No. 14439

Supreme Court of Illinois

Boies, Admx.

---

vs.

Henney

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 238

Bur

1864

Supreme Court of Illinois
April Term ad 1863

Mary J Boies
administratrix of
Estate of
Wm H Boies (deced)
vs
Adam H Henry

Appeal from Henry

It is stipulated & agreed by the above parties & their counsel that the plaintiff shall & appears this day and to the Clerk of the Court the abstract of the Cause & all papers to be filed therein and the same shall be considered as filed within the rule or agreement heretofore made in this Cause. And the cause heard this term if possible.

The defendant does hereby waive one copy of the abstract & points to which he was entitled.

Dated May 1st 1863

H Bigelow
of Counsel for appellant
J. J. Bennett
of Counsel for Appellee

258 - 15

Stipulation

Mary J Bates
administratrix Estate of
Wm M Bates (deceased)

vs

Filed May 12, 1863

J Secombe Clk

SUPREME COURT.

April Term. A. D. 1863.

MARY J. BOIES, Administratrix, of the estate of WILLIAM H. BOIES, deceased, *Plaintiff in Error*, vs. ADAM K. HENNEY, *Defendant in Error.*

Points of Plaintiff in Error.

T. G. FROST, of Counsel of Plaintiff in Error.

I. The court erred in excluding the rebutting evidence offered by the plaintiff below. Until the proof on the part of the defendant below had been given, showing the defendant to be a judgment creditor, no evidence was admissible to impeach the plaintiff's title, on the ground of fraud, and when this evidence had been given to impeach the plaintiff's title, it was error in the court to reject the evidence on the part of the plaintiff below to rebut this proof and to sustain the plaintiff's title, as a bona fide purchaser and to show where the plaintiff below got his money to make the purchase and that the funds did not come from Farr, the judgment debtor, but were his own funds and raised from other sources on his own credit.

II. The Court erred in his instructions given to the jury at the request of the defendant below, and in his modifications of those given at the request of the plaintiff below. He especially erred in failing fairly and explicitly to state to the jury that to impeach the title of Boies, the plaintiff be-

low, on the ground of fraud, it was necessary to show that he was a *party* to the fraud and even a suspicion on his part that Farr's purpose was fraudulent, was not sufficient to invalidate his title provided his own purpose was honest and fair.

III. There was no sufficient evidence to submit to the jury on the question of fraud and the verdict of the jury defeating the plaintiff on this ground was contrary to evidence. Fraud must be affirmatively proved and the evidence offered created at best, but a mere suspicion, and wholly failed to be sufficient to establish actual fraud.

The testimony of Wells is clear and explicit to the point that he purchased of Farr in perfect good faith, with no intent whatever to defraud Farr's creditors, and that his sale to Boies was equally fair and free from fraud and satisfactorily established also Boies good faith, on his purchase. If either Wells or Boies acted in good faith the sale must be sustained —although fraud like other questions of fact is properly submitted to the decision of the jury, yet when the evidence fails legally to establish a case of fraud, a verdict finding fraud must be set aside, as well as a verdict against evidence in any other case or on any other points. Here the defendant called Wells as a witness to prove the fraud, and he swears the transaction was in all respects fair and honest. By his statement the defendant below was bound unless overthrown by other evidence in the case. There must be some limit to the discretion of a jury, and they cannot arbitrarily finda sale fraudulent and void, when there is no sufficient legal proof to establish the fraud.

Vance v. Phillips, 6 Hill N. Y. R.—433, 436.

The syllabus of this case reads as follows:—"where the validity of a sale of chattels depends upon whether it was made with *intent* to defraud creditors, however clear and conclusive the evidence of fraudulent intent may be, the Judge is bound to submit the case to the jury. Per Bronson, J. But if the jury find against the evidence, *the Court will set aside the verdict and grant a new trial.*"

And on page 436 the court in their opinion use the follow-

ing language:—"However clear and conclusive the evidence of fraud may be, it must be left as a question of fact to the jury. In other respects the law remains as it was before. If the jury come to a wrong conclusion, we must, as we do in other cases, grant a new trial.' The road to justice may be longer, and consequently more expensive than it was before; but it ends at the same place."

258

Bois
v
Heiney

Pleff's. Briefs

Filed May 11. 1883
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

MARY BOIES, *Admrx., &c.*,
vs.
ADAM K. HENNEY. } *Appeal from Henry.*

POINTS AND AUTHORITIES OF APPELLEE.

I.

Unless the verdict of the jury is "clearly and palpably against the weight of evidence" the Supreme Court will not reverse a cause upon the evidence.

Allen *vs.* Smith *et al.*, 3 Scam. 97.
Munn *et al. vs* Russell, 11 Ill. 587.
Bloomer *vs.* Denman, 12 Ill. 245. 6.
Ill. C. R. R. Co. *vs.* Hays *et al.*, 19 Ill. 167.
Whisler *vs.* Roberts, 19 Ill. 282.
Archdale *vs.* Moore *et al.*, 19 Ill. 568, 9.
Bush *vs.* Kindred, 20 Ill. 93.
Goodhill *vs.* Woodruff, 20 Ill. 192, 193.
Schultz *vs.* Lepage, 21 Ill. 160, 1.

II.

The preponderance of proof clearly sustains the verdict of the jury.

III.

The refusal of the Court to allow Rockafellow, on re-examination, to testify as to where plaintiff, *Boies*, got his money, paid by him to *Peterson*, *Gibson*, and *Lind*, because the same was not properly rebutting, was correct, and not error. The defendant had not attacked the pecuniary ability of plaintiff to pay, nor introduced evidence tending to show that he was paying the money of some other person. The plaintiff, therefore, had nothing on that subject to rebut. The payments to *Peterson*, *Gibson*, *and Lind were made after June* 2, 1862.

"Any evidence that is a confirmation of the original case can "not be given as evidence in *reply*; and the only evidence that "can be given in *reply* is that which goes to cut down the de- "fence, *without being any confirmation of the original case.*"

Rex *vs.* Hilditch, 5 Carrington & Payne, ~~219~~. 330.
The Governor *vs.* Campbell, 17 Ala. 574.
Dorsey *vs.* Whipps, 8 Gill. 463, 4, 5.
Gilpins *vs.* Consequa, 3 Wash. C. C. R. 188.
Waugh *vs.* Shunk, 20 Pa. (8 Harris) 133.
Foye *vs.* Leighton, 2 Foster, N. H. R. 71.
1 Greenleaf's Evidence, § 52, top paging 67, and note 5; also p. 68, and note 1, and authorities there cited.
1 Greanleaf's Evidence, § 448, top paging, 560. The files of the Case of Johnson vs. Farr were admitted in evidence to show relation of Creditor & property.

IV.

The instructions of the Court were the law, and the jury did not disregard them in bringing in their verdict.

The evidence in this case abundantly justified the finding of the jury. The evidence shows that Olof Johnson became the creditor of George Farr November 20th 1859, by an award of arbitrators, to whom their matters in difference had been submitted. That Johnson recovered a judgment upon the award, October 21, 1860, in the Henry Circuit Court, from which Farr appealed to the Supreme Court. That the cause was remanded to the Circuit Court, May 17, 1861, and that final judgment was entered up in the Henry Circuit Court, March 5, 1862. While the cause was pending in the Supreme Court, and, on the 16th day of January 1861, Farr entered into a contract with Peterson, Gibson and Lind - which is, in some respects, of an extraordinary character. By it Farr leased to them two hundred and ninety five (295) acres of land, for two years, together with a large amount of personal property. It further provided that the lease might be assigned, by Farr, with or without

notice to them — to whomsoever Farr might choose! And that Farr's assignee — however irresponsible — should sustain the same relation to them, that Farr had sustained! That they would deliver to such assignee — however irresponsible — two thirds (2/3) of their share of the Broom Corn, to be raised by them, upon a credit — and without security! Farr — or his assignee — was to advance moneys, at ten per cent, which by the terms of the instrument was secured by their share of the Broom Corn raised..

Does not the Contract bear evidence on its face, that it was made by Farr, for the purpose of assignment?

While his Cause with Johnson was still pending in this Court, and, on or about the first day of May 1861, — sixteen (16) days, before his Cause was here decided, — Farr went to Chicago, for the apparent purpose of Conferring with Wells, in regard this affair, and to take Counsel Concerning his failing circumstances — informed Wells of this claim of Johnson, and,

assigned him, this Peterson, Gibson and Lind lease, without Consideration, and - at the same time - also, assigned, without Consideration, a Contract, made by Farr, in 1869 probably, with L. H. Butler, of Northampton, Massachusetts, - by which Contract Butler had furnished Farr Money, and Farr had, with the Money bought Broom Corn, at Galva on joint account and shipped the same to Butler - who was to make sale, and the profits, if any, were to be divided equally between Farr and Butler.

How much Corn had been so bought by Farr the evidence fails to show; but Farr had executed his part of the Contract - he had purchased and shipped the Corn to Butler, who held the same, in the market unsold, and all that remained for Farr to do, was, to receive his share of the profits, if he was not liable to any loss.

Surely there Could be no misadventure in Such a Contract as that - no possibility of loss and no labor to be done! Hence this man Wells - who Says he was always ready

to drive a sharp bargain — proposed to Farr that, if he would give him the Butler-Farr Contract, he would accept also as a gift, the Peterson, Gibson and Kind Contract! No sooner proposed, than accepted! The Contracts passed into Wells' hands. Wells can state no reason why Farr offered the lease to him. He does not claim that Farr owed him at the time. Farr had previously assigned notes to Wells. Wells "Represented" some claims against Farr — that is all. Wells thinks it was offered to him; because Farr knew he speculated on his money! What use for money, where none is either paid or asked to be paid?

F. C. Wells was a novice in the Broom Corn business; resided one hundred and fifty miles from the field of his broom corn labors — was entirely employed as the general Commercial and Collecting agent of Wadsworth and Wells, and — of Course — Farr Continued as before to manage the entire business! So Wells says. He was employed by Wells, at a Salary

of $25- per week — and, to do what? To do that which by the Contract, Peterson, Gibson and Lind were to do! To see to the drying, scraping, baling, and delivery of the brush!
What necessity of employing Farr for that purpose?
Wells himself says, that there were raised, under that lease, in 1861, Sixty (60) tons of Brush. One third (1/3) of that — or twenty (20) tons — belonged to Wells as a bonus from Farr, or as a margin against losses. At $75- per ton — that would amount to $1500. His advances, with ten per cent, were secured on forty (40) tons of Brush. By the Contract Wells was not Compelled to take any except prime green brush — which could not have been worth less than $75- per ton. In fact he states, that he sold, at one time, fifteen tons of that same Corn at $100 per ton. He could have lost nothing on his advances. Nor in his purchase from Peterson, Gibson and Lind, if he insisted upon the Con-

tract. Wells must have made out of the one broom corn contract, in 1861, at least $1500 — unless he gave it back to Farr, under the name of expenses, for his pecuniary attendance on the broom corn; for Farr seems certainly, to have danced attendance, upon the Broom Corn, from the time it came out of the ground, until he sold it, in Chicago, or Providence, Rhode Island.

