

No. 14304

# Supreme Court of Illinois

Nelson

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vs.

Smith

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 211

1404

Nelson

vs

Smith

Repaired

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1882.

CHARLES H. NELSON

vs.

SETH SMITH ET AL.

} Error to Warren.

PLAINTIFF'S POINTS AND AUTHORITIES.

I. The verdict of the jury was against the evidence.

II. The true construction of the Statute of Frauds requires that the sale must be "had and made or contrived of malice, fraud, collusion, or guile, with the intent (*actual*) to hinder and delay creditors."

Burrill on Assignments,  
Ewing v. Runkle, 20 Ill.  
Sackett et al. v. Mansfield, 26 Ill. 28.  
Myers v. Kinzie, *ibid.* 36.

III. A debtor may prefer one creditor over others by assignment, judgment, sale of property, or otherwise, even if made with the actual intent to hinder, delay, or defeat those not preferred.

Pickstock v. Lyster, 3 Maule & S. 371.  
Holbird v. Anderson, 5 T. R. 235.  
Hartshorn v. Eames, 31 Me. 98.  
Wilder v. Winne, 6 Cow. 284.  
Anderson v. Smith, 5 Blackf. 395.  
Kirtland v. Snow, 20 Conn. 23.

IV. The Circuit Court erred in admitting the execution in favor of Seymour & Co. v. Geo. W. Nelson, and the return thereon.

V. The instructions of the plaintiff to Eorp, when he hauled the boxes, were a part of the *res gesta*, and admissible.

Rigg v. Cook, 4 Gilman. 336.  
Thomas v. Leonard, 4 Scam. 558.  
1 Stark. Ev. 62.  
Proctor v. Lewistown, 25 Ill. 153.

W. C. GOUDY, for Plff. in Error.

216-130

Abelson & Smith vs  
Poff, Puff & Co.

Filed May 11, 1862  
L. Veand  
Clk.

20.

Be it remembered that heretofore to wit on  
the 30<sup>th</sup> day of January AD 1868 a suit of  
Trespass to personal property was commenced  
in the Circuit Court of Warren County Illinois.  
And thereupon a summons issued out of  
said Court which is in the words and  
figures following to wit.

State of Illinois  $\int$  The People of the State  
Warren County  $\int$  of Illinois

To the Coroner of Warren County  
Greeting. We Command you to Summon  
Seth Smith, Draper Babcock, Theodore  
Cornell, John Stewart & Harmon Straw, if  
to be found in your County, personally to be  
and appear before the Circuit Court of the  
County of Warren, on the first day of the next  
term thereof to be holden at the Court House  
in Mammouth, on the third Monday in the  
month of March next, to answer the Com-  
plaint of Charles H. Nelson of a plea of  
trespass to personal property to his damage,  
the sum of eight thousand dollars, as he  
says; and have you there and there this Writ,  
and make return thereon in what manner  
you execute the same.

Witness William Laferty, Clerk of our said  
Circuit Court, and the seal thereof at  
Mammouth, this 30<sup>th</sup> day of January in

the year of our Lord one thousand eight hun-  
dred and sixty  
(Seal). M<sup>rs</sup> Deputy Clerk

On the back of said summons was the  
following return

I did, on the 31<sup>st</sup> day of January 1860 serve  
this writ by reading the same to the within  
named persons, Seth Smith, Draper Babcock  
Theodore Cornell, John Stewart & Harmon  
Straw, dated this 1<sup>st</sup> day of February 1860.

J. C. Crawford, Coroner  
of Warren County

Filed Feb 1<sup>st</sup> 1860.

M<sup>rs</sup> Deputy Clerk.

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

Charles H. Nelson plaintiff in  
this cause by Halloway & Luce his attys.  
complains of Seth Smith, Draper Babcock  
Theodore Cornell, John Stewart and Harmon  
Straw defendants in this suit being in  
custody &c of trespass to personal property  
for that the said defendants on the sixteenth  
day of December in the year of our Lord one  
thousand eight hundred and fifty nine at  
and within the County of Warren did at a

brick store on the north side of the public square then occupied by said plaintiff at & within the City of Mammoth in said County and State of Illinois, with force and arms &c seized, took and carried away certain goods & merchandize of the said plaintiff described as follows to wit, two vests of the value of ten dollars, twelve pair of thick coats of the value of forty four dollars, Eleven pair of Kip coats of the value of thirty eight dollars & fifty cents, one pair of Kip coats of the value of four dollars, another pair of thick coats of the value of sixty three dollars, two pair grained coats of the value of nine dollars, one pair Calf coats of the value of five dollars, one pair of boys Calf coats of the value of three dollars, fourteen pair of youths coats of the value of twenty four dollars & fifty cents, six boys Caps (Cloth) of the value of six dollars, twelve mens. plush Caps of the value of eighteen dollars, sixteen boys plush Caps of the value of six dollars & forty cents, five boys plush Caps of the value of three dollars, twenty one mens plush Caps of the value of fifteen dollars & seventy five cents, twelve pounds of white & assorted cotton thread of the value of nine dollars, Eleven pounds of black linen

thread of the value of fourteen dollars &  
 ninety five cents, three pounds of white &  
 brown thread of the value of three dollars  
 & seventy five cents, thirty-one dozen Carltons  
 spool thread of the value of twelve dollars &  
 forty cents, forty dozen walkies spool thread  
 of the value of twenty dollars, three packages  
 of pins of the value of three dollars, seven  
 colored corsets of the value of seventeen  
 dollars & fifty cents, four white corsets of the  
 value of six dollars, one Brown Corset of  
 the value of two dollars, two great boxes  
 of bone buttons of the value of five dollars,  
 twelve pounds of black linen thread of the  
 value of fifteen dollars & sixty cents, two  
 pounds of thread of the value of two dollars  
 and fifty cents, nine pair buck gauntlets  
 of the value of thirteen dollars & fifty cents,  
 ten & three fourths yards of black Cassimere  
 of the value of sixteen dollars & thirty cents,  
 two yards farmers satin of the value of one  
 dollar & seventy cents, twenty seven & three  
 fourths yards of gray mixed satinets of the  
 value of seventeen dollars & fifty one cents,  
 six yards of Canada Gray cloth of the value  
 of six dollars, five & one fourth yards of  
 Kentucky Jeans of the value of three dollars  
 & fifteen cents, seventeen & one fourth yards

of farmers satin of the value of fourteen  
 dollars & sixty six cents, twenty & one half  
 yards of blue cloth of the value of seventy  
 one dollars & seventy five cents, sixty one  
 & one half yards of black cloth of the  
 value of one hundred & seventy two dollars  
 & fifty cents, fourteen & one fourth yard of brown  
 cloth of the value of fifty seven dollars,  
 twelve woollen comforters of the value of three  
 dollars and thirty seven cents, one yard of  
 table linen of the value of seventy five cents  
 sixteen & one fourth yards of nankin of the  
 value of four dollars & six cents, thirty & three  
 fourth yards of diaper of the value of five dollars  
 & twenty cents, two pieces of diaper of the  
 value of three dollars & fifty cents, seven yards  
 of Crash of the value of one dollar & five cents,  
 fourteen & one half yards of birds eye diaper  
 of the value of five dollars & eighty cents,  
 twenty & one eighth yards of trowled white  
 linen of the value of twelve dollars & fifty  
 seven cents, nine yards of bleached pillow  
 case cotton of the value of one dollar & thirteen  
 cents, thirty two yards of white corset jeans of  
 the value of four dollars & eighty cents, forty  
 three yards of the value of seven dollars &  
 seventeen cents, seven & one half yards of  
 nankin check of the value of one dollar &  
 eighty cents.

6.  
One Hundred & twenty six & three fourths yards of bleached sheeting of the value of twenty one dollars & twenty three cents, twenty five yards of bleached drills of the value of three dollars & seventy five cents, nine yards of bleached muslin of the value of one dollar & thirteen cents, sixty four & three fourths yards of bleached jeans of the value of nine dollars & seventy one cent.  
One pair white blankets of the value of four dollars & fifty cents, eight hoop skirts of the value of eight dollars & seventy five cents. One colored skirt of the value of two dollars four white skirts of the value of eight dollars. Sixteen hundred and twenty four & three fourths yards of calico of the value of two hundred and three dollars & thirteen cents, Eleven brooms of the value of one dollar & thirty seven cents, fourteen map sticks of the value of four dollars, five fair lady's kid boots of the value of ten dollars, two fair Lady's calf boots of the value of three dollars & fifty cents, Eleven pair mens waders gloves of the value of five dollars & fifty cents, nine traveling bags of the value of nine dollars & twenty cents, six mens silk plush caps of the value of fourteen dollars & fifty cents, sixteen fair yarn mitts of the value of six dollars & forty cents, two pair luffed

mitts of the value of two dollars, seven  
silk plush caps of the value of thirteen  
dollars & twenty five cents, three pair boy's  
yarn mitts of the value of seventy five cents  
four mens wool plush caps of the value of  
ten dollars, seven boy's cloth caps of the  
value of seven dollars, three mens velvet  
caps of the value of four dollars & fifty cents.  
One boy's silk plush cap of the value of one  
dollar, eight mens cotton plush caps of the  
value of four dollars, ten pair lady's Congress  
kid gaiters of the value of twenty dollars, eight  
mens silk plush caps of the value of seventeen  
dollars, two pair of lady's enamelled lace  
boots of the value of three dollars & thirty cents  
two pair lady's lace kid boots of the value  
of four dollars, four mens silk plush caps  
of the value of ten dollars & twenty five cents,  
One pair lady's sewed calf boots of the value  
of one dollar & seventy five cents, seven  
wipes wool hoods of the value of four dollars,  
five pair wipes enamelled lace boots of the  
value of five dollars, two reams letter paper  
of the value of four dollars, six pair coats  
of the value of three dollars & sixty cents, one  
pair wipes patent leather slips of the value  
of sixty cents, one & seven eighths reams of  
cap paper of the value of six dollars & fifty

6.  
six cents, two nutria fur caps of the value of four dollars, one felt Plush trimmed cap of the value of two dollars & fifty cents, two hundred and three & one fourth yards of Gingham of the value of forty nine dollars & eighty eight cents, four pair french Capimero pants of the value of twenty four dollars, three pair Cassimer pants of the value of sixteen dollars & fifty cents, one pair grey Capimero pants of the value of three dollars & fifty cents, one pair miller pants of the value of four dollars & fifty cents, seventeen & one fourth yards of gingham of the value of two dollars & fifty eight cents, thirty one assorted vests of the value of one hundred and eight dollars & fifty cents, six boys vests of the value of ten dollars & fifty cents, two cotton velvet vests of the value of five dollars, one boys coat of the value of four dollars, five pair mens Capimero pants of the value of thirty one dollars, two pair mixed pants of the value of fourteen dollars, six pair Capimero pants of the value of twenty one dollars & fifty cents, one pair middle sex pants of the value of six dollars, five pair Cassimer pants of the value of thirteen dollars & fifty cents, two pair millers Cassimer pants of the value

of nine dollars. One pair gray Capinere  
 pants of the value of four dollars & fifty  
 cents. Eight pair pants of the value of twenty  
 one dollars & fifty cents, three pair middlers  
 Capinere pants of the value of nineteen  
 dollars, two pair pants of the value of eight  
 dollars, one black Cassinere vest of the  
 value of two dollars, two pair woollen leggings  
 of the value of three dollars & fifty cents,  
 three Guernsey frocks of the value of three  
 dollars & seventy five cents, four hundred  
 and nineteen yards of gingham of the  
 value of Eighty nine dollars & ten cents, two  
 pair Gray Capinere pants, of the value of  
 seven dollars & fifty cents, eight yards of  
 damaged gingham of the value of one dollar.  
 One pair of doe skin pants of the value of  
 five dollars, two pair middlers Capinere  
 pants of the value of twelve dollars, fifteen  
 yards of gingham of the value of two dollars  
 & twenty five cents, one pair Capinere pants  
 of the value of six dollars & fifty cents, two  
 pair black doe-skin pants of the value of  
 ten dollars & fifty cents, one Drab Capinere  
 Coat of the value of eight dollars, One pair  
 Capinere pants of the value of two dollars &  
 fifty cents, One Capinere Coat of the value of  
 twelve dollars & fifty cents, thirty nine yards

