No. 14285

Supreme Court of Illinois

Nelson

vs.

Smith

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 131

14285

Nelson
vs
Smith

4662

(Appeal)

Supreme Court of the
State of Illinois

Seth Smith and
Harmon Straw
Appellants
vs.
Charles A. Nelson
Appellee

} Appeal from
Adl No

And now Come the said Appellants Seth Smith & Harmon Straw by E. D. Smith their Attorney and say that in the Record and proceedings aforesaid. And also in giving the judgment aforesaid there is manifest Error in this court

1. The Court erred in refusing to give the instructions requested by Appellants after the Appellee had rested

2. The Court erred in overruling the objection made by the Appellants to the admission of the invoice of goods claimed to have been taken by the Appellants' in Evidence and in permitting said invoice to be read in Evidence to the Jury

3. The Court erred in refusing to give instructions numbered nine. Eleven twelve

thirteen fourteen fifteen. Sixteen Seventeen. Eighteen and nineteen as requested by the Appellants.

4. The Court erred in modifying instructions numbered five Six Seven Eight and ten and in refusing to give said instructions as requested by the Appellants without modification.

5. The Court erred in giving instructions numbered One. two three four & five for the Appellees.

6. The Court erred in denying the motion for a new trial & in overruling the same

7. The Court admitted improper evidence for the Appellees. and refused to admit proper evidence on the part of the Appellants.

8. The verdict of the Jury was against law and evidence

And the said Seth Smith & Harrison Shaw pray that the judgment aforesaid for the errors aforesaid and other errors in the Record & proceedings aforesaid may be reversed annulled & altogether held for nothing and that they may be restored to all things which they have lost by occasion of the said

judgment,

E. S. Smith
Appellants Atty

And now comes the said appellee Charles H. Nelson and says there is no such error as alleged above & this they pray may be acquitted of &c

April 24/62 W. C. Goudy
for Appellee

Supreme Court Illinois
Thos Johnson Dunson

Sally Smith and
Harmon Shaw - Appls

131 vs.

Charles N Nelson
Appellee

Argument of Cause

Filed Apl. 14. 1862
L. Leland
Clk.

Be it Remembered that on the 3d day February AD 1860 a praecipe was filed in the office of the Clerk of the Circuit Court of Warren County Illinois. And upon filing the same a Summons issued out of said Court which is in the words and figures following to Wit:

State of Illinois }
Warren County } ss

The People of the State of Illinois. To the Coroner of Warren County Greeting:

We Command you to Summon Seth Smith & Harmon Strain 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 Monmouth on the third Monday in the month of March next to answer the Complaint of Charles H Nelson of a Plea of Trespass to personal property to his damage the sum of One Thousand dollars as he says: and have you then and there this Writ and make return thereon in what manner you execute the same

Witness William Lafferty Clerk of our said Circuit Court and the Seal thereof at Monmouth this 3d day of February in the year of our Lord one thousand eight hundred and sixty

Wm Lafferty Clerk

C. S.

On the back of said Summons is the following return made by the Coroner of said County,
"I did on the 4th day of February 1860 serve this Writ by reading the same to the within named Seth Smith & Harmon Straw.
Dated this 9 day of February 1860
J. C. Crawford Coroner of Warren County
Filed Feby 9th 1860
Wm Lafferty clerk
"And on the 9th day of March AD 1860 a Declaration was filed in said cause which is in the words and figures following to wit;
State of Illinois } Warren County Circuit Court
Warren County } March Term AD 1860

Charles H Nelson plaintiff in this suit by Holloway & Lucas his Attorneys complains of Seth Smith and Harmon Straw Defendants in this suit being in Custody &c of Trespass to personal property for that the said Defendants on the second day of January in the year of our Lord One thousand eight hundred and sixty, at and within the County of Warren and State of Illinois, did at a Brick Store on the North side of the Public Square then occupied by said Plaintiff at and within the City of Monmouth in said County, with force and arms &c Seized, took and carried away

certain goods and merchandise of the said Plaintiff described as follows to Wit: Nine Vests of the value of Thirty one dollars & fifty cents, two light silk Vests of the value of Twelve dollars, Fourteen Vests of the Value of Thirty five dollars, Eight Vests of the Value of twenty four dollars, Seven Vests of the Value of Twenty four dollars & fifty cents, Twenty seven Vests of the Value of Eighty one dollars, Thirty Vests of the Value of One hundred and twenty dollars, Fifty six Vests of the Value of One hundred and seventy five dollars, Two Vests of the Value of Ten dollars Twenty eight vests of the value of One hundred and twelve dollars, Two vests of the Value of Ten dollars, then and there found and being, and disposed of them to 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, Whereforo the said Plaintiff says that he is injured and has sustained damage to the amount of One thousand dollars and therefore he brings suit &c

Holloway & Luce
Attys for Pltff

Filed Mch 9th 1860
W. Lafferty Clerk

State of Illinois }
Warren County }

Pleas before the Honorable John S Thompson Judge of the tenth Judicial circuit of the State of Illinois. At a circuit court began and held at the Court House in Monmouth. in the said County of Warren and State of Illinois. on the third Monday in the month of March in the year of our Lord one thousand eight hundred and sixty. It being the 19th day of said month and year

Present Hon John S Thompson Judge
James H Stewart States Attorney
Seth Smith Sheriff
Wm Lafferty Clerk

220 Charles H Nelson vs Seth Smith & Harmon Straw } Trespass to personal property

(Copy of Plea)

The State of Illinois } In Circuit Court
Warren County } March Term AD 1860

Charles H Nelson vs Seth Smith & Harmon Straw } Trespass to personal property

And the said defendants by E. S. Smith & Co & Phils & Reed their attorneys come and defend the force & injury when &c and say that they are not guilty of the trespass 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 thereof complained against them And of this they the said defendants put themselves upon the Country &c

E. S. Smith & Co & Phils & Reed defts attys

And Pltff doth likewise

Gondy for Pltff

And for a further plea in this 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 said Plaintiff in manner and form as the said Plaintiff has in his said Declaration in that behalf alledged. and of this they the said defendants puts themselves upon the Country &c

E. S. Smith & Co & Phils & Reed Defts attys

And Pltff doth likewise

Gondy for Pltff

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 Twenty fourth day of December in the year of our Lord One thousand eight Hundred and Fifty nine One George W Nelson became and was indebted to one Robert Pulliam, Andrew J Wills, David Rankin & Eben Mason under the firm name of Pulliam Wills, Rankin & Co; in the sum of One Hundred & Twenty four dollars and Sixty three cents for goods wares and merchandize sold him the said George W Nelson at his request on to wit, the Sixteenth day of April AD 1859 for their damages which they had sustained by reason of the nonperformance by the said George W Nelson of certain promises and undertakings then made by the said George W Nelson to the said, Pulliam, Wills, Rankin & Co,

And the defendants further say that the said indebtedness remaining unpaid unsatisfied and in full force the said Robert Pulliam Andrew J Wills, David Rankin & Eben Mason on to wit: the twenty fourth 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 Robert Pulliam, Andrew J Wills David Rankin & Eben Mason filed the twenty fourth day of December AD 1859 and such estate so attached to secure or so 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 AD 1860 so as to compel the said George W Nelson defendant to appear and answer the Complaint of the said plaintiffs Robert Pulliam Andrew J Wills, David Rankin & Eben Mason - 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 men-
-tioned the said defendant Seth Smith was
the then acting Sheriff of said Warren County
Illinois and as such was authorized and com-
-manded 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 the
said Writ of Attachment to Wit: on the twenty
fourth day of December AD 1859 the said goods
and Merchandize in the said declaration men-
-tioned being the property of the said George W
Nelson and in the possession of the said Plaint-
-iff 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 Harmon Straw as his assistant
and deputy then and there levied the said
Writ of Attachment upon the said Goods and
Merchandize in the said declaration mention-
-ed 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

Supreme Court of the
State of Illinois

Seth Smith and
Harmon Straw
Appellants
vs.
Charles H. Nelson
Appellee

} Appeal from
A.D. 1870

And now Come the said Appellants Seth Smith & Harmon Straw by E. S. Smith their Attorney and say that in the Record and proceedings aforesaid. And also in Giving the judgment aforesaid: there is manifest Error in this court

1. The Court erred in refusing to give the instructions requested by Appellants after the Appellee had rested

2. The Court erred in overruling the objection made by the Appellants to the admission of the invoice of Goods claimed to have been taken by the Appellants; in Evidence and in permitting said invoice to be read in Evidence to the Jury

3. The Court erred in refusing to give instructions numbered nine. Eleven twelve

Thirteen fourteen fifteen Sixteen Seventeen Eighteen and nineteen as requested by the Appellants.

