

No. 13555

Supreme Court of Illinois

Knott.

VS.

Seguin & Byrns.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. **267.**

1860

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STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

CHR. W. KNOTT

vs.

FRANCIS SEGUIN and
JAMES BYRNES.

} Appeal from Kankakee.

BRIEF AND POINTS FOR DEFENDANTS.

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

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 *Of the first point made questioning the power of the Circuit Court to allow a demurrer to be withdrawn (after it has been overruled,) and give the party leave to plead over while the case is still pending.*

By an examination of the record, at pages 28, 29 & 30, (*see Abst.*) the pleadings will be found to be sufficient. The defendants, in open Court, asked and obtained leave to withdraw their demurrer to plaintiff's pleas to defendant's avowries, and for leave to file their replications thereto. The judgment complained of by appellant, which was vacated by the Circuit Court on allowing the defendants to plead over, was but an interlocutory judgment, which establishes nothing but the inadequacy of the defence set up by the plea, or that the party shall answer over; see 1st Gilman R. 395; 5th Blackford's R. 167; 24 Pick. R. 49; and 16 Conn. 436. This Court held in a case in the 1st Scammon R. 472, that, as the defendants in the Circuit Court must have asked leave to withdraw their demurrer and reply to the plaintiff's plea, the correctness of the decision of the Court below on the demurrer cannot now be inquired into. In 3d Gilman R. 349, this Court held that "the Circuit Courts may, in their discretion, allow or "refuse an application to file additional pleas, or amend the "pleadings, or allow the withdrawal of pleas, and the exercise "of that discretion cannot be reviewed in the Supreme Court."

2d Point: As to the evidence admitted for defendants, no reason is given why it should have been excluded, and it is not believed that there was any irregularity in that regard.

3d Point: As to the release of the property levied upon by the officer, (one of the defendants,) it is only necessary to refer to the record, pages 50, 51 & 52, where it will appear that the bond or instrument executed by witness, *Brush*, and delivered to the officer, was not a statutory forthcoming bond; it described an execution bearing date April 12th, when the execution levied and justified under by the defendants bore date April 22d, and was, in other respects, so defective as to render it void as a security to the officer, yet was allowed by the Court to go to the jury, under the objections of the defendants. I will now call the attention of the Court to pages 47, 48 & 49 of the record, to the evidence of the witness *Brush*, (defendant in execution.) His evidence fully shows that the officer (the defendant *Byrns*) did not agree or intend to release the levy or lien on the property, when he received from *Brush* the instrument called a forthcoming bond; but that it was the intention of the officer to leave the property with the witness *Brush* only until the day of sale, to wit: the 12th day of July following; and the witness *Brush* so understood the arrangement, and did not understand or pretend that the property was actually released from the levy by the mere giving of the instrument offered in evidence, for, by reference to dates in the record, it will appear that the levy was made May 20th, and this pretended bond executed same day, and day of sale fixed by officer July 12th. Mortgage executed to plaintiff by *Brush*, the witness, May 31st; sale of the property adjourned on the request of witness *Brush* for 10 days, July 12th; four or five days afterwards, witness *Brush* presents his bill for an injunction, staying the sale until the further order of the Circuit Court. Prayer granted by Judge Norton. When it is recollected that an injunction or stay of the sale of property is only granted on the oath of the defendant in the execution, in the face of all these facts, will it be contended that *Brush* thought that the officer had in fact released the levy on the day that he made it, without receiving anything valuable for such release? The mortgage under which this plaintiff claims, see Record page 41, in 3d & 5th line from bottom, provides for the publication of a notice in some newspaper in the city of Chicago for the sale of the property, without fixing any place where the sale should be made, and was therefore void as to mortgagor's creditors. The pleading formed an issue on this question of release for the jury to try; and the proofs in the

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STATE OF ILLINOIS, SUPREME COURT,
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case, see pages 38 to 53 inclusive, show plainly that there was not any release of the levy intended by the officer or the witness *Brush*; at least, the jury was satisfied with the proofs on that issue, and by their verdict found for the defendants.

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

The Assignment of Errors presents the simple question whether the mortgage of *Brush* was *bona fide*, and for a valuable consideration, or merely colorable, and given to defraud, hinder and delay creditors. The jury have found, under the proofs and instructions, that the mortgage was not *bona fide*, but given merely to delay creditors. There was evidence in the case tending to prove that the mortgage was fraudulent, and this Court, in the case of *Powers vs. Green*, 14 Ills. R. 391, held that "though they might have differed in opinion with the jury as to the transaction, sitting as tryers in the first instance, they would not disturb the verdict of the jury in such a case."

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

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

R. N. MURRAY,
For Appellees.

267-127

Trust

vs

Lepine & Byrnes

Point & Brief
of Appeals

Filed May 9, 1860
L. Leland
clerk

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

KNOTT,
vs.
SEGUIN & BYRNS. } *Appeal from Kankakee.*

ABSTRACT OF THE RECORD.

Page of Rec.

- 3 Action: Replevin by Knott against Seguin & Byrns for two black horses and one sorrel horse—value \$75—taken Nov. 1, 1858.
Def'ts Seguin & Byrns pleaded seven pleas:
- 6 1st. *Non cepit et non delinuit.*
- 7 2d. Property in defendants and not in plaintiff.
3d. Property in Robert K. Brush and not in plaintiff.
- 8 4th. (Called in Record 1st avowry.) Judgment for one Wm. Godfrey against Robert K. Brush and one Ingham for \$346 and costs, and an execution to sheriff of Kankakee county, dated April 22, 1858, and that defendant, Seguin, being such sheriff, by his deputy, one Byrns, levied said execution on said property on May 20, 1858, and that said property was then the property of Robert K. Brush.
- 11 5th. (Called in Record 2d avowry.) Like 4th plea, except it omits the judgment and pleads only the writ.
- 13 6th. (Called in Record 4th plea.) Right of possession in Byrns as deputy sheriff.
- 14 9th. (Called in Record 5th plea.) Denies the allegation of property and right of possession in plaintiff.
- 16, 17 At same time issue was joined on all the pleas except 4th and 5th, (called 1st and 2d avowries.)
And to the 1st and 2d avowries plaintiff pleaded,—
- 1st. Property in defendants and not in R. K. Brush.
- 2d. Release of the levy by taking bond from R. K. Brush.
- 19 3d. Same as second, and that the property became plaintiff's while in possession of R. K. Brush.
- 21 4th. Release and discharge of the levy by Byrns and delivery of the property to R. K. Brush, who retained possession during the life of the execution.
- 22 Defendants demurred to 2d and 3d above pleas and issue was joined on the 1st and 4th.

- 24 Defendants' demurrer overruled and court and defendants abided.
- 25, 26 At the same term a trial by jury was had; verdict for plaintiff; motion for new trial, and cause continued.
- 29 April term, 1859, new trial granted and the court allowed the defendants to withdraw their demurrer to plaintiff's pleas and to reply thereto, and plaintiff excepted.
- 30 At Sept. term, 1859, defendants replied to said pleas that said levy was not released and discharged as alleged.
- 31, 33, 35 At Jan. term, trial and verdict for defendants; motion for new trial overruled; motion in arrest of judgment overruled, and judgment.
- 38 Bill of exceptions taken at the trial shows: That plaintiff offered in evidence a chattel mortgage from R. K. Brush to plaintiff, dated May 31, 1858, on the property in question, and other property, to secure the payment of a certain note and to secure plaintiff from any loss by reason of signing a certain other note with Brush. Which mortgage provided that in case the property should be levied on, mortgagee may take possession, and was duly acknowledged and recorded on the day of its date.
- 42
- 43 George Longfellow, witness for plaintiff, proved a demand of the property from Byrns in the fall, just before the commencement of the replevin suit.
- 45 Defendant then gave in evidence an execution, dated April 22, 1858, from the circuit court of Kankakee against R. K. Brush and Ingham and in favor of Wm. Godfrey, purporting to be upon a judgment for \$346 28 recovered April term, 1858, by confession against "said defendant," and for costs, and the return upon said execution showing a levy on May 20, 1858, on two span of horses.
- 46 Plaintiff objected to the execution and return, and excepted to the ruling of the court admitting the same.
- 47 Defendants then gave in evidence the record of a judgment in favor of Godfrey, and against R. K. Brush and said Ingham, in the circuit court of this county, which record is without date.
- Defendant then proved that the property in question was the same property levied upon by virtue of the execution in evidence, and that Seguin acted as sheriff of Kankakee county and Byrns as deputy.
- Defendants offered evidence tending to show that the mortgage to plaintiff was fraudulent as against the creditors of R. K. Brush.
- 48 Plaintiff then called R. K. Brush, who testified that at the time of the levy, in May, 1858, Byrns proposed to let him have the property back if he would give a forthcoming bond. Byrns drew such bond as he wanted, and witness and Barrick, as his security, executed it and handed it to Byrns who then said, "The property is released, take it and go home;" that witness gave the bond as a release of the property.
- On cross-examination, witness stated that he never re-delivered the property to Byrns; that before the sale witness obtained an injunction restraining further proceedings under the judgment and execution.

Page of Rec. Plaintiff then produced the bond spoken of by Brush and gave it in
 50 evidence, which was a bond executed by R. K. Brush and Wm. Barrick to F. Seguin, sheriff for "county of K. K. K.," of Illinois, dated May 20, 1858, and reciting a judgment in the circuit court of said county in favor of Godfrey and against R. K. Brush and Ingham, and an execution issued upon said judgment, dated April 12, 1858, and a levy under the execution upon the horses in question and conditioned for the return of the property to the sheriff, July 12, 1858, and against the sale or injury of the same in the meantime.

51 The plaintiff moved the court to give to the jury each of the following instructions, viz :

"That if the jury find that James Byrns undertook to draft the forthcoming bond in evidence, and that R. K. Brush relied upon the skill and knowledge of said Byrns and gave to said Byrns said bond in good faith, then the defendants are estopped from taking advantage of any insufficiency in said bond, which was owing to or caused by Byrns' improper drafting; and that it is a rule of law that a party cannot take advantage of his own wrong."

Also—"that if the jury believe that said bond was given in good faith and received by Byrns as a good and sufficient bond, it must be considered as such for the purposes of this trial."

Also—"That a mortgagee in, or owner of, a *bona fide* chattel mortgage is in law a purchaser, and if the jury find that plaintiff took a *bona fide* chattel mortgage on the property in dispute in good faith, securing an indebtedness from R. K. Brush to him, he would be deemed a purchaser."

59 Also, that "if the jury find that the forthcoming bond in evidence was given for the release of the property in dispute, though it may not describe the execution in evidence, it will be a release of the property levied upon, and law is, on this point, for plaintiff."

Also—"that it is not sufficient in this case to prove that defendants acted as sheriff, &c., but they must show that said sheriff was duly commissioned and qualified, and that said Byrns was duly appointed deputy, &c." Each of which instructions the court refused to give. Plaintiff excepted to each of said decisions.

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

And the court instructed the jury, that an execution coming to hands of sheriff is a lien on all property of defendants in execution; and if jury believe from evidence that the execution in evidence came into hands

Page of Rec. of defendants as sheriff, &c., on April 22, 1858, and the time of receipt endorsed thereon by Byrns as deputy, then the execution was a lien on the property of witness, Brush, from the time of the endorsement, and the time of the receipt is shown by such endorsement. To which plaintiff excepted.

