

13837

No. _____

Supreme Court of Illinois

Robinson

vs.

Nye et al

HENRY ROBINSON,
vs.
 IRAM NYE, HENRY M. MATTHEWS, WILLIAM
 W. HULBUT, PHILIP VAN VOLKENBURGH,
 WILLIAM B. LEONARD & ISAAC W. FRENCH. }

IN THE SUPREME COURT,
 TO THE
 APRIL TERM, A. D. 1858.

This was an action of trespass de bonis asportavit. The declaration was in the usual form in such cases, and was filed the _____ day of _____ A. D. 1857.

Recall 1

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The declaration contains four counts. The first count is in the usual form for trespass de bonis, &c. The second count alleged the existence of a partnership between Andrew S. and George W. Anderson in Chillicothe, under the name and style of "A. S. Anderson & Bro." That said firm, on, to-wit, the 8th day of November, 1856, made an assignment of their goods and effects to the plaintiff, and that the goods in this count mentioned were conveyed and delivered to plaintiff by said firm, under and by virtue of said assignment, on the said 8th November, 1856, and that defendants seized, took and carried away, &c., (following the usual form.) The third count alleges the possession of a certain building, or store-house, in Chillicothe, and that defendants broke into said store-house when, &c., and seized, took, &c. The fourth count alleges that the plaintiff was, when, &c., in possession of a certain lot and store-house situated thereon, in Chillicothe; that defendants, when, &c., broke in with force and arms and took possession of the same, and ejected and expelled plaintiff therefrom, and kept said plaintiff expelled and out of the use and occupation of the same for a long time; from thence hitherto and during all that time said plaintiff lost the use and occupation of the same, which use and occupation was worth, &c.

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To the declaration the defendant filed three several pleas. 1st, the general issue; 2d, a special plea to the 1st, 2d, 3d and 4th counts of plaintiff's declaration, stating that Wm. W. Hulbut, Philip Van Volkenburgh, and Wm. B. Leonard, partners trading under the name and style of Hulbut, Van Volkenburgh & Co., before the time when, &c., sued out a writ of execution from the United States Circuit Court for the Northern District of Illinois, on the 3d day of January, A. D. 1857, directed to the Marshal of said district, commanding, &c., of the goods and chattels of Andrew S. Anderson, impleaded with Geo. W. Anderson, he make the sum of \$959 95, on a judgment in said U. S. Court before that time recovered by Hulbut, Volkenburgh & Co., against said Andrew S. Anderson, impleaded with Geo. W. Anderson; that the goods and chattels in plaintiff's declaration mentioned were the goods and chattels of said Andrew S. and Geo. W. Anderson, partners under the name and style of A. S. Anderson & Bro.; that said Nye was the U. S. Marshal before and at the time of issuing said writ of execution, and took and seized said goods, &c., as said Marshal, by virtue of said writ; that the other defendants entered, took and seized &c., as the servants of said Nye, for purpose aforesaid, &c.

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The 3d plea alleges that Andrew S. and George W. Anderson owned the goods and chattels mentioned in plaintiff's declaration, and not by the plaintiff.

Issue was filed to defendants' first plea.

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Leave was obtained of Court to reply double to defendants' first plea, and filed, 1st, a replication denying the several facts in said second plea, and defendants joined issue thereon. The 2d replication to 2d plea of defendants denied that the goods and chattels in plaintiff's declaration mentioned were the goods and chattels of Andrew S. and George W. Anderson, partners, &c., but the goods and chattels of plaintiff, and defendants joined issue upon the same.

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The replication to defendants' 3d plea denied that Andrew S. and George W. Anderson

owned the goods, &c., but that plaintiff owned the same, and defendants joined issue upon the same

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A jury being impaneled, plaintiff called ANDREW S. ANDERSON, who testified that he knew George W. Anderson; that George W. and witness were equal partners in buying and selling goods at Chillicothe from April 1, 1856, to November 8, 1856; that George left September 8, 1856, with \$1600 in money belonging to said firm; that the name of the firm was A. S. Anderson & Bro.; that George went via Virginia (to raise more money) to New York, in the State of New York; that he went to New York to pay debts and buy goods for said firm; that when George left he told witness to do what he thought best for the firm; that George never returned, and witness never heard of him until the spring of 1857, and knew nothing as to his whereabouts until the spring of 1857; that when George left he expected to be absent about four weeks at most; that George being absent and witness not being able to consult with George, and not knowing where George was, and having the sole management of the firm affairs, on the 8th day of November, A. D. 1856, executed the assignment and schedules to plaintiff, and plaintiff took possession of the property assigned on the 10th day of November, 1856; that at the time the assignment was executed the firm were largely indebted, and between \$4000 and \$5000 was due, and creditors whose claims were due were pressing for payment; that one debt of between \$200 and \$300 was sued, and all wanted their pay; that at the time the assignment was made witness and the firm had not money enough to pay any one of their creditors. The plaintiff then offered the assignment and additions thereto in evidence, in words and figures following:

