name? A. Yes, sir.

Q. Have you done anything whatever in your own name since the pretended sale to Mrs. McLoskey? A. I do not think that is a fair question.

Q. Have you done anything in your name since March, 1861? A. No, sir, I have not.

Q. Did you go to New York to go into business with your father at his solicitation? A. Yes, sir.

Q. What business had he been in previously? A. Episcopal minister.

Q. Is he engaged in that business now? A. I do not 132
know.

Q. Did you put any capital in the business? A. I did.

Q. How much? A. I do not know. I used to receive drafts from Wisconsin, where I had done a credit business. I used to get drafts from $25 to $100 or up to $300—and as they came I put them in.

Q. You do not know how much you did put in? A. No, sir.

Q. How long did you continue in business there with him? A. From the 8th day of August to the 14th day of December, in the same year.

Q. What was the amount of goods on hand when you
133 went into business with him? A. Between $800 and $1,000 worth.

Q. Did you make any purchase for the purpose of filling up your stock? A. Yes, sir.

Q. To how large an amount? A. I think there is Jones, Fuller & Bond, $600 or $700.

Q. How large an amount was it in all? Was it $10,000? A. No, sir.

Q. Was it $5,000? A. I think it might have been.

Q. What time in December was it you put your father out? A. It was along somewhere in the fore part of December.

Q. About the 14th of December? A. I think it was.

Q. From that time to the 16th March, 1861, did you buy goods for the purpose of replenishing that stock? A. I do
134 not think I did.

Q. You do not think you bought any goods at all? A. I do not remember any.

Q. At the time you had completed your inventory, in March, 1861, how much were you indebted on account of goods purchased by yourself and father, or yourself alone? A. $,3000 or $4,000.

Q. Then you had not paid anything on account of your purchases? A. No, sir.

Q. Did you buy on time? A. Yes, sir.

Q. How much time? A. Six or eight months.

Q. Who were you indebted to? A. Jones, Fuller & Bond, $600 or $700; Griffiths, Prentice & Malcolm, I think, about $1,900; ——— ———, $400 or $500; and, I think, Mills, Hunt & Co., $300 or $400.

135 Q. Did you owe Pratt, of Buffalo, anything? A. Nothing but what I paid him.

Q. Did you at that time, March, 1861? A. I do not remember. I know that there was an old claim against us there that I paid.

Q. Did you owe him anything at that time? A. I do not remember now. I might have done. It was for hardware, and some other things.

Q. How much did you owe when you bought your father out, December 14th, 1861. A. I do not remember the 136
amount.

Q. Was it $4,000? A. Probably that amount, besides what I owed my sister.

Q. Did you not buy any goods of Griffiths, Prentice & Malcolm, after you had bought out your father? A. I think I did not.

Q. Did you have any conversation with Mr. Griffiths, in January, 1861, with relation to your pecuniary affairs? A. I think I did.

Q. Where was that conversation held? A. In their store I had one conversation.

Q. What was the occasion of the conversation; were you there applying for credit? A. No, sir.

Q. What was the occasion? A. I happened in there, and Mr. Griffiths wanted I should buy some goods, and I 137
told him that I did not wish to do it.

Q. What did you tell Mr. Griffith with regard to your pecuniary ability? A. Mr. Griffith asked me for some recommendations, as his father was going West.

Q. Did you state to Mr. Griffith, at that time, that your indebtedness at the time (January 26th, 1861) was $3,000, which you had paid, with the exception of $200, which was due Mr. Pratt, of Buffalo? Did you state that, or that in substance, to Mr. Chas. Griffiths, that the indebtedness of the concern of Thos. Bellamy & Son was $3,000 with the exception of $200, which was due Mr. Pratt, of Buffalo? A. No, I do not think I did.

Q. Did you get any goods, at this time, of this firm? A. No, sir, I did not.

Q. Did you in the Winter of 1861? A. No, sir. 138

Q. None after you purchased for yourself and father? A. No, sir.

Q. Did you state to Mr. Griffiths, at the same time you bought out your father, the stock amounted to $11,000? A. No, sir I did not.

Q. Did you state to them that you had $900 to pay at the bank, which you had endorsed, and that Thos. Bellamy & Son's indebtedness did not exceed $600, exclusive of what they owed to Griffiths, Prentice & Malcolm? A. No, sir, I do not remember that.

Q. Did you state that in substance? A. I say, I do not remember.

139 Q. You do not remember whether you did or did not say it, then? A. I do not remember any such conversation at all.

Q. Did you not state to Mr. Griffith, of the firm of Griffith, Prentice & Malcolm, that your father, on leaving the business, left in the business $5,000, which was the amount of the original capital? A. I stated that I assumed that indebtedness.

Q. Did you state that your father left that in the business, and that it was to remain in the business? A. No.

Q. Did you tell him, at that time, that the rent of your store was low? A. No, I do not think I did.

Q. Do I understand you to say, positively, that you made no application to this firm of Griffith, Prentice & Malcolm, or any member thereof, for the purchase of goods on credit,

140 for any quantity, during the months of December, 1860, and January and February, 1861? A. I did not, to my knowledge. No, sir.

Q. When did you first go to McGregor's Landing, Iowa? A. I think, some time in the month of February, 1861.

Q. From what place did you start? A. New York.

Q. Did you stop at Rochester on your way out? A. Yes, sir.

Q. You saw Mr. Townsend at Rochester? A. I did.

Q. How long did you remain at Rochester? A. I think I was there about two days—one or two days.

Q. How long did you design to stay away from New York when you started out? A. About a week. Just as soon as I could get out and back.

Q. How long did you remain? A. I was about three 141
weeks, I guess.

Q. What time in February did you start? A. I do not remember the date.

Q. Was it about the middle of February? A. If I remembered the date, I could tell you.

Q. Was it about that? A. It might have been, or it might have been about the 1st.

Q. You come by way of Cleveland? A. Yes, sir.

Q. Was it on the cars you saw Counts? A. Yes, sir.

Q. Had you seen him before? A. No, sir.

Q. You entered into conversation with him as to the propriety of establishing yourself in business at McGregor? A. Yes, sir.

Q. Did he recommend McGregor? A. Yes, sir.

Q. Did you go there on the strength of his recommend- 142
ation? A. Not entirely—partially.

Q. You never had been there before? A. No, sir,

Q. Did you go immediately to McGregor's Landing? A. No, sir.

Q. How long did you stop in Chicago? A. I do not think I staid more than one train.

Q. What point did you next stop at? A. Milwaukee.

Q. How long did you remain there? A. I left as soon as I could get away.

Q. Where did you go to from there? A. I went to Port Washington.

Q. How long did you remain there? A. About one and a half weeks.

Q. Where did you go from there? A. I went to McGregor's Landing. I found Mr. Counts there when I got 143
there. I expected to find him there. He said he was going to be there, that is all.

Q. How long did you remain at McGregor's Landing at that time? I could not have been there over three or four hours.

Q. During that time, did you engage a store at McGregor's Landing? A. No, sir.

Q. Did you arrange with him to engage one for you? A. Partially.

144 Q. Did you engage to send goods to him? A. Yes, sir.

Q. Did you arrange for him to receive the goods. A. Yes, sir.

Q. He agreed to rent you a store? A. He did.

Q. Was there any talk about the terms? A. I told him I wanted a low rent.

Q. And you would send a stock of goods directed to him immediately after this arrangement was perfected, and you returned? A. Yes, sir.

Q. You stopped at Rochester on your return? Yes, sir.

Q. And saw Mr. Townsend? A. I did.

Q. How long did you remain there? A. I do not know whether I remained there or not.

Q. When was it you got to Rochester? A. I do not remember exactly the date.

145 Q. What month? A. I think it was in February, or the 1st of March.

Q. You stayed there only over night? A. I do not remember whether I did the night or not.

Q. You went on from there to New York? A. I went on from there, surely.

Q. Did Mr. Townsend tell you that your goods hae been attached in New York? A. Yes, sir.

Q. That a suit had been commenced, and the goods attached? A. Yes, sir.

Q. Did he tell you they were attached, or taken on execution? A. I do not remember that he said that; he said that he had sent Shuard down to take charge of the good. About the commencement of the suit I did not know at that time.

146 Q. Did you not know that a suit had been commenced? A. I knew that papers had been got ready.

Q. Had you not been served? I think I had.

Q. Who served you? A. My brother, John Bellamy.

Q. Where is he? A. He is dead now.

Q. Was it before or after you bought your father out? A. It was about the same time.

Q. Can you state whether it was before or after? A. I think it was after. 147

Q. How long after? A. I think it might have been a week.

Q. A proposition had been made to you before you bought your father out? A. No, I do not think there had, previously.

Q. But just at the time, there was? A. Well, there were certain considerations about the commencement of this suit, which I can tell you if you want to know.

Q. Then about the time you paid your father off, arrangements were made to sue you on account of this $5,000 which your sister claimed, and the other loans which had been made by her to yourself and father together? A. Yes, sir.

Q. After you knew, then, that arrangements had been made to sue you, after papers had been served upon you, 148 you went to McGregor's Landing and engaged a store from Geo. W. Counts, and told him that goods would be sent on to him? A. I could not answer it.

Q. After arrangements had been made to sue you, after you had actually been sued by your sister, and the papers actually served upon you, then you went to McGregor's Landing and made arrangements for the renting of a store, and stated to Geo. W. Counts that you would send goods to his care? A. Yes, sir; those are the facts.

Q. Did you not oppose any defence to this suit commenced against you? A. No, sir.

Q. You were sued alone? A. Yes, sir.

Q. How long had you been back to New York from McGregor's Landing, before the 16th March, 1861? A. I have no remembrance of the dates. 149

Q. Was it a fortnight? A. I have no remembrance of the dates at all. It could not be a fortnight; it might have been three days, it could not have been over that.

Q. Mr. Shuard told you judgment had been entered, and

the execution was in the hands of the sheriff? A. Yes, sir.

Q. Was that when you first got there? A. No, sir, I hardly think it was, not in the first two or three days.

Q. How soon after? A. It might have been three days.

Q. You went directly to Mr. Shuard when you got to
150 New York? A. No, sir, I went directly home.

Q. How long was it before you saw Mr. Shuard? A. I think he called at the house, before I went to the store at all.

Q. On the same day? A. Yes, sir.

Q. And then you told him what Mr. Townsend had said? A. I presume that would be so.

Q. How long before the sale was made, was it Mr. Shuard told you that an execution was in the hands of the sheriff? A. Two or three days.

