

No. 13522

Supreme Court of Illinois

Brush.

vs.

^S
~~X~~eguain, et al.

STATE OF ILLINOIS,
SUPREME COURT.
Third Grand Division.

No. 268.

1860

Brush
vs.

Dequar

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, 1860.

BRUSH
vs.
SEGUIN and BYRNS. } *Appeal from Kankakee.*

ABSTRACT.

Page of Rec.
2, 4, 6

Action: Replevin, by Brush against Seguin and Byrns, for a sorrel mare, value \$75, taken Nov. 1, 1858.

Defendants, Seguin and Byrns, pleaded 7 pleas.

1st. *Non cepit et non detinuit.*

2d. Property in defendants.

7 3d. Property in one Robert K. Brush.

8 4th. (Called in Record 1st avowry,) judgment for one Wm. Godfrey,
against Robert K. Brush and one Ingham, for \$346 and costs, at April
9 term, 1858, and an execution to Sheriff of Kankakee County, dated
April 22, 1858; and that defendant, Seguin, being such Sheriff, by his
deputy, one Byrns, levied said execution on said property, on May 20,
1858; and that the property was then the property of Robert K. Brush.

10 5th. (Called in Record 2d avowry,) like 4th plea, except it omits the
judgment and pleads only the writ.

12 6th. (Called 4th plea in Record,) right of possession in Byrns, as de-
puty Sheriff.

7th. (Called 5th plea in Record,) denies the allegation of property and
right of possession in plaintiff.

Dec. 28, 1858, issue was joined on all the pleas except 4th and 5th,
(called 1st and 2d avowries,) and to 1st and 2d avowries plaintiff replied:

14 1st. Property in plaintiff and not in R. K. Brush.

15 2d. A release of defendant's levy, by taking bond from R. K. Brush.

16 3d. Release of the levy and delivery of the property to R. K. Brush,
and that the property became plaintiff's while it was in possession of
said Brush.

18 4th. The release and discharge of the levy, and delivery of the pro-
perty to R. K. Brush, who retained possession during life of execution.

19, 20, 21 Jan. 5, 1859, defendants demurred to second and third above replica-
tions, and issue was joined upon the first and fourth.

Page of Rec. Jan. 6, 1859, defendants' demurrer overruled by the Court, and defendants abided.

- 23 A trial of the issues was had by a jury; verdict for defendants, and motion for a new trial, Jan., 1859.
- 24 At the next term, April, 1859, a new trial was granted, and the Court allowed the defendants to withdraw the demurrer upon which judgment had been rendered at the former term, and to file rejoinders to said 2d and 3d replications to the avowry pleas, and plaintiff excepted.
- 25, 26 At Sept. term, 1859, defendants rejoined to said replications, that said levy was not released and discharged as alleged.
- 27 Jan. term, 1860, trial, and verdict for defendants.
- 28 A motion for a new trial overruled, and judgment.
- 31 Bill of exceptions taken at the trial, shows: Witness for plaintiff testified, that on Nov. 1, 1858, Byrns took the property from plaintiff; and that May 31, 1858, witness, R. K. Brush, gave plaintiff a chattel mortgage on the property in question and on other property, to secure the
31-35 payment of certain notes. [The mortgage, duly acknowledged and recorded on that day, with the note, was produced and read in evidence, and contained a provision that the mortgagor might retain possession, unless mortgagee should fear a removal, or the property should be levied on, in which case mortgagee might take possession.] That the mortgagee, after the execution of the mortgage, took possession of the property, and kept it until she was taken in November, by defendant, Byrns.
- 37-38 That about May 20, 1858, Byrns levied an execution on the property, and witness gave Byrns a bond and retained the property.
- 44 Plaintiff gave the bond in evidence, which was a bond of R. K. Brush
42 and Wm. Barrick, in the penal sum of \$500, reciting an execution in favor of Godfrey and against R. K. Brush and Ingham, dated April 12, 1858, and the levy, and the re-delivery of the property to R. K. Brush, and conditioned for the delivery of the property to the Sheriff on July 12, 1858, and that the same should not, in the mean time, be sold or injured.
- 30 Defendants gave in evidence an execution in favor of Godfrey and against R. K. Brush and Ingham, dated April 22, 1858, purporting to be issued upon a judgment obtained by Godfrey against "said defendant," by the confession of "said defendant," at the April term, 1858, of the Kankakee Circuit Court, and the return thereon showing a levy upon two span of horses, May 20, 1858.
- 41 This evidence was admitted, against plaintiff's objections, and he excepted. Defendant then gave in evidence the judgment, to which plaintiff objected and excepted.
- 42 R. K. Brush recalled, testified for plaintiff that, at the time of the levy,
44 Byrnes told witness that if he would give a bond he might keep the property. Witness agreed to do so, and Byrnes drew up the bond ready for execution; then witness and Barrick signed it, and Byrnes, on receipt

Page of Rec. ing the bond, told witness, "the levy is now released." Witness further testified, that the bond was given and accepted as a release and discharge of the levy.

On cross-examination, witness stated that he never did deliver the property according to the terms of the bond; that on the day of the sale Byrnes adjourned the sale ten days.

The above is all the material evidence in the cause.

And plaintiff requested the Court to instruct the jury, that if the jury find that the said forthcoming bond was given for the release of the property, although not describing the execution in evidence, it will be a release, and the law is for plaintiff. Which instruction the Court refused, and plaintiff excepted.

And the Court instructed the jury, on behalf of the defendants, that if the jury believe from the evidence, that defendants levied on the mare in question as Sheriff, &c., on or before May 20, 1858, by virtue of the execution in evidence, and left said mare in possession of R. K. Brush, then defendant, Byrns, had a right to take said mare after the return day of said execution, and sell the same to satisfy said execution, and the legal possession was in said defendant, unless the jury find the levy released; to which plaintiff excepted.

49 The Court then instructed the jury, that an execution coming into hands of sheriff is a lien on the property of defendant in such execution; and if the jury believe from the evidence, that said execution came to hands of defendants, as sheriff, &c., on April 22, 1858; and that the time of the receipt was endorsed thereon by Byrns, as deputy, then the execution was a lien on the property of R. K. Brush from the time of such receipt and endorsement, and the endorsement by Byrns is evidence, and to entitle plaintiff to recover, he must show a right to possession superior to that of defendant; to which plaintiff excepted.

And the Court instructed, that if the jury believe from the evidence, that defendant, Byrns, as deputy, &c., levied on said mare under said execution, he had a right to leave said mare in the possession of said R. K. Brush, and such leaving did not, of itself, release the levy; to which plaintiff excepted.

50 And the Court instructed, that if the jury believe from the evidence, that R. S. Brush acquired all his right to said mare under said mortgage, then his right is not equal to defendants' by virtue of said levy, &c.; to which plaintiff excepted.

And the Court instructed the jury, that if the jury believe that plaintiff acquired possession of said mare under any arrangement other than said mortgage, then the law in that regard is for defendant; to which plaintiff excepted.

51 And the Court instructed, that if jury believed from the evidence, that the transaction between plaintiff and witness, Brush, was for the purpose of delaying creditors, said mortgage is void as against said execution; to which plaintiff excepted.

Page of Rec. And the Court instructed the jury, that defendants need not prove by the record that Seguin was Sheriff, &c., but it may be proved by their having acted in that capacity; to which plaintiff excepted.

And the Court instructed, that if the jury believe from the evidence, that the forthcoming bond in evidence described a different execution from that in evidence, then such bond is not a release of said execution; and plaintiff thereupon excepted.

And the Court instructed, that if the jury believe from the evidence that plaintiff has not proved that he took possession of said mare under said mortgage, the law is for defendants, the burden being upon plaintiff; to which plaintiff excepted.

52 And the Court instructed, that if the jury believed from the evidence that the mare remained on the farm of R. K. Brush after the date of said mortgage the same as before, the law is for defendants; and plaintiff thereupon excepted.

Plaintiff excepted to the ruling of the Court in refusing a new trial.

POINTS AND AUTHORITIES FOR APPELLANT.

1. The Court had no power at the April term, 1859, to set aside the final judgment on demurrer, rendered at the former term. A Court at a subsequent term may amend its record of a former term, if incorrect, but cannot alter the judgment.

2. The evidence admitted for defendants ought to have been excluded.

3. Although an officer may not be required by law to release his levy upon personal property, on receiving a forthcoming bond, yet if, by express agreement, he accepts such bond, or any other bond or thing, and in consideration thereof releases and discharges the levy, his interest in the property acquired by the levy is gone.

4. There is no proof in the case, that defendant, Seguin, was Sheriff, and Byrns, deputy; but merely that they acted as such. The instructions, therefore, given for the defendant and printed in the Abstract, are each erroneous, and a new trial ought to have been granted.

DICKEY, WALLACE & BOAL,
For Appellant.

268

Branch no Symp

Abstract & Brief
of Appellants

Filed ~~at~~ May 8, 1842

L. Delmon

clerk

W. A.

STATE OF ILLINOIS, SUPREME COURT,
THIRD GRAND DIVISION.
APRIL TERM, 1860.

ROBERT S. BRUSH
vs.
FRANCIS SEGUIN and
JAMES BYRNES. } *Appeal from Kankakee.*

BRIEF AND POINTS FOR DEFENDANTS.

THE points and authorities furnished by appellant, and the points of objection, are so vague and equivocal, that it is very difficult to understand what is meant by them, or how to answer them.

1st. *Of the first point made questioning the power of the Circuit Court to allow a demurrer to be withdrawn (after it has been overruled,) and give the party leave to plead over while the case is still pending.*

By an examination of the record, at pages 23 and 24, the pleading will be found to be sufficient. The defendants, in open Court, asked and obtained leave to withdraw their demurrer to plaintiff's pleas to defendant's avowries, and for leave to file their replications thereto. The judgment complained of by appellant, which was vacated by the Circuit Court on allowing the defendants to plead over, was but an interlocutory judgment, which establishes nothing but the inadequacy of the defence set up by the plea, or that the party shall answer over; see 1st Gilman R. 395; 5th Blackford's R. 167; 24 Pick. R. 49; and 16 Conn. 436. This Court held in a case in the 1st Scammon R. 472, that, as the defendants in the Circuit Court must have asked leave to withdraw their demurrer and reply to the plaintiff's plea, the correctness of the decision of the Court below on the demurrer cannot now be inquired into. In 3d Gilman R. 349, this Court held that "the Circuit Courts may, in their discretion, allow or "refuse an application to file additional pleas, or amend the "pleadings, or allow the withdrawal of pleas, and the exercise "of that discretion cannot be reviewed in the Supreme Court."

2d Point: As to the evidence admitted for defendants, no reason is given why it should have been excluded, and it is not believed that there was any irregularity in that regard. Moreover, the Bill of Exceptions does not show that it contains *all the evidence*. Upon the ruling in the 22 Ills. R. 423, this Court held that the presumptions are all in favor of the verdict below, when the bill of exceptions fails to state that it contains all of the evidence introduced on the trial in the Court below.

3d Point: As to the release of the property levied upon by the officer, (one of the defendants,) it is only necessary to refer to the record, pages 42 and 43, where it will appear that the bond or instrument executed by witness, *Brush*, and delivered to the officer, was not a statutory forthcoming bond; it described an execution bearing date April 12th, when the execution levied and justified under by the defendants bore date April 22d, and was, in other respects, so defective as to render it void as a security to the officer, yet was allowed by the Court to go to the jury, under the objections of the defendants. I will now call the attention of the Court to pages 38 and 39 of the record, to the evidence of the witness *Brush*, (defendant in execution.) His evidence fully shows that the officer (the defendant *Byrns*) did not agree or intend to release the levy or lien on the property, when he received from *Brush* the instrument called a forthcoming bond; but that it was the intention of the officer to leave the property with the witness *Brush* only until the day of sale, to wit: the 12th day of July following; and the witness *Brush* so understood the arrangement, and did not understand or pretend that the property was actually released from the levy by the mere giving of the instrument offered in evidence, for, by reference to dates in the record, it will appear that the levy was made May 20th, and this pretended bond executed same day, and day of sale fixed by officer July 12th. Mortgage executed to plaintiff by his son, the witness, May 31st; application made to the Judge for an order to stay the sale of the property June 7th; sale of the property adjourned on the request of witness *Brush* for 10 days, July 12th; four or five days afterwards, witness *Brush* presents his bill for an injunction, staying the sale until the further order of the Circuit Court. Prayer granted by Judge Norton. When it is recollected that an injunction or stay of the sale of property is only granted on the oath of the defendant in the execution, in the face of all these facts, will it be contended that *Brush* thought that the officer had in fact released the levy on the day that he made it, without receiving anything valuable for such release? The mortgage under which this plaintiff

claims, see Record page 32, in 10th line from bottom, provides for the payment of the money mentioned in said mortgage to the mortgagor, and not the mortgagee, and was therefore void as to mortgagor's creditors. The pleading formed an issue on this question of release for the jury to try; and the proofs in the case, see pages 31 to 44 inclusive, show plainly that there was not any release of the levy intended by the officer or the witness *Brush*; at least, the jury was satisfied with the proofs on that issue, and by their verdict found for the defendants.

4th Point : As to the fact whether the defendants were Sheriff and Deputy Sheriff, and acting in that capacity, it is believed that an examination of the proofs on the pages above referred to will fully show to this Court that they were such officers; at least the jury so found by their verdict. And as to the instructions given to the jury, we think they fairly presented the law of the case to the jury, and did not influence their minds wrongfully, against the rights of the plaintiff. Again, if they were not officers, they could not take any such forthcoming bond as the appellants pretend they gave. A forthcoming bond does not satisfy the execution or release the levy, but merely authorizes the defendant in execution to retain the property until the day of sale.

The date of the mortgage will show, if it is to have any validity, that it was executed after the execution was in the hands of the officer, and its lien fixed.

The judgment in this case was for costs only, and an appeal does not lie. 4 Gil. R. 353.

R. N. MURRAY,
For Appellees.

268

Pruth

U

Seque & Bynes

Point & Brief
of Appelles

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

BRUSH
vs.
SEGUIN and BYRNS. } *Appeal from Kankakee.*

ABSTRACT.

Page of Rec.
2, 4, 6

Action: Replevin, by Brush against Seguin and Byrns, for a sorrel mare, value \$75, taken Nov. 1, 1858.

Defendants, Seguin and Byrns, pleaded 7 pleas.

1st. *Non cepit et non detinuit.*

2d. Property in defendants.

7 3d. Property in one Robert K. Brush.

8 4th. (Called in Record 1st avowry,) judgment for one Wm. Godfrey,
against Robert K. Brush and one Ingham, for \$346 and costs, at April
9 term, 1858, and an execution to Sheriff of Kankakee County, dated
April 22, 1858; and that defendant, Seguin, being such Sheriff, by his
deputy, one Byrns, levied said execution on said property, on May 20,
1858; and that the property was then the property of Robert K. Brush.

10 5th. (Called in Record 2d avowry,) like 4th plea, except it omits the
judgment and pleads only the writ.

12 6th. (Called 4th plea in Record,) right of possession in Byrns, as de-
puty Sheriff.

7th. (Called 5th plea in Record,) denies the allegation of property and
right of possession in plaintiff.

Dec. 28, 1858, issue was joined on all the pleas except 4th and 5th,
(called 1st and 2d avowries,) and to 1st and 2d avowries plaintiff replied:

14 1st. Property in plaintiff and not in R. K. Brush.

