No. 14369

Supreme Court of Illinois

Babcock

vs.

Smith.

71641 7

STATE OF ILLI

SUPREME COU

Third Grand Division

No. 44

Be it remembered that heretofore to wit on the 17th day of September AD 1859 a suit of Trespass to personal property was commenced in the Circuit Court of Warren County Illinois. And thereupon a Summons issued out of said Court which is in the words and figures following to Wit.

State of Illinois } ss.
Warren County } The People of the State of Illinois

To the Coroner of Warren County, Greeting;
We command you to Summon Alexander G. Kirkpatrick, Seth Smith, George D. Crandall & James McCoy, William M. Gregg & Chester W. Palmer, if to be found in your County, personally to be and appear before the Circuit Court of the County of Warren, on the first day of the next term thereof, to be holden at the Court House in Monmouth, on the fourth Monday in the month of October next, to answer the complaint of Elijah C. Babcock & John Babcock by name & style of E. C. Babcock & Son of a plea of trespass to personal property to their damage the sum of Four Thousand dollars, as they say; and have you then and there this writ, and make return thereon in what manner you execute the same. Witness William Laferty, Clerk

of our said Circuit Court and the seal
thereof at Monmouth this 17th day of Sep-
tember in the year of our Lord one thous-
and eight hundred and fifty nine,
(Seal). Wm Lafuty clerk.
I did, on the 17th day of September AD 1859
serve this writ by reading the same to the
within named Alexander G. Kirkpatrick
Seth Smith George D. Crandall. James
McCoy. William M Gregg & Chester W. Palmer
Dated this 17th day of September 1859,
J. C. Crawford
Coroner of Warren County
Filed Sept 17 1859
Wm Lafuty clk

State of Illinois } ss.
Warren County }

Pleas before the Honorable
Aaron Tyler Judge of the Tenth Judicial
Circuit of the State of Illinois. At a Cir-
cuit Court begun and held at the Court
House in Monmouth in the said County of
Warren and state of Illinois on the Fourth
Monday in the Month of October in the year
of our Lord One thousand eight hundred and Sixty
It being the 22d day of said month and
year.

Present Hon Aason Tyler Judge
James H Stewart States Attorney
Seth Smith Sheriff
Wm Lafferty Clerk

Elijah. C. Babcock & John Babcock
partners by the name & style of
E. C Babcock & Son

vs.

Alexander G Kirkpatrick
Seth Smith, Geo. D. Crandall
James. McCoy William McGregg
& Chester W Palmer.

Trespass to personal Property.

And afterwards to wit on the 31st day of October AD 1860 the following order was entered upon the records of our said Court which is as follows to wit,

Elijah C. Babcock & John Babcock
partners by the name & style of
E. C Babcock & Son.

vs.

Alexander G Kirkpatrick Seth Smith
Geo. D. Crandall James. McCoy
William M. Gregg & Chester W. Palmer

Trespass to personal Property.

This day, came the plaintiffs by their Attorneys and enter their motion for leave to amend their declaration filed herein and after hearing the same it is ordered by the Court that the motion be allowed.

And afterwards to wit on the 1st day of November AD 1860. the following order was entered upon the records of our said Court which is as follows to wit:

Elijah C Babcock & John Babcock partners by the name & Style of E. C. Babcock & Son.
vs.
Alexander G Kirkpatrick, Seth Smith Geo D. Crandall, James McCoy William M Gregg & Chester W. Palmer
} Trespass to Personal Property.

This day came the defendants by their attorney and enter their motion for a continuance herein on account of a material amendment to the declaration filed herein, After hearing the same it is ordered by the court that the motion be overruled,

And afterwards to wit on the 12th day of November AD 1860. the following order was entered upon the records of our said Court which is as follows.

Elijah C Babcock & John Babcock by name & Style of E.C. Babcock & Son
vs.
Alexander G Kirkpatrick Seth Smith George D Crandall James McCoy William M Gregg & Chester W Palmer.
} Trespass to Personal Property.

This day again came on this cause to a hearing on the Plaintiffs motion to suppress the deposition of Edward J Brown, And after hearing the same it is ordered by the Court that the motion be allowed, and that the deposition be suppressed so far as excepted to by Plaintiff.

And afterwards, to wit on the 13th day of November AD 1860 the following order was entered upon the records of our said Court which is as follows, to wit.

Elijah C Babcock & John Babcock by the name & style of E C Babcock & Son vs Alexander G Kirkpatrick. Seth Smith Geo D Crandall James McCoy William M Gregg & Chester W Palmer	Trespass to Personal Property.

This day again this cause coming on to a hearing on the Plaintiffs demurrer to the defendants 3rd plea filed herein. And after hearing the same it is ordered by the Court that the demurrer be overruled. And thereupon came the said Plaintiffs, and ask leave to amend their declaration filed herein.

And afterwards, to wit, on the 14th day of November A.D. 1860 the following order was entered on

the records of our said Court which is as follows.

Elijah C Babcock & John Babcock partners by the name & style of E. C Babcock & Son. vs Alexander G. Kirkpatrick. Seth Smith George D Crandall James McCoy William M. Gregg & Chester W. Palmer.	Trespass to Personal Property.

This day again this cause coming on to a hearing on the Plaintiffs motion for leave to amend his declaration filed herein. And after hearing the same it is ordered by the Court that the said Plaintiff have leave to amend his declaration filed herein.

And afterwards to wit on the 15th day of November A.D. 1860 the following order was entered upon the records of our said Court. which is as follows. to wit.

Elijah C Babcock & John Babcock by the name & style of E.C. Babcock & Son vs Alexander G. Kirkpatrick Seth Smith George D Crandall James McCoy William M. Gregg & Chester W. Palmer.	Trespass to. Personal, Property.

This day came the defendants and enter their motion for a continuance herein on account of material amendment to the declaration filed herein. And after hearing the same it is ordered by the Court that the

motion be allowed. Therefore it is considered by the court that the said defendants have and recover of and from the said Plaintiffs their costs by them at this term of this court laid out and expended and may have execution therefor. Excepted to by Plaintiffs

"Copy of Amended Declaration"

State of Illinois County of Warren. }

Elijah C. Babcock &al.	}	Circuit Court
vs.	}	October Term
Alexander G. Kirkpatrick &al	}	A.D. 1860.

Elijah C Babcock and John Babcock, partners under the name and style of E. C. Babcock & Son, Plaintiffs, complain, by leave of the Court just had and obtained of Alexander G. Kirkpatrick Seth Smith, George. D. Crandall James McCoy. William. M. Gregg and Chester W. Palmer. Defendants, summoned to answer unto the Plaintiffs in a plea of trespass to

1\. personal property. For that the said Defendants on the eighth day of March in the year of our Lord one thousand eight hundred and fifty nine, and on divers other days & times with force and arms at and within the County of Warren and State of Illinois, seized took and carried away the goods and chattels.

wares and merchandize of the Plaintiff. to wit: Fourteen knit shirts. twenty pairs of drawers. twenty four yards of gingham. twenty seven yards of green check gingham. thirty nine yards of red check gingham. Thirty two yards of brown check gingham. Eighteen & one half yards of blue check gingham. Twenty nine yards of green check gingham. Forty yards of black check gingham. Twenty four yards of Turkey red check gingham. Twelve yards of purple check gingham. Eight yards of purple check gingham. Forty two yards of pink check gingham. Thirty nine and one half yards of pink check gingham. Three yards of brown check gingham. Thirty eight yards of brown check gingham. Twenty nine & one half yards of purple check gingham Ten and one half yards of Brown check gingham. Forty yards of pink check gingham Thirty two yards of green check gingham. Eighteen yards of green check gingham. Forty four and one half yards of green check gingham. Twelve yards of purple check gingham Thirty five yards of bleached muslin. Thirty seven yards of bleached muslin. Thirty five yards of bleached muslin. Thirty eight yards of bleached muslin. Eighty five yards of bleached muslin Two hundred and fifty two and one half

yards of bleached muslin. Thirty nine yards of bleached muslin. Thirty six and one half yards of bleached drilling. Twenty four yards of colored drilling. Thirty yards of brown check gingham. Forty four yards of purple check gingham. Forty two yards of brown check gingham. Twenty two yards of green check gingham. Eight yards of green check gingham. Four and one half yards of brown check gingham. Two yards or pair of royal skirts Four and one half yards of apron check. Eleven yards of apron check. Twelve yards of diaper towels. Twelve yards of diaper towels Seven yards of black muslin. Sixty yards of diaper. Thirty one yards of brown muslin. Two and one half yards of brown muslin. Seventeen yards of hickory shirting. Two and one half yards of hickory shirting. Two yards of hickory shirting Two yards of hickory shirting Three and one half yards of hickory shirting four yards of hickory shirting. One black cloth coat. One brown cloth coat. One Brown cloth coat. One Brown cloth coat. Seven Brown cloth coats. Four Brown cloth coats. Two Brown cloth coats, one brown cloth coat. Five over shirts. One over shirt. Nine over shirts. One velvet vest. One satin vest. One satin vest. Two satin vest. Two satin vest. Two satin vests. Two satin vests.

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One pair pants, Two pair pants, Three pair pants. Four pair of pants. Two pair pants. Two pair of pants. One pair of pants, One pair of pants. Two pair pants. One pair of pants, Two pair pants. Two pair of pants, Two pair of pants. Two pair of pants, One pair of pants. Two pair of pants. Five pair of pants. One pair of pants. One pair of pants. One pair of pants. One over Coat Twelve Diaper Towels. One Shawl. Sixteen and one half yds white flannel. Two pair pants. Four pairs of pants Four pairs of pants. One pair of pants Five pair of Ladies heel Shoes. One pair of childs Shoes. One pair childs Shoes. One pair childs Shoes. Seven pair of ladies shoes. Six pair of Ladies Enameled Boots. One pair of Ladies enameled Boots. Two pair of ladies cloth gaiters. One pair of Ladies enameled Boots. Two pair of Ladies enameled Boots. One pair Kip Boots. Two pair of Stoga Boots. One pair of Stoga Boots. Three pair of Boys boots. Six pair of Boys Boots. One pair of Boys boots. One odd Shoe. One odd shoe. One odd shoe, one odd shoe. Two odd shoes Three odd shoes. One odd shoe. Fourteen pair enameled & Lace Boots. Two pair enamelled & Lace boots. Nine pair of enameled & Lace Boots. One

pair of enameled Lace Boots, Three pair of enameled lace Boots, One pair Ladies Busking. Two pair of ladies lace boots two pair of Misses lace boots. Three pair of ladies lace Boots. Eleven pair of ladies lace boots, Six pair of ladies lace Boots, Six pair of ladies Lace boots, Six pair of ladies lace Boots. One pair of ladies lace boots, Five pair of ladies lace boots, two pair of ladies lace boots, one pair of Childs lace Boots. One pair of Childs lace Boots two pairs ladies lace boots, One pair of ladies lace boots. Two pair of Boys lace Boots, one pair of Boys lace boots, one pair of boys lace boots, One pair of Mens lace Boots, one pair of Childs lace boots Six pair of ladies enameled lace Boots, One pair of ladies Buskins. Three pair of Misses lace boots, Two pair of Misses lace boots. One pair of Misses lace Boots, One pair of Misses Busking, Nine pair of ladies enameled lace boots.. One pair of Cloth gaiters enameled Tip. Two pair of Ladies cloth gaiters enameled tip. Five pair of Ladies Cloth gaiters enameled Tip, One pair of ladies cloth gaiters enameled Tip. Four pair of ladies Kid lace Boots, Seven lbs of grass Rope, Ten lbs of Cotton Rope. Nine Knit shirts, Two umbrellas. Two umbrellas

One umbrella. Of great value, to wit, of
the value of twelve hundred dollars and con-
verted and disposed thereof to their own use
and other wrongs to the said Plaintiffs then
and there did to the great damage of the
said Plaintiffs and against the Peace and
Dignity of the People of the State of Illinois
wherefore the said Plaintiffs say that they are
injured and have sustained damage

2. And also for that the said defendants on the
day & year aforesaid and on divers other days
& times with force & arms at and within the
County of Warren and State of Illinois, seized
took and carried away other goods
chattels, wares and merchandise of the
Plaintiffs, to wit. Forty two yards of ging-
ham, forty four yards of gingham, four &
one half yards gingham. Thirty yards of
gingham. Twenty two yards of gingham,
Eight yards of gingham, Two skirt Patterns
striped, Two Umbrellas, two umbrellas, one
Umbrella Two Pair thick boots, one pair
Kip Boots. Three pair Kip Boots, Boys, One
pair of Kip youths. Three pair boys enameled
shoes, Ten pair of womens enameled shoes,
~~Six pair of Youths thick Boots, One pair of~~
Youths kip boots. Two pair of ladies gaiters,
seven pairs of ladies calf shoes. One.

pair of boys thick shoes. Five pairs of Ladies high shoes. One pair of ladies Buskin, Six pairs of misses fine shoes. Two pairs of Misses fine shoes, nine pair of ladies black gaiters Four pair of high shoes. Six pair of fine Kid shoes (with heels), Three pair of Childrens shoes, Nine pair of ladies Kid shoes seven pair of ladies Kid shoes. Five pair of Womens calf shoes. Four pair of ladies Calf shoes, Nine pair of Ladies calf shoes. Seven pair of ladies fine Kid shoes, Seven pair of ladies fine Kid shoes, One pair Buskins, One pair of misses fine shoes. One pair of ladies fine shoes. one pair of ladies fine shoes, with heels. One pair of ladies fine shoes. two pair of Children enameled shoes. Two pair of Misses enameled shoes, Four pair of Ladies enameled shoes. Two pair of Ladies Enameled shoes. Two pair of Ladies enameled shoes, one pair of ladies morocco. shoes. One pair of Misses enameled shoes. One pair of Ladies kid shoes. with heels. Three pair of Womens. Kip Shoes Eleven pair of Womans enameled shoes. Three odd shoes. (Childs). Three odd shoes (Boys) Two odd shoes, ladies, One odd shoe mens, Thirty seven yards bleached Sheeting Thirty five yards of bleached Sheeting.

Thirty five yards of bleached sheeting. Thirty eight yards of bleached sheeting. Thirty five yards of bleached sheeting. Thirty two yards of bleached sheeting. Thirty six yards of Bleached sheeting. Thirty nine yards of Bleached sheeting. Thirty nine yards of Bleached sheeting. Forty six yards of Bleached sheeting. Thirty nine yards of bleached sheeting. Twenty six yards of bleached sheeting. Thirty nine yards of bleached sheeting. Thirty one yards of sheeting. Two and one half yards of sheeting. Seventeen and one half yards striped Shirting. Two and one half yards of striped shirting. Two yards of striped Shirting. Two yards of striped shirting Four yards of striped, shirting. Two and one half yards of striped shirting. Four and one half yards. Check. Ten yards of Check. Eighteen and one half yards of bleached sheeting. Thirty two yards of bleached sheeting. Thirty six and one half yards. of bleached drilling. Six yards of bleached sheeting. Four yards of corset Jeans. Thirty two yards of diaper. Twenty yards of Corset Jeans. Eleven yards of diaper Twelve yards of diaper. Eleven yards of Napkin. Fifteen yards. of white Flannel

One Shawl, Forty two yards of Curtain Calico. Forty three yards curtain calico. Five and one half yards curtain calico Thirty two yard's Curtain calico, Two yards Curtain calico, One Coat, One Coat One Coat, One Coat, One Coat, One Coat, One Coat, One Coat, One Coat, One Coat. One Coat, One Coat, One Coat, One Coat One Coat, One Coat, One Coat, One Coat, One Coat, One Coat, One Coat, One Coat, One Coat, One Coat, One Coat, One Coat. One pair pants, One pair pants, One pair pants, One pair pants, One pair pants One pair pants One pair pants, One pair pants One pair pants, One pair pants, One pair Pants, One pair pants, One pair pants, One pair pants, one pair pants, One pair pants, One pair pants, One pair pants, One pair pants. One pair pants, One pair pants, One pair pants, One pair pants, One pair pants One pair pants, One pair pants, One pair pants. One pair pants, One pair pants, One pair pants, One pair pants, One pair pants, One pair pants. One pair pants, One pair pants, One pair pants, One pair pants, One pair pants, One pair pants, One pair pants, One pair pants, One pair pants, One pair pants, One pair pants, One pair pants One pair pants, One pair pants, One pair pants,

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One Vest, One vest, One Vest; One Vest
One Vest. One Vest, One Vest, One Vest.
One vest, One Vest, One vest, One Vest.
Five plain red shirts. Six fancy Red
Shirts. Twenty pairs white woolen Drawers
Fourteen Wrappers. Seventeen fine wrappers.
Fifty three and one half yards of Curtain
Calico. Thirty one yards of green Bard ging-
ham, Thirty yards of purple bard. gingham.
Twelve yards of purple bard. gingham.
forty four and one half yards of green
bard gingham. Thirty eight, yards of Brown
Bard gingham. Forty yards of Pink bard.
gingham. eighteen yards of green bard.
gingham. Forty yards of Pink Bard, ging-
ham. Two and one half yards of black
bard gingham, Twenty-nine yards of green
bard gingham. Eleven yards of brown bard,
gingham, Forty yards. of black Bard
gingham. forty yards of pink Bard, ging-
ham. Twenty three yards Brown bard ging-
ham. Nine yards of brown bard gingham
Thirty four yards of brown bard gingham
Twenty seven yards of green bard gingham
Thirty nine yards of Red bard gingham
Eleven yards of brown bard gingham
Eighteen yards of blue bard gingham
Twenty four yard of pink bard gingham,

Twelve and one half lbs Grass Rope. Ten lbs Cotton Rope, of great value, to wit, of the value of fifteen hundred dollars, and converted and disposed of the same to their own use and other wrongs to the said Plaintiffs then and there did to the great damage of the said Plaintiffs & against the Peace &c.

3. And for that also the said defendant on the day & year aforesaid & on divers other days between that day and the day of commencing this suit, with force & arms at & within the County & State aforesaid, did seize take & convey away, other goods, chattels, wares & merchandize of the Plaintiffs, to wit, ginghams, cloths, calicos, coats, vests, pants, shoes, boots, shawls, umbrellas, ropes, muslins, shirts, skirts, buskins, diaper cloth, shirting, sheeting, drilling, checks, jeans, napkins, flannels, drawers, wrappers, of great value to wit, of the value of twelve hundred dollars, and then and there converted & disposed of the same to their own use and other wrongs to the Plaintiff then & there did to the damage of the Plaintiffs and against the peace and dignity of the People &c wherefore the Plaintiffs say they have sustained damage in the sum of four thousand dollars & therefore they

bring this suit.

James G Madden
Plff. Attorney.

Filed Nov 15th 1860.

Wm Laferty, clerk.

State of Illinois }
Warren County } ss.

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

Present. Hon Aaron Tyler Judge,
James H Stewart States Attorney
David Turnbull Sheriff
Wm Laferty Clerk.

Elijah C. Babcock & John Babcock partners by name & style of E. C. Babcock & Son.

vs.

Alexander G. Kirkpatrick Seth Smith, Geo. D. Crandall James McCoy, William McGregor & Chester W. Palmer

Trespass to Personal Property.

And afterwards to wit on the 22nd day of March A.D. 1861 the following order was entered on the records of our said Court, which is as follows, to wit,

E. C. Babcock & Son

vs

Alexander G. Kirkpatrick et al

Trespass to Personal Property.

Defendants by attorney filed their demurrer to plaintiffs declaration.

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

Elijah C. Babcock et al.

vs.

Alexander G. Kirkpatrick et al

And said defendants come and defend the wrong & injury when &c and say that the said several counts of the said declaration, and the matters & things

therein contained in manner & form as the same are before pleaded & set forth are not sufficient in law nor are either of said counts of said declaration sufficient in law for the said plaintiffs to have & maintain their aforesaid action thereof against the said defendants & that they are not bound by law to answer the same, And this they are ready to verify wherefore they pray judgment.

A. G. Kirkpatrick
Defts Atty.

And for special causes of demurrer the said defendants assign the following to wit.

1 For that the said plaintiffs have in said declaration & in each & every count thereof complained against said defendants for a trespass to personal property to wit, goods, chattels. wares & Merchandise, therein & thereby supposed to have been committed by said defendants on the 8th day of March A.D. 1859 and to have been thence continued in divers days between that day & the commencement of said suit when by law they ought to have declared against said defendant for the said trespass if any had been committed as having been committed on some

certain or stated day and to have confined & limited the said trespass to that day in particular & not have continued the same from time to time & they have set forth in each of said counts of said declaration,

2 For that it is not alledged in either of said Counts that the supposed trespasses were committed with force & arms &c.

3 For that said plaintiffs have not specified the number, amount or kind of ginghams, cloths, calicos, coats, vests, pants, shoes, &c &c &c. &c. in said third count in said declaration which is supposed to have been taken by said defendants & the description is otherwise insufficient

4 For that said plaintiffs in each & all of said counts of said declaration after stating the supposed taking, carrying away & converting of said goods, chattels, wares, merchandize by said defendants avers that other wrongs were done by said defendants to said plaintiffs to the great damage of said plaintiffs, without specifying or stating what said damage amounts to or that it was included in the damages at the conclusion of the declaration ——

22. 4. For that the said plaintiffs have in each & all of said counts of said declaration alledged alia enormia. without specifying the amount of such damages or including the same in the damages at the conclusion of the declaration.

5 For that by each & all of said counts of said declaration, said plaintiffs claim special damages without stating how much the same amounts to.

6 For that in each & all of said counts of said declaration, the same words being a description of the same article are repeated, as for instance in the said second count, the words "one pair of pants" are repeated forty eight times &c & because said description & specification of said goods &c in each & all of said counts is otherwise improper & illegal & uncertain

7 For that the said supposed trespasses in each & all of said counts of said declaration & the conversion of said goods &c by said defendants are not charged directly, expressly or positively, but the same are only stated by way of recital & inducement.

8. Because the, Fourth repetition of the words being a description of the same article which are repeated in each of said counts as for instance in the said second count where the words "one pair of pants, are repeated 48 times ought to stricken out before going to trial, so that the description of the same will be then rendered certain

9. And because the said declaration & each & every count thereof is in other respects uncertain &c.

A. G. Kirkpatrick
Defts Atty,

Filed Mch 18/61.
Wm Lafuty Clk.
pr. H.

And afterwards to wit on the 25th day of March A.D. 1861 the following order was entered upon the records of our said court which is as follows. to wit.

Elijah C. Babcock & John Babcock partners &c in the name of E. C. Babcock & Son

vs.

Alexander G. Kirkpatrick, Seth Smith George D. Crandall. James McCoy William McGregg & Chester W. Palmer

Trespass to Personal Property.

This cause coming on to be heard on defendant's demurrer to plaintiff's Declaration. - The Court Sustains the demurrer as to the third Count, and plaintiff stands by the third Count in his said declaration.
And the Court Sustains the special demurrer as to the first and second counts in said declaration as to "force and arms" and as to "Continuendo". And on plaintiff's motion leave is given to amend the first and second Counts in said Declaration.

And afterwards to wit on the 26th day of March A.D. 1861 the following order was entered on the records of our said Court which is as follows to wit.

Elijah C. Babcock & John Babcock, partners by the name & style of E. C. Babcock & [illegible]
vs
Alexander G. Kirkpatrick, Seth Smith, George D. Crandall, James McCoy, William M. Gregg & Chester H. Palmer

Trespass to Personal Property.

This day came the defendants by their Attorney and enter their motion for a continuance herein on account of amendment to the declaration filed herein, And after hearing the same it is ordered by the Court that the motion be overruled.

Alexander G. Kirkpatrick
Seth Smith, George D. Crandall
James McCoy William M. Grigg
and Chester W. Palmer.
ats
Elijah C. Babcock &
John Babcock

In Warren
Circuit Court
October Term
A.D. 1859

Trespass.

1 And the said defendants by A. G. Kirkpatrick their attorney come and defend the force & injury when &c and say that they are not nor is any or either of them guilty of the said supposed trespasses above laid to their charge, in any or either of them or any part thereof in manner & form as said plaintiffs hath above thereof complained against them, And of this the said defendants put themselves upon the County &c.

A. G. Kirkpatrick
Defts Atty.

2 And for further plea in this behalf the said defendants say actio non, because they say that they at said time when &c by the leave and licence of the said plaintiffs to them for that purpose first given and granted. to wit at Warren County Illinois aforesaid committed the said supposed trespass.

in said declaration mentioned. And
this said defendants are ready to verify
wherefore they pray judgment &c.

R. G. Kirkpatrick
Defts Atty.

3. And for further plea in this behalf, (as to
the seizing, taking & carrying away the said
goods, wares, merchandize & chattels & converting
and disposing thereof to their own use) said def-
endants say action non because they say that
Oliver N Bostwick, Valentine Hussy Jr. Charles
E. Bostwick & George B. Knickerbocker, partners
trading under the name & style of Bostwick
Hussy & Co before the said time when &c in
the said declaration mentioned to wit, on
the seventh day of March A.D. 1859 in pursu-
ance of the statute in such case made
and provided, filed an affidavit in the
office of the clerk of the Circuit Court of said
County of Warren setting forth that Joel E Rag-
land & Robert H. Ragland partners trading
under the name & style of J. E. Ragland & Bro
were justly indebted to them in the sum
of five hundred & thirty eight & 07/100 dollars and
that said Joel E Ragland & Robert H Ragland
had departed from this state with the intention
of having their effects removed from this
state to the injury of said Bostwick Hussy &c

and thereupon the clerk of said Court did issue a writ of attachment under his hand & seal of said Court, directed to the Sheriff of said County returnable at said Term of said court, commanding him to attach the lands, tenements, goods, chattels, rights credits money & effects of said debtors of every kind or so much thereof as would be sufficient to satisfy said claim sworn to, with interest and costs of suit in whose hands or possession the same may be found; which said writ was afterwards & before said time when &c to wit on the 7th day of March AD 1859, delivered to & placed in the hands of said Seth Smith the then acting Sheriff of Warren County aforesaid, by virtue of which said writ the said Seth Smith being Sheriff of Warren County aforesaid and the said Alexander G. Kirkpatrick George D Crandall James McCoy William M Gregg & Chester W. Palmer as servants of said Smith and by his command afterwards and before the return of said writ to wit on the 8th day of March AD, 1859 at the said time when &c in order to seize and take and did then & there seize and take in attachment the said goods wares, merchandize & Chattels And in so doing said Smith so being Sheriff as aforesaid and the said Alexander G.

Kirkpatrick, George, D, Crandall James McCoy, William M. Gregg and Chester W Palmer as his servants aforesaid did then & there seize & take said goods &c as they lawfully might for the cause aforesaid doing no unnecessary damage to said plaintiffs on that occasion which is the said supposed trespass in the said declaration mentioned and whereof the said plaintiffs hath above thereof complained against said defendants, And this the said defendants are ready to verify wherefore they pray judgment &c.

A. G. Kirkpatrick
Defts Atty,

4 And for further plea in this behalf (as to the seizing, taking and carrying away of the said goods wares, merchandize & chattels and converting and disposing thereof to their own use) said defendants say actio non, because they say that Oliver N. Bostwick, Valentine Hussy Jr, Charles E Bostwick & George B, Knickerbocker, partners trading under the name & style of Bostwick Hussy & Co before the said time when &c, in the said declaration mentioned on the 7th day of March A D 1859 in pursuance of the Statute in such case made & provided

filed an affidavit in the office of the clerk of the Circuit Court of said County of Warren setting forth therein that Joel. E Ragland & Robert F. Ragland partners trading under the name & style of Joel E Ragland & Bro were justly indebted to them in the sum of $5 38.07/100 dollars. and that said Joel E Ragland & Robert F. Ragland had departed this state with the intention of having their effects removed from this state to the injury of said plaintiffs and thereupon the clerk of said Court did under his hand & seal of said Court issue a writ of attachment directed to the Sheriff of said County of Warren to execute, which said writ, was returnable to said Term of said Court to wit March Term AD. 1859, and commanded the said sheriff of said County to attach so much of the estate real or personal of the said Joel E Ragland & Robert F. Ragland to be found in said County as shall be of value sufficient to satisfy the said debt and costs according to the complaint filed in said cause which said writ was afterwards & before said time when &c. to wit on the 7th day of March AD 1859, at said County of Warren aforesaid delivered to said Seth Smith who was then & there the acting Sheriff of

said County of Warren to be executed in due form of law. And the said defendants further say that before and at the said time when &c divers goods & chattels of the said Joel E Ragland & Robert H Ragland liable to be attached by the said Seth Smith as aforesaid under & by said writ of attachment were in possession of said plaintiffs, and that thereupon under & by virtue of said writ of attachment the said Seth Smith so being Sheriff of said County aforesaid and the said Alexander G. Kirkpatrick & George D. Crandall as agents or attorneys for said Bostwick Hussy & Co plaintiff in said suit of attachment, and for the purpose of pointing out said goods & Chattels of said Joel E Ragland & Robert H. Ragland to said Seth Smith Sheriff as aforesaid, so that he could attach the same and said James McCoy William M. Gregg & Chester H Palmer as the servants of said Seth Smith and by his command afterwards and before the return of said writ, to wit, at said time when &c in order to seize & attach said goods &c and did then seize & attach the said goods & chattels of the said Joel E

Ragland & Robert H. Ragland and in so doing said defendants being &c as aforesaid did then & there necessarily and unavoidably commit said supposed trespass complained of in said declaration as they lawfully might for the cause aforesaid doing no unnecessary damage to the said plaintiff on that occasion which is the said supposed trespass in the introductory part of this plea mentioned and whereof said plaintiff hath above thereof complained against said defendants. And this the said defendants are ready to verify wherefore they pray judgment.