But the matter was so managed by Farr and Wells, that the Broom Corn account comes out about square, at the end of that year.''

With all these transactions, Plaintiff Boies was conversant. The money was sent down to Bennett and paid out to Farr and Peterson, Gibson and Lind, in the office of Bennett and Boies. Most of which was, doubtless, the same money realized by sale of the Broom Corn, delivered on that Contract, and a part of which the evidence shows, he had been collected upon notes which Farr had assigned to Wells! The nature of this transaction, as between Farr

and Wells is unmistakable.

The evidence discloses the fact that the land leased was incumbered by trust deed, running to D. K. Lyman, of Northampton, Massachusetts - probably for a large sum - and the interest (semi-annual), upon which it would be necessary to pay to keep the possession of the land. Wells went to Galva. Came to Bois' office. Farr was "around." Bois had $259 in gold, in his pocket! The interest due Lyman, on the Trust deed, was just that sum! Whenever Wells has anything for sale he offers it! No sooner the proposition made, than accepted! The Butler-Farr contract was sold to Bois, for $259 - which he had only to put his hand in his pocket to get, in gold and in even change! Surely there can be no fraud in gold! Plaintiff paid it, and Wells handed Bois back a draft for the same sum - $259 - which Bois sent to Lyman to pay a debt of Farr's for just that amount! And Farr gave

his own note — at the time notorious insolvent — to Wells! Strange, when Wells was so anxious to collect of Farr! — as he says.
Farr was still "around", and another trade must be consummated with Wells. Farr escorted Bries to Peterson, who knew nothing about Bries — and recommended him. He induced Peterson to allow Bries to assume the liabilities of Wells, under the lease — which he did, and Wells assigned to him the lease — reserving what he was then owing Peterson, Gibson and Lind, on the sale of their Corn, in 1861, and which was due in May 1862.
This was June 2. 1862. Farr's case had been decided in the Supreme Court and judgment entered up in the Circuit Court. Wells "wanted to see out of it". Very likely! It never was his business. It was only a side affair, run for the benefit of Farr, and of which Wells seems to have kept a separate account. He now says, that he was about to see

his own note — at the time notorious insolvent — to Wells! Strange, when Wells was so anxious to collect of Farr! — as he says.
Farr was still "around" and another trade must be consummated with Wells. Farr escorted Bois to Peterson, who knew nothing about Bois — and recommended him. He induced Peterson to allow Bois to assume the liabilities of Wells, under the lease — which he did, and Wells assigned to him the lease — reserving what he was then owing Peterson, Gibson and Lind, on the sale of this Corn, in 1861, and which was due in May 1862.
This was June 2. 1862. Farr's case had been decided in the Supreme Court, and judgment entered up in the Circuit Court. Wells "wanted to see out of it" Very likely! It never was his business. It was only a side affair, run for the benefit of Farr, and of which Wells seems to have kept a separate account. He now says, that he was about to see

involved in litigation, on account of these transactions of Farr & Co continued. He therefore went "out of it" with the $207, due Peterson, Gibson and Lind, from the sale of their corn in 1861, and the profits of the transaction for that year, and they lease passed into Plaintiff's hands.

This was apparently consistent with the desire of Farr. He wanted his principal (?) nearer home. He "was around", when Wells came to Bories' office. He afterwards nursed the tide between Bories and Wells, and by his urgent requests, induced Peterson, on behalf of Peterson, Gibson and Lind to recognize Bories.

What then?

Bories had been a law partner of Bennett in the year 1861, and was conversant with these transactions between Wells & Farr. In June 1862, Bories appears by the evidence, to have had an office by himself.

It was, probably, the headquarters of Farr, as witness Peterson, when on the stand, at the

trial below on the 23d of Oct. 1862, said - "Farr has been in Chicago and not in Bories' office, for about four weeks past."

Before that it would seem, Farr officed with Bories, and probably still superintended the Broom Corn. In the latter part of September or first of October 1862, and about the time when the Broom Corn was ready to send forward to market - Farr transferred his office, from the Law office of Bories, at Galva, to Chicago, and, was "in the employ" of the Lane B. L. Chamberlain, to whom the Broom Corn was consigned by Bories!!

Witness Wells stated, at the trial - "Farr stays in Chicago, now, and is" "in the employ of B. L. Chamberlain", I believe, I suppose Chamberlain is the Lane man, that the Broom Corn in this suit was shipped to."

Johnson

On the 10th day of September 1862 obtained an execution and fee Bill upon his judgment against Farr, and on the Same day

placed the same [illegible] the hands of the Defendant who is acknowledged by the Plaintiff to have been, at the time of the levy and replevin, Sheriff of Keene County - who afterwards, and on the same day, by virtue thereof, levied upon thirty nine (39) Bales of the Broom Corn, raised by Peterson, Gibson and Kind, and delivered by them to Bois in part payment of the rent under the Contract - which is the same property replevied.

Upon the hypothesis, that as much Corn was raised in 1862, as in 1861 - Sixty (60) tons - Bois received in September and October 1862, twenty (20) tons of prime green Brush, in the Bale in shipping order - for the use of the land - which was worth at least $15.00,

From this deduct the $307 accrued by Bois for Wells, and the value of the Corn levied upon by the Defendant and replevined - Some five and a half (5 1/2) tons

and there must remain the nice little sum of about $800 - which Farr will then have very kindly thrown into the hands of Bories, and beyond the reach of Johnson and the other Creditors of Farr.

It can not be said that Bories lost anything on his advances. The money advanced by him, together with ten per Cent interest, was secured by the lease upon the entire Broom Corn interest of Peterson, Gibson and Kind - about forty (40) tons.

If Bories borrowed money of Rockfellow or any one else - at a greater rate of interest than ten per cent - which can hardly be presumed - to pay them - the use of the procuds of the sale of the Corn of Peterson, Gibson and Kind one half (½) till Jan. and one half (½) till May 1863 would more than re-imburse him for the extra interest.

Bories had been a resident of Galva, when both Johnson

son and Farr lived; — where the arbitration was had, and the litigation had been carried on.

He was an attorney, and an attendant upon the Circuit Court of Henry County, and must have known of the relation of Creditor and debtor, existing between Johnson and Farr.

He was but recently admitted to practice, and so far as the proof shows, was not acquainted with the Broom Corn business; and, in this transaction, was engaging in a matter, not germane to his profession.

From the whole evidence, it is quite clear, that Farr, after the rendition of the first judgment for $2275.05 — October 31. 1861 purposed the transfer of his entire personal and real estate — to avoid the payment, or to hinder and delay the collection of this debt of Johnson.

The land mentioned

in the lease, appears to have been encumbered by Trust Deed. By the lease he conveyed the use of the land for two years, beyond the reach of Johnson and his other creditors, in such manner that he could control the rents himself, and probably, with a view, at the end of that period to suffer a sale of the premises on the Trust Deed - thus conveying the land beyond the lien of Johnson's judgment.

The Jury found the property replevied to Farris, and the transactions, with reference to the same between Messrs. Farr, Wells and Boies, to be fraudulent as to Johnson. The evidence abundantly sustains this finding. Indeed, it is difficult to see how they could have found differently.

It is to be borne in mind, too, that the entire oral evidence, in this case, came from unwilling lips. The witnesses Wells and Peterson -

first introduced on the part of the Plaintiff, and the only witness.
Wells, one of parties to the entire transaction, - from first to last almost mixed up with it; - himself a party to the fraud, and interested in covering it up - is the principal witness. He is manifestly a reluctant witness for the defendant, and his testimony as to facts prejudicial to the Plaintiff's case, are entitled to full weight. Out of the mouth of his own witnesses, is the Plaintiff not entitled to retain the Corn. So thought the jury and so must any unbiassed mind, think - on consideration of the evidence.

Beyond this question of fact, upon which the jury have found, and with which verdict, under the decisions and the Law, this Court will not interfere - there is no serious objection in the record. The ruling of the Court, as to the relevancy of the question

proposed to Rockafellow - and in refusing to allow him to state when Boies got the money - which he paid Peterson, Gibson and Kind - because it appeared to him irrelevant - was clearly correct, and the claim of the appellant to the Contrary, is frivolous.
Here are no questions of pleading; The instructions given by the Court, on both sides, were clearly the law, and applicable to the Case. Substantial justice has been done. Let us pass in silence over the impropy - not to say wrong - act of one who is no more; because he is no more; but to the living, of the Profession, & its honor, let it be understood - that it is no part of a Lawyer's duty, to become a party to his Clients' fraud - to help him out of difficulty.

J. J. Bennett
Atty for Appellee.

258 - 150

Mary Boies
Admx &c
v.
Adam K. Kennez

Written argument
for Appellee

Filed May 4. 1863
Leland
Clk.

J. J. Bennett
of Counsel for
Appellee

Supreme Court

April Term AD 1863

Mary J Boies
Administratrix of
Estate of
Wm H Boies (dec'd)
vs
Adam K Henry

Appeal from Henry

Argument of H Biggs
of Counsel for Appellant

"While it is true that appellate Courts will seldom disturb a verdict of a jury because against the weight of evidence, yet in all cases where the question of fraud is submitted to a jury there ought to be some evidence in the record tending to prove the fraud otherwise the verdict finding fraud to exist ought to be set aside & a new trial granted; otherwise (as in this case) where the client is feeble & unable to attend to the proper selection of the jury, but is compelled to leave the matter to his atty. personal enemies of the party are liable to be called to try the case as jurors, and where one or two such men get upon a jury and control it their verdict if allowed to stand will work great injustice to men who are perfectly honest.

Such a case as I have supposed I believe this one to be, and it seems to me that the whole evidence both on the part of the defendants as well as on the part of the plaintiff proves the whole transaction to be fair and honest.

It may not be reasonably supposed that an Atty will never embark in business outside of his profession! - There may be circumstances (as in this case there were) which require it. A person in feeble health and generally declining with Consumption may be compelled to leave his office and seek some active out-door employment and when he does do so, (and whether he does or not) a jury ought not to be allowed to say that his acts are fraudulent unless there is evidence before them showing fraud.