15 2d. A release of defendant's levy, by taking bond from R. K. Brush.

16 3d. Release of the levy and delivery of the property to R. K. Brush,
and that the property became plaintiff's while it was in possession of
said Brush.

18 4th. The release and discharge of the levy, and delivery of the pro-
perty to R. K. Brush, who retained possession during life of execution.

19, 20, 21 Jan. 5, 1859, defendants demurred to second and third above replica-
tions, and issue was joined upon the first and fourth.

Page of Rec. Jan. 6, 1859, defendants' demurrer overruled by the Court, and de-
22 fendants abided.

23 A trial of the issues was had by a jury; verdict for defendants, and motion for a new trial, Jan., 1859.

24 At the next term, April, 1859, a new trial was granted, and the Court allowed the defendants to withdraw the demurrer upon which judgment had been rendered at the former term, and to file rejoinders to said 2d and 3d replications to the avowry pleas, and plaintiff excepted.

25, 26 At Sept. term, 1859, defendants rejoined to said replications, that said levy was not released and discharged as alleged.

27 Jan. term, 1860, trial, and verdict for defendants.

28 A motion for a new trial overruled, and judgment.

31 Bill of exceptions taken at the trial, shows: Witness for plaintiff testified, that on Nov. 1, 1858, Byrns took the property from plaintiff; and that May 31, 1858, witness, R. K. Brush, gave plaintiff a chattel mortgage on the property in question and on other property, to secure the payment of certain notes. [The mortgage, duly acknowledged and recorded on that day, with the note, was produced and read in evidence, and contained a provision that the mortgagor might retain possession, unless mortgagee should fear a removal, or the property should be levied on, in which case mortgagee might take possession.] That the mortgagee, after the execution of the mortgage, took possession of the property, and kept it until she was taken in November, by defendant, Byrns.
31-35
37-8 That about May 20, 1858, Byrns levied an execution on the property, and witness gave Byrns a bond and retained the property.

44 Plaintiff gave the bond in evidence, which was a bond of R. K. Brush
42 and Wm. Barrick, in the penal sum of \$500, reciting an execution in favor of Godfrey and against R. K. Brush and Ingham, dated April 12, 1858, and the levy, and the re-delivery of the property to R. K. Brush, and conditioned for the delivery of the property to the Sheriff on July 12, 1858, and that the same should not, in the mean time, be sold or injured.

Defendants gave in evidence an execution in favor of Godfrey and
39 against R. K. Brush and Ingham, dated April 22, 1858, purporting to be issued upon a judgment obtained by Godfrey against "said defendant," by the confession of "said defendant," at the April term, 1858, of the Kankakee Circuit Court, and the return thereon showing a levy upon two span of horses, May 20, 1858.

This evidence was admitted, against plaintiff's objections, and he excepted.
41 Defendant then gave in evidence the judgment, to which plaintiff objected and excepted.

R. K. Brush recalled, testified for plaintiff that, at the time of the levy,
42 Byrnes told witness that if he would give a bond he might keep the property. Witness agreed to do so, and Byrnes drew up the bond ready
44 for execution; then witness and Barrick signed it, and Byrnes, on receiv-

Page of Rec. ing the bond, told witness, "the levy is now released." Witness further testified, that the bond was given and accepted as a release and discharge of the levy.

On cross-examination, witness stated that he never did deliver the property according to the terms of the bond; that on the day of the sale Byrnes adjourned the sale ten days.

The above is all the material evidence in the cause.

And plaintiff requested the Court to instruct the jury, that if the jury find that the said forthcoming bond was given for the release of the property, although not describing the execution in evidence, it will be a release, and the law is for plaintiff. Which instruction the Court refused, and plaintiff excepted.

And the Court instructed the jury, on behalf of the defendants, that if the jury believe from the evidence, that defendants levied on the mare in question as Sheriff, &c., on or before May 20, 1858, by virtue of the execution in evidence, and left said mare in possession of R. K. Brush, then defendant, Byrns, had a right to take said mare after the return day of said execution, and sell the same to satisfy said execution, and the legal possession was in said defendant, unless the jury find the levy released; to which plaintiff excepted.

49 The Court then instructed the jury, that an execution coming into hands of sheriff is a lien on the property of defendant in such execution; and if the jury believe from the evidence, that said execution came to hands of defendants, as sheriff, &c., on April 22, 1858; and that the time of the receipt was endorsed thereon by Byrns, as deputy, then the execution was a lien on the property of R. K. Brush from the time of such receipt and endorsement, and the endorsement by Byrns is evidence, and to entitle plaintiff to recover, he must show a right to possession superior to that of defendant; to which plaintiff excepted.

And the Court instructed, that if the jury believe from the evidence, that defendant, Byrns, as deputy, &c., levied on said mare under said execution, he had a right to leave said mare in the possession of said R. K. Brush, and such leaving did not, of itself, release the levy; to which plaintiff excepted.

50 And the Court instructed, that if the jury believe from the evidence, that R. S. Brush acquired all his right to said mare under said mortgage, then his right is not equal to defendants' by virtue of said levy, &c.; to which plaintiff excepted.

And the Court instructed the jury, that if the jury believe that plaintiff acquired possession of said mare under any arrangement other than said mortgage, then the law in that regard is for defendant; to which plaintiff excepted.

51 And the Court instructed, that if jury believed from the evidence, that the transaction between plaintiff and witness, Brush, was for the purpose of delaying creditors, said mortgage is void as against said execution; to which plaintiff excepted.

Page of Rec. And the Court instructed the jury, that defendants need not prove by the record that Seguin was Sheriff, &c., but it may be proved by their having acted in that capacity; to which plaintiff excepted.

And the Court instructed, that if the jury believe from the evidence, that the forthcoming bond in evidence described a different execution from that in evidence, then such bond is not a release of said execution; and plaintiff thereupon excepted.

And the Court instructed, that if the jury believe from the evidence that plaintiff has not proved that he took possession of said mare under said mortgage, the law is for defendants, the burden being upon plaintiff; to which plaintiff excepted.

52 And the Court instructed, that if the jury believed from the evidence that the mare remained on the farm of R. K. Brush after the date of said mortgage the same as before, the law is for defendants; and plaintiff thereupon excepted.

Plaintiff excepted to the ruling of the Court in refusing a new trial.

POINTS AND AUTHORITIES FOR APPELLANT.

1. The Court had no power at the April term, 1859, to set aside the final judgment on demurrer, rendered at the former term. A Court at a subsequent term may amend its record of a former term, if incorrect, but cannot alter the judgment.

2. The evidence admitted for defendants ought to have been excluded.

3. Although an officer may not be required by law to release his levy upon personal property, on receiving a forthcoming bond, yet if, by express agreement, he accepts such bond, or any other bond or thing, and in consideration thereof releases and discharges the levy, his interest in the property acquired by the levy is gone.

4. There is no proof in the case, that defendant, Seguin, was Sheriff, and Byrns, deputy; but merely that they acted as such. The instructions, therefore, given for the defendant and printed in the Abstract, are each erroneous, and a new trial ought to have been granted.

DICKEY, WALLACE & BOAL,
For Appellant.

268

Brush, vs. Seguin

Also & brief of
Apple

Filed May 8, 1863
A. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

BRUSH
vs.
SEGUIN and BYRNS. } *Appeal from Kankakee.*

ABSTRACT.

Page of Rec.

2, 4, 6

Action: Replevin, by Brush against Seguin and Byrns, for a sorrel mare, value \$75, taken Nov. 1, 1858.

Defendants, Seguin and Byrns, pleaded 7 pleas.

1st. *Non cepit et non detinuit.*

2d. Property in defendants.

7 3d. Property in one Robert K. Brush.

8 4th. (Called in Record 1st avowry,) judgment for one Wm. Godfrey,
against Robert K. Brush and one Ingham, for \$346 and costs, at April
9 term, 1858, and an execution to Sheriff of Kankakee County, dated
April 22, 1858; and that defendant, Seguin, being such Sheriff, by his
deputy, one Byrns, levied said execution on said property, on May 20,
1858; and that the property was then the property of Robert K. Brush.

10 5th. (Called in Record 2d avowry,) like 4th plea, except it omits the
judgment and pleads only the writ.

12 6th. (Called 4th plea in Record,) right of possession in Byrns, as de-
puty Sheriff.

7th. (Called 5th plea in Record,) denies the allegation of property and
right of possession in plaintiff.

Dec. 28, 1858, issue was joined on all the pleas except 4th and 5th,
(called 1st and 2d avowries,) and to 1st and 2d avowries plaintiff replied:

14 1st. Property in plaintiff and not in R. K. Brush.

15 2d. A release of defendant's levy, by taking bond from R. K. Brush.

16 3d. Release of the levy and delivery of the property to R. K. Brush,
and that the property became plaintiff's while it was in possession of
said Brush.

18 4th. The release and discharge of the levy, and delivery of the pro-
perty to R. K. Brush, who retained possession during life of execution.

19, 20, 21 Jan. 5, 1859, defendants demurred to second and third above replica-
tions, and issue was joined upon the first and fourth.

Page of Rec. Jan. 6, 1859, defendants' demurrer overruled by the Court, and de-
22 fendants abided.

23 A trial of the issues was had by a jury; verdict for defendants, and
motion for a new trial, Jan., 1859.

24 At the next term, April, 1859, a new trial was granted, and the Court
allowed the defendants to withdraw the demurrer upon which judgment
had been rendered at the former term, and to file rejoinders to said 2d
and 3d replications to the avowry pleas, and plaintiff excepted.

25, 26 At Sept. term, 1859, defendants rejoined to said replications, that said
levy was not released and discharged as alleged.

27 Jan. term, 1860, trial, and verdict for defendants.

28 A motion for a new trial overruled, and judgment.

31 Bill of exceptions taken at the trial, shows: Witness for plaintiff testi-
fied, that on Nov. 1, 1858, Byrns took the property from plaintiff; and
that May 31, 1858, witness, R. K. Brush, gave plaintiff a chattel mort-
gage on the property in question and on other property, to secure the
31-35 payment of certain notes. [The mortgage, duly acknowledged and re-
corded on that day, with the note, was produced and read in evidence,
and contained a provision that the mortgagor might retain possession,
unless mortgagee should fear a removal, or the property should be levied
on, in which case mortgagee might take possession.] That the mortga-
gee, after the execution of the mortgage, took possession of the property,
and kept it until she was taken in November, by defendant, Byrns.
37-8 That about May 20, 1858, Byrns levied an execution on the property,
and witness gave Byrns a bond and retained the property.

44 Plaintiff gave the bond in evidence, which was a bond of R. K. Brush
42 and Wm. Barrick, in the penal sum of \$500, reciting an execution in fa-
vor of Godfrey and against R. K. Brush and Ingham, dated April 12,
1858, and the levy, and the re-delivery of the property to R. K. Brush,
and conditioned for the delivery of the property to the Sheriff on July
12, 1858, and that the same should not, in the mean time, be sold or in-
jured.

39 Defendants gave in evidence an execution in favor of Godfrey and
against R. K. Brush and Ingham, dated April 22, 1858, purporting to be
issued upon a judgment obtained by Godfrey against "said defendant,"
by the confession of "said defendant," at the April term, 1858, of the
Kankakee Circuit Court, and the return thereon showing a levy upon
two span of horses, May 20, 1858.

41 This evidence was admitted, against plaintiff's objections, and he ex-
cepted. Defendant then gave in evidence the judgment, to which plain-
tiff objected and excepted.

42 R. K. Brush recalled, testified for plaintiff that, at the time of the levy,
Byrnes told witness that if he would give a bond he might keep the
property. Witness agreed to do so, and Byrnes drew up the bond ready
44 for execution; then witness and Barrick signed it, and Byrnes, on receiv-

Page of Rec. ing the bond, told witness, "the levy is now released." Witness further testified, that the bond was given and accepted as a release and discharge of the levy.

On cross-examination, witness stated that he never did deliver the property according to the terms of the bond; that on the day of the sale Byrnes adjourned the sale ten days.

The above is all the material evidence in the cause.

And plaintiff requested the Court to instruct the jury, that if the jury find that the said forthcoming bond was given for the release of the property, although not describing the execution in evidence, it will be a release, and the law is for plaintiff. Which instruction the Court refused, and plaintiff excepted.

And the Court instructed the jury, on behalf of the defendants, that if the jury believe from the evidence, that defendants levied on the mare in question as Sheriff, &c., on or before May 20, 1858, by virtue of the execution in evidence, and left said mare in possession of R. K. Brush, then defendant, Byrns, had a right to take said mare after the return day of said execution, and sell the same to satisfy said execution, and the legal possession was in said defendant, unless the jury find the levy released; to which plaintiff excepted.

49 The Court then instructed the jury, that an execution coming into hands of sheriff is a lien on the property of defendant in such execution; and if the jury believe from the evidence, that said execution came to hands of defendants, as sheriff, &c., on April 22, 1858; and that the time of the receipt was endorsed thereon by Byrns, as deputy, then the execution was a lien on the property of R. K. Brush from the time of such receipt and endorsement, and the endorsement by Byrns is evidence, and to entitle plaintiff to recover, he must show a right to possession superior to that of defendant; to which plaintiff excepted.

And the Court instructed, that if the jury believe from the evidence, that defendant, Byrns, as deputy, &c., levied on said mare under said execution, he had a right to leave said mare in the possession of said R. K. Brush, and such leaving did not, of itself, release the levy; to which plaintiff excepted.

50 And the Court instructed, that if the jury believe from the evidence, that R. S. Brush acquired all his right to said mare under said mortgage, then his right is not equal to defendants' by virtue of said levy, &c.; to which plaintiff excepted.

And the Court instructed the jury, that if the jury believe that plaintiff acquired possession of said mare under any arrangement other than said mortgage, then the law in that regard is for defendant; to which plaintiff excepted.

51 And the Court instructed, that if jury believed from the evidence, that the transaction between plaintiff and witness, Brush, was for the purpose of delaying creditors, said mortgage is void as against said execution; to which plaintiff excepted.

Page of Rec. And the Court instructed the jury, that defendants need not prove by the record that Seguin was Sheriff, &c., but it may be proved by their having acted in that capacity; to which plaintiff excepted.

And the Court instructed, that if the jury believe from the evidence, that the forthcoming bond in evidence described a different execution from that in evidence, then such bond is not a release of said execution; and plaintiff thereupon excepted.

And the Court instructed, that if the jury believe from the evidence that plaintiff has not proved that he took possession of said mare under said mortgage, the law is for defendants, the burden being upon plaintiff; to which plaintiff excepted.

52 And the Court instructed, that if the jury believed from the evidence that the mare remained on the farm of R. K. Brush after the date of said mortgage the same as before, the law is for defendants; and plaintiff thereupon excepted.

Plaintiff excepted to the ruling of the Court in refusing a new trial.

POINTS AND AUTHORITIES FOR APPELLANT.

1. The Court had no power at the April term, 1859, to set aside the final judgment on demurrer, rendered at the former term. A Court at a subsequent term may amend its record of a former term, if incorrect, but cannot alter the judgment.

2. The evidence admitted for defendants ought to have been excluded.

3. Although an officer may not be required by law to release his levy upon personal property, on receiving a forthcoming bond, yet if, by express agreement, he accepts such bond, or any other bond or thing, and in consideration thereof releases and discharges the levy, his interest in the property acquired by the levy is gone.

