


No. 13550

Supreme Court of Illinois

Funk

vs.

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St~~x~~ats.

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STATE OF ILLINOIS,
SUPREME COURT.
Third Grand Division.

No. 304

PEOPLES CASES

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Lump*

1850

of the time, place and terms of said sale, together with a description of
46 the goods and chattels to be sold, by at least three advertisements,
posted up in public places in the vicinity where said sale is to take place,
to make the sum of money and interest promised as aforesaid, together
with his reasonable costs, charges and expenses in so doing; and if there
shall be any overplus, shall pay the same to the said Temple & Wright,
or their legal representatives.

In testimony whereof, the said parties of the first part, have hereunto
set their hands and affixed their seals the day and year first herein
written.

JOHN F. TEMPLE, [L. S.]
ROBERT M. WRIGHT, [L. S.]

Scaled, signed and delivered in the }
presence of GEO. HERBERT. }

STATE OF ILLINOIS, } ss.
COOK COUNTY, }

I, J. A. Hoisington, 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 John F. Temple, this 25th day of
January, A. D., 1859.

J. A. HOISINGTON, J. P. [L. S.]

STATE OF ILLINOIS, } ss.
COOK COUNTY, }

I, Chas. H. Barmm, a Justice of the Peace in and for said
county, do hereby certify that this mortgage was duly acknowledged be-
fore me by the above named Robert M. Wright, this 25th day of
January, A. D., 1859.

CHAS. H. BARMIM, J. P., [L. S.]

STATE OF ILLINOIS, }
COOK COUNTY, }

Filed for Record 29th January, 1859, and recorded in book
16 of C. M., page 356.

WM. L. CHURCH, Clerk.

(2-) Note of John F. Temple and Robert M. Wright, secured by said
mortgage, dated October 14th, 1858, as follows, to wit:

Chicago, the 14th Oct'r, 1858.

One year after date, we promise to pay to the order of Henry Funk,
of Muscatine, Iowa, at the banking house of B. W. Phillips, with interest
at ten per cent., eleven hundred and thirty-five 36-100 dollars, value
received.

In consideration whereof, and the further sum of one dollar to us
already paid to said payee, we do empower and hereby authorize and
empower George Payson or any other attorney, of any court of

held. Constant us Miller &c 22 Ill. Whistler us Rob
into 20 Ills.

Abel Adams, a witness on the part of the defendants, being duly sworn, testifies as follows :

I am acquainted with Temple & Wright's mill. I know Mr. Funk, one of the Defendants. My acquaintance with him commenced the 23d day of March last. On that day, about half-past five o'clock in the 63 morning, Mr. Temple came over to his office. I was lodging there nights. He came and rapped on the window, and waked me up, and wanted to come in. I let him in, and a little while after he opened the door, and a man came in whom Mr. Temple introduced as Mr. Funk. Mr. Funk said, I have come in to take possession of this property here. Mr. Temple says, "very well," and then they entered into a conversation, which I do not recollect. They went out into the yard a little while after that, and then Mr. Temple went away. Mr. Funk staid there until eight or nine o'clock, and might have staid longer. Mr. Funk wanted to know if there was any one he could get to keep possession; think Mr. Temple suggested me, and then I and Mr. Funk made a bargain as to what I should charge him. He did not know how long he should want me to stay. He told me to keep possession there and not let any thing be taken out of the mill. If they wanted to run, to let them. He went away then and came back near eleven o'clock and told Mr. Temple that they must not run the mill. He and Mr. Temple then went away together. 64 Nothing was said about the particular property. No exception was made as to the property. He said this property. He did not go into the mill at this time as I recollect of. After seven o'clock the mill was open and he went in. The mill is about 24 feet from the office. The premises are enclosed and the mill and office form a part of the enclosure. I remained on the premises after that, night and day. I might be out for something to eat for an hour or half an hour at a time. I had the key to the office and shut up the yard or saw that it was shut. When the yard was shut the entrance to the premises was through the office. I slept in the office. When Mr. Funk first came on the premises there was no one there but Mr. Temple and myself.

Baldwin was there that day right away after seven, if he was not at seven.

I remained there in possession for Funk thirty-one days, counting the day of sale.

66 After Funk employed me, Baldwin would come sometimes at seven and sometimes at nine o'clock in the forenoon. Some days he would stay nearly all day except when he went for his meals. Other days he would come about seven and go away about eight or nine, and not come back until afternoon. Sometimes he would go away in the afternoon and stay until nearly six. I do not recollect that he was away all day, except once. He went away on Friday, the first day of April, about noon, and did not come back until the following Monday in the afternoon. I mean I did not see him during that time. There was no difference in working the mill before and during this time for twenty-two or three days. I saw no difference, only Temple and Wright worked it. Temple & Wright's sign was up. There had not been any change of signs that I know of.

The mill was shut up and fastened some of the time. It was after I had been there twenty-one or twenty-two days as near as I can recollect after the twenty third of March.

Cross-examination by Mr. Farwell.

I had slept there about eight weeks before Funk hired me. I did not work for Wright & Temple during this time. The mill was not run all the time, but by spells as they had lumber, from the time I first slept there until it was closed. The mill would sometimes lie idle two or three days at a time, and sometimes four or five. When the mill was not running, there was no one at work for Temple & Wright. I think there was a young man at work a few days making boxes.

Re-examination by Mr. Herbert.

When the mill was not running, the engineer was in and out to see when they were going to start.

ABEL ADAMS.

Subscribed and sworn to this 15th day of June, A. D., 1859, before me.

J. HOWLAND THOMPSON.

67 Elijah Mattoon, a witness called for the defendant by deposition. Testified that he went to mill with defendant Herbert Adams and Temple were in the mill and Wright also there or in barn on premises. Baldwin was not there. Next day saw Herbert and Baldwin in office. I went to mill to keep possession of property. Adams and myself to be there all the time; while one went the the other staid. Baldwin was

There is nothing in the evidence of this witness that shows any change of appearance. And the name was very usual and where it is claimed that Sipsan was claimed to have been taken, it looks like it was done in a corner.

This witness does not fix the time when he went to take possession, he says in the record as in this abstract that it was on the 14th but no name is named.

about the premises one or two mornings after I went there, but not inside. The time Baldwin and Herbert were there together was the 14th. I saw Baldwin leaving as I stated. Funk said he approved of what Herbert had done and wished me to consider myself his keeper, and that he would pay me to keep possession, and afterwards paid me. I know McLane was there. It was between 5 and 6 o'clock in the P. M., when Herbert and I went to the mill to take possession. We nailed up the doors, or fastened them up inside. I am not sure that this was done till after Baldwin left.

68 On cross examination of plaintiff's counsel, witness testified that Baldwin was round on the 13th; we explained that we were there for Funk and told him he had no business there.

Christian S. Engle, a witness called for the defendant testified by deposition.

I have been in the foundry and engine business past 8 years. Somewhat acquainted with the value of steam engines and boilers, and have bought and sold them old and new, and think I know something of the market value of engines, boilers and the usual appurtenances and fixtures. Have made contracts in reference to them, and am acquainted with terms of trade among engine and boiler makers. Have examined these claimed by plaintiff.

I consider that engine worth one-half what a new one would be built in the modern style. I call it worth six hundred dollars; the boilers in their present condition I don't think are worth more than \$800, one of them is about worthless. In engine and boilers, I include everything 69 that belongs to the engine. I do not consider the smoke stack worth anything if taken down. I took one down that had run three years and it all fell apart.

Was in Herbert's office several times when Barent, Staats and defendant Funk were there. Was there much of the time every day while Herbert was drawing my answer to a bill in chancery. First saw B., Staats and Funk together in Herbert's office. Staats and Herbert were talking feelingly. Neither were satisfied with what the other had done. Herbert charged Staats with violating some agreement, and Staats thought that he could have got along better if Herbert had not interfered for Funk.

Afterwards, on another day Funk and Staats talked of making a com-

promise. Funk seemed to wish an agreement to postpone a sale till the plaintiff could be heard from, and till then they talked as if it was best that it should lie as it was. Both were willing to arrange that meantime Temple and Wright might run the mill. They both came to Herbert's desk and Mr. Funk asked Herbert if he could safely make such an
70 arrangement with Staats. Herbert told him he could not, that there could be no such thing as a concurrent possession, but that he could do as he was a mind to. Staats then called Funk into the private office. They came out in 20 minutes and shook hands at the door of the office. This was on the last day Staats was at the office, and not the first time I saw Staats and Funk there.

On cross examination by plaintiff's counsel the witness testified.

Have been employed about two and a half years by H. P. Moses in general care of his business to buy stock and sell machinery &c. Had no charge of manufacturing and no machinist. Have not for past six months been in Moses' employ. By modern style of engine, I mean those with modern improvements. There are different proportions of cylinder, where the length of stroke is not so great in proportion to the diameter of cylinder. Steam chests may have more capacity, also a different arrangement of the cut off and different governor valve. I should have Hill's governor valve. This matter of building engines in
71 different styles is a matter of taste and fancy, and different opinions of manufacturers. All are struggling to secure two points, decrease of consumption of fuel, and to equalize the power.

The boiler which I spoke of as about worthless, is the one which seems to have been injured by fire and looks as if would require new plates. The heads of the boilers do not seem to be perfect and the iron does not appear to be first-class. They appear not perfectly riveted and show symptoms of leakage. I am not a boiler maker, and don't know much about boilers. I think iron, English iron, in some of the plates I saw mark "Staffordshire" and a crown. I do not know that I saw it on more than one plate.

Zebina Eastman, a witness for the defendants, testified, by deposition:

I saw witness Mattoon there, at Temple & Wright's mill, about 10th or 12th April last. Prior to that had had business done at the mill, more or less through the winter, and before that time had been there
72 almost every day for twenty days. I did not see any difference between

the way the business was carried on during these 20 days and the way it was carried on all winter. The same parties were in possession. Temple & Wright did the business and controlled the mill up to the time Mattoon came. No change of signs or other thing outside which led me to suppose a change of possession. The mill was shut one morning. It was the morning after I saw Herbert there. He stated he had taken possession and the mill was to be stopped. I was present at an interview between Herbert and Baldwin. Herbert notified Baldwin that he had taken possession and did not want him there. Herbert among other things said he hoped he (Baldwin) would take a polite invitation and leave. Baldwin said he had been authorized to stay there. Herbert denied Staat's right and that he had maintained his possession. 73 Baldwin left. he went out of the office and went off.

The defendant's counsel introduced the following depositions.

JOHN STAATS, }
VS. }
HENRY FUNK AND }
GEORGE HERBERT. }

SUPERIOR COURT OF CHICAGO.

It is hereby stipulated that whatever depositions may be taken before James W. Scoville, Esq., Notary Public, may be used in evidence on the trial of this cause, subject, however, to all legal objections, to the competency of the witnesses and to the interrogatories and answers.

June 22d, 1859.

FARWELL & SMITH, Att'ys for Plff.

GEO. HERBERT, Att'y for Def't.

Deposition taken before me, Jas. W. Scoville, a Notary Public, under the foregoing stipulations.

George Payson being produced, sworn and examined on the part of the defendants, deposes and testifies as follows:

Was present at an interview between Barent Staats and Henry Funk, at George Herbert's office. Barent Staats and Funk addressed each other as though it was the first time they had met. Geo. Herbert was 74 present.

It is difficult to state the conversation between the parties; don't remember what Staats said he had done. Remember Staats saying he had taken possession at some time of mill and machinery. Don't recollect what was said. Think that he, Staats, had made an agreement to wait, but had taken possession contrary to the agreement. The foregoing is

*This witness
evidence can be
water but not
to testimony
-ok shows that
Staats first as
joint possessor
and that the
fact was known
by Funk before
he acquired his
share.*

the impression derived from what was said by all the parties at the time. I remember Herbert saying that he would not have anything further to do with it and did not think joint possession possible or legal. I don't remember the precise words. I thought the other parties were very much surprised and dissatisfied to find that Staats had taken possession, and thought that it was a breach of faith on his part. Remember distinctly that Herbert did not negotiate with Staats any further in the matter, and that Staats and Funk went into another room, and Mr. Herbert did not go with them. Funk and Staats were a long time more than one day negotiating. The last time I saw them together I recollect some one asking Funk or Staats if any agreement had been made, and the reply was made laughingly that they had not. I think Herbert was present and two or three other persons. Don't remember that anything further occurred except that Funk and Staats shook hands and went out of the office. Can't say that they went out together.

GEORGE PAYSON.

Frances A. Stevens being sworn and examined on the part of the defendants, deposes and testifies as follows:

Know where Temple & Wright's mill is, and know the engines and boilers, fixtures and appurtenances. I have examined them last Monday. I am a manufacturer of steam engines, boilers and other machinery. Have sold a great many during the last six years and particularly in the last two years, in Chicago. I think I could judge of the value of second hand machinery, engines and boilers. I have sold several second hand engines and boilers and fixtures; by fixtures I mean pipes and connections and whatever is necessary to put them in good working order. I don't know as I could express it any better.

Question by Defendant.—After you have the pipes and connection, what else is necessary to put them in good working order, which you would include in the description of engines, boilers and fixtures?

Answer by witness.—I mean by the engine, boiler and fixtures all the necessary parts belonging to the same.

2d Interrogatory by Defendant.—What, from your knowledge of the manufacture and sale of engines, boilers and fixtures, is the value of the engines, boilers fixtures and appurtenances in the Temple & Wright mill, on the corner of Polk and Canal streets, to be sold to remove?

Answer.—From the appearance of the boilers, if they have been in

use four years, I should call them worth, engine, and boilers, and fixtures a thousand dollars.

I noticed an English stamp on the iron of the boilers.

Cross-examined by plaintiff.

I have been doing business under the name of Stevens & Brother; F. A. Stevens, Kimball, Stevens & Co.; and F. A. Stevens & Co.; which is the name of my present firm. I think we have not sold but one engine this spring or summer.

The last second-hand engine and boiler we sold was a year ago last December.

1st Question.—What would the engine and boilers with the fixtures
77 and appurtenances at Temple & Wright's mill, if they were new, be worth?

Answer.—They would not be worth near what they would cost. What I mean by that is there has been a great many improvements made in the last four years which they do not possess.

2d Question.—What would they be worth if new?

Answer.—Two thousand dollars.

3d Question.—What would the boiler be worth if new?

Answer.—If they are forty-two inches and twenty-four feet long, and flues, they would be worth four hundred dollars each.

4th Question.—What are they worth now?

Answer.—They are worth perhaps one hundred dollars each.

5th Question.—What would the engine be worth if new, and what is it worth now?

Answer.—Twelve hundred dollars if new and eight hundred dollars now. There is not that depreciation in engines that there is in boilers.

6th Question.—What would the fixtures and appurtenances be worth if new, and what are they worth now?

Answer.—Those were included in my estimate of the value of the engine and boilers.

7th Question.—What improvements do you refer to which these do not possess?

78 Answer.—In regulating the steam, in construction of the valve, improvement in the heater and the proportionate length of stroke with diameter of cylinder.

8th Question.—How should the steam be regulated differently from what it is?

Answer.—It should be admitted into the cylinder and be cut off more instantaneous.

9th Question.—What valve do you refer to, and how should it be constructed differently from what it is?

Answer.—I refer both to the main valve and regulator valve. The main valve should be a long valve instead of a short one. The regulator valve should be after the style of the Judson valve or the Gates' late improvement.

10th Question.—How should the proportionate length of stroke with the diameter of the cylinder differ from what it is?

Answer.—It should be much shorter.

11th Question.—How much shorter.

Answer.—One quarter to a third.

12th Question.—If this engine and boilers were new and had all these improvements you speak of how much would the whole be worth?

Answer.—Twenty-eight hundred dollars.

13th Question.—How much would they be worth with the service
79 which they have had, provided they had these improvements?

Answer.—Fifteen hundred dollars.

14th Question.—Where on the boilers did you see the English mark?

Answer.—On the top of one of them where the brick had been torn up.

15th Question.—Why do you make so much difference between the value of the boilers if new, and their present value?

Answer.—From the fact that they have been in use four years and show signs of giving out?

16th Question.—What signs?

Answer.—There is a very bad spot on the lower side of one of them, just over the grate.

17th Question.—If boilers are well made and of good materials and are heated with light stuff and not with coal, how long will they last with careful usage? (Objected to by defendant's counsel.)

The objection withdrawn.

Answer.—Eight years, from six to eight years.

18th question.—Do all manufacturers in making engines, adopt all

these improvements of which you have spoken?

Answer.---They most generally do. They all do as far as I know.

19th question.---What improvements in the heater do you refer to?

Answer.---The heater should be constructed so that the exhaust steam should come in contact with the water that supplies the boiler.

Direct examination resumed.

1st question.---In speaking of the value of the engine, boilers, etc., in cross questions 12 and 13, in valuing them at \$2,800 and \$1,500 respectively, did you or not take into account the quality of materials of which the boilers were made.

