

Jefferson County Circuit Court
Case Files-Civil
September 1871

Box 28 Folder 56

Wiggins, W. C. R.

vs.

Graham, Madison

Breach of contract

Defendant owed plaintiff \$636.42 for
services as clerk of defendant's store
in Morse's Mill; bill of exceptions;
Supreme Court

W. C. R. Higgins Plaintiff
2
Madison Graham Defendant

In the Jefferson Circuit Court
September Term 1871.

Plaintiff states that on or about the 25th day of March 1870 the Defendant was in the mercantile business near Morse's Mills in Jefferson County Missouri and on or about that day Defendant hired Plaintiff to act as his Clerk in such business for and during the term of two years as understood by Plaintiff but for one year only as accepted by Defendant and in consideration of Plaintiff's services as Defendant's Clerk in his business as a merchant Defendant agreed to pay and Plaintiff agreed to receive one third of the profits of such business for the time he might be so employed. Plaintiff states that in accordance with such employment and hiring as aforesaid he entered into the service of Defendant as his Clerk in said business on or about the day and year aforesaid and continued

therein till the 25th day of March 1871
when the Defendant refused to retain him
in his employ any longer.

Plaintiff states that the profits of the
mercantile business in which Defend-
ant was engaged and in which Plain-
tiff acted as Defendant's Clerk as
aforesaid were for the year ending
March 25th 1871 Nineteen hundred
and nine $\frac{28}{100}$ dollars, one third of
which belonged to Plaintiff under the
hiring aforesaid. Plaintiff therefore
states that he was on the 25th day of March
1871 and is yet entitled to receive
from Defendant for his services
as Clerk aforesaid the sum of \$44
hundred and thirty six $\frac{42}{100}$ dollars
but which the Defendant through
often request^{ed} to do, has failed
and refused and still fails and
refuses to pay to Plaintiff.

Wherefore Plaintiff demands judgment
for \$44 hundred and thirty six $\frac{42}{100}$
dollars with the interest thereon
from the bringing of this suit and
for other proper relief.

Thomas & Thomas

Attys for Plaintiff.

No 2

N.R.C. Wiggins

vs

Madison Prohace

Petition on Contract

Filed April 11th 1871

Wm Doyce clk

By Atty Genl Dept.

Cost \$5.00 from plaintiff

W C R Wiggins, Plaintiff } In the Jefferson
vs } Circuit Court
Madison Graham, Defendant } September Term 1871

Plaintiff states that on or about the 25th day of March 1870 the Defendant was in the Mercantile business near Morse's Mill in Jefferson County Missouri and on or about that day Defendant hired Plaintiff to act as his Clerk in such business for and during the term of two years as understood by Plaintiff but for one year only as alleged by Defendant and in consideration of Plaintiff's services as Defendant's Clerk in his business as a Merchant Defendant agreed to pay and Plaintiff agreed to ~~take~~ receive one third of the profits of such business for the time he might be so employed, Plaintiff states that in accordance with such employment and hiring as aforesaid he entered into the service of Defendant as his Clerk in said business on or about the day and year aforesaid and continued therein till the 25th day of March 1871, when the Defendant refused to retain him in his employ any longer, Plaintiff states that the profits of the Mercantile business in which Defendant

was engaged and in which Plaintiff acted as Defendant's Clerk as aforesaid were for the year ending March 25th 1871 Nineteen hundred and Nine 28/100 dollars one third of which belonged to Plaintiff under the hiring aforesaid, Plaintiff therefore states that he was on the 25th day of March 1871 and is yet entitled to receive from Defendant for his services as Clerk aforesaid the sum of six hundred and thirty six ⁴²/₁₀₀ dollars, but which the Defendant though often requested so to do, has failed and refused and still fails and refuses to pay to Plaintiff, wherefore Plaintiff demands judgment for six hundred and thirty six ⁴²/₁₀₀ dollars with the interest thereon from the bringing of this suit and for other proper relief,

Thomas + Thomas
Attys for Plaintiff

A true Copy of the original petition now on file in my office,

Witness my hand and the seal of
Said Circuit Court hereto affixed
at office in Hillsboro this the
Eleventh day of April AD 1871

W. S. Boyce Clerk

The State of Missouri, } ss.
COUNTY OF JEFFERSON.

The State of Missouri,

TO THE SHERIFF OF THE COUNTY OF JEFFERSON---GREETING:

We command you, that you summon *Madison Graham*

if he be found in your County, that he be and appear before the Honorable Judge of
our Circuit Court, on the first day of the next term thereof, to be begun and held at the
town of Hillsboro, within and for the County of Jefferson, on the *third*
~~Monday after the fourth~~ Monday of *September* next, then and there
to answer unto *W. C. R. Higgins*

upon *his* original petition, a copy whereof is hereunto annexed
and accompanies this writ, and have you then there this writ.

Witness, W. S. BOYCE, Clerk of our said

Circuit Court, with the seal thereof hereunto af-
fixed, at office in Hillsboro, this *11th*

day of *April* A. D. 18*71*

W. S. Boyce Clerk Circuit Court.

By _____ Deputy.

No 21

RETURNABLE
TO
JEFFERSON CIRCUIT COURT.

September TERM, 1871.

W C R Wiggins

vs
Madison Graham

John Williams
Sheriff fee

\$1.00

Original

I Received this Writing of Jefferson County Mo on the
4th Day of May 1871 by Delivering to Madison
Graham attorn copy of this Writ and a copy
of the Petition as furnished to by the clerk

John Williams Sheriff

W. C. R. Higgins - Plaintiff } In the Circuit
Against } Court of Jefferson
Madison Graham, - Defendant } County Missouri

The Defendant moves the Court to
order the Plaintiff to give security for the costs,
in the above entitled cause, for the following
reasons;

- 1- Because the Plaintiff has no property, real
or personal, out of which costs could be
made by execution.
- 2- Because the Plaintiff is insolvent, or
unable to pay costs, - and has no prop-
erty that could be reached by execution.

Almer Green
Attorney for Defendant

W. C. R. Wiggins

B.

Madison Graham

Prothon
for Security for Costs

Filed Sept 1878/1
md Boyce Cl

W. C. R. Wiggins Plaintiff } In the
vs } Jefferson
Madison Graham, Defendant } Circuit Court.

I bind myself to pay all costs
which have accrued or may accrue
in the above entitled cause. Sept 23, 1871.

W. C. R. Wiggins
E. Amos

W. C. R. Wiggins
2
Madison Graham

Security for Court.



Filed Sept 23 1871.
m & Borel

all the bad debts he might make during the year, in selling goods to irresponsible persons. This was the only Contract that Defendant made with Plaintiff in employing him to act as Defendant's Clerk for one year, - and Defendant denies that he made the Contract with Plaintiff as stated in his petition, - Defendant denies that the profits of such mercantile business, for the year ending March the 31st 1871, in which Plaintiff was employed as such Clerk, amounted to Nineteen hundred and nine dollars, and 28 cents, ^{or} any thing near such sum. Defendant states that Plaintiff utterly failed to ^{keep} intelligible Books of such mercantile business during said year, so as to show the total value of the goods bought and received in such mercantile business, the costs of shipping the same; the total amount of the goods sold during said year, and the value thereof, and the expenses of such business. And Defendant therefore states that he cannot ascertain with accuracy the amount of profits made during said year of such mercantile business, but he denies that it was \$1909.28, - or any other sum, which

Defendant has been able to ascertain after deducting all expenses. ^{He denies that} ^{mer-} ^{cantile} ^{business} ^{makes} ^{any} ^{profits} ^{that} ^{year} ^{over} ^{the} ^{expenses} ¹ Defendant therefore denies that one third of the profits of such

mercantile business was six hundred and
thirty six dollars, ^{or any sum whatever} & 42 cents, - and denies that
he owes Plaintiff six hundred and thirty
six dollars & 42 cents, or any other sum, -

Defendant states that Plaintiff during
said year, while he was engaged ^{as} Defend-
ant's Clerk, failed to charge himself with
large amounts of goods, and money, which
he took out of Defendant's store, and used
for his own purposes, and for work done
for Plaintiff by Defendant's servants, in
washing clothes, - amounting ^{in all} to \$263.10,
A Bill of which is as follows, to wit,

W. C. R. Wiggins

To Madison Graham Dr,

1870

To washing clothes 6 months -	\$18.00
" 2 Hats \$5.00, - washing \$18. =	23.00
" Goods for drawers & making same -	3.60
" 1 Pr. Boots \$5.50, - 1 Pr. boots \$4.50, =	10.00
" 1/2 Doz Boxes paper Collars -	1.50
" Suspenders \$1 - 4 Pr. Socks \$1. =	2.00
" 1 Pr. Pants & vest -	7.00
" Money ^{of Deft.} used to buy Overcoat	25.00 +
" Money of Deft. used to buy accordion	20.00 +
" Blue Coat -	16.00 +
" Cash Taken from Defendant's Store	33.00
" Do, Do, last Christmas a year ago,	65.00
" 1/2 Doz fine Shirts -	16.00
" 1 Bolt Calico \$6. & 1 Saddle \$8. =	14.00 +
Total amount -	\$263.10

Defendant therefore states ^{that} Plaintiff owes him two hundred and sixty three dollars and ten cents, for goods and money taken by Plaintiff out of Defendant's Store, and not accounted or paid for, and for work done by Defendant for Plaintiff, at his request, as shown by the above Bill of particulars; and for which sum of two hundred and sixty three dollars and ten cents, the Defendant asks Judgment.

Defendant further states that Plaintiff during the said year, sold goods of Defendant to irresponsible persons, amounting to \$200. ⁰⁰ and that said debts cannot be collected, as such persons are insolvent, and therefore Plaintiff ^{by} said Contract is liable for the amount of such bad debts, - Defendant therefore asks Judgment against Plaintiff ^{for} said sum of Two hundred dollars,

{ A. Green, T. H. J. Ahlvers,
3 Attorneys for Defendant

In the Circuit Court
Jefferson County

W. C. R. Wiggins

vs,

Madison Graham

Defendants
(Answer)

Filed January 18th 1872,
W. J. Doyle Cl
By C. Thos. H. Gammie Dep.