of gingham of the value of nine dollars &  
 seventy five cents, one ~~black~~ capimere  
 coat of the value of eight dollars, One gold  
 mixed cassimere coat of the value of ten  
 dollars. One hard times coat of the value of  
 eight dollars & fifty cents, thirty six yards  
 of gingham of the value of nine dollars,  
 One capimere coat of the value of six dollars  
 & fifty cents, two pair capimere pants of the  
 value of eight dollars, four miss wool  
 shawls of the value of four dollars, one black  
 stella shawl of the value of seven dollars  
 & fifty cents, Seventeen pocket knives of  
 the value of five dollars & ninety five cents,  
 four stella shawls of the value of nineteen  
 dollars & fifty cents, three pocket knives  
 of the value of seventy five cents, One  
 black shawl of the value of six dollars &  
 fifty cents, One embossed table cloth of  
 the value of two dollars, sixteen pocket knives  
 of the value of eight dollars, four pen knives  
 of the value of one dollar & twenty cents, One  
 dozen wool knit shirts of the value of nine  
 dollars, five pruning knives of the value of  
 five dollars, nine pocket knives of the  
 value of two dollars & fifty five cents,  
 seventeen pair knit drawers of the value  
 of twelve dollars & seventy five cents,

five pocket knives of the value of two dollars  
& twenty five cents, nine knit wool shirts of  
the value of six dollars & seventy five cents.  
One capinew coat of the value of ten  
dollars. One blue beaver coat of the value  
of twelve dollars. - twelve silk velvet vests,  
of the value of sixty dollars. One capinew  
coat of the value of twelve dollars, two black  
doe skin coats of the value of twenty dollars  
two beaver coats of the value of eleven  
dollars, one capinew coat of the value of  
four dollars, two beaver coats of the value  
of ten dollars, One Petersham coat of the  
value of eleven dollars, One Rayland capinew  
coat of the value of twelve dollars. three  
traveling sacks glazed of the value of three  
dollars & seventy five cents. five traveling  
sacks of the value of four dollars & fifty cents.  
one black doe skin coat of the value of  
eleven dollars & fifty cents, four beaver  
coats of the value of seventeen dollars.  
One pair Rubber boots. of the value of four  
dollars. Eight buggy whips of the value of  
Eight dollars. Six team whips of the value  
of four dollars, & thirty five cent. two riding  
whips of the value of one dollar & fifty cents.  
four pair mens rubbers of the value of five  
dollars. two riding whips of the value of Eight  
cents. two pair gents congress gaiters of the

value of nine dollars. One pair mens. felt  
 over shoes of the value of two dollars, twelve  
 pair mips calf shoes of the value of nine  
 dollars, twenty eight pair womens. laced boots  
 of the value of twenty eight dollars & fifty cents,  
 four pair children's shoes of the value of one  
 dollar & fifty cents, six pair mips rubbers  
 of the value of four dollars & fifty cents,  
 Eleven pair mens felt overshoes of the value  
 of twenty two dollars, six pair mens thick  
 shoes of the value of seven dollars & eighty  
 cents, two pair womens rubber boots of the  
 value of five dollars, One pair mens. calf  
 shoes of the value of two dollars, four pair  
 mens calf boots of the value of fifteen  
 dollars, One pair hair lined boots of the  
 value of four dollars, ten boys cloth caps of  
 the value of ten dollars, two boy's plush  
 caps of the value of two dollars, sixteen mens  
 hats of the value of forty three dollars & fifty  
 cents, fifty one wool hats of the value of  
 eighty six dollars & twenty five cents, Eleven  
 mens felt hat (silk) of the value of forty  
 four dollars, Seventy four yards of oil cloth  
 of the value of fifty five dollars & fifty cents.  
 One hundred and twenty six yards of  
 ingrain wool carpet of the value of seventy  
 five dollars & sixty cents, two hundred and

forty five and one half yards of Extra fine  
 Carpet of the value of One Hundred and  
 eighty four dollars & thirteen cents. One  
 hundred and twenty two yards of Extra  
 wool Carpet of the value of sixty one  
 dollars. Seventy and one fourth yards  
 of wool Carpet of the value of twenty six  
 dollars & thirty five cents, twenty five yards  
 of three ply Carpet of the value of thirty one  
 dollar & twenty five cents, One hundred  
 and seventy one & one half yards of Ingrain  
 Carpet of the value of one hundred and  
 fifty one dollars & ninety five cents, sixty  
 seven and one half yards of linen Carpet  
 of the value of twenty seven dollars, three  
 hundred and eighteen and seven eights  
 yards of Berge De Laine of the value of Eighty  
 seven dollars & forty two cents, sixty seven  
 yards of morning De Laine of the value of  
 nineteen dollars & twenty five cents, Seven  
 and one eighth yard of Cashmere of the  
 value of one dollar & seventy eight cents,  
 four & one fourth yards of Berge De Laine of  
 the value of eighty five cents, Three and one  
 fourth yards of Paplin of the value of one  
 dollar & fourteen cents, nine and three fourth  
 yards of De Laine of the value of two dollars  
 & forty three cents, three shawls of the value of  
 nine dollars, One Pracha Shawl of the value

of seven dollars & fifty cents, One wool shawl  
of the value of five dollars, twenty two yards  
of Plaid Belaines of the value of six dollars  
& twenty seven cents, twelve yards of pink  
Borage of the value of six dollars, these &  
these found and being and disposed of  
them as their own use to wit at the County  
and state aforesaid, And other wrongs to the  
said plaintiff then and there did to the  
great damage of the said plaintiff, And  
against the peace and dignity of the same  
people of the state of Illinois, wherefore  
the said plaintiff says that he is injured  
and has sustained damage to the amount  
of eight thousand dollars and therefore he  
brings suit &c

Nalloway & Lucas :

Filed March 9<sup>th</sup> 1866.

Wm. L. Lofely ck

atly for Plff.



And the said defendants by E. J. Smith & Co  
 + Phils E Reed their attorneys come and  
 defend the force and injury when & c,  
 and say that they are not guilty of the said  
 supposed trespasses above laid to their charge  
 or any or either of them or any part thereof  
 in manner and form as the said plaintiff  
 hath above complained against them.

And of this the said defendants put them-  
 selves upon the Country & c.

E. J. Smith & Co +  
 Phils E Reed depts attys

And the Plff doth likewise by Goudy

And for a further plea in their behalf the  
 said defendants say that the said goods and  
 Chattels in the said declaration mentioned  
 were not nor were any of them at the said  
 time when & c or at any time from thence  
 hitherto nor are any of them the goods +  
 Chattels of the plaintiff in manner and  
 form as the said plaintiff hath in his  
 said declaration in that behalf alledged  
 And of this they the said defendants put  
 themselves upon the Country & c

E. J. Smith & Co +  
 Phils E Reed depts attys

And the Plff doth likewise by Goudy.

And for a further plea in their behalf to the said declaration the said defendants say Actio non, because they say that before the time of the committing of the supposed trespasses in the said declaration mentioned to wit on the sixteenth day of December ad 1857. One George W. Nelson by the consideration of his certain promissory note made and executed in the following words and figures to wit.

\$920.<sup>65</sup>/<sub>100</sub> New York October 15 1858  
 Eight Months after date I the subscriber of Monmouth County of Warren State of Ills promise to pay to the order of Arch<sup>d</sup> Young & Hoaglan Nine Hundred & Twenty <sup>65</sup>/<sub>100</sub> Dollars at the Warren County Bank Monmouth Ills value received with current rate of exchange on N.Y. No 1000 due June 15/18/54

Geo. W. Nelson.

became and was indebted to one Archibald Young, Dennis L Hoaglan & Thomas Rutherford under the firm name of Archibald Young & Hoaglan in the sum of Nine Hundred Twenty Dollars and sixty five cents principal and the further sum of thirty two dollars and ninety one cents interest accrued thereon, - for their damages which they had sustained by reason of the non-performance

by the said George W. Nelson of certain promises and undertakings then made by the said George W. Nelson to the said Archibald Young & Hoaglan which by the said Note in hand ready to be produced under order of this Court will more fully appear.

And the said defendants further say that the said Note and said damages remaining unpaid unsatisfied and in full force the said Archibald Young, Dennis S. Hoaglan and Thomas Rutherford on to-wit: the sixteenth day of December AD 1859 at the City of Monmouth sued out and prosecuted out of the Warren County Circuit Court, of the State of Illinois a certain writ of attachment directed to the Sheriff of said Warren County) by which said writ the said Sheriff was commanded to attach so much of the Estate, real or personal of the said George W. Nelson as should be of value sufficient to satisfy the said debt and costs according to the complaint of said Archibald Young, Dennis S. Hoaglan and Thomas Rutherford - filed the sixteenth day of December AD 1859 and such estate so attached to secure or so to provide that the same shall be liable to further proceedings thereupon according to Law

at a Circuit Court to be holden at the Court House in Monmouth within and for the County of Warren aforesaid on the third Monday of March A.D. 1868, so as to compel the said George W. Nelson defendant to appear and answer the complaint of the said Plaintiffs Archibald Young Dennis Hoaglan and Thomas Rutherford - and that the said Sheriff should have then and there the said writ which said writ afterwards and before the return day thereof and before the said time when etc - to wit on the same day and year aforesaid at Monmouth in said Warren County was delivered to the Sheriff of said Warren County to be executed according to law.

And the said Defendants further aver that at the time of the issuing of the aforesaid writ of attachment as aforesaid and the levying of the same as hereinafter mentioned the said defendant Seth Smith was the then acting Sheriff of said Warren County Illinois and as such was authorized and commanded to levy the said writ of attachment upon the property of the said George W. Nelson. And the said defendants further aver that afterwards and before the return day of said writ of attachment to wit on the

sixteenth day of December AD 1859 the said goods and merchandize in the said declarations mentioned being the property of the said George W. Nelson and in the possession of the said plaintiff to wit at the City of Monmouth in said Warren County and as the property of the said George W. Nelson being then and there liable to be seized and taken in virtue of said writ of attachment the said defendant Seth Smith as said Sheriff of said Warren County, and the said defendants, Draper Babcock Theodore Cornell, John Stewart and Harmon Straw as his assistants and deputies then and there levied the said writ of attachment upon the said goods and merchandize in the said declaration mentioned so as aforesaid in the possession of the plaintiff and which had before then been fraudulently sold to him by the said George W. Nelson to keep the same out of and beyond the reach of the Creditors of the said George W. Nelson and to hinder and delay the said Creditors of said George W. Nelson from the collection of their just demands against him and being so kept and possessed;

And the said defendant Seth Smith then acting Sheriff of said Warren County then and then having the said writ of attachment so issued and delivered to him as aforesaid and before the return day thereof did on to wit; the day and year in the said declaration mentioned by virtue of the said writ of attachment and by virtue of his said office as Sheriff of said Warren County seize and take the said goods and merchandize in the said declaration mentioned as he lawfully might which plaintiff hath above thereof complained against them the said defendants and this they are ready to verify. Wherefore they pray judgment of the said suit and their costs in their behalf expended.

E. S. Smith & Co. +  
Phil E. Reed.

Filed March 23<sup>rd</sup> 1868. Defts. Atty.  
Wm. Lafayette, Clk.

Charles A. Nelson }  
vs. }  
Seth Smith & al }

And the said Plaintiff for replication to the 3<sup>rd</sup> plea of the defendants aforesaid says preclusion non.

because he says that the said defendants at the said time when &c of their own wrong and without the cause in their said third plea alledged committed the said several trespasses in the said plea attempted to be justified in manner & form as the said Plaintiffs hath above complained against them the said defendants, And this the Plaintiff prays may be enquired of by the Country &c.  
 Goudy for Pff.

And the said defendant doth the like.  
 Smith & Reed vs City  
 Filed October 31<sup>st</sup> 1860.  
 W<sup>m</sup> Lafuz. clk.

Be it remembered that heretofore to wit. on the 23<sup>rd</sup> day of October A.D. 1860 the following order was entered on the records of our said Court which is as follows.

Charles N. Nelson	3	
vs.	3	Trespass to
Seth Smith, Draper Babcock	3	Personal Property
Theodore Cornell, John Stens	3	
& Harmon Straw.	3	

This day came the



State of Illinois  
 Warren County 3 Pleas before the  
 Honorable, Aaron Tyler Judge of the tenth  
 Judicial Circuit of the State of Illinois  
 At a Circuit Court begun and held at the  
 Court House in Mossumouth in the said  
 County of Warren and State of Illinois on  
 the fourth Monday in the Month of October  
 in the year of our Lord one thousand  
 eight hundred and sixty. It being the  
 22<sup>d</sup> dy of said Month.

