No. 14782

Supreme Court of Illinois

Dole, Impl.

---

vs.

Kennedy

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 188-154

J. W. Middleton & Co., Stationers, 196 Lake St.

188 182

IN THE

SUPREME COURT OF ILLINOIS,

Third Grand Division---April Term, A. D. 1865.

DOLE & SWEET,
Plaintiffs in Error.

v.

LAWRENCE KENNEDY,
Defendant in Error.

DEFENDANT'S BRIEF.

I.

The verdict is fully sustained by the evidence.

In May, 1862, Dole & Sweet formed a co-partnership in the milling business at Chicago. About the middle of the following November, Dole sold, or prentended to sell, out his interest to Sweet, who continued the business until the 28th of January 1863, when having sold, or pretended to sell out to Dole, he absconded, leaving Dole in possession of a mill filled with grain, yet unpaid for. About ten days previous to this time, Sweet commenced purchasing grain largely, and hauling it to the mill. A great many teams, including two which belonged to Dole, were engaged in this work, and so great and unsual was the activity about the mill, that it excited the attention of outsiders. The mill usually contained but a small quantity of grain, but at the time of the transfer to Dole, was filled to such an extent, that grain was stored in the cellar and other unusual places.

Filed Apl 25. 1865
S Lawrence Clk

The grain was purchased for cash; and in pursuance with the custom at Chicago on sales to millers, was to be weighed by Sweet, at the mill and certificates of weight given to the sellers.

Several days were occupied in delivering the grain, the last load of the lot in question, having been delivered, as appears by the weight certificate, on the 28th, the day that Sweet absconded.

Sweet was not seen at the mill during that day—although the parties who sold the grain were in pursuit of him—until evening, after the close of business hours, he and Dole, and their witnesses, Geymer and Andrews, met for the purpose of the pretended assignment—an assigment by which it was arranged, that Dole should succeed to the business, and get back not only the mills and all the machinery—on which several thousand dollars had been invested while Sweet had it—but also the unpaid for grain, under the form of a purchase, the consideration of which, was, it is claimed, the surrender of Sweet's notes and chattel mortgage, given on the transfer of November 17th, and certain other pretended claims amounting to about one thousand dollars. A *ware*house receipt, given, it is pretended, by Sweet at the time of the transfer to him, on grain *then in the mill, and to be ground up, and which was purchased before that time, by the firm of Dole & Sweet, Dole's demand note for* $1,500, *which is still unpaid*, and the assumption of certain claims against Dole and Sweet. An arrangement by which not a dollar in money passed between them, Sweet escapes, and Dole now claims to hold the property.

After the pretended sale from Dole to Sweet, Dole continued to be seen at the mill. He had no other place of business. His teams were employed there. Andrews, his brother-in-law, was book-keeper, and boarded in his family. Dole and Sweet were still seen on change together, and but a few days before Sweet ab-

sconded, Dole was heard to urge him to buy (abstract 5 and 6, record 26).

Dole knew, of course, the usual quantity in the mill, the manner of doing business, the custom of taking the miller's weights; everything connected with the transaction was calculated to show him, if he did not already know, that Sweet was defrauding the parties who sold the grain. Besides, his own witness, Andrews, was obliged to admit that he told him, that persons were there to get pay for the grain on the 28th, and that he did not know that it was paid for (Abstract 16, record 71).

It will be seen, therefore, that ~~Sweet~~ Dole was not a purchaser in good faith, and that he helped to carry out the fraud, if he did not assist also in planning it.

His conduct in buying the corn which Boynton had taken out of the mill on a writ of replevin, and pouring it back into a pile with other corn, shows how he regarded his purchase from Sweet (abstract, 16, record 71).

II.

The verdict was sufficient in law.

It disposed of all the issues.

The pleas to the count in replevin were—

1. *Non cepit.*
2. Property in Dole.
3. To the count in trover—not guilty.

The verdict was:

"We, the jury find the defendants guilty—damages assessed to "one cent. We also find the property in the plaintiff" (abstract, 23, record 127). Guilty or not guilty was the only proper verdict

under the plea of *non cepit*—as well as on the count in trover.

The plea of property in Dole is answered by the latter clause in the verdict.

Thus the verdict covers the whole case.

It may be admitted, that the jury would have been justified in allowing further damages on the count in trover; but that they did not, is surely no cause of complaint, by those who thereby escaped a larger verdict; nor will the court, at their instance, disturb it, although they may not know the precise manner in which the result was reached.

But if the verdict *as recorded* on page 17, of the record (abstract 2) finding the issues of the property for the plaintiff, and defendants guilty of *detaining* the same, etc., instead of a general verdict of guilty *as rendered*, is to govern, the judgment should not be disturbed.

At common law, the gist of this action is the tortious taking. Under our statute, which has enlarged the remedy, it is the detention.

The present declaration was in the *cepit* and *detinet*, and the plaintiff entitled to recover for a detention simply. The plea of *non cepit* therefore, did not cover the whole declaration, and presented an immaterial issue which may be disregarded.

Ames v. *Sinnot*, 4 Scam. 445, 448.
Woodward v. *Woodward*, 14 Ill. 468.
Gotloff v. *Henry*, 14 Ill. 384.
4 Black. 304.
Marston v. *Baldwin*, 17 Mass. 605.

If, as the plaintiffs contend, it applied to the issues on the count in replevin alone, it is an acquittal on the count in trover.

Sloltz v. *The People*, 4 Scam. 168.
Wilderman v. *Sandusky*, 15 Ill. 59.

If the plaintiffs desired an apportionment of the costs, they should have made a motion, for that purpose, in the court below, in whose discretion this subject is left by the statute.

Purple Stat. 275, chap. 26. sec 9.

III.

The judgment is not erroneous. It is in the usual form, and follows the verdict, *as rendered.* It directs that the plaintiff have and retain possession of the goods replevied, and recover of defendants his damages of one cent, together with his costs, etc. (Abs. 3, rec. 19.)

No objection is made to the form of the judgment in the list of the errors assigned.

IV.

The books of Dole & Smith were properly excluded.

They were inadmissible to show the respective contributions to the original capital stock of Dole & Co., as against strangers. They might be used against, but not for, the plaintiffs, on this question.

The entries were made by the defendants, or Dole alone, in his own favor, in the absence of the plaintiff, and had no connection with the ownership of grain; they were immaterial, and not the best evidence. If, as Andrews said, they showed correctly the amount each contributed, he must have known this fact independently of the books, and it should have been called out from him.

There was no evidence showing when these entries were made; whether in the usual course of business, or only preparatory to the trial; nor that any capital stock was, in fact, contributed by Dole or Sweet. They could not, therefore, have been treated as part of the *res gestæ*, as insisted upon by the plaintiff, even had they been admissible on that ground.

V.

There was no error in the instructions.

The modification of the 10th is immaterial.

The 12th is law.

Trover can be maintained at common law, although by the conversion the identity of the property is lost, or is subsequently disposed of; and the statute in this State permitting a count in trover to be added to replevin, was specially enacted for this class of cases.

The 8th, 14th, and 15th instructions, were not only calculated to mislead the jury, but they, in effect, declare that the vendor can not avoid a sale, unless the design to defraud existed at the time of the agreement of purchase; that no intermediate design of that character, or refusal to pay, after or as soon as the vendee has obtained possession, confers that right, or will enable the vendor to retain his property, which is clearly not the rule on this subject. The vendor is certainly at liberty to demand payment, on completion of the delivery, without thereby losing his property.

The 15th instruction is especially open to this objection.

It declares that a delivery on a cash sale, followed by demand for the purchase money, before attempting to reclaim the property, not only is evidence from which the jury may infer a waiver of the

condition of payment, but that thereby both the right of property and of possession becomes vested in the vendee absolutely.

Besides, there was no evidence to which this instruction was applicable, as the case showed that the plaintiff, so soon as he got his weights, and the delivery was made, demanded payment at the mill—Sweet having already disappeared—and not receiving it, immediately commenced this suit.

GEO. F. BAILEY,
Att'y for Def't in Error.

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In Supreme Court of Illinois.

APRIL TERM, 1865.

WILLIAM H. DOLE, Impleaded, etc., Pl'ff. in Error.
vs.
LAWRENCE KENNEDY, Defendant in Error.
} Error to Cook.

POINTS FOR PLAINTIFF IN ERROR.

I. The Court erred in overruling the motion in arrest of judgment.

The verdict does not respond to the issues made by the pleadings.

There can be no final judgment in an action until all the material issues of fact made in it are determined.

Ronge vs. Dawson, 9 Wisconsin, 246, and cases cited.
Patterson vs. United States, 2 Wheat. 224.
Bacon's Abridgment, Tit. Verdict, M. N. R.
Comyn's Digest, Tit. Pleader (S.) Verdict S. 19—.

Sample

The exceptions to this rule are where there are immaterial as well as material issues, and the jury find the latter, but omit to pass upon the former; and also where, though the verdict be in form only upon one of the issues, yet in finding it the other issues are passed upon.

The case at bar falls within neither of these exceptions.

Filed Apr 20. 1865
L. Leland Clk

The verdict found the property in the plaintiff, and the defendant guilty, with damages at one cent. (*Record, p.* 127, *Abstract, p.* 23.)

The finding of the property applies to the second plea to the first count. The finding of guilty can only be applied upon the plea of *non cepit*, the first plea to the first count. It is not to be presumed that the jury found the defendants guilty of converting several hundred bushels of grain and assessed the damages at *one cent.*

If the verdict could be applied to the issue on the trover count, then the issue of *non cepit* remains unresponded to.

This was not an immaterial issue in this case. The plaintiff was not pursuing the statutory remedy for a wrongful detention, but on the contrary, the writ and declaration are in the *cepit*, and the plaintiff must abide by the issue he has tendered.

Ronge vs. Dawson, 9 Wisconsin, 250.
Morris on Replevin, pp. 85–86.

And whether immaterial or not, this was the issue actually found, and not that on the count in trover.

The verdict is so uncertain that the Court could not know what judgment to render, and it is therefore void.

Comyn's Dig., Tit. Pleader, S. 21.

II. The judgment is fatally erroneous.

The verdict as recorded is of property in the plaintiff, and defendants guilty of *unlawful detention*, with one cent damages. (*Record p.* 17, *Abstract, p.* 2,) and the judgment as entered, (*Record, p.* 18, *Abstract, p.* 3,) follows this verdict.

This is not a judgment upon the plea of *non cepit*, nor upon the plea of *not guilty*. The verdict, as it appears in the bill of excep-

tions, (*Abstract*, *p.* 23, *Record*, *p.* 127,) failed to respond to one issue. The judgment leaves two issues unfound.

This judgment is certainly not entered upon the count in trover, and could not be plead in bar by the defendants if sued again for the same property.

If the jury really intended to find the defendants not guilty upon the second count, they are entitled to such verdict and judgment, and to their costs.

The judgment sustains the position that the verdict was void because so uncertain that the Court could not know what judgment to render.

III. The Court erred in refusing to admit in evidence the account books of W. H. Dole & Co., for the purpose for which they were offered.

These books covered the period of the partnership of Dole & Sweet. They terminate November 17, 1862. They were kept by Dole, the firm having no book-keeper, and in addition to these facts it was proven that they were "perfectly reliable."

The Court confounded the rule under which these books were admissible with that in relation to proof of book accounts, as against parties sued thereon.

The books in this case were offered simply to show the amount each partner contributed to the capital stock, and as such, the entries having been made at the commencement of the firm, months *ante litem*, and under no circumstances of suspicion, were the best evidence of which the nature of the case was susceptible, and clearly admissible.

The Court would have admitted verbal declarations by the defendants, or partnership articles between them to have proved the same thing, and why not these books?

It should be remembered, also, that the prominent question in this case was one of fraud or no fraud, and as the widest latitude is allowed in the introduction of evidence to sustain, so, also, the same rule obtains as to the admission of evidence to repel the charge.

The books were *quoad hoc*, plainly part of the *res gestae*.

Nelson vs. Smith, 28 Ill., 495.

IV. The Court erred in qualifying defendant's tenth instruction, and in refusing to give the same without qualification.

V. The Court erred in refusing to give defendant's eighth, twelfth, fourteenth and fifteenth instructions, and each of them, but particularly the eighth and twelfth.

VI. The verdict is against the evidence.

FULLER, HAM & SHEPARD,
Attorneys for Plaintiff in Error.

Chicago Evening Journal Print, 50 Dearborn St.

In Supreme Court of Illinois.

April Term, A. D. 1865.

WILLIAM H. DOLE, Impleaded, &c., Plaintiff in Error, vs. LAWRENCE KENNEDY, Defendant in Error.	ERROR TO COOK.

ABSTRACT.

1. Placita.

2. Affidavit and writ of replevin against William H. Dole
3. and Rufus C. Sweet for "fourteen hundred and sixty-nine bushels and three pounds of spring wheat, of the value of thirteen hundred dollars."

4. Officer returns the taking on said writ and delivery to the plaintiff of "eight hundred and seventy-one $\frac{85}{60}$ bushels of

the within described wheat; the balance of the wheat not found." This on the 30th and 31st days of January, 1863. Served on William H. Dole.

5. Bond.

6. Narr. filed. 1st count — Replevin ~~in~~ the ~~detinet~~ ~~for~~ of a plea wherefore Defendants took unjustly detained &c
7. $1{,}469^{03}_{00}$ wheat. 2d count — Trover for fifteen hundred
8. bushels of wheat.

8. Pleas filed on behalf of Dole, March 27, 1863. To the 1st count,—1st, *non cepit;* 2d, property in defendant. To the 2d count,—"Not guilty."

11. Same pleas filed on behalf of Sweet.

13, 11. Issues separately joined by plaintiff on 1st plea of Dole, and same of Sweet to 1st count, and on their separate pleas to the 2d count; and several replications to the plea of property in Dole.

15. January 14th, 1864. Trial terminating January 18th, 1864, with the following verdict, as it appears recorded:

17. "We, the Jury, find the issue of property for the plaintiff, and find the defendants guilty of unlawfully detaining the same from the plaintiff; and assess the plaintiff's damages, by reason of the premises, to the sum of one cent."

Defendants move the Court for a new trial.

18. March 19th, 1864—Motion for new trial overruled, and defendants except. Defendants enter motion in arrest of

judgment, which is argued and taken under advisement, and June 2d, 1864, overruled; and defendants except, and thirty days given to file bill of exceptions. Judgment entered that "it is ordered and considered by the Court that said plaintiff do have and retain possession of the goods and chattels replevined in said cause. And it is further considered that said plaintiff do have and recover of the said defendant his damages of one cent in form aforesaid by the Jury aforesaid assessed, together with his costs in
19. this behalf expended, and have execution therefor."

BILL OF EXCEPTIONS.

PLAINTIFF'S TESTIMONY.

JOHN S. QUIN.—Know parties. Was at Kennedy's the latter part of January, 1863. Sweet came in and talked. He and Kennedy boarded at the same house. Sweet asked Kennedy to go out and see some wheat of Kennedy's then
20. in K.'s warehouse in bags, that had been spoken of between them on 'Change. They went and came back together. Sweet had a handful of the wheat in his hand. He bought that wheat that day of Kennedy, at 83 or 84 cents, I think. Kennedy told me that was a little better than he could do anywhere else. The amount was towards a thousand bushels. I saw some of it going in Kennedy's teams towards Sweet's mill. I was at the mills the day the grain was replevied, to assist Kennedy to get his grain

WM. O'NEIL, teamster.—Hauled grain for plaintiff to mill of defendants in question. In the winter of 1862–'63, I delivered the grain mentioned in the certificates (which are shown witness) at South Branch Mills—Sweet's mills. Was employed to draw the grain by Kennedy, and was working for him at the time as teamster.

21. C. W. BOYNTON, commission merchant.—Knew Sweet was running mill that Dole is now running, and very suddenly left. Sold Sweet corn just before his failure, about January 28th, 1863. The morning after went to mill and found Kennedy there. Dole was there and workmen, but nothing going on. Some men there rolling out flour in Dole's presence. Kennedy demanded of Dole the grain he had sold and just delivered there. Dole did not deliver it up. I was there trying to get my corn, and got it on a replevin writ. Sold it to Dole after I got most of it out.
22. Sweet was not there, but Dole was. Have not seen Sweet since I sold him car-load of corn on 'Change the afternoon of the sale, and next morning I went there and could not find him

The next day after I sold to Sweet was the first time I ever saw Dole. Dole said he knew nothing about it. I found it in a dark place in the cellar beyond some bran, barrels, &c. Dole was then in possession of the mill, and, I believe, told me he had bought the mill and contents the night before. I sold to Sweet January 28th, I think. The corn was in a car and unloaded unusually quick. Sweet was not at the mill the next morning. I hunted for him the afternoon previous, and could not find him.

Weed, Kennedy, and some officers and others, were look-
23. ing for him. I inquired of Dole, but he didn't know where he was. Where a sale is made and no terms mentioned, the sale is "cash on delivery." Where it is sold to millers,

they weigh the grain sent them and give seller the weights, and it is settled by their weights. This is the usual custom. The mill was pretty well filled with grain and flour. Kennedy demanded his wheat of Dole, but Dole didn't give it to him, or show any disposition to. Spring wheat, from January 20th to 28th, was $1.00 per bushel. Sweet bought 1,500 bushels of Weed, which has not been paid for. Weed was at the mill on the 29th, to get his pay.

I told Dole I had sold my corn to Sweet the day before; that it had been got in very suddenly, and I meant to get it. Dole treated me very politely. He didn't know where it was, and no one else did. He promised to show it to me
24. at one time, but did not. I hunted a whole day for it, and did not find it till some of the men showed me a hole in the back room where it was poured down. I sold it back to Dole, and it was carried back into the mill.

Cross-examination.—Sold corn to Sweet January 28th, I think. Dole said, when I offered to sell him the corn, that he had to have some corn to run the mill, and I proposed selling it to him to save carting it away. Good many people at the mill inquiring for grain; thought I could tell mine; all the rest was dusty; had lain there some time. I
25. don't know that Dole refused to show me the corn, though it runs in my mind that he did. He spoke as if he knew where it was. He showed Weed his wheat. He seemed perfectly willing at that time to show me my corn. It occurs to me the reason I didn't go then was that I wanted a witness with me.

26. A. G. LOW.—Know Sweet and Dole. Have seen them on 'Change frequently. They appeared to be together almost every day. Saw Sweet looking at samples of wheat, and Dole would stand by the west door. Sweet would come up and show samples. I remember once, two or three

days before Sweet left, Sweet came up and showed sample, and Dole said "buy." Sweet and Dole appeared always to be together.

M. H. WEED.—Know parties. Think I was at mill about January 28th. Sweet could not be found. Dole had possession. We sold Sweet 14 or 1500 bushels of wheat at that time. It has not been paid for.

27. JEROME F. YATES.—Am in the milling business next to South Branch Mills. Know that grain to a considerable amount went into the mill the latter part of January—more than I had ever seen before; great activity; more teams than usual; great many parties delivering grain. Dole, Sweet & Davis carried on the mill together; then Dole & Sweet down to the latter part of November, 1862; then Sweet until he failed. Saw Dole there a great part of the time after Sweet took it. Don't know of Dole having any other place of business, though he might.

28. GEORGE FLAGUT.—Am a miller, and was in the fall of '62, when I worked for Sweet & Dole. Was there from the latter part of October, '62, to the latter part of February, '63. I ran the mill nights. Betting and Thompson were the day millers. Sweet left January 29th. Saw him last between 7 and 8 o'clock, on the evening of January 28th. Mill was better filled than previously; generally had 400 or 500 bushels, perhaps 300 or 400; it would last till morning; if nothing happened it might run out sooner. I recollect a time, before Dole sold to Sweet, when they had more grain in. Don't think, except at that time, that I ever saw over 1000 bushels in at night. From 300 to 500 bushels would be used at night, on an average, and no more. Sometimes we worked straight through the night, and sometimes not: sometimes suspend because the boiler would
29. give out; generally, we stopped for want of grain when

the mill did not run. Saw Sweet, Dole and Andrews, and no one else, on the evening of January 28th, between 7 and 8 o'clock. Was in there that evening, perhaps five or ten minutes, when Dole, Sweet and Andrews were there; went out and did not return.

AMBROSE BETTING.—Commenced work for Sweet about the 10th or 12th of December, and continued to the latter part of January, '63. Great rush of wheat into the
30. mill the latter part of January. Had never seen that amount in the mill before. It was for about ten days or a fortnight before Sweet left that wheat came in so fast. The mill was filled; lot of grain in the basement, which was no place for it, because we were filled up so; it was a bad place, because damp and full of holes. We were frequently short of wheat. Never knew of wheat in the cellar before. Boiler gave out occasionally, and elevators. We emptied grain from bags into the cellar. All the grain goes through the cellar, but through a runway from sidewalk to
31. elevator. Used to see Dole at the mill every day while I was employed there. He had two teams hauling grain and flour. Worked for Dole a week or fortnight, and then left.

R. M. POUCHER, commission business.—Was running a feed-mill by side of Dole's mill latter part of 1862. Knew Dole & Sweet. Pretty lively times at their mill for 2 or 3
32. weeks in January. Great activity in hauling grain, from January 20th to January 28th; rush so much greater than usual, we could not help noticing it. Saw Dole there mostly every day. Know of no other place of business that he had. He had two teams hauling grain to the mill and flour from it. The mill was about full, unusually so, when Sweet left.

Cross-examination. — Davis, Dole & Sweet run the mill in the spring of 1862; Dole & Sweet after Davis went out; then Sweet, at least he said he was proprietor.

33. THOMAS CONNER. — Great activity at the mill a week or ten days before Sweet left. Sweet was rushing business — more than he had been.

FREDERICK MATERN. — I sold Sweet wheat the latter part of January, 1863, 600 or 700 bushels, which was not paid for. Had had dealings before and he paid. I replevied.

34. W. F. TOMPKINS. — Sold grain to Sweet in January, 1863, for Bacon & Co. It is the usual custom, where bag grain is sold, to deliver before collecting pay. Bacon & Co. were not paid. Went there several times to collect, and was unable. Saw Sweet two or three times, and the book-keeper every time. Saw Dole there January 29, and demanded the grain. He said he bought all the grain of Sweet, and knew nothing about this bill. Dole said only 3000 bushels of grain up stairs, and none down stairs. Found Bacon & Co's wheat up stairs. Never saw
35. Sweet and Dole together on 'Change — may have. In sales of bag grain it is impossible to tell exactly what it will come to, until we get the miller's weights. Bag grain is not paid for or weighed until delivered to the miller. Grain is sold by the car to millers, and it is weighed by the miller before delivery is complete, and delivered before payment.

36. E. W. GRIFFIN. — Sold Sweet several cars of corn — not paid for. He went off January 28th, I think. Was at
37. the mill the day after. It was full of grain from top to bottom; grain in the basement, put in regardless of its condition.

38. MOSES S. BACON. — Sold Sweet corn January 26th or 27th. Sweet was not seen for a day or two before he left. Found the mill very full of grain, put into what I

thought very unusual places. In sales to millers, grain is paid for as soon as weighed.

E. WOODRUFF. — Sold Sweet oats and wheat January 20th. I got partly paid. Sweet hauled slowly. Said he had so much to haul, hadn't been able to. Generally, we rely on miller's weights. Cash on delivery is the custom.

JOHN WHITTEMORE. — Sold Sweet grain between the 14th and 22d of January. He paid me from time to time up to January 24th. Saw Sweet last about January 26th, I think. Told him I had some wheat, and would like
40. to show him a sample. He says, "I didn't think you'd want to sell me any more wheat." Told him I didn't think he intended to cheat me. I had no idea of selling to Sweet, but wished to court his friendship, to get what he owed me. I asked him, in order to avoid a sale, an unreasonable price. I had offered it at 88c; I asked him 94c. While we were talking, Dole came up and said, "What are you doing, boys?" Sweet said he was looking at some wheat which John wished to sell him, and I assented. Dole clapped Sweet on the shoulder and said, "Buy; don't be fooling away your time."

41. JOHN A. NELSON. — Deputy Sheriff of Cook County, in January, 1863. Served writ of replevin on Sweet that month. Got corn, part up stairs and part in cellar. Cellar
42. rather dark. Mill pretty well filled when I got there. Some corn had been taken out and was brought back into the mill and let down on to the corn I had taken. Told the men to stop. Told Dole to have it stopped or I'd take it all. Dole went and told his men to stop it. This was January 30th. There was not much let down.

RUDOLPH SLOMER.—Think Dole and Sweet were doing business together in January, 1863. After, saw Dole often about the mill.

43. GRAIN RECEIPTS put in evidence; four of them da ted Chicago, January 21st, 1863, and headed "load of spring, wheat from L. Kennedy & Co. to R. C. Sweet," and for 16,688 lbs. in the aggregate.

44. Three dated January 23d, 1863, for 16,785 lbs. in the aggregate.

45. Three dated January 24th, 1863, for 15,390 in all.

46. Three dated January 26th, 1863, for 14,845 lbs. in all.

47. Four dated January 27th, 1863, for 19,635 in all, and

48. One dated January, 28th, 1863, for 4,800 pounds; all with the same heading and signed "A. F. Andrews, weigher."

DEFENDANT'S TESTIMONY.

49. HENRY GEYMER.—Work at South Branch Mills—have since November, 1862. Did previous to that and quit and returned. Worked for Sweet alone, then for Dole. Big business carried on at the mills. There were two, No's. 23, and 25 South Canal street. Sweet ran mill up to and including January 28th, 1863. Saw Sweet in the morning and at night that day. Mills were pretty full at that time. Mills stopped January 27th. Were not running January 28th.