Q. Had you commenced making an inventory at the time you were told, by Mr. Shuard, that an execution was in the hands of the sheriff? A. Yes, I think I made it before.

Q. Did he tell you he had an execution in the hands of
151 the sheriff before or after this inventory? A. It must have been before. It must have been at the time I got in New York.

Q. How long were you taking this inventory? A. I think we took it in one day.

Q. Who assisted? A. My brother, George T. Bellamy, Mr. Shuard, and others.

Q. What part did you take? A. I think I put it down, as fast as they called it out.

Q. Did Mr. Shuard take any part? A. No, sir, he could not; he did not know the marks.

Court adjourned until ten o'clock, a. m., next day.

"CHICAGO, January 20th, 1864.

I hereby certify that the preceding is a faithful transcript of my notes of the testimony in this case, so far as it
152 extends.

GEORGE BUCKLEY,
Reporter."

15th JANUARY, 1864.

Before HON. JUSTICE GARY, and jury.

CYRUS M. BELLAMY—*Continued on the stand, is cross-examined by* E. A. STORRS, ESQ.:

Q. When you bought out your father, did you intend to continue in business in New York? A. I did.

Q. You perfectly well understood your pecuniary con- 153
dition at the time you bought out your father? A. I don't know that I did entirely.

Q. Did you know the amount of your indebtedness at the time you bought out your father? A. Yes, sir.

Q. You say you bought no goods—made no new debts after you bought your father out? A. I don't think I did. I might, but not to my knowledge.

Q. When did you change your mind about continuing in business in New York? A. I never changed my mind until I was closed out.

Q. What did you go West for? I went West to collect my own indebtedness.

Q. Was that the reason you went to McGregor's Landing? A. No, sir.

Q. You went there to secure a location? I did. 154

Q. Why? A. Because I think it was recommended to me in 1854 or 5. I have been acquainted with that place for ten years.

Q. What induced you to change your mind about continuing in business in New York? A. Well, the only thing in particular was, that my goods were levied on and I could not go on in business.

Q. Did you know the goods were levied on when you made arrangements with Mr. Counts? A. No, sir; I did not.

Q. Did Mrs. McLosky know you were going West when you started? A. I think she did.

Q. Did you ever tell her why you were going? A. No, I don't think so.

Q. Did you tell Mr. Townsend? A. He was at Roch- 155

ester, and he could not know when I started from New York.

Q. He knew you were going West? A. Yes, sir.

Q. Did he know how long you were to be gone? A. He did not.

Q. When did the bulk of the indebtedness or paper of Thomas Bellamy & Son, outside of the indebtedness to your sister, mature? A. I could not state.

Q. It was bought on six and eight months credit—the goods were? A. Yes, sir.

Q. When were they bought? A. I couldn't state.

Q. Were they bought soon after going in with your father? A. Within from three to four months.

156 Q. You went in with him in August? A. I went in with him in August.

Q. Mrs. McLosky is a widow lady, is she not? A. Yes, sir.

Q. You say she gave you two water bonds of the city of Brooklyn? A. Yes, sir.

Q. What other property had she? A. I don't know, sir.

Q. What was her husband's business? A. Nothing, that I know of.

Q. Was he reputed to be a man of wealth? A. Well, I think he left her some sixteen or seventeen thousand dollars. That is all I know in regard to it.

Q. How long after these goods were shipped to McGregor's Landing, was it before you reached McGregor? A. I came to Chicago, and was looking for ——

157 Q. How long was it? A. I can't state the time?

Q. Was it a week after the goods reached McGregor's Landing? A. I think that my brother and myself got there before the goods got there.

Q. Did your brother and you get there at the same time? A. We went there together.

Q. Did you get there together? A. Yes, sir.

Q. Did you find the goods at McGregor, or across the river. A. Across the river.

Q. You paid the freight on the goods, did you not? A. I did, myself.

Q. Yes, sir; of course you did. Did you advise Mr. Counts, about the time the goods were sent, that they had been sent? A. No, sir. Yes, I did; I think I did advise him.

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Q. You wrote him a letter? A. I think I did.

Q. Telling him the goods were sent? A. Yes, sir; I did.

Q. That letter was written about the time the goods were sent? A. Yes, sir.

Q. The business then commenced? A. Yes.

Q. What was the sign on your store? A. The New York Store.

Q. What business had your brother been engaged in before that time? A. Clothing.

Q. Where? A. I guess he had been in a dry goods store in Rochester, and from there he went with my father and uncle, and from there went to New York.

Q. You say you know Mr. Dolson? A. No, sir; I don't know such a man at all, as Dolson.

Q. Is not the name, Dolsen?

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The Court. James H. Dalsen.

Q. Do you know James H. Dalsen? A. I know Mr. Dalsen.

Q. What business was he engaged in in New York in the Spring of 1861? A. Collecting for me.

Q. How long had he been collecting for you? A. He commenced when we first went to New York.

Q. Did he continue with you to 16th March, 1861? A. I think he did. No, he did not.

Q. When did he quit? A. I don't remember the date.

Q. Was he present at the time that the inventory was taken? I don't think he was.

Q. Was he there when the goods were packed? A. I don't think he was.

Q. Did he assist in the packing of the goods? A. I don't think he did.

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Q. Did you give him directions to assist in packing those goods? A. I don't think I ever did.

Q. Mr. Dalsen testifies in his deposition that the packing

was done on the order of Cyrus M. Bellamy, and another person I do not know. I marked all the boxes, except three or four. Is that true? A. It never was done under my direction.

161 Q. Then that is not so? A. That is not so.

Q. Mr. Burlinghame, in his deposition, testifies that you gave to him a bill of sale of the goods at McGregor, signed with the name of George T. Bellamy, which he supposed was your name; that the goods were invoiced to him, and that the lands he was to let you have, were in the name of James Thompson. After the lapse of five days, he delivered to you a deed of the land, duly executed, and you gave him up the bond and signed the receipt, George T. Bellamy, by C. M. Bellamy. Is that so or no?

WITNESS. I will explain.

Q. Answer the question? A. No, sir; that is not so. I can state why.

Q. Did Mr. Burlinghame, as he testifies, "observing this, I asked an explanation, whereupon he said to me, George
162 T. Bellamy was his brother, and the reason was, that because he himself had a suit pending in court in Chicago, and he did not know how it would turn out." Is that true or not?

WITNESS. What is that?

COUNSEL. What I just read.

WITNESS. Make the same statement.

Q. Repeated. A. No, sir; it is not true.

Q. Had George T. Bellamy anything to do with the sale made to Burlinghame? A. Yes, sir; he had.

Q. What had he to do with it? A. He had the general control of it. I gave him my advice.

Q. Mr. Burlinghame testifies as follows: "George T. Bellamy had nothing to do with the sale, so far as I know of, except to help make the inventory. I do not know his
163 age when he came to McGregor." Is that true?

WITNESS. Is what true?

Q. Mr. Burlinghame testifies, that "George T. Bellamy had nothing to do with the sale, so far as I know of, except

to help make the inventory." Is that true? A. No, sir; that is not true.

Q. Do you know Mr. N. C. Turner? A. Yes, sir.

Q. How long have you known him? A. I think from the time I went to McGregor.

Q. How long had you known N. C. Turner at the time of the transfer to Burlinghame? A. He was not there at 125
the time.

Q. That is not the question. How long had you known him? A. I can't state the time.

Q. About how long? A. I can't state the time, for I can't remember.

Q. Mr. Turner swears that you told him you shipped the goods from New York city. Is that so?

WITNESS. Did I tell him what?

Q. Mr. Turner swears that you told him you shipped the goods from New York city. Is that so?

MR. S. SMITH. Do you understand it now?

WITNESS. What is it?

MR. STORRS. Did you tell Mr. Turner that you shipped the goods from New York city? A. No, sir; I did not.

Q. Was Turner in the employ of George W. Counts? 126
A. I think he was.

Q. Did you tell Turner there was not more than half of the goods there you expected, and that there was a large amount of them in Chicago—that they were stopped in Chicago? A. I don't remember in regard to that.

Q. Did you ever offer to sell Turner one thousand dollars worth of clothing for $700? A. No, sir.

Q. Don't be excited; keep calm. Did you say, at any time, that you wanted to go out of the clothing business into the hardware trade, to Mr. Turner? A. No, sir.

Q. Did you say to him, at any time, that was your former business?

WITNESS. Would you be willing I should give you a reason?

COUNSEL. No, sir. Did you tell him the hardware busi- 127

ness was your former business, and you liked it better than the clothing trade?

WITNESS. That was my former business.

Q. Did you tell him so? A. I can't remember.

Q. Turner testifies as follows: "I have heard Cyrus M. "Bellamy making a statement concerning the goods, call- "ing the goods his. I had conversations with him several "times about buying the stock, in which conversations he "always claimed the goods to be his." Is that true or not? A. *That is not true.*

Q. Is it in substance true? A. No, sir.

Q. Mr. Turner also testifies, "Their sign was 'New
164 "York Clothing Store;' Cyrus M. Bellamy controlled the "business and always called the goods his." Is that true? A. No, sir.

Q. Do you know Thomas Arnold, of McGregor? A. I do.

Q. When did you make his acquaintance? A. I don't remember at what time.

Q. Was it when you first went to McGregor? I don't think I did.

Q. What business is he engaged in?

WITNESS. Arnold?

COUNSEL. Yes, sir. A. He is a lawyer—a pettifogging collector.

Q. Did he ever undertake to collect anything out of you? A. No, sir.

Q. Mr. Arnold testifies as follows; "I know from the
165 "statement of Cyrus M. Bellamy, made to me, that he "controlled the goods then in store." Is that true or not? A. No, sir.

Q. Did you tell him you controlled the goods? A. Never.

Q. Did you ever tell him the goods were yours? A. No, sir.

Q. Did you ever tell him that in substance? A. No, sir.

Q. Or anything from which he could derive such an impression? A. No, sir.

Q. Did you ever tell Arnold the goods came from New York city? A. I never had a conversation with Arnold at all, in regard to the goods.