The State of Missouri,

COUNTY OF JEFFERSON.

Do

vs. *Dr. W. G. Graham and John
and Henry Hinkle*

You are Herely Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *22nd day of March 1872.*

at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *W. G. Graham is*

Plaintiff, and *William Graham*

Defendant, on the part of *Defendant*; and herein you are in no wise to fail.

Witness, *W. J. Joyce*, Clerk of our said Court, with the seal thereof hereto affixed, at office, this *1st* day of *March* A. D. 1872.

W. J. Joyce Clerk.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

March Term, 1872

Higgins
vs
Graham
For Defendant

Do M. G. Harrison

Tree Pools

Henry Kinckle

John Williams Sheriff
fee

51.25

I executed the within Subpoena in Jefferson County Mo
on the 13th day of March 1872 on Dr M. G. Harrison and
Henry Kinckle by reading the same to each of them
in their presence and hearing and the within
named Fred Butts not found in my county
John Williams Sheriff
By M. W. Wiggins Deputy

The State of Missouri,

COUNTY OF JEFFERSON.

Do *W. C. Harrison & Henry Kincke*

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *17th day of May 1872*

..., at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *W. C. K. Wiggins is*

Plaintiff, and *Madison Graham is*

Plaintiff

Defendant, on the part of ...; and herein you are in no wise to fail.

W. S. Boyce
Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof

hereto affixed, at office, this *29th* day of *April* A. D. 1872

A true copy of John W. Wiggins Sheriff Clerk.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

May

Term, 1872

*serve by reading
the same on the 8
day of May*

Wiggins

*vs
Graham*

The State of Missouri,

COUNTY OF JEFFERSON.

To

Jud. Court of Cass. Hickes
W. C. Hartman & Wm. Beard

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 22nd day of March 1872,

at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

Plaintiff, and

W. C. R. Haggard, vs. Madison Graham,

Defendant, on the part of

Tham. Jeff

; and herein you are

in no wise to fail.

Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof

hereto affixed, at office, this 6th day of

March A. D. 1872

J. C. H. Stone Dept. W. C. R. Haggard

Clerk.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

March

Term, 1872

Higgins

vs
Graham

For Plaintiff

Fred Boots
Henry Quicke
M. C. Harrison
Wm Beard

Sheriff fee

\$1.75

I served the Within in Jefferson County Missouri
15th Day of March 1872 on Henry Quicke & Co.
Harrison and Wm Beard by reading the same
to each of them Fred Boots not found in my county

John Williams Sheriff

The State of Missouri,

COUNTY OF JEFFERSON.

Do *ell. C. Martinson & Henry Hincle*

You are Herely Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *17th* day of *May 1872*

at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *W. C. R. Wiggins* is

Plaintiff, and *Madison Graham* is

Defendant

; and herein you are in no wise to fail.

W. S. Boyce
Witness, *ELIAS F. HONEY*, Clerk of our said Court, with the seal thereof

hereto affixed, at office, this *29th* day of *April* *A. D. 1872*

Attest copy John Williams Sheriff Clerk.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

May Term, 18*77*

*Serve on & reading
the same on the
day of May*

Wiggins
vs

Graham

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To

Jacob M. Mason

You are hereby commanded, that setting aside all manner of excuse and delay you appear before our Circuit Court, for the County aforesaid, on the *fourth* and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *W. S. Boyce vs*

Plaintiff, and

Mason Graham vs

Defendant, on the part of
in no wise to fail.

; and herein you are

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *20th* day of

May A. D., 1872.

W. S. Boyce Clerk.

May Term 1872

Higgins
vs
Graham.

Deft

Jacoby Wilson

Sheriff. Fee. 50

The State of Missouri,

COUNTY OF JEFFERSON.

Do "

Chas. B. T. Henry & Co.
M. G. Jackson & Am. Ward

You are Herely Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 17th day of May 1872,

at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

W. C. D. Higgins is
Plaintiff, and

Charles

Defendant, on the part of Plaintiff; and herein you are in no wise to fail.

Witness, ELIAS F. HONAY, Clerk of our said Court, with the seal thereof

hereto affixed, at office, this 29th day of

April A. D. 1872,

D. O. H. L. W. J. P. Clerk.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

May

Term, 1872

Higgins
vs
Graham

Plff,

Fred Roots - served

Henry Wincke

M. C. Harrison

Jm Deard,

May 2nd
Sheriff

\$2.00

The State of Missouri,

COUNTY OF JEFFERSON.

Do

Jud. Dwyer

You are Hereby Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 17th day of May 1872,

at Hillsboro, then and there to testify and the

truth to say in a certain matter of controversy, now pending in our said Court, wherein

Plaintiff, and

W. C. Wiggins is
J. M. Graham is

Defendant, on the part of
in no wise to fail.

; and herein you are

Witness, ELIAS F. HONDT, Clerk of our said Court, with the seal thereof

hereto affixed, at office, this 29th day of

April A. D. 1872,

By Order of Court, S. Dwyer Clerk.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

May

Term, 1877

Wiggins

vs

Graham

Deft,

Fred Poole

serve by reading
the same on the
8 day of May

The State of Missouri,

COUNTY OF JEFFERSON.

To

M. C. Carlin, Fred Gule
Henry Fincke

You are Herely Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 17th day of

May 1872,

at Hillsboro, then and there to testify and the

truth to say in a certain matter of controversy, now pending in our said Court, wherein

W. C. Higgins is

Plaintiff, and

M. Graham is

Defendant, on the part of

Defendant

; and herein you are

in no wise to fail.

Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof

hereto affixed, at office, this

29th

day of

April

A. D. 1872,

E. C. Carlin, F. Gule, H. Fincke
Witness, Elias F. Honey, Clerk.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

May

Term, 1872

Wiggins
vs
Graham,

Deft,

M. C. Harrison,
Fred Boots
Henry Wincke

2 May

Sherriff fee

150

10
5
20
35

W.C. Wiggins Plaintiff
vs
Madison Graham, Defendant } In the Jefferson
County Circuit
Court.
May Term 1872.

The Plaintiff comes and moves the Court to strike out the following portion of Defendant's answer, viz:

"Defendant further states that Plaintiff during the said year sold goods of Defendant to irresponsible persons amounting to \$200⁰⁰ and that said debts cannot be collected as such persons are insolvent and therefore Plaintiff by said contract is liable for the amount of such bad debts."

1 Because the names of the persons alleged to be insolvent should be given

2. Because the above recited portion of said answer is too indefinite to require Plaintiff to reply to the same.

John L. Thomas & Bro
Attys for Plaintiff.

H. C. R. Higgins

v

Madison Graham

Motion to strike
out a portion of
Defendant's answer.

County of Jefferson. Sch.
The State of Missouri.

To Madison Graham

You are hereby commanded, that setting aside all manner of excuse and delay you appear before our Circuit Court, for the County aforesaid Forthwith at Hillsboro, ~~then~~ and ~~here~~ bring with you all the books of every kind and nature in which the accounts, inventories and transactions connected with your mercantile business near Morse's Mill were kept for the year ending March 25th 1871, to be used as evidence in a cause now pending in our said Court, wherein W. C. R. Wiggins is Plaintiff and Madison Graham is Defendant; and herein you are in no wise to fail.

Witness, W. S. Boyce, Clerk of our said Court with the seal thereof hereto affixed, at office this 17th day of May A.D. 1872.

W. S. Boyce Clerk
By O. H. Hoine Dep't.

M. C. R. Wiggins

vs

Madison Graham

Subpoena Duces Tecum

Plff.

Madison Graham

John Williams
Sheriff per \$1.00

N. C. R. Higgins Plaintiff } In the Circuit Court
against } of Jefferson County
Madison Graham Defendant } Missouri

Plaintiff for replication to ~~plea~~ defendant's answer denies that the contract with defendant was that defendant would pay plaintiff one third of the neat profits of such mercantile business for one year from the 25th of March, 1870, after deducting one third of the whole expenses of shipping the goods to defendant's store, and one third of the expenses incurred during the year, in shipping to market, such ^{country} produce as might be received in said mercantile business for goods or otherwise, but says the contract was as set forth in plaintiff's petition, Plaintiff denies that he was to bear one third of all such expenses, and denies that he was to ~~lose~~, or deduct out of his ~~earnings~~ or wages all the books debts he might make during the year, in selling goods to irresponsible persons. Plaintiff denies the statement of defendant in this "That Plaintiff utterly failed to keep intelligible Books of such mercantile business during said year, so as to show the total value of the goods bought & ~~sold~~ received in such mercantile business, the costs of shipping

the same; the total amount of the goods sold during said year, and the value thereof, and the expenses of such business "but says the books were kept in a business like manner.

Plaintiff denies that during the said year while he was engaged as defendants clerk, ^{that he} failed to charge himself with large amounts of goods, and money, which he took out of Defendants store, and used for his own use, and for work done for Plaintiff by Defendants servants in washing clothes, denies that he ever got any amount that he failed to charge himself with, denies that he ever got the amount of \$263.10, or any other sum denies that he is indebted to defendant for washing clothes six months amounting to \$18 00

Denies that he owes for 2 Hats \$5.00 and washing \$18 00,

Denies that he owes for goods for Drawers & mending \$3.60,

Denies that he owes for 1 Pr Boots \$3.50 + 1 Pr. Boots \$4.50, Denies that he owes for 1/2 doz. Boxes paper collars \$1.50, Denies that he owes for 1 Pr suspenders \$1 00 + 4 Pr socks \$1.00

Denies that he owes for 1 Pr Pants & Vest \$7.00, Denies that he owes for money of Deft. used to buy overcoat \$25.00
Denies that ^{he owes for} money of Deft. used to buy accordion \$20.00, Denies that he owes for Blue coat \$16.00

Denies that he owes Deft. for Cash Taken from Defendants Store \$33.00, Denies that he owes Deft. for Cash Taken last Christmas a year ago from 1870 \$65.00
Denies that he owes Deft. for 1/2 doz fine shirts \$16.00

Denies that he owes Deft. for 1 Boot Colico \$6.00 & Saddle \$8.

