Hayden, William v. Smith, Irwin & Sedwick, William & Shepley, John

472/1

617/26

Trustee of Mo to the Vs of
Hayden - respon
Pltff

v

Smith - appell
Deft

Knox - Smith & Sedgwick - app

Decker & Voorhee - resp

Sept 1859

March 1862

St. L Circuit Ct

Reversed Remanded
Judge Bay - concur

1 State of Missouri } ss Be it remembered that on
County of St Louis } the 29th day of June 1858 there
was filed in the office of the
Clerk of the St Louis Circuit Court a petition which
is in the words and figures following to wit.

The State of Missouri to the use
of William W Haydon - Plff. } In the Circuit
vs } Court St Louis
Irwin G Smith - William D. } County - State of
Sedgwick and John R Shepley - Defts } Missouri
October Term 1858

Petition William W Haydon comes and states that Loel
W Norcross - and William H Sargeant, who are
partners in trade doing business under the firm
and style of L W Norcross & Co obtained a judgment
before Peter W Johnstone, Esq. a Justice of the Peace of
the Township of St Louis, in St Louis County, against
one Henry Hudson, on the 14th day of May, 1858,
that on said May 14th 1858, execution was issued
on the said judgment by said Justice of the -
Peace returnable 90 days after date of said execution
and directed to any constable of St Louis Township
in Saint Louis County, that said Execution was
given by the said Justice to William B Watson
Constable of the fifth and sixth wards of the
City of St Louis, in the Township and County
aforesaid, that under said Execution said William
B Watson, Constable as aforesaid by the order and

2 direction of Irwin B Smith agent and attorney of plaintiffs in said Execution the said Joel W Morrow and William H Sargeant did levy upon and seize the personal property named in the schedule hereto annexed and also hereinafter recited as the property of the said Henry Hudson, on the 20th day of May 1858 to satisfy the above mentioned execution, The said William W Haydon further states that he was the sole owner of said property so levied upon and seized by the said Constable under the said Execution at the time of said seizure, that at the time of said seizure he claimed said property according to the third section of the act of the General Assembly of the State of Missouri, entitled, "An act, concerning the duties of Sheriffs and Marshal in the County of St Louis in relation to the levy and sale of such property under execution or attachment as may be claimed by third persons" and in accordance therewith on the 20th day of May 1858 caused to be served on said Constable a written notice of said claim a copy of which said notice is hereto annexed and made an exhibit in this cause the original of said notice not being in the possession or under the control of said Haydon but being on file in the office of said Peter W Johnston, Esq- Justice as aforesaid with the other papers in said suit- The said William W Haydon further states that thereupon the said Constable demanded of and obtained from the said Irwin B Smith as

3 as principal and the said William D Sedgwick and John R. Sheply as securities their bond, whereby they bound themselves unto the State of Missouri in the sum of One thousand Dollars, they, their heirs executors and admin=
=istrators jointly and severally sealed with their seals and dated St Louis the 20th day of May AD 1858 conditioned as follows to wit, That whereas by virtue of an execution issued by Peter W Johnstone a Justice of the Peace within and for the City and County of St Louis aforesaid and directed to any Constable of St Louis County and whereas the said execution was given by the said ~~Sheriff~~ Justice to Wm B Watson constable as aforesaid, on a judgment rendered by the said Justice in favor of the above named Joel W Norcross and William H Sargeant and against H Hudson for the sum of One hundred and Six 31/100 Dollars and also for the costs of suit The said ~~Constable~~ Wm B Watson Constable as aforesaid, executed the said writ at the request of the said plaintiffs by taking as the property of the said H Hudson defendant aforesaid the follow=
=ing described personal property = to wit. Two Ivory Hair Brushes; One Ivory sett fine pieces, One Ivory hair brush Three Buffalo horn nail [illegible] brushes, Twenty nine shell tuck Combs, Twenty one shell pocket Combs, Five Buffalo horn nail Combs, Twenty shell dressing Combs Three shell fine Combs - Ten shell pocket Combs Eight pair shell puff Combs - five shell tuck Combs fourteen shell tuck combs, Three shell round tuck Combs

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One shell fine Combs, Seven shell fine Combs, Nine Buffalo hair Brushes - two shell inlaid brushes - Six Buffalo hair brushes - four shell hair brushes - One shell inlaid brush - Ten satin wood brushes, two infants wood brushes - Seventeen pocket Combs, thirty Eight ivory fine Combs - Twenty nine hair brushes assorted, Fifty hair brushes, Each $2.50 of the value of One hundred and thirteen 18/100 dollars and Wm W Haydon by ~~his attorney~~ Henry Hudson his Attorney in fact has claimed said property according to the third section of the act of the General Assembly of the State of Missouri, intitled "An act concerning the duties of Sheriff, Marshal and Constable in the County of St Louis in relation to the levy and sale of such property under execution or attachment as may be claimed by third persons." Approved March 3rd 1855 and in the manner therein mentioned, Now if the aforesaid plaintiff will pay to the aforesaid claimant all damages that the said claimant may sustain in consequence of such levy and ~~sale~~ in consequence of any sale which may be made under ~~of~~ or in virtue of such then this obligation shall be null and void otherwise it shall remain in full force and virtue - all of which will more fully and particularly appear by reference to a copy of said bond filed herewith and made an exhibit in this Cause the original thereof not being in the possession or under the control of the said William W Haydon but being on file in the office of Peter W Johnstone

5 Esq. Justice as aforesaid with the other papers in said suit
The said William W Haydon avers that the goods levied on and seized by the Constable as aforesaid were well worth the sum of five hundred dollars.
The said William W Haydon further states that notwithstanding the said claim so served ~~so served~~ as aforesaid, upon the said Constable, he the said Constable did proceed to sell the goods, wares and merchandise so levied upon and seized by him as aforesaid and did sell the same, to the great loss and damage of him the said William W Haydon, ~~The said William W Haydon~~
The said William W Haydon avers that by reason of the premises he has been damaged in the sum of One thousand Dollars, for which sum of One thousand Dollars with interest and costs he asks judgment and alleges as a breach of the condition of the above in part recited bond that the aforesaid defendants (Obligors in said bond) have failed to pay to the aforesaid claim=
=ant - William W Haydon (plaintiff in this suit) all of the damages or any part thereof, that the said claimant has sustained in consequence of such levy and in consequence of said sale made under or in virtue of such, wherefore said Haydon prays judgment as aforesaid

Decker and Voorhis
attys for Haydon

William W Haydon for whose benefit this suit is insti=
=tuted, makes oath and says that the above petition

6 and the matters therein, as stated, are true, as he believes

Sworn to and Subscribed before me this 29th of May 1858 — S Rice Clk } Wm W. Haydon

Claim Said Notice of Claim is as follows

Copy of Claim

St Louis May 20th 1858

To William B Watson

Constable of St Louis Township, in the County of St Louis, State of Missouri

You are hereby notified that the property mentioned in the annexed schedule, which I hereby make part of the claim, and which property you have levied upon, and now have in your possession under an execution, issued by Peter W Johnstone, Esq. a Justice of the Peace in and for St Louis ~~County~~ Township in the County aforesaid under date of May 14th 1858 in the Case of Joel W Norcross & William H Sergeant partners doing business as J W Norcross & Co against H Hudson is my property that I am the lawful owner and intitled to the possession of the whole of said property and am in good faith the lawful owner of the interest claimed by me in said property that the defendant in said execution has no right or title directly or indirectly in the interest in said property claimed by me as aforesaid and that this my claim is not made in collusion with said defendant for the purpose of vexing hindering

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on delaying the plaintiffs in obtaining their just rights and that my title to said property was acquired by virtue of an instrument of conveyance duly executed from Henry Hudson to me under date of March 3rd 1858 and Recorded in Book X 194 page 525 in the Recorders office of St Louis County

W. W. Haydon

by Henry Hudson his Attorney in fact.

Henry Hudson ~~in~~ attorney in fact of William W. Haydon and in this behalf his agent makes oath and says that the above claim and the matters therein as stated are true

H Hudson

Sworn to and Subscribed before me this 20th day of May ~~—~~ A.D 1858

Peter W Johnston

Justice of the Peace

Said Schedule is as follows

Schedule

2 Ivory Hair Brushes @	$12	00	Ea	24	00
1 Set. 5 pieces Ivory Brushes				30	00
1 Ivory Hair Brush				8	00
3 Buffalo Horn nail Brushes	1	50	Ea	4	50
1 Shell Tuck Comb				8	00
1 " " "				9	00
1 " " "				6	00
2 " " " @	$4			8	00
3 " " " @	3			9	00

4	2 Shell Tuck Combs	3	00	6	00
	4 " " "	2	50	10	00
	5 " " "	2		10	00
	6 " " "	1	25	7	50
	3 " " "	1	50	4	50
	1 " " "			1	75
	10 " Pocket Combs	1	25	12	50
	2 " " "	1	50	3	00
	5 " " "		75	3	75
	2 " " "	2	00	4	00
	2 " " "	1	50	3	00
	5 Buffalo horn Tail Combs		50	2	50
	5 Shell dressing Combs	1	25	6	25
	11 " " "	1	50	16	50
	3 " " "	2	00	6	00
	1 " " "			1	75
	3 Shell fine Combs	1	25	3	75
	10 Shell Pocket Combs	1	25	12	50
	1 Pr Shell puff Combs		75	6	00
	5 " Tuck Combs	1	50	7	50
	2 " " "	2	50	5	00
	2 " " "	4	00	8	00
	2 " " "	3	00	6	00
	3 " " "	1	75	5	25
	5 " " "	2	25	12	25
	3 " Round "	1	50	4	50
	" " Fine Comb			4	00
	3 " " "	1	75	5	25

9	4 Shell fine Combs	1	50	6	00
	9 Buffalo Hair Brushes	1	75	15	75
	2 Shell inlaid	2	50	5	00
	2 Buffalo Horn "	1	50	3	00
	4 " "	1	25	5	00
	4 Shell "	1	50	6	00
	1 " inlaid			3	50
	4 Satin Wood	1	50	6	00
	1 " "	2	00	2	00
	2 " "	1	25	2	50
	3 " "		85	2	55
	2 Infants "		75	1	50
	17 Packet Combs		25	4	25
	5 Ivory fine Combs	1	00	5	00
	5 " " "		40	2	00
	4 " " "		25	1	00
	3 " " "		30		90
	14 " " "		20	2	80
	7 " " "		15	1	05
	9 Hair Brushes assorted	1	50	13	50
	3 " " "	2	00	6	00
	15 " " "	1	25	18	75
	2 " "	1	75	3	50
	11 " "	1	00	11	00
	4 Hair Brushes	10	60	2	40
	1 " "			2	25
	1 " "			2	00
	1 " "			1	50

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5	Hair Brushes	1	00	5	00
2	" "	1	25	2	50
6	" "	"	75	4	50
7	" "	1	00	7	00
2	" "	1	00	2	00
4	" "		60	2	40
5	" "		70	3	50
1	" "				85
"	Cash			2	50
				$452	45

Henry Hudson attorney in fact of William W Haydon and in this behalf his agent makes oath and says that the above schedule of property is just and correct and that the goods seized and taken in possession by Constable Watson under and by virtue of that execution mentioned in the claim of which this Schedule is made a part and really and truly of the value mentioned in this account to wit the sum of $452 $\frac{45}{100}$ dollars

Henry Hudson

Sworn to and Subscribed before me this 20th day of May A. D 1858

Peter W. Johnston
Justice of the Peace

Bond

Said Bond is as follows.

Know all men by these presents - That we Irwin R Smith - Agent of plaintiffs as principal and William D Sedgwick and John R. Sheply as securities are held and firmly bound unto the State

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of Missouri in the sum of One thousand Dollars, to the payment whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents sealed with our seals, and dated at St Louis, this 20th day of May A. D. 1858

The Conditions of the above obligations are such, That whereas by virtue of an execution issued by Peter W. Johnston a Justice of the Peace within and for the City and County of St Louis aforesaid and directed to any Constable of St Louis County and whereas the said Execution was given by the said Justice to Wm B. Watson Constable as aforesaid, on a judgment rendered by the said Justice in favor of the above named Joel W. Norcross and William H Sergeant, and against H Hudson for the sum of One hundred and Six $\frac{31}{100}$ Dollars, and also for the costs of suit - The said William B Watson Constable as aforesaid, executed said writ at the request of said plaintiffs, by taking at the property of the said H. Hudson defendant aforesaid the following described personal property to wit Two Prong hair Brushes, One Ivoryset fine pocket - One Prong hair brush - 3 Buffalo horn nail Brushes, Twenty nine Shell Tuck Combs - Twenty nine shell tuck Combs Twenty one Shell Packet Combs - Five Buffalo horn tail Combs, Twenty shell dressing Combs, Three shell fine Combs - Ten Shell pocket Combs - Eight pair Shell puff Combs - Five shell tuck combs - Fourteen shell

19 tuck combs - Three shell round Zuck Combs, One shell fine Comb, Seven shell fine Combs - Nine Buffalo hair Brushes - Two Shell inlaid brushes - Six Buffalo horn brushes, Four Shell horn brushes, One shell inlaid Brush - Ten satin wood brushes, Two infants wood brushes - Seventeen Pocket Combs, Thirty eight ivory fine Combs Twenty nine hair brushes, aported, Fifty hair brushes Cash $2.50. -

Of the value of One hundred and thirteen $\frac{18}{100}$ dollars and Wm W Haydon by Henry Hudson his attorney in fact has claimed, said property according to the third section of the act of the General Assembly of the State of Missouri entitled, An act concerning the duties of Sheriff, Marshal and Constable, in the County of St Louis, in relation to the levy and sale of such property under execution or attachment, as may be claimed by third persons." Approved March 3rd 1855. and in the manner therein mentioned.

Now if the aforesaid plaintiffs will pay to the aforesaid claimant all damages that the said claimant may sustain in consequence of such levy, and in consequence of any sale which may be made, under or in virtue of such, then this obligation shall be null and void otherwise it shall remain in full force and virtue

Signed Sealed and delivered in Irwin Z Smith agent

presence of
Chas. C Whittelsey
as to W D Sedgwick & J R. Shepley

for Plaintiffs (Seal)
William D Sedgwick (Seal)
John R Shepley (Seal)

13 On the filing of which petition &c the following Summons was issued – To the Sheriff of St Louis County Greeting

Summons The State of Missouri } &c We command you to
County of St Louis } summon Irwin G Smith
William D Sedgwick and
John R Shepley to appear before the Judge of our Circuit Court, on the first day of the next term thereof, to be held in the City of St Louis within and for the County of St Louis, On the first Monday of October next, then and there to answer the Complaint of the State of Missouri to the use of Wm W. Haydon as set forth in the annexed petition and have you then and there this writ.

Seal

Witness Stephen Rice, Clerk of our said Court, with the seal thereof hereto affixed at Office in the City of St Louis this 29th day of June in the year of our Lord Eighteen hundred and fifty Eight.

Stephen Rice Clk.

On the back of which Summons, there is indorsed

Sheriffs Return the following Sheriffs Return

Executed this writ in ~~the County of~~ St Louis County on the 1st day of July 1858 by delivering a copy of the writ and petition as furnished by the Clerk to Irwin G Smith, also by delivering a copy of the writ and by offering to read the petition to John R Shepley ~~and~~ which he declined to hear on the 10th day of July 1858 by delivering a copy of the writ and ~~petition~~

reading the petition to William D Sedgwick which he declined to hear

James Castello Sheff.
By Geo N. Stevens Dep'y

Answer of Defendants

On the 5th of October 1858 the following answer of Defendants was filed

Defendants in answer to plaintiffs petition, say that they have no knowledge or information sufficient to form a belief as to whether said Constable Watson did levy upon and seize the personal property alleged to have been levied upon, in plaintiffs petition, upon the execution in said cause.