Present Hon Aaron Tyler Judge  
 James H. Stewart State atty.  
 Seth Smith Sheriff  
 Wm Lafaty Clerk.

Charles H. Nelson

vs.

Seth Smith, Draper Babcock } Trespass to  
 Theodore Cornell John Stewart } personal.  
 & Harmon Straw } property.

And afterwards to wit  
 on the 15<sup>th</sup> day of November AD 1860, the  
 following order was entered upon the records  
 of our said Court which is as follows.

Charles H. Nelson

vs.

Seth Smith, Draper Babcock  
Theodore Cornell, John Stewart  
& Harmon Straw

Trespass to  
personal  
property,

This day came the parties by their attorneys and by their agreement it is ordered by the Court that this suit be continued generally until the next term of this court.

And afterwards to wit on the 26<sup>th</sup> day of March AD 1881 being at the regular March term of said Court the following order was entered upon the records of said Court which is as follows, to wit:

Charles H. Nelson

vs.

Seth Smith Draper Babcock  
Theodore Cornell John Stewart  
& Harmon Straw.

Trespass to  
personal  
property,

This day came the defendant by their attorney and enters his motion to suppress the deposition of George W. Nelson filed herein, and after hearing the same it is ordered by the Court that the motion be allowed and the said deposition suppressed.

And afterwards to wit on the 2<sup>d</sup> day of April  
AD 1861 being at the March Term of said  
Court the following order was entered upon  
the records of said Court which is as follows  
to wit,

Charles H. Nelson	vs.	Trespass to
Seth Smith, Draper Babcock		personal
Theodore Cornell, John Stewart		property.
& Harmon Straw.		

This day came the parties and their attorneys, and issue being joined for trial they put themselves upon the Country. Thereupon came a jury to wit Cherington Coats, John Larimer, Peter Rugh Jr. B. Charlton, Charles W. Littleton, John Pattison, William H. George, S. F. M. Wride, James Bower, John S. Norcraft Charles Stice & Henry H. Kelly who being elected tried and sworn to well and truly try the issue joined herein, and after hearing a part of the evidence and the time of adjournment having arrived, the jury were permitted to separate under the instructions of the Court and required to meet the Court at 8 1/2 o'clock to-morrow morning.

And afterwards to wit on the 4<sup>th</sup> day of April AD 1861 the following order was entered upon the records of said Court which is as fallows to wit,

Charles H. Nelson

vs

Seth Smith, Drafur Babcock  
Theodore Cornell, John Stewart  
& Harmon Straw,

This day again came the parties and their attorneys, and also came the jury empannelled herein heretofore and after hearing the conclusion of the argument of Counsel and receiving the instructions of the Court retired in charge of an officer to consider of their verdict And returned into Court and upon their oaths do say "We the Jury find for the defendants. Thereupon came the plaintiff by his attorney and enters his motion for a new trial and in arrest of Judgment.

And afterwards to wit on the 12<sup>th</sup> day of April AD 1861 the following order was entered upon the records of said Court which is as fallows, to wit,

Charles H. Nelson  
 vs  
 Seth Smith, Draper Babcock  
 Theodore Cornell, John Stewart  
 & Harmon Straw

Trespass  
 to  
 personal  
 property.

This day again this  
 Cause coming on to a hearing on the  
 Plaintiffs motion for a new trial and in  
 arrest of Judgment herein, after hearing the  
 same it is ordered by the Court that the  
 motion be overruled, therefore it is con-  
 sidered by the Court that the said defend-  
 ants have and recover of and from the  
 said Plaintiff their costs by them in this  
 suit laid out and expended and  
 may have execution therefor. And  
 leave is given the said Plaintiff to  
 file Bill of Exceptions in thirty days  
 from this date.

1  
State of Illinois } March Term A.D. 1861 of the  
County of Warren } Circuit Court of said County.

Charles H. Nelson

vs

Sub Smith

Draper Babcock

Theodore Cornell &

John Stewart &

Harmon Straw

Trespass on the case  
on promises.

Be it remembered that on the trial of this cause Christopher W. Lucas a witness of Plaintiff testified, that he knew Plaintiff and defendants - that defendants took the goods of the Plaintiff in the fall or winter of A.D. 1859 he thought in December of that year, that they took a lot of dry goods, that he saw them - that he partly made a memorandum of them that they took coats, hats, caps, histories, calicos, gingham and other articles, that he could not tell how many of each kind they took, that they took some of almost every article in the store, that the Plaintiff was retailing goods on the north side of the public square in the City of Massena in a brick building and that they took his goods from that building.

That Charles L. Arnsby another witness of the plaintiff testified on his examination in chief. That he knew the parties to this suit that he knew nothing of the taking only from report. That he was called to take an inventory of the goods both parties were present and assisted. That he was called to appraise the goods taken by the defendants of the plaintiff. The inventory was commenced January 11 1860. The inventory of the goods was commenced January 11. 1860. He made the inventory and testified that it was the one that he held in his hand and that it commenced at a certain mark then designated by him made as the following is \$625.

The goods were in the possession of Seth Smith, that he had had twelve years experience in selling goods and that he was a judge of goods and of the prices thereof and that we put them down at what we thought right and that he put them down on the inventory and that they were as particular as if they were buying for themselves.

And on cross examination, that he called the goods off himself, that they all looked at them, that they did not understand the Cost mark and put them down at what they thought they were worth, that the Sheriff had them in his possession and that the conversation was general and that the Sheriff participated, that a part of the goods were inventoried at the store and part at Billings new building, that he measured part of the cloth and Mrs Mark part, that they put down the number of yards that they measured and marked small files of goods then appraised them and put them on the invoice, that he took the inventory from his own knowledge and the statements of the others with him and that they were two or three days at it, that they were one afternoon in the store then went to Billings building.

Lucas and Dent might have been in and out. Smith helped a little in rolling the carpet and unlocked the door to let us in the store and that he thought the boxes were opened by one of them or Mr Smith, and that Mark and either Dent or Lucas assisted him in making out the inventory and that no one else did.

That William Dent a witness of plaintiff on his examination in chief testified that he was acquainted with the parties to the suit that the plaintiff had goods taken in December AD 1859, that he knew of but one taking, they were taken. They were taken by Mr Smith Draper Babcock and J. Cornell. Stewart was assisting - that the plaintiff was present and that they were taken against his will when protested against it in strong terms that there was an inventory taken by Babcock and Cornell and and by another and himself. And that another was taken afterwards by Arnsby, Mark and myself sometime in January AD 1860 taken in Billings Building in Warrmouth. They were taken from Claycomb brick building on the north side of the Public square in Warrmouth. That it was occupied

by plaintiff for selling goods by plaintiff  
That he assisted in taking the inventory  
and Amshy did the writing. That he saw  
the most of the goods and reported cor-  
rectly to Amshy in every instance. That  
this is the invoice of which Amshy  
testified in this case commencing at  
a mark made thus \$6<sup>25</sup>. and is I  
think the invoice made by Amshy,  
Mark and myself of the goods that were  
taken by defendants from the plaintiff  
Some of the articles are familiar to me.  
That the goods they took were the most saleable  
in the store. I don't recollect seeing  
Stewart there. And on cross examination  
That he recollects a great many of  
the goods. That he could recollect them  
by seeing the inventory. That they worked  
together when they could. That we valued  
them at the cash retail price, at wholesale  
they would be worth twenty five per cent  
less. That he remembered measuring some  
Carpet and carpet different kinds diff-  
erent prices.

Hiram C. Mark a witness of plaintiff on  
his examination in chief testified that  
he was acquainted with the parties except  
Stewart and had been for some years.

That he assisted in making an invoice of the goods. - the invoice of them is in Arnsley's hand writing, Arnsley did the writing in making the inventory, Dent, Arnsley and myself made the inventory. - they all worked at it assorted the goods and put a value on them, they aimed to measure right and put a fair value on them. Dent and he marked the price and gave it to Arnsley. They marked correctly Smith was present. - He was among us all the time. Nelson spoke to me to go. Have known plaintiff two years. - He was selling goods in Claycomb's block, a bricks building on the north side of the public square in Monmouth, Illinois. Don't know where the goods came from. They appraised them at what they would bring at retail for cash at wholesale they would be twenty five per cent less.

The plaintiff then gave in evidence to the jury the invoice testified of by said Arnsley commencing at the point designated by him and excepting the carryings out and fractings up.

Nelson Dent a witness of the defendant testified on his examination in chief as follows, to wit, I know.

3

George W Nelson in December of A.D. 1809. he was selling goods. He was the owner of the goods previous to plaintiff until October, was in his employ. I think I was present when the sale to plaintiff was made. No inventory was made. I did not hear the Contract made, - latter part of October George W. Nelson, Lucas and myself were present. George W Nelson had been here part of the time and part of the time in New York. I judged the goods bought by plaintiff would invoice about six or seven thousand dollars. These were less than half plaintiff had been selling two months; trade was very dull not \$100 per day - dont remember of sale to W order. - goods were shipped to W. Nelson. George W. Nelson went to New York after the sale - think he went the next day; the sale was I think in the morning. Think he went on the morning train. I guess he bought goods on time. I knew he was indebted to New York Houses for goods at that time George W Nelson told me he had sold out the stock to plaintiff and that I must look to him for pay for my wages. I knew that the sale had been talked of before for a week, - plaintiff was present when the goods were taken, I did not see Smith.

have any writ or hear him read any.  
 Plaintiff is cousin of George W. Nelson.  
 He was a clerk before the sale, not very  
 long. He at times had charge of the store.  
 Plaintiff did not to my knowledge pur-  
 chase any goods in absence of George  
 W. Nelson while he was clerk.

Plaintiff kept the books of George W. Nelson  
 part of the time kept a cash book. - think  
 there was no bill book, Don't know when  
 George W. Nelson returned. - plaintiff  
 got me to assist in taking inventory  
 George W. Nelson had no property here  
 after the sale that I know of.

And on cross examination as follows  
 to wit. They had been talking of the sale  
 sometime before it was made heard  
 plaintiff speak of it publicly. - plaintiff  
 paid me for my work after the sale.  
 know that George W. Nelson bought goods  
 on credit from the invoices only they  
 came before the goods. He bought his  
 goods in New York - don't know if they  
 kept a bill book, after the sale plaintiff  
 carried on the business. Don't know of  
 my own knowledge that George W. Nelson  
 ever bought on credit or owed a dollar.

Isaac M. Kirkpatrick a witness for defend-  
ant in his examination in chief testified  
as follows to wit, I know George W. and  
Charles N. Nelson; on the evening of the  
24<sup>th</sup> of October A.D. 1859 we received from  
New York three notes signed by George W.  
Nelson of over seven hundred dollars  
each for collection. my brother handed  
me the notes and told me to go and see  
Mr Nelson about them, - saw him at the  
store - think plaintiff was in the store  
at the time - took George W. Nelson to  
one side and told him that our in-  
structions were that if they were not se-  
cured to take legal means to collect  
the debt. - he was in the store at the  
deck - think plaintiff was there but not  
certain. He said he would call around the  
next day and see my brother about it,  
and arrange it. Did not see him the  
next day nor for two or three months  
I looked for him. He said I will call  
around and fix - can not say that the  
plaintiff heard what was said. Another claim  
against George W. Nelson came afterwards, it  
was Dayton & Guilders, another came four  
or five months afterwards amounting to  
two hundred dollars on account of

C. W. + J. T. Miner

And on Cross examination that the three notes belonged to George Lewis and each of them were on the back endorsed or guaranteed by Rusa Nelson - think he guaranteed the notes, - they were sent off in two or three weeks to New York dont know if they have been paid. Dont think any one in the store could hear what I said when I presented the notes, dont think I ever enquired for George W. Nelson - think the Dayton & Guilber claim came one or two months after this, The Miner claim came on the next spring, At the time I presented the three notes I knew of no other claim against George W. Nelson

William W. Greig a witness of defendants on his examination in chief testified as follows to wit, I was in the exchange business in October A.D. 1859 on the 13<sup>th</sup> of October A.D. 1859 had note against George W. Nelson in favor of.

for seven hundred and twenty three dollars then due, another on 13<sup>th</sup> September A.D. 1859 against him for seven hundred and nineteen dollars in favor of

The notes were not paid but protested and returned. And on his cross examination as follows to wit, I dont know that George W. Nelson owed a dollar - they were protested in town, George W. Nelson had been doing business here for sometime. The Notes came in September, dont know that George W. Nelson ever gave the notes - they were signed in his name.

