

14404

No. \_\_\_\_\_

# Supreme Court of Illinois

Davidson

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vs.

Cooley

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

*14704*  
No. 128.

1853

*James  
Cook  
County*



and being so possessed thereof, he, the said plaintiff, to wit: on the day and year at the County and State aforesaid, casually lost the said lumber, boards, planks, scantling and lath out of his possession, and the same then and there came to the possession of the defendants by finding: that the said defendants well knowing the same to be the property of the plaintiff, but contriving and intending to injure the plaintiff in this behalf, have not as yet delivered the same or any part thereof to the plaintiff, although often requested so to do; and afterwards, to wit: on the day and year aforesaid, at the County and State aforesaid converted and disposed of the same, to wit: the said defendants and use.

And also for that whereas, to wit: on the 13<sup>th</sup> day of November A.D. 1857, at the Village of ... County, and that the said plaintiff was the owner and in the lawful possession of a lot of his own goods and property, of certain boards, planks, scantling of great value, to wit: of the value of twelve hundred dollars, - the said plaintiff afterwards, to wit: on the day and year aforesaid, to wit: at the County and State aforesaid, casually lost the said lumber, boards,

County of ...

[REDACTED]

planks and scantling, out of his possession  
 and the same afterwards, to wit: on the day  
 and year and at the County and State aforesaid,  
 came to possession of the defendants by  
 finding. Yet the said defendants well knowing  
 the said plaintiff to be the owner of some  
 lumber, boards, planks and scantling, but  
 contriving and intending to injure the plain-  
 tiff in this behalf, have not as yet delivered  
 the same or any part thereof, or any  
 part thereof to the said plaintiff, although  
 often requested so to do, to wit: at  
 on the day and year and at the place aforesaid, to wit: at  
 Arlington in said County, that the same were  
 and disposed of and taken, boards, planks  
 & scantling, to their, the said defendants  
 own use. - To the damage of the said plaintiff  
 of about Hundred Dollars, and therefore he  
 brings his suit vs. by C. S. [unclear]  
 atty for Plaintiff

Precipe

State of Illinois } in the Bureau County  
 Bureau County } 3<sup>rd</sup> Circuit Court of Illinois  
 March Term A.D. 1862

James H. Davidson, plaintiff  
 vs.  
 Francis B. Cooley, Elisha J. Hudson, }  
 John V. Farwell, Zuchanah R. Hudson, }  
 Marshall Field and Charles H. Wilcox }

Trove  
 Damage \$1200.

Please issue process in the above entitled cause  
for Francis C. Cooley, Elisha J. Hadsenworth,  
John V. Farwell, Marshall Field and Charles  
W. Hilcox - directed to the Sheriff of Cook  
County - and for Zuchariah W. Halderson  
directed to the Sheriff of Bureau County. -  
And obliges &c.

To the Clerk of the Circuit Court, E. J. Smith  
Court of said County -

Whose copies on the same day of process  
issued in said cause to the Sheriff of Cook  
County to serve on the named and signed  
parties, to wit:

State of Illinois, County of Bureau  
County of Cook  
The command is that you  
summon Francis C. Cooley, Elisha J.  
Hadsenworth, John V. Farwell, Marshall Field &  
Charles W. Hilcox (as parties with Zuchariah  
W. Halderson) of said County, to appear  
before the Circuit Court of said Bureau County,  
on the first day of the next term thereof, to  
be holden at the Court House, in the Town of  
Pinceton, in said County on the second  
Monday in the Month of March next, to an-  
swer unto James W. Davidson in a plea of

[Redacted signature]

Prover, to the damage of the said Plaintiff as he says in the sum of Twelve Hundred Dollars; and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness: George M. Chadcliffe, Clerk of our said Circuit Court, and Clerk thereof at Princeton, in said County, this 4th day of February in the year of our Lord one thousand eight hundred and sixty two. Geo. M. Chadcliffe Clerk. By Charles W. Stone Deputy.

Which said writ was duly served and returned as follows:

Served by reading to the within named John V. Furwell and Marshall Field the above writ named C. C. Cooley, C. S. Hildreth and Ch. W. Wilcox not found. Chicago March 10th 1862.

M. H. ... Sheriff  
U. G. ... Deputy

And on the same day also Summons to Sheriff of Bureau County as follows. To wit: -

State of Illinois  
Bureau County of The People of the State of Illinois  
To the Sheriff of said County, Greeting:

We command you that you summon Zachariah N. Waldson (impleaded with Francis B. Cooley, Elisha S. Hadswath, John V. Furwell, Marshall Field and Charles W. Wilcox), if he shall be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden at the Court House in the Town of Princeton in said County on the second Monday in the month of March next, to answer to said Plaintiff Davidson a plea of Torts to the damage of said Plaintiff, as he says in the sum of Twelve Hundred Dollars; and that you do and adhere thereto, with an endorsement thereon which you are to have executed as follows.

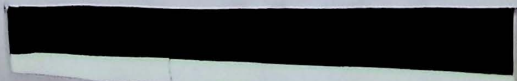
Witness George M. Ruffelle Clerk of our said Circuit Court, and he Seal thereof, at Princeton in said County, the 4th day of February, in the year of our Lord one thousand eight hundred and sixty two.

Geo. M. Ruffelle Clerk.  
By Chas. J. Peckham Deputy.

(Which said Writ was returned endorsed as follows.)

Return

Served this 8th day of February A.D. 1862  
By reading to the within named Zachariah N. Waldson  
D. McDonald Sheriff of Bureau County Illinois.



7

Pleas before the Hon<sup>ble</sup> M. E. Hollister Judge  
of the Ninth Judicial Circuit of the State of  
Illinois at a term of the Circuit Court begun  
and held at the Court House in Princeton  
within and for the County of Bureau and  
State aforesaid on the second Monday of  
March in the year of our Lord one  
thousand eight hundred and sixty two.

Present Hon<sup>ble</sup> M. E. Hollister Judge  
George M. Schaeffer Clerk  
Daniel M. Jones Sheriff  
and J. P. Jones Attorney

On the Ninth day of March, 1862  
at the County Court House of said County of Bureau  
Illinois. Court met for the purpose of  
adjournment. Present same as at first  
term H. Davison

vs. James Waldson

Francis C. Wesley, Otha S. Waldson,  
John V. Samuel, Jeremiah Waldson,  
Marshall Field & Charles H. Wilcox

And now comes plaintiff  
by his Attorney and on his motion said  
defendant Waldson is three times solemnly  
called and comes not but makes default  
herein.

(And on the Eleventh day of said Term,  
To wit: Friday Morning 9 o'clock March 21<sup>st</sup>

A.D. 1862 - Court met pursuant to  
adjournment - Present same as at first.

James W. Davidson

vs.

Provs

Francis B. Cooley, Elisha S. Wadsworth,  
John V. Farwell, Zechariah W. Waldron,  
Marshall Field & Charles H. Wilson

... on motion of Sheriff,  
... by the Court that this  
... until the next term with  
...  
...  
...  
... of Cook County.



9

And, To wit: on the ninth day of May  
A.D. 1862 came defendants in said cause  
by C. M. Hawley their Attorney and filed  
their Pleas and Affidavit of John V.  
Farwell and motion for costs as follows, to wit:

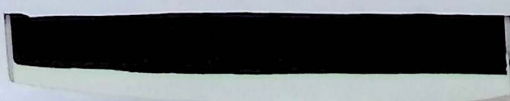
Pleas

State of Illinois }  
County of Cook }  
James W. Davis }  
vs }  
Francis B. Cook, Joshua C. ... }  
John V. Farwell, Jeremiah ... }  
Moses ... }  
Defendants }

And the said defendants in the above  
titled cause by C. M. Hawley their attorney  
come and defend the wrong and injury where  
it is said, that they are not guilty of the  
said supposed grievances in manner and  
form above laid to their charge or either of  
them or any part thereof in manner and  
form as the said Plaintiff hath above  
thereof in his first and second counts  
complained against them, and of this  
they put themselves upon the country &c.

C. M. Hawley  
Defendants atty.

And for a further plea in this behalf, the said defendants say, acts non, because they say, that before and at the time when &c., to wit, on the twenty fourth (24) day of April in the year of our Lord eighteen hundred and fifty eight, in the Circuit Court of Cook County, in the State of Illinois aforesaid, at a term thereof begun and held at Chicago in said Cook County, on the second Monday of April of said year, one George E. Wilder by the consideration and judgment of the said court, recovered two certain judgments against one John C. Gibson by confession and cognovit, one in the sum of eight hundred and twenty dollars and twenty cents, besides his costs in that behalf, and the other in the sum of eight hundred twenty seven dollars and sixteen cents, besides his costs in that behalf expended; and that afterwards, to wit, on the said twenty fourth (24) day of April in the year last aforesaid, the said Wilder caused to be issued out of and under the seal of the said Circuit Court of said Cook County duly attested by the Clerk thereof the People's writ fieri facias upon the said several judgments, each directed to the Sheriff of the said Bureau County to be



of April in the year last aforesaid, recovered against the said John C. Gibson defendant therein for his damages and also the further sum of five dollars and seventy cents which were adjudged to the said George G. Wilder for his costs and charges in that behalf expended whereof the said defendant therein was convicted, and that the said Sheriff have the money ready to render to the said plaintiff therein for his said damages and costs and that he make due return of that the said writ with an endorsement thereon in what manner he executed the same in ninety days from the date thereof.

And that afterwards, to wit, on the 24 day of July in the year last aforesaid, the said George G. Wilder caused to be issued out of and under the seal of the said Circuit Court of Cook County, an alias Writ of *Habeas Corpus*, upon his other said judgment in said Court against the said Gibson directed to the Sheriff of the said County of Bureau to execute in due form of law, duly attested by the clerk thereof, commanding the said Sheriff of the said County of Bureau that of the lands and tenements goods and chattels of the said John C. Gibson the defendant therein in his County he cause

to be made the sum of eight hundred  
 twenty dollars and seventy cents, which the  
 said George F. Wilder plaintiff therein lately  
 in said Circuit Court of Cook County, at a  
 term thereof begun and held at Chicago  
 in said County of Cook, on the second Monday  
 of April in the year last aforesaid recovered  
 against the said John C. Gibson defendant  
 therein for his damages, and also the further  
 sum of five dollars and seventy cents which  
 was adjudged to the said Wilder for his costs  
 and charge in that behalf entered, whereof  
 the said Gibson was committed by said Circuit  
 Court of Cook County, and that he the said  
 Sheriff of said Bureau County, by these  
 moneys ready to come to the said Wilder plain-  
 tiff therein for his damages and costs aforesaid,  
 and that he make return to the said Circuit  
 Court of Cook County, of that said writ, with  
 an endorsement thereon in what manner he  
 had executed the same in ninety days from  
 the date thereof; and that afterwards, to wit,  
 on the 26<sup>th</sup> day of July in the year last aforesaid,  
 the said two People's Writs of fieri facias  
 last mentioned, came into the hands of the  
 said Sheriff of the said County of Bureau at  
 the hour of 4 o'clock P. M. of that day to exe-  
 cute, and that the said Zachariah H. Waldron  
 defendant herein, then being Sheriff of the

said County of Bureau, received the said two last Writs of Fieri Facias; and that afterwards, to wit, at Arlington, to wit, in the said County of Bureau, on the 28<sup>th</sup> day of July last aforesaid, the said Waldron, then being Sheriff of said County of Bureau as aforesaid and by virtue of the said two writs of Fieri Facias last mentioned, and as Sheriff as aforesaid levied the same and each of them upon the property, Lumber, boards, planks scantling and Lath mentioned in the plaintiff's first and second counts in his said declaration (as he lawfully might) and the property of the said John C. Gibson.

And that on the 21<sup>st</sup> day of July in the year last aforesaid, in the Court County Court of Common Pleas, in and for the said County of Cook in the State of Illinois, aforesaid in vacation, after the full vacation term of said last mentioned Court, the said defendants herein Francis D. Colby, Elisha S. Mudge worth, and John V. Furness by the consideration and judgment of the said last mentioned Court recovered their certain judgment against the said John C. Gibson by his confession and cognovit filed therein, in the sum of Three Thousand two Hundred eighty one dollars and sixty cents (\$3281.60) for their damages, and also their costs in that behalf expended:

And that afterwards, to wit, on the day and  
 year last mentioned, they, the said Cooley,  
 Wadsworth + Sawell, caused to be issued out  
 of and under the seal of the said Cook County  
 Court of Common Pleas, upon their said  
 judgment the Peoples Writ of Fieri Facias, directed  
 to the Sheriff of the said County of Bureau  
 to be by him executed in due form of law,  
 commanding him, the said Sheriff of Bureau  
 County, that of the lands and tenements,  
 goods and chattels of the said John C. Gibson  
 defendant therein in his County he cause to  
 be made the sum of three thousand two  
 hundred eighty one and no/100 parts, which  
 the said Francis B. Cooley, Charles Wadsworth,  
 and John V. Sawell plaintiffs therein brought in  
 the said Cook County Court of Common Pleas,  
 in said County of Cook at Chicago aforesaid,  
 on the said 26<sup>th</sup> day of July in the year last  
 aforesaid recovered against the said John C.  
 Gibson defendant therein, and which by the  
 said Court was adjudged to the said plaintiffs  
 therein for their damages and also the further  
 sum of five dollars and seven/100 cents which  
 were adjudged to the said plaintiffs therein  
 for their costs and charges in that behalf  
 expended, whereof the said John C. Gibson  
 defendant therein was convicted and that he  
 the said Sheriff have these moneys ready to

render to the said Coolley, Hadswoth and Farwell, Plaintiffs therein for their damages and costs aforesaid, and that the said Sheriff make return of said Writ with an endorsement thereon in what manner he executed the same in ninety days from the date thereof.

And that afterwards, to wit, on the 27<sup>th</sup> day of July in the year last aforesaid, at the hour of twelve meridian of that day, the said People's Writ of Fieri Facias last mentioned came into the hands of the said Zachariah N. Waldron defendant herein to execute in due form of law. He being then the Sheriff of the said County of Bureau; and that by virtue of the two Writs made as aforesaid upon the property, Lumber, Boards, Planks, Lumber and materials as aforesaid and at the time aforesaid, and by virtue of the liens so made upon the said property, lumber, boards, plank, sawdust and lath by means of the said three last mentioned Writs of Fieri Facias so in the hands of the said defendant Waldron, He then being Sheriff as aforesaid of the said County of Bureau, duly elected and qualified, advertised and sold the same according to the Statute in such case made and provided as he lawfully might do to satisfy so far as the money arising from such sale could the said three last mentioned judgments against

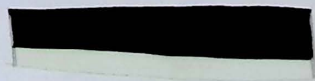
the said John C. Gibson. And the defendants  
 own that the said moneys were duly applied upon  
 the said judgments, and that at the time and  
 at each of the times the said three last men-  
 tioned People's Writs of *Hieri Facias* issued out  
 out of and under the seals of the said respective  
 Court as aforesaid upon the said three Judg-  
 ments so as aforesaid obtained against the  
 said John C. Gibson and at the times they  
 respectively came into the hands of the said  
 Zachariah W. Harrison defendant as aforesaid,  
 and that at the time he was one of the two said  
 Juries upon the said property, lumber, boards,  
 plank, scantling and lath as aforesaid, he  
 was the Sheriff of the said County of Bureau, in  
 the said State of Illinois, duly elected and  
 qualified and that for a long time prior and  
 subsequent to said times and each of said times,  
 he was the Sheriff of said Bureau County; and  
 the said defendants further own that at the  
 time and times the said several levys were made  
 as aforesaid, the said John C. Gibson was in  
 the possession of and was engaged in selling and  
 disposing of the said property, lumber, boards,  
 plank, scantling and lath mentioned in the  
 said first and second counts of the plaintiff's  
 said declaration at retail in his customary and  
 usual manner in Arlington, to wit, in the  
 County of Bureau aforesaid where said property

was, and that he had been in such possession and engaged in selling and disposing of the same for a long time before the said Walton as Sheriff as aforesaid levied upon the same as aforesaid.

And the said defendants further aver that said property, lumber, boards, plank, scantling and lath were liable to be so levied upon and sold as aforesaid by virtue of the said three Writs of Fieri Facias issued as aforesaid upon the said three judgments for the benefit of said plaintiff therein and the proceeds of such sales to be applied as aforesaid.

And the said defendants further aver that the proceeds of the said goods and chattels so levied upon and sold as aforesaid were duly and properly applied toward the payment and satisfaction of the said three judgments and executions.

And the said defendants further aver that the said Cooley, Washburn and Farnell as plaintiffs in said execution as aforesaid, and said Marshall Field and Charles W. Wilcox as their agents did direct the said Sheriff to levy the said executions upon the said goods and chattels in said declaration described, and to seize and take the same thereunder, which are the same trespasses complained of in said



declaration, as they lawfully might for the causes aforesaid.

And the said defendants further aver that after the said levy was made as aforesaid, the said Field and Wilcox acted under the direction of the said Sheriff and as his clerks in the sale of the said goods and chattels under the said Writs of execution in pursuance to the laws of this State. And thus the said defendants are ready to satisfy wherefore they pray judgment of the said plaintiff ought to have or maintain the aforesaid actions thereof against them.

Affida

State of Illinois }  
County of Bureau }  
County of Bureau }

James H. Davidson

vs.

Francis B. Cooley, John V. Farwell, Elisha G. Wadsworth, Marshall Field, Zechariah N. Waldron, impleaded with Charles W. Wilcox, defts.

Prover

State of Illinois }  
County of Cook }

John V. Farwell of said County, being duly sworn deposes and says.

that he is one of the defendants in the above  
 entitled suit, that the said plaintiff James W.  
 Davidson is merely a nominal plaintiff in  
 said suit and that E. J. Smith Esq. who  
 commenced said suit in his name, this  
 affiant is informed and verily believes is  
 the real plaintiff, that the said Davidson  
 is a bankrupt + is largely indebted and has  
 not the means to pay his debts, and that  
 neither his debts or a bill of costs can be  
 collected of him by the ordinary process, and  
 that unless he gives security for the costs in  
 the said cause the same are in great danger  
 of being lost. This affiant further says  
 that said plaintiff commenced suit against  
 this affiant and others in the Circuit Court  
 of Cook County and a verdict was had thereon,  
 and a verdict rendered for the defendants,  
 and that owing to an instruction that was  
 deemed erroneous Judge Monro granted a  
 new trial remanding at the same time that  
 he regretted this error, as he thought the verdict  
 in favor of the dfts. done justice to the parties  
 under the evidence, and that in that case  
 security for costs was filed by plaintiff, and  
 but for that the costs could not be collected  
 in that case and that said E. J. Smith  
 remarked after that suit was dismissed

that the said defendants could not collect the costs of Davidson. This Affiant further says that the herewith attached letter was received by C. M. Hawley from the said Davidson on the 12th of April inst. in regard to the matter of costs in the above entitled suit; and this affiant is informed and believes, that the said Davidson is helplessly insolvent, and is largely in default in the matter of his account to the Government of the United States arising from his officiate relations as Marshall of the United States for the Northern District of Illinois

Subscribed and sworn to before me by C. M. Hawley, a Notary Public in and for the County of Cook, State of Illinois this 14th day of April, A. D. 1862. In witness whereof I have hereunto set my hand and Notarial Seal.  
 C. M. Hawley Notary Public.

Northampton April 11th/62

C. M. Hawley Esq.

Letter attached to afft.

Sir, yours of yesterday has been rec<sup>d</sup> & I have to say in reply that I did authorize Mr. Smith to use my name to assert his rights if he has any against Cooley, Farwell & Co. To file your affidavit for costs as soon as you like. Your threats fail to bring terror as the security will be on the ground. Jas. M. Davidson.

22  
Motion for  
Costs

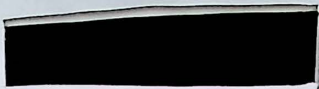
State of Illinois      In the Circuit Court of  
County of Bureau      the County of Bureau  
James W. Davidson

vs  
Francis B. Cooley et al

And the said defendants  
by C. M. Hawley their attorney come and  
enter their motion upon the affidavit of  
John V. Farwell defendant herein, that  
the said plaintiff file security for costs in  
this suit

C. M. Hawley

Att. atty.



Pleas before the Honorable Madison E. Hollister, Judge of the Ninth Judicial Circuit of the State of Illinois, at a Special Term of said Court within and for the County of Bureau in said State, begun, held and continued at the Court House in Princeton in said County on the fifth Monday in the month of September (being the twenty ninth day of said Month) in the year of our Lord one thousand eight hundred and sixty two.

Present Court M. E. Hollister Judge  
 Henry M. Radcliffe Clerk  
 David Sheriff  
 James H. Waters Esq.

On the 10th day of Monday morning 10 o'clock October 6th A.D. 1862 - Court met pursuant to adjournment. Present same as on Saturday last - (and as at first)

James M. Davison

vs

Trover

Francis B. Cooley, Elisha J. Wadsworth  
 John V. Farrell, Zachariah N. Waldron,  
 Marshall Field and Charles H. Wilcox

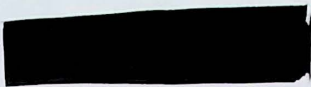
This day came the said defendants by Hawley and Peters and Smith their attorneys and filed their demurrer to the said Plaintiff's petition to the said defendants same as filed herein

in the words and figures following, to wit: -

James W. Davidson	}	Circuit Court
vs.		Trover - - - - Term
Francis B. Cooley et al		A.D. 1862

And the said defendants come and defend when se. and say that the Plaintiff's Replication to defendants 2<sup>d</sup> plea is insufficient in law.

- 1<sup>st</sup> The Replication traverses defts plea + yet concludes with a verification
- 2<sup>d</sup> The Pleff by the same Replication traverses said Plea + yet confesses and avoids
- 3<sup>d</sup> Said Replication admits that the property belonged to John C. Gibson yet attempts to justify a seizure under a judgment and execution against John C. Gibson
- 4 If the Replication is construed as a traverse of the Plea it does not traverse material facts, + if as a confession of the plea the evidence set up is insufficient.
- 5 Said Replication attempts to set two replies to the same plea
6. Said Replication is argumentative + States evidence instead of a simple allegation of facts.
- 7<sup>d</sup> No reason is stated for the delay in selling the property levied upon from November 1857 until July 1858. Said Replication is in other respects informal + insufficient wherefore defts pray judgment se. Hawley + Peters for Defts.



On the 8<sup>th</sup> day of said Term, to wit: 1  
 Tuesday Morning 8 o'clock October 7<sup>th</sup>  
 A.D. 1862. Court met pursuant to  
 adjournment. Present same as yesterday  
 (and as at first)

James W. Davidson

vs.

Trover.

Francis B. Cooley, Elisha J. Woodworth,  
 John V. Farwell, Zachariah W. Halston,  
 Marshall Field & Charles H. Wilcox.

On the 8<sup>th</sup> day of said Term, the said  
 Defendants by their Attorneys aforesaid and  
 on motion a rule is taken on said Plaintiff  
 to file security for costs herein or show cause  
 by Saturday morning next.

(On the ninth day of said Term, to wit: 2)  
 Wednesday Morning 8 o'clock October 8<sup>th</sup>  
 A.D. 1862. Court met pursuant to  
 adjournment. Present same as yesterday  
 (And as at first)

James W. Davidson

vs.

Trover

Francis B. Cooley, Elisha J. Woodworth,  
 John V. Farwell, Zachariah W. Halston,  
 Marshall Field & Charles H. Wilcox.

This day came the said parties by  
 their attorneys aforesaid and the said Plain-  
 tiff in accordance with a rule heretofore

entered against him herein, filed his security  
for costs herein (In the words and figures  
following, to wit)

State of Illinois,      In Circuit Court  
Bureau County 3<sup>rd</sup>      September Spl Term 1862

James H. Davidson

vs

Francis B. Cooley + others

I 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 has  
now accrued and which may hereafter  
accrue either to the opposite party or to any  
of the officers of this Court in pursuance  
of the laws of the State. Dated this 8<sup>th</sup>  
day of October A.D. 1862

E. J. Smith

And the said Plaintiff having complied  
with said rule, it is ordered that the  
same be discharged.

On motion, leave is given to said Plaintiff,  
by the Court, to withdraw from the files  
his Replication to the 2<sup>d</sup> plea of Defendants  
by him filed herein, and to file an  
other replication thereto.

(On the Tenth day of said Term, to wit: -)  
 Thursday Morning 8 o'clock October 9<sup>th</sup>  
 A.D. 1862. Court met pursuant to  
 adjournment. Present same as yesterday,  
 (And as at first)

James W. Davidson

vs.

Trover.

Francis B. Cooley, Elisha J. Wadsworth,  
 John V. Farrell, George H. K. Hudson,  
 Marshall Field & Charles W. Milcox.

On this day, before the said parties  
 by their attorneys aforesaid, Milton J.  
 Peters one of the attorneys for said defendant,  
 files herein his affidavit in the words and  
 figures following, to wit:

James W. Davidson } sworn to alls.

vs.

Circuit Court

Francis B. Cooley et al } Sept. T. A.D. 1862.

