No. 12979

Supreme Court of Illinois

Clark

vs.

Groom

71641

83

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 130.

1860

Clark

vs

Goom

12979

STATE OF ILLINOIS,
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of Kane ——— Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit ——— Court of Kane ——— County, before the Judge thereof, between Alfred J. Groom ———

plaintiff, and Henry M. Clark ———

defendant, it is said that manifest error hath intervened, to the injury of the said defendant ———

——— as we are informed by his ——— complaint ——— the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Alfred J. Groom ———

that he ——— be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April A.D. 1860 next, to hear the record and proceedings aforesaid, and the errors assigned, if he ——— shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Alfred J. Groom ———

——— notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 3 ——— day of April ——— in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

Executed this writ April 5th 1860
by Reading the same to the within
named Alfred J. Groom
E. J. Allen Sheriff
of Kane County
By A. E. Lewis
Deputy

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Henry M Clark

No. vs.

Alfred J. Groom

SCIRE FACIAS.

FILED April 17 A. D. 1860

L. Leland
Clerk.

Sheriffs fees

1 Service	50
3 miles	15
Return	10
	~~69~~
	75

E. J. Allen Shff
Fees Paid by Plaintiffs
E. J. Allen
Sheriff

Chicago, May 1. 1860.

To the Hon.
The Judges of the Supreme Court.

On behalf of the appellee we submit cause No. 210, James H. Kane and Michael B. White vs Hiram G. Barton. and hand now down herewith our printed brief and a written argument will be furnished in due time.

Respectfully
Goodwin Thomas & Robert
Attys for appellee.

Henry M. Clark
vs
Absa J. Groom

State of Illinois
Supreme Court of the 3rd Grand Division
April term A.D. 1860

Argument for Def't

There seems to be but two points made by the Plaintiff in error in this case. The first point is, that Groom was an improper person to act as the assignee of March. The second point is that the Court admitted improper testimony on the trial of this cause. I shall lay out of the question in the remarks I am about to make to the Court all other questions, as to the qualifications excepting as to his pecuniary responsibility. And upon this point I do not find any authority or rule of Law that requires a man to be worth in dollars and cents the amount of property assigned to him.

In each and every case referred to by Plaintiffs counsel the question made was partly a question of Law and fact. Now in this case the whole question was left to the jury as to the qualification of Groom, and in no case that I have been able to find has the Court decided that the mere insufficiency of property or want of pecuniary ability to respond to the amount of the property assigned rendered the assignment void, unless the assignee was clearly insolvent at the time that it was a question of fact like all other

questions in the case to be taken into consideration and weighed by the jury. Now the first third and fourth instructions asked for by the defendant in the Court below (Plaintiff in error) required the Court to instruct the jury that in case Groom was not of sufficient property or pecuniary responsibility to cover the amount of property assigned to him then the assignment was void. In other words it was taking the case entirely out of the hands of the jury and deciding the case by the Court himself, and left no question of fact for the jury to try except the amount of property which the assignee was worth at the time he took the assignment and in case the jury should find, that the assignee had not sufficient property liable to execution to pay Dollar for Dollar for the property assigned to him, then the jury should find the assignment absolutely void. These instructions assert the principle that although the assignee may be every way qualified to discharge the duties confided to him by the assignment, still if he lacked a single Dollar of being able to respond to the amount of the property assigned to him it would render the assignment absolutely void. This certainly would be a very harsh doctrine and I believe there cannot be a single case found in the books to sustain such a principle. certainly I have examined all the cases referred to by the Counsel

for the plaintiff in error and now they go to the extent of the instructions asked in this case

In each and every case I have examined the was a question of fact to be left to the jury, and to be weighed by them in connection with the other evidence and no court has ever yet decided to my knowledge that the assignment was absolutely void on that account, except in cases where the assignee was notoriously insolvent

The Court refused to give the instructions as asked for. But gave the fourth instruction after qualifying the same to the effect "That if the jury believed that he Groomes was insolvent at the time" That would render the assignment void Instead of the plaintiff in error asking the Court to submit this as a question of fact to be passed upon by the jury he asked the Court to instruct the jury that the same was absolutely void this the Court refused to do and gave the qualifycation as aforesaid. The second instruction asked for by the plaintiff in error required the Court to instruct the jury that before the Plaintiff could maintain this action he must show to the satisfaction of the jury that he took possession and continued in the possession of the property up to and until the time of levy and that the assignment was actually delivered to and accepted by the assignee

(the plaintiff in the Court below Defendant in error) or to or by some one for him, and on his behalf. before the time of such levy and that the mere taking possession of assigned property and the giving in evidence such assignment do not in and of themselves prove that such deed of assignment was so delivered and accepted before such levy and unless the plaintiff has so proved to the satisfaction of the jury such taking and continuing in possession of the property, delivery, and acceptance, of the assignment they should find for the defendant

This instruction asserts the principle that before the defendant in error the plaintiff in the suit below could maintain his action he must prove to the jury that the deed of assign= =ment was actually delivered to him it was not enough that he had it in his possession on the trial, it was not sufficient that he had put his signature to the deed of assignment thereby accepting the trust but he must still go further and prove by some witness that he and witness had seen March deliver the deed of assignment to Groom. and unless he could prove that fact he had no right to maintain any action

This to me is certainly a strange doctrine I have always supposed the Law to be well settled. That a promissory Note in the

hands of the Payee. A Mortgage in the hands of the Mortgagee. A Deed in the hands of the Grantee. Or that the possession of any other instrument of writing which was proper for the person to have. was at least prima facie evidence that he was the legal owner and lawfully entitled to the possession of the same and had a legal right to use them as evidence on a trial in which he was interested until the contrary was shown. This principle I consider to be so well settled that I shall not insult the Court by referring to any authorities on the subject

The other point made by the plaintiff in error is that the Court erred by allowing the preferred creditors of March to be witnesses in the case. This error complained of by the plaintiff in error is not true in fact. the Court will perceive by an examination of the Record that the Circuit Court certifies that all the evidence given on the trial of this cause both on the part of the plaintiff and defendant in the Court below is contained in the Record. The only two witnesses who were or ever had been preferred creditors as shown by the record in this case that were introduced by the plaintiff in the Court below were Bowman and Hoyt. and the Court will see by an examination of the Deed of

assignment that they were preferred creditors only to the amount only of $100 and the Court will further observe by the testimony of Mr Bowman that that amount had been fully paid and liquidated before the trial of this cause. The question then narrows itself down to this were all the creditors of March incompetent witnesses by reason of being interested

And this I hardly think will be contended for by the Counsel for the plaintiff in error. Upon this point I would respectfully call the attention of the Court to the case of Mutual Ins Co vs Masseilles Manuf Co 1st Gilm commencing on page 236. On pages 260 and 261 Same case the Court will find the doctrine discussed as to the interest of a witness and what interest will disqualify a witness. I also ask the attention of the Court to the case of Countermus vs Wheeler 5th of Gilman 469 and the authorities there referred to in brief. And it seems to me from an examination of these authorities that the creditors of March (even if they were preferred creditors) had no such interest in the event of the cause as would disqualify them from being witnesses

If the creditors were disqualified in this case from being witnesses they certainly would be in all other cases where March was a party to the suit at least where he was likely to gain or lose by the

cent of the suit. For if March should gain the suit he would certainly be better able to pay his credi-
-tors than he would be if he should lose it. and the same rule (trial) would exclude witnesses from (giving) evidence in this case would exclude every person from being a witness for another who was indebted to such witness no matter how small the amount of the debt nor how abundantly able the party might be to pay it because the loss of the suit might render the party less able to pay his debts than he would be if he gains it. There is no evidence in this record showing or pretending to show but what March was able to pay all his debts and liabilities. or that the property assigned to Groom was not sufficient in amount to pay all just claims against March

Upon the questions of fact as to the evidence the jury had the whole evidence before them as to the qualifications of Groom in other respects and they had a right to weigh the evidence of each wit-
-ness. and give it the weight to which it was entitled the jury were the Judges of the credibility of the wit-
-nesses and the Courts will be reluctantly if ever disturb their verdict notwithstanding it may appear to be against the strength and weight of the testimony Dowry. vs. Orr Et al 1st of Gilm Page 84

A new trial will not always be grant-
-ted even if the jury find against the weight

of evidence and against the instructions of the Court or through the misinstruction of the Court on a point of Law provided the Court is satisfied that substantial justice was done Gillett bs Sweet 1st of Gilman 490. A Court will not grant a new trial or reverse a judgement on error because of the admission of improper or the rejection of proper testimony or for want of proper directions or mis-=directions of the Judge who tried the case provided this Court can clearly see by inspection of the whole Record that justice has been done And that the error complained of could not have affected the merits of the cause or influenced the verdict of the jury Greenup, b, Stoker 3 Gilman 202

W. L. Barry
Atty for Defts in error

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~~Henry M. Clark~~

vs

~~Alfred J. Groom~~

Argument

Alfred J. Groom
at the suit of
Henry M. Clark

Filed May 10. 1860
L. Leland
Clerk

SUPREME COURT

Of the State of Illinois.

APRIL TERM, 1860.

ALFRED J. GROOM, vs. HENRY M. CLARK, } *Replevin.*

PAGE OF RECORD.

This suit was commenced by Writ of Replevin, in February, 1859, and tried at the November Term of the Kane County Circuit Court for 1859, before Isaac G. Wilson, presiding Judge.

2 On the 18th day of February, 1859, an Affidavit and Plain[illegible] was filed in the
3 Clerk's Office of said Court, in this case. And on the same day, to wit; on the
4 18th day of February, 1859, a Writ of Replevin was issued from the Clerk's Office of said Court, directed to the Coronor of Kane County to execute. The property replevied, as appears from the officer's return on said Writ, was as
6 follows:—"Executed this Writ by replevying the following Property; viz. Seven "Thimble Skeined Two-horse Lumber Wagons, One Leather-top One-horse "Buggy, and One two-seated Rockaway Carriage, and delivered the same to A. "J. Groom, the Plaintiff in this Writ. I also read the same to Henry M. Clark, "the Defendant in this Writ, on the 18th day of February, 1859.

H. W. WILLIAMS, Coronor of Kane County,"

7 On the 6th day of May, A. D. 1859, a Declaration was filed in the Clerk's Office, in this case. Declaration, usual form in Replevin.

On the 28th day of November, 1859, the following Pleas were filed. After the entitling of suit:—

8 1st. And now comes the said Defendant, by D. L. Eastman his Attorney, and defends the wrong and injury, when, &c., and says, that as to the wrongful de-
9 tention of Six Thimble Skeined Two-horse Lumber Wagons, parcel of the Goods and Chattels in the said Declaration mentioned, *actio non*, because he says, that before the said time when, &c., to wit: on the first day of February, A. D. 1859, a certain Writ of the People of the State of Illinois, commonly called an Execution, was issued out of the Kane County Circuit Court, in the State of Illinois, directed to the Sheriff of said Kane County, by which said Writ, the said People, commanded the said Sheriff, that of the Lands and Tenements, Goods and Chattels of Stephen March, he caused to be made the sum of Two Hundred and Twenty-six Dollars and Forty-five Cents, which John L. Beveridge, lately in the said Court, in vacation, after the November Term thereof, A. D. 1858, at Geneva, in said County of Kane, on the 21st day of January, A. D. 1859, recovered, as Plaintiff, against said Stephen March, Defendant, for his Damages; and also, the further sum of Six Dollars and Eighty Cents for his costs of suit; and that he have said money ready to render to the said Plaintiff, for his damages and costs,
10 and make return of said Writ, with an endorsement thereon in what manner he shall have executed the same, in ninety days from the date thereof. Which said Writ afterwards, and before the return day thereof, and before the time when, &c., to wit; on the 7th day of February, A. D. 1859, to wit—at the said Kane County, was delivered to said Defendant, who then, and from then, and from thenceforth, until, and at, and after the return day thereof, was Deputy Sheriff of the said County of Kane, to be executed in due form of law; and thereupon the said Deputy Sheriff, Defendant, by virtue of said Writ, to wit; on the said 7th day of February, A. D. 1859, at Kane County aforesaid, seized and levied upon the said Goods and Chattels, in this Plea mentioned, to wit; Six Lumber Two-horse Wagons, (parcel of the said Property in said Declaration mentioned,) as the Goods, Chattels, and Property of said Stephen March; and the said Defendant avers that said Goods and Chattels were then and there the Goods and Chattels of said Stephen March, and liable to be seized and sold on said Writ of

PAGE OF RECORD.

11 Execution, for the purpose of making the money therein mentioned, and not the Property of said Plaintiff, which seizure and levy is the wrongful action and detention complained of in said Plaintiff's Declaration, so far as relates to the said Goods and Chattels, mentioned in this Plea, and this the said Defendant is ready to verify; wherefor he prays Judgment, &c., and also prays a return of said Property, &c.

2nd. Plea in the same form as the preceding, alleging that as to the balance of the property, goods and chattels in said Declaration mentioned, and not referred
12 to, in said first Plea, to wit; One Thimble Skeined Two-horse Lumber Wagon, One Leather-top One-horse Buggy, and One Two-seated Rockaway Carriage, the same to have been taken, by the said Defendant, as Deputy Sheriff of Kane
13 County, by virtue of an Execution, regularly issued out of the Clerk's Office, of said Kane County Circuit Court, on a Judgment obtained in said Court on the 3rd day of November, A. D. 1858, in vacation, after the May Term thereof, at Geneva, in said Kane County, which Joseph Fulton as Plaintiff recovered against Stephen March and Erastus Hallack, for the sum of One Hundred and Fifty-one Dollars and 14-100, and the sum of Nine Dollars and 20-100 for his costs of suit. Said Execution issued November 15th, A. D. 1858, and delivered to said Defendant, and before the return day thereof, to wit: on the 8th day of February, A. D. 1859, the said Defendant as Deputy Sheriff aforesaid, seized and levied upon the said Goods and Chattels, in the 2nd Plea mentioned as the Property, &c., of said Stephen March.

Said Pleas endorsed as filed, Nov. 28th, 1859, and amended Pleas, filed Nov. 30th, 1859.

14 3rd. Plea of *non detinet* as to the Property, &c., mentioned in first Plea.

15 4th. Plea of *non detinet* as to the balance of the Property, &c., mentioned in second Plea.

16 On the 28th day of November, 1859, leave was given by the Court to the Plaintiff, to amend his Declaration, and on the same day, on motion, leave is also given the Defendant to file an additional Plea herein.

"And on the 29th of Nov. 1859, a Plea was filed as follows:

5th. And for a further Plea in this behalf by like leave of the Court, &c., the said Defendant says *actio non*, because he says, that the said Property, Goods and Chattels, in the said Declaration, were at the said time, when, &c., the Property, Goods, and Chattels of Stephen March, to wit: at Kane County aforesaid, and not the Property of the said Plaintiff; and this the said Defendant is ready to verify, wherefor he prays Judgment, &c."

17 On the 29th day of Nov., 1859, the Plaintiff filed his demurrer to the said 1st & 2nd Pleas, which demurrer was sustained by the Court, and leave given the
18 Defendant to amend his said Pleas.

19 On the 30th of Nov., 1859, the Plaintiff filed his Replication. To the 1st Plea of the Defendant the Plaintiff replies, that the said Defendant, at the said time, when, &c., was not an acting Deputy Sheriff of Kane County, as in said Plea
20 alleged. And as to the 2nd Plea of the Defendant, the said Plaintiff replies, Property in himself, and not in one Stephen March, as said Plea alleges. And as to the last Plea of the Defendant, by him lastly pleaded, the said Plaintiff replies, Property in himself, and not in one Stephen March, as is alleged in said Plea.

21 On the 30th of November, 1859, the Defendant filed a demurrer to the Plain-
23 tiff's Replication to the Defendant's 2nd Plea, which was by the Court sustained.

24 On the 1st day of Dec., 1859, a further Replication was filed by the Plaintiff to the 1st Plea of the Defendant, replying, the Property, &c., as therein set forth, the Property, &c., of the Plaintiff and not of one Stephen March; and also a Replication to the 2nd Plea of the said Defendant, as follows:

25 "And the said Plaintiff as to the said Plea of the said Defendant by him secondly above pleaded, says *precludi non*, because he says, that the said Defendant was not seized at said time, when, &c., of an Execution, by which he, the said Defendant, took and seized upon said Goods and Chattels, in the manner and at the time in said Plea alleged, and of this the said Plaintiff puts himself upon the County, &c."

And also a further Replication to said 2nd Plea—replying, Property in said Plaintiff, and not in Stephen March, upon which Pleas and Replications issues were joined.

And on the 1st day of December, 1859, it being one of the days of the Novem-
26 ber Term, 1859, of the Kane County Circuit Court, this cause came on for trial on the issues heretofore formed in this cause. On motion of the Plaintiff a Jury was empanneled to try said cause. And the Plaintiff to maintain his action under the issues, offered in evidence the following evidence and testimony.

An instrument of assignment from Stephen March to Alfred J. Groom.

SUBSTANCE OF SAID ASSIGNMENT.

The indenture entered into between the said parties, Stephen March and Alfred J. Groom, on the 18th day of October, A. D. 1858. Then follows the inducement and consideration for which the said first party doth grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, his heirs, executors, administrators, and assigns, all and singular the Lands, Tenements, Hereditaments, and Appurtenances, Goods, Chattels, Promissory Notes, Debts, Choses in Action, Claims, Demands, Property, and Effects of every description; the same more particularly set forth and referred to in a Schedule annexed to said Assignment, marked "D." To have and to hold the same in trust.

First. To take possession of the said assigned Property, and to sell and dispose of the same with diligence, and for the best price, and convert the same into money, and to collect all Debts and Demands; and with the proceeds and collections,

Secondly. To pay and discharge all the expenses attending the execution of the Trust, with a reasonable compensation to the said Groom for his services in performing the duties of said Trust.

Thirdly. To pay and discharge in full, if sufficient for that purpose, the debts and liabilities due or to become due from said March, which are referred to in a Schedule, annexed to said instrument, marked "A," with interest, &c. If the proceeds be not sufficient to pay said Debts and Liabilities in full, after paying expenses, &c., then to pay the same *pro rata*, as far as the same will go, and if after paying all charges, &c., and liabilities mentioned in Schedule "A," there should be a surplus,

Fourthly. To pay and discharge in full, if there be sufficient for that purpose, all debts and liabilities due, or to become due, mentioned in Schedule "B," with all interest on the same in full, if sufficient, but if otherwise to apply the said proceeds *pro rata*, as far as the same will go, but if after payment, &c., there should then remain a surplus, then,

Fifthly. To discharge in full, if sufficient for the purpose, all debts, and liabilities due, or to become due, as set forth in Schedule "C," with interest, &c., but if not sufficient, then to pay the same *pro rata*, so far as the same will extend to the payment of said liabilities; and if after payment of all charges, &c., and the respective liabilities, mentioned in the annexed Schedules, marked "A," "B," and "C," any surplus remains, then,

Lastly, to pay over and return the same to the said March, his heirs, &c.

Then follows the usual power of Attorney, and the acceptance of the Trust, by Groom, signed and sealed by the respective parties thereto on the aforesaid day and year.

SCHEDULE "A,"

Embraces the amounts due the following persons:—

Alfred J. Groom,	$140 00
A. P. Kniffin,	100 ..
R. Van Valk,	110 ..
Bowman and Lloyd on Note,	100 ..
Barr,	27 ..

SCHEDULE "B."

E. Hallack, 3 notes each, $455, dated Nov. 20th, 1856, due about $1393 00

Page of Record.
30 to 50

SCHEDULE "C."

Lake & Brown, Note,	$110	39
Crawford & Son, " dated, Aug. '58 ..	91	38
M. L. Hobart, "	69	00
Head, Campbell & Head, Note	135	..
P. P. Letchworth, "	180	..
Joseph Hibbard, Account,	100	..
Cowing & Co.,	220	..
Farwell & Co., Account,	80	..
Samuel De Golyer, Note,	39	..
Ocabock & Foster, Account,	80	..
J. S. Van Patten & Co., Note, due,	35	..
J. P. Furnald, Account,	20	..
Minard & Osgood, "	50	..
Ira Minard, "	70	..
R. J. Haines, "	200	..
Freeman & Waite, Note,	200	..
H. Wheelbeck & Co., "	230	..
G. G. Hall, "	363	..
S. B. Flint, "	23	..
Joseph Fulton, "	125	..
" " Account,	40	..
M. Flannegan, "	12	..
Unknown, "	14	..
L. Bailey, "	13	..
Reed Ferson, Note,	82	50

(ABSTRACT OF SCHEDULE "D.")

Notes and Accounts due Stephen March.

John and James Clark, Note,	$90	00
B. Seepy, "	110	..
A. J. Taylor, "	90	..
Andrew Jackson, "	96	70
T. W. Bailey, "	58	45
A. R. Whitney, "	58	..
D. M. Kelsey, "	280	00
E. D. Bacon, "	103	..
Daniel Dennison, "	45	..
Stewart and Vance, "	54	..
Edward S. Thompson, "	97	..
W. P. Lloyd, "	98	..
H. Thompson, "	106	..
James A. Beverly, "	23	..
—— Crumb, "	80	..
S. & E. Shattuck, "	50	..
E. Haggarty, "	85	..
Norris Dodd, "	165	..
E. Mott, 2 "	95	..
Nelson Waite, "	60	..
B. R. Pierce, "	60	..
Norris Dodd, "	6	05
Otto Law, "	80	..
H. H. Jackson, "	77	75
" " "	75	00
James H. Welch, "	99	56
M. L. Mason, "	127	25
Moses Hilts, "	59	50
J. W. Munford, "	95	00
S. J. Smith, "	90	..
H. S. Rumper, "	35	..
J. T. Whitaker & Co., "	25	..
Unknown, "	90	..

Assets, &c., in Stock and Tools on hand, total, ... $5,802 95
Also, interest in a lease on which Shop stands, and a Lot and Store in Franklin, Lee Co., Ill.; also, Book Accounts, &c.

52 The Plaintiff then introduced as a witness, B. B. Payne, sworn. I know the parties. Reside in St. Charles. I heard the Plaintiff in this suit demand of the the Defendant, Seven Thimble Skeined Double Lumber Wagons, One Two-seated Rockaway Carriage, One Single Leather-top Buggy. The morning before the Property was replevied, I went with Groom to demand the Property. This was the same day the Property was replevied.

Cross-Examination.—I know Stephen March.

A. P. Kniffin sworn. Know the parties. Have worked some years at the "Kane County Carriage Manufactory," in St. Charles. Worked for Stephen March there. March made an Assignment in October, 1858. Groom took pos-
53 session of the Property immediately afterwards, the same day. I worked in the shop at the time. Groom continued the business afterwards, and conducted it. The property in question was on the premises at the time of the assignment. The property mentioned is the same as replevied by Groom.

Cross-Examined.—I have worked for Groom since the assignment—finishing work—making new work and repairing. March was about the premises before and after the assignment. Neither worked much before nor after. I am a creditor of March—never had a final settlement with him. March owed me about
54 $100 when he failed. The shop has been kept open since the assignment. On hand at the time about 10 lumber wagons, some light wagons. Lumber wagons worth about $75 or 80 each—buggies $150 each. Some material on hand, perhaps worth $800 or 1000. Groom has paint shop in same building—done March's painting. There has been no change of sign on the shop since the assignment. I owed Minard & Osgood. Paid them since by turning out a wagon at Groom's request. The wagon overpaid my account—the balance of $13 was turned on March's account there. Heard Groom say that March had gone west, one time since the assignment, to collect some Notes. Have known Groom fifteen years. He has always worked at painting. Groom said he had paid Flint's debt, that March owed, of some $25. [*Plaintiff rests.*

DEFENCE.

A. P. Kniffin.—I was present the first time (Defendant) Clark came to levy on this Property. He took some lumber wagons. Heard him say he came to levy on some wagons. The last time he took a top buggy and a Rockaway. Groom paid Flint by giving him a carriage. Wood worth $21 or 22. Groom is a man of family—lives in a house owned by Dr. De Wolf. He owns some tools, worth perhaps $50. Groom's business was painting. Never knew of his having any property but his tools. He has no other property. No real estate. His family consists of a wife, and a daughter, married. He might earn $2 or 3 per day at his trade. His habits for industry are good. I have seen him drink liquors. Have seen him feel well years ago. I have seen no change in his habits since the assignment. He has been disposing of the property. Sold a wagon to Harroun, and took his note for it. I have heard March talk about the work since the assignment. The key to the shop was usually kept over the door. Have seen March take it, open the door, and go in, as before the assignment.

Cross-Ex.—The same property was replevied, as taken by Clark. I think Groom saw and examined the Executions. It was about one year ago.