4. The Court erred in modifying instructions numbered four Six Seven Eight and ten and in refusing to give said instructions as requested by the Appellants without modification.

5. The Court erred in giving instructions numbered One two three four & five for the Appellees.

6. The Court erred in denying the motion for a new trial & in overruling the same

7. The Court admitted improper Evidence for the Appellees. and refused to admit proper Evidence on the part of the appellants.

8. The verdict of the Jury was against law and Evidence

And the said Seth Smith & Harrison Shaw pray that the judgment aforesaid for the Errors aforesaid and other Errors in the Record & proceedings aforesaid may be reversed annulled & altogether held for nothing and that they may be restored to all things which they have lost by occasion of the said

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each 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 there 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 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 defs attys

Filed March 23d 1860

Wm Lafferty Clerk

And afterwards to Wit on the 24th day of March AD 1860 the following order was entered upon the records of said court which is as follows:

Charles N Nelson }
vs } Trespass to personal property
Seth Smith & }
Harmon Straw }

This day came the defendants by their Attorneys, and file their affidavit and move the Court for a Continuance herein and after hearing the same. It is ordered by the Court that the motion be allowed. And that this cause be continued until the next term of this Court at the defendants costs, Therefore it is considered by the Court that the said Plaintiff have and recover of and from the said defendants his costs by him at this term of this Court laid out and expended and may have Execution therefor.

State of Illinois }
Warren County } ss

Pleas before the Honorable Aaron Tyler Judge of the tenth Judicial Circuit of the State of Illinois. At a circuit court began and held at the Court House in Monmouth 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 22d day of said Month and year,

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Present Hon Aaron Tyler Judge
James H Stewart States Atty
Seth Smith Sheriff
Wm Laferty Clerk

Charles H Nelson
vs } Trespass to
Seth Smith & Harmon Straw } personal property

"And afterwards to wit, on the 15th day of November A D 1860 being at the October term 1860 of said Court the following order was entered upon the records of Court, which is as follows Viz:

Charles H Nelson
vs } Trespass to
Seth Smith & Harmon Straw } personal property

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

Copy of Replication to 3d plea

Charles H Nelson
vs }
Seth Smith et al }

And the Plaintiff for Replication to the 3d plea of the defendants

aforesaid says Precludi non because he says that the said defendants at the said time when &c. of his own wrong and without the cause by him in their own wrong and with the cause in their third plea alleged. committed the said several Trespasses in the said Plea attempted to be justified, in manner & form as the said Plaintiff hath above complained against them the said defendants And this the Plaintiff prays may be inquired of by the Country &c

Gundy for Pltff

And the said defendants doth the like

Storrs & Reed D. A.

Filed Oct 31st 1860

Wm Lafferty Clk

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State of Illinois }
Warren County }

Pleas before the Honorable Aaron Tyler Judge of the tenth Judicial Circuit of the State of Illinois. At a circuit court began and held at the Court House in Monmouth in the said County of Warren and State of Illinois. On the third Monday in the month of March in year of Our Lord one thousand eight hundred and sixty one. It being the 18th day of said month and year,

Present Hon Aaron Tyler Judge
James H Stewart States atty
David Turnbull Sheriff
Wm Laferty Clerk

Charles H Nelson
Vs } Trespass to personal property
Seth Smith & Harmon Straw }

"And afterwards to wit. on the 26th day of march AD 1861 the following order was entered upon the records of said Court which is as follows;

Charles H Nelson
Vs } Trespass to personal property
Seth Smith & Harmon Straw }

This day came the defendants

by their Attorney and enters his motion to suppress the Deposition of George N Nelson filed herein, And after hearing the same it is ordered by the Court, that the motion be allowed and that said deposition be suppressed,

And afterwards to Wit: on the 4th day of April AD 1861 being at the March Term of said Court the following order was entered upon the records of said Court as follows. To Wit;

Charles N Nelson
vs } Trespass to personal property
Seth Smith & Harmon Straw }

This day came the Plaintiff by his attorney and enters his motion for a continuance herein, And leave is given him to file affidavit for that purpose by tomorrow morning, thereupon came the Plaintiff and enters his motion to withdraw his Replication to defendants 3d plea, which motion is confessed by the defendant, And leave is given the said Plaintiff to reply double herein,

(Copy of Replication)

State of Illinois } March Term AD 1861 of the
County of Warren } Circuit Court of said County

Charles N Nelson
vs } Trespass on personal property
Seth Smith & Harmon Straus }

Said Plaintiff for replication to the plea of said defendant thirdly above pleaded says precludi non, Because he says that at the said time when &c, it is alledged in said plea that said defendant Smith as Sheriff of said County and said Straus as his assistant and deputy levied the Attachment in said plea mentioned on the goods and chattels in said plea mentioned. Said Smith was not Sheriff of said County, in manner and form as is in said plea alledged, and that plaintiff prays may be inquired of by the Country &c.

And the deft doth the like. Reed D. A. } Jamison & Harris atty for Pltff

And by leave of the Court for further Replication to the plea of said defendants thirdly above pleaded, said Plaintiff as to said plea says precludi non, Because he says that at the said time when &c it is alledged in said plea that said defendant Smith as Sheriff of said County, and said Straus as his assistant and deputy levied the attachment in said plea mentioned on the goods and chattels in said plea named, said defendant Straus was not the deputy and assistant of said defendant Smith in manner and form as

is in said plea alledged, and this the Plaintiff prays may be inquired of by the Country &c

Jamison & Harris
Attys for Pltff

And the said defendant doth the like

Reed D.A.

And said Plaintiff by leave of the Court for further Replication to the plea of said defendants thirdly above pleaded says Precludi non, because he says that the goods and chattels in said plea mentioned or any of them were not on the 24th day of December AD 1859 nor when it is in said plea alledged that they were levied upon as the goods and chattels of said George W Nelson, the property of said George W Nelson, nor were they or any of them then as the property of said George W Nelson liable to be seized or taken by virtue of the Writ of Attachment in said plea mentioned and that they nor any of them had not before then or at any time been sold to him by said George W Nelson to hinder or delay the Creditors of said George W Nelson from the collection of their just demands against him in manner and form as said defendants have in their said plea alledged, but that they were then his property and that he had in good faith on the 24th day of October AD 1859 for a Valuable Consideration to Wit: the sum of Six thousand and five hundred dollars

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purchased them of said George W Nelson and that they were then and thereupon delivered to him by said George W Nelson. And this said plaintiff prays may be inquired of by the Country &c

Jamison & Harris
Atty for Pltff

And the said defendants doth the like

Reed D.A.

Filed April 5th 1861

Wm Lafferty clk

And on the 5th day of April AD 1861 the following order was entered upon the records of said Court which is as follows.

Charles W Nelson
vs
Seth Smith & Harmon Straus } Trespass to personal property

This day again the Plaintiff by his attorney and withdraws his motion for a continuance herein, Thereupon came the defendant and enters his demurrer to the Plaintiff Replications 1st & 2d to defendants 3d plea, and after hearing the same the Court overrules the demurrer,

(Copy of Dem)

The State of Illinois } In Circuit Court
Warren County } March Term AD 1861

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purchased them of said George W Nelson and that they were then and thereupon delivered to him by said George W Nelson. And this said plaintiff prays may be inquired of by the Country &c

Jamison & Harris
Atty for Pltff

And the said defendants doth the like

Reed D.A.