Thereupon the court gave the following instructions: If the jury believe from evidence that Byrns, as deputy, &c., levied on said horses, he had a right to leave them in possession of witness Brush, and such
61 leaving did not of itself release said levy, and law on this point is for defendant. To which plaintiff excepted.

And the court instructed the jury, that if the jury believe from the evidence that plaintiff's only right to said property is acquired under said mortgage, his right of possession is not equal to that of defendants by virtue of levy, &c., unless jury find property *released*, and the law is for Byrns. To the giving of which instructions plaintiff excepted.

And the court instructed the jury, that if the jury believe from evidence that said bond described a different execution from that in evidence,
62 then such bond is not a release of the levy, &c., and the law in that regard is for defendants. To which plaintiff excepted.

Thereupon the court instructed, that if the jury believe from evidence that said mortgage was entered into by Brush and Knott to delay Godfrey in collecting said money, or to defraud creditor, such mortgage is void as against such execution, and for the purpose of determining this question jury may consider all the attendant circumstances. To which plaintiff excepted.

63 And the court instructed the jury, that if the jury believe from evidence that plaintiff failed to prove a demand of defendants before commencement of this action, the law is for defendants.

Whereupon plaintiff excepted.

And the court instructed the jury that the execution in evidence is full and perfect enough, and the clerk's omitting the letter "s" from the word "defendant" did not invalidate it.

Whereupon plaintiff excepted.

Thereupon the court instructed the jury that the defendants have a right to prove that they were sheriff, &c., by their having acted as such and if the evidence shows that they have so acted, the law in that particular is for defendants.

Whereupon plaintiff excepted to the giving of such instruction.

Thereupon the jury retired.

Upon the jury coming in for further instructions, plaintiff moved the court to instruct the jury, that if the jury find that an injunction was issued restraining proceedings at law, and the evidence does not show a dissolution, the presumption is that it is still in force, and the burden of showing its dissolution is on defendants; and which the court refused and

caused the jury to retire without writing "refused" upon the margin thereof, to which the plaintiff excepted.

And the court refused to give any further instructions, to which pl'tff excepted.

The jury then brought in a verdict against plaintiff. Whereupon plaintiff moved to set aside the verdict and for a new trial.

But the court overruled said motion, and gave judgment upon said verdict. Whereupon plaintiff excepted, and the court certified that said bill of exceptions contains all the evidence given in the case.

POINTS AND AUTHORITIES FOR APPELLANT.

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

2d. The evidence admitted for def'ts ought to have been excluded.

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

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

The bill of exceptions contains all the evidence in the case.

DICKEY, WALLACE & BOAL,
For Appellant.

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Scott vs. Seguin

Alot & Prints
of Apes

Filed May 3, 1860
L. Leland
Clerk

The People of the State of Illinois -

By the Grace of God

Free and Independent

To all to whom these presents shall come.
Greetings !!!

~~Know Ye~~ That we having caused to be inspected the
Records and proceedings now remaining in the office of our Clerk
of our Circuit Court in and for our County of Kankakee. Do find
Certain Records and Proceedings in the words and figures
following to wit,

" United States of America " Kankakee Circuit Court.
" State of Illinois SS: " December Term A.D. 1858.
" Kankakee County. " Then before the Honorable Charles
" H. Starr Judge of the Twentieth Judicial
" Circuit and presiding Judge of the Kankakee County Circuit Court
" in the State of Illinois. At a Term of said Court began and held
" at the Court House in Kankakee City in the County and State afoe-
" said on the Third Monday the same being the Twentieth day of
" December in the year of our Lord one thousand Eight hundred
" and fifty eight And of the year of the Independence of the United
" States of America the Eighty Third.

" I present you Charles H. Starr Judge as aforesaid

" vsa Bartlett States Atty Pro. Resp.

" Harris H. Durham Sheriff of Kankakee County

" Philip Worcester Clerk of the Kankakee County Circuit Court"

Subscribed and sworn to before me

on the first day of November in the year of our Lord one
thousand eight hundred and fifty eight C. W. Knott
Plaintiff by J. P. Bonfield his Attorney did file in the
Office of our Clerk of our said Court his certain
affidavit in the words and figures following To Wit,
" State of Illinois

" Kankakee County, Ills. " Christopher W. Knott Plaintiff being duly

" Sworn deposes and says he is the owner of
" the following described goods and Chattels viz: Two
" Black Horses and one sorrel horse of the value of two hundred and
" Twenty five dollars - and that he is entitled to the possession
" of the same - and that Francis Seguin and James Byrne
" Defendants wrongfully took and wrongfully detain the
" same from his possession To Wit, on the first day of November
" A.D. 1858 at the Town of Limestone in said County. And he further
" Says that said goods and Chattels have not been taken for
" any tax assessment or fine levied by virtue of any Law of
" said State. nor seized under any execution or attachment
" against the goods and Chattels of said plaintiff -
" liable to execution or attachment"

" Subscribed and Sworn to before me this

" 1st day of November A.D. 1858. Winchester Ills. "

" By A. M. Mosley depd

" C. W. Knott "

And afterwards To Wit,
on the ~~1st~~ same day and year last aforesaid the said
plaintiff did by J. P. Bonfield his said Attorney file in

the office of our said Clerk a certain Receipt in the words and figures following To wit,

" State of Illinois

" Kankakee County, S.S.: Circuit Court December Term A.D. 1858.

" Christopher W. Knott

" Francis Seguin vs Replevin "damages \$75.00
" James Byrne "issue a writ

" of Replevin against the

" said Francis Seguin and James Byrne defendants in

" the above entitled cause directed to the Coroner of said Co

" returnable according to Law for the following goods and

" Chattels To wit, Two Black Horses and one sorrel horse

" of the value of two hundred and twenty five dollars"

" Wm. B. Bonfield Deputy

" Philip Worcester Esqy Clerk Circuit Court."

And afterwards To wit,

on the same day and year last aforesaid. our said Clerk

by the direction of said Receipt did issue a writ of

Replevin on said Affidavit in the words and figures

following To wit,

" State of Illinois

" Kankakee County, S.S.:

" The People of the State of Illinois

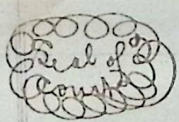
" do

" The Coroner of said County

Greeting!!!

" Whereas

4)
" Christopher W. Knott Plaintiff Complains that Francis
" Sequin & James Byrns defendants unlawfully and
" wrongfully took and detained Two Black Horses and
" one Sired Horse of the value of Two hundred and Twenty
" five dollars. Therefore we command you that if
" the said Plaintiff shall give you Bond with good and
" sufficient security in double 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 said goods and Chattels if return thereof
" shall be awarded. and to have and to keep you harmless
" in recovering said goods and Chattels. you cause
" the same to be relieved and delivered to the said
" Plaintiff without delay. And also that you Summon
" the said Defendants 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 Kankakee City on
" the third Monday of December next 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 Philip Worcester Clerk of our said Court and the Seal
" thereof at Kankakee City in said County this first day of November A.D. 1858.

" Worcester Clerk
" By A.M. Wooley dep't

15
And afterwards Torkie, on the Third day of November
in the year last aforesaid. G. Horner Coroner of said
County did return ~~into~~ said writ into the Office of our
said Clerk with the following endorsement thereon Torkie,
"Served by replenishing the within described property and
"delivering the house to Plaintiff this 3 day of November 1858."

"Castalis Horner Coroner"

And afterwards Torkie, on the eighth day of December
in the year last aforesaid, the said Plaintiff by his
said Attorney did file in the Office of our said Clerk
his certain declaration ~~in the~~ against said
defendants in the words and figures Torkie,
"State of Illinois
"Kankakee County, SS. Circuit Court of the December Term
"A.D. 1858"

"Francis Ceguin & James Byrnes the defendants in this
"Suit were summoned to answer Christopher K.
"Knott the Plaintiff in this Suit of a Plea wherefore
"they took the goods and Chattels of the Plaintiff
"and unjustly detained the same until &c. and there=
"upon the said Plaintiff by Thomas F. Bonfield his Attorney
"complain For that the said defendants on first day of
"November in the year of our Lord one thousand eight hundred
"and fifty eight at the Town of Limestone in the County
"of Kankakee aforesaid took the goods and Chattels Torkie,
"Two black horses and one sorrel horse of the said Plaintiff

" of great value To wit, of the value of Two hundred and
" Twenty five dollars and unjustly detains the same
" until &c. Sub also for that the said defendants on the
" first day of November in the year of our Lord one Thousand
" eight hundred and fifty eight at the Town of Limestone
" in the said County of Kankakee detained the goods and
" Chattels To wit, Two Black horses and one sorrel horse
" of the said plaintiff of great value To wit, of the value of Two
" hundred and Twenty five dollars and now unjustly
" detains the same &c. and the said plaintiff is now lawfully
" entitled to the possession thereof To wit, at the place aforesaid.
" wherefore said plaintiff says he is injured and has -
" sustained damage to the sum of Twenty five dollars
" and therefore he brings Suit &c."

" Thomas P. Bonfield deffs Atty."

Sub afterwards To wit, on the Twenty second day of
December in the year last aforesaid the said defen-
dants by Murray & Loring their Attorneys did file in
open Court with our said Clerk their Pleas to said
plaintiff's declaration in said cause To wit,

" State of Illinois

" Kankakee County Ss. Circuit Court December Term A.D. 1858.

" Francis Seaton & James Byrnes

vs.

" Replevin"

" Christopher W. Knott

" Sub the said

" defendants by Murray & Loring

" their Attorneys come & defend the wrong and injury when
 " to. and say they did not take and did not detain the
 " said horses in said declaration mentioned or either
 " of them or any part thereof in manner and form as
 " the said plaintiff hath above complained against
 " them - and of this they put themselves upon the Country
 " & deft doth the like."

" Murray & Loring defts attys"

" but for a further plea in this behalf as to the wrongfull taking
 " and wrongfull detention of said goods chattels &
 " horses in said declaration mentioned the said defen-
 " dants say that the said Plaintiff ought not to have or
 " maintain his aforesaid action thereof against them
 " because they say that the said goods-chattels &
 " horses in said declaration mentioned at said the time
 " when & were the property of the said defendants and
 " not of the said plaintiff as above supposed & this they
 " are ready to verify - wherefore they pray Judgment if the
 " said Plaintiff ought to have or maintain his afore-
 " said action against them, and also pray a return
 " of said goods chattels and horses together with their
 " costs in this behalf according to the Statute in such
 " Cases made and provided to be adjudged to them &c."

" Murray & Loring defts attys"

" but for a further plea in this behalf as to the wrongfull
 " taking and wrongfull detaining of said goods and

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" Chattels and horses in said declaration mentioned - the said
" Defendants say - Actio = now - because they say that the said
" goods Chattels & horses at the said time when & were
" the goods Chattels and horses of one Robert W. Bush
" and not of the said plaintiff as is above supposed - and
" this they are ready to verify: wherefore they pray Judgment
" if the said plaintiff ought to have or maintain his
" aforesaid action thereof against them - and they also
" pray a return of said goods Chattels and horses to go =
" therewith their costs and Charges in this behalf
" according to the Statute in such case made and
" provided to be adjudged to them."