56 Deposition of Erastus Hallack read in evidence, in substance as follows:—

I have known the parties about 4 years. Groom's business has been painting. He has been carrying on business for himself in March's Shop, and done (M's) work. Think Groom has no property except his paint tools. His property might be worth in all, one, two, or three hundred dollars—his paint tools and household furniture. His paints and tools might be worth one hundred dollars. Groom had no other property to my knowledge, except what I have mentioned, since June, 1858. I was acquainted with March in 1858. Know of his making a pretended Assignment. He carried on the Carriage business in St. Charles, and

employed Groom to do his painting. I think there was not any perceptible
61 change in the control of March's business after the assignment. I think he controled the business as he had done previous. I don't know of any acts, excepting I was concerned in a Judgment obtained against me and said March, and I spoke to Groom about settling it up. He said that so far as he was concerned he was willing to fix it up. He wanted me to see March, and see what he was willing to do about it, and that any arrangement I could make with March he would agree to. Groom told me that he had taken up a Note at Freeman & Waite's, and paid part of it, and got the balance extended. That they held collateral security for this Note, of notes belonging to March. He said that March told him these notes held as collateral security were perfectly good, and would be paid at maturity, and that he had used all the means he could command, and had even
62 sold a buggy to Burchell for less than it was worth, in order to pay Freeman and Waite, and after he had paid them, and taken up the notes held as collateral, he gave them to March to go out west and collect them, and that March returned and said he could not collect a cent. I don't know of any thing further except March was around the premises as usual. I think that Groom told me Freeman and Waite's note was about $200. He said that he had taken up the
63 note on the strength of what March had told him in relation to the notes held as collateral. He said he should not have made this arrangement but for March.
64 I think Groom has not controled the assigned property, independently. I think he did not at the time referred to about the Judgment and that Note. Kniffin
65 has worked about the shop since the assignment. Saw him to work making some two-horse gearings. March I think has been out west some two or three times
66 with some notes to collect. All I know of his business is, that I have seen him around the shop, as in time previous to the assignment. March prior to the as-
67 signment was in the habit of drinking to excess, and was not capable of doing business at such times. I think he has drank more and been more reckless since.
68 I have seen March play for money prior to the assignment, and Groom knew it, for he was playing with him, but have not seen him (March) play since. I know of Groom playing for money only at one time, and that was about two week's
69 previous to the assignment, and March was knowing to the fact. Could not say that Groom has been in the habit of drinking to excess since June, 1858, nor that I have seen him on any "sprees" since. I have seen Groom when I thought
71 he had been drinking to excess—the last time over a year ago. Groom said that he had paid part of Freeman & Waite's note at March's suggestion. Their demand as I learned from Groom was about $200.

Cross-Ex.—I think I have seen Groom intoxicated and incapable of doing bu-
72 siness over a year ago. I think in Dec., 1859, at "Foss' Restaurant." He was there perhaps half an hour or over. I was there eating oysters and lounging about. I drank one glass of beer, while eating oysters, and no more that day to my recollection. I left there about half-past nine or ten o'clock in the evening. No one helped me home that night that I recollect of. Don't know that I saw Groom drink any beer or liquor on that occasion. I saw Groom gambling for
74 money in the fore part of October, 1858, in the back room of Foss' Restaurant. Myself, March, and Barr were with him—played at "poker," five cents "ante."
75 Could not say that Groom lost any money. On that occasion I lost 20 cents. That is the only time I ever knew Groom to gamble. I am one of the Defend-
76 ants in the suit of Fulton vs. March & Hallack. There has been an Execution on the Judgment against myself and Stephen March. Said Execution has not been paid to my knowledge. I have seen the wagons Clark levied upon. I do
77 not know who the parties in the Execution were. March I think was Defendant in the Execution. There was an Execution issued against me and March in favor
78 of Fulton. I did not direct Clark to levy on the property in question. I heard Lewis tell Clark what to levy on. I was in partnership with March from April,
79 1855, to September, 1857, and am now in co-partnership with Lewis. I have not transferred my property to any one since the issuing of Fulton's Execution. I told Clark I had no individual property to turn out on said Execution. I told

80 Clark that I could not pay it at that present time. Groom told me that March
83 had returned the notes which he let him take to collect. The conversation herein
before referred to with Groom, was had in January last. I had some three con-
84 versations with Groom on the subject. I think I had a conversation in the store
with Groom. He said that March did not collect anything on the notes he took
85 out west, but had returned them. I spoke to him (G) about the propriety of
sending March out to collect. I told him I did not consider him a very trusty
hand, and thought the creditors would not. Groom said he did not feel exactly
86 right about it himself. I never saw March handle any of the assigned property
to my recollection. I have seen Groom about the shop often. I could not say
87 that I have seen March in the shop when Groom was not there. I have not seen
March sell or dispose of any of said property. I think Groom is as industrious
as the average of men, and works as steady as mechanics usually do.

88 Direct-Ex. Resumed.—Foss kept in his Restaurant intoxicating drinks for sale,
and gaming implements. Kept beer and brandy, billiard tables and cards. I
89 have seen Groom frequently at Foss' in the evening—March there but once.
There has been no change of signs at the shop since the assignment. March was
93 to pay the note of Fulton's, upon which the Execution issued, and Fulton knew
it. Fulton said to me, that it was just that March should pay the debt, and that
he should collect it out of him, if possible, and that he would not trouble me un-
95 less he failed to get it out of March. March told me, about the time he made
the assignment, he should not have done so if Fulton had not sued him. I have
never in any way satisfied said Judgment against me and March, nor turned out
any property on it.

(Signed,) ERASTUS HALLACK,

96 and attached to which is Officer's Certificate in due form.

Reed Ferson sworn.—Know the parties. March was indebted to me, October 18th, 1858, about $80 or 90. When the note became due Groom paid it, and since the assignment.

Cross-Ex.—I held collateral security for my security to the amount of about
97 $150. Groom took up the collaterals when he paid me. Groom's habits so far as I know are good. See him almost every day. Don't know where he spends his time. He is honest so far as I know.

Direct resumed.—Never saw him do any business but paint. I paid Groom when we settled the note some $30 in money. I took other notes and paid the difference. Groom is as industrious as I am. Don't know as his drinking affects
98 him.

W. J. Gale sworn.—Known Groom 4 or 5 years. Have seen him frequently at Kingsbury's saloon playing at cards—once or twice a week for the past six months. He played for amusement, and something to eat and drink, and some for money in small amounts. Have seen him play at Foss' saloon, and at Garnun's saloon, two or three times a week. Saw him play two years ago.

Cross Ex.—Groom is a man of good industry, works daily, and good business habits.

O. Kingsbury sworn.—Known Groom 4 or 5 years. He is a painter by trade. My business auctioneer and saloon-keeping. Groom has of late been in my saloon often. March has been there with him. Groom was frequently in my private room. A company hire it by the evening—they pay for it by the evening. The company would call for eatables and drink. Spent from thirty cents to one dollar each evening with me.

John F. Foss sworn.—Known Groom two years. I keep saloon and billiard room. Groom frequently stops there—sometimes in the day time. Often played cards there for oysters, beer, &c. March came with him in 1858.

99 E. H. Chapman sworn.—Known Groom 4 or 5 years. I have played at cards with him for amusement, two years ago. I think it is a good indication for a business man to play at cards.

Cross-Ex.—Groom is an industrious mechanic.

George Barr sworn.—Known Groom over a year. Have played cards with

him. Once at a game called "Spriggers." Used "chips," which represented money, 5 cents more or less. I lent Hallack three "spriggers"—Groom was banker. Think this was before the assignment.

Cross-Ex. Chapman, Groom, March, myself, and Hallack played together. Groom is industrious.

100 S. C. Wright sworn.—Knew Groom in Oct., 1858. Have seen him play at "poker" in Foss' saloon—played for "spriggins" at different places. Played for from one cent to five "ante."

Cross-Ex.—Knew him once at Foss' to lose some money. Don't think it a good indication for a business man to play at such games.

Affidavit of Henry M. Clark, offered in evidence to the Court—in substance as follows:—

101 Deposes that he is Defendant in this case. That on the 7th and 8th days of February, as Deputy Sheriff of Kane County, Ill., had in his possession the Executions mentioned in the 1st and 2nd Pleas in this case, by virtue of which he levied upon the Goods and Chattels in said Pleas alleged, and that he had said Executions until about the 20th of June, 1859, when he placed the same in the hands of his counsel, D. L. Eastman, for the purpose of drawing Pleas in this case. That said Eastman has never returned said Executions to him, nor does he know where they are, nor has known since he so gave them to his said Attorney. That he has examined in all places, and made diligent search for the same, but has been wholly unable to find them. Subscribed and sworn to, &c.

102 D. L. Eastman sworn.—On or about the 28th day of June last, the Defendant gave me the two Executions. (The witness described the Executions in detail, dates, and amounts as set forth in said 1st and 2nd pleas, and endorsed on the back, as having been executed by levying on the property in question and signed 103 by the proper officer.) The said Executions were issued out of and under the seal of this court, and the signature in the hand writing of its clerk. I took said Executions for the purpose of drawing pleas in this case. I took said Executions to my house and placed them in my private Secretary, as I supposed. I have looked all my papers through for five different times but am unable to find them. (This testimony was first given to the court, and afterwards allowed to go to the Jury.) Copies of said Executions presented.

104 An Execution in favor of John L. Beveridge against Stephen March, for the sum of $226 55, on a Judgment recovered against said March in the Kane Co. Circuit Court, on the 21st January, 1859, and $6 80 costs of suit. Said Execution issued on the 1st of February, 1859, in the same form as the following, being the other copy of said Executions set out in full.

STATE OF ILLINOIS, }
KANE COUNTY. } The People of the State of Illinois to the Sheriff of said County, Greeting:

105 We command you that of the Goods and Chattels, Lands and Tenements of Stephen March and Erastus Hallack, Defendants, in your County, you cause to be made the sum of $151 14, which Joseph Fulton, Plaintiff, lately in the Circuit Court of said Kane County, in vacation, after the May Term thereof, to wit: at Geneva, in said County, on the 3rd day of Nov., A. D. 1858, recovered against the said Defendants, and which by the said Court was adjudged to the said Plaintiff for damages which he had sustained by reason of the non-performance of certain promises then lately made by the said Defendants to 106 the said Plaintiff. And also the further sum of $9 20, which was adjudged to the said Plaintiff for costs in that behalf expended, whereof the said Defendants are convicted, as appears to us of record. And have you these moneys ready to render to the said Plaintiff for his Damages and Costs aforesaid, and make return of this Writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness, PAUL R. WRIGHT, Clerk of our said Court, and the Seal thereof, at Geneva, in said County, this 15th day of November, A. D. 1858.

[SEAL.]

P. R. WRIGHT, Clerk.

107 These are substantial copies of the said Executions so far as they go. The blanks upon the back were filled on the originals, and they were severally endorsed in Defendant's hand writing as before stated.

to The Commission bond and oath of office of E. J. Allen, as Sheriff of Kane Co., read in evidence—

112 E. J. Allen.—I am Sheriff of Kane County. Have been since the fall of 1858.

113 (The appointment of Defendant, as Deputy Sheriff of Kane County, dated the 17th day of November, 1858, and signed by E. J. Allen, Sheriff, also his oath of

114 office, November 16th, 1858, read in evidence.) His (Defendant) appointment as Deputy Sheriff,' and oath of office, were executed on the same day, the 16th day of November, 1858. Clark has been an acting Deputy Sheriff since the 16th of November, 1858, to the present time.

115 Judgment Record of the Kane County Circuit Court, page 169, offered in evidence—shows that on the 3rd day of Nov., A. D. 1858, a Judgment was entered of Record, in favor of Joseph Fulton vs Stephen March & Erastus Hallack, for the sum of $151 14 Damages, and costs of suit.

116 Execution Docket of said Court offered in evidence, page 108—shows that an Execution in favor of Joseph Fulton vs Stephen March & Erastus Hallack, issued on the 15th of November, 1858, and delivered to Sheriff. Damages, $151 41—Costs, $9 20.

Execution Docket on page 128, offered in evidence—shows that an Execution in favor of John L. Beveridge vs Stephen March, issued Feb. 1st, 1859, and delivered to Sheriff. Damages, 226 45—Costs, $6 80.

117 Allen.—I heard the Judgment of Fulton vs March & Hallack, read also the Execution Docket, relating to said Execution—also Execution Docket as to Execution of Beveridge vs March. I had Executions corresponding to those mentioned. I put them into the hands of the Defendant to be executed just before the levy.

Joseph Fulton sworn.—I am Plaintiff in suit of Fulton vs March & Hallack. I sold the Judgment to J. P. Lewis. He has paid me for it. March owed me at the time of the assignment about $200. I have been paid in full. Groom paid me about one month since $50. Known Groom four years. Have seen him drink. Never saw him the worse for liquor. Think his habits of intemperance would not hurt him as assignee.

118 Cross-Ex.—Groom paid for me at Minard & Osgood's $30 and $20 in Stock, from the assigned property. Groom I think is a fair business man. Never done any business with him except to settle. There was property assigned of $2000 to 3000, besides the building, which was worth at least $1000.

John Andrus sworn. Have known Groom 3 or 4 years. Been quite intimate with him some of the time in '57 & '58. Was often at gaming places with him. Never knew him to play for money. March was sometimes present. The party who lost usually paid the oysters, beer, &c. Seen Groom play at billiards, at Foss' saloon. He kept liquors, &c.

119 Cross-Ex. Groom attends to his business. Have seen him drink at saloons, but think it does not disqualify him for business. Know nothing of his business capacity.

Austin Barnum sworn.—Know Groom. Have seen him frequently in a room over Kingsbury's saloon. Saw him there eating oysters, playing cards. Played for buttons. Don't know as they paid for them, but they sometimes owed each other. Seen him play cards at Garnum's three or four times. Saw him play "Eucher."

S. B. Flint sworn.—March owed me at the time of the assignment about $25. Groom paid part of it by turning out the wood work of a lumber wagon. Groom is an industrious man so far as I know.

120 W. F. Osgood sworn. Am of the firm of Minard & Osgood. When March assigned, owed us about $50. A part of it has been paid by making turns—the balance by notes. Our claim was in the third class.

Defence rests.

Plaintiff called A. B. De Wolf.—Known Groom 5 years. Know his business habits. Was industrious. A man I think of integrity. Done business with him to the amount of 4 or $500 in a year. Always paid me.

Cross-Ex.—I rent him a house. I never employed him only to paint. (Plaintiff's Counsel here admitted that Groom had no property liable to Execution.) Do not think that spending three or four nights in a week in saloons, gaming for oysters, &c., a mark of a good business man. I would not sell him a large amount of property on his own responsibility.

121 P. J. Burchell sworn. Known Groom 4 or 5 years. So far as I know, he is honest, industrious, and of good business habits.

Cross-Ex.—Seen him play at cards sometimes. Groom sold me a buggy for $65 00.

R. J. Haines sworn.—(Objected to by Defendant on the ground of interest, as it appears from the evidence, that he was in the first class in the assignment. Objection overruled by the Court. Defendent then and there excepted to the ruling of the Court.) Known Groom 5 years. My place of business is some 40 feet from the carriage shop of March. Have seen Groom attending to business nearly every day. March owed me about $200 when he assigned. Have not been paid. His (G) business habits are good.

122 Cross-Ex.—I have seen March about the premises since the assignment, assisting Groom about the same as usual. There is no change of sign. Saw March take no control of the property since.

Ira Minard sworn.—(Objected to by Defendant on same grounds as the preceding witness—overruled and excepted.) Known Groom 3 years. Has done painting for me. Should call him a capable business man—is quick in figures, and honest, so far as I know.

Cross-Ex.—Have done business with him to the amount of $50 in a year. Did painting. He never did any business for me but painting. I would let him have property to dispose of in town, where I could look after it. Don't think it a
123 mark of a good business man to play for oysters, &c. I might trust him property to dispose of when I would not sell the same amount to him on credit.

F. H. Bowman sworn.—(Exception taken to witness on same ground.) Known Groom 4 or 5 years. When March assigned he owed us (Bowman & Lloyd) about $1600 or 1700. I knew of the assignment at the time it was made. I think Groom is industrious and competent. He has taken care of the property since the assignment so far as I know.

Cross-Ex.—We have been paid on our claim some $500. We have security
124 on the building and tools. We bid off property sold by Groom at auction lately, of the assigned property, to the amount of $200. We were in the first class for about $100. That is all paid. Terms of the sale at auction were, less than $25, cash—sums above $25, three months' credit. We had been previously paid 7 lumber wagons, worth about $72 each.

125 John Lloyd sworn.—(Exception taken on the same ground.) Known Groom 3 or 4 years. Think him industrious, honest, and competent.

Cross-Ex.—Never knew him do any business but painting.

C. K. Parks sworn.—Have known Groom 3 years. Think him honest and capable.

Cross-Ex.—He painted a buggy for me. *Ques.* Is that all the reason you have to give why you think him honest and capable? *Ans.* Yes. Never saw him do any other business.

The above is all the material evidence offered. The Plaintiff then asked the Court to give the following instructions to the Jury.

1st. If the Jury believe from the evidence, that March made the assignment in question, then the presumption of law is, that the said assignment was made honestly, in the absence of proof to the contrary; for the law permits the debtor, even in failing circumstances, to assign his property for the benefit of his creditors; and said assignment is presumed to be an honest act if duly made, even though the effect of the assignment may be for a time to delay the creditors in the collection of their debts, such delay would not make the assignment void.

126 2nd. If the Jury believe from the evidence, that March was in failing circumstances, and that he made an assignment in good faith, and appointed Alfred J. Groom as his assignee, and that Groom was a suitable person to act as assignee, and accepted the trust, and possessed himself of the trust property, and that while so in the possession, Clark, the Defendant, without Groom's consent, took said property from his possession, then in law it was the duty of Groom to pursue said property, and re-possess himself of the same, if unlawfully detained from him, as stated in the Declaration.

3rd. If the Jury believe from the evidence, that the Deed of Assignment was delivered to Groom, the assignee, and that he went on and acted under it, the law presumes the acceptance of the trust by Groom, in the absence of proof to the contrary.

4th. The Jury in determining the case should take into consideration all the
127 evidence, and if they believe from such evidence, that the assignment was honestly and fairly made, no acts of Groom in regard to said property since the assignment would invalidate the same.

5th. Groom had a right to employ March, or allow March to remain, and be about the shop and assist him, (Groom) in doing work, in finishing up, and preparing any of the work assigned by said March for sale, provided the Jury further believe from the evidence, that said Groom had the entire custody and control of said property, and such employment would not be evidence of a fraudulent assignment.

6th. Although the Jury may believe from the evidence, that Groom is a man of limited means, and without pecuniary responsibility, sufficient to cover the amount of the property assigned, yet, if they further believe from the evidence, that he is honest and competent in all other respects, the mere fact of his lack of pecuniary responsibility would not of itself be sufficient to render the assignment void.

128 To the giving of which severally as asked for by the said Plaintiff, the said Defendant then and there, by his counsel, duly excepted.

The Defendant asked the Court to give the following instructions to the Jury.

1st. That although the law allows every debtor to appoint his own assignee, yet such debtor cannot exercise such power *arbitrarily*, but such appointments, must be made with proper reference to the interest of such debtor's creditors. Hence it is an *essential qualification* of every assignee, not only that he is capable from age, health, and education, of performing the duties of the office, but also that he be of sufficient character, and *pecuniary ability*, to afford assurance to creditors that the funds will be safe in his hands, and that the trust will be properly administered. And the selection of an incompetent assignee, in *either* of the said essential requisites, will have the effect of rendering an assignment void. Therefore, in this case, if the Jury believe from the evidence, that the
129 Plaintiff (Groom) at the time of the assignment from March to him, had no pecuniary means liable to Execution, or that he had not sufficient pecuniary ability to afford assurance to the creditors of March, that the property assigned him would be safe in his hands, or that he had not sufficient pecuniary ability or means to fully respond in damages, in case such trust be improperly administered, in such case, the assignment is void, and the property so assigned would not pass to Groom, but would be liable to be taken in Execution by the creditors of March.

2nd. Before the Plaintiff in this suit can claim any right to, or maintain any action for the property in question, by virtue of the assignment given in evidence, as against Judgment, creditors, he must show to the satisfaction of the Jury, that
130 he took possession, and continued in the possession of the property, purporting to be assigned, up and until the time of the levy, given in evidence, and that the assignment was actually delivered to and accepted by the assignee, (the present Plaintiff) or to or by some one for him, and in his behalf, before the time of such levy, and that the mere taking possession of the assigned property, and the giving in evidence such assignment, do not in and of themselves prove that such as-

signment was so delivered and accepted before such levy, and unless the Plaintiff has so proved to the satisfaction of the Jury, such taking and continuing in possession of the property, deriving and acceptance of the assignment, they should find for the Defendant.

3rd. That although the Jury may believe from the evidence, that the assignee (Groom) may be a fair business man, and in other respects capable to carry out the trust in question, still if the Jury further believe from the evidence, that said Groom had *no property liable to Execution* at the time of said assignment, and was unable to respond in damages, in case of an improper administration of said
131 trust, and that said March knew such fact at the time he appointed him his assignee, in such case the assignment in question is void as to the creditors of March, and will not pass the property named in said assignment to Groom, and the law is for the Defendant as to said assignment. Presumed

A. That every person, in law, of sound mind, is premised to know the effect of his own acts, and when such acts affect the rights of third parties, they are not to be construed in favor of the party making them. Hence in this case, if the Jury believe from the evidence, that March, the assignor, was well acquainted with Alfred J. Groom, and knew him to be insolvent, yet knowing such fact he appointed the said Groom, assignee, in the said assignment, such appointment will in effect render such assignment void, as to the rights of the creditors of the said March, as it evinces an intention on the part of said March to place his property
132 beyond the reach of his creditors, or in the language of the law, "to delay or hinder them in the collection of their debts," and in such case the assignment in question is void as to such creditors, and the property so assigned will not pass to Groom, but is liable to be seized in Execution by said creditors in satisfaction of their debts.

B. The Jury are instructed that under the pleadings in this case, it is not necessary for the Defendant to show any Judgment or Execution in favor of Beveridge against March, or that the property was taken and levied upon by the Defendant by such Executions as in the first Plea alleged, that being admitted by the pleadings; the only facts being in issue as to that Plea is the title of the property, and the fact that Defendant was Deputy Sheriff. And as to the second Plea, it is only necessary for the Defendant to show an Execution in favor of Fulton vs March & Hallack, as in said Plea alleged, and that he took the property named in said Plea, by virtue of such Execution, and that the property was
133 the property of March, the assignor, the Judgment not being in issue on either Plea.

C. If the Jury believe from the evidence, that after the time of the assignment, (to wit, Oct., 1858,) the assignor, March, continued in the possession of the property assigned, up and until the time of the levy, and exercised the same visible acts of control about and over the same, that he did before the assignment, or that the Plaintiff, Groom, and that the assignor, March, have continued in the joint possession and visible occupancy and control of said property, without any apparent change, up and until, at or about the time of the levy, then such assignment is void as to such levy, and the Jury should find for the Defendant; but Groom, the assignee, had the right to employ March, the assignor, to aid him in the discharge of his duties, as assignee, provided he, (Groom,) remained in the actual and visible control of the property assigned.

D. If the Jury believe from the evidence, that the assignee, the present Plain-
134 tiff, has suffered the assignor, March, to continue in possession of, or exercise control over the property assigned, and that he has paid debts in the third class of the assignment by the direction of March, these are facts and circumstances to be considered by the Jury, as tending to prove that such assignment was made with a view and intent to hinder and delay creditors in the collection of their debts; and if the Jury believe from the evidence, that such assignment was made with such intent, then it is void as to Judgment creditors, and they should find for the Defendant.

To the action of the Court in refusing to give said instructions marked on their margin "Refused," and numbered 1, 2, 3, the Defendant by his counsel then and

there duly excepted. And as to the qualification by the Court of said instruction given to the Jury, designated by the character "A," by striking out the following
135 words included in parenthesis, after the phrase, "and knew him to be insolvent," (and unable to respond in damages, in case of illegal or improper administration of the assigned property,) the Defendant then and there duly excepted.

The Jury found the issues joined for the Plaintiff, and the Defendant then moved for a new trial; and afterwards on the 17th day of December, 1859, it being one of the days of the November Term of said Court, said motion for a
29 new trial came on for argument, the Court overrules said motion—to which ruling of the Court in refusing a new trial, the Defendant then and there, by his counsel, excepted.

Abstracted by EASTMAN & BOTSFORD,
Attorneys for Defendant.

180-83

Clark vs Groom

Abstract

Filed Apr 24, 1866

L Leland
Clerk

1

In Supreme Court
April Term 1862

Henry M. Clark
vs
Alfred J. Groom
} Error to Bane Co.

