

14455

No. 14455

Supreme Court of Illinois

Leverenz

vs.

Haines

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 57

1435

1853

1853

12

12

102
No 57

GUSTAV LEVERENZ,

Appellant,

vs.

JOHN C. HAINES,

Appellee.

APPELLEE'S BRIEF AND POINTS.

For Judge Walker

Filed May 7 1863

J. S. Anderson

IN THE SUPREME COURT OF ILLINOIS,

AT OTTAWA.

APRIL TERM, 1863.

GUSTAV LEVERENZ,

Appellant,

vs.

JOHN C. HAINES,

Appellee.

H. P. SMITH, ATT'Y FOR APPELLEE.

BRIEF AND POINTS FOR APPELLEE.

PAGE OF ABSTRACT. 15

PAGE OF RECORD.

32 The record shows that David C. Rawleigh, on the
10 20th of June, 1859, made an assignment of all his
39 property to said Haines, the appellee, for the benefit
of his creditors, including the property mentioned in
43 the writing declared on.

6 44 That the appellee, by his agents for that purpose,
E. M. Haines and Kennedy, went to Rawleigh's house
with this assignment to take possession of this prop-
erty, then in Rawleigh's house, for the appellee under
this assignment. Rawleigh wanted to retain or use
it, and proposed to get Leverenz, the appellant, to
become *responsible* for it, if they would not remove it.
That terms were agreed on as expressed in this writ-

ing. That Rawleigh took the writing to appellant and *procured* him to sign it and returned it to E. M. Haines, to be delivered to J. C. Haines, the appellee, by *consent* of Leverenz, which was done, and the property was left and remained in Rawleigh's possession, by *permission* of Leverenz, at the *instance* of Rawleigh.

I here call the attention of the court to an *omission* in the abstract—*material*, as I consider—and ask an inspection of the record at page 44. The abstract, at page 6, *omits* to state that Rawleigh *procured* Leverenz to sign this writing, and that the property was left and remained in Rawleigh's possession, by *permission* of *Leverenz*, at Rawleigh's *instance*. The record, page 44, expressly states this, and the appellee's instructions were drawn and given in view and consideration of this fact.

The record further shows that after the time specified in this writing to deliver the property to the appellee had expired, E. M. Haines, at the *request* of J. C. Haines, appellee, called on appellant, showed him the paper and demanded payment. Leverenz said he was not holden to pay the money; that Haines must take the property; that he could and would deliver it. That E. M. Haines then told Leverenz, although he considered him holden for the money, he would take the property if he would deliver it to J. C. Haines' house by a day then fixed and agreed on. Leverenz said he would do so, *but did' not*. Afterwards E. M. Haines, as agent of appellee, again went to see Leverenz on the subject. Leverenz *then* said he had concluded to do nothing

about it; that the matter was in charge of lawyers, and he guessed they would take care of it.

45 I must here again ask the court to inspect the record, page 45, for the full testimony of E. M. Haines, showing that he acted as agent for appellee in this matter; had with him the assignment when he went to take possession of the property; and wholly what transpired when he called on appellant for pay on the contract. His testimony shows that according to declarations of Leverenz, he had the property in his possession or under his control and could have delivered it in satisfaction of the contract if he had been a mind to when called on for payment.

The writing declared on, and assignment, appear in the record as given in evidence.

Upon the foregoing evidence and facts proved, it was and I am told will be in this court insisted, that the appellee was not entitled by law to recover, because the evidence did not show a sufficient *delivery* to the appellant of the property mentioned in the writing declared on, and therefore the contract could not be enforced for *want of consideration*. The special pleas and appellant's instructions asked for, proceed upon this assumption.

On this part of the case the instructions, given at the request of the appellee, and in which I insist there is no error, are as follows:

49 "2nd. If the jury find from the evidence that the goods and chattels in question were transferred to

the plaintiff, and that he was entitled to the possession thereof at the time of the execution and delivery of the instrument declared on, and if the jury further find that the plaintiff was about to take possession thereof and that thereupon *Rawleigh procured the defendant to execute said instrument, and that Rawleigh, after the execution of the same, by arrangement with the defendant, continued in possession of said goods and chattels*, then the possession of Rawleigh was the possession of the defendant, and it became and was the duty of the defendant to deliver up the goods to the plaintiff or pay the sum of money, according to the stipulation of said instrument. *The arrangement between Rawleigh and defendant, if proved, constitutes a sufficient delivery* to entitle the plaintiff to recover for a violation of his agreement.

"3rd. If the jury find that the property enumerated in said instrument in writing, declared on and read in evidence, was in possession of said Rawleigh, and that the plaintiff was about to take possession at the time the defendant executed and delivered the same, and that the defendant executed the instrument in question with the consent and instance of Rawleigh, and thereupon *the defendant voluntarily consented to allow Rawleigh to retain the possession thereof, then this was a sufficient delivery* by the plaintiff to the defendant to entitle the plaintiff to recover in this action."

On part of the appellant the court gave this instruction :

"If the jury should believe from the evidence, that

plaintiff gave to defendant the right of possession of the property, yet, if the jury further find said Haines did not in fact give defendant the actual possession 'OR CONTROL' of the property, and that said defendant has not ever been in the actual possession 'OR CONTROL' of said property in question, then the law is for the defendant, and he is entitled to your verdict."

This instruction is quite as favorable for the appellant, to say the least, as the law will permit. The *appellee*, rather than the appellant, had reason to except thereto.

In support of these instructions I cite—

Wade v. Moffett, 21 Ill. 111.

Howard v. Babcock, ib. 263.

Hilliard on Sales, 86, 88, 89, 105 & 106.

Ingersoll v. Kendall, 13 S. & M. 611.

Fellon v. Fuller, 9 Foster's Rep. 128.

Means v. Williamson, 37 Maine, 556.

Barrett v. Goddard, 3 Mason, 107.

Sweeny v. Owsley, 14 B. Mon. 413.

Frazer v. Hilliard, 2 Strobb, 309.

Field v. Simco, 2 Eng. 269.

" " ib. 197.

I insist that *these* instructions *given* embody the law applicable to the evidence; and if *they* are correct it necessarily follows that the refusal of those asked by appellant was not error. Those *refused* express a *contrary* rule of law.

Counsel for appellant have not yet furnished briefs,

but inform me the error assigned in overruling demurrer to replications will *not* be insisted on. That they rely upon a want of sufficient *delivery* of the property, and consequent want of *consideration* of and for the contract declared on. Therefore I deem it unnecessary to add further.

But should the error assigned referring to the demurrer and replication be insisted on, I submit that the "*single point*" to which a replication is required to be confined, does not consist of course of a *single fact*, but of *all* the particular facts which go to the point or ground of defense which may and often does consist of two or more distinct facts. *All* the particular facts which are pleaded as one point or ground of defense may be traversed.

H. P. SMITH,
Att'y for Appellee.

Some of the Appellants instructions refused mentioned in the Objection are but abridgements & abridgments of the original as will appear by the Record. If the Court have any doubt as to the correctness of refusing, I refer to the Record -

In the Supreme Court of the State of Illinois
April Term 1862 at Ottawa

Estouren Levenutz Appellant }
vs } Appeal from the
John C. Hains Appellee } Circuit Court of
Cook County Ill

It is hereby stipulated and agreed
that the above entitled case shall
be continued to the next Term of
said Court ^{at this division} - That no rule shall be taken
therein by either party at this term of said Court
other than a Continuance - H. P. Smith atty
J. N. Deft Appellee
A. Garrison
April 26th 1862 -

Atty for Appellant

132 ~~267~~ 519

Stipulation
14455

Filed Apr. 29, 1862

Supreme Court

Gustav Severny

vs Appellant

John C. Haines

Appellee

Of April Term AD 1862

Afterwards to wit on the first day of June the term aforesaid & before the Judges of the Court aforesaid Comes the said Gustav Severny by Andrew Garrison ^{his attorney} and says that in the judgment & proceedings the record aforesaid there is manifest Error And assigns the following Grounds of Error

The Court below Erred in overruling the defendant's demurrer to plaintiff's Replications to Defendant's 2^d 3^d & 4th Pleas & in sustaining each of said Replications

2. On the Trial Improper Evidence was admitted on the part of Plaintiff to go to the jury & the Court Erred in overruling defendant's objections to the same

3 The Court Erred in overruling defendant's several objections to instructions asked & given on the part of Plaintiff

4. Erred in Amending instructions asked on the part of defendant.

5. Erred in refusing to give ^{each of} the instructions asked by Defendant & in overruling each of them

6 The verdict was Contrary to the Law & evidence of the case & a penalty was treated as damages

7 The Court Erred in overruling defendants motion
for a new trial upon the grounds therein stated

8 Verdict & Judgment should upon the evidence
have been for the defendant

And for the above and other errors appearing
in the record judgment & proceedings aforesaid
said Appellant prays said Judgment may
in all things be reversed & altogether held for
naught & he in all things restored &c

A. Garrison

Atty for Appellant

Custom Sundry

Appellant

John C. Hains Offlee

} In Supreme Court of Ills.
at Ottawa

April Term 1863

Joinder in Error

And hereupon comes the said John C. Hains Offlee
by H. Smith his attorney ^{and Joins in Error} and says that there is no error
either in the record judgment and proceedings
aforesaid or in the rendition of said
the judgment aforesaid and prays
that the Supreme Court here may proceed
to examine and consider or unless the record
& proceedings aforesaid or the matters
aforesaid are given for Error but that the
judgment aforesaid in favor of said
J. C. Hains Offlee given may be affirmed &c
H. Smith Atty for Offlee

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Manierre Judge of the Seventh
Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of
Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House
in the City of Chicago, in said County, on the Third Monday, (being the
Seventeenth day) of February in the year
of our Lord One Thousand Eight Hundred and fifty and of the
Independence of the said United States the Eighty first

Present, Honorable

George Manierre

Judge of the 7th Judicial Circuit
of the State of Illinois.

Charles Warren

States Attorney.

Anthony L. Downing

Sheriff of Cook County.

Attest, William L. Church Clerk.

1
Be it remembered that heretofore, to wit: on the fourteenth
day of November in the year of our Lord One thousand
Eight hundred and sixty, John C. Mearns, Plaintiff
by W. P. Smith his Attorney filed in the Court aforesaid
his certain declaration, in the words and figures following
to wit:

State of Illinois In the Circuit Court of Cook County
Cook County vs For Term A.D. 1860

John C. Mearns of the City of Chicago
in the County of Cook and State of Illinois Plaintiff in
this suit by W. P. Smith his Attorney, Complainant of
Gustave Leverenz of Chicago in said County of Cook
Defendant in this suit in a plea of trespass on the
case upon promises. For that whereas the said
Defendant heretofore, to wit: on the 19th day of

November 1859 at Chicago aforesaid made
executed and delivered to the Plaintiff under
his hand of that date a certain instrument in
writing in the words and figures following

"Chicago Ill Nov. 19. 1859

Received of John C. Haines the following personal
property, to wit: six spring seat hair cloth chairs,
two spring seat hair cloth sofas, one rocker or
rocking chair, One marble top table, one parlor
stove, six maple cane seat chair, One small
writing desk & stand, One wash stand with drawers,
two common looking glasses, two Brussels parlor
carpets, one Brussels Hall Carpet, one cooking stove
eight common Windsor chairs, one picture and
frame, one dining table, one butter press, one
kitchen table, one ice box, four sets parlor window
curtains and trimmings, one stair carpet, seven
bed room Windsor chairs, One Walnut bureau, two
feather bed. & bedding, one bed room wash stand
One hall table, one bay horse, two buggy wagons
One cutter sleigh and two sets single harness,
and to have the use of the same until the
first day of June next, and to use the same
in a careful manner, and I do agree to deliver
all of said property above enumerated to the said
John C. Haines or his legal representatives in as good
condition as it now is at the residence of said
Haines in the City of Chicago on or before the

first day of June 1860 (next) and in default of such delivery at the time and place aforesaid in the conditions aforesaid, time being material and of the essence hereof; for value received I promise to pay to said John E. Cairns or to his order the sum of Four Hundred dollars with interest thereon from this date at the rate of six per cent per annum
G. Leverenz

3 And the said Plaintiff avers that the said Defendant did not on or before said first day of June 1860 deliver said property enumerated in said instrument in writing or any part thereof to the said Plaintiff at his residence in Chicago, but wholly neglected so to do and hath hitherto & still doth neglect and refuse so to do, and the Plaintiff further avers that the said Defendant hath not though requested paid said principal sum of Four Hundred dollars and interest thereon specified in said instrument of writing, nor any part thereof but hitherto hath & still doth neglect and refuse to pay the same.