H. G. Kirkpatrick
Defts Atty.

5 And for further plea in this behalf as to said declaration the said defendants say actio non, because they say that before the time of the committing of the said supposed trespass in the said declaration mentioned to wit, March 17th A.D. 1859 in pursuance of the Statute in such case made & provided Oliver N. Bostwick, Valentine Huey Jr. Charles E. Bostwick & George B. Knickerbocker partners trading under the name & style of Bostwick Huey & Co filed an affidavit in the office of

the Clerk of the Circuit Court of said County of Warren setting forth therein that Joel E Ragland & Robert. H, Ragland partners trading under the name & style of J E Ragland & Bro were justly indebted to them in the sum of five hundred & thirty eight $\frac{07}{100}$ dollars the same being the amount due on a certain promissory note given by said Joel. E. Ragland & Bro to them said Bostwick Hussy & Co and particularly set forth in said affidavit and that said Joel E Ragland & Robert. H, Ragland had departed this state with the intention of having their effects removed from this state to the injury of them said Bostwick Hussy & Co and said Bostwick Hussy & Co. having given Bond as the Statute provides all of which will more fully appear from the record & proceedings of said cause in said Court now remaining in said Court. therefore the Clerk of said Circuit Court did under his hand & the seal of said Court issue a writ of attachment directed to the Sheriff of said County of Warren returnable to the March Term A.D. 1859 of said Circuit Court of said County of Warren. by which said

writ of attachment said Sheriff was
commanded to attach so much of the
estate real or personal of the said Joel
E Ragland & Robert F. Ragland to be found
in said County as shall be of value
sufficient to satisfy the said debt and
costs according to the said complaint;
and such estate so attached in the hands
of said Sheriff of said County to secure or
so to provide, that the same may be
liable to further proceedings thereupon
according to law at said Term of said
Court; which said writ of attachment
was afterwards & before the return day
thereof & before said time when &c to wit,
on the same day & year aforesaid at the
County aforesaid was delivered to said Sheriff
to be executed in due form of law; and
said defendants further aver that, that
at the time of the issuing of the aforesaid
writ of attachment as aforesaid, and the
attaching of the goods &c as hereinafter men-
tioned that said defendants Alexander
G. Kirkpatrick & George D Crandall were
the agents of said Bostwick Hussy & Co
in respect to the enforcement and coll-
ection of said money due them from said
Joel. E. Ragland & Robert. F. Ragland and.

for the recovery of which said attachment suit was brought as aforesaid and as such were authorized and commanded to direct the attachment of the goods & property of said Joel E Ragland & Robert H. Ragland under & by virtue of said writ of attachment as aforesaid and said defendants further aver that said defendant Seth Smith was at the time of the issuing of said writ of attachment and from thence hitherto & until the return of said writ of attachment. and at the time of attaching the goods &c as hereinafter mentioned the Sheriff of the County of Warren then acting as such. And the said defendants further aver that afterwards & before the return day of said writ of attachment to wit on the 8th day of March AD, 1859 the said goods & chattels in said declaration mentioned being the property of the said Joel E Ragland & Robert H Ragland and in possession of the said plaintiffs to wit at Warren County aforesaid and as the property of said Joel E Ragland & Robert H. Ragland being then & there liable to be attached & taken by virtue of said writ of attachment the said

defendants Alexander G. Kirkpatrick &
George D Crandall as the agent of said
Pastwick Nussey & Co then & there directed
said Seth Smith as Sheriff as aforesaid
to attach said goods & chattels in said
declaration so as aforesaid in possession
of said plaintiffs and which had been
before them fraudulently sold to one
Milton C. Munger from whom said
plaintiffs pretend to have purchased the
same and said defendants aver that
the Creditors of said Joel E Ragland &
Robert F. Ragland before & at the time
of said plaintiffs pretended purchase of
said goods & chattels from said Milton
C. Munger notified said plaintiffs that
said sale of said goods & chattels of said
Raglands to said Milton C. Munger was
fraudulent & intended to defraud, delay
& hinder the said Creditors in the collection
of their just dues, and the said defendants
say that before & at the time of said preten-
ded purchase of said goods & chattels the
said plaintiffs had full & complete
Knowledge of the fraud in said sale from
the said Raglands to said Milton C Munger.
and that they bought the same or pretended
to buy the same with a full Knowledge
of the fraud, and the said goods &

being so fraudulently bought by said Milton O Munger of & from said Raglands and said plaintiffs having pretended to buy the same as aforesaid & with full Knowledge of the fraud as aforesaid, and being so kept & possessed, and the said Seth Smith being then & there acting Sheriff of said County of Warren as aforesaid and then & there having said writ of attachment as aforesaid so issued and delivered to him as aforesaid and before the return day thereof to wit, on the day & year in said declaration mentioned by virtue of said writ and the directing of said Alexander G Kirkpatrick & George L Crandall as such agents aforesaid and the said James. M Coy. William M. Gregg & Chester W. Palmer being then & there deputies, clerks & servants of said Seth Smith and for the purpose of taking an inventory of said goods & chattels & taking charge & keeping & removing the same and by the employment & command of said Seth Smith for the purpose aforesaid, did attach, seize & take the said goods & chattels in said Counts mentioned as they lawfully might which is the said trespass whereof the said plaintiffs hath above thereof

complained against said defendants and this they are ready to verify wherefore they pray judgment &c.

H. G. Kirkpatrick
for Defts.

6. And for further plea in this behalf as to said declaration the said defendants say actio non because they say that before the time of the committing of the said supposed trespass in said declaration mentioned to wit March 17th A.D. 1859 in pursuance of the Statute in such case made & provided, Oliver N Bostwick, Valentine Hussey Jr Charles C Bostwick & George B. Knickerbocker partners trading under the name & Style of Bostwick Hussey & Co filed an affidavit in the office of the Clerk of the Circuit Court of said County of Warren Setting forth therein that Joel. E Ragland & Robert J Ragland partners trading under the name & style of J. E. Ragland & Bro. were justly indebted to them in the sum of five hundred & thirty eight & 07/100 according to the tenor & effect of a promissory note the following being a copy thereof to wit

"$538 07/100 New York August 28 1858"
Six months after date we the subscribers

of Monmouth, County of Warren, State of Ills. promise to pay to the order of Bostwick Hussey & Co. Five hundred & thirty eight 07/100 dollars at their office in N.Y. value received.
"Mch 7/59 J. E. Ragland & Bro"
and that said Joel E. Ragland & Robert F. Ragland had departed from this State with the intention of having their effects removed from this State to the injury of said Bostwick Hussey & Co as the affiant was informed & verily believed and the clerk of said Court having taken bond & security in said case of attachment as by the Statute in such case is provided of & from said Bostwick Hussey & Co and the same being approved of by him the said clerk of said court afterwards & on the day & year last aforesaid the said clerk of said Circuit Court did under his hand & seal of said court, did issue a writ of attachment directed to the Sheriff of Warren County aforesaid returnable to the March Term A.D. 1860 of said Circuit Court at a Term thereof then to be holden, by which said writ of attachment said Sheriff was commanded to attach

so much of the estate real or personal of the said Joel E Ragland & Robert H Ragland to be found in said County of Warren as shall be of value sufficient to satisfy the said debt and costs, according to the said complaint; and such estate so attached in the hands of said Sheriff of said County to secure or so to provide that the same may be liable to further proceedings thereupon according to law at said term of said Court as aforesaid and such other & further proceedings were had in said attachment cause that afterwards to wit at the October Term 1859 of said Circuit Court by the judgment & consideration of said Court the said Oliver N. Bostwick, Valentine Hussy Jr, Charles E. Bostwick & George B Knickerbocker partners trading under the name & style of Bostwick Hussy & Co as aforesaid recover a judgment against said Joel E Ragland & Robert H. Ragland for the sum of five hundred & fifty nine & $\frac{60}{100}$ dollars which was adjudged to the said Bostwick Hussy & Co for their damages by them sustained as well on the occasion of the non-performing of certain promises & undertakings before them made by said Joel Ragland & Robert H. Ragland.

as aforesaid to said Bostwick Hussey & Co
and in the further sum of
dollars for their costs by them
about said attachment suit expended
whereof the said Joel E Ragland & Robert
H. Ragland were convicted as by the
record now remaining in said Court
will more fully appear. and said
defendants further aver that said writ
of attachment was, after the same was
issued out of said Court and before
said judgment was obtained in said
Court to wit on the 7th day of March A.D.
1859 & at the County of Warren aforesaid
delivered to said Sheriff to be executed
in due form of law; and said defend-
ants further aver that at the time of the
issuing of the aforesaid writ of attach-
ment as aforesaid and at the time
of the attaching of the goods & chattels
as hereinafter mentioned that said
defendants Alexander G. Kirkpatrick
& George D. Crandall were the agents of
said Bostwick Hussey & Co in respect to
the enforcement and collection of said
money due them from said Joel E
Ragland & Robert H. Ragland and for
the recovery of which said attachment

suit was brought as aforesaid and as such were authorized and commanded to direct the attachment of the goods & property of said Joel. E. Ragland & Robert. F. Ragland under & by virtue of said writ of attachment as aforesaid. and said defendants further aver that said Seth Smith was at the time of the issuing of said writ of attachment and from thence hitherto & until the return of said writ of attachment and at the time of attaching the goods & chattels hereinafter mentioned the acting Sheriff of the County of Warren aforesaid: and that at the time of the attaching of the goods & chattels as hereinafter mentioned that said James. Mc Coy. William. M. Gregg & Chester. W. Palmer were the deputies & clerks of said Seth Smith and at the time of the attaching of the goods & chattels as hereinafter mentioned were acting as such to & for him and by his employment direction & command in the taking of said goods & chattels & taking an inventory of the same. And said defendants further aver that afterwards & before the return day of said writ of attachment to wit on the eighth day of March AD 1859 the said goods & chattels in said declaration mentioned. being the property of said Joel E Rag-

land & Robert F. Ragland and in possession
of said plaintiffs to wit at Warren County
aforesaid and as the property of said Joel E.
Ragland & Robert F. Ragland being then &
there liable to be attached & taken by vir-
tue of said writ of attachment, the said
defendants Alexander G. Kirkpatrick &
George D. Crandall as the agents of said
Bostwick Hussey & Co. then & there directed said
Seth Smith as Sheriff as aforesaid to attach
said goods & chattels in said declaration
mentioned & set forth & described so as
aforesaid in possession of said plaintiffs
and which had been before them fraudulently
sold to one Milton C. Munger, who made
a pretended conditioned sale of the same
to said plaintiffs, the conditions & stipu-
lations of said pretended conditioned sale
being that said plaintiffs were to pay said
Milton C. Munger in five years from &
after the time of said sale provided that
said Milton C. Munger could & would
sustain his title to said goods & chattels as
against the creditors of said Joel E Rag-
land & Robert F. Ragland, and said sale
of said goods & chattels from said Robert F.
Ragland & Joel E. Ragland to said Milton
C. Munger. being fraudulent & made for the

purpose of preventing said Bostwick Hussey & Co from collecting their just dues of & from said Joel E Ragland & Robert H Ragland as aforesaid. and the said Seth Smith as Sheriff as aforesaid having then & there said writ so issued and delivered to him as aforesaid and before the return day thereof to wit the day & year mentioned in said declaration by virtue of said writ and the directions of said Alexander G. Kirkpatrick and George D. Crandall and the said James McCoy William M. Gregg & Chester W Palmer acting as the deputies & clerks of said Sheriff & by his command as aforesaid did seize and take the said goods & chattels in the said declaration mentioned as they lawfully might which is the supposed trespass whereof the said plaintiffs hath above thereof complained against the said defendants and this they are ready to verify. wherefore they pray judgment, &c

A. G. Kirkpatrick
Defts atty.

7th Plea And for further plea in this behalf as to said declaration said defendants say actio non. because they say that before the time of committing of the said supposed

43 trespasses in the said declaration

mentioned to wit March 7 AD 1859 in pursuance of the Statute in such case made & provided. Oliver N. Bostwick Valentine Hussy Jr. Charles E. Bostwick and George B. Knickerbocker partners trading the name & style of Bostwick Hussy & Co filed an affidavit in the office of the clerk of the Circuit Court of said County of Warren setting forth therein that Joel E. Ragland & Robert F. Ragland partners trading under the name & style of J E Ragland & Bro were justly indebted to them in the sum of $538.07 the same being the amount due on a certain promisory note given by said Joel. E. Ragland & Bro to said Bostwick Hussy & Co and that said Joel E Ragland & Robert F. Ragland had departed this State with the intention of having their effects removed from this state to the injury of said Bostwick Hussy & Co. And the said Bostwick Hussy & Co having filed a bond with said clerk as the law providing the said clerk of said Court did under his hand & the seal of said Court issue a writ of attachment directed to the Sheriff of said County of Warren returnable to the March Term AD 1859 of said Circuit Court of said County of Warren

by which said writ said Sheriff was commanded to attach so much of the estate real or personal of the said Joel. E. Ragland & Robert. H. Ragland to be found in said County of Warren as shall be of value sufficient to satisfy the said debt and costs according to said complaint and such estate so attached in the hands of said Sheriff of said County to secure or so to provide that the same may be liable to further proceedings thereupon according to law at said term of said Court; which said writ of attachment was afterwards & before the return day thereof & before said time when &c to wit on the same day & year aforesaid at the County aforesaid was delivered to said Sheriff to be executed in due form of law. And said defendants aver that the consideration of said note which was given by said Joel E. Ragland & Bro to said Bastwick Hussy & Co & upon which said attachment suit was based were certain goods & chattels which had been before that time sold & delivered to them the said J. E. Ragland & Bro by said Bastwick Hussy & Co and that a part of the goods & chattels mentioned & described in said plaintiffs said dec-

location were a part of the identical goods so sold as aforesaid by said Bostwick Hussy & Co to said Joel E Ragland & Bro. to said Joel E Ragland & Bro

And said defendants further aver that at the time of the issuing of the aforesaid writ of attachment as aforesaid and the attaching of the goods & chattels as hereinafter mentioned that said defendant Alexander G. Kirkpatrick was the agent of said Bostwick Hussy & Co in respect to the enforcement and collection of said money due them from said J. E. Ragland & Bro and for the recovery of which said attachment suit was brought as aforesaid and as such was authorized & commanded to direct the attachment of the goods & property of said Joel E Ragland & Bro under & by virtue of said writ of attachment as aforesaid. And said defendants further aver that said Seth Smith was at the time of the issuing of the said writ of attachment and from thence hitherto & until the return of said writ of attachment and at the time of the attaching of the goods & chattels as hereinafter mentioned the Sheriff of the said County of Warren acting as such And that said defendants George D Randell

James McCoy, William M. Gregg & Chester W Palmer, were the agents & clerks of the said Seth Smith for the purpose of taking & removing said goods & chattels and were acting under the command of said Seth Smith as Sheriff as aforesaid. And said defendants further aver that on the day of A.D. 1857 at the County of Warren aforesaid, said Joel E. Ragland & Robert H. Ragland made a sale of certain goods & chattels to one Milton C Munger and that an inventory of said goods & chattels was then & there taken by said Milton C. Munger, that said inventory was taken in great haste and partly on the Sabbath or first day of the week and partly in the night before & the night after said Sabbath day, and that in consequence of the haste of the same & the fraud of said Munger, said Joel E Ragland & Bro were defrauded out of the sum of eight hundred dollars, that said inventory only amounted to the sum of $5200 whereas had it been fairly & fully taken it would have amounted to the sum of $6,000 - that said goods & chattels so sold by said Joel E Ragland & Bro to said Milton C Munger were partly the goods & chattels purchased by said

Joel. E. Ragland & Bro from said Bostwick Nasey & Co and the said goods & chattels mentioned & described in said plaintiffs said declaration were a part & portion of said goods so sold by said Joel E Ragland & Bro to said Munger and said defendants further aver that said plaintiffs afterwards to wit on day of AD 1879 made a pretended purchase of said goods & chattels so sold as aforesaid by said Joel E Ragland & Bro to said Munger from said Munger by which said purchase or pretended purchase said plaintiffs pretended to have bought the same on a credit of five years and that they at the end of (five) years are to pay for the same, provided said Munger sustains his title to the same against the creditors of said Joel E Ragland & Bro, and if said Munger does not sustain his title to the same, said plaintiffs are not to pay for the same at said time or at any other time. And said defendants aver that both before & at the time of said pretended purchase of said goods & chattels by said plaintiffs from said Milton C. Munger that said plaintiffs had notice of the fraud of said Munger in the inventory & invoice of said goods and that the creditors of said Joel E Ragland

& Bro would contest said sale in consequence thereof.
And said defendants further aver that afterwards & before the return day of said writ of attachment to wit on the 8th day of March AD 1859 the said goods & chattels in said declaration mentioned, being of the value of four hundred dollars and not of the value of twelve hundred dollars as alledged in said declaration & being part of said stock of goods & chattels so sold. or pretended to be sold as aforesaid and said Bostwick Hussey & Co having the right as creditors of said Joel E Ragland & Bro to levy on so much of said goods & chattels as were of the value of not more than eight hundred dollars being the amount out of which said Raglands were defrauded by said Munger as aforesaid and said plaintiffs having notice of the fraud of said Munger as aforesaid before the time of their said pretended purchase from him and the said goods & chattels in said declaration mentioned being then & there liable to be attached as the property of said Joel E Ragland & Bro by virtue of said writ of attachment the said Alexander G. Kirkpatrick &

George D Crandall as the agents of said Bostwick & Hussy & Co then & there directed said Seth Smith as Sheriff as aforesaid to attach said goods & chattels in said declaration mentioned so as aforesaid in possession of said plaintiffs, and being so kept and possessed and the said Seth Smith being then & there the acting Sheriff of said County of Warren aforesaid and then & there having said writ of attachment as aforesaid so issued and delivered to him as aforesaid and before the return day thereof to wit on the day & year in said declaration mentioned by virtue of said writ and the directions of Alexander G. Kirkpatrick & George D. Crandall as such agents aforesaid and said James McCoy, William M Gregg & Chester H Palmer being then & there clerks & servants of said Seth Smith and for the purpose of taking an inventory of said goods & chattels and removing the same and by the employment and command of said Seth Smith for the purposes aforesaid did attach & seize & take said goods & chattels in said declaration mentioned as they lawfully might which is the said supposed trespass whereof the

said plaintiffs hath above thereof complained against said defendants and this they are ready to verify wherefore they pray judgment &c.

A J Kirkpatrick
for Defts,

4 Plea And for further plea in this behalf the said defendants say actio non &c because they say that before the time of the committing of the supposed trespass in the said declaration mentioned to wit, on the 28th day of August A.D. 1858 Joel. E. Ragland & Robert. H. Ragland partners trading under the name & style of J. E Ragland & Bro by the consideration of their certain promissory note made & executed in the words & figures to wit.

$538 07/100 New York August 28 1858.
Six months after date we the subscriber of Monmouth County of Warren State of Ill promise to pay to the order of Bostwick Hussy & Co Five hundred & thirty eight 07/100 dollars at their office in N.Y
value received J. E Ragland & Bro
March 3/59.

became & were indebted to Oliver N. Bostwick Vallentine Hussy & Charles E. Bostwick and George B. Knickerbocker partners trading under the name & style of.

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Bostwick Hussey & Co in the sum of five hundred & thirty eight 07/100 Dollars which by the said note in hand ready to be produced under the order of the Court will more fully appear.

And said defendants say that said sum of money in said note mentioned remaining unpaid & unsatisfied and in full force the said Oliver N Bostwick, Valentine Hussey Jr. Charles E. Bostwick & George B. Knickerbocker to wit the seventh day of March AD 1859 at the City of Monmouth in Warren County & State of Illinois, sued out and prosecuted out of the Warren County Circuit Court of the State of Illinois a certain writ of attachment directed to the Sheriff of said Warren County by which said writ the said Sheriff was commanded to attach so much of the estate real or personal of the said Joel E Ragland & Robert F. Ragland as should be of value sufficient to satisfy the said debt & costs according to the complaint of said Oliver N Bostwick Valentine Hussey Jr. Charles E. Bostwick & George B. Knickerbocker filed the day & year aforesaid. and such estate so attached to secure or so to provide that

the same shall be liable to further proceedings thereupon according to law at a Circuit Court to be holden at the Court House in Monmouth within & for the County of Warren aforesaid on the third Monday of March AD 1809 so as to compel the said Joel E Ragland & Robert. F. Ragland to appear and answer the complaint of said Oliver N Bostwick, Valentine Husey Jr Charles. E. Bostwick & George. B. Knickerbocker and that the said Sheriff should have then & there the said writ. which said writ afterwards and before the return day thereof and before the said time when &c to wit on the same day & year aforesaid at Monmouth in said County of Warren was delivered to said Sheriff to be executed according to law.

And said defendants further aver that at the time of the issuing of the aforesaid writ of attachment as aforesaid and the levying of the same as hereinafter mentioned the said defendant Seth Smith was the then acting sheriff of said Warren County Illinois and as such was authorized and commanded to levy the said writ of attachment upon the property of said Joel E Ragland & Robert F Ragland.

and that said Alexander G. Kirkpatrick
& George D Crandall were the attorneys &
agents of said Oliver N Bostwick, Valen-
tine Hussy Jr Charles E Bostwick &
George B Knickerbocker in respect to
the enforcement and collection of said
money due them from said Joel E
Ragland & Robert. F. Ragland for the re-
covery of which said suit of attach-
-ment was brought as aforesaid and
as such were authorized and comman-
ded to direct the attachment of the
goods & property of said Joel E Ragland &
Robert F, Ragland under & by virtue of
said writ of attachment as aforesaid.
And said defendants further aver that
before the time of the issuing of said
writ to wit day of AD 1859
the said Joel E Ragland & Robert F. Ragland,
had in their possession a large stock
of goods then in their storehouse in Mon-
mouth Warren County Ill of great value
to wit of the value of four thousand dollars
& then were the owners thereof and that
afterwards to wit on the day & year aforesaid
the said Joel E Ragland & Robert F. Ragland
made a fraudulent sale of said goods
to one Milton C Munger for the ex pur.

purpose of hindering & delaying the creditors of said Joel E Ragland & Robert. F. Ragland from the collection of their just dues. And said defendants further aver that afterwards to wit on the day of A.D 1859 the said Milton C Munger made a pretended sale of said goods to said plaintiffs and the defendants further aver that said plaintiffs had notice of all & singular the fraud in said sale of said goods by said Joel E Ragland & Robert F. Ragland to said Milton C. Munger both before & at the time of their pretended purchase of the same from said Milton, C. Munger; and said defendants further aver that said plaintiffs with full knowledge of said fraud between said Joel E Ragland & Robert. F. Ragland and said Milton C Munger afterwards to wit on the 7th day of March A.D 1859 willfully intermixed said goods so pretended to be purchased by them from said Milton C Munger with a large stock of goods, to wit of the value of twenty thousand dollars then owned by them & then in their possession in their store house in Monmouth in said Warren County & State of Illinois so that said goods so pretended to be purchased by them from said Milton C Munger as aforesaid could not be identified or picked out by

the creditors of said Joel E Ragland & Robert F. Ragland or by any other person or persons whatever, and that said plaintiffs made said intermixture for the sole & only purpose of preventing said goods from being identified and being levied upon as the goods of said Joel E Ragland & Robert F. Ragland. And said defendants further aver that afterwards & before the return day of said writ of attachment to wit on the 8th day of March AD 1859 the said goods & chattels in said declaration mentioned & being a part & portion of said stock of goods intermixed as aforesaid by said plaintiffs & then & there in the possession of said plaintiffs, and in consequence of the wilful intermixture as aforesaid by said plaintiffs were then & there liable to be attached as the goods & property of said Joel E Ragland & Robert F. Ragland under & by virtue of said writ of attachment. The said Alexander G Kirkpatrick & George D Crandall as the agents of said Oliver N Bostwick Valentine Hussey Jr. Charles E. Bostwick & George B. Knickerbocker then & there directed said Seth Smith as Sheriff as aforesaid to attach said goods & chattels in said declaration mentioned so as aforesaid in possession of said plaintiffs and

being so kept and possessed and the said Seth Smith being then & there the acting Sheriff of said County of Warren aforesaid and then & there having said writ of attachment so issued & delivered to him as aforesaid and before the return day thereof to wit on the day & year aforesaid by virtue of said writ of attachment and the directions of said Alexander G. Kirkpatrick & George D. Crandall as such attorneys & agents as aforesaid and said James McCoy, William M. Gregg Chester W. Palmer being then Clerks &c of said Seth Smith Sheriff &c by the employment of said Seth Smith Sheriff &c as aforesaid did attach and seize said goods & chattels in said declaration mentioned as they lawfully might, which are the supposed trespasses whereof the said plaintiffs hath above thereof complained against said defendants & this they are ready to verify wherefore they pray judgment &c

A. G. Kirkpatrick
for Deft.

10 And for further plea in this behalf said defendants say actio non &c because they say that heretofore and before the time of the committing of the supposed trespasses in said declaration mentioned, to wit.

on the 28th day of August AD 1858 at
New York to wit at said County of Warren
Joel E Ragland & Robert H. Ragland partners
trading under the name & style of J. E.
Ragland & Bro made a purchase of certain
goods & chattels being the same goods & chattels
mentioned in said plaintiffs declaration
of & from Oliver N. Bastwick Valentine
Hussy Jr. Charles E. Bastwick & George B.
Knickerbocker partners trading under
the name & style of Bastwick Hussy & Co
and then & there obtained possession
thereof that said purchase of said goods
& chattels was accomplished by the said
Joel E Ragland & Robert H. Ragland from
said Oliver N. Bastwick. Valentine Hussy
Jr. Charles E. Bastwick & George B. Knick-
erbocker by false & fraudulent represent-
ations which said Joel E Ragland & Robert H.
Ragland had before and at the time of said
purchase made to said Oliver. N. Bastwick
Valentine Hussy Jr Charles E Bastwick and
George B. Knickerbocker which said false &
fraudulent representations were as follows
to wit, said Joel E Ragland & Robert H
Ragland then & there & before the time of
said purchase represented to said Oliver
N. Bastwick. Valentine Hussy Jr. Charles E.

Bostwick & George B. Knickerbocker that said Joel E Ragland & Robert. H Ragland were in good circumstances as regards pecuniary matters and were the owners of Real Estate situated in said County of Warren worth Ten Thousand dollars and that they were entirely out of debt all of which said defendants aver was totally false & untrue and that said Joel E Ragland & Robert, H, Ragland were not either at the time of said representations or at any time thereafter in good circumstances as regards pecuniary matters and were not the owners of Real Estate in said County of Warren of the value of ten thousand dollars & were not entirely out of debt as they had represented to said Oliver. N. Bostwick. Valentine Hussey Jr Charles E Bostwick & George. B. Knickerbocker but on the contrary thereof said Joel E Ragland & Robert H, Ragland were at said time when &c & at the time of said purchase of said goods and have ever since then been utterly & entirely insolvent & had not any land in said or in any other County or place whatsoever, and were at said time of said representations &c & have ever since that time been in debt to the amount of Ten Thousand dollars

And said defendants further aver that in consequence of the false & fraudulent representation of said Joel E Ragland & Robert F. Ragland they obtained possession of said goods & chattels of & from said Bostwick Hussey & Co and for no other reason whatever and that said Bostwick Hussey & Co at the time which the said representations of said Joel E Ragland & Robert F. Ragland and were deceived thereby and said goods & chattels being obtained possession thereof by said Raglands of & from said Bostwick Hussey & Co in consequence of the fraud of said Raglands as aforesaid and being liable to be seized by said Bostwick Hussey & Co at any time and said defendants being the agents of said Bostwick Hussey & Co afterwards to wit on the day before mentioned in said declaration, took & seized the said goods & chattels as the property of said Bostwick Hussey & Co. as they lawfully might which is the supposed trespasses whereof said plaintiffs hath above thereof complained against said defendants & this the said defendants are ready to verify. wherefore they pray judgment &c.

Filed March 26 1861 — A. G. Kirkpatrick.
Wm Laforty Clk — Defts Atty

State of Illinois County of Warren

Elijah C Babcock et al.
vs
Alexander G. Kirkpatrick et al.

Circuit Court March Term 1861

And the said plaintiffs as to the defendants third, seventh, ninth & tenth pleas by him pleaded are severally insufficient in law to enable the plaintiffs from having & maintaining the said action & they are not bound to reply to the same and this they are ready to verify wherefore they pray judgment &c.

Goudy for Plffs

And for special causes of de-murrer to the 7th & 9th pleas & each of them the plaintiffs assign

1st That they & each of them are argumentative

2nd That they & each of them set out evidence in detail & facts to aver conclusions therefrom expressly as required by the rules of pleading

3rd The same facts are set forth in other pleas of the defendant on which issue is joined.

4th There is no express averment that the goods & chattels so averred to be taken in each of said pleas were the property of the said Raglands

5th The said facts so set out in each of the pleas amount to the general issue

6th The said pleas & each of them contain matter irrelevant, impertinent & amounting to surplusage.

7th The said pleas & each of them incumber the record unnecessarily

Filed Mch 20th 1861.

Wm Lafaty Clk.

State of Illinois County of Warren

Elijah C. Babcock et al vs A. G. Kirkpatrick et al } Trespass.

Circuit Court March Term 1861.

And the said plaintiffs as to the fourth, fifth & sixth pleas of the defendants before pleaded by them says pre-cludi-non, because they say that the said defendants at the said time when & of their own wrongs and without the causes by them in their said fourth, fifth & sixth pleas

or either of them alledged, committed
the said several trespasses in the said
several pleas attempted to be justified
in manner & form as the said plaintiffs
hath above in the said first & second
Counts in said declaration or either counts
thereof complained against the defendants
And this the plaintiffs pray may be
enquired of by the Country &c.

Goudy for Plffs.

Filed March 26th 1861
Wm Lafferty Clk.

State of Illinois County of Warren
Elijah C Babcock et al
vs
A J. Kirkpatrick et al
Circuit Court March Term 1861

And the said plaintiffs as to the first
plea of the defendants likewise put
themselves on the Country &c

Goudy for Plffs.

And as to the second plea of the def-
endants above pleaded the said plaint-
iffs say precludi non because they say
that the said defendants at the said time

when &c of their own wrong. & without the leave & license of the said plaintiffs to the defendants first given & granted in that behalf committed the said several trespasses in the introductory part of the said second plea mentioned in manner & form as the plaintiffs hath above thereof complained against them the said defendants. And this they pray may be enquired of by the County &c.

Goudy for Plffs.

Filed Mch 26 1864.

Wm Lafaty. Clk

And afterwards to wit on the 27th day of March AD 1864 the following order was entered upon the records of our said Court which is as follows to wit,

Elijah C Babcock & John Babcock by the name & style of E C Babcock & Son
vs.
Alexander G Kirkpatrick, Seth Smith, George D Crandall, James McCoy, William M Gregg & Chester W. Palmer

Trespass To personal Property.

This day came the Plaintiffs by their attorney and enters his demurrer to the defendants 3d, 7" 9 & 10" pleas filed herein. And after hearing the same

the Court sustains the demurrer.
Thereupon came the plaintiff by their attorney and enters a Nolle prosequi as to William M. Gregg and Chester W Palmer

And afterwards to wit on the 28th day of March AD. 1861 the following order was entered upon the records of our said Court which is as follows, to wit,

Elijah C Babcock. John Babcock partners by the name & style of E C Babcock & Son } Trespass
vs } To
Alexander G. Kirkpatrick. Seth Smith } Personal
George D Crandall & James McCoy } Property.

This day came the parties and their attornies and issue being joined for trial they put themselves upon the County. Thereupon came a Jury to wit Clark Shaw. John Bartsall. Almond. Kidder. Thomas G. Allen. James. M Franklin. S. C Smith, Samuel. Ellinger William. W. Whitenack. R. B. Higgins. L D. Robinson. Philip Dan & Nathaniel Cecil who after being elected tried and sworn to well and truly try the issue joined herein. And after hearing a part of the evidence were by agreement of the parties permitted to separate under the instructions of the Court. And requested to meet the Court at 8½ o'clock tomorrow morning

And afterwards to wit on the 29th day of March AD 1861 the following order was entered upon the records of our said Court which is as follows.

Elijah C. Babcock, John Babcock.
by the name & Style of E C Babcock & Son
vs
Alexander G. Kirkpatrick. Seth Smith [?]
George D Crandall & James McCoy

} Trespass to Personal Property.

This day again came the parties and their attornies. And also came the Jury empannelled herein on Yesterday and after hearing the conclusion of the evidence, the argument of counsel and receiving the instructions of the Court retired in charge of an officer to consider of their verdict.

And afterwards to wit on the 31th day of March A.D. 1861 the following order was entered upon the records of our said Court which is as follows to wit.

Elijah C Babcock & John Babcock
by the name & Style of E C Babcock & Son
vs.
Alexander G. Kirkpatrick, Seth Smith [?]
George D. Crandall & James McCoy

} Trespass To Personal Property.

This day again came the Jury empannelled herein heretofore

And upon their Oaths do say "We the Jury find for the defendants. Thereupon came the Plaintiffs by their attorney and enters his motion for a new trial herein.

And afterwards to wit on the 12th day of April AD 1861 the following order was entered upon the records of our said Court which is as follows. to wit.

Elijah C Babcock & John Babcock. partners by the name & style of E. C Babcock & Son
vs
Alexander G. Kirkpatrick. Seth Smith George D Crandall & James. McCoy
} Trespass to Personal Property.

This day again this cause coming on for a hearing on the Plaintiffs motion for a new trial herein. And after hearing the same it is ordered by the Court that the motion be overruled, and the judgment be rendered on the verdict of the Jury herein, Therefore it is considered by the Court that the said defendants have and recover of and from the said Plaintiffs their costs by them in this suit laid out and expended and may have execution therefor. Thereupon came the said Plaintiffs by their Attorney and pray an appeal to the Supreme Court, which is allowed by the Court upon the said

Plaintiff entering into Bond in the sum of Twelve hundred dollars with security to be approved by the Clerk by agreement of Parties. Bond and Bill of Exceptions to be filed in thirty days from this date.