Answer.---I did.

2d question.---How much longer will these boilers in their present condition last?

Answer.---I could not say.

3d question.---You state in your answer to cross interrogatory 17 that boilers last from six to eight years under the circumstances stated in the interrogatory; what material, in giving your answer, did you suppose such boilers constructed of?

Answer.---Boilers constructed of English No. one iron; with the exceptions of the heads, which ought to be of flange iron.

4th question.---Judging from the condition of the boilers in Temple & Wright's mill, were they made of good materials and have they had that careful usage to which you refer in your answer to the 17th interrogatory?

Answer.---I should think possibly they were of such material and have had such careful usage. The material is far from the best material.

5th question.---What is the best material?

Answer.---American No. one Lake Superior iron.

6th question.---What quality of iron goes by the name of charcoal iron and how does it compare with Lake Superior No. one and the material of these boilers?

Answer.---What is called charcoal iron is considered the best, both English and American Lake Superior iron, or any other iron manufactured by the use of charcoal, is considered better. I am speaking of boiler iron. I took this iron here to be common English iron, if it is it would be much better. I may possibly be mistaken.

Question.---After your answer to the 13th cross interrogatory, you

stated that you might explain. Please explain if you wish?

Answer.—I don't think of any explanation.

Cross resumed.

1st *question.*—What led you to suppose that these boilers were of common English iron?

Answer.—It had the English stamp on. I could not read it distinctly, but I think I would have noticed if the brand had been of any higher grade.

82 2d *question.*—What was the stamp as far as you could make it out?

Answer.—It was Crawfordshire, or Crawford & Sons. I think it had the English crown and the English stamp, No. one. I am not sure as to the manufacturer's name. I can't say that it was either, that is my impression now.

FRANCIS A. STEVENS.

Subscribed and sworn before me this 22d day of June, A. D. 1859.

JAS. W. SCOVILLE, Notary Public. [L.S.]

Peter Devine being duly sworn and examined on the part of the Defendants, deposes and testifies as follows:

I am a boiler maker. Know a little about engines and their value. I have been eighteen years about them. As a general thing I know about their value, both new ones and old ones.

I have been engaged over eighteen years in the boiler business. I have examined the boilers in Temple & Wright's mills partly. I took off some of the brick work and looked for the stamp. I found the stamp of Staffordshire, No. one. From the general appearance of what I examined, I came to the conclusion that it was all English iron. I found no other mark, as I did not examine any further.

83 1st *question.*—How is English iron marked?

Answer.—It is generally marked with the stamp of the maker's name or the place where it is manufactured or with the mark of a crown.

2d *question.*—Did you find the mark of a crown?

Answer.—I saw a mark which I thought was a crown mark.

3d *question.*—Are you an Englishman?

Answer.—No.

Question.—Is Staffordshire No. one with a crown a mark of English iron?

Answer.—Yes.

4th question.--Did you go into these boilers?

Answer.--No.

5th question.--Did you examine the engine, if so, how far?

Answer.--Partly. I did not look particularly. I looked over the outside of the engine.

6th question.--From the examination you gave to those boilers and your knowledge of the manufacture and value, what is the value of the boilers and fixtures thereto, and appurtenances in Temple & Wright's mill, including also the smoke stack, to be sold to remove?

Answer.--Four hundred dollars for both.

7th question.--From your knowledge of the manufacture and value of engines, boilers, fixtures and appurtenances, and from your examination of the engines and boilers in the Temple & Wright mill, what is the
84 value of the same to be sold to remove?

Answer.--One thousand dollars.

Cross examination.

1st question.--Do you manufacture engines? Answer.--No.

2d question.--Do you sell them? Answer.--No.

3.1 question.--Did you examine more than one of the plates on the boiler, and if so, how many?

Answer.--Yes; I examined the bottoms and four sheets on top.

4th question.--Where did you find the mark you speak of?

Answer.--On the top of the boiler.

5th question.--On how many sheets? Answer.--On one sheet.

6th question.--Was there anything from which you could judge of what kind of iron the other sheets were?

Answer.--From the general appearance of the iron, their being alike, all the plates on the top were English iron I believe.

7th Question.--How many plates on top do you refer to?

Answer.--Four.

8th Question.--If you had not found any mark on any plates on top, could you tell what kind of iron it was? Answer.--Yes.

85 9th Question.--How? Answer.--By the skin or scale of it.

10th Question.--Describe the appearance you refer to?

Answer.--In English iron the surface is all quite plain and smooth as if it was japanned, and American iron is rough on the surface.

11th Question.--How was this? Answer.--Smooth on the surface.

12th *Question*.---Is your estimate of the present value of these boilers based upon the supposition that they are English iron No. one ?

Answer.---Yes.

13th *Question*.---What, in your opinion, would these boilers be worth if they were new ? *Answer*.---\$500 each.

14th *Question*.---Why do you make so much difference between their value if new and their present value ?

Answer.---They are more than half done; they have come to a period that they will want repairs all of the time and be a source of expense.

15th *Question*.---If boilers are well made and of good materials, and are heated by shavings or light stuff, and not by coal, how long will they last with careful treatment ?

Answer.---From eight to ten years.

16th *Question*.---How much would this engine be worth if it were new, and how much is it worth as it is ?

86 *Answer*.---Sixteen hundred dollars if new, and about seven hundred dollars as it is.

17th *Question*.---Why do you make so much difference in its value, between old and new ?

Answer.---By getting old, they depreciate by wear and tear, and will want repairs, and be a source of expense.

18th *question*.---Does this engine need any repairs, and if so, what ?

Answer.---I don't know whether it does or not. I did not examine.

19th *question*.---If such an engine is well made and of good materials and is carefully used, how long will it last ?

Answer.---From ten to fifteen years.

20th *question*.---What would it cost to keep it in repair during this time ? *Answer*.---Don't know.

Direct resumed.

1st *question*.---How much would it to cost to take those engines, boilers and fixtures out, including also the smoke stack, and remove them ?

Answer.---About one hundred dollars.

Cross resumed.

1st *question*.---What would the labor or expense consist in ? Give the items ? *Answer*.---It would consist in labor or expense.

2d *question*.---Can an engine and boilers of that description be moved out of any building and put into the street, without labor or expense ?

Answer.—I should think not.

3d *question.*—If that boiler was not set in brick and the engine were not fastened, how much would it cost to remove the engine and boilers, and fixtures out of the building and put them on the street.

Answer.—Fifty dollars.

PETER DEVINE.

Subscribed and sworn before me this 22d day of June, A. D. 1859.

JAS. W. SCOVILLE, Notary Public. [L.S.]

Gustavus E. Buschick being produced sworn and examined on the part of Defendants, deposes and testifies as follows:

1st *question.*—What has been your occupation for the last twenty years?

Answer.—I have been in the machinery business, building and constructing engines and machinery, and boilers, and carrying on the foundry business. Have carried on the business myself three years in Chicago, where I resided for four years, then one year in the country and and have been back two years.

2d *question.*—Are you acquainted with the value of engines, boilers, their appurtenances and fixtures? *Answer.*—Yes.

3d *question.*—Do you know Temple & Wright's mill corner Canal and Polk streets, and have you seen and examined the engines and boilers fixtures and appurtenances therein, and if so, when?

88 *Answer.*—I knew the mill, was there about two weeks ago and examined the boilers and engine.

4th *question.*—From your knowledge of the of the manufacture of engines, boilers, fixtures and appurtenances and from the examination you made of those in Temple & Wright's mills, what is their value to sell to be removed?

Answer.—I should value about \$900 or \$1000 including smoke stack.

5th *question.*—If the smoke stack has stood four years, what is its value, in your opinion, to remove?

Answer.—I would not give more than eight dollars. It may not be worth anything. I did not examine it to see whether it was rusted out or not.

6th *question.*—In estimating the value of engines, boilers, etc., what kind of iron did you suppose the boilers were manufactured of, or did you examine to see?

Answer.—I did not examine closely, but from appearance, I judge them to be of English iron.

Cross examination.

1st *question.*—Previous to your carrying on business for yourself as you have stated, did you work at the business either as apprentice or 89 journeyman, and if so, how long?

Answer.—I was draughtsman and foreman at the works of the Locomotive Company for about 6 months and previous to that time I worked as apprentice or journeyman.

2d *question.*—What would these boilers be worth if they were new, and what are they worth now?

Answer.—About nine hundred dollars if new; four hundred and fifty dollars for each boiler. They are now worth about three hundred and fifty dollars.

3d *Question.*—Why do you make this difference in value between old and new?

Ans.—Because they have been used for a term of four or five years.

4th *question.*—If they were well made and of good materials, and light fuel were used for heating instead of coal, how long would they last if new, with careful usage?

Answer.—If made out of No. one charcoal iron, they ought to last about 6 or 7 years without repairs.

5th *question.*—If made of No. one English iron, how long would they last? *Answer.*—About 4 or 5 years without repairs.

6th *question.*—What repairs would then probably be needed?

Objected to by defendants.

90 *Answer.*—Probably they might require to be turned bottom side up and have new flue sheets or new flues.

7th *question.*—Does these boilers require that? *Answer.*—I could not state exactly whether they do or not, as I have not given them a thorough examination.

8th *Question.*—After boilers have been so repaired how much longer can they be used? *Answer.*—If a boiler commences once to give out they are apt to require repairs soon again. I could not say how long they would last.

9th *Question.*—What causes you to think that these boilers are of

English iron? *Answer.*—From their appearance. What I have seen of it it does not look as smooth as No. one charcoal iron should.

10th *Question.*—What would the engine be worth if it were new, and what is it now worth? *Answer.*—About nine hundred dollars if new about four hundred dollars now.

11th *Question.*—Are there any other fixtures or appurtenances belonging to the engine or boiler which have not been included in the estimates which you have just made in the value of the engine and boiler, and if so, name them?

91 *Answer.*—Yes. The heater, the steam pipes, pump and pipes, safety valve, castings for boilers and smoke-stack.

12th *Question.*—What would all these things be worth if they were new? *Answer.*—About four hundred dollars.

13th *Question.*—What are they worth now?

Answer.—About \$150 or \$175.

Question.—Why do you make so much difference between the value of the engine if new and the value now?

Answer.—Because you could not realize any more for second hand machinery after it has been used for four or five years.

14th *Question.*—When did you last sell a second hand engine of that description? *Answer.*—I don't recollect exactly the time, some three or four years ago.

15th *Question.*—How long since you ceased to carry on business?

Answer.—About three years.

16th *Question.*—If that engine were new and was well built and of good materials, how long would it be fit to use with careful usage?

Answer.—About four or five years without repairs.

17th *Question.*—What repairs would it then need?

Answer.—The cylinder would need re-boring and would require a new pi-ton, and it might require new boxes and connecting rods, also
92 pillar blocks.

18th *question.*—What would be the probable expense of such repairs?

Answer.—From \$50 to \$200.

19th *question.*—How long could such an engine be used, if kept in repair?

Answer.—That is a question hard to answer.

20th *question.*—What would be the probable expense of keeping such an engine in repair for 15 years.

Answer.—It might come up to the original cost of the machinery.

21st *question.*—Do you mean to say upon your oath that you believe it would ?

Answer.—I can't say yes or no to that. It depends upon how much labor it has to perform.

22d *question.*—Suppose it were during the time above mentioned kept in as constant use as you have contemplated when you have spoken of 4 or 5 years use, do you believe that it would require repairs equal to its original cost ?

Answer.—If said engine has no more labor to perform during that time than she is able to, and by careful usage, I do not think it would.

23d *Question.*—How much do you think it would cost in the case you have supposed ?

Answer.—It may cost from \$1,500 to \$1,800.

93 24th *question.*—How much do you think it would cost in the case supposed ?

Answer.—I think it would cost as I have stated above, \$1500 or \$1800.

25th *question.*—What is the least which you think it would cost ?

Answer.—I think it could not be kept in repair for less than \$1500 for fifteen years.

26th *question.*—Do you refer to nothing but the repairs to the engine alone, excluding all the fixtures and appurtenances and the boilers and all other machinery ? *Answer.*—No.

27th *question.*—What repairs do you refer to then ?

Answer.—I refer to the repairs of the whole of the machinery, including boilers, smoke stack, grate bars, and all other appurtenances.

28th *question.*—If the engine alone, which you have estimated if new to be worth \$900, were not over worked, and were used in a careful manner for 15 years, how much in your opinion would it cost to keep it in repair for 15 years ?

Answer.—The repairs of the engine alone probably would cost from \$600 to \$1000.

29th *question.*—If kept in such a state of repair, what would the engine probably be worth at the end of 15 years ?

94 *Answer.*—Probably one hundred dollars.

30th question.—During what portion of the time would those repairs be needed, and in what proportion ?

Answer.—It would need the most of the repairs after it had been running for 7 or 8 years, during the fore part of the time it would not require so expensive repairs as during the latter part.

Direct examination resumed :

1st Question.—Do you mean to be understood, in your answer to the 27th cross interrogatory, that the repairs in that answer referred to, would keep up the same boilers, smoke stack and other machinery in said answer referred to, for fifteen years for the expense of \$1500 or \$1800.

Answer.—I had reference to the boiler, engines, smoke-stack, and other appurtenances and stated that it would amount to \$1500 or \$1800, and also stated that it could come to the original cost of the machinery.

2d Question.—When you speak of its not looking so smooth as No. One charcoal iron, do you refer to the original surface of the iron or to the surface exposed to the fire and the air and water ?

Answer.—I refer to the flue sheet and smoke chamber that was in sight, as the shell was covered with brick at the time of my examination; 95 I did not examine closely into it.

3d question.—In the 11th cross interrogatory the words 'engine and boiler' occur, would a description as follows:—the engine, boiler, fixtures and appurtenances in the Temple & Wright mill, according to the usage and technical language of machinists and those accustomed to run and use such machinery—be a proper description of the engine, boilers and appurtenances and fixtures of the Temple & Wright mill ?

Objected to as improper by plaintiff's attorneys!

Answer.—It would be proper to state engine with two connected boilers and appurtenances, instead of using the words engine, boiler and appurtenances, as there are two boilers in that place instead of one. and the word boiler constitutes but one.

4th Question.—You do not appear to understand the question : would a description as follows: the engine, boiler, fixtures and appurtenances in the Temple & Wright mill, according to the usage and technical language of those accustomed to build and run such a machinery, —be a proper description of the engine, boilers, appurtenances and fixtures in said mill ? Objected to by plaintiff's counsel.

Answer.—It would with the exception of the word boiler.

96 5th *Question*.---According to the usage and technical language of those who manufacture and run such machinery, would or would not a description of machinery as the engine, boiler, fixtures and appurtenances in the Temple & Wright mill, include both boilers, provided there were two connected boilers connected with each other and an engine as those are connected in the Temple & Wright mill?

Objected to by plaintiffs' attorney.

Answer.---It would not.

Cross examination resumed?

1st *question*.---Are not both of those boilers side by side with connections at top and bottom so that the water and steam passes freely from one to the other.

Answer.---They lay side by side, and I suppose them to be connected on top and bottom.

2d *Question*.---Is there a steam pipe from each boiler to the engine or only from one?

Answer.---I believe the boilers are connected on the top, from which connection a pipe leads to the engine.

3d *Question*.---Are not the boilers enclosed, having one wall on the north side of the north boiler and another wall on the south side of the
97 south boiler, with a single arch going from one wall to the other, or with brick work going over from one wall to the other, entirely covering the boilers?

Answer.---They are enclosed with the above mentioned walls but I don't recollect whether the brick work runs over the entire width of both boilers.

4th *question*.---When boilers are put up in the manner that these are and thus connected with the engine, is it not usual to speak of the whole as engine and boiler, as well as engine and boilers?

Objected to by defendant's attorney, because the interrogatory does not point to any class of individuals who are supposed to use such language.

Answer.---We generally use the words engine and boilers where there are two, and I never knew of anybody else using the words engine and boiler where there were two boilers.

5th *question*.---What is the largest single boiler that you have ever made?

Answer.---24 feet long and 42 inches diameter.

6th question.—For an engine of what power would such an boiler be suitable? *Answer.*—Twenty horse power.

7th question.—What is the largest engine which you have ever constructed?

98 *Answer.*—Five hundred horse power. I made the design, and it was built in the works where I was employed.

8th Question.—If a customer from abroad were to send you an order for an engine and boiler of forty-horse power, would you be filling the order by sending him an engine of that power and sufficient boiler, whether it was composed of one single boiler or of two separate boilers, which could be set up and connected like these of Temple & Wright's?

Objected to by Defendant as incompetent, and not opened by any previous examination on the part of defendant.

Answer.—Yes, I would.

9th Question.—If Temple & Wright were to inquire of you what you would give them for their engine and boiler with the fixtures and appurtenances thereunto belonging, would you have any doubt as to what property they referred to?