Where is the fraud in this case? It would not seem to be on the part of Hart as the testimony of depts witness (Wells) shows that Hart leased the land in the manner that he did for the very purpose of getting something with which to pay his creditors & that his Creditors refused to accept the lease burdened with the conditions. What then was Hart to do? He had assumed liabilities he could not perform & somebody must be found to perform them. & hence the sale of both the lease and Contract to Wells as Wells swears he would not assume the responsibilities of the lease unless the Contract was also assigned to him.

Starr was as much fortunate in selling the lease so far as the first year was concerned as Wells swears that he made nothing & really lost $40- or $50- & that anything was done & going lower - in the market and broom corn had fallen - It was assume there could be no injury done to Starr's creditors then both Starr & Wells assigned the lease as they did, for the fact is there was really nothing in it & few men would touch such a contract. The assignee was bound to pay $75- a ton for the 2/3 of the brush remaining on the land even if (as the proof showed) it should only be worth $35- a ton & this would only take out of the other 1/3 -

But supposing both Starr & Wells to have intended a fraud on Starr's creditors certainly for this Boies ought not to be condemned and his property seized (while he was dying) unless he too participated in the fraud. & it appears clear to me that there is no evidence whatever tending to prove fraud on the part of Boies. He bought the lease in good faith and assumed heavy responsibilities (for him) and Wells swears expressly that he had no thought of defrauding Starr's creditors -

The Court should have permitted the plaintiff to show where he got the money advanced on the lease & not kept the Counsel for defendant to urge before a jury (all of whom were acquainted with the plaintiff) that the fact of the advancement of $1200- or more showed him guilty of a fraud as charged here. He

had not so much money of his own.

But it is claimed by the defense that the pecuniary ability of Boies had not been attacked, & hence the court decided properly in rejecting Rockafellow's evidence, if this is conceded then what evidence is there tending to show fraud; certainly I can find none.

The rule is familiar that fraud "must be proved", and unless there is some reasonable evidence in this record to show Boies to have been guilty of a fraud a Court will not blacken his memory after he is gone by allowing an unjust verdict to stand.

~~Upon a full examination of the instructions it was deemed best not to print them as none of them were clearly erroneous and~~ The points made in this case by J S Frost Esq were prepared before the abstract was printed.

H Bigelow
Of Counsel for Appellant

Plaintiffs 258 Exhibit 15

Mary J Boies.
administratrix &c
Wm H Boies deceased

vs

Allen B Henry

Filed May 12. 1863
L Leland Clk.

Supreme Court

April Term 1863.

Mary J. Boies &c } Additional to
v. } written argument
Adam K. Kenney } for Appellee.

I beg leave to suggest to the Court, that the points and written argument on the part of Appellee, have been prepared under difficulties, which in justice to the Case ought to be understood by the Court. Appellant had not filed the Record until about the middle of the 2d week of Court. The Abstract of the Record and Appellant's points have not yet been filed - and I have only just within the last hour - seen a copy of each. Counsel for Appellant have both filed written arguments - or will do so today - which I have not seen.

The reason appellee has insisted upon his right to have the appeal dismissed - is, that he wants a trial at this term - and the delay of a writ of Error, is not desired. Both parties are interested in having the Case tried at this term.

Of necessity I have filed my points and written argument, with nothing but the assignments of error before me, and without the benefit of the points and written arguments of appellant. Those written arguments I shall not see. What new points they have made, I cannot tell.

There is a fallacy in fact, in point No. II. of Appellant's printed points. The Law said in the body of it may be good Law - probably is; but the language "and to show when Plaintiff "first got his money to make the purchase" "that, and that the funds did not come" "from Farr, the judgment debtor, but" "were his own funds and raised from" "other sources on his own credit" is not a legitimate inference from the Law & the facts.

It is true the defendant did attack the transaction as fraudulent; both in Law and in fact; It is true defendant did establish certain badges of fraud; but that Boies was not pecuniarily responsible or solvent, was not one of them, neither that he paid the money

of fact. Defendant offered no proof proposing to establish either. So far as the proof goes, Bois, may have been worth $100.000. Now unless, the defendant offered evidence tending to show that Bois paid Peterson, Gibson and Lind Farr's money and not his own - it is difficult to see how proving that Plaintiff paid his own money, or borrowed money for the purpose of Rockefellow, would be rebutting! Would it tend to remove any badge of fraud proven?

The mere legal truth - the abstract legal proposition, that until defendant had proven himself a creditor of Farr - he was not in a position to attack the sale to Bois, and Plaintiff could not rebut - has little to do with the question of fact, whether defendant had proven any thing in reference to the money paid by Peterson, Gibson and Lind, which defendant had a right under the Law to rebut. The law proposition, is correct. The application to this case is not a consequence. As the point stands stated - it is a shrewd sophism.

Besides, it was not sought to prove that Bois got the money he paid Wells; but

where he got the money to run the Concern after he had bought it! The money paid Peterson, Gibson & Lind was paid [illegible] except $50 — all after the sale from Wills & Boies! How can that effect the bona fides & fraud of the prior transaction. If the purchase from Wills was a fraud — any amount of good faith and money borrowing could not purge it.

III.

The Court will find no substance in point No 2. of Appellants. The fact that Counsel for appellant have not printed the instructions in this abstract shows, I think, how little they rely on it. Point No. 2, is not true in fact. If the Court did not instruct or failed to instruct upon the point indicated, it was the fault of the Counsel for Appellant, in not asking it and not of the Court, in refusing to give when asked. The Record shows no modifications or refusals of instructions asked by Counsel for Appellant. The Court will look into the Record, if in doubt on this point. In making out Bill of Ex-

Exceptions, the Clerk is directed (by the daily reading sheet) - to copy refused & modified instructions on the part of Plaintiff; but none are copied because, in fact none were modified or refused. The law is well stated in instructions given. III

On Appellant's third point I desire to add nothing further, to what I have already stated in my written argument - & except - to say that what is here stated by Counsel for Appellant, fails to establish any new doctrine pending the proof of the fact of fraud; or the duties of Courts or juries with reference to it. The fact of fraud whether, in Law, or in fact - was submitted to and determined by the jury, and is to be treated by Courts as any other fact determined by the verdict of a jury. I understand there is no special exception in favor of the fact of fraud, over any other fact - and that the decisions of this Court - cited in point "II." of my printed points - apply; in which cases, this Court can not review the case on the evidence.

What other point Counsel for

Appellant may make in this written argument, I can not fore-tell for I have not been permitted to see them and it is difficult to say what "Strategy" may do.

J. T. Bennett
Of Counsel for Appellees.

No. 258.

Mary J. Briggs &c
v.
Allan R. Kerr

Add. Argument

Filed May 13. 1863
L. Leland Clk

Supreme Court

April Term 1863.

Mary J. Boies et al
v.
Adam K. Kenney

Additional to written argument for Appellee.

I beg leave to suggest to the Court, that the points and written argument on the part of Appellee, have been prepared under difficulties, which in justice to the Case ought to be understood by the Court. Appellant had not filed the Record until about the middle of the 2d week of Court. The Abstract of the Record and Appellant's points have not yet been filed - and I have only just - within the last hour - seen a copy of each. Counsel for Appellant have both filed written arguments - or will do so today - which I have not seen.

The reason appellee has not insisted upon his right to have the appeal dismissed - is, that he wants a trial at this term - and the delay of a writ of Error, is not desired. Both parties are interested in having the Case tried at this term.

Of necessity I have filed my points and written argument, with nothing but the assignments of error before me, and without the benefit of the points and written arguments of appellant. Those written arguments I shall not see. What new points they have made, I can not tell.

There is a fallacy in fact, in point no. II. of Appellant's printed points. The Law said in the body of it may be good Law - probably is, but the language "and to show when Plain" "tiff got his money to make the purch-" "ase, and that the funds did not come" "from Farr, the judgment debtor, but" "were his own funds and raised from" "other sources or his own credit" is not a legitimate inference, from the Law & the facts.

It is true the defendant did attack the transaction as fraudulent; both in Law and in fact; It is true defendant did establish certain badges of fraud; but that Boice was not particularly responsible or culpable, was not one of them, saying that he paid the money

of fact. Defendant offered no proof proposing to establish either. So far as the proof goes, Boies, may have been worth $100 000. Now unless the defendant offered evidence tending to show that Boies paid Peterson, Gibson and Kind Farr's money and not his own - it is difficult to see how proving that Plaintiff paid his own money, or borrowed money for the purpose of Rockefellow, would be rebutting! Would it tend to remove any badge of fraud proven?

The mere legal truth - the abstract legal proposition that until defendant had proven himself a creditor of Farr - he was not in a position to attack the sale to Boies, and Plaintiff could not rebut - has little to do with the question of fact, whether defendant had proven any thing in reference to the money paid by Peterson, Gibson and Kind, which defendant had a right under the Law to rebut. The law proposition, is correct. The application to this case, is not a Conveyance, as the point stands stated - it is a shrewd sophism.

Besides, it was not sought to prove where Boies got the money he paid Wells, but

Supreme Court of Illinois

April Term AD 1863 at Ottawa

William H Bois
vs
Allen N Henry
} Appeal from Kane

It is stipulated and agreed by and between the parties to the above entitled suit, that the following facts in said case shall be considered by said Court in all respects as if the same should be verified by affidavits.

1st Since the appeal of said case the appellant Wm H Bois has deceased at Chicago about the first of February AD 1863 and that no administrator has been appointed until after the expiration of the three days allowed by law and the rule of this Court in which to file the record and that there was no person to look after or attend to the same & file the record until within the past four days since which time Mary J Bois widow of the said William H Bois deceased has been appointed administratrix of said estate, and that immediately after the appointment of said administratrix the attorney of said Mary J Bois procured the

record and the attorney of the defendant brought the same to Court to be filed on the 29th day of April AD 1863.

It is agreed by the parties that said cause should be docketed and no advantage taken because the record was not filed in due season. and that the plaintiff should have until Saturday May 9th 1863 in which to file abstracts of the record and printed points and written or printed arguments and it is agreed by the parties that this cause should be heard at the present term of this Court upon printed points to be filed on either side and such written or printed arguments as either party may desire to file. and that neither party should argue the cause orally.

May 1st 1863

H Bigelow
Atty for appellant
I. I. Bennett
atty for appellee.

Stipulation 140

258

Wm H Bois
vs
Adam W Henry

} Appear. for Henry

Filed May 1. 1863.
S Leland
Clk.

Allowed to be
placed [illegible]
the [illegible]

1

State of Illinois } Henry County Circuit Court October
Henry County } Term A.D. 1862.