State of Illinois } In Circuit Court
Warren County } March Term A.D. 1861

Elijah C. Babcock et al }
vs } Trespass
Alexander G. Kirkpatrick }

Be it remembered that at the said term of said Court said cause came on to be heard upon the defendants demurrer to the plaintiffs amended declaration. And the Court sustains the demurrer to each count thereof. And the plaintiffs then asked leave to amend the first & second counts thereof to which the defendants objected to any amendment unless upon terms but the court overruled the objection and permitted the plaintiff to amend the 1st & 2d cts of said declaration to which the defendant then & there excepted. And the plaintiff elected to abide by said third count to said declaration The plaintiff then amended the 1st & 2 counts by striking out after the words "on divers other days, the words "between that day and the commencement of this suit" and inserting instead thereof "and times with force and arms" in each of said

Counts" And amended said third count without leave by by inserting after the words "Commencing this suit" the words "with force & arms to which said amendments & each of them the defendant then & objected and the Court decided that the amendment to said third count was improper. but made no further order with regard thereto but overruled the plaintiffs objections to the amendment to said 1st & 2 Counts to which decision the defendants then & there excepted & then upon the defendants moved said Court for a continuance of said cause for the following reasons.

Elijah C. Babcock Et al } Warren Circuit
~~John Babcock~~ } Court March
vs } Term 1861.
A~~lexander~~ G Kirkpatrick et al }

And said defendants come & move the court for a continuance herein at the said plaintiffs costs for the following reasons to wit

1 Because said plaintiffs have made material amendment in their said declaration which take these defendants by surprise

2 Because said defendants were called upon to answer in Trespass without force & arms to the personal property specified in said counts of

said declaration of said plaintiff on the 8th day of March 1859 & on divers other days between that day & the day of the commencement of this suit, and now by the said amended declaration in the first two counts thereof the defendants are called upon to answer for said Trespass with force & arms on said day and on divers other days & times, thereby extending this cause of action not only to divers days & times since said March 8 AD 1859 but to days & times before said day and that too to an indefinite extent, all of which have taken these defendants by surprise, and they aver that they are not able & will not be able & cannot be able to go to trial on said amended declaration at & during the present term of this Court.

3 Because said third Count has been amended by said plaintiffs & to which the said general demurrer was sustained

4 The general demurrer having been sustained to said 3rd count and said plaintiff having amended the same entitles the defendants to a continuance as a matter of course & of right.

72 5 These defendants expressly allege and aver that said amendments have taken them by surprise & they are not & cannot be able to go to trial at the present term upon said declaration as amended.
Filed Mch 25-1861.
Wm Laferty Clk

But the court overruled said motion for a continuance to which decision of the Court the defendants then & there in open Court excepted. And afterwards & during said Term of said Court and upon the trial of said cause before the court and jury the plaintiffs to maintain the issues on their part called as a witness William M. Gregg who was sworn & testified as follows That he was acquainted with the plaintiffs: that they were doing business during the year 1859. on the N. E. corner of the public square in Monmouth in Warren County Illinois under the name of E. C. Babcock & Son as general merchandising merchants - that he knew the defendants, that the defendants; Kirkpatrick, McCoy, Smith & Crandall. in March AD 1859 took from the store of the plaintiffs and out of their possession in Monmouth Warren County Illinois. a

lot of goods, that they were a general assortment of dry goods. That he kept a memorandum in pencil of of the goods at the time that were taken at the request & under the employment of the defendant Seth Smith That he afterwards made a copy in writing with ink and gave it to Sheriff Smith at his request. That he had the original which was the paper here shown to the witness. The aggregate cost price of the goods at wholesale was $1937 72/100 Dollars. The invoice is a correct list and description of the goods taken. The figures on the left margin indicate the number of goods. The next column the number of yards &c The next the kind the next the original wholesale prices The last the aggregate wholesale price. That the Invoice contained a full list & was a correct inventory of the articles taken. The witness further testifies that at wholesale the goods taken would not be worth more than the cost price— The plaintiffs then asked the witness the following question " How much more were the goods worth at retail than the prices marked on the list ". To which question the defendants by their counsel then and there objected. But the Court overruled the objection and allowed the question :- and the defendants

then and there excepted. The witness answered the question by saying that the goods would bear an increase of 25 per ct at retail. The witness further testified that cost of insurance & carriage are generally included in the cost price, but that he did not know whether they were included in this instance or not. That the plaintiffs were in the retail business as Merchants That Elijah C. Babcock was present when the goods were taken away and objected to defendants taking the goods away. That neither he nor his clerks assisted.
Defendant Kirkpatrick told him that if he would turn out sufficient of the Ragland goods to satisfy the claim he would just leave it to himself. & if he did not he would be compelled to to take enough of them to satisfy the claim. Babcock reply was that he had no goods to turn out which belonged to Ragland & had no goods which did not belong to the firm - That he did not recollect of any notice being given by Babcocks that they would sue for the goods.
Babcock said if the goods were taken it would be at the defendants peril. And Kirkpatrick replied that he was taking the goods according to law. And considered

himself responsible for his actions. Crandall selected the goods mostly and passed them to Palmer. On cross examination this witness stated that he was acting as clerk for the Sheriff. Palmer was a clerk also. Defendant McCoy was acting as a deputy to the Sheriff, and Crandall also appeared to act under the Sheriff—that they all appeared to be acting under the Sheriff.—Kirkpatrick claimed to be acting as the atty of the plaintiff in the attachment suit— that the goods were not worth more in cash than the price marked in the memorandum in a lump. But would be marked at 20 pr ct more at retail. Kirkpatrick asked Babcock to turn out the Ragland goods. But did not say at that time that the sale from Ragland was fraudulent & did not say at that time that they still belonged to Ragland. Babcock said he had no goods but his own. Upon reexamination the witness stated that he did not know what the quality of the Ragland goods were. The goods taken were not damaged - that the goods taken would rate rather above the average of the Babcock goods. Upon a cross examination the witness stated that the word. "K[1] E[2] i[3] l[4] h[5] s[6] b[7] u[8] r[9] g[0]" was given to him as the cost word of the Ragland. The plaintiff then offered in

evidence the memorandum testified to by the witnesses Palmer & Gregg

K	E	I	t	h	s	6	u	r	j
1	2	3	4	5	6	7	8	9	0

No.	Quantity	Article	Price	Amount
#18 –	46 yds	Bleached Sheeting	10¢	4.60
#19 –	37 "	" "	"	3.70
#20 –	26 "	" "	"	2.60
#21 –	39 "	" "	14	5.46
#22 –	31 "	" Sheeting	10	3.10
	2½ "	"	10	.25
#1	17½ "	Stripe Sheeting	10	1.75
	2½ "	" "	12	.30
	2 "	" "	11	.22
	2 "	" "	12	.24
	4 "	" "	11	.44
	2½ "	" "	10	.25
	4½ "	Check	10	.45
	10 "	"	11	1.10
#23 –	18½ "	Bleached Sheeting	10	1.85
#24 –	32 "	" "	10	3.20
#25 –	36½ "	" Drill	10	3.65
#26 –	6 "	" Sheeting	15	.90
	4 "	Corset Jeans	10	.40
#3 –	32 "	Diaper	12	3.84
	20 "	Corset Jeans	10	2.00
#4 –	11 "	Diaper	12	1.32
#5 –	12 "	"	10	1.20
#6 –	11 "	Napkins	11	1.21
	15 "	White Flannel	35¢	5.25

	1	Shawl	4.11
#1 –	42	yds Curtain Calico 10^d	4.20
#82 –	43	" " " 10	4.30
	5½	" " " 10	55
			62.33
#2	32	" " " 10	3.21
	2	" " "	21
#3892	1	Coat	5.
#2936	1	do	5.
"2152	1	do	5.
2887	1	do	5.
2152	1	do	5.
2791	1	do	5
2798	1	do	10.
2790	1	do	5.
2516	1	do	6.51
2516	1	do	6.51
2516	1	do	6.51
2783	1	do	9.00
2516	1	do	6.50
2516	1	do	6.51
2833	1	do	8.00
390	1	do	12.50
2833	1	do	8.00
2903	1	do	8.00
2833	1	do	8.00
3673	1	do	5.00
2872	1	do	10.20

77

78	#2872	1	Coat	10.20
	439	1	pr Pants	2.00
	439	1	"	2.00
	439	1	"	2.00
	429	1	"	2.00
	479	1	"	2.00
	387	1	"	2.00
	380	1	"	2.00
				173.80
	387	1	pr Pants	2.00
	392	1	" "	4.00
	392	1	" "	4.00
	41	1	" "	3.75
	298	1	" "	5.00
	398	1	" "	3.00
	233	1	" "	2.50
	233	1	" "	2.50
	398	1	" "	5.00
	233	1	" "	2.50
	298	1	" "	5.00
	233	1	" "	2.50
	389	1	" "	1.75
	389	1	" "	1.75
	389	1	" "	1.75
	389	1	" "	1.75
	389	1	" "	1.75
	389	1	" "	1.75
	389	1	" "	1.75

387	1 pr Pants		2.00
387	1 "	"	2.00
387	1 "	"	2.00
380	1 "	"	2.00
380	1 "	"	2.00
225	1 "	"	2.00
225	1 "	"	2.00
376	1 "	"	2.50
406	1 "	"	3.00
380	1 "	"	2.00
406	1 "	"	3.00
225	1 "	"	2.00
380	1 "	"	2.00
			82.50
475	1 "	"	2.00
475	1 "	"	2.00
389	1 "	"	1.75
439	1 "	"	2.00
439	1 "	"	2.00
432	1 "	"	2.25
432	1 "	"	2.25
298	1 "	"	4.00
371	1 "	"	4.00
1325	1 Vest		3.00
434	1 "		6.00
1339	1 "		2.00
3649	1 "		1.75
3649	1 "		1.75
1107	1 "		1.00

1107	1 Vest	1.00
1005	1 "	1.25
1005	1 "	1.25
1107	1 "	1.00
1145	1 "	2.00
1145	1 "	2.00
3073	5 Red Shirts, Plain 1.25 ea	6.25
	6 " " Spotted 1.25 ea	7.50
	20 prs white Wool Drawers 70 ea	14.00
	14 under Shirts 75 ea	10.50
	17 fine Wrappers 70 ea	11.90
782 –	53½ yds Curtain Calico 10¢	5.35
	31 " Gingham Green Band 10¢	3.10
	30 " Gingham Purple " 10¢	3.00
	12 " " " " 10	1.20
	44½ " " Green " 9	4.00
	38 " " Brown " 18	6.84
		119.89
	40 " " Pink " 15¢	6.00
	18 " " Green " 10	1.80
	40 " " Pink " 15	6.00
	2½ " " Blk " 18	.45
	29 " " Green " 18	5.22
	11 " " Brown " 18	1.98
	40 " " Black " 18	7.20
	40 " " Pink " 15	6.00
	23 " " Brown " 10	2.30
	9 " " Brown " 18	1.62

	34 yds Gingham Brown Band	18	6.12
	27 " " Green "	10	2.70
	39 " " Red "	12	4.68
	11 " " Brown "	10	1.10
	18 " " Blue "	10	1.80
	24 " " Pink "	25	6.00
	12½ lb Rope	15	1.88
	10 " Cotton Rope	5 "	5.00
			67.85
#24 –	42 yds Gingham	10c	4.20
#10 –	44 " do	10c	4.40
#5 –	4½ " do	10	.45
#24 –	30 " do	10c	3.00
#25 –	22 " do	10c	2.20
#18 –	8 " do	10c	.80
#3	2 Skirt Patterns Striped	$2.00 Ea	4.00
	2 umbrellas	80 Ea	1.60
	2 do	50 "	1.00
	1 do		.60
	2 prs Thick Boots	2.50 Ea	5.00
	1 " Kip do	2	2.50
	3 " Boys Kip do	1.75 Ea	5.25
	1 " Youths " "		1.20
	6 " " Thick "	1.25 Ea	7.50
	1 " Kip "		3.00
	3 " Boys Enmld Shoes	1.00 Ea	3.00
	10 " Woms " "	1.00 "	10.00
	2 " Ladies Gaiters	1.10 "	2.20

Qty	Item	Price	Amount
7	pr Ladies Calf Shoes	1.00	7.00
1	" Boys Thick "		1.00
5	" Ladies High "	1.15	5.75
1	" " Buskins		1.10
6	" Misses fine Shoes	80 Ea	4.80
2	" " " "	1.00	2.00
9	" Ladies Gaiters, Blk	1.10	9.90
4	" " High Shoes	1.15	4.60
6	" " fine Kid Shoes with Heels	1.50	9.00
3	" Childs Shoes	25	.75
9	" Ladies Kid Shoes	1.10	9.90
7	" " " "	1.25	8.75
5	" Wons Calf "	1.25	6.25
			132.70
4	" Ladies Calf ~~Boots~~	1.00	4.00
9	" " " "	1.00	9.00
7	" " Kid fine "	1.10	7.70
7	" " " " "	1.00	7.00
1	" " Buskins		1.10
1	" Misses Shoes. fine		1.10
1	" Ladies fine Shoes		1.10
1	" " " " with Heels		1.50
1	" " " "		1.00
2	" Childs Shoes. Enamld	55	1.10
2	" Misses " "	80	1.60
4	" Ladies "	1.20	4.80
2	" " "	1.00	2.00
2	" " "	80	1.60

	1 pr Ladies Morocco		1.25
	1 " Misses Enaml^d		.80
	1 " Ladies Kid with Heels		1.20
	3 " Wom^s Kip Shoes	1^00	3.00
	11 " " Enaml^d "	1^00	11.00
	3 odd Shoes (Childs)	15	.45
	3 " " (Boys)	25	.75
	2 " " (Ladies)	25	50
	1 " " (Mens)		.40
#10	37 yds Bleach^d Sheeting	11^d	4.07
#11	35 " " "	11^d	3.85
#12	35 " " "	11	3.85
#13	38 " " "	10	3.80
#6	35 " " "	11	3.85
#14	32 " " "	11	3.52
#15	36 " " "	11	3.96
#16	39 " " "	10	3.90
#17	39 " " "	10	3.90
			98.65
			67.85
			119.89
			82.50
			173.80
			62.33
			132.70
			737.72

The defendant made no objection to the paper as containing a list of the goods taken but objected to the introduction of the same on account of a variance between the list and declaration, but the court overruled the objection of the defendants, and the

defendants then & there in open court excepted
The Plaintiffs then called Chester W Palmer
as a witness who was sworn & testified that
he had heard Greggs testimony, that he was
present at Babcocks Store when the goods
were taken, Sheriff Smith generally handed
him the goods and he measured them
& gave amount and price to Gregg
That he saw witness Gregg making out
the list and frequently looked over it
(Paper here shown witness which is the
same as testified by witness Gregg as his
memorandum). That he thought this was
the list made out by Gregg. That he made
out the inventory from the cost mark.
That Crandall gave him the cost mark).
That the goods that were taken were rather
over an average of the Ragland Stock
The goods were taken by the Sheriff to the
jail - that he thought the Babcocks were
both there. Smith wanted them to turn
out enough of goods of the Raglands Stock
to satisfy the claim, Kirkpatrick & Smith
went in together. Babcock said he had no
goods of Raglands & could not turn them
out. John Babcock refused to deliver the
goods to the Sheriff & said he would prosecute
them for taking the goods. Kirkpatrick made

the reply that he should take some of the Ragland goods at all events if they did not turn them out, - that he had taken legal steps. The plaintiffs then asked the witness the following question. I ask you whether the goods were worth more at retail prices here in Monmouth than the prices affixed on the paper. The defendants objected to the question but the Court overruled the objection and the defendants excepted. And the witness answered that they would be worth more from 25 to 33 per ct more at that time.

Upon cross examination this witness stated that there was more conversation between the plaintiffs and defendants at the time the goods were taken but he did not now remember all of it; that he was acting as an assistant for the Sheriff and that Gregg acted as clerk & McCoy as Deputy for the Sheriff and Crandall & Kirkpatrick were picking out the Ragland goods from the mark said to be Raglands - And he understood that Crandall & Kirkpatrick were acting as agents for the plaintiffs in the attachment suit that the goods were not worth much more by the wholesale for cash than the prices marked, perhaps a little more. That Crandall had been a good deal about Raglands Store & claimed to know what their mark was.

and was employed to assist in selecting those goods for that reason as witness supposed. The Plaintiffs then called William Dent as a witness, who was sworn & testified that he helped take an inventory of the goods at the jail and produced a paper which he said was the one containing the inventory; the marks on the goods which we made the inventory from was the retail prices. The plaintiffs then asked witness how much the inventory amounted to? To which question the defendants objected, but the court overruled the objection & the defendants excepted — the witness answered that the whole amounted to $1187.20
The plaintiff then asked the witness the following question: How much was the goods worth at retail? The defendants objected to the question, but the court overruled the objection & the defendants excepted. The witness answered that they were worth $1187.20 Cash at retail in Monmouth. That the goods were in the County jail in possession of the Sheriff. That A.H. Holt helped him to take the invoice & that he took the invoice at the request of A.H. Holt.
On cross examination the witness testified that the prices in the last inventory were

the selling prices. He did not remember the time when it was taken. He supposed but did not Know that he was taking it for Babcocks. He was, at the time working at Nelsons. He did not remember particularly about 8 Woolen Shirts - he did not remember what they were worth - did not remember about 3 Knit Shirts - Knew there was shirts - remembered ginghams but did not remember their value. Some was worth 12½ cents to 20 or 30 cts - did not remember check ginghams. He thought the number and price were right because he thought no one there would have any reason to do anything wrong He did not make out the inventory but called off & did not see the numbers put down. He did not remember the pants and boots - These goods were a part of an old stock of goods - to a person in trade they were worth as much as new goods. The coats & pants were as good as new. All the goods were as good as new goods - the boots and muslins were as good as new goods. - We did not take the cost price of the goods. He was a Clerk for Babcocks at the time of giving in his testimony, that he did not Know who put the marks on the goods. - dont Know whether they was put on before or after they left Babcocks

or not. Upon re examination the witness
stated that Holt & Jenks helped him to take
the invoice in the jail - that the inventory
is in Holts hand writing. He believed that
Jenks would put the figures as they were
found on the goods. He examined the goods
and they were worth at the time the amount
of the invoice. Upon recrossexamination
the witness stated that he did not change
the mark on the goods that he examined the
goods before putting down the prices and
judged they were worth each time the price
marked on the goods exactly.
The Plaintiffs then called A.H. Holt as a
witness who was sworn and testified as
follows - that he helped to take the invoice
- that part of the writing was his and part
W.B. Jenks, and that the heading had been
placed there since by Babcock. Milton C.
Munger & John Babcock were present part
of the time. It was taken on the 8th of March
1859. Jenks and Dent examined the goods
at the time & measured them & gave the prices
& I wrote the prices down. The goods were
marked at a fair retail price goods. Goods are
generally marked at an advance of 33 to 50 per
cent. They were worth the invoice price - they
were worth more than the wholesale price.

On Cross Examination this witness stated that he did not examine but a few of the goods. Goods are marked up to cover all costs & losses from insolvent & poor customers — that goods are seldom retailed for less than 20 pr ct: That Merchants generally make a difference between credit & Cash of 15 to 25 per. ct. — that goods are never sold above the selling mark for Credit. That some merchants mark goods at two prices, one for cash and one for Credit. These goods were marked in figures at credit prices, — that these goods were worth nearly as much as new goods.

Upon Re examination this witness stated that he had examined the ginghams & he thought they were marked at a fair retail price & said the same in regard to some bleached muslins. The plaintiff then offered in evidence the inventory which the witnesses Dent & Holt had testified in regard to. and the defendants objected to such testimony going to the jury but the court overruled the objection & permitted the following inventory to be read to the jury.

List of Articles taken from our store by Seth Smith & others March 8 1859

Qty	Item			Price	Amount
8	Knit Shirts		(I L	1.25	10.00
3	do			1.25	3.75
1	do				1.75
6	prs Drawers			1.50	9.00
4	" do			1.25	5.00
10	" do			1.50	15.00
2	Knit Shirts			1.25	2.50
24	yds Gingham			15	3.60
27	" Green Check Ging			15	4.05
39	" Red	"	"	15	5.85
32	" Brown	"	"	25	8.00
18½	" Blue	"	"	15	2.78
29	" Green	"	"	25	7.25
40	" Block	"	"	28	11.20
24	" Turkey Red	"	"	37	8.88
12	" Purple	"	"	15	1.80
8	" do	"	"	25	2.00
42	" Pink	"	"	25	10.50
39²	" Pink	"	"	25	9.88
3	" Brown	"	"	25	.75
38	" Brown	"	"	28	10.64
29²	" Purple	"	"	15	4.43
10²	" Brown	"	"	25	2.63
40	" Pink	"	"	20	8.00
32	" Green	"	"	25	8.00
18	" do	"	"	15	2.70
44²	" do	"	"	15	6.68
12	" Purple	"	"	20	2.40

Qty	Description	Rate	Amount
35 yds	Blchd Muslin	16.	5.60
37 "	" "	15	5.55
35 "	" "	16	5.60
38 "	" "	15	5.70
	Amt Carried Ford.		$791.47
39 yd	Blchd Muslin	16	6.24
35 "	" "	15	5.25
32 "	" "	15	4.80
46 "	" "	16	7.36
36 "	" "	15	5.40
39 "	" "	15	5.85
37 "	" "	15	5.55
33 "	" "	15	4.95
26 "	" "	15	3.90
14½ "	" "	15	2.18
39 "	" "	20	7.80
36½ "	" Drilling	14	5.11
20 "	Cal^d do	15	3.00
4 "	" do	15	.60
30 "	Red Check^d Gingham	12½	3.75
44 "	Purple " "	12½	5.50
42 "	Red " "	12½	5.25
22 "	Green " "	12½	2.75
8 "	" " "	12½	1.00
4½ "	Red " " (Dom)	15	.68
2 "	Royal Skirts	3.00	6.00
4½ "	Apron Check	15	68
11 "	" "	16	1.76

12 yds	Diaper Towels	15	1.80
12 "	do	20	2.40
7 yd	Blch^d Muslin	25	1.75
60 "	Diaper	20	12.00
31 "	Brd Muslin	12	3.88
2 2 "	" "	12	.31
17 "	Hickory Shirting	12	2.13
2 2 "	" "	15	.38
2 "	" "	17	.34
2 "	" "	15	.311
	Amt carried ford		$312.12
3½ yd	Hickory Shirting	15	.53
4 "	" "	15	.60
No 2516	1 Blk Cloth Coat		10.511
2798	1 Brown "		15.00
390	1 "		16.00
2783	1 "		13.00
3673	1 "		8.00
2881	1 "		8.00
3892	1 "		8.00
3936	1 "		8.00
2052	1 "		8.00
2790	1 "		8.00
2790	1 "		8.00
2833	1 "		12
2516	1 "		10.511
2903	1 "		12.–

2833	1	Coat		12.00
2872	1	"		15.00
2833	1	"		12.00
2516	1	"		10.50
	5	Over Shirts	200	10.00
	1	do		2.00
	5	do	1.75	8.75
	1	Velvet Vest		9.00
1325	1	Satin "		5.—
1339	1	" "		3.00
3649	1	"		2.70
3649	1	"		2.70
1107	1	"		1.50
1107	1	"		1.50
1005	2	"	2	4.00
	1	"		3.00
1145	1	"		3.00
		Amt Carried ford		$563.90
No 389	1	pr Pants		2.75
406	2	" "	500	10.00
225	2	" "	3.	6.00
"	1	" "		3.00
392	1	" "		7.00
432	2	" "	350	7.00
380	2	" "	5.50	11.00
392	1	" "		7.00
298	1	" "		7.00
371	1	" "		6.00
439	1	" "		3.00

389	2 pr Pants	2.75	5.50
"	1 " "		2.75
475	2 " "	3.25	6.50
233	1 " "		4.00
398	1 " "		5.00
233	2 " "	4 00	8.00
398	1 " "		5.00
	1 " "		4.00
298	1 " "		7.00
439	2 " "	3 00	6.00
387	1 " "		3.00
439	4 " "	3 00	12.00
415	1 " "		5.75
380	1 " "		3.50
298	1 " "		7.00
2872	1 Over Coat		15.00
	12 Diaper Towels	25	3.00
	1 Shawl		8.00
	16½ yd White Flannel	50	8.25
380	2 pr Pants	3.50	7.00
225	1 " "		3.00
387	3 " "	3.00	[illegible]
	Amt Carried ford		$771.90
389	4 pr Pants	275	11.00
387	1 " "		3.00
	5 " Ladies heel'd Shoes	2.00	10.00
	1 " Child's "		.75
	1 " " "		.45

Qty	Item	Price	Amount
1	pr Child^s Shoes		.55
7	" Ladies "	175	12.25
6	" " Enm^d Boots	140	8.40
1	" " " "		1.40
2	" " Cloth Gaiters	1.50	3.00
1	" " Enm^d Boots		1.25
2	" " " "	150	3.00
1	" Kip Boots		4.50
2	" Stoga "	4.00	8.00
1	" "		4.00
3	" Boys "	2.50	7.50
1	" " "		2.00
5	" " "	200	10.00
1	" " "		1.75
1	odd Shoe as pr		1.40
1	" " " "		.80
1	" " " "		.65
1	" " " "		1.25
1	" " " "		1.75
1	" " " "		1.75
1	" " " "		1.50
3	" " " "	1.40	4.20
14	pr Enm^d Lace Boots	150	21.00
2	" " " "	140	2.80
2	" " " "	1.75	3.50
1	" " " "		2.00
3	" " " "	125	3.75
2	" " " "	175	3.50
1	" " " "		1.75

Amt Carried ford $916.30

Item	Price	Amount
Amt Brot ford		$916.30
1 pr Ladies Buskins		1.40
2 " " Lace Boots	1.25	2.50
3 " Misses Lace "	1.75	5.25
1 " Ladies " "		1.40
3 " " " "	1.65	4.95
2 " " " "	150	3.00
3 " " " "	175	5.25
1 " " " "		1.75
1 " " " "		2.00
3 " " " "	200	6.00
5 " " " "	1.65	8.25
1 " " " "		1.65
1 " " " "		1.00
1 " " " "	150	1.50
2 " " " "	150	3.00
1 " " " "		1.75
1 " " " "		1.75
2 " " " "	200	4.00
2 " " " "	125	2.50
2 " " " "	1.65	3.30
1 " " " "	1 40	1.40
4 " " " "	1 00	4.00
1 " Childs " "		.70
1 " " " "		.85
2 " Ladies " "	1 60	3.20
1 " " " "		1.50
1 " " " "		2.75

Qty	Item	Price	Amount
2	pr Boys Lace Boots	1.40	2.80
1	" " " "		1.50
1	" " " "		1.25
1	" Ladies " "		1.40
1	" " " "		1.65
1	" Mens " " as pair		2.00
1	" Childs " " " "		75
	Amt carried ford		$1104.25
5	pr Ladies Enm^d Lace Boots	1.75	8.75
1	" " Buskins		1.40
3	" Misses Lace "	1.25	3.75
2	" " " "	115	2.30
1	" " " "		.75
1	" Ladies " as pr		1.75
1	" Misses Buskin " "		75
9	" Ladies Enm^d Lace Boots	175	15.75
1	" " Cloth Gaiters En^d Tip^d		1.60
2	" " " " "	165	3.30
5	" " " " "	150	7.50
1	" " " " "		1.75
4	" " Kid Lace Boots	175	7.00
12	ths Grass Rope	20	2.50
10	" Cotton do	75	7.50
9	Knit Shirts	1.25	11.25
	Total		$1181.85
2	Umbrellas	75	1.50
2	do	125	2.50
1	do		1.25
	Total.		$1187.10

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Here the plaintiffs rested.
The defendants to support the issue on their part, then called as a witness Charles Littleton who was sworn and testified as follows — that he knew of a sale of goods from Joel E Ragland & Robert H. Ragland to Milton O'Munger & was present when the inventory was taken, that he went to Raglands store about sundown. Joseph Haley & the two Raglands were there. Milton O Munger came in about 9. O'clock P.M. — this was on Saturday night January 22, 1859 that he waited there until Munger came. George W Nelson went in with Munger, — the windows were fastened with Blankets & Shawls — they were nailed up. A blanket was put over the door also — there was a window in the door. It was all shut up he did not know what it was done for.
The defendants then proposed to ask the witness the following question? What did the Raglands say with regard to the title to the property in controversy while they were in possession of it? The plaintiff objected to this question & the Court sustained the objection & the defendants excepted.
The witness further testified that they commenced invoicing the goods between 9 & 10

O'clock Saturday Night - and worked on till about 4. O'clock the next morning. - that they commenced again on Sunday afternoon about 2 or 3. O'clock and continued until Monday morning about three o'clock when they finished. He believed a part of the articles were not invoiced but guessed at. Milton. C. Munger was there during the time he Munger came around about 2 or 3 oclock. Sunday afternoon - that the witness went around a little before and went in at a back door - the front door was closed. - Several persons knocked at the door - it appeared as if some one was trying to come in. This was when they were invoicing. When any one knocked at the door they remained quiet a few minutes - that he did not know why it was done - that they waited generally until the noise ceased. That the invoice amounted to something over $5.000 - and was based upon the cost price. That the Raglands. Joseph Kaly. Milton C Munger William Dent - James. Cowan. George W Nelson & my self did the invoicing & were the only persons there. Nelson was not there all the time - that he heard nothing said about who was at the door. He left. Raglands in the Store when he left. When he came back about 9. O'clock they were there, - the Store was open and Munger in possession, - that his

impression was that the goods were moved to Babcocks Store on Monday - that same day, but was not certain, - although they were moved soon after - that Milton C Munger at that time he thought was in the employ of George W Nelson - that he did not know who paid Dent. On Cross examination the witness stated that the Building in which Raglands had their Store was in the Corner of a Street with two windows in front on the Square & one door with glass in the door - there was no shutters to the windows at the time - There was blankets & Shawls put up to the windows - that the door he went in at on Sunday was on a public Street running north - when he returned to the Store on Monday morning there were several persons in the Store. Joseph Haly was a clerk in Raglands store - that Munger & Ragland examined & measured the goods. William Dent and witness took them down - that a number of articles such as Ribbons were guessed at - such as Ribbons there did not amount to much in value - that he thought the invoice was fairly taken. The Defendants then called Azro Patterson as a witness who after being sworn testified as follows, - that he knew & remembered the

time of the sale of the goods by the Raglands to Milton C. Munger – that he had a conversation with Elijah C Babcock on monday after the sale in regard to the sale. Babcock said that he thought there would be a pretty good chance for the creditors of the Raglands to recover the goods on the ground of fraud in the sale. Witness told him he thought so to. That he Patterson Knew there was a man by the name of Brown here from Chicago trying to secure a debt against Raglands. Brown was here on Monday. That Milton C. Munger proposed to sell the witness the goods which had been sold to him by the Raglands. He witness told Munger he was afraid of trouble – that the goods might be tied up by the creditors of Ragland, that he was afraid of litigation. Munger replied to this that he was not afraid of it. Munger told Witness that the inventory as they had footed it up amounted to a little over $5200, but on a close inventory would amount to $6000. A few days afterwards he saw Babcocks take the same goods to their store & saw some of them in their store. Munger told him that he had sold the goods to Babcock on five years time for $4.000 with 10 per cent interest. Munger told witness at the time he offered to sell him the goods that he had traded Iowa lands for the goods – that he told Munger that he

refused to give the Creditors of Raglands information of where the lands were & the description of them would tend to show fraud. Munger replied that that was his business, that if Raglands had a mind to give the information they could. Witness said to Munger that he would make $2.000- by the trade. Munger replied that he would make more than $2000, witness told Munger that the fact the goods were invoiced on Sunday was a suspicious circumstance. Munger replied that they were not invoiced on Sunday. Munger further said he would not go across the street to avoid a law suit about the goods. Munger was not surprised when witness told him there would be a suit about the goods. That the witness had a conversation with John Babcock. he said that he was unfriendly & would involve him in loss. Witness replied that he thought Babcocks were safe enough as Munger being their friend would not see them loose. - that he had a conversation with Elijah C Babcock after the suit at Chicago had been commenced against them. He enquired of witness what position he would occupy if they recovered. Witness told him that he thought he would have to pay the money for the goods.