Denies that he owes Defendant the sum of Two hundred & sixty three dollars & ten cents for goods, ~~to~~ and money taken by Plaintiff out of Defendant's Store & not accounted for, or for work done done by Defendant for Plaintiff at his request, Denies owing any of the Articles set forth in the Bill of items as shown in Defts. answer,

Plaintiff further denies that during the ~~time~~ said year, ^{that he} sold goods of Defendants to irresponsible persons, amounting to \$200.00 or any other sum, that cannot be collected, by reason of the parties

being insolvent, Plaintiff denies
that by his and Defendants contract
that he would be liable for bad
debts, Plaintiff denies that Defend-
-ant, is entitled to a judgment
for the said Two hundred dollars
or any other sum,

John L. Thomas, Wm.
Atty for Plaintiff

H. C. R. Higgins

a grand

Madison Graham,

Replications

Filed May 18th 1872
O. S. Woyan Clerk

H. C. R. Wiggins Plaintiff
against
Modron Graham, Defendant

In the Jefferson
County Circuit
Court.
May Term 1872.

The Plaintiff comes and for ~~an~~
amended replication to the answer
of the Defendant filed herein admits
that he was by the Contract between Plain-
tiff and Defendant to receive from
Defendant for his services as clerk
in Defendant's business one third
of the annual net profits of such busi-
ness after paying all legitimate expenses
incident to carrying on the same.

Plaintiff does not deem it necessary
for him to reply to that portion of
Defendant's answer in reference
to the agreement of Plaintiff as alleged
by Defendant to lose and how de-
ducted out of his wages all bad
debts he might make by selling
goods to irresponsible persons as
the Defendant has voluntarily with-
drawn all allegations in said answer
in reference thereto.

Plaintiff denies that he did not keep
intelligible books of Defendant's busi-
ness but he avers that all transactions
connected with said business were kept

by him in books provided by Defendant for that purpose which books show the condition of the whole business for the year ending March 25th 1871 including the expenses of every kind and nature connected therewith as also the profits and losses from which Defendant could readily ascertain with accuracy the amount of profits made during said year.

Plaintiff further replying states that he denies that he owes Defendant two hundred and sixty three ⁷⁰/₁₀₀ dollars for any other sum for large sums of money and large amounts of goods received by Plaintiff or later by Plaintiff out of Defendant's store and for which he failed to charge himself. He denies that he owes each and every one of the items set out in said answer. He avers that on or about the 25th day of March 1870 he and Defendant settled up all ^{their} transactions existing at that time ~~between~~ and it was found in such settlement that Defendant owed him \$160, for which Defendant gave Plaintiff his note bearing ten per cent in interest per annum from date and that on or about the 25th day of March 1871 ~~when~~.

he servant of Defendant's employ ~~the~~
and Defendant again settled up for all
goods and money received by Plaintiff
during the preceding year as well as
for washing and sawing and it was
found that he owed Defendant for
such items one hundred and sixteen
dollars which Plaintiff then and
there paid to Defendant in Cash
and the Defendant paid him the
Amount of said note with the interest
thereon. But he avers that he and
Defendant could not settle and
did not settle the amount due him
for his services for the year ending
^{but the same was interchangedly omitted from and settled out}
March 25th 1871. Therefore Plaintiff
averts that for any goods or money
received by Plaintiff from Defendant
or any work or labor done for him
by Defendant or his servant he has
fully paid Defendant in Cash as
above set forth and for such items
Defendant is not entitled to recover
against Defendant ^{him} the sum of \$263.10
or any sum whatever.

Plaintiff denies that Defendant has paid
him one cent or any sum whatever
for his services for said year but ^{he avers} the
whole amount claimed by him in his

original petition viz: the sum of \$636.42
is justly due Plaintiff and for which
with interest he now again asks judg-
ment.

John L. Thomas & Bny
Attys for Plaintiff.

W. C. R. Wiggins

vs

Madison Graham

Amended Repleader

Filed May 17 1892.
W. C. R. Wiggins, et al

W. C. R. Wiggins, - Plaintiff }
Against }

Madson Graham, - Defendant }

} In the Circuit Court
} Jefferson County, Missouri

The Defendant moves the Court to set aside the Verdict and Judgment rendered in the above entitled cause, and grant him a new trial, for the following reasons;

1 - Because the verdict is against the evidence, and the Law of the case.

2 - Because the Court excluded proper and legal testimony from the Jury, offered by the Defendant.

3 - Because the Court erred in refusing to permit the Defendant to prove the customary average per centage of profits that Country merchants in the County usually make in selling goods.

4 - Because the Court erred in refusing to permit the Defendant to prove by parol testimony that the Plaintiff had committed errors, by not giving Defendant the proper credits for moneys put into the store by him, while Plaintiff

was doing business in said Store for Defendant under said Contract,

5- That the Court misadvised the Jury, and misconstrued the law governing the Case,

6- Because the Court gave to the Jury illegal and improper instructions, asked by the Plaintiff.

7- Because the Court committed error in refusing to give to the Jury proper and legal instructions, asked by the Defendant,

8- Because the Court erred in refusing to exclude from the Jury improper and illegal evidence offered by the Plaintiff,

9- Because the Jury disregarded the instructions given by the Court for Defendant, and rendered a verdict contrary to the law and evidence of the Case,

10- Because the verdict is for the Plaintiff, when it should have been for the Defendant,

11- Because the Court excluded from the Jury proper and legal evidence offered by the Defendant,

} A. Green, J. J. Williams, Attorneys for Defendant

In Circuit Court
Jefferson County

W. L. R. Wiggins

vs.

Marion Graham

Motion

to set aside verdict
& grant a new trial

Filed May 22nd 1872

W. S. Boyce cl

M. C. R. Wiggins, - Respondent
Against
Madison Graham, - Appellant }
In the Circuit Court of
Jefferson County, State
of Missouri.

This Affiant, Madison Graham, ap=
pellant in the above entitled Cause, makes
oath, and states that his application for
an Appeal from the Judgment of the
Circuit Court aforesaid rendered in the
above entitled Cause, to the Supreme
Court of Missouri, is not made for
recreation or delay, but because this Af=
fiant believes that he, the said Appel=
lant, is aggrieved by the Judgment
or decision of the said Circuit Court,
Subscribed & sworn to before } Madison Graham
on this May 24 1872

W. S. B. C. C.

Be @ the Hearing Dept.

In the Jefferson Circuit
Court, - May Term 1872

W. C. R. Wiggins

vs.

Madison Graham

Affidavit
for appeal

Filed May 24 1872
W. S. Purcell

W. C. R. Wiggins, - Respondent }
Against }
Madison Graham, - Appellant }

} In the Circuit Court of
} Jefferson County, Missouri

We, the undersigned, Madison Graham, as Principal, and S. Byrns and Peter Jenni, - as securities, acknowledge ourselves indebted to W. C. R. Wiggins, in the sum of Eleven hundred dollars ————— to be void upon this condition; Whereas, Madison Graham has appealed from the judgment of the Circuit Court of Jefferson County Missouri, to the Supreme Court of Missouri, in an action between W. C. R. Wiggins, Plaintiff, and the said Madison Graham, defendant. Now, if on such appeal the said Appellant will prosecute his said 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 Circuit Court to give, and if the judgment of such Circuit Court, or any part thereof, be affirmed, that he, the said Madison Graham, the appellant, will comply

with and perform the same, so far
as it may be affirmed, and will pay
all damages and Costs which may
be awarded against the said Appel-
lant by the Supreme Court, then
this recognizance shall be null and
void, otherwise to remain in full force.

Witness our hands and seals
this 24th day of May — 1872,

Madison Graham (seal)

J. D. W. (seal)

Walter J. W. (seal)

W. C. R. Wiggins, - Plaintiff } In the Circuit
 Against } Court of Jef=
 Madison Graham, - Defendant } ferson County
 Missouri,
 } May Term 1872,

Be it remembered that on the 31st day of May 1872, being the regular May Term 1872 of the Circuit Court of the County of Jefferson aforesaid, the above entitled cause came on for trial, and a jury being empanelled and sworn, all and singular the matters at issue between the parties aforesaid, as made by the pleadings, were submitted to the jury, and the Plaintiff to sustain the issues on his part introduced the following evidence; to wit,
 W. C. R. Wiggins, the Plaintiff, who states, I made a contract with the Defendant about the 23rd of March 1870, by which he hired me to act as clerk for him in selling goods, at his store near Horse's Mill on Big River, for two years as understood by me, but for one year, as contained by Defendant. I was to have for my services one third of the nett profits of the store. When I commenced business, March 23, 1870, I took an invoice of the goods and stock on hand, including cash, bills and accounts payable, and bills and accounts receivable, as appears by the following abstract, made by

me from the Books of the previous year, kept by
(as follows) ~~Here copy such as he had~~
myself, - I kept the store for the Defendant
under said Contract from March, 1870 to the
23rd of March 1871 - I offered to settle
with Defendant about that time, and told
him, if he would give me his Note for three
hundred dollars, I would take that amount
for my share of the Profits of the Store, but
said that it would ^{be} something over that, - De-
fendant said let us see your books - if the
books show that much, I will settle at that,
I was willing to settle
- I told him, the whole Profits of the Store
~~was something over~~ at \$900⁰⁰ but if I had
to make out an abstract, ^{the books} it would show
more than that, - I and Dr. Harweston
then made an invoice of the goods on
hand at that time, March the 23rd 1871 -
This is the abstract, and shows the total
amount of Stock on hand, - of goods, cash,
Bills receivable, bills payable, Accounts
receivable, & payable, interest, & costs &c. -
The Plaintiff then read in evidence the
said Abstracts or balance sheets, as fol-
lows, To wit, (here copy said ~~two~~ Abstracts)
The difference in the ^{net} ~~total~~ amount of Stock
on hand, when I quit the business, on the 23rd March
1871, and the ^{net} ~~total~~ amount on hand when I com-
menced, on the 23rd of March 1870, as shown by these
Abstracts, is \$1909.28, - This, I call the net Profits,