State of Illinois }  
 Bureau County }  
 Milton J. Peters being  
 duly sworn, says that in the above cause he  
 was not retained by the defendants as their  
 Attorney, or by either of them, but that  
 C. M. Hawley Esq. of Chicago, who is the de-  
 fendants attorney, spoke to me to assist him  
 in said cause or look after said cause,  
 which this affiant agreed to do, but that this  
 affiant was not expected to assume a leading  
 position in the case but only to assist said

Hawley, or rather to look after the said Cause for him, said Hawley not being a resident here and could not conveniently attend during the entire sitting of the Court. That said Hawley had tried a similar case between the same parties involving precisely the same issues in Cook County, which case was dismissed after verdict against him and new trial granted to institute this suit. That said Hawley knew all about the merits of the controversy, while this affiant knew nothing and has not made inquiries. For the reason that it was not incumbent upon this affiant to make such inquiries. That he was not expected to try the case himself, but that said Hawley was to manage this Cause. The affiant further states that on the Tuesday morning of this week, a rule was entered upon the Plaintiff to give security for costs in this Cause by Saturday morning of this week. That after the entry of this rule, a demurrer to the Plaintiff's Replication to the defendant's second plea was called up for disposition. The Court declined to consider the demurrer, and said that all proceedings in the Cause would be suspended until the rule was answered. The said Hawley had

previously stated, that he wanted the demurrer disposed of because he could not attend all the time during the Court, and when this Court made the foregoing remark, the said Hawley then said that if all further proceedings in the case were suspended until Saturday morning, that he would leave and be absent from the Court until that time, that he had business which required his presence in Cambridge Henry County, Va. To which no objection was made by the Court or the Plaintiff's attorney who was present and heard such proposals, but on the contrary this affiant understands from the known that said Hawley insisted both the Court and the Plaintiff's attorney to assent to the same. That this affiant heard the Plaintiff's Attorney say at said time, that the case would not probably be tried at this term at all. That he did not expect that they would be ready for trial, and certainly the Plaintiff's attorney did acquiesce at said time in the arrangement, that said Cause should not be taken up until Saturday morning. That this affiant since last evening, when he was first advised by Plaintiff's Counsel, that they should insist upon a disposition of the

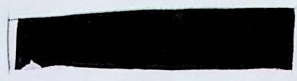
case earlier than Saturday morning. Has spoken to the Clerk of this Court & his deputy, and the Sheriff of this Court and they all agree with him in their understanding and that the arrangement was as is stated by him as aforesaid. That if this affiant had not understood such to be the arrangement he would not have consented that the said Hawley should have left. And this affiant is well assured that if said Hawley had not understood this to be the arrangement he would have never left this Court but would have been attendance to attend to this trial. This affiant believes it not to be acting in good faith towards the said Hawley, to move upon the trial of said cause before Saturday morning.

This affiant further states that last evening, immediately after the Plaintiff's Attorney had advised him that he would press said cause for trial, he prepared <sup>and</sup> sent to the telegraph office at Princeton Ills. a dispatch to Cooley, Farwell & Co., who reside in Chicago Ills. to be telegraphed at once to them at Chicago notifying them that their suit would be called up for trial tomorrow, that Hawley was away <sup>and</sup> that unless they came down immediately

that judgment would go against them by default & signed my name to the dispatch. That this affiant is informed by Mr. Smith who took said dispatch to the office that the telegraph operator informed him that the wires were down between here and Chicago and also upon the Illinois Central Rail Road and it would be probably impossible to transmit said dispatch to Chicago. This affiant then the same evening sent a letter to the Post Office at Princeton Ill. directed to Messrs. Cooley, Farwell & Co. at Chicago advising them substantiated by the same as in said dispatch and also engaged one of the employees of the Princeton Depot to send a letter by train to Co. by last evening train a letter which he caused to be prepared notifying them of the substance of said dispatch. This affiant has received no ans. from Cooley, Farwell & Co. and does not believe that they have as yet received any of his communications to them. This affiant is not acquainted with them and do not know that they have ever seen or heard of him & could not say therefore that they would have paid any attention to his dispatches if they had received any of them.

This affiant believes that if defendants have

a good defence to said cause as he learns from the Pleas. He learned from the said Hawley that the said Pleas could be sustained by the testimony which he had which he believes is correct, but that since last evening when he was first notified, that a trial would be pressed he has not had time to prepare the defense if he even had the right to represent the said defendants, of which he is not sure as they never employed him directly and he has no information from Mr. Hawley or any one, that they authorized him to employ the affiant. All of the said defendants live in Chicago except J. H. Williams who has no actual interest in the case and has employed no counsel in the case and taken no part in the defence of the case. That during last evening and ever since this affiant has been busily employed in other legal matters that required his time and attention and he could devote no more time to this business than was necessary to prepare this affidavit in a very hasty manner. This affiant asks a matter of courtesy and good faith to the defendants attorney C. M. Hawley as well as in justice to the defendants themselves, that the



case be deferred until Saturday morning.  
 This affiant could not telegraph to said  
 Hawley for the reason that there is no telegraph  
 office in Cambridge Mass. That before this  
 term of Court he wrote to said Hawley the day  
 of trial and enquired of him what witnesses  
 he wished subpoenaed, if any. He sent back  
 a letter giving the names of the witnesses,  
 but not what he wished to prove by them,  
 and when the said Hawley came down to  
 Court this affiant did not know he had  
 arrived until he saw him at Court, which  
 was only a few minutes past before he  
 left for Cambridge, and he had no oppor-  
 tunity to learn what particular facts he  
 wished or expected to prove by the said  
 witnesses. This affidavit does not make  
 this affidavit for delay, but only to sub-  
 serve the purposes of justice and good  
 faith and a fair honorable practice

Subscribed and sworn Milton J. Peters  
 to before me this 9th day  
 of October A.D. 1862  
 Geo. M. Rauscliffe clk  
 By Wm D. Trumble Depy.

And now comes the Plaintiff  
 by his said attorney and files his  
 Replication herein in the words and figures  
 following, to wit:-

State of Illinois }  
 Bureau County }<sup>3<sup>rd</sup></sup> In the Circuit Court  
 of Bureau County  
 October Term A.D. 1862

James W. Davidson

vs.

Francis B. Cooley, Elisha S. Wadsworth,  
 John V. Farwell, Zachary W. Waldron,  
 Marshall Field vs Charles W. Wilcox

} Trover

And the said Plaintiff,  
 as to the plea of said defendants, by them  
 first above pleaded and of which they  
 have put themselves upon the country, both  
 the like. E. S. Wadsworth, J. S. Taylor  
 atty for plt.

And the said plaintiff to the plea of  
 the said defendants, by them secondly above  
 pleaded, says - "Precluded" because he  
 says - That the said George S. Wilder, in  
 said Plea named, did not, on the 24<sup>th</sup> day  
 of April A.D. 1858. in the Circuit Court of  
 Cook County Illinois, at a term thereof  
 begun and held on the second Monday of  
 April in said year, by the consideration  
 and judgment of said Court, recover two  
 certain judgments against one John C.  
 Gibson, as in said plea stated -  
 and that the said Francis B. Cooley, Elisha

J. Wadsworth, and John V. Farwell, in said plea named, did not, on the 26<sup>th</sup> day of July A.D. 1858, in the Cook County Court of Common Pleas - within and for the County of Cook and State of Illinois in vacation, after after the July vacation term, of said Court, by the consideration and judgment of said Court recover their certain judgment against said John C. Gibson, as in said plea stated.

And that at the said time when &c. in said plea mentioned, said John C. Gibson, was not, in possession, or possessor of the property in plaintiff's declaration mentioned, and that the same was not then liable to be levied upon and sold as in said plea stated. And also the said plaintiff prays may be enquired of by the Country &c.

E. J. Smith <sup>and</sup> J. J. Taylor  
attys for Pet.

(On the 12<sup>th</sup> day of said Term, to wit: -)  
Saturday Morning 8 o'clock October 11<sup>th</sup>  
A.D. 1862 - Court met pursuant to  
adjournment. Present same as yesterday.

(and as at first)

James H. Davidson

vs.

Trover.

Francis B. Cooley,

Elisha J. Wadsworth,

John V. Farwell,

Zachariah K. Waldron,

Marshall Field and

Charles W. Wilcox

James H. Davidson

vs.

Trover.

Francis B. Cooley, et al.

Circuit Court

Eastern District

Sept. 5. 1862

It is hereby agreed that the above case shall be argued for the plaintiff before Judge M. C. Hollister at the Judge's Chambers at Ottawa Ill. on Monday the 31st October A.D. 1862 at 2 o'clock P.M. and this stipulation is to supersede the one now on file fixing the 29th inst. for the time of argument.

Saturday Night

Oct. 11. / 62

Peters + Hawley

for Defts.

C. J. Smith

atty for plt.

Final  
Stipulation

James W. Davidson } In the Bureau  
 vs. In Trosser } County Circuit  
 Francis B. Cooley and others } Court of Illinois

It is hereby stipulated and agreed by and between the parties to the above entitled cause by their respective attorneys, that either party shall have ninety days after the giving or announcing of the opinion or judgment of the Court in said cause in which to prepare and file a Bill of Exceptions therein, and that the Bill of Exceptions so prepared and filed shall have the same effect as if filed in the term at which said cause was tried.

And that either party to said suit shall have the right to appeal in said cause, if desired, by filing a Bond in double the amount of the judgment to be rendered in said cause, within thirty days after the announcement of the same by the Judge, the Bond to be approved by the Clerk of said Court.

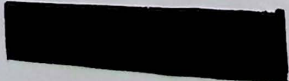
Dated this 1<sup>st</sup> Nov. 1862 } E. J. Smith  
 atty. for Plaintiff  
 Hawley & Peters attys.  
 for Defendants.

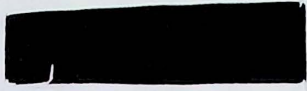
Friend Hawley I want you to extend  
the time on the within stipulation until  
25 Jan. 1863 - I am sick and unable  
to do anything now.

and oblige re. Yours  
Geo. J. Mc Kinnon.

all right it may be so extended.

C. M. Hawley  
attys for C. F. & Co.





And now, to wit; February 5<sup>th</sup> A.D. 1863, came the said Plaintiff, by his Attorneys aforesaid, and filed his Bill of Exceptions herein, in the words and figures following, to wit;

State of Illinois, } ss In the Bureau County Circuit Court  
County of Bureau } Of the October Term A.D. 1862

James H Davidson, Plaintiff

vs

Francis B Leoley; Elisha W Jewett } In Trover.  
John V Farwell, Zachary B Jewett }  
Marshall Field and Charles Jewett }

As it remembered and recalled to the mind of the court at said October Term of the Bureau County Circuit Court of Illinois, to wit; On the 11<sup>th</sup> day of October A.D. 1862, a Jury being sworn, and said cause, by consent of parties, having been submitted to the court for trial,

The said James H Davidson to maintain the issues on his part, called John C Gibson, as a witness, who being duly sworn, testified and said.

"My name is John C Gibson, I live in Westfield township Bureau County, Illinois. I know the firm of Jewett, Tabbetts & Co. They live in Boston: In 1857 I was owing them \$1500. or \$1600. They sued me on that indebtedness in the United States Court at Chicago, and obtained judgment against me there."

Here Plaintiff's Attorney produced and offered to read in evidence to the court, a record of a judgment rendered

and proceedings had thereunder in the United States Circuit Court for the Seventh District and Northern District of the State of Illinois, - wherein David B. Jewett and others are Plaintiffs and James C. Gibson, defendant. and which said Record is in words and figures as follows, to wit; -

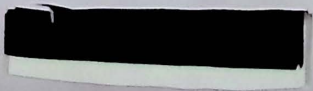
Pleas in the Circuit Court of the United States of America for the Northern District of Illinois, held at the City of Chicago in the District aforesaid before the Hon Thomas Drummond District Judge of said District, and in the absence, pro tempore, of the Hon John McLean, one of the Justices of the Supreme Court of the United States of America sole Judge of said Circuit Court on Monday the ~~fourth~~ <sup>fourth</sup> day of October in the adjourned October Term of said Court in the year of Our Lord One thousand eight hundred and fifty seven, and of our Independence the Eighty Second Year.

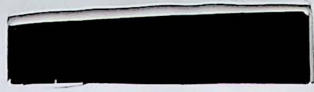
Wm. H. ... Clerk

David B. Jewett, James R. Tebbetts  
Stephen W. Mearston Jr John A  
Ordway and William C. Tebbetts  
vs  
James C. Gibson

Northern District of Illinois. ss.

David B. Jewett, James R. Tebbetts, Stephen W. Mearston Jr, John A. Ordway and William C. Tebbetts, plaintiffs in this suit, who are





citizens of the State of Massachusetts, put in their place Messrs Smith, Dewey and Pratt their Attorneys against James C Gibson defendant in this suit who is a citizen of the State of Illinois, in a plea of trespass on the case on promises.

Northern District of Illinois ss.

Be it remembered that on the ninth day of October in the year of Our Lord one thousand eight hundred and fifty seven come said Plaintiffs by their <sup>said</sup> Attorneys and filed in the office of the Clerk of the Circuit Court of the United States of America for the Northern District of Illinois at Chicago in said District, their praecipe for the issue of a writ of summons against said defendant in the plea aforesaid Damages two thousand Dollars and on the fifteenth day of October in the adjourned October Term A.D. 1857 of said Court. Also at the same time filed their bond for costs in said entitled cause, and said bond is in the words and figures following to wit:

United States of America, Northern District of Illinois ss.

Circuit Court October Term A.D. 1857

David B Jewett  
James R Tibbets et al }  
vs } In  
James C Gibson }

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this Court, and in default of payment by the Plaintiff of any costs ordered or adjudged to be paid by them I hereby agree and stipulate that execution may issue

against my property for any costs expnd against them  
 Dated this 9<sup>th</sup> day of October A.D 1857

E. S. Smith.

(Endorsed) Filed this 9<sup>th</sup> day of Oct A.D 1857

Wm H Bradley Clerk.

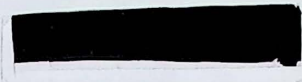
On the same day to wit the Ninth day of October A.D 1857 a Writ  
 of Summons was issued out of said Clerk's Office against said  
 Defendant in the plea aforesaid. Which said writ, together  
 with the return of the Marshall endorsed thereon is in  
 the words and figures following to wit;

Circuit Court of the United States of America }  
 Northern District of Illinois }

The United States of America

To the Marshall of the Northern District of Illinois; Greeting.

We command you that James C.  
 Gibson if he shall be found to be and  
 appear before our Judges of said Court of the United  
 States for the Northern District of Illinois at the Term  
 thereof now being holden at Chicago in the District a-  
 fovesaid on the 15<sup>th</sup> day of October Instant to answer unto  
 David B Jewett, James R Tibbets, Stephen W Marston Jr.  
 John A Ordway and William C Tibbets in a plea of trespass  
 on the case upon promises to their damage as they allege  
 of two thousand 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 9<sup>th</sup> day of October in the year of our Lord One thousand eight hundred and fifty seven, and of our Independence the 82<sup>d</sup> year

Wm H. Bradley Clerk

I hereby deputize and authorize E. C. Thompson as Special Deputy to serve this summons, and the deft Gibson Oct 10<sup>th</sup> 1857.

Geo W Davidson U.S.

Marshal for Dist Ill

I have served the within summons by reading the same to the within named James C. [unclear] Oct 12<sup>th</sup> 1857.

Geo W Davidson Marshal  
By E. C. Thompson Depy.

(Endorsed)

Filed Oct 13<sup>th</sup> 1857

Wm H. Bradley Clerk

On this day to wit, on the 13<sup>th</sup> day of October 1857 came said Plaintiffs by their Attorneys and filed in said Clerk's Office their declaration against said defendant which said declaration is in the words and figures following to wit:

United States of America  
Circuit Court of the United States  
for the Seventh Circuit and  
Northern District of Illinois

Northern District of Illinois. vs.  
Of the October Term A.D. 1857.

David B Jewett, James R Lobbitt, Stephen W. Marston for  
John A Ordway and William L Lobbitt plaintiffs in this

Suit who are citizens of the State of Massachusetts and co-partners in trade under the name & style of firm "Jewett, Tabbette & Co." by Smith, Dewey & Pratt their Attorneys complain of James Le Gibson Defendant in this suit who is a citizen of the State of Illinois, of a plea of trespass on the case on promises:

For that whereas the said defendant heretofore, to wit; on the twenty ninth day of September in the year of our Lord one thousand eight hundred and fifty six at Boston, to wit; at Chicago in the District aforesaid, made his certain promissory note in writing bearing date the day and year aforesaid and then and there delivered the said note to the said plaintiffs, by which said note the said defendant then and there promised to pay the said plaintiffs to pay to the order of Jewett Tabbette & Co (the said plaintiffs) eight months after the date thereof the sum of seven hundred and twenty seven dollars and thirty nine cents with change on Boston for value received. By means and force of the Statute in such case made and enacted the said defendant then and there became liable to pay to the said plaintiffs the said sum of money in the said note specified according to the tenor and effect of the said note, and being so liable, the said defendant, in consideration thereof, afterwards to wit; on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay to the said Plaintiffs the said sum of money in the said note specified, according to the tenor and effect of the said note.

And whereas also the said defendant heretofore, to wit;

on the thirtieth day of September, in the year of our Lord one thousand eight hundred and fifty six, at Boston, to wit, at leakage in the District aforesaid, made his certain promissory note in writing, bearing date the day and year last aforesaid and then and there delivered the said note to one Woodford & Wilbur, who were, at the time of said endorsement and now are citizens of the State of Massachusetts, by which said note the said defendant then and there promised to pay to the order of said Woodford and Wilbur, eight months after the date thereof the sum of one hundred and eighty six dollars and ninety five cents, with exchange on Boston, for value received.

And the said Woodford & Wilbur, to whose order the payment of the said sum of money on the said note specified was to be made as aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said note, and also for the purpose mentioned and appointed by the said note for the payment thereof to wit on the same day and year and at the place aforesaid endorsed the said note in writing, and by that endorsement ordered and appointed the contents of the said note to be paid to the said Plaintiffs or order, and then and there delivered the said note so endorsed to the said Plaintiffs of which said endorsement is made thereon as aforesaid, the said defendant afterwards to wit on the same day and year and at the place aforesaid, had notice.

By reason whereof, and by force of the Statute in such case made and provided the said defendant became liable to pay to the said plaintiffs the said sum of money in the

said note specified according to the tenor and effect of the said note and of the said endorsement so thereon made as aforesaid, and being so liable the said defendant in consideration thereof afterwards to wit; on the same day ~~to~~ wit and year and at the place aforesaid undertook and faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in the said note specified according to the tenor and effect of the said note and of the said endorsement so thereon made as aforesaid.

And also for that whereas the said defendant afterwards to wit on the first day of October in the year of our Lord one thousand eight hundred and fifty seven to wit at Chicago in the District of Illinois was indebted to the said Plaintiffs in the sum of two thousand dollars lawful money of the United States of America such money by the said plaintiffs before ~~that~~ and advanced to the said defendant and at ~~the~~ instance and request, and being so indebted to the said defendant, in consideration thereof afterwards to wit; on the day in the year aforesaid and at the place aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money when he the said defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards to wit on the day ~~and~~ in the year aforesaid and at the place aforesaid was indebted to the said plaintiffs in the further sum of two thousand dollars of like lawful money for so much

47

money by the said plaintiffs before that time paid, laid out and expended to and for the use of said defendant and at his special instance and request, and being so indebted, he, the said defendant, in consideration thereof afterwards to wit, on the day in the year aforesaid and at the place aforesaid undertook, and then and there faithfully promised the said plaintiffs to pay them the said sum of money last mentioned when he the said defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards to wit on the day in the year aforesaid and at the place and within the district aforesaid did give to the said plaintiffs in the further sum of            and dollars of like lawful money for            money by the said defendant before that time paid and received to and for the use of the said plaintiffs and being so indebted he the said defendant in consideration thereof afterwards to wit on the day and in the year aforesaid, and at the place aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money last mentioned when he the said defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the day in the year aforesaid and at the place aforesaid accounted with the said plaintiffs for and concerning divers other sums of money from the said defendant to the said plaintiffs before that time due and owing and then in arrear and unpaid, and upon such accounting the said defendant was then and there found

to be in arrear and indebted to the said plaintiffs in the further sum of two thousand dollars of like lawful money and being so found in arrears and indebted he the said defendant in consideration thereof afterwards to wit on the day in the year aforesaid and at the place aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said plaintiff the said sum of money last mentioned when he the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested &c to wit at the time when the said notes became due and payable according to the tenor and effect thereof and often times since to wit at the place aforesaid) has not yet paid the said several sums of money above mentioned or any part or either of them or any part thereof and to the said plaintiffs but to pay the said sum of money to the said plaintiffs the said defendant has refused to altogether refused and still does refuse to the damage of the said plaintiffs of Two Thousand dollars and therefore the said plaintiffs being suit &c

Smith Dewey & Pratt  
Plaintiffs Attorneys

Copy of Notes sued on with the endorsements thereon.

\$1427 <sup>39</sup>/<sub>100</sub>

Boston Sept 29<sup>th</sup> 1856

Eight after date I promise to pay to the order of Jewett Tibbets & Co fourteen hundred & twenty seven <sup>39</sup>/<sub>100</sub> dollars, value

one or two years

49

received. Exchange on Boston

(signed) J. C. Gibson

Sept 16<sup>th</sup> 1857 Rec<sup>d</sup> on within note one hundred & fifty four dollars

186<sup>95</sup>/<sub>100</sub>

Boston September 30<sup>th</sup> 1856.

Eight months after date I promise to pay to the order of Woodford & Wilbur one hundred & eighty six dollars <sup>95</sup>/<sub>100</sub> payable at Marine Bank Chicago, value received. Exchange on Boston

(signed) J. C. Gibson

"Woodford & Wilbur"

"\$30.- August 3<sup>rd</sup> 1857 within note  
"thirty dollars"

(Endorsed)

Filed October 26<sup>th</sup> 1857

Bradley clk

On this day to wit the twenty sixth day of October in the adjourned October Term A D 1857 of said Court in the Record of the proceedings thereof in said entitled cause is the following entry, to wit:

David B Jewett James R Tibbets	}	Assumpsit.
Stephen W Mauston Jr John A		
Ordway and William C. Tibbets		
vs		
James C. Gibson		

Now come the plaintiffs

by Miss Smith, Dewey and Pratt their attorneys, and it appearing to the Court that the defendant has been regularly served with process, and he being now ruled to plead instantly and failing to plead or answer to said rule, and the said defendant being now three times solemnly called, comes not but makes default. It is thereupon considered by the Court that his default be entered and that the plaintiffs have and recover of the defendant their damages, but as those damages are not certainly known and it appearing to the Court that this action is instituted upon two certain promissory notes of hand for the payment of money only, it is ordered that they be referred to the Clerk to assess the damages thereon, and the Clerk having assessed said damages at the sum of fourteen hundred and sixty nine dollars and forty eight cents, and reported the same to the Court, the Court approved

It is thereupon considered and ordered by the Court that the plaintiffs have and recover of the defendant the said sum of fourteen hundred and sixty nine dollars and forty eight cents their damages so as aforesaid assessed, together with their costs by them about their suit in this behalf expended, amounting to the sum of thirty one dollars and fifteen cents, and that they have execution therefor.

Afterwards to wit on the thirteenth day of November A. D. 1857 a Writ of Fieri Facias issued out of said Clerk's Office against said Defendant, upon the above recited Judgment, which said writ together with the endorsements



thereon are in the words and figures following, to wit:

United States of America }  
Northern District of Illinois } sp.

The United States of America

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

We command you that of the goods and Chattles  
Lands and tenements of James G Gibson in your District  
you cause to be made fifteen hundred dollars and sixty  
three cents which David B Jewett, James R Tobbets, Stephen  
W Marston Jr, John A Ordway and William H Tobbette lately  
in our Circuit Court of the United States for the Northern  
District of Illinois before us at Chicago in  
the District aforesaid recovered judgment upon for damages  
which they had sustained by the occasion of the  
non performance of certain promises and undertakings  
as for their costs and charges by them about this suit  
in this behalf expended of said defendant is con-  
victed as appears to us of record. And have you that money  
at the Clerks office of our said Court in ninety days from  
the date hereof to render to the said plaintiffs for their  
damages aforesaid and this writ.



Witness the Hon Roger B Taney Chief Justice  
of the Supreme Court of the United States of  
America at Chicago aforesaid this 13<sup>th</sup> day of  
November in the Year of our Lord one thousand  
eight hundred and fifty seven and of our Inde-  
pendence the 82<sup>d</sup> year

W. H. Bradley Clerk

(Endorsed)

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This writ came to hand Nov 13<sup>th</sup> 1857 at 12 O'clock

M.

Jas W Davidson U. S. Marshall

By H. M. Matthews.

This Execution is returned by order of Plaintiffs Atty being heretofore levied on 175,000 feet of pine Lumber at Arlington in the Northern District of Illinois; also on the North West quarter of & North Half of the North East quarter of Section No Eighteen in Township No 17 North of Range No Eleven East of the fourth principal Meridian (turned out by the defendant Jas. G. Gibson's property) all of which was afterwards to wit on the 1<sup>st</sup> day of September A.D. 1858 advertised by me for sale, but that no sale of either the said Lumber or land, because to the day of sale the said Lumber had been disposed of by the said Gibson, or some other person, and by examination of the Records at Princeton in Bureau County where said land is situated, it appears that said Gibson had no title to the said land above described.

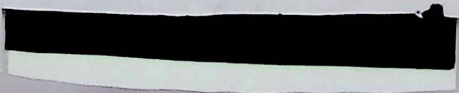
This Execution is therefore returned by order of Plaintiffs Atty without sale, and unsatisfied Nov 3<sup>rd</sup> 1858

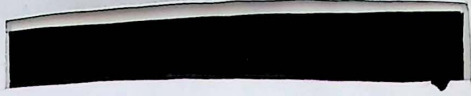
Jas W Davidson late

U. S. Marshal Nor Dist Ills.

(Endorsed)

No 1046. Circuit Court United States  
Northern District of Illinois  
David B Jewett et al





vs  
James C Gibson

Damages 1469.48

Costs 31.15

Collect \$1500.63 Judgment rendered Oct 26<sup>th</sup> 1857

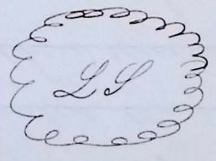
Wm H Bradley clk

Filed March 11. 1859

Wm H Bradley clk.

United States of America }  
Northern District of Illinois }

Wm H Bradley clerk of the Circuit Court of the United States for said Northern District of Illinois hereby certifies the foregoing to be a true and complete transcript of the Record of all the proceedings had in said Court in said cause, wherein David B. Jewett et al are Plaintiffs and James C. Gibson is Defendant as the same remain of Record in my custody.



Witness my hand and the seal of said Court this 12<sup>th</sup> day of March AD 1862, and of our Independence the 86<sup>th</sup> year.