On cross examination this witness stated that he did not see Brown before Monday, the day Munger came into possession of the goods - heard him tell Munger that he was going to make an effort to recover the goods. That Munger had made the proposition to the witness on the same day to buy the goods, - that Munger wanted him to make an offer. He proposed to take a house & lot that witness owned. Witness told him he did not want to interfere with Nelson. That the good were an old stock. Gilbert & Frymire had the goods from Claycomb. Munger said he gave 1200 acres of Iowa lands for the good worth $5 per acre - that the goods were not worth over 60 per cent Cash on cost of goods. John Babcock and witness had a a little difficulty since that time because he could not coincide with him about the sale. - that his wife was a daughter of Elijah. C. Babcock and a sister of John Babcock - & John Babcock is married to Mungers sister. That Munger claimed the trade was a fair one. - That he might have said that Munger had conspired to cheat him - the difficulty with Munger arose because Munger could not make use of witness as a tool in this business. Upon reexamination this witness stated that a short time after the

goods were moved to Babcocks store. Jones a clerk in Babcocks store & John Babcock were handling the Rogland goods & Jones remarked in a whisper to John Babcock that Azro Patterson was in the store - that he heard him & got up and left the store - that this was after the goods were removed from Roglands store house & were lying on Babcocks Counter. The defendants then called as a witness Charles L. Armsby who was sworn & testified as follows. That he had a conversation with John Babcock in regard to the purchase of the Rogland goods from Munger. He asked the advice of the witness. Babcock stated that the gentleman who claimed to have a claim against the Roglands had notified him not to buy the goods. Witness advised him not to buy old goods any way. He wanted to know if it would not be better to trade him notes for old goods. Witness replied that that he would not pay money or notes for old goods. and there might be trouble about them. - told him if it was a fair sale between him & Munger might make a difference. This was before the good were moved from Roglands Store House to Babcocks. On Cross examination - the witness stated that Babcock gave him the ~~circumstances~~

of the sale, - He said that Munger had traded Iowa land for the goods. Said it was a fair sale & I thought so to that I understood that he was asking his advice about the legality of the sale. That he did not know whether the man that was here from Chicago was a principal or Clerk. Did not know that any body was here trying to collect debts before the sale. That he had not heard talk of Raglands failing - that Raglands had been doing good business - mostly cash - had sold goods pretty low. The Defendants then called Draper Babcock as a witness who was sworn & testified as foll ows - that he heard of the sale on Monday forenoon & went around & found Munger in poss-ession of the goods. That Munger told him that he had bought the goods & paid in Iowa lands. Something was said about trouble. Munger said he knew what he was doing & was all right. Munger said something about the invoice. but witness could not recollect what. - Said he had made a pretty good trade. Something was said about their guessing at the amount in the Show case. Something said that if an invoice was closely taken it it would amount to more. Thought Ragland boarded at the Warren house at that time. Witness could not recollect any

conversation which he had with Elijah C Babcock had some. He thought he testified before that Elijah C Babcock his father said that Munger stood between them & all harm. Pff here objected to putting leading question to the witness, and defendants counsel claimed the right to do so on account of the evident unwillingness of the witness to testify, and the Court overruled the objection of the plaintiff and the plaintiffs excepted. This witness further testified that he did not remember whether he had heard E. C Babcock say that a man had been in the store and notified them not to buy the goods or not. He did not recollect whether he had testified so once before. - that he did not remember whether John Babcock had told him that a man had been in the store and notified them not to buy the goods or not. He did not remember whether he had testified so once before or not He could not remember whether he had heard Elijah C Babcock say that Munger stood between them and harm or not. He did not recollect whether he heard Munger say that the inventory as taken amounted to about $5.200 & if it had been fairly and fully taken it would have amounted to

$6000 or not. Something was said about an inventory but witness could not remember what. He could not remember whether he had so testified or not once before. — that he did hear Munger say that he knew what he was doing & he would not loose anything — that Joel E Ragland has boarded with Munger since the time of the sale but could not remember when. He did know his father had not forgotten that. And he remembered that Munger & Ragland were on good terms at the time of the sale.
Upon cross. examination this witness stated that he found Munger in possession of the goods on Monday after sale & he said he was all right. — Said he had made a fair purchase and knew what he was doing. Prior to Monday after sale he never heard of Raglands creditors being in town.
The defendants then called as a witness Jerome Gilbert — who was sworn & testified as follows, that he was not present when when the inventory was taken of the goods, and did not know anything about the sale. That he knew Brown an agent of some of the creditors of Raglands being here. Brown was here on Saturday before the inventory was taken. — he was around town & in the store. Munger was not in the store when Brown was in at least

when the witness was in. The defendants here proposed to prove the admissions of Raglands while they were in the possession of the goods in regard to the title of the goods, but the plaintiff objected & the court sustained the objection and the defendants excepted. – The witness further testified that Ragland and brother were in possession of the goods on Saturday in the evening. Witness was instructed by Joel E Ragland to go to the Warren House with Brown & entertain him and keep him away from the store. and he did so. – that Brown and the witness played Euchre until 11 or 12 o'clock at the Hotel on Saturday night. On Sunday morning took a walk together and went to Church at 11 O'clock A.M. – then they went to the Hotel and had dinner and went to Church at two o'clock & went again in the evening after which Brown went to bed – That Brown was an agent for some firm in Chicago he thought Cooley Farly & Co. – Raglands were indebted to them. – That the Raglands got goods from Chicago & New York, that he did not know the amount of their indebtedness. He went to the store of Raglands on Mondy morning about 7 to 8 o'clock. Munger then claimed the goods. That the goods had been changed from shelves to Counter & Boxes from Saturday.

to Monday. Munger & Ragland were on friendly terms at that time. Ragland has boarded at Mungers. Munger does not keep a general boarding house. Ragland boarded at the Warren house at that time. That the goods were taken from Raglands store house to Babcocks store house Witness thought on Thursday or at least during that week. That he saw a portion of them taken over himself but could not tell how many worked at it. The goods could not all be invoiced in one day he thought. Upon cross examination this witness testified that Joel E Ragland wanted him to entertain Brown - this was done at Raglands Store. Brown stopped at the Warren House & witness slept at the Warren House that night. That he did not know anything about the sale until Monday Morning. He suspected and asked Joel E Ragland what was up & he replied no matter or something like that. That the witness had clerked for Raglands before that. That up to that time he supposed that Raglands were solvent. - that they were selling goods very low and doing what is called a cash business. He thought they were in business a few weeks over a year. - that Raglands were out of the State in the Spring of that year

Munger had no other boarders, that he was aware of — that it was six months after the sale before Ragland went to board with Munger. Upon re-examination this witness stated that Raglands left in March sometime some weeks after the sale, That they were absent some time The sale from Raglands to Munger took place sometime in the latter part of January A.D. 1859 - Witness was to keep Brown away from the store until Monday morning.

The defendants then offered to read in evidence the depositions of Marshall Field and the plaintiffs asked the Court to suppress such parts of the deposition as are hereinafter included in Brackets, which was allowed by the Court and the defendants then & there in open court excepted, Then read to the jury the following depositions except such parts as are included in brackets which was excluded by the Court.

Depositions of Marshall Field taken by and before Calvin DeWolf a Justice of the Peace in and for the County of Cook & State of Illinois to be used in a trial pending in the Circuit Court of Warren County Illinois in which Elijah. C. Babcock et als are plaintiffs and Alexander G. Kirkpatrick et als are defendants. taken on the 5th day of November

A.D. 1860 in the presence of the attorneys of both plff and defendant and by their counsel to be used on the trial of said Cause.

The said Witness Marshall Field being duly sworn deposes and testifies as follows in answer to Questions by Defts Attorney.

Question 1st. What is your name, age, residence & occupation and do you know the parties to this suit or either & which of them.

Answer. My name is Marshall Field my age is 25 years I reside at Chicago Ill. I am engaged in the Dry Goods business. I know the plaintiffs & know Kirkpatrick Deft

Question 2nd Are you acquainted with Joel E Ragland & Robert H. Ragland - who during the year 1858 were engaged in business in Monmouth Warren County Illinois under the firm name of J. E Ragland & Bro. If yea when did you first become acquainted with them?, and in what business were they so engaged.

Answer I am acquainted with them. I have known Joel E Ragland nearly 4 years & Robert, H. Ragland between 2 & 3 years I think, They were during the latter part of year 1858, Engaged in the business of Country Merchants in Monmouth Warren County Ill—

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Question 3d Do you Know of any pretended or alledged sale by the said firm of J. E. Ragland & Bro of their said stock of Goods &c in said Monmouth, to one Milton C Munger, who was then a resident of said Monmouth in in the month of January 1859. If yea state all you Know about it and when it was— If you say you Know it from information state the source of that information & whether or not either or both of said plffs informed you of it or conversed with you about it.

Answer. I Know they pretended to sell out to the said Munger — about the 23d or 25, January 1859 The first I Knew of it it was telegraphed by one E. J. Brown, about the 25th of January 1859. I had conversation with Milton C Munger about that time — he said he had bought them out and had paid for the goods in wild Lands. I had Conversation with John Babcock one of the plaintiffs about that time a day or two afterwards about the sale.

Question 4th Did you or not have any conversation or conversations about said sale with the said Raglands or either of them. If yea when was it.

Answer I had conversation with Joel E Ragland about the 25th of January 1859 about the sale

Question 5th Were you or not acquainted with said Milton C Munger about that time.

Answer	I became acquainted with him about that time. I had never seen him before to my recollection
Question 6	Did you or not at that time see and examine the said stock of Goods alledged to be sold to said Munger.
Answer	I did
Question 7th	How long have you been engaged in the mercantile business and were you at that time or not familiar with the value of goods
Answer	I had at that time been engaged about 7 years in the mercantile business and was familiar with the value of goods.
Question 8.	Did you at that time examine said stock of goods with reference to their value & if so what was their value in your judgment at that time
Answer	I did examine it thoroughly and to the best of my judgment they were worth $6000.
Question 9	Do you know what if any consideration was alledged to have been paid by the said Munger for said stock of Goods. If yea state what it was & the source of your knowledge.
Answer	I do know from both Munger & J E Ragland & John Babcock it was wild lands in the state of Iowa.
Question 10	Did you at that time as agent or otherwise have any claim or claims against the

said Raglands which you was endeavoring to collect or secure.

Answer — I did.

Question 11th — Did you make any effort at that time or any other time after that to ascertain the description and location of said lands. If yea state what Effects you so made and whether or not you had any conversations with the said Babcocks. or either of them, with the said Munger and with the said Raglands or either of them in relation to the location & descriptions of said lands, if yea state when such conversation or conversations were, as near as you can & State the same as fully and particularly as you are able & if you cannot or conversations give the substance of each.?

Answer — I did at that time make effort to obtain the location & description of them. I enquired of J E Ragland & of Milton C Munger & of John Babcock & I went to the Post Office to see if any letters had passed or deeds sent to be recorded. I tried to find to what Counties they might have been sent & enquired of other persons. of Ayres Patterson I dont recollect other names. I had the Conversation with J E Ragland about the 20 Jany/09. He refused to tell me where

they were, the quality of the Lands or the number of acres or any thing about them. He said he knew nothing about the title of them. The same day I had a conversation with Milton C Munger - he refused to tell me where they were or what they were, or the number of acres. About the 26th or 27th of January 1869 I had the conversation with John Babcock. I could learn nothing from him what they were.

Question 12th Do you know of your own knowledge or from conversation with the said plaintiffs or either of them whether or not at the time of said conversations last spoken of by you, there was any talk or negotiations between said Babcocks and said Munger for the purchase & sale of said stock of goods. If yea state all you know about it & what if any conversation occurred about it between you & the said Babcocks in relation thereto.

Answer I know from a conversation with one of the plaintiffs John Babcock that there was a negotiation going on for the goods. I went to Babcock to give him notice that if there was any negotiation going on between them as I had heard there was in the street he would have trouble if he did buy it. I told that I did not wish to make any law suit with them nor to get them

into any litigation but they certainly would have trouble if they took the Stock as it was a fraudulent sale from Raglands to Munger. He John Babcock said the sale would be guaranteed to them if they if they went into it.

Question 13 Do you or not know of your own knowledge or from conversation with the said plffs or either of them whether they the said plffs at any time thereafter completed an alledged sale & transfer of the said goods by the said Munger to them. if yea state when such alledged sale & transfer was so made and relate as near as you are able the conversation if any with the said plaintiffs or either of them. or the substance of the same

Answer I do. it took place about the 27th of January 1809. I had conversation with John Babcock in the fore part of Feby/09 He said they were to pay Munger interest annually if he wanted it to support his family. I think that was the substance of the conversation

Question 14 Did you or not ever hear either of the said plffs say anything about or what was the consideration moving from the

said plaintiffs to the said Munger for said goods & how and when the same were to be paid for if at all - if so state.

Answer — I did. I think John Babcock - said there had been no notes given - he was to pay Munger interest annually if he wanted it to support his family. I dont recollect that he told me the amount or time payments.

Question 15 — Do you know what if any business the said Munger was engaged in prior to the said alleged purchase by him of said stock of goods; - if yea state what business he was engaged in & with whom if you know

Answer — I dont know personally. I think he was clerking it for one Nelson at Monmouth

Question 16" — Did you ever hear the said Babcocks or either of them state that he was employed by said Nelson just prior to the purchase spoken of by you

Answer — I dont recollect that I ever did

Question 17 — Do you or not know in what business said Munger has been engaged since the said transaction & whether he has been engaged in business on his own account, or others. - if yea state the business in which you say he has been engaged on the account of others & for whom he has been so engaged.

Answer 118 | I think he has been clerking it for E. C. Babcock & Son ever since, a most of the time at any rate.

Question 18th | Have you ever seen him in their employ since

Answer | I have not but I have seen letters signed E C Babcock & Son per Munger

Question 19 | Did you ever have any conversation with the said John Babcock at any time in the month of February 1859 in the City of Chicago and with the said Munger in regard to the said lands in Iowa. - if yea state when such conversation was & what said by each of them.

Answer | I did have conversation in regard to said lands with both of them together I think in the Ill Central Depot in Chicago, in the fore part of Feby 1859 Munger then said he would give me a discription of the Iowa Lands & John Babcock said I must not let Ragland Know that they had given me a discription Munger said he did not care a Damn for Ragland. that he had managed to get a good trade that was all he wanted. That is the substance of the conversation.

Cross Examination of said Witness Goudy for plffs

Question 1 Where were you at the time the telegraph from Brown was sent & where was Brown

Answer I was in Chicago & Brown was at Monmouth.

Question 2 To whom was the telegraph sent.

Answer I dont Know. I think I may have seen it at the office of Burgess & Hawly.

Question 3 What do you Know about the telegraph then

Answer I was informed one was received. I dont recollect by whom.

Question 4 On what day of the week & month did you first go to Monmouth

Answer I think it was Monday night about the 24th or 25 January/09. I arrived there the next morning

Question 5 At whose request did you go to Monmouth

Answer Mess Burgess & Hawly suggested the idea of my going

Question 6 What claim did you have in your hands against Ragland.

Answer I did not have any, there was one down there.

Question 7 In whose hands was that & in whose favor was it.

Answer It was in the hands of Brown. The Note

was originally in favor of Cooley Farwell & Co.

Question 8 What was the note originally given to Cooley Farwell & Co

Answer I do not know from my own knowledge positively

Question 9 Do you know whether a part of the Consideration was a promissory note given by Raglands to Gilbert & Frymire

Answer I think it was. I would'nt swear positively

Question 11 Did you ever see the Stock of goods sold by Raglands to Munger before you went to Monmouth on the 25 January

Answer I have seen a stock of goods there in the store some time before. I do not know whether it was the same one or not.

Question 11 When and in what manner did you examine the goods to ascertain the value of them.

Answer I examined them about the 25 January 1859. I did not take any invoice. I looked the Stock over carefully & Estimated it.

Question 12 How long time was you engaged in examining it - State as near as you can.

Answer I dont recollect.

Question 13. Did you take down any of the goods

Answer — I did not.

Question 14 — Did you do anything else than walk into the Store - look around at what you could see within sight without handling any of the goods?

Answer — I did. I examined each branch of the Stock or nearly every Branch. I examined the dry goods, Boots & Shoes & Clothing

Question 15. — How did you make that examination. State in detail every act you did in making such examination

Answer — As I stated before I looked over the goods each Branch & made up my own mind as near as I could about how many goods were there.

Question 16 — Can you tell in that way how many yards there are in a bolt of Cloth or in a piece of calico. How many pairs of Boots & Shoes there was in the drawers & Boxes & the value of them.

Answer — I can not exactly but I can guess mighty near some times. I can form an opinion very near by looking through a stock

Question 17 — When you were informed by Ragland, Munger & John Babcock that Munger had bought the goods for wild lands, did either of them tell you the amount that the goods had been taken by Munger at, if so what was it?

Answer | Munger showed me an invoice which he said was of that stock which amounted to something over $5.200 or about that amount.

Question 18 | Did Munger in such conversation claim that he had made a fair trade and deny that it was fraudulent on his part.

Answer | I think he did. I dont recollect however distinctly what he did say about it.

Question 19 | Has not Munger insisted in every conversation you ever had with him on the subject, that he bought the goods honestly and in good faith

Answer | I dont recollect particularly, I think he has sometimes but I wouldent be positive one way or the other.

Question 20 | When you professed to give notice to John Babcock that the sale was fraudulent who were you acting for

Answer | When I gave him notice about the 28 or 29 of January I was sent there by Burgess & Hawley

Question 21 | What did you say to John Babcock, state the words as near as you can recollect it.

Answer | What I stated before that I believed the sale was fraudulent — That I did not wish to involve them in a heavy law suit. That is about the substance.

Question 22 When John Babcock told you not to inform Ragland that they were about to furnish you a list of the lands. what reason did he give for such request.

Answer He gave no particular reason. He said Ragland would be in their road if he did.

Ques 23. Had the sale been made by Raglands to Munger & were the goods in Mungers possession before you went to Monmouth

Answer It had & the goods were in Mungers possession He claimed to have possession

The witness desires to correct his answer so that it shall read; "It had & Munger claimed to have possession.

Re Examination by Defts Atty

Question About what was the amount of the said claim which the said Brown had against said Raglands, State as near as you are able

Answer. I think it was a little over $3.000.

Question Were you or not directed by Burgess & Hawley to look after this claim & secure it if possible at the time you went to Monmouth.

Answer I was.

Marshall Field.

State of Illinois } Ss.
Cook County.

I, Calvin DeWolf a Justice of the Peace in and for the County of Cook and State of Illinois do hereby certify that prior to the examination of said witness Marshall Field he was by me duly sworn to testify the truth in relation to the matter in controversy in a suit mentioned in the caption to this deposition and pending in the Circuit Court of Warren County Illinois in which Elijah C. Babcock et als. are plaintiffs and Alexander G Kirkpatrick et als. are defendants, so far as he might be interrogated, that said deposition was taken and reduced to writing by me in the presence of said witness & the attorneys of the parties to said suit, at my office in Chicago on the 5th of November 1860 at Two o'clock P.M., And was then signed and sworn to by said witness in my presence Given under my hand and seal this 5th day of November AD 1860.

Justices fees	5.50	Calvin DeWolf
Wit fees	1.00	
Clks Cert	.30	Justice of the Peace.
	6.80	

Paid by plffs Atty W. C. Goudy

Filed Nov 7 1860 C. DeWolf J.P.
W. Laferty Clerk

The defendant then offered to read the deposition of Edward J Brown in evidence and the plaintiffs asked the court to suppress & exclude a portion of said deposition which is hereafter in Brackets - And the Court allowed said motion & defendants excepted. The defendants then read in evidence the following deposition of Edward J Brown, except such part as were excluded by the court & are included in brackets, to wit,

The deposition of Edward J Brown of the County of St Louis and State of Missouri, a witness of lawful age, produced, sworn and examined, upon his corporal oath on the ninth day of November in the year of our Lord one thousand, eight hundred and fifty nine at my office in the City of St Louis in the County of St Louis and State aforesaid by me Lucien Eaton a commissioner duly appointed by a Dedimus Potestatem or commission issued out of the Clerks office of the Circuit Court of Warren County in the State of Illinois bearing teste in the name of Wm Lafferty Esq Clerk of the said Circuit Court with the seal of said Court affixed thereto and to me directed as such commissioner for the examination of the said Edward J Brown, a witness in a certain suit

and matter in controversy now pending and undetermined in the said Circuit Court wherein Elijah C. Babcock and John Babcock partners trading under the name and style of E.C. Babcock & Son are plaintiffs and Alexander G. Kirkpatrick, Seth Smith, George D Crandall, James McCay, William M Gregg and Chester W Palmer are defendants, - in behalf of the said defendants as well upon the cross interrogatories of the Plaintiffs ~~as on the interrogatories of the Plaintiffs as~~ as on the interrogatories of the Defendants which were attached to or inclosed with the said commission, and upon none others. The said Edward J Brown being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination to testify the truth as well on the part of the plaintiffs as the defendants in relation to the matters in controversy between the said plaintiffs and defendants so far as he should be interrogated, testified and deposed as follows

"Interrogatory First": What is your name, age, residence and occupation, and where did you reside in the month of January AD 1859?

Answer to first interrogatory.

My name is Edward J Brown, my age is twenty six years, I reside in the City of St Louis and State of Missouri; my business is manufacturing: In the month of January AD 1859 I resided in Chicago in the State of Illinois.

Interrogatory Second. Are you acquainted with the parties to this suit, or any or either of them? If yea state when and where you became acquainted with them & state whether you are acquainted with Joel E Ragland & Robert F. Ragland and Milton C Munger of Monmouth Illinois, and when and where you became acquainted with them

Answer to Second Interrogatory. I have seen the plaintiffs, I think, and am somewhat acquainted with Alexander G. Kirkpatrick The other parties I do not recollect to have seen. I saw the plaintiffs and made the acquaintance of Mr Kirkpatrick in the early part of 1859 at Monmouth, Illinois I am acquainted with Joel. E. Ragland & Robert. F. Ragland and Milton C Munger of Monmouth Illinois, - I became acquainted with Milton C Munger & Robert F. Ragland at Monmouth, on my visit

their in either January or March 1869
Joel E Ragland I had known for some
months previous to that time, I became
acquainted with him at Chicago

Interrogatory Third. Did you or did you not
act as agent for John Allen or for any
other person or persons in trying to secure a
debt with said Joel E Ragland & Robert
F. Ragland 2. if yea, state what you did,
all the conversation that took place between
you at the time, where it occurred & when
and all about it fully and whether said
Milton C Munger was in said store of
Raglands at the time or not

Answer to Interrogatory Third. I did act
as such agent in trying to secure a
debt with said Raglands. I went to
Monmouth to secure the signature of one
of the Raglands to a Judgment note—
one having already signed. Not suc-
ceeding in this. I endeavored to arrange
the matter & secure the debt in some
other way. I remained in Monmouth
several days for this purpose,—having
frequent conversations with the Raglands at
their store and elsewhere in Monmouth.
I could not get them to accede to any

proposition. On Saturday evening I prepared to return to Chicago but finally concluded not to do so and (Early Monday morning was told by Robert F. Ragland that they had sold their stock of goods to Milton C. Munger for Iowa wild lands I requested Ragland to show me the deeds of those lands & allow me to examine them & other papers connected with the sale. He refused. I then asked him to transfer these deeds or otherwise secure on them the claim which I represented. This he also refused to do — or to give me any explanation or satisfaction whatever. He referred me to Milton C Munger who was at that time standing near. I spoke to Munger but could get no satisfactory explanation from him. He reaffirmed Raglands Statement in regard to the sale, but would give me no particulars as to the value or location of the lands). While I was at Raglands Store previous to the sale, I spent most of the time there — Milton C. Munger came in once or twice, without any apparent business All this occurred in Monmouth during my visit as beforesaid in the early part of the year 1859. — I cannot recall the particulars of every conversation during

my stay there.

Interrogatory Fourth. Do you know or do you not know anything about a pretended sale of a stock of goods by said Raglands to one Milton Munger at Monmouth Illinois or at any other place? If yea state all you know about such sale, when and where the sale took place, & whether it was or was not at the time you were at Monmouth to secure said debt and any conversation you may have had with said Raglands, said Munger or said plaintiffs or either of them. either at the time or at any other time subsequently in regard to said sale.

Answer to Fourth Interrogatory. I do know something about said pretended sale. I have before stated most of the facts in my answer to the third interrogatory to which I refer as part of this answer. The sale was made while I was in Monmouth as before said trying to secure the debt. I had remained there a day or two endeavoring to prevail on the Raglands to adjust the debt, but with no success. They finally promised to come up to Chicago. on the next Monday — this was Saturday evening — & arrange the matter there.

Joel E Ragland accompanied me to the Rail Road Depot where I purchased my ticket for Chicago, Saturday Evening On second thought I decided to remain till Monday and accompany the Raglands to Chicago and ensure their going. Joel E. Ragland then returned with me to the hotel, and soon after between seven & eight O'clock in the evening took leave of me to meet me Monday Morning. I did not see either of the Raglands I think, till Monday morning (when Joel E Ragland in reply to my question whether he was ready to start, said they had sold out to Munger as I have stated stated in my answer to the third interrogatory) Ragland was considerably excited. very unwilling to converse with me about the matter. Subsequent to the sale I repeatedly tried to obtain from the Raglands & from Munger the particulars of the sale, but could obtain only vague answers from either. They each referred me to the other party.

Interrogatory Fifth

What was the pretended consideration for said pretended sale of said goods.

Answer to Interrogatory Fifth.

Both the Raglands and Munger told me that the stock of goods was exchanged with Munger for Iowa wild lands.

Interrogatory Sixth.

Do you or do you not know anything about a pretended sale of said goods by said Munger to the said plaintiffs in this suit. If yea state when such sale was made, and all conversations which you may have had, if any, with said plaintiffs or either of them, with said Munger or with said Raglands in regard to said sale.

Answer to Interrogatory Sixth.

(I understood that the said stock of goods was transferred by Munger to other parties, and the plaintiffs names were connected with this transfer I know nothing further)

Interrogatory Seventh.

What was the pretended consideration for said pretended sale last mentioned?

Answer to Interrogatory Seventh

I do not know.

Interrogatory Eighth.

Did you or not as agent for said John Allen or some other person or persons notify said plaintiffs or either of them.

that said sale by Raglands to said Munger was fraudulent. & If yea state all that was said at the time and whether it was before or after said Plaintiffs purchased said goods from said Munger.

Answer to Interrogatory Eighth

I do not recollect having done so.

Interrogatory Ninth.

Did you ever see said goods & if yea state when you saw them. where - what the goods consisted of. and the value of the goods.

Answer to Interrogatory Ninth.

I did see the goods in the Raglands' Store at the time of my visit to Monmouth, as before stated. They consisted of dry goods, groceries, clothing, boots & Shoes. and other. articles & Merchandize commonly kept in a country store, I do not recollect what I then considered them worth, but from the best of my recollection of the stock, should say they were worth between five thousand and eight thousand dollars.

Interrogatory tenth.

If you know any thing further which would be beneficial to the parties to this suit, or either of them state the same fully in answer to this.

interrogatory.

Answer to Interrogatory Tenth.

(In a conversation subsequent to the pretended sale to Munger. I inquired of Joel E Ragland how much the lands were worth per acre. He replied that he knew nothing about them. I intimated to him that they might be swamp lands & for that reason of little value. He replied that all he wanted was land or something to that effect. I recollect nothing further of value to the parties to said suit).

Edward. J. Brown.

I, Lucien Eaton, of the city and County of St Louis and State of Missouri. a Commissioner duly appointed to take the deposition of the said Edward J Brown, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Edward J Brown as a witness in the said suit. between the said Elijah C Babcock & John Babcock plaintiffs and the said Alexander G. Kirkpatrick, Seth Smith, George. D. Crandall, James McCoy. William M. Gregg & Chester W Palmer, Defendants. he was duly sworn by me as such Commissioner to testify the truth in relation to the

matters in controversy between the said Babcocks, plaintiffs and the said Kirkpatrick, Smith, Crandall, McCoy, Gregg & Palmer defendants so far as he should be interrogated concerning the same: that the said deposition was taken at my office No 35 Pine Street in the City of St Louis in the county of St Louis and State of Missouri, on the ninth day of November AD 1859; and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto, as written down, were read over to the said witness; and that thereupon the same was signed and sworn to by the said deponent Edward J Brown before me, the oath being administered by me, as such commissioner at the place and on the day and year last aforesaid.

Lucien Eaton, Commissioner

Filed Mch 20 1860

Wm Lafferty Clk.

The defendants then read in evidence to the jury the following deposition of Myron Nelson without objection - to wit.

In Justice Court before N. H. Walworth.
Police Justice
Elijah C. Babcock et al } J.
vs
Alexander G. Kirkpatrick et al.

Deposition of Myron Nelson of lawful age, a witness in the above entitled suit, taken by N. H. Walworth, Police Justice of the County of Knox, on the first day of November AD 1860 at the office of said Justice in said county in presence of Plaintiffs attorney. M. C. Munger for defendant
Knox County ss. Myron Nelson being duly sworn deposes and says as follows, viz.

Interrogatory 1st What is your name, age, and residence and occupation & where did you reside in the Winter & Spring of the year 1859.

Ans 1st My name is Myron Nelson, am 23 years of age & reside in Oneida Ill. am a clerk in a dry goods store & I resided in Monmouth Warren Co. Ill. in the winter & Spring of 1859.

Interrogatory 2nd Are you acquainted with the parties to this suit or any of them.

Answer 2nd. I am acquainted with all the parties to this suit.

Int 3rd. Whether or not have you at any time heard Elijah C Babcock or John Babcock

Plaintiffs in this suit say anything in relation to the sale of a Stock of goods to them by Milton C. Munger during the winter or spring of 1869 & if yea, state what they did say in relation thereto in full

Answer 3d. I heard John Babcock say that he had bought a stock of goods of Milton C. Munger – do not recollect all that was said and never heard E. C. Babcock say anything in relation thereto

Int 4 Whether or not have you at any time heard said John Babcock say upon what terms he bought said goods of said Milton C. Munger: if yea state what he did say in relation thereto & the time he said it.

Ans 4. I heard him say that they bought the goods & paid for them, in the store of Geo W. Nelson shortly after he bought them. I think I heard him say so in January 1869

Interrogatory 5. Whether or not have you at any time heard said John Babcock say that "they were to pay said Munger for said goods if the suit went all right & if not, they were not to pay Munger anything" or words to that effect or anything in relation thereto & if yea state what he did say & when he said it.

Answer 5. I have heard him say something

about it. I heard the question asked him & he denied it, — do not remember what else was said. The conversation transpered in the store of Geo W Nelson shortly after the goods were bought

Interrogatory 6. In your answer to the 5th interrogatory you say you heard John Babcock say something in relation to paying Munger for said goods if the suit went all right & if not, they were not to pay Munger anything. Please state to the best of your recollection & belief what he did say in regard thereto. & when he said it. Question objected to by Pltff.

Answer 6. All I ever heard him say was what he said in the store — some one asked the question of John Babcock concerning this trade between Munger & them — how much he paid for the goods & how or what he paid for them. I do not remember what the amount he replied he paid for the goods.

Interrogatory 7. In your answer to the sixth interrogatory you say some one asked the question of John Babcock concerning the trade between Munger & them & how & what he paid for them. State to the best of your recollection & belief what

reply said John Babcock made or what he said in regard to how he or they were to pay for said goods or what he or they was to pay for them

Answer 7 I heard him say he had paid for the goods, - What he paid for the goods I do not know whether money or notes. I do not how he paid for them whether money or notes.