" Loring & Murray Defts Attys "

in recovery: " Sub for a further plea in this behalf the said Defts come and
" defend the force and vigour when & and well avow the
" taking and detention of said goods & Chattels and
" horses in said declaration mentioned and justify &
" because they say that Lobbis on the 12th day of April
" A.D. 1858. at the April Term A.D. 1858 of the Kankakee
" County Circuit Court. begun and held in the Town of
" Kankakee City in said County of Kankakee - State of Illinois
" on the first Monday of April A.D. 1858. William Godfrey by
" the Consideration & Judgment of said Court recovered
" against one Robert W. Bush & one George H. Duham
" the sum of Three hundred and forty Six dollars and
" Twenty Eight Cents for the damage which the said

" Godfrey had sustained by the non performance of certain
 " promises and undertakings before that time made by
 " the said Bruch & Engham to the said Godfrey - also the
 " further sum of three dollars & forty five cents for the costs
 " and charges by the said Godfrey in and about that
 " suit laid out and expended which were adjudged
 " to the said Godfrey in and by the said Court whereof
 " the said Bruch and Engham were convicted as by the
 " records and proceedings thereof still remaining in the
 " office of the clerk of said Court in the said Town will -
 " more fully appear. And the said defendants further faith
 " that the said Godfrey afterwards viz: on the Twenty
 " second day of April A. D. 1858. sued and prosecuted
 " out of the said Court a writ of Fieri Facias directed to
 " the Sheriff of said County to execute that County being
 " the County in which the said Engham & said Bruch then resided
 " by which said writ the said Sheriff was commanded
 " that of the lands and tenements goods and Chattels
 " of the said Bruch and said Enghams which should
 " be found in his County he should cause to be made
 " the sum of Three hundred and forty six dollars
 " and twenty eight cents which the said Godfrey had
 " recovered against the said Bruch and said
 " Engham for his damages and also the further sum
 " of Three dollars and forty five cents - which were adju-
 " dged to the said Godfrey for his costs and charges in that

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"behalf expended - and that he the said Sheriff should have
"those moneys ready to render to the said Godfrey for damages
"deb^t and costs aforesaid. And to make return of said
"Writ with an indorsement thereon in what manner
"he had executed the same in thirty days from the date
"thereof as by the said Writ under the seal of said Court
"tested by the Clerk thereof bearing date the 22^d day of
"April A.D. 1858. may more fully appear. Reference thereto
"being had. And which these defendants bring here
"into Court. And said defendant Esq. in being
"such Sheriff of said County after the delivery of
"said execution to him to execute as aforesaid. and in
"the lifetime thereof viz: on the 20th day of May A.D. 1858. To wit,
"at the times and place where & by said defendant Byrne
"who was then and there a deputy of such Sheriff
"and then and there acting in that behalf in the
"Capacity of such deputy by virtue of such Writ
"as he lawfully might and as it was his duty to do
"levied upon and took the goods and chattels and
"horses in the said declaration mentioned. and then and
"thereas he lawfully might and as it was his duty to do.
"held and detained them in his custody through and
"by his said deputy. by virtue of such Writ until &c. which
"said taking & detention of said goods. chattels & horses is
"the same taking and detention mentioned in said declaration.
"And these defendants aver that the said goods

" Chattels & horses at the time when &c were the goods, chattels
" and horses of the said Robert H. Bruch and not of said
" Plaintiff and lawfully liable to be taken and levied upon
" by said Defendant Sequin through his said Deputy as
" aforesaid upon and by virtue of the said writ of Fieri
" Facias. and this the said defendants are ready to
" verify. Wherefore they pray Judgment and a return of the
" said goods and chattels & horses together with their damages
" &c according to the form of the Statute in such case made
" and provided to be adjudged to them."

" Murray & Loring depts attys "

2nd writing

" And the said defendants come and defend the taking
" and detention fore and injury & well avows the taking ^{and}
" detaining of said said goods, Chattels & horses in
" said declaration mentioned and justly &c because they
" say that at the time when &c the said Sequin was
" the Sheriff of said County. and that on the Twenty
" second day of April A.D. 1858. a certain other writ of
" Fieri Facias issued out of the Circuit Court of the County
" of Kane County State of Illinois directed to the Sheriff of
" said County. by which said writ the said Sheriff was
" commanded that of the lands and tenements goods
" & Chattels of Robert H. Bruch and George H. Lufham in
" said County. he the said Sheriff should cause to be made
" the sum of Three hundred and forty five dollars and
" Twenty Eight cents. which it was therein stated that one

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" and that he the said Sheriff should have
" William Godfrey as plaintiff had recovered in the Circuit
" Court of said County at a Term thereof begun and held at
" Kankakee City on the first Monday of April A.D. 1858. by the
" Confession of said Bush & said Eughans defendants in
" said Execution for his the said Godfrey's damages. and
" was therein also further commanded to cause to be made
" the further sum of three dollars and forty five cents which
" was in said Fieri Facias stated to have been adjudged to
" the said Godfrey at said Term of said Court. for the costs
" and charges by the said Godfrey in and about the suit
" in said writ named. expended. whereof the said Bush
" & Eughans stood convicted. And said Sheriff was by
" said writ further commanded that he have those
" moneys ready to render to the said Godfrey for his said
" damages debt and costs. and make return of said writ
" with an endorsement thereon in what manner he should have
" executed the same in ninety days from the date thereof as by
" the said writ under the seal of said Court & tested by the
" clerk thereof. and bearing date the said 22 day of April
" A.D. 1858. may more fully appear reference thereto being had
" and which these defendants bring here into Court.
" and the said Dequin being at the time when & Sheriff
" of said County. after the delivery to him of said writ to execute
" as aforesaid and in the lifetime thereof viz: on the 20th day
" of May A.D. 1858. being at the time & place when & by the
" said defendant Dequin who was then and there a deputy

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" of such Sheriff, and then and there acting in that behalf
" in the Capacity of such Deputy, by virtue of such writ,
" as he lawfully might and as it was his duty to do, levied
" upon and took the goods chattels and horses in said
" declaration mentioned and then and there as he lawfully
" might and as it was his duty to do, held and detained
" them in his custody, through and by his said Deputy, by
" virtue of such writ until & which taking & detaining of
" said goods chattels & horses is the same taking & detaining
" named in said declaration. And the said Defendants aver
" that said goods chattels & horses at the time when &
" were the goods and Chattels & horses of the said
" Robert X. French and not of the said Plaintiffs and
" lawfully liable to be taken and levied upon by said
" Defendant Requin through his said Deputy as afore-
" said upon & by virtue of the said writ of Fieri Facias. And this
" the said Defendants are ready to verify - wherefore they
" pray Judgment - and they also pray a return of the
" said goods & chattels & horses together with their
" damages &c according to the form of the Statute in
" such Cases made and provided to be adjudged
" to them &c"

" Murray & Louing Attys for Defts"

" And for a further plea in this behalf the said Defendants
" say that the said Plaintiffs Actio-nou- because they say
" that at the said time when &c the said Defendant -

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Byrd as Deputy Sheriff of the County of Kankakee
in the State of Illinois, had the legal right to the possession
of said goods & chattels in the said declaration
mentioned & that the said plaintiff had not the right of
possession of said goods & chattels and this the said
defendants are ready to verify - wherefore they pray judgment
if the said plaintiff ought to have or maintain his aforesaid
action thereof against them & they also pray a return
of said goods & chattels together with their costs
in this behalf according to the form of the Statute in
such case made & provided to be adjudged to them

vc Murray & Loring attys for defts
And for a further plea in this behalf the said defendants
say that the said plaintiff acts wrong because they say that
the said goods & chattels in the said declaration mentioned
at the time when & were not the property of the said plaintiff
and he had not the right of possession of said goods & chattels
And this they the said defendants are ready to verify —
wherefore they pray judgment if the said plaintiff ought
to have or maintain his aforesaid action thereof against
them & they also pray a return of the said goods & chattels
together with their costs in this behalf according to
the form of the Statute in such case made & provided
to be adjudged to them &c

Murray & Loring attys for defts
And afterwards To wit, on the Thirtieth day of

December in the year of our Lord one thousand
eight hundred and fifty eight. It being one of the
regular days of the December term of said Court for
said year A.D. 1858. And the said Court being then duly
organized and sitting in open Court for the trans-
action of business the following proceedings were
had and entered of Record by the said Court in the
words and figures following To Wit,

" Christopher H. Knott

" 382

vs

" Replevin"

" Francis Dequin James Byrnes

" And now at this

" Day on motion of said Dequin

" and by Murray & Young their Attorneys it is ordered by the

" Court that said Plaintiff do file his Repli-

" cation herein to said defendants Pleas by next

" Monday at one o'clock in the afternoon"

And afterwards

To Wit, on the third day of January in the year
of our Lord one thousand eight hundred and fifty
nine the said Plaintiff bid by his said attorney
file with our said Clerk his Replications ~~and~~ ~~also~~
to said defendants Pleas and also his Pleas to said
defendants Answer in the words and figures
following To Wit,

" State of Illinois

" Kankakee County vs. Kankakee County Circuit Court

" of the December 2. 1858."

" Christopher W. Knott

" as Replevin"

" Francis Sequin James Byrnes " And the said

" Plaintiff as to the said Plea of
" the said defendants secondly above pleaded. Says. Precludi
" non - because he says that at the said time when & the
" said goods - Chattels & horses in plaintiffs declaration
" mentioned were the property of the said plaintiff and
" not of the said defendants. and of this the said plaintiff
" puts himself upon the Country & the Jefe doth
" the like -

" And the said Plaintiff as to the plea of the defen
" dants Thirdly above pleaded. Says. Precludi = non -
" because he says. that at the ^{said} time when & that the said
" goods and Chattels and horses in plaintiffs declara
" tion mentioned were the property of the said plaintiff and
" not of the said Robert S. Burch. and of this the plaintiff
" puts himself upon the Country. & the Jefe doth the like"

" And the Plaintiff as to the Plea of the def
" endants fourthly above pleaded Says. Precludi = non -
" because he says. that at the said time when & the said
" plaintiff had the right of possession of the goods and
" Chattels and horses in the said declaration -
" mentioned and the said Byrnes had not the legal
" right to the possession of the same. and of this

"the plaintiff puts himself upon the Country: & the
 "defts doth the like."

"And the said Plaintiff as to
 "the Plea of the defendants fifthly above pleaded says
 "Recessi-von. because he says that at the said time
 "when &c. the said goods and Chattels and horses
 "were the property of the said Plaintiff - and the right
 "of the possession thereof was in the said Plaintiff.
 "and of this the plaintiff puts himself upon the Country
 " & the defts doth the like."

"And the said Plaintiff as to the first and second avowies
 "of the defendants says that the said defendants beg
 "reason of any thing by them in said two avowies above
 "alleged. ought not to avow the taking and detaining
 "said goods and Chattels and horses in said Declaration
 "mentioned in the Town of Limestone in the County afore-
 "said in which &c. and justly &c. because he says
 "that at the said time when &c. the said said goods
 "and Chattels & horses. were the property of the said
 "plaintiff and not the property of the said Robert H.
 "Bruck - and of this the plaintiff puts himself upon
 "the Country - & the deft doth the like."