" 22

This indenture, made this the eighth day of November, A. D. 1855, between partnership firm of A. S. Anderson & Bro. of Chillicothe, in the State of Illinois, whose individual names are Andrew S. Anderson and George W. Anderson, of the first part, and Henry Robinson of the said Chillicothe, appointed for the purpose hereinafter mentioned, of the second part, and the several persons creditors, endorsers, guarantors and sureties of the said parties of the said first part, and particularly those of said creditors, endorsers and sureties who have or who shall hereafter execute or accede to these presents within thirty days from the date hereof, of the third part. Whereas, the said party of the first part is at present unable to pay the immediate demands upon him, and deems it just and reasonable to secure, pay and indemnify the several persons parties to these presents in the manner hereinafter mentioned: Now, therefore, this indenture witnesseth, that for and in consideration of the considerations and purposes and conditions herein mentioned, and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part doth by these presents grant, bargain, sell, convey, assign and set over unto the said party of the second part, and his assigns, all the stock in trade, goods, wares and merchandise, debts, *choses in action*, property and effects of every description belonging to the said party of the first part or in which said A. S. Anderson & Bro. have any right or interest whatsoever, mentioned, contained or referred to in the schedule marked "A." To have and to hold, all and singular, the premises herein assigned and otherwise assured, or intended so to be, to the said party of the second part, his heirs and assigns, to their use and behoof forever, but upon trust that the said party of the second part shall with all reasonable speed sell and dispose of such parts of the said trust property and effects as are of a saleable nature, and shall use his best endeavors to obtain, recover and receive such parts of the same as consist of debts or other outstanding interests into his hands and possession, and forthwith after deducting and retaining all such costs, charges, damages, expenses and disbursements as shall be sustained, incurred or reasonably due in and for or in relation to the execution of the trusts hereof, including the costs, charges and expenses of preparing and executing these presents; then upon trust that the said party of the second part shall do and divide, distribute and pay over all the residue of the said trust property to and among all the persons creditors of the said party of the first part ratably and proportionably due each of them respectively as hereinafter directed; and the said party of the first part by these presents doth name, constitute and appoint the said party of the second part to be his attorney in fact, irrevocably with full power of substitution

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in his name or in the name of the said party of the first part or otherwise, howsoever as the case may require, but to be and for the trust herein declared to demand, sue for, recover and receive the outstanding debts, interests, trusts, property and effects, and to institute, prosecute or defend all such suits and processes at law or in equity, and to execute, perform and transact all such deeds, writings and acquittances, acts and matters and things as shall be necessary or expedient to carry into effect the trusts, uses and interests and purposes herein declared or contained, as fully and effectually as the said party of the first part could do personally if these presents had not been made. And the said party of the first part doth hereby covenant to and with the said party of the second part that said party of the first part will at all times promote and forward the speedy receipt and recovery of the debts and property and effects aforesaid, and confirm and ratify all such acts as shall be lawfully done therein by virtue of these presents, and shall and will aid and assist the said trustee party of the second part in managing the concerns of the said trusts, estate and property in the execution of these presents when thereto requested, upon being allowed a reasonable compensation for services rendered therein, and will execute and perform all such further and other acts, deeds, matters and things for the further and better assigning and assuring the premises and property herein assigned or otherwise assured or intended so to be to the said party of the second part, and for the interests and purposes herein declared as may be reasonably advised or requested, and it is hereby agreed by and between the parties hereto that the said trustee may at discretion compound any debt or debts due or owing to the said party of the first part, and enter into, sign and execute any bargain or deed of composition, compromise or assignment of or with any persons indebted to the said party of the first part who shall be or become insolvent or unable to make punctual payment, and also may make any such agreement or arrangement as shall be deemed reasonable with any persons possessing any security given by said party of the first part upon any estate or other property of or holden by him or by any creditor of his by way of mortgage or pledge for money or other property, or with any persons having a lien on such property by virtue of any attachment, levy, bailment or otherwise, as the said trustee may think expedient, and may compromise all matters which may be in dispute, or submit the same to arbitration, and may sell and convert into money all contingent interests and securities which cannot be immediately enforced with a prospect of advantage, and all debts which shall be deemed doubtful, or which cannot be collected in a reasonable time; and it is further agreed that the naming of any debt or debts in any schedule hereto annexed shall not prevent the parties of the first or second part from calling in question or controverting the amount of the same, or taking any course at law or in equity to have the same disallowed or adjusted, and that if the demand of any creditor shall have been stated as being greater or smaller than it really is, such creditor shall be entitled to the benefit upon and for and only upon and for the amount which may be found to be justly due him; provided, further, that no person shall be entitled to be admitted a creditor under these presents unless notice shall have been given by him of his debts or demand to the party of the second part before final dividend shall have been made of said trust property under the trusts herein declared, unless such debt is mentioned in schedule hereto attached marked "B." Nor shall any person be admitted a creditor after any one or more dividend or dividends shall have been made under the trusts herein declared, but on condition of his not requiring any abatement of or otherwise disturbing the dividend or dividends made prior to his having given notice of his debt or demand, and the said party of the second part doth hereby covenant with the said party of the first part and the said party of the third part that the trust in him reposed he, said party of the second part, shall and will execute and

