Supreme Court of Illinois

Hathorn et al

VS.

Lewis

71641

John Hathorn eta Sette Liwis

United States of America & State of Illinois Have County I'm Pleas before the Honorable Asaac 4. Wilson Indge of the thirteenth Indicial Circuit and presiding Judge of Kane County Circuit Court in the State of Illinois ara regular Dermi of said Court begun and helib at the Court Housen Genera in daid County on tho Eighteenth day of January in the year of our Lord One Thousand Eight mudred Present The How Isaac Illian Indge Edward & John Steles atten George & Corwin Sheriff. Pant M. Might Clirk Do it Remembered that herelofore to wit on the 10th day of December al 1857 there was pled in the Office of the Clesh of the Handonly Cin - Cut Court an affidavet which is in the words and frances for lowing to wit State of Allivis & Beth Lewis of said County being duly sworn we oath says that he is justly entitled to the possession of the following described goods warrs merchandin and property

[2776-]]

which are unlawfully detained by John Hathorn + Losen Heath to wit! 12 pe imphana asserted colo 20 " Calie assertent " 20 yds yellow flamel olw 20 ydes White Flamel 20 yds of & diaper. In a hundred pair of Shoes consisting of gailers boolers and shoes one dozen mens calf boots two dozen mens heavy bots here Bay State Shawls one black Selk show two Summer Thawls Salu Stripe three Jancy Shawls liveler coats mens one". dozen pair pants one dozen vesto - dozen 1/2 drawers one dozun'/ under shirts fifty sich nandker chiefs len black stary's 1/2 dozen stocks four sell bonnets one case of nellow a osiciny and gloves of different kinds book punsling 5-yells Some of bard mull 50 yds dottet mull 12 rolls of paper Cambric 50 gds Common Cambrio 60 Lehool books 3 frees of Changeable Lell one piece of pland like me black Ild Curtain calies 4 pieces three pieces of deminis 500 yds of Delames 100 yds land mee four pieces of bleached musim how preces turkey red Calico so cotton handerchiefs 1000 bot Balts 4 dez Wadding 21 % bot Flamel 4 Reams wapping paper I Keam Letter one one of fools cap paper Hrugs I far agamo =ma one Shr Natro and Jinch Opiam me Squills me wine Cholcici me Dino Camphor me tun Paragorie Essences one far Peppermint one Cinna = mon one Clores one Janey one Verurian bank one Quinine one Morphine one Execut calls one le Fartar

3.

one le Soda me Sulphur ne antimon one Vitrol blue one white one 2. 3. acril 6 dog Il Sisters I for Crosote ne Oil Croath me oil Origanum one oil chike one Wintergreen one for Aybe Symp I base of Gurces Matches 15 gross Screws 2 Euch of 2-11/2-1/4-1-1/2-3/4 buch 2 dog Western Locks 6 mortice Locks 6 bab Locks 4 doz door Lateres 10 Prads 25- paps those drails 4 parts of Kego of walls 10 finishing 8 Juishing 2 200 6 pump Reels ofratures 100 Rump Chain & Harumero 2 hand Daws 6 Coffee Mell 6 doz Coffin huges 1 gross 3/2 mch Loose frints Butts 1. 2/2 Anch Love frint Boxts 2 gross fast fouts 2 wich & I Inch 2 doz Japannes oil Lamps I doz oron Candlesticks 1/2 doz Brass Candle Theks 1/2 doz axes Crockery 4 doz bowls 8 doz Plates 2) White Dew setts I mulberry do I doz glazub mugs I white Mings I day O prititions 1/2 doy White Vitcher Small Dige 1/2 " - " Large " 1/2 " blue " 4 doz white Cups o Sancers 2 doz blue 1 doz Cream Jugs 3 doz Bumblers I doz Peh Cruetts I doz Musters one doz Vinegar 2 Castors 4 glass Can llestreks 4 Spilloons 4 log Chains 4 for truce Chains 4 halter Chains 4 dog chams 6 doz Collar 4 doz Plush Caps Idoz Cloth caps i 103 gurbody Nenog Hatts 6 silk Hats 6 Wire ocurs 8 pape choc boves it doz glove othering fores - Sill cords + lassels asserted Collars 6 Hat Boxes

Too flo wall paper assorted Collars & gratity 1 Pr Trey furs 1 Pr white spotted Small 1 dog Buch mitts one doz Isloves mens 2 dog vool /2 14020 1 doz Ladies Wood Hozo I doz Children Wood Hogo I large looking glasses I doz Manur forts Thort handles 1/2 doz Long handle manur forms 1/2 dog chrels 1/2 chales 1/2 dog How 100 gul Stone wars 101 Theek June 4 molasses gates 500 Saleratus in papers 1 Keg Junger 8 drawing Knives 10 setto Kurses o Fortes & 10 dog Fable o poons 6 dog Fen 4 Ground Cummon 2 Spice 2 pepper 8 cans fonder 1/2 Keg powder of powder Caw 1/4 gross Vial Corks 4 doz glass of ars for Drugs. 4 gold breast pur it sett Ear rings 6 Processors 4 biller Knives 1 pl plane double width dress goods one black alapace I figured 1 pls blue Merino 1 brown 1 green one Coburg are yourse and that the same have not been taken for any tax assessment or fine levied by virtue of any law of this stile nor seaged under any Execution on attachment against the goods and chattels of this affrant liable to Execution or allachment Qurom + subscribed before mu this 10th day of Dear 185; Seth Lewis Fill right Clim Milid Der 104, 1857 P. Post right Cling.

4.

and afterwards to wit on the said 10th day of December ad 1807 there was filed in said Clerki Office at Raint

Which is in the works and figures following to with Mate of Illinois & Ibane Circuit Court Grant Gang Derm 1858 Deth Lewis complains of John Huthorn and Loxen Death their they at Mano County on the 9th day of December ad 1807 bot and unlawfully detained the goods wares merchandise and property of the said out Lewis to wit: 12 fps gingham asserted Colors 20 ps Calieo asserted colors 20 yds yellow flamust 20 do white do 20 & Diaper 200 pro shoes assisted consisting of gaiters booters and shoes 12 for mens calf boots 24 pr heavy Boots 3 bay State Shawls I ben sell Shaw 2 Dunner Shawls datin stripe three guncy Shawls 12 mens conts 18 pr pants 12 vests 18 pr drawers 18 under shirts 50 och halfs 10 Hk scarfs 6 stocks 4 sell Bonnetts one case of Rabbons hosiery or glass of different Kinds 75- gds Borto Muslin Barred Mull 00 you's dollert mull 12 rolls paper cambrie 30 yds common Cam brief 10 School books 3 ps Changeallo site Ifes pland sell 1 ps black sillo 4 po Curtain Calico 3 po Denins sorgels Delaine 100 gds Delaines 4/2 bleached muslin 2/21 turkey red Calico 30 cotton helps 100 lbs cotton batt 4 dog wadding I ho ber flowned 4 reams wrapping paper ! bram letter paper one ream goods cap paper. Drugs o medicines I far agrea ammonia 1 Sht hiere 1 truck Opiam I Squells one far Cholerci I buch. Campber I tunt Paregorie I far peppermint Est, 1 do

Cinnamon 1 clores 1 tanzy me Zumie me perurian barto vio Marphine 1 Grow salts 1 Cream tartar 1 C Soda 1 Julphur 1 antimum 1. bliv vitrol 1 white 1 3 acid 1 doz & Bitters 1 dar Crevote 1000 Craath 100 Origanum 1000 Speter 1 will bergreen I far hire Syrup I case l'erces Malches 15 gross Soreus 2 Each of 2 1/2 1/4 1. 1/2. 3/4. (uch 2) doz Western Locks 6 motice Looks 6 pallochs 4 doz door lateties 10 Brads 215 pp thou mails 4 parts of Kegs mails 100 finishing 80 finishing 1200 1 pump Keels of stures 100 fump chains & Harmers 2 hands aws 6 coffee Mills 6 doz Coffin hunges 1 gross 3's mich loose joints talts 1 do 2/2 wich loow joint 2 gross fast four 2 meh o I meh 2 doz jappan el vil lamps I doz from Candlisticks 6 brase do 6 axes = Crockery-4 doz bowls 8 doz Klales 2 white tow setts 1 mulberry do I doz glazed Mugs I doz white mugs I doz O Vitatiers I while petcher small 6 large to blue 4 doz white cups & saucers 2 dez blue \$1doz cream jugs 3 doz Inmblers 1 doz pepper cruetts 1 doz Mustarb do 1 doz Vnegar do 2 Castors 4 glass candlethetes 4 Spettons 4 log chains 4 pre truce chains 4 nather Chains 4 dog Chains & dog Collars 4 doz Plush Caps I doz cloth Caps 4 doz fur body Heny hats 1, sell hats 6 wire Dieves 8 paper Thos boxes 4 doz gloves thosing boxes such cords Cassels assorted collars I hat toxes 200 ps wall paper assorted colors / for gray gurs I white por spotted small I doz for buch milleus I doz for gloves mens 2 doz wood " he

I doz ladies wood how I doz Childrens' worl how 2 large love and glasses I doz mumin forthe chot traulles '2 doz love do ! Shovels 6 shales 6 hoes 100 gals Sone ware 100 2 Sheet Line 4 molesses gates 50 le Talendus in prepare 1 Reg langer 8 de awing Sunces 11 sett Shives oforthe 10 doz latto shows 1, doz ten shows 11 2 from Cinnemon 2 Spice 2" pepper 8 cans Ponder '2 Reg fronder I produce can '4 gross reals cortes 4 doz glass fair 4 gold breast pais 4 gold coast pais 4 set learnings 6 for scrivers 4 butter Ruires 1 for Plant donoble with class goods 1 Rach alphan 1 frequents 1 for blue ments of the value of me I do green 1 Coburg 1 one Lyonero of the value of me I housand and still detains the same against Sureties pledges and the said Lewis therefore prays that a writ of replevier may usine for

The same of Plate ally of Pleff.

Filis right Cling

Aust afterwards to wit on the said 10th day of December 1857 there was issued ont of the Office of the Clark of oaid bank and under the sal thereof a writ of replevin which is in the name and figures following to with State of Illinois & Taple of the State State of Illinois & of Illinois to the chariff of the said.

County Incling:

There is Sth Lewis

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7.

9.

Six doz German / Titters one far crevioto one oil bruath one oil Origanin one oil spike one withter Green one far Hive Syrup one case of Pierces matches 15 gross Soreus 2 Each of 21 meh 1/2 1/4 /2 3/4 mich I doz western Locks & mortree Locks & padlocks & doz door lateties 10 to Brads 20 paps steve nails 4 parts of Meyo Smals 10 finishing 8th Junihing 12 th 20. 6 Rumps Reels Thistures 100 ls farmpoham 8 Hanneners 21 tandsows 6 coffee mulls 6 doz coffin hunges 1 gross 3/2 unch loose founts butts 1 2/2 unch loose joint 2 gross gast fruits 2 mich + 1 mch 2 doz Sapaned oil Lamps 1003 . Unin Candlesticks 1/2 doz brass Candlesticks 1/2 doz aves, Crockery 4 doz bowls 8 doz Plates 2 white I'm Setts 1 Mulberry do 1 dz glazed Mugs 1 white mugs 1 dz C. Vitchers 1/2 doz white Pitchers small size 1/2 large 1/2 blue 4 doz white Cups + Saucers 2 dz blue 1 dz cream jugs 3 dz tumblers / dy pepper Cruett / dz Musland 1 doz Vinegar 2 Castoro 4 glass Candletheks 4 Spettom 4 log chains 4 pair trace chains 4 halter Chains 4 dog Chains le dez Collars 4 dz plush Caps 102 Cloth Caps 4 doz fur body heavy hats 6 sell hats 6 wire sers 8 pap show boxes 4 dog glove + hosieng boxes of the cord or Jassels assorted colors to hat roces 200 pieces stall paper assorted Colors ognatity 1 pr gray gurs 1 white Spotted Intall 1 of buch mitte one dy gloves mens 2 dz wool 12 how 10g Ladres wood hose 162 Children worthogo 3 large looking glasses ida mamuro forks thorthandles 1/2 doz long haw les manure faits 1/2 dog Shovels 1/2 Shades 1/2 dog hoes

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10.0 gal stone ware 100 lbs Sheet Zin 4 molareds gales 50 lb caleratus in papers 1 Keg Binger 8 drawing Kuwes 10 sett Knives of fortes 10 dz lable spoons 6 dg toa - 4 ls ground Coma oun 2 Spice 2 pepper 8 Cans Powder 1/2 Keg Powder 1 Powder Can 1/4 gross vial corks 4 box glass fars for drugs. 4 gold breach pins 4 sett carriage (pair ocessors & butter Kures / Riece plaid double with dress goods - I black alpaca 1 figures 1 Rs blue merino 1 brown 1 green 1 Coburg 1 Lyoneso of the value of one Thousand dollars. Therefore we command you that if the said plantiff shall give you bond with good and Sufficient security in double the value of the said good and chattets as required by law to prosecuto his suit in this behalf to effect and without delay and to make ferlure of the said goods and chattels if return thereof Shall be awarded and & sand and keep you harmless in repleying said goods and chattels you cause the sail goods and chatter to be repleved and delivered with sand plainty without delay. and also that you Dummon The Sail defendants to be and appear before the Coronit Court in and for said Country on the first day of the next Cour thereof to be holden at the Cour House in said County on the thirt monday of Jamary next to answer Sail plaintiff in the premises. And you have then and there this with with an endorsement thereon in what man. -mer you have Execute to the same together with he tond which you shall have taken from the said plaintiff as refere

10.

Commanded before executing this wit: Witness Fand Rwright Clerk ofour said Court and the seal thereof at mura Lew in said County the 10th day of December 1857 V. Might Elepin said writ appears the following endorsement Executed the within wit this 11th day of Decem ter ad 1857 by replexying the following described froperty it vering a part of the property mentioned in suit writ and delivering the same to the plaintiff he having given bond which is hereinto attached and by realing the same to John Drathom and down Heath dependants this 11th day of December 1857. Den part preis Gingham me piece grigham twenty fices of calies Three bay state Shawls 2 & anner Shawls datin stripe 2 Janey Shawle three cills bonnetts one case Ribbons Hossing + sloves of different lands three pieces carbonull sixty fares of boots muslin leve freces dolle to muld 17 ydards de califier Eight pair buckskin mitts 10 rolls paper Cambric fifty com. mon Cambrie 14 ochool Books 2 pieces changeable sel 4 preces Curtain Calico hos preces turkey soil. Calico 200 garde delaine 4 pieces bleached muelin 32 Cotton handker - chiefs 121 mens coats & pair pants 4 vests 1 pries black allahacha I figurid allahacha ne mens plant double width dress goods In blue Menins I green I coburg 12771-6]

1 Lyoners 129 pairs of Shoes 1 pair heavy boots 1 gar of time paragores 1 time Cumamon / Cochichin 1 Squels I Peruvia bart / Epson Jalts I Cream tartar 1 Julphur / antinony / blue V driol - a white ! 2. 2. acit / Crevsote / winter green 5 12. german betters 5/4 gross scrows 5 mortise locks 3 dozen loor latetus 224 papers those nails 6 pallocks of Hummers 2 handsaws. 3 Coffee Mulls 10 pair butts 11 orl Lamps 1, doz Collars 4 dog chains 4 halter chains 4 log chains 6 frump mils o fixtures 101 lbs partifichains 6 hoes 3 spides 2 Shorels 100 gallons Monoward 2 2 towls 3 dozen Platis 2 to sett white of glazzed Mugs I small white Mug 10 Cream pitchers I white fitchers 4 blue Pitchers 21/2 dozen Cups + Jancers 20 blue cups a travers three Ore an jugo me dozen cruetts inegar 4 cruetts - pepper 6 wire Leeves 6 drawing Ruises 2 Detts Kuis forks 4 dozni table shows o'dozni tea shows 11/2 lls Cumanus ground 2 lbs Cepper 2 assispice o cans Conder 11 Plushloups, 8 cloth Caps 2 Sill hats 29 gur hats Dog wall papir 3 pieces denins I case Matches the remainder of the property mentioned in said with not found.

by E. S. Allew Deputy

Attached to said writ appears a bond which is in the words and figures following to wit:

Mow all Myn by these Presents hat We Both Lewis

13.

Harnes Lewis for and Samuel Hawley of the Country of Bane & State of Minors are held and firmly bound outs George & Country of Kane in the State of Minis and whis successors in Office recenters administrations and assigns in the penal sum of Down Thousand dollars lawful money of the Hentet States for the payment of which sum we do hereby fointly and severally build wirselves our heirs recenters and administrators

The condition of this obligation is such that whering on the tenth day of December in the Year of our Lord One Thousand Eight hundred and lifty seven the said Deth Lewis sued out of the Circuit Court of Kano County a writ of teplevin against John Halkon and Loren Neith defendants for the receivery of the following described goods and Chatleds property towit; 12 frees gingham asserted Color 20 preses calver resortes . Colors 20 gds gillow flamed 20 yds white flamed 20 yds of. Deaper. 200 pair Shoes consisting of gaiters bothers & shoes one doy men boots calf two mens heavy boots 3 bay State Thanks me black out Shows 20 numer Showls Datin Itripe 3 fancy Drawles 121 Coats linens 1/2 doz pour punts 1 doz Vesto 1/2 doz drawers 1/2 doz undershirts 50 sell hand -Kerchiefo 10 black & carfs 1/2 dog Stocks 4 such bonnets I care of Rebbons hosiery & sloves of different hunds book muslin 75 gds some Bardmull or yards dottet mull 12 rolls paper Cambrie It yds Common Candrick 60 School books Spices of Changeath Silk I piece of place set one Black silto Curtain Calico 4 pieces 3 pieces of Denius 500 yds of

2 gross fact joints 2 wich + 1 inch 2 doz fafran oil lang.