And whereas also the said Defendant heretofore, to wit on the 12th day of November 1860 at Chicago aforesaid was indebted to the said Plaintiff in the sum of five hundred dollars for so much money before that time had and received to and for the use of the said Plaintiff and being so indebted the said Defendant in

consideration thereof afterwards, to wit: on the same day & year and at the place aforesaid, undertook and promised the Plaintiff to pay him ^{said} the sum of money last above mentioned when the same afterwards requested, yet though often requested the said Defendant has not paid the same but neglects & refuses so to do. All of which is to the damages of the Plaintiff five hundred dollars and therefore he brings suit &c

W P Smith Plaintiff Attorney

4

And afterwards, to wit: on the Seventeenth day of December in the year last aforesaid said Defendant by his Attorneys filed in said Court their certain Plea and Affidavit of Merits in words and figures following, to wit:

Circuit Court Cook County

Gustavus Leverenz
ad
John C. Harris

And the said Defendant by Garrison & Anderson his attorneys comes and defends the wrong and injury when &c, and says that he did not undertake and promise in manner and form as the said Plff hath above thereof complained against him. And of this he

puts himself upon the country &c

2

And for a further plea in this behalf pursuant to the Statute in such case made and provided the said Deft says that the said Plff his action aforesaid in said first Count ought not to have or maintain against him - Because he says that the said goods, chattels and personal property in said Count mentioned were at the time of the execution by the Deft to the Plff of said instrument in writing in said Count mentioned, the proper goods chattels and personal property of one David L Rawleigh, and that before the time specified in said instrument for their delivery by the Deft to said Plff, said Rawleigh took said good, chattels & personal property from the said Deft by paramount title, and converted the same to his own use, as it was lawful for him to do, thereby preventing said Deft from delivering said goods, chattels & personal property to said Plff at the time and place in said instrument specified - and this the said Deft is ready to verify. Wherefore he prays judgment of the said Plff his action aforesaid in said first Count ought to have or maintain against him &c.

5

3 And for a further plea in this behalf pursuant to the Statute in such case made and provided the said Deft says, that the said Plff, his

6
action aforesaid in said first Count mentioned
ought not to have and maintain against him
Because he says, that the goods, chattels &
personal property in said Count mentioned at
the time of the execution and delivery of said
instrument in writing by said Deft to the said
Plff, were then and there, to wit: at the City of
Chicago in said County of Cook in the possession
and under the control of one David C. Rawleigh
and not of the said Plff, and that the same nor any
part thereof were ever delivered by said Plff to the
said Deft, and that he the said Deft never had
the possession, custody and control of said goods,
chattels and personal property or any part thereof
nor did he receive any consideration of and from
said Plff for said promises and undertakings in
said instrument of writing mentioned and this
the said Deft is ready to verify, Wherefore he
prays judgment of the said Plff, his action
aforesaid in said first Count mentioned ought to
have or maintain against him the said Deft &c.

4 And for a further plea in this behalf pursuant
to the provisions of the Statute in such case
made and provided, the said Deft says, that the
said Plff, his action aforesaid in said first Count
mentioned ought not to have and maintain
against him, Because he says, that the said

goods, chattels and personal property nor any part thereof in said instrument in writing mentioned were never delivered by said Plff to the said Deft nor have the same or any part thereof come to the possession, been in the custody or under the control of said Deft, and capable of being delivered by him to said Plff, and this the said Deft is ready to verify. Therefore he prays judgment if the said Plff his action aforesaid in said first Court mentioned, ought to have or maintain against him
vc

5 And for a further plea in this behalf, pursuant
7 to the provisions of the Statute in such case made and provided, the said Deft says, that the said Plff his action aforesaid ought not to have or maintain against him - Because he says, that the consideration for the promise and undertaking by the said Deft to the said Plff in said declaration mentioned was wholly failed - and this the said Deft is ready to verify - Therefore he prays judgment if the said Plff, his action aforesaid ought to have or maintain against him
vc

6 And for a further plea in this behalf pursuant to the provisions of the statute in such case made and provided the said Deft says that the said Plff his action aforesaid ought not to have and maintain against him, Because he says that the

8
said Plff before and at the time of the commencement
of this suit, to wit: at the City of Chicago in said
County of Cook was and still is indebted to him
the said Deft in a large sum of money, to wit: the
sum of Six Hundred dollars lawful money of the
United States of America for goods, wares, chattels
and personal property before that time sold and
delivered by the said Deft to the said Plff at his
interest and request, which said sum of money so
due and owing from the said Plff to the said
Deft as aforesaid exceeds the damage sustained
by the said Plff by reason of the non performance
by him the said Deft of the said several promises
and undertakings in the said declaration mentioned,
and out of which said sum of money so due and
owing from the said Plff to the said Deft he the
said Deft is ready & willing and hereby offers to set off
and allow to the said Plff the full amount of the
said damages, according to the form of the Statute
in such case made and provided, and this the
said Deft is ready to verify. Wherefore he prays
Judgment of the said Plff his action aforesaid
ought to have and maintain against him &c.

Garrison & Anderson Deft Attys.

And afterwards, to wit: on the Twentieth day of
February in the Year of our Lord One thousand Eight
Hundred and fifty one said Plaintiff by his said

6
Attorney filed in said Court his certain replication
in the words and figures following, to wit:

John C Wainier }
vs } In the Circuit Court of
Gustave Leveney } Cook County

And the said John C Wainier as to the plea by
the said Defendant first above pleaded whereof
he hath put himself upon the Country, doth the
like

W P Smith Atty for Plff.

9

And the said Plaintiff as to the said Plea of
the said Defendant secondly above pleaded to the
first count of the said declaration says, that the
said Plaintiff by reason of any thing by the said
Defendant in that plea alleged, ought not to be
barred from having and maintaining his aforesaid
action thereof against the said Defendant, because
he saith the said goods, chattels and property in
said Court mentioned were not at the time of the
execution by the Defendant to the Plaintiff of said
instrument in writing in said Court mentioned the
five per goods, chattels and property of said
David C Rawleigh, and the said Rawleigh did
not take the same from the said Defendant by
paramount title as the said Defendant hath

alms in his said second plea in that behalf
alleged, and this the said Plaintiff prays may
be enquired of by the Country

W P Smith Atty for Plff.

10 And the said Plaintiff as to the said third
plea of the said Defendant, thirdly above
pleaded to the first count of the said declaration
mentioned says that said Plaintiff by reason of
anything in that plea alleged ought not to be
barred from having or maintaining his aforesaid
action thereof against this said Defendant because
he says it is not true that said goods, chattels and
personal property were never delivered by the said
Plaintiff to the said Defendant and that the
said Defendant never had the possession and
control of the same nor any part thereof nor received
any consideration of & from the Plaintiff for said
promise and undertaking as alleged in said plea,
but on the contrary the Plaintiff says that he did
at the time of the execution and delivery of said
instrument in writing by the Deft to the Plff
deliver ~~to~~ said goods chattels and personal property to
the Defendant, and this he prays may be enquired
of by the Country

W P Smith Atty for Plff

And as to the fourth plea of the said Defendant

7
above pleaded to said first count of said declaration.
the Plaintiff says that by reason of anything in that
plea alleged he ought not to be barred from having
and maintaining his aforesaid action thereof against
said Defendant, because he says it is not true
and he denies that the said goods chattels and
personal property, nor any part thereof mentioned
in said instrument of writing were never delivered by
said Plaintiff to the said Defendant and that the
same nor any part thereof never came to the possession
custody or under the control of said Defendant
capable of being delivered by him to the Plaintiff
as is alleged in said fourth plea; and this he
prays may be inquired of by the Country
W P Smith Atty for Plff.

And the said Plaintiff as to the said Sixth plea
of the said Defendant above pleaded says that the
said Plaintiff by reason of anything therein in that
plea alleged ought not to be barred from having and
maintaining his aforesaid action thereof against the
said Defendant, because he says that he the said
Plaintiff was not nor is indebted to the said Defendant
in manner and form as the said Defendant hath above
in said plea in that behalf alleged, and this the said
Plaintiff prays may be inquired of by the Country
W P Smith
Atty for Plff.

And said Defendant as to the said 2^d third
fourth and fifth replications to said pleas, says
as the Plaintiff prays the same may enquired
of the Country &c doth the like &c
Garrison & Anderson
Atty for Deft.

And afterwards, to wit: on the Twentieth day of
February in the year last aforesaid said Plaintiff
by his said Attorney filed in said Court his certain
Demurrer to Defendants fifth plea in the words and
figures following, to wit:

John L. Maier
vs
Gustave Leverenz

In the Circuit Court of Cook County

And the said Plaintiff as to the
said fifth plea of the said Defendant by him above
pleaded says that the same and the matters therein
contained in manner and form as the same are
above pleaded and set forth are not sufficient in
law to bar or preclude him the said Plaintiff
from having or maintaining his aforesaid action
thereof against the said Defendant and that he
the Plaintiff is not bound by law to answer the
same, and this he is ready to verify. Wherefore by
reason of the insufficiency of said fifth plea

the said Plff pray judgment and his damages
by reason of the non performing of the said
several promises or undertakings in the said
declaration mentioned to be adjudged to him &c.

And the said Plaintiff states and shows to the
Court here the following causes of demurrer to said
fifth plea.

13 The said plea alleges the failure of the
consideration of the instrument of writing sued on &
mentioned in said declaration and promises therein
contained and declared on but does not show or
allege when it has failed. It should be set out
& stated in said plea what the said consideration was
in what particular it failed.

W. J. Smith Atty for Plff

And afterward, to wit: on the Twenty first day of
February in the year last aforesaid said Defendant
filed in said Court his certain Joinder in
Demurs in the words and figures following, to wit:
Cook County Circuit Court

Gustav Leverenz

ad

John C. Wainers

} Joinder in Demurrer

And the said Defendant saith
that his said 5th plea by him above pleaded and
the matters therein contained in manner &c are

sufficient in law to bar and preclude the said Plaintiff from having and maintaining his action aforesaid against him & the said Deft is ready to verify &c & pray judgment &c
Feb 21. 1861

Garrison & Anderson
Attys for Deft.

And afterwards, to wit: on the Twenty first day of February in the Year last aforesaid, said Defendant filed in said Court his certain ^{Demurrers to} Replications 2, 3 & 4 in the words and figures following, to wit:

14

Cook County Circuit Court.

Gustav Levenitz
ad
John C. Maines

And the said Defendant says that the said several replications of said Plaintiff to the said Second, third & fourth pleas of him said Defendant above pleaded, and the matters in each of said Replications contained in manner and form as the same are above pleaded (in each of said Replications) and set forth are not sufficient in law for the said Plff to have or maintain his aforesaid action thereof ~~against him~~ against him & that he said Defendant is not bound by law to answer the same and this the said Defendant is ready to verify.

Wherefore for the want of a sufficient Replication in this behalf to said 2^d 3^d & 4th pleas respectively the said Defendant prays judgment (upon each of said 2^d 3^d & 4th pleas) if the said Plaintiff ought to have or maintain his aforesaid action thereof against them &c - beside the general demurres to each of said replications the defendant specifies the following grounds of demurral to each of said replications

- 1 Each Replication is double
- 2 It puts in issue more than one traversable material fact in each plea
- 3 denies both delivery & title & want of consideration
- 4 2^d Replication is a departure from the declaration, avers delivery of the goods & chattels & sets forth a different consideration
- 5 3^d Re Also departure - avers the goods were capable of delivery
- 6 And also for that said Replications each of them are in other respects uncertain, argumentative, informal and insufficient

Garrison & Anderson
Attys for Deft

And the said Plaintiff joining in Demurres says that the said several Replications to the

said 2^d. 3^d & 4th pleas of the said Defendant
are each & severally sufficient in law &c
W P Smith Plff Atty

And afterwards, to wit: on the Twenty fifth
day of February in the year last aforesaid
the said Defendant filed in said Court his
certain 5th Plea as Amended in the words
and figures following, to wit:

Cook County Circuit Court

16 } Gustavus Levering
ad }
John C. Harris } 5th Plea Amended

And for a further Plea in this
behalf, by special leave of the Court first had and
obtained, the Deft by his said Attorney comes, and
by his 5th Plea as Amended says, that the said
Plff, his action aforesaid ought not to have or
maintain against him in said first Court mentioned,
because he says that the consideration for the
promises and undertakings, by the said Deft. to the
said Plff in said first Court mentioned has wholly
failed in this; That the said goods, chattels and
personal property, in said Court mentioned, and
which forms the consideration, for the promises
and undertakings, of the said Deft. to the said
Plff, were at the time of their delivery by the
Plff to the Deft the goods, chattels and personal

property of one David C Rawleigh, and that he the said Rawleigh, was then and there entitled to their immediate and exclusive possession and as such owner, so entitled to the possession of said goods, chattels and personal property as aforesaid, due before the day fixed in said writing in said first count mentioned, for their delivery by the said Deft to the said Plff, enter and take from the care and custody of the said Deft, the said goods, chattels and personal property as he lawfully might for the cause aforesaid, and so the Deft say, that the consideration aforesaid has wholly failed - And this the said Deft is ready to verify. Wherefore he prays judgment if the said Plaintiff his action aforesaid ought to have and maintain against him &c

Garrison & Anderson

Deft Atty

And afterwards, to wit: at the February Term of said Court, to wit: on the twenty fifth day of February in the year last aforesaid the following proceedings, among others were had and intended of record, to wit:

John C Wainio

Gustav Leverenz

Assumpsit

This cause coming on this day to be heard upon the demurrer of the Plaintiff to the 5th Plea of the Defendant filed therein, and upon the demurrer of the Defendant to the 2^d. 3^d &

14th Replications of the Plaintiff filed therein
and counsel having been heard as well in
support of said demurrer as in opposition thereto,
and being now fully advised in the premises doth
find that the said Defendants said 5th Plea is not
sufficient in law to bar or preclude the said
Plaintiff from having and maintaining his
aforesaid action against the said Defendant,
therefore it is ordered that said demurrer
thereto be and the same hereby is sustained.
And that said Demurrer of the Defendant to
the Plaintiffs said 2^d, 3^d & 4th Replications be
overruled and the same hereby is overruled according
ly, with order for Defendant to file an amended
plea herein by 2 O'clock P.M. of this day.