Objected to by Defendant for same reason stated above.

Answer.—I believe not. I would not, provided I had seen the machinery and boilers, and knew they meant two boilers in using the word boiler.

Objection withdrawn.

99 10th question.—Suppose you were perfectly well acquainted with the situation of the engine, boilers, fixtures and appurtenances and knew how the boilers were put up and enclosed, and knew that the whole belonged to Temple & Wright, and that was all you knew on the subject, as far as their intention or meaning in the use of words was concerned, and they were to come to you and say Mr. Buschick, we want to sell you the engine and boiler in our mill, with the fixtures and appurtenances, would you have any doubt as to what property they referred to?

Objected to for same reason as above.

Answer.—I would not.

11th question.—What property should you suppose they referred to?

Objected to as improper.

Answer.—I should suppose they referred to the engine, boilers, fixtures and appurtenances.

Direct resumed.

1st *question*.—Would you know with certainty to what property they referred to, without making any further enquiry?

Answer.—I could not know for certain.

2d *question*.—Would you know for certainty that they intended in their proposition supposed in the last interrogatory, marked ten, to offer to sell you two boilers.

100 *Answer*.—I would not.

Cross examination resumed.

Question.—Would you have any doubt upon the subject?

Answer.—I would not, suppose I knew they were straight-forward honest men.

GUSTAVUS E. BUSCHICK.

Subscribed and sworn before me, June 22nd, A. D. 1859.

JAS. W. SCOVILLE, Notary Public. [Ls]

Hiram P. Moses being duly sworn and examined on the part of the Defendants, deposes and testifies as follows:

Question.—What is your business and how long have you been engaged in it, and what means have you of knowing the value of engines and boilers, either new or second hand in the city of Chicago; and particularly what means of knowledge have you of the engine, boilers, fixtures and appurtenances in the Temple & Wright mill, on the corner of Polk and Canal streets, in Chicago?

Answer.—Building machinery, engines, boilers, &c. and have been since
101 1838. Commenced carrying on business in Chicago in 1848. Have build boilers and engines, and have bought and sold second-hand boilers and engines, and have appraised them.

I have seen them occasionally since they were put up, and particularly. Mr. Wright called on me to appraise the engine, boilers and machinery, and Mr. Temple afterwards called on me. I mean the engine, boilers and machinery in the Temple & Wright mill, fixtures and appurtenances. After Temple asked me, I examined them with Mr. Peter Devine in May, 1859.

2d *question*.—From your knowledge of the manufacture of engines, boilers, fixtures and appurtenances, and your examination of those in the Temple & Wright mill, according to the best of your judgment, what was the value of those in the Temple & Wright mill at the time of your

examination for the purpose of selling to remove from their present location?

Answer.—Nine hundred and fifty dollars.

3d *question.*—If a boiler were made equal to the boilers above referred to for generation of steam similar in construction, how large would it be?

102 *Answer.*—We should put in more flues in a larger shell. If the shell was 50 inches in diameter we could get in flues enough to make the same fire surface in those two boilers and 24 feet long.

4th *question.*—What particular things did you examine at the time you examined.

Answer.—The engine, pipes, smoke pipe, boilers, and steam and water pipe. We did not examine thoroughly, but examined until we were satisfied they were in condition to use; did not take the engine to pieces; we took the brick off about two sheets of the top of boiler; think we took off from both boilers; am not certain.

5th *question.*—Did you determine from any examination you made what kind of iron the boilers were made?

Answer.—I did. I concluded they were made of English iron at the first examination. We determined by the peculiar scale that there is on English iron, different from our American iron; English iron having a glossy scale. I then saw the stamp on the iron at a second examination, and filed it over to make it show plainer. The stamp was Staffordshire and a crown, a familiar stamp on English iron.

103 6th *Question.*—Is it usual among boiler makers to use different kinds of iron in the same boiler, and if such were the case, and English iron should be used in part and a better quality of iron for the residue, how would the boilers class with the English iron or with a better quality.

Answer.—When there are flanges to turn as there are in all boilers of that description we use No. one American iron—No. one American iron would be charcoal iron—for the heads and sometimes for one end of each flue. It is not usual to use different qualities in the shell. If there were different kinds used in the shell, it would depend upon the proportion used as to how it would class.

7th *question.*—Did you examine the bottoms?

Answer.—We examined by looking into the front end and putting a light in so that we could see back.

8th question.—If there were several sheets of English iron in a boiler and the rest of them should happen to be of better quality of iron, what effect would that have upon the strength, quality and value of the boiler?

Answer.—I would not consider the strength any greater than if it
104 were all English. The quality I suppose would depend upon strength and durability. It would be worth less than if it were all made of American iron, because English iron of that stamp is not considered as strong as American.

9th question.—What is the value of boilers of the description of those referred to new?

Answer.—At the present time about seven cents (7) they weigh not far from 6,300 or 6,400.

10th question.—Have you ever taken smoke pipes that have stood three or four years down? Answer.—I have.

11th question.—Would the description as follows: the engine, boiler, fixtures, and appurtenances in the Temple & Wright mill, on Canal and Polk streets, according to the usage and technical language of machinists and those accustomed to use such machinery—be a proper description of the engine, boilers and appurtenances and fixtures in the Temple & Wright mill, standing as they now do? Objection by plaintiffs' attorney.

Answer.—I should n't think it would; when we speak of engine and boiler, we suppose there is but one boiler. No engine is so large but that one boiler could be made large enough for it.

105 12th question.—Is there a difference between the value of the engine, boilers, etc., in the Temple & Wright mill to remain where they are as they stand, and their value to sell and remove?

Answer.—There is. They are worth more to stand where they are to use, than to remove them.

13th Question.—What was the state of market for old machinery of that description during the last spring? Answer.—It was dull.

14th Question.—Did you take into account the state of the market and the fact that the machinery was to be sold and removed, when you made the examination above referred. Answer.—I did.

Cross examination.

1st Question.—What would it be worth to remain to be used on the premises? (Objected to by defendant's attorney.)

Answer.---I could not tell. I don't know the profits of the business. I don't know how long a lease they have or whether they have any or not.

2d *question.*---What would it cost to remove it from the premises into the street? *Answer.*---Thirty-five dollars.

106 3d *Question.*---What would it cost to thus remove it if it were not put up for use as it is, but were standing there for sale, as in a shop of the manufacturer? *Answer.*---Seven dollars.

4th *question.*---If it were stored there to be taken away when sold, what would it be worth in the condition that it is?

Objected to by defendant's attorney.

Answer.---Nine hundred and seventy-three dollars.

5th *Question.*---What is the engine worth?

Answer.---About five hundred dollars or four hundred and fifty,

6th *question.*---What are the boilers worth?

Answer.---About \$175 or \$200 each.

7th *question.*---What is the smoke stack and breeches worth?

Answer.---Probably \$15 or \$20.

8th *Question.*---What are the pipes, connections and other fixtures and appurtenances, not including the smoke stack and breeches, worth?

Answer.---\$25 to \$30.

9th *question.*---What would the engine be worth if new?

Answer.---About one thousand dollars.

10th *Question.*---Why do you make so much difference between its value if new, and its present value?

Answer.---I judge from the prices that we are obliged to sell and that we can buy for.

107 11th *Question.*---If that engine were new how long would it probably last with careful usage, and if not over-worked?

Answer.---Some parts of it will wear out in two years, and some parts will last fifty years.

12th *Question.*---How much would it probably cost to keep it in repair for fifteen years?

Objected to by Defendants as irrelevant and immaterial.

Answer.---I could not tell. The reason is, some engines cost a great deal, while some cost but very little. It depends upon the material they are made of and the way they are made, and the water they use.

14th Question.—If this engine were made of good materials and the work was well done, and the water used was our hydrant water and this engine were new, and were carefully used, how much would it probably cost to keep it in repair fifteen years?

Objected to for the same reasons.

Answer.—I couldn't tell until I knew how many days it were to run during the time.

15th question.—Suppose it were run during every month for three quarters of the time during usual working hours.

Answer.—It would depend upon the work it had to do in that time, and the number of revolutions made.

108 16th question.—Do you know how long it has been in use?

Answer.—I do not know the exact time. I remember when it was put up.

17th Question.—Do you know to what extent it has been used?

Answer.—I do not.

18th question.—Do you know whether any repairs have been made?

Answer.—I do not.

19th Question.—Do you know whether it needs any?

Answer.—I do not.

20th Question.—What kind of iron do you generally use in making boilers, for mills of this description? Objected to for same reasons.

Answer.—What is called Philadelphia plate No. 2.

21st question.—What is a boiler made of that kind of iron worth per pound? Objected to for same reasons.

Answer.—About eight and a half cents.

22d question.—In making boilers of that kind of iron, do you sometimes put in one or more sheets of a different quality of iron?

Answer.—We do not. It has sometimes been done when we did not have enough into a sheet or two. It is not a common practice.

23d Question.—In case the whole boiler was not of the same quality of iron, and a few sheets of an inferior quality were used, where would you put them?

109 Answer.—Any where in the boiler away from either end.

24th question.—Does that part of the boiler exposed to the fire usually give out any sooner than that part which is not exposed to the fire?

Answer.—It does.

25th *question.*—On what part of the boiler did you discover the scale which you have spoken of?

Answer.—I have no recollection of testifying about any scale. On the top of the boiler. I supposed when I first heard the question you referred to the blister under the boiler.

26th *question.*—Had these boilers been painted?

Answer.—I didn't notice any thing that showed that they had.

27th *Question.*—Can this scale which you speak of, and which you say indicates English iron, be discovered if the boiler is painted?

Answer.—Not as well while the paint is on it. It depends upon the amount of paint.

28th *question.*—Have you in your shop any boiler iron which has on it the mark which you say you discovered on one of the sheets of this boiler. *Answer.*—Not to my knowledge.

29th *question.*—Have you ever used any?

Answer.—Not to my knowledge; couldn't say whether I have or not.

110 30th *question.*—Have you ever seen any?

Answer.—Not that I recollect, of that peculiar stamp, to notice it in particular.

31st *question.*—If those boilers were well made and of good material, what would they be worth if they were new, and as they now are?

Answer.—Eight and a half cents per pound new; and as they are, cent and a half to two cents.

32d *question.*—What is the cause of this depreciation in value?

Answer.—New boilers are none too strong, and the older they get the weaker they are.

33d *Question.*—How old are these?

Answer.—Four years, more or less; I should think between four and five

34th *question.*—Does this depreciation depend upon the age or upon the amount of use? *Answer.*—Amount of use.

35th *Question.*—Does it depend upon the number of days used and upon the number of hours per day, and upon the pressure of steam and upon the kind of fuel used, and upon the kind of water used?

Answer.—It does.

36th *Question.*—Do you know what has been the use of these boilers in the particulars above mentioned?

111 *Answer.*—The fuel used was shavings; I have never seen them burn

any thing else. The water has mostly been hydrant water; they ran one or two years after they started, near as my recollection serves me, about probably two-thirds of the time; within the last year or eighteen months I don't think they run over half of the time; I have noticed at times when they were carrying about sixty pounds of steam, sometimes more, and sometimes less.

37th *Question*.—If the boilers were to be used in future in the same manner that they have been used during the last four years, how long in your opinion would they be suitable for use?

Answer.—Six or seven years longer.

38th *Question*.—Did you notice any defect in them, and if so, what?

Answer.—I saw two blisters under the front end of the south boiler, back 4 or 5 feet, over the fire; were not both in one sheet; think there was no intervening sheet between them; am not certain.

39th *Question*.—In your estimate of the present value of these boilers have you estimated them worth less on account of these blisters, and if so, how much less?

Answer.—Twenty-five dollars less.

112 40th *question*.—If a customer were to send to you for an engine and boiler of forty horse power, would you consider that you would be filling his order by sending him an engine of that power and two boilers amounting together to forty horse power? Objected to by defendant.

Answer.—I should. (Here the counsel for the defendant called the attention of the witness to the word *boiler* in the singular.) I understood the question to be engine and boilers. I think it would not be filling the order.

41st *Question*.—What would you think the whole property which you have spoken of, engine, boilers, &c., worth if new?

Answer.—Twenty-three hundred dollars.

42d *Question*.—Is there any partition under the boilers in the arch?

Answer.—Not that I know of.

43d *question*.—Does a brick wall on the north side of the north boiler with brick wall on the south side of the south boiler with brick work passing from one wall to the other over the boilers enclose them?

Answer.—Yes, except the front end.

Direct examination resumed.

1st Question.— In your estimate in answer to the second cross interrogatory and the third, do you speak of what it would cost you, having 118 all the necessary fixtures to do such work, or of what it would cost parties to hire it done?

Answer.—I speak of what I would take the job for?

2d question.—In your answer to the sixth cross interrogatory, and in your answer to the thirty-first cross interrogatory, you speak of the boilers under different circumstances, being worth \$175 or \$200 each, and being worth in your last answer, as they now are, a cent and a half or two cents per pound. In your answer to the latter question of what materials did you suppose them constructed when you gave them the latter valuation?

Answer.—Of English iron.

3d question.—Do you call them good materials if constructed of English iron, such as they are constructed of? Answer.—I do not.

4th question.—Do you mean to state in your answer to the thirteenth cross interrogatory that the cost of keeping an engine in repair depends only on the material, the way they are used and the water—do not many other contingencies come in?

114 Answer.—Certainly other contingencies.

5th Question.—Is Philadelphia plate No. 2 spoken of in answer to 20th cross question, called also American charcoal iron, or not?

Answer.—It is not.

6th question.—What is charcoal iron, so called?

Answer.—That in which charcoal is used in the manufacturing of, instead of bituminous or anthracite.

7th Question.—What could boilers be procured for, made of American charcoal iron, of the same description as the boilers in controversy, during the last four months, in the market, or of manufactures in Chicago?

Objected to by plaintiff's attorney.

Answer.—Nine or nine and a half cents per pound.

8th question.—In answer to the 35th cross question, do you mean to be understood that no other contingencies than those stated in questions 34 and 35 go to make up the depreciation in value? Does it or does not depend on the market and the price at which they can be sold, and the price at which such boilers can be bought and other contingencies?

Objected to by plaintiff's attorney.

115 *Answer.*—They are not all the contingencies. It does depend upon the market price and other contingences.

9th *question.*—Is the hydrant water in this city the best of water for boilers, and if not, why is it not, and what effect does it have on the boilers?

Answer.—It is not the best. There is more or less lime in it, and it is frequently roily. The lime adheres to the boiler and prevents the water from coming in contact with boiler to keep it cool.

10th *question.*—Will boilers, when this water is used, last as long or be in as good condition at the end of a given time, as where pure water is used? *Answer.*—No.

11th *Question.*—What repairs would be necessary to run these boilers 6 or 7 years, and did you take the fact into account, stated in your answer to the 37th cross interrogatory, in valuing the boilers?

Answer.—I could not tell what would be necessary. Yes, I did take it into consideration.

12th *question.*—Would or would not these repairs to enable them to run 6 or 7 years be large?

Answer.—I could not tell. Boilers will sometimes want repairing and sometimes they will not.

116 13th *question.*—If these boilers were made of No. one charcoal iron, and were otherwise in the same condition they now are, what would they be worth?

Answer.—Two and one half to three cents per pound.

Cross examination resumed.

1st *Question.*—What kind of water is generally used in Chicago for boilers? (Objected to.)

Answer.—Majority use hydrant water, but I don't know, but hydrant and river water.

3d *Question.*—Which kind is the best? Objected to.

Answer.—I think hydrant is preferable.

H. P. MOSES

William Marshall being duly sworn and examined on the part of the Defendant, deposes and testifies as follows:

I live in Chicago and was in the employ of Temple & Wright in March last as engineer. I ran the engine in their mills.

1st *Question.*—What condition were the boilers in said mill in about the middle of April, and the pipes, etc.?

Answer.---They were scaled over a little all around as far as the water goes up into the boilers. It was a kind of thick scale that gathers over the iron, the connection pipes between the heaters and pump were a little
117 out of order. There has been a good deal of expense in repairing them since I went there. I have been there nearly four years. The other lead pipes, one at each end of cylinder, to take away exhaust water, are all used up and good for nothing.

2d *Question.*---What is the condition of the engine?

Answer.---It is not in good as condition as it was about a year ago; the cylinders are a little cut in the bottom; it wants repairs. It has been a little used up for want of repairs not being done before this time. It is all perfect good as far as I know, except the pump, which has been always a great trouble ever since I have been there; the cylinder got hot for want of new springs. It was an old fashioned horizontal pump. The Governor and Governor valve are not in very good order at all.

3d *question.*---What effect does the Governor and Governor valve, in their present condition, have upon the working of the engine and the economy of its operation?

Answer.---The valve don't work regular. It makes the engine go
118 sometimes slower and sometimes faster. It don't govern the steam; it aint tight enough; the steam passes through outside of the valve. I mean Governor valves. The main valve aint got up in very good style. It is put on with screws. It would be better if it had been put on with keys instead of screw bolts.