4. There is no proof in the case, that defendant, Seguin, was Sheriff, and Byrns, deputy; but merely that they acted as such. The instructions, therefore, given for the defendant and printed in the Abstract, are each erroneous, and a new trial ought to have been granted.

DICKEY, WALLACE & BOAL,
For Appellant.

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

BRUSH
vs.
SEGUIN and BYRNS. } *Appeal from Kankakee.*

ABSTRACT.

Page of Rec.
2, 4, 6

Action: Replevin, by Brush against Seguin and Byrns, for a sorrel mare, value \$75, taken Nov. 1, 1858.

Defendants, Seguin and Byrns, pleaded 7 pleas.

1st. *Non cepit et non detinuit.*

2d. Property in defendants.

7 3d. Property in one Robert K. Brush.

8 4th. (Called in Record 1st avowry,) judgment for one Wm. Godfrey,
9 against Robert K. Brush and one Ingham, for \$346 and costs, at April
term, 1858, and an execution to Sheriff of Kankakee County, dated
April 22, 1858; and that defendant, Seguin, being such Sheriff, by his
deputy, one Byrns, levied said execution on said property, on May 20,
1858; and that the property was then the property of Robert K. Brush.

10 5th. (Called in Record 2d avowry,) like 4th plea, except it omits the
judgment and pleads only the writ.

12 6th. (Called 4th plea in Record,) right of possession in Byrns, as de-
puty Sheriff.

7th. (Called 5th plea in Record,) denies the allegation of property and
right of possession in plaintiff.

Dec. 28, 1858, issue was joined on all the pleas except 4th and 5th,
(called 1st and 2d avowries,) and to 1st and 2d avowries plaintiff replied:

14 1st. Property in plaintiff and not in R. K. Brush.

15 2d. A release of defendant's levy, by taking bond from R. K. Brush.

16 3d. Release of the levy and delivery of the property to R. K. Brush,
and that the property became plaintiff's while it was in possession of
said Brush.

18 4th. The release and discharge of the levy, and delivery of the pro-
perty to R. K. Brush, who retained possession during life of execution.

19, 20, 21 Jan. 5, 1859, defendants demurred to second and third above replica-
tions, and issue was joined upon the first and fourth.

Page of Rec. Jan. 6, 1859, defendants' demurrer overruled by the Court, and defendants abided.

23 A trial of the issues was had by a jury; verdict for defendants, and motion for a new trial, Jan., 1859.

24 At the next term, April, 1859, a new trial was granted, and the Court allowed the defendants to withdraw the demurrer upon which judgment had been rendered at the former term, and to file rejoinders to said 2d and 3d replications to the avowry pleas, and plaintiff excepted.

25, 26 At Sept. term, 1859, defendants rejoined to said replications, that said levy was not released and discharged as alleged.

27 Jan. term, 1860, trial, and verdict for defendants.

28 A motion for a new trial overruled, and judgment.

31 Bill of exceptions taken at the trial, shows: Witness for plaintiff testified, that on Nov. 1, 1858, Byrns took the property from plaintiff; and that May 31, 1858, witness, R. K. Brush, gave plaintiff a chattel mortgage on the property in question and on other property, to secure the payment of certain notes. [The mortgage, duly acknowledged and recorded on that day, with the note, was produced and read in evidence, and contained a provision that the mortgagor might retain possession, unless mortgagee should tear a removal, or the property should be levied on, in which case mortgagee might take possession.] That the mortgagee, after the execution of the mortgage, took possession of the property, and kept it until she was taken in November, by defendant, Byrns.

31-35 That about May 20, 1858, Byrns levied an execution on the property, and witness gave Byrns a bond and retained the property.

44 Plaintiff gave the bond in evidence, which was a bond of R. K. Brush and Wm. Barrick, in the penal sum of \$500, reciting an execution in favor of Godfrey and against R. K. Brush and Ingham, dated April 12, 1858, and the levy, and the re-delivery of the property to R. K. Brush, and conditioned for the delivery of the property to the Sheriff on July 12, 1858, and that the same should not, in the mean time, be sold or injured.

39 Defendants gave in evidence an execution in favor of Godfrey and against R. K. Brush and Ingham, dated April 22, 1858, purporting to be issued upon a judgment obtained by Godfrey against "said defendant," by the confession of "said defendant," at the April term, 1858, of the Kankakee Circuit Court, and the return thereon showing a levy upon two span of horses, May 20, 1858.

41 This evidence was admitted, against plaintiff's objections, and he excepted. Defendant then gave in evidence the judgment, to which plaintiff objected and excepted.

42 R. K. Brush recalled, testified for plaintiff that, at the time of the levy, Byrnes told witness that if he would give a bond he might keep the property. Witness agreed to do so, and Byrnes drew up the bond ready for execution; then witness and Barrick signed it, and Byrnes, on receiving

Page of Rec. ing the bond, told witness, "the levy is now released." Witness further testified, that the bond was given and accepted as a release and discharge of the levy.

On cross-examination, witness stated that he never did deliver the property according to the terms of the bond; that on the day of the sale Byrnes adjourned the sale ten days.

The above is all the material evidence in the cause.

And plaintiff requested the Court to instruct the jury, that if the jury find that the said forthcoming bond was given for the release of the property, although not describing the execution in evidence, it will be a release, and the law is for plaintiff. Which instruction the Court refused, and plaintiff excepted.

And the Court instructed the jury, on behalf of the defendants, that if the jury believe from the evidence, that defendants levied on the mare in question as Sheriff, &c., on or before May 20, 1858, by virtue of the execution in evidence, and left said mare in possession of R. K. Brush, then defendant, Byrns, had a right to take said mare after the return day of said execution, and sell the same to satisfy said execution, and the legal possession was in said defendant, unless the jury find the levy released; to which plaintiff excepted.

- 49 The Court then instructed the jury, that an execution coming into hands of sheriff is a lien on the property of defendant in such execution; and if the jury believe from the evidence, that said execution came to hands of defendants, as sheriff, &c., on April 22, 1858; and that the time of the receipt was endorsed thereon by Byrns, as deputy, then the execution was a lien on the property of R. K. Brush from the time of such receipt and endorsement, and the endorsement by Byrns is evidence, and to entitle plaintiff to recover, he must show a right to possession superior to that of defendant; to which plaintiff excepted.

And the Court instructed, that if the jury believe from the evidence, that defendant, Byrns, as deputy, &c., levied on said mare under said execution, he had a right to leave said mare in the possession of said R. K. Brush, and such leaving did not, of itself, release the levy; to which plaintiff excepted.

- 50 And the Court instructed, that if the jury believe from the evidence, that R. S. Brush acquired all his right to said mare under said mortgage, then his right is not equal to defendants' by virtue of said levy, &c.; to which plaintiff excepted.

And the Court instructed the jury, that if the jury believe that plaintiff acquired possession of said mare under any arrangement other than said mortgage, then the law in that regard is for defendant; to which plaintiff excepted.

- 51 And the Court instructed, that if jury believed from the evidence, that the transaction between plaintiff and witness, Brush, was for the purpose of delaying creditors, said mortgage is void as against said execution; to which plaintiff excepted.

Page of Rec. And the Court instructed the jury, that defendants need not prove by the record that Seguin was Sheriff, &c., but it may be proved by their having acted in that capacity; to which plaintiff excepted.

And the Court instructed, that if the jury believe from the evidence, that the forthcoming bond in evidence described a different execution from that in evidence, then such bond is not a release of said execution; and plaintiff thereupon excepted.

And the Court instructed, that if the jury believe from the evidence that plaintiff has not proved that he took possession of said mare under said mortgage, the law is for defendants, the burden being upon plaintiff; to which plaintiff excepted.

52 And the Court instructed, that if the jury believed from the evidence that the mare remained on the farm of R. K. Brush after the date of said mortgage the same as before, the law is for defendants; and plaintiff thereupon excepted.

Plaintiff excepted to the ruling of the Court in refusing a new trial.

POINTS AND AUTHORITIES FOR APPELLANT.

1. The Court had no power at the April term, 1859, to set aside the final judgment on demurrer, rendered at the former term. A Court at a subsequent term may amend its record of a former term, if incorrect, but cannot alter the judgment.

2. The evidence admitted for defendants ought to have been excluded.

3. Although an officer may not be required by law to release his levy upon personal property, on receiving a forthcoming bond, yet if, by express agreement, he accepts such bond, or any other bond or thing, and in consideration thereof releases and discharges the levy, his interest in the property acquired by the levy is gone.

4. There is no proof in the case, that defendant, Seguin, was Sheriff, and Byrns, deputy; but merely that they acted as such. The instructions, therefore, given for the defendant and printed in the Abstract, are each erroneous, and a new trial ought to have been granted.

DICKEY, WALLACE & BOAL,
For Appellant.

268

Brush as Seguir

Alot. & Prints of
Apollito

13522

Filed May 8. 1860
L. Lamm
Clark

STATE OF ILLINOIS, SUPREME COURT,
THIRD GRAND DIVISION.
APRIL TERM, 1860.

ROBERT S. BRUSH
vs.
FRANCIS SEGUIN and
JAMES BYRNES. } *Appeal from Kankakee.*

BRIEF AND POINTS FOR DEFENDANTS.

THE points and authorities furnished by appellant, and the points of objection, are so vague and equivocal, that it is very difficult to understand what is meant by them, or how to answer them.

1st. *Of the first point made questioning the power of the Circuit Court to allow a demurrer to be withdrawn (after it has been overruled,) and give the party leave to plead over while the case is still pending.*

By an examination of the record, at pages 23 and 24, the pleading will be found to be sufficient. The defendants, in open Court, asked and obtained leave to withdraw their demurrer to plaintiff's pleas to defendant's avowries, and for leave to file their replications thereto. The judgment complained of by appellant, which was vacated by the Circuit Court on allowing the defendants to plead over, was but an interlocutory judgment, which establishes nothing but the inadequacy of the defence set up by the plea, or that the party shall answer over; see 1st Gilman R. 395; 5th Blackford's R. 167; 24 Pick. R. 49; and 16 Conn. 436. This Court held in a case in the 1st Scammon R. 472, that, as the defendants in the Circuit Court must have asked leave to withdraw their demurrer and reply to the plaintiff's plea, the correctness of the decision of the Court below on the demurrer cannot now be inquired into. In 3d Gilman R. 349, this Court held that "the Circuit Courts may, in their discretion, allow or refuse an application to file additional pleas, or amend the pleadings, or allow the withdrawal of pleas, and the exercise of that discretion cannot be reviewed in the Supreme Court."

2d Point: As to the evidence admitted for defendants, no reason is given why it should have been excluded, and it is not believed that there was any irregularity in that regard. Moreover, the Bill of Exceptions does not show that it contains *all the evidence*. Upon the ruling in the 22 Ills. R. 423, this Court held that the presumptions are all in favor of the verdict below, when the bill of exceptions fails to state that it contains all of the evidence introduced on the trial in the Court below.

3d Point: As to the release of the property levied upon by the officer, (one of the defendants,) it is only necessary to refer to the record, pages 42 and 43, where it will appear that the bond or instrument executed by witness, *Brush*, and delivered to the officer, was not a statutory forthcoming bond; it described an execution bearing date April 12th, when the execution levied and justified under by the defendants bore date April 22d, and was, in other respects, so defective as to render it void as a security to the officer, yet was allowed by the Court to go to the jury, under the objections of the defendants. I will now call the attention of the Court to pages 38 and 39 of the record, to the evidence of the witness *Brush*, (defendant in execution.) His evidence fully shows that the officer (the defendant *Byrns*) did not agree or intend to release the levy or lien on the property, when he received from *Brush* the instrument called a forthcoming bond; but that it was the intention of the officer to leave the property with the witness *Brush* only until the day of sale, to wit: the 12th day of July following; and the witness *Brush* so understood the arrangement, and did not understand or pretend that the property was actually released from the levy by the mere giving of the instrument offered in evidence, for, by reference to dates in the record, it will appear that the levy was made May 20th, and this pretended bond executed same day, and day of sale fixed by officer July 12th. Mortgage executed to plaintiff by his son, the witness, May 31st; application made to the Judge for an order to stay the sale of the property June 7th; sale of the property adjourned on the request of witness *Brush* for 10 days, July 12th; four or five days afterwards, witness *Brush* presents his bill for an injunction, staying the sale until the further order of the Circuit Court. Prayer granted by Judge Norton. When it is recollected that an injunction or stay of the sale of property is only granted on the oath of the defendant in the execution, in the face of all these facts, will it be contended that *Brush* thought that the officer had in fact released the levy on the day that he made it, without receiving anything valuable for such release? The mortgage under which this plaintiff

claims, see Record page 32, in 10th line from bottom, provides for the payment of the money mentioned in said mortgage to the mortgagor, and not the mortgagee, and was therefore void as to mortgagor's creditors. The pleading formed an issue on this question of release for the jury to try; and the proofs in the case, see pages 31 to 44 inclusive, show plainly that there was not any release of the levy intended by the officer or the witness *Brush*; at least, the jury was satisfied with the proofs on that issue, and by their verdict found for the defendants.

4th Point: As to the fact whether the defendants were Sheriff and Deputy Sheriff, and acting in that capacity, it is believed that an examination of the proofs on the pages above referred to will fully show to this Court that they were such officers; at least the jury so found by their verdict. And as to the instructions given to the jury, we think they fairly presented the law of the case to the jury, and did not influence their minds wrongfully, against the rights of the plaintiff. Again, if they were not officers, they could not take any such forthcoming bond as the appellants pretend they gave. A forthcoming bond does not satisfy the execution or release the levy, but merely authorizes the defendant in execution to retain the property until the day of sale.

The date of the mortgage will show, if it is to have any validity, that it was executed after the execution was in the hands of the officer, and its lien fixed.

The judgment in this case was for costs only, and an appeal does not lie. 4 Gil. R. 353.

R. N. MURRAY,
For Appellees.

268

Brush

vs

Sequim & Bynd

Pont & Binf

of Appelles

Filed May 9. 1860
L. L. Linn
Clerk

The People of the State of Illinois

By the Grace of God free and
Independent

To all to whom these Presents shall come, We know Ye. That we having caused to be inspected the Records and proceedings now remaining in the Office of our Clerk of the Circuit Court in and for our County of Kankakee. do find certain Records and proceedings in the words and figures following (To Wit)

"Kankakee Circuit Court December Term 1858
"United States of America
"States of Illinois } ss.
"Kankakee County } Pleas before the Honorable Charles R
"Star Judge of the Twentieth Judicial
"Circuit and Presiding Judge of the Kankakee County Circuit Court
"in the State of Illinois at a Term of said Court began and held
"at the Court House in Kankakee City in the County and State aforesaid
"on the Third Monday (the same being the Monday) of
"December in the year of our Lord One thousand eight hundred
"fifty eight and of the year of the Independence of the United
"States of America the Eighty Third
"Present Hon Charles R Star Judge as aforesaid
"Ara Bartlett States atty Pro Tem
"Harris Durham Sheriff of Kankakee County
(1) Philip Worcester Clerk of the Kankakee County Circuit Court.