Defendants deny that said William W Haydon was the owner of the ~~same~~ property described in plaintiffs petition, at the time mentioned therein, and deny that he was the owner of the property levied upon by the said Constable, by authority of the said execution and they allege that the defendant in said execution Henry Hudson was the owner, and in possession of the property levied upon, up to and at the time when said levy or seizure was made. Defendants admit that said Constable Watson did levy upon and seize certain personal property at the store No 96 Market Street. as the property of Henry Hudson defendant in said execution. Defendants allege that on the 3rd day of March A. D 1858. Henry Hudson was the owner of the property levied upon, to wit the personal property, or stock in trade at No 96 Market Street

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in the City of St Louis, and that at said time the said Henry Hudson was indebted to divers persons and among others J. W. Norcross & Co of Boston — Massachusetts, that on or about said third day of March, the said Henry Hudson executed a ~~bill~~ certain Bill of sale whereby he pretended to convey to said William W Haydon the said stock in trade and fixtures in said store, but defendants allege that said bill of sale was colorable only, and without any real consid=-eration, that the same was executed by said Henry Hudson, for the purpose and with the intent to hinder delay and defraud his creditors and that said Haydon accepted said Conveyance with the intent to assist said Hudson, in hindering, delaying and defrauding his creditors and that no title passed by the said Conveyance that the said ~~Hudson~~ Haydon and the said Hudson combined and Confederated together to defraud the Creditors of said Hudson, That up to and at the time of said seizure, the said Haydon had never taken possession of said personal property but that said Hudson continued in the possession thereof and continued to sell the said goods, in his usual course of trade in the same manner as before the said pretended Conveyance. That some of the articles levied upon by said Sheriff, were articles included in the pretended sale of March 3rd 1858 and other were articles purchased by said Hudson himself after said bill of sale was executed, Defendants

16 deny that said goods levied upon as aforesaid by the Constable aforesaid were of the value of Five hundred Dollars and deny that said Haydon has been damaged in any sum whatever, and deny that they have been guilty of any breach of said bond, or of any of the conditions thereof, and that plaintiff is not entitled to recover any thing by his said action and they therefore ask judgment and for their costs in this behalf expended.

Smith and Sedgwick
for Defendants

State of Missouri } ss Irwin Z Smith one of the
County of St Louis } above named defendants

being duly sworn on his oath says that he believes the foregoing petition and the matters as therein stated are true

Sworn to and Subscribed before me this day of October A. D 1858 } Irwin Z Smith

Stephen Rice Clk

And at the February Term 1859 and on the 9th of April 1859 the following proceedings were had herein

Petition on Bond.

Now come the parties by their respective attorneys, and also a jury to wit, M Foristell A. Sevis Henry Peetes, Wm A. Robinson, L M. Abbott P Kennerle, J R. Creele J Baldwin, D Mickey

1r

Jacob Koch, Henry Kennedy and Charles G Carr twelve good and lawful men who being duly elected tried and sworn the issues herein joined well and truly to try the trial progressed but not being finished further proceedings are laid over until Monday — Morning.

At the same term and on the 11th of April 1859 the following further proceedings were had herein

Now again came the parties by their respective attorneys and also the Jury impannelled and sworn herein and thereupon the trial progressed and not being finished, is laid over until to morrow morning.

And at the same term and on the next 12th the foll=-owing further proceedings were had in said Cause to wit,

Now again came the parties by their respective attorneys and also the Jury impannelled and sworn herein and thereupon the trial of this Cause progressed and being finished the Jury retire to consider of their Verdict.

And at the same term and on the 13th of April 1859 the following further proceedings were had herein

Petition On Bond =

Now again came the parties by their respective Attorneys, and also the Jury empan=-nelled and sworn herein and the Jury aforesaid being agreed upon a verdict upon their oaths find for the plaintiff and assess his damages at the sum

of Four hundred and Seventy Six dollars and fifty six cents, It is therefore considered by the Court that the plaintiff recover of the defendants the sum aforesaid in form aforesaid as assessed and also his Costs herein expended and have execution therefor.

And at the same term and on the 20th of June 1859 the following order was made in said Cause to wit The defendants motion for a New Trial being heard and being fully considered by the Court it is ordered that the same be over ruled.

And at the same term and on the 22nd of June 1859 the following order was made herein

The defendants file a bill of Exceptions and also an — affidavit for an appeal wherefore it is ordered that an appeal be allowed them to the Supreme Court from the judgment herein rendered and they — thereupon file an appeal bond in the sum of — One thousand dollars with themselves as principals and John A Rankin and George P Strong — as securities, which bond is approved by the Court.

Said Bill of Exceptions is as follows.

State of Missouri } ss.
County of St Louis } Be it remembered, that the said cause coming on to be heard

Bill of Exceptions

plaintiff in support of the allegations in his petition, examined Henry Hudson, who being duly sworn testified as follows, I know William W Haydan I have known him ~~ff~~ five or six years, I recollect

the judgment of Justice Johnston against me for about $104 and the levy under it upon the goods of W. W. Haydon at No 96 Market Street.

I sold these goods to Haydon March 3rd 1858, that sale was by writing. This is the Bill of sale that I executed to him = as follows

Bill of Sale

This Bill of sale ~~was~~ made and entered into ~~on this~~ 3rd day of March Eighteen hundred and fifty Eight by and between Henry Hudson party of the first part and William W. Haydon party of the second part all of St Louis in the State of Missouri Witnesseth, that the said party of the first part for and in consideration of the sum of One thousand two hundred and fifty nine Dollars - cash in hand paid by the said party of the second part. the receipt of which is hereby acknowledged ~~does~~ by these presents bargain, sell - alien - transfer - convey and deliver unto the said party of the second part. all the goods wares and merchandise consisting of wigs perfumeries Fancy goods and other articles and also all the fixtures - furniture and other personal property all of which are in store and rooms No 96 (ninety six) in the City of St Louis & County of St Louis & State of Missouri, said No 96 being on Market Street between third and fourth streets.

To have and to hold the said personal property unto the said party of the second part, his heirs and assigns forever. In witness whereof the said party of the first

part has hereto set his hand & seal the day and year first herein written - Henry Hudson (seal)

Witness

William C. Jamison

State of Missouri } ss Personally appeared before me
County of St Louis } a Justice of the Peace within & for the County aforesaid Henry Hudson who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing and acknowledged that he executed the same as his voluntary act and deed for the purposes and condition therein mentioned

St Louis March 18th/1858. C Hequembourg Justice of the Peace

State of Missouri } ss
County of St Louis } I the undersigned Recorder for said County certify that the foregoing instrument of writing was filed for record in my office March 19th 1858 and is truly recorded in Book 194 page 525

(seal) Witness my hand and Official seal the date aforesaid

C. Keemle Recorder

The consideration paid me was $1259 = $1000 of which was by notes that I had given to James H. Haydon for money that I had borrowed of him, about $700 in Dec = 1856 or January 1857, and about - $200 in June 1857 and which W. H. Haydon brought to me ~~in~~ in November 1857 and requested me to give him a new note

21 for the amount with interest and give him security
The balance of the consideration was $259 which
he paid on a judgment for that sum against me
and James H. Haydon and in favor of Joshua W.
Owings - When I gave Haydon the note for $1000
he gave up the two notes that I had given to James
H. Haydon, and when I made the bill of sale to him
of March 3rd 1858, he gave me up the note for $1000
which I had given him the preceding November.
After I sold the stock to him, I remained in the
store as the agent of Haydon, and some stock
and added new stock, I took charge of the store
as the agent of Haydon.
After I sold the store, I retained no right, title or
interest whatever, in the store, but he employed one
at $100 per month to carry on the business for him
I acted for him under a power of Attorney I acted
under that power of Attorney from a day or two
after the sale, until it was revoked October 19th 1858
Here the power of Attorney was offered in evidence
Power of Atty. Know all men by these presents that I William H.
Haydon of the City and County of St Louis
in the State of Missouri [illegible] made constituted
and appointed, and do by these presents, constitute
make and appoint Henry Hudson, my true
and lawful Attorney, for me & in my name
place and stead, to conduct and carry on my
Fancy store at No 96 Market Street between 3 & 4

22 Streets in the City of St Louis to buy goods, to replenish the stock and sell the same as well as those now on hand at retail and at the usual prices, giving and granting unto my said Attorney full power and authority to do and perform every act and thing necessary and requisite to be done as I could do if personally present and hereby ratifying and confirming all that my said Attorney may do or caused to be done by virtue hereof In witness whereof I have hereto set my hand and seal on this sixth day of March, Eighteen hundred and fifty ~~nine~~ eight

Theodore Mournerm } Wm W. Haydon.
witness

On this 19th day of October 1858 - I hereby revoke the above Power of Attorney and declare the same null and void from this date

Wm W Haydon

I acknowledge and consent to the above revocation of the said Power of Attorney

St Louis October 19th 1858 - Henry Hudson.

I continued in the store to act for Haydon immolested from the 3rd day of March 1858 to the 20th day of May 1858, when a levy was made by Constable Watson under an execution issued by Justice Johnston against me and in favor of Norcross & Co.

I recollect the goods levied upon the list enumerated in the petition is correct and the goods were worth $452.45 - My father made the list when Watson

23 made the levy a list was made out and this is a copy of that list. Here witness compared the list in the petition with the inventory attached to claim.

I have been in the wig and perfumery business since 1847, The charges ~~are~~ in the list are reasonable and as low as that kind of goods could be bought at After Watson made the levy I made the claim for the goods for Mr. Haydon. Here the claim was offered in evidence - for which see Exhibit in petition. After the claim was made the Constable took the bond sued on from defendants, the goods were advertised and sold by the Constable

Cross Examination

Another levy was made afterwards by Constable Watson on a judgment against me and before the second levy by Watson, the Sheriff made a levy on an attachment against me, On the first levy the goods taken were of the value of $450 about, on the second levy by the Constable the goods taken were worth about $375 and the levy by the Sheriff took goods to the amount of about $800 There was a judgment ~~against myself~~ obtained against myself and James H. Hudson who is a brother to W. H. Haydon the plaintiff in favor of Joshua W Owings

I loaned the $700 that I first borrowed from James H. Haydon to my father

James H Haydon is a lower Mississippi River

pilot, In June 1857 he was engaged in the stave business, was a member of the firm of Hudson and Haydon, The firm was composed of himself and my Father Francis Hudson,
I dont know the pecuniary condition of James Haydon in June 1857 or Dec 1856 or January 1857 - I have known him ~~ff~~ five or six years
I dont know the pecuniary condition of W. W. Haydon in Nov 1857 When I made the conveyance of March 3rd 1858, I was indebted in the sum of $879 besides what I owed to Haydon,
I had about $50 when I made that sale, I did not tell Haydon that I was indebted
I gave a deed of trust on my stock of goods in November 1857 to secure this note of $1000, note was made payable one year after date
W. W. Haydon paid judgment for $259 because he became alarmed for his security for $1000
The Sheriff had possession of the store at the time Haydon paid off this execution, From March to May 1858 Haydon was not doing any thing He did not sell goods - He was at the store ~~nearly~~ every day nearly when in the City, He never gave me any cash to carry on business, I gave him proceeds of sales from March to May, I think I paid $25 on his account, I was in charge of the store from November 14th 1857 to March 13th 1858 I sold of the goods, & applied proceeds to carry on

25 store & to my own personal accounts
Haydon was in the City a part of the time and knew that I carried on the store
Between March 3rd and May 20th I made purchases for the store I dont recollect the amounts I purchased of Vilmar and Hartung - New York I think about $300 or $400 all cash except $138 I bought in the name of Mr. Haydon,
There were also goods bought of Bazin of Phila=delphia, I dont think he asked me in whose name they should come, The come invoiced to me - The order was taken in St Louis by Mr. MacBride, the agent of Bazin, They were bought on time. My old sign was left over the door, the length of the front and about nine inches wide Haydon's sign was on the door, it was about 12 inches long and three inches wide.
When the door was closed and the shutters were up, the sign would show, ~~when~~ I saw Edward E Tower in St Louis in April 1858 He came on business I gave him an order for goods on J W. Norcross & Co This the order

Order H. Hudson St Louis

4 lbs	Band Hair	28 in
2 lbs	" "	26 in
3 lbs	wift	16 in
1/4 Doz	Cauls	

Set 1/4 lb Band wift match the inclosed sample

26
Order

the balance varying from that to black the band hair assorted colors but no dyed black.
(This order was given 6. 7 or 8th of April and is in his own hand writing -
I did not tell him that the stock of goods was worth $2000 and belonged to me and was unincumbered I wrote to Vilmar and Harting that I had sold out to Haydon - The goods levied at the two different times by the Constable were sold at one time - Haydon bought some, I dont think there was over $800 or $1000 of goods left after the first levy - After the second levy the place was pretty nearly cleaned - At the time I made the bill of sale I think the goods were worth $1259 including the side cases, counters &c &c
In estimating the value of the goods, levied upon I estimate them at what we sold them for we sold about $300 per month, We kept a sales Book and day book, I drew my wages ~~from month to month~~ as I wanted them, The expenses were about $150 per month to $200 I gave up the goods to Haydon when I made the bill of sale, and said, here take the store the goods are yours - My father gave me the store, My brother has possession now, He is about 21 years of age, He paid about $950 for the store, He borrowed some of the money and paid $500 down, My father was insolvent in November 1857 - I am now engaged

in making wigs - I did not tell Mr. Turner that if I gained my suits against Spencer & Co I could pay what I owed to his house, I did not tell Walson that the goods sold at a profit, There were no wigs taken at these levies - After the last levy the wigs were left - W. H. Haydon was most of the time in the City between March and May, our books show the amount of stock purchased and the amount of sales - Haydon had a general knowledge of what I was doing. - He drew $25 on May 5th to pay a part of what he owed Meyer -

Re Examined

Mr. Haydon obtained my note for $1000 and the deed of trust from me in November in place of two notes that I had given to James H. Haydon The levy was made on my property to satisfy the Owings judgment.

There were but two items of my indebtedness due when I made the bill of sale amounting to $364 Mr. Haydon paid off the judgment for fear of losing the debt he proposed to buy me out to save his - $1000 - he came with F. Meyer and Mr. Samson the lawyer, was with him and I accepted his proposition and a bill of sale was drawn up Mr. Haydon paid judgment and gave me up the note for $1000 after which I took charge of the store as agent - The receipt of Sheriff to Haydon is here read in evidence

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Sheriffs Receipt

Joshua W. Owings
as Pltff
James H. Haydon et al
Deft -

Ex No 46 Feby Term 1858
Circuit Court.

Amt of Debt & Interest	$235.91
" " Costs Taxed	11.65
Service & Commissions	7.45
Watchman	4.00
	$259.01

Received St Louis March 4th 1858 from W. W. Haydon the sum of Two hundred and fifty nine $\frac{01}{100}$ Dollars being the full amount of the Debt and Costs on the judgment in the above entitled suit

Jas Castello Shff
By Thos Tallis Depty

The goods bought by me were paid for in Cash except one bill. I gave the note on the first of May for balance due for goods as attorney in fact for Haydon. I bought goods from Bazin for which Mr Haydon gave his own note The note to Bazin was given before the first buy The goods sent by Bazin in my name were the same ordered by MacBride were paid for by Haydon (note to Bazin read in evidence)

note to Bazin

$65.$\frac{99}{100}$ St Louis May 13th 1858

Six months after date I promise to pay to the order of A C Bazin Sixty five $\frac{99}{100}$ Dollars with current rate of Exchange on Philadelphia without defalcation. Value received -

29th

Due Nov 13th/76 W. W. Haydon.
Endorsed thereon X - Bozin pay
Haskills & Co or order for Collection
Dolan & Co

Haydons sign was put ~~on~~ the door a few days after the sale - he ordered it up on the day of sale, I told Sorenses and Co if they would sell me goods on time to the amount of the notes comming due, I would pay - the notes - I asked Sorenses & Co two notes, that were then comming due - They wanted to know if I would be able to meet them at maturity, I said, I would not, but that if they would sell me goods equivalent to amount of notes, on four monthstime, I would pay them when they became due, that is if the goods arrived - I was to use Mr. Haydons money to pay ~~my~~ notes, by putting into the store an amount of goods equal to the money, That is the reason I transacted the business in my own name.