On cross-examination, - says, I did not charge myself on the Books of the Store with the goods or moneys I took out of the Store for my own private purposes during the year, I just put the amount on a piece of paper, ~~that~~ I kept in my pocket, - I have since lost the paper, I did not show the paper to Defendant when I offered to settle with him - nor tell him any thing about it, ^{nor did he ask me for the same} I held Defendant's Note for \$160⁰⁰, for the balance due me for the previous year's services in the Store, - and a few days after I offered to settle with him, I showed him the Note, - on which I placed a Credit of \$116, - for the goods & moneys I had taken out of the Store, - I took up in the Store during the year, one or two hats, worth \$3, & \$5, - 1 pair of boots - \$5, - Pants & vest \$7, - bought overcoat with money of the Store in St. Louis, costing \$25, - and an accordion for \$20, - took some domestic for shirts, \$3, - paid \$8, for saddle, - and took about

\$13, in cash out of the Store about Christmas, — I had in money only about \$23, when I first commenced keeping Store for Defendant, the year before I made the Contract before stated, by which I was to have one third the profits for my services, —

Plaintiff here closed his Case and the Defendant to sustain the issues on his part introduced the following evidence

Winkie, - says I have stayed in
the Store of Defendant, as clerk, a good deal
since Wiggins quit the business, - I sold goods
and did business for Defendant for several
months since then, and I have examined
the Books of the Store, kept by Plaintiff, a
good deal, - The difference in the ~~total~~^{nett} am-
ount of Stock, when Plaintiff quit, compared
with the ~~total~~^{nett} amount when he commenced, as
balanced on the Books, kept by Plaintiff, is
about \$1900. - The Plaintiff told me that
the Books showed the total amount of all the
Bills of goods bought & sent into the store, for
the year ending March 23rd 1871. - By these
I estimated the total amount of goods bought
& sent into the Store, during the year, and
the total amount is \$6194.52, as shown by
the Books, - (Defendant then offered to prove
what is the Customary average Per Centage, or
Profits, made by the Country merchants of
this County in selling goods, - and asked the
witness to state (if he knew) what were the
Customary average Per Centage, or Profits made
by such merchants, in selling goods in this
County. But the Plaintiff objected to the
witness answering the question, and the Court
sustained the objection, and would not permit
Defendant to prove what were the Customary
average Profits, or Percentage, made by such

merchants in selling goods in this County, And to the decision of the Court in sustaining such objection, & in refusing to permit Defendant to prove such facts, the Defendant at the time objected and excepted,)

~~Witness referred to various pages of the books of the store, showing that Defendant was charged regularly with goods taken by him out of the store during the year, Defendant read many of these entries from the books, -~~

Madison Graham, the Defendant, - states, I employed Plaintiff on 25th March 1870, to keep my store on Big River, for one year. - He was to have for his services one third of the net profits of the store, - ~~and to be accountable for all the~~ ~~debts he made~~, - Plaintiff took an invoice of the goods, when he commenced business, on the 25th of March 1870, - including the debts due the store &c, - He always went to St. Louis to buy

goods for the store himself, - took what money he wanted out of the store, - never told me what amount he took, - he kept the Books entirely himself, I hardly ever looked over the books, I thought he would keep them all right, - as I had confidence in him then, I know of his taking things out of the store many times, for his private use, - Saw him some times take money out of the drawer, - During the year he took two pair of boots out of store, - two hats - collars - socks, and took money I thought him an overcoat, that cost \$25.⁰⁰ and an accordion \$20, - and saddle \$8, - and took some money when he joined the Masons - don't know how much, -

When Plaintiff offered to settle with me, on 25th of March 1871, he ^{he thought} said, the great profits of the store the preceding year was about \$900, - and if I would give him my Note for \$300⁰⁰ he would settle at that, - I told him to show me his Books, and if he could show me the profits were \$300, I would pay him \$300, - for his share, - He said well - if I have to look over the Books, ^{the books will show a} ~~I can make it a~~ good deal over that, - He did not at that time say any thing about what he took out of the store, - He did not settle then, - I got Dr. Horneston to assist Plaintiff, - and they then went to work, and

Jacob Wilson - Says, I sold Defendant in 1870 a Cow for \$24,- he paid me in money \$10,- and the balance \$14, was paid me out of the Store,

Dr. Harleston, - States, about the 23th of March 1871, at request of Defendant, I assisted Higgins, the Plaintiff, in making an invoice of the goods then in the Store of the Defendant, - and in making the balance sheet or Abstract here in Court, showing the ^{nett} ~~total~~ amount of Stock on hand, including the Accounts due the Store, - cash, bills receivable, &c, as shown by said Abstract, ^{abstract is correct and} this shows the balances as we found them on the books,

The Plaintiff, to my knowledge, took out of the Store during the year 1870, the following articles - 2 wit, - 2 Hats of the value of \$3, and \$5, - 1 Pair Boots \$6, - Pants & vest \$8, - bought overcoat with money taken out of the Store.

that cost \$23, - Accordeon \$20, - Blue coat
\$16, - Domestic for shirts \$4, - for saddle
\$15, - Paid \$30, to enter Masonic Lodge, - and
I heard Plaintiff say his Christmas trip
cost him about \$50. -

Frederick Boots, - States, I helped Defendant
to drive a lot of hogs to St. Louis just before
Christmas, 1870. - We sold the hogs, and some -
the Plaintiff told me that Defendant had paid on food in
time in Christmas, ~~I saw the Defendant put~~
~~St Louis \$600~~
~~into the store \$600, in money, -~~

Defendant then read from the Books the fol-
lowing entries, at page - ^{dated Dec. 20" 1870} showing that
Defendant had been credited by Plaintiff
on the Books with only \$155, ^{at said page} - ~~instead of~~
~~\$600, and was~~ ~~Defendant then offered to prove~~
~~that Plaintiff had not in several instances~~
~~for the purpose of showing of other erroneous entries if any,~~
~~given Defendant credit on the Books for the~~
~~full amount he put into the store at dif-~~
~~ferent times in money, -~~ But Plaintiff
objected to said evidence, or any evidence
tending to show that any erroneous or

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Fraudulent entries had been made on
the books against Defendant's interest, - for
the reason that Defendant had not charged
in his Answer that any ^{or erroneous} fraudulent en-
tries had been made in the books,

and the Court sustained the objection, &
~~would~~ not permit Defendant to give any
evidence tending to show that any entries
had been made in the books, by which
Defendant did not get the full credit
he was entitled to, or that any erroneous,
or fraudulent entries had been made,
in the books, - and to which decision of
the Court, Defendant at the time objected &
excepted. -

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The Plaintiff then moved the Court
to exclude from the Jury all parol evi-
dence which had been given by Defend-
ant, tending to show any erroneous, false,
or fraudulent charges, or entries, made in
the Books of the store, kept by Plaintiff,
- for the reason that Defendant had not
charged in his Answer that the Books had
been fraudulently ^{or erroneously} kept,

and the Court sus-
tained said motion, and excluded from the

Give all such testimony, which tended to show false, erroneous, or fraudulent entries made in the said Books, - and to which ruling and decision of the Court in sustaining said motion, & excluding such testimony, the Defendant at the time objected and excepted.

The Defendant then moved the Court to exclude from the jury the abstracts, or balance sheets, showing the amount of Stock &c, on hand when Plaintiff commenced to keep store on the 25th of March 1870, and when he quit, on 25th of March 1871, as read in evidence, and also, the several entries read from the Books by Plaintiff, - for the following reasons, - 1- Because Plaintiff in his Petition had made no averment of the contents of said Books, - no averment of any charge, or entry contained in the books, - or of the total amount of stock on hand when Plaintiff commenced said services, or when he quit, - 2- Because said petition did not aver that said Books showed specifically the amount of goods put into the store, the amount of cash on hand, - Bills receivable, when Plaintiff commenced business, or when he quit - payable, - & accounts receivable &c, - nor 3- make any profert of the Books, or averment ~~that~~ of any entry therein, - and 4th - Because the Court had excluded Defendant's testimony tending to show erroneous entries in the books, -

But the Court overruled said motion, and refused to exclude from the Jury the portion of said Book, read in evidence, and the said Abstracts, - and to which decision & ruling of the Court, the Defendant at the time excepted.

The Defendant here closed his evidence, and the above and foregoing was all the evidence introduced by the parties in the case,

The Plaintiff then asked, and the Court gave to the Jury the following instructions, to wit, number one, two, as follows, (here copy same)

To the giving of said instructions Nos. one and two as asked by the Plaintiff, the Defendant at the time objected and excepted,

The Defendant ^{then} asked the Court to give to the Jury the following instructions, to wit, Nos. one, two, three, four, and five, ~~But the Court refused~~ as follows, to wit,

(here copy the same) ~~But~~ The Court gave No. two & three - but refused to give instructions numbered, one, four, and five, - To the ruling of the Court in refusing to give to the Jury instructions numbered, one, four, and five, the Defendant at the time excepted,

The cause being then submitted to the Jury they returned the following verdict for Plaintiff, (here copy)

The Court thereupon rendered Judgment for Plaintiff as follows, (here copy Jngt.)