Interrogatory 8. In your answer to the 5th interrogatory you say "I heard him say some thing about it" - do you or do you not mean by said answer that you heard John Babcock say something about paying Munger for said goods. if the suit went all right & if not they were not to pay Munger anything

Answer 8. I do not remember that I ever heard John Babcock say that they were not to pay anything for the goods.

Int 9. Whether or not have you ever heard said John Babcock say that they or he was not to pay said Munger for said good if the suit did not go all right or words to that effect.

Ans 9. I heard John Babcock say something about the suit but did not pay any attention to it as it did not

concern me. I do not recollect what was said. I think I have.

Interrogatory 10. Whether or not have you ever heard said John Babcock say that they or he was not to pay said Munger for said goods if the suit did not go all right or words to that effect,- if yea state when & where he said it

Answer 10. I think I have in the store of Geo W Wilson,- it could not have been far from the time the sale was made.

Interrogatory 11. Whether or not was the conversation with said John Babcock referred to by you in relation to the stock of goods bought of Joel E Ragland & Robt F. Ragland by said Munger & sold by said by said Munger to said Babcocks

Answer 11. It was.

Interrogatory 12. Whether or not have you ever heard Milton C Munger say anything in relation to the reason why said Joel E Ragland & Robt F. Ragland sold out or anything in relation to said sale, if yea, state what he did say.

Answer 12. I do not remember that I ever heard him give any reason for sale

Interrogatory 13. In your answer to the 9th interrogatory you state you heard.

John Babcock say something about the suit Please state what suit was referred to & whether or not said suit was not in relation to said Stock of goods bought of said Raglands by Munger & sold by said Munger to said Babcocks.

Answer 13 Do not Know what suit it was I think it was in relation to the Ragland goods

Interrogatory 14 Do you Know of any other matter or thing that will be of benefit to the Parties in this suit or either of them & if yea, state the same fully in your answer to this interrogatory

Answer 14. I do not.

Cross. Examined by Plffs

Interrogatory 1

If John Babcock said anything in relation to a suit in the conversation referred to by you in your answer to the 9th direct interrogatory do you of your own Knowledge Know anything what suit was referred to by the said Babcock and the other parties holding said conversation.

Answer 1 I do not.

Int 2 Were you acquainted with the stock of J. E. Ragland & Bro prior to the sale of said goods to said Munger & if yea

what were they worth on the dollar on the original cost in your judgment.
Objected to by defendants
Ans 2. I cannot say that I was
Int 3. Have you any knowledge of the kind of goods kept by Jacl E Ragland & Bro & which were sold by them to the said Munger.
Ans 3 Yes.
Int 4 What were said stock worth on the dollar of the original cost price at said time.
objected to.
Ans 4. I would not be willing to give over fifty cents on the dollar if I was going to buy them.
Int 5 Do you know of your own knowledge or from either of the Raglands how said Munger paid for said stock.
Question objected to by defendants.
Ans. 5 I heard the Raglands say that they got their pay in Lands, for the said goods.
Int 6. Do you know whether or not said Munger talked of selling said stock of goods after he had purchased them of said Raglands to George W Nelson
Question objected to by defendant.

Ans 6. I do.
Int 7. Were you in the same store & doing business with said Munger at and about the time of said purchase by said Munger of Raglands.
Ans 7. I was.
Int 8 Had you not heard said Munger propose to trade Iowa lands to different parties for property in Warren Co
Objected to.
Ans 8 I have.
Int 9 From all your Knowledge of the sale from Raglands to Munger do you think it was a bonafide trade & transaction
Objected to
Ans 9 I do.
Defendant asked. Have you any Knowledge of your own before said trade was made in relation to said trade.
Ans. I had no Knowledge of the trade till after it was made.
Myron Nelson
State of Illinois }
Knox County } I. N. H. Walworth a justice of the Peace in & for said County do certify that the foregoing deposition was taken by me at my office in the town of Oneida in said County at the time mentioned in

~~in~~ the notice hereto attached & in pursuance of said notice to wit on the 1st day of November AD 1860 between the hours of 10. O'clock A.M. and 5. O'clock P.M. of said day that the witness was first duly sworn according to law to testify the truth the whole truth & nothing but the truth in the matter in controversy in the suit named in the caption thereof, that said deposition was reduced to writing by me & carefully read over to said witness & by him subscribed & sworn to before me. that said deposition was taken between the hours named on said day, commencing at 11. o'clock A.M. & concluding at 4½ o'clock P.M., the defendants by their attorneys being present and Milton C. Munger appearing for Plaintiffs. that the objections noted in said deposition were made at the time of propounding said interrogatories
Given under my hand and seal this 1st day of November AD 1860.

N. H. Walworth (Seal).
Police Magistrate &
acting Justice of the Peace.

State of Illinois }
Knox County } ss. County Clerks Office.

I, John S. Winter, Clerk of the County Court, in and for said County and State, do hereby certify that N. H. Walworth Esquire, whose name is subscribed to the foregoing Certificate to Deposition, was on the day of the date thereof, to wit; on the 1st day of November A.D. 1860 a Police Magistrate in the town of Oneida in said County and State, duly elected, commissioned, and sworn, and, as such, duly authorized and empowered to administer oaths for general purposes, to take the acknowledgment of Deeds, and all other Instruments, in writing, and that his signature thereto is genuine. In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said County Court, at the City of Knoxville, this 5th day of November A.D. 1860.

(Seal). John S. Winter, Clerk
pr John A. West Depy Clerk

Filed Nov 6th 1860
Wm Lofuty Clk

The defendants then offered to read in evidence the following deposition of Marshall Field to the reading of which the plaintiffs by their counsel then & there objected, but the court overruled the objection and the plaintiffs by their counsel excepted to the overruling of said objection and still except the plaintiffs then asked the court to suppress such parts of said deposition as are hereinafter included in the Brackets — which motion the court sustained and the defendants then and there excepted.

The defendants then read to the jury the following deposition of Marshall Field (except the parts included in Brackets.).

State of Illinois } Warren Circuit Court
Warren County } October Term AD 1859

Elijah C Babcock &
John Babcock partners
trading under the name
& style of E. C Babcock & Son } Trespass.
vs.
Alexander G Kirkpatrick
Seth Smith George D Crandell
James McCoy & William
M. Gregg

Deposition of Marshall Field taken on the 2nd day of November AD 1859 by Calvin D Woff a Justice of the Peace in and for the County of Cook and State of Illinois at his office in Chicago by virtue of the annexed notice - to be used in cause pending in the Circuit Court of Warren County and State of Illinois wherein Elijah C Babcock & John Babcock partners &c are plaintiffs and Alexander G. Kirkpatrick. Seth Smith, George D Crandall, James. McCoy and William W Gregg Defendants, The said witness Marshall Field being first duly sworn doth depose and say in answer to the several interrogatories as follows. to wit.

Question 1st What is your name, age, occupation, residence, and are you acquainted with the parties Plaintiffs and Defendants named in the caption to these interrogatories or either and which of them and how long have you Known them respectively

Answer. My name is Marshall Field I am 24 years of age, reside in Chicago I am acquainted with the Plaintiffs and with the defendant Alexander G Kirkpatrick - have Known the Plffs

about 3 years - have known the defts Kirkpatrick since about the 20 of January last

Question 2nd Are you acquainted with Joel E Ragland & Robert Ragland formerly residents of Monmouth, Warren County Illinois. If yea, how long have you been acquainted with them and when did you first become acquainted with them.

Answer. I am acquainted with Joel & Robert Ragland - have known Joel about 2 years & Robert about 9 months.

Question 3rd. In what business were they engaged when you first became acquainted with them. - where did they do business?, and were they associated in business in any way and under what name or firm.

Answer Joel E Ragland was alone at the town of Cameron Warren. Co. Ill - had a general country store a little over 2 years ago - He left there in the winter of 1857-8 & moved his goods to Monmouth Warren. Co. Ill. - & a short time after took his brother Robert Ragland into Co. with him under the style & firm of J. E. Ragland & Brother.

Question 4th How long did the said J. E. Ragland & Bro continue business in Monmouth Ill. and what Kind of business & when did they close the same.
Answer. They continued about 12 Months - it was a general country Store - Dry goods Boots & Shoes &c - closed about the 21th January 1859.
Question 5th Do you Know in what manner & how they closed their business. if so state.
Answer. I do. They pretended to sell out to one Milton C Munger - for wild Lands in Iowa.
Question 6th Were you acquainted with any of the circumstances attending the pretended sale to said Milton C Munger - and what if any reason was assigned for said pretended sale at that particular time. State all the facts you Know in relation to the said sale.
Answer. I was acquainted with the Circumstances attending said sale The reason assigned for the sale was that Raglands were deeply involved in debt & the creditors were urging them for pay or security, And I am satisfied it was done to defraud and hinder & delay their Creditors.

Question 7th State if you Know the amount of Goods said Raglands had at the time of the said pretended sale to Munger & which were placed in his hands.

Answer. I think at least $6.000 worth.

Question 8th Do you Know what if any consideration said Munger gave or pretended to give for them, if yea state fully.

Answer. I do Know from Statements of Raglands & Munger — and from John Babcock one of the plaintiffs: That Munger gave or pretended to give for said goods.- wild lands in Iowa.

Question 9th When and where did you learn this from said persons and what were the circumstances leading to said Knowledge

Answer I learned it about the 20th of January 1859. at Monmouth. Ill. I was at Monmouth with claims against said Raglands at the time urging payment or security.

Question 10th Do you or not Know whether there was an invoice of the goods taken at the time of said pretended sale to Munger — if yea — when was it taken 2. & State what day of the week.— times of day and whether the business was managed in

the usual open frank and honest business like manner, and all you know about the matter & what is your means of knowledge,

Answer. I know from Raglands & Munger & perhaps from John Babcock. that an inventory was taken on Sunday the 23rd January 1859. They worked all day on Sunday, Saturday night — It was hurried through with closed doors & in a secret manner.

Question 11th State how long said Munger continued to hold said goods in his possession, if you know, and what he did with them.

Answer. He continued to hold them till about the 27th or 28th of January 1859 when they were removed into the Store of the plaintiffs in this suit at Monmouth.

Question 12th Do you know under what circumstances & how they came to be moved into plaintiffs store — if so state fully.

Answer. I do — I know plffs said they bought the goods of Munger — I suppose Munger pretended to sell them to plffs.

Question 13. Do you know from plffs or Munger what if any consideration was paid by plffs for said goods, and

whether or not there was anything
actually paid down at the time of
said pretended sale and when and how
said consideration was to be paid.
State all you know about it of your own
Knowledge and from information
received by you from said plaintiffs
and said Munger.

(Answer. I do know from John Babcock
one of the plaintiffs - that they plffs
did not pay anything down for said
goods. at the time of said pretended
sale: That they gave them notes on long
time and were to pay Munger interest
annually if he wanted it. to support his
family. This is what John Babcock told me)

Question 14. Did you or not as the agent
of any Creditor or Creditors of the said
Joel E Ragland & Bro prior to said sale of
said goods - from Munger to the said
plaintiffs give any notice to the said
plaintiffs or have any conversation with
said plaintiffs or either of them in regard
to the said sale of Joel E Ragland & Bro
to said Munger being fraudulent and
made for the purpose of hindering and
delaying the Creditors of Joel E Ragland
& Bro in collecting their debts against them

if yea when was such notice or conversation given — in whose behalf & to whom was it given or with whom was it held. State as near as you are able all that was said as such agent and the reply of said plaintiffs or either of them to the same. ?

Answer. I did as the agent of creditors before said pretended sale to pltffs. from Munger have conversation with John Babcock one of pltffs. on the 26th Jany 1859 in regard to the sale from Raglands to Munger (being fraudulent. I told him there was not a doubt but the sale from Raglands to Munger was fraudulent. That I did not wish to make them any trouble but if they the pltffs took the goods of Munger they would buy a Law suit.) He John Babcock said if they had anything to do with the goods they would be guaranteed to them.

Question 15th. Did you have any conversation with the said John Babcock in relation to the Lands in Iowa which the said Munger pretended to give for said goods, if so state fully said conversation.

(Answer. I did. He John Babcock said Munger came to him a week before the trade and told him that he (Munger) wanted some of our Iowa Lands

to trade for J. E. Raglands & Ro. Stock of goods — & he Babcock (Munger also told me) that the title to the lands that were paid for the goods came partly from Babcock.)

Question 16th. Did you as the agent of any creditor or creditors make any inquiry or inquiries of the said plaintiffs or the said Munger or either of them in regard to the said Iowa lands, which was pretended to be given by the said Munger to the said Raglands as consideration for said stock of goods, if yea, what inquiries did you make of whom did you make such inquiries, when and where were they made, and what replies did you receive from them, or either of them.

Answer. I did make inquiries of Milton E. Munger and John Babcock, plaintiff in regard to said lands. I inquired of them as to the quantity, quality and title of the lands in which County they were located in and the full description of the same. They refused to give me any such information, and referred me to Joel E Ragland, I made such inquiries at Monmouth Illinois at

about the 26th of January 1869

Question 17th Did you make any inquiries in regard to the said Iowa lands as to their value, location, description, quantity and quality of the said Raglands or either of them. if yes. of which Ragland and what was the reply, if any.

Answer I made such inquiries of Joel. E. Ragland, he refused to give me any information whatever.

Question 18th Did you from any source learn in what part of the State of Iowa, those lands were located, if yes, in what part of the state, and were they improved or unimproved lands, and how far west from the Mississippi are they located

Answer. I did not learn definitely but I learned that Babcock and Munger had owned or did own some land in Carroll & Madison Counties Iowa, which is located about 150 or 200 Miles west from the mississippi river, - they said they were wild lands unimproved.

Question 19th Did you have any conversation with Joel E Ragland in Monmouth Ill at or about the time of the said sale to Munger in regard to the title of said

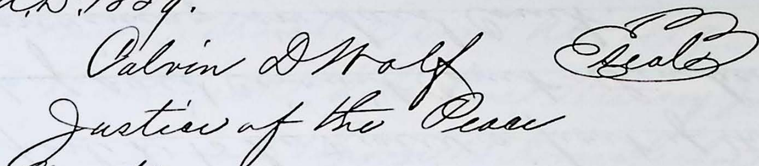
lands, and what he knew about them. if yea, state when and where such conversation or conversations were had and what it was, state fully & particularly

Answer. I did have such a conversation with Joel. E. Ragland, he said he knew nothing about the title or quality of said lands, I had such conversation at Ragland's store and at the Hotel in Monmouth Ill about the 25th of January 1859.

Marshall Field

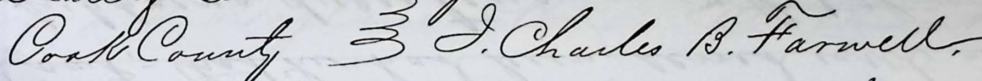
State of Illinois } ss.
Cook County } I, Calvin DeWolf a Justice of the Peace in and for said County do hereby certify that the said Witness Marshall Field prior to the taking of the foregoing deposition and on the second day of November A.D. 1859. was by me duly sworn to testify the truth in relation to the matter in controversy in the suit mentioned in the Caption to these depositions and the attached notice so far as he might be interrogated in relation thereto and that said deposition was reduced to writing on the said second day of November A.D. 1859, at the time mentioned in said

notice and was signed and sworn to by said witness in my presence and was partly reduced to writing by me and partly by my clerk Julius Pame in my presence. Given under my hand and seal at Chicago this 2nd day of October A.D. 1857.



Calvin D Wolf [Seal]
Justice of the Peace

Justices Fees $3.85
Clks Ct 35
Postage 9.
Witness fees 1.00



$5.29 paid by Defts atty.

State of Illinois } ss.
Cook County } I. Charles B. Farwell, Clerk of the County Court, in and for said County, do hereby certify that Calvin D Wolf Esquire, whose name is subscribed to the annexed Certificate was, at the time of making the same, an acting justice of the Peace, in and for said County, duly commissioned, sworn and authorized to take the same; and full faith and credit are due to all his official acts. In testimony whereof, I have hereunto set my hand and affixed the official seal of said County Court, this third day

of November AD 1859.
(Seal). C. B. Farwell Clerk.
Filed Nov 4 1859
Wm Laferty Clk.
The defendants then called William Laf
erty as a witness who was sworn and
testified as follows. That he was clerk
of the circuit court of Warren County & State
of Illinois & had been for over four
years and as such keeper of the papers
and records belonging to the said Circuit
Court, - that he had been served with a
Subpoena duces tecum & that the
papers and records here produced to wit,
—, attachment bond, affidavits, 2 writs,
Declaration. Note & Judgment & which are
the same hereinafter set forth as being
offered in evidence, were the papers
they purported to be & were a part of the
records of said circuit Court - then being
and remaining in said Court.
That Seth Smith one of the defendants
was acting Sheriff at the time of serving
out of said writs, that he went into office
on the 20th day of December AD 1858 & con-
tinued until the 12th day of December
AD 1860, when he went out and was

acting Sheriff of Warren County Illinois during all that time

The defendants then offered the following affidavit bond, 2 Writs & returns thereon, Note - declaration & Judgment Record in evidence to wit.

State of Illinois } Warren Circuit Court
Warren County } March Term AD 1859.

Oliver N. Bostwick, Valentine Hussey Jr Charles E. Bostwick & George B. Knickerbocker partners trading under the name & style of Bostwick Hussey & Co.

vs.

Joel E. Ragland & Robert F. Ragland partners trading under the name & style of J. E. Ragland & Bro. } Attachment.

Alexander S. G. Kirkpatrick attorney for said plaintiffs after being first duly sworn according to law doth depose & say that said defendants are justly indebted to said plaintiffs in the sum of five hundred & thirty eight dollars & seven cents according to the tenor & effect of a promissory note the following being a copy thereof to wit,

$538.07 New York August 28 1858

Six months after date we the subscribers of Monmouth County of Warren State of

Ill. promise to pay to the order of Bastwick Hussey & Co. Five hundred & thirty eight 07/100 Dollars at their office in N.Y. value received

Mch 3/59 J. E. Ragland & Bro.

That said defendants and both of them have departed from this state with the intention of having their effects removed from this state to the injury of said plaintiffs. as he is informed and verily believes

Alexander G. Kirkpatrick

Subscribed & sworn to
before me this 7th day of March 1859
Wm Laferty clerk.

Filed March 7, 1859
Wm Laferty clk

State of Illinois }
Warren County }

Know all men by these presents, that we, Oliver N. Bastwick, Valentine Hussy Jr. Charles E. Bastwick & George B Knickerbocker partners trading under the name & style of Bastwick Hussey & Co & Alexander G. Kirkpatrick, are held, and firmly bound, unto Joel. E Ragland & Robert F. Ragland partners trading under

the name & style of J. E. Ragland & Bro.
in the penal sum of twelve hundred
dollars, lawful money, to the payment of which,
well and truly to be made, we bind ourselves,
our heirs, executors and administrators,
jointly and severally, firmly by these presents
sealed with our seals, and dated this 7th day
of March A.D. 1859. The condition of this
obligation is such, that whereas, the above
bounden Oliver N. Bostwick, Valentine Hussey Jr.
Charles E Bostwick & George B. Knickerbocker
hath, on the day of the date hereof, prayed an
attachment out of the Circuit Court of said
County, at the suit of themselves, against
the estate of the above named, Joel E.
Ragland & Robert H. Ragland for the
sum of five hundred thirty eight & 07/100 Dollars;
and the same being about to be sued out of
said Court, returnable on the third Monday
of March inst to wit March AD 1859 to the term
of the Court there to be holden. Now if the said
Oliver N. Bostwick, Valentine Hussey Jr. Charles
E. Bostwick & George B. Knickerbocker shall
prosecute their suit with effect, or in case of
failure therein, shall well and truly pay and
satisfy the said Joel E Ragland & Robert H. Rag
land, all such costs in said suit, and
such damages as shall be awarded against

the said Oliver N. Bostwick Valentine Hussy Jr
Charles. E. Bostwick & George B. Knickerbocker
their, executors or administrators, in any
suit or suits, which may hereafter be brought
for wrongfully suing out the said attachment.
Then the above obligation to be void, otherwise
to remain in full force and effect.
Witness our hands and seals the day and
year first above written.

Oliver N. Bostwick (seal)
Valentine Hussy Jr (seal)
Charles. E. Bostwick (seal)
George. B. Knickerbocker (seal)
Alexander G. Kirkpatrick (seal)

Approved by me this 7th day of March AD
1859

Wm Lafferty Clerk.

Filed March 7th, 1859
Wm Lafferty Clk.

State of Illinois }
Warren County }

The People of the State of Illinois:
To the Sheriff of Warren County - Greeting
Whereas. Alexander G Kirkpatrick attorney for Oliver
N. Bostwick, Valentine Hussy & Charles E. Bostwick
& George. B. Knickerbocker. partners trading under
the name & style of Bostwick Hussey & Co. hath

complained on oath to William Laferty,
clerk of the Circuit Court of Warren County
that Joel E Ragland & Robert F. Ragland,
partners trading under the name & style of
J. E. Ragland & Bro are justly indebted to
the said Oliver N. Bostwick, Valentine Hussey Jr
Charles E. Bostwick & George B. Knickerbocker
to the amount of Five hundred & thirty eight
dollars and seven cents: and oath having also
been made that the said Joel E Ragland & Robert
F. Ragland have departed from this state with
the intention of having their effects removed
from this state to the injury of the said plaint-
iffs, and the said Oliver N. Bostwick Valentine
Hussey Charles E. Bostwick & George B Knickerbocker
having given bond and security according to
the directions of the act, in such case made
and provided: We, therefore, Command you,
as we have before commanded you, that
you attach so much of the estate, real or
personal, of the said Joel E Ragland & Robert
F. Ragland, if to be found in your county as
shall be of value sufficient to satisfy the said
debt and costs, according to the complaint:
and such estate so attached, in your hands
to secure, or so to provide that the same may
be liable to further proceedings thereupon,
according to law, at a court to be holden
at Monmouth, for the County of Warren

on the fourth Monday of October next; so as to compel the said Joel. E. Ragland & Robert F. Ragland to appear and answer the complaint of the said Bostwick Hurley &c and that you also summon Joseph H Haley as garnishee, to be and appear at the said Court, on the said 4 Monday of October next; then and there to answer what may be objected against him. When and where you shall make known to the said Court how you have executed this writ, And have you then and there this writ.

Witness, William Laferty Clerk of our said circuit Court, at Monmouth, this 2nd day of June in the year of our Lord one thousand eight hundred and fifty nine.

(Seal). Wm Laferty Clerk

Filed Oct 22d 1859. Wm Laferty Clk.

Served on Joel. E. Ragland June 23d 1859 by reading the same to him. - dated this day June 23d 1859.

Seth Smith Sheriff.

Robert F. Ragland not to be found in my County.

I have served the within writ by reading the same to the within named Joseph F. Haley this 4th day of August 1859.

Seth Smith. Sheriff.

The People of the State of Illinois
To the Sheriff of Warren County - Greeting.
Whereas, Alexander. G. Kirkpatrick attorney
for Oliver N. Bostwick. Valentine Hussey Jr
Charles E. Bostwick & George. B. Knickerbocker
partners trading under the name & style of
Bostwick Hussey & Co hath complained on oath
to William Laferty clerk of the circuit Court
of Warren County, that Joel. E. Ragland &
Robert H. Ragland partners trading under
the name & style of J E Ragland & Bro are
justly indebted to the said Oliver N. Bostwick
Valentine Hussey Jr. Charles E. Bostwick & George
B. Knickerbocker to the amount of Five hundred
& thirty eight dollars and seven cents; and
oath having also been made that the said Joel
E Ragland & Robert. H. Ragland have
departed from this state with the intention
of having their effects removed from this State
to the injury of the said Plaintiffs, and the
said Oliver N. Bostwick. Valentine Hussey Jr
Charles E. Bostwick & George B. Knickerbocker
having given bond and security according to
the directions of the act, in such case made
and provided: We therefore Command you, that
you attach so much of the estate, real or
personal, of the said Joel E Ragland & Robert
H. Ragland if to be found in your county,

as shall be of value sufficient to satisfy the said debt and costs, according to the complaint: and such estate so attached, in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon according to law, at a court to be holden at Monmouth, for the County of Warren, on the third Monday of March instant, so as to compel the said Joel E Ragland & Robert F. Ragland to appear and answer the complaint of the said Oliver N. Bostwick Valentine Hussey & Charles E Bostwick & George B Knickerbocker and that you also summon, Elijah C Babcock, John Babcock, Robert Holloway, Henry M. Boggess George D Luce, H.H. Boggess, Joseph Haley & Milton C Munger as garnishee, to be and appear at the said Court, on the said third Monday of March Instant then and there to answer what may be objected against them. When and where you shall make known to the said Court how you have executed this writ. And have you then and there this writ Witness, William Laferty clerk of our said Circuit Court, at Monmouth, this 7th day of March in the year of our Lord, one thousand eight hundred and fifty nine

(Seal) - Wm Laferty Clerk

On the back of the foregoing writ was the following return. to wit. By virtue of this writ and by direction of the plaintiffs attorney I did on the 7th day of March AD 1857 [call on Elijah C. Babcock & John Babcock and read to each of them this writ and told them then that they had in their possession certain goods, & chattels which said defendants had pretended to sell to Milton C. Munger & who pretended to sell the same to them said Babcocks which said sale said plaintiffs alledge was fraudulent and void as against them and requested them to point out to me said goods so that I could make a levy, the said goods being so mixed up with their own stock that I was in doubt whether I would be able to designate them, and said Babcocks & both of them refused to point out said goods or so many as would satisfy this writ in any part thereof & thereupon afterwards on said day by direction of plaintiffs attorney] I served the within writ on Elijah. C. Babcock. John Babcock. Robert Holloway. Henry M Boggess. H H Boggess George D Luce. Milton C. Munger (said Joseph Haly not found) as garnishees, by reading the same to each of them, that on the 8th day of March AD 1857, by virtue of this writ and by direction of the

plaintiffs attorney I attached certain goods and chattels as the property of the defendants therein which property attached is more fully described in a schedule herewith marked Schedule "A". said property being at the time of said attachment in the possession of said Babcocks [& which was pointed out by plaintiffs attorney as part of said goods sold by said defendants to said Milton C Munger the said Babcocks still refusing to point the said goods out. but at the same time tearing off marks & mixing up said goods with their own goods so that they might not be designated] the said property as described in schedule "A" is in my possession subject to the order of the Court. that said goods will probably sell for about five hundred dollars.

Seth Smith Sheriff

List of articles invoiced March 8th 1869 by Seth Smith. Sheriff of Warren County Illinois upon the premises of E. C. Babcock & Son.

#24.	42	Yds Gingham
#10	44	" do
# 5	4½	" do
#24	30	" do
#25	22	" do

#18	8 yds Gingham
# 3	2 Skirt Patterns. Striped,
	2 Umbrellas
	2 do
	1 do
	2 prs Thick Boots
	1 " Kipp do
	3 " do do Boys
	1 " do do Youths.
	3 " Boys Enamel'd Shoes
	10 " Wom's " do
	6 " Youths Thick Boots
	1 " Kip do
	2 " Ladies Gaiters
	7 " " Calf Shoes
	1 " Boys Thick do
	5 " Ladies High do
	1 " " Buskins
	6 " Misses fine Shoes
	2 " " " do
	9 " Ladies Gaiters, Blk.
	4 " High Shoes
	6 " Fine Kid Shoes, (with heels).
	3 " Childrens do
	9 " Ladies Kid do
	7 " " do do
	5 " Woms Calf do
	4 " Ladies " do.

9 prs Ladies Calf Shoes.
7 " " Kid do fine
7 " " " do "
1 " Buskins
1 " Misses Fine Shoes
1 " Ladies " do
1 " do " do with heels,
1 " do " do
2 " Child's Enamld do
2 " Misses " do
4 " Ladies " do
2 " " " do
2 " " " do
1 " " Morocco do
1 " Misses Enamld do
1 " Ladies Kid do with heels.
3 " Wom's Kip do
11 " Enamd do
3 odd Shoes Childs
3 " " Boys
2 " " Ladies
1 " " Mens
#10 — 37 yds Bleached Sheetings
#11 35 " " do
#12 35 " " do
#13 38 " " do
#6 35 " " do.
#14 32 " " do.

#15	36 yds.	Bleached Sheeting
#16	39 "	" do
#17	39 "	" do
#18	46 "	" do
#19	37 "	" do
#20	26 "	" do
#21	39 "	" do.
#22	31 "	" Sheeting
	2½ "	do
#1	17½ "	Striped Shirting
	2½ "	" do
	2 "	" do
	2 "	" do
	4 "	" do
	2½ "	" do
	4½ "	Check
	10 "	do
#23	18½ "	Bleached Sheeting
#24	32 "	do do
#25	36½ "	do Drilling
#26	6 "	do Sheeting
	4 "	Corset Jeans
#3	32 "	Diaper
	21 "	Corset Jeans
#4	11 "	Diaper
#5	12 "	do
#6	11 "	Napkins
	15 "	White Flannel.
	1	Shawl.

#1 42 yds Curtain Calico
#82 43 " " do
8½ " " do
32 " do do
2 " " do

#3892	1 Coat		#2516	1 Coat	
#3986	1	do	#2783	1	do
#2052	1	do	#2516	1	do
#2887	1	do	#2516	1	do
#2052	1	do	#2833	1	do
#2790	1	do	#390	1	do
#2798	1	do	#2833	1	do
#2790	1	do	#2903	1	do
#2516	1	do	#2833	1	do
#2516	1	do	#3673	1	do
#2016	1	do	#2872	1	do
			#2872	1	do

#439	1 pr	Pants		#439	1 pr	Pants	
#439	1	"	do	#439	1	"	do
#439	1	"	do	#387	1	"	do
#380	1	"	do	#387	1	"	do
#392	1	"	do	#392	1	"	do.
#41	1	"	do	#298	1	"	do
#398	1	"	do	#233	1	"	do
#233	1	"	do	#398	1	"	do
#233	1	"	do	#298	1	"	do
#233	1	"	do	#389	1	"	do
#389	1	"	do	#389	1	"	do

#389	1	pr	Pants	#389	1	Pr	Pants
#389	1	"	do	#389	1	"	do
#387	1	"	do	#387	1	"	do
#387	1	"	do	#387	1	"	do
#380	1	"	do	#380	1	"	do
#225	1	"	do	#225	1	"	do
#376	1	"	do	#406	1	"	do
#380	1	"	do	#406	1	"	do
#225	1	"	do	#380	1	"	do
#475	1	"	do	#475	1	"	do
#389	1	"	do	#439	1	"	do
#439	1	"	do	#432	1	"	do
#432	1	"	do	#298	1	"	do
#271	1	"	do	#1325	1	Vest	
#434	1	Vest		#1339	1	do	
#3649	1	do		#3649	1	do.	
#1107	1	do		#1107	1	do	
#1005	1	do		#1005	1	do	
#1107	1	do		#1145	1	do	
#1145	1	do					

#3073 5 Plain Red Shirts.
6 Fancy " do
24 prs White Wool Drawers
14 Wrappers
17 Fine do.

#782 5 3/2 yds Curtain Calico
31 " Gingham Green Band.,
30 " do Purple "
12 " do " "

44½	yds	Gingham	"Green Band"	
38	"	do	"Brown	"
41	"	do	"Pink	"
18	"	do	"Green	"
41	"	do	"Pink	"
2½	"	do	Black	"
29	"	do	Green	"
11	"	do	Brown	"
41	"	do	Black	"
41	"	Gingham	Pink Band	
23	"	do	Brown	"
9	"	do	"	"
34	"	do	"	"
27	"	do	Green	"
39	"	do	Red	"
11	"	do	"Brown	"
18	"	do	Blue	"
24	"	do	"Pink	"
12½	lbs	Grass Rope		
10	"	Cotton	do.	