And afterwards, to wit: on the twenty sixth day
of February in the year last aforesaid, the said
Plaintiff filed in said Court his certain
Replication to fifth Plea as amended, in the
words and figures following, to wit:

John C. Harris

vs } In the Circuit Court of Cook
County, Illinois

And the said Plaintiff as to the
said Defendants said fifth plea as amended
says that he the said Plaintiff by reason of
anything in that said plea alleged ought not to

be barred from having and maintaining his
aforesaid action thereof against the said
Defendant because he says; that the said
goods chattels and personal property in said first
count of said declaration mentioned were not at
the time of their delivery by the Plff to the Deft
the property of David C Rawleigh and that
said Rawleigh was not then & there entitled to
the immediate and exclusive possession thereof
as the said Defendant hath above in his fifth
plea as amended in that behalf alleged and
this the said Plaintiff prays may be inquired of
by the Country.

19

W O Smith Plff Atty

As to the above Replication whereof the Plaintiff
puts himself upon the Country, Defendant doth
the like &c

Garrison & Anderson
Attys for Deft

And afterwards, to wit: at the same Term of said
Court last aforesaid, to wit: on the twenty seventh
day of February in the year last aforesaid, the
following among other proceedings were had
and entered of record, to wit:

John C Haines }
Gustav " Severely } Assumpsit

This day again come as well the said Plaintiff by
W P Smith his attorney as the said Defendant
by Garrison and Anderson his Attorneys, and the
Defendant by his counsel now moves for a
continuance of said Cause for reasons assigned
and the Court having carefully considered the
premises, and being now fully advised therein
doth order that said motion for a continuance
be and the same hereby is overruled.

And afterwards, to wit: at the same Term of
said Court last aforesaid, to wit: on the first day of
March in the year last aforesaid, the following
among other proceedings were had and entered
of record, to wit:

John C Mcunes

Gustav Severentz

Assumpsit

This day again come the said
parties by their attorneys and issue being joined
herein between them, it is ordered that a
jury come, whereupon come the Jurors of a jury
of good and lawful men, to wit Bennett
Smith, S Gunderson, Robert Mohr, John
Hastings, Edward Russell, Samuel J Grannis
John M Williams, W M Woodward, R Henderson
George W Smith, Frank Prackert and T C
Alford, who being duly elected, tried and

Sworn, well and truly to try the issue joined
aforesaid, and a true verdict render according
to law and the evidence and after hearing a
part of the evidence, the hour of adjournment
having arrived, by consent of said parties said
Jury is allowed to separate to meet the Court
on the coming in thereof to morrow morning at
nine O'clock.

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And afterwards, to wit: at the same Term of
said Court last aforesaid, to wit on the Second
day of March in the year last aforesaid, the
following among other proceedings were had and
entered of record, to wit:

John C. Maines

Gustav Leverenz

Assumpsit

This day again come the said
parties by their attorneys and the Jurors of the jury
aforesaid also come, and having heard further
evidence in said Cause, the same not being closed
and the hour of adjournment having arrived
by consent of said parties said Jury is again allowed
to separate to meet the Court at the coming in
thereof on Monday morning at nine O'clock

And afterwards, to wit: at: at the same Term
of said Court last aforesaid, to wit: on the

fourth day of March in the year last aforesaid the following among other proceedings were had and entered of record, to wit:

John L. Haines

" } Assumpsit
Gustav Severitz }

22

This day again come the said parties by their attorneys and the juron of the Jury aforesaid also come and having now heard all the evidence offered in said Cause the arguments of Counsel as well on the part of the Plaintiff as of the Defendant and instructions from the Court, retire to consider of their verdict and afterwards return into Court and say, "That the Jury find the issues for the Plaintiff and assess his damages to the sum of Four Hundred and thirty dollars and fifty five cents." Whereupon the Defendant by his Counsel moves the Court for a new trial of said Cause, and thereupon on motion of said Plaintiff's Counsel it is ordered that said Defendant do and he hereby is ruled to file his written grounds for a new trial herein by Wednesday Morning next.

And afterwards, to wit: on the Seventh day of March in the year last aforesaid, the said Defendant filed in said Court his certain Motion.

for a new trial in the words and figures following
the writ?

Circuit Court of Cook County

Gustavus Leverenz

ad.

John C. Haines

Motion for new Trial

And now comes the Defendant
Gustavus Leverenz by Garrison & Anderson his attorneys
and moves the Court now here for a rule or order
setting aside the Verdict of the Jury therein and
for a new trial on the following grounds namely

23

- 1st Improper evidence was admitted on part and behalf
of the Plff to go to the Jury, the Deft objecting to
the same, and the objections being overruled & the
Evidence admitted by the Court.
- 2^d The exceptions taken by the Deft to the introduction
of evidence on part and behalf of the Plff were
well taken, and the overruling such exceptions
and admitting the evidence objected to, was error
for which a new trial should be granted.
- 3^d The Court erred in refusing to give the instructions
to the Jury, asked to be so given on part and behalf
of the Deft.
- 4th The Court erred in giving the instructions on part

and behalf of the Plff. - They not being law,
the Jury was misled by them, and thereby
induced to give a wrong verdict.

5th The Court were not authorized by the law of
the land, to write out all of the instructions on
part and behalf of the Plff given to the
Jury, and omit to write and give any on
part and behalf of the Deft. For this error
we claim that a new trial should be granted.

6th We have no objections to the Court writing
out the law of the land and submitting it to
the consideration and judgment of the Jury. -

24 But we do object to the Court writing out
instructions which change the contract of the
Deft, the relations of the parties, and their
52- legal liability - And for this error of the Court
we claim that a new trial should be granted.

See Instructions

7th The Verdict of the Jury was and is contrary to
law and justice. Hence a new trial should be
granted

Garrison & Anderson
Deft Attys

8th The same Moor did not stand in different relations

the Plff & the Deft - and the Court decided that he did without determining that fact in the manner prescribed by the law - for this error of the Court a new trial should be granted

J + Anderson Deft Atty

And afterwards, to wit: at the February Term of said Court, to wit: on the twenty first day of February in the year of our Lord one thousand eight hundred and sixty two, the following among other proceedings were had and entered of record, to wit:

25-

John C. McQuinn

v
Gustav L. Swerenz

} Assumpsit

This day again came the said parties by their Attorneys, and the Court having had the motion of the said Defendant for a new trial of said Cause under advisement - and being now fully advised in the premises doth order that said motion be and the same hereby is overruled, to which ruling of the Court in overruling said motion for a new trial the Defendant by his Counsel now here excepts

#420⁶³

Therefore it is considered by the Court that said Plaintiff do have and recover of the said Defendant his damages of Ten Thousand and thirty dollars and sixty three cents in form aforesaid

by the Jury aforesaid assessed together with his costs and charges by him about his suit in this behalf expended and have execution therefor.

Whereupon the said Defendant by his Counsel excepts and prays an appeal to the Supreme Court of the State of Illinois.

And afterwards, to wit: at the same Term of said Court last aforesaid, to wit: on the fifteenth day of March in the year last aforesaid, the following among other proceedings, was had and entered of record, to wit:

26

John C. Wainwright }
v } Assumpsit
Gustav Severenz }

3.
This day again comes the said Defendant by Garrison and Anderson his attorneys, and the prayer of the said Defendant for an appeal from the rulings and Judgment of this Court to the Supreme Court of the State of Illinois is now granted upon condition that the said Defendant shall on or before the 17th day of March instant execute and file with the Clerk of this Court his Appeal bond herein in the penal sum of Eight Hundred and fifty one dollars and twenty six cents, Conditioned according to law with J. D. Rawlins and Jacob Gross as sureties thereto; And on motion of Defendant's Counsel it is ordered

That Defendant have till Tuesday next to prepare and file his Bill of exceptions in said cause.

And afterwards, to wit: on the fifteenth day of March in the year last aforesaid the said Defendant filed in said Court his certain Affidavit, in the words and figures following, to wit:

27 Know all men by these Presents that we Gustav
Lerrentz and James T Rawleigh and Jacob
Gross of the County of Cook and State of
Illinois are held and firmly bound unto John
C Haines also of the same County and State in
the penal sum of Eight Hundred and fifty two
dollars lawful money of the United States for
the payment of which well and truly to be made
38 we bind ourselves as their executor and
administration, jointly, severally and firmly by
these presents

Witness our Hands and seals this fifteenth day
of March A.D. 1862

The Condition of the above
obligation is such that whereas the said John
C Haines did on the twenty first day of
February A.D. 1862 in the Circuit Court in and
for the County of Cook and State aforesaid and
of the February Term thereof 1862 recover a
judgment against the above Bounden Gustav

I Verrent for the sum of Four hundred
and thirty dollars and sixty three cents besides
costs of suit; from which said judgment of the
said Circuit Court the said Gustav Verrent
has prayed for and obtained an appeal to the
Supreme Court of said State

Now therefore, if the said Gustav Verrent,
shall duly prosecute his appeal with effect,
and moreover pay the amount of the judgment,
costs, interest and damages rendered and to be
rendered against him, in case the said judgment
shall be affirmed in said Supreme Court, then
the above obligation to be void, otherwise to remain
in full force and virtue

28
Appn. Taken and entered into before me

at my Office in Chicago this

Fifteenth day of March A.D. 1862

Wm L Church Clerk

Gustav F Verrent (seal)

J F Rawleigh (seal)

Jacob Gross (seal)

And afterwards Do=mit, on the 17th
day of March A.D. 1862. paid defendant by his paid attorney,
filed in said Court his certain Bill of Exceptions in words
and figures following. Do=mit—
"I do not know what it is."

and papers, forming: "Book Bounty Society -
Gustav Leverenz }
ad }
John L. Quiner }

Afterwards to-wit: on the 4th day of March A D. 1861. in the February Term of the said Court for the year A D 1861. Before the Honorable George Manierre Judge thereof, and a Jury of book country, the issues joined as aforesaid in this cause, came on for trial and leave was granted defendant to withdraw the plea of set off without prejudice to future suit thereon.

Plaintiff to maintain the issues on his part introduced and read in Evidence the paper or instrument declared on in writing of date November 19. 1859

"Chicago" Ill. Mar 19. 1859

Received of John H. Wiggins the following personal property to-wit: Six ^{hair cloth} forming seat-Chairs, two forming seat-hair cloth sofas, one Rocker or Rocking Chair, one marble top table, one parlor stove, six maple cane seat chairs, one small writing desk & stand, one wash stand with drawers, two common looking glasses, two Brussels parlor Carpets, one Brussels Hall Carpet, one locking stove, Eight-Common Windsor

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Chairs, one picture and frame, one dining table, one
Buttry press, one kitchen table, one Ice Box, four
sets parlor window Curtains and trimmings, one
stair Carpet, four bedroom window Chairs, one
walnut Bureau, two feather Beds + bedding, one
Bed room wash stand, one Wall table one bugy
horse. two buggy wagons, one cutter sleigh and two
sets single harness. Aged to have the ^{use} of the same
~~until the first day of June next - and to use the same~~
in a careful manner, and do agree to deliver
all of said property above enumerated to the said
John L. Wainie or his legal representatives in as good
condition as it now is, at the residence of said Wainie
in the City of Chicago on or before the first day of
June 1860 (next) and in default of such delivery
at the time and place aforesaid in the Condition
aforesaid, time being material and the essence
thereof, for value received I promise to pay said
John L. Wainie or to his order the sum of four
hundred dollars with interest thereon from this
date at the rate of five per cent per annum

H. Severing

And plaintiff rested.

