Silverman, Benj. vs Beardslee, Charles 1852 St. Louis Co 317/3
Field, Richard R

564/10

Silverman #254

Account
Ryland/affirm

Mitchell, Julius butcher

clothes
looking glass
"perfumery"
utencils
violins

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the St Louis Court of Common Pleas in said State, GREETING:

Whereas, In the record and proceedings in a certain cause lately pending in the St Louis Court of Common Pleas

wherein Field & Beardslee were plaintiffs and Benjamin Liverman was defendant

in a petition ~~in an action of~~ on an account for goods & merchandize manifest error hath intervened, to the great damage of the said defendant as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of ~~Jefferson~~ St Louis, in the county of ~~Cole~~ St Louis, in said State, on the third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, ~~HAMPTON L. BOON~~ William S. Glanville, Clerk of our said Supreme Court, at office, in the City of Jefferson, the ninth day of September, in the year of our Lord one thousand eight hundred and ~~forty~~ fifty two.

W. S. Glanville

Clerk.

State of Missouri
County of St Louis } ss In obedience to the command of the within writ I herewith transmit a full true and perfect transcript of the record and proceedings in the case therein named

In testimony whereof I hereto set my hand, and affix my official seal at office in St Louis this 25th day of September A D 1852

P Tippett Clerk

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State of Missouri
County of St. Louis } ss

Be it remembered that, on the twenty second day of October in the year of our Lord one thousand eight hundred and fifty, a Petition was filed in the Clerk's office of the St. Louis Court of Common Pleas, in and for the County aforesaid, and at the February Term thereof, (1851) in the words and figures following, to wit:-

Petition "In the St. Louis Court of Common Pleas. February Term A. D. 1851.-

Richard B Field &
Charles Beardslee Plaintiffs

vs

Benjamin Liverman Defendant

County of St. Louis ss:

Plaintiffs state that defendant owes them two Hundred & fifty four dollars & forty one cents, for goods sold & delivered by plaintiffs to defendant. The particulars of all which & also the credits thereon will appear by an account hereto annexed & made part of this petition. Plaintiffs ask judgment for two hundred & fifty four dollars & forty one cents, being the balance due them & interest thereon.- Todd & Krum Pr. Q.

Charles Beardslee makes oath & says he believes the above petition & the matters therein as stated are true. sworn to & subscribed.
before me this 22d day of Chas Beardslee
October A. D. 1850. P. Siffert clk

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Petition

Charles Beardsle makes oath & says ~~he be-~~ ~~lieves~~ That Benjamin Liverman the defendant is justly indebted to Richard R Field & Charles Beardsle. composing the firm of Field & Beardsle in the sum of Two Hundred & fifty four dollars & forty one cents after allowing all just credits & setts. offs. That this indebtedness accrued on account of merchandize that they sold & delivered to said Liverman. That this affiant has good reason to believe and does believe that said Liverman is about to remove his property out of the State of Indiana with the intent to hinder or delay his creditors. also that he has fraudulently conveyed his property so as to hinder or delay his creditors. also that he is about to conceal or dispose of his property & effects so as to hinder or delay his creditors.

Sworn to & subscribed this
22d day of October A.D. 1850 Chas Beardsle
before me P. Tippett clk

The account referred to and made part of the foregoing petition is in the words and figures following to wit:

account

Benjamin Liverman

To Richard R Field & Charles Beardsle Dr

August 18th 1850. To Goods & merchandize $ 279.41

Cr

October 14th 1850. By Cash 25.00

Balance due $ 254.41

And on said 22nd day of October 1850. the following Bond was entered into for purpose of

suing out writ of attachment on said Petition. Viz:

Bond

Know all men by these presents. That we Charles Beardsley as principal and Henry Miller as security are indebted to the State of Missouri in the sum of Five hundred and Ten dollars for the payment whereof. we bind ourselves. our heirs. executors and administrators. jointly and severally. firmly by these presents. sealed with our seals. and dated at St. Louis this 20th day of October eighteen hundred and fifty. The condition of this obligation is such. That whereas Richard R Field & Charles Beardsley are about to institute a suit in the St. Louis Court of Common Pleas. by attachment. against Benjamin Liverman defendant, for the sum of Two hundred & fifty four dollars and forty one cents. Now if the said plaintiffs shall prosecute their action without delay. and with effect, refund all sums of money that may be adjudged to be refunded to the defendant. or found to have been received by the plaintiffs. and not justly due to them. and pay all damages that may accrue to any defendant or any garnishee by reason of the attachment. or any proceeding in the suit. or by reason of any judgment or proceeding thereon. Then this obligation to be void. otherwise to remain in full force.

Chas. Beardsley [seal]
Henry Miller [seal]
[seal]
[seal]

Approved
P. Tippett Clk

and afterwards viz: on the said 23d day of October 1850. the following writ of attachment was issued.

Writ of Attachment

The State of Missouri. To the Sheriff of St. Louis county. Greting. We command you to attach Benjamin Liverman by all and singular his lands and tenements. goods. chattels moneys. credits and effects. or so much thereof as shall be sufficient to secure the sum of two hundred and forty four dollars and forty one cents. with interest and costs of suit. in whose hands or possession soever the same may be found in your bailiwick. and that you summon the said Benjamin Liverman to appear at the next term of the St. Louis Court of Common Pleas. before the Judge thereof. on the first day of said term to be holden at the city of St. Louis. within and for the county of St. Louis on the first monday of February next. then and there to answer the complaint of Richard R Field and Charles Bardlee as set forth in the annexed petition. and also that you might summon all and every person. in whose hands or possession soever. any such lands. tenements. goods. chattels. moneys. credits or effects may be found. and particularly that they be and appear before the Judge of our said court. on the first day of the term aforesaid then and there to answer unto what may be objected against them: and have you then there this writ. Witness. Phillip Tiffett clerk of our said court. with the seal thereof

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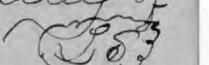
hereto affixed at office in the City of St. Louis this 22d day of October in the year of our Lord eighteen hundred and fifty

P. Tiffett Clerk

I hereby acknowledge myself bound for all costs that may accrue in the case of against in the St. Louis Court of Common Pleas. Witness my hand and seal at St. Louis this day of 18



Upon the foregoing writ of attachment the Sheriff made his return as follows viz:

Sheriffs Return on attachment

"Executed this writ in the County of St. Louis on the 22nd day of October 1850. by delivering a true copy of the Petition and writ to Benjamin Linneman the defendant. and by attaching on this writ and on Execution No 366 To November Term 1850 of the St. Louis Circuit Court. the following described goods and chattels. as the property of the defendant. To wit: 112 pair Pants assorted 65 vests assorted 64 Blanket coats. 46 coats assorted 15 fur caps 15 cloth caps. 16 glazed caps 9 caps assorted 46 Shirts assorted 1 doz suspenders 1 doz fancy col. shirts 46 cotton Hdkfs 28 silk do 38 pair gloves. 15 silk cravats 3 bundles Buttons 1 gro Buckles 3 gro playing cards 2 doz ass'd gloves. lot of Nutts lot of Brads. lot of perfumery & sundries 14 looking glasses. lot Knives & forks (9 setts) 8 violins. lot canvass & Buckram ass'd 7 cash

whips. 2 doz suspenders. 3 Trunks. 8 small shawls. 78 yds Lawn & 498 yds Calico. which said goods and chattels was all the property found in my county belonging to the defendant and a sufficient amount of which I have applied to this writ to satisfy the debt Int & costs. giving this writ priority over the said execution for the reason that the plaintiff in said execution had ordered the same not to be levied until after this writ came to my hands. and having obtained an order for the sale of said goods and chattels according to law. I sold under said order a sufficient amount of said goods & chattels to satisfy the amount of this debt. int and costs as will be seen by my return on said order. and the remainder I have sold and applied to the said execution in favor of Julius Mitchell Henry B Belt Sheriff"

Service $1.00 attaching 1.00 drayage & Labor 5.00 rent of Store where goods were found 6.00 – $15:00 other costs and expenses of sale. charge upon the return made. on the order of sale –

And afterwards to wit. on the 3rd February 1851. the following plea was filed.