50. Evening of January 28th W. H. Dole met me and told me to come back to mill. When I got back, found Dole and Andrews. Dole told me he wanted Sweet to settle with him that night. Sweet came in and Dole asked him if he was willing to secure him. Sweet said that he was not; that he had flour enough in store to pay him off in a

few days, if he could only sell it. Dole told him: "It is no use talking; you have promised me, fer three weeks along, that if you could sell the flour you would pay me, but I see you don't pay me, and I want to be secured." Sweet then said he hadn't the money and didn't know how to secure him, but if he would wait a few days he would pay him if he could sell his flour. Dole made Sweet an offer for the mill and grain. He offered him $5,000 for the mill and the market price for his grain. Sweet refused it and said the
51. mill was worth more. Dole said the mill was neglected. Sweet admitted that, but said it was worth more—he paid more. Dole then offered him $1,200 cash and all claims he had against Sweet. Sweet refused. Dole told him to make an offer. Sweet offered to sell for $1,500 and all claims. Dole took him up. After that, bill of sale was made out to Dole of the grain. Dole's bill of sale of the mill and fixtures to Sweet was produced, his signature torn off and the bill surrendered to Dole. (Witness identifies Dole's bill of sale to Sweet of boiler, &c., dated November 17th, 1862, and Sweet's bill of sale of grain, &c., to Dole, dated January 28th, 1863.) There was a chattel mortgage on the mill, given by Sweet to Dole to secure Sweet's notes, to the amount of $6,000. These notes were produced and surrendered to Sweet by Dole. Dole also held two small notes [against] Sweet, one for $450 and one for $300, also
52. which had been given for borrowed money. These were given up to Sweet by Dole. Dole also claimed Sweet owed him $300 for borrowed money. This Dole also gave in. Sweet owed Lonergan $525 for rent. This Dole agreed to pay. Dole also held a warehouse receipt of Sweet for $1,800 worth of grain, between 1,800 and 1,900 bushels of corn, and between 1,200 and 1,300 bushels of wheat. It was between $1,800 and $1,900 worth in all. It was for grain in the mill in November, 1862, before sale to Sweet. Dole gave Sweet his note on demand for $1,500. He told Sweet he hadn't the money, but would pay it in a week or ten days. After settlement Dole told me to see that doors were locked and look after the property. Next

morning Dole called up the hands and asked them if they wished to work for him on the same terms as for Sweet. The business was buying grain and making flour and meal. Sweet generally came in in the morning and went away about 10 A. M. Sometimes came in the evening, sometimes in
53. the afternoon. I saw him at the usual hour at the mill on the morning of January 29th. Havn't seen him since. Dole was at the office that forenoon. Good many persons there that day. Nothing said the evening before as to where the grain was. Andrews figured on the books as to how much grain there was. They took his figures. I heard Sheriff Nelson's testimony. We poured corn down the spout and Dole stopped us. He did'nt direct us to put it down the spout. We always took corn into the mill on first floor, poured it down the spout, and it was then taken up to the upper stories. The elevator was not running at this time. We wouldn't carry corn up by hand. Men
54. can't stand it to carry corn up two flights of stairs in bags. It's always done through an elevator. In one of these mills there was an elevator for corn, and in the other a wheat elevator. There was wheat and corn in the cellars in the vicinity of the respective elevators. The elevators were not running, and that was the reason corn and wheat were in the cellars. (Witness identified two diagrams of the two cellars and explained the exact position of corn and wheat,
55. how the grain was taken in, &c., &c.) There had been wheat and corn on the cellar floors before. The cellars were in good condition and not damp where the grain lay. The corn and wheat which had been there before, lay till elevators were started. I know wheat came from Kennedy's. I weighed a good many loads. *The first part of that wheat was ground out.* The wheat was in two lots, as Kennedy
56. testified on former suit. The bill for first lot was all ground out, and part of the second lot. I know all the first lot was ground out, because all the spring wheat was cleaned out of the Mill January 24th. That morning Andrews had to get a load of Leonard & Jennison to start up with. The

first lot from Kennedy came in before the 24th January. A portion that came after the 24th was also ground. Can't tell this by the wheat itself, but that which came earliest after the 24th was ground.

Kennedy offered me a month's pay to show him his
57. wheat. I told him I couldn't do it; it was impossible to tell anybody's wheat, the way it was weighed. When Sweet was running the mill, I have seen Dole there in the morning reading the newspapers, perhaps once in a couple of days. He didn't stay there during the day, and had no connection with the business. He had teams which hauled for the mill. At the time Sweet sold to Dole, D. called his attention to a balance due him for teaming. Sweet said he'd make it right when Dole paid him. There were shorts and middlings in the cellar, bought two weeks before Sweet failed. No more activity after January 24th than just preceding. Four or five days before, we got mills going. We could grind twenty bushels of corn an hour, and one hundred and sixty barrels of flour in twenty-four hours—
58. four and one-half to four and three-fourths bushels to the barrel. Have seen that mill as full before and since as on January 28th. We have had more corn in.

Cross-Examination.—It was between seven and eight, and nearer seven than eight, when I got to the mill on the evening of January 28th. I stayed till Sweet left, about
59. half past nine o'clock. Dole and Sweet didn't go round the mill or look at the grain. They examined the books. There was about 3000 bushels wheat. Can't say how much corn. A small bin of oats. May have been an hour or two spent on the books.

There was some flour at the mill, but it did not belong to Sweet but to Doles' brother-in-law, who had a warehouse receipt on it. When Sweet talked about selling his flour,

60. he meant other flour. No more activity January 28th than any other day. Sometimes millers get in 3000 bushels in a day, and at others none. So we did here. We could run in 3000 bushels of wheat easily in a day, and corn at the same time. [Witness identifies chattel mortgage.]

A. SHINN. — Sweet paid me for a car of corn on the 28th
61. January. It was the day before the day his property was attached. Sweet owed us eight or ten days. Cash sale.

E. H. BALL. — We sold Sweet grain, January 21st. Cash sale—$500 worth. He paid us some days after we got the weights, which was the 23d, $300.

J. M. WILLARD. — Have sold Dole, since January 28th,
62. in the neighborhood of 8,000 bushels of grain in the course of two or three days. Market was advancing, though fluctuating, in winter of '62, '63.

THOMAS JONES. — Have worked in South Branch Mills three years, 24th this month. Considerable grain in the mill January 28th, '63. Have seen as much before and since. Have seen it so full as to press down the wheel. It was not full January 28th. Mill was not running at this
63. time. There was wheat in the north cellar. It was put there while the elevator was broken.

J. F. ANDREWS. — Worked for Dole, Sweet and Davis from May 1st, 1862; for Dole & Sweet to November 18, 1862; then for Sweet: then Dole; Sweet bought mill and fixtures of Dole, November 17th, 1862. Sweet paid Dole $1,300 in cash, and gave his notes for $6,000, secured by
64. a chattel mortgage on fixtures and machinery. I did not keep the books for Dole & Sweet. Dole kept them. The firm was Dole & Co. They had no book-keeper. (Ledger cash book and day book shown witness.) These are the

books of W. H. Dole & Co., and were kept by Dole for the firm. Have settled by them and know them. November 17th, 1862 there were 1,900 bushels of corn and 1,200 bushels of wheat in the mill. Sweet gave Dole a warehouse receipt on it. Dole gave Sweet a bill of sale. (Identifies bill of sale of Nov. 17th, 1863.) January 28th, 1863, we could have got in 2,000 or 3,000 bushels more of grain. Was in that mill a short time ago when it had 3,000 bushels more in, than on January 28th. On the 24th January we had ground the wheat all out and sent to Leonard & Jennison for a load to keep the mill going. The first lot of Kennedy's wheat was 298 bushels, delivered January 21st, and all ground out. On the 23d 300 bushels more
65. was delivered and ground out. Kennedy delivered no wheat on the 28th. He came in on 28th and said I had n't given him receipt for one car load. I found this was so and gave him a receipt, dated the 28th, but for grain delivered before. [Witness explains how wheat and corn were taken into the mill through the cellars.] Mill stopped on 26th or 27th. Had not ground much that came in on 26th, but all that came in on 24th. Cellars in good condition. Wheat and corn there because elevators were broken. Had been so before. Saw Sweet, January 28th, in the morning,
66. at noon on change, and in the evening. Sweet was at the mill on the 27th, also in the morning of the 29th. I saw him. Sweet was at the mill on the evening of January 28th, from between seven and eight o'clock till nine o'clock. Geymer, Dole, Sweet and myself were there. [Witness here details the sale from Sweet to Dole. Witness figured up grain in mill. Parties had loud talk. Offers made back and forth, &c. Witness got at amount of grain by taking the number of bushels of wheat received from the last time mill was cleaned out, and reducing barrels of flour ground, to wheat, and deducting, and in the same way the corn,
67. deducting the meal. Witness details settlement in substance as stated by Geymer, *ante*, the claims surrendered, &c., &c. Identifies bill of sale, chattel mortgage, &c. &c.]

68. Books of Dole & Co. here shown witness, viz., ledger, cash-book, and day-book.] These books were kept by W. H. Dole for W. H. Dole & Co. They had no book-keeper. They are in his hand-writing. They show what Dole put in to the capital of Dole & Co., and what Sweet did. I have found these books correct in settling by them. They terminate Nov. 17, '62.

There were no oats nailed up Jan. 28th. The oats were in a bin, with an entrance near the top like the rest. There was no difference in the spring wheat, and you couldn't tell one bushel from another. After Dole sold to Sweet, he used to come in and read the newspapers on his way down town. He was getting up a model for a dryer. He had
69, nothing to do with Sweet's business. Had no suspicion Sweet was going to fail. Kennedy delivered, Jan. 21st, 278 bushels and a fraction, and on the 23d, 366 bushels and a fraction. This was all ground out. No spring wheat was delivered, as appears by the stubs on the weigh-book. Dole paid market price for the grain. I went to B. F. Quinby, Jan. 29th, to see about getting pay. He had been advancing on Sweet's flour.

January 28th

70, *Cross-examination.* — Dole's brother-in-law. I went to Dole & Co.'s in June, '62. Davis had gone out of the firm before. He put nothing in. Saw Dole tear name off bill of sale of Nov. 17, '62, on night of Jan. 28th, '63, when he repurchased of Sweet. Warehouse receipt for $1800 or $1,900 worth of grain, given by Sweet to Dole Nov. 17th, 1862, was surrendered to Sweet by Dole Jan. 28th. Dole
71, asked me that day what was the condition of things. I told him there had been some men around with bills that day, and that I did not know whether grain was paid for. I think I told him so, but am not certain. I should have told him if I had n't snpposed everything all right. Sweet kept no regular set of books, and what he did were not accurate, because Sweet didn't give me the amounts. I supposed, up

to Jan. 29th, that they were, and, so far as I kept them and could tell, they were. The books of W. H. Dole & Co. are perfectly reliable. I have settled by them and know them. business was lively Jan. 24th, but dull Jan. 28th. Perhaps
72. more activity from 24th to 28th than the week before, but have seen it more active many times before. On the 26th or 27th the mill stopped. We used to run out 800 to 1000 bushels of wheat in a day. We could get 3,000 or 4,000 bushels more in the mill. Mill stopped for want of grain Jan. 23d. Sent to Leonard & Jennison, 44 Franklin street, for grain morning of Jan. 24th. All of Kennedy's wheat received on 21st and 23d was ground out, and part of the rest. I didn't know, till after Jan. 28th, that Sweet had deceived me as to the cash. He had drawn against flour, and not told me or any one else of it.

73. Notice of dissolution of partnership between Dole and Sweet, with certificate of publication, put in evidence without objection. Notice dated Nov. 17, 1862; signed by W. H. Dole and R. C. Sweet, and published a week from Nov. 22, 1862.

75. EDWARD HILL.—Was working on boiler at South Branch Mills when Sweet failed.

GEORGE BROWN.—Saw Sweet on 26th and 27th January, and, I think, 28th. Fluctuating market at this time.

76. B. F. QUINBY.—Sweet & Dole owed me $2,500 in fall of '62. Dole paid this $2,500. When they dissolved, we inquired who was to pay it. Both of them said Dole was to pay it, and he did. Saw Sweet Jan. 28th, I think. Had advanced on flour for Sweet. Had no reason to believe he was going to fail. The only thing I did not like was that,

a day or two before he failed, two or three parties came to see if we were going to advance Sweet any more. Never
77. saw Dole and Sweet together on Board of Trade; am a member.

THOMAS LONERGAN.—Dole paid the rent due while Sweet occupied the mills, after he took possession of the mill. [Witness describes mill and machinery.]

78. E. MILLER.—Mill was pretty full Jan. 28th, but could hold more. Have seen it as full before. Saw Sweet last, Jan. 28th.

C. CUMMINGS.—Drove team for Dole in fall of 1862; for Dole & Co. before. When we had no teaming to do, at time Dole & Co. had mill, we worked in mill. After Dole sold to Sweet we did no work in mill. Dole told us not to. Saw Sweet at mill day replevin writs were served —the day Sheriff took away the grain.

79. THOMAS JONES, re-called.—Saw Sweet at the mill on the 29th of January, about 9½ o'clock in the morning. Mill turned out 160 bbls. flour in a day.

CHARLES H. HAM.—Drew the chattel mortgage, Sweet to Dole, dated Nov. 17, '62. It was given to secure Sweet's notes for $6,000, which he gave to Dole as balance
80. of amount due for purchase of mill and fixtures. Dole came into my office, in spring of 1863, with H. B. Hurd. Hurd had Dole's demand note for $1,500, given to Sweet, and endorsed to one Clinton Frazier, Hurd's client. Dole wished to know whether it would be safe to pay it. He had been garnisheed Jan. 30th, 1863, for about $800. As Sweet had not presented it for so long a time, and under the circumstances, I thought Sweet might still own the note, and told Dole so, and not to pay it till the garnishee processes were disposed of. Hurd thereupon sued Dole.

PERRY YATES.—The market was a rising one January, 1863; good deal of a rise in grain; Sweet bought a good deal just before he broke up.

81.

MARTIN THOMPSON.—Have seen the mill as full before and since January, '63. Mill would turn out 160 barrels of flour per day, 5 bushels to the barrel, and 400 bushels of corn per day.

J. F. ANDREWS, re-called.—Grain was on the advance while Sweet was in the mill. The grain in the mill Jan. 28th could have been ground out in less than three days time.

82. GEORGE W. NOBLE.—Sold Dole, in April, '62, a steam engine for $1,450, which was worth over $3,500. Had it made for myself for a mill. Sold the whole at quarter of its value.

The following exhibits were put in evidence:

Bill of sale, Dole & Co. to Sweet, dated Nov. 17, '62, of engine, fixtures, &c., &c., for $7,350.

83. Bill of sale, Sweet to Dole, dated Jan. 28, '63, of wheat, corn, &c., &c., in South Branch Mills, at $4,385.77.

84. Diagrams of oat bin, &c., cellar and elevator, &c.

85. Chattel mortgage, Sweet to Dole, to secure $6,000 on mills, fixtures, engines, carts, &c., duly acknowledged and recorded.

89. Stubs from weigh-book, showing grain received from Jan. 15, '63, to and including Jan. 28, '63.

111. Defendant then offered in evidence the books of account of W. H. Dole & Co., consisting of ledger, cash-book, and day-book, for the purpose of showing that Dole had put into the capital stock of the firm of Dole & Co. over $7,500, and had withdrawn nothing therefrom, and that R. C. Sweet had put in $126.00, and drawn out $150.00, as appeared by the books aforesaid. Plaintiff objected, and Court below sustained the objections, and refused to admit the books for that or any other purpose, and defendant excepted.

Defendant rested, and plaintiff called, as *rebutting*,

AMBROSE BETTING. — The mill did not stop on the 24th for want of grain. There was plenty of grain. Flagut was night miller.

112. GEORGE FLAGUT. — Was night miller in January 1863. Mill broke down January 27th. It strikes me that I got out of wheat, at twelve o'clock, on the night of the 23d. Might have been the 24th. It was one night or the other.

113. WM. WAYMAN. — Deputy Sheriff, and served the writ in this case. Some of the hands showed wheat through a little hatchway where nobody would have thought of looking. I found $139\frac{45}{60}$ bushels there.

Defendant recalled

THOMAS JONES. — The hatchway Mr. Wayman speaks of is the hopper over the stones. The grain he took from there was all ready for grinding.

B. F. QUIMBY. — Dole was engaged on a model dryer in December 1862, and January 1863, and in teaming.

114. This was all the evidence in the case.

Among other instructions for plaintiff the Court gave the following:

115. Where a partnership is shown to exist between two persons, and the terms of it are not shown, the law implies that the partners are equal in capital stock, and profits, but such presumption may be overcome by proof that the partners put in capital stock in different proportions, or were to share profits in different proportions.

Among the instructions asked by the defendant was the following:

123. "Although the jury believe from the evidence that Dole and Sweet were jointly liable to Lonergan, for the rent of the mill, in question, during the months of November and December, 1862, and January, 1863, by reason of both having executed the lease therefor, at the time they were in partnership, yet, if the jury further believe, from the evidence, that Dole & Sweet dissolved partnership, on the 17th day of November, 1862, and that Sweet carried on the business alone from thence to January 28th, 1863, then, as between themselves, Sweet was bound to pay the rent, during that period, and the undertaking of Dole to do so for him, and the payment of said rent by said Dole (if the jury believe Dole did so undertake and pay) would constitute valuable consideration for the sale of property by Sweet to Dole."

124. The Court refused to give said instruction, without qualification, but qualified the same, by adding at the end thereof, the following words, to wit: "And in the absence of any agreement to the contrary between Dole and Sweet," and

gave said instruction as qualified. Defendant excepted to the refusal of the Court to give the instruction without qualification, and to the qualification.

The defendant asked the Court to give the following instructions:

12th. "Trover cannot be maintained, for property not properly identified and the quantity of which has not been ascertained or distinguished."

8th. "The mere fact that a person does not pay for personal property which he purchases does not make such purchase fraudulent, even though the terms be cash. It is
125. only when a party buys property with the preconceived intention of not paying therefor, and of defrauding the vendor thereof, which intention must exist in making the purchase, that the law pronounces the transaction voidable at the option of the vendor. And, therefore, if the jury believe, from the evidence, that the grain sold by Kennedy to Sweet was purchased by Sweet in good faith, and with no intention, at the time he made the purchase, of defrauding Kennedy thereof, then they should find for the defendant."

14th. "In order for a vendor to recover from his vendee the possession of the property so sold, on account of fraud, the fraud must be such as would justify a conviction for obtaining goods under false pretenses, and, in this State, no person can be so convicted in cases of sales made for cash on delivery, hence, if the jury believe, from the evidence, that the sale by Kennedy, to Sweet was a sale for cash on delivery, the plaintiff cannot recover, on the ground of fraud, in this case."

127. 15th. "In cases of conditional sale, the condition may be waived by the vendor. Thus, in case of a sale for cash on delivery, if the property is delivered absolutely without payment, and the vendor, after such delivery, and without attempting to reclaim his property, endeavors to collect the purchase money therefor, as in an ordinary case of indebtedness, this is evidence from which, in the absence of other testimony, the jury may infer a waiver of the condition, and both the right of property and the right of possession become vested in the vendee. And, therefore, if the jury believe, from the evidence, that the grain in question, though originally sold to be paid for on delivery, was delivered without payment, and that the plaintiff treated the price agreed to be paid therefor as a debt due from Sweet to him, and relied upon Sweet, and gave him credit for the purchase money, instead of seeking to recover the property, he has, thereby, waived the condition, and cannot recover in this action."

126. Which instructions, or any or either of them, the Court refused to give, and the defendant excepted.

127. The jury thereupon found the following verdict:

"We, the jury, find the defendant guilty—damages assessed to one cent. We also find the property in the plaintiff."

128. And defendant moved for new trial, because—1. The verdict was against the law and the evidence; 2. and against the law; 3. and the weight of evidence; 4. That the Court erred in refusing defendant's instructions—and each of them; 5. and in admitting incompetent testimony offered by plaintiffs; 6. and in excluding competent testimony on behalf of defendant, particularly the books of W. H. Dole & Co., to prove the amounts contributed by each of the parties to the capital stock of the firm; 7. and for other reasons.

Which motion was overruled, and defendants excepted,
129. and moved in arrest of judgment, because, 1. The verdict was void; 2. And so uncertain and imperfect that judgment cannot be rendered thereon; 3. Because said verdict is not found upon all the issues in the case; 4. And the Court cannot know from said verdict what judgment to render; 5. And for other reasons.

Which motion was overruled and judgment entered on
130. the verdict, to which defendant duly excepted.

Bill of Exceptions duly signed, sealed and filed, June 28th, 1864.

Certificate of Clerk.

ERRORS ASSIGNED.

1. That the Court erred in the admission of incompetent evidence on behalf of plaintiff below, and overruling defendant's objections thereto.

2. That the Court erred in excluding competent testimony offered on behalf of defendant below.

3. That the Court erred in giving plaintiff's instructions, and each of them.

4. And in qualifying defendant's instructions, 7th and 18th, and refusing to give them, and each of them, without qualification.

5. And in refusing to give defendant's 8th, 12th, 14th, and 15th instructions.

6. That the Court erred in overruling the motion for a new trial of defendant below; and

7. In overruling the motion in arrest of judgment of defendants below.

8. That the judgment was for the plaintiff below, and against the defendant below, when it should have been in favor of defendant below, and against plaintiff below.

FULLER, HAM & SHEPARD,
Attorneys for Plaintiff in Error.

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Supreme Court Illinois

William H. Dole

Impleadt &c

vs

Laurence Kennedy

Abstract

Filed Apl 20. 1865

L Leland Clk

In Supreme Court of Illinois

April Term, A.D. 1865

Jno. H. Dole, impleaded &c

v

Lawrence Kennedy

Reply to argument of Defts. in Error.

Reserving some slight comment on the facts rendered necessary by the introductory statement of the Counsel for Defts. in Error, I proceed to consider

First Whether the verdict was sufficient in law

We are met on the ~~threshold~~ of this inquiry by the fact that the verdict recorded and the verdict actually returned are different.

If the "guilty" as filed to the eighth Count only then the verdict recorded is not the verdict found, yet it is the verdict upon which the judgment is rendered.

It is urged by the Defts. &

that the verdict covers the whole case. That is to say, that "guilty & one cent damages" may be applied to the issue of "non cepit" & that of "not guilty" on the 1st over count.

Is this possible? Can one cent damages stand for nominal damages for the wrongful caption and detention of 800 bushels of wheat and as substantial damages for the conversion of 600 bushels?

In Brown v Smith 3 Cainer Reports 80, 81 it was held that judgment could not go for one mill because there was no such currency - Perhaps this under the New York statute there cited -

But can this cent be divided & fair mills appropriated to each issue?

There is however a fatal objection to this application of the verdict - If the defendant Dole (Plff. in Error) was acquitted on the trover count he is entitled to his costs -

In the last case cited in Bacon's Abridgment under the title "Verdict", 10 Vol. p. 364 it is stated "when the Plaintiff succeeds in trover only as to part of his claim, the defendant has a right to have the verdict entered distributively".

By the 19th Section 26th Chapter Revised Statutes one of several defendants acquitted in trover, replevin &c, &c, "shall recover his costs of suit."

The case at bar presents the anomaly of two cases in one (two single Gentlemen rolled into one) but so far as this question of costs is concerned

they are to be treated as two suits & if Dole were really acquitted he is entitled to his costs -

The Counsel for Defendant in Error anticipating this objection cites the 9th section of the 26th Chapter Revised Statutes & says the Plaintiff in Error should have moved for an apportionment in the Court below

That section provides that where a verdict on any issue joined is found for Defendant, costs in the discretion of the Court may be apportioned & but it is not applicable for if any client was acquitted, he is entitled under the 10th section to his costs in any event & without reference to the Court's discretion -

These suggestions indicate that the position of the Plaintiff in Error is sound, viz: that the verdict is void because argumentative & uncertain and because it does not respond to all the issues -

In Semple vs Hoileman 3 Gilman 131 on page 133, it is held that "a verdict which finds part only of

the issues, is void as to the whole"

"Numerous other authorities" says the Court, "might be mentioned to show that the finding must be as broad as the issues, otherwise no judgment can be pronounced upon it but it is unnecessary - The proposition is too clear to admit of doubt - It necessarily results from the nature of the case"

And the Court will observe that Temple v Hailman was a suit where there was no finding on one of the counts of the declaration -

But my learned friend says that if the verdict as recorded (Abst. 2 R.17) is bad, which finds Defendants guilty of detention, still that verdict is correct because where the writ & declaration are in the capit & detinet the Plaintiff is entitled to recover for detention only - That the plea of non capit presented an immaterial issue which may be disregarded -

But such is not the case - The plea of non capit is an immaterial issue only where the Plaintiff sues

his writ for the detention only and his writ & declaration are according to Boyce v Downer, 9 Wisconsin 246

My friend cites the case of Ames v Sinnott 4 Gil. 448 as deciding the plea of non cepit to be immaterial what was the action in that case? Chief Justice Young delivering the opinion of the Court says (page 442) "This was an action of replevin commenced by Sinnott against Ames in the Clinton Circuit Court for the wrongful detention of a two horse wagon & harness" The Plaintiff filed his declaration "in the usual form for a wrongful detainer"

Thus we perceive that the action was entitled in the detinet & by course the plea of "non cepit" was immaterial

I know that on page 445 the Language of the Court might seem to sustain the position of Defts. in Error but there is nothing there really inconsistent with the point we make - The Court says p. 445 - "This statute enlarges

the common law remedy, as well as the remedy given by the act of 1827 and extends it to a wrongful detention only" but by this the Court mean merely to say that the remedy is extended (not confined) to cases where in fact there has been only a wrongful detention -

Gotlieb v Henry 14 Ill. 384 is cited but that was a case where the verdict was for the Defendant on the plea of property & of course covered all the issues because the Plaintiff could not thereupon recover & the finding involved passing upon all the other issues -

Woodward v Woodward 14 Illinois 466 has no application whatever -

Walpole v Smith, 4 Blackford 304 is inapplicable - The action says the Court "is founded upon the statute & the declaration properly conforms to the modified character of the remedy - The unlawful detention is the gist of the action - Non cepit tenders an immaterial issue - It was properly excluded by the Court - Non detinet is the proper

general issue in this form of replevin"

Marston v Baldwin 17 Mass. 605 has no bearing - It simply decides that "Replevin lies for goods unlawfully detained although there was been no tortious taking"

whether that was good law or not in Massachusetts at the date of the decision, it is certainly good law ~~here~~ in this State but it has no application to a case where as here the Common law remedy for a capture as well as detention, has been pursued —

The position of Pl. in error that the plea of non cepit was a material issue stands unaffected by these citations.

