

12037

No. _____

Supreme Court of Illinois

Cook

vs.

Miller

71641  7

Isaac Cook $\frac{2}{3}$ Appeal from Cook County Court
vs $\frac{1}{3}$ of Common Pleas.
Jacob Miller $\frac{2}{3}$

In the Supreme Court of Illinois
Third Grand Division
Of the June Term 1850.

And now comes the said appellants
by & ask his attorney and say, that
in the record and proceedings aforesaid
and in the rendition of the judgment
aforesaid, manifest error, hath
intervened to his prejudice in this
to wit:

1. That the said Cook County Court of
Common Pleas erred in sustaining
the objection of the said appellee to the
introduction by the said appellants of
the execution in favor of Belvidere &
Holloway vs. Miller & Clements, and in
refusing to permit the same to be read
as evidence to the jury aforesaid
upon the trial of the cause aforesaid.

2. That the said Court erred in refusing
to permit the said appellants to amend
his notice attached to the general issue
plea aforesaid.

3. That the said Court erred in giving to
the jury aforesaid, upon the trial

afforeaid, the instructions prayed for
by the said appellee and numbered
~~11~~ 2. 11. 14. and five.

4. That the said Court used in
rendering judgments upon the finding
of the jury afforeaid in vacation.

5. That the said Court used in
refusing the instructions asked by
the said appellant & numbered 11 & 12
and in modifying said appellant's
instruction numbered 14.

6. That the said Court used in
overruling the said appellant's
motion for a new trial here in

7. That the said Court used in rendering
judgments for appellee when by the
law terms the said judgments should
have been for the said appellant.

Wherefore the said appellant prays
the errors afforeaid and others appearing
in the record of the proceedings and
judgments afforeaid, ~~that~~ prays
that the said judgments afforeaid of
the Court afforeaid, may be reversed
annulled set aside and for nothing
collected, and that he may be restored
to all things lost by reason of the judgments
afforeaid &c.

E. Peck. p 90

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

Plas before the Honorable Elias Spring
Judge of the Cook County Court of Common Pleas
within and for the County of Cook and State of Illinois
aforesaid, at a regular term of said Court begun and
holden at the Court House in the City of Chicago in
said County and State on the first Monday being
the fourth day of February in the year of our Lord
One Thousand Eight hundred and fifty and of the
Independence of the United States the Seventy third

Present the Honorable Elias Spring Judge

Daniel Mc Elroy Prosecuting Attorney

Isaac Cook Sheriff

Attest, Walter Kimball Clerk

Be it Remembered, that hereupon, to wit on
the fourteenth day of August A.D. 1855 came William
Gall & Mc Elroy Attorneys for Jacob Miller, and filed
in the office of the Clerk of the Cook County Court
a Precept and Affidavit, which said Precept & Affidav-
it, are in the words and figures following to wit,

"Jacob Miller

vs
Isaac Cook

Transp.

The Clerk will please give

Summons to the Coroner returnable to the next
term Plea Trespass Damages \$4000
Bellingall & Mc Stray
for Plff

State of Illinois }
Cook County } p.

Jacob Miller being sworn says
that the defendant in the above cause is the Sheriff
of Cook County in the State of Illinois

Subscribed & sworn to
this 14th August 1848

Jacob Miller

before me
James C. Smith C. C.

And thereupon there was issued out of the office
of the Clerk of said Court a. Summons. which said
Summons is in the words and figures following to
wit:

State of Illinois }
Cook County } p.

The People of the State of Illinois to
the Coroner of said County, Greeting:

We Command You that you summon Isaac
Cook if he shall be found in your County, person-
ally to be and appear before the Cook County Court
of said County, on the first day of the next term
thereof, to be holden at the Court House in the City
of Chicago, in the said County, on the first Monday
of October next to answer unto Jacob Miller in
a plea of Trespass to the damage of the said Plaintiff
as he says in the sum of Four Thousand Dollars.

And have you then and then this writ, with an endorsement thereon, in what manner you shall have executed the same

Witness the Honorable Hugh D. Dickny, Judge of our said Court and the Seal thereof, at the City of Chicago, in said County, this 14th day of August A.D. 1848
James Conly, Clerk

Which said summons, was afterwards returned into the office of the Clerk of said Court with the endorsement thereon, in words and figures following to wit,

"Executed the within by reading the same to Isaac Cook, Sheriff, in presence of Wm. Brown, Chicago August 15th 1848. P. Kelly, Coroner Cook County."

And afterwards to wit on the Twenty Second day of September A.D. 1848 then was filed in the office of the Clerk of said Court a Declaration in said cause which said Declaration is in the words and figures following to wit,

"Of the October Term of the
State of Illinois } Cook County Court A.D. 1848
Cook County }
Jacob Miller
Isaac Cook

Jacob Miller Plaintiff complains of Isaac Cook Defendant in a plea of Trespass, so that the said Defendant on the 5th day of June in the Year of our Lord One thousand eight hundred and

Forty eight with force and arms at the County of Cork
and State of Munster seized and took divers goods
and Chatter to wit. Ninety eight pounds allspice
fourteen pounds turmeric. Four & three quarters pounds of
Wick King. Ten gross of Corks. Twenty five pounds Black
Tea. One hundred & forty eight pounds green tea. Forty one
& a half pounds Indigo. Sixty four pounds Ginger. Sixty
pounds Saffron. Five hundred & ninety two pounds of
refined Sugar. Five hundred & thirty eight pounds Cracked
Sugar. Forty pounds Coffee. One barrel & a half Mashed
One barrel, two hundred thirty four pounds sugar. One
Hogshead eleven hundred seventeen pounds sugar
Twenty barrels. Eight hundred gallons whiskey
Ninety pounds Leaf Sugar. Forty six pounds ginger
Thirty four pounds Salt Petre. Twenty eight pounds Epsom
Salt. Forty two pounds Cassia. Seven pounds
Scotch Snuff. Fourteen pounds Black Snuff. Two Boxes
Raisins. Twenty six pounds Tea. Forty two pounds Tea
One hundred & twenty nine pounds Tea. Three & a half
thousand Segars. Five dozen Balls Sute. Twenty eight
pounds Sulphur. Four hundred & sixty six pounds
Muscovado Sugar. Sixty two Brooms. One Keg, thirty
eight pounds Cloves. Forty one & a half gallons Brandy
Seventeen & a half gallons port wine. Fifteen Gallons
Madeira Wine. Fourteen gallons whiskey. Twenty
gallons Vinegar. One Box medicine. Twenty three gallons
Gin. Thirteen gallons pure spirit. Fourteen empty barrels.
Nine Hauls. sundry Tin Measures. One pair Corn
Scales. One stone and pipe. Ten yards broad cloth Ten
yards Kerseymer Six & three quarters ditto. Three quarters
of a yard ditto. Twenty one yards Saltin. Eighteen
yards ditto. One yard & a half broad cloth. Twelve yards

broad cloth, Ten and a half ditto Six & a half yards silk
cloth Six and three quarter yards Broad cloth Two yards
Satinett, Fifteen & a half yards ditto Seventeen & three quarter
yards Satinett, Nine & three quarter yards Satinett, Eleven
yards Shucks gray cloth Twenty three & a quarter yds, Iron
cloth, Seventeen & three quarter yds broad cloth, Three hun
dred & ninety five & a quarter yds Calico Three yds Tickling
Forty two yds Cambric Fifteen yds Gingham Twenty six
yds, Malmsey Seventy five yds white Flannel, Eight yds
Red ditto Eight yds Cotton ditto Twelve pounds three quarters
Cinnamon Seventy five pounds pepper Forty pounds
allspice Four & a half pounds Soap six dozen mustard
Ninety pounds sperm candles Nine Basins Fifty five
dozen & a half Chewing Tobacco Four & a half pounds
Nutmegs Twenty eight looking glasses, one looking glass
frame Thirty two glass lamps, thirty eight castor bottles
Twenty specie jars Seven Lamp Chimneys Forty seven tumbles
Sixty eight tumbles Four bottles Pepper sauce Twenty flasks
Four hundred & ninety five pounds Tobacco One Port wine
Castor Eight Basins & Boxes Forty Nine Pitchers Twelve
Basins Twenty three gilt Cups Three Teapots, Six dozen
Cups & Saucers Nine & a quarter dozen Saucers Eleven dozen
Cups & Saucers Three hundred & thirty two plates Three quarter
lamps One hundred & forty nine bowls Eighty four deep
dishes Twenty two plates Ninety tea pots, Five pairs
woollen pantaloons Three & a half dozen suspenders Twenty
four pair ditto Nine gross coat Buttons Ninety six
Pocket Handkerchiefs Twenty one Cotton ditto Fifteen Gingham
Cravats Ninety pairs Cotton Hose Three gross Buttons
Ten Woollen Comforters Ninety pounds Cotton Yarn Forty
Seven yards Bagging Seventy two yards Canvas Fifty
Cups Seven Leghorn Hats Fifty nine palm leaf Hats
Four pair Moccasins Ninety yds sheeting Sixty four hats

Twenty Cakes Soap Eight hundred Pencils Nine dozen &
three quarter Blasting Forty three Shoe Brushes One
Doz Curry Combs Four Harrows Six pair Buck Skin
Hoods Eleven & a half dozen Spools Thread Three pounds
cotton Thread One and a half pound cotton Thread One bunch
Crimson Thread Three Nails Eight empty Barrels Box
Garden seeds Two counter Tables Eight Turkeys
One wooden building occupied as a store of the said
Plaintiff then and then being found and being of great
value to wit of the value of three thousand five hun-
dred dollars and carried away the same and contents
and disposed thereof to his own use and other wrongs
to the said Plaintiff then and then did against the
peace of the People of the said State and to the damage
of the said Plaintiff of four thousand dollars.

And for that also the said Defendant on the twenty
day of June in the year of our Lord one thousand eight
hundred and forty eight at the County of Cook in
the State of Illinois with force and arms broke
and entered a certain Store of the said Plaintiff
situated and being in the said County and then and
then forced and broke open and damaged divers
to wit two doors of the said Plaintiff and dam-
aged and spoiled the locks and hinges of said doors
respectively of great value to wit of the value of twenty
dollars.

And also the said Defendant on the day and year
last aforesaid with force and arms at the County afo-
said seized and took divers Goods and Chattels of the said
Plaintiff of the like number quantity quality description
and value as the said goods and chattels in the first
Count of this Declaration mentioned then and then found

and being, and converted and disposed thereof to his own use to the damage of the said Plaintiff of four thousand dollars.

And also for that the said Defendant on the twelfth day of June in the year of our Lord one thousand eight hundred and forty eight at the County of Cook in the State of Illinois with force and arms broke and entered another Ston of the said Plaintiff situate in said County and then and there ejected, expelled, put out, and removed the said Plaintiff from the possession, use, occupation, and enjoyment of the said last mentioned Ston and kept and continued him so ejected and expelled for a long space of time to wit from thence hitherto, whereby the said Plaintiff for and during all that time lost and was deprived of the use and benefit of his said last mentioned Ston, to wit at the County aforesaid to the damage of the said Plaintiff of Four thousand dollars.

Bullingall & Mc Grov
Attys for Plaintiff

And thereafter, to wit on the Eighteenth day of May A D 1849 there was filed in the office of the Clerk of said Court by Morris Brown & John attorneys for the said Isaac Cook a Plea & Notice, which said Plea & Notice was the words and figures following to wit,

" Isaac Cook

vs
Jacob Miller

} Insuper

And the said Defendant comes and defends &c and says that he is not guilty of the Insuper

or either or any of them above alledged against him in
manner and form as the said Plaintiff hath shewed
Complained and of this he puts himself upon the Coun-
try to try the same by Morris Brown & Nick his Atty,
"and Plff doth the like" by Ballingall atty.