Alexander G Kirkpatrick is a witness of defendants on his examination in chief testified as follows to wit, I know George W. Nelson in October AD 1859 had claims against him as stated by Isaac M. Kirkpatrick in his testimony. He received another November 2<sup>nd</sup> in favor of Dayton & Guilden for \$358<sup>69</sup>/<sub>100</sub> due 15 & 18 June AD 1859. He was absent when it came - looked for him about 24<sup>th</sup> October - he did not call to arrange it. I looked for him the next morning but could not find him. Received claim in favor of Moore for \$1023, placed in my hands September 13 1860 due November 2 1859. Knew of no property of George W. Nelson except these goods - made no inquiries at the store for George W. Nelson.

As to his cross examination as follows to wit. I saw plaintiff at the store the next morning. The Lewis claim was received October 23 or 24<sup>th</sup> AD 1859 I put it on the books. I wrote them the situation of affairs - by the order of Lewis I returned the notes November 17<sup>th</sup> 1859 to New York. All the claims that I received were in favor of persons in New York. I have not since heard from the Lewis Notes.

Isaac M Birkpatrick being recalled by defendant on his examination in Chief testified as follows. I made a memorandum of the time. I presented the notes it was the evening of the 24<sup>th</sup> October AD 1859 - he left the next day.

Agro Patterson a witness of plaintiff on his examination in Chief testified as follows to wit. I had a conversation with the plaintiff about buying the goods in the fall of AD 1859. Remembered the attachment. - it was before the attachment. Plaintiff said the goods were worth \$7500. not very long before the attachment appeared to sell the stock

gave me no reason, the stock would not have brought exceeding \$5000. in Cash. And on his cross examination as follows to wit, He could not agree as to pay. If I could not pay in a certain way I would not buy. I offered him quarter section of wild and unimproved land at \$2500. Don't know that I could sell the land for cash. Can't say what it would have brought. I offered him some notes on other parties amounting to \$3000. and my notes for the balance something like \$2000. on one or two years think two years - don't think interest was talked of or that I was to pay any. The land is in Edison. He said he did not want it. The stock was worth six or seven thousand dollars. I would not have given six thousand dollars for it. I never heard of the sale of a stock of goods like that for the Cash. They are sold for trade or on long time. I would not be afraid to lump a stock of goods that I was familiar with, without an invoice. I saw the stock after the goods were taken.

as follows to wit: I have known Plaintiff several years. He was here in summer of A.D. 1859 as clerk - have known several stocks of goods to change hands. If a man has money he will go and get new goods. The inducement for buying an old stock is to get it for trade or on long time. Plaintiff has been a merchant before and sold goods on his own account.

Willis P. Green a witness of defendant on his examination in chief testified as follows: I know George W. Nelson and Plaintiff - had claims against George W. Nelson in fall of 1859. In November Day came here with claim in favor of Seymour & Co of about \$600. it was due, called on him for pay - it was not paid - sued it - got judgment - the Execution is returned no property found. After that I protested two of his notes as a Notary, while he was absent. And on his cross examination as follows to wit: George W. Nelson was here when I received the Note I presented it for payment as soon as I received it. The Notes that I protested are those

testified of by Mr Grezz.

William Laferty, a witness of defendants  
on his examination in chief testified  
as follows - This is the execution in the  
Case of Seymour & Co.

against G. W. Nelson, I am Clerk,  
- the return was February 21 filed  
February 24 - This is a writ. Seth Smith  
is Sheriff of Warren County. To the fact  
of the testimony which says that Seth  
Smith was Sheriff of Warren County, the  
plaintiff then and there objected. For the  
reason that such is a fact that can in  
a case of this kind be presumed only by  
his commission, and asked the Court  
to exclude the same from the jury when  
the Court overruled the objection and  
refused to exclude the testimony so objec-  
ted to from the jury to which ruling of  
the Court the plaintiff then and there ex-  
cepted. Said Laferty then testified that  
he had seen George W. Nelson write and  
that he thought the signature to the  
Note was his.

#607.#

New York April 24<sup>th</sup> 1858

Six Months after date the subscribers of  
Monmouth County of Warren State of  
Ills. promise to pay to the order of

John F. Seymour & Co. Six Hundred & Seven dollars for value received, negotiable and payable, without defalcation or discount, at their Office, with the Current Exchange on New York.

No. - Due

Geo. W. Nelson.

The defendants then offered in evidence the Execution and return thereon State of Illinois  $\frac{3}{4}$ . The People of the Warren County  $\frac{3}{4}$  State of Illinois To the Sheriff of said County. Greeting: Mr. Commannd You. That of the goods and chattels, lands and tenements of George W. Nelson defendant in your County, you cause to be made the sum of Five Hundred and Seventy one &  $\frac{98}{100}$  dollars, which John F. Seymour and Robert W. Seymour partners by the name & style of John F. Seymour & Co lately in the Circuit Court of said Warren County, at a term thereof begun and held at Mountb. in said Warren County, on the fourth Monday of October AD 1864, on the 17<sup>th</sup> day of Nov 1864 said Plaintiffs recovered against

the said Defendant, and which by the said Court was adjudged to the said Plaintiffs for damages. And also the further sum of Five &  $\frac{50}{100}$  Dollars which were adjudged to the said Plaintiffs for Costs and Charges in that behalf expended, whereof the said defendant doth, stand convicted, as appears to us on Record. And have you these moneys ready to render to the said Plaintiffs for damages and costs aforesaid, and make return of this Writ, with an endorsement thereon in what manner you shall have executed the same, in sixty days from the date hereof.

Witness William Laferty  
Clerk of the said Court, and the  
(Seal). Seal thereof, at Monmouth, in  
said County, this 21<sup>st</sup> day of  
Nov, AD 1860.

W. Laferty Clerk  
On the back of the above Execution was  
the following return, to wit,  
State of Illinois  $\frac{3}{4}$   
Warren County  $\frac{3}{4}$

I cannot in my  
County find any property of the within  
named George W Nelson whereon to levy

and make this debt + Costs.  
I therefore return the same not  
satisfied

July 21<sup>st</sup> AD 186

David Turnbull,

Sheriff.

To which the plaintiff then and there  
objected for the reason that there was  
no evidence that said Smith had  
ever been Sheriff of Warren County in  
the State of Illinois; which objection the  
Court then and there overruled and  
permitted the execution and return to  
go to the jury as evidence. To which  
ruling and permission of the Court the  
plaintiff then and there excepted.

Willis B. Greer, being recalled by the  
plaintiff on his examination in chief  
testified as follows, to wit, I have  
examined my books and find that I  
had two notes left with me one on  
the 9<sup>th</sup> November and dated New York  
September 7<sup>th</sup> payable in sixty days  
for \$387, payable to Demmon Williams  
& Co. The other was left with me Decem-  
ber 20 AD 1859 dated at New York  
September 27 AD 1859 payable in three

6

months payable to  
and endorsed to Hill  
and others and by them to  
for collection. I received  
the Seymour note in October A.D. 1859.  
presented it to George W. Nelson in the  
store. He said he could not arrange  
it then. It was presented to him before  
he left town. These are the notes of  
which Mr. Gregg testified as having  
been protested.

William M. Gregg being recalled by  
defendants testified on his examination  
in chief as follows to wit, I had a  
claim in November A.D. 1859 in favor  
of  
against George W. Nelson due November  
the 9<sup>th</sup> for \$389. Had it protested Nov-  
ember 4 1859. Another due December 4<sup>th</sup>  
in favor of  
for \$371. All that I know about their  
being against George W. Nelson is that  
his name was to them, I do not  
know his hand writing or that they were  
his notes.

Phil. Reed a witness of defendants or

His examination in chief testified as follows to wit: I had in December A.D. 1859, a Note and account against George W. Nelson the account about \$800, part due part due in February belonging to

I presented the account to George W. Nelson and he admitted it, And on his Cross examination as follows to wit, the account and note was for goods sold in June and August 1859

The Note belonged to Archibald Young & Co. We sued it and got beat, the attachment was quashed, it was the same attachment offered in evidence in this case They are the Creditors that are interested in this case.

And on his re-examination as follows to wit the Attachment was on the Note offered, We were beaten on a plea in abatement as To residence of Nelson.

J. O. K. Carp a witness of defendants on his examination in chief testified as follows to wit I in the fall and winter of 1859 hauled six loads of goods from plaintiffs store, The first load on the 7<sup>th</sup> November and last load

December 1<sup>st</sup> dont know how many boxes, or bales I hauled; One load I had only one bale, at others more - they were hauled with one horse. They were hauled to the Depot and marked William Nelson Hendersonville. I drove the team myself. And on his Crap examination as follows to wit, I dont know what was in the boxes or whose property the goods were, They were dry goods boxes and hat boxes.

Andrew Claycomb a witness of defendants testified on his examination in chief as follows to wit, The Building was N. Claycombs. I had charge of it. I had notice in November that there had been a change in the store - I was not about to notice any change in manner of business. The rent was paid in advance. And on his Crap examination as follows to wit Dont know that George W Nelson or plaintiff had any sign. It was in October or November AD 1859 when George W Nelson quit business and plaintiff succeeded him in business.

The defendants then gave in evidence to the jury a promissory note executed

by George W. Nelson to Archibald Young & Co

\$920 <sup>65</sup>/<sub>100</sub> New York October 13<sup>th</sup> 1858.

Eight months after date. I the subscriber of Mammoth County of Warren State of Ills promise to pay to the order of Arch<sup>d</sup> Young & Hoaglan Nine hundred & twenty <sup>65</sup>/<sub>100</sub> Dollars at the Warren Co Bank Mammoth Illt value received with current rate of exchange on N.Y.

Geo. W. Nelson.

State of Illinois 3  
Warren County 3

The People of the State of Illinois to the Sheriff of said Warren County. Greeting: Whereas George Rice of the County of Cook and State of Illinois, hath complained on oath to me William Lafayette Clerk of the Circuit Court of said Warren County, that George W Nelson is justly indebted to Archibald Young, Dennis S Hoaglan & Thomas Rutherford partners under the name & style of Archibald Young & Hoaglan, upon his promissory note in the sum of nine hundred & fifty dollars which matured on the 15<sup>th</sup> day of June AD 1859 and which is still unpaid. And that said George W Nelson is a non-resident of the State,

Archibald Young  
Dennis S Hoaglan  
Thomas Rutherford.

of Illinois & so conceals him self that  
 process cannot be served upon him.  
 And that he has property in said County  
 of Warren. And the said George Rice  
 Having given bond and security according  
 to the act in such case made and  
 provided, We therefore Command you  
 that you attach so much of the estate,  
 real or personal, of the said George W  
 Nelson to be found in your County, as  
 shall be of value sufficient to satisfy  
 the said debt and Costs, according to  
 the said complaint; and such estate,  
 so attached in your hands to secure,  
 so to provide that the same may be  
 liable to further proceedings thereupon,  
 according to law, at a Circuit Court  
 to be holden at the Court House in  
 Mount Pleasant within and for the County  
 of Warren aforesaid, on the Third Monday  
 of March A.D. 1860; so as to compel  
 the said defendant to appear and  
 answer the complaint of the said plain-  
 tiffs, and that you also summon Elisha  
 Noye, James & W. Lean, Nye, Kiah N  
 Boggers, John Porter, Phil's E. Reed, Robert  
 A. Davis Charles, H. Nelson as garnishes,  
 to be and appear before the said Court on  
 the said Third Monday day of March

A.D. 1860, then and there to answer what  
 may be objected against them, when  
 and where you shall make known to the  
 said Court how you have executed this  
 Writ. And have you then used there  
 this Writ. Witness William Lafety  
 Clerk of said Court, and the Seal  
 thereof, at Mounmouth in said County,  
 this 16<sup>th</sup> day of December AD 1859.  
 (Seal). W<sup>m</sup> Lafety Clerk

On the back of foregoing Writ is the following  
 return to wit.