Filed April 5th 1861

Wm Lafferty clk

And on the 5th day of April AD 1861 the following order was entered upon the records of said Court which is as follows.

Charles W Nelson
vs
Seth Smith & Harmon Straus } Trespass to personal property

This day again the Plaintiff by his attorney and withdraws his motion for a continuance herein, Thereupon came the defendant and enters his demurrer to the Plaintiff Replications 1st & 2d to defendants 3d plea, and after hearing the same the Court overrules the demurrer,

(Copy of Dem)

The State of Illinois } In Circuit Court
Warren County } March Term AD 1861

Charles N Nelson
vs
Seth Smith &
Harmon Straw

And the said defendant come and demur to the said first & second Replication to the third plea by the said Plaintiff filed and say the same is insufficient in law

Storrs & Reed D.A.

Filed April 5th 1861

Wm Lafferty Clk

And afterwards on the 5th day of April AD 1861 the following order was entered upon the records of said Court which is as follows

Charles N Nelson
vs } Trespass to personal property
Seth Smith & Harmon Straw

And now in this day came the parties and their attorneys, and issue being joined for trial they put themselves upon the Country, thereupon let a Jury come, and the regular panel having been exhausted, It was ordered by the Court that the Sheriff summon enough to fill the panel from among the bystanders. Thereupon Came a Jury to Wit: James M Duncan, William B Brown

Smith Purdy, Selah White, P D. Hedges, George L Bostwick, James Cowan, Clement Pierce, Franklin Purdy, Andrew Livermore Lewis S Olmstead & Joseph H Adcock who being duly elected tried and sworn to well and truly try the issue joined herein. Thereupon came Joseph H Adcock one of the jurors impannelled herein, and for good and sufficient cause shown to the Court. And by the agreement of counsel he was excused from serving as a Juror in this case. And the parties agree to try it by the other eleven, who after hearing the evidence and argument of Counsel, And the hour of adjournment having arrived the Jury were permitted to separate under the instructions of the Court and required to meet the Court at 8½ o'clock tomorrow morning.

And afterwards to Wit on the 6th day of April AD 1861 the following order was entered upon the records of said Court as follows Viz;

Charles H Nelson
vs
Seth Smith & Harmon Straw } Trespass to personal property

This day again came the parties by their attorneys, And also came the Jury impannelled herein on Yesterday

And after receiving the instructions of the Court, retired in charge of an officer to consider of their Verdict, And again returned into Court and upon their Oaths do say, "We the Jury find for the Plaintiff and assess his damages at the sum of Three hundred and Seventy two dollars and fifty Cents Thereupon Came the defendants by their Attorney and entered his motion for a new trial herein, and in arrest of Judgment,

And afterwards to wit, on the 12th day of April A D 1861 the following order was entered upon the records of said Court as follows Viz:

Charles H Nelson
vs } Trespass to personal propty
Seth Smith & Hammond Straw }

This day again this cause coming on to a hearing on the defendants motion for a new trial, and in arrest of Judgment herein, And after hearing the same it is ordered by the Court that the motion be Overruled, And that Judgment be rendered on the Verdict of the Jury herein, Therefore it is considered by the Court that the said Plaintiff have and recover of and from the said defendants the sum of Three hundred and Seventy two dollars and fifty Cents

And after receiving the instructions of the Court, retired in charge of an officer to consider of their Verdict, And again returned into Court and upon their Oaths do say, "We the Jury find for the Plaintiff and assess his damages at the sum of Three hundred and Seventy two dollars and fifty Cents Thereupon came the defendants by their Attorney and entes his motion for a new trial herein, and in arrest of Judgment,

And afterwards to Wit, on the 12th day of April A D 1861 the following order was entered upon the records of said Court as follows Viz:

Charles H Nelson
vs } Trespass to personal propty
Seth Smith & Hammond Straw }

This day again this cause coming on to a hearing on the defendants motion for a new trial, and in arrest of Judgment herein, And after hearing the same it is ordered by the Court that the motion be overruled, And that Judgment be rendered on the Verdict of the Jury herein, Therefore it is considered by the Court that the said Plaintiff have and recover of and from the said defendants the sum of Three hundred and Seventy two dollars and fifty Cents

being the amount so found by the Jury as aforesaid, together with his costs by him in this suit laid out and expended and may have Execution therefor,
Thereupon came the said defendant and pray an appeal to the Supreme Court, which is allowed by the Court upon the said defendant entering into Bond in the sum of Fifteen hundred dollars, with security to be approved by the Clerk of this court by agreement of the parties herein, Bond and Bill of Exceptions to be filed in thirty days from this date,

1 No 7

22 Circuit Court Warren County

Charles H Nelson
vs
Seth Smith and
Harmon Straw
State of Illinois
Warren County } ss

Be it Remembered that in the term of March AD 1860 came Charles H Nelson the above named Plaintiff by Holloway & Luce his attorneys into the Circuit Court of Warren County and impleaded Seth Smith and Harmon Straw of a plea of Trespass on which said Plaintiff declared against the said defendants in these words

State of Illinois } ss Warren County Circuit Court
Warren County } March Term AD 1860

Charles H Nelson Plaintiff in this suit by Holloway & Luce his attorneys complains of Seth Smith and Harmon Straw defendants in this suit being in Custody &c of Trespass to personal property for that the said defendants on the second day of January in the year of our Lord One thousand eight hundred and sixty at and within the County of Warren and State of Illinois, did at a Brick Store on the North side of the Public Square then occupied by said Plaintiff at and within the City of

Monmouth in said County, with force and arms &c seized, took and carried away certain goods and Merchandise of the said Plaintiff described as follows to Wit: Nine Vests of the value of Thirty one dollars & fifty cents, two light silk vests of the value of Twelve dollars, Fourteen Vests of the value of Thirty five dollars, Eight vests of the value of Twenty four dollars, Seven Vests of the value of Twenty four dollars & fifty cents, Twenty Seven Vests of the value of Eighty one dollars, Thirty Vests of the value of One hundred and twenty dollars Fifty six vests of the value of One hundred and Seventy five dollars, Two Vests of the value of Ten dollars, Twenty eight vests of the value of One hundred and twelve dollars, Two Vests of the value of Ten dollars, then and there found and being and disposed of them to 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 One thousand dollars and therefore he brings suit &c

Holloway & Luce
Attys for Pltff

Filed Mch 9th 1860
Wm Lafferty Clerk

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To which said declaration the said defend-
-ants by Phil E Reed attorney pleaded
these words,

The State of Illinois } In Circuit Court
Warren County } March Term AD 1860

Charles N Nelson
vs } Trespass to personal property
Seth Smith & Harmon Strand

And the said defendants
by E S Smith & co & Phil E Reed their attorneys
come and defend the force & injury when &c
and say that they are not guilty of the supposed
trespass 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
thereof complained against them, and of this
they the said defendants put themselves upon
the Country &c

E S Smith & co & Phil E Reed defts attys

And Plaintiff doth likewise
Gondy for Pltff

And for a further plea in this 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 said
Plaintiff in manner and form as the said Plaintiff
has in his said Declaration in that behalf
alleged and of this they the said defendants

put themselves upon the Country &c.

E. S. Smith & co & Phils & Reid defts attys

And Pltff doth likewise

Goudy for Pltff.