The Defendant on the 22nd day of May 1872, filed his motion to set aside the verdict of the Jury and the Judgment rendered, and grant a new trial for the reasons stated in said motion, and which motion is as follows, to wit, (here copy motion for new trial)

But the Court ^{overruled said motion and} refused to set aside the verdict & Judgment and grant a new trial. To which decision of the Court in overruling said motion, and in refusing to grant a new trial, the Defendant at the ^{time} excepted,

And by the Consent and agreement of the Parties, and that the same should be so entered of record, the Court then made an order allowing the Defendant to present his Bill of Exceptions to the Judge in vacation, and that the same might be signed and filed in the Clerk's office within thirty days from the day of the adjournment of Court - and which Court adjourned on the 24th day of May

1872, - and which order is as follows,
(here copy same)

The Defendant now
therefore on this 7th day of June 1872, he
sents to the Judge this his Bill of
exceptions, and prays that the same
may be signed, sealed, and made a
part of the record in said Cause, and
which is accordingly done on the 7th
day of June 1872,

Philip Piffinger 

W. C. R. Wiggins

29.

Madison Graham

Bill of Exceptions

Filed June 11 1872
W. S. Boyce Clerk
By Chas. H. Conine Depy

W. R. C. Wiggins, — Plaintiff } In the Circuit
Against } Court of Jef=
Madison Graham, — Defendant } ferson County
} Missouri, Sep. Term 1872

The Defendant comes and moves
the Court to set aside and vacate, as null
and void, what purports to be the judg=
ment of the Court, ^{above said} entered upon the records
of the said Court, on the 21st day of May
^{in the above cause} 1872, — for the following reasons;

1st Because there was no Term of the Circuit
Court of Jefferson County in the State of Mis=
souri held in May 1872, and this Court was
not in Session on the said 21st day of May
1872, and said entry purporting to be a
Judgment of said Court ^{in said cause} was made by the Clerk
at a time when this Circuit Court for said Co=
nty was not in Session.

2 — By the records of said Court, it appears that
the Hon. James H. Vail is duly commissioned
and qualified as Judge of the Fifteenth Judi=
cial Circuit, composed of the Counties of Jefferson,
Washington, Iron, and Reynolds, from the 1st day
of January 1869, for the term of six years, and
that the said James H. Vail was on the
21st day of May 1872, the only lawful Judge
of the Circuit Court of said Jefferson County
and the only person entitled to hold the en=
-

Circuit Court within and for the County of Jefferson in said State of Missouri, on said 21st day of May 1872, and that the May Term 1872 of said Circuit Court was not held by the said James H. Vail, but imports to have been held by Philip Pipkin Esq, who was not the Judge of the said Circuit Court of Jefferson County, nor entitled by law to hold said Court for the trial of causes, - all of which will appear by the records of this Court, and otherwise, and all of which Defendant is ready to verify,

And Defendant therefore moves the Court to have said Cause placed on the Docket of said Court, for trial.

A. Green & J. J. Williams
Attorneys for Defendant,

In the Supreme Court of Mo.
October Term 1872

W. C. R. Wiggins Resp. } Appeal from
Madison Graham Ap. } Jefferson Circuit
Court.

Opinion of the Court.

The defendant was a merchant, and employed the plaintiff as clerk, to take charge of and manage his business, for one year, ending March, 1871; for which he agreed to pay him one-third of the net profits.

This action was brought on this agreement, and the petition alleged that the net profits of the business amounted to nineteen hundred and nine 28-100 dollars, of which the plaintiff claimed one-third as the amount due him under the agreement.

The agreement is admitted by the answer; but the defendant denies that there were any net profits. Whether there were any net profits or not, was the issue presented by the pleadings, and tried in the Circuit Court. The case was submitted to a jury and resulted in a verdict for the plaintiff. On the trial, the plaintiff was introduced as a witness, and produced abstracts from the books of the defendant, which books he himself had kept. These abstracts were read to the jury, as evidence. The first abstract was a memorandum of the amount of goods on hand, the amount of accounts and debts due to and by defendant; and showing the balance, as to stock on hand, when the plaintiff entered into his service. The second abstract was the same kind of account, taken at the time the plaintiff left the defendant's service, at the end of the year; and deducting the first from the last, left the balance of \$1,909 28-100, which the plaintiff claimed were the net profits. And this was substantially the evidence upon which the plaintiff relied for a verdict; and a verdict was found for him on this basis.

The defendant, on his part, gave evidence conducing to prove that the plaintiff had, during his employment, the custody of the books, from which those abstracts were taken, and made all the entries thereon, and offered to prove that the plaintiff had made false and fraudulent entries on them, so as to show larger profits than really existed.

But the Court excluded this evidence, on the alleged ground that no foundation had been laid in the answer, by averments to that effect, to warrant its admission, and the defendant excepted.

After the evidence was closed, the Court at the instance of the plaintiff, gave this instruction to the jury.

The Court instructs the jury that the rule by which the net profits of any business, for a given year, are ascertained, is to ascertain the amount of stock, including the goods, wares and merchandise or property, and debts due to the business, on notes and accounts, at the beginning of the year, from which the debts due by the business, on notes and accounts should be deducted, the balance showing the net stock at the beginning of the year; and then to ascertain, in the same way the net stock on hand, at the end of the year.

The difference between the net stock, at the beginning of the year, and the net stock, at the end of the year, being the net profits;—and if the jury believe, from the evidence, that the defendant employed plaintiff, to act as his clerk, in his business as a merchant, near Morse's Mill, in Jefferson county, Missouri, for the year ending March 25, 1871, and agreed to pay him one-third of the net profits of the business, for that time, for his services as such clerk;—and that plaintiff acted as clerk of the defendant, in said business, according to his agreement, then the jury will allow plaintiff one-third of the net profits, if any, of said business, for that year; to be ascertained, by them, by the above rule; and may allow interest at the rate of six per cent. per annum, on any sum they may find to be due to the plaintiff, to be computed from the time of bringing this suit."

The Court refused to instruct the jury that unpaid accounts and notes ought not to be taken into consideration, in estimating the amount of net profits.

The exclusion of the evidence offered by defendant, and the action of the court on the instruction above referred to, raise all the points necessary for us to decide in this case.

The only issue made, by the pleadings, was whether there were any net profits, and the amount thereof. The plaintiff alleged that there were net profits, growing out of the business, during his employment, to such an amount. The defendant denied this allegation. It was not necessary, and indeed it would have been improper, for either party to have set forth in his pleading, the evidence by which he expected to prove his case. The defendant's books, as kept by the plaintiff, were proper evidence on either side. They were not, however, under the circumstances, conclusive on the plaintiff or defendant. As the books had been kept by the plaintiff, and as he had the management of the business, the defendant had the right to prove that false and fraudulent entries had been made, on the books, by the plaintiff, showing profits that really did not exist.

After the plaintiff had read abstracts from the books, to prove the amount of profits, it was certainly legitimate for the defendant to show that false and fraudulent entries had been made, by the plaintiff, on the books, from which the abstracts had been taken; and that, by such entries, the profits had been apparently increased.

The relation of these parties, to each other, is settled by the pleadings. They were not partners *inter se* nor as to third persons. The plaintiff was to be paid, for his agency, one third of the profits.

He did not, thereby, become a part owner, either in the goods or the profits. He was simply a clerk for the defendant; having no interest in the stock nor in the profits as profits. If the defendant refused to pay him his wages, he became liable to the plaintiff, for damages, for a breach of the contract tantamount to one-third of the net profits. The action was not for a settlement of the partnership; but for damages, for a violation of the contract of hire. But the rule for ascertaining the damages, for a violation of the contract of hire, is precisely the same, in this sort of case, as if it had been a settlement between partners.

The rule, as laid down by the Court, was correct, upon the evidence, as it stood before the Court. If, however, there had been evidence proving that the goods had, from any cause, deteriorated in value, or had increased in value; or that the debts due the store had become of less value, that the debtors were insolvent, &c., &c., it would have been necessary that these considerations should have been entertained, in order to reach a correct estimate of the net profits. In short, the same considerations are involved, in this case, as in the settlement of a partnership. If the issue required the examination of long accounts, it would be in the discretion of the Court to refer the trial to a referee, instead of a jury. (See Wagn. Stat., p. 1041, section 18.) That might be the best course in this case; but, as before stated, it rests in the discretion of the Court whether to refer it or not.

3. In estimating the net profits, it was absolutely necessary to take into consideration the unpaid debts and accounts, and deduct the worthless from the good.

The plaintiff was not bound to wait till the debts due the store should be collected. He was not the owner of the debts, and had no interest whatever in them. The defendant might let them run as long as he pleased. But he became liable to pay the plaintiff his hire, as soon as the term expired, to be estimated at one-third of the net profits.

Under the view we take of the case, the judgment must be reversed and the cause remanded.

Judge WAGNER concurs, Judge BLISS being absent.

Wash. Adams

State of Missouri, ss.

I, FRANCIS MINOR, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the opinion delivered in the above entitled cause, as fully as the same remains on file in my office.

Witness my hand, with the seal of said Court hereto affixed,
at office in the City of St. Louis, this Eleventh
day of December one thousand eight
hundred and seventy two.

Francis Minor Clerk.

For L. H. Fairchild

In the Supreme Court held at St. Louis, of the State of Missouri,

October Term 1872
November 19th 1872

W. C. R. Higgins

Respondent

Madison Graham

Appellant

Appeal from Jefferson
Circuit Court

Now again come the parties aforesaid, by their respective attorneys, and the Court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said Jefferson Circuit Court be reversed, annulled, and for naught held and esteemed: That the said Appellant be restored to all things which he has lost by reason of the said judgment: That the said cause be remanded to the aforesaid Jefferson Circuit Court for further proceedings to be had therein, in conformity with the opinion of this Court herein delivered and filed, and that the said Appellant recover of the said Respondent his costs and charges herein expended, and have execution therefor.

STATE OF MISSOURI, SS.

I, ~~Francis Miles~~ ANDREW W. MEAD, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this second day of December A. D. eighteen hundred and seventy two.

Francis Miles Clerk.
per J. L. Davis
Secy.

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Supreme Court of Missouri.

W. C. Higgins
Resp.
vs
Madison Graham
Appel.

MANDATE.

Judgment of Jefferson Circuit
Court
Reversed and Remanded.

Filed Dec 12 1877
W. B. Doyce Clk
By C. H. Hargis
Deputy

STATE OF MISSOURI,

COUNTY OF JEFFERSON.