I have served the within Writ  
 by reading the same to the within named  
 Elisha Nye, James S. M. Leav. W. H. Boggess  
 John Porter Phil. E. Reed. Robert Adams  
 Charles H. Nelson this day December 16<sup>th</sup> 1859  
 and by reading the same to the within  
 named George W. Nelson this 27<sup>th</sup> day of  
 December AD 1859

Dated this 12<sup>th</sup> day Seth Smith  
 of January 1860. Sheriff

Warren County

By virtue of the within Writ I did on the  
 16<sup>th</sup> day of December AD 1859 levy upon  
 the following goods taken as the property  
 of George W. Nelson. Dated this day Dec 16<sup>th</sup>  
 1859

Seth Smith Sheriff  
 W. County.

Goods taken by Seth Smith on the 16 of  
 December 1859 in the store of Charles Nelson

12	per	Thick Boots	2	24.00
12	"	do	2	24.00
12	"	Kip or Split do	2	24.00
7	"	do	1.75	12.25
2	"	double sole do	2.25	4.50
1	"	Calf do		3.00
1	"	No 5 do		2.00
14	"	Youths do	1.	14.00
12		Whips	.50	6.00
2		do	.25	.50
4		Riding do		1.00
11		Booies		1.10
14		Map Ndlr	.15	2.10
5		axe Ndlr	.05	.25
20		Plush Caps	.50	10.00
24		Boys Cotton do do	.20	4.80
12		Mens do	.75	9.00
6		Clack do	.50	3.00
12		Brown Nats	1.00	12.00
7		Black Soft do	1.75	12.25
1		Drab do		1.75
11		Boys do	.60	6.60
4		Mens do	.75	3.00
18		Black do	.75	13.50
3		do	2.00	6.00
5		do	2.00	10.00

1	for Mens Rubber Boots	3.00	3.00
25	yds Oil Carpet No 73	.50	12.50
22	" " do " 74	.60	<del>13.20</del>
	" " Carpet " " "		2 29.30
25	yds Oil Carpet No 91	.50	12.50
12 1/2	" Carpet " 26	.40	49.00
135	(estimated) do	.75	101.25
110	" " do	.40	44.00
25	" " Hoop do	.60	15.00
115	" " Poor do	.35	40.25
100	" " do	.25	25.00
18	" " Good do	.50	9.00
60	" " Poor do	.25	15.00
75	" " Hemp do	.30	22.50
40	" " Hoop do	.75	30.00
7	Mens Hoop Skirt	.20	1.40
5	Ladies " do	.50	2.50
1	" Cold do	.75	.75
30	yds Satin Jeans	.90	2.70
1	for White Hoop Blankets	3.00	3.00
1	for 30 yds Bleached	.80	2.40
1	" 25 " " Drilling	1.00	2.50
1	" 33 " Satin Jeans	1.00	3.30
1	" 14 " Bleached	1.20	1.68
1	" 25 " do	1.20	3.00
1	" 4 " do	1.00	.40
1	" 18 1/2 " do	.60	1.11
1	" 9 " do	.80	.72

1	pc	22 yds	Bleached	9	1.98
1	"	14 "	do	9	1.26
1	"	13 "	do	5	.65
1	"	5 "	do	10	.50
1	"	Manken 16 1/4 yds		15	2.50
1	"	check do 4 "		15	.60
1	"	do 4 "		15	.60
1	"	Linen Drill 22 "		30	6.60
1	"	7 "		8	.56
1	"	Diaper 14 "		25	3.50
1	"	do 6 "		12 1/2	.75
1	"	Cotton do 22 "		10	2.20
1	"	do 6 "		12 1/2	.75
1	"	do 5 "		10	.50
1	"	do 10 "		15	1.50
1	"	do 2 "		12 1/2	.25
1	pc	Satin Jeans 32		10	3.20
1	"	Table Cover		25	.25
1	"	9		10	.90
1	"	Day Rays Wool Comforts			1.50
1	pc	Black Cloth 28 1/2 yds		1.00	28.50
1	"	Brown do 16 "		2.00	32.00
1	"	do 23 "		2.00	46.00
1	"	do 21 1/2 "		1.50	32.25
1	"	do 14 "		2.00	28.00
1	"	Picking 43 "		10	4.30
1	"	Grey Cloth 6 "		1.5	4.50
1	"	Black Lusting 7 "		1.5	1.50
1	"	do do 17 3/4		50	8.87

1 Pc	Jeans	5 1/2 -	30	1.65
1 -	Satin	2 1/2 -	40	9.00
1 -	do	5 1/2 -	50	2.75
40	Dy Walker & Co Spool Thread		50	21.00
31 -	Coulton Co do do		30	9.30
3	Packs Pins		60	1.80
9	pr Lined Mittens		50	4.50
13 #	Bdl, Linen Thread		75	9.75
15 "	do do do		75	11.25
12	g. g Bone Buttons		1.50	3.00
7	Mifs Knit Hoods		40	2.80
8	Cold Corsets		1.00	8.00
11	White do		1.00	4.00
				<u>928.58</u>
12 #	Bdls Cotton Thread		60	6.60
17	yds Delaine		12	2.14
3 1/2 -	do		12	4.74
11 -	Black Cassimer		1.00	11.00
11 -	Print		10	1.10
2 1/2 -	do		10	2.65
4 1/2 -	Morning do		10	.45
6 -	Fancy do		8	.48
17 -	do		8	1.36
4 1/2 -	do		9	.41
19 -	do		7	1.33
4 1/2 -	do		8	.36
4 1/2 -	do		8	.36
7 -	do		7	.49

9 1/2	Morning	do	8	.76
6	Fancy	do	8	.48
8 1/2		do	8	.68
8 1/2		do	8	.68
18		do	6	.78
8		do	7	.56
10		do	9	.90
8 3/4		do	8	.70
14		do	9	1.26
10 1/2	Fancy	do	9	.95
17 1/2		do	8	1.40
5 1/2		do	8	.44
6 1/2		do	8	.52
3		do	9	.27
12		do	8	.16
4 1/2		do	8	.36
10	Furniture	do	10	<u>1.00</u>
				973.80
18 yds	Print		10	1.85
8	Pink	do	10	.80
14 1/2		do	7	1.11
30	Furniture	do	10	3.00
4	Fancy	do	8	.32
5 1/2		do	8	.44
11		do	9	.99
5		do	8	.40
13		do	9	1.17
28		do	8	2.24

18 -	do	7	1.26
11 -	do	11	1.10
14 -	do	9	1.26
12 1/2 -	do	8	1.00
32 -	do	7	2.24
41 1/2 -	do	8	3.32
9 3/4 -	do	9	.88
5 -	do	8	.40
46 -	do	8	3.68
22 1/2 -	do	8	1.80
45 -	do	9	4.05
5 -	do	11	.50
23 1/2 -	do	8	1.88
13 1/2 -	do	8	1.08
10 1/2 -	do	8	.85
6 -	do	8	.48
4 -	do	9	.36
7 -	do	8	.56
6 -	do	8	.48
5 -	do	8	.40
5 -	do	8	.40
7 -	do	8	.56
12 -	do	8	.96
14 -	do	6	.84
			<hr/>
			1.016.36
27 yds	Yellow Print	10	2.70
12 "	Black do	7 1/2	.15

5 1/2 -	Fancy	do	11	.55
26 1/2 -		do	9	2.38
18 -		do	8	1.44
35 1/2 -		do	8	2.84
9 1/2 -		do	11	.95
18 -		do	8	1.44
5 1/4 -		do	8	.42
11 -		do	9	.99
6 -		do	8	.48
11 -		do	11	1.11
28 -		do	7	1.96
4 -		do	8	.32
5 1/2 -		do	8	.44
12 -		do	8	.96
6 1/2 -		do	8	.52
6 -		do	8	.48
7 -		do	8	.56
1 -		do	8	.8
3 1/4 -		do	8	.26
5 -		do	8	.40
7 -		do	8	.56
4 -		do	8	.32
11 -		do	8	.80
4 -		do	8	.32
15 -	Plain	Prs	8	1.20
9 -		do	7	.63
21 -	Plain	Pink	8	1.68
31 -	Fancy	do	7	2.18
24 -		do	8	1.92

60.

22½ yds	Blue Print	9	2.12
8½ —	Honey do	8	.68
8 —	do	8	.64
22 —	do	8	1.76
28½ —	do	8	2.28
12 —	do	8	.96
5¼ —	do	8	.42
3 —	do	8	.24
23 yds	Print	8	1.84
29 —	do	7	2.03
10½ —	do	8	.84
4 —	do	10	.41
24 —	do	7	2.38
25 —	do	7	2.45
19 —	do	8	1.52
41½ —	do	8	3.32
43½ —	do	8	3.48
37 —	do	8	2.96
2½ —	Silane	16	.41
25 —	do	15	3.75
5 —	do	21	1.11
29 —	do	15	5.85
33¾ —	do	18	6.07
41 —	do	15	6.00
1¾ —	do	21	.35
3 —	do	15	.45
9 —	do	21	1.80
17 —	do	21	3.40

4	—	Plain do	15	.60
27	—	Morning do	18	4.80
7	—	Stripe	20	2.10
11	—	do	20	2.20
3	—	do	20	.60
12 1/2	—	Pink Berage	21	2.51
1		Bracka Skawl		5.11
1		Wool do		3.11
2		do	1.51	4.51
38 yds		Challa Delane	15	5.71
26 1/4	—	do	15	2.92
39	—	do	21	7.81
41	—	do	15	6.15
1		Raglan Sack Coat		7.11
1		Drab do		8.11
2		Sack do	3.51	7.11
				<u>1178.22</u>
1		Tweed Coat		3.11
2	pr	do Paints	3.	6.00
1	"	Plaid do		3.51
1	"	Car do		4.11
3	"	Gray do	1.51	4.51
2	"	— do	3.	6.00
2	"	Car do	4	8.11
2	"	S Gray do	3.	6.00
4	"	Satinet do	1.51	6.00
4	"	do do	—	6.00
5	"	do do	2.	10.00

3 -	Fancy	do	2.50	7.50
2 -	Gray	do	3.00	6.00
3 -		do	1.50	4.50
2 -	Cas	do	4.00	8.00
1 -	Plaid	do	4.00	4.00
1 -	Gray	do	2.00	2.00
4 -	Cas	do	3.	12.00
1 -	Black Coat No 2	8		8.00
1 -	S Mix	do	8.	8.00
3 -	Black	do	7	21.00
3 -	Gray Mix	do	7	21.00
2 -	Pilat	do	3.	6.00
3 -	Boys	do	2.50	7.50
3 -		do	2.50	7.50
6	Fancy Vests		2.	12.00
8		do	2.	16.00
8	Boys	do	1.	8.00
7	Mens Fancy	do	2	14.00
9		do	2.	18.00
12	Velvet	do	1.75	3.50
17	Block Carpet Sacks		1.00	17.00
9	Woolen Undershirts		.75	6.75
12	fur Drames		.75	9.00
17	White	do	.60	10.20
2	Reams Cap Paper		2.00	4.00
4	Half do Letter	do	1.50	6.00
4	Woolen Over Shirts		1.	4.00
2	fur Legging		.75	1.50

12	for	Childrens Shoes	60	7.20
3	+	do do	50	1.50
4	+	do do	30	1.20
12	-	Mens. Over do	1.00	12.00
4	-	Rubber do do	75	3.00
6	-	Super Rubber do	50	3.00
2	-	Boats	1.50	3.00
6	-	Calf Boats	3.00	18.00
3	-	Boys Thick Shoes	75	2.25
5	-	kip do	1.00	5.00
3	-	Gents Gaiters	2.00	6.00
10	-	Men split Shoes	75	7.50
9	-	do do	75	6.75
9	-	Kid C. Gaiters	1.25	11.25
4	-	do do	1.00	4.00
6	-	Wipes do	75	4.50
6	-	Ladies do	1.25	7.50
12	-	Childrens Shoes	50	6.00
3	-	Men Calf do	1.25	3.75
2	-	Fur Caps	2.	4.00
1	-	Clath do fluck Board	1.50	1.50
30	yd	Small Fig Gingham	15	4.50
16	-	do do	12.	1.92

1619.59

40	yd	Small Fig Gingham	11	4.40
24	-	Plaid do	15	3.60
27	-	Buff do	14	2.70
16	<sup>3</sup> / <sub>4</sub>	do do	20	3.35
20	-	Striped do	20	4.00

64.