Filed March 2 1st 1869
Wm Laferty. Clk.

State of Illinois } March Term AD 1869
Warren County } of the Warren County Circuit Court,

Oliver N. Bostwick, Valentine Hussey Jr
Charles E. Bostwick & George B Knickerbocker

partners trading under the name & style of Bastwick Hussy & Co. Plaintiffs by A G Kirkpatrick their attorney complains of Joel E Ragland & Robert H. Ragland partners trading under the name of J. E. Ragland & Bro defendants in custody &c of a plea of Trespass on the case upon promises For that whereas the said defendants heretofore: on the 28th day of August in the year of our Lord one thousand eight hundred and fifty eight at New York to wit at the County of Warren & State of Illinois by the name & style of J. E. Ragland & Bro. made their certain 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 said plaintiffs by which said note the said defendants then and there promised to pay said plaintiffs or order under the names and style of Bastwick Hussy & Co six Months after the date thereof at the office of said plaintiffs in New York the sum of Five hundred & thirty eight Dollars & seven cents for value received. By reason whereof, and by force of the statute in such cases made and provided, the said defendants then and

then 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 defendants in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, to wit at the County aforesaid, undertook, and then and there 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 whereas, also, the said defendants afterwards, to wit, on the fourth day of March in the year of our Lord, one thousand eight hundred and fifty nine at the place aforesaid & at the County aforesaid were indebted to the said plaintiffs in the sum of eight hundred dollars lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendants and at the special instance and request of the said defendants. And for other money by the said plaintiffs before that time paid, laid out and expended for the said defendants, and at the like request of the said defendants. And for other money

by the said defendants before that time had and received to and for the use of said plaintiffs. And being so indebted, the said defendants in consideration thereof, afterwards to wit, on the same day and year last aforesaid and at the place aforesaid, to wit at the County aforesaid undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when the said defendants should be thereunto afterwards requested; And whereas also the said defendants, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, to wit at the County aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiffs. and then and there being in arrear and unpaid, and upon such accounting, the said defendants then and there were found to be in arrear and indebted to the said plaintiffs in the further sum of eight hundred dollars of like lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiffs, the said defendants, in consideration thereof, afterwards, to wit, on the

same day and year last aforesaid, and at the place aforesaid, to wit at the County aforesaid undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c, to wit, on the day when the said note became due and payable according to the tenor and effect thereof, and oftentimes since) to wit at the County aforesaid have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs but to pay the same or any part thereof to the said plaintiffs the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiffs of ten hundred dollars, and therefore the said plaintiffs bring suit, &c

A. G. Kirkpatrick
Plffs Atty.

(Copy of Note sued on).

$1538.07 New York August 28th 1858
Six months after date we the subscriber of Monmouth County of Warren State of

Ill^l promise to pay to the order of Bostwick Hussy & Co Five hundred & thirty eight 07/100 dollars at their office in N.Y.
value received
Mch 3/09 (signed) J. E. Ragland & Bro.

(Copy of account sued on).

J. E. Ragland & Bro
To Bostwick Hussy & Co Dr

To money loaned &c	$800.00
" " found due &c	$800.00

Filed Mch 9th, 1809.
Wm. Lafferty. Clk.

Oliver N. Bostwick Valentine Hussey Jr
Charles E. Bostwick & George B. Knickerbocker
firm of Bostwick Hussey & Co
vs
John E Ragland & Robert H. Ragland
firm of J. E. Ragland & Bro

Attachment.

This day came the defendants attorney and withdraws his appearance and pleas, and the said defendants being three times solemnly called came not nor any person for them to defend this suit but made default, thereupon it is ordered by the Court that the plaintiffs recover of the defendants their damages and as those damages are unknown to the Court it is ordered that the clerk

189. — assess the same, and the clerk having assessed and reported the damages at the sum of Five hundred and fifty nine dollars and sixty cents. which being approved by the Court, thereupon it is considered by the court that the plaintiff recover of the defendant the sum of Five hundred and fifty nine dollars and sixty cents. the amount so assessed as aforesaid together with their costs by them in this suit expended and that a special execution issue herein against the property attached. Thereupon came the defendant and move the court for a new trial and in arrest of judgment. Thereupon leave is given to the Sheriff to amend his return to the alias writ of attachment.

The defendants then read in evidence without objection. said affidavit bond, writs of attachment and return thereon, together with the record of the judgment in the case & also said promissory note, to the reading of which said return of the Sheriff upon said writ of attachment dated March 7th 1859 the plaintiffs by their counsel in open court then and there objected generally but the court overruled the objection and allowed the writ and return to be read in evidence to the Jury. subject to any

special objection that might be made to it before the defendants closed their testimony, to which ruling of the Court in overruling said objection the plaintiffs by their counsel then and there in open Court excepted and still except.
The defendants then called as a witness Henry M Boggess, who was sworn & testified that he knew Joel E Ragland & Robert. H. Ragland, that they were selling goods in the fall of 1858 & 1859 in Monmouth & ceased selling goods sometime in January 1859. Joel E Ragland went away sometime in the spring of 1859, that he thought Milton, C. Munger and Joel. E. Ragland were on intimate terms before that they appeared to be, that he generally saw them together. That he did not recollect what became of Robert. H. Ragland after the sale but remembers he was absent, That at the time the sale was reported to have been made the witness was in Chicago, that he came home, on saturday evening or Monday Morning. A week after the sale the witness went to his office after breakfast — & a short time after he got there Joel E Ragland came in — that the office was also occupied by Geo D. Lusse an attorney — that Mc Lusse

was in the office when Ragland came in — that Ragland & Luce made a proposition to him which he did not answer at the time. That Munger was present at a part of the conversation, but took no part in it; that after the proposition was made Munger came into the office and set down and commenced writing — that he appeared to be filling up blank deeds. — That Munger was in the office when he made his reply & heard it. The defendants then proposed to prove by the witness the proposition made by Ragland & Luce to which the witness gave his reply to which the plaintiffs by their counsel then and there objected, but the court overruled the objection and allowed the testimony to go to the jury. but refused to allow any conversation with regard to any conversation except when Munger was present. Ragland & Luce proposed to deed to me Lands in Iowa that he Ragland said he had got of Munger for goods. — that Munger was there when he gave his reply. Ragland said that he wanted me to take the deed of the land from Munger & sell it & apply the proceeds to his creditors. Munger was

present a part of the time and took no part in the conversation he was writing at the desk, filling out what appeared to be blank deeds and might have heard the conversation
That the witness replied to the proposition that he declined receiving the title to the lands - that he had enough to do of his own business, and that it might lead to dificulty, Ragland & George D. Luce said they were to be conveyed to him for the purpose of compromising with Raglands creditors - that the witness understood they were the lands which had been paid for the goods & that this was said to Ragland & Luce when Munger was present. Milton C. Munger was to deed him the lands as Ragland & Luce told him - that he did not know who the lands were deeded to, that witness did not look closely to see what Munger was writing but he appeared to be filling up blanks and the witness inferred from the proposition that he was preparing the deeds. The plaintiff then moved the Court to exclude all the above evidence of said last witness, but the court overruled the motion, to which the plaintiffs then & there excepted.

On Cross. Examination the witness testified that Ragland came into his office shortly after he went in - that Luce was in the office when he went in. Ragland said he had been to the house of the witness a short time before but did not see witness. Luce said they wanted to see the witness about recovering title to some land which Ragland had traded for. Munger had traded land to him for goods. - that he asked what the object was, Ragland said that the witness could sell the land and pay off or compromise the debts of Ragland as best they could. That about that time Munger came in and commenced filling up some blanks, that he thought Munger must have heard it - that Munger said nothing - that he was confident they were blank deeds and that Munger was filling them up. That he did not know what Munger was putting in the deeds, or what was done after he made his reply, that he left them all in the office when he went out, that he did not know that the deeds had been made by Munger and delivered before that time - if in point of fact they had been then he was mistaken in

supposing that Munger was to make out the title to the land to him though he understood so at that time. That Luce had been Raglands counsel & was Mungers Counsel,- that Luce or Ragland made the proposition to him that he did not recollect whether he had testified about the deeds before or not. Upon re examination the witness stated that it might be that he only infered that Munger was to make the deeds to him from the whole connection. Ragland & Luce desired him to receive the title and Munger was filling up blanks which witness was confident was deeds.- After declining the proposition he left the office leaving Luce, Ragland & Munger there. The defendants then called as a witness John H Frymire who was sworn and testified as follows, that he did not know anything about the sale of the goods, that Ragland told him that he had sold out to Munger - that he was not there when the inventory was taken, That he knew nothing positive about the circumstances of Ragland, that he thought he owed from $12,000 to $15,000 dollars. They had no property after they sold to Munger. The goods were all the property

they owned at that time, Joel E. Ragland remained here after the sale from 2. to 4 weeks — he was then absent about 6 weeks — he was boarding at the Warren House at the time of the sale. That Robert H Ragland left also. Joel E Ragland returned the same spring & that during he boarded at Mungers — that about the time of the sale. Joel E Ragland & Munger appeared friendly. Upon Cross examination this witness stated that he Knew of some of the debts of Raglands — he Knew of a debt to Cooley Farwell & Co of about $3000.- Knew that Joel E Ragland had been east a short time before and purchased goods to the amount of $2,800 — He did not Know of any other debts particularly. — the Cooley Farwell & Co debt was what Brown was here after — dont Know much about debts due them. He did not Know of their having money at that time. The defendants then called Isaac, M. Kirkpatrick as a witness who was sworn & testified as follows. that he saw John Babcock one of the plaintiffs about the 12th day of March AD 1859 after he got a decree of the United States Circuit Court at Chicago. He

told Babcock that judgment had been rendered against Raglands & that he was appointed receiver & that if he had any property of the Raglands he witness wanted him to turn it out. Either witness read the decree to him or he read it, — This is it (witness here produced the decree which is the same afterwards offered in evidence, After the reading of it Babcock remarked that he might as well give up the goods if that was the case, but would see Munger first, That he asked witness to go over to Nelsons Store where Munger was with him to see Munger, — that Babcock and the witness went over to Nelsons, Babcock then talked with Munger, They then said they wanted to consult with their counsel first & started off to consult with their counsel & after a short time he saw him again & Babcock said he would not give up the goods as he did not think the decree reached him. On Cross Examination the witness testified that he did not mean to say that he Babcock meant to admit that the goods were Raglands — he afterwards said he did not. The said defendants then in conclusion with the testimony of Isaac McKirkpatrick offered in evidence

the following Copy of the decree together with certificates, which is the same one alluded to by Isaac M. Kirkpatrick in his testimony. To the reading of which decree in evidence the plaintiffs by their counsel then and there objected but the Court overruled the objection and the plaintiffs excepted, the defendants then read said decree in evidence which is as follows

The United States of America
Northern District of Illinois Sct.

Circuit Court of the United States
Northern District of Illinois

Present The Hon Thomas. Drummond
Judge.

John Allen.
vs
Joel E. Ragland Robert, F. Ragland
Milton C. Munger. Elijah C. Babcock
and John. Babcock.

In Chancery.

Now comes the complainant by Burgess and Hawley his solicitor and on affidavit filed moves the court for an injunction against said defendants.

It is thereupon ordered, by the court that an Injunction issue against the said defendants Joel. E. Ragland and Robert. H. Ragland enjoining and restraining them as prayed for and the court not being fully advised as to the motion for an injunction as to the other defendants. take the same under advisement and on motion of the complainants by his solicitor the court appoint. Isaac. M. Kirkpatrick a receiver in this behalf of the Goods. wares and merchandize assetts. money. book accounts and choses in action of the said defendants Joel E Ragland and Robert. H. Ragland and the court order that said receiver before entering upon the duties of this appointment make and file a good and sufficient bond in the penalty of Four Thousand Dollars conditioned for the faithful discharge of his duties as such Receiver

The United States of America
Northern District of Illinois Sct.

I, William H Bradley clerk of the Circuit court of the United States for the Northern District of Illinois do hereby certify that the above and foregoing is a full true and complete transcript of the order of appointment of a Receiver wherein John Allen is complainant and Joel E Ragland Robert F. Ragland and others are defendants pending in said Court as the same appears of Record now remaining ~~on~~ file in my office.
In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office in the City of Chicago this 8th day of March AD 1859 and of our independence the 83rd year.
(Seal). Wm H. Bradley Clk.
The defendants then called as a witness Joel E Ragland, who was sworn on his Voir Dire, and testified as follows: that he was a member of the firm of J E Ragland & Brother and the same person who sold the goods to Milton C

Munger, that had been spoken of by the other witnesses. That he had no interest in the event of this suit that he knew of, – that if the defendants succeeded, the goods would pay his debt if not he would be liable to pay Bostwick Hussy & Co under these circumstances he supposed that he would be liable & interested in the event of this suit, that he had never expressly warranted the goods to Munger. On Cross examination on his voir dire this witness stated that Munger claimed that he was liable to him on an implied warranty of the goods. That he had claimed so at Chicago and had obtained judgment against him at Chicago on such implied warranty & consequently could not see that he had any interest in the suit going either way. The plaintiffs thereupon objected to the said Joel. E. Ragland as a witness but the court overruled the objection and allowed the witness to testify. To which the plaintiff then and there excepted.

The witness was then sworn in chief and testified that he had heard the witnesses testify in regard to the sale of goods - that he was in debt at that time from $12.000 to 14000 - that Munger & him talked sometime in the fall of 1858 about the goods he had bought in New York. that fall when witness told Munger that he had bought about $10.000 worth, Munger replied that it was hard for a Man to make the money out of the stock). That Brown was in Monmouth for the purpose of getting Robert H. Ragland's signature to a judgment note, he was acting for Cooley Farwell & Co. - the note was about $800 - that the witness had already signed the note in Chicago. that his brother did not sign it, after the sale Brown wanted the note secured, - that he thought Brown got here on Thursday night and staid around the store trying to get his Brothers signature to the note, - that he thought but would not sure that he told Munger of Browns business before the sale and invoice The sale was made he thought on Friday & he told Munger on Saturday afternoon,

The sale was made for the reason that Joel E Ragland & brother could not pay their debts, That he could not say that Munger knew that was the reason the sale was made. that some two or three weeks before the sale was made the witness had been talking of selling his stock of clothing to Munger & when looking over the goods at that time witness talked to Munger about the large stock of goods he had bought in the fall and Munger said it required a "nack" to buy a stock of goods and pay for them. This was said during the winter and before the sale, – that the plaintiffs had subpoened him & defendants did at last term. On cross examination the witness testified as follows: that the firm of J. E. Ragland & Bro had notes and accounts at the time of the sale good and bad amounting to 4 5 or 6 thousand dollars. that he signed the judgment note from the 15 to the 20th of January, that Brown had no business in Monmouth except to get his Brother signature to the judgment Note. that he arrived here from Chicago on Thursday morning and Brown on Thursday evening. That the debt to Cooley Farwell & Co was not then due – that he signed the note for the

purpose of securing the claim to them, that he at that time felt partial toward them, that they had not been sued; had been runners here from New York with claims against him that was not due — that he had been in business about two years; that his brother had been with him about a year; — that he went to Chicago to give the judgment note valuntarily. The Notes and accounts they had would amount to between $5.000 & 7.000 $ — that the New York debts were not due till in the last of February — that he did not make the sale for the purpose of cheating his creditors — He made the sale for this purpose — he thought it would be best for him to sell his stock & divide the proceeds among his creditors — that he went to Chicago & told Cooley, Farwell & Co his situation — they wanted him to assign to them but he thought it best to sign the note & secure them, that he refused at first to sign the note but afterwards concluded to do so. He made the sale on Friday & the goods were delivered Monday morning before day. Plaintiffs then asked the witness the following question

Was the sale from you to Munger a fair & bona fide sale? But the defendants objected to said question and the Court sustained the objection and the plaintiffs excepted, — The witness further testified upon cross examination that he got 1200. acres of Iowa land for the goods, that Munger conveyed the lands to his Brother & himself & that the deeds were delivered on Monday at the time the sale was closed up that the sale was all closed up on Monday. — that he sent of the deeds for record in a week or ten days. — and that they were recorded within two or three weeks in the proper counties. Upon re-examination this witness stated that the lands were in Madison Adair & Carroll Counties Iowa, — that he had never seen them — that he went to see them and was near them afterwards — that he took them at 4 1/2 dollars per acre, — that Lands in Iowa were worth from 1, to $5. per acre, He would not give $1.25 per acre for these lands, He did not know what the cash value of lands were, at that time, — that Munger said lands were worth at the time $5. per acre, The titles were all right; except one forty acre tract — That he deeded one quarter of

the lands to Joseph H. Haly, without his Knowledge & without consideration. This was done about 10 days after sale, He did it for the benefit of himself & creditors & to Keep his creditors & to Keep his creditors from levying on the lands. He afterwards sold the lands all of them for $1800. - $1300 of which was cash & the balance notes. He did not Know whether that was a fair value - it was all I could get, - that the Morning after the invoice was closed Munger said the witness could compromise with his Creditors by turning out lands - this was about. 3 or 4 O'clock on Monday morning but there was no talk, of this Kind at the time of the sale. Munger made a calculation putting the lands at a certain price & thought witness could compromise at 50 cts on the dollar. He calculated the land at $10 per acre, per acre.

That the witness went to Munger & proposed the trade - he was intimate with Munger at that time - that he went to Munger & told him he had concluded to sell out - that he was boarding at the Warren House when the sale was made, that the sale was made about the 20th day of January

That he went to Kansas about the 1st of April 1859. Carroll County is two hundred miles from the Mississippi - both Adair & Carroll Counties are thinly settled. Upon further cross examination this witness stated that he had not the original deeds, - that he gave them to Munger to be used in Chicago suit, - that the witness enquired of Wilson & Perdue about the lands before he made the trade. Wilson spoke very favorably of the lands, said they were worth from 2½ to $5 per acre. He said he knew the Munger lands. Perdue said they were good lands. He did not know of any of the title to any of the lands coming through John Babcock. Witness kept the lands till August 1859, - before he sold them Joseph Haley deeded the land to another man & he paid witness for them at that time. The plaintiffs counsel then asked the court to exclude from the Jury the portions of the return on the back of said writ of attachment in favor of Bostwick Hussey & Co against Joel E Ragland & Brother dated the 17th day of March 1859 which are included in brackets, to wit, [Call on Elijah C. Babcock & John Babcock and read to each of them this writ and told

them then that they had in their possession certain goods & chattels which said defendants had pretended to sell to Milton C. Munger & who pretended to sell the same to them said Babcocks which said sale said plaintiffs alledge was fraudulent and void as against them and requested them to point out to me said goods so that I could make a levy, the said goods being so mixed up with their own stock that I was in doubt whether I would be able to designate them, and said Babcock & both of them refused to point out said goods or so many as would satisfy this writ in any part thereof & thereupon afterwards on said day by direction of plaintiffs attorney]. [& which was pointed out by plaintiffs attorney as part of said goods sold by said defendants to said Milton C. Munger the said Babcocks still refusing to point the said goods out, but at the same time tearing off marks & mixing up said goods with their own goods so that they might not be designated].

And the court allowed said motion and excluded said parts from the consideration of the Jury, and the defend-

ants excepted.
The defendants here rested.
The plaintiffs then called as a witness William Dent, who was sworn and testified as follows. That he was engaged in helping take the invoice of the Ragland goods at the time of the sale to Munger, that they commenced soon after he came up from supper — that about 11 or 12 o'clock at night on saturday night, Munger objected to proceeding further — said that it was time to quit, — he done this 3 or 4 times that he knew the trade was talked of 2, or 3 days, before saturday night that he did not know of any secrecy — that it was talked of in Nelsons store — all the clerks in Nelsons store knew of it before Saturday night — that Munger spoke of it in the store — that he thought other persons were in the store when it was spoke of besides the clerks.
Upon cross. examination the witness stated, That he did not know any persons outside of the clerks in Nelsons store knew of it before six o'clock Saturday night — that he would not swear that Ragland came down from Chicago and sold out to Munger two or three days before Saturday.

The plaintiffs then gave a verbal notice or requested the defendants attorneys to produce certified copies of the deeds from Munger to Raglands — when the defendants produced and delivered the said copies in open court to plaintiffs attorneys, when the plaintiffs offered to read the same in evidence together with an affidavit, Copy of an order and certificate which are as follows.

This Indenture made this twenty second day of January in the year of our Lord, one thousand eight hundred and fifty nine, between Milton C. & Mary E. Munger of the first part and Joel E Ragland & Robert. F. Ragland of the second part, witnesseth, that the said party of the first part. for and in consideration of the sum of one thousand dollars paid by the said party of the second part the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant bargain, sell, convey and confirm unto the said party of the second part the following tract or parcels of land known and described as follows. Viz The west half of the North West Quarter and the west

half of the South west Quarter of Section number thirty (31) in Township Seventy five (75) North of Range (28) twenty eight west, being in the County of Madison and State of Iowa, containing one hundred and sixty acres more or less, according to Government survey. - Together with all and singular the Hereditaments, rights, privileges and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said premises as above described with the appurtenances to the said party of the second part his heirs and assigns forever, and the said partys of the first part for themselves and their heirs, executors and administrators do hereby covenant to and with the said party of the second part his heirs, executors, administrators and assigns that they are well seized of the premises above conveyed, as of a good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form as aforesaid, that they are free from all incumbrances, and the above bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs or assigns, against the claims of

all persons whomsoever, they will warrant and forever defend. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written

M. C. Munger (L.S.)
Mary E. Munger (L.S.)

Signed sealed and delivered in presence of:

State of Illinois } ss.
Warren County }

I James G. Madden a Notary Public for said County do certify that on this day personally appeared before me Milton C. Munger and Mary E Munger his wife whose names appear subscribed to the foregoing deed of conveyance as having executed the same who are personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made and acknowledged the execution thereof as his voluntary act and deed for the uses and purposes therein expressed, And Mary E. Munger, wife of the said Milton C Munger

having been by me made acquainted with the contents of said deed, and by me, examined separate and apart from her said husband whether she had executed the same, and relinquished her dower to the lands and tenements therein mentioned acknowledged that she had done so voluntarily and freely and without compulsion of her said husband and does not wish to retract. Given under my hand and seal of office at Monmouth this 22d day of January AD 1859

James G Madden
(Seal). N. P.

Endorsed on the back of the same as follows.

State of Illinois }
County }

This instrument was filed for record on the fifth day of February 1859 at 3½ o'clock and duly recorded in book H. page 652

David Bishop Recorder.

Madison Co Iowa. fees $\frac{50}{100}$.

A.

This Indenture made this twenty second day of January in the year of our Lord, one thousand eight hundred and fifty nine between Milton. C. Munser & Mary. E.

Munger his wife of the first part, and Joel E Ragland & Robert H. Ragland of the second part witnesseth. That the said party of the first part for and in consideration of the sum of Six thousand four hundred dollars paid by the said party of the second part the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed and by these presents do grant bargain, sell, convey and confirm unto the said party of the second part the following tract or parcels of land. known and described as follows, viz. The South West Quarter of section number twelve (12) and the South East quarter of section number eleven (11). and the and the South West Quarter of Section number Eleven (11) also the South East Quarter of Section number twenty (20) and the South West quarter of section number twenty (20) all the above described lands being situate in Township number Eighty two (82) North of Range thirty three (33), in the County of Carroll and State of Iowa, Containing eight hundred acres, more or less. together with all and singular

the hereditaments, rights, privileges and appurtenances thereunto belonging or in any wise appertaining, To have and to hold the said premises as above described with the appurtenances to the party of the second part his heirs and assigns forever. And the said party of the first part for themselves and their heirs, executors and administrators do hereby covenant to and with the said party of the second part. his heirs, executors administrators and assigns that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple and have good right to sell and convey the same in manner and form as aforesaid: that they are free from all incumbrance and the above bargained premises, in the quiet and peaceable possession of the said party of the second part his heirs or assigns against the claims of all persons whomsoever they will warrant and forever defend, In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written,

Signed sealed and delivered in presence of

M. C. Wenger (L.S.)
Mary E. Wenger (L.S.)

State of Illinois } ss.
Warren County }

I, James G. Madden a Notary Public for said County, do certify that on this day personally appeared before me M. C. Munger and Mary E. Munger his wife whose names appear subscribed to the foregoing Deed of Conveyance as having executed the same who are personally known to me to be the real persons who and in whose names the acknowledgment is proposed to be made, and acknowledged the execution thereof as their voluntary act and deed, for the uses and purposes therein expressed. And Mary E. Munger wife of the said M. C. Munger having been by me made acquainted with the contents of said deed and by me examined separate and apart from her said husband whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned, acknowledged that she had done so voluntarily and freely, and without compulsion of her said husband and does not wish to retract. Given under hand and seal of office at November this 22nd day of

January AD. 1859

James G. Madden
N. P.

(Seal).

Endorsed on the back of the said deed as follows

State of Iowa }
Carroll County }

This instrument was filed for record the 8 day of February 1859 and duly recorded in book A. on page 257.

H. L. Youst Co
Recorder.

B.

This indenture made this 22nd day of January in the year of our Lord one thousand eight hundred and fifty nine, between M. C & Mary E Munger of the first part and Joel E Ragland & Robert F. Ragland of the second part, witnesseth, That the said part of the first part for and in consideration of the sum of Thirty two hundred dollars paid by the said party of the second part the receipt of which is truly acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant bargain sell Convey and confirm unto the said party of the second part, the following tract

or parcels of land known and described as follows, viz: The North half of the north east quarter of section number twenty three (23) and the north west Quarter of the North west quarter of section number twenty four (24), and the south half of north east quarter of section number twenty three (23) and South West quarter of north west quarter of Section number twenty four (24) and the east half of north west quarter of section number twenty four (24) all in Township No seventy four north of range No (31) thirty one W. in the County of Adair & State of Iowa. Containing three hundred & twenty acres more or less, together with all and singular the hereditaments, rights privileges and appurtenances thereunto belonging or in any wise appertaining To have and to hold the said premises as above described with the appurtenances to the said party of the second part, his heirs and assigns forever- And the said party of the first part for themselves and their heirs executors and administrators do hereby covenant to and with the said party of the second part his heirs,

executors, administrators and assigns that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple and have good right to sell and convey the same in manner and form as aforesaid; that they are free from all incumbrances, and the above bargained premises in the quiet and peaceable possession of the party of the second part his heirs or assigns against all claims of all persons whomsoever they will warrant and forever defend. In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered in presence of } M. C. Munger (L.S.) Mary E. Munger. (L.S.)

State of Illinois } ss.
Warren County }

I, James. G. Madden a Notary Public for said County do Certify that on this day personally appeared before me, M. C. Munger and Mary E. Munger his wife whose names appear subscribed to the foregoing deed of Conveyance as having executed the same who are personally Known to me to be

the real persons who and in whose names the acknowledgment is proposed to be made and acknowledged the execution thereof as their voluntary act and deed for the uses and purposes therein expressed, And Mary E. Munger wife of the said W. C. Munger having been by me made acquainted with the contents of said deed and by me examined separate and apart from her said husband whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned, acknowledged that she had done so voluntarily and freely, and without compulsion of her said husband and does not wish to retract, Given under my hand an seal of Office at Monmouth this 22^d day of January AD. 1859.

(seal). James. G. Madden
N.P.

Endorsed on the back of the said deed as follows to wit,

State of Iowa }
Adair County } This instrument was filed for record the 7th day of February 1859 and duly recorded in book No 3.

page 57.

S. W. Armstrong
Recorder.

C.

Northern District of Illinois } ss.
I, Wm H Bradley clerk of the Circuit Court of the United States for said Northern District of Illinois do hereby certify that the foregoing are true copies of three certain Deeds made by Milton C. Munger & Mary E. his wife to Joel E ~~Ragland~~ & Robert H. Ragland now on file in a certain suit now pending in said Court on the Chancery side thereof wherein John Allen is the Complainant and Joel E Ragland Robert H. Ragland, Milton C Munger Elijah C Babcock & John Babcock are defendants that the originals of which the accompanying are copies are attached to and made exhibits in depositions taken by the defendants in said Chancery Cause and now on file in said Court in said entitled cause In testimony whereof I have herewith set my hand and affixed the seal of said Court at my office in Chicago in said Northern District this 31st day

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of October AD 1860

(seal), Wm H Bradley Clk

In the Circuit Court of the United States of America for the Northern District of Illinois In Chancery

John Allen
Complainant
vs.
Joel E. Ragland
Robert H. Ragland
Milton C. Munger
Elijah C Babcock
& John Babcock
Defendants.

Creditors Bill.

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

Cyrus M Hawley of said District being duly sworn doth depose and say that he in conformity to the request of A. G. Kirkpatrick made application to the Judge of the said above circuit Court of the United of America, on this the 31st day of October AD 1860, for leave to withdraw from the files three certain Deeds of land now on file in said Court, in the above entitled cause a copy of each of said

Deeds being hereunto attached. - and that the said Judge refused such application and I do further say, that I copied the said Deeds + that the above copies are true and faithful, together with the endorsement on the back of each of said deeds and further this deponent saith Not.

C. M. Hawley.

Sworn to + Subscribed
before me this 31st day of October AD 1860
by C M Hawley as witness my hand + the seal of Circuit Court of United States for Northern District of Illinois at Chicago the day + date last aforesaid

Wm H Bradly Clk

(Seal). Fees paid $6.50

To the reading of which the defendants objected, because the same was his private property, unless the plaintiffs would pay the costs of obtaining the same, and presented the following bill of Costs.

Paid C. M Hawley atty fees $25.00
" W H. Bradly Clk " 6.25
31.25

which the plaintiffs refused to pay or any part thereof - The defendant then stated that he had merely handed the

deeds on request of the plaintiffs counsel as an attorney and requested him to hand them back & he refused, and objected to their being read to the jury, but the Court overruled the objection, but stated that it was proper for plaintiffs to pay debts for the same, ~~but the Court overruled the objection~~, and the defendant excepted, - the plaintiffs then read said deeds, order & certificate to the jury.

The plaintiffs then offered and read in Evidence to the jury the depositions of William M Knowlton, Isaac G Hauk G. M. Halleday & C. D. Bedington.

To the reading of said depositions the defendant objected but the court overruled the objection & the defendants excepted.

This was all the evidence in the cause. The plaintiff then asked and the court gave the following instructions to the jury - to the giving of which said instructions the defendants by their counsel then & there excepted.

Babcock & al vs Kirkpatrick & al
Plffs Instructions

1 If the jury believe from the evidence that the defendants in the month of March 1869 at & within the County of Warren in the State of Illinois, took & carried away the goods & chattels of the Plaintiffs described in the first or second counts of the declaration, or any part thereof, then the jury will find the issues for the Plaintiffs & assess their damages at the value of such goods & chattels so proved by the evidence to have been taken and carried away.

Given

2 Evidence that the goods & chattels were in the actual possession of the plaintiffs at the time of the taking is sufficient to show such goods & chattels were the property of the plaintiffs subject to be removed by proof that the goods were

Given

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the property of Raglands, notwithstanding such possession.

3 If the jury believe from the evidence that the plaintiffs have proved the taking of the goods & chattels as charged in the first or second counts of the declaration from their possession, then it devolves on the defendants to prove the material averments of either the 4th 5th or 6th pleas in case the defendants have failed to prove all the material averments of some one of these pleas, then the Jury will find for the plaintiffs

Given

4 Unless the Jury believe from the evidence that the goods and chattels taken from the possession of plaintiffs were the same goods or a part of them sold to Munger by Raglands, & by Munger to Babcocks then the Jury will find for the Plaintiffs provided they believe defendants took goods from the plaintiffs as charged in either the 1st or 2d counts of the declaration

Given

5 Unless the Jury believe from the evidence that Raglands sold the goods to Munger for the purpose of defrauding, hindering, or delaying their creditors of their just debts, and further that Munger was a party to such fraudulent

Given

purpose, then such sale would be a valid & binding sale on all persons.