And for a further plea in this 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 Twenty fourth day of December in the year of our Lord One thousand eight hundred and fifty nine. One George W Nelson became and was indebted to one Robert Pulliam. Andrew J Wills. David Rankin & Eben Mason under the firm name of Pulliam. Wills. Rankin & Co, in the sum of One hundred & twenty four dollars and sixty three cents for goods wares and merchandize sold him the said George W Nelson at his request on to wit. the Sixteenth day of April AD 1859. 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 Pulliam. Wills. Rankin & Co,

And the defendants further say that the said indebtedness remaining unpaid unsatisfied and in full force the said Robert Pulliam Andrew J Wills. David Rankin & Eben Mason on to wit: the twenty fourth day of December AD 1859 at the City of Monmouth sued out and prosecuted out of the Warren County Circuit

26 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 Robert Pulliam, Andrew J Wills, David Rankin & Eben Mason filed the twenty fourth day of December AD 1859 and such Estate so attached to secure or so 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 AD 1860 so as to compel the said George W Nelson defendant to appear and answer the Complaint of the said Plaintiffs Robert Pulliam Andrew J Wills, David Rankin & Eben Mason — 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 wherein 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

26 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 Robert Pulliam, Andrew J Wills, David Rankin & Eben Mason filed the twenty fourth day of December AD 1859 and such Estate so attached to secure or so 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 AD 1860 so as to compel the said George W Nelson defendant to appear and answer the complaint of the said Plaintiffs Robert Pulliam Andrew J Wills, David Rankin & Eben Mason — 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 wherein 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 defendant further Aver that afterwards and before the return day of the said Writ of Attachment to Wit: on the twenty fourth day of December AD 1859 the said goods and Merchandize in the said Declaration 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 Harmon Straw as his assistant and deputy 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 defendants

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Seth Smith then acting Sheriff of said Warren County then and there 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 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
Philo E Reed defts attys

Filed March 25th 1860
W. Lafferty Clerk

And to which said plea of the said defendants the said Plaintiff by Jamison & Harris his attorneys made replication in these words,

State of Illinois } March Term AD 1861 of the Circuit
County of Warren } Court of said County

Charles N Nelson
vs
Seth Smith & Warren Straw } Trespass to personal property

Said Plaintiff for Replication to the plea of said defendants thirdly above pleaded says precludi non because

he says that at the said time when &c. it is alledged in said plea that said defendant Smith as Sheriff of said County and said Straw as his assistant and deputy levied the Attachment in said plea mentioned on the goods and chattels in said plea mentioned said Smith was not Sheriff of said County in manner and form as is in said plea alledged: and that plaintiff prays may be inquired of by the Country &c

Jamison & Harris Attys for Pltff

And the deft doth the like

Reed D.A.

And by leave of the Court for further replication to the plea of said defendants thirdly above pleaded. said Plaintiff as to said plea says *precludi non*. Because he says that at the said time when &c. it is alledged in said plea that said defendant Smith as Sheriff of said County and said Straw as his assistant and deputy levied the Attachment in plea mentioned on the goods and chattels in said plea named. said defendant Straw was not the deputy and assistant of said defendant Smith in manner and form as in said plea alledged. And this the Plaintiff prays may be inquired of by the Country &c

Jamison & Harris

Attys for Pltff

And the said defendant doth the like Reed D.A.

No 9

30 And said Plaintiff by leave of the Court for further Replication to the plea of said defendants thirdly above pleaded says precludi non Because he says that the goods and chattels in said plea mentioned or any of them were not on the 24th day of December AD 1859 nor when it is in said plea alledged that they were levied upon as the goods and chattels of said George W Nelson. the property of said George W Nelson, nor were they or any of them then as the property of said George W Nelson liable to be seized or taken by virtue of the Writ of Attachment in said plea mentioned and that they nor any of them had not before then or at any time been sold to him by said George W Nelson to hinder or delay the Creditors of said George W Nelson from the Collection of their just demands against him in manner and form as said defendants have in their said plea alledged but that they were then his property. And that he had in good faith on the 24th day of October AD 1859 for a Valuable Consideration to Wit: the sum of Six thousand and five hundred dollars purchased them of said George W Nelson and that they were then and thereupon delivered to him by said George W Nelson. And this said Plaintiff prays may be inquired of by the Country &c

Jamison & Harris
Atty for Pltff

And the said defendants doth the like Rud D. a

Filed April 5 1861
W. L. [illegible] Clk

And afterwards to wit: at a term of the Circuit Court of Warren County held at the Court House in the City of Monmouth in & for the County of Warren on the 5th day of April AD 1861 before the Hon Aaron Tyler Judge of said Court according to the form of the Statute in such case made and provided the aforesaid issue so joined between the said parties came on to be tried by a Jury of the County of Warren aforesaid for that purpose duly empannelled good & lawful men of said County. At which day came then as well the said Plaintiff as the said defendants by their respective attorneys aforesaid. and the jurors of the Jury aforesaid Empannelled to try the said issue being called also came and were then and there in due manner chosen & sworn to try the said issue. And upon the trial of the said issue the Counsel for the said Plaintiff to maintain and prove the said issue on his part called, Christopher N Lucas who being sworn testified as follows, I have known the parties to this suit for several years. Seth Smith came into the Store of the Plaintiff late in the fall or early in the winter of 1859 and took goods consisting mostly of Vests I think Straw helped haul them away Chs McNelson was in possession of the goods. they were in a Brick Store on the South side

of the Squaw in Monmouth. Plaintiff forbid taking goods.
The Plaintiff further to maintain and prove the issue on his part then called as a Witness C. S. Armsby

Who being duly sworn testified as follows, I have known parties for a good many years. I made invoice of goods shown me from top of paper down to mark $625. Dont recollect who employed me. I made it either in Store of Nelson or in Billings Block. I commenced making it January 11th 1860. part of the invoice is in my hand Writing. Reading over the Memorandum brings to my recollection the fact that the statements there are correct & upon reference to the Memorandum I am able to swear to the correctness of the invoice Mark and Dent were there and assisted me in making the Memorandum. Each of us counted & fixed a price. we examined one article of each kind In making up the invoice we took count of each other. I am acquainted with such articles & have been in Dry goods business for self and some time for father.
On cross examination witness testified
We put on what we considered a cash retail value which is probably twice or three times what the goods would have sold for in cash at whole sale. upon refreshing my recollection by reference to the invoice I am

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We put on what we considered a cash retail value which is probably twice or three times what the goods would have sold for in cash at whole sale. upon refreshing my recollection by reference to the invoice I am

able to swear to the invoice.

The Plaintiff further to maintain and prove the issues on his part, then called as a Witness William Dent who being duly sworn testified as follows. I assisted Mr Mark. Mr Armsby in invoicing goods in January 1860. I think early in the month. we invoiced a large stock of dry goods. We invoiced two lots. The first was a lot of beets which had belonged to Charles H Nelson. I did not see them taken from the store. I saw them in Deft Smiths possession after they were taken. Saw him sell of them. Saw some of them in his possession that I did not see him sell. there was a case full of them. I counted some of them at time of Invoice I was engaged in making out the inventory I reported the goods set out by myself correctly.

On his Cross examination Witness testified I have no recollection of the amount or price of any single article, or any number of articles of any kind. One lot was separate from the other. Nelson requested us to make the inventory. I think I was present when whole Invoice was taken, the Valuation was put ~~down~~ at a cash retail Value.

C. L. Armsby recalled by Plaintiff

34 testified, I have no knowledge of how many of those Vests I counted, Probably one third. Some where about Sixty I should think. We separated them in different piles according to Value, and then we each counted separate piles.

The Plaintiff here rested his case

The Defendant then insisted and claimed that under the pleadings in the case, the fact that the sale from Geo W Nelson to Charles H Nelson was without a Valuable consideration was admitted by the Replication, and asked the Court to give the Jury the following Instruction.

The Court is requested by the defendant to instruct the Jury that unless they believe from the evidence in the case that a good and Valuable consideration was paid by the Plaintiff to Nelson on the pretended Sale of said goods to him that then they will find for the defendant.

The Court refused to give said instruction to which refusal the Counsel for the defendant then and there excepted.

Instruction was asked by Pltff had rested his case for any evidence was offered by Defdt & refused by the Court.

The Defendants to maintain and prove the Issues on their part then called as a Witness William Dent who being duly sworn testified as follows,

The goods in Controversy were sold by George W Nelson to Charles H Nelson. Before the sale the Plaintiff had been in the employ of Geo W Nelson, he had been in the Store about two months before the sale & had had the general management of the business. Geo W Nelson left about the last of October. I dont know where he went. He told me he went to New York Charles H Nelson kept books part of the time. I kept them until he came, and for a part of the time after. Afterwards Plaintiff kept them. He kept Cash Book Ledger, Day book & Journal. Geo W Nelson was East after Charles H Nelson came. The Plaintiff was Clerk in the Store up to the time of the sale to him. George had been buying goods on Credit. I first learned of sale on Morning of some day in latter part of October. George W Nelson left the same day. Charles H Nelson bought no other goods. He shipped away some of the goods to Willard Nelson in Knox County I think the amount sent to Willard Nelson would Invoice at $600, or $700. The Plaintiff and Geo W Nelson are Cousins. I know of no other property of Geo W Nelson than

the Stock of goods, I was with him Eleven months.