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perform to the best of his judgment and discretion, provided always, and it is hereby agreed, that the said trustee for the time being, his substitute or executors or administrators shall not be liable for more money or effects than he shall receive, nor for any loss or damage which may happen thereto except the same shall arise through his own wilful default, and the said respective creditors parties hereto do and each and every one of them for himself and herself severally and respectively, and for their several and respective executors, administrators, partners and assigns, doth hereby accept and take the estate and effects hereon assigned in full payment, satisfaction and discharge of all their respective debts and demands aforesaid, and all loss and damage sustained or to be sustained by reason of any liability aforesaid, and do and each and every one of them doth absolutely remise, release, discharge and quit claim the said party of the first part of and from all demands which they or any or either of them now have, ever had or hereafter may have, claim or demand against the said party of the first part. And it is understood that any additions, corrections and alterations may be made in the schedules hereto annexed for the more full and accurate specification of the matters and things therein contained or intended to be contained; it is understood and intended that all properties, debts, claims and demands due the said party of the first part are scheduled, and also that all liabilities and indebtedness due from the said party of the first part to said creditors of said first part severally are also scheduled; it is hereby understood and directed that the said party of the second part shall pay over the moneys arising from the sale and disposition of the said trust property herein referred to and scheduled, to creditors parties of the third part in the following manner, viz: the demands of Benjamin S. Hammett of Chillicothe, Illinois, of Rushmore, Cone & Co., of C. W. and J. J. Garrett, of Norton, Hewitt & Busby, of Northrop, Hoffman & Co., of Vanderburgh, Bonnett & Co., of S. B. Gregory & Co., all names of business firms in the city and state of New York, of Duryee & Forsyth of the city of Rochester and state of New York, of J. & D. Green of Ottawa, in the state of Illinois, of Orson E. Wilbur of Chillicothe, Illinois, of William McLean, of James Pratt, of Richard Scholes, of J. O. Tomlinson, M. D., of John C. Follett, of Seely & Co., all of Chillicothe, in the state of Illinois, shall be preferred to any and all other indebtedness, and the persons above named shall be paid first and preferred to all other creditors, and shall be paid pro rata or proportionably to the several demands, by the said party of the second part out of the first moneys received by him from the trust property herein mentioned, until their demands are fully satisfied. Upon the full satisfaction and payment of the demands of the preferred creditors above named, then the other creditors are to be paid, all of them proportionably to their several demands. As soon as may be after the payment of all the creditors of the said party of the first part herein referred to fully and entirely, any and all moneys, goods, wares and merchandise, claims and demands whatsoever then remaining in the possession of the said party of the second part shall be delivered and paid over to the said party of the first part, after deducting and retaining a reasonable amount for costs, charges and compensation as before mentioned. In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

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28 Signed, sealed and delivered in presence of }
 HARVEY HOLMAN as to A. S. ANDERSON & }
 BRO. and HENRY ROBINSON.

A. S. ANDERSON & BRO. [SEAL.]
 HENRY ROBINSON, [SEAL.]
 Assignee.

Signed, sealed and delivered in presence of }
 V. T. MATTHEWS as to J. C. FOLLIOTT and }
 ARSON E. WILBUR and WM. McLEAN, S. }
 V. CUTRIGHT as to RICHARD SCHOLES.

Names of Creditors.
 J. C. FOLLIOTT,
 O. E. WILBUR,
 WM. McLEAN,
 RICHARD SCHOLES.

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This indenture, agreement, declaration and release, made this day at Chillicothe, by and between A. S. Anderson & Bro. of the first part, Henry Robinson, trustee, of the second part, and the several creditors of said A. S. Anderson & Bro. of the third part, witnesseth, That in the assignment this day executed by the said A. S. Anderson & Bro. to the said Henry Robinson for the benefit of said creditors, as in said assignment mentioned and set forth, it was not the intention of the parties executing said assignment to require, compel or to induce any creditor of said firm of A. S. Anderson & Bro. to execute or release said firm of A. S. Anderson & Bro. from the claim of said creditors, or either of them, as a condition upon which such creditor could or should receive their share of the proceeds of the property assigned. And the said A. S. Anderson & Bro. hereby release and discharge all and every of their said creditors from and of all conditions, if such should be found in said assignment, and authorize and empower each of said creditors to receive from said Henry Robinson, trustee, &c., the share or part of such creditor or creditors of the property assigned, or the proceeds thereof, in the order in which they and each are preferred and mentioned in said assignment, without executing any release or instrument whatever as a condition upon which they shall be entitled to receive their dividend. And the said A. S. Anderson & Bro. further stipulate, declare and agree that said trustee shall at once, without delay, proceed to convert the property assigned into money, and pay over the same to the creditors of said firm, first paying the creditors preferred the full amount of their respective claims, and the remaining creditors of said firm pro rata; and this instrument is made part and parcel of the assignment hereto attached, and is to be considered a part and parcel thereof.

A. S. ANDERSON & BRO. [SEAL.]
HENRY ROBINSON. [SEAL.]

28 We, A. S. Anderson & Bro., hereby sell, assign, transfer and deliver to Henry Robinson (in consideration of the trusts herein before mentioned, and of one dollar to us in hand paid,) all the goods, wares, merchandise, property and estate mentioned in and described in the schedules hereto annexed, for the purposes and upon the trusts in said instruments, schedules, &c. hereto annexed, mentioned and declared, and which instruments and schedules, &c., we adopt and make part of this instrument.

A. S. ANDERSON & BRO.

49 No question was made to the Signature or execution of the assignments and additions. The Plaintiff admitted that the additions were executed on Thanksgiving Day, being November 25, A. D. 1856, and after the original assignment was executed.

" The Defendants objected to assignment and additions going in evidence, (but not on the ground that the execution thereof was not proved)

" And the Court sustained the objection, and excluded the assignments, additions, and schedules from the Jury; to which decision of the Court sustaining said objection, and excluding said assignments and schedules, the Plaintiff then and there, at the time, objected and excepted.