Wilmar & Hastings bill was paid in Cash - I got $100 per month for my services, The rent was $450 per year Haydon came frequently to the store sometimes he would stay two hours, sometimes all the forenoon and look over the books and arrange the goods and took goods of which he gave no account of them He was in Town most of the time from March 3rd to May the 20th, ~~He~~ was in town when the Constable was going to levy and told the Constable to levy that day as was going away, All the goods

30

taken by Watson brought about $300 - The value of goods sold was between $900 and $1000 - Haydon did not take charge of the business himself because he did not understand it - Note to X Bazin - was executed a few days after its date The order must have been filled May 13th the note to Bazin was signed before the levy — I did not tell Tower that the money I had was Haydons - Told him if the goods come I would pay the note

W. C. Jamison

William C Jamison sworn says

I am a lawyer I know W. W. Haydon, Mr. F. Meyer came to me to have a bill of sale drawn and I think Haydon was with him. I went around to No 96 Market Street and drew it there - witness is here shown bill of sale which he identifies, There was an execution and Haydon wanted it paid off to secure himself, I drew a power of Attorney a few days after that to Hudson witness is here shown power of Attorney which he identifies - A part of the consideration of the bill of sale was the judgment and execution The Sheriff had possession of the stock when we went there and Haydon borrowed the money of Meyer and paid off the execution.

Cross Examined

I know nothing of the $1000 only what I heard at the time - I drew the papers

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F. Meyer

My Ferdmand Meyer, sworn says,
I know W. W. Haydon - I recollect his buying out Henry Hudson, In March 1853 Mr James H Haydon came to my house with W. W. Haydon and stated that the Sheriff had attached Hudsons goods that Hudson was indebted to them in the amount of over $1000 for which he had given a mortgage but that the Trustee refused to act. They requested me to loan them money sufficient to pay of the judgment and get possession of the goods, The judgment was in favor of J. W. Owings - I recommended to them to consult Messrs Cline & Jameson Attorneys, and Mr Jameson fixed the papers and advanced about $256 to pay the judgment, After I got Mr Jameson's opinion, I went to see the Sheriff and told him I would be responsible for the payment of the judgment and he released the goods I then met Jameson at Hudsons store where the bill of sale was made out and signed and the goods delivered ~~over to~~ Haydon
Mr Haydon being a senior man Hudson was employed to take charge of the store as his clerk or agent, with instructions to keep a correct account of the sales of the goods purchased for Haydon Mr Jameson advised Haydon to make this purchase at my suggestion He stated to Jameson his objects in desiring the conveyance I think I stated all the facts connected with the matter to Mr Jameson

32

Cross Examination

I know of the matters between Hudson and Haydon from the statements of Mrs Haydon and W. W. Haydon - he made an invoice before the bill of sale was made out, and the stock was delivered by Hudson to Haydon, including account books He delivered separately all of the stock in the store room, and all the household and kitchen furniture in the rooms above and in the rear, I had no idea that the whole stock & household furniture would pay the whole debt. I saw a great many wigs and a great deal of hair, I think the total value of fixtures and furniture was something over $200 - I estimated the whole value of the stock in trade and furniture at $1400 - The delivery was made immediately after the bill of sale was signed I took a note of W. W. Haydon with the indorse-ment of Eulalie Haydon to secure the $256 loaned - I became acquainted with Francis Hudson Jr. - six or seven months after that - I called on W. W. Haydon to know if he could pay the $256 and he said he could not, as he made nothing out of the store, out of which he expected to pay the debt - within three months after I made the loan - I carried it along until fall, and told him it was very singular ~~it was not paid~~ that the money was not paid He said he could not help it, He ~~said he~~ had to

33 put all the money he made on the river into the store - He then asked me to look at the books and see how it stood - I examined the books but I could make nothing out of the store - A few days after he came to my store with F Hudson Jr and said he wanted to buy the store - I asked him what security he could give - F Hudson proposed to turn over hoop and Sheet iron to the amount of $156 and I took it and Haydon paid me the balance of my claim in cash

Re Examination

Mr Jamison advised the particularity of delivery He told us to make an inventory as near as we could and deliver accordingly

F Hudson Francis Hudson Senior sworn says

I know W. W. Haydon - I remember the sale to him in March A. D. 1858 - The judgment in favor of Joshua W. Owings was on a note of James H. Haydon endorsed by Henry Hudson on the 2nd or 3rd of March - the Sheriff levied upon this stock to satisfy the execution in that case -

W. W. Haydon held a note for $1000 against Henry Hudson at that time secured by deed of trust on that stock and as he was unable to pay this judgment, Haydon paid it, and Henry sold to him the stock of goods — Haydon then took possession, The consideration of the sale was $259 paid on the judgment

~~judgment~~ by Haydon and a note for $1000 which he gave - up - After the sale my son had the charge of the store under a power of Attorney from Haydon at a salary of $1200 a year =
He carried on the business unmolested from March 3rd until May when Mr Watsons deputy came to levy but he did not levy that day; When the deputy came he demanded pay of my son - The plaintiffs Attorney asks, What did your son say when pay was demanded, to which question defendant objected and the objection being overruled by the Court the defendant excepted Answer - My son said he was unable to pay. the deputy then said he should make a levy, and my son told him he had better see Mr Haydon that the goods did not belong to him.
(The above question and answer was objected to, the objection overruled and exceptions taken on account of such overruling) -
When Watson made the levy on the 20th of May I was present, the articles were handed over to Mr Watson and an inventory taken as he took them, they are the same goods sold by Constable I made out one list - and I am not certain that I did not make out the one for Watson The witness here identifies the inventory as the one made by him - I assisted to pack the goods They consisted of perfumery, combs & brushes

35 I wrote out the inventory filed in this cause The list of goods is correct as to prices - The value of the articles taken was $245 to $250 This is the correct value I wrote the inventory attached to the claim I have been in the wig business thirty years The sign of Haydon was put up on the door a day or two after the sale.

W. W. Haydon"

Cross Examined

I am the father of Henry Hudson - his pecuniary condition was very low in the Spring of 1858 I dont know the pecuniary condition of James H Haydon then - I went into Copartnership with him in June 1857 and dissolved in February 1858. I dont suppose that James H. Haydon's condition was brilliant in the fall of 1857 I dont recollect any suits against Hudson & Haydon in November 1857 judgments have been rendered against Hudson and Haydon since that time which have not been paid - My son and his family occupied the dwelling house after the sale I lived with him until December 1858

I cant say how often W. W. Haydon was there after March 3rd - Perhaps he went to New Orleans once or twice - He was in the City a day or two before the levy He left May 19th I cannot tell when he returned - W. W. Haydon's sign was put up on the door and my sons old sign

remained - F. Hudson Jr. bought out this stock of goods in 1858 - I was not in the City when my son borrowed $700 of James H Haydon I supposed he used this in his own business, I had some of it, I had bought goods for my self and him too and he sent this money to me for that - He did not lend it to me, I do not owe him now more than $10, Henry Hudson did not pay Haydon rent for the dwelling house On the contrary Haydon rented the store from him - Henry Hudson lives in the house still At the time of the bill of sale I was carrying on a foundry in the lower end of town - I was at the store most of the day - I had nothing to do with the business I happened to be there when Watson called to make the levy - I was there the next day - I was also present at the 2nd levy also at the 3rd levy - I assisted in the inventory of each - I bid on some of the lots for Mr. Haydon at the Constables sales - My son Henry and family have been in possession of the house and furniture since March 3rd 1858 I have allways considered that it belonged to him - My son had carried on the business deligently I gave him the stock - He was sober - economical and temperate

E Hudson Elizabeth Hudson sworn

Says - I know W. W. Haydon I was not at

87 home, when the sale took place March 3rd 1858
I arrived at home on the 19th day of May and
was told about the sale immediately Mr. Haydan
~~was there every day after the sale~~ and conducted himself as any
one would who owned the store He used to ask
about the sales - place the things in the cases - take
goods away without accounting ~~for them~~ or
~~paying for them~~ asking permission or I know the
value of the goods taken - The prices in the list are
are Correct - I saw the inventory made
Cross Examined
I did not know of the sale until I arrived home
My father had nothing to do with the store
My brother Henry Hudson had been intimate with
the Haydans four or five years
G. Hudson Jr. G. Hudson Jr. sworn
I know W. W. Haydan - I remember the sale to
him - His sign was put up as soon as it
could be painted - My brother Henry had
charge of the store as his agent He continued
until the levy and afterwards
Cross Examined
A person could see Haydans sign from the
street - I dont know when the sign was chan=
=ged - I am now the owner of the stock - I was
21 years old October 11. 1858 and bought the stock
on the 18th of that month, I bought on Con=
=sideration of assuming two notes and all of

the liabilities that Haydon had contracted in the business One note I paid in cash and the other partly in cash and partly in iron I paid between $140 & $150 in iron. These were all the payments that I made - I have since paid all of Haydons notes - Henry Hudson has since been in the store - acting in the same capacity as he did for Haydon - I am in the printing business and spend my time at that during the day It is has taken all of the money I have made to replenish the stock & pay the debts

S. Murkey Susan Murkey sworn -

I have known W. W. Haydon a year and seven months The sale from Henry Hudson to W. W. Haydon was in March - Haydon said I must work for him - I come to the store every day for two months He used to sell things occasionally and I have seen him take articles and carry them off - I saw a list of the articles made Nothing was left after the first boy - The list shows the value of the articles —

Cross Examined

I cannot tell the value of the articles separately without the list - Hudson paid me my wages as the agent of Haydon - I have been there two years

J Brook John Brook sworn says

I saw the sign of W. W. Haydon in the door of the store - No 96 Market Street

39 Plaintiff Offered no other evidence
Defendants to support the allegations in their answer offered the following evidence
Wm B. Watson, sworn
I was constable in May 1858 - I made a levy upon the stock in the store at No 96 Market Street in May 1858 - Henry Hudson was then in possession - I also saw his father there officiating
Haydon was not there - The total amount of the two levies brought $260 There were a good many present at the sale, barbers and others, Hudson father and son were there and bought goods
Haydon was not there - Henry Hudson told me that the goods were well sold.
I saw the sign of Henry Hudson over the door and no other ~~[illegible]~~ no ways. The levy consisted of fancy goods, soaps and brushes and combs
Cross Examined
I was not the first Officer at the Store Mr. Mack first went - Hudsons remark about the sale of the goods was not qualified, Francis Hudson made out the list and prices, I think the prices were marked on the goods - I suppose the goods brought in many cases less than the prices marked on them
Wm M Sleeth — Wm M Sleeth sworn says
I keep furnishing store - I attended the sale of Hudsons stock - The stock brought very good prices

There were a good many persons I bought about $100 worth - My impression is, they bought all they were worth They were marked 25 to 50 per cent higher than I sold them, and that much higher than retail prices - I bought combs - brushes and some lavender water

Cross Examined

There is a difference between wholesale and retail prices - These are goods that sell at large profits - I generally make 25 to 33 per cent - I sold the Combs at an advance of less than ten per cent. When I compare the prices of goods sold at Constables sale - I mean to compare them with the prices that I can buy such goods for in New York.

H. E. Turner Deposition of H. E. Turner read as follows

Henry E Turner of lawful age, being duly sworn and examined on the part of the plaintiffs, deposeth and saith - I am engaged in the fancy goods business and reside in Philadelphia, I know Henry Hudson and knew him in February and March last - He was then engaged in the wig making - perfumery and fancy goods business He was indebted to the House of W. D Glenn in about the sum of $150 - I cant say what the exact amount was - I visited St Louis at that time and called on Mr Hudson and asked him for money I got from him some $30

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as near as I recollect, As near as I recollect I got this money on the 1st of March about that time at that time he was indebted to W. D. Glenn in a larger sum than this $30 the account matured in the fall previous and Mr Hudson informed me that he would have paid it sooner but for the reason that he could not purchase a bill on Philadelphia as he had nothing but Illinois Currency and with that he could not purchase Eastern Exchange –

I visited St Louis last fall about the 1st of Sept and again saw Mr Hudson and had conversation with him.

Quest. State what Mr Hudson said in that conversation about his affairs Counsel for deft objects to this question as irrelevant and incompetent

Ans. I called on Mr Hudson to see if I could get any money from him He said he could not give me any as the act of Messrs Norcross & Co in seizing in his goods had taken all is available means out of his hands and he was then only acting ~~only~~ as agent and they were about trying the case of the legality of the act of Norcross & Co in taking his goods and that if the case could be apeal which he had no doubt of he could pay me in a short time – He also stated that he had sold the store out to some party I forget the name now, for borrowed money, some $200

to a thousand dollars which he had loaned to his father - I cant recollect now whether he paid to the firm of Hudson and Pack or to his father, and that Messrs Sourcross & Co had seized the stock since he had sold it to this party to pay him the amount of his claim I dont know that he had said any thing more, He sent us a note of Hudson and Pack for the amount of our claim which note we still hold he said nothing about being able to pay all of his debts in case of success with Sourcross & Co I only asked him about our ~~claim~~ own claim At the time he paid me about $30, he said nothing about being able to pay all of his debts - After examining the register at the Planters House where I stopped I finds that I arrived in St Louis on February 14 1858 and left on the 19th of same month. The second visit was on Aug 30. and left on 3rd Sept. 1858

Cross Examination

When Mr Hudson said Sourcross & Co had attached the goods, I suppose he said the goods in the store, I cant say he said his goods, I should not have said his goods, had I supposed it would have had any bearing in the case. I recollect now - he said the goods in the store Hayden was the name of the party, who Hudson said had purchased his store, I think he said Hayden was a Pilot on a Steam Boat - In that conversation

43 Hudson said Haydon had paid a judgment for him for some $200 - I cant say that this judgment was in addition to the money he had borrowed - He did tell me that he had received some $700 from the same party - but whether it was previous or after that judgment I dont remember - I recollect that Hudson ~~had~~ said that Haydon had loaned him something like a thousand Dollars and held his note for it I wont say it was a thousand Dollars, but it - near that sum, He said he sold the store in consideration of receiving back this note and the payment of the judgment. He said he had received back his note and was then acting as the agent of Haydon - This was in the fall I am agent only of the firm of W. D. Glenn, After the payment of the ~~firm~~ $30 there was still due some $120 or thereabouts the note of Hudson and Pack was sent to us sometime in June or July of last Summer, Hudson did not state during that Conversation at what time he had loaned the money to his father The last bill sold by our house to Henry Hudson was in the fall of 1854 We have not since that time sold any goods to the house or to W. D. Haydon

By H. E. Turner

A Lafore Deposition of A. Lafore -

Armand Lafore of lawful age being sworn and

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examined on the part of the plaintiffs deposeth and saith, I am fifty years of age I reside No 36 South fourth street in the City of Philadelphia I am an importer and seller of human hair I know Henry Hudson of St Louis by correspondence I do not know him personally, he is a hair dresser - He was indebted to me prior to the third day of March 1858 in the sum of Two hundred and ninety dollars that is the balance he owes me - I think this was due and payable on the third of February 1858 That was the whole balance that was due at that time - Henry Hudson did not order ~~goods~~ any goods from me after the third day of March 1858 either in his own name or for any one else - I have not heard from him for three months before that time, I think it was about three months before the third of March 1858 That I received the last letter from him - I dont know of his carrying on business after the third of March 1858, I dont know any thing about it.