4th *Question.*---Do you know Heman Baldwin, and when did you first see him about the mill?

Answer.---Yes. I saw him about the time he took possession there. I mean the time Staats took possession.

5th *question.*---What did this man do?

Answer.---I saw him round the premises; he came there in the morning, and went away at night again.

6th *question.*---How much of the time was he there?

Answer.---All the time working hours after Staats took possession. I don't know when he left.

7th *question.*---Do you know any thing about a key that he used to take out?

Answer.—There was a key and two gibs taken out after Staats took possession; we were not running at the time they took possession, and this first time we got up steam, after that I asked Mr. Wright where the key and gibs were. I could not start up without them or some other thing in their place. I got them. Mr. Baldwin gave them to me. I put them in. I started up the engine as soon as we were ready afterwards; I did not take them out for sometime, two or three days. I left them there and went home after working hours. I didn't find them when I came back in the morning. Sometimes when I was ready to start, I found them put in.

8th question.—How long a time at any one time did you know them to remain in their place between the time when you first saw Baldwin there and the time when Herbert took possession?

Answer.—About the latter end of March they were left there. They were still remaining there every morning when I went down until the 3d or 4th of April.

9th Question.—Did you hear any conversation of Baldwin with any party relative to the propriety or necessity of taking them out or leaving them in? Objected to by plaintiffs' attorney. *Answer.*—No.

10th question.—Where was Baldwin during the time they remained in 120 as stated in the answer to the 8th question? was he about the mill or not?

Answer.—I don't know where he was; I didn't see him around there. Cross examination?

1st question.—Was you informed at that time or soon afterwards that Baldwin was sick? Objected to.

Answer.—I was told that he was sick.

2d question.—Was you present when Staats took possession?

Answer.—I was not in the mill.

3d Question.—How thick a scale is this on the inside of the boiler?

Answer.—I don't know.

4th question.—What kind of water has been used for the boiler?

Answer.—Both hydrant and surface water; the hydrant goes into a cistern, I am told 16 feet deep; wooden pipes take the surface water into the cistern, and the hydrant pipe runs into the cistern. The wooden pipe runs from the ditch in front of the mill. It has been so all the time I have been there.

Answer.—It is always full except when something goes wrong with the hydrant, or in dry weather when there is no surface water.

Answer.---The hydrant is always running into it and the surface water.

8th Question.--What business were you engaged in before you work-
for Temple & Wright?

WILLIAM MARSHALL

William Baregwanath being sworn and examined on the part of Defendants, deposes and testifies as follows:

1st question.—Have you examined the boilers, engine and appurtenances in said mill?

Answer.—Yes, externally; I have not taken the machinery apart to examine them critically. I have not been in the boilers.

2d Question.—How long have they been in use?

Answer.—I should think four or five years, I couldn't be positive.

3d question.—From your knowledge of the manufacture of engines, boilers, fixtures and appurtenances and of the value of and market for the same and your examination of those in the Temple & Wright mill, supposing they have been in use four years, what, according to your best

judgment, was their value at the time you examined them, for the purpose of selling to remove from their present location?

Answer.—From \$900 to \$1000.

123 4th question.—What do you include in that estimate?

Answer.—The engine, two boilers and appurtenances appertaining thereto, pipes, heater, smoke pipe, check valves, fire front, grate bars and mud pipe.

5th Question.—What kind of iron are the boilers made of?

Answer.—Of English iron, I presume. I believe so. I examined the boilers and the iron had the appearance of English iron, and after examining them some time I found them stamped Staffordshire, No. one. I felt satisfied before I saw the stamp that they were made of English iron.

6th question.—Is that a stamp of English iron?

Answer.—Yes, I forgot to say that there was a crown on it.

7th question.—Is that English iron considered among boiler makers good material, and how does it compare with American charcoal iron?

Answer.—It is not considered as good as American iron. It is from two to two and a half cents cheaper. It varies according to the market. Now one is $4\frac{1}{2}$ cents and the other is 7 cents.

8th Question.—What has been the range of difference for the last four and one half years?

Objected to by plaintiff's attorney.

Answer.—About four years ago No. one iron was retailed at the stores here for 8 cents per pound or eight dollars per hundred. No. 1
124 charcoal I speak of. English iron was at the same time selling for five dollars per hundred. They have both come down a little since. but English iron has not come down so much as American.

9th question.—How many sheets did you examine of this boiler?

Answer.—I just looked under from the fire door. I might have examined two or three sheets. I also examined some two or three sheets on the top of the boiler, where I could get at them.

10th question.—Is it usual among boiler makers to use different kinds and qualities of iron in the shells of a set of boilers, to be used together?

Answer.—No, unless in locomotive boilers.

11th Question.—If there were several sheets of English iron in a

This witness
fixes value at
900. or 1000

boiler like that in the boilers in controversy, what effect would that have on the value, strength and quality of the boiler?

Answer.—The boiler would be no better than if made of all English iron. It would cost more, but be no better. If the part exposed to the fire were American iron, and the top that was not exposed to the fire 125 were English iron, I think the boilers would be better than if they were all English; but the top and bottom of those boilers are English iron. I do not recollect that I ever saw a boiler put up in that way. The thought has just occurred to me. It would not be any stronger, but would not be so liable to crack the part exposed to the fire. In calculating the strength of boilers we always figure on the weakest point.

12th *question.*—Is there a difference between the value of the engine, boilers, &c., in the Temple & Wright mill, to remain as they stand, and their value to sell and remove?

Answer.—There is a material difference.

13th *Question.*—How was the market this last spring for old machinery of that description, particularly of second-hand boilers?

I don't know that there is any market value on them at present. It depends on the necessities of the person having them to sell.

Cross examined by plaintiff:

1st *Question.*—What would this property be worth if new?

Answer.—About \$2500, at the present time, if new.

126 2d *question.*—Suppose during the four years since they commenced using, it has been idle from one half to one-third of the time, what would it be worth then?

Answer.—I think it would be worth more if they ran it every day than if they ran it one week and let it stand idle the next.

3d *Question.*—Do you think that it would be worth more if it were run every day during working hours than if it were run only part of the day?

Answer.—No. If you run it every day it is not apt to rust. The engineer will keep it clean. Rust injures the machinery more than working it.

4th *question.*—Suppose during the four years it were run at short intervals, but in the aggregate only from one half to two thirds of the time and it were well taken care of and kept from rusting, what would it now be worth? Objected to.

Answer.—I don't know that it would be worth any more than I told you. I don't know whether it ran all of the time or half the time. I took it as it is.

5th *question.*—Can you tell from the examination which you made how long they have been in use? *Answer.*—No.

127 6th *Question.*—Does the depreciation depend on the time they have been in use?

Answer.—It depends more on the state they are actually in, than on the time they have been in use, taking every thing into consideration.

7th *Question.*—What condition is the engine in?

Answer.—I never examined the engine internally. I only know from external appearances. I am not prepared to speak of the condition the engine is in. An engine that has run as long as that has, must of necessity need considerable repair; I have not seen it running lately.

8th *Question.*—From what do you judge that the entire boiler is made of English iron?

Answer.—From the smooth, glossy appearance of the sheets; American No. 1 charcoal iron presents a rougher surface.

9th *Question.*—Is the under surface of the boilers, where they have been exposed to the fire, smooth and glossy?

Answer.—They appeared so when I saw them.

10th *question.*—Do you mean to be understood as saying that after boilers have been used 4 years, you can tell from their appearance where they have been exposed to the fire, whether they are made of English iron or American charcoal iron?

Answer.—In some cases, I can not in all cases.

128 11th *question.*—Of what kind of iron do you ordinarily make boilers which are to be used in mills of this description? Objected to.

Answer.—It depends on what kind of iron is called for in the contract.

12th *question.*—Have you made during the last four years boilers to be used in mills of this description, and if so, how many?

Answer.—I have made several, I cannot tell how many. I have made several during the last year. I have made some during the last three months; but not for mills of this description within the last year. Within the last two years, I have made one for Boyd, a tubular boiler, and not like this. I used No. 1 American iron. I don't know whether it was charcoal iron or not. It would flange.

13th question.—Are there any kinds of iron that will flange except charcoal iron?

Answer.—Once in a while you may get a sheet of English iron that will flange if you will take it across the grain, but you can't rely on it.

129 14th Question.—Do you recollect any other boilers you have made during the last four years for mills of this description, and if so, name them?

Answer.—Yes, I recollect two. One for Dunlap, Wright & Co., cor. Wells and Charles streets, and one for a planing mill in Rochester, Indiana. They were different from each other, and different from the boiler in the Temple & Wright mill. The one for Dunlap, Wright & Co., was a fire box or locomotive boiler. The one for Indiana was a fire box Atlantic boiler. I can describe it. It is a fire box boiler with one large flue passing through from the fire box to the extreme back end, fire returns on the outside of the boiler to the chimney. I am not positive what iron I used. It was a good while ago.

15th Question.—Have you many boilers manufactured by yourself now on hand like those of Temple & Wright's, of a similar style and construction?

Answer.—I have one in the shop that I made, but it does not belong to me. It was made for H. P. Moses, I should think 20 months ago, in 130 the fall of 1857 I think. I don't know what use it was to be put to. I forget the kind of iron in it.

16th question.—What different kinds of iron have you put into boilers during the last four years?

Answer.—I can't name all the different kinds, there are as many different kinds of iron as there are makers, varying in quality. Charcoal No. 1 American—English iron of different—

17th question.—I don't ask you to tell how many kinds of iron there are in the world. I ask you to name the different kinds of iron which you have put into boilers during the last four years.

Answer.—I have put No. 1 charcoal in. I have made boilers of Lake Superior iron, manufactured at Cleveland. I have used English iron of different stamps. I don't know that I can name the different stamps. I don't know that I have ever used the commonest or puddle iron. I have used Thornicroft iron, English crown iron, and have used different qualities of American iron. I don't know that I can name the stamps. Every maker have their own peculiar stamp.

131 18th *question*.—Have you ever made boilers of the description of Temple & Wright's, except to order, if so, how many, and when?

Answer.—Yes. I can't tell how many. I have not made any the last two years, unless they have been orders. When business was brisk, and I had a lot of men, I used to make boilers whether they were ordered or not.

19th *question*.—What kind of iron did you use in making those boilers?

Answer.—I usually made them of English iron, I think, when they were not ordered.

20th *question*.—What kind of English iron?

Answer.—What is generally denominated No. 1 English iron. It is generally stamped so.

21st *Question*.—What kind of iron is this in Temple & Wright's boilers?

Answer.—I believe it is marked No. 1 Staffordshire Crown.

22d *Question*.—How does it compare with the English iron which you say you put in boilers not ordered?

Answer.—I guess it is about equal in quality to the iron which I used. I think I have made boilers of iron of same stamp.

23d *Question*.—For a boiler to be used in a mill of this description, is not this English iron No. 1 which you have spoken of, of sufficient strength for a good boiler?

Answer.—Yes, I could make a good boiler of the iron but it would not cost as much as one made of higher priced iron.

24th *question*.—What would this boiler of Temple & Wright's be worth if it were new, per pound?

Answer.—About eight to eight and a half cents per pound. I have never made none for less than eight and a half cents per pound. Boilers are selling now for less than they are worth.

25th *Question*.—Did you discover any defects in these boilers, and if so, what?

Answer.—I discovered a crack or blister in one of the boilers just over the grate. I think the second plate from the front. I did not examine the boilers any further, except on top and underneath. There may be other cracks, but I didn't see any.

26th question.—How much less is the boiler worth on account of that blister ?

Answer.—If a person wanted to buy that boiler and saw the crack or blister, it would be a hard thing to get them to buy it. Such is my experience in the business. If the boiler was exposed for sale in its
133 present condition, it would be \$75 or perhaps \$100 damage to it, but it could be put in good repair for probably \$30 or \$35.

27th question.—Could it be thus repaired before being exposed for sale ? *Answer.*—Of course it could.

28th question.—After thus repaired, how would its value compare with its value as it now is, or with its value as it would be if this blister were not upon it ? Objected to.

Ans ver.—In that case I should add the cost of repairing.

29th Question.—What are the boilers worth ?

Answer.—If I was going to remove the boilers I would not give over \$250, for both of them in the condition they now are.

30th Question.—If you had them in your shop for sale, and had repaired the place where blister is what would you consider a fair price for you to ask for them, please give a direct answer to the question without any preliminary remarks.

Answer.—I should want \$250 each for them, if they look as well after they come out as now. There would be a good deal of labor and
134 expense in removing them, repairing them, cleaning them, &c. Old boilers at the present time can be bought for almost any price.

31st question.—Do you know of any repairs they would need except the spot where the blister is, and if so what ?

Answer.—I don't know that they need any other repairs or not. They would have to be cleaned, and generally overhauled and examined.

22d question.—Is not your business manufacturing boilers and not steam engines ? *Answer.*—I manufacture both.

33d question.—How many steam engines have you manufactured within a year last past ?

Answer.—Two ; my principal business is boiler making, black-smithing and machinery. A very little of either just at p esent.

Direct resumed :

1st Question.—When you made the examination of those boilers did

you find any composition or paint upon them to prevent your making a satisfactory examination or not?

Answer.---There was some soot on the bottom and there appeared to be some paint on the top, or tar, or something. When I went there first
135 the top was covered up. I could not see then; I went there again; the top had been cleaned some; then I saw the marks that I referred to.

2d *Question.*---Within the last four years how many boilers have you manufactured, bought or sold, similar in construction to those in the Temple & Wright mill, as near as you can state?

Answer.---I can't tell within 20. I think I have made about 80 or over.

3d *question.*---In your answer to the 26th question, do you mean to be understood that if the boiler were repaired in the manner therein proposed, that it would be as saleable and sell for as much as if there had been no defect and no repair, as much as the other boiler would sell for?

Answer.---If the plate were cut out all the way across, it would be as saleable, but would not be as good. I would not give as much for it.

4th *Question.*---You speak in your answer to the 30th cross question about the labor, expense and repairs, cleaning, &c., and in the answer to the 31st question you speak of overhauling and examining, please ex-
136 plain the character, cost and general nature of the overhauling examination and other things which you suppose in these answers to have been done?

Answer.---If I had bought those boilers, I should remove them, clean them thoroughly, and examine them to see what was their condition and give them what repairs they needed, paint them, and put them in the market for sale.

5th *Question.*---Would they or not before offered for sale need recaulking?

Answer.---I could not tell until I had examined them.

6th *question.*---What would be the fair price of what you propose to do on them?

Answer.---It would be hard to say what would be the cost until I knew what repairs were needed. I would undertake to do it for \$150.

8th *question.*---If you had these boilers in your shop after the repairs, &c. that you propose, were made on them, what would be the fair market

value of them, considering the state of the market in March and April last?

- 137 *Answer.*—I told you \$250 each. I would sell them a little less rather than lose a sale. I don't know anything about the state of the market. It is just what you can get. As a general thing you have to sell a good second hand boiler for less than it is worth. Poor ones generally bring more than they are worth, for they are not worth any thing except for old iron.

WM. BARAGWANATH.

The counsel for Defendants then offered the following written evidence.

- (1) Stipulation as to Foss judgment.

SUPERIOR COURT OF CHICAGO.

John Staats vs. George Herbert, et. al.

- It is admitted that the judgment in favor of Foss and spoken of by Temple & Wright in their testimony, was a final decree in the Circuit Court of the United States, on a bill in equity, filed by Foss & als. vs. Alpheus Stewart, Michael H. Wright and Robert M. Wright, to enjoin the defendants therein from the use of a machine patented, the patent for which was claimed by the complainants, and praying an account of the profits made by the defendants by the use of said machine, and a decree that the same be paid to the complainants.
- 138

GEO. HERBERT *pro se* and att'y for H. Funk.
FARWELL & SMITH, Attorneys for Plaintiff.

- (2) Contract between P. W. Gates & Co., with John F. Temple and Robert M. Wright.

This agreement, made this second day of February, one thousand eight hundred and fifty-five, between P. W. Gates & Co., of the city of Chicago, County of Cook, State of Illinois, of the first part, and J. F. Temple and M. H. Wright of the city of Chicago, County of Cook, and State of Illinois, of the second part, witnesseth that the said P. W. Gates & Co., in consideration of the covenants on the part of the party of the second part, hereinafter contained, doth covenant and agree to and with the said Temple & Wright, that they will within one and a half months from the date hereof, make the said Temple & Wright one

steam engine, boilers, to wit : Cylinder 14 in. bore and 36 in. stroke, 2 boilers, 24 ft. long, 42 in. in diameter, with fire front, stands, grates, connecting pipe, breeches, etc., all complete for running, except smoke pipe, and to be made of good materials, and in a good and substantial manner, all for the sum of three thousand dollars, also furnish a competent engineer, when all things are in readiness, to set the boilers and start the engine to running.