"And the plaintiff as to the first and second avowies
 "of the defendants further says. that the said defendants
 "by reason of any thing by them in said two avowies above
 "alleged. ought not to avow the taking and detention of

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" said goods and Chattels and ~~property~~ horses in said
" Declaration mentioned in the Town of Limestone in the
" County aforesaid. in which ~~cc.~~ and quieting because
" to say. that after the levying said Fieri Facias upon
" the said goods & Chattels and horses in said declar-
" ation mentioned and seizing the same. the said
" defendants released and discharged the said
" Levy and all their right to the said goods & chattels
" and horses. in the manner following- that is to say-
" on the 20th day of May A. D. 1858 the said Robert K. Bush
" being desirous of retaining the said goods and
" Chattels and personal property in said Levy upon said
" Fieri Facias mentioned in his possession. The said defendants
" in pursuance of the Statute in such case made and
" provided. took from the said Robert K. Bush a Bond
" Commonly called a forthcoming Bond running
" to said Sequin as Sheriff of said County in the
" penal sum of two hundred dollars. with one William
" Kunkakee thereon as Security. Conditioned that if the
" said horses therein mentioned should be forthcoming
" and delivered to the said Sequin as Sheriff at
" Kankakee City in said County of Kankakee on the
" 12th day of July A. D. 1858. the day & place appointed
" by said Sequin as such Sheriff for the sale thereof
" in pursuance of Law. and should not in the mean-
" time be disposed of in anywise injure or destroy

" said property or any part thereof. whereby the same
" might be diminished in value. then the said Bond
" should be void. otherwise to remain in full force. and
" thereupon the said defendants delivered the said horse
" to said Robert X. Bush. who retained the same during
" the life of said execution. as he had a lawful right to
" do which the said plaintiff is ready to verify. wherefore
" in as much as the said depts have acknowledged the
" taking said horse in the said place in which & he
" prays Judgment and his damages by reason of the
" taking and unjustly detaining the same to be adjudged
" to him:-

And the said plaintiff as to the said avowies of
" the defendants. further says that the said defendants
" by reason of any thing by them in said avowies alleged
" ought not to avow the taking and detention of said horse
" and Chattels and horses in said avowies mentioned
" in the town of Limestone in the County aforesaid- in
" which &c. & justly &c. because he says that after the
" levying said Fieri Facias upon said goods & chattels &
" horses in said declaration mentioned, and seizing
" the same, the said defendants released and discharged
" said levy, and all their right to the said goods & chattels
" & horses in the manner following that is to say. on the 20th
" day of May A.D. 1858. the said Robert X. Bush being desirous
" of retaining the said goods and chattels & horses in his

possession. the said Begun Sheriff of said County by
said James Byrne his deputy. in pursuance of the —
Statute in such case made and provided. took
from said Robert K. Bruch. a Bond Commonly Called
a forthcoming Bond. running to the said Begun as
Sheriff of said County. in the penal Sum of Five
hundred dollars. with one William Sarick as security
thereon. Conditioned that if said Robert K. Bruch
should cause the said property to be forthcoming and
should deliver or cause the same to be delivered to the
said Sheriff at Kanawha City in said County on the 12th
day of July A.D. 1858. the day & place appointed by the said
Sheriff for the Sale thereof - in pursuance of law - and
should not in the meantime sell. dispose of - or in
anywise injure or destroy said property or any part
thereof. whereby the same might be diminished in
value. then said obligation to be void. otherwise to
remain in full force & virtue - and signed sealed by
said Robert K. Bruch and William Sarick - and
thereupon said Begun by said Byrne delivered
said goods & chattels & horses to the said Robert K.
Bruch. who retained the possession of the same during
the life of said Execution. as he had a lawful right
to do - and afterwards Took, on the 31st day of May
A.D. 1858 and whilst the possession of said goods & chattels
& horses was lawfully in the said Robert K. Bruch - the

" property in the said goods & chattels & horses become
" vested in the said plaintiff - which he is ready to
" verify - Therefore in as much as the said defendants
" have acknowledged the taking of the said goods &
" Chattels & horses in the said place in said declaration
" mentioned in which &c. he the said plaintiff prays
" judgment and his damages by reason of the takings
" and unjustly detaining the same - to be adjudged to
" him &c."

" And the Plff as to the said avowies of the said
" defendants further says ~~further says~~ that the said
" defendants by reason of any thing by them alleged
" in said avowies, ought not to avow the takings &
" detention of said horses in said declaration mentioned
" at the Town of Limestone in said County - in which &c.
" & justly &c. because he says - that after the levying and
" seizing by virtue of said Fieri Facias the said horses
" in said declaration mentioned as in said Plea alleged
" on the 20th day of May A.D. 1858. the said Sequin Sheriff
" of said County by said Byrne his deputy Sheriff
" discharged and released said levy and seizure of
" said horses under the said Fieri Facias and released and
" discharged all his or their right to the same to said Robert
" H. Bush. and delivered the said property to the said Robert
" H. Bush who retained possession thereof during the
" life of said Fieri Facias. as he had a lawful right to do.

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" which the plaintiff is ready to verify - wherefore is as much
" to be prayed judgment and his damages by reason of the
" taking & unjust detention of the same to be adjudged to
" him &c"

" J. P. Bonfield Esq Att'y =
And afterwards To Wit, on the Fifth day of January in
the year of our Lord one thousand eight hundred and fifty
nine the said defendants by their said Attorneys
did file in open Court with our said Clerk of their
certain demurrer and Replication in the words and
figures following To Wit,

" State of Illinois

" Cook County, 3^d Circuit Court December Term A.D. 1858.

" Francis Sequin & James Byrne

" vs

" Replevin

" Christopher W. Knott

" And the said defendants by

" Murray & Loring their Attys

" Come and demur to each of the second & third of the

" said plaintiffs Pleas above pleaded to defendants

" said avowries. and say that said second & third

" Pleas no either of them is sufficient in Law.

" & Reply in in said

" Murray & Loring

" demur Laker & Bonfield Esq Attys

" Attys for depts =

" And the said depts by Murray & Loring their Attys as to the

" Pleas of said plaintiff further by him above pleaded to said

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" avowies - both that the said defendants by reason of
" any thing by the said plaintiff therein alleged ought
" not to be barred from avowing the taking of the said goods
" & chattels & horses in the said declaration mentioned
" because they say they did not release & discharge
" said levy & seizure of said goods & chattels & horses from
" under said Fieri Facias and release and discharge all
" their right to the same goods & chattels & horses to the said
" Robert K. Bruch & thereupon delivered said goods &
" chattels & horses to said Robert K. Bruch in manner & form
" as the said plaintiff hath in his said fourth plea in
" Bar alleged and of this the said defendants put
" themselves upon the country & differ doth the like.

" Murray & Loving Defts Attys
And afterwards Tookit, on the Fifth day of January
in the year of our Lord one thousand eight hundred and fifty
nine - it also being one of the regular days of said
December Term of said Court for said year A.D. 1858.
And the said Court being then duly organized and
sitting in open Court for the transaction of business
the following proceedings were had and entered of
Record by the said Court Tookit,

" Christopher W. Knott

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" Francis Seguin & James Rymel

" Replevin"

" And now at this day

" Come the said defendants by

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" which the Court will in no way...
" Murray and Loring their Attorneys and file demurrer
" herein to the Second and Third Special Pleas of said
" Plaintiff to said defendants first and Second
" Avoiries:

And afterwards took place on the Sixth day
of said month of January in the year last aforesaid
it also being one of the regular days of said December
Term of said Court for said year A.D. 1858. and the
said Court being then duly organized and sitting
as aforesaid. the following proceedings were had
and Entered of Record by the said Court took place,

" Christopher H. Knott

" 382.

vs

" Replevin:

" Francis Rogers & James Rogers

" And now at this day

" Comes the said Plaintiff by T. P.

" Bonfield and C. A. Lake his attorneys and the said
" defendants also come by R. H. Murray and H. Loring
" their Attorneys, and after hearing the arguments of
" Counsel upon said defendants demurrer heretofore
" filed herein to the Second and Third Pleas of said
" Plaintiff to the first and Second Avoiries of said
" defendants. the Court being fully advised in the
" premises it is ordered that the same be and it is
" overruled. Whereupon said defendants by their
" said Attorneys except to the opinion and rulings
" of the Court in overruling their said demurrer and
" say that they will stand by their said demurrer.

And afterwards Tookit, on the Seventh day of January
in the year last aforesaid. it also being one of the regular
days of said December Term of said Court for said year
A.D. 1858. And the said Court being then duly organized
and sitting in open Court for the transaction of business
the following proceedings were had and entered
of Record by the said Court Tookit,

" Christopher W. Knott

" Replevin"

" Francis Esquin & James Rynd

" And now at this

" day comes the said Plaintiff

" by J. P. Bonfield and C. A. Lakshis Attorneys. and the

" said defendants also come by R. H. Murray and H.

" Young their Attorneys. and by the agreement of said

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

" now proceed to trial. And that a jury come for that

" purpose. Whereupon comes the answer of a jury of good

" and lawful men Tookit

" Nathan Chester

" Ezra Wetmore

" Arthur Marcotte

" Sidney Dubois

" Samuel Oakes

" Charles Horner

" Lindon Church

" James Melvin

" Pleasant Durham

" William True

" Ezra Huntley - My William Stables

" who being duly empanelled and sworn to well and truly

" try the issues herein joined between the parties to this suit

" and a true verdict give according to the evidence

" after hearing the evidence adduced. the arguments

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" of Council and receiving the instructions of the Court
" by Consent of said parties it is ordered by the Court
" that the Jury do have leave to sign and seal their
" verdict when found then separate and bring the same
" into Court at the coming in of Court tomorrow morning
" Thereupon said Jury retire in charge of an officer
" to consider of their verdict."

And afterwards To Wit:
on the Eighth day of January in the year last aforesaid
said it also being one of the regular days of said
December Term of said Court for said year A.D. 1888.
And the said Court being then duly organized and
sitting in open Court for the transaction of business
the following proceedings were had and entered
of record by the said Court in the words and
figures following To Wit:

" Christopher W. Knott

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vs

" Deplevin"

" Francis Seguin & James Dymal

" And now at this

" day again come the parties

" to this suit by their respective attorneys - and the

" Jury heretofore empanelled herein also again

" come - and for verdict say " we the Jury find the Defen-

" dants Guilty and Assess the Plaintiffs damages

" to the sum of one Cent." Thereupon said Defendants -

" enter their motion for a new trial in this cause. And

" by the Consent of said parties it is ordered by the Court that
" this cause be and it is continued on said motion."

And afterwards Lobitz,
on the same day and year last aforesaid the said defend-
ants by their said attorneys did file with our said clerk
their points on which they ask for a new trial in this cause
Lobitz

" State of Illinois

" ~~Kankakee~~ County, Circuit Court December Term 1858.

" C. W. Knott

" vs { Replevin }

" F. Sequin & D. Lynes " And come the defts by Murray
" & Young their attorneys and move

" the Court for a new trial herein for the following reasons viz

" 1st - Because the Court erred in overruling defts demurrers to

" Defts 2 & 3 leave to defts 1 & 2 to move."

" 2nd - Because the verdict of the Jury is contrary to the evidence

" 3rd - Because the verdict of the Jury is contrary to the instructions

" given them by the Court on the law applicable to this cause

" 4th - Because the Court erred in allowing a certain Chattel

" mortgage offered by the deffs to be read as evidence to the Jury.