(2)

And heretofore (So Mt) On the First day of November in the year of Our Lord One thousand eight hundred and fifty eight Robert S Brush Plaintiff by J P Benfield his Attorney did file in the Office of the Clerk of Our said Court a certain affidavit in the words and figures following. (So Mt)

" State of Illinois }
" Hankook County } ss Robert S Brush Plaintiff being duly sworn de
" poses and says he is the owner of the following
" described goods and chattels viz: One Sorrel mare of the value of
" Seventy Five Dollars and that he is entitled to the possession of the
" same and that Francis Sequin and James Byrnes defendants
" wrongfully took and wrongfully detain the same from his poss
" session. So Mt, On the First day of November AD 1858 at the Town of
" Limestone in said County, and he further says that said goods and
" chattels have not been taken for any Tax assessment or fine levied by
" virtue of any law of said State, nor seized under any execution or at
" tachment against the goods and chattels of said Plaintiff liable to
" Execution or attachment

" Subscribed and sworn to before me, " Robert S Brush."
" this 1st day of November AD 1858. }
" P Worcester Clerk " }
" By A W Woolley Deft. " }

And afterwards (So Mt) On the day and year last aforesaid said Plaintiff by J P Benfield his said Attorney did file in the Office of Our said Clerk his certain Process in the

Words and figures following (to wit,
" State of Illinois
" Hankau County } ss. Circuit Court December Term A.D. 1858
" Robert S Brusk

" vs } Replein
" Francis Sequin and James Byrnes } Damages \$ 75.00

" Issue a writ of Replein against the said
" Francis Sequin and James Byrnes defendants in the above entitled
" cause returnable according to law for the following goods and
" chattels, to wit: One Sorel mare of the value of Seventy five dollars
" Thomas P Bonfield
" Piffs Atty
" To Philip Worcester Esq., Clerk Circuit Court.

And afterwards (to wit) the day
and year last aforesaid. Our said Clerk in pursuance of the directions
of said Proceps did issue an said affidavit a certain writ of Replein
in the words and figures following (to wit)

" State of Illinois
" Hankau County } ss

" The People of the State of Illinois to the Coroner of
" County Groveling ???

" Whereas Robert S Brusk Plaintiff complains that
" Francis Sequin + James Byrnes Defendants unlawfully and wrongfully
" took and detains One Sorel mare of the value of Seventy five dollars
" Therefore we command you that if the said Plaintiff shall give
(3) you Bond with good and sufficient security in double the amount of

Words and figures following (to wit,

" State of Illinois

" Hankau County } ss. Circuit Court December Term A.D. 1858

" Robert S. Brush

" vs } Replevin

" Francis Sequin & James Byrnes } Damages \$ 75.00

" Issue a writ of Replevin against the said

" Francis Sequin and James Byrnes defendants in the above entitled

" cause returnable according to law for the following goods and

" chattels, to wit: One Sound mare of the value of Seventy Five Dollars

" Thomas P. Bonfield

" " Piffs Atty

" To Philip Worcester Esq., Clerk Circuit Court.

And afterwards (to wit) the day
and year last aforesaid. Our said Clerk in pursuance of the directions
of said Process did issue an said affidavit a certain writ of Replevin
in the words and figures following (to wit)

" State of Illinois

" Hankau County } ss

" The People of the State of Illinois to the Coroner of

" County Greeting !!!

" Whereas Robert S. Brush Plaintiff complains that

" Francis Sequin & James Byrnes Defendants unlawfully and wrongfully

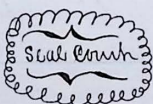
" took and detains One Sound mare of the value of Seventy Five Dollars

" Therefore We command you that if the said Plaintiff shall give

(3) you Bond with good and sufficient security in double the amount of

(4)

" the value of said goods and chattels as required by law to prosecute
" his suit in this behalf to effect, without delay and to make return of the
" said Goods and chattels if return thereof shall be awarded and to save
" and to keep you harmless in replenishing said goods and chattels you
" cause the same to be replenished and delivered to the said Plaintiff
" without delay and ^{also} that you Summon the said Defendants to be
" appear before our Circuit Court for said County for on the first day
" of the next Term thereof to be holden at the Court House in Hannibal
" City on the Third Monday of December next to answer said Plaintiff
" in the premises And have you shew them this writ with an endorse-
" ment thereon in what manner you shall have executed the same
" Together with the Bond which you shall take of the Plaintiff before
" executing this writ



" Witness Philip Worcester Clerk of our said Court

" the seal thereof at Hannibal City in said County

" this first day of November A.D. 1858

" P Worcester Clerk

" By A M Woolley Deputy

And afterwards to wit, on the Third day of November in the year last of
said C Hoerner Coroner of said County did return said writ with the
of our said Clerk with the following endorsement thereon to wit

" Served by Replenishing the within described property and delivering the same
" to Plaintiff this 3^d day of November 1858

" Gustavio Hoerner

" Coroner

And afterwards (to wit) on the Eighth day of December in the year of

last aforesaid the said Plaintiff by his said Attorney did file in the office of our said Clerk his certain declaration in the words and figures following (to wit)

"State of Illinois }
 "Kankakee County } ss. Circuit Court of the December Term a 1855.
 "Francis Sequin and James Brynes the defendants in this suit:
 "summoned to answer Robert S. Brush the Plaintiff in this suit of
 "plea wherefore they took the goods and chattels of the Plaintiff and
 "unjustly detains the same until &c and thereupon the said Plaintiff by
 "Thomas P. Bonfield his Attorney complain for that the said de-
 "fendants on first day of November in the year of our Lord one thousand
 "eight hundred and fifty eight at the Town of Limestone in the County
 "of Kankakee aforesaid took the goods and chattels to wit: One Sorel
 "mare of the said Plaintiff of great value to wit: of the value of Seventy
 "Five Dollars and unjustly detains the same until &c
 "and also for that the said Defendant's on the first day of November in
 "the year of our Lord one thousand eight hundred and fifty eight
 "at the Town of Limestone in the said County of Kankakee detained
 "the goods and chattels (to wit) ^{one} ~~The~~ Sorel mare of the said Plaintiff
 "of great value to wit: of the value of Seventy Five Dollars and
 "unjustly detains the same &c and the said Plaintiff is now lawfully
 "entitled to the possession thereof to wit at the place aforesaid. Wherefore
 "said Plaintiff says he is injured and has sustained damage to the
 "sum of Seventy Five Dollars and therefore he brings suit &c

"Thomas P. Bonfield

"Plff: atty

(Co)

And afterwards is wit on the Twenty Second day of December in the
year last aforesaid. the said Defendants by Murray & Soring their
attorney did file in open court their said Plea to said Plaintiff's
declaration in this cause in the words and figures following (to wit)

" State of Illinois

" Waukegan County

} ss. Circuit Court December Term AD 1858

" Francis Sequin & James Myers

" and

" Robert S. Brush

} Replevin

And the said Defendants by Murray

& Soring their attorney comes and defends the

" wrong and injury whereon do and say that they did not take and did not

" detain the said goods and chattels and Sorel ware in the said Declaration

" mentioned or any or either of them or any part thereof in manner and

" form as the said Plaintiff hath above thereof complained against them

" and of this the said defendant puts themselves upon the country

" &c Piff doth the like

" "Murray & Soring"

" "Atty for Defts."

" And for a further Plea in this behalf as to the wrongful taking and

" the wrongful detention of said goods & chattels & Sorel ware in said

" declaration mentioned the said Defendant say that the said Plaintiff

" ought not to have or maintain his aforesaid action thereof against

" them because they say that the said goods & chattels & Sorel ware in

" said Declaration mentioned at the said time when &c were the pro

" perty of the said Defendant and not of the said Plaintiff as by the

" said Declaration is above supposed & this they are ready to verify
 " wherefore they pray Judgement if the said Plaintiff ought to have
 " or maintain his aforesaid action thereof against them and they also
 " pray a return of the said Goods and chattel & Some more Toget.
 " with their costs in this behalf according to the form of the Statute
 " in such case made and provided to be adjudged to them &c

"Murray & Spring"

"Atty for Deft."

" and for a further Plea in this behalf as to the wrongful taking and
 " wrongful detaining of said goods & chattel & Some more in said
 " declaration mentioned the said Defendants say action because
 " they say that the said Goods & chattel & Some more at the said
 " time when &c were the goods & chattel & Some more of one Robert
 " H. Bush and not of the said Plaintiff as by the said declaration is
 " above supposed and of this they the said Defendant are ready
 " to verify wherefore they pray Judgement if the said Plaintiff
 " ought to have or maintain his aforesaid action thereof against
 " them and they also pray a return of the said goods & chattel &
 " Some more Together with their costs in this behalf according to the
 " form of the Statute in such case made and provided to be ad-
 " judged to them &c

"Murray & Spring"

"Deft's Atty."

" And for a further Plea in this behalf the said defendant.

1st Army.

" Come & defend the wrong & injury when &c and will answer the
 " taking and detention of the said goods & chattel & Some more in the

(7)

(8)

" in the said Declaration mentioned and partly so because they say
" that to wit, on the 12th day of April A.D. 1858 at the April Term
" A.D. 1858 of the Hankaker County Circuit Court began & held in the
" Town of Hankaker City in said County of Hankaker & State of Illinois
" on the First Monday of April A.D. 1858 William Grafey by the
" consideration & judgement of said Court recovered against one
" Robert W. Bruck & one George W. Ingham the Sum of Three Hundred
" & fifty six dollars & twenty eight cents for the Damages which the said
" Grafey had sustained by the non performance of certain promises
" & undertakings before that time made by the said Bruck & Ingham
" to the said Grafey & also the further sum of Three Dollars & fifty
" cents for the costs & charges by the said Grafey in & about that
" suit laid out & expended which were adjudged to the said Court
" Grafey in and by the said Court Whereof the said Bruck & Ingham
" have been convicted as by the Records & proceedings thereof still re
" maining in the Office of the Clerk of said Court in said Town well
" more fully appears And the said defendant further saith that the
" said Grafey afterwards to wit, on the 22nd day of April A.D. 1858
" sued & prosecuted out of the said Court a Writ of Fieri Facias di
" rected to the Sheriff of said County to execute being the County in
" which the said Bruck & Ingham then resided by which said Writ
" the said Sheriff was commanded that of the lands & tenements
" & chattels of the said Bruck & Ingham which should be found in
" his County that he cause to be made the sum of Three Hundred
" & fifty Six Dollars & twenty eight cents which the said Grafey
" had so recovered against the said Bruck & Ingham for his

„ damages + also the further sum of Three Dollars + forty five cents
 „ which were adjudged to the said Godfrey for his costs and charges
 „ in that behalf expended + that the said Sheriff should have said
 „ money ready to render to the said Godfrey for his damages debt + costs
 „ aforesaid + to make return of said writ with an endorsement thereon
 „ in what manner he had executed the same in ninety days,
 „ the date thereof as by the said writ under the seal of said Court, +
 „ attested by the clerk thereof bearing date the 22^d day of April 1858
 „ as may more fully appear reference thereto being had and which
 „ these defendants bring into Court and said defendant Sequin being
 „ such Sheriff of said County after the delivery of said Execution to him
 „ to be executed as aforesaid + in the lifetime thereof viz. On the 20th
 „ day of May 1858 at the time + place when + &c + said
 „ defendant Byrne who was then + there a Deputy of such Sheriff
 „ + then and there acting in that behalf in the capacity of such Deputy
 „ + by virtue of such writ as he lawfully might + as it was his duty
 „ do seized upon and took the goods + chattels + some more in the
 „ said declaration mentioned + then + there as he lawfully might + as
 „ it was his duty so to do held + detained them in his custody +
 „ by his said Deputy as aforesaid through ^{and} by virtue of such
 „ writ until + &c which said taking + detention of said goods + chattels
 „ + some more is the same taking + detention mentioned in said
 „ declaration And the said Defendants aver that the said goods
 „ + chattels + some more in the said declaration mentioned at the
 „ time when &c were the goods ^{and} chattels + some more of
 „ the said Robert D. Bush and not of the said Plaintiff and

"were lawfully liable to be taken & levied upon by the said defendant
 "Sequin through his said Deputy as aforesaid upon & by virtue of
 "the said Writ of Fieri Facias and this the said defendants knowingly
 "do verify wherefore they pray Judgment and a Return of the said
 "goods & chattels & Some more together with their damages &c ac-
 "cording to the form of the Statute in such case made and pro-
 "vided to be adjudged to them &c

"Murray & Soning"

"Defts Attys"

"2^d answy"

"And the said Defendants come & defend the taking and detaining
 "of such & injury & well avows the taking and detaining of the said
 "goods & chattels & Some more in the said Declaration mentioned
 "justly &c because they say that at the said time when &c
 "the said Sequin was the Sheriff of said County & that on the
 "23^d day of April ad 1858 a certain other Writ of Fieri Facias
 "issued out of the Circuit Court of said County of Hancock &
 "State of Illinois directed to the Sheriff of said County by which
 "said Writ the said Sheriff was commanded that of the Land-
 "tenements goods & chattels of Robert B Brush and George W
 "Ingham in said County he the said Sheriff cause to be made
 "the sum of Three Hundred & Forty Six Dollars & twenty eight
 "cents which it was therein stated that one William Graffey a
 "Plaintiff had recovered in the Circuit Court of said County at
 "a Term thereof began & held at Hancock city on the first
 "Monday of April ad 1858 by the confession of said Brush and said

„ Ingham Defendants in said Execution for his the said Godfrey
 „ Damages & was therein also further commanded to cause to be made
 „ the further sum of Three Dollars & fifty five cents which was in said
 „ Petri Facias stated to have been adjudged to the said Godfrey at said
 „ Term of said Court for the costs and charges by the said Godfrey in and
 „ about his suit in said writ named expended whereof the said Petri
 „ Ingham stood convicted and said Sheriff ^{was} by said writ ~~was~~ further
 „ commanded that he have those money ready to surrender to the said
 „ Godfrey for his said damages Debt + costs + make return of said writ
 „ with an endorsement thereon in what manner he should have executed
 „ the same in Ninety Days from the date thereof as by the said writ
 „ under the seal of said Court + tested by the Clerk thereof + bearing
 „ date the said 23^d day of April A.D. 1858 as may more fully appear
 „ reference thereto being had + which these defendants bring here into
 „ Court and the said Seguin being at the time when &c Sheriff of said
 „ County after the delivering to him of said writ to execute as aforesaid
 „ + in the lifetime thereof viz: on the 20th day of May A.D. 1858 to wit
 „ + at the time + place where &c by the said defendant Payne who
 „ was then + there acting in that behalf in the capacity of such
 „ Deputy by virtue of such writ as he lawfully might + as it was
 „ his duty to do levied upon + took the goods + chattels + some money
 „ in said Declaration mentioned + then + there as he lawfully might +
 „ as it was his duty to do held + detained them in his custody
 „ through + by his said Deputy by virtue of such writ until &c
 „ which taking + detaining of said goods ~~and~~ ^{and} chattel + some money
 „ (11) is the same taking + detaining named in said Declaration And the

" said defendants aver that said goods + chattels + some man
 " at the time when &c were the goods + chattels + some man
 " of the said Robert. H. Bruck and not of the said Plaintiffs and
 " lawfully liable to be taken and levied upon by said Defendants
 " Dequin through his said Deputy as aforesaid upon & by virtue
 " of the said Writ of Fieri Facias and this the said defendants are
 " ready to verify wherefore they pray Judgment and they also
 " pray a return of the said goods + chattels + some man together
 " with their damages &c according to the form of the Statute in
 " such case made and provided to be adjudged to them &c
 " "Murray + Spring"

"Atty for Defts."