Wm H. Bradley Clerk

(Endorsed)

Filed Oct 11<sup>th</sup> 1862

G. M. Radcliffe Clk.

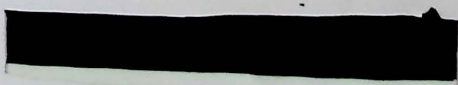
- Whereupon the Council on the part of said defendants interposed and insisted that the said record was not good or admissible evidence in law, and there and there moved

said Court to arrest the same from its consideration -

"Because that, to the certificate of the Clerk thereto there was no certificate from the Magistrate that it was formal: that the record does not show service of process on John L. Gibson; and that the name of the Marshal to the return of the execution set forth in said Record is not proven." and, in support of these objections, cited 17 Ills 471. - and the said Court then and there overruled the said objections of defendants, and then and there received and permitted said Record to be read in evidence by said plaintiff, to which opinion and ruling of the Court the said defendants accepted. And the said plaintiff then and there offered and read said record in evidence - and said plaintiff then and there further to maintain the issues on the said record proceeded with the examination of said witness [redacted] Gibson who further testified and said

"I was sued and served with summons in the name of James L. Gibson" Whereupon the Counsel for defendants again interposed and insisted "that plaintiff must prove that he was Marshal" and the said Court then and there overruled the said objection of defendants Counsel and permitted the plaintiff to proceed with examination of said Witness, to which opinion of the Court the Counsel for defendants excepted.

"I was called on by Matthews who had the execution against me in favor of Jewett Tebbetts & Co or papers which he said was the execution. He asked me for payment



I turned out the lumber to be laid on it. This was in November  
 1857. I think the latter part of the month. He placed the lum-  
 ber in D. H. Randall's care as custodian. He designated and  
 separated the lumber laid on from other lumber in the yard  
 When he came to me he stated he had execution against me  
 and told me the amount of the execution. He said he was  
 Deputy Marshal under Davidson. He acted as Deputy  
 Marshal and levied the execution upon about one hundred  
 thousand feet of lumber including shingles and lath.  
 I was then selling lumber at \$18. a thousand feet of lumber  
 The lumber was at Arlington, in my yard. The Marshal  
 separated and marked out the lumber in the yard from  
 the other lumber. The Marshal was to sell afterwards  
 I do not know what became of the Deputy Marshal who  
 made the levy. I can't say whether he was Marshal or Deputy  
 on the day he was to sell.

Cross examined by Defendants Counsel

I know D. H. Randall. He lived in Arlington. He was  
 in my employ when the lumber was taken by the Sheriff.  
 He partly was in grain trade for himself. He was in my  
 employ in my yard in 1858. - I was in lumber business un-  
 til July or August. The judgment of Jewett, Tiddetts & Co was  
 \$1500. or \$1600.

Defendants Counsel then asked witness the following question.

"Was anything paid on the judgment?"

Whereupon plaintiffs attorney interposed and insisted that the question and evidence sought were both improper and not admissible in law, and moved the said

Court not to permit or receive the same. - and the said Court then and there held and affirmed that the evidence was proper and admissible - to which opinion of the Court the plaintiffs Attorney excepted -

" I paid \$700.- on this judgment at one time: it was on the 27<sup>th</sup> of October 1857 - I paid it before the levy was made  
" I paid it to E. C. Smith, plaintiffs Attorney in Chicago. I took  
" his receipt for it at the time. this was before the execution  
" issued."

Defendants Attorney then asked the following question.

" Did you make any arrangement with Mr Smith the Attorney of Jewett Tibbets & Co. by which a levy was to be endorsed on the execution as security for the payment of their execution judgment in favor of Jewett Tibbets & Co. and that there was no sale immediately to take place but that you were to have time to raise the money and pay the judgment just prior to the issuing of the execution."

To which question the said Witness then and there answered.

" No sir, - there was no arrangement at all on that subject.  
" All the conversation was - that I tried to get Mr Smith not  
" to send the Marshal with the execution immediately,  
" which he would not agree to. Don't recollect that I swore  
" differently on the subject in Chicago, I had a talk with  
" Mr Peters. I don't recollect what it was. I didn't tell Mr  
" Peters as he asks. I don't understand that there was any  
" conversation with Mr Peters about the long delay about the  
" levy of the execution by the Marshal. I told Mr Peters

that the Marshal had made a levy and other parties  
was trying to take the property from him. I never told Peters  
that there was any arrangement by which delay was to be  
had on Marshal's levy. I have no knowledge of ever saying  
so to Mr Peters. I never said any such a thing at any time  
to my knowledge. - The conversation with Smith was in  
Chicago on the 27<sup>th</sup> of October 1857 at Smith's office. All  
that I then said to Smith was to get Smith to hold on and  
not let execution come out - I never agreed with Smith or  
any body to have any delay. I don't remember that I ever  
told anybody that there was any arrangement. I can't  
remember what I swore to at Chicago. I think I paid  
some on this judgment after paying the 700.- I have a  
faint recollection that I paid Smith at Chicago \$200.-  
I have forgotten if I paid another 100. Don't recollect  
whether I paid the \$100.- or recollect the \$200.- can't  
tell whether the \$200. was paid some time after 700.- was  
paid. I can't say how long after. Nothing said when I  
paid the \$200.- about the levy. I will swear nothing was said  
about extending the time on the levy. I don't think I told  
Randall I had paid Smith \$100.- or had fixed up the  
judgment. - Matthews made the levy. He had the papers. I  
had seen him before not since. I had no talk with the  
Marshal about extending the time on the levy. When the  
Marshall levied he asked me who was a proper person  
to put lumber in charge of. I told him Mr Randall  
was an honest man and would care for it. I turned  
the lumber out to him, and he levied on it. I then left  
the yard and went to the store. Matthews was with Randall

" in yard. I introduced Mr Randall to him. Matthews  
" placed the lumber in Randall's charge. He told Randall  
" to take charge of the lumber. I had no charge of the  
" lumber after that. I never sold any of this lumber after  
" that, nor had no knowledge of any of this lumber being  
" sold by Randall or any body. I don't know whether proceeds  
" of lumber come into the Store. I kept no lumber account.  
" All my accounts were kept together. I did not know what  
" the extent of sales of lumber were. Randall will know a-  
" bout it. The lumber was on the South side of Plank Road  
" when the Marshal levied on it. I had three or four hundred  
" thousand feet in the yard at that time. There was over  
" a hundred thousand feet on the body, Samwell also levied  
" on the lumber. I had received a charge of Seventy or Eighty  
" thousand feet after the Marshal levied. Randall retained  
" lumber for me. I don't know what lumber was sold after  
" the Marshall levied, and before Samwell levied. Ran-  
" dall was to sell what lumber was not levied upon. There  
" was no arrangement made between Matthews, Randall  
" and myself about selling the lumber levied on. I had  
" a right to sell all such lumber as was not levied upon.  
" I did not ask the Marshal for the right to sell the  
" lumber levied on. I asked no such right. I ordered  
" Randall to sell lumber not levied upon."

Re-examined by plaintiffs Attorney.

" I had other lumber in the yard than that levied upon  
" by the Marshall - You are right sir. Now I remember it since  
" you call my attention, The \$200. I paid Smith was on an

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" other claim he held. It was a claim in favor of Willard  
 " & Co. The \$700. was all that was paid on the Libbets judgment.  
 " I don't remember that I told Randall that I had  
 " paid the \$200. on this judgment "

And the plaintiffs counsel further to maintain and  
 prove the issue on his part, called Dragen & Randall  
 who being duly sworn, testified as follows.

" I don't know Cooley, Farwell & Co. I know J. W.  
 " Waldron since the summer of 1858. I know Charles W  
 " Miles. I know a young man named Field. I don't know  
 " his first name. I know Davidson by sight. Know H. M.  
 " Matthews. that is I know a person who came to Arlington  
 " on the 18<sup>th</sup> of November 1857. He had some papers in his  
 " hands. He told me his name was Mr. Matthews, and  
 " that he was Deputy United States Marshal, and that  
 " he had made a levy upon some lumber in the lumber  
 " yard of Mr Gibson, the name of John C. Gibson. That he  
 " wished me to take charge of the lumber for him. Mr  
 " Gibson was in the lumber yard with Matthews when I  
 " came to them. I was passing on the Rail Road from  
 " the warehouse to Mr Gibson's store when they called  
 " me to them. Mr Gibson introduced me to the Marshal  
 " Mr Gibson told me he was an Officer. He did not tell  
 " me what Officer he was. The Marshal made a division  
 " of the Lumber Yard. There was a certain telegraph pole  
 " in the yard. The lumber that lay East, between the  
 " telegraph pole and the plank road, was the lumber  
 " levied on by the Marshal - The lumber that lay West of  
 " this pole, between that and the station, he did not levy

upon. The lumber west of the telegraph pole, I was to go on  
and sell as usual. The Marshal was to go to Chicago and  
then write me what arrangement was to be made with  
regard to the lumber that he had levied upon. If he did  
not write and let me know what arrangement was made,  
then I was to go and sell the lumber as I had before been  
doing. He did not write to me. I did not get any word  
from him whatever. I went on and sold part of that  
lumber as I had been doing. In April 1858 I got word  
that Mr Crady was to bring on Lumber, and the Rail Road  
Company requested Mr Gibson to remove the lumber levied  
on, out of the way of this lumber so that they could put  
their lumber off the Cars. I went to work and removed  
the lumber so that Mr Crady could put his lumber off  
the Cars. Mr Crady took some of his lumber away. He sold  
the balance about Eighty thousand dollars to Gibson. He  
went on and retailed the Mr Crady lumber out to  
different persons, until the Sheriff came and levied  
upon all the remaining lumber that there was in the  
yard, including the said lumber levied on by the  
Marshal. After that there was no more lumber sold  
until the Sheriff sold it. Sheriff Waldron came there  
on the 5<sup>th</sup> or 10<sup>th</sup> of August 1858. I think on the 10<sup>th</sup> of  
August he sold some property but did not sell lumber  
at that time. The second or third time he came again  
and was standing out in front of Gibson's store. The Sheriff  
was talking with Wilcox. I stopped to hear what the talk  
was. I heard Sheriff Waldron tell Wilcox, the Agent of

Cooley, Farwell & Co., that he would not sell the lumber unless he was indemnified. Mr Helcox promised him that he would get him the indemnifying bond that he required. The same evening Helcox and I talked together about it. I said to him I think you had better let that lumber alone. I told him the Marshal had a levy ~~at~~ on it and you may get into a law suit about it. His reply was in these words - "Old Smith is the Marshall's lawyer, we have beaten him and can beat him again. Hawley & Burgess are our Lawyers and they know how to do it -" I said I don't know anything about Mr Smith or your Lawyers, but the Marshal has a levy on that lumber, and I think it will hold. Helcox replied that the Marshal had ~~to~~ to hold the levy from November till July without making a sale, and for that reason the levy was not ~~made~~. I told Mr Helcox that time that the Marshal had his ~~order~~ for the sale of the lumber. He told me that their sale ~~was~~ to come off first, and they could get the lumber away before the Marshall would come. Helcox then asked me what arrangement the Marshall made when he put me in charge of the Lumber. I told him the Marshall put it in my charge and he was to write me when he got to Chicago and let me know what arrangement they made in regard to the lumber. I told him they had not written, and if they did not write I was to go on and sell the same as I had been doing - as I sold the lumber I was to pay it over to Mr Gibson - He asked me how much of the Marshall's lumber I had sold, I told him I had sold about thirty thousand feet of it as near as I could tell, that I had paid the money

over to Mr Gibson. Mr Wilcox thought the fact that I had sold a part of the lumber and gave the proceeds over to Mr Gibson would make the levy invalid any how. I told him I was not Lawyer enough to know whether it would or not. I said that I thought it would be best for him not to sell the lumber until after the Marshall's day of sale. The lumber was not sold until the Saturday before the Marshall's day of sale. The lumber was not sold until the Saturday before the Marshall's day of sale. I passed along by the lumber about dinner time the day the Sheriff was selling and saw them selling lumber. Mr Fields and Wilcox were both pointing out which lumber to sell, On Monday night of September 1858, what lumber the farmers did not buy was loaded in cars on the Rail road track. The ends of the Car loads I noticed were marked in chalk "Waldron" the cars were taken out on Monday night Tuesday morning by the West train. before Tuesday noon were all gone (Here the Court adjourned for dinner, after which the examination in chief was continued)

"There was about seventy thousand feet of lumber converted by the Sheriff which had been levied upon by the Marshall. There was sixty two thousand feet of common lumber worth \$18. a thousand - about Eight thousand feet of square timber worth \$25. a thousand. Four thousand shingles worth four dollars a thousand and six thousand lath worth four dollars a thousand. This was all the property levied on by the Marshall and taken by Sheriff Waldron"

Question by plaintiffs attorney.

"Mr Randall will you please state how the Marshall came to speak about writing you. give his words as near as you can"

"Gibson said to the Marshall I will be up to your place in a few days and arrange the matter. The Marshall said he would like to have him come. The Marshall then told me that if he should write me I was to go on and sell. He never did write me"

Question by the Court. "I understood you to testify this morning that if Matthews did not write, you were to go on and sell as usual and hand the money to Gibson?"

Answer: "I did so state, but in reflection of the manner in which the conversation came about I think I was wrong"

"I saw two notices of the Marshall's sale. it was to be on the 6<sup>th</sup> of September 1858. I don't know positively that the Sheriff knew of the Marshall's levy. I supposed he did from his demanding a bond of Indemnity. I heard the Sheriff tell Mr Wilcox that he would not sell the property unless he was indemnified. I did not tell the Sheriff that the Marshall had levied."

Cross examined by defendant's counsel.

"It was some three weeks after the Sheriff's levy that I heard the conversation between Wilcox and the Sheriff which I have stated. I was sworn in this case at Chicago. I stated my testimony this morning as well as I remember it. Matthews told me to take charge of the lumber for him until he should go to Chicago and see

" what arrangement was made about it, that he would  
 " write me and let me know what arrangements they made  
 " about the lumber. If he wrote me and let me know what  
 " arrangement was made I was to sell the lumber. that is  
 " as I stated it this morning. I stated this morning that  
 " the Marshall said he would go home and if he did not  
 " write me that the matter was arranged, I was to go on and  
 " sell the lumber. I do not recollect what I said to Judge  
 " Manierre in Chicago was in substance the same. Neither  
 " Smith nor McKinnon were present at Arlington. I  
 " don't know that I testified this morning different  
 " from what I now do."

Question by Defendant's counsel.

" Did you walk immediately after the adjournment  
 of this court this morning from the court house to dinner  
 between Smith & McKinnon attorneys for the plaintiff?"

Answer "I did not between them."

Question "Did I not walk behind you and Smith & McKinnon, and did I not see you and hear your conversation with them. Now Sir, please state all about this?"

Answer. "I believe I did walk with them to dinner. I  
 " don't know whether you were behind us or not. before I  
 " went up into the Hotel Mr Smith and I stood talking <sup>just</sup> at  
 " the steps"

Question. "Did not Smith & McKinnon or one of them tell  
 you on your way going to dinner that you had made a  
 mistake, and did you not change your testimony from  
 that of this morning as to what Matthews directions were to

[REDACTED]

you when he went to Chicago, at the suggestion of Smith & McKinnon?"

Answer. "Yes, but on reflection as to the manner in which the matter came up with the Marshal, I think I was wrong this morning. one of them told me I had made a mistake in what the Marshal told he was to do."

Question. "Did you not testify at Chicago on the trial of this cause of action before Judge Manierre just as you testified this morning before the adjournment of Court?"

Answer. "I was a witness there and I think I testified as I did this morning but I don't remember exactly what I did say."

Question. "Did you not this morning before adjournment of Court for dinner, testify, and what Matthew's instruction to you at the time of his pretended stay and on his going to Chicago and writing to you, just as you then believed the facts were and just as such facts were then in your mind?"

Answer. "I did but on reflection I think I was wrong. I just stated what my impression then was."

Question: "When you come into Court this afternoon did you not change your testimony upon what Matthews told you or instructed you to do, at the suggestion of Smith & McKinnon, the Attornies of the plaintiff in this suit?"

Answer: "The conversation might have made my recollection better. This talk with the Marshal was five years ago, and once I was in Court at Chicago."

Question: "Did you not follow what you then believed to be the instructions of the Marshal?"

Ans "I waited three or four months to hear from the

" Marshal, before I sold any".

" He said if he did or did not write, I cant say which, I was to sell the lumber. but I was to pay the money to Gibson  
 " I think he said the money might go to pay the judgment  
 " execution. It was either if he did or did not write, I  
 " forget which, my impression was this morning if he did  
 " not write, but I believe that in that I was wrong. I  
 " accounted for what I sold. Gibson paid me until first  
 " of April 1858 "

" Two persons came off the cars before or after levy by the  
 " Sheriff. Davidson never paid me or offered to pay me.  
 " I obeyed Marshal as I understood him. Gibson went  
 " to Chicago some ten days after levy. said he was  
 " going up to try and arrange matters."

Question by Defendant's Counsel.

" Did not Gibson hand you a receipt on his return  
 " from Chicago? "

Answer: " Yes. He handed me a receipt for \$ 700. - da-  
 " ted October 27<sup>th</sup> 1857. I did not sell the lumber levied  
 " on by the Marshal right away. What I did sell was  
 " under directions of Gibson, some three or four months  
 " after the levy Gibson told me he had matters fixed."

Re-direct examination.

" Some time in the Spring of 1858, two men came off  
 " the cars at Arlington, one of them was Davidson, the  
 " Marshal, I know him. I saw him before and since  
 " He asked me if the lumber was still in the yard. I  
 " told him the most of it was." (Here Mr Peters one

of the Council for Defendants asked the witness a question, to which he replied)

"I told him that a part of the lumber was there. He did not say anything in reply. He did not tell me ~~to~~ not to sell it or say I had done wrong. He did not complain. I never talked with him before. He only asked if the lumber was there and that was all. The car whistle then sounded, and he went along with the train. There was no inventory of the lumber taken by the Marshal or by me and none directed to be taken. The Marshal was at Arlington on the 6<sup>th</sup> of September 1858, which was the day the lumber was advertised to be sold by him, but the lumber was gone there, it had all been sold by the Sheriff the day before, as I have stated"

Plaintiff's Counsel then appeared and read in evidence an indemnifying bond given by the Defendants F. B. Cooley, John V. Farwell and Elisha S. Wadsworth to the defendant G. K. Waldron, the execution of which was admitted, and which Bond is in the words and figures following to wit:

"Know all men by these presents that we Francis B. Cooley, John V. Farwell and Elisha S. Wadsworth of the County of Cook and State of Illinois are held and firmly bound unto G. K. Waldron Sheriff of Bureau County and State in the penal sum of Six thousand dollars lawful money of the United States, for the payment of which well and truly to be made, we bound ourselves our heirs, executors and administrators, jointly

" severally and jointly by these presents, Witness our hands  
 " and seals this 21<sup>st</sup> day of August A.D. 1858.

" The condition of the above obligation is such that  
 " whereas the said G. W. Waldron, Sheriff of said Bureau  
 " County did, by virtue of a certain writ of Execution is-  
 " sued out of the Cook County Court of Common Pleas, in  
 " favor of the above bounden Francis B. Cooley, J. V. Farwell  
 " & Elisha S. Wadsworth, plaintiffs and against the pro-  
 " perty of John G. Gibson, to the said Waldron directed,  
 " or the Sheriff of said Bureau County, and whereas the  
 " said Sheriff by virtue thereof has levied upon certain  
 " goods, wares, merchandises, lumber and property as  
 " the property of the said John G. Gibson.

" Now therefore if the said bounden Francis B. Cooley  
 " J. V. Farwell & Elisha S. Wadsworth shall keep and  
 " save ~~harmless~~ the said G. W. Waldron harmless and  
 " fully indemnify him against and all suits that  
 " may be commenced against him the said Sheriff, by  
 " virtue of said levy and sale of said property, and pay  
 " all judgments damages and costs that may be entered  
 " against the said Sheriff by reason of the said levy and  
 " the sale of the said property, then the above obligation  
 " to be null and void, otherwise to be and remain in  
 " full virtue and power.

" In presence of " }  
 " L. G. Leiter " }

" F. B. Cooley " seal

" John V. Farwell " seal

" E. S. Wadsworth " seal.

The bond for the plaintiff here recited his case.

And the counsel for the defendants to maintain and prove the issues on their part produced and offered to read in evidence three several Transcripts of judgments in words and figures respectively as follows, to wit;

United States of America.

State of Illinois } 38  
County of Cook }

Plea before the Honorable George Mamerie Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid and at a Term thereof begun and held at the Court House in the City of Chicago in said County on the Second Monday (being the twelfth day) of April in the year of our Lord one thousand eight hundred and eighty two and of the Independence of the United States the Eighty Second.

Present, Honorable George Mamerie Judge of the 7<sup>th</sup> Judicial Circuit }  
of the State of Illinois }

Charles Haven States Attorney

John L. Nelson Sheriff of Cook County

Attest William L. Church, Clerk.

Be it remembered that heretofore to wit, on the 24<sup>th</sup> day of April in the year aforesaid there was filed in the Office of the Clerk of said Court a certain Declaration together with the note declared on and a warrant of Attorney thereto attached, which said Declaration, note and warrant of attorney, are in the words and

figures following, to wit:

Declaration

" State of Illinois } ss Circuit Court of Cook County  
Cook County } April Term A.D. 1858.

George G Wilder plaintiff in this suit by  
J. S. Howe his Attorney complains of John C Gibson, de-  
fendant in a plea of trespass on the case on promises; For  
that whereas the said Defendant, heretofore, to wit; on the  
Sixth day of March in the year of our Lord one thousand  
eight hundred and fifty eight at Chicago, to wit; at  
said County of Cook, made his certain promissory note in  
writing, bearing date the day and year aforesaid and  
then and there delivered the same to said Wilder, in and  
by which said note, said defendant promised to pay to  
the order of the said plaintiff the sum of Seven Hundred  
Dollars five <sup>and</sup> no dollars at the Banking House of George Smith  
in Chicago aforesaid, with current exchange on New  
York, three months after the date ~~of~~ said note, for value  
received. By means whereof and by force of the Statute in  
such case made and provided the said defendant became  
liable to pay said plaintiff said sum of money mentioned  
in said note, and being so liable, in consideration <sup>there</sup> of  
then and there undertook and promised to pay the same  
to the said plaintiff according to the tenor and effect true  
intent and meaning of the said note and of the indorse-  
ment aforesaid, to wit at the place aforesaid. Yet the de-  
fendant although often requested & hath not yet paid the  
said sum of money or any part thereof to the plaintiff, but  
so to do hath hitherto wholly refused and still does refuse





to the damage of the plaintiff of one thousand dollars.

F. S. Howe, Plaintiff's Attorney.

Note & Warrant of Attorney.

" \$795.70

Chicago March 6<sup>th</sup> 1868.

Three months after date, for value received J. C. Gibson of Arlington Ill. promise to pay, to Geo G Wilder or order the sum of Seven hundred ninety five  $\frac{70}{100}$  Dollars at the Banking House of Geo Smith in this city with current rate of exchange on New York

J. C. Gibson.

Know all men by these presents that whereas the subscriber John C. Gibson am justly indebted to Geo G Wilder upon a certain promissory note bearing date herewith for the sum of Seven hundred ninety five dollars & seventy cents; made payable to the said Geo G Wilder or order and due at Geo Smiths Bank, this ~~date~~ from date. Now therefore in consideration of the sum of one dollar to me in hand paid by the said G. G. Wilder the receipt whereof is hereby acknowledged, I do make, constitute and appoint F. S. Howe or any Attorney in any Court of Record to be my true and lawful Attorney in and for me and in my name place and stead to appear in any Court of Record in term time or vacation in any of the States or Territories of the United States, at any time after the date hereof to waive service of process and confess a judgment in favor of the said G. G. Wilder or his or their assignee or assignees upon the said note for the above sum or for as much as appears to be due according

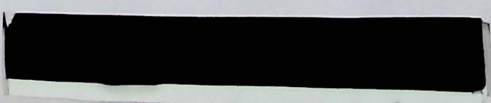
to the tenor and effect of said note with interest thereon together with costs also for a usual Attorneys fees to be added to the amount due on entering up judgment; also to file a cognovit for the amount that may be so due, with an agreement therein that no writ of Error or appeal shall be prosecuted upon the judgment by virtue hereof nor any Bill in Equity filed to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of such judgment or reversing the execution thereon and also to consent to immediate execution upon such judgment: Hereby ratifying and confirming all that my said Attorney may do by virtue hereof. Witness my hand and seal this sixth day of March A. D. 1858

In presence of } J. M. Gibson (Seal)

On the back of said note appears the following affidavit to wit; " F. L. Howe being sworn makes oath that he is acquainted with the hand writing of John. C. Gibson & believes that his signature attached to the within Power of Attorney & note are genuine Francis. L. Howe.

Done & subscribed before me }  
 this twenty fourth day of }  
 April 1858 }  
 Wm. L. Church Clk }

And thereupon - to wit, on the same day and year last aforesaid said defendant by George Ely his Attorney filed



in said Court his Cognovit, in words and figures following to wit:

"Circuit Court of Cook County  
April Term A.D., 1858.

John C. Gibson

vs

George G. Welder

Cognovit:

And the said John C. Gibson defendant in the above entitled suit by George Ely, his Attorney comes and defends the wrong and injury when & so receives service of process and says that he cannot deny the action of the said Plaintiff nor but that the said Plaintiff has sustained damages on occasion of the performance of the several promises and undertakings in the said declaration mentioned including the sum of twenty five dollars for his reasonable Attorneys fees for entering up this judgment over and above all other costs and charges by him about his suit in this Court expended to Eight hundred and twenty dollars and seventy cents and the said defendant further agrees that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bill in Equity filed to interfere in any manner with the operation of said judgment and that he hereby releases all error that may intervene in entering up the same or issuing the execution thereon and consents to immediate execution upon such judgment

George Ely, defendant's Attorney

And thereupon to wit at the April Term of said Court, to wit: on the said 24<sup>th</sup> day of April in the year aforesaid the

following proceedings among others were had and entered of record, to wit:

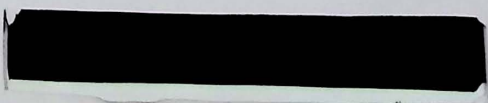
" George G Wilder	}	Confession
v		
John C Gibson		

This the 24<sup>th</sup> Day of April AD 1858 comes the said plaintiff by D. S. Howe his attorney and files herein his certain declaration of a plea of trespass, the case on promises and thereupon also comes the said defendant by Geo Ely his attorney in fact who files herein his warrant of Attorney the execution of which being duly proven and also his cognovit confessing the action of the said plaintiff against him and that he has sustained damages herein to the sum of Eight Hundred dollars and seventy cents. And it is considered by that said plaintiff do have against the said defendant his damages of eight hundred and seventy dollars seventy cents, in form aforesaid confessed, and also his costs and charges in this behalf expended and that he have execution therefor.