And the said Temple & Wright in consideration of the covenants, on the part of the party of the first part, doth covenant and agree, to and with the said P. W. Gates & Co, that they will receive, on completion, the said engine, boiler &c., at the shop of the party of the first part.

The balance of this will be found on pages 139 or 140.

140 (3) Letter from Temple, Wright & Co., to plaintiff, dated Feb. 11th, 1857.

CHICAGO, Feb. 11th, 1857.

Mr. John Staats,

Dear Sir :

Will you have the goodness to render us a statement of our account with you, adding interest as per agreement with our Mr Robert.

It is a deep source of mortification to us to have been obliged to keep you out of your money so long, and it would be a great relief to us to know that it has occasioned you no great inconvenience.

Last year has been very poor in the way of business, little to do, and we have besides had several losses, which tended to keep us poor. We hope to do better this year.

We shall be obliged to you for the above statement at the earliest possible date.

Respectfully yours, TEMPLE, WRIGHT & Co.

(4) Letter of plaintiff to Temple, Wright & Co., dated Feb. 17th, 1857.

OSWEGO, Feb. 17, '57.

Temple & Wright & Co.

G'ts I send you the Amount due me as near as I can get at it. Henry *Is Gone* with the keys of the Safe and I cannot *Get* the *Exact* amount—it is about \$2098.00 cts. I am in a *tite* place for

money. I bot To much Lumb Last year and have Sold to much on tim
Have a lot of plank in Troy will loos money on last yer pursch (pur-
chase,) Barent & Capt. Mead have s m lumb in the land of promis and
I get Nothing But promise, Nots protst Draft Come Back and am Down
with the Blues. Have to pay 20.00 00 1st of march Can Not get a
142 note Discounted will Be obliged to get Som nots Shave George Rath-
bun Was in here To Day, he wishe me To Say To You if Either of you
will Come Down Immediately he will Take on 1/2 or on third Cs his Busi-
ness Such he Can not Leave At present you must Write him if you In-
tend To Come you must make your Calculations to pay this spring I
Don't Know But I will Be oblig To Get your not Shav All well.

JOHN STAATS.

(5.) Letter Temple & Wright to plaintiff, dated March 7, 1857.

CHICAGO, March 7, 1857.

Mr. John Staats—Dear Sir: I find in making up your acc't that we dis-
agree somewhat. I make out our indebtedness to you up to the 1st
March, \$2069, and some cents.

We propose to execute to you a chattel mortgage for this amount, for
the following reasons, viz:

When two years ago we commenced business as a company, we con-
structed and used a little rotary matching machine, such as was used in
143 many parts of the country by others than "Woodworth" planars.
When we had run it but few months, we were sued for infringement
and judgment obtained against us. The appraisal of damages was re-
ferred to a commissioner, and he made out a bill against us for \$2600.
Our attorney filed bill of exceptions to this and the court now holds the
matter under advisement. We have good reasons to hope the court will
lessen the amount of damages very considerably, but yet we have no
guarantee to that effect. Should judgment be rendered and execution
ordered for the whole am't claimed, we think the plaintiff would not
hesitate to sacrifice our all to recover. This chattel mortgage then is
to secure you as a creditor previous to the issuing of the execution.
You will therefore lose no time to commission Mr. Geo. W. Hall to de-
mand of us in your name such mortgage as collateral security. You
know Mr. Hall. Direct his letter to box 442.

*This audit proves our indebtedness more certain
which will certainly be paid allowable if fair-
ly made on our debt balance.*

20.98
20.69
—
29 1/2 difference

You see by this that we desire to put you in a safe position whatever
144 the consequences may be to us. We feel this decision to be a most un-
righteous one. Do not fail to write to Hall immediately.

Yours, very truly, TEMPLE & WRIGHT.

(6.) Letter of Barent Staats to Temple & Wright, dated April 1, '59.

MILWAUKIE, April 1st, 1859.

Messrs. Temple & Wright, Chicago:

Gents--I have just received a letter from John Staats, and
as I understand his instructions, is as follows, viz: If Mr. Funk will pay
him fifteen hundred \$1500, and all costs to the time of closing the
same, will discharge the demand; he does not make any other proposi-
tion, but I suppose he may take something on short time if made right.
I wish you would get an answer from Mr. Funk and let me know at
once. My brother is sick and not able to leave home at present; he
will come up if no trade can be made and take the next best course.
I have been quite unwell since I left Chicago, but hope recover as the
145 season advances.

I trust you will attend to this at once, so that I may in time inform
my brother. If you have any propositions to make, you can send
them to me and I will submit to my brother, so that there can be any
gangle.

Yours, B. STAATS.

The counsel for the plaintiff then introduced the affidavit of Geo. W.
Hall, sworn to June 29th, 1859, as follows:

STATE OF ILLINOIS, } ss SUPERIOR COURT OF CHICAGO.
WHITESIDES COUNTY. }

John Staats }
vs. }
Henry Funk and }
George Herbert. }

Geo. W. Hall, of Sterling, in said county, being duly sworn, says:

That he was sworn as a witness in this suit on the 16th day of June,
1859, that afterwards, upon his return home, he made a careful and
thorough examination of all his papers, in order to find the power of at-
torney or authority in writing from the plaintiff to this affiant, referred
to in his testimony, and looked in every place where he would be likely
146 to find it, but that he has not been able to find it.

This affiant further says that he removed from Gun Plains in the State of Michigan to Sterling aforesaid, in the month of March last past. That within a few weeks before such removal, he assorted over his letters and papers, and destroyed some of them, which he considered of no further use or value, and may have then destroyed the power of attorney above mentioned; since he did not then know that it was of any further importance, but that he does not now recollect that he destroyed the same.

And this affiant further says that when he removed from Michigan he left a few of his papers properly packed in a box in the house of widow Anna P. Thompson, in the town of Gun Plains, in the county of Allegany, which box is about the size of an ordinary packing trunk, and painted blue, containing most of his books and papers, and that this affiant brought all the rest of his papers to Sterling, and has examined them as above mentioned, that this affiant does not know whether such power of attorney is still in existence, that if it was not destroyed, at the time above mentioned, it is in the box in Michigan above referred to, as this affiant verily believes.

GEO. W. HALL.

Sworn to before me, this 29 day of June, 1859.

L. KING HAWTHORN, J. P.

We hereby stipulate that the foregoing affidavit of Geo. W. Hall may be read in evidence on the trial of the cause therein mentioned, with the same force and effect as if he had made the statements therein contained upon examination in open court, in the trial of such cause.

GEO. HERBERT, for self and as att'y for H. Funk.

Dated July 28th, 1859.

Also the depositions of Robert M. Wright and Philetus W. Gates, as follows:

Robert M. Wright having been previously examined before the court on the part of plaintiff, is recalled.

1st Question.—While the engine and boilers were in use in your mill, how where they supplied with water?

Answer.—They were fed from a well, which was supplied from the hydrant. We have a conductor from the south side of the main roof to this well. There is a drain that leads from the well into the gutter to

*The box I have
have been examined
before the witness
was admitted
= before. There was
not a search.
He does not know
only that he
believes the
papers was destroyed
= brought for last.*

take off surplus water, we blow off the boilers into this well, and this drain is to keep the well from overflowing from that or any other cause.

2d question.—Is there any leak in the boilers?

There is no leak from any source except one of the hand holes in the head, which has leaked a little. The hand hole is an oval shaped hole, cut in the head of the boiler, about 5 or 6 inches long, and 3 or 4 inches wide, used for cleaning the mud out of the boiler.

3d question.—What is the cause of the leakage and how does it affect the value of the boilers, if at all?

Answer.—The leakage is caused for want of proper packing of the rim of the plate which closes this hole. It does not affect the value of the boiler at all.

4th question.—What amount of repairs were made to the engine and boilers, if any, up to the middle of April last?

149 Answer.—The repairs to the boilers and engine proper could not have exceeded ten dollars, I suppose. There was a new stand pipe and also the steam pipe that takes the steam from the boilers was cracked so that we had to put in a new one, caused I suppose from the boilers settling.

5th question.—How has the pump operated?

Answer.—It has operated well so far as I know.

6th question.—How is the heater constructed?

Answer.—It is a plane cylinder, with flues passing through it; the exact number I do not know, and the water is inside of this cylinder, through which the flues pass; there are two outside heads fastened by means of bolts running lengthwise of the cylinder, these outside heads come in contact with each end of the cylinder. The steam from the engine is exhausted through one of these heads into the heater and out through the other into the exhaust pipe that carries off the steam.

7th question.—When was the engine used for the first time after Staats took possession and put Baldwin in charge on the 22d of March as stated in your examination before the court?

Answer.—It was used a half day on the 24th March, I presume in the afternoon; am not certain.

150 8th Question.—Do you recollect whether or not at the time the note and mortgage were given to the plaintiff by Temple and yourself, any

authority in writing was given to Hall? If so, state who gave it to him and what it was, if you know. Objected to.

Answer.—Authority was given by John Staats, of Oswego, N. Y., requesting him to secure his debt from Temple & Wright, which was due him, by taking note and chattel mortgage as such security.

9th question.—Are you acquainted with the handwriting of the plaintiff? have you seen him write? did you examine or see this power of attorney? Do you know whose hand writing it was? Objected to.

Answer.—I am; I have seen him write. I saw the power of attorney. It was in the plaintiff's handwriting.

10th Question.—Have you made any search for this paper within the 151 last few days, and if so where and what search have you made?

Answer.—I have made search. In Michigan, Plainwell, Allegan Co., where Hall lived before he moved to Stirling. The search was made at the house of Mrs. Anna P. Thompson. I examined a box of books and papers; first a box about 6 feet long, painted blue, hung on one side with hinges; the box was nailed up with four large nails solid. I opened it and made a thorough search of all the books and papers it contained. I found nothing of the power of attorney. These books and papers appeared to belong to Geo. W. Hall. I identified books that I knew to be his; some of them had his name in. I found another large box, which contained mostly carpets and bedding. There were no papers in the box. I examined it.

11th question.—Have you seen this power of attorney since the time the note and mortgage were executed?

Answer.—I have not.

12th Question.—Do you know what has become of it?

Answer.—I do not of my own knowledge.

Cross examination:

1st Question.—How much fall is there to the drain that leads to the gutter mentioned in your answer to the 1st question?

Answer.—I could not tell, my impression is that it is about level.

152 2d question.—How many different kinds of heaters do you know?

Answer.—Three.

3d Question.—In the 8th question it is assumed that the note and mortgage were given to plaintiff by Temple and yourself; do you mean

This evidence with the Hall shows a sufficient search to authorize the admission of evidence of the contents of the power of attorney--

What a partition imagination to invent such a question!!

that the plaintiff was ever present and received from you or Temple the note and mortgage, or either? *Answer.*---No.

4th *Question.*---You state in your answer to the 8th question that authority was given by John Staats, but you do not state whether it was in writing, or whether Staats was present and gave it, what do you mean by the word given?

Answer.---It was in writing; Staats was not present. The authority was on a slip of paper directed to Geo. W. Hall.

5th *Question.*---How was it given into Hall's possession, and by whom if he ever received it?

Answer.---It was given to Hall by Temple.

6th *question.*---How did Temple get it?

Answer.---I think it was sent in a letter to us for Hall by Staats the plaintiff.

7th *question.*---Where is that letter?

Answer.---I don't know.

153 8th *question.*---Have you looked for it?

Answer.---Mr. Temple had it the last time I saw it. I have not looked for it.

9th *question.*---Is the slip of paper spoken of above the power of attorney and authority all one and the same thing? *Answer.*---It is.

Question.---May not the letter which accompanied this slip of paper be in your possession?

Answer.---I think not. It was a letter to the company of Temple & Wright. I have not made a search among my own papers. All letters to the company went into the office and were filed. Temple now has charge of the papers.

R. M. WRIGHT.

Philetus W. Gates, a witness on the part of the plaintiff, having been previously examined before the Court, is recalled.

1st *Question.*---What kind of governor is there on this engine of Temple & Wright's, and how does it compare with governors of other styles for an engine to be used in a mill of this description?

Answer.---It is what we term a rotary balance valve, and is known as the Gates valve, for governing an engine. I consider it equal to any
154 in use for ordinary purposes. I consider it equal to Judson's or Hill's.

2d Question.—Is there any advantage in having the main valve a long valve instead of a short one?

Answer.—I can't tell what you mean. If you mean a long steam chest instead of a short one, I think there are advantages and disadvantages in a long steam chest, and there are advantages and disadvantages in a short one. On the whole I am inclined to think that the advantages are in favor of a long steam chest. But in operating an engine for a planing mill I don't think there is a penny's difference. If there is any difference it is in saving fuel. If men should make the calculation by figures, it would be difficult to determine the difference.

3d question.—Would it be any advantage to this engine if the proportionate length of stroke with the diameter of the cylinder was shorter than it is?

Answer.—I think not for that purpose. It is about a medium proportioned engine. There are extremes both ways. The latest and most 155 noted engines now, are those known as the Corless Nightingale's engines, and they are long stroke engines, and I think they are considerably larger in proportion than this engine. They are used largely in factories East. The cut off is operated by the governor or attached to the governor, and cuts off at any part of the stroke required to do the work.

4th question.—In your opinion would it be any improvement to this engine for its use in a mill of this description to have the steam cut off, and regulated in the manner you have spoken?

Answer.—I don't think it would be, for the reason they are complicated, and it is difficult to find a man to take care of them

5th Question.—What kind of pump has this engine?

Answer.—A horizontal pump that works direct from the cross head.

6th Question.—Is there any style of pump that is preferable for an engine of this kind?

Answer.—I prefer the upright pump if it runs more than 50 or 60 revolutions per minute, because the valves wear more, or strike harder in running quick.

156 7th Question.—When did you last examine the engine and see it work? Answer.—To-day.

8th Question.—Was Marshall the engineer requested to point out to

you those parts of the engine or apparatus which were defective or needed repairing of which he had spoken in his testimony?

Answer.---He was.

9th *Question.*---Did he profess to undertake to point out the same, and what did he call your attention to on the subject?

Objected to as leading and otherwise improper.

Answer.---He spoke of the pipes connecting with the pump and boiler leaking at the flanges. I looked at them and found no leaking. He said the pump was not reliable. The pump was working. He spoke also of the pistons having cut the cylinder on the lower side, by the spring having got out of place, all of which showed bad engineering, if true. Objections withdrawn.

10th *question.*---How did the engine work?

Answer.---It appeared to be working well.

157 12th *question.*---How much longer in your opinion would the boilers be suitable for use, provided they were used in the manner they have been during the last four years, and what repairs would they probably need in this time, if any?

Answer.---They would probably last ten years longer, and require 25 dollars per year in repairs.

18th *Question.*---Do you know the kind of heater?

Answer.---It is called a flue heater.

14th *question.*---How does it compare with other heaters of other styles?

Answer.---It is the best in use; we make several different kinds, and we consider the flue heater the best.

Cross examination:

1st *question.*---Does the water or the steam pass through the flues?

Answer.---The steam.

2d *question.*---Are there not heaters constructed where the water goes through the pipes or flues?

Answer.---Yes. This is not one of them.

3d *Question.*---Is there not a difference in the opinion of mechanics in reference to the best kinds of heaters?

Answer.---I believe that all mechanics agree that that flue heaters
158 made like that are the best.

4th *Question.*---Give a description of this heater.

Answer.—It is a shell made of boiler iron, about 16 inches in diameter, with heads set in three or four inches from the end, and filled with fines and heads put on the extreme ends to receive the steam at one end and discharge it at the other. The water is admitted into the shell at one end and discharged at the other usually. Sometimes set perpendicular and sometimes horizontal.

5th question.—Is there not what is called an improved Gates' Governor or valve, and is this one?

Answer.—There is, but this is not the latest improvement.

6th Question.—Is there not a difference of opinions among engineers as to the advantages and disadvantages as to the long and short steam chest in high pressure engines?

Answer.—There is. Good mechanics and engineers are directly opposite in opinion.

7th question.—Are the Corless and Nightingale engines you speak of high pressure engines as used in the factories East, and do they run a slow or fast motion?

Answer.—I think I have seen both, and generally slow motion.

8th Question.—Where the speed is got upon the engine and 50 or 60 revolutions are required, is a long or short stroke in proportion to the diameter of the cylinder, usually considered desirable?

Answer.—That is just exactly according to men's fancy. Some good engineers prefer long and some equally competent prefer a short one, but for the modern improvements in cut off, long stroke engines are considered desirable where the cut off is operated or attached to the governor.

9th question.—Has this engine any cut off attached to the Governor?

Answer.—No.

10th Question.—How do you know that under the circumstances stated in the 11th question, it would not cost more than \$25 to \$50, during the next ten years to keep the engine there spoken of in good working order?