Argument for Pltff in Error

This is an action of Replevin brought by Groom vs Clark -

In the Court below. the plaintiff claimed the property replevied. by virtue of an assignment. made Oct 18. 1858 by one Stephen Murch to him - and introduced a witness to prove a demand. and also a witness, who testified that Murch made an assignment. Oct 18. 1858. - that Groom took possession of the property. the same day. and that the property replevied was part and parcel of same property. - but he did not prove by any witness that ~~the Groom~~ Murch ever delivered the assignment to Groom. or to any one in his behalf.

The defendant. Clark. besides his Testimony. introduced 12 or 14 witnesses To show the character. habits. business qualifications. and pecuniary responsibility

& of Groom, the assignee.

The testimony shows that Groom is a painter by trade - had carried on business in Marietta Ohio - had done his painting - a man of family, consisting of wife, and one daughter. Married. - had property worth from one to three hundred dollars, including his household goods, paints & tools (It was admitted on trial that he had no property subject to levy and execution) - That he was in the habit of using intoxicating liquors, drinking to excess, at times "feeling well" - was often at Saloons and Billiard rooms, spending his evenings, and part of the day time, playing cards, gambling, for amusement, beer, oysters, & money - playing games called "Spriggens", "poker" &c

Although the proof seems to show Groom an industrious Mechanic, yet with only his wife to

support. his daughter being married. he accumulates nothing, and is not the owner of any property liable to execution.

The conclusion is irresistable, that, if industrious, he is a spendthrift and his earnings, over and above what are needed for the support of himself & wife, are spent at Saloons, playing cards for beer &c - *

Defence further shows that March continued on in business, - or rather that the business continued, without any change of sign, ~~&~~ business &c.

Plaintiff - introduced several witnesses to re-but what may have been proved by defendant as to plaintiff's habits, to ~~four~~ four of whom: ~~R. J. Haines & Manard~~ R. J. Haines Sig Manard. F. H. Bowman & John Lloyd, the defendant ~~excepts~~ objects, on the ground of interest, it appearing that they were preferred creditors in the assignment, and that their claims had not been fully paid.

Under the instructions of the Court, the Court refusing, 1st, 2d & 3d instructions

* And March, the assignor in whose employ, the assignee had been must have known the insolvency, & or presuming ability of Grown

of defendant, and modifying instruction marked "A", by striking out, after phrase, "and knew him to be insolvent," the words "and unable to respond in damages, in case of illegal or improper administration of the assigned property" — the jury found for the plaintiff —

Motion for New Trial over-ruled and case brought to this Court by error —

1 The first point raised, is the insufficiency of the character and pecuniary ability of Groom, the assignee, — based upon the instructions No 1, asked for by the defendant, and refused by the Court —

The rule of law laid down in the cases cited, Burrill on Assignment, 62, 8 Paige 417, & 1 Barbour S. Ct. 210, is, "That an assignment to one who ~~was~~ is known to be insolvent, ~~was~~ is at least prima facie evidence of an intent to defraud creditors; that it is the duty of the assignor as an honest man to select one whose circumstances are such as to afford a reasonable assurance to the creditors that the fund will be safe in

his hands: and that of the debtor, in such case selects one who is known to be insolvent, it is a fraud upon the rights of creditors, and evidences an intention to place his property beyond their reach or, to delay & hinder them in the collection of their debts."

In this case the assignee is a man of no property - none liable to execution - living in the employ of the assignor, doing his painting his income ability must have been known to the assignor - and his circumstances pecuniarily were not such as to afford a reasonable assurance to the creditors that the fund or assigned property would be safe in his hands. and the selection of him as assignee, evidences, as counsel think, an intention of fraud on the part of the assignor to cheat his creditors, and the assignment is therefore void.

This view of the case is strengthened from the fact that the assignee's habits are not good - though an industrious mechanic he accumulates nothing - he spends his time in saloons & billiard rooms, playing at cards, gaming for beer, oysters

and Money - and at times drinks to excess and "feels well" - thereby lessening the assurance that the assigned property will be safe in his hands -

In the case cited, 1 Sanford ch. R. 251, one of the assignees was blind, - yet a man of sound judgment, capable of advising - another of the assignees was illiterate, - could not write, and incapable of making up ~~his~~ an account of the estate, - yet in other respects, active and competent to take the charge of business -

The third assignee, although fully qualified, resided at a distance. -

It was held under these circumstances that the assignment was made with the intent to defraud creditors, - and also held that the assignee or assignees should be competent and of sufficient character & pecuniary responsibility, to insure the execution of the trust, for the benefit of those interested.

In the case cited in 2 Sanford ch R. 353, an assignment to a brother who was sick, and at the time unfit to attend to business by reason of a lingering disease, which the assignor believed incurable.

and of which he died. was held for that cause. held to be fraudulent and void as to creditors.

In both of the last cases, the Court refers to the case in 8 Paige and 1 Barbour S. Ct. by way of approval, and for authority - and similar views are expressed, and cases referred to in Burrill on assignments, and 1. Am. Leading cases. 97.

The Second point is the inadmissibility of the evidence of R. J. Haines et al on the part of the plaintiff, that being professed creditors under the assignment.

The rule laid down in 5 Conn. 258 cited, is, that if the effect of the witness's testimony will be to create, or increase a fund, in which he may be entitled to participate - or to prevent the diminution of a fund created, for his benefit, he is incompetent - and there are numerous authorities there cited to sustain the rule -

The Rule laid down in 10 Conn. 280, cited, is, that if the effect of the witness's

testimony could be to prevent the diminution of a fund created for his benefit. He is incompetent - and it is not necessary that the interest of the witness in the fund should appear to be inevitable."

The same rule is confirmed by the other cases cited.

In this case the witnesses ~~were~~ objected to, were preferred creditors - the assigned property was a fund created for their special benefit, and they were interested in preventing a diminution of that fund - of preserving it intact, from the creditors who were not preferred - they were interested in sustaining the assignment from against the attacks of those who were interested in destroying the same - hence Counsel think, they were incompetents - & the Court erred in admitting their testimony to go to the jury -

There is one other point—

There is no evidence that the instrument of assignment was ever delevered by March to Groom—the delivery thereof was essential ~~under~~ in order to pass the title to him of the property—without such proof, the verdict should have been for the defendant, and counsel insist that the instruction, No 2, refused by the Court, is good law

Eastman & Botsford
J L Bevindge
Attys for Pltff in Error

By J L Bevindge

130 ~~[illegible]~~ 83

Supreme Court

Henry M. Clark

vs

Alfred J. Groom

Argument for

Plaintiff in Error

Filed May 9, 1860

L. Leland

Clerk

J. L. Beverly

for Pltff

SUPREME COURT

Of the State of Illinois.

APRIL TERM, 1860.

ALFRED J. GROOM, } *Replevin.*
vs.
HENRY M. CLARK, }

PAGE OF RECORD.

This suit was commenced by Writ of Replevin, in February, 1859, and tried at the November Term of the Kane County Circuit Court for 1859, before Isaac G. Wilson, presiding Judge.

2 On the 18th day of February, 1859, an Affidavit and Plain[illegible] was filed in the
3 Clerk's Office of said Court, in this case. And on the same day, to wit; on the
4 18th day of February, 1859, a Writ of Replevin was issued from the Clerk's Office of said Court, directed to the Coronor of Kane County to execute. The property replevied, as appears from the officer's return on said Writ, was as
6 follows:—"Executed this Writ by replevying the following Property; viz. Seven "Thimble Skeined Two-horse Lumber Wagons, One Leather-top One-horse "Buggy, and One two-seated Rockaway Carriage, and delivered the same to A. "J. Groom, the Plaintiff in this Writ. I also read the same to Henry M. Clark, "the Defendant in this Writ, on the 18th day of February, 1859.

H. W. WILLIAMS, Coronor of Kane County,"

7 On the 6th day of May, A. D. 1859, a Declaration was filed in the Clerk's Office, in this case. Declaration, usual form in Replevin.

On the 28th day of November, 1859, the following Pleas were filed. After the entitling of suit:—

8 1st. And now comes the said Defendant, by D. L. Eastman his Attorney, and defends the wrong and injury, when, &c., and says, that as to the wrongful de-
9 tention of Six Thimble Skeined Two-horse Lumber Wagons, parcel of the Goods and Chattels in the said Declaration mentioned, *actio non*, because he says; that before the said time when, &c., to wit: on the first day of February, A. D. 1859, a certain Writ of the People of the State of Illinois, commonly called an Execution, was issued out of the Kane County Circuit Court, in the State of Illinois, directed to the Sheriff of said Kane County, by which said Writ, the said People, commanded the said Sheriff, that of the Lands and Tenements, Goods and Chattels of Stephen March, he caused to be made the sum of Two Hundred and Twenty-six Dollars and Forty-five Cents, which John L. Beveridge, lately in the said Court, in vacation, after the November Term thereof, A. D. 1858, at Geneva, in said County of Kane, on the 21st day of January, A. D. 1859, recovered, as Plaintiff, against said Stephen March, Defendant, for his Damages; and also, the further sum of Six Dollars and Eighty Cents for his costs of suit; and that he have said money ready to render to the said Plaintiff, for his damages and costs,
10 and make return of said Writ, with an endorsement thereon in what manner he shall have executed the same, in ninety days from the date thereof. Which said Writ afterwards, and before the return day thereof, and before the time when, &c., to wit; on the 7th day of February, A. D. 1859, to wit—at the said Kane County, was delivered to said Defendant, who then, and from then, and from thenceforth, until, and at, and after the return day thereof, was Deputy Sheriff of the said County of Kane, to be executed in due form of law; and thereupon the said Deputy Sheriff, Defendant, by virtue of said Writ, to wit; on the said 7th day of February, A. D. 1859, at Kane County aforesaid, seized and levied upon the said Goods and Chattels, in this Plea mentioned, to wit; Six Lumber Two-horse Wagons, (parcel of the said Property in said Declaration mentioned,) as the Goods, Chattels, and Property of said Stephen March; and the said Defendant avers that said Goods and Chattels were then and there the Goods and Chattels of said Stephen March, and liable to be seized and sold on said Writ of

11 Execution, for the purpose of making the money therein mentioned, and not the Property of said Plaintiff, which seizure and levy is the wrongful action and detention complained of in said Plaintiff's Declaration, so far as relates to the said Goods and Chattels, mentioned in this Plea, and this the said Defendant is ready to verify; wherefor he prays Judgment, &c., and also prays a return of said Property, &c.

2nd. Plea in the same form as the preceding, alleging that as to the balance of the property, goods and chattels in said Declaration mentioned, and not referred
12 to, in said first Plea, to wit; One Thimble Skeined Two-horse Lumber Wagon, One Leather-top One-horse Buggy, and One Two-seated Rockaway Carriage, the same to have been taken, by the said Defendant, as Deputy Sheriff of Kane
13 County, by virtue of an Execution, regularly issued out of the Clerk's Office, of said Kane County Circuit Court, on a Judgment obtained in said Court on the 3rd day of November, A. D. 1858, in vacation, after the May Term thereof, at Geneva, in said Kane County, which Joseph Fulton as Plaintiff recovered against Stephen March and Erastus Hallack, for the sum of One Hundred and Fifty-one Dollars and 14-100, and the sum of Nine Dollars and 20-100 for his costs of suit. Said Execution issued November 15th, A. D. 1858, and delivered to said Defendant, and before the return day thereof, to wit: on the 8th day of February, A. D. 1859, the said Defendant as Deputy Sheriff aforesaid, seized and levied upon the said Goods and Chattels, in the 2nd Plea mentioned as the Property, &c., of said Stephen March.

Said Pleas endorsed as filed, Nov. 28th, 1859, and amended Pleas, filed Nov. 30th, 1859.

14 3rd. Plea of *non detinet* as to the Property, &c., mentioned in first Plea.

15 4th. Plea of *non detinet* as to the balance of the Property, &c., mentioned in second Plea.

16 On the 28th day of November, 1859, leave was given by the Court to the Plaintiff, to amend his Declaration, and on the same day, on motion, leave is also given the Defendant to file an additional Plea herein.

"And on the 29th of Nov. 1859, a Plea was filed as follows:

5th. And for a further Plea in this behalf by like leave of the Court, &c., the said Defendant says *actio non*, because he says, that the said Property, Goods and Chattels, in the said Declaration, were at the said time, when, &c., the Property, Goods, and Chattels of Stephen March, to wit: at Kane County aforesaid, and not the Property of the said Plaintiff; and this the said Defendant is ready to verify, wherefor he prays Judgment, &c."

17 On the 29th day of Nov., 1859, the Plaintiff filed his demurrer to the said 1st & 2nd Pleas, which demurrer was sustained by the Court, and leave given the
18 Defendant to amend his said Pleas.

19 On the 30th of Nov., 1859, the Plaintiff filed his Replication. To the 1st Plea of the Defendant the Plaintiff replies, that the said Defendant, at the said time, when, &c., was not an acting Deputy Sheriff of Kane County, as in said Plea
20 alleged. And as to the 2nd Plea of the Defendant, the said Plaintiff replies, Property in himself, and not in one Stephen March, as said Plea alleges. And as to the last Plea of the Defendant, by him lastly pleaded, the said Plaintiff replies, Property in himself, and not in one Stephen March, as is alleged in said Plea.

21 On the 30th of November, 1859, the Defendant filed a demurrer to the Plain-
23 tiff's Replication to the Defendant's 2nd Plea, which was by the Court sustained.

24 On the 1st day of Dec., 1859, a further Replication was filed by the Plaintiff to the 1st Plea of the Defendant, replying, the Property, &c., as therein set forth, the Property, &c., of the Plaintiff and not of one Stephen March; and also a Replication to the 2nd Plea of the said Defendant, as follows:

25 "And the said Plaintiff as to the said Plea of the said Defendant by him secondly above pleaded, says *precludi non*, because he says, that the said Defendant was not seized at said time, when, &c., of an Execution, by which he, the said Defendant, took and seized upon said Goods and Chattels, in the manner and at the time in said Plea alleged, and of this the said Plaintiff puts himself upon the County, &c."

And also a further Replication to said 2nd Plea—replying, Property in said Plaintiff, and not in Stephen March, upon which Pleas and Replications issues were joined.

And on the 1st day of December, 1859, it being one of the days of the Novem-
26 ber Term, 1859, of the Kane County Circuit Court, this cause came on for trial on the issues heretofore formed in this cause. On motion of the Plaintiff a Jury was empanneled to try said cause. And the Plaintiff to maintain his action under the issues, offered in evidence the following evidence and testimony.

An instrument of assignment from Stephen March to Alfred J. Groom.

SUBSTANCE OF SAID ASSIGNMENT.

The indenture entered into between the said parties, Stephen March and Alfred J. Groom, on the 18th day of October, A. D. 1858. Then follows the inducement and consideration for which the said first party doth grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, his heirs, executors, administrators, and assigns, all and singular the Lands, Tenements, Hereditaments, and Appurtenances, Goods, Chattels, Promissory Notes, Debts, Choses in Action, Claims, Demands, Property, and Effects of every description; the same more particularly set forth and referred to in a Schedule annexed to said Assignment, marked "D." To have and to hold the same in trust.

First. To take possession of the said assigned Property, and to sell and dispose of the same with diligence, and for the best price, and convert the same into money, and to collect all Debts and Demands; and with the proceeds and collections,

Secondly. To pay and discharge all the expenses attending the execution of the Trust, with a reasonable compensation to the said Groom for his services in performing the duties of said Trust.

Thirdly. To pay and discharge in full, if sufficient for that purpose, the debts and liabilities due or to become due from said March, which are referred to in a Schedule, annexed to said instrument, marked "A," with interest, &c. If the proceeds be not sufficient to pay said Debts and Liabilities in full, after paying expenses, &c., then to pay the same *pro rata*, as far as the same will go, and if after paying all charges, &c., and liabilities mentioned in Schedule "A," there should be a surplus,

Fourthly. To pay and discharge in full, if there be sufficient for that purpose, all debts and liabilities due, or to become due, mentioned in Schedule "B," with all interest on the same in full, if sufficient, but if otherwise to apply the said proceeds *pro rata*, as far as the same will go, but if after payment, &c., there should then remain a surplus, then,

Fifthly. To discharge in full, if sufficient for the purpose, all debts, and liabilities due, or to become due, as set forth in Schedule "C," with interest, &c., but if not sufficient, then to pay the same *pro rata*, so far as the same will extend to the payment of said liabilities; and if after payment of all charges, &c., and the respective liabilities, mentioned in the annexed Schedules, marked "A," "B," and "C," any surplus remains, then,

Lastly, to pay over and return the same to the said March, his heirs, &c.

Then follows the usual power of Attorney, and the acceptance of the Trust, by Groom, signed and sealed by the respective parties thereto on the aforesaid day and year.

SCHEDULE "A,"

Embraces the amounts due the following persons:—

Alfred J. Groom,	$140 00
A. P. Kniffin,	100 ..
R. Van Valk,	110 ..
Bowman and Lloyd on Note,	100 ..
Barr,	27 ..

SCHEDULE "B."

E. Hallack, 3 notes each, $455, dated Nov. 20th, 1856, due about $1393 00

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30 to 50

SCHEDULE "C."

Lake & Brown, Note,	$110	39
Crawford & Son, " dated, Aug. '58	91	38
M. L. Hobart, "	69	00
Head, Campbell & Head, Note	135	..
P. P. Letchworth, "	180	..
Joseph Hibbard, Account,	100	..
Cowing & Co.,	220	..
Farwell & Co., Account,	80	..
Samuel De Golyer, Note,	39	..
Ocabock & Foster, Account,	80	..
J. S. Van Patten & Co., Note, due,	35	..
J. P. Furnald, Account,	20	..
Minard & Osgood, "	50	..
Ira Minard, "	70	..
R. J. Haines, "	200	..
Freeman & Waite, Note,	200	..
H. Wheelbeck & Co., "	230	..
G. G. Hall, "	363	..
S. B. Flint, "	23	..
Joseph Fulton, "	125	..
" " Account,	40	..
M. Flannegan, "	12	..
Unknown, "	14	..
L. Bailey, "	13	..
Reed Ferson, Note,	82	50

(ABSTRACT OF SCHEDULE "D.")

Notes and Accounts due Stephen March.

John and James Clark, Note,	$90	00
B. Seepy, "	110	..
A. J. Taylor, "	90	..
Andrew Jackson, "	96	70
T. W. Bailey, "	58	45
A. R. Whitney, "	58	..
D. M. Kelsey, "	280	00
E. D. Bacon, "	103	..
Daniel Dennison, "	45	..
Stewart and Vance, "	54	..
Edward S. Thompson, "	97	..
W. P. Lloyd, "	98	..
H. Thompson, "	106	..
James A. Beverly, "	23	..
—— Crumb, "	80	..
S. & E. Shattuck, "	50	..
E. Haggarty, "	85	..
Norris Dodd, "	165	..
E. Mott, 2 "	95	..
Nelson Waite, "	60	..
B. R. Pierce, "	60	..
Norris Dodd, "	6	05
Otto Law, "	80	..
H. H. Jackson, "	77	75
" " "	75	00
James H. Welch, "	99	56
M. L. Mason, "	127	25
Moses Hilts, "	59	50
J. W. Munford, "	95	00
S. J. Smith, "	90	..
H. S. Rumper, "	35	..
J. T. Whitaker & Co., "	25	..
Unknown, "	90	..

Assets, &c., in Stock and Tools on hand, total, ... $5,802 95
Also, interest in a lease on which Shop stands, and a Lot aud Store in Franklin, Lee Co., Ill.; also, Book Accounts, &c.

52 The Plaintiff then introduced as a witness, B. B. Payne, sworn. I know the parties. Reside in St. Charles. I heard the Plaintiff in this suit demand of the the Defendant, Seven Thimble Skeined Double Lumber Wagons, One Two-seated Rockaway Carriage, One Single Leather-top Buggy. The morning before the Property was replevied, I went with Groom to demand the Property. This was the same day the Property was replevied.

Cross-Examination.—I know Stephen March.

A. P. Kniffin sworn. Know the parties. Have worked some years at the "Kane County Carriage Manufactory," in St. Charles. Worked for Stephen March there. March made an Assignment in October, 1858. Groom took pos-
53 session of the Property immediately afterwards, the same day. I worked in the shop at the time. Groom continued the business afterwards, and conducted it. The property in question was on the premises at the time of the assignment. The property mentioned is the same as replevied by Groom.

Cross-Examined.—I have worked for Groom since the assignment—finishing work—making new work and repairing. March was about the premises before and after the assignment. Neither worked much before nor after. I am a creditor of March—never had a final settlement with him. March owed me about
54 $100 when he failed. The shop has been kept open since the assignment. On hand at the time about 10 lumber wagons, some light wagons. Lumber wagons worth about $75 or 80 each—buggies $150 each. Some material on hand, perhaps worth $800 or 1000. Groom has paint shop in same building—done March's painting. There has been no change of sign on the shop since the assignment. I owed Minard & Osgood. Paid them since by turning out a wagon at Groom's request. The wagon overpaid my account—the balance of $13 was turned on March's account there. Heard Groom say that March had gone west, one time since the assignment, to collect some Notes. Have known Groom fifteen years. He has always worked at painting. Groom said he had paid Flint's debt, that March owed, of some $25. [*Plaintiff rests.*

DEFENCE.

A. P. Kniffin.—I was present the first time (Defendant) Clark came to levy on this Property. He took some lumber wagons. Heard him say he came to levy on some wagons. The last time he took a top buggy and a Rockaway. Groom paid Flint by giving him a carriage. Wood worth $21 or 22. Groom is a man of family—lives in a house owned by Dr. De Wolf. He owns some tools, worth perhaps $50. Groom's business was painting, Never knew of his having any property but his tools. He has no other property. No real estate. His family consists of a wife, and a daughter, married. He might earn $2 or 3 per day at his trade. His habits for industry are good. I have seen him drink liquors. Have seen him feel well years ago. I have seen no change in his habits since the assignment. He has been disposing of the property. Sold a wagon to Harroun, and took his note for it. I have heard March talk about the work since the assignment. The key to the shop was usually kept over the door. Have seen March take it, open the door, and go in, as before the assignment.

Cross-Ex.—The same property was replevied, as taken by Clark. I think Groom saw and examined the Executions. It was about one year ago.

56 Deposition of Erastus Hallack read in evidence, in substance as follows:—

I have known the parties about 4 years. Groom's business has been painting. He has been carrying on business for himself in March's Shop, and done (M's) work. Think Groom has no property except his paint tools. His property might be worth in all, one, two, or three hundred dollars—his paint tools and household furniture. His paints and tools might be worth one hundred dollars. Groom had no other property to my knowledge, except what I have mentioned, since June, 1858. I was acquainted with March in 1858. Know of his making a pretended Assignment. He carried on the Carriage business in St. Charles, and

employed Groom to do his painting. I think there was not any perceptible
61 change in the control of March's business after the assignment. I think he controled the business as he had done previous. I don't know of any acts, excepting I was concerned in a Judgment obtained against me and said March, and I spoke to Groom about settling it up. He said that so far as he was concerned he was willing to fix it up. He wanted me to see March, and see what he was willing to do about it, and that any arrangement I could make with March he would agree to. Groom told me that he had taken up a Note at Freeman & Waite's, and paid part of it, and got the balance extended. That they held collateral security for this Note, of notes belonging to March. He said that March told him these notes held as collateral security were perfectly good, and would be paid at maturity, and that he had used all the means he could command, and had even
62 sold a buggy to Burchell for less than it was worth, in order to pay Freeman and Waite, and after he had paid them, and taken up the notes held as collateral, he gave them to March to go out west and collect them, and that March returned and said he could not collect a cent. I don't know of any thing further except March was around the premises as usual. I think that Groom told me Freeman and Waite's note was about $200. He said that he had taken up the
63 note on the strength of what March had told him in relation to the notes held as collateral. He said he should not have made this arrangement but for March.
64 I think Groom has not controled the assigned property, independently. I think he did not at the time referred to about the Judgment and that Note. Kniffin
65 has worked about the shop since the assignment. Saw him to work making some two-horse gearings. March I think has been out west some two or three times
66 with some notes to collect. All I know of his business is, that I have seen him around the shop, as in time previous to the assignment. March prior to the as-
67 signment was in the habit of drinking to excess, and was not capable of doing business at such times. I think he has drank more and been more reckless since.
68 I have seen March play for money prior to the assignment, and Groom knew it, for he was playing with him, but have not seen him (March) play since. I know of Groom playing for money only at one time, and that was about two week's
69 previous to the assignment, and March was knowing to the fact. Could not say that Groom has been in the habit of drinking to excess since June, 1858, nor that I have seen him on any "sprees" since. I have seen Groom when I thought
71 he had been drinking to excess—the last time over a year ago. Groom said that he had paid part of Freeman & Waite's note at March's suggestion. Their demand as I learned from Groom was about $200.