Plea filed

Field & Beardslee Plffs
vs
Benjn Liverman Deft

In St. Louis Court of Common Pleas

The defendant putting in issue the truth of the facts alledged in the affidavit on which the attachment was sued out in this case. comes & says. that he the defendant

at the time the said attachment was sued out. was not about to remove his property or any part thereof out of the state of Missouri with the intent to hinder or delay his creditors. and he the defendant at said time had not fraudulently conveyed his property or any part thereof. so as to hinder or delay his creditors. and at said time he the defendant was not about to conceal or dispose of his property or effects or any part thereof so as to hinder or delay his creditors: - and of this he the defendant puts himself upon the country &c

B. A. Hill atty
for Deft

And afterwards to wit: on Wednesday the 18th day of February 1852 the following proceedings were had in said case. Viz:

Jury

Richard R Field & Charles Beardslee vs Benjamin Liverman. on plea in abatement now at this day come the parties by their attornies and thereupon came also a Jury to-wit: Louis Tebean. Paul Decharles. Aaron Templeton. Antoine Tayon. Julian Chouquette Peter Gamache. Jesse Little. William Fine. T. D. Marphy. J. Coyle. Mackey Collins and Babish Joers twelve good & lawful men who being duly elected. tried and sworn well and truly to try the issue joined between the parties aforesaid the trial progressed but not being finished

Contd. to next day

the same is laid over until to-morrow -

And afterwards to-wit on Thursday the 19th day

of February 1852 the following further proceedings were had in said case viz:
Richard R Field and Charles Beardsley vs Benjamin Liverman. on plea in abatement. now at this day come again the parties by their attorneys. and the Jury empannelled and sworn herein also come and the Trial of this cause progressed and being finished the jury retire to consult of their verdict -

Jury retire

and afterwards to wit: on Friday the 20th day of February 1852 the following further proceedings were had in said cause. viz:
Richard R Field and Charles Beardsley vs Benjamin Liverman. on plea in abatement now at this day come again the parties by their attorneys and the jury empannelled and sworn herein also come. and being agreed upon their verdict upon their oaths aforesaid find that at the time the said attachment was sued out said defendant was about to remove his property out of the State of Indiana with the intent to hinder and delay his creditors. also that at said time he had fraudulently conveyed his property so as to hinder or delay his creditors. also that at said time he was about to conceal or dispose of his property and effects so as to hinder or delay his creditors. and thereupon defendant files a motion for a new trial.

Verdict of Jury

Deft files motion for new trial

which said motion for new trial is in the words and figures following to-wit:

Motion for new trial

Field & Beardsley vs Benjn Liverman. In St Louis court of common Pleas. The Defendant by his

attorney comes and moves this court for a new trial for the following reasons. 1st Because the jury found a verdict against law & against evidence. 2nd Because the court. in excluding from the jury. the evidence offered on the part of the defendant. erred. 3rd Because the court erred in giving the instructions asked by the plaintiff. 4th Because the witness Field conversed with members of the Jury pending the trial. B. A. Hill atty for Deft.

And afterwards to wit: on Wednesday the 10th day of March 1852 the following further proceedings were had in said cause viz:

Field & Beardslee vs Benjamin Liverman

motion for new trial overruled

on plea in abatement. The motion of said defendant for a new trial herein being heard and the court being fully advised of and concerning the premises it is ordered that the same be overruled –

And afterwards to wit: on Thursday the 1st day of April 1852 the following further proceedings were had in said cause.

Richard R Field & Charles Beardslee vs Benjamin Liverman. Petition. Now at this day come

Petition taken for confessed

said plaintiffs by their attorney but said defendant although called comes not but makes default. Wherefore on motion of said plaintiffs it is ordered that their petition be taken against said defendant as confessed –

And afterwards to wit: on Tuesday the 6th day of April 1852 the following further proceedings were had in said cause.

Judgment of Court

Richard R Field & Charles Beardsley vs Benjamin Liverman. Petition. now at this day come the plaintiffs by their attorneys and on their motion no jury being required the Court doth assess their damages sustained by reason of the premises in this petition at the sum of two hundred and seventy one dollars and forty one cents. It is therefore considered by the Court that said plaintiffs recover of said defendant the damages aforesaid in form aforesaid as assessed and also their costs and charges herein expended and that execution issue therefor—

and afterwards to-wit: on the 22d day of may 1852 a Bill of Exceptions was filed by defendant and is in the words and figures following viz:

Bill of Exceptions

Field & Beardsley
vs
Benjamin Liverman

In St Louis Court of Common Pleas. February Term 1852

Be it remembered that on the trial of this cause at this term of this court the following testimony and evidence were given & proceedings were had. The plaintiffs called as a witness Reuben Beardsley who being

Evidence of R. Beardsley

duly sworn said that he knew plffs & defts. that plffs sold clothes cassimeres & clothing goods. & sold defts goods. the bill filed in this cause is correct & the prices charged are correct & plffs sold this bill to defts in 18th aug 1850. I presented this bill to defts & he said he had'ent means to pay. the bill is for 279 dollars 41/100. on the 14th of October 1850 the defts paid 25 dollars. no certain credit was given to defts on this bill. I called upon defts two or three times. I dont know who collected

The Twenty five dollars of dft on this bill. It was after that payment when I began to call on the dft for the balance of the account. I think the dft manufactured the clothing he sold. He had at that time a small store & a small stock. on cross examination this witness stated that the cholera was pretty bad in the summer of 1850.

Evidence of Jno K Field

John K Field a witness for plffs being duly sworn says. That he was in the employment of plffs in summer & fall of 1850. Plffs had an account against dft. witness called on dft in October 1850. the bill filed in this case is the same amount. Witness called on dft for the payment of the amount in october 1850. at his store on the levee of the city of St. Louis. was sent there by Mr Bradsby to settle with dft in some way If I could'nt get money I was to take goods I asked him dft if he could give me the money he said he could not. I then made him several offers. until finally I offered to take 150 dollars in clothing at cost. I offered to take some less than the face of the account in money. Defendant said he had not the money to give when I finally offered to take clothing he said the clothing did not belong to him. That Mr Mitchell had a deed of trust upon them and he could'nt give them to plffs. dft said he would go to california. if he could get means to go with. I had heard before. That he was going to California. he dft had in the store more than enough to pay the debt of plffs. I think

he had in the store from 1000 to 1500 dollars in goods. the store of deft was open & busines was being done in it at the time. I knew mitchell at that time. I dont know the relationship betwen the defendant & mitchell. deft made no objection to the acct of pltffs.

Evidence of Samuel Ash

Samuel Ash was then called as a witnes for pltffs & being sworn testified that deft & mitchell were Jews. I have known deft two & a half years. I first knew deft in St Louis. he carried on the clothing business on the levee. I have been at his store. from the time I first knew him. he was doing busines on the levee. I belive he had his store first on main Street & then on the levee deft made up clothing as well as sell it ready made. I never had any conversation with deft until the fall of 1850. deft might have made some remark about his creditors & I think he said he could'nt pay his creditors. that he would have to support his wife & children & he swore with an oath. that he could not or would not pay his creditors. He said he would go to California. this was about a month before he left for California. he said at that time. he would see them damned first. before he would give them any thing these were the words.