Q. Mr. Arnold testifies: "I never had any conversation
"with either of the Bellamys, as to who owned them; I 166
"only know he seemed to exercise control of the goods
"and said he was to have a large addition of goods, which
"were on the way." Is that true? A. No, sir, it is not.

Q. Did you ever speak of the goods, in his hearing, as belonging to you? A. No, sir.

Q. Did you ever tell him you were going to have a large addition of goods, which were on the way? A. No, sir, I did not.

Q. Did you ever say that in substance? A. No, sir.

Q. Were the sales in that McGregor store generally made for cash? A. I think they were.

Q. What would the sales average per day? A. I don't remember.

Q. Would they average fifty dollars? A. I could not tell. 167

Q. Give some idea? A. I did not keep a cash account. I could not tell anything about it. I could not tell anything of it.

Q. Was it five or fifty dollars? A. I could not tell anything about it.

Q. Where did you first go when you left McGregor? A. To Chicago.

Q. What was your business at Chicago? A. *I was looking for a location for going into the tin trade.*

Q. *You came here to find a location?* A. *Partly.*

Q. What was the balance? A. Nothing but, I think, that my brother sent here that he learned Mr. Shuard was here, and he wanted *to send word to him the goods were attached.*

Q. Was that the first you knew that these goods were 168
attached after you got to McGregor's Landing? A. Ye, sir.

Q. He wanted you to come here and advise Mr. Shuard? A. No, sir, only I was coming.

Q. Then you came here go into the tin business? A. Only to find a location.

Q. What did you do? Did you make inquiries? A. Yes, I did.

Q. Where did you look? A. I could not tell you.

Q. Did you go into the tin shops in town? A. No, sir,
169 I did not propose to go to work at the trade.

Q. Did you go to any places in town? A. I went to Dickerson's and looked at a set of tools I proposed to buy.

Q. Was that all you did? A. I did a good many other things?

Q. I suppose you did, but in regard to the tin business? A. That is about all.

Q. Did you see Shuard? A. I did.

Q. Did you give up the tin business? Did you abandon it? A. No, I did not.

Q. What else did you do? A. I went back home.

Q. You went where? A. To McGregor.

Q. That was your home? A. No, it was not, but I considered it so at the time.

Q. You saw Shuard? A. I did.

170 Q. When you got back home to McGregor what did you do about going into the tin business? A. I went North to St. Paul.

Q. Did you go there to go into the tin business? A. Looking for a location.

Q. What did you do there about it? A. I looked round.

Q. Among the tin shops, or what kind of shops? A. No, I looked round for a location.

Q. Where, at St. Paul? A. Yes, sir.

Q. What did you do about it? did you make any arrangements there or at some other place? A. No, sir.

Q. Did you make any negotiation? A. No.

Q. Did you make inquiries? A. No—yes, I made inquiries, of course.

Q. Who of? A. Hardware men.

171 Q. What ones? A. I cannot state their names; you know that very well.

Q. How long did you remain at St. Paul? A. I was there three weeks.

Q. Then where did you go to? A. I went from there to La Crosse.

Q. What for? A. Looking for a location.

Q. For what? A. Hardware trade.

Q. Tin business again? A. Yes, sir.

Q. What did you do then? A. I went to Appleton. 172

Q. What did you do about the tin business? A. Oh, I looked out for a location.

Q. That is away in Northern Wisconsin? A. Forty miles above Green Bay; if you know where Green Bay is you know where Appleton is.

Q. What did you do about the tin business at Appleton? A. Well, I saw a friend of mine there.

Q. Did you talk to him about the tin business? A. The first thing that led me to go there was—

COUNSEL. No matter about that; what did you do there?

WITNESS. I was going to tell you what caused me to go there.

COUNSEL. I don't want that. What did you do about the tin business at Appleton?

WITNESS. I did not go in— 173

COUNSEL. What did you do? A. I did not think it was a proper situation.

Q. What was the difficulty in the situation? A. I did not like the looks of the country.

Q. It was not a good tin country? A. No.

Q. Where did you go to next? A. I went back to McGregor, I think.

Q. What did you do at McGregor? A. Nothing, only buy grain for my brother. After I went back he employed me to buy wheat.

Q. Did you not buy wheat at St. Paul? A. No, sir.

Q. Did you not buy wheat at La Crosse? A. No, sir.

Q. Did you not buy wheat at Appleton? A. No, sir.

Q. Nor make inquiry in regard to it? A. No.

Q. Then you went back to McGregor. Under what ar- 174

rangement did you buy wheat for your brother? A. Well, he told me he would give me a cent a bushel, or if that was not enough, he would give me as much more as was right.

Q. Did you make the suggestion to him about buying the wheat? A. No, sir.

Q. Had you not thought of it before?

WITNESS. I thought of a good many things.

COUNSEL. Never mind that. Had you not thought of buying wheat before? A. I think I had.

Q. How long after you went to McGregor, after leaving the tin business, was it you went into the wheat business? A. I don't remember.

175 Q. How much has been made by the wheat business, or operations you have been into with your brother?

WITNESS. If you send for our books you can have the whole thing.

COUNSEL. That is pretty funny, but now give us the answer. A. I think he is behind.

Q. Are you behind? A. I have more than collected my salary all the while.

Q. Where did you go to next, from McGregor, after you had abandoned the tin business and gone into the wheat business? A. To Chicago.

Q. What for? A. For nothing.

Q. How long did you stay in that business here? A. Three months.

Q. Did you find it a good location for that business? A.

176 Well, I am dead broke—that's all I know of it.

Q. Did you not say something about Lansing in your direct examination? A. I did, sir.

Q. What about Lansing? What did you do there? A. I don't remember.

Q. Was it while your brother was in business at McGregor you went there? A. Yes, sir.

What did you go there for? A, I went there; a clerk of my brother's said he had an offer—

Q. What did you go there for?

WITNESS. That is what I was trying to state, if you will keep still.

COUNSEL. I shall not, sir. Did you go there to buy wheat? A. I did. 177

Q. Did you buy wheat? A. I did; yes.

Q. Who furnished the money? A. Messrs. Coy and Mason.

Q. Did your brother get the money from Coy and Mason? A. Yes, sir.

Q. You bought the wheat? A. Yes, sir.

Q. Did you apply for the money to Coy and Mason? A. No, sir.

Q. But you made the purchases? A. No, sir, I did not.

Q. What did you do? A. I went up with Mr. Plummer.

Q. Did you not buy the wheat? A. No, sir.

Q. When was the time you went to Lansing, Michigan? A. I did not go to Lansing, Michigan.

Q. When, then, did you go to Lansing, Iowa? A. I think it was in 1861. 178

Q. Was it the same time you went up with Mr. Plummer? A. Yes, sir.

Q. I think you said you did not buy the wheat? A. That I did not. Well, I state it now.

Q. What is the reason you told your brother you went to Lansing and made some money? A. I did not say so.

Q. What did you swear to? A. I can take and state the circumstances right through.

Q. What did you state about going to Lansing, and buying wheat, and making money? A. I stated we were informed there was a quantity of wheat up there.

Q. That is, you and your brother? A. Yes; my brother in particular. I went to my brother and told him in regard to what we could do up there, and he said, "I have no money to invest in that way." Then I went to Plummer, and he said, "I can go to Charley Coy and borrow two hundred dollars." Said I, "What is it going to cost?" He told me five dollars, and I said, "You go and borrow the money, and we will go and buy wheat." We went up 179

and bought the wheat, and there was some eighty dollars made on the wheat at that time. It was a transaction of our own at the time, entirely separate from my brother.

Q. Your brother had no interest in it? A. No; he did
180 not know of it.

Q. Did you ever go there more than once? A. Yes, I went after that.

Q. Did you go in your brother's interest? A. Yes, sir.

Q. How long were you gone? A. About two months. It might not have been as long as two months.

Q. It was a month or two months? A. Yes, sir.

Q. Do you know whether anything has been sent to Mrs. McLosky out of the avails of the goods sold at McGregor? A. I do not know.

Q. Would you not know of anything having been sent? A. No, I should not.

Q. Were you not advising your brother for the interest of your sister? A. Never, unless he asked me for my advice.

181 Q. You did advise him when he asked you? A. When he asked me I did.

Q. Did you ever learn that he sent any to your sister? A. I don't think I did.

Q. Do you know what was done with the deeds of the land? A. My brother holds it in his name.

Q. Do you know of his having sent the deeds to your sister? A. No, I do not.

Q. Do you know what he did with the notes and money received on the sale? A. He went into the wheat business and lost it.

Q. With you? A. No, sir.

How much of that money was there? A. The stock sold for $4,500. There was $1,600 in notes of hand.

Q. Was the money realized on the notes? A. I do not
182 know.

Q. Did I understand you to say that there was some creditor in the store in New York at the time you were making the inventory—one of your creditors? A. At the

time the inventory was being made? I don't remember in regard to that.

Q. Did you not state that, or did you state it? A. I can't state in regard to that. I know Mr. Budd was in there at the time they were being turned out.

Q. Did you state that he was in there at the time the inventory was being made? A. I don't remember. 183

Q. Who is Mr. Budd? A. He is of the firm of Southwell, Randolph & Budd.

Q. How long was he in the store? A. It might have been fifteen minutes, or five or six hours.

Q. Was anything said to him at that time? A. Yes; I had a talk with him.

Q. Was there anything done in the way of taking this inventory, except to talk to him? A. I think that the men were at work all the time making the inventory.

Q. Did you tell him the men were at work taking an inventory? A. No, sir; I did not tell him anything of the sort. He saw it plain enough.

Q. That is not the question. Did you tell him? A. I did not.

Q. What did he come in for? A. To collect a debt. 184

Q. Did he get it? A. Not much.

Q. Why did he not? A. Because I had not the money.

Q. When did you tell him you would pay him? A. I did not tell him I would pay him at all.

Q. How much was his claim? A. Between three and four hundred dollars, I think.

Q. When you got back from McGregor, in March, 1861, how much paper did Mrs. McLosky hold against you, individually?

WITNESS. At what time?

COUNSEL. After you got back from McGregor? A. She held between eight and nine thousand dollars.

Q. What was it? A. Fifty-two hundred and some odd dollars that I had assumed of my father's, then there was two thousand dollars in Brooklyn water bonds, and one 185 thousand dollars I borrowed in 1859, with interest.