Answer.—I know because I run an engine all the time and know that it does not cost us that to keep ours in repair.

11th question.—Do you mean to be understood that it does cost more than \$2.50 or \$5.00 per year to keep in repair your engine you speak of?

*Black Scientific
Skill is shown
by attending to
phant this exam-
ination, as well
as by saving of
the mistakes as
to the ad-
-tages of dis-
-cutting and
their various
improvements
as what is sup-
posed to be such.*

160 *Answer.*—I do not mean so to be understood. I meant in my answer to question 11th, \$25 to \$50 per year.

12th *Question.*—Can you tell for a given number of years what repairs may not be necessary upon any machinery of the description of the engine, boilers and appurtenances in the Temple & Wright mill, with certainty? Do they not depend on many contingences?

Answer.—There is no difficulty in telling what the ordinary wear would be with proper use, consequently no difficulty in telling what the repairs would be. Unforeseen accidents, careless of engineer, &c., might destroy the whole thing and incur great expense.

13th *question.*—Did you ever keep an account of the repairs of boilers that had run 14 or 15 years for the last ten years of that time, constructed as the boilers in controversy are? *Answer.*—No.

14th *Question.*—Did you ever run boilers like those ten or fifteen years? *Answer.*—No.

161 15th *Question.*—Did you ever repair boilers like those, that had run 12 or 15 years?

Answer.—I don't know whether I have or not.

16th *Question.*—Do you include in your answer to the 12th question, the pipes with the boilers?

Answer.—Nothing was said about pipes?

P. W. GATES.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, James W. Scoville, a Notary Public in and for the city of Chicago, in the county and State aforesaid, do hereby certify that the foregoing testimony was taken before me, under the stipulations which appear on Page 1, on the 23d, 27th and 28th days of June, A. D. 1859, at the office of Geo. Herbert, Esq., in the city of Chicago aforesaid, in the presence of Wm. Farwell, attorney for the Plaintiff, and George Herbert, attorney for the Defendants, and that the witnesses were all duly sworn by me according to law, except Robert M. Wright and Philetus W. Gates, who, as was previously stated by counsel, had previously been sworn and examined in this case, before Hon. 162 John M. Wilson, Judge of the Superior Court of the city of Chicago.

and permitted the said testimony, so sought to be excluded, to stand as evidence.

To which overruling said motion, the defendants excepted ~~there~~ and there, by their said counsel. And after ~~a~~ ^{the} hearing of the parties upon the issue aforesaid, by their counsel aforesaid, the Court found the issue aforesaid for the plaintiff, and assessed the damages for the plaintiff against the defendants at sixteen hundred and fifty-six dollars.

Thereupon the said defendants, by their counsel, moved the Court to grant a new trial.

- 165 1. Because the Judge admitted improper evidence.
2. Because the Judge did not exclude the testimony sought to excluded on motion of defendants.
3. Because the decision is against the law.
4. Because the decision is against the evidence.
5. Because it is against the weight of evidence.
6. Because the damages are excessive.

and Which motion the court then and there overruled and ordered judgment for the plaintiff, to which overruling said motion and order the said defendants by their counsel aforesaid, then and there excepted; and inasmuch as these exceptions, which embody and contain all the evidence introduced at the trial by both parties, do not appear upon the records of this case otherwise, therefore the said Judges of said Superior Court, on the prayer of the defendants, do sign and seal these exceptions to the
166 and that this bill may become a part of the record in this cause.

JOHN M. WILSON, [L. S.]

VAN H. HIGGINS, [L. S.]

GRANT GOODRICH, [L. S.]

Judges, &c.

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

I, Walter Kimball, Clerk of the Superior Court of Chicago, within and for the County and State aforesaid, do hereby certify that the foregoing is a full and true transcript of all the pleadings, appeal bond, bill of exceptions, and orders entered of record in said court as the same now appear on file in my office, in the case of John Staats, plaintiff, and Henry Funk and George Herbert, defendants.

In testimony whereof, I herewith set my hand and affix the seal of said Court, at Chicago, in said County, this first day of March, A. D. 1860.

[L. S.]

WALTER KIMBALL, Clerk.

304-160
Henry Funk
as
John Staats

Abstract

Filed April 26 1860
L. Lehard
Clerk

(1)

United States of America
State of Illinois
Cook County, Jp

Heas before the Honorable Judges
of the Superior Court of Chicago, within and for
the County of Cook and State of Illinois, at a
regular term of said Superior Court of Chicago
begun and holden at the Court House in the
City of Chicago in said County and State on
the first Monday being the Seventh day
of November in the year of Our Lord Eighteen
Hundred and fifty nine, and of the Independ-
ence of the United States of America the eighty
fourth,

Present the Honorable John M. Wilson
Chief Justice of the Superior Court of Chicago
Saml Higgins and Grant Goodrich, Judges
Carl Marvin Dist. Attorney
John Gray Sheriff of Cook County

Attest
Halter Minshall, Clerk

For a Record being the first

2

To wit, on the twenty Second Day of April
A.D. Eighteen Hundred & fifty-nine, came
John Staats plaintiff by Maxwell & Smith
his Attorneys and filed in the office of the Clerk
of the Superior Court of Chicago his Declaration
of appeal of Verdict, against George Herbert
and Henry Hunt Defendants, which said
Declaration is in words & figures as follows
to wit,

3.

The Superior Court of Chicago.
Of the May Term A.D. 1857.

State of Illinois

County of Cook fs.

John Staats plaintiff in this
suit by Farwell & Smith his attorneys
complains of George Herbert and
Henry Farnck defendants therein being
in custody &c of a plea of trover.
For that whereas the said Plaintiff here-
before brought on the thirteenth day of
April in the year of our Lord one
thousand eight hundred and fifty
nine at to wit: the County of Cook
aforesaid, was lawfully possessed
as of his own property of certain
goods and chattels to wit: one
Steam Engine & boiler & the fixtures and
appurtenances thereto belonging of
great value to wit: of the value of three
thousand dollars, and being so possessed
thereof the said Plaintiff afterwards to wit
on the day and year aforesaid at to wit
the County of Cook aforesaid casually
lost the said steam Engine and boiler
and the fixtures, and appurtenances
there^{unto} belonging out of his possession.

and the same afterwards to wit: on the day and year first aforesaid at to wit the County of Cook aforesaid came to the possession of the said defendants by finding, yet the said defendants well knowing the said Steam Engine and boiler & the fixtures and appurtenances thereunto belonging to be the property of said plaintiff and of right to belong and appertain to him, but contriving and fraudulently intending craftily and subtly to deceive & defraud the said plaintiff in this behalf have not nor has either of them as yet delivered the said Steam Engine and boiler & the fixtures and appurtenances, or any or either of them or any part thereof to the said plaintiff, though often requested so to do, but hath hitherto wholly refused so to do, and afterwards to wit: on the day and year last aforesaid at to wit the County of Cook aforesaid converted and disposed of the said Steam Engine and boiler & the fixtures and appurtenances ^{any} thereto belonging.

And whereas also the said

5. Plaintiff heretofore to-wit: on the twentieth day of April one thousand Eight hundred and fifty nine at to-wit: the County of Cook aforesaid was lawfully possessed as of his own property of certain other goods and chattels to-wit: one Steam Engine & boiler and appurtenances thereto belonging of great value to-wit: of the value of three thousand dollars, and being so possessed thereof the said Plaintiff afterwards to-wit: on the day and year last aforesaid at to-wit: the County of Cook aforesaid casually lost the said Steam Engine & boiler and appurtenances out of his possessions and the same afterwards to-wit: on the day and year last aforesaid at to-wit: the County of Cook aforesaid came to the possession of said defendants by finding, yet the said Defendants well knowing the said Steam Engine, boiler and appurtenances to be the property of the said Plaintiff and 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 nor has either of them as yet delivered to the said plaintiff the said Steam Engine boiler & appurtenances, or any or either of them or any part thereof although often requested so to do but hitherto wholly refused so to do and afterwards to wit: on the day and year last aforesaid at Court the County of Cook aforesaid converted and disposed of the said Steam Engine boiler & appurtenances to their own use,

To the damage of said plaintiff of four thousand dollars and therefore he brings suit &c.

Farwell & Smith
Plff's. attys.

And afterwards, to wit on the third day of May in the year aforesaid came the said Defendants George Herbert and Henry Frank, by George Herbert attorney and filed in the office of the Clerk of this Court their pleas to said plaintiff's Declaration which said pleas are as follows, to wit

7

Superior Court of Chicago
May Term 1859.

John Straats
vs

Henry Funk &
George Herbert

And now the said defendant
George Herbert comes and defends
the wrong & injury when &c
and says that he is not guilty of
the said supposed grievances
above said to his charge or any
or either of them or any part
thereof in manner and form
as the said plaintiff hath above
thereof complained against
him, and of this he the said
defendant puts himself on the
country &c

Geo. Herbert prase
And the said Plaintiff doth the like
Garrell & Smith
Attys for Plff.

Superior Court of Chicago
May 11. 1839.

John Staats

vs

Henry Fank

George Herbert.

And now the said defendant Henry Fank by his attorney Geo. Herbert comes and defends the wrong & injury whereof and says that he is not guilty of the said supposed grievances in any or either of them or any part thereof in manner & form as the said Plaintiff hath above thereof complained against him and of this he the said defendant puts himself upon the Country &c

Geo. Herbert.

Attorney for Fank

And the said Plaintiff doth the like

Garwell & Smith

Attys for Plff.

9 And afterwards, to wit on the twenty second day of November A D Eighteen Hundred & fifty nine, said day being one of the days of the November term of said Superior Court of Chicago, in the year aforesaid, the following proceedings were had in said cause and entered of Record, to wit,

John Staab	}	Traver
George Herbert and Henry Frank,		

This day comes the said plaintiff by Maurice Smith his attorney, and the said defendants by George Herbert their attorney in person also comes, and after being joined herein upon agreement of the parties made now here in open Court, this cause is submitted to the Court for trial, without intervention of a Jury, And the Court now here after hearing evidence and arguments of counsel, and being fully advised in the premises finds the defendants guilty, and assesses said plaintiffs damages at the sum of One thousand six hundred & fifty six dollars.

And thereupon said defendants submit their motion for a new trial in this case, which

motion for a new trial is overruled by the Court.

Therefore it is considered said Plaintiff do have and recover of said Defendants his damages of One thousand six hundred and fifty six dollars in form aforesaid by the Court here found and assessed, and also his costs and charges in this behalf expended, and have execution therefor.

And therefore defendants pray an appeal herein to the Supreme Court which is allowed to them upon condition that they file herein their appeal bond in the penalty of twenty five thousand dollars with surety to be approved by a Judge of this Court by first day of the December term next, and that they have thirty days time in which to file their bill of exceptions.

And afterwards to wit on the fifth day of ^{said day being the first day of December term} December in the year aforesaid the said Defendants filed in said Court their appeal bond which said bond is in words and figures as follows to wit,

11

Know all men by these presents
 that we Henry Frank of Muscatine in the
 County of Muscatine & State of Iowa and
 George Herbert of Chicago in the County of
 Cook & State of Illinois as principals, and
 Thomas W. Scott of said Muscatine and Ambly
 Webster of Chicago aforesaid as security
 are holden & stand firmly bound & obliged to
 John Staats in the penal sum of Twenty five
 hundred dollars lawful money of the United
 States for the payment of which well & truly
 to be made we bind ourselves our heirs executors
 & administrators jointly & severally firmly by
 these presents, sealed with our seals & dated
 this thirtieth day of November Eighteen hundred
 & fifty nine.

The condition of the foregoing obligation
 is such that whereas on the twenty second day
 of November Eighteen hundred and fifty nine
 at a term of the Superior Court of Chicago began
 & holden at Chicago in said County on the first
 Monday of November aforesaid by the con-
 sideration & judgment of said Court in a
 certain suit then & there pending in a plea of
 trespass on the case wherein the said John
 Staats was plaintiff and Henry Frank & George

Herbert as foreseen Defendants it was then there
 ordered & adjudged that the said John Staats
 have & recover of the said Henry Hunt & George
 Herbert the sum of Sixteen hundred & fifty
 six Dollars as for his Damages in this
 behalf sustained, together with the sum
 of Dollars and Cents for his
 Costs & Charges by him about said suit
 sustained, from which judgment of said Court
 the said Henry Hunt and George Herbert
 have taken an appeal to the Supreme Court,
 Now if the said Henry Hunt and George Herbert
 shall duly prosecute said appeal and in
 case of the affirmance of the said judgment
 shall well & truly pay or cause to be paid
 as well the said judgment so affirmed as
 all such judgments Costs interest & Damages
 as may be adjudged & rendered by said Supreme
 Court upon the dismissal or trial of said
 appeal then the above obligation shall be
 void otherwise to be & remain in full
 force & virtue.

Signed Sealed & Delivered	Henry Hunt	Seal
in presence of	by Geo. Herbert his attorney in fact	Seal
J. A. Samlton,	Geo. Herbert	Seal
December 5 1850	Thos. M. Smith	Seal
Approved by me	C. M. Culbertson	Seal
John M. Wilson, C. J.		
The Superior Court of Chicago		

And afterwards to wit on the twenty second day of December in the year aforesaid said May being one of the days of the December term of said Court the following proceedings were entered of Record in said Court to wit

John Staats

Trover

^{vs}
George Herbert &
Henry Munk

On Motion of George Herbert for defendants it is Ordered that the Rule & time limited herein to make file bill of Exceptions on appeal to Supreme Court be extended ten days.

And afterwards to wit on the twenty eighth day of December in the year aforesaid as yet of said December term of said Court the following proceedings were entered of Record in said Court to wit

John Harts

Trotter

Hymus Smith &
George Herbert

On motion of defendants
Ordered that time to file bill Exceptions
be extended, to be filed on or before
the third Monday of February next

And afterwards to wit on the fif-
teenth day of February A D Eighteen
hundred & Sixty, the said defendants filed
in the office of the Clerk of said Court their
Bill of exceptions signed by the Judges
of said Court, which bill of exceptions
is in words & figures as follows, to wit,

15 State of Illinois
Cook County ss

In the Superior Court
of Chicago
June Term 1859

John Staats
vs
Henry Funk &
George Herbert } Trover.

Be it remembered that
on the tenth day of June in the year
aforesaid the said plaintiff John Staats
appeared by his attorneys Garwell & Smith
and the said defendant Henry Funk
by his attorney Geo. Herbert and
the said Geo. Herbert pro se. and
the said cause having been submit-
ted to be tried by the Court without
a jury. Hon. John M. Wilson ^{Judge} presiding.
the said plaintiff upon the issue afo-
said of not guilty by his counsel
aforesaid introduced his evidence
as follows to wit the following mortgage

This Indenture, made and entered
into this twenty first day of March in
the year of our Lord one thousand
Eight Hundred and fifty seven between
John F. Kemple and Robert M. Meight
of the County of Cook and State of Illinois

16 party of the first part and John Staats
of Oswego New York, party of the second
part, Witnesseth. That the said parties
of the first part, for and in consideration
of the sum of two thousand and seventy
seven and 4/100 Dollars, in hand paid,
the receipt whereof is hereby acknowledged,
do 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: The Steam Engine Boiler, and
fixtures and appurtenances thereunto
belonging, now owned and possessed
by the said parties of the first part and
situated in the Plaining Mill now
occupied and used by said parties
of the first part on the corner of Polk
and Canal streets in the city of
Chicago, said Engine Boiler and
fixtures and appurtenances being now
used to propel the plaining and
matching machines used in said mill,
together with all and singular the
appurtenances thereunto belonging or
in any wise appertaining. To have and
to hold the above described Goods and
Chattels unto the said part of the

17 second part, his heirs and assigns forever.

Provided always, That these Presents are upon this express condition, that if the said John F. Geisler and Robert M. Wright their heirs, executors, administrators or assigns, shall, on or before the twenty first day of March A.D. eighteen hundred and fifty nine pay or cause to be paid to the said John Maats or his lawful attorney or attorneys, heirs, executors, administrators, or assigns, the sum of two thousand and seventy seven and 4/100 Dollars, together with the interest that may accrue thereon, at the rate of seven per centum per annum, from the twenty first day of March A.D. eighteen hundred and fifty seven until paid, according to the tenor of a certain promissory note bearing even date herewith made by said parties of the first part to said party of the second part given in consideration of moneys sold by said party of the second part to said parties of the first part that then, and from thenceforth, these Presents, and every thing ~~the~~ herein contained, shall cease and be null and void, and any thing

herein contained to the contrary notwithstanding.