Cross-Ex.—I think I have seen Groom intoxicated and incapable of doing bu-
72 siness over a year ago. I think in Dec., 1859, at "Foss' Restaurant." He was there perhaps half an hour or over. I was there eating oysters and lounging about. I drank one glass of beer, while eating oysters, and no more that day to my recollection. I left there about half-past nine or ten o'clock in the evening. No one helped me home that night that I recollect of. Don't know that I saw Groom drink any beer or liquor on that occasion. I saw Groom gambling for
74 money in the fore part of October, 1858, in the back room of Foss' Restaurant. Myself, March, and Barr were with him—played at "poker," five cents "ante."
75 Could not say that Groom lost any money. On that occasion I lost 20 cents. That is the only time I ever knew Groom to gamble. I am one of the Defend-
76 ants in the suit of Fulton vs. March & Hallack. There has been an Execution on the Judgment against myself and Stephen March. Said Execution has not been paid to my knowledge. I have seen the wagons Clark levied upon. I do
77 not know who the parties in the Execution were. March I think was Defendant in the Execution. There was an Execution issued against me and March in favor
78 of Fulton. I did not direct Clark to levy on the property in question. I heard Lewis tell Clark what to levy on. I was in partnership with March from April,
79 1855, to September, 1857, and am now in co-partnership with Lewis. I have not transferred my property to any one since the issuing of Fulton's Execution. I told Clark I had no individual property to turn out on said Execution. I told

80 Clark that I could not pay it at that present time. Groom told me that March
83 had returned the notes which he let him take to collect. The conversation herein before referred to with Groom, was had in January last. I had some three con-
84 versations with Groom on the subject. I think I had a conversation in the store with Groom. He said that March did not collect anything on the notes he took
85 out west, but had returned them. I spoke to him (G) about the propriety of sending March out to collect. I told him I did not consider him a very trusty hand, and thought the creditors would not. Groom said he did not feel exactly
86 right about it himself. I never saw March handle any of the assigned property
87 to my recollection. I have seen Groom about the shop often. I could not say that I have seen March in the shop when Groom was not there. I have not seen March sell or dispose of any of said property. I think Groom is as industrious as the average of men, and works as steady as mechanics usually do.

88 Direct-Ex. Resumed.—Foss kept in his Restaurant intoxicating drinks for sale, and gaming implements. Kept beer and brandy, billiard tables and cards. I
89 have seen Groom frequently at Foss' in the evening—March there but once. There has been no change of signs at the shop since the assignment. March was
93 to pay the note of Fulton's, upon which the Execution issued, and Fulton knew it. Fulton said to me, that it was just that March should pay the debt, and that he should collect it out of him, if possible, and that he would not trouble me un-
95 less he failed to get it out of March. March told me, about the time he made the assignment, he should not have done so if Fulton had not sued him. I have never in any way satisfied said Judgment against me and March, nor turned out any property on it.

(Signed,) ERASTUS HALLACK,

96 and attached to which is Officer's Certificate in due form.

Reed Ferson sworn.—Know the parties. March was indebted to me, October 18th, 1858, about $80 or 90. When the note became due Groom paid it, and since the assignment.

Cross-Ex.—I held collateral security for my security to the amount of about
97 $150. Groom took up the collaterals when he paid me. Groom's habits so far as I know are good. See him almost every day. Don't know where he spends his time. He is honest so far as I know.

Direct resumed.—Never saw him do any business but paint. I paid Groom when we settled the note some $30 in money. I took other notes and paid the difference. Groom is as industrious as I am. Don't know as his drinking affects
98 him.

W. J. Gale sworn.—Known Groom 4 or 5 years. Have seen him frequently at Kingsbury's saloon playing at cards—once or twice a week for the past six months. He played for amusement, and something to eat and drink, and some for money in small amounts. Have seen him play at Foss' saloon, and at Garnum's saloon, two or three times a week. Saw him play two years ago.

Cross Ex.—Groom is a man of good industry, works daily, and good business habits.

O. Kingsbury sworn.—Known Groom 4 or 5 years. He is a painter by trade. My business auctioneer and saloon-keeping. Groom has of late been in my saloon often. March has been there with him. Groom was frequently in my private room. A company hire it by the evening—they pay for it by the evening. The company would call for eatables and drink. Spent from thirty cents to one dollar each evening with me.

John F. Foss sworn.—Known Groom two years. I keep saloon and billiard room. Groom frequently stops there—sometimes in the day time. Often played cards there for oysters, beer, &c. March came with him in 1858.

99 E. H. Chapman sworn.—Known Groom 4 or 5 years. I have played at cards with him for amusement, two years ago. I think it is a good indication for a business man to play at cards.

Cross-Ex.—Groom is an industrious mechanic.

George Barr sworn.—Known Groom over a year. Have played cards with

him. Once at a game called "Spriggers." Used "chips," which represented money, 5 cents more or less. I lent Hallack three "spriggers"—Groom was banker. Think this was before the assignment.

Cross-Ex. Chapman, Groom, March, myself, and Hallack played together. Groom is industrious.

100 S. C. Wright sworn.—Knew Groom in Oct., 1858. Have seen him play at "poker" in Foss' saloon—played for "spriggins" at different places. Played for from one cent to five "ante."

Cross-Ex.—Knew him once at Foss' to lose some money. Don't think it a good indication for a business man to play at such games.

Affidavit of Henry M. Clark, offered in evidence to the Court—in substance as follows:—

101 Deposes that he is Defendant in this case. That on the 7th and 8th days of February, as Deputy Sheriff of Kane County, Ill., had in his possession the Executions mentioned in the 1st and 2nd Pleas in this case, by virtue of which he levied upon the Goods and Chattels in said Pleas alleged, and that he had said Executions until about the 20th of June, 1859, when he placed the same in the hands of his counsel, D. L. Eastman, for the purpose of drawing Pleas in this case. That said Eastman has never returned said Executions to him, nor does he know where they are, nor has known since he so gave them to his said Attorney. That he has examined in all places, and made diligent search for the same, but has been wholly unable to find them. Subscribed and sworn to, &c.

102 D. L. Eastman sworn.—On or about the 28th day of June last, the Defendant gave me the two Executions. (The witness described the Executions in detail, dates, and amounts as set forth in said 1st and 2nd pleas, and endorsed on the back, as having been executed by levying on the property in question and signed
103 by the proper officer.) The said Executions were issued out of and under the seal of this court, and the signature in the hand writing of its clerk. I took said Executions for the purpose of drawing pleas in this case. I took said Executions to my house and placed them in my private Secretary, as I supposed. I have looked all my papers through for five different times but am unable to find them. (This testimony was first given to the court, and afterwards allowed to go to the Jury.) Copies of said Executions presented.

104 An Execution in favor of John L. Beveridge against Stephen March, for the sum of $226 55, on a Judgment recovered against said March in the Kane Co. Circuit Court, on the 21st January, 1859, and $6 80 costs of suit. Said Execution issued on the 1st of February, 1859, in the same form as the following, being the other copy of said Executions set out in full.

STATE OF ILLINOIS, }
KANE COUNTY. } The People of the State of Illinois to the Sheriff of said County, Greeting:

105 We command you that of the Goods and Chattels, Lands and Tenements of Stephen March and Erastus Hallack, Defendants, in your County, you cause to be made the sum of $151 14, which Joseph Fulton, Plaintiff, lately in the Circuit Court of said Kane County, in vacation, after the May Term thereof, to wit: at Geneva, in said County, on the 3rd day of Nov., A. D. 1858, recovered against the said Defendants, and which by the said Court was adjudged to the said Plaintiff for damages which he had sustained by reason of the non-performance of certain promises then lately made by the said Defendants to
106 the said Plaintiff. And also the further sum of $9 20, which was adjudged to the said Plaintiff for costs in that behalf expended, whereof the said Defendants are convicted, as appears to us of record. And have you these moneys ready to render to the said Plaintiff for his Damages and Costs aforesaid, and make return of this Writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness, PAUL R. WRIGHT, Clerk of our said Court, and the Seal thereof, at Geneva, in said County, this 15th day of November, A. D. 1858.

[SEAL.]

P. R. WRIGHT, Clerk.

107 These are substantial copies of the said Executions so far as they go. The blanks upon the back were filled on the originals, and they were severally endorsed in Defendant's hand writing as before stated.

to The Commission bond and oath of office of E. J. Allen, as Sheriff of Kane Co., read in evidence—

112 E. J. Allen.—I am Sheriff of Kane County. Have been since the fall of 1858.

113 (The appointment of Defendant, as Deputy Sheriff of Kane County, dated the 17th day of November, 1858, and signed by E. J. Allen, Sheriff, also his oath of

114 office, November 16th, 1858, read in evidence.) His (Defendant) appointment as Deputy Sheriff,' and oath of office, were executed on the same day, the 16th day of November, 1858. Clark has been an acting Deputy Sheriff since the 16th of November, 1858, to the present time.

115 Judgment Record of the Kane County Circuit Court, page 169, offered in evidence—shows that on the 3rd day of Nov., A. D. 1858, a Judgment was entered of Record, in favor of Joseph Fulton vs Stephen March & Erastus Hallack, for the sum of $151 14 Damages, and costs of suit.

116 Execution Docket of said Court offered in evidence, page 108—shows that an Execution in favor of Joseph Fulton vs Stephen March & Erastus Hallack, issued on the 15th of November, 1858, and delivered to Sheriff. Damages, $151 41—Costs, $9 20.

Execution Docket on page 128, offered in evidence—shows that an Execution in favor of John L. Beveridge vs Stephen March, issued Feb. 1st, 1859, and delivered to Sheriff. Damages, 226 45—Costs, $6 80.

117 Allen.—I heard the Judgment of Fulton vs March & Hallack, read also the Execution Docket, relating to said Execution—also Execution Docket as to Execution of Beveridge vs March. I had Executions corresponding to those mentioned. I put them into the hands of the Defendant to be executed just before the levy.

Joseph Fulton sworn.—I am Plaintiff in suit of Fulton vs March & Hallack. I sold the Judgment to J. P. Lewis. He has paid me for it. March owed me at the time of the assignment about $200. I have been paid in full. Groom paid me about one month since $50. Known Groom four years. Have seen him drink. Never saw him the worse for liquor. Think his habits of intemperance would not hurt him as assignee.

118 Cross-Ex.—Groom paid for me at Minard & Osgood's $30 and $20 in Stock, from the assigned property. Groom I think is a fair business man. Never done any business with him except to settle. There was property assigned of $2000 to 3000, besides the building, which was worth at least $1000.

John Andrus sworn. Have known Groom 3 or 4 years. Been quite intimate with him some of the time in '57 & '58. Was often at gaming places with him. Never knew him to play for money. March was sometimes present. The party who lost usually paid the oysters, beer, &c. Seen Groom play at billiards, at Foss' saloon. He kept liquors, &c.

119 Cross-Ex. Groom attends to his business. Have seen him drink at saloons, but think it does not disqualify him for business. Know nothing of his business capacity.

Austin Barnum sworn.—Know Groom. Have seen him frequently in a room over Kingsbury's saloon. Saw him there eating oysters, playing cards. Played for buttons. Don't know as they paid for them, but they sometimes owed each other. Seen him play cards at Garnum's three or four times. Saw him play "Eucher."

S. B. Flint sworn.—March owed me at the time of the assignment about $25. Groom paid part of it by turning out the wood work of a lumber wagon. Groom is an industrious man so far as I know.

120 W. F. Osgood sworn. Am of the firm of Minard & Osgood. When March assigned, owed us about $50. A part of it has been paid by making turns—the balance by notes. Our claim was in the third class.

Defence rests.

Plaintiff called A. B. De Wolf.—Known Groom 5 years. Know his business habits. Was industrious. A man I think of integrity. Done business with him to the amount of 4 or $500 in a year. Always paid me.

Cross-Ex.—I rent him a house. I never employed him only to paint. (Plaintiff's Counsel here admitted that Groom had no property liable to Execution.) Do not think that spending three or four nights in a week in saloons, gaming for oysters, &c., a mark of a good business man. I would not sell him a large amount of property on his own responsibility.

121 P. J. Burchell sworn. Known Groom 4 or 5 years. So far as I know, he is honest, industrious, and of good business habits.

Cross-Ex.—Seen him play at cards sometimes. Groom sold me a buggy for $65 00.

R. J. Haines sworn.—(Objected to by Defendant on the ground of interest, as it appears from the evidence, that he was in the first class in the assignment. Objection overruled by the Court. Defendent then and there excepted to the ruling of the Court.) Known Groom 5 years. My place of business is some 40 feet from the carriage shop of March. Have seen Groom attending to business nearly every day. March owed me about $200 when he assigned. Have not been paid. His (G) business habits are good.

122 Cross-Ex.—I have seen March about the premises since the assignment, assisting Groom about the same as usual. There is no change of sign. Saw March take no control of the property since.

Ira Minard sworn.—(Objected to by Defendant on same grounds as the preceding witness—overruled and excepted.) Known Groom 3 years. Has done painting for me. Should call him a capable business man—is quick in figures, and honest, so far as I know.

Cross-Ex.—Have done business with him to the amount of $50 in a year. Did painting. He never did any business for me but painting. I would let him have property to dispose of in town, where I could look after it. Don't think it a
123 mark of a good business man to play for oysters, &c. I might trust him property to dispose of when I would not sell the same amount to him on credit.

F. H. Bowman sworn.—(Exception taken to witness on same ground.) Known Groom 4 or 5 years. When March assigned he owed us (Bowman & Lloyd) about $1600 or 1700. I knew of the assignment at the time it was made. I think Groom is industrious and competent. He has taken care of the property since the assignment so far as I know.

Cross-Ex.—We have been paid on our claim some $500. We have security
124 on the building and tools. We bid off property sold by Groom at auction lately, of the assigned property, to the amount of $200. We were in the first class for about $100. That is all paid. Terms of the sale at auction were, less than $25, cash—sums above $25, three months' credit. We had been previously paid 7 lumber wagons, worth about $72 each.

125 John Lloyd sworn.—(Exception taken on the same ground.) Known Groom 3 or 4 years. Think him industrious, honest, and competent.

Cross-Ex.—Never knew him do any business but painting.

C. K. Parks sworn.—Have known Groom 3 years. Think him honest and capable.

Cross-Ex.—He painted a buggy for me. *Ques.* Is that all the reason you have to give why you think him honest and capable? *Ans.* Yes. Never saw him do any other business.

The above is all the material evidence offered. The Plaintiff then asked the Court to give the following instructions to the Jury.

1st. If the Jury believe from the evidence, that March made the assignment in question, then the presumption of law is, that the said assignment was made honestly, in the absence of proof to the contrary; for the law permits the debtor, even in failing circumstances, to assign his property for the benefit of his creditors; and said assignment is presumed to be an honest act if duly made, even though the effect of the assignment may be for a time to delay the creditors in the collection of their debts, such delay would not make the assignment void.

126 2nd. If the Jury believe from the evidence, that March was in failing circumstances, and that he made an assignment in good faith, and appointed Alfred J. Groom as his assignee, and that Groom was a suitable person to act as assignee, and accepted the trust, and possessed himself of the trust property, and that while so in the possession, Clark, the Defendant, without Groom's consent, took said property from his possession, then in law it was the duty of Groom to pursue said property, and re-possess himself of the same, if unlawfully detained from him, as stated in the Declaration.

3rd. If the Jury believe from the evidence, that the Deed of Assignment was delivered to Groom, the assignee, and that he went on and acted under it, the law presumes the acceptance of the trust by Groom, in the absence of proof to the contrary.

4th. The Jury in determining the case should take into consideration all the
127 evidence, and if they believe from such evidence, that the assignment was honestly and fairly made, no acts of Groom in regard to said property since the assignment would invalidate the same.

5th. Groom had a right to employ March, or allow March to remain, and be about the shop and assist him, (Groom) in doing work, in finishing up, and preparing any of the work assigned by said March for sale, provided the Jury further believe from the evidence, that said Groom had the entire custody and control of said property, and such employment would not be evidence of a fraudulent assignment.

6th. Although the Jury may believe from the evidence, that Groom is a man of limited means, and without pecuniary responsibility, sufficient to cover the amount of the property assigned, yet, if they further believe from the evidence, that he is honest and competent in all other respects, the mere fact of his lack of pecuniary responsibility would not of itself be sufficient to render the assignment void.

128 To the giving of which severally as asked for by the said Plaintiff, the said Defendant then and there, by his counsel, duly excepted.

The Defendant asked the Court to give the following instructions to the Jury.

1st. That although the law allows every debtor to appoint his own assignee, yet such debtor cannot exercise such power *arbitrarily*, but such appointments, must be made with proper reference to the interest of such debtor's creditors. Hence it is an *essential qualification* of every assignee, not only that he is capable from age, health, and education, of performing the duties of the office, but also that he be of sufficient character, and *pecuniary ability*, to afford assurance to creditors that the funds will be safe in his hands, and that the trust will be properly administered. And the selection of an incompetent assignee, in *either* of the said essential requisites, will have the effect of rendering an assignment void. Therefore, in this case, if the Jury believe from the evidence, that the
129 Plaintiff (Groom) at the time of the assignment from March to him, had no pecuniary means liable to Execution, or that he had not sufficient pecuniary ability to afford assurance to the creditors of March, that the property assigned him would be safe in his hands, or that he had not sufficient pecuniary ability or means to fully respond in damages, in case such trust be improperly administered, in such case, the assignment is void, and the property so assigned would not pass to Groom, but would be liable to be taken in Execution by the creditors of March.

2nd. Before the Plaintiff in this suit can claim any right to, or maintain any action for the property in question, by virtue of the assignment given in evidence, as against Judgment, creditors, he must show to the satisfaction of the Jury, that
130 he took possession, and continued in the possession of the property, purporting to be assigned, up and until the time of the levy, given in evidence, and that the assignment was actually delivered to and accepted by the assignee, (the present Plaintiff) or to or by some one for him, and in his behalf, before the time of such levy, and that the mere taking possession of the assigned property, and the giving in evidence such assignment, do not in and of themselves prove that such as-

signment was so delivered and accepted before such levy, and unless the Plaintiff has so proved to the satisfaction of the Jury, such taking and continuing in possession of the property, deriving and acceptance of the assignment, they should find for the Defendant.

3rd. That although the Jury may believe from the evidence, that the assignee (Groom) may be a fair business man, and in other respects capable to carry out the trust in question, still if the Jury further believe from the evidence, that said Groom had *no property liable to Execution* at the time of said assignment, and was unable to respond in damages, in case of an improper administration of said
131 trust, and that said March knew such fact at the time he appointed him his assignee, in such case the assignment in question is void as to the creditors of March, and will not pass the property named in said assignment to Groom, and the law is for the Defendant as to said assignment. Presumed

A. That every person, in law, of sound mind, is premised to know the effect of his own acts, and when such acts affect the rights of third parties, they are not to be construed in favor of the party making them. Hence in this case, if the Jury believe from the evidence, that March, the assignor, was well acquainted with Alfred J. Groom, and knew him to be insolvent, yet knowing such fact he appointed the said Groom, assignee, in the said assignment, such appointment will in effect render such assignment void, as to the rights of the creditors of the said March, as it evinces an intention on the part of said March to place his property
132 beyond the reach of his creditors, or in the language of the law, "to delay or hinder them in the collection of their debts," and in such case the assignment in question is void as to such creditors, and the property so assigned will not pass to Groom, but is liable to be seized in Execution by said creditors in satisfaction of their debts.

B. The Jury are instructed that under the pleadings in this case, it is not necessary for the Defendant to show any Judgment or Execution in favor of Beveridge against March, or that the property was taken and levied upon by the Defendant by such Executions as in the first Plea alleged, that being admitted by the pleadings; the only facts being in issue as to that Plea is the title of the property, and the fact that Defendant was Deputy Sheriff. And as to the second Plea, it is only necessary for the Defendant to show an Execution in favor of Fulton vs March & Hallack, as in said Plea alleged, and that he took the property named in said Plea, by virtue of such Execution, and that the property was
133 the property of March, the assignor, the Judgment not being in issue on either Plea.

C. If the Jury believe from the evidence, that after the time of the assignment, (to wit, Oct., 1858,) the assignor, March, continued in the possession of the property assigned, up and until the time of the levy, and exercised the same visible acts of control about and over the same, that he did before the assignment, or that the Plaintiff, Groom, and that the assignor, March, have continued in the joint possession and visible occupancy and control of said property, without any apparent change, up and until, at or about the time of the levy, then such assignment is void as to such levy, and the Jury should find for the Defendant; but Groom, the assignee, had the right to employ March, the assignor, to aid him in the discharge of his duties, as assignee, provided he, (Groom,) remained in the actual and visible control of the property assigned.

D. If the Jury believe from the evidence, that the assignee, the present Plain-
134 tiff, has suffered the assignor, March, to continue in possession of, or exercise control over the property assigned, and that he has paid debts in the third class of the assignment by the direction of March, these are facts and circumstances to be considered by the Jury, as tending to prove that such assignment was made with a view and intent to hinder and delay creditors in the collection of their debts; and if the Jury believe from the evidence, that such assignment was made with such intent, then it is void as to Judgment creditors, and they should find for the Defendant.

To the action of the Court in refusing to give said instructions marked on their margin "Refused," and numbered 1, 2, 3, the Defendant by his counsel then and

PAGE OF RECORD.

there duly excepted. And as to the qualification by the Court of said instruction given to the Jury, designated by the character "A," by striking out the following
135 words included in parenthesis, after the phrase, "and knew him to be insolvent," (and unable to respond in damages, in case of illegal or improper administration of the assigned property,) the Defendant then and there duly excepted.

The Jury found the issues joined for the Plaintiff, and the Defendant then moved for a new trial; and afterwards on the 17th day of December, 1859, it being one of the days of the November Term of said Court, said motion for a
29 new trial came on for argument, the Court overrules said motion—to which ruling of the Court in refusing a new trial, the Defendant then and there, by his counsel, excepted.

Abstracted by EASTMAN & BOTSFORD,
Attorneys for Defendant.

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Clark vs Groom

Abstract

Filed Apr 24, 1860
L. Leland
Clerk

United States of America
State of Illinois – Kane County. } ss

Pleas before the Honorable Isaac G. Wilson, Judge of the Thirteenth Judicial Circuit, and Presiding Judge of the Circuit Court of Kane County, in the State of Illinois, at a Term of said Court begun and held at the Court House, in Geneva, in said County, on the Third Monday of November in the year of our Lord, one thousand, eight hundred and fifty nine, and of the Independence of the United States of America, the Eighty fourth.

Present: The Hon. Isaac G. Wilson, Judge
Edward S. Joslyn, States Attorney
Ethan J. Allen, Sheriff

Attest:
Paul R. Wright, Clerk.

Be it Remembered, That heretofore, towit, on the 18th day of February, A.D. 1859, an affidavit was filed in the office of the Clerk of the Circuit Court aforesaid, which is in the words and figures following towit:—

United States of America
State of Illinois – Kane County. } ss

Pleas before the Honorable Isaac G. Wilson, Judge of the Thirteenth Judicial Circuit, and Presiding Judge of the Circuit Court of Kane County, in the State of Illinois, at a Term of said Court begun and held at the Court House, in Geneva, in said County, on the Third Monday of November in the year of our Lord, one thousand, eight hundred and fifty nine, and of the Independence of the United States of America, the Eighty fourth.

Present: The Hon. Isaac G. Wilson, Judge
Edward S. Joslyn, States Attorney
Ethan J. Allen, Sheriff

Attest:
Paul R. Wright, Clerk.

Be it Remembered, That heretofore, towit, on the 18th day of February, A.D. 1859, an affidavit was filed in the office of the Clerk of the Circuit Court aforesaid, which is in the words and figures following towit:—

2

State of Illinois
Kane County } ss Alfred J. Groom,

being duly sworn, on oath deposes and says that he is lawfully entitled to the possession of the following described property, to-wit:

Seven Thimble Skeined two horse wagons, one leather top one horse buggy, and one two seated Rockaway carriage, and all of the value of seven hundred and fifty dollars; That said property is unjustly and wrongfully detained by Henry M. Clark, and that the same has not been taken, and is not detained for any tax, assessment, or fine levied by virtue of any law of this State, nor seized under any Execution or attachment against the Goods and Chattels of said Alfred J. Groom, liable to execution or attachment.

Alfred J. Groom.

Subscribed and sworn to before me this 18th day of February A.D. 1859.