Q. Had you given one note for $5,000? A. I had.

Q. When did you give it? A. I gave it when I assumed all the indebtedness.

Q. When did you give that note of $5,000. A. Sometime in March, I think.

Q. Was the note delivered to Mr. Townsend by you? A. No, sir.

Q. To whom was it delivered? A. I think Mr. Shuard.

Q. Where? A. New York.

Q. After you got back from McGregor? A. Yes, sir; I think so.

Q. I would like to mave you pretty tolerably positive about that? A. I cannot be very positive, because I have
186 not thought of it for three years.

Q. But you think it was after you got back from McGregor? A. I think so.

Q. Where is that note now? A. I could not have it.

Q. Have you ever seen it since? A. No, sir.

Q. Where is the thousand dollar note? A. The thousand dollar note was given up to me.

Q. When? A. At the time that we made the settlement.

Q. Where is it now? A. Destroyed.

Q. When did you destroy it? A. I destroyed it immediately I got it.

Q. Where is the two thousand dollar note? A. All those notes were destroyed. I took them all up.

Q. That is only two? A. Yes, sir.

187 Q. What did you realize on those Brooklyn bonds? what did you do with them? A. There was one of them disposed of in Water (?) street by my father.

Q. For how much? A. I don't remember now.

Q. How happens it you don't remember the amount? A. For the very reason that I can't remember the dates precisely.

COUNSEL. It is not a question of dates, but of amounts.

WITNESS. It was something less than one thousand dollars. I don't remember the figures.

Q. What was done with the other bond? A. The other, I think, was put into the Savings Bank, in New York, under the Cooper House.

Q. What was got for that? A. I know he got between 188
nine and ten thousand.

Q. Not for that bond? A. Nine or ten hundred.

Q. Did he sell it or put it up as collateral? A. Collateral.

A. Where is the bond now? A. I don't know.

E. A. STORRS, ESQ. We wish to show him this paper, and ask him if it is a copy of the letter he sent to Mr. Counts.

E. H. BRACKETT, ESQ. We object to it. If they have got any letter let them produce it.

THE COURT. I suppose it is fairly before the court that Mr. Counts is in Iowa, out of the jurisdiction of this court.

E. H. BRACKETT, ESQ. They could take the party's deposition; then, on taking the deposition, if he he refused to deliver up the original, a copy would be good, but there 189
must be some attempt made to bring in the best evidence. The original is the best evidence, and there is no relaxation of that rule at all, except as a matter of necessity, when the party cannot procure it. If they had taken the deposition of Mr. Counts, from all appearances, he would have made the letter a part of his deposition, or if he stood on his reserved rights, then a copy, doubtless, would be good evidence as being a copy of a paper in possession of a third party, out of the jurisdiction of the court, the party declining to give up the original. That is all the exception to the rule there is requiring parties to produce the original document itself.

THE COURT. My understanding of the rule is, that if a paper is out of the jurisdiction of the court you need not make an effort to get it at all, but you may produce a copy 190
as secondary evidence.

(Exception.)

Q. Will you look at that and say whether it is a copy of a letter you sent to George W. Counts?

* To which decision of the Court the Counsel for the Plaintiff defendant then and there excepted.

E. H. BRACKETT. There is another objection to that, if the court please. It is not a letter of ours at all, and it does not amount even to a declaration of a third party.

THE COURT. It may not be competent original evidence.

191 WITNESS. Yes, sir, I wrote it.

THE COURT. It is proper in the attack they are making on this witness.

E. A. STORRS, ESQ. read the following letter:

"NEW YORK, March 20, 1861.

"GEORGE W. COUNTS, ESQ'R,

"*Dear Sir:*—We ship to your care twenty-one boxes "goods, and two bales; also one safe. I wish you would "see if you can procure a store, or have the refusal of one, "before I come on. We do not wish to pay over five "hundred dollars per year. I shall, without doubt, be in "McGregor next week.

"Yours truly,

"C. M. BELLAMY."

WITNESS. Can you ask me the reason why I wrote that

192 way?

MR. STORRS. I can, but I don't think I shall.

MR. BRACKETT. I will do that.

MR. S. SMITH. You are not presented here as a reasoner. Your counsel will present the reasons.

RE-DIRECT EXAMINATION—BY E. H. BRACKETT.

Q. I wish you now to state—to explain to the jury—the reason why you wrote this letter.

MR. S. SMITH. One moment! We are not trying this case on the secret motives or reasons of the witness.

WITNESS. That is what I propose to do.

MR. S. SMITH. Wait a moment.

193 MR. BRACKETT. (To the court.) The question is the reason of writing the letter.

THE COURT. I think it is competent.

* (Exception.)

* See bottom page 73 — (Exception by defendant —)

WITNESS. The reason was that when I first went West, with the idea of transferring the stock in New York to the West—

Q. It was before you sold out? A. Yes, sir. I made Mr. Counts' acquaintance. I met him at Cleveland and spent a Sunday with him. I had considerable conversation with him about the dry goods and clothing trade, and 194
told him that it was my intention, or that I was looking for a location in the West, to go into business, and he wanted I should come to McGregor. I told him I did not know if I should go there or not, that I had to go Wisconsin, and that after I went there I would come to McGregor and see what I thought of the point. After I went to Wisconsin, I went to McGregor and saw Counts. He had at that time rented a store there.

Q. For you? A. No, sir, for himself. I told him that I was satisfied with the place, and that I would send the goods on West.

Q. You would send the goods West? A. Yes, sir, and consign them to his care.

Q. State whether that was before, or not, you knew of their being levied upon in New York? A. It was before. 195

Q. Well, this letter was written from New York, it seems, afterwards? A. Yes, sir. Probably I was to blame for writing that letter. I wrote it without the advice of anybody, at merely my own suggestion. I have become acquainted with Mr. Counts, and thought he was an honest man, and had made the arrangement. I wrote him only as a friendly letter.

Q. You had made arrangements to rent a store? A. I had previous to that.

Q. Did you say that it was not under the advice or direction of any one? A. No, sir, it was not under the advice of any one.

MR. S. SMITH. We admit it was not under the advice of any counsel.

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After a short recess

PETER HORR *was examined by* SIDNEY SMITH, ESQ.

Q. You reside in Chicago? A. I do.

Q. How long have you resided here? A. Five or six years.

Q. In what business? A. I am in the laundry business at the present time.

Q. What was your business in July, 1861? A. Wholesale clothing.

Q. How long experience have you had in the clothing business? Twenty-five years. I would say tailoring and clothing together.

197 Q. Do you remember being present at the appraisement of some goods in LaSalle street, when Mr. Turner, Mr. Garribrand and Mr. Marks were also present? A. I do.

Q. Did you also appraise the goods, in connection with others? A. I did.

Q. Was a written schedule of the appraisement made? A. Yes, sir.

Q. Will you look at that paper? A. That is the appraisal.

MR. BRACKETT. This question they have no right to introduce.

THE COURT. You began to examine Bellamy as to the value of these goods.

MR. BRACKETT. That is true—I did. I had forgotten that.

198 Q. Is that a memorandum of these goods? A. Yes, sir, and the prices put upon them.

Q. What did the goods amount to at your appraisal? A. *$1,756.86.*

Q. *Was that your judgment of the value at that time?* A. *It was.*

Q. That is dated 16th July? A. Yes, sir, that is the date of the paper.

Q. Is that the date of the appraisement? A. Yes, sir.

Q. Did Mr. Marks agree with you in this? A. Yes, sir.

Q. As to the valuation? A. Yes, sir.

And the said defendant, to further maintain the said issue on his part then called Peter Hoor as a witness, who being duly sworn testified as follows.

CROSS-EXAMINED—By E. H. Brackett, Esq.

Q. It was a wholesale estimate that you made it upon. Did you make the estimate with a view to selling it out altogether—the whole stock? A. The estimate was made upon what I could buy the goods of jobbers in New York and make them up, not at the price of a commission house, because I know that no retailer buys in that way. 199

Q. Were you acquainted with the value of goods in New York city? A. I was well acquainted with these goods.

Q. Acquainted with the value of that kind of goods? A. Not beyond our own stock.

Q. I will ask you what would such a stock as that be worth in Chicago, as compared with its worth in New York? A. I don't know as to that.

Q. Taking into consideration the kind of goods and the season of the year, what would they be worth in New York? A. I don't know anything of the clothing trade, when you come down to it, in New York. 200

CYRUS M. BELLAMY—*Continued on the stand, is further examined by* E. H. Brackett, Esq.

Q. What did I understand you—or did you mean to be understood on your cross-examination—in reference to these three notes that I understood to have been given, one of one thousand, one of two thousand, and one of five thousand dollars; what was done with these notes? what was done with the notes when the inventory was signed and delivered? A. After the whole arrangement was completed those notes were surrendered to me.

Q. All of them? A. Yes, sir.

Q. What did you do with them? A. Well, I don't know what I did with them. I kept them part of the time. 202

Q. When you stated, on your cross-examination, you first determined to go West, with reference to what business was it that you answered that you intended to go West?

WITNESS. Well, I don't understand the statement.

Q. Well, you stated in your cross-examination, if I recollect correctly, in answer to their question, that you first made up your mind to go West—

WITNESS. Yes.

Q (continued). After these goods had been levied upon; what was the fact as to that?

MR. S. SMITH. That is not what he said. He said that he made up his mind to go West before the goods were
203 levied on; but on your examination he stated, in one stage of your examination, that he designed to continue on in business in New York until he was closed out by this pretended execution.

These water or city bonds you spoke of—you spoke of one having been left as collateral on which you said between nine and ten hundred dollars was had; state whether that went to your benefit? A. Yes, sir, it did.

Q. Those six per cent. bonds—were they worth their face? what was their value? A. Well, they were worth more than one hundred cents on the dollar; I cannot tell the exact amount.

Q. You stated you paid the freight on these goods. I would ask you whether it was repaid?

WITNESS. At what time?

204 COUNSEL. At any time? I understood you to state you paid the freight on these goods that went to McGregor's Landing? A. Yes.

Q. Have you ever got it back? A. I have.

Q. You stated that you thought, on your cross-examination, that you gave the five thousand dollar note to Mr. Shuard, in New York. I will ask you whether you are positive of that? Might it not have been Mr. Townsend that you gave it to? A. Well, I can't positively remember the circumstances as to that, for the very reason I was very much embarrassed at the time in my trade, and I might have given it to Mr. Townsend.