To *McCarrison*

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *21st day of January 1873*, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

W. R. Higgins vs
Plaintiff, and

W. M. Graham & Co

Defendant, on the part of *Self*
in no wise to fail.

; and herein you are

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof

hereby affixed, at office, this

10th
January A. D., 1873.

day of

Clerk.

W. S. Boyce
By Chas. H. Hume Depy

Presented the within supra at the County of Jefferson
State of Missouri on the within named witness M C
Harrison by Reading the same with his presence on
the 11th day of January 1873 J. B. Proff sheriff
By J. B. Williams Del.

Wiggins
vs
Graham

Plff
M. C. Harrison

sheriff

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STATE OF MISSOURI,

COUNTY OF JEFFERSON,

To

Madison Graham

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *21st* day of *January* *1873*, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, ~~wherein and about~~ *concerning with you the Day books, Journals and Vouchers of* *Kepler your store during Plaintiff*, and *the year ending March 25th 1871* *to be used in evidence in the Case of W. S. Boyce vs. M. Graham* Defendant, on the part of Plaintiff; and herein you are in no wise to fail.

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *10th* day of *January* *A. D.* 1873.

W. S. Boyce Clerk.
Wm. C. McKeone Depy.

I executed the within subpoena at the county of Jefferson
State of Missouri on the within named witnesses
M. Graham - duces tecum by reading the same
in his presence and hearing on the 11th day of January 1873

J. B. MacWhorter

By J. A. Williams Clerk

Wiggins
vs
Graham

6
567 571 | 7 48. 11. 70. 74

Plff

M Graham - II

Spa - duces tecum

sheriff fees \$ 5.00

STATE OF MISSOURI,

COUNTY OF JEFFERSON.

To

M. C. Harrison, Fred Books, Henry Hunkle

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *16th day of May 1873*, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

W. S. Boyce Plaintiff, and *M. Graham* is

Defendant, on the part of

; and herein you are

in no wise to fail.

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof hereto affixed, at office, this

April *29th* A. D., 1873. day of

Clerk.

W. S. Boyce
Thos. W. Stone

Wiggins
vs.
Graham

Def.

M. B. Hartison + 29
Fred Books 29
Henry Sturkie 29

Shrist Peas \$1.50

per 28

I cleared the within duplicates at the county
of Jefferson State of Missouri in the within
named M. C. Markleon Jacob Bechtel's Henry
Markle by reading the same to him
~~from~~ April 29th 1893

Wm. W. Shurtin

By. This is true

W. W. Shurtin

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To

M. C. Harrison

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *16th day of May 1873*, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

W. C. D. Wiggins is
Plaintiff, and *Madison Graham is*

Defendant, on the part of *Def.*

; and herein you are
in no wise to fail.

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *29th* day of
April A. D., 1873.

W. S. Boyce Clerk.
By C. H. Horine Deput

I executed the within subpoena at the County of
Jefferson State of Missouri on the within
named Mc Carbisson by reaching the
same in his presence on the 28th of May
1877

J. B. Proff shaft
D. J. F. Williams

Wiggins
vs
Graham

P.
M. C. Carbisson

Sheriff fees Cts
50
ser 28

STATE OF MISSOURI,

COUNTY OF JEFFERSON }

To Henry Amker & F. B. Bury

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the fourth day of April, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein W. L. R. Higgins vs

Plaintiff, and M. Graham is

Defendant; and herein you are Defendant, on the part of Defendant; and herein you are in no wise to fail.

Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof
hereof affixed, at office, this 16 day of

May A. D. 1873.

W. S. Boyce Clerk.

persecuted the within but penat the
country of cilepsoam state of missouri
on the within ⁱⁿmarces Huntlee A Porty
by reading the same to him on the
16th may 1879

J. D. McGovern

Higgins
vs
Graham

sheriff fees \$1.00

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To

Madison Graham

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *16th day of May 1873*, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

W. S. Boyce vs
Plaintiff, and *Madison Graham vs*

Defendant, on the part of Plaintiff

; and herein you are in no wise to fail. And bring with you the books kept in your store for the year ending March 1871 including day books, ledgers and also the inventories of the goods in your store taken in

March 1870 & March 1871.
Witness, W. S. BOYCE, Clerk of our said Court, with the seal thereof hereto affixed, at office, this *16th* day of

May A. D. 1873.

Clerk.

By C. M. McNamee Deput

Executed the within ^{the} subpoena at the county of Jefferson
State of Missouri on the within named M. Graham
by reading the same to him on the 10th day of May 1873

J. D. Moss Sheriff
By J. A. Williams Delet

Higgins
vs
Graham.

Subpoena duces tecum
for Graham

Sherriff fees \$1.00

Served May 10

W. C. R. Wiggins Plaintiff } In the Circuit
against } Court of Jefferson
Madison Graham, Defendant } 2d Judicial District.

The Plaintiff comes and for an amended petition herein states that on or about the 25th day of March 1870 the Defendant was in the mercantile business near Horse's Mills in Jefferson County State of Missouri and on or about that day the Defendant hired Plaintiff to act as his Clerk in said mercantile business for and during the term of two years as understood by Plaintiff but for one year only as alleged by Defendant and in consideration of Plaintiff's services to be rendered Defendant in the as his Clerk in said business the Defendant agreed to pay Plaintiff and Plaintiff agreed to receive from Defendant a sum equal to one third of the nett profits of said business for the time he might be so employed and in addition thereto Defendant agreed to board Plaintiff during that time and Plaintiff states that at the time of said hiring it was expressly agreed and stipulated between the parties

that the debts contracted during the time he was to remain in the employ of Defendant in favor of Defendant in and about his said business were to be computed in the ascertainment of the profits thereof without regard to the solvency or insolvency of the persons from whom said debts might be due, the Defendant taking all the risk in relation thereto except such debts as Plaintiff ~~might~~ create by selling goods to irresponsible and insolvent persons without ^{any which event Plaintiff would lose the same} the consent of Defendant. And Plaintiff states that on or about the day and year aforesaid in pursuance of said hiring and relying upon Defendant's promises as hereinbefore set out he entered into the service of Defendant as his Clerk in said business and continued therein till the 25th day of March 1871 when Defendant refused to retain him in his service any longer and that during that he sold no goods or other property of Defendant to any ~~irresponsible~~ persons ~~except by the express direction of Defendant~~ whom he did not know

to be solvent and responsible without first informing Defendant thereof and getting his permission and direction to credit such persons, and hence he alleges that if there be any debts on irresponsible and insolvent persons for the year he was in the employ of Defendant of which fact he has such knowledge or information to form ~~a belief~~ ^{an opinion} he is not liable for the same under said contract.

Plaintiff states that the ^{nett} profits of said business of Defendant for the year ending March 25th 1871 during which Plaintiff acted as Clerk for Defendant as aforesaid were nineteen hundred and nine $\frac{28}{100}$ dollars, one third of which was due Plaintiff under the hiring aforesaid. Plaintiff therefore states that he was on the 25th day of March 1871 and is yet entitled to receive from Defendant for his services as his Clerk aforesaid the sum of six hundred and thirty six $\frac{42}{100}$ dollars, being one third of the nett profits of said business as aforesaid for the year aforesaid and which the Defendant though often re-

quested so to do, has failed and refused
and still fails and refuses to pay
Plaintiff. Therefore Plaintiff demands
judgment for ~~seventy~~ and thirty
six ⁴²/₁₀₀ and the interest thereon from
the bringing of this suit and for other
proper relief.

John L. Howard Bro.
Atty for Plaintiff.

W. C. R. Higgins

27

Madison Graham

Amended Petition

Filed May 14 1873

W. S. Boyce
Clerk

W. L. R. Wiggins, - Plaintiff } In the Circuit
Against } Court of Jef-
Madison Graham, - Defendant } ferson County
Missouri
May Term 1873,

The Defendant for Answer to the amended Petition of Plaintiff, filed May the 1873, admits that he, on the 23rd day of March 1870, was engaged in the Mercantile business near Horse's Mills in said Jefferson County, and that he on or about that day employed Plaintiff to act as his Clerk in said Mercantile business, for one year from that date, but he denies that he employed Plaintiff for two years, as stated by Plaintiff. And Defendant denies that he, in consideration of the services to be performed by the Plaintiff, as such Clerk, agreed to pay him a sum equal to one third of the net profits of said business, for one year, or the time he might be so employed, and denies that he at the time of making said Contract, or at any other time, expressly agreed with Plaintiff that the debts contracted during the time he was to remain in the employ of Defendant, in favor of Defendant in and about said business, were to be computed in the ascertainment of the profits thereof, without regard to the solvency or insolvency of the persons from whom said debts might be due, the Defendant taking all the risks in relation thereto. Defendant

denies that any such agreement or stipulation
as this, was made between him and Plaintiff,-
But, Defendant states that the Contract, and the
only Contract, he made with Plaintiff, on or about
the 25th of March 1870, was this; that the Defend-
ant hired Plaintiff at that time to act as his,
Defendant's, Clerk in said Mercantile business.
For one year from that date and that Defend-
ant agrees that Plaintiff ^{should have} for such services,
one third of the net profits of such Mercantile
business, arising that year, after deducting one
third of all expenses, incurred during the year,
in shipping or transporting goods to Defendant's
store, and one third of the expenses incurred during
the year, in hauling to market such Country Pro-
duce as might be received in said Store during that
time, in exchange for goods, or otherwise, and that
Plaintiff agreed to drive Defendant's wagon to
St Louis to haul said Country Produce to mar-
ket. Defendant admits that in such Contract
he agreed to board Plaintiff during the year
he acted as such Clerk, without any extra charge.
Defendant further states that in such Contract,
it was expressly agreed between him and the
Plaintiff, that Plaintiff was to lose or deduct
from his wages all the bad debts he might
make during said year, by selling goods in De-
fendant's store to irresponsible or insolvent persons,
and that Defendant was to lose such bad debts

as he might make, by selling goods himself personally to insolvent persons, during that year.