Alexander V. Sill
Justice peace

And afterwards, towit, on the 18th day of February, A.D. 1859, a Plaint was filed in the Clerks office aforesaid, which is in the words and figures following, towit:-

Kane County Circuit Court.
Of the February Term A.D. 1859

State of Illinois }
Kane County. } ss Alfred J. Groom of the County of Kane, complains of Henry M. Clark of the County of Kane and State of Illinois, of a plea of taking and unjustly and wrongfully detaining his goods and chattels, to wit, Seven Thimble skeined two horse lumber wagons, one leather top one horse buggy, and one two seated Rockaway carriage, and gives security to prosecute his said complaint, and to return the same Goods and Chattels if return thereof shall be adjudged.

Herrington & Barry
Attys for Plff.

And afterwards, towit, on the 18th day of February, A.D. 1859, a writ of Replevin was issued from the office of the Clerk of said Court, directed to the Coroner of Kane County to execute, which is in the words and figures following, towit:—

State of Illinois } ss
Kane County. } The People of the State of Illinois to the Coroner of said County, Greeting:—

Whereas, Alfred J. Groom, Plaintiff complains on oath, and says that he is lawfully entitled to the possession of the following described property, towit: Seven Thimble skeined two horse lumber wagons, one leather top one horse buggy, and one two seated RocKaway carriage, and all of the value of seven hundred and fifty dollars, that said property is unjustly and wrongfully detained by Henry M. Clark, and that the same has not been taken, and is not detained for any tax, assessment or fine levied by virtue of any law of this State, nor seized under any execution or attachment against the goods and chattels of said

Alfred J. Groom, liable to execution or attachment. Therefore, we command you, That if the said Plaintiff shall give you bond with good and sufficient security in double of the value of said Goods and Chattels, as required by law to prosecute his suit in this behalf to effect, without delay, and to make return of the said Goods and Chattels, if return thereof shall be awarded, and to save and keep you harmless in Replevying said Goods and Chattels, you cause the same to be replevied and delivered to the said plaintiff without delay; and also that you summon the said Henry M. Clark, defendant to be and appear before our Circuit Court for said County, on the first day of the next Term thereof, to be holden at the Court House in Geneva, in said County, on the Third Monday of February instant to answer said Plaintiff in the premises. And have you then, there, this writ, with an endorsement thereon in what manner you shall have executed the same, together with the Bond which you shall take of the plaintiff before executing this Writ.

Witness, Paul R. Wright, Clerk of our said Court, and the Seal thereof at Geneva, in said County, this 18th day of February, A.D. 1859.

In Court Seal.

P. R. Wright,
Clerk.

And afterwards, towit: on the 18th day of February, A.D. 1859, the Replevin Writ aforesaid was filed in the office of the Clerk of said Court, upon which there appears an endorsment, which is in the words and figures following, towit,

Executed this writ by Replevying the following property, viz. Seven Thimble Skeined two-horse Lumber Wagons, one Leather top one horse buggy, and one two seated Rockaway Carriage and delivered the same to A. J. Groom, the plaintiff in this Writ. I also read the same to Henry M. Clark, the defendant in this Writ on this 18th day of February. 1859.

H. H. Williams.
Coroner of Kane Co.

And afterwards, towit, on the 6th day of May, AD 1859. a Declaration was filed in the Clerk's office aforesaid, which is in the words and figures following, towit:—

State of Illinois } ss Kane County Circuit
Kane County } Court of the Term AD 1859

Alfred J. Groom }
vs. } Alfred J. Groom, plaintiff in this suit, by
Henry M. Clark } ~~Herrington & Barry his attornies, complains~~ of Henry M. Clark, defendant in this suit, in a plea of Replevin; For that the said defendant on the 18th day of February. AD 1859, at St. Charles, towit, in the County of Kane aforesaid, was possessed of certain goods and Chattels of the said plaintiff, towit: Seven Thimble skeined two horse lumber wagons, one leather top one horse buggy, and one two seated, Rockaway carriage. to be delivered to the said plaintiff when he the said defendant should be thereunto afterwards requested.

Yet the said defendant though

often requested, so to do has not delivered the said Goods and Chattels, nor any part thereof to the said plaintiff, and so the said defendant unjustly, and wrongfully detains the same from the said plaintiff, to his damage, of seven hundred and fifty Dollars, and therefore he brings suit, &c.

Herrington & Barry
Attys for Plff.

And afterwards, towit, on the 28th day of November, A.D. 1859, Pleas were filed in the Office of the Clerk of said Court, which are in the words and figures following, towit:

State of Illinois } ss. Kane County Circuit
Kane County } Court. November Term.
A. D. 1859.

No. 1. Henry M. Clark
ads
Alfred J. Croom. } And now comes the said defendant by D. L. Eastman, his attorney and defends the wrong and injury, when &c, and says that as to the wrongful detention of six

Thimble & Reynier two horse lumber wagon
parcel of the goods and chattels in the
said declaration mentioned "actio non"
because, he says, that before the said
time, when &c. towit, on the first day of
February, A.D. 1859, a certain writ of
the People of the State of Illinois, com-
monly called an execution was issued
out of the Kane County Circuit Court
in the State of Illinois, directed to the
Sheriff of said Kane County, by which
said writ the said People commanded
the said Sheriff, that of the lands and
tenements, goods and chattels of Stephen
March, he cause to be made the sum
of two hundred twenty six dollars and
forty-five cents, which John L Beveridge
lately, in the said Court in vacation after
the November Term, thereof, A.D. 1858,
at Geneva, in said County of Kane, on
the 21st day of January A.D. 1859 recov-
ered as plaintiff against said Stephen
March as defendant, for his damages,
and also the further sum of six dollars
and eighty cents for his costs of suit
and that he have said moneys ready to
render to the said plaintiff for his dam-
ages and costs, and make return of

said writ with an endorsement thereon, in what manner he shall have executed the same in ninety days from the date thereof, which said writ afterwards & before the return day thereof, and before the time when &c to wit on the 7th day of February A.D. 1859 to wit at said Kane County was delivered to said defendants, who then and from then and from thenceforth, until, and at, and after the return day thereof, was deputy Sheriff of the said County of Kane, to be executed in due form of law, and thereupon the said deputy sheriff, defendant, by virtue of said writ, to wit, on the said 7th day of February, A.D. 1859, at Kane County aforesaid seized and levied upon the said goods and chattels in this plea mentioned, to wit, six lumber two horse wagons - parcel of the said property in said declaration mentioned, as the goods, chattels & property of said Stephen March, and the said Defendant avers that said goods and chattels were then and there the goods and chattels of said Stephen March, and liable to be seized and sold on said writ of Execution for the purpose of making the money therein mentioned, and not the property

of said plaintiff, which seizure & levy is the wrongful action & detenture complained of in said plaintiffs declaration, so far as relates to the said goods & chattels mentioned in this plea, and this the said defendant is ready to verify, wherefore he prays judgment &c and also prays a return of said property, goods and chattels, together with his costs and charges in this behalf expended. &c.

No. 2. And for a further plea in this behalf, as to the wrongful detention of the balance of the property, goods & chattels in said declaration mentioned & not mentioned and referred to in said first plea, to wit, one Thimble Skeined two horse lumber wagon, one leather top one horse buggy, and one two seated RocAway carriage, the said defendant by leave of the Court &c. says "actio non because he says that before the said time when &c. to wit, on the 15th day of November A.D. 1858, a certain writ of the people of the State of Illinois, commonly called an Execution was issued out of the said Kane County Circuit Court in the

State of Illinois, directed to the Sheriff of said Kane County by which said writ the said People commanded the Sheriff of said Kane County that of the Lands & tenements, goods & chattels of Stephen March, and Erastus Hallock. he cause to be made the sum of one hundred and fifty one dollars, and fourteen cents which Joseph Hutton as plaintiff in said Court, on the 3d day of November, AD 1858, in vacation after the May Term thereof, at Geneva, in said Kane County, recovered against said March & Hallock as defendants for his damages and also the further sum of nine dollars and twenty cents for his costs of suit, and that he have said moneys ready to render to said plaintiff, and make return of said writ with an endorsement thereon in what manner he shall have executed the same, in ninety days from the date thereof, which writ, afterwards, and before the return day thereof, and before said time, when. to wit, on the 8th day of February, AD 1859 was delivered to said defendants Henry M. Clark, who then and from thenceforth until, and

at and after the return day thereof. was deputy Sheriff of said Kane County, to be executed in due form of law, and thereupon the said defendant so being deputy Sheriff as aforesaid, by virtue of said writ, afterwards, to wit: on the day and year, and at the place last aforesaid, did seize and take in Execution, the said goods & chattels in this place mentioned and referred to, as the goods and chattels of said Stephen March and the said defendants avers that they were then & there the goods & chattels of said Stephen March, and liable to be seized and sold on said writ for the purpose of making the money therein mentioned, and not the property of said plaintiff, which is the supposed wrongful detention complained of in said plaintiff's declaration so far as relates to the property, goods & chattles mentioned in this plea. And this the said defendant is ready to verify whereof he prays Judgment &c. and he also prays a Judgment of, or return of the property mentioned in this plea together with his costs and damages. &c

D. L. Eastman
Atty for Defts

13.

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State of Illinois
Kane County. } Kane County Circuit Court. November Term

A. D. 1859.

Henry M. Clark
ads.
Alfred J. Groom } And the said defendant, by D. L. Eastman his attorney, comes and defends the wrong and injury when and &c and says, that he did not detain the said goods and chattels, to wit, six Thimble Skeined two horse lumber wagons, parcel of the goods and chattels in the said declaration mentioned, &c, any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him.

3d

And for a further plea in this behalf, the said defendant by leave of the Court, &c. says that he did not detain the balance of the property, goods & chattels, to wit:- one Thimble Skeined, two horse lumber wagon, one leather top one horse buggy, and one two seated Rockaway Carriage, in the said declaration mentioned, or any or either of them,

4th

or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him And of this the said defendant puts himself upon the country, &c.

D. L. Eastman.
Defts. Atty.

Upon which Pleas there is an Endorsment, as follows:- Filed Nov. 28th 1859. P. R. Wright, Clerk. And also, upon the 1st and 2d Pleas aforesaid, there is an Endorsment as follows, towit:- Amended Pleas filed November 30th 1859. P. R. Wright, Clk

And afterwards, towit, on the 28th day of November A.D. 1859, the same being one of the days of the November Term of said Court, the following, among other proceedings, were had and entered of Record in said Court, towit:-

Alfred J. Groom
v
Henry M. Clark } Replevin

This day comes the Plaintiff, by Barry his attorney, and on his motion, leave is given the Plaintiff to amend his

declaration, and thereupon, on motion, leave is also given the defendant to file additional plea herein.

And afterwards, towit, on the 29th day of November AD 1859, a plea was filed in the Clerks office aforesaid which is in the words and figures following, towit:—

5th And for a further plea in this behalf, by like leave of the Court, &c. the said defendant says actio non. because he says. That the said property goods and chattels in the said declaration, were at the said time, when &c. the property, goods, and chattels of Stephen March, towit, at Kane County aforesaid, and not the property of the said plaintiff, and this the said defendant is ready to verify, wherefore he prays judgment. &c.

D. L. Eastman
Defts. Atty.

And afterwards, towit, on the 29th day of November. AD 1859. a Demurrer was filed in the office of the Clerk

of said Court, which is in the words and figures following, towit:—

Alfred J. Groom } Kane Circuit Court
v. } of the November
Henry M. Clark. } Term, 1859.

And the said plaintiff as to the plea of the said defendants By him first & secondly above pleaded, saith that the same, and the matters therein contained the manner and form as the same are above pleaded & set forth are insufficient to have or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against the said defendant & that he the said plaintiff is not bound by law to answer the same, and the said plaintiff is ready to verify, wherefore by reason of the insufficiency of the plea in this behalf the said plaintiff prays Judgment & Damages by reason of the insufficiency of said Plea.

Mr. D. Barry
Pltffs. Atty.

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And afterwards, towit, on the 29th day of November AD 1859, the same being one of the days of the November Term of said Court, AD 1859 the following among other proceedings were had and entered of Record in said Court, towit:—

Alfred J. Groom
v
Henry M. Clark
} Replevin

This day comes the Plaintiff by Herrington & Barry, his attorney, and files his Demurrer to the first & second pleas of the said defendant. Thereupon comes the defendant by Eastman & Coon his attorneys, and joins in Demurrer. After argument of Counsel, the Court being fully advised, sustains said Demurrer, and gives leave to the defendant to amend his said pleas. It is therefore considered by the Court that the Plaintiff have and recover of the defendant his costs about his Demurrer expended, and have Execution therefor.

And afterwards, to wit, on the 30th day of November A.D. 1859, a Replication was filed in the office of the Clerk of said Court, which is in the words and figures following, to wit:—

Alfred J. Groom
v.
Henry M. Clark.
} Kane County Circuit Court of the November Term, A.D. 1859.

And the said plaintiff as to the said plea of the said defendant by him firstly above pleaded says precludi non because he says that the said defendant was not at the said time when &c. an acting deputy Sheriff within & for the County of Kane as in said plea alledged, and of this the plaintiff puts himself upon the country &c

And the defendant doth the like

Eastman, Coon & Moore.

And the said plaintiff as to the said plea of the said defendant by him secondly above pleaded says precludi non because he says that the said one thimble skeined lumber two horse wagon & one leather toped one horse buggy & one two

seated Rockaway carriage were not the property, goods & chattels of one Stephen March at the said time when &c as in said plea alledged but were the property, goods & chattels of the said plaintiff & of this the said plaintiff puts himself upon the country, &c.

And as to the last plea of the said defendant by him lastly above pleaded the plaintiff says precludi non because he says that the said property goods & chattels in said plaintiffs declaration mentioned, at the said time when &c. was not the property, goods & chattels of Stephen March, as is alledged in said plea, but was the property, goods & chattels of the plaintiff, and of this the said plaintiff puts himself upon the country &c.

Barry & Herrington
Attys for Pltff

And the Defendant doth the like by
Eastman Moore & Coon, his attys

Afterwards, towit, on the 30th day of November, AD 1859 a Demurer to Replication was filed in the Clerk's office aforesaid, which is in the words and figures following, towit:—

State of Illinois
Kane County. } ss

Kane County Circuit Court. November Term A.D. 1859.

Henry M. Clark
vs
Alfred J. Groom

And the said defendant saith that the Replication of the said Plaintiff to the said second plea of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth are not sufficient in law, for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that the said defendant is not bound by law to answer the same, and this the said defendant is ready to verify, wherefore, by reason of the insufficiency of the said Replication in this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him &c

Eastman, Moore & Coon
Defts Attys.

And for special causes of demurrer the defendant assigns the following causes

State of Illinois
Kane County. } ss

Kane County Circuit Court. November Term A.D. 1859.

Henry M. Clark
vs
Alfred J. Groom

And the said defendant saith that the Replication of the said Plaintiff to the said second plea of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth are not sufficient in law, for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that the said defendant is not bound by law to answer the same, and this the said defendant is ready to verify, wherefore, by reason of the insufficiency of the said Replication in this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him &c

Eastman, Moore & Coon
Defts Attys.

And for special causes of demurrer the defendant assigns the following causes

towit:—

1st. The Replication is double. It purports to put in issue several distinct points or averments.

2d It does not follow the plea. It avers the goods, chattels & property in said Replication maintained were not the goods & chattels &c of Stephen March which in the Plea it is alledged as the property of Stephen March & one Erastus Hallack.

3d The Replication does not aver that the property was the property of the Plaintiff, but attempts to take issue on the inducement of said Plea.

4th It is otherwise insufficient & informal & uncertain.

Eastman Moore & Coon.
Defts. attys.

And afterwards, towit, on the 1st day of December, AD 1859, the same being one of the days of the November Term of the Circuit Court aforesaid, 1859, the following among other proceedings were had and entered of Record in said Court, towit:—

Alfred J. Groom
v
Henry M. Clark
} Replevin

This day comes the Plaintiff by Herrington & Barry, his attornes, and the Defendant by Eastman Moore & Coon his attorneys also comes and files his Demurer to the Plaintiffs replication to the 2d plea, in which the Plaintiff joins. After argument of counsel, the Court being fully advised sustains said Demurer. It is therefore considered by the Court that the Defendant have and recover of the Plaintiff his costs in and about this Demurer expended, and have Execution therefor.

And afterwards, towit, on the 1st day of December, A.D. 1859, a Replication was filed in the office of the Clerk of said Court, which is in the words and figures following towit:-

And for further replication to the said first plea of the said defendant by him above pleaded says, precludi non because he says, that

him secondly above pleaded, says
precludi non because he says that
the said goods & chattels in said
plea and declaration mentioned, were
not at said time, when &c the property
of said Stephen March, but were the
goods & chattels & property of said
plaintiff. And of this the said
plaintiff puts himself upon the coun-
try &c Barry & Herrington
Pltffs
And the Defendant doth the like.

And afterwards, towit. on the
1st day of December, A.D. 1859, the same
being one of the days of the November
Term of said Court, 1859, the following
among other proceedings were had and
entered of Record in said Court, towit:-

Alfred J. Groom
v
Henry M. Clark. } Replevin

This day comes the
Plaintiff by Herrington & Barry his
attorneys, and the defendant by Eastman,
Coon & Moore his attorneys also come
and on motion of the Plaintiff it is

ordered by the Court that a Jury come, whereupon come a Jury of good and lawful men of the County, towit:- John McClelland, George Buckland, Caleb Kipp, George Thompson, S. C. Everts, Henry Lyon, Joseph Spalding, Marcus P. Rowland, H. P. Stephens, John C. Wilson, Philip V. McCarty, & John D. Easter, who being severally tried and elected are sworn to try the issues herein, and to render a true verdict according to the evidence, and after hearing a portion of the evidence, the Jury are allowed by the Court to separate to meet the Court to-morrow morning.

And afterwards, towit:- on the 2d day of December, A.D. 1859. the same being one of the days of the November Term of said Court, A.D. 1859. the following among other proceedings were had and entered of Record in said Court, towit:

Alfred J. Groom
v
Henry M. Clark. } Replevin

This day come again the parties by their respective attorneys, and the Jury heretofore impannelled

herein also comes, and after listening to the remainder of the evidence, and a portion of the arguments of Counsel, the Jury are allowed to disperse to meet the Court at the coming in thereof tomorrow morning.

And afterwards, towit, on the 3d day of December, AD1859, the same being one of the days of the November Term of said Court, AD1859, the following, among other proceedings were had and entered of Record in said Court, towit:

Alfred J. Groom
v
Henry M. Black. } Replevin.

This day come again the parties to this suit by their respective attorneys, and the Jury heretofore impanelled herein also come, and after listening to the remainder of the arguments of Counsel, and the instructions of the Court the Jury retire under the charge of a sworn officer of this Court to consider of their verdict, and by consent of the parties it is further ordered by the Court that when the Jury agree, they have leave to seal their

verdict, and separate to meet the Court on the coming in of the Court on Monday morning next.

And afterwards, towit, on the 5th day of December, AD1859, the same being one of the days of the November Term, AD1859, the following among other proceedings were had and entered of Record in said Court, towit:—

Alfred J. Groom
v
Henry M. Clark
} Replevin

This day come again the parties to this suit, by their respective attorneys, and the Jury heretofore impanelled herein also come, and for a verdict upon their oaths do say, we the jury find the issues joined in favor of the plaintiff, and assess his damages at one cent, which is ordered by the Court to be entered of Record. Thereupon the defendant by Eastman his attorney, moves for a new trial.

And afterwards, towit, on the 17th day of December, AD1859, the same being

And afterwards. towit, on the 1st day of December A.D 1859, a Bill of Exceptions was filed in the office of the Clerk of said Court, which is in the words and figures following, towit:—

State of Illinois } ss Pending in the Kane
Kane County. } County Circuit Court
November Term thereof, A. D. 1859.

Alfred J. Groom
v
Henry M. Clark } Replevin

And now come on to be heard the above entitled suit, it being one of the days of the said November Term of said Court, the plaintiff appearing by W. D. Barry & A. M. Herrington his attys. and the defendant appearing by Eastman & Moore his attys

Plaintiffs Evidence.

First offered in evidence an instrument of assignment from Stephen March to Alfred J. Groom.

{Copy of Assignment}

This indenture Made this Eighteenth day of October in the year One Thousand Eight Hundred and Fifty Eight between Stephen March of St. Charles Kane county Illinois of the first part and Alfred J. Brown of the same place of the second part

Whereas the said party of the first is indebted to divers persons in divers sums of Money which by reason of sundry losses & Misfortunes he has become unable fully to pay and is desirous of providing for the payment thereof by an assignment of all his property and effects for that purpose

Now This Indenture Witnesseth that the said party of the first part in consideration of the premises and of the sum of one dollar to him in hand paid by the said party of the ~~first~~ Second part at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged hath granted bargained Sold assigned Transferred & set over and by these presents doth grant, bargain, sell, assign, transfer and set over unto the said party of the Second part his heirs executors administrators and assigns all and singular the lands tenements

hereditaments and appurtenances Goods Chattels Promissory Notes debts Choses in action claims demands property and effects of every description belonging to the said party of the first part or in which he has any right or interest whatsoever the same being more fully and particularly enumerated and described in a Schedule thereto hereunto annexed marked Schedule D.

To have and to hold the same and every part and parcel thereof with the appurtenances unto the said party of the second part his heirs executors and assigns

In Trust Nevertheless and to and for the uses intents and purposes following That is to say — First to take possession of the said property hereby assigned and to sell & dispose of the same with all convenient diligence and for the best price that can be obtained therefor and to convert the same into Money and to collect all such debts and demands as may be collectable and with and out of the Proceeds of such sales and collections

Secondly — To pay and discharge all the reasonable expenses costs and charges of executing this assignment and of

carrying into effect the trust hereby created together with a reasonable commission or compensation to the said party of the second part for his own services in executing the said Trust and out of the residue of the proceeds of said sales and collections

Thirdly, To pay and discharge in full if there be sufficient for that purpose all the debts and liabilities now due or to become due from the said party of the first part and which are particularly enumerated in a Schedule thereto annexed marked Schedule A. Together with all interest moneys due and to grow due thereon and if there be not sufficient of said proceeds to pay the said debts and liabilities in full then to apply the same pro rata so far as they will extend to the payment of the said debts and liabilities according to their respective amounts and

After payment of all the costs charges and expenses attending the creation of the said trust and the payment and discharge in full of all the said debts owing by the said party of the first part as in said "Schedule A" there should be a surplus of the said proceeds then

Fourthly To pay and discharge in full if there be sufficient for that purpose all the debts and liabilities now due or become due from the said party of the first part and which are particularly enumerated and described in Schedule B. together with all interest may due or to grow due thereon and if there be not sufficient of said proceeds to pay the said debts and liabilities in full then to apply the same pro rata so far as they will extend to the payment of the said debts mentioned in said Schedule B. according to their respective amounts And if after full payment of said debts &c there should be a surplus of said proceeds in money in the hands of the said party of the second part then

Fifthly To pay and discharge in full if there be sufficient for that purpose all the debts and liabilities now due or to become due from the said party of the first part and which are particularly enumerated and described in a Schedule thereto annexed Marked Schedule C. together with

interest monies due or to grow due thereon and if there be not sufficient of said proceeds to pay the said debts and liabilities in full then to apply the same pro-rata so far as they will extend to the payment of the said debts and liabilities according to their respective amounts. And if after payment of all the costs charges and expences attending the execution of the said trust and the payment and discharge in full of all the lawful debts owing by the said party of the first part of any and every description there should be a surplus of the said proceeds remaining in the hands of the said party of the second part then Lastly to pay over and return the same to the said party of the first part his executors administrators and or assigns

And for the better and more effectual execution of these presents and of the trusts hereby created & reposed the said party of the first part doth hereby make constitute and appoint the said party of the second part his true and lawful attorney irrevocably with full power and authority to do transact and perform all acts to such matters and things which may be necessary in the premises and to the

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full execution of the said Trusts and for the purposes to ask demand recover and receive of and from all and every persons & persons all the property debts and demands belonging and owing to the said party of the first part and to give acquittances and discharges for the same and to sue prosecute and defend and implead for the same and to execute acknowledge and deliver all necessary deeds & instruments of conveyance in the premises necessary for the purposes of said Trust and also for the purposes aforesaid or any part thereof to make constitute and appoint one or more attorney under him and at his pleasure to revoke the same Hereby ratifying and confirming whatever the said party of the second part or his substitutes may shall lawfully do in the premises

And the said party of the second part doth hereby accept the trust created and reposed by these presents and doth for himself & his heirs executors and administrators hereby covenant and agree to and with the said party of the first part his executors and administrators and

assigns that he the said party of the second part will honestly and faithfully and without delay execute the same according to the best of his ~~skill~~ knowledge and ability ~~in witness whereof~~
In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written

Signed Sealed & delivered the day and year first above written in presence of A. M. Harrington

Stephen March (Seal)
Alfred J. Groom (Seal)

"Schedule A"

The following debts due the below mentioned persons

Alfred J. Groom —	$140.00
Lucien P. Griffin	100.00
Richard Van Vlack	110.00
Bowman & Lloyd on a promissory note on which there is now due about	$100.00
Rent for Fleming	$27.00

Schedule B.