1 doz iron candle stietes 12 doz brass candle ctiets 1/2 doz

axes (Crockery) + doz bowls 8 doz Plates 2 white

a sets 1 Temberry do 1 doz glazed Mugs 1 white Manys

cream Pitchers 1/2 doz white cream futchers

small size 1/2 largo 1/2 doz white cream futchers

small size 1/2 largo 1/2 blue 4 doz white cufs + seman

2 doz blue 1 doz cream jugs 3 doz lumbers 1 doz peffer

cruetts + 1 doz mustarto 1 doz binegar 2 Castors 4 glass

Candle Stick 4 chittoons 4 log Chains 6 dog Collars 4 dog Plush caps I dog Cloth Caps . 4 dog fur body sheavy hald 6 selk hats 6 wire seeves 8 baper Shoe boxes 4 doz glove thoseing toxes such Cord + Fassels asserted colors on hit boxes 200 pieces wallfigher asserted colors of quality one pair grey gurs I white Spolled Small I doz buck mittens (mens) I doz gloves (mens) 3 doz wall Hose Idoz Ladies wool How Idoz Children's wool Hore I large looking glasses I doz manure forts that handles 1/2 doz longhandles manur gorks 1/2 doz chovels 1/2 doz chades 1/2 doz Hoes 100 gallons stone ware 100 pounds Theek fine 4 molacses gates So pounds Saleratus in papers / Key Gunger & drawing Knives 10 sett Knives oforts 10 doz lable Spoonshdug tea 4 hounds ground Cimamon 2 Spice 2 pepper 8 Caus powder 1/2 Keg bowder I powder can 1/4 gross vial cots 4 doz glass for drugs four gold breackpus 4 sett Carrings 6 pair Scissors 4 butter Muires i free pland dress goods double writth I black alpaca 1 figured prece blue Merino 1 brown 1 green 1 Coburg / Lyonew Now if the said Deth Lewis plaintiff shall prosecuto his said suit to Effect and without delay and make return of the said property if return thenof shall be awarded and saro and keep harmless the said Thereff in replenying the said property their this obligation to bevord otherwise to remain inful force and Eggs

Helwers annum.

day of December aD 1857

Wilium Seth Lewis Red
Farmel Hawley Red
. Filed Dec 12 1857 PRinght Clery Und afterwards to with on the 3th day of Janus. any aD 1858 there was felled in the said office of the Cless of said Court a Declaration which is in the words and figures following to wit; Date of Ilmois Mane bounty of Name Court Court John Nathorn & Loren Heath were summed to answer of the Lewis of w plear wherefore they tooks the goods warrs merchandize chattels and property of the sand Lewis and unjustry detained the same against Sureties of bledges until to and theregoon the said plain tiff by thato his attorney complains for that the said defendants on the 9th day of December al 185, at the County of Mane aforesaid work the goods chattets wares merchandize oproperty to wit; 20 ps Calico assorter Colors 12 po grugham assorte to colors 20 gds yellow flannel 20 yds white do 20 jds & Diaper 200 pto Three gasters + boolees 12pr mens Calf boots 24pr heavy boots 3 day Stato chawls me our oll chawl 2

Formers Shaw Satin Stripe three fancy shawls 12 mens costs 18 pr. Cants 12 vests 18 pr drawers 18 under Shirts or sello hakes 10 blh scarge 1, stocks 4 Sell bonnets one case of rebbons hosiery & gloves of different kinds book muslin some of barred mull 50 yds doller muld 12 rolls paper cambric 50 yds Common Cambrelo 60 Achool books 3 hs changeable Sels 1 ps pland sell 1 ps Ruch sello tops Curtain Calies 3 hs derums 500 yds delaine 100 yds delaine 4/2s bleached muslin 2/2s history red Calico of Cotton hatels 100 lbs Balts 4 dog Wadding 2 ps Cot flamell 4 Arans wrapping paper one ream letter fraper pre Fram Jools cap paper Drugs + Medicines / for agna anumonia 1 Spt nitro one touch Thum one Sopulls one were Cholerci one tinch Camphar one und Represent Varegorie one dar pepperment Es me Cumamon one cloves one Tanzy one beruvia bando one grining and morphine and opson salts me to Sartar and Soda / Salphur are antimony me blue Vitriol one white one 30, acid I doz & Better one far Creosote one oil Craath are Oil Oregamm one Oil Speke one wintergreen one for Hire Syrap one case of Pierce's matches 15 gross Sorews 2 each of 2 mich 1/2-14-1-2-5/4 mich 2 doz Western lock 6 Merlie Locks 6 Vallocks 4 dog door lateres 10% made 25 paps thre nails 4 parts of Mego of mails 10d finding & finishing 120 200 6 pumpeteels ofix lunes 1000 bump chain 8 Harmer 2 hande aws 6

doz Coffin hinges , I grow 3/2 Inch loose fruit buts 1 2/2 wich love founts 2 gross fast joints 2 wich + 1 unch 2 doz japanned oil lamps one doz oron Candle Streks 1/2 doz brass candle streks 6 axes Crockery 4 doz bowls 8 doz Plates 2 white lea Setts 1. Mulberry do I doz glazed Mugs I doz white Mugs I doz & Vetchero & white Vetchers small 1, large 1, blue 4 drz white cups & someins 2 dozblue I doz cream jugs 3 doz tumblers I doz pepper cruetts 1 do mustard 1 do vinegas 2 Castors 4 glass Candlesticks 4 Shittoons 4 log chains 4 for trace chains 4 halter Chains 4 dog chains 6 doz collars 4 dog plush cops & doz cloth caps 4 doz fur body heavy hats 1, sello hats 6 wire sieves 8 paper shoe boxes 4 doz gloves thisiery boxes och Cord trassels assured Collars 6 hat boxes 200 ps wallpapers assirted Colors I prancy furs I white for spotte to small I dog for buck mitten, I doz meni, bloves 2 doz inak half hose I dog Laties wood hose I doz Chillenns do 2 large looking, glasses I doz manun forks Short hand les 1/2 dog long do 1 Chevels 6 Shades 6 hors 100 hal alond war 160 2 Sheek Zuc 4 molasses Gates 50 ll caleratus in papers 1 Key Dinger & drawing Knives 10 Act Knives oforks. 10 doz lablo spoons 6 do le a spoons 4 homo Cumamon 2 de Spico 2de peppler 8 Cans of powder 1/2 Keg booder 1 powder Can 1/4 gross vial corks 4 doz glass pars 4 gold reast pris 4 set Carrings 6 pr seisen 4 butter huires

19.

I he Plaid double with dress goods I black alpace I fragueral I ps blue menino I ps brown I do green I Coburg of one Lyonece of the said plaintiff of great value to with of the value of me thousand dollars and unputty detained the same against sunties to until to when four the said plaintiff sais he is infured and has sustained doubt are and therefore he brings suit of one thousand dollars and therefore he brings suit or

MBRento

ally re

Filid July 5 7808

Clair afterwards to wit on the 29th day of faum.

- any a2/858 there was filed in the said clerks

office certain pleas which are in the words and

figures following to with

Seth Lewis Aum by lein bourt

from Hathorn &

Amusery Dirac for 808

John Hathorn &

Am b the said defendants

by mayborne & mith their allowing

that they did not take the words chattas for perty

of the said plaintiff in the said declaration mentioned

or may or either of them in manner and form as the

or my or either of them in manner and form as the

or may be as here; complained a games them

\$1277540

and of this they put themselves upon the country so. May forme the country and the Peff doth thelite Lefts altys Plats Etial 20 Coul for a further plew in this behalf the said defendants say action non because they say that the goods Challets oproperty in the said declaration men = - times at the said time when re was the property of the said defendants and not the property of the Sound plaintiff and this they are ready to verify to May borne fruits for Defter End for a greather blew in this tehalf the said defend = ants say acts now because they say that at the sand time when to the said plaintiff was not the Owner nor entitled to the possession of the dans property in the said declaration mentioned tof This they put themselves upon the country to Mayborner fruith Filial 29 th Jany 1808 P. Assright clim afterwards work on the got day of Debrua my ad/808 there was filed in the said Clins Office a Replication while is in the words . troms following towit

Seth Lowis Kame Cir Court any John Hathorn Replevin 21. VLoren Healt And the said plaintiff as to the said plea of the said dependant seemlly & thirdly above pleaded says preclude non became he says that the said goods + chattels at the time When so were the property of the said plaintiff and owt of the said defendant and this he prays may be enquired of by the Country 10. Plato Erab. Fileworth Clerk Und afterwards with On the 10th day of February ad 1838 The same being one of the days of the Jehn: - any derm of sand Court for said year the following among other proceedings werehad in said Court and interest ofreed to wit! Sohn Halhorn Replexie Loven Skath I This day comes the Plainty by Herrington his attorney and the defendants by Mayborne their allowey also come and on motion of the Plaintiff it is ordered by the 512776-11

Court that a Juny come whereupon a Jung of 22, good and lawful men towit! Thomas & Clears George Scott Joseph Whipple John & Chambers & com Kront of Extore forefor b. Stephens J.R. Schmolds abner Currier L. J. Brily John alepangh John Posheler Who being duly tried elected and sworn also come and after hearing a portion of the evidence are allowed to disperse and ordered to meet the count tomosrow morning at nine oclock. Und afterwards to wir on the 11th day of Telmany ad 1808 the same being no of the days of the said February Term of said Court the following among other proceedings were had in said Bourt and intered of record to wit; Deth Lewis & Replevin. John Hathorn This day come again the said parties by their attorneys and the Jung herretofore empanuelled herin also come and after hear -ing the balance of the evidence arguments of coursel t medinations of the Court reter under charge of a Levore officer of the Court to con ider of their wordiet and by agreement of the parties it is ordered that

when the Juny agree they may reduce their verde

to widing sign and seal the onine well meet the Court

23. Comorrow morning at mine oclocks.

and afterwards to wit on the 12th day of February all 1858 the same being one of the days of the said February Derm of said Court the following among other proceedings were had in said Court and Court and Court and Court and court

SEth Lewis

John Halhorn

Replevin

Jany heritafore empanuelled horize also come and the find that he said defendants detained the goods and chattels of the Plaintoff in manner and form as the paid plaintiff high complained against them and after the damage of the plaintiff by reason of the premises at the sum of four hundred thereof five dollars. Therefore and the defendants by mayborne their attency come and more the court for a new trail hering.

Auch afterwards to wir on the 17th day of Debruary in the year last aforesaid The same being one of the lay of the said February Derus of said Court the following among other proceedings was had in said court and my freezed to wir:

100

Sest Livis Replenin John Halborn Losen Keath This day come the parties by their respective attorneys whereupon the plaintiff remits the damages assessed by the Juny hereto foro entered herein, Tuel the defend: unts' motion for a new trut commence on a be heard after argument of coursel the Court being fully advise overrules said motion to which welling of the Court the defendants by their coursel 'acepts Therefore it is Considered by the Court that the Plaintiff have and traver of the defendants their costs in this behay Expended and have Execution therefor afterwards come the defendants by Mayborns thur allowey and pray an appeal witho Supreme Court of the State of Selevin which is allowed by the Court on condition that the defendants file their feel of Exceptions and appeal bond within hvenly days bond to be in the sum of mothembrul dollars con - ditioned as required by Low with Lacharrale Hathorn Solomon White and John Hallom Sen

Hearch A 1809 there was filed in the said of frie of the Clerk of said Court a Bill of brechtins which is in the words and figures follow-ing to wit:

Kane County Circuir Court

Seth Lewis
Vo
John Wathorn

4 Loven Weath

Of the January Jenn of the Said Court for AD 1858 Bill of Exceptions

Paint of the Said Court for AD1858 to Will on the Said Court, the above entitled Cause Court for AD1858. if still bring one of the days of the Said Jameny Derm of the Said Knaw Court, the above entitled Cause Court on the iferent heretofores formed in Said Cause, And Thereufon and motion of the Said Cause and after the Emparentless to by the Said Cause and after the Emparentless of the Sury the Said Plaintiff is order to maintain his Said Cause of action while if we print therein offered

12776-13

in evidence the fallowing Evidence and testimony to wit In Ilain lift offered in eventiner a Chattel Mortgage in the Words by frigues following to wir. This Inden how made this wenty third day of October 1854 Dehven Levye W Alexander party of the finst part of the Jun of Virgil County of Name and State of the John of Virgil Same County " State aforeaid party of the Second part. Withuf eth that the said party of the fines fourt for aust in Consideration of the Sum of Sen dallains in hund paid received by the Said party of the second furt do grant burgain & Dell unto the Said party of the second part his heins all apeyrs the fullowing Loods and Challets to wir. all the Goods and Chattets of Every Kind and quality Prints Clothing Drugs grocerus medicines vendy much clothing dry good Hardwan crocking and all and Sungular Every article of articles in Said Store formerly owned by Selto Lewis and Situated on Block Iwo Lat four in Lodi Cane County Illinois. Ulso all the Goods "In Muterials of Every Kind "and description belonging to said Mortgager in Said Store during the Continuana of this Mortgage, also all accounts and males book accounts and undertedup or debt of any under edual or individuals in form of said Mortgagin dale o belong my to the hurty of the second frust also all the goods which may be in Store at the him when this Mortgap Shall be down your ath, On Span of Monses Color buy medium die black mane and

tail about Eight offen ald. Ulso our Hense from t planning Machin, tenanting Muchim, circular Saw apright to Saw and all Muchining belonging to said Pluring Mell and Machine Shop detuate in Said Shop or allactual thereto bring in Lode on the North Side of the Rail Road track between the Resedence of John Sichett and the Ware honer owned by Salomin White Keam County State of Illmos, et Means by to hald all and Singular the Goods and Chattets herein before granted buryament and sald unto the Said purty of the Oceand frank former. Sand Good and Chattets now remaining and Continuous in the propelsion of the Said party of the yourse part, in the saint down of Kingd. I windert always and these fresents are upon these express conditions that if the party of the fines part shall and do will and truly fray or cause to be pure to the said furty of the second punt the Sum of Own thousand Dix hundred & thirty deven dollars and forty fin cents from ath as follows; One note che aid punable on the Skinth of Nimber 1857, \$315 38 dollars, Our of hos hundred and forty din dullans pun able 26th day of November ASD 1857, Our of one hundred Eighty four dallans for payable December fifth AD1857. One Wendered + fifty hos dollars and difty four cents pay able danning Nine levelle AD 1858, One Hundred Six leen dallans for purable January Eighth AD 1858, Fin hundred and yorky two dullars for payable March 8th AD 1858. Fire hundred forty nin dollars to payable March 17 00 1858. Jour Hountred o four dallars to pay able 21 at

day of March AD1858. One Woundard fronteen dallans Too payable fifth day of april Ad 1858. then these presonts and every matter herein contained Shall cease o by mull I Word. But in once default Shall by much in the fragment of the said sum of money above mentioned, at the him atrivalimental for the payment of the Same or any frust thereof it should may be lawful for the Band party of the second part to take propepin of the sand goods "y Challets wherever the same shall by, and to sell o dispose of the Dann for the best free which can be ablant therefor at public Vendow or otherwier, giving six dup notion to the said party of the finer funt of the him and pluci of such sale and out of the money to arise by Such sale thereof to velaw the said sum of money about mentioned and all charges for Keeping said property and of Juch dallif or much there shall but the Surplus money (of any there Shall by) to the said party of the forest part. and it is hereby agreed by and between the said parties thus in case the said party of the first fact shall Sell apign or dispuse of or altemps to sell apign is dispuse of any of said good and Challets or vinour or attempt to rown from said bounty any of said Fronts and Chattes or if the dann shall be deveil upon or desgret by when of any Execution with or attachment or atter process against the Said farty of the finst part it Shall to may bulawful you the said frasty of the second fast to lake fupipion of the said good and Chatits and Lell the dawn in the payment of the said Sum of

30 Muny about mentioned in the manner aforasaid. In Webrief whereof the said party of the first part has here unto set his hund and seal the day and year first above Written G. W. Alexander Edd State of Allinois) Ihrs Mertyan was acknowledged bufor me by George W alexander this 22 m day of October A D1857. E. P. Roberton E. P. Roberton J. P. Filed for Record Oct 24 1854. at 4 Helock P.M. To the offering of which Chattet Mortgay in Evidence the Defendants by their Counsel objectit. Objection ormulal Definitional exceptit. E. P. Roberton who testified. Was a cluster of the Sener in Virgil in October last. this Mortgay was acknowledged before me, I have no meens of Known, whether it was executed before the acknowledgement Alexander Signed it before me. . Crap ex amind. It was filled up at the trin I finst Dan it. Jacob M armshing - I know the parties to this suir, Show lived in Lodi 2 years, & Know the Stone and gives mention in Mortgage - am Clerk for Lewis - Lewis sald the goods mentional [271-15]

in Mentgap to George W alexander about the 22 of 31, October last. - I was present at the true of the replin - Same South reflered as cornel by Mostage, I heard of the Sale by Alexander to the Defendants, I am inclimed to think it was about the of Many in grant December engo the of Morenter, last - I was present when demand was much by Lewis of the Defruidants for the Lords. It in about the 6th or y mon Documber on Wednesday Some three days after the sale to Defindunt. James Lewis and my oelf were with Setto Lewis. Mr Seth Lewis canis in and asked from Walturn if he had brught the goods of alexander he Said hi had. We then asked if he Knew that he had a Mortgap he replied that his brother had burn to Genera and his Lawyer Mr Maybon Said the Mortgap was not good. Lewis demended papepin. Halton said you will have to get it by Law and the extent of the Law. It was a varry Short him before that he had heard of it. Heard that My ander and Defundant Waltern war going in partners. that Hathow heard of the Murlyan otherto in Health, also heard that Wathing brother had been down to General. Oh Defend and objected to the last three answers of withef - objection overrulal exeption . Crap & annul. I that been Clerk for Lowis, I would the Stone when the Sale was made to alexander, the Sale 1000 much in the 22° day of October 185%. allegander

32,

went into investinte frapepine, Defendant Health was
his Clerk, Alexander commenced selling Goods at
once and Kepr right on selling like any other Store
until dale to Defaul ants, Plaintiff Lewis was in
and about all the time—live in Lorditions in about
the Store frequently after the sale to Alexander, Alexander
brught a bill of New York in Chicago to which were
fout right in Store a general full aportanie of Stores
to fill up the complete abortant of the Goods in Stores
Lewis Sales for week before he sald to Alexander
arrayor from \$300, to \$350. Alexander Kept undiffected
properties of Store and Goods from Oct 22m until Sale to

Waltern of Heath. I prasum the Good wars in the Jupepin of Waltern and Heath at the time the demand

was much by Lewis which I down to.

Sauford a Flumonar, Called -

Know George Walexander Slightly Known him Smer October last, Know of Alexander bring in the Store Spoke of Hosard him say that he had sald the Store and Goods to Wathorn o Weath the Defendants I was foresent when the invaior was taken a moved into aterement connected with the store after the Sale on the 12th of December, I was in and out of the Store while they were taking the invoice. I did not take sunch whee, I am not Compeled to Sudge of the memory of taking the invoice. Wathorn had a Book, White the Clerk called off the articles and also Sentins I Guess Weath and

33, Ulyander wir out tim and didn't Keep record. Alexander is not now in doch. We left between two Weeke. Was there at his home before his departure after the sale, (Question) States where alexander was Friday " Saturday before his leaving " Question objected to, overreled, Exception) He was in and out of the Thom. Luss State whether you Know if he was Secreting himself s" Objection by Defrudant, ormulal. and Exeception to ruling of the bourt. I the asked me to Short the door o said Churley Ihrall was after him The definitanto were out and in of the Store about the bussiness of the ston at the time. Quel State whether Either of the Defendant vesited alexander in any alter wond of the buildings" (Objected to by Dets. orrivaled and Exception taken) and I could not State, Ithink Senking "Il White Saw him. (The Deformalants presented their general objection to the admission of any Evidence relation to the acts of alexander Subsequent to the Sale or convications of him o the Dets, objections overmed and exception (aken). Think that alexander was not to be generally deen know of some bring represent admittance by the blerks of the Defrand out to the part of the Ston building where alrander framily lived through the ston. Uly anders wife Sent me for him

and White, the Clerk told me he quessed he was
not fare off. (Quest) State whether Alexanders Wife
has received delters from Alexander Line he lefts
(Objected to by 20ft - overraled, Exception laken)

aux, I heard her say that She had!" Clexanders wife has sent by mi for the Defendants. I lote them of her wish to see them. She told me she had seen them, Mr Clexander tetto girl brought me a letter and said her Which brought it for our, dan the mine arrive (Objection and exception) Did not see the Defrudants go nets Mrs alexanders apartments then, Thought of heard this Voices in there afterwands. I did not hear the conviroation, Objection and Exception) Alexander claimed to our the Stone before the Dale and also three horses and four lowe. May be he was worth four in for thonoand Dallans, He might be with mon. might bu worth from four to Eight Thousand dallans, I recollect asking alexander for bouts while the July was going on We said they were taken away, Have heard Wealth Say he bright & fait for the Store. might. have heard Something Sand about land Sorif or land Warrants don't rimember.

Alexander was selling the good in his store as retail all the time of the door being closed which I swent to one while the morntery was going on. Think I have seen Lewis in the Store while in Alexanders paperpin Han deen him there served times. I was at work for Alexander brilding, fring Sunter se for Barn, Alexander was their when the good war later by the Officer on the Replession writing

Redirect, alexander Said When he wanted me to Class the door that Charling Thrall was looking 35 Re direct, after him. John alixander. Hour understood my brother was a Murchant in Lodi. I have lind in down bity down, I travel asound some all the him. during the last three months of stopped longer in Marin County Jown, The last time I saw my Brother George he was in John City Objection to act and Statements of alexander Serbsequent to Jalos reneward arrivaled Exceptions) I don't Know when he is now. I Carm from John bity to Lodi. I brought no letters. Mr Ferry Stuppest at Lodi with me, Perry com to this Vellaga with me, Perry hast a Cackage with him, he did not tell me what was in it. We gave it to Benga's wife, I diton Know the contents. I know my brother was to be in Nova bity. We Dent a letter to Marion County for me. I had lound my bother some morning and he lott me his wife would Jung me the amount. I down thin money to bear Expenses Dome \$20, or\$30, el came to see his fruity

M. J. Brown. I am an atterning I drew the Menty of which has been presented, I was not presented when it was acknowledged. Alexander "It beth device came to my Office. Said they were going to Chicago. I drew the Merety you, all this was on

36,

the same day. brak Evanimel.

Lewis came to me and we would down to Mr Platos,

Came before the gives were replevened. I had a conversation with Lewis at Incamon, he was talking about

taking a Challe Mostgap. and State him I would

not take such are one, I advised him to take butter

Decurity;

Redirect

Lowis Said Alexander was honest and would pay up as somethow the mote came due, I total if he was honest it would be safe snough, I transcribed from book of account. The notes described in the Mortgage, Lewis and Alexander were present when the Mortgage was drawn up.