Defendant admits that Plaintiff, in pursuance of such Contract of hiring as stated by Defendant, entered into such services for Defendant as his Clerk, on the 23rd of March 1870, and continued therein in such business, till March the 23rd 1871, when Plaintiff's time expired under said Contract, and Defendant refused to employ Plaintiff again. But Defendant denies that during that time, Plaintiff sold no goods or other property to any persons whom he did not know to be solvent without first informing Defendant thereof, and getting his permission and direction to credit such persons, and that therefore Plaintiff is not liable, if he made any bad debts during the year by selling Defendants goods to insolvent persons. - Defendant denies that the net profits of said mercantile business of Defendant, for the year ending March 23rd 1871, - during the time Plaintiff acted as Clerk for Defendant, amounted to nineteen hundred and nine $\frac{28}{100}$ dollars, - and denies that Plaintiff is entitled to one third of that sum, or any other sum, for his services as Clerk as aforesaid, And Defendant denies that his said mercantile business, during the year ending March 23rd 1871, while Plaintiff acted as clerk therein, amounted to 1909, $\frac{28}{100}$ dollars, or any sum whatever, after deducting all costs, and expenses

of carrying on such business, And Defendant denies that Plaintiff was on the 23rd day of March 1871, or that he is now, entitled to receive from Defendant, for his services, as Clerk as aforesaid, the sum of Six hundred and thirty six dollars, and forty two cents, (as one third of the net profits of said business for said year) or any other sum whatever; and Defendant denies that Plaintiff is entitled to Judgment for six hundred and thirty six dollars and forty two cents, or any other sum whatever, or for any relief,

Defendant further states that Plaintiff during the year ending March 25, 1871, while he acted as Defendant's Clerk as aforesaid, failed to charge himself with large amounts of goods, and money, which he took out of Defendant's Store, and used for his own purposes, and for work done by Defendant's family, - amounting in the aggregate to Two hundred and sixty three dollars; a Bill of particulars, of which, is as follows;

W. C. R. Wiggins

1870

To Madison Graham Dr,

To Washing clothes 6 months, —	\$ 18.00
" 2 Hats \$ 5, - Washing \$ 18, =	23.00
" Goods for drawers & making same	3.50
" 1 Pair Boots \$ 5.50, - & 1 Pr. Boots \$ 4.50, =	10.00
" 1/3 doz. boxes paper Collars, \$ 1.50; suspenders, 1 \$	2.50
" 4 Pr. Socks \$ 1.00, 1 Pr. Pants & vest \$ 7.00, =	8.00
" Money of Defendant used to buy Overcoat	25.00

Money of Deft, used to buy accordion	\$ 20.00
Do, Do, to buy Blue dress Coat	16.00
Cash taken out of Defendant's Store	33.00
Do, Do, about Christmas, 1870	65.00
1/2 Doz. fine Shirts	16.00
1 Bott Calico \$6. ⁰⁰ , 1 Saddle \$8. ⁰⁰	14.00
Total	<u>\$ 263.00</u>

Defendant therefore states that Plaintiff is indebted to him in the sum of Two hundred and sixty three dollars, and ten cents, for goods and money taken by Plaintiff out of Defendant's Store, and not accounted or paid for, and for work done for him by Defendant, at Plaintiff's request, as shown by said bill of particulars; and for which sum of two hundred and sixty three dollars, and ten cents, the Defendant asks Judgment.

The Defendant further states that Plaintiff during the year ending March 25, 1871, sold goods of Defendant out of said Store, to the following ^{insolvent} persons, To wit, To George Bradfer, goods to the amount of \$1.83 - Drury Brazel, goods of the value of nine dollars, Frank Clark, goods of the value of 95 cents, William Dall, goods of the value of \$2.30; A. More, goods of the value of \$2.40, Clarissa Williams, goods of the value of \$5.43 - Theresa Holtebrana, goods of the value of 85 cents, and Henry Widemose, goods of the value of \$15.00; making the total value of goods sold and delivered by Plaintiff to insolvent persons,

during said year, amounting to Thirty seven dollars and thirty seven cents; for which Plaintiff is responsible under the terms and stipulations of said Contract, - said persons being now, and were at the times of such sales, irresponsible and insolvent; and for which sum of Thirty seven dollars and thirty seven cents, Defendant asks judgment.

} Abner Green, &
J. J. Williams
} Attorneys for Defendant,

In Jefferson Circuit
Court - May Term 1873

W. C. R. Wiggins
vs.
Madison Graham

Answer to
amended Petition

Filed May 14 1873
W. S. Boyce
clerk

W. C. R. Higgins, Plaintiff
vs
Madison Graham, Defendant

In the circuit court of Jefferson
County Missouri. May Term 1873.

Plaintiff comes and for replication to the answer of Defendant states that he denies that during the year ending March 25th 1871 while he acted as Defendant's Clerk he failed to charge himself with large amounts or any amount of goods or money which he took out of Defendant's store or used for his own purposes or for work done by Defendant's family amounting in the aggregate to two hundred and sixty three or any sum whatever. He denies that he owes Defendant eight dollars for working, five dollars for two hats, eighteen dollars for working, three dollars for pants for drawers and making same, five dollars $\frac{7}{8}$ dollar for one pair of boots, four $\frac{7}{8}$ dollar for another pair of boots, one dollar and fifty cents for one half dozen boxes paper collars, one dollar for suspenders, one dollar for socks, seven dollars one pair pants and vest twenty five dollars to buy an overcoat twenty dollars to buy an accordion sixteen dollars for a blue deer coat, thirty

three for cash taken by him, Sixty five dollars,
for cash later about Christmas 1870, Six-
teen dollars for one half dozen fine shirts
Six dollars for one belt of Calico, eight
dollars for one saddle. He specifically
denies owe Defendant either of said
sums or any part thereof.

For further replication to the offset set
up by Defendant Plaintiff states that
about the 25th day of March 1871 when
he left the employ of Defendant, he
and Defendant had a settlement
in regard to and including all their
dealings except the wages he was to receive
for the year ending March 25th 1871,
and it was found Plaintiff was owing
Defendant on account for goods
and cash and other items taken by him
during that year in the sum of one
hundred and sixteen dollars. That
at the time they had such settlement
Plaintiff held a note secured by Defend-
ant to him in March 1870 for one
hundred and sixty dollars and by mutual
agreement the sum of one hundred and
sixteen dollars aforesaid paid and settled
by crediting the same on said note.

Wherefore Plaintiff denies that he is
indebted to Defendant in the sum
of two hundred and sixty three dollars
or any other sum for any of the items

set up by Defendant in his answer.
or for any other items or in any manner
whatever.

Plaintiff in replication to the third
count of Defendant's answer states
that he has no knowledge or information
sufficient to form a belief as to whether
he sold goods during the year ending
March 25th 1871 to George Brodgen to the
amount of \$1.85, to Drury Brozale to
the value of nine dollars, to Frank Clark
of the value of 95 cents, to Mr. Dall to
the amount of \$2.50, to A. Moore of the
value of \$2.40, to Eloissa Williams of the
value of \$5.45, to Theresa Hetterboud
of the value of 85 cents or to Henry
Hidemon of the value of \$13. he not
having possession or charge of the
books of the store nor ~~does~~ ^{has} he ~~know~~
sufficient knowledge or information
to form a belief as to whether any or
all of said parties were at the time
the alleged sale of goods took or now are
insolvent and hence he requires
strict proof of the same. He states
he sold no goods during that year to
the above parties or any insolvent person
without first obtaining the consent
and direction of Defendant to do
so. Wherefore he denies that he is
responsible to Defendant under the

terms and stipulations of this agreement with
sufficient for any of the alleged debts on
any or all of said parties amounting
to the sum of thirty seven $\frac{37}{100}$ dollars
or any sum whatever

John L. Thomas & Bro.
Attys for Plaintiff

W. C. R. Higgins

VS

Madison Graham

Replevin

Filed May 14 1873
ms Bayallor

W. C. R. Wiggins } In the Circuit
against } Court of Jefferson
Madison Graham } County Missouri

To W. C. R. Wiggins Plaintiff You are
notified that in compromise of the
above entitled Cause I hereby
offer to allow you to take judgment
against me in the above entitled
Cause for Two Hundred Dollars

May 15th 1873 } Madison Graham
} By Green & Williams
} his Attorneys

I. Executed the within notice at the County
of Jeff. Mo by Delivering the within Plaintiff
a true copy as furnished me by the Defendant
Atty this the 15 day of May 1875

J. B. Map Sheriff

Wiggins
vs
Graham

offer to compromise

Confidential

Sheriff fee 100

H. C. R. Wiggins }
against }
Madison Graham }

The Court instructs the jury that the rule by which the nett profits of any business for a given year are ascertained, is to ascertain the amount of stock including the goods, wares, and merchandise or property, and debts due to the business on notes and accounts at the beginning of the year from which the debts due by the ~~firm~~ business on notes and accounts should be deducted, the balance showing the nett stock at the beginning of the year, and then to ascertain in the same way the nett stock on hand at the end of the year, the difference between the nett stock at the beginning of the year and the nett stock at the end of the year being the nett profits and if the jury believe from the evidence that Defendant employed Plaintiff to act as his Clerk in his business as a merchant near Morse's Mills in Jefferson Co. Mo. for the year ending March 25th 1871 and agreed to pay him one third of the nett profits of the business.

Given May 1873 J. H. Vail

Gavin May 1873 J.H. Van

for that time for his services as such Clerk and that Plaintiff did act as Clerk of Defendant in said business according to his agreement Then the Jury will allow Plaintiff one third of the net profits, if any, if said business for that year to be ascertained by them by the above rule and may allow interest at the rate of six per cent per annum on any sum they may find to be due Plaintiff to be ~~computed~~^{computed} from the time of bringing this suit.