The debt he owes me was contracted in 1857 It is in three different accounts contracted between March and October 1857 I think

Cross Examined by Mr. Husbands

I have no interest in this suit, I have no interest in the result of this case, I dont know whether it will affect my claim - I have put my claim

45 in the hands of Messrs Bullitt & Fairthorne of this City - I dont know whether they have brought suit or not., I was afraid that this suit would affect my claim if it should go against Hudson I should have very little chance of my getting my money, If the plaintiffs succeed in this suit I dont know how it will affect my suit.
My books will show exactly when the goods were sold to Hudson - The goods were ordered by letters from Mr Hudson to me - It took time for the letters to reach me and then for me to prepare the goods and send them off - The letters ordering the goods were written sometime before the goods were charged I cant say how long - I can give you all the information by referring to my books and papers The orders came direct from Hudson to myself He first sent to me a letter and gave me reference and I sent him goods - I think I have the letters ordering the goods. The witness is asked to produce them - The witness goes out and brings in his books and letters which he produces —
Witness in referring to his books says the first bill for $74.50 was charged on the 22nd of June 1857. The second bill for $28.00 was charged on the 22nd of August 1857
The third Bill for 187.50 was charged on the third of October 1857
The three amounts together make $291.00

46 The first Bill was ordered by letter dated June 16th 1857 - The second bill by letter dated ~~Septem-~~ ~~ber~~ August 3rd and August 19th 1857 Both letters dated Chicago, The third bill by letter dated St Louis September 18th 1857, The first dealings I had with Mr Hudson was March 9th 1857 that is the goods were charged to him on that date - I suppose they were ordered a week or ten days before I never take longer than that The amount of this Bill is $251.55 and has been paid - I never paid Mr Hudson I have never had any correspondence with W. W. Haydon. I dont know the price I never was in St Louis =

S. Lafore =

Fr Vilmar Deposition of Fred Vilmar

Fredrick Vilmar, of lawful age being sworn and examined on the part of the plaintiffs, deposeth and saith

Question - What is your business?

Answer - Have Importing business

Question - Do you know the parties to this suit?

Answer = I know Mr Sorrows - I dont know Mr Henry Hudson

Question = Have you had business relations with Mr Henry Hudson during the year 1858, or in any part of that year?

Answer - I had -

Question = Did you sell him goods last Spring

Answer - Yes Sir

47 Question = Up to what time?

Answer = From about the first of February to December 1858 Not all the time in his name –

Question = Up to what time did you do business with him in his name

Answer – I dont know exactly but in May he wrote me a letter stating that he had sold out his business to Wm Hayden –

Question Have you that letter with you?

Answer – No Sir =

Question = You have been asked to produce all letters and papers coming from Wm Hudson relating to the matter in this suit, Have you not?

Answer – Yes Sir,

Question Have you them now in your possession or control?

Answer – Not that I know now.

Question = Do you remember the date of that letter in May?

Answer = No Sir –

Question = From February up to the time of receiving that letter in May did you continue selling Wm Hudson goods?

Answer = Yes Sir

Question = About what amount did you sell Mr Hudson, from the beginning of March up to the time you received that letter?

Answer - I cannot recollect at all -

Question = Are you still in correspondence with Mr. Henry Hudson?

Answer = Within three or four months past the name changed from Henry Hudson to F. Hudson

Cross Examined by Defendants Counsel =

Question = Up to what time in the Spring of 1858, did you sell goods to Henry Hudson?

Answer - I dont know, I believe I sold him goods in his own name, up to the time of the receiving the letter in May above referred to =

Question = What has become of the letters and papers and orders for goods, if any there were written by Hudson to you, between the first day of March 1858 and the first day of June 1858

Answer = It is our custom to destroy letters & orders for goods semi=annually, on the First days of January and July - in each year =

Question = Do you know whether the letter of May has been destroyed or not?

Answer - I dont know - I believe so -

Question - Have you ever seen Henry Hudson personally

Answer = No Sir =

Question Have you seen Henry Hudson write

Answer - No Sir

Question - How do you know that the letter referred to

49 before as the May Letter from Hudson to you was written by Mr. Hudson

Answer Because it was signed by ~~him~~ Henry Hudson

Question - Do you know whether the so called May Letter was written by Henry Hudson

Answer I know it was his letter because it was signed by him

Question = Was it signed by Henry Hudson alone

Answer It was signed ~~by~~ Henry Hudson for Haydon

Question Why cant you recollect the amount of goods sold from the first of February up to the time of receiving that letter

Answer - It is impossible that I know all my customers in my head

Question You have stated in your direct examin = = ation that the name changed from Henry Hudson to F. Hudson, When did it so change

Answer In September

Question How do you know that the name changed from Henry Hudson to F. Hudson

Answer = I received I received a letter from Henry Hudson for Haydon requesting me to send some goods, I returned Answer that I would not trust him, and afterwards in ~~the~~ September I received a letter signed F. Hudson asking me to send goods and

that he would pay on delivery

Question = Do you know of your own knowledge any thing about the sale of goods by Hudson to Haydon

Answer - All that I know is what he wrote me

Re direct examination

Question = Were the letters from Henry Hudson from St Louis

Answer They were

Question = Were the letters signed Henry Hudson all in the same hand writing I mean those between February & May inclusive

Answer = I believe so but I dont know sure

Question - Was the letter you received in May signed Henry Hudson for Haydon in the same hand writing

Answer I believe so but I dont know

Question In what way were the goods sold by you from February to May ~~[illegible]~~ to Hudson delivered

Answer = Always before the letter of May to Hudson after that to Haydon

Question = How did you send them

Answer = By Express

Question = How directed before the letter of May

Answer = To Henry Hudson;

Question - How after the Letter of May =

Answer = To Haydon

Question - Were you paid for all the goods before the letter of May

Answer Yes Sir

Question How.

51 Answer = The goods were paid for on delivery

Pro Cross Examination

Question = You have spoken of a letter by the words May letter why do you so call it?

Answer = Because I received it in May, I did not notice its ~~mark~~ date or its post mark

Quest: Then it may have been written in the preceding January -

Answer = It is not likely that I should receive a letter in May = written in ~~January~~, but I dont know

Question = What quantity of goods did you sell to Hudson - between February and May?

Answer = I dont know?

Question = Was it a thousand Dollars

Answer = No =

Question = Was it three hundred Dollars?

Answer = I suppose so ~~but~~ I dont know

Question = Have you any memoranda by you, at present, by reference to which you can tell the amount of goods sold between those dates =

Answer = No Sir =

Question = When you said ~~in answer~~ before in answer, to the question, Was it three hundred Dollars," I suppose so, what did you mean?

Answer = I meant it was possible but I dont know

Question = How do you know that the goods were directed to Hudson up to the time of the May letter, and after that to Haydon

Answer = Because I saw them - I did not see all of them, I dont know how many of them

Question By what Express were they sent?

Answer = By the American and United States

Question After the May letter did you received a letter, or order signed by Henry Hudson in his own name?

Answer - No Sir.

Re direct Examination

Question - Is the paper now shown you (here to an = nexed marked Exhibit "A") the summons served on you?

Answer = Yes Sir

Re Cross Examination

Question = Have you made Diligent search for all letters and goods, written by said Henry Hudson to you or to your firm between the first day of March 1858 and the first day of June 1858.?

Answer = Yes but I could not find them

Re direct Examination

Question Which of your firm, you or your partner attends to the business of the office

Answer = I do My partner attends mostly to out door business

Fred Velmar

53 Deposition of Mac Bride

McBride George W. MacBride of lawful age being sworn and examined on the part of the plaintiffs deposeth and saith - I am a salesman in the house of. L Bazin perfumers in this City I travel for the house of L Bazin and sell goods for them sometimes collect Bills when they are in jeopardy or there is some difficulty about them I know — Henry Hudson the defendant named in this suit I have known him some three or four years, I have sold him one Bill of goods for L Bazin The goods were ordered of me personally while I was in the City of St Louis between the dates of the third and Seventh of May A D 1858 - My letter home ordering the goods for the defendants was dated May seventh 1858 -

Geo W McBride

The goods were ordered by Mr Hudson personally They were sold to him and the invoice was sent to him and they were charged in our Books to him - When I returned home in June I learned that Mr W. W. Haydon (objected to by Mr Husbands as incompetent) had sent his note for the order stating, that at the time the goods were ordered Mr Husband was acting as his Mr Haydons agent and that he had purchased the entire stock of Mr Hudson and in future Mr Hudson would transact the business as Mr Haydons

54 Agent - I learned this from Mr. Haydons ~~agent~~ letter (Objection withdrawn by Mr. Husbands)
Question - by Mr. Martin - At the time the goods were ordered of you by Hudson on or before the seventh day of May A-D 1856 - did he Hudson the defendant inform you that he had sold out his store and stock of perfumery &cetra in St Louis or did you know of any such change of owner-ship at that time
Cross Examined by Mr. Husbandt, reserving exceptions &c. I have no interest in this suit. I am not one of the firm of X Bozin and never have been I am positive as to the time when Mr. Hudson ordered these goods, I called upon him to solicit his orders and he afterwards called upon me at my room at the Hotel in St Louis

Geo W McBride.

and gave me the order from samples which I had with me. I did not see any thing of Mr. Haydon there knowingly I did not know such a man, I did not observe that Mr. Haydons sign was there My This is the first bill I sold Mr. Hudson for X Bozin and I think it is the first bill I ever sold him for any body but am not certain about that - I have sold his father

Re Examined by Mr. Martin.
I did not look for Mr. Hudsons sign or Mr. Haydons I did

55 not look for any sign, I knew the man himself and went into his store, that is what I supposed to be his store at the time, I had been at that store before

Geo W. Mac Bride

Deposition of G. A. Wright.

G. A. Wright George A. Wright of lawful age, being affirmed and examined on the part of the plaintiffs deposeth and saith, I am a member of the firm of R. & G. A. Wright importers of fancy goods and manufacturers of Perfumery in the City of ~~Saint Louis~~ Philadelphia I know both the plaintiffs - I have sold Henry Hudson the defendant goods, but never met him that I know of - At the time I sold him goods he resided in the City of St Louis. I first sold him goods in May - A. D 1856. on six months credit - I made two other sales to him since One November seventh A D 1856 at six months and the other the fifteenth of March 1857 at six months also. The amount of the last bill was seventy four Dollars ninety four Cents It has not been paid. The two first bills were paid That last bill was ordered through our traveller I believe, calling upon him in St Louis, his name is Thomas Lee. The charge is entered in our books against Henry Hudson

C M Husbands reserving all exceptions proceeds to Cross Examine —

56 Witness proceeds, I have no interest in this claim whatever - Our firm has not brought suit in St Louis, for our debt, The payment of our ~~note~~ debt is not in any way dependant Upon the result of this suit as far as I am aware of Our Traveller Thomas Lee is now in Washington We expect him back here in the Course of three or four months - The last bill is the date of our Travellers letter at St Louis forwarding the order - I mean the fifteenth of March A D 1857 The date of our charge is April the 8th 1857, Which is the date we shipped the goods - The only knowledge that I have of Mr Hudsons having ordered these goods is through our Travellers letter to our firm I have not seen Mr Hudson personally myself I do not know Mr Haydon of St Louis - (Mr Husbands objects to the testimony of this witness it not being of his own knowledge but derived ~~his information from others~~ from the information of others)

Witness proceeds - as to the forwarding of the goods to Henry Hudson and the entry against him on our books are matters within my own knowledge

Dept - E E Tower } Geo A. Wright.

E E Tower Edward E Tower of lawful age, being produced sworn and Examined on the part of the plaintiffs in the first case and of the defendants in the other deposeth and saith in answer to the several

57 interrogatories and cross interrogatories hereto annexed

Question 1st = What is your name residence and place of business?

Answer My name is Edward E Tower - I reside in Boston Massachusetts and my place of ~~said~~ business is in said Boston

Question 2nd Whether or not as agent for J W Norcross & Co you ever visited St Louis, Missouri If yea, for what purpose? When did you leave Boston and when did you arrive at St Louis =

Objected to by David Thaxter Esq. Atty for Hudson & Haydon, for incompetency)

Answer = I have visited St Louis as such agent for the purpose of selling goods, settling accounts and looking after the standing of their creditors in regard to their credit, I left Boston on the 23rd of March last and arrived at St Louis about the seventh of April

Question 3rd = Do you know Henry Hudson of St Louis If yea - how long have you known him, and did you see him while in St Louis

Answer I know him - I saw him the first time when I was there as stated in my last Answer

Question 4 - Whether or not you made any appointment

to meet him & when & where & for what purpose
(Objected to by Mr Charter as incompetent against Mr Haydon)

Answer = I did - at my room at the Planters House in St Louis

Question 5th = Whether or not you ~~made any appointment~~ met him as appointed, If yea, who was present? (objected as last.)

Answer I did - His father was present

Question 6th Will you detail in as nearly as possible the words used, the conversation which passed between you & Henry Hudson (Objected to as last)

Answer = The first conversation was with him alone his father remained down stairs, I asked him how he was getting along, and what was his prospects for the comming season? He stated that he was getting along very well, and that his stand was one of the oldest in the City and commanded the best run of trade, I asked how his stock was aported and he said that it was well aported with the exception of braid hair, The great trouble was with color he had not the desirable colors, If he had such goods as he wanted the sales would have amounted to enough to have paid all our notes at

59 maturity He also stated that if he had these goods, that one weeks sales would enable him to pay the whole amount of his indebtedness to us, at that point of conversation his father came in, The conversation after that was held almost exclusively with the old man Francis D Hudson, I think his name is, with the exception of about fifteen minutes with Henry Hudson, I asked Henry Hudson the amount of his stock, He stated he could not tell exactly, I then put the question to him in this form, Is it worth two thousand Dollars The answer was, Yes - I then asked him, doth it belong to you unincumbered, he stated that it did, That is about the whole of the conversation with regard to his standing, There was some further Conversation with regard to a note which was to mature about the 1st of that month, He said he had the money to pay that note, but would not pay it, unless I would give him credit for the same amount in goods - He stated that he had ~~money~~ got money, and that money must furnish him with goods - and unless I would agree to send goods to that amount, he would buy for Cash in New York = and let our note go unpaid - I then made an agreement with him to extend our note, then past due, four months in consideration of his paying the good note becoming due on the 1st I then agreed to take his order in consideration of his agreement - and his answer in regard to his

credit and standing and requested ~~me~~ him to hand me his order the next morning

That is all the Conversation I had with him in relation to his business

Question 7th = Had you any conversation with Francis Hudson in regard to his own Condition If yea state that (Objected to as incompetent against both Henry and Mr Haydon)

Answer = I did at the sametime - I asked him what he was doing and what his business was he said that he was doing nothing in particular - He stated that he had lost a great deal in the stove business, and that he lost about twelve thous=and Dollars in that business, also that he form=erly owned the store and stock where Henry was doing business - He had ~~now~~ given up all claim to it - the stock and stand now belonged to ~~Haydon~~ Henry - He had no connection with it whatever - He was owing J W Norcross & Co at that time about Eight hundred Dollars I settled with him by taking two notes 9 & 12 months from that date, which he stated would be promptly paid and probably before comming due

Question 8th = Whether or not you wrote any report to

Ruled out = Mr Norcross of your Conversation & Hudsons Condition? If yea where is it?

(Said Thaxter objects as incompetent to both Mr

61 Hudson and Mr Haydon)

Ruled out. Question 9th Did you send the goods, ordered? If not, why not? (Mr Thaxter objects as incompe=tent against both parties)

Question 10th Whether or not you saw ~~on~~ on or about the premises of Hudson any sign of "W. W. Haydon"? what sign if any did you see on the shop? How many times did you call at the shop —

(Mr Thaxter objects as incompetent to both)

Answer = I did not see any sign of "W. W. Haydon" I saw the name of Henry Hudson over the door — I called three times at the shop —

Question 11th Did you see any thing of W. W. Haydon or hear any thing of him at the shop, or while you was in St Louis —

(Objected to as to both, by Mr Thaxter)

Answer = I did not see, or hear any thing of him

Question 12th = How long have you been in the fancy good & hair business?