My learned opponent says however that applying this verdict to the issues as the replevin count only as seems the most probable application upon the facts, the verdict is equivalent to an acquittal on the count in trover as the cites

Slotts vs The People, 4 Scam. 168 &
Wildermans v Bandusky, 15 Ill. 59

In the first of these cases (Stolz v People) there was a finding of guilty on the first count and no finding on the second count Held (Treat J. delivering the opinion) that the verdict should be regarded as an acquittal on the second count -

In the other case (Wilderman v Sandusky) three persons were found guilty in an action of trespass & no finding as to the fourth defendant - Held that this was sufficient - Treat, C.J. delivering the opinion

Now in the first place the Court will perceive that in neither of those cases was the verdict of such a character that the Court could not know what judgment to enter - In one was a specific verdict on one count - the other was a specific verdict of acquittal as to certain defendants. In neither case could there be any reasonable doubt as to the intention of the jury - While in the case at bar it is impossible to tell what issues are found what not -

In the second place the case of

Stolz v People was a criminal case - Under our Constitution a party charged can not be twice put in jeopardy - Where therefore he has been once tried & a verdict rendered only on one count of the indictment, the absence of a verdict on the other count, would be equivalent to an acquittal - Every intendment is to be taken in favor of a defendant under such circumstances & the presumption is that he is found innocent of that of which he is not found guilty

So in Wildeman et al v Sandusky, to find affirmatively the entire issue as to three of the defendants might well be held a negative finding in favor of the other - The three could not complain as the action was trespass & either or any of the parties might be convicted or acquitted & they could not enforce contribution from their co-defendant -

As to the appellants in that case, it did not lie in their mouths to raise the objection -

And in this connection we call the attention of the Court to the fact that Mr. Justice Beat dissented concurred in the decision arrived at in Beaple

vs Hallman, 3 Gilman 133, and which disposes of the point in our favor - This indicates that the Court saw no inconsistency between the latter case and the conclusion arrived at in Stolz v The People.

This error can not be corrected in this Court

Semple v Hallman, 3 Gil. 133

II. The books of W. H. Dole & Bro. were clearly admissible for the purpose for which they were offered -

Dole & Sweet were in partnership from May 1862 to Nov. 17, 1862 in the milling business - On the 17th November 1862, they dissolved partnership & Dole sold out his interest in the mill and fixtures for $7,350 - $1,350 cash & $6,000 in notes -

On that day the mill & fixtures were worth $7,500 or thereabouts -

On the 28th day of January 1863, Dole repurchased the mill & fixtures & the grain on hand, of Sweet, which grain included as Defts. own

insist, the grain in question in this case - For the grain & mill & Dole gave to Sweet some $11.000, that is, one $5000 for mill & the balance for the grain and as part consideration surrendered to Sweet the $6.000 he held against him -

In attacking the sale of Jan. 28/63 as fraudulent, the signing was necessarily involved as to the good faith of the sale of Nov. 17th 62 as more than half of the consideration for the sale of January 28th grew out of that of Nov. 17th -

In the absence of proof the presumption of law was that Dole & Sweet were equal in capital stock, profits &c and so the Court below instructed the Jury (Record page 115 Abstract p. 21) at the instance of the Defs. in Error

Hence the mill & fixtures belonged presumptively to them equally on the 17th day of November; how then did it happen that Sweet paid Dole for one half interest in the mill & fixtures the value of the whole? Now to be able to

answer this inquiry would be almost necessarily fatal to the bona fides of both the sales -

Yet the Court excluded the book which showed as it admitted by its statement & the offering them in evidence, that Dole put in $7,500 & Smart $126. and that consequently on the 17th November, Dole's ~~acting~~ interest was actually the whole interest -

p. 20 abstract
Rec. p. 111

It will be perceived that this evidence was not only material but vital As the case stood the Jury might well have believed Dole as well as Smart guilty of fraud & that there was some connection of a fraudulent character between the two sales -

It is impossible to conjecture upon what ground these books were excluded My learned friend says "They might be used against, but not for, the Plff. on this question"

I am sure I do not know why - If there had been partnership articles setting forth the amount contributed by each, they would have been admitted - So would their oral declarations -

Jones as my learned friend says they "had no connection with the ownership of Dairies" but they were material nevertheless as on the amounts each contributed during the question of the sale of Dec. 17 as we have just seen —

But the Counsel says they were "not the best evidence". If as Andrews said, they showed correctly the amount each contributed, he must have known this fact independently of the books, & it should have been called out from him"

This is, not a fair argument as influenced from the testimony of Andrews — He says (on page 16 Abstract 70 of Record) on Cross-Examination: "I went to Dole Bro's in June '62" —

He could not therefore know as in fact he did not, what each contributed — If he had known, it would not have been as good evidence as the books for it would have been knowledge acquired from their declarations which the books contained in the more satisfactory form of entries

entries

~~declarations~~ -

Andrews did not say the books showed correctly what the parties contributed - Speaking with the books before him, he says (abstract top 16) "They show what Dole put in to the capital of Dole & Co & what Sweet did - I have found them correct in nothing by them"

Counsel makes the broad assertion that "there was no evidence showing when these entries were made; whether in the usual course of business or only preparatory to the trial; nor that any capital stock was, in fact, contributed by Dole or Sweet."
I ask this Court to consider the evidence -

Andrews says page 14 abstract 64 of record, "I did not keep the books for Dole & Sweet - Dole kept them - The firm was Dole & Co. They had no book keeper - (ledger, Cash book & day book shown witness) These are the books of W. H. Dole & Co & were kept by Dole for the firm - Have looked by these & known them"

On page 16 of abstract he says: "These

books were kept by W. H. Dole for W. H. Dole & Co. They had no book keeper - They are in his handwriting. They show what Dole put in to the Capital of Dole & Co. & what Lovell did. I have found these books correct in adding by them - They terminate Nov. 17 '62 -"

And in Cross-Examination on page 17 & Abstract 71 & record) he says "The books of W. H. Dole & Co. were perfectly reliable - I have added by them & know them"

Now here is evidence showing that these were a regular set of books, kept regularly from day to day (that is the legitimate inference) by Dole for the firm which had no book keeper & terminating Nov. 17/62 when the firm dissolved - that they were kept correctly & were perfectly reliable - This all shown by a man who had settled by them & knew them -

Can a doubt linger in the mind of the Court as to the them

Record Book Ledger, Cash book & Day book were got up "preparatory to the trial"?

The witness testified they "were kept" by Dole & these words carry a conclusion drawing - He says he has settled by them - How could he if got up for the occasion?

Evidently there were the regular books of the concern, kept & closed long "before suit was instituted, & before it could be known that any contest would arise, at a time when no motive is perceived why false statements should have been made" 28 Pac. 501

Their truthfulness is sustained by the facts attending the sale & Nov. 17/92 & by the testimony as to the purchase & the Engine by Dole - his payment of $2,500 to Trinity &c, &c -

I don't know how to argue this point because it seems so plain with me -

The rule is that this Court will not disturb a verdict as against the evidence unless very flagrantly and overwhelmingly so - Nor will a verdict be set aside for the

rejection of proper testimony if the admission could not have effected the merits of the cause or influenced the verdict of the Jury

While I concede that in a closely contested suit like this at bar the Court will not set aside the verdict as against the evidence even though the Court believes it should have been given the other way, yet I insist that the admission of so material a vital a fact as the production of Capital stock owned by the partners Nov. 17/12 must necessarily have influenced the verdict of the Jury — if that verdict had still been against us, it would have to be set aside.

With that fact proven the verdict could never have gone against the Defendants — without it, the verdict can not be said to be against the weight of evidence —

III. The Evidence

The extraordinary statement by Defts's Counsel as to the facts in this case renders it absolutely necessary for me to say a few words upon them — I wish to place

the cause of my client, Mr Dole, so clearly before the Court that the points I have taken against this judgment may not be forgotten in the supposition that his defence had no merits -

Dole & Sweet went into partnership May '62 in the milling business - Dole put in $7,500 - Sweet put in only $126 but Sweet was a practical miller which Dole was not - Dole also paid other money for the concern £2,500 to Sunday (etc.) Nov. 17, 1862 the mill & pictures were worth rising $7,500 & there was some $1850 worth of grain in the mill belonging to Dole -

On that day Dole sold to Sweet the mill & pictures for $7,350 - $1350 in cash & the balance $6000 in note secured by a Chattel mortgage -

After the sale Dole advanced from time to time to Sweet small sums of money amounting in all to $1,050 - It was the non payment of these that caused Dole to try & get a settlement & June 28th

During the time that Sweet had the

Abstract
10, 11, 15

mill, business was extremely good & the market advancing —

On the 28th day of January 1863 Dole tried to get Sweet (as he had often tried before as the evidence shows) to settle with him — Sweet said he owed when he sold his flour — Dole told him he had often told him that before — (It turned out afterwards that Sweet had drawn against this flour to within $5 of its full value See Quinby's testimony) After a good deal of loud talk, Sweet ~~agreed~~ offered to sell Dole the mill & fixtures & the grain in it for the claims he, Dole, had against him (Sweet) & $1,500 cash & Dole took him at his offer — The grain was put at its market price — Dole agreed to pay the rent for the time Sweet had had the mill — The consideration of the sale was as follows: Sweet owed Dole

On mill & fixtures	$ 6.000
on two small notes	$ 750
Cash borrowed two note	$ 300
Warehouse receipt	$ 1.850
	$ 8.900

Amount up $8.900
Dole paid rent 5 25
Abstract Page 11 Cash - Remainder 1.500
Total $10.925

Abstract p. 11 when Dole agreed to the offer he told Sweet he did not have the money ($1500), with him but would pay it in a few days & would give him a due bill then which he did - The reason Dole did not pay this immediately after, was that Sweet ran away & Dole did not know where the due bill was - Subsequently he was garnished on attachments against Sweet & when the note turned up four months afterwards in the hands of a man residing in Indiana, Dole agreed Abstract p. 18 to pay upon the advice of his Counsel that he might be compelled to pay it over again if Sweet had not transpired it in good faith as appeared probable -

Part of the grain in question in this suit was among the grain that Dole purchased - (about 69 4/60 bushels as will hereafter be seen through the plaintiff got 87 35/60 bushels on his suit)

Kennedy replevied and claims that

the sale from Sweet to Dole was fraudulent

To sustain the charge the Plaintiffs below endeavored to prove

1st That the mill was filled unusually full of grain the last week of January 1863

It was shown by Dole that this was not so - that the mill had been as full before and afterwards

By Geymer, Abstract fo. 13; By Thomas Jones, fo. 14; Anderson, fo. 15; Fuller fo. 18; Dunlavy fo. 19

and that the market was an advancing one

2d That grain was put in the cellars (which were in bad condition) because the mill was so full of grain

Dole proved that the grain in the cellars was but small in amount & put there because the elevators had broken down

Anderson, Abstract fo. 15; Geymer fo. 12; Jones, fo. 14

And that cellars were in good condition where the grain lay -

3d That Dole stayed around the mill after he sold to Sweet Nov. 17/02 and has since been there [illegible]

Dole proved that he occasionally went to the mill on his way down town to read the newspapers & that he was engaged in teaming & getting up a model for a dryer on which he afterwards got a patent

Abstract p. 6 p. 22 -

4th That Sweet was not to be found for several days up to Sunday Jan. 28th

This was disproved by some of Kennedy's own witnesses & by several of Dole's -

Boynton, p. 4; Quinby p. 17; Brown, p. 17; Jones, p. 18; Miller, p. 18; Shinn, p. 14; Floyt, p. 6

5th That Dole & Sweet were seen together on the Board of Trade together after Dole sold to Sweet in November -

The testimony is conflicting on this which is an immaterial point -

6th That Dole repurchased Boynton's corn -

Boynton ~~sold~~ sold some corn (about 300 bushels) to Sweet about noon of Jan. 28th - Dole bought

sweet out the same day –

When Dole saw all his grain going out & the mill leaving him without any & heard Boynton's statement that he had sold it about that very day, he said he might as well buy that as any as he'd got to have some to run his mill –

This showed his simplicity but not his rascality – The Boynton corn evidently has been recrecked for the explosion –

Abstract Page 5

7th That Dole left some of the Boynton corn down on to some other corn –

This is untrue – After Dole repurchased it, the men putting it back into the mill did pour some down the usual spout that they poured all the corn through & it fell upon a board that Deputy Sheriff Nelson had levied on – It was entirely accidental & unknown to Dole, who when he heard of it, put a stop to it –

Nelson, p. 91 Geymen, p. 12

8th That Dole urged Sweet to "buy"
on Board of Trade
This is proven by Whitemore in a
single instance & that evidently
a mere casual & portin remark
of Dole's without the slightest intention
of giving serious advice —

These are all the points that were
accen to me or made on the
trial as indicative of fraud — They
were all either disputed or consistent
with honest intention — It was throughout
a closely contested & well balanced
case — Without wearying the Court
with recapitulation I ask the
careful perusal of the testimony
on both sides — Perhaps this is
unnecessary as the points I rely
on do not call for a general
discussion of the merits of the
case —

The verdict was in any event
against the evidence —
Mr Kennedy's wheat amounted in
all to 14619 $\frac{03}{60}$ bushels which was
what he claimed in the replevin —
Of this number of bushels he sold

Abstract pd

$871\frac{55}{60}$ bushels on the writ of replevin, leaving $597\frac{28}{60}$ bushels for which he sought a recovery in trover.

Abstract p. 10

As shown by the weight tickets of Kennedy, 33.473 lbs. of wheat were received from Kennedy on Jan. 21st & 23d, viz, 16.688 lbs. Jan. 21st + 16.785 lbs Jan. 23d - 33.473 lbs = $55\frac{53}{60}$ bushels

On the 24th 15.390 lbs. were received or $256\frac{30}{60}$ bushels

Plf's witness Flaput (abstract p. 20) & Defd's witness Seymer (p. 12) & Andrews (p. 15) testify that the mill stopped the night of the 23d for want of Spring wheat. (Kennedy's was Spring) Seymer means that all that Kennedy delivered the 21st & 23d was ground out (of course it was) and some more - Andrews means (p. 15) that all delivered Jan. 21st, Jan. 23d & 24th was ground out the time find:

Whole No. of bushels	1469.03
Ground out before Jan. 25th	814.23
Leaving	$654.\frac{40}{60}$ bushels

which is all that in any event could have been in the mill on the 28th of January & the wheat Kennedy had delivered & probably more was ground out on the 26th

Thus not only could no recovery be had on the seven count but Kennedy has actually recovered on the Ophelia count 216 55/60 bushels more than he was in any aspect of the case entitled to - Thus:

He had 1469.03 of which
814.28 had been ground out

Leaving 654, 40/60 bushels in the mill - He took on his exhibit however 871 35/60 or 216 55/60 bushels of somebody else's wheat -

This verdict is directly in the teeth of the evidence & shows an evident unreasonable caprice on the part of the jury -

The testimony is very conclusive - Bebing, Day Miller, swears the mill did not stop in the 230 hr course of grain (He don't say what kind. The mill was running on Spring Wheat at the time)

Flagut Night Miller says it did - These are both Plaintiff's witnesses & seem to balance each other

except that Flagg had the best means of information —

Geymer & Anders both testify that it did rain the night of the 23d they had to send kept moving for a load of wheat to 44 Franklin Street & the weight bears out their statement

Had I the time and did I deem it necessary to weary the patience of the Court by a recapitulation of the evidence, I think I could make it plain that the verdict might quite as well have resulted otherwise — I have said what I have on the subject to indicate that the exclusion of the books operated disastrously to my client, Mr. Dole —

And the verdict on the replevin Count, issue of property, was clearly erroneous as to $1\frac{55}{60}$ bushels of wheat & judgment ought to be reversed for that reason alone

J. W. Fuller

For Pltff in Error

Supreme Court 1875

1875

152

W. H. Doble

v.

L. Kennedy

Reply to Defts' answer

Filed April 27. 1875

L. Leland

Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable Erastus S Williams Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the third Monday, (being the fifteenth day) of February in the year of our Lord One Thousand Eight Hundred and Sixty four and of the Independence of the said United States the Eighty Eighth

Present, Honorable Erastus S Williams Judge of the 7th Judicial Circuit of the State of Illinois.

Joseph Knox States Attorney.

David S Hammond Sheriff of Cook County.

Attest, Wm L Church Clerk.

Be it remembered that heretofore to wit on the 29th day of January A D 1863 Lawrence J Kennedy by Messrs Bailey Gary & Williams his attorneys filed in the Court aforesaid his certain affidavit in the words & figures following to wit.

State of Illinois
County of Cook SS.

I Lawrence Kennedy of Chicago Illinois on oath say that I am the owner of the following described property namely. Fourteen hundred and sixty nine bushels and three pounds of Spring wheat, of the value of thirteen hundred dollars, and am now lawfully entitled to the possession thereof.

That said wheat has been wrongfully & unlaw-

2. fully taken and is now wrongfully and unlawfully detained by one William H Dole and Rufus C Sweet of Chicago aforesaid. That said wheat has not been taken for any tax assessment or fine levied by virtue of any law of this state; nor seized under any execution or attachment against the goods and chattels of this affiant liable to execution or attachment. Chicago Dany 29th 1863.

L. Kennedy.

State of Illinois, Cook County 88.

Subscribed & sworn to this 29th day of January A D 1863 before me

Wm L Church Clk

And thereupon afterwards towit; on the day and year last aforesaid there issued out of the office of the clerk of said court and under the seal of said Court, the Peoples certain writ of Replevin directed to the Sheriff of said County to execute & clothed in the words and figures following towit.

State of Illinois } SS.
Cook County }

The People of the state of Illinois to the Sheriff of said County, Greeting:

Whereas Lawrence Kennedy Plaintiff complains that Rufus C Sweet and William H Dole Defendants unlawfully and wrongfully has taken and does detain the following described goods

and chattels to wit: Fourteen hundred and sixty nine bushels & three pounds of spring wheat of the value of Thirteen hundred Dollars.

Therefore, We command You, That if the said plaintiff shall give you bond with good and sufficient security in double the value of the said goods and chattels as required by law, to prosecute his suit in this behalf to effect and without delay, and to make return of the said goods and chattels, if return thereof shall be awarded, and to save and keep you harmless in replevying said goods and chattels, you cause the said goods and chattels to be replevied and delivered to the said plaintiff without delay; and also that you summon the said defendants to be and appear before the Circuit Court of Cook County on the first day of the next term thereof, to be holden at the Court House in the City of Chicago, in said County on the Third Monday of February next, to answer said plaintiff in the premises. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same together with the bond which you shall have taken from the said plaintiff as before commanded, before executing this writ

(L S) Witness, William L Church Clerk of our said Court, and the seal thereof, at

Chicago in said County the 29 th day of January 1863.

Wm D Church Clerk.

And afterwards to wit. on the 21st day of February in the year last aforesaid, said writ was returned into the Court aforesaid by said Sheriff endorsed as follows and with a bond attached in words & figures following to wit

The Plaintiff having giving bonds as herein directed I did on the 30th and 31st days of January 1863 Deliver to the Plaintiff Eight hundred and Seventy one 35/60 bushels of the within described wheat the Ballence of the wheat not found the receipts for the above amount his hereon Endorsed and also served this writ by Reading to the within named Defendant William H Dole the other within named defendant not found in my county.

David S Hammond Sheriff
by Wm Wayman Deputy.

Rec Chicago January 30th 1863 of David S Hammond Sheriff per Wm Wayman Deputy Sheriff 731 35/60 Bushels of Spring wheat as part of the property specified in the within writ.

L Kennedy.

5 Rec'd Chicago January 31st 1863 of David S Hammond Sheriff per Wm Wayman Deputy Sheriff 139 45/60 bushels wheat as part of the property specified in the within writ.

L Kennedy.

Know all men by these presents, that we Lawrence Kennedy and Martin Mahoney are held and firmly bound unto David S Hammond Sheriff of the County of Cook in the state of Illinois, and to his successors in office, executors administrators and asigns, in the penal sum of twenty six hundred dollars, lawful money of the United States for the payment of which sum we do hereby jointly and severally bind ourselves our heirs, executors and administrators.

The condition of this obligation is such, that whereas on the 29th day of January in the year of our Lord one thousand eight hundred and sixty three the said Lawrence Kennedy sued out of the Circuit Court of Cook county, a writ of Replevin against Rufus C. Sweet & William H Dole defendant, for the recovery of the following described goods and chattels, property, viz:

Fourteen hundred and sixty nine bushels and three pounds of spring wheat of the value of Thirteen hundred Dollars.

5

Now if the said Lawrence Kennedy Plaintiff shall prosecute his suit to effect and without delay, and make return of the said property, if return thereof shall be awarded and save and keep harmless the said Sheriff in replevying the said property then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this 29th day of January A.D. 1863.

L. Kennedy. (Seal.)

Martin Mahoney (Seal.)

And afterwards towit: on the said 21 day of February in the year last aforesaid said plaintiff by his said attorneys filed in the Court aforesaid his certain declaration in said cause in words and figures following, towit:

State of Illinois } Ss.
Cook County }

In the Circuit Court of Cook County of the February Term A.D. 1863.

Rufus C. Sweet and William H. Dole, the defendants in this suit were summoned to answer Lawrence Kennedy the plaintiff in this suit of a plea wherefore they took the wheat of the said plaintiff and unjustly detained the same against sureties and pledges until &c and thereupon the said

Lawrence Kennedy by Bailey, Gary & Williams his attorneys complains.

For that the said defendants on the 28th day of January A.D. 1863 at said County of Cook, took the wheat to-wit Fourteen hundred and sixty nine bushels & three pounds of wheat of the said plaintiff of great value to-wit of the value of Thirteen Hundred Dollars and unjustly detained the same against sureties and pledges until &c

And further according to the statute in such case made and provided the said plaintiff complains (the above mentioned wheat not having all been taken by the sheriff on the writ in this case)

For that whereas the said plaintiff heretofore to-wit on the 28th day of January A.D. 1863 at said county was lawfully possessed as of his own property of certain goods & chattels to-wit Fifteen hundred Bushels of wheat of great value to-wit of the value of Fifteen hundred dollars, and they being so possessed the said plaintiff afterwards to-wit on the day & year last aforesaid at said county casually lost the said last mentioned wheat out of his possession and the same afterwards to-wit on the day & year last aforesaid at said county, came to the possession of the

8 said defendants by finding yet the said defendants well knowing the said last mentioned wheat to be the property of the said plaintiff and of right to belong and appertain to him, but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf have not as yet delivered the said last mentioned wheat or any part thereof to the said plaintiff, although often requested so to do, and have hitherto wholly refused so to do - And afterwards towit on the day & year last aforesaid at said County converted and disposed of the said last mentioned wheat to their own use.

Wherefore the said plaintiff saith that he is injured and hath sustained damage to the amount of two thousand dollars & therefore he brings this suit &c.

Bailey, Gary & Williams
Plffs attys -

And afterwards towit: on the 27th day of March in the year last aforesaid said said defendants by Messrs Fuller & Ham their attorneys filed in the Court aforesaid their certain Pleas to said plaintiffs said declaration in said cause in the words and figures following towit:

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State of Illinois
County of Cook ss.

Circuit Court of Cook County March Term A.D. 186

William H. Dole impleaded
with Rufus C. Sweet
ads
Lawrence Kennedy

And the said defendants impleaded &c by Fuller & Ham his attorneys comes and defends the wrong and injury when &c and says that he did not take the said wheat, to wit fourteen hundred and sixty nine bushels & three pounds of wheat, goods and chattels of the said plaintiff in the first count of the said declaration mentioned, or any part thereof in manner and form as the said plaintiff hath above thereof complained against him and of this the said defendant impleaded &c puts himself upon the country &c.

Fuller & Ham.
Attys for Deft Dole.

And for a further plea in this behalf the said defendant impleaded as aforesaid by leave of the court here for this purpose first had and obtained says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that the said wheat to wit fourteen

hundred and sixty nine bushels and three pounds of wheat goods and chattels in the said first count of the said declaration mentioned, at the said time when &c, was the property of the said defendant impleaded as aforesaid and not of the said plaintiff as by the said declaration is above supposed. And this the said defendant impleaded &c is ready to verify: Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, and he also prays return of the said wheat to the fourteen hundred and sixty nine bushels and three pounds of wheat goods and chattels, together with his costs in this behalf according to the form of the statute in such case made and provided to be adjudged to him &c.