Pleas before the Honorable Ira O Wilkinson Sole Judge of the Sixth Judicial Circuit in the State of Illinois begun and holden at the court house in Cambridge in said County of Henry and State aforesaid On Monday the thirteenth day of October in the year of our Lord One thousand eight hundred and sixty two it being the second monday of said month.

Present . Honorable Ira O Wilkinson Judge
" Adam K Henry Sheriff
" Amos Gould Clerk

Know ye that on the 16th day of September A.D. 1862 W.M. Boies made and filed in said court his certain affidavit for a writ of Replevin in the words and figures following. to wit!

State of Illinois }
Henry County } ss. W.M. Boies being duly sworn doth depose and say that he is the owner & entitled to the possession of the following goods and chattels viz! Thirty Bales of Broom corn Brush (which was in Car No 739 Standing on the track opposite the C. B & Q. R.R. Warehouse in Galva on the tenth of Sept A.D. 1862 but which has since been removed into said Ware House) & also nine Bales of Broom corn brush in the C B & Q R.R. Ware House in Galva Henry county & State of Illinois and that said goods and chattels are of the Value of Two hundred & forty dollars That on the tenth day of September A.D. 1862 one Adam K Henry wrongfully took and unjustly detains the said goods and chattels from this affiant and that said goods and chattels have not been taken for any tax assessment or fine levied by virtue of any law of this State nor

Seized under any execution or attachment against the goods and chattels of this affiant liable to execution or attachment

Subscribed and Sworn to before me } W^m H Boies
this fifteenth (15th) day of September 1862

Amos Gould Clerk } W^m H Boies
by W L Dalrymple Dep^y

And afterwards to wit on the day and year last aforesaid a writ of Replevin was issued out of said court in the words and figures following to wit:

State of Illinois }
Henry County } ss. The People of the State of Illinois to Norton Kelsey an Elisor of said county Greeting:

We. William H Boies of said county of Henry shall give you good and Sufficient Security to prosecute his suit to effect and without delay and to make return of the following described goods and chattels the property of the said William H Boies as he says to wit; Thirty Bales of Broom corn Brush (which was in Car No 739. standing on the track opposite the C B & Q. R. R. Ware House in Galva on the tenth of Sept^r A.D 1862 but which has since been removed into said Warehouse & Also Nine Bales of Broom corn Brush in the C B & Q R R Warehouse in Galva Henry county & State of Illinois of the value of two hundred and forty dollars which Adam K Henney also of said County wrongfully took and unjustly detains and return the said property if return thereof be awarded and further to save and keep you harmless in replevying said property then you are to cause the said goods and chattels to be replevined and delivered to said plaintiff without delay, And summon the defendant personally to be and appear before our circuit Court in and for said Henry county on the first day of the next term thereof to be holden at the Court house in Cambridge in said

3 Henry county on the second Monday of October A.D 1862 to answer to the said Plaint of the said plaintiff for wrongfully taking & unjustly detaining the goods and chattels aforesaid And make due return of the Bond to be taken of the said plaintiff aforesaid together with this writ to the clerk of our said court with an endorsement hereon as to your doings in the premises Witness Amos Gould clerk of said court and the seal thereof at Cambridge in said county this 15th day of September A.D 1862

Seal

Amos Gould Clerk
By W.L. Dalrymple Dep.

Upon which writ appears the following endorsement to wit: "I have served the within writ by Reading the same to Adam K Kenney the within named defendant and by receiving from him the property as described in the within writ this 20th day of Sept 1862 and by delivering the within named personal property to William H Boies Norton Kelsey Edisor"

And afterwards to wit on the 27th day of Sept 1862 the said plaintiff filed in said cause his declaration in words and figures following to wit;

State of Illinois } Henry Circuit Court
Henry county } ss Of the October Term A.D 1862

William H Boies }
vs } Replevin
Adam K Kenney }

Adam K Kenney the defendant in this suit was summoned to answer William H Boies the plaintiff in this suit of a plea wherefore he wrongfully took thirty nine Bales of Broom Corn Brush of the said William H Boies and unjustly detained the same against sureties and pledges until &c & thereupon

the said William H Boies in his own proper person complains for that the said defendant Adam K Kenney on the tenth day of September A.D 1862 in the town of Galva in the county of Henry & State of Illinois in a certain Freight Carr No 739 Standing on the Rail Road track opposite the Chicago Burlington & Quincy Rail Road Ware House in the town & county & State aforesaid wrongfully took Thirty Bales of Broom corn brush marked "C" and in the Chicago Burlington & Quincy Rail Road Ware house in said Town County & State aforesaid wrongfully took nine Bales of Broom corn Brush of the said plaintiff of great value to wit of the value of Two hundred and forty dollars & unjustly detained the same against Sureties and pledges until &c

Also for that the said defendant on the tenth day of September A.D 1862 in the town of Galva county of Henry & State of Illinois in Freight Carr No 739 standing on the Rail Road Track opposite to the Chicago Burlington & Quincy Rail Road Ware House wrongfully took thirty Bales of Broom corn Brush of the said plaintiff & in the said last mentioned Ware House wrongfully took nine Bales of Broom Corn Brush of the said Plaintiff of great value to wit of the value of two hundred and forty dollars,

Also for that the said Adam K Kenney on the 15th day of September A.D 1862 at Cambridge to wit Henry County & State of Illinois was possessed of certains goods & chattels of the said William H Boies to wit thirty nine Bales of Broom corn Brush to be delivered to the said William H Boies when he the said Adam K Kenney should be thereto afterwards requested, Yet the said Adam K Kenney though requested so to do has not delivered the said thirty nine Bales of Broom corn Brush or any part thereof to the said William H Boies and so the said Adam K Kenney unjustly detains the same from the said William H Boies to his damage of Two hundred & forty dollars and therefore

5

he brings this suit

W^m H Bois Atty for Pl

And afterwards to wit at the term last aforesaid and on the 2^d day of the term thereof it being the 14^th day of October A.D. 1862 the following proceedings were had in said cause to wit

W H Bois
vs
Adam K Kenney } Replevin

At this day came the said plaintiff by Bigelow & Frost his attorneys and the said defendant by Pleasants & Bennett his attorneys and this cause being called for the hearing of motions &c And motion is made by defendant for a rule of court on the plaintiff to elect one count in declaration on which to proceed, Cross motion by the plaintiff for leave to amend counts On consideration thereof by the court, It is ordered by the court that the defendants motion be overruled and that the cross motion of plaintiff to amend be and the same is hereby sustained

And afterwards to wit at the term aforesaid and on the 15^th day of October 1862 the said defendant entered his demurrer to said plaintiffs declaration to wit

State of Illinois } Henry Circuit Court
Henry County } Oct Term A.D. 1862

William H Bois
vs
Adam K Kenney } Replevin

And now comes the said defendant by John D Bennett his atty and says that the plaintiffs declaration & the matters & things therein stated and alleged is not sufficient in Law to make answer unto and doth demur thereto and for special reasons for said demurrer doth state the following to wit

6 1 Each count of said declaration is double in this that two distinct Seizures and two separate and distinct causes of action are set forth in each count thereof and 2d for other reasons apparent on the face of said declaration

I I Bennett
Atty for Defr

And afterwards to wit and at the term aforesaid the said defendant by his attys filed in said cause his pleas in the words and figures following to wit

State of Illinois }
Henry County }
Adam K Kenney }
ats }
William H Boies } And the said defendant by I I Bennett his attorney comes and defends the wrong and injury when &c and says that he did not take the said Broom corn brush Goods and chattels in the said declaration mentioned or any or either of them or any part thereof in manner & form as the said plaintiff hath above thereof complained against him and of this the said defendant puts himself upon the Country &c

John I Bennett
Atty for Defr

And the said plaintiff doth the like

Boies & Frost Reffs attys

2 And for a further Plea in that behalf by leave of the Court here for this purpose first had and obtained according to the form of the statute in such case made and provided the said defendant by John I Bennett his attorney says actio non because he says that he at the time when &c was bailiff and Sheriff of the County of Henry and State of Illinois and in the exercise of his office, on the 10th day of Sept

7 A D 1862 received for collection a certain writ of Alias Fieri Facias issued by the clerk of the Henry circuit court on the 10th day of Sept A D 1862 upon a certain judgment rendered in the Henry circuit court in the state aforesaid for the sum of two thousand four hundred and fifty three & 20/100 dollars and cost of said suit taxed at one hundred eighteen & 80/100 dollars in a certain case wherein A & J Johnson against George Farr commanding said defendant as Sheriff aforesaid within ninety days from the date of said writ of Alias Fieri Facias and in pursuance of the statute in such case made and provided out of the goods & chattels lands and tenements of said George Farr make the amount of money aforesaid And have the same at the said circuit clerks office within the time aforesaid And in pursuance of said writ and the authority thereby in him vested said defendant did at the time when &c levy the same upon the goods & chattels in the declaration mentioned — the same then & there being the property of the said George Farr and not the property of the said plff as he the said defendant had good right by law to do And this he is ready to verify Wherefore he prays judgment if the said plaintiff ought to have his aforesaid action thereof against him &c

John J Bennett

Atty for Defr

3 And for a further plea in this behalf by leave of the court here first had and obtained the said defendant by John J Bennett his atty comes and defends &c and says Action because he says that the said goods & chattels in the said declaration mentioned at the time when &c were the property of one George Farr and not of the plaintiff and this he is ready to verify wherefore he prays judgment if the said William H Boris ought to have his aforesaid

8

thereof against him &c . J J Bennett

Atty for Defr

4 And for a further plea in this behalf by leave of the court here first had and obtained the said defendant by John J Bennett his atty comes and defends &c and says that the said William McBoris ought not to have his aforesaid action against him because he says that the said goods & chattels in the said declaration mentioned at the time when &c were the property of One Abg Johnson and not of the plaintiff and this he is ready to verify wherefore he prays judgment if the said William McBoris ought to have his aforesaid action thereof against him &c

J J Bennett

Atty for Defr

5 And for a further plea in this behalf by leave of the court here first had and obtained the said defendant by John J Bennett his attorney comes and defends &c and says Actio non because he says that the said goods and chattels in the said declaration mentioned at the time when &c were the property of George Farr Peter Peterson Peter Gibson and John Lund and not of the plaintiff And this he is ready to verify wherefore he prays judgment if the said William McBoris ought to have his aforesaid action thereof against him &c