Answer = Nine Years =

Question 13th = What should you say was the value of the stock in the shop? (Objected to as to both by Mr Thaxter)

Answer = I could not say because the stock was in boxes and drawers

Question 14th = Whether or not at the time of the conver=sation with Henry Hudson he made any statements in regard to money

he had lent. ? If yea = what?

(Mr. Thaxter objects as incompetent in regard to both)

Answer = He stated that he had lent a great deal of money to a party where it was perfectly safe and that if he could collect it at that time he should be able to pay all our demands.

First Cross Interrogatory by Mr. Thaxter

How long were you at St Louis at the time you refer to in your direct examination?

Answer - I arrived Monday afternoon, between 2 & 3. O'Clock = and left the next Thursday about nine Oclock

Cross Interrogatory 2nd when and where did you first see Mr. Henry Hudson there?

Answer = On Tuesday morning at his store

Cross Interrogatory 3rd (Put De vene esse to be used if 14 direct interrogatory is competent) was Mr. Hudsons father present at the conversation testified to in your answer to the 14th direct interrogatory?

Answer = He was

Cross Interrogatory 4th (Put De vene to be used if 7th direct Interrogatory & answer be competent) Mr. Francis Hudson made the statement that he had no interest in his sons store, without being asked by you about it did he not?

Answer = He did not - I asked him the question

Cross Interrogatory 5th (De vene as the last) You knew then - that he had had an interest there, did you

Answer = I knew that he had had formerly an interest there

Cross Interrogatory 6th = (Put de vene efe to be used if 6th direct interrogatory & answer be competent)

All the conversation testified to by you in answer to the 6th direct interrogatory whereby in your ~~conversation~~ answer follows the statement that the father came in was had in the presence of the father, was it not

Answer = It was.

Cross Interrogatory 7th = Had you at the time any connection in business with J. W. Sorcross & Co or any interest in this matter ?

Answer = I had not.

Additional question put in re Examination

What interest had the father formerly in this place

(Mr Thacher objects as incompetent as to both)

Answer = It was formerly his place of business I believe.

Edward E. Sower

Defendant then read order, marked one as follows

(See page 25 of this transcript for order)

And letters 2 & 3 =

Letters 2 & 3.

St Louis April 29th 1858

Messrs J. W. Sorcross & Co

Boston Mass.

Gentlemen

When Mr Sower was in this City as your agent a short time since

64 I made an ~~arrg~~ arrangement with him to this effect that he would continue to furnish me with such goods as I wanted on condition that I would pay my notes as they became due he Mr. T agreeing to give me an extension of 4 months on my notes of $165 due March last - I told Mr. Tower that it was impossible for me to do business without stock and that if he would not sell me goods - as heretofore - I should be compelled to seek another market, and as I should have to pay cash for them being comparatively a stranger to the parties - and that I could not buy goods for cash and pay my notes just now and I could not afford to let my business stand still just because I owed J W Norcross & Co a few Dollars and to do that would certainly not enable me to pay it any the sooner - Mr. T then made the propo=sition of supplying me as per agreement above which I accepted and pleged my word to pay the note then nearly due, he pleging his that he would forward the goods immediately on his arrival home - for which he then took my order I was prepared ~~the note~~ to pay the note and would ~~of~~ have done so and have still the money to pay it with had you sent the goods as was agreed, the reason I did not pay that note was this, a day or two after Mr. Tower left here I was told that he had said that he had said he did not intend to sell me any goods

65 after having taken my order for them, I was surprised at the information for Mr. T appeared to have made his promises in good faith - I however Concluded to await the arrival of the goods before parting with my ~~goods~~ Cash - for had I paid the note and the goods not Come to hand as it appears it was not your intention to send them, I should now have neither the goods or the money, As it is if I have not the goods I have the money and that will at all times and under all circumstances procure its value in any kind of goods, on Receiving the inform=-ation above alluded to in regard to Mr. Towers intended Violation of his agreement, I wrote to him and received his answer under date of the 20th inst assuring me that his agreement would be kept and that the goods would be forwarded that day the 20th inst. I heard nothing further until yesterday when I was called on by 2 Attorneys who told me they had my note for collection whereupon they Commenced suit for the Amt. Thereby Confirming the information I had received to the effect that Mr. Tower said he would not send the goods his protestations to the con-trary notwithstanding

Yours H. M. Hudson

2nd Letter = St Louis April 9th = 1858 =

E E Tower Esq =

Dear Sir =

I was surprised to hear the day after you left St. Louis that you stated to some one that you had refused to take an order from me and that you did not intend to sell me any goods - What am I to understand from that - Since your departure I have made such arrangements that will enable me to pay that note at any moment providing the understanding you and I came to is carried out on your part - Yours Respectfully -

H. Hudson.

And Deed of trust from Henry Hudson to W. D. Haydon's trustee dated November 12th 1857

Deed of trust - This Deed ~~of trust~~ made and entered into this twelfth day of November - A. D. ~~1857~~ Eighteen hundred and fifty seven (1857) by and between Henry Hudson of the City and County of St Louis and State of Missouri party of the first part. John P. Jennison of the same place, party of the second part. and - William D. Haydon of the City County and State aforesaid, party of the third part. witnesseth that the said party of the first, for and in consideration of the debt and trust hereinafter ~~Created~~ mentioned and Created and of the sum of One dollar to him paid by the said party of the second part - the receipt of which is hereby acknowledged does by these presents grant. bargain, and sell, convey and Confirm unto the said party of the said party of the second part, All the goods wares and -

67 merchandize of him the said Henry Hudson, comprising his entire stock in trade, now in, or that may hereafter be put into his store situated on the south side of Market Street in said City, County & State aforesaid being No ninety six = (96) Intending to convey truly all his present stock in trade and all additions ~~made thereto~~ that may be made thereto and which consists principally of hair, perfumery, Combs brushes and other kinds of fancy goods including all the stock manufactured and unmanufactured and every thing belonging or that may hereafter belong to his stock of fancy goods, perfumery, hair, wigs &c and it is agreed by the parties hereto that if any creditor or Creditors of the said Henry Hudson shall at any time attach or levy upon the property aforesaid in execution or otherwise or if the said Hudson shall attempt to sell or remove said property out of the City or out of the ordinary way of that trade or if the said party of the second part shall at any time be of the opinion that the said Hudson is so conducting with said goods as to endanger the security hereby intended, it shall be lawful for the said party of the second part to enter and take ~~possession~~ immediate possession of the same To have and to hold the same with the appurtenances to the said party of the second part and to his legal representatives forever. In trust however for the following purposes: Whereas the said Henry

Hudson is justly indebted to the said William W. Haydon in the sum of One thousand Dollars ($1000) agreeably to his certain negotiable promissory note of even date herewith for One thousand Dollars payable to the order of the said William W. Haydon one year after date with interest at the rate of ten per cent per Annum from its maturity without defalcation or discount - Now, if the said Hudson shall well and truely pay the said note at its maturity then this deed shall be void and the property hereinbefore Conveyed shall be released at the cost of the said party of the first part. But if the said Henry Hudson shall fail to pay said note - or any part thereof at its maturity then this deed shall remain in force and the said party of the second part. or his legal representatives may proceed to sell the property ~~conveyed~~. hereinbefore described or any part thereof at Public Vendue to the highest bidder at said store No 96. Market Street St Louis for Cash first giving Thirty days Public Notice of the time terms and place of said sale and of the property to be sold by advertisement in some Newspaper printed in St Louis aforesaid and upon such sale shall deliver the property sold to the purchaser or purchasers thereof and receive the pro-=ceeds of said sale out of which he shall pay first the costs and expenses of making this deed and recording the same and of executing this trust

69 and next the said note and interest due thereon And the remainder if any shall be paid to the said Henry Hudson or his legal representatives And the said party of the second part Covenant faithfully to perform and fulfill the trust herein Created. In witness whereof the said parties have hereunto set their hands and seals the day and year first above written

State of Missouri } ss. Henry Hudson (Seal)
County of St Louis } Be it remembered that Henry Hudson who is personally known to me the undersigned a Justice of the Peace within and for the County aforesaid to be the person whose name is subscribed to the foregoing instrument of writing as a party thereto that he executed and delivered the same as his voluntary act and Deed for the uses and purposes therein contained

Given under my hand this fourteenth day of November A D 1857

C Hequembourg Justice of the Peace

Filed and Recorded - November 16 1857

C Keeble Recorder

State of Missouri } ss
County of St Louis } I the undersigned Recorder for said County certify the foregoing to be a true copy

70 I, the undersigned, cestui que trust in the deed of trust recorded on this page and executed by Hy Hudson, acknowledge to have received full satisfaction of said deed of trust, and I do for ever release the property therein conveyed from all lien on account of said conveyance, Witness my hand and seal the 3rd day of March 1858

Test Julius Conrad = Wm W Haydon (seal)

State of Missouri } dept y Recorder ss
County of St Louis } I the undersigned recorder for said County, certify the foregoing to be a true copy of a deed from Henry Hudson to William W. Haydon's trustee as also of the Certificate of acknowledgment the date of filing and recording the same and of the release on the margin thereof as fully as the same remains of record in my office in Book 196 page 140

(seal) Witness my hand and Official seal this 21st day of September AD 1858

C Keemle Recorder

J.W. J Conrad Dy

Defendant also offered in evidence several notes executed by James H Haydon, and Hudson and Haydon and Francis Hudson and Henry Hudson also executions against the above named persons The notes against Henry Hudson were for $450 & $300 & $225 = as endorser, and dated respectively

41 June - July & October 1857.
Those against James H. Haydon were the above and $300 Dec 4th 1857 - $480 - August 15th 1857 and $368.88 dated June 9th 1857 —
On all of the above, judgments, had been obtained and defendant offered in evidence the executions issued upon said judgments returned nulla bona by the Sheriff of St Louis County
Defendants then read in evidence bill of sale from W. W. Haydon to Francis Hudson Jr
This bill of sale made and entered into this Eighteenth day of October Eighteen hundred and fifty Eight by and between William W. Haydon party of the first part and Francis Hudson Jr. party of the second part all of the City and County of St Louis and State of Missouri Witnesseth that the said party of the first part for and in consideration of the sum of Nine hundred and thirty seven 11/100 dollars of which amount Five hundred and fifty 74/100 Dollars is Cash in hand paid by the said party of the second part the receipt of which is hereby acknowledged and the said party of the second part assumes and promises to pay the liabilities of the said party of the first part amounting to Three hundred and Eighty six 37/100 Dollars at such times as the same may become due - Do by these presents Bargain, Sell - alien - Transfer, convey and deliver unto the said party of the second part.

T 2. All the goods wares and merchandise consisting of wigs Perfumeries, fancy goods and other articles and also all the ~~fixtures~~ and furniture of him the said Wm W. Haydon now contained in his store situate on the South side of Market Street between third (3rd) and fourth (4th) Streets and known as No (96) Ninety six in the City County and State aforesaid To have and to hold the said personal property unto the said party of the second part his heirs and assigns for ever Now if the said party of the second part shall well and truly pay the aforesaid Liabilities, then this Bill of sale shall remain in full force, but if the said party of the second part shall fail to pay the aforesaid liabilities or any part thereof within five months of the date hereof - then this bill of ~~sall~~ sale shall be null and void and the property herein conveyed shall revert unto the said party of the first part or such portion of said property as shall be sufficient to pay the amount of said Liabilities remaining unpaid - In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written. Witnessed by Saml D Wendel & John Brooks

Wm W. Haydon {seal}

State of Missouri } ss
County of St Louis } Be it remembered that on this 19th day of October 1858 before me the undersigned a Justice of the Peace in and for said County came Wm

W. Hayden who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto and he acknowledged the same to be his act and deed for the purposes therein mentioned

Taken and certified the day and year above written

Peter N. Johnston
Justice of the Peace

State of Missouri
County of St Louis

I the undersigned Recorder for said County certify that the foregoing instrument of writing was filed for record in my office November 6 1856 and is truly recorded in Book 211 – 129

Witness my hand and official seal the date aforesaid

Seal

E Keemle. Recorder

Defendants then offer in evidence the papers in suits marked 232 & 246 in which the same plaintiff brings suits for $387 and $787 respectively for the alleged value of goods levied upon from the same stock in order to show that plaintiff claimed a greater amount than the value of all of this goods, but objection being made the Court refused to permit said papers to be offered in evidence, and defendant then and there excepted –

Defendant here rested and plaintiffs introduced in Rebuttal –

74 Francis Hudson, who says
I was present at the conversation between Hudson and Tower - referred to in Towers deposition My son did not tell him that he owned the stock in trade that it was worth $2000 unincumbered
Henry Hudson, said, ~~that~~ he did not tell Tower that the goods did not belong to him and were worth $2000 unincumbered.
Plaintiff then offered in evidence attachment suit No 178 October Term A. D 1858 in favor of J. W. Norcross & Co and against Henry Hudson
The above is all the evidence offered in this cause.

Instructions given for Plaintiff

The Court then, on motion of plaintiff instructed the Jury as follows
3 The Jury are instructed that to render a bill of sale void, as to creditors, the sale must have been made by virtue of confederation and combination between the seller and buyer to hinder & delay or defraud the creditors of the seller; and if the Jury believe from the evidence that no such combination & confederation existed between said Hudson & Haydon, but that Haydon purchased the said property for an adequate valuable consideration with the view only of securing his own claim against said Hudson, then said bill of sale is good against any creditors of said Hudson & plaintiff is entitled to recover in this suit

Given

4 The Jury are instructed that to render a bill of

75

sale void as to creditors, the sale must have been made by overture of combination & confederation between the seller & buyer - to hinder defraud or delay the creditors of the seller or with knowledge on the part of the buyer of such intent on the part of the seller; and if the Jury believe from the evidence that no such combination & confederation existed between said Hudson & Haydon but that Haydon purchased the said property for an adequate valuable consideration, with the view only of securing his own claim against said Hudson & without any knowledge on the part of Haydon of any fraudulent intent that may have been conceived by said Hudson, then said bill of sale is good against any creditors of said Hudson & plaintiff is entitled to recover in this suit.

To which Defendant objected but the Objection being overruled defendant at the time excepted)

Instructions given by Court.

The Court of its own motion instructed the Jury as follows =

If the Jury find that Henry Hudson was really indebted to Wm W. Haydon and in good faith conveyed him goods in store in payment of that debt and that said Hudson conveyed and said Haydon received the goods in satisfaction of said debt. and not with the intent to hinder delay or defraud the creditors of said Hudson, and that while Haydon held the goods under such a conveyance

76 an execution against said Hudson in favor of Norcross ~~&c~~ Sargeant was levied upon the same goods, and said Haydon claimed the same and that bond sued upon was given to indemnify the plff for alleged damage from such levy then the plaintiff is entitled to recover and the measure of the damages is the value of the goods levied upon at the time of the levy in the retail market thereof with interest thereon at 6 per cent. from the commencement of this suit to the present time.

Given But if plff took the property in good faith in payment of a just debt at a fair rate due by Henry Hudson and constituted said Hudson his agent or attorney in fact to take charge of & sell the same then the possession of said Hudson is regarded as the possession of plff and in such case no such presumption of fraud arises.

The Court on motion of defts instructed the Jury as follows

Instructions Given for Defts. Continued possession of personal property after a sale by the vendor, is presumptive evidence of fraud, and it is conclusive evidence unless the ~~evidence shows~~ vendee shows that the sale was made in good faith.

Given The claim of W. W. Haydon to the goods sued for recites that he claimed them under a bill of sale from Henry Hudson dated March 3rd 1858 — If the Jury shall believe from the evidence that any part of said goods were not included in said bill of sale, but were purchased by Henry

4/7 Hudson subsequently acting for himself then they cannot find against the defendants the value of the goods so purchased =

The law does not require bills of sale of personal property to be placed on record and the fact that they are recorded does not rebut any presumption of fraud that may arise =

Given The declarations of Henry Hudson, as to how he held said goods while they were in his possession are evidence tending to show the manner in which he held them.