1. The Plff in this suit will take notice that on the trial
of this cause he will give in evidence & insist thereon in
bar of this action, that at the said time when &c he was the
Acting Sheriff of Said County of Cook and from thencefor-
ward the commencement of this suit so continued to be
acting Sheriff of said County, and at the time & place
in the alledged Declaration mentioned he did by John
Boach his lawfully authorized Deputy, levy upon,
Seize & take the goods & Chattle mentioned in the
said Declaration, to wit those set forth in the sched-
ule hereto annexed, as the property goods and Chattle
of Augustus Miller & Daniel Clements found in
their store in Chicago in their possession & Control
by Virtue of a certain writ of Attachment duly issued
by the Court of this Court under the Seal of this Court
Directed to the Sheriff of said County of Cook at the
suit of William Graydon & John S. Nelson thereby
Among other things commanding the said as such
Sheriff to attach so much of the Estate real or
personal of Augustus Miller & Daniel Clements
aforesaid which were to be found in said County
as should be of Value sufficient to satisfy the debt &
Costs in the recital of said writ, mentioned, And
Said Deft as such Sheriff, by Virtue of said writ by his
said Deputy-levied upon and took the said goods

This Court

I Chattels mentioned in said Declaration to wit in
said Schedule hereto annexed as the property of
said Augustus Miller & Daniel R. Clements found
in their possession, and the same were then & there
the property of said Augustus Miller & Daniel R.
Clements liable to be seized & taken: And were
not the property of said Plaintiff as is supposed by
the said Declaration.

2. The Defendant will further give in evidence &
insist thereon in his defence that the said Defendant
before, at the time & since the alleged taking of said
goods & Chattels, mentioned he was Sheriff of said
Cook County and that a Henry Johnston, Robert Gel-
verton and George A. Millers at the Term Term of the
Year 1848 obtained a judgment against the said Augustus
Miller & Daniel R. Clements for the sum of \$1309.92
cts Damages & \$5.45 cts as taxed by the Clerk of said
Court, upon which judgment execution was duly issued
& placed in the Defts hands to be executed as Sheriff of
said County, he then & there being Sheriff of said County,
by which writ or execution he was commanded that
of the goods & Chattels, lands & Clements & real estate
of said Miller & Clements which were to be found in
said County, he make the said Damages & Costs as
by said execution when produced well more fully
shown. And that by virtue of said Execution the Defts as
such Sheriff by his deputy John Black levied upon
& took in custody the goods & Chattels in said Declaration
mentioned at the said time when as the property
of said Miller & Clements which was found in their
possession in said County to pay & satisfy said judgment
& execution as he lawfully might, And he will further
prove that said goods & Chattels at the said time

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when the levy was made were the property of said Miller & Clements & not the property of the said plaintiff.
3. The deft will further give in evidence, that he as Sheriff of said County by virtue of said writ of attachment & fieri facias above mentioned he levied upon & took the goods & chattels in the declaration mentioned at the said time when &c. and he was then & then Sheriff of said County - and that said goods & chattels were the property of said deft. in said writ mentioned & not the property of said plaintiff.

Morris Brown & Pick
for deft

The Plaintiff excepts to the said Notice, It is general & indefinite: it is included in the 1st & 2^d notices
Ballingall for Plff

And afterwards to wit on the Eleventh day of February A D 1850 being one of the days of the February Term of said Court for the year aforesaid the following proceedings were had in said Cause and entered of Record to wit

Jacob Miller
vs
Isaac Cook } Disposit.

And now upon this day comes the said parties by their attorneys, and the attorney for the plaintiff Challenges the array of Jale Pittet Jones amounting to thirteen, for the reason that the Defendant herein is the Sheriff of the County of Cook by whom the said talespittet jurors had been summoned, which Challenge was allowed. and

the array of the said tales petit jurors quashed, and
thereupon it is Ordered by the Court, that writ issue
to the Coroner of said County to summon Thirteen tales
petit jurors to complete the Regular panel, and
thereupon the Coroner returned into Court

D. J. Sumner. H. Douglass. Jacob Sargent. Charles Wright.
John Martindale. R. J. Stephens. J. Lyons. W. H. Chappel. Levi
Chipman. John Melroy. B. McDonald. E. W. Delmonico.
R. H. Cringle, who appeared and gave their attend-
ance. And thereupon it is Ordered that a Jury
come to try the issues herein. Whereupon come the
jurors of a Jury of Good and lawful men to wit,
W. H. Sumner. M. C. Therrin. Charles Wright. H.
Douglass. John Martindale. E. Cady. W. H. Bennett. A. H. Hut-
chins. George W. Morris. Charles M. Luce. W. H. Cleveland
& D. J. Sumner, who now duly elected tried and sworn
well and truly to try the issue joined as aforesaid, and
after hearing a part of the evidence, and the hour of
adjournment having arrived, the further consider-
ation of this cause is postponed until to-morrow morn-
ing.

And thereafter to sit on the twelfth day of Feb-
ruary AD 1850 being one of the days of the said
February Term of said Court for the year aforesaid
the following proceedings were had in said cause
and entered of Record to wit,

Isaac Cook.

vs
Isaac Cook.

Indorsed.

This day again come the said par-
ties by their attorneys, and the Jury empanelled here-
in on yesterday also come, and after hearing the

remainder of the evidence adduced, the arguments of
Counsel and the instructions of the Court, retire under
Charge of an officer of the Court to consider of their
Verdict. And thereupon the Hour of adjournment
having arrived, by agreement of parties it is Ordered,
that when the jury shall have agreed upon a Verdict
they may sign and Seal the same, and meet the
Court to-morrow Morning at Nine O'Clock.

And afterwards to wit on the Thirtieth day of Fe-
bruary A.D. 1850 being one of the days of the said Feb-
ruary Term of said Court as aforesaid, the following
proceedings were had and entered of Record in said
Cause, to wit,

David Miller
vs
Isaac Cook } Joseph

This day again came the said
parties by their attorneys and the jury heretofore
empanelled herein also came into Court, and
say, We the jury find the issue for the plaintiff and
assess his damages to the sum of Three Thousand
two hundred and thirty-six dollars and thirty-
three cents.

And thereupon the said Defendant enters his mo-
tion for a new trial herein.

And afterwards to wit on the twenty-eighth day of
February A.D. 1850 being one of the days of the said Feb-
ruary Term of said Court as aforesaid, the following
proceedings were had and entered of Record to wit,

Jacob Miller }
 vs } Inexpop
 Isaac Cook }

This day comes the said parties by their attorneys and after argument heard on the said defendants motion for a New Trial in this cause. The Court not being sufficiently advised in the premises takes the matter under advisement,

And afterwards to wit on the Twenty ninth day of March A.D. 1850. the said day being one of the days of the March Special Term of said Court, for the year aforesaid, the following proceedings were had in said cause and entered of Record to wit,

Jacob Miller }
 vs } Inexpop
 Isaac Cook }

This day come the said parties by their attorneys & the Court having the motion for a New trial herein under advisement, continues the same under advisement, with opinion to be given in vacation and judgment to have same effect as if entered in term time, by agreement of parties.

And afterwards, to wit on the Twenty fifth day of May A.D. 1850, during vacation, after the said March Special term of said Court, the following proceedings were entered of Record in said cause by Order of the Judge of said Court. to wit

Jacob Miller

vs
Isaac Cook

In Vacation May 25th 1850

Writ of Habeas Corpus.

The Motion for a New trial in this cause having been taken under advisement by the Court at the last February term thereof, And the Court being now fully advised in the premises. It is Ordered that the said Motion for a New trial herein be overruled, and that judgment be entered on the Verdict of the Jury as of the last February term of this Court, by Virtue of agreement of parties on Record entered at last March Special Term of said Court, And that appeal may be prayed & allowed and exceptions filed as of the last February term of this Court.

Therefore it is Considered that the said Plaintiff do have and recover of the said Defendant his Damages of Three Thousand two Hundred and thirty Six Dollars and twenty three cents in form aforesaid aforesaid together with his Costs and Charges by him in this behalf expended and have execution therefor.

Whereupon the said Defendant enters his exceptions, and prays an appeal to the Supreme Court of the State of Illinois, which is allowed, upon the said defendant's filing Bond with the usual condition, in the penal sum of Four Thousand dollars with Philander Eddy as Security, in five days from the date hereof.

And afterwards to wit on the Twenty eighth

day of May A D 1850 came the said defendant Isaac Cook and filed in the office of the Clerk of said Court his appeal Bond, which said Bond is in the words and figures following to wit,

"Know all men by these presents, that we Isaac Cook as principal and Philander Eddy as surety are held and firmly bound unto Jacob Muller in the Penal sum of four thousand dollars for the payment of which well and truly to be made we bind ourselves our respective heirs executors and administrators firmly by these presents.

Witness our hands and seals this twenty eighth day of May A D 1850.

Whereas the above bounden Cook has taken an appeal from a judgment rendered on the twenty fifth day of May instant as of the February term of the Co & W County Court of Common Pleas A D 1850, in the suit of Jacob Muller against the said Isaac Cook in an action of Trespass to the Supreme Court of the State of Illinois. Now the condition of the above obligation is such that if the said Isaac Cook shall pay said judgment costs, interest and damages in case said judgment shall be affirmed by the said Supreme Court and shall duly prosecute his said Appeal herein then this obligation to be void, otherwise to remain in full force and virtue.

Witness
Walter Kiniball.

I. Cook. Seal

Philander Eddy Seal

And afterwards to wit on the Thirty first day of May A D 1850. then was filed in the office of the Clerk of said Court by the Defendant attorney a Bill of Exceptions, which said Bill of Exceptions are in the words and figures as follows to wit.

Jacob Miller

vs
Isaac Cook

Be it Remembered that on ^{the} Seventh day of the February Term of the Cook County Court of Common Pleas the above entitled suit came on for trial. before a Jury. The plaintiff then called George W Gardner who was sworn and testified as follows. That he was present and saw the bills of sale executed, that they were in his hand writing and to the best of his recollection were executed the day named in them. The said bills of sale were then offered in evidence to the jury.

"Memorandum of an agreement of Bargain & Sale made this 15th day of April 1848 by & between A Miller & Clements of the first part & Jacob Miller of the second part. Witnesseth. That the said parties of the first part, for & in consideration of the sum of Nine hundred dollars to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged have granted bargained sold & delivered to the party of the second part all their right title interest in & property to, a certain two story wooden building situated & being upon part of Lot No 3 in Block 31 Original Town of Chicago and now occupied

by the party of the second part as a Store being the
one lately occupied by the parties of the first part.

To have and to hold the same and all the appur-
tenances thereto belonging unto the party of the
Second part his Executors administrators and
assigns & to them only use forever.