On his Cross Examination the Witness testified, I had heard of Sale before it was made, perhaps a Week before, I heard of it from Charles H Nelson. I knew of his going through the Stock with me for the purpose of ascertaining its Value. I think we ascertained the Value very nearly. Estimate was made by taking one department of goods at a time. There was no Secrecy that I was aware of.

On his ReDirect Examination the Witness testified, I dont know of Sale only from what parties told me. Dont know of any one who knew any thing of Sale out side of Store.

The Defendants then called as a Witness Isaac M Kirkpatrick, who being first duly Sworn testified as follows,

I knew the Nelsons in 1859, On the evening of the 24th of October 1859, my Brother gave me three notes against George W Nelson. And told me to see him. I called at the Store, presented the notes to him and demanded payment. He replied that he would call in the morning and settle them. He did not call. The notes amounted to about $2200. I think Chs H Nelson was at the Desk with George when I went into the Store. As I turned to go out

he said he would call around next morning. He spoke in the usual tone of voice Matters looked as usual. The Plaintiff and Geo W Nelson were both at the desk. I next saw Nelson two or three months afterwards I looked for him next day but did not find him. We had other demands against George W Nelson. We received November 2d a claim against George W Nelson in favour of Dayton & Gilder of $360. Some time afterwards claim in favour of C W & J. T Moore of $1023.00 I know of no other property of Geo W Nelson at that time. Should probably have known if he had any. Our business required us to be on the watch for men of that kind.

On his Cross Examination witness testified when I went into the Store. I called George W Nelson one side. No one else learned from me what my business was. George W Nelson said in answer to me when I presented the notes. "I'll call around and make it all right" I might not have noticed things if sale had been made. Reed Nelson was Endorser on the notes. Dont know of their being paid George W Nelson could hardly have had property without my knowing it.

The Defts then called as a Witness
A. G. Kirkpatrick. who being duly sworn testified as follows.

I received the Lewis notes

38 against Geo N Nelson October 24th 1859
I handed to my Brother Isaac M Kirkpatrick
to present to Nelson for payment. He returned
them and said that Nelson would call and
see me the next morning. I looked and
inquired for Nelson the next morning and
was then told of the sale. I also had a claim
against him in favour of Dayton & Gilder
& brot suit on it & obtained judgment. Also
claim of C N & J T Moore of $102.3. I was on
the look out for property and have not been
able to find any unless it was these goods
I also held a claim in favour of Chaney
Cole & Carpenter dated August 11th 1859 due
in 9 months for $525.95. I filed an affidavit
and had Clerk issue Capias on Dayton &
Gilder claim Affidavit was filed January
7th 1860.

On Cross Examination witness testified
I obtained judgment on the Dayton & Gilder
claim in October last. never obtained judg-
-ment on any other claim, Reuben Nelson
was endorser on the Lewis paper. after
the sale took place, I wrote to parties. On
the 7th Nov notes were sent to Lewis on his
order. Reuben Nelson was endorser on
Chaney. Cole & Carpenter paper & I commen-
-ced Attachment suit against him.

On his Redirect Examination witness
testified. The property attached was in

building where Charles N and Geo W Nelson had done business Rueá Nelson put Stock in the Store room after Geo W & Chs N Nelson quit. Geo W Nelson was bossing around the Store,

The Defendant then called as a Witness William M Gregg who being duly Sworn testified as follows,

I was in the Exchange & Banking business in the fall of 1859 I had Several claims against Geo W Nelson Sent to me for Collection, These claims came through the Banking House of J. N. Burch & Co Chicago

One due	September	13 for	$719.00
"	"	Oct " "	723.00
"	"	Nov 9 (Dennison et al)	387.00
"	"	Dec 4 Collins & Bower	371.39
"	"	Dec 20	735.00

These were all protested and returned,

On cross Examination the witness testified I dont know that any were presented to Nelson. Dont know Nelsons hand writing all were protested by Notary & sent back I presume Mr Greer protested some,

The defendants then called as a Witness W. B. Greer, who being first duly Sworn testified as follows,

I Rec'd claim against George W Nelson sent me from Aurora on the 21st October 1859 and presented it to him before he went East. I obtained judgment on the claim for $571.98. I rec'd other claims against Geo W Nelson. The first I received as Notary was acceptance drawn by Reed Nelson on George Sept 7th 1859 for $387. and endorsed to Dennison Williams & Co — Note $725.00 Sept 17th 1859 payable to Reed Nelson endorsed to Hill and others were not presented. Nelson was here when I presented note which came to me from Aurora he said he could not arrange it then. Reed Nelson had a Store under my office in 1860. George W & Reed Nelson and A. N. Nott were in attendance. A M. Nelson was doing business here for Reed in fall of 1859 in Pattisons building.

On his Cross Examination witness testified A M Nelson removed his Store last Spring think it was after A M Nelson went away that Reed went into business. Reed bought out Sherman. He was bound to pay both notes I protested.

The defendant then called as a Witness Phile E Reed. who being duly sworn testified as follows.

I held two claims against

George W Nelson Rec'd one Dec 16th 1859 $920. & int 5 or 6 months Acct $126. & Enough to make up nearly $800. which was not then due.

The defendant then called as a Witness J. O. R. Earp who being duly sworn testified as follows.

I know the Plaintiff in this suit Charles H Nelson. Between the 7th Nov 1859 and the 1 Dec 1859 I hauled from his Store six loads of goods. Some were heavy loads One trip I had only one box. they were Shipped to W. M. Nelson Hendersonville. Some boxes & bales. Chs H Nelson paid me for hauling & delivered to me some dry goods boxes filled with goods & some Boots & Shoes

On his cross Examination witness testified The Boot & Shoe boxes were light. Some were heavy loads. Called every trip a load.

The defendant then Called as a Witness Azro Patterson who being duly sworn testified as follows.

I know the parties to this suit. I had Conversation about trading with Plaintiff. I made proposition to buy Stock of goods. he said they were worth $7500. The Conversation was but a few days not over a week before they were Seized on the Attachment Writ.

42 On his Cross Examination witness testified I think perhaps I made proposition to buy. I Examined the Stock. Should have been willing to have traded without inventory.

The defendants then called as a Witness William Safety who being duly Sworn testified as follows.

I am Clerk of Circuit Court of Warren County. was in 1859 The return on the attachment writ shown me in case of Pulliam & others Vs George W Nelson is in the hand writing of the Defendant Seth Smith who was then acting as Sheriff of this County.

The return to the Execution shown me Seymour Vs George W Nelson is in the hand writing of D Tumbull present acting Sheriff. Strain was appointed & acted as deputy from 15th Sept 1859 to Dec/60.

The deft here offered and read in evidence the Commission of Seth Smith as Sheriff of said County which is in the words & figures following to Wit:

William H Bissell

Governor of the State of Illinois. To all to whom these presents shall come Greeting

Know ye that Seth Smith having been duly elected to the office of Sheriff of the County of Warren and State of Illinois

I William H Bissell Governor of the State of Illinois, for and on behalf of the People of said State, do commission him Sheriff for said County and do authorize and empower him to execute and fulfill the duties of that office according to law. To have and to hold the said office with all the rights and Emoluments thereunto legally appertaining until his successor shall be duly elected and qualified to office.

In Testimony Whereof I have hereunto set my hand and caused the great Seal of State to be hereunto affixed. Done at the City of Springfield this fourth day of December in the year of our Lord one thousand eight hundred and fifty eight, and of the Independance of the United States the eighty third.