Given The Jury may give to the evidence of each witness such weight as they think it deserves, and if in their opinion the testimony of any witness is not entitled to credit they may reject it altogether =

Given = If the Jury believe from the evidence that the said bill of sale read in evidence from Hudson to Haydon was made with the intent on the part of Hudson, to hinder, delay, or defraud his creditors, and that Haydon at the time he accepted said bill of sale knew of Hudsons intent, then they will find a verdict for the defendants, notwithstanding, they should further find that Hudson was indebted to Haydon to the full amount of the stock of goods

Defendants also asked the following instructions

Instructions asked by Defts Refused Where a sale of personal property has been made there must have been an actual bona fide delivery of the same to the vendee in order to give him a title against the creditors of the vendor

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Refused — If the Jury believe from the evidence that this suit is prosecuted wholly or in ~~benefit~~ part for the benefit of Henry Hudson they will find for the defendants =

Refused. — If the Jury believe from the evidence that either the deed of trust dated November 1857 from Henry Hudson to W. W. Haydon bearing and read in evidence on the trial in this cause, or the bill of sale dated March 3rd 1858 from Hudson to Haydon, was made by said Hudson with the intent to hinder or delay ~~the~~ creditors, and that said Haydon had knowledge of such intent then the Jury will find for the defendant.

Refused — If the Jury believe from the evidence that certain property included in the deed of trust of November 1857 - read in evidence on the trial of this cause was left in the possession of Henry Hudson the defendant, and that it was sold by said Hudson with the consent of Wm W. Haydon, the beneficiary in said deed of trust, or with the knowledge of said Haydon without ~~his~~ objection on his part. and that said Haydon, applied the proceeds of such sales to his own use and that the same was done in accordance with the understanding or agreement of the parties to the deed of trust at the time it was executed then the said deed was fraudulent as to creditors of Hudson and the subsequent bill of sale to Haydon did not cure the fraud

79 The jury are instructed that if they believe from the
Refused. evidence that Henry Hudson the defendant in executing the deed of trust of November 12th 1857 either in writing or by a verbal understanding or agreement with Wm W. Haydon retained the right to sell the goods conveyed in said deed and to keep on to apply to his own use the proceeds of such sale then such deed was fraudulent.

Refused. If the jury believe from the evidence that on the 3rd day of March A.D 1858 Henry Hudson the defendant executed a bill of sale purporting to convey his stock of goods at his store to Wm W. Haydon but that he still retained possession of the same, and held himself out as the owner of said stock of goods then said conveyance was prima facie fraudulent.

= But the Court refused to give the same to which defendants at the time excepted.

The Jury then retired and after deliberation brought in the following verdict.

Verdict We the Jury in the case of W. W. Haydon against Irwin J. Smith Wm I. Sedgwick and John R. Sheply agree to find for plaintiff in the sum of Four hundred and Seventy six 56/100 dollars ($476.56/100)

Henry Kennedy Foreman

And in due time defendant filed his motion for a New Trial in the words and figures following, to wit

Motion for a New Trial And now come the defendants and move the

Court to set aside the verdict of the Jury and to grant a new Trial in the above named cause for the following reasons.

1st Because the Court improperly admitted incompe-
-tent, irrelevant and illegal testimony on the part of plaintiff

2nd Because the Court ~~excluded~~ excluded, legal relevant and competent testimony offered by defts

3rd Because the Court gave erroneous and improper instructions on ~~the~~ part of plaintiff

4 Because the Court refused proper instructions asked by defendants

5th Because the verdict is against the law and the evidence, and against the weight of evidence

6th Because the verdict is excessive

7 Because Court of its own motion gave impro=
=per instructions

Smith & Sedgwick
for Defendants

Which cammeng on to be heard the Court overruled the same to which overruling defendant at the time excepted and brings this his bill of Exceptions and prays that it may be signed by the Court and become a part of the record in this cause which is accordingly done

J. R. Lockland
Judge.

Said affidavit for an appeal is as follows.

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Affidavit for an appeal

Irwin B Smith one of the above named defendants being duly sworn on his oath says that the appeal in the above named cause is not made for vexation or delay but because affiant believes that appellants are aggrieved by the judgment or decision of the Court.

Sworn to and Subscribed before me this 22nd day of June 1859

Irwin B Smith

S Rice Clk.

Said Appeal Bond is as follows

Appeal Bond

Know all men by these presents, that we Irwin B Smith and William D Sedgwick as principals and John H. Rankin and Geo P. Strang as sureties are held and firmly bound unto the State of Missouri to the use of Wm N. Hagan in the sum of One thousand Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents sealed with our seals and dated at St Louis this 22nd day of June AD 1859

The condition of the above obligation is such that whereas Irwin B Smith, William D Sedgwick & John R. Shepley have appealed from the judgment rendered against them and in favor of the State of Missouri to the use of William N. Hagan in the St Louis Circuit Court, for the

sum of Four hundred and Seventy Six dollars and fifty six Cents, together with costs —

Now, if the said appellant shall prosecute appeal with due diligence to a decision in the Supreme Court and shall perform such judgment as shall be given by the Supreme Court or such as the Supreme Court may direct the St Louis Circuit Court to give; and shall, if the judgment or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force and effect.

Approved
J. R. Lockland
Judge

Wm D Sedgwick (seal)
Irwin Z Smith (seal)
John H. Rankin (seal)
Geo P. Strong (seal)

State of Missouri
County of St Louis } ss

I Stephen Rice Clerk of the St Louis Circuit Court within and for the County and State aforesaid certify the above and foregoing = to be a true and Complete transcript of the record and proceedings in the above entitled cause as fully as the same remains of record in my office.

In testimony whereof I hereto set my hand and ~~seal~~ affix the seal of said Court

at office in the City of St Louis this 23rd of September Eighteen hundred and fifty nine.

Stephen Rice Clk

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(26) 59.

March Term 1862

The State of Missouri to the use of William W. Haydon respondents.

vs } Transcript

Irwin J. Smith, William D. Sedgwick & John R. Shepley appellants

Transcript for Supreme Court.
Appeal from Circuit Court.

√ M E

Filed 28th Sept. 1859
Wm. S. Glanville ck.

Smith and Sedgwick for Appellants &

Decker & Voorhis for Appellees

83

Fee = $ [illegible] by Smith

$70.00 paid on filing this appeal by I. Z. Smith. dep.
assgt of errors, joinder/ res. stat. & bf/ apts. bf/ apts. stat/

1862 April 9. Arg'd sub
1862 April 24. Reversed and remanded Dp 32

30.50
10.00
$40.50 paid by I. Z. Smith
1.20 Costs
75 Copies
$2.00
45 Pines
15 Kids
15 Rose
$4 [illegible]

State of Missouri to the use of
William W. Hayden
Respondents

Irwin Z. Smith and others
appellants

IN SUPREME COURT,
October TERM, 1859

AND now come the said appellants and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said appellants assign the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Plaintiff
2. That said Court rejected proper and legal testimony offered by defendants
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by defendants.
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Plaintiff when it should have been rendered for the defendants.
10. That said Court overruled the motion for a new trial, made by defendants.

Smith & Sedgwick
for appellants

And now comes the Respondent and for joinder in error says that there is no error in the record and proceedings of said Circuit Court in said cause, as assigned by said Appellants & prays that said judgment be affirmed.

Decker & Boothe,
Attys. for Respondents.

~~294~~ 83

The state of Missouri
to the use of William
W. Hayden
Respondent

v

Irwin Z. Smith et al
appellant

Assignment of errors

Filed December 15th 1859.
Wm. S. Glanville
Clk

Smith & Sidwick
for appellants

The State of Missouri to the use of William W. Hayden Respondents

v

Irwin Z. Smith et al Appellants

IN SUPREME COURT, October TERM, 1859

AND now come the said appellants and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said ~~Respondents~~ appellants assign the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Plaintiff
2. That said Court rejected proper and legal testimony offered by defendants
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by defendants
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Plaintiff when it should have been rendered for the defendants
10. That said Court overruled the motion for a new trial, made by defendants

Smith & Sedgwick
for appellants —

And now come the Respondents and for joinder in error say, that there is no error in the record and proceedings of said Circuit Court in said cause, as assigned by said Appellants & they pray that said judgment be affirmed,

Decker & Woolsis,
Attys. for Respondents,

~~295~~ 83

The State of Missouri
to the use of William
W. Hayden Respondent

vs

Isaac Z. Smith et al
appellant

Assignment of errors

Filed December 15th 1859.
Wm. S. Glanville
Clk

Smith & Sedwick
for appellants

The State of Missouri to the use of William W. Hayden, Respondent
vs
Irwin Z. Smith, William D Sedgwick and John R. Shepley, Appellants

In the Supreme Court of the State of Missouri
March Term 1861.

Statement of the Case for Respondent.

This is an action brought on an indemnification bond, taken by a Constable under the local statute defining the duties of Sheriffs & Constables, in St Louis County, in relation to property levied on; & claimed by third persons.

The suit was brought in the Circuit Court of St Louis County.

J W. Ayer cross & Co. of Boston, Mass., obtained a judgment before a justice of the peace in St Louis, against Henry Hudson, on the 14th day of May 1858, and on the same day execution was issued on the same. On the 20th May 1858, by the direction of Irwin Z Smith, agent of Ayer cross & Co. the Constable levied the execution on certain property, to satisfy the same, in store No 100, Market Street, St Louis, consisting of cigs, perfumeries, & fancy goods.

William W. Hayden served on the Constable a written notice, properly verified, to the effect that he was the sole owner of the property taken under the execution. The constable took the bond sued on, in the sum of $1000.00, Irwin Z. Smith being principal, and William D Sedgwick and John R. Shepley the securities in the bond.

The whole case turns upon a certain sale of the goods which were levied up, by Henry Hudson to Wm W. Hayden,

the relator. The Appellants, defendants below, allege fraud.

Henry Hudson was indebted to several parties, and among them were, one Owings and William W. Hayden. Owings obtained a judgment in the Court of Shorris County against Hudson for 259^{00}. Hayden held against Hudson a promissory note for 1000^{00}, secured by a deed of trust of the goods of Hudson in store on Market Street. Hayden, to secure his own debt, the sheriff having levied on Hudson's store, paid off the Execution in favor of Owings, 259^{00}, and delivered up to Hudson his note for 1000^{00}, and took a bill of sale from Hudson of the goods in his store.

Hayden made the purchase to secure his own debt, and is now charged with colluding with Hudson to defraud his Hudson's Creditors.

The whole question went fairly to the jury and they found a verdict for the plaintiff.

The record does not show any Exceptions made by the defendants to Evidence admitted or refused by the Court.

The Court allowed the following instructions, asked by the plaintiff.

"The jury are instructed that "to render a bill of sale void, as to creditors, the "sale must have been made by virtue of confeder-"ation and combination between the seller and buyer "to hinder or delay or defraud the creditors of the "seller; and if the jury believe from the Evidence that "no such combination or confederation existed

"between said Hudson and Hayden, but that Hayden "purchased the said property for an adequate valuable "consideration with the view only of securing his own "claim against said Hudson, then said bill of sale is "good against any creditors of said Hudson, and "plaintiff is entitled to recover in this suit."

"The jury are instructed that to render a bill "of sale void as to creditors, the sale must have "been made by virtue of combination & confederation "between the seller & buyer to hinder the defraud or "delay the creditors of the seller, or with knowledge "on the part of the buyer of such intent on the "part of the seller, and if the jury believe from "the evidence that no such combination & con-"federation existed between said Hudson & Hayden, "but that Hayden purchased the said property for "an adequate valuable consideration, with the "view only of securing his own claim against "said Hudson & without any knowledge on the part "of Hayden of any fraudulent intent that may "have been conceived by said Hudson, then said "bill of sale is good against any creditors of said "Hudson, and plaintiff is entitled to recover in "this suit".

The defendants excepted to the granting of these instructions by the Court.

The Court of its own motion gave the following instructions.-

"If the jury find that Henry Hudson was "really indebted to William A. Hayden, and in good "faith conveyed him goods in store in payment of "that debt, and that said Hudson conveyed and said "Hayden received the goods in satisfaction of said "debt, and not with the intent to hinder delay or "defraud the creditors of said Hudson, and that "while Hayden held the goods under such a con-"veyance an Execution against said Hudson "in favor of Norcross & Sargent was levied upon "the same goods said Hayden claimed the same and "that the bond sued upon was given to indemnify the "plaintiff for alleged damage from such levy, then "the plaintiff is entitled to recover, and the measure "of damages is the value of the goods levied upon "at the time of the levy, in the retail market thereof "with interest thereon at 6 per cent. from the Com-"mencement of this suit to the present time.

"But if plaintiff took the property in good faith in "payment of a just debt at a fair rate due by "Henry Hudson, and constituted said Hudson his "agent or attorney in fact to take charge of and "sell the same then the possession of said Hudson "is regarded as the possession of plaintiff and in "such case no such presumption of fraud arises"

The Court gave the following instructions asked by the defendants.

"Continued possession of personal property "after a sale by the vendor is presumptive Evidence

"of fraud, and it is conclusive evidence unless "the vendee shows that the sale was made in good "faith".

"The claim of W. W. Hayden to the goods sued for "recites that he claimed them under a bill of sale "from Henry Hudson dated March 3. 1858. If the "jury shall believe from the evidence that any part "of said goods were not included in said bill of "sale, but were purchased by Henry Hudson sub-"sequently, acting for himself, then they cannot find "against the defendants the value of the goods so "purchased. The law does not require bills of "sale of personal property to be placed on record "and the fact that they are recorded does not re-"lut any presumption of fraud that may arise".

"The declarations of Henry Hudson, as to how "he held said goods while they were in his "possession are evidence tending to show the "manner in which he held them".

"The jury may give to the evidence of "each witness such weight as they think it "deserves, and if in their opinion the testimony of "any witness is not entitled to credit they may "reject it altogether.

"If the jury believe from the evidence that

"the said bill of sale, read in Evidence, from "Hudson to Hayden was made with the intent on "the part of Hudson to hinder, delay or defraud his "creditors, and that Hayden, at the time he "accepted said bill of sale knew of Hudson's intent, "then they will find a verdict for the defendants, "notwithstanding, they should further find that "Hudson was indebted to Hayden to the full amount "of the stock of goods."

The Court refused the following instructions asked by the defendants.

"When a sale of personal property "has been made, there must have been an actual "bona fide delivery of the same to the vendee "in order to give him a title against the credi- -tors of the vendor"

"If the jury believe from the Evidence that this "suit is prosecuted wholly or in part for the benefit "of Henry Hudson they will find for the defendants."

"If the jury believe from the Evidence that "either the deed of trust dated November 1857, "from Henry Hudson to W. W. Hayden's trustee, and "read in Evidence on the trial in this cause, "or the bill of sale dated March 3rd 1858 from "Hudson to Hayden, was made by said Hudson "with the intent to hinder or delay the Creditors "and that said Hayden had knowledge of

"such intent then the jury will find for the
"defendants."

"If the jury believe from the Evidence
"that certain property included in the deed of
"trust of November 1857, read in Evidence on
"the trial of this Cause, was left in the possession
"of Henry Hudson, the defendant, and that it was
"sold by said Hudson with the Consent of Wm W.
"Hayden, the beneficiary in said deed of trust,
"or with the Knowledge of said Hayden, without
"objection on his part, and that said Hayden
"applied the proceeds of such sales to his own
"use and that the same was done in accordance
"with the understanding or agreement of the par-
"ties to the deed of trust at the time it was
"Executed, then the said deed was fraudulent
"as to Creditors of Hudson + the subsequent
"bill of Sale to Hayden did not cover the fraud."