Three certain Promissory notes for $55.00 each given to Erastus Wallace by S. March & signed by Bowman & Lloyd as security, said notes were dated about 20th November ~~1855~~ 1856 The last two of above ~~Bowman~~ named notes now held or supposed to be held by - Lewis on which will be due about one ~~Hundred~~ Thousand and fifty dollars $1050.00

The first of above notes now held by Bowman & Lloyd and on which is now due about Three Hundred and forty three dollars $343.00

Schedule C.

A promisory note given by S. March to Lake Brown & Co for the sum of One Hundred and ten Dollars 39/100 $110.39 with interest thereon and due on the 5th day of November next.

A promisory note dated in augt. 1858 and due two months from date with interest thereon for the sum of Ninety one Dollars 38/100 $91.38 to Crawford & Low "A promisory note given to M. L. Hobart for the sum

of Sixty Nine Dollars and accrued interest and now over due $69.00

Two promissory notes Given to Head campbell & Head now due on said notes about One Hundred & thirty five dollars & interest thereon $135.00

A promissory note given to Pratt & Letchworth for the Sum of One Hundred & Eighty Dollars and int. thereon & now due $180.00

A certain account for Hubs due to Joseph Hibbard for the sum of One Hundred Dollars 100.00

A promissory note given to Cowing & Co for the sum of Two Hundred and Twenty Dollars or thereabout with interest thereon and now due $220.00

An account due to Cooly Farwell & co for Eighty Dollars $80.00

A promissory note given to Saml. De Golyer for the sum of thirty Nine Dollars & interest & now due $39.00

An account due to Occaboc & Foster for the sum of Eighty Dollars 80.00

A Promissory Note on which there is now due to J. S. Van Patten & Co Thirty five Dollars & interest 35.00

An account due to J. P. Turnald of about Twenty Dollars 20.00

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Balance of acct- due to Minard & Osgood of about Sixty Dollars	$50.00
An account due to Ira Minard for ground rent of Machine Shop &c.	70.00
An acct- due R.J. Haines for ground rent and et-ceteras	200.00
A Promissory Note dated Sep 6th 1858 given to Truman & Waite & due N 6th the sum of Two Hundred dollars & int.	$200.00
A Promissory Note given to N Whitbeck & Co of about Two Hundred and Two Dollars and an account to same of about Twenty dollars	$230.00
A Promissory note given to Ed. J. Hall & Co for the sum of Three Hundred & Sixty three dollars & int- thereon	$363.00
A Promissory note given to S.B. Smith for the sum of Twenty three Dollars and interest	$23.00
A Promissory note given to Joseph Dalton dated Oct. 1st 1856 for the sum of One Hundred & Twenty five dollars & interest & said note due March 1st	$125.00
An account due Joseph Dalton for work of about Forty dollars	$40.00
An account due for work due to Michael Canningan	12.00

An account due a firm in Indiana name & place unknown for Whiffletrees & Neckyokes about — $14.00

A promissory note given to L Baily date unknown for the sum of Thirteen dollars or thereabouts — $13.00

A Promissory note dated about Oct 3d given by me to Reed Ferson for the sum of Eighty Two Dollars and fifty cents for which he holds Hackett and Richards note for the same amount as Collateral Security — $82.50

Schedule of Am. of Notes and Accounts now due to S. March (Marked D)

A Promissory note dated July 13th 1858 Made by John & James Cleary for the sum of Ninety Dollars & due Jany. 15th "/59 — $90.00

A Promissory note ~~due~~ dated July 28th "/58 given by B. Seeping for the sum of One Hundred & Ten Dollars and due July 28th 1859 — $110.00

A Promissory note dated June 24 1/58 given by A. J. Taylor for the sum of Ninety Dollars and due Dec 24 1858 — $90.00

Said three notes are now held as collateral for My paid indebtedness To Drumm & Waite

A promissory note made by Andrew Jackson for the sum of Ninety Six Dollars & 70/100 & now due — $96.70

A Promissory note made by J. N. Bailey for the sum of Fifty Eight Dollars 45/100 and now due — $58.45

A Promissory note made by A. R. Whitney for the sum of fifty Eight Dollars — $58.00

Said three notes are now held by A. Whilbeck & Co as collateral security to My said indebtedness to them

A Promissory note given by D. M. Kelsey for the sum of about Two Hundred & Eighty Dollars and due any 1859 — $280.00

A Promissory note given by E. D. Bacon for the sum of One Hundred & Dollars and due about Nov 1858 — $103.00

Said two notes are now held by E. S. Hall & Co as collateral security for My said indebtedness to them

A promissory note dated April 13th

1858 made by Danl Denson at 30 days
after date with int. for the sum of Sixty
Dollars and on which is now due.
Sixty Five dollars & int. $45.00

A promisory note given by William
Stuart & Henry Vance dated Jany 16th
1858 nine Months from date for the
sum of Seventy Six Dollars & int.
with an endorsement of Twenty Two
Dollars as received on said note
Oct. 18th 1858 due on Same with int. $54.00

A Promisory note dated augt 22d
1857 made by Edward S. Thompson
and due Sixty days from date
for the sum of Ninety seven Dollars
and interest from date $97.00

A promisory note dated Sept 21st
1858 made by N.P. Dozier due one
year after date with int. for the
sum of Ninety Eight Dollars $98.00
106.

* A promisory note dated ~~Sept~~ May 21st/57
made by James A. Beverly for the
sum of Twenty Three Dollars & int.
and due Oct 1st 1857 $23.00

A. Promisory note dated Oct. 20th
1856 given by Crumb for the
sum of Eight Dollars and interest
& due May 1st 1857 $8.00

* A promisory note dated Sept 21 1858 made by N.P. Dozier for the sum of one Hundred & six dollars & interest due one year after date

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A Promissory note dated Feb. 8th 1856 given by Simeon and Ebenr. Shattuck for the sum of Fifty Dollars & int. & due Nov. 8th 1856 — $50.00

A Promissory note dated augt. 9th 1856 Made by Edward Haggard for the sum of Eighty five dollars & int. and due Nov. 9th 1856 — $85.00

A promissory note dated dec. 17 1857 given by Norris Dodd for the sum of One Hundred & Sixty Five Dollars & int. at 8 per cent and due six months from date — $165.00

Two Promissory notes dated October 21st 1857 one for fifty dollars due Nov 21 1857 one for forty five dollars due March 21st 1858 with int. both given by E. Mott — 95.00

A Promissory note dated Sept. 10th 1858 given by Nelson Waite for the sum of Sixty dollars & int. due Eight Months from date — $60.00

A Promissory Note dated Dec. 1st 1857 given by B. R. Pierce for Sixty four dollars & int. and due 15th April 1858 & an endorsement of four dollars & and thirty — $60.00

A Promisory note dated Nov. 6th 1857 given by Norris Dodd for Twenty Six Dollars 25/100 & due April 6th 1858 with int with an endorsement thereon of Twenty Dollars 20/100 as paid — $6.05

A promisory note dated June 20th 1857 given by Otto Lewis Jr for sixteen cords of Wood Value at Eight Dollars due 20th Sept. 1857 — $80.00 (Paid)

A Promisory note dated July 1st 1857 given by W. H. Jackson for the sum of Seventy Seven Dollars 75/100 due Sept. 1st 1857 with interest — $77.75

A promisory note dated July 1st 1857 given by W. H. Jackson for the sum of Seventy five Dollars & int due augt. 1st 1857 — $75.00

A promisory note given by James H Welsh for ninety nine dollars 56/100 dated Nov. 11th 1857 due april 11 1857 — $99.56

A Promisory note dated May 27th 1858 given by M. L. Mason & A. R. Mason for One Hundred & Twenty seven dollars 25/100 due act. 27th 1858 with int. — $127.25

A Promissory note dated May 15th 1857 given by Moses Hill for fifty Nine Dollars 50/100 & int. & due Nov. 15th 1857 — $59.50

A promissory note Aug. dated 26th 1857 given by J. W. Mumford for the sum of Ninety five Dollars & int. and due Nov 26th 1857 — $95.00

A promissory note dated May 1st 1857 made by Spafford J. Smith for Ninety Dollars & int & due Nov 1st 1857 — $90.00

A promissory note dated Jany 1st 1858 made by Henry S Bumper for thirty five dollars & int & due May 1st 1858 — 35.00

A promissory Note dated Oct 16th 1858 for one of Whitaker & Co's first Class Reapers due Sep 16th 1859

A promissory note dated Oct 16th 1858 given by John C Whitaker & co for Twenty five Dollars due Oct 16th 1859 — $25.00

A promissory note for the sum of Ninety Dollars & int. in hands of J Trumbull Sugar Grove P.O. Address Hicks Mills Makers name & date unknown — $90.00

Schedule of Assets Marked (D)

23	Lumber Wagons finished	@ 80.	$1840.00
6	" " without boxes	@ 72.	432.00
1	Rockaway carriage large size		225.00
1	" " "		200.00
1	" " "		200.00
1	Leather Top Buggys		180.00
2	single Democrat "	@ 90.	180.00
5	Lumber Wagons Gearings		30.00
7	Sett of light wheels	@ 10.	70.00
1	pr Bulky "		5.00
8	Sett Lumber Wagon Wheels	@ 12.	96.00
2	Sliding Seat Buggy bodies	@ 20.	40.00
4	open " "	@ 10.	40.00
2	Democrat " "	@ 10.	20.00
1	Britska carriage "		25.00
4	Buggy Gearings & Thills	@ 5.	20.00
2	one Horse wagon Gearings	@ 3	6.00
9	Wagon Seats	@ 1.	9.00
3000	Spokes	@ 50.	150.00
3000	Fellors	@ 70.	210.00
15	Sett Thimble Skeins	5.	75.00
1000	lbs of various Kinds of Iron		40.00
2	Sett Buggy Axletrees		8.00
80	" Neckyokes		80.00
500	Wagon Hounds		30.00
38	" Reaches		3.80
40	" Bolsters		5.00
			$4239.80

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	amount brought over		$4239.80
50	Wagon Sand boards		6.25
38	" Axeltrees		19.00
8	Set bent fellows		16.00
16	Wagon Poles		6.40
100	Neck Yokes & Whiffletrees		10.00
1	Set of Callings		20.00
3	pr of bent Shafts		1.50
6	Set Buggy Spokes		12.00
about 700 feet of soft lumber			14.00
Stone Shop and wood addition thereto			1500.00
3	pair of Bellows	$5.	15.00
3	anvils	$5.	15.00
2	Iron Vices	3	6.00
1	Hand Drill		3.00
16	pairs of Tongs	@ 3/-	6.00
3	Sledge hammers	6/-	2.25
4	Hammers	4/-	2.00
2	Set Hammars	2/-	.50
4	handle Punches	3/-	1.50
24	hand "	1/-	3.00
5	screw plates & Tacks	$3.	15.00
4	Heading Tools	2/-	1.00
6	Work Benches	$3.	18.00
6	Wood Vices	4/-	3.00
1	Morticing Machine		5.00
4	Wheel Pits	2/-	1.00
3	box stoves & Pipe	$5.	15.00
1	Set 5 in. Springs on the way from Chicago		8.00
			$5988.70
12	Seat Democrat at Dunn & in hands of H. H. Clarke		120.00

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Amount brot forward		$5988.70
1 Grind Stone		1.00
1 Office Desk & Table		5.00
700 carriage Bolts	$1.50	10.50
3 Gross Screws	.40	1.20
Wood files		4.50
papers of Tacks		.55
12 yds Coach Lace	2/-	3.00
6 " Enamelled	4/-	3.00
Demask "	4/-	3.00
Plated Bands	4/-	1.50
Press & Set of leather Stamps		5.00
of leather stamps		2.00
2. Oil Cans		4.00
		6032.95
Deduct for Rockaway	2.00	230.
also Lumber	30	5802.95

My interest in a certain lease of land on which my shop now stands from R. J. Haines which lease expires in May 1st 1860

Also A Lot situated in the town of Franklin Lee county, State of Illinois and the store standing thereon described as Lot No 11 in Chaplin situated on the corner oposite J. H. Hughes Hotel in the Village of Franklin Grove Lee County ~~Ills~~ aforesaid or any interest I may have in said lot Also the accounts & Books due thereon and

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B. B. Payne, sworn, I Know the parties – reside in St. Charles – I heard the plaintiff in this suit demand of the defendant Seven thimble skeined double lumber wagons, one two seated Rockaway carriage, one single leather top buggy. It was on the morning before the property was replevied. I went with Groom to demand the property, we then returned to Barry's office. The papers were then made out. This was in February. the same day the property was taken from Clark. Clark was not at Barry's office when we returned after demanding the property.

Cross Ex by Defts Counsel. I Know Stephen March

A. P. Kniffin sworn. I reside in St. Charles, Know the parties, have worked for some years at the Kane County Carriage Manufactory in St. Charles. worked for Stephen March there. March made an assignment in October, 1858, and I Know, that Groom took possession of the property immediately after the assignment, the same day.

I worked in the shop at the time, Groom was made assignee & continued the business afterwards, and controlled it. The property in question, was on the premises since the assignment. one Rockaway two-seated, one top buggy, do not recollect whether there was five or Seven double wagons. I think there was as many as ten double wagons on the premises at the time of the assignment. I have worked there since the assignment to the present time. The property mentioned is same as replevied by Groom.

Cross Examined. I have worked for Groom since the assignment. I have been finishing up work, and making new work, & repairing. March was about the premises both before & after the assignment, he neither worked much before nor after — I worked for Groom since the assignment and he has paid me, no other person worked in the shop but me, I am a creditor of March, we have never had a final settlement, there has been no understanding between me & him that I was to be paid my demand

March owed one at the time of making the assignment about $100. I worked two years for March. The shop has been kept open since the assignment. do not know the exact amt of property on hand at time of the assignment. think about 10 lumber wagons, some light buggies, about 5 or 6. lumber wagons were worth $75 to $80 each. the buggies about $150 each. was some material on hand. should think $400 or $500 worth or more. might be worth $1000. I should say $700 to $800. Groom said there were some notes assigned. some of which were good & some bad. Groom has a paint shop in same building where I worked. He done March's painting. the sign over the shop reads. "Kane County Carriage Manufactory" There has been no change of sign since the assignment. I owed Minard & Osgood. done any trading there. I paid them by turning them ~~by turning them~~ out a wagon from the shop. since the assignment by Grooms request. the wagon more than paid my debt. the balance $13 was turned on March's acct. there I heard Groom say that March had

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gone out West to collect some notes since the assignment. the same that were left with Freeman & Waite as collateral security. have known Groom 15 years. he has always worked at painting. Heard Groom say he had paid a debt of some $25 to S. B. Hunt that March owed him.

Plaintiff here rests.

Defence.

A. P. Griffin called. I was present when Clark (Deft) came first time to levy on the property. He took some lumber wagons. heard Deft say he came to levy on some wagons. I do not recollect the second time he came there. I now recollect the second time. he left the carriages in the shop the last time. he took a top buggy & a Rockaway. Groom paid Hunt by giving him a carriage wood worth $21 or $22. Heard Groom speak of settling a debt of Minard & Osgood which March owed them. Groom is a man of family. lives in a house owned by Dr. DeWolf. Groom never owned a house in St. Charles. he owns some tools worth perhaps $50.

Knew Croom in New York - he never followed any business but painting. I never knew of his having any property but his tools worth perhaps $50. he has no other property - no real estate - his family consists of a wife & daughter. married - he might earn $2 to $3 per day at his business. his habits for industry are good - his house is furnished comfortably. I have seen him drink liquors - have seen him feel well years ago - his companions are Barry, Gale, Miller & such men - I have seen no change in his habits since the assignment - he has been disposing of the property - never have seen him sell any - I am intimate with him in his business relations. Know of his selling a wagon a short time ago to Harroun & taking his note for it, this wagon was partly made before the assignment. I have heard March talk about the work since the assignment. The key was usually kept over the door - have seen March take it & open the door & go in as before the assignment.

Cross Examined by Duff -

The same property was replevied as taken by Clark. I think Croom saw & examined the Executions. was about a year ago.

Deposition of Erastus Hallock
read under the first plea.

Deposition of Erastus Hallock of the county of Kane, and State of Illinois a witness aged about twenty eight years, produced, sworn, and examined, before me. A R McWayne, a Justice of the Peace in and for the County of Kane, and State of Illinois, on the fifth day of March, A.D. 1859, at the house of D. L. Eastman (by agreement of parties) in the town of St. Charles, in said county of Kane, in the presence of the said Plaintiff, and said defendant (by his attorney D. L. Eastman;) on the part of said defendant in a suit now pending and undetermined in the Kane County Circuit Court, wherein Alfred J. Groom is plaintiff, and Henry M. Clark is defendant.—

First Interrogatory. Please state your name, age, and business?

Answer to 1st Interrogatory. My name is Erastus Hallock. I am twenty eight years old next May, business Mercantile.

2d Interrogatory Do you Know the parties named in the title of these Interrogatories, Alfred J. Groom, and Henry M. Clark. If yea, how long have you Known them respectively?

Answer to 2d Interrogatory I do Know them have Known them about four years.

3d Interrogatory If you are acquainted with Alfred J. Groom, how long have you Known him, what is, and has been his business, for whom has he been employed; if for any person or persons since June 1858 State fully and definately.—

Answer I have Known him about four years his business has been carriage painting house painting &c. I believe he has been carrying on business for himself.

4th Interrogatory State what shop said Groom has occupied since June AD 1858 and about whose work has he been employed — mainly, since that time?

Ans He occupied Stephen Marchs shop. and done his work.

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5th Interrogatory Are you acquainted with A J Groom pecuniary means, and ability, & have you been for the last year; If yea, state what they are and have been. for the past year the amount, kind and value of his property during the past summer, & at the present time, state fully and definately:

Answer to 5th Interrogatory I think I am, have been for the last year. I think he does not own any property of any amount, he had his paint, tools and I suppose owned some stock in paints. I dont Know of any further property. could not state the value.

6 Interrogatory Had the said A. J. Groom on or about the 18th day of October A.D 1858. any real estate to your Knowledge, if yea. state the value of the same.

Ans— He had none to my Knowledge.

7 Interrogatory If you cannot state the value of the tools, stock & personal property of the said A.J. Groom, on or about the 18th day of October, A.D 1858 definitely, state whether such property would

exceed in value one hundred dollars, if yea. state how much. If nay. state how much less.

Ans I should think it would exceed one hundred dollars. it may go as high as two or three.

8th Interrogatory Describe all the property belonging to A. J. Groom on or about the 18th day of October 1858. and its value according to the best of your Knowledge.

Ans His paint tools & paints and household goods, is all the property that I know anything about that he claimed, I could not state its value

9th Interrogatory State the value of his paints, and paint tools Oct 18th 1858.

Ans I should not think they would exceed a hundred dollars

10th Interrogatory Had he any other household furniture except what was used for his own household purposes in his own family, to your Knowledge? If yea

state what it was.

Ans He had none to my Knowledge.

11th Int Has the said A. J. Groom been possessed of any property, in his own right, since June, AD 1858. to your Knowledge, if yea, state what it was. when he was thus possessed, and its value; state fully and definitely & whether your acquaintance with him is such that you would be likely to Know the substance of his property since June 1858.

Ans He has not had any to my Knowledge excepting what I have mentioned before. I should think that I would be likely to Know what he had, if any.

12th Int. Please to state whether or not you was acquainted with Stephen March on the 18th day of Oct 1858. and prior thereto, and whether or not you Know of his making a pretended assignment to said A. J. Groom, on or about the 18th day of October, 1858. If yea, state where said March resided, at the time

of making such assignment, what his business was, what relation said Groom had sustained to said March in his business if any, prior and up to the making of such an assignment, state fully

Ans I was acquainted with him, and knew of his making such assignment. he lived in the Town of St Charles and carried on wagon and carriage business, and employed Mr. Groom to do his painting.

13th Interrogatory If said March done business, in St. Charles, state whether or not there was any perceptible change, in the control of the business after the making of said assignment whether or not the said March controled the business, in fact, as he had always done, what acts of control of such business he performed, if any, to your knowledge, state fully.

(Interrogatory objected to by Defendant

Ans. I think there was not any perceptible change in the control of the

business. I think Mr. March controled the business as he had done previous to the assignment. I dont Know of any acts excepting I was concerned in a judgment obtained against me and said March, & I spoke to Mr. Groom, about settling it up. He told told me that he thought that it ought to be paid, and as far as he was concerned, he was willing to fix it up, but he wanted that I should see Mr. March and see what he was willing to do about it; and whatever arrangements I could make with March, he would agree to. furthermore Mr. Groom told me that he had taken up a note at Freeman & Waites and had paid a part of it, and got the balance extended, his reasons for so doing was Mr. Freeman and Waite held notes belonging to March as collateral security for said notes, and Mr. March told said Groom that those notes held as collateral were perfectly good, and would be paid at maturity, and upon the strength of what Mr March told Groom, he Groom had used all the means that he could command &

had even sold a buggy to Mr. Burchell for less than it was worth in order to get money to pay Freeman and Waite. and after he had paid them and taken up two of the notes held as collateral, he gave them to Mr. March to take them out west. & collect the same. and that said March returned, and reported that he could not collect a cent upon them. I don't know of anything further except that he March was around the premises as usual.

14th Int. Did you learn from Mr. Groom or otherwise the amount of the note referred to in your last answer paid to Freeman and Waite. If you, state the amount.

Ans. I think Mr. Groom told me it was about two hundred dollars, and that he paid one hundred of it, and got the balance extended.

15th Int. State whether or not you learned from Mr. Groom that he took up this note, and made the arrangement spoken of in your answer to the

13th Interrogatory of his own volition or whether he did it at the instance of any other person & if at the instance of any other person, at whose instance.

Ans He stated to me that he made the arrangement, and took up the note upon the strength of what Mr. March said in relation to those notes held as collateral.

16 Interrogatory obj by Pltff State whether or not you learned from Mr. Groom that he should not have made the arrangement in relation to the note at Freeman & Waites and spoken of in your answer to the 13th Interrogatory, had it not been at the instance of some third party. If yea, state at whose instance.

Mr. Groom told me that he should not have made the arrangement before mentioned, had it not been for Mr. March.

17th Int. Was there any property in said March's possession about the time of making said assignment to said

Groom, that was not named in the Schedule of said assignment, to your Knowledge. If yea, state what it was, its value when it was taken away if at all; who had it, or what became of it, and what said Groom said about its not being Scheduled, and when, State fully and particularly.

Ans. I could not say that there was any that was not in the Schedule.

15th Int. Obj. to by Plff. counsel

Has said Groom controlled independantly of said March the property pretended to be assigned him by said March, on or about the time aforesaid. If not, state when he has not done so, and what said Groom has said since said assignment, touching the fact that he was not free to dispose of, or control such property, without said March's consent or approval. State fully and definately.

Ans Obj. to by Plff

I think he has not controlled it independently. I think he did not control it independently at the

time that I tried to settle up that matter against myself and March. and also at the time he paid that note at Freeman and Waites

19th Int. Who has been employed, if any one by said Groom or March, about the business of said assignment, in completing the work in the shop of said March, what work has he completed? and what other Kinds of work has he been engaged in, relating to the said assigned property, if any. State fully and particularly.

Ans. Mr. Knippen has been to work in the shop since the assignment was made, I don't Know of any work in particular that has been completed. all that he has done to my Knowledge is to make some two horse gearings. I have seen him to work on same and saw some six or eight piled up in the room where he was to work.

20th Int. Objected to by Defft. What has been the business of said Stephen March, since the making of said supposed assignment. If

he has been engaged in and about the business of his shop or its proceeds. State in what manner, and how his actions and relations, to his property and effects, so assigned, have differed, if at all, since the time of his supposed assignment, from his acts and relations to the same property, before the time of such assignment. State facts.

Ans I believe he has been out west two or three times with some notes to collect, all that I know of his business is, that I have seen him around the shop as in times previous to the assignment.

21 To whom were the notes referred to in your last answer made payable to?

Ans Mr. Groom told me that he sent him out there with notes that were taken for wagons sold there. I could not say who they were payable to.

22 What were said March's habits prior

Obj. by Pl'ff

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to his making said assignment, with reference to Sobriety If you Know, and what have they been since if you Know? State fully and definitely, and how his habits affected his business capacity if at all?

Ans He was in the habit of drinking to excess at times, and was not capable of doing business at such times. Since the assignment was made I think he has drank more than what he did previous, and is more reckless than what he has ever been before since I have Known him.