And defendant to maintain the
issues on his part - called as his first witness
David L. Rambleigh

Who being duly in this cause
sworn testified as follows: I know the parties plain-
tiff and defendant in this suit - (paper above

mentioned introduced by Jeff was (from witness). I know this paper and have seen it before. I was present when the defendant Severitz signed it, nobody else was present when he signed the paper. Because the plaintiff was not present, defendant signed it at his store on West Randolph, I know the articles mentioned in this instrument and where they were at the time this instrument was signed by the defendant, they were at my house on the corner of Ann + Washington Street, they had always been in my possession. I kept house these articles in this paper mentioned was most of my household furniture. I bought all of those there as I wanted some of the articles I have always had since I began to keep house + some I bought since. They were there in my house when this paper was made. My Mother was home + pick them at the time, I have always been at my house at the corner of Ann Street + those articles were there until last September last + after the death of both my Mother + Wife they were stored on Market Street for a spell and then my Brother James took them to me + has them now most of them, until after the death of my wife + until the time they were stored they never had been out of my possession. They have never been in the possession of the plaintiff John W. Gaines and they never were in the possession of the defendant or did I ever deliver the possession of them or either

of them to him. Nothing was delivered to him, defendant
at the time he signed the paper or fence
cross. Examined

The signature to the paper is
in the hand writing of the defendant - Severn, I saw
him sign it, - I first saw the paper before it was
signed, at the store of Deane & Ramleigh store on
Market Street - I took the paper to Severn's store
& asked him to sign it - he done so - he done so at
my request - I brought it back after it was signed
and delivered it to her. It came to be delivered
to the plaintiff. The property then was at the corner
of Washington & Ann Streets at my house - the dwelling
house I occupied - I was in possession of most of it
June 20th 1859

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The plff objected to all that part of the testimony of
said witness Ramleigh tending to show that said property
mentioned in the instrument declared was never delivered
to the deft at the time said evidence was offered, on the
ground that he was estopped by said instrument from
denying or disproving its delivery to him, which objection
was overruled by the Court and the plff then and there
excepted thereto & exceptions were then and there allowed
at the time said testimony was offered & admitted by
the Court.

Counsel for plaintiff here produced
and offered in evidence the following assignment: David
W Ramleigh to the plaintiff dated June 20th 1859

This Indenture made and entered into this twentieth day of June in the year of our Lord one thousand eight hundred and fifty nine Between David C Rawleigh of the City of Chicago in the County of Cook and State of Illinois party of the first part and John C Haines of the same place party of the second part.

33 Whereas the said party of the first part is indebted to sundry persons in divers sums of money which he is unable to pay and discharge and has agreed to convey and assign all his estate and effects for the benefit of his creditors as herein after mentioned

Now this Indenture witnesseth that the said party of the first part in consideration of the premises and of the sum of one dollar to him in hand paid by the said party of the second part (the receipt of which is hereby acknowledged) hath granted bargained sold assigned transferred and set over and by these presents doth grant bargain sell assign transfer and set over unto the said party of the second part his heirs executors administrators and assigns all and singular
over

34
the lands tenements and hereditaments real estate and Chattels real of the said party of the first part, and also all the goods wares and merchandise. Lumber logs personal property Chattels and effects of every kind and nature whatsoever belonging to the said party of the first part and also all and singular the debts sums of money balances of account promissory notes bills of exchange drafts bonds judgments and other securities for money claims and demands, now belonging to, due or payable or hereafter to become due and payable to the said party of the first part, of which said real estate Chattels real personal property effects debts securities claims and demands a schedule is herewith annexed marked "Schedule A" (not excluding however any property or effects of the said party of the first part not included in the said Schedule) and also all the books of account of the said party of the first part and all papers documents and vouchers relating to his business dealings property and affairs
To have and to hold the

35
him
Same and every part and
parcel thereof unto the said
party of the second part his
executors administrators and
assigns. In trust nevertheless and
to and for the uses interests and
purposes following - that is to say
That the said party of the second
part shall take possession of the
property hereby assigned or int-
ended so to be and shall
with all convenient dilligen-
ce and despatch sell and
dispose of the same at public
or private sale as he may
deem most beneficial to
the interests of the Creditors
of the said party of the first part
and convert the same into
money, and shall also with all
reasonable ^{diligence} despatch collect get
in and recover all and
singular the debts, dues, bills, bonds
notes, accounts ^{& balances of accounts}, judgments,
securities, claims and dem-
ands hereby assigned or intended
so to be and with and out of
the proceeds of such sales and
collections that the said party
of the second part shall first
pay and disburse all just and
reasonable expenss, costs, charges
and commissions attending
the due execution of these presents
or in

and the carrying into effect the trusts hereby created together with a lawful and reasonable Commission and compensation for his own services, and with and out of the residue of the net proceeds of such sales and collections the said party of the second part shall pay and discharge the debts due and owing by the said party of the first part in the order and manner following that is to say. First, The said party of the second part shall pay the debt set forth in a Schedule hereunto annexed marked "Schedule B" and designated as Class No 1 - the said debt to be paid in full with interest due thereon (if any) if the proceeds shall be sufficient for that purpose. Secondly, after the payment in full of the debt designated in said "Schedule B" as Class No 1 in manner above directed the said party of the second part shall pay in full the debt set forth in said Schedule B and designated as Class No 2, the said debt to be paid in full with interest due thereon if the remainder of said proceeds after the payment of the debt designated as Class

thereof - Lastly, after the payment
of all the costs charges and
expenses attending the execution
of the trusts hereby created and
the payment and discharge in
full of all the lawful debts due
and owing by the said party of
the ~~said~~ first part of any and
every kind and description if
any part or portion of the proceeds
of said sales and collections
shall remain in the hands or
under the controul of the said
party of the second part his execu-
tors administrators or assigns
he or they shall pay over and
return the same to the said
party of the first part his executors
administrators or assigns, and if
after the payment in full of all the
costs charges debts and liabilities
aforesaid there should remain
in the hands or possession of the
said party of the first part his heirs
executors administrators or assigns
any part or portion of the real or personal
property and effects assigned which
shall not have been sold collected
or converted into money he or they
shall return reconvey reassign
and redeliver the same and every
part thereof to the said party of the first
part his heirs executors administra-
tors or assigns, and for the better

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and more effectual execution
of these presents and of the trusts
hereby created and reposed the
said party of the first part doth hereby
make, constitute and appoint the
said party of the second part his true
and lawful attorney irrevocable
with full power and authority to
do transact and perform all
acts deeds matters and things
which may be necessary in the
premises and to the full execution
of the said trusts. Hereby ratifying
confirming and holding for effectual
all and whatsoever the said party
of the ~~first part~~ second part shall
lawfully do in and about the premises
by virtue hereof, and the said
party of the second part by joining
in the execution hereof signifies
his acceptance of the trust hereby
created and for himself his heirs
executors and administrators doth
covenant to execute the same
honestly faithfully and without
delay

In witness whereof the said
parties have hereunto set their hands &
seals the day & year above written

Signed sealed & delivered
in presence of
E Anthony
Robt Henry
L Proudfoot

} D. C. Rawlings Seal
John C Haines Seal

State of Illinois }
Cook County } S.S.

I Elliott Anthony a
Notary Public in & for the City of Chicago
and said County in the State aforesaid do
hereby certify that David C Rawlough and
John C Haines who are personally
known to me to be the same persons
whose names are subscribed to
the annexed instrument appeared
before me this day in person and
acknowledged that they had signed
sealed & delivered the said instrum-
ent of writing as their free act & deed
Given under my hand & Notarial
Seal this Twentieth day of June
A D 1859

Elliott Anthony
Notary Public

State of Illinois }
County of Cook } S.S.

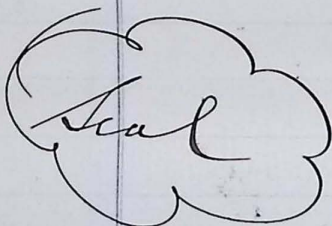
Be it remembered
that on this 20th day of June in the year
of our Lord one thousand eight hundred
and fifty nine before me the Subscriber
a Commissioner in and for the said
State appointed by the Governor of the
State of Michigan to take the acknow-
ledgement and proof of deeds
and instruments of writing under

Notarial
Seal

Seal to be used and recorded
in the said State of Michigan and
to administer on the affirmations
affirmed J. C. Rawlins and John
C. Haines and acknowledged
that they had executed the within
instrument for the uses and purposes
therein mentioned, and further
certify that the persons who made
the said acknowledgment are known
to me to be the individuals described
in and who acknowledged executed
the said instrument

In witness whereof I hereunto
set my hand and seal this
day & year before mentioned

S. Bondfoot Jr
Commissioner for State of
Michigan In State of
Illinois



and offered to prove by paid witness D. L. Randleigh the Execution and delivery of paid assignment, and that the property in question mentioned in the paid instrument-declared on and read in Evidence, was included and described in paid assignment, and that the plaintiff as the assignee of paid Randleigh was about to take possession of paid property under and by virtue of paid assignment, when and whereupon at the instance and request of paid Randleigh, the paid instrument-declared on was Executed and delivered, and that the paid defendant permitted said property to remain in the possession of paid Randleigh at his instance and request upon the Execution and delivery of paid instrument-declared on

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To which offer the deft objected
The Court overruled the objection + deft then + then Excepted

Witness answered that the signature to paid assignment was his signature, that he made and executed that assignment to John L. Haines at the time it bears date and that at that time he was the owner of the property in question and was in possession of it - paid assignment was then read in Evidence

Question - State whether or not E. M. Haines and Captain Kendy were about to take possession of the property in question for the plaintiff under this assignment from you to the plaintiff when this instrument in question was given, and under what circumstances paid instrument was made and delivered, and what was done with the property on the Execution and delivering of paid

instrument in writing,

Question was objected to by deft, objection was overruled and deft Excepted —

Answer of witness —

44 E. M. Waines and Captain Kenedy came to my house with the assignment to take possession of the property in question mentioned in the writing declared on, and was about to do so for plaintiff or my assignee. I told them I wanted to retain or use it, and I proposed to get the defendant to become responsible for it if they would not remove it. I agreed to meet E. M. Waines at the store of Weather Rambleigh and arrange it. I did so. E. M. Waines drew up this instrument in writing (the writing declared on) and I took it to and procured the defendant to sign it and returned it to E. M. Waines to be delivered to the plaintiff. The property was left and remained in my possession by permission of the defendant at my instance —

Witness further testified in answer to question asked, as follows, — I went to Pike's Peak last April left here April 9th and returned here Oct 13th last — the property all the time was at my house at the corner of Union Washington Street — Deft then rested the case —

Plaintiff called E. M. Waines as a witness who being duly sworn testifies as follows — I am an attorney at law + Brother of the plaintiff

and know the defendant - David L. Ramleigh the
witness - As the agent of the plaintiff I went with
Captain Kennedy to take possession of the personal
property mentioned in the assignment. D. L.
Ramleigh to the plaintiff and described in the
instrument declared on in this suit, having with me
the assignment - The property was at said Ramleigh's
house - we called at Ramleigh's house, saw him
there - I told him I had come as the agent of the
plaintiff to take said property - Ramleigh said
he could not well spare it ^{then} and proposed to
get the defendant or some one else to be responsible
for it - if I would not then remove it, we agreed
to meet at the store of Beatty & Ramleigh and arrange
it. we then parted and met again at Beatty &
Ramleigh's store - I drew up the paper or instrument
declared on - it is in my handwriting, I delivered
it to Ramleigh at the store to have him procure
it signed - Ramleigh took it, was gone awhile
and returned with it signed by the defendant
and gave it to me to deliver to the plaintiff
which I did - and I left the property where it
then was at Ramleigh's house -

45
Soon after the time had expired for the delivery of
the property as mentioned in this instrument (meaning
the one filed on) I took said written instrument at
the request of the plaintiff and called on the defen-
dant; showed him the writing, told him I, as the

agent of the plaintiff, had called on him for the payment of the ~~same~~ mentioned in paid writing. Defendant said he was not haldeen to pay the money but I must take the property mentioned in paid writing. I asked him if he would deliver me the property. He said he would. I asked him if he had the property and could deliver it, he said he could deliver it. I told him then I would take it although I considered him haldeen for the money but if he would deliver the property at the plffs house by a day in there fixed and agreed on I would take it, and he said he would do so, the day arrived and passed but he did not deliver the property. I then, ^{after} offered some little time more and saw him again. He then told me he had concluded to do nothing about it, that the matter was in the charge of some lawyers and he guessed they would take care of it. When I first called as above stated on the defendant for payment, I understood him to say that he had the property somewhere in a building under his contrall and could at any time deliver it.