" 5th - Because the Court erred in allowing the deffs to read as

" evidence to the Jury a certain Chattel mortgage - the notes

" for which said mortgage was given to secure, was not accom-

" panying said mortgage when so offered -

" 6th - Because the Court erred in permitting the deffs to read

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" as evidence to the Jury a certain Chattel Mortgage purporting
" to be given to secure the payment of ~~Two~~ 2 Certain promissory
" notes therein described without the Dffs first showing
" that he was then the legal owner of said notes, said notes
" not being offered in evidence with the mortgage -

" 7th Because the Court erred in allowing the Dffs to read
" as evidence to the Jury a certain Bond purporting to
" be a forthcoming Bond signed and entered into by one
" H. K. Brueh & one W. Barick -

" 8th Because the Court erred in giving instructions to
" the Jury as to the Law asked by Dffs viz No 1, 3, 5, 6, 8 & 9 -

" 9th Because the Court erred in permitting the Dff to
" read as evidence to the Jury a certain Chattel Mortgage -
" which contained a description of property, none of
" which corresponds with the description of the property
" claimed by Plaintiffs in the affidavit & Narr in this suit.

" Murray & Loring Atty for Dffs

And afterwards Tookit, on the eighteenth day of April in
the year last aforesaid - it being one of the Regular days of
the April Term of said Court for said year A. D. 1859. And the
said Court being then duly organized and sitting in open
Court for the transaction of business the following proceed-
ings were had and entered of Record by the said Court Tookit,

" Christopher W. Knott

" 382

vs

" Replevin =

" Francis Seguin James August

" And now at this day

" Comes the said Plaintiff by Bonfield and Lake his
" Attorneys - and the said defendants also come by Murray
" and Loring their Attorneys - and after hearing the argu-
" ments of Counsel upon said defendants motion for
" a new trial heretofore at the last term of this Court entered
" herein. the Court being fully advised in the premises it is
" ordered that a new trial be and it is granted. Thereupon said
" defendants enter their motion for leave to withdraw their
" demurrer heretofore at the last term of this Court
" filed herein to said Plaintiffs plea to said defendants
" answer, and for leave to file their replication thereto.

And afterwards

To wit, on the Twenty seventh day of April in the year
last aforesaid. it also being one of the regular days of
said April term of said Court for said year A.D. 1859. and
the said Court being then duly organized and sitting
in open Court for the transaction of business the following
proceedings were had and entered of Record by the
said Court To wit,

" Christopher W. Knott

" Francis Sequin & James Byrnes

vs
Replevin.

" And now at this

" day come the parties to

" this suit by their respective Attorneys. and after

" hearing the Arguments of Counsel upon said defendants

" motion heretofore entered herein for leave to withdraw

" the said plaintiff hath above in his said Pleas in that
" behalf alledged. And this said Ofls pray may be
" inquired of by the Country &c =

" Loring & Murray Ofls attys =

And afterwards To Wit, on the fourth day of January
in the year of our Lord one thousand eight hundred
and sixty it being one of the regular days of the
January Term of said Court for said year A.D. 1860.
and the said Court being then duly organized and
sitting in open Court for the transaction of business
the following proceedings were had and entered
of Record by the said Court. To Wit,

" Christopher W. Knott

vs

Replevin

" Francis Seapin & Anne Rymer

" And now at

" this day comes the said

" plaintiff by Bonfield & Lakosie Attorneys. And the

" said Defendants also come by Murray and Loring

" their Attorneys. And by the agreement of said parties

" it is ordered by the Court that this Cause do now proceed

" to trial. and that a Jury come for that purpose. Where-

" upon come the Jurors of a Jury of good and lawful men To Wit,

" Nathaniel L. Hamilton. Archibald Morrison James P. Merrick

" Edward Chappele. James Yorke. Richard A. Lane

" John Fuller. William Loomis. Collett Duckham

" Cyrus Capton. Lemuel Chapman. Hamilton Kenney

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82.
" their demurrer heretofore filed hereto... to... 5th 11. 1860.
" who being duly Empannelled and known to well and truly
" try the issues herein joined between the parties hereto and
" a true verdict give according to the evidence after hearing
" the evidence this day adduced. and the arguments of
" Counsel by Consent of the parties it is ordered by
" the Court that the Jury do have leave to separate and
" meet the Court again tomorrow morning at nine
" o'clock ~~at~~ the forenoon."

And afterwards Tobitt, on the
Fifth day of January in the year last aforesaid it
also being one of the regular days of said January
Term of said Court for said year A.D. 1860. and the
said Court being then duly organized and sitting
in open Court for the transaction of business the following
proceedings were had and entered of Record by the
said Court Tobitt,

" Christopher B. Scott

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" Francis Seagin & James Byrnes

" Replevin"

" And now at this

" day again come the parties

" hereto. and the Jury heretofore Empannelled herein also
" again come. and after hearing the remainder of the
" Arguments of Counsel and receiving the instructions
" of the Court. retire in charge of an officer to consider
" of their verdict. And now it being time for adjournment
" said Jury was sent for to the Jury Room by the Court. said

33.
" Jury came into court. and it appearing that said
" Jury have not agreed on their verdict - by Consent of
" the parties hereto. it is ordered by the Court that said
" Jury do have leave to separate until tomorrow morning
" at nine o'clock. when they will here meet the Court
" and be sent out to again consider of their verdict in
" this cause."

And afterwards Tenth, on the Sixth day of
January in the year last aforesaid - it also being one of
the regular days of said January Term of said Court for said
year A.D. 1860. and the said Court being then duly organized
as aforesaid the following proceedings were had and entered
of record by the said Court Tenth,

" Christopher W. Smith

vs

" Replevin"

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" Francis Sequin & James Byrnes

" And now at this day

" again come the parties to this

" suit by their respective attorneys. and the Jury heretofore
" empanelled herein. also again come. and by direction
" of the Court said Jury again retire to consider of their verdict
" and said Jury returning into open Court for verdict say
" we the Jury find the defendants not guilty in manner and
" form as charged in the said plaintiffs declaration. Whereupon
" said Plaintiff enters his motion for a new trial in this cause."

And afterwards

33.
Tenth, on the Sixth day of February in the year last aforesaid

34.
their demurred motion as L. A. L. ...
the said plaintiff by his said attorneys filed with our said
Clerk in open Court his points on which he asks for a new
trial in this cause. To wit,

" State of Illinois

" Lawrence County SS Circuit Court of the January T 1860.

" Christopher W. Knott

" vs

" Replevin

" Francis Esquivel James August

" And now comes the

" Plaintiff and moves the Court

" to grant a new trial in said cause for the following reasons.

" 1st Because illegal and improper evidence was allowed to
go to the Jury."

" 2^d Because the Court refused to allow Plaintiff to introduce
proper and competent evidence to the Jury."

" 3^d Because Court gave defendants instructions to the Jury."

" 4th Because Court refused to give plaintiffs instructions."

" 5th Because the verdict of the Jury was contrary to the evidence."

" 6th Because the verdict of the Jury is contrary to the law."

" 7th Because the instructions to the Jury on the part of the
defendants are contrary to the law."

" C. A. Lake & L. P. Bonfield Refs Attys

And afterwards To wit, on the Eleventh day of February
in the year last aforesaid. It also being one of the regular days
of said January Term of said Court for said year A. D. 1860.
And the said Court being then duly organized as aforesaid
And sitting in open Court the following proceedings

were had and entered of Record by the said Court in the words and figures following To wit,

" Christopher W. Knott

vs

" Replevin "

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" Francis Seagriss & Sonner Defendants

" And now at this day

" Again come the parties hereto

" by their respective Attorneys. and after hearing the

" Arguments of Counsel upon said Plaintiffs motion

" for a new trial heretofore entered herein the Court being

" fully advised in the premises it is ordered that said

" motion be and it is overruled. Whereupon said Plaintiff

" by his said Attorneys Excepts to the opinion and ruling

" of the Court in overruling said motion. and enters his

" motion in arrest of Judgment in this Cause. Whereupon

" it is ordered by the Court that said motion in arrest be

" and it is overruled. And said Plaintiff by his Attorneys

" aforesaid Excepts to the opinion and ruling of the Court

" in overruling said motion. Whereupon on motion of

" said Defendants it is ordered by the Court that a writ

" Re- Returno- Habeas do issue herein against said

" Plaintiff for a Return of the property Replevied. and

" that they the said Defendants do have Judgment

" against the said Plaintiff for their costs in this

" Cause."

" It is thereupon considered by the Court that said

" Defendants do recover of said Plaintiff their costs and

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" charges by them about their defence in this behalf expended
" and that they do have execution therefor. Thereupon
" said plaintiff by his said Attorneys enters his prayer
" of Appeal from the judgment of this Court in this cause
" to the Supreme Court of this State. And the Court being
" fully advised in the premises it is ordered that such
" appeal be and it is granted on said plaintiff's filing
" an Appeal Bond in this cause in the sum of
" Six hundred dollars with Henry Van meter or James
" Van meter thereon as security in thirty days from this day
" and that he do have the same time to file his Bill of
" Exceptions in this cause."

And afterwards To wit,
on the Twelfth day of March in the year last aforesaid
(it being within the rule of Court entered for that
purpose) the said Plaintiff by his said Attorney
did file with our said Clerk ~~this~~ his Appeal Bond
in the words & figures following To wit,

" Know all men by these presents. That we Christopher W. Knott
" and James W. Van meters of the County of Kankakee and
" State of Illinois are held and firmly bound unto Francis
" Sequin and James Ayres in the penal sum of
" Six hundred dollars. for the payment of which well
" and truly to be made, we jointly and severally bind our-
" selves, our heirs & executors and Administrators. Sealed
" with our seals and dated this the Twelfth day of March

" A.D. 1860."

" The condition of the above obligation is such that
" whereas the above bounden Francis Sequin and Anne
" Agnes did in the Circuit Court of the County of
" Kankakee and State of Illinois at the January Term
" A.D. 1860. thereof recover a Judgment Against the
" above bounden Christopher W. Knott for their costs
" of suit with an award of the return of two black
" horses and one sorrel horse to reverse which said judgment
" the said Christopher W. Knott has taken an appeal
" to the Supreme Court of the State of Illinois. Now
" therefore if the said Christopher W. Knott shall duly
" prosecute said appeal, and shall pay or cause to
" be paid said judgments costs interests and damages
" in case the same shall be affirmed, and all judgments
" costs interests and damages which may be adjudged
" against him in this behalf by said Supreme Court, and
" shall abide the order and judgment of said Supreme
" Court in this behalf then this obligation to be void -
" otherwise to be & remain in full force & effect."

" C. W. Knott

" James W. Vanmeter

And afterwards To wit, on the same day and year
last aforesaid, there was filed in the office of our said
Clerk by Hon C. B. Starr the Judge of said Court the
Bill of exceptions in said Cause in the words and

figures following Exhibit

" State of Illinois

" Kansas County ss Circuit Court of the January
" Term A.D. 1860.

" Christopher W. Knott

" as Defendant

" Francis Dequin & James Byrnes Plaintiff

" That on the trial of this cause

" at the January Term of said Circuit Court of said County

" A.D. 1860 thereof the said plaintiff to maintain the issue

" upon his part offered a mortgage in evidence to the Jury

" in the words and figures following Exhibit

" Chattel mortgage

" This Indenture made this thirty-first day of May in the

" year of our Lord one thousand Eight hundred and fifty eight

" between Robert K. Bruch of the County of Kansas and

" State of Illinois party of the first part and Christopher

" W. Knott of the same place party of the second part.