J J Bennett

Atty for Defr

6 And for a further plea in this behalf by leave of the court first had and obtained said defr by John J Bennett his attorney comes & defends &c and says that he does not wrongfully detain the goods and chattels in the declaration mentioned or any part thereof in manner and form as therein alleged and of this he puts himself upon the country &c

said pltff doth the like

Frost & Boris pltffs atty

John J Bennett

Atty for Defr

And afterwards to wit at the term aforesaid and on the 17th day of October 1862 the said plaintiff filed his replication to the said defendants pleas in said cause in words as follows

State of Illinois } Henry County Circuit Court
Henry County } ss Of the October Term A D 1862
William H Boies
vs
Adam K Kenney } Replication

And the said plaintiff as to the second plea of the said defendant by him above pleaded by leave &c saith preclusi non because he says that said defendant was not at the time when &c Plaintiff or Sheriff of the county of Henry aforesaid & that he did not receive said execution upon a judgment rendered in said Henry Circuit Court & against said George Farr nor did he levy the same upon the goods & chattels in the declaration mentioned nor were the said goods & chattels the property of said George Farr nor did said defendant have a right to levy said execution on said goods & chattels as in said declaration mayned & of this said plaintiff puts himself upon the country

Frost & Boies attys for Plff

And the said defr doth the like

J J Bennett Defrs atty

And as to the third plea of the said defendant said plaintiff says preclusi non because he says that the said goods & chattels in the said declaration mentioned at the said time whereof were the property of the said plaintiff & not of the said George Farr as the said defendant has in his said plea hath alleged & of that he puts himself upon the country &c

Frost & Boies attys for Plff

And the said defr doth the like

J J Bennett atty for Defr

and as to the fourth plea of said defendant said plaintiff says precludi non because he says that the said goods & chattels in the said declaration mentioned at the time when &c were the property of the said plaintiff & not of Oloff Johnson as the said defendant in his said plea has alleged & of this he puts himself upon the country &c

Frost & Bois attys for Plff

And the said Defr doth the like

I J Bennett Defts atty

And as to the fifth plea of said defendant said plaintiff says precludi non because he says that the said goods & chattels in said declaration mentioned at the time when &c were the property of the said plaintiff & not of George Kurr Peter Peterson Peter Gibson & John Laird as the said defendant in his said plea has alleged & of that he puts himself upon the country &c Frost & Bois attys for Plff

And the said Defr doth the like

I J Bennett atty for Defr

And afterwards to wit and at the term aforesaid and on the 22d day of October AD 1862 the following proceedings were had in said cause to wit

W H Bois
vs
Adam K Kenney } Replevin

At this day this cause being again called comes the parties herein by their attys as aforesaid and issue joined by the parties It is therefore ordered by the court that a jury be called and thereupon comes the jurors of a jury of good and lawful men to wit James Withrow D McHenry W G Heaps J McWhinney Allen Laird Wm Westlake Peter Luther Philip Keppler John Morse Jo Kirkpatrick G Worrell and Ben Fritts who were duly selected chosen and sworn to well and truly try this cause and a true verdict

render according to the evidence, And the parties thereupon proceeded with the testimony

And afterwards to wit at the term aforesaid and on the 23d day of October 1862 the following proceedings were had in said cause to wit

W H Boies
vs
Adam K Kenney } Replevin

At this day this cause being again called came the parties herein by their attys as aforesaid and the testimony herein concluded, and the jury having heard the evidence of the witnesses the arguments of counsel and the instructions of the court retire to their room under charge of a sworn officer of the court to consider of their verdict and with leave to seal the same, And afterwards to wit on the day and year last aforesaid came the jury aforesaid and return into court their verdict in the words and figures following to wit "We the jurors in the above named case find the issues for the defendant J C Morse foreman" which is received by the court and ordered to be filed and the jury discharged, And on the rendering of said verdict comes the said pltff and moves the court for a new trial for reasons filed

And afterwards to wit at the term aforesaid and on the 24th day of October 1862 the following proceedings were had to wit

W H Boies
vs
Adam K Kenney } Replevin

At this day this cause being again called comes the said parties herein by their attys as aforesaid And the court having duly considered the motion made herein by the pltff for a new trial and being now fully advised in the premises orders that said Motion for a new trial be overruled and judgment entered on the verdict

12

It is therefore considered and adjudged by the court the defendant have return of the Property replevied and have and recover of the plaintiff his costs in this behalf expended and that execution issue therefor And now on the rendering of said judgment, comes the said plaintiff and moves the court for an appeal from the judgment of this court to the Supreme court of the State of Illinois. On consideration whereof the said appeal is granted and the said plaintiff allowed sixty days in which to file his bill of exceptions and bond on appeal in the sum of five hundred dollars to be approved by the clerk

And afterwards to wit and on the 15th day of November 1862 the said plaintiff filed in said cause his bill of exceptions in the words and figures following to wit

State of Illinois } ss
Henry County }

Henry County Circuit Court
Of the October Term AD 1862

William McBoies
vs
Adam K Kenney

Replevin

Be it remembered that on this 22d day of October AD 1862 and on the trial of the above entitled cause the said plaintiff in order to maintain and prove the issues on his part called as a witness one H C Wells who being first duly sworn testified as follows; I know the parties to this suit, the following lease and assignments "This Indenture made and entered into this 16th day of "January AD 1861 between George Farr of the town of Galva "in State of Illinois of the first part and Peterson John Reid "and Peter Gibson of the same place of the second part Witness "that the said party of the first part hereby leases demises "and quit claims upon the terms and for the term herein "after contained the property real & personal hereinafter

" described to wit, The South West Quarter of Section No (33)
" Tp 14 N Range 4 East of the 4th P M and one hundred &
" thirty five (135) acres on Section No (33) Tp No (14) North Range
" 4 East of the 4th P M now occupied by said Farr, the Broom
" corn sheds & machinery for Scraping and baling Broom
" corn viz four (4) Scrapers One (1) eight horse Power two (2)
" Presses with Slats for drying brush on, being the entire
" furniture for Scraping & preparing for market the same and
" used by said Farr in the year A D 1860 the said land all sown
" to Broom corn To have and to hold the same unto the said
" parties of the second part their heirs and assigns for and during
" the term of two (2) years from date = the terms and conditions
" hereinafter stated shall apply to each year separately & all
" of the obligations to be mutual In consideration of the
" premises and of the use of the said Real estate & goods & that
" to aforesaid the said parties of the second part their heirs and
" assigns agree to & with the said party of the first part his heirs
" & assigns as follows to wit — That they (the parties of the
" second part) will deliver during the month of September
" of each year to the said Farr his heirs or assigns One
" third (⅓) of the entire crop which may or shall have been
" grown upon the real estate aforesaid during each year all
" well scraped & thoroughly dried in a workmanlike manner
" put up in good shipping order in the bale said Brush to be
" green brush & all of said land to be to brush It is further
" agreed that the said Farr or in case of the assignment hereof
" by him then his assignee hereof is to loan to the said parties
" of the second part at the time of cutting & preparing the said
" Brush for market the necessary money for paying the hands
" which shall be necessary to be hired for said cutting & preparing
" for market for which the said Farr & in case of his assignment
" hereof then his assignee hereof shall receive ten per cent per
" annum as interest thereon The said Farr or in case

of the assignment hereof then his assignee hereof is to pay the said parties of the second part, Seventy five dollars ($75) per ton for the other portion (to wit two (2/3) thirds) of Brush raised on the land aforesaid for the years aforesaid by the said parties of the second part which said other two thirds (2/3) to be delivered by the said parties of the second part on or before the 15th day of October of each year or so soon thereafter as the same can be prepared for market to the said Farr or in case of the assignment hereof then to his assignee hereof said last mentioned brush to be thoroughly scraped dried & put up in good shipping order & to be good green Brush & to answer the requirement as to the one third (1/3) hereinbefore described and the said (2/3) shall be sold to the said Farr or his said assignee upon the above terms in any event, It is also agreed that the said money loaned by the said Farr or in case of the assignment hereof then the assignee hereof together with the interest thereon shall apply in payment to the said parties of the second part upon the said two thirds (2/3) of the Broom corn crops and the balance which shall be due upon the said two thirds (2/3) of the Broom corn crop shall be paid by the said Farr or in the case of the assignment hereof then his assignee hereof to be paid as follows to wit, One third (1/3) thereof upon the delivery of said Brush in the condition aforesaid - One third (1/3) thereof on each January 1st then next following and the last one third (1/3) the balance on each May 1st then next following It is mutually agreed that all of the obligations herein shall be reciprocally binding upon both parties and the yearly obligations shall be capable of enforcement the same as if the obligations with reference to each year were a separate contract said Farr is to put the said machinery in good order & the same is to be returned to him in like order natural wear & tear excepted said parties of the 2d part to put in forty

"to corn & small grain. It is further mutually agreed that
" in case the said Farr shall assign this lease it shall be in
" force between his assignee & the said parties of the second part
" & the said assignee shall hereby be obligated in like manner
" & with like effect as the said Farr would be were this not assigned
" & the said parties of the second part hereby satisfy this contract
" with any such assignee or assignees without or with notice
" from the said Farr previously given to them as to whom the
" same may & shall be assigned In witness whereof the
" said parties have hereunto set their hands & seals the day &
" year first above written

George Farr (Seal)
Peter Peterson (Seal)
John Lund (Seal)
Peter Gibson (Seal)

" For value rec'd I hereby assign the within lease to H. C.
" Wells Esq Witness my hand & seal
" Galva Apr 19 1861 George Farr (Seal)

" For value received I hereby assign the within lease to
" W. H. Boies Esq Witness my hand & seal at Galva
" this 2d day of June 1862
H. C. Wells (Seal)

" For value rec'd I hereby assign & transfer all my right title
" & interest to the within contract to A. Rockafellow as collateral
" security for the payment of a certain promissory note of even date
" herewith given by W. H. Boies to said Rockafellow for the sum of
" Six hundred & thirty six dollars & payable ninety days after date
" Witness my hand & seal this 28th day of August A.D. 1862 at Galva
" Henry co Ill
W. H. Boies (Seal)

" Having received payment in full of the note specified in the
" foregoing assignment of W. H. Boies to me I hereby in

"consideration thereof & for value received reassign & transfer
"said lease to said Bories & release & discharge all my claim
"thereupon & right thereto Witness my hand & seal Oct 21st
"1862 A J Rockafellow (Seal) 11

Was here shown witness whom he stated, I know the handwriting of the parties to this lease the signatures are genuine I assigned it to the plaintiff on the 2d day of June AD 1862 Farr assigned it to me about the date of his assignment or about May 1st 1861 The plaintiff then read the lease and assignments to the jury