32 1/2 Yds	Gingham	25	8.12
21	Bluecheck do	18	3.78
17 1/2	do	12	90
36	do	15	5.40
36	do	15	5.40
38	Morning do	21	7.60
15	do	21	3.15
25 1/2	Morning do	10	2.55
17	do	12	2.04
36	do	18	6.48
34	do	10	3.40
21	do	11	2.21
21	do	12	2.40
10 1/2	Scotch do	12	2.10
42	do	21	8.40
15 3/4	do	21	3.15
19 1/2	do	15	2.93
26	do	20	5.20
11	do	12 1/2	1.25
28	do	10	2.80
30	Mens Plush Caps	1.50	45.00
24	Boys Cloth & Plush Caps	50	12.00
7	do	60	4.20
4 per	Boys Wool Mittens	20	.80
15 "	do do	25	3.75
22 "	Shaggy do	50	1.00
11 "	Woolen Gloves	25	2.75
11 "	Silk Hats in Boxes	2.50	27.50

9	1	Blade Knives	30	2.70
2	2	do No 670	40	1.20
6	1	do - 518	20	1.20
5	2	do - 577	30	1.50
4	1	do	25	1.00
3	1	do - 802	30	.90
5	1	do	25	1.25
4	1	Pen do	25	1.00
5	1	Penny do	50	2.50
5	1	do	20	1.00
6	1	do	20	1.20
3	1	do	16 <sup>2</sup> / <sub>3</sub>	.50
12		Silk Plush Velvet Vests	5.00	60.00
1		Table Cover		1.25
4		Black Shirts	6.00	24.00
4		small do	50	2.00
1		Black do		3.50
1		Waist do		3.50
2		Gray Coats	6.00	12.00
1		Dark do do	10.	10.00
1		Gold Mis do		7.00
1		do		4.00
1		do		7.00
2		fur Pants	3.	6.00
1		" do	2	2.00
1		" Cas do	5.	5.00
2		" " do	3.50	7.00
1		" do	2.50	2.50

1	per	Cas	Pants	4	4.00.
1	—	do	do	5	5.00.
2	—	—	do	2	<u>4.00.</u>
					1999.44
5	Post	Boxes	without		1.00
1	do	—	—		50
26	yds	Gingham		20	5.20
4 <sup>3</sup> / <sub>4</sub>	—	do		20	.95
21 <sup>1</sup> / <sub>2</sub>	—	do		15	<u>3.22</u>
					\$2,010.31

### Estimated Cost.

Filed in the Circuit Court, and approved  
by me, this 19<sup>th</sup> day of January AD 1860  
W<sup>m</sup> Lafayette Clutz.

To the introduction of which or either  
of which plaintiff then and there ab-  
jected. For the reasons first that there  
was no evidence that Seth Smith was  
ever Sheriff of Warren County in the State  
of Illinois.  
Second, that the so called return to said  
attachment attached was no return thereof,  
And Third that if it were such a return  
it was too objectionable to be admitted as  
evidence and did not embrace the  
property in plaintiff's declaration men-  
tioned, which objection the Court then

11  
and then overruled and permitted the attachment, and return to go to the jury as evidence in the case to which ruling and permission of the Court the plaintiff then and there excepted.

Christopher M. Lucas being recalled by the plaintiff testified as follows on his examination, I know of the sale from George W. Nelson to the plaintiff, George W. Nelson sold him the entire stock of goods for \$6,500, payable in payments, I saw the notes of plaintiff executed to George W. Nelson therefore the time between payments was short from three to six months, don't remember exactly, - don't know when the first was due. The sale was made October 24 A.D. 1859 in the forenoon the notes were drawn up after dinner I was clerk for George W. Nelson had been since the spring of A.D. 1858. There was a change of business on the day of the sale Plaintiff then took charge of the establishment and hired me as one of his clerks. The trade was talked of three or four days before the sale, There was no secrecy about it - they both talked with me about it Plaintiff came to the store in August before the sale, He advised with me as

675

to the value of the goods before purchasing Plaintiff went through the stock and clipped the goods off and estimated the different clips and then talked over the value of the different articles with me before the sale, Plaintiff had possession of the goods after the sale, I would not have given over \$5000 for the goods sold by George W. Nelson to the plaintiff don't think they would have brought that in cash, some of them had been in a store three years, I never knew of a sale of a stock like that for cash or in any way but on long time or for trade, - some of the goods were bought in 1857, many of them were out of style - many remnants, Cant well sell such goods for their real worth, There were a great many drip goods out of style which were not saleable, I was present when the goods were taken by the defendants - the best of stock were taken by them, A portion of the stock was sold by the plaintiff in a lump, He sold all out after the attachment to Rueda Nelson, I don't know the amount sold to Rueda Nelson He is the father of George W. Nelson, He lived in New York, The goods were

taken to Pattersons building in which Geo  
Nelson had a store conducted by his son  
A M Nelson.

George W Nelson in the fall of AD 1859 sent  
money and drafts at different times to New  
York to pay his debts, I do not know  
the amount.

Defendants Counsel asked the Court to exclude  
from the jury the foregoing evidence to wit  
"George W. Nelson in the fall of AD 1859 sent  
money and drafts at different times to  
New York to pay his debts, I do not  
know the amount" - which the Court then  
and there did and to doing which the plaintiff  
then and there objected. But the Court over-  
ruled the objection and withheld the  
evidence from the jury. To which rulings  
of the Court the plaintiff then and there  
excepted. Plaintiff had been in the  
mercantile business on his own account  
for or five years or longer in Henderson  
~~and~~ in Knox County Illinois. Plaintiff sold  
out before he came here to his brother  
knew of plaintiffs having before the purchase  
of George W Nelson a great many notes  
on other persons, I dont know the amount  
Plaintiff when in business in Henderson  
bought goods in St Louis and New York.  
Had a stock in Henderson worth.

five or six thousand dollars. His stock would average that amount. Plaintiff sold out in the spring of AD 1859 in Henderson. He was in possession of real estate in Henderson.

Plaintiff then asked said Lucas whether plaintiff at the time he sent the goods to the depot by the witness Earp, gave to Earp any instructions concerning them and if so to state them. To which question the defendants then and there objected which objection the Court then and there sustained and then and there prohibited the witness from answering the question - To which rulings of the Court the plaintiff then and there excepted. Plaintiff then asked said witness whether the plaintiff in the summer and fall of AD 1859 or in either sent money to New York to pay his debts. To which question the defendants then and there objected, which objection the Court then and there sustained and then and there prohibited the witness from answering it - to which rulings of the Court the plaintiff then and there excepted. Said Lucas then on cross examination testified as follows to wit, The sale was no secret - heard them talking to

Dent remember the day of the week the sale was made, I heard them talk about the sale three or four days before the sale I was present when the sale was consummated, Was not called as a witness.

They agreed about the price in the forenoon - they had been disputing about the price for three or four days. I think George W. Nelson went away the next day. I am not certain. Plaintiff came in the store in August before the sale. He was head clerk and is my brother in law. He sold to a brother of his Willard Nelson.

William Dent being recalled by the plaintiff testified on his re-examination as follows, to wit: I know of the sale. George W. Nelson sold the stock of goods to plaintiff in October AD 1859. I think on the 24<sup>th</sup> a stock of dry goods & o all the stock, Dent knew the price, plaintiff came to me a week before the sale and asked me what I thought they were worth. We went through the stock together estimating it and took a rough estimate of what we thought the stock worth. This was before the sale. The ownership was changed from George W. Nelson to the plaintiff. Plaintiff then took possession. I was one of his

Clerks. George W. Nelson had three Clerks when he owned the stock.

Plaintiff. Christopher W. Lucas and myself I after the sale commenced clerking for the plaintiff. I had been with George W. Nelson about eleven months and had been in the business of clerking in such establishments for thirteen or fourteen years. I thought the stock when sold would invoice about \$70,000. I would not have paid in Cash more than \$50,000. It was an average stock for a firm that had been in business sometime. - some of it was unsaleable - some unfashionable. There was a great deal of the clothing and dress goods that was unfashionable. And on a careful examination as follows to wit. I don't know the day of the week on which the sale was made. I did not see the contract made.

A. W. Nelson a witness of the plaintiff on his examination in Chief. testified as follows to wit. I know the plaintiff and defendants - plaintiff is my cousin. I was in business here in Monmouth Illinois in the fall of AD 1859 for my father in Pattersons building. I received some

goods for my father of plaintiff in January  
AD 1860. They called them \$1550. It was  
the balance of the stock of Charles H. Nelson  
Father paid for them with plaintiff's notes  
one of the notes were given up and the  
balance endorsed on another - the notes  
were given by plaintiff to George H. Nelson  
and endorsed by him to my father Ruel  
Nelson who sent the notes to me as his  
agent for collecting. In the summer of  
AD 1859 I had accep to plaintiff's books  
and notes. He then had accounts and  
notes against others amounting to between  
fifteen and twenty thousand dollars.  
He had been in trade a number of years  
I know he has bought goods in New York  
on credit. I lived in New York when  
he bought in the spring of AD 1858. I  
was buying at the same time he bought  
and we bought at the same place and  
on the same terms with others. he bought  
He bought them too previous to AD 1858  
He bought them four or five thousand dollars  
worth in the spring or fall of AD 1857.  
I think he usually had four or five thous-  
and dollars worth in his stock at Hudson  
Ellen's

And on his crop examining as

follows to wit. Ruca Nelson is the father  
 of George W. Nelson and I am a brother  
 of George W. Nelson. I know he had  
 the accounts and notes because I  
 saw the books and the notes showed for  
 themselves. I saw them charge for goods  
 sold in the same books. I cast them  
 up until I was satisfied there was over  
 \$15000. of the accounts and notes. I feated  
 them up from curiosity - some of the  
 accounts I knew to be good for I knew  
 the men that they were on. - plaintiff was  
 my Cousin and I was on a visit to see  
 him and he said that he had commenced  
 clerking for Elliatt a boy and that he  
 wanted me to look over his accounts and  
 notes to see how well he had done. He  
 had then been living there a good deal  
 over fifteen years. I know not how long  
 I acted as agent for my father here  
 in Monticouth - some of the goods he  
 bought of plaintiff were sold - some of  
 them I have on hand at Oneida now  
 I examined the books and notes in the  
 summer of ad. 1859. The books were in  
 the hand writing of Charles W. Nelson and  
 in his possession

Joel E. Rayland a witness of Plaintiff on his examination in Chief testified as follows to wit. I know the parties - Plaintiff took possession of the stock of goods immediately after he bought them of George W. Nelson I saw the goods taken by the defendants and saw them in the possession of Seth Smith. I saw Seth Smith sell the most of them. The Plaintiff objected to defendants taking them. He forbid Seth Smith's taking them several times. Heard Smith say he was indemnified.

Rueda Nelson a witness of Plaintiff on his examination in Chief testified as follows. To wit. I know the Plaintiff and some of the defendants - the Plaintiff is my nephew and George W. Nelson is my son. I assisted George W. Nelson by endorsing and accepting for him in AD 1858 and the winter and Spring of AD 1859, when I was worth more than \$100,000. The defendants then admitted as evidence in the case that from six to twelve months before the sale in question said Rueda Nelson had become bound as indorser and acceptor for said George W. Nelson to the following named persons and for the following amounts to wit,

To Wells & Christie for \$ 1736.84  
 To Carr Schoonmaker & Co for \$ 544.22  
 To Dennison Williams & Co for \$ 798.20  
 To Cherry Cole & Carpenter for \$ 533.95  
 To George Lewis for \$ 2,315.89  
 To Southworth Shaw & Co for \$ 258.94  
 To Phelps Blip & Co for \$ 515.75  
 To Ringo, Buckley & Plumpton for \$ 434.40  
 To Blip Wheelock & Kelly for \$ 1,237.36  
 To Cippely Hoover & Co. for \$ 1,356.94  
 To Eno Roberts, Rhoads & Co for \$ 449.82  
 To Cherry Cole & Carpenter for \$ 575.00  
 To Hill M<sup>c</sup>Collom Printerhoff & Co for \$ 2600.00  
 And to Stimpson for \$ 165.00  
 And that said Rueda Nelson had paid  
 all thereof for said George W. Nelson  
 to gether with the following additional sums  
 to wit: Paid by G. W. Nelson \$50 for expenses  
 home - paid expenses on draft on Stimp-  
 son draft \$1.59. Paid George W. Nelson  
 for expense home \$35.00. Paid Sheriff's fee  
 for George W. Nelson \$54.00. Paid A. B. Cep-  
 nells fees for George W. Nelson \$25. And  
 that it was further admitted by the defend-  
 ant as evidence in this case, that all  
 the goods sold by said George W. Nelson to  
 plaintiff were obtained by a portion of  
 said endorsements and acceptances.