Witness our hands the day & year above mention-
ed at Chicago. A Miller & Clements. "

Memorandum of an agreement of Bargain and
Sale made this Sixteenth day of April in the year
1848. by & between A. Miller & Clements of the first part
& Jacob Miller of the second part. Witnesseth that
the parties of the first part for in consideration of the
sum of Two thousand Six hundred, twenty nine
& 83/100^{ths} Dollars to them in hand paid by the party
of the second part the receipt whereof is hereby ac-
knowledge, have granted bargained, sold assign
transferred & delivered & by them presents do grant
bargain, sell, assign transfer & deliver to the party of
the second part all and singular the following described
goods and chattels, to wit: 4137 pounds Java Sugar in
Hogshead, part Hogshead & Barrels, 762 pounds Crushed Sugar
in barrels 570 pounds Brown Maranna in boxes 270 pounds
Loaf, 740 pounds Rio Coffee, 224 pounds Laguaira Coffee, 334
pounds Java Coffee, 4 half Chests Young Hyson B B Tea
53 pounds Agave Tea, 60 pounds R Fallow Tea, 72 pounds
Hongqua Tea, 60 pounds A W Low Tea in half Chests 4
caddy Boxes Tea, 25 lbs black Tea, 61 1/2 Gals Brandy
in 2 Casks, 50 Gals Holland gin, 20 Gals port wine, 35
gallons Madras wine, 15 gallons Span Spirits, a lot of
Whisky, about 8 barrels, 450 pounds of Tobacco in half
boxes, 139 pounds Curandito tobacco, 106 pounds Thomp-

Sons Tobacco, 4 boxes Chewing tobacco, 2 Bunches MacKinn
120 pal Soap, 110 pounds Alspice, 100 pounds Pepper
4 boxes Starch, 4 Boxes mustard, 3 boxes ground Spice
3 boxes Pepper, 8 pounds nutmegs, 2 pounds Cloves, 20
Mats Carica, 7 boxes Sperm Candles, 3 boxes Red Pepper
Sauce, 2 Hogs ginger, 12 pounds Indigo, 4 boxes Shaving
Soap, 3 thousand Segars, 2 Bunches tar, sundry groceries
consisting all the remaining of their Stock of groceries,
a Lot of Crockery & Hard ware, comprising the entire
of their Stock of crockery, a lot of looking glasses, 4
Dozen Bat. pails, 11 Doz Brooms, 1 pr Scales, measures
& funnels, 2 Hanging lamps, 60 Doors, 2 1/2 thousand Shingles,
1 piece Blk Broad cloth, 2 pieces Gold mixed Beaver, 3
pieces Blk Br^d Cloth, 1 piece Blk french Br^d Cloth, 1
piece Blue English Br^d Cloth, 3 pieces Blk Herry men
1 piece plaid Linen, 3 pieces Satinets, 3 pieces Tag
Satinets, 1 piece black Satinet, 2 pieces mixed Sat-
inets, 3 pieces plaid Satinets, 1 piece Kentucky, Seal, 8
pairs pantaloons, 560 yd. Calico, 280 pounds Cotton
yarn, 35 yards Gingham, 288 yards factory, 42
Boys mens Caps, 120 yards Bagging, 72 yards Canvas, 20
Silk Hf, 44 Cots Hf, 1 1/2 doz pr Suspenders, 8 pr do,
4 doz Cotton Suspenders, 7 doz pair Cots Hf, a lot of
cotton & linen thread, 7 Bunches pins, 5 gross Buttons,
2 pieces Black Cambr, a lot of Lighart & Palm leaf Hats,
3 doz Slates, 2 doz Emery Cambr, a Lot of pocket Knives,
10 pr Buck Skin gloves, a Lot of Wrapping Twine & Cotton
Wickling, 6 pr Moccasins, 1 Store ships in Store, compri-
sing the entire whole of the Stock of Goods belonging
to the partner of the first part now being in the Store
at Number 345 Lake Street Chicago and more
particularaly enumerated and described in Schedule
here to annexed with prices affixed with the addition

often persons, To Have & to hold the above de-
scribed goods & chattels unto the party of the second
part, his execution Administrator and assigns
and to their only proper use & benefit forever

Witness our hands this 17th day of April 1848
at Chicago, Illinois

A Miller & Clements

Schedauis

Refined to in annexed Bill of Sale
Jacob Miller

Ref of A. Miller & Clements

1 Wha Sugar	1241.74	100	1415.74	100
980 @ 6 3/4 in pt khar + blls	1045	lbs		
@ 6 3/4 Tan out	544	lbs	4137 @ 6 3/4	279.24
762 ^{lb} Cracked do in blls			@ 10 1/2	80.01
520 Pulverised do in do			10 1/2	54.60
590 Bro Maranad in Boxes			7 1/2	44.25
270 Loaf Do			10 1/2	28.35
740 lbs Rio Coffee Sacks			8 1/2	17.92
334 - Jarad Do				35.07
2 Half Chest M. H. R. B. Tea	118		@ 30°	35.40
2 " " " " "	125		@ 34°	42.50
53 ^{lb} Agnes			16 1/2	8.48
60 Rob Fullers			16 1/2	9.60
27 " Hoaguan			50°	36.00
1 Half Chest A McWinn	60		37 1/2	22.50
60 " Hoaguan Half Ch			35°	21.00
4 Caddy Boxer Tea			52.55	28.60
25 Bk Tea			45°	10.00
41 1/2 Gal Brandy in 2 casks			2.15	132.22
50 - Hld gin.			1.31	65.50
20 - Port Wine			1.1	20.00
35 - Madras			115	15.75

15 - 1 pure Spirits	45	6.75
A lot of Whiskey & Bbls	20 ^c	79.00
450 doz Tobacco 1/2 Box	1/2	56.25
139 lbs. Cassia	10 ^c	23.90
106 do. Thompson	12 ^c	12.72
4 Boxes Chewing 24 doz each		21.12
2 Bls MacKerel	\$10.	\$ 20.00
120 1/2 pale Soap	7 ^d	8.40
110 - Spices	14	15.40
100 - pepper	7	7.00
2 Boxes Starch 38 + 41	7 ^d	5.53
2 do do 36 + 38	7 1/2	5.55
4 " Mustard 2 doz each	57	5.00
3 " Ground Spice 20 each	16 ^d	7.60
3 " Peppers 20 each 60 +	9 ^d	5.49
8 bl Nutmegs	11 1/2	11.00
20 - Cloves	27 ^c	5.40
20 Mats Capia 54	17 ^c	7.18
2 Boxes S Candles 31 + 28 - 89 - @ 35 ^c		19.47
3 - St paper Saus	12 1/2	4.50
2 Kegs Ginger 40 each	7 ^c	5.60
12 lbs Indigo	12 1/2	18.00
4 Boxes Shaving Soap		5.00
3 M Cigar	\$4.	18.00
2 Barrels Tar	\$3.	6.00
Sundries		100.00
Lot Crocheting Comp asst		100.00
Lot of Looking Glasses		10.00
4 doz Bat Pails	20 1/2	10.00
11 " Brooms	10 1/2	13.75
Scale Weasels & Funnels		8.00
2 Hanging Lamps		5.00
60 Deer Sand	12 1/2	90.00

2 1/2 M Shingles	20¢		4.25
1 pr Blk Bro Cloth	8 3/4	3¢	9.84
1 " 100 Gold Mxd Bearer	11 1/2	150	17.25
1 " Bro B ^d D ^o	12 1/2	175	21.88
1 " Blk " "	11 3/4	14¢	20.57
1 " " " "	13 3/4	2.25	39.93
1 " " " "	15 1/2	2 1/2	40.46
1 " French	5	3.75	18.75
1 " Blue long D ^o	12	2.25	27.00
1 " Gold Mxd	10	15¢	18.75
1 " Blk Hermy mxd	12	9¢	13.50
1 " " " "	10	1.20	12.00
1 " " " "	9	12¢	13.50
1 " Plaid Linny	43	15	6.45
1 " Satinette	21	67 1/2	14.17
1 " " "	17 1/2	82 1/2	14.43
1 " " "	25	55	13.89
3 " Tag	75	38	28.50
1 " Blk	26 1/4	42 1/2	11.15
1 " Mxd	20	53.	10.60
1 " " "	21	50	10.50
1 " Plaid	50	42	21.00
1 " Kentucky Seam	25	28	7.00
8 pair pants		3.	24.00
500 yds Calico		9 1/2	53.20
280 lbs Cote yarn		18¢	50.40
35 yds Gingham		15	5.25
288 " Factory		8 ^d	23.04
42 Caps		3¢	15.75
120 jar Bagging		16 ^d	19.20
72 " Canran		14 ^d	10.08
20 Silk HKfs		50	10.00
40 Cotte D ^o		1¢	5.00

1/2 Doz pr Surpender		6.75
8 pr Do	20	1.60
4 Doz Canvas Web	6	2.88
7 Cotton hose	12 1/2	10.50
Lot of Cate + Linen thread		15.00
Lot of Pins		3.50
5 Gross Buttons		3.00
2 pieces Glazed Canvas 40 8		3.20
A Lot of Leigham + Palm leaf Hats		20.00
1/2 Doz H. Slates 10		3.60
2 Curry Combs 10		2.40
Lot of pocket Knives		10.00
10 pr Buck S. Gloves 50		5.00
A Lot of Twine + Ricking		10.00
6 pr Moccasins 50		3.00
1 Store + pipe in Store		7.00
		<u>2481.65</u>

Ten per Cent add^d 248.16

\$ 2729.85

Recd Pay^d Chicago April 17th
 1848 by 4 notes pay^{ble} in 3, 6, 9 + 12 months
 from date

A Miller + Clements

The bill of sale of building was executed in the office of nitrup, that of the goods at the store of Miller & Clements, they were executed by Augustus Miller to plaintiff in the name of Miller & Clements, Clements was absent at the time, but he afterwards agreed to the sale, the consideration of the building was \$500.00 for which Jacob Miller gave his note - Augustus Miller is married, Clements is not, has occupied a room over the store, a formal delivery was made of the goods to Jacob Miller by Augustus Miller; nitrup was in the store very frequently, so far as his knowledge extended Jacob Miller had the care & custody of the goods, & so far as he had any means of judging managed the business - The notes received for the goods & building were delivered to Charles R. Miller, who was here and accepted the notes. Charles R. Miller came here about the last of April or first of May, I was attorney for the firm of Miller & Clements at that time, they said they were in debt to the Bank of Toledo about \$5500.00, & to merchants in New York, that the plaintiff was their endorser to the Bank & they wished to secure him first, the object of the bill of sale was to protect Jacob Miller as their endorser to the bank, I advised the sale of the goods & store to Jacob, which Augustus Miller said he wanted to do if the Bank would take the notes of Jacob Miller in payment. The bill of goods amounted to \$2729.55, and the store to \$500.00, the notes of Jacob Miller for these sums were given to Augustus Miller, payable to Miller & Clements, Augustus Miller stated that Miller & Clements owed the bank for money borrowed, On his cross examination nitrup stated that Augustus Miller came to him for advice, that Jacob

Miller had not called upon him when Augustus
came the first time, but that afterwards, & before
the execution of the bills of sale ^{he} saw and consulted
with him. The Note for the goods sold from
Jacob Miller to Miller & Clements new at 6, 9 & 12 months
or at 3, 6, 9 & 12 months in equal sums, Augustus Mil-
ler told me when he called upon him for advice
Mr Croes had called upon him for the payment of a
New York debt, and wanted to procure a judgment
Note, and that another firm had sent out a claim,
and that Miller & Clements could not meet their
liabilities, that he fear Croes would take a draft
judgment against them and get the claims in his
hands to the exclusion of others. They had offered to
secure Yelverton & Helloms if they would give them
time, this was not done to delay creditors but to secure
their endorser. They wanted to secure this claim and
wished to know how it was to be done, and I advised
them that this was the best way. It was in the store
of Miller & Clements the night the invoice of the goods
was taken when they sold to Jacob Miller. I stood
at the desk and made out the invoice as they
Jacob Miller, and Augustus Miller called off the
goods. I do not know whether they measured and
weighed all the goods or not, I think they did meas-
ure and weigh some of them. We commenced taking
the invoice at night and worked all night, we
got through about sunrise in the morning. There
was not any person in the store but Jacob Miller
Augustus Miller and myself. Jacob Miller took
formal possession of the store and goods. The
sign of Miller & Clements continued over the door,

I advised them that it was not necessary to change the sign, That there had not been any negotiation between Jacob Miller and Augustus Miller in relation to the sale of the goods to his knowledge, up to the time that he witness advised the sale of the goods to Jacob Miller. Witness advised the sale because he expected process of some kind would be out in the morning against Miller & Clements, as Augustus Miller told him he expected it,