" The Plaintiff then proved to the Jury that the Plaintiff took possession of the goods in Plaintiff's declaration mentioned, under said assignment and addenda, and kept and retained full and sole possession of the same, for the space of over a month, and proceeded in good faith to execute the Trusts and convert the property into money, and while the Plaintiff was in possession of the goods, executing the Trusts, the Defendants entered in such possession.

and with force and arms, took and carried away thirty-five hundred dollars worth of said goods, and converted the same to their own use.

The Plaintiff here rested.

The Defendant then moved the Court to exclude all the evidence offered by the Plaintiff, to which the Plaintiff objected then and there, but the Court overruled the objection, and excluded from the Jury all the Plaintiff's evidence; to which decision of the Court overruling and excluding Plaintiff's evidence. the Plaintiff then and there, at the time, objected and excepted.

The Defendants then offered in evidence, and proved by the cross-examination of said Plaintiff's Witness, Andrew S. Anderson, that he, (witness,) and his brother George, commenced business in Chillicothe, on the first day of April, 1856. That he had formerly been a clerk at Ottawa, and his brother had an interest in a store in Iowa. That his brother said he had some wild lands in Iowa, viz: two 80 acre tracts, and a 40 acre tract, all worth \$1000. The witness also had a town lot in Newton, Jasper Co. Iowa. He did not assign the town lot, nor his brother's lands, nor the sixteen hundred dollars in his brother's hands.

Record Page 45 They purchased their goods in New York, in February or March 1856, chiefly on a credit, about \$6000 worth. When they started to New York, they had \$1000 in money, and paid \$500 on their goods, and kept the balance to pay freight. His brother started East on the 8th day of September 1856, and had \$1600 of the money of the firm, which he was to pay out to their creditors, and purchase more goods. He was to go first to Virginia, and then to New York. Witness heard of his brother in Virginia, and New York; but he did not pay any of the creditors in New York. He afterwards, in the spring of 1857, heard of him in Kansas.

That just before the assignment, he was called upon by Wead and Williamson, with a claim in favor of Messrs. Wilcox, Perry & Ecker, of New York, and he paid thereon about \$200, and they sued him for the balance. That Mr. Orendorf, agent for Hurlbut, Van Volkenburgh & Co., of New York, called on him, and wanted his pay; and when he did not pay him, Orendorf started for Peoria, saying, he would get out an attachment. That the claim of Browning, Stewart & Allen of New York, was presented before the assignment was made, by J. K. Cooper, Esq., and pressed for payment, and threatened to prosecute the claim. These three claims amounted to about \$2000; and when he made the assignment, he postponed these persons because they had urged the payment of their dues; but that he did not postpone them for the purpose of defrauding them. Had no other reasons for postponing them, and was not authorized to do so by his brother.

On the 15th November, or thereabouts, 1856, Batchelder took a portion of the goods, on an attachment in favor of Mason B. Browning & Co., about \$800 worth. They had sold during the summer about \$300 worth of goods, including a nett profit of 30 per cent. Defendants took the goods about the last of January, or first of February, 1857, and seized all the goods left by Batchelder.

46 The Defendant then offered in evidence the following papers.

1st. The transcript of the record of the case of Hurlbut, Van Volkenburgh & Co., vs. A. S. Anderson & Bro.

UNITED STATES OF AMERICA, }
 NORTHERN DISTRICT OF ILLINOIS. } ss.

Pleas in Circuit Court of United States of America, for Northern District of Illinois, held at the City of Chicago, in said Northern district of Illinois, before the Honorable Thomas Drummond, Judge of the District Court of the United States, for said Northern District of Illinois, and (in the absence *pro tempore* of the Honorable John McLean, one of the Justices of the Supreme Court of the United States of America,) Sole Judge of said Circuit Court, on Tuesday the twenty-third day of December, in the year of our Lord one thousand eight hundred and fifty-six, and of our Independence, the 81st year.

WILLIAM W. HURLBUT,
 PHILIP VAN VOLKENBURGH,
 & WILLIAM B. LEONARD,
 vs.
 ANDREW S. ANDERSON,
 IMPEADED WITH
 GEORGE W. ANDERSON. } *In Assumpsit.*

Be it remembered, that heretofore, to wit, on the eighth day of November, in the year of our Lord one thousand eight hundred and fifty-six, came the said William W. Hurlbut, Philip Van Volkenburgh, and William B. Leonard, Plaintiffs in this suit, by H. M. Wead Esq., their Attorney, into the Clerk's Office of the Circuit Court of the United States, for said Northern District of Illinois, at Chicago, and filed in said Clerk's Office their affidavit and precipe for the issue of a writ of Capias against the said Andrew S. Anderson and George W. Anderson, Defendants in this suit, in a plea of trespass on the case on promises, damages, twelve hundred dollars, returnable as speedily as the rules of Court will allow; also, at the same time, filed their bond for costs in said entitled cause, which said affidavit, precipe and bond are in the words and figures following, to wit :

STATE OF ILLINOIS, }
 COOK COUNTY. } ss.