Q. It was made when you bought your father out in December? A. Yes, sir.

WITNESS. The reason was that when I first went West, with the idea of transferring the stock in New York to the West—

Q. It was before you sold out? A. Yes, sir. I made Mr. Counts' acquaintance. I met him at Cleveland and spent a Sunday with him. I had considerable conversation with him about the dry goods and clothing trade, and 194
told him that it was my intention, or that I was looking for a location in the West, to go into business, and he wanted I should come to McGregor. I told him I did not know if I should go there or not, that I had to go Wisconsin, and that after I went there I would come to McGregor and see what I thought of the point. After I went to Wisconsin, I went to McGregor and saw Counts. He had at that time rented a store there.

Q. For you? A. No, sir, for himself. I told him that I was satisfied with the place, and that I would send the goods on West.

Q. You would send the goods West? A. Yes, sir, and consign them to his care.

Q. State whether that was before, or not, you knew of their being levied upon in New York? A. It was before. 195

Q. Well, this letter was written from New York, it seems, afterwards? A. Yes, sir. Probably I was to blame for writing that letter. I wrote it without the advice of anybody, at merely my own suggestion. I have become acquainted with Mr. Counts, and thought he was an honest man, and had made the arrangement. I wrote him only as a friendly letter.

Q. You had made arrangements to rent a store? A. I had previous to that.

Q. Did you say that it was not under the advice or direction of any one? A. No, sir, it was not under the advice of any one.

MR. S. SMITH. We admit it was not under the advice of any counsel.

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After a short recess.

PETER HORR *was examined by* SIDNEY SMITH, ESQ.

Q. You reside in Chicago? A. I do.

Q. How long have you resided here? A. Five or six years.

Q. In what business? A. I am in the laundry business at the present time.

Q. What was your business in July, 1861? A. Wholesale clothing.

Q. How long experience have you had in the clothing business? Twenty-five years. I would say tailoring and clothing together.

197 Q. Do you remember being present at the appraisement of some goods in LaSalle street, when Mr. Turner, Mr. Garribrand and Mr. Marks were also present? A. I do.

Q. Did you also appraise the goods, in connection with others? A. I did.

Q. Was a written schedule of the appraisement made? A. Yes, sir.

Q. Will you look at that paper? A. That is the appraisal.

MR. BRACKETT. This question they have no right to introduce.

THE COURT. You began to examine Bellamy as to the value of these goods.

MR. BRACKETT. That is true—I did. I had forgotten that.

198 Q. Is that a memorandum of these goods? A. Yes, sir, and the prices put upon them.

Q. What did the goods amount to at your appraisal? A. $1,756.86.

Q. Was that your judgment of the value at that time? A. It was.

Q. That is dated 16th July? A. Yes, sir, that is the date of the paper.

Q. Is that the date of the appraisement? A. Yes, sir.

Q. Did Mr. Marks agree with you in this? A. Yes, sir.

Q. As to the valuation? A. Yes, sir.

And the said Plaintiff further to maintain the said issue on his part, then further examined, said Cyrus M Bellamy who then testified as follows.

CROSS-EXAMINED—By E. H. Brackett, Esq.

Q. It was a wholesale estimate that you made it upon. Did you make the estimate with a view to selling it out altogether—the whole stock? A. The estimate was made upon what I could buy the goods of jobbers in New York and make them up, not at the price of a commission house, because I know that no retailer buys in that way. 199

Q. Were you acquainted with the value of goods in New York city? A. I was well acquainted with these goods.

Q. Acquainted with the value of that kind of goods? A. Not beyond our own stock.

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Q. It was made when you bought your father out in December? A. Yes, sir.

MR. S. SMITH. He stated it was given in March. 204

Q. When was the five thousand dollar note given? A. It was given in the Month of December, I think.

Q. Upon what occasion?

MR. S. SMITH. What is the date of it? Fix that while you are about it.

Q. Can you fix the date of it? A. I don't think I can.

Q. Upon what occasion was it given? What was it given for?

MR. S. SMITH. Given for five thousand dollars, I suppose.

Q. You then made the purchase, as I understand.

MR. S. SMITH. I object to these leading questions.

THE COURT. He can abandon that question and ask another.

WITNESS. I have been asked so many questions that I am— 205

MR. STORRS. Got a little mixed.

MR. S. SMITH. He asked you upon what occasion you gave that note, and what was it given for?

Q. What was it given for? A. The five thousand dollars was given to my father. That was the only interest he had in the business at all.

Q. Given to your father! You don't understand the question.

WITNESS. You asked me what that five thousand dollars was given for.

MR. TOWNSEND. If you made a five thousand dollar note, say who you made it to, and on what occasion?

MR. BRACKETT. You have stated you gave a one thousand dollar note, one of two thousand, and a five thousand dollar note. A. I did, yes.

Q. What was the five thousand note given for? What 206 did you get for it? A. It was given for the indebtedness of Thomas Bellamy.

Q. To whom? A. My own account.

Q. Upon what occasion was it given? What had you been doing when it was given? A. I don't know anything

about it. I went into business after Thomas Bellamy had been in for, it must have been, a number of months.

Q. When you bought Bellamy out, what did you pay for his interest?

207 WITNESS. What is that?

Q. When you bought your father out, what did you pay for his interest?

WITNESS. Who do you mean?

COUNSEL. Thomas Bellamy. A. Thomas; well, I agreed to put in with him whatever I got from my business in the West—to put it in.

Q. Well, when you commenced doing business for yourself, in December, and your father transferred his interest in the concern, what did you give him for his interest? A. I did not give him anything. Their idea was, after he divided with his brother, they went into business together. I said, "Father, what I can do with you I will, and what capital I can raise, I will put in the treasury."

Q. When your father went out what was done in refer-

208 ence to this note? A. I gave him $225.

Q. What else did you give him? A. Nothing.

What did you assume to do? A. Pay the debts of the concern.

Q. Including those of your sister? A. Yes, sir.

MR. BRACKETT. The gentleman read to him a long string of these depositions, and alluding only to a small portion of one-half a page, or a quarter of a page, asked him if everything there stated was true, and he answered, in general terms, it was not, which embraced the whole statement. Now I wish to ask him as to particular parts. I asked him about one interrogatory—the fourth answer in Burlinghame's deposition.

THE COURT. Well, get on.

Q. It is stated here, in the deposition of Turner; he says,

209 "He did control the stock of clothing, and Cyrus M. Bellamy exercised ownership over it, and he told me that he shipped them from New York city. I know the goods were coming some two or three weeks. Before they came

I was in the employ of a man named George W. Counts and he told me a man by the name of Bellamy"—

THE COURT. That is stricken out.

Q (continued). "I got acquainted with him, and found his name was Cyrus M. Bellamy. The goods were marked 'Geo. W. Counts, McGregor, Iowa.' These were the marks upon the boxes."

THE COURT. We cannot endure to have all these depo- 210
sitions read over again.

MR. BRACKETT. I am coming to it.

THE COURT. There must be a limit somewhere.

Q. I understand you to state that these statements that were read over to you, that you never made the statements in the manner here testified to?

WITNESS. What statements are those?

Mr. BRACKETT. With reference to your having a law suit in Chicago, is one? A. No, sir, I never made no such statement, at all.

Mr. S. SMITH. Since you left the stand, during the recess here, have you had some talk with Brackett, Townsend or Shuard? or have they said anything to you? A. Yes.

Mr. BRACKETT. What was said? A. I asked you down to take a drink. 211

Mr. BRACKETT. You did not ask me such a question.

WITNESS. I asked Mr. Townsend and Mr. Shuard.

MR. BRACKETT. What conversation have you had since you left the stand a few minutes ago, when the jury went out? A. That is all the conversation I had.

MR. S. SMITH. Did not Townsend say anything about the date of that five thousand dollar note? A. No, sir.

Q. Did not Mr. Shuard? A. No, sir.

Q. Did not Mr. Brackett? A. No, sir.

MR. BRACKETT. He had no talk with me.

W. D. SHUARD, *is examined by* GEORGE D. TOWNSEND, ESQ.

Q. When you were packing the goods, in New York, do 212

you know of any creditor of Bellamy & Co., coming to the store? A. A gentleman came in—Mr. Budd.

Q. Will you state whether these goods were packed with the doors and windows open, in their usual condition? A. It was open to the public.

Q. When the creditor came in, did he speak to you on the subject? A. He did.

Q. What took place there?

(Objected to for defendants).

Q. Did the party examine the boxes and the marks? A. He did and took copies of them himself.

Q. When you went to New York, at my direction, were any notes placed in your hands? A. There were.

213 Q. What? A. There were three notes against Cyrus M. Bellamy.

Q. What was the amount of the three? A. The aggregate was about $8,500.

Q. When the goods were turned out to you, what did you do with the notes? A. I delivered them to Cyrus Bellamy.

Q. All of them? A. Yes, sir.

Mr. S. Smith. What is the date of the five thousand dollar note? A. I can't tell you the date.

Mr. S. Smith exhibits record of the Supreme Court of the county of New York, judgment roll.

Mr. Brackett. We object to that.

Mr. S. Smith. What was the date of that note? A. I could not tell you, Mr. Smith.

214 The Court. By consent you may look at the record.

Mr. S. Smith. We have decided we would withdraw our objection to the record. We withdraw it.

Witness. The date of the $5,257 note was December 10th, 1860.

The Court. I suppose the record is going in as evidence, and that is as good as any body's statement.

Witness. In the judgment which I entered, the notes where described.

Mr. S. Smith. What is the amount of that judgment—it is stated in the record? A. $8,440.70.

And the Counsel for the Plaintiff then recalled W. D Shumard, who then testified as follows

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THE COURT. That is stricken out.

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Witness. In the judgment which I entered, the notes where described.

Mr. S. Smith. What is the amount of that judgment—it is stated in the record? A. $8,440.70.

Mr. S. Smith. What is the date of that judgment? A. March 6th, 1861.

Mr. Townsend. You say the amount was, $8,440.70? A. Yes, sir.

Mr. Townsend. Will you state, if in footing up that 215
judgment roll, there was any mistake? A. After I entered the judgment, I found I had made an error of calculation of $100; but I did not think it worth while to apply to the court to amend the record.