On cross examination the witness stated, The lease was not assigned to me at the time the assignment bears date but about the first of May after that, It had previously been assigned to parties at the east Creditors of Farr who refused to receive it and it was returned to Farr and a part of the assignment stricken out and my name put in and the date was not altered: I was to assume the responsibilities of the lease which was all I paid for it, I reside in Chicago I resided there at the time the lease was assigned to me I was in the employ of Wadsworth & Wells

Peter Peterson was then called as a witness for the plaintiff and after being duly sworn testified as follows

I went into possession of the land described in the leave with Lund and Gibson and tilled it, Broom corn was raised on the land also small grain as the contract says. The plaintiff advanced the money on this years crop according to the terms of the lease he paid it as we wanted it We delivered thirty nine bales of the corn at the Rail Road company's Ware house in Galva Mr Bories paid us about $1200 on the Contract, We delivered his third at the freight house in Galva but it was delivered to Mr Bories We delivered it about Sept 22d last

On cross examination the witness stated, I delivered the broom corn to the plaintiff because he advanced the money

and had the contract and I knew nobody else to deliver it to I first learned that Boris bought the Contract the 2 or 3d of June last it was at my house and I knew of Boris & Farr were there 2d of June and this base I presume it was assigned to Boris then, Wells was to be out of it because he had so much business to do, The arrangement was on this contact I saw it when Farr & Boris came to my house $50 in cash was then paid us by the plaintiff the day he was there, Farr knew us and we did not know Mr Boris so Farr came with Boris I suppose, We relied on Farr to inform us of Boris responsibility Farr recommended him Farr has been in Chicago and not in Boris office for about four weeks past We thought Boris would fulfil the contract and he did do so and paid us the money and that was all we asked him to do, Farr did not come again after that We had no transactions with Farr then as to the contract, I have seen him in plaintiffs office,

The plaintiff then by the consent and agreement of the defendant read in evidence the following agreed state of facts in this case

William H. Boris
vs
Adam K Kenney } Replevin

On the part of the above entitled cause John S Bennett atty for Defendant hereby agrees to admit that the thirty nine bales of Broom Corn Brush replevied in this cause was delivered to said plaintiff at the C B & Q R R Co's Warehouse in Galva & that Col Fuller the agent of said R R Co at Galva had previous to the 10th day of September A D 1862 loaded Car No 138 of said R R Co with thirty bales of said Broom Corn brush & had entered it on the Co's Shipping Book & made out a Way Bill of same in the name of said plaintiff as consignor & B L Chamberlain of Chicago as consignee by

18

that on the 10th of September A.D 1862 the defendant in this suit levied on the thirty bales of Broom corn brush in said Carr No 789 & also on nine Bales of Broom corn brush in the Ware house & that said Defr ordered Col Fuller to unload said Broom corn Brush & put it back into the Ware House & that said Fuller did unload the same & put it back in the Ware house I agree to the above with the understanding that said Fuller shall not be subpoenaed to prove same facts which are admitted to be true

Galva Oct 20 1862 D F Bennett
attys for Defts

The plaintiff then called Wm H Shepard as a witness who being duly sworn testified as follows, I was present when a demand was made of the broom corn in this suit plaintiff asked defendant to give it up defendant refused, this was before the suit was commenced

On cross examination the witness stated I understood the demand was made before this suit was commenced Mr Bois wanted to make a witness of me in a suit for the broom corn which he said he proposed to commence

The plaintiff here rested his case and the court adjourned until to morrow

October 23d 1862

The defendant then introduced the following evidence and read the same to the jury

11

Henry County Circuit Court

Orf Johnson
vs
George Farr } assumpsit

October Term, 1862

Wednesday Oct 31, 1862

At this day came the plaintiff in this cause by Bush Eustace & Reed his attys and the defendant by Bigelow and Frost his attys and this cause now coming on to be heard and

19

Henry County Circuit Court
Of March Term 1862

Olof Johnson
vs
George Furr

Remanded from Supreme Court

Wednesday March 5, 1862

"At this day appeared the plaintiff by Howes & North his attorneys
"and the defendant by Bigelow his attorney and thereupon the
"atty for plaintiff moved for judgment of this court on the judg-
"ment and opinion of the Supreme Court in this case at its
"April Term AD 1861 for the sum of $237.05/100 and interest at the
"rate of six per cent per annum from the 31st day of October AD 1860
"with costs, On consideration whereof motion of plaintiff was
"heard and judgment rendered for the plaintiff and
"against the defendant for the sum of $255.20 cts being the
"amount aforesaid with interest from Oct 31st 1860 aforesaid
"It is therefor ordered and adjudged by the court that the plaintiff
"have and recover of and from the defendant the sum of
"Two thousand five hundred and fifty three dollars and twenty
"cents together with his costs in this behalf expended and
"that execution issue therefor Whereupon the defendant ex-
"cepts to this judgment of the court on the ground that the
"judge of this court was of counsel in the original trial of
"said cause in this court before the appeal thereof to the Supreme
"court

It was then agreed by the parties that the defendant was Sheriff of Henry co Illinois at the date of the execution and levy thereon on the personal com in this case

The defs then offered in evidence the following execution & Fee Bill

"The People of the state of Illinois, To the Sheriff of Henry county Greeting; We command you as

we have heretofore that of the goods and chattels lands and tenements of George Farr in your county you cause to be made the sum of Two thousand five hundred and fifty three & 20/100 dollars which on the 5th day of March 1862 Olof Johnson recovered in the circuit court of said county against the said George Farr with legal interest thereon from said date until paid and also the further sum of One hundred eighteen & 50/100 dollars which were adjudged to the said Olof Johnson by said court for his cost in that behalf expended whereof the said George Farr [illegible] convicted as appears to us of record and that you have the said sums of money with interest and costs at our clerks office within ninety days from the date hereof together with the writ Witness Amos Gould Clerk of our said court and the seal thereof at Cambridge this 10th day of September AD 1862

(Seal) Amos Gould Clerk

By W L Dalrymple Dep

Fee Bill March Term 1862 Plaintiffs cost

Dkt suit 10 app 15 fil papers in suit 10 Orders 1,00	
Judgt 25 Exe Dkt ret sur & fil 80 Fee bill copy cert & fil 90	$3.30
Defts cost app 15 Orders 20 fee bill & copy 50	85
accruing cost	
Shffs fee on Exe Ret 1.40 Alias fee bill copy cert & fil 90	
Alias Exe Dkt ret sur & fil 80	3.10
Amt from fee bill hereto attached	111.35
	$118.50

I hereby certify that the above fee bill is truly copied from my fee book Witness the Clerk and the seal of said court the 10 day of Sept AD 1862 , Amos Gould Clerk

(Seal) By W L Dalrymple Dep

Received this execution this tenth day of September 1862 at 11 Oclock am Adam K Kenney Sheriff

By virtue of the within writ I have this day levied on the interest of George Farr in the following personal property found in

sheds known as George Farrs Broom corn Sheds to wit 20 bales of Broom corn brush in the South Shed 20 bales in the north shed & all the broom corn brush now cleaned and on the slats in the middle tier in the south shed all the broom corn brush now on the slats in the middle tier of the North shed and two two bales at the ware house in Galva all of the above remaining where found and not taken into my possession Also nine bales of broom corn brush in the Ware house in Galva and thirty bales of broom corn brush in Car, No 784 standing on the track of the said Warehouse in Galva Henry county Illinois September 10th 1862

Adam K Keeney Sheriff

Replevied by Norton Kelsey Constable Sept 20th 1862.

This writ returned without sale of property levied on as above

Adam K Keeney Sheriff

I have also by virtue of the within writ levied on the interest of George Farrs in & to all the Broom corn brush now on the slats in the middle tier of the south shed also the Broom corn brush in the east end of the middle tier of the North shed and the corn brush in the north tier of the North shed excepting about 18 feet at the West end of said tier all of said Broom corn brush is in the Sheds known as George Farrs broom corn sheds in Galva Henry county Illinois the same remaining in the possession of Peter Peterson Peter Gibson & John Lind Sept 27 at 10 Oclock A M

A K Keeney Sheriff

Replevin writ served by N Kelsey Sept 27/62

By virtue of the within writ I have levied on the following personal property to wit all the slats in Farrs sheds supposed to be about Seven thousand more or less, Said slats being twelve feet long & three inches wide Also one Singer sells improved portable broom corn press No 785, two hand Scrapers one Self Scraper one eight horse power one two horse power & 3 wheel barrows Galva Nov 8th 1862

A K Keeney Sheriff
By A C Howard Depy

The above described personal property was this day sold at public sale for four hundred eleven & 40/100 dollars ($411.40) of which is applied on this execution $141.05 is applied on costs in full herein. Execution returned not satisfied as to balance Nov 27th 1862

Sheriffs fees on Exc $28.55

A K Keeney Sheriff

To which the plaintiff objected the overruled the objection and the defendant then and there at the time excepted and the same was read to the jury

The defendant then offered in evidence the following

"At a Supreme court begun and held at Ottawa on Tuesday "the 16th day day of April in the year of our Lord one thousand "eight hundred and sixty one within and for the third grand "Division of the State of Illinois

Present the Honorable John D Caton Chief Justice
" " Sidney Breese Associate Justice
" " Pinkney H Walker Associate Justice

Friday May 17th 1861

George Farr
vs
Oloff Johnson } Appeal from Kenny

On this day came again the said parties and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error and being now sufficiently advised of and concerning the premises are of opinion that in the Record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the circuit court in this behalf rendered be reversed annulled set aside and wholly for nothing esteemed and that this cause be remanded to the circuit court with instructions to render a judgment for the sum of $2.375.05 & interest from the 31st day of October 1860 with costs against the appellant & for such other and further proceedings as to law and justice shall appertain And it is further considered by the court that the said appellant recover of and from the said appellee his costs by

him in this behalf expended and that he have execution therefor. I Lorenzo Leland Clerk of the Supreme Court of the State of Illinois do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office In testimony whereof I have set my hand and affixed the seal of the said Supreme Court at Ottawa this Seventeenth day of February in the year of our Lord one thousand eight hundred and sixty two

L Leland
Clerk of the Supreme Court"

to which the plaintiff objected the court overruled the objection and the plaintiff then and there at the time excepted to the ruling of the said court and the same was read to the jury The defendant then offered in evidence the following

Kenny county Circuit Court
October Term 1860

Olof Johnson
vs
George Farr } Assumpsit

Wednesday Oct 31. 1860

At this day came the plaintiff in this cause by Knox Eustace & Reed his attys and the defendant by Bigelow and Frost his attys and this cause now coming on to be heard and issue being joined by the parties herein It is ordered by the court that a jury be called to hear and decide the issues between the parties And thereupon came the jurors of a jury of good and lawful men to wit Benj Brown Kenny Albro A Dillenbeck Geo B Phillips A Negus G W Daily John Seymore A K Kenney M Taylor John Boyd Joseph Arnell A A. Lee who were duly selected chosen and sworn to well and truly try the cause and a true verdict

under according to the evidence.