heres Examined

The time I called on defendant was after the property had become due, it was after the first of June 1860. I called at his store, he did not say he had it in his possession but that he said that the property was somewhere where he could

get it, and that he would deliver it. He did not pay where it was, said that he could not pay the money but would deliver the property, I wanted to get the money which this instrument called for and when I called for this purpose, the conversation was had —

John M. Kennedy was next sworn & testified as a witness for plaintiff as follows, at the request of the plaintiff I went to the house of Ramleigh the witness and made an inventory of the things, it was a few days before this paper, it was a few days before this paper was made. I was also present with E. H. Quines at the times & place —
Cross Examined

47

I was captain of the Police under E. H. Quines. I did not do anything with the property only to look it over and see what was there and inventory it — Plaintiff rested

Defendant called as a witness. James Ramleigh who being duly sworn testified and said, I know the parties to this suit and am Brother to D. L. Ramleigh David left home in April 1860 & did not return until the latter part of September last; I know the articles of personal property & where they have been all the time or until lately I lived at the corner of Ann and Washington Street with my Brother and his family these articles were never taken out of the house or out of my Brothers possession, my mother was there and was sick she died just before David came home

in June, July or August and until she died some of the things now used by her, defendant never had the possession of any of the things nor did John Le Haines & they are some of them and most of them in our possession now

The above and foregoing is all the testimony given in the

48
So that part of the testimony of James Rambleigh tending to prove the property in question was not delivered to the deft was at the time it was offered objected by the plff on the ground that the deft was estopped by said instrument declared, from denying or disproving its delivery to him. The objection was by the court overruled & testimony admitted. Plff then and there excepted thereto. Exception was then and there allowed and the plaintiff asked the following instructions to the Jury

Plaintiffs Instructions

The Court are requested to give the following instructions on part of the plaintiff -

1st - That the assignment - David L. Rambleigh to the plaintiff read in Evidence bearing date 20th day of June 1859 Entitled the plaintiff to and gave him the right of immediate possession of the property enumerated in said instrument in writing declared on and read in Evidence as against said Rambleigh, and conferred on the plaintiff the right to dispose of the same to the

Given

the instrument in question with the consent and at the instance of Ramsey, and thereupon the defendant voluntarily consented to allow Ramsey to retain the possession thereof, then this was a sufficient delivery by the plaintiff to the defendant to entitle the plaintiff to recover in this action —

To the giving of each of said instructions + each of said instructions so given by the Court to the Jury the said defendant did then and there object + Except to the law thereof in this case —

The defendant asked the following instructions

12.

50

If the Jury should believe from the evidence that plaintiff gave to defendant the right of possession of the property, yet if the Jury further find said John L. Haines did not in fact give defendant the actual possession or control of the property and that said defendant has not ever been in the actual possession or control of said property in question then the law is for the defendant and he is entitled to your verdict —

(Note, the words written in red ink in the last instruction are the amendment to the same in the hand writing of the Judge — M. L. Churchick)

To the amendment made by the Court to each of said

Instructions as asked by the said defendant: the said defendant did then and there except—

The defendant asked the following instructions to the Jury which the Court refused to give—

I

Refused

If the Jury believe from the evidence that the property in question, never came to the possession of the deft—severely—then the law is for the deft and he is entitled to your verdict—

II

51

Refused

If the Jury believe from the evidence that the peff D. L. Wainie holds the property in question only as the assignee of D. L. Rambleigh and for the benefit of said Rambleigh's creditors, then the law is for the deft and he is entitled to your verdict—

III

If the Jury believe from the evidence that the peff D. L. Wainie never had the possession of the property in question, and that the same never was delivered by him into the hands and possession of the deft—and that his only right to the same consisted in being assignee for the benefit of Rambleigh's creditors then the peff is not entitled under the pleadings + ~~process~~ in this case in his name alone to recover—and your verdict should be for the deft—

V

If the Jury believe from the evidence that the peff

Refused

D. L. Waines in his personal character never had title to or possession of the property in question and that D. L. Ramleigh had such title and right of possession as against said Waines individually, and that the same has always remained in said Ramleigh's possession. Then the law is for the deft and he is entitled to your verdict.

VII

Refused

52

If the Jury believe from the evidence that at the time of the Execution & delivery of the writing in question by the deft to the plff that the property therein mentioned was in the actual possession of D. L. Ramleigh and has ever since remained in his possession and that he refused to deliver it up, then the consideration for such undertaking and promise by the deft to the plff has failed and the defendant is entitled to your verdict.

6

Refused

If the Jury believe from the evidence that the defendant signed the paper filed upon by request of David L. Ramleigh and that he received no other consideration from plaintiff then the law is for the defendant and he is entitled to your verdict.

7

The Jury to find a verdict for plff in this case must find from the evidence that a consideration was received by defendant Gustav Berenz for his

paid property by reason of the paper filed upon. Beyond this reach and the reach of the Creditors of said Rambleigh from Nov-19 1859 to June 1860^{then paid} agreement and paper was ^{made} Contrary to the Statute of this state and is void + verdict should be for the defendant —

5-4
Refused
If the Jury believe from the evidence that John L. Waines the plaintiff was the assignee of David L. Rambleigh for the benefit of the creditors of Rambleigh and that his only title to the property in question was by virtue of the assignment and that he had not taken actual possession of the property in question then said John L. Waines had no authority to dispose of the property in any other manner than as provided by the terms of the assignment and if the Jury believe that the paper filed upon means the return of such property then the law is for the defendant and he is entitled to your verdict in this case for defendant does not preclude the plaintiff as assignee from taking possession of the property wherever he can find it —

12
If the Jury believe from the evidence that the Plff John L. Waines is assignee of David L. Rambleigh took the deed of assignment in question, such deed of assignment is a personal contract between said Rambleigh and Waines and as such is a chose in action

Refused

and Waines cannot found an action upon it in his own name as against the debt he being a 3^d person - Hence their verdict should be for the debt unless they further believe from the Evidence that the debt promised paid Waines to pay him Waines for the property in question and that such promise was founded on some new and valid consideration, moving between Waines & the debt. But if they are not satisfied from the evidence that there was such new and valid consideration for paid promises, then their verdict should be for the Debt -

55

To each instruction so refused by the Court to be given the defendant then and there excepted

The Cause was submitted to the Jury who retired in the charge of the proper officer & returned into Court with a verdict for plaintiff for the sum of \$430⁶⁵ whereupon the defendant by his Counsel moved for a new trial which was in writing in the words and figures following viz
(See page 23)

which said motion was taken after argument under advisement, and afterwards to wit on the 21st day of February AD 1862 in February Term AD 1862 the said Court ~~deemed~~ ^{denied} said motion for new trial though the Judge long before that time told Counsel

the motion would be overruled, to which decision
and ruling the defendant then and there
excepted, and said defendant then and
there prayed his appeal to the Supreme Court
and this his Bill of Exceptions

The above is a true and correct history and
statement of all the evidence and proceedings
in the trial of the Cause —
In witness whereof I George Manierre Judge of the
Cook County Circuit Court at the Court House
in the City of Chicago have hereunto this Bill
of Exceptions, set my hand and seal this 15th day
of March A.D. 1862, in February Term A.D. 1862
of said Circuit Court

George Manierre Seal
Judge of 7th Sud Cir Ill

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of all papers on file (excepting the process & summons) and all proceedings entered of record in a certain cause sub pending in said Court, on the Common Law side thereof, wherein John L. Guine was plaintiff and Heitor Severely was Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this ninth day of April A. D. 186 2

Wm L Church Clerk.



102 267 54

Gustave Leroy
vs

John C. Haines

Record

Filed April 24-1862

L. Laland

Clerk

Record 14⁰⁰

mschuck ab



S U P R E M E C O U R T .

GUSTAV LEVERENZ,

vs.

APPELLANT.

JOHN C. HAINES,

APPELLEE.

APRIL TERM 1863.

A B S T R A C T .

Narr in Assumpsit.

- 1 First count.—For that whereas the said defendant heretofore at &c. made executed and delivered to the plaintiff under his hand of that date a certain instrument in writing in the words and figures following :

CHICAGO, ILL., Nov. 19, 1859.

- 2 Received of John C. Haines the following personal property, to wit—six spring seat hair cloth chairs, two spring seat hair cloth sofas, one rocker or rocking chair, one marble top table, one parlor stove, six maple cane seat chairs, one small writing desk and stand, one wash stand with drawers, two common looking glasses, two brussels parlor carpets, one brussels hall carpet, one cooking stove, eight common windsor chairs, one picture and frame, one dining table, one buttering press, one kitchen table, one ice box, four setts parlor window curtains and trimmings, one stair carpet, seven bed room windsor chairs, one walnut bureau, two feather beds and bedding, one bed room wash stand, one hall table, one bay horse, two buggy wagons, one cutter sleigh and two setts single harness, and to have the use of the same until the first day of June next, and to use the same in a careful manner, and I do agree to deliver all of said property above enumerated to the said John C. Haines or his legal representatives in as good condition as it now is at the residence of said Haines in the City of Chicago, on or before the first day of June 1860 (next), and in default of such delivery at the time and place aforesaid, in the condition aforesaid, time being material

and of the essence hereof, for value received, I promise to pay to said John C. Haines or to his order the sum of four hundred dollars with interest thereon from this date at the rate of six per cent. per annum.

G. LEVERENZ.

3 And the said plaintiff avers, that the said defendant did not on or before said first day of June 1860, deliver said property enumerated in said writing or any part thereof to the said plaintiff at his residence in Chicago, but wholly neglected so to do &c. and has not paid said principal sum of four hundred dollars and interest thereon, but neglects &c.—

3 Second count.—That defendant was indebted to plaintiff in the sum of five hundred dollars for so much money before that time had and received to and for the use of the plaintiff, and being so indebted &c. afterwards &c. promised to pay the same vc.

Defendants Pleas.

4 1st Gen. issue.

5 2. PLEA.—To the first count, that said goods &c. were at the time of the execution by def't to plaintiff of said instrument in writing, the proper goods, chattels and personal property of David C. Rawleigh, and that before the time specified in said writing for their delivery by defendants to plaintiff, said Rawleigh took said goods &c. from the said defendant by paramount title and converted the same to his own use, as it was lawful for him to do, thereby preventing defendant from delivering the same to plaintiff at the time and place in said instrument specified—and the defendant is ready to verify &c.

6 3. PLEA.—To the said first count. Defendants says, “that the said personal property in said count mentioned at the time of the execution and delivery of said instrument in writing by def't. to plff. were at &c. in the possession and under the control of David C. Rawleigh, and not of the said plaintiff, and that the same nor any part thereof were ever delivered to defendant, and that he defendant never had the possession, custody and control of the same, nor did he receive any consideration from plaintiff for said promises &c. in said writing mentioned” &c. (concluding with verification.

6 4. PLEA.—To said count. Because &c. “that the said personal property nor any part thereof in said instrument mentioned were never delivered by plaintiff to defendant, nor have the same or any part thereof came to the possession, been in the custody or under the control of said defendant, and capable of being delivered by him to plaintiff,” (concluding with verification.)

5. 3d Rep. also departure avers, the goods were capable of delivery.

6. Said Replications each of them are in other respects uncertain argumentative informal and insufficient Joinder in demurer by plaintiff.

By leave of the court, defendant amends his 5th Plea.

16 Amended plea says that the consideration for the promises and undertakings by the said defendant in said first count mentioned has wholly failed in this, that the said goods &c., and which forms the consideration for the promises and undertakings of the said defendant to the plaintiff were at the time of their delivery by the plaintiff to the defendant the goods and personal property of one David C. Rawleigh, and he was entitled to the possession and as such owner and so entitled to the possession; did, before the day fixed in said writing in said first count &c., enter and take from the care and custody of defendant the said goods &c. as he lawfully might for the cause aforesaid, and so the defendant says, the consideration aforesaid has wholly failed (concluding with verification)

18 Plaintiffs Replication to defendants amended 5th Plea, says that the said goods &c. in said first count &c., were not at the time of their delivery by the plaintiff to defendant the property of Rawleigh, and that said Rawleigh was not then and there entitled to the immediate and exclusive possession thereof as the said defendant has above alleged &c. (and concluding to the country.)