23d Int. obj by Plff

If you Know, state whether or not the said March was in the habit of gaming for money, and other things, prior and subsequent to the time of such assignment, and whether if such is the fact, said Groom Knew of it, and also of his habits of Inebriety at or subsequent to said assignment. State your reasons why you think said Groom was Knowing to such habits of said March.

Ans. I have seen him playing for money previous to said assignment but have not seen him since. Mr. Groom did know of his playing for money, previous to said assignment, and also of his inebriety. My reasons are that Mr. Groom was playing with him.

24 Int. obj. by plff. State whether or not you know from Mr. Groom or otherwise, that he, Mr. Groom has paid, or caused to be paid at the instance of Mr. March since the making of said assignment any debts or demands in full, enumerated in the second or third class in the Schedule of said assignment. If yea, state to whom such debt or debts were paid, and the amounts thereof as near as you can recollect.

Ans. Mr. Groom told me that he had paid Freeman and Waite a demand they held against March for the reason that Mr. Freeman and Waite held notes as collateral for the said demand.

25th Interrogatory. Do you Know of any other debts in the second or third class mentioned in said assignment being paid in full. If yes, state to whom such debt was paid and the amounts thereof.

Ans Mr. Groom told me that he had paid a demand Reed Hersons held against March. I think he said it was eighty or a hundred dollars.

26th Int. obj by Plff If you Know, state whether or not said A. J. Groom since August A.D. 1858, has been in the habit of gaming for money or other things, and whether or not said March Knew of such habits of said Groom at, or prior to the time of making said assignment.

Ans. I dont Know of his playing for money only at one time, and that was about two weeks previous to said assignment. Mr. March was Knowing to the fact.

27th Int. obj. by Plff. If you Know, state whether or not the said A. J. Groom has been

in the habit of using intoxicating drinks to excess, since June, A.D. 1858. and whether he is not at times addicted to sprees and the use of strong drinks.

Ans. I could not swear that he has been in the habit of drinking to excess. and I could not swear that I had seen him on any sprees since that time.

28th Int. obj. State, whether or not said A. J. Groom has been on a spree or sprees since you have known him, and whether or not he has during such time, been the worse by the use of Intoxicating drinks. If yea, state about when the last spree was.

Ans. I have seen him when I thought he had been drinking to excess. The last time that I can recollect of, is something over a year ago.

29th Int. obj. by Def'ts State what you have heard A. J. Groom say of anything, relating to the payment of a demand or note held by Freeman & Waite against

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Stephen March. And at whose instance if any one he paid the same or any part thereof. State concisely and directly.

Ans. He said he had paid a part of a demand that Freeman and Waite held against March at Mr. March's suggestion.

3o Int. State the amount of the demand so held by Freeman and Waite.

Ans. I understood by Mr. Groom that
obj by Pltff it was about two hundred dollars.

Cross Interrogatories.

1st Cross Interogatory. Did you ever see A. J. Groom so intoxicated that he was not capable of doing business?

Ans. I think I have.

2d cross Int. When was it.

Ans. Something over a year ago.

3 cross Int. State the year, month, and the day of the month.

Ans. It was in 1857 I think it was in December. can not state the days.

4th cross Int. Where was said Groom when you saw him intoxicated?

Ans. In Mr. Hoss' Restaurant.

5th cross Int. How long did you see him in Hoss's Restaurant?

Ans. Perhaps half an hour or over.

6 cross Int. What was you doing there during that length of time?

Ans. I was eating oysters a part of the time. the balance was lounging around the room

7th cross Int by Def. by Def. Did you drink any Intoxicating drinks during that day?

Ans. I drank one glass of beer while eating oysters

8 cross Int by Def. by Def. Did you drink any more intoxicating drinks than that one glass of

beer during that day?

Ans. Not to my recollection.

9th cross Int. What time did you go away from Hoes. saloon that day?

Ans. About half past nine or ten o'clock in the evening.

10th cross Int. Did any one help you home that night?

Ans. I dont recollect of being carried by any one.

11th cross Int. How many times did you see A. J. Groom drink beer while you was in Hoes's Restaurant? at the time spoken of by you?

Ans. I could not say that I saw him drink any.

12th cross Int. Did you see him drink any liquor upon that occasion whatever?

Ans. I could not say that I did.

13th cross Int. When did you see A. J. Groom gambling for money? State the year the month, and day of the month.

Ans. In 1858 the forepart of October, could not state the day of the month.

14th cross Int. Where was it?

Ans. In the back room of Doss's Restaurant.

15th cross Int. Who was he a gambling with upon that occasion?

Ans. Myself, Mr. March, & George W. Barr.

16th cross Int. obj by Def At what games were you playing upon that occasion?

Ans. obj obj I believe it was what is called poker, 5 cents ante

17th cross Int. How much money did Groom loose upon that occasion?

Ans. I could not say as he lost any.

18th cross Int. How much money did you loose upon that occasion.

Ans. I lost just the amount that I told them I should when I went in to play, that was twenty cents.

19th cross Int. Did you ever know A.J. Groom to gamble for money upon any other occasion?

Ans. No sir.

20th cross Int. obj by Def Are you one of the defendants in a suit of Hutton against March & Hallack in which an execution was issued in favor of said Hutton against said March and Hallock for about the sum of one hundred and fifty dollars, and costs of suit.

Ans. I was one of the parties that was sued by Mr. Hutton.

21 cross Int. obj by Def Has there ever been an Execution issued and put into the hands of W. W. Clark in favor of Joseph Hutton for about the sum of one hundred

and fifty dollars, against yourself and Stephen March.

Ans. I believe there has.

22 cross Int. Has that Execution ever been paid or in any way satisfied to your Knowledge.

Ans. It has not to my Knowledge.

23 cross Int obj by Def. Do you Know the property in controversy between A. J. Grooms plaintiff, and Henry M. Clark, defendant in this suit.

Ans. I have seen the wagons that Mr. Clark levied on.

24 cross Int obj. by Def. Do you Know who the Execution was in favor of, and who they were against upon which the property in Controversy was taken, if so, state the names of the Plaintiffs and the Defendants in said Execution.

Ans. I do not Know.

25 Cross int obj by Def

Do you Know any of the Defendants against whom an Execution issued, and upon which the property in controversy was taken: If so, state who.

Ans. I do. Mr. March.

26 Cross Int obj by Def.

Was ever there an Execution issued to your Knowledge in favor of any person and against March and Bullock If so, state in whose favor said Execution issued.

Ans. obj by Def.

There was an Execution issued against me and March in favor of Joseph Fulton.

27 Cross Int.

State if you Know what property was levied upon, if any by the Sheriff to satisfy the Execution in favor of said Joseph Fulton, and against you and March?

Ans. obj. by Def.

I understood Mr. Clark to say that he had levyd on a Rockaway. Top Buggy & Lumber wagon.

28th Cross Int. obj by Def

Did you not direct Henry M.

Clark to levy upon the property spoken of in your last answer.

Ans. I did not.

29th cross Int. obj. by Def. Do you Know of any persons pointing out the property, or telling said Clark to levy upon the same. If so, state all you Know upon that subject.

Ans. obj. by Def. I heard Mr. Lewis tell Mr. Clark what to levy on.

30th cross Int. obj. by Def. Was you ever in company as a partner with Stephen March. If so. when did the partnership commence. and how long did it continue.

Ans. I was in company with him. I think the partnership commenced in March or April, A.D. 1855 and ended September twentieth, 1857.

31 cross Int. obj. by Def. Have you been in company with any person since that time; If so, state whom.

74 Ans. I have been in company with J. P. Lewis, and am in partnership with him at the present time.

32 cross Int. obj by Def. Have you transferred your property to any person since the issuing of the execution in favor of Hulton and if so, state to whom it was transferred.

Ans. I have never transfered it to any one.

33d cross Int. obj. by Def. Did you not tell Mr. Clark that you had no property to turn out upon said Execution.

Ans. I told Mr. Clark I had no individual property to turn out.

34 cross Int obj by Def. Did you not refuse to turn out any property, either individual or company, to satisfy said execution.

Ans. I did.

35 cross Int obj by Def Did you not refuse to pay said Execution.

Ans. I told Mr. Clark that I could not pay it at that present time.

36th cross Int obj by Def. Have you ever transferred any property of any description, to J. P. Lewis, or Perry Lewis, within the last 6 months. If so, state the amount of property, time and description.

Ans. I never have.

37th obj. Did not Groom tell you that March had returned to him the notes which he Grooms had sent out West by said March for collection, which you have spoken of in your answers to the direct interrogatories, in the same conversation, that he Groom had with you when he told you that he had sent said notes by said March to be collected.

37th cross ans obj. He told me that he had returned the notes, but I think it was not at the same conversation.

38th cross Int obj by Def Did not Groom tell you in the same conversation that you had with

him, and spoken of in your answer, to the direct interrogatories concerning the notes taken up at Freeman and Waites & and concerning his said Groom sending the notes out west to be collected by said March, that he said March could not collect anything & and that he said March had returned said notes to said Groom.

Ans. He did not to my recollection.

39th cross Int obj by defendt. Did ever said Groom tell you that said March had returned said notes to him.

Ans. He did.

40th cross Int. obj. by defendt When was it?

Ans I think it was in January. Could not state the time precisely.

41 cross Int When did you have the conversation with said Groom as referred to in your answer to the 13th direct Interrogatory?

41 ans. I think it was in January, cannot state the day.

42d Cross Int obj. by Def. Did you ever have more than one conversation with said Groom upon the subject referred to in your answer to the 13th direct Interrogatory.

Ans. I did.

43 Cross Int How many conversations have you had with said Grooms upon the subject referred to in your answer to the 13th direct Interrogatory.

Ans. I talked with him some three or four or perhaps more different times.

44 Cross Int. In any one of the conversations you had with said Grooms upon that subject in your answer to the 13th Interrogatory, did not said Groom tell you that said March had returned said notes to him said Grooms.

Ans. I can not recollect that he did.

45th Cross Int. You say in your answer to the

43' cross interrogatory that you had three or four, and perhaps more conversations with said Grooms in relation to said notes. Did not said Grooms tell you in some one of those conversations, that March had returned said notes to him said Grooms.'

Ans. I could not say that he did.

46th cross Int obj by Def — Did he ever tell you so?

Ans obj by Def — He did.

47th cross Int — When did he tell you so?

Ans. obj by Def — I believe it was in January.

48 cross Int. obj by Def — In what conversation did he tell you so?

Ans. I don't recollect any conversation in particular only in relation to that matter.

49th cross Int — Where was the conversation you had with said Groom referred to in your answer to the 13th direct Interrogatory?

Ans. A part of it was in front of Bowmans & Lloyds upon the sidewalk & a part between Hunts harness shop and Brooks store, & I think I talked with him in relation to the matter in Mr. Doss's one evening.

50th cross Int. Was that all the conversations you had with said Groom, at different times and places referred to in your answer to the 13th direct Interrogatory?

Ans. I do not recollect whether it was, or was not.

51 cross Int obj by Def. Where was the conversation you had with the said Groom when he told you Mr. March had returned said notes to him said Grooms.

Ans. I believe it was in the store occupied by Lewis and Wallach.

52 cross Int obj by Def. State that conversation in full from beginning to end.

Ans. I could not state it in full.

53 cross Int obj by Def

Can you state any part of it, & if so, state all you recollect of it.

Ans. obj by Def

I think I asked Mr. Groom if Mr. March had got back from out west yet, he told me that he had. I then asked him what luck he had had in collecting. He told me that he did not collect anything. I talked with him then about the propriety of his putting notes in March's hands for collection. I said to him that I did not consider him a very trusty hand to send out collecting, and also remarked that I thought a majority of the creditors would not. Mr. Groom remarked that he did not feel exactly right about it, but Mr. March had returned the notes into his possession again. I do not recollect any farther conversation

54th cross Int obj. by Def.

Did you refer to any part of that conversation in your last answer, in any of your answers to any of the direct interrogatories?

Ans. –

I do not recollect whether I did or did not.

55th cross Int obj by Def

Did you ever see Stephen March use or handle any of the property mentioned in the Schedule of his assignment, since the 18th day of October last?

Ans. Not to my recollection.

56th cross Int obj by Def

Have you seen any of the property mentioned in the Schedule of assignment made by Stephen March, in his said March's possession, since the 18th day of October last.

Ans. I have seen some of the property at the shop, but could not say who had possession of it.

57th Cross Int. obj by Def

Has not Mr. Groom been in the shop almost every day since the 18th day of October last?

Ans. I have seen him there often.

58th cross Int obj. by Def.

Have you seen Stephen March in the shop at any time since the 18th of Oct. last, when Groom was not there.

57 Ans. I could not say whether I had, or had not.

59 cross Int. obj by Def. Have you seen Stephen March sell or dispose of any property mentioned in his Schedule of assignment since the 18th day of October last.

Ans. obj by Def. I have not.

60th cross Int obj by Def. Do you not Know that Mr. Groom has been an industrious hard working man since you have Known him in St. Charles?

Ans. I think he has worked as hard as the average of men.

61st How long did Groom work for March and Wallack, painting?

Ans. I cannot tell how long. I think probably a year and half.

62d cross Int. Did he work steady, and was he industrious during that time.

Ans. He worked as steady as mechanics usually do.

Direct Examination Resumed.

31 direct Interrogatory. In your answer to the cross Interrogatories you have spoken of a restaurant kept by one Doss. State whether or not said Doss kept in said Restaurant, intoxicating drinks for sale. & whether or not, there were implements of gaming kept in the same building by him. If yea, state what kinds of liquors were so kept and what kind of implements for gaming were so kept or used. Please answer definitely.

Ans: He did keep intoxicating drinks for sale, and also gaming implements I could not state any kinds of liquor excepting Beer and Sherry Brandy. He kept Billiard Tables for gaming implements & also cards.

32 Int State whether or not the said March and Groom, or either, and which of them were in the habit of frequently spending their leisure hours or evenings, or either of them, at said Restaurant, before and after the 18th

day of Oct last.

Ans. I have seen Mr. Groom at Mr. Foss's evenings frequently. I have never seen Mr. March in there more than two or three times.

33d Int. Obj by Pltf. State if you know of how many members Mr. Grooms family has consisted, and whether or not he has accumulated property since he has lived in St. Charles. If yea, state how much.

Ans. His family has consisted of himself, wife and daughter, and I do not know of his accumulating any property.

31st Int Obj by Pltf In your answer to the 30th Interrogatories, you speak of Mr. Grooms, attendance at the shop after the 18th day of October last. Was there any difference in his attendance prior and after said assignment at said shop. If so, state what that difference was.

Ans. There was no difference to my knowledge.

35th Int. obj. by Pltf

What sign had the said A. J. Groom, if any, over one of the doors of said shop prior to the 18th day of October last; and has there been any change since.

Ans. I believe he had a sign lettered A. J. Groom, Painter, or house and sign painter. I dont remember which it is & and there has been no change since that I have noticed.

36 Int. obj Plaintiff

What sign was upon the shop of said March, prior to said assignment, except the one already mentioned and has there been any change since.

Ans. A sign lettered, Kane County Carriage Manufactory. There has been no change since.

37 Int. obj.

You speak of not seeing Mr. March sell any particular piece of property since the 18th day of October last; Do you recollect of seeing

him sell any particular piece of property for two months prior to that date. if so state what it was.

Ans. I dont recollect of seeing him sell any.

38 Int. obj. by Pltff

What business, if any, has said March been engaged in since the 18th day of October last; and around what property or building, if any, has he spent most of his time.

Ans. I dont Know as he has been engaged in any business in particular. I could not say where he spent the most of his time. I have seen him at the shop occasionally, and also at the stores opposite to the shop.

39 Interrogatory obj. by Pltff

Have you Known of said March since the 18th of October last making any efforts to sell or dispose of any carriages or property in his possession at the time of making said assignment. If yes, state about when, and to whom.

Ans. I have not.

40 Interrogatory obj by Defs

State whether or not the said March has been about his said shop since the 18th of October last, to all external appearance as he had been before that date as the proprietor of the same. If not, state in what respect he has been different, and if you know whether he has a Key to said shop.

Ans. I have seen no material change; could not say whether he has a Key or not. I believe the Key is usually kept over the door, and I have seen him take it down from there occasionally, and go into the shop.

41 Int. Has there been any change in the place of keeping the Key to said shop before and since said assignment?

Ans. There has been none to my Knowledge.

42 Int. obj by Defs You speak of a Judgment in favor of Dalton against March &

Wallack. State who was to pay the note upon which the judgment was predicated, at the dissolution of March & Wallack, and when such note became due, and whether or not Mr. Fulton knew that Mr. March was to pay said notes. If so, how long did he know such fact before said note was sued.

Ans. Mr. March was to pay the note and Mr. Fulton was knowing to the fact more than a year before it was sued.

43d Int. obj to by Pltf

State what Mr. Fulton said to you since obtaining the judgment upon the note referred to in your last answer touching the payment of said judgment by March, and what, if anything, touching efforts upon said Fultons behalf as to the collection of said Judgment from March.

Ans. Mr. Fulton said to me that it was right and just that Mr. March should pay the debt, and that he should collect it out of him, if it was a possible thing so to do, and

that he would not trouble me on it, unless he failed to collect it out of March.

44 Int. obj by Pltf

You speak in answer to the Cross Interrogatories, of stating to Mr. Clark in substance that you could not pay the Execution then, and also of a conversation of Mr. Clark in refusing to turn out personal property or company property to satisfy said Execution. If, in either or any of said interviews said Clark said anything touching the reasons, or the fact of his applying or demanding to you for the payment of said Execution. State all he said at either or any of said interviews touching the subject as fully as you can recollect; applying to the payment, or demanding pay thereon.

Ans. Mr. Clark said to me that he did not want to urge the thing up, but Judge Barry was urging him every time he saw him to put the thing through, and collect it out of me. He stated that Judge Barry had a

spite against the Lewis's and he wanted the thing urged up.

45th Interrogatory. State what Mr. March has said to you, if anything, at or about the time of making said assignment as to the reasons why he made the assignment.

Ans. He said he should not have made the assignment, had it not been for Hulton's suing him.

Cross Interrogatories resumed.

63 cross Interrogatory. Have you in any way, directly, or indirectly, paid, or in anywise satisfied the Judgment of Hulton against March & Wallack, either to Hulton, or to any other person.

Ans. I have not

64 cross Int. Have you turned out any property or made any payment, or given any security to J. K. Lewis, or any other person, for the satisfaction or security of said judgment?

Ans. I have not.

Erastus Wallack

State of Illinois
Kane County. } ss I. A.R. McWayne
a Justice of the Peace
in and for said County, do hereby
certify that the foregoing deposition
was taken by me at the time and
place mentioned in the caption thereof.
and that the said Witness was first
duly sworn, and that the said depo-
sition was carefully read to the witness
and signed by him.

Justices fee
6025 words
$10.38.
Cert 1.00

Dated this 7th day of March. 1859.

A. R. McWayne
Justice of the Peace.

Reed, Herson sworn — Know the parties to this suit. March was indebted to me the 18th of October, AD 1858 — about $80. or $90. I was paid when the note became due by Groom. It was since the assignment from March to Groom.

Cross Examined. I held collateral security for the payment of March's note to the amount of $150 to $160. They were notes payable to March — Groom to keep the collaterals when he paid me. Grooms habits so far as I know are good. See him almost every day —

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never saw him intoxicated. Do not know where he spends his time when not at work. he is honest so far as I know. I think he is sharp enough so far as my deal was concerned.

Doct Resumed. I never saw him do any business except paint - he lives in Dr. DeWolf's house. I paid Groom on settlement $30. besides March's note. I took other notes for my pay. paid him the difference - one note was against Charles Probert - one against Nelson Waite - Groom is as industrious as I am - I don't know as his drinking affects him.

W. G. Gale sworn - I have known Groom four or five years. I have frequently seen him in Kingsburys Saloon with others playing cards, - over or twice a week, during past six months - he played for amusement, and something to eat & drink - played some for money I think in small amounts - have seen him play at Doss' Saloon and Grannis Saloon - perhaps two or three times a week - saw him play two years ago on the west side of the river, in Saloon over the race.

Cross Examined. Groom is a man of good industry, works daily, don't know

as he frequents saloons in the day time and is of good business habits.

O. Kingsbury Sworn. I have Known Croom four or five years, his business is painting - mine is auctioneer & saloon keeping - Croom has of late been in my Saloon often - March has been there with him. Croom has been frequently in my private room - a company hire it by the evening - they paid for use of room - sometimes more & sometimes less sometimes they paid just for the lights they would call for eatables & drink, as oysters beer. spent from 30 cents to one dollar each evening with me.

John H. Doss sworn. - I have known Croom two years. I keep Saloon & Billiard Room Croom frequently stops there, sometimes in the day time, but not frequent, seen him (often) play cards there, for oysters - beer - pies &c. March used to come with him in 1858 -

E. H. Chapman sworn - I have known Croom for 3 or 4 years - Know of his playing cards - I have played

with him - he played for amusement - first knew of his playing about two years ago - I think it is a good indication for a business man to play at cards.

Cross Examined -

Groom is an industrious mechanic.

George Barr Sworn - I have known Groom for a year or more. I played cards at one time with him - at a game called "Spriggers" used chips which represented money - parties playing brought as many chips - each represented five cents more or less. I lent Hallock 3 spriggers. he has never paid me as yet to my knowledge. (Groom was Banker) March was there - I think this was before the assignment.

Cross Examined. Chapman, Groom March & myself and Hallock played together. Groom is an industrious man as mechanics in general.

S. C. Wright sworn. I knew Groom in October 1858. I saw him play at "poker" in Ross Saloon, played for "Spriggers" at different places, at

Granni's Saloon as often as once or twice a week. played for one penny to five cents "ante"

Cross Examined. I Knew him once at Dosi' to loose some money. I do not think it a good indication for a business man to be in the habit of playing at such games.

Henry M. Clarks affidavit as to loss of two Executions by vertue of which he levied upon the property in question - offered in evidence to the Court

State of Illinois
Kane County } ss Kane County Circuit Court. November Term, A. D. 1859.

Jefred J. Groom
v.
Henry M. Clark } Henry M. Clark the defendant in the above entitled cause being duly sworn doth depose and say that on the 7th & 8th of February, A D 1859, he as Deputy Sheriff of Kane County, Ills, had in his possession the Executions referred to

in his first & second pleas filed in the above cause, by virtue of which he levied upon the goods & chattles as in said pleas alledged. — that said Executions were in his hands as such Deputy Sheriff until about the 20th day of June last past when they were by this affiant placed in the hands of D. L. Eastman, this Defendants attorney in said cause, for the purpose of drawing the pleas in the same. that said Eastman has never returned said Executions to this affiant, and he does not now know where they are, and has not known any thing of them since they were so placed in the hands of his said attorney, that he has made diligent search for the same in all places where they would be likely to be found if in the hands of this affiant and he is and has been ever since said 20th of June been wholly unable to find the same, or learn or hear of their whereabouts, and he verily believes said Executions are now wholly lost so that the same cannot be found, and further saith not. H. M. Clark:

Subscribed and sworn to
before me this 2d day of Dec. 1859
E. K. Knight
Clerk.

D. L. Eastman, sworn. On or about the 28th day of June last, the defendant, Clark gave me, two Executions, one of them was in favor of Joseph Hutton, and against Stephen March & Erastus Hallock, was issued November 15th 1858 - for the sum of $151,14 damages $9.20 costs. There was endorsed on the same, the following in substance, "By virtue of the within execution, I have this the 8th day of February 1859 levied upon one two horse lumber wagon, one leather top buggy & one Rockaway two horse carriage. (signed) Ethan Allen Sheriff of Kane Co. by H. M. Clark, Deputy. - which endorsement was in the hand-writing of the Defendant. The other execution was in favor of John L. Beveridge & against Stephen March - it issued Feby. 1st 1859 for the sum of $226.25 damages & $6.80 costs. There was endorsed in substance the following on the same. By virtue of the within Execution I have this the 7th day of February, 1859 levied upon the following property, to-wit. Six two horse lumber wagons, signed Ethan Allen, Sheriff of Kane Co. by H. M. Clark, Deputy.

The said Executions were issued out of and under the seal of this Court and the signatures to the same were in the hand writing of its Clerk, Paul R. Wright — I took these executions for the express purpose of pleading in this case, carried them to my house & put them as I supposed in my private secretary — In a day or two I left for the East for my health, leaving my house in charge of my wife — on my return in October. I looked for these Executions but could not find them. I then got my wife to assist me & looked all my papers carefully through for five different times, and am wholly unable to find said Executions, although I have looked every where, they would be likely to be. (The above testimony was first given to the Court, & afterwards allowed to go to the Jury) (Copies of said Executions were here presented to witness.)