Provided also, that the said John H. Kemple and Robert M. Wright are to retain possession of and have the use of said Goods and Chattels, until the day of payment aforesaid; and also, at their own expense, to keep said Goods and Chattels; and also, at the expiration of said time of payment, if said sum of money, together with interest as aforesaid, shall not be paid, to deliver up said Goods and Chattels, in good condition, to said John Staate or his heirs, executors, administrators or assigns; and provided also, that if default in payment as aforesaid shall be made, that then the said John Staate or his attorney, agent, or assigns, or heirs, executors or administrators, shall have the right 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 on hand, after giving ten days notice of the time, place and terms of said Sale, together with a description of the Goods and Chattels to be sold, by

19 at least these advertisements, posted up in public places in the vicinity where said Sale is to take place; to make the sum of money and interest promised as aforesaid, together with his reasonable costs, charges and expenses in so doing; and if there shall be any overplus, shall pay the same to the said John F. Temple and Robert M. Wright, or their legal representatives.

In Testimony, whereof, the said parties of the first-part have hereunto set their hands and affixed their seals the day and year first herein written.

John F. Temple (J.F.)
Robert M. Wright (R.M.)

Signed, sealed and delivered

in the presence of
Geo. W. Hall

State of Illinois }
Cook County } ss. J. H. B. Penger 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 John F. Temple and
Robert M. Wright this twenty third day of March A.D. 1852.
J. H. B. Penger J.P. (J.P.)

State of Illinois } Filed for record 24 March 1852 and recorded
Cook County } in Book 2 of Mortgages Page 21
Wm. L. Church
Clerk.

The signatures were admitted by the defendants but the defendant objected to ^{the} admission as evidence of the said chattel mortgage without proof that it was properly and duly acknowledged in the justice's district in which each of the mortgages respectively resided and that the same was duly recorded in the office of the recorder of the County in which said mortgages resided.

The plaintiff then called Robert M. Wright as a witness who testified:

I am one of the mortgagors in the mortgage produced. At the time the mortgage was executed & on the twenty third day of March 1857 I resided in the town of West Chicago. The firm was in the planing and sawing business. The other party was John H. Gempfle. The origin of the indebtedness secured by mortgage was lumber bought of Plaintiff. We leased the land and owned the fixtures, the building & machinery situated in West Chicago. John H. Gempfle resided in South Chicago. Our business was carried on in the place mentioned in

21 the mortgage. Plaintiff was not present when Mortgage was executed. George W. Hall who witnessed the Mortgage represents him. Before the Mortgage expired, I think in April soon after the Mortgage was given I saw plaintiff. All the objection plaintiff made was that it was subsequent to Funks Mortgage. I took plaintiffs Mortgage & two others to the recorder's office. Of my own knowledge I do not know what became of the note. On the 22nd of March 1859 Barent Staats of Milwaukee came as the agent of the plaintiff & demanded possession of the Engine and Boilers. I gave him possession of them. They disconnected the keys and gibs of the main valve & Barent Staats put Philander H. Baldwin in possession who in the day time was in the mill and kept these keys when the engine was not running; when we were running ^{it} he put them in place, & took them out when we were through. These keys were indispensable to run the engine. Baldwin remained on the premises some three or four weeks, maybe more. The

22 note or debt for which it was given has not been paid. The Engine & Boilers are four years old last March. We procured them of Bates & Co. They were run pretty much all the time perhaps three quarters of the time ten hours per day since that time: heated with shavings. At the time Baldwin was put in possession it was in good running order, we were running it all the time as we wanted to, we run the engine with Baldwin's permission, when we wanted to run he furnished us the Keys & gibs to run with.

I am acquainted with Defendant Fank. He was in Chicago when Plaintiff's agent took possession and he told me he knew that fact the day after Plaintiff had taken possession when about 7 or 8 o'clock in the morning I came to Temple & Wright's office Defendant Fank was there. I went into the mill. Fank followed me. He told me he had come to take possession of the property mortgaged to him that as Plaintiff had taken possession he thought he had the same right; & it was not his intention to prevent the mill from running & that

23 Things should remain just as they were, the property in our use, that when we wished to run wey use & its all we could with it; that Mr Barent Staats would write to his Brother the Plaintiff in Oswego New York and an arrangement would be made he presumed to settle matters between the parties. That neither of them wished to close up the concern but to secure themselves.

I am acquainted with the value of machinery of this kind and have been engaged about it eleven years. I should consider the Engine and boiler & fixtures worth about two thousand dollars & cheap at that at the time Funk took possession. We then thought it would need new following bolts & bolts for setting out Springs. Funk by his agent Mr Herbert had two custodians. Herbert claimed possession under the mortgage for Funk.

The plaintiff's counsel here again presented the mortgage with its accompanying certificates as copied above and the defendants by their counsel again objected to their introduction without further proof suggested above and for the reasons stated above which objection was overruled by the court and the said mortgage

24 and certificates copied above admitted in evidence — to which admission of said mortgage and certificates the said defendants by their said counsel excepted then & there.

Robert M. Wright on cross examination said in his estimate of value he included engine Boilers pipes smoke stack heater & jackets but not brick work under the term appurtenances should include everything necessary to run the engine. Value the boilers at ten cents a pound or seven hundred dollars each. In estimating the value in the mill I call it to be 2500\$, but estimating it to remove I call it 2000\$. The Boilers I think worth 700\$ a piece, the engine 500\$ or 600\$. If the boilers were separated and I left one in shop I should sell one boiler for 800\$. I should charge that for it. I should think the one boiler and the appurtenances would be worth 1800\$. The appurtenances about 500\$ I guess. The original cost of the whole engine, boilers &c was 3,215\$. besides brick work. I do not know what such property is worth. They have grown 4 years older. Price of engine Boilers and pipes was 3000\$. I have put on

25 two prices - when we pull an engine to pieces & sell it so we should sell it for more.

We run the engine up to the time Mr Herbert took possession most of the time. Baldwin was there every day except about $1\frac{1}{2}$ days when he was sick was there the rest of the time. The gibs and keys weighed about one pound. Baldwin used to carry them away when we were not using them.

Thomas Chalmers a witness called by Plaintiff said that he resides in Chicago is a machinist & one of the firm of Bates & Co. who manufactured engines & Boilers in the Temple & Wright Mill. I have seen & examined them lately within a week. The boilers are built into a brick arch, the engine is built upon a cast iron frame, the boiler of itself is only one part. There are two boilers, they are in one brick arch. The fire is all one underneath them, such a boiler as this is often called an engine and boiler. The engine & boiler include engine & whatever boilers are used to run the engine whether one or more. In my opinion

from the general appearance the engine, boilers, fixtures & appurtenances ought to be worth 2000\$ as it stands - in my judgment the middle of last April it was worth that sum.

On cross-examination. I did not go into boilers. examined them on the under side, saw blister on south boiler. New boilers like these No. 1. charcoal Iron we have made for nine cents and sold them new for eight cents per pound at cost, they weigh 6000 lbs. to 6500 lbs. each. The market value would be 9 cents ~~per~~ per pound new. The boilers are of No 1 charcoal iron. These have been used four years. The engine, Boilers and appurtenances, might bring more or less in the market, they might not sell for more than 50\$ at auction according as a man want ed them. The boilers ^{I think} were worth seven cents a pound. Have got in our establishment one boiler belonging to each engine. It would not be proper to call an engine & one boiler an engine & boilers. It would be proper to call it an engine & boiler on the same principle ~~boilers belonging to each engine~~ it would

27 Be proper to call an engine and two
boilers an engine and boilers. It don't
make any difference whether there are
a half a dozen boilers or one, they can
be described either way, either as boiler
or boilers. The boilers are connected at
top by a steam pipe, at the bottom by
a water pipe, - a pipe from the steam
pipe conducts the steam to the engine
& a pipe from the heater on the engine
conducts the water to the boilers. If
you came to me and wanted an
engine of ten horse power & boiler I
+ should ^{sell} you as many boilers as you
wished. If you came and wanted
an engine and boiler it might mean
either one, two, or three boilers depending
upon the size wanted. I subcontracted
the building of this engine.

Barent Staats, a witness called
on behalf of the Plaintiff testified that at
request of the Plaintiff he came March
1859 from his residence in Milwaukee to
protect the rights of Plf in the property
described in the Mortgage which March
21. 1859 I took from the office of recorder of
Cook County and March 22 1859 by
virtue of Mortgage above I took possession

of the mortgaged property & placed a party there to control it, Mrs Baldwin whom I placed in possession. About that time I had a conversation with Defendant Gunk who came on here about that time. There was some negotiation made by all parties Temple & Wright myself & Mr Gunk. This was a day or two after I took possession. The object was not to break up the concern and give them a chance to negotiate and still make good any brother's claim, that was understood between Gunk & myself. Gunk wanted to take the property to Iowa. I could not consent.

Mrs Baldwin was to keep possession - Temple & Wright were to work the mill until a conference could be had between Gunk & plaintiff to see who would sell out to the other. In the course of about 20 days Plaintiff & defendant Gunk met at Chicago.

On cross examination he testified.

Baldwin was employed to keep possession for Staats not for Gunk till Plaintiff and Defendant Gunk could get together. I wrote my brother don't remember whether I received an answer from him - thereupon I wrote to Gunk

29 I don't remember whether I got an answer from Gunk or Herbert or not. The arrangement I can't say whether it was made in Herbert's office or not. I would not say it was not. There was some talk of my writing my brother who would come in some ten days.

The arrangement was that I expected my brother in about ten days and that I would write him. The understanding was between Gimple & Wright, Baldwin & me that Baldwin was to keep keys.

I don't remember, but I don't know but I got a letter from Herbert. It was not arranged that Gunk should wait ten days but until there was time for Plaintiff & Gunk to meet and come to an agreement.

Philander H. Baldwin for Plf. testified. Between 8 & 9 O'clock A. M. March 22nd 1849 Barant Staats having Plaintiff's mortgage with him at Gimple & Wright's office about twenty or thirty feet from their mill where the property included in mortgage was, employed me to take care of the engine boiler & fixtures. He went with me to the mill & showed me the engine & took some

keys out of the prison and gave them
to me. Without the keys they could
not run the engine. Wright was
present. He, Staats told me to take
of the engine boiler and fixtures and
the next day he told me to let Temple
& Wright run the mill if they wished,
letting them have the keys and then
take them out. I was to continue until
further orders and I continued in
possession about twenty days. From
7 to 12 and from 1 to 6 o'clock, except 1 1/2
days, I was sick and during this time
engine was run 3/4 of the time. When
they run the engine I was there and
gave them the keys, and when they were
done I put them in my pocket.

Second day, the next after Staats employ-
ed me I saw Fank and was introduced
to him. Fank had a custodian to look
after his property during the twenty days
I was there, one Adams. Neither Adams
nor Fank interfered with me. On or
about April 13th Herbert told me I was
not wanted any longer there and that
he had a lease of the premises for Fank
whom I understood he acted for.
He insisted that I should go and

31 said he should put one out and I went out. After this Mr. Meats was there. I don't know the name of the man that went up there. Meats the Plaintiff undertook to get in but Deft. Gunk's people directed by Herbert would not let him in. They (Deft's people) had about 20 police officers there.

On cross examination Baldwin testified that the keys he took out of the engine were pieces of steel, 1 piece about $2\frac{1}{2}$ inches long and one piece 5 inches long.

Philetus W. Gates for Plaintiff testified Am a manufacturer of engines and have a practical knowledge of that business. I know the Engine and Boilers in the Temple & Wright Mill. Saw them Saturday last. did not make a thorough examination. They were good apparently. There was a blister on the south boiler. I looked at the engine. I think they were in good condition for the time they have run. I think the engine and boilers have had good care. Could

32 not tell about the engine without taking it down. I have known of no repairs on them. amount of repairs and condition depends on who uses them. I take a pride in examining engines and boilers. Boilers will last longer burning shavings and wood than burning coal. These boilers I believe were built of American Charcoal Iron, the best quality for boilers. A blister is an evidence of bad quality though it injures a boiler, don't think it would affect the value more than 15 or 20%. Besides the delay of one and one half days. The engine Boilers and fixtures are worth in an ordinary way of speaking \$2000, should sell such an arrangement new for 2800. & more. Sold these at \$3200. at that time.

Gross examined. My business is not selling old engines, I sell them when I have them. I don't make old ones to sell. Have sold one old one certain. I have not sold many. The one I sold was a portable engine about 10 horse power. The engine mortgaged was 30 or 40 horse power. I think it is my opinion the property

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mortgaged Staats is worth 2000⁰⁰.
 I cannot tell. Between English iron
 and American No. 1 charcoal boilers
 there is a difference of value now of
 1 1/2 to 2 cents per pound. We have
 used both kinds of iron in our shop.
 Have sold one old boiler with portable
 engine above during the last year.
 Smoke stacks depreciate faster than
 boilers and engine. Have sold old
 smoke stack. My opinion on an
 old thing of this kind is as good as
 on a new I think.

David S. Mc Lane testified for Off.
 Received a chattle mortgage from
 plaintiff and with five men undertook
 to get possession of the property mortgaged
 in Temple, Wright's bill. Gunk's
 keepers told me I could not have it
 I demanded it of them. Herbert
 came up, asked if I had any paper.
 He said if I had a writ of replevin I
 could have it. I said I had not. Her-
 bert said I could not have it. I
 waited at request of men in bill
 for Herbert to come. Herbert came with
 police.

Cross examined. I pretended to be an officer. I said I was ~~here~~ a constable. I was there as a constable to arrest any one who made a disturbance. I had a chattle mortgage to execute. I said I had no precept. My orders were to break into the building if I could not get in peaceably from the plaintiff, not from the attorneys, but this young man in the office of Goodrich, Garwell & Smith said Mr Goodrich wanted to see me.

Chinton Ward for the Plaintiff testified that he had Saturday last examined these boilers. In good condition except a blister, which would take two days to repair at cost of 25¢. Been 9 years in the boiler business. Could not tell what sort of iron they were. Never have seen a boiler made at Bates & Co's of other iron than No. 1. Charcoal iron. Did not go inside these boilers. I have worked for Bates & Co. Am a boiler maker.

William W. Garwell testified for plaintiff about 19th or 20th of April last some question having arisen between Herbert and myself I desired to know of Mr

35 Gunk whom I went to see at Herbert's invitation whether what Mr Herbert had done about the property mortgaged to Staats by Gemple & Wright had been done with his consent and under his authority. Mr Gunk replied that what Herbert had done was by his authority and by his approval. Herbert was present and remarked after my statement of the case we do not want you to understand that we admit that Staats was in possession.

On cross-examination. Once when you called something was said in our office about taking forcible possession of the property. I presume that Herbert sent for Gunk to come here.

Geo. W. Ball testified for Plaintiff. Reside in Stirling Illinois, am acquainted with all the parties Gemple, Wright, John Staats & Barent Staats. In Spring of 1857 Gemple & Wright asked me to take some part in execution of note and mortgage for Staats. I had known the above parties many years. The day of the transaction Gemple I think called on me at my place one or both of them

having spoken to one before and requested me to go to their office and I went.

Gemple then handed me a power of attorney from Plaintiff which is in my possession among my papers at Stirling I suppose. I did not bring it. I had not time to look for it. Gemple said Staats had sent it. Gemple & Wright proposed to secure the debt they owed Staats Plf. by chattel Mortgage. The mortgage (above copied) now shown me was there produced ready drawn up and was read and Gemple & Wright signed it and I witnessed it. A note also made before accompanied the mortgage. This was the end of the transaction except sending the note to Staats and recording the mortgage. They said I think that the mortgage should be acknowledged and recorded. I left the mortgage ^{with them} to be acknowledged and recorded ~~with them~~. Mr Gemple said he should be writing Plf. and would enclose the note to him.

X The attorney for the plaintiff proposed the following interrogatory.

Did either Gemple or Wright within a short time afterwards inform

37 again whether they had acknowledged or left for Record the mortgage?

To this interrogatory the defendants by their counsel objected as hearsay evidence and substantially bad.

The witness in reply stated that Mr Wright informed me within a day or two afterwards that it was acknowledged and recorded. Which evidence was admitted by the court, to the admission of which the said defendants by their counsel excepted then and there.

Mr Temple was sitting at his desk when the business was done. I was sitting near him by his side. Mr Wright was near by present during the whole transaction but I am not certain whether he was sitting or standing by the desk. We arranged about the acknowledgement of the mortgage and that was the end of it. I examined the note and mortgage either before or after the signing. My impression is that Temple signed the company name to the note. I saw Temple & Wright sign the mortgage. The note and mortgage were on the desk before me.

28 The note was signed at that time after I got there. The note marked "Exhibit B" is like the note and it corresponded with the amount stated in mortgage. I do not know what became of the note further than I have stated. Temple took it I think at the time he made the remark about writing Plaintiff. It was arranged to be sent to Staats and I assented. I never received but one power of attorney from Staats

Cross examined.