"The jury are instructed that if they believe
"from the Evidence that Henry Hudson, the de-
"fendant in executing the deed of trust of
"November 12th 1857, either in writing or by
"verbal understanding or agreement with Wm
"W. Hayden retained the right to sell the goods
"conveyed in said deed and to keep or to apply
"to his own use the proceeds of such sale then
"such deed was fraudulent".

"If the jury believe from the evidence that "on the 3rd day of March A.D. 1858 Henry Hudson "the defendant executed a bill of sale pur-"porting to convey his stock of goods at his "store to Wm W. Hayden, but that he still retain-"ed possession of the same, and held himself out "as the owner of said stock of goods then said conveyance was *prima facie* fraudulent.

The defendants excepted to the ruling of the Court in refusing these instructions.

The defendants filed their motion for a new trial based on the grounds that the Court-

Admitted improper testimony.
Excluded proper testimony
Gave erroneous instructions
Refused proper instructions
Verdict is against law & evidence.
Verdict is excessive.
Court of its own motion gave improper instructions.

The Court overruled the motion & the defendants appeal.

This is all the case.

Decker & Voorhis
Attorneys for Respondent

Brief for Respondent.

The only question the record, in this case, presents to this Court, is whether the Court below properly declared the law to the jury on the question of fraud. That is the only question made by the defendants.

The Court in the instructions given on its own motion, and as asked by the parties, declared the law to the jury as fully, clearly, fairly and concisely as it seems possible.

And the instructions are in perfect consistency with the facts elicited on the trial.

The instructions refused by the Court below are only a reiteration of the law contained in the instructions granted. Or they assume facts and apply the law accordingly.

This Court has already said that it is not error to refuse instructions that are only a repetition of others that are given; and if the whole case is fully and fairly given to the jury, in the instructions granted by the Court, this Court will not disturb the judgment. 8 Mo. 339. 13 Mo 82. 13 Mo. 465. 17 Mo. 310. 18 Mo. 93.

A multiplicity of instructions on the same point serve only to confuse the jury, and defeat the very object of declaring the law in written instructions.

Decker & Norris
Attys for Respondent.

on 10 see Statute Fraud.
ulent Conveyances se 15 Mo (416) 419.

No 83

The state of Missouri to the use of William W. Hayden
Respondent

vs

Irwin G. Smith, William D. Sedgwick & Jno R. Shepley
Appellants

Statement & Brief of Respondent.
Decker & Vorhis attorneys.

Filed 4 April 1861.
W. S. Glanville Cl.

Sub. if not in cum-

The State of Missouri to the use of William W. Hayden Plaintiff

Against

Irwin J. Smith, William D Sedgwick & John R Shipley, Defendants

No. 231. Oct Term 1858 St Louis Cir. Court

Appeal —

Given for Plff 1

The jury are instructed that to render a bill of sale void, as to creditors the sale must have been made by virtue of combination and confederation between the seller and buyer to hinder or delay or defraud the creditors of the seller, and if the jury believe from the evidence that no such combination or confederation existed between said Hudson & Hayden but that Hayden purchased said property for an adequate valuable consideration with a view only of securing his own claim against said Hudson, then said bill of sale is good against any creditors of said Hudson, and plaintiff is entitled to recover in this suit —

Given for Plff 2

The jury are instructed that to render a bill of sale void as to creditors the sale must have been made by virtue of combination & confederation between the seller and buyer to hinder delay or defraud the creditors of the seller or with the knowledge on the part of the buyer of such intent on the part of the seller, and if the jury find from the evidence that no such combination

or confederation existed, between said Hudson & Hayden, but that Hayden purchased the said property, for an adequate valuable consideration, with the view only of securing his own claim against said Hudson and without any knowledge on the part of Hayden of any fraudulent intent that may have been conceived by said Hudson, then said bill of sale is good against any creditors of said Hudson, and Plaintiff cannot recover in this suit —

Given for Plff

If the jury find that Henry Hudson was really indebted to Mr. W. Hayden and in good faith conveyed him goods in store, in payment of that debt and that said Hudson conveyed and said Hayden received said goods in ~~payment~~ satisfaction of said debt and not with the intent to hinder delay or defraud the creditors of said Hudson, and that while Hayden held the goods under such a conveyance an execution against said Hudson and in favor of Morrow & Sargent was levied upon the same goods & said Hayden

claimed the same, and that the bond sued upon was given to indemnify the plaintiff for alleged damage from such levy then the plaintiff is entitled to recover and the measure of damages is the value of the goods levied upon, at the time of the levy in the retail market thereof with interest thereon at 6 per cent from the commencement of this suit to the present time -

Given for Plff

But if plaintiff took the property in good faith in payment of a just debt at a fair rate, due by said Hudson ~~to said~~ and constituted said Hudson his agent or attorney in fact to take charge of and sell the same, then the possession of said Hudson is regarded as the possession of plaintiff, and in such case no presumption of fraud arises -

Given for Defh

* Continued possession of personal property after a sale by the vendor is presumptive evidence of fraud, and it is conclusive evidence unless the vendee shows that the sale was made in good faith -

* given

(34)

Given for Deft — The claim of W. W. Hayden to the goods sued for recites that he claimed them under a bill of sale from Henry Hudson, dated March 3d 1858 If the jury shall believe from the evidence that any part of said goods were not included in said bill of sale, but were purchased by Henry Hudson subsequently acting for himself, then they cannot find against the defendants, the value of the goods so purchased —

given Given for Defh — The law does not require bills of sale of personal property to be placed on record, and the fact that they are recorded does not rebut any presumption of fraud that may arise —

given — The declarations of Henry Hudson as to how he held said goods while they were in his possession are evidence tending to show the manner in which he held them —

Given for Defh — The jury may give to the evidence of each witness, such weight as they think it deserves, and if in their opinion, the testimony of any witness is not entitled to credit, they may reject it altogether

Given for defts — If the jury believe from the evidence that the said bill of sale read in evidence from Hudson to Hayden was made with the intent on the part of Hudson to hinder, delay or defraud his creditors, and that Hayden at the time he accepted said bill of sale knew of Hudson's intent, then they will find a verdict for defendants notwithstanding they should further find that Hudson was indebted to Hayden to the full amount of the stock of goods —

Refused * Where a sale of personal property has been made, there must have been an actual bona fide delivery of the same to the vendee in order to give him a title against the creditors of the vendor

Refused 2 If the jury believe that this suit was prosecuted wholly or in part for the benefit of Henry Hudson, they will find for the defendants —

Refused 3 If the jury believe from the evidence that ~~certain~~ either the property included in the deed of trust dated November 12 1857, from Henry Hudson to W. W Hayden's trustee and read in evidence on the trial of this cause, or the bill of sale dated March 3

1858, from Hudson to Hayden was made by said Hudson with the intent to hinder or delay his creditors, and that said Hayden had knowledge of such intent, then the jury will find for the defendants —

Refused 4 If the jury believe from the evidence that certain property included in the deed of trust of November 12th 1858, read in evidence on the trial of this cause, was left in the possession of Henry Hudson the defendant and that it was sold by said Hudson with the consent of Wm. W. Hayden the beneficiary in said deed of trust or with the knowledge of said Hayden without objection on his part and that said Hayden applied the proceeds of such sales to his own use and that the same was done in accordance with the understanding or agreement of the parties to the deed of trust at the time it was executed, then the said deed was fraudulent as to creditors of Hudson and the subsequent bill of sale to Hayden did not cure the fraud —

Refused 5 The jury are instructed that if they believe from the evidence that Henry Hudson the defendant in executing the deed of trust of November 12th 1857 either in writing or by a verbal understanding or agreement with Plaintiff Hayden retained the right to sell the goods conveyed in said deed and to keep or to apply to his own use, the proceeds of such sale, then such deed was fraudulent

Refused—6 If the jury believe from the evidence that on the 3d day of March A.D. 1858 Henry Hudson the defendant executed the bill of sale purporting to convey his stock of goods as his own to Plaintiff W. Hayden, but that he still retained possession of the same and held himself out as the owner of said stock of goods, then said conveyance was prima facie fraudulent —

State to the use of Hayden
vs
Smith, Sedgwick & Shepley

The above named cause is founded upon a bond given by the defendants

On the 14th day of May 1858, Joel W. Norcross & William H. Sargent obtained a judgment before a justice of the Peace, on which an execution issued, and the constable levied upon certain property at 96 Market Street, St. Louis, as the property of Henry Hudson the defendant in the execution, on the 20th day of May 1858—

The property so levied upon was claimed by William W. Hayden, according to the third section of the act of the General Assembly entitled "An act concerning the duties of Sheriffs and Marshalls in the county of St Louis in relation to the levy and sale of such property as may be claimed by third persons"

This claim was made by defendant in the execution, Henry Hudson as the attorney in fact for Hayden, and sworn to by him

The notice or claim to the constable states that the title of said Hayden to said property was acquired by virtue of an instrument of conveyance duly executed from Henry Hudson to Hayden, dated March 3d 1858 and recorded in book 194 page 525

After the filing of this claim

the defendants herein entered into bond in the sum of one thousand dollars, conditioned to pay said Hayden all dam-ages that he might sustain in conse-quence of such levy, and in consequence of any suit that might be made there under

The suit in question was brought upon this bond—

Defendants as a defence, deny that Hayden was the owner of the goods in question and deny that he was the owner of goods levied upon by the Constable, and allege that Henry Hudson was the owner of the goods in question, and in the possess-ion of the same, that on the 3d day of March AD 1856, said Hudson was indebted to various persons and among others to Joel W. Brewer & co, That on said day with intent to hinder delay & defraud his creditors, he made said conveyance, without any consideration therefor, and that said Hayden accepted said convey-ance with the intent to assist said Hudson in cheating, hindering and de-laying his creditors— that said con-veyance was colorable only, and that no title passed—

That up to the time of the levy said Hay-den had never taken possession of said goods, but that Henry Hudson, the de-fendant in the execution had retained possession, and continued to sell said goods. That some of articles levied

upon, were included in the bill of sale of March 3d 1858 & others were articles purchased by Henry Hudson after said bill of sale was executed. The defendants also put in issue the value of the goods levied upon —

The plaintiff, on the trial introduced Henry Hudson, who testified that the goods described in plaintiffs petition were the goods levied upon by the ~~Sheriff~~ constable and that the actual value was $452 45 — That he sold out his stock to Hayden March 3d 1858, for $1259 — $1000 of which was for money originally due to James H. Hayden, a brother of William W. and $259 was the amount of a judgment obtained against witness & James H Hayden, brother of plaintiff. That the judgment was on account of a note executed by James H. Hayden and endorsed by witness — that plaintiff & Eulalie Hayden wife of James H. procured the money of one Meyer, to pay off the judgment & gave Meyer their joint note for it — That the $1000 had been lent to witness by James H. Hayden at various times and that in November 1857, James H. came to him, and at his request, the amount was consolidated into one note, and given to William W. Hayden, and a deed of trust given on his stock in trade to secure its payment —

That the execution for $259 was levied upon this stock in trade and the trustee in the deed of trust refused to act and claim the property, so it was held - That then the bill of sale was made and the property in question, together with the household furniture, delivered to plaintiff, by witness who went around and said, "I deliver you this" and "I deliver you this" - That shortly afterwards, plaintiff executed a power of attorney and witness continued to sell the stock in trade until the levy complained of -

That at the time of the bill of sale, and up to the time of trial, plaintiff was a river pilot - and had never attended to the business of the store

That between the time of the bill of sale and the levy, Hudson purchased several bills of goods, some of which were in his own name - and on his own credit -

That he, Hudson left his old sign over the door extending along the whole front, and about nine inches wide - Hayden's sign was put in the door, it was twelve inches long and three inches wide -

That one Edward E. Foster, the agent of Joel W. Stevens & Co., came to St. Louis in April 1858, and he, Hudson gave him an order

for goods in his own name, and told him, that if Norcross & Co would sell him more goods, he would pay the debts he owed them at that time, as they became due, these notes, that had been given in renewal of other notes for merchandize

He testified that from March 3d to May 20th, the time of the levy, he sold to the value of about $300 per month That the only benefit Hayden derived from the store was the payment by witness of $25, on the note held by Meyer, and that he, witness, purchased goods to replenish the stock, between the dates in question, amounting to $500 -

Other witnesses testified that they were present when the bill of sale was made and the formal delivery made -

It was proved also, that Henry Hudson remained in possession of the household and kitchen furniture, embraced in the bill of sale, until the time of the trial -

One of the witnesses testified that he was present when the constable went to the store to make the levy.

Plaintiffs attorney then asked what Henry Hudson, who was in possession of the goods, said at that time - Defendants

attorneys objected to the question, but the Court permitted to be answered, and the witness answered, that "Henry Hudson told the Constable that the goods belonged to W. W. Hayden and he had better see him" Defendants excepted to the ruling of the Court in permitting the question to be answered—

On behalf of defendants, the Constable who made the levy, testified that the goods levied upon in this case, and about an equal amount in ~~the~~ another case sold for $260, and that Henry Hudson told him that they sold well—
That there were a number of persons, barbers and others there to purchase the goods—

Wm. M. Sleth testified that he kept a furnishing store, and was acquainted with the kind of goods in question that he attended the sale of these goods and that they brought good prices—witness himself bought to the amount of about $100

The agent of J. W. Norcross & Co testified that he visited St. Louis a month or more after the bill of sale was executed, that he found ~~that~~ Henry Hudson at the store, talked with him, and

that Hudson told him that he owned the stock, unencumbered and that it was worth $2000, that he gave an order for goods in his own name —

Frederick Willmer testified that he sold goods to Henry Hudson in his own name from March 1858 to May of the same year. That in May, Hudson wrote a letter, stating that he had sold out to Hayden — That Hudson bought $300 worth of goods

Mc Bride, agent of K. Bazin testified that Hudson bought goods of him, in his own name, somewhere between the 3d & the 7th of May 1858

Defendants then offered in proof various notes, judgments and depositions, showing that Henry Hudson was indebted in the sum of $2400 at the time the bill of sale was made —

Also the deed of trust executed by him in Nov. 1857, whereby he conveyed the stock in trade mentioned in the bill of sale of March 3d 1858 to one Tennyson, in trust to secure to W. W. Hayden a note for $1000 —

The deed of trust contained the following clause

"Intending to convey truly all his present stock

" in trade, and all additions that may be
" made thereto, and which consists princi-
"- pally of hair, perfumery, combs, brushes
" and other kinds of fancy goods, inclu
" ding all the stock manufactured and
" unmanufactured, and every thing belong
" -ing or that may hereafter belong to his
" stock of fancy goods, perfumery, hair
" wigs &c, and it is agreed by the parties
" hereto, that if any creditor or creditors
" of the said Henry Hudson shall at any
" time attach or levy upon the property aforesaid
" said on execution or otherwise, or if the said
" Hudson shall attempt to sell or remove
" said property out of the city, or out of
" the ordinary way of retail trade, or if
" the said party of the second part shall at
" any time be of the opinion that the said
" Hudson is so conducting with said goods
" as to endanger the security hereby in
" tended, it shall be lawful for the said
" party of the second part, to enter and
" take possession of the same" —

It was on account of the refusal of the trustee in that deed of trust, to make a claim to the goods when they were levied upon, that ~~they~~ the same was cancelled and a

bill of sale executed in its stead —

The note sued on by J. W. Norcross, & Co. was for a debt subsisting at the time this deed of trust and the bill of sale was executed

The Court gave instructions as will be seen by the first part of this statement, and the jury retired and brought in a verdict for $476 $\frac{56}{100}$ and defendants in due time, moved for a new trial on the grounds that, improper evidence was admitted on the part of pleff & legal evidence offered by defts was excluded

Because the Court gave improper instructions in behalf of pleff & refused proper ones offered by defts.