On cross examination. this witnes testified I dont belive the conversation I had with deft was a month before he went to California this conversation took place in his store on the levee. Deft went to california in the early part of January 1851. no one else was in the

store when I saw Duff. Duff had a clerk. a young man. I had been cutting in the store of Duff at the time of this conversation. after Duff left I was asked by Pfeffs if I Knew any thing of Duff. I told them the conversation I had with Duff. I have since that time bought goods of Pfeffs on credit. I had never bought of Pfeffs any goods before I told them of this conversation of Duff. The Duff him asked witness by his counsel to state particularly the conversation by question & answer that passed between him & Duff in the words said. Witness answered "the Duff said he could not pay his creditors. that he had'nt got the means that all he had got he wanted for his family I dont think the Duff said anything more I had but one conversation with him on this subject. on cross examination of this witness by Pfeffs. this witness testified that the store of Duff was not shut up at the time of this conversation. his store was open with the usual stock in it. I had worked for Duff as a cutter before that time. it was a common thing for me to stop in Duffs store. I was familiar with him. I Knew him well. I was a cutter for clothing stores and cut round at one place & another as I could get employment. I had not been in business for myself before this I am now in business for myself & have been since July 1851. I told Pfeffs of the conversation with Duff after Duffs store was shut up & before he

went to California. I heard of the Store being shut up. I never had any conversation with defft about his debts except the time I spoke of. On cross examination this witness said he could not tell the season of the year when this conversation with defft happened whether it was winter or summer.

Evidence of A. Lyons

Archibald Lyons was then called as a witness for plffs & testified. I knew defft in summer & fall of 1850. I had no dealings with him in 1850. I recollect the fact of defft being shut up by attachment. Mr Mitchell came to my store in 1849 & said (here defft objected to this witness stating what said Mitchell had said) the plffs then introduced as evidence a confession of judgment in the St. Louis circuit court in favor of Julius Mitchell against Benjamin Liverman the defft for 970 dollars dated 6th July 1850 & an execution of same date with sheriffs return thereon. and thereupon the plffs declaring that they intended to show a levy on said execution upon defts goods. the court permitted this witness to go on & state the conversation of himself with said Mitchell. To which defft excepted. Mitchell said he would pay for defft. for such goods as he might get of witness. Mitchell & defft paid along for a while. at length defft run up a bill of $180: & left it unpaid & I asked Mitchell for the money but he refused to pay it. I then offered to take 100 dollars for the debt but he refused to do it. Mitchell had promised

To pay the debt to me. That deft might contract. I suppose that Mitchell knew his promise was not in writing. deft paid me five dollars & promised to pay me five dollars every week until he paid me up. To all of this testimony as to the conversation of Mitchell with witness the deft objected as incompetent & as hearsay & inadmissable but the court admitted it & deft excepted Then & Then. on cross examination this witness that on 1st aug 1849 deft paid him 100 dollars on acct & on 2d? augst 1849. 100 dollars more & in October 1850 deft paid me the five dollars spoken of.

Evidence of D. H. Bishop

David H. Bishop. being sworn for plffs testified I was deputy sheriff of this county in the summer & fall of 1850. Mr. Bell handed me the execution of Mitchell against Siverman & went to see deft about it. I found deft in his store and Mitchell was there at the time I told Deft my business. Deft said he had not the means to pay & referred him to Mitchell & said that I must do with it. as Mitchell directed. Mitchell & Siverman had some conversation about the matter in my presence & Mr. Mitchell finally instructed me not to levy. until he told me to levy. I met him the second time. and he told me to suspend execution until orders. after this an attachment was issued in this case by plffs. and the sheriff directed me to see Mitchell & know what he would do. in the execution in his favor. I saw Mitchell & he said he would decide by & by

I told him I wanted a distinct answer. if I should buy it or not. Mitchell then asked if I knew of any thing else against defts. I told him of pltffs attachment. Mitchell then told me. To levy on the execution in his favor. I then went down to defts and levied on the execution and attachment. both at the same time. I took unto the writs every thing he had in the store. The property was sold and brought clear of expenses 700 $\frac{15}{100}$ dollars. I had no conversation with either the deft or Mitchell except at the time referred to. Mitchell charged that the Sheriff acted with partiality. Towards Field & Brandeis. He wanted the execution to be satisfied first. I do not know that any direction was given to the Sheriff by Mr. Liverman.

Evidence of Mark Samuel

The defendant then called as a witness Mark Samuel who being duly sworn testified I know the defendant & have known him about fifteen years. I knew the defts circumstances the first time he came to St. Louis 8 or 9 years ago. about the year 1845 or 1846 he came to this city not worth a dollar. He had a wife & three children. He got a small stand close to my store on the levee between Vine & Locust. The stand I mean was not a house or store but a place to put a glass show case to sell cutlery & jewelry & such articles. Mr. Mitchell defts brother in law helped him to start. Mitchell is a responsible man & has capital. afterwards the deft got a small store on the levee. which was burnt out by the

great fire of 1849. I had a stock of about 12000 dollars lost by the fire & my insurance had run out only a few days before. the deft had a stock of about three thousand dollars. on which he was insured 1000 dollars. neither deft or myself saved any thing from the fire it came up so suddenly. and the steamboats & every thing around burning & exploding at the same time. I didn't know what to do mitchell had assisted the defendant to get the greatest part of his stock of goods before the fire. after the fire mitchell assisted deft again to start. deft got a store between walnut & market. mitchells store was above vine street on the levee & did not burn up the deft lived on market street between second & third streets. I know the deft had much sickness in his family in the summer of 1850. his wife lay at the point of death I know that the state of business was worse in 1850 than it was in the great cholera season of 1849. I know the deft is an honest man. but he is unfortunate. I know that mitchell made him considerable advances after the fire in goods. on cross examination this witness stated. I was present and knew that mitchell assisted Liverman I saw him give a large stock of goods to deft in the fall of 1849. I saw many a dray load of clothing at one time taken from mitchells to defts. the goods I saw taken must have amounted to several hundred

dollars. four to six hundred dollars at that time. I know that Mitchell said to deft at the time. you must pay me for my goods as fast as you are able. deft bought out Isaac Flatteau.

Evidence of Judah A Hart

Judah A Hart was then called as a witness for the Deft. who being sworn testified that he knew deft. deft then offered to prove by this & other witnesses in attendance the payment of the amounts of money specified in the annexed account. to the various persons therein named on account of indebtedness by the deft to the said various persons. which payments were made at the various times in the annexed list of items specified. To which the plffs objected & the Court refused to permit. the said testimony to be given. but excluded the same to which the deft then & there excepted. The following is the list of payments offered to be proved by the defendant and excluded by the Court.

List of debts offd. to be proved by deft and excluded by the Court

Aug 2./49. Nouse, Crane & Co 20.

1. Prague & Walter	50.	Young Bros	100.
Wolff & Hoppe	70.	Abrahams & Co	100.
Shlon & Bros	20.	A Young & Co	100.
Jno Menick	40.	Jno Michael	50.
Judah A Hart	30.	P Chouteau Jr	30.
A. J. Latz	30.	P Chouteau Jr & Co	30.
J. Michael	75.17	P Chouteau Jr	30.
Mandlebaum B & Co	20.	P. C. Jr & Co	30.
Helln & Lehwain	40.	Jas. K Thompson	150.
			1015.17
Debts & house exps. not entd.			434
			$1449.17

Dec 26/49.	Abrahams & Co	$20.00
" " "	A. J. Latz	25.00
Jany 2. 1850	Alfred Osgon	25.00
Jany 7th '50	P Chouteau & Co	15.00
note Jan 1 '50	A. J. Latz	note
" 11th '50	Alfred Osgood	40.25
" 26th '49	J Michael	50.00
12. '50	J. Michael	25.00
Feb 6th '50	Alfred Osgood	56.86
12 "	P Chouteau & Co	15.00
21 "	Alfred Osgood	30.00
Mar 13 "	Abrahams & Co	50.00
	Amt carried over	352.11