That all of the indebtedness of said George W Nelson was in the City of New York, and that said Rues Nelson had received on the amounts so paid for said George W Nelson, the following at the times named to wit November 7 1859. Received of Charles H Nelson \$100 November 18 1859. Received of L Richmond on account of George W Nelson \$100. November 28<sup>th</sup> 1859. Received of Charles H Nelson \$438. December 3 1859 Received of Charles H Nelson \$75. December the 21 1859. Received of Charles H Nelson \$330 January 14 1860. Received of Charles H Nelson three drafts \$581. February 8 " 1860 Received of Charles H Nelson \$363. February 8<sup>th</sup> 1860. Received of George W Nelson draft \$637 February 8, 1860. Received on account of draft of Simpson \$100 February 13 1860. Received draft on Woodruff & Co \$400. February 13, 1860. Received George Simpsons draft \$65. February 16, 1860. X. Received draft on Woodruff & Co \$600 April 22, 1860. Received in Currency bills \$283. May 5<sup>th</sup> 1860 Received in Currency bills \$150. August 1860. Note from Charles H Nelson \$514.93.

Said Rues Nelson then testified on his examination in chief as follows to wit That in the first part of November AD 1859 said George W Nelson in the

City of New York paid to him on what he owed him notes on plaintiff amounting to \$6500. one of which amounted to \$500. and was due on the 1<sup>st</sup> March thereafter. The other six notes amounted to \$1000. each, and were payable respectively at intervals of two months. The same notes were assigned to me by said George W. Nelson, and that all that I have received on said seven notes is what the defendants have just admitted that I received of said Charles W. Nelson and the goods that A. M. Nelson has testified in this case to having received from Charles W. Nelson for me amounting to \$1550. and that I got hold the balance of said notes against Charles W. Nelson and that all that I have ever received from George W. Nelson on \$13,688, which I have paid for him and let him have is the seven notes on Charles W. Nelson amounting to \$6500. and the amounts that the defendants here just admitted that I received of him.

The plaintiffs then offered and the defendants admitted without objection in connection with said admissions the following statement of the amounts paid by Rues Nelson.

upon said indorsements + acceptances,  
 and the monies and drafts rec<sup>d</sup> thereon  
 of George W Nelson + of C. H. Nelson on said seven  
 notes assigned by Geo W Nelson to Rueda Nelson  
 on him said Chas H Nelson.

Statement of a/c for money paid on Geo W  
 Nelson's indebtedness for which I became  
 liable for him

Decr 22/59	Paid George for Expenses home	\$ 50.00
Jan'y 28/61	To Stimpson draft returned	165.00
" "	" Expense on above draft	1.59
Nov 11/59	" Paid Wells & Christie	1736.84
" "	" M'Con Schoonmaker & Co	544.22
" 17/59	" Paid Denison Williams & Co	798.30
May 23/60	" " Cheney, Cale & Carpenter	533.95
" 31/60	" " George for expenses home	35.00
June 9/60	" " George Lewis	2,315.89
" "	" " Sheriff fees	54.00
" "	" " A. B. Capmells fees	25.00
" "	" " Southworth Shameson & Co	258.94
Mch 5/60	" " Phelps Bliff & Co	515.75
" "	" " Perigo, Buckley & Plumpton	434.40
Nov 10/60	" " Bliff Muelock & Belley	1,237.36
" "	" " Copperly Hoover & Co	1356.94
" "	" " Eno Rabets, Rhodes & Co	449.82
	Cheney Cale & Carpenter about	575.00
	Will M'Callom Brinkheff & Co do	2600.00

79

\$ 13,688.00

Copy of Statement of Rhea Nelson introduced in evidence ~~and~~ which Clerk is to Copy.

Nov 7/59	Recd from Cha H Nelson	\$ 100.00
" 18/59	" " L Richmond on a/c G. M. N.	100.00
" 28/59	" " Cha H Nelson	438.00
Dec 3/59	" " " "	75.00
" 21/59	" " " "	381.00
Jan 14/60	" 3 dfts from Cha H Nelson	581.00
Feb 8/60	" from Cha H Nelson	363.00
" "	" " G. M. Nelson Draft	637.00
" "	" Draft on a/c of Simpson	100.00
" 13/60	" " " Woodruff Co	400.00
" "	" Geo Simpson Draft	65.00
" 16/60	" Draft on Woodruff Co	600.00
Apr 23/60	" Recd in Currency (Bills)	283.59
May of 60	" " " " " "	15.00
Aug 60	" from Cha H Nelson (Note)	574.93
		\$ 4,737.52

This is all the evidence given and admissions made in the Case. The plaintiff then asked the Court to give to the jury the following instructions on his part.

1<sup>st</sup> The Court will instruct the jury that although a sale may have the effect to hinder or delay some of the Creditors of the debtor making it in the collection of their demand.

such a debtor however insolvent may lawfully make such a sale for less than the property so sold is worth for the purpose of in good faith having the proceeds thereof applied in discharge of any legal liability of such debtor wherefore although they may believe from the evidence that the sale in question did defraud or hinder some of the creditors of George W. Nelson in the collection of their demands against him if they further believe from the evidence that at the time of such sale Rhea Nelson guarantor or acceptor or both for G. W. Nelson for a larger amount than that of such sale. That such sale was made for \$6500. That plaintiff executed and delivered to G. W. Nelson his promissory notes therefor making one thereof payable on the first day of March thereafter and the others in equal sixty days payments and that G. W. Nelson soon or within a week or two thereafter in good faith assigned and delivered said notes to Rhea Nelson on account of his being his guarantor and acceptor or either as aforesaid and that Rhea Nelson in good faith so received such notes and has since as such guarantor and acceptor or either paid more than \$6000 for G. W. Nelson they are bound under

any circumstances to find a verdict for the plaintiff if they believe from the evidence that defendants or any of them took or participated in taking the goods in question from the possession of the plaintiff and that such verdict should be against such defendants, as they may from the evidence believe took or participated in taking such goods.

2<sup>nd</sup> The Court will instruct the jury that the plaintiff has made a prima facie case if they believe from the evidence that defendants took the goods and chattels from the possession of the plaintiff and that unless they believe from the evidence that the defendants were the owners of such property when so taken or that such sale was made by said G. M. Nelson not only with intent to delay hinder and defraud creditors, both with malice, fraud, collusion or guile and with such intent and that the plaintiff at the time of such sale was likewise guilty of making such purchase with such intent and manner with malice, fraud, collusion or guile they are bound under any circumstances to find a verdict for the plaintiff for what they

15  
may believe from the evidence such goods  
were worth when so taken.

3<sup>rd</sup> 11. The Jury are instructed that fraud is not  
to be presumed, but should be proven by  
the party alleging it; That law presumes  
that good faith controls business transactions;  
therefore if the Jury believe from the  
evidence that the nature and design  
of the sale in question, from George  
W. Nelson to the Plaintiff, was to secure  
Ruea Nelson from loss as the indorser  
for said George W. Nelson, and that said  
sale was not continued as a fraud  
on the part of said George W. Nelson  
and the Plaintiff, to hinder and delay  
or cheat the creditors of said George W.  
Nelson the Law is for the Plaintiff; if  
the Jury shall believe from the evidence  
that the Plaintiff took possession of the  
goods, and that such possession was  
continued to and at the time of the levy  
of the attachment.

4<sup>th</sup> 11. Fraud cannot be presumed, but must be  
proven, and the jury are not at liberty to  
infer that the sale from George W. Nelson to  
the Plaintiff was fraudulent, but the same

must be proved to the satisfaction of the jury before they can find the property to be the property of George W. Nelson.

5 A Sale of property for a valuable consideration, when there is a delivery of the property sold, passes the title to the purchaser and the fact that the seller was in debt will not, of itself, invalidate the sale, although the purchaser may have known that fact when at the time of the purchase

6 The Court will instruct the jury that if they believe from the evidence that ~~straw~~ one of the defendants took or ~~hauled~~ hauled or assisted in taking or hauling the goods in question from the store house and possession of the plaintiff they are bound to find a verdict against him for what they may believe from the evidence the goods so taken when so taken were worth. Although they may further believe from the evidence that the sale in question was fraudulent and void as to creditors and that ~~Smith~~ and the witness Chapman first said goods in the box and that said Smith is not guilty in the premises Provided however they believe from the evidence that

said Smith is they should include him in their verdict finding it in that case a verdict against both defendants for what they may from the evidence believe the goods so taken were worth when so taken.

7 The Court will instruct the jury that there is no law requiring a debtor however insolvent to keep his property until a creditor can attach it or have it levied upon with an execution that such debtor may in good faith and for a valuable consideration though with the avowed intention of defeating an honest claim if no lien exist to forbid it and there is not in this case such lien, sell all of his property for a fair price or even below a fair price and apply the proceeds thereof to the payment of one creditor guarantor through such sale and application exhausts his whole estate and leaves all his creditors unpaid wherefore should they from the evidence believe that the sale in question was so made and that at the time of making thereof Rhea Nelson had become guarantor for George W Nelson for more than \$6000. and that the proceeds thereof was in good faith paid to him by G W Nelson by reason of his being such guarantor and that G W Nelson

is indebted to Rues Nelson more than \$6000 by reason of payments made by Rues Nelson to the Creditors of said G. W. Nelson by reason of being such guarantor they should find such sale void and binding upon said George W. Nelson and his Creditors though they may further believe from the evidence that G. W. Nelson was when it was made insolvent.

8 The Court will instruct the jury that if they believe from the evidence that defendants participated in taking the goods in question from the possession of the plaintiff although they may so believe that they were first put in a box and straw did not assist them in putting them in the box they are bound to find a verdict for the plaintiff for whatever they may believe from the evidence such goods when so taken were worth, and that although they may further believe from the evidence that the sale in question was fraudulent and void as to the Creditors of G. W. Nelson

16.

Instructions of the Plaintiff as modified  
by the Court.

1<sup>st</sup> The Court will instruct the jury that although a sale may have the effect to hinder or delay some of the Creditors of the debtor making it in the collection of their demands such a debtor however insolvent may lawfully make such a sale for less than the property so sold is worth for the purpose of in good faith having the proceeds thereof applied in discharge of any legal liability of such debtor wherefore although they may believe from the evidence that the sale in question did delay or hinder some of the creditors of George W. Nelson in the collection of their demands against him if they further believe from the evidence that at the time of such sale Rhea Nelson was guarantor or acceptor or both for G. W. Nelson for a larger amount than that of such sale, that such sale was made for \$65000. that plaintiff executed and delivered to G. W. Nelson his promissory notes therefor making one thereof payable on the first day of March thereafter and the others in equal sixty day payments and that G. W. Nelson soon or within a week or two thereafter in good faith assigned and delivered said notes to Rhea Nelson

Given

on account of his being his guarantor and acceptor or either as aforesaid, and that Rhea Nelson in good faith so received such notes and has since as such guarantor and acceptor or either paid more than \$6500 for G. W. Nelson they are bound under any circumstances to find a verdict for the plaintiff if they believe further from the evidence that defendant's or any of them took or participated in taking the goods in question from the possession of the plaintiff as charged in either Count of the declaration and that such verdict should be against such defendant's as they may from the evidence believe took or participated in taking such goods, if the jury further believe from the evidence that the sale between G. W. Nelson & Plaintiff was not made for the purpose of hindering, delaying or defrauding the Creditors of G. W. Nelson by G. W. Nelson & the plff.

2 The Court will instruct the jury that the plaintiff has made a prima facie case if they believe from the evidence that defendant's took the goods and chattels in controversy from the possession of the

plaintiff as charged in either Count of the declaration and that unless they believe from the evidence that the defendants were the owners of such property when so taken or had the right to the Possession or that such sale was made by said G. W. Nelson not only with intent to delay hinder or defraud creditors with such intent or purpose, but that the plaintiff at the time of such sale was likewise guilty of making such purchase with such intent with malice or fraud or Croen or collusion or guile they are bound under any circumstances to find a verdict for the plaintiff for what they may believe from the evidence such goods were worth when so taken.