Security on the notes and to be word if alexander took them if of the parties halding them

Charles Thrall. I have Dein the Street of South Street Ahar have been Sporten of. Talking with The Wealth about them he Said he brugher the good Subject to the Therty age and trugher them under Value. He Said if the could hald the good the wanted make a spratty good thing of it. He said he calculated to faller Levois as long as there was a dallar to this mann. We are bound to

37. Julim him as long as he has a dallar". I was Deputy Theriff last October. I had some executions against Weath- I did not collect them the had no fromperty

that I could found. Crap Ex aminul, I worked for Lowis last Deason. I wonth for him none when I hear any thing I tell Lewis. I am a party in a Suit with Lewis in matters Connected with this suis. I want to the Store for custs at the time Health total me what I testified to me my direct Examination. Weath asked me about shorting the Said Lewis could mot grighten him. I said Lewis did mut do any thing about it, my peelings are enlisted on the Dish of Lowis. I told Lowis of this a few day after it was lold me. This deriv is mutter of talk among the majorety of heapth of Lodi, Lervis Urustrong and I are logather must every night at the Past Office. Ormston Keeps the Past Office. I have not brun hired by Lewis to watch only our night. I slept in wunshoner

Several nights. Health Said to me. "I Shouldn't use Lewis do if he had not accused me of baring his warshouse. We ought to be bogother but Lewis goes the other word, We ought and I have not been very good friends of late meither Lewis and Healt. Weath The Meath Said Lewis had accused him of breakinging.

it was notively brisines when he bright or how he bright.

I was freene when the goods were replevent. Health said he had his hunds tied up and now he was ready for a grat. I had a ba. Sa. against Health last week, some body had board up and let the grain out of the wan honer,

John Pickett I Know nothing of the Goods.

I have heard talk about them,

I had a talk with Weath. He and I won walking.

We said he had got Lever's right where he winder him

and he means to keep him there, Hoe said he had got the

goods and if Lever's could chald them will, if not he should

get them buch, nothing was said that I remember about

debts in Chicago. That Lewis didn't Know if that he would

have to pay, Don't Know what that reperred to.

I am not particultant, friendly to Weath, don't Know that I am very hustite to him. We sued me ones in a Mechanic Lien, I got a little viled I guess I did have not liked him very well sines.

W. R. Burdick I Know the parties to the Snit Know the Stock of goods. Spoken of. was foresent at the time of the service of the replevie wit by the Sheriff. I was delected to measure and court the goods, at the trim of the service of with I shad formerly owned a grant of them before Sale to armstrong and Jah to alexander. during the invoice Some thing was said about a case of Calf Skin boots, I searched for them. I should day the boats were not in the stone at the tim, There was a question raised in ragard to some crownto that win mipmy. There were Cravat culled for on the Sheriff Rolls, We all set to looking. Mr Bair said they were there a day or two before. We could not find them, Bair and I talked about the boot. Weath and I had some words about another Cur of boots, a new and full care. Health said they war new goods and new of the ald scook. We had Considerable words. Health Said I with too much interest it was none of my business, he said if I look such a Stant against him I should duffer for it, I told him that he and his party had tried to rot Lewis and I was going to Stand by Lowis.

Cross Examind.

They business has been delling goods, I came buck to Lodi from bono Station, but there delling goods since I want out of trade in Lode, when I am in Lodi I make it may home at Esq Robertons in E. P. Raterton Esq, is now delling the goods that were replieved. Lewis down his business and makes it his appearant Robertoms, I stayed at Lode makes it his appearant works, I never work in the store as Clerk. I did not serve work in the store as Clerk. I did not serve where goods were in it. I happened in the store just bufore dinner at the

40.

12776-20

tum of the Repling. We communed a dittle before dinner time to take the inventory, I had heard the Sheriff was in John before I went our to the Store. deems to me Lewis that spoken to me about coming was my helping. I can't tell certain whether I had Seen Lewis that morning. I Knew the Sheriff had come with the propens, I'm Sheriff latet med Could help measure the goods and Count them, he did mut lett me to keep tally. The Sheriff did not but me to look up the goods. Suppres I did so breamer il wonted to. I much myself youthy fumilliar about the Store. I present look down some goods. Es e did tell Healto Would grind it for him." This was when ever work latting about the case of book on the Sheriff roll. . Know of its bring there by hearing the Clerke talking about it! Know the good win the Sann by the list in the Sheriff Hand I don't Know whether the list was correct or not. Cant Day whether it called only for ald goods, I know I measured and passed down that looked new. I recognised some as fant of the Stock I had formurly owned, I suld out to Lewis Some time in duly praviona. my morner to him about \$1200. vif1500. Un way I Knew Lewis goods was by The Coar mort, of told by the letters. I can't bell the letters of Either murk his or thems. The Calerto

41,

Selling goods there some two months, Lewis Knew of it I prasum, he ought to he was right there.

Benjamin Stewart. I had a conversation with Weath Som after the Reflice Writ was derval, I met him in the Street he said "are you one of Lewis Standing army"s I said no, We said did you lay in the Store Homes the other night? We said Sexualistord agas was one of Lewis hired men to watch his property. He said Lewis, no need to have a Standing army he had got most of his property.

Croped Examind:

Noboly was present when this conversation book place I am a Blackernith by trade. I don't do ninch now I spend must of my time at the grocery, I have talked these matters over it is general talk theo our part of the learnitry. I talien Levis had somebody watching in the wanshous one or two nights, Knew of firmy of yours one night didn't Know of its bring" to take place". As the time of this conversation I men Health mear the Depart. He said his standing army was of no use to Lewis, he had got purt of his property, and he would have the rase as some as he could bring it assound." I never tall of the

42,

Lowis Something about this mutter, One of the Defoundants is not a varry good friend of min. I don't know as they have any Sudgment against me, have such me me or twice.

John Simms I heart the conversation spoken of by last withing I was just tribind Hearth at the time. Hearth commined at Stevent about the Standing army, Stevent Seemed to Stick up for Lewis. Hearth Said falks Day I have a sport of his property, but if Shan del be damend if I down than the rast.

Ethan I allen I was the appear who Repliens the goods, I don't recalled having driving any Executions against Hoeath for I must time past, Hour had Executions against him I have some now. I tried to find project, I found now. Was present when the goods were taken under the Writ of Replien, I don't know much about the matter of the Boats. Spoken of I know there was some inquiry much for them.

It. Alaybourne I was at Lodi the night or how before the Dale to Defradant I will not be certain that I ever saw this Merlyage Were the Mortgage heretofore set our was hunded

\$12776-2]

43, Witnip) byon, I saw the Record, I was not foreint at the time of the Sale, I saw now but my Clients when in Lodi.

Witness declind

John A Oliver for. I knew the Plaintiff Levis of Know of his brying Goods of Bruith Paleard & bo of Chicago. I am Book keeper of that Hones. At the time Levis sult to Alexander the firm would not take Alexander nates alone for what Lewis inal owing on former deal and so Lawie Signal with him, I gan Lewis and Alexander both notice when the notes ware due. They have not tren fraid. We have a Sudgment, against Lewis for \$460 for the Sudgment remotion in the Chicago Court of Commen Pleas. (the nate above Spake of Show by with the Chicago Court of Commen Pleas. (the nate above Spake of Show by with the Chicago Court

Alexander much the progrants of whaters has bun spaids on their notes there are two Endorsements, These notes were given on Lowis order original indebledant, At the time Lowis sold to alexander as I indeveloped it alexander was to aparen Lowis instabledants, I or tarted to draw them for alexander, but one of the firm sport to me and I drew them as they are Ihr endorsement which is exact I made at the time we received a remittance from allexander. I endorsed it immediately upon

44,

receift of the miny but by order of the firm Erasul is and the amount was applied in Alexanders Book Account. a letter accompanied the samittana, I don't know what the directions were. It is our custom when we receive many if we have a Book account as well as note to apply remitteness on the Book account instead of the mate.

Wirom W. Bair I know of Something bring the raplism, I had brown click for ally ander, I had brown about those of south there is something wrong about those Boats and I will find them, I find Know of the Merly of at the time the inventory was bring later when I had beathern talked of giving in partner, at that time I worken talked of giving in partner, at that time I worken I what was harther say if there is a mortgage I will not harther say if there is a mortgage I will not harther safe with the Mathem and myself took the inventory. The Sale to Halton of West was after the inventory was taken a day or two, In Shorewas closed while the inventory was taken a day or two, In Shorewas closed while the inventory was taken a day or two, In the not at other times.

I helped take the inventory at the time of the Sale to Wathern o Weath it was a verry fair inventory. I do not recalled the Exact amount of the fratings. I. K arms trong my I owned the Store

512476-23

45.

one we bought of Lewis. after ally ander bought the stock he pur in some \$1200 or \$1500, of new goods. We Kepr up the Stock butter than I Ever Knew is before, Ihr average dalea would overnound I hould judga \$ 140 or \$15 for day while alexander was in the Now. Ulexander took Weathern & Meaths notes in purt payment. He told me he had received all of his pay. I know the Stock of goods will I had burn Clerk there all the while, Wathin & Weath gave me their note for \$ 594. in place of a note I held against alexander and what alexander over me. The debt was partly for goods that had formuly belong and to me and purty for dervices & labor as Clerk. I consider them amply good for the amount. I released alexander on his notes ony claim for the note. They paid alexander it must have brought 3500. I saw alexander take the notes which they gave and ful them in his pocker book and the Defruidants took pupepin. I was present when the writ of Replevin was served Weath told use we must not take new Goods. The Ther iff only called for ald goods and we clocks selected there are will as we could. There were no Silk neck - Kercherfs in the inventory from aller ander to the Defundants, The Clothing & Surrum Goods had from land away to Keep them from the dust. W. K. Burcheke was there at the time of the

Replevy he afisted in measuring goods the was quito appricions quaralles with Mr Health a good deal and used a good many hard names. 46. D. A. Ilmmer recalled - A was on Saturday that I moved to alixandens tenement. alexander lived there two. alexander was nut in the Streets as much after this Sale to Wathom & Weath as usual. Defindants again object to the admission of Evidence in regard to acts and words of alexander Subsequent to Oak objection orrelate " Exception taken) Ulexander was there in the buck room must of the time. I. frasum Various, had accept to him the Defendant and other . I Know they did. Hawley came to buy Sloves, alexander went to the window opening into Stone o looked before he want out of his room. I thought from this manner he was looking out for brukens. I have heard Heath say he was hard up. I think I saw Mr Mayboum in Lodi about the time of Sal, but can not day when or with whom. I throught I daw how with Some of these parties on the Rail Road bruck . Crap Examinal. I thought it was Mr May bound, I might be mistaken, thought it was him a Mr Burdick. it may have been Burdick. Other persons busides 12716-23

47.

Room. Esq Robinson - Wawley - Southins - and athens I don't vamender.

Mm H. Robinson. I am a Justice of the Rene I live in the down of Vincil but not in the Village of Lodi - I look the acknowledgement of a Deed from alexander about the time of the Sale in Saturday. I think I am in the Village generally on Saturday. (Defundants objected to admission of Evidence of alexanders act or Statements as before objection overrules t Exception (aken) allexander met me in the street Said he had brow looking for me. Wantest I should take the acknowledgement of a Deed I were in with him and much the Deed to one John W. Bicknell, Bicknell was not prisent, Tex I think there was something said about not Speaking about the Deeds having bun mude Lodi is a Village in Virgil if som 300 or Hor inhabitants.

I, W. Bignall. I know Alexander of an a brother in law of Geo.

W. Alexander (Objection to testimony in vagand to act o Statements of Alexander as before ormened winds of Stephen) They say there was a Deed much out to me by Alexander of the place when

48,

I live, I did mut see the Deed. the understan dung was when ally ander bought the place that it was for me and I was to puy for it in work as soin as I could - Think alexander many have over me \$500. The place was called worth \$700,00 800. Alexander owned me mustly for world I had downed him down money lound him gett. I have his nate still for \$41. busides what he wird me on book acct. He owned me on Book account done 18, or 10. x I commenced working for alexander latter part aplass winter oworked with the , as of November. I worked at \$2. for day. I have received verry Little from him he has fruit me \$100. furhap a little mora furhaps a little less. He had a done account against me two for family groceries o Inch like, Somewhere about \$60. May have been mon mmy hum bass lead.

Juns Dich when the Deed was much have been very sich- This is the fines time. I have

Alexander Some last winter we have had no

Settlement, don't Know exactly how much he

does ovi m. I am a michanie I work

at the dash and Blud brisines.

E. I. allm re called - Burdisk eves

Suggested by Heathern & Health at the time of the 44, me pleny to measure the goods. Ihr Defind ants themselves did nut know all the ald goods from the new. Burdick was called on by annetrong and Bair to look up the goods. Evidence offend by the Defundants. 6, P. Roberton - This is my Docker. Cher Without from a Sustin Docker) I am a dustie of the Sener for the him of Virgit. live in Losti Village. I have no other docker, this is the entry tracend in my Docker of a Chattet Meryago From Geny W alexander to the Plaintiff Lewis and of which I look the acknowledgement: as I les topid in my provious Examination by the Olain tiff and is in the words and figures following there without want from his Set Lewis Chattle Montgape
Sette Lewis Mortgap of all the goods " of Every Krist and quality frients clothing Drugg groceries medicions ready much clathing dry goods hard wan crocking " all and singular every article and articles in the other formerly occupied by

" Seth Lewis and Situatur in Block 2 Lat 4 in Lodi 50 " also one Span of Honses Calor buy medium size black " man and lasts about Eight ofuns ald one House "horor planeing Machine, termanting Meachin. Circle Daw a and all Machinery belonging to and attached to the " Shap for planein, purpasis and all ather purpases " Hears in the Street Siche of the R.R. acknowledges "this 22 day of October AD 1857 before me E. P. Roberton This is the only Entry o Recog in my docket of a Chatter Mortgage from Seonge W. Alexander to Seth downs, dent remember when the Defendants louted at my Docker. Think it was after the Sale by Alexander to them. alles ander to them. The Defandant. by their Counties them made a motion to Suppress the Chatteto Mortgan Evidence. Motion overraled Definidants except to suling) A. S. Babcock. - I was living in Lodi last December. recollect the day af the Refelery & Know alexander was in Losli all of the work. Spaken of by witness for Plaintift 12776-00

Except Wednesday, I did not see him that day that Irreallest. I saw alexander in and about the olin during that work, on Saturday formorn the day Spoken of by witness, blummer, I saw alexander writing at the counting Dest. in the Storm cherfle win profound in and our all the time, I noticed no dificulty Alixander was around as usual for all &. Saw. I had born at work for alexander. Head had chuye of the Lumber yand belonging to allexander. I saw Salomon White Sen + others looking at the lumber te, and went to alexander to see why they were there as they did not call on me, I want to him also about some other mutten, alexander total no he had sald the Lumber Gard, loted me he had Sald the Loverter our all he owned in Lodi Exape the Story building and the Lat it storet on Crafe Examind:

I had brown in the Employ of Alexander four months of Should Judy the value of Alexanders property to be about. 14000.

Chat B. Wells I am an attorning living in Geneva think I have seen the Chattle Morty of front in Evidence before. It was some thin in the latter punt of October or the final of November last, I don't recalled who hunded it to me. Hee said Seth Lewis had seen him with it to me and wanted my opinion whether it was good security. I gave my apinion and hundred it buck to the muni, (Queet) what apinion did you give? Obj. to by Plf. objection distained Defendants Execution.

Salonum White for I Know the purtus to this Suit . Know Teorge Walleyan der. I was a Clerk for alexander. while he own the Store , I Clerked for him 26 days, was his Clark when he sald to Wathown, Helper to take the inventory. It was taken as all inventories are taken The goods amounted to \$2700. I some Mules passed our to alexander, & Know that Hathor had a note against alexander of som \$300. I Know of a pew pair of their Bouts bulonging to the Stock They wan hunging over the writing deale. Mer Weathon total me there would be no date for them undit Spring. and I must take them down and pur them where they would be our of the way and safe, I took them down and put them is a box under the bounts I was not present when they were enquired for at. the Repleon. I took down and put away down Durmer Goods also to keep them from dust until there Should by a Sale for thew. Olyander was about at the term

the goods wor Repleved, I saw alexander the

Thursday Friday " Saturday Spoken of by former

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53 withefer He was in and out of the Store Friday. I saw him on the Street on Saturday Sometimes, el Saw him Sometimes at the writing deck, I have deen Lewis in the Stone while alexander had the Stone, Wa Duld any thing people wanted like any retail others of we had it while alexander had the store, , Crop Examinal, I live with my futher calonin White den downs in the Store when Wattoom and Health latked of bruying m. I only Know of on inventory. Incom Saw Min Maybrum there at that time, I heard reported assured town that he had been there at the him the inventory was taken I helped Mr Bair and Mr Sentins Count. I saw Mr Mouth write and gin one note to alexander & Saw Halton with Some. I don't Know where alyander Sleps Friday and Saturday nights. He sleps at my tathens I think on chesda Wednesday night, I think he deft alone. Mor Wathom I think was there that Evening he Cann for his wife and Stagad furhales 15 minutes I don't thinte he betket with aligander 5 munts There were about \$3000. of Book accounts I think from hups \$2000. of them good, - Re direct Ejanimation. Mr alexandir was up at my futhers to Straighter 11 his Limber brook. It had brow Nerry badly Kefr and needed Straightenery, down of them was portly hand debt. They will be ald before they

they ever an collected. Ihi Book accounts were worth man by frow. Withef identified alexanders 54, hundrity, Ho. H. Bair. I was prosent when alexander mude the Dale to Walton oftenthe of the Gross, I was called upon by all of them to withing the dale. There were more goods in the down at the trins of the dale by alexander to Hathon and Health them when sold to ally ander by Lewis, at the trum Levri Sald to ally ander the store was in the name of arms hong by my odly, we had bought of Lewis Some Short time before we had not made the pregnents Lewis sold to alexander and we apented to the date, Ulexander added may to to the Stock while dullans. Palethorpe and I have brught from Wathern and Heath, the Stock was valued at \$2200 when we want in. Ihr mute given by Worther I Mouth to ally ander much have overmen \$3000, they apund lintility of alexander to me and have bufore textified to. , Craf Examino. I hald Hathoms & Moenth muto shite their inveren to me amounted to a little mon than \$2100, The good repliend by the Sheriff amounted to about \$800, el cunt by for our of the way in regard to the value of the goods Replined Hathom & Heath 12776-27

chart fraddission of the Store Some your work this 557 Inlia averaged Jenn \$300 per with. I may be mistate in rayard to the amount should think that not fair from the average amount of Dales for with, I was Clerk for ally ander and sold Foods for him I should think this majority of his Book ac counts callectate . think I would needer take to callo Them for 25 pm cent. Ih debts worn much by farmin , Re direct Examination, Wathom " Health calculated to do a Cush busines they did some Cradit business. Heathon & Weath Sales would average about \$25, a day, Ihr dervin of the Replevin writ was for. damage to the Store and its business besides the property Salomn White fr. recalled I was Clerk also for Mathom and Heath unter they ould our to Bair and Sale thorp I was there Three works Hathern of Health did a Cash business, I don't recalled ever setting more than \$25, dallan in the till as vasult of one days sale, I drew aff the days date one or how might, I should think They would average \$10. The following Shipulation between the parties

hereto was then Read by the Counsel for the Plainty Kamilo bir bours. January Term of the Said Court for 1858. Seth Lewis John Hathom of Replevin Kam le bir bours January Devin 1858 Jahn Halhon Replevai Setto Lervis + (Charles Phrale) It is Stiput about and agreed that the motes mentioned in the Chatte Mortgape from G. W alexander to said Lewis dutet Och 23 1854 were notes given by said down and Said alexander for Goods furchased by said Lewis before he sald out to said aligander. and were the same as Mertyago and in the storm at doch at him of the making said mortgage and that said Lewis was held as Security on the Dann and that allex ander has not fruit said matis and are the same notes, are the notes described in the Miryay and are given to pay the indebtectives orriginally contracted for said goods mentioned in this Thirtyup,

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Sty. This Shiputation to be naid in Each of the cases above entitled.

Senior February to Plate & Parks

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Here both parties restet and this was all the Exidence given on the trial of the above canaly Either of the parties to the above sutitlet dail.