Fuller & Ham

Attys for deft Dole.

And the said defendant impleaded as aforesaid by Fuller & Ham his attorneys, comes and defends the wrong and injury when &c and says that he is not guilty of the said supposed grievances as in the said second count of the said declaration against him is above laid to his charge or any or either of them or any part thereof in manner and

forma as the said plaintiff has above thereof complained against him. And of this the said defendant impleaded &c puts himself upon the country &c

Fuller & Ham
Attys for deft Dole.

State of Illinois
County of Cook SS.
Circuit Court of Cook County March Term AD 1863

Rufus C Sweet impleaded
with William H Dole
ads
Lawrence Kennedy

And the said defendant impleaded &c by Fuller & Ham his attorneys, comes and defends the wrong and injury when &c and says that he did not take the said wheat goods and chattels, of the said plaintiff in the said first count of the said declaration mentioned or any part thereof in manner and form as the said plaintiff hath above thereof complained against him and of this the said defendant impleaded &c puts himself upon the country &c.

Fuller & Ham
Attys for deft Sweet

And for a further plea in this behalf the said defendant impleaded as aforesaid by

12 12 leave of the court here first had and obtained, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him Because he says that the said wheat goods and chattels, in the said first count of the said declaration mentioned at the said time when &c, was the property of one William A Dole, and not of the said plaintiff as by the said declaration is above supposed And this the said defendant impleaded &c is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him. And he also prays return of the said wheat, goods and chattels, together with his costs in this behalf according to the form of the statute in such case made and provided to be adjudged to him &c.

Fuller & Ham
Attys for Deft Sweet.

And the said defendant impleaded as aforesaid by Fuller & Ham his attorneys comes and defends the wrong and injury when &c and says that he is not guilty of the said supposed grievances in the said second count of the said declaration above laid to his charge or any or either

13 of them or any part thereof in manner and form as the said plaintiff has above thereof complained against him and of this he the said defendant impleaded &c puts himself upon the country &c.

Fuller & Ham.

Attys for deft Sweet.

And afterwards to wit on the 14th day of September, in the year last aforesaid said plaintiff by his said attorneys filed in the Court aforesaid his certain Replication to said defendants pleas in said cause in words and figures following, to wit:

State of Illinois
County of Cook SS.
Circuit Court of Cook County.

Lawrence Kennedy
vs
Rufus C Sweet &
William H Dale

13/

Had said Plaintiffs as to said pleas of said Sweet whereof he puts himself on the country does the like

Bailey Gary & Williams.
Plffs Attys.

Had said Plaintiffs as to said pleas by the said Dale above pleaded whereof he has put himself on the country does the like.

Bailey Gary & Williams Plffs Atty.

14 And said Plaintiffs as to said plea by said Dole. secondly above pleaded says precludi non, because he says that said wheat in said first count in said declaration mentioned at the said time when &c was the property of the said plaintiff & not the property of the said Dole and this he prays 14. may be required of by the country

Bailey Gary & Williams
Plffs Attys.

And said Plaintiffsas to said plea by the said Sweet secondly above pleaded says precludi non. because he says that said wheat in said first county in said declaration mentioned at the said time when &c was the property of the plaintiff & not the property of the said Dole. And this he the plaintiff prays may be enquired of by the country &c.

Bailey Gary & Williams
Plffs Attys.

And afterwards to wit, at the January term of said Court to wit: on the 14th day of January A D 1864 the following proceedings among others in said court, were had and entered of record in said cause to wit: ~~Again~~ This day ~~come the said Plaintiff by Bailey Gary and Williams his attorneys and the said Defendants by Fuller and Ware their attorneys~~

Lawrence Kennedy
vs
Rufus C. Smith and
William H. Lee

Replevin

This day again come the said Plaintiff by Bailey Gary and Williams his attorneys and the said Defendants by Fuller and Hamm their attorneys also come and issue being joined herein it is ordered that a jury come. Whereupon come the following of a jury of good and lawful men to wit: William Meadows A Hawkins E Langley Charles Brandorf P Stemmilliver D. L. Simpson John A Ballard ~~E W Ballard~~ E W Barney Eli Timmerman Louis Baker Charles Sauter and Leander Ewer who being duly elected tried and sworn well and truly to try the issue joined aforesaid and a true verdict render according to law and the evidence and after hearing a part of the evidence the hour of adjournment having arrived by consent of said parties said jury is allowed to separate to meet the Court at ten o'clock tomorrow morning to which time the further hearing of said cause is now adjourned. And afterwards to wit at the January term of said Court to wit: on the 15th day of January A.D. 1869 the following proceedings among others in said Court were had and entered of record in said cause to wit

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Lawrence Kennedy
vs
Rufus C. Smith and

William McLeod } Replevin

This day again come the said parties by their Attorneys and the Jurors of the jury aforesaid also come and having heard further testimony in said cause, the same not being closed and the hour of adjournment having arrived by consent of said parties said jury is allowed to separate to meet the Court at ten o'clock tomorrow morning to which time said cause is now adjourned. And afterwards to wit at the January term of said Court to wit: on the 16th day of January A.D. 1869 the following proceedings among others ~~then~~ in said Court were had and entered of record in said cause to wit:

Laurence Kennedy }
vs } Replevin
Rufus C Sweet and }
William McLeod }

This day again come the said parties by their Attorneys and the Jurors of the jury aforesaid also come and having now heard all the evidence and arguments of Counsel adduced by the said parties and instructions from the Court retire to consider of their verdict with the further instruction given by consent of said parties to sign and seal up their verdict when they shall have agreed upon the same and return it into Court at ten o'clock on Monday morning next. And afterwards to wit at the January term of said Court to wit: on the 18th day of January A.D. 1869 the following proceed-

ings among them in said Court were had and entered of record in said Cause

Laurence Kennedy
vs
Rufus C. Short and
William H Lobb
} Replevin

This day again come the said parties by their Attorneys and the Jury aforesaid having agreed upon and sealed their verdict return into Court and say, "We the Jury find the issue of property for the Plaintiff and find the Defendants guilty of unlawfully detaining the same from the Plaintiff and assess the Plaintiff's damages by reason of the premises to the Sum of One cent" Whereupon the said Defendants by their Counsel here demanded that the Jury be polled and the Jurors of the Jury aforesaid being separately called and enquired of whether the foregoing verdict by them returned was and is now their verdict severally answer and say that it was and is now their verdict Whereupon the Defendants move the Court for a new trial of said Cause. And afterwards to wit: at the February term of said Court holden on the 19th day of March 1864 the following proceedings among them in said Court were had and entered of record in said Cause:

17

Laurence Kennedy
vs
Rufus C Short and
William H Lobb
} Replevin

This day again come the said parties by their Attorneys and Counsel having been heard as well in support

of the Motion of the Defendants heretofore entered for a new trial of said cause as in opposition thereto and the Court being now fully advised of and concerning the premises doth order that the said Motion be and the same is hereby overruled to which ruling of the Court in overruling said Motion for a new trial of said cause the Defendants by their Counsel now here except. Whereupon the Defendants enter their Motion in arrest of judgement, and Counsel having been heard as well in support of said Motion as in opposition thereto and the Court not being sufficiently advised in the premises takes said Motion under advisement. And afterwards to wit at the May term of said Court Towit: on the Second day of June A.D 1864 the following proceedings among others in said Court were had and entered of record in said Court towit

Laurence Kennedy
vs
Rufus C Short and
William H Cole
} Replevin

This day again come the said parties by their Attorneys and the Court having had under advisement the motion of the Defendants in arrest of judgment and being now fully advised of and concerning the premises doth order that said Motion in arrest be and the same is hereby overruled to which ruling of the Court in overruling said Motion in arrest of judgement the Defendants by their Counsel now here except, and on their Motion thirty days are allowed Defendants in which to file their bill of Exceptions. Thereupon it is ordered and considered by the Court that said Plaintiff do have and retain possession of the goods and chattels replevied in said cause. And it is further considered that said Plaintiff do have and recover of the said Defendants his damages of one cent in form aforesaid by the jury aforesaid assessed together with his costs and charges by him about his suit in this behalf expended and his Execution therefor.

19 in this behalf expended, and have execution therefor.

And afterwards towit: on the 28 day of June in the year last aforesaid said defendant by their said attorneys filed in the court aforesaid their certain bill of exceptions in said cause in the words and figures following towit:

State of Illinois } In Circuit Court of
Cook County } ss. Cook County June T 1864.

Lawrence Kennedy
vs
Rufus C Sweet &
William H Dale

19

Be it remembered that heretofore towit on the 17th day of January A D 1864 the same being one of the days of the January Term A D 1864 of said Court this cause coming on to be heard & a jury having been empanelled to try the issue joined, the Plaintiff to maintain & prove the issues on his part to be maintained & proved called as a witness John S. Linn who being duly sworn testified: I know the plaintiff & have for the last nine years. I knew a man also called himself Sweet and I know H H Dale.

The latter part of January 63 I was at Kennedy's on Kinzie street. I had a pony at Kennedy's stable. Sweet came in & talked Sweet & Kennedy boarded at the same house

Sweet asked Kennedy to go out & see some wheat of Kennedys then in Kennedys warehouse sax bags that had been spoken of between them on change. I think Sweet mentioned it first. It was bagged wheat Sweet & Kennedy came back together from the warehouse. Sweet had a handfull of the wheat in his hand He Sweet purchased that wheat that day of Kennedy & at 83 or 84 cents I think - Kennedy told me that was a leetle better than he could do anywhere else. The amount of wheat I saw was towards a thousand bushels. I saw some of it going in Kennedy's teams towards Sweets mill. I was at the mills the day the grain was relieved. I went there with Kennedy to assist him to get his grain

The Plaintiff then called as a witness Wm O Neil who being duly sworn testified. I am a teamster - I worked for Kennedy in 1862 - from 1st of November 1862 to Spring of 1863. I hauled grain to the mill of defendants in question. Sometime through the winter but dont recollect the day or week. (Certificates are here shown witness) I delivered the grain mentioned in the certificates at the South Branch Mills. Sweets mills. I was employed to draw the grain by Kennedy & was working for him at that time as teamster.

21 The Plaintiff then called as a witness
C. W. Boynton who being duly sworn testifies:
I know the parties to this suit. I reside in
Chicago. am a commission merchant & do
business at 209 South Water street. I know that
Sweet was once running the mill that Dole
is now running and very suddenly left. I
sold Sweet some corn just before his failure
& therefore know he was running the mill
I sold Sweet a cargo of corn just before he
left about the 28th January 1863. All I
know about Kennedy's wheat is that the
morning after I sold the corn I went to the
mill & found Kennedy there. Dole was
there & workmen, nothing going on men were
idle. There were some men there rolling
out flour in the presence of Dole Kennedy
said to me he had sold some grain there.
We went into the office of Kennedy de-
manded of Dole the grain he had sold &
just delivered there, Dole did not deliver
up the grain. I was there trying to get
a car load of corn I had sold to Sweet.
I got it on writ of replevin. I sold it to
Dale after I had got most of it out. I
hired men, who went into the cellar bagged
it up & got it out on the sidewalk.
Sweet was not there but Dale was I've

never seen Sweet since I sold him the car load of corn on 'change the afternoon of the sale & next morning I went there but could not find Sweet. The next day Dole was there the next day after I sold Sweet the corn this was the first time I had seen Dole I told Dole I had a car load of corn there & wanted to get it - Dole said he knew nothing about it I found it in the cellar in a dark place, working my way through beyond some bran barels &c Dole was then in possession of the mill - I believe Dole told me that morning that he had bought the mill and contents the night previous. He claimed he owned the ~~grain~~ & everything there He said this before I found my corn. I sold the corn to Sweet on the 28th day of January I think. It was on track in a car. I didn't see it after that. I gave him an order for it. It was unloaded in an unusually quick time. I went to the car that night about dark & found it gone I made sale about 1 O'clock that day I did not go to the mill the next day expecting to get my money as I knew Sweet was not there. I had been hunting for Sweet the previous afternoon & couldn't find him. I know of Weed Kennedy some

23 officers & others were looking for him - I inquired of Dole about it. He didn't know where he was. Where a sale is made ~~[illegible]~~ on terms mentioned, the rule is "cash on delivery". Where it is sold to Millers they weigh the grain sent them and give seller the weights & it is settled by their weights, this is the usual custom. Dole

24 claimed he had bought the grain the night before. the mill was pretty well filled with grain & flour - Kennedy demanded his wheat of Dole - Dole didn't give it to him or offer to or show any disposition to - The market price of spring wheat was $1 per bushel along this time from Jany 20 to Jany 28, 1863. the grades are No 1, No 2 & "rejected". Sweet bought a lot of wheat of Weed 1500 bushels about 20th of January which has not been paid for. I had my office with Weed & sold the wheat for him Weed was one of the parties there on the 29th at the mill to get his pay. I had a conversation with Dole about my corn I told him I had sold it to Sweet the day before that it had been got in there very suddenly & meant to get it. Dole treated me politely - He didn't know where ~~any~~ grain was & no one else did.

Dole at one time promised to show it to me me but did not. I could find no one who could tell me anything about it I have stated about all there was said to Mr Dole. I hunted a whole day before I found the corn. I did not find it then till it was shown me until the men showed me a hole in the back room where it was poured down. I sold it back to Dole at the mill & it was carried back into the mill.

On Cross Examination the witness testified:

I think I sold Sweet the corn Jan 28th It was at all events the day before I saw Dole at the mill - Dole told me at the time Kennedy demanded his wheat that he had bought Sweet out. Dole said when I offered to sells him the corn that he had to have some corn to run the mill & I proposed selling it to him to save carting it away. It was one of the laborers at the mill that showed me the corn. Dole said he would show it to me We did not go but why I dont recollect There were a good many people there inquiring for grain. Reed & Kennedy were making inquiries. I thought I could tell my corn by its looks - all the other heaps

35 were dusty, had lain there sometime. This was not. The color was different also. I don't know that Dole refused to show me the corn though it runs in my mind he did because I had to hunt. Dole spoke as if he knew where the corn was Dole went and showed Reed his wheat and I don't remember why he did not show me my corn. Mr Dole seemed perfectly willing at that time that he promised to do so to show me my corn. It occurs to me that the reason I didn't go there was because I wanted a witness with me The corn amounted to about 325 bushels - a car load. I had n't seen Dole before that time that I remember. I am a member of the Board of Trade.

On redirect examination the witness said: I remember something indistinctly about weights but not distinctly enough to testify. I got the weights of my own corn that morning. Don't remember distinctly whether Kennedy got his that morning or not. I am not positive as to date of sale of corn to Sweet, I think it was Jany 28th. It may have been 27th or 28th I think the 28th. It was before Sweet went away & the day previous to the morning when I found

Dole in possession of the mill -

The Plff then called as a witness A. G. Low, who being duly sworn testified:

I know Sweet & Dole, have seen them on 'change frequently they appeared to be together almost every day. I know of their being in business on Canal street near Randolph, South Branch Mills - I saw Sweet looking at samples of wheat & Dole would stand by west door - Sweet would come up and show samples - I remember once two or three days before Sweet left Sweet came up & showed sample & Dole said buy. Sweet & Dole appeared always to be together.

The Plff called as a witness, M. D. Steed who being duly sworn testified:

I know the parties to this suit. I am one of those who sold wheat to Sweet & Dole. I think about the 28th January was the first I was at the mill - Sweet was not there & could not be found - Dole had possession - he said he had - We sold Sweet 14 or 1500 bushels wheat at that time. It was not paid for - It went into the South Branch Mills - There was where I went after it.

27

The Peff then called as a witness Jerome P. Yates who being duly sworn testified: I reside at Chicago am in the milling business at 19 Canal street next door to the South Branch Mills. I am in the milling business. I know grain to a considerable amount went into the mill the latter part of January, more than I had ever seen before going in there. There was great activity. More teams than usual. There were a great many parties delivering grain that had been bought for two weeks before Sweet went away. there was great activity. Dole, Sweet & Davis were there in partnership at first - Davis shortly after withdrew. The mill was then carried on by Dole & Sweet 'till latter part of November '62, then Sweet carried it on until he failed. I saw Dole there a great part of the time after Sweet took it - in the morning & at other times - I used to go in frequently after sports - I don't know of Dole having any other place of business. I never saw so much grain there as just before Sweet left.

On Cross Examination the witness said: I don't know but what Dole might have had some other place of business

2.8

The Plff then called as a witness George Hagot who being sworn testified:
I am a miller & was in the fall of 1862 when I worked at South Branch Mills for Sweet & Dole - I was there from latter part of October 62 to latter part of February 63. I ran the mill nights & Andrew Betting & Thompson were the day millers. Sweet left Jan 29th 1863. I saw him last Jan 28th I saw him between 7 & 8 O'clock at night that day - Don't think I saw him that day before that time the mill was pretty well filled up at that time - more then than had been previously. I couldn't say how much Sweet generally had in during the day. At night he generally had not over 4 or 500 bushels, perhaps 300 or 400. It would last till morning - perhaps till 9 O'clock - If nothing happened, it might run out sooner. There was a time when I recollect they had more grain - that was before Dole sold out to Sweet. I dont think except at that time that I ever saw over 1000 bushels in at night. I don't know as to day time. From 3 to 500 bushels would be used at night on an average & no more. Sometimes we worked straight through the night & sometimes not

we would sometimes suspend for a few days because the boiler would give out generally we stopped for want of wheat when mill did not run. I saw Sweet & Dole & Andrews & nobody else on the evening of the 28th between seven & 8 O'clock in the mill it might have been 8 O'clk —

Cross Examination. Webster's mill on State street is where I now work. I went to Oriental Mills after leaving Dole & ~~Worked~~ till last November — Then lay idle till last Wednesday when I went to Webster mills. I was not at South Branch Mills all the night of Jan 28 '63. I was in there that evening perhaps 5 or 10 minutes, when Dole Sweet & Andrews were there I went in after supper & stayed 5 or 10 minutes & went out again & did not return.

The Plff then called as a witness Ambrose Betting who being duly sworn testified:

I was employed by Sweet latter part of 1862 in milling business. I was his foreman and worked in the daytime - I commenced work for Sweet about 10th or 12th Dec running his mill & continued until the latter part of January 1863. I have known Sweet two ~~&~~ three years ~~+~~ we had a great rush of wheat & cars into the mill the

latter part of January. I had never seen that amount in the mill before. It was for about ten days or a fortnight before Sweet went away that wheat came in so fast. The mill was filled, the place for the grain was the third story which was filled up - There was probably from 6 to 800 bushels winter wheat on the 2d story. There was a lot of grain in the basement. It was no place for wheat. The reason for putting grain there, was we were filled up & had no other place - It was a bad place because it was damp & full of holes The most I have seen there from 500 to 1000 bushels of wheat on hand. I have seen 2500 bushels there when Humphrey & Walker ran the mill some time before. The mill was not always employed because we were frequently short of wheat. we generally had enough to run till 4 or 5 O clock A M Sometimes not - Sometimes enough for two days. I never knew of grain put in the cellar before. I worked three years for Walker The mill was not always in running order The boiler would give out occassionally & the elevators occassionally - could mend elevators in two or three hours - or perhaps five - We emptied grain from bags into the

31 cellar. All the grain goes through the cellar but by a different process. It passes from a runway leading from a hole in the sidewalk to foot of elevator.
I was at the mill Jan 29th 1863. I saw all the men standing around & others I saw Dole there - I used to see him most every day there during the time I was employed there he had two teams there hauling grain and flour.
On Cross Examination the witness said.
I was keeping a store on Wells street immediately before Dec 10th or 11th when I came to Sweets. I kept that store from May 1st 1862 till latter part of November in the same year. The other places were filled was the reason of putting grain in the cellar. I am selling flour round Town for James Duffy now. I worked for Dole a week or fortnight & then left. In February or March.

31/

Plff then called as a witness R M Pinches who being duly sworn testified:
I am in the commission business - I was running a feed mill by the side of Dole's mill in latter part of 1862. I was acquainted with Dole & Sweet then - Had some idea of their business - They had pretty lively

times there for two or three weeks in January 1863. Great activity in hauling grain from 20th to 28 January. It was being hauled in mostly – They were drawing grain at other times but not so fast as at this time, the rush was so much greater then we could not help noticing it. I saw Dole there nearly every day. He would go into this mill & into ours – used to see him pass & repass – I could not tell that he had any other place of business. that is. I know of none – He had two teams hauling grain to the mill & flour away from it – The mill was about full – more than usually so when Sweet left. I was employed in the mill before running it for Walker.

On Cross Examination the witness said. I occupied the next store to the mill in question from Mar '62 to May 63 about, Dole Davis & Sweet were the proprietors at first Davis went away. I lent him 20 dollars to go away with in summer of 1862. After Davis went out Dole & Sweet conducted the business could not tell whether Dole was in there till Sweet went away & not. Sweet stated to me several times in the fall that he was proprietor of the mill. Sweet told me

33 his partnership with Dole was dissolved —
— Dole never did —

Plff then called Thomas Connor. who being sworn testified.

I did business 2 door from Doles Mill South — it to be rather lively there for a weeks or ten days before Sweet left. Sweet was rather pushing business - doing more than he had been. The activity consisted in hauling wheat to the mill & flour away hauling grain to the mill, running it &c &c.

33

Plff then called as a witness Fredk Chotteau who being sworn testified:

I am a commission merchant. I know the defendants. I had business with Sweet the latter part of Jan 163 - I sold him wheat I lost a few hundred bushels by him. I had had business transactions with him before & he paid. This last was a sale of 6 or 700 bushels. Replevied it but not all 70 or 80 bushels short — I delivered about 600 bushels & replevied short 70 or 80 — It was spring wheat. Market price $1. to $1.02

Cross Examination. I had had business transactions before with Sweet. A few months before & he had paid. 2 car load or two I had sold him 500 bushels = 150 bushels

& so on - Small lots.

Plff then called Wm H. Tompkins who being duly sworn testified:

I am a commission merchant - I was in the employ of H Bacon & Co in Fall of '62 we sold one car load of grain to Sweet the latter part of January 4 or 5 days before end of month 1863. Between 3 & 400 bushels red winter wheat - I acted as salesman & gave Sweet an order for it. The weights were given me at the mill. It is the usual custom where bag grain is sold to deliver before collecting pay - Bacon & Co did not get their pay. I went there several times to collect & was unable to get the money I saw Sweet there once or twice & the book keeper every time. I didn't see Dole at the mill until last day of January I think. It was the day before Bacon's replevin that I saw Dole - Bacon & Co. replevied the grain they claimed Jan 30th. I found Dole there the 29th. I demanded the grain of Dole - He said he bought all the grain in the mill of Sweet & Knew nothing about this bill. I enquired of him about the sale - Dole said there was only about 3000 bushels of grain up stairs & none down stairs except a few screenings. I have

55 never seen Sweet & Dole on 'change together
I may have - I have never seen every-
body together on 'change. Ford M Bacon
& Co Wheat stored in the upper part of
the building.

Cross Examination. I am a member of
the Board of Trade - Change is from 11 to 1
There are 1000 registered members & the atten-
dance is from 3 to 500 daily. The room
is 1/2 to 1/3 larger than this court room
The center of the room is pretty well occu-
pied during 'change hours - Bacon & Co
sold their grain to Sweet on the 24th or
26th Jan I had been to the mill three
times at least & I think five. I saw
Sweet once certain & I think twice. It is
the custom to deliver grain in elevators by
receipt or voucher & that is paid for on
delivery. In sales of bag grain it is
impossible to tell exactly what it will come
to until we get the millers weights. Bag
grain is not paid for or weighed until de-
livered to the miller. Grain is sold by
the car to millers & it is weighed by the
miller before delivery is complete, outside par-
ties usually & delivered before payment. The
rule is the same as in regard to bag
grain - When I was talking to Dole it

35

was in the morning after 8 O'clock and before 11 Jany 29. It was ~~wheat~~ that Bacon & Lee sold we were talking - red winter wheat. that was the only wheat of that variety which I saw - the rest was Spring wheat. I was through the upper part of the mill that day - was in the 3d story that day or the next certainly the next. There was a good deal of wheat in the 3d story. The end towards the street was filled up nearly full - This was spring wheat & was in one mass.

Off then called E W Griffin who being sworn testified:

I am a commission merchant - In January '63 I was in the office of Griffin Bros. They sold to Mr Sweet several cars of corn. It went into Sweet's mill on West side on Canal street. Sweet didn't pay for it. It was not paid for by anybody. It was the latter part of January. Sweet went off the 28th I believe or thereabouts. I was at the mill the day after. I made efforts to get the corn or pay for it. we replevied the corn. Sweet was gone & Dole claimed it. There were 4 car loads, we sent 2 or 3 days before for the pay & couldn't get it. I went through the mill

37. It was full of grain from top to bottom was there at the time Babcocks' writ was served. This grain was in the basement behind screenings & barrels, put in regardless of its condition.

Cross Examination When the Babcock writ was served there was other corn in the basement. This corn was identified by the boy. It was at about the center of the cellar. There was wheat & oats under the sidewalk it was full, mill was perhaps 30 x 80. The basement was under the entire mill I speak of one mill, there are Two we made this sale within 3 or 4 days of the time Sweet failed. These car loads were not sold all in one day but on different days as they came in. I never went to the mill with the bill. one young man went in that direction. I am a Member of the Board of Trade. I was in the 3d story. there was more wheat there than any thing else. In the 2d story there were oats filled into & nailed up in an office This wheat on 3d floor was spring wheat I think, am not positive.

Re Direct. The cellar was nearly dark just light enought to go through it.