Charles R. Miller, called by plaintiff - Resides at Toledo in Ohio, in the year 1848 was President of the Bank of Toledo, and its Managing Officer is not now interested in said bank, Knott Miller & Clements, they had considerable dealings with the bank. They were indebted to the said Bank in about \$5,500. or \$5,800. on Notes, on which Jacob Miller was endorser, as early as February they notified me that they should be unable to meet their engagements to the bank and desired a new loan which was declined, They then stated that they had not yet received returns from the pinery, That they expected their New York Creditors would be out here, and they wished me to come, I came here to secure the claim due the Toledo Bank. After I came here I found that Miller and Clements had sold their goods to Jacob Miller, who was their endorser on the Notes due the Toledo Bank, I received the Notes given by Jacob Miller to Miller and Clements for the goods and building amounting to about \$3,200.00 - I receipted for this amount which wiped out so much of their indebtedness, Jacob Miller was worth \$1500.00 or \$2,000.00 - If these gentlemen (Miller & Clements) secured him, over and above his in-

debtedness, The Money loaned to them went into their
business here as I suppose. And some of it I know
the Bank remitted to their New York Creditors.
I arrived in Chicago about the middle of May,
found Jacob Miller managing the Store, I was
here about a week. Jacob Miller had been the
Clerk of Miller and Clements for some time before he
bought them out, he is the brother of Augustus
Miller, and I married the sister of Jacob and
Augustus Miller. The dealings of Miller and Clements
with the bank ran from eighteen months to two
years. I did not know until I arrived in Chicago
that Miller and Clements had sold to Jacob Miller.
The indebtedness of Miller & Clements to the Bank accrued
after they came to Chicago. Jacob Miller was en-
dorsed to the full amount due the bank, Miller
and Clements were liable to the bank beyond the
sum I before stated, which has been since paid.
If Miller & Clements had continued their business,
from the exhibit they made me they might have
gone on with their business if they had received
returns from the Vinery but without that they could
not go on. I considered the paper of Jacob Miller
to Miller & Clements good because he had property
to make the amount good. It was stated to me
that the goods and building given for the notes
were ample, and that the notes were safe, the
notes were endorsed to me by Miller & Clements,
and my security for the notes I received was pre-
cisely the same as the notes I returned to Miller
& Clements. The first notes were signed by Miller
& Clements, and endorsed by Jacob Miller, the last

Notes which I received in lieu of them were signed by Jacob Miller and endorsed by Miller & Clements. Jacob Miller's property was in Connecticut, part of his paternal estate worth some hundred dollars, the other six hundred dollars was his personal property. I knew that Jacob Miller was Clerk to Miller and Clements at the time he endorsed all the notes to the bank.

Gardner recalled, produced an invoice of the goods seized upon made at the time of the levy by Beach the Deputy Sheriff, Clements, Beach, O'Connell and myself were present and none others, at the time of the making of the second invoice.

" Invoice of Jacob Miller's goods taken by the Sheriff

98' Alspice 16	15.68	1 Counter Scale	8.00	8.00
14' Sine 2/-	3.50	1 Stone Pipe	12.00	12.00
4 1/2' Mieling 2/-	1.19	10 yds B ^o Cloth	36/-	45.00
1 Sack Corks 10 yds 8/-	10.00	10 - Kersymmer	18/-	22.50
25' 1 Bk Saw 6/-	18.75	21 - Sallinet	8/6	22.31
60' Green Lin 8/-	60.00	6 3/4 - Kersymmer	13/-	11.38
30' do - 6/-	22.50	1 1/2 - B ^o Cloth	6.00	9.00
68' do - 4/-	34.00	12 - do	36/-	54.00
60' Pepper 4/-	7.50	18 - Sallinet	7/-	15.75
41 1/2' Indigo 10/-	51.88	10 yds Beaver	18/-	23.06
64' Ginger 4	8.00	3/4 Kersymmer	18/-	16.9
248' Pulverizer 4/-	31.00	6 1/2 - Pilot	14/-	11.23
238' Crushed - 4/-	27.25	6 3/4 B ^o Cloth	24/-	20.25
40' Coffee 9	3.60	2 - Sallinet	10/-	2.50
244' Pul Sugar 4/-	30.50	15 1/2 - do	8/-	15.50
1 1/2' Bk Mieling 13	19.50	11 - Ship's Gray	6/-	8.25
1 Bk 234 Sugar 8	18.97	1 1/4 - Sat.	6/-	13.31
1 Rhode 12 1/4 117 Sugar 9	100.53	2 3/4 - Imuds	6/-	17.44
20 Bk 44 1/8 Mieling, 20	172.00	9 3/4 - Sallinet	7/6	9.17

90° Loaf Sugar 1/4	11.25	27 Yds Calico	160	
46 Sugar 1/4	5.75	27 - 190	160	8.94
34 Gal Vets 16	5.44	14 1/2 - do	1/6	2.72
28° Coffee 1/4	3.50	20 - do	1/4	3.33
42° Cinnamon 3/4	14.28	27 - do	1/4	4.50
7° S Snuff 2/4	1.75	30 3/4 do	15	4.61
14° B do 3/4	5.25	23 1/4 do	15	11.49
2 Box Raisins 10/4	2.50	16 do	16	2.56
2 Catty cat B Sea 8/4	26.00	16 do	1/6	3.00
42° 1/4 Sea 5/4	26.25	13 do	20	2.60
2 Chest Nutmeg 2 1/2	113.52	36 do	18	6.48
3 1/2 M Segars 800	28.00	3 Ducking	1/6	56
5 doz Salt 1/4	3.75	52 1/2 Yds Cambr 1/4		6.56
25° Sulphur 1/4	4.66	15 - Gingham 3/4		5.63
466 Hard Sugar 10	46.65	26 - Molasses 28		7.28
62 Brooms 1/4	7.75	25 - white Flannel 3/4		9.37
11 doz 24-35 Cloves 3/6	16.97	8 - Red - 4/4		4.00
4 1/2 Gall Brandy 28/4	145.25	8 - Cotton - 15		1.20
17 1/2 - Rattine 14/4	30.62	5 pr Winter Pants 3/6		22.50
15 - Mad do 14/4	26.25	3 1/2 doz Wrist Susp 12/4		5.25
14 - Whisky 20	2.80	24 pr G.C. Suspenders 4/4		12.00
20 - Vinegar 20	4.00	14 Six Pocket Walffs 8/4		14.00
1 Box Medicine	28.00	6 Cotton Turkey 3/4		2.25
23 Gall Gin 20/4	57.50	15 - do 1/4		1.88
13 pure Spirits 5/4	8.12	15 Gingham Cravat 3/4		5.62
11 Empty Casks 4/4	5.50	19 pr Cotton Hose 3/4		7.13
3 Iron Bar 12/4	4.50	5 pr Coat Buttons 9/4		5.62
9 Bullfrogs 3/4	3.38	2 pr Vest Buttons 2/4		.50
2 in Measms 12/4	1.50	10 Wool Comforters 4/4		5.00
17 1/2 1/4 Bd Cloth 30/4	11.00	90° Cotton Yarn 2/4		22.50
106 1/4 - Calico 8	8.82	47 Yds Bagging 22°		10.34
34 1/2 - do 1/4	4.31	72 - Canvas 1/6		13.50

4 caps	9/-	450	41	Chocolate	1/6	7.69
9 do	70	650	135	Starch	1/-	16.88
11 do	5/-	250	12 3/4	pr Cinnamon	40	5.10
2 do	8/-	200	75	Pepper	20	15.00
2 do	3/-	75	40	Allspice	2/-	10.00
10 do	11/-	875	4 1/2	Soap	2/-	1.12
8 do	4/-	400	10	dy Soap	20	2.00
14 do	3/-	150	6	Mustard	12/-	9.00
7 do	8/-	700	14	Sperm Candles	3/-	5.28
7 Sperm Nats	8/-	700	5	Candle Boxes	2/-	1.25
59 Palm	1/-	763	55 1/2	dy Chen Tobacco	2/6	17.34
4 pr Moccasins	10/-	500	4 1/2	Nutmegs	14/-	7.88
18 1/2 lbs Shooting	9	162	6	hooking Staples	12/-	9.00
35 Stales	1/6	656	7	do	2/3	1.94
29 do	1/-	362	8	do	5/-	5.00
1 1/2 pr dy Mil Soap	18/-	375	3	do	7/-	2.63
8 Min. State pencils	2/-	200	11	do	2/3	1.12
9 1/2 pr dy Blacking	6/-	731	1	frame	2/-	..25
3 1/2 pr Brushes	18/-	806	10	glap Sumps	3/-	3.75
1 Curry Combs		150	22	do	4/-	11.00
4 But Facets	3/-	150	38	Caster Bottles	1/-	4.75
6 pr Buck Gloves	8/-	600	10	Spice Jar	3/-	3.75
5 1/2 dy Spools	5/-	344	10	do	2/6	3.13
6 do	1/6	112 1/2	7	Samp Chimney	2/-	1.75
3 Cott Shuad	7/-	263	47	Drumblen	1/-	5.88
1 1/2 do	6/-	112	18	do	1/4	3.41
1 Bunch Linen	2/-	..25	50	do	6/4	3.12
4 packets pins	4/-	2.00	11	Botly & Boxes	2/-	1.00
1 do	5/-	62	20	Flasks	10	2.00
10 dy Pocket Knives	24/-	3.00	3	Guano lanterns	8/-	3.00
1 do	16/-	200	71	Tobacco	2/-	17.75
8 1/2 do	20/-	168	70	do	1/-	8.75
10 1/2 do	12/-	125	14	do	3/-	5.25

21 B ¹¹³ 132	114. 201	16 24	50.25	20 Plates	10¢	200
100 162	139	11	34.75	7 B ¹¹⁴ do	6¢	5.25
1 Brit Caster	11	88	12	do	3¢	.56
3 E & Basins	10¢	3.75	96 Com Bonts	10		9.60
1 do	13¢	1.63	42 Bonts	14		5.88
4 do	12¢	6.00	11 do	1¢		2.06
3 Pitchers	5¢	1.58	8 Dishes	11¢		4.00
12 Basins	3¢	4.50	12 do	2¢		3.00
8 Tumblers	5¢	8.00	8 do	4¢		4.00
19 Sist Cups	2¢	4.75	12 do	3¢		5.25
4 do do	3¢	1.50	44 do	3¢		19.25
18 Pitchers	2¢	5.62	5 Platters	1¢		4.37
12 do	3¢	4.50	17 do	4¢		8.50
12 do	4¢	1.50	19 Tea Pots	28		5.32
1 do	3¢	.38	2 Ston Jars	12¢		3.00
3 Tea Sells	10¢	3.75	2 Chimneys	2¢		.50
6 do Com Cups			6 Sugar Bonts	1¢		.75
54 Savens	114	2.81	14 ps Crockery	5		.70
11 do Cups	184	4.64	3 Mams, all	2¢		2.50
2 5/12 - plates	10¢	3.02	8 Empty flom	10¢		1.00
22 do	1¢	2.75	past box garden	18¢		2.25
5 do do	8¢	5.00	2 Counter Tables	48¢		12.00
8 1/4 do	5¢	5.16				

2.463.29

Exp sundry articles amounting to 14.56

\$ 2.448.75

This is to certify that we have together invoiced the goods mentioned in the above Schedule & now lying in the Store Number 245 Lake Street, and have agreed upon the prices set opposite each article (Being generally the retail prices marked upon the articles) at the time such invoice was made. And

the amount thereof as appears by the Inventory
D. R. Clement
Chicago, June 28th 1848. J. C. O'Connell.

When the levy was made Jacob Miller
selected Clement to appraise the goods levied
upon and the Deputy Sheriff, selected O'Connell
and these two inventoried the goods seized and
set down the value opposite each article and
appended their certificate to it. Known of several
Barrels of Whisky purchased by Jacob Miller
after the sale.

John Beach called by Plaintiff - acted as Deputy
Sheriff, levied on the frame building and on the goods
in the store formerly occupied by Miller & Clement
under the attachment of Nelson & Graydon - and
on the Execution of Silveston & Fellows, said on the
Execution, and the attachment, - Attachment pro-
duced.

" State of Illinois
Cook County, ss.