State of Illinois
Kane County } ss The People of the State of Illinois to the Sheriff of said County, Greeting;

We command you, that of

the Goods and Chattels, lands and Tenements, of Stephen March, Defendant in your County, you cause to be made the sum of two hundred and twenty six Dollars, and forty five cents, which John L. Beveridge, Plaintiff, lately in the Circuit Court of said Kane County, on Vacation after the January Term thereof. to wit: at Geneva, in said County, on the 21st day of January, A. D. 1859. recovered against the said Defendant and which by the said Court, was adjudged to the said Plaintiff for damages which he had sustained by occasion of the non-performance of certain promises, then lately made by the said Defendant to the said Plaintiff. And also the further sum of six dollars and eighty cents, which was adjudged to the said Plaintiff for costs in that behalf expended, whereof the said Defendant was convicted, as appears to us of Record: And have you these moneys ready to render to the said Plaintiff for his damages and costs aforesaid, and make return of this writ with an endorsement thereon in what manner you shall have

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executed the same, in ninety days from the date hereof.

Witness, Paul R. Wright, Clerk of our said Court, and the Seal thereof, at Geneva, in said County, this 1st day of February, A.D. 1859.

P. R. Wright.
Clerk

State of Illinois
Kane County } ss The People of the State of Illinois, to the Sheriff of said County, Greeting:—

We command you, that of the Goods and Chattels, Lands and Tenements of Stephen March and Erastus Kallock Defendants in your County, you cause to be made the sum of one Hundred and fifty one Dollars and fourteen cents, which Joseph Hutton, Plaintiff, lately in the Circuit Court of said Kane County in Vacation after the May Term thereof, to wit, at Geneva, in said county, on the 3d day of November, A.D. 1858, recovered against the said Defendants, and which by the said Court, was adjudged to the said Plaintiff, for

damages which he had sustained by occasion of the non-performance of certain promises, then lately made by the said Defendants to the said Plaintiff. And also the further sum of Nine Dollars and twenty cents which was adjudged to the said Plaintiff for costs in that behalf expended whereof the said defendants are convicted, as appears to us of Record, and have you these moneys ready to render to the said Plaintiff for his damages and costs aforesaid, and make return of this writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness, Paul R Wright, Clerk of our said Court, and the Seal thereof at Geneva in said County, this fifteenth day of November, A.D. 1858.

P R Wright
Clerk

(In Court Seal)

These are substantial copies of the said Executions so far as they go. The blanks upon the back were filled on the originals - with the parties names

as stated & the amounts of damages and costs — and they were severally endorsed in Defendants hand writing as before stated.

The commission bond & oath of office of E. J. Allen as Sheriff of Kane County read in evidence.

Copy of Commission

William H. Bissell, Governor of the State of Illinois, To all to whom these Presents shall come — Greeting: —

Know Ye, That Ethan J. Allen, having been duly elected to the office of Sheriff of the County of Kane and State of Illinois,

I, William H. Bissell, Governor of the State of Illinois for and on behalf of the People of said State, do commission him Sheriff for said County, and do authorize and empower him to execute and fulfil the duties of that office according to law.

To have and to Hold the said office, with all the Rights and Emoluments thereunto legally appertaining, until his successor shall be duly elected, and qualified to office.

In Testimony Whereof, I have hereunto set my Hand and caused the Great Seal of State to be hereunto affixed. Done at the city of Springfield, this tenth day of November, in the year of our Lord, one thousand, eight hundred, and fifty eight, and of the Independence of the United States the eighty-third.

Great Seal of State

Wm H. Bissell

By the Governor:
O. M. Hatch
Secretary of State.

State of Illinois }
Kane County. } ss I, Paul R. Wright, Clerk of the Circuit Court of said Kane County, in the State of Illinois, do hereby certify that Ethan J. Allen, the person named in the within Commission has this day filed in my office his official Bond as Sheriff of said County, approved by the Judge of the Kane County Circuit Court, and has

taken and subscribed the several oaths required by law and an oath for the faithful performance of the duties of his office, which Bond & oaths have been filed and Recorded.

Court Seal.

Witness my hand and the Seal of said Court, at Geneva, in said County, this 16th day of November, A. D. 1858.

P. B. Wright
Clerk.

Copy of Official Bond.

Know all men by these Presents. that we, Ethan J. Allen as principal and Henry H. Allen, William B. West, A. B. Moore, N. P. West, Elisha Freeman, Geo W Waite as securities, all of the County of Kane and State of Illinois are held and firmly bound unto the People of the State of Illinois, in the penal sum of Ten Thousand Dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our Heirs, executors and administrators jointly, severally & firmly by these presents.

Witness our hands this tenth day of November in the year of our

Lord, one thousand, eight hundred and fifty-eight.

The condition of the above obligation is such, that if the said Ethan J. Allen, Sheriff elect of said Kane County aforesaid shall faithfully and truly perform all the duties required by law to be performed by him as Sheriff of said County of Kane, then the above obligation to be void, otherwise to remain in full force and effect.

Ethan J. Allen (Seal)
Henry H Allen
William B West
A D Moore
Wm Pl West
Elisha Freeman
Geo. W. Waite

Approved in open Court at the November Term A.D. 1858 of the Kane County Circuit Court on this 10 day of November A.D. 1858

Isaac G. Wilson
Judge 13th Circuit

Copy of Oath of Office.

State of Illinois }
Kane County. } ss I. Ethan J. Allen do solemnly swear that I will support the constitution of the United States, and of the State of Illinois and that I will faithfully discharge

the duties of Sheriff of Kane County Illinois, to the best of my ability and understanding, and I do solemnly swear that I have not fought a duel nor sent or accepted a challenge to fight a duel, the probable issue of which might have been the death of either party, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been Knowingly the bearer of such challenge or acceptance since the adoption of the Constitution, and that I will not be so engaged or concerned directly or indirectly, in or about any such duel during my continuance in office. So help me God.

Ethan J. Allen

Subscribed and Sworn to before me this 16th day of November, A.D. 1858.
P.K. Wright
Clerk of the Cir. Court
of said Kane County

E. J. Allen, sworn - I am Sheriff of Kane County. have been since the

fall of 1858 (The writing of the appointment of Defts as Deputy Sheriff here shown the witness)

Copy of the Appointment

Know all men by these presents that I, Ethan J. Allen, Sheriff of the County of Kane, in the State of Illinois, have this day appointed and do hereby appoint Henry M. Clark of said county a Deputy under me, and he is hereby authorized as such Deputy Sheriff to do and perform in my name, any and all of the duties required of the Sheriff of said county.

Given under my hand at Geneva in said County, this 17th day of November A.D. 1858.

Ethan J. Allen
Sheriff

Also Defts oath of office

Copy of Oath of Office

State of Illinois
Kane County } ss I, Henry M. Clark, do solemnly swear that I will support the Constitution

of the United States, and of the State of Illinois, and that I will faithfully discharge the duties of Deputy Sheriff of Kane County, Illinois, to the best of my ability and understanding; and I do Solemnly swear that I have not fought a duel, nor sent or accepted a challenge to fight a duel, the probable issue of which might have been the death of either party, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been Knowingly the bearer of such challenge or acceptance, since the adoption of the Constitution, and that I will not be so engaged or concerned directly or indirectly in or about any such duel during my continuance in office. So help me God.

Henry M. Clark

Subscribed & Sworn to before me this 16th day of November, A D 1858

P. K. Wright
Clerk of Kane
Co. Cir. Court.

His appointment as Deputy Sheriff & oath of Office were executed on the same day, the 16th day of November A. D. 1858. Deft (Clark) has been an acting Deputy Sheriff since the 16th day of November A. D. 1858 to the present time.

Judgment Record of the Kane County Circuit Court offered on Page 169. so far as it relates to case of Fulton v March & Hallock.

Copy of Judgment Record.

Joseph Fulton
v
Stephen March &
Erastus Hallack. } Assumpsit

This day comes the plaintiff by W. D. Barry his attorney and files the note upon which this suit is brought and it appearing that the plaintiff filed his declaration herein against the defendant on the 13th day of October, A. D. 1858, on an Instrument of writing for the payment of money only, and that thereupon a Summons issued

at the instance of the said plaintiff against the said defendants, dated the 13th day of October 1858, returnable in twenty days after the date thereof, directed to the Sheriff of Kane County to Execute, and which said Summons has been returned by said Sheriff executed October 15 1858 by reading the same to the said defendants, and that at the same time he delivered to said defendants certified copies of the declaration on file herein. And the said defendants having failed to plead to or otherwise answer said declaration according to law, his default is entered of record herein, and thereupon the plaintiffs damages are computed and assessed by the Clerk of this Court at the sum of one hundred and fifty one dollars and fourteen cents, being the amount of principal and interest that appears to be due on said note.

It is therefore considered, that the plaintiff have and recover from the defendants the sum of one hundred and fifty one dollars, and fourteen cents his damages aforesaid, and also his costs herein expended, and have execution therefor.

Execution Docket offered in evidence of same Court, relating to same parties on page 108

Copy of Execution Docket.

Gen. No.	No Exc	Parties.	Against Whom	To Whom Delivered	Date		Judgment		Cost.	
		Joseph Dutton								
6462	859	v	Defts	Corwin	Nov	15	151	14	9	20
		Stephen March								
		& Erastus Hallack								

Execution Docket of same Court offered in evidence, Page 128 as far as related to case of John L. Beveridge v Stephen March

Copy of Execution Docket.

Gen. No.	No Exc	Parties.	Against Whom	To Whom Delivered	Date		Judgment.		Cost.	
		John L. Beveridge								
6668	1019	v	Deft.	Allen.	Feb.	1.	226	45	6	80
		Stephen March								

E. J. Allen, Recalled. I have the judgment of Joseph Hulton v March & Hallack read & also the execution docted relating to execution on said judgment - also Execution Docket as to Execution of John L Beveridge v Stephen March. I had executions corresponding to those mentioned - I put them into the hands of the defendant to be executed just before the levy.

Joseph Hulton sworn. I am plaintiff in suit of Hulton vs March & Hallack; I have sold the judgment to J. P. Lewis, he paid me for it about $162. March owed me when he made the assignment about $200. I have been paid in full, Groom paid me about one month since about $50. I have known Groom about four years, I have worked in same shop with him - have seen him drink, dont know that I ever see him the worse for liquor I think his habits of intemperance would not hurt him as assignee.

Cross Ex. Groom paid me at Minard & Osgoods $30. & 20 in stock.

from assigned property - in the shop - think he paid Shinard & Osgoods, by turning out notes. Groom I think is a fair business man - never done any business with him except to settle - There was personal property assigned worth $2000. to $3000. besides the building - building was worth at least $1000.

John Andrus Sworn - Have known Groom 3 or 4 years - been quite intimate with him some of the time - in 1857 & 8 was often at gaming places with him. We played mostly at "cribbage" I never knew him to play for money. March was sometimes present - the party who lost usually paid the oysters, beer, or what was wanted - bill from 30 to 50 cts usually - played euchre some. saw Groom play within the past year half a dozen times perhaps - seen him play billiards - March was present sometimes - at Does Saloon - he sold beer oysters & liquors - & Kept a billiard room - Billiards cost 20 cts per game the one who lost paid for the use of the table.

Cross Examined. Groom usually attends to his business - have seen him drink at Saloons - don't think his drinking disqualifies him for his business - I know nothing as to his competency as a business man.

Austin Barnum sworn. I know Groom. have seen him frequently in a room over Kingsbury's saloon - saw him there eating oysters and playing cards - played for buttons - don't know as they paid for them - but they sometimes owed each other - have seen Groom play cards at Garan's three or four times - saw him play euchre. played for beer.

S. B. Flint sworn. March owed me at the time of the assignment $25. a portion of it has been since paid - Groom turned me out the wood work of a lumber wagon on it worth $20 My claim was in third class of assignment.

Cross Examined. Groom is an industrious & honest man so far as I know.

W. H. Osgood sworn. I am of the firm of Minard & Osgood. March owed us about $50 when he assigned – a part of it has since been paid – by making terms, the balance by notes – our claim was in 3d class.

Defence Rest.

Plaintiff Resumes.

A. B. DeWolf sworn – I have Known Groom five years – Know his business habits – was industrious – is a man I think of integrity – he always has paid me – have done business with him to the amount of $400 to $500. in a year he owes me now some $50

Cross Examined. I rent him a house, and one year a shop – I never employed him only to paint for me (question) Has he any property liable to execution to your Knowledge. (Counsel for the plaintiff here admitted that he had none) – I think spending three or four nights a week in saloons gaming for oysters & beer & the like is not a mark of a good business man – I would not sell him a large amount of property on his own responsibility.

O. J. Burchell sworn. I have known Groom 4 or 5 years - so far as I know he is honest & industrious - his business habits I think are good - see him most every day - never spent his time about my house - I Keep a hotel - he done painting for me - charged a big price for it.

Cross Examined. I Keep no liquors in my house - I never saw Groom play euchre - have seen him play at cards sometimes - I play what I call a strong game of "Euchre" Groom sold me a buggy since the assignment for $65.

R. J. Haines sworn. - Objected by Defts on the ground of interest - as it appears from the evidence that he was in the first class in the assignment - Objection overruled by the Court & Defts. then & there excepted to the ruling of the Court. I have known Groom about five years - my place of business is some 40 feet from Carriage shop of March - have seen Groom attending to business nearly every day - March owed me about $200. when he assigned. have not been paid. His business habits are good.

Cross Ex - I have seen March about the premises since the assignment assisting Croom about the same as usual - is no change in the sign - but never saw March take any control of the property assigned.

Ira Minard Sworn. (Objected to by Defts - on the ground of interest as he appears as a first class creditor - objection overruled by the Court & exceptions were then & there taken to said ruling) I have known Croom about three years. he has done painting for me. I should call him a capable business man - is quick at figures & honest so far as I know.

Cross Ex. I have done business with him to the amt of $50. at a time - was for painting signs - he never done any business for me except painting - that is all the business that I know of his doing - I would let him have property to dispose of on town when I could look after it. I do not think it is a mark of a good business man to spend 3 or 4 nights in a week playing cards for oysters

been & the like - I might trust him with property to dispose of - when I would not sell him the same amount on credit.

H. H. Bowman sworn. (objected to by Defendant as interested - as he is a first class creditor of March - Objection overruled by the Court, to which ruling the defendant then & there excepted.)

I have known Groom four or five years - When March assigned he owed us (Bowman & Lloyd) about $1600 or $1700 - I knew of the assignment about the time it was made - I think Groom is industrious and competent to transact business - he worked about the shop which is near our store - saw him almost every day in & about the shop - he has taken good care of the property since the assignment so far as I know.

Cross Examined. We have been paid on our claim some $500. We have security on the building & tools by Mortgage - the tools are worth perhaps $50. We bid off property sold by Groom at Auction lately - of the property

assigned to the amount of $200. or near – it was wood work to lumber wagons – one unfinished buggy wagon a lot of hubs – We were in the first class for $100. that is all paid. – the sale at the auction was on these terms, on all sums less than $25. cash, & on all sums above $25 – three months credit. We had been previously paid 7 lumber wagons – worth about $72.50 each –

John Lloyd sworn. (objected to by defendant for interest – as he appeared as first class creditor – objection over-ruled by the Court & defendant then & there excepted to said ruling) I have known Groom 3 or 4 years. I regard him as industrious, honest & competent.

Cross Examined. I never knew of his doing any business except painting until this assignment.

E. K. Parks sworn – I have known Groom three years – I think him honest & capable.

Cross Examined. All the business I ever see Groom do was he painted

a buggy for me. I never had any other deal with him (question) Is that the only reason that you have to give why you think him capable & honest.. Ans. Yes. I never see him do any other business

The above is all the evidence offered on the trial of this cause.

The plaintiff asked the Court to give the following instructions to the Jury:

1. If the Jury believe from the evidence that March made the assignment in question, then the presumption of law is that said assignment was made honestly, in the absence of proof to the contrary, for the law permits the debtor, even in failing circumstances to assign his property for the benefit of his creditors, and said assignment is presumed to be an honest act if duly made, even though the effect of the assignment may be for a time to delay the creditors in the collection of their debts. such delay would not make the assignment void

Groom

2. If the Jury believe from the evidence that March was in failing circumstances, and that he made an assignment in good faith, and appointed Alfred J. Groom as his assignee and that Groom was a suitable person to act as assignee & accepted the trust and possessed himself of the trust property, and that whilst so in possession Clark the defendant without Grooms consent took said property from his possession, then in law it was the duty of Groom to pursue said property, and repossess himself of the same, if unlawfully detained from him, as stated in the declaration

Groom

3. If the Jury believe from the evidence that the deed of assignment was delivered to Groom the assignee, and that he went on and acted under it, the law presumes the acceptance of the trust by Groom in the absence of proof to the contrary.

Clark

4th The Jury in determining the case should take into consideration all the evidence & if they believe from such

evidence that the assignment was honestly and fairly made, no acts of Groom in regard to said property since the assignment would invalidate the same.

5th Groom had a right to employ March or allow March to remain & be about the shop & assist him (Groom) in doing work in finishing up & preparing any of the work assigned by said March for sale provided the Jury further believe from the evidence that said Groom had the entire custody & control of said property, and such employment would not be evidence of a fraudulent assignment.

Given

6. Although the Jury may believe from the evidence that Groom is a man of limited means, and without pecuniary responsibility sufficient to cover the amount of the property assigned, yet if they further believe from the evidence that he is honest and competent in all other respects the mere fact of his lack of pecuniary responsibility would not of itself be sufficient to render the assignment void.

Given

To the giving of which Several-
ally as asked for by the said plain-
tiff, the said defendant then & there
duly excepted by his counsel.

The Defendant asked the Court
to give the following Instructions to
the Jury.

II That although the law allows every
Debtor to appoint his own assignee,
yet such Debtor cannot exercise such
power arbitrarily; but such appointments
must be made with proper reference to
the interests of such debtor's creditors -
Hence it is an essential qualification
of every assignee, not only that he is
capable, from age, health and education,
of performing the duties of the office,
but also that he be of sufficient char-
acter and pecuniary ability to afford
assurance to creditors that the funds
will be safe in his hands, and that the
trusts will be properly administered,
and the selection of an incompetent
assignee in either of the said essential
requisites will have the effect of ren-
dering an assignment void.

Refused

Therefore in this case, if the jury believe from the evidence, that the plaintiff (Croom) at the time of the assignment from March to him, had no pecuniary means liable to execution, or that he had not sufficient pecuniary ability, to afford assurance to the creditors of March, that the property assigned him would be safe in his hands, or that he had not sufficient pecuniary ability or means, to fully respond in damages, in case such trust be improperly administered, in such case the assignment is void, and the property so assigned would not pass to Croom, but would be liable to be taken in execution by the Creditors of March.

III

Before the plaintiff in this suit can claim any right to, or maintain any action for the property in question, by virtue of the assignment given in evidence, as against judgment creditors, he must show to the satisfaction of the Jury, that he took possession, and continued in the possession of the property purporting to be assigned, up until the time of the levy, given in

Refused

evidence, and that the assignment was actually delivered to, and accepted by the assignee (the present plaintiff), or to or by someone for him, and in his behalf before the time of such levy, and that the men taking possession of the assigned property, and the giving in evidence such assignment do not, in and of themselves, prove that such assignment was so delivered and accepted before such levy. and unless the plaintiff has so proved to the satisfaction of the jury such taking and continuing in possession of the property, delivery and acceptance of the assignment they should find for the Defendant.

IIIII

That although the Jury may believe from the evidence that the assignee (Groom) may be a fair business man, and in other respects capable to carry out the trust in question, still if the Jury further believe from the evidence that said Groom had no property liable to Execution at the time of said assignment & was unable to respond in damages in case of improper administration of said

Refused

trust. and that said March Knew such fact at the time he appointed him his assignee in such case the assignment in question is void as to the creditors of March, and will not pass the property named in said assignment to Groom, and the law is for the defendant as to said assignment.

(A) That every person of sound mind in law is presumed to Know the effects of his own acts, and when such acts affect the rights of third parties - they are not to be construed in favor of the party making them - Hence in this case, if the jury believe from the evidence, that March, the assignor, was well acquainted with Alfred J. Groom, and Knew him to be insolvent, yet Knowing such fact, he appointed said Groom, assignee, in the said assignment, such appointment will in effect render such assignment void, as to the rights of the creditors of said March, as it evinces an intention on the part of said March to place his property beyond the reach of his creditors, or

Given

in the language of the law "to delay or hinder them in the collection of their debts" and in such case the assignment in question is void as to such creditors, and the property so assigned will not pass to Croom, but is liable to be seized in Execution by said creditors, in satisfaction of their debts.—

B

The Jury are instructed that under the pleadings in this case it is not necessary for the Defendant to show any judgment or execution in favor of Beveridge against March or that the property was taken and levied upon by the Defendant by such Execution, as in the first plea alledged. that being admitted by the pleadings the only facts being in issue as to that plea is the title of the property - and the fact that the Defendant was Deputy Sheriff. And as to the second Plea it is only necessary for the Defendant to show an Execution in favor of Fulton vs March ∇ as in said plea alledged. and that he took the property named in said plea by virtue of such execution and that the property was the property

Graves

of March the assignor - the judgments not being in issue on either Plea.

(6) If the Jury believe from the evidence that after the time of the assignment. (to wit Oct 1858) the assignor March continued in the possession of the property assigned up until the time of the levy and exercised the same visible acts of control about and over the same that he did before the assignment - or that the Plaintiff Groom and the assignor March have continued in the joint possession & visible occupancy & control of said property without any apparent change, up until, at, or about the time of the levy - then such assignment is void as to such levy, and the jury should find for the Defendant. but Groom the assignee had the right to employ March the assignor to aid him in discharging his duties as assignee provided he Groom remained in the actual & visible control of the property assigned.

Groom

(D) If the Jury believe from the evidence that the assignee, the present

plaintiff has suffered the assignor March, to continue in the possession of, or exercise control over the property assigned, and that he has paid debts in the third class of the assignment, by the direction of March. these are facts and circumstances to be considered by the Jury as tending to prove that such assignment was made with a view and intent to hinder and delay creditors in the collection of their debts, and if the Jury believe from the evidence that said assignment was made with such intent, then it is void as to judgment creditors, and they should find for the Defendant.

Given.

To the action of the Court in refusing to give said instructions marked on the margin ("Refused") & numbered (II) (III) (IIII) the said defendant by counsel then & there duly excepted. And as to the qualification by the Court of said Instruction marked on its margin ("Given") & also by the character ("A") by striking out the following words after the phrase included in parentheses.

"and knew him to be insolvent" ("and unable to respond in damages in case of illegal or improper administration of the assigned property") the defendant then & there duly excepted.

Isaac G. Wilson

State of Illinois
Kane County ss. I, Paul R. Wright Clerk of the Circuit Court of said County do hereby certify that the foregoing is a true & complete Transcript from the Records and files of said Court in my office in a certain suit between Alfred J. Groom, Plaintiff and Henry M. Clark, defendant, of the following papers Count. Affidavit — Plaint. Replevin Writ. and Officers Return thereon — declaration — Pleas. Demurrer to 1st & 2d Pleas. — Replications. Demurrer to Replications — Bill of Exceptions, and all the orders of said Court Entered of Record in said suit.

Witness my hand and the Seal of said Court at Geneva in said County this 19th day of March A.D. 1860.

P. R. Wright
Clerk

In Supreme Court
April Term 1860

Henry M. Clark
Plaintiff in error
vs
Alfred J. Brown
Defendant in error

} Error to Racine Co

Assignment of errors

1 The Court erred in admitting improper evidence to go to the jury on part of plaintiff.

2 In giving instructions asked for by plaintiff.

3 In refusing instructions asked for by defendant.

4 In over-ruling motion for new trial.

5 In giving judgment on the verdict.

6 The verdict was contrary to law and the evidence

7 The assignment under which the plaintiff claimed the property in question, was void as to defendant.

Eastman & Botsford
J. L. Bevens
Attys for Plff in error

130

Supreme Court

Henry M. Clark

vs

Alfred J. Groom

Errors

6

Filed Apr 17, 1860

L. Leland

Clerk

W. L. Eastman

J. S. Bevenstyle

for Repr in error

Alfred Groom
&c.
Henry H. Clark

Supreme Court of the
April Term 1860

And the said Alfred L
Groom by W D Barry his attorney comes
& says there is no Error either in the
record & proceedings aforesaid or in
Giveing the Judgment aforesaid & therefore
he prays that the said Judgment may
Be affirmed

W D Barry
Atty for Groom

Filed Apr 24, 1860
L. Leonard
Clerk

130 83

Kane Co. Cir. Court.

Alfred J. Groom

v

Henry M. Clark

Transcript

Filed April 3d 1860
L. Leland
Clerk

Fees $20 00