The Court. It should have been $8,540.70? A. Yes, sir.

Mr. Townsend. Was an execution actually issued on that judgment? Yes, sir, there was.

Mr. Townsend. Was it the same date? A. Yes, sir, the same day.

Mr. Townsend. Was it put into the hands of the sheriff? A. I put it into the hands of the sheriff, in his office.

Mr. Brackett. I will ask you whether you remained in the store during the time the inventory was going on? 316

Mr. S. Smith. That is going into the whole subject again.

Mr. Brackett. Never mind. There is another question. How could the notes be delivered to Bellamy when you got the judgment, as I understand the law does not require you to file the instruments on which you recover judgments.

Mr. S. Smith. By the law, as you understand it, in New York, the entry of a judgment merges the notes and closes it? A. Yes, sir.

Mr. S. Smith. Did you receipt the judgment and give him a receipt in full for all claims? A. Yes, sir.

Mr. S. Smith. According to the practice in New York, everything is done by the lawyer, in the office, until the judgment is entered? A. Yes, sir.

217

Mr. S. Smith. In this particular case, there was nothing on the record of the city and county of New York, until the 16th of March? A. No, sir.

MR. S. SMITH. Every thing is kept in your offie? A. Yes, sir.

GEORGE D. TOWNSEND, *Sworn—is examined by* E. H. BRACKETT, ESQ.

218

Q. I wish you would state to the jury, your connection and relationship with Mrs. McLosky, and your entire connection, with reference to this whole transaction?

MR. S. SMITH. I perfer counsel would put questions to the witness.

THE COURT. The counsel has a right to ask the witness questions, or to detail the circumstances in his own way.

MR. BRACKETT. (To witness). Commencing at the first.

WITNESS. Do you desire me to tell my relationship.

COUNSEL. Yes.

WITNESS. I am brother-in-law to the plaintiff. I reside in the city of Rochester, New York, and am a lawyer by profession.

Q. How long have you resided there? A. Twelve
219 years. I have had charge—almost entire charge, of the business affairs of my sister, Mrs. McLosky, from the day of her husband's death, in 1859. January 25th, he applied to his sister for the loan of $1,000. She consented to give it.

MR. S. SMITH. State nothing but what you know, of your own personal knowledge.

THE COURT. You say "he." Who do you mean?

WITNESS. Cyrus. She directed me to give him the money. I gave him the money, or a check. I gave him the thousand dollars and took his note—the first note in the judgment roll described. That note is payable one day after date, as I recollect it. He paid the first instalment of interest; at the end of six months he paid a half year's interest. That is the only payment he made on that note.
220 In August, 1859, Thomas Bellamy being about to go into the business, personally, with his brother John, proposed

The Counsel for the Plaintiff here read in evidence a copy of the judgement Record, offered as on Page 4 which is as follows - the defendant with drawing all objections to the same (See Copy annexed) and the Counsel for the Plaintiff then called George D Townsend as a witness, who being duly Sworn, testified as follows.

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to borrow of his daughter $5,000, which she consented to loan him. That $5,000 I furnished to him from her funds—to Mr. Thomas Bellamy. I had entire control of her property and of her funds. He gave his note, payable to his 221
daughter, or to the order of John Bellamy. I think it is endorsed by John. That note was surrendered to Thomas Bellamy, by me, at the time of his going out of the firm of Thomas Bellamy & Son, in December, 1861. No payment had been made upon it. When this money was loaned to Thomas, it was put into the business; and John Bellamy, who endorsed the note, said that that money should be repaid at all events—no matter what might happen.

Mr. S. Smith. John Bellamy's statement is not competent here.

The Court. The only object, I suppose, is to show whether the money was put in at the risk of the business.

Witness. Both said at the same time.

Mr. S. Smith. Said what? That the money should be paid to her? 222

Witness. At all events; and that he would protect her, and would see that she should be protected. If you desire, I will go on and tell how this came to be told.

Mr. S. Smith. Go on and tell your story.

Witness. Subsequently to December, 1860, Cyrus Bellamy took the entire business of T. Bellamy & Son into his own hands. I was present at that transaction, and conducted the proceedings, principally. At that time, about the 14th December, Thomas Bellamy transferred all of his interest in the assets of T. Bellamy & Son, and property of every name, nature and description, to Cyrus Bellamy, Cyrus assuming to pay all the debts and liabilities of T. Bellamy & Son; among which, was this liability to the plaintiff for $5,000, loaned previously, and also $2,000 which they had had in the meantime, and the cost and in- 223
terest on the note which Thomas Bellamy had given for $5,000—deducting from it an account which T. Bellamy & Son had against Mrs. McLosky. Maria surrendered that note to them, and took the note of Cyrus for the balance,

$5,257.44, I think. That is the second note. It is one of the notes mentioned in the judgment roll. I also took this note for the value of the two bonds, being the face of the two bonds, and interest from the time they had received them, amounting to $2,102.77, which is the third, or other note mentioned in the judgment roll. That transfer was made upon my own instance; at the time I insisted that it should be done for the protection of the creditors of T. Bellamy & Son.

224 Mr. S. Smith. What should be done?

Witness. That T. Bellamy & Son should make a transfer to Cyrus. Thomas Bellamy was indebted on his individual account, for which one or more suits had been commenced against him. I insisted, at that time, and claimed to them that they should surrender over to me, in December, these goods, for the prstection of Mrs. McLosky in some form, which they declined to do at the meeting. I then told them that I must have possession of the goods or I should take some proceedings right away, unless we could make some arrangement amicably all round in the matter. I was not willing the business should be closed up in any form by the creditors of Thomas Bellamy. Upon looking the thing all over, and consulting with other merchants in the neighborhood as to the probabilities of an-

225 increase of trade and the improvement of business, I consented to the proposition made by Cyrus, to have the father retire from the concern, and continue the business on his own responsibility. I told Cyrus, even then I did not think the business could be made to pay, and I must have some additional understanding or arrangement, before I could consent even to that—I must have the matter in such a shape that I could enforce these claims. Cyrus said he was willing to pay his sister, but at the same time he was anxious to pay the creditors of Thomas Bellamy. He thought he could get on and reduce the expenses, and live less extravagantly, and could pay all of it. I told him I did not believe it could be done. I did not believe the trade in that market was going to revive so that it could be

done—that I was willing he should go on if I could have as much security as possible on the subject. I proposed to him that he confess judgment, in case he went on. He said he did not like to do that, but he would do it when I saw that he could not carry the thing along. I told him that would not be satisfactory to me, for I did not know but he would change his mind. I presume he would do so, but some other circumstance might intervene to render it ineffectual. I told him the course I proposed to pursue, was to take his notes for all this liability, and then I should serve a summons upon him, and commence an action for the amount of these claims; so that, if I saw fit, whether he was willing or not, I could enter up judgment and take possession of the stocks. I did, after the papers were made out and all completed, and the transfer made. I did, soon after, cause to be served a summons in this action, and let it lie, to be used at my discretion. I furnished him some money of my own to pay immediate expenses, and went home. 226 227

Mr. S. Smith. What next? or is that all? He has got home.

Witness. Afterwards, and in the following Spring, I delivered these notes to Mr. Shuard, who was then my law partner, and sent him to New York to take possession of those goods and secure the debt; to get possession of them in any way satisfactory to the family, if he could; and if not, then to take possession of them any way, and sell them. I gave him those three notes, which were the notes described in the judgment roll, and he went to New York with them. After that George T. Bellamy came to Rochester for full instructions as to what he should do with the goods; what course to pursue. I gave him instructions and he went on. I made out the power of attorney which, I believe, has been introduced in evidence here. 228

Mr. Brackett. That is the power of attorney I read yesterday.

Witness. I made out that power of attorney and sent it to my sister, in New York, with directions what to do

with it, and return it to me, and I would forward it immediately.

MR. BRACKETT. What did you do with it? A. I sent it to George T. Bellamy. Those bonds which the Bellamy's
229 had were bonds which I had had in my possession down to the May previous. Mrs. McLosky had left them with me to that time. At that time those bonds having coupons, I delivered them to her the May previous, when she went to New York. They were six per cent. bonds of the city of Brooklyn—not water bonds—I think, and they were worth, with the interest then upon them, about 101½ cents on the dollar; they had interest from July previous.

MR. BRACKETT. I wish you would state as to her means? A. Her husband died giving her all his estate, without exception—I don't exactly remember the amount of it, but it was somewhere in the neighborhood of $16,000—$15,000 or $16,000. I took charge of it immediately after his death. I took the papers from his desk.

MR. S. SMITH. He has already stated he had charge of
230 her estates.

WITNESS. (To Mr. S. Smith.) I would say that I am willing to state all the circumstances right through.

MR. S. SMITH. You answer our questions. We will take care of our side of the case, or try to. You spoke of the old gentleman owing and the creditors crowding him. I suppose these debts were for stock purchased in the clothing business before Cyrus went into it.

The Court took recess until 2 o'clock, P. M.

The Court reconvened at 2 o'clock. P. M., Present, His Honor Justice GARY, and the Jury.

GEORGE D. TOWNSEND addressed the jury for the plaintiff.

231 E. A. STORRS, Esq., for defendant.

SIDNEY SMITH, for defendant.

E. H. BRACKETT, Esq., for plaintiff, closed.

And no other or further evidence being offered by either of the said parties, the Counsel for the defendant then moved the Court upon the evidence aforesaid to instruct the Jury as follows.

1st - That every grant or Conveyance of goods and Chattels by writing or otherwise had or made or continued to the intent or purpose to delay or prevent Creditors of their just and lawful debts or prevent Creditors from reaching the goods and Chattels in ~~Satisfaction~~ of their lawful debts is absolutely void

2 - The Jury are instructed as matter of law that they are to determine the fact as to the delivery and possession of the property in Controversy, and in determining that fact they may take into consideration all the transactions in New York, and also all the acts and declarations of the parties after the goods were shipped to McGregor and while they were there.