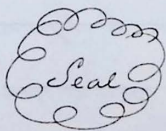
And thereupon, to wit, on the said 24<sup>th</sup> day of April in the year aforesaid there was issued out of and under the seal of said Court, the peoples writ of Fieri Facias directed to the Sheriff of Bureau County to execute in words and figures following to wit;

State of Illinois } ss  
 County of Cook }

The People of the State of Illinois to the Sheriff of Bureau County, Greeting:



We command you that of the lands and tenements  
 goods and chattels of John L. Gibson Defendant in your  
 County you cause to be made the sum of Eight hundred  
 and twenty dollars and Seventy cents which George G. Wilder  
 Plaintiff lately in the Circuit Court of Cook County at a  
 term thereof begun and held at Chicago in said County  
 on the Second Monday of April instant recovered against  
 the said John L. Gibson defendant for his damages, and  
 also the further sum of four dollars and fifty cents  
 which were adjudged to the said Plaintiff for his costs  
 and charges in that behalf expended whereof the said  
 defendant is convicted as appears by record and  
 have you these moneys ready to make to the said Plaintiff  
 for his damages and costs of judgment, and make return  
 of this writ with an endorsement thereon in what man-  
 ner you shall have executed the same, in ninety days  
 from the date hereof.



Witness My hand in L. Church Clerk of our  
 said Court and the seal thereof at Chicago  
 in said County this 24<sup>th</sup> day of April  
 A.D. 1858 Wm. L. Church Clerk

And afterwards to wit on the 24<sup>th</sup> day of July in the  
 year aforesaid said writ of fieri facias was returned  
 into said Court by said Sheriff endorsed as follows, to wit:  
 "I return this writ by order of the Plaintiff  
 J. H. Waldron Sheriff Bureau"

July 17<sup>th</sup> 1858

And afterwards, to wit on the 24<sup>th</sup> day of July in the

Year aforesaid there was issued out of and under the seal  
of said Court the Peoples Alias writ of Fieri Facias, directed  
to the Sheriff of Bureau County to execute, in words and  
figures following to wit

State of Illinois } ss  
County of Cook }

The People of the State of Illinois  
to the Sheriff of Bureau County Greeting

We command you as before that of the Lands and Tenements  
goods and Chattels of John L. Gibbons defendant in your  
County you cause to be made the sum of eight hundred  
and twenty dollars and seventy cents which George G.  
Wilder Plaintiff lately in the Circuit Court of Cook  
County at a term thereof begun and held at Chicago  
in said County on the second Monday of April last  
past recovered against the said John L. Gibbons defen-  
dant for his damages, and also the further sum of Five  
dollars and Seventy cents which were adjudged to the  
said Plaintiff for his costs and charges in that behalf  
expended, whereof the said defendant is convicted as ap-  
pears to us of record, and have you these moneys ready to  
render to the said Plaintiff for his damages and costs  
aforesaid, and make return of this writ with an endorse-  
ment hereon in what manner you shall have executed  
the same in twenty days from the date hereof.

Witness William L. Church's clerk of our said Court and the seal  
thereof at Chicago in said County this 24<sup>th</sup> day of July A.D. 1858  
Wm. L. Church Clerk

And afterwards to wit; on the 14<sup>th</sup> day of December in the year aforesaid said Alias Writ of Fieri Facias was returned into the Court aforesaid, by said Sheriff Endorsed as follows to wit; "By virtue of this writ I did on this 28<sup>th</sup> day of July 1858 levy upon the following goods to wit About 70 thousand feet of lumber 53 Doors a lot of rags in a building back of the Store 1 Warehouse near the Depot on the C. B & D Rail Road Co grounds and all the goods in the Store of John C Gibson and a quantity of salt in the yard back of the said Store. all of said goods being in the town of Arlington Bureau ~~to~~ be as the property of John C. Gibson

J. W. Waldron Sheriff Bureau Co Ill

By James [unclear] Deputy

I return the within writ ~~with~~ by sale of personal property Nov 6. 1858. J. Waldron Sheriff Bureau Co

The Sheriff will give receipt for four hundred & thirty five dollars paid July 9<sup>th</sup> 1858 & twenty dollars paid May 12. 1858.

I William L. Church Clerk of the Circuit Court of Cook County, in the State aforesaid do hereby certify the above and foregoing to be a true perfect and complete copy of all papers on file & all proceedings entered of record in a certain cause lately pending in said Court on the Common Law side thereof wherein George S. Wilder was plaintiff and John C. Gibson Defendant. In witness whereof I have hereunto set my hand and affixed the seal of said Court, at Chicago this twenty fifth day of April A.D. 1862.

Wm L. Church Clerk

United States of America  
State of Illinois, Cook County. ss.

Pleas before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and presiding Judge of the Circuit Court of Cook County in said State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County on the second Monday (being the twelfth day) of April in the year of our Lord one thousand eight hundred and fifty eight and of the Independence of the said United States the eighty second.

Present, Honorable George Manierre Judge of the 7<sup>th</sup> Judicial Circuit of the State of Illinois

Carlos Heaven Attorney

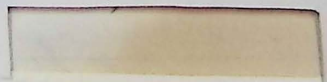
John L. Nelson Sheriff of Cook County.

Attest William L. Church Clerk.

Be it remembered that heretofore to wit on the twenty fourth day of April in the year aforesaid there was filed in the office of the Clerk of said Circuit Court a certain Declaration together with the note declared on and the Warrant of Attorney there to attached, which said Declaration note and Warrant of Attorney, are in the words and figures following, to wit:

Declaration.

" State of Illinois } ss Circuit Court of Cook County  
Cook County } April Term A.D. 1858.



[REDACTED]

George J. Alder plaintiff in this suit by F. S. Howe his Attorney complains of John C. Gibson defendant in a plea of trespass on the case on promise, for that Whereas the said defendant heretofore to wit, on the sixth day of March in the year of our Lord one thousand eight hundred and fifty eight at Chicago to wit, at said County of Cook made his certain promissory note in writing bearing date the day and year aforesaid and then and there delivered the same to said Plaintiff in and by which said note said defendant promised to pay to the order of the said Plaintiff the sum of Eight hundred two <sup>16</sup>/<sub>100</sub> Dollars at the Banking house of George Smith in Chicago aforesaid with current exchange on New York four months after the date of said note for value received. By means whereof and by force of the Statute in such case made and provided the said defendant became liable to pay said Plaintiff said sum of money mentioned in said note, and being so liable in consideration thereof then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect, true intent and meaning of the said note, and of the indorsement aforesaid, to wit, at the place aforesaid. Yet the defendant although often requested & hath not yet paid the said sum of money, or any part thereof to the plaintiff but so to do hath hitherto wholly refused and still doth refuse to the damage of the plaintiff of one thousand dollars and therefore he brings suit &c. F. S. Howe,

Plaintiff's Attorney

Note and Warrant of Attorney

" \$812<sup>10</sup>/<sub>100</sub>Chicago March 6<sup>th</sup> 1858.

Four months after date for value received  
 S. J. C. Gibson of Arlington Ill, promise to pay to Geo  
 G Wilder or order the sum of Eight Hundred & two + <sup>10</sup>/<sub>100</sub>  
 dollars, at the Banking House of Geo Smith in this City  
 with current Exchange in New York.

J. C. Gibson

Know all men by these presents that whereas the subscriber  
 J. C. Gibson is justly indebted to Geo. G. Wilder upon a certain  
 promising note bearing even date herewith for the sum of  
 Eight Hundred two dollars and fifteen cents made payable  
 to the said Geo G Wilder or order and due at Geo. Smith's  
 Bank. four months from the date hereof. Now therefore  
 in consideration of the promise and of the sum of one  
 dollar to me in hand paid by the said Geo. G. Wilder  
 the receipt whereof is hereby acknowledged, I do hereby  
 make constitute and appoint F. S. Howe or any Attorney  
 in any Court of Record, to be my true and lawful Attor-  
 ney, irrevocably, for me and in my name place and  
 stead, to appear in any Court of record in term time  
 or vacation, in any of the States or territories of the  
 United States, at any time after the date hereof, to  
 waive service of process and confess a judgment in  
 favor of the said G. G. Wilder or his or their assigns  
 or assignees, upon the said note for the above sum  
 or for as much as appears to be due, according to the  
 tenor and effect of said note, with interest thereon  
 together with costs: also for - usual attorneys fees -

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to be added to the amount due on entering up judgment, also to file a cognovit for the amount ~~due~~ that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof or any bill in equity filed to interfere in any manner with the operation of such judgment and to release all errors that may intervene in the entering up of such judgment, or issuing the execution thereon, and also to consent to immediate execution upon such judgment.

Hereby ratifying and confirming all that my said Attorney may do by virtue hereof. Witness my hand and seal this sixth day of March AD 1858.

In presence of  $\frac{3}{3}$  John Gibson Seal

On the back of said note & warrant of attorney appears the following affidavit, to wit:

"F. L. Hows being duly sworn makes oath that he is acquainted with the signature of John C. Gibson, affixed to the within power of attorney & note & believes the same to be genuine.

Sworn to before me this  $\frac{3}{3}$  Francis L. Hows.  
 twenty fourth day of  $\frac{3}{3}$   
 March AD 1858  $\frac{3}{3}$   
 Wm. L. Church Clk  $\frac{3}{3}$

And thereupon to wit on the same day and year last aforesaid said defendant by George Ely his Attorney filed in said Court his return and

figures following to wit;

"Circuit Court of Cook County  
April Term A.D. 1858

John C. Gibson  
ads } Cognovit  
George F. Wilder }

And the said John C. Gibson defendant  
in the above entitled suit by George Ely his Attorney  
and defends the wrong ~~and~~ injury when ~~it~~ and waives  
service of process and says that he cannot deny the  
action of the said plaintiff nor but that the said  
plaintiff has sustained damages on occasion of the  
non performance of the several promises and undertakings  
in the said Declaration mentioned, including the sum  
of twenty five dollars for his reasonable attorney's  
fees for entering up this judgment, and above his  
other costs and charges by him in his suit in  
this behalf expended to Eight Hundred and twenty  
seven dollars and sixteen cents; and the said defendant  
agrees that no writ of Error or appeal shall be prose-  
cuted upon the judgment entered by virtue hereof, nor  
any Bill in Equity filed to interfere in any manner  
with the operation of said judgment, and that he hereby  
releases all errors that may intervene in entering up the  
same, or in the execution thereof, and consents to  
immediate execution upon such judgment

George Ely  
Defendant's Attorney

And thereupon to wit at the April Term of said Court, to wit; on the same day and year last aforesaid the following proceedings among others were had and entered of record, to wit;

" George G. Wilson )  
 ) Confession  
 John G. Gibson )

This the twenty fourth day of April A.D. 1858 comes the said plaintiff by F. S. Howe his Attorney and files herein his certain declaration of a plea of trespass on the case on promises, and thereupon also comes the said defendant by Geo Ely, his attorney in fact and files herein his warrant of Attorney, the execution of which has been duly proven and also his cognovit containing the action of the said plaintiff against him and that he has sustained damages herein to the sum of Eight hundred twenty seven dollars and sixteen cents. Therefore it is considered said plaintiff do have and recover of said defendant his damages of eight hundred twenty seven dollars and sixteen cents in form aforesaid confessed and also his costs and charges in his behalf expended and have execution therefor

\$827<sup>60</sup>

And afterwards to wit on the 24<sup>th</sup> day of April in the year aforesaid there was issued out of and under the seal of said Court the People's writ of Fieri Facias directed to the Sheriff of Bureau County to execute in words and figures following, to wit;

" State of Illinois } ss  
 County of Cook }

The People of the State of Illinois to the  
 Sheriff of Bureau County Greeting.

We command you that of the lands and tenements  
 goods and chattels of John B. Gibson defendant in  
 your County you cause to be made the sum of Eight  
 Hundred and twenty seven dollars and sixteen cents  
 which George G. Wilder Plaintiff lately in the Circuit  
 Court of Cook County at a term thereof begun and  
 held at Chicago in said County on the second Monday  
 of April instant recovered against the said John B.  
 Gibson defendant for his damages, and also the fur-  
 ther sum of four dollars and fifty cents which were  
 adjudged to the said plaintiff for his costs and char-  
 ges in that behalf expended, and that the said de-  
 fendant is convicted as appears to us of record, and  
 have you these moneys ready to render to the said plain-  
 tiff for his damages and costs aforesaid, and make re-  
 turn of this writ with an endorsement hereon in  
 what manner you shall have executed the same, in  
 twenty days from the date hereof. Witness William L  
 Church, Clerk of our said Court and the seal  
 thereof at Chicago in said County this 24<sup>th</sup> day  
 of April 1858

Wm L. Church Clerk

And afterwards to wit on the 22<sup>d</sup> day of July in the year  
 aforesaid, said writ of Fieri Facias was returned into said

leant by said Sheriff, endorsed as follows to wit

"Return this writ by order of the Plaintiff, July  
17<sup>th</sup> 1858 E. K. Waldron Shff Bureau

And afterwards, to wit on the 22<sup>d</sup> day of July in the year aforesaid there was issued out of and under the seal of said court, the peoples writ of Alias Fieri Facias directed to the Sheriff of said Bureau County to execute in the words and figures following, to wit.

" State of Illinois } ss  
County of Cook }

The people of the State of Illinois, to the  
Sheriff of Bureau County, Greeting:

We command you as we have before that of the lands and tenements goods and chattels of John C. Gibson defendant in your County you cause to be made the sum of Eight Hundred and twenty seven dollars and sixteen cents which George J. Helder plaintiff lately in the Circuit Court of Cook County at a term thereof begun and held at Chicago in said County on the second Monday of April last past recovered against the said John C. Gibson defendant for his damages and also the further sum of five dollars and seventy cents which were adjudged to the said plaintiff for his costs and charges in that behalf expended whereof the said defendant is convicted as appears to us of record; and have you these moneys ready to render to the said Plaintiff for his damages and costs aforesaid and make

return of this writ with an endorsement hereon in what manner you shall have executed the same, in ninety days from the date hereof. Witness William L. Church Clerk of our said Court and the seal thereof at Chicago in said County - this twenty second day of July A.D. 1858 Wm L. Church Clerk



And afterwards to wit on the 14<sup>th</sup> day of December in the year aforesaid said Alia's writ of Fieri Facias was returned unto said Court, by said Sheriff, endorsed as follows, to wit;

" Rec<sup>d</sup> July 26<sup>th</sup> 1858 at 4 o'clock P. M.  
I return this writ satisfied by J. K. Waldron Shff  
Sale of Property Nov 6<sup>th</sup> 1858 by James White Dep.

J. K. Waldron Shff  
Bureau Co Ill.

By virtue of this writ I did on this 28<sup>th</sup> day of July A.D. 1858 levy upon the following described good to wit about 70 thousand feet of lumber, one Ware-house on the C.B. & D Rail Road Co grounds near the Dep - all the goods in the Store of John C. Gibson, a quantity of salt and about 35 Doors & a lot of rags in a building back of the Store at of said property being in Arlington Bureau Co Ill, as the property of John C. Gibson

J. K. Waldron  
Shff Bureau Co Ill.

William L. Church Clerk of the Circuit Court

of Cook County in the State aforesaid do hereby certify  
 the above and foregoing to be a true perfect and complete  
 copy of all papers on file & all proceedings entered of  
 record in a certain cause lately pending in said Court  
 on the Common Law side thereof wherein George G. Wilder  
 was plaintiff and John L. Gibson was defendant.



In witness whereof I have hereunto set my hand  
 and affixed the seal of said Court at Chicago  
 this twenty fifth day of April A.D. 1862  
 Wm. L. Church Clerk

( 3<sup>d</sup> Record )

United States of America }  
 County of Cook. State of Illinois }

Present before the Hon-  
 orable John W. Wilson Judge of the Cook County Court  
 of Common Pleas within and for the County and State  
 aforesaid, had in Vacation after the July Vacation  
 Term of said Cook County Court of Common Pleas  
 in the year of our Lord eighteen hundred and  
 fifty eight and of the Independence of the United  
 States of America the Eighty third.

Present Honorable John W. Wilson, Judge  
 Attest Walter Kimball Clerk

Be it remembered that herebefore to  
 wit on the twenty sixth day of July in the year  
 of our Lord one thousand eight hundred and fifty  
 eight came Francis B. Leary, Clerk of said Court

and John V. Farwell by their Attorneys Burgess & Hawley and filed in the Office of the Clerk of the said Cook County Court of Common Pleas their certain Declaration in words and figures following to wit;

State of Illinois } ss

Cook County } The Cook County Court of Common Pleas  
In Vacation after July Term 1858

Francis B. Cooley Cluick & Wadsworth & John V. Farwell late co-partners in doing business under the firm name of Cooley Wadsworth & Co by Burgess & Hawley their Attorneys complain of John C. Gibson of a plea of Trespass on the case upon promises. For that whereas the said defendant heretofore to wit on the first day of July in the year of our Lord one thousand eight hundred and fifty eight at Chicago to wit in the County of Cook and State of Illinois made his note in writing commonly called a promissory note bearing date a certain day and year therein mentioned to wit the day and year last aforesaid and then and there delivered the said note to the said Plaintiff. By which said note the said defendant then and there promised to pay to the order of the said Plaintiff under the name and style of the said firm of Cooley Wadsworth & Co on or before the fifteenth day of September in the year of our Lord one thousand eight hundred and fifty eight at the Merchants Savings, Loan & Trust Company Bank in Chicago aforesaid the sum of ten hundred forty

five dollars and fifty five cents, with interest at the rate of ten per cent per annum after the same became due & payable for value received.

By reason thereof and by force of the Statute in such case made and provided, the said Defendant became liable to pay to the said plaintiffs the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, the said defendant in consideration thereof, afterwards, to wit: on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said plaintiffs well and truly to pay to the said plaintiffs the said sum of money in the said note specified according to the tenor and effect of the said note.

And for that whereas also afterwards heretofore to wit the said Defendant, on the first day of July in the year of our Lord one thousand eight hundred and fifty eight at Chicago to wit: in the County of Cook and State of Illinois made his certain other note in writing commonly called a promissory note bearing date the day and year last above mentioned and then and there delivered the said note to the said Plaintiff and thereby then and there promised to pay to the order of the said plaintiff on the first day of October in the year of our Lord one thousand eight hundred and fifty eight at the Merchants Saving, Loan & Trust Company's Bank in Chicago aforesaid the sum of ten hundred forty five

dollars and fifty five cents with interest at the rate of ten per cent per annum after the same became due and payable, for value received.

But although the said note hath become due and the said defendant has been requested to pay the same to the plaintiffs he has refused so to do, to wit; at Chicago aforesaid, and whereas also the said defendant heretofore to wit; on the Ninth day of June in the year of our Lord one thousand eight hundred and fifty eight at Chicago, to wit; in the County of Cook and State of Illinois, made his certain other note in writing commonly called a promissory note, bearing date the day and year last aforesaid mentioned and then and there delivered the said note to Cooley, Farwell & Co and thereby then and there promised to pay to the order of the said Cooley, Farwell & Co thirty days after the date thereof at the Merchants Savings, Loan and Trust Companies Bank in Chicago aforesaid the sum of Ten hundred twenty one Dollars and forty nine cents for value received.

And the said Cooley Farwell & Co afterwards and before said note became due, to wit; on the day and year and at the place aforesaid, assigned said note in writing thereon endorsed, and delivered the same to said Plaintiffs of which the said defendant then and there had notice. Yet although the said note hath become due and the said defendant hath been requested to pay the same to said plaintiffs he has refused so to do, to wit; at Chicago



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in said county aforesaid.

And for that ~~also~~ whereas also the said defendant heretofore to wit; on the twenty fourth day of July AD 1858 at Chicago in said county was indebted to the said plaintiffs in the sum of four thousand dollars for goods wares and merchandise sold and delivered by the said plaintiffs to the said defendant at his request

And in the further sum of four thousand dollars for money before that time lent and advanced by plaintiffs to defendant at his request.

And in the further sum of four thousand dollars for money then and there paid by plaintiffs for use of defendant at his request.

And in the further sum of four thousand dollars for money found to be due and owing from said defendant to said plaintiffs on an account then and there had and stated between them.

And the defendant being indebted, afterwards to wit on the day and year last aforesaid, at the place aforesaid in consideration of the premises, respectively promised the said plaintiffs to pay them the said several moneys last aforesaid, on request, yet the defendant, although requested, to wit; afterwards, on the day and year and at the place last aforesaid, hath disregarded his promises and hath not paid said moneys above mentioned, or any or either of them, or any part thereof, to the damage of the plaintiffs of four thousand dollars and thereupon they being suit

vs

Burgess & Hawley  
Plaintiffs Attorneys

## Copy of Instruments sued upon and sole cause of action

\$1045<sup>53</sup>/<sub>100</sub>

Chicago July 1. 1858.

On or before the 15<sup>th</sup> Sep next, I the Subscriber of Arlington, County of Bureau, State of Illinois for value received I promise to pay to the order of Croley Wadsworth & Co ten hundred forty five <sup>53</sup>/<sub>100</sub> Dollars at the Merchants Savings Loan & Trust Co with interest at 10% after due. In consideration whereof and the further sum of one dollar already paid to said payee I do empower and hereby authorize C. W. Hawley or other Attorney of any Court of record to enter my appearance therein at any time after the date hereof and waiving all process to confess judgment for the amount due thereon, with costs and with five per cent Attorneys fees in favor of the holder thereof and hereby release all errors that may occur in such proceedings. Witness my hand this first day of July 1858.

"J. C. Gibson"

\$1045<sup>53</sup>/<sub>100</sub>

Chicago July 1. 1858

On or before Oct 1<sup>st</sup> 1858, I, the subscriber of Arlington, County of Bureau State of Ill, for value received I promise to pay to the order of Croley Wadsworth & Co Ten Hundred & forty five <sup>53</sup>/<sub>100</sub> Dollars at the Merchants Savings Loan & Trust Co with interest at 10% after due. In consideration whereof and the further sum of one dollar already paid to said payee I do empower and hereby authorize C. W. Hawley or other Attorney of any Court of record to enter my appearance therein at any time after the date hereof

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" and waiving all process to confess judgment for the amount due thereon with the costs and five percent Attorneys fees in favor of the holder thereof and hereby release all errors that may occur in such proceeding, witness my hand this first day of July 1858 "

J. C. Gibson

" \$1021 <sup>49/100</sup>

Chicago June 9. 1858

" Twenty days after date I the subscriber of Arlington, County of Bureau State of Ill, for value received promise to pay to the order of Cooley Farwell & Co Ten hundred & twenty one <sup>49/100</sup> Dollars at the Merchants Savings Loan & Trust Co. In consideration of the sum of one dollar already paid to said payees, I do empower and hereby authorize C. W. Hawley or other attorney of any Court of Record to enter my appearance thereat any time after the date hereof and waiving all process to confess judgment for the amount due thereon with the costs and with five percent Attorneys fees in favor of the holder and hereby release all errors that may occur in such proceeding. Witness my hand this Ninth day of June 1858 "

J. C. Gibson

" Endorsed on the back of said note July 1. 1858. pay to Cooley Wadsworth & Co "

" Cooley Farwell & Co "

And afterwards to wit on the same day and year aforesaid the said plaintiffs by their said Attorney filed herein their

Several notes and Warrants of Attorney & affidavit in words and figures following to wit:

\$1021 <sup>49</sup>/<sub>100</sub>

Chicago June 9 1858

Twenty days after date of the subscriber of Arlington County of Bureau State of Ill. for value received promise to pay to the order of Cooley, Farwell & Co ten hundred & twenty one <sup>49</sup>/<sub>100</sub> Dollars at the Merchants Savings Bank & Trust Co

In consideration of the further sum of one dollar already paid to said payee I do empower and hereby authorize C. M. Hawley, or other Attorney of any Court of Record to enter my appearance therein at any time after the date hereof, and waiving all process to confess judgment for the amount due thereon, with the costs, and with five per cent attorneys fees, in favor of the holder thereof, and hereby release all errors that may occur in such proceedings. Witness my hand this ninth day of June 1858

In presence of:

J. C. Gibson

Due July 1st 58

On which is the following endorsement

"July 1. 1858 pay to Cooley Wadsworth & Co  
Cooley Farwell & Co"

\$1145 <sup>55</sup>/<sub>100</sub>

Chicago July 1. 1858

On or before the 15<sup>th</sup> Sept next I the Subscriber of Arlington County of Bureau State of Ill for value received I promise to pay to the order of Cooley Wadsworth & Co Ten

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hundred & forty five <sup>55</sup>/<sub>100</sub> Dollars at the Merchants Savings Loan & Trust Co with interest at 10% after due.