Given May 1873 J. H. Hall

2. The court further instructs the jury that if they believe from the evidence in the case that when Plaintiff went out of the employ of Defendant in March (87) they had a settlement of all their accounts except the third of the profits Plaintiff was to receive for his years services and that Plaintiff paid Defendant for the goods and money received by him and labor done for him for the year ending March (87), then the jury should allow nothing for any of those items set up by Defendant in his answer.

W. B. R. Higgins
Madison Graham

} Defendant asks the Court to instruct
the Jury as follows,

1. The Court instructs the Jury
that if the plaintiff received goods
and merchandise from defendant's
store during the year ending March
1871 the Jury will take into
consideration and charge him with
the same at such prices as
from the evidence they may
believe such goods & merchandise
to have been worth and in case
the Jury believe from the evidence
that any profit was made during
the year on the store they will
deduct from plaintiff's share of
such profit a sum equal to
the amount taken by him in
goods and merchandise from
the store and in case the Jury
find from the evidence that the
plaintiff's account for goods &
merchandise is greater in amount
than his share of the profits then
the verdict of the Jury should be for
the defendant unless however the
Jury should believe from the evidence
that plaintiff and defendant had a settlement
by which plaintiff's said account for goods &
merchandise ^{or any of it} was settled

Spencer May 1873 J. H. Fair

2- If the Jury believe from the evidence that the Plaintiff in any instance made erroneous, or false charges, or entries, in the Books of the Defendant, as kept by Plaintiff, while doing business for Defendant in the year ending March 23rd 1871, by not giving Defendant ^{credit} for the full amount of money put into the Store, or used by him in buying goods, or in paying off Store bills, or in adding up charges made against the Defendant, then the Jury should take into consideration all such erroneous, false, or fraudulent charges, and entries, in making an estimate of the profits of the Store, - and should make deduction from Plaintiff's Claim of profits, in accordance with what they believe said false, erroneous, or fraudulent charges and entries may show,

Spec. May 1873 J. H. Vail

Wiggins 3
Graham 3

1 The Court instructs the Jury that if in the transaction of the business pertaining to the Defendants store during the year ending in March 1871 merchandise was sold on a credit and accounts thereof charged against the purchasers or bonds, notes or Bills taken therefor and if such accounts, bonds, notes or Bills or any portion thereof were due and outstanding ^{and uncollected} when this suit was commenced then the amounts thereof should not be taken into consideration by the Jury in determining the amount of profits if any made by said store during said period of time and if such sales on credit were made and accounts thereof charged against the purchasers or Bonds, notes, or Bill taken therefor the burden of proving payment of the same prior to the institution of this suit rests on the plaintiff

Refused

2 The Court instructs the Jury if the ~~jury~~ plaintiff received merchandise or money from the Defendants store during the year ending in March 1871 the Jury will take into consideration and charge him with such amounts ^{are charged in the answers} as they ^{and} may find him to have received and not paid for if any and deduct the same from such portion of the profits of said store during that

Given

Period as the Jury may from the
evidence find him to have been entitled to
have received ~~and~~ And if the Jury find him
to have received in merchandise and
money for which he has not accounted
or paid a sum Equal to or exceeding ~~in~~
the amount which he was entitled to receive
on account of his Share of the profits
of the Store then in that event the
Verdict of the Jury should be for the
Defendant . .

Defendants

§³ - The court instructs the jury if the Plaintiff received Merchandise or money from the Defendant's Store during the year ending in March 1871 the jury will take into consideration and charge him with such amounts as are charged in the answer and from the Evidence they may find him to have received and not paid for if any and deduct the same from such portion of the profits of said store during that period as the jury may from the Evidence find him to have been entitled to have received and if the jury find him to have received in Merchandise and money for which he has not accounted or paid a sum equal to or exceeding the amount which he was entitled to receive an account of his share of the profits of the store then in that event the verdict of the jury should be for the Defendant

Given

4 - If the Jury believe from the evidence that the Plaintiff in any instance made false charges in the Books kept by him, while doing business for Defendant in his store by failing to give Defendant full credit for all moneys paid into the store by him at different times while Plaintiff was doing business under the Contract proven, then such incorrect or false charges may be taken into consideration to show that the abstracts read in evidence are erroneous, and to invalidate the same to the extent of such errors,

Refused

Refused
Jury — The Court instructs the jury that the abstracts, tending to show the ^{total} amount of stock on hand in the store when Plaintiff quit the business of Defendant, - the total of Bills receivable, payable, expenses, & costs, - and the balance therein struck as being on hand when Plaintiff quit such business, is excluded from the jury.

We the jurors find a verdict in
favor of the plaintiff Three Hundred
and Thirty Nine Dollars and
Thirty Six Cents, with interest
included at the rate of Six per cent

L. L. Lewis
as foreman

Mcquinn
no
Graham

Filed May 20 1873
H. Boyce
Clerk

Niggins

24

Graham

33

Be the good friend
for the printing in the sum
of \$53,500

Samuel Barker

Foreman

Wiggins
vs
Graham

Wiggins
vs
Graham

Verdict of the
jury

Filed,

~~But~~
Wiggins. J
Graham. J

Total amount of goods bought during
my year about 6 or 7000.

Book here shows we bought during
year goods amounting to \$ 6194. 52
had goods on hand when year com-
menced ————— \$ 2,303. 00

goods left on hand at end
of year ————— \$ 2,497. 52
\$ 3401.

~~amount~~ 10th of May 1870. I gave
Graham credit for \$ 300. cash
put by him in store, which he received from
Saml Anderson for cattle sold to him. Ledger
shows this.

Ledger shows 30th Decr. 1870. credit given
Graham for cash paid in ————— \$ 455. 27.
this was when Graham took some bags to St Louis.

Kept my account as a memorandum, which
I left in the drawer; don't know, where it is now.
was \$ 116, I credited same an note of Graham;
don't recollect, whether I told Graham, when settle-
ment was proposed, or when I produced note, to have
told Graham, that I always put money into boxes for
things, I took out.

When I went to ~~see~~ see my friends at
Lake Escondido I did not take ~~out~~ ?
I bought accordion, as rather took it out of
store may be cost about \$15. as
for over cost ————— \$24. as
pants I may have taken
out during that year as
year before;
took out books, —
Saddle about —
Moose ————— \$2.40.
Bradford

I think the average profit on goods sold
is as much as ~~\$50.~~ 50 percent.

Harbison —
Dr. ~~Harbison~~

I assisted Mr. Higgins at end of year in
making up inventory of goods; Mr. [unclear]
and Higgins both I believe got me, to do
accounts were sent an Abstract, Hig-
gins I believe counted them up — Invoice
was taken first; object was to ascer-
tain net amount of profits, due Hig-
gins; next I assisted in, was taking
Inventory of goods; I was not very par-
ticular, did not think there could be any
difficulty; I believe Higgins told me, he
had spent about \$60. on a trip to his relatives
during Christmas, also that he paid about \$30.

to join Masons, which he took out of
drawers. — ~~then made a book of sales~~
~~at~~ Wiggins was grumbling at not
making much. — Jett offered to settle
taking it for granted that total net-
profit was \$900 — Jett told me
several times, that most of the money
he paid put money in drawers,
for things he bought —

Wiggins generally bought goods —

Wiggins recalled

This is Inventory at beginning of year.
This is Inventory at end of year —

Mr. Graham Witness,

Contract for 1 year from March 1870
for 1/3 of net profits. were to be
governed by amount sold — At
end of year Wiggins wanted me to sign
note for \$300. He thought net profit in
all was about \$900. — I would not dare
think, profit was not so high —
~~Wiggins kept no account.~~ Wiggins
when producing note with credit
of \$116 as it said he needed same
money a few days ago and took
out about \$116.00 — I know Wiggins
took out anything out of store during year
he wanted. —

About Christmas 1878. I put
in about \$657. or \$700, ^{where he had about \$405.20} — Another
time I put in \$400. ^{from Anderson} where I got
credit for \$300. on the books —
The 1st amount I got for logs I sold,
the last amount for cattle I sold to
Anderson — about 21st of Decr. Wiggins
gave me about \$50. out of store for trip
to sell logs — I am charged on books
with \$115.65. — Once I paid about \$10. out
of my pocket for a cow, Wiggins charged
me with the whole amount of cow —

~~My other account~~ I think understand-
ing was, that I was to have means of living for him-
self. The ^{other} account against me
could not be more I think than
my the year that about \$600 —

During the first year Wiggins got
? but he only took a little money
of which he kept account, and for balance
I gave him note, referred to —
family accounts may amount to
about \$400. I cannot account
for ^{the} my account being so high, unless
Wiggins charged me with whatever he
pleased under the name of Andrew
menahdee's etc. About the time
we settled note, Wiggins told me the
store had made \$900. profit and
he wanted \$300. I told him I doubted
about that — he said he could make

Book 6

Sept. 7. 1872 motion to re docket. ²⁰ p. 357

" " rule ²⁰ p. 371

" " order Set aside Judgment. ³⁰ p. 371.

" " order to dock ²⁰ Cont. ²⁵ p. 371.

Jan. 7. 1873 Docketed ¹⁵ 2d pass ⁵⁰

May 18/3 Amend fer. ²⁰ and ²⁰ rep ²⁰ (Boors) p. 48.

" " Jun ³⁰ Sub ³⁵ Cont. ²⁵ " " p. 56

Agree to try cause with eleven ²⁰ " " p. 70

Verdict ³⁵ Judgment ³⁰ " " p. 74 May 20 1873 / 339. ³⁶ 670

3d pass ²⁵ reduces to cum ²⁰ " "

File ⁶⁰

7 B maps. . 5 h b b.

notice Comp. ¹⁰⁰ 10 d pass ^{5.00} / calls.

Jun ¹⁰⁰ / calls.

No. 3826

Jefferson Circuit Court.

Sept. Term, 1871.

W. C. Wiggins
vs.
Madison Greiner

Judgment, - - \$

Date 18

Fee Book No. Page

Judg't Docket, Page

J. L. Thomas & Co.
Plaintiff's Atty.

ATTORNEYS: Exercise care and return promptly.

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