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3 - If the Jury believe from the evidence that the goods in Controversy were not absolutely delivered by Cyrus M Bellamy to the Plaintiff or her agent, and that She or her agent took actual possession of the same, then the Jury will find a verdict for the defendant

4 - If the Jury believe from the evidence that the arrangement of the transfer in question was entered into by the Plaintiff and Cyrus M Bellamy to enable him to remove the Goods from New York to Iowa to prevent

his creditors from reaching the same, then the Jury will find a verdict for the defendant

5- If the Jury believe from the evidence that the transfer of the Goods by Cyrus M Bellamy to the plaintiff was made under cover of the plaintiffs claim and judgement - to enable him to remove the goods from New York out of the reach of the Creditors of T. Bellamy & Son to prevent creditors reaching them, then the transfer is absolutely void, although the plaintiff may have had a bona fide debt and judgement against Cyrus M Bellamy and your verdict will be for the defendant.

6- The Jury are instructed as matter of law that if they believe from the evidence that the plaintiff had a bona fide debt against Cyrus M Bellamy and used it or allowed it to be used to Cover the goods in question to enable Cyrus M Bellamy to remove the goods from New York City to be used for his benefit in any way or to prevent his creditors from reaching the same in satisfaction of their debts, then the transfer is absolutely void and the Jury will find for the defendant

70

7- The Jury are instructed as matter of law. That if they believe from the evidence that Thomas Bellamy transferred his interest in the goods to Cyrus M Bellamy, that he was to pay the Company debts first, that the five thousand dollars had by Thomas Bellamy in 1859 of the plaintiff was the capital at the risk of the business, then the giving of

a note by Cyrus M Bellamy to Plaintiff's on December 10th 1860 for that amount and interest and allowing a suit to be instituted by the Plaintiff immediately upon that note against him without notice to his creditors, then such facts raise a strong presumption of fraud in the whole transaction

8- The Jury are instructed as matter of law, that it is not necessary that there should be positive proof of fraud, that fraud may be presumed from facts and circumstances proved in the case, and if the Jury believe from the evidence that the transfer was made with the intent to hinder or delay the creditors in the collection of their debts against J Bellamy & Son, or to enable Cyrus M Bellamy to appropriate the goods or any part of them to his use after the transfer to the injury of his creditors, then the transaction is void and the Jury will find for the defendant.

71

9- The Jury are instructed that if they believe from the evidence in this case that at the time, the Sale of the goods in controversy was made by Cyrus M Bellamy to the Plaintiff, the said Bellamy was involved in debt and that the Plaintiff or her Agent or Agents knew it, and that such Sale was made by the parties thereto for the purpose of enabling the said Bellamy to control said goods and have the benefits thereof, so that his Creditors could not reach the same; then the Sale is void, and the Plaintiff cannot recover -

10— The Jury are instructed that the intent of the parties to the sale of the goods in Controversy from Cyrus M. Bellamy to the plaintiff may be determined from the acts of the parties thereto both before and after such Sale; And if the Jury believe from the evidence in the case that the sum of $5000 was advanced by plaintiff to Thomas Bellamy for the purpose of being used by him as Capital at the risk of his business, that Thomas Bellamy and Cyrus M Bellamy during the time they were in business together Contracted debts which were owing by said firm at the time the Sale was made to the plaintiff, that she or her agents, knew of such indebtedness, that Cyrus M Bellamy a short time after his purchase from his father went West with the intention of finding a location to which he could transfer his business, and that the plaintiff, or her agent, knew that fact, that said Bellamy made arrangements for going into business at McGregors Landing Iowa. and then returned to New York, that immediately after his return the Sale was made, and upon his advice the goods were immediately after the Sale shipped to McGregors Landing to the care of George W. Counts, that Bellamy immediately afterwards wrote said Counts advising him that the Goods had been shipped to him and requesting him to rent a store, that said Bellamy shortly afterwards went to McGregor

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paid the freight on said goods, put them in the Store and exercised acts of ownership and control of them, that he finally negotiated and effected a sale of said stock of Goods and has since, with his brother, been using the avails thereof with the consent of the plaintiffs, and that she has never been paid over said avails, and has never demanded the same, then the Jury would have the right to consider such facts as badges of fraud in determining whether the purpose of the sale from Bellamy to the plaintiffs was to enable Bellamy to control the property and keep the same beyond the use of Creditors

73

11 If the Jury believe from the evidence in the case that the five thousand dollars loaned and advanced by Mr. McLosky to Thomas Bellamy was so advanced at the risk of his business, then the mere fact that Cyrus M Bellamy gave his note for that amount upon buying out his father does not of itself change the character of the original transaction

And the Court refused to give to the said Jury Nos 1. 4. 5. 6. 7. 8. 9 and 10 of said instructions - To which said refusal of the said Court to give the instructions last aforesaid the Counsel for the said defendant did then and there except

And the Court, at the instance of the plaintiffs, gave the following instructions to the said Jury - being instructions No 3

drawn by the plaintiff.

Although the Jury may believe from the evidence that the possession of the goods at McGregor Iowa was in Cyrus M Bellamy and not in the possession of George J Bellamy as the Agent of the plaintiff, yet the right of recovery for these goods being in Chicago is not necessarily thereby affected, and if the Jury believe from the evidence that the Sale in New York was a fair one, and the possession of the goods in Chicago, was in the plaintiff or her Agent, then in that case the plaintiff might recover for these goods in Chicago although she might not have been enabled to have recovered had she sued for a seizure of the goods at McGregor.

To the giving of said instructions of the plaintiff, the Counsel for the defendant did then and there except

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And the Court gave the following instructions to said Jury - being instructions No 4 drawn by the Court

The Court instructs the Jury that the main question in this Cause is as to the honesty and good faith of the alleged transfer of the goods in question from Cyrus M Bellamy to the plaintiff - If that Sale was in good faith, for an adequate consideration, for the purpose of paying a debt a debt which he owed to her, and if the possession of the goods was delivered to her or to Mr Shuard or George J Bellamy acting for her, by her authority, for her use,

then no subsequent acts or declarations of Cyrus W Bellamy as to the goods that arrived at McGregors Landing would affect her title or right to recover for the taking of the goods in question; and therefore, if the Jury believe from the evidence that the goods were so transferred as above mentioned, and if the Jury further believe from the evidence that the defendant took the goods in question under attachments against Cyrus W Bellamy after such transfer and delivery, then the plaintiff is entitled to recover, as damages in this action, the value of the goods at the time of such taking with interest from that time to the present at the rate of six per cent per annum.

75

But if on the contrary the find from the evidence that such transfer was not in good faith, for an adequate consideration as before mentioned, or that the possession was not delivered as before mentioned, and if the find from the Evidence that the defendant as Sheriff of Cook County Ills took the goods under writ of attachment against Cyrus W Bellamy, in favor of persons who were creditors of Cyrus W Bellamy upon debts existing at the time of such transfer, then the Plaintiff is not entitled to recover in this action

To the giving of which find last mentioned instructions by the Court, the Counsel for the defendant did then and there except

And the Court also gave to the Jury said

instructions Nos 2. 3 & 11. moved for by the Counsel for the defendant as aforesaid

And thereupon the said Jury after having considered the Case gave their Verdict against the defendant

Whereupon the Counsel for the defendant filed the following motion for New trial

Superior Court of Chicago

Maria O Mc Loaky
vs
Anthony L Keasing
} Action of Trespass

Motion for New trial by defendant.

The defendant by his Counsel come now here and moves the Court for a New trial for the following reasons.

76

1st The Court erred in giving instruction No 3 for the plaintiff to the Jury.

2d The Court erred in its instructions to the Jury (Number 4. for reference) in several particulars.

1

In stating "if the possession of the goods was delivered to xxxx Leo J. Bellamy acting for her, by her authority for her use" there being no proof in the Case upon which to base such instructions as to Leo J. Bellamy

2.

In Stating "if the Jury believe from the "evidence that the goods were transferred "to her as above mentioned and delivered "as above mentioned"

This includes Geo F Bellamy when there was no proof whatever of any pretended transfer to him, or authority to him until the goods arrived at McGregor.

3

In Stating "if the Jury further believe from "the evidence that the defendant took the "goods in question x x x x after such trans- "fer and delivery then the plaintiff is en- "titled to recover damages"

This includes the delivery to Geo F Bellamy, when in fact, there was no proof as to delivery to him prior to the taking

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3d The Court erred in refusing to give instructions to the Jury asked by the defendants Counsel Numbered 1. 4. 5. 6. 7. 8. 9. 10

4th Because the Court erred in admitting evidence on the part of the plaintiff which defendant objected to, and in ruling out evidence offered on the part of the defendant

5th Because the verdict is against law and evidence in the case

Chicago June 16th 1864.

E. L Smith
Atty for deft

But the Court overruled the said Motion and gave Judgement upon the said verdict of the said Jury against the defendant, to which the said defendant then and there excepted! And inasmuch as the matters aforesaid, do not appear of record, the Counsel for the defendant presents this bill of Exceptions, and prays that the same may be signed and sealed by the Court and made part of the record in said Cause; and it is done accordingly

Joseph E. Gary (Seal)
Judge of Superior Court
of Chicago

I have examined the foregoing bill of exceptions, and find the same to be correct and I hereby agree that the testimony in this Cause may not be copied with said bill of exceptions, but that the printed Copy of said testimony hereto annexed shall be referred to in said bill of exceptions as therein stated, And that said annexed printed Copy of said testimony shall be part of said bill of exceptions and made part of the record in said Cause

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I also agree that the bill of Sale (of the goods sued for in this action) from Cyrus H. Bellamy to the plaintiff, being the paper referred to in the testimony of W. D. Shuard and introduced in evidence by the plaintiff as on page 2 of said

bill of exceptions need not be copied into said bill of Exceptions, Except the receipt at the bottom and the footing, as already in said Bill of Exceptions, but that it shall be precluded at the hearing in this Cause before the Supreme Court of Illinois and may be referred to by the Counsel in the Agreement and shall be considered a part of said bill of exceptions and a part of the Record in this Cause

Edwd H Brackett
Atty for Plaintiffs

79

Supreme Court, County of New York
Cyrus W Bellamy Defendant

You are hereby summoned to answer the Complaint of Maria O. McCloskey plaintiff a Copy of which is hereto annexed, and to serve a Copy of your answer on the Subscriber at his Office in Rochester N.Y. within Twenty days after the service of this Summons, exclusive of the day of service or the plaintiff will take Judgement against you for Eight thousand two hundred Seventy Six & 21/100 dollars with interest on $1000 from July 25. 1859 interest on $2018.77 from Oct 15. 1860 and interest on $525.44 from the 10th day of December 1860 besides costs

Geo P. Townsend
Plffs Atty

80

Supreme Court
County of New York
Maria O. McCloskey
against
Cyrus W Bellamy

The plaintiff Maria O McCloskey complains of the defendant Cyrus W Bellamy and states on information and belief that the said defendant on the twenty fifth day of January 1859 at Rochester N.Y. made his promissory note in writing dated that day whereby by the name of C W Bellamy for value received he promised to pay to the plaintiff

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the sum of One thousand dollars in one day from the date thereof, with use and then and there delivered the said note to the plaintiff, who is now the lawful owner and holder of the same. That the said note became due before the Commencement of this action and remains wholly unpaid Except $35.00 paid 28th July 1860 being interest for six months

Second For a second and other cause of action this plaintiff on information and belief says that heretofore to wit on the 15th day of October 1860 at New York the said defendant made his other promissory note in writing whereby by the name of C M Bellamy for value received he promised to pay to the plaintiff two thousand & eighteen & 77/100 dollars in one day from the date thereof, with use and then and there delivered to the plaintiff, who is now the lawful owner and holder thereof that the said note remains wholly unpaid.