And afterwards to wit on the 1st day of Nov of the term aforesaid the jury having heard the evidence the arguments of the counsel and all things to be adduced herein The jury aforesaid aforesaid return into court their verdict in words and figures following to wit "We the jury find verdict for the plaintiff and assess the damages at four thousand seven hundred and fifty & 10/100 dollars ($4750.10" which is received by the court and ordered to be filed and entered of record in this cause. And on the rendering of said verdict comes the said plaintiff and remits of the above amount the sum of two thousand three hundred and seventy five dollars and five cents ($2375.05) And now comes the said defendant by his attorneys aforesaid and moves the court for a new trial in this cause on the ground 1st the court erred in giving the several instructions asked for by the plaintiff 2° the court erred in giving the several instructions for by the defs and refused by the court &c &c And the court having heard the motion and the reasons offered therefor and being now fully advised in the premises overrules the motion And judgment entered on the verdict It is therefore considered and adjudged by the court that the plaintiff have and recover of the defendant the said sum of four thousand seven hundred and fifty dollars and ten cents judgment (subject to the aforesaid remittance) together with his costs in this behalf expended and that he have execution therefor And afterwards to wit on the day and year last aforesaid comes the said defendant by his attys aforesaid and takes exceptions to the judgment and ruling of this court and pray an appeal to the Supreme court of the State of Illinois Which appeal is by the court granted And leave given said defendant to prepare and file his bill of exceptions and file his bond herein with Daniel L Wiley

25 as surety six sixty days

Award of Arbitrators

Galva Nov 30th 1859

"We the arbitrators between Olof Johnson plaintiff and George Harr defendant agree on the following points in the Bill of Olof Johnson against Johnson & Harr

1st Assuming that $9,746.53 was the amt of indebtedness of Johnson & Harr – that Olof Johnson shall be allowed exchange on such amts of indebtedness as was payable in New York at the rate of one and half per cent

2d That in the items charged costs & expenses one hundred and twenty five dollars shall be deducted

3d That Olof Johnson shall be allowed interest at rate of six per cent on amt of indebtedness less O Johnsons end it to Johnson & Harr as per bill of July 16th 1859 for $4,835,72 from April 26th 1857 to Nov 30th 1857

4th That the motion of defendant for non suit for cause of non fulfilment of contract be overruled and Olof Johnson be allowed 15 per cent commission as per contract on amt of indebtedness

5th That all assetts of Johnson & Harr unsettled and not collected shall be divided as per contract of April 26th 1857

6th That we find balance due Olof Johnson of $ 4,302,41

Claudius Jones
Wm L Wiley
Edm S Bond "

and all the files in said case" to which the plaintiff objected, the court overruled the objection and allowed the papers to read to the jury as evidence to which judgment and ruling of the court the plaintiff then and there at the time duly excepted. It was then agreed by the Plff.

26 that Defendant at the time of the levy was Sheriff Kenz

Co. the defendant then called as a witness on his part H. C. Wells who testified as follows

I reside in Chicago I was in the employ of Wadsworth & Wells as collecting agent in 1860. Before the assignment of the lease to me I had had no reference in the Broom corn business. The lease was assigned to me and delivered at Chicago Farr resided in Galva at the time. He came to Chicago do not know what his business was Farr advised with me about the assignment of the lease before it was sent east and asked me to take it I told him I did not want it he said he wanted to let some of his creditors have it and asked me to take it as he said he wanted to pay his creditors he left me this after the lease was returned from the east when it had been sent to a Mr Leyman or to the Northampton bank No consideration passed at the assignment of the lease only I assumed the responsibility of the lease The parties at the east to whom the lease was sent refused to receive it. I know of no reason why he offered the lease to me except he knew I bought anything in which I could see any money

I was acquainted with Farr in Lafayette five or six years ago I think I had been informed there was a matter in litigation between Johnson & Farr. Farr informed me I do not know that he informed me of Johnsons judgment he may have done so I cant say he did do so he was talking over his general business and I was asking him to pay me and it was natural for me to inquire about his business when I had claims against a party so as to take steps to collect

I was trying hard to get Farr to pay other debts first as I represented some of them He did not say he did not intend to pay Johnsons judgment but that

he considered it unjust Farr had an agreement with a Mr Butler of Northampton by which they were to buy broom brush on joint account Butler had made advances to buy the broom brush. If I remember Farr was to buy the brush ship it to Butler and Butler was to sell it and the profits to be equally divided
On looking over the agreement I concluded I would not become liable for any loses in the purchase of the brush and on looking over both the lease and the agreement with Butler I concluded to take them and they were both assigned to me by Farr, I would not assume the responsibilities of the lease to Peterson Lund & Gibson unless the Butler contract was assigned to me also I dont recollect of the assignment of anything else at that time It was not contemplated by me to take the lease before that time but I dont know what Farr contemplated I bought some notes of Farr sometime previous to the assignment of the lease, There were no arrangements about the assignment of the lease and contract until after the notes were assigned to me After the assignment of the broom corn lease I advanced the money on it and Mr Bennett paid it out for me Farr assisted me in boxing the Brush and Mr Bennett paid him for me $125 for his services I had previously arranged with Farr to pay him $25 a week for his services I knew nothing about the business and Farr did and I wanted him to have the oversight of it and get the brush into shipping condition * I made this arrangement with Farr after the lease was assigned When I delivered the notes Farr assigned me to Bennett & Bros I had no thought of taking the lease, In the year 1861 the plaintiff was a partner of Bennett in Galva I have assumed to pay no debts of Farr out of the notes or lease

* By the lease the keys were to be all ours -

assigned me, I assigned the lease to Mr Boies in his office on the 2d day of June 1862 I dont know whether Farr was present or not but he was around I did not assign the lease to Boies the first interview I did not go there for the purpose of selling it but when I have a thing to sell I always offer it I owed Peterson Lund and Gibson which he went out and brought in receipts for. I should have paid them the first of May, I wanted to dispose of the Butter contract and also of the other as I wanted to get out of them I had the Butter agreement with me and agreed to sell it to Boies for a sum of money he agreed to pay me paid me $259 mostly in gold for the Butter contract and he assumed to pay a debt of $307 that I owed Peterson Lund & Gibson for the assignment of the lease Farr was present the most of the time I am under the impression that Boies went and got the receipts of Peterson Lund & Gibson There was a trust deed on the premises described in the lease and there was a payment due on it and the owner of it threatened to sell the premises & I took the $259 got of Boies for the sale of the Butter contract & loaned it to Farr to pay the interest on the trust deed I took Farrs note & paid the incumbrance by draft on Boston I delivered the draft to Boies Farr Stays in Chicago now and is in the employ of B de Chamberlain I believe, I suppose Chamberlain is the same man that the tea room corn in this suit was shipped to.

On cross examination the witness stated

I was in the employ of Wentworth & Wells of Chicago at the time I purchased the lease and contract & employed my money in any way I could I became acquainted with Farr at Lafayette I bought the Peterson Lund & Gibson lease and agreed to assume the liabilities of it which was the consideration paid for it. The time I bought it was

about the time Fort Dunsplen fell and nothing was Stable
everything was going down broom corn had fallen in
the market I sold fifteen tons of the brush raised in
1861 for $1500 I also sold some in Chicago at $85 a ton
also shipped some to Boston and realized some $80 or $85
a ton During the time I had the lease I advanced some
$1200 to Peterson Lund & Gibson I wanted to get out of it
for I considered there was no money in it thought I sold
it well to get rid of the liabilities Farr wanted to
sell it before it was assigned to me so as to get something
to pay his creditors but they would not take it I sold the
Butter contract first before I sold the lease and at the time
I sold it I did not know that I should sell the lease to
Boris $259 was all the Butter contract was worth
the assumption of the liabilities of the lease was all it
was worth I had no intention of chasing Farrs creditors
The $259 received for the sale of the Butter contract
I loaned Farr before I sold the lease as the life of the lease
depended upon the payment of the interest due on the
Trust deed, Boris had the $259 in gold in his pocket
when we made the trade and paid it to me and I allowed
him a commission on the gold, The notes and property
assigned to me by Farr were honestly assigned to pay debts
I knew Farr six or eight years ago at Lafayette
Bennett paid out of the collection of notes moneys to
Peterson Lund & Gibson on the lease as he said but the
amount was small I paid Farr $125 for his services
buying the broom corn and shipping it which was cheap
enough as he understood the business and I do not know
where I could have got as competent a hand as Farr
Boris agreed to pay Peterson Lund & Gibson $307
and brought me receipts from them None of the money
paid me by Boris came from Farr that I know of

Peterson Lund & Gibson $307 and $125

Nothing was said by Boris about Farrs business no conversation was had about protecting Farr against his Creditors dont think it was thought of

Orr being re examined by defendant the witness stated some of the brown corn sold for $100 a ton in Chicago Farr sold it I telegraphed him to come up to Chicago and sell the corn the most of the corn was sold for from $35 to $40 a ton Farr knew about the business I paid him for coming to Chicago to sell it The money received for it was paid to me think I got some where in the vicinity of $60 a ton on an average for the corn I got ⅓ of it on the lease the balance I took as by the terms of the lease at $75 a ton I did not make the interest on my money and my expense out of the one third, as the money I got for the one third was cut up on the other two thirds and expenses and some $40 or $50 besides There was raised in 1861 about sixty (60) Tons of brush on the land leased, The defendant here rested his case The Plaintiff then recalled Peter Peterson who testified as follows, After the 2d day of June last and after the lease was assigned to Mr Boris by Wells, Boris advanced $1200 to Peterson Lund & Gibson on the lease Also $29 paid me $29 paid Lund & $29 paid Gibson

The plaintiff then called A J Rockafellow as a witness and asked him the following question, viz, State if you know where or of whom the plaintiff got the money or any part of it advanced by him to Peterson Lund & Gibson on the lease to which question the defendant objected as not properly rebutting, and the court sustained the said objection and refused to allow the witness to answer the question, or the plaintiff to show where he got the money by him paid to the tenants or to Wells to which judgment & ruling of the court the said plaintiff then & there at the

time excepted and thereupon the plaintiff rested his
31 case And the above and foregoing was all of the evidence
given in the case by either party

The Plaintiff thereupon requested the Court to give the
jury the following instructions and each of them to wit