L S

By the Governor Wm H. Bissell

O. M. Hatch

Secretary of State

State of Illinois }
Warren County } I Wm Laferty Clerk of the circuit Court in and for said County do certify that on this day I administered the Oath of office to the within named Seth Smith as Sheriff of said County, according to Law

Given under my hand & Seal of office this 20th day of December AD 1858

L S

Wm Laferty Clerk

The defendants here offered & read in evidence the Execution in Case of Seymour et al Vs Geo W Nelson & return thereon, which said Execution and return thereon are in the words & figures following to Wit:

State of Illinois
Warren County } The People of the State of Illinois
To the Sheriff of said County Greeting.
We Command 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 & 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 Monmouth in said Warren County on the fourth Monday of October AD 1860 & on the 17th day of Nov 1860 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 & 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 of 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 Ninety days from the date hereof.
Witness William Lafferty clerk of the Said
Court and the Seal thereof at Monmouth
in Said County this 21st day of Nov AD 1860
Wm Lafferty Clerk

On the back of Said Execution is the following,
"Received this Execution this 21st day of Nov AD 1860
at 1 o'clock P M Seth Smith Sheriff

State of Illinois }
Warren County } 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 Feb
21st AD 1861 David Turnbull Sheriff
Filed Feby 21 1861
Wm Lafferty Clerk

The defendants here offered and read in evidence
the Writ of Attachment this Case Pulliam and
others Vs Geo W Nelson & return thereon which
said Attachment & return are in the words &
figures following to Wit:

Attachment Writ

State of Illinois }
Warren County } The People of the State of Illinois
To the Sheriff of said Warren County Greeting
"Whereas Philo C Reed of the County of Warren and
State of Illinois, hath Complained on Oath to
William Lafferty Clerk of the Circuit Court of
said Warren County, that George W Nelson

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is justly indebted to Robert Pulliam, Andrew J Wills, David Rankin & Eleen Mason partners under the name & style of Pulliam Wills Rankin & Co in the sum of One hundred & twenty four 63/100 dollars for goods wares & Merchandise sold & delivered to said George W Nelson by said firm of Pulliam, Wills, Rankin & Co, And that said George W Nelson is a non resident of the State of Illinois And has property rights & credits in said County of Warren & State of Illinois, And the said Phies E Reed 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, or so to provide that the same may be liable to further proceedings thereupon according to law, at a Circuit Court to be holden at the Court House in Monmouth within and for the County of Warren aforesaid on the third Monday of March AD 1860 so as to compel the said defendant to appear and answer the Complaint of the said Plaintiffs; And that you also summon Hezekiah M Boggess, James D McLean, Daniel B Eckenberger, Elisha Boyd, Harry G Hardin, Robert Clark, John Porter, Robert A Davis, Phies E Reed Charles M Nelson, John Clark & James McCartney as Garnishees, to be and appear before the

said Court, on the said Third Monday of March AD 1860 then and there to answer what may be objected against them. when and where you shall make known to the said Court how you have executed this Writ, And have you then and there this Writ.

Witness William Lafferty Clerk of said Court and the Seal thereof at Monmouth in said County this 24th day of December AD 1859 Wm Lafferty Clerk

(L S)

On the back of said Writ is the following,
"I have served the within Writ by reading the same to the within named Charles N Nelson & Phila E Reed on the 24th day of December AD 1859 and by reading the same to the within named Nezekiah N Boggess, James D McLean, John Porter Elisha Ayres, Daniel B Eckenburger, Harry G Harden John S Clark & Robert A Davies on the 26th day of December AD 1859, and by reading the same to the within named George N Nelson on the 27th day of December AD 1859, and by reading the same to the within named Robert Clark on the 3d day of January AD 1860

I hereby accept service of the within Seth Smith Sheriff. W.C.
mons this 4th day of January AD 1860

Jas McCarty

dated this 4th day of January AD 1860

By virtue of within Writ I did on the 24th day of December AD 1859 levy upon the following

goods taken as the property of George W Nelson
To Wit: Six Vests, Twenty Moire Antique, Twenty
Silk Vests. Six Silk & Worsted do. Twenty four
Silk vests. Twenty four do. Silk Vests, Twenty
four Worsted Vests. Six Moire Antique Vests.
Twenty four Silk & Worsted Vests. Twenty four
~~do~~. do. do. Six Moire Antique Vests
dated this day December 24th 1859

Seth Smith
Sheriff W County

Filed 19th January AD 1860
W Lafferty Clerk

The defendants then called as a Witness
W. R. Chaplin who being duly Sworn testified
as follows.

I was present when the goods mentioned in the Declaration were taken. I helped take them. I went as agent of the Pltff. The Sheriff levied upon the goods in the Writ. And the levy was endorsed immediately after.

The defendants here rested their case, And the Plaintiff further to maintain and prove the issues on his part called as a Witness, C. W Lucas who testified as follows.
I know of sale of goods from Geo W Nelson to Charles N Nelson the Plaintiff in this suit It was made on the 24th of October 1859 the entire stock of goods was sold for $6500, the notes of the Pltff were given for the amount,

I saw the notes Executed. they were Executed Oct 24th 1859. there were several different notes, the possession of the goods passed from Geo W to Charles N Nelson. I had been Clerk of Geo W Nelson, continued & acted as Clerk for Charles N Nelson after the Sale. I have been engaged in Selling goods about three years I made Examination of Stock with a view to ascertain its value. Once at request of the Plaintiff & once at request of Geo W Nelson. Heard talk of Sale two or three days previous to its being made. I told Charles N Nelson that I would not have given over $5000 for the stock under the circumstances. I did not think they were worth more than $5000. The Sale was made like any trade of that character. The goods were taken from same Stock of goods bought of Geo W Nelson. Smith & Chapline came in and took goods out. Think Strain helped haul them away, that's the best of my recollection.

On his Cross Examination witness testified. I spoke to two or three different ones about the Sale. After I had became Satisfied in my own mind that Sale was made. I spoke to Gillett about it & in my family. Dont know of Gilletts being in early in the evening Geo W Nelson was in. Dont remember of Kirkpatrick being in. Dont Remember that I was in all the evening. Geo Nelson went away the next morning. Think he remained until

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after the attachments were levied. No money was paid down on the sale. The Plaintiff & Geo H Nelson are Cousins. I am Plaintiffs Brother in law. The notes were executed in the afternoon. Charles H Nelson was Clerk before the sale, He was chief Clerk. Dent kept books most of the time. Charles Nelson kept Books part of the time, George Nelson was East most of the time, Some goods were bought while he was East, Charles Nelson Examined the bills. Should think one half the value of the Stock was taken on both Bills Should think Sales were worth from $15. to $20.00 per day from Sale to levy.

The Plaintiff then called as a Witness, William Dent, who testified as follows. The Sale of goods from Geo H Nelson to Charles H Nelson was made in October 1859. I heard Sale Spoken of a few days before it was made Was asked to look through Stock and make an Estimate of its Value, He estimated the Stock, at between $6000. & $7000. Should not have considered them worth over $5000. in Cash. Dont know that any other persons knew of Sale. Have had experience in dry goods business over ten years. Had been Clerk of Geo H Nelson eleven months up to time of Sale On Cross Examination witness testified. Was with Charles H Nelson at time goods were taken, C. L. Armsby, Mr Marks and

myself invoiced goods taken. Should think stock taken was half of stock. Kept books before Charles H Nelson came and for a short time after. Stock was lighter than usual at time of sale. Sales I should think would amount to about $25. per day. I heard of sale morning that it was made. Geo H Nelson told me sale had been made. Geo went away that morning & said he was going to New York.

The Plaintiff then called as a Witness, Ezra Patterson, who testified as follows.

I examined stock of goods they might have been worth 75 cts on the dollar of what they cost. Should think they would invoice $6000. or $7000. I have never known such a stock of goods sold for cash. Commonly sold on long time or for trade. Should think 1 & 2 years usual time. I would not have given notes for them on that time for $6500. Nelson asked me $7500. I offered quarter Section of land $2500. cash notes $3000. in trade & proposed to pay balance either in 1 or in 1 & 2 years.

On Cross Examination Witness testified I made Examination of stock a week or ten days before it was levied on. I now remember three or four sales of entire stock of dry goods made in this City on time or for trade.