4 Plea

" And for a further Plea in this behalf the said defendants say
 " that the said Plaintiff Actio non because they say that at
 " the said time when &c the said defendant Byrne as Deputy
 " Sheriff of the County of Hancock in the State of Illinois had the legal
 " right to the possession of said goods + chattels in this said Declaration
 " mentioned and that the said Plaintiff had not the right of possession
 " of said goods + chattels and this the said defendants are
 " ready to verify wherefore they pray Judgment if the said Plaintiff
 " ought to have or maintain his aforesaid action then of
 " against them they also pray a return of the said goods +
 " chattels together with their costs in this behalf according to
 " the form of the Statute in such case made + provided to be
 " adjudged to them &c.

"Murray + Spring"
Atty for Defts

"Plea"

" And for a further Plea in this behalf the said Defendants say
 " that the said Plaintiff Actis now because they say that the
 " said goods & chattels in the said declaration mentioned at the
 " time when &c were not the property of the said Plaintiff and
 " that he had not the right of possession of said goods & chattels
 " & this they the said defendants are ready to verify wherefore
 " they pray Judgement if the said Plaintiff ought to have or main-
 " tain his aforesaid action thereof against them & they also pray
 " a return of the said goods & chattels Together with their costs
 " in this behalf according to the form of the Statute in such
 " case made & provided to be adjudged to them &c

"Murray & Soning"

"Attys for Defts."

and afterwards To Wits On the Twenty Eighth day of December
 in the year last aforesaid the said Plaintiff by his said Attorney
 did file with our said Clerk in Open Court. certain Pleas and
 Replications in the words and figures following To wit,

" State of Illinois

" Hamilton County } ss

" Hamilton County Circuit Court of the December Term 1871

" Robert S. Brush

" vs

" Francis Squire & James Byrnes

} Replevin

" And the said Plaintiff as to the

" said Plea of the said defendants saying

" above pleaded says in conclusion because he says that at the time

" when &c the said goods and chattels &c were in said de-

" clation mentioned were the property of the said Plaintiff and

„ not of the said defendants and of this the said plaintiff puts
 „ himself upon the country & depts doth the like
 „ and the said Plaintiff as to plea of the said defendants jointly
 „ above pleaded says precludi non because he says that at the
 „ said time when & the said goods and chattels & some more in
 „ the said declaration mentioned were the property of the said
 „ Plaintiff and not of the said Robert H. Pugh, and of this the
 „ Plaintiff puts himself upon the country & depts doth the like

„ and
 „ the said Plaintiff as to the plea of the said defendants jointly
 „ above pleaded says precludi non because he says that at the
 „ said time when & the said Plaintiff had the right of possession
 „ of the goods & chattels & some more in the said declaration men-
 „ tioned and the said Pyne had not the legal right to the pos-
 „ session of the same, and of this the Plaintiff puts himself upon the
 „ Country & depts doth the like.

„ and the said Plaintiff as to the plea
 „ of the Defendants jointly above pleaded says precludi non. because
 „ he says that at the said time when & the said goods and
 „ do and some more were the property of the said Plaintiff and the
 „ right of the possession thereof was in the said Plaintiff and of this
 „ the Plaintiff puts himself upon the country & depts doth the like
 „ and the Plaintiff

„ as to the first and second answers of the defendants say that
 „ the said defendant by reason of anything by them in said m

15
"averries above alledged ought not to atone the taking and
"detention of said goods and chattels and Sorel mare in said
"declaration mentioned in the Town of Simestone in the County a
"foresaid in which + and justly + because he says that at the
"said time when + the said goods and chattels and Sorel mare
"were the Property of the said Plaintiff and not the property of the
"said Robert H Brush and of this the said Plaintiff puts him
"self upon the Country + depts doth the like

"and the Plaintiff acts

"2 Plea. "the ^{2nd} first and second averries of the defendants further says that
"1st special. "the said defendants by reason of anything by them in said two
"Plea to 1st a. "averries above alledged ought not to atone the taking and de
"2 averries "tention of said goods and chattel and Sorel mare in said
"Declaration mentioned in the Town of Simestone in the County
"aforsaid in which +c and justly +² Because he says that after
"the levying of said Fieri Facias in said Declaration mentioned,
"upon said goods + chattels + Sorel mare and seizing the same.
"the said defendants released and discharged said levy and all
"their right to said property in the manner following that is to say
"on Twentieth day of May AD 1858 the said Robert H Brush
"being desirous of retaining the said Goods + Chattels + Sorel mare
"in his possession the said Defendant in pursuance of a
"Statute in such case made and provided took from the said
"Robert H Brush a Bond commonly called a forthcoming
"Bond running to the said Squin as Sheriff of said County in the
"Penal sum of Five Hundred Dollars with one William
(15) "Barwick then as security conditioned that if the said goods

(16) " ~~said~~ chattel and property levied and seized upon by virtue of
" said *Pieri Facias* therein mentioned should be forthcoming and
" delivered to the said *Sequin* as Sheriff at the Court House in Han-
" naker City in said County on the Twelfth day of July 1858
" and that the same should not be disposed of nor injured and
" thereupon the said Defendants delivered the said goods + ch-
" + property in said *Pieri Facias* mentioned to the said *Robert S. Bush*
" *Bush* who retained the possession of the same during the life of
" said *Pieri Facias* as he had a lawful right to do which the
" Plaintiff is ready to verify wherefore in as much as the said de-
" fendants have acknowledged the taking said *Sorrel mare* in the
" said *Writ of Ejectment* in which + he prays judgement and
" his damages by reason of the taking and unjustly detaining
" the same to be adjudged to him +.

" 3 Pleas.

" And the Plaintiff as to the +

+ 2^d Special Pleas. 2^d Special said first and second averries of the defendant further
" 1st + 2^d averries. say that the said Defendant by Reason of anything by them in
" said averries alleged ought not to avow the taking and detaining
" of said goods + chattel + *Sorrel mare* in said Declaration men-
" tioned in the *Writ of Ejectment* in the County aforesaid in
" which + unjustly + because he says that after the levying
" seizing the said goods + chattel in said averries alleged the said
" defendant released and discharged said levy and all their
" right to the said goods + chattel in the manner following that is to
" say on the 25th day of May 1858 the said *Robert S. Bush* being
" desirous of retaining the said goods + chattel in his possession the

17. " said Seguin as sheriff of said County by said Byrns his Deputy in
" pursuance of the Statute in such case made and provided took
" from said Robert K. Brush a Bond commonly called a forthcoming
" Bond running to the said Seguin as Sheriff of said County in the
" Penal Sum of Two Hundred Dollars with One William Barnick
" as Security therein conditioned that if the said Robert K. Brush
" should cause the said property to be forthcoming and should deliver
" or cause the same to be delivered to the said Sheriff at Kankakee
" City in said County On the 13th day of July A.D. 1858 the day &
" place appointed by the said Sheriff for the Sale thereof in the pursuance
" of law and should not in the meantime sell dispose of or in any
" wise injure or destroy said goods & chattels in said therein mentioned
" or any part thereof whereby the same might be diminished in value
" then said Obligation to be void otherwise to be and remain in full
" force and virtue and signed and sealed by said Robert K. Brush
" and William Barnick and Thereupon said Seguin by said Deputy
" delivered said Goods and Chattels to the said Robert K. Brush who
" retained possession of the same during the life of the said Fieri Facias
" as he had a lawful right to do, and afterwards (to wit) on the 31st
" day of May A.D. 1858 and while the possession of said goods & chattels
" were lawfully in the possession said Robert K. Brush the property
" said goods & chattels become vested in said Plaintiff which he is ready
" to verify wherefore inasmuch as the said defendant has not
" acknowledged the taking of the said goods & chattels & Sons Maw in the
" Town of Simontown in said County in which & he the said
" Plaintiff prays Judgement and his damages by Reason of the

(P8) Taking and unjustly detaining the same to be adjudged to him &

"4:" " "And the said Piff

" as to the said answer of the said defendants further says that the
" said defendants by reason of anything by them alledged in said
" answer ought not to answer the taking & detention of said goods
" & chattels & Sorel ware in said Declaration mentioned at the Town
" of Limestone in said County in which & unjustly & because he
" that after the taking and seizing said goods & chattels & Sorel ware
" virtue of said Fieri Facias as is in said Plea alledged (to wit) On the
" 20th day of May A.D. 1858 the said Seguin as Sheriff of said County &
" said Pym as deputy Sheriff released and discharged said defendants
" seizure of said goods & chattels & Sorel ware from under said Fieri
" Facias and released and discharged all their right to the same
" goods & chattels & Sorel ware to the said Robert K. Brush and thereupon
" delivered the said goods & chattels & Sorel ware to the said Robert
" K. Brush who retained possession thereof during the life of said
" Fieri Facias as he had a lawful right to do which the Plaintiff
" is ready to verify. Whereupon inasmuch as the said defendants haveack
" nowledged the taking of the said goods & chattels & Sorel ware in
" the Town of Limestone in said County in which & he the said
" Plaintiff prays Judgement and his damages by Reason of
" the taking and unjustly detaining the same to be adjudged
" to him &.

" T. P. Bonfield.

" Piffs Atty.

And

19. afterwards (To wit) On the Thirty First day of December in the year of Our Lord one thousand eight hundred and Fifty Eight it also being one of the regular days of the December Term of said Court for the said year as 1858 aforesaid. And the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following (To wit.)

"Robert. S. Brush

"381."

"vs

} Replein

"Francis Seguin & James Byrne

"And now at this day on motion of

said Plaintiff by J. P. Penfield his attorney

"It is Ordered by the Court that said defendants do file their Re-

"-plication herein to said Plaintiff, Pleas to said defendants answer-

"-s by next Monday at One O'clock in the afternoon.

And afterwards

To wit, On the Fifth day of January in the year of Our Lord as 1859

the said Defendants by their said attorneys files their ^{in open Court} Demurs to said

Plaintiff Pleas in the words and figures following, To wit,

"State of Illinois

"Hankau County } ss. Circuit Court December Term as 1858

"Robert. S. Brush

"vs

} Replein

"Francis Seguin & James Byrne

and the said debt by Messrs

"Saying their Atty's comes and demurs to each of

"the second third of the Plaintiff Pleas above pleaded to Dept said attorneys

"that said third & fourth Pleas nor either of them is sufficient in law,

Saying & moving

"+ Peff Joins in said Demurs

"to the said

(20) and afterwards (To Wit) On the same day and year last aforesaid, the said Defendants by their said Attorneys did file in open Court their Replication to said Plaintiffs Pleas in the words and figures following (To Wit)

" State of Illinois

" Hancock County } ^{ss} Circuit Court December Term AD 1858.

" Robert S. Brush

" ^{vs}

" Francis Seguin & James Byrne

} Replevin

" ^{vs} And the said Defts of Murray

" ^{vs} & Lewis their Attorneys as to the Plea
" of said Plaintiff fourthly by him above pleaded to said answer
" saith that the said Defts by Reason of any thing by the said Plaintiff
" therein alledged ought not to be barred from avowing the Taking
" of the said goods & chattels & Some mares in the said declaration men-
" tioned because they say they did not release & discharge said
" levy & seizure of said goods and chattels & Some mares from under
" said Petit Facias and release and discharge all their right
" to the same goods and chattels & Some mares To the said Robert
" K Brush & thereupon delivered said goods & chattels & Some mares to
" said Robert K Brush in manner & form as the said Plaintiff
" hath in his said fourth Plea in law alledged and of this the
" said Defts put themselves upon the Country & Riff both the law
" ^{vs} Lewis & Murray.
" ^{vs} Defts Atty.

And afterwards (To Wit) On the Fifth day of January in the year
Our Lord One thousand eight hundred and Fifty nine it is

21. Being one of the regular days of said December Term of said Court for the said year 1857 and the said Court being then duly organized and sitting as aforesaid for the transaction of business the following proceedings were had and entered of Record by the said Court in the words and figures following to wit

" Robert S. Brush

" 381 "

vs

} Replevin

" Francis Seguin & James Byrne

And now at this day come the said

Defendants by Murray^{es} Soing their attorney

" and file their Demurrer herein to the second and Third Special

" Pleas of said Plaintiff to said defendant first and Second Aforesaid

And

afterwards (to wit) On the Sixth day of January in the year last aforesaid It also being one of the regular days of said Term last mentioned for said year 1858 and the said Court being then duly organized and sitting as aforesaid for the transaction of business the following further proceedings were had and entered of Record by the said Court in the words and figures following (to wit)

" Robert S. Brush

381 "

vs

} Replevin

" Francis Seguin & James Byrne

And now at this day come

the said Plaintiff by J P Confield his

" Attorney and the said Defendants also come by R N Murray

" Soing their attorney and after hearing the arguments of counsel

" upon said Defendant Demurrer heretofore filed herein to the second

(21) " and Third Pleas of said Plaintiff to the First and Second

(22) " avowies of said Defendants Tho. Court being fully advised in the
" premises it is Ordered that said Demurer be and it is overruled
" Thereupon said Defendant by their said Attorneys except to the
" Opinion and ruling of the Court in overruling their said demur
" and stand by the same. And by the agreement of said parties
" it is Ordered by the Court that this cause do now proceed to
" and that a Jury do now come for that purpose. Thereupon
" the Jurors of a Jury of good and lawful men (To Wit)
" James Melvin Elisha Parsons Antonio Marcotte & B. Wainwright
" Azariah Buck Morris Miller William Durham Howard McArthur
" William True Pleasant Durham Sidney Dubois & Michael D. Gray
" Who being duly empannelled and sworn to well and truly try the
" issues herein joined between the parties to this Suit and a True Ver
" dict give according to the Evidence. After hearing the Evidence adduced
" the arguments of counsel and receiving the Instructions of the Court by
" the consent of said parties it is Ordered by the Court that said Jury
" do have leave to sign and seal their Verdict when found then
" separate and bring the same into open Court at the coming in of
" Court to Morrow morning. Thereupon said Jury retire in charge
" of an Officer to consider of their Verdict.

And afterwards (To Wit) On
the Seventh day of January in the year last aforesaid. it also being one
of the regular days of said Term of Court aforesaid and the said Court
being then duly Organized and sitting as aforesaid for the transacting
Business the following proceedings were further had and entered of
Record by the said Court in the words and figures following (To Wit)

" Robert. S. Mush

" 381 "

vs

} Replevin

" Francis Sequin James Byrns

And now at this day again come

" the parties to this suit by their Respective

" Attorneys and the Jury heretofore empannelled herein also again

" come and for Verdict say We the Jury find the Defendant not

" Guilty but that they are entitled to the cattle goods and

" chattels in dispute Thereupon said Plaintiff by his said Attorney

" enters his motion for a new trial in this cause

And afterwards, to wit, on

The Eighteenth day of April in the year of our Lord One thousand

eight hundred and fifty nine It being One of the Regular days

of the April Term of Court for the said year ad 1858 aforesaid

and the said Court being then duly organized and sitting in open

Court for the transaction of Business the following proceedings

were had and entered of Record by the said Court in the

words and figures following to wit,

" Robert. S. Mush

" 381 "

vs

} Replevin

" Francis Sequin James Byrns

And now at this day comes

" said Plaintiff by ^{J.P.} Bonfield and says his cause

" now and the said Defendants also come by Murray and says

" their Attorneys And after hearing the arguments of counsel of

" said ^{Plaintiffs} Defendants Motion, for a new Trial heretofore at the last

" Term of this Court entered herein, the Court being fully advised of the

" premises It is ordered that, a new Trial do and it is ^{Sustained} ~~granted~~

(24)

"The said defendants enter their motion for leave to
"withdraw their Demurrer heretofore filed herein to said Plain-
"tiffs Pleas to said defendants answers and for leave to join
"their replication thereto.