The People of the state of Illinois to the
Sheriff of said County, Greeting: Whereas,
William Graydon hath complained on oath to
James Culp Clerk of the Cook County Court
of Cook County, that Augustus Miller & David
R. Clement are jointly indebted to the said ~~William~~
William Graydon and John I. Nelson to the amount
of One thousand One hundred & Twenty Six Dollars
and Eleven Cents, and oath having been also
made, that the said Miller and Clement are
about to depart from the state of Illinois with
the intention of having their goods and Chatter
and effects removed therefrom, And the said

William Graydon 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 Augustus Miller & David R. Clements
to be found in your County, as shall be of value
sufficient to satisfy the said debt and costs, according
to the said Complaint, And such estate so attached
in your Hands to secure, or so to provide that the
same may be liable to further proceedings thereupon,
according to law, at a term of said Co. & County Court
to be holden at Chicago, within and for the County of
Cook, on the first Monday of October next, so as
to compel the said Augustus Miller & R. Clements
to appear and answer the Complaint of the said
John G. Nelson and William Graydon, And that
you also summon W. Kimball, C. B. Ingraham, E. S.
Ingraham Barr & Guild, a Carpenter Mc Donald & Leary,
C. D. Hinton, S. Putnam, James Branigan, M. Williams,
J. C. Clark, L. C. Halliday, W. Walcott Potter, & Standley,
W. Ballinger & M. Ousterhout, M. Colvin M. O. Barnes
as Garnishees to be and appear at the said Court on
the said first Monday of October next then and then
to answer to what may be objected against them
when and when you shall make known to said
Court how you have executed this writ, And how
you then and there this writ,

Witness the Honorable Hugh D. Wick, Judge
of our said Court, and the Seal thereof at Chicago
in said County this twelfth day of June
in the Year of our Lord one thousand eight hundred
and one hundred and forty eight. James Connelley, Clerk

"Attached as per schedule annexed and reading
the within in the presence of Augustus Miller, David
McClements, W Kimball, J C Clark, J C Halladay &
J Branigan, the other persons within named & before,
I do so Aff

By J B Black Sept 9

"By virtue of the within attachment I have levied
upon the following property. To wit

1 piece Black Cloth 10 yds	1 piece Tickling 3 yards
1 " Capener 10 "	2 " Canvass 5 1/2 "
1 " Sallinet 21 "	1 " Flaid 15 "
1 " Capener 6 3/4 "	1 " Woolly 26 "
1 " B Black Cloth 12 "	1 " Muscad 25 "
1 " Sallinet 18 "	1 " Red do 5 "
1 " Beaver 10 3/4 "	1 " Cotton 5 "
1 " " 6 3/4 "	5 pr Pants
1 " Capener 3 3/4 "	3 1/2 lbs Wet Suspensory
2 " " 2 "	14 Hosiery
1 " Pilot 6 1/4 "	6 others
1 " Sallinet 15 1/2 "	14 Diet Handkerchiefs
1 " " 17 1/2 "	15 " do
1 " S Gray 11 "	15 Dingham Cravats
1 " Brown 23 1/4 "	19 1/2 Cotton Shoes
1 " Sallinet 9 3/4 "	5 prs of Buttons
1 " Black B Cloth 17 3/4 "	2 " do
3 " Calicoes 110 1/4 "	10 Comforters
1 " " 34 1/2 "	15 bundles Cotton Yarn
1 " " 29 "	1 piece Bagging 47 yards
2 " " 54 "	1 " Canvas 7 1/2 "
2 " " 34 1/2 "	50 Caps
2 " " 57 3/4 "	66 C Mats
2 " " 39 1/4 "	4 prs Moccasins
4 " " 65 "	1 Sheet

29 S Plates
 1 1/2 doz S Soap
 800 S Pencils
 9 1/2 doz Blacking
 3 1/2 - S Brushes
 3 - Cotton Thread
 1/4 - Linen Thread
 5 Packages Pins
 4 1/2 Chocolate
 3 1/2 Boxes Pepper
 2 - Allspice
 3 - Box Mustard
 5 Candle Boxes
 5 5 1/2 doz Chewing Tobacco
 32 Lamps
 20 Candy Tins
 9 1/2 doz Staps
 4 Bottles Pepper Sauce
 5 1/2 lb Tobacco
 10 Cans
 25 S Cups
 3 Tea Sets
 6 doz Common Sauces
 5 1/4 - Cups
 20 large Blue Plates
 5 S Edges do
 2 - do do
 94 Common Bowls
 42 - - -
 9 doz Vegetable Dishes
 19 Tea Pots
 14 Trina

35 S Plates
 12 Curry Combs
 11 Trunks
 6 pr 13 Gloves
 11 1/2 doz Spools
 1 1/2 Cotton Thread
 1 doz Pen Knives
 2 1/2 - do
 12 3/4 Cinnamon
 Part Box Soap
 10 doz Soap
 part Box Sperm Candles
 4 1/2 Nutmegs
 29 Looking Glasses
 38 pepper Casters
 9 Lamp Chimneys
 20 Masks
 3 Lamps
 1 Crest Stand
 21 Wash Basins
 18 W Pitchers
 14 S do
 13 S do
 5 1/2 doz Blue Sauces
 5 1/2 - - - Cups
 8 1/4 - W Plates
 8 1/4 - Small do
 1 1/2 doz Small Cups
 11 - - -
 22 Dining plates
 2 Stone Lamps
 1 Bag allspice

58° YH Tea	part Bag Corals
60° Pepper	do Chest Tea 15 25
41 1/2 Indigo	do Y R J 60
45° Ginger	do 30
1 B. B. Sugar 235	1 1/2 B MacNend
18° Ginger	32° Coffee
2 B Pul Sugar 492	1 B Sugar 234
20 Banned Whiskey	1 Hoghead do 1119
10 Loaves Sugar 90	1 Keg Ginger 45
1 Keg Sal Petre 34	1 " E Salt 28
7° Scotch Snuff	42° Cinnamon
14° Black do	2 Boxes Raisins
1 Chest YH 42	2 Caddys of Tea 25
2 Chests Tea 127	13 Box Sugars
5 Kegs In W.	part 112 Sulphur
1 Box B Sugar 466	1 Keg Cloves
part 1/4 Cask Brandy 41 1/2	do 1 Brown
" 1 Mile 17 1/2	part 12 Whisky 14 gallons
" 15	" Vinegar 20
" 15	" Gin 20
1 Box Medicine	12 Empty Barrels
9 Shells	1 Counter Scale
2 Duckets & Measures	1 Oil Can
6 Sugar Bones	1 Stone & pipe
8 Empty Sugar Barrels	3 B Hams
part 1 Box Garden Seeds	1 Building or Store
which has been occupied by Miller & Clements	
Chicago	J. Cook Sheriff
June 12 th 1848	By John Beach Deputy

On his cross examination Beach was re-
 quired to produce the Execution upon behalf
 of Hydovston & Wellons which he produced, and the
 Defendant offered the same in evidence, to the

3
reading of which plaintiff objected and the Court
sustained the objection, upon the ground of the in-
sufficiency of the Notice under which it was offered,
to which opinion the defendant excepted. The
Defendant then moved the Court for leave to
amend said Notice by inserting therein the name
of the Court from which said execution had
issued, which Motion was denied by the Court
and the defendant excepted to the decision of the
Court. Beach further testified that when he went to
levy no one was there but Jacob Miller and he saw
no change in the Management of the business of said
Store of goods, at the time of the levy from what it
had been prior thereto, that ^{when} he went to levy he
found Jacob Miller in the Store, he informed
him of his business, but Jacob Miller wanted
witness to wait until his brother Augustus Miller
came in, which witness did, and Augustus
Miller informed witness that Jacob owned
the goods. The Sheriff has been fully indemnified
for this levy. The property has been all sold by the
Sheriff, under the said process, went with Augustus
Miller to Gardners office.

Waller Kimball, called by Plaintiff, is Clerk
of the Cook County Court of Common Pleas,
has charge of the records of said Court, produced
and read to the Jury the Records of said Court
showing that the attachment of Nelson and Bradley
against Miller and Clements had been dis-
missed as is shown by the said records. (No writ)

May 12 1849. John G. Nelson & William Graydon

Attachment

Augustus Miller & David Clements

This day comes the said Plaintiffs by Morris & Brown their attorneys and the said Defendants by Gardner & Ballingall their attorneys also come and issue being joined herein, let a jury come, and thereupon come the Jurors of a Jury of good and lawful men to wit, John A. Oliver, J. W. Stude, James Leese, John Whitland, Francis Shanley, Henry Reynolds, J. H. Sullivan, J. Barbour, James Campbell, Peter Ellis, John Mc Fall and William Brown who being duly elected tried and sworn well and truly to try the issue joined as aforesaid after hearing the evidence adduced, argument of counsel and instruction of the Court retire under charge of an Officer of the Court to consider of their Verdict, and afterwards come into Court and say we the Jury find the issue for the Defendants. And thereupon the said Plaintiffs enter their Motion for a new trial herein;

May 2 1849.

John G. Nelson & William Graydon

Attachment

Augustus Miller & David Clements

This day again come the said Parties by their attorneys, and after argument heard on the said Plaintiffs Motion for a new trial herein, the Court being now fully advised in the premises doth Order that the said Motion be overruled.

Therefore it is considered that the said Defendants do recover of the said Plaintiffs their costs and charges in this behalf expended and have Execution therefor.

500
600
Witness knows the store and goods in question,
the building was worth five or six hundred
dollars, was often in the store, saw no change
after the sale from Miller & Clements to Jacob
Miller except in the condition of the goods, there
seemed to be the same management, and control,
went there twice and saw Jacob Miller there alone,
Miller & Clements were not there then, I bought
two barrels of whisky and wanted to pay for
them by an account I had against Miller and
Clements, this Jacob Miller objected to, and
I had to pay the money for the whisky to him, -
this was the first I ever heard that Miller and
Clements had sold to Jacob Miller, this was
some weeks after the sale to Jacob Miller, -

John Beach was again called by the Court,
for the purpose of advising the Court as to whether
the witness ^{cross} was a competent witness and not as ev-
idence to the jury, and on being interrogated by
the Court stated that he sold the goods & store
in question upon the attachment, suit out by
Nelson and Graydon and upon the execution
of Yelverton & Mellons, -

R. V. M. Cross - Called by the defendant, -
testified, that he was employed as an attorney by
Yelverton & Mellons of New York to collect a sum
of money due from Miller & Clements to them,
that he frequently called upon them for payment
and pressed them to pay or secure the payment of
that debt which was twelve hundred dollars
and upwards, that he was frequently about their
store both before and after the sale alleged

to have been made to Jacob Miller, and that
he saw no change in any way, nor did he hear
of any change, either from the parties or any
other persons, Miller & Clements were about
the store as they had previously been and their
sign was over the door as usual, had no reason
to believe there had been any change of propie-
ty in the store, made it his business to watch
these men, on the day before Gilchriston & Hellons
obtained judgment against Miller & Clements,
I heard of the sale to Jacob Miller.

Cross also testified that he had signed an indem-
nifying bond to the Sheriff, indemnifying him
against the levy under the execution of Gilchriston
& Hellons. And the Plaintiff thereupon moved
to exclude his testimony which the Court over-
ruled and the plaintiff excepted,
which was all the evidence offered on the trial
of this cause.

The Plaintiff then asked for the
following instructions which were given, except
the third.

9
1st If the Jury shall believe from the evidence
that the sale from Miller & Clements to Jacob
Miller, was made, before the levying of the at-
tachment, for a valuable consideration and in good
faith, and that Jacob Miller thereupon obtained
delivery and possession of the property, and so law-
fully retained and used it, up to, and until, the
levying of the attachment, but, then the law in
this case arising out of the levy of the attachment
is for the plaintiff.

2nd If the jury shall believe from the evidence, that

at the time of the laying of the attachment, upon the property in the declaration, the property was the property of Jacob Miller, and not the property of Augustus Miller and David H. Clements, and that the goods so attached have not been restored to the said Jacob, then the Plaintiff, ought to recover the value of such property, according to the evidence given of such value and may also recover interest, from the date of the levy of the attachment, together with such additional damages as the circumstances attending the attaching; may in their judgment seem to warrant.