And after argument of bourself for the respection parties the lower gave the fullowing instructions on the fourt of and in brhulf of the Plaintiff

Mo 3. Thus any Jale much for the fourpose of hindering delaying or defranding creditions is World as to born file Creditions.

A - That while fraid current by freshmend aget it is capable of bring proved by freets and circumcircumstances and if from all the freets and circumstances in proof the Jury believe from the evidence
that Health o Heathorn purchased goods of Alexander
for the purpose of Cheating or defrauding Lewis Such
dale was wird if Lewis was execution of Alexander
4/2 — That if the Jury believe from the evidence

58,

that Heath and Halton brught the growts in question subject to the Mentage them Levis had the Same night. to take the Goods of Meath and Halton that the world have had to late the goods from Alexander, as 6. — If the I very balive from the Evidence that Lewis had a Merbyy from Alexander on the property in question and that by the Jerms of the Menty of and that Meath or Weathern brought the Goods with a full Knowledge of the Execution of Said Merby and that they Meath to Mathorn meads Anch furches for the perspect of defrancing Lewis out of this Security their such said was franches out

To the giving of which instructions in the part of and in bahalf of the Plaintiff by the bourt the Defandants by their commel them and there excepted. The bourt then gur the following instructions on the harri of the Defandants.

First - All convergences of Goods and Chattets when the papelin is allowed to remain, with the donor, a Nender and frankulent perse and North as to Craditions and provehours. unless the retaining of fapelins by consistent with the terms of the Deed or convergence, and unless the Mortgap from Alexander to devise Authorised Alexander to retain frassepin of the goods mentional in the Mortgap, such papaline was inconsistent with the terms of the Mortgap, and rendered

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Word the tras Jules eyems four chases. Second Shur a Mortgap of Pensonal Junperty Where the grassession is allowed to remain with the Mortgager, although bushing between the purhis, 11 never theties, frandulens and word us to Subsequent your chasens. unless by its terms, the Morgager is allowed to valain pupision of the goods. Seventh - That frank is never to be inferred but must be proved. Eighth, If the Jury balein from the Evidence in the Case that there was no such nitet titup Existing between allexander & the Plaintiff Lewis as thur mention in the Mintgap but that it was other o different from that stated in said Morlyage then that is a fact that they ought to consuler in arriving at the fact whether it was fair o bond fre transaction between Lewis and alexander, In Court rappaid to give the following matrice him asked for in bahalf of the Defundants. Regular to the Gours. Thur from the frets that appear upon inspection of the Chattle Montgage offered in evidence in this who trak the acknowledge mint of the Dann and other evidence afformal, that the daid Mortgage is in valid, and imporation, and therefore should not by permetted to go to the dury as evidence, The Court is

therefore vaguestut suppress the Same from the Sand 60 Third If the Juny bulein from the evidence that alexander continued to sell the goods and question, with the Knowledge and consur of dever after the execution of the Mortgy in question, and of Such dala were inconsistent with or not allowed by the terms of the Morlyan. Such selling and consent will muder the Mortgap mop souther and wind as to the Defundants in this cuar. provided they purchased the Goods in good faith and for a bona file consideration Stroth - That a Mentyan of firsmal profinty which provides that the presession many remain with the Newdor Coupled with an implied right to sill is of its dely, francolalist in low, and Void as to purchasin and if the day believe from the Evidence that the Mayay from alexander to Lewis contained an emplied authority in alexander to sell the goods mentioned in the Montgage, Luch emplied authority would sender the Mentage word as to these defendants and if the pury balein from the Evidence that alexander sald said goods from day to day with the Kumlige o consent of dewis after the execution of the Mortgape such sales and consent are circumstances which the Juny may late into consideration in constraining the question of france. If the Jury balein from the Evidence that

61 the Mortgay in question was given to decire the payment of certain Notes executed by alexander and Lewis, then in their case. Lewis hus me claim against ally der by Wester of Said notes & Murty mileas hu Lewis. hus paid sand Nats or Some furtion of them - and he Lewis had no right to late the sprapmy in qualin in consequence of this lightlity an the notes. Sixth If the dury believe from the evidence that the Challet Mortgage offered in Evidence does not contain the same discription of Goods oc. as the one described on the Docket of the dustreet of the lever who look the acknowledge ment of the Said Moryage, and that the Said Moryage was dated the 230 day of October AD 1857, and the acknown - lulyment was on the 22 nd day of said October. then the said Mortgap do offered in Exidence is invalid and has no binding efficie as against Subsequent furchasers, and thereform the Jury Should find a Verdick for the Defoundants Seventh __ If the Jury should find the issues in this case in form of the Defendants. They will apress their Damage, which will be the Value of the goods at the time they were repleved or Such further duringes as the Defendants have sustained in consequence of the Mount of Paid Goods do which regusal to give the instruct time asked by the Defundants they there and there Excepted. Ihr dury then retired in charge of and officer to consider of their Nerdick and Subsequently

We the Jury fried the ipness joined for the Plaintiff and apip the durings at \$425_ abover Cerries

fromm Therupon the Defundants, then and there made a motion for a new treat and in arrest of eludyment. afterwards to wit on the 17th day of Jebruary AD 1858 it still bring one of the days of the said Carriery clerm of said Court. the said motion of the Defrudant for a new trent and arrest of cludymus coming on for a hearing after againment of counsil the Court bring then and there pully advised and the Plaintiff remothing the durings of 1425. the lover overmeled the Said Defandants motion for a new trial and in arrest of dudyment. Is the represent of the levert to grant a New treat in this cause and in overruling the Defaudant then and there excepted.) to wit on the 19th day of February 1858. and thus and there granged an appeal to the Suprim lours of the State of Sellinon and the other presented this their bill of Exceptions in the Said Cause and asked the said bout to the and there sign total the same and make it a part and protein of the Kecords in this Coar which is accordingly then and there done on this 17th day of February Sanc & Wilson die A20 1858.



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And afterwards to evir on the 5th day of March AD 1858. There was filed in the said Oppin of the blerk of said bourt, an appeal Band which is in the words of figures following to wir:

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Heather Salomm White and John Hoathorn senier ail of the bounty of Roun and State of Allinois are

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and promety by these Bresents, Within our hunds and

Jends this fines duy of Mairch AD 1858.

That whereas the about affind when the Saint Source did at the Samming Jerm of the Saint Court against the about numeral John Weathern and Lover Weath in an action of Replevin them pending in saint bourt. And whereas the saint Defandants in Saint Swir Health huth fromped to bather a appeal in the Saint Swir Health huth fromped to later an appeal in the Saint Swir.

It the Supram bourt of the State of Illinois to the of the Statute in Such Case much & provided and in conformity of the order of the said Court much in said case. Now then if the said cohn Halton of Love Meutto shall duly prosecute their sund appeal in said. Superime Court of the State of Allinon in the daid divission thering and in cust the Judyment Shall bir affirmed the Band Suprem lover so obtained against them in the Daid Kean Mounty Cover Court and Shall also fray the said Judames + all costs interest and damages arising from the offering or dismiping of the said appeal them in Thur case this obligation Shall be work of no effect othermies to be and running in full fire office John Weathorn Que down Wenth Did Sachininh Hathum Bud Solomon White Que John Wathon Deninder

65. State of

State of Illinois I'm of Paul Retright Cline of the Circuit Court of said County, do hereby certify that the foregoing is a time parged and complete transcript of the Records in a certain Cause in said Court wherein Outh Lewis was Plaintiff and John Halhorn and Loven Heath were defindants in an action of Replevin including The writ of Replevin + Return theren Bond taken by the Theriff all the pleadings in the cause Bell of Exceptions and appeal bond and all the orders made by said bout and entered ofreend therein as appears from the neards of saul bunt and the giles in my office Nitness my hand and the seal of said Court at Heneval in said bounty this 26 day of March as 1859 4. Wright

Ares \$16.00.

In the Supreme Comp of Illinois in the Shird Grand Division John Hathorn of Sith Lewis Error to Sauce County Circuit Court, And now come the said of his Hathen and Lown Heath by their attorneys and lay that in the record of the said proceedings and in the rendition of the said judgement; manifest was hath interorned to their proporce in this to not It The Court Welow eved in admitting improfee widines on behalf of the Defent. and in lever 2the Court word in excluding proper widence offend on the part of the Claimliff in Error, The Court end in allowing the deer er subsequent to the bale by him to the Plain tills in legger whe admitted in Evidence, My to The Court wied in allowing the Chattel Mortgage has admitted in 5th The Court weet in overmling the motion made by the Caritiffs in Em

the Defendant in Error and in not withhelding it from the Juny as Evidence 6 the Court ind in giving the instructions asked for by the Defendant instructions asked for by the Plaintiffs in 8 the widere in the case is contrary to law. and motion for a new trial. 10th The Court erred in undering judge ment for the Defendant in com when by the law of the land the faid judgment Aught to have been for the said Reasuliffs. in Com. And this the said Plaintiffs in Em are ready bring, by the earl heard when for they pray judgement of May bine & pritts alty for Alffor in Error. Sthe Sewis

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Filed April 12 1859 Labeland Clark

Supreme Court of the State of Illinois,

IN THIRD GRAND DIVISION.

John Hathorn & Loren Heath, v8 : APRIL TERM FOR A. D. 1859. SETH LEWIS.

POINTS AND BRIEF.

This Suit was commenced by Writ of Replevin, by the Defendant Seth Lewis, in December, A. D. 1857, in the Kane County Circuit Court, and was tried at the January Term of the said Court for 1858, before I. G. Wilson, Presiding, and a Jury, and

resulted in a verdict for Defendant in Error.

The Property replevied was a part of a Stock of Goods of a Retail Country Store; and the value of the Goods replevied amounted in all to some \$800 or \$900 at the cost price. A full description of Goods replevied is set out on the first page of the printed Abstract in this case—to which the Court is referred. The Defendant in Error, Seth Lewis, was engaged as a country merchant or storekeeper, in the Fall of 1857, at Lodi, in Kane County, and had been for some years before; and on the 22d day of October, A. D. 1857, he sold the Store and Stock of Goods at Lodi, to one George W. Alexander, who up to that time had been a farmer by occupation, and owned a large and valuable Farm in De Kalb County, some five or six miles from Lodi. This he overlapped for the Stock of Cook in the Stock of Logic and for the Stock of Cook in the Stock of Logic and for the Stock of Cook in the Stock of Logic and for the Stock of Cook in the Stock of Logic and for the Stock of Cook in the Stock of Logic and for the Stock of Cook in the Stock of Logic and for the Stock of Cook in the Stock of Logic and for the Stock of Cook in the Stock of Logic and for the Stock of Cook in the St Lodi. This he exchanged for the Stock of Goods in the Store of Lewis, and for his Store in Lodi in which the Goods were, and for his Book Accounts then outstanding and unpaid. The Stock of Goods in the Store, the Store, and the Book Accounts, sold by Lewis to Alexander, at the prices agreed on between them, amounted to some twenty-seven hundred dollars more than what they called the Farm worth, in the exchange. At the time of the sale of the Goods to Alexander, Lewis was largely in debt in Chicago, for goods purchased by him, and put into this Store at Lodi. These debts, to the amount of some twenty seven hundred dollars. Alexander was to vary or segment to the amount of some twenty-seven hundred dollars, Alexander was to pay, or agreed to pay; and to secure the payment of these, Alexander on the 22d day of October, executed to Lewis a Chattel Mortgage on the entire Stock of Goods purchased by him of Lewis, on some other property which he owned in Lodi, and also on the Book Accounts. This Mortgage was recorded in the Recorder's Office of Kane County—a copy of which Mortgage, the acknowledgment of the same, and the entry made thereof on the docket of the Justice by whom the acknowledgment was taken, are fully set forth in the printed Abstract, on the first, second, and sixth pages thereof, to which the attention of the Court is directed, as this Mortgage is the source by and under which the Defendant Lewis claims title to the Goods replevied, and bases his right to the pos-Defendant Lewis claims title to the Goods replevied, and bases his right to the possession thereof. Alexander after making the purchase of Lewis took immediate possession of the Store, and at once commenced selling at retail the Stock of Goods therein to customers and purchasers in the usual way, and as is customary for merchants to do, without any regard to the Mortgage to Lewis, and with the full knowledge of Lewis, up to the time he made sale of his entire Stock to the Plaintiffs Hathorn and Heath, which was on or about the ninth day of December, A. D. 1857, and for the same he received full payment from them, at the time of sale. The Stock of Goods sold to the Plaintiffs in Error by said Alexander was such part of the Goods Goods sold to the Plaintiffs in Error by said Alexander was such part of the Goods bought of the Defendant in Error as were then in the Store and unsold, with such Goods and Groceries as he had bought from time to time to keep up the assortment in the Store, and which had been mingled with those bought of said Lewis.

First Point. The Chattel Mortgage offered and admitted in evidence by the Court below, was void on its face—

1st. Because the Instrument purports to have been made, and is dated on the 23d day of October, A. D. 1857, when the acknowledgment before the Justice is dated October 22d, one day before the making and execution of the Mortgage by Alexander. Instruments of the character of this Mortgage are to be tested by themselves, and as they appear on their face, without the aid of explanatory evidence. Vide Record,

2d. It is void on its face, and was not evidence for any purpose, because it does not describe the Goods mortgaged with sufficient distinctness, as it should have done—giving the quantity and description of each article included in the Mortgage, so that it could be readily ascertained what was and what was not embraced within it.

3d. It is void on its face, and it cannot be made or set up as the foundation of a title in any case, by the mortgagee, because it not only includes the Goods then in the Store, but all that the mortgagor might buy during the continuance of the Mortgage; a provision as unheard of, as it is fraudulent and destructive to the best interests and good faith of commercial dealing. By this provision the mortgagee held not only the property in existence, and in the possession of the mortgagor, at the time of the execution of said Mortgage, but all that he may subsequently acquire, whether he makes payment for it or not; and the mortgagor holds it against the just claims of the individuals who furnished it, thereby creating a lien that is to cut off and exclude all persons who may deal with or trust him with their property from collecting their claims, till such terms as the exacting demands of a heartless mortgagee are fully met and satisfied. Such unfair and unjust Contracts and Instruments have never met with favor from Courts, and we trust never will.

4th. This Mortgage is void, and cannot be used as evidence for any purpose, because it not only covers and includes the account books sold by the mortgagee to the mortgagor, but all debts, accounts, and notes, that he may hold or have at the time said Mortgage becomes due, without regard or reference to how made, or when, or what the consideration of them might be. Vide Record page 27. Book Accounts and Notes are not and cannot be the subject of a Mortgage, for the simple reason that Accounts and Notes are not property for such a purpose.

5th. This Mortgage is void in law, because it does not make any provisions for the property to remain in the possession of the mortgagor, yet he was allowed to retain and keep possession of it. The only provision in the Mortgage touching the possession of the property, is in these words—"To have and to hold, all and singular, the Goods "and Chattels hereinbefore granted, bargained and sold unto the said party of the "second part forever, said Goods and Chattels now remaining and continuing in pos- "session of the party of the first part, in the said town of Virgil." Vide Record page 28. This is only descriptive of the place where the Goods were at the time of the making and executing of the Mortgage, but does not give the possession or provide for the possession to remain in the mortgagor, according to the provisions of the Statute, and Mortgages not containing such provision this Court has time and again pronounced void. Vide 3 Gill R., page 455; Rhines vs. Phelps; 11 Illinois 617; 1 Scam. 296.

6th. This Mortgage was void in law, because it purports upon its face to be given to secure the payment of certain Promissory Notes, or of the sum of money therein specified, to the mortgagee, when the evidence shows—(see stipulation set forth on page 56 of Record, and witness Oliver, page 43, to which the Court is referred)—that these were debts that the mortgagee owed, or was holden for, and were due to third parties, but by arrangement made between the mortgagor and mortgagee, the mortgagor was to pay. Yet the Mortgage does not so state, or define the mortgagor's liability, but describes them as notes payable to the mortgagee, when in truth and in fact not a dollar was to be paid to him. Under the Mortgage, the mortgagee could claim the payment himself, if the mortgagor had made payment to the creditors of Lewis, as by their agreement he had promised to do; and in this manner Lewis held a Mortgage to secure to him the payment of certain sums of money, and also had him held with him as one of the makers of the notes given to third persons to pay these notes; and he might at any time assign the Mortgage, or fail, or die. It also had the effect to hinder and delay creditors, as it assumed and asserted a debt to Lewis, when he did not owe Lewis individually a dollar, thereby apparently doubling up his indebtedness, and multiplying his liability twofold; it was also another and different debt than that set out in the Mortgage, and therefore made it void.

7th. This Mortgage was void in law, because it was understood, impliedly at least, by the parties to it, if not expressed, that the mortgagor should continue to sell the goods mortgaged contrary to the express terms of the Mortgage; if this cannot be gathered from the face of the Mortgage itself, still the goods were left in his possession, and he was allowed to deal with them, and sell and dispose of them, as a merchant to his customers, down to the time he sold to the Plaintiffs in Error. Such transactions always has been pronounced a fraud upon creditors and purchasers, and always will be. Vide 18 Ill., page 401–4; Comstock's R., page 588.

8th. The Defendant in Error is estoped by his own act from setting up the Mortgage and claiming title under and by virtue of it, to the Goods therein described, from the fact, that when he sold the store, and the stock of goods therein, to the mortgagor, and allowed him for nearly two months to go on and sell goods to his customers, and in the presence of the mortgagee, at the rate of \$40 to \$70 per day, (vide testimony

of Hiram H. Bair, p. 44 of Record,) the Plaintiffs in Error had a right to assume and believe that the mortgaged did not rely on his Mortgage, or claim any title by virtue of it, for he allowed the mortgaged daily to sell and dispose of the property mortgaged, as if it was his own; and if he assented and allowed him to sell to customers the property mortgaged, he had the same right to sell and they to purchase all the property in a bulk, as they had to purchase it by individual articles, or in small quantities. Lewis could not allow Alexander to have possession of the property, and deal with it as though it was his own property, and then assert title to it by virtue of his Mortgage; such acts and conduct will not stand against creditors or purchasers. Vide 4 Comtatock, page 588; 18 Illinois, page 401.

9th. This Mortgage was not evidence for any purpose, from the fact that the entry made in the Justice's docket, was not such an entry as is required to be made by the Statute, (Vide R. S. of Scates, Treat and Blackwell, page 813, sec. 2,) in this,—it does not describe the property mentioned in the Mortgage, it being in the words and figures following, to wit:—

"George W. Alexander, Chattel Mortgage.

"Mortgage of all the Goods of every kind and quality—Prints, Clothing, Drugs, "Groceries, Medicines, Ready-made Clothing, Dry Goods, Hardware, Crockery, and "all and singular, every article and articles, in the store formerly occupied by Seth "Lewis, and situated on Block 2, Lot 4, in Lodi; also, one span of horses, color bay, "medium size, black mane and tails, about eight years old; one horse power, planing "machine, tenanting machine, circle saw, and all machinery belonging to and attached to the shop for planing and purposes, and all other purposes. Said shop situate between John Pickett's dwellinghouse and Solomon White's warehouse, on the "north side of R. R. Acknowledged this 22d day of October, A. D. 1857, before me.

"E. P. ROBERTSON, J. P."

Vide Record, page 50, and Abstract pages 6 & 7. The entry made in the Justice's docket would show another and different Mortgage, for it entirely omits this part of the Mortgage, to wit:—"Also, all the goods and materials of every kind and description belonging to said mortgagor in said store, during the continuance of this Mortgage. Also, all accounts and notes, book accounts, and indebtedness or debt of any individual or individuals, in favor of said mortgagor, sole and belonging to the party of the second part; also, all the goods which may be in said store at the time when this Mortgage shall be due and payable." (Vide Record, page 28.) The entry made in the Justice's docket should be in the precise terms, and should agree in description in every respect with the Mortgage, describing the same property in the same terms, and just as full and no fuller than they are described in the Mortgage; and unless it does this, the Mortgage is void, and is not evidence for any purpose, and gives and conveys no rights to the mortgagee. (Vide R. S., page 813, sec. 1.) And in this case this is not done, but one-half of the descriptive part of the Mortgage is omitted. This provision of the Statute must be strictly complied with, and fully conformed to, before it can give any validity to the Mortgage. If such looseness is to be tolerated and sanctioned, the Statute becomes a dead letter, and the entry is of no use, as it gives no correct information of the property mortgaged, as it was intended it should. Vide 18 Illinois, page 400-2.