"And afterwards is met on the Monday
"Seventh day of April in the year last aforesaid It also being
"One of the Regular days of said Court aforesaid for said
"year 1859 the said Court being then duly organized
"and sitting as aforesaid for the transaction of business
"the following proceedings were had and entered of record
"By the said Court in the words and figures follow-
"ing, to wit,

"Robert S. Bush

381

vs

"Francis Seguin &

"James Byrnes

} Replevin

"and now at this day
"come the parties hereto by their
"respective Attorneys and after hearing

"the arguments of Counsel upon said defendants

"motion heretofore entered herein for leave to withdraw their

"demurrer heretofore filed herein to said Plaintiffs Pleas to their said

"answers and for leave to reply thereto. The Court being fully ad-

"vised in the premises it is ordered that such leave be and

"it is granted and ~~that~~ it is also further ordered by the Court that

"the Judgement heretofore entered herein on said Demurrer be and

"it is set aside and vacated to which Ruling of the Court the

"said Plaintiff by his said attorneys excepts—

And afterwards (To Wit) On the Fifth day of September A.D. 1859. the said Defendants by Murray & Loring did file in Open Court. their Repleading to said Plaintiff Plea ^{in this Court} in the words and figures following (To Wit)

" State of Illinois

" Hankook County } ss Circuit Court of the September Term A.D. 1859.

" Francis Seguin & James Byrns

" add

" Robert S. Bruch

} Repleading

" And the said Defendants by
" Murray & Loring their Attorney ask

" the Pleas of the Plaintiff secondly and thirdly above pleaded say

" Precludi-non- Because they say that said deft did not

" and discharge the levy in said annex above mentioned in manner

" form as the said Plaintiff hath in his said Pleas above supposed and

" in that behalf alleged and this the said Defendants prays may be

" inquired of by the Country and Plaintiff doth the like.

" Murray & Loring

" atty for Defendant

And afterwards (To Wit) On the Second day of January in the year of our Lord One thousand eight hundred and Sixty It also being one of the regular days of the January Term of said Court for the said year A.D. 1860. aforesaid and the said Court being then duly organized and sitting in Open Court for the transactions of business the following proceeding were had and entered of Record by the said Court in the words and figures following

(To Wit)

(26)

" Robert S. Brush

" 381

" 75

} Replevin

" Francis Sequin & James Rymes

" And now at this day comes the said

" Plaintiff by Bonfield & Lake his Attorney and

" the said defendants also come by Murray and Irving their Attorney and

" by consent of parties it is ordered by the Court that this cause do now

" proceed to trial and that a Jury come for that purpose The Jurors

" come the Sworn of a Jury of good and lawful men So Wit,

" Edward Chipman " Augustus W. Mylin " James Hutchins " Cornelius Cortine

" Azariah Buck " Louis Fortier " Charles P. Hamlin " William N. Newberry

" George Gay " Christian Gray " Thomas States " Cornelius Jaquish

" Who being duly empanelled and sworn to well and truly try the

" issues herein joined Between the parties hereto and a True verdict

" give according to the Evidence. after hearing the evidence this day addu

" ced It is ordered that the Jury do have leave to separate by consent of

" parties hereto and meet the Court to morrow morning at nine O. Clock

and afterwards So Wit, On the Third day of January in the year

last aforesaid It also being one of the Regular days of the said

January Term of said Court for said year aforesaid and

the said Court being then duly organized and sitting in open Court

for the transaction of business. The following proceedings were had

entire of Record by the said Court in the words and figures following

(So Wit)

"

27.

" Robert. S. Brush

" 381

" 75

} Replein.

" Francis Seguin & James Byrne

And now at this day again
 come the parties to this Suit by their
 Respectiv^e Attorneys and the Jury heretofore Empannelled herein also
 again come and after hearing the Evidence this day adduced by
 consent of parties hereto It is ordered by the Court that said
 do have leave to separate to meet the Court To morrow morning at
 Nine O Clock

And afterwards (To Wit) On the Fourth day of
 January in the year last aforesaid. It also being one of the regular
 days of the said January Term of said Court for said year as aforesaid
 aforesaid. and the said Court being then duly Organized and sitting
 as aforesaid for the transaction of business The following proceedings
 were had and Entered of Record by the said Court. in the words and
 figures following To Wit,

" Robert. S. Brush

" 381

" 75

} Replein

" Francis Seguin & James Byrne

And now at this day again come the
 Parties to this Suit by their Respectiv^e Attorneys
 and the Jury heretofore Empannelled herein also again come
 after receiving the Instructions of the Court retire in charge of an
 Officer to consider of their verdict and said Jury returning into open Court for verdict say "No"
 The Jury find the Defendants Not Guilty, in manner and form as charged in said
 Plaintiffs declaration Thereupon said Plaintiff by his said Attorney enters
 his motion for a new trial in this cause

(27)

and afterwards to wit, On the Eleventh day of February in the year last aforesaid it also being one of the Regular days of said January Term of said Court for the said year as aforesaid and the said Court being then duly Organized and sitting as aforesaid for the Transaction of Business the following proceedings were entered of Record by the said Court in the words and figure following (to wit)

Robert S. Bush

" 381.

vs

} Replevin.

" Francis Seguin & James Byrnes

" And now at this day comes the said Plaintiff by Lake & Kenfield his Attorney and said Defendants also come by Murray & Soning their Attorney after hearing the arguments of counsel upon said Plaintiff's motion for a new Trial heretofore entered herein and the Court being fully advised in the premises it is ordered that said motion ^{whereupon said Plaintiff excepts to the opinion and ruling of the Court in overruling said motion} be and it is overruled, and it is also further ordered by the Court that said Defendants do have Judgement against the said Plaintiff for their costs in this cause and that a writ de Retur-
no Habendo do issue herein against said Plaintiff for a Return of the property replevied in this cause

" It is Thereupon considered by the Court that said Defendants do recover of said Plaintiff their costs and charges by them about their suit in this behalf expended and that they do have Execution therefor
Thereupon said Plaintiff by his said Attorney ~~excepts to the~~

" opinion and making of the Court in overruling said Motion and
 " enters his prayer of appeal from the Judgement of this Court
 " in this Cause in the Supreme Court of this State Whereupon it is
 " ordered by the Court that such Appeal be and it is granted to
 " said Plaintiff filing an Appeal Bond in this cause in the sum
 " of Three Hundred Dollars with Benjamin Lewis as Security
 " in Thirty day from this date and that said Plaintiff do have the
 " same time to file his Bill of Exceptions herein

And afterwards to wit,
 on the Seventh day of March. In obedience to said Rule of Court
 hereupon entered herein the said Plaintiff did file in the Office
 of our Clerk of our said Court his certain Appeal Bond in the
 words and figures following to wit.

" Know All men by these Presents That We Robert S. Brush Benj
 " amin Lewis are held and firmly bound unto Francis S. Quinn
 " and James Pyne in the sum of Three Hundred Dollars for
 " the payment of which well and truly to be made we do hereby
 " jointly and severally bind ourselves our heirs executors and
 " administrators Sealed with our Seals and dated the Twenty
 " Seventh day of February A D 1865

" The Condition of the above obligation
 " is such that whereas the above named Francis Quinn and James
 " Pyne did in the Circuit Court of the County of Waukegan in the
 " State of Illinois at the January Term thereof A D 1865 render a
 " Judgement against the above bounden Robert S. Brush for the

(28) " Costs of Suit with an award of the property in a certain suit

(30)

" wherein the said Robert S. Brush was Plaintiff and the said
" Francis Squin and James Byrne were Defendant in an Action of
" Replevin to Return which said Judgement the said Robert S. Brush
" has taken an Appeal to Supreme Court of the State of Illinois
" Now if the said Robert S. Brush shall duly prosecute said Appeal
" and shall pay or cause to be paid said Judgement in case
" the said Judgement shall be affirmed and shall pay a
" Judgement costs interests and Damages in case said Judgement
" shall be affirmed then this obligation shall be void otherwise
" It shall be and remain in full force and effect.