3^d. If the Jury shall believe from the evidence, that Jacob Miller was security to the Bank of Toledo, for Miller & Clements, to the amount of some five thousand dollars, and that the Property sold by Miller & Clements to Jacob was to indemnify him for such security, then Miller & Clements had a legal right to prefer Jacob Miller to any other creditor.

4th. If the Jury shall believe from the evidence, that the Promissory Notes given, at the time of the sale, by Jacob Miller were delivered to the Bank of Toledo, and that such Bank was then a creditor of Miller & Clements, and that the Bank cancelled so much of the debt of Miller & Clements as was equivalent to the amount of Jacob Millers Notes, then the giving and transfer of the Notes and cancelling of the debt, was a valuable consideration for such sale of the property.

5th. If the Jury believe from the evidence that the conveyance from Miller & Clements to Jacob,

Miller was made in reality to secure him as their
endorser and security to the Bank of Toledo,
and was made in good faith, and for a valuable
consideration, and that the possession was taken
by Jacob at the time of the sale, and retained
by him, then although it may have resulted
in delaying other creditors, still it is a valid
transfer, and vests the property in the plaintiff.

The Defendant asked for the following instruc-
tions which were given,

- 1st If the jury believe from the evidence that
Miller and Clement remained in possession of the
goods, and continued to exercise acts of ownership
over the goods, then Jacob Miller under such
circumstances could not protect the goods from
the attachment in the hands of the defendant,
- 2nd That if the Jury believe the sale was
made to Jacob Miller with a design to defeat,
delay, hinder or defraud the creditors of Miller
& Clement in the collection of their claims against
Miller & Clement, then they will find for the
defendant provided the Plaintiff shows it,
- 3^d That if the Jury believe from the evidence,
that Miller & Clement at the time of the sale were
insolvent, and made the sale at or about the
time that they expected judgments would be ob-
tained against them, it is evidence of fraud from
which the Jury are at liberty to infer that the
sale to Jacob Miller was made with a design
to injure, hinder or defraud their creditors if
Jacob Miller had knowledge of thereof,
- 4th That if the Jury believe from the evidence

that Miller & Clements after the sale to Jacob Miller retained concurrent possession with him of the goods it is a circumstance from which the jury may infer that the whole transaction was fraudulent as to the creditors of Miller & Clements.

(Vendor) 5th When property remains in the possession of the Vendor ^{after the sale as the visible owner}, it is a fact from which the jury may infer that the sale was fraudulent and void against Creditors.

6th To defeat an execution by a bill of sale there must appear to have been a bona fide substantial change of possession, and if the jury believe from the evidence that Jacob Miller did not take and retain exclusive possession of the property claimed by him, but permitted Miller & Clements to retain concurrent possession with him, it is a fact from which the Jury may infer fraud.

The defendant also asked for the following instructions which were given as asked for by the defendant.

7th If the Jury believe from the evidence that no visible change took place in the ownership or control of the goods and property, sold by Miller & Clements to Jacob Miller, after said sale, the Jury are at liberty to pronounce said sale fraudulent and void as to the creditors of said Miller & Clements.

8th If the jury believe ^{from the evidence} that Jacob Miller ^{is} the brother of ^{brother of} Charles P. Miller, they are authorized by law to take into consideration the fact of said relationship, in decid-

ing upon the validity of the sale to Jacob Miller
9th If the Jury believe that the debt to the
Bank of Toledo was a subsisting and bona fide
debt due from Miller & Clements at the time
of said sale, still if they also believe from the
evidence that the said sale and purchase was
made on the part of said Miller & Clements &
Jacob Miller for the purpose as well of paying
the debt to the Bank, as to delay, hinder or
defraud Yelton & Mellons and the other
creditors of Miller & Clements, then it is their
duty to find for the defendants.

10th If the Jury believe from the evidence
that the conveyance by Miller & Clements to
Jacob Miller was made for the purpose of
indemnifying him as their endorser in the
Bank of Toledo, and not as a subsisting creditor
of said Miller & Clements at the time of the con-
veyance, then the law is for defendant.

13th If the Jury believe from the evidence
that the conveyance was made by Miller and
Clements to the plaintiff for indemnity, that
if that was the only consideration the convey-
ance being absolute in its terms was fraudulent
as to creditors and the subsequent payment of
the debt for which plaintiff was liable, can
not alter the legal nature of said conveyance.

14th If the Jury believe from the evidence
and the law placed before them, that the convey-
ance on which the plaintiff relies as showing
his title to the property, was void in law as to
the creditors of Miller & Clements then they
must find for the defendant.

Qualification
to 14th Instruction

The Jury will understand that the law to be found is that which is given them from the Court. That in said action the jury are to be governed by the law as laid down by the Court.

The following instructions asked for by the defendant were refused:

11. If the Jury believe from the evidence that no sale was made by the Sheriff of the property described in the declaration under the attachment and Execution in question or either of them, then under the pleadings in this case, they must find the Defendants Not Guilty.

12. That the execution of Yelverton & Fellows being excluded from the Jury there is no legal evidence before the Jury of the conversion by the Defendant of the property in question.

To the giving of which instructions on the part of the Plaintiff, and the refusal to give the instructions asked for by the Defendant, and to all the rulings and decisions of the said Court in the progress of the said trial the said Defendant excepted at the time, and prays that this Ver Bill of Exceptions may be signed and sealed and made a part of the record.

Giles Spring Seal

State of Illinois
Cook County

I Walter Kimball Clerk
of the Cook County Court of Common Pleas
within and for the County of Cook and State
aforesaid do hereby Certify that the foregoing
is a true and correct copy and transcript
from the papers and of the Records of Said Court
now on file in my office, in the case of Jacob
Miller vs Isaac Cook.

In Testimony whereof I have hereunto
set my hand & affixed the Seal of Said
Court at Chicago in Said County this
8th Day of April A.D. 1852.

Walter Kimball

Clerk,

And now comes the said Jacob Miller by
J. H. Arnold his attorney and says that
in the record & proceedings aforesaid & in
the rendition of the judgments, ^{aforesaid} there is no
error in manner and form as the
said Isaac Cook hath above in his
said assignments alleged and this
he is ready to verify by the record
aforesaid, wherefore he prays that the
judgments aforesaid may be affirmed in
all things &c.

J. H. Arnold for Miller

Cook Co. Ct of Com Pleas

Jacob Miller

Trade Cook

Transcript

Filed June 11, 1850.
S. Leland Clk.

for. pr. Clk. —

\$ 21.35

Isaac Cook }
v }
Jacob Miller } Appeal from Cook.

The counsel for the appellant having carefully examined the record in this cause and attentively read and considered the opinion of the Court affirming the judgment of the Court below, have determined to solicit a re-hearing; and respectfully we leave to submit the following reasons.

When the argument in this cause was heard the bench was not full, his honor Justice Trumbull being absent. The case is one of great importance, and involves a large sum of money. The defendant, was at the time of the commission of the alleged trespass ~~was~~ Sheriff of the County of Cook, and in that capacity, having ^{and attachments} an execution in his hands, against ~~the property~~ Miller and Clements seized the goods in controversy as the property of the said Miller and Clements under the following circumstances. Miller and Clements were merchants in the City of Chicago, occupying a store on Lake Street, with their sign over the door, and as such possessed of

the goods in controversy. The plaintiff
was their clerk. ^{brother of Augustus Miller} They were embarrassed
circumstances. Executions were about
to issue against them. ~~see~~ This state
of facts existed on the 17th of April
1848. On the evening of that day
Miller one of the firm of Miller &
Clements (Clements at the time ~~was~~
being absent) anticipating the issue
of executions against the firm, without
attempting to negotiate a sale of the
goods to the plaintiff who was their
clerk as before stated, and without
any consultation with the plaintiff,
goes to a lawyer in the city of
Chicago for advice touching the
most effectual mode of ~~for~~ securing
the plaintiff as their endorser to the
Toledo bank, and stating at the same
time his anticipations that an execution
would be out against their firm
in the morning. This lawyer advised
a sale to the plaintiff of all the goods
belonging to the firm of Miller &
Clements. They return together to the
store, and there the proposition is
made to transfer the goods to the
plaintiff which is assented to and
immediately the store is closed, and
in secret, with no one being present

error in
fact

but the plaintiff, Augustus Miller and
the attorney, the goods are invoiced,
the whole being stock not being either
weighed or measured, and in the
language of the witness a "formal
delivery" of the goods was made by
Augustus Miller for himself and
further to the plaintiff. All this was
done in the night time, witnessed
by no one but the parties above men-
-tioned. Not one dollar in money
was paid by the plaintiff to Miller
& Clements, and instead of the transac-
-tion purporting upon its face to be
an indemnity to the plaintiff as
endorser for Miller & Clements to
the Toledo bank, it was in reality
an absolute sale of the goods, and
the notes of the plaintiff taken for
the amount of the invoice payable
at 3.6. 9 & 12 months. ~~If this~~
~~is a contract of indemnity or a coupon~~
~~After these transactions which~~
After this sham sale & formal delivery
thus made in secret had transpired,
morning dawned, and the sun rose
upon the new establishment of "Jacob
Miller" The sign of Miller & Clements
remained over the store door, Jacob.

untaken

Error in
fact -

Error -

Under their former clerk was seen
as usual in the store; in what capacity,
whether as clerk, or owner was un-
known to the defendants and the
business men of Chicago. Clements
slept in the same building as usual,
he was still about the store as was
also Augustus Miles. Both to
all appearances managing the business
as before the alleged sale & delivery
took place. These were the principal
circumstances under which the defendants
took and seized the goods in controversy.
The mere statements of these facts is a
sufficient justification for his conduct
is ~~conclusive~~ in seizing the goods, as
far, at least, as equity and good conscience
are concerned. The defendant is sued
for the trespass Jacob Miller the Plaintiff
alleging that he was at the time of
the levy the owner of the goods seized.
The defendants after proving all of
the above facts and other circumstances
tending strongly to prove fraud in
this transaction, offers in evidence
an execution in favour of Helvetius
& fellows, and against Miller & Clements
for the purpose of showing his right
to attack the sale & delivery as fraud-
-ulent. This execution is excluded

from the jury upon the technical ground
that the name of the court out of
which it issued ~~is~~^{was} not formally set
forth in the notice given by the
~~defendant~~^{defendants} under his general issue
plea. The defendant thereupon moved
to amend his notice, a motion almost
of course, but which nevertheless is
discretionary with ^{the} court, and if this
motion is overruled, the whim of
the judge being regarded by this
Court as the boasted lex terra. Thus
the very foundation of our defence is
taken from us and a bald case
of Malicious and wanton trespass on
the part of the defendant in seizing
the goods is laid before the jury.
Nor is this all, the same Court who
excluded the foundation of our defence,
refused an application to amend
the notice because he is temporarily
"clothed with power" adds insult
to the injury already inflicted upon
an innocent officer by instructing
the jury that as the measure of damages
to which the plaintiff is entitled, they
may give the value of the goods & interest
from the time of the conversion to the
time of the trial, and such other
damages as they in the exercise of

an arbitrary discretion may think proper to allow him. Thus giving to the jury the power of inflicting amount money in a case above all others free from ~~the~~ all circumstances of aggravation, misconduct or oppressions. This is a general history of the trial in the court below, as appears of record in this cause. Under these circumstances the jury return a verdict for the plaintiff for the sum of \$3,236. 23., the defendant moved for a new trial which motion was overruled. and the defendant excepted & now prosecutes his appeal to this court. and assigns for error

- 1 In rejecting the execution
- 2 Refusing leave to amend notice
- 3 In giving plaintiffs instructions 2, 4, & 5
- 4 Overruling motion for a new trial.
- 5 ~~overruling~~ Refusing defendants instructions No 11.

The court in their opinion say that "The question of prand is not before us, nor was it properly before the jury in the court below" and the reason assigned is that the execution being excluded, and no judgments having been rendered in the attachments sent "They may be laid out of the question. To this position we beg leave to reply.