Plaintiff then called Moses S Bacon

who being duly sworn testified:
I do business in grain & corn I was in same business in Jan 1863. I know the parties - sold Sweet a car load of wheat & didn't get my pay for it - It was between 3 & 400 bushels red winter wheat - we tried to get our pay - sold Sweet a car of red winter wheat which was delivered about 26th or 27th January. I went to the mill once or twice after the pay - sent my book-keeper first - then went myself - we couldn't find Sweet - I was there the day before the writ was issued & the day it was served. Sweet left I think the day before the writ was served. Sweet was not seen for a day or two before he left. I found the mill very full of grain put in what I thought very unusual places - I have been in business here 9 years & never sold a car load of grain except for cash on delivery in sales to Millers it was paid for as soon as weighed.
Crop Examination. I went to the mill & sold the corn to Mr Sweet.

Pltff then called as a witness E Woodruff who being duly sworn testified: I am a commission merchant in Chicago & was in Jan 163 I had dealings with Mr Sweet

39 20th Jan. I sold him 900 bushels of oats & very near 150 bush wheat. It was hauled to his mill on Canal street - He was engaged in hauling it about a week, when I went to collect the said he had not hauled all the oats - He had so much hauling to do, he hadn't been able to haul. I finally told him I should sell them over again if he didn't take them away. I got part pay - the wheat was paid for & about half the oats - the balance remains unpaid for - It is customary for millers to weigh generally. we rely on Millers' weights - cash on delivery is the custom so far as I know.

39

Cross Examination I sold the grain both wheat & oats Jan 20th 1863. Had sold Sweet once before.

Ilff then called John Whittemore who being duly sworn testified: I am a dealer in grain & was in January 163 I know the Defts - Had some dealings with Sweet. sold him 16 or 1700 bush wheat It was delivered between the 14th & 22) days of January - he paid part from time to time until the 24th of Jan when he paid me $ 500 which was the last I saw Mr Sweet on 'Change - I think it

was about the 28th of Jany. I had been dunning him very often for my pay. I think it was on that day I told him I had some wheat & would like to show him a sample He & I walked to the desk in Board of Trade rooms adjoining telegraph office. I then showed him the wheat. I think the sample was on the desk, he says to me " I didnt think you'd want to sell me any more wheat. I told him I didnt think he'd want to cheat me out of anything that was due me & stated to him how hard I had worked & accumulated what little I had. I would say here that I had no idea of selling Mr Sweet this wheat. I was simply courting his friendship to get from him what he then owed me — In order to avoid a sale I then asked him in my opinion a very unreasonable price. I had offered it at 88c & asked him 94 cents. — while we were talking, Dole came up & asked or made some such remark as " What are you doing boys?" Sweet said he was looking at some wheat which John wished to sell him & I assented. I presume there were a few more words used. Dole clapped Sweet on the shoulder & said " boys — dont be fooling away

41

your time. I think Dole was informed of the price before this. I had a sample of the wheat there. It was spring wheat. I know the plaintiff & have for 3 years.

Cross Examination. This was about 26th January It was the day before the day, on the evening of which Sweet sold to Dole. I have sold to Sweet while he was doing business alone & before that to Dole & Sweet. Had made 2 or 3 sales in January to Sweet amounting to 16 or 1700 bushels of spring wheat. in all. I sold & delivered it from 14th to 22d. might have delivered some on the 12th. It is customary to pay on delivery & I expected to get mine on delivery.

Peff then recalled Moses S Bacon who testified. I never knew of any partnership between Peff & anybody. Peff was alone in business.

Peff then called as a witness John A Nelson who being sworn testified:

I am Deputy Sheriff of Cook County & was on January '63. I served writs of replevin against Sweet in that month, served one on the 30th. This writ called for corn which I got in various places part up stairs & part in cellar. In the cellar it was laying in one pile back of some shorts

The cellar is rather dark & the mill pretty well filled when I got there. I saw Dole there when I was taking out the corn, Dole & I were talking together. There was some other corn taken out by other deputies in bags & placed on the sidewalk. It was carried back again into the mill & emptied in the floor above the cellar & some of it was let down on to the corn I had taken. I told the men to stop & looked where Dole was - I went to Mr Dole & informed him that he had better have it stopped or else I would have to take that corn as well as that called for in the writs. This corn ~~was~~ was falling into the other - Dole went & told his men to stop it.

Cross Examination. This was the 30th of January. The writ called for 1030 bushels & I got that amount. There wasn't much let down.

Plff then called Rudolph Stoner who being sworn testified:

I know Defts, think they were doing business together in Jan 1863. I told them grain several times. I made the collections. Often saw Dole about the mill.

Cross Examination. I think it was in January 1863.

The Plff then offered in evidence the

123 certificates of the weights of the grain sold by Beff to Sweet which are in the words & figures following to wit:

Weighed on Fairbanks, Standard Scale.
Chicago Jany 21st, 1863
Load of Spring wheat from L Kennedy & Co.
To R C Sweet.

Gross 7170 lbs.
Tare 2247 lbs.
Net 4923 lbs.

Fees —— Net bus.
J. F. Andrews Weigher (Space for figuring on back side)

Weighed on Fairbanks' Standard Scale
Chicago Jany 21. 1863.
Load of Spring wheat from L Kennedy & Co.
To R C Sweet

Gross 6500 lbs
Tare 2260 lbs
Net 4240 lbs

Fees Net bus
J. F. Andrews Weigher (Space for figuring on back side)

Weighed on Fairbanks' Standard Scale
Chicago Jany 21st 1863.
Load of Spring wheat from L Kennedy & Co
To R C Sweet

Gross 6235 lbs
Tare 2270 lbs
Net 3965 lbs.

Fees Net bus
J. F. Andrews Weigher (Space for figuring on back side).

Weighed on Fairbanks Standard Scale
Chicago Jany 21. 1863.
Load of Spring wheat from D Kennedy & Co
To R C Sweet

Gross 5830 lbs
Tare 2270 lbs
Net 3560 lbs

Net ——— lbs
Fees ———
J F Andrews Weigher (Space for figuring on back side)

Weighed on Fairbanks' Standard Scale.
Chicago Jany 23d 1863.
From D Kennedy & Co To R C Sweet.
47 Bags.

Gross 7240 lbs
Tare 3320 lbs
Net 4920 lbs.

Net ——— lbs
Fees ———
J F Andrews Weigher (Space for figuring on back side).

Weighed on Fairbanks' Standard Scale.
Chicago Jany 23d 1863.
Load of Spring wheat from D Kennedy & Co.
To R C Sweet.
50 Bags

Gross 8225 lbs.
Tare 2210 lbs
Net 6015 lbs

Net ——— lbs.
Fees ———
J F Andrews Weigher (Space for figuring on back side)

45

Weighed on Fairbanks' Standard Scale
Chicago Jany 23d 1863.
Load of spring wheat from D Kennedy & Co.
To R C Sweet. Gross 8060 lbs
50 Bags Tare 2210 lbs
Net 5850 lbs
Fees Net ——— lbs
J F Andrews Weigher (Space for figuring on back side).

Weighed on Fairbanks' Standard Scale
Chicago Jany 24th 1863
Load of Spring wheat from D Kennedy & Co.
To R C Sweet. Gross 7350 lbs
45 Bags Tare 2170 lbs
Net 5280 lbs
Fees Net ——— lbs
J F Andrews Weigher (Space for figuring on back side).

Weighed on Fairbanks' Standard Scale
Chicago Jany 24th 1863
Load of Spring wheat from D Kennedy & Co
To R C Sweet Gross 7280 lbs
45 Bags. Tare 2160 lbs
Fees ——— Net 5120 lbs
Net ——— lbs
J F Andrews Weigher (Space for figuring on back side)

Weighed on Fairbanks' Standard Scale.
Chicago Jany 24. 1863.
Load of Spring wheat from L Kennedy & Co
To R & Sweet.

returned. Gross 7260 lbs
45 Tare 2270 lbs
Net 4990 lbs
Fees Net ——— lbs
J F Andrews Weigher (Space for figuring on back side).

Weighed on Fairbanks Standard Scale.
Chicago Jany 26th 1863
Load of Spring wheat from L Kennedy & Co
To R & Sweet. Gross 7280 lbs
45 Bags Tare 2245 lbs
Fees — Net 5035 lbs
Net ——— lbs
J F Andrews Weigher (Space for figuring on back side)

Weighed on Fairbanks' Standard Scale
Chicago Jany 26th 1863.
Load of Spring wheat from L Kennedy & Co
To R & Sweet. Gross 6885 lbs.
40 Tare 2125 lbs
Net 4760 lbs
Fees ——— Net — lbs
J F Andrews Weigher (Space for figuring on back side)

47 Weighted on Fairbanks' Standard Scale
Chicago Jany 26. 1863.
Load of Spring wheat from L Kennedy & Co.
To R C. Sweet Gross 7270 lbs
45 bags. Tare 2220 lbs
Fees Net 5050 lbs.
Net ——— lbs
J F Andrews Weigher (Space for figuring on back side)

Weighed on Fairbanks' Standard Scale
Chicago Jany 27th 1863.
Load of Spring wheat from L Kennedy & Co.
To R C Sweet
47
Gross 6750 lbs
Tare 2220 lbs
Fees. Net 4530 lbs
Net ——— lbs
J F Andrews Weigher (Space for figuring on back side)

Weighed on Fairbanks' Standard Scale.
Chicago Jany 27th 1863.
Load of spring wheat from L Kennedy & Co
To R C Sweet Gross 7500 lbs
Tare 2240 lbs
Net 5360 lbs
Fees
Net ——— lbs
J F Andrews Weigher (Space for figuring on back side)

46

Weighed on Fairbanks' Standard Scale
Chicago Jany 27th 1863.
Load of spring wheat from L Kennedy & Co
To R C Sweet. Gross 6725 lbs
Tare 2230 lbs
Fees —— Net 4495 lbs.
Net —— lbs
J F Andrews Weigher (Space for figuring on back side)

Weighed on Fairbanks' Standard Scale.
Chicago Jany 27th 1863
Load of Spring wheat from L Kennedy & Co
To R C Sweet.
Gross 7350 lbs.
Tare 2100 lbs
Net 5250 lbs
Fees — Net —— lbs.
Weigher (Space for figuring on back side)

Weighed on Fairbanks' Standard Scale
Chicago Jany 28th 1863.
Load of Spring wheat from L Kennedy & Co
To R C Sweet. Gross 6900 lbs.
Tare 2100 lbs
Net 4800 lbs
Fees — Net —— lbs
J F Andrews Weigher (Space for figuring on back side).

The Pef here rested his case.

The Defendant thereupon called as a witness Henry Seymer who being duly sworn testified as follows:

I reside in Chicago & work in South Branch Mills - I have worked there since November or December 1862 & before then. I first worked for Dole & Sweet & quit them but cant tell exactly when. then went back in Nov or December /62 & worked for Sweet alone & afterwards for Dole - I worked all around the mill. It was a pretty big business carried on at the mills. There were two buildings 23 & 25 South Canal street. Sweet continued to run the mill until 28th of January /63 & including that day. I saw Mr Sweet that day at the South Branch Mills. I saw him in the day time & between 7 & 8 O' clock in the evening - I saw him in the morning about 9 O' clock also in the evening. Don't recollect any other times during that day - I can't say how many bushels the mills would hold - They were pretty full on the 28th January - Dole ran the mill after the 28th January. It stopped on the 27th & was not running on the 28th. It had stopped a day & a night on the evening of the 28th of January - As I was going

home on the evening of that day January 28th. Mr Dole met me & told me to come back to the mill, he wanted to see me. I did so - when I got back to the mill I found Mr Dole & J L Andrews in the mill Mr Dole then told me what he wanted me for - He told me he wanted Mr Sweet to secure him that night - Afterwards Mr Sweet came in himself. After he came in Dole asked him if he was willing to secure him that night. Mr Sweet replied that he was not. Mr Sweet said he had flour enough in store to pay him up in a few days if he could only sell it. Mr Dole told him "Mr Sweet, it is no use talking. You have promised me this for three weeks along, that if you could sell the flour, you would pay me but I see you don't pay me & I want to be secured." Mr Sweet then said he hadn't the money to pay him & he didn't know what way to secure him but if he would wait a few days he would pay him. if he could sell his flour, he couldn't sell his flour because the inspector wouldn't pass it as sound. Mr Dole then made Sweet an offer for the mill & grain - He offered him $5000 for the mill & the market price for his grain. Sweet refused it & said the mill was worth more. Mr Dole told him he thought

51 the mill was neglected - Sweet said he knew it was but that wasn't enough for it - He paid more for it. Then Mr Dole made him another offer - offered him $1200 in cash & all claims he had against him - Sweet refused to take it - Mr Dole then told Mr Sweet he had made two offers & for him to make an offer how he would sell it. Sweet then made an offer. He asked Dole $1500 & all claims he had against him & he would be willing to give up & sell to him. Mr Dole took him up at that offer. After Dole took him up a bill of sale was made out of the grain - Sweet produced Dole's bill of sale to him of the mill fixtures & Dole's signature was torn off & the bill surrendered to Dole (Witness here shown bill of sale Dole & Leo to Sweet of engine boiler & c &c) This is the bill of sale (Witness is here shown bill of Sweet to Dole of the grain) This is the bill of sale of the grain. There was also a chattel mortgage on the mill fixtures given by Sweet to Dole to secure Sweets notes to the amount of $6000. These notes were produced & surrendered to Sweet by Dole - Dole also had two small notes against Sweet one for $450 & one for $300 which had been given for borrowed money.

51

52 These were also given up to Sweet by Dole - Dole also claimed that Sweet owed him $300 borrowed money for which he had no memorandum - This Dole also gave in to Sweet. There was $525 rent due Mr Donegan for the time Sweet had been running the mill & Dole agreed to pay this.

Dole held against Sweet a warehouse receipt which was also given up to Sweet. It called for over $1800 worth of grain for between 18 & 1900 bushels of corn & between 12 & 13 hundred bushels of wheat - It was between $18 or $1900 worth in all. It was for grain in the mill in the month of November before sale to Sweet. Mr Dole also gave Sweet a note of $1500 on demand. He told Sweet he had not the money but would pay him in a week or ten days. After he Dole had everything settled up, he told me to look after the doors & see that they were locked and look after the property - Next morning Dole called all the hands up and asked them if they wanted to work for him at the same price they had for Sweet - Sweet carried on the business of buying grain & making flour & corn meal. He generally came in in the morning & went away about 10. O'clock A.M. He sometimes came in in

53 the evening & sometimes in the afternoon. I saw him at the usual hour the next morning Jan 29th at the mill but have not seen him since. Dole did not go away the day after he bought the mill. He was in the office that forenoon & went through the mill. There were a good many persons there that day. Nothing was said the evening before as to where the grain was. It was figured upon the books how much grain there was by the clerks of Mr Sweet Mr Andrews. They told Andrews to figure it up & he did & they took his figures.

I worked in the mill before Dole sold out to Sweet. I left Dole & Sweet when they were in partnership. Sweet got me back afterwards after he had bought Dole out. at least he told me he bought Dole out. I heard the Deputy Sheriff Nelson's testimony as to corn being poured down into the cellar.

We carried it & poured it down the spout from the first floor to the cellar. Mr Dole came & stopped us. He did not direct us to put it down that spout. He always took corn into the mill on the first floor and poured it down the spout & it was then taken up to the upper stories. The elevators was not running at this time

We swore we wouldn't carry the corn up by hand - At that time we had to carry corn to the back of the mill to get at elevators. I have been in other mills - in this mill nearly two years - They generally take corn up by an elevator I couldn't stand it, nor no other man to carry corn in bags up two flights of stairs. There was in one part of one of the cellars some corn & in another part of the other cellar, wheat. The wheat was in the north of one cellar of the south of the other. All the corn & wheat that was in the cellar was in the vicinity of their respective elevators. I drew these diagrams (Witness is here shown diagrams of the cellars marked No 1 & No 2) There are two cellars, one under No 23 Canal st. the other under No 25. wheat goes through one cellar & corn through the other, there are two elevators one for wheat & one for corn — The wheat elevator is to the front of one building & the corn at the back of the other — There is & was then a conductor from the sidewalk to the wheat elevator — open on the top - There was a hole in the sidewalk which communicated with the conductor. The corn elevator was communicated with by a spout which lead from the

55 first story - when disconnected from the elevator it would let the corn on to the floor of the cellar. The wheat in the cellar lay at the foot of the wheat elevator & the corn at the foot of the corn elevator neither of these elevators was running at the time. There was no opening in the sidewalk at this time to communicate with corn elevator. From the cellars the grain was elevated to the third story & thence into hoppers & into the Sweet mills & over the stones.

55

There had been corn on the cellar floor before this time & wheat. Perhaps 3 or 400 bushels of wheat on the floor at this time because the elevator was out of repair. It was near the machinery. The cellars were in good condition where the grain was - were not damp. The corn left on the cellar floor before this, lay there till elevator was started. There were about 18 or 1900 bushels of wheat in 3d story - in a big bin. The bin had a partition in it. The wheat was all together with only one partition in it. I know wheat came to the mill from Mr Kennedy. His teams brought it about a week before Sweet failed. I weighed a good many loads for him. The first part of that wheat was ground out. I heard Kennedys testimony on the

56 trial of Weed vs Sweet. He testified that he sold Sweet one car load of wheat & before that was all delivered Sweet bought more. This last was delivered he testified, a couple of days after the first. The wheat was in two lots — bill of the first lot & part of the 2d was ground out. I know the 1st lot was all ground because all the wheat was cleared out of the mill on the 24th of January. It was all ground up & Andrews went over to Leonard & Jenneson to get a load to start mill up with — The 1st lot of Kennedys wheat came in before the 24th. It came about a week before Sweet failed - A portion of the wheat that came after the 24th was also ground. I couldn't tell this by the wheat itself because there was other wheat of the same kind but that which came earliest after the 24th was ground - I had conversation with Kennedy at this time he came to refinery, on the 29th or 30th of January - Kennedy asked me if I could show him his wheat - I said no — He said it was too bad for Sweet to beat him so — I said, yes - it was bad for us too — we didn't get our pay neither. I meant us workmen. He then said if I could show him his wheat he would give me a months' pay - I told him I couldn't

57 do it — It was impossible to tell anybody's wheat the way it was mixed. That was all that passed at that time. I don't know how much had been taken out at the time he took wheat on his visit. At the time Sweet was running the mill I have seen Dole there reading the newspaper. He was there generally in the morning about 7 O'clock. perhaps once in a couple of days. He didn't stay there during the day. He had no connection with the business. He had teams which hauled for Sweet. sometimes two. sometimes only one. At the time Sweet sold to Dole, Dole called Sweets attention to balance due him on trucking account. It was $1500 + 20. Sweet said never mind let it go till you pay me & I'll make it right. There were shorts in the 3rd floor at the time Dole bought. No shorts in the cellar. There were some middlings there. Sweet bought them two weeks before he failed. There was no more activity in the mills after the 24th January than just preceeding that date. It was about 4 or 5 days before we got the mill going. Repairs were commenced before Sweet failed. The boilers were leaking & elevators broken. we could grind twenty (20) bushels an hour of corn & about 160 barrels of flour in

58 twenty four hours if we grind during the whole period that is at the rate of 4 1/2 to 4 3/4 bushels of wheat to the bbl..

I have seen that mill as full before & since as on the 28th January - we have had more corn in since I know

Cross Examination. I am working in South Branch Mill for Dole - doing general work in the mill. was doing some work latter part of January 63 - I am not a miller - my business is selling shorts - putting in wheat &c. I live at 6 1/2 Sherman street. Dole met me that night on Canal street between Washington & Madison streets - I was going home to supper Dole was coming towards mill - I don't know where he lived then or does now. This was about 6 O'clock P M. I did not state it was between 7 & 8 - It was between 7 & 8 when I got to the mill & found Dole there - Sweet soon came in - It was nearer 7 than 8 when I got to the mill - It may be 15 or 20 minutes before Sweet came in. And Mr Sweet & Dole went out together about 9 1/2 O'clk - I was there all the time until they left. I don't know whether I heard anything that was said - the first thing I heard was Dole said he wanted Sweet to secure him - After Sweet came in, Dole said he wanted

57 to be secured - They settled up their matters as stated - They didn't go round the mill - didn't look at the grain - Sweet was there till after 9 O'clock - He was there about 2 hours - They made an examination of the books. Andrews — was told to figure up the grain there was in the mill. There was about 3000 bushels wheat - can't tell how much corn - a small box full of oats - perhaps 4 or 500 bushels - I think I've stated all I heard between Dole & Sweet - may have been an hour spent over the books or two can't say how long. Andrews looked them over, so did Sweet - don't remember as to Dole - Dole said Sweet had been promising two or three weeks to pay. Sweet said he had flour enought to pay. There were 400 or 500 bbls at the mill but it did not belong to Sweet. Or rather he had given a warehouse receipt on it on which he had borrowed money of Andrews, Dole's brother in law, a commission merchant on the west side, who took it away from the mill. Sweet was talking of other flour he claimed to own - I know we sent up to Leonard & Jennisons on the 23 or 24th of January for a load of wheat. The mill was empty we had some winter but no spring wheat in the mill at that time. There was no more activity on the 24th than previous

59

60 by. Sometimes millers get in ~~over~~ 3000 bushels in a day & ~~sometimes~~ at others it was so here we some times got in 3000 bushels a day sometimes none at all ~~none at all~~, we could run in 3000 bushels of wheat in a day easily the way we were fixed & corn at the same time. The corn mill & the wheat mill ran at the same time (The chattel mortgage Sweet to Dole is here shown witness) This is the chattel mortgage to which I refered. The notes it was given to secure were surrendered by Dole to Sweet in my presence. I don't know why mortgage was not given up no money was given by Dole to Sweet. I have talked with Dole about this matter. I have told Mr Fidler what I could testify to in substance Kennedy offered to pay me if I'd find out his wheat – I told him I couldn't do it any more than I could tell a bucket of water after it was thrown into the lake. Kennedy's grain was run in with other grain.

Re-Direct I can't tell whether any of the 2d lot of the Kennedy wheat was delivered before the 24th.

Defendant then called A. Shinn who being duly sworn testified: I knew Sweet when he ran the South Branch Mills I sold him corn in January 1863 – Sweet owed us for a car of corn 8 or 10 days – I sold the corn

61 for cash – That was the understanding when we sold – Sweet paid us for a car of corn on the 28th January. It was the day before the day on which his property was attached.

Cross Examination. I am not positive about the day – my reason for fixing it at the 28th is that the day after the writs were served I know he paid me & I never saw him afterwards. It was about $1.25.

61

Deft then called as a witness E H Ball who being duly sworn testified:
I am a commission merchant – I knew Sweet – Have sold him grain – we sold him grain at different times in fall & winter of 1862-1863. We sold him on the 21st Jan 63 – over $500 worth – the grain was delivered – terms cash – He paid us $300 – We got the weights the 23d & he paid us the $300 some days afterwards.

Cross Examination. Can't say how long after the 23d that he paid us. He owes us $200.

Deft called as a witness J M Hillard who being duly sworn testified:
I am a commission merchant – I knew Sweet, have sold him grain – Have sold him

62 grain & bought for him since Jany 28th. The amount of Dole's bills for 2 or 3 days has been sometimes $8 or $9000. This would be in the neighborhood of 8000 bushels of grain. The state of the grain market in the Fall & winter of 62-3 was somewhat fluctuating- The mills were pretty generally running. I know the mill in question. There was at that time a profit of 60 cents a bbl in milling flour. My impression is that the market was advancing at that time.

Cross examination. Men sometimes buy 40 or 50,000 bushels of grain a day- what I bought for Dole was generally warehouse receipts.

Deft then called Thomas Jones who being duly sworn testified:

I pack flour in the South Branch Mills. I know Sweet & Dole- I have worked in the South Branch Mills three years the 24th of this month. Dole Sweet & Davis ran the mill in May 62- then Dole & Sweet & then Sweet. I am now in Dole's employ- On 28th January 63 there was considerable grain in the mill, have seen more before & since but don't know that when as full before it was when Walker carried on the mill or not. The packer runs by a shaft. on the 4th story a wheel is attached to a post. There was such a

63 weight of wheat in the mill once before this as to press down the wheel. No such thing occurred on the 28th January. The mill was not filled on the 28th January. The mill was not running at this time & men were at work in the boiler - There was wheat in the north cellar - It was put there while the elevator was broken.

Cross Examination — Have seen the mill as full before & since I have seen more in it while Dole, Sweet & Davis were running the mill and since then while Dole was running it.

Deft then called as a witness J. F. Andrews who being sworn, testified: In the Fall & winter of 62 - 3. I worked at the South Branch mill. I am now working at 182 West Lake street. In 1862 I worked for Dole Sweet & Davis from May 1, 1862 to Nov 18. 1862 for Dole & Sweet - then for Sweet. Was in his employ on the 28 January 63. & after that in Dole's employ. Had worked in the mill from May or June 62 until & after Jan 28th 63 Sweet bought out Dole that is bought the mill & fixtures in November 62. They had been running it together for some months previous. Sweet paid Dole $1300 in cash & gave his notes for $6000 secured by a

64 chattel mortgage on fixtures & machinery.
This was on the 17th November 1862. I did not keep the books - Dole kept them - the firm was Dole Ives & consisted of Dole & Sweet. they had no book keeper (Ledger Cash book & Daybook shown Witness) These are the books of W H Dole & Co & were kept by Dole for the firm. I have settled by them & know them There was on the 17th of November 1900 bushels of corn & 1200 bushels of wheat in the mill. Sweet gave Dole a warehouse receipt on it. This grain was in the mill & was all there was there The mill was doing a good business. Dole gave Sweet a bill of sale - This is it (Witness identifies bill of sale dated Nov 17th 1862) On the 28th of January there was not so much grain in the mill but what we could get in 2 or 3000 bushels more. I was in the mill a short time ago when there was 3000 bushels more in the mill than on the 28th Jan/63 On the 24th January we had ground the wheat all out & sent to Leonard & Jennisons for a load to keep the mill going. There were two lots of Kennedys grain - The 1st lot was one car load and delivered on the 21st. On the 23d more was delivered. This was all ground out. 1st lot was 298 bushels &.