6 Although the Jury should find from the evidence that the sale from Raglands to Munger was fraudulent & void against creditors, yet unless they further believe from the evidence that the Plaintiffs knew of such fraud before they purchased the goods of Munger then the Plaintiffs would have the right to purchase them free from the claim of the creditors of Raglands, if they bought them in good faith & for a valuable consideration.

Given

7 The Jury cannot presume fraud but the charge of fraud must be proved by acts & circumstances in evidence like any other fact, and as a rule of evidence it devolves on the party alleging fraud to prove it.

Given

8. If the Jury believe from the evidence that Munger purchased the goods in good faith & paid for them by lands in Iowa, for the purpose of making a profitable trade for himself & not for the purpose of enabling Raglands to defraud, hinder, or delay their creditors, then the Jury will find the sale valid & binding

Given

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9 The jury will not regard any statements in the sheriffs return of this levy, except those that give the dates of levy & service on Garnishees, the goods levied upon as the property of defendants in the writ & such return does not prove that the goods were the property of Raglands or that the goods were the same purchased by Babcocks of Munger.

Given

10 Every conveyance or sale of property, having the effect to delay or hinder creditors of their just & lawful demands and debts is not fraudulent & void, but the conveyance or sale must be "had and made or contrived of malice, fraud, covin, collusion or guile". with that intent, and both the vendor and vendee must have that purpose in view.

Given

11 Unless the jury believe from the evidence that Munger purchased the goods of Raglands with the intent & for the purpose to defraud, hinder, or delay Raglands Creditors, then they will find the sale valid and binding as against the defendants.

Given

Filed Mch 30 1861

Wm Laferty clk

The Defendant then asked the Court to give the following instructions to the Jury.

Elijah C Babcock et al vs Alexander G Kirkpatrick, Seth Smith & James McCoy — Warren Circuit Court, March Term AD 1861. Deft. instructions

1 — If the jury believe from the evidence that the sale of goods, the title of which is in controversy in this suit was made by Joel E Ragland & Robert F. Ragland to Milton C Munger for the purpose of hindering, delaying, & defrauding the creditors of said Raglands and that Milton C Munger participated in the said fraud of said Raglands: and if the plaintiffs had notice, or had knowledge prior or at the time of their purchase of the same goods from Milton C Munger of said fraud then the jury will find for the defendant.

Given

2 — If the jury believe from the evidence that the sale between said Ragland & said Munger was of the character mentioned in the above instruction, and if the plaintiffs had notice of such fraud. then the sale of said Munger to said plaintiffs would be void as against the creditors of said Raglands and such creditors could hold by attachment said property in the hands of said plaintiffs for the satisfaction of their demands

Given

Refused

3. If property is conveyed for the purpose of hindering delaying & defrauding the creditors of the seller, and such property is attached by such creditors such property by law is still considered the property of the seller in favor his creditors rights

Given

4. The jury are further instructed that if they believe from the evidence, that said Raglands made said sale of said goods in controversy to said Munger for the purpose of delaying, hindering or defrauding their creditors from the collection of their just debts, and that said Munger had Knowledge of such purpose on the part of said Raglands and participated therein, then such sale was fraudulent & void as against the creditors of said Raglands as between Ragland & Munger, notwithstanding said Munger had given a full price for said goods.

5. The jury are instructed that if they believe from the evidence, that the Raglands being in embarrassed circumstances, made the sale to Milton C. Munger, for the purpose & with the intent of securing their property from being reached by ordinary process of law.

and that the said Milton C. Munger at the time of such sale knew of the purpose and intent of the vendors and participated therein, then the conveyance is fraudulent & void as to the creditors of the Raglands; and if the jury further believe from the evidence that the plaintiffs had notice of such fraud at or before the purchase of such goods & that the goods sued for are the same goods then they will find for the Defts.

Given

6. The jury are further instructed that a conveyance of property made by a debtor in embarrassed circumstances for the purpose of securing the same from attachment or other process, the purpose being known to the purchaser (at the time of such purchase), would be void as against creditors although the debtor might at the time of the sale have believed that it would be better for his creditors to make the conveyance and intended in the end, that his creditors should be paid, such a conveyance although it does not indicate any moral turpitude is void by the statute of fraud & void by the laws of the state of Illinois

Refused

7 The jury are further instructed that although it rests with the defendants to prove the fraud in the sale of the goods in question from said Raglands to said Munger, yet it is not necessary for the defendants to establish such fraud by direct proof; because they may resort to circumstantial evidence; and if they believe from the circumstances which have been proved in regard to said sale, that it was made for the purpose of hindering, delaying & defrauding the creditors of said Raglands & that Munger had knowledge of & participated in such fraud & that said plaintiffs had notice of such fraud before the time of their purchase from Munger of the same goods, then the jury are instructed to find for the defendants.

Given

8 The jury are further instructed that a conveyance of all the property of a debtor in embarrassed & insolvent circumstances, is a badge of fraud and if unexplained & the jury believe from the evidence that said Raglands were in embarrassed circumstances & said Munger had knowledge of such fact and that afterwards said Raglands made a pretended sale of all their property liable

Refused

to execution in the state of Illinois to said Milton C Munger. the consideration of such sale being wild lands in the state of Iowa, the jury will be warranted in finding that such sale is fraudulent & void as against the creditors of said Raglands.

9 The Court will instruct the jury that the defendants are not bound to prove that plaintiffs had actual notice that the contract between Raglands and Munger was fraudulent should they believe from the evidence that it was fraudulent in order to charge said plaintiffs with notice thereof. But it is sufficient that it appears to them from the facts and circumstances proven that plaintiffs previous to the consummation of their alleged contract with Munger had such information with regard to such fraud as would on reasonable inquiry have given them a knowledge thereof. and further that if they believe from the evidence that the previous to the consummation of the contract last aforesaid one of the creditors of Raglands or an agent of such creditors advised plaintiffs not to purchase the goods of Munger alledging that the sale between Ragland and Munger was fraudulent as to the creditors of Raglands

Refused

the plaintiffs will be chargeable with the notice first aforesaid and that in making up their verdict they should so consider

10\. If the jury believe from the evidence that there was a scheme or plan concocted, between the Raglands & Munger by which the Raglands were to sell their whole property subject to execution to Milton A. Munger the consideration being Iowa lands, and that such lands under such arrangement were to be conveyed to Henry M. Boggess or any other person either by Munger directly or first from Munger to Raglands & from Raglands to said Henry M. Boggess or any other person so that such land in Iowa as well as all their other property in the state of Illinois should be placed beyond the reach of the creditors of the Raglands by ordinary process of law, then such sale from Raglands to Munger is fraudulent & void as against the creditors of the Raglands.

Refused

11\. If the jury believe from the evidence that the inventory of the goods at the time of the sale between Raglands & Munger was done & made secretly and on Sunday & that

Raglands before such inventory was made hired Jerome Gilbert to entertain the agent of this creditor or creditors and keep him away from the store from Saturday evening until Monday Morning while such inventory was being taken, all such circumstances should be taken into consideration by the jury in making up their verdict.

Given

12 The Court for the defendants instructs the jury that defendants are under no circumstances bound to prove that either Munger or plaintiffs had actual notice of any fraud or fraudulent intent or design of any person provided they believe from the evidence and circumstances proven or either that Munger previous to the consummation of his alledged contract with Raglands, and plaintiffs previous to their alledged contract with Munger had such information as with reasonable diligence and inquiry would has resulted in a knowledge of the intent and design of Raglands in making the alledged contract first aforesaid consequently if they believe from the evidence and circumstances proven or either that Raglands made such sale with intent to Delay, Injure, Hinder or Defraud his creditors they are bound

Refused.

in any event to find a verdict for the defendants.

13. If the jury believe from the evidence that the Raglands sold the goods to Munger, when they at the same time were in embarrassed circumstances, and that such goods comprised the whole of the property of the Raglands subject to levy by execution & attachment, and that Munger knew at the time of the embarrassed circumstances of the Raglands and that such sale was made in secret, and the inventory of the goods taken in a hurried & secret manner & on Sunday, and that such sale was made in consideration of wild lands in the State of Iowa, and that the Raglands soon after such sale absconded from this state, and that Munger afterwards & while in possession of the goods denied that said inventory was made on Sunday, and that the effect of such sale was to hinder delay & defraud the Creditors of the Ragland and that the plaintiffs were notified by an agent of the Creditor of the Raglands that said sale was fraudulent before they purchased of Munger then the jury will find for the defendants.

Refused.

14 If the jury believe from the evidence that John Babcock one of the plaintiffs in connection with Milton C. Munger, told the agent of a Creditor of the Raglands that they would give a description of the lands which were the consideration of said sale of said goods from Raglands to Munger, if said agent would not inform the Raglands & that they were afraid of getting into Raglands wool in consequence thereof then such fact is a circumstance should be taken into consideration by the jury as tending to show that Babcock had notice of the facts in relation to the sale to Munger.

Given

15 If the jury believe from the evidence that Milton C. Munger after his said pretended purchase of said goods & while he was in the possession of the same, from said Raglands, refused to give to the Creditors of the Raglands a description & the location of the lands which were the pretended consideration of said purchase then such fact is a circumstance for the consideration tending to show that Munger participated in the fraud of the Raglands.

Refused

239 16. If the jury believe from the evidence that the lands in Iowa which were the consideration of the sale of the goods from Raglands to Munger were of greatly inferior value than the goods then such fact is a circumstance to be taken into consideration by the jury tending to show that the transaction was not a bona-fide transaction between Raglands & Munger.

Given

17 If the jury believe from the evidence that the inventory of the goods which were sold by the Raglands to Munger was made on Sunday and that Munger afterwards & while in possession of the goods when offering to sell the same to witness Patterson and that Patterson argued to Munger as a reason for not buying the same goods, said circumstance in connection with other tending to show a fraudulent sale, between Raglands & Munger, and that Munger denied that such inventory was made on Sunday then such fact is a circumstance for the consideration of the jury in connection with other circumstances tending to show fraud between the Raglands & Munger in regard to said sale.

Given

18. If the jury believe from the evidence that the sale of the goods the title to which is in controversy in this suit was made by Joel. E. Ragland & Robert. F. Ragland to Milton C. Mauzey for the purpose of hindering, delaying or defrauding the creditors of said Raglands although. Milton C. Mezinger had knowledge of the purpose for which said sale was made & if the plaintiffs had notice at the time of or before the purchase by them that any of the creditors of said Raglands claimed that the said sale made by Raglands was made for the purpose of hindering, delaying, or defrauding the creditors of said Raglands, then the jury will find for the defendants

Refused

19 All sales of property made for the purpose of hindering - delaying or defrauding the Creditors of the vendor in the collection of their debts of which purpose the purchaser had notice are void as against such creditors - And the property so sold is as to the creditors considered as the property of the vendor & subject to attachment at the suit of the creditors.

Refused

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

Refused

21. The Knowledge of the purchaser referred to in the foregoing instructions may be inferred from & proved by circumstances & direct evidence of that fact is not necessary. Proof that the purchaser knew that the vendor was in embarrassed circumstances was pressed by his creditors for payment and that the sale was made in a hurried and unusual manner is sufficient to justify the jury in finding that the purchaser had knowledge of & participated in the purpose for which the sale was made.

Refused

22. The Jury are instructed as matters of law that a party must in all cases be held to have intended that which is the necessary consequences of his acts. If therefore the jury believe from the

Refused

the evidence in the case that the necessary consequence of the sale from Raglands to Munger of the goods in controversy taking in exchange wild lands in the state of Iowa was to hinder or delay the creditors of Raglands in the collection of their debts, then they will find that the Raglands intended so to hinder & delay their Creditors.

Refused

23. The principle of law as stated in the foregoing instruction applies also to the purchaser If knowing the embarrassed circumstances of his vendor; his insolvency & inability to pay, the fact that he was pressed by his creditors for payment that the sale of the property was made in a hurried and unusual manner & that the consideration therefore was real estate out of the reach of process issued in the state where the vendor resides the necessary consequence of such sale & purchase is to hinder & delay the creditors & the purchaser will therefore be presumed to have intended it.

Filed Mch 30 1861
McLaferty Clk

24 It is not necessary in order to render a sale of property void as to creditors on the ground that it was made to hinder, delay or defraud them, to show that the vendor was insolvent. It is sufficient to raise the presumption of fraud to show that he was in embarrassed circumstances & was pressed for immediate payment.

Refused

25 The Court will instruct the jury that fraud as well as any other fact may be inferred from the facts or circumstances proved.

Given.

26. The notice of the purpose for which or the intent with which a sale of property is made does not require full notice or Knowledge of all the facts & circumstances of the transactions. A notice sufficient to put the plaintiffs in this case upon inquiry as to put a man of ordinary caution upon his guard is all that is required & if with such notice a party purchases of a fraudulent vendor, he does so at his peril.

Refused.

27 A party entirely solvent & able to pay all his debts may make a fraudulent disposition of his property - If a solvent person disposes of his property in such a manner that the necessary consequence of the sale will be to hinder or delay his creditors - that is proof of fraudulent intent on his part,

Refused

28. The jury are instructed that if the sale of Raglands to Munger was fraudulent, then the Babcocks cannot be protected if the jury believe from the evidence that they have bought the goods on five years time and have never given their notes to Munger for the goods

Refused

29. The Jury are instructed as a Matter of Law, that the purchaser from a fraudulent vendee of property acquires no rights as against the Creditors of the original vendor, unless he purchases in good faith & for a valuable consideration, and this is so whether such purchaser have notice of the original fraud or not - And the jury are also further instructed that the notes of the purchaser, on time, given upon such purchase are not of themselves such a consideration as will make the purchase

Refused

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bona fide within the meaning of the Statute.

31 Refused

If therefore the jury believes from the evidence, that the plaintiffs in this case, gave their promissory notes on long time, upon the purchase of the goods in controversy from Munger: that said notes are still in Mungers possession or under his control unpaid, no notice of any fraud in the sale from Raglands to Munger was necessary, and should the jury believe from the evidence that the sale to Munger was made for the purpose of hindering, delaying, or defrauding Raglands Creditors with the knowledge of Munger, they will find a verdict for the defendants,

And the Court gave said instructions numbered 1, 2, 4, 5, 7, 14, 16, 17 & 25 to the giving of which instructions and each of them the plaintiffs by their counsel then and there in open Court excepted and still except,

And the Court refused to give all the others & to such refusal the defendants excepted,

And thereupon the jury retired to consider of their verdict. And afterwards returned into Court the following verdict

We the Jury find for the Defendants.

1.	Almon Kidder	7	J. M. Franklin
2	Wm W Whitenack	8	Nathaniel Cecil
3	S. C. Smith	9	C Shaw.
4	John Birdsall	10	T. G. Allen
5	Philipp Darr	11	L. D. Rabinson
6	R. B. Higgin	12	Samuel Ellingen.

Filed Mch 28" 1861

Wm Lofutz clk.

And after the said verdict of the jury was delivered the plaintiffs moved for a New trial for the following reasons to wit,

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

Elijah C Babcock et al } Trespass to
vs } personal
Alexander G Kirkpatrick et all } property.

And now comes the said plaintiffs by their attorneys and move the court for a new trial in said cause for the following reasons

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

2nd Because the verdict is against the instructions of the Court.

3rd Because the Court refused to give proper instructions asked on the part of the plaintiffs

4th Because the court gave improper instructions on the part of the defendant

5th Because the Court improperly modified some of the plaintiffs instructions & gave them as so modified

6th Because the court admitted improper evidence for the defendant,

7th Because the court refused to reject improper evidence admitted on the part of the defendant,

Goudy, Madden & Reed
Attys for Pltffs.

Filed April 1, 1861.
Wm Lafferty Clk

Which motion the court overruled to which the plaintiffs then and there excepted. And for as much as the said facts do not appear of record the plaintiffs pray, that this their bill of exceptions may be signed and sealed by the Court which is accordingly done.

A. Tyler. (Seal).

Filed May 27" 1861.
Wm Lafferty Clk

Know all Men by these presents, that we Elijah C Babcock, John Babcock & M. C. Munger & Wm H Pierce are held and firmly bound unto Alexander G Kirkpatrick, James McCoy, Seth Smith & George D Crandall, in the penal sum of twelve hundred dollars, 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 17th day of April, Anno Domini, one thousand eight hundred and sixty one.

The Condition of the above obligation is such that whereas, Alexander G. Kirkpatrick, James McCoy Seth Smith & George D Crandall did, on the 12th day of April 1861, in the Circuit Court, within and for the County of Warren, and State of Illinois, recover a judgment against the above bounden Elijah C Babcock & John Babcock for the Costs of suit, from which judgment of said Circuit Court, the said Elijah C Babcock, John Babcock has prayed for and obtained an appeal to the Supreme Court of said State. Now if the said Elijah C. Babcock & John Babcock shall duly prosecute their said appeal with effect and shall moreover pay the amount of the judgment, costs, interest

and damages, rendered and to be rendered against them in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be null and void, otherwise to remain in full force and virtue

E. C. Babcock (L.S.)
John Babcock (L.S.)
M. C. Munger (L.S.)
Wm H. Pierce (L.S.)

Approved by me this 11th day of May AD 186[illegible]
Wm Lafferty clk

Filed May 11th 1861.
Wm Lafferty clk

State of Illinois }
Warren County } I Wm Laferty Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a true copy of the record and proceedings in the foregoing case as the same appears from the records and files of my office (except Deposition of Wm M Kuykendall. Isaac G Mantz. C M Halliday & C D Bedington which deposition is not on file)

In testimony whereof I have hereunto set my hand and affixed the seal of our said Circuit Court at my office in Monmouth this 7th day of March AD 1862

Wm Laferty Clerk

236 pages at 20c $47.20
Certificate .35
$47.55

State of Illinois; Third Division
Supreme Court: April Term 1862

Elijah C. Babcock &
John Babcock

vs

Seth Smith
Alexander G. Kirkpatrick
George D. Crandall &
James McCoy

Error to Warren

And the said Elijah C. Babcock and John Babcock plaintiffs in error come by their attorney and say that manifest error hath intervened the proceedings whereof the foregoing is a record, and they jointly and severally assign the following errors.

1st The Circuit Court erred in sustaining the demurrer to the 3d Count of the amended declaration.

2d The Circuit Court erred in allowing Joel C. Ragland to testify as a witness.

3d The Circuit Court erred in allowing the deposition of Field taken Nov. 2. 1859. to be read in evidence

4. The Circuit Court erred in refusing to permit the witness Ragland to answer the plaintiffs' question on cross-examination as to whether the sale was fair and bona fide.

5. The Circuit Court erred in giving for defendants their instructions numbered 11. 14. 16. 17. & 25 and each of them.

6. The Circuit Court erred in overruling the plaintiffs motion for a new trial.

Therefore they pray &c

W. C. Goudy

Atty for Pltffs in Error

1524 44

Elijah C. Babcock Et al

v

Seth Smith

Record Errs

Filed April 22. 1862

L. Leland
Clerk

66

~~Babcock~~
vs
~~Smith~~

Mr. Chief-Justice Caton, delivered the opinion of the Court: ~~C. J.~~ The witness, Ragland, stated on his voir dire that Munger, to whom he sold the goods, had obtained judgment against him in Chicago on the implied warranty of title. The plaintiffs' counsel thinks this is not sufficient proof of that fact. If we agreed with him in this we should probably have to affirm this judgment, but we think this was competent proof ~~of~~ that such a judgment was obtained ~~fact~~, and it is this which renders the witness ~~incom~~ interested in favor of the party calling him, and, consequently, incompetent. When Munger obtained a judgment against him on the implied warranty of the title to the goods, then his liability was fixed, and could not be affected by the determination of this or any other cause. It then became his interest to prove that his sale of the goods to ~~him~~ Munger, was fraudulent, and thus procure the goods to be applied in satisfaction of the judgment against him. Had not Munger already ~~pr~~ obtained a judgment against him for ~~of~~ the failure of the title to the goods, there would then be his desire to make that title good, and thus save himself from liability on that implied warranty; to counterbail, his desire to have the goods

sold to pay this judgment against him but now, as all question on that implied warranty is for ever settled, there is nothing to balance his interest in favor of the party calling him. The court Erred in permitting him to testify.

The judgment is reversed, and the cause remanded.

~~The whole Court Concurred in this opinion~~

Judgment reversed.

Babcock
v.
Smith

Opinion
Carson

Ok

Recorded B. 12. P. 113

The following is a Copy of the notice attached to the second Deposition of Marshall Field ~~and~~ read in evidence and read upon trial ~~of Marshall Field~~, in Case of E.C. Babcock & Son Vs Alexander G Kirkpatrick et al, And I certify that I left said notice out of the Original record in said Cause under the instructions of Plaintiff Attorney,

State of Illinois } Warren Circuit Court
Warren County } October Term AD 1859

Elijah C Babcock & John Babcock partners trading under the name & Style of E.C. Babcock & Son
Vs } Trespass
Alexander G Kirkpatrick Seth Smith George D Crandall, James McCoy & William M Gregg

To James G Madden & Holloway & Luce Attorneys for Plaintiff in the above entitled Cause - Take notice that on the 2d day of November AD 1859 I will proceed to take the Deposition of Marshall Field of Cook County Illinois before Calvin De Wolf a Justice of the Peace in & for the said County of Cook at his office in Chicago with the intent of having his Deposition read in Evidence on trial of the above entitled Cause. The taking of said Deposition to be Commenced at 9 Oclk AM

of said day and to Continue from day to day if necessary until Completed

Oct 17th 1859

A. G. Kirkpatrick Defts Atty

"I acknowledge the receipt of a Copy of the foregoing notice this 17th day of October AD 1859

Holloway & Luce

Atty for Pltff —

State of Illinois }
Warren County } ss

I Wm Laferty Clerk of the Circuit Court in and for said County do hereby certify that the above and foregoing is a true copy of the original notice attached to the second deposition of Marshall Field taken in the foregoing case read in evidence as the same appears from the files & records of my office

Witness my hand and the seal of our said Circuit Court at my office in Monmouth this 17th day of April AD 1863

Wm Laferty Clerk

44 - 99
44
Elijah C. Babcock
et al
v
Seth Smith
et al

Copy Notice
Filing Deposition

Filed April 20th 1885
L. Leland
Clerk

Elijah C. Babcock et al v. Seth Smith et al } In the Supreme Court of Illinois April Term 1862

Error to Warren

And said defendants ~~Error~~ come & move the court to strike the bill of exceptions from the ~~file~~ Record for the reason that it was not filed during the Term of the Court or within the order of the court.

(Page 67, of Record judgment rendered against plaintiffs for costs on the 12th day of April 1861. Page 68 ordered that a bill of exceptions be filed within 30 days from date of judgment. Page 247, Bill "filed May 27 1861"

A. G. Kirkpatrick for said defendants in Error

Suggestions

Circuit Court convened in same district in Mercer co. 3 Monday April, in Henderson 2d Monday May —

44

Elijah C. Babcock et al

v.

Seth Smith et al

Motion to strike Bill of exceptions from file

Filed Apl. 21, 1863.
L. Leland
Clk.

Rule Nisi by the ~~3~~ ~~May~~ 1 May.

Elijah C. Babcock et al } In Supreme
vs } Court
Seth Smith et al } April Term 1862

Defendants Crandall & McCoy move the court for a certiorari upon Mr Lafferty the clerk of the Court below to send up a full & complete record; the one filed being defective in the following particulars to wit

1 The Record filed does not give the notice which was attached to the Deposition of Marshall Field (see pages 147 & 165 of Record)

2 The record filed does not give the Depositions of Wm McKnowlton Isaac G. Hawk, G. W. Holloday & C. D. Bedington
(see page 249)

A. G. Kirkpatrick
for Crandall & McCoy

Suggestions.

The plaintiffs assign for

Error the reading in evidence of the Deposition of Marshall Field, and the reason as appears from the abstract is because there was no notice, appearance, or cross examination. It is therefore important that the notice should be supplied. This notice is shown to exist as well by the certificate of the justice who certifies that he attaches the same etc. (see Record page 147 & 165) as by the following affidavit showing that notice & the service of the same was made on the opposite party

The depositions of Knowlton et al are important & should be in the record

Kirkpatrick & Dupuy, Atty.

A. G. Kirkpatrick after being duly sworn deposes & says that his impression is that there was a notice served on the opposite party or his attorney or attorneys as to the time & place of taking the deposition of Marshall Field given in the record page 146 in due form & according to law; that

an indorsement on the back of the notice shows that fact; that he afterwards saw the same notice ~~the attached~~ & the deposition on file in the Court below; that he has not had occasion to look at the file or think of the matter ~~for~~ since the trial which was more than 1 year ago and may be mistaken but thinks & believes he is not. And further deponent saith not

A. G. Kirkpatrick

Subscribed & sworn to before me this ~~24~~ 30th day of April 1862

L. Leland Clerk
by J. B. Rice Deputy

No 2 44

E. C. Babcock et al

v

Seth Smith et al

Motion for Certiorari

& affidavit

Certiorari ordered

SUPREME COURT OF ILLINOIS,

APRIL TERM, 1863.

ELIJAH C. BABCOCK, et al,

vs.

SETH SMITH, et al.

ERROR TO WARREN.

DEFENDANTS' BRIEF AND POINTS.

20 There was a demurrer filed to each of the counts of the Declaration, both general and special. The demurrer was sustained as to all the counts, and 24 plaintiffs, by leave of the court, amended the 1st and 2d counts of the Declaration; but by inadvertance, and without leave of the court, amended the 70 third count, as well as the first and second.

This was a waiver of the demurrer. The pleas answer the whole declaration. But without this, the 3d count was defective. It did not state that the trespass was committed with force and arms.

2d Chitty P., 846, Note Y.

This count was also defective in not showing the quality and quantity of goods, with even convenient certainty.

9 Bacon's Abridg. 507 and 508.

200 The testimony of Joel E. Ragland, on his *voir dire* on cross examination, shows that Munger claimed that the witness was liable to him, on an implied warranty of the title to the goods, and had in fact already recovered on such warranty in a case in Chicago; and therefore could not see how he had any interest in the case going either way. Is this not the strongest evidence in the world that the witness had no interest either way?

The court has laid down the true rule, as follows:

"If a witness has sold with a warranty, and a warranty of title is always implied in sales of chattels, and a trial results in favor of its liability to the execution, he thereby becomes liable to the vendee for a breach of warranty for the price; whilst if the vendee recovers the property, his liability to pay the execution remains unimpaired. In either event, his liability is the same, and his interest is balanced."

Warner v Carlton, 22 Ill., 423, and authority then cited, together with the following: Muchmore vs. Jeffers, 25 Ill., 199.

The question whether the sale was *bona fide*, was a mixed question of law and fact. It was for the jury to decide under the law and evidence, and not for the witness. ~~[illegible]~~ The question proposed to be asked witness Ragland was therefore properly refused. But if it had been proper, it could not have been asked on cross examination, when no testimony was given in chief as to the fairness of the sale.

The plaintiffs had Ragland subpœnaed as a witness, as his testimony shows, and they had no right to make him a general witness on their behalf upon cross examination. The question was also leading.

There was a ~~motion~~ notice served on the plaintiffs for taking the deposition of Field, as the record of the clerk in return to the certiorari shows; this is agreed to by the parties.

But if it had not been served properly, this was ground for suppressing the deposition before trial, and could not properly come up on trial.— The plaintiffs objected to the reading of the deposition, generally, without assigning any reasons. Afterwards, when they stated reasons, those parts which they objected to were suppressed, and the parts of the deposition read to the jury did not vary from the deposition of the same witness already read, and could not prejudice the plaintiffs.

The instruction No. 11, given on part of defendants was founded on the evidence, (see testimony of Jerome Gilbert, page 108,) and in connection with the preceding instructions, was proper.

The instruction 14 was proper, being founded on the evidence of Marshall field. (See page 123 of Record; also page 118.) & 148

The instruction 16 was proper.

The testimony of Ragland and others, shows that the wild land in Iowa exchanged for the goods, was worth less than one-third the value of the goods; and such being the fact, in connection with other facts in the case, was a circumstance tending to show an unfair sale.

The instruction 17 was founded on the evidence of A. Patterson, (pages 101 and 102,) and on the evidence of Charles Littleton, (pages 98 and 99.)

The instruction 25 was proper, in connection with the instructions of plaintiffs, in which the jury are instructed that fraud cannot be presumed, but must be proved.

In regard to the motion for a new trial see testimony of

Charles Littleton, page 98.
A. Patterson, page 101.
Jerome Gilbert, page 108.
C. L. Armsby, page 104.
Marshall Field, page 111. & 148
Edward J. Brown, 125
H. M. Boggess, 190
John Frymire,
M. Nelson 136

The case has been in court over four years, and the verdict of a jury in a case of fraud, should not be set aside for slight reasons.

The defendants in error refer to the following authorities in support of the ~~transaction~~ instructions, as given, and the proceedings of the court.

Hilliard on venders, 345.

"Inadequacy of consideration, though not in general of itself a sufficient ground for avoiding a contract, is when gross, strong evidence of fraud, and may be so great as to form a ground for cancelling the contract. Suspicion of fraud, coupled with gross inadequacy of price, and the pressure of pecuniary embarrassment, is sufficient ground to rescind a sale."

Refers to Lother vs. Lowther, 13 Ves., 95
Coles vs. Tracothick, 9 Ves., 234.
Stilwell vs. Wilkins, Jac., 282.
Mann vs. Beverly, 21 Vert., 326.
Lester vs. Mahan, 25 Ala., 445.

"A secret manner of transacting such bill of sale, and unusual clauses in it, as that it is made honestly, truly, and *bona fide*, are marks of fraud and collusion." 4 Bacon's Abridg., 407.

"The adequacy of the consideration is an important element in forming a conclusion as to the bona fides of the transaction. In no case, however, can inadequacy of consideration alone be said as a proposition of law, conclusively to establish *mali fides*. The relationship of the parties, and other circumstances, may explain away its prima facia effect.

1 Smith, leading cases, 47 and cases then cited.

If the consideration is grossly inadequate, it is a fraud *per se*.

Scott vs. Winship, 20 Geo., 428.

The sale of the whole of an insolvent's property is a badge of fraud, but does not apply to one who has purchased bona fide an inconsiderable portion of it. Do. do.

Fraud is a subtle element, and is to be traced out, if at all, by the small indices discernable by the wayside where it travels; and to enable courts and juries to detect it, they must in most cases aggregate many small items before the true features are discernable.

Baltimore & Ohio R. R. Co. vs. Hoge, 34, Pa. 24.

"Fraud is not to be presumed, it must be proved; or it may be inferred from facts proved, leading to that conclusion."

Jackson vs. Sumerville, 13 Pa. S. 359.

"Fraud may be inferred from facts calculated to establish it."

Kaine vs. Weigly, Pa. S. 22, 179.

Gross inadequacy of price is evidence of fraud.

Davidson vs. Little, et al, Pa. S. 22, 245.

In 10 Ves. 95 and 108, it is said that inadequacy of consideration, though not of itself a sufficient ground for setting aside a contract, is when gross, strong evidence of fraud.

See 1 Yates, 583.
1 Story Eq., 245-6-9.

Inadequacy of consideration is an indication of fraud.

21 Barbour, 88.

"Evidence to prove fraud, though it may be circumstantial and presumptive, must be strong and cogent, such as to satisfy a man of sound judgment of the truth of the allegation."

Henry vs. Henry, 8 Barbour, 592.

"In most cases, fraud is a mixed question of law and fact; and the jury are often called upon to draw a conclusion from equivocal facts and suspicious circumstances.

Jackson ex. dem., Hooker vs. Mather.
7 Cowan, 201.

"Fraud is a question of law when there is no dispute about facts."

Do. do.

"As a general principle, fraud is a question of fact; or at farthest, is a mixed question of law and fact."