1. That the sheriff seized the goods under the attachments & execution

2. The attachment is set out in the bill of exceptions
3. The attachment is properly described in the notice n^o 1.
4. The attachment was levied June 18 1848 & was not dismissed until May 12 1849.
5. The Court refused the instructions n^o 11 asked by defendants as to a justification under this attachment.

Now upon this state of facts we infer, that the officer was not a trespasser by seizing the goods under the writ of attachment, it issued out of a Court of competent jurisdiction, it was valid upon its face, & the defendant was required to make the return, he would have been guilty of a neglect of duty if he had refused to do so, the mere fact that the writ was afterwards dismissed would not make him a trespasser at this, in order to render him a work factor ~~in proceeding~~ the plaintiff should have

1. Notified him of the dismissal
2. Demanded the re-delivery of the goods.

until this notice was given his possession was held ^{under} lawful authority and he cannot be made a trespasser by reluctance

But it
was vs.
Miller & Chas.
& Nat. J. Miller
the
justification

This map
furnishes no
justification
for taking
J. Miller's
goods

But whether the defendant was entitled to notice or not of the disimpal of the attachment suit, he was clearly not a trespasser in retaining the goods until the 12th day May 1849. On which day the record shows the attachment suit was dismissed. ^{personal} legal conclusions may be drawn from these premises viz

Act lawful,
because not
vs J. Miller.

5th now
attacked after
dismissal!!

1. The seizure having been made under an attachment, and being lawful at the time, the defendant had made out a prima facie title to impeach the sale of the goods and shift the burden of proof upon the plaintiff to show that by some subsequent unlawful act of the defendant he had made himself a trespasser ab initio.

2. This state of facts which is admissible under the general issue, disproves the allegation in the declaration that the defendant unlawfully took seized and carried away the goods in said declaration mentioned and establishes conclusively that if ^{the defendant} having acquired the ^{possession of the} goods lawfully, afterwards wrongfully detained or converted them, the only remedy for the plaintiff was an action of Trove.

3. The verdict of the jury as we have seen was \$ 3.236.23.

The value of the goods was 2.448 73
of the building 500.00

Int on goods from ~~May~~ May 12

1849. When deft's possession
became unlawful by the
disimpale of the attachments

up to incl Feb 13/50 is 110 19

On the building 22 50

\$ 3.081.42

Leaving a verdict for an excess over and
above the whole value & interests of the
sum of \$ 154.81.

These facts demonstrate the illegality of
the second instruction given on the part of
the plaintiff below, and which ^{by the way} instruction
tho' assigned for error, and earnestly pressed
upon the arguments by the counsel for
the appellants, seems to have escaped the
attention of the Court.

This second instruction assumes as a
legal proposition that the ^{true} measure of damages
in this case is

1. The value of the goods.
- 2 Interest from the time of the seizure
3. Together with such additional damages
as the circumstances attending the
attachment may in their judgments seem
to warrant.

10
The second branch of this instruction was clearly wrong, if as we insist the seizure was lawful up to the time of the dismissal of the attachments; and the illegality of the defendant's conduct consisted ~~of not~~ in retaining the goods after attachments dismissed. And by means of this erroneous instruction ~~the~~ the jury rendered a verdict of \$154.81 more than as the plaintiff was entitled to recover unless ~~the third proposition~~ the third ^{branch} ~~branch~~ of this instruction is correct which gives the jury a discretion; a proposition which ~~we must~~ ~~abhor~~ abhorrent to the first principles of justice. ~~Such money as~~ Where vindictive damages are allowed ~~where~~ a trespass has been committed under circumstances of aggravation or oppression, and in such cases it is ~~not~~ ~~not~~ the province of the jury to fix arbitrarily upon the quantum of damages, but the court should instruct them that they must find from the evidence that the defendant has been actuated by malice, or that the trespass was a wilful one, before they can exercise any discretion whatever upon the subject of vindictive damages. Rose v Stone 1 Barr & P. 12 190. 4 Blackf 12 348

The writ of attachment under which the Sheriff acted, having been issued by the Circuit Court, that Court having jurisdiction to issue a writ of attachment, the law requiring an affidavit of indebtedness to authorize the Court to issue the writ, the presumption of law is that such affidavit was filed, this *prima facie* establishes the relation of *creditor & debtor* between the plaintiffs in attachment and *debtor & creditors* against whom the attachment issued, at least in a collateral action like this where the defendants being a sheriff and the person to whom the writ was directed is justifying his acts under the writ, *prima facie* then he is justified to justify his seizure ^{and at least} to prevent a verdict of *unlawful damages*, by showing that the sale of the goods in controversy were *pendent* ~~word~~ as to creditors.

— *Compounded*
Another question of law and fact we beg leave to present to the Court as a ground of a re-hearing. ~~We say that under the writ of attachment~~ while it we think we have established the position that the defendants having made the

seized as sheriff under a writ of attachment, which was valid upon its face and issued by a court of competent jurisdiction at the instance of a creditor, whose debt for the purposes of our jurisdiction is prima facie established. proved, has a right to attack this sale as fraudulent. Taking this proposition as a tenable one, the verdict was against law & rendered in this particular. The law requires that as to creditors the possession of goods & chattels shall accompany and follow the deed or sale, else all such conveyances shall be void in law. Is this rule a mere matter of form, existing only in contemplation of law, or is it a tangible and visible rule, intended for practical and beneficial purposes. If the latter, what substantial act is contemplated by the law in order to make a valid transfer of personal property to creditors and subsequent purchasers? Possession of goods is prima facie evidence of title. ~~A~~ Credit is extended and ~~the~~ the property purchased on the faith of the visible ownership

convinced by the possession of ^{the} goods. What
kind of possession does the law contem-
plate? It meant an actual possession
a visible, ^{open} and notorious possession, as
~~Contrasted distinguished~~ Contrasted distinguished
from a secret ~~mixed~~ or deceptive
possession, which may be in one
while to all appearance it may be
belong to another. Unless then the
possession upon a sale is changed
law & in fact, unless that pos-
-session is open, visible and no-
-torious so as to leave no doubt
upon the minds of ~~the~~ Community
as to the fact in whom the possession
resides, it is calculated to deceive
mislead, and the parties who
have continued it by their equivocal
acts & conduct contributed to the
late deception must bear the con-
-sequences of their own neglect. —
Apply these principles to the facts
proved in this case (& which
will not be repeated) and then
answer the question, was there in
this case such an open & visible
change of ^{the} possession of the goods
involved in this controversy as to
give notice to the world that Miller &
Clements had ~~fully~~ parted with their
title to them? We answer there was not.

Acts' the jury have passed upon this question of possession, yet their finding under the circumstances is entitled to no weight whatever.

1. Because the court withdraws the question of fraud from their consideration by excluding one execution & attachments
2. Because the facts necessary in law to constitute a possession of the good as against creditor, was not given the jury in charge by the court.

Another point in this case, and which was overlooked by the court in delivering their opinion, arises out of the giving of the 4th instruction by the court below as asked by the plaintiff. This instruction is objectionable upon these grounds.

1. It is deceptive & calculated to mislead the jury as to the time referred to, when the arrangement with the Bank of Toledo was effected; upon a fair construction it refers to the time of the sale, when in fact as appears by the evidence of the President of the Bank (Charles Miller) the arrangement was made in May 1848.

one month after the sale of the goods
was made.

2. It is erroneous in assuming that
the facts therein stated would con-
-stitute a consideration for the bill
of sale. Before the sale the Plaintiff
was endorser and Miller & Clements
makers of the notes due the Toledo
Bank, after the sale the only change
(and this one month after) made
was that the Plaintiff became principal
and Miller & Clements similar to the
Bank. The difference is "twixt tweddle
dum & tweddle dee". These facts
constituted no consideration whatever.

3. This instruction declares that a transaction fraudulent in its
inception, may become purified, by subsequent acts of the fraudulent
parties, this involves a contradiction in morals, as well as in law.
The fifth instruction is also erroneous
in this.

± The mere liability of a surety to pay a debt
altho' a consideration for a promise
of indemnity or an actual in-
-demnity is no consideration for
a transaction which upon its face
purports to be ^{an} absolute ^{sale of goods} & founded
upon the notes of the vendee given
for the purchase money as in this
case.

Again in relation to the exclusion of the execution upon the ground of the insufficiency of the notice, we have but one or two suggestions to make

~~The court in their opinion say "Had~~
~~to the opinion that~~

The Court in their opinion say "Had
 M. & Clements been the parties to and
 the notice given to them, we should
 be inclined to hold the notice sufficient"
~~we respectfully ask~~ before what ground
 is this inclination of the Court based?
 in language of the Court because "they
 might reasonably be supposed to know
 what judgments & execution were refused".
 The same reasons apply with as much
 force to the plaintiff

1. When the alleged fraudulent sale
 was made to way in anticipation
 of this very execution & the plaintiff
 knew it.

2. When the defendants made the
 levy upon the goods in controversy.
 It appears from the evidence
 that the plaintiff ~~knew~~ was
 informed of ~~the~~ his intention to
 levy this very execution.

Again there is a much stronger reason
 why this notice is sufficient as against
 the plaintiff. He claims to be a

bona fide purchaser of the goods from Miller and Clements. Creditors on the contrary allege it to be a fraudulent sale. The only point in a controversy of this kind which the plaintiff has a right to notice of is that we impeach his purchase as fraudulent. If his purchase is bona fide, the same proof is necessary to substantiate it against the creditor as another, and he must come prepared to defend his title. It makes no difference to him whether we claim as creditor under a distress, execution, mortgage or otherwise, so that it is impossible for him to be surprised.

In conclusion we refer the Court to the Case Wilson v Rastall 4 T R 753 ~~case~~ in which Lord Kenyon says "Whenever a mistake of the judge has crept in and swayed the opinion of the jury I do not recollect a single case where in which the Court have ever refused to grant a new trial". That ~~among~~ ^{County Court} ~~the~~ ^{cases} ~~mistakes~~ ^{of the Court} have crept into this, upon the trial, which have greatly swayed the jury, is manifest upon an inspection of the

of the record, that the merits were not
fairly tried is evident, and that
justice requires a new trial we do
not entertain a doubt; and we
trust that this ~~case~~ Court upon
a review of the case will grant
a re-hearing and having heard
a new argument reverse the judgment
and demand the cause for a new
trial.

Morris & Blackwell
for appellant

Isaac Cook

Jacob Miller

Pickin for rehearing

Sup. Court

Isaac Cook appellant

vs
Jacob Miller

Protst against
a Re-hearing -

The object of a Re-hearing is to re-examine a cause. It will be granted when the case has not been fully argued - or some point has been overlooked - or there is some great legal or constitutional question decided.

In this case, there has been very full, long, able & elaborate argument. The case was fully & deliberately considered by the Court. & the decision arrived at is in accordance with law & equity.

There is not in the future for a re-hearing, any new suggestion, nor further authority, nor new argument.

The Petition is a mere restatement of the argument before the Court.

It is mere pertinacity, & a meddling with the opinion of the Court.

1. The statement of facts in future is not a fair statement, as appears from the Bill of Exceptions.

1007-43

There was no fraud in fact, nor any pretence of charging for charging it.

It is simply a question whether Miller,
the Endorser for Miller & Clements, bona
fide, & honest, shall be ruined, or
whether some of the N. York creditors
of M. & Clements shall suffer -

Cook, the appraiser, has no interest in the
results, being fully indemnified.
Unhappily, indeed, the keeping of records
of sale of the property, for next
year, may be useful, & to his
interest.

It is assumed that Miller of firm
of Miller & Clements went to Gardner the
Atty, without first consulting Jacob Miller.
This is untrue in fact, & is a
gratuitous assumption.

After the sale, the Endorser
does not show a single act of
ownership over the property - in fact of Miller
& Clements.

Jacob Miller died at, Sill, by
exchange &c. &c. -

The jury below, the Court
below, & the Court here - have
found against fraud.