65 it was all ground out.

On the 25th 3000 bushels was delivered & this also was ground out. I find on the weight book the stub for the load got on 24th from Leonard & Jenneson. Kennedy delivered some on the 24th. 19.905 lbs, were delivered on 24th 5050 lbs on the 26th. 14381 lbs on the 27th — 60 lbs of wheat goes to the bushel. Kennedy delivered no wheat on the 28th He came in on the 28th & said I did not give him receipt for one car load. I found this was so & gave him a receipt dated on the 28th but for grain delivered before that day wheat goes into a hopper in the sidewalk & thence to the elevator. There was no place of the sort for corn — all the wheat went in together — we had other wheat there. Mills stopped on the 26th or 27th (We had not ground much that came in on 26th). Had ground all that came in on 24th. The cellars were in good condition. There was wheat & corn there on the 28th. The wheat lay by its elevator. I had seen corn & wheat ~~wheat~~ there before. The elevator was broken which was the reason. I saw Sweet on the 28th in the forenoon — at noon after 'change & in the evening. Sweet was usually at mill after 'change with his receipts.

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66 - He was there at night - I saw Sweet on the 29th about 9 O'clock. Sweet was there on the 27th - I was there on the 28th - was there in the evening from between 7 & 8 O'Clk to 9 O. clock. I lived with Dole and am his brother in law and he came with me to the mill. Gegner was there he came in & then Sweet - Dole bought Sweet out on the evening of the 28th - Dole asked Sweet to pay & secure him - Dole had notes of 300$ $50 & a claim of $300 cash against Sweet. These small notes were given in December. Sweet said he couldn't secure him that night - but would pay him as soon as he sold his flour. He expected to sell it every day - Dole then told him he must be secured - He had been waiting long enough - after they had had some loud talk. Sweet told me to figure up the grain in the mill. I took the wheat figures from the weigh books from the 24th & then estimated how many bbls. flour had been ground out - reduced this to bushels & deducted from number of bushels received - took the corn in the same way, deducting the meal which had been ground out. Dole then said he'd give him market price for his grain & $5000 for the mill - Sweet said he wouldn't take it - the mill

67 was worth more. Dole then offered him $1200 & all claims held against him. Sweet then said he would take $1500 & all claims held against him. After some little talk Dole took him up at his offer. Dole told him he had'nt the currency but would give him a note on demand and pay him in a week or ten days. a bill of sale was then made out of the grain in the mill. (Witness is here shown bill of sale Sweet to Dole). This is it. Dole surrendered to Sweet notes for $6000 secured by chattel mortgage & Sweet gave up to Dole the bill of sale of 17th November 1863 & Dole & Lees name was torn off. Dole also gave up to Sweet two small notes of $300 & $450 & a claim of $300 for cash. Also gave him his own note on demand for $1500. Dole also gave up warehouse receipt for over $1800 worth of grain. There was $525 rent due which Dole agreed to pay. After they had settled up Dole told Sweet that there was a small balance due him for trucking & Sweet said he ought to let that go. I believe Dole agreed to do so. The old bill of sale was given up. This is it (Witness is shown bill of sale Dole & Lee to Sweet) There were about 60 or 70 bbls of flour belonging to Sweet included in the bill of sale besides some oats. The bill of sale included

67

68 (68)

68 everything in the mill - Dole took possession that night & next morning called up all the men into the office & told them he had bought Sweet out and if they wanted to work for him at the same wages, they could (Books of Dole & Co here shown witness viz: Ledger, Cash book & Daybook) These books were kept by W H Dole for W H Dole & Co They had no book keeper - They are in his handwriting. They commence in May 1862 They show what Dole put in to the capital of Dole & Co & what Sweet did - They terminate with 17th of November 62. I have found these books correct in settling by them - At the time of the sale by Dole to Sweet Nov 17th 62. I know of no liability of the firm. We have bins in the mills for oats, shorts & &c - The oat bin holds 7 or 800 bushels - There were no oats mailed up - The oat bin was an office turned into a bin. It had an entrance near the top of the bin just like the rest - There was no difference in the Spring wheat & you couldn't tell one bushel from another - After Dole sold to Sweet he used to call in at the mill & read the newspaper, attend to his teams & then go on down town. his teams were employed in hauling grain to the mill. He was getting

69 up a model for a dryer on which he has got a patent since. He had nothing to do with Sweets business. Don't know what amt of money was put in to the firm of W H Dole & Co by the partners. I had no suspicion that Sweet was going to fail -

69 Kennedy delivered Jan 21st 278 bushels & a fraction & on the 23d 366 bushels & a fraction - This was all ground out - I don't think the stub of the receipt dated Jan 28th but given for grain delivered before then, is on here (the stub book) We received on & after Jan 21st Spring wheat as follows: On the 24th 6.900 lbs. of Leonard & Jennison 22.500 lbs of Weed & Co of Harley & Parker 17.090 lbs On the 26th 4.745 lbs of Leonard & Jenneson; & 29.850 lbs of Weed & Co - On the 27th 17,850 lbs of Woodruff & Co. & 32,120 lbs of Weed & Co. on the 28th no spring wheat was delivered - as appears by the stubs on the weigh book. The receipts given to Kennedy were given by me & bear my signature. Sometimes a car load might not get on to weigh book on the very day. Sometimes some one ways outside & don't send in the receipts. On the 29th January I found out for the first time that I did not have all the cash on the books. I supposed

I had before, there was no regular sett of books. The price Dole paid for the grain was the market price. On the 29th I went to B F Quimby to see about getting pay- he had advanced on Sweets flour.

Cross Examination I went to the mill for Dole & Co in June '62 - I am Dole's brother in law & lived with him at this time. I was present when Sweet bought out Dole I was not when Davis went out of the firm which was shortly after the firm commenced business. Davis had put nothing in & there was some trouble - this Dole told me - Davis had gone out before I went there Dole sold to Sweet Nov 17th 1862 or 18th

The name to bill of sale was torn off by Dole in January 63 night of sale when he repurchased of Sweet I don't know why it was done. I saw Dole tear it off - The grain for which warehouse receipt was given which was in the mill Nov 17th 1862 came from Munn & Scott - Dole bought it for milling purposes - It was bought by W H Dole & Co. Sweet & Dole composed the firm of W H Dole & Co. The grain amounted to $18 or $1900 I know it by the fegures - we figured it up from the stubbs & we so found how much grain there was in the mill Jany

71

28, 1863. The receipt was given up & at the time of the sale from Sweet to Dole - can't say whether it was signed by Dole & Lee or Sweet. I never knew of a warehouse receipt having been given by that mill before. I was book keeper for Sweet - I knew something about the business there were people around with accounts Jan 28th. I never paid bills. I said nothing to Dole about men being there - He asked me that day what was the condition of things & I told him there had been some men around with bills that day & that I did not know whether grain was paid for. I think I told him so but am not certain. I knew Dole had a mortgage on the mill. I was boarding with Dole ++ I should have told him if I hadn't supposed everything all right ++. We didn't keep a regular sett of books, a great many mills don't - we didn't trust out anything. The books were not accurate because Sweet didn't give me the amounts. but so far as I knew or had any reason to suppose until the 29th of January the books were perfectly correct. They were so so far as I kept them & so far as I could tell at the time. The books of W H Dole & Co are perfectly reliable (I have settled by them & know them) to be so. The grain is on

72 tered on the weight or stub book in the
order in which it arrived at the mill.
Sometimes this is not so because a load
would come when I was x Seymer would
weigh it & forget to give it to me till the next day
when I would date it the day of the
entry — Business was lively at the mill
on the 24th Jan but dull on the 28th.
There might have been more activity from 24th
to 28th than the week before that but I
have seen it more active many times before
On the 26th or 27th the mill stopped. We
used to run out 800 to 1000 bushels a day
we could get in to the mill 3 or 4000
bushels more. The mill stopped on the 23d
at night for want of grain & on the morn-
ing of the 24th I sent to Leonard & Jenne
son 44 Franklin street for Grain. The stub shows
what spring wheat came from them. It was
spring wheat which we sent for. Mr Sweet
told me to send to 44 Franklin street and
get some wheat. It was the first that ar-
rived that morning. I know it was spring
wheat & the first we received that day. One
car load of Kennedy's wheat received on the
21st was ground out — that on the 23d was
ground out. This was 3 or 4 loads. that
received after that was ~~was~~ mixed with other

73 wheat. The reason I know that that on the 21st & 23d was ground out is that was the 24th was sent to Leonard & Jenneson to get wheat to keep mill going. The certificate given Kennedy on the 28th was for grain delivered before. Kennedy produced the weight & I gave him receipt in accordance with the weight. Have collected a bill or two due to Sweet since he went away - small amount (Grain receipts here shown witness). These are all in my handwriting & signed by me.

73

Re-direct. The mill was grinding nothing but spring wheat at that time. No spring wheat was delivered on the 28th. I was not employed by Sweet to collect the small amounts of which I have spoken. I used the money to pay the hands with. It was only a few dollars. I have not been paid. I know Sweet paid Mr Shinn a bill on the 28th of January. It was not till after the 28th that I found that Sweet had deceived me as to the cash. He had drawn against flour & not told me or any one else of it.

The notice of dissolution of partnership between Doft & Sweet was then offered in evidence by Doft & admitted by Pff to have been published as stated

74 said notice is as follows

Notice of the dissolution of copartnership existing between W H Dole and R C Sweet Nov 17th 1862 was published in the Chicago daily Tribune Nov 22, 1862 and for one week thereafter.

Chicago Dec 14. 1863.

Tribune Co.

by A G Fisher

Notice of Dissolution

The partnership heretofore existing between R C Sweet and W H Dole, under the name of W H Dole & Co is this day dissolved by mutual consent.

W H Dole.

R C Sweet.

Chicago Nov 17th 1862.

75 Deft then called as a witness Edward Hill who being duly sworn testified: I am a boiler maker & work for D W Gates & Co & did in 62-63. I know the South Branch Mills. I was working there when the proprietor failed as I understood, we were working on the boiler & knocked off work. - commenced again however -

75

Deft then called George Brown who being sworn testified: I am a dealer in flour & Produce & a member of the Board of Trade I know R G Sweet & W A Dole I knew them in '62 - 63 - I have not seen Sweet since last of January 1863. I used to see him every day up to his leaving. I was in B F Dunby & Co's Office. I can't tell exactly how long before replevin writs were got out that I saw Sweet. I saw him on the 26th of January - also on the 27th the next day - in B F Dunby's office - think I saw him the 28th would not swear that I saw him that day. Don't think I saw him the day of the service of the writs - The market at this time was an advancing & receding one - it was fluctuating -

Deft then called Benj F Dunby who

76

76 being duly sworn testified &
I reside in Chicago and am engaged in the commission business - I know Sweet & Dole. They were indebted to me in $2500 in the fall of '62 - The indebtedness was created Nov 11/62. It was secured by a chattel mortgage afterwards - very soon after the form of Dole & Sweet was dissolved, Dole paid the $2500. We inquired who was to pay this $2500 - Both of them said Dole was to pay it & he did pay it - Sweet failed about 28th of Jany - I saw him about that time - Think on the 28th - at any rate I heard next day that he had left town. I believe I saw him the day before he left - We had advanced money to Sweet on flour. Had advanced within a week before he left - I had no reason to believe Sweet was going to fail. The only thing I did not like about him at this time was that a day or two before he failed, two or three parties came into my office to see whether we were going to advance to Sweet any more, this was the only reason I had for suspicion
Cross Examination. My advances were secured by a pledge of flour we had flour enough as we supposed to secure us - we made a

77 very close advance - within five or six dollars.
I cannot fix the day precisely when I saw him, Sweet Dale one on the 27th or I think on the 28th.
Re-Direct I am a member of the board of Trade. Dole was out of business after Nov 17/62. Never saw Dole & Sweet together after that, on Board of Trade - Have seen Dole on 'change. have seen Sweet there I am on 'change as often as every other day certainly.
Deft then called as a witness Thomas Lonergan who being sworn testified:
I know Dole & Sweet rented their mills to Dole Sweet & Davis May 1/62. The ground belongs to me - machinery in No 25 to McDevitt that in 25 to Dole Sweet & Davis. I was told that Dole furnished the money to put in machinery in No 25 - There was a boiler & engine and a vast number of wheels & other machinery put by Dole into No 25 for the purpose of drying & grinding corn. The firm terminated that fall Dole going out & Sweet then ran the mill He didn't pay me any rent. It was subsequently paid by Dole. A quarters rent was $675. It was after Dole had resumed possession of the mill that he paid this rent.

Cross Examination, Dole Davis & Sweet occupied the premises under a lease from me running to all of them. Leases had 3 years to run. The quarters rent which Dole paid for Sweet became due a day or two after Sweet failed.

Deft then called as a witness E. Miller who being sworn testified:

I am a teamster. I teamed for Sweet in Fall & winter of '62 - '63. The mill was pretty full Jan 28th but would hold more I have seen it as full before. Have not worked there since. saw Sweet last on the night of Jan 28th.

Cross Examination. I have seen the mill as full before. Humphrey & Walker had it blocked up full.

Deft then called as a witness C. Cummings who being duly sworn testified:

I drove team for Dole in fall of 1862. drove for Dole & Co before that time. when we had no teaming to do we worked in the mill, that is during the time Dole & Co employed us - After Dole sold out to Sweet in November 1862 we did not do any more work in the mill. Dole told us not to - I saw Sweet on the day the Replevin writs were served - on the sidewalk near the mill

19

Cross Examination I teamed for Pl & Dole & Co & then for Dole, when I worked for Dole & Co I worked in the mill occasionally when teams were idle - but when Sweet took the mill Dole told me I had nothing to do with the mill, but to attend to the horses - I saw Sweet there the day the Sheriff took away the grain -

Thomas Jones was then recalled by Defts & testified: I saw Sweet on the 29th Jany at the mill - about 9½ O'clk in the morning he came out of the office in the mill The mill turned out 160 bbls flour per day when we worked night and day.

19

The Defts then called as a witness Charles M Ham who being duly sworn testified: The chattel mortgage from Sweet to Dole dated Nov 17/62 & now shown me (that mortgage is here shown witness) was drawn by me. It was acknowledged on the 18th. It was given to secure Sweets notes for $6000 which he gave to Dole as balance of amount due for purchase of mill & fixtures. In January 1863 Dole bought mill & grain of Sweet as I am informed & know that Dole had given Sweet a

demand note for $1500 as I saw it in July 1863. (Dor) Dole came into my office with H D Heid. Heid had the $1500 note & said it belonged to a client of his by the name of Clinton Frazier to whom it had been endorsed by Sweet. Dole wished to know whether it was safe for him to pay it. I told him not to as he might have to pay it twice. Dole had been garnisheed Jan 30th 63 in several attachment suits against Sweet amounting to something like $800.

As Sweet had not presented the note for so long & under the circumstances of the case I thought he might still own it & so stated to Dole. I told him I thought he could run the risk of paying part of it twice, if he paid Heid before the disposal of the garnishee processes. Heid thereupon sued Dole for Clinton Frazier & the suit is pending & undetermined.

The Deft then called as a witness Perry Yates who being duly sworn testified.

I am in the milling business Feed milling mostly. I can form a pretty correct estimate of the market in Jan 1863. We talked it over at the time Sweet was in the mill. how much he would have made if he'd

Kept along. The market was a rising one. There was a good deal of a rise in grain. Corn meal brought $2 to $2.50 per ton over what it cost & 60c ti run it. One run of stone could turn out 8 to 10 tons per day.

Cross Examination. I was in the next mill to Sweets. He bought a good deal of grain just before he broke up. There were many teams hauling there - and the stir was subject of common talk among us.

Deft then called Martin Thompson who being sworn testified. I am a miller & work for Mr Dole. I worked at that mill when Sweet left and while he was running the mill. Have seen the mill as full before & since January 63. It was pretty full Jany 28th The mill would turn out 170 bbls of flour per day and use 25 bushels of corn per hour or 400 bushels per day. Five bushels of wheat go to a bbl of flour.

Cross Examination. I worked for Humphrey & Walker when they ran the mill.

Deft recalled

James F Andrews who testified:

While Sweet was in the mill grain was on the advance wheat advanced 15c to 25c & flour 75c to $1 per bbl. The grain in that mill on the 28th January could have

82 been ground out in three days — in less than three days time —

Cross Examination (The last month Sweet & ran the mill grain was advancing very fast) I speak generally about advance, not advance from day to day.

Defendant here called as a witness George W Noble who being duly sworn testified: I had a business transaction with Dole in April 62. I sold him a steam engine — It cost me with the boilers over $ 5000 & had never been used. The boilers were worth $ 1450 & the engine over $ 3500. I sold it to Dole for $ 1450. I sold at that low rate because I had abandoned the idea to carry out which I had bought it. I had it made for me. I sold the mill I intended to use it in for a quarter of its value.

The Defendant then offered in evidence Bill of sale Dole to Sweet dated Nov 17/62 which is in the words & figures following viz:

Chicago. Nov 17th 1862.

Rufus C Sweet

Bot of W H Dole & Co

1 Engine 2000, 00

83 1 Corn mill $300,00
1 Boiler 700.00
3 Elevators
Conveyors
Stencil Plates
200 Bags more or less } marked W H Dole & Co
& all machinery &c for milling & grain
Drying belonging to W H Dole & Co
nowon use in South Branch Mills
23 & 25 South Canal St. } $350.00

$7350.00.

83

Also bill of sale Sweet to Dole dated Jan 28/63 which is as follows:

Chicago Jany 28th 1863.

W H Dole

Bot of R C Sweet

Three thousand one hundred (3104) & 4 bush wheat more or less @ 95 cts per bush 2948.80.

One thousand one hundred & twenty four bush corn (1124) more or less @ 40 449.60.

Seven hundred & thirty nine bush oats (739) @ 48c 35.37.

Thirty tons of mill feed @ $9 per ton 270.00

Seventy six bbls of flour @ $4.50 342.00

Two smutting machines 320.00

1 Stove Drum & Pipe 30.

$4385.77.

Rec payment.

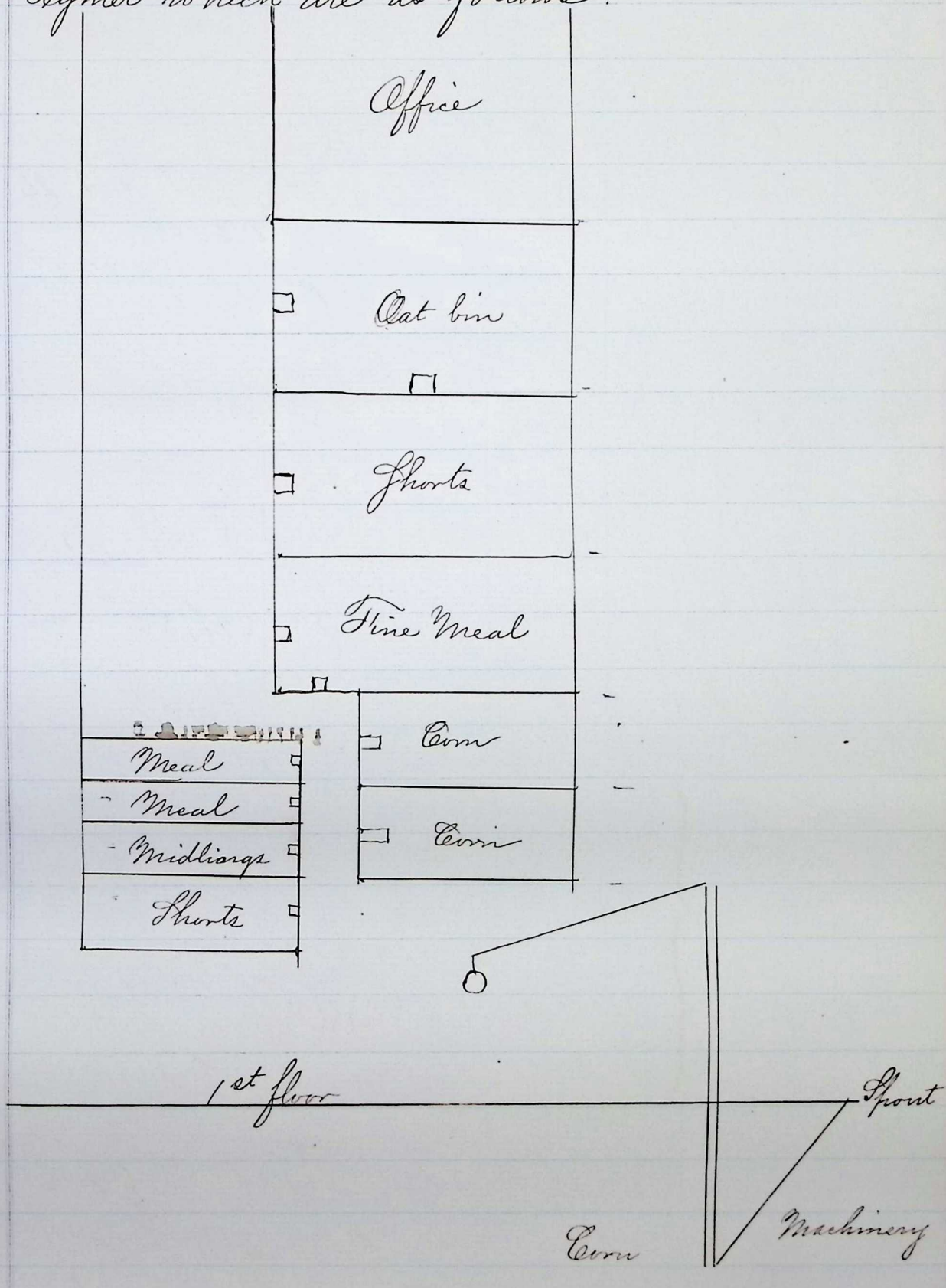
R C. Sweet.

All the above flour & grain &c in mill

84 known as South Branch Mills 23 x 25 South Canal St.

R. C Sweet.

Also the diagrams used by the witness Seymer which are as follows:



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Also Chattel mortgage Sweet to Dole, which is as follows:

This Indenture, made and entered into this seventeenth (17th) day of November in the year of our Lord one thousand eight hundred and sixty two (1862) between Rufus B Sweet of the city of Chicago of the county of Cook and state of Illinois, party of the first part and William H Dole of the same place aforesaid party of the second part Witnesseth, That the said party of the first part, for and in consideration of the sum of Six thousand ($6000) Dollars (being the purchase money in part of the goods hereinafter named) in hand paid (the receipt whereof is hereby acknowledged) does hereby grant, sell convey and confirm unto the said party of the second part, his heirs and assigns forever, all and singular the following described, goods and chattels, to wit: One (1) Engine) One (1) Boiler One (1) Portable corn mill, one (1) Grain Dryer, three (3) Elevators (One corn, one meal and one miscellaneous) conveyors, spouts and bins, now situated in the buildings known as number 23 and 25 South Canal street in said city of Chicago, Also all the right title and interest of the said party of the first part in and to, two certain Leases, one of said building Number 23 South Canal street & certain milling machinery then in said

building, dated April 21st 1862. made by John McDevit of Pittsburg, Pa to W H Dole, R C Sweet & Samuel Davis of said Chicago and one of the building number 25 South Canal street, dated April 16th 1862 made by Thomas Lonergan of said Chicago to said Dole, Sweet & Davis.

Together with all and singular the appurtenances thereunto belonging or in anywise appertaining To Have and to Hold the above described Goods and Chattels, unto the said party of the second part & to his heirs and afsigns forever, subject nevertheless to a certain, chattel, mortgage made by said party of the first part & said party of the second part to Benjamin F Quimby bearing date November 11th 1862.

Provided always, And these presents are upon this express condition, That if the said Rufus C Sweet his heirs, executors, administrators or assigns shall pay or cause to be paid to the said William H Dole or his lawful attorney or attorneys, heirs executors, administrators or assigns, the sum of Six thousand ($6000) Dollars together with the interest that may accrue thereon, at the rate of ten (10) per cent per annum from the Seventeenth day of November A D One thousand eight hundred and sixty two (1862) until paid, according to the tenor of five certain promissory notes, made by said party

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of the first part to the order of said party of the second part of even date herewith, and all bearing ten per cent interest as follows: number one (1) for one thousand dollars, payable in thirty days after date: Number two (2) for one thousand dollars payable sixty days after date: Number three (3) for one thousand dollars payable Ninety days after date: Number four (4) for one thousand dollars payable four months after date, and number five (5) for two thousand dollars payable on the first day of April 1863 that then, and from thenceforth, these presents and everything herein contained, shall cease, and be null and void, anything herein contained to the contrary notwithstanding.

Provided Also, that the said Rufus C Sweet may retain the possession of and have the use of said Goods and Chattels until the day of payment aforesaid of said note number One (1) due in thirty days after the date thereof and also at his own expense to keep said Goods and chattels and also at the expiration of said time of payment of said note number one (1) due in thirty days from date, if said sum of money, together with the interest as aforesaid mentioned in said note number one shall not be paid, to deliver up said Goods and Chattels in good condition to said William A Dole or to his heirs, executors

administrators or assigns.