Amt Brot over		352.11		Brot up	1551.68
Feb 21st 1850	T & C Slevin	34.77	Apl 24th '50	Abrahams & Co	60.00
Mar 13 "	T. M. Jacobin	5.00	" "	" Judah Hart	50.00
" 15 "	P Chouteau	15.00	May 8	" Harvey & Stewart	38.24
" 15 "	Wolff & Hoppe	30.00	10	" Alfred Osgood	30.00
	John Gap	20.00	13	" J Merrill	25.00
19 "	J Michael	50.00	"	" T & C Slevin	30.00
" "	Prager & Walter	20.00	"	Jno McNeil	20.00
20 "	Wolff & Hoppe	40.00	16	Harvey & Stewart	75.00
" "	" Alfred Osgood	30.00	18	Nourse Crane & Co	10.00
25	Wolff & Hoppe	30.00	"	Abrahams & Co	25.00
" "	" J. Merrick	30.00	"	Scholop Brothers	10.00
" 26 "	Nourse Crane & Co	20.00	21	P Chouteau	15.00
" 27 "	P & C Slevin	30.00	25	Harvey & Stewart	50.00
29 "	Prager & Walter	20.00	June 3	do do	25.00
Apl 1 "	rent Howard & Bulle	50.00	" 7	Howard & Bulle	50.00
" 2 "	Michael	50.00	" 13	Harvey & Stewart	20.00
3 "	D Langsdorf	18.00	" "	Warne & Merritt	14.40
" "	" Heller & Lehman	31.57	" "	T & C Slevin	20.00

10	J & C Slevin	$0.00	"	"	A C Lapp	17.50
1	Wolff & Hoffe	$0.00	"	19	Harvey & Stuart	25.00
" 1	Abrahams & Co	60.00	"	21	P Chouteau & Co	15.00
8	Alfd Osgood	25.00	July	6	L Howard	25.00
15	Jno McNeil	25.00		15	Harvey & Stuart	32.00
"	John Gaf	15.00	"	"	Harvey & Stuart	6.14
"	Jno Michael	50.00	Aug	19	P Chouteau & Co	15.00
17	Harvey & Stuart	19.85	"	23	Harvey & Stuart	25.93
22	P Chouteau & Co	15.00	"	30	John Gaf	10.00
23	Wolff & Hoffe	25.00	Sept	15	P Chouteau & Co	15.00
24	J & C Slevin	$0.00		21	Jno Merrick	10.00
"	Harvey & Stuart	52.44	Oct	7	Arch Young	5.00
25	Jno Michael	50.00		14	Field & Beardsley	25.00
27	Abrahams & Co	$0.00		17	P Chouteau	15.00
May 1 Rent	Howard & Bulle	50.00	Nov	14	do	15.00
5	Jno Gaf	8.00	Dec	17	do	15.00
		1551.68				$2180.89

and thereupon the testimony was closed and the plaintiffs asked the court to give the following instructions. 1 If the jury believes from the evidence that at the time the writ of attachment was sued out in this case. the defendant was about to remove his property out of the State. or. that he had fraudulently conveyed his property. or. was about to conceal or dispose of his property & effects fraudulently. so as to hinder or delay his creditors then. in either case. the jury ought to find for the plaintiffs. 2. If the jury believes from the evidence that the judgment & execution given in evidence were confessed & sued out for the purpose of covering the property of the defendant for his use from his creditors. or partly for such purpose.

Instructions asked for by Plaintiffs and given by court

as well as for securing an indebtedness to mitchell. Then, in either case, the jury ought to find for the plaintiffs - 3. If the jury believe from the evidence that Mitchell directed the Sheriff not to levy his execution until he should direct him & did not direct him to levy until he heard of the issuing of the attachment of Field & Beardsley from this together with the lapse of time since the issuing of the execution, the jury may infer that the object of the judgment & execution were at least in part, to cover the property of the defendant, for his use, from his creditors. 4. Evidence that frauds in the minds of the Jury a reasonable satisfaction or belief of fraud will warrant their verdict thereof. and from circumstantial as well as direct evidence, fraud may be proved & inferred - To the giving of which instructions the deft objected but the court gave said instructions and the deft then and there excepted. and the deft asked the court to give the following instructions that were given by the court.

Instructions asked for by deft and given by the court

Instructions by the court to the jury, as to the law of this case - for the Defendant. The Jury are instructed by the court, that there are the following issues in this case. 1st Whether Liverman at the time of the issuing of the attachment in this case, was about to remove his property & effects out of this State with the intent to hinder or delay his creditors. 2nd Whether Liverman, at said time, had fraudulently conveyed his

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property so as to hinder or delay his creditors
3d Whether Liverman, at said time, was about to
conceal or dispose of his property or effects, fraudu-
lently so as to hinder & delay his creditors, and in
the consideration of this case, the jury are con-
fined to the foregoing issues & must find their
verdict thereunder. no other charges of fraud,
can be regarded by the Jury, than those specified
in the affidavit of the plaintiff for the said
attachment: Therefore if the Jury believe from
the evidence that the defendant was not about
to remove his property & effects out of this State
with intent to hinder or delay his creditors
that the defendant had not fraudulently
conveyed his property with intent to hinder or
delay his creditors & that defts was not about
to conceal or dispose of his property or effects
fraudulently so as to hinder or delay his cred-
itors: Then the jury are instructed that it is
their duty to find for the defendant. 3d The
Jury are instructed, that the frauds charged
by the plaintiffs in this case, must be proved by
evidence satisfactory to the Jury, and the burden
of such proof of fraud devolves upon the plaintiffs
4. The Jury are instructed that the confession
of judgment, is prima facie, good & genuine
and the same is to be so regarded by the Jury in
their consideration of this case, unless it is proved
to their satisfaction to have been otherwise.
5. The defendant had a lawful right, upon finding
himself involved in debt to prefer any one creditor
to the exclusion of all the others, and it is no

evidence of fraud for a dubt to make such preference. 6. The defendant had a lawful right to give to Mitchell the confession of judgment upon the consideration specified in the confession. and although such confession of judgment should operate as a preference in favor of Mitchell over the creditors. that is not any evidence of fraud on the part of the defendant.— The deft then asked the court to give the following instructions which the court refused to give. " Evidence of verbal admissions or conversations at a distant period of time. is always to be received by a jury with great caution. Experience proves that very slight variations in the form of expression. will change the sense entirely.— 2nd If the jury believe from the evidence that the confession of judgment by the defendant to Julius Mitchell was for just indebtedness. then the said Mitchell had the lawful right to issue said execution thereon. & to stay the levy thereon as long as he thought fit. and such acts of Mitchell in staying the execution. at the request of the Defendant. is no evidence of fraud. as charged against the Defendant.— & to the refusal of the court to give the said instructions asked by Defe. the deft then & there excepted. The court then gave the following instructions on its own motion. " If the Jury believe from the evidence that the confession of judgment in favor of Mitchell was made in good faith to secure the indebtedness of Defendant to Mitchell and not to cover up defendants property in

Instructions asked to be given by deft and refused by court

Instructions given by court on its own motion.

whole or part. so as to hinder and delay. or defraud the creditors of the Defendant. and that the execution placed in the Sheriffs hands was not levied from time to time in consequence of the direction of Mitchell not to levy. until further directions and that the design of the parties in delaying the levy was not to defraud. or hinder and delay. the other creditors or to cover up the defendants property for the defendants use. then said judgment and execution. although the design was to give Mitchell a preference if that was the sole design. were not fraudulent within the meaning of the attachment act. In order to ascertain what weight should be given to Testimony. the jury should consider the ability of the party to know and recollect what he testifies about. When the Testimony is concerning verbal admissions or conversations which occured at a distant period of time. the jury should carefully consider whether the witness probably understood said admissions or conversations correctly and whether he has remembered them correctly. and to the giving of the same the defendant by their counsel excepted. the cause was thereupon submitted to the Jury & the foregoing were all the proceedings Evidence & Testimony in the cause on the trial thereof. and afterwards within four days the defts moved for a new trial as follows. "Field & Beardsley vs Benjamin Liverman. In St. Louis Court of Common Pleas

motion for new trial

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The defendant by his attorney comes and moves this court for a new trial for the following reasons. 1st Because the jury found a verdict against law & against evidence. 2nd Because the court in excluding from the jury the evidence offered on the part of the defendant and 3rd Because the court erred in giving the instructions asked by the plaintiffs. 4th Because the witness Field conversed with members of the Jury pending the trial -

B. A. Hill atty for Deft."

and the deft insists that the motion should be allowed for the new trial but the court overruled said motion. and the defendant then & there excepted. wherever the words deft & pltffs occur they mean "defendant" or "plaintiffs" as the case may be. The foregoing is made a part of the record in this cause In testimony whereof I the Judge of this court in the same term of the trial have hereto set my hand & seal this twenty second day of May 1852.