33 The court then gave the following instructions by him modified on behalf of the plaintiff viz

1st If the jury find upon the evidence that George Farr executed the lease read in evidence to the lessees therein named viz Peter Peterson Peter Gebevis & John Lind & that on the 19th day of April A.D 1861 said lease was by said Farr assigned to H.C. Wells & by said Wells on the 2d day of June A.D 1862 was assigned to said Plaintiff W.H. Boris with the consent or acquiescence of the lessees then or afterwards given such assignments and transfers if made in good faith & upon a valuable consideration entitle the plaintiff to the same rights then and interest in the lease & in the broom corn crop that Farr would have been entitled to had the lease not been assigned & if the jury further find from the evidence that the broom corn in question was raised by the tenants under said lease on the leased premises & delivered to the plaintiff & put in possession by said tenants as his share under the lease said broom corn thereby became the property of said plaintiff & if the Jury further find upon the evidence that after it had become the property of the plaintiff (if they find it did so become his property) the defendant levied upon & took the same the jury will find for the plaintiff

2 The agreement and assumption by Wells & by Boris (if made) to discharge and perform on their part respectively the covenants of the lease in question and the delivery to and acceptance by them of the lease by reason of such agreement and assumption by them severally is a valuable consideration for the assignments to them respectively of the said lease notwithstanding no money was paid or agreed to be paid by them or either of them for such assignment

3 If the jury believe from the evidence that George Farr sold and assigned the lease in question to H.C. Wells and

34 that the plff Boies purchased the said lease and received and assignment thereof from said Wells for a valuable consid eration in good faith and without knowledge of the fraudulent intent of Farr (if any such there was by Farr) and the lessees named in said lease consented to or acquiesced in said purchase by Boies and delivered to him thirty nine bales of broom corn brush under & in pursuance of the terms of said lease and that the defr learned on or both the same after such delivery to the plff & while in his possession the jury will find a verdict for the plff

4 In order that the assignment of the lease read in evidence from Wells to plaintiff shall be found to be fraudulent & in order to make out a defence to this action on the ground of fraud the jury must first believe from the evidence that the making of the lease by Farr was originally for a fraudulent purpose or that the assignment thereof from George Farr to F. & C. Wells was with a fraudulent intent & in the second place that said plaintiff purchased said lease from said Wells with knowledge at the time of the fraudulent & covinous designs of said Wells & said Farr (if such existed) & it is wholly immaterial whether the interest of said Farr in making said lease or in the assignment of it was fraudulent or not unless the jury also believe upon the evidence that both said Wells & said Boies were also guilty of fraud in accepting the transfer of said lease or that they severally had knowledge of such fraudulent intent by Farr or of facts and circumstances from which they were required at the time to infer the fact of fraud by Farr

7th A Debtor has a legal right to prefer creditors in the payment of his debts & a sale or transfer of property by him with a view & for the purpose of paying one of his creditors in

35 preference to another, is not an illegal or fraudulent act & does not for that cause render such sale or transfer fraudulent or void merely because the effect of such sale or assignment postpones one creditor in favor of another

8 The existence of a judgment or of an indebtedness in favor of Johnson & against Farr is of itself no evidence of fraud by Farr in the sales or transfer of his property made during the existence of such judgments or indebtedness but in addition to the judgment or indebtedness there must be evidence of a fraudulent purpose or intent in the making of such sale or transfer before the jury are warranted in regarding the sale or transfer as null & void on the ground that it is made with the intent of hindering delaying or defrauding the creditors of Farr so also mere knowledge or notice on the part of Wells or Bois (if it existed) of such fraudulent intention cannot render invalid the sale or assignment to them without evidence of knowledge or notice on their part that the sale or assignment was made by Farr for the illegal & fraudulent purpose of hindering & delaying or defrauding his creditors or some of them in the collection of their indebtedness against him,

To each of which several modifications & modified instructions & giving thereof the plaintiff then & there duly & severally excepted

The defendant then requested the court to give to the jury the following instructions viz

1 Every sale assignment or conveyance of property made by the parties to it with intent to hinder defraud or delay creditors existing at the time as to the collection of their debt is void as to such creditor whether such sale assignment or conveyance was made with or without a valuable consideration therefor

court for a new trial on the following grounds viz

36

2 If the Jury believe from the evidence that Johnson was a creditor of Farr at the time of the assignment by Farr to Wells and further believe that such assignment was made by them to hinder delay or defraud said Johnson in respect of his debt then they may & ought to regard said assignment as void. and notice by Farr to Wells at or before the time said assignment was made that Johnson was a creditor whom he wished & intended to postpone delay or hinder the assignment without any actual consideration to Wells the employment by Wells of Farr in connection with the property assigned if proved to the satisfaction of the jury are circumstances to be considered by them as tending to show such intent to hinder delay or defraud said Johnson

3 If the jury believe from the evidence that Wells afterwards assigned to Bories the plaintiff with intent or purpose by them to hinder delay or defraud said Johnson in respect of said debt against Farr then they should find said last mentioned assignment void as to Johnston and the property covered by such assignment as still liable to execution in favor of Johnston The assignment without a valuable consideration or for a consideration furnished by Farr — the application of the proceeds to the payment of other debts of Farr — acts of Farr showing a personal interest in the property covered by such assignment & at & after the time when it was made and the like with notice to Bories of the existence of the debt in favor of Johnson & of Farrs & Wells interest thereby & hinder delay or defraud said creditor are circumstances which if proved the jury may consider as tending to show such intent by Wells & Bories in making said last assignment

4 If at the time of the transfer of the case from Farr to Wells (May 1 1861) Johnson had recovered a judgment against Farr which was then or afterwards appealed to the Supreme court

37

and judgment afterwards again rendered in the circuit court on the proceedings had in said Supreme Court — this would constitute Johnson such a creditor of Farr as to entitle him to take advantage of any sale transfer or assignment by Farr which the law would hold void or to his creditors

5 If Johnson is a judgment creditor of Farr and the assignment to Wells was made or intended by Farr in which or in part to defraud hinder delay or postpone the collection by Johnson of his judgment and Wells knew of such intent or had knowledge of facts and circumstances from which such intent was reasonably and necessarily inferable then such assignment is in law fraudulent — and void as against the rights of Johnson and if Wells with like intent and purpose assigned to Boris with like knowledge of such an intent or if the facts and circumstances from which it was to be reasonably and necessarily inferred then the assignment to Boris is in like manner fraudulent and void as to the rights of Johnson as a creditor of Farr

To which and to each of which the said plaintiff objected, the court overruled the objection and gave the said instructions to the jury to which said judgment & each of said rulings of the court in giving each several & separate instruction the said plaintiff then and there at the time duly & separately excepted

And thereupon the jury retired to consider of their verdict and afterwards and on the same day returned in court with the following verdict

"We the jurors in the above named case find the issues for the defendant J C Moore foreman"

Thereupon the plaintiff entered his motion for a new trial as follows

"And now comes the said plaintiff & moves the court for a new trial on the following grounds viz

38 1st The court erred in excluding the evidence offered by the plaintiff & objected to by the defendant & in refusing to allow the plaintiff to prove where the plaintiff got the money which he advanced on the brown corn in pursuance of the terms of the lease - & or how he got the money by him paid on the purchase of the Northampton Contract

2 The court erred in giving such several & separate instructions asked by the defendant & given by the court

3 The court erred in modifying such several instructions asked by the plaintiff & modified by the court & in not giving each several & separate instructions asked by the plaintiff on that such modification

4 The Verdict of the jury was against law & the instructions of the court

5 The Verdict of the jury was against evidence

6 The defendant failed to prove justification under his plea & the facts assigned in said plea & demurred by the replication

Bagelow & Frost

Which the court overruled to which judgment and ruling of the court in overruling said motion the said plaintiff then and there at the time duly excepted

Inasmuch therefore as the foregoing does not appear of record the said plaintiff prays that this his bill of exceptions may be signed Sealed and made part of the record which is done accordingly

J. O. Wilkinson Seal

Judge &c

And afterwards to wit and on the 20th day of December 1862 the said plaintiff filed his appeal bond in said case in the words and figures following to wit

" Know all men by these presents that we William H

Boris as principal and Arthur F Hathaway and Hiram Bigelow as sureties are held and firmly bound unto Adam H Kenney in the penal sum of five hundred dollars for the payment of which well and truly to be made we bind ourselves our heirs and legal representatives jointly severally & firmly by these presents

Witness our hands and seals this 15th day of December AD 1862.

The condition of the above obligation is such that whereas the above named Adam H Kenney did at the October Term AD 1862 of the Henry county Circuit Court and on the 23d day of said month of October recover a judgment against the above bounden William H Boris for the return of thirty nine bales of broom corn and for the costs of the suit amounting to $62.40 Now if the said William H Boris shall pay and perform the judgments costs interest and damages in case said judgment shall be affirmed and shall also duly prosecute the appeal of said case then this obligation to be void otherwise to remain in full force and effect

W H Boris
A F Hathaway
Hiram Bigelow

State of Illinois }
Henry County } ss. I Amos Gould Clerk of the Circuit Court in and for said county hereby certify that the foregoing is a full and complete transcript of the record and judgment in said cause as appears of record in my office

Witness Amos Gould Clerk of said Court and the seal thereof at Cambridge April 8th AD 1863. Amos Gould Clerk

By W L Dalrymple Dep'y

Mary J Bois
Administratrix of
Wm H Bois deceased
vs
Adam N Berry

Appeal from Berry

And now comes the said Mary J. Bois by Bigelow & Frost her Attorneys and says that in the record and proceedings aforesaid there is manifest error for which she therefore asks that the said judgment may be reversed, and for causes of error assigns the following

1st The Court erred in allowing the defendant to read in evidence the execution, judgment, and record of each of them.

2

2d The Court erred in refusing to permit A J Rock, a fellow to testify and answer as to when the plff Bois got the money paid Peterson and Gibson on the Contract.

3 The Court erred in overruling the motion for a new trial.

4th Because the verdict is contrary to the evidence

5th The judgment should have been for the plaintiff instead of for the defendant

6th Because of other error in the record

J S Frost
W H Bigelow
Attys for appellant

And now Comes the said Defendant, Adam K. Kenney Appellee, by John A. Bennett his attorney and says that there is no error in the record and proceedings aforesaid; and especially no such error as is above assigned by said Appellant

J. A. Bennett
Atty for Appellee.

Wm. [illegible] Davis

vs

Adam K. Kenney

Appeal from Henry

258 — 150

Wm H Bois

vs

Adam K Henney

Appeal from Henry

Filed May 4. 1863.
L. Bland
Clk.

Jus Allen