10th. The necessary tendency and effect of this Mortgage was to hinder and delay creditors, and it is therefore void as to creditors and purchasers. It was intended by the parties to it at the time it was made, that the property mortgaged should be exposed for sale and sold. The property was bought for that purpose and that only, as the mortgagee was fully advised; and it was intended that the mortgagor should treat and use it as his own property, and sell it, and when sold, the avails to be his own. Vide 17 Wendell R., page 492; 2 Pickering, page 129.

Second Point. The Court erred in admitting the declarations and acts of Alexander, after he had sold to the Plaintiffs in Error, to be given in evidence to the Jury. His statements and acts were not evidence for any purpose against them, after he had sold to them—and their rights and interests should not have been prejudiced or jeopardized by them; and the Court should have excluded them, he having received his pay for his goods, and given full possession to the Plaintiffs in Error, he had no longer any interest in common with them, but it was then his interest to do all in his power to prejudice their rights to them, to avoid the penalties of the Statute for selling mortgaged property. He also might have another and additional reason for so doing, which might be to aid Lewis in holding them, and thereby have them applied in payment of his liabilities on Lewis' notes; he might be a witness for Plaintiffs in Error, but not for Defendant in Error. And furthermore, all the acts and statements of Alexander tending to show fraud, which were admitted as evidence under the protest of the Plaintiffs in Error, were acts and statements made by him, after the commence-

ment of this suit by the Defendant in Error. See return of Sheriff, R., page 11; Plummer's testimony, R., page 32; White's testimony, R., page 52.

Third Point. The evidence shows no fraud on the part of the Plaintiffs in Error for they paid Alexander all that the goods were worth, to wit: some \$3,500 or \$4,000 for them, as Bair testifies, and he was one of the witnesses for the Defendant in Error, called and sworn by him, and one to whom Lewis had sold the goods before he made sale of them to Alexander—and fraud is not to be presumed but must be proven, and it requires the same amount of evidence to establish fraud as it does to establish the act of obtaining goods under false pretences in a criminal prosecution for that offence. (Vide 4; Scam. 97. The Court also erred in admitting the hearsay evidence presented in answers of witness Armstrong in regard to acts of Plaintiffs in Error. Vide Record page 31.

Fourth Point. The Defendant Lewis had no right or claim under the Mortgage, or power to take the goods, for the reason that the Mortgage was given to secure him against notes and claims that he was holden for, and had signed with Alexander as surety for him, as John N. Oliver testified, (Vide Record, page 43 & 44; and stipulation, page 56,) and which notes he had not taken up or paid, though Alexander had paid a part of them, and until this was done, Lewis had no claim on him or the property mortgaged; for no principle of law is better or more fully settled, than that a surety cannot maintain an action against his principal, till he has paid or taken up the debt. Vide Bonham vs. Galloway, 13 Ills., 68; Shepard vs. Ogden, 2 Scam. 257; Davis vs. The People, 1 Gill, 409.

Fifth Point. Alexander was a man of considerable property, besides these goods, as was testified to by A. S. Babcock and others, and not contradicted. (Vide Record page 51 and 52.) He estimated him to be worth some \$4,000, so that Lewis' debt was not endangered, or he injured by the Plaintiffs in Error buying the goods, and Alexander held the notes of Hathorn and Heath to the amount of some \$3,000. (Vide Record, page 54.) And there is no pretence that Hathorn was not perfectly responsible, and a man of property.

Sixth Point. The testimony of Stewart, Thrall, and Burdick, show that they had a great deal of feeling, and entertained strong and bitter feelings against the Plaintiffs in Error, and had taken sides and become partisans, and as such they testified, and so manifest was this on the trial, that it ought and doubtless would have weakened, if it had not had the effect to lead the Jury to wholly disregard their evidence, had not the Court allowed the statements and conduct of Alexander to have been given and received as evidence, and thereby occasioned the Plaintiffs a great wrong and injury.

Seventh Point. The Court should have sustained the motion which was made by the Plaintiffs in Error, to suppress the Chattel Mortgage and withhold it from the Jury, (See Record, page 50,) for the reasons above stated, and had the Court done this, then the Jury must have found their verdict for the Plaintiffs in Error under the issue formed, for the Defendant in Error could no longer legally claim any rights, powers, or privileges by virtue of the Mortgage, and it was not such an instrument as the Plaintiffs in Error or any other person was required to respect or regard, as it made no provisions for the property mortgaged, remaining in the possession of the mortgagor, and it was not properly entered on the Justice's docket, or properly and sufficiently described in the docket, or Mortgage, and it was the design and intention of the mortgagor and mortgagee that the property should be sold by the mortgagor, and he had been doing so as fast as he could ever since the making of it, with the knowledge and assent of the mortgagee, and he purchased with this object, as the Defendant in Error well knew.

Eighth Point. There is no evidence to warrant the verdict of the Jury, and the Court should have granted a new trial. By no testimony can it be said that the purchase of the Goods in the Store was made by the Plaintiffs in Error, for the purpose of defrauding the Defendant Lewis, nor did it place him in any worse condition than he was in before, as the goods were sold for all they were worth, and he had received in exchange for them, good paper, that his creditors would gladly and willingly have taken; paper that was much better than Lewis', and that his creditors would have cheerfully accepted and taken in exchange for his, dollar for dollar. Then how was he wronged or injured? Alexander had been induced by Lewis to buy a stock of old goods, and pay a big price for them, much more than they were worth, as Lewis knew at the time, but Alexander knew very little about mercantile business or trans-

actions, and Lewis took advantage of his ignorance. But he soon learnt that he had entered on a branch of business that he knew but little about, and he was anxious to get out of it as soon as he could, and the best way he could, and therefore sold as he did to the Plaintiffs in Error; and because he did so, and did not allow Lewis to strip him of all he had left, and prevent his creditors from getting their just claims and demands against him; for the Court will bear in mind that he had added to the stock purchased by him of Lewis some twelve or fifteen hundred dollars worth of new goods, (see the testimony of H. H. Bair, page 45 of Record.) Lewis flares up and makes a great cry about the sale, and seeks to regain the possession of the goods, and claims that the acts and conduct of the Plaintiffs are fraudulent, because they have purchased and given their obligations to the full amount of the property bought, which are good and collectible, and by doing so, have given to Alexander an opportunity to sell by wholesale to responsible parties, the property that the Defendant was allowing him to sell by retail, (and often to irresponsible parties.) He stood by and saw the goods being sold at retail, and made no objections, though this was contrary to the letter of the instrument, and the intentions of the parties—if the Defendant in Error can claim any rights under it—but all this time he never utter one word of complaint, or even made an objection. If the purchase was made by the Plaintiffs in Error for the purpose of defrauding Alexander's creditors, it is a little surprising that his creditors have not endeavored to hold the goods, by asserting their claims, for they certainly could lay a far better claim to them, and one that would meet with a more ready recognition in a Court of Justice, than that of the Defendant Lewis.

Ninth Point. The instruction marked No. 3 given by the Court, for Defendant in Error, should not have been given, for he had not shown himself a creditor of Alexander's, or at least such a one as could claim any rights by virtue of the Mortgage.

The Court erred in giving the instruction marked No. 4, asked by Defendant in Error, and it was not law in this case, for Lewis did not lay a claim as creditor of Alexander except by virtue of his Mortgage, and by that only.

The Court erred in giving the instruction marked No. 4½, asked by the Defendant

in Error, and it was not law, for the reason that Lewis had no right to the goods until such times as he had paid the debts that he had become surety for with Alexander.

The Court should not have given the instruction marked No. 6, asked by the Defendant in Error, because it is so drawn that its meaning is not clear, from its words; and secondly, Lewis had no rights under his Mortgage, it being void. By this instruction the Court impliedly asserted and instructed the Jury, that it was a valid Mortgage, and in fact took the case from the Jury, and pronounced the verdict for them in the case.

The Court should have given the "third" instruction asked by the Plaintiffs in Error, for it correctly states the law in this case, and if this instruction had been given

the Jury must have found a verdict for the Plaintiffs in Error.

The "fourth" instruction asked by Plaintiffs in Error was law, and should have been given by the Court.

The other instructions asked by the Plaintiffs in Error should have been given by the Court, as they correctly state the law, and had they been given by the Court, the Jury must have found a verdict for the Plaintiffs in Error, if they had paid any regard to the said instructions, and if they had not, then the Court would have granted a new trial.

The verdict of the Jury was against the law in the case, and against the evidence, and should have been set aside by the Court, and a new trial granted to the Plaintiffs And the Court erred in not granting a new trial, because he had allowed improper evidence to go to the Jury, on the part and in the behalf of the Defendants in Error, and had excluded proper evidence offered on the part of the Plaintiffs in Error; and also because he had erred in giving improper instructions on the part of the Defendant in Error, and had refused to give instructions on the part of the Plaintiffs in Error, that were proportional extend assembly the particular of the Plaintiffs in Error. tiffs in Error that were proper, and stated correctly the principles of law governing this class of cases; and because the verdict was against the law and evidence in the case, and by this act would have restored to the Plaintiffs in Error to some extent the rights that they had been deprived of by the wrongful ruling of the Court on the trial of this case; for if this Mortgage, in view of all the evidence in the case, and circumstances surrounding it, is such an instrument as will be enforced and respected by Courts of Justice, then a door will be thrown open wide enough to admit of transactions that must have a direct tendency to deceive and defraud creditors and purchasers, and indirectly sanction acts and conduct that will lead to the most deplorable results, and ultimately unsettle and undermine the well-established and approved principles of the law in this class of cases.

> MAYBORNE & SMITH, Attorneys for Plaintiffs in Error.

Seth Lewis
Point- & Brief

Hilat April 19.1859 Dedund Clesh Mathono & Meath \ Come \ Servis \ ...

In this case the three first errors assigned are disposed of with a single remark that the questions presented thereby are not since in the record. No proper exception was carren by defendant on the trul due to the decisions of the court admitting or excluding testimony unless it be in the single instance of the admission of a le hattle Mortgage and on that instance of is doubtful whether the exception is properly paved -The bill of exceptions is literally expired in the abstract and the Court will see upon inspection that the manner of laking the exceptions is as follows " Question objected to overriled, exception. or in many cases simply objection and exception In more of these exceptions does it ap pear by whom the exception was laken whether by planitiff or defendant, Nor does it appear whether the question or the objection was overrelled. None of these exceptions can be sustained without overruling the principle of the following cases Gibbons vs Johnson 3rd Scannen 63 Buckmaster or Blanes 4th Bilmon 448 Berker os Bond 12 Des 89

The bill of exceptions is the pleading of the party and should be taken most strongly against him.

The submit that this court cannot inquire into the questions raised in the three first assignments of error Whe first error assigned which it is necessary to discuss is that the court erred in allowing the Chattle Mortgage to be read in evidence

It was insuited that the Mortgage was void because first. It is dated on the 33rd of October and the acknowledgement is dated on the 32 nd Bruppose that a mustake in the date of the obsed Mortgage or a mistake in the date of the acknowledgement will neither resolvent of them render the Mortgage void

It does not describe the goods with sufficient distinctions and certainty. I answer that some past of the articles named in the Mortgage are described with the petruost possible certainty and at least for such portion the Mortgage would be good.

The goods which were in the store were sufficiently described and these are the goods which were repleved is have required an inventory of these goods in the Mortgage and to be spread upon the furtices docket would make it mnecessarily prolis and combersone.

It is said the Mortgage was void because it not only includes the goods then in the store but all that the Mortgagor night buy during the continuance of the Mortgage. I auswer. I do not think this is a line construction of the Mortgage

The Mortgage grants first the goods in said clove which formaly belonged to said Servis.

Ind ofhe goods in said store belonging to said Mortgage during the continuouse of this Mortgage of the last words limit the time for which they are to be held and are not discriptive of the goods sold Your of there was a fortism of the goods named in the Mortgage not belonging to the Mortgage, That would not viliate the mortgage as to the portion of the property which was in the hourds of the Mortgage is concerned as between the parties to the Mortgage

As to the 4th objection of pay, If the Mortgage included Notes and book accounts which could not be thus transferred that would not make it would as to goods and Chattes which were the proper subjects of such transfer

as to the 3th Objection made to the Mortgage, Danswer,

1st The Mortgage contemplated that the property

should continue in the possession of the Mortgager

otherwise no effect whatever wite be given to the

words " now remaining and continuing in possession

of the party of the first part in the said town of

Vingil" Under the view laken by defendants Connect

the words "and continuing" are wholly inoperative

and

(1A776-41)

there were no such provision in it

have been received in evidence because it is alledged to have been contradicted by other evidence

event, for a payment to the creditors of Lewis for him and at his request is a payment to him

The 7th 48th objections to the mortgage & do post think it necessary to disense for they resolve themselves into this That the continuing in possession by alexander rendered the Mortgage frandulent and voice, That enight be so as to fudgeness creditors or to bone fide pourchasers Whether the defendants were in that position was the question to be bried. It was proper to admir the Mortgage in evidence as one of the facts necessary to determine that question

But it is said that there was no each entry made in the docket of the fresties of who look the acknowledgment of the Mortgage as is required of the Malute. All the property which was in dispute in this suit was correctly entered upon the Justices docket a fother articles were omitted in would not vitale the Mortgage which were as to those articles which were property entered

2nd. of no such entry was made the Mortgage would

II

But there is a point of view in which this Wortgage was properly received in widence and which disposes of all the objections which were made to it at once and which is the point upon which the case was tried in the court below

and a proper entry made in the fentices docker. If it does not provide for the pessession of the property to remain with the Mortgagor and if each possession did remain with him contrary to the provisions of the Mortgago elit it would be good as between the parties to the Mortgago and would be good against all persons except creditors and bone jide punchasers

If when these defendants purchased the goods of alexander he told them that they were subject to this Mortgage and only sold them the goods subject to the Mortgage them these defendants by their purchase only against the sight of redemption which alexander had and the Mortgage as between Sewis and them was good

This was the precise state of the ease, beharles I hall testifies that Heath told him that he bought the goods entreet to the Mortgage and bought them under value We also said if he could hold the goods he should make a good thing of it. That he shouldn't use Lewis so if

12776-42

he had not accused him of boring his barn (abstract page 4 (See also Beir's Certinony page 5)

Only the old goods which had been Lewises were repliced (see abstract page 6) Bris testimony

Over eve had a right to have that Mortgage go to the fury and to insist that these defendants evere not force fide perrehasers or circlitors. That they had form = chased these goods subject to this Mortgage and stood fereniely in place of alexander. The pury having found that fact for an upon sufficient evidence there is an end to all the questions in the case except those arising from instructions -

As to all the points made by the plaintiff in his brief, from the first to the minth I answer. The questions are not preserved in the record, No proper exceptions having been taken.

as to the mith point which is covered by the 6th + y the assignments of error.

In relation to instructions given to the plaintiff marked 3, 4 +4/286 have only to say, That there was evidence landing to those that Lewis was a creditor of alexander for the purchase money of these very goods and if this pale from alexander to defendants was made by the parties to it with the intent to hinder Levis in the collection of his debt with by oale mides his Mortgage or in any other legal way it was void -

Peroples Statules page 585 Section 2

It is paid that the 3rd instruction asked by defendants below should have been given. That instruction was not the law of this ease. The theory of the plaintiff was that the olefendants had princhased the goods subject to his Mortgage, and that they stood precisely in the place of alexander, the evidence emported this position and we had a right to how it passed upon by the fury.

From the Jury the very point whon which the plaintiff

relied and had a right to rely

En far as this instruction contains any form : ciple of low it had been reflected twice in the first and second instructions asked by planitiff which had been given by the court.

Instructions which present the same propositions of law need not all be given and courts may refuse to repeat a principle of law which has been previously jairly to the Juny -

Chay es Jalman 21th 3les 443 Centis es Martin 20th 200 587

because It refered the question of the construction of the Mortgage to the fung. What provess were served on and air the Mortgage was a question of law

Ind o'here was nothing in the Whortgage from which either Court or fung could say that there was an implied authority to alexander to sell the goods

The 5th Instruction is not the law because if alexander had agreed with Servis to pay certain debts which were owing by Servis and to seeme his performance of this agreement the most gage was taken that is a sufficient consideration to support the Mortgage

The learns will see from the whole widened that the debt was owing by defendants to Lewis for the goods in question and that they had agreed to pay that debt by paying the enough to Servis ereditors, this certainly could make no difference. The debt to Servis could not be dicharged without payment to comebody

The 6th Instruction asked by defendant is not the law. If defendants bought of alexander subject to that Plantage as Thrall testifies plaintiffs anight home a right to recover notwithstanding facts as elated in the asstruction

By The your Enstruction the defendants asked the learnst to instruct the fung that if they found for the defendants they should find les that the property was defendants 2nd they should give defendant down ges to the full value of the goods and thirdly such other damages as they were a mind too

and under value as they said they did and thew could hold the goods without paying the mortgage and also collect the full value of the goods from Lewis and also other damages to be assessed by a fury doubtless they would make a pretty good thing of it

I shall not discuss the point that the verdiet was against the weight of widered because it is so apparent that the great weight of testimony is with the plaintiffs and the gross and manifest inputies which would result from any other verdiet is so bridest

B. Co. Cooks for appelled

Mathon & Meath Lewis Uppeal from 18 and 166 = 2 argument for appelle

Supreme Court of the State of Illinois,

IN THIRD GRAND DIVISION.

JOHN HATHORN & LOREN HEATH, Plaintiffs in Error, APRIL TERM FOR A. D. 1859. vs: SETH LEWIS, Defendant in Error.

ABSTRACT OF RECORD.

First. This suit was commenced by Defendant in Error, by writ of Replevin, in December, 1857, and tried at the January Term of the Kane County Circuit Court for 1858, Isaac G. Wilson, Judge presiding, and a Jury, and resulted in a verdict for the Defendant in Error. The property replevied was as follows, as appears by the p. 11. return of the officer, which was as follows: "Executed the within writ, this 11th day of December, A. D. 1857, by replevying the following described property, it being a part of the Property mentioned in said writ, and delivering the same to the Plaintiff, he having given bond which is hereunto attached, and by reading the same to John Hathorn and Loren Heath, Defendants, this 11th day of December, 1857; 10 part pieces gingham, 1 piece gingham, 20 pieces of calico, 3 Bay State shawls, 2 summer shawls, satin stripe, 2 fancy shawls, 3 silk bonnets, 1 case ribbons, hosiery, and gloves of different kinds, 3 pieces barred mulle, 60 yards of book muslin, 2 pieces dotted mulle, 17 yards J. C. diaper, 8 pair buck skin mitts, 10 rolls paper cambric, 50 pieces common cambric, 14 school books, 2 pieces changeable silk, 4 pieces curtain calico, 2 pieces truckey red calico, 205 yards delaine, 4 pieces bleached muslin, 32 cotton p. 12. alpaca, 1 piece plaid, double width dress goods, 1 piece blue merino, 1 green, 1 coburg, 1 lyonese, 129 pairs shoes, 1 pair heavy boots, 1 jar of tinet. paregoric, 1 tinet. cinnamon, 1 cochechu, 1 squills, 1 peruvian bark, 1 epsom salts, 1 cream tartar, 1 sulphur, 1 antimony, 1 blue vitriol, 1 white, 1 T. T. acid, 1 creosote, 1 wintergreen, 3 10-12 German bitters, 5½ gross screws, 5 mortice locks, 3 dozen door latches, 24 papers shoe nails, 6 padlocks, 5 hammers, 2 hand saws, 3 coffee mills, 10 pair butts, 11 oil lamps, 6 dozen collars, 4 dog chains, 4 halter chains, 4 log chains, 6 pump reels and fixtures, 100 lbs. pump chains, 6 hoes, 3 spades, 2 shovels, 100 gallons stone ware, 22 bowls, 3 doz. plates, 2 tea setts, white, 5 glazetts grand saveges, 20 black grand pitchers, 6 white pitchers, 4 blue pitchers, 21 setts cups and saucers, 20 blue cups and saucers, 3 cream jugs, 1 doz. cruets, vinegar, 4 cruets, pepper, 6 wire sieves, 6 drawing knives, 2 setts knives and forks, 4 doz. table spoons, 5 doz. tea spoons, 1½ lbs. ground cinnamon, 2 lbs. pepper, 2 lbs. spice, 5 cans powder, 11 plush caps, 8 cloth caps, 2 silk hats, 29 fur hats, 200 wall paper, 3 pieces denims, 1 case matches." The remainder of the remainder of the property mentioned in said writ, not found.