Jones sold to Pressly on short time and made an assignment. Ragland sold to Munger that sale has been decided fraudulent as I understand. that was a trade sale. Munger sold to Babcock on time; that sale has just been decided fraudulent. I recollect of no other sale except the sale from Geo N Nelson to Chs N Nelson which as I understand in the case tried before this was decided fraudulent

The Plaintiff then called as a Witness Milton Nelson, who being duly sworn testified.

The Plaintiff is a cousin of mine have known Plaintiff 18 years. He had notes & accounts in the Spring of 1859 amounting to $15000, or $20000. Resided then in Henderson. Had been there some 13 or 14 years. I think was then selling goods. I was then on a visit. I received goods of Charles N Nelson on account of my Father Reuben Nelson in January 1860. It was all there was left of his stock it amounted to $1550. They were paid for by delivering up one note to Charles N & endorsing $550,00 on another. The notes were given by Plff to Geo & endorsed by him to my Father Reuben Nelson. I Rec'd notes about 1 January 1860. Father sent them out here to collect.

(A note was then shown Witness & admitted to be the Note of Chs N Nelson which Note was then introduced & read in evidence & was as follows,

On or before the first day of March next for Value received I promise to pay George W Nelson or order Five hundred dollars
Monmouth Oct 24/59 C N Nelson
(Endorsement on back of said note)
Pay Rena Nelson. G W Nelson

This is the note I gave up to him. the balance was endorsed on another Note given & endorsed in same way. The note upon which endorsement was made was here introduced & read in evidence without objection & is as follows,
Twelve months after date for value received I promise to pay George W Nelson or order One thousand dollars
Monmouth Oct 24/59 C. N. Nelson
(On the back of said note is the following
Pay Rena Nelson
Geo W Nelson. Rec'd Jany 10th 1860 Rec on the within Five hundred & fifty dollars $550,00
I held this note as agent for my Father for the purpose of Collecting it. The endorsement of Payment on the back of the note is in my hand writing. I have more of these notes in my possession. Notes endorsed & read & are as follows,
Six months after date for value received I promise to pay George W Nelson or order One thousand Dollars
Monmouth Oct 24/59. C. N. Nelson
(Endorsed on back) Pay Rena Nelson
Geo W Nelson

54 Eight months after date for value received
I promise to pay George W Nelson or order
One thousand dollars
Monmouth Oct 24/59 C N Nelson
(Endorsed on Back) Pay Reed Nelson
Geo W Nelson

Ten months after date for value received
I promise to pay George W Nelson or order
One thousand dollars
Monmouth Oct 24th/59 C. N Nelson
(Endorsed on back) Pay Reed Nelson
Geo W Nelson

Fourteen months after date for value received
I promise to pay George W Nelson or order One thousand
Monmouth Oct 24/59 C. N. Nelson
(Endorsed on back) Pay Reed Nelson
Geo W Nelson

Sixteen months after date for value Received
I promise to pay George W Nelson or order
one thousand dollars
Monmouth Oct 24/59 C. N. Nelson
(Endorsed on back) Pay Reed Nelson
Geo W Nelson

I will send you a receipt against the
3 first notes of $2500, as which Reed
Nelson returns in New York & was paid
to him

Nothing has been paid on these notes $2450. is yet due on these notes.

On his Cross Examination witness testified.
"I reside at Oneida. Have resided in this State about three years. Charles N Nelson is 33 or 34 years old. Willard N Nelson was partner of Chs N Nelson. when I examined apes. I was there in may or June. Chas N Sold out to Esquire Elliott & came here in June Willard was in trade in Henderson in December 1859. I commenced trade in May 1858. Commenced a clothing Store. I looked through the goods. taken of Charles N Nelson & applied on note. and agreed upon price. Had notes before sale was made I stayed here a little over two years & am a Oneida now. Whole of the notes were sent to me at same time. Charles N Nelson is in no business. Charles N and Willard had a very fair Stock say $5000. or $6000. Willard is a Brother of Charles N. Dont know of any one proposing to buy this Stock of goods before I got them. I went to him to make the trade.

The Plaintiff then Called as a Witness Reuben Nelson

Who being duly Sworn testified as follows.
I became Surety in the Shape of Endorsement

& acceptances for him on the following paper.

Statement of a/c for money paid on Lee N Nelsons indebtedness for which I became liable for him

	22/59	Paid George for expenses home	$ 50.00
Jany	28/61	To Stimpson Draft returned	165.00
"	"	" Expense on above Draft	1.59
Nov	7/59	" Paid Wells & Christie	1736.84
"	"	" " McCoun Schoonmaker & Co	544.22
"	7/59	" Paid Denison Williams & Co	798.30
May	23/60	" Paid Chany Cole & Carpenter	533.95
"	31/60	" " George for Expenses home	35.00
June	9/60	" " George Lewis	2515.89
"	"	" " Sheriffs Fees	54.00
"	"	" " A. B. Capwells fees	25.00
"	9/60	" " Southworth Slawson & Co	258.94
Mch	5/60	" " Phelps Bliss & Co	515.75
"	"	" " Perigo. Buckley & Plimpton	434.40
Nov	15/60	" " Bliss Wheelock & Kelly	1237.36
"	"	" " Cipperly. Hoover & Co	1356.94
"	"	" " Ens Roberts. Rhodes & Co	449.82
		Chany. Cole & Carpenter about	575.00
		Hill McCullom Brinkerhoof & Co	2600.00
			$ 13688.00

It was here stipulated that all these endorsements were made before sale from Lee N to Charles H Nelson & that they were for goods brought here. Last fall I purchased of J D Sherman of Chicago a stock of goods here. Traded a House in Brooklyn & he

paid me balance in goods from his Store in Chicago. My Whole Stock was about $26000.

A paper was here shown Witness which was a receipt for moneys received from Geo W Nelson which was introduced & read in evidence & is as follows.

Nov	7/59	Rec'd from Chas N Nelson	$100,00
"	18/59	" " L Richmond on a/c G.W.N	100,00
"	28/59	" " Chas N Nelson	438,00
Decr	3/59	" " " "	75.00
"	21/59	" " " "	330,00
Jany	14/60	" 3 Drafts from C.N. Nelson	581.00
Feby	8/60	" from C.N Nelson	363.00
"	"	" " Geo W 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
April	28/60	Rec'd in Currency (Bills)	283.59
May	5/60	" " " "	150.00
Aug	60	" from C N Nelson (Note)	314.93
			$4737.52

This paper is my receipt for moneys received in payment of Charles N Nelsons notes. I gave him up three notes one of $500. & three of $1000. Each. I received the notes about 1 of November 1859 from Geo W Nelson. I took them as payment on what I had become liable to him

58 On his Cross Examination witness testified the charge of $50. against Geo N Nelson Dec 1859 is for Cash to pay his Expenses here $54. is for Sheriffs fees on Lewis Claim. I recd most of my remittances from Chas N Nelson by Mail. As fast as he sold goods I recd pay he sent on funds to me.

The Plaintiff here offered in Evidence the Invoice of goods made by Amsby. Dent & Mark of goods taken by defts. as Evidence of the quantity & Value of goods so taken.

The defendants then & there objected to the ~~Invoice~~ receipt of Said Invoice in Evidence on the grounds

1 That the Witness Amsby testified that he could upon reference to the Invoice recollect the facts therein Stated & Contained.

2 That the Invoice had not been properly proved as Mark who assisted in making it did not Swear to its Correctness.

3 It was not offered in proper time.

The Court overruled the objection & permitted the said Invoice to be received & read in evidence to which ruling of the Court the said defendants then & there excepted & Still excepts.