" ~~Roberts S. Brush~~

" R. A. Lane

" Elias Gray

" Aaron Mills

" Alvin Sciotton

" E. B. Harner

Robert S. Brush

" Benj Lewis

And afterwards to wit on the day and year last aforesaid In ob-
dience to said Rule of Court heretofore entered herein. did file in
the Office of our Clerk of our said Court. this certain Bill of Exceptions
in the words and figures following (To Wit)

~~~~~





"State of Illinois

"Hankake County } ss.

Circuit Court of January Term a 1860

"Robert S. Brush

" vs

"Francis Sequin &

"James Pyms

} Replevin

Be it Remembered that on the Trial  
of this cause at the January Term of said  
Circuit Court of said County a 1860 the said  
Plaintiff to maintain the issue upon his part produced Robert S. Brush  
who being duly sworn testified as follows &c. int. James Pyms took  
the Sorel mare from the Plaintiff on or about the first day of Novem  
ber 1858 I am the person who executed this Instrument (a mortgage  
was here shown to the witness which is in the words and figures following to wit

"Chattel Mortgage"

"This Indenture made this Thirty First day of May in the year  
of Our Lord One thousand eight hundred and Fifty Eight Between  
Robert S. Brush of the County of Hankake and State of Illinois  
party of the first part and Robert S. Brush of the same place party  
of the second part. Witnesseth that the said party of the first part for  
and in consideration of the sum of Three Hundred & Forty three  
Dollars in hand paid the receipt whereof is hereby acknowledged  
do hereby grant sell convey and confirm unto the said party of  
second part his heirs and assigns all and singular the following  
described goods and chattel viz:

"One Sorel mare Eight years old

"One Yoke of Oxen and Red Cow Six Hundred Bushels of Corn in

"Wheat more or less. One pair of Saddle and Single Harness and Saddle



(32) and Biddle the above described goods and chattels are now in the possession of the said Robert H. Bush and on the farm now owned and occupied by him in the County of Hancock State of Illinois Together with all and singular the appurtenances thereto belonging or in anywise appertaining. To Have & to Hold the same unto the said Robert S. Bush his heirs executors administrators and assigns and their sole use forever and the said R H Bush for himself his heirs executors and administrators do covenant and agree with the said R. S. Bush his heirs executors administrators and assigns that he is lawfully possessed of the said goods and chattels as of his own property. that the same are free from all incumbrances and that he will and his heirs executors and administrators shall warrant defend the same unto the said party of the second part, his heirs executors administrators and assigns against the lawful claims and demands of all persons. Provided nevertheless that if the said R H Bush his heirs executors administrators or assigns shall well and truly pay or cause to be paid unto R H Bush his heirs executors or assigns Seventeen day of April AD 1859. the sum of Three Hundred and forty three Dollars and also the interest that may accrue thereon at the rate of six per cent per annum from the Eleventh day of April AD 1859. according to the tenor and effect of Mrs certain Promissory Notes (to wit) One made by Robert H Bush payable to the Order of Robert S. Bush for the sum of Ninety Seven Dollars and due on the Seventeenth day of April AD 1859. and one of even date herewith for the sum of One Hundred and Forty Six Dollars made by said R H Bush to R. S. Bush or his Order and due



„ One year from date both for value received + interest at 2 1/2 per  
 „ cent. then and from thenceforth these Presents and every thing  
 „ therein contained shall cease and be null and void  
 „ And provided also that it shall be lawful for the said R B Bruch  
 „ his heirs executors and administrators to retain possession of  
 „ the said granted property and at his own expense to keep and to use  
 „ and enjoy the same until he or his heirs executors administrators or  
 „ assigns shall make default in the payment of said sum of money  
 „ above specified either in principal or interest at the time or times  
 „ and in the ~~for~~ manner hereinbefore contained or unless the said  
 „ R B Bruch shall fear diminution removal or waste for want of  
 „ proper care or if the said party of the first part shall sell or assign  
 „ or attempt to sell or assign said goods and chattels or any part  
 „ thereof or if any writ issued from any Court shall be levied on any  
 „ part of the above described goods and chattels, that then and in any  
 „ of the aforesaid cases all of said notes both principal and in-  
 „ terest shall become due and payable and the said party of the  
 „ second part his heirs executors administrators and assigns agents  
 „ or attorneys or any of them may elect thereupon to take possession of  
 „ the said property, and for that purpose may pursue the same or  
 „ any part thereof wherever it may be found and also may enter  
 „ any of the premises of the said party of the first part with or  
 „ without force or process of law, wherever the said goods and chattels  
 „ may be or be supposed to be and search for the same and if found  
 „ to take possession of and remove and sell and dispose of said property  
 „ or any part thereof at Public Auction to the highest bidder after giving



days notice  
" ten of the time place and terms of sale. Together with a description of  
" the property to be sold either by publication in some newspaper  
" in the City of Chicago aforesaid or by similar notices posted up  
" in three Public places in the vicinity of each Sale or at private sale  
" with or without notice, for cash or on credit as the said N. H.  
" Brush his heirs executors administrators or assigns agents or attorneys  
" or any of them may elect and out of the money arising from such sale  
" to retain first all costs and charges for pursuing searching taking  
" removing keeping storing advertising and selling such property goods  
" chattels and effects and all prior liens together with the amount due  
" and unpaid upon said notes or any of them either in principal or  
" interest rendering the surplus of the money arising from such sale (if  
" any there shall be unto the said N. H. Brush or legal representatives

" Witness Hand and Seal the day and year first above written

" Signed Sealed and delivered

= N. H. Brush



" In presence of

" E. M. Beach

" State of Illinois

" Kankakee County }<sup>ss</sup>

" E. M. Beach a Justice of the Peace in and  
" for said County do hereby certify that this

" Mortgage was duly acknowledged before me by the above named

" N. H. Brush this Thirty first day of

20 1855

" E. M. Beach



" J. P. "

" This Instrument was filed for Record on the 31<sup>st</sup> day of May 20 1855

" at 4 o'clock P.M. and duly Recorded in Book No 17 of Deeds page

" 9-10-11-

" Philip Worcester

" Recorder.

" And I executed this note (a note was here shown the said Robert S. Bush  
" in the words and figures following. to wit,

" \$246.

" Limestone May 31 1858.

" One Year after date for value received I promise to pay Robert  
" S. Bush or Order the sum of Two Hundred and Forty Six Dollars with  
" Interest

" R S Bush =

" after this note and mortgage and note were executed and delivered  
" by me to the said Robert S. Bush. Robert S. Bush took possession  
" of the Sonell mare. It was the same day he has had the mare  
" in his possession and control ever since. that time he said after  
" the mortgage was given that he should take possession of the mare  
" and he from that time on looked after the mare, called her his mare  
" and permitted ~~no one~~ to use her but with his consent. and I had  
" nothing to do with her from that time on \* Thereupon the Plaintiff  
" offered to give the said note + mortgage in Evidence to the Jury to  
" the giving of which said note + mortgage in Evidence the Defendant  
" their Counsel then + there objected Because the mortgage promised  
" for the payment of the money mentioned in the said mortgage +  
" the mortgage + not the mortgage + because the notes are not  
" correctly described in the mortgage. which objections the Court  
" overruled + permitted the note + mortgage to be given to the Jury as

" to which ruling of the Court the defendants then + there excepted



Thereupon the Defendants Cross Examined the said Witness who  
 testified as follows to wit. The Plff is my Father he was not present  
 when I executed the mortgage But was not sworn that day. The  
 Mortgage was filled up in Hankkaku City I reside in the Town of  
 Sonestons some 7 miles distant from Hankkaku City Mr Justice  
 the Justice before whom I acknowledged this mortgage resides some  
 four miles from my residence and about six miles from Hankkaku  
 City I went direct from Hankkaku City to the Justice (taking with  
 me a young man) a clerk of Dr Knolls and acknowledged the  
 Mortgage she brought them back. I can not say when the Plff.  
 first saw this Mortgage The man in controversy in this suit is one  
 of the Henses that the Defendant Pyrus lived on with our forefathers  
 Execution on the 20<sup>th</sup> of May. 1858. or I suppose he lived on  
 the Four Henses then for I gave him a Bond then. (the Court here  
 directed the Witness not to speak of Any Bond under Defendant  
 objection) This man I purchased some two & half years since  
 and she has been kept on my farm ever since I bought her and  
 is there now The Plff my father is an old man. and has lived  
 with me for the last three years as one of my Family he comes  
 when he chooses I have never paid him wages for his whole  
 little work he has done on my farm. He is a practical Farmer  
 and I am not. he generally busied himself in doing chores  
 directing the men on the Farm what to do in my absence. The  
 man has been kept in the same Stable fed sometimes & worked  
 on the farm with his consent since the execution of the mortgage



37. "The Six hundred bushels of corn mentioned in this mortgage & a  
"in Oct we estimated the quantity at Six hundred Bushels I  
"do not think there was that amount perhaps not half that amount  
"in the crib It was not of the best quality some frost bitten I do  
"not remember the price of corn that spring perhaps worth 40c  
"per Bushel. we had two or three hundred Bushels of other corn  
"on the place at that time of which about One hundred Bushels  
"was shelled corn The corn was all fed out to the Stock on the  
"place that season by the Plaintiff. The mare in controversy in this  
"Suit was worth about Eighty Dollars. The Oxen and other  
"property <sup>mentioned and</sup> described in the mortgage I should think was worth viz:  
"The Oxen Seventy Five Dollars the Cow Twenty Dollars the Horses  
"Ten Dollars the Saddle & Bridle Six Dollars the Plows Five  
"Four hundred Dollars the Plows Five I gave Wm Knott a  
"Mortgage and that I executed and acknowledged at the  
"same time that I executed and acknowledged this mort-  
"gage to my Father the Plaintiff.  
"Witness recalled by Plaintiff who testified as follows, to wit,  
"Some time in the month of May 1858 I think about the 20<sup>th</sup> when Mr  
"Byrnes one of the Defendants lined the execution on the Horses  
"told me that if I would give him a forthcoming Bond that I would  
"take the Horses home with me. and Byrnes drew up the Bond  
"and I signed it & got Mr McBanick to sign it as security and  
"handed it back to Mr Byrnes one of the Defs. and Byrnes told  
"me to take the Horses home and I took them to my farm  
"where they have remained until Byrnes one of the Defendants



(38) " came and took them away on or about the first of June  
" 1858 Whereupon the Plaintiffs offered said Bond in Evidence to  
" the Jury. And the Defendants by their Attorney objected to said  
" Bond being given to the Jury as Evidence. Because the Bond did  
" not describe the Execution given in Evidence by the defendant  
" under which by their Attorney they justified the taking of the property,  
" But described an Execution of different date and because it was  
" otherwise informal and not such a Bond as the Statute  
" prescribes which objection the Court overruled and permitted  
" the Bond to go to the Jury as Evidence. In which ruling the  
" Defendants then & there excepted Thereupon the said defendant  
" Cross said Witness Fresh who testified as follows to wit:  
" I did not deliver the the property (the Horses) to the said Defendant  
" Pyms on the day for the delivery of said property by the terms of  
" the Bond Because on or about the 7<sup>th</sup> day of June A.D. 1858 I  
" applied to the Judge of the Circuit of Hancock County by Petition  
" for a stay of the sale of the property under the Execution in Question  
" and I was informed by my Attorney that the Judge had granted  
" the stay and there would not be any more done in the premises  
" until the next term of the Circuit Court But I called at the Court House  
" on the 13<sup>th</sup> day of July on my way to Arona & there learned from  
" my Attorney that that was the day for the Sale of the Horses  
" under the Execution. and that the sale was not stayed by the  
" Order of the Judge I passed on to Arona and on my return I  
" called on Mr Pyms one of the Defendants and requested him  
" to adjourn the sale I had one of the Horses lined up with me



" during before my Buggy. And Mr Byrns One of the Defendants  
 " adjourned the Sale for ten days. as I had requested him to do  
 " and some Four or Five days after that on the Fifteenth or Six-  
 " teenth of July I had my Attorney draw up a Bill for an  
 " Injunction and I took the Bill over to Solicitor and presented it  
 " to Judge Anton who granted an Injunction staying the Sale  
 " of the Property until the further Order of the Circuit Court of New  
 " Walker County and I kept the Property on my farm. until a  
 " bout November just when Mr Byrns One of the Defendants took  
 " it.

" My Father the Plaintiff went down to Massachusetts and sold a little  
 " homestead he had there and brought out the money and let me have  
 " it \* The Piff my Father at the time of the Execution of mortgage lived  
 " on my farm with me & in my family Mrs Superintended my farm  
 " mare was on my farm at time she was taken on the Execution  
 " was used on the farm and was used on the farm when mortgage  
 " was made Piff is a practical farmer but I am not She was used  
 " on the farm after mortgage was <sup>given</sup> ~~used~~ by Piff. but was never used  
 " without his consent. my Father worked when he pleased

" Thereupon the Plaintiff rested his case. Whereupon the defendants  
 " offered the following Execution and return and lay in evidence to  
 " maintain the issue upon their part (or mt)

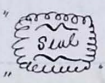
" State of Illinois

" Frankfort County

} ss

" The People of the State of Illinois to the Sheriff of said  
 " County Greeting !!! We Command You. that of the goods



(210) " and chattels lands and tenements of Robert S. Bruce & George H.  
" Ingham defendants in your County you causes to be made the  
" sum of Three Hundred and Forty Six Dollars and Twenty Eight  
" cents which William Grapew Plaintiff lately in the Circuit Court of  
" said County of Hancock at a Term thereof begun and held at  
" Haverhill City on the First Monday of April A.D. 1858 do me know  
" the day of the date thereof April 15<sup>th</sup> as of said Term by the con-  
" fession of said Defendant Records against the said Defendant as  
" which by the said Court was adjudged to the said Plaintiff for  
" his damages. and also the further sum of Three Dollars and  
" Forty Five cents which were adjudged to the said Plaintiff for  
" costs and charges in that behalf expended whereof the said  
" Defendant do stand convicted as appears to us of Record and  
" have you these moneys ready to render to the said Plaintiff for  
" damages debt and costs aforesaid. and make return of this  
" writ with an endorsement thereon in what manner you shall  
" have executed the same. in ninety days from the date hereof  
" Witness Philip Worcester Clerk of our said Court and  
"  the Seal thereof at Haverhill City in said County of Hancock  
" this 20<sup>th</sup> day of April A.D. 1858.

" Philip Worcester, " Clerk.

" State of Illinois

" County of { ss. By virtue of the within execution I have caused  
" on two spans of Horses this 20<sup>th</sup> day of May 1858

" I Dequin Sheriff,

" A. J. Byrnes Deft.



41. " This Mit Returned the Property Lend is this day replenish this 3<sup>d</sup>  
" day of Nov. 1858

" J Sequin Shff.

" By J Pyens Rept.

" Received this Mit this 22<sup>d</sup> day of April 1858

" J Sequin Shff.

" By J Pyens.

" Which the Plaintiff objected to upon the ground that the said  
" Execution showed that Judgement was only rendered against  
" said Robert H. Bush. and that if it did not. it did not show  
" that Judgement was rendered against both said Bush &  
" said Ingham and did not show which of them it was  
" rendered against. and also because it was contradictory<sup>and</sup>  
" also because the levy was upon two spans of Horses and therefor  
" did not describe the <sup>part</sup> in dispute which objection the Court  
" overruled and permitted said Execution levy and return to be  
" read in Evidence to the Jury and then the said Plaintiff ex-  
" cepted to the Courts overruling said objection and permitting said  
" Execution levy and return to be given in Evidence to the Jury  
" and Whereupon the Defendants offered in evidence a Judg-  
" ment recovered by said William Grafton at the April Term  
" the Court A.D. 1858 of the Circuit Court of said County against  
" said Robert H. Bush & George H. Ingham for the sum of  
" \$346 <sup>28</sup>/<sub>100</sub> damages and cost suit which was objected to  
" by Plaintiff and objection overruled Whereupon the Plaintiff  
" excepted and then the defendants rested this case Whereupon



(42.) the said Robert H. Bush was again called and examined by  
the Plaintiff further to maintain the issue upon his past and  
testified as follows.

"Sometime in May 1858 when the case was  
referred to in the execution in evidence Mr. Byrnes (the Defendant)  
told me that if I would give a Forfeiting Bond that I might  
the property levied upon and I agreed to do so and gave  
a Forfeiting Bond and he drafted this Bond ready to be  
signed which is in his hand writing (here a Bond in the words  
and figures following shown Witness (do wit)

"Know all men by these Presents that We \_\_\_\_\_ of the  
County of \_\_\_\_\_ and State of Illinois are held and firmly  
Bound unto J. Sequin Sheriff in and for the County of Kankakee and  
State of Illinois in the Penal Sum of Five Hundred Dollars lawful  
money of the United States for the payment of which said sum we  
and truly to be made to the said J. Sequin Sheriff aforesaid or  
his successors, ~~in~~ Office all and each of us do hereby bind ourselves  
our heirs executors, administrators assigns and personal representatives  
jointly each and every of them jointly <sup>and jointly</sup> and severally, by these  
presents In Witness Whereof we have hereunto set our hands and  
Seals at Kankakee City in the County and State aforesaid this  
20<sup>th</sup> Day of May A.D. 1858. The Condition of the above obligation  
is such that whereas a Judgment was lately rendered in the  
Circuit Court of said County in favor of William Bradley and against  
the above bounden R. H. Bush & George Ingham for the sum of  
Three Hundred Forty Six <sup>23</sup>/<sub>100</sub> Dollars Debt to your <sup>for</sup> son.



43. costs on which said Judgement an execution issued out of the  
" Clerk's Office of said Court numbered                      and bearing date 13<sup>th</sup>  
" April A.D. 1858 which said Execution came to the hands of the  
" above named Sheriff on the 18<sup>th</sup> day of April A.D. 1858 and  
" was by him on the <sup>20<sup>th</sup></sup> ~~Twenty~~ day of May in the year last  
" aforesaid levied on the following described goods and chattels the  
" property of R. H. Brush to wit. Mrs. Sparrow of horses and the  
" said R. H. Brush being desirous of retaining the same in his pos-  
" session until the day of Sale according to the provisions of the  
" Statute in such case made and provided and having tendered  
" the above named                      as Security for the delivery  
" thereof on the said day of Sale who is approved of by the  
" said Sheriff and the said property thereupon redelivered to the  
" said                      Now if the said Defendant                       
" shall have or cause the said property to be forthcoming and  
" shall deliver or cause the same to be delivered to the said  
" Sheriff at Hannibal City in said County of St. Louis on the 13<sup>th</sup>  
" day of July A.D. 1858 the day and place appointed by the  
" said Sheriff for the sale thereof in pursuance of law and shall  
" not in the mean time sell dispose of or in any wise injure or  
" destroy said property or any part thereof whereby the same may  