And Provided Also. That if default as aforesaid by said party of the first part, shall be made in the payment of either of said promissory notes at the time or times when the same shall severally fall due. that then the said party of the second part or his attorney agent, assigns or heirs executors or administrators, shall have the right immediately upon such default in the payment of either Number one, two, three or four of said notes, to declare the whole sum due & payable and to proceed in the same manner as if the last mentioned (number one) of said notes had matured to take possession of said Goods and Chattels, wherever the same may or can be found, and sell the same at public or private sale to the highest bidder for cash in hand and proceed to make the sum of money and interest promised as aforesaid, together with all reasonable costs, charges and expenses for so doing; and if there be any overplus, shall pay the same without delay to the said party of the first part, or his legal representatives.

In Testimony Whereof, the said party of the first part has hereunto set his hand and affixed his seal the day and year first herein written.

Rufus C Sweet Seal

Signed, sealed and delivered in Presence of
Charles H Ham
Witness

Interlineations and erasures made before signing by me.

Charles H Ham

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State of Illinois } SS.
Cook County }

I A D Sturtevant 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 Rufus C Sweet This 18th day of November A D 1862.

A D Sturtevant (Seal.)
Justice of the Peace.

All of which were received, read & put in evidence without objection.

The weigh book of W H Dole was also put in evidence. all the material part of which is as follows:

Load of Spring wheat	Load of Spring wheat
From John Whitmore	From John Whitmore
To R C Sweet	To R C Sweet
Weighed Jany 15th 1863	Weighed Jany 15th 1863
Gross 6700 lbs	Gross 7310 lbs
Tare 2010 lbs	Tare 1890 lbs
Net 4690 lbs	Net 5420 lbs

90

Load of Spring Wheat
From John Wheat
To R & Sweet
Weighed Jany 15th 1863
Gross 6850 lbs
Tare 1890 lbs
Net 4960 lbs

Load of Spring Wheat
From John Whitmore
To R & Sweet
Weighed Jany 15th 1863.
Gross 6000 lbs
Tare 2040 lbs
Net 3960 lbs

Load of Spring wheat
From John Whitmore
To R & Sweet
Weighed Jany 15th 1863
Gross 6780 lbs
Tare 1970 lbs
Net 4810 lbs

Load of Corn
From B & 2 R R.
To R & Sweet
Weighed Jany 15th 1863.
Gross 6830 lbs
Tare 1940 lbs
Net 4890 lbs

Load of Corn
From B & 2 RR
To R & Sweet
Weighed Jany 15th 1863
Gross 7000 lbs
Tare 2055 lbs
Net 4945 lbs

Load of Corn
From B & 2 R R.
To R & Sweet
Weighed Jany 15th 1863
Gross 8230 lbs
Tare 1895 lbs
Net 6335 lbs

Load of Corn
From B & 2 R R
To R & Sweet
Weighed Jany 16th 1863
Gross 6480 lbs
Tare 1750 lbs
Net 4730 lbs

Load of
From John Whitmore
To R & Sweet
Weighed Jany 16th 1863.
Gross 5500 lbs
Tare 1940 lbs
Net 3570

90 1/8
91

Load of Spring wheat
From John Whitmore
To R & Sweet
Weighed Jany 16th 1863
Gross 4795 lbs
Tare 2082 lbs
Net 2713 lbs

Load of Spring wheat
From John Whitmore
To R & Sweet
Weighed Jany 16th 1863.
Gross 5520 lbs
Tare 1940 lbs
Net 3580 lbs

Load of Spring wheat
From John Whitmore
To R & Sweet
Weighed Jany 16th 1863
Gross 5410 lbs
Tare 1900 lbs
Net 3510 lbs

Load of Spring wheat
From John Whitmore
To R & Sweet
Weighed Jany 16th 1863.
Gross 5510 lbs
Tare 1840 lbs
Net 3660 lbs

Load of Spring wheat
From John Whitmore
To R & Sweet
Weighed Jany 16th 1863
Gross 6495 lbs
Tare 1975 lbs
Net 4520 lbs

Load of Spring wheat
From John Whitmore
To R & Sweet
Weighed Jany 16th 1863
Gross 5680 lbs
Tare 845 lbs
Net 4835 lbs

Load of Spring wheat
From John Whitmore
To R & Sweet
Weighed Jany 16th 1863
Gross 6630 lbs
Tare 1850 lbs
Net 4780 lbs

Load of Midlgs
From B F Linsley & Co
To R & Sweet
Weighed Jany 16th 1863
Gross 5740 lbs
Tare 1860 lbs
Net 3880 lbs

90 1/2
92

Load of Mdlgs
From B F Dunnby & Lee
To R C Sweet
Weighed Jany 16th 1863
Gross 7110 lbs
Tare 1925 lbs
Net 5185 lbs

Load of Mdlgs
From B F. Dunnby & Lee
To R C Sweet
Weighed Jany 16th 1863
Gross 6095 lbs
Tare 2000 lbs
Net 4095 lbs

Load of Mdlgs
From B F Dunnby & Lee
To R C Sweet
Weighed Jany 16th 186
Gross 5590 lbs
Tare 1860 lbs
Net 3730 lbs

Load of Spring wheat
From John Whitmore
To R C Sweet
Weighed Jany 16th 1863
Gross 7140 lbs
Tare 1975 lbs
Net 5765 lbs

Load of Spring wheat
From John Whitmore
To R C Sweet
Weighed Jany 16th 1863
Gross 4550 lbs
Tare 845 lbs
Net 3705 lbs

Load of Spring wheat
From John Whitmore
To R C Sweet
Weighed Jany 16th 1863
Gross 5795 lbs
Tare 1850 lbs
Net 4145 lbs

Load of Spring wheat
From John Whitmore
To R C Sweet
Weighed Jany 16. 186
Gross 3800 lbs
Tare 1800 lbs
Net 2000 lbs

Load of spring wheat
From Jno Whitmore
To R C Sweet
Weighed Jany 17th 1863
Gross 4715 lbs
Tare 890 lbs
Net 3820 lbs

92 3/16
93

Load of Spring wheat
From John S Whitmore
To R C Sweet
Weighed Jany 17th 1863
Gross 6460 lbs
Tare 1900 lbs
Net 4560 lbs

Load of Spring wheat
From John S Whitmore
To R C Sweet
Weighed Jany 19th 1863
Gross 6600 lbs
Tare 1990 lbs
Net 4610 lbs

Load of Spring wheat
From John Whitmore
To R C Sweet
Weighed Jany 19th 1863
Gross 5530 lbs
Tare 1990 lbs
Net 3540 lbs

Load of Mdlgs
From B F Dunnby & Co
To R C Sweet
Weighed Jany 17th 1863
Gross 5650 lbs
Tare 1780 lbs
Net 3870 lbs

Load of Mdlgs
From B F Dunnby & Co
To R C Sweet
Weighed Jany 17th 1863
Gross 6570 lbs
Tare 1870 lbs
Net 4700 lbs

Load of Mdlgs
From B F Dunnby & Co
To R C Sweet
Weighed Jany 19th 1863
Gross 5130 lbs
Tare 1870 lbs
Net 3260 lbs

Load of Mdlgs
From B F Dunnby & Co
To R C Sweet
Weighed Jany 19th 1863
Gross 6800 lbs
Tare 1780 lbs
Net 4020 lbs

Load of Spring wheat
From John Whitmore
To R C Sweet
Weighed Jany 17th 1863
Gross 7200 lbs
Tare 2000 lbs
Net 5200 lbs

90 4/16
94

Load of Winter wheat
From Spruance & Preston
To R & Sweet
Weighed Jany 19, 186
Gross 7010 lbs
Tare 1750 lbs
Net 5260 lbs

Load of spring wheat
From Spruance & Co
To R & Sweet
Weighed Jany 19th 1863
Gross 7750 lbs
Tare 1940 lbs
Net 5810 lbs

Load of Spring wheat
From Spruance & Co
To R & Sweet
Weighed Jany 19th 1863
Gross 6660 lbs
Tare 1840 lbs
Net 4820 lbs

Load of spring wheat
From No 44 Franklin
To R & Sweet
Weighed Jany 19th 1863
Gross 6850 lbs
Tare 1940 lbs
Net 4910 lbs

Load of Spring wheat
From No 44 Franklin st
To R & Sweet
Weighed Jany 19th 1863
Gross 5390 lbs
Tare 1740 lbs
Net 3650 lbs

Load of Spring wheat
From R A Skinner
To R & Sweet
Weighed Jany 20th 1863
Gross 8760 lbs
Tare 1520 lbs
Net 6640 lbs.

Load of Spring wheat
From R & Skinner
To R & Sweet
Weighed Jany 20th 1863
Gross 8780 lbs
Tare 1860 lbs
Net 6920 lbs

5 bags

Load of Spring wheat
From Campbell & Woodruff
To R & Sweet
Weighed Jany 20th 1863
Gross 6690 lbs
Tare 1860 lbs
Net 4830 lbs.

90 5/116
95

Load of Spring wheat
From Campbell & Woodruff
To R C Sweet
Weighed Jany 20th 1863
Gross 5940 lbs
Tare 1920 lbs
Net 4020 lbs

Load of Spring wheat
From B & D R R Co
To R C Sweet
Weighed Jany 20 th 186
Gross 6150 lbs
Tare 1900 lbs
Net 4250 lbs

Load of Spring wheat
From B & D R R
To R C Sweet
Weighed Jany 21. 1863
Gross 5600 lbs
Tare 1900 lbs
Net 3700 lbs

Load of Spring wheat
From R A Slomer
To R C Sweet
Weighed Jany 20 th 1863
Gross 7165 lbs
Tare 1840 lbs
Net 5325 lbs

Load of Spring wheat
From R A Slomer
To R C Sweet
Weighed Jany 20th 1863
Gross 5395 lbs
Tare 1840 lbs
Net 3555 lbs

Load of Spring wheat
From R A Slomer
To R C Sweet
Weighed Jany 20th 1863
Gross 5510 lbs
Tare 1950 lbs
Net 3560 lbs

Load of Spring Wheat
From R A Slomer
To R C Sweet
Weighed Jany 21 st 1863
Gross 7170 lbs
Tare 1860 lbs
Net 5310 lbs

Load of Winter wheat
From Willard Bros & Co.
To R C Sweet
Weighed Jany 21st 1863.
Gross 4340 lbs
Tare 1750 lbs
Net 2590 lbs.

90 5/16
96

Load of Winter wheat
From
To R & Sweet
Weighed Jany 21st 1863
Gross 7680 lbs
Tare 1930 lbs
Net 5750 lbs

Load of Winter wheat
From C & O Line R R
To R & Sweet
Weighed Jany 21st 1863.
Gross 6720
Tare 1930
Net 4790 lbs.

Load of Winter wheat
From
To R & Sweet
Weighed Jany 21st 1863
Gross 5180 lbs
Tare 1930 lbs
Net 3250 lbs

Load of Winter wheat
From
To R & Sweet
Weighed Jany 21st 1863
Gross 6550 lbs
Tare 1930 lbs
Net 4620 lbs

Load of Corn
From B & O R R
To R & Sweet
Weighed Jany 21st 1863
Gross 7480 lbs
Tare 1940 lbs
Net 5540 lbs

Load of Corn
From B & O R R
To R & Sweet
Weighed Jany 21st 1863
Gross 6850 lbs
Tare 1760 lbs
Net 5090 lbs.

Load of Corn
From B & O R R.
To R & Sweet
Weighed Jany 21st 1863
Gross 7260 lbs
Tare 1810 lbs
Net 5450 lbs

Load of Spring wheat
From L Kennedy & Co
To R & Sweet
Weighed Jany 21st 1863
Gross 7170 lbs
Tare 2247 lbs.
Net 4923 lbs

90 1/2
97

Load of Spring wheat
From L Kennedy & Co
To R & Sweet
Weighed Jany 21st 1863
Gross 6500 lbs.
Tare 2260 lbs
Net 4240 lbs

Load of Spring wheat
From L Kennedy & Co
To R & Sweet
Weighed Jany 21st 1863
Gross 6235 lbs
Tare 2270 lbs
Net 3965 lbs.

Load of Spring wheat
From L Kennedy & Co
To R & Sweet
Weighed Jany 21st 1863
Gross 5830 lbs
Tare 2270 lbs
Net 3560 lbs

Load of Corn
From B & O R R
To R & Sweet
Weighed Jany 21st 1863.
Gross 7300 lbs
Tare 2020 lbs
Net 5280 lbs

Load of Spring wheat
From D Kirk & Co
To R & Sweet
Weighed Jany 21st 1863
Gross 7730 lbs
Tare 1900 lbs
Net 5830 lbs

Load of Spring wheat 125 bags
from D Kirk & Co
To R & Sweet
Weighed Jany 21st 1863
Gross 7670 lbs
Tare 1900 lbs
Net 5770 lbs

Load of Spring wheat
From D Kirk & Co
To R & Sweet
Weighed Jany 22d 1863
Gross 7860 lbs
Tare 1865 lbs
Net 5995 lbs

Load of Spring wheat
From Woodruff & Co
To R & Sweet
Weighed Jany 21st 1863
Gross 6790 lbs
Tare 1860 lbs
Net 4930 lbs

Load of Spring wheat
From Woodruff & Co
To R & Sweet
Weighed Jany 22d 1863
Gross 7495 lbs
Tare 2100 lbs
Net 5395 lbs

Load of Spring wheat
From Woodruff & Co.
To R & Sweet
Weighed Jany 22d 1863.
Gross 7025 lbs
Tare 2100 lbs
Net 4925 lbs

Load of Spring wheat
From D & A J Hayward
To R & Sweet
Weighed Jany 24th 1863
Gross 8680 lbs
Tare 2130 lbs
53 Bags
Net 6550 lbs

Load of Mdlgs
From B F Quimby & Co
To R & Sweet
Weighed Jany 186
Gross 6200 lbs
Tare 1700 lbs
Net 4500 lbs

Load of Mdlgs
From B F Quimby & Co
To R & Sweet
Weighed Jany 21st 1863
Gross 5960 lbs
Tare 1860 lbs
Net 4100 lbs

Load of Mdlgs.
From B F Quimby & Co
To R & Sweet
Weighed Jany 21st 1863
Gross 6000 lbs
Tare 2000 lbs
Net 4000 lbs

Load of Mdlgs
From B F Quimby & Co
To R & Sweet
Weighed Jany 22d 1863
Gross 6225 lbs
Tare 2000 lbs
Net 4225 lbs

Load of Corn
From Pratt
To R & Sweet
Weighed Jany 21st 1863
Gross 6300 lbs
Tare 1800 lbs
Net 4500 lbs

98 96
99

Load of Corn
From Pratt
To R & Sweet
Weighed Jany 22 1863
Gross 7480 lbs
Tare 1930 lbs
Net 5550 lbs

Load of Spring wheat
From Elevator
To R & Sweet
Weighed Jany 22 1863
Gross 6620 lbs
Tare 1900 lbs
Net 4720 lbs

Load of Spring wheat
From Elevator
To R & Sweet
Weighed Jany 22 1863
Gross 8500 lbs
Tare 1900 lbs
Net 6600 lbs

Load of Corn
From Griffin Bros & Co
To R & Sweet
Weighed Jany 22 1863
Gross 7150 lbs
Tare 2000 lbs
Net 5150 lbs

Load of Corn
From Griffin Bros & Co
To R & Sweet
Weighed Jany 22 1863
Gross 6300 lbs
Tare 1800 lbs
Net 4500 lbs

Load of Corn
From Griffin & Co
To R & Sweet
Weighed Jany 22 1863
Gross 6420 lbs
Tare 2000 lbs
Net 4420 lbs

Load of Corn.
From Griffin & Co
To R & Sweet
Weighed Jany 22 1863
Gross 6415 lbs
Tare 2080 lbs
Net 4335 lbs

Load of Spring wheat
From Lymns Dean & Co
To R & Sweet
Weighed Jany 22 1863
Gross 6660 lbs
Tare 1850 lbs
Net 4810 lbs

Load of Spring wheat
From Higgins & Co
To R C Sweet
Weighed Jany 22 186.
Gross 6680 lbs
Tare 1850 lbs
Net 4830 lbs

Load of Spring wheat
From Higgins & Co.
To R C Sweet.
Weighed Jany 22d 1863
Gross 6940 lbs
Tare 2140 lbs
Net 4800 lbs.

Load of Spring wheat
From Higgins & Co
To R C Sweet
Weighed Jany 23d 1863
Gross 8060 lbs
Tare 2070 lbs
Net 5990 lbs

Load of Spring wheat
From Elevator
To R L & Sweet
Weighed Jany 22d 1863
Gross 7450 lbs
Tare 1950 lbs
Net 5500 lbs

Load of Spring wheat
From Elevator
To R L & Sweet
Weighed Jany 22d 1863
Gross 7000 lbs
Tare 1960 lbs
Net 5040 lbs

Load of Spring wheat
From Elevator
To R C Sweet
Weighed Jany 22d 1863
Gross 7600 lbs
Tare 1970 lbs
Net 5630 lbs

Load of Spring wheat
From Elevator
To R C Sweet
Weighed 24th 1863
Gross 8900 lbs
Tare 1960 lbs
Net 6940 lbs

Load of Mdlgs
From B F Linsley & Co
To R L & Sweet
Weighed Jany 22d 1863
Gross 6185 lbs
Tare 1860 lbs
Net 4325 lbs.

90 11/16
101

Load of Mdlgs
From B F Dimmby & Co
To R C Sweet
Weighed Jan 22d 1863
Gross 4890 lbs
Tare 1930 lbs
Net 2960 lbs

Load of Mdlgs
From B F Dimmby & Co
To R C Sweet
Weighed Jany 23d 1863
Gross 7190 lbs
Tare 1830 lbs
Net 5360 lbs

Load of Mdlgs
From B F Dimmby & Co
To R C Sweet
Weighed Jany 23d 1863
Gross 5475 lbs
Tare 1650 lbs
Net 3825 lbs

Load of Spring wheat
From L Kennedy & Co
To R C Sweet
Weighed Jany 23d 1863
Gross 7240 lbs
Tare 2320 lbs
Net 4920 lbs

Load of Spring wheat
From L Kennedy & Co
To R C Sweet
Weighed Jany 23d 1863
Gross 8225 lbs
Tare 2210 lbs
Net 6015 lbs

Load of Spring wheat
From L Kennedy & Co
To R C Sweet
Weighed Jany 23d 1863
Gross 8060 lbs
Tare 2210 lbs
Net 5850 lbs

Load of Spring wheat
From L Kennedy & Co
To R C Sweet
Weighed Jany 24th 1863
Gross 7350 lbs
Tare 2170 lbs
Net 5180 lbs

Load of Corn
From Griffin Bro
To R C Sweet
Weighed Jany 23. 186
Gross 6860 lbs
Tare 1900 lbs
Net 4960 lbs

9c 12/16

102

Load of corn
From Griffin Bros & Co
To R & Sweet
Weighed Jany 23d 1863
Gross 6250 lbs
Tare 2020 lbs
Net 4230 lbs

Load of Corn
From Griffin & Lee
To R & Sweet
Weighed Jany 23d 1863
Gross 6790 lbs
Tare 1970 lbs
Net 4820 lbs

Load of Corn
From Griffin & Lee
To R & Sweet
Weighed Jany 23d 1863
Gross 7060 lbs
Tare 2320 lbs
Net 4740 lbs

Load of Corn
From Hanson
To R & Sweet
Weighed Jany 23d 1863
Gross 6316 lbs
Tare 1900 lbs
Net 4416 lbs

Load of Corn
From Hanson
To R & Sweet
Weighed Jany 23d 1863
Gross 7300 lbs
Tare 2100 lbs
Net 5200 lbs

Load of Corn
From Hanson
To R & Sweet
Weighed Jany 23d 1863
Gross 6350 lbs
Tare 1900 lbs
Net 4450 lbs

Load of Corn
From Hanson
To R & Sweet
Weighed Jany 23d 1863
Gross 6315 lbs
Tare 2100 lbs
Net 4215 lbs

Load of Spring wheat
From Lenard & J.
To R & Sweet
Weighed Jany 23d 1863
Gross 6680 lbs
Tare 2120 lbs
Net 4560 lbs
4560
4522

90 13/16
103

Load of Spring wheat
From Lennard & J
To R & Sweet
Weighed Jany 23 1863
Gross 6820 lbs
Tare 2120 lbs
Net 4700 lbs

Load of
From 44 Franklin
To R & Sweet
Weighed Jany 24th 1863
Gross 5170 lbs
Tare 1870 lbs
Net 3300 lbs

Load of
From 44 Franklin
To R & Sweet
Weighed Jany 24. 1863
Gross 5500 lbs
Tare 1900 lbs
Net 3600 lbs

Load of corn
From J & Mahan & Co
To R & Sweet
Weighed Jany 24th 1863
Gross 7080 lbs
Tare 2100 lbs
Net 4980 lbs
6 cor 1132
J Gibbon
RR

Load of Corn
From J & Mahan & Co
To R & Sweet
Weighed Jany 24th 1863
Gross 7080 lbs
Tare 2050 lbs
Net 5030 lbs

Load of Corn
From J & Mahan & Co
To R & Sweet
Weighed Jany 24th 1863
Gross 6150 lbs
Tare 2095 lbs
Net 4055 lbs

Load of Corn
From J & Mahan & Co
To R & Sweet
Weighed Jany 24th 1863
Tare 2050 lbs
Gross 6210 lbs
Net 4160 lbs

Load of Winter wheat
From H Bacon
To R & Sweet
Weighed Jany 24th 1863
Gross 7260 lbs
Tare 1860 lbs
Net 5400 lbs

90 14 18

104

Load of Winter wheat
From H Bacan
To R & Sweet
Weighed Jany 24th 1863
Gross 6810 lbs
Tare 1760 lbs
Net 5050 lbs

Load of wheat
From H Bacon
To R & Sweet
Weighed Jan 24th 1863
Gross 7050 lbs
Tare 1860 lbs
Net 5190 lbs

Load of Wheat
From H & Bacon
To R & Sweet
Weighed Jany 26th 1863
Gross 7060 lbs
Tare 1960 lbs
Net 5100 lbs

Load of Spring wheat
From L Kennedy & Co
To R & Sweet
Weighed Jany 24th 1863
Gross 7280 lbs
Tare 2160 lbs
Net 5120 lbs

Load of Spring wheat
From L Kennedy & Co
To R & Sweet
Weighed Jany 26th 1863
Gross 7260 lbs
Tare 2270 lbs
Net 4990 lbs

Load of Spring wheat
From L Kennedy & Co
To R & Sweet
Weighed Jany 26th 1863
Gross 7280 lbs
Tare 2245 lbs
Net 5035 lbs.

Load of Spring wheat
From L Kennedy & Co
To R & Sweet
Weighed Jany 26" 1863
Gross 6885 lbs
Tare 2125 lbs
Net 4760 lbs

Load of Spring wheat
From Weed & Co.
To R & Sweet
Weighed Jany 24" 1863
Gross 6670 lbs
Tare 2050 lbs
Net 4620 lbs.

90 15/16
105

Load of Spring Wheat
From Weed & Lee
To R C Sweet
Weighed Jany 24th 1863
Gross 6500 lbs
Tare 2040 lbs
Net 4460 lbs

Load of Spring wheat
From Weed & Lee
To R C Sweet
Weighed Jany 24th 1863
Gross 6980 lbs
Tare 2040 lbs
Net 4940 lbs

Load of Spring wheat
From Weed & Lee
To R C Sweet
Weighed Jan 26th 1863
Gross 6500 lbs
Tare 2040 lbs
Net 4460 lbs

Load of Spring wheat
From H & Parker
To R C Sweet
Weighed Jan 24th 1863
Gross lbs
Tare lbs
Net 2371 lbs

Load of Spring wheat
From H & Parker
To R C Sweet
Weighed Jany 24th 1863
Gross lbs
Tare 2330 lbs
Net lbs.

Page 600

Load of Spring wheat
From H & Parker
To R C Sweet
Weighed Jany 24th 1863
Gross 6020 lbs
Tare 1980 lbs
Net 4040 lbs

Load of Spring Wheat
From H & Parker
To R C Sweet
Weighed Jany 24th 1863
Gross 6680 lbs.
Tare 2080 lbs
Net 4600 lbs

Load of Spring Wheat
From H & Parker
To R C Sweet
Weighed Jany 24th 1863
Gross 5750 lbs
Tare 1901 lbs
Net 3750 lbs.

90 1/2 8
106

Load of Spring wheat
From Weed & Leo
To R & Sweet
Weighed Jany 24th 1863.
Gross 6020 lbs
Tare 2000 lbs
Net 4020 lbs

Load of Spring wheat
From Weed & Leo
To R & Sweet
Weighed Jany 26th 1863
Gross 6400 lbs.
Tare 1950 lbs.
Net 4450 lbs.

Load of Spring wheat
From Weed & Leo
To R & Sweet
Weighed Jany 26th 1863
Gross 5870 lbs
Tare 1950 lbs
Net 3920 lbs

Load of Spring wheat
From Weed & Leo
To R & Sweet
Weighed Jany 26th 1863
Gross 6420 lbs
Tare 1950 lbs
Net 4470 lbs

Load of Spring Wheat
From Weed & Leo
To R & Sweet
Weighed Jany 26" 1863
Gross 5980 lbs
Tare 2045 lbs
Net 3855 lbs

Load of Spring wheat
From Weed & Leo
To R & Sweet
Weighed Jany 26th 1863
Gross 6430 lbs
Tare 2045 lbs
Net 4385 lbs.