Second. The Defendant in Error alleges in his declaration, that the Plaintiffs in Error unlawfully took and unlawfully withholds the property replevied, vide Record, page 16; to which the Plaintiffs in Error filed their pleas,—First, "Non Cepit;" Secondly, that the property replevied was the property of the Plaintiffs in Error; and Thirdly, that Defendant in Error was not entitled to the possession of the property replevied, on which pleas issues were joined. Vide Record, pages 20 & 21.

The Bill of Exceptions is printed at length, and is as follows:—

p. 26.

SETH LEWIS JOHN HATHORN & LOREN HEATH.

Kane County Circuit Court of the January Term of the said Court, for A. D. 1858.

BILL OF EXCEPTIONS.

Be it remembered, that at the January Term of the said Court, for A. D. 1858, to wit, on the tenth day of February, 1858, it still being one of the days of the said January Term of the said Kane County Circuit Court, the above entitled cause came on for trial on the issues heretofore formed in said cause. And thereupon on motion of

for trial on the issues heretofore formed in said cause. And thereupon on motion of the Plaintiff, a Jury was empanneled to try the said cause, and after the empanneling of the Jury, the said Plaintiff, in order to maintain his cause of action under the issues p. 27. joined therein, offered in evidence the following evidence and testimony, to wit:—

The Plaintiff offered in evidence a Chattel Mortgage, in the words and figures following, to wit: This Indenture made this twenty-third day of October, 1857, Between George W. Alexander, party of the first part, of the town of Virgil, County of Kane, and State of Illinois, and Seth Lewis, of the town of Virgil, same County, and State aforesaid, party of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of ten dollars in hand paid, received by the said party of the second part, do grant.

of ten dollars in hand paid, received by the said party of the second part, do grant, bargain, and sell unto the said party of the second part, his heirs and assigns, the following Goods and Chattels, to wit: All the Goods of every kind and quality, Prints, Clothing, Drugs, Groceries, Medicines, Ready-Made Clothing, Dry Goods, Hardware, Crockery, and all and singular, every article and articles in said Store, formerly owned by Seth Lewis, and situated on Block two, and Lot four, in Lodi, Kane County, Illinois.

Also, all the Goods and Materials of every kind and description, belonging to said mortgagor in said Store, during the continuance of this Mortgage. Also, all accounts and notes, book accounts, and indebtedness or debt of any individual or individuals in favor of said Mortgagor, sole and belonging to the party of the second part; also, all the Goods which may be in said Store at the time when this Mortgage shall be due p. 28. and payable :- One span of horses, color bay, medium size, black mane and tail, about

eight years old. Also, one horse power, and planing machine, tenanting machine, circular saw, upright to saw, and all machinery, belonging to said planing mill, and machine shop, situate in said shops, or attached thereto, being in Lodi, on the north side of the Rail-road track, between the residence of John Pickett, and the warehouse, owned by Solomon White, Kane County, State of Illinois. To have and to hold, all and singular, the Goods and Chattels, herein-before granted, bargained, and sold unto the said party of the second part forever, said Goods and Chattels, now remaining and continuing in the possession of the said party of the first part, in the said town of Virgil. Provided always, and these presents are upon these express conditions, that if the party of the first part, shall and do, well and truly, pay or cause to be paid to the said party of the second part, the sum of two thousand six hundred and thirty-seven dollars and forty-five cents, payable as follows: one Note due and payable on the ninth of November, 1857, \$315 38-100 dollars; one of two hundred and forty-six dollars, payable 26th day of November, A. D. 1857; one of one hundred eighty-four dollars 81-100, payable December fifth, A. D. 1857: one hundred and fifty-two dollars and sixty-four cents, payable January nineteenth, A. D. 1858; one hundred sixteen dollars 38-100, payable January eighth, A. D. 1858; five hundred and forty-two dollars 50-100, payable March 8th, A. D. 1858; five hundred forty-nine dollars 29-100, payable March 17th,

p. 29, 1858; Four hundred and four dollars 24-100, payable 21st day of March, A. D. 1858; One hundred fourteen dollars 88-100, payable fifth day of April, A. D. 1858; then, these presents, and every matter herein contained, shall cease and be null and void. But in case default shall be made in the payment of said sum of money, above mentioned at the time above limited for the payment of the same, or any part thereof, it shall and may be lawful for the said party of the second part, to take possession of the said Goods and Chattels, wherever the same shall be, and to sell, and dispose of the same for the best price which can be obtained therefor, at public vendue, or otherwise, (giving six days' notice to the said 1 arty of the first part, of the time and place of such sale,) and out of the money to arise by such sale, thereof to retain the said sum of money above mentioned, and all charges for keeping said property, and if such sale (if so much there shall be) rendering the surplus money (if any there shall be) to the said party of the first part. And it is hereby agreed by, and between, the said parties, that in case the said party of the first part, shall sell, assign, or dispose of, or attempt to sell, assign, or dispose of any of said Goods and Chattels, or remove, or attempt to remove, from said county, any of said Goods and Chattels, or if the same shall be levied upon, or seized by virtue of any execution, writ, or attachment, or other process, against the said party of the first part, it shall and may be lawful for p. 30. the said party of the second part, to take possession of the said Goods and Chattels, and sall the same in the parameter of the said grown of the said Goods and Chattels,

and sell the same, in the payment of the said sum of money, above mentioned, in the manner aforesaid. In witness whereof, the said party of the first part, has hereunto set his hand and

seal, the day and year first above written.

G. W. ALEXANDER. [L. S.]

STATE OF ILLINOIS,) KANE COUNTY.

This Mortgage was acknowledged before me, by George W. Alexander, this 22nd day of October, A. D. 1857. E. P. ROBERTSON, J. P.

Filed for Record, October 24th, A. D. 1857, at 4 o'clock P. M.

To the offering of which Chattel Mortgage, in evidence, the Defendants by their cunsel objected. Objection over ruled, Defendants excepted.

The Plaintiff offered as a witness, E. P. Robertson, who testified counsel objected.

Was a Justice of the Peace, in Virgil in October last. This Mortgage was acknowledged before me. I have no means of knowing whether it was executed before the acknowledgement. Alexander signed it before me.

Cross Examined—It was filled up at the time I first saw it.

Jacob M. Armstrong. I know the parties to this suit. I have lived in Lodi two years. I know the Store and Goods mentioned in Mortgage. Am Clerk for Lewis.

p. 31. Lewis sold the Goods mentioned in Mortgage to George W. Alexander about the
22nd of October last. I was present at the time of the replevy. Same goods replevied
as covered by Mortgage. I heard of the sale by Alexander to the Defendants. I am inclined to think it was about the first of November. Think it was nearer the ninth of December last. I was present when demand was made by Lewis of the Defendants for the goods. It was about the 6th or 7th of December, on Wednesday, some three days after the sale to Defendants. James Lewis and myself were with Seth Lewis. Mr. Seth Lewis came in and asked John Hathorn if he had bought the goods of Alexander. He said he had. He then asked if he knew that he had a Mortgage. He replied that his brother had been to Geneva, and his lawyer, Mr. Mayborne, said the Mortgage was not good. Lewis demanded possession. Hathorn said, you will have to get it by law, and the extent of the law. It was a very short time before that he had heard of it. Heard that Alexander and Defendant Hathorn were going in partners—that

Hathorn heard of the Mortgage and took in Heath-also heard that Hathorn's brother

had been down to Geneva. (The Defendants objected to the last three answers of witness. Objection overruled—exception.)

Cross-Examined. I had been Clerk for Lewis. I owned the Store when the sale p. 32. was made to Alexander. The sale was on the 22d day of October 1857. Alexander went into immediate possession. Defendant Heath was his clerk. Alexander commenced selling Goods at once, and kept right on selling like any other store, until sale to Defendants. Plaintiff Lewis was in and about all the time; lives in Lodi; and was in and about the store frequently, after the sale to Alexander.

Alexander bought a bill of new Goods in Chicago, which were put right in store; a general, full assortment of Goods to fill up the complete assortment of the Goods in store. Lewis' sales per week before he sold to Alexander, averaged from \$300 to \$350. Alexander kept undisputed possession of store and Goods, from October 22d until sale to Hathorn and Heath. I presume the Goods were in the possession of Hathorn and Heath at the time the demand was made by Lewis, which I swore to.

Sanford A. Plummer-called. Know parties to this suit. Know George W. Al-

exander slightly. Known him since October last. Know of Alexander being in the store spoken of. Heard him say that he had sold the store and Goods to Hathorn and Heath, the Defendants. I was present when the invoice was taken. I moved into a tenement connected with the store, after the sale on the 12th of December. I was in and out of the store, while they were taking the invoice. I did not take much I am not competent to judge of the *manner* of taking the invoice. Hathorn pook. White, the clerk, called off the articles, and also Jenkins. I guess had a book. p. 33. Heath and Alexander were out and in, and didn't keep record. Alexander is not now in Lodi. He left between two weeks: was there at his house before his departure after the sale. (Question.) "State where Alexander was Friday and Saturday before his leaving?" (Question objected to—overruled—exception.) He was in and out of the store. (Question.) "State whether you know if he was secreting himself?" (Objection by Defendants overruled, and exceptions to the ruling of the Court.) He asked me to shut the door, and said Charley Thrall was after him. The Defendants were out and in of the store, about the business of the store at the time. (Question.) "State whether either of the Defendants visited Alexander in any other room of the building?" (Objected to by Defendants—overruled and exceptions taken.) Answer. I could not state. I think Jenkins and White saw him. (The Defendants presented their general objection to the admission of any evidence relative to the acts of Alexander, subsequent to the sale, or conversations of him and the Defendants—objection overruled, and exception taken.). Think that Alexander was not to be generally seen; know of some being refused admittance by the Clerks of the Defendants, to the part of the store building where Alexander's family lived, through the store. Alexander's wife sent me for him, and White, the Clerk, told me he guessed he was not far off. (Question.) "State whether Alexander's wife has received letters from Alexander since he left?"

p. 34. (Objected to by Defendants—overruled—exceptions taken.) Answer. I heard her say that she had. Alexander's wife has sent by me for Defendants. I told them of her wish to see them. She told me she had seen them. Mr. Alexander's little girl brought me a letter, and said her uncle brought it for me. Saw the man arrive. (Objection and exception.) I did not see the Defendants go into Mrs. Alexander's apartments then—thought I heard their voices in there afterwards. I did not hear the conversation. (Objection and exception.) Alexander claimed to own the store before the sale, and also three horses and four cows. Maybe he was worth four or five thousand dollars. He might be worth more—might be worth from five to eight thousand dollars. I recollect asking Alexander for boots while the sale was going on; he said they were taken away. Have heard Heath say he bought and paid for the store; might

have heard something said about land scrip or land warrants. Don't remember.

Cross-Examined.—Alexander was selling the goods in his store, at retail, all the time until the sale to Hathorn and Heath. The time of the door being closed, which I swore to, was while the inventory was going on. Think I have seen Lewis in the store while in Alexander's possession. Have seen him there several times. I was at work for Alexander building fixing lumber. work for Alexander, building, fixing lumber, &c., for barn. Alexander was there when the goods were taken by the officer on the replevin writ.

Re Direct. Alexander said, when he wanted me to close the door, that Charley

p. 35. Thrall was looking after him. Have understood that my brother was a merchant in Lodi. I have lived in Iowa City, Iowa. I travel around some all the time. During the last three months I stopped longest in Marion County, Iowa. The last time I saw my brother George he was in Iowa City. (Objection to acts and statements of Alexander subsequent to sale renewed—overruled—exceptions.) I don't know where he is now. sequent to sale renewed—overrined—exceptions.) I don't know where he is now. I came from Iowa City to Lodi. I brought no letters. Mr. Perry stopped at Lodi with me. Perry came to this village with me. Perry had a package with him; he did not tell me what was in it. He gave it to George's wife. I don't know the contents. I knew my brother was to be in Iowa City. He sent a letter to Marion County for me. I had loaned my brother some money, and he told me his wife would pay me the amount. I loaned him money to bear expenses—some \$20 or \$30. I came to see his

W. J. Brown.—I am an attorney. I drew the Mortgage which has been presented. I was not present when when it was acknowledged. Alexander and Seth Lewis came to my office; said they were going to Chicago. I drew the Mortgage. All this was

on the same day.

Cross-Examined.—Lewis came to me, and we went down to Mr. Plato's. Came before the Goods were replevied. I had a conversation with Lewis at Sycamore. He was talking about taking a Chattel Mortgage, and I told him I would not take such an one. I advised him to take better security.

Re-Direct.—Lewis said Alexander was honest, and would pay up as the Notes became due. I told him if he was honest it would be safe enough. I transcribed from book of accounts the Notes described in the Mortgage. Lewis and Alexander were

present when the Mortgage was drawn up.

Re-Cross Examined.—I understood the Mortgage was to be given as collateral security on the Notes, and to be void if Alexander took them up of the parties holding them.

Charles Thrall.—I have seen the stock of Goods that has been spoken of. Talking with Mr. Heath about them, he said, he bought the Goods subject to the Mortgage, and bought them under value. He said if he could hold the Goods he would make a pretty good thing of it. He said he calculated to follow Lewis as long as there was a dollar to his name. "We are bound to follow him as long as he has a dollar." I was Deputy Sheriff last October. I had some executions against Heath. I did not collect

He had no property that I could find.

Cross-Examined.-I worked for Lewis last season. I work for him now. When I hear anything I tell Lewis. I am a party in a suit with Lewis, in matters connected with this suit. I went to the store for costs at the time; Heath told me what I testified to in my direct examination. Heath asked me about shooting; he said Lewis could not frighten him. I said Lewis did not do anything about it. My feelings are enlisted on the side of Lewis. I told him of this a few days after it was told me. This suit is matter of talk among the majority of people in Lodi. Lewis, Armstrong and I are together almost every night at the Post Office: Armstrong keeps the Post Office. I have not been hired by Lewis to watch, only one night. I slept in Warehouse several nights. Heath said to me, "I shouldn't use Lewis so, if he had not accused me of boring his warehouse; we ought to be together; but Lewis goes the other way." Heath and I have not been very good friends of late; neither Lewis and Heath. Heath said Lewis had accused him of breaking into his safe, and he had better not do it. He said that it was nobody's business when he bought, or how he bought. Re-Direct Examination.—I was present when the Goods were replevied.

said he had had his hands tied up and now he was ready for a grab. I had a Ca. Sa. against Heath last week. Somebody had bored up and let the grain out of the ware-

John Pickett.—I know nothing of the Goods. I have heard talk about them. I had a talk with Heath. He and I were walking. He said he had got Lewis right where he wanted him, and he meant to keep him there. He said he had got the Goods, and if Lewis could hold them, well: if not, he should get them back. Nothing was said that I remember about debts in Chicago, that Lewis didn't know of, that be

would have to pay. Don't know what that referred to.

Cross-Examined.—I am not particularly friendly to Heath. Don't know that I am very hostile to him. He sued me once on a Mechanic's Lein. I got a little riled; I guess I did —haven't liked him very well since.

W. P. Burdisk L. Laurentham of the sued means a superior of the superior of the

W. R. Burdick.—I know the parties to this suit. Knew the stock of Goods spoken

Was present at the time of the service of the replevin writ by the Sheriff. selected to measure and count the Goods at the time of the service of the writ. I had p. 39. formerly owned a part of them before sale to Armstrong, and sale to Alexander. During the service something was said about a case of calf skin boots. I searched for them. I should say that the boots were not in the store at the time. There was a question raised in regard to some cravats that were missing. There were cravats called for on the Sheriff's roll. We all set to looking. Mr. Bair said they were there a day or two before. We could not find them. Bair and I talked about the boots. Heath and I had some words about another case of boots—a new and full case. Heath said they were new goods, and not of the old stock. We had considerable words. Heath said I took too much interest; it was none of my business; he said if I took such a

sand I took too intent interest; it was none of my business; he said if I took such a stand against him, I should suffer for it. I told him that he and his party had tried to rob Lewis, and I was going to stand by Lewis.

Cross-Examined.—My business has been selling goods. I came back to Lodi from Como Station; been there selling goods since I went out of trade in Lodi. When I am in Lodi I make it my home at Esq. Robertson's. E. P. Robertson, Esq., is now selling the goods that were replevied. Lewis does his business and makes it his office at Robertson's. I stayed at Lodi until the last two weeks. I never was in the store at Robertson's. I stayed at Lodi until the last two weeks. as clerk. I did not know what goods were in it. I happened in the store just before p. 40. dinner, at the time of the replevy. We commenced a little before dinner time to take the inventory. I had heard the Sheriff was in town before I went over to the store. Seems to me Lewis had spoken to me about coming over and helping. I can't tell certain whether I had seen Lewis that morning. I knew the Sheriff had come with

the papers. The Sheriff told me I could help measure the goods, and count them; he did not tell me to keep tally. The Sheriff did not tell me to look up the Goods. Suppose I did so because I wanted to. I made myself pretty familiar about the Store. I presume I took down some goods. Yes, I did tell Heath, "I had his damned nose on the ground, and I would grind it for him." This was when we were talking about the case of boots. I did not find the case of boots on the Sheriff's roll. Knew of its being there by hearing the Clerks talking about it. Knew the Goods were the same by the

list in the Sheriffs hands. I don't know whether the list was correct or not, Can't say whether the list was correct or not. Can't say whether it called for old goods. know I measured and passed some that looked new. I recognized some as a part of the stock I had formerly owned. I sold out to Lewis sometime in July previous. My invoice to him about \$1200 or \$1500. The way I knew Lewis' Goods, was by the cost mark. I told by the letters. I cannot tell the letters of either mark, his or theirs. p. 41. The Clerks told me the letters. I knew of Alexander selling Goods there, some two

months; Lewis knew of it, I presume; he ought to, he was right there.

Benjamin Stewart.—I had a conversation with Heath soon after the replevin writ was served. I met him on the street. He said, "Are you one of Lewis' standing army?" I said, No. He said, "Did you lay in the store house, the other night?" He said, he understood I was one of Lewis' hired men, to watch his property. He said, Lewis had no need to have a standing army; he had got most of his property.

Cross Examined.—Nobody was present when this conversation took place. a blacksmith, by trade. I don't do much now. I spend most of my time at the grocery. I have talked these matters over. It is general talk through our part of the country. I believe Lewis had somebody watching in the warehouse one or two nights. Know of firing of guns one night; didn't know of its being to take place. At the time of this conversation, I met Heath near the depot. He said, "his standing army was of no use to Lewis; he had got part of his property, and he would have the rest p. 42. as soon as he could bring it around." I never told of this conversation until last Mon-Talked about it with Lewis; something about this matter. One of the Defendants is not a very good friend of mine. I don't know as they have any judgments

against me; have sued me once or twice. John Simmons.—I heard the conversation spoken of by last witness. I was just behind Heath at the time. Heath commenced at Stewart about the standing army. Stewart seemed to stick up for Lewis. Heath said, "folks say I have a part of his

property; but if I have, I'll be damned, if I don't have the rest.

Ethan J. Allen.—I was the officer who replevied the goods. I don't recollect having received any executions against Heath, for some time past. Have had executions against him. I have some now. I tried to find property; I found none. Was present when the goods were taken under the writ of replevin. I don't know much about the matter of the boots spoken of. I know there was some inquiry made for them.

J. H. Mayborne.—I was at Lodi, the night or two before the sale to Defendants. I will not be certain that I ever saw this mortgage (here the mortgage heretofore set out, was handed witness) before. I saw the record. I was not present at the time of

the sale. I saw none but my clients, when in Lodi.

John N. Oliver.—I know the Plaintiff Lewis. Know of his buying goods of Smith, Pollard and Co., of Chicago. I am bookkeeper of that house. At the time Lewis sold to Alexander, the firm would not take Alexander's notes alone, for what Lewis was owing on former deal, and so Lewis signed with him. I gave Lewis and Alexander both notice when the notes were due. They have not been paid. We have a judgment against Lewis, for \$460 53-100; the judgment rendered in the Chicago Court of Common Pleas. (The notes above spoken of shown by witness.)