HENRY C. ORENDORF, agent for Hurlbut, Van Volkenburgh & Co., of the City and State of New York, being duly sworn, deposes and says that, Andrew S. Anderson, and George W. Anderson, of the County of Peoria, in the State of Illinois, (said County is in the Northern District and Circuit for Illinois,) doing business under the name, firm, and style of A. S. Anderson & Bro.; are indebted to William W. Hurlbut, Philip Van Volkenburgh and William B. Leonard, doing business under the name, firm and style of Hurlbut, Van Volkenburgh & Co., in the sum of nine hundred and thirty-three dollars and thirty-three cents, for goods, wares and merchandise sold and delivered to said A. S. Anderson & Bro., by them in the City of New York; and that the same will be in danger of being lost, unless the said Defendants shall be held to bail. That said goods were obtained by said A. S. Anderson and brother, from said Hurlbut, Van Volkenburgh & Co., by fraud and false representations, in this, that when said goods were purchased, the said A. S. Anderson, in order to induce the said firm of Hurlbut & Co. to give him a credit for said Goods, falsely represented and stated that they, the said A. S. Anderson & Bro., were worth Forty-five Hundred Dollars, that they intended to put into said business, in the fall of 1856, the sum of thirty-five hundred dollars more, when in fact, the said A. S. Anderson & Bro. were not worth forty-five hundred dollars, and did not intend to put in, and have not put in thirty-five

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 hundred dollars into the business of the firm, nor any considerable part of that sum; but one of said firm, viz: George W. Anderson, has gone off, and left the State, and cannot be found by his creditors, or heard from, and the said A. S. Anderson has not enough property left to pay the debts of said firm, nor has the said George W. Anderson any property or effects in this State, so far as this affiant can ascertain and believes, except his proportion of the goods now in possession of said A. S. Anderson, at Chillicothe, and which are insufficient to pay the debts of said firm.

That the said Hurlbut, Van Volkenburgh & Co., relying upon the statements so much as aforesaid, by the said A. S. Anderson, sold him a large amount of goods, viz: of the value of \$923 10, which with interest amounts to the sum of \$933 33; in which sum, the said A. S. Anderson & Brother are now indebted to them.

HENRY C. ORENDORF.

Sworn to and subscribed before me this
 8th day of November, A. D. 1856.

Wm. H. BRADLEY, *Clerk*.

WILLIAM W. HURLBUT,
 PHILIP VAN VOLKENBURGH,
 & WILLIAM B. LEONARD,
 Doing business under the name and firm of
 HURLBUT, VAN VOLKENBURGH & Co.,

vs.
 ANDREW S. ANDERSON,
 & GEORGE W. ANDERSON,
 Doing business under the name and style of
 A. S. ANDERSON & BRO.

IN THE UNITED STATES
 CIRCUIT COURT,
 FOR THE NORTHERN DISTRICT
 & CIRCUIT OF ILLINOIS.

TERM, A. D. 1856.

Trespass on the case on promises. Damages \$12,00 00.

The Clerk will please issue a Capias and Summons, returnable as speedily as the rules of Court will allow.

H. M. WEAD, *Attorney for Plaintiffs*.

4 4 49 I, H. M. WEAD, do hereby enter myself security for costs in the above entitled cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue to the opposite party, or to any of the officers of said Court, in pursuance of the laws of the United States, or the rules of said Court.

H. M. WEAD.

[Endorsed.]

Filed November 8th., 1856.

[SEAL.]

WM. H. BRADLEY, *Clerk*.

Whereupon a writ of capias was issued out of said Clerk's office against the said defendants, as prayed for, directed to the Marshal of the Northern District of Illinois to execute, and was returned by the Marshal on the 21st day of November, A. D. 1856, executed upon one of the defendants, which said writ, together with the return of the Marshal thereon, is in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, }
 NORTHERN DISTRICT OF ILLINOIS. }

The United States of America,

To the Marshal of the Northern District of Illinois, Greeting:

We command you, that you take Andrew S. Anderson and George W. Anderson, doing

business under the name and style of A. S. Anderson & Brother, if they shall be found in your district, and them safely keep so that you have their bodies before our Judges of our Circuit Court of the United States for the Northern District of Illinois, at the term thereof now being holden at Chicago, in the District aforesaid, on the 20th day of November, inst., to answer unto William W. Hurlbut, Philip Van Volkenburgh and William B. Leonard, doing business under the name and firm of Hurlbut, Van Volkenburgh & Co., in a plea of trespass on the case upon promises to their damage as they allege of the sum of 1200 dollars, and have you then and there this writ. Witness, the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this eighth day of November, in the year of our Lord one thousand eight hundred and fifty-six, and of our Independence the eighty-first year.

[SEAL.]

WILLIAM H. BRADLEY, Clerk.

(Endorsed.)

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I hereby authorize, appoint and deputize Smith Fry to serve the within summons and make return thereon for me and in my name, this 8th day of November, 1856.

IRAM NYE, U. S. Marshal Nor. Dist. Ill.

PEORIA COUNTY, ss.—

I have, this 19th day of November, A. D. 1856, by virtue of the within writ of capias, taken the body of the within named Andrew S. Anderson, and said Andrew S. Anderson has given security as required by law. The said George W. Anderson not found in my District.

IRAM NYE,
By SMITH FRYE, Dep'y.

Filed Nov. 21st 1856.

WM. H. BRADLEY, Clerk.