In consideration whereof and the further sum of one dollar already paid to said payees I do empower and hereby authorize C. M. Stanley or other attorney of any Court of Record, to enter my appearance therein at any time after the date hereof and waiving all process to confess judgment for the amount due thereon, with the costs and with five percent attorney fees ~~thereon~~ in favor of the holder thereof, and hereby release all errors that may occur in such proceeding. Witness my hand this first day of July 1858

J. C. Gibson

In presence of:

\$1045 <sup>55</sup>/<sub>100</sub>

Chicago July 1. 1858

On or before Oct 1<sup>st</sup> 1858 the Subscriber of Arlington County of Bureau State of Ill. for amount received, I promise to pay to the order of Cooley & Smith & Co Ten hundred & forty five <sup>55</sup>/<sub>100</sub> Dollars at the Merchants Savings Loan & T Co with interest at 10% after due. - In consideration whereof and the further sum of one dollar already paid to said payees I do empower and hereby authorize C. M. Stanley or other Attorney of any Court of Record to enter my appearance therein at any time after the date hereof and waiving all process to confess judgment for the amount due thereon, with the costs, and with five percent attorney fees, in favor of the holder thereof and hereby release all errors that may occur in such proceeding. Witness my hand this first day of July 1858

In presence of: }

J. C. Gibson

In the Court of Common Pleas

Francis Bleooley et al }  
vs }  
John B. Gibson }

State of Illinois } 58  
County of Cook }

Marshall Field

being duly sworn in the above entitled cause says that he is well acquainted with the hand writing of John B. Gibson defendant therein. that he has carefully examined the signatures to the three promissory notes hereto attached and that he verily believes that the same and each of them are the genuine signatures of the said John B. Gibson.

Sworn to & subscribed before me Marshall Field  
this 26<sup>th</sup> day of July 1858

Moses Hallett }  
Notary Public }

And afterwards to wit: on the same day and year aforesaid the said John B. Gibson by Thos. Hooge his attorney filed in the office of the clerk as aforesaid his Cognovit in words and figures following.

Clerk of Court of Common Pleas  
at the Court after July Term A.D. 1858  
State of Illinois }  
Cook County }

John B. Gibson }  
ats } Cognovit:



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Francis B. Cooley  
Elisha S. Wadsworth &  
John V. Garrison }

and the said John C. Gibson De-  
fendant in the above entitled cause by Thomas Hoge Attorney  
comes and defends the wrong and injury when & and waive  
service of process, and says that he cannot deny the actions  
aforesaid of the said plaintiffs, nor but that the said defend-  
ant did undertake and promise in manner and form  
as the said plaintiffs have above thereof declared against  
him, nor but that the said plaintiffs have sustained  
damages by reason of the non performance of the said  
several promises and undertakings aforesaid, including  
the sum of one hundred and sixty six dollars for his  
reasonable attorneys fees for entering up this judgment  
to the amount of Three thousand two hundred eighty one  
Dollars and sixty cents, besides the costs and charges by  
the said plaintiffs in this suit expended, to be taxed. And  
the said defendant consents to immediate execution being  
issued on the judgment herein rendered and releases all  
errors in the proceedings, and agrees that no appeal  
shall be prosecuted on the judgment entered by virtue  
hereof nor any Bill in Equity filed to interfere in any  
manner with the operation of said judgment.

\$3281.60

Thos Hoge Atty for Deft

And afterwards to wit on the same day and year afore-  
said said day being one of the days in Vacation after the

July term of said Court the following among other proceedings was had in said Court and entered of Record to wit

Francis D Cooley Clerk of  
Haddam & John V Farwell

vs

Confession

John G. Gibson

This the 26<sup>th</sup> day of July 1881

comes said Plaintiffs by Burgess & Hawley their Attorneys and file herein their certain Declaration of a plea of trespass on the case upon promises and thereupon also comes the said defendant by Thos Hope his Attorney in fact and files herein his warrant of attorney the execution of which being duly proven and also his Cognovit confessing the action of said Plaintiffs against him and that they have sustained damages because of the premises to the sum of three thousand two hundred and eighty one dollars and sixty cents.

\$3281.60

Therefore it is considered said plaintiffs do have and recover of the said defendant their damages of Three thousand two hundred and eighty one dollars and sixty cents in full aforesaid confessed and also their costs and charges in this behalf expended and have execution therefor

Ab Wilson

And afterwards do wit on the same day and year aforesaid there issued out of the Office of the Clerk of the Superior Court of Chicago a certain writ of the People commonly

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called Fieri Facias in words and figures following to wit:

State of Illinois } ss  
 County of Cook }

The People of the State of Illinois, To the  
 Sheriff of Bureau County, Greeting:

We command you that of the Lands and tenements  
 goods and chattels of John Gibson Defendant in your  
 County you cause to be made the sum of three thousand  
 two hundred & eighty one (\$3281.60) dollars and eighty  
 cents which Francis B. Cooley, Cleha S. Hadsworth & John  
 V. Farwell plaintiffs lately in the Cook County Court of  
 Common Pleas in said County at Chicago in said County  
 on the 26 day of July instant recovered against the said  
 Defendant and which by the said Court was adjudged  
 to the said plaintiffs for their damages, and also the for  
 their sum of four dollars and eighty cents which were  
 adjudged to the plaintiffs for their costs and charges in  
 that behalf expended whereof the said defendant was  
 convicted as appears to us of record. And have you three  
 moneys ready to render to the said plaintiffs for their  
 damages and costs aforesaid, and make a return of  
 said writ with an endorsement thereon in what man-  
 ner you shall have executed the same, in twenty  
 days from the date hereof. Witness Walter Kimball  
 clerk of our said Court and the seal thereof  
 at Chicago in said County this 26<sup>th</sup> day of  
 July A.D. 1858.



Walter Kimball

Clerk

Rec<sup>d</sup> July 27<sup>th</sup> 1858 at 12 o'clock M.

G. K. Waldron Sheriff Bureau Co

By virtue of the within writ I did on this 27 day of July A.D. 1858 levy upon the following real estate to wit. To the North West quarter and the North Half of the North East of Section 15 Township 17 North Range 11 East of the fourth P.M. and all the goods now in the Store recently occupied by John C. Gibson as the property of John J. Gibson

G. K. Waldron

Sheriff's return

Sheriff Bureau, Geo Ill.

Rec<sup>d</sup> on the within writ two thousand dollars October 19<sup>th</sup> 1858. Returned by order of the Plaintiffs  
G. K. Waldron Sheriff.

Recd on the within writ two thousand dollars \$2000.

Cooley, Farwell & Co  
Pr Field.

To the Sheriff of Bureau County.

The Title to the North West 1/4 & the North Half of the North East quarter of Section 15 in Township 17 North Range 11 East of the 4<sup>th</sup> P.M. not being clear in the Defendant in execution, the Sheriff will abandon the levy thereon made by virtue of the annexed Execution No 11327 from book containing writ of Common Pleas & release said lands thereof on Oct 19, 1858

Cooley, Farwell & Hawley Pliffs Atty

The said Stock of goods mentioned in said levy I have sold & made therewith two thousand dollars which I have paid to the within named plaintiffs. By order of the Pliffs

I have abandoned the levy on said Real estate, the title thereto not being clear in the debt in execution, and as to the balance due on this execution after deducting said \$2,000 I return the same unsatisfied. No property found whereon to make the same in my County.

Dated Oct 20. 1858

J. C. Waldron Sheriff Bureau County

By Geo W Stone Deputy.

Debt of

Damages 3281.60

Plaintiff's costs 4.70

Defendant's costs 1.30

3287.60

And afterwards to wit on the sixth day of May in the year of our Lord one thousand eight hundred and sixty two, said day being one of the days of the May Term of said Court, the following among other proceedings was had and entered of record in said Court to wit;

Francis B. Cooley, Elisha S

Wadsworth and John V. Fairwell

vs

Assumpsit.

John C. Gibson

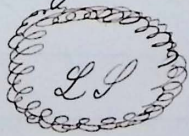
On this 6th day of May 1862

came Francis B. Cooley, John V. Fairwell and Elisha S. Wadsworth by G. M. Hawley their Attorney and enter their motion to vacate an endorsement of two thousand dollars made by Marshall Field upon a writ of Fieri

*Facias* issued out of the Court County Court of Cook County Pleas  
 upon a Judgment therein in favor of the said Corley  
 Farwell & Madeworth and against John M. Gibson, the same  
 being the same moneys received by the Sheriff of the County  
 of Bureau, and by him endorsed upon the said writ.  
 And the Court being fully advised in the premises and  
 it appearing from the affidavit of the said Marshall  
 Field that the said endorsement so made by said Field  
 was the same moneys received by the Sheriff and endorsed  
 by him upon said writ in his return. It is therefore ordered  
 that the said endorsement so made by Marshall Field be  
 erased and the same is hereby annulled and that the  
 judgment be and remain as if such endorsement had  
 not been made.

State of Illinois } ss.  
 County of Cook }

I Thomas B. Carter Clerk  
 of the Superior Court of Chicago within and for the County and  
 State aforesaid do hereby certify that the above and foregoing  
 is a full true and complete transcript of all the papers on  
 file in my office and all orders and judgments entered of Re-  
 cord in said Court in said suit wherein Francis B.  
 Corley Clerk of the Court & John V. Farwell are plaintiffs  
 and John M. Gibson is defendant



In testimony whereof I hereunto subscribe  
 my name and affix the seal of said

follows "I recede in

Court at the City of Chicago in said County  
 this 6<sup>th</sup> day of May A.D. 1862

Thomas B. Carter Clerk

- To the ~~xxxxxx~~ examination and reading of which the Court  
 for the purpose of the object " Because they are  
 transcripts of judgments entered up in violation by confession  
 in the Clerk's office of the Court in which they purport to have  
 been rendered and are each irregular and void on the face  
 of the record. And Because the transcripts of judgments  
 from the Court of Common Pleas in favor of Francis B. Corley  
 Eliza S. Hadeworth and John V. Farrell and against John  
 C. Gibson and under which and the other two judgments  
 the defendants all justify, shows conclusively that the Clerk  
 had no authority or power to enter up judgments in that case  
 upon the papers filed with him and the act of the Clerk in  
 that respect being without authority renders it a Nullity.

And again the execution in that case was not levied on the  
 property in controversy, and for other reasons the plaintiffs  
 counsel then and there also objected to the said three re-  
 cords being offered or read".

And the said Court then and there held and affirmed  
 that said three transcripts of judgments were good and  
 admissible as evidence in law upon the issue aforesaid  
 to which ruling of the Court the counsel for the plaintiffs  
 then and there excepted and still excepts, and the Counsel  
 for the defendants further to maintain and from the  
 issues called to. G. Nichols who being first duly sworn and  
 testified as follows "I reside in Chicago. I know these

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" was a levy made by Sheriff Walden in favor of Cooley, Farwell & Co. upon the Lumber of Gibson about July or August  
" 1858. I dont know the exact time, John G Gibson was engaged  
" for about one year prior to that time in selling Lumber  
" I did not know of any prior levy made by the United  
" States Marshal or of any other levy, I am Station Agent  
" and have been for about six years. Gibson was selling lumber  
" from the time he commenced till he closed without interrup-  
" tion so far as I know. His lumber yard was about  
" 20 yards from the Station house. Gibson received from March  
" 1<sup>st</sup> 1858 to the time of the levy of the Sheriff, 104,895 feet of  
" Lumber "

Cross examined by plaintiff's Counsel

" No sir I dont know of all the levies made round Arlington  
" I could not tell the amount of Lumber received by Gibson un-  
" less I looked at the books, without I looked at the letter  
" In November 1857, I should think there was Lumber there."

And the counsel for the defendant further to maintain  
and prove the issue called Dr Picanet who being sworn testi-  
fied as follows.

" I reside at Arlington, I know Gibson prior to August  
" 1858 he was trading there and selling Lumber. I live about  
" twenty five or thirty rods from his yard. I was by it frequently  
" I know of the levy made in favor of Cooley, Farwell & Co  
" I know of no other levy prior to that for one year previous  
" Randall or some of them sold Lumber as usual up to the  
" Sheriff's levy under the Cooley, Farwell & Co's execution, was attend-  
" ing to Gibsons business, some. There was no levy made to my  
" knowledge before the Sheriff. I was interested, I know

" the Sheriff sold the lumber under the levy Farwell & Co  
" judgment."

And the counsel for the defendants further to maintain  
and prove the issue recalled Seely Baldwin who being duly  
sworn testified as follows

" I lived about twenty rods from Gibson's Lumber Yard  
" I saw the Sheriff there in July or August. I know nothing  
" of my own knowledge as to the levy. It was generally under-  
" stood the Sheriff made a levy. I never heard of any by the  
" Marshall till after the Sheriff made his levy"

The Counsel for the Defendants here rested.

And the counsel for the plaintiff further to maintain and  
prove the issue recalled Drayton A Randall, who testified

" I never heard of the execution in favor of the Hilder. The  
" Sheriff levied on and took nine thousand and either four  
" or six hundred dollars worth of goods in the store and 3 horses  
" a wagon and set of Double Harness and about twenty thous-  
" and feet of lumber. He sold all this property. I don't know  
" whether he made both levies at the same time."

Cross examination by Defendants Counsel

" The Marshal made no inventory of the lumber only  
" to divide it off, and I made no inventory for him. I  
" don't know how many executions were against Gibson. I  
" saw the first notice of the Marshals sale in August. I  
" think it might have been in July. It was after the  
" Sheriffs levy when I saw it. All I know on whose exe-  
" cution the lumber was sold is what Mr Hilder told me  
" He told me that the lumber was sold on body of the

judgment and that they understood the She... to -  
" make the sale "

And this being all the evidence of any nature or kind  
offered by either the plaintiff or defendants; thereupon the  
plaintiffs Counsel moved the Court for Judgment in the  
half of the plaintiff for the reasons following to wit;

1<sup>st</sup> Because the proofs establish as a fact beyond all  
controversy that on the 18<sup>th</sup> of November 1857 the United  
States Marshal for the Northern District of Illinois levied  
the execution in favor of Jewett Tebbetts & Co on the property  
in controversy which was turned out to him by John. C.  
Gibson to satisfy the same, and that levy was never after-  
wards relinquished or released.

2<sup>d</sup> Because by the levy of the Marshal not only gained such  
a special property in the lumber levied on as enables him  
to maintain this action for its wrongful conversion.  
By virtue of that levy the property levied on was in the  
custody of the Law and could not even be replevied,  
much less taken in execution by an officer acting under  
another jurisdiction.

3<sup>d</sup> Because the Marshal who is the plaintiff in this  
suit is a mere nominal plaintiff for the benefit of Jewett  
Tebbetts & Co. the party who levied the execution which he levied.

4<sup>th</sup> The fact that the Marshal did not sell the property levied  
upon by him under the Jewett. Tebbetts & Co execution,  
or offer the same for sale until several months after he  
made the levy, did not and could not under that



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execution dormant, without some act or saying on the part of the plaintiffs therein or their attorney. And the property itself by virtue of that levy, being in the custody of the Law, could not be interfered with by the Sheriff, although the Marshal's execution might have been adjudged dormant by the Court whence it issued.

5<sup>th</sup> Because the judgment of confession, under which the defendants seek to justify the taking, and conversion were entered up by the Clerk in vacation as conclusions of executory contracts and are void.

1<sup>st</sup> for the reason that there was no evidence of the Execution of the Warrant of Attorney before the Clerk where he entered up the judgments.

2<sup>d</sup> for the reason that the notes upon which the Cooley Farwell & Co judgment was entered up were not due and the power of attorney only authorized a confession for the amount due thereon and, nothing being due at the time, the judgment was unauthorized.

3<sup>d</sup> And for the further reason that the Cooley Farwell & Co judgment is on three notes one of which is payable to Cooley Hadsworth & Co and there being no warrant of Attorney authorizing a confession in favor of Cooley Farwell & Co for the amount of that note or the amount of the judgment confessed, it is void.

And the said Court then and there took the case under advisement and afterwards on the 10<sup>th</sup> day of November A.D. 1862 gave judgment therein for the defendants upon the issues aforesaid; whereupon the counsel for the plaintiff made his exceptions and moved

that the said court would sign and seal the Bill  
of exceptions which is accordingly done

M. E. Hollister (seal)  
Judge.



Pleas before the Honl. M. C. Hollister  
 Judge of the Ninth Judicial Circuit of the  
 State of Illinois at a term of the Circuit Court  
 begun and held at the Court House in  
 Princeton, Illinois and for the County of  
 Bureau, State aforesaid, on the second  
 Monday in the month of March in the  
 year of our Lord one thousand eight hun-  
 dred and sixty three

Present Honl. M. C. Hollister Judge  
 George M. Rudcliffe clk.  
 Elias Batty Sheriff and  
 David P. Jones State attorney  
 James W. Davison

vs. } Trover  
 Francis B. Corley, Elisha S. Muesworth,  
 John V. Farnell, Zachariah N. Waldron,  
 Marshall Field vs Charles W. Micox

And now comes Plaintiff  
 by Taylor and Paddock his attorneys  
 Defendants come by Peters their attorney  
 and file their agreement herein, for  
 judgment sumo pro sumo, in the words  
 and figures following to wit:

State of Illinois }  
 Courts of Bureau } March Term A.D. 1863

James W. Davidson }  
 vs }  
 Cooley, Farwell & Co. }

In this cause it is  
 agreed that the judgment of the Court  
 upon the argument herein in vacation  
 after last term be entered nunc pro tunc  
 as of the last day of the last term of this  
 Court; and it is further agreed and  
 declared by the said parties that the  
 opinion & judgment of the Court herein  
 was announced on the tenth day of  
 November 1862

March 9, 1863

Taylor & Paddock  
 attys for Petff  
 Peters for Defts.

State of Illinois vs  
 Bureau County vs George M.  
 Radcliffe clerk of the Circuit Court in  
 and for said County in the State aforesaid  
 do hereby certify the foregoing to be a true  
 and faithful copy from the Records and  
 files in my office of proceedings in the  
 within named cause



Witness my hand and the Seal of  
 our said Court at Princeton in said  
 County this 10th day of March in  
 the year of our Lord one thousand  
 eight hundred and sixty three

Geo. M. Radcliffe clerk  
 By Geo. D. Trimble Deput.

Clks fees \$51.85  
 Paid by Pltff atty.

Admission by plffs. that Waldron was  
 Sheriff of Bureau Co at the time he levied the  
 Ex mentioned in this Transcript duly elected  
 and qualified at the time said said several  
 Ex come into his hands and at the time said  
 several  
 levies were made

Supreme Court of Illinois  
Third Grand Division

Of the term of April in  
the year of our Lord One  
thousand Eight hundred  
and sixty three.

James W. Davidson  
Plff in Error.

vs.

Francis B. Cooley,  
Elisha S. Wadsworth  
Bacharach, H. Wadsworth  
John W. Farrell,  
Marshall Field and  
Charles W. Wiley

Assignment  
of Errors

Afterwards took on  
the first Tuesday after the third Monday in  
April at this same term before the Justices  
of the Supreme Court of the State of Illinois  
at the Courthouse in the City of Ottawa comes  
the said James W. Davidson by A. S. Smith his  
attorney and says 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 permitting the witness  
John Gibson to testify as to whether any  
payments had been made on the judgment of  
Smith, Tibbets & Co. and in overruling the plain-

Plaintiff's objection thereto. (Record p 55-56).

2. The Court erred in admitting in evidence the three several transcripts of judgments and proceedings under said judgments. offered in evidence by the defendants: And in overruling the Plaintiff's objection to the admission and reading of the same. (Record p 69. to 103 both inclusive)

3. The Court erred in not giving judgment for the plaintiff upon the reasons assigned by him on his motion for judgment. (Record p 106. 107).

4. The Court erred in giving judgment for the defendants

5. The judgment is against law & evidence

And the said James W. Wilson prays that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings aforesaid may be reversed annulled and set aside held for nothing. and that he may be restored to all things which he hath lost by occasion of the said judgment &c.

C. I. Smith

Attorney for Plaintiff in Error

And the said defendants in error by C. M. Hawley their attorney come and say that in the record & proceedings aforesaid and in giving the judgment aforesaid there is no error whatsoever

C. M. Hawley  
for Defendants in Error

Filed April 21- 1863

W. G. Land  
Clerk

Supreme Court of Illinois  
April Term A.D. 1863

James W. Davidson }  
vs } Error to Bureau  
Francis B. Cooley et al } County Circuit Court

It is hereby stipulated and agreed, the same having been omitted in the bill of exceptions, by and between the said plaintiff and defendants that on the trial of the said cause in the said court below, the said plaintiff admitted, as evidence, to be used on said trial that the said defendant Zachariah K. Waldron at the time the said several writs of execution came into his hands, and at the time the said several levies were made by him, and at the time the said several sales were made by him mentioned and set forth in the said three several judgments and transcripts set forth in the said bill of exceptions, two of which being in favour of Francis B. Cooley, Eliza S. Wadsworth and John V. Harwell and against said John C. Gibson, was the Sheriff of said Bureau County duly elected and qualified.

March 23<sup>d</sup> 1863 } E. S. Smith  
Atty for plff. in Error  
C. M. Hawley  
Atty for Defts. in Error

Supreme Court of Ill  
3<sup>d</sup> Ju. District

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James W. Davidson  
Plff in error

vs  
Francis B Cooley et al  
deft in error

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Recombined assignments  
of errors.

Filed Dec. 31, 1863.  
L. Deland  
Clk.

1877

delivered the opinions of the Court.  
 Mr. Justice Brewer In an action of Tress and Conversion,  
 as in an action of ejectment, the Plaintiff must  
 recover on the strength of his own title, with out  
 regard to the weakness of that of his adversary.  
 Like that, this is a paper copy action, and the  
 Plaintiff must ~~show that he has either a specific or a~~  
~~showing that he has either a specific or a~~  
 general property in the thing, (Certificate), ~~and that~~  
 and the right to ~~the~~ its possession.

This right, the plaintiff in this action  
 claims he has, <sup>to the land he is claiming</sup> by virtue of a certain writ of  
fiat facias which he had only levied on the  
 property. He claims by force of the levy  
 and if the levy he sets up, was a valid levy  
 one, he <sup>may</sup> have established his right.

The courts of Great Britain, and of this Country,  
 have entertained opposite notions as to what is  
 necessary to constitute a valid levy of an  
 execution. We do not claim <sup>to go into an</sup> ~~to go into an~~ examination of the  
 state the points of difference, <sup>on examination the</sup> ~~on examination the~~  
<sup>subject in evidence,</sup> ~~subject in evidence,~~ <sup>as to the</sup> ~~as to the~~ <sup>validity of</sup> ~~validity of~~ <sup>the</sup> ~~the <sup>copy</sup> ~~copy inasmuch as this court  
 has ~~previously~~ ~~declared~~ ~~what~~ ~~could~~  
 be ~~supplied~~ ~~a~~ ~~valid~~ ~~copy~~.~~~~

In the case of Prison <sup>vs</sup> Henford, et al.  
 25 M., 248, it was held to constitute a valid  
 levy the property must be within the power and  
 control of the officer when it is made, and he  
 must take it into his possession in a reasonable  
 time thereafter, and in such an open, public

and unscrupulous manner, as to [acquire every] thing that it has been taken in execution. He must so deal with the property, in order to convert it into a good buy, as, without the protection of the execution, his acts would make him a trespasser. This has been followed by the case of decided  
at the January Term 1863.

put in this case

2

Again, in the case of Douglas et al. vs. Whiting, 28 id., 356, this court <sup>intimated</sup> ~~expressed~~ that a buy should be endorsed on the fi. fa., and be distinct and specific.

We believe all courts hold that a buy should be endorsed on the fi. fa., and that the property should be in the view and under the control of the officer at the time he makes it, and be stored in a reasonable time after the buy is made, take possession of the property. ~~Being aware, we are justly supposed as the statute may be, as a receipt of, for if it was a good buy, the usual possession could not be taken until it should be sold.~~

It appears that even when possession is taken, it is the same for the same reason as a matter of property being on the principle of possession.

This is to prevent fraud, and to require  
 that the inducement of ownership shall be taken  
 the title is. If property be laid upon, way  
 not ~~act~~ taken into the possession of the  
 officers in a reasonable time ~~then~~ after the  
 levy, or the levy should not be open  
 and notorious, means would be afforded  
 the defendant to obtain credit on the  
 faith of the property in his possession, of  
 which he is, to an appearance, the real  
 owner. There is a species of personal  
 property, of which, at the time of a levy,  
 actual possession cannot be taken,  
 as a growing crop. In such a case,  
 it would be prudent <sup>in</sup> for the officers  
 to call some one or more of the neighbor-  
 hood to witness he had taken it in secu-  
 sion, and he should endorse the fact  
 on the writ, ~~and on a tal~~ The purchasers  
 of such a chattel would have the right  
 to enter upon the premises and gather the  
 crop. ~~The~~ Most kinds of personal property,  
 can be easily handled, and moved from  
 place to place, ~~and such~~ ~~as~~ ~~are~~ ~~not~~ ~~so~~ ~~readily~~  
~~removed~~ ~~as~~ ~~others~~ ~~are~~ <sup>ponderous</sup> ~~and~~ ~~their~~  
 removal attended with expense and trouble.  
 This may be predicated of the timber in  
 controversy, and which might justify an

officer making a copy upon it, to possess it to remain where he found it. But he should exercise some act over it, as would make him, without the protection of the writ, a trespasser. Some public, open, magisterial act <sup>should be done</sup> that would lead all persons to know the <sup>law</sup> <sup>correctly</sup> <sup>own</sup> <sup>property</sup> <sup>was</sup> claimed <sup>of</sup> it, and that the <sup>was</sup> no longer in the custody of the former owner, but in that of the law.

4  
 The testimony as to the copy in this case, to establish a copy on this lumber, the owner Gibson, ~~was examined~~ and his employee Ransell were examined. Gibson states he was called on by Matthews who had the execution against him as payee, which he said was an execution - that he demanded payment, and he, Gibson, turned out the lumber to him on it. ~~The~~ Matthews placed it in Ransell's care as custodian. He distinguished and separated the lumber piled on upon other lumber in the yard. He said he was Deputy Marshal under Davidson - he seized on about one hundred thousand feet of lumber including stumps and cots - The Marshal separated and marked out the lumber in the yard from the other lumber, and advertised for sale afterwards - does not know what became

of the deputy Marshal who made the copy, and cannot say he saw the Marshal, or deputy on the day he was to seal. ~~That~~ On his cross examination, he said when the Marshal died, he asked witness who was a proper person to put in charge of the lumber, and he mentioned Randall. Randall was in his employ. The lumber was turned out to him and he sealed on it - Matthews placed the lumber in Randall's charge, and told him to take charge of it - after that, witness had the charge of the lumber, and never had any of this lumber after that, nor any knowledge of any of it being sold by Randall or any body - does not know that the moulds of the lumber came into his store - kept no lumber account, as his accounts were kept together. The lumber was on the south side of the plank road when the Marshal died on it - had three or four hundred thousand feet in the yard at the time.