Because the verdict was against the law and the evidence & the weight of evidence & because the same was excessive —

The Court overruled the motion for a new trial and the ~~[illegible]~~ defendants duly excepted to such overruling, and appealed said cause —

Knox, Smith & Sedgwick
for appellant

No. 83

The State of Missouri to the use of William W Hayden

vs

Irwin Z. Smith, William D. Sedgwick and John R. Shepley

Appellants statement

Filed 5 April 1861.
Wm Glanville Clk

Smith & Sedgwick
for appellants

(84)

The State of Missouri to the use of William W. Hayden, Plaintiff Respondent

Against

Irwin Z. Smith, William D Sedwick and John R Shipley Appellants

On appeal from the St Louis Circuit Court —

In the third instruction given on behalf of the plaintiff, the jury are instructed, that if they find for the plaintiff, "the measure of damages, is the value of the goods levied upon in the retail market thereof"

The only construction that the jury could well give to such a principle, is, that the measure of damages is the price at which they were sold in the retail market in the ordinary course of trade, and it is apparent that they did place that construction upon it, as they gave in their verdict, the retail price of the goods levied upon, with interest, according to the testimony of the witnesses Hudson, and not the value that was placed upon them by other witnesses, who gave the value of the goods according to other bases —

In order to make them bring those retail

retail prices, it would be necessary to bestow upon them time, labor, clerk hire, rent and other expenses -

Henry Hudson testified that he sold to the amount of about $300 per month, at the prices at which these goods were held

In order to realize the $300 plaintiff would have to pay $100 clerk hire, $45 rent - and other expenses to run up probably to $175, leaving the nett value of the goods in the store, less than $50 per $100 -

According to the prices claimed by plaintiff the goods seized upon by the constable were worth over $400 - but apply the test mentioned above, take out the expenses incurred in one month and a third, in carrying on the store, and we find that the nett value is under $200 -

This compends with the testimony of other witnesses, and with the view of the case taken by appellants - and with the actual value of the goods -

Goods are worth no more than it will take to purchase them - and the true measure of damages is the ~~value~~ cost that would replace them -

The instruction, asked by defendants, as to delivery was good law.
In order to maintain his action plaintiff ought to have shown that there was an actual bona fide delivery - but such an instruction was not given - This principle of law is not sufficiently set forth in the instructions given -
The jury under the instructions given, were led to infer, that this pretended delivery, in the presence of Meyer, wherein Henry Hudson said, "I deliver you this" &c, was all the delivery required by law, when in fact, it was no delivery - The actual possession & control remained in Henry Hudson - The constable found him and nobody else in possession, when he went there. The creditors of Hudson, one and two months after the pretended delivery, found him there, and although looking after their debts, and interested in every movement of Hudson, did not see any thing or hear any thing to indicate a change in possession - and Henry Hudson then certainly held out to them, that he was there in possession -

The second instruction offered by defendants and refused, should have been given —
Our law provides that suits shall be brought in the name of the real party in interest — It is in proof that Henry Andrews told me of his creditors, that if he won these suits, he could pay his debts —
How pay them, if any better by defeating these defendants, if he had no interest in them. It is hard to see —
This was proof enough to go to the jury as to whether he was interested or not —

The third instruction refused ought to have been given —
The deed of trust of November 1857 was fraudulent by its terms, and the only reason given by anybody for making the bill of sale, was the difficulty in preventing the trustee in the fraudulent deed of trust to act. It is one transac

-tion, conceived in fraud, carried on in fraud, and when that fraud is likely to be defeated, another form of con-
-veyance resorted to, in order to cover up the difficulties in the way of carrying out the fraud -

Did the bill of sale cure the primary fraud?

The last instruction asked should have been given -
It is true, that if Hudson had made the sale with a fraudulent intent, but Hayden had no knowledge of it - and took possession of the goods for a valuable and adequate consider-
-ation, then the possession of Hayden would have held good against the creditors; but in this case, Hudson not only remained in possession, but he held himself out as the owner and proprietor of the store. He lived in the house, enjoyed the fur-
-niture, paid nothing for its use and the only consideration for which it is pretended that he gave, the debt was paid, partly by Henry Hud-
-son, out of the proceeds of sales, and partly by Frank, with him, that

Henry had bought — and that it is not known that Frank the brother ever said —

Smith & Sedgwick
for appellants

No. 83

The State of Missouri
to the use of William
W. Hayden
vs
Irwin J. Smith, William
D. Sedgwick & John
R. Rupley —

Appellants brief

Filed 5 April 1861
Wm P. Glanville Cl.

Knox, Smith & Sedgwick
for appellants

State of Missouri to the use of William W. Hayden vs Irwin F. Smith et al } Nos 82. 83 & 84 —

Appellants would refer to the following authorities.

Upon the subject of fraud as to creditors —

Sale made by vendor of goods, unless accompanied by delivery in reasonable time, and followed by an actual and continued change of the possession, void as to creditors &c See Rev St p. 805 — Sec 10 —

— see — Kutz Kendall vs McDonald 15. Mo. Rep — p. 416 — as to the construction of forgo — ing clause

For the construction given to similar statutes in other states, see

19 Vermont p. 609, Mills vs Warner
+ 2 Foster. N.H. p 1 Kendall vs Fitts
+ 10 N. H " 236 Clark " Moore
+ 14 Conn " 240 + 529
6 " " 277
9 " " 63. 134. 216
20 " " 23 Kirtland vs Snow —
12 S + M " 365
3 J. J. Marshall 714

14	B. Monroe	529	
6	Humphreys	509	
5	Vermont	527	Fuller vs Sears
5	"	231	Harris vs Langdon
2	"	181	Beattie " Robin –
6	"	521	Farnsworth vs Shepard
+ 9	Johns N.Y. Rep.	336	Sturtevant " Ballard
19	" " "	222	Ludlow " Hard
17	Vermont	271	Hall " Parsons
16	~~Conn~~ Mndell " "	523	Doane " Eddy
17	Mndell N.Y.	53	Randall " Cook
+ 2	" "	446	Jennings " Carter
9	" "	198	Collins " Brush
2d	Bibb Ky	605	Dale vs Arnold
2d	Bailey	118	Smith vs Henry

As to the measure of damages –
See Sedgwick on Damages p. 530

1	Gray Mass –	151	Gardner vs Field –
7	Louisiana ~~Am~~ Rep	233	Porter " Curry

Knox, Smith & Sedgwick
for defendants

82. 83 + 84

The State of Missouri
to the use of William
W. Hayden
vs
Irwin J. Smith et al

In three cases —

Authorities relied on by
Appellants

Filed April 10. 1861.
Wm S. Glanville clk.

Knox, Smith & Sedgwick

(30)

State to use of Hayden
vs
Smith et al

On the 14th of May 1858 I W Norcross & Co obtained judgment before a Justice of the Peace of St Louis County against Henry Hudson and on the same day caused Execution to be issued thereon which on the 20th of the same month was levied by direction of the plaintiffs in Execution, on certain goods in store No 100 on Market street in the City of St Louis — The goods were claimed by Hayden who notified the Constable thereof, whereupon the defendants Smith as Principal and Sedgwick and Shepley as Securities Executed an indemnification bond agreeable to the provisions of an act concerning the duties of Sheriff and Marshall in the County of St Louis approved March 3d 1855 — The suit was brought upon this bond plaintiff claiming the property by virtue of an alleged Sale from Hudson as evidenced by a bill of Sale Executed by Hudson to Hayden bearing date March 3d 1858 and embracing the property in question — The defendants in their answer deny that Hayden was the owner of the property at the time of the levy, and charge that said property belonged in fact to Hudson the defendant in said Execution — that said bill of Sale was made with an intent,

to hinder & delay and defraud the creditors of Hudson which fraudulent intent was known to plaintiff and participated in by him — that no consideration was given therefor, and that after the execution of the bill of sale Hudson continued in possession of the goods and store, doing business as formerly —

Upon the trial of the cause a large amount of testimony was given and printing hours to the question of fraud & intent in the case, among which was a deed of trust read in evidence by the defendants which deed bears date December 12th 1857 and was executed by Hudson to Hayden, Trustee to secure the payment of a promissory note for $1000 executed by Hudson & made payable to the order of Hayden — The deed covers the goods in said store and we have been particular in thus noticing it because it is made the basis of one or two instructions asked by defendants and refused by the court,

We do not deem it important to advert to all the instructions given and refused, but simply to such as bear directly upon the issue. Several instructions asked by defendants were properly refused because they were substantially given in others. The practice of giving numerous instructions all enunciating the same principle but in a different form, only tends to confuse the jury and this Court will not reverse a judgment because of the refusal to give an instruction which has been substantially given in another form, though the instruction may be otherwise unexceptionable.

The 11th Sec. of our Statute relating to fraudulent conveyances is as follows.

"
" Every sale made by a vendor of goods
" and chattels in his possession, or under his
" control, unless the same be accompanied by a
" delivery in a reasonable time (regard being
" had to the situation of the property) and
" be followed by an actual and continued
" change of the possession of the things sold,
" shall be presumed to be fraudulent
" and void as against the creditors of
" the vendor or subsequent purchasers in
" good faith, and shall be conclusive
" evidence of fraud, unless it shall be
" made to appear to the jury, on the part
" of the person claiming under such sale,
" that the same was made in good faith,

"and without any intent to defraud
"creditors or subsequent purchasers;"

It will be observed from the reading of this section that continued possession in the vendor does not of itself render the sale void, but only becomes conclusive evidence of fraud in the absence of testimony to satisfy the jury that the same was made in good faith and without any intent to defraud creditors or subsequent purchasers, in other words if the party attacking the validity of the sale shows possession in the vendor the statute presumes that the transaction is fraudulent and the burden of proving to the contrary is placed upon the vendee or party seeking to maintain the sale, and if he fails to satisfy the jury that it was a fair and bona fide transaction and made in good faith and without an intent to defraud then the statute makes the possession in the vendor conclusive evidence of fraud -

Upon the part of the plaintiff the court gave the following instructions

"The Jury are instructed that to render a bill of sale void as to creditors, the sale must have been made by virtue of confederation and combination

between the seller and buyer to hinder and delay or defraud the creditors of the seller. and if the jury believe from the evidence that no such combination or confederation existed between said Hudson & Hayden, but that Hayden purchased the said property for an adequate valuable consideration with the view only of securing his own claim against said Hudson, then said bill of sale is good against any creditors of said Hudson and plaintiff is entitled to recover in this suit,

4 The jury are instructed that to render a bill of sale ~~void~~ void as to creditors, the sale must have been made by virtue of combination and confederation between the seller and buyer to hinder defraud or delay the creditors of the seller & with knowledge on the part of the buyer of such intent on the part of the seller and if the jury believe from the evidence that no such combination & confederation existed between said Hudson & Hayden but that Hayden purchased the said property for an adequate valuable consideration with the view only of securing his own claim against said Hudson and without any knowledge on the part of Hayden of any fraudulent intent that may have been

concerned by said Hudson, then said bill of sale is good against any creditors of said Hudson, and plaintiff is entitled to recover in this suit —"

It is contended by the appellants that the above instructions are erroneous because they fail to inform the jury of the legal effect of continuous possession in Hudson after the sale but in lieu of the instructions given by the court at the instance of the defendants we find the following

"continued possession of personal property after a sale by the vendor, is presumptive evidence of fraud, and it is conclusive evidence unless the vendee shows that the sale was made in good faith"

"If the jury believe from the evidence that the said bill of sale recd in evidence from Hudson to Hayden was made with intent to hinder, delay, or defraud his creditors and that Hayden at the time he accepted said bill of sale knew of Hudson's intent then they will find a verdict for the defendants notwithstanding they should

further find that Hudson was indebted to Hayden to the full amount of the stock of goods,"

These instructions together with those given at the instance of the plaintiff, we think presented the law of the case fairly to the jury and gave the defendants the full benefit of the presumption of fraud arising from continued possession of the property in Hudson the vendor —

The defendants asked the court to give the following instruction

"If the jury believe from the evidence that either the deed of trust dated December 1857 from Henry Hudson to W. W. Hayden, Trustee, and used in evidence on the trial in this cause; or the bill of sale dated March 3d. 1858 from Hudson to Hayden, was made by said Hudson with the intent to hinder or delay his creditors and that said Hayden had knowledge of such intent, then the jury will find for the defendants,"

The court was properly asked to give this instruction for it assumed as a legal proposition that if the deed of trust was fraudulent the bill of sale was necessarily so. The plaintiff claims under the bill of sale executed four months after the deed of trust and we do not see what connection the deed has with the bill of sale, except as a link in the chain of testimony tending to show the character of the sale. Even if the deed of trust was ~~fraudulent~~ tainted with fraud, or was fraudulent on its face as a conveyance for the benefit of the grantor, it does not necessarily follow that the bill of sale was also fraudulent.

We see therefore no error in the refusal of the court to give the instruction, but the judgment must be reversed and cause remanded for error in ~~the court~~ instructing the jury that if they found for the plaintiff the measure of damages was the value of the goods levied upon at the time of the levy in the retail market thereof, with 6 pr. ct int from the commencement of the suit.

The only inference which the jury must have drawn from this instruction was that if they found for the plaintiff the measure of damages was the retail price at which such goods usually sold in the St. Louis Market —

Such is not the measure of damages in a case of this kind and we have been unable to find any case that approximates it and presume the counsel for respondent labored under the same difficulty, as he has cited none in his brief —

Sedgwick, in his work on the measure of damages p 529 & following, says "the object in this class of cases is to limit relief to compensation and when trespass is brought for personal property and no circumstances of aggravation are shown, the action is to be regarded as one of Trover and the value of the property with interest furnishes the measure of damages.

In Pacific Insurance Co vs Leonard 1 Baldwin 138, Justice Baldwin in his charge to the jury said

"The value of the property taken with interest from the time of the taking down to the trial, is generally considered as the extent of the damages sustained; and this is deemed legal compensation which refers solely to the injury done to the property taken, and not to any collateral or consequential

" damages resulting to the owner by the
" trespass - These are taken into consideration
" only in a case more or less aggravated.
" But where the party taking the property
" of another by legal process acts in the fair
" pursuit of his supposed legal right,
" the only reparation he is bound to make
" to the party who turns out to be ultimately
" injured, is to place him as to the property
" in the same situation in which he was
" before the trespass was committed.
See 1st Peters 386. 4th Peters 291 -
In Brannin vs Johnson 1st Maine R
361 and Gray vs Stevens 28th Vermont
p 2, the true measure of damages was
held to be the value of the property at the
time of the taking - In Walker vs
Borland 21st Mo. 289 which was a
seizure and sale under an execution
against one James Walker, of a horse
and some cattle belonging to the plaintiff,
the court below refused to give an
instruction asked for by defendant, to the
effect, that the measure of damages
was the value of the property at the time
of the seizure by the sheriff, with interest
to the trial, and this court reversed the
judgment by reason of such refusal.
Judge Leonard in delivering the
opinion of the court said, the jury
must be confined to the value of the property
when the trespass was committed, upon which

they might allow interest.

We might quote numerous other cases tending to the same result but the question is too well settled to require authority —

The value of the property is a question of fact for the jury to determine — In numerous cases a very common rule is to take the the invoice price of the goods and add 10 per. cent to cover contingencies, which is supposed to be sufficient to replace the goods — The jury must be left to exercise their own judgment with ~~the~~ regard to the value, but the instruction in this case deprives them of any discretion in the matter and requires them to adopt the retail price.

This is not only erroneous, but manifestly unjust, for the merchant in fixing the retail price takes into consideration not only the first cost of the goods but stores rent clerk hire, insurance and probable amount of bad debts and adds to all this a percentage for profit — Such a rule is unknown to the law, and we think without a precedent —

The other judges concurring the judgment will be reversed, and the ~~the~~ cause remanded —

W. T. W. Bay

State to use of
Hayden
vs
Smith et al

Opinion

W. T. T. Bay

Filed April 24. 1862
A. W. Mead
Clerk