Cross Examination.—Alexander made the payments of whatever has been paid on these notes. There are two endorsments. These notes were given on Lewis' original indebtedness. At the time Lewis sold to Alexander as I understood it. Alexander was to assume Lewis' indebtedness. I started to draw them for Alexander, but one of the firm spoke to me, and I drew them as they are. The endorsment which is erased, I p. 44. made at the time we received a remittance from Alexander. I endorsed it immediately upon receipt of the money, but by order of the firm erased it, and the amount was

applied on Alexander's book account. A letter accompanied the remittance; I don't know what the directions were. It is our custom when we receive money, if we have a book account, as well as notes, to apply remittances on the book account, instead of

the notes.

Hiram H. Bair.—I know of something being missing at the time of the replevin. I had been Clerk for Alexander. I said, "there is something wrong about those boots, and I will find them." I first knew of the Mortgage at the time the inventory was being taken, when John Hathorn talked of going in partner. At that time I overheard John Hathorn say, "If there is a Mortgage, I will not burden myself with the matter". Mr. Heath John W. John School, White Hathorn and proved took the ter." Mr. Heath, John W. Jenkins, Solomon White, Hathorn, and myself, took the inventory. The sale to Hathorn and Heath was after the inventory was taken, a day or two. The store was closed while the inventory was being taken, but not at other times.

Cross-Examined.—I helped to take the inventory at the time of the sale to Hathorn and Heath. It was a very fair inventory. I do not recollect the exact amount of the p. 45. footings. J. K. Armstrong and I owned the store once. We bought of Lewis. After Alexander bought the stock he put in some \$1200 or \$1500 worth of new Goods. He kept up the stock better than I ever knew it before. The average sales would overrun I should judge \$40 or \$75 per day, while Alexander was in the store. Alexander took Hathorn's and Heath's notes in part payment. He told me he had received all of his pay. I know the stock of Goods well. I had been Clerk there all the while. Hathorn and Heath gave me their note for \$594, in place of a note I held against Alexander, and what Alexander owed me. The debt was partly for goods that had formerly belonged to me, and partly for services and labor as Clerk. I consider them

amply good for the amount. I released Alexander on his note and my claim for this note. They paid Alexander; it must have been somewhere about \$3,500. I saw Alexander take the notes which they gave, and put them in his pocket book, and the Defendants took possession. I was present when the writ of replevin was served. Heath told us we must not take new goods. The Sheriff only called for old goods, and we clerks selected these as well as we could. There were no silk neck-kerchiefs in the inventory from Alexander to the Defendants. The clothing and sumer goods had been laid away to keep them from the dust. W. R. Burdick was there at the time of the replayer, he assisted in measuring goods: he was quite officious p. 43. at the time of the replevy; he assisted in measuring goods; he was quite officious, quarrelled with Mr. Heath a good deal, and used a good many hard names.

S. A. Plummer, re-called.—It was on Saturday that I moved to Alexander's ten-

Alexander lived there too. Alexander was not in the streets as much, after his sale to Hathorn and Heath, as usual. (Defendants again object to the admission of evidence in regard to the acts and words of Alexander, subsequent to sale—objection overruled, and exception taken.) Alexander was there in the back room most of the time. I presume various persons had access to him, the Defendants and others. I know they did. Hawley came to buy stoves, Alexander went to the window opening into the store, and looked before he went out of his room. I thought from his manner I have heard Heath say he was hard up. he was looking out for breakers. saw Mr. Mayborne in Lodi about the time of sale, but cannot say when or with whom. I thought I saw him with some of these parties on the Railroad track.

Cross-Examined.—I thought it was Mr. Mayborne; I might be mistaken; thought it was him or Mr. Burdick. It may have been Burdick. Other persons besides the p. 47. Defendants had access to Alexander in the back room—Esq. Robinson, Hawley. Jen-

kins, and others I don't remember.

Wm. H. Robinson.—I am a Justice of the Peace. I live in the town of Virgil, but not in the village of Lodi. I took the acknowledgment of a Deed from Alexander about the time of the sale; on Saturday, I think. I am in the village generally on Saturdays. (Defendants objected to admission of evidence, of Alexander's acts or statements, as before—objection overruled, and exception taken.) Alexander met me in the street; said he had been looking for me; wanted I should take the acknowledgment of a Deed. I went in with him, and made the Deed to one John W. Bicknell. Bicknell was not present. Yes, I think there was something said about not speaking about the Deed having been made. Lodi is a village in Virgil, of some 300 or 400

J. W. Bignall.—I know Alexander. I am a brother-in-law of Geo. W. Alexander. (Objection to testimony in regard to acts and statements of Alexander, as before renewed—overruled and exception.) They say there was a Deed made out to me by p. 48. Alexander, of the place where I live. I did not see the Deed. The understanding was when Alexander bought the place, that it was for me, and I was to pay for it in work as soon as I could. Think Alexander may have owed me \$500. The place was called worth \$700 or \$800. Alexander owed me mostly for work. I had loaned him some money—loaned him \$41. I have his note still for \$41, besides what he owed me on book account. He owed me on book account some \$8 or \$10. I commenced working for Alexander the latter part of last winter, and worked until the 1st of November. I worked at two dollars per day. I have received very little from him. He has paid me \$100—perhaps a little more; perhaps a little less. He had a store account against me too for family groceries, and such like—somewhere about \$60—may have been more, may be less.

Cross-Examined.—I was sick when the Deed was made. Have been very sick. This is the first time I have been out since my sickness. I worked for Alexander some last winter. We have had no settlement. Don't know exactly how much he does

owe me. I am a mechanic. I work at the sash and blind business.

E. J. Allen, re-called.—Burdick was suggested by Hathorn and Heath, at the time of the replevy, to measure the goods. The Defendants themselves did not know all the old goods from the new. Burdick was called on by Armstrong and Bair to look up the goods.

PLAINTIFF RESTED.

EVIDENCE OFFERED BY THE DEFENDANTS.

E. P. Robertson.—This is my Docket. (Here witness produced a Justice's Docket.) I am a Justice of the Peace for the town of Virgil. I live in Lodi village. I have no other Docket. This is the entry and record in my Docket of a Chattel Mortgage from George W. Alexander to the Plaintiff Lewis, and of which I took the acknowledgment, as I testified in my previous examination by the Plaintiff, and is in the words and figures following:

"George W. Alexander Chattel Mortgage. "SETH LEWIS.

"Mortgage of all the Goods of every kind and quality—Prints, Clothing, Drugs, "Groceries, Medicines, Ready-made Clothing, Dry Goods, Hardware, Crockery, and p. 50. "all and singular, every article and articles, in the store formerly occupied by Seth "Lewis, and situated on Block 2, Lot 4, in Lodi; also, one span of horses, color bay, "medium size, black mane and tails, about eight years old; one horse power, planing "machine, tenanting machine, circle saw, and all machinery belonging to and at"tached to the shop for planing and purposes, and all other purposes. Said shop situate between John Pickett's dwellinghouse and Solomon White's warehouse, on the north side of R. R. Acknowledged this 22nd day of October, A. D. 1857, before me.

"E. P. ROBERTSON, J. P."

This is the only entry and record in my docket of a Chattei Mortgage from George W. Alexander to Seth Lewis.

Cross-Examined.—I don't remember when the Defendants looked at my docket. Think it was after the sale by Alexander to them. (The Defendants by their Counsel then made a motion to suppress the Chattel Mortgage offered by the Plaintiff from going to the Jury as evidence—motion overruled—Defendants except to ruling.)

A. S. Babcock.—I was living in Lodi last December; recollect the day of the replevy. I know Alexander was in Lodi all of the week spoken of by witness for Plaintiff, except Wednesday. I did not see him that day that I recollect. I saw Alexander in and about the store during that week. On Saturday forenoon, the day spoken of by witness Plummer, I saw Alexander writing at the counting desk in the store. People were passing in and out all the time. I noticed no difficulty. Alexander was around as usual for all I saw. I had been at work for Alexander. Had had charge of the Lumber Yard belonging to Alexander. I saw Solomon White, Senr., and others, looking at the lumber, &c., and went to Alexander, to see why they were there, as they did not call on me. I went to him also about some other matters. Alexander told me he had sold the Lumber Yard—told me he had sold out all that he owned in Lodi, except the store building and the lot it stood on.

Cross-Examined.—I had been in the employ of Alexander four months. I should

judge the value of Alexander's property to be about \$4,000.

Charles B. Wells.—I am an attorney living in Geneva. Think I have seen the Chattel Mortgage, offered in evidence, before. It was some time in the latter part of October, or the first of November last. I don't recollect who handed it to me. He said Seth Lewis had sent him with it to me, and wanted my opinion whether it was good security. I gave my opinion, and handed it back to the man. (Quest.) "What opinion did you give?" (Objected to by Plaintiff—objection sustained—Defendants

opinion did you give?" (Objected to by Plaintiff—objection sustained—Defendants excepted.)

Solomon White, Junr.—I know the parties to this suit. Know George W. Alexander. I was a clerk for Alexander while he owned the store. I clerked for him 26 days. Was his clerk when he sold to Hathern. Helped to take the inventory. It

der. I was a clerk for Alexander while he owned the store. I clerked for him 26 days. Was his clerk when he sold to Hathorn. Helped to take the inventory. It was taken as all inventories are taken. The goods amounted to \$2,700. I saw notes passed over to Alexander. I know that Hathorn had a note against Alexander of some \$300. I know of a few pairs of thin boots belonging to the stock; they were hanging over the writing desk. Mr. Hathorn told me there would be no sale for them until next Spring, and I must take them down, and put them where they would be out of the way and safe. I took them down, and put them in a box under the counter. I was not present when they were inquired for at the replevy. I took down and put away some thin summer goods also, to keep them from dust, until there should be a sale for them. Alexander was about all the time the Goods were replevied. I saw Alexander the Thursday, Friday, and Saturday spoken of by former witnesses. He p. 53. was in and out of the store, Friday. I saw him on the street on Saturday sometime. I saw him sometimes at the writing desk. I have seen Lewis in the store while Alexander while Alexander was about all the vertical saw him sometimes at the writing desk.

I saw him sometimes at the writing desk. I have seen Lewis in the store while Alexander had the store. We sold anything people wanted, like any retail store, if we had it while Alexander had the store.

it, while Alexander had the store.

Cross-Examined.—I live with my father, Solomon White, Senr. I was in the store when Hathorn and Heath talked of buying in. I only know of one inventory. I never saw Mr. Mayborne there at that time. I heard reported around town that he had been there. At the time the inventory was taken, I helped Mr. Bair and Mr. Jenkins count. I saw Mr. Heath write and give one note to Alexander, and saw Hathorn write some. I don't know where Alexander slept Friday and Saturday nights. He slept at my father's I think, on Tuesday and Wednesday nights. I think he slept alone. Mr. Hathorn, I think was there that evening. He came for his wife, and stayed perhaps 15 minutes. I don't think he talked with Alexander five minutes. There were about \$3,000 of book accounts. I think perhaps \$2,000 of them good.

he slept alone. Mr. Hathorn, I think was there that evening. He came for his wife, and stayed perhaps 15 minutes. I don't think he talked with Alexander five minutes. There were about \$3,000 of book accounts. I think perhaps \$2,000 of them good.

Re-Direct Examination.—Mr. Alexander was up at my father's to straighten up his lumber book. It had been very badly kept, and needed straightening. Some of them were pretty hard debts. They will be old before they ever are collected. The p. 54. book accounts were worth maybe \$1500. (Witness identified Alexander's handwriting.)

H. H. Bair.—I was present when Alexander made the sale to Hathorn and Heath

H. H. Bair.—I was present when Alexander made the sale to Hathorn and Heath, of the Goods. I was called upon by all of them to witness the sale. There were more Goods in the store at the time of the sale by Alexander to Hathorn and Heath, than when sold to Alexander by Lewis. At the time Lewis sold to Alexander, the store was in the name of Armstrong and myself. We had bought of Lewis some short time before; we had not made the payments, and Lewis sold to Alexander, and we assented to the sale. Alexander added maybe to the Stock while in his possession, some eight or ten hundred dollars. Palethorpe and I have bought from Hathorn and Heath. The Stock was valued at \$2,200, when we went in. The notes given by Hathorn and Heath to Alexander, must have overrun \$3,000. They assumed the liability of Alexander to me, as I have before testified to.

Cross-Examination.—I hold Hathorn and Heath's note still. Their invoice to me amounted to a little more than \$2,100. The goods replevied by the Sheriff amounted to about \$800. I can't be far out of the way in regard to the value of the goods reple-

p. 55, vied. Hathorn and Heath had possession of the store some four weeks. Their sales averaged some \$300 per week. I may be mistaken in regard to the amount, should think that not far from the average amount of sales per week. I was clerk for Alexander, and sold goods for him. I should think the majority of his book accounts collectible; think I would undertake to collect them for 25 per cent. The debts were made by farmers generally.

Re-Direct Examination.—Hathorn and Heath calculated to do a cash business. They did some credit business. Hathorn and Heath's sales would average about \$25 a day. The service of the replevin writ, was \$500 damage to the store and its busi-

ness, besides the property taken.

Solomon White, Junr., re-called.—I was clerk also for Hathorn and Heath until they sold out to Bair and Palethorp. I was there three weeks. Hathorn and Heath did a cash business. I don't recollect ever seeing more than \$25 in the till, as result of one day's sales. I drew off the day's sale one or two nights. I should think they would average \$10.

DEFENDANTS RESTED.

Stipulation between the parties hereto, read by the Counsel for the Plaintiff. p. 56.

KANE COUNTY CIRCUIT COURT. SETH LEWIS, January Term of said Court for 1858. JOHN HATHORN & LOREN HEATH.

It is stipulated and agreed, that the Notes mentioned in the Chattel Mortgage from G. W. Alexander to said Lewis, dated October 23, 1857, were Notes given by said Lewis and said Alexander for Goods, purchased by said Lewis before he sold out to said Alexander, and were the same as mortgaged and in the store at Lodi, at time of the making said Mortgage, and that said Lewis was held as security on the same, and that Alexander has not paid said Notes, and are the same Notes as the Notes described in the Mortgage, and are given to pay the indebtedness originally contracted for p. 57. said Goods, mentioned in the Mortgage. This stipulation to be used in each of the cases above entitled.

Geneva, February 8th, 1858.

HERRINGTON, PLATO, & PARKS, for Plaintiff. MAYBORNE & SMITH, Atty's for Hathorn & Heath.

Here both parties rested; and this was all the evidence given on the trial of the above cause by either of the parties to the above entitled suit. And after argument of Counsel for the respective parties, the Court gave the following instructions on the part of, and in behalf of the Plaintiff.

No. 3. That any sale made for the purpose of hindering, delaying, or defrauding Creditors is void as to bona fide creditors.

No. 4. That while fraud cannot be presumed, yet it is capable of being proved by facts and circumstances, and if from all the facts and the circumstances in proof, the Jury believe from the evidence, that Heath and Hathorn purchased goods of Alexander for the purpose of cheating or defrauding Lewis, such sale was void, if Lewis was creditor

of Alexander.

No. 41. That if the Jury believe from the evidence, that Heath and Hathorn bought the goods in question subject to the Mortgage, then Lewis had the same right to take the goods of Heath and Hathorn that he would have had to take the goods from

No. 6. If the Jury believe from the evidence that Lewis had a Mortgage from Alexander on the property in question, and that by the terms of the Mortgage, and that Heath and Hathorn bought the goods with a full knowledge of the execution of said Mortgage, and that they, Heath and Hathorn, made such purchase for the purpose of defrauding Lewis out of his security, then such sale was fraudulent and void.

(To the giving of which instructions on the part of and in behalf of the Plaintiff by the Court, the Defendants by their Counsel then and there excepted.) The Court then

gave the following instructions on the part of the Defendants.

First. All conveyances of Goods and Chattels, where the possession is allowed to remain with the donor or vender, are *fraudulent per se*, and void, as to creditors and purchasers, unless the retaining of possession be consistent with the terms of the Deed or Conveyance, and unless the Mortgage from Alexander to Lewis authorized Alexander to retain possession of the Goods mentioned in the Mortgage, such possession was p. 59. inconsistent with the terms of the Mortgage, and rendered void as to subsequent pur-

Second. That a Mortgage of Personal Property where the possession is allowed to remain with the Mortgagor, although binding between the parties, is nevertheless fraudulent and void as to subsequent purchasers, unless by its terms the mortgagor is

allowed to retain possession of the Goods.

Seventh. That fraud is never to be inferred, but must be proved.

Eighth. If the Jury believe from the evidence in the case, that there was no such indebtedness existing between Alexander and the Plaintiff Lewis, as that mentioned in the Mortgage, but that it was other and different from that stated in said Mortgage, then that is a fact they ought to consider in arriving at the fact whether it was a fair and bona fide transaction between Lewis and Alexander.

The Court refused to give the following instructions asked for on behalf of the De-

p. 60. Third. If the Jury believe from the evidence, that Alexander continued to sell the goods with the knowledge and consent of Lewis after the execution of the Mortgage in question, and if such sales were inconsistent with, or not allowed by the terms of the Mortgage, such selling and consent will render the Mortgage inoperative and void as to the Defendants in this case, provided they purchased the Goods in good faith, and for a bona fide consideration.

Fourth. That a Mortgage of Personal Property which provides that the possession may remain with the vender, coupled with an implied right to sell, is of itself fraudulent in law, and void as to purchasers. And if the Jury believe from the evidence, that the Mortgage from Alexander to Lewis contained an *implied* authority in Alexander to sell the Goods mentioned in the Mortgage, such implied authority would under the Mortgage be void as to these Defendants; and if the Jury believe from the evidence, that Alexander sold said Goods from day to day with the knowledge and consent of Lewis after the execution of the Mortgage, such sales and consent are circumstances which the Jury may take into consideration, in construing the question of fraud.

p. 61. If the Jury believe from the evidence, that the Mortgage in question was given to secure the payment of certain Notes executed by Alexander and Lewis, then in that case Lewis has no claim against Alexander by virtue of said Notes and Mortgage, unless he Lewis has paid said Notes, or some portion of them, and he Lewis had no right to take the property in question in consequence of his liability on the Notes.

If the Jury believe from the evidence, that the Chattel Mortgage offered in evidence does not contain the same description of goods, &c., as the one described on the docket of the Justice of the Peace who took the acknowledgment of the Mortgage, and that the said Mortgage was dated the 23rd day of October, A. D. 1857, and the acknowledgment was on the 22nd day of said October, then the said Mortgage so offered in evidence is invalid, and has no binding effect as against subsequent purchasers, and the Jury should find a verdict for the Defendants.

Seventh. If the Jury should find the issues in this case in favor of the Defendants, they will assess their damages, which will be the value of the Goods at the time they were replevied, and such further damages as the Defendants have sustained in consequence of the removal of their Goods.

To which refusal to give the instructions asked for by them, the Defendants excepted.

p. 62. The Jury rendered a verdict for the Plaintiff for \$425.

Plaintiff remitted the \$425 damages. Court overruled motion of Defendants for a p. 62. new trial; to which ruling of the Court the Defendants excepted; and pray this their Bill of Exceptions be signed, &c., which is done.

The following errors are assigned:

The Court below erred in admitting improper evidence on behalf of the Defendant in Error.

The Court erred in excluding proper evidence offered on the part of the Plaintiffs in Error.

The Court erred in allowing the declarations and acts of Alexander subsequent to the sale by him to the Plaintiffs in Error to be admitted as evidence.

The Court erred in allowing the Chattel Mortgage to be admitted as evidence.

The Court erred in everylling the motion made by the Plaintiffs in France to

The Court erred in overruling the motion made by the Plaintiffs in Error to suppress the Chattel Mortgage, offered by Defendant in Error, and in not witholding it from the Jury as evidence.

The Court erred in giving the instructions asked for by the Defendant in Error. The Court erred in not giving the instructions asked by the Plaintiffs in Error.

The verdict is contrary to Law, and the evidence in the case. The Court erred in overruling the motion for a new trial.

The Court erred in rendering judgment for the Defendant in Error, when by the law of the land, the said judgment ought to have been for the said Plaintiffs in Error.

MAYBORNE & SMITH,

Attorneys for Plaintiffs in Error.

John Harhorn re Loren Heath Seth Lovis Abstract flecord

Hilal April 19, 1839 Leland Clark

Supreme Court of the State of Illinois,

IN THIRD GRAND DIVISION.

John Hathorn & Loren Heath, vs : SETH LEWIS.

APRIL TERM FOR A. D. 1859.

POINTS AND BRIEF.