" Witnesseth that the said party of the first part for and in

" consideration of the sum of one thousand and thirty

" one and $\frac{5}{100}$ dollars in hand paid the receipt whereof is

" hereby acknowledged do hereby grant sell convey and

" confirm unto the said party of the second part his heirs

" and assigns ~~and~~ all and singular the following

" described goods and chattels viz:—

" Four Head of

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" horses, Torbits, one Span of Blacks. Six years old. one
" Cheenut mare seven years old. and one Sorrel horse seven
" years old. Two Lumber wagons. one light two Sprunged
" wagon and one one horse Buggy. three sets of double
" harness. one reaper and mower. and one horse rake.
" three Cows. described as one Cow three years old. one
" lined back red. two and one field red and white five years
" old. six two horse plows and two harrows. three Corn
" Cultivators. one Siam-Porte. and six head of hogs all
" of said goods and Chattels now on said Brushers
" farm and now in his possession in said County
" and State together with all and singular the
" appurtenances thereto belonging or in anywise
" appertaining. To have and to hold the same unto the
" said Christopher W. Knott his heirs Executors Adm-
" inistrators and Assigns to his and their sole use forever.
" And the said Robert W. Brush for himself his heirs
" Executors and Administrators do covenant and
" agree with the said C. W. Knott his heirs Executors
" Administrators and Assigns that he is lawfully pos-
" sessed of the said goods and Chattels as of his own
" property. that the same are free from all incumbrances
" and that he will will and his heirs Executors and
" Administrators shall warrant and defend the same
" unto the said party of the second part his heirs Executors
" Administrators and Assigns against the lawful claims

and demands of all persons.

Provided nevertheless that if the said Robert X. Brush —
his executors administrators or assigns shall well and
truly pay or cause to be paid unto G. W. Knott his heirs
executors administrators or assigns on or before the
thirty first day of May A. D. 1859. the sum of one thousand
and thirty one and $\frac{65}{100}$ dollars and also the interest that
may accrue thereon at the rate of ten per cent per annum
from the thirty first day of May A. D. 1858. according to the
tenor & effect of two certain Indentment notes To wit, one
made by the said Brush payable to the order of the said
G. W. Knott for six hundred and thirty one and $\frac{65}{100}$ dollars
one year from date. and also to secure said Knott against
any losses that may accrue to him in consequence of
signing a note with said Brush payable to the order
of A. S. Perry & Co at their Bank dated Feby. 12th 1858. and
due in thirty days after date. said notes on value received
then and from thence forth. these presents and every thing
therein contained. shall cease and be null and void.
but provided also. that it shall be lawful for the said
R. X. Brush his heirs executors and administrators
to retain possession of the said granted property. and at
his own expense to keep and to use and enjoy the same
unless he or his heirs executors administrators or
Assigns shall make default in the payment of said
notes or any one of them either in principal or interest

" at the times or times and in the manner hereinbefore
" contained or unless the said C. W. Knott shall fear
" diminution removal or waste for want of proper care.
" or if the said party of the first part shall sell or assign
" or attempt to sell or assign said goods and chattels
" or any part thereof - or if any writ issued from any court
" shall be levied on any part of the above described goods
" and chattels that then and in any of the aforesaid cases
" all of said notes both principal and interest shall
" become due and payable and the said party of the
" second part his heirs executors administrators and
" assigns agents or attorneys or any of them may elect -
" thereupon to take possession of the said property and
" for that purpose may pursue the same or any part
" thereof wherever it may be found - and also may enter any
" of the premises of the said party of the first part with or
" without force of process of law wherever the said goods
" and chattels may be or be supposed to be - and search for
" the same and if found to take possession of - and remove
" and sell and dispose of said property or any part thereof
" at public Auction to the highest bidder after giving
" ten days notice of the time place and terms of sale together
" with a description of the property to be sold either by publi-
" cation in some newspaper in the City of Chicago or by similar
" notices posted up in three public places in the vicinity
" of such sale or at private sale with or without notice for

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" Cash or on Credit as the said Christopher W. Knott heirs
" Executors Administrators or assigns agents or attorneys
" or any of them may Elect and out of the money arising
" from such Sale to retain first all Costs and charges for
" purchasing searching taking removing keeping storing adver-
" tising and selling such property goods chattels and effects
" and all prior Liens together with the amount due and
" unpaid upon said notes or any of them either in
" principal or interest rendering the overplus of the
" money arising from such Sale if any there shall be unto
" the said Robert K. Bush or his legal representatives
" Witness hand and seal the day and year first above written

" Signed Sealed and Delivered

" in Presence of L. M. Beach

R. K. Bush

" State of Illinois

" Kankakee County } S. J. L. M. Beach a Justice of the

" Peace in and for said County - do hereby

" Certify that this Mortgage was duly acknowledged

" before me by the above named R. K. Bush this Thirty

" first day of May A.D. 1858."

" L. M. Beach J. P. Seal

" This instrument was filed for Record on 31st day of May

" 1858 at 4 o'clock P.M. and duly Recorded in Book No 16.

" Page No 67, + 68."

" Philip Worcester =

" Recorder of Kankakee Co"

43.
" Is the giving of this mortgage in evidence to the jury the
" defts by their Counsel objected because there was no notes
" produced & offered with it & because the description
" of the notes in mortgage was contradictory - the Court
" overruled the ob & defts excepted -
" Thereupon the Plaintiff produced as a witness George
" Youngblood who being duly sworn testified as follows -
" Some time this last fall I was present at a conversation
" between Plaintiff and defendant Byrnes - Plaintiff said
" to Byrnes: don't you know that before I replevied the horses
" in our replevin suit I come to you and asked you for
" them and told you that I had a mortgage upon them
" and that if you did not give them up I should replevy
" them under it and you told me that I would have to
" replevy them and that if I did not you would sell
" them - Mr Byrnes answered yes that is what I told you
" and upon cross examination the said witness
" testified as follows - I come to be present at the
" conversation because Dr Knott told me to get in
" his buggy and go up with him to Byrnes - and also
" said that he wanted to have a witness to a conversation
" he would have with Mr Byrnes - Thereupon the Plaintiff
" rested his case - Thereupon the defendants offered
" an execution in evidence in the words and figures
" following to wit -

(over)

" State of Illinois

" Kankakee County SS:

" The People of the State of Illinois

" do.

" The Sheriff of said County =: Greeting !!!

" We Command you

" that of the goods and Chattels Lands and Tenements
" of Robert H. Bruch & George H. Knapham defendants
" in your County you cause to be made the sum of
" Three hundred and forty Six dollars and Twenty
" Eight Cents which William Godfrey plaintiff lately
" in the Circuit Court of said County of Kankakee at
" a term thereof begun and held at Kankakee City
" on the first Monday of April A.D. 1858. To wit, on the day
" of the date hereof April 12th at of said term by the
" Confession of said defendant recovered against
" the said defendant and which by the said Court
" was adjudged to the said plaintiff for his damages
" and also the further sum of Three dollars and forty
" five Cents which were adjudged to the said plaintiff
" for costs and charges in that behalf expended whereof
" the said defendant do stand convicted as appears
" to us of Records. And have you these moneys ready to
" render to the said plaintiff for damages debt and costs
" aforesaid. and make return of this writ with an end-
"owment thereon in what manner you shall have executed

"the same in ninety days from the date hereof."

"Witness Philip Worcester clerk of our said Court and the
Seal thereof at Kankakee City in said County of Kankakee
this 22 day of April A.D. 1858."

"Philip Worcester clerk"

Copy

"State of Illinois
County of Will ss. By virtue of
the within execution
I have levied on two Span of horses
the 20th day of May 1858.
F. Seagrave Sheriff
By J. Ryans Deputy

"This writ returned the property
levied is this day replevied the
3rd day of Nov 1858. F. Seagrave Sheriff
Service 1.00 By J. Ryans Deputy
am 1.00
adv 25
ut 10
235
soud 50
\$ 285

"Received this writ this 22nd day
of April 1858. F. Seagrave Shff
By J. Ryans Dep

Execution on Judgment Confessed
Kankakee Co Circuit Court
For Book Page
Whole No 855. Fi. Fa. No
William Godfrey

Robert K. Bruck & George H. Ingraham
Debts - - - - - \$
Sums - - - - - 346.25
Costs Plaintiff - - - 2.45
Costs Defendant - - - 1.35
Total amount - - - \$351.05
Judgment April 12. - - - 1858.
This writ issued April 22. 1858.
Return day July 22. 1858.

Collect interest at 5% per cent per annum
from above mentioned date of Judgment.

Filed in the Circuit Court this 6th
day of Nov 1858. Philip Worcester clk

By A. W. Godley Dep
Murray Attorney

"And the Shff objected to its being given in evidence because
"It did not show that Judgment had been recovered against
"both said Bruck and Ingraham. but only against said
"Bruck and was uncertain and contradictory in time
"when such Judgment was recovered and against whom.
"and it did not show that the Court was held in said County
"and because the return did not sufficiently describe the
"property levied upon whereupon the Court overruled
"said objection and allowed said Execution to be read

" in evidence to the Jury - to which the plaintiff excepted -
" Thereupon the alft offered & gave Record of the Records
" of proceedings of the Circuit Court of this County of a
" Judgment in evidence which is in the words and
" figures following To wit

William Godfrey

vs

Leagorik =

" Robert K. Bruch & George H. Ingham

And now this

day Comes the said

" Plaintiff by R. N. Murray his attorney and files
" his declaration against said defendants in this
" cause. And the Court being fully advised in the
" premises it is ordered that said defendants do file
" their plea herein to said plaintiffs declaration in
" this cause instant. Thereupon comes H. Loring attorney
" for said defendants and file their plea in this cause
" and also their Warrant of Attorney verified by affidavit
" and they the said defendants by their attorney
" aforesaid acknowledge that they did undertake and
" promise in manner and form as the said plaintiff
" hath thereof complained against them in his
" said declaration in this cause. and Confess that said
" plaintiff has sustained damages against them
" by reason of the nonperformance of the same to the sum
" of Three hundred and forty six dollars and Twenty
" eight Cents - Whereupon it is ordered by the Court

"that said plaintiff do have Judgment against the said
"defendants for their damages aforesaid."

"It is thereupon Considered by the Court
"that said plaintiff do recover of said defendants his
"damages aforesaid Confessed to the sum of Three
"hundred and forty six dollars and Twenty eight Cents -
"together with his costs and charge in this behalf
"Expended - and that he have Execution therefor."

13 "Thereupon the defendants produced the said Robert H.
"Brush who testified as follows - The property replevied
"in this suit is the same property levied upon by the Sheriff
"under the Execution and levy in Evidence - that
"Sequin acted as Sheriff of this County and Byrne
"as deputy Sheriff - that Plaintiff some time in the year
"month of February in the year 1859. told the Deans. Fote described
"in the mortgage to William L. Swannell for the sum of \$388.⁰⁰
"taking part in money and part in notes among which was a
"note on me of \$85.⁰⁰ which he still has - and which I have
"never paid - the other property in the mortgage - the
"plaintiff upon the maturity of the mortgage told to my
"father Robert S. Brush who lives with me on my farm,
"what he sold it for I don't know. my father farmed my
"land last year - I having rented it to him - I can't say what
"was paid Knott for the property or how secured - I am a
"minister of the Gospel - The Deans was also mortgaged to my
"father Robert S. Brush - my fathers mortgage was filed after

" the plaintiffs mortgage - they were both executed before
" J. M. Beach & I. and given to Jeff Clerk. that was lost &
" law of them. Jeff's mortgage I have always understood
" was recorded first. I did not deliver Liano to Jeff.
" was not at home - Jeff went & took it."