5

Randall states that he knows Matthews that he came to Abington on the 12<sup>th</sup> of November 1857 - he had some papers in his hands, and said he was A. M. Matthews and was Deputy United States Marshal, and ~~that~~ had made a

Coy on some lumber in Ebsom's lumber  
 yard belonging to Ebsom and wished witness  
 to take charge of the lumber for him - The  
 boy introduced to the Marshal by Ebsom the  
 Marshal made a division of the lumber yard.  
 There was a certain telegraph pole in the yard,  
 the number that lay each return this pole  
 and the plank road was the lumber coiled  
 on. The lumber west of this pole he did  
 not buy on, and witness was to sell it as  
 usual - The Marshal was to go to Chicago  
 and then write witness what arrangement  
 was to be made with regard to the lumber  
 he had coiled upon - if he did not write  
 and say witness, know what arrangement  
 was made then witness was to go on and  
 sell the lumber as he had been doing -  
 He did not write - got no word from him,  
 went on and sold part of the lumber as  
 witness had been doing. In April 1858, witness  
 removed this lumber to make room for  
 a load that had arrived by the <sup>for my party,</sup> cars, about  
 5000 feet of which was sold to Ebsom -  
 they went on and retained the McCurdy lumber  
 to different persons, until the Sheriff came  
 and seized upon all the ~~remaining~~ lumber  
 remaining in the yard including the  
 lumber coiled on by the Marshal - After

that there was no more lumber sold until the  
 Sheriff sold it. He further says he ~~was~~  
~~was~~ ~~heard~~ ~~the~~ ~~sheriff~~ ~~to~~ ~~was~~ ~~to~~ ~~pay~~ ~~the~~  
 proceeds ~~was~~ ~~to~~ ~~Edison~~ it was part of the  
 arrangement made with the Marshal, as he  
 sold lumber he was to pay it (the proceeds)  
 over to Edison - that he had ~~some~~ about \$2,000  
 for and had paid the money over to Edison.  
 On his cross examination he says he  
 waited three or four months to hear from  
 the Marshal before he sold any of the  
 lumber - The Marshal said if he did  
 or did not write he could not say which,  
 witness was to tell the Marshal but was to  
 pay the money to Edison - he said the money  
 might go to ~~pay~~ the present execution -  
 he forgets whether the Marshal told him to  
 sell if he did or did not write - He  
 accounted for what he sold and Edison  
 paid him until part of April 1858, he  
 obeyed the Marshal as he understood him -  
 There was no inventory of the lumber taken by  
 the Marshal or by witness, and none visited  
 to be taken.

This is the substance of all the testimony  
 going to prove a conspiracy, and it falls far short  
 of the requisites necessary to make a valid  
 conspiracy. Admitting the person having the

Sennett

<sup>was an officer</sup>  
 papers, and one of them was an execution,  
 of neither of which, is there any proof,  
 there is no proof of an actual levy. ~~made~~  
 So far as the debtor himself is concerned,  
 the levy may be good, but we are trying the  
 question with reference to the rights of  
 third persons, in view of the rule established  
 by this Court in Mcivor <sup>vs.</sup> Benford, before cited.  
 The lumber was in view of the officers, "though  
 there is no proof he looked at it, and being  
 out in the open yard, was under his power  
 and control for the moment, but he did no  
 act, and made no declaration by which other  
 interested parties or the public, might know  
 he had seized the lumber on an execution.  
 On the contrary three witnesses residing within a  
 few rods of the lumber yard state that they  
 never heard of the levy by the marshal, and that  
 Gibson arriving and up to the time of the levy by  
 the deputy sheriff Waldron, was in the possession of  
 the lumber and engaged in selling it as usual  
 at retail. The division of the lumber, by the  
 telegraph pole and plank road, was a mere  
 incidental act of the parties. There was no actual  
 division or separation of one portion of the  
 lumber from ~~the~~ another, or any public  
 declaration, that all the lumber <sup>belonged to</sup> ~~was~~  
 certain telegraph pole and the plank road.

was taken in execution. The officer, if he was  
 one, did not go towards the timber, that  
 would make him a trespasser if he had no  
 writ. This is ~~an~~ an explicit criterion of a levy,  
 as we have said. Nor did the officer endorse  
 any levy on the execution in its life time. It  
 appears, that after the execution of the writ  
 of officer of the Marshal and eleven months  
 and ~~a half~~ <sup>to nearly one & a half</sup> after the alleged levy, that officer  
~~was~~ returned the execution with this endorse-  
 ment: This writ came to hand Nov. 13. 1857 at  
 12 o'clock M. Saw W. Davidson by H. M.  
 Matthews. This execution is returned by order  
 of plaintiffs attorney being heretofore levied  
 on 175,000 feet of lumber at Arlington in the  
 Northern District of Missouri, also on (a certain  
 tract of land denominated) ~~is~~ turned out by James  
 C. Gibson as his property) all of which was  
 afterwards turned on the 6<sup>th</sup> day of September  
 1858 advertised by me for sale, but there was  
 no sale of either the said lumber or land,  
 because prior to the day of sale the said  
 lumber had been ~~in~~ sold or disposed of by  
 said Gibson, or by some other person, and by  
 an examination of the records it appears  
 that Gibson had no title to the land above  
 described. This execution is therefore returned  
 by order of plaintiffs attorney without sale

and uncasted Nov. 3. 1858 - James W. Davidson late U. S. Marshal Northern Dist. Ills.

It may not appear in what character the person receiving the execution, acted. ~~any~~ No official character is assigned to the name of either Davidson or Matthews, at the time the writ came to hand, nor is there any proof that either of <sup>them</sup> was, in fact, or had ever acted, the one as Marshal, and the other as his deputy. ~~Some~~ The statement of the levy is too indefinite and uncertain, to give the Marshal a right of possession or property in the Number. It does not show when it was levied, whether in the life time of the frifa, or after it had expired, nor upon what number ~~it was levied~~ or kind or description, so that others interested might be notified of a change of possession by means of a levy. For all that appears, "levied before" may mean that it was levied on after the ~~an~~ life of the execution. There is nothing definite or certain about it - nothing to notify other parties of the fact that the Number was in the custody of the Law by a regular and valid levy, and like a <sup>they was</sup> ~~that~~ only about one hundred thousand feet levied or including shingles and laths. We infer from the testimony of Randall, that the

10.

only "separation and marking out" the lumber  
 piled on from the other lumber in the yard  
 was that spoken of by Russell which was  
 the appropriation of all the lumber each  
 of a certain telegraph pole and between  
 that and the plank road to the location  
 and which was afterwards removed to  
 make way for the McGraw lumber. There  
 was no displacing of the pile of lumber,  
 no change made in its position, no  
 mark put upon it to show that it was  
 in the custody of the law, and no act done  
 by which, without the writ of execution, the  
 office could be made a warehouse.

In addition to all this, the lumber was  
 left in the possession of an employee of  
 the defendant who was instructed on a  
 certain contingency, ~~to~~ to go on and  
 sell it as usual, and pay over the  
 proceeds to the defendant in the execu-  
 tion which he did do. These facts, if the  
 levy was a valid one, furnish strong  
 grounds for the belief, ~~that~~ taken in connec-  
 tion with the fact that a judgment of seven  
 hundred dollars made by the defendant,  
 was not satisfied in the execution, that  
 the levy was colorable only, and made to  
 shield the property from the claims of other

parties, or to create a lien separate from the possession  
under which they can will enforce. Lang v. Northington,  
4 Penn. State R. 155. But if the levy was asked, ~~seizure~~

without permitting the property to remain for months  
in the possession of the defendant, or of Randall  
who was in the defendant's employment, taking  
from it, as advised and paying over the proceeds  
to the defendant, was fraudulent, as against  
third persons having demands against the  
defendant and made the execution under  
which the levy was made <sup>and therefore, constructively fraudulent</sup> void as to  
them. The rule is well settled if the plaintiff  
is a creditor <sup>a creditor</sup> ~~in an execution~~ seize the goods  
of a debtor under an execution and suffers  
them to remain in the possession of the  
debtor, the execution is deemed fraudulent  
and void as against a subsequent execution  
Stora v. Wood, 11 Johns., 110. ~~This must be~~  
~~with the creditor consent it is admitted that~~  
~~and that may be shown by circumstances~~

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It is admitted the consent of the creditor  
must be shown. It must be shown that  
the creditor actually <sup>to</sup> instructed the officer  
or that the facts and circumstances are such, as  
to justify the inference that instructions  
were given - that the delay ~~was~~ was with the  
knowledge and assent of the creditor. The fact  
that the plaintiffs were proceeding on an  
execution to collect seven hundred dollars

More than was due upon it - the presumption that the Marshal informed the plaintiffs attorney at Chicago, of the arrangement made with Randal about the disposal of the lumber, and he countermanded by him, warrants the inference that all the acts done in reference to this lumber were done with the knowledge and approbation of the Counsel for the plaintiffs, and for the purpose of protecting the property from the claims of other creditors. This being so, the exemption, was granted -  
 sent as against ~~the~~ such persons. X

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2199 But waiving all this, as not being properly  
 in the case, the question is not, ~~but~~ whether  
 the plaintiffs in the execution have lost their  
 lies, or their numbers by the delay, but it is, has the Marshal lost  
 the benefit of the levy by reason of his  
 delay. There is no attempt to throw a  
 loss on the plaintiff in the execution here  
 by the Marshal, but the loss is thrown  
 on the Marshal's officer who is the party  
 in fault for the delay in levying and  
 selling. If the attempt here, was to  
 throw the loss on those plaintiffs, then  
 they might well say that they did not  
 authorize the delay. The Marshal  
 is the Meritorious party in this action  
 and he alone can be held to suffer  
 by his own negligence. The plaintiffs  
 in the execution here by him, have  
 their remedy against him.

That it is urged by the plaintiff, that  
the validity of this levy, cannot be  
sustained into by this Court, as the pro  
under which it was made, was issued  
by ~~such~~ a Court of a different jurisdiction  
and much labor and expense <sup>have</sup> been  
expended in the argument on this point.  
We have looked into the case cited by  
the Counsel, and much say they do not touch  
such a case as this. Here a remedy is  
sought by us in individual, not as an officer  
of the United States, in a Court of the State  
in a matter over which the State Court has  
unquestioned jurisdiction, namely, an arising  
action of Torts. ~~Therefore~~ <sup>Therefore</sup> ~~we say~~ <sup>we say</sup> for the

The Plaintiff, to sustain his claim, has to give  
 some evidence of his rights, and whatever be  
 the character of that evidence, like every  
 thing else in the case it becomes subject  
 to the scrutiny of the Court trying the Cause;  
 and thus in no case of jurisdiction, or  
 usurpation of power, belonging to the  
 Court which issued the execution.

The Court which issued the execution  
 under which this levy was made, <sup>is deemed to have been</sup> was  
 a Court of the United States, but the officer  
 is suing in a State Court, as an individual  
 and he must show that Court that the  
 writ under which he pretends to claim  
 property, was properly issued by that Court,  
 and that he has a valid levy under it.  
 It would be strange indeed, if such questions  
 could not be heard and decided by the  
 State Court, without the <sup>hazard</sup> of a clash  
 of jurisdictions, on the charge of usurpation  
 of power. The books abound with cases  
 of this kind, where jurisdiction is claimed  
 for a Court ~~to~~ under process issuing from  
 different jurisdictions, and the validity of such  
 process examined and adjudged. ~~With~~  
~~the~~ ~~jurisdiction~~ ~~of~~ ~~the~~ ~~State~~ ~~Court~~ ~~has~~ ~~been~~ ~~examined~~  
 and ~~has~~ ~~been~~ ~~adjudged~~ ~~in~~ ~~its~~ ~~own~~ ~~right~~ ~~and~~ ~~power~~.

The jurisdiction must be examined.

Suppose a party, suing in a State Court in an action of ejectment claiming title by virtue of a sale of the premises under an execution issued out of the District or Circuit Court of the United States, is not the validity of the execution and of the proceedings under it, a fair object of investigation and adjudication by the State Court? Is the writ, because issued by a Court of the United States, invulnerable to any attack in a State Court, when it is there offered as evidence? What law or principle of justice, ~~there is no~~ ~~more~~ bestows upon such proofs, such immunity? Is not the claimant bound to show the execution valid, and the proceedings under it legal if ~~it~~ <sup>is</sup> attacked? The answer must be in the affirmative. Is the principle different, when personal property is the subject of the action?

We are inclined to think this is the first time that an objection has been made. It certainly has no merit or force in it.

The judgment must be affirmed.

~~In this opinion the whole Court concurred.~~

Judgment affirmed.

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Dawson  
42

Walton et al.

opinion by

Mesa J.

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Rem 155

C.R.

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Supreme Court of Illinois,  
THIRD GRAND DIVISION.

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APRIL TERM, A. D. 1863.

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JAMES H. DAVIDSON,

PLAINTIFF IN ERROR,

vs.

FRANCIS B. COOLEY & OTHERS,

DEFENDANTS IN ERROR.

No. 128.

---

**POINTS AND AUTHORITIES**

FOR

PLAINTIFF IN ERROR.

I.

The property levied upon by the Plaintiff in Error, as United States Marshal, was in the custody of the law, and was not liable to be taken by another execution in the hands of a different officer, acting under another jurisdiction, and herein.

1.—The property was in the custody of the law.

*Taylor vs. Caryl*, 20 How. U. S., 595.

*Ludden vs. Leavitt*, 9 Mass., 104.

*Brashear vs. West*, 7 Peters, 608.

- 2.—The property thus levied upon by the Plaintiff in Error, was not liable to be taken on another execution in the hands of a different officer, acting under another jurisdiction.

*Hagan vs. Lucas*, 10 Peters, 400.  
*Peck vs. Jenness*, 7 How U. S., 612.  
*Taylor vs. Caryl*, 20 How. U. S., 583.  
*Freeman vs. Howe*, 24 How. U. S., 455-9.  
*Brown vs. Clarke*, 4 How. U. S., 4.  
*The Oliver Jordan*, 2 Curtis, 415.  
*Exparte Robinson*, 6 McLean, 356.  
*Pulian vs. Osborn*, 17 How. U. S., 474.  
*United States vs. Booth*, 21 How. 507.

- 3.—The general rule is settled beyond all controversy, that State Courts cannot enjoin nor interfere with proceedings in the United States Courts; nor the latter in the former Courts.

*Act of Congress*, Melh. 2, 1793, ch. 22, sec. 5.  
*Story's Eq Jurisp.*, vol. 2, p. 241, sec. 900.  
*Story on the Cons.*, secs 1757-1759.  
*Kent's Commentaries*, vol. 1, page 412.  
*Diggs vs. Wolcott*, 4 Cranch, 179.  
*Kittridge vs. Emerson*, 13 New Hamp. 227.  
*McKim vs. Voorhies*, 7 Cranch, 279.  
*Cruikshanks vs. Robarts*, 6 Madd., 104.  
*Mead vs. Merritt*, 2 Paige, 404, 405.  
*Bicknell vs. Field*, 8 Paige, 440.  
*United States vs. French*, 1 Gall, 1.  
*Phelan vs. Smith*, 8 Cal. 520.  
*City Bank of N. Y vs. Skelton*, 2 Blatch.,  
 C. C., 14.  
*Exparte Cabrera*, 1 Wash. C. C., 232  
*Dudley's Case*, 1 Penn. Law Jour., 302.  
*Osborn vs Bank of U. S.*, 9 Wheat., 738.

- 4.—The word "PROCEEDINGS" as used in the above rule, includes the sale of a sheriff under an execution, as also the levy made by him upon property by virtue of the execution.

*Wayman vs. Southard*, 10 Wheat., 1.  
*Duncan vs. Dart*, 1 How., 304.  
*Beers vs. Houghton*, 9 Pet., 329.  
*United States vs. Knight*, 14 Pet., 329.  
*Amis vs. Smith*, 16 Pet., 312

5.—This rule is founded not only upon comity, but upon public necessity.

*Frecman vs. How*, 24 How., 455-9.

*Mead vs. Merritt*, 2 Paige, 404.

*Peck vs. Jenness*, 7 How., 625.

6.—The fact that the Plaintiff in Error, in this case, sought to enforce the rights secured by his levy in the State Court, cannot affect the application of this rule. Having made the first levy, the State Courts cannot inquire into its regularity or validity, but must remit those questions to the tribunal from which the process issued, and could, with no greater propriety, defeat an attempt to assert such right on the ground that the execution was dormant, than it could enjoin the Marshal from proceeding to sell under such an execution for the same reason.

## II.

The execution held by the Marshal, and by virtue of which he levied upon the property of Gibson, was not, by reason of the delay in selling the property thus levied upon, dormant as to these defendants, nor as to any other creditors of Gibson; and herein

1.—The question as to whether an execution is, or is not dormant, is one of intent; and it must appear that the Plaintiff, in the execution, intended by it to hinder, delay, or defraud other creditors, and that it was levied to cover the goods merely, or create a lien separate from the possession.

*Seanty vs. Worthington*, 4 Rawle, 155.

*Matthews vs. Warne*, 6 Halst., 310.

*Bac. Abr.*, Fraud "A."

*Bradley vs. Windham*, 1 Wills, 44.

2.—And hence it is that this fraudulent intent must be established by some act of the Plaintiff in the execution. A delay in making sale is merely evidence of an intent to cover the property, when such

delay proceeds from the directions of, or is caused by, the Plaintiff's interference with the officer in the execution of the writ.

*Herkimer County Bank v Brown*, 6 Hill, 232.  
*Russell v. Gibbs*, 5 Cowen, 390.  
*Butler v. Maynard*, 11 Wend., 552.  
*Rew v. Barber*, 3 Cowen, 279.  
*Benjamin v Smith*, 12 Wend., 404.  
*Brown's Appeal*, 26 Penn. State, 402.  
*Doe v. Ingersoll*, 11 Smedes & M., 250.  
*Houston v. Sutton*, 3 Harring., 37.  
*Hickman v. Hickman*, 4 Harring., 484.  
*Cumberland Bank v. Hanx*, 4 Harr., (N. J.)  
 168.  
*Power v. Van Buren*, 7 Cow., 560.  
*Paton v. Westervelt*, 13 N. Y. Leg. Obs., 7.  
*Etheridge v. Edwards*, 1 Swan, 426.  
*Cox v. McDougal*, 2 Yeates, 434.

3.—In this case the delay in making sale proceeded from no act or directions of the Plaintiff in the execution. The law and the officer were left to take their course; and in postponing the sale from time to time, the Marshal did so in the uncontrolled and undirected exercise of his own discretion. The delay therefore not proceeding from any act of the Plaintiffs, nor with their knowledge, it would be impossible that from an act in which they did not participate, and of which they were ignorant, any presumption could be indulged in against them.

4.—All presumptions of fraudulent intent or purpose upon the part of the Plaintiffs in the execution, are met and overthrown by the facts in the case. It does not appear that at the time the execution was levied by the Plaintiffs in Error, Gibson, the Defendant in Error, had any other creditors. The Defendants in Error were not his creditors until several months after the levy was made. There could, therefore, have been no intent to delay them, because they were not then creditors of Gibson. Again, the levy was not upon all of Gibson's property, but only a portion of it, barely sufficient to satisfy the execution. At least \$14,000 worth of personal property was left exposed to any other process, and which was not levied upon by the Plaintiff in Error. There could have been no intent to cover the property of the debtor, for but a small portion of it was levied upon.

5.—The lumber levied upon was left in the custody of a third person, appointed by the Marshal. The acts of the custodian in permitting the Defendant in the execution to interfere with the property, could neither affect the rights of the Marshal, nor the Plaintiffs in the execution. He would simply make himself liable to them in damages.

6.—The authorities cited by the Defendant in Error are not in point.

In *Knower vs. Barnard*, 5 Hill, 377, the property levied upon was left in the possession of the Defendant, and the sheriff was directed by the Plaintiff's attorney not to sell on the execution. In *Kimball vs. Munger*, 2 Hill, 364, the Plaintiff directed the sheriff not to proceed to sell unless forced to do so. *Benjamin v. Smith*, 4 Wend., 336, is an authority against the Defendants in Error, for in that case the Court say "The mere delay of the officer, without countenance or direction from the Plaintiff in the execution, will not render the execution dormant." In *Hickock v. Coates*, 2 Wend., 419, the Plaintiff in the execution ordered the officer to suspend further proceedings till he gave further directions. In *Kellogg v. Griffin*, 14 Johns., 573, the Plaintiff's attorney gave instructions to the sheriff to make a levy, but to do nothing until ordered. In *Minor v. Herriford*, 25 Ill., 346, this Court simply hold, that in order to make a levy, the sheriff must so deal with the property, as without the protection of the writ his acts would make him a trespasser; and *Ross v. Weber*, 26 Ill., 223, is directly against the Defendants in Error, for this Court there held, that without an agreement for delay, or instructions to that effect, the execution will not, by reason of the delay, be rendered dormant.

7.—That there were no agreements, instructions or directions for delay in this case, is affirmatively shown.

8.—The course pursued by the Defendants in error, was so manifestly unfair in its purpose, and unjust and oppressive in its consequences, that they should be entitled to no favor. Their judgments were entered on judgment notes long before the notes were due. Execution was levied upon the property covered by the execution held by the Plaintiff in error, while there was an abundance of other property out of which it might have been satisfied. They were notified of the Marshal's levy, and of the day when he had advertised to sell, but insisted that they could "beat the Marshal's lawyer," and had advertised their sale for two or three days previous. They sold at least \$14,000 worth of goods, on an execution where the

debt was not then due, and hurried the property out of the way before the Marshal's day of sale arrived. They ruined the debtor and destroyed the rights of the Plaintiffs in the execution, by an arbitrary and oppressive use of judicial process, where there was no necessity for it.

### III.

The judgments by confession upon which the executions under which the Defendants in error seek to justify the taking and conversion, were entered by the clerk, and are irregular and void; therein,

- 1.—The debts for which the judgments were entered were not due at the times the judgments were so entered.

*Scates st.*, vol. 1, p. 262.

*Clapp v. Ely*, 3 Dutch, 559

*Burns v. Morse*, 6 Paige, 108.

*Parker v. Griggs*, 1 Southard, 161.

*Cleve v. Applegate*, 2 Southard 479.

*Shepard v. Shepard*, 5 Halsted, 252,

- 2.—There was no power by the warrant of attorney to enter judgments at the times they were entered for the amounts for which they were thus entered. The warrants of attorney simply authorize the entry of judgment for as much as *appears to be due*, according to the tenor and effect of said note. *There was nothing then due*, and hence no power to enter judgment for any sum whatever.

- 3.—The judgments in favor of the Defendants in error was entered *in solido* on three notes, to each of which there was attached a warrant of attorney, authorizing a judgment upon it. There was no authority, therefore, to enter up judgment on all the notes, together for their aggregate amount, and this judgment was entered in va-

cation. The rule is imperative that the authority given by a warrant of attorney must be strictly pursued.

*Field's Practice*, vol. 1, p. 552, side page.

*Paris v. Wilkerson*, 7 T. R., 133.

*Harire v. Wade*, 1 Chitty, 322.

*Gee v. Lane*, 15 East, 592.

*Cerire v. Allaway*, 87 R., 257.

*Rowe v. Alderson*, 7 Taunt, 453.

*Henshall v. Multheney*, 7 Bing., 337.

*Gale v. Foster*, Minor, 12*u*.

*Stevens v. Dubarry*, Minor, 379.

*Man. Mech. Bank v. St. John*, 5 Hill, 461.

*Man. Mech. Bank v. Boyd*, 3 Denio, 254.

*Chobald v. Chilver*, 4 M. & G., 62.

*Romney* ~~*Leante*~~, *Assignee &c v. Hunt*, 24 Ill., 603. 598

- 4.—One of the notes upon which the payment in favor of the Defendant in error was entered, was payable to other parties, and by the payers assigned to the defendants in error. A warrant of attorney is not assignable.

*Osborn v. Hawley*, 19 Ohio, 130.

*Marsden v. Soper*, 11 Ohio State, 503.

- 5.—There is no proper proof of the execution of the warrants of attorney, on which the judgment in favor of the Defendants in error was entered.

E. A. STORRS, for  
E. S. SMITH,  
*Attorney for Pl'ff. in Error.*

128-50

Davidson

to

Wiley H. Hays

Stiff Point

Filed Apr 28 1863

L. Leland  
CR

Received of Wiley H. Hays  
 the sum of \$100.00  
 for the purchase of  
 land in the town of  
 Stiff Point, in the  
 county of ... State of ...  
 L. Leland  
 Clerk

IN THE  
**SUPREME COURT OF ILLINOIS,**

THIRD GRAND DIVISION,

April Term, A. D. 1863.

James W. Davidson,  
Plaintiff in Error.

vs.

FRANCIS B. COOLEY, ELISHA S. WADSWORTH, ZACHARIAH  
K. WALDRON, JOHN V. FARWELL, MARSHALL FIELD,  
and CHARLES W. WILCOX,

*Defendants in Error.*

Error to Circuit Court of Bureau County, Ill.

ABSTRACT OF RECORD.

*Filed April 21-1863*

*H. G. Galand*  
CHICAGO: *Clark*

PRINTED BY BEACH & BARNARD, NO. 14 SOUTH CLARK STREET.

1863.

IN THE  
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THIRD GRAND DIVISION,

April Term, A. D. 1863.

James W. Davidson,  
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v. s.

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*Defendants in Error.*

**Error to Circuit Court of Bureau County, Ill.**

ABSTRACT OF RECORD.

CHICAGO:

PRINTED BY BEACH & BARNARD, NO. 14 SOUTH CLARK STREET.

1863.

## ABSTRACT OF RECORD.

---

Rec. p. 1 DECLARATION states that, at Arlington, in said county and State, on the 13th of November, 1857, the plaintiff was lawfully possessed, and the owner of certain lumber, boards, scantling, planks, and lath, of the value of \$1,200.00; that on said day, he casually lost the same out of his possession, and that they came into possession of the defendants, by finding; that defendants, knowing same to be plaintiff's property, but contriving and intending to injure plaintiff, have not delivered same to him, though often requested, but converted and disposed of same to their own use, to the damage of said plaintiff, of \$1,200.00. Filed, February 4, 1862.