Samuel Treat Judge Seal

State of Missouri }
County of St. Louis } ss I Philip Tippett clerk of the St. Louis court of common Pleas in and for the county do certify that the foregoing is a full and complete transcript of the Record and proceedings in the case of Richard R Fields and Charles Beardsley against Benjn Liverman.

In testimony whereof I have hereto set my hand and affixed the seal of said court at office in St. Louis this 24th day of September 1852 Philip Tippett clerk

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(10) 85

Act. T. 1852

Richard R Fields &
Chas. Beardsley

vs

Transcript
of
Record

Benj. Liverman

D. A. Hill
for Deft.

Fee $8.00 Pd by Hill

Field & Beardslee plffs
vs
B. Liverman Deft
} In Supreme Court

To Todd & Krum Esqs
Attys for plffs Take notice that I have sued out a writ of error in this case from the Supreme Court to the St Louis Court of Common Pleas on the part of the Defendant, returnable to the next term of the Supreme Court, to be holden at St Louis on the third monday of October 1852 and that the cause will be argued at said term whenever counsel can be heard.

Send Oct 4 - 1852 -
on A. Todd Esq in his Office -

B. A. Hill
attys for Deft.

State of Missouri
County of St Louis } Dr Britton A. Hill being duly sworn says that on the fourth day of October 1852 he served a notice of which the within is a true copy upon Albert Todd Esqr one of the attorneys of record for said plaintiff by delivering the same to him personally in his office:

B. A. Hill

Sworn to and subscribed before me the undersigned a Notary Public within & for St Louis County this sixth day of October 1852 as witness my hand & seal

David W. Hill
Notary Public

Field & Beardsley
vs
Benj Lieverman
Notice of Writ of Error

Filed 6th October 1852
Wm Glasgow
Clerk.

Field & Beardslee Appes
vs
Benjn Liverman Appltt

In Supreme Court
Octr Term 1852

The defendant by his Attorney comes & assigns the following errors in this case.

1st The judgment ought to have been given for the Defendant instead of for the Plaintiff.

2nd The Court below erred, on the trial in excluding competent & relevant testimony offered by the defendant; and also, erred in admitting incompetent & irrelevant testimony on the part of the plaintiff.

3d The Court below erred, in refusing to give the instructions asked by the Defendant; & also erred in giving the instructions asked by the plaintiffs; and also, erred in giving the instructions given by the Court on its own motion.

4th The Court below erred in refusing to grant the Defendant a new trial in this case

Britton A. Hill
Atty for Dfts

In the above entitled case the plaintiffs in Error come & say there is no error in the judgment & proceedings of the Court below in this case &c.

Todd & Evans
Attys for Pltfs in Error

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Supreme Court

Field & Beardslee
v
Benj. Liverman

Asst Errors

Hill
p Applt

Filed 18 October 1852
Wm. J. Glanville, Clerk
Joinder filed 3d Nov, 1852

to this witness stating what Mitchell had said) The plffs then introduced as evidence a confession of judgment in the St Louis Circuit Court, in favor of Julius Mitchell against Benjm Liverman Deft for 970 Dollars dated 6th day of July 1850 & an execution of same date, with the Sheriff's return thereon; & thereupon the plffs declaring that they intended to show a levy on said execution upon Defts goods; the Court permitted this witness to go on & state the conversation of himself with said Mitchell, to which Deft excepted. Mitchell said he would pay for Deft for such goods as he might get of witness. Mitchell & Deft paid along for a while; at length Deft run up a bill of $180 & left it unpaid and I asked Mitchell for the money, but he refused to pay it - I then offered to take $100 for the debt, but he refused to pay it. Mitchell had promised to me to pay the debt to me that Deft might contract. I suppose that Mitchell knew that his promise was not in writing: Deft paid me five dollars & promised to pay me five dollars every week until he paid me up. To all of this testimony as to the conversation of Mitchell with witness, the Defendant objected as incompetent and as hearsay & irrelevant; but the Court admitted it & Deft excepted.

On cross Examination; this witness testified, that on the first of August 1849 deft paid him $100 - on acct on the 23d 1849 - $100 more & in October 1850 Deft paid witness the $5 spoken of -

The Deffs then called David H. Bishop; who testified that he was deputy sheriff of St Louis County in fall of 1850; & went with the execution of Mitchell agst Livermann to Deft; & found Mitchell in the store of Deft; that witness told Deft his business; and Deft said he had

not the means to pay & referred Pltff to Mitchell & said I must do with it as Mitchell directed; that Mitchell & Livermore had some conversation about the matter in my presence & Mitchell finally instructed me not to levy until he told me to do so. Pltff met Mitchell again who told me to suspend execution until orders. When an attachment was issued by Pltff, the Sheriff directed me to see Mitchell & know what he would do, on his execution; I saw him & he said he would decide by & by; I told him I wanted a distinct answer, if I should levy or not, he asked me if I knew of any thing else against Deft & I told him of Pltffs attachment. Mitchell then told me, to levy on the execution in his favor; I levied on the execution & attachment both at the same time; and took every thing he had in the store; and the property brought clear of expenses 700-$^{18}_{100}$ Dollars. Mitchell said the Sheriff acted with partiality towards Field & Beardslee & wanted his execution satisfied first.

Deft then called — a witness who testified; that Deft came to St Louis with his family in 1840 poor without money; that he got a place on the levee to put a glass show case, to sell jewelry & cutlery on; that Messrs Mitchell his brother in law helped him to start; that Mitchell was responsible & had capital. Afterwards the Deft got a small store on the levee, which was burnt out by the great fire of 1849; with a stock of about 3000 Dollars, on which he was insured only $1500 that Deft saved nothing from the fire; that Mitchell had assisted Livermore to get the greater part of his stock before the fire; and after the fire Mitchell assisted the Defendant again to start. Defendant got a store

(A) On the 22d of Oct. 1850 Peffs issued an attachment against Defendant, on said account; and alleged as causes of attachment, the following —
"that Liverman is about to remove his property out of the State"
"that he has fraudulently conveyed his property," so as to
& "that he is about to conceal or dispose of his property & effects" so as to hinder & delay his creditors —

Defendant took issue on each allegation of fraud, - and trial was had thereon:

Field & Beardslee ~~Respondts~~ Dfts Error
vs
Benjm Livermann ~~Apptt~~ Plff in Error

In Supreme Court
Octr Term 1852.
Statement of case.