The bond given to the Marshal by the Defendant A. S. Anderson upon the release of the said defendant from custody, and returned by the Marshal with the said writ, is in the words and figures following, to-wit:

Know all men, by these presents, that we, Andrew S Anderson and Henry Robinson, of the county of Peoria and State of Illinois, are held and firmly bound unto Iram Nye, of the county of Cook and State aforesaid, in the penal sum of two thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Witness our hands and seals this 19th day of November, A. D. 1856. The condition of the above obligation is such that whereas Hurlbut, Van Volkenburgh & Co. have lately sued out of the Circuit Court of the United States for the Northern Dist. & Cir. of the state of Ill. a certain writ of capias ad respondendum in a certain plea of trespass on the case on promises against Andrew S. Anderson and George W. Anderson, partners trading and doing business under the name, firm and style of A. S. Anderson & Brother, returnable to the now present term of said Court on the 20th day of November, A. D. 1856, and upon which said capias ad respondendum said Andrew S. Anderson has been arrested and is now in lawful custody. Now if the said Andrew S. Anderson shall be and appear before said Court on the said 20th day of November, A. D. 1856, and in case the said Henry Robinson shall not be accepted as bail in said action, shall put in good and sufficient bail which shall be received by the plaintiff, or shall be adjudged sufficient by the Court, or the said Henry Robinson being accepted as bail shall pay and satisfy the costs and condemnation which may be rendered against the said Andrew S. Ander-

son in the plea aforesaid, or surrender the body of the said Andrew S. Anderson in case the said Andrew S. Anderson shall not pay and satisfy the said costs and condemnation money, or surrender himself in execution when by law such surrender is required, then this obligation to be void, otherwise to remain in full force and effect.

(Endorsed.)

Filed Nov. 21st, 1856.

A. S. ANDERSON. [SEAL.]

HENRY ROBINSON. [SEAL.]

WM. H. BRADLEY, Clerk.

And after the issuing of said writ, and on the day of the return thereof, to-wit: on the 21st day of November, in the year last aforesaid, came again the said plaintiffs by their attorneys into the Clerk's office aforesaid, and filed their certain declaration against the said defendants in the plea aforesaid, which said declaration is in the words and figures following, to-wit:

STATE OF ILLINOIS, NORTHERN DISTRICT.	}	CIRCUIT COURT OF THE UNITED STATES, FOR THE SEVENTH CIRCUIT AND NORTHERN DISTRICT OF THE STATE OF ILLINOIS. OF THE OCTOBER TERM, A. D. 1856.
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William W. Hurlbut, Philip Van Volkenburgh and William B. Leonard, partners doing business under the name, firm and style of Hurlbut, Van Volkenburgh & Co., citizens of the State of New York, plaintiffs, complain of Andrew S. Anderson and George W. Anderson, trading and doing business as partners under the name, firm and style of Andrew S. Anderson & Brother, defendants, and who are citizens of the State of Illinois, in a plea of trespass on the case on promises, for that whereas the said defendants, to-wit, on the first day of November, A. D. 1856, to-wit, at the county of Peoria, in said district and circuit aforesaid, were indebted to the said plaintiffs in the sum of twelve hundred dollars, lawful money of the United States, for divers goods, wares and merchandise, by the said plaintiffs before that time bargained and sold by the said plaintiffs to the said defendants, and at their special instance and request, and by the said defendants, under and by virtue of that bargain and sale, before that time accepted, received and carried away, and being so indebted, they, the said defendants, in consideration thereof afterwards, to-wit, on the day and year last aforesaid, to-wit, at the county of Peoria and said district and circuit aforesaid, undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money when the said defendants should be thereunto afterwards requested. And whereas the said defendants afterwards, to-wit, on the day and year last aforesaid, at the said county of Peoria and northern district and circuit of Illinois aforesaid, accounted with said plaintiffs of and concerning divers other goods, wares and merchandise, from the said defendants to the said plaintiffs before that time due, and owing and then in arrear and unpaid, and upon such accounting the defendants were then and there found to be in arrear and indebted to the said plaintiffs in the further sum of twelve hundred dollars of like lawful money, and being so found in arrear and indebted, they the said defendants undertook and then and there promised to pay them the said last mentioned sum when they the said defendants should be thereunto afterwards requested. Yet the said defendants, not regarding their said promises and undertakings, but contriving and intending to deceive and defraud the said plaintiffs, have not paid the said several sums of money, nor either of them, nor any part thereof, to the said plaintiffs, although often requested so to do, to the plaintiffs' damage twelve hundred

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dollars; and therefore they bring suit, and the said plaintiffs aver that the matter in controversy in this suit is of greater value than five hundred dollars.

WEAD & WILLIAMSON,
Attorneys for Plaintiff.

The following is a copy of the account on which this suit is brought:

(See Record.)

Record Page 303 And afterwards, to-wit, on the 9th day of December, A. D. 1856, the plaintiffs filed in said Clerk's office a copy of the account declared on, which is in the words and figures following, to-wit:

(See Record.)

And afterwards, to-wit: Tuesday, the twenty-third day of December, in the year of our Lord one thousand, eight hundred and fifty-six, in the December term of said Court A. D. 1856, the following judgment was entered upon the record of the proceedings of said Court, in said entitled cause, to wit:

WILLIAM W. HURLBUT,
PHILIP VAN VOLKENBURGH,
& WILLIAM B. LEONARD,
vs.
ANDREW S. ANDERSON,
IMPLEADED WITH
GEORGE W. ANDERSON. } In Assumpsit.