### PRÆCIPE.

4 SUMMONS to Cook county, issued February 4, 1862; served  
5 March 10, 1862, on John V. Farwell, and Marshall Field,  
other defendants not found.

6 SUMMONS to Bureau county, served February 8, 1862, on  
7 Zachariah K. Waldron. March 19, 1862, default, as to Z.  
K. Waldron.

8 ORDER of Continuance and alias summons against Cooley,  
Wadsworth, and Wilcox, defendants, directed to sheriff of  
Cook county, March 21, 1862.

PLEAS filed May 9, 1862.

1st. NOT GUILTY.

10 2nd. That on the 24th of April, 1858, in the Circuit

Court of Cook county, one George G. Wilder recovered two certain judgments against one John C. Gibson, by confession and cognovit, one for \$820.70 and costs, the other, \$827.16 and costs, and caused writs of *fi. fa.* to be issued on each thereof, directed to the sheriff of said Bureau county, 11 which writs were respectively returned on the 22d and 24th of July, 1858, by order of the plaintiff therein; that on the 22d of July, 1858, said Wilder caused an alias writ of *fi. fa.* to be issued on the second of said judgments, out of Cook County Circuit Court, to the sheriff of Bureau county, directing him to make said \$827.16, out of the property of 12 said Gibson, and \$5.70 costs; that on the 24th of July, 1858, said Wilder caused an alias *fi. fa.* to be issued out of Cook County Circuit Court, to the sheriff of Bureau county, on 13 his other judgment, to make of said Gibson, \$820.70, and costs amounting to \$5.70; that said writs came into the said sheriff's hands July 26, 1858, said Zachariah K. Waldron, 14 defendant herein, then being such sheriff; that on July 28, 1858, said Waldron, as sheriff, levied said writs upon the lumber, boards, plank, scantling, and lath, mentioned in plaintiff's declaration, as the property of said John C. Gibson. That July 26, 1858, Francis B. Cooley and Elisha S. 15 Wadsworth, and John V. Farwell, recovered judgment, by confession, in said Cook County Court of Common Pleas, against said John C. Gibson, for \$3,281.60, and costs, and on the same day caused a writ of *fi. fa.* to be issued thereon, directed to the sheriff of Bureau county, to make said sum of money, and \$5.70 costs, of said Gibson; that on July 27, 16 1858, said writ came into the hands of said Waldron, sheriff; that by virtue of said writ and said levies, made as aforesaid, and the liens made on said property by means of said three writs, said sheriff advertised and sold said property above named, 17 to satisfy said judgments; that at the times of making said levies, said defendants aver that said John C. Gibson was in possession of, and engaged in selling and disposing of said lumber, boards, &c., mentioned in said declaration, in his 18 customary and usual manner, at Arlington, in said Bureau

county, and had been in possession of, and so engaged, for a long time prior to said levies; that said lumber, &c., was liable to be so levied on and sold under said writs to satisfy said judgments; that the proceeds thereof were duly and properly applied towards the satisfaction of said judgments; that said Cooley, Wadsworth, and Farwell, and said Field and Wilcox, as their agents, directed said sheriff to so levy on and take said lumber, &c., mentioned in said declaration, under said writs, which are the same trespasses complained of in said declaration.

- 19 That after said levy was made, said Field and Wilcox acted under the direction of said sheriff, and as his clerks, in the sale of said property.
- 20 AFFIDAVIT of John V. Farwell, to require security for costs.
- 21 LETTER attached to said affidavit, from James W. Davidson.
- 22 MOTION FOR COSTS.
- REPLICATION omitted in record.
- 23 DEMURRER to said replication filed October 6, 1862.
- 24 RULE taken for plaintiff to file security for costs, October 7, 1862. State points.
- 26 SECURITY for costs filed, and rule discharged, Oct. 8, 1862. LEAVE to withdraw replication to 2d plea from files.
- 27 33 AFFIDAVIT of Milton J. Peters, for deferring cause, filed October 9, 1862.
- 34 REPLICATION filed October 9, 1862; denies the recovery of two judgments by George G. Wilder, in the Cook County Circuit Court, against John C. Gibson, on the 24th of April, 1858, and the recovery of a judgment in said Court of Common
- 35

Pleas of Cook county, on the 26th of July, 1858, by Elisha S. Wadsworth and John V. Farwell, against said John C. Gibson, and avers that at the times when, &c., in said plea mentioned, said Gibson was not in possession or possessed of said property, and that the same was not liable to be levied on and sold as stated in said plea.

36       AGREEMENT of counsel for final argument of cause before Judge Hollister, at chambers, October, 31, 1862.

37       STIPULATION that either party shall have 90 days after announcing the decision of the Court, to prepare bill of exceptions, and that same shall be as if filed in the term when cause was tried; also that either party may appeal by filing bond in double the amount of judgment rendered, in 30 days after rendition thereof; dated Nov. 1, 1862.

38       AGREEMENT to extend time to January 25, 1863.

39       BILL OF EXCEPTIONS; filed February 5, 1863.

*The said James W. Davidson, to maintain the issues on his part, called JOHN C. GIBSON as a witness, who, being duly sworn, testified, and said:*

My name is John C. Gibson; I live in Westfield township, Bureau county, Illinois. I know the firm of Jewett, Tibbetts & Co.; they live in Boston. In 1857 I was owing them \$1,500 or \$1,600; they sued me on that indebtedness in the United States Court in Chicago, and obtained judgment against me there.

40       Here plaintiff's attorney produced, and offered to read in evidence to the Court, a record of a judgment rendered, and proceedings had thereunder in the United States Circuit Court for the Seventh Circuit and Northern District of the State of Illinois, wherein David B. Jewett and others, are plaintiffs, and James C. Gibson defendant.

41 50 RECORD AND PROCEEDINGS in said United States Court.

51 WRIT OF FIERI FACIAS.

52 RETURN, &c., thereon. This writ came to hand Nov. 13, 1857, at 12 o'clock, M.

JAS. W. DAVIDSON, *U. S. Marshal.*

*By* H. M. MATTHEWS, *Deputy.*

53 This execution is returned by order of plaintiff's attorney, being heretofore levied on 175,000 feet of pine lumber, at Arlington, in the Northern District of Illinois; also on the north-west quarter and north half of the north-east quarter of section No. eighteen, in township No. 17, north of range No. eleven, east of the fourth principal meridian, (turned out by the defendant Jas. C. Gibson, as his property), all of which was afterwards, to wit., on the 6th day of September, A. D. 1858, advertised by me for sale, but there was no sale of either said lumber or said land, because prior to the day of sale, the said lumber had been sold or disposed of by the said Gibson, or some other person; and by an examination of the records at Princeton, in Bureau county, where said land is situated, it appears that said Gibson had no title to the said land above described. This execution is therefore returned by order of plaintiff's attorney, without sale and unsatisfied. Nov. 3d, 1858.

JAS. W. DAVIDSON, *late*

*U. S. Marshal, Nor. Dist. Ill.*

53 Thereupon defendant's counsel moved said Court to arrest  
54 same from its consideration; objections of defendants' counsel overruled by the Court, and said record read, to which defendants excepted.

John C. Gibson further testifies, "I was sued and served with summons in the name of James C. Gibson."

Whereupon, counsel for defendants again interposed, and insisted "that plaintiff must prove he was marshal," and the said Court then and there overruled said objection of defendants' counsel, and permitted the plaintiff to proceed with the examination of said witness, to which opinion of the Court, the counsel for defendants excepted.

55 "I was called on by Matthews, who had the execution against me, in favor of Jewett, Tibbetts & Co, or papers which he said was the execution. He asked me for payment. I turned out the lumber to him on it. This was in November, 1857—I think the latter part of the month. He placed the lumber in D. H. Randall's care, as custodian. He designated and separated the lumber levied on, from other lumber in the yard. When he came to me, he stated that he had an execution against me, and told me the amount of the execution. He said he was deputy marshal, under Davidson; he acted as deputy marshal, and levied the execution upon about one hundred thousand feet of lumber, including shingles and lath. I was then selling lumber at \$18 a thousand feet of lumber. The lumber was at Arlington, in my yard. The marshal separated and marked out the lumber in the yard, from the other lumber. The marshal advertised for sale afterwards. I do not know what became of the deputy marshal who made the levy. I can't say whether I saw the marshal or deputy, on the day he was to sell."

CROSS EXAMINED *By Defendants' Counsel.*

"I know D. H. Randall. He lived in Arlington. He was in my employ when the lumber was taken by the sheriff. He partly was in the grain trade for himself. He was in my employ, in my yard, in 1858. I was in the lumber business until July or August. The judgment of Jewett, Tibbetts & Co., was \$1,500, or \$1,600."

Defendants' counsel then asked the witness the following question :

“ Was anything paid on the judgment ?”

*Whereupon, plaintiff's attorney interposed, and insisted, that the question, and evidence sought, were both improper and not admissible in law, and moved the said Court not to permit or receive the same; and the said Court then and there held and affirmed that the evidence was proper and admissible—to which opinion of the Court, the plaintiff's attorney excepted.*

“ I paid \$700 on this judgment at one time. It was on the 27th of October, 1857. I paid it before the levy was made. I paid it to E. S. Smith, plaintiff's attorney, in Chicago; I took his receipt for it at the time; this was before the execution issued.”

Defendants' attorney then asked the following question :

“ Did you make any arrangement with Mr. Smith, the attorney of Jewett, Tibbetts & Co., by which a levy was to be endorsed on the execution as security for the payment of their judgment in favor of Jewett, Tibbetts & Co., and that there was no sale immediately to take place, but that you were to have time to raise the money and pay the judgment, just prior to the issuing of the execution ?”

*Answer.* “ No, sir; there was no arrangement at all on that subject. All the conversation was, that I tried to get Mr. Smith not to send the marshal with the execution immediately, which he would not agree to. Don't recollect that I swore differently on the subject in Chicago. I had had a talk with Mr. Peters; I don't recollect what it was. I did n't tell Mr. Peters as he asks. I don't understand there was any conversation with Mr. Peters about the long delay

57 about the levy of the execution by the marshal. I told Mr. Peters that the marshal had made a levy, and other parties were trying to take the property from him. I never told Mr. Peters there was an arrangement by which delay was to be had on marshal's levy. I have no knowledge of ever saying so to Mr. Peters. I never said any such thing at any time to my knowledge. The conversation with Smith was in Chicago, on the 27th of October, 1857, at Smith's office. All that I then said to Smith was, to get Smith to hold on and not let the execution come out. I never agreed with Smith or anybody to have any delay. I don't remember that I ever told anybody that there was any arrangement. I can't remember what I swore to at Chicago. I think I paid some on this judgment after paying the \$700. I have a faint recollection that I paid Smith at Chicago \$200. I have forgotten if I paid another \$100. Don't recollect whether I paid the \$100 or not. I recollect the \$200. Can't tell whether the \$200 was paid some time after the \$700 was paid. I can't say how long after. Nothing was said when I paid the \$200 about the levy. I will swear nothing was said about extending the time on the levy. I don't think I told Randall I had paid Smith \$100, or had fixed up the judgment. Matthews made the levy. He had the papers. I had seen him before—not since. I had no talk with the marshal about extending the time on the levy. When the marshal levied, he asked me who was a proper person to put the lumber in charge of; I told him Mr. Randall was an honest man, and would care for it. I turned the lumber out to him, and he levied on it; I then left the yard and went to the store. Matthews was with Randall in the yard. I introduced Mr. Randall to him. Matthews placed the lumber in Randall's charge. He told Randall to take charge of the lumber. I had no charge of the lumber after that. I never sold any of this lumber after that, nor had any knowledge of any of this lumber being sold by Randall, or anybody. I don't know whether the proceeds of the lumber came into the store. I kept no lumber account. All my

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accounts were kept together. I did not know what the extent of the sales of lumber were. Randall will know about it. The lumber was on the south side of plank road when the marshal levied on it. I had three or four hundred thousand feet in the yard at that time. There was over a hundred thousand feet when Cooley, Farwell & Co. levied on the lumber. I had received a cargo of seventy or eighty thousand feet after the marshal levied, and before the sheriff levied. Randall was to sell what lumber was not levied upon. There was no arrangement made between Matthews, Randall, and myself, about selling the lumber levied on. I had a right to sell all such lumber as was not levied upon. I did not ask the marshal for the right to sell the lumber levied on. I asked no such right. I ordered Randall to sell the lumber not levied on."

RE-EXAMINED *By Plaintiff's Attorney.*

59 "I had other lumber in the yard than that levied upon by the marshal—you are right sir; now I remember it, since you call my attention. The \$200 I paid Smith was another claim he held. It was a claim in favor of Willard & Co. The \$700 was all that was paid on the Tibbetts judgment. I don't remember that I told Randall that I had paid the \$200 on this judgment."

DRAZEN H. RANDALL, being duly sworn for plaintiff, testified as follows:

"I don't know Cooley, Farwell & Co. I know Z. K. Waldron since the Summer of 1858. I know Charles W. Wilcox. I know a young man named Field. I don't know his first name. I know Davidson by sight. Know H. M. Matthews—that is, I know a person who came to Arlington on the 18th of November, 1857; he had some papers in his

60 hand; he told me his name was H. M. Matthews, and that he was Deputy United States Marshal, and that he had made a levy on some lumber in the lumber yard of Mr. Gibson—the lumber of John C. Gibson—that he wished me to take charge of the lumber for him. Mr. Gibson was in the lumber yard with Mr. Matthews when I came to them. I was passing on the railroad from the warehouse to Mr. Gibson's store, when they called me to them. Mr. Gibson introduced me to the marshal. Mr. Gibson told me he was an officer; he did not tell me what officer he was. The marshal made a division of the lumber yard. There was a certain telegraph pole in the yard—the lumber that lay east, between the telegraph pole and the plank road, was the lumber levied on by the marshal. The lumber that lay west of this pole, between that and the station, he did not levy upon. The lumber west of the telegraph pole I was to go on and sell as usual. The marshal was to go to Chicago, and then write me what arrangement was to be made, with regard to the lumber that he had levied upon. If he did not write and let me know what arrangement was made, then I was to go on and sell the lumber as I had before been doing. He did not write to me. I did not get any word from him whatever. I went on and sold part of that lumber as I had been doing. In April, 1858, I got word that Mr. McCrady was to bring on lumber, and the Railroad Company requested Mr. Gibson to remove the lumber levied on out of the way of this cargo, so that they could put their lumber off the cars. He went to work and moved the lumber so that McCrady could put their lumber off the cars. McCrady took some of his lumber away. He sold the balance—about eighty thousand feet—to Gibson. We went on and retailed the McCrady lumber out to different persons, until the sheriff came and levied upon all the remaining lumber that there was in the yard, including the said lumber levied on by the marshal. After that, there was no more lumber sold, until the sheriff sold it. Sheriff Waldron came there on the 5th or 10th of August, 1858. I think on the 10th of August he sold some

property, but did not sell the lumber at that time. The second or third time he came again, and was standing out in front of Gibson's store. The sheriff was talking with Wilcox; I stopped to hear what the talk was. I heard sheriff

61 Waldron tell Wilcox, the agent of Cooley, Farwell & Co., that he would not sell the lumber unless he was indemnified. Mr. Wilcox promised him that he would get him the indemnifying bond that he required. The same evening Wilcox and I talked together about it. I said to him, 'I think you had better let that lumber alone.' I told him the marshal had a levy on it, and 'you may get into a law-suit about it.' His reply was in these words: 'Old Smith is the marshal's lawyer; we have beaten him, and can beat him again.—' 'Hawley & Burgess are our lawyers, and they know how to 'do it.' I said, 'I don't know anything about Mr. Smith or 'your lawyers, but the marshal has a levy on that lumber, 'and I think it will hold.' Mr. Wilcox replied that, 'the 'marshal had no right to hold the levy from November till 'July without making a sale, and for that reason the levy 'was not valid.' I told Mr. Wilcox at that time, 'that the 'marshal had his notice up for the sale of the lumber.' He told me that 'their sale would come off first, and they could 'get the lumber away before the marshal would come.' Mr. Wilcox then asked me 'what arrangement the marshal made 'when he put me in charge of the lumber.' I told him, 'the 'marshal put it in my charge, and he was to write me when 'he got to Chicago, and let me know what arrangement they 'made in regard to the lumber.' I told him 'they had not 'written, and if they did not write I was to go on and sell 'the same as I had been doing. As I sold the lumber I was 'to pay it over to Mr. Gibson.' He asked me 'how much 'of the marshal's lumber I had sold?' I told him 'I had 'sold about thirty thousand feet of it, as near as I could tell; 'that I had paid the money over to Mr. Gibson.' Mr. Wil-

62 cox thought the fact that I had sold a part of the lumber and gave the proceeds over to Mr. Gibson would make the levy invalid anyhow. I told him 'I was not lawyer enough to

'know whether it would or not.' I said that 'I thought it would be best for him not to sell the lumber until after the marshal's day of sale.' The lumber was not sold until the Saturday before the marshal's day of sale. I passed along by the lumber about dinner time, the day the sheriff was selling, and saw them selling lumber. Mr. Field and Mr. Wilcox were both pointing out which lumber to sell. On Monday, the 5th of September, 1858, what lumber the farmers did not buy, was loaded in cars on the rail road track. Two or three of the car loads, I noticed, were marked in chalk, 'Neponset;' the cars were taken out on Monday night, or Tuesday morning, by the west train; before Tuesday noon they were all gone."

Here the Court adjourned for dinner, after which the examination in chief was continued.

"There was about seventy thousand feet of lumber converted by the sheriff, which had been levied upon by the marshal. There was sixty-two thousand feet of common lumber, worth \$18 a thousand; about eight thousand feet of square timber, worth \$25 a thousand; four thousand shingles, worth \$4 a thousand; and six thousand lath, worth \$4 a thousand. This was all the property levied on by the marshal, and taken by sheriff Waldron."

63 *Question by Plaintiff's Attorney :*

'Mr. Randall, will you please state how the marshal came to speak about writing to you; give his words, as near as you can?'

"Gibson said to the marshal, 'I will be up to your place in a few days and arrange the matter.' The marshal said he would like to have him come. The marshal then told me, if he should write me I was to go on and sell. He never did write me."

Q. by the Court. I understood you to testify, this morning, that if Matthews did not write, you were to go on and sell as usual, and hand the money to Gibson? A. I did so state; but on reflection of the manner in which the conversation came about, I think I was wrong. I saw two notices of the marshal's sale. It was to be on the 6th of September, 1858. I don't know positively that the sheriff knew of the marshal's levy. I supposed he did, from his demanding a bond of indemnity. I heard the sheriff tell Mr. Wilcox that he would not sell the property unless he was indemnified. I did not tell the sheriff that the marshal had levied.

CROSS EXAMINED *By Defendants' Counsel.*

64 It was some three weeks after the sheriff's levy that I heard the conversation between Wilcox and the sheriff, which I have stated. I was sworn in this case in Chicago. I stated my testimony this morning, as well as I remember it. Matthews told me to take charge of the lumber for him until he should go to Chicago and see what arrangement was made about it; that he would write me and let me know what arrangement they made about the lumber. If he wrote me and let me know what arrangement was made, I was to sell the lumber. That is as I stated it this morning. I stated this morning that the marshal said he would go home, and that if he did not write me that the matter was arranged, I was to go on and sell the lumber. I do not recollect what I said to Judge Manierre, in Chicago—was in substance the same. Neither Smith nor McKinnon were present at Arlington. I don't know that I testified this morning different from what I now do.

Q. By defendants' counsel. Did you walk, immediately after the adjournment of this Court this morning, from the court house to dinner, between Smith and McKinnon, attorneys for plaintiff? A. I did not, between them.

Q. Did I not walk behind you, and Smith and McKinnon, and did I not see you and hear your conversation with them? Now, sir, please state all about this? A. I believe I did walk with them to dinner. I don't know whether you were behind us or not. Before I went up into the hotel, Mr. Smith and I stood talking just at the steps.

Q. Did not Smith and McKinnon, or one of them, tell you, on your way going to dinner, that you had made a mistake; and did you not change your testimony from that of this morning, as to what Matthews directions were to you when he went to Chicago, at the suggestion of Smith and McKinnon? A. Yes; but on reflection as to the manner in which the matter came up with the marshal, I think I was wrong this morning. One of them told me I had made a mistake in what the marshal told he was to do.

Q. Did you not testify at Chicago, on the trial of this cause of action before Judge Manierre, just as you testified this morning, before the adjournment of Court? A. I was a witness there, and I think I testified as I did this morning; but I don't remember exactly what I did say.

Q. Did you not, this morning, before adjournment of Court for dinner, testify, as to what Matthews' instructions to you were at the time of his pretended levy, and on his going to Chicago and writing to you, just as you then believed the facts were, and just as such facts were then in your mind? A. I did; but, on reflection, I think I was wrong. I just stated what my impression then was.

Q. When you came into Court this afternoon, did you not change your testimony upon what Matthews told you, or instructed you to do, at the suggestion of Smith & McKinnon, the attorneys of the plaintiff, in this suit. A. The conversation might have made my recollection better; this talk with the marshal was five years ago, and once I was at Court in Chicago.

66 Q. Did you not follow what you then believed to be the instructions of the marshal? A. I waited three or four months to hear from the marshal before I sold any. He said, if he did, or did not write, I can't say which, I was to sell the lumber; but I was to pay the money to Gibson. I think he said the money might go to pay the judgment execution. It was either if he did or did not write, I forget which; my impression was this morning, if he did not write, but I believe that in that I was wrong. I accounted for what I sold. Gibson paid me until 1st of April, 1858. Two persons came off the cars before or after the levy by the sheriff. Davidson never paid, nor offered to pay me. I obeyed marshal as I understood him. Gibson went to Chicago some ten days after levy—said he was going up to try and arrange matters.

Q. By defendants' counsel. Did not Gibson hand you a receipt on his return from Chicago? A. Yes; he handed me a receipt for \$700, dated October 27th, 1857. I did not sell the lumber levied on by the marshal right away. What I did sell was under directions of Gibson. Some three or four months after levy Gibson told me he had matters fixed.

#### RE-DIRECT EXAMINATION.

Some time in the Spring of 1858, two men came off the cars at Arlington; one of them was Davidson, the marshal. I know him. I saw him before and since. He asked me if the lumber was still in the yard. I told him that most of it was.

67 In answer to Mr. Peters, defendants' attorney, witness says: I told him that a part of the lumber was there. He did not say anything in reply. He did not tell me not to sell it, or say I had done wrong. He did not complain. I never talked with him before. He only asked if the lumber

was there, and that was all. The car whistle then sounded, and he went along with the train. There was no inventory of the lumber taken by the marshal or by me, and none directed to be taken. The marshal was at Arlington on the 6th of September, 1858, which was the day the lumber was advertised to be sold by him; but the lumber was not there, it had all been sold by the sheriff the Saturday before, as I have stated.

68 INDEMNIFYING BOND to sheriff offered and read in evidence by plaintiff:

KNOW ALL MEN BY THESE PRESENTS, That we, Francis B. Cooley, John V. Farwell, and Elisha S. Wadsworth, of the county of Cook, and State of Illinois, are held and firmly bound unto Z. K. Waldron, sheriff of Bureau county, and State of Illinois, in the penal sum of six thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents. Witness our hands and seals, this 21st day of August, A. D. 1858.

The condition of the above obligation is such, that, where as, the said Z. K. Waldron, sheriff of said Bureau county, did, by virtue of a certain writ of execution, issued out of the Cook County Court of Common Pleas, in favor of the above bounden Francis B. Cooley, J. V. Farwell, and Elisha S. Wadsworth, plaintiffs, and against the property of John C. Gibson, to the said Waldron directed, or the sheriff of said Bureau county; and whereas, the said sheriff, by virtue thereof, has levied upon certain goods, wares, merchandise, *lumber*, and property, as the property of the said John C. Gibson.

Now, Therefore, if the said bounden Francis B. Cooley, J. V. Farwell, and Elisha S. Wadsworth, shall keep, and

save the said Z. K. Waldron harmless, and fully indemnify him against any and all suits that may be commenced against him, the said sheriff, by virtue of said levy and sale of said property, and pay all judgments, damages, and costs, that may be entered against said sheriff by reason of the said levy and the sale of the said property, then the above obligation to be null and void, otherwise to be and remain in full virtue and power.

F. B. COOLEY, [SEAL.]  
 JOHN V. FARWELL, [SEAL.]  
 E. S. WADSWORTH, [SEAL.]

In presence of  
 L. Z. LEETER.

69 Defendants offered to read in evidence, three several transcripts of judgments, as follows :

70 1st. DECLARATION on a promissory note. GEO. G. WILDER vs. JOHN C. GIBSON.

71 COPY of note, and warrant of attorney thereto attached, viz. :

\$795.70.

Chicago, March 6th, 1858.

Three months after date, for value received, I, J. C. Gibson, of Arlington, Ill., promise to pay to Geo. G. Wilder, or order, the sum of seven hundred and ninety-five 70-100 dollars, at the banking house of Geo. Smith, in this city, with current rate of exchange on New York.

J. C. GIBSON.

KNOW ALL MEN BY THESE PRESENTS, That whereas, the subscriber, John C. Gibson, am justly indebted to George G. Wilder, upon a certain promissory note, bearing even date herewith, for the sum of seven hundred ninety-five dollars and seventy cents, made payable to the said Geo. G. Wilder, or order, and due at Geo. Smith's bank, three months from date. Now Therefore, in consideration of the

72 premises, and the sum of one dollar, to me in hand paid, by the said G. G. Wilder, the receipt whereof is hereby acknowledged, I do make, constitute, and appoint, F. S. Howe, or any attorney in any Court of Record, to be my true and lawful attorney, irrevocably, for me and in my name, place, and stead, to appear in any Court of Record, in term time or vacation, in any of the States or Territories of the United States, at any time after the date hereof, to waive service of process, and confess a judgment in favor of the said G. G. Wilder, or his or their assignee or assignees, upon the said note for the above sum, or for as much as appears to be due according to the tenor and effect of said note, with interest thereon, together with costs; also for — usual attorneys fees to be added to the amount due, on entering up judgment; also to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of such judgment, or issuing the execution thereon, and also to consent to immediate execution upon such judgment. Hereby ratifying and confirming all that my said attorney may do by virtue hereof. Witness my hand seal, this 6th day of March, A. D. 1858. In presence of

J. C. GIBSON, [SEAL.]

On the back of said note, appears the following affidavit, to wit.:

F. S. Howe, being duly sworn, makes oath that he is acquainted with the handwriting of John C. Gibson, and believes that his signature attached to the within power of attorney and note, are genuine.