18 Court overruled defendant demurrers to 2d, 3d and 4th Replications, and decided said Replications each of them good.

22 Verdict for plaintiff for \$430,65.

Bill of Exceptions.

29

TRIAL, MARCH 4, 1861.

Plaintiff to maintain the issue on his part introduced and read 2 & 29 in evidence, the writing set forth in the first count of the Narr.

Plaintiff Rested.

30

Defendant called as witness—

David C. Rawleigh, sworn, said he knew the parties plaintiff and defendant (said paper shown witness), I know this paper—I was present when the defendant signed it, nobody else was present when he signed the paper. Haines the plaintiff was not present. Defendant signed it at his Store, West Randolph St., I know the articles mentioned in this instrument, and where they were at the time this instrument was signed by the defendant, they were at my house

on the corner of West Ann and Washington Streets, they had always been in my possession. I kept house, these articles in this paper mentioned was most of my house-hold furniture, I bought all those there as I wanted them, some of the articles I have always had since I began to keep house and some I bought since—they were there in my house when this paper was made—my mother was home and sick there at the time—Have always been at my house, and those articles were there until last September and after the death of my mother and my wife, they were stored on Market Street for a spell, then my brother James took them to use and has them now most of them, until after the death of my wife and until they were stored, they never have been out of my possession—they never have been
 31 in the possession of the plaintiff—and they never were in the possession of the defendant—or did I ever deliver the possession of them or either of them to him, nothing was delivered to him defendant at the time he signed the paper or since.

32 Cross-Ex.—I saw defendant sign this paper—signature his. I first saw the paper at store of Heart & Rawleigh—I took this paper to defendants store and asked him to signed—he done so at my request—I brought it back after it was signed and delivered it to Mr. Haines to be delivered to the plaintiff—and was in possession of it June 20th 1859.

32 Plaintiff here produced and offered in evidence a paper pur-
 33 porting to be an assignment by said David C. Rawleigh to plaintiff, dated June 20th 1859, of all the property of said Rawleigh to plain-
 33 to 39 tiff for the benefit of his Rawleigh's Creditors and offered to prove by witness the execution thereof, that the property in question was
 43 included therein, and the plaintiff as the assignee of said Rawleigh was about to take possession of said property by virtue of said assignment when at the request of said Rawleigh this said instrument declared on was executed and delivered, and that the said defendant permitted said property to remain in the possession of said Rawleigh at his instance and request upon the execution and delivery of said instrument declared.

Defendant objected. Objection overruled and defendant excepted, I made and executed that assignment to plaintiff at the time it bears date. I was the owner and had the property in my possession at the time—(assignment was hear read in evidence, and is in the usual form conveys all the property, both real and personal property of Rawleigh to plaintiff—"in trust nevertheless and to and for
 43 "the uses interests and purposes following that is to say, that the
 35 "said party of the second part shall take possession of the pro-
 "perty hereby assigned or intended so to be, and shall with all con-

house by a day then fixed, he did not deliver it. Another time, he told me he had concluded to do nothing about it, that the matter was in charge of Lawyers &c., when I first called I understood him to say, he had the property somewhere in a building under his control and could deliver it.

Cross-Examination—it was after June 1860 I called on defendant, I called at his store—he did not say he had it in his possession, but that he said that the property was somewhere, where he could get it, and that he would deliver it—he did not say where it was but would deliver the property—I wanted to get the money, and when I called this conversation was.—

47 John M. Kennedy sworn for plaintiff said, at the request of plaintiff I went to the house of plaintiff and made an inventory of the things, it was a few days before this paper was made.

Cross-Ex.—said was Captain of Police under Haines, I did not do any thing with the property, only to look over it, see what was there and inventory it.

47 James Rawleigh sworn for defendant—said am brother of David C. Rawleigh. I know the articles of personal property, and where they have been all the time or until lately. I lived with my brother at the corner of Ann and Washington Sts.—These articles were never taken out of the house or out of my brothers possession, mother was there and sick and died just before David came home—in June, July and until she died, some of the things were used by her.—Defendant never had the possession of
48 any of the things nor did plaintiff, they are some, and most of them, in our possession now.

Plaintiffs Instructions.

48 1st, That the assignment David C. Rawleigh to the plaintiff read in evidence bearing date 20th day of June 1859 entitled the plaintiff to and
Given gave him the right of immediate possession of the property enumerated in said instrument in writing read in evidence as against said Rawleigh and conferred on the plaintiff the right to dispose of the same to the defendant in the manner in which he did by instrument in writing introduced in evidence.

49 2d. If the jury find from the evidence, that the goods and chattels in question were transferred to the plaintiff, and that he was entitled to the possession thereof at the time of the execution and delivery of the instrument declared on, and if the jury further find, that the plaintiff was about to take possession thereof and that thereupon Rawleigh procured the defendant to execute said instrument, and that Rawleigh after the
49 execution of the same by arrangement with the defendant, continued in
Given possession of said goods and chattels, then the possession of Rawleigh was the possession of the defendant, and it became and was the duty of the defendant to deliver up the goods to the plaintiff or pay the sum of money according to the condition of said instrument. The arrangement

between Rawleigh and the defendant if proved, constituted a sufficient delivery to entitle the plaintiff to recover for a violation of his agreement.

Given 49 3d. If the jury find, that the property enumerated in said instrument in writing declared on and read in evidence, was in possession of said Rawleigh, and that plaintiff was about to take possession at the time the defendant executed the same with the consent and instance of Rawleigh, and thereupon the defendant voluntarily consented to allow Rawleigh to retain the possession thereof, then this was a sufficient delivery by the plaintiff to the defendant to entitle the plaintiff to recover in this action.

To each of the above instructions defendant excepted.

Defendants Instructions Given.

Given as Amended 50 If the jury should believe from the evidence, that plaintiff gave to defendant the right of possession of the property yet, if the jury further find said John C. Haines did not in fact give defendant the actual possession "OR CONTROL" of the property, and that said defendant has not ever been in the actual possession "OR CONTROL" of said property, in question then the law is for the defendant and he is entitled to your verdict.

(To the above amendment defendant objected.)

Defendants Instruction Refused.

Refused 51 1st. If the jury believe from the evidence, that the property in question never came to the possession of the defendant Leverenz, then the law is for the defendant and he is entitled to your verdict.

Refused 51 2d. If the jury believe from the evidence, that the plaintiff held the property in question only as the assignee of D. C. Rawleigh, and for the benefit of said Rawleigh's creditors, then the law is for the defendant and he is entitled to your verdict.

Refused 52 3d. If the jury believe from the evidence, that the plaintiff John C. Haines in his personal character never had title to or possession of the property in question, and that D. C. Rawleigh had such title and right of possession as against said Haines individually, and that the same has always remained in said Rawleigh's possession, then the law is for the defendant and he is entitled to your verdict.

Refused 52 4th. If the jury believe from the evidence, that at the time of the execution and delivery of the writing in question by the defendant to the plaintiff, that the property therein mentioned was in the actual possession of D. C. Rawleigh, and has ever since remained in his possession, and that he refused to deliver it up, then the consideration for such undertakings and promise by the defendant to plaintiff has failed and the defendant is entitled to your verdict.

5th. If the jury believe from the evidence, that the defendant signed
Refused the paper sued upon by request of David C. Rawleigh, and that he re-
52 ceived no other consideration from plaintiff, then the law is for the defen-
dant and he is entitled to your verdict.

7th. The court were asked to instruct, that plaintiff could not recover
Refused unless defendant was proved to have received the property in question,
53 that the proof or pretence of any other consideration would not do.

8th. The court was asked to instruct if the jury found the facts,
that plaintiff being the assignee of Rawleigh for the benefit of his creditors
Refused and had not taken possession of the property. He was not the owner
53 and could convey no title to defendant.

The court was also asked to instruct, if the jury found the
the plaintiff being the assignee of Rawleigh of the property in
question for the benefit of his creditors, placed such property by said pa-
5 r sued on beyond his reach and the reach of the creditors until June
1860, then said obligation was void and contrary to the statute.

11th. Also requested to instruct.

Plaintiff as assignee had no authority to dispose of property under
Refused the assignment by such an instrument as declared upon &c. and whole
54 proceedings void &c.

Refused 12th. Embraced in the above.
55

55 Defendant excepts to the above refusals of his instructions.

55 Defendant moves for a new trial over and ex.

23 Motion for new trial in writing.

A. GARRISON,
Attorney for Appellant.

Grounds of Error.

The court erred in overruling demurrer to Replications to 2d, 3d and
4th Pleas.

- 2. Improper evidence was admitted.
- 3. Erred in giving plaintiffs instructions.
- 4. " " amending defendants instructions.
- 5. " " refusing " "
- 6. Verdict was contrary to the law and evidence of the case, and
a penalty was treated as damages.
- 7. Erred in overruling motion for new trial.
- 8. Verdict and Judgment should have been for defendant.

A. GARRISON,
Attorney.

57-102

Supreme Court

Gustav Levenenz
vs
John C Haines

Abstract

Filed April 23-1863

L. Leland

Clerk

A. Garrison
Atty

SUPREME COURT.

GUSTAV LEVERENZ,

vs.

APPELLANT.

JOHN C. HAINES,

APPELLEE.

} APRIL TERM 1863.

ABSTRACT.

Narr in Assumpsit.

- 1 First count.—For that whereas the said defendant heretofore at &c. made executed and delivered to the plaintiff under his hand of that date a certain instrument in writing in the words and figures following :

3 And the said plaintiff avers, that the said defendant did not on or before said first day of June 1860, deliver said property enumerated in said writing or any part thereof to the said plaintiff at his residence in Chicago, but wholly neglected so to do &c. and has not paid said principal sum of four hundred dollars and interest thereon, but neglects &c.—

3 Second count.—That defendant was indebted to plaintiff in the sum of five hundred dollars for so much money before that time had and received to and for the use of the plaintiff, and being so indebted &c. afterwards &c. promised to pay the same vc.

Defendants Pleas.

4 1st Gen. issue.

5 2. PLEA.—To the first count, that said goods &c. were at the time of the execution by def't to plaintiff of said instrument in writing, the proper goods, chattels and personal property of David C. Rawleigh, and that before the time specified in said writing for their delivery by defendants to plaintiff, said Rawleigh took said goods &c. from the said defendant by paramount title and converted the same to his own use, as it was lawful for him to do, thereby preventing defendant from delivering the same to plaintiff at the time and place in said instrument specified—and the defendant is ready to verify &c.

6 3. PLEA.—To the said first count. Defendants says, “that the said personal property in said count mentioned at the time of the execution and delivery of said instrument in writing by def't. to plff. were at &c. in the possession and under the control of David C. Rawleigh, and not of the said plaintiff, and that the same nor any part thereof were ever delivered to defendant, and that he defendant never had the possession, custody and control of the same, nor did he receive any consideration from plaintiff for said promises &c. in said writing mentioned” &c. (concluding with verification.

6 4. PLEA.—To said count. Because &c. “that the said personal property nor any part thereof in said instrument mentioned were never delivered by plaintiff to defendant, nor have the same or any part thereof came to the possession, been in the custody or under the control of said defendant, and capable of being delivered by him to plaintiff,” (concluding with verification.)

7 5. PLEA.—Because &c. “that the consideration for the promises and undertakings by the said defendant to plaintiff in said declaration mentioned has wholly failed, and this he is ready to verify &c.

8 6. PLEA.—Set off. Withdrawn before trial.

Replications.

9 Plff. Replication. 2d Plea—because he says “the said goods &c. were not at &c. the property of Rawleigh, and he did not take the same from the said defendant by paramount title as the said defendant has averred &c. concludes to the country.

10 Replication to the 3d Plea—“because he says it is not true, that said goods &c. were never delivered by said plaintiff to defendant, and that the said defendant never had the possession and control of the same, nor any part thereof, nor received any consideration of and from the plaintiff for said promise and undertakings as alleged in said Plea, but on the contrary plaintiff says he did at &c. deliver said goods &c. to the defendant—and concludes to the country.

11 Replication to 4th Plea—“because he says,” it is not true, and he denies that the said goods &c. nor any part thereof mentioned in &c. were never delivered by said plaintiff to said defendant, and that the same nor any part thereof never came to the possession, custody and under the control of defendant, capable of being delivered by him to the plaintiff as is alleged &c. (and concludes to the country,)

Plaintiff demurred to defendants 5th Plea.

Specifying the following causes of demurrer.

13 That the Plea does not show or allege, how the consideration failed.

Should have stated what &c.