Now comes the Defendant, Andrew S. Anderson, in his own proper person, and confesses a judgment in favor of the Plaintiffs, for the sum of nine hundred and twenty-three dollars and ten cents. It is thereupon considered and adjudged by the Court, that the Plaintiffs have and recover of the Defendant, Andrew S. Anderson, the said sum of nine hundred and twenty-three dollars and ten cents, their damages, so as aforesaid confessed, together with their costs by them about their suit in this behalf expended, amounting to the sum of thirty-six dollars and eighty-five cents, and that they have execution therefor.

On the third day of January, in the year of our Lord one thousand eight hundred and fifty-seven, a writ of *feri facias* was issued out of the said Clerk's office, upon the foregoing judgment, against the said Andrew S. Anderson, impleaded with George W. Anderson, as aforesaid, directed to the Marshal of the Northern District of Illinois, to execute, and was returned by the Marshal on the twenty-ninth day of May, in the year last aforesaid, satisfied in full; which said writ of *Fieri Facias*, with the return of the Marshal thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF ILLINOIS, } ss.

The United States of America, to the Marshal of the Northern District of Illinois, Greeting: We command you, that of the goods and chattels, lands and tenements of Andrew S. Anderson, impleaded with George W. Anderson, in your District, you cause to be made nine hundred and fifty-nine dollars and ninety-five cents, which William W. Hurlbut, Philip Van Volkenburgh and William B. Leonard, lately in our Circuit Court of the United States for the Northern District of Illinois, before the Judges thereof at Chicago, in the District

Record Page 34
 aforesaid, recovered against him for damages which they had sustained, as well by occasion of the non-performance of certain promises and undertakings as for their costs and charges by them, about their suit in this behalf expended, whereof said Defendant is convicted, as appears to us of record; and have you that money at the Clerk's office of our said Court, in ninety days from the date hereof, to render to the said Plaintiffs, for their damage aforesaid, and this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this third day of January, in the year of our Lord one thousand eight hundred and fifty-seven, and of our Independence the 81st year.

WM. H. BRADLEY, Clerk.

This writ came to hand this 3rd day of January 1857, at 12 o'clock M.

I. NYE, U. S. Marshal.

By virtue of the annexed writ of Fi. Fa. to me directed, I did on the 16th day of January 1857, levy upon the following personal property as the property of Andrew S. Anderson, in order to satisfy the same, to wit: one stock of merchandise consisting of Dry Goods, Hardware, Queensware and sundries, in the town of Chillicothe, County of Peoria, and State of Illinois, and after having given due notice of the same according to law, I did on the 10th day of February 1857, proceed to sell so much of said stock as was required to satisfy the said execution, for the prices described in the following account of sales, to wit:

58 6 57
 (See Record.)

NORTHERN DISTRICT OF ILLINOIS, ss.

4 4 57
 I, WILLIAM H. BRADLEY, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the foregoing transcript to be a true and correct copy from the record of all the proceedings which have been had in said Circuit Court, in said cause of William W. Hurlbut, et al, against Andrew S. Anderson, impleaded etc.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at my office in Chicago, in said District, this 5th day of November, A. D. 1857.

[Seal.]

WM. H. BRADLEY, Clerk.

2nd. The Commission of Iram Nye, as Marshall as follows, to wit:

Franklin Pierce, President of the United States of America, to all who shall see these presents, greeting:

Know ye that reposing special trust and confidence in the integrity, ability and diligence of Iram Nye, of Illinois—I have nominated and by and with the advice and consent of the Senate do appoint him Marshal of the United States in and for the Northern District of said State; and do authorize and empower him to execute and fulfil the duties of that office, according to Law; and to have and to hold the said office, with all the power, privileges and emoluments to the same, of right appertaining unto him, the said Iram Nye, for the term of four years from the date hereof; unless the President of the United States, for the time being, should be pleased sooner to revoke and determine this commission.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Record Page *58* Given under my hand at the City of Washington, the seventh day of July, in the year of our Lord one thousand eight hundred and fifty-six, and of the Independence of the United States of America, the 81st year.

By the President, FRANKLIN PIERCE.
W. L. MARCY, Secretary of State.

[SEAL.]

3rd. The Oath of said Nye, as follows, to wit :

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF ILLINOIS. } ss.

I do solemnly swear that I will faithfully execute all lawful precepts directed to the Marshal of the Northern District of Illinois, under the authority of the United States; and true return make, and in all things well and truly and without malice or partiality perform the duties of Marshal of the said District, during my continuance in office, and take only my lawful fees.

IRAM NYE.

Sworn to and subscribed before me, this 16th day of July, A. D. 1856.

THOMAS DRUMMOND, U. S. Judge.

NORTHERN DISTRICT OF ILLINOIS, ss.

I, WILLIAM H. BRADLEY, Clerk of the District Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing transcript to be a true and correct copy of the original oath of office of Iram Nye, late Marshal for said Northern District, as the same appears on the official Bond of said Marshal, on file in my office, and also of record therein.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at my office in Chicago, in said Northern District, this third day of December, A. D. 1857.

[Seal.]

WM. H. BRADLEY, Clerk.

59 4th. The appointment of Mathews & French, two of Defendants, as Deputy Marshals, and also, 5th. the oaths of said Mathews & French, as follows, to wit :

Know all men by these presents, that I, Iram Nye, United States Marshal for the Northern District of Illinois, have appointed, and do by these presents appoint Henry M. Mathews, of said District, my true and lawful deputy, hereby giving and granting to my said deputy, full power and authority to execute all writs to me directed, and generally to transact all business appertaining to my office, as fully and completely as I could or would do if personally present or otherwise, hereby ratifying and confirming all that my said Deputy may lawfully do in the premises.