" be diminished in value then this obligation to be void otherwise  
" it remain in full force and virtue  
" Signed Sealed and Delivered                      R. H. Brush  
"                      In presence of                      Wm. Barnick



(44.) " I did not know any thing about what the Bond should  
" be and left it entirely to him (Byrnes) and when he had  
" prepared it I signed it and got Mr Banick to sign it  
" as surety. When I gave it back to Mr Byrnes who said to me  
" that the levy was now released and I could take my property  
" home I gave this Bond as a release and discharge of the  
" levy under the Execution in Evidence and it was so received  
" by Byrnes and upon being cross examined by the defendants the  
" said Witness testified as follows "That I did not deliver the  
" property back to the said defendants on the day for the  
" delivery by the terms of the Bond I was at the Court house. I  
" stopped on my way to Arrows and had one of the horses  
" with me in a Buggy I learned from Mr Bonfield that it  
" was the day for the sale of the property I went to Mr Byrnes  
" who at my request adjourned time of Sale for ten days &  
" never redelivered the property back to the Defendants or  
" either of them according to the condition of the Forfeiting  
" Bond Whereupon the Plaintiff gave said Forfeiting Bond  
" in Evidence and then closed his Evidence in the case and  
" the Court upon behalf of the Plaintiff duly gave the following instructions to the Jury  
" the Defendants offering no further Evidence to the Jury and  
" the Defendant by their Counsel there and there accepted  
" the giving of the said Instructions

" Instruction for Plaintiff

" given

" Of the Jury believe from the Evidence that  
" the Plaintiff had a Chattel mortgage on the Sows made in  
" question and that under and by virtue of said Mortgage he



45 " had possession of said Sorel man and that said possession  
" said man was according to the terms and provisions of said  
" given " Mortgage it is such a title as the Plaintiff can recover upon  
" unless the defendants show a Superior title to the same property  
" Instruction for Plaintiff.

" 2. " " If the Jury believe from the Evidence that the  
" Defendants denied upon the Sorel man by virtue of the Execution in  
" Evidence and that the defendants after making such levy released  
" given " said levy and took a forthcoming bond from the defendant in  
" Execution Robert H Bush and that the said Robert H Bush  
" after the release of said property from said Execution executed and  
" delivered unto the Plaintiff a Chattel Mortgage in good faith  
" upon the said property in dispute and that the said Plaintiff  
" took possession of said Property under and by virtue of said  
" Mortgage and that the said defendants did not again take  
" or seize said property until about the first day of November  
" A.D. 1858 and after the execution had expired that the Plaintiff  
" is entitled to a verdict.  
" Instruction for Plaintiff.

" 3. " " That if the Jury find from the Evidence  
" that the defendants after making the levy upon the property in dis-  
" pute delivered back to the defendants in Execution Robert H Bush  
" the said Property and took a forthcoming bond for the same from  
" said Execution Defendant. and said property was not redelivered  
" to the defendants under and according to the terms of said  
" forthcoming bond. but was disposed of by said defendants in



(46.) in execution in good faith the Defendant Squire by force of  
the Forthcoming Bond had a right to levy upon goods and  
Chattel's lands and tenements of the Execution defendant Robert  
H Bruck or his surety or sureties upon such forthcoming Bond or  
might sue said Robert H Bruck and his Sureties upon said  
Bond for the amount of the debt according to the terms of said  
bond but could not forcibly retake such property intended in  
such Forthcoming Bond. If the same had been disposed of and  
went into the hands of bona fide purchasers  
Instruction for the Plaintiff.

"14" That if a Sheriff levies upon personal property  
and leaves the same undisturbed in the possession of the Defendant  
in execution for a period of Five months and until his execution has  
expired and no sufficient or lawful reason appears for so doing  
purchasers may treat and consider it an abandonment of the  
levy by the Sheriff.  
Instruction for the Plaintiff.

"5" That fraud is an affirmative proposition  
and must be proven by the defendant if they wish to rely upon  
it in this suit, and that it should appear to the Jury from the ev-  
idence and must not be presumed and the fraud must have  
been committed by both the defendant in the execution and the  
Plaintiff in this Suit  
Instructions for the Plaintiff

"6" That when persons claiming to be a  
Sheriff and Deputy Sheriff levies upon and seizes property by virtue



47

"Given"

"of an Execution and the said property is repleined by Special  
 "not parties to the Execution and the defendants as claiming to be  
 "such Sheriff or Deputy Sheriff justified and defends such levy and  
 "seizure by virtue of said Execution must also show and prove to the  
 "satisfaction of the Jury they are either Sheriff and Deputy Sheriff  
 "of the County where such <sup>levy</sup> ~~seizure~~ and <sup>seizure</sup> ~~levy~~ was made in fact  
 "that they were the acting Sheriff and Deputy Sheriff of such  
 "County

"Instruction for Plaintiff

"8"

"That the Defendants might at their own  
 "risk release said levy of said mare without taking any further  
 "Bond or taking a good forthcoming Bond and that if the Jury  
 "find such to be the case the loss is for the plaintiff.

"Given"

"Instructions for the Plaintiff

"9"

"That the Jury may consider whether the  
 "language used by the Defendant Pyper when he took such  
 "forthcoming Bond was a release and discharge of said levy  
 "or not" and thereupon the Plaintiff requested the Court to give the following instruction to the Jury, to wit,

"Given"

"Instruction for Plaintiff

"4"

"If the Jury find that Defendant Pyper  
 "undertook to draft and prepare a Forthcoming Bond for the  
 "Witness Bush and his Society to sign and execute and he  
 "improperly drafted the same the defendants are only responsible for  
 "any imperfections in such Bond and they are estopped from  
 "denying the legality of such bond and the same shall be taken as given  
 "said defendant as far as the same was improperly drafted by said Pyper

"Refused"



(48.)

"Which instruction the Court refused to give to the Jury in which  
the Plaintiff excepted to such refusal

and the Plaintiff requested  
the Court to give the following instruction to the Jury to wit:

"If  
the Jury finds that the forthcoming Bond in Evidence was  
given for the release of the property in dispute although it  
may not describe the execution in Evidence it will be a release  
of the property liened upon and the law upon that point is for  
the plaintiff and the Court refused to give said instruction to the  
Jury to which refusal the Plff thereupon excepted.

"And thereupon  
the Court gave to the jury the following instruction upon the part of  
the defendants to wit: "If The Jury believe from the evidence  
that the defendant liened upon the ware in question & Sheriff &  
deputy Sheriff of the County of Hancock State of Illinois on or  
before the 20<sup>th</sup> day of May A.D. 1858 by virtue of the execution in  
Evidence and left said ware in possession of Robert D. Bush  
one of the defendants in the execution then said Bush had a  
right to take the ware by virtue of such lien & execution after the  
return day of such said execution and sell the same for the pur-  
pose of satisfying such execution and the legal possession of  
such ware was in the defendants by virtue of such lien and  
less the jury find that the lien was released to the giving of such  
Instruction the Plaintiff thereupon excepted to

Thereupon the Court

"Refused"

"given"



also gave the following instruction on the part of of the Deft. to wit,

"An Execution

" coming into the hands of the Sheriff is a lien upon the property of  
 " the deft. in such Execution and if the Jury believe from the  
 " Evidence that the Execution in Evidence came into the hands of  
 " Deft. as Sheriff of Hancock Co. Ill. to execute on the 22<sup>nd</sup> day  
 " of April A.D. 1858 and that the time of the receipt of said Execution  
 " was endorsed on said execution by Deft. Pyne & deputy, then the  
 " Execution became a lien upon all the property of Witness R  
 " H. Brush from the time of such receipt & the time of such  
 " receipt endorsed on said writ by Deft. Pyne is evidence of such  
 " time and to entitle the Plaintiff to recover he must show a  
 " right of possession to said mare superior to that of Deft." is  
 " the giving of which instructions the Plaintiff thereupon made his  
 " exceptions.

" Thereupon the Court also gave the following instructions upon the part of the Deft. to wit,

" If the Jury believe from the

" given "

" Evidence that the Deft. Pyne is a Deputy of Sheriff Sequin  
 " lienk upon the mare by virtue of the Execution. after such levy  
 " the Defendant Pyne as such Deputy had a right to leave  
 " the mare in the possession of Witness R H. Brush the deft. in  
 " such Execution and the leaving such mare in the possession  
 " of said Brush did not of itself release such levy and the law  
 " upon that point is for Deft. Is the giving of which instructions the  
 " Plff thereupon excepted.



(50.) " Thereupon the Court also gave the following instruction upon the  
" part of the deft.

" If the Jury believe from the evidence that all the  
" right that the Plff R S Brush acquired to the mare in question  
" was by virtue of the Mortgage in evidence then the Plff Brush  
" did not acquire a right to the possession of said mare  
" superior or equal to that of Defts Pyons acquired by virtue of  
" the levy made by the Execution in evidence. if the said levy  
" was not released and the law is for Deft Pyons. Subject to  
" the giving of which Instruction the Plff thereupon excepted

" Thereupon the  
" Court gave the following instruction upon the part of the Deft  
" & Mt.

" If The Jury believe from the Evidence that the mare in  
" question was delivered to Plff by virtue of some other arrangement  
" than by virtue of the mortgage in question and was not  
" delivered under the Mortgage then the law in that particular  
" is for the Deft. To the giving of which <sup>Instruction</sup> ~~Excluded~~ the Plff  
" Excepted

" Thereupon the Court gave the following Instruction  
" upon the part of the Defendant & Mt.

" If the Jury believe  
" from the Evidence that the giving of the Mortgage in question  
" and the transaction between Plff and witness Brush the sale  
" in the Execution was designed between the parties thereat  
" for the purpose of delaying the Creditors of said R S Brush

" Given "

" given "



" then such Mortgage is void as against such Execution  
 " + the above law is for the deft. In the giving of which  
 " instruction the Plff thereupon excepted

" Thereupon the Court  
 " gave the following instruction upon the part of the defendant  
 " Is Wt.

" The deft in this action is not bound to prove by the  
 " Records that deft Sequin was Sheriff of Bankston County Ga  
 " Byrns was Deputy But the fact of said Sequin being such  
 " Sheriff and said Byrns was his Deputy can be proven other  
 " wise than by such Records it can be proven by said  
 " Sequin having acted as such Sheriff and said Byrns  
 " having acted as such Deputy. In the giving of which instruct  
 " ion the Plaintiff thereupon excepted."

" Thereupon the Court gave  
 " the following instruction to the Jury upon the part of the deft  
 " Is Wt. If the Jury believe from the Evidence that the  
 " Forthcoming Bond in Evidence described a different execution  
 " from that in Evidence then such Bond is not a release of  
 " said Execution and the law in that particular is for the deft  
 " In the giving of which instruction the Plff thereupon excepted

" Thereupon  
 " the Court gave the following instruction upon the part of the  
 " deft Is Wt. If the Jury believe from the Evidence that the  
 " Plff has failed to prove he took possession of said land by  
 " virtue of said Chattel Mortgage the law is for the Deft.



(53)

" and the burden of proving that the Piff took possession of  
" said mare by virtue of such Mortgage is on Plaintiff. In  
" the giving of which Instruction the Piff thereupon excepted  
" Thereupon

" the Court gave the following instruction upon the part of the  
" deft. & Int.,

" If the Jury believe from the Evidence that the  
" property or mare, in question at and after the date of such  
" Mortgage, remained upon the farm of R. H. Bush and in  
" his possession the same as it did at the time of the levy of the  
" Execution thereon then such Mortgage does not give a right  
" to the possession of said mare to the Plaintiff greater than that  
" of defts by said Execution and the law in that particular  
" is for the defts " In the giving of which Instruction the Plaintiff  
" thereupon excepted.

" And Thereupon the said Jury gave their Verdict  
" against said Plaintiff upon the issue aforesaid. Whereupon the  
" Plaintiff moved said Court to set aside the Verdict and for a  
" new Trial upon the issue aforesaid, by reason of the supposed  
" misdirection of the Court as given, as aforesaid to the Jury and  
" by reason of the Verdict of the Jury being contrary to the law  
" because the <sup>Verdict</sup> Evidence of the Jury was contrary to the Evidence  
" and because the Court refused to give the aforesaid Instructions  
" of the Plaintiff to the Jury which are manifestly refused  
" because the Court gave the defendant instructions to the



jury and because the Court allowed incompetent testimony to  
 go to the Jury and because Aganah Buck one of the  
 Jurors said Jury that tried the case aforesaid was upon  
 the Jury that tried this cause at December Term a 1858  
 of this Court and the Court being satisfied that said case  
 was a Juror of the Jury that tried this cause of the Decem-  
 ber Term a 1858 of this Court. Heard the following affidavit in  
 support of said motion, which by mistake bore date, in the  
 Jurat of January the 2<sup>d</sup> 1860 instead of February, <sup>the 3<sup>d</sup></sup> 1860, to wit,  
 State of Illinois,

Hankook County } ss Robert S. Bush being duly sworn deposes  
 and says that he is plaintiff in the within  
 suit of himself vs Francis Sequin and James Pyne and that  
 Aganah Buck who was a juror on the trial of said cause  
 at the present Term also was a Juror of the Jury which  
 tried the same cause at the December Term a 1858 and that  
 this deponent has been informed by his attorney and believes  
 that they examined the said Buck upon the trial of  
 cause at this Term of the Circuit Court of said County as to  
 whether he had ever heard any thing about the facts in issue  
 in said cause and whether he had ever heard it spoken of  
 or had talked to either of the parties in the suit or any person  
 else as to the facts or had not formed or expressed an opinion  
 in regard to the merits of said case and that they did  
 not know or remember that said Buck had been examined  
 previous to this and this deponent was not present



" upon either of said trials and further this deponent  
 " says not. "Robert S. Bush

" sworn to & subscribed before me this  
 " the 2<sup>d</sup> day of January A.D. 1860

" P Worcester Clerk

" against said motion upon the part of the defendants, do vint, and the Court heard the following affidavit

" State of Illinois

" Hancock County } ss

" Robert S. Bush

" ss } Replevin

" Francis Seguin James Pyper

" State of Illinois

" Hancock County } ss } Canis on Swain and R A Murray being duly

" sworn depose and say that they are the

" Atty of the Deft in the above cause and were such on the trial

" of said cause and that when the Jury was empanelled

" One of said Jurors Agarrak Buck according to the recollection

" was accepted by the Court without any objection & without asking him any questions and these deponents

" of deponents believe they are not mistaken in that fact and

" they distinctly recollect when it came to their turn to examine

" Buck person they hesitated quite a time about accepting said

" Buck as a Juror and consulted with William Godfrey the

" Plaintiff in the Execution under which the defendants justify

" in their actions in said cause that these defendants were

" somewhat doubtful about the propriety of taking such Buck

" as a Juror and One of these reasons were that said



" Plaintiff <sup>attys</sup> accepted him without objection or asking him any  
 " questions and after having consulted with said Bradley said Bradley  
 " said in substance that he Buck looked like a good man  
 " and would take him and these deponents at the time of acc<sup>ing</sup>  
 " ~~for~~ said Burr did not recollect of said Buck having been on  
 " the former Jury in said cause

" Subscribed & sworn to before me

" this 6<sup>th</sup> day of February A.D. 1865

" P Worcester Clerk

Manison Spring

R A Murray

" By A M Woolley, dect

" State of Illinois

" Hamilton County

" ss William Bradley being duly sworn deposes and

" says he has heard the affidavit of R A Murray

" at Spring above subscribed by them read and that the matters therein

" set forth are true according to his best recollection as he was

" present at the trial of said cause & believes he is not mistaken

" about the P<sup>lffs</sup> attys accepting said Buck without asking

" him Buck any questions

" Subscribed & sworn to before

" me this 6<sup>th</sup> day of February

" A.D. 1865

William Bradley

" P Worcester Clerk

" By A M Woolley, dect



" State of Illinois

" Hamilton County } ss of the January Term 1866

" R S Bush

" 75

" I Jequin James Byers } Henry K Durham after being duly sworn  
doth depose & say that he was present

" when the Jury was impanelled to try the above entitled  
" cause at the present Term of this Court and according to  
" his best recollections that when the Court ordered Buck  
" was called the attorneys for the Plaintiff. took and accep  
" ted said Buck without asking him any questions and  
" the attorneys for the Defendants then asked said Buck if he  
" had any impressions as to which of the parties to this suit  
" ought to recover (or words to that effect) and after a short  
" consultation they took & accepted said Court

" Subscribed & sworn to before me, H K Durham.

" this 6 day of February 1866 }

" J Worcester Clerk "

" By A M Worley Sec "

" But said Court overruled said motion and refused to set aside  
" said Judgment Verdict and grant a new trial and gave  
" judgment upon said Verdict of the Jury against the said Plaintiff  
" Whereupon the Plaintiff made his exceptions to said opinion of  
" the Court in that behalf and prayed that the Court would



57. " sign and seal this Bill of Exceptions and certify that the  
" foregoing contains the Evidence given upon the trial of the  
" issues aforesaid which is accordingly done

" Charles R. Stan.



" Judge of the 20<sup>th</sup> Judicial Circuit of the

" State of Illinois

State of Illinois

Waukegan County } 85

I Philip Worcester Clerk of the Circuit  
Court in and for said County in the  
State aforesaid do hereby certify the above and foregoing to be  
a full true and perfect Transcript of the Record of the proceedings  
of the Circuit Court of said County in a certain cause lately  
pending in said Court wherein Robert S. Bush was Plaintiff  
and Francis Sequin and James Pyne were defendants as  
appears from the Records and files of said Court now in my  
said Office

Attest my hand and the Seal of our said  
Court, at <sup>hereby affirmed</sup> Office in Waukegan City in the County  
and State aforesaid this 17<sup>th</sup> day of March  
A.D. 1860

P. Worcester Clerk  
By A. W. Hooley Dep.



And now comes the said Robert S. Burck,  
and says, that in the record and proceedings aforesaid, there is  
error, in this, to wit.

1<sup>st</sup>. That the court erred in setting aside judgment  
upon the said plaintiffs second, third and fourth pleas and  
allowing said defendants to reply to said pleas.

2<sup>d</sup> That the court erred in allowing incompetent evidence  
to go to the jury.

3<sup>d</sup> That the court erred in not allowing competent  
evidence to go to the jury.

4<sup>th</sup> That the court erred in giving defendants instructions  
to the jury.

5<sup>th</sup> That the court erred in refusing to give the  
plaintiffs instructions to the jury marked "refused".

6<sup>th</sup> That the court erred in overruling the motion  
for a new trial.

7<sup>th</sup> That the verdict was not sufficient to render  
such a judgment upon.

8<sup>th</sup> That judgment was given in favor of the  
plaintiff defendants, whereas by the laws of the land, it  
ought to have been given in favor of the plaintiff.

T. P. Knapp

Plff Att

Recorder in Error

R. H. Manning  
for Defendant