Plffs, sold Deft a bill of ~~goods~~, cloths, cassimeres and vestings, amounting to 279 41/100 dollars, on the 13th of August 1850. Plffs were wholesale dealers, Deft was a retailer & manufacturer of clothing ready made. The goods were sold on a credit for no specified time. (A) The plffs offered evidence tending to prove that

In October plffs, sent a clerk to demand payment; deft replied, that he had not the means to pay. On the 14th Oct 1850, the Deft paid 25 Dollars on the bill. Plffs continued to demand payment of the bill afterwards, and offered to take goods for the bill and finally offered to take 150 Dollars in clothing at cost; when the deft replied that he had not the money & the goods did not belong to him, that Mr Mitchell had a ~~lien~~ deed of Trust on them; & he couldn't give them to plffs; that he would go to California if he had the means to go with. At this time the Deft had from 1000 to 1500 Dollars worth of goods as plffs witness supposed; that there was more than enough to pay the plaintiffs; that the store was open & business was going on at the time:

By another witness Samuel Ash plaintiffs offered evidence tending to prove, that Deft made up clothing & sold it ready made; that witness never had any conversation with Deft until fall of 1850; that Deft might have made some remark about his creditors; he said that he would have to support his wife & children; that he swore with an oath, he could not or would not, pay his creditors; that he would go to California; this was about a month before he went to California; he said at that time he would see them damned first, before he would give them any thing

This witness on cross examination testified that he did not believe it was a month before the Deft went to California; that this conversation took place, that Deft went to California in the early part of January 1851; (The Sheriff shut up Defts store on the 23d of October 1851) that no one else was in the store but witness & defendant, at the time of this conversation; that after deft left plffs asked witness if he knew any of Deft; that witness told them the conversation he had had with Deft; & that since that he had bought goods of plffs on credit; that he had never bot of plffs any goods on credit before; and thereupon the witness was asked to state the conversation between him & Deft by question & answer in the words used; and he stated it as follows "The deft said he could not pay his creditors, "that he had'ent got the means; that all he had "got he wanted for his family; that deft said no more; & that witness had but one conversation with him on this subject

On re examination this witness testified that the store of Deft was not shut up, at the time of this conversation; his store was open with the usual stock in it; that witness had worked for Deft as a cutter & it was common for witness to stop in Defts store; that he was familiar with him; that he had not been in business for himself before this; that he told plff of the conversation with Deft after Defts store was shut up & before he went to California; but he could not tell whether the conversation had occurred in winter or summer.

The plffs then called Archibald Young as a witness who testified that he knew the fact of Deft being shut up by attachment; that Mitchell came to the witness's store in 1849 & said (Defts counsel objected

again between Walnut & Market streets on Main St. Mitchells store was above Vine St. & did not burn up. Deft lived on Market street between second & third streets; Deft had much sickness in his family in the summer of 1850; his wife lay at the point of death; the state of business was worse in 1850 than it was in the great Cholera Season of 1849; the deft is an honest man but unfortunate; Mitchell made him considerable advances after the fire in goods — at one time from four to six hundred Dolls in goods:

Deft then called another witness & offered to prove by said witness & others in attendance the payment of the items of money, mentioned on the 18th & 19th & 20th pages of the record, at the dates mentioned; to which the plffs objected, and the Court excluded the testimony & Deft excepted.

The Plffs & Deft then asked the instructions stated on the 20th page 21st page & 22 & 23 page of Record as follows (Here set forth all the instructions & the exceptions as stated in record)

Deft moved for a new trial; because the verdict was against law & against evidence; because the Court erred in excluding from the jury the evidence on the part of the Deft. & because the Court erred in giving the instructions asked by plffs —

Which motion was overruled & Deft Excepted & bot this writ of Error

~~R. A. Hill~~

~~[illegible]~~

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Supreme Court

Field & Beardslee
vs
Benj^m Liverman

Stat^t of case
Hill
p.D.

(adopted Ryland)

Filed 5th November 1852
Wm J Glanville
Clerk

Field & Beardsley vs Leverman

Copy Statement of case & asked instructions

From the above statement of the facts in this case, it will be seen, that the propriety of the ruling of the Court below in admitting and in rejecting evidence, and in giving the instructions and in refusing to give instructions, is before this Court for consideration –

The defendant objected to the testimony of a witness in relating what one Julius Mitchell had said to him, about Leverman and his business – The plaintiff then proved, that Mitchell was the Brother in law of Leverman, that Leverman had confessed a judgment to Mitchell for some nine hundred dollars – That Execution issued on the same – and upon the plaintiff stating to the Court, that he expected to prove that the defendants property had been levied upon and held under this Execution in favor of Mitchell; the Court permitted the witness to testify, in relation to what Mitchell said –

There is no error in this – In cases where fraud is charged, a greater latitude is given to parties to interrogate witnesses and to bring before the jury facts and circumstances seemingly irrelevant, but which may ultimately form a link in the chain that encloses the transaction and gives it character – I should have had no objection to the admitting of the testimony which the defendant offered showing

the payment of debts; yet for the refusing to permit this, this Court will not re=verse — As to the ruling of the Court below then in admitting and refusing evidence, this Court is not inclined ~~[illegible]~~ to pronounce the same erroneous — ~~[illegible]~~

The instructions will next demand our consideration — The Court as will be seen from the above statement gave for the plaintiffs, four instructions — There can be no serious objection to the 1st. 2nd and 4th given for plaintiff — The third instruction becomes the point on which the case turns — The defendant below, the plaintiff in Error contends that this instruction is not the law — and that the Court was not authorised to give it —

The instruction brings before the jury the conduct of Mitchell and the defendant in regard to the confession of the judgment, issuing of Execution and the direction to the Sheriff, not to levy it until he got further orders — this too after, the defendant had been informed by the Sheriff of his having the Execution against him in his hands. and after defendant talks with Mitchell privately about the business, then Mitchell in the presence of defendant gives orders to the Sheriff not to proceed until he should direct him — The

law upon this subject has been decided to be, that where a plaintiff shall direct the Sheriff to hold up his execution, not to sell nor proceed to make the money until he shall give further orders and until he shall find younger executions crowding in; such acts render the execution dormant and fraudulent as to subsequent executions"—

The instruction marked as third given for the plaintiff, complied with the instruction given by the Court to the jury of its own motion, on the same subject; in the opinion of this Court was legal and proper—

It placed the transaction fairly before the jury and declared the law as favorably for the defendants as was ~~requested by~~ consistent with propriety— See 14 Johns Rep. 273— 5 Cowen 393—

There was no error then in the Court below and its judgment must be affirmed— The other judges concurring the same is affirmed.

John F. Ryland C

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Field & Beardslee

v

Liverman

Filed 10th December 1852
Wm. F. Glanville
Clerk

THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF Saint Louis IN SAID STATE, Greeting,

Whereas, Richard R. Field & Charles Beardslee on the Tenth day of December in the year eighteen hundred and fifty two at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Benjamin Liverman the sum of Eleven Dollars and Eighty five cents for their costs and charges by them expended in a certain suit wherein the said Benjamin Liverman was Plaintiff in Error and the said Fields & Beardslee were defendants in Error which to the said Dependants in Error were adjudged as appears to us of record: Therefore, We command you, that of the goods and chattels, lands and tenements of the said Benjamin Liverman in your bailiwick, you cause to be made the aforesaid costs, and that you have the same before the Judges of our said Supreme Court, on the Third Monday in March next, to render unto the said Fields & Beardslee the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then and there this writ.

Witness, WILLIAM S. GLANVILLE, Clerk of said Supreme Court, at office, in the City of St. Louis, the Twenty Seventh day of December in the year of our Lord one thousand eight hundred and fifty two.

Wm. S. Glanville, Clerk.

No 5 to March. 7. 1833

Fields & Beardslee
Todd & K.

Vs.

Benjamin Livermore
Hill

Glanville, Clerk $11.85
for 2 [illegible] 1.18
13.03

near [illegible] mist/[illegible]
[illegible]-day
will Payrina fee
days

No goods, chattels or real estate belonging to defendant found in my County, whereon to levy and make the within costs or any part thereof.

Jno. M. Winer. Sff.

March 21. 1853.