Given under my hand and seal this twenty-sixth day of July, A. D. 1856, at Chicago, Illinois.

IRAM NYE, U. S. Marshal,

[SEAL.]

Nor. Dist. Ill.

NORTHERN DISTRICT OF ILLINOIS, ss.

I, HENRY M. MATTHEWS, do solemnly swear, that I will faithfully execute all lawful precepts directed to the Marshal of the Northern District of Illinois, under the authority of the United States, and true returns make, and in all things well and truly and without malice or partiality perform the duties of the office of Marshal's Deputy, of the Northern Dis-

trict of Illinois, during my continuance in office, and take only my lawful fees.

So help me God.

HENRY M. MATTHEWS.

Sworn to before me this 28th day of July, A. D. 1856.

THOMAS DRUMMOND.

[Endorsed.]

Filed July 28th, 1856.

WM. H. BRADLEY, Clerk.

NORTHERN DISTRICT OF ILLINOIS, ss.

Record Page 80 I, WILLIAM H. BRADLEY, Clerk of the District Court of the United States, for said Northern District of Illinois, do hereby certify the foregoing transcript to be a true and correct copy from the record and files of said Court, of the appointment of Henry M. Matthews, and of his oath of office as Deputy Marshal for said Northern District, as the same now appears of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Chicago, in said Northern District, this 8th day of December, A. D. 1857.

[Seal.]

WM. H. BRADLEY, Clerk.

Know all men by these presents, that I, Iram Nye, United States Marshal for the Northern District of Illinois, have appointed, and do by these presents appoint I. Washington French, of said District, my true and lawful deputy, hereby giving and granting to my said deputy, full power and authority to execute all writs to me directed, and generally to transact all business appertaining to my office, as fully and completely as I could or would do if personally present or otherwise, hereby ratifying and confirming all that my said deputy may lawfully do in the premises.

Given under my hand and seal this first day of August, A. D. 1856, at Chicago, Illinois.

[Seal.]

IRAM NYE, U. S. Marshal, Nor. Disct. Ill.

NORTHERN DISTRICT OF ILLINOIS, ss.

I, I. WASHINGTON FRENCH, do solemnly swear that I will faithfully execute all lawful precepts directed to the Marshal of the Northern District of Illinois, under the authority of the United States, and true returns make, and in all things well and truly and without malice or partiality perform the duties of the office of Marshal's Deputy, of the Northern District of Illinois, during my continuance in office, and take only my lawful fees. So help me God.

I. WASHINGTON FRENCH.

Sworn to before me this 1st day of August, A. D. 1856.

THOMAS DRUMMOND

81 (Endorsed.)

Filed August 1st, 1856.

WM. H. BRADLEY, Clerk.

NORTHERN DISTRICT OF ILLINOIS, ss.

I, WILLIAM H. BRADLEY, Clerk of the District Court of the United States, for said Northern District of Illinois, do hereby certify the foregoing transcript to be a true and correct copy from the record and files of said Court, of the original appointment and oath of office of I. Washington French, as Deputy Marshal, within and for the Northern District of Illinois, as the same now appears of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at my office in Chicago, in said Northern District, this eighth day of December, A. D. 1857.

[Seal.]

WILLIAM H. BRADLEY, Clerk.

To the admission in evidence to the Jury the Plaintiff objected at the times they were severally offered in evidence, but the Court overruled the said objections of said Plaintiff, and admitted said records, transcripts and papers in evidence to the Jury; to which decisions of the Court admitting said records, transcripts and papers in evidence, the said Plaintiff then and there objected and excepted.

It was admitted by Plaintiff that Matthews and French were acting as the deputies of Nye, the Marshal, when they seized the goods.

The Jury found for the Defendants.

The Plaintiff entered a motion for a new trial, for the following reasons:

1. The Court erred in excluding proper evidence offered by the Plaintiff.
2. The Court erred in excluding the assignment and additions thereto, offered in evidence by the Plaintiff.
3. The Court erred in admitting improper evidence offered by Defendants.
4. The verdict is against the weight of evidence.
5. The verdict is against law.
6. The verdict should have been for the Plaintiff. But the Court overruled said motion, and refused to grant a new trial; to which decision of the Court overruling the said motion to grant a new trial, the Plaintiff then and there, at the time, objected and excepted, and prayed that his Bill of Exceptions might be signed and sealed, and made part of the records in this case, which is done.

E. N. POWELL, [SEAL.]

STATE OF ILLINOIS, }
PEORIA COUNTY. } ss.

I, ENOCH P. SLOAN, Clerk of the Circuit Court in and for said County and State, do certify that the foregoing is a full and complete transcript of papers filed, and of proceedings of our said Court, in the cause wherein Henry Robinson is Plaintiff, and Iran Nye, Henry M. Matthews, William H. Hurlbut, Philip Van Volkenburgh, William B. Leonard and Isaac W. French, are Defendants, as the same appears on file and of record in my office.

Given under my hand and the seal of said Court, at my office in Peoria, this eleventh day of March, in the year 1858.

ENOCH P. SLOAN, Clerk.

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Robinson et al

¹⁰⁷

Nye

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