FRANCIS S. HOWE.

Sworn and subscribed before me, this twenty fourth day of April, 1858.

WM. L. CHURCH, *Clk.*

73      **COGNOVIT.** And the said John C. Gibson, defendant in the above entitled suit, by George Ely, his attorney, comes and defends the wrong and injury, when, &c., and waives service of process, and says, that he cannot deny the action of the said plaintiff, nor but that the said plaintiff has sustained damages on occasion of the non-performance of the several promises and undertakings in the said declaration mentioned, including the sum of twenty-five dollars, for his reasonable attorney's fees for entering up this judgment, over and above all other costs and charges, by him about his suit in this behalf expended, to eight hundred and twenty dollars and seventy cents; and the said defendant further agrees, that no writ of error or appeal shall be prosecuted on the judgments entered by virtue hereof, nor any bill in equity filed, to interfere in any manner with the operation of said judgment, and that he hereby releases all errors that may intervene in entering up the same or issuing the execution thereon, and consents to immediate execution upon such judgment.                      GEORGE ELY, *Defendants' Att'y.*

74      **CONFESSION.** This, the twenty fourth day of April, A. D. 1858, comes the said plaintiff, by F. S. Howe, his attorney, and files herein his certain declaration of a plea of trespass on the case on promises, and thereupon also comes the said defendant, by Geo. Ely, his attorney in fact, who files herein his warrant of attorney, the execution of which being duly proven, and also his cognovit confessing the action of the said plaintiff against him, and that he has sustained damages herein to the sum of eight hundred dollars and seventy cents. Therefore, it is considered that said plaintiff do have and recover of the said defendant his damages of eight hundred twenty dollars seventy cents, in form aforesaid confessed, and also his costs and charges in this behalf expended, and that he have execution therefor. And thereupon, to wit., on the said 24th day of April, in the year aforesaid, there was issued out of and under the seal of said Court, the people's

writ of *feri facias*, directed to the sheriff of Bureau county, to execute, in words and figures following:

75 FIERI FACIAS and return, by order of plaintiff. Issued April 24, 1858; returned July 24, 1858.

76 ALIAS *fi. fa.*

77 RETURN THEREON. By virtue of this writ, I did, on this 28th day of July, A. D. 1858, levy upon the following goods, to wit.: about 70,000 feet of lumber, 53 doors, a lot of rags in a building back of the store, 1 warehouse near the depot, on the C. B. & Q. Railroad Co.'s grounds, and all the goods in the store of John C. Gibson, and a quantity of salt in the yard back of said store; all of said goods being in the town of Arlington, Bureau county, as the property of John C. Gibson.

Z. K. WALDRON,

*Sheriff, Bureau Co., Ill.,*

*By JAMES WHITE, Deputy.*

I return this execution satisfied by sale of personal property. Nov. 6, 1858.

Z. K. WALDRON, *Sheriff Bureau Co.*

The sheriff will give credit for four hundred and thirty-five dollars, paid July 9th, 1858; and seventy dollars, paid May 12, 1858.

78 2d. DECLARATION on a promissory note. GEO. G. WILDER *vs.* JOHN C. GIBSON.

80 COPY of note, and warrant of attorney thereto attached.

\$802.16.

Chicago, March 6th, 1858.

Four months after date, for value received, I, J. C. Gib-

son, of Arlington, Ill., promise to pay to Geo. G. Wilder, or order, the sum of eight hundred and two and 16-100 dollars, at the banking house of Geo. Smith, in this city, with current rate of exchange on New York.

J. C. GIBSON.

KNOW ALL MEN BY THESE PRESENTS, That whereas, the subscriber, John C. Gibson, is justly indebted to George G. Wilder, upon a certain promissory note, bearing even date herewith, for the sum of eight hundred and two dollars and sixteen cents, made payable to the said Geo. G. Wilder, or order, and due at Geo. Smith's bank, four months from date. Now Therefore, in consideration of the sum of one dollar, to me in hand paid by the said Geo. G. Wilder, the receipt whereof is hereby duly acknowledged, I do hereby make, constitute, and appoint, F. S. Howe, or any attorney in any Court of Record, to be my true and lawful attorney, irrevocably, for me, and in my name, place, and stead, to appear in any Court of Record, in term time or vacation in any of the States or Territories of the United States, at any time after the date hereof, to waive service of process and confess a judgment in favor of the said G. G. Wilder, or his or their assignee or assignees, upon the said note for  
 81 for the above sum, or for as much as appears to be due according to the tenor and effect of said note, with interest thereon, together with costs; also, for — usual attorney's fees, to  
 81 be added to the amount due on entering up judgment; also, to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of such judgment, or issuing the execution thereon; and also, to consent to immediate execution upon such judgment. Hereby ratifying and con-

fessing all that my said attorney may do by virtue hereof.  
 Witness my hand and seal, this 6th day of March, A. D.  
 1858. J. C. GIBSON, [SEAL.]

AFFIDAVIT on back of said note and warrant of attorney

F. S. Howe, being duly sworn, makes oath that he is acquainted with the signature of John C. Gibson, affixed to the within power of attorney and note, and believes the same to be genuine.  
 FRANCIS S. HOWE.

Sworn to before me, this twenty-fourth day of March, A.  
 D. 1858. WM. L. CHURCH, C<sup>l</sup>k.

82 COGNOVIT. And the said John C. Gibson, defendant in the above entitled suit, by Geo. Ely, his attorney, comes and defends the wrong and injury, &c., and waives service of process, and says he cannot deny the action of the said plaintiff, nor but that the said plaintiff has sustained damages on occasion of the non-performance of the several promises and undertakings in the said declaration mentioned, including the sum of twenty-five dollars, for his reasonable attorney's fees for entering up this judgment, over and above his other costs and charges, by him about his suit in this behalf expended, to eight hundred and twenty-seven dollars and sixteen cents; and the said defendant further agrees that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and that he hereby releases all errors that may intervene in entering up the same or issuing execution thereon, and consents to immediate execution upon such judgment.

GEORGE ELY, *Defendant's Attorney.*

74 CONFESSION. This, the twenty fourth day of April, A. D. 1858, comes the said plaintiff, by F. S. Howe, his attorney, and files herein his certain declaration of a plea of trespass on the case on promises, and thereupon also comes the said defendant, by Geo. Ely, his attorney in fact, who files herein his warrant of attorney, the execution of which being duly proven, and also his cognovit confessing the action of the said plaintiff against him, and that he has sustained damages herein to the sum of eight hundred twenty-seven dollars and fifteen cents. Therefore, it is considered that said plaintiff do have and recover of the said defendant his damages of eight hundred twenty-seven dollars and sixteen cents, in form aforesaid confessed, and also his costs and charges in this behalf expended, and have execution therefor.

84 FIERI FACIAS and return, by order of plaintiff. Issued April 24, 1858; returned July 22, 1858.

85 ALIAS *fi. fa.*

86 RETURN THEREON. Rec'd July 26, 1858, at 4 o'clock,  
P. M. Z. K. WALDRON, *Sheriff*,  
By JAMES WHITE, *Deputy*.

I return this execution satisfied by sale of property. Nov. 6, 1858.

Z. K. WALDRON, *Sheriff Bureau Co.*

By virtue of this writ, I did, on this 28th day of July, A. D. 1858, levy upon the following described goods, to wit.: about 70,000 feet of lumber, one warehouse on the C. B. & Q. Railroad Co.'s grounds, near the depot, all the goods in the store of John C. Gibson, a quantity of salt, and about 35 doors, and a lot of rags in a building back of the store, all of said property being in Arlington, Bureau county, Ill., as the property of John C. Gibson.

Z. K. WALDRON,  
*Sheriff, Bureau Co., Ill.*

- 88 3d. DECLARATION on three promissory notes and usual money counts:

*Francis B. Cooley, Elisha S. Wadsworth, and John V. Farwell*, under firm name of COOLEY WADSWORTH & Co, complain, &c., of John C. Gibson, in first and second counts, 90 and COOLEY, FARWELL & Co., complain, &c., of John C. Gibson, in third count.

- 92 COPIES of notes and warrants of attorney:

\$1,045.55. Chicago, July 1, 1858.

On or before the 15th Sep. next, I, the subscriber, of Arlington, county of Bureau, State of Ill., for value received, I promise to pay to the order of Cooley, Wadsworth & Co., ten hundred forty-five 55-100 dollars, at the Merchants' Saving, Loan and Trust Co., with interest at 10 per cent. after due.

In consideration whereof, and the further sum of one dollar, already paid to said payees, I do empower and hereby authorize, C. M. Hawley, or other attorney of any Court of Record, to enter my appearance therein, at any time after the date hereof, and waiving all process, to confess judgment for the amount due thereon, with costs, and with five per cent. attorney's fees, in favor of the holder thereof, and hereby release all errors that may occur in such proceeding.

Witness my hand, this first day of July, 1858.

J. C. GIBSON.

\$1,045.55. Chicago, July 1, 1858.

On or before Oct. 1st, 1858, I, the subscriber, of Arlington, county of Bureau, State of Ill., for value received, I promise to pay to the order of Cooley, Wadsworth & Co., ten hundred and forty-five 55-100 dollars, at the Merchants' Savings, Loan and Trust Co., with interest at 10 per cent. af-

93 ter date. In consideration whereof, and the further sum of one dollar already paid to said payee, I do empower and hereby authorize C. M. Hawley, or other attorney of any Court of Record, to enter my appearance therein at any time after the date hereof, and waving all process, to confess judgment for the amount due thereon, with the costs and five per cent. attorney's fees, in favor of the holder thereof, and hereby release all errors that may occur in such proceeding.

Witness my hand, this first day of April, 1858.

In presence of

J. C. GIBSON.

\$1,021.49.

Chicago, June 9, 1858.

Twenty days after date, I, the subscriber, of Arlington, county of Bureau, State of Ill., for value received, promise to pay to the order of Cooley, Farwell & Co., ten hundred and twenty one 49-100 dollars, at the Merchants' Saving, Loan and Trust Co.

In consideration of the sum of one dollar, already paid to said payees, I do empower and hereby authorize C. M. Hawley, or other attorney of any Court of Record, to enter my appearance therein at any time after the date hereof, and waving all process, to confess judgment for the amount due thereon, with the costs, and with five per cent. attorney's fees, in favor of the holder, and hereby release all errors that may occur in such proceeding. Witness my hand, this 9th day of June, 1858.

In presence of

J. C. GIBSON.

Endorsed on the back of said note, July 1, 1858 : pay to Cooley, Wadsworth & Co.

COOLEY, FARWELL, & CO.

96 Marshall Field, being duly sworn in the above entitled cause, says that he is well acquainted with the handwriting

of John C. Gibson, defendant therein, that he has carefully examined the signatures to the three promissory notes hereto attached, and that he verily believes that the same and each of them are the genuine signatures of the said Gibson.

MARSHALL FIELD.

Sworn to and subscribed before me, this 26th day of July,  
A. D. 1858. MOSES HOLLETT, *Notary Public*.

73 COGNOVIT. And the said John C. Gibson, defendant in the above entitled cause, by Thomas Hoge, his attorney, comes and defends the wrong and injury, when, &c., and waives service of process, and says, that he cannot deny the action aforesaid of the said plaintiffs, nor but that the said defendant did undertake and promise in manner and form as the said plaintiffs have above thereof declared against him, nor but that the said plaintiffs have sustained damages by reason of the non-performance of the said several promises and undertakings aforesaid, including the sum of one hundred and fifty-six dollars, for his reasonable attorney's fees for entering up this judgment, to the amount of three thousand two hundred eighty-one dollars and sixty cents, (\$3,281.60) besides the costs and charges, by the said plaintiff in this suit expended, to be taxed; and the said defendant consents to immediate execution being issued on the judgment herein rendered, and releases all errors in the proceedings, and agrees that no appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment.

THOS. HOGE, *Att'y for Def't*.

98 CONFESSION. This, the 26th day of July, A. D. 1858, comes said plaintiffs, by Burgess & Hawley, their attorneys, and file their certain declaration of a plea of trespass on the case upon promises, and thereupon also comes the said defendant, by Thos. Hoge, his attorney in fact, and files herein

his warrant of attorney, the execution of which being duly proven; and also his cognovit, confessing the action of said plaintiffs against him, and that they have sustained damages herein by reason of the premises, to the sum of three thousand two hundred and eighty-one dollars and sixty cents, (3,281.60). Therefore, it is considered said plaintiffs do have and recover of said defendants their damages of three thousand two hundred and eighty-one dollars and sixty cents, in form aforesaid confessed, and also their costs and charges in this behalf expended, and have execution therefor.

99 FIERI FACIAS, issued July 26, 1858, to wit.:

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

*The People of the State of Illinois, to the Sheriff of Bureau county, Greeting:*

We commend you, that of the lands and tenements, goods and chattels, of John C. Gibson, defendant, in your county, you cause to be made the sum of three thousand two hundred and eighty-one (3,281.60) dollars and sixty cents, which Francis B. Cooley, Elisha S. Wadsworth, and John V. Farwell, plaintiffs, lately in the Cook County Court of Common Pleas, in said county, at Chicago, in said county, on the 26th day of July, instant, recovered against the said defendant, and which by the said Court was adjudged to the said plaintiffs for their damages; and also, the further sum of four dollars and seventy cents, which were adjudged to the plaintiffs for their costs and charges in that behalf expended, whereof the said defendant was convicted, as appears to us of record. And have you these moneys ready to render to the said plaintiffs for their damages and costs aforesaid, and make a release of said writ, with an endorsement thereon in what manner you shall have executed the same, in ninety

days from the date hereof. Witness Walter Kimball, Clerk  
of our said Court, and the seal thereof, at Chi-  
[SEAL.] cago, in said county, this 26th day of July, A.  
A. D. 1858.

WALTER KIMBALL, *Clerk.*

100 RETURN. Received July 27, 1858, at 12 o'clock, M.  
Z. K. WALDRON, *Sheriff, Bureau Co.*

By virtue of the within writ, I did, on this 27th day of  
July, A. D. 1858, levy upon the following real estate, to wit.:  
the north-west quarter and the north half of the north-east  
quarter of section 15, township 17 north, range 11, east of  
the fourth p. m., and all the goods now in the store recently  
occupied by John C. Gibson, as the property of John C.  
Gibson.

Z. K. WALDRON,

*Sheriff, Bureau Co., Ill.*

Rec'd on the within writ, two thousand dollars, October  
19th, 1858. Returned by order of the pl<sup>ff</sup>.

Z. K. WALDRON, *Sh'ff.*

Rec'd on the within writ, two thousand dollars.

\$2,000.00.

COOLEY, FARWELL & CO.,

*P. FIELD.*

*To the Sheriff of Bureau County :*

The title to the north-west  $\frac{1}{4}$  and the north half of the  
north-east quarter of section 15, in township 17 north, range  
11, east of the 4th p. m., not being clear in the defendant in  
execution, the sheriff will abandon the levy thereon made  
by virtue of the annexed execution, No. 11,327, from Cook  
County Court of Common Pleas, and release said lands  
therefrom. Oct. 19, 1858.

BURGESS & HAWLEY, *Pl<sup>ffs</sup>' Att<sup>ys</sup>.*

101 The said stock of goods, mentioned in said levy, I have

sold, and made therewith two thousand dollars, which I have paid to the within named plaintiffs. By order of the plaintiffs I have abandoned the levy on said real estate, the title thereto not being clear in the defendant in execution, and as to the balance due on this execution, after deducting said \$2,000, I return this writ unsatisfied—no property found whereon to make the same in my county.

Z. K. WALDRON, *Sheriff, Bureau Co.*,

Dated, Oct. 20, 1858.

By GEO. W. STONE, *Depty.*

101-2 MOTION TO VACATE the endorsement on said writ of \$2,000.00 made by Mr. Field, and affidavit

103 *To the admission and reading of which the counsel for the plaintiff did then and there object, "Because they are transcripts of judgments entered up in vacation, by confession, in the Clerk's office of the Courts in which they purport to have been rendered, and are each irregular and void on the face of the record.*

*2d. "Because the transcript of the judgment, from the Court of Common Pleas, in favor of Francis B. Cooley, Elisha S. Wadsworth, and John V. Farwell, and against John C. Gibson (and under which, and the other two judgments, the defendants all justify), shows conclusively that the Clerk had no authority or power to enter up judgment in that case upon the papers filed with him; and the act of the Clerk, in that respect, being without authority, renders it a nullity. And again, the execution in that case was not levied on the property in controversy; and for other reasons, the plaintiff's counsel then and there also objected to the said three records being offered or read."*

And the said Court then and there held and affirmed, that said three transcripts of judgments were good and admissible as evidence in law upon the issue aforesaid; to which

*ruling of the Court, the counsel for the plaintiff then and there excepted, and still excepts.*

C. C. NICHOLS, being first duly sworn, testified on the part of the defendants, as follows:

104 "I reside in Arlington. I know there was a levy made by sheriff Waldron, in favor of Cooley, Farwell & C., upon the lumber of Gibson, about July or August, 1858; I don't know the exact time. John C. Gibson was engaged for about one year prior to that time in selling lumber. I did not know of any prior levy made by the United States Marshal, or of any other levy. I am station agent, and have been for about six years. Gibson was selling lumber from the time he commenced till he closed, without interruption, as far as I know. His lumber yard was about 20 yards from the station house. Gibson received, from March 1st, 1858, to the time of the levy of the sheriff, 104,895 feet of lumber.

CROSS EXAMINED *By Plaintiff's Counsel.*

No, sir; I don't know of all the levies made round Arlington. I could not tell the amount of lumber received by Gibson, unless I looked at the books, without I looked at the letter. In November, 1857, I should think there was lumber there.

DR. PEREANET, on part of defendants, testified as follows:

I reside at Arlington. I knew Gibson prior to August, 1858. He was trading there and selling lumber. I live about twenty-five or thirty rods from his yard. I was by it frequently. I know of the levy in July, 1858, in favor of Cooley, Farwell & Co. I know of no other levy prior to that for one year previous. Randall, or some of them sold lumber as usual, up to the sheriff's levy under the Cooley, Farwell & Co. execution; was attending to Gibson's business some. There was no levy made, to my knowledge, be-

105 fore the sheriff's. I was interested. I know the sheriff sold the lumber under the Cooley, Farwell & Co. judgment.

SEELY BALDWIN, on the part of defendants, testified as follows:

I lived about twenty rods from Gibson's lumber yard. I saw the sheriff there in July or August. I know nothing of my own knowledge as to the levy. It was generally understood the sheriff made a levy. I never heard of any by the marshal till after the sheriff made his levy.

*Defendants here rested.*

DRAZEN H. RANDALL recalled by plaintiff, testified as follows:

I never heard of the execution in favor of Wilder. The sheriff levied on and took nine thousand, and either four or six hundred dollars worth of goods in the store, and 3 horses, a wagon and set of double harness, and about twenty thousand feet of lumber. He sold all this property. I don't know whether he made both levies at the same time.

CROSS EXAMINATION *By Defendants' Counsel.*

106 The marshal made no inventory of the lumber, only to divide it off, and I made no inventory for him. I don't know how many executions were against Gibson. I saw the first notice of the marshal's sale in August. I think it might have been in July. It was after the sheriff's levy when I saw it. All I know on whose execution the lumber was sold, is what Mr. Wilcox told me. He told me the lumber was sold on Cooley, Farwell & Co.'s judgment, and that they indemnified the sheriff to make the sale.

And this being all the evidence of any nature offered by

either the plaintiff or defendants, thereupon the plaintiff's counsel moved the Court for judgment on behalf of the plaintiff, for the following reasons:

1st. Because the proofs establish, as a fact beyond controversy, that on the 18th of November, 1857, the United States Marshal for the Northern District of Illinois, levied the execution in favor of Jewett, Tebbetts & Co., on the property in controversy, which was turned out to him by John C. Gibson to satisfy the same, and that levy was never afterwards relinquished or released.

2d. Because, by the levy, the marshal not only gained such a special property in the lumber levied on, as enables him to maintain this action for its wrongful conversion; by virtue of that levy, the property levied on was in the custody of the law, and could not even be replevied, much less taken in execution by an officer acting under another jurisdiction.

3d. Because the marshal, who is the plaintiff in this suit, is a mere nominal plaintiff, for the benefit of Jewett, Tebbetts & Co., the plaintiffs in the execution which he levied.

107 4th. The fact that the marshal did not sell the property levied on by him under the Jewett, Tebbetts & Co. execution, or offer the same for sale until several months after he made the levy, did not, and could not, render that execution dormant, without some act or saying on the part of the plaintiffs therein or their attorney. And the property itself, by virtue of that levy, being in the custody of the law, could not be interfered with by the sheriff, although the marshal's execution might have been adjudged dormant by the Court whence it issued.

5th. Because the judgment by confession, under which the defendants seek to justify the taking and conversion,

were entered up by the clerk in vacation, as conclusions of executory contracts, and are void.

1st. For the reason that there was no evidence of the execution of the warrants of attorney before the clerk when he entered up the judgments.

2d. For the reason that the notes upon which the Cooley, Farwell & Co. judgment was entered up were not due, and the powers of attorney only authorized a confession for the amount due thereon, and nothing being due at the time, the judgment was unauthorized.

3d. And for the further reason that the Cooley, Farwell & Co. judgment is on three notes, one of which is payable to Cooley, Wadsworth & Co., and there being no warrant of attorney authorizing a confession in favor of Cooley, Farwell & Co., for the amount of that note, or the amount of the judgment confessed, it is void.

And the said Court then and there took the case under advisement, and afterwards, on the *10th day of November, A. D. 1862, announced judgment therein* for the defendants, upon the issues aforesaid: whereupon the counsel for the plaintiff made his exceptions, and prayed that the said Court would sign and seal this bill of exceptions, which is accordingly done.

110 AGREEMENT that judgment be entered *nunc pro tunc*.  
March 9, 1863.

111 CERTIFICATE OF CLERK.

## ASSIGNMENT OF ERRORS.

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113 1. The Court erred in permitting the witness, John C. Gibson, to testify as to whether any payments had been made on the judgment of Jewett, Tebbetts & Co., and in overruling the plaintiff's objection thereto. (Record, p. 55, 56).

2. The Court erred in admitting in evidence the three several transcripts of judgments, and proceedings under said judgments offered in evidence by the defendants, and in overruling the plaintiff's objection to the admission and reading of the same. (Record, p. 69 to 103, both inclusive).

3. The Court erred in not giving judgment for the plaintiff upon the reasons assigned by him on his motion for judgment. (Record, p. 106, 107).

4. The Court erred in giving judgment for the defendants.

5. The judgment is against law and evidence.

E. S. SMITH,

*Attorney for Plaintiff in Error.*

## STIPULATION.

SUPREME COURT OF ILLINOIS, APRIL TERM, A. D. 1863.

JAMES W. DAVIDSON, }  
                   *vs.*                } Error to Bureau Co. Cir. Court.  
 FRANCIS B. COOLEY, *et. al.* }

It is hereby stipulated and agreed, the same having been omitted in the bill of exceptions, by and between the said plaintiff and defendants, that on the trial of said cause in the said Court below, the said plaintiff admitted, as evidence to be used on said trial, that the said defendant, Zachariah K. Waldron, at the time the said several writs of execution came into his hands, and at the time the said several levies were made by him, and at the time the said several sales were made by him, mentioned and set forth in the said three several judgments and transcripts set forth in said bill of exceptions, two of which being in favor of Francis B. Cooley, Elisha S. Wadsworth, and John V. Farwell, and against said John C. Gibson, was the sheriff of said Bureau county, duly elected and qualified.

E. S. SMITH,

*Att'y for Pl'ff in Error.*

C. M. HAWLEY,

*Att'y for Def'ts in Error*

March 23d, 1863.

STATE OF ILLINOIS,  
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Cook County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Cook <sup>Bureau</sup> County, before the Judge thereof, between

James W. Davidson

plaintiff, and Francis B. Cooley, Elisha S. Nadsworth, John V. Farwell, Zachariah K. Waldron, Marshall Field & Charles W. Wilcox

defendants, it is said that manifest error hath intervened, to the injury of the said

James W. Davidson

as we are informed by his

complaints the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law:

Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Francis B. Cooley, Elisha S. Nadsworth, John V. Farwell, Zachariah K. Waldron, Marshall Field & Charles W. Wilcox

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Defendants

notice, together with this writ.

Witness, The Hon. John W. Paton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 21<sup>st</sup> day of March in the year of our Lord One Thousand Eight Hundred and Sixty-Three.



L. Island  
Clerk of the Supreme Court.



The said defendants in error hereby  
 accept service of the within citation  
 dated this 3<sup>rd</sup> of July 1863  
 [Signature] atty  
 for the Dfts in Error

128

James W. Davidson

No. vs.

Francis B. Cooley & Co.

SCIRE FACIAS.

FRED. H. H. 4. .... A. D. 1863

S. S. Clerk

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the *Circuit* Court for the County of *Bureau* - Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the *Circuit* Court of *Bureau* County, before the Judge thereof, between

*James W. Davidson*

Complainant, and *Francis B. Cooley, Elisha S. Madson, Zachariah K. Waldron, John V. Farwell, Marshall Hunt & Charles W. Wilcox*

defendants, it is said manifest error hath intervened, to the injury of the aforesaid

*Davidson*

as we are informed by *his*

complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *31<sup>st</sup>* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Sixty *Three*.

*S. Claude*  
Clerk of the Supreme Court.



James W. Davidson

No. vs.

Francis B. Cooley vs.

**WRIT OF ERROR.**

FILED March 31<sup>st</sup> A. D. 1863.

S. Seland

Clerk.