I never corresponded with Staats or have done any other business for him in the West. Saw him last 2 years ago this summer or fall at Chicago. Wright spoke to me a few days I should judge a week previous to the signing mortgage and note about securing Staats I think at his house and at that time spoke of a claim of Foss & others for the infringement of a patent and said he should not pay it until he had paid his honest debts or something to that effect. He said I think Staats had furnished them with lumber and favored them

39

with credit and he ought to be secured or paid before Goss. I had several conversations with Wright about securing his creditors about that time Wright named other debts, one particularly. I cannot say that Mr Temple or Mr Wright gave me any other reason for preferring any of their creditors than that stated above between the date of this conversation and the time the mortgage was signed, I think they did not. I do not remember that I objected to the length of time on which the mortgage was given at the time it was signed. I think one or both of them said the time given would be acceptable to Plaintiff but I do not know that anything was said on the subject. I had not received any other letter or paper from the plaintiff but this power of attorney and some other was exhibited. I took that. I supposed it belonged to me. The reason why I did not take the note and mortgage I had implicit confidence in Temple & Wright. No other papers were exhibited there but the note and mortgage. I was on intimate and friendly terms with

40 Gensple & Wright. They said at that time ^{that} they had written to Plf. and had received the power of attorney.

Re-examination by Plaintiff's counsel witness stated that Wright spoke of a debt due Frank when he spoke of preferring his creditors. When I met Plf in Chicago I had no conversation with him in reference to the transaction about taking security for the debt. I was busy in Mill and my attention could not be diverted. I shook hands with him and asked for himself and his family which was about all that was said. I last saw the power of attorney in Michigan where I was then living and before I removed to Sterling. I am not certain where it is now; part of my goods and papers are in Michigan where I formerly resided and part in Sterling. Have not searched but will do so on my return and will forward it if I find it.

Question by plaintiff's attorney.

41 Can you state the contents of the paper?
If so state them.

The defendants counsel objected to the above interrogatory which objection was overruled and the answer was taken down as testimony and was subsequently fully admitted as evidence in connection with the affidavit of Hale and the testimony of R. M. Wright.

Answer by Witness.

The substance and almost the very words were "I hereby authorize you to secure any claim or debt against Temple & Wright". It was short and in three or four lines and signed by John Staats but I cannot say whether it was sealed. I know his handwriting. In which overruling the said objection of the defendants and admitting said answer depts. by their counsel excepted. ~~The~~ The Plaintiff here introduced the note marked "Exhibit B" as follows,

Chicago March 21st 1857

\$2077.24

On the Twenty first day of March Eighteen Hundred and fifty nine we promise to pay to the order of John

42 States two thousand and seventy seven
dollars and forty four cents with
interest at the rate of seven per cent.
per annum

Exhibit B.

J. Wendell Thompson.

And now the said defendants by
their counsel aforesaid introduced
their evidence as follows.

(1) Chattel Mortgage John F. Gemple
and Robert M. Wright to Henry Funk
dated October 14th 1858 acknowledged
before J. A. Choisington Justice of the Peace
January 25th 1859 by John F. Gemple and
the same date before C. H. Bauman
Justice of the Peace by said Wright
recorded January 29th 1859 as follows
(to wit)

This indenture, made and entered
into this fourteenth day of October in
the year of our Lord eighteen hundred
and Fifty Eight ^{between} John F. Gemple and
Robert M. Wright of Chicago partners under
the firm of Gemple & Wright in the
County of Cook and State of Illinois
party of the first part and Henry Funk
of Muscatine in the County of Dubuque

43
The State of Iowa party of the second
part, Witnesseth, that the said party of
the first part, for and in consideration
of the sum of eleven hundred & thirty
five 36/100 (\$1135³⁶/100) Dollars, in hand
paid, the receipt whereof is hereby acknowl-
edged, do hereby grant, sell, convey and
confirm unto the said party of the sec-
ond part his heirs and assigns, forever,
all and singular the following described
Goods and Chattels, to wit; The Engine
& Boilers with fixtures and appurtenances
there to; the chain bed Iron planing ma-
chine, constructed after J. P. Woodbury's
Patent. the rotary flooring machine for
planing, tonguing & grooving boards, the
roller bed surfacing machine, the Wy-
Koff's Patent boring machine together
with the right to use the same; one sid-
ing saw and two edging saws; one rotary skin-
g machine; one double scroll saw &
frame, one Turning Lathe and all the
Belts shafting and Pulleys and other
appurtenances of the above enumerated
machines, one bench vise; one grind-
stone, all the line shafting together with
the mill buildings, Office, Barn & sheds
also one gray and one bay horse, one

double wagon, one single buggy wagon & one pair of sleds. The same being all on the premises occupied by said Gempfle & Wright on the South East corner of Polk & Canal streets in said Chicago, together, with all and singular, the appurtenances therunto belonging, or in any wise appertaining. To have and to hold the above described Goods and Chattels, unto the said party of the second part his heirs and assigns forever.

Provided always, That these Presents are upon this express condition that if the said Gempfle & Wright their heirs, executors, administrators, or assigns, shall, on or before the fourteenth day of October A.D., eighteen hundred and fifty nine pay or cause to be paid to the said Henry Funk or his lawful ^{attorney or} attorneys, heirs, executors, administrators, or assigns, the sum of Eleven hundred & thirty five \$600 Dollars together with the interest that may accrue thereon, at the rate of ten per centum per annum, from the fourteenth day of October A.D. eighteen hundred and fifty eight until paid, according to a certain note of even date herewith that then, and from thenceforth, these Presents,

48 and every thing herein contained, shall cease and be null and void, anything herein contained to the contrary notwithstanding.

Provided also, that the said Temple & Wright shall have the right to obtain possession of and have the use of said Goods and Chattels, until the day of payment aforesaid, and also at their own expense, to keep said Goods and Chattels, and also, at the expiration of said time of payment, if said sum of money, together with interest as aforesaid, shall not be paid, to deliver up said Goods and Chattels, in good condition to said Henry Farnk, or his heirs, executors, administrators, or assigns.

And provided also, that if default in payment as aforesaid on said October 14, 1859 shall be made, or the said Henry Farnk shall at any time feel unsafe and insecure that then the said Henry Farnk or his attorney, agent, or assigns, or heirs, executors, or administrators, shall have the right 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, after giving ten days notice of the time, place, and terms of said sale

together with a description of the Goods and Chattels to be sold, by at least three advertisements, posted up in public places in the vicinity where said sale is to take place; to make the sum of money and interest promised as aforesaid, together with his reasonable costs, charges, and expenses in so doing; and if there ^{shall} be any overplus, shall pay the same to the said Temple & Wright or their legal representatives.

In testimony whereof, the said parties of the first part have hereunto set their hands and affixed their seals the day and year ^{first} herein written.

Sealed, signed & delivered
in the presence of }
Geo. W. Herbert.

John F. Temple (J.F.)
Robert M. Wright (R.M.)

State of Illinois }
Cook County } ss. I, J. A. Whittington 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
John F. Temple this 25th day of January A. D.
1852.

State of Illinois } J. A. Whittington, Jr. (J.A.)
Cook County } ss. I, Chas H. Benson a
Justice of the Peace in and for said County
do hereby certify that this mortgage was

47 duly acknowledged before me by the above
named Robert M. Wright this 25th day of
January A. D. 1859.

Chas. H. Baerman J. P. (Seal)
State of Illinois } Filed for Record 29th January
Cook County } 1859 and recorded in Book 16 of
C. H. page 356. Wm. L. Church Clerk.

(2) Note of John F. Temple and Robert M. Wright
secured by said mortgage dated October 14th
1858 as follows, to wit:

Chicago the 14th Oct'r 1858
\$1135-³⁶/₁₀₀.

One year after date we promise to pay to the
order of Henry Gunk of Mouscatine Iowa at the
Banking house of B. W. Philips with Interest at ten
per cent. Eleven hundred & thirty-five ³⁶/₁₀₀ Dollars
value received.

In consideration whereof and the further
sum of one dollar to us already paid to said payee
we do empower and hereby authorize and empower
George Payson or any other Attorney, of any Court of
of Record to enter our appearances therein at
any time after the date hereof, and waiving all
process to confess judgment for the amount due there-
on, with the costs, and with five per cent. Attorneys
fees, in favor of the holder thereof, and hereby release
all errors that may occur in such proceeding.

48 Witness our hands this fourteenth day of October 1858.
In presence of John F. Temple L. S.
Geo. Herbert. Robert M. Wright L. S.
Endorsed, L. S.

\$1084.50,

Chicago April 22^d 1859.

Rec'd on the within note by sale
under the Whittell Mortgage to secure this note
one thousand & eighty four dollars & 50/100 expenses
being deducted from the amount of said sale
under said Mortgage. H. F.unk.

(3) Lease of Seth Madhorns to John F. Temple &
Michael G. Wright dated Feby 2. 1855 of the
lots on which the Temple & Wright Mill and
office stand and the assignment of M. G. Wright
to John F. Temple, as follows, To wit:

This Indenture, made this second day of
February in the year of our Lord one thousand
Eight Hundred and Fifty five between Seth
Madhorns of the first part, and J. F. Temple &
Michael G. Wright of the second part, witnesseth,
that the said party of the first part, for and in
consideration of the covenants and agreements here-
inafter mentioned, to be kept and performed by the
said party of the second part, their executors, adminis-
trators and assigns, hath demised and leased to the
said party of the second part, all those premises sit-
uate, lying and being in the City of Chicago, in the ^{County} of Cook,

49 of Cook and the State of Illinois, known and described as follows, to wit: Lots Number one (1) Two (2) Three (3) and four (4) in Block number sixty four (64) school Section addition to Chicago as per subdivision E. H. Hubbard containing one hundred & eighty four feet (184 feet) more or less fronting on Polk Street each lot being one hundred & eighteen feet (118) deep deep cornering on Canal Street. To have and to hold the said above described premises, with the appurtenances, unto the said party of the second part, their executors, administrators and assigns from the first day of March in the year of our Lord One Thousand Eight Hundred and Fifty five for and during, and until the first day of March in the year of our Lord one Thousand Eight Hundred and Sixty (1860). And the said party of the second part, in consideration of the leasing of the premises aforesaid; by the said party of the first part, to the said party of the second part, doth covenant and agree with the said party of the first part his heirs, executors, administrators and assigns, to pay the said party of the first part, as rent for said demised premises, the sum of Three hundred and fifty dollars per annum (\$350) payable Quarterly yearly in advance.

And the said party of the second part further covenants with the said party of the first part, that at the expiration of the Term in this lease mentioned, they will yield up the said demise premises to the said party of the first part, in as good condition as when the same were letted upon by the said party of the second part, less by fire, or inevitable accident, or ordinary wear excepted.

It is further agreed, by the said party of the second part, that neither they nor their legal representatives, will surrender said premises, or any part thereof, or assign this lease, without the written assent of said party of said party of the first part, first had and obtained thereto.

It is expressly understood and agreed, by and between the parties aforesaid, that if the rent above reserved or any part thereof shall be behind or unpaid, on the day of payment when on the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, their executors, administrators and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney or assigns, at his election to declare said term ended, and into the said demise premises, or any part thereof,

51 either with or without process of law, to disenter;
and the said party of the second part or any
other person or persons occupying or upon
the same, to expel, remove and put out, using such
force as may be necessary in so doing, and the
said premises again to repossess and enjoy, as
in his first and former estate, and to distrain for
any rent that may be due thereon, upon any
property belonging to the said party of the second
part, whether the same be exempt from execution
and distress by law or not, and the said party
of the second part in that case hereby agrees to waive
all legal rights which he may have to hold or se-
tain any such property, under any exemption law
now in force in this State, or in any other way;
meaning and intending hereby to give the said
party of the first part, his heirs, executors, adminis-
trators or assigns, a valid and first lien upon
any and all the goods, chattels, or other property
belonging to the said party of the second part, as se-
curity for the payment of said rent, in manner as
aforesaid, anything herein before contained to the
contrary notwithstanding. And if at any time
said term shall be ended at such election,
of said party of the first part, his heirs, executors
administrators or assigns, as aforesaid, or in
any other way, the said party of the second part
their executors, administrators and assigns,

is hereby covenant and agree to surrender and deliver up said above described premises and property, peaceably, to said party of the first part his heirs, executors, administrators and assigns, immediately upon the determination of said term as aforesaid, and if they shall remain in possession of the same ten days after notice of such default, or after the termination of this lease, in any of the ways above named, they shall be deemed guilty of a forcible detainer of said premises, under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated. It is further agreed by and between the parties aforesaid that if on the expiration of this lease the party of the second part desire to renew the same for a term of five years longer they shall have the privilege of doing so at an ^{appraisement} ~~assessment~~ of the rent by three disinterested freeholders of the city of Chicago legally chosen for that purpose.

In testimony whereof, the said parties have hereunto set their hands and seals, the day & year first ^{above} written.

Leth Madhous L S

J. F. Temple L S

W. H. Wright L S

53.

In and in consideration of the sum
of One Dollar to me in hand paid, I
hereby assign all my right title and
interest to and in the within lease
to John F. Kemple.

Chicago March 9. 1857.

N. H. Wright.

(4) Lease John F. Kemple to Henry Funk
defendant dated March 22nd 1859 of same
premises as follows, to wit:

54

[LEASE - Sold by B. Nourse, Ellsworth.]

This Indenture, made the *fourth* day of *March*
in the year of our Lord one thousand eight hundred and *fifty nine*
WITNESSETH, That *I John F Temple of the County of Cook & State of Illinois*
do hereby Lease, Demise and Let unto

Henry Frank of Muscatine in the
County of Muscatine & State of Iowa Lots Number
one (1) two (2) three (3) & four (4) in block Number
sixty four (64) in School Section addition to
Chicago containing one hundred eighty four feet
on Polk Street nine or less and 118 feet deep corner-
ing on Canal Street

To Hold for the term of *Eleven Months* from the

yielding and paying therefor the Rent of *five dollars per month*
And the said Lessee *do* covenant to pay the said rent in *monthly* payments,

and to quit and deliver up the Premises to the Lessor or *his* Attorney, peaceably and quiet-
ly, at the end of the term aforesaid, in as good order and condition (reasonable use and wear-
ing thereof, inevitable accident excepted) as the same are, or may be put into, by the Lessor and
to pay all taxes duly assessed thereon during the term, for and such further time as the
Lessee may hold the same;

and not to make or suffer any waste thereof, and that he will not assign or underlet the premi-
ses or any part thereof, without the consent of the Lessor in writing upon the back of this
Lease. And the Lessor may enter at any and all times to view, and make improvements, and
suitable repairs. And if the said ~~payments herein named, or either of them~~
whether the same be demanded or not, are not paid when they become due, or if said leased
premises shall be appropriated to any other purpose or use than as

or if any waste or strip shall be made therein, or if any part of said
demised premises are underlet without the consent of the Lessor as above named, or if any
condition or covenant of this Lease to be by said Lessee performed, shall be violated, or neg-
lected, then and in either of said cases the said Lessor his Agent, Attorney, Heirs, or Assigns,
may, in any manner he or they may see fit, re-enter into the leased premises and, if he please,
terminate and annul this Lease, so far as regards all future rights of said Lessee and the same
to have again, retain, repossess and enjoy, as in his or their first estate, anything herein to the
contrary notwithstanding.

Witnesses whereof the parties have
hereunto interchanged their hands & seals this day
and year first above written -
John F Temple Seal
Henry Frank Seal
in presence of.

55.

John H. Gump, a witness introduced for the defendants, testified as follows. I reside in South Chicago, resided there March 23^d 1857 when the plaintiffs mortgage was executed and acknowledged. It was made with two others to secure bona fide debts to cut off a heavy judgment against one of the members of our firm for an infringement of a patent right which we considered unjust on which an execution was about to issue in the United States Circuit Court for the Northern District of Illinois. The debt to Plaintiff was due when the mortgage was given. Either Wright or myself wrote to the Plaintiff. I do not remember whether we received a letter from Plaintiff in reply. I do afterwards some months in 1857 was here and complained that his mortgage did not have priority. We gave these mortgages to secure these bona fide debts in preference to a claim against one of the firm. These mortgages had a direct reference to this judgment. Our intention was to evade the payment of this judgment by these mortgages. By them our intention was to hinder and delay our creditors which was its natural result. We put off the mortgage two years

to get all the time we could get to pay, under that instrument. We had our own choice. At this time only about 600\$ of Frank defendant's debt was due.

The judgment aforesaid was against Apphus Stewart, Michael H. Wright and Robert M. Wright. The two Wrights and I were partners when the judgment was rendered and the name of the firm was A. Stewart & Co and at the time of the infringement also. we three were the partners in the firm of A. Stewart & Co also and were using the patent.

In respect to this judgment we thought that our property was not enough to cover the judgment and all our other debts that it would take all our property or nearly so to pay the judgment. We had the motive to execute the mortgage to prevent the judgment being levied, to avoid the one by accomplishing the other, we had a two fold motive. The note secured by the mortgage was never delivered to Plaintiff, (the note produced and ^{identified} by witness) It has been in my office up to a day or two ago. No receipt or papers were given.