Nulla Bona 50 cts

No. October Term, 1852.

Benjamin Liverman

v.

Richard R Field & Charles Beardslee.

Clerk Wm. S. Glanville.. $	5,30
"	
Sheriff	
.....	
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STATE OF MISSOURI, ss.

I, WILLIAM S. GLANVILLE, Clerk of the Supreme Court, within and for said State, at St. Louis, certify that the foregoing fee bill is a true copy, in the aggregate, from the Fee Book and Execution Book in my office, and that the said Field & Beardslee liable for the same.

WITNESS, my hand and the seal of said Court, at office, in the City of St. Louis, this nineteenth day of January in the year of our Lord eighteen hundred and fifty-six.

W. S. Glanville, **Clerk.**

No 57

Supreme Court,
March Term 1856.

Benjamin Liverman
} Jan 19. '56
O. }

Richard R. Field &
~~Charles~~ Beardslee.
(Field)

W L G Lanville, Ck $5.30
Ser & Com 0.10
$5.40

Pro rata.
Execution never satisfied

Nulla Bona
Turner Maddox Sty
Bryan Crop. Dr

~~As Liverman~~ &
As the costs in this
case Court be made
out of Liverman,
you have to pay you
our costs, this within
$5.40/100 - A. Todd
To
Mr. Field Beardslee

No. 85 October Term, 1852

Benjamin Liverman

vs.

Richard R. Field &

Charles Beardslee.

Clerk Wm. S. Glanville.. $	5.30
"	
Sheriff	
F. Jones S. C. M.	.20
T. Maddox Shff.	.50
	$6.00
Cont. Sum	1.00
	$7.00

STATE OF MISSOURI, SS.

I, WILLIAM S. GLANVILLE, Clerk of the Supreme Court, within and for said State, at St. Louis, certify that the foregoing fee bill is a true copy, in the aggregate, from the Fee Book and Execution Book in my office, and that the said Field & Beardslee are liable for the same.

WITNESS, my hand and the seal of said Court, at office, in the City of St. Louis, this 16th day of August in the year of our Lord eighteen hundred and fifty-eight.

Wm. S. Glanville, **Clerk.**

notified Sept 27, 59

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No. 3

Supreme Court,
October Term 1858.

Benjamin Liverman
v.
Richard R. Field &
Charles Beardslee.

Wm. S. Glanville Ck.	$5.30
F. Jones S.C.M.	.20
T. Maddux Shff.	.50
	$6.00
Semit	1.00
	$7.00

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Judgt. Dec. 10th 1852
Book A page 311

Aug. 16 '58

Benjamin Leverman
vs
Richard R. Field &
Charles Beardslee

And now come the defendants and move the Court to quash the fee bill issued by the Clerk of this Court because the same was improvidently & irregularly issued —

Krum & Harding
for defts —

Field & Beardslee

vs.

Benjamin Liverman

Motion to Grant fee bill.

Filed 3d Nov. 1859.
Wm S Glanville Clk

S.t Lawis Novr. 3d 1859.

Messrs. Richard R. Fields & Charles Beardsley.

You are hereby notified to appear before the Supreme Court on Thursday the 8th instant, and show cause if any you have, why a fee bill shall not issue against you to the sheriff of S.t Lawis County, for the fees of the undersigned, in the case of Fields & Beardsley against Benjamin Linerman, decided in Supreme Court December 10th 1852.

Wm S Glanville,
Clerk Sup. Court,
S.t Lawis

Field & Beardslee
Liverman
Attachment No 23 to Feby 1851
Com Pleas for $254.41 & Costs

~~Attached~~ Livermans property ~~by~~ Attached by
M. B. Belt Shff and Sold by him for $345.80

Judgt against Liverman 6 April 1852
for $271.41 and Costs amounting to gether
to the sum of $395.01.-

Execution No 156 returnable to Sep T. 1852
issued to Shff Belt, upon which he
makes return, of having made $349.88
which after paying all costs on said execution
pays of the debt $221.28/100. Execution
then turned over to Shff Wimer, and
returned by him Nulla Bona as to
balance Sep 20th 1852

On the 22 December 1852 Execution
issued from the Supreme Clk Office against
Liverman to Shff Wimer for Costs in that Court
for $11.85 on the 21st March 1853 Wimer
returned that Ex Nulla Bona.

On 15 June 1853 Fee Bill issues to Shff Wimer from
Supre Clk Off against Field & Beardslee
for 6.05 - last or mislaid by Shff Wimer - not
satisfied,
On the 19 January 1856 Another fee bill
issues from Sup Clk Office to Shff Maddox

$5.30, upon which is ~~and~~ written by Atty Todd - who was Field & B. Atty as follows " as the costs in this case can not be made out of Liverman you have to pay your own costs $5.30 A. Todd

To Field & Beardslee " which fee bill was returned Nulla Bona by Madden -

On the 16th August 1858 a fee bill issued to Shff Cerre, for $6.00 - Shff Cerre sent to Beardslee & Bro several times for the money, and their replied was that ~~the fee~~ bill was not legal and that they would not pay it, ~~On the morning of the day of the levy, Mr Wilkins~~ The Clerk of the Court was requested, to withdraw the fee bill, and his reply was that the Court was justly due him, ~~and that Beardsley in the fee bill was a member of the firm of Main Street~~. On the morning of Oct 25th 1859 Mr Wilkins went down to the Store of Beardslee & Bro, and requested them them to pay the same or to have it taken from the Shff if it was illegal - and spent considerable time in explaining the Sheriff passion in the matter - Mr Beardslee refuses to do either.

In the Supreme Court - October Term 1852

Field & Beardslee
pffs
vs
Livingston
Deft

For the affirmance of the judgment below the plaintiffs insist upon the following points to wit:

August. - The Court did not err in refusing to grant the motion for a new trial. First

The only matters that can be assigned for Errors, which this Court will notice, are those set forth in the motion for a New Trial as the reasons therefor. 10 Mo. Rep. p 515 - 13 Mo. Rep. p 455.

The reasons for a new trial set forth in the motion therefor are three to wit:

1. That the Court erred in giving the instructions asked for by the plaintiffs
2. That the Court erred in excluding certain evidence offered by the defendant -
3. That one of the plaintiffs talked with one of the jurors -

As to the last no evidence of it was shown, or offered or preserved in the bill of exceptions - Nor does any affidavit thereof appear to have been made -

It is therefore no matter for the consideration of this Court -

As to the second reason, it was justly ~~excluded~~ overruled - For, on the trial of such issues as contained in this case, evidence of general good character & of general honesty is inadmissable - Mo. Rep. p
And evidence that he Liverman did pay or try to pay certain of his creditors is no evidence that he did not intend to ~~defraud~~ or unlawfully hinder others - The result of such evidence & the object of it are to show that the defendant was of good repute & honest - As before stated, in such a case as this such evidence is inadmissable.
1 Kirby's Rep. p 60-62 - 7 Conn. Rep. p 116-118-119.
10 Serg. & Rawle's Rep. p 55 - Also the Case of Scott vs Conway decided at the
Term 184 of this Court but not reported. This was a case of Trespass de bonis apostatis instituted by Scott against Conway, for taking as Sheriff certain lumber under an attachment in a suit of Fisher vs Wesson. Scott claimed the property & the defence was that Wesson conveyed it Scott to defraud his creditors - Among other evidence Scott gave evidence of the good character & honesty of Wesson, which was excepted to - Scott obtained a judgment & Conway appealed to this Court, which reversed the judgment by reason of the admission of ~~said~~ such Evidence -