3<sup>rd</sup>

The Jury are instructed that fraud is not to be presumed, but should be proven by the party alleging it; The law presumes that good faith controls business transactions; therefore if the jury believe from the evidence that the nature and design of the sale in question, from George W. Nelson to the Plaintiff was to secure Ruca Nelson from loss as the indorser for said George W. Nelson, and that said sale was not contrived as a fraud on the part of said George W. Nelson

General

and the Plaintiff, to hinder and delay or cheat the Creditors of said George W. Nelson the law is for the plaintiff; if the jury shall believe from the Evidence that the Plaintiff took possession of the goods, and that such possession was continued to and at the time of the levy of the attachment that the defendants or either of them wrongfully took the Property of the Plaintiff in the declaration described as charged in either Count of said declaration

General

4. Fraud cannot be presumed, but must be proven, and the jury are not at liberty to presume fraud - that the sale from George W. Nelson to the Plaintiff was fraudulent, but the same must be proved by facts & circumstances to the satisfaction of the jury before they can find the property to be the property of George W. Nelson

General

5. A sale of property for a valuable consideration, when there is a delivery of the property sold, passes the title to the purchaser if made in good faith and the fact that the seller was in debt will not, of itself invalidate the sale, although the purchaser may have known that fact at the time of the purchase.

6 The Court will instruct the jury that if they believe from the evidence that Strawn one of the defendants took or hauled, or assisted in taking or hauling the goods in question from the store house and possession of the plaintiff they are bound to find a verdict against him for what they may believe from the evidence the goods so taken when so taken were worth although they may further believe from the evidence that the sale in question was fraudulent and void as to creditors and that Smith and the witness Chapman put said goods in the box and that said Smith is not guilty in the premises. Provided however they believe from the evidence that said Smith is they should include him in their verdict finding in that case a verdict against both defendants for what they may from the evidence believe the goods so taken were worth when so taken.

Revised

7 The Court will instruct the jury that there is no law requiring a debtor however insolvent to keep his property until a creditor can attach it or have it levied upon with an execution that such debtor may in good faith and for a

valuable consideration though with the avowed intention of defeating an honest claim if no lien exist to forbid it and there is not in this case such lien sell all of his property for a fair price or even below a fair price and apply the proceeds thereof to the payment of one guarantor though such sale and application exhausts his whole estate and leaves all his creditors unpaid, wherefore should they from the evidence believe that the sale in question was so made and that at the time of making thereof Rues Nelson had become guarantor for George W. Nelson for more than \$6500. and that the proceeds thereof was in good faith paid to him by G. W. Nelson by reason of his being such guarantor and that G. W. Nelson is indebted to Rues Nelson more than \$6500 by reason of payments made by Rues Nelson to the creditors of said G. W. Nelson by reason of being such guarantor they should find such sale valid and binding upon said George W. Nelson and his creditors though they may further believe from the evidence that G. W. Nelson was when it was made insolvent

Refused

8

The Court will instruct the jury that if they believe from the evidence that defendants participated in taking the goods in question from the possession of the plaintiff although they may so believe that they were first put in a box and straw did not assist in putting them in the box, they are bound to find a verdict for the plaintiff for whatever they may believe from the evidence such goods when so taken were worth and that although they may further believe from the evidence that the sale in question was fraudulent and void as to the creditors of G. W. Nelson.

which the Court refused to do, but gave those marked given, refused those marked refused and modified those copied first as originally they were and then as modified by the Court to which decisions of the Court the plaintiff then and then excepted. The Court then gave on the part of the defendants the following instructions.

1<sup>st</sup> The Court is requested by the defendant to instruct the jury that unless they believe from the evidence in the case

Edward

Refused

that a good & valuable consideration was paid by the plaintiff to George W. Nelson on the pretended sale of said goods to him, that then they will find for the defendant. This instruction was asked after the plaintiff had rested his case & before any evidence was offered by defendant & "Refused" by the Court

2

Given

The jury are instructed that any person assisting an officer in the execution of process is justified in this cause when the Sheriff himself would be.

3.

Given

If the jury believe from the evidence in the case that the notes given by the plaintiff to George W. Nelson were transferred by George W. Nelson to his father Rues Nelson & that the payments made on said notes were made from the proceeds of the sales of the goods by Geo. W. Nelson to the plaintiff; the jury have a right to take such circumstances into consideration in determining whether it was the intention of Geo. W. Nelson & the plaintiff that said sale was made for the benefit of Rues Nelson.

4. If the jury believe from the evidence that the sale from George W. Nelson to the plaintiff was made by said parties or contracts of malice, fraud, covin, collusion or guile, with the intent to hinder delay or defraud the creditors of George W. Nelson - Then such sale was fraudulent & void as to the creditors of George W. Nelson and no title to said goods passed to the plaintiff as against the creditors of George W. Nelson

Given

5. The jury are instructed, that if they believe from the evidence that the sale of the goods the title of which is in controversy in this suit was made by George W. Nelson to Charles H. Nelson with the intent or purpose of hindering delaying or defrauding the creditors of said George W. Nelson and that the plaintiff Charles H. Nelson participated therein they will find for the defendants.

Given

6. The jury have a right to take into consideration all the facts and circumstances of the case as proved before them in making up their verdict in this case.

Given

7

Given

If the jury find for the plaintiff they will assess the value of the goods in damages at the Cash value of the goods when taken, provided however the jury may give such other & further damages if they find for the plaintiff as the facts of the case may justify.

8

Given

If the jury believe from the evidence in the case that at the time of the sale from George W. Nelson to the plaintiff, the plaintiff was the book keeper and principal clerk of George W. Nelson, and had an opportunity to know the pecuniary condition of the said George W. Nelson, it is a circumstance which the jury may take into consideration in making up their verdict as to notice & intent in making this ~~sale~~ said purchase in connection with other evidence in the case.

9.

The knowledge of the purchase referred to in the foregoing instruction may be inferred from or proved by circumstances & direct evidence of that fact is not necessary. Proof that the purchaser knew that the vendor was in embarrassed

Reynard

Circumstances; was pressed by his creditors for payment; that he left the country immediately after the pretended sale was made, and that the purchasers had knowledge of these facts, are sufficient to justify the jury in finding as a matter of fact that the sale was made with intent to hinder, delay or defraud creditors & that the purchasers had knowledge of & participated in that intent

Green

10. A Conveyance or sale of property made with the intent on the part of the vendor known to the vendee & participated in by him to delay defeat hinder or defraud a particular creditor from obtaining his debt though made for a valuable & full consideration: is fraudulent and void as against such creditors or any creditors who have been thus hindered or delayed.

11. The notice of the fraudulent intent on the part of the vendor in disposing of his property to & knowledge of that purpose or intent in the vendee need not be established by direct evidence, but if the jury believe from all the evidence in the case that,

Reframed

the plaintiff in this case knew at the time of the pretended sale to know that George W. Nelson was in embarrassed circumstances, and was passed by his creditors for payment, the jury would be justified in finding as a matter of fact that the plaintiff participated in the intent of the vendor George W. Nelson to hinder or delay his creditors by such sale.

12. An intent actually to defraud creditors is to be legally inferred from the grantors being insolvent at the time or greatly embarrassed, and if therefore the jury believe from all the evidence in this case that George W. Nelson was insolvent at the time of the sale from him to the plaintiff they would be justified in finding that the intent of George W. Nelson in making that sale was to hinder and delay his creditors.

13. Sales of personal property made under whatever pretences by an individual insolvent or unable to pay his debts, when the grantee has knowledge of the facts, will be held prima facie void in the hands of the grantee as against such creditors.

Reframed

14. If the jury believe from the evidence in the case that at the time of the pretended sale from Geo. W. Nelson to the plaintiff, the plaintiff was the book keeper and principal clerk of Geo. W. Nelson, such circumstances are sufficient to justify the jury in finding as a matter of fact that the plaintiff had knowledge of the pecuniary circumstances of Geo. W. Nelson.

Refused

15. It is not necessary in order to render a sale of property void as to the Creditors of the vendor that fraud should be proved. It is sufficient to show that the sale was made with the intent or purpose to hinder or delay the Creditors of George W. Nelson in the collection of their debts & that the purchaser had knowledge of such intent or purpose.

Refused

16. The jury are instructed as a matter of law, that a sale of property by a person at the time insolvent, to an individual who has knowledge of such insolvency is presumptively fraudulent and void against the Creditors of the vendor.

Refused

17

The fact that the defendant in this case was justified in taking the property in question under the attachment, set out in the plea, and that the sale from Geo. W. Nelson to Charles H. Nelson was fraudulent & void as to Creditors is admitted under the pleadings in this case & is to be taken and considered by the jury as a fact proved.

Refused

18

If the jury believe from the evidence in the case that the pretended sale from Geo. W. Nelson to the plaintiff in this suit was made for the benefit of Rhea Nelson & intended by the parties to that sale to be for his benefit, then the jury are instructed as a matter of law that such sale was fraudulent & void as to the other Creditors of Geo. W. Nelson.

Refused

19

Any sale or assignment of property by an insolvent debtor to a third person intended for the benefit of a particular Creditor which does not provide for the other Creditors of the insolvent debtor is fraudulent & void as to the other Creditors

Refused

In the giving of which the plaintiff then  
and then excepted. The jury found a  
verdict for the defendants.

The plaintiff then filed the following  
motion for a new trial and in arrest  
of judgment and his reasons therefor.

State of Illinois March Term A.D. 1861 of  
County of Warren the Circuit Court of said  
County.

Charles H. Nelson

vs.

Seth Smith

Drafus Babcock

Theodore Cornell

John Stewart &

Harmon Stratton

Said plaintiff moves the  
Court for a new trial and in arrest of  
judgment in this case and assigns as his  
reasons therefor

1<sup>st</sup> That the verdict of the jury is against the  
evidence in the case.

2<sup>nd</sup> That it is against the instructions of the Court.

3<sup>rd</sup> That it is against the law.

4<sup>th</sup> That the Court permitted illegal questions to be  
put to witnesses and illegal testimony to be  
given to the jury by the defendants.

5<sup>th</sup> That the Court gave on behalf of defendant's  
illegal and improper instructions

6<sup>th</sup> That plaintiff asked the Court to give to the  
jury legal and proper instructions some  
of which the Court refused to give and  
others of which the Court erroneously modified

Filed April 11. 1861.

Jamison & Harris

W<sup>m</sup> Lafaty, clk.

Atty - for plffs.

Which motion was overruled by the Court who  
refused to grant a new trial or arrest of  
the judgment. To which decisions of the  
Court the plaintiff then and then excepted  
whereupon judgment was rendered for the  
defendants, all the exceptions and objec-  
tions were taken and made in open Court  
and on the trial of said cause, Wherefore  
it is ordered that the matters aforesaid be  
made a part of the record in this case  
and that this bill of exceptions be signed  
and sealed.

Witness my hand and seal

A. Tyler

Seal B.

Filed May 10 1861

W<sup>m</sup> Lafaty clk.

State of Illinois  
Hannu County

I Wm Laferty Clerk of the  
Circuit Court in and for said County do hereby  
Certify that the foregoing is a true Copy of the  
record and proceedings in the foregoing case  
(except the Inventory mentioned in the bill of exception  
which is either lost or mislaid) as fully as the  
same appears from the records and files of  
my office

Witness my hand and the Seal of  
our said Circuit Court at my office  
in Monmouth this 8<sup>th</sup> day of April AD  
1862

Wm Laferty Clerk

Fees \$22.00

paid by G M Harris

Atty for Plff

In Nulla Est Emattum  
C D Smith  
Atty for Def in Error  
Ed Stone of Carmel

State of Missouri 3<sup>rd</sup> Grand Division  
Charles H. Nelson }  
24 } Enroute Missouri  
Lotto Scritto sal 3 }  
Superior Court April Term 1862

And now comes the said Charles  
H. Nelson plaintiff in error and says  
that manifest error hath intervened  
the record whereof the foregoing is  
a record and he specifies the following  
to-wit

1. The Circuit Court erred in  
admitting improper evidence for the  
defendants.

2. The Circuit Court erred  
in excluding from the jury proper  
instructions evidence for the plaintiff.

3. The Circuit Court erred in  
refusing to give to the jury instructions  
1 & 7 as requested by the plaintiff  
in modifying the said instruction 1.

4. The Circuit Court erred  
in giving to the jury the instructions  
10 & 12 on the part of the defendants.

5. The Circuit Court erred  
in overruling the plaintiff's motion  
for a new trial.

W. L. Gandy  
for plff in error

In full Est & Evaluation  
" " Ed Smith & Co. Boston.

211

Charles H. Nelson

vs

Seth Smith & Co

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Record & Evs

Filed April 22, 1862

L. Selman  
clerk