13 Joinder in demurrer.

14 Defendant demurred to each of the several replications to 2d, 3d and 4th Pleas respectively.

15 And specified the follow grounds of Demurrer to each of said Replications.

1. Each replication is double.

2. It puts in issue more than one traversable material fact in each plea.

3. Denies delivery title and want of consideration.

4. 2d Replication is a departure from the declaration, avers delivery of the goods and chattels and set forth a different consideration.

5. 3d Rep. also departure avers, the goods were capable of delivery.

6. Said Replications each of them are in other respects uncertain argumentative informal and insufficient Joinder in demurer by plaintiff.

By leave of the court, defendant amends his 5th Plea.

Amended plea says that the consideration for the promises and undertakings by the said defendant in said first count mentioned has wholly failed in this, that the said goods &c., and which forms the consideration for the promises and undertakings of the said defendant to the plaintiff were at the time of their delivery by the plaintiff to the defendant the goods and personal property of one David C. Rawleigh, and he was entitled to the possession and as such owner and so entitled to the possession; did, before the day fixed in said writing in said first count &c., enter and take from the care and custody of defendant the said goods &c. as he lawfully might for the cause aforesaid, and so the defendant says, the consideration aforesaid has wholly failed (concluding with verification)

Plaintiffs Replication to defendants amended 5th Plea, says that the said goods &c. in said first count &c., were not at the time of their delivery by the plaintiff to defendant the property of Rawleigh, and that said Rawleigh was not then and there entitled to the immediate and exclusive possession thereof as the said defendant has above alleged &c. (and concluding to the country.)

Court overruled defendant demurrers to 2d, 3d and 4th Replications, and decided said Replications each of them good.

Verdict for plaintiff for \$430,65.

Bill of Exceptions.

TRIAL, MARCH 4, 1861.

Plaintiff to maintain the issue on his part introduced and read in evidence, the writing set forth in the first count of the Narr.

Plaintiff Rested.

Defendant called as witness—

David C. Rawleigh, sworn, said he knew the parties plaintiff and defendant (said paper shown witness), I know this paper—I was present when the defendant signed it, nobody else was present when he signed the paper. Haines the plaintiff was not present. Defendant signed it at his Store, West Randolph St., I know the articles mentioned in this instrument, and where they were at the time this instrument was signed by the defendant, they were at my house

on the corner of West Ann and Washington Streets, they had always been in my possession. I kept house, these articles in this paper mentioned was most of my house-hold furniture, I bought all those there as I wanted them, some of the articles I have always had since I began to keep house and some I bought since—they were there in my house when this paper was made—my mother was home and sick there at the time—Have always been at my house, and those articles were there until last September and after the death of my mother and my wife, they were stored on Market Street for a spell, then my brother James took them to use and has them now most of them, until after the death of my wife and until they were stored, they never have been out of my possession—they never have been
 31 in the possession of the plaintiff—and they never were in the possession of the defendant—or did I ever deliver the possession of them or either of them to him, nothing was delivered to him defendant at the time he signed the paper or since.

32 Cross-Ex.—I saw defendant sign this paper—signature his. I first saw the paper at store of Heart & Rawleigh—I took this paper to defendants store and asked him to signed—he done so at my request—I brought it back after it was signed and delivered it to Mr. Haines to be delivered to the plaintiff—and was in possession of it June 20th 1859.

32 Plaintiff here produced and offered in evidence a paper pur-
 33 porting to be an assignment by said David C. Rawleigh to plaintiff, dated June 20th 1859, of all the property of said Rawleigh to plain-
 33 to 39 tiff for the benefit of his Rawleigh's Creditors and offered to prove by witness the execution thereof, that the property in question was
 43 included therein, and the plaintiff as the assignee of said Rawleigh was about to take possession of said property by virtue of said assignment when at the request of said Rawleigh this said instrument declared on was executed and delivered, and that the said defendant permitted said property to remain in the possession of said Rawleigh at his instance and request upon the execution and delivery of said instrument declared.

Defendant objected. Objection overruled and defendant excepted, I made and executed that assignment to plaintiff at the time
 43 it bears date. I was the owner and had the property in my possession at the time—(assignment was hear read in evidence, and is in the usual form conveys all the property, both real and personal pro-

43 QUESTION. State whether or not E. M. Haines and Capt. Kennedy were about to take possession of the property in question for the plaintiff under this assignment from you to plaintiff when this instrument in question was given, and under what circumstances said instrument was made and delivered and what was done with the property on the execution and delivery of said instrument in writing.

44 Objected to by defendant. Objection overruled and defendant excepted.

E. M. Haines and Captain Kennedy came to my house with the assignment to take possession of the property and was about to do so for plaintiff, I told them I wanted to retain or use it, and I proposed to get the defendant to become responsible for it if they would not remove it. I agreed to meet E. M. Haines at the store of Heart & Rawleigh and arrange it—I did so, E. M. Haines drew up this instrument in writing (declared on) and I took it to defendant to sign it and returned it to E. M. Haines to be delivered to the plaintiff—the property was left and remained in my possession—I went to Pikes Peak last April and returned Oct. 13th, last—this property all the time was at my house.

Defendant rests.

45 Plaintiff called E. M. Haines, sworn testified—am an Attorney—brother of plaintiff, as the agent of plaintiff I went with Kennedy to take possession of the personal property mentioned in this assignment and this instrument—the property was at Rawleigh's house—we called and saw him—I told I come to take said property—Rawleigh said he could not spare it then, and proposed to get defendant or some one to be responsible for it if I would not remove it—we agreed to meet at the store of Heart & Rawleigh and arrange it—I drew up this paper declared on. I delivered it to Rawleigh at the store, to have him procure it signed—Rawleigh took it and returned with it signed and I delivered it to plaintiff. I left the property where it then was at Rawleigh house.

46 After the time to deliver this property had expired I called on defendant, showed him the paper and told him I called on him for payment of the same. Defendant said, he was not holden to pay the money, I must take the property, I asked him if he would deliver it said he would, he said he could deliver it—I told him I would take it, to deliver at plaintiff's

Refused
52

Refused
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Refused
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Refused
53, 54

11th. Also requested to instruct.

Plaintiff as assignee had no authority to despose of property under
Refused the assignment by such an instrument as declared upon &c. and whole
54 proceedings void &c.

Refused 12th. Embraced in the above.
55

55 Defendant excepts to the above refusals of his instructions.

55 Defendant moves for a new trial over and ex.

23 Motion for new trial in writing.

A. GARRISON,
Attorney for Appellant.

Grounds of Error.

The court erred in overruling demurrer to Replications to 2d, 3d and
4th Pleas.

2. Improper evidence was admitted.
3. Erred in giving plaintiffs instructions.
4. " " amending defendants instructions.
5. " " refusing " "
6. Verdict was contrary to the law and evidence of the case, and
a penalty was treated as damages.
7. Erred in overruling motion for new trial.
8. Verdict and Judgment should have been for defendant.

A. GARRISON,
Attorney.

57-102
Supreme Court

Gustav Severenz

vs

John C. Harries

Abstract

Filed Apr 23, 1863

L. Selan^d CM

A. Garrison
attly.

house by a day then fixed, he did not deliver it. Another time, he told me he had concluded to do nothing about it, that the matter was in charge of Lawyers &c., when I first called I understood him to say, he had the property somewhere in a building under his control and could deliver it.

Cross-Examination—it was after June 1860 I called on defendant, I called at his store—he did not say he had it in his possession, but that he said that the property was somewhere, where he could get it, and that he would deliver it—he did not say where it was but would deliver the property—I wanted to get the money, and when I called this conversation was.—

47 John M. Kennedy sworn for plaintiff said, at the request of plaintiff I went to the house of plaintiff and made an inventory of the things, it was a few days before this paper was made.

Cross-Ex.—said was Captain of Police under Haines, I did not do any thing with the property, only to look over it, see what was there and inventory it.

47 James Rawleigh sworn for defendant—said am brother of David C. Rawleigh. I know the articles of personal property, and where they have been all the time or until lately. I lived with my brother at the corner of Ann and Washington Sts.—These articles were never taken out of the house or out of my brothers possession, mother was there and sick and died just before David came home—in June, July and until she died, some of the things were used by her.—Defendant never had the possession of
48 any of the things nor did plaintiff, they are some, and most of them, in our possession now.

Given

49

To each of the above instructions defendant excepted.

Defendants Instructions Given.

Given as
Amended

50

(To the above amendment defendant objected.)

Defendants Instruction Refused.

SUPREME COURT.

GUSTAV LEVERENZ,

vs.

APPELLANT.

JOHN C. HAINES,

APPELLEE.

APRIL TERM 1863.

ABSTRACT.

Narr in Assumpsit.

- 1 First count.—For that whereas the said defendant heretofore at &c. made executed and delivered to the plaintiff under his hand of that date a certain instrument in writing in the words and figures following :

CHICAGO, ILL., Nov. 19, 1859.

- 2 Received of John C. Haines the following personal property, to wit—six spring seat hair cloth chairs, two spring seat hair cloth sofas, one rocker or rocking chair, one marble top table, one parlor stove, six maple cane seat chairs, one small writing desk and stand, one wash stand with drawers, two common looking glasses, two brussels parlor carpets, one brussels hall carpet, one cooking stove, eight common windsor chairs, one picture and frame, one dining table, one buttering press, one kitchen table, one ice box, four setts parlor window curtains and trimmings, one stair carpet, seven bed room windsor chairs, one walnut bureau, two feather beds and bedding, one bed room wash stand, one hall table, one bay horse, two buggy wagons, one cutter sleigh and two setts single harness, and to have the use of the same until the first day of June next, and to use the same in a careful manner, and I do agree to deliver all of said property above enumerated to the said John C. Haines or his legal representatives in as good condition as it now is at the residence of said Haines in the City of Chicago, on or before the first day of June 1860 (next), and in default of such delivery at the time and place aforesaid, in the condition aforesaid, time being material

and of the essence hereof, for value received, I promise to pay to said John C. Haines or to his order the sum of four hundred dollars with interest thereon from this date at the rate of six per cent. per annum.

G. LEVERENZ.

3 And the said plaintiff avers, that the said defendant did not on or before said first day of June 1860, deliver said property enumerated in said writing or any part thereof to the said plaintiff at his residence in Chicago, but wholly neglected so to do &c. and has not paid said principal sum of four hundred dollars and interest thereon, but neglects &c.—

3 Second count.—That defendant was indebted to plaintiff in the sum of five hundred dollars for so much money before that time had and received to and for the use of the plaintiff, and being so indebted &c. afterwards &c. promised to pay the same &c.

Defendants Pleas.

4 1st Gen. issue.

5 2. PLEA.—To the first count, that said goods &c. were at the time of the execution by def't to plaintiff of said instrument in writing, the proper goods, chattels and personal property of David C. Rawleigh, and that before the time specified in said writing for their delivery by defendants to plaintiff, said Rawleigh took said goods &c. from the said defendant by paramount title and converted the same to his own use, as it was lawful for him to do, thereby preventing defendant from delivering the same to plaintiff at the time and place in said instrument specified—and the defendant is ready to verify &c.

6 3. PLEA.—To the said first count. Defendants says, "that the said personal property in said count mentioned at the time of the execution and delivery of said instrument in writing by def't. to plff. were at &c. in the possession and under the control of David C. Rawleigh, and not of the said plaintiff, and that the same nor any part thereof were ever delivered to defendant, and that he defendant never had the possession, custody and control of the same, nor did he receive any consideration from plaintiff for said promises &c. in said writing mentioned" &c. (concluding with verification.

6 4. PLEA.—To said count. Because &c. "that the said personal property nor any part thereof in said instrument mentioned were never delivered by plaintiff to defendant, nor have the same or any part thereof come to the possession, been in the custody or under the control of said defendant, and capable of being delivered by him to plaintiff," (concluding with verification.)

7 5. PLEA.—Because &c. “that the consideration for the promises and undertakings by the said defendant to plaintiff in said declaration mentioned has wholly failed, and this he is ready to verify &c.

8 6. PLEA.—Set off. Withdrawn before trial.

Replications.

9 Plff. Replication. 2d Plea—because he says “the said goods &c. were not at &c. the property of Rawleigh, and he did not take the same from the said defendant by paramount title as the said defendant has averred &c. concludes to the country.

10 Replication to the 3d Plea—“because he says it is not true, that said goods &c. were never delivered by said plaintiff to defendant, and that the said defendant never had the possession and control of the same, nor any part thereof, nor received any consideration of and from the plaintiff for said promise and undertakings as alleged in said Plea, but on the contrary plaintiff says he did at &c. deliver said goods &c. to the defendant—and concludes to the country.