The m

The first reason concerns the instruc=
tions asked for by the plaintiffs & given
by the Court.
The instructions asked for by the plain=
tiffs & given by the Court & excepted to
by the defendant, were four in num=
ber & are set forth on pages 20 & 21. of the
transcipts.
As to three, numbered 1-2-4, it is not
~~understood~~ supposed that any objection is
insisted upon.
As to the instruction Numbed 3. it
was ~~supported~~ warranted by the
evidence & the inference the jury
were therein told they might make
from ~~the~~ the facts, therein contained,
if found to exist, was right.
It is insisted to be the law that if
~~a plaintiff~~ in an execution direct
the officer having it to execute, not
to execute it, till ordered by him so to do
& then he does not order it, until he

learns of the issuing of another execution in favor of another creditor against the defendant, that the presumption of law is that the object of the execution & of the direction to delay it is, at least partly, to protect the defendant in the use of his property from other creditors. 17. I.R. p 274 Kellogg vs Griffen. The direction by the plaintiffs in the execution in this case to the Sheriff was to do nothing until ordered, unless crowded by younger executions but by no means to let the execution lose its preference. And upon this the Court said that the inference was that the plaintiffs issued their execution, not with the absolute intention of collecting their debt but, partly, at least with a view to cover the property of the debtor, for his use. Now the direction of Mitchell was tantamount to this. ~~His~~ The plan was between him & Liverman, evidently, that the Sheriff should not proceed with this execution, so long as Liverman was not threatened with another but then to proceed, so as not to loose its preference. This is as manifest as if actually expressed in words, from the fact that the judgment in favor of Mitchell was confessed & an execu=

tion was immediately issued thereon & with it a direction was given not to proceed till ordered & then no order to proceed was given till another process against Liverman's property came out. All these acts, except the last, were so contemporaneous with the confession, that they must be viewed as of a piece as Liverman was a voluntary party to the confession he must have been a party to the other acts & as to the last act, the order of the Sheriff to proceed when the attachment came out, that of course was the contemplated consummation of the former acts. Now, upon such a state of facts, said case decides that the presumption of a fraudulent purpose, at least in part, is complete. But this instruction does not go so far as that. It only says that from them the jury may infer a fraudulent purpose. The facts make a badge of fraud. And although this Court seems to have repudiated, utterly, the doctrine of frauds in law, it never can, rationally, repudiate the doctrine of presuming fraud from certain facts. of making certain facts prima facie proof of fraud in fact

so as to be conclusive thereof, unless rebutted - and a fortiori never the doctrine of permitting a jury to infer fraud from certain facts, which experience & reason show & prove do not generally exist without a connection with some fraudulent purpose, such as the law prohibits - The strength of these badges or indicia of fraud varies in law from absolute proof to a presumption thereof & thence to a speculative character warranting the inference of fraud but not requiring it - The facts, upon which this third instruction is predicated, have been generally considered, by Common Law Courts, presumptive evidence of fraud & therefore conclusive, unless rebutted - But in this instruction they are not given the strength of presumptive evidence of fraud but merely that of such a tendency towards proving it, that the inference therefrom would be warrantable - This instruction therefore is not as strong as the authorities would warrant and is as weak as it could be ~~by~~ without a complete denial of all tendency in these facts towards proving fraud -

Besides, by reference to the in=
struction given by the Court upon
its own motion, numbered 1-2-3-4 p 21-22-23
+ instruction p 23 + 24
it will be seen that the Court most
fully + carefully protected the
defendant against any inference
of fraud from vague notions of
the ~~effect~~ proper strength of the evidence - And in=
deed, if all the instructions be ta=
ken together, it will be seen
that it very rarely happens that
a party is more effectually pro=
ted by instructions from an
unjust verdict - It is hard to see
how the Court could, more
effectually, save the defendant in this case
from a verdict by instructions
without instructing the jury
at once that upon the evidence
they should find for the de=
fendant -
It is therefore insisted that the
judgment below in this case
should be affirmed -

Todd & Krum
Attys. for Defts. in Error -

A man can dispose of his property
by means of a judgment & execution
as well as by deed & a judgment & ex=
ecution therefor, ~~in whole or part~~ not
yet completed, is an intended dis=
position not yet made & therefore
about to be made & intended for the use of
the defendant in the execution he must be presumed to
be a party to it -

Todd & Krum
Attys. for ~~Deft~~ Defts.
in Error -

No. 85
Sup. Court

Field & Beardsley
Defts in Error
vs
Livingston
Pltff. in Error

Briefs for
Pltff. in Error

10 Mo. Rep. 515
13 Mo. " 455.
17 J. R. " 274.
1 Kirby Rep. 60-62
7 Conn. Rep. 116-118-119
10 Serg. & Rawle Rep. p 53

Benjm Liverman pltff in Err
ads
Field & Beardslee Defts in Err

Supreme Court
Oct T. 1852

Points:

1st There were the three following ifsues for trial in this case:

1st At the time of ifsuing the attachment in this case, was Liverman, about to remove his property & effects out of this State; with intent to hinder or delay his creditors.

2d Had he fraudulently conveyed his property so as to hinder & delay his creditors.

3rd Was he about to conceal & dispose of his property or effects fraudulently so as to hinder & delay his creditors.

The fraud is charged to consist in the confession of a judgment, by the said Liverman on the 6th July 1850 to one Julius Mitchell for $970 - on which an execution was ifsued; and after the ifsue, Mitchell at the request of Liverman, gave defts time on the execution until the 23d Oct 1850; said writ being returnable on the 3d Monday of November following:

Point — 2nd Deft insists that there is no issue in this case, to meet any such charge of fraud - Such judgment, execution & order not to levy; are ~~not any~~ no evidence that Deft was about to remove his property; that he had fraudulently conveyed it; or that he was about to conceal & dispose of it.

If the judgment was fraudulent; ~~&~~ the execution being stayd until issue of attachment it might be evidence that the Deft had concealed his property with intent to defraud —

Point — 3rd There was no pretence or evidence in the case, that the judgment of Mitchell vs Liverman was not bona fide ~~&~~ or not for a good & valuable consideration. The judgment was introduced with the execution, by the plffs, as their own testimony in the case; and they gave no evidence tending to impeach either; on the contrary it appeared, that ~~Deft~~ he was justly indebted to Mitchell for large advances. The judgment then must stand in this case as just and unimpeachable —

Point 4th The 2d & 3d instructions of the plffs were improperly given, for the reason that the confession of judgment, issue of execution & stay of execution, are no evidence of any fraud, unless the judgment was not bona fide.

(A). Mere indulgence by an execution creditor to his debtor, is not fraud; nor evidence of fraud; it is only charity which is commendable both in law & in morals.

(B.) Said instructions were well designed to mislead the jury, by authorizing them to find fraud, from the stay of execution.

(C) The other instructions given do not so qualify those of the plffs, as to place the law properly before the jury.

Point 5th The Court erred in excluding the evidence offered by Deft showing the amount of the money paid by him on his debts from July 1st till October 1850.

(A) This proof was of great importance to show the intent of the Defendant; who thro' struggling with poverty, sickness & calamity; paid ~~as much~~ more money to his creditors than the whole amount of plffs bill; after the confession of judgt

(B.) Whatever goes to show the intent of a party charged with fraud is material -

Point 5th Under the 3d instruction given for plffs - the evidence of Defts payments to his creditors before & after confession of judgment, was material. It went directly to rebut the inferences to be drawn from the facts to support said 3d instruction -

Point 6th The Court erred in admitting the testimony of the conversations of Julius Mitchell with Archibald Young; in 1849; for the reason that such testimony was irrelevant & hearsay & incompetent; on the trial of plff's agst Deft on a charge of fraud -

Point 7th: The Court erred in giving the 2nd & 3rd instructions, to the jury - for the further reason; that the whole of the evidence on the part of defendt to avoid the effect of the presumptions, designed to be drawn by the plff, under said instructions; was excluded -

Britton & Hill
for Defd

Supreme Court

Field & Beardsley

vs

B. Liverman

Points

B. A. Hill

Atty for Dft.