" Thereupon the defendants produced William L. Swannell
" who being duly sworn testified as follows - I purchased
" a Liano of Plaintiff - mortgaged to Plaintiff by Robert K.
" Beach - Jeff said that he must sell it to raise money to pay
" a note to A. S. Perry & Co. which he was security on for Robert
" K. Beach - I paid Jeff \$388.00 ~~in notes~~ for the Liano in
" notes - and \$70.00 of which sum was in an accepted order
" from Lewis Goodwin on the Jeff and \$89.00 or thereabouts
" in a note on Robert K. Beach and one note of twenty five
" dollars on Mr Lake one of Attys of Jeff. the balance in
" notes upon other people in town. I should not have pur-
" chased the Liano unless the Jeff had taken the notes upon
" Beach - I considered I paid all that the Liano was
" worth - Dr Knott gave me an order on R. K. Beach for
" the Liano - I gave the Reameter Clark Perry the order who
" brought the Liano to me. Thereupon the defendants
" rested their Case."

" Thereupon the Plaintiff recalled Robert
" K. Beach who testified as follows To wit I signed and
" delivered this instrument & gave a forthcoming Bond herein
" after set forth was known witness to the Jeff & Perry & Perry

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" Come to me with an execution in evidence. I turned out the
" property described in the levy, and he told me to give a
" forthcoming Bond, and I might have the property back
" again. I told him I would - and Byrns let down
" and drafted this Bond. I did not know any thing about
" them, and relied upon him to get it up properly for me. I
" thought as he was Sheriff he certainly knew, when he had
" prepared it ready to be signed. I took it and got Mr Barrick
" to sign it as my security. This Bond is all in Mr
" Byrns hand writing, but the signatures of myself and
" Barrick. when I gave it to him, he said to me, the property
" is released, take it and go home. I gave this Bond as a
" release of the property levied upon, and upon cross -
" examination the said witness testified as follows.
" I did not deliver the property to the Sheriff upon his
" execution. I never delivered it to him again. I did
" not bring it and deliver it to him at the Court House -
" the day fixed for the sale. I was going to home and had
" one of the horses in my buggy. I stopped at the Court
" House to see Mr Bonfield on some of my business. That it
" was the day of the sale I went to Mr Byrns and at my
" request the sale was adjourned ten days. I did not
" bring in the property at the end of the ten days because
" I went to Colier and got an injunction from Judge Horton
" restraining the sale and all further proceedings under the
" judgment and execution in evidence, which I stopped

" all further proceedings under the Execution. I do not
" know whether I swore in the Indignation that the
" property was mine. the Indignation will show if I
" did."

" Thereupon the plaintiff offered a forthcoming
" Bond in evidence in the words and figures following
" To wit:

" Know all men by these presents that we -----
" ----- of the County of -----
" and State of Illinois are held and firmly bound unto F.
" Sequin Sheriff in and for the County of K. K. K. and
" State of Illinois. in the penal sum of Five hundred
" dollars lawful money of the United States. for the payment
" of which said sum well and truly to be made to the
" said F. Sequin Sheriff aforesaid or his successor in
" office all and each of us do hereby bind ourselves
" our heirs Executors Administrators assigns and
" personal representatives. each and every of them
" jointly severally and firmly by these presents. In
" Witness whereof we have hereunto set our hands and
" seals at Kankakee City in the County and State aforesaid
" this 20th day of May A.D. 1858."

" The conditions of the above obligation, ~~is~~ ^{is} such. that
" whereas a Judgment was lately rendered in the
" Circuit Court of said County in favor of H. M. Colby
" and against the above bounden R. K. Bush & George

" H. Lughans for the sum of Three hundred ~~and~~ forty six
" ²⁸/₁₀₀ dollars debt and four ⁸⁰/₁₀₀ Costs. on which said
" Subsequent an Execution issued out of the Clerk's
" Office of said Court. numbered — and bearing date
" 12th April A.D. 1858. which said Execution came to the
" hands of the above named Sheriff on the 12th day of
" April A.D. 1858. and was by him on the 20th day of May
" in the year last aforesaid. levied on the following described
" goods & chattels the property of B. X. Arueh Tokit, Two
" Span of Horses. And the said B. X. Arueh being desirous
" of retaining the same in his possession until the day
" of Sale according to the provisions of the Statute
" in such Cases made and provided. and having tendered
" the above named — — — as — Security for the
" delivery thereof on the said day of Sale. who is
" approved of by the said Sheriff. and the said property
" thereon redelivered to the said — — —
" Now if the said Defendant — — —
" shall have or cause the said property to be forthcoming
" and shall deliver or cause the same to be delivered
" to the said Sheriff at Kankakee City in said County
" of X. X. X. on the 12th day of July A.D. 1858. the day
" and place appointed by the said Sheriff for the Sale
" thereof. in pursuance of law. and shall not in the
" mean time. sell dispose of or in anywise injure or
" destroy said property or any part thereof. whereby the

" Same may be diminished in value. Then this oblig-
" ation to be void - otherwise to remain in full force
" and virtue."

" Signed Sealed and delivered

L. K. Bruch

" In presence of

Wm. Barwick

" To the introduction of which
" Bond in evidence the defts by their attys then and there
" objected for the following reasons - 1st The Bond does not
" amount to a release of the levy of the Execution - 2nd Because
" it describes a different Execution than the exe-
" cution in evidence on the part of defts - 3rd Because
" the body of the Bond does not show who was bound
" 4th Because it does not show that the Execution named
" therein is the same Execution in evidence. The execution
" bearing date 22nd April A.D. 1858. & Bond describes an
" Execution bearing date the 12th day of April A.D. 1858. &
" Bond describes an Execution in which Sheriff is
" commanded to make three dollars and forty five cents
" costs & Bond describes an Execution in which the
" Sheriff is commanded to make four dollars &
" eighty Cents costs - & Bond does not correspond
" with the Allegation in deffs Pleas to avowries - & is
" not such a Bond as is prescribed by Statute - which
" Objection the Court then & there overruled - to which -
" ruling of the Court. the defts by their attys then & there
" excepted - and the Court thereupon permitted such

" Bond to be read in evidence to the Jury."

" Thereupon the plaintiff rested his case - Thereupon

" the Court gave the following instructions to the Jury on

" the part of the Plaintiff Torbit,"

Instruction for Plaintiff

No 1. That if the Jury find from the evidence that the defendants
after making the levy upon the property in dispute, delivered
back to the defendant in execution Robert H. Bush the said
property, and took a forthcoming Bond for the same from
said execution defendant, and said property was not
re-delivered to the defendants in this suit under and
according to the terms and conditions of said forthcoming
Bond, but was disposed of by said Robert H. Bush in
good faith, the defendant Torbit by force of the forth-
coming Bond had a right to levy upon goods and chattels
lands and tenements of the execution defendant
Robert H. Bush or his surety or sureties upon such forth-
coming bond, or might sue said Robert H. Bush and his
sureties upon said Bond for the amount of the debt
according to the terms of said Bond. But could not
forcibly retake such property mentioned in such forthcoming
Bond, if the same had been disposed of and went into the
hands of bonafide purchasers."

Instruction for Plaintiff

No 2. That if the Sheriff levied upon personal property and left
the same undisturbed in the possession of Robert H. Bush

for a period of five months and until after his execution
has expired. and no sufficient or lawful reason appears
for so doing. purchasers may treat and consider it
as an abandonment of the levy by the Sheriff."

Instruction for the Plaintiff

No 3. If the Jury believe from the evidence that the plaintiff had
a Chattel Mortgage upon the Two Black horses and one
Dun horse in question. and that previous to the Commencement of this Action, the plaintiff made a demand
upon the defendant Byrnes for said property under and by
virtue of said mortgage then it is such a title as the
plaintiff has a right to recover upon. unless the defendant shows a Superior title to the same property."

Instruction for Plaintiff.

No 4. That if the Jury believe from the evidence that the defendant levied upon the Two Black horses and one Dun horse by virtue of the Execution in evidence. and that the defendant after making such levy. released said levy and took a forthcoming Bond from the defendant in Execution Robert K. Bush. and that the said Robert K. Bush. after the Release of said property from said Execution. executed and delivered unto the Plaintiff Knott a Chattel Mortgage in good faith upon the said property in dispute. and that the ^{said} defendant did not again seize upon said property until about the first day of November A.D. 1858. and after the execution

" had expired & that the plaintiff previous to the comm =
" encement of this suit made a demand upon the def =
" endant Rymer for said property. by virtue of said mortgage.
" then the plaintiff is entitled to a verdict."
" Instruction for Plaintiff"

" No 5. That a Sheriff has a lien upon personal property of the
" defendant in execution during the life of it. but in
" order for the Sheriff to have the advantage and benefit of.
" such lien. it is necessary for the Sheriff to use diligence
" in keeping such execution upon such personal property.
" if the Sheriff should keep such execution in his possession
" without diligently making any levy. leaving the possession
" and dominion of the personal property in the defendant
" in the execution. and an innocent person should pur =
" chase the same in good faith. the Sheriff would lose
" his lien upon such personal property so sold. but the
" Sheriff has no lien upon personal property after the
" life of the execution unless it has been previously levied
" and the Sheriff could not after the life of the execution
" make any levy of the same."

" Instruction for Plaintiff"

" No 9. That fraud is an affirmative proposition and must be
" clearly proven by the defendants. and can not be presu =
" med. and must be the joint act of the plaintiff in this
" suit and the defendant in the execution."

"Instruction for Plaintiff:-"

"No 10. That the Jury have no right to inquire into whether the Sale from the
" Plaintiff to Robert S. Bruch was fraudulent and in bad
" faith - that the only question of fraud for the Jury to
" inquire into - is whether the mortgage by the defendant
" in Execution Robert S. Bruch to Plaintiff Knott was
" made for the purpose of defrauding creditors or was
" made for the purpose of securing an honest and
" bona-fide indebtedness due to said Knott."

"Instruction for Plaintiff:-"

"No 11. That the defendants could release and discharge the
" levy without taking a good and sufficient forth-
" coming bond - or any forthcoming Bond whatever."

"Instruction for Plaintiff:-"

"No 12. That if the Jury find that the Plaintiff Knott received from
" Robert S. Bruch a chattel mortgage upon the property in
" dispute, and that said mortgage contained provisions
" that if the said Knott feared diminution - removal or waste
" for want of proper care - or if Bruch should sell or assign
" such property or make an attempt to sell or assign the
" same, or if any writ issued from any Court should be
" levied upon said property - that then said notes mentioned
" in such mortgage should become due - and that said
" Knott should have the right to take possession of such
" property and sell the same - that then the Plaintiff
" had a right at any time after the execution of such

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" mortgage when any of those contingencies should occur
" to take possession of such property. and sell the same
" according to the provisions of such mortgage. and could
" take in payment money - notes or any other property
" Instruction for Plaintiff "

14. That the Jury may consider whether the language used by
James Byrnes to Robert K. Bush. when he took the forth-
coming Bond. was an actual release and discharge
of the levy or not. "

" Is the giving of which instructions
" on the part of Plaintiff the dopts by their attys then
" and there objected - which objection was by the Court
" then and there overruled - to which ruling the dopts
" excepted - and they were thereupon agreed to the Jury. "

" Thereupon the Plaintiff moved the Court
" to give the following instruction to the Jury To wit
" That if the Jury find that James Byrnes undertook
" to draft and prepare a forthcoming Bond in evidence
" for Robert K. Bush and his surety thereon to sign and
" execute. and that Robert K. Bush relied upon the skill
" and acquaintance of said Byrnes in properly drafting
" the same - and relied upon said Byrnes knowledge of
" what would constitute a good and sufficient
" Bond - and gave to said Byrnes said Bond in good
" faith - that the defendants are estopped from taking any
" advantage of any insufficiency therein. which was -

owing to or caused by said Byrne not having properly
drafted the same. as it is a rule of law that a party
can not take advantage of his own wrong. — which
instruction the Court refused to give to the Jury. to
which refusal the Plaintiff thereupon excepted.
Whereupon the Plaintiff moved the Court to give the
following instruction to the Jury to wit, — "If the Jury
find that the forthcoming Bond in evidence was given
to the Defendant Byrne in good faith and accepted by
him as a good and sufficient Bond. it must be
considered by the Jury as a good and sufficient Bond
for the purposes of this trial." — which instruction
the Court refused to give to the Jury. and to which
refusal the Plaintiff excepted.