11 Replication to 4th Plea—“because he says,” it is not true, and he denies that the said goods &c. nor any part thereof mentioned in &c. were never delivered by said plaintiff to said defendant, and that the same nor any part thereof never came to the possession, custody and under the control of defendant, capable of being delivered by him to the plaintiff as is alleged &c. (and concludes to the country,)

Plaintiff demurred to defendants 5th Plea.

Specifying the following causes of demurrer.

13 That the Plea does not show or allege, how the consideration failed.

Should have stated what &c.

13 Joinder in demurrer.

14 Defendant demurred to each of the several replications to 2d, 3d and 4th Pleas respectively.

15 And specified the follow grounds of Demurrer to each of said Replications.

1. Each replication is double.

2. It puts in issue more than one traversable material fact in each plea.

3. Denies delivery title and want of consideration.

4. 2d Replication is a departure from the declaration, avers delivery of the goods and chattels and set forth a different consideration.

5. 3d Rep. also departure avers, the goods were capable of delivery.

6. Said Replications each of them are in other respects uncertain argumentative informal and insufficient Joinder in demurer by plaintiff.

By leave of the court, defendant amends his 5th Plea.

16 Amended plea says that the consideration for the promises and undertakings by the said defendant in said first count mentioned has wholly failed in this, that the said goods &c., and which forms the consideration for the promises and undertakings of the said defendant to the plaintiff were at the time of their delivery by the plaintiff to the defendant the goods and personal property of one David C. Rawleigh, and he was entitled to the possession and as such owner and so entitled to the possession; did, before the day fixed in said writing in said first count &c., enter and take from the care and custody of defendant the said goods &c. as he lawfully might for the cause aforesaid, and so the defendant says, the consideration aforesaid has wholly failed (concluding with verification)

18 Plaintiffs Replication to defendants amended 5th Plea, says that the said goods &c. in said first count &c., were not at the time of their delivery by the plaintiff to defendant the property of Rawleigh, and that said Rawleigh was not then and there entitled to the immediate and exclusive possession thereof as the said defendant has above alleged &c. (and concluding to the country.)

18 Court overruled defendant demurrers to 2d, 3d and 4th Replications, and decided said Replications each of them good.

22 Verdict for plaintiff for \$430,65.

Bill of Exceptions.

TRIAL, MARCH 4, 1861.

2 & 29 Plaintiff to maintain the issue on his part introduced and read in evidence, the writing set forth in the first count of the Narr.

Plaintiff Rested.

30 Defendant called as witness—

David C. Rawleigh, sworn, said he knew the parties plaintiff and defendant (said paper shown witness), I know this paper—I was present when the defendant signed it, nobody else was present when he signed the paper. Haines the plaintiff was not present. Defendant signed it at his Store, West Randolph St., I know the articles mentioned in this instrument, and where they were at the time this instrument was signed by the defendant, they were at my house

on the corner of West Ann and Washington Streets, they had always been in my possession. I kept house, these articles in this paper mentioned was most of my house-hold furniture, I bought all those there as I wanted them, some of the articles I have always had since I began to keep house and some I bought since—they were there in my house when this paper was made—my mother was home and sick there at the time—Have always been at my house, and those articles were there until last September and after the death of my mother and my wife, they were stored on Market Street for a spell, then my brother James took them to use and has them now most of them, until after the death of my wife and until they were stored, they never have been out of my possession—they never have been
 31 in the possession of the plaintiff—and they never were in the possession of the defendant—or did I ever deliver the possession of them or either of them to him, nothing was delivered to him defendant at the time he signed the paper or since.

32 Cross-Ex.—I saw defendant sign this paper—signature his. I first saw the paper at store of Heart & Rawleigh—I took this paper to defendants store and asked him to signed—he done so at my request—I brought it back after it was signed and delivered it to Mr. Haines to be delivered to the plaintiff—and was in possession of it June 20th 1859.

32 Plaintiff here produced and offered in evidence a paper pur-
 33 porting to be an assignment by said David C. Rawleigh to plaintiff, dated June 20th 1859, of all the property of said Rawleigh to plaintiff for the benefit of his Rawleigh's Creditors and offered to prove
 33 to 39 by witness the execution thereof, that the property in question was included therein, and the plaintiff as the assignee of said Rawleigh
 43 was about to take possession of said property by virtue of said assignment when at the request of said Rawleigh this said instrument declared on was executed and delivered, and that the said defendant permitted said property to remain in the possession of said Rawleigh at his instance and request upon the execution and delivery of said instrument declared.

Defendant objected. Objection overruled and defendant excepted, I made and executed that assignment to plaintiff at the time
 43 it bears date. I was the owner and had the property in my possession at the time—(assignment was hear read in evidence, and is in the usual form conveys all the property, both real and personal property of Rawleigh to plaintiff—"in trust nevertheless and to and for
 35 "the uses interests and purposes following that is to say, that the "said party of the second part shall take possession of the property hereby assigned or intended so to be, and shall with all con-

"venient diligence and despatch sell and despose of the same at public or private sale as he may deem most beneficial to the interests of the creditors of the said party of the first part and convert the same into money," "and shall &c. collect all the debts &c." "and with and out of the proceeds of such sales and collections" pay &c. the creditors.")

43 QUESTION. State whether or not E. M. Haines and Capt. Kennedy were about to take possession of the property in question for the plaintiff under this assignment from you to plaintiff when this instrument in question was given, and under what circumstances said instrument was made and delivered and what was done with the property on the execution and delivery of said instrument in writing.

44 Objected to by defendant. Objection overruled and defendant excepted.

E. M. Haines and Captain Kennedy came to my house with the assignment to take possession of the property and was about to do so for plaintiff, I told them I wanted to retain or use it, and I proposed to get the defendant to become responsible for it if they would not remove it. I agreed to meet E. M. Haines at the store of Heart & Rawleigh and arrange it—I did so, E. M. Haines drew up this instrument in writing (declared on) and I took it to defendant to sign it and returned it to E. M. Haines to be delivered to the plaintiff—the property was left and remained in my possession—I went to Pikes Peak last April and returned Oct. 13th, last—this property all the time was at my house.

Defendant rests.

45 Plaintiff called E. M. Haines, sworn testified—am an Attorney—brother of plaintiff, as the agent of plaintiff I went with Kennedy to take possession of the personal property mentioned in this assignment and this instrument—the property was at Rawleigh's house—we called and saw him—I told I come to take said property—Rawleigh said he could not spare it then, and proposed to get defendant or some one to be responsible for it if I would not remove it—we agreed to meet at the store of Heart & Rawleigh and arrange it—I drew up this paper declared on. I delivered it to Rawleigh at the store, to have him procure it signed—Rawleigh took it and returned with it signed and I delivered it to plaintiff. I left the property where it then was at Rawleigh house.

46 After the time to deliver this property had expired I called on defendant, showed him the paper and told him I called on him for payment of the same. Defendant said, he was not holden to pay the money, I must take the property, I asked him if he would deliver it said he would, he said he could deliver it—I told him I would take it, to deliver at plaintiff's

house by a day then fixed, he did not deliver it. Another time, he told me he had concluded to do nothing about it, that the matter was in charge of Lawyers &c., when I first called I understood him to say, he had the property somewhere in a building under his control and could deliver it.

Cross-Examination—it was after June 1860 I called on defendant, I called at his store—he did not say he had it in his possession, but that he said that the property was somewhere, where he could get it, and that he would deliver it—he did not say where it was but would deliver the property—I wanted to get the money, and when I called this conversation was.—

47 John M. Kennedy sworn for plaintiff said, at the request of plaintiff I went to the house of plaintiff and made an inventory of the things, it was a few days before this paper was made.

Cross-Ex.—said was Captain of Police under Haines, I did not do any thing with the property, only to look over it, see what was there and inventory it.

47 James Rawleigh sworn for defendant—said am brother of David C. Rawleigh. I know the articles of personal property, and where they have been all the time or until lately. I lived with my brother at the corner of Ann and Washington Sts.—These articles were never taken out of the house or out of my brothers possession, mother was there and sick and died just before David came home—in June, July and until she died, some of the things were used by her.—Defendant never had the possession of
48 any of the things nor did plaintiff, they are some, and most of them, in our possession now.

Plaintiffs Instructions.

48 1st, That the assignment David C. Rawleigh to the plaintiff read in evidence bearing date 20th day of June 1859 entitled the plaintiff to and gave him the right of immediate possession of the property enumerated
Given in said instrument in writing read in evidence as against said Rawleigh and conferred on the plaintiff the right to dispose of the same to the defendant in the manner in which he did by instrument in writing introduced in evidence.

49 2d. If the jury find from the evidence, that the goods and chattels in question were transferred to the plaintiff, and that he was entitled to the possession thereof at the time of the execution and delivery of the instrument declared on, and if the jury further find, that the plaintiff was about to take possession thereof and that thereupon Rawleigh procured
49 the defendant to execute said instrument, and that Rawleigh after the execution of the same by arrangement with the defendant, continued in possession of said goods and chattels, then the possession of Rawleigh
Given was the possession of the defendant, and it became and was the duty of the defendant to deliver up the goods to the plaintiff or pay the sum of money according to the condition of said instrument. The arrangement

between Rawleigh and the defendant if proved; constituted a sufficient delivery to entitle the plaintiff to recover for a violation of his agreement.

Given 3d. If the jury find, that the property enumerated in said instrument in writing declared on and read in evidence, was in possession of said Rawleigh, and that plaintiff was about to take possession at the time
49 the defendant executed the same with the consent and instance of Rawleigh, and thereupon the defendant voluntarily consented to allow Rawleigh to retain the possession thereof, then this was a sufficient delivery by the plaintiff to the defendant to entitle the plaintiff to recover in this action.

To each of the above instructions defendant excepted.

Defendants Instructions Given.

Given as Amended 50 If the jury should believe from the evidence, that plaintiff gave to defendant the right of possession of the property yet, if the jury further find said John C. Haines did not in fact give defendant the actual possession "OR CONTROL" of the property, and that said defendant has not ever been in the actual possession "OR CONTROL" of said property, in question then the law is for the defendant and he is entitled to your verdict.

(To the above amendment defendant objected.)

Defendants Instruction Refused.

Refused 51 1st. If the jury believe from the evidence, that the property in question never came to the possession of the defendant Leverenz, then the law is for the defendant and he is entitled to your verdict.

Refused 51 2d. If the jury believe from the evidence, that the plaintiff held the property in question only as the assignee of D. C. Rawleigh, and for the benefit of said Rawleigh's creditors, then the law is for the defendant and he is entitled to your verdict.

Refused 52 3d. If the jury believe from the evidence, that the plaintiff John C. Haines in his personal character never had title to or possession of the property in question, and that D. C. Rawleigh had such title and right of possession as against said Haines individually, and that the same has always remained in said Rawleigh's possession, then the law is for the defendant and he is entitled to your verdict.

Refused 52 4th. If the jury believe from the evidence, that at the time of the execution and delivery of the writing in question by the defendant to the plaintiff, that the property therein mentioned was in the actual possession of D. C. Rawleigh, and has ever since remained in his possession, and that he refused to deliver it up, then the consideration for such undertakings and promise by the defendant to plaintiff has failed and the defendant is entitled to your verdict.

5th. If the jury believe from the evidence, that the defendant signed
 Refused the paper sued upon by request of David C. Rawleigh, and that he re-
 52 ceived no other consideration from plaintiff, then the law is for the defen-
 dant and he is entitled to your verdict.

7th. The court were asked to instruct, that plaintiff could not recover
 Refused unless defendant was proved to have received the property in question,
 53 that the proof or pretence of any other consideration would not do.

8th. The court was asked to instruct if the jury found the facts,
 Refused that plaintiff being the assignee of Rawleigh for the benefit of his creditors
 53 and had not taken possession of the property. He was not the owner
 and could convey no title to defendant.

10th. The court was also asked to instruct, if the jury found the
 Refused facts, the plaintiff being the assignee of Rawleigh of the property in
 53, 54 question for the benefit of his creditors, placed such property by said pa-
 per sued on beyond his reach and the reach of the creditors until June
 1860, then said obligation was void and contrary to the statute.

11th. Also requested to instruct.

Plaintiff as assignee had no authority to despose of property under
 Refused the assignment by such an instrument as declared upon &c. and whole
 54 proceedings void &c.

Refused 12th. Embraced in the above.
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55 Defendant excepts to the above refusals of his instructions.

55 Defendant moves for a new trial over and ex.

23 Motion for new trial in writing.

A. GARRISON,

Attorney for Appellant.

Grounds of Error.

The court erred in overruling demurrer to Replications to 2d, 3d and
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A. GARRISON,

Attorney.

Supreme Court
Gustav Severenz
vs
John C Haines }
//
Abstract

Filed April 23-1863.
Leland
Clark

A. Garrison
Atty for Appell