The Plaintiff here closed his Proof & rested his Case

The Defendants further to maintain & prove the Issues on their part called as a Witness G. Rosenfield

Who being duly sworn testified as follows. I know the Plff. Myself & Brother tried to purchase goods left in his Store after Attachments were levied & offered him $2000. Cash which he refused to take,

On his Cross examination witness testified A short time before the Sale to Rufus Nelson I offered him $2000. think there were about 1200 Vests in the Stock & about 600. when I offered him $2000,

The Defendants then called as a Witness Charles L Armsby

Who testified as follows The whole Invoice of goods taken foots up between $3000. & $4000. Cash Value if put up at Auction I presume would not be over $1000,

The defendants here rested his case

The above & foregoing is all the evidence given upon said trial by either party. and this Bill of Exceptions contains all the evidence in the Case,

60 The counsel for the defendants then requested & asked the Court to give to the Jury the following Instructions.

Given 2 The Jury are instructed that any person assisting an officer in the Execution of process is justified in this case, when the Sheriff himself would be

Given 3 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 Rufus Nelson & that the payments made on said Note 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 Rufus Nelson

Given 4 If the Jury believe from the evidence that the Sale from George W Nelson to the Plaintiff was made by said parties or contrived 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.

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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 for the 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.

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

7 If the Jury find for the Plaintiff they must assess the damages at the cash value of the goods when taken.

8 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.

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 circumstances; was pressed by his creditors for payment; the he left the County immediately after the pretended Sale was made, and that the purchaser had knowledge of those 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 purchaser had knowledge of & participated in that intent

Refused

10 A conveyance or Sale of property made with the intent on the part of the Vendor known to the Vendee to delay defeat or hinder a particular creditor from obtaining his debt, though made for a valuable & full consideration is fraudulent and void as against such creditor 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 the Plaintiff in this case knew at the time of the pretended Sale to him that George B Nelson was in Embarrassed circumstances and was pressed by his creditors for payment; the jury would be justified in finding as a

Refused

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

Refused

12 An intent actually to defraud creditors is to be 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,

Refused

13 Sales of Personal Property made under what ever pretences by an Individual insolvent or unable to pay his debts, when the Grantee has knowledge of the facts, will be held prima facia Void in the hands of the Grantee as against such Creditors,

Refused

14 If the Jury believe from the evidence in the case that at the time of pretended sale from George W Nelson to the Plaintiff, the Pltff 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

64 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 Rena Nelson & intended by the parties to that sale to be for his benefit then the jury instructed as a matter of law that such sale was fraudulent & void as to the other creditors of Geo W Nelson

Refused

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 nor provide for the other creditors of the insolvent debtor is fraudulent & void as to the other creditors

The court refused to give instructions numbered 9. 11. 12. 13. 14. 15. 16. 17. 18 & 19 as requested by defendants & gave instructions numbered 5. 6. 7. 8 & 10 modified as follows.

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 M Nelson (with the intent or purpose of hindering delaying or defrauding the creditors of said George W Nelson and that the Plaintiff Charles M Nelson participated therein they will find for the defendant.

Given

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

Given

7 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 Pltff as the facts of the case may justify.

8 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 purchase in connection with evidence in the case)

Given

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.

Given

To which refusal of said Court to give said instructions numbered 9. 11. 12. 13. 14. 15. 16 17. 18 & 19 & each of them and modifications of said instructions numbered 5. 6. 7. 8. 10 & 4 each of them as aforesaid the Counsel for said defendants then & there duly excepted.

Upon & at the request of the Counsel for the said Plaintiff, the Court then gave to the Jury the following Instructions,

1 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 whereon 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 Rufus Nelson was guarrantor or acceptor of 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 day payments and that G W Nelson soon or within a Week or two thereafter in good faith assigned and delivered said notes to Rufus Nelson on account of his being his guarrantor and acceptor or either as aforesaid and that Rufus Nelson in good

Given

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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 defendants or any of them took or participated in taking the goods in question from the possession of the Plaintiff as charged in either Count in the declaration, and that such Verdict should be against such defendant 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 & Plff 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 facia case if they believe from the evidence that defendants 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,

Given

likewise guilty of making such purchase with such intent with malice or fraud or covin 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 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 Reed 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 and the Plaintiff to 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 Pltff in the Declaration described as charged in either Count of said Declaration

Guess

4 Fraud cannot be presumed, but must be proven: and the Jury are not at liberty

70

Given

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

Given

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.

To the giving of each which said Instructions by the Court as aforesaid the Counsel for defts then & there duly Excepted.

Thereupon the Jury under instructions from the Court as aforesaid & after having retired in charge of an officer & considered returned into Court with the following Verdict,
"We the Jury find for the Plaintiff & Assess the damage at Three hundred Seventy two 50/100 dollars

Lewis S Olmsted
James M Duncan
P D Hedges
Seth White
W B. Brown
Andrew Livermore
S. F. Purdy
F. Purdy
James Bower
Ses L Bostwick
Clement Pierce

Filed April 6th 1861
W Rafferty Clk

Thereupon in Open Court the said defendants by their Counsel entered motion for new trial upon the following reasons duly filed,

State of Illinois } In Circuit Court
County of Vermilion } March Term AD 1861

Charles N Nelson
vs
Seth Smith & Harmon Straw }

And now the said defendants by their attorneys come and move the Court for a new trial and in arrest of Judgment for the following reasons to wit:

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

2d Because the Verdict is against the instructions of the Court

3d Because the Court refused proper Instructions asked on the part of the Pltff.

4th Because the Court gave improper Instructions on the part of the defendant

5th Because the Court improperly modified some of the Plaintiffs Instructions & gave them so improperly modified.

6th Because the Court admitted improper evidence for the defendant.

72 7th Because the Court refused to admit proper evidence on the part of the Plaintiff

8th Because the Court refused to reject improper evidence on the part of the defendant,

9th Because the Court erred in admitting the Invoice & Memorandum of the goods claimed to have been taken by the defendants,

10th Because the Court erred in refusing to instruct the Jury after the Plaintiff had rested his case: that it was necessary for the Plaintiff under the pleadings to show a valid Consideration for the Sale to him.

11th The fact that the Sale was fraudulent was admitted by the pleadings & the Court erred in refusing so to instruct the Jury as requested by defendant.

Philo E Reid
Defts atty

Monmouth April 6th 1861

Filed April 6th 1861
Wm Lafferty Clerk

Which said motion came on to be heard on the 12th day of April 1861 before said Court upon the reasons aforesaid. But the Court overruled the motion for a new trial & denied said motion and entered a Judgment on the Verdict of the Jury as follows,

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Charles N Nelson
vs
Seth Smith & Harmon Straw } Trespass to personal property

This day again this cause coming on to hearing on the defendants motion for a new trial. And in arrest of judgment herein, And after hearing the same it is ordered by the Court that the motions be overruled. And that judgment be rendered on the Verdict of the Jury herein. Therefore it is considered by the Court that the said Plaintiff have and recover of and from the said defendants the sum of Three hundred and seventy two dollars and fifty cents being the amount so found by the Jury as aforesaid together with his costs by him in this suit laid out and expended and may have execution therefor

To the overruling & denying which said motion for a new trial by the Court and the entry of Judgment by the Court upon the Verdict afore said & to each & every of them the said defendants by their said Counsel did then & there except & still do except.

Whereupon the said defendants prayed an appeal which was allowed upon the said defendants entering into Bond in the sum of Fifteen hundred dollars, with security to be approved by the Clerk of this Court, by agreement of the parties herein. Bond and

76 And proceedings in the foregoing case as fully as the same appears from the records and files of my office.

In testimony whereof I have hereunto set my hand affixed the seal of our said Circuit Court at my office in Monmouth this 11th day of September AD 1861

Wm Laferty Clerk

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[redacted] J. Nelson

vs

Seth Smith &
Harmon Strong

Record

Filed Mch. 22. 1862
L. Leland
Clk.

Recd $15.00
paid by defts

Chicago Ill. 10th Mo 2

L. Leland Esq.
Clerk Supreme Court
Ottawa

Enclosed please find Record on Appeal to the Supreme Court from the Warren County Circuit in which Seth Smith & others are Appellants & Charles H. Wilson is appellee.

If any process is necessary to be served please enclose to me.

Please acknowledge receipt & am Counsel for Appellant.

Yours &c
C. S. Smith
2d Ins

[illegible] for
[illegible] fidelity to
[illegible] —
Oct. 12. 1862