Whereupon the Plaintiff moved the Court to give the following
instruction to the Jury to wit, — "That a mortgagee
in a bona-fide Chattel mortgage or the owner of a
bona-fide Chattel mortgage is held in law to be
a purchaser. and that if the Jury find that Christopher
W. Knott took and received a bona-fide Chattel mortgage
upon the property in dispute. in good faith for the
security of any indebtedness from Robert H. Bush to
him. that he would be held and deemed a purchaser.
— which instruction the Court refused to give.
Whereupon the Plaintiff excepted to such refusal.

Whereupon the Plaintiff moved the Court

to give the following instruction to the Jury, to wit, — "If
the Jury finds that the forthcoming Bond in evidence was
given for the release of the property in dispute. Although
it may not describe ^{the execution} in evidence it will be a release of the
property levied upon and the law upon that point is for
the plaintiff" — Which instruction the Court refused
to give to the Jury. Whereupon the plaintiff excepted
to such refusal.

Whereupon the plaintiff moved the Court to give the following
instruction to the Jury, to wit, — "It is not sufficient in
this case for the defendants to prove that they acted in the
matter in controversy as Sheriff and Deputy Sheriff of this
County but in order for them to make out a defence as
Sheriff and Deputy Sheriff of said County duly commis-
sioned and qualified as such. and that said Burns was
Deputy Sheriff duly appointed and qualified as such."
Which instruction the Court refused to give to the Jury
whereupon the plaintiff excepted.

Whereupon the Court
gave all following instruction on the part of the defendants —
to wit, — "If the Jury believe from the evidence that the debts
levied upon the horses in question as Sheriff & Deputy Sheriff
of the County of Kankakee State of Illinois — on or before the 20th
day of May A.D. 1858. by virtue of the execution in evidence
and left said horses in possession of Robert H. K. Bush one
of debts in the execution. Then said Burns had a right to

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" take the horses in question by virtue of such levy and
" execution after the return day of such execution - and
" sell the same for the purpose of satisfying such execution
" and the legal possession of such horses was in debt
" by virtue of such levy - unless the jury find from
" the evidence that the levy was released - To the giving
" which instruction the plaintiff thereupon excepts -

Given
" Thereupon the Court gave the following instruction
" on the part of the defendants Polk, - "An execution
" coming into the hands of the Sheriff is a lien upon the
" property of debtors in such execution - and if the jury believe
" from the evidence that the execution in evidence came
" into the hands of debtors as Sheriff of Kankakee County
" Illinois to execute on the 22nd day of April A.D. 1858. and
" the time of the receipt of said execution was indorsed
" upon said execution by debtors as Deputy - then the
" execution became a lien upon all the property of witnesses
" Bruch - one of the debtors in the said execution - from the
" time of such receipt indorsed on said execution by debtors
" as Deputy - and the time of the receipt of such writ is shown
" by such indorsement - To the giving of which
" instruction the plaintiff thereupon excepts -

Given
" Thereupon the Court gave
" the following instruction on the part of the defendants
" Polk, - "If the jury believe from the evidence
" that the debtors as a deputy of Sheriff Despin levied

upon the horses in question by virtue of the execution
after such levy the dft Byrns as such deputy had a
right to leave the horses in the possession of witness
Brush dft in the execution, and as leaving such horses in
the possession of said Brush did not of itself release
such levy and the law upon that point is for the dft
to the giving of which instruction the Plaintiff
thereupon excepted.

Thereupon the Court gave the
following instruction to the jury upon the part of
the defendants To wit: — "If the jury believe from
the evidence that all the right that the dft Knott acquired
to the horses in question was by virtue of the mortgage
in evidence then the dft Knott did not acquire a right
to the possession of the horses greater, superior or equal
to that of dft Bequin & Byrns acquired by virtue
of the levy made by virtue of the levy made by virtue
of the execution in evidence, unless the jury find
that said property had been released from the levy, and
the law is for the dft Byrns." To the giving of which
instruction the dft thereupon excepted.

Thereupon the Court gave the following instruction
to the jury upon the part of the defendants To wit:
"If the jury believe from the evidence that the
forth coming Bond in evidence describes a different
execution from that in evidence, then such Bond is not

" a release of the levy made by virtue of such execution
" in evidence and the law in that particular is for
" the defendants." — " Whereupon the Plaintiff ex-
" cepted to the giving of said instruction."

" Thereupon
" the Court gave the following instruction to the
" Jury upon the part of the defendants Tolbit, —
" If the Jury believe from the evidence that the mortgage
" in evidence was made by R. K. Brush the dft in the
" Execution and taken by dfff for the purpose of
" hindering and delaying the dfff Godfrey in the ex-
" cution in collecting the money mentioned in the
" Execution or if the mortgage was entered into and
" made by Brush & Knott for the purpose of delaying
" and hindering and defrauding creditors then
" such mortgage is void as against such execution,
" and the Jury in determining whether such mortgage
" was or was not made in good faith, have a right to
" take into consideration all the Circumstances
" Attending the execution of such mortgage, the
" sale of the property, and dealing between R. K. Brush
" & dfff. — Whereupon the dfff excepted to the giving
" of said instruction."

" Thereupon the Court gave the foll-
" owing instruction to the Jury upon the part of the
" defendants Tolbit, — " If the Jury believe from

Given

" the Evidence that Dft has failed to prove a demand
" of Lyons or Esquin before the commencement of this
" suit then the law is for the dfts. — Whereupon the
" Plaintiff Excepted to giving of said instruction
" to the Jury."

Thereupon the Court gave the following
" instruction to the Jury upon the part of the defendants
" To wit: — "The Execution in evidence is full and
" perfect enough to secure the rights of Mr Godfrey and
" the fact that the clerk left off of some words: which
" should have been added to the words "defendant" does
" not invalidate such execution." — Whereupon
" the plaintiff excepted to the giving of said instruction
" to the Jury."

Thereupon the Court gave the following
" instruction to the Jury upon the part of the defendants
" To Wit: — "The dfts have a right to prove that they were
" Sheriff and Deputy Sheriff by showing that they
" acted in that capacity. and if the evidence show
" that dfts acted in the capacity of Sheriff & Deputy
" Sheriff then the law in that particular is for the
" defendants. — Whereupon the Plaintiff excepted
" to the giving of said instruction to the Jury."

Thereupon the Jury retired to consider upon
" their verdict. and returned into Court and asked
" the Court for further instructions upon the question

" whether because an injunction issued restraining
" all further proceedings upon the execution in evidence
" they were to presume without evidence that the
" injunction was dissolved or whether the law
" presumed the injunction was in full force and effect
" and thereupon the Deff moved the Court to give
" the following instruction to the Jury to wit, - That
" if the Jury find that an injunction was allowed
" and issued restraining the defendants from
" all further proceedings at law upon the execution
" in evidence - and that the evidence does not show
" that such injunction was dissolved - the presumption
" of the law is that the injunction is still in force.
" and the burden of proof is upon the defendants to show
" that it is dissolved. The Attys for Defts & attys for Deff
" could not agree that instructions should be given and
" thereupon the Court refused to give said instruction and
" caused the Jury to retire to further consider upon their
" verdict - and did not write the word "refused"
" on the margin thereof to which the Plaintiff excepted
" and the Court refused to give the Jury any further
" instructions whatsoever to which the Plaintiff excepted
" and thereupon the Jury gave their verdict against
" the said Plaintiff upon the issue aforesaid. Whereupon
" the Plaintiff moved the Court to set aside the verdict
" and grant a new trial upon the issue aforesaid. -

" because incompetent evidence went to the jury. because
" competent evidence was rejected by the court. because
" the Court gave the instructions upon the part of the
" defendants. because the Court refused to give Plaintiff's
" instructions to the jury. because the Court refused to
" instruct the jury. - Because the verdict of the
" jury was contrary to the evidence. Because the
" verdict was contrary to the law and the instructions
" of the Court and because the instructions of the
" Court on the part of the defendant were contrary
" to the law. But the Court overruled said motion
" and gave judgment upon said verdict of
" said jury against said Plaintiff. Whereupon
" the Counsel of said Plaintiff made their excep-
" tions to said opinion of the Court in that behalf
" and prayed that the said Court would sign this
" Bill of Exceptions. and Certify that the same
" contains all the evidence given upon the trial
" said Cause. which is accordingly done."

" Charles B. Stone ~~Att~~
" Judge of the 20th Judicial Circuit of the State of
" Illinois"

State of Illinois
Kankakee County Ss. I Philip Worcester Clerk
of the Circuit Court in and for said
County in the State aforesaid. do hereby certify the above
and foregoing to be a full true and perfect transcript
of the record of the proceedings of the Kankakee County
Circuit Court in a certain Cause lately pending in
said Court wherein Christopher W. Knott was Plaintiff
and Francis Sequin & James Byrne were defendants
as appears from the Records and files of said Court
now remaining in my said Office.

Attest my hand and the seal of our said Court hereto affix-
ed at Office in Kankakee City in the County and State aforesaid
this 22nd day of March A.D. 1860.

P. Worcester Clerk
By A. M. Woolley dep

Fee \$20.
/

Alv. C. Ross & H. Knott
vs

Miss Beggs & Emma Byrne
"

Records

RECEIVED
JAN 10 1881

State of Illinois,

Supreme Court, Third Division.

Christopher W. Knott, Appellant,

vs.

Francis Leguin & James Byrns,

Appellees.

} Appeal from
Kankakee.

Afterwards, to wit, at the April Term, A. D. 1860, of the said Supreme Court, comes the said appellant, by Thomas P. Bonfield, his attorney, and says that in the record and proceedings aforesaid, it is manifestly erred, to wit:

1st. The court erred in setting aside judgment on the plaintiffs 2nd & 3rd pleas, and allowing the defendant to reply thereto.

2nd. The court erred in allowing incompetent evidence to go to the jury.

3rd. The court erred in not allowing competent evidence to go to the jury.

4th. The court erred in giving the defendants' instructions, and each of them, to the jury.

5th. The court erred in refusing to give instructions asked by the plaintiff.

6th. The court erred in overruling the plaintiffs motion for a new trial.

7th. The court erred in giving judgment upon the verdict rendered.

8th. The court erred in giving judgment

for the defendant, when by the law of the land
judgment ought to have been given for the
plaintiff.

And the said appellant prays that the
said judgment may be reversed, set aside,
and for naught held.

J. P. Bonfield,

Atty. for appellant.

For the defendant in Error

R. A. Murray
for Appellee

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Krusts or Sequin Stud

Record & Envs

File Apl. 19. 1860
L. Keland
C.W.