This Suit was commenced by Writ of Replevin, by the Defendant Seth Lewis, in December, A. D. 1857, in the Kane County Circuit Court, and was tried at the January Term of the said Court for 1858, before I. G. Wilson, Presiding, and a Jury, and

resulted in a verdict for Defendant in Error.

The Property replevied was a part of a Stock of Goods of a Retail Country Store; and the value of the Goods replevied amounted in all to some \$800 or \$900 at the cost price. A full description of Goods replevied is set out on the first page of the printed Abstract in this case—to which the Court is referred. The Defendant in Ergeth Lawin was a standard or standard ror, Seth Lewis, was engaged as a country merchant or storekeeper, in the Fall of 1857, at Lodi, in Kane County, and had been for some years before; and on the 22d day of October, A. D. 1857, he sold the Store and Stock of Goods at Lodi, to one George W. Alexander, who up to that time had been a farmer by occupation, and owned a large and valuable Farm in De Kalb County, some five or six miles from Lodi. This he exchanged for the Stock of Goods in the Store of Lewis, and for his Store in Lodi in which the Goods were, and for his Book Accounts then outstanding and unpaid. The Stock of Goods in the Store, the Store, and the Book Accounts, sold by Lewis to Alexander, at the prices agreed on between them, amounted to some twenty-seven hundred dollars more than what they called the Farm worth, in the exchange. At the time of the sale of the Goods to Alexander, Lewis was largely in debt in Chicago, for goods purchased by him, and put into this Store at Lodi. These debts, to the amount of some twenty-seven hundred dollars, Alexander was to pay, or agreed to pay; and to secure the payment of these, Alexander on the 22d day of October, executed to Lewis a Chattel Mortgage on the entire Stock of Goods purchased by him of Lewis, on some other property which he owned in Lodi, and also on the Book Accounts. This Mortgage was recorded in the Recorder's Office of Kane County—a copy of which Mortgage, the acknowledgment of the same, and the entry made thereof on the docket of the Justice by whom the acknowledgment was taken, are fully set forth in the printed Abstract, on the first, second, and sixth pages thereof, to which the attention of the Court is directed, as this Mortgage is the source by and under which the Defendant Lewis claims title to the Goods replevied, and bases his right to the possession thereof. Alexander after making the purchase of Lewis took immediate possession of the Store, and at once commenced selling at retail the Stock of Goods the source to the court of the store and the sto therein to customers and purchasers in the usual way, and as is customary for merchants to do, without any regard to the Mortgage to Lewis, and with the full knowledge of Lewis, up to the time he made sale of his entire Stock to the Plaintiffs Hathorn and Heath, which was on or about the ninth day of December, A. D. 1857, and for the same he received full payment from them, at the time of sale. The Stock of Goods sold to the Plaintiffs in Error by said Alexander was such part of the Goods bought of the Defendant in Error as were then in the Store and unsold, with such Goods and Groceries as he had bought from time to time to keep up the assortment in the Store, and which had been mingled with those bought of said Lewis.

First Point. The Chattel Mortgage offered and admitted in evidence by the Court

below, was void on its face-

1st. Because the Instrument purports to have been made, and is dated on the 23d day of October, A. D. 1857, when the acknowledgment before the Justice is dated October 22d, one day before the making and execution of the Mortgage by Alexander. Instruments of the character of this Mortgage are to be tested by themselves, and as they appear on their face, without the aid of explanatory evidence. Vide Record, p. 27-30.

2d. It is void on its face, and was not evidence for any purpose, because it does not describe the Goods mortgaged with sufficient distinctness, as it should have done—giving the quantity and description of each article included in the Mortgage, so that it could be readily ascertained what was and what was not embraced within it.

3d. It is void on its face, and it cannot be made or set up as the foundation of a title in any case, by the mortgagee, because it not only includes the Goods then in the Store, but all that the mortgagor might buy during the continuance of the Mortgage; a provision as unheard of, as it is fraudulent and destructive to the best interests and good faith of commercial dealing. By this provision the mortgagee held not only the property in existence, and in the possession of the mortgagor, at the time of the execution of said Mortgage, but all that he may subsequently acquire, whether he makes payment for it or not; and the mortgagor holds it against the just claims of the individuals who furnished it, thereby creating a lien that is to cut off and exclude all persons who may deal with or trust him with their property from collecting their claims, till such terms as the exacting demands of a heartless mortgagee are fully met and satisfied. Such unfair and unjust Contracts and Instruments have never met with favor from Courts, and we trust never will.

4th. This Mortgage is void, and cannot be used as evidence for any purpose, because it not only covers and includes the account books sold by the mortgage to the mortgagor, but all debts, accounts, and notes, that he may hold or have at the time said Mortgage becomes due, without regard or reference to how made, or when, or what the consideration of them might be. Vide Record page 27. Book Accounts and Notes are not and cannot be the subject of a Mortgage, for the simple reason that Accounts and Notes are not property for such a purpose.

5th. This Mortgage is void in law, because it does not make any provisions for the property to remain in the possession of the mortgagor, yet he was allowed to retain and keep possession of it. The only provision in the Mortgage touching the possession of the property, is in these words—"To have and to hold, all and singular, the Goods "and Chattels hereinbefore granted, bargained and sold unto the said party of the "second part forever, said Goods and Chattels now remaining and continuing in possession of the party of the first part, in the said town of Virgil." Vide Record page 28. This is only descriptive of the place where the Goods were at the time of the making and executing of the Mortgage, but does not give the possession or provide for the possession to remain in the mortgagor, according to the provisions of the Statute, and Mortgages not containing such provision this Court has time and again pronounced void. Vide 3 Gill R., page 455; Rhines vs. Phelps; 11 Illinois 617; 1 Scam. 296.

6th. This Mortgage was void in law, because it purports upon its face to be given to secure the payment of certain Promissory Notes, or of the sum of money therein specified, to the mortgagee, when the evidence shows—(see stipulation set forth on page 56 of Record, and witness Oliver, page 43, to which the Court is referred)—that these were debts that the mortgagee owed, or was holden for, and were due to third parties, but by arrangement made between the mortgagor and mortgagee, the mortgagor was to pay. Yet the Mortgage does not so state, or define the mortgagor's liability, but describes them as notes payable to the mortgagee, when in truth and in fact not a dollar was to be paid to him. Under the Mortgage, the mortgagee could claim the payment himself, if the mortgagor had made payment to the creditors of Lewis, as by their agreement he had promised to do; and in this manner Lewis held a Mortgage to secure to him the payment of certain sums of money, and also had him held with him as one of the makers of the notes given to third persons to pay these notes; and he might at any time assign the Mortgage, or fail, or die. It also had the effect to hinder and delay creditors, as it assumed and asserted a debt to Lewis, when he did not owe Lewis individually a dollar, thereby apparently doubling up his indebtedness, and multiplying his liability twofold; it was also another and different debt than that set out in the Mortgage, and therefore made it void.

7th. This Mortgage was void in law, because it was understood, impliedly at least, by the parties to it, if not expressed, that the mortgagor should continue to sell the goods mortgaged contrary to the express terms of the Mortgage; if this cannot be gathered from the face of the Mortgage itself, still the goods were left in his possession, and he was allowed to deal with them, and sell and dispose of them, as a merchant to his customers, down to the time he sold to the Plaintiffs in Error. Such transactions always hardbeen pronounced a fraud upon creditors and purchasers, and always will be. Vide 18 Ill., page 401-4; Comstock's R., page 588.

Sth. The Defendant in Error is estoped by his own act from setting up the Mortgage and claiming title under and by virtue of it, to the Goods therein described, from the fact, that when he sold the store, and the stock of goods therein, to the mortgagor, and allowed him for nearly two months to go on and sell goods to his customers, and in the presence of the mortgagee, at the rate of \$40 to \$70 per day, (vide testimony

of Hiram H. Bair, p. 44 of Record,) the Plaintiffs in Error had a right to assume and believe that the mortgaged did not rely on his Mortgage, or claim any title by virtue of it, for he allowed the mortgaged daily to sell and dispose of the property mortgaged, as if it was his own; and if he assented and allowed him to sell to customers the property mortgaged, he had the same right to sell and they to purchase all the property in a bulk, as they had to purchase it by individual articles, or in small quantities. Lewis could not allow Alexander to have possession of the property, and deal with it as though it was his own property, and then assert title to it by virtue of his Mortgage; such acts and conduct will not stand against creditors or purchasers. Vide 4 Comstock, page 588; 18 Illinois, page 401.

9th. This Mortgage was not evidence for any purpose, from the fact that the entry made in the Justice's docket, was not such an entry as is required to be made by the Statute, (Vide R. S. of Scates, Treat and Blackwell, page 813, sec. 2,) in this,—it does not describe the property mentioned in the Mortgage, it being in the words and figures following, to wit:—

"George W. Alexander, Chattel Mortgage.

Seth Lewis.

"Mortgage of all the Goods of every kind and quality—Prints, Clothing, Drugs, "Groceries, Medicines, Ready-made Clothing, Dry Goods, Hardware, Crockery, and "all and singular, every article and articles, in the store formerly occupied by Seth "Lewis, and situated on Block 2, Lot 4, in Lodi; also, one span of horses, color bay, "medium size, black mane and tails, about eight years old; one horse power, planing "machine, tenanting machine, circle saw, and all machinery belonging to and at"tached to the shop for planing and purposes, and all other purposes. Said shop situate between John Pickett's dwellinghouse and Solomon White's warehouse, on the "north side of R. R. Acknowledged this 22d day of October, A. D. 1857, before me.

"E. P. ROBERTSON, J. P."

Vide Record, page 50, and Abstract pages 6 & 7. The entry made in the Justice's docket would show another and different Mortgage, for it entirely omits this part of the Mortgage, to wit:—"Also, all the goods and materials of every kind and descrip-"tion belonging to said mortgagor in said store, during the continuance of this Mortgage. Also, all accounts and notes, book accounts, and indebtedness or debt of any "individual or individuals, in favor of said mortgagor, sole and belonging to the party "of the second part; also, all the goods which may be in said store at the time when "this Mortgage shall be due and payable." (Vide Record, page 28.) The entry made in the Justice's docket should be in the precise terms, and should agree in description in every respect with the Mortgage, describing the same property in the same terms, and just as full and no fuller than they are described in the Mortgage; and unless it does this, the Mortgage is void, and is not evidence for any purpose, and gives and conveys no rights to the mortgagee. (Vide R. S., page 813, sec. 1.) And in this case this is not done, but one-half of the descriptive part of the Mortgage is omitted. This provision of the Statute must be strictly complied with, and fully conformed to, before it can give any validity to the Mortgage. If such looseness is to be tolerated and sanctioned, the Statute becomes a dead letter, and the entry is of no use, as it gives no correct information of the property mortgaged, as it was intended it should. Vide 18 Illinois, page 400-2.

10th. The necessary tendency and effect of this Mortgage was to hinder and delay creditors, and it is therefore void as to creditors and purchasers. It was intended by the parties to it at the time it was made, that the property mortgaged should be exposed for sale and sold. The property was bought for that purpose and that only, as the mortgagee was fully advised; and it was intended that the mortgagor should treat and use it as his own property, and sell it, and when sold, the avails to be his own. Vide 17 Wendell R., page 492; 2 Pickering, page 129.

Second Point. The Court erred in admitting the declarations and acts of Alexander, after he had sold to the Plaintiffs in Error, to be given in evidence to the Jury. His statements and acts were not evidence for any purpose against them, after he had sold to them—and their rights and interests should not have been prejudiced or jeopardized by them; and the Court should have excluded them, he having received his pay for his goods, and given full possession to the Plaintiffs in Error, he had no longer any interest in common with them, but it was then his interest to do all in his power to prejudice their rights to them, to avoid the penalties of the Statute for selling mortgaged property. He also might have another and additional reason for so doing, which might be to aid Lewis in holding them, and thereby have them applied in payment of his liabilities on Lewis' notes; he might be a witness for Plaintiffs in Error, but not for Defendant in Error. And furthermore, all the acts and statements of Alexander tending to show fraud, which were admitted as evidence under the protest of the Plaintiffs in Error, were acts and statements made by him, after the commence-

ment of this suit by the Defendant in Error. See return of Sheriff, R., page 11; Plummer's testimony, R., page 32; White's testimony, R., page 52.

Third Point. The evidence shows no fraud on the part of the Plaintiffs in Error for they paid Alexander all that the goods were worth, to wit: some \$3,500 or \$4,000 for them, as Bair testifies, and he was one of the witnesses for the Defendant in Error, called and sworn by him, and one to whom Lewis had sold the goods before he made sale of them to Alexander—and fraud is not to be presumed but must be proven, and it requires the same amount of evidence to establish fraud as it does to establish the act of obtaining goods under false pretences in a criminal prosecution for that offence. (Vide 4; Scam. 97. The Court also erred in admitting the hearsay evidence presented in answers of witness Armstrong in regard to acts of Plaintiffs in Error. Vide Record page 31.

Fourth Point. The Defendant Lewis had no right or claim under the Mortgage, or power to take the goods, for the reason that the Mortgage was given to secure him against notes and claims that he was holden for, and had signed with Alexander as surety for him, as John N. Oliver testified, (Vide Record, page 43 & 44; and stipulation, page 56,) and which notes he had not taken up or paid, though Alexander had paid a part of them, and until this was done, Lewis had no claim on him or the property mortgaged; for no principle of law is better or more fully settled, than that a surety cannot maintain an action against his principal, till he has paid or taken up the debt. Vide Bonham vs. Galloway, 13 Ills., 68; Shepard vs. Ogden, 2 Scam. 257; Davis vs. The People, 1 Gill, 409.

Fifth Point. Alexander was a man of considerable property, besides these goods, as was testified to by A. S. Babcock and others, and not contradicted. (Vide Record page 51 and 52.) He estimated him to be worth some \$4,000, so that Lewis' debt was not endangered, or he injured by the Plaintiffs in Error buying the goods, and Alexander held the notes of Hathorn and Heath to the amount of some \$3,000. (Vide Record, page 54.) And there is no pretence that Hathorn was not perfectly responsible, and a man of property.

Sixth Point. The testimony of Stewart, Thrall, and Burdick, show that they had a great deal of feeling, and entertained strong and bitter feelings against the Plaintiffs in Error, and had taken sides and become partisans, and as such they testified, and so manifest was this on the trial, that it ought and doubtless would have weakened, if it had not had the effect to lead the Jury to wholly disregard their evidence, had not the Court allowed the statements and conduct of Alexander to have been given and received as evidence, and thereby occasioned the Plaintiffs a great wrong and injury.

Seventh Point. The Court should have sustained the motion which was made by the Plaintiffs in Error, to suppress the Chattel Mortgage and withhold it from the Jury, (See Record, page 50,) for the reasons above stated, and had the Court done this, then the Jury must have found their verdict for the Plaintiffs in Error under the issue formed, for the Defendant in Error could no longer legally claim any rights, powers, or privileges by virtue of the Mortgage, and it was not such an instrument as the Plaintiffs in Error or any other person was required to respect or regard, as it made no provisions for the property mortgaged, remaining in the possession of the mortgagor, and it was not properly entered on the Justice's docket, or properly and sufficiently described in the docket, or Mortgage, and it was the design and intention of the mortgagor and mortgagee that the property should be sold by the mortgagor, and he had been doing so as fast as he could ever since the making of it, with the knowledge and assent of the mortgagee, and he purchased with this object, as the Defendant in Error well knew.

Eighth Point. There is no evidence to warrant the verdict of the Jury, and the Court should have granted a new trial. By no testimony can it be said that the purchase of the Goods in the Store was made by the Plaintiffs in Error, for the purpose of defrauding the Defendant Lewis, nor did it place him in any worse condition than he was in before, as the goods were sold for all they were worth, and he had received in exchange for them, good paper, that his creditors would gladly and willingly have taken; paper that was much better than Lewis', and that his creditors would have cheerfully accepted and taken in exchange for his, dollar for dollar. Then how was he wronged or injured? Alexander had been induced by Lewis to buy a stock of old goods, and pay a big price for them, much more than they were worth, as Lewis knew at the time, but Alexander knew very little about mercantile business or trans-

actions, and Lewis took advantage of his ignorance. But he soon learnt that he had entered on a branch of business that he knew but little about, and he was anxious to get out of it as soon as he could, and the best way he could, and therefore sold as he did to the Plaintiffs in Error; and because he did so, and did not allow Lewis to strip him of all he had left, and prevent his creditors from getting their just claims and demands against him; for the Court will bear in mind that he had added to the stock purchased by him of Lewis some twelve or fifteen hundred dollars worth of new goods, (see the testimony of H. H. Bair, page 45 of Record.) Lewis flares up and makes a great cry about the sale, and seeks to regain the possession of the goods, and claims that the acts and conduct of the Plaintiffs are fraudulent, because they have purchased and given their obligations to the full amount of the property bought, which are good and collectible, and by doing so, have given to Alexander an opportunity to sell by wholesale to responsible parties, the property that the Defendant was allowing him to sell by retail, (and often to irresponsible parties.) He stood by and saw the goods being sold at retail, and made no objections, though this was contrary to the letter of the instrument, and the intentions of the parties—if the Defendant in Error can claim any rights under it—but all this time he never utter one word of complaint, or even made an objection. If the purchase was made by the Plaintiffs in Error for the purpose of defrauding Alexander's creditors, it is a little surprising that his creditors have not endeavored to hold the goods, by asserting their claims, for they certainly could lay a far better claim to them, and one that would meet with a more ready recognition in a Court of Justice, than that of the Defendant Lewis.

Ninth Point. The instruction marked No. 3 given by the Court, for Defendant in Error, should not have been given, for he had not shown himself a creditor of Alexander's, or at least such a one as could claim any rights by virtue of the Mortgage.

The Court erred in giving the instruction marked No. 4, asked by Defendant in Error, and it was not law in this case, for Lewis did not lay a claim as creditor of Alexander except by virtue of his Mortgage, and by that only.

The Court erred in giving the instruction marked No. 4½, asked by the Defendant in Error, and it was not law, for the reason that Lewis had no right to the goods until such times as he had paid the debts that he had become surety for with Alexander.

such times as he had paid the debts that he had become surety for with Alexander.

The Court should not have given the instruction marked No. 6, asked by the Defendant in Error, because it is so drawn that its meaning is not clear, from its words; and secondly, Lewis had no rights under his Mortgage, it being void. By this instruction the Court impliedly asserted and instructed the Jury, that it was a valid Mortgage, and in fact took the case from the Jury, and pronounced the verdict for them in the case.

The Court should have given the "third" instruction asked by the Plaintiffs in Error, for it correctly states the law in this case, and if this instruction had been given the Jury must have found a verdict for the Plaintiffs in Error.

The "fourth" instruction asked by Plaintiffs in Error was law, and should have been given by the Court.

The other instructions asked by the Plaintiffs in Error should have been given by the Court, as they correctly state the law, and had they been given by the Court, the Jury must have found a verdict for the Plaintiffs in Error, if they had paid any regard to the said instructions, and if they had not, then the Court would have granted a new trial

The verdict of the Jury was against the law in the case, and against the evidence, and should have been set aside by the Court, and a new trial granted to the Plaintiffs in Error. And the Court erred in not granting a new trial, because he had allowed improper evidence to go to the Jury, on the part and in the behalf of the Defendants in Error, and had excluded proper evidence offered on the part of the Plaintiffs in Error; and also because he had erred in giving improper instructions on the part of the Defendant in Error, and had refused to give instructions on the part of the Plaintiffs in Error that were proper, and stated correctly the principles of law governing this class of cases; and because the verdict was against the law and evidence in the case, and by this act would have restored to the Plaintiffs in Error to some extent the rights that they had been deprived of by the wrongful ruling of the Court on the trial of this case; for if this Mortgage, in view of all the evidence in the case, and circumstances surrounding it, is such an instrument as will be enforced and respected by Courts of Justice, then a door will be thrown open wide enough to admit of transactions that must have a direct tendency to deceive and defraud creditors and purchasers, and indirectly sanction acts and conduct that will lead to the most deplorable results, and ultimately unsettle and undermine the well-established and approved principles of the law in this class of cases.

MAYBORNE & SMITH,
Attorneys for Plaintiffs in Error.

Pavir Our 1 tot Tomber Sevene 3 The summentioned in the offection is queter Then the amount of the note 3. Me appellant clice not affer to pay when 40 the setting aside a dulyt is a multi