We read in the petition of the
sums rising on establishment of Jacob
Miller. The "whims" of the
Court &c. -

These things need no reply.

It would be presumptuous, in the Council, making these suggestions, to add argument & illustrations to sustain the opinion of the Supreme Court.

The reasons & for re-hearing - have all been ably presented to the Court in the argument ^{on the first hearing}. They are neither strengthened, nor improved in the future - Having endeavored to answer them when first presented, I will not go over the ground again.

It is said that the attachment justified the Sheriff, altho. subsequently dismissed. True as against Wills & Clements.

But Jacob Wills, had a bill of sale from them. Then being no judgment ~~in favor of~~ our debt, as shown by the result, the Sheriff could not justify, nor could he raise the question of fraud.

Even if he had have properly raised the question of fraud, the jury have negatived it.

The Court is most earnestly urged,
not to by granting a Motion
for Mistrial or Re-hearing
to seriously prejudice, if not
ruin Jacob Mills.

Justice has been
done, the law faithfully administered

I trust & believe the Court
will not grant to the
petitioners of Counsel what
it refused to their logic &
argument —

J. N. Arnold
Atty for J. Mills.

Sap. County
Issue Book

in
Jacob Miller

Reasons against
Purchasing. ~~see~~
also, original
Book -

Barre Cook

v

J. Miller

1. There must be some circumstances of aggravation, such as malice, oppression with &c, in order to authorize a verdict for smart money.

Sean v Lyons 3 Eng. C. L. R. 426.

Anthony v Gilbert H. Mackf R 348.

Sedgewick on Damages 241-2

Smith v Putney 18 Maine R 87.

Wort v Luntin 14 John R 352

Churchill v Watson 5 Day R 140

Rose et al v Story 1 Barr R 190.

Rogers v Frazer 5 Barr R 154.

2 Greenleaf R 276 sec 272.

- 2 The notice given under general issue filed by deft was sufficiently certain to set in the execution under which deft acted

Fuller v Roods 3 Hill R 258.

Chamberlain v Gorham 2d John R 746

Edward v Clements 2d Wend R 1650.

Appleton v Donaldson 3 Barr R 381.

Brooks v Berniss 8 John R 455.

Linsley v Keys et al 5 John R 123.

In this case admitting that the evidence is insufficient to establish fraud in fact, ~~the~~ it does furnish strong ~~facts~~ circumstances of mitigation for the conduct of the deputy and effectually repels every suspicion of oppressors &c.

1 The debt was a public officer acting under process and compelled to make the seizure at his peril
Meeker v Wilson 1 Gallison R 423-4.

2 He is not called upon to make reparation for an injury done by himself, but for an injury done by his deputy.

3 There was no force, threats or wanton conduct on the part of the deputy.

4. The sign of Miller & Clements was still over the door of the store where the seizure was made.

5 Miller was still in the store, concurrently possessing of the goods with the plaintiff and exercising acts of ownership.

6. Miller had declared his intent to defeat this very execution.

7. He had consulted with a lawyer relative to an

Sale to plaintiff before any negotiations had taken place between them.

8. The possession was not in fact changed. M & Co were the lessees of the house. Plaintiff had been their clerk. He continued in the store after the sale. So that no notoriety was given to the transaction, but on the contrary it was a secret and clandestine arrangement.

9. The invoicing, giving of the notes and delivery was made in the night time.

10. When the officer went to the store & made known his business - no claim was set up to the goods by plaintiff, but he desired the officer to wait until Miller came in.

11. No money in fact paid, but notes given for the purchase money.

12. Relationship of parties by blood & employment.

13. M & Co. being largely indebted at the time

14. Executions being about to issue against them

The Court below should have ~~been~~ permitted the amendment of the notice

Malfeace v Boyce 2 Mass R 430.

Buckett v Lewis 21 Pick R 404.

Heslop v Palmer 35 Cam 45.

14. *Handwritten notes, mostly illegible.*

825 Note. R 891. Dec 187

The transactions fraudulent 2 Kent 518. 15 Cam. 296.

Archer v Hubbell 4 Wend R 514.

Jackson v Mather 7 Cow R 301.

The change of possession must be ^{actual} substantial & visible exclusive, and not concurrent with the vendor 6 Hill R 433

2 Kent 518. 1 Aikew 116 & 162 5 Wheat R 545

Wardall v Smith 1 Campb NP Rep 332

Butler v Stoddard 1 Cal 7 Paige R 163.

M'Pride v McClelland 6 Serg & Watts 94

Young v McElme 2 Watts & Serg 147.

Sheper v Eckhardt 2 Wharton R 302.

Paige v Perchard 1 Esp St Plea 205

The delivery of possession

- 1 must be actual
- 2 It must be exclusive
- 3 It must be continuing
- 4 It must be open & notorious no concealment.

10. *Handwritten notes, mostly illegible.*

A mere contingent liability is not a sufficient consideration
for a ~~con~~ bargain & sale of chattels.

Cushing v Gore 15 Mass B 69 Corp 825

Dyer 295 a Note 10 21 Pick R 246

Ingalls v Demmitt 6 Maine R 79

Tho it would be if the conveyance was by way of
mortgage.

Even in that case there should be no disguise
H.C. Barker v French 18 Vermont R 460.

4th instruction would mislead the jury
because there was no cancellation of the
debt of Miller & Clements to the Toledo
Bank, it merely changed their liability as
makers to that of endorser - This
instruction also declares that the
transaction fraudulent in its inception
~~was made honest~~ became bona fide by
the subsequent transfer of Jacob Miller's
notes to the Toledo Bank

Miller
~~to~~
Cook

Brief

Superior Court

Jacob Miller appeller
ad.

aclos

Isaac Cook affulant

Brief & Points for
Appeller.

Jacob Miller was a Young Man, who inherited \$10000. or \$15000. from his father. He became the Endorser for Miller & Clements, to the Bank of Toledo for \$5000 for money used in their business in Chicago -

In spring of 1848, Miller & Clements, being unable to meet their engagements, & being desirous of taking up as much of the paper as possible in which, Jacob Miller was endorser, sold out their store & goods to him. & took his note therefor, & ~~thence~~ thence took up & carried so much of the liabilities in which he was an endorser -

He went into business of goods immediately & remained in possession until Jan 12. 1848, when the store & goods were seized, by debtors, taken & subsequently sold by him.

Left, justifies the taking, by
allegation of attachment, & execution
against Miller & Clements -

The action is Trosop for taking
the property.

Plaintiff recovered judgment below for Term \$3200. the value of the property & interest.

1. Error, assigned questions the decision of the Court, in rejecting the exceptions of Silverton & Fellows.

The paper rejected, & the rejection of which is assigned for Error - is not embraced in Bill of exceptions.

How then can this Court determine whether or not there is Error -

"a Bill of exceptions is regarded as the pleading of the party, & will be taken most strongly against the party presenting it."

Rogers vs Hall 3 Scam. R. 6-

h. 465- 44 (S)
1. U. S. Dig. Articles of Co-partnership

Sec. 92. rejected - Court decided as

106. they were not embraced

109- in Bill & Court must determine whether there was error or not

6 Blackford R. 167-256

3 Scam R. 186

1 Sup U. S. Dig 283.

Sec 128. Extra. 138

& L

recapitulating answers of
Writings 3 Scam R. 428-

2 Gil. R. 636. "Rep of atty."

II. again, Arthur Bill of exceptions, nor pleadings show whether in what ^{court} judgment

was rendered - whether in this state or

Elsewhere - further account of record -

Sir W. Jones

It is the decision & not the reason given
which this Court is to review -

But secondly. The notice was insufficient.

Altho. the officer is prohibited by
the execution, when suddenly a
party to the proceeding, yet when suddenly
a third person - he must plead & show
every thing necessary to show
that he is justified - He must
plead & show

1

1. A Judgt. of a Circuit Court.
&c -

8 John R. 50

21 Picky 406, 2 Picky 411 -

6 Mass 480 -

23 Mass R. 480

2 John 46 -

5 Mass 194 -

form of notice -

11. Ills R. 30 -

1. There is nothing in the notice or the
plea - showing a judgment of
any Circuit Court -
2. Nor whether the execution was or
not void
3. Nor whether it had expired -

The decision in *gudt* is
the error not the
upside 13 this RE 25

2.^d Error. The decision of court refusing
Amendment.

This a matter of discretion
& cannot therefore be assigned for
error.

3 Gilb. R. 449 -

2 " 400 -

1 Greenleaf. Ev. Sec. 73. page 93.
& Cases cited -

1. Garnishment in Sec. 73. & p 93.
& Cases cited in Note 2.

II. But the admission or rejection of the Supposed Execution
was irrelevant =

There was a sale from Miller &
Clements, to Jacob Miller.

IV. The attachment was quashed, there
was never any return of the
property. &

3. The appellant, did not show, or
offer to show any judgment,
against Miller & Clements. Until this was
done he could not attack the sale
from Miller & Clements, to plaintiff
on ground of fraud.

(5 Hill 194)

5 Hill. ¹⁹⁴ ~~194~~ 194

& Cases cited -

2 ~~2~~ ^{Ridg} ~~250~~ 411.

23 Mass 480

III. An execution then, against Miller & Clements without showing a judgment, & fraud in the sale of the property from Miller & Clements to plaintiff is immaterial - & the

"A party cannot apine for error an erroneous decision which does not prejudice him."

15 Conn. 340-

5 Gil. R. 26-

7 Ark R. 355,

IA - If this evidence was offered in mitigation of damages - it is immaterial, because the verdict is

1. The exact value of property & interest &
2. It is not disputed, the evidence shows that he took this property under legal process -
3. There is no exemplary damages awarded -

3 Error, questions. 2 & 4th instructions -

3^d Instruction authorizes interest
for damages -

This verdict is for the
value of property & interest -

Exemplary damages would have
been authorized by sale under
attachment after it was
quashed.

4. Instruction, Consideration of sale-
right. -

15 Mass. R. 68 -

- Question of Actual fraud, or fraud in
Law -

Cannot be raised by Cook.

1. Because, he showed no judgment
Nor did he offer to show any.

2. This has been passed by the jury.
I must not disturb their
verdict -

3. It was a bona.fide sale -
followed by a change of profession.

17 Permeat 271-

Miller & Clements. did right to see
a payoff for the debts
on which Jacob Miller
was Endorser. Culpable others,

His brother. so much more merit,

"He that will not provide
for his own household is worse
than an infidel."

III - There was a change of proprietor
Gardner.

"Inventory of Jacob Miller's
goods."

Inc Receipts. store
formerly occupied by M. & C.

E. R. Miller. I. Miller in
possession.

Mr. Shynbald

Grand.

Grand has to begin in the
Merge of M. V. Duties - now
lowest Grand against Grand.

Grand has to begin in the

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lowest Grand against Grand.

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lowest Grand against Grand.

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lowest Grand against Grand.

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lowest Grand against Grand.

Grand has to begin in the

1. The object was not a fraudulent one,
but a good one.

The objection is as
to the manner it was done.

Supper. This sale had been made
to Cues. to secure the N. York
Creditors. it would have run all
well.

Lardner. "Taking possession &
exercising acts of
ownership."

C. R. Miller. Jacob Miller
had Control &
Management -

Geo. Bush. refers on the goods
of "Jacob Miller"
in the store formerly occupied
by M. L. C."

When he went to buy from
Jacob Miller there."

Walter Kyrenhall. Charge -
buying & selling

Sup. Court

Jacob Miller
vs. Appellant

Isaac Cook
Appellant

Parents &
Bridg

1 Sup 283
Sec. 148

As to sufficient notice -

X 13 Office R 21-

X 9 5 Highway 84

5 Office 169-

X 13 John R 475-

X 3 4 Adatto R 129-

3 W. Y. High 156. de. 524-

X 8 Mend R. 576

6 Case R 118.

49

Snare loon
vs
Jaeger chitler

12037

Prepared

1850