81

Third For a third and other cause of action the plaintiff says on information and belief that the defendant heretofore to wit, on the 10th day of December 1860 at New York made his other promissory note in writing dated that day whereby by the name of C M Bellamy for value received he promised to pay to the plaintiff the sum of five thousand two hundred and fifty seven & 44/100 dollars in one

day from the date thereof with use and then and there delivered the same to the plaintiff who is now the lawful owner and holder of the same. That before the Commencement of this action the said note became due and payable and remains wholly unpaid

Wherefore the plaintiff demands Judgement against the said defendant for Eight thousand two hundred seventy six & 21/100 dollars with interest on $1000 from July 25th 1859. interest on $2018.77 from Oct 15th 1860 and interest on $5257.44 from the 10th day of December 1860. besides costs

Leo P Townsend
Plffs Atty

8.2

City & County of New York. S.S.

Maria O. McLockey being duly sworn says she is plaintiff in the above Entitled action and that the foregoing Complaint is true of her own knowledge except as to those matters stated on information & belief and as to those matters she believes it to be true

M. O. McLockey

Sworn this 18 day of December 1860 before me

Wm H. Ribbet
Comr of Deeds
3 Av Cor 9 St

New York County - S.S.
City of New York - John A Bellamy being duly sworn says that on the 18th day of December 1860 at New York City he served the within summons and Complaint on Cyrus W Bellamy defendant therein named by delivering leaving with him personally Copies thereof and that he knew the person served to be the same person mentioned and described in the summons as defendant therein

Sworn before me this 22 day of January 1861
Wm A Ribbet
Com of Deeds
3 Ave Cor 9 St

John A Bellamy

Supreme Court
Maria O Mc Loskey
Agt.
Cyrus W Bellamy

Judgment
March 16 A D 1861.

The Summons with a Copy of the Complaint in this action having been personally served on Cyrus W Bellamy the defendant more than Twenty days previous to this date and no Copy of an answer to the Complaint having been served on the plaintiffs attorney as required by the summons.

Now on Motion of Lee P. Thomas plaintiffs Attorney it is hereby adjudged that the plaintiff Recover of the defendant the sum of eight thousand four hundred

forty dollars and seventy cents, with Twelve dollars and ten cents costs and disbursements amounting in the whole to Eight thousand four hundred fifty two 80/100 dollars

John Clancy
Clerk

State of New York
Monroe County

Geo P. Townsend being duly sworn says that he is Attorney for the plaintiff in the above entitled action and that no answer or demurrer has been received therein or appearance in any manner made by the defendant, and that more than twenty days have elapsed since the service of the summons and complaint on the defendant in this action

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Sworn to before me
this 12th day of March 1861
C. B. Hulett
Com. of Deeds

George P Townsend

Filed March 16. 1861.
3 H & 47 W

State of New York } ss. I, John Clancy, Clerk
City & County of New York } of the County of New York
& of the Supreme Court of Judicature of
the State of New York, do hereby certify that
the foregoing is a true and correct copy
of the Original Judgment Record now on
file in my Office in an Action in said Court

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wherein Maria O McCosky was plaintiff and Cyrus W Bellamy was defendant, and that I have compared the said Copy Record with the Original Record now on file in my Office and have found the same to be a correct transcript therefrom & of the whole of said Original Record.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court, at the City of New York in the County of New York this 31st day of August 1861.

John Clancy
Clerk

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

I Josiah Sutherland presiding Judge of the Supreme Court of the State of New York in the First Judicial District do hereby that the foregoing Attestation of John Clancy and the Seal thereto annexed and the foregoing Copy of Judgment Record are in due form of law and that the said John Clancy is the Clerk of the Supreme Court and the Officer in whose Custody the said Seal and the Original Judgments are required to be kept by the laws of said State and that the signature to said Attestation is genuine and that said Attestation is made by the proper Officer

85

L.S.

In testimony whereof I have hereunto set my hand and affixed the Seal of said

Court at the City of New York
this thirty first day of August
1861.
Js. Sutherland

Indorsed
Supreme Court
Mc O Mc Leaky
&
C M Bellamy
Exemplification of Judgment Roll.

Filed May 24. 1864
Thos. B Carter
Clerk

86

And afterwards to wit on the 26th day of May A.D. 1864 / being one of the days of the May term of said Court / the following Proceedings were had in this cause and entered of record to wit:

Maria A McLeskey
vs
Anthony C Kesling
} Motion

And now came said deft by Eb Smith his atty and moves the Court for Extension of time in which to file his appeal bond herein on appeal to the Supreme Court which is sustained & it is ordered by the Court that time to file appeal bond in this cause be and the same is hereby extended to said defendant from this day until the Monday next the 30th day of May inst

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And thereafter to wit on the 30th day of May A.D. 1864 came the said Defendant by his attys and filed in the office of the Clerk of the said Court his appeal Bond in said Cause, which appeal bond is in the words and figures following to wit

Know all men by these presents that We Anthony C. Hesing of the County of Cook and State of Illinois, Charles Griffith John Prentiss Hertimer & McCombs of the City and State of Newyork Henry W. King Somers L. Barrett of the County of Cook and State of Illinois are held and firmly bound unto Maria D. McCloskey of Rochester in the State of Newyork in the Penal sum of Three Thousand Dollars lawful 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 severally and firmly by these presents.

88

Witness our hands and seals this third day of May A.D. 1864.

The Condition of the above obligation is such, that whereas the said Maria D. McCloskey did on the twenty sixth day of march A.D. 1864 in the Superior Court of Chicago in and for the County of Cook and State aforesaid and of the January term thereof A.D. 1864 recover a judgement against the

above bounden Anthony C. Hessing for the sum of Six Thousand Four hundred Seventeen dollars and fifty one Cents besides Costs of Suit from which said judgement of the said Superior Court of Chicago the said Anthony C. Hessing has prayed for and obtained an Appeal to the Supreme Court of said State.

Now therefore if the said Anthony C Hessing shall duly prosecute his said Appeal with effect and moreover pay the Amount of the judgment Costs interest and damages rendered and to be rendered against him in Case the said judgment shall be affirmed in said Supreme Court then the above obligations to be void, otherwise to remain in full force and virtue

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Taken and entered into before me at my Chambers in Chicago this thirtieth day of May A.D. 1864

Anthony C. Hessing (Seal)
Charles Griffith (Seal)
Ira Prentiss (Seal)
H.S.M. Combs (Seal)
H.W. King (Seal)
S.L. Barrett (Seal)

Wm A Higgins
Judge

I.F. Beck witness
to C. Griffith
and Ira Prentiss

State of Illinois } S.S.
Cook County }

I. Thomas B. Carter, Clerk of the Superior Court of Chicago, within and for said County and State, do hereby certify the above and foregoing to be a true and correct transcript of the Summons, Coroners Return thereto, Security for Costs, Declaration, Pleas, Replication, Bill of Exceptions and Appeal Bond now on file in my Office, together with all proceedings and Judgment entered of record in said Court in a certain Suit therein, wherein Maria O. McCloskey was Plaintiff and Anthony C Hessing Defendant

90

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Chicago in said County this First day of April A D 1865.

Thomas B Carter
Clerk

State of Illinois } In Supreme Court.
Third Grand Division } To April Term 1865.

Anthony C. Hessing
Appellant
vs
Maria D. M. Sosky
Appellee

Appeal from the Superior Court of Chicago.

Assignment of Errors.

And now the said Anthony C. Hessing, Appellant comes and says, that in the record and proceedings aforesaid, there is manifest error in this, to wit:

1. The court erred in giving instruction No. 3 to the jury, asked by defendants' counsel.

2. The court erred in giving instruction No 4, (drawn by the court,) to the jury.

3. The court erred in refusing to give instruction No. 1, to the jury, asked by defendants' counsel.

4 The court erred in refusing to give instruction No. 4 to the jury, asked by defendants' counsel.

5. The court erred in refusing to give instruction No. 5. to the jury asked by defendants' counsel.

6. The court erred in refusing to give instruction No 6. to the jury asked by defendants' counsel.

7. The Court erred in refusing to give instruction No. 7 to the jury, asked by defendants' counsel.

8. The Court erred in refusing to give instruction No. 8 to the jury asked by Defendants' Counsel.

9. The Court erred in refusing to give instruction No. 9 to the jury asked by defendants Counsel.

10. The Court erred in refusing to give instruction No. 10, to the jury asked by Defendants' Counsel.

11. The Court erred in admitting evidence asked for on the part of the plaintiff.

12. The Court Erred in excluding and ruling out evidence asked for on the part of the defendant.

13. The Court erred in overruling and denying the motion for a new trial.

14. The verdict is against law and evidence.

By reason whereof the appellant prays that the said judgment may be reversed, &c.

By E. S. Smith
Attorney for Appellant.

152
preme Court.

C. Hessing
Appellant.
vs
McSorley
Appellee

ent of Errors.

10. 1865

and Clk

152 1413

Anthony C. Hessing

vs

M. O. McCloskey

Record

Filed Jul 10, 1865

L. Leland

Clk

$46.55