Load of Spring wheat
From Weed & Leo
To R & Sweet
Weighed Jany 26th 1863
Gross 6270 lbs
Tare 1900 lbs
Net 4370 lbs

Load of Oats
From Campbell & M
To R & Sweet
Weighed Jany 26th 1863
Gross 5060 lbs
Tare 1890 lbs
Net 3170 lbs

Load of Oats
From Campbell & W
To R C Sweet
Weighed Jan 26th 1863
Gross 7600 lbs
Tare 1735 lbs
Net 5865 lbs

Load of Oats
From Campbell & W
To R C Sweet
Weighed Janry 26th 1863
Gross 7220 lbs
Tare 1890 lbs
Net 5330 lbs

Load of Oats
From Campbell & Co
To R C Sweet
Weighed Janry 26th 1863
Gross 6270 lbs
Tare 1735 lbs
Net 4435 lbs

Load of Spring wheat
From L Kennedy & Co
To R C Sweet
Weighed Janry 26th 1863
Gross 7270 lbs
Tare 2220 lbs
Net 5050 lbs

Load of Spring Wheat
From L Kennedy
To R C Sweet
Weighed Janry 27th 1863.
Gross 6750 lbs
Tare 2220 lbs
Net 4530 lbs

Load of Spring wheat
From L Kennedy & Co
To R C Sweet
Weighed Janry 27th 1863
Gross 6725 lbs
Tare 2230 lbs
Net 4495 lbs

Load of Spring wheat
From L Kennedy & Co
To R C Sweet
Weighed Janry 27th 1863
Gross 7600 lbs
Tare 2240 lbs
Net 5360 lbs

Load of Oats
From Campbell
To R C Sweet
Weighed Janry 26th 1863
Gross 7015 lbs
Tare 1890 lbs
Net 5125 lbs.

90 15 49
108

Load of Spring wheat
From Lennard & J
To R C Sweet
Weighed Jany 26th 1863
Gross 6780 lbs
Tare 1935 lbs
Net 4745 lbs

Load of Corn
From Pratt & Co
To R C Sweet
Weighed Jany 27th 1863
Gross 6500 lbs
Tare 1995 lbs
Net 4505 lbs

Load of Corn
From Pratt
To R C Sweet
Weighed Jany 27th 1863
Gross 5900 lbs
Tare 2050 lbs
Net 3850 lbs

Load of Spring wheat
From Weed & Co
To R C Sweet
Weighed Jany 26th 1863.
Gross 6200 lbs
Tare 1800 lbs
Net 4400 lbs

Load of Spring Wheat
From Weed & Co
To R C Sweet
Weighed Jany 27th 1863
Gross 6175 lbs
Tare 1770 lbs
Net 4405 lbs

Load of Spring wheat
From Weed & Co
To R C Sweet
Weighed Jany 27th 1863
Gross 6355 lbs
Tare 1810 lbs
Net 4545 lbs

Load of Spring wheat
From Weed & Co
To R C Sweet
Weighed Jany 27. 1863
Gross 6425 lbs
Tare 1850 lbs
Net 4675 lbs

Load of Spring wheat
From Ill C R R
To R C Sweet
Weighed Jany 26th 1863
Gross 5380 lbs
Tare 1910 lbs
Net 3470 lbs.

90 12/30
109

Load of Spring wheat
From Ill C RR
To R C Sweet
Weighed Jany 26th 1863
Gross 6155 lbs
Tare 2000 lbs
Net 4155 lbs

Load of Spring wheat
From Ill Cent RR
To R C Sweet
Weighed Jan 27th 1863
Gross 6125 lbs
Tare 1995 lbs
Net 4130 lbs

Load of Spring wheat
From Ill Cen R R.
To R C Sweet
Weighed Jany 27th 1863
Gross 8005 lbs
Tare 1910 lbs
Net 6095 lbs

Load of Spring wheat
From Weed & Leo
To R C Sweet
Weighed Jany 27th 1863
Gross 6210 lbs
Tare 1820 lbs
Net 4390 lbs

Load of Spring wheat
From Weed & Leo
To R C Sweet
Weighed Jany 27th 1863
Gross 5250 lbs
Tare 1880 lbs
Net 3370 lbs

Load of Spring wheat
From Weed & Leo
To R C Sweet
Weighed Jany 27th 1863
Gross 6300 lbs
Tare 1870 lbs
Net 4430 lbs.

Load of Spring wheat
From Weed & Leo
To R C Sweet
Weighed Jany 27th 1863
Gross 8350 lbs
Tare 1945 lbs
Net 6405 lbs

Load of Spring wheat
From L Kennedy & Leo
To R C Sweet
Weighed Jany 27th 1863
Gross 7350 lbs
Tare 2100 lbs
Net 5250 lbs.

Load of Corn
From Griffin Bros & Co
To R C Sweet
Weighed Jany 25th 1863
Gross 6395 lbs
Tare 1820 lbs
Net 4575 lbs

Load of Corn
From Griffin Bros & Co
To R C Sweet
Weighed Jany 28th 1863
Gross 6550 lbs
Tare 1820 lbs
Net 4730 lbs.

Load of corn
From Griffen Bros
To R C Sweet
Weighed Jany 28th 1863
Gross 7210 lbs
Tare 1920 lbs
Net 5290 lbs
46 bushels
52.50

Load of Corn
From Griffin Bros & Co
To R C Sweet
Weighed Jany 27th 1863.
Gross 7810 lbs
Tare 1860 lbs
Net 5950 lbs

Load of Corn
From Weed & Webster
To R C Sweet
Weighed Jany 28th 1863
Gross 7440 lbs
Tare 1840 lbs
Net 5600 lbs

Load of Corn
From Boyanton & Webster
To R C Sweet
Weighed Jany 28. 1863
Gross 6600 lbs
Tare 1840 lbs
Net 4760 lbs

Load of Corn
From Weed & Co
To R C Sweet
Weighed Jany 28th 1863
Gross 5930 lbs
Tare 1950 lbs
Net 3980 lbs

Load of Corn
From Boyanton & Webster
To R C Sweet
Weighed Jan 28th 1863
Gross 5835 lbs
Tare 1880 lbs
Net 3955 lbs.

91 The Deft then offered in evidence the
111 books of account of W H Dole & Co consisting
of Ledger, Cash book & Daybook for the
purpose of showing that W H Dole had put
into the capital stock of the firm of Dole
& Co over $7.500 & had withdrawn nothing
therefrom & that R C Sweet had put in
$126.00 & drawn out $150 - as appeared by the
books aforesaid.

To the introduction of which said books in
evidence the Plaintiff by his counsel then &
there objected and the court sustained the
objection & refused to permit the same to be
put in evidence for the purpose aforesaid or
otherwise - to which decision & ruling of the
Court the Deft by his counsel then & there
duly excepted -

The Deft here rested his case & the Plff as
rebutting recalled A Betting who testified:
I was at work in the mill on the 23d
& 24th of January 63. The mill didn't stop
for want of grain on the 24th there
was grain all the time - Skagot was the
night miller at this time.

Cross Examination I was the day miller
& went on at 7 O'clock I left Dole the
week after Sweet failed - I wouldn't stand
Thompson being foreman - I left Friday.

92 then went back Monday - stayed two or
112 three weeks - Had trouble about Ingalls & Cady
bill. Dole didn't discharge me at all. I
went of my own accord. Wasn't discharged
because I wouldn't pay my debts round to
me. I paid the Ingalls & Cady bill my-
self & have the receipt. I quit the second
time because Thompson was boss miller -
& I did the first time - I don't know what
time in the morning I got to the mill
on the 24th about seven O'clock - Mr Dole
didn't say he wouldn't have a man in
the mill who didn't pay his little debts -
I went around the mill every morning to see
if everything was running right -
11½/ Peff then recalled George Blagot who
testified: I was night miller in January
63 at South Branch Mills. The mill
broke down Jan 27th. It strikes me that
I got out of wheat at 12 O'clock at night
on the night of the 23d. It might have
been the night of the 24th. It was one
night or the other & I can't exactly say
which.
Peff then called Wm Wayman who being
duly sworn testified:
I was acting Deputy Sheriff in January 63.
I served the writ in this case and took

113 a portion of the wheat called for in it & 113
delivered it to Pfff as appears by my re-
turn - & saw Dole at the mill - didn't see
Sweet - Kennedy was inquiring for a peculi-
ar kind of wheat - found 6 or 700 bushels in
cellar - took 500 bushels of this & 200 from
another bin - found 731 5/60 bushels first day
found the rest of that in the dryer - There
was some more in the dryer elevated ready
to grind - some of the hands showed me
wheat through a little hatchway where no
body would have thought of looking 139 45/60
bushels & found there -

Pfff here rested his case -

Deft then recalled Henry Geppner who testified:
Dole & Betting had a difficulty in regard
to money paid to Dargalls Cady just before
Betting left - Dole told Betting he didn't
want a man round who didn't pay his
little debts. I don't know that Dole discharged
him -

Deft then recalled Thomas Jones who testified:
The place Mr Wayman means when he
speaks of a "hatchway" is the hopper over
the stones - The grain that he took from
there was all ready for grinding.

Deft recalled B F Quinby who testified:
I saw Dole's model of a Dryer - He was

114 engaged on it in December/62 and January
114 /63 & in leaning.

Deft then called E A Ingalls who being sworn testified:

Betting owed Ingalls & Cady. The bill was allowed by Dole on account who undertook to collect the bill. It was afterwards returned to us. I believe Dole paid it. Betting also paid it afterwards.

This was all the evidence in the case. The said cause having been argued by counsel, the court gave to the Jury on behalf of the Plaintiff the following instructions.

Plaintiffs' Instructions:

Where no time of payment is agreed upon by the parties to a sale, the presumption of law is that the sale is for cash and that the seller is entitled to payment on delivery.

Where anything remains to be done as between the parties to a sale, in order to ascertain the price or quantity of the thing sold as weighing or measuring - the title to the property sold as between the parties to the sale, does not vest in the buyer, until this act is done.

If the Jury believe from the evidence that the purchase of the grain in this case by Sweet

95 was fraudulent, and that he obtained the
115 possession thereof by fraud, and that at the time of the purchase by him he did not intend to pay the plaintiffs therefor: then he acquired no title thereto as between himself and the plaintiffs. And if they further believe from the evidence, that William H Dole at the time of his purchase knew these facts and knew that the grain was not paid for or knew of such facts, as would have put a prudent man on enquiry, then by his purchase from Sweet, he would acquire no title, or no better title than Sweet acquired by his purchase.

3 Where a partnership is shown to exist between two persons & the terms of it are not shown the law implies that the partners are equal in capital, stock & profits, but such presumption may be overcome by proof that the partners put in capital stock in different proportions, or were to share the profits in different proportions.

Where a sale of personal property is made & no time of payment is agreed upon, the presumption of law is that the sale is for cash on delivery. If by agreement of the parties, or by implication of law, payment

96 is to be made on delivery - and simultaneous
116 ly with the completion of the delivery or be
fore that time, the purchaser secretly absconds
or evades payment and keeps out of the
way so that no demand of payment can
be made upon him - the title to the thing
sold, as between the parties to the sale
does not pass by the mere delivery of the
article sold against the consent of the vendor.

On a sale of personal property where pay-
ment either by implication of law or by the
agreement of the parties is due on delivery
the seller is not entitled to payment on
delivery of part only of the thing sold. The
delivery is not complete, until the whole
is delivered.

If the jury believe from the evidence that
no credit was extended by the plaintiffs to the
defendant for the wheat in controversy and
that, so soon as the delivery was complete
in this case, the plaintiffs demanded the
defendants weights, and as soon as the Plaintiff
obtained them, sought out Sweet at his mill
& elsewhere in the city to demand payment
and he was not to be found, but evaded
the plaintiffs purposely & left - no one at his
place of business to pay for the grain &

97 did not intend to pay for it. and if the
117 Jury believe further from the evidence that
by the contract or understanding of the par-
ties - Sweet's weights of the grain were to
govern in determining the amount delivered
the plaintiff can not be considered as having
waived the right to payment on delivery
as aforesaid, but in that respect stand
in the same position as if they had
succeeded in making the demand for deliv-
ery.

To the giving of which said instructions
& each & every of them the Deft by his
counsel then & there duly excepted.

And on behalf of the Deft the court
gave the following instructions:

Defendants instructions.

1st

Fraud cannot be presumed: it must be
alleged and proven.

2d.

If the Jury shall believe from the evidence
that the grain in question was sold to the
defendant Sweet, by the Plaintiff, upon con-
dition, that cash should be paid therefor:
yet if they further believe from the evidence
that the grain was delivered to said de-
fendant Sweet without payment of the money

98 therefor, and that William H Dole purchased
116 the same of said defendant Sweet while said
wheat was in his possession for valuable con-
sideration without notice, of any fraud com-
mitted or intended by defendant Sweet (if
any such has been proved against him)
then the plaintiff is not entitled to recover
and the Jury must find for the defendant.

3.

If the Jury believe from the evidence that
the said William H Dole purchased the
said grain from the said defendant Sweet
in good faith, without notice of any fraud
committed or intended by him (even if such
fraud has been proved against Sweet) and
received the same partly in payment of a
precedent debt due to him from the said
Sweet, and at the same time paid, or
bound himself to pay, to or for the said
Sweet other new and valuable consideration
for said grain; and that the said grain
was delivered to the said Dole, while it
was in his possession, and before it was
reclaimed by the plaintiff, this would con-
stitute a sufficient consideration to protect the
said Dole against any equities which might
exist as between the plaintiffs and the said
Sweet. In such case therefore, unless the

99 evidence satisfies the jury that the said Dole
119 had notice of the alleged fraud the plaintiff
is not entitled to recover.

4th.

The law never presumes any transaction fraudulent, and hence a party seeking to set aside a sale on account of fraud, must allege and prove the same: and therefore if the jury believe from all the circumstances and facts in evidence, that the sale from Sweet to Dole, of the grain in question was made in good faith to secure and pay Dole, the indebtedness of Sweet to him, and also for other valuable consideration, from said Dole to said Sweet moving, at the time of such sale, and without notice on Dole's part of the alleged claims of the Plaintiff to said grain, then the law is for the defendant. In all cases of alleged fraudulent sales, of the Kind alleged in this case a Knowledge of, or participation in the fraud, or a knowledge of such facts as would put a prudent man upon inquiry, must be shown on the part of the buyer, as well as fraud in the seller, in order to deprive the buyer of his purchase.

5th

A fraudulent purchase of goods accompanied

12

by delivery is not void but voidable only, at the election of the vendor; and until it is avoided the vendee, having such goods in his possession, has the power to make a valid sale of the goods, to a bona fide purchaser for a valuable ~~consideration~~ having no notice of the fraud *, without notice of the alleged fraud, then the property in said grain legally passed to the said Dole and the plaintiff cannot recover.

6th

The possession of personal property is one of the strongest indications of ownership and when a person is in the possession of personal property, claiming and treating it as his own, the presumption is that he is the owner thereof.

9th

The Jury should not confound the wheat sought to be recovered in this case, with the wheat or grain testified to as replevied in any other case.

The question here is whether Kennedy is entitled to the wheat taken on the writ in this case; and therefore if the jury believe from the evidence that the wheat which Kennedy sold Sweet was converted into flour before the writ in this case issued, then they must find for the defendants.

4th

* If therefore the grain in controversy was sold by the said plaintiff and delivered to the said Defendant Sweet, and the jury are satisfied from the evidence that Williams & Dole was a bona fide purchaser for a valuable consideration

12

18th

So also if the jury believe from the evidence, that Dole undertook to pay and did pay $2500 to B F Quimby & Co for which Sweet as well as Dole was liable to said Quimby & Co such payment of joint liability by Dole alone, should be considered by the Jury in passing upon the transactions between the parties; and if the Jury are satisfied from the evidence that said $2500 went into the business of the firm of Dole & Co and they invested the same therein, and that Dole afterwards by agreement paid the whole of said loan, then such payment by said Dole may be considered as so much additional contribution to the capital stock, and as giving him so much more interest in the mill and fixtures.

13th

If the Jury believe from the evidence that the wheat mentioned in the Count in trover in the declaration in this case ~~mentioned~~ was converted by Sweet to his own use before the 28th day of January 1863, no recovery therefor can be had against Dole.

16th.

A fraudulent sale is not void but voidable only at the election of the vendor, and

if after a discovery of the facts alleged to constitute the fraud, a vender does not rescind the contract of sale, but proceeds upon it, and treats the purchase money as a debt due from the purchaser instead of seeking to recover the property, he thereby waives his right so to rescind the same on the ground of fraud.

And therefore although the jury may believe from the evidence, that Sweet was guilty of fraud in purchasing the grain in question yet if they further believe from the evidence, that the plaintiff after he was informed of such fraud, declined to rescind the sale, and sought to collect the amount due for said grain, as an ordinary indebtedness, he thereby affirmed said sale, and cannot recover in this action, even as against defendant Sweet.

And the Deft asked the court to give to the Jury the following instructions.

4th

If the Jury believe from the evidence that it is the universal custom in sales of grain for such sales to be made for cash on delivery and that the grain in question was sold and delivered to Sweet upon those terms then the presumption

123 arising from Sweets' possession of the same and the custom aforesaid is that the grain had been paid for, and that presumption enures to the protection of a party purchasing the grain without notice that it had not been paid for, nor does the law impose upon such purchaser the obligation of making inquiry as to whether the grain was paid for or not.

123

8th

Although the jury believe from the evidence that Dole and Sweet were jointly liable to Lonergan for the rent of the mill in question, during the months of November and December 1862 and January 1863 by reason of both having executed the lease therefor at the time they were in partnership. Yet if the Jury further believe from the evidence that Dole and Sweet dissolved partnership on the 17th day of November 1862. and that Sweet carried on the business alone from thence to January 28th 1863, then as between themselves Sweet was bound to pay the rent during that period and the undertaking of Dole to do so for him and the payment of said rent by said Dole (if the jury believe Dole did so undertake and pay) would constitute valuable consider-

ations for the sale of property by Sweet to Dole.

Which the court refused to do but qualified the same by adding to the first thereof the following:

Unless facts & circumstances such as would put a prudent man upon inquiry are brought to his knowledge in relation to the possession of said grain tending to show the vendors possession fraudulent.

And to the second thereof the following:

And in the absence of any agreement to the contrary between Dole & Sweet.

To which decision & ruling of the Court in refusing to give said instructions without qualification & in qualifying the same & each of them the Deft by his counsel then & there excepted.

The Deft further asked the Court to give to the jury the following instructions:

Defendants instructions 12th.

Trover can not be maintained for property not properly identified & the quantity of which has not been ascertained or distinguished—

8th

The mere fact that a person does not pay for personal property which he purchases

125

does not make such purchase fraudulent, even though the terms be cash. It is only when a party buys property with the preconceived intention of not paying therefor, and of defrauding the vendor thereof, which intention must exist in making the purchase, that the law pronounces the transaction voidable at the option of the vendor; and therefore if the jury believe from the evidence, that the grain sold by Kennedy to Sweet was purchased by Sweet in good faith and with no intention at the time he made the purchase of defrauding Kennedy thereof, then they should find for the defendants.

14th.

In order for a vendor to recover from his vendee the possession of the property so sold on account of fraud, the fraud must be such as would justify a conviction for obtaining goods under false pretenses and in this state no person can be so convicted in cases of sales made for cash on delivery Hence if the jury believe from the evidence that the sale by Kennedy to Sweet was a sale for cash on delivery the Plaintiff can not recover on the ground of fraud in this case.

15th.

In case of conditional sale, the condition may be waived by the vendor, thus in case of a sale for cash on delivery, if the property is delivered absolutely without payment, and the vendor after such delivery and without attempting to reclaim his property, endeavors to collect the purchase money, therefor, as in an ordinary case of indebtedness, this is evidence from which in the absence of other testimony, the jury may infer a waiver of the condition, and both the right of property and the right of possession become vested in the vendee. And therefore if the jury believe from the evidence, that the grain in question though originally sold to be paid for on delivery was delivered without payment and that the plaintiff treated the price agreed to be paid therefor, as a debt due from Sweet to him, and relied upon Sweet and gave him credit for the purchase money instead of seeking to recover the property, he has thereby waived the condition, and cannot recover in this action.

Which the court refused to do - to which decision & ruling of the court in refusing to give said instructions & each & every of them the Defts by their counsel then & there duly

107 excepted.

The Jury thereupon found the following verdict.
"We the Jury find the Defendants guilty damages assessed to 1 cent.

We also find the property in the plaintiff

Chas Windorff Foreman
J P Simpson
Eli Zimerman
E. H. Barney
Jh Steinmüller
Edwin Langley
Lewis Barker
Oswald Krakowicz
John A Ballard
W C Munson
Charles Sauter
David Ewer.

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Whereupon the Defts entered their motion for a new trial in the words & figures following towit:

State of Illinois
Cook County Ss.

In Circuit Court of Cook County Jan T 1864

L Kennedy
vs
R C Sweet & W H Dole

And the said Defts impleaded &c come by Fuller & Dana his attys & move

that the verdict hereinbefore rendered be set aside & a new trial granted herein for the following reasons viz.

1st That the verdict is against the law & the evidence.

2d. That the verdict is against the law.

3d. That the verdict is against the weight of evidence.

4th That the court erred in refusing instructions asked on behalf of the Defendants & in refusing each of the instructions refused.

5th. That the court erred in the admission of evidence for the Plaintiff against objection by Defendants counsel.

6th That the Court erred in excluding evidence offered on behalf of the Defendants & in refusing to admit the same & particularly the books of W A Dole & Co offered to prove the amounts contributed by each of the parties to the capital stock of the firm.

7th And for other reasons &c.

Fuller & Ham

For defendants.

Which was thereafterwards overruled by the Court. To which decision & ruling of the court in overruling said motion for new trial, the Defts by their counsel then

128 & there duly excepted.
And thereupon the Defendant, entered their motion in arrest of judgment in said cause in the words & figures following toit.

State of Illinois } ss
Cook County }

In Circuit Court of Cook County February Term 1864.

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Lawrence & Kennedy.
vs
Rufus B Sweet & W & Dole

And the said defendant William H Dole by Fuller & Ham his attys, comes & moves the court that judgment be arrested in the above entitled cause for the following reasons viz:

1. Because the verdict rendered in said cause is void.
2. Because said verdict is so uncertain & imperfect that judgment cannot be rendered thereon.
3. Because said verdict is not found upon all the evidence in the case.
4. Because the court can not know from said verdict, what judgment to render.
5. And for other reasons.

Fuller & Ham
Deft Dole's attys.

Which motion being duly considered by the court was thereafterwards overruled by the Court & judgment entered upon the

110 verdict, to which several decisions & rulings
of the court and each of them in over-
ruling said motion in arrest of judgment
& in entering judgment upon said verdict
the Deft by their counsel then & there
duly excepted.

And forasmuch as the matters & things
hereinbefore stated and set forth do not
otherwise appear the Defts pray that this
their bill of exceptions may be signed and
sealed & made a part of the record hereof
which is done this 28th day of June
A.D. 1864.

E. T. Williams (Seal.)
Judge &c

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the original writ, pleadings orders & Judgment of record & bill of Exceptions in a certain cause Laloty pending in said Court, on the Common Law side thereof, wherein Lawrence Kennedy is plaintiff and William A. Dole impleaded &c is Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this fourth day of April A. D. 1865.

Wm L Church Clerk

Fee for Record $32,50
Stamp 5
$32,55

In Supreme Court of Illinois

April Term, A.D. 1865

William H. Dole

impleaded with Rufus C. Streeter

Plaintiff in Error

vs

Lawrence Kennedy

And now on the first Tuesday in April, A.D. 1865 at this same term before the Judges of the Supreme Court of Illinois comes the said Plaintiff in Error by Fuller, Hamilton & Shepard, his Attys. & says that in the record & proceedings aforesaid & in rendering the judgment aforesaid there is manifest error in this, Court, That the Court below erred in the admission of incompetent evidence on behalf of Plaintiff below (Deft. in Error) & in overruling the objections of the Defts. below (Pltff. in Error) thereto; That the Court below erred in excluding competent evidence offered on behalf of the Defendant below (Plaintiff in Error) & in sustaining the objection of Plaintiff below (Defts. in Error) thereto; That the Court below erred in giving the instructions given on behalf of Pltff. below (Deft. in Error) each & them; & erred in qualifying the 7th & 10th instructions

asked by Defendant below (Plff. in Error) respectively each & them in said instructions without qualification; and in refusing to give the ~~Defendant~~ 8th, 12th, 14th & 15th instructions asked by Defendant below (Plff. in Error); that the Court erred in overruling the motion for new trial of Defendant below (Plff. in Error); that the Court below erred in overruling the motion in arrest of judgment of the Defendant below (Plff. in Error); that the judgment aforesaid in form aforesaid given, was given in favor of Plaintiff below and against Defendant below whereas said judgment should have been by the law of the land in favor of Defendant below and against Defendant below

And said Plff. in Error says that the judgment aforesaid for the errors aforesaid & others, the errors in the record & proceedings aforesaid may be reversed, annulled & for nothing held and that he may be restored to all things he has lost by occasion of such judgment &c

Fuller, Dana & Shepard
Attys. for Plff. in Error

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Wm H. Dole

vs

L. Kennedy

Record

Filed Apl. 5. 1865

L. Nelson

Clk.