Haven vs. Low, 2 N. 18, 13.
Richards vs. Swan, 7 Gill., 377.
Chaplin, et al, vs. Hill, 24 Vat. 528.
Hildreth vs. Sands, 2 Johns, eb. 43.
Clark vs. Depu, 25 Pa. S., 516.
Helferth vs. Stern, 17 Pa. S., 151.
Wolcott vs. Almy, 6 McLean, 23.

"In the case of Hildreth vs. Sands, 2 Johns, C. R., above cited, the court decided that a deed fraudulent on the part of the grantor, may be avoided, although the grantor be a bona fide purchaser, and ignorant of the fraud. And refer to the case of

Haguenin vs. Basely, 14 Ves., 289.

"A deed not fraudulent, at first, may afterwards become so, by being concealed, or not pursud, by means of which creditors have been drawn in to lend their money." 2 Johns, C. R., 43.

A. G. KIRKPATRICK,
For Defendants in Error.

44

E. C. Babcock et al

v

Seth Smith et al

Brief Defts in Error

44

Filed May 5. 1883

S Leland Clk

Printed by Jameson & Morse, 14 La Salle Street.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

ELIJAH C. BABCOCK, et. al.,
vs.
SETH SMITH, et. al.
} *Error to Warren.*

POINTS, BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

I.

The 3d count of the declaration is good

The defendants allege that the count is bad because the *number* of coats, shoes, ginghams, &c., is not mentioned, and the court below sustained a *general* demurrer to it for that reason.

The description of the property in a declaration in trespass must be stated with sufficient certainty, to make the judgment a bar to another action for the same cause. In actions of replevin or detinue, a more specific description is required, because the property must be identified by the officer in executing the writ, and if more than one article of the same kind is claimed, the *number* is to be stated, so that he may know how many he is to take.

Another reason requiring certainty in the description of the property, is to enable the parties to form definite issues, and the court to limit the evidence to some reasonable limits.

Tested by these principles, the third count is sufficient. The judgment rendered would be a bar to any other suit for the wrongful taking of the goods, mentioned in the count, before the commencement of the suit in Warren county, and the statement of taking five, ten or twenty coats as a matter of form, would make no more certain issues, or limit the evidence, than does the description in this count.

In ancient times the rule in actions of trover and trespass, was as strict as in replevin or detinue; but it was enlarged before the reign of Charles II, so as to sustain this count, and the rule has in more modern cases been extended still further.

Taylor vs. Wells, 2 *Saund*, 74 *and N.*
1 *Chitty*, *Pl.* 365.

II.

Joel E. Ragland was not a competent witness.

The goods in controversy had been taken by the defendant, Smith, Sheriff, and his assistants, upon an attachment against the witness, in favor of Bostwick, Hussey & Co., from the possession of the plaintiffs', who held them as the vendees of Munger, who purchased them from the witness. Judgment had been rendered in favor of the attaching creditors, and if the defendants succeeded in this suit, the goods paid the judgment against the witness, but if they fail, the judgment would stand as a valid evidence of indebtedness. He was, therefore, directly interested in the immediate result of the suit, and in favor of the defendants who called him for the purpose of proving the goods subject to the attachment.

Bland vs. Ansley, 5 *Bos. and Pul.*, 331.
Bailey vs. Foster, 9 *Pick.*, 139.

But is there an equal interest on the other side, so as to leave the witness indifferent as to the result ?

The witness stated on the cross-examination, when sworn on his *voir dire*, that Munger, his vendee, had obtained judgment against him at Chicago on his implied warranty. No other evidence as to the existence of such judgment was produced, and the witness made no more

definite statement in regard thereto. It will doubtless be a matter of surprise to the Court how such a judgment could have been rendered at any time, and still more so at the stage of the transaction disclosed by the evidence, which will be increased by the vague statement of the witness. While the record shows such evidence to have been given, yet the fact is, that no such statement was ever given, and no such judgment ever evisted. But this Court must now treat the record as it is found.

The inquiry arises whether, the attempted proof of a judgment by parol with no greater certainty than appears, will be regarded as evidence.

If this statement is to be rejected, then the question presented is, was the witness liable on his implied warranty in such a manner as to balance his interest in favor of applying the goods in controversy in payment of the judgment of the attaching creditors? On this state of facts the court below held on the authority of *Warner vs. Carlton*, 22 *Ill.*, 422, that he was, and excluded the witness.

The case of *Warner vs. Carlton* was precisely like this case, except that the witness was called by the vendee to sustain the sale, and prove that it was not fraudulent. He was clearly competent in that case, and his interest was either balanced or adverse to the party calling him. But in this case the witness Ragland was called by the sheriff to overthrow the sale, and prove that the sale was a fraud. In the one case the effect of the testimony was to prevent the payment of the judgment against the witness, and to save him from liability on his implied warranty; in the other to apply the property in satisfaction of the judgment after he had received full payment from his vendee, and thus obtain payment twice.

It is nevertheless true that if there would be a liability on the part of Ragland, on his implied warranty, direct to the plaintiffs, that would balance the interest of the witness. But there could be no such liability, because of the maxim "*ex turpi causa non oritur actio.*"

Broome's Legal Maxims, 463.
Surlott vs. Beddow, 3 *Mon.* 109.

Munger could not recover of Ragland on an implied warranty, where the title failed because of the mutual fraud of the parties. The policy of the law prohibits it, and a Court will not aid either party against the other.

In such cases the interest of the witness, when called to prove the fraud and avoid the sale, is not balanced, and he is incompetent.

Rea vs. Smith, 19 *Wend.* 293.

Ragland was a competent witness for the plaintiff, but not for the defendants.

Gardiner vs. Tubbs, 21 *Wend.*, 170.
Sterling vs. Ripley, 3 *Chanc.* (*Wis.*) 170.
Bailey vs. Foster, 9 *Pick.*, 139.
Smead vs. Williamson, 16 *B. Mon.*, 464.

The interest was not balanced for another reason. The witness did not sell to the plaintiffs and the plaintiffs could not maintain an action on the implied warranty against the witness, even if the mutual fraud did not prevent.

The plaintiffs' only recourse would be on Munger, their vendor; but if the defendant prevailed, it would be upon the ground that the witness sold to Munger to avoid creditors, in which he, Munger, participated, and that the plaintiffs purchased with *notice* of the fraud, and that Munger had no title. In such case the plaintiffs could not recover of Munger, and therefore Munger could not recover of the witness.

The rule is also well settled that the interest must be equal on both sides, and if more uncertain or more remote on one side than the other, he is then incompetent for the party where his interest is most direct. In this case the interest of Ragland was direct and immediate in favor of the defendants; but on the other side, he was not liable, in any event to the plaintiffs, and not to Munger, unless he was first compelled to pay the plaintiffs. At least two suits would be required to reach the witness, and he had the benefit of all the intervening contingencies. The interest was not equal, and therefore, he was incompetent.

Radburn vs. Morris, 1 *Mo. and Payne*, 653.
Clark vs. Lucas, 1 *Corr. and Payne*, 156.
Phillips vs. Bridge, 11 *Mass.* 242.
Beach vs. Swift, 2 *Conn.* 269.

To return to the precise question presented by this record, we are led to enquire what effect does the fact that a judgment had been rendered on an implied warranty in favor of Munger against the witness, ^ if have
that statement is to be regarded.

That does not better the condition of the witness; if possible he is in a worse one.

If judgment had been rendered, then the only liability of the witness Ragland, to his vendee, Munger was to pay the judgment; that liability would not be altered by the result of this suit. If the plaintiffs

prevailed he was still indebted to Munger on the judgment precisely the same as before; if the defendants defeated the suit he was no more liable to pay the judgment. He could not be liable to another suit on the implied warranty, because that had been determined and the judgement rendered, would be a bar to any such action. The witness would not lose by the success of the defendants, but he would *gain*.

The witness being interested directly and immediately in having the goods used to satisfy the judgment of Bostwick, Harvey & Co., (*Bland vs. Ansley*, 5, *Bos. and Pul.* 331 ; *Bailey vs Foster*, 9 *Pick.* 139 ; *Clifton vs. Bogardus*, 1 *Scam.* 32 ; *Warner vs. Carlton*, 22 *Ill.*, 422 ;) and there being no equal interest, nor any interest, to oppose it, he was incompetent and the Circut Court erred in admitting him to testify.

III.

The second deposition of Field ought to have been excluded because—

A later deposition on the same subject matter of the witness had been taken and read, where there was a cross-examination, showing that most of the matter contained in the second deposition, where there was no cross-examination, was hearsay. The plaintiffs supposed, as they had a right to, that the deposition taken on the 5th November, 1860, was a substitute for that taken 2d November, 1859, and the reading of the latter was error.

IV.

After the witness Ragland had testified in chief to facts tending to show that the sale to Munger was unfair and fraudulent, the plaintiffs proposed as their first question on cross examination: "Was the sale from you to Munger a fair and *bona fide* sale?" The Court refused to allow the question to be answered.

The question did not call for a legal opinion, nor for any opinion; nor did it call for a conclusion. All intelligent men know, as a matter of fact, whether a sale is a cheat and fraud or a fair transaction, made in good faith, and the witness was called on to state the fact. If any question could exist as to the propriety of this question in chief, it was clearly proper on cross-examination.

V.

The defendants prayed *thirty* instructions, and the Court gave *ten*; the 11th, 14th, 16th and 17th collect certain facts in each one, then conclude with the direction that such fact is a circumstance to be taken into consideration, as tending to show fraud.

These instructions are erroneous, because they would mislead the jury. The natural conclusion would be, that if any set of facts enumerated in any one instruction is proved, that the finding must be for the defendants.

The 25th instruction stated to the jury that *fraud* could be *inferred* from facts and circumstances proved. Facts and circumstances may prove fraud, but it must be proved, not inferred nor guessed at. This instruction is clearly erroneous.

W. C. GOUDY,
Attorney for Plaintiffs in Error.

44

E. C. Babcock et al

vs

Seth Smith et al

Pltffs Praecipe

44

Filed May 5. 1843

L Leland clk

Printed by JAMESON & MORSE, 14 La Salle Street.

SUPREME COURT OF ILLINOIS,

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The interest was not balanced for another reason. The witness did not sell to the plaintiffs and the plaintiffs could not maintain an action on the implied warranty against the witness, even if the mutual fraud did not prevent.

The plaintiffs' only recourse would be on Munger, their vendor; but if the defendant prevailed, it would be upon the ground that the witness sold to Munger to avoid creditors, in which he, Munger, participated, and that the plaintiffs purchased with *notice* of the fraud, and that Munger had no title. In such case the plaintiffs could not recover of Munger, and therefore Munger could not recover of the witness.

The rule is also well settled that the interest must be equal on both sides, and if more uncertain or more remote on one side than the other, he is then incompetent for the party where his interest is most direct. In this case the interest of Ragland was direct and immediate in favor of the defendants; but on the other side, he was not liable, in any event to the plaintiffs, and not to Munger, unless he was first compelled to pay the plaintiffs. At least two suits would be required to reach the witness, and he had the benefit of all the intervening contingencies. The interest was not equal, and therefore, he was incompetent.

Radburn vs. Morris, 1 *Mo. and Payne*, 653.
Clark vs. Lucas, 1 *Corr. and Payne*, 156.
Phillips vs. Bridge, 11 *Mass.* 242.
Beach vs. Swift, 2 *Conn.* 269.

To return to the precise question presented by this record, we are led to enquire what effect does the fact that a judgment had been rendered on an implied warranty in favor of Munger against the witness, have if that statement is to be regarded.

That does not better the condition of the witness; if possible he is in a worse one.

If judgment had been rendered, then the only liability of the witness Ragland, to his vendee, Munger was to pay the judgment; that liability would not be altered by the result of this suit. If the plaintiffs

prevailed he was still indebted to Munger on the judgment precisely the same as before; if the defendants defeated the suit he was no more liable to pay the judgment. He could not be liable to another suit on the implied warranty, because that had been determined and the judgement rendered, would be a bar to any such action. The witness would not lose by the success of the defendants, but he would *gain*.

The witness being interested directly and immediately in having the goods used to satisfy the judgment of Bostwick, Harvey & Co., (*Bland vs. Ansley*, 5, *Bos. and Pul.* 331 ; *Bailey vs Foster*, 9 *Pick.* 139 ; *Clifton vs. Bogardus*, 1 *Scam.* 32 ; *Warner vs. Carlton*, 22 *Ill.*, 422 ;) and there being no equal interest, nor any interest, to oppose it, he was incompetent and the Circut Court erred in admitting him to testify.

III.

The second deposition of Field ought to have been excluded because—

A later deposition on the same subject matter of the witness had been taken and read, where there was a cross-examination, showing that most of the matter contained in the second deposition, where there was no cross-examination, was hearsay. The plaintiffs supposed, as they had a right to, that the deposition taken on the 5th November, 1860, was a substitute for that taken 2d November, 1859, and the reading of the latter was error.

IV.

After the witness Ragland had testified in chief to facts tending to show that the sale to Munger was unfair and fraudulent, the plaintiffs proposed as their first question on cross examination: "Was the sale from you to Munger a fair and *bona fide* sale?" The Court refused to allow the question to be answered.

The question did not call for a legal opinion, nor for any opinion; nor did it call for a conclusion. All intelligent men know, as a matter of fact, whether a sale is a cheat and fraud or a fair transaction, made in good faith, and the witness was called on to state the fact. If any question could exist as to the propriety of this question in chief, it was clearly proper on cross-examination.

V.

The defendants prayed *thirty* instructions, and the Court gave *ten*; the 11th, 14th, 16th and 17th collect certain facts in each one, then conclude with the direction that such fact is a circumstance to be taken into consideration, as tending to show fraud.

These instructions are erroneous, because they would mislead the jury. The natural conclusion would be, that if any set of facts enumerated in any one instruction is proved, that the finding must be for the defendants.

The 25th instruction stated to the jury that *fraud* could be *inferred* from facts and circumstances proved. Facts and circumstances may prove fraud, but it must be proved, not inferred nor guessed at. This instruction is clearly erroneous.

W. C. GOUDY,
Attorney for Plaintiffs in Error.

44.

Elijah C. Bobcock ~~ra~~

vs

Seth Smith et al

Pffs Points &c.

44

Filed May 4. 1843
L Leland Clk

W. C. Goudy
Pffs atty

Jameson & Morse, Printers, Chicago.

STATE OF ILLINOIS,

3d GRAND DIVISION.

ELIJAH C. BABCOCK, ET AL.
vs.
SETH SMITH, ET AL.
Error to Warren.

SUPREME COURT, APRIL TERM, 1862.

ABSTRACT.

Page 1 Elijah C. Babcock and John Babcock, parties under the name of E. C. Babcock & Son, commenced an action of trespass in the Warren Circuit Court, against Seth Smith, Alexander G. Kirkpatrick, George D. Crandall, James McCoy, William M. Gregg and Chester W. Palmer, to recover damages for the taking of certain goods, wares and merchandize.

7 The amended declaration contained three counts. The two first counts are alike, except in the description of the property, and on these issue was joined.

17 The third count is as follows:

"And for that, also, the said defendants, on the day and year aforesaid, and on divers other days between that day and the day of commencing this suit, with force and arms, at and within the county and State aforesaid, did seize, take and carry away other goods, chattels, wares and merchandise of the plaintiffs, to wit: ginghams, cloths, calicoes, coats, vests, pants, shoes, boots, shawls, umbrellas, ropes, muslins, shirts, skirts, buskins, diaper cloth, shirting, sheeting, drilling, checks, jeans, napkins, flannels, drawers, wrappers, of great value, to wit, of the value of twelve hundred dollars, and then and there converted and disposed of the same to their own use, and other wrongs to the said plaintiffs then and there did, to the great damage of the said plaintiffs, and against the peace and dignity of the people," etc.

19 To this count the defendants demurred generally and specially, and
24 the court sustained the general demurrer to the third count. The plaintiffs abided by their count, and the decision of the circuit court in sustaining the general demurrer to this count is now assigned for error.

25 To the two first counts the defendants plead the general issue,
28 license, and several special pleas, in which they justified the taking of the property, avering that the goods, &c., described in the declaration were the property of Joel E. Ragland and Robert F. Ragland, partners under the name of Joel E. Ragland & Bro.; that the defendant Smith was sheriff of Warren county, and the other defendants his assistants; that the defendant had in his hands a writ of attachment, issued from the circuit court of Warren county, in favor of Oliver N. Bostwick and others, partners under the name of Bostwick, Hussey & Co., against the said Ragland & Bro., to make the sum of $538,07, and by virtue thereof the defendant Smith, as sheriff, and the others aiding him, took the property described in the declaration, as the property of Ragland & Bro., and denied that it belonged to the plaintiffs.

35 A part (5th and 6th) of the special pleas in addition, averred that
42 the goods in controversy had been owned by the Raglands, and were sold by them to one Milton C. Munger fraudulently, for the purpose of hindering, delaying and avoiding creditors, and by the said Munger sold to the plaintiffs, they having notice of the fraudulent sale by the Raglands to Munger, and that at the time of such pretended sale by the Raglands they were indebted for the amount sued for in the attachment proceeding to Bostwick, Hussey & Co.

64 The court sustained the demurrer to the 3d, 7th, 9th and 10th pleas, (there is no 8th,) and they are out of the record.

63 The plaintiffs traversed the 2d, 4th, 5th and 6th pleas, and joined with 1st.

65 The plaintiffs entered a *nolle prosequi* as to the defendants William M. Gregg and Chester W. Palmer.

At the March term, 1861, the cause was tried before the Hon. Aaron
67 Tyler and a jury. A verdict was rendered for the defendants; motion for a new trial overruled, and judgment rendered against the plaintiffs, from which they bring the cause to this court.

72 On the trial the plaintiffs proved that the defendants, on the 8th of March, 1859, took and carried away from the storehouse of the plaintiffs and from their possession the goods described in the first and second counts of the declaration, at Monmouth, in the county of Warren; that

73 86 74

the value of the goods at wholesale was $737.72, and at retail was $1,187.10; that the defendant Smith was sheriff, Kirkpatrick was attorney of Bostwick, Hussey & Co., and the other defendants aided and assisted in taking the goods; that demand was made on plaintiffs by Smith and Kirkpatrick for the goods of the Raglands, to which reply was made that they had none belonging to them; the defendant Kirkpatrick said he had taken legal steps, and was responsible, and one of the plaintiffs notified defendants that they would be prosecuted if they took the goods.

They further proved that the plaintiffs were merchants, doing business in Monmouth, on the public square, under the name of E. C. Babcock & Son, and that the goods were taken by the defendants from their storehouse, where they were intermixed with other merchandise for retail; the goods were selected by marks upon them, said to be the cost mark of the Raglands. The goods taken were a general assortment of dry goods, and an invoice was taken thereof at the time the defendants took them.

The plaintiffs then rested.

98

The defendants then, in support of the issues on their part, proved that Joel E. Ragland and Robert F. Ragland were doing business in Monmouth, as country merchants, prior to 22d January, 1859, and were in debt to the amount of several thousand dollars; that on that day they sold their whole stock to Milton C. Munger, for 1,300 acres of unimproved lands in Iowa, which were conveyed by deeds of that date, to the Raglands, with covenants of warranty, by Munger and his wife; that the goods were invoiced at about $5,200, and delivered to Munger.

209

The defendants also proved that Munger sold the stock of goods about the 27th January, 1859, to the plaintiffs, and they were transferred from the storehouse occupied by Raglands to that of the plaintiffs where they were put up on the shelves, on the counter, in boxes, &c., with their other merchandise for sale at retail; that they remained there until a part of them were taken and carried away by the defendants.

The defendants further proved, that at the time of the taking, the defendant, Smith, was the sheriff of Warren county; that Kirkpatrick was the attorney of Bostwick, Hussey & Co., creditors of Raglands; that the other defendants were assistants of the sheriff; and also proved by the records of the court, that an attachment suit was commenced by Kirkpatrick, as attorney for Bostwick, Hussey & Co., on the 7th day of March, 1859, in the Circuit Court of Warren county, against the Raglands, upon the following note, to wit:

168

" 538.07. New York, August 28, 1858.

Six months after date we, the subscribers of Monmouth, county of Warren, State of Illinois, promise to pay to the order of Bostwick, Hussey & Co., five hundred thirty-eight $\frac{07}{100}$ dollars, at their office in New York. Value received.

Due March 3, '59. J. E. Ragland & Bro."

174 176 173 188

That a writ of attachment was issued to the defendant, Smith, as sheriff, and on the 8th day of March, 1859, by virtue thereof, under the direction of Kirkpatrick, and aided by the other defendants, he took the goods described in the declaration from the possession of the plaintiffs, claiming them as the property of Raglands, the defendants in the attachment, that personal service was obtained on the Raglands in the proceeding, and afterwards at the October term, 1859, a judgment *in personam* was rendered therein upon the note for $559.60 and costs, and a special execution awarded against the attached property.

So far there was no controversy as to the facts.

98–209

The defendants, by several witnesses, proved facts and circumstances tending to show that the sale by Joel E. Ragland and Brother to Munger, was made to hinder and delay the creditors of Raglands on their part, and that Munger had knowledge of such fraudulent intention; and further facts tending to show that the plaintiffs purchased the goods of Munger, with notice of such fraudulent sale; and, therefore, claiming that the property in controversy was subject to the attachment writ.

200

In support of this proposition, and for the purpose of proving the sale from Raglands to Munger, was fraudulent, the defendants called as a witness Joel E. Ragland, one of the vendors and defendant in the attachment, who was sworn on his *voir dire*, and testified as follows:

" That he was a member of the firm of J. E. Ragland and Brother, and the same person who sold the goods to Milton C. Munger, that had been spoken of by the other witnesses, that he had no interest in the event of this suit that he knew of; that if the defendants succeeded the goods would pay his debt—if not, he would be liable to pay Bostwick, Hussey & Co., under these circumstances he supposed he would be liable and interested in the event of this suit; that he had never expressly warranted the goods to Munger.

The plaintiffs objected to the examination of Joel E. Ragland as a witness, on the ground of interest, but the Court overruled the objection and allowed him to testify, to which decision the plaintiffs excepted.

On his cross-examination on his *voir dire*, the witness stated that Munger claimed that he was liable to him on an implied warranty of the goods. That he had so claimed at Chicago, and had obtained judgment against him at Chicago, on such implied warranty, and consequently could not see that he had any interest in the suit going either way.

The witness, Joel E. Ragland, was then sworn in chief and testified to his pecuniary embarrassment, the sale to Munger, the object of said sale, and the circumstances under which the same was made.

203 On cross-examination, the first question proposed by the plaintiffs, was as follows: "Was the sale from you to Munger a fair and bona fide sale?" To this question the defendants objected and the Court sustained the objection and refused to permit the witness to answer. To which decision the plaintiffs excepted.

110 In the course of the trial, the defendants read in evidence the deposition of Marshall Field, taken by consent before DeWolf, a justice of the peace in Cook county, on the 5th Nov., 1860, containing an examination on the part of the defendants, and cross-examination on the part of the plaintiffs.

146 Afterwards, in the course of the trial, the defendants offered to read in evidence another deposition of the same Marshall Field, taken before DeWolf, J. P., on the 2d Nov., 1859, on the same subject matter, where there had been no cross-examination, appearance or notice, to which the plaintiffs objected, but the Court overruled the objection and allowed the same to be read, to which decision the plaintiffs excepted. On the application of the plaintiffs, certain parts included in brackets were then suppressed, and the other parts read to the jury against the objection of the plaintiffs.

The defendants prayed thirty instructions, of which the Court gave those numbered 1, 2, 4, 5, 7, 11, 14, 16, 17 and 25, against the objection of the plaintiffs, and to which they excepted. Among these instructions are the following:

235 "11. If the jury believe, from the evidence, that the inventory of "the goods at the time of the sale between Raglands and Munger was "done and made secretly, and on Sunday, and that Raglands, before "such inventory was made, hired Jerome Gilbert to entertain the agent "of this creditor or creditors, and keep him away from the store from "Saturday evening until Monday morning, while such inventory was "being taken, all such circumstances should be taken into consideration "by the jury in making up their verdict."

238 "14. If the jury believe from the evidence that John Babcock, one " of the plaintiffs, in connection with Milton C. Munger, told the agent " of a creditor of the Raglands that they would give a description of the " lands which were the consideration of said sale of said goods from the " Raglands to Munger, if said agent would not inform the Raglands, and " that they were afraid of getting into Raglands wool in consequence " thereof, then such fact is a circumstance that should be taken into con-" sideration by the jury, as tending to show that Babcock had notice of " the facts in relation to the sale to Munger.

239 "16. If the jury believe from the evidence that the lands in Iowa, " which were the consideration of the sale of the goods from the Rag-" lands to Munger, were of greatly inferior value than the goods, then " such fact is a circumstance to be taken into consideration by the jury, " tending to show that the transaction was not a *bona fide* transaction " between the Raglands and Munger."

239 "17. If the jury believe from the evidence that the inventory of " the goods which were sold by the Raglands to Munger was made on " Sunday, and that Munger afterwards, and while in possession of the " goods, when offering to sell the same to witness Patterson, and that " Patterson argued to Munger as a reason for not buying the same goods, " said circumstances in connection with others tending to show a fraudu-" lent sale between the Raglands and Munger, and that Munger denied " that such inventory was made on Sunday, then such fact is a circum-" stance for the consideration of the jury, in connection with other " circumstances, tending to show fraud between the Raglands and Mun-ger in regard to said sale."

243 "25. The court will instruct the jury that fraud as well as any " other fact may be inferred from the facts or circumstances proved."

The jury found a verdict for the defendants, when the plaintiffs moved for a new trial, which the court overruled, to which decision the plaintiffs excepted.

The plaintiffs now assign the following errors, to wit:

1. The circuit court erred in sustaining the demurrer to the third count of the amended declaration.

2. The circuit court erred in allowing Joel E. Ragland to testify as a witness.

3. The circuit court erred in allowing the deposition of Field, taken Nov. 2, 1859, to be read in evidence.

4. The circuit court erred in refusing to permit the witness Ragland to answer the plaintiffs' question on cross examination, as to whether the sale was fair and bona fide.

5. The circuit court erred in giving for defendants their instructions numbered 11, 14, 16, 17, and 25, and each of them.

6. The circuit court erred in overruling the plaintiffs motion for a new trial.

W. C. GOUDY,
Attorney for Plaintiff in Error.

152

Supreme Court
Third Division

Elijah C. Babcock

v

Seth Smith et al

~~44~~

Abstract of Record

44

7863

Filed April 25 1862

L Leland
Clerk

State of Illinois, 3^d Grand Division

Elijah C. Babcock et al }
vs } Appeal from Warren
Seth Smith et al }

Supreme Court April Term 1863

Aaron Tyler, Jr., being sworn says that he was the Circuit Judge of the 10th Judicial Circuit who presided in Warren County at the trial of the above entitled cause, that after the adjournment of the Court in that County at which the final judgment was rendered he was in Monmouth the County seat at the office of one of the defendants A. G. Kirk=patrick who was also the attorney for the defendants, within the time fixed by the Court for filing the bill of exceptions, that the said Kirkpatrick and Philo E. Reed, Esq, one of the attorneys for the plaintiffs were present, and the deponent states according to his best re=collection a bill of exceptions that had been prepared by Wm C. Goudy one of plaintiffs attorneys was pre=sented to him, which was not

satisfactory for some reason, that said Kirkpatrick and Reed stated they could probably agree on a bill of exceptions to be thereafter pre=pared, and the fact that the time fixed by the Court would probably expire before it could be signed and filed, and both of the said persons said that the expiration of the time should make no difference, but the same could be filed afterwards. The best re=collection and impression of the deponent further is that it was then agreed by & between the said Kirkpatrick and Reed that the bill was to be prepared and taken to the deponent while he was holding court in Henderson County for examination and signature.

The deponent further states that the bill of exceptions was brought to him while he was holding the Henderson court by Mr. Reed, together with some note, as he now thinks, from Mr. Kirkpatrick — at any rate, he learned in some way that the bill was satisfactory to both parties — and the same was then

~~filed~~ signed and taken by Mr. Reed for filing, after the time fixed by the order of record had expired, and the deponents present recollection is that it was so signed & to be filed after such time by the consent of Mr. Kirkpatrick.

Subscribed & sworn to before me this 29th day of April 1863.
L. Seland Clerk

A. Taylor

24.

Babcock et al

vs

Smith et al.

Elijah C. Babcock et al
vs
Seth Smith et al

Appeal from Warren

61
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W. C. Goudy being sworn says he was one of the attorneys for plaintiffs below and has been the attorney for appellants in this Court, that Philo E. Reed Esq was associated with him in the trial of the ~~Court~~ case in the Circuit Court and preparation of the case for this Court, that said Reed was killed in battle before Donaldson on the 3d day of February 1863, that said Reed was present at the last term of this Court and this deponent then observed that the bill of exceptions did not appear to be filed within the time fixed and on enquiry of said Reed, he stated that a delay had occurred in agreeing on the bill, that one prepared by deponent was rejected and one prepared by said Reed which was agreed to by Mr Kirkpatrick one of the defendants & attorney for defendants, and that by agreement made with

said Kirkpatrick to the Bill of exceptions was signed and filed after the time fixed by the order of the Court.

And he further says that at the last term of this Court he made an agreement with said Kirkpatrick whereby the appearance of the defendants was entered & the case continued, and that no exceptions were then taken or mentioned to the bill of exceptions.

W. C. Goudy

Subscribed & sworn to before me this 29th day April 1863.
L. Leland
Clk.

44.

Babcock & al

vs

Smith & al

Rule discharged

State of Illinois 3rd Grand Division

Elijah C. Babcock &
John Babcock partners
under the name of
E. C. Babcock & Son
vs
Seth Smith
Alexander G. Kirkpatrick
George D. Crandall &
James McCoy

Error to Warren

Supreme Court April Term 1862

The Clerk will issue Sci. fa.
against the above defendants
to the Sheriff of Warren County.

W. C. Goudy
atty for Pffs in Error

April 5. 1862.

152-1??

Elijah C. Babcock et als

152 vs

Seth Smith et als

Precipe

Filed April 7 1862

L. Leland
Clk

Babcock et al }
vs } Error to Warren
Smith et al }

Reasons against motion to strike Bill of Exceptions from the files.

II. The Court granted 30 days from 12th April 1859 to file Bill & it was ~~filed~~ signed and filed on the 27th May.

This Court held such a filing sufficient at the last term. But if this is held otherwise now I only ask that the rule entered be nisi & the parties will show sufficient cause

W. C. Goudy
Atty for Applts.

Babcock et al
vs
Smith et al

Reasons against
Mo. to strike bill
Exceptions from
files

W. C. Goudy
atty for applts

STATE OF ILLINOIS,
SUPREME COURT. } ss. **The People of the State of Illinois,**

To the Sheriff of Warren 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 Warren County, before the Judge thereof, between Elijah C. Babcock and John Babcock partners under the name of E. C. Babcock & Son.

plaintiffs, and Seth Smith, Alexander G. Kirkpatrick George D. Crandall and James McCoy.

defendants, it is said that manifest error hath intervened, to the injury of the said Elijah C. Babcock & John Babcock

as we are informed by their complainant 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 Seth Smith, Alexander G. Kirkpatrick. George D. Crandall & James McCoy

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 Seth Smith, Alexander G. Kirkpatrick George D. Crandall and James McCoy notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this seventh day of April in the year of our Lord One Thousand Eight Hundred and Sixty-two.

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

I did on the 10th day of April A.D. 1862 serve the within writ by reading the same to the within named James McCoy and George D Crandall the within named Alexander G Kirk Patrick & Seth Smith not found in My County -

April 20 1862 David Turnbull Sheriff
By H Strand depty W.C.

Elijah G. Dubois et al

No. vs.

Seth Smith et al

SCIRE FACIAS.

FILED .... A. D. 186

.... Clerk.

Sheriff fees
Servig $ 1,00
